

IN THE MATTER OF the Resource Management Act 1991
AND

IN THE MATTER OF a joint application by Gleeson Managed Fill Limited to Waikato Regional and Waikato District Councils under section 88 of the Resource Management Act 1991 for resource consents to establish and operate managed fill disposal sites (including all related water, earthworks, discharge and diversion regional consents) in a Rural Zone, at 310 Riverview Road, Huntly.

Decision following the hearing of an application by Gleeson Managed Fill Limited to Waikato Regional and Waikato District Councils for resource consents under the Resource Management Act 1991.

Proposal

To establish and operate three managed fill areas (referred to as FA2, FA3 and FA4) as part of a new managed fill operation, to be located north of the existing Gleeson quarry operation, but within the Gleeson Quarries Huntly Ltd land ownership. The importation and deposit of clean and managed fill, along with some overburden from the quarry (to be undertaken in a staged manner) involves vegetation clearance; earthworks; stormwater discharge and diversion; stream reclamation; and stormwater discharge within 100 metres of a wetland, in a Rural Zone, at Riverview Road, Huntly.

Council references are as follows:

- Waikato Regional Council - APP144475.01.01 – earthworks and vegetation clearance in High Risk Erosion Areas
APP144475.02.01– discharge overburden to land
APP144475.03.01– discharge cleanfill and managed fill to land
APP144475.04.01– stormwater discharge
APP144475.05.01– stormwater and groundwater diversion
APP144475.06.01- stream diversion and streambed disturbance (including NESF Regulation 57)
APP144475.07.01 – discharge treated stormwater to land within 100m of a natural wetland (NESF Regulation 54)
- Waikato District Council - LUC0488/22 – land use. For establishment and operation of a managed fill disposal activity; and to undertake soil disturbance with the management of contaminants to soil

The applications were heard jointly at the Huntly War Memorial Hall, Wight Street, Huntly on Tuesday, 6th December 2022 through to Thursday 8th December 2022.

The resource consents sought are **GRANTED**. The reasons are set out below.

Hearing Commissioners:	Ms Cherie Lane (Chair) Dr Ngaire Phillips Mr Shane Solomon	
Application numbers:	As above	
Applicant:	Gleeson Managed Fill Limited	
Site addresses:	310 Riverview Road, Huntly	
Legal Description	Size	Notes
Lot 9 DP 1278 and Pt Lot 10 DP 1278 (RT SA149/243)	68.9628ha	Fill Areas 2 - 4
DP 25272 (RT SA656/223)	23.0949ha	
Pt Lot 9-10 DP 1278 (RT SA922/109)	45.8678ha	
Lot 1 DPS 75436 (RT SA57C/382)	374.7741ha	Compensation Site
Pt Lot 11 DP 1278 (RT SA200/118)	4047m ²	Quarry Site and Access
Pt Lot 11 DP 1278 (RT SA200/119)	50.5857ha	
Site area:	527.9393 ha This area comprises both the existing quarry operation (owned by Gleeson Quarries Huntly Limited) and the proposed managed fill operations (to be operated by Gleeson Managed Fill Ltd). Gleeson Quarries Huntly Ltd owns the entire landholdings.	
Zoning:	<u>Waikato District Plan (Waikato Section) 2013</u> Rural Zone with the following overlays: <ul style="list-style-type: none"> • Aggregate Extraction Policy Area (FA2) • Aggregate Resource Policy Area (FAs are not within identified resource areas) • Landscape Policy Area (adjacent to Waikato River) • Transmission Line (adjacent to FA4 location) • Waikato River Catchment 	

	<p><u>Proposed Waikato District Plan – Appeals Version 2022</u></p> <p>General Rural Zone with Policy Areas:</p> <ul style="list-style-type: none"> • National Grid • Waikato River Catchment • Aggregate Extraction Area (Fill Area 2 only) • Aggregate Resource Area (on wider site) • Significant Natural Area (outside of Fill Areas) • Outstanding Natural Landscape Area (along site frontage) • Flood Plain Management Area (northeast corner) • High Risk Flood Area (northeast corner) • Area of significance to Maaori (northeast corner)
Lodgement:	14 April 2022
S92 information:	23 June 2022
Notification:	20 July 2022
Submissions closed:	18 August 2022
Hearing held:	6 th , 7 th and 8 th December 2022
Site visit:	28 November 2022
Hearing adjourned:	8 th December 2022
Hearing closed:	10 th March 2023
Appearances:	<p><u>The Applicant:</u> James Gleeson – Applicant Mark Pelan, Seth Pardoe, Shawn Mclean, Leigh Turner and Ross Twidle – Gleeson: operations and management Sue Simons – Legal Counsel Kate Madsen – Planning Michael Parsonson – Erosion and Sediment Deborah Ryan – Air Quality Rob Pryor – Landscape / Visual Nevil Hegley – Acoustics Ohara McLennan and Scott Lowry – Terrestrial Ecology Parviz Namjou - Groundwater Phillip Brown – Traffic Ellen Cameron – Archaeology Andrew Rumsby – Contaminants Discharge Rod Lidgard – Contaminated Land – Asbestos Ka-Ching Cheung and Matthew Kernot - Geology</p> <p><u>Submitters:</u> Nicola Maplesden Anthony Perkins</p>

	<p>Alan and Bronwyn Kosoof Denise Lamb Wayne and Maree Rutherford Tiffany Whyte Norman Hill Jessica Rix Andrew Parkin Kate Thomas Kevin Wickens Kathie Shephard Paul and Nicola Vitasovich Huntly Community Board (Sheryl Matenga) WDC (Rebecca Law – Parks and Reserves)</p> <p><u>Councils:</u> <i>Waikato Regional Council (WRC)</i> Emma Cowan - Reporting Officer Sheryl Roa – Team Leader Cameron Lines – Geotechnical Tim Baker – Groundwater Josh Evans – Erosion and Sediment control</p> <p><i>Waikato District Council (WDC)</i> Kirsty Ridling – Legal Counsel Julia Masters – Reporting Officer Wade Hill - Team Leader Dave Mansergh – Landscape/ Visual James Whitlock - Acoustics Naomi McMinn – Traffic Anna Kostiuk-Warren – Stormwater, Erosion and Sediment control</p> <p><i>WRC and WDC</i> Karen Denyer - Ecology Jonathan Caldwell – Dust / Odour / Contaminants</p> <p>Steve Rice - Hearing Administrator</p>
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Summary Decision:

1. Pursuant to sections 104, 104B, 104D, 123 and sections 105 and 107 and Part 2 of the Resource Management Act 1991 (RMA), the bundled application, as a non-complying activity for land use consents; various regional consents; and NESCS and NESF consents, are granted.

Introduction

2. These decisions are made on behalf of the Waikato Regional Council (WRC) and Waikato District Council (WDC) (together, 'the Councils') by Independent Hearing Commissioners Cherie Lane (Chair), Shane Solomon and Ngaire Phillips, appointed and acting under delegated authority under sections 34 and 34A of the Resource Management Act 1991 (the RMA).¹
3. These decisions contain the findings from our deliberations on the applications for resource consent and have been prepared in accordance with section 113 of the RMA. The proposal was publicly notified (on 20 July 2022). Submissions closed on 16 August 2022; with a total of 42 submissions received. Of these, 36 submissions were received by both WRC and WDC; 6 submissions were received by WRC only and 1 submission received by WDC only. All but one submission (which was neutral) were in opposition. A full list of submitters is provided in section 5 of the WRC section 42A report², with a summary of submitter key concerns provided in the Executive Summary of the WDC section 42A report. No written approvals were received.
4. We address the status of the submission received from Ms Kate Thomas in our Procedural section, whereby her submission was originally only coded to WRC but was intended to be in opposition to both the WRC and WDC consents.

We note that for the purpose of the written decision, one decision text has been produced in order to avoid an artificial divide of the application between the two separate Council consents. However, the conditions are provided as separate Council conditions – (WRC = Schedule 1; WDC = Schedule 2).

5. The section 42A report was prepared for the Councils by Ms Emma Cowan for WRC and Ms Julia Masters for WDC and was made available to parties on or about 14 November 2022. The section 42A report authors' overall recommendations were that consent be refused. The principal concern of both Ms Cowan and Ms Masters was in respect of the potential for adverse effects on cultural values; with additional effects concerns identified by Ms Cowan in respect of ecological values and discharges of contaminants. Both Ms Cowan and Ms Masters confirmed in their section 42A report assessments that should these matters be addressed and resolved at the hearing, their recommendations may be changed.
6. Both Ms Masters' and Ms Cowan's reports were informed by a number of technical reviews (as detailed below in the Decision) to assist in their effects assessment of the

¹ Commissioners Lane and Phillips were appointed by both Councils, and Commissioner Solomon by the Waikato River Authority.

² S42A Report, pg 5 Agenda

application. Both section 42A reports also included policy analysis and statutory consideration assessment; with respective sets of suggested draft conditions provided should the application be granted.

Procedural matters

7. While all submissions were received within the statutory time period, a query was received from Ms Kate Thomas prior to the hearing in relation to her submission which had only been identified relative to the WRC application. This was clarified by Mr Wade (WDC) by email advice to the Panel (21st November 2022) confirming that while Ms Thomas' submission to both WDC and WRC had been lodged, as a result of email address errors it had only been allocated to the WRC application. It is considered entirely appropriate to accept this part of Ms Thomas's submission (to both WRC and WDC applications). WDC received confirmation from the applicant that they had a copy of Ms Thomas's full submission and would not be disadvantaged. We therefore confirm that, for the following reasons, under sections 37 and 37A of the RMA, the time limit for the receipt of the submission from Ms Kate Thomas is waived:
 - The submission does not raise any new issues;
 - Given the timing, we consider that accepting this submission will not result in unreasonable delay; and
 - The submission does not unduly impact on the applicant.

Directions

8. Two Directions were issued by the Panel during the course of the hearing. The first, dated 4th November 2022, confirmed a time frame extension, which was necessary in response to the change of hearing date. The new hearing date (of Tuesday 6th December 2022 to Thursday 8th December 2022) was set in response to one of the originally appointed Commissioners not being able to participate due to unforeseen circumstances. An extended time frame was necessary to accommodate the appointment of a replacement Commissioner. The timetable for the exchange of pre-circulated evidence was accordingly amended and advised in this Direction.
9. The second Direction (dated 19th December 2022) recorded matters arising from the hearing to which Council and the Applicant advised that they would respond. A time frame extension (pursuant to section 37A(5) of the RMA) was agreed to, with the expectation that a set of draft conditions would be reviewed by Councils and provided to the Applicant for inclusion in their reply submission.

Summary of proposal

10. The applicant proposes to establish and operate a managed fill facility and to carry out works associated with the establishment and operation of the facility, at 310 Riverview Road, Huntly. The proposal is detailed in the section 42A report, and, in summary, comprises:
 - Import material for disposal (at a rate of up to 300,000m³ of fill per annum) within three identified gullies (Fill Areas 2, 3 and 4) on a staged fill operation basis. The three fill areas will have an estimated combined fill area of a total capacity of 2,009,200m³ over an area of 14.05 ha. Fill would also include overburden from the quarry that operates adjoining the proposed managed fill site. Fill Area 5 is not part of the proposal, being an authorised overburden disposal fill area.
 - Imported material may include managed construction and demolition material, within which asbestos containing soil and material, peat, marine sediment, and acid sulphate soils may be present.
 - Site preparation is to include earthworks, construction of sediment retention ponds, vegetation removal, reclamation of watercourses and wetland areas, construction of supporting infrastructure (office and inspection areas) and formation and upgrade of internal access roads (with access to the fill areas through the existing quarry site to the north of the quarry pit), shown below, Figure 1.
 - The three proposed fill areas are described in the section 42A report, being located generally north and northwest of the quarry pit.
 - Staged ecological enhancement within a compensation gully, located to the west of the subject site (Hillside Heights Road).
 - Rehabilitation of the land on completion of each fill area with forestry and the conversion of the sediment retention ponds into wetlands.

