

**IN THE MATTER OF** the Resource Management Act 1991

**AND**

**IN THE MATTER OF** A hearing for a resource consent application to Hutt City Council by KJ Whitley (Receiver) for Paddy Hannan Contracting Ltd for land use consent for the operation of a cleanfill including 81,000m<sup>3</sup> of filling for remediation purposes at 14 Waiu Street, Wainuiomata.

Hutt City Council Reference RM150061

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**DECISION OF THE HEARING COMMISSIONER**

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27 June 2016

**SUMMARY OF THE PROPOSAL**

The applicant, K J Whitley proposes to undertake rehabilitation of a clean fill including 81,000m<sup>3</sup> of filling to a further depth of 3m (including a 1.5m sub-excavation). The works seek to make the site suitable for future development including building platforms for commercial development. The applicant has confirmed that the proposed clean filling will take two years to complete, however a five year timeframe has been sought. The site known as 14 Waiu Street Wainuiomata is located within the General Business Activity Area in the Operative City of Lower Hutt District Plan.

**SUMMARY OF THE RESOURCE CONSENTS REQUIRED**

The proposal requires resource consent from Hutt City Council (“HCC”) for the following reasons:

- Earthworks exceeding 50m<sup>3</sup> and 1.2m by a 1.5m sub-excavation from the existing level and a 1.8m above the 1.2m permitted (totalling 3m in height above the current levels) - Restricted Discretionary under 14I 2.2(b); this proposal exceeds the height by 0.3m for the sub-excavation and a further 3m of filling for the clean fill. The volume of 50m<sup>3</sup> is exceeded by 80,950m<sup>3</sup>.
- Discretionary under Clause 11 of the National Environmental Standards for assessing and managing contaminants in soil to protect human health.

While separate consents could be sought for the clean fill earthworks and contamination components of this activity, the applicant has applied for them as a package. I consider the activities are sufficiently inter-related that the activity statuses should be bundled. On this basis the proposal is to be considered as a **Discretionary Activity** overall.

**SUMMARY OF THE HEARING**

I was delegated authority from HCC to act as an independent commissioner on its behalf, to hear the application, the submissions and to make the Council’s decision on the above proposal.

The hearing took place on 5 May 2016 at the Wainuiomata Chambers, Wainuiomata Library, Queen Street Wainuiomata. The hearing was adjourned seeking resolution on the following three matters:

1. The applicants position on the mechanism for a landscape and planting plan and how that would be transferred into a condition of consent.
2. Consideration as to the workability of a condition concerning vibration.
3. A methodology and a potential condition concerning decommissioning of the erosion and sediment control pond.

In addition further confirmation was sought as to the appropriate mechanism for managing any leachate that may result from the proposed activity either through conditions, a management plan or through regional consent conditions that apply.

After further information was received and circulated amongst the parties, on 3 June 2016 I was able to close the hearing.

A list of persons who presented submissions or evidence at the hearing is presented in Appendix 1 to this decision.

**SUMMARY OF  
THE DECISION**

Resource consent is **granted**, for the reasons outlined in Sections 6 to 11 of this decision.

In particular:

- The recent history of the site has been to say the least unfortunate. The site is degraded to the extent that it is unusable and must be remediated.
- There are positive benefits to the applicant to getting a solution to the future use of the site but there are also significant wider environmental matters that must be considered. These relate to whether the receiving environment can assimilate the proposal which will change the existing landform and visual amenity values permanently.
- It was generally acknowledged by all persons giving evidence at the hearing that the site is currently in poor condition and that rehabilitation of the site is desirable. I am satisfied that the proposed works are reasonably necessary.
- In relation to best practice and compliance issues I have had no regard to the applicant's history or the management of the existing site. I consider that the conditions of consent are appropriate to create, in my view, an effective process of design, implementation, monitoring and review of the effects of the proposal.
- I consider that the traffic effects of the proposal will be less than minor, and the remaining effects; on natural features and topography; visual amenity; natural hazards and contamination; construction effects (including noise, vibration and dust/sediment control) will be more than minor, but that subject to compliance with the proposed conditions of consent will mean that they will not be significant, or to an extent where I consider they would be unacceptable.
- The imposition of a bond is unnecessary in the circumstances. I acknowledge the degree of sensitivity of the site due to the history of past cleanfill activity however any requirement for a bond needs to be based on the current set of circumstances. In my opinion there are no extenuating circumstances that would warrant the need to impose a bond and I am satisfied that a standard compliance and monitoring regime under the RMA framework is appropriate.
- I find that the proposal is generally consistent with the relevant objective and policy framework and conclude that there is nothing in any of the statutory instruments that is an absolute policy directive in opposition to the proposal proceeding. I consider that the application is all about effects as opposed to being inconsistent with the statutory instruments.
- While not a matter before me for determination, I make the observation that any future industrial or warehousing development on the site if built to the

maximum of 12 metres above ground level would be a prominent feature visible from some parts of the community against the backdrop of a bush covered hill. While buildings to that height are not at all common in Wainuiomata there is the potential for such an occurrence to happen. My recommendation to HCC would be that it consider a site specific reduction in permitted height in consultation with the landowner. This could be considered at the same time as a further identified change being the rezoning of the Waiu Street end of Wainuiomata Mountain Bike Park from General Business to a Recreation zoning noting that there has been a recent change to the Reserves Act 1977 status of that land.

- However based on the matters that I was able to determine I consider that the conditions, as drafted in Appendix 2 to this decision, are appropriate to avoid, remedy or mitigate the actual and potential adverse effects of the applicant's proposal.

I conclude that the application should be approved as with mitigation and the conditions of consent, the proposal is considered to be consistent with the sustainable management purpose of the Act.

**Contents**

- 1. Introduction ..... 1**
- 1.1 Preliminary Matters.....1
- 2. Summary of the Proposal ..... 2**
- 2.1 The site.....2
- 2.2 Recent resource consent history within Waiu Street.....4
- 2.3 Proposed Activity .....4
- 3. Relevant RMA Provisions ..... 5**
- 3.1 Section 104 Considerations .....6
- 4. Notification, Submissions and Officers Report..... 6**
- 4.1 Notification and Submissions .....7
- 4.2 Section 42A Report.....7
- 5. Necessity for and Positive Effects of the Proposal..... 8**
- 6. Actual and Potential Adverse Effects ..... 10**
- 6.1 Landscape and visual effects.....10
- 6.2 Natural Hazard and contamination effects .....14
- 6.3 Traffic effects.....16
- 6.4 Construction / operation effects.....18
- 6.5 Effects conclusion.....22
- 7. Bonds and dispute resolution ..... 22**
- 8. Relevant Policy Instruments, Plan Rules and Consent Status ..... 24**
- 8.1 City of Lower Hutt District Plan.....24
- 8.2 National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES) .....27
- 8.3 Regional Policy Statement for the Wellington Region.....27
- 8.4 Other Matters.....28
- 9. S104 ..... 28**
- 10. Conditions ..... 28**
- 11. Part 2 Considerations and Overall Conclusion ..... 28**

11.1 RMA Part 2 Considerations .....	29
11.2 Conclusions .....	30
<b>12. Decision .....</b>	<b>31</b>

**Appendix 1:** Persons who attended and presented evidence or submissions at the hearing

**Appendix 2:** Conditions of Resource Consent RM150061

# 1. Introduction

This is the decision on a resource consent application for the rehabilitation of a clean fill including 81,000m<sup>3</sup> of filling with a further depth of 3m (including a 1.5m sub-excavation) on the site known as 14 Waiu Street, Wainuiomata. The application site is legally described as Lot 3 DP 489061, which has an area of 3.5127ha contained within certificate of title 702724.

The proposed works seek to make the site suitable for future development including suitable building platforms. The applicant has confirmed that the proposed clean filling will take two years to complete, however a five year timeframe has been sought. The resource consent application requires a Land Use resource consent from the Hutt City Council (HCC) due to the extent of earthworks and relevant standards under the National Environmental Standards for assessing and managing contaminants in soil to protect human health.

I have been delegated the authority from HCC to hear and determine this application on behalf of the Council.

At the outset it should be made clear that while I am aware of a history of compliance issues with the previous cleanfill operation on site my complete focus is on the proposed cleanfill and site rehabilitation works. I therefore record that I am in no way influenced by any matters concerning the resource management history of the previous cleanfill operation.

## 1.1 Preliminary Matters

In making this decision I firstly note that, in determining this resource consent I have read and considered the application and further information supplied to HCC by the applicant, including the following reports:

- Assessment of Environmental Effects prepared by Spencer Holmes Ltd;
- Landscape and Visual Effects assessment prepared by Hudson Associates Landscape Associates;
- Dust and Discharges to Air Assessment prepared by Ron Pilgrim Consulting;
- Noise Assessment prepared by Marshall Day Acoustics;
- Traffic Assessment prepared by Traffic Design Group Ltd;
- Geotechnical Assessment prepared by ABUILD Consulting Engineers Ltd; and
- Cleanfill Management Plan prepared by Spencer Holmes Ltd.

A section 42A officer's report was prepared by the Council Senior Resource Consents Planner, Ms Sarah Clarke. An addendum to the s42A Planning Report was also submitted at the commencement of the hearing following evidence supplied by the applicant. In addition I record that I have read all submissions received during the notification period and all evidence and legal submissions presented to the hearing.

Following the adjournment of the hearing the following further information was provided by the applicant as requested by me at the conclusion:

- Waiu Street Cleanfill Planting Plan, prepared by Hudson Associates Landscape Architects, dated May 2016;
- Waiu Street Cleanfill Planting Specification 2016, prepared by Hudson Associates Landscape Architects;
- Assessment of Surface Water Sampling at 14 Waiu Street, Wainuiomata (via email), from Bo Simkin at Pattle Delamore Partners Ltd, to Ian Leary, sent Monday, 23 May 2016 4:58pm, with attachment (Analysis Report, Hill Laboratories, date reported 20 May 2016);
- Proposed decommissioning and vibration conditions; and
- Applicant's Reply and Response to Commissioner's Memorandum No. 2 prepared by R E Bartlett QC, dated 26 May 2016.

A final proposed condition set was provided to me by Ms Clarke on 31 May 2016 which I understand both the applicant and Council support.

I undertook a site visit prior to the hearing on Monday 2 May and following the hearing on Friday 20 May. After receipt of all information the hearing was formally closed on 3 June 2016.

## **2. Summary of the Proposal**

For context it is important to briefly discuss the site and the proposal. This has been primarily sourced from the officer's s42A report and from my site visits.

### **2.1 The site**

The application site is located at 14 Waiu Street, Wainuiomata. The site has been used as a clean fill/landfill in the past and following the completion of a recently certified subdivision does not contain any buildings. The site has been the subject of on-going enforcement relating to conditions of RM060334 (outlined further in Section 2.2 below).

The site is in the general business activity area of the city's District Plan. The land adjoining the north-eastern boundary is within the general recreation and passive recreation activity areas. The site has no further special notations or restrictions registered on the District Plan that may affect the proposal.

