

Report / Decision on Non-notified Resource Consent Application

(Sections 104B/104D)

Application Number:	RMA92032968
Applicant:	Penley Limited
Site address:	318 Kennedys Bush Road, Halswell
Legal Description:	Lot 1 DP 9250
Zoning:	Christchurch City Plan: Living HA (Hills – Boundary), Living HB (Hills Hoon Hay Valley – Very Low Density), and Rural H (Hills) Proposed Replacement District Plan: Residential Large Lot and Rural Port Hills zone Overlays and map notations: Significant Landscape and Outstanding Natural Feature or Landscape Operative Replacement District Plan: NA Overlays and map notations: 220 KV High Voltage Transmission Line and Remainder of Port Hills and Banks Peninsula Slope Instability Management Area.
Activity Status:	Christchurch City Plan: Non-complying Proposed Replacement District Plan: Permitted Operative Replacement District Plan: Discretionary
Description of Application:	Alter and expand an existing earth bund containment cell to dispose of materials containing asbestos including associated earthworks and upgrade to existing access and culvert crossing.

Introduction

The proposal is to alter and expand an existing earth bund containment cell at 318 Kennedys Bush Road (a farm) to dispose of materials containing asbestos including associated earthworks and upgrade to existing access and culvert crossing. I adopt the description of the site and surrounds and proposal from the introduction of the section 95 decision report for this application prepared by myself and determined by Commissioner Ken Lawn and Commissioner Robert Nixon on 22 June 2016 (Appendix A).

Note: One change has been made to the proposal since the notification decision. The applicant has sought to allow light vehicles (but not heavy vehicles) to traverse over the surface of the containment cell. The containment cell which would be marked and sign posted but not fenced. To clarify there would not be any formed access over the containment cell.

Planning Framework

For a full description of the planning framework (in so far that it addresses rules non-compliances and the activity status) refer to the planning framework section of the section 95 decision report.

In summary consent is required for non-compliances relating to the location of the upgraded access, a culvert crossing extension associated with the access upgrade, the volume of earthworks, the extent of filling and excavation and the content of fill including asbestos containing material. The rules breached are set out below:

Christchurch Replacement District Plan (Part Operative)

Residential Large Lot zone

- Clause 14.7.2.4

Christchurch City Plan

Part 9 General City Rules

- Development Standard 9-5.2.4 Filling, excavation and building adjacent to waterways and the coastline
- Development Standard 9-5.6.2 Filling and Excavation on Other Land

- Critical Standard 9-5.8.1 Content of fill and excavation material

In addition the relevant objectives and policies in the relevant plans and the Canterbury Regional Policy Statement 2013 are addressed later in this report

Actual and potential effects on the environment of allowing the activity [Section 104(1)]

As a non-complying activity the Council's assessment is unrestricted and all actual and potential effects of this proposal must be considered. I have already assessed the effects of the proposal in the section 95 decision report which I adopt for this section of the report in so far that it relates to section 104(1) as well as the commissioner note included in the decision.

In summary many of the effects for this proposal would be very similar to a larger scale earthworks exercise with most impacts being felt over a relatively short duration. A number of controls are proposed by the applicant to manage these matters including an erosion and sediment control, restrictions on the hours of operation and a transport management plan. Overall these effects are considered to be less than minor including for neighbours.

It can be seen from the information put forward by the applicant and the memorandum by Ms Stout that there are already regulatory controls in place for the transportation and initial disposal of the asbestos material. In my view the key effects to consider relate to the longer term storage of asbestos on site.

With the proposal put forward by the applicant there would be very limited opportunities for asbestos to find a pathway to air and which would probably be outside the terms of the resource consent application put forward by the applicant (e.g. if the containment cell was dug up).

In reaching a conclusion on effects and suitable conditions I have consulted with Ms Isobel Stout, Senior Environmental Health Officer and Mr Bruce Craig, Subdivision Engineer, whom have provided an assessment relevant to the merits decision under section 104 (Attachment B). They have not raised any concerns with the proposal.

One change that has been made to the proposal is that the applicant now intends to allow light vehicle access over the contamination cell which would be marked and sign posted but not fenced. This has not created any concern for Mr Craig and is not considered to materially change the proposal nor likely to result in damage to the surface of the containment cell. Heavy vehicle access would not be permitted.

Draft conditions were prepared by Ms Stout, Mr Craig and myself in consultation with the applicant's representative (Attachment C) which reflected the proposal put forward by the applicant. These conditions and the proposal were then independently reviewed by Mr Gerald Strayton, Technical Director – Geotechnical, Pattle Delamore Partners Ltd. The key assessment from Mr Strayton's memorandum (Attachment D) is set out below:

Having reviewed the supplied information and the draft consent conditions from a landfill engineering point of view, I find the conditions to be reasonable, robust and acceptable to allow the safe operation and closure of the new containment cell. The information provided relating to the geotechnical ground conditions (Eliot Sinclair & Partners Ltd Geotechnical Assessment) indicate that site is suitable to be used for a containment cell. This has been seen to be the case with the construction of the previous cell.

As noted in the geotechnical report by Eliot Sinclair & Partners, the cell should be clearly marked as possible consolidation post closure could occur. The consent conditions do require post closure monitoring and reporting which would address and monitor this issue. The geotechnical report notes that there are no signs of historic or active slope instability across the site.

I would recommend that the consent does limit the operation of the containment cell to accepting the existing ACM soils from the site at 36 Colwyn Street only.

The consent does require the registration of the location of the containment cells onto the title of the property which will inform any future owners to the presence of buried asbestos containing materials.

I would recommend that an advice note be included so that the consent holder's attention is drawn to the legal requirement for the work to comply with the Health and Safety at Work (Asbestos) Regulations 2016.