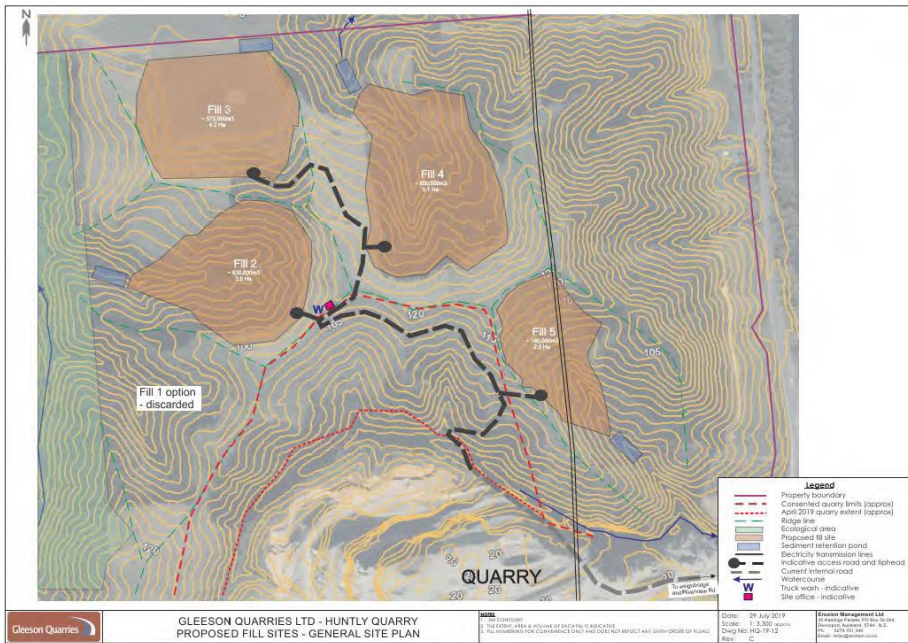


Figure 1: Fill Area Access Plan

Reasons for Consent

- The proposal requires resource consent for the following reasons, as detailed in the section 42A report.

Waikato Regional Council Consents

Reference ID and Rule	Activity Description
144475.01.01 <i>Rule 5.1.4.15</i> <i>Rule 3.7.4.7</i>	Earthworks and vegetation clearance within high risk erosion areas associated with the overburden, cleanfill and managed fill disposal areas 2, 3 and 4 and ancillary activities.
144475.02.01 <i>Rule 5.2.5.3</i>	To discharge overburden to land at Fill Areas 2, 3 and 4.
144475.03.01 <i>Rule 3.5.4.5</i> <i>Rule 3.5.4.6</i>	To discharge cleanfill and managed fill to land at Fill Areas 2, 3 and 4.
144475.04.01 <i>Rule 3.5.4.5</i> <i>Rule 3.5.11.8</i>	To discharge stormwater and treated water in association with Fill Areas 2, 3 and 4.

144475.05.01 <i>Rule 3.6.4.13</i> <i>Rule 3.6.4.14</i>	To take and divert groundwater and divert stormwater all in association with Fill Areas 2, 3 and 4.
144475.06.01 <i>Rule 4.3.4.4</i> <i>NESF Regulation 57 – Reclamation of rivers</i>	To undertake stream diversions, reclamation or streams and associated bed disturbance in association with filling areas 2, 3 and 4.
144475.07.01 <i>NESF Regulation 54</i>	To discharge treated stormwater to land and/or water within 100 metres of a natural wetland.

Waikato District Council Consents

Resource Consents Required under ODP

Rule #	Rule Name	Status of Activity	Description
25.10	Type of Activity	Discretionary	The importation and disposal of managed fill (consisting of asbestos contaminated soil and material), deposit of overburden material associated with quarrying (extractive industry) and potential sales of overburden material.
25.16	Vehicle Movements	Discretionary	The application states that the nature of the proposal is such that 24 additional vehicle movements per day are anticipated. This is in addition to the 466 vehicle movements per day generated by the quarry which are authorised in accordance with LUC0035/11.05. At more than the permitted 200 movements, the activity requires consent.
25.25	Earthworks	Discretionary	The proposal exceeds the permitted standards for earthworks as the works will involve: <ul style="list-style-type: none"> • cut and fill operations over 1000m³ within a site in a single calendar year • cut and fill operations over 1000m² • cut/batter faces greater than 3m in height being up to 10m in height • changes to natural waterflows and established drainage paths, and • fill areas will not be revegetated within 12 months of commencement

Rule #	Rule Name	Status of Activity	Description
25.27	Earthworks filling using imported fill	Discretionary	The proposal includes using imported managed fill and clean fill. The volume/capacity of each Fill Area varies between 576,600 – 800,000m ³ , with the combined total fill volume estimated to be over 2 million cubic metres. The anticipated fill volume will exceed the permitted volume of 200m ³ and a depth of 1m.
25.43A	Indigenous Vegetation Clearance	Restricted Discretionary Activity	The proposed fill areas will result in the clearing and disturbance of indigenous vegetation for preparation and stabilisation purposes. This includes vegetation clearance already undertaken within Fill Area 3 and within the proposed compensation area. This is not provided as one of the identified purposes in section (a) (i) to (viii) in rule 25.43A.1.

On 17 January 2022 Council notified the Decisions on the Proposed Waikato District Plan (PDP). The period for appeals to the Environment Court has since closed. These rules therefore have legal effect but are not yet operative.

It is noted that one key difference between the ODP and PDP for the site is that the extent of the Aggregate Extraction Policy Area (ODP) /Aggregate Extraction Area (PDP) differs. Under the PDP the Aggregate Extraction Area extends further to the north.

Resource Consents Required under PDP

Rule	Status of Activity	Description
<i>GRUZ-R40</i> An extractive activity or waste management activity located within an Aggregate Extraction Area, Coal Mining Area or Extractive Resource Area	Restricted Discretionary	Fill Area 2 is located wholly within the Aggregate Extraction Area as identified in the PDP. The extent of the Aggregate Extraction Area in the PDP differs from the extent of the Aggregate Extraction Policy Area in the ODP.
<i>GRUZ-R41</i> A waste management facility located outside an Aggregate Extraction Area, Coal Mining Area or Extractive Resource Area	Discretionary	Fill Areas 3 and 4 are located outside the Aggregate Extraction Area, Coal Mining Area or Extractive Resource Area.

Rule	Status of Activity	Description
<p><i>GRUZ-R45</i> An extractive activity located outside an Aggregate Extraction Area, Coal Mining Area or Extractive Resource Area</p>	Discretionary	The deposition of any overburden from the adjacent quarry falls within the definition of an extractive activity and may occur within Fill Areas 3 and 4, which are outside the Aggregate Extraction Area.
<p><i>AINF-R8</i> Earthworks activities associated with infrastructure</p>	Restricted Discretionary	<p>Earthworks are required for infrastructure such as the stormwater management. The volume and area of earthworks will exceed that permitted, and works are proposed within 10m of watercourses within the gullies.</p> <p>Areas exposed may not be recontoured/replanted within 6 months of works commencing and the earthworks will divert overland flow paths.</p> <p>Erosion and sediment controls are proposed and will be implemented and maintained. The earthworks are not located within any Historic Heritage site, area/site of significance to Maaori, the dripline of a Notable Tree or SNA/landscape and natural character area.</p>
<p><i>AINF-R9</i> Trimming, maintenance or removal of vegetation or trees associated with infrastructure</p>	Restricted Discretionary	Existing indigenous vegetation will be removed to install infrastructure (such as the sediment retention ponds) and will exceed the standards in (a)(iii).
<p><i>AINF-R10</i> Pipe and cable bridge structures for the conveyance of electricity, telecommunications, water, wastewater, stormwater and gas</p>	Restricted Discretionary	Stormwater pipes will exceed the standards outlined in (a).
<p><i>TRPT-R4</i> Traffic generation</p>	Restricted Discretionary	The application states that the proposal is such that 24 additional truck movements per day are anticipated. This is in addition to the 466 vehicle movements per day generated by the quarry which are authorised in accordance with LUC0035/11.05 and therefore requires consent.
<p><i>WWS-R5</i> Pump stations for the conveyance of water, wastewater and stormwater</p>	Restricted Discretionary	The pump and associated tanks required for storing and testing groundwater for Fill Area 3 may exceed 10m ² in area and 3m in height.

Rule	Status of Activity	Description
<i>ECO-R3</i> Earthworks in a Significant Natural Area for purposes other than the maintenance of existing tracks, fences or drains.	Restricted Discretionary	Earthworks associated with compensation activities (within compensation area 4) within an identified SNA, as proposed.
<i>ECO-R11</i> Vegetation clearance outside a Significant Natural Area	Restricted Discretionary	Clearance of all vegetation within Fill Areas 2, 3 and 4 is proposed, which do not fall within the permitted standards
<i>ECO-R16</i> Indigenous vegetation clearance outside a Significant Natural Area for any reason not specified in Standards ECO-R11 to ECO-R15.	Restricted Discretionary	Clearance of all vegetation within Fill Areas 2, 3 and 4 is proposed. This includes vegetation clearance already undertaken within Fill Area 3 and indigenous vegetation removed as part of compensation works.
<i>EW-R21</i> Earthworks – general	Restricted Discretionary	Earthworks proposed within Fill Areas 2 to 4 exceeding the volume, area, depth and slope.
<i>EW-R22</i> Earthworks – general	Restricted Discretionary	Given the volume of material to be imported to the site, the works proposed will exceed the volume, depth and slope outlined in EW-R22.

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

A combined Preliminary Site Investigation (PSI) and Detailed Site Investigation (DSI) identified Fill Area 3 as containing a piece of land, as described by Regulation 5(7) and the NESCS. The DSI identified that some contaminants were above background levels.

The soil disturbance activity associated with the site development therefore requires resource consent as Controlled Activity under Regulation 9 with respect to the NESCS.

12. In summary the reasons for consent are for discretionary activities under the provisions of the Waikato Regional Plan and the Waikato District Plan, discretionary and non-complying activities under the National Environmental Standards for Freshwater Regulations 2020 (NES-FW) and a controlled activity under the National Environmental Standards for Contaminated Land.
13. Overall, the application has been considered, on a bundled approach, as a non-complying activity.

Site description

14. The site is described in detail in the application and in the section 42A reports. The proposed managed fill operations are located within the overall quarry site, which is situated on the western side of Riverview Road, south of the Huntly township. Riverview Road runs parallel to the Waikato River. It is understood that quarry operations have existed on this land since the 1930s, with various consents granted subsequently to expand the operation.
15. The applicant's AEE describes that part of the site, as it relates to the proposed fill areas, as:

“The existing landform relating to the proposed Fill Areas 2-4 rises steeply towards the west from the front boundary with Riverview Road, creating a natural physical landform buffer from the proposed Fill Areas. From this ridgeline, the Fill Areas comprise of a series of steep gullies and ridges, rising to a height of 100m above sea level, with the lowest point of the gullies being 50m above sea level. The ridgelines run both east to west and north to south, creating five distinct depressions in the landform. Fill Areas 2, 3 and 4 are located north of the existing quarry pit.”

As part of the proposal, a ‘compensation area’ is offered. This land (at 3.9 ha in area) is owned by Gleeson Quarries Huntly Ltd. It is located approximately one kilometre to the northwest of the quarry and comprises rural land, with a gully and wetlands and has been used for agricultural purposes. A Significant Natural Area overlay (SNA 16743) also applies to this land. The location of this site, the proposed fill areas and the quarry are shown (Figure 2).