The application site is legally described as Lot 3 DP 489061, which has an area of 3.5127ha contained within certificate of title 702724. The property's certificate of title has a relevant interest registered on it as follows;

- An updated consent notice was included on this recent certificate of title, this states that prior to the development of any buildings or structures on Lot 3 the owner shall engage a geotechnical engineer. This is considered to be complied with in respect of the current proposal which includes a geotechnical assessment.
- The certificate of title for 14 Waiu Street contains an interest (8457469.1) via a memorandum of encumbrance that restricts the erection of buildings on the site without a chartered professional engineer certifying that the filling has been in accordance with compaction recommendations stemming from conditions attached to the consent order ENV-2007-WLG-00092.

The application site is positioned at the base of a small hill/ridge running along the eastern boundary. Kawatiri Grove (featuring established residential activity) is located on the other side of this ridge, screened by its position where the base of the ridge is located at the 100-105m contour and the top of the ridge is approximately located at the 115m contour. This ridge is well vegetated, with the predominant species being *Kunzea ericoides* (Kanuka) and *Leptospermum scoparium* (Manuka).

Waiu Park is located at the end of the Waiu Street cul-de-sac. The park is owned and managed by the Hutt City Council. Waiu Park is zoned general business in the lower reaches of the park immediately adjoining Waiu Street. The remainder of the park is zoned passive recreation. Waiu Park features a number of mountain bike and walking trails as part of the Wainuiomata Trail Project. We were advised by Mr Hodgkins on behalf of the Parks and Reserves section of the Council that it has recently amended the Reserves Act 1977 of the Park to include the land at the end of Waiu Street but that the District Plan zoning of general business still remains.

Parkway Family Playground is located at 33 Parkway. The park is owned and managed by the Hutt City Council. The park is zoned general recreation and adjoins the application site towards the western corner of the park. The front portion of the park features a playground. The Hutt City Council Parks and Gardens division is currently undertaking a redevelopment project for the park, including an upgrade of playground equipment. The project is aiming to be completed in November 2016.

Parkway Family Playground adjoins a reserve area along the parks northern boundary. The reserve area is zoned passive recreation and effectively forms as part of Waiu Park, connecting the playground area to the mountain bike park via a trail over the small hill/ridge that separates the application site and Kawatiri Grove. From my site visit observations, the trail in general is not well maintained and does not currently appear to be signposted from the Parkway Family Playground. Views from the trail are generally limited by established vegetation.

Other sites accessed off Waiu Street are comprised of a mix of industrial activities except the end site which is recreation reserve. In terms of its traffic function Waiu Street is a cul-de-sac is accessed off Parkway and has low volumes of vehicular movement.

## **2.2 Recent resource consent history within Waiu Street**

The site has a recent history of consents. These include:

RM140269 – a 3 lot subdivision of 14 and 22 Waiu Street, including earthworks to form a right of way.

RM140214 – retrospective consenting of current levels of filling at 7 Waiu Street.

RM120097 – partly retrospective land use consent at 14 Waiu Street to operate a cleanfill to give an already consented operation an additional 12 months capacity. This consent is subject to active enforcement orders due to various conditions not being met.

RM100291 – three lot subdivision and boundary adjustment with adjoining council reserve land which did not progress to new titles being issued.

RM060334 – land use consent to establish cleanfill where commissioner acting for council granted consent for top soil stripping already occurred and refused consent to establish and operate cleanfill. A consent order via Environment Court was issued in 2008 that cancelled the commissioner's decision to decline the cleanfill. Non-compliances with the conditions implemented through the consent order were subsequently subject to enforcement action and resulted in a memorandum of encumbrance being registered on the title for 14 Waiu Street.

RM020698 – subdivision consent for a boundary adjustment that created Lots 1 and 2 DP 386913 (the subject sites). Titles were issued in 2007.

An application was made for a certificate of compliance for a building recycling facility in 2006 but was declined.

In addition there were a range of consents granted by Greater Wellington Regional Council relating to discharges and land use consents for stream works which are still in place.

## **2.3 Proposed Activity**

The applicant seeks resource consent for the rehabilitation of a clean fill including 81,000m<sup>3</sup> of filling with a further depth of 3m (including a 1.5m sub-excavation). This seeks to make the site suitable for future development including suitable building platforms. The applicant has confirmed that the proposed clean filling will take two years to complete, however a five year timeframe has been sought.

Previous management of the clean fill did not include suitable geotechnical monitoring such that certification of the clean filling could be provided. The applicant has provided a geotechnical report prepared by ABUILD Engineering to support this application. This confirms that there are isolated areas of loose fill. Sub-excavation of a depth of 1.5m is now proposed to remove these areas of loose fill and achieve suitable compaction.

The northern end of the site is proposed to be filled first, including grassing of the side batters to provide visual mitigation. Minimal landscaping of the site is proposed (only re-grassing) as this is to provide the greatest flexibility for the future development of the site.

The hours of operation for the clean fill are proposed to be between 7am and 6pm weekdays and 8am to 4pm on Saturdays with no operation on Sundays or public holidays.

Given that the site contains a clean fill, it is subject to the considerations under the National Environmental Standards for assessing and managing contaminants in soil to protect human health (NES), as a clean fill (landfill) is captured by the Hazardous Activities and Industries List (HAIL). A report was provided by the applicant as a result of a Council further information request concluding that the risk to human health is low. The report further recommended various conditions including a contaminated soil management plan (CSMP), noting that the report is not a detailed site investigation (DSI).

The appropriate planning instrument for assessing the proposed activity is the City of Lower Hutt District Plan. The site is within the General Business Activity Area. The relevant rules are contained within chapter 14 of the District Plan and within the National Environmental Standard for assessing and managing contaminants in soil to protect human health, as follows:

- Earthworks exceeding 50m<sup>3</sup> and 1.2m by a 1.5m sub-excavation from the existing level and a 1.8m above the 1.2m permitted (totalling 3m in height above the current levels) - Restricted Discretionary under 14I 2.2(b); this proposal exceeds the height by 0.3m for the sub-excavation and a further 3m of filling for the clean fill. The volume of 50m<sup>3</sup> is exceeded by 80,950m<sup>3</sup>.
- Discretionary under Clause 11 of the National Environmental Standards for assessing and managing contaminants in soil to protect human health.

While separate consents could be sought for the clean fill earthworks and contamination components of this activity, the applicant has applied for them as a package. I consider that the activities are sufficiently inter-related and that the activity statuses should be bundled and on this basis the proposal is to be considered as a **Discretionary Activity** overall.

### 3. Relevant RMA Provisions

Under section 9(3) of the Act:

*“No person may use land in a manner that contravenes a district rule unless the use-*

*(a) is expressly allowed by a resource consent; or*

*(b) is allowed by section 10; or*

*(c) is an activity allowed by section 10A.”*

As stated, the application is for a Discretionary Activity under the District Plan. My discretion to grant or refuse the application is set out in section 104B of the RMA, which states:

**Section 104B – Determination of applications for discretionary or non-complying activities**

*After considering an application for a resource consent for a discretionary activity or non-complying activity, a consent authority-*

- (a) may grant or refuse the application; and*
- (b) if it grants the application, may impose conditions under section 108.*

**3.1 Section 104 Considerations**

Section 104 of the RMA sets out the matters to which I must have regard when considering the applications and submissions received. For this application, they are:

- a. The actual and potential effects on the environment of allowing the proposed activity; and
- b. The relevant provisions of:
  - A national environmental standard (one applicable - National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health);
  - Other regulations (none applicable);
  - A national policy statement (none applicable);
  - The New Zealand Coastal Policy Statement 2010 (not applicable);
  - A regional policy statement or proposed regional policy statement (the applicable document is the Regional Policy Statement for the Wellington Region 2013);
  - A plan or proposed plan (the operative City of Lower Hutt District Plan is the only document of relevance).

I have also considered whether I have needed to have regard to any other matters under s104 (1)(c) and have concluded that there are none.

Apart for the matters raised in submissions and evidence there are no other matters relevant and reasonably necessary to determine this application. My conclusions on s104(1)(a) (effects) and (b) (relevant provisions) are included in a later section of this decision prior to my conclusions under Part 2 of the Act.

## **4. Notification, Submissions and Officers Report**

Prior to my assessment of effects and consideration of the proposal under the City of Lower Hutt District Plan, it is important that I record, based on the officers report, matters of the public notification process and the content of the submissions.

## 4.1 Notification and Submissions

The application was publicly notified on the 29 June 2015 to owners/occupiers of properties located on Parkway, Kawatiri Street, Waiu Street and Puriri Street, Wainuiomata. This notification also included a sign on the site and a public notice in the Hutt News. At the close of submissions on 30 July 2015 a total of 12 submissions were received.

The submissions included 9 in opposition, 1 neutral and 2 submissions in support. Eight submitters originally requested to be heard. A summary of the submissions is included in the s42A Officers Report. The overall key issues raised across the submissions were as follows:

- Dust – needs to be a water cart available for use all days of the week and work should cease if dust clouds are significant. Full sealing of the driveway and a 24 hour watering system is recommended;
- Noise;
- Previous non-compliances with earlier resource consent conditions, the likelihood of compliance is considered to be highly debateable;
- Negative effects on natural features and topography/users of reserve land;
- Compaction of timber materials may not be achievable;
- Silt laden discharges should be adequately treated to prevent migration to Black Creek;
- Algal rich growth from iron leachate within the site and in the storm water system needs to be addressed;
- Lack of information within the application regarding dust, noise and visual effects;
- Lack of mitigation similar to that included within the 2012 resource consent, including removing inappropriate materials, bunding and planting.

Prior to the hearing the applicant made contact with some of the submitters and separately held meetings with them but no formal pre-hearing meeting was held. The applicant instead decided to directly address the concerns outlined within the submissions by supplying further information relating to dust, visual effects, noise, management of the clean fill and traffic.

Following engagement by the applicant with submitters a total of four submitters withdrew their request to be heard at the hearing.

## 4.2 Section 42A Report

Prior to the hearing, I received and reviewed the s42A report, and all attachments including the application documentation submitted by the applicant. An addendum to the s42A report was submitted at the commencement of the hearing following evidence supplied by the applicant.

The addendum addressed typos in the original s42A report and recommended additional conditions of consent be included (as agreed between the applicant and OTB investments Ltd and Tremendous Ltd as submitters).

The Reporting Officer Ms Clarke recommended in her s42A report that resource consent should be granted subject to conditions of consent. Ms Clarke confirmed that the addendum to the s42A report did not change her overall recommendation.

I discuss the officers reasoning and my views on this under both the effects and objectives and policies discussion later in this decision.

## 5. Necessity for and Positive Effects of the Proposal

The definition of effect under the RMA includes positive effects. Mr Whitley as the applicant and his advisors provided evidence at the hearing of the current state of the site and the necessity for the works to facilitate future development of the site for industrial and commercial activity. Essentially it is considered by the applicant that the proposed cleanfill activity will provide for a positive improvement of the site.

