

**BEFORE THE WAIMAKARIRI DISTRICT COUNCIL
AND CANTERBURY REGIONAL COUNCIL**

UNDER The Resource Management Act 1991 (**Act**)

AND

IN THE MATTER OF Application RC175031 to the Waimakariri District Council to retrospectively approve the placement of landfill material (hardfill) on the part of the site extending from the northern boundary of the site to 5m to the south of Neeves Drain, Kaiapoi (known as "Area D") that is not approved under Waimakariri District Council Land Use Consent RC145641, at 180 Doubledays Road, Kaiapoi, being Lot 1 DP30964

AND

IN THE MATTER OF Application CRC174554 by Clemence Drilling Contractors Limited for a permit to discharge contaminants to air

**DECISION OF HEARING COMMISSIONER DAVID CALDWELL
DATED 29 MAY 2018**

Appearances

Applicants:

Mr Peter Farrant, Engineer for the Applicant

Mr David Clemence, Owner

Submitters:

Ms Juliet Derry, Counsel for the Submitters

Graeme Campion and **Bernadette Williams** and **Natasha Harden**

Canterbury Regional Council and Waimakariri District Council Reporting Officers:

Mr Matthew McCallum-Clark, WDC S42A Reporting Officer

Mr Alister O’Callaghan, WDC S42A Reporting Officer

Ms Natalia Ford, Senior Consents Planner and S42A Reporting Officer for CRC

Tabled Evidence:

Natasha Harden – tenant at 2 Neeves Road

Introduction

- 1 I have been appointed by the Waimakariri District Council (**WDC**) and the Canterbury Regional Council (**CRC**) as Independent Commissioner to hear and determine applications made by Clemence Drilling Contractors Limited for:
 - (a) Retrospective land use consent to approve the placement of material in “Area D” adjacent to Neeves Drain at 180 Doubledays Road.
 - (b) Application for consent to discharge to air dust emissions from the excavation, relating to the scraping back of the existing sides of fill material to obtain separation distances and batter slopes and reshaping and landscaping the ground surface associated with rehabilitation of the cleanfill site at 180 Doubledays Road, Kaiapoi.

Background

- 2 Application CRC174554 was originally submitted on 13 February 2017 but was returned as incomplete in accordance with s88 of the RMA. The application was resubmitted on 7 March 2017 and again returned pursuant to s88. The application was then receipted on 9 May 2017 following receipt of further information gained during a site visit.
- 3 Application RC175031 was originally submitted in February 2017. It was subject to a further information request.
- 4 Both applications were jointly limited notified on 19 December 2017. Those notified were Graeme Campion and Bernadette Williams, as owners of 2 Neeves Road, Kaiapoi; the occupiers of 2 Neeves Road, Kaiapoi; and KiwiRail as owners of the adjacent South Island main trunk rail line.

Submissions

- 5 Two submissions were received in opposition to the CRC proposal. These were from
- Graeme Campion and Bernadette Williams;
 - Natasha Harden.
- 6 In terms of the CRC application, the submitters raised concerns regarding the adverse effects that the discharge of dust may have, including offensive and objectionable effects on the rural amenity values and the submitters' property, particularly given the location and proximity of the fill.
- 7 Three submissions were received in relation to the WDC application. These were from Natasha Harden, Bernadette Williams and Graeme Campion, and KiwiRail Holdings Limited.
- 8 By way of summary, the submitters raised concerns regarding adverse effects. In relation to the WDC application these related to:
- amenity effects;
 - flooding risk.

Hearing and Procedural Matters

- 9 The hearing of the applications commenced on 3 April 2018. Submissions and evidence were given on that day. The hearing was adjourned on 3 April 2018.
- 10 A request was received from the applicant on 10 April 2018, to allow them to provide further evidence. That request was subject of a Minute dated 12 April 2018. This provided the opportunity for the submitters to provide their views of the request for further evidence to be provided. I extended the time for closing of the hearing to 10 May 2018.
- 11 I issued a second Minute on 20 April 2018 addressing the further evidence, which I declined to receive. The Minute also provided further directions in relation to information to be provided. I sought a full set of proposed conditions from the WDC Reporting Officer, together with copies of the relevant Certificates of Title. Those documents were subsequently provided and I formally closed the hearing on 8 May 2018.

Site Visit

- 12 I undertook a site visit on 13 April 2018. I was accompanied by an employee of the applicant, but not one who had been involved in the hearing.
- 13 I drove down the right of way to 2 Neeves Road. I then parked on 6 Neeves Road and made my way through the main gate and across the site to Area D. Overall, it could be said that the wider site at 180 Doubledays Road is still in something of a state of flux. I understood from Mr

Farrant at the hearing that the previously granted consents had not been fully implemented due to delays which, from the applicant's position, were not its fault.

- 14 I traversed the site to the KiwiRail line. I walked alongside that line to the area of the culvert, which is essentially opposite 2 Neeves Road. I then followed Neeves Drain through the site, passing the two culverts installed by the applicant, and viewed the confluence of the drain with Courtney Stream.

The Proposal

15. In terms of the land use consent application to the WDC, the application can be summarised as an application for retrospective consent for the placement of fill adjacent to the Neeves Drain at 180 Doubledays Road. The volume is approximately 8,200m³. I note this application is part of a much wider consenting issue. The applicant had previously sought, and obtained, retrospective resource consent for filling on other areas of this site, and other properties in the vicinity.
16. The application to CRC is for discharge to air. The proposed activity is summarised in paragraph 21 of the S42A Report. The discharge application is limited to discharge from excavation to reshape the batters of the existing cleanfill and reshape the surface with a finished elevation of 3.6masl and landscaping. The application notes the existing cleanfill is to maintain a 5m setback between the cleanfill and the property boundaries, with 10m to the railway boundary, and that a total soil quantity movement of 92m³ will occur. It is also proposed that the total work area exposed would not exceed 200m² at any one time and the works are only to occur when wind direction is from the windward side of Neeves Road (being a general northerly direction).

The Existing Environment

17. Ms Ford described the existing environment in paragraph 45 of her S42A Report. She noted that the land was zoned Rural, generally flat, with areas of large willows along the north boundary, with the exception of a 50m length. She noted that the closest dwelling to the work site was approximately 30m from the site.
18. Mr McCallum-Clark described the sites in paragraphs 8-13 of his S42A Report. He noted that fill at 180 Doubledays Road was subject to existing resource consents RC115027 and RC145641. He also noted that the adjacent or nearby sites at 2/4 Neeves Road and 164 Doubledays Road were filled with cleanfill material, for which retrospective consent was granted under RC145641.
19. The consented environment is, in my view, very relevant to the applications before me.
20. In 2015, the following consents were granted:
 - (a) Waimakariri District Council Resource Consent 145254: to deposit cleanfill onto land at 2 and 4 Neeves Road, Kaiapoi;

- (b) Waimakariri District Council Resource Consent 125439: to establish a landfill for cleanfill at 164 Doubledays Road;
 - (c) Waimakariri District Council Resource Consent 145641: to deposit cleanfill onto land at 180 Doubledays Road;
 - (d) Canterbury Regional Council Resource Consent CRC151646: to excavate material at 2 and 4 Neeves Road;
 - (e) Canterbury Regional Council Resource Consent CRC151647: to discharge contaminants into air from the deposition of cleanfill at 2 and 4 Neeves Road;
 - (f) Canterbury Regional Council Resource Consent CRC140483: to use land to excavate material and to discharge contaminants into air from the deposition of cleanfill at 164 and 180 Doubledays Road.
21. Several of those consents were appealed in relation to the consent conditions. The Environment Court issued a s116 determination on 18 July 2016, excluding the conditions relating to the activities between the northern boundary of the site and 5m south of the existing Neeves Drain.
22. While the consents in relation to 180 Doubledays Road do not appear to have been fully implemented, that is not a matter for me to determine. I consider that the environment needs to be assessed on the basis of the consents granted.