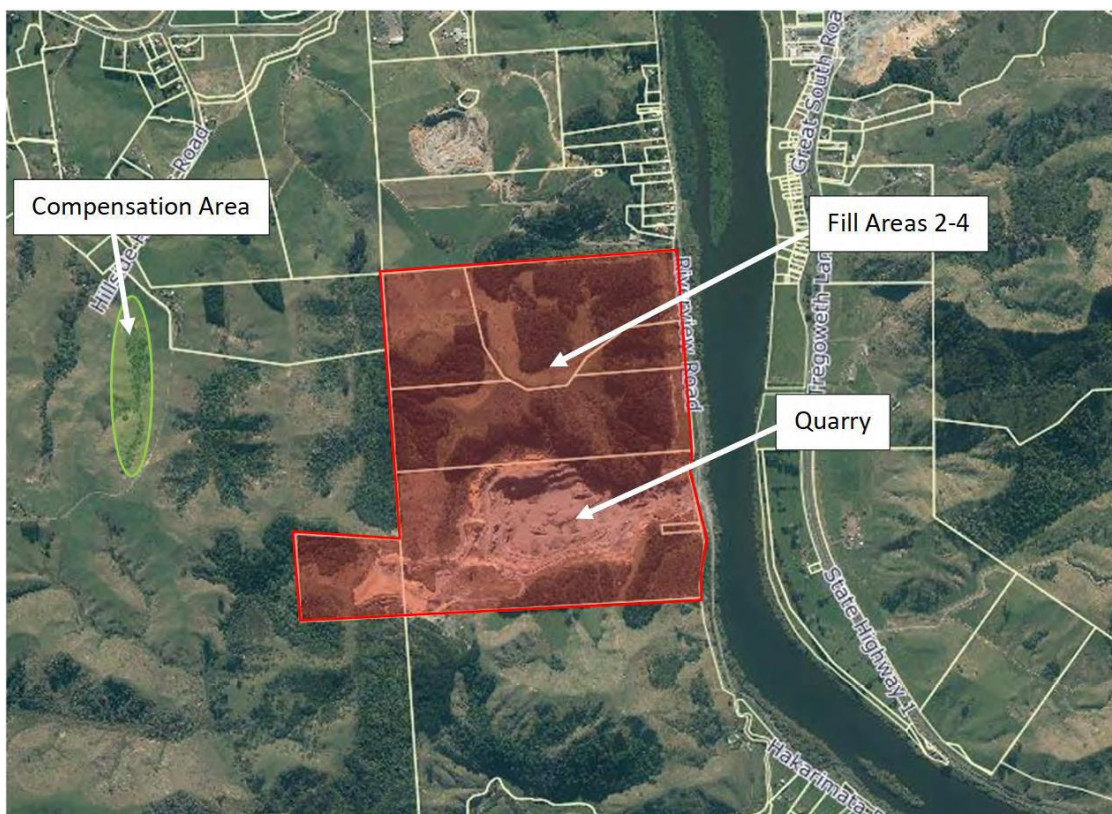


Figure 2: Location Plan showing the general locations of proposed Fill Areas 2 - 4, the ecological compensation area and the existing quarry.

16. The wider context of the surrounding area is described in the AEE as including:

“To the north lies Lake Waahi and Lake Puketirini. Lake Puketirini is a former open cast coal mine (referred to as being Weaver pits) which operated between 1954 and 1993 by State Coal (Mindat, 2020). Lake Puketirini was formed when the former Weaver’s Opencast Mine Pit was naturally flooded. The outflow at the western end of the lake discharges through a canal into Lake Waahi. Two one-way gates have been installed at the outlet of the canal into Lake Waihi to prevent water from Lake Waihi entering Lake Puketirini.

In 2006, Solid Energy New Zealand Limited gifted Lake Puketirini to Waikato District Council, and currently the lake is managed by Waikato District Council for swimming and recreational purposes (WDC, 2009). Overall, the lake has been artificially created and is heavily engineered and its original intended purpose was to be a contact recreational reserve, rather than an ecological sanctuary. The water clarity within the lake is very good, with a Secchi disc visibility of between 0.4 to 9.31 m (average of 4.1 m). Lake Waahi is known to have low water quality values due to nitrate levels, which are a result of poor farming practices within the immediate region.”

Relevant statutory provisions considered

17. In accordance with section 104 of the RMA we have had regard to the relevant statutory provisions, including the relevant sections of Part 2, sections 104, 104A-D, and sections 105 and 107 with respect to discharge permits, and sections 108 and 108AA with respect to conditions.

Relevant standards, policy statements and plan provisions considered

18. In accordance with section 104(1)(b)(i)-(vi) of the RMA, we have had regard to the relevant policy statement and plan provisions of the documents noted below, the relevant provisions of which are assessed, variously, in the application AEE and in the WRC and WDC section 42A reports.
- National Policy Statement on Freshwater Management 2020
 - National Environmental Standards for Freshwater Regulations 2020
 - National Environmental Standard for Managing Contaminants in Soil to Protect Human Health Regulations 2011
 - National Environmental Standards for Air Quality 2004
 - National Policy Statement on Electricity Transmission
 - Waikato Regional Policy Statement (2016)
 - Waikato Regional Plan
 - Waikato Regional Plan Change 1 – Waikato and Waipa River Catchments 2016;

- Waikato District Plan
 - Proposed Waikato District Plan
19. We have also had regard to the following specific plans and policy documents:
- Te Ture Whaimana o Te Awa o Waikato – Vision and Strategy for the Waikato River
 - Waikato-Tainui Environmental Plan (Tai Tumu Tai Pari Tai Ao)
 - Waikato-Tainui Raupatu (Waikato River) Settlement Claims Act 2010
20. We do not consider any other matter to be relevant and reasonably necessary to determine the application in accordance with section 104(1)(c) of the RMA.

Section 104D – Gateway Test

21. Section 104D (as a non-complying activity) requires an assessment of whether the application will create adverse effects that are minor on the environment, or alternatively whether the development is not contrary to the objectives and policies of the plan. The application must meet one of these tests to proceed to assessment under section 104 and determination under section 104B.

We address our section 104D findings later in this decision.

Summary of evidence heard

Councils

22. The Councils' combined section 42A report was circulated prior to the hearing and taken as read. The conclusions reached and recommendations made by the reporting planners, Ms Cowan and Ms Masters, in their section 42A reports, were confirmed. Their respective recommendations, that the grant of consent to the application be refused, was, to a degree, qualified with the potential for the revision of these recommendations should further information be presented at the hearing that would address the outstanding matters they each raised.
23. Ms Masters (WDC) identified 'unacceptable cultural effects' and a 'lack of a site wide stormwater management plan' as the outstanding matters upon which her recommendation was based. She did however conclude that:
- "The remaining actual and potential adverse effects of allowing the activity can be adequately avoided, remedied or mitigated via the mitigation measures proposed in the application, the technical reviews and subject to the imposition of the suggested conditions so that the effects on the environment will be acceptable."*³
24. Similarly, Ms Cowan (WRC), in her conclusion, identified '*potential adverse effects to tangata whenua values*' as a principal concern, along with the potential adverse effects to ecological values and discharges of contaminants to surface water. She indicated that confirmation of an offer of 'additional ecological compensation' and of a

³ 42A Report (WDC), para 17, pg 303 Agenda

clear net benefit to the Waikato River catchment being demonstrated, would potentially address these concerns.

25. Technical memos and reports formed part of the section 42A reports, against which the reporting planners' assessments were made. These included peer reviews and analysis in relation to ecological, geotechnical, erosion and sediment control, groundwater, contaminated soil and contaminant discharges, air discharge / dust, traffic, noise and vibration, and landscape and visual amenity.
26. Prior to the hearing, a statement of evidence was received from Dr Jonathan Caldwell and circulated. Dr Caldwell very helpfully provided evidence in relation to discharges to air, land and water; contaminants; and waste acceptance criteria ('WAC').

For the Applicant

27. The evidence presented by the applicant at the hearing, or pre-circulated, is summarised below. We refer to particular aspects of the evidence in more detail in our consideration of identified matters of contention.

Opening Legal Submissions

28. **Ms Sue Simons**, counsel for the applicant, provided a memorandum prior to the hearing (dated 29th November 2022), usefully outlining the evidence to be presented and the applicant's key propositions. Legal submissions were received, to which Ms Simons spoke. She confirmed that the applicant (Gleeson Managed Fill Ltd) was a separate entity to Gleeson Quarries Huntly Limited, as land owner. At the outset, Ms Simons also addressed matters raised in some submissions (specifically concerning the operational conduct of the quarry site), confirming that these were not relevant to the consent application hearing but had, however, been addressed by the applicant in acknowledgement of submitter concerns.
29. Ms Simons provided a brief overview of the proposal, the site and surrounding area, along with the site zoning (Rural), history and existing context as an operating quarry. It was Ms Simons submission that it was anticipated that the site could be utilised for fill activities (including quarry overburden) and that the proposal *'aligns with the various relevant planning documents, meets the regional demands of the construction industry and associated economic growth in the region (including in relation to mining).'*⁴
30. Ms Simons referenced the recommendations made in the section 42A reports by WDC and WRC, along with an acknowledgement that 'there are numerous matters not in contention between the authors and GMF.' She elaborated, indicating that:

'Where matters are in contention, we consider a number of the authors findings are not supported by the relevant technical experts (including the Council experts) and/or have no sound basis on the relevant information to be considered. Regardless,

⁴ Legal Submission, para 1.5

*comprehensive evidence has been filed by GMF addressing the potential adverse effects arising, including those issues raised in the reports.*⁵

31. More specifically, Ms Simons addressed those matters remaining in contention between the Council reporting planners and the applicant; providing summary responses. This included the restoration of water quality within the Waikato River catchment from, as an example, the proposed compensation area; erosion and sediment control measures; stormwater management; waste acceptance criteria; and cultural provisions.

Section 104D Test

32. Ms Simons submitted that the manner in which Councils' reporting planners had interpreted and determined the non-complying activity test of section 104D had erroneously conflated the test as to whether the proposal was "contrary to" objectives and policies" with being "inconsistent" with objectives and policies. Ms Simons provided legal submissions and supporting case law confirming the meaning of 'contrary to' in the context of section 104D. On this basis, she submitted that a holistic view of the objectives and policies should be taken.

Section 104(1)(c)

33. Ms Simons identified documents considered to require consideration under section 104(1)(c), being The Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 ("Settlement Act") and the Waikato-Tainui Environmental Plan (Tai Tumu Tai Pari Tai Ao). Within the Settlement Act, Ms Simons referenced the Vision and Strategy (inserted as part of the Waikato Regional Policy Statement) and provided commentary in the context of the Environment Court decision, *Puke Coal Ltd v Waikato Regional Council* which was referenced in Ms Cowan's section 42A report.

34. Ms Simons submitted that:

"Applying this to the GMF's proposal, the application must demonstrate that the proposed activities will result in a net benefit to the Waikato River Catchment in a way that is proportionate to the effects of the proposal."

She submitted that, with reasons to support listed, this has been the case, making the proposal in accordance with the Vision and Strategy for the Waikato River, and the Settlement Act.⁶ Ms Simons did, however, acknowledge that 'ultimately the potential effects on cultural (iwi) values are determined by mana whenua.'

35. Ms Simons confirmed the applicant's commitment to compliance with conditions and management plans; and the level of a bond offered at \$250,000. She summarised the potential effects arising from the proposal with reference to the expert evidence provided by the applicant, having particular regard to those matters remaining in contention or requiring clarification. In concluding, Ms Simons submitted that it is "*GMF's fundamental position, in reliance on all expert evidence filed, that any*

⁵ Legal Submission, para 1.21

⁶ Legal Submission, para 2.31

potential adverse effects arising are either less than minor or can be avoided, remedied or mitigated.”

36. Statements by a number of management and operations witnesses, on behalf of the applicant and landowner company, were presented at the hearing:
37. **Mr James Gleeson**, Director of Gleeson Managed Fill Limited and Managing Director of Gleeson Group, provided a background history of the family- owned business (Gleeson and Cox) and more specifically of the quarry operations on site, since purchasing from Stevenson in November 2018. Mr Gleeson explained the rationale for also now wishing to utilize part of the site as a managed fill operation; as being to address an identified regional demand and to create efficiencies with the existing quarry operation; within an area of the site that was not considered suitable for future extraction (as part of the quarry operation).
38. Mr Gleeson outlined the improvements made to the quarry operations since purchase in 2018 and confirmed his company’s commitment to training, development and compliance as part of the proposed managed fill operation. He described new roles and positions created to achieve this commitment and measures undertaken on site. He responded to submitter concerns regarding the company’s compliance history, as well as the need for engagement with the community.

In concluding, Mr Gleeson acknowledged the need to operate within conditions set in any consent granted. He also stated his desire to engage with community and mana whenua; and more specifically, with the Waahi Whaanui Trust in order to develop the Maataurangi Maori Environmental Management Plan (MMEMP) proposed as a condition of consent.