The site has been subject to a number of consents relating to cleanfill activity. The applicant provided an overview of the relevant consent history for the site (both Hutt City Council and Greater Wellington Regional Council consents) in section 1.1 in the original application document. For the sake of brevity I do not repeat the list of consents here except to note that the original Hutt City Council cleanfill consent for the site was granted in an Environment Court Order [ENV-2007-WLG-000092] on 30 April 2009 and that cleanfill activity has been carried out on the site since the granting of consents in 2009.

On 6 December 2013 an enforcement order was granted by the Environment Court requiring Paddy Hannan Contracting Ltd to carry out works to achieve compliance with the conditions of the Hutt City Council consent. In February 2014, Paddy Hannan Contracting Ltd went into receivership.

The current applicant has been appointed receiver of the land. The applicant states that after having been appointed receiver he moved quickly to suspend the cleanfill activity. The applicant further states that after approximately 11 months of investigations into the site, the receiver has initiated some cleanfill activity on site and is now moving to gain the necessary consents to rehabilitate the site and make it suitable for further development. In this respect, the applicant considers the works necessary in order to recover costs as part of the receivership process.

### **Findings:**

It was generally acknowledged by all persons giving evidence at the hearing that the site is currently in poor condition and that rehabilitation of the site is desirable. Having visited the site I agree with the applicant that site rehabilitation works are necessary in order to make the site suitable for further development. This in turn provides for direct positive effects, not only

to the applicant from a commercial perspective, but also to the wider surrounding area in rehabilitating a vacant contaminated site with low amenity value.

During the hearing Mr Hodgkins raised question as to the need to raise the existing ground level by 3m, citing concerns around the potential height of future buildings on the site. Mr Hodgkins commented that with previous fill activity the site is already 3m in height above ground level, and in noting the 12m height limit for the zone, the additional 3m fill proposed created the potential for a permitted development of up to 18m in height. Mr Hodgkins considered that such a development would be out of context within the surrounding environment and overly dominant (visually), particularly when viewed from the adjoining park and reserve areas. To this end Mr Hodgkins sought a condition limiting building height to 12m, which he considered effectively constituted a 6m building height.

In addressing Mr Hodgkins evidence Mr Bartlett noted the District Plan definition of height extends to include the *“finished level of the ground as a result of an approved subdivision”*. Mr Bartlett further noted that with the granting of the three lot subdivision of 14 and 22 Waiu Streets (RM140269) the existing ground levels equate to the ground level from which height is to be measured.

Mr Johnstone provided further clarity at the hearing regarding imposing a condition limiting the height of the building. Having sought legal advice Mr Johnstone determined that limiting the height of buildings on the site would be out of scope of the decision, unless agreed to by the applicant, and would require a plan change.

In considering the necessity of the 3m platform, I firstly note that visual amenity matters are discussed further in my assessment of adverse effects.

The requirement for a 3m platform is a recommendation of the ABUILD Geotechnical Assessment and I accept the detail and the justification. During the hearing I questioned Mr Cassidy, Consultant Engineering Geologist for the Council, as to the robustness of the geotechnical assessment undertaken to date. Mr Cassidy commented that the ABUILD assessment is considered to be comprehensive. Mr Cassidy further commented briefly on the potential for other design options (thereby eliminating the need for a 3m platform), noting that piles were a potential option from an engineering perspective but could prove uneconomic.

In light of the above I am satisfied that the proposed works are reasonably necessary and that the 3m platform is an appropriate response to geotechnical conditions on the site. I also note here that I concur with Mr Bartlett regarding the definition of ground level and agree with Mr Johnstone that limiting the height of future buildings on the site would be out of scope of the decision (noting that the applicant does not agree to a height limit).

There are positive and financial benefits to the applicant but there are also significant wider environmental matters that must be considered. These matters relate to whether the receiving environment can assimilate the proposal and in particular effects stemming from site rehabilitation works.

## 6. Actual and Potential Adverse Effects

The following is my assessment of the evidence and my findings on what I consider to be the actual and potential adverse environmental effects of the proposal. Setting aside any positive effects, I focus on the matter of potentially adverse effects and available methods to avoid, remedy or mitigate them.

In my view, after considering the evidence presented in the hearing the principal issues that were in contention were in respect of:

- Landscape and visual effects;
- Natural hazard and contamination effects;
- Traffic effects; and
- Construction / cleanfill operation effects (relating to noise, dust, vibration, erosion and sediment).

I discuss these in the following sections of this decision.

### 6.1 Landscape and visual effects

The key issues at hand relating to landscape and visual effects appear to be the potential visual impact of the fill batter along the sites western boundary and the potential height and bulk of future buildings on the site.

Landscape and visual impacts were identified as a concern by Mr Hodgkins who submitted evidence on this issue on behalf of the HCC Parks and Gardens Unit (independent from the regulatory function of the HCC Resource Consent Team). Ms Clarke also expressed a level of concern as to the potential for visual impacts. Mr Hudson addressed landscape and visual matters at the hearing on behalf of the applicant while Mr Goodyear provided evidence on behalf of HCC.

Considering the visual impact of the batter, the applicant originally proposed grassing of the bank. The applicant commented in the AEE that the bank would effectively 'marry into' the adjacent hill and that the landscaping proposed is minimal as the site is intended to be developed for General Business Activity. The applicant further commented that views of the site from the wider surrounding area were generally limited and further noted the industrial nature of the immediate surrounding area. The applicant concluded any landscape and visual effects to be less than minor.

Ms Clarke considered the issues of landscape and visual effects in her s42A report concluding that the effects will be more than minor, but not significant or unacceptable provided that recommended planting is effectively implemented. Ms Clarke recommended a condition of consent requiring planting of the fill batter commenting as follows:

*On this basis, I have included a condition which requires the planting of the fill batter around its periphery closer to the southern and western boundaries. Noting this was a matter requested by several of the submitters. The applicant may wish to advise further when this would be practical, as there will be a significant amount of work to be completed to create the batter, so in effect this would only mitigate the long term visual effects not those experienced in the intervening period which the applicant advises will take two years to complete.*

Ms Clarke further addressed the issue of visual impacts of future building development on the site, commenting as follows:

*The previous application which included levels similar to those proposed from 2006 did include the further mitigation of limiting the building height on top to 6m so that they would not be higher than the maximum building height from natural ground levels. I requested that the applicant consider if they would be prepared to limit the height of the buildings in a similar way and they confirmed that they did not consider this to be necessary. With no mitigation I consider there is a potential for the buildings to become visually obtrusive within the context of this site.*

Ms Clarke similarly concluded that the effects of future building development will be more than minor, but not significant or unacceptable provided that recommended planting is effectively implemented.

Mr Hudson presented evidence for the applicant at the hearing concluding that either maintained grass or a densely vegetated batter slope would be suitable in terms of mitigating visual impacts at this location. Mr Hudson's assessment included four visual simulations of viewpoints of the site for a 7m and 12m building height development. The 7m building height was chosen to show what the building height might have been without the earlier earthworks raising the site levels between 2-3m and the proposed additional height of 3m. This assessment concludes that the landscape and visual effects of the proposal will be less than minor and that they will be consistent with their receiving environment. Mr Hudson noted the zoning of the site and surrounding area (also noting the extent of the General Business Activity to include part of Waiu Park), commenting that any visual impact needs to be considered in the context of the industrial nature of the area.

Mr Goodyear presented evidence on behalf of the Council maintaining that grassing the banks would not adequately mitigate the visual impact of the batter and future development of buildings on the site. Mr Goodyear recommended that a landscape plan be prepared for planting the batters facing Waiu Park and the southern face of the filled area facing Parkway and the Parkway Family Playground, concluding that an appropriate level of planting (subject to conditions) would suitably mitigate the visual impact of both the batter slopes and future site development.

Following the hearing I sought resolution on the applicant's position on the mechanism for a landscape and planting plan and how that would be transferred into a condition of consent. In response the applicant has submitted a detailed landscape plan for consideration.

The need for a landscaping bond was discussed during the hearing as this was an issue raised in submissions. This matter is considered in further detail in Section 7 of this report.

**Findings:**

I agree with expert evidence presented at the hearing that the key determinant of landscape and visual impacts are in relation to the visual appearance of the batter slopes and future building developments on the site.

As noted above, Mr Hodgins raised concerns as to the potential visual impact of the proposal. His concerns centred around the proposed batters and potential future building development when viewed from the surrounding park and reserve areas, including from the trail connecting the playground area to the mountain bike park located on the hill separating the application site and Kawatiri Grove.

As stated earlier I carried out two site visits, the purpose of which in part was to determine visibility of the site and consider potential visual impacts. As part of the second site visit I walked through the trail and I observed views from the trail to the application site to be generally limited due to the extent of established vegetation coverage. There would be limited visual connection from the trail to a future building development. I consider that any adverse visual impact on views from the trail would be less than minor.

In addressing landscape and visual amenity impacts Mr Goodyear recommended planting along the batters facing Waiu Park and the southern face of the filled area facing Parkway and the Parkway Family Playground. I note that Mr Hodgins commented during the hearing that he supports Mr Goodyear's evidence in relation to batter treatment.

The applicant has subsequently provided a planting plan and specifications which I understand has been developed in consultation with Mr Goodyear. Mr Goodyear recommends the proposed plan and specifications be included as part of any consent approval as a means to mitigate potential visual impacts. I further understand that the Council supports Mr Goodyear's recommendation. The planting plan and specifications essentially mirror proposed measures outlined in Mr Goodyear's evidence which I note that Mr Hodgins supported. In this respect I consider that the planting plan and specification appropriately addresses Mr Hodgins' concerns.

During the hearing I raised issue with the applicant's assessment of proposal within the context of the surrounding industrial/commercial environment. While acknowledging the zoning of Waiu Park (in part zoned General Business) I consider the assessment needs to take into account the existing reserve and questioned Mr Hudson how that would change the landscape assessment. Mr Hodgins provided input regarding the reserve status of Waiu

Park, confirming that the park was granted reserve status under the Reserves Act through a public process in 2015 with the Council intention to seek a plan change to provide for a more appropriate zoning at a future undetermined date.

Having sought legal advice, Mr Johnstone provided further clarity regarding the reserve status. Mr Johnstone commented that the reserve status needs to be taken into account as part of the effects assessment and is able to be taken into account as a s104(1)(c) matter but does not trump other matters. Mr Johnstone commented that the s42A report assessed the mountain bike park as a park and that this assessment stands.

During the hearing concerns were raised in relation to the staging of the landscaping. The Council identified potential risk were landscaping measures to be implemented at the completion of fill activity, noting the implications for short term visual amenity impacts with the works to occur over a two year period. Concerns were also expressed over the potential for compliance issues following completion of fill activity in the event plantings were not subsequently undertaken.