The Hearing

23. **Mr Peter Farrant** spoke to his Brief of Evidence filed on 7 March 2018. I do not propose to fully summarise that evidence. It has been pre-circulated and is a matter of public record. I address that evidence more fully when dealing with particular issues raised.
24. By way of a very brief summary, Mr Farrant addressed the background to the application, stating that the reason why Area D had been filled was not as a result of a deliberate decision but on the basis that the original consent (issued in 2011) was very unclear as to the status of Area D due, I understand, to the provision of a black and white map which did not show the specific identification of the area.
25. Mr Farrant addressed amenity issues. His evidence was that the issues of dust and traffic safety were best dealt with through minimising the further disturbance to the fill and maintaining ongoing controls, with visual amenity matters dealt with through minor site landscaping and ongoing maintenance.
26. In terms of the submitter's property flooding at 2 Neeves Road, by way of summary, he submitted the potential flooding within that property is not influenced by the presence of fill in Area D, other than possibly increasing it by 1-2mm in a future 1:200 (year) rainfall event.
27. He summarised that the only effect of fill in Area D may have is on the culvert discharge under the railway line as primary floodwaters recede. This was to be addressed by a 5m wide swale

north of the fill, providing for an overland flowpath for culvert discharge water under all possible events.

28. In terms of the Kiwi Rail concerns he considered the fill in Area D had no significant impact on maximum flood levels and the open swale to accommodate the impact of the Neeves Road culverts would mean there would be no measurable impact on how quickly water recedes adjacent to the rail corridor.

Submitters

29. **Ms Juliet Derry** presented submissions on behalf of the owners and occupiers of the property at 2 Neeves Road. She addressed the effects that the landfill activity had and continued to have on the submitters she represented, particularly in relation to amenity effects, and the potential for further flooding.
30. Ms Derry addressed past conduct, noting, quite properly, that the applicant's past conduct should not influence the judgment of a resource consent application in a punitive manner. It was not however, she submitted, irrelevant.
31. Ms Derry addressed the existing environment, noting that filling activities which had taken place illegally should not be considered part of the existing environment, before addressing what she considered to be inadequate information. Ms Derry then addressed the objectives and policies, submitting that the proposal was not consistent with the relevant rural zone and natural hazards policies, particularly those regarding effects on rural character and amenity and flooding impacts.
32. Ms Derry helpfully addressed, without resiling from her submission that consent should be declined, conditions in the event consent was granted.
33. **Ms Bernadette Williams** then provided a statement of evidence on behalf of herself and Mr Champion. Ms Williams' evidence outlined that they had owned the property since September 2001. The property is located approximately 30m from the 180 Doubledays Road boundary. She described her property, the importance of the rural environment and the effects of the filling of Area D in particular. She described Area D as essentially acting as a buffer or at least providing some separation to the landfill activity occurring on 180 Doubledays Road.
34. Ms Williams then addressed the adverse effects arising from the filling. She summarised these as effects on rural character, visual amenity, and flooding effects. She provided a series of photographs showing flooding on the property, which she stated resulted from Area D being filled. She disputed the applicant's position that it was unaware that Area D was a no fill zone and addressed past non-compliance, before expanding on her concern as to the effects. She saw no benefit in leaving the fill in situ and sought the removal of the fill from Area D and the culverts. She considered this would return the environment back to how it was pre-fill. She acknowledged the short term effects and works associated with the removal of the fill, but considered the overall benefit of returning to the status quo pre-fill outweighed the short term effects.

35. She further identified concerns in relation to survey boundary measurements and concluded by reiterating her opposition to the granting of consent.
36. **Ms Natasha Harding** was unable to attend the hearing due to other commitments but provided a Brief of Evidence. I have read and considered that evidence. Ms Harding addressed dust effects, noise from trucks passing within 10m of her residence, flooding, visual amenity and safety risks from truck movements. She concluded that she would like to see the fill removed from Area D.
37. Kiwirail did not appear, advising it would rely on its submissions. I confirm that I have taken into account the matters raised.

S42A Reports

38. **Mr McCallum-Clark** provided a comprehensive S42A Report on behalf of WDC. He described the application, the sites, the background, legislative framework, relevant planning documents and an assessment of the relevant rules in Waimakariri District Plan. He noted that overall the activities subject to RC175031 are discretionary activities under the District Plan. He also recorded his opinion that the land filling and associated earthworks to modify the final contours was subject to the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health Regulations 2011).
39. Mr McCallum-Clark provided an assessment of effects, noting that in his opinion the effects of the activity also needed to be considered in the context of the resource consents granted for the much more significant landfilling works on the remainder of 180 Doubledays Road and 2/4 Neeves Road.
40. Mr McCallum-Clark noted that the applicant suggested in a number of places that the adverse effects of removing the fill are greater than the effects of leaving it in place. He agreed that the existing environment is complicated by the retrospective nature of the application, but in his opinion, given the placement of fill in this area was specifically excluded by the previous resource consents, the assessment of effects needs to be against the position as if the fill did not exist. He did however note that it was something of a nonsense to consider some of the temporary construction effects of the placing the fill in this location when those effects have long passed. He also noted that the removal of the fill would inevitably have some short term effects, but in his opinion they are adequately addressed by the performance standards of the District Plan.
41. He addressed the final contours and levels, noting in paragraph 29 that the application essentially seeks to leave the existing fill in situ, with minor recontouring near Neeves Drain, recontouring near the accessway to 2 Neeves Road to enable a secondary flow path, and some landscaping adjacent to Neeves Road. In his view those elements comprise relatively significant changes in the volume of fill able to be placed on the 180 Doubledays Road site.

He addressed the long term visual effects, primarily by bringing the fill and associated activities closer to the adjacent property and accessway.

42. His opinion was that leaving the fill in place on the northern side of Neeves Drain, without substantial mitigation works, including recontouring of the edges, limiting the non-rural activities occurring in that area and landscaping, there would be adverse visual effects from the owners and occupiers of 2 Neeves Road which are more than minor.
43. Mr McCallum-Clark also addressed effects of dust generation, water and soil contamination and traffic generation, before concluding that the adverse environmental effects from the proposal were more than minor, particularly in relation to adverse effects on drainage patterns and potential for flooding of the adjacent property and its accessway, and upstream properties. In addition, his view was the visual and amenity effects are likely to be more than minor, particularly as appropriate mitigation has not been provided.
44. Mr McCallum-Clark then undertook an analysis against the relative objectives and policies in the District Plan, concluding that the proposal was largely consistent with the outcome sought by the relevant objectives and policies of the District Plan. He retained residual concerns as to maintenance of rural amenity values and potentially significantly increased risk of flooding.
45. Overall, he concluded that the proposal was contrary to the policy of the District Plan that relates to flood risk (Policy 8.2.1.4) and it will result in adverse effects in terms of character and amenity to the adjoining site in a more than minor nature. He considered that the application could be approved, in a comparatively small part, to enable the fill to remain immediately to the south of Neeves Drain.
46. **Mr Alister O'Callaghan** provided a memorandum as part of the S42A Report and attended the hearing. I will not summarise his memorandum in any detail. Again, that is a matter of public record and I have considered it carefully. In discussions, he offered to clarify a number of matters. He expressed concern in relation to the lack of detailed information provided. He noted that the alternative flow path proposed meant a reasonable amount of physical work would be required. It would be critical that it is properly maintained but the Manning's n value (a roughness coefficient) used was typical of a mown grass swale. He addressed the Tonkin & Taylor report (draft which was provided) and again noted the maintenance of the alternative watercourse was a critical matter.
47. He addressed the flooding issues at Kaiapoi identified in his written memorandum. He described the "red area" in that memorandum as one puddle of water. Removing storage altered the footprint of that puddle. In his opinion, even if 1.8mm was a result of loss of storage capacity from filling of Area D, that could result in someone getting water in a house when they wouldn't otherwise, or getting evacuated. He described it as the thin end of the wedge. In terms of additional flood modelling, he did not consider it necessary for further flood modelling to be undertaken as any effect would likely be in the range 1-3mm.
48. In terms of the photographic evidence of flooding which had been provided, he was not previously aware of that. In his view, it was not clear what was causing it. He was not clear

whether it was related to Area D or other areas which had been filled. He also addressed matters in relation to the Kiwirail culvert and the other culverts on the site.

49. **Ms Natalia Ford** provided a S42A Report on behalf of the CRC. Again it was a comprehensive report addressing the background, the submissions, a description of the proposed activity and the legal and planning matters, before addressing the relevant Regional Plans. Ms Ford also outlined the consultation process which had been undertaken by CRC. She undertook an assessment of the existing environment, explained the proposed conditions, and confirmed that the Regional Plans did not consider any regional land use consent for the works was required.
50. Overall, Ms Ford recommended a duration of 12 months and the granting of the consent subject to conditions, but only in the event that RC175031 was granted.