39. **Mark Pelan**, Chief Financial Officer of Gleeson Managed Fill Limited (‘GMF’), outlined his career background in accounting and finance, largely within the construction and infrastructure industry. He principally addressed the bond amount offered, at \$250,000, and the ability of the applicant to comply with this as a condition. Mr Pelan was questioned as to what the bond was intended to cover; and asked to respond to Ms Cowan’s concern that this amount was not sufficient.
40. Mr Pelan advised that the bond was largely to cover earthworks. He provided a breakdown of the calculation, which was to cover the ‘risk of non- performance of consent conditions’. He clarified that this was not to cover the ‘actual cost of non-compliance’. He also noted that this was at a 50% risk assessment which compared to other NZ infrastructure projects that are based on 10%. By way of comparison, he advised that the Gleeson and Cox bond for work involved in the City Rail Link, Auckland was set at \$200,000.
41. **Leigh Turner**, Sales and Operations Manager of GMF also outlined her experience over 20 years in the quarrying and transport industry. This included the approval process of testing and compliance for managed and clean fill operations (previously with Winstone Aggregates and Stevenson Aggregates). She provided an overview of the manner in which the approval/ importation process would operate and likened her role to that of the ‘gatekeeper’.

42. Ms Turner provided the Panel with a useful understanding of the methodology and measures to be used in managing and overseeing the receipt of material to the proposed fill operation.
43. **Ross Twidle**, General Manager GMF advised that he had recently been appointed to the quarry and managed fill manager position, having worked at the Stevenson's Tuakau sand quarry and clean fill operation. He provided background on the operational management proposed and his expectations for the operation. Mr Twidle said he anticipated that he would be employing suitably qualified and non-qualified staff from within the community, and he reiterated his commitment to engaging with the community including iwi. He confirmed that he was familiar with the draft recommended conditions and would ensure compliance where relevant to his role as GMF General Manager.
44. **Seth Pardoe**, provided an overview of the proposal in terms of corporate governance, from his role as GMF's Chairman of the Groups Advisory Board (held since 2015). He confirmed his confidence in GMF's experience and ability to operate the proposed managed fill operation in compliance with consent conditions.
45. **Shawn McLean**, provided further background to the operation and rationale for the proposal, from his experience as Waikato Regional Manager GMF and as a local Huntly resident. In support, he detailed his extensive experience in the mining industry. He advised that the proposed fill areas were identified as potential fill areas by the previous quarry owner, while in their employ. Mr McLean outlined the subsequent site selection process undertaken by GMF; and the intended staging of works in developing the fill areas. He advised that the existing quarry entrance would be used but that new facilities such as weighbridge and wheel wash would also be installed. He confirmed that the managed fill operation would not be open to the public, and that many of the trips are expected to be made by return Gleeson trucks using the quarry.

The following expert witnesses gave evidence for the applicant:

46. **Phillip Brown**, Managing Director of TEAM Traffic, experienced traffic engineering consultant, advised that the traffic impact assessment work for this application had been undertaken by his colleague, Andrew Hunter. With the recent retirement of Mr Hunter, Mr Brown had prepared evidence and taken responsibility for this project. He acknowledged the review prepared by Council's traffic consultant (Gray Matter Ltd), the section 42A report and submissions received.
47. In opening Mr Brown made some corrections to his evidence, noting the changes recently made to the road in front of the site, with a speed limit of 60km/hr now in place; and to the site access (now concreted). He summarised specific points in his evidence, including the expected ratio of trucks to use the proposed managed fill site to comprise around 80% of the trucks already arriving at the quarry. This meant, he said, that the actual increase in truck movements as a result of the proposal would be low, at up to 12 additional trucks a day, or 24 trips per day and achieved transport efficiencies.
48. Mr Brown addressed the traffic generation effects on Riverview Road, with, in his opinion, daily and peak hourly volumes considered to be very low from a traffic

engineering perspective. He also discussed the split in direction of traffic, being a function of demand and the most appropriate transport route. He referred to additional survey monitoring of truck movements (November 2022) and concluded that as the actual increase in number of movements would be low, there were no adverse traffic impacts expected. This included his consideration of potential effects on the nearby Tainui Bridge Road to the north.

49. Mr Brown commented on traffic matters raised by submitters, reiterating that the number of movements attributable to the proposal will be small. In summary, he supported the application from a traffic perspective and found the recommended draft conditions to be appropriate.
50. **Nevil Hegley**, an experienced acoustic specialist and principal of Hegley Acoustic Consultants, appeared on-line to answer any questions arising from his evidence. It was Mr Hegley's opinion that (based on the noise assessments undertaken) the proposed noise limits for the managed fill would be at or below the existing noise environment and could achieve compliance with the various relevant Council noise standards.
51. Mr Hegley's assessments had been made at the fill sites (at maximum fill height when, he advised, it would be the noisiest stage of the fill activity). His evidence included noise contours for each of the fill sites and associated noise assessment points within the neighbourhood, as well as noise contours for truck movements internally on site. He observed that noise from vehicles on the road was outside the control of District Plan provisions, although he acknowledged this as a submitter concern and did provide measured noise results from Riverview Road, from which he concluded that there would not be any perceivable increase in the existing noise level experienced.⁷
52. Mr Hegley confirmed his agreement with the draft recommended conditions and concluded that *'When considering the existing noise environment and the predicted level of noise the effects of the proposed managed fill will be less than minor for all neighbours.'*
53. **Ellen Cameron**, Director of Clough & Associates, appeared on-line and provided a summary of her archaeological assessment, with her evidence taken as read. Her archaeology assessment was informed by both research and field survey. One recorded archaeological site was located on the quarry property but was not in the vicinity of the proposed fill areas. Ms Cameron was therefore of the opinion that *"Based on my findings the potential for the proposed activity to affect archaeological sites is considered to be low and an archaeological authority under the HNZPTA will not be required."*⁸
54. Ms Cameron, in her evidence, observed that no issues relating to archaeology were raised by either the Councils or submitters. She supported the general condition relating to accidental discovery.

⁷ N.Hegley SOE, Figure 4

⁸ E. Cameron SOE, para 2.4

55. **Deborah Ryan**, Director at Pattle Delamore Partners Ltd, appeared on-line to summarise her evidence as an experienced air quality specialist. She noted that her evidence was to be read in conjunction with that of Mr Lidyard which addressed asbestos containing material (“ACM”) acceptance, management and monitoring at the site. As background to her assessment, Ms Ryan observed that: *“The prevailing winds are from the west through to the southwest and the nearest dwellings, not owned by GMF, are to the northeast of the Fill Areas at a distance of at least 400 metres.”*⁹
56. Ms Ryan identified the key issue in respect of air quality (apart from asbestos) to be dust generated by the proposed operation, of which she noted that it had been agreed by Dr Caldwell (reviewer for the Councils) that standard good practice management was appropriate in this case. Ms Ryan was of the opinion that, with good practice dust mitigation measures, along with the distance from the site to neighbouring properties, the effects of the operation on air quality will be no more than minor.
57. Ms Ryan also addressed issues related to odour and effects on human health in her evidence (as raised by some submitters), referring to the evidence of Mr Rumsby and his analysis of WAC management. In summary, she confirmed her agreement with the Councils’ specialist, Dr Caldwell, that the effects of the operation on air quality will be no more than minor; and her support of the draft recommended conditions.
58. **Rob Pryor**, Director of LA4 Landscape Architects, and experienced landscape architect, attended on-line and spoke to his evidence. He was of the opinion that, based on his landscape and visual assessment: *“The proposed managed fill activity would not be out of character with the surrounding rural environment and the potential adverse effects from the managed fill on the character and amenity of the rural environment are considered to be low.”*¹⁰ Mr Pryor was of the opinion that once filling was completed, effects would be low (and potentially positive) because the areas are to be planted in forestry and would be ‘integrated into the rural landscape’.
59. Mr Pryor described the fill areas and surrounding landscape context in detail in his evidence, observing that: *“The existing quarrying activities are largely screened from the north, south, west and east by the surrounding landform and vegetation patterns.”*¹¹ He considered and analysed the proposal against relevant plan policy, concluding that it was, in his opinion, consistent with the intent of the landscape, visual, natural character and amenity objectives and policies of the relevant statutory documents.
60. In response to questions from the Panel regarding potential visual effects to submitters in the vicinity, Mr Pryor confirmed the viewing distance (Viewpoint 5) to submitters (Hillside Heights Road), would be approximately 900 metres and that while the fill areas (3 and 4) would be visible, he said they would be incrementally filled and grassed before the reinstatement period of pine tree planting.

⁹ D. Ryan SOE, para 2.2 and Figure 1 / Table 1

¹⁰ R. Pryor SOE, para 2.1

¹¹ R. Pryor SOE, para 3.14

61. Mr Pryor noted that the Councils' reporting planners had concluded (based in part on the Council's peer review) that the landscape and visual amenity effects would be acceptable. In addressing submitter concerns, he considered that effects would be short term and would be acceptable within the context of the site and surrounding 'working rural environment'. Mr Pryor confirmed agreement with the draft recommended conditions, offering additional items for inclusion in the preparation of the Landscape and Visual Mitigation Strategy.
62. **Parviz Namjou**, a Principal hydrogeologist at Pattle Delamore Partners, attended on-line speaking to his evidence and answering questions from the Panel. Mr Namjou's experience and knowledge in relation to the site spans a number of years (back to 2015), undertaking groundwater and surface water effects assessments for the quarry operations and associated expansion projects.
63. Mr Namjou advised that his assessments and evidence should be read in conjunction with that of Mr Rumsby, with respect to contaminants. He detailed his hydrogeological assessment with respect to the locations and effects of regional groundwater and perched groundwater relative to the proposed fill areas. He provided response to the Council's peer review by Mr Baker, offering '*a targeted site investigation programme and contingency measure rather than any ongoing monitoring programme*'.¹²
64. Mr Namjou addressed issues raised in submissions as they relate to his hydrological expertise. Of particular relevance, he advised:
- "Based on the available hydrogeological data, there is no shallow aquifer (continuous zone of saturation) below the proposed Fill area and the laterally discontinuous lenses or pockets of perched groundwater is likely to prevent lateral groundwater flow away from the site."*¹³
- He concluded that the likelihood of infiltration would be low due to the underlying geology. He advised, in response to questions, that as there was no continual aquifer to act as a conduit, there would be no discharge to other sites and no impact on drinking water sources (as raised in submissions).
65. **Ka-Ching Cheung and Matthew Kernot**, specialist geotechnical engineers with GAIA Engineers Ltd presented their joint statement of evidence, based on their geotechnical investigations and design for the proposed fill areas as managed disposal sites. Dr Cheung and Mr Kernot described, in evidence, the geotechnical suitability of the proposed fill sites and the resulting detailed geotechnical designs for FA2 and FA3, and FA4 as a concept design.
66. They advised that the design of FA3 was also informed by its historic mining fill, with the installation of under fill drainage required. In describing the design of the fill areas, they stated in evidence:
- "The geotechnical design approach for the managed fills utilises structural containment bunds, constructed from fill capable of meeting the design specification."*

¹² P. Namjou SOE, para 7.6

¹³ P. Namjou SOE, para 8.4

The first structural bund (referred to as the basal bund) will be keyed into the existing subgrade material at the toe of the fill in order to provide sufficient lateral earth pressure resistance. These structural bunds will form cells in which managed fill can be placed and allowed to naturally drain and consolidate under gravity.”¹⁴

67. Dr Cheung and Mr Kernot acknowledged the technical peer review undertaken for Councils by Baseline Geotechnical; with its conclusions reached that their geotechnical designs were sufficient to demonstrate the stability of the proposed fill sites. In response to concerns raised in submissions, they addressed the stability of FA3 as a historic mining fill, confirming confidence in the design, which involved drainage trenches to release pore water pressure.
68. In concluding, Dr Cheung and Mr Kernot were of the opinion that the proposed fill areas were constructable, without decreasing the stability of the existing slopes and that mitigation measures and monitoring were also available.
69. **Rod Ligard**, Technical Director with Pattle Delamore Partners Ltd, provided evidence in his role as a contaminated land specialist, with specific input in this case to the filling of asbestos containing materials. He advised that he had responsibility in preparing the Asbestos Fill Management Plan, 2019 (“AFMP”) and the Asbestos Air Monitoring Plan, 2022 (“AAMP”). He requested that his evidence be read in conjunction with that of Ms Ryan (air quality).
70. Mr Lidgard described, in evidence, the management plans’ site processes for handling asbestos, reporting procedures, and asbestos air monitoring. He addressed specific concerns raised in submissions regarding the possibility of erionite and tremolite being present in asbestos and the resultant risk in waste soils. Based on research and discussion with authors of a report considering the health risks of erionite, Mr Lidgard was of the opinion that, with dust control measures undertaken, the risk from these mineral fibres was expected to be negligible. He commented specifically on two of the draft recommend conditions but was in general agreement with others of relevance and in alignment with the AFMP. Mr Lidgard’s evidence stated in conclusion:

“The discharge of asbestos (and other mineral fibres) to air from the activities associated with the proposed fill site will not result in a significant dust nuisance or health effects relative to asbestos air quality standards, provided that the proposed mitigation and monitoring methods discussed in the AFMP and AAMP are implemented to the level described.”¹⁵

71. **Andrew Rumsby**, an experienced environmental chemist with the consultancy, EHS Support NZ Ltd, provided evidence in relation to the application specifically with regard to the potential environmental impact on the surface water quality of discharges and in developing the Waste Acceptance Criteria (“WAC”). This also involved preparing associated management plans. Mr Rumsby explained that the

¹⁴ Ka-Ching Cheung and M.Kernot SOE, para 2.7

¹⁵ R. Lidgard SOE, para 11.1

WAC had been developed specific to the site and was similar to recently published Wasteminz waste acceptance criteria for managed fill operations.