In response the applicant noted that the cleanfill works were to be undertaken in a staged progression from north to south on the site. The planting specification includes the requirement for progressive planting each planting Season (May – August) as earthworks are completed, and hydroseeded batters established. I note this matter is discussed in further detail in relation to the requirement for a landscaping bond in Section 7 of this report. For the time being, I note here that I consider this measure adequately alleviates concerns regarding the staging of planting.

In light of the above, I consider the planting plan and planting specifications proposed provide for a practicable response to mitigate the potential for adverse landscape and visual amenity impacts. I am satisfied that the proposed planting would suitably mitigate the impact of the batter slopes and some of the potential impact of future buildings on the site. I am therefore satisfied that subject to compliance with the relevant conditions, that all landscape and visual issues can be appropriately managed.

I note that the assessments in relation to “worst case” building height have largely focused on a development up to 12m in height occupying the majority of the site. In reality I consider this an unlikely outcome for the site and consider one could reasonably anticipate a future development with significantly less bulk. However my recommendation to Council is to consider a reduction in height for the site through a Plan Change in conjunction with the applicant, as 12 metre high buildings (however unlikely that may be) would be very prominent.

However the risk of maximum permitted height buildings does not outweigh the absolute need for a plan to remediate the site in my view and is not in itself a reason to decline the consents sought. With that proviso I am satisfied that all other landscape and visual issues have been appropriately addressed.

## 6.2 Natural Hazard and contamination effects

Ms Clarke, as the Council planning officer addresses the potential for natural hazard and contamination effects in her s42A report, noting the site is not identified as having any particular natural hazards such as flood risk, fault-lines or areas prone to slips. The site has been extensively modified by clean filling and the long-term stability of the site is an important consideration. Ms Clarke concludes that the natural hazard and contamination effects of the proposal will be minor provided that the applicant implements the recommendations of the ABUILD geotechnical report and Council contamination advice.

The ABUILD geotechnical report detailing the proposed clean filling operations has been peer reviewed by Council's consultant engineering geologist from Engeo, Mr Cassidy, who commented that he agrees with the conclusions drawn in relation to the filling proposed. The report includes a number of recommendations including:

- An earthworks management plan and settlement monitoring should be established on site;
- Flatter batter profiles where the existing batters (20-35 degrees) have the potential for shallow seated instability; and
- Future buildings must be subject to specific foundation design.

The Council supports the ABUILD report recommendations.

Ms Clarke notes that one submitter raised concerns as to the risk to property adjoining the batter slopes. Ms Clarke considers the geotechnical advice and subsequent peer review has been appropriately undertaken by suitably qualified geotechnical specialists to assess the long term stability of the site including that of batter slope stability. Ms Clarke further recommends conditions to ensure that an engineer is involved in overseeing the works to the extent where they can be verified to be in a safe condition on completion.

With regard to contamination matters no Detailed Site Investigation has been undertaken and the activity therefore falls to be assessed as a Discretionary Activity under clause 11 of the NES. Ms Clarke notes the method of works (with contamination to be capped beneath a layer of fill approximately three metres in depth) and concludes the contamination effects will be suitably mitigated. Ms Clarke recommends conditions to require a contaminated soil management plan to be in place to manage the potential risks during the filling phase (noting this as an approach anticipated by the NES) and also a condition requiring un-suitable material to be disposed of at an appropriate off-site facility.

During the hearing Mr Simmons raised concerns as a submitter on behalf of the HCC Infrastructure Team regarding geotechnical and contamination matters on the site. Concerns related to the technical difficulty of the cleanfill operation and ensuring an appropriate level of

expertise to oversee the process and the decommissioning of the sediment pond. Mr Sherlock as General Manager City Infrastructure reiterated the position of the Infrastructure Team citing concerns around risk to the Council and ratepayers if the works are not completed to an appropriate standard. To this end Mr Sherlock sought that a bond be imposed to ensure works are appropriately undertaken.

During the hearing I noted the comment from the applicant as to the presence of a brown leachate on the site in the context of potential for contamination effects and water quality impacts. Mr Leary on behalf of the applicant commented that ABUILD undertook testing of the brown leachate in select locations and found no evidence of any contamination. Mr Leary further noted that all relevant regional consents had been obtained for the proposed works and that the leachate was primarily a matter to be addressed through regional consent requirements.

Following adjournment of the hearing I sought further response from the applicant to determine an appropriate mechanism for managing any leachate that may result from the proposed activity either through conditions, a management plan or through regional consent conditions that apply. The applicant subsequently undertook further testing, confirming the two additional samples complied with ANZECC guidelines and provided copies of the relevant regional consents.

**Findings:**

I am satisfied that geotechnical matters have been appropriately considered and generally agreed upon by all parties. I find the ABUILD report and subsequent peer review process to have been appropriately undertaken by suitably qualified and experienced specialists and I rely on their expert opinion.

Geotechnical considerations play an important role in the design of the cleanfill operation and final site topography. Concerns were raised during the hearing by Mr Hodgkins as to the need for the three metre platform and resulting visual impact. I have previously commented around the necessity for the three metre high platform in Section 5 of this report and I stress here that my primary concern with regard to geotechnical matters is to ensure stability and usability of the site after effective remediation. I also note that while an alternate design solution could potentially address visual impact concerns I have concluded above that the primary landscape issues can be appropriately managed through implementation of the proposed planting plan. While an alternate design solution could be considered (potential economic considerations aside) I am satisfied that the proposed engineering response is appropriate to the site context.

Geotechnical concerns raised in submission by Mr Simmons, on behalf of the Council Infrastructure Team, essentially equated to a caution as to the potential complexity of the proposed works. Mr Simmons also raised an issue with decommissioning of the sediment pond and I discuss this issue in further detail below. I asked Mr Simmons during the hearing

as to whether the proposed cleanfill activity could be appropriately undertaken on the site to meet relevant engineering standards. Mr Simmons considered the works could be undertaken but again emphasised the complexity of the proposed works, commenting that an appropriate level of expertise should oversee the works. Mr Simmons commented that his main issue was the requirement for a bond to ensure the works were adequately undertaken. I similarly questioned Mr Cassidy, providing geotechnical advice for the Council, as to whether the works could be undertaken from an engineering perspective. Mr Cassidy considered that the works (subject to recommendations) could be undertaken to a satisfactory standard such that buildings could be established on the site in the future.

To that end I am satisfied that subject to the uptake of the ABUILD report recommendations and the additional Council conditions (including the requirement that all earthworks are designed, supervised and certified by a suitably qualified and chartered engineer with appropriate structural/geotechnical experience) that site stability will be appropriately provided for. I further understand that the applicant and Council agree to the proposed engineering conditions. I consider that subject to compliance with conditions of consent, all geotechnical matters can be appropriately addressed.

With regard to contamination matters I am satisfied that the Council's recommended conditions will appropriately mitigate the potential risk to human health during the earthwork activity. I also agree with Ms Clarke that capping the soil is an appropriate response based on current best practice. Having since reviewed the additional information provided by the applicant (additional testing and regional resource consents) I am satisfied that the observed brown leachate is to be appropriately managed on site. I further understand that the applicant and Council agree to the proposed contamination conditions. I consider that subject to compliance with conditions of consent, all contamination matters can be appropriately managed on site to mitigate the potential risk to human health.

During the hearing Mr Simmons raised issue with the decommissioning of the erosion and sediment control pond (ESCP) on site. This matter had not previously been raised by either the applicant or the Council. Following adjournment of the hearing the applicant liaised with the Council to propose agreed to conditions of consent to manage decommissioning of the ESCP. I am satisfied that the proposed conditions of consent appropriately provide for the decommissioning of the ESCP.

Overall the conditions proposed in respect of geotechnical and contamination issues provide a comprehensive approach to managing these issues in my view.

### 6.3 Traffic effects

The applicant has provided an assessment of traffic effects in support of the proposal by TDG Ltd. The proposal in terms of traffic matters is described in the original application document as well as the TDG report and the Council s42A report. The proposal detail is not repeated further here other than to note the cleanfill operation is anticipated to equate to an average of one

truck (two truck movements) every 40 minutes. The TDG report concluded that with on-site management proposed by the Cleanfill Management Plan and with an internal passing bay, *'the cleanfill can function effectively and safely from a traffic perspective, with effects that will be minor'*.

Mr Whitaker of TDG Ltd presented evidence on behalf of the applicant at the hearing. Mr Whitaker identified two main traffic issues - width of the access and clarification of number of truck movements. Mr Whitaker noted that since the original traffic assessment had been undertaken that the access has now been sealed to a width of 6m and length of 15m, commenting that the additional approximate 35m length of unsealed driveway provides sufficient space for two trucks to pass on the site. Mr Whitaker confirmed that truck movements were anticipated to be approximately 20 per day. Mr Whitaker maintained that the cleanfill activity can operate satisfactorily from a traffic network and safety perspective.

Mr Bartlett for the applicant commented that the level of traffic entering the site is likely to be significantly less than what could be expected were the land to be developed for yard based activities, provided for as permitted activities under the Operative District Plan. Mr Bartlett further commented that in the event of traffic movements being higher than presently anticipated, the consequence would be that the landfill capacity would be exhausted sooner than anticipated, and the rehabilitation of the site would be able to happen sooner.

For the Council Ms Clarke considered the likely number of movements associated with the proposed activity would not significantly exceed what is anticipated within the District Plan. Ms Clarke noted the roads have previously accommodated similar levels of traffic without issue during the previous clean filling activities occurring on this site, including up to 40 vehicle movements per 10 hour day. Mr Barclay provided traffic advice for the Council, concluding that Waiu Street is of sufficient width and formation to accommodate the traffic outlined within the proposal and substantially concurs with the traffic advice provided by the applicant. On the basis on Mr Barclay's advice Ms Clarke concludes traffic effects of the proposal will be less than minor.

A submission was received during the notification period by OTB Investments Ltd citing a number of concerns with the proposal, including concerns around capacity issues on the local road network from the number of heavy truck movements to and from the site. I note here that the applicant has since met with OTB Investments Ltd, providing an agreed to set of conditions (also agreed to by Treemendous Ltd) to address concerns. OTB Investments Ltd subsequently withdrew their request to be heard at the hearing.

In other traffic related submissions Mr Vaughan raised concerns relating to dust impacts on their adjoining property from heavy vehicle movements and Mr Criglington cited concerns around heavy vehicle movements primarily in relation to vibration impacts on his adjoining site. These concerns primarily relate to cleanfill operation effects discussed further in Section 6.4 below. The focus of this section is to consider traffic network and safety effects.

**Findings:**

During the hearing I asked Mr Whitaker, acting on behalf of the applicant, as to the ability of the surrounding network to accommodate potential variation in anticipated traffic movements. Mr Whitaker commented that the previous cleanfill activity on site did not adversely affect operation of the network and concluded any likely variation in traffic movements would be able to be accommodated.

