BEFORE THE ENVIRONMENT COURT

Decision No. [2017] NZEnvC 109

IN THE MATTER	of the Resource Management Act 1991
AND	
IN THE MATTER	of an appeal pursuant to s 120 of the Act
BETWEEN	NORSHO BULC LIMITED (ENV-2016-AKL-000168) Appellant
AND	AUCKLAND COUNCIL Respondent
AND	BLACKBRIDGE ENVIRONMENTAL PROTECTION SOCIETY INCORPORATED Section 274 party

Court:	Environment Judge D Kirkpatrick Environment Commissioner I Buchanan Environment Commissioner E von Dadelszen
Hearing:	at Auckland on 22 – 24 May 2017
Appearances:	J M Savage for Norsho Bulc Ltd G C Lanning and M McCullough for Auckland Council J C Brabant and S T Darroch for Blackbridge Environmental Protection Society Inc
Date of Decision:	21 July 2017
Date of Issue:	21 JUL 2017

DECISION OF THE ENVIRONMENT COURT

THE SEAL OF THE ENVIRONMENT COURT NEW ZEALAND

A: The Appeal is upheld.

B: Resource consents are granted subject to conditions.

C: Any application for costs must be made within 10 working days of receipt of this decision and the party against whom costs are sought must respond within a further 5 working days.

REASONS

Introduction

[1] Norsho Bulc Limited applied to the Auckland Council for resource consents to establish a managed fill operation at a site at 294 Blackbridge Road, Pine Valley legally described as Lot 4 DP166787 and Lot 2 DP 422009 (**the site**). Following a hearing before Commissioners appointed by the Council, a decision refusing consent was issued on 18 July 2016. Consent was refused on the following grounds.

(a) Adverse effects on amenity values at adjacent properties.
(b) Adverse effects of operational noise at adjacent properties.
(c) Increased truck movements on Blackbridge Road with associated adverse effects on residents' amenity and the condition of the road pavement.
(d) Cumulative adverse effects from the succession of fill activities in the area.
(e) The proposal was contrary to the relevant provisions of the operative District Plan and the proposed Auckland Unitary Plan relating to the maintenance and enhancement of rural character and amenity.
(f) Neither of the s 104(d) RMA gateway tests were met.
(g) The site did not differ from the generality of sites in the rural zone to an extent that warranted special consideration for consent.

[2] The decision was appealed by Norsho Bulc, seeking consents for the proposal subject to appropriate conditions. The Blackbridge Environmental Protection Society Incorporated (**the Society**) registered an interest in the appeal in support of the Council's decision under s 274 RMA. The Society represents a number of residents who live in Blackbridge Road and the surrounding area. Six members of the Society provided evidence for the hearing, together with expert traffic and planning evidence.

The Proposal

[3] The application to establish and operate a managed fill as notified involved the importation and placement of some 940,000m^3 of managed fill to northern and eastern gullies on the site over a period of ten years. This involved up to 240 truck movements per day, six days per week between the hours of 6 am to 6 pm, Monday to Friday and 6 am to 1 pm on Saturdays. On-site earth bunding was proposed to screen visibility of truck movements on the internal access road and the fill operation areas from neighbouring residences.

[4] Prior to the application being heard by the Council's Commissioners, Stage 2 of

the proposal, involving fill of 340,000m^3 in the eastern gully, was removed from the application leaving 600,000m^3 of fill to be placed in the northern two gullies on the site. The fill is to be used by account holders only with access by prior arrangement to control the number of truck movements. Access to the site is by electronic key with imported fill volumes and composition logged at an internal weighbridge prior to deposition at the tip area. An on-site operator will check fill material prior to tipping and spreading. The operational exposed area is to be limited to 1.0 hectares (**ha**) with additional site preparation and post-fill restoration leaving a further 2.0 ha exposed during the summer earthwork season. During the winter, the maximum exposed area is 1.5 ha. All fill material is to comply with the specific requirements of the Auckland Plan (AUP-OP) for managed fill and this is to be detailed in a site management plan prepared by the Company.

[5] Since the initial Council decision and following mediation, the application has been further modified as follows:

(a) The number of track movements is to be limited to a maximum of 160 per day.

(b) The hours of operation remain from 6 am to 6 pm Monday to Friday, but no trucks are to arrive at the site earlier than 7 am or after 5 pm. No material is to be imported to the site on Saturdays, Sundays or public holidays.

(c) Saturday work is to be limited to machinery maintenance and site preparation maintenance between 8 am and 1 pm.

(d) A 20 metre riparian planting strip is to be fenced either side of the east/west stream north of the landfill and 10 metre riparian buffers established on other streams.

(e) The northern most bund is to be formed and planted in a manner that avoids shading of the adjacent property to the east and to present a natural appearance.

(f) Additional planting is proposed for the lower section of the entrance driveway.

[6] Norsho Bulc did not intend to commence fill operations at this site until similar operations on a neighbouring site operated by Dirtworks had been completed. We were told that this operation has now finished, making this proposed delay redundant.

[7] Additional modifications to the application were proposed by Norsho Bulc following further investigation for the preparation of traffic evidence by Mr Phillip Brown, their consultant traffic engineer. These modifications were to:

(a) Reposition the limit line and marked edged line on Postman Road, opposite the intersection of Blackbridge Road and Dairy Flat Highway and trimming of roadside vegetation at this area.

(b) Upgrade the one-way bridge priority sign.

(c) Implement a pedestrian/cycle/equestrian advanced warning system at the one-way bridge.

(d) Pipe four roadside channel sections to enable improved pedestrian and equestrian access to the adjacent berm along Blackbridge Road. Following caucusing of traffic witnesses, an additional two accessways were agreed to and now form part of the application.

[8] Counsel for Norsho Bulc advised in opening that in addition to the above modifications to the application, the company would seal the full length of the unsealed section of the access road from Blackbridge Road to the northern fill area.

Issues

[9] Following mediation and caucusing of the experts involved in the case, two principal issues remained for determination.

(1) Is the character and amenity of the area around the Blackbridge Road fill site sufficiently compromised by the effects of the proposal to warrant declining the application?

(2) Is a review condition as proposed by the Council appropriate to address any future upgrade of Blackbridge Road pavement that may result from heavy vehicles accessing this site?

The Environment

[10] The site is located in the northern side of Blackbridge Road approximately 2.9 km to the west of Dairy Flat Highway. It comprises approximately 65 ha and is currently used for pastoral farming. There are no buildings on the site. A household unit owned by Norsho Bulc is located on the adjacent lot of 294 Blackbridge Road and the existing accessway to this lot will be shared by trucks accessing the site. The managed fill is to be located in two northern gullies in a central position adjacent to the western boundary of the site. There are a number of watercourses on the site.

[11] The landscape of the site was assessed by Ms Janet Woodhouse, consultant landscape architect for Norsho Bulc, as not having landscape values of significance or as being sensitive and vulnerable to change. It is however a valued landscape, particularly to those residents who live nearby. The site is characterised by pasture

with small areas of indigenous shrubland and wetland vegetation. Gorse has invaded much of the pasture within the proposed fill area. Watercourses within the proposed fill area carry intermittent runoff discharging into an upper tributary of the Rangitopuni Creek. The tributary bisects the property flowing in a westerly direction. No watercourses in the fill area are classified as permanent.