If this application is approved I have recommended that the modifications suggested by Mr Strayton are adopted as part of the decision. I note that after Mr Stayton's review and as a result of Council's peer review process some additional changes were made to the conditions included in the recommendation of this report. These only sought to better clarify responsibilities in the administration of the conditions and do not change the overall intent of the conditions.

I consider that any effects from the proposal on the environment are less than minor.

Recovery Plans and Regeneration Plans

Section 60(5) of the Greater Christchurch Regeneration Act 2016 states that Recovery Plans and Regeneration Plans are a matter over which discretion is restricted.

There are no Recovery or Regeneration Plans relevant to this application.

Relevant provisions of a National Environmental Standard, National Policy Statement, Regional Plan, Regional Policy Statement or Coastal Policy Statement [Section 104(1)(b)]

National Policy Statements

There are no applicable National Policy Statements that apply to this proposal.

Canterbury Regional Policy Statement 2013

The Canterbury Regional Policy Statement 2013 (RPS) provides an overview of the resource management issues in the Canterbury region, and the objectives, policies and methods to achieve integrated management of natural and physical resources. The methods include directions for provisions in district and regional plans. I have considered the key chapters of the RPS below. A list of the key objectives and policies (along with the explanation and reasons) is included in Attachment E.

Chapter 17 Contaminated Land:

Objective 17.2.1 seeks the protection of people and the environment from both on-site and off-site adverse effects of contaminated land. Underlying policies that implement the objective are set out below:

Policy 17.3.1 — Identify potentially contaminated land

To seek to identify all land in the region that was historically, or is presently, being used for an activity that has, or could have, resulted in the contamination of that land, and where appropriate, verify the existence and nature of contamination.

Policy 17.3.2 – Development of, or discharge from contaminated land

In relation to actually or potentially contaminated land, where new subdivision, use or development is proposed on that land, or where there is a discharge of the contaminant from that land:

- (1) a site investigation is to be undertaken to determine the nature and extent of any contamination; and*
- (2) if it is found that the land is contaminated, except as provided for in Policy 17.3.3, the actual or potential adverse effects of that contamination, or discharges from the contaminated land shall be avoided, remedied or mitigated in a manner that does not lead to further significant adverse effects.*

Policy 17.3.3 — Contaminants may remain in the land

Where land has been identified as being contaminated, contaminants should only be allowed to remain in the ground if discharges of contaminants beyond the site to air, water or land will not result in significant risk to human health or the environment.

Policy 17.3.4 — Integrated management

To promote an integrated approach to the management of contaminated land in the region.

I consider that the proposal is consistent with the above objective and underlying policies. While in the ground the asbestos material would be relatively inert and not harm the wider environment nor people. The main risk would be to human health if asbestos was ever discharged to air and then inhaled by people. Given the containment cell structure and the long term and ongoing management measures proposed by the applicant I am satisfied that it is unlikely that asbestos would be discharged to air. I am satisfied that there would be no significant adverse effect from the proposal, and that people and the environment would be adequately protected. I understand that the implementation of any resource consent in relation to this proposal would see the containment cell and the material within it documented and included in Environment Canterbury's LLU register as well as being recorded on the property file for the site.

Chapter 18 Hazardous Substances

Objective 18.2.1 seeks that adverse effects on the environment from the storage, use, disposal and transportation of hazardous substances are avoided, remedied or mitigated. I consider that the proposal achieves this objective. Arguably the proposal would not meet objective 18.2.2 which seeks to ... *avoid contamination of land*. The proposal would see the area of contamination on the subject site (i.e. the area of land above the containment cell) increase from approximately 1,200m² to 4,200m². Underlying policies intended to implement these objectives are:

Policy 18.3.1 — Protection of sensitive areas and activities

Avoid actual or potential adverse effects, resulting from the use, storage or disposal of hazardous substances, in the following locations:

- (1) High hazard areas*
- (2) Within a community drinking water protection zone, or within such a distance from a community drinking water supply that there is a risk of contamination of that drinking water source*
- (3) In areas of unconfined or semi-confined aquifer, where the depth to groundwater is such that there is a risk of contamination of that groundwater*
- (4) Within the coastal marine area and in the beds of lakes and rivers*
- (5) Within any area identified by a district or regional plan as being sensitive to the potential effects of hazardous substances, which may include, but are not limited to, areas such as wāhi tapu, urupā, institutions and residential areas.*

Policy 18.3.2 – Avoid, remedy or mitigate adverse effects

To avoid, remedy or mitigate adverse effects on the environment, including contamination of land, air and water, associated with the storage, use, transportation or disposal of hazardous substances.

Policy 18.3.3 — Integration and coordination

To promote an integrated approach to hazardous substance management within the region.

Policy 15.3.1 – Avoid remedy or mitigate soil degradation

In relation to soil:

- (1) to ensure that land-uses and land management practices avoid significant long-term adverse effects on soil quality, and to remedy or mitigate significant soil degradation where it has occurred, or is occurring; and*
- (2) to promote land-use practices that maintain and improve soil quality.*

I do not consider that there are any inconsistencies with the underlying policies intended to implement Objective 18.2.2. With respect to Policy 18.3.1 the site is not within a high hazard zone (as defined by the RPS), asbestos is not expected to contaminate any water or water supply (it is inert in the ground), nor is the containment cell in an area that is known to be sensitive to any of the activities set out in clause (5). With respect to Policy 18.3.2.1, I have concluded that the effects of the proposal can be seen to avoid, remedy or mitigate effects on the environment to the extent that the effects are less than minor. With respect Policy 18.3.3, the reasons and explanation focus on efficient administration. In the long term there would be no additional administration required by this consent because the number of contaminated sites would not increase and recommended conditions ensure that the applicant is responsible for much of the monitoring and its cost. In respect to Policy 15.3.1, while the containment cell could be seen to degrade the soil structure and limit its future use. I do not consider that this effect is significant on the basis that the land could still be used for pastoral production purposes at the end of works and the land does not contain versatile soils.