Reply

51. Mr Farrant took the opportunity to present an oral reply. He acknowledged that the works which had been undertaken on the wider site had impacted on the quality of life for the residents. He expressed some concern in relation to the photographs and believed that the flooding was unrelated to Area D. He discussed the swale. He discussed the visual amenity effects, noting that when grassed the site would be higher but more attractive.
52. He discussed the 5m setback required and that the swale would in essence provide that setback. He advised that the Manning n number included some regrowth and was not based on a mown strip. In terms of angles in the swale, he noted that it was very low gradient and corners would not create any difficulty.
53. Again, he identified the amenity concerns of the submitters as valid, but they need to be considered after the grassing down rather than as the site presently presented. He addressed truck movements to 6 Neeves Road and explained those.
54. He addressed the statement relating to Area D having been a flow area. He did not accept that. He agreed it had been a holding area and that the capacity had been removed. He advised that this resulted in approximately an increase of 1.8mm in flood levels which was included in the 30mm assessed as part of the previous hearings.
55. He advised that the applicant was happy to provide site specific design detail, had no difficulties with an EMP or DMP, addressed flooding issues in the Kiwirail culvert, noted that flooding in the wider environment was primarily in areas where existing drains have not performed. Again, he indicated that the 1.8mm increase was already part of the 30mm considered as part of the previous hearing.
56. If this consent were granted, the swale would become the main carrier of large flows. He acknowledged that the success depended on the swale being there and being properly maintained. He concluded by stating that in terms of 2 Neeves Road, there are no meaningful changes to the flood levels experienced by that site arising from the fill.

Assessment

Statutory Framework

S104 and s104B

57. S104(1) RMA sets out the matters which I must have regard to in my consideration of the Application. The relevant matters are as follows:

- “(a) any actual and potential effects on the environment of allowing the activity; and*
- (b) any relevant provisions of –*
 - (i) a national environmental standard;*
 - (ii) other regulations;*
 - (iii) a national policy statement;*
 - (iv) a New Zealand coastal policy statement;*
 - (v) a regional policy statement or proposed regional policy statement;*
 - (vi) a plan or proposed plan; and*
- (c) any other matter the consent authority considers relevant or reasonably necessary to determine the application.”*

58. S104(1) RMA provides the matters listed are subject to Part 2, which includes s5 through to s8. I address Part 2 RMA matters, and the approach taken to that analysis, subsequently.

S104D

59. As identified by Ms Ford, pursuant to the proposed Canterbury Air Regional Plan, Decisions Version (CARPd), which I understand was its status at the date of application, the activity is non-complying pursuant to Rule 7.5. Under the now operative CARP, the activity status remains non-complying pursuant to Rule 7.5.

60. Mr McCallum-Clark advised that activities subject to RC175031 are discretionary under the relevant provisions of the Waimakariri District Plan.¹

61. I have considered whether the application to the WDC should also be assessed as non-complying on the basis that it should be bundled with the activity status required under the regional planning documents.

62. This was not an issue that was raised by any party at the hearing, but in the circumstances of this case I consider it is appropriate that I focus my assessment of the District Plan matters on the basis of that plan, rather than a bundling as such.

¹ McMcCallum-Clark s42A at para 23

63. I record that no party appearing before me suggested bundling between the regional and district planning documents was appropriate.
64. While neither the reporting officers nor submitters addressed the application as one under s127, in essence it is the effects additional to, and potentially cumulative on, those already consented which are an issue.
65. In any event, in terms of the air discharge consent, it is clear that both of the gateways in s104D are met. My analysis is therefore conducted under s104B.

S105 RMA Discharge

66. In terms of s105(1), when considering a discharge application, I must, in addition to s105(1), have regard to –
- the nature of the discharge and the sensitivity of the receiving environment to adverse effects; and
 - the applicant’s reasons for the proposed choice; and
 - any possible alternative methods of discharge, including discharge to any other receiving environment.
67. I confirm I have had regard to these matters in considering the application for discharge to air.

Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011

68. Mr McCallum-Clark identified the need for a consent under the NES as, while the site is not listed as contaminated or potentially contaminated under the CRC’s Listed Land Use Register, it has now had land filling operations undertaken such that in his opinion it would now constitute a “HAIL” site.²

Part 2 RMA

69. The application of the words “subject to Part 2” in a s104 context has been addressed by the Environment Court in AJ Davidson Family Trust v Marlborough District Council [2016] NZEnvC 81. The Environment Court noted that “subject to Part 2” does not give a specific direction to apply Part 2 in all cases but only in certain circumstances. The Court found, in addition to where there is a conflict between provisions, Part 2 may be relevant where there is invalidity, incomplete coverage or uncertainty of meaning in the relevant planning documents. The Environment Court’s approach was confirmed by the High Court in RJ Davidson Family Trust v Marlborough District Council [2017] NZHC 52.
70. Overall, I consider the Waimakariri District Plan, and the Regional Planning documents, appropriately address the relevant Part 2 matters and it is not necessary, or indeed appropriate, for me to undertake a clause by clause analysis of Part 2.

² Para [18] S42A Officer’s Report of Matthew McCallum-Clark (**WDC S42A Report**)

Issues in Contention

71. The principal issues in contention were essentially related to effects. The principal effects identified were those relating to amenity, and those relating to flooding.
72. Associated with that, there were issues as to whether the application was inconsistent with, or contrary to, the relevant objectives and policies.

Permitted Baseline

73. I have considered whether there is any permitted baseline which should be considered in relation to s104(2) RMA. No permitted baseline was identified.

ANALYSIS

Actual and Potential Effects on Environment of Allowing Activity (S104(1))

74. As noted, in general terms, the principal effects in contention related to:
 - (a) effects on amenity; and
 - (b) effects relating to flooding.

Dust Emissions

75. Ms Ford at paragraph 48 of S42A Report identified the following:
 - (a) potential adverse effects of dust on air quality, amenity values and human health;
 - (b) potential adverse effects on tangata whenua values; and
 - (c) other adverse effects.
76. Ms Ford addressed the potential effects of dust on air quality, amenity values and human health at paragraphs 49-60 of her report.
77. She identified that the discharge of dust activities are very localised in effect. Given the close proximity to a sensitive receptor, careful consideration needed to be taken to ensure that any dust that may cross the boundary is minimised as far as practicable.³
78. Ms Ford considered that the size of the dust particles created as a result of the proposed work would be significantly greater than PM₁₀, and will not pose a risk to human health and was unlikely to adversely affect air quality. She considered that any adverse offensive or objectionable effects on 2 Neeves Road would be less than minor.
79. In relation to nuisance effects on the occupants of 2 Neeves Road, she considered there would be limited potential effects on amenity values. In her view, while the work site was adjacent to the property boundary and only 30m from the neighbouring dwelling, sufficient

³ S42A Report – Ford at 58

mitigation had been proposed and suitable conditions recommended so adverse effects on amenity values are likely to be minor.⁴

80. Ms Harden identified dust effects as an issue of concern. She noted that when the applicant carries out landfill works dust is transferred onto the property. She noted further that this impacted on her and her family by restricting what activities could occur. Specifically, she identified impacts on children playing outside, motor vehicle storage outside, hanging washing, opening windows and even walking around outside was an issue because of potential dust effects.
81. Mr Farrant addressed this issue, particularly in paragraphs 60-65 of his evidence, essentially identifying that the fill in Area D had been in situ for almost four years, it has settled and stabilised and that it does not pose a risk of generating fugitive dust emissions, or indeed rainfall sediment runoff. The main thrust of Mr Farrant's evidence and submissions was that any attempt to remove fill material from Area D would inevitably generate fugitive dust and sediment runoff, even with provisions to minimise dust movement, with a greater potential for nuisance and adverse effects to arise. He noted further, in addition to the impacts associated with fill disturbance, if the material needed to be relocated similar risks would apply to the next disposal site.