[12] Based on ecological surveys of the site Mr Nicholas Goldwater, consultant ecologist for Norsho Bulc, concluded that overall the terrestrial ecological values of the fill site are very low.[1] This view was shared by the Council ecologist, Mr Rupert Statham.[2]

[13] The surrounding area is characterised as rural in nature, with scattered rural residential subdivision. The area to the north of Blackbridge Road in the general vicinity of the subject site has been zoned Rural - Mixed Rural in the operative Auckland Unitary Plan (**AUP-OP**). The land on the southern side of Blackbridge Road opposite the subject site has been rezoned from General Rural to Rural - Countryside Living under the AUP-OP where subdivision to a minimum average size of 2.0 ha is provided (1.0 ha minimum if a transferable title is used). The eastern end of Blackbridge Road has been zoned as Future Urban under the AUP-OP and is included within the Rural Urban Boundary.

Background to the application

[14] Rapid and continuous growth and development in Auckland, particularly in areas on the North Shore close to the subject site, has generated demand for properly managed fill operations within reasonable driving distance. We were told that on average each residential site development generates 25m^3 of fill that needs to be removed. When considered alongside surplus fill generated by commercial, infrastructure and industrial development it becomes obvious that one of the significant consequences of this development is disposal of clean and managed fill.

[15] Material accepted for managed fills is soil, clay, gravel, sand, rock, concrete or brick that, unlike cleanfill, has or may have certain contaminant or hazardous substance levels that are higher than natural background levels, but where adverse environment and health effects remain less than minor. It is expected that with the history of land use in the Auckland area much of the fill generated by development will fall into the category of managed fill rather than cleanfill.

1 Goldwater EIC at para 31.
2 Statham EIC at para 51.

[16] Counsel for Norsho Bulc submitted that the proposed site was well-suited to contribute to meeting the demand for this type of facility due to its large size, ability to control access and deposited material, and separation distance from adjacent residences. He described this proposal as "an essential part of the fill disposal regime supporting development, particularly in this part of the Auckland region".[3]

Statutory Planning

[17] The Commissioners' decision was made under the then operative Auckland Council District Plan: Rodney Section where managed fill operations in the General Rural zone had non-complying activity status. Relevant sections of the Auckland Unitary Plan became operative on 19 August 2016. It was common ground with the planning witnesses that it is only these AUP-OP provisions that now apply to the application before the Court.

[18] The site is zoned Rural – Mixed Rural. Consents are required under the following provisions of the AUP-OP:

(a) Discretionary activity consent for the managed landfill (Rule H19.4.1).
(b) Restricted discretionary activity consent for land disturbance within the settlement control area one (Regional Rule E11.4.1).
(c) Restricted discretionary activity consent for earthworks greater than 2,500m^2 in area and 2,500m^3 in volume (District Rule E12.4.1).
(d) Controlled activity consent for discharge from managed fills (Rule E13.4.1).
(e) Non-complying activity consent for stream filling (Rule E3.4.1).

It was not in dispute that, on a bundled basis, the proposal was to be considered as a non-complying activity, triggering consideration under s 104D RMA.

Statutory Instruments

National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health.

[19] This NES is relevant. It was not in dispute that the methodology proposed for managing discharges from the fill site from both surface and sub-surface water is appropriate as are proposed erosion and sediment control measures. Adherence to acceptance criteria and acceptance management practices would result in less than minor effects on the freshwater environment.

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3 Mr Savage opening at para 20.

National Policy Statement for Freshwater Management 2014

[20] It was not in dispute that this Policy Statement was relevant and that the proposal was in accordance with the NPSFM.

Auckland Unitary Plan

[21] Sections H19.2.1 - 6 set out the objectives and policies related to all Rural zones. These recognise the importance of rural character and amenity values as well as rural areas being a place for production activities.

[22] Policies H19.2.5 and H19.2.6 relate to rural industries, rural commercial services and non-residential activity.

[23] These objectives and policies recognise the need to provide for non-rural industries, including cleanfills and managed fills in Rural Production, Mixed Rural and Rural Coastal zones.

[24] Section H19.4.1 sets out the purpose of the Mixed Rural zone to provide for rural production generally on smaller rural sites and non-residential activities of an appropriate scale. The objectives and policies of the zone are set out in sections H19.4.2 and H 19.4.3.

[25] Chapter E3 relates to lakes, rivers, streams and wetlands. Of particular relevance to the application are Objective 6 and associated policies 1 to 4, 9 and 13, covering permanent removal of streams and corresponding offset mitigation measures, and disturbance and depositing of substances.

Effects on Character and Amenity

[26] The RMA defines "amenity values" as those natural or physical qualities in and characteristics of an area that can contribute to people's appreciation of its pleasantness, aesthetic coherence and cultural and recreational attributes.

The positions of the parties

[27] Counsel for Norsho Bulc submitted that the proposal addresses potential effects from visual landscape changes, traffic, dust and noise to the extent that no unacceptable adverse effects on the character and amenity of the area will be experienced. The subject site is located in a rural zone where a range of rural productive activities occur. The effects of the proposal will be no more than that generally expected from other appropriate activities. Counsel noted that the fill operation is located on the northern side of a ridge separating it from the Countryside Living zone along the southern side of Blackbridge Road.

[28] Counsel for the Council submitted the Council accepted that the modified proposal as described in the Applicant's evidence and included in the revised conditions of consent would ensure that effects on general amenity, including dust, landscape, noise and traffic effects, were adequately addressed and would be no more than minor. The only outstanding issue for the Council related to road pavement effects, which we deal with later.

[29] Counsel for the Society submitted that the concerned residents of the area considered that, in combination, the effects of the application would "impose in a significant and adverse way upon their amenity and environment".[4] This community attitude had developed from experience with a succession of similar but smaller fill operations in the Blackbridge Road area over many years.

[30] We now turn our attention to specific aspects of the proposal that have the potential to affect amenity values.

Dust

[31] The Company proposed to seal the full length of the access road not already sealed and to implement a range of on-site dust suppression management techniques at the active fill area. In addition, a dust monitoring device is to be installed at an appropriate boundary position with a monitoring threshold set above which further on-site management will be triggered to reduce dust emissions to acceptable levels. Conditions of consent have been developed to give effect to these dust management proposals which in the opinion of Ms Diana Bell, planning consultant for Norsho Bulc, would result in any adverse effects from dust being no more than minor.

[32] The other planning consultants who gave evidence, Mr Robert Scott for the Council and Dr Mark Bellingham for the Society, agreed with Ms Bell that adverse effects from dust generated on the fill site would be managed to an acceptable level by operating to the proposed conditions of consent. Of particular importance in this regard was the sealing of the access road.

Landscape and visual

[33] Norsho Bulc relied on the evidence of Ms Woodhouse to describe the landscape around the site and assess any effects that may be generated by the proposal on the site. Ms Woodhouse's landscape assessment concluded that "although this landscape is not regarded as having landscape values of significance or as being sensitive or

4 Mr Brabant opening at para 6.

vulnerable to change, it is still a valued landscape".[5] Ms Woodhouse considered that the proposed earth mound bunding at the operational fill area and along the access road, together with screen planting, would avoid or mitigate visual effects of the operation from the immediate neighbouring residences. In her opinion the visual change to the fill area at any given time would not be incongruent within the landscape and that any change in landscape character from alteration to landform shape in the northern area of the site would not be adverse.

[34] In response to cross-examination by Mr Brabant, Ms Woodhouse acknowledged that given a three to five year time lag for vegetation screening on the bunding to be effective, and if the maximum rate of fill was continuously achieved, then some fill working may be visible from residences to the northeast of the site for a period of up to one year.[6]

[35] In preparing evidence for the Council, consultant landscape architect Mr Simon Cocker peer reviewed the landscape assessment undertaken by Ms Woodhouse and agreed with her methodology and conclusions. Mr Cocker participated with Ms Woodhouse in a witness conference, producing a joint witness statement to assist the Court.[7] This statement confirmed that the landscape witnesses were in agreement that the proposal as now applied for would result in no adverse visual or landscape effects that would be more than minor. In doing so, they acknowledged that the mitigation of the effects of trucks accessing the sites off Blackbridge Road would not be fully effective until after three to five years.