In the context of the above I conclude that the proposal does not meet objective 18.2.2, however this is viewed as a minor inconsistency on the basis that the proposal meets the underlying policies that are intended to implement that objective, any effects of the proposal on the environment are considered to be less than minor and the proposal represents an extension of an existing facility.

Chapter 19 Waste Minimisation and Management:

There is no opportunity to minimise the waste from the origin site and therefore the key objectives and policies relate to the residual waste and its management. Objective 19.2.2 seeks that adverse effects on the environment caused by residual waste and its management are avoided, remedied or mitigated. Key underlying policies to implement this objective are:

Policy 19.3.3 – Integrated management of waste

Promote an integrated approach to waste management in the region.

Policy 19.3.4 – Establish community waste transfer facilities

Enable the establishment and use of appropriate community facilities and services such as waste-transfer facilities and recycling centres throughout the region.

I consider that the disposal of the proposed waste in a community scale facility like Kate Valley would better achieve the above objective and policies than the current proposal. I have an underlying concern that if a number of small bespoke facilities are established that they become more difficult for the City and Regional Council's to monitor and manage especially in the longer term. Historically this has been a problem in Christchurch where former quarry pits have not been backfilled with clean/inert material. For the subject proposal this is less of a problem because the proposal does not represent an additional facility for Council to monitor and manage, the waste source is known and relatively inert when in the ground and the management measures proposed will protect the containment cell in the long term.

Notwithstanding the above the policy framework does not require that the best option for waste disposal be selected through the consenting process and I do not consider that there is any inconsistent with the above objective and policies noting that:

- Policy 19.3.3 does not preclude the opportunity to establish a small private facility;
- Policy 19.3.4 is more relevant to enabling the establishment of community waste management facilities and doesn't address small private facilities.

I conclude that the proposal is consistent with the objective and policies in Chapter 19.

Overall Conclusion

I consider that the proposal is generally consistent with the key objectives and policies of the RPS. Arguably there is an inconsistency with objective 18.2.2 which seeks to *avoid contamination of land* however I consider that this inconsistency is only minor in nature and on its own does not form a basis to refuse the application.

National Environmental Standards

As discussed earlier the National Environmental Standard for managing contaminants in soil to protect human health does not apply to this proposal. There are no other applicable National Environmental Standards.

Relevant objectives, policies, rules and other provisions of the Plan and proposed Plan [Section 104(1)(b)(vi)]
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The following assess the objectives and policies in the Operative Christchurch City Plan, Operative (part) Christchurch Replacement Plan and Proposed Christchurch Replacement District Plan. A list of the key objectives and policies is included in Appendix E.

Operative Christchurch City Plan

Part 2 Natural Environment:

Objective 2.1 seeks to maintain and enhance those physical, chemical and biological characteristics of land and soils, and the ecosystems they contain, in a way that best enables them to support life and provide for community needs. Key underlying objectives and policies are:

2.1.2 Policy Degradation and rehabilitation:

To avoid the degradation of soil and land resources, and to promote their rehabilitation where these resources are degraded as a result of a loss of soil stability, erosion or contamination.

2.1.3 Policy: Hazardous substances and wastes

To manage the effects of any manufacturing, storage, use or disposal of hazardous substances or wastes, by ensuring these are contained to avoid adverse effects on the life supporting capacity of land and soils.

2.1.5 Policy: Waste Disposal:

To continue the operation and maintenance of refuse transfer stations and landfill sites as the primary disposal system for wastes, and to control the disposal of hard fill and specialised wastes.

My main area of discomfort with the above relates to Policy 2.1.5. The explanation and reasons to this policy highlight the benefits of having a co-ordinated waste management system where the effects can be more carefully managed and which is contrasted with the historical situation of having scattered landfill sites. In my view this policy would be better achieved if the waste was instead disposed of at Kate Valley or another purpose built large scale waste disposal facility for similar reasons to those outlined above in assessment of waste policies in the RPS. Notwithstanding the policy framework does not concern itself with finding the best available option. It is difficult to find any inconsistency with this policy when the proposal does not increase the number of waste

disposal facilities (the site has already been used to dispose of material containing asbestos); the primary transfer and landfill system for Christchurch would still revolve around the Kate Valley landfill (and Burwood); and controls are in place for the long term management of the facility. The policy does not specifically prevent the establishment of small waste disposal facilities such as that proposed.

Objective 2.3 and 2.3.2, seeks to improve the standards of air considering the nature of land use activities. The proposal is not expected to have a detrimental effect on air quality in the longer term.

Objective 2.5 Objective Natural hazards, seeks to avoid or mitigate the actual or potential adverse effects of loss or damage to life, property, or other parts of the environment from natural hazards. Based on the assessment by Mr John Aramowicz, Eliot Sinclair dated 2 May 2016 the containment cell is not expected to increase the risk presented by natural hazards nor be impacted on by natural hazards in any material way.

Objective 2.7 Port Hills, seeks the *maintenance and enhancement of the distinctive landscape and natural characteristics of the Port Hills and is supported by Policies 2.7.1 and 2.7.6*. I consider that the proposal is consistent with these provisions as the changes to the landform would be relatively modest and the main effect would be short term scarring of the landscape while earthworks are underway in association with the containment cell. The upgraded farm access track would be in keeping with anticipated rural character.