Evaluation

82. I accept that fugitive dust emissions may have an adverse effect if consent were to be granted. This would arise from the works necessary to reshape the batters and similar. However, in my view, the adverse effects of dust emissions can properly be addressed by way of conditions.
83. In relation to Mr Farrant's position that the removal of the fill would result in greater disturbance, from a practical level there is some force in that argument. However, in my view it does not provide an answer. This is an application for a retrospective resource consent. It is the effects of the activity for which consent has been sought that I am to consider. The submitters, and Ms Williams in particular, clearly acknowledge that there would be short term effects if the consent were not granted and the fill were to be removed, but the long term benefits of returning to the pre-fill state outweighed concerns in that regard.

Visual Amenity

84. There was no landscape evidence provided. Mr Farrant addressed this matter in his evidence and submissions. Primarily, his submission was that visual effect needs to be assessed on the basis that the area has been grassed down, and the proposed landscaping incorporated.

⁴ Supra at 60

85. Ms Harden addressed this issue in paragraphs 15-18 of her evidence. Ms Williams addressed it in paragraphs 25-29 of her evidence. Essentially, it was Ms Williams' evidence that by filling Area D, the associated removal of some willows, the southern boundary had been opened up. Instead of looking at vegetation and a shelter belt, the view is now of a large pile of landfill, with the southern view now dominated by Area D. She noted that Area D is of particular importance to them as that area, together with the willow trees, had acted as a privacy screen and buffer to the applicant's landfill activities. She did not consider that the landscaping proposed by the applicant would be sufficient to mitigate the visual impact of landfill stockpiles, their dominance, or the applicant's operations.
86. Mr McCallum-Clark addressed this primarily in paragraphs 30-34 of his S42A Report. He noted that the retention of fill in situ contained long term visual effects, primarily by bringing the fill "closer" to the adjacent property and accessway.⁵
87. Mr McCallum-Clark did note that a substantial component of the visual effects was authorised by the existing resource consents, but again noted, should the fill in Area D remain, that would have the effect of bringing the visual effects closer to the adjacent property at 2 Neeves Road. He noted further landscaping would be required, but in his opinion there was no escaping the significant visual effects of the existing operations on the site, exacerbated by the actions of the applicant, including using Area D as an accessway between the site and 2/4 Neeves Road, pushing fill, with steep batters, to the edge of Area D in some places, storage of equipment unrelated to the landfill activities, and the proliferation of weed and scrub growth.
88. Overall, he was of the opinion that leaving the fill in place on the northern side of Neeves Drain without substantial mitigation works, including recontouring of the edges, limiting the non-rural activities occurring in this area and landscaping, would result in adverse visual effects on the owners and occupiers of 2 Neeves Road which are more than minor.

Evaluation

89. Informed by my site visit and the evidence referred to above, it is apparent that the applicant's activities have had adverse effects on the visual amenity enjoyed by the owners and occupiers of 2 Neeves Road. I consider those effects have been considerably more than minor.
90. I accept to a degree the applicant's position that the adverse visual effects are, in essence, temporary. I am also cognisant that it is not my role to act punitively. However, based on the evidence, and informed by my site visit, in my view there would remain adverse effects on visual amenity, even post the ultimate rehabilitation of the site. This is primarily as a result of the bulk and proximity of the fill to the residents of 2 Neeves Road. This results, in my view, in significant changes to the amenity values previously enjoyed. Overall, I consider, notwithstanding the conditions offered and the ultimate grassing down of the site, consenting the retention of the fill and associated culverting and similar in the area to the north of Neeves Drain will have adverse effects on the residents' amenity values.

⁵ McCallum-Clark S42A Report at 30

Other Amenity Effects

91. A number of amenity effects have been identified relating to noise, traffic movements and general disturbance.
92. I have considered the evidence and submissions on this issue. In my view those effects can be appropriately mitigated by conditions.

Flooding and Drainage Issues

93. Flooding and drainage issues were contentious, and subject to a considerable amount of evidence and submissions.

Applicant's Evidence

94. The applicant addressed issues relating to drainage and flooding risk at some length. Indeed this was the focus of Mr Farrant's evidence. It was addressed in detailed in the response to a s92 request. I have considered that response.
95. Mr Farrant attached to his evidence a draft report from Tonkin & Taylor, which I understand was prepared for the 2016 Environment Court appeals. No representative from Tonkin & Taylor gave evidence. I have considered the report and given it the appropriate weight, recognising it is only a draft.
96. The report notes the two culverts constructed by the applicant were both individually longer and smaller in diameter than the railway culvert and would therefore be unable to convey the same flow rate with comparable headwater levels. At extremely high levels, an alternative path would be required. The report states that this is possible via the 5m wide strip adjacent to 2A (2) Neeves Road, controlled by the vehicle access at 1.63masl from 180 Doubledays Road to Neeves Road. The assessment was based on the channel being partly grassed, with shrubs and free from blockage. It noted that, without the secondary flow path, runoff would back up behind the new culverts, possibly resulting in flooding within the 2A (2) Neeves Road property.
97. In essence, the report concluded, based on the information that had been provided and the investigation undertaken, the placement of fill would not impact on local surface water flows and response to a 100 year ARI rainfall event provided:
 - The works are undertaken as described, particularly at the northern property boundary of 180 Doubledays Road. The 5m wide strip is to be taken down to pre-fill levels with positive grade to Neeves Drain;
 - Adopted levels and dimensions are correct, the recommendation is confirmed by Registered Survey and the concept level hydraulic analyses presented and reviewed and updated to reflect this data;
 - Infrastructure is maintained (including channels and culverts) and remains free from blockage.

98. Mr Farrant provided a “recap” of flood water behaviour and flow patterns, addressing the catchment, the flood gates at the east end of Raven Quay, Kaiapoi, and restrictions in flow at the Courtney outlet in heavy prolonged rainfall events. He addressed the limiting factors as to the amount of water which can enter the eastern part of the catchment from culverts under the motorway, Main North Road and the railway corridor.
99. He noted that flooding is caused by water flowing into the Courtney Stream from within its catchment and, with the outlet being partially blocked, the water backing up from the outlet and inundating more land. This he described as the catchment being outlet controlled and, without pumping of water, the catchment will remain outlet controlled.
100. He stated that the flood waters that could impact on a dwelling at 2A (2) Neeves Road can only occur as a consequence of water slowly backing up within the lower catchment and inundating the surrounding land. It would not occur as a rush of water, but as a slow buildup of water as the catchment fills. Again, his evidence was that the buildup of the flood water was externally “outlet” governed by the floodgates and the presence of fill in Area D would not impact on the rate at which this water could encroach on the dwellings at 2A (2) Neeves Road by any more than 1-2mm at the most. His evidence was that at this point minor winds would generate wave lapping (50mm high) that would be significantly greater in their impact than what he described as the “very small fill-induced surge”.⁶ He concluded, in relation to this particular issue, that the frequency and duration of flooding on the site was not affected in any real sense by the fill in Area D and the maximum 2mm increase that may cause was less than minor.
101. Mr Farrant addressed the rail culvert. His evidence was that a reasonable design flow to use for determining flood water behaviour arising from the rail culvert maximum discharge is 400l/sec. He selected 600l/sec for assessing the downstream impact in sizing the swale. He concluded that the risk of localised flooding adjacent to 2A (2) Neeves Road from draining the area east of the rail culvert is not increased in any real sense by the fill in Area D. He stated that the only obligation on the applicant is to ensure that any impediment to the peak culvert outflow due to the PBC culverts placed in Neeves Road, are property remedied (construction of the swale).⁷
102. Mr Farrant then addressed the proposed alternative flow path in some detail. His conclusions were recorded in paragraph 186 of his evidence, and were, in summary - the behaviour of flood water arising from the rail culvert between 2.0-2.70masl is not going to be any different to the Area D pre-fill state due to surface water being able to freely move across part of the right of way and that its elevation remained controlled by the main floodwater receding. For floodwaters between 1.60-2.0masl the pre-filling route along Neeves Drain (without the PVC culverts) had very similar overall dimensions to the proposed 5m wide swale. The ground level and vegetation in that eastern part of Area D (pre-fill) posed a restriction to water flow so the post-fill scenario has a marginally higher flow carrying capacity.