[36] Mr Cocker addressed in evidence the potential visual effects of the proposal on Mr Nicholas de Witte's property at 99 Tender Road, in particular the effects from an approved building site on a new lot directly to the north of the fill site. Mr Cocker concluded that due to a separation distance of some 700 metres and the presence of vegetation adjacent to the 99 Tender Road building site, the adverse visual effects would be low. He confirmed this view in cross-examination from Mr Brabant, stating that in his opinion views of the activity in the fill area "won't be particularly noticeable"[8] from 99 Tender Road.

[37] Presenting evidence for the Society, Mr de Witte outlined his concerns for the visual effects of the fill activity when viewed from his building site, 700 metres to the north. Mr de Witte considered that the active working area at the fill site of up to 3.0 ha

5 Woodhouse EIC at para 68.
6 Transcript page 78, line 19.
7 Expert witness statement – landscape 2004, 2017.
8 Transcript page 165, line 18.

would "completely dominate the view from any of the building sites on my property".[9] He also expressed concern that further subdivision to the north and east of the landfill site would establish a number of additional residences from which the site would be visible even with the proposed screening in place.

[38] Ms Chrystal Henwood expressed concern at the potential visual effect of trucks using the access road when viewed from her property at 27 Drury Lane, some 400 metres away. The fill site itself was around 800 metres from her house, but located on the other side of the central ridgeline on the site, so not directly visible.

[39] Mr Chris Wheeler's property at 246A Blackbridge Road is immediately east of the proposed fill area but separated from it by a low ridge. Mr Wheeler acknowledged in his evidence and in response to cross-examination from Mr Savage that the proposed bund along the ridgeline between his house and the operational fill area was designed to screen any view of the activity from his house area,[10] but that he had reservations about its effectiveness. He also had reservations that the screening bund could or would be constructed to blend with the natural landform of the ridge as recommended by the landscape experts.

Noise

[40] Norsho Bulc relied on the evidence of Mr Neville Hegley, Consultant Noise Expert, to provide measurements of ambient noise in the subject rural area and to assess predicted noise levels attributable to the operation of the proposed managed fill. Mr Hegley's evidence was uncontested by other expert evidence.

[41] Mr Hegley measured ambient noise at the notional boundaries of the site as typically 37dB during mid-morning and mid-afternoon. Based on actual noise measurements at a similar nearby fill site, Mr Hegley predicted that the level of noise from the subject site would be relatively low, rarely above 40dB. It was his opinion that while this level of noise may be heard by the closest neighbours it would not be at an unreasonable level. Mr Hegley considered that noise from the site would typically be below background levels at these neighbouring residences and well below plan provisions for the rural zone. In his opinion, the noise effects would be no more than minor.

[42] We note that the baseline noise level for the rural area in the AUP-OP is $55dBA_{Leq}$.

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9 de Witte EIC at para 4.15.

10 Transcript page 221, line 1.

[43] Mr Hegley noted in rebuttal evidence in response to statements from Dr Bellingham that the noise generated by trucks using Blackbridge Road to access the proposed fill site would be well below the closest relevant New Zealand Standard guideline level of 64 dBA_{Leq}.[11] He predicted a one hour noise level of 41 dBA_{Leq} at the dwelling closest to the road. In his opinion, this would not be an unreasonable level of truck noise either along Blackbridge Road or from the site access road.

[44] Mr de Witte expressed concern that the levels of machinery noise measured by Mr Hegley did not take into account how the bulldozer was being operated or the presence of other noise generating equipment such as a water cart. Based on his experience of a similar operation on Tender Road some 700 metres from his property, Mr de Witte considered that noise from the fill site was likely to be experienced at his proposed building site, 700 metres away and would adversely affect the rural amenity at that site.

[45] Ms Henwood was also concerned that noise from trucks using the access road would be intrusive, based on her experience with the nearby Dirtworks managed fill. This would have an adverse effect on the rural amenity values experienced at her Drury Lane property.

[46] Ms Louise Johnston, resident at 252 Blackbridge Road, considered that what she expected to be continuous noise from the fill operation for up to 11 hours per day, five days per week, would be very different from the general background noise expected in a rural environment and would diminish the amenity value of her property. Mr Stephen Johnston also expressed concern that the constant noise would have a negative effect on his livestock, particularly sheep during lambing season.

Traffic

[47] Mr Phillip Brown, a consultant traffic engineer, prepared a brief of evidence and rebuttal evidence for Norsho Bulc and participated in the preparation of a joint witness statement on traffic matters. Mr Brown was overseas at the time of the hearing so was unable to attend. Mr Donald McKenzie, also a consultant traffic engineer with prior involvement in assessing transport aspects of the proposal, provided a statement of evidence adopting Mr Brown's Evidence-in-Chief and rebuttal.

[48] For the purposes of this decision, we take the written evidence of Mr Brown as being that of Mr McKenzie and refer to it as such. Mr McKenzie has reviewed all of the data, calculations and opinions presented in Mr Brown's statements and adopted all of

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11 NZS 6806:2010

these. He also attended the caucusing of traffic witnesses and agrees with the joint statement of that group.

[49] Lay witnesses for the Society, Mr de Witte, Ms Henwood, Mr and Mrs Johnston and Ms Tanya Syme, resident at 438 Blackbridge Road, provided primary evidence supporting their concerns in relation to the effects of additional trucks using Blackbridge Road. These concerns identified two main issues:

(a) The safety of non-motorised road users including pedestrians, particularly school children accessing school buses, horse riders and cyclists.

(b) The ongoing safe use of the intersection of Blackbridge Road with Dairy Flat Highway.

Both of these issues were addressed in expert evidence by Mr McKenzie and Mr Wesley Edwards, a consultant traffic engineer engaged by the Society.

[50] With regard to Blackbridge Road use, Mr McKenzie outlined modifications to the application designed to address the residents' concern around the safe use of Blackbridge Road. These measures had been developed following discussions with Mr Edwards and a Council traffic engineer, Mr Andrew Gratton. They involved upgrading the one-way bridge priority signage, implementing a pedestrian/cycle/equestrian advanced warning system at the one-way bridge, and installing pipes in four roadside channel sections to improve pedestrian and equestrian access to the berm. He also noted that the proposed weekday only importation of material, the restriction on truck movements to 160 per day and access to the site limited to between 7 am and 5 pm, meant that trucks using the fill site would not be on Blackbridge Road during periods when the majority of non-motorised use was likely to occur, that being evenings and weekends.

[51] Discussions at caucusing of the traffic engineers focused on the need for additional pedestrian/equestrian access culverts along the road. Two further sites were identified as appropriate and agreed to by Mr McKenzie and Mr Edwards, bringing the total number of these mitigation facilities to six. Mr McKenzie and Mr Edwards agreed that the provision of these facilities, together with the other measures described in the revised application would result in no more than minor adverse effects on uses of Blackbridge Road from the proposed fill operation.[12]

[52] Regarding the Blackbridge Road/Dairy Flat Highway intersection, Mr McKenzie described the current volumes on the Highway at the intersection and the controls and

12 Joint traffic statement, 2 May 2017 at para 14.

numbers of lanes on the two side roads being Postman Road and Blackbridge Road. He considered the current controls to be appropriate.

[53] Mr McKenzie examined the data for current turning movements from the Highway into Blackbridge Road, observing that the proportion of heavy to light vehicles making this turn was extremely low during peak hours and that he did not expect this to change significantly with this fill operation in place. Outside peak hours the total volume of traffic turning right or left into Blackbridge Road was lower than in peak times and did not, in his opinion, justify any significant alteration to the layout of the intersection, including the provision of dedicated right or left turn lanes into Blackbridge Road. He did not expect this to change with the proposal.