Part 11 Living:

There are a number of objectives and policies in part 11 that relate to protecting the amenity and character of the residential environment. The potential amenity and character effects on neighbours relate to the construction period and in my view are controlled to the extent that the effects would be less than minor. I consider that the proposal is consistent with the objectives and policies relating to Part 11.

Part 13 Rural:

Key themes within the objectives and policies as relevant to this proposal are encapsulated in Objective 13.1 and 13.4 as set out below:

13.1 Objectives: The rural land and soil resource

(a) *That the rural land and soil resource be managed to:*

- *enable rural resources to continue to be used for a variety of rural activities while recognising their operational needs and the potential environmental effects of such activities;*
- *...*
- *retain the stability and character of rural soils, and the life supporting capacity of the soil resource, including the potential for primary production, and to safeguard natural values.*

(b) *That the open space character and low density of built form which distinguish the rural area be maintained and enhanced.*

13.4 Objective : Rural amenity values

That over the rural area as a whole, rural amenity values, including visual character, heritage values, cultural and recreational opportunities are maintained and whenever possible enhanced, and adverse effects of activities are recognised and controlled.

I am satisfied that the proposal is consistent with the objective and policies in Part 13. While the proposal would change the physical characteristics of the soil affected by the containment cell, the proposal would not prevent the activity from being used for productive rural purposes once the earthworks are being completed. In the long term there will be no impact on the open space character of the rural zone nor any of the values set out in Objective 13.4.

Operative (Part) Christchurch Replacement District Plan

Chapter 3 Strategic Directions:

Chapter 3 of the operative (part) Christchurch Replacement District Plan (CRDP) provides the overarching direction for the District Plan, including for developing the other chapters within the Plan, and for its subsequent implementation and interpretation. Its objectives have primacy over the objectives and policies in the other chapters of the Plan, which must be consistent with the objectives in Chapter 3. The objectives are relatively high level and for the purposes of this proposal I do not consider that there is any specific conflict with any underlying policies and objectives set out in the City Plan and the Proposed Christchurch Replacement District Plan nor is there a direct conflict between this proposal and the strategic objectives.

Chapter 8 Subdivision, Development and Earthworks:

A number of objectives and policies are applicable to earthworks in chapter 8 which address a number of similar themes to those in Chapters 2 and 13 of Operative City Plan. I am of the view that the proposal is consistent with these objectives and policies for similar reasons to those outlined above.

Chapter 12 Hazardous Substances and Land Contamination:

Chapter 12 of the Operative (part) of the Christchurch Replacement District Plan addresses hazardous substances and land contamination. The applicant has provided a supplementary assessment of chapter 12 dated 1 June 2016 as part of their application however I have considered some additional policies also.

Firstly in respect to hazardous substances I (and Ms Stout) accept the applicant's argument that the material is a hazardous substance both in term so of the definition in Chapter 2 as well as the plain dictionary meaning.

Key objectives and policies relating to hazardous substances are:

12.1.1.1 Objective - Adverse environmental effects

a. The residual risks associated with the storage, use, or disposal of hazardous substances in the district are managed to acceptable levels to not adversely affect people, property and the environment while recognising the benefits of facilities using hazardous substances.

12.1.1.1.2 Policy – Identifying and managing individual and cumulative effects of facilities using, storing, or disposing of hazardous substances

a. Identify the individual and cumulative effects associated with facilities using, storing or disposing of hazardous substances and manage residual risks to people, property and the environment to acceptable levels.

The above objective and underlying policy has a focus on managing effects associated with the residual risks. Residual risk means any risk of an adverse effect that remains after other industry controls and legislation such as the Hazardous Substances and New Organisms Act 1996, the Land Transport Act 1998 and regional planning instruments have been complied with. The applicant has outlined that the industry controls relevant to this proposal are:

- The Land Transport Act 1998
- The Health and Safety at Work (Asbestos) Regulations 2016
- Regional Planning Instruments which do not require any discharge permit for a discharge to air (which is the primary cause of concern for asbestos disposal and human health effects) although other consents are required for stormwater discharges and land disturbance.

In terms of residual effects my main concern relates to the long term management of the facility and the risk that the asbestos may somehow escape to the wider environment. Based on the comprehensive controls put forward by the applicant and reflected in the recommended conditions I am satisfied that the effects of the proposal will be managed to an acceptable level of risk and that the proposal is consistent with the above objective and policy.

12.1.1.2 Objective - Risk and reverse sensitivity effects

a. Sensitive activities are established at suitable locations to minimise reverse sensitivity effects on and avoid unacceptable risks from established facilities using, storing or disposing of hazardous substances.

12.1.1.2.1 Policy - Establishment of sensitive activities

a. The establishment of sensitive activities in close proximity to existing major facilities using, storing or disposing of hazardous substances shall be:

- i. avoided in the first instance when that facility or area includes strategic infrastructure or where the sensitive activity may be exposed to unacceptable risk; and*
- ii. minimised, to allow such facilities to carry out their operations without unreasonable reverse sensitivity constraints.*

Reverse sensitivity is not an issue given that the proposal is not expected to create a pathway for asbestos to discharge to air. I note that the nearest neighbouring site and the land zoned Residential Large Lot (within the site) is approximately 200m away. I consider that the proposal is consistent with the above objective and policy.

12.1.1.3 Objective - Acceptable slope stability risks in relation to hazardous substances

a. Residual risks of adverse effects from the use, storage, or disposal of hazardous substances are managed to acceptable levels in areas affected by slope instability.