I observed from my site visit potential difficulties for heavy vehicles in turning right out of Waiu Street. Mr Whitaker noted that visibility is generally good and commented that on some occasions vehicles may need to wait for a gap in traffic but that such delays based on reasonably anticipated traffic flows would be minimal.

With regard to trucks passing within the site Mr Whitaker commented that visibility at the front of the site would mitigate the potential for conflict at the site access, noting that trucks could reverse within site if necessary.

I find traffic matters have been generally agreed to by all parties, noting that Mr Barclay raised no further issue on behalf of the Council during the hearing proceedings. Overall I am satisfied that the scale of the proposed activity is such that the efficiency and safety of the surrounding traffic network will not be unduly compromised and that the number of vehicle movements is comparable to that anticipated under the District Plan. Any traffic related effects would be less than minor.

#### **6.4 Construction / operation effects**

Construction effects would include; noise, traffic, vibration, dust, erosion and sediment effects. I have considered the traffic network effects separately under the earlier section of this assessment. Traffic effects are only considered further here in relation to amenity values in respect of noise, dust and vibration effects.

Overall I consider the most significant part of the construction effects would be the potential dust nuisance. I note the number of complaints previously received in relation to dust prior to the receiver taking over the management of the site and also note that nearly all of the submitters raised dust as a concern in respect of this proposal.

##### *Dust effects*

The applicant maintains that the potential for adverse dust effects are able to be appropriately managed on site. A number of dust related conditions have been offered by the applicant in agreement with some submitters and in further liaison with Council officers.

For the Council, Ms Clarke outlines measures to mitigate the potential for adverse dust effects in her s42A report. I refer to Ms Clarke's report for an overview of dust related matters. Mr Coulson provided expert advice on behalf of the Council, commenting as follows:

*The proposed plan does cover the generation of dust on paper. The effectiveness of the plan will be dependent on the resources available and the commitment of the staff. It will be important that an operational plan be formulated which should include the appropriate operator training and list the resources available cross checked against the land area and water usage to ensure that there is adequate capacity in dusty conditions. A log of operators and their level of training should be recorded and checked to ensure that it is current.*

Relying on Mr Coulson's advice, Ms Clarke concluded that the dust and erosion sediment control effects of the proposal will be more than minor, but that they can be adequately managed on the site to an extent where they are considered to be acceptable and not significant.

At the hearing Mr Vaughan and Mr Hyde presented evidence of the impact of previous cleanfill activity on their adjoining warehouse storage facility. In particular a warehouse door (generally required to be open) faces directly downwind of the site (thereby being particularly affected by dust impacts during the predominant northerly wind). This impact resulted in significant time being spent on cleaning merchandise before being sent to customers (with goods often returned when dust visible). Mr Vaughan and Mr Hyde raised concerns that dust generated by the current proposal would similarly adversely impact on their business activity, noting that since cessation of cleanfill activity on the site that dust was no longer an issue for their business.

#### *Noise effects*

Mr Wood of Marshall Day Acoustics presented evidence for the applicant in relation to noise matters. Mr Woods states that it is expected that the proposed clean filling activities will easily comply with the required residential daytime noise criterion of the District Plan. Additionally, given the level of cleanfill activity, the received noise level predicted at the closest residential areas is considered to be reasonable. Compliance with the general business noise limits measured at the boundary may at times be marginal in terms of compliance, but not to an extent which is considered to be unreasonable. Mr Woods recommends the following:

- *If noise from the site is required to be reduced to be within the District Plan noise limit, an appropriately designed and located bund constructed from cleanfill material close to the affected boundary can effectively reduce the noise from the site to comply with the District Plan noise limit.*
- *Rock crushing activities are predicted to be the largest noise generator for this activity, on this basis the acoustic report recommends that the rock crushing activities and associated plant are located away from the site boundaries.*
- *A noise management plan is proposed and this will further detail the best practicable options for the site.*

Mr Bentley, Senior Environmental Health Officer, has provided expert noise advice for the Council. Mr Bentley commented at the hearing that his only concern was the noise performance standard for the General Residential activity area, and in particular, Kawatiri Grove. Mr Bentley commented that he has discussed this issue with Mr Woods and have been able to come to an agreed noise limit. Relying on Mr Bentley's advice, Ms Clarke concludes any noise effects would be minor.

### *Vibration*

During the hearing Mr Criglington raised issue with the potential for vibration effects to adversely impact on his business, Miers Laboratories, operating on the site at 32 Waiu Street which directly adjoins the application site. The business produces medical products requiring 'high-tech' machinery to be recalibrated when affected by vibrations. Vibration effects were raised in a general manner in his submission, however Mr Criglington commented that the primary cause for concern was in relation to heavy vehicle movements and heavy machinery use on the site.

Neither the applicant nor the Council had considered the potential for vibration effects in their evidence. There was general discussion at the hearing of the potential for vibration impacts. While acknowledging the issue had been generally raised in his submission it was generally agreed by all that the issue of vibration effects needed to be addressed.

Following adjournment of the hearing I sought consideration as to the workability of a condition concerning vibration. The applicant has subsequently submitted a proposed vibration condition and I understand the Council supports the condition as proposed.

#### **Findings:**

The construction / cleanfill operation effects of the proposal will be relatively significant. The applicant anticipates that the filling will occur for a period of 2 years but has applied for resource consent to cover the typical 5 year timeframe. There is no existing fencing or vegetation along the boundaries of the site which might assist with mitigation of effects and the site is currently covered in weed species.

As above, the most significant part of the construction effects would be the potential dust effects. The previous history of cleanfill operation on the site has resulted in a high level of sensitivity from other activities in the surrounding area. Mr Bartlett notes on behalf of the applicant '*substantial consensus*' between the applicant's and Council's respective air quality advisers. Mr Bartlett further notes that Mr Curtis, as a highly qualified and experienced air quality specialist, was retained on behalf of OTB Investments Ltd as to what would be appropriate conditions that would enable the granting of consent.

I acknowledge the general consensus from experts regarding the appropriate range of measures and conditions to be set in place to mitigate the potential for adverse dust effects. I also appreciate concerns from surrounding sites previously affected by cleanfill operations

on the site. In this situation I rely on the expert advice that adequate measures are proposed through conditions of consent. Mr Bentley succinctly comments that the proposed measures cover the generation of dust on paper but that the effectiveness of the plan will ultimately depend on what happens on with the staff on site. To this end Mr Bartlett notes that a review condition will provide further certainty to concerns raised by submitters. Based on the expert advice before me, I am satisfied that subject to compliance with conditions of consent, adverse dust and erosion sediment control effects will be more than minor but can be suitably managed to an extent where I consider they will be acceptable/not significant.

On this point I would note that the success of the clean filling operation will rely on both efficient practice and effective compliance to ensure that previous direct dust nuisance effects to adjacent occupiers does not occur.

With regard to noise matters I note that the applicant and Council experts are in general agreement. I also note noise was not a significant issue raised by submitters. Overall I am satisfied that any adverse noise effects would be no more than minor.

I note the location of an apparent residential dwelling on the site at 26 Waiu Street adjoining the western boundary of the application site. Mr Hyde (as a submitter who works in the area) commented at the hearing that the dwelling was occupied with people living there. Mr Woods commented at the hearing that along the western boundary noise limits may be exceeded by 2-3db. Mr Woods commented that the amount of exceedance will remain marginal with a 2db exceedance essentially imperceptible and 3db maybe a 'little bit noisier than usual'. Mr Woods confirmed there was no  $L_{max}$  issue along the boundary. Noting the proposed hours of operation for the cleanfill (7:00am - 6:00pm Monday to Friday, 7:00am - 4:00pm Saturday during daylight saving; 7:00am-5:00pm Monday to Friday, 7:00am to 4:00pm Saturday outside daylight saving) and the nature of the surrounding General Business Activity area I am satisfied that any noise impacts on the site at 26 Waiu Street would be within that which could be reasonably anticipated.

At the hearing there was discussion as to the extent to which vibration impacts should be taken into account considering the highly sensitive nature of the Miers Laboratory activity. Ms Clarke noted that the District Plan requires as a permitted activity standard that vibration is not discernible beyond a site boundary, noting that in the past the Council has looked at restricting hours of operation to enable activities on different sites to occur at different times of the day. Mr Bartlett raised the question as to what the vibration effects of the proposed activity would have on Mr Cringlinton's business compared to permitted General Business activities in the zone.

I agree with general sentiments expressed by the applicant during the hearing - that consideration of vibration effects should extend to consider general nuisance effects. I further consider that extending vibration controls beyond that of general nuisance levels (i.e.: controlling vibration affecting machinery within buildings) would be beyond that which

could be considered reasonable in the context of a permitted baseline of vibration effects using the general movement of heavy vehicles within the area as an example.

In light of the above, I am satisfied that the proposed vibration condition addresses concerns raised by Mr Criglington to an appropriate extent. I note that Mr Criglington was unable to propose a specific performance standard that would address his concerns. I am however satisfied that the proposed condition agreed to by the applicant's expert and Council experts is appropriate.

Overall I consider that the construction / operation effects associated with traffic and noise will be minor and the effects associated with dust and erosion sediment control will be more than minor but can be suitably managed to an extent where I consider they will be acceptable.

## 6.5 Effects conclusion

In respect of section 6.0 of this report, I consider that the traffic effects of the proposal will be less than minor, and the remaining effects; on natural features and topography; visual amenity; natural hazards and contamination; construction effects (including noise, vibration and dust/sediment control) will be more than minor, but that subject to compliance with the proposed conditions of consent will mean that they will not be significant, or to an extent where I consider they would be unacceptable.

## 7. Bonds and dispute resolution

The suggestion of a performance bond for landscaping was raised in submissions received. During the hearing I asked both Council officers and the applicant to consider whether a bond was appropriate.

The applicant was opposed to a bond. The reasons included:

- no landscaping is required in zone and any consideration of landscaping requirements should be compared with an unpainted tilt slab wall along the boundary (as a permitted activity in the zone);
- for an operator, the cleanfill is an expensive operation and a bond is in effect a double penalisation as they need to do grassing plus need money in bank to pay for bond; and
- in this case other performance conditions are proposed. Do not see necessity of controlling landscaping with a bond.

Ms Clarke commented she did not support a bond in this case as she felt it would in effect be penalising the current owner due to previous owner indiscretions. Ms Clarke suggested that if a bond was deemed necessary it should be a bank bond to 1.5x value of costs and would need an accurate assessment from applicant.

Mr Simmons and Mr Sherlock, submitting in opposition on behalf of the HCC Infrastructure Team, raised concerns around the quantum of bond required. Evidence presented at the hearing sought to not only increase the bond amount but to extend the bond performance standards to cover the wider scope of proposed works to ensure completion to a satisfactory standard. Mr Sherlock reiterated his main concerns were the potential financial burden to the Council and ratepayers in the event the cleanfill activity fails. Mr Sherlock commented in response to the applicant's concerns around financial commitments for the bond that a bank bond insurance option would likely be possible.