[54] Mr McKenzie supported his conclusions with an examination of crash history records from 2005 to 2016, noting that only one crash had occurred during that period. This involved a light vehicle turning right into Blackbridge Road. No heavy vehicle had been involved in a right turn crash at the intersection during this period when similar fill operations had been operating along Blackbridge Road.

[55] Notwithstanding his conclusions on the safe operation of the intersection being unaffected by the proposal, Mr McKenzie considered that some minor adjustments could be made to improve the situation for southbound vehicles that may have to pass another vehicle waiting to turn right into Blackbridge Road. This would involve the limit line on Postman Road being repositioned so that it was 6.0 metres back from the marked centre line of the road and repositioning the marked lane edge line and tying this into existing markings. To ensure that visibility from Postman Road to the north is maintained, Mr McKenzie recommended the trees on the eastern side of the road reserve on Dairy Flat Highway north of Postman Road be trimmed back to the property boundary.

[56] These recommended additions to the application have been accepted by Norsho Bulc and included in the proposed conditions as the company's responsibility to implement.

[57] The Council did not call any evidence in relation to traffic matters other than that addressing physical effects on the pavement along Blackbridge Road, a matter that we deal with in detail later in this decision. Counsel for the Council advised that "based on its own advice, the Council accepts the evidence of Mr Brown (McKenzie)".[13] As noted above, this evidence concluded that the proposal was acceptable from a traffic

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13 Mr Lanning opening submissions at para 4.1(e).

engineering perspective if the modifications addressing safety and operational issues are included in consent conditions.

[58] Mr Edwards expected the proposal would generate greater heavy vehicle numbers turning into Blackbridge Road than at present as it was of a significantly larger scale and of much longer duration than other fills that have previously operated along the road. Mr Edwards emphasised that the current volumes of traffic using the intersection at peak hours triggered consideration of right and left designated turn lanes into Blackbridge Road by the Road Controlling Authority.[14] In his opinion, the additional heavy traffic turning generated by the proposed fill would exacerbate the current operation of the intersection and that it was Norsho Bulc's responsibility as applicant to remedy this by upgrading the intersection and providing dedicated turn lanes from the Highway into Blackbridge Road. He accepted that Mr McKenzie's recommended minor lane marking alterations were feasible, but in his opinion these did not adequately mitigate the risk presented by the proposal.

Discussion

Amenity Effects

[59] Members of the Society, all of whom are resident in the general locale of the proposed site, told us of the value they place on the character and amenity of the area they have chosen to live in. Without exception they expressed concern that offsite effects related to dust, noise, views and traffic would have an adverse effect on the lifestyle they currently enjoy.

[60] We also heard expert description and evaluation of the potential effects, together with proposals from the Applicant to address these. These broadly included:

(a) Sealing of the access road, monitoring of dust at the fill site and operational measures to prevent nuisance dust generation;

(b) Earth mound bunding and screen planting at appropriate areas and limitations on active fill areas to avoid visual effects on neighbouring properties from truck movements on the access road and operational activity of the site;

(c) Traffic management and road berm access for pedestrians and horse riders to mitigate the effects of heavy vehicles accessing the site on traffic safety and the safety of non-motorised users of Blackbridge Road.

(d) Restricting truck access to the site to weekdays between 7am and 5pm to

[14] Austroads Guide to Road Design Part 4A: Unsignalised and Signalised Intersections (Section 4.8).

avoid any potential interaction between heavy trucks during evening hours and on weekends and public holidays and residents using the road corridor for walking, riding or cycling.

[61] In each instance expert evaluation of the efficacy of the proposed operational limitations and activities to avoid, remedy or mitigate visual noise, dust and traffic effects, has concluded that each of these potential offsite effects will be contained within acceptable limits and that there will be no significant adverse effects on the character and amenity value of the area within which the proposed fill site is located.

[62] Without in any way doubting the sincerity of the concerns held by Society members or the significance they attach to these concerns, we place considerable weight on the agreement between independent expert witnesses on the level of effects on lifestyle amenity likely to be experienced by members of the Society from the operation of the proposed fill. In doing so, we acknowledge that some local people will be more sensitive to the low level of offsite effects generated by the proposed fill operation than others. This heightened sensitivity is not of itself sufficient cause for us to decline consent.

[63] The application includes the establishment of a community liaison group and a complaints register to allow for and encourage ongoing dialogue between the fill operator and interested local residents. Properly constituted and operated community groups of this type can assist in identifying operational aspects that may be causing nuisance effects from time to time and provide an opportunity for the operator to adjust where practicable to meet these concerns.

[64] We find that the adverse dust, noise, visual and traffic effects on lifestyle amenity in the Blackbridge Road area will be no more than minor.

[65] The only area where there was not an agreement between witnesses related to effects on the continued safe operation of the Dairy Flat Highway/Blackbridge Road intersection. It is clear that heavy vehicles accessing landfill sites along Blackbridge Road has been a reality for some years. The latest fill to be completed was the Dirtworks site in close proximity to the proposed site. This site operated under the same restrictions on daily truck movements as that proposed in the Norsho Bulc application and we were told that on occasions the maximum truck movements allowed was achieved.

[66] The evidence available to us suggests that on an average daily basis this proposal will see similar truck movements as that experienced from the Dirtworks

operation, albeit over a considerably longer period. Mr McKenzie's evidence demonstrated that the subject intersection had been operated without incident involving a heavy vehicle for at least the last ten years and that is in his opinion the layout of the intersection was fit for purpose and will continue to be so with the proposed fill operating. This evidence was accepted by the Council and, anecdotally from Mr McKenzie, by the road controlling authority Auckland Transport.

[67] It is not for this Court to enter into a detailed evaluation of the performance of road intersections against the relevant Austroad Guidelines as suggested by the detailed evidence of Mr Edwards and Mr McKenzie. That is clearly the responsibility of the road controlling authority. Our task is to assess the safety risk of heavy vehicles accessing the proposed landfill on, in this instance, the Dairy Flat Highway/Blackbridge Road intersection.

[68] We accept the evidence of Mr McKenzie that the proposal will not result in a significant increase in daily average truck movements through the intersection. These movements represent a small proportion of the total vehicle movements and consequently there is no additional safety risk at the subject intersection. Despite this, Norsho Bulc have offered consent conditions requiring the company, with the approval of Auckland Transport, to carry out minor lane marking repositioning and visibility enhancement to assist in the smooth flow of traffic through the intersection. We acknowledge this offer is made on an *Augier* basis[15] and have included the relevant consent conditions on that basis.

Effects on Ecology

[69] Counsel for Norsho Bulc submitted that the ecology experts relied on, Mr Nick Goldwater for the company and Mr Rupert Statham for the Council were in agreement on the ecological values associated with the site, the effects of the proposal on ecology, and offset compensation measures that should be undertaken.

[70] It is anticipated that around 600m^2 of wetland vegetation and 480 metres of intermittent and ephemeral watercourses will be lost at the fill site. These areas are heavily modified by past land management practices and their ecological values are considered to be low by the ecologists. Terrestrial vegetation within the fill gullies is

15 This is a reference to the decision in *Augier v Secretary of State for the Environment* (1978) 38 P & CR 219 (QBD) as authority for the proposition that an applicant for consent who undertakes to abide by a condition of consent cannot later challenge the validity or reasonableness of that condition. See *Frasers Papamoa Ltd v Tauranga CC* [2010] 2 NZLR 202, [2010] NZRMA 29, (2009) 15 ELRNZ 279, for a full discussion of the application of this principle in the context of the RMA.

dominated by exotic plant species and the terrestrial ecological values are considered to be very low.