72. In developing the WAC and the management plans to support the receipt and distribution of fill material, Mr Rumsby described the regard had to factors of the site including hydrogeology and sediment control along with the site locational context to Lake Puketirini and the Waikato River.
73. Mr Rumsby further described the extent and effect of possible contaminant discharges from the various fill areas, expressing confidence that discharges would not impact either the recreational use of Lake Puketirini, water quality in the Waikato River or nearby tributaries.

It was his evidence that:

“The combination of appropriate waste acceptance criteria, stormwater treatment and monitoring will ensure that the discharges from the site will not result in an exceedance of drinking water or water guidelines values for the protection of ecosystem within the Waikato River or Lake Puketirini.”¹⁶

74. Mr Rumsby, in evidence, stated his disagreement with several technical matters raised by Ms Cowan in her section 42A report and addressed each in turn.¹⁷ In particular, he queried the basis for Ms Cowan seeking an alternative WAC when the Council’s expert, Dr Caldwell, had accepted the applicant’s proposed WAC. He also addressed Ms Cowan’s preference for water quality limits to be set at a more conservative limit. He observed that there were other discharges that potentially impacted the receiving environment. He disagreed with Ms Cowan’s proposition that discharges from the proposed fill operation would result in a deterioration in water quality; referencing the design and operation of the proposed sediment retention ponds.
75. Mr Rumsby also disagreed with Ms Cowan’s comment that management plans lacked enforceability. He was of the opinion that the recommended conditions were appropriately worded and provided the ability for Council to enforce compliance by way of the Council’s review and certification process. He did not consider this to be a ‘haphazard’ process, being informed and relying on appropriate experts. Similarly, he explained his opposition to Ms Cowan’s suggestion for verification sampling of the fill deposited and referred to the alternative as part of the offered Sampling and Analysis Plan.
76. Mr Rumsby acknowledged submitter issues raised in relation to discharge effects within the receiving environment and potential effects on human health and water quality; referring to the low threshold set for discharge criteria from the sediment retention ponds. In response to submitter concerns regarding discharges during extreme weather events, Mr Rumsby explained that as there would be more flow within the catchment, there would be an increase in the amount of dilution within the

¹⁶ A. Rumsby SOE, para 2.8

¹⁷ A. Rumsby SOE, section 12

catchment (and allowable mixing zone), thereby decreasing the relative impact that the discharges from the managed fill would have on Lake Puketirini.

77. **Ohara McLennan and Scott Lowry**, of Envoco Ltd, provided a joint witness statement, describing their involvement in implementing an Ecological Management Plan for the proposed compensation site and in undertaking various ecological assessments and wetland identification for the application. They were of the opinion that adequate ecological mitigation was being offered to ensure adverse effects were minimised, describing the compensation measures proposed (and both undertaken or underway) for each fill area. This included bat and fish management plans.
78. Ms McLennan and Mr Lowry detailed the mitigation offset ratio proposed for indigenous terrestrial vegetation and wetland habitat loss. They acknowledged and referenced the Ecological Impact Assessment previously undertaken by Boffa Miskell (2019). They described the works being undertaken within the compensation area (a separate site, of 3.9 ha, Hillside Heights Road) and the wetland restoration and creation measures proposed.
79. Ms McLennan and Mr Lowry made comment and provided response to some matters raised in the section 42A report by Ms Cowan. They also advised of a pre- hearing meeting with the Department of Conservation (as a submitter), describing the understandings reached regarding various survey requirements. They referred to management plans as proposed, including the Bat Management Plan (Wildland Consultants, 2020) which has been given effect to in part with the establishment of a bat reserve.
80. In response to questions from Commissioners, they confirmed their opinion that there would be an ecological net gain from the compensation works proposed and that it was good practice for these works to commence ahead of the proposal, as in this case.
81. **Michael Parsonson**, Director at SouthernSkies Environmental Ltd provided evidence in his role as technical advisor and in the design of the erosion and sediment control ('ESC') measures for the proposed fill areas. He outlined the components of the ESC system for each fill area and explained the Adaptive Management Plan ('AMP') and its monitoring role. His evidence included, as attachments, the Erosion and Sediment Control Plans for the three fill sites.
82. Mr Parsonson described the intent of the ESC design (to minimise sediment yield); with only one fill site to be operational at any given time; the use of diversion channels and bunds for clean and dirty water runoff; and chemical treatment to enhance sediment settlement and overall device efficiency. He explained the use of the AMP, with trigger event monitoring and responded to queries raised by Ms Cowan in her section 42A report in respect of additional monitoring measures, specifically in terms of quantifying sediment load. Mr Parsonson was of the opinion that: *"The adoption and implementation of ESC system and the AMP is the appropriately means to*

*ensure that effects continue to be appropriately minimised. I do not consider it beneficial to quantify sediment load.*¹⁸

83. Mr Parsonson also addressed queries raised by Ms Masters and Ms Anna Kostiuk-Warren in respect of stormwater management; and responded to relevant submitter concerns. He supported the draft recommended conditions, with some changes noted. It was his conclusion that the ESC system proposed had been proven on comparative significant earthworks projects of similar topography and within ecologically sensitive receiving environments.
84. **Kate Madsen**, Director of Paua Planning Ltd and experienced planner, had prepared the resource consent applications, having been engaged by the applicant since 2018. She addressed the planning and processing issues associated with the application, including matters raised in the respective section 42A reports. Ms Madsen's evidence included a detailed summary of the relevant policies and objectives (WDC and WRC), against which the consents are sought. It was her opinion that the proposal was consistent with these policies and objectives and that potential effects (based on expert advice, as detailed in her evidence) could be managed and mitigated and therefore met the threshold tests of section 104D of the RMA as a non-complying activity. Ms Madsen also discussed the relevant National Environmental Standards, Policy Statements and identified other policy and plan matters.
85. Ms Madsen described the proposal as taking 'an integrated and holistic management approach' in referring to the ecological net gain within the catchment (with the compensation site), as was proposed to be supported by a suite of conditions and management plans. She referred, in evidence, to the balanced approach taken, in 'supporting both the economic growth of the quarry' while 'offsetting ecological impacts with the holistic restoration of a degraded ecosystem'.¹⁹
86. Ms Madsen commented on the matters raised by Ms Cowan and Ms Masters in their section 42A reports, clarifying and addressing those aspects where there was disagreement. This included one of the pivotal concerns of both Ms Cowan and Ms Masters, being that the proposal was potentially inconsistent with tangata whenua values. Ms Madsen detailed the iwi engagement undertaken by the applicant which involved multiple hui, including with an iwi appointed liaison consultant (Mr Norman Hill) who was previously commissioned by the applicant to undertake a Cultural Impact Assessment.
87. Ms Madsen advised that she had worked with Ms Cowan over a period of over two years in drafting the set of recommended conditions, which she considered to be very comprehensive.

For the Submitters

88. We received representations from those submitters listed at the beginning of this Decision. All were opposed to the proposed managed fill operation. We acknowledge

¹⁸ M. Parsonson SOE, para 7.12

¹⁹ K. Madsen SOE, para 5.17

the willingness of submitters to attend the hearing within extended hours (running through after 5.00pm most days). We also note that no expert evidence was presented on behalf of submitters. Nevertheless, we appreciate the calibre of the presentations made, with the depth of concern from submitters being evident.

89. Principal concerns, as expressed by these submitters, included the risk of contamination from air and water discharges; increased truck movements and traffic safety; management concerns and accountability; lack of community and iwi engagement; and impact on and risk to the Huntly community, with no identified benefit.
90. Traffic impact concerns included the use and maintenance of the Tainui Bridge Road; and general traffic impacts to users of Riverview Road, including the Te Araroa Trail Walk (Jessica Rix, Denise Lamb, Anthony Perkins, Kathie Shephard, Nicola Maplesden).
91. Adverse impacts (through contamination discharges) included potential risk to the recreational use and water quality of Lake Puketirini (Alan and Bronwyn Kosoof, Andrew Parkin, Jessica Rix) and the Hakarimata Valley walk (Nicola Maplesden). The wider concern of the adverse impact on the community with a managed fill facility was expressed (Huntly Community Board, Tiffany Whyte, Wayne and Maree Rutherford, Kathie Shephard).
92. Concerns regarding iwi consultation were identified by Mr Norman Hill. While he confirmed that he was the author of a previous Cultural Impact Assessment ('CIA') prepared on behalf of iwi (in 2021), he observed that he did not present at the hearing in this role but rather as an individual private submitter. He referred to cultural effects of concern to him as including the 'dumping of material outside the rohe' and the need for a 'partnership' between the applicant and iwi.
93. Specific site concerns were expressed by the neighbouring property owner to the west of the application site, Ms Kate Thomas (Hillside Heights Road). Ms Thomas opposed the proposal in its entirety, with specific mention made of the lack of engagement from the applicant; impact on views from her property; and impact on a stream that traverses her property.
94. The risk in using Fill Area 3 as part of this managed fill operation was discussed in detail by Mr Paul Vitasovich, based on his experience and observations from working on the construction of this fill area as part of the historic Weavers mine. At the outset of his presentation at the hearing, Mr Vitasovich clarified the reference in his written submission to mine 'tailings', being more accurately 'overburden'. His primary concern related to the stability of FA3 given its historic use as overburden fill from the Weavers mine. He believed this fill area to have high levels of contamination; subject to water penetration; and therefore to be inherently unstable and unsuitable for further fill. In his summary he expressed significant concerns for the risk that use of this fill area would create on the surrounding area, including Lake Puketirini and the Waikato River.
95. In contrast to other submitters, Mr Kevin Wickens presented at the hearing advising that he was not seeking to stop the proposal but rather, he had concerns around the protocols to be used in site management. This was based on his experience in the

waste management industry. His position that 'overkill' in management plans and measures was essential. This included the Adaptive Management Plan for emergency situations. Mr Wickens also commented on truck movements (as a close property owner to the site, Riverview Road), observing that the Gleeson trucks, as newer vehicles, tended to be quieter on the road than others; and that the newly introduced reduced speed limit (to 60 km/hr) had made a marked difference.

96. The submission from Waikato District Council to the WRC components of the application was presented by Ms Rebecca Law in her role as Reserves Planning Team Leader (WDC). We understood that, as she advised, she was representing the community, based on feedback received in respect of the Council reserve assets (Lake Puketirini and the Hakarimata Valley walk). In response to questions from Commissioners, Ms Law confirmed that the 'community feedback' was as received within the Community Board context.
97. Submitters' concerns are acknowledged and discussed further within this decision under Matters of Contention; as well as being addressed in the applicant's reply submission.