12.1.1.3.1 Policy – Risks and adverse effects within areas affected by natural hazards

a. Design, construct and manage any proposal involving use, storage or disposal of hazardous substances within areas affected by slope instability to ensure residual risks are managed to acceptable levels.

The above objective and policy is relevant because the site is identified under chapter 7 as being within an area defined as *Remainder of Port Hills and Banks Peninsula Slope Instability Management Area* i.e. within an area of the Port Hills that is not within a cliff collapse management area, rockfall management area or mass movement area. At the present time no consent is required under the rules in chapter 7.

A Geotechnical Assessment has been provided with this application by Mr John Aramowicz¹, Principle, Eliot Sinclair. He has concluded that:

In summary, the proposed containment cell is located in an area of low geotechnical risk, and the measures included in its design (Eliot Sinclair drawing 393568 E3, titled '*Proposed containment cell, Lot 1 DP9250, 318 Kennedys Bush Road, For Penley Group Ltd.*', dated 21/03/2016) will ensure the risk of falling debris, inundation, land slippage and erosion is not likely.

Consolidation settlement of the uncontrolled fill material is likely to occur over time. Due to the risk of consolidation settlement, there should be no foundations or vehicle driveways constructed over the completed containment cell. We recommend the area be fenced to exclude potential vehicle wheel loads.

The applicant later clarified that they did not seek the area to be fenced as the applicant would require light vehicle access noting that the area would be marked with posts and signed to exclude large vehicles.

Neither Mr Craig nor Mr Strayton have any concerns with the overall proposal from a geotechnical perspective (including the light vehicle access). I consider that the proposal is consistent with the above objective and policy.

Objectives and policies relevant to land contamination are set out below:

12.2.1.1 Objective - Contaminated land - managing effects

- a. *Land containing elevated levels of contaminants is managed to protect human health and the environment, which includes significant natural and Ngāi Tahu cultural values from the adverse effects of subdivision, development and use of contaminated land and natural hazards, including from site investigations, earthworks and soil disturbance, and to enable the land to be used in the future.*

12.2.1.1.1 Policy - Best Practice Approach

- a. *Require any proposal to subdivide, use or develop contaminated or potentially contaminated land to apply a best practice approach to investigate the risks, and either remediate the contamination or manage activities on contaminated land to protect people and the environment.*
Note: The status of some activities will be determined by the requirements of the Resource Management (National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011. Reference should be made to the Ministry for the Environment website for a copy of these regulations, a user's guide, and documents incorporated by reference in these regulations.

12.2.1.1.2 Policy - Remediation

- a. *Remediation of contaminated land should not pose a more significant risk to human health or the environment than if remediation had not occurred.*

12.2.1.1.3 Policy - Future use

- a. *Use or development of contaminated land that has been remediated or has an existing management plan in place, must not damage or destroy any containment works, unless comparable or better containment is provided.*

Based on expert input sought during the processing of the application I consider that the long term management of the site is sufficient to protect human health.

Chapter 14 Residential

¹ BE(Hons), MIPENZ, CPEng, IntPE(NZ)

The proposed access to the containment cell would traverse a portion of the Residential Large Lot zone and chapter 14 is therefore relevant. In relation to non-residential activity a key policy would be:

14.1.6.4 Policy - Other non-residential activities

a. Restrict the establishment of other non-residential activities, especially those of a commercial or industrial nature, unless the activity has a strategic or operational need to locate within a residential zone, and the effects of such activities on the character and amenity of residential zones is insignificant.

The effects of using the access are expected to be short term and suitably controlled to avoid/minimise effects on residential neighbours during the construction phase. I consider that these effects would be insignificant. In order to access the containment cell there is an operational need to use the existing access from Kennedys Bush Road.

Proposed Christchurch Replacement District Plan

Chapter 9.2 Outstanding Natural Features and Landscapes, Significant Features and Landscapes and Areas of Natural Character in the Coastal Environment

There are a number of objectives and policies at Chapter 9.2 relating to the outstanding landscape proposed for much of the site (and wider locality) and which the containment cell and much of the access track is located. Any impact on the outstanding landscape would be short term until the containment cell is covered in grass and noting that the access track upgrades are not substantial and in keeping with a rural setting. I am satisfied that the proposal is consistent with the objectives and policies under chapter 9.2.

Chapter 17 Rural:

The containment cell and majority of the access sits within the Rural Port Hills zone (stage 2). The key objective and policies contain similar themes to those in Chapter 13 of the Operative City Plan and for the reasons outlined above the proposal is considered broadly consistent with this objective and policy.

Policy 1 could potentially be seen as an exception in that it is relatively directive as to what activities can take place in the rural zones and is set out below:

17.1.1.1 Policy 1 - Rural activities

- a. *Ensure the range of activities located on rural land is limited to those that have a:*
- i. *direct relationship with, or are dependent on, the natural resource, natural features or the rural activity; or*
 - ii. *functional necessity for a rural location.*

I consider that the proposal is consistent with Policy 1. Landfills are typically located in rural settings for amenity reasons. However I am aware of a number of examples situations in the urban environments where material containing asbestos have been contained/managed in-situ where contamination has been found on-site during the development of land². I note that a number of at source solutions (i.e. at 36 Colwyn Street) have been considered by the applicant³ all of which have been ruled out as practical options. In particular a containment option at 36 Colwyn Street has been ruled out due to the volume of material involved and some local opposition⁴.

I consider that the proposal is generally consistent with the objective and policies of the rural chapter.

Conclusion on Objectives and Policies

I consider that the proposal is generally consistent with the objectives and policies of the relevant plans and is not contrary to any objectives and policies in the relevant plans.