[71] Norsho Bulc, on the advice of the ecologists, proposed by way of consent conditions to prepare an ecological compensation plan which would include:

(a) Protection of the wetland within the significant ecological area (SEA) north of the fill area.
(b) Riparian protection and enhancement of streams in the northern sub-catchments and downstream of the landfill.
(c) Restoration of identified wetland habitats.

Mitigation measures related to the capture and relocation of any lizards and fish found on the site, pest plant control and management of surface and subsurface hydrology are also proposed.

[72] The ecologists agreed that the package of mitigation and compensatory measures proposed in the revised application will significantly enhance the ecological value of the site. Any adverse effects from the loss of stream and wetland habitats would be minimal. We accept the advice of the ecologists in this regard and have included the recommended mitigation and offset measures in the consent conditions.

Road upgrading issue

[73] The main issue between Norsho Bulc and the Council centred on a proposed purpose for the review condition, being:

> To consider the effectiveness of consent conditions relating to the effect of truck movements on the pavement along Blackbridge Road and the need for any upgrading works to be undertaken and the consideration of limiting truck movements to the managed fill until such improvements have been completed.

[74] The Council sought the inclusion of this purpose and Norsho Bulc opposed it. The s 274 parties, while concerned about the potential effects of heavy vehicle traffic on Blackbridge Road, adopted a neutral stance on whether this purpose should be included in the review condition.

Appellant's case

[75] Counsel for Norsho Bulc submitted that this review purpose was based on the desire of Auckland Transport to levy a charge per tonne of material delivered to the site to be applied in respect of future maintenance. Counsel submitted:

(a) There is no statutory power or district plan provision lawfully enabling such a levy. The Auckland Unitary Plan contains no financial contribution

provisions of the type required by s 108(10) which would enable the Council to impose conditions requiring financial contributions under s 108(2)(a).

(b) A levy is not required in any event given the condition and anticipated life of the current road. Analysis of tests on the road shows it to be in good structural condition such that it is unlikely to require pavement reconstruction within a 25 year period. Norsho Bulc does agree to pay for and maintain the upgrading of the stretch of Blackbridge Road to 50 metres on either side of its entrance, but will not agree to maintain all of the road from the intersection with the Dairy Flat Highway to its entrance.

(c) Such a levy does not recognise properly the road user charges payable by truck operators delivering fill to the site. The cost of improving and maintaining local roads is shared between the New Zealand Transport Agency and local councils with that funding being sourced from road user charges, among other things. The charges likely to be payable by trucks using this section of Blackbridge Road is an appropriate contribution by those operators towards the costs associated with maintaining the road.

(d) Levying Norsho Bulc would be selective and flawed, as the deliveries would be by other companies. There are many other users of the road. It is likely that the road could be used by forestry trucks when the Riverhead Forest is harvested. Previous fill operations on the site and in the vicinity have also resulted in road user charges available for the maintenance and upgrading of the road.

(e) The imposition of a levy on Norsho Bulc but not on other companies with much larger associated trucking operations is unreasonable, illogical and unlawful. Numerous large scale trucking operations use roads all over the region but none are required to pay levies of this kind.

[76] Norsho Bulc relied on the evidence of Mr Michael Lee, its civil engineer, in support of these submissions. Mr Lee is not specifically qualified in road pavement construction but his engineering qualifications and his project management experience provided a basis on which he challenged the Council's approach. He pointed to the classification of Blackbridge Road as a primary collector under the One Network Road Classification published by the New Zealand Transport Agency and said that this indicated that the proposal was consistent with the expected level of traffic (including heavy traffic) on the road. He challenged the Council's calculations of the makeup of

the heavy traffic, which he considered would be likely to result in less "equivalent standard axles" than estimated by Ms Parsonage for the Council.

[77] For those reasons, counsel for Norsho Bulc submitted that this review purpose should not be included in the review condition.

Respondent's case

[78] The Council did not accept that any of Norsho Bulc's arguments were valid. While it accepted that there is no jurisdiction for the Court to impose a levy, it said that it was not seeking one. Rather, its argument was that heavy vehicle traffic associated with the proposal would exceed the structural capacity of the road causing damage well in excess of ordinary wear and tear, and accelerating the need to repair and upgrade the road. The Council accepted that the road is presently sound and able to carry its current traffic loading, so that it is not in need of road pavement reconstruction within 25 years. Allowing the proposed fill operation, however, would significantly increase the axle loading on the road within a relatively confined period, exceeding its capacity to bear such loads. This, counsel submitted, would be an adverse effect of the environment (in particular the physical resource of the road) caused by the proposal which should be internalised by the appellant rather than passed to the road controlling authority, Auckland Transport.

[79] The Council relied on the evidence of Ms Anna Percy as to funding of roading and the use of road user charges. Ms Percy is a senior officer with Auckland Transport. She reviewed in broad terms the way in which road user charges are collected to form part of the funds available to the New Zealand Transport Agency for funding land transport expenditure. She said it was incorrect to say, as Mr Lee did, that charges incurred by vehicle operators through specific travel were then available to fund the roads specifically travelled on. In fact, the funds gathered as road user charges (like other sources of land transport revenue such as petrol taxes or excise duties on motor spirits) have only an indirect relationship to the mitigation of effects on any road in particular.

[80] The Council also relied on the evidence of Ms Angela Parsonage as to the existing condition of Blackbridge Road and the likely effects of traffic generated by the proposal on the road. Ms Parsonage is a civil engineer employed by Auckland Transport with particular experience and expertise in roading pavement. She did not agree with Mr Lee's assessment of Blackbridge Road or his interpretation of particular pavement assessment results. She said that a key difference between the current proposal and other heavy vehicle traffic on Blackbridge Road lay in the frequency of

heavy vehicle movements which occur substantially more often as a result of this proposal and which would therefore subject the road to greater impacts with less time for the pavement (which is inherently flexible) to recover. She advised that many rural roads in the Rodney area appeared to be constructed in the same manner and were similarly susceptible to intensive heavy vehicle movements.

[81] On these grounds the Council's preferred position was that the fill activity should not commence until the road is upgraded. This could be achieved by declining resource consent or by imposing a condition precedent delaying the commencement of consent. Counsel acknowledged the significance of this approach. Mr Scott, the planner called by the Council, under cross-examination by counsel for the Society offered the view that declining consent in this situation would be "*a big conclusion to make.*"[16]

[82] Alternatively, the Council sought a review condition of the kind set out above in paragraph 73. Counsel submitted that this approach would have weaknesses, including the delay between detecting damage and addressing it, the contested nature of any review process and the consequent likelihood that Auckland Transport would be compelled to undertake and fund repairs without any certainty that it would recoup those costs.

Discussion

[83] It is not a matter of dispute that heavy vehicle movements on a road can cause damage to a road. It also does not appear to be in dispute that Blackbridge Road, typical of rural roads in Rodney, is of lower grade construction than, by comparison, the Dairy Flat Highway which was once State Highway 1. The acknowledged potential effect is that heavy traffic will cause premature damage to the road. The issue then is how this effect may be avoided, remedied or mitigated.

[84] We note at the outset that this general issue is not confined to the circumstances of this case. We were told, without apparent challenge, that every new house results in approximately 25m^3 of spoil which is usually disposed of in a clean- or managed fill. If any large number of houses are to be built in the short to medium term in the Auckland region (and the Auckland Unitary Plan is predicated on a stated need for some 400,000 new homes over the next 30 years) then roughly 10 million cubic metres of spoil may need to be disposed of. The Court would expect that both the Council and Auckland Transport should be making some strategic plans as to how and where that will be done, but no-one involved in this case appeared to know whether that was under way.

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16 Transcript page 197, line 28.