⁶ Farrant Evidence at 143

⁷ Farrant Evidence at 169

103. He considered the fill had no quantifiable impact on flood levels or property damage. It represents at worst a slight delay in removing the rail culvert inflow water, with flood water being between the 2 and 2.20masl. He considered, with the fill in place, the time for water to recede to pre-flood levels would be increased by at most 2-3 hours.
104. In terms of Mr O'Callaghan's report and discussions during the hearing, Mr O'Callaghan considered, from a flooding perspective, the T & T report and the swale construction should be sufficient to address the concerns about flooding from Area D. However he remained very concerned about the level of detail, or more correctly lack of detail, that had been provided. This included detail around matters such as distances, location of the boundary, maintenance access and similar. He noted that the flood flow path appeared to conflict with the retention of the willows and significant physical works would be required. He noted there could be difficulties with maintenance if the swale were to be constructed right to the boundary. Overall, he considered more detailed thinking needed to be undertaken.
105. Mr O'Callaghan's comments largely reflected the matters raised in the T & T report. That is, the swale may be effective, but it would need to be very carefully designed and properly maintained. He had a number of concerns about the information provided in the submitter evidence and submissions. I have summarised the submitter evidence and submissions above.
106. Ms Williams' evidence was that, prior to Area D being filled, rainwater naturally flowed into what she described as a wetland (now in Area D), which held the water at bay until Neeves Creek subsided and volume returned to normal. Her evidence was that, since the filling of Area D, and due to the overland flow path being filled, water now flowed onto their property. She stated it was now the norm that, after a heavy rain, water runs down the driveway into sheds, flooding them. Ms Williams was not confident a swale would prevent or reduce flooding. She again expressed concern that, given the history of non-compliance, they had no confidence that the swale drain would be maintained. The solution she identified was to remove the fill from Area D and to remove the culverts. This would essentially revert matters to how they were pre-fill which they know with some certainty worked and which would address resultant flooding on the property.
107. Ms Harden's evidence identified extensive flooding they experienced when heavy rainfall events occur. She provided a map as Appendix B to her evidence showing as a hatched area where the flooding area extends when rain is particularly heavy.
108. Ms Derry's submissions on this issue noted that the WDC stormwater and flooding assessment accorded with the submitters' concerns regarding the flooding effect with the fill in Area D, and referenced page 8 of the WDC stormwater and flooding assessment in particular. Ms Derry advised that the submitters shared the same concern as Mr O'Callaghan in relation to the swale, including the inevitable removal of the significant vegetation currently screening the fill material and the requirement for ongoing maintenance by the applicant to ensure functionality. She expressed concern regarding the inadequacies of the information provided, and the inability for that inadequacy to be dealt with by way of conditions.

109. Mr McCallum-Clark was of the view that the proposal would result in floodwater and flow path displacement outside the site of more than minor nature and he was not confident that those effects could be avoided, remedied or mitigated by the imposition of resource consent conditions. Mr McCallum-Clark was of the view that the fill should be removed from Area D, which would return the situation to where it was beforehand, would not worsen the situation, would remove the need for a swale and would remove the culverts from Neeves Drain. The low lying area would then have some capacity for stormwater retention.

Evaluation

110. It is clear that the issue of flood water in this area is a complex one. I have carefully considered all of the matters raised in evidence, by the WDC reporting officers, and in the application.
111. Overall, I am not satisfied that the retention of the fill in Area D and the swale proposed by the applicant is an appropriate response. On the evidence before me, it is not possible for me to determine with any degree of certainty that the fill presently in Area D has contributed to further flooding or stormwater displacement. The evidence of the submitters was clearly that it has. The photographic evidence provided by the submitters clearly shows flooding. The connection between that flooding and the fill in Area D is however difficult to determine.
112. What is however clear is that the retention of fill may lead in certain events to an increase in flood levels of between 1.8 and 2mm. That was not disputed. Mr O'Callaghan considered this may potentially lead to some sites having flooding issues they had not previously had, or residents having to be evacuated for further periods of time.
113. I acknowledge that the 1.8 to 2mm was considered as part of the consenting of the more significant resource consents in the area. That does not however mean that it is not an issue to be considered here.
114. The swale proposed clearly would need very careful design, engineering and maintenance for it to be effective. I do not understand there to be any disagreement between T & T, Mr Farrant or Mr O'Callaghan that such matters are critical. It is clear from my site visit that the culverts placed on the site and the proximity of fill are having a significant impact on Neeves Drain, in terms of narrowing the water flow in certain areas. The site visit also illustrated quite clearly how difficult it would be to properly maintain the drain if the fill were to be retained. Indeed, it is difficult to observe the drain, let alone maintain it, in certain parts of the site. This maintenance issue, and the need for access, was one clearly identified by Mr O'Callaghan as a concern.
115. The swale will require significant works and would be very near to the boundary. Overall, on the basis of the information before me, I conclude that removal of the fill, at least to the north of Neeves Drain, returning that part of the site to its pre-fill levels, including inverting the flow towards Neeves Drain, together with the removal of the culverts, offers far more certainty in terms of avoiding, remedying or mitigating flood effects and stormwater displacement.

Positive Effects

116. The only positive effect of the granting of the consent relates to the deposition of earthquake-related fill material. I accept that this a positive effect.

Objectives, Policies and Other Provisions of the Relevant Planning Documents

Canterbury Regional Council

117. Ms Ford provided an analysis of the Canterbury Regional Policy Statement (**CRPS**), the Natural Resources Regional Plan (**NRRP**) and the Canterbury Air Regional Plan (**CARP**). These were identified and addressed in paragraphs 71-94 of her S42A Report.
118. In terms of the CRPS, I agree with Ms Ford's assessment in paragraphs 71-78 of her report.
119. In terms of the NRRP, again I agree with Ms Ford's analysis, given the nature of the likely discharge and the proposed conditions.
120. In terms of the CARP, I agree with Ms Ford's analysis that the activity does not meet Objective 5.7. Subject to her conditions, it meets Objective 5.6. In terms of Policies 6.1 and 6.5 (and 6.8 when it becomes operative), again, given the proposed mitigation and consent conditions recommended, I consider it is consistent with those.
121. I have also considered Policy 6.6 (to become 6.9). I consider that the activity is not inconsistent with, or contrary to, the relevant objectives and policies of the regional planning documents.

Waimakariri District Council

122. In terms of the WDC, Mr McCallum-Clark identified the relevant objectives and policies in paragraphs 56-75 of his S42A Report.
123. Mr McCallum-Clark's analysis was undertaken in the context of the wider suite of consents which had been granted. Like Mr McCallum-Clark, I consider that Policy 8.2.1.4, which implements Objective 8.2.1 is particularly relevant. This provides:
- "Policy 8.2.1.4 – Avoid, remedy or mitigate the adverse effects of activities that impede or redirect the movement of flood water on a site, and/or exacerbate flood risk".*
124. As identified by Mr McCallum-Clark in paragraph 69 of his report, there is potential, based on Mr O'Callaghan's report, to result in displaced flooding or flood paths affecting sites to a greater extent, or potentially flooding on sites not previously affected. On that basis it is at the least inconsistent with, and arguably contrary to, that policy.
125. Overall, I agree with Mr McCallum-Clark's conclusion that the proposal is largely consistent with the outcome sought by the Rural objectives and policies of the District Plan in particular. I share his residual concerns in relation to the maintenance of the rural amenity values and potentially the increased risk of flooding other properties.

126. I have carefully considered Ms Derry's legal submissions in relation to the District Plan objectives and policies, particularly her submissions in relation to the outcomes for the rural zone captured by Objective 14.1.1. I agree it is not entirely consistent with the District Plan rural zone objectives and policies insofar as they relate to maintaining and enhancing the rural character. As noted above, I consider it is largely so. In terms of Ms Derry's submissions in relation to Policy 8.2.1.3, I accept Mr McCallum-Clark's position that Policy 8.2.1.3 is largely addressed by the previous resource consents.

Part 2

127. I note that both reporting officers provided an analysis of Part 2. Mr McCallum-Clark was of the opinion that the relevant objectives and policies of the CRPS and Waimakariri District Plan provided a suite of objectives and policies that give effect to Part 2 of the RMA. I agree.

128. I also consider the CARP and associated documents do the same.

129. It is those provisions which guide my decision making, rather than an assessment under s5.

Ultimate Evaluation and Conclusions

130. Overall, I consider that the application as sought, that is for the whole of Area D, is not appropriate. In my view it creates adverse potential effects in terms of visual amenity and flooding and stormwater displacement.