Weighting of the City Plan and Christchurch Replacement District Plans

I consider that the objectives and policies in the following sections of the Replacement Plan should be given significant weight:

- Chapter 3 Strategic Directions and Strategic Outcomes as these provisions become operative on 25 May 2015 under decision 1.
- Chapter 12 Hazardous Substances and Contaminated as these provisions become operative on 7 June 2016 under decision 18.

² Examples include resource consents at 64 Port Hills Road under RMA92021193, RMA92021957 and RMA92021958 and at 91 to 103 Rowses Road under RMA92032307.

³ Refer to Page 8 of the Contamination Management Plan.

⁴ I note that the Contamination Management Plan report also sights opposition from Council but does not state whom within Council has this position.

- Chapter 14 Residential as these objectives and policies are to be treated as operative. The subject objective and policies became operative on 7 June 2016 although the new zoning (Residential large Lot) was only notified on 18 March 2016 under decision 17 on and is no longer subject to any appeals.

I have given the objectives and policies of Chapter 8 of the Replacement Plan moderate weight because they have been determined by the IHP under decision 28 on 22 July 2016 but are not yet beyond appeal.

I consider that the remaining objectives and policies of the Replacement Plan set out below should be given limited weight as they have not yet been determined by the IHP and are subject to change and/or legal challenge:

- Chapter 9.2 Outstanding Natural Features and Landscapes, Significant Features and Landscapes and Areas of Natural Character in the Coastal Environment (not determined by IHP)
- Chapter 17 Rural (not determined by IHP)

I consider that the objectives and policies of Part 2 Natural Environment of the City Plan and Part 13 Rural should be given moderate weight because many of the equivalent matters relating to these chapters in the Replacement Plan (chapters 9.2 and 17) have not yet been determined and or are not yet beyond appeal. The exception would be those objectives and policies that specifically relate to hazardous facilities and land contamination which are now addressed in Chapter 12 of the Replacement plan. I include Policy 2.1.5: Waste Disposal in this category (i.e. apply limited weight to it) because it is now principally dealt with under chapter 12 and is not an issue that is sought to be dealt with under any the policies that are not yet determined in the Replacement Plan.

Any other matters which are relevant and reasonably necessary to determine the application [Section 104(1)(c)]

Precedent / Plan Integrity

Given the non-complying status of this application it is appropriate to have regard to the issue of precedent, as well as the effect of granting consent upon the integrity of the City Plan and public confidence in its consistent administration. Case Law has established however, through the High Court in *Rodney District Council v Gould*, that concerns relating to plan integrity and precedent effect are not mandatory considerations. The Court held that they are matters that decision makers *may have regard to*, depending on the facts of a particular case including:

1. Whether a proposal is contrary to the objectives and policies of the plan; and if so
2. Whether in the circumstances of a particular case a proposal can be seen as having some unusual quality.

In this case the proposal is not contrary to the objectives and policies, therefore I am satisfied that issues of precedent or plan integrity do not arise.

Part II of the Resource Management Act 1991 [Section 104(1)]

The above considerations are subject to Part II of the Act which outlines its purpose and principles. Based on my earlier assessments I consider that the proposal is consistent with the purpose of the Act under section 5(1) to promote the sustainable management of natural and physical resources. In particular the proposal is considered to:

- enable people and communities to provide for their health and safety (section 5(2));
- sustain the potential of natural and physical resources (i.e the soil) to meet the reasonable needs of future generations (section 5(2)(b));
- avoid, remedy, or mitigate any adverse effects of activities on the environment (section 5(2)(c));
- the maintenance and enhancement of amenity values (7(c));
- maintenance and enhancement of the quality of the environment (7(f))

Non complying activity threshold tests [Section 104D(1)] - delete if not a non-complying activity

I consider that the satisfies both tests as the adverse effects on the environment will be less than minor and the application is not contrary to the objectives and policies of the Plan.

Section 104(3)(d) notification consideration

No matters have arisen in the assessment of this application which would indicate that the application ought to have been notified.

Recommendation: That for the above reasons the application **be granted** pursuant to Sections 104, 104B, 104D and 108 of the Resource Management Act 1991, subject to the following conditions:

1. Unless otherwise stated in conditions of this consent, the development shall proceed in accordance with:
 - i. The report by Eliot Sinclair, dated 7 April 2016, under reference 393569 and labelled *318 Kennedys Bush Road, Kennedys Bush, Christchurch, Application for Resource Consent Prepared for Penley Ltd.*
 - ii. Appendices 1, 3 and 6 of the above mentioned report.
 - iii. The letter (with attachments) from Mr Paul Thompson, Eliot Sinclair dated 1 June 2016 and titled *RMA92032968, 318 Kennedys Bush Road, Penley Ltd.*
 - iv. The letter (with attachments) from Paul Thompson (to Environment Canterbury) dated 5 May 2016 and titled *318 Kennedys Bush Road CRC167576 – CRC167581.*
 - v. Email correspondence dated 27 May 2016 and 9 June 2016.

These documents have been submitted as the Approved Consent Documentation and have been entered into Council records as RMA92032968 (261 pages).