[85] Returning to the more confined issue in this case, and assuming that consent should be granted, there are a number of possible solutions as presented during the hearing:

i. For Auckland Transport to upgrade the road using funds available to it, including whatever subsidy funding may be available from the national land transport fund if the upgrading is approved by the New Zealand Transport Agency.

ii. For Auckland Transport to seek contributions from Norsho Bulc towards this upgrading.

iii. For the Auckland Council to review the exercise of the consent and determine whether there should be any reduction or other constraint imposed on the heavy vehicle traffic associated with the consented activity.

iv. For the exercise of the resource consent not to commence until the road is upgraded.

[86] These possible solutions are not mutually exclusive and might occur in combination or in series. As discussed below, we also do not think this is an exhaustive list and that there are other possible solutions.

[87] In reaching our decision on whether the review purpose sought to be included by the Council, or any other condition, should be imposed in any consent in relation to this proposal, we are mindful that any condition of resource consent must be within the scope of the Act, both in terms of the ambit of s 108 and also in terms of well-established case law[17] that, to be valid, a condition must:

a. be for a resource management purpose and not an ulterior one; and

b. fairly and reasonably relate to the activity for which consent is being granted; and

c. not be so unreasonable that no reasonable consent authority, duly appreciating its statutory duties, could have approved it.

[88] In relation to road user charges, we observe that the Environment Court has no jurisdiction in relation to matters of land transport funding. We therefore will not delve

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17 *Newbury District Council v Secretary of State for the Environment* [1981] AC 578; [1980] 1 All ER 731 (UKHL); approved in *Housing New Zealand v Waitakere City Council* [2001] NZRMA 202 (CA); explained in *Waitakere City Council v Estate Homes Ltd* [2007] 2 NZLR 149, [2007] NZRMA 137 at [64] – [66] (SC).

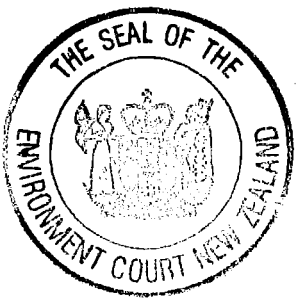
into the issue of whether the charges payable by truck operators whose vehicles travel on Blackbridge Road are or could be hypothecated to the funding of any upgrade of that road. We do note that the Council says the funds will not be used in that way and we accept the submission, supported by authority, that the Court has no power to direct the Executive or any of its agencies as to how they may collect or spend public monies.[18]

[89] We note that it is common ground that there are no provisions in the Auckland Unitary Plan which enable any condition of consent requiring a financial contribution for this purpose to be imposed. That could change should the Auckland Council initiate a plan change but that possibility seems too remote to be an appropriate consideration in this case, especially now that the provisions enabling financial contributions to be included in district plans will be repealed with effect from 18 April 2022.[19]

[90] The absence of any provisions in the plan enabling financial contributions to be imposed as a condition of consent in a case such as this means that care must be taken in considering case law about road upgrading contributions,[20] most of which was decided in the context of such provisions or the corresponding earlier provision in s 321A of the Local Government Act 1974 (repealed).

[91] We also note that the Auckland Council apparently has no development contribution policy under Part 8, Sub-part 5 of the Local Government Act 2002 which would apply in this case. That position could also change, subject to the procedures required to amend the existing policy or adopt a new one under that Act. As we understand it, that process might be considered to be less remote than the prospect of incorporating financial contribution provisions in the Auckland Unitary Plan. However, as with land transport funding, the Council's development contributions policy is not something over which we have any jurisdiction and so we do not give any potential change to it any weight in our assessment.

[92] Looking at the scope for addressing this issue by means of conditions imposed on resource consents, we start by acknowledging that roads are finite physical resources[21] and the use of roads is a use of land.[22] It is a relevant resource



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18 *Bell v Central Otago District Council* C 04/97 at p 8; *Coleman v Tasman District Council* [1999] NZRMA 39 (HC).

19 Pursuant to sections 175 – 184 of the Resource Legislation Amendment Act 2017.

20 Such as *Flude v Waitakere City Council* A 123/92, which is otherwise quite similar to the present case on its facts.

21 *Coleman v Tasman District* W 67/97.

management consideration to seek to manage the effects of activities on such resources in a way or at a rate that enables people and communities to provide for the various aspects of their well-being while sustaining their potential to meet the reasonably foreseeable needs of future generations.[23] As the Court has said:[24]

> It is bad resource management practice and contrary to the purpose of the [Act] ... to zone land for an activity when the infrastructure necessary to allow that activity to occur without adverse effects on the environment does not exist, and there is no commitment to provide it.

[93] It is accordingly open to a Council to refuse a plan change on the grounds that it would cause unnecessary expense to the ratepayers.[25] It is also a lawful basis on which to refuse an application for resource consent.[26]

[94] But these propositions all arise out of proposals, whether in the form of plan changes or applications for resource consent, where the need for new or further infrastructure was acknowledged as a direct consequence of allowing new development. In the *Coleman* case, which related to a subdivision proposal, the Environment Court's assessment of the overall proposal concluded that it *sent all the wrong signals to the community* and entailed much more than the direct effects of the subdivision itself. In the present case, both the plan provisions for the Mixed Rural Zone and evidence of the existing environment indicate that fill activities are planned for and are widespread. So while we accept that the Court may decline resource consent where the effects of the new activity would exceed the capacity of the site and the surrounding environment, we are not convinced that the present case can be properly characterised in that way. In our view, the proposed fill activity is consistent with the relevant plan provisions and (subject to appropriate conditions) with the affected environment. We think that the real issue arising from this case relates to the management of the rural road resources in this and similar neighbourhoods.

[95] We note that the use of roads is a permitted activity under the Auckland Unitary Plan.[27] There was no discussion of this activity status before us, perhaps because the

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22 *Hall v McDrury* [1996] NZRMA 1 (PT).

23 *McIntyre v Tasman District Council* W 83/94.

24 *Foreworld Developments Ltd and ors v Napier City Council* W 008/2005 at [15].

25 *Prospectus Nominees v Queenstown Lakes District Council* C 74/97, citing *Bell v Central Otago District Council* C 4/97.

26 *Coleman v Tasman District Council* W 67/97; upheld on appeal: *Coleman v Tasman District Council* [1999] NZRMA 39 (HC).

27 Activity A67 in Table E.26.2.3.2 of the Auckland Unitary Plan provides for "Construction, operation,

rule may do little more than state a position that must apply in any event: counter-factually, we doubt that a Council could make a rule under which a person seeking to use a road first had to obtain a resource consent. But the rule and the counterfactual both demonstrate a much broader issue in relation to the extent to which the control of the use of roads may be limited under the RMA, at least in practical terms if not in legal theory.

[96] Roads are perhaps the oldest form of public infrastructure. The common law in relation to roads recognises two ancient rights:

i. that the public may pass and repass on a highway without let or hindrance;[28]
and

ii. that every person with property fronting a road may enter that property from and leave it to the road.[29]

[97] While those ancient rights endure, the boundaries of them are now the subject of many statutes and associated subordinate legislation which control or limit the exercise of them. For present purposes the most relevant are the Local Government Act 1974 (especially Part 21 relating to roads), the Land Transport Act 1998 and the Heavy Motor Vehicle Regulations 1974 now in force under the latter Act. This legislation confers on local authorities and road controlling authorities (in the Auckland Region, this is Auckland Transport[30]) broad powers to control the use of roads.

[98] Among the powers available that might be relevant in this case are the following:

(a) under s 319 of the Local Government Act 1974, a range of general powers including to construct, upgrade and repair all roads with such materials and in such manner as the council (here, Auckland Transport) thinks fit;

(b) under s 16A of the Land Transport Act 1998, the power by public notice to direct that any heavy traffic[31] or any specified kind of heavy traffic defined in

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use, maintenance and repair of road network activities" as a permitted activity on both existing and unformed roads. "Road network activities" is defined in Chapter J of that plan to include road carriageways and road pavements.