Councils' Response to Evidence Heard

98. All Council experts made themselves available and attended the hearing (either in person or on-line). This enabled these advisors to provide informed responses to matters raised following the presentation of the applicant's and submitters' evidence. These responses were in the form of both verbal presentations and / or supplementary written statements.
99. Further written material was helpfully provided by the following Council specialists and consultants:
- *Mr David Mansergh* – peer review of landscape and visual assessment
 - *Ms Anna Kostiuk-Warren* – stormwater and erosion sediment control
 - *Ms Julia Masters* – reporting planner (WDC)
 - *Ms Emma Cowan* – reporting planner (WRC)
 - *Ms Naomi McMinn* – traffic
 - *Ms Karen Denyer* - wetland and terrestrial ecology
100. While some matters remained in contention (as identified in the statements of Ms Cowan and Ms Masters), we understood that there was general agreement between most, if not all, of the Councils and the applicant's experts on the various effects assessments of the proposal. This is reflected in the identification and consideration of Matters of Contention below.
101. A separate legal submission was received from WDC counsel, Ms Kirsty Ridling, (dated 22nd December 2022). This was in response to queries raised in the hearing by the Panel regarding the status and mandate of mana whenua in our decision making, where, in this case, we have not had the opportunity to hear from them on cultural

effects. Nevertheless, the recommendations from both WRC and WDC had been to refuse consent largely on the basis of the 'potential' for cultural effects.

102. It was Ms Ridling's legal position that the submission from Te Kauri Marae Trust, as a recognised marae within the Waikato District, was therefore required to be considered to be mana whenua for the purposes of the RMA.²⁰ Furthermore, regardless of the lack of specific information available to the Panel in respect of cultural effects (as Te Kauri Marae Trust did not present on their submission), this submission, which expressed the potential for cultural effects, must be considered within Part 2 RMA assessment.
103. Ms Ridling concluded in support of Ms Masters' position that: *"..without that additional information, WDC cannot be satisfied that the application promotes sustainable management in relation to providing for the cultural well-being of tangata whenua."*

The overall conclusion reached in the legal submission by Ms Ridling was that:

"Accordingly, WDC contends that without the agreement of mana whenua in terms of any conditions or contents of any Maatauranga Maaori Environmental Management Plan which could provide for the mitigation or avoidance of any potential adverse cultural effects, it cannot be certain that the Application recognises and provides for the relationship of Māori with their taonga as required under Part 2.

As such, WDC continues to support the recommendation of Ms Master in the Report that the Application should be refused."²¹

Draft Conditions

104. As requested in our Direction (dated 19th December 2022), the applicant provided a draft set of conditions for consideration by WRC and WDC. This set of conditions was reviewed by all relevant Council advisors, with a resulting final revision set made available to the applicant for consideration and response as part of the reply submissions.
105. This process greatly assisted in both co-ordinating approaches and also confirming those remaining areas of contention. We acknowledge the time allocated to this work by both the Councils' staff and the applicant, especially given the time of year within the Christmas / New Year holiday break.

Applicant's Reply

106. Ms Simons, on behalf of the applicant, provided a comprehensive reply in writing, to which the following expert rebuttal evidence (in the form of memorandum and email advice) were appended and referenced:

²⁰ Legal Submission, WDC, para 19

²¹ Legal Submission, WDC, para 37

- *Ohara McLennan* – Ecology (with an updated Ecological management Plan, January 2023)
- *Ka-Ching Cheung and Matthew Kernot* – Geotechnical
- *Michael Parsonson* – Erosion and Sediment control and discharges
- *Andrew Rumsby* - Contamination
- *Andrew Rumsby* – Surface water sampling and analysis
- *Parviz Namjou* - Hydrogeological
- *Mark Pelan* – GMF Financial

107. The information provided in the above advice responded, in part, to matters identified in our Direction (19th December 2022), as raised in the hearing by Council advisors, submitters and ourselves. The further information provided also informed the finalised set of conditions offered by the applicant.

108. Ms Simons provided legal submissions addressing the question as to whether there were adverse cultural effects arising as a result of the application. This was fundamental as it was the principal reason of concern upon which both Ms Masters and Ms Cowan based their recommendations to refuse consent. Integral to this position of the Councils was the submission by Te Kauri Marae Trust (as mana whenua), which Ms Simons addressed as follows:

“In the hearing, the Commissioners observed that this makes their decision-making a difficult task. It is submitted that there is settled law confirming that whilst cultural values must be given particular consideration, mana whenua do not have a right of veto over activities within their jurisdiction as mana whenua as the High Court noted in Gock v City Council.²²”

109. In relation to the matter of weighting given to the submission of Te Kauri Marae Trust, Ms Simons’ legal submission referenced further case law (*SKP Inc v Auckland Council (2020) ELRNZ 268 (CA) at [29]* and *Ngati Rangī Trust v Genesis Power (2009) 15 ELRNZ 164 (CA) at [19]*). We refer to this in our findings on matters of contention and in particular, the question as to whether the absence of specifics on cultural effects, and therefore the ‘possibility’ of adverse cultural effects, being sufficient and a legally appropriate basis for the refusal of consent. It was Ms Simons’ submission that it was not.

110. Ms Simons’ reply submissions provided detail regarding the fill management and operations proposed, reiterating the evidence received from the GMF personnel and confirming acceptance of a community liaison group as a condition.

111. Clarification and discussion in response to matters remaining in contention with Council advisors and the reporting planners were provided in the appended expert statements. This included effects and measures related to ecology (with an updated

²² Applicants Right of Reply Para 3.5-3.6

Ecological Management Plan submitted); groundwater, contamination and erosion and sediment control; traffic and geotechnical.

112. Ms Simons addressed concerns raised by submitters, specifically in respect to the stability of FA3 (as raised by Mr Vitasovich). Referring to evidence of Dr Cheung and Mr Kernot, Ms Simons submitted that the stability of FA3 had been appropriately assessed and the proposed managed fill design would be 'sufficiently stable.'
113. Detailed responses were provided by Mr Parsonson, and referenced by Ms Simons, in addressing queries raised by Ms Cowan regarding potential sediment yield in the erosion and sediment control system proposed. Similarly, details in respect of specific contaminants (marine sediments and acid sulphate soils) were provided in Mr Rumsby's statement, which was accompanied by an updated Surface Water Sampling Analysis Plan.
114. Details of conditions proposed were referenced by Ms Simons, confirming the Bond as offered, at \$250,000 (but with an additional proviso that it be reviewed and recalculated every five years). Other changes to the offered conditions were identified, with a draft set of finalised conditions provided.
115. As part of Ms Simons submission, she also addressed the proposition that the proposal would satisfy the requirements of Te Ture Whaimana O Te Awa o Waikato – Vision & Strategy, by resulting in a net benefit to the Waikato River catchment. She submitted that the betterment created was proportionate to its effects, specifically by utilising degraded farmland and undertaking comprehensive ecological enhancement both on the site and off site (with in the compensation area). This would also be consistent with the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act and the Waikato Tainui Environmental Plan.
116. In concluding Ms Simons confirmed her understanding that all outstanding issues had been satisfactorily addressed; and it was her submission that any adverse effects had been avoided, remedied or mitigated (or were acceptable); with it being appropriate that consent be granted subject to the conditions proposed.

Principal issues in contention

117. In terms of section 104(1)(a) of the RMA regarding the actual and potential effects of allowing the activity on the environment, we note that many of the identified adverse effects were accepted by the reporting officers and Councils' technical reviewers as not being so significant that they are not able to be managed or mitigated through conditions of consent and/or by operational management procedures and practices and mitigation offered through restoration of the compensation area.
118. In that regard the expert evidence relating to the following potential effects (together with their management and mitigation measures proposed) was largely uncontested (albeit not necessarily accepted by lay submitters), with appropriate conditions of consent generally agreed with the respective Councils:
 - dust, noise and vibration
 - air quality

- traffic
- landscape and visual
- hydro geotechnical (groundwater and geotechnical)
- Fill Area 3 stability
- contaminated land – asbestos
- waste acceptance criteria and associated discharges (with the exception of marine sediments)
- archaeological

119. We agree with the conclusions reached that any adverse effect on those matters will either be avoided or, be minor, with the mitigation measures as proposed.

120. After analysis of the application and evidence (including proposed mitigation measures), undertaking our site visit, reviewing the Councils' planning officers' recommendation reports, reviewing the submissions and concluding the hearing process, the proposal raises a number of issues for consideration. The principal issues in contention (in no particular order of primacy) are considered to be:

- Whether the ecological compensation offered is adequate in form and nett gain*
- Whether the management of all contaminants in the WAC are appropriate*
- Whether there are adverse cultural effects that warrant the refusal of consent*
- Whether the proposed erosion and sediment control measures and monitoring are adequate in the management of sediment discharges*
- Whether the proposal, overall, results in a nett betterment outcome to the Waikato River catchment*

Main findings on the principal issues in contention

121. Our main findings on the principal issues that were in contention are discussed under the headings that follow.

Ecological: Compensation Area – Adequacy and Form

122. The managed fill activity will involve the irreversible loss of terrestrial vegetation, ephemeral and intermittent streams, as well as artificially constructed wetlands. The applicant is proposing a mitigation package for the loss of wetlands which includes ecological enhancement and legal protection of a 3.9ha Compensation Area (a degraded Significant Natural Area), restoration of small, induced wetlands (below FA2 and FA4), and the conversion of Sediment Retention Ponds (SRPs) in each Fill Area into indigenous wetland habitat once each fill operation is complete.

123. An Ecological Management Plan (EMP) was developed for the Compensation Area which proposed a holistic compensatory approach with the goal of achieving an ecological gain for the entire site by excluding stock, indigenous planting in terrestrial,

riparian and wetland habitats, and pest plant and animal control. An updated EMP has been provided by the applicant as part of their Right of Reply.²³

124. The matter of contention that remains is as to whether or not sufficient compensation has been offered to mitigate the effects on wetlands, in terms of quality (“like-for-like”) and quantity.
125. In her evidence for the Councils, Ms Denyer considered that inadequate compensation had been provided for the loss of an induced wetland at FA3, with the potential area lost being much greater than that considered by the applicant. Ms Madsen, for the applicant, noted that “the loss of the fill 3 wetland was dealt with through a separate compliance process, including a formal warning and ecological compensation”. The Panel notes that these compensation actions (fencing and wetland planting²⁴) have been completed and we are satisfied that this point of contention has been addressed.
126. The Panel notes that Nick Goldwater (Wildlands, co-author of the EMP) acknowledged that “*the proposed habitat for restoration and the existing impact wetlands are not ‘like for like’*”²⁵. Consequently, Wildlands recommended a larger area than recommended by Boffa Miskell (2019)²⁶ be provided for ecological restoration to compensate for loss of values in the proposed fill areas.²⁷ The Panel notes that the completed fencing encompasses an area of 6ha rather than 4ha and a larger area of planting has been undertaken than proposed.
127. Ms Denyer also considered that the EMP did not offer the creation of any new areas of wetland within the Compensation Area in order to offset the loss of wetland in a like-for-like manner. The updated EMP²⁸ notes that planting undertaken in Areas 13a-c of the compensation area in June-July 2022 provides like-for-like mitigation for FA2. The Panel notes that the conversion of the SRPs to indigenous wetlands will create new wetland habitat²⁹ and we are satisfied that this point of contention is addressed.

Finding

128. The Panel finds that the compensation offered by the applicant is commensurate with the level of effect and that it will achieve an appropriate level of ecological gain. The ‘holistic approach’ taken by the applicant, in setting aside a specific compensation area, albeit separate to the site (but within catchment proximity) is considered appropriate and of ecological value. The Ecological Management Plan will provide support and certainty to this approach, with ecological losses effectively mitigated. Onsite measures (new wetland habitat and planting for example) will also augment

²³ Envoco (2023) Updated Ecological Management Plan. January 2023.

²⁴ Section 3 Envoco (2023) Updated EMP

²⁵ K.Madsen, SOE, 24 November 2022, Attachment 6

²⁶ Boffa Miskell (2019) recommended a restoration ratio of 1:1, which Wildlands only considered appropriate where ‘like-for-like’ restoration is being undertaken. The EMP proposed restoration would provide a restoration ratio of 4.07:1.

²⁷ Wildlands (2020) Ecological Management Plan for the Proposed Compensation site at Gleeson Quarry, Huntly, Contract Report No. 5208f, May 2020.