2. Contaminated material shall only be imported to the site from 36 Colwyn Street.

Pre-construction

3. The consent holder shall be responsible for all contracted operations relating to the exercise of this consent and shall ensure that all personnel working on the site are made aware of the conditions of this consent, have access to the contents of this consent document and all associated erosion and sediment control plans and methodology, and shall ensure compliance with consent conditions. A copy of these documents shall also remain on-site through the duration of the works.
4. Prior to the commencement of the earthworks, the consent holder shall appoint a site supervisor who is responsible for ensuring that the conditions of this consent are complied with at all times.
5. The consent holder shall notify the Christchurch City Council in writing at least 5 working days prior to the commencement of any on-site works associated with this resource consent. This information shall include the contact details (name, position, phone number) of the site supervisor appointed under Condition 4 above. This notification shall be sent to the Christchurch City Council, Attention: Team Leader Environmental Compliance, by way of email to envresourcemonitoring@ccc.govt.nz.
6. An Erosion and Sediment Control Plan (ESCP) is to be submitted for review prior to the commencement of the works. The ESCP is to include (but is not limited to):
 - Site description, i.e. topography, vegetation, soils etc
 - Details of proposed activities.
 - A report including the method and time/type of monitoring to be undertaken.
 - A locality map.
 - Drawings showing the site, type and location of sediment control measures, onsite catchment boundaries and offsite sources of runoff.
 - Drawings and specifications showing the positions of all proposed mitigation areas with supporting calculations if appropriate.

The performance criteria for the ESCP, unless directed by Council through the engineering acceptance process, will be based on ECan's Erosion and Sediment Control Guidelines (2007 or current).

<http://ecan.govt.nz/advice/your-land/earthworks-soil-eroison/Pages/soil-erosion-sediment-guidelines.aspx>

The ESCP is to be designed by a suitably qualified person and a design certificate supplied with the plan. (Use the certificate from Appendix IV of the CCC Infrastructure Design Standard Part 3).

Works shall not commence until such time as the ESCP is accepted by the Senior Subdivision Engineer.

Pursuant to Section 128 of the Resource Management Act 1991 Council reserves the right, during the construction phase, to review this condition to impose further controls in respect to Sedimentation Control and Management.

7. The measures outlined in the accepted Erosion and Sediment Control Plan (ESCP), shall be implemented on site prior to the commencement of any earthworks. No earthworks shall commence until the consent holder has submitted an "Engineering Completion Certificate" (as per IDS – Part 3, Appendix VII), signed by an appropriately qualified and experienced engineer to Council. The Certificate shall attest that the erosion and sediment control measures have been properly installed and shall also name the person(s) responsible for the maintenance of these measures. This certificate shall be sent to the Christchurch City Council, Attention: Subdivision Engineer, by way of email to resourceconsentapplications@ccc.govt.nz.
8. The Erosion and Sediment Control measures referred to in Condition 5 shall be appropriately maintained until the soil/materials associated with the project works are reinstated to an erosion-free state and there are no exposed surfaces.
9. No material containing asbestos shall be imported to the site until such time as the access upgrades (as described in the Contaminated Management Plan) have occurred.
10. No material containing asbestos shall be placed in the containment cell until such time as a section 108 covenant is registered on the title of the property which:
 - i. States that hazardous material is contained within a containment cell on the property within a defined area (the area is to be defined on a plan of the site and with a map co-ordinates identifying the fence post markers of the containment cell (refer to Cond. 31).
 - ii. Imposes the conditions set out in 27 to 33 of this consent as conditions of the section 108 covenant (once earthworks are complete).

Note: As the containment cell will not actually be constructed at this time the area defined in (i) will need to represent the maximum area required. All Council costs associated with the creation of this instrument shall fall upon the consent holder.

11. Prior to the commencement of works along the access track (including the culvert extension) a detailed engineering design plan shall be provided to the Senior Subdivision Engineer, Council (with all appropriate calculations/report) from a suitably qualified and experience engineer to demonstrate that natural drainage patterns will be maintained for the proposed culvert crossing and that the proposed formation would not create any additional potential for erosion within the waterway. The culvert shall be installed in accordance with this plan.
12. No material containing asbestos shall be imported to the site until a suitably qualified and experienced geotechnical engineer has inspected the excavations to create the containment cell and confirmed in writing to Council's Senior Subdivision Engineer that the geotechnical conditions are in accordance with those described in the letter from Mr John Aramowicz, Eliot Sinclair dated 2 May 2016.

On-site Works

13. All works shall be carried out in accordance with the approved Erosion and Sediment Control Plan.
14. The project works shall be carried out in accordance with the report prepared by Eliot Sinclair, on 7 April 2016, under reference number 393569 and labelled Contamination Management Plan, 36 Colwyn Street (Soil Removal) / 318 Kennedys Bush Road (Soil Deposition) on behalf of Penley Ltd.

Note: From hereon this report is referred to as The Contamination Management Plan. For the purposes of clarification this report shall only apply from the point that the material leaves 36 Colwyn Street. Works within 36 Colwyn Street are to be controlled by a separate resource consent.

15. Any variations to the procedures/measures in the Contamination Management Plan are to be notified to the Christchurch City Council, in writing for certification that the contamination risk is not increase,

at least 5 working days prior to the implementation of any proposed changes. This notification shall be sent to the Christchurch City Council, Attention: Team Leader Environmental Compliance, by way of email to envresourcemonitoring@ccc.govt.nz. Any proposed variations shall not be implemented until this certification is provided.