28 *Paprzik v Tauranga District Council* (1991) 1 NZRMA 73 (HC); *Hall v McDrury* [1996] NZRMA 1 (PT).

29 *Fuller v McLeod* [1981] 1 NZLR 390 (CA).

30 Sections 46 and 50, Local Government (Auckland Council) Act 2009.

31 Defined in the Regulations as the use of motor vehicles having a gross laden weight exceeding 3,500kg.

the notice may not proceed between any 2 places by way of any road or roads specified in the notice;

(c) under s 22AB(1) of the Land Transport Act 1998, the power to make a bylaw for the purposes of:

(c) prohibiting or restricting, absolutely or conditionally, any specified class of traffic (whether heavy traffic or not), or any specified motor vehicles or class of motor vehicle that, by reason of its size or nature or the nature of the goods carried, is unsuitable for use on any road or roads;

(d) for the safety of the public or for the better preservation of any road,—

(i) fixing the maximum speed of vehicles or of specified classes of vehicles on any road:

(j) designating any area, where that designation will have the effect of determining the speed limit in that area:

...

(i) providing for the giving and taking of security by or from any person that no special damage will occur to any road, bridge, culvert, ferry, or ford by reason of any heavy traffic:

(j) prohibiting any specified class of heavy traffic that has caused or is likely to cause serious damage to any road, unless the cost of reinstating or strengthening the road, as estimated by the Minister or the relevant road controlling authority, as the case may be, is paid previously:

(k) providing for the annual or other payment of any reasonable sum by any person concerned in any heavy traffic by way of compensation for any damage likely to occur as a result of the heavy traffic to any road, bridge, culvert, ferry, or ford:

(l) providing for the establishment, in accordance with section 361 of the Local Government Act 1974, of a toll to be levied on any class of heavy traffic: ...

(d) under regulation 3 of the Heavy Motor Vehicle Regulations 1974, the power to classify a road as Class C where it would be likely to suffer excessive damage by heavy motor vehicles if classified in Class I, with the consequence under regulation 5(5) that no person may operate any heavy motor vehicle on that Class C road except for the purposes of the delivery or collection of goods[32] or passengers to or from locations directly accessible only from that road; and

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32 Defined in s 2 Land Transport Act 1998 to mean "all kinds of movable personal property; and

(e) under regulation 10 of the Heavy Motor Vehicle Regulations 1974, the power, on reasonable grounds, to prohibit absolutely or conditionally the use on any specified road of heavy motor vehicles, or to prohibit those which exceed a specified axle weight where that is necessary to protect a road from excessive damage.

[99] In light of this range of methods, it is reasonable to consider whether the transport provisions rehearsed above should be read as excluding any scope for the operation of the Resource Management Act. This question arose in *Hall v McDrury*[33] in relation to a challenge to the Planning Tribunal's jurisdiction to make an enforcement order requiring a dairy farmer to cease the driving of dairy cows on a particular road except for certain limits. There was a stock driving bylaw in effect apparently under s 72 of the Transport Act 1962. His Honour Judge Skelton considered the issues in detail. He held that the common law right to use a road did not necessarily override the RMA.[34] He considered that the existence of other statutory powers in relation to the management of roads was not so inconsistent with or repugnant to the RMA that the statutes were incapable of standing together.[35] On that basis he held that as activities on roads may give rise to the kind of adverse effects that are the subject of ss 17 and 314 of the RMA, the Tribunal did have jurisdiction to make an enforcement order of the kind sought.

[100] It is pertinent to record that in his discussion of the High Court's decision in *Paprzik*, Judge Skelton also noted Fisher J's observation[36] that there may be no compelling reason for seeking to control roads through a district plan given the provisions of other legislative controls.

[101] It is also important to be clear that the Court has no authority to direct the Executive or any of its agencies as to any choice available in the exercise of that agency's powers, including the choice of doing nothing.[37] But in a contested case where the imposition of a regulatory control (such as a condition of a resource consent) is discretionary, we consider that it is a relevant consideration in the exercise of our discretion to look at the other options that may be available including any which appear

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includes articles sent by post, and animals." *Quaere* whether clean or managed fill material are "goods."

33 *Hall v McDrury* [1996] NZRMA 1 (PT).

34 Finding support for this in *Paprzik v Tauranga District Council* (1991) 1 NZRMA 73 (HC).

35 In terms of the approach adopted in *Stewart v Grey County Council* [1978] 2 NZLR 577 (CA).

36 *Paprzik v Tauranga District Council* (1991) 1 NZRMA 73 (HC) at 81.

37 *Bell v Central Otago District Council* C 4/97, cited with approval in *Coleman v Tasman District Council* [1999] NZRMA 39 (HC).

to be open to the agency itself. Further, this may be especially important where the consistent administration of such regulatory controls is particularly desirable because of the likelihood of directly comparable cases arising in the future.

[102] Although we accept that it would be within the scope of the Court's authority to do so, we do not consider it to be necessary or appropriate in this case to refuse resource consent for a managed fill on this site on the basis of future damage to Blackbridge Road. For the Court to make that decision in the present case would, we think, be for the Court to assume a role in the management of the road which would go beyond the ambit of resource management contemplated under the RMA.

[103] We also do not consider it appropriate to include the additional purpose sought by the Council in the review condition. To do so would simply put off for another day the resolution of the central issue. It would run a clear risk that the consent might be rendered nugatory on review or mean that the review would be substantially ineffectual from the point of view of the consent holder should the consent authority treat that risk as determinative.

[104] We consider that the road upgrading issue in this case can be squarely addressed by the road controlling authority through any of a number of options for the management of the road, as outlined above. We note that it may also be possible for the consent authority to address the broader issue through its policy on development contributions but, as we have already indicated, we cannot presume that the Council should make a policy to address these circumstances and so we do not give that any weight. These options may also enable one or both of those authorities to consider the most appropriate basis for enabling fill operations on sites with access via local roads while placing the burden of the cost of any damage to those roads on the person or persons who most appropriately should bear that cost, who may be the operators of the sites that receive the fill material, or the operators of the truck operations that transport the material on these roads, or the land developers whose activities generate the material.

Auckland Unitary Plan

[105] There are a number of objectives and policies within the AUP-OP directed at cleanfills and managed fills within rural zones.

- Policy H19.2.4(2)(b) recognises noise, dust, odour and traffic as usual effects associated with the use of land in rural zones for, amongst other activities, cleanfills, are a typical feature of rural zones.

- Policy H19.2.6(2) requires non-residential activities in the rural zone to be managed to avoid creating reverse sensitivity effects to contain and manage adverse effects on site and avoid, remedy or mitigate effects on traffic and the road network.
- Policy H19.2.6(4) states:

  Restrict cleanfills and managed fills in the rural-rural conservation and rural – countryside living zone. Where cleanfills are established in other zones:

  (a) They should not adversely affect or inhibit the use of surrounding land for production purposes or for carrying out any permitted restricted discretionary or discretionary activity; and

  (b) Their completed state should be in keeping with the appearance, form and location of existing rural character and amenity values.

While these policies refer to managed fills less often than cleanfills, we do not consider that they call for different treatment of them as land uses (as distinct from the management of their potential discharge effects) given they are likely to have the same effects in relation to landscape and visual, noise, traffic and roading. To the extent that they may have different effects in relation to dust or the ecology, there was no evidence put before us on which to make any differentiation in this case.