²⁸ Section 4 Envoco (2023) Updated EMP

²⁹ Section 5.2 Envoco (2023) Updated EMP

the compensation area benefits, providing site specific mitigation upon completion of the proposed managed fill sites.

Contaminant Components

129. Several points of contention associated with the management of contaminants remained following the hearing. Further clarification was sought by the Panel in this regard, with the resultant responses from Councils and the applicant largely resolving these matters.

Waste Acceptance Criteria (WAC) for contaminants not included in the WAC table

130. Dr Caldwell, in his evidence³⁰, recommended an approach for developing WAC for contaminants not listed in the Table of WAC. He noted that having an agreed method would provide certainty for both the consent holder and the consenting authority. The Panel notes that details of Dr Caldwell's recommended approach and acceptance guideline values have been included in the applicant's most recently proposed consent conditions (condition 5 of Resource Consent APP144475.03.01).

Acceptance of Marine Sediments

131. Dr Caldwell, in his evidence³¹, recommended that "marine sediments, even if lime-treated, should not be received due to the potential risk of elevated concentrations of contaminants". His reasoning was that marine sediment is unlikely to be subject to the robust sampling investigations routinely undertaken for land-based soils from HAIL sites. Subsequently Dr Caldwell has reviewed³² a proposed set of conditions associated with the acceptance of marine sediments (including a requirement to develop a Marine Sediments Management Plan), which he appears to have largely accepted. He questioned whether the higher water content of marine sediments could affect the geotechnical instability of Fill Area 3. The Panel notes that, in their geotechnical design for FA3³³, Dr Cheung and Mr Kernot have adopted soil strength parameters that are similar to those of marine clay deposits and are very conservative.

Treatment and Management of Acid Sulphate Soils

132. Further details on the treatment and management of acid sulphate soils were sought by the Panel, in particular on how runoff would be managed. As part of the applicant's Right of Reply, Mr Rumsby³⁴ describes how the acid sulphate soils treatment area will be sized and built to prevent ingress of rainwater. Further, Mr Rumsby has provided details of how stormwater will be collected from the site, as well as proposed trigger values which will be used to determine how the stormwater can be disposed

³⁰ Para 18, Statement of Evidence of Jonathan Paul Caldwell on behalf of Waikato Regional Council, 28 November 2022

³¹ Para 32, Statement of Evidence of Jonathan Paul Caldwell on behalf of Waikato Regional Council, 28 November 2022

³² Applicant's Draft Conditions Post Hearing 16 Jan 2023 JCaldwell

³³ Applicant Right of Reply, Appendix 4, Dr Cheung and Mr Kernot email, 22 December 2022

³⁴ Applicant Right of Reply, Appendix 6, Mr Rumsby Memorandum 20 December 2022

of. These details are to be included in the updated Acid Sulphate Soils Management Plan, as required by condition 43 of Resource Consent APP144475.03.01.

Finding

133. The Panel is satisfied that any points of contention related to contaminants have been adequately addressed by the relevant experts for both the Councils and the applicant. Accordingly, we find that the WAC and associated management protocols are appropriate for the proposed managed fill facility, with sufficient detail provided to describe and confirm management measures and onsite acceptance protocols; supported by and detailed in conditions.

Cultural Values Effects

134. The Panel was aware of the difficulty in determining the potential for the proposal to cause adverse cultural effects given that we did not receive evidence on this matter. The Councils' recommendations to refuse consent was based in part of the 'possibility' of adverse cultural effects. As we have referred to above, we received a legal submission on this issue from WDC (Ms Ridling). Ms Ridling supported the view of Ms Cowan and Ms Masters that because the submission from Te Kauri Marae Trust (as mana whenua) had identified that there were potential adverse cultural effects, then without further information (as was the case), The Panel could not be satisfied that this was not the case.
135. In reply submissions, Ms Simons addressed this matter (as we have described in detail above), with reference to case law in support of the legal position that the Panel's decision should be based on the evidence presented. We understood from Ms Simons that, as in this case, where there is no evidence provided by mana whenua to support and describe potential adverse cultural effects, then this vacuum in information availability does not provide mana whenua with, in effect, a right of veto over activities within their jurisdiction.
136. To assist in our consideration as to whether adverse cultural effects arise, to the degree that consent should be refused, we have identified the following aspects of relevance and address each in turn:
- Iwi Submitters
 - Mr Norman Hill a submitter
 - Consultation undertaken with iwi
 - Mana whenua submission – Te Kauri Marae Trust

Iwi Submitters

137. A submission was received from iwi/manua whenua Te Kauri Marae Trust. A submission was also received from a Tribal member, Mr Norman Hill, on behalf of the Hill Whanau. Both submissions oppose the application. In determining the status of mana whenua, we accept the WDC definition of mana whenua:

“Mana whenua’ means the collective authority to act, or speak, on issues that affect iwi, hapuu or marae, and their taonga.”³⁵

138. Te Kauri Marae Trust fulfils that status. We consider Mr Hill’s submission, however, to be part of public submissions received and we have proceeded on that basis.

Mr Norman Hill a submitter

139. We heard from Mr Norman Hill presenting his submission in opposition on behalf of the Hill Whanau. He referred to consultation with Waahi Whaanui Trust and that he had, previously, been commissioned to complete the Cultural Impact Assessment. Waahi Whaanui Trust was not a submitter to the application, although we note that the position of the Trust to the application was referenced in the section 42A reports.
140. In terms of consultation, Mr Hill stated that the original engagement had changed from a three fill gullies approach to a one gully approach, then reverted back to a three gullies approach. Changes had been made to the original application. It was his understanding that consultation and engagement with mana whenua remained outstanding. Mr Hill’s submission listed a wide range of points of concern that he considered the applicant had failed to address, including specifically health and wellbeing of mana whenua and also more general effects (noise, geological, ecological, landscape and visual). Mr Hill supported the position of Te Kauri Marae Trust that consent should be refused. We accept that Mr Hill’s submission was made in his personal capacity and not on behalf of mana whenua.

Consultation undertaken with iwi

141. We outline below our understanding of iwi/mana whenua consultation, noting this matter as being one of the reasons mana whenua took a position of opposition to the application. The information available to us was primarily received from the Councils and Mr Hill. The applicant met a number of times with iwi/mana whenua.³⁶ Initial engagement with iwi/mana whenua was 1 May 2019 when the applicant’s planner, Ms Madsen, met with a representative of Waahi Whaanui Trust (Mr Hill) to introduce Gleeson Cox as the new owner of the quarry and to discuss resource consents. The applicant sought Mr Hill’s assistance to engage with Waikato Tainui and mana whenua. Mr Hill informed the applicant that Waahi Whaanui Trust was the mandated authority representing six Marae (including Te Kauri Marae) who held mana whenua status in Raahui Pookeka.
142. In September 2019 Mr Hill was engaged to complete a Cultural Impact Assessment for the applicant, the final version of which was received by the applicant in December 2019, with an updated version dated September 2020 after a mana whenua Hui.
143. In February 2020 the applicant provided Mr Hill with a draft Maatauranga Maaori Monitoring Plan, to which, we understand, Mr Hill responded with his agreement. During April and May 2020, the applicant engaged formally with the Iwi Authority,

³⁵ Chapter 2 WDC

³⁶ WDC/WRC Summary of Gleeson Iwi Consultation Table

Waikato Raupatu River Trust, who supported the recommendations in the Cultural Impact Assessment.

144. However, in August 2020 WDC received a letter from the Chair of Te Kauri Marae Trust outlining their objection to the application. This was followed, in August 2021, with Mr Hill informing the applicant that Waahi Whaanui Trust would be opposing the application. At this point, we understand that formal consultation on the application ceased.
145. We note that consultation with mana whenua appeared to have been robust and genuine over several years before the engagement broke down. This is confirmed in Ms Simons opening legal submissions:

“We acknowledge that we cannot speak as to potential effects on cultural (iwi) values on behalf of mana whenua. It is significant however, that GMF (and representatives), prior to lodging any consent, sought to engage an iwi liaison consultant, made contact with the appropriate Iwi representation bodies, and continued to phone, write, email and meet with those who expressed interest and concerns over the 3 years up to a point where any form of support was withdrawn.”³⁷

146. We accept this position as a matter of fact, with it being apparent that the applicant has engaged in a genuine and robust process of consultation. From the evidence of Ms Madsen, further engagement and understanding of Maaori values, as they relate to this application, was invited, and anticipated through the hearing process:

“I welcome any response from mana whenua to deepen my understanding of the Vision and Strategy but cannot see how its objectives can be achieved without parties working together for best outcomes, such as by utilising available tools (for example a Maatauranga Maaori Environmental Monitoring Plan).”³⁸

Mana whenua submission – Te Kauri Marae Trust

147. We did not hear from Te Kauri Marae Trust at the hearing but were in receipt of their written submission in opposition; the grounds of which were the proximity of the proposal to a residential area and six Marae, the Waikato River, Lakes and Puna and in conclusion that: *“The proposed landfill development directly adjacent to the Waikato River should not be approved.”*
148. We accept that mana whenua have a special relationship with the Waikato River. However, without the opportunity to hear directly from Te Kauri Marae Trust, we are not in a position to respond to this submitter on what may or may not constitute mitigation of effects. Nevertheless, we do acknowledge that the Awa should be restored and protected and that the compensation package and the management of water discharge to the Awa are proposed to be designed to contribute to the restoration and protection of the Waikato River.

Finding

³⁷ S.Simons, Legal subs, para 14.1

³⁸ K. Madsen SOE, para 6.79

149. We have considered all written submissions including those where the submitter did not appear at the hearing. We are aware that no expert evidence was presented by any of the submitters. Te Kauri Marae Trust's submission is brief but unequivocal in their opposition and their reasons for it. We have given it due consideration but also accept that this does not provide a veto right. We have made comment on Te Kauri Marae Trust's written submission above. We do not consider it can be compared to the *Ngati Rangī* case (as described in legal submissions by Ms Simons) in this instance because we have mana whenua's position before us in the form of a written submission, whereas there was nothing similar provided in the *Ngati Rangī* case.
150. Section 96(1) and 96(2) RMA provides for any person to make a submission on a resource consent that is publicly notified. Te Kauri Marae Trust has done so, to the application when publicly notified.
151. Although we have not had the opportunity to read the Cultural Impact Assessment as it was not provided as part of the application material, we observe that we have no issue as to whether the Cultural Impact Assessment is withdrawn or not, or who has ownership. The CIA is reliant on Iwi and mana whenua participation. Nevertheless, we observe that the knowledge that this document may have imparted, likely had the potential to assist our understanding of the relevant cultural values and their respective effects from the application.
152. We acknowledge that GMF had engaged with mana whenua and that the process was robust until the relationship came to an end; as explained in part in response to questions from the Panel to Mr Hill. This is further extrapolated in paragraph 3.15 of the Right of Reply. We note, in particular, from the Right of Reply, the applicant's aspiration to re-engage with mana whenua.
153. In conclusion, we find that while we cannot comprehensively address and consider the impacts of the application on cultural values (due to a lack of specifics as to what constitutes adverse cultural effects in this case), we accept that these values are important to mana whenua/Māori. To that end, we find the condition offered of a Maatauranga Māori Environmental Management Plan could appropriately provide for the mitigation or avoidance of any potential adverse cultural effects. We also note our support for continued engagement between the applicant and mana whenua.
154. We find that on the evidence before us, adverse effects on cultural values will be minor and will be able to be mitigated, avoided or managed by conditions as set out and which form part of this Decision.

Erosion and Sediment Control

155. There was a point of disagreement between Ms Cowan and the applicant's expert advisor (Mr Parsonson) in respect of the manner in which sediment yield monitoring was best undertaken, as part of the erosion and sediment control system proposed. Mr Parsonson addressed this in detail in his supplementary evidence (memorandum dated 20 February 2023) which formed part of the applicant's reply submissions.