131. I do however consider there is merit in Mr McCallum-Clark's proposal for what is in essence a partial consenting. That is to consent the fill south of Neeves Drain. In my view, having considered all the submissions and evidence, and other relevant matters, such a proposal results in a better outcome in terms of amenity, visual effects, stormwater placement and potential flooding issues. It will enable access to Neeves Drain for maintenance, it will set back the activity from the residents, thereby assisting in the maintenance and enhancement of their amenity, and in addressing visual effects issues.

132. It will result in the removal of some fill, addressing to a degree the stormwater displacement and potential flooding issues. It will result in the removal of the culverts, which are there as a result of the fill. This removes the constriction identified in the T & T report. It will also result in an area at a much lower level between Neeves Drain and the boundary. This can be inverted back towards the drain. That avoids the risk of the swale not performing, and removes the uncertainties created by the clearly critical issue of maintenance to preserve the swale's effectiveness. Overall, I consider that granting consent for all of the fill to remain Area D, would not be appropriate. I do however consider granting consent for the retention of the fill in the area south of Neeves Drain, is appropriate.

Conditions

133. As requested, Mr McCallum-Clark provided a full set of conditions addressing both a full consenting and a partial consenting. That has been helpful.

134. Ms Derry, without resiling from submissions, commented on proposed conditions, identifying a particular concern in relation to the nature of the conditions proposed by Mr O'Callaghan which addressed resolving the inadequacies of the application information.⁸
135. I consider that a number of the matters of concern raised by Ms Derry in this regard are addressed by my decision and the conditions I now propose. One matter Ms Derry provided submissions on related to a proposed bond condition. Ms Derry helpfully provided a draft condition.
136. I have carefully considered the appropriateness or otherwise of such condition. If my decision had been to consent the full Area D, I consider such a condition would have been appropriate. Given my decision, I do not consider that is so.
137. A number of the conditions proposed by Mr McCallum-Clark related to the remainder of the site. These are new consents relating to the area in contention.
138. While it is appropriate that a number of the consent conditions for the wider site are repeated, in my view care needs to be taken in that regard. To simply adopt them wholesale may have unintended consequences and create uncertainties around time frames and similar. For example, Mr McCallum-Clark's proposed Condition 17 refers to the whole site being restored within particular timeframes from the granting of consent. Including such a condition would appear to extend the timeframe for such activities to be completed pursuant to RC145641. Those are simply not matters that are before me. Another example refers to movement between sites. I do not consider that is before me. Again, the reference to stockpiles in the proposed conditions is not appropriate as there are none, to the best of my knowledge, in Area D.
139. The conditions which are attached to this decision relate to the matters before me, which are simply matters relating to Area D and the retention of some fill on the southern side of Neeves Drain as sought. The conditions relating to the removal of materials and the degree of rehabilitation for Area D are in my view appropriate. These include removing materials and a degree of rehabilitation of the site. In my view they are within scope.

Canterbury Regional Council Conditions

140. In relation to the Canterbury Regional Council conditions, I have largely adopted these conditions proposed by the S42A Reporting Officer, with some minor alterations to address the more limited activity given my findings on the WDC application.

Decision

141. For the reasons addressed above, the WDC and CRC consents are granted insofar as they relate to the filling south of Neeves Drain as identified as of Area A on Plan A attached to this decision pursuant to s104, 104B and 104D of the Resource Management Act, subject to the

⁸ Legal Submissions of Juliet Derry at para 71

attached conditions. I decline consent for filling of the area to the north of Neeves Drain identified as Area D on Plan A.

A handwritten signature in blue ink that reads "D Caldwell". The signature is written in a cursive style.

David Caldwell
Independent Commissioner

Dated 29 May 2018

CONDITIONS OF CONSENT FOR CRC174554

	SCOPE
1	<p>The discharges of contaminants into air shall only be dust produced from the following activities:</p> <ul style="list-style-type: none"> a. Excavation to reshape the toes and batter of the existing clean fill; and b. Reshaping the surface with a finished elevation of 4.5 metres above sea level (masl); and c. Landscaping. <p>Advice Note: <i>This consent only authorises the discharge to air of dust from the activities listed above. It does not authorise the discharge of other contaminants such as stormwater or the use of land for excavation. At the time consent was granted, the removal of cleanfill from Area D in accordance with RC175031 requires consent under Rule 5.176 of the Land & Water Regional Plans</i></p>
	LOCATION
2	<p>The activities referenced in condition (1) shall only occur within the area labelled as the "works area" on Plan CRC174554 located within Lot 1 DP 30964, 180 Doubledays Road, Kaiapoi at or about map reference NZTM2000: 1571569 mE 5194332 mN.</p>
	PRIOR TO WORKS COMMENCING
3	<p>The Canterbury Regional Council, attention: Regional Leader – Monitoring and Compliance shall be notified in writing at least five working days prior to the commencement of the activities referred to in condition (1) commencing.</p>
4	<p>Prior to commencing works, the consent holder shall provide a copy of this resource consent and the Dust Management plan (DMP) required by condition (12) to all persons undertaking activities authorised by this consent, and explain to those persons how to comply with the consent conditions and DMP.</p>
	GENERAL
5	<p>Any discharge of dust from the works site shall not have an offensive or objectionable effect across the property boundary.</p>

6	The consent holder shall each day that works occur, continuously measure the wind direction and wind speed using a Meteorological Monitoring Station (MMS) located within 20 metres of the works area. The MMS shall be kept in good working order until the activities listed in condition (1) are completed.
7	In the event of visible dust generated from site activities blowing beyond the boundary, the activities listed in condition (1) shall cease on the work site until appropriate mitigation measures are in place and/or meteorological conditions improve.
8	The activities listed in Condition (1) shall not occur when the wind direction is from the East by South (101.25°N) to the West by North (281.25°N).
9	The activities listed in condition (1) may only be carried out: <ul style="list-style-type: none"> a. Between 7:00am and 6:00pm Monday to Friday (inclusive); and b. Between 7:00am to 1:00pm on Saturdays; and shall not occur on Sundays or public holidays.
10	The methods used to control dust within the works area shall include the following: <ul style="list-style-type: none"> a. Stabilisation of all potentially dusty surfaces using water, chemical dust suppressants (authorised for such use), compaction, straw mulching, temporary vegetation, gravelling or other surface modification methods; and b. Limiting the size of the working face to a maximum of 200 square metres at any time.
11	An adequate supply of water and suitable equipment for watering all potentially dusty areas of the site shall be kept on site at all times.
	DUST MANAGEMENT PLAN
12	The consent holder shall prepare and implement a Dust Management Plan (DMP). The DMP shall be prepared and provided to the Canterbury Regional Council, attention: Regional Leader – Monitoring and Compliance at least twenty working days prior to the exercise of this consent. This consent shall not be exercised until the DMP has been certified as being consistent with the achievement of conditions (5) and (7) of this consent by the Canterbury Regional Council, except that if the consent holder has not received the certification within ten working days of the Canterbury Regional Council Regional Leader – Monitoring and Compliance receiving the DMP, the discharge may commence.

13	The objective of the Dust Management Plan (DMP) and any revisions to the DMP shall be to prevent dust discharges from the site which are noxious, offensive or objectionable to the extent that they cause an adverse effect at or beyond the boundary of the site.
14	<p>The Dust Management Plan (DMP) shall include descriptions of:</p> <ul style="list-style-type: none"> a. All measures to be undertaken to achieve the objectives and compliance with conditions (5) and (7) of this consent; b. The dust sources; c. The methods to be used for controlling dust at each source; d. Monitoring requirements and how these will be implemented; e. Employee training and how employees will be made aware of the requirements of the DMP; f. Individual staff responsibilities for implementing and reviewing the DMP; g. The process for recording and responding to complaints from the public; h. Procedures for managing dust when staff are not on site; i. Specific measures for potentially dusty activities and considering forecasted weather conditions; j. how to take the wind speed and wind direction measurements using the MMS as required under condition (7); and k. Specific methods for avoiding, remedying and mitigating effects on the residents of Lot 2 DP 30964.
	COMPLAINTS RECORD
15	<p>A written record shall be kept of any complaints regarding discharges to air from the site. The record shall include, but not be limited to:</p> <ul style="list-style-type: none"> a. The location where the discharge was detected by the complainant; b. The date and time the discharge was detected; c. The name, phone number and address of the complainant, unless the complainant refuses to supply these details; d. A description of the wind speed and wind direction when the discharge was detected by the complainant; e. most likely cause of the discharge detected, and f. Any corrective action undertaken by the consent holder to avoid, remedy or mitigate the discharge detected by the complainant. <p>This record shall be provided to the Canterbury Regional Council, Attention: Regional Leader – Monitoring and Compliance on request.</p>

	ADMINISTRATION
16	<p>The Canterbury Regional Council may annually on the last five working days of May or November each year, serve notice of its intention to review the conditions of this resource consent for the purposes of:</p> <ul style="list-style-type: none"> a. Dealing with any adverse effect on the environment which may arise from the exercise of this consent and which it is appropriate to deal with at a later stage; or b. Requiring the consent holder to carry out monitoring and reporting instead of, or in addition to, that required by the consent.