**Findings:**

Bonds are an established method to ensure that in the case of unforeseen circumstances a consent authority has the ability to carry out works to restore land to a proper state and to ensure that mitigation is in place without having to pay for such activities from the public purse.

In considering the requirement for a bond I firstly reiterate that the application needs to be assessed on its merits. Any requirement for a bond needs to be based on the current set of circumstances rather than the previous management of the site.

I commented during the hearing that a bond is often used in a situation where there are questions about the potential for the applicant to come into financial difficulty. I asked the applicant whether in terms of conditions there is a possibility that the Council would need to complete the works in the event the applicant is unable to do so into the future. Mr Leary commented on behalf of the applicant that the staged approach addresses such concerns, with fill activity to progress from north to south (in a maximum 4000m<sup>2</sup> area at a time) across the site and for landscaping to move with it. The risk long term is therefore mitigated as landscaping is required to progress through the site with fill activity rather than at the end. I agree with Mr Leary that the staged management reduces long term risk.

In terms of the quantum of bond I would agree with Mr Simmons that were the requirement for the bond to be extended beyond that of landscaping that the amount would need to be increased, and potentially significantly increased. I do however question the need to impose a bond in the circumstances. The applicant as receiver is seeking to make the land suitable for a commercial land use and due to the current poor state of the land should not be financially bound further. It is also in the applicants own interests to have the work carried out as efficiently as possible.

I have previously discussed the scale of adverse effects, concluding effects would be more than minor, but that subject to compliance with the proposed conditions of consent will mean that they will not be significant, or to an extent where I consider they would be unacceptable.

I therefore see no extenuating circumstances that would warrant the need to impose a bond. Noting the inclusion of a review condition, I am satisfied that an effective compliance and monitoring regime under the RMA framework is appropriate and absolutely necessary.

## 8. Relevant Policy Instruments, Plan Rules and Consent Status

In the s42A report Ms Clarke provided an analysis of the statutory instruments which the proposal is required to be assessed against. These instruments are the:

- City of Lower Hutt District Plan Objectives and Policies; and
- National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES)

These statutory instruments in respect of this application are discussed as follows.

I have also given regard to relevant national environmental standards; other regulations; national policy statements; New Zealand Coastal Policy Statement 2010; regional policy statement/proposed regional policy statement; or plan/proposed plan. I also consider the Regional Policy Statement for the Wellington Region (RPS) to be relevant to proposal and discuss that document briefly below.

### 8.1 City of Lower Hutt District Plan

The objectives and policies of the District Plan require particular consideration as they express the intentions of the Council and community in relation to the General Business Activity Area and the outcomes that the community seeks to achieve through the District Plan.

Ms Clarke's s42A report outlines the relevant objectives and policies. I consider that Ms Clarke has appropriately identified the most relevant objectives and policies and I comment on each of these in turn.

**6A 1.1.3 Objective** - *To avoid or mitigate adverse effects on the amenity values of the area and neighbouring areas, and the receiving environment.*

#### **Policies**

*That effects likely to be generated by each activity, such as noise, dust, odour and traffic, are managed to avoid or mitigate adverse effects on the amenity values and character of both the General Business Activity Area and interface areas.*

*That effects likely to be generated by each activity are managed to avoid or mitigate any adverse effects causing harm or damage to the receiving environment.*

As assessed within section 6.0 of this report, I consider that there will be adverse effects amenity which I consider will be more than minor, however planting of the proposed fill batters in accordance with the planting plan and specifications will ensure that in the longer term that these effects are at a level where they will not be significant or unacceptable.

**6A 1.2.1 Objective** - *To maintain and enhance the amenity values of the activity area and neighbouring areas.*

**Policies**

*That each site, structure and building is designed and maintained to enhance the amenity values and character of both the General Business Activity Area and adjacent activity areas.*

*That identified urupa sites be protected from inappropriate development on neighbouring sites.*

Ms Clarke considers that this proposal is not entirely consistent with the above objective and its underlying policies because while it would maintain, it does not enhance the adjacent activity areas. Ms Clarke further comments that the required planting may assist in mitigating this effect but is more relevant in the longer term. The site location abutting reserve areas makes the receiving environment more sensitive to amenity value impacts than that for a site surrounded entirely by similarly zoned business activity.

The proposed works seek to rehabilitate the site to make it suitable for future building development. Comparative to the current state of the site I consider that the works would enhance the amenity of the site and the adjoining business activity area. In terms of the surrounding reserve areas I would agree with Ms Clarke that the works would maintain rather than enhance amenity. As above, planting will mitigate any long term impacts and I am satisfied that overall amenity impacts would not be significant.

**14I 1.1 Objective** - *To ensure that earthworks are designed to maintain the natural features that contribute to the City's landscape.*

**Policies**

*To ensure that earthworks are designed to be sympathetic to the natural topography.*

*To protect significant escarpments, steep hillside areas, and the coastal area by ensuring that earthworks are designed to retain the existing topography, protect natural features, and prevent erosion and slips.*

The site is considered to be a highly modified context and the general business activity area is located beneath the 120m contour. The applicant has presented visual simulations which seek to assist assessment of the likely visual impact which have been subsequently peer reviewed by David Goodyear Landscape Architect acting on behalf of the Council. In the context of the site location within a general business activity area and noting the current state of the site, I consider the proposed works would not detract from the natural topography and associated landscape values in the surrounding area beyond that which could be reasonably anticipated in the

business zone. On this basis I am able to conclude that the effects on the natural features and topography of this site will be more than minor but will not be significant or to a degree where I consider they would be unacceptable.

However while not a matter before me for determination, I make the observation that any future industrial or warehousing development on the site if built to the maximum of 12 metres above ground level would be a prominent feature visible from some parts of the community against the backdrop of a bush covered hill. While buildings to that height are not at all common in Wainuiomata there is the potential for such an occurrence to happen.

My recommendation to HCC would be that it consider a site specific reduction in permitted height in consultation with the landowner. This could be considered at the same time as a further identified change being the rezoning of the Waiu Street end of Wainuiomata Mountain Bike Park from General Business to a Recreation zoning noting that there has been a recent change to the Reserves Act 1977 status of that land.

***14I 1.2 Objective - To ensure earthworks do not affect adversely the visual amenity values, cultural values or historical significance of an area, natural feature or site.***

#### **Policies**

*To protect the visual amenity values of land which provides a visual backdrop to the City.*

*That rehabilitation measures be undertaken to mitigate adverse effects of earthworks upon the visual amenity values.*

*To protect any sites with historical significance from inappropriate earthworks.*

*To recognise the importance of cultural and spiritual values to the mana whenua associated with any cultural material that may be disinterred through earthworks and to ensure that these values are protected from inappropriate earthworks.*

There are no known sites of cultural or historical significance within or adjoining this site. In terms of site rehabilitation, proposed planting will mitigate the long term visual effects of the batters. As above the application and landscape assessment have been through a peer review process incorporating feedback to achieve an agreed upon planting plan. I further note here the current state of the site which in my opinion detracts from visual amenity values in the surrounding area. On this basis I am able to conclude that the effects on the natural features & topography and visual amenity of this site will be more than minor but will not be significant or to a degree where I consider they would be unacceptable.

I also consider the proposed works to be generally consistent with objectives and policies in Chapter 14 General Rules which in addition to earthworks extend to include transport, noise and natural hazard matters. In particular I note the natural hazard objectives and policies, with the overarching objective to avoid or reduce the risk to people and their property from natural hazards associated with seismic action, landslides, flooding and coastal hazards. As discussed in

the effects assessment in Section 6 of this report I am satisfied that natural hazard matters, as well as noise and traffic matters, have been appropriately considered in the engineered design response to the site.

### **Conclusion**

Overall I consider that the proposal will largely be consistent with the relevant objectives and policies, except for where I consider it would not necessarily enhance the adjoining reserve areas. Considering the current state of the site and its location within a general business activity area I consider the works are consistent with outcomes sought for the zone.

I also consider that HCC should investigate a site specific lowering of the height limit noting that the applicant did not agree to a potential condition of consent relating to building height. Other than that issue landscape plantings will suitably mitigate any other long term impacts on visual amenity values in the surrounding area to an acceptable level such that effects will not be significant.

### **8.2 National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES)**

The NES controls soil disturbance on land where an activity on the Hazardous Activities and Industries List (HAIL) is being carried out, has been carried out, or is more likely than not to have been carried out. Given that the site contains a clean fill, it is subject to the considerations under the NES as a clean fill (landfill) is captured by the Hazardous Activities and Industries List (HAIL). As discussed in Section 6.2 of this report I am satisfied that subject to compliance with conditions of consent the potential for risk to human health will be adequately managed on site. In this respect I consider the proposed works consistent with the relevant standards under the NES for soil contaminants.

### **8.3 Regional Policy Statement for the Wellington Region**

In respect of the RPS it outlines the resource management issues of significance to the Wellington region and provides a framework for managing natural and physical resources in a sustainable manner. Chapter 3 of the RPS outlines the regionally significant resource management issues and objectives, and Chapter 4 outlines the policies and methods to achieve these. Section 4-2 outlines the regulatory policies to be considered when assessing and deciding on resource consent applications.

There are three RPS issue/objective/policy subject areas which are considered to be relevant to the application, being Air Quality; Landscape; Natural hazards; Regional form, design and function; and Soils and minerals. The proposal is generally consistent with these matters for reasons discussed elsewhere in this decision. I conclude that the RPS presents no barrier to consent as in my opinion the proposal provides for the appropriate management of natural and physical resources and avoids inappropriate development.

## 8.4 Other Matters

At the hearing Mr Hodgkins explained that the Waiu Street part of the Wainuiomata Mountain Bike Park had been declared reserve under the Reserves Act 1977. While not of direct importance to this application I consider a Plan Change to reflect the Park usage should be carried out at an appropriate stage. I also note that all relevant experts considered the existing park usage not necessarily its zoning.

## 9. S104

I now consider the statutory tests of s104.

**s104(1)(a)** In considering this application I have had regard to the actual and potential effects on the environment of allowing the proposed activity. I have concluded that the actual and potential effects on the environment will be more than minor, but that subject to compliance with the proposed conditions of consent will mean that they will not be significant, or to an extent where I consider they would be unacceptable.

**s104(1)(b)** I have also had regard to the relevant provisions of, in this case, the City of Lower Hutt District Plan as being the only statutory instrument of direct relevance. I have concluded that the proposal is not contrary to the overall objectives and policies of the District Plan.

**s104 (1)(c)** I have also considered whether I have needed to have regard to any other matters and have concluded that apart from the reserve status of the adjoining land that there are no other matters material to this decision.

## 10. Conditions

The applicant, Council officers and experts have been involved in discussions with an overall aim of providing a set of workable recommended conditions to be used as part of the basis for my decision. Conditions were also the subject of discussion with some of the submitters, most notably OTB Investments Ltd and Tremendous Ltd who subsequently withdrew their request to be heard at the hearing on the basis of an agreed upon set of conditions.