156. We observe, as noted in Mr Parsonson’s memorandum, that there were a number of points of agreement reached by way of further communication between advisors, supporting information provided and conditions offered. We record our support for the initiative taken by experts to engage and to seek resolution of these outstanding matters.
157. Mr Parsonson described the manner in which he undertook the erosion and sediment design and the information it was based on, specifically with regard to sediment yield considerations. Mr Parsonson reached the conclusion that:
- “When taking account of the additional land and stream bank stabilisation that will be achieved through the offset and compensation planting, and the rehabilitation planting of each fill site when filling is completed, I would anticipate that the proposal will achieve overall betterment in terms sediment yield and be consistent with the relevant Plan Change 1 policies. I do not consider there to be any gap in information in this regard. The retirement of other land for carbon farming will further increase that benefit.”³⁹*
158. Mr Parsonson further addressed specific concerns regarding monitoring and condition measures (TSS limits) raised by Ms Cowan. He referred to similar design approaches undertaken on major projects he was involved in, confirming their adequacy and appropriateness. He also addressed matters raised by Ms Kostiuik-Warren (in respect of stormwater management) and detailed responses including additional conditions offered.

Finding

159. We find that the erosion and sediment design, as proposed and detailed in evidence by Mr Parsonson, is an appropriate response to the site circumstances for the proposed fill activity and will not result in adverse effects on the environment that cannot be managed and mitigated. The suite of conditions proposed (including the Adaptive Management Plan), and those further agreed to with the Councils’ expert advisors, will ensure effects are managed or avoided. We also find that these conditions will provide an adequate and appropriate monitoring regime.
160. We accept that this design has been informed by Mr Parsonson’s experience and expertise in this field, as detailed in his evidence presented at the hearing. We are also in agreement with Mr Parsonson, finding that the inclusion of the conversion of sediment retention ponds into wetlands upon completion of the respective fill area, will achieve overall betterment to the Waikato River. This, we note, has been part of an integrated design approach coordinating the erosion and sediment control design with other site considerations (geotechnical; hydro geotechnical; ecological and the overall sensitivity of the receiving environment).

Betterment / Net Benefit – Waikato River Catchment

161. We acknowledge that the application must demonstrate that the proposal will result in a net benefit to the Waikato River Catchment, as anticipated by specific policy and plan directives. This, we understood, was of particular concern to Ms Cowan and

³⁹ M. Parsonson Memo (updated 23 February 2023)

which, in part, informed her recommendation that consent be refused. She made reference to case law (*Puke Coal Ltd v Waikato Regional Council and Waikato District Council, 2014, NZEnvC 223*) in support of her recommendation, with reasoning being that discharges from the site should improve the receiving water quality and provide for the ongoing restoration of the catchment over the duration of the consents. It was Ms Cowan's position, as expressed in the section 42A report, that this would not be achieved by the application.

162. This point of contention was addressed in the applicant's legal submissions and expert evidence. In particular, the ecological enhancement proposed with the compensation area was referenced, whereby, it was submitted, that there would (as a consequence of this compensation area), be an overall improvement to the catchment which feeds into Lake Waahi. It was submitted in evidence that there would be no groundwater impact on the Waikato River or Lake Puketirini; and that the erosion and sediment control system (with the wetland conversion) would contribute to the long-term ongoing water quality benefits to the Waikato River as well as enhancing the delineated wetlands. The policy framework, against which this 'betterment' aspect of the proposal is assessed, was undertaken in evidence by Ms Madsen. Of reliance, we observe that the Vision and Strategy for the Waikato River clearly states in its objectives that "the integrated, holistic and coordinated approach to management of the natural, physical, cultural and historic resources of the Waikato River" be pursued.

Finding

163. We find that betterment will be achieved, and will be, as is anticipated by the relevant policies and plans, proportionate to the effects of the proposal. We received expert evidence on this matter from the applicant and tested it through the hearing process with input received from the Councils' experts. No expert evidence was provided to support Ms Cowan's position. Rather, a number of the Councils' expert advisors (notably the evidence of Dr Caldwell) commented that there would be no measurable change in water quality within Lake Puketirini or the Waikato River for example⁴⁰. Dr Caldwell was also generally in agreement with the WAC proposed.
164. We find, from the evidence presented, that the ecological improvements (including gully restoration) and protection proposed (within the compensation area and on site) will result in an overall benefit to the health of the area's associated freshwater system, from the headwaters of the stream on the compensation site, downstream towards Lake Waahi and Lake Puketirini.
165. We find this to be consistent with, and to meet the expectations of, the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act, the Vision and Strategy and the Waikato Tainui Environmental Plan. We also find that this addresses the concerns held by a number of submitters for the future wellbeing of Lake Puketirini, as an important recreational destination within the region.

⁴⁰ J. Caldwell SOE (28 November 2022), para 34

Section 104, 104D and Part 2 RMA

166. We confirm that we have considered the matters required under s104 and s104D of the RMA. As discussed above we have concluded that the actual and potential effects on the environment of allowing the managed fill activity can be managed or mitigated appropriately within the site's rural zone context.
167. When put into the wider context of the Part 2 sustainable management purpose of the RMA and the function of both regional and territorial authorities, we are satisfied that the proposal will promote the sustainable management purpose of the RMA and will not adversely affect the health and safety and/or wellbeing of neighbouring properties or the wider environment, including and in particular, the Waikato River, Lake Waahi and Lake Puketirini.

Section 104D

168. Under the National Environmental Standards for Freshwater Regulations 2020 (NES-FW), Regulation 54, the application is a non-complying activity. The bundled approach taken to processing and consideration of this application means that the application in its totality is to be considered as a non-complying activity. The tests of section 104D RMA therefore apply, whereby either of the two 'gateway' tests must be satisfied prior to a section 104 RMA consideration being undertaken. The gateway tests of section 104D RMA are:
- (a) adverse effects of the activities on the environment will be minor; or
 - (b) the application for the activity will not be contrary to the objectives and policies of the relevant Plan and relevant proposed Plan.
169. The Councils' reporting planners considered that the application was 'inconsistent with objectives and policies', from which they concluded that the application was contrary to objectives and policies. We received legal submissions (including case law and analysis) from the applicant's counsel in respect of this apparent conflation of this statutory test. We accept, as correct, the statutory assessment provided by Ms Simons.
170. The Councils' reporting planners also concluded that the application would have more than minor adverse effects, specifically with regard to ecological values, contaminant discharges and cultural effects. It was their recommendations that the application did not therefore meet either of the tests of section 104D RMA.
171. We find, based on the evidence and presentations made (from the Councils, the applicant and the submitters) during the course of the hearing, that the application is not contrary to objectives and policies; thereby passing this gateway test of section 104D RMA. We have addressed the question as to whether the application will result in adverse effects that are more than minor on the environment in our Decision above. We consider that both tests of section 104D RMA can be passed.

Part 2 RMA

172. In terms of Part 2 sections 6, 7 and 8, based on the evidence of the expert witnesses of the applicant along with the proposed management plans, revised conditions and

revised compensation package proposed, we are of the view that the application does mitigate any adverse effects and that as such, adverse effects will be no more than minor.

173. We accept the view of the Councils, as expressed in the section 42A reports, to the extent that Part 2 applies. We have also been mindful of the legal submissions made by the applicant and our inability to seek clarification from mana whenua on their submission. We have considered this aspect, as it relates to Part 2 RMA, in so far as we could. As we have already stated, we note mana whenua's position of opposition and the reasons why.

Conditions

174. We note that the majority of the conditions for both the territorial and regional consents were agreed between the applicant and the Councils by the close of the hearing. Where appropriate those conditions that are common to both Councils have been similarly framed to avoid any subsequent confusion or enforcement problem. We find that the conditions, as recommended for adoption, and as amended by us (as addressed below), are appropriate and accord with sections 108 and 108AA RMA.

Duration of Regional Consents

175. The applicant sought a term of 35 years duration for the regional consents. A five year lapse period for the land use consent was considered appropriate by the applicant.⁴¹ We understood that the rationale, for the 35 year duration, was, in part, to enable future overburden disposal from the quarry operations on site. We note that the Council's preference was for a shorter time (of 10-15 years), which was based on the projected annual take by the managed fill and a view by Ms Cowan that there was some uncertainty in respect of adverse effects. We consider that the effects assessment for this application has been fully addressed during the course of the hearing, as reflected in our Decision above.
176. We find that a 35 year duration for the regional consents is appropriate as it will enable the efficient use of the managed fill facility and will ensure that there is adequate time available for establishment works and then rehabilitation works upon completion and closure.

Bond

177. We note that there was disagreement between Ms Cowan and the applicant as to the appropriate bond to be set as a condition. The applicant originally offered a bond of \$250,000. This was supported in evidence by Mr Pelan. Ms Cowan considered that the bond should be in the order of \$400,000 - \$500,000 to cover site rehabilitation in the event of non-performance with conditions by the applicant. In rebuttal, during the course of reviewing the draft set of conditions, Mr Pelan confirmed a Bond offer of \$250,000 with a five yearly review.

⁴¹ AEE, Paua Planning, para 23.4 and 23.5

178. We accept the evidence of Mr Pelan and confirm the \$250,000 bond with a five yearly review as an appropriate condition. We did not receive any evidence from WRC as to the increased bond amount sought.

Decision

179. In exercising our jointly delegated authority under sections 34 and 34A of the RMA and having regard to the foregoing matters, sections 104, 104A-D, and sections 105 and 107, and Part 2 of the RMA, the application to establish and operate a managed fill and overburden disposal activity at 310 Riverview Road, Huntly, is granted for the reasons discussed in this Decision (and as summarised below); and as subject to the conditions attached, being Schedules 1 (WRC) and 2 (WDC).

Summary reasons for the decision

180. After having regard to the actual and potential effects on the environment of allowing the proposed activity and taking into account the relevant statutory and plan provisions, we find that consents for the proposed managed fill activity should be granted for the reasons discussed throughout this decision and, in summary, because:
- (a) Potential adverse effects relating to sediment runoff, contaminated discharges to land and water, vegetation removal, natural hazards and water quality have been appropriately avoided, remedied and/or mitigated. Accordingly, the environmental effects from the proposed activities should be no more than minor, provided the activities are undertaken in accordance with the consent conditions.
 - (b) There is adequate separation from the site boundaries to its neighbouring properties to enable adverse effects such as noise, dust, vibration, odour and visual amenity to be contained within the site and, as a consequence, for compliance with these respective standards to generally be achieved.
 - (c) The proposal, inclusive of the suite of conditions, will meet the purpose and principles of the Resource Management Act 1991. The proposed managed fill activity will provide for the sustainable management of the existing quarry operation on site (through overburden disposal) in conjunction with the new managed fill operation which will serve the construction and demolition industry of the surrounding area and the wider region. This dual operation also supports efficiency in truck movements by 'backloading' of existing traffic movements made to the quarry.
 - (d) The managed fill activity location is considered appropriate as it will not affect any outstanding natural features, outstanding landscapes, areas of significant indigenous vegetation or significant habitats of indigenous fauna.
 - (e) Ecological compensation is offered (in the form of a separate, dedicated compensation area as well as measures on site). This is considered to be commensurate with the level of effect, achieving an appropriate level of ecological gain.

- (f) The proposed activities will result in a net benefit to the Waikato River Catchment that is proportionate to the effects of the proposal and is therefore consistent with the Vision and Strategy for the Waikato River.
- (g) The overall engineering design of the managed fill facility achieves an outcome whereby there will be negligible groundwater impact on the water quality of the Waikato River or Lake Puketirini. There will be no adverse impact on the recreational use and enjoyment of Lake Puketirini.
- (h) The geotechnical design, together with the erosion and sediment control measures proposed, will ensure that any risk of instability, or erosion which may lead to sediment impacts on adjoining sites, has been mitigated or avoided.
- (i) There are no known adverse cultural effects that may impact upon the relationship of Māori with their ancestral lands, water, sites, waahi tapu, and other taonga.
- (j) Comprehensive management, development and monitoring plans are part of the suite of conditions, ensuring that the activity will operate in accordance with appropriate standards. This includes the operational protocols proposed for managed fill received on site (including, importantly, the waste acceptance criteria).
- (k) Inclusion of a review condition will ensure that the environmental effects associated with the proposal are subject to review if circumstances arise.



Cherie Lane
Chair, Independent Hearing Panel
and Commissioners Shane Solomon and Ngaire Phillips

Date: 29th March 2023

Schedule 1
Waikato Regional Council
Consent Conditions

Schedule 2

WAIKATO DISTRICT COUNCIL

CONDITIONS OF CONSENT

Resource Consent No: LUC0488/22