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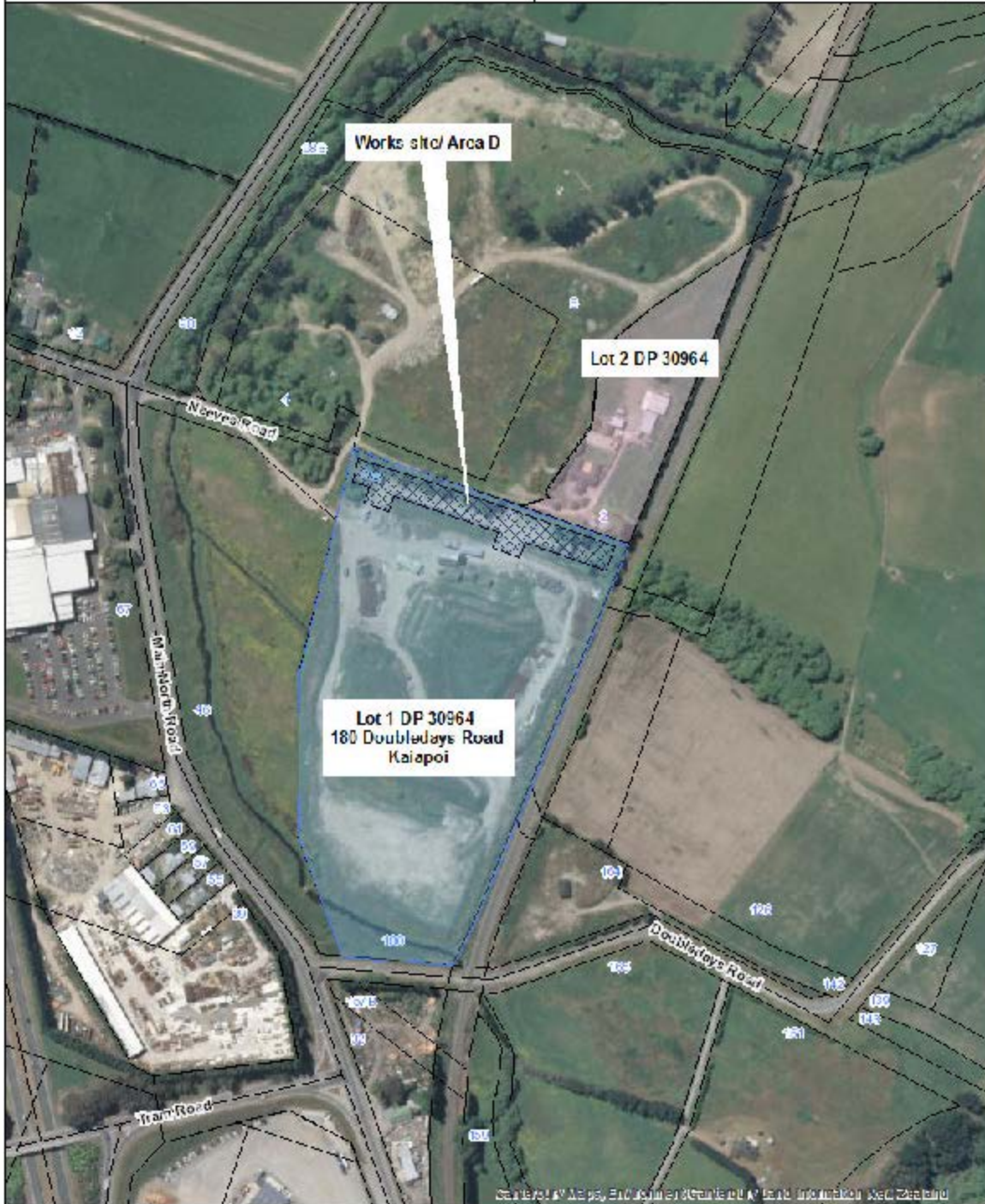
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Conditions for RC175031 – 180 Doubledays Road, Kaiapoi

1. Except as modified by conditions of consent, the activities authorised by this resource consent shall be carried out in general accordance with the information and plans submitted in support of the application, as amended during the hearing process.
2. For the avoidance of doubt, in the event of any inconsistency between the conditions of resource consent and the information and plans submitted as part of the applications and amended during the hearing process, the conditions of resource consent shall prevail.
3. For the purposes of this consent, the term "site" refers to the land contained at 180 Doubledays Road, Lot 1 DP30964.

Location and Scale of Works on the site

4. The deposit of any cleanfill shall be limited to the area shown on the plan labelled A and attached to this decision and marked as Area A. The maximum height of fill in Area A is not to exceed 4.5 m amsl. No filling, excavation or other earthworks are authorised under this resource consent on any other parts of the site, other than earthworks associated with the removal of fill and remediation of Area D in accordance with the remediation and landscaping plan required by Condition 9(a) of this consent. In the event of any inconsistency between the conditions and Plan A, the conditions shall prevail.
5. No additional cleanfill material is to be added to the site from the date of this consent.
6. Any movement of cleanfill from the site must comply with the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011.
7. The Consent Holder will ensure that all landfill operations staff:
 - (a) Are familiar with the requirements of these consent conditions; and
 - (b) Understand the methods of load checking for prohibited substances, and for fill placement procedures
8. The deposit of any cleanfill shall not:
 - (a) Exceed a maximum height of 4.5 m above sea level on 180 Doubledays Road, except for the area between the northern boundary of the site and the northern drain (Neeves Drain) where there shall be no fill.
 - (b) Exceed a height greater than the level of the rails of the South Island Main Trunk Railway Line on any part of the site within 30 m of the rail corridor.
 - (c) The maximum fill depth allowed for in conditions 8(a)-(b) is inclusive of an allowance for a minimum of 200mm of topsoil.
9. The toe (lowest point) of the batter of the cleanfill, inclusive of the topsoil cap, shall be set back a minimum of (and the greater of where more than one setback distance applies):
 - (a) 12 m from the bank of Courtenay Stream on any part of the site ;
 - (b) 10 m from any rail corridor;
 - (c) 5 m from any legal road or property boundary;

- (d) 5 m from the bed (on both sides) of the "middle drain", except that portion where a culvert has been installed in accordance with RC135153; and
 - (e) 0.6 m from the south side of the "northern drain" (Neeves Drain).
- 9A. The consent holder shall prepare a Remediation and Landscaping Plan for "Area D", being the area between Neeves Drain and the northern boundary of the site that implements any conditions of this consent and has the objectives of:
- (a) Restoring the land form of "Area D" to as close as possible to pre-filling conditions; and
 - (b) Removing the unauthorised culverts in Neeves Drain; and
 - (c) Removing any fill material and potentially contaminated material from "Area D"; and
 - (d) Establishing appropriate landscape planting on "Area D" in order to mitigate visual and amenity effects following the removal of fill; and
 - (e) Setting out the timing, duration and monitoring of works and mitigation measures.
- 9B. The Remediation and Landscaping Plan shall be submitted to the Council's District Plan Manager for certification within 30 days of this resource consent commencing.
- 9C. All works set out in the Remediation and Landscaping Plan shall be undertaken within 12 months of this resource consent commencing.
10. Any fill that has been placed in locations or to heights above mean sea level that do not comply with conditions 8 and 9, except as provided for by condition 15, shall be removed within 90 days of this resource consent commencing.