Ms Clarke provided a proposed final condition set to me on 31 May 2016 which I understand both the applicant and Council support.

I consider that the conditions, as drafted in Appendix 2 to this decision, are appropriate to avoid, remedy or mitigate the actual and potential adverse effects of the applicant's proposal.

## 11. Part 2 Considerations and Overall Conclusion

In terms of whether the proposal represents the sustainable management purpose of the Act we have outlined above the principle matters and constituent parts of s104. In terms of Part 2 the following are my findings.

## 11.1 RMA Part 2 Considerations

While I must have regard to the matters listed in section 104, those matters are subject to Part 2 of the RMA and appropriate weight should also be given to the relevant provisions of sections 5, 6, 7 and 8. Of particular relevance to this application are:

- a) The definition of 'sustainable management' in section 5 which includes:
  - *Enabling people and communities to provide for their social, economic and cultural wellbeing.*

This is relevant to the application because the proposed cleanfill operation will provide for the future development of the site. I outlined that there were some positive effects from the proposal to the applicant and also acknowledged general consensus from all parties of the need to rehabilitate the site.

- *Avoiding, remedying or mitigating adverse effects on the environment.*

I have discussed the concerns about the range of potential adverse effects raised by the Council Officers and their experts, and by submitters earlier in this decision. Overall subject to the imposition, implementation of and compliance with conditions of consent I am satisfied that the adverse effects of this proposal can be adequately avoided, remedied or mitigated.

- b) I have also given particular regard to the following section 6 matters that need to be recognised and provided for:
  - *The protection of outstanding natural features and landscapes from inappropriate subdivision, use and development - section 6(b).*

The cleanfill site is located below the 120m contour and there is limited visibility of the site within the context of the wider cityscape. No outstanding natural features and landscapes are affected by the proposal.

- *The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna - section 6 (c);*

I recognise the proximity of the site to adjacent reserve areas and regenerating indigenous vegetation. The proposed works will not however directly impact on existing vegetation and habitat within these areas. The same view applies to s 7(d) the intrinsic values of ecosystems.

There are no other s6 matters of relevance particularly s6 (e) (the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga as well as s6 (g) recognised customary activities. A submission was received in support from Luke Richard on behalf of the Waiwhetu Urupa and there are no recorded sites of significance within the District Plan.

- c) In terms of section 7 of the Act I have also had particular regard to:

- *The efficient use and development of natural and physical resources - section 7(b).*

In my view providing for the rehabilitation of the site is an efficient use of land that is a natural and physical use. This is subject to compliance with conditions to ensure impacts on the surrounding area are appropriately mitigated to an acceptable level.

- *The maintenance and enhancement of amenity values – section 7(c).*

As with section 7(b) above, I am satisfied that subject to compliance with conditions, that amenity impacts will be appropriately mitigated to an acceptable level. I am satisfied that the proposed planting will mitigate the long term visual effects from the proposal. In terms of other amenity values there are no residentially zoned properties in close proximity and effects such as noise and traffic can be appropriately managed. For existing residential activity in the surrounding business area I consider that the works and associated scale of effects are not beyond that which could be reasonably anticipated in a general business activity area.

- *Maintenance and enhancement of the quality of the environment - section 7(f).*

The works will provide for the rehabilitation of a site currently in poor condition. Proposed planting will suitably mitigate the long term effects such that the quality of the environment will be maintained subject to due consideration of a plan change to reduce the permitted height from 12 metres.

- *Any finite characteristics of natural and physical resources - section 7(g).*

Land is a finite resource and the rehabilitation works will make the site suitable for use and development in the future.

- d) There are no s8 matters (taking into account the principles of the Treaty of Waitangi) that have been brought to our attention that we have to take into account.

## **11.2 Conclusions**

This application is to provide for the rehabilitation of an existing site in poor condition. In its current state the site is not suitable for future use and development anticipated by the District Plan in the General Business Activity area.

I acknowledge the issues with past cleanfill activity on the site and the degree of sensitivity expressed from both the Council and third parties. I was however conscious from the outset of the need for the rehabilitation of the site and note that all persons involved were generally in agreement that something needs to be done to the site. There is no question that the proposed cleanfill activity carries with it various environmental, landscape and amenity implications and the suite of management plans and list of conditions reflects that range of actual and potential impacts. I am firmly of the opinion that the cleanfill works can be undertaken and that the final condition set establishes an appropriate framework to mitigate the scale of adverse effects to an acceptable level.

Historically the implementation of the preceding consents fell well short of providing a framework for the appropriate management of the cleanfill activity on the site. The final shape of the proposal and condition set reflects the collective efforts of the various parties to minimise those impacts and to mitigate the various risks in terms of site stability, water quality, stormwater and leachate management and disposal, as well as landscape and amenity values. As a result parties have been able to reach workable solutions to each of the issues of relevance.

In the context of part 2 of the Act there is a clear overall judgement to be made between the effects on the local environment and in providing for the long-term rehabilitation of the site. I am satisfied that so long as the conditions are strictly observed by the applicant, in cooperation with council officers, along with careful monitoring and review that the proposal represents the sustainable management purpose of the Act.

## 12. Decision

In accordance with the authority delegated to us by the Hutt City Council, and pursuant to sections 104 and 104B the Resource Management Act 1991, I **grant consent** to the application made by KJ Whitley (Council reference RM150061) subject to the conditions specified in Appendix 2 and for the reasons explained throughout this decision.



Lindsay Daysh

**Independent Commissioner**

Decision dated **27 June 2016** at Wellington

For the Hutt City Council

Appendix 1

**Persons who attended and presented evidence or  
submissions at the hearing**

**For the Applicant:**

Mr KJ Whitley Applicant

Mr Russell Bartlett QC, Legal Counsel for the  
applicant Mr Ian Leary, Planning Consultant

Mr Bill Wood, Acoustic Noise Consultant

Mr John Hudson, Consultant Landscape

Architect Mr Jamie Whitaker, Traffic  
Consultant

Mr Ron Pilgrim, Environmental Health Consultant

**For the Hutt City Council:**

Ms Sarah Clarke, Senior Resource Consents

Planner Mr Tim Johnston, Resource Consents

Team Leader Mr Robert Coulson, Environmental  
Health Consultant Mr William Barclay, Traffic  
Consultant

Mr Guy Andrew Cassidy, Consultant Engineering

Geologist Mr Dean Bentley, Senior Environmental  
Health Officer

Mr David Goodyear, Consultant Landscape  
Architect

**Submitters (in order of appearance):**

Mr Bruce Sherlock, HCC Infrastructure Team & Mr Bruce Simmons, Tonkin &  
Taylor Mr Bruce Hodgkins, HCC Parks and Gardens

Mr David Vaughan, Owner 29 Parkway Street & Mr Stephen Hyde, Employee 29  
Parkway Street Mr Andrew Criglington, Owner 32 Waiu Street

**Assisting the Commissioner**

Aaron Edwards

Appendix 2

**Conditions of Resource Consent**

**RM150061**

**KJ Whitley (Receiver) for Paddy Hannan Contracting Ltd  
Application**

## **Hutt City Council - RM150061 - Conditions of Consent**

1. That the proposal is carried out substantially in accordance with the information and approved plans submitted with the application (outlined within the table below) and held on file at the council.

Drawing Number	Revision	Prepared by	Dated
S14-0218-12	B	Spencer Holmes Ltd	6.11.2014
S14-0218-13	B		7.11.2014
S14-0218-14	B		10.11.2014
S14-0218-20	B		10.2.2014
S14-0218-21	B		10.2.2015
S14-0218-22	B		10.2.2015
S14-0218-23	A		19.3.2015
S14-0218-24	A		20.3.2015
S14-0218-25	A		20.3.2015
S14-0218-26	B		15.10.2015
S14-0218-D03	A		5.3.2015
S14-0218-D04	A		19.2.2015
S14-0218-D07	A		2.3.2015

2. That the consent holder keeps a copy of this decision on site when work starts and makes it available on request to council staff.
3. That the consent holder advises the council (enforcement@huttcity.govt.nz or (04) 560 1044) at least two working days before starting any work on site; and that the consent holder also supplies the name, phone number and address of the main contractor and, if applicable, the same details for the earthworks company.
4. That the consent holder must have a contact person available on site at all times during the works, and that the person's contact details are prominently displayed at the site entrance.

### **Engineering**

5. That the consent holder ensures earthworks do not affect the stability of adjoining properties.
6. The consent holder shall follow the recommendations/ongoing measures and guidance contained within the Preliminary Geotechnical Assessment prepared by Abuild Consulting Engineers Ltd dated February 2015.

7. During construction, the consent holder shall take all practical steps to ensure the stability of the cut batters, and shall implement sound engineering solutions where poor ground conditions are exposed in those batters.
8. All work undertaken shall be in compliance with NZS 4431:1989 or as specified by a suitably qualified geotechnical engineer where NZS 4431:1989 is not applicable.
9. The consent holder shall ensure that all earthworks are to be designed, supervised and certified by a suitably qualified and chartered engineer with appropriate structural/geotechnical experience who is to ensure that the site is in a safe condition at the completion of the works (including reworking of over steep batters, compaction of fill in layers and survey monitoring for settlement). Within 3 months of completing the works the certification of these works is to be submitted for consideration and approval to the satisfaction of the Team Leader Resource Consents.
10. The consent holder shall ensure that only those materials listed as "Acceptable Cleanfill Materials" in table 4.1 and those 'Conditionally Listed Materials' listed in section 4.2.2 of the Ministry for the Environment's document "A Guide to the Management of Cleanfills" shall be placed within the cleanfill. Approval from the Team Leader Resource Consents must be obtained prior to any of those materials listed as 'conditionally acceptable materials' being placed in the cleanfill.
11. The consent holder shall keep an inventory of the volume, type and nature of material, and the source of all material deposited on site. The inventory shall be available on site at all times and be made available upon request to council's monitoring and enforcement officers. Once in each six month period the register will be submitted to the Team Leader Resource Consents.

Note: Council will be on-charging for any monitoring which involves employing external contractors to complete this monitoring.