16. No stockpiling of asbestos containing material shall occur outside the containment cell.
17. No work shall be undertaken on Sundays, Public Holidays, or outside the hours of 7.00 am to 6.00 pm without the Council's prior written consent.
18. Noise from excavation and traffic (on-site machinery / trucks) shall comply with requirements of NZS 6803 "Acoustic – Construction Noise" (See Table 3, page 11 from NZS 6803).
19. All bared surfaces shall be adequately top-soiled and vegetated as soon as possible to limit sediment mobilisation. Stabilisation shall be undertaken by providing adequate measures (vegetative and/or structural and which may include hydro-seeding, re-vegetating and mulching or other appropriate method) that will minimise erosion of exposed soil.
20. Should the consent holder cease, abandon work on site, stop the works for a period longer than 6 weeks, or be required to allow time gaps in accordance with the proposed timeline, they shall first take adequate preventive and remedial measures to control sediment discharge/run-off and dust emission, and shall thereafter maintain these measures until the completion of the works and soils are reinstated to an erosion-free state. The consent holder shall advise the Senior Subdivision Engineer at the earliest opportunity of work ceasing, but not later than 6 weeks after such time as works have ceased.
21. Adequate dust control measures must be in place at all times so as to minimise any nuisance to neighbouring property. Appropriate equipment (including water carts and sprinklers) is to be available on site at all times.
22. A hand hose shall be available on site and used during the excavation / filling, truck loading to avoid the risk for dust to disperse into the air.
23. Any temporary stockpiling of topsoil or subsoil material (other than asbestos contaminated concrete/materials) shall be kept moist all the times or stabilised to prevent the creation of dust.

Validation/Reporting

24. The consent holder shall submit a Site Validation Report (SVR) to the Christchurch City Council no later than three months following the completion of earthworks carried out under this resource consent. The SVR shall comply with the Ministry for the Environment Guidelines for Reporting on Contaminated Sites in New Zealand (2011) and contain the following information as a minimum:
 - a) Volumes of materials removed from the deposition location and deposited in the containment cell;
 - b) Details of any variations to the proposed work plan;
 - c) Details of any health and safety incidents during the development;
 - d) Details of any discharges or contingency measures employed during the earthworks;
 - e) Photographic evidence of the site works;
 - f) Confirmation of the location of the containment cell.

The SVR shall be submitted to Team Leader Environmental Compliance (or equivalent) Christchurch City Council.

25. The consent holder shall submit an engineering report to the Christchurch City Council no later than three months following the completion of earthworks carried out under this resource consent. This report shall contain an "As Built" Plan showing exact location (defined by GPS coordinates points), final geometry and formation of the containment cell as well as the final depth of the excavation and thickness of soil cover. This report shall be submitted to the Senior Subdivision Engineer, Christchurch City Council.
26. The consent holder shall submit to the Christchurch City Council, no later than three months following the completion of earthworks carried out under this resource consent, photographic evidence and a plan that the fence posts and signage described in conditions 31 and 33 have been installed and grass established in accordance with condition 19. This evidence shall be submitted to the Senior Subdivision Engineer, Christchurch City Council.

Long Term Management of the Containment Cell

27. The containment cell shall be maintained with continuous cover with grass, regenerating bush or native vegetation at all times.
28. No trees shall be planted or permitted to establish on the containment cell.
29. The containment cell (including the surface of the ground above it) shall not be excavated and shall not be accessed by heavy vehicles except when the surface of the containment cell or the containment cell needs to be repaired or remediated and only under the supervision of suitably qualified and experienced practitioner with engineering and/or land contamination experience. If repair or remediation of the containment cell is required, the landowner shall notify the Head of Regulatory Compliance immediately in writing.
30. If at any time the plastic marker geogrid mesh has become exposed or there are any other signs of disturbance to the soil cover, the containment cell shall be remediated to its former condition in accordance with the approved plans and this shall be certified by a suitably qualified person with engineering and/or land contamination experience and reported to the Head of Regulatory Compliance, Christchurch City Council.
31. At all times the containment cell will be identified on site with posts on each corner to demarcate the full extent of the containment cell and the exclusion area for excavations.
32. No vehicle access track shall be formed over the surface of the containment cell.
33. Signage must be fixed on posts on each corner of the containment cell and shall remain in place at all times to identify the presence of the containment cell, that it contains buried hazardous material, that no excavation is to take place over the containment cell and that no heavy vehicle access is permitted over the surface of the containment cell.
34. The containment cell shall be inspected annually by the landowner on the anniversary of the consent being issued. A written report and photographic evidence shall be prepared by the landowner detailing the condition of the surface of the containment cell and whether compliance has been achieved with conditions 27 to 33 above. The report shall be provided to the Head of Regulatory Compliance, Christchurch City Council within 10 working days of the annual anniversary of the consent.
35. At any time, if any erosion or other signs of disturbance of the containment cell (including the surface of the ground above it) is present, which has the potential to compromise the integrity of the containment cell, the consent holder shall engage a suitable qualified and experienced practitioner with engineering or landfill experience to remediate any issues and immediately notify the Head of Regulatory Compliance, Christchurch City Council.

Review

36. The Council may, one year after the commencement of the consent and at yearly intervals thereafter or after any non-compliance with the conditions of consent are identified, serve notice on the consent holder within 10 working days and in accordance with section 128 of the Resource Management Act of its intention to review any of the conditions of this consent for any of the following purposes:
 - i. To deal with any unanticipated adverse effects on the environment that may arise from the exercise of the consent; and
 - ii. To ensure that the conditions are effective and appropriate in managing the actual and potential effects of activities.

Advice Notes:

- There is a legal requirement to comply with the Health and Safety at Work (Asbestos) regulations 2016.
- The Head of Regulatory Compliance can be contacted by way of email to envresourcemonitoring@ccc.govt.nz
- Costs:
 - (i) A monitoring fee of \$434 (*commercial*) to cover the cost of setting up a monitoring programme and carrying out two site inspections to ensure compliance with the conditions of this consent; and
 AND
 - (ii) Time charged at an hourly rate of \$116 incl. GST if additional monitoring is required, including non-compliance with conditions.

Reported and recommended by: Paul Lowe, Senior Planner

Date: 10 August 2016

Peer reviewed by: Wendy Baker

Date: 12 August 2016

Decision

That the above recommendation be adopted for the reasons outlined in the report.

Commissioner:

Name: Robert Nixon

Signature:



Date: 18 August 2016