Advice Note: *Prior to any fill being removed in accordance with this consent, the consent holder may require resource consent from the Canterbury Regional Council for the use of land for excavation in accordance with Rule 5.176 of the Land & Water Regional Plan.*

11. Excess fill to be removed from Area A or Area D shall be removed to a facility or site authorised to accept such fill. At least one week prior to the removal of any fill from the site, the consent holder shall notify the Waimakariri District Council's District Plan Manager of the dates between which fill will be removed, the volume of the fill being removed and the destination of the fill.
12. The cleanfill shall be overlain in its entirety with a layer of topsoil, to a minimum thickness of 200mm. The topsoil shall be sown with pasture grass or turf ryegrass and maintained such that a healthy grass sward is established.
13. All filling shall be compacted in accordance with NZS 4431:1989
14. The edge of the cleanfill and topsoil cap in Area A shall have a completed batter slope of not greater than 1 vertical to 3 horizontal (1:3). The batter slope will not be used for grazing cattle or horses, will be maintained as a continuous ground cover, and will be kept substantially free of rank grass vegetation listed in the Canterbury Regional Council Regional Pest Management Strategy.
15. Area A shall be restored and finished to the levels set out in condition 8 and grassed in accordance with condition 12 within the shortest timeframe feasible and no later than 12 months from the date of commencement of this resource consent.

Advice note: The shortest timeframe feasible means as soon as possible given:

- (i) the tasks involved including site stabilisation works such as the preparation of batter slopes;
 - (ii) the time of year/growing season; and
 - (iii) the need to avoid any further adverse environmental effects.
16. Within three months of completion in accordance with condition 12, the consent holder shall provide, at its expense, to the District Plan Manager of the Waimakariri District Council, a site survey undertaken by a registered surveyor which confirms that the maximum height of cleanfill (including the topsoil cap) batter slopes and setbacks comply with these conditions of consent.
17. No sediment laden stormwater is to be discharged off site. Sediment retention bunds and filtration shall be installed on the downstream side of all earthworks to control sediment and runoff. Any stormwater leaving the site shall have a total suspended solids concentration of no greater than 100 grams per cubic metre of stormwater.
18. Cleanfill deposited on the site shall only comprise the following materials:
- (a) Asphalt (cured) - weathered (cured) asphalt: After asphalt has been exposed to the elements for some time, the initial oily surface will have gone and the asphalt is considered inert.
 - (b) Bricks.
 - (c) Ceramics.
 - (d) Concrete (reinforced) - provided there is no reinforcing steel protruding from the concrete face.
 - (e) Fibre cement building products - inert material comprising cellulose fibre, Portland cement and sand. Material containing asbestos is unacceptable.
 - (f) Glass - provided it is not placed immediately adjacent to the finished surface.
 - (g) Road sub-base.
 - (h) Soils, rock, gravel, sand, clay, etc - provided these materials are free of contamination.
 - (i) Tiles (clay, concrete or ceramic).
 - (j) Concrete (un-reinforced) - ensure that other attached material is removed
 - (j) Incidental relatively inert material comprising less than 3% of any load by volume. The relatively inert material shall be limited to plant material, material/reinforcing rods/wires, plastic, untreated timber, polystyrene, fiberglass/wool insulation and wall board, that were not able to be reasonably separated from demolition materials listed above.
19. For the avoidance of doubt, the following materials shall not be deposited within the site:
- (a) combustible, putrescible, degradable or leachable components;
 - (b) hazardous substances;
 - (c) products or materials derived from hazardous waste treatment, hazardous waste stabilisation or hazardous waste disposal practices;
 - (d) Materials that may present a risk to human or animal health such as medical and veterinary waste, asbestos or radioactive substances;
 - (e) liquid waste;
 - (f) clean waste; and organic material.

20. If any unauthorised material is deposited or found to be present on the site, the consent holder shall remove the material from the site immediately and arrange for disposal at a facility authorised to receive such material.
21. Activities at the site shall operate within the hours of 7:30 am to 6:00 pm Monday through Saturday, with no activities on the site on Sundays and public holidays.
22. Prior to undertaking any works on the site, a shade cloth fence to a height of 2 m in the position located on Plan A accompanying this consent.
23. The screening provided by the willows located in the position marked on Plan A accompanying this consent shall be retained until all works have been completed.
24.
 - (i) There shall be no storage of relocated buildings on the site. All relocated buildings on the site at the date of the commencement of this consent shall be removed as soon as possible, and no later than three months from the commencement of this consent.
 - (ii) There shall be no storage of goods, equipment or machinery at the site, other than machinery and equipment necessary to complete the works in accordance with the conditions of this consent. All goods, equipment and machinery on the site at the date of the commencement of this consent that do not fit within the above exemption shall be removed as soon as possible, and no later than six months from the commencement of this consent.
25. Noise shall not exceed the recommended limits specified in, and shall be measured and assessed in accordance with, the provisions of NZ is 6803:1999 "Measurement and Assessment of Noise from Construction Maintenance and Demolition Work". Adjustments for long-term work shall apply.

Testing of Materials

26. Within one month of the commencement of this consent, and prior to the removal of any material from Area D, the consent holder shall undertake a preliminary site investigation, as defined in the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011, and provide the resulting report to the Waimakariri District Council's District Plan Manager.

Environmental Management Plan

27. All works are to be undertaken in accordance with the Environmental Management Plan approved under RC145641, including any updates to that plan under the process set out in RC145641.

Traffic Management

28. All works are to be undertaken in accordance with the Traffic Management Plan approved under RC145641, including any updates to that plan under the process set out in RC145641.
29. Access to the site shall be confined to Neeves Road at the location marked X on Plan A.
30. No vehicles, including heavy machinery, are to use the 'culvert' between Neeves Road and 180 Doubledays Road, or pass within 30 metres of the dwelling on 2A Neeves

Road. The culvert shall only be used for the purpose of moving one relocated dwelling from 180 Doubledays Road onto the site at 2/4 Neeves Road, subject to any building or resource consents that may be required.

31. The speed of any vehicles within the site shall not exceed 15 km/hour.
32. There shall be no dust discharges from the site which are noxious, offensive or objectionable to the extent that they cause an adverse effect at or beyond the boundary of the site.

Complaints

33. The consent holder shall maintain a written Complaints Register at the site office and make this available to officers of the Waimakariri District Council and the Canterbury Regional Council on request. In the event of any non-compliance with the conditions the consent holder shall notify the Council's District Plan Manager within 24 hours of the breach being detected. The Complaints Register shall record the following:
 - (a) the date and time of the incident that has resulted in the complaint;
 - (b) the location of the complainant when the incident was detected;
 - (c) a description of any relevant matters such as wind speed and wind direction when the effects were detected by the complainant;
 - (d) the possible cause of the incident; and
 - (e) any corrective action undertaken by the consent holder to avoid, remedy or mitigate the effects identified by the complainant, including the time of that corrective action.

Review and administration

34. The Waimakariri District Council may, quarterly, on the last five working days of May, August, November or February, serve notice on the Consent Holder under section 128(1) of the RMA of its intention to review the conditions of these consents, for the following purposes:
 - (a) To review the effectiveness of any of the conditions of the consents in avoiding, remedying or mitigating any adverse effects on the environment from the exercise of the consents and, if necessary, to avoid, remedy, or mitigate such effects by way of further or amended conditions;
 - (b) To ensure that the conditions are consistent with any policies or rules in a Regional plan or National Environmental Standard or Regulation that becomes legally effective after the commencement of consent;
 - (c) To review the adequacy of, and necessity of, monitoring undertaken by the Consent Holder;
 - (d) Requiring the adoption of the best practicable option to remove or reduce any adverse effect on the environment; or
 - (e) Complying with the requirements of a relevant rule in an operative district plan; or
 - (f) Collecting data about the exercise of the consent.
35. The consent holder shall pay to the Waimakariri District Council any administrative charges fixed in accordance with section 36 of the RMA. The administrative charges shall be paid to the Waimakariri District Council for the carrying out of its functions in relation to the administration, monitoring and supervision of this resource consent and for carrying out its functions under section 35 of the RMA.

36. The consent holder shall pay all costs relating to reviews, reports or engagement of others to undertake any actions or services required in terms of these conditions.
37. As works have commenced on this site, there shall be no lapse date for the purposes of section 125 of the RMA

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