### **Erosion and sediment control**

12. That during site works the consent holder takes measures to ensure stormwater and surface water run-off does not affect adjoining properties, and that afterwards surface water is controlled, to the satisfaction of the council, through the use of curbing or channelling to an approved outlet.
13. That the consent holder submits an erosion and sediment control plan for consideration and approval by the Team Leader Resource Consents before starting any earthworks; and that the consent holder and the consent holder's agents comply with the plan, which must include the following:
  - calculations of run-off from stripped land, based on a rate of 0.14 m<sup>3</sup>/second per hectare;
  - calculations showing time of retention in sediment ponds;
  - details of methods proposed to treat sediment on site;

- erosion control; and
  - details of proposed monitoring measures.
14. That the consent holder undertakes all earthworks (including for trenching purposes) in such a way that no sediment leaves the site or enters streams or the stormwater system; and that, as far as is practical, the consent holder installs sediment control measures in accordance with the approved sediment control plan before any earthworks start. (Phone (04) 560 1044 to arrange an inspection and approval.) Such measures must be generally installed and maintained in compliance with Greater Wellington regional council's erosion and sediment control guidelines (issued in September 2002).
  15. That the consent holder ensures vehicles and machinery leaving the site do not drop dirt or other material on roads or otherwise damage road surfaces; and that if such spills or damage happen, the consent holder cleans or repairs roads to their original condition to the satisfaction of the Team Leader Resource Consents, being careful not to discharge the material into any stream, stormwater system or open drainage channel in the process. (The term "road" includes footpaths, vehicle crossings and berms.)
  16. The consent holder is to ensure that completed areas exposed by earthworks are to be re-grassed at the earliest possible opportunity following earthworks or at the latest within 1 month after completion of the earthworks. Following this, any seeding or planting which fails to become fully established shall be re-seeded/re-planted no later than 12 months after completion of the earthworks.

### **Dust mitigation**

17. Prior to first operation of the cleanfill activity in accordance with this resource consent, the Consent Holder shall undertake the following to ensure that dust generation from the site is kept to a practicable minimum, all to the satisfaction of the Team Leader, Resource Consents:
  - a. Form an access road as shown on drawing S14-0218-26, Revision B. At least the first 15 metres of the access road from the road boundary shall be sealed, and the unsealed section of the access road shall be covered in such a manner as to allow it to be wet-swept.
  - b. Fit the hardstand transfer station with an overhead water sprinkler or other appropriate water system to be used for dust suppression of incoming loads.
  - c. Install a real-time TSP monitor and on-site weather station for recording wind speed and direction, at the location shown on drawing S14-0218-26 Revision B. The TSP monitor and on-site weather station shall be programmed to provide real-time data and alerts to both the Site Manager and Team Leader, Resource Consents.

### **Advice Note:**

*For the purpose of these conditions, "the Site Manager" is as defined in the CMP to be provided in accordance with condition [10].*

18. The consent holder shall ensure that the hardstand transfer station, the access road and Waiu Street (from the site entrance to a distance of 100m south) shall be wet-swept on a regular basis to ensure the areas are free of dust causing material to the satisfaction of the Team Leader, Resource Consents.
19. The consent holder shall ensure that vehicles travelling to and from the site shall not be permitted to enter the clean fill site, beyond the hardstand transfer station.
20. The consent holder shall ensure that all active waste stockpiles shall be watered or treated with dust suppression chemicals, or otherwise treated (including if necessary contained in bunkers with walls at least one metre taller than the stockpile, with the opening facing east or west), to ensure dust generated from them is kept to a practicable minimum.

**Advice Note:**

*Installing bunkers with walls will be required only in the instance that other methods of dust control have proved ineffective.*

21. During dry weather conditions, on receiving alerts from the on-site weather station that wind speeds are 7 m/s or greater and/or from the TSP monitor that the one-hour ambient suspended particulate concentration is  $170\mu\text{g}/\text{m}^3$  or greater, the Site Manager (on behalf of the consent holder) shall review and implement on-site dust mitigation measures to ensure dust generation from the site is kept to a practicable minimum. Such measures may include (but are not limited to):
  - a. Maintaining materials and surfaces that may potentially generate dust in a visibly damp condition or otherwise treating or covering of exposed areas (including haul roads, manoeuvring areas, stockpiles and truck loads and the active working area);
  - b. Undertaking visual assessments of dust emissions from the site on an on-going basis throughout the working day (and in any case at least three times each working day), recording the outcomes of those visual inspections and the date and time of inspections;
  - c. If the frequency of loads of cleanfill arriving on the site is causing issues with appropriate dust management upon receipt and/or efficient handling of materials, reducing the number of vehicle movements arriving at the site until such issues are resolved; and
  - d. Suspending all operations on site (excluding dust mitigation).

**Advice Notes:**

- a. *For the purpose of these conditions, "dry weather conditions" means that the site surfaces are not sufficiently damp to have low dust generating potential.*
  - b. *For the avoidance of doubt, the Consent Holder is still required to adopt good dust mitigation procedures during dry weather conditions at wind speeds less than 7 m/s and at TSP concentrations less than  $170\mu\text{g}/\text{m}^3$ .*
22. During dry weather conditions, and for all wind directions except from the southerly quadrant, the Site Manager (on behalf of the consent holder) shall ensure that all on-site activities which could generate dust cease on receiving alerts from the TSP monitor that the one-hour ambient suspended particulate concentration is  $250\mu\text{g}/\text{m}^3$  or greater. Those on-site activities that are

ceased shall not recommence until the Site Manager confirms that the one-hour ambient suspended particulate concentration (as recorded by the on-site TSP monitor) is below  $250\mu\text{g}/\text{m}^3$ .

23. The consent holder shall ensure that the active area of the clean fill site (being the active work area, site haul roads and the tipping area of the transfer station) shall be limited to a maximum of  $4,000\text{m}^2$  at any one time. All completed areas of the site shall be rehabilitated (through hydroseeding or grassing) as soon as practicable following completion.
24. The consent holder shall ensure that the speed limit for all vehicles on-site shall be 10kph.
25. The Site Manager (on behalf of the consent holder) shall ensure that sufficient equipment (for example, a water cart) and water supplies are maintained on-site at all times for use as dust suppression, so that dust generation from the site is kept to a practicable minimum.
26. At least 25 working days prior to the first operation of the cleanfill activity in accordance with this resource consent, the Consent Holder shall provide to the Team Leader, Resource Consents, a Cleanfill Management Plan ("CMP") and Dust Management Plan ("DMP"), for approval in a certifying capacity. The CMP and DMP shall:
  - a. Detail how the cleanfill activity is to be managed in order to prevent nuisance or damage to neighbouring properties or roads being caused from dust generated by the site.
  - b. Be based on the draft CMP and DMP (entitled "*Rehabilitation of 14 Waiu Street – Minimising Dust and other Discharges to Air*"), both submitted with the application, and both draft Plans shall be updated to incorporate the requirements of conditions [1]-[9] above, to the satisfaction of the Team Leader, Resource Consents.
  - c. Be written in accordance with the Ministry for the Environment's "A Guide to the Management of Cleanfills", dated January 2002.
  - d. Identify the Site Manager (including their experience and expertise) who shall be responsible for the management of cleanfill operation and the contact person available 24 hours a day to address issues relating to the site.
  - e. Identify the person and/or company responsible for geotechnical testing and surveying, and their relevant qualifications.
27. The consent holder shall ensure that the cleanfill activity authorised by this consent shall be undertaken in accordance with the final CMP and DMP.
28. Pursuant to section 128 of the RMA the conditions of this consent may be reviewed by the Team Leader, Resource Consents at the Consent Holder's cost on a two monthly basis following commencement of consent:
  - a. In order to deal with adverse effects on the environment associated with dust nuisance from the cleanfill operation which arise from the exercise of this consent.
  - b. If it is found that the information made available to the Council in the application contained inaccuracies which materially influenced the decision and the effects of the exercise of the consent are such that it is necessary to apply more appropriate conditions.

## **Noise**

29. That the consent holder ensures all development and construction work complies with the provisions of NZS 6803:1999 Acoustics - Construction noise.
30. The consent holder shall ensure that the noise associated with this proposal shall be in accordance with NZS6802:1991, including a noise performance standard of 53dBA L10, 7.00am to 10.00pm excluding public holidays.

## **Contamination**

31. The consent holder shall submit a contamination management plan, in accordance with the recommendations of the Pattle Delamore Partners report dated 21 May 2015. This plan shall be submitted for consideration and approval to the satisfaction of the Team Leader Resource Consents prior to any earthworks commencing under this cleanfill proposal.
32. That the consent holder ensures that persons involved in undertaking works involving trenching or minor earthworks for piling implement the following;
  - Workers should wear personal protective equipment including sturdy footwear and dedicated work clothing;
  - There should be no eating, drinking or smoking, except in any designated clean areas;
  - Workers should wash hands, faces, and change out of work clothing before leaving or site or entering designated clean areas; and
  - If managed soils generate dust, dust suppression mechanisms such as wetting should promptly be implemented, and if this is not practicable in specific work areas then nuisance dust masks should also be worn.
33. That the consent holder shall ensure that in the unlikely event that any contaminated materials need to be disposed off-site that they shall be disposed of at a facility which can accept potentially contaminated materials. Advice in writing of this disposal including its quantity shall be submitted to the Team Leader Resource Consents.

## **Landscaping**

34. That the consent holder submits a landscaping plan for dense planting on the fill batters to the council for consideration and approval before starting any site works. The plan must include information about: the location and size of the planting area; the name of each species to be planted; the number, size and spacing of each species to be planted; and the time and method of planting and post-planting maintenance. The plan must be implemented as soon as the seasons make practicable, but must be finished within six months of the completion of works.
35. That the consent holder replaces any dead or dying plants for a period of five years from the date of planting.

## **Works for Wellington Electricity**

36. Before any earth moving or filling work commences the consent holder must install an audible warning device triggered by a height restriction gantry. This device must be:
  - designed in accordance with plans approved by the Council before it is installed;

- located within the site and at least 15 metres from vehicle crossing over legal road; and
- located, designed and maintained to avoid the exit of any truck with its tray raised.

Note: Installation of this warning device is in addition to the obligations and requirements of the approved traffic management plan.

37. In addition to the obligations and requirements of the approved dust management plan, the consent holder must manage the consented activity so dust does not accumulate on Wellington Electricity's infrastructure located adjacent to the site. Dust accumulation will be deemed to have occurred if:

- There is visible evidence of suspended solids/particulate matter in the air beyond the site boundary; and,
- There is visible evidence of deposited particulate matter attributable to consented activity settling on any above ground electricity distribution structures or components on adjoining land.

**Vibration condition** (agreed and proposed in applicants memorandum circulated 26/5/2016);

38. The consent holder shall implement reasonable measures to reduce the vibration effects on adjacent properties which will include:

- Ensuring vehicles travel at low speeds within the site
- Maintaining access routes to avoid potholes, dips and bumps or other unevenness
- Minimising the operation of machinery along the boundaries of adjoining properties
- Locating activities such as concrete crushing 20 metres or more from the adjoining boundaries
- Avoiding using vibrating rollers to achieve compaction
- Working in accordance with the hours of operation approved in the conditions of consent.

The vibration reduction measures should be included into the operational management plan required by the conditions of consent and work on the clean fill shall not commence until the management plan is approved. All work on site should be in accordance with the management plan.

The measures implemented to control vibration effects on the site should be in accordance with BS5228-2: 2009, and specifically Section 4 (Community relations); 6 (Neighbourhood nuisance); and section 7 (Project supervision) and not exceed 2mm/s ppv measured at the site boundary.