[106] We have concluded that any potential adverse effects arising from the operation of the fill site will be largely internalised on site or mitigated to an acceptable level. The land will revert to pasture on completion and its form and character will be in keeping with the surrounding rural landscape. The managed fill will not affect or inhibit the use of any surrounding rural land. Potential effects from heavy vehicles accessing the site on the road network and traffic safety have been accepted as either no more than minor or best addressed through non-RMA mechanisms. Taking these findings into account, we find the proposal does not offend the relevant general provisions for rural zones.

[107] The Mixed Rural zone purpose and description is set out in s H 19.4.1. The relevant objectives and policies for the Rural – Mixed Rural zone are:

H19.4.2 Objectives:

1. The existing subdivision pattern is used by a range of rural production activities and non-residential activities that support them.
2. The continuation of rural production and associated non-residential activities in the zone is not adversely affected by inappropriate rural lifestyle activity.
3. Rural character and amenity values of the zone are maintained while anticipating a mix of rural production non-residential and rural lifestyle activities.

H19.4.3 Policies:

1. Enable rural production, rural industries and rural commercial services that are compatible

with the existing subdivision pattern and recognise that these activities are significant elements of and primary contributors to rural character and amenity values.

2. Manage reverse sensitivity effects by:
   (a) Limiting the size, scale and type of non-rural production activities;
   (b) Retaining the larger site sizes within this zone;
   (c) Limiting further subdivision to new rural lifestyle sites; and
   (d) Acknowledging a level of amenity that it reflects the presence of:
      (i) Rural production and processing activities that generate rural odours, noise from stock and the use of machinery and the movement of commercial vehicles on the local road network; and
      (ii) Non-residential activities which may generate noise, light and traffic levels greater than those normally found in areas set aside for rural lifestyle activities.

[108] We consider that Ms Bell best summarised the position of the proposal in the context of these planning provisions in the Mixed Rural zone as:

> The Mixed Rural zone in which the subject site is located recognised that there are a number of rural production activities and non-residential activities, including cleanfills and managed fills which occur and need to continue to occur in the rural environment. The objectives and policies also recognise that the level of amenity which can be expected needs to take into account these non-residential activities which may generate noise, light and traffic levels greater than those associated with rural lifestyle areas. I consider that the proposal is consistent with the above objectives and policies; the actual and potential effects generated are consistent with that expected within a rural area. The key potential effects on amenity values being dust, noise, vibration, safety and efficiency of the road networks have been specifically addressed in the design mitigation measures and recommended conditions of consent.

This position was supported by Mr Scott.[38]

[109] We accept this evidence and find that the proposal is consistent with the objectives and policies for rural zones within the AUP-OP.

[110] Section E3 of the AUP-OP sets out provisions related to the management of lakes, rivers, streams and wetlands. Broadly these provisions direct that permanent loss of these features is to be minimised and significant modification avoided. In some circumstances where adverse effects cannot be avoided, remedied or mitigated, offsetting compensatory action can be considered.

[111] Objectives E 3.2(1) to (6) specify the protection and management requirements for streams and wetlands on the site. The natural values of these features on this site are considered by the ecologist witnesses to be low and onsite enhancement is proposed to offset the permanent loss of the ephemeral stream and wetland areas.

38 Scott EIC at para 75.

The loss of these areas is inevitable as fill material is to be placed in the gully where they exist. No significant ecological area (SEA) is affected by fill and areas identified as SEA on the property are to be protected and enhanced through appropriate conditions of consent proposed by Norsho Bulc. No permanent stream areas will be lost as a result of this managed fill.

[112] It was not in dispute that filling the two north facing gullies on the site would inevitably remove the low value ephemeral streams and wetlands from these gullies, but that any adverse ecological effects would be more than adequately compensated by the protection and ongoing management proposed for the remaining northern streams and wetlands. As a consequence, we agree with the planners that the proposal is not contrary to the relevant objectives and policies for the lakes, rivers, streams and wetlands in the AUP.

Section 104D RMA

[113] The non-complying activity status of the proposal on a bundled basis requires consideration under the relevant provisions of s104D RMA. This states that a consent authority may only grant consent provided it is satisfied that:

(a) The adverse effects on the environment will be minor; or

(b) The application is for an activity that will not be contrary to the objectives and policies of the relevant planning documents.

[114] It was not in dispute in submissions from the parties that the proposal passed at least the second of these gateway tests and could therefore be considered for grant under s. 104.

[115] Dr Bellingham confirmed in response to questions from Mr Savage that he agreed with Ms Bell and Ms Scott that the proposal met the jurisdictional test for non-complying activities under s 104D.[39] In doing so, he acknowledged that the proposal was not contrary to the relevant objectives and policies for rural zones in the AUP.

[116] We have concluded that any adverse effects from operation of the fill and of heavy vehicles accessing the site along Blackbridge Road will be no more than minor for consenting purposes under the RMA, leaving open the possibility that Auckland Transport may manage the road and potential effects of heavy traffic on it in some other way to address its concern about protection of the pavement.. The application therefore also passes the first of the gateway tests.

39 Transcript page 247, line 22.

Section 104

[117] Section 104(1) directs that regard must be had for:

(a) Any actual and potential effects on the environment of allowing the activity;
(b) Any relevant provisions of a plan in this case the AUP-OP; and
(c) Any other relevant matters.

Positive Effects

[118] Cleanfill and managed fill operations are a consequence of residential, commercial and industrial development that is projected to continue apace in this part of the Auckland region. The location of the site in close proximity to this development reduces the need for longer haul heavy traffic journeys to more remote rural areas with consequent reductions and fuel use and road maintenance. It also avoids the inefficient deposition of clean material at sanitary landfill sites.

[119] The proposal is of a large enough size to support a fully controlled and managed operation which may reduce demand for smaller sites in the area. The site will support development year around, including the winter period when smaller fill sites cannot receive wet material.

[120] Riparian protection and enhancement proposed for the northern streams and wetlands outside the operational fill area are a positive environmental gain and the completed fill will enhance the suitability of the site for pastoral farming.

Adverse effects

[121] The proposed fill activity is considered by many in the local community as likely to have adverse effects on the lifestyle amenity of a rural area containing a growing number of residential properties. We have found these adverse effects to be no more than minor. Of themselves, the adverse effects are not significant enough to warrant decline of consent.

Plan provisions

[122] Provision is made for managed fill operations in the operative Auckland Unitary Plan. In the proposed location, the application is consistent with the provisions of the plan and the final proposal before us fully addresses all matters requiring assessment under these provisions.

[123] No other matters were brought to our attention requiring consideration under s 104(1)(c).

Conditions

[124] As requested by the Court at the conclusion of the hearing, the planners called by Norsho Bulc, the Council and the Society drafted an agreed set of consent conditions to assist the Court. These conditions run to some 26 pages and are very comprehensive. We have accepted these draft conditions in full, with the exception of condition 15 providing for review under s128 RMA and a minor amendment to Traffic Management Plan provisions requested by the Society.

[125] We see no need in this case for a general review provision as we consider all potential adverse effects have been identified in evidence and addressed through conditions. We have considered the issue of Blackbridge Road pavement effects separately, concluding that a review provision as promoted by the Council is not the appropriate approach. Draft condition 15 has been removed from the final consent Conditions.

[126] The Society continues to oppose the 10 year grant of consent. We have accepted the application from Norsho Bulc, supported by the Council, for a time frame that enables flexibility to cater to uncertain demand over time for the facility. We have noted earlier that if demand leads to the maximum allowed daily truck movements continuously, the fill will be completed in around 3 years. Should demand be less, the fill will obviously take longer to complete. We accept that a 10 year consent period is reasonable in this circumstance.

[127] The Society has requested a minor addition to Appendix A: Traffic Management Plan to include "riders, pedestrians and cyclists" as subsets of "public". We have no difficulty in accepting this and have amended section 5 of the provisions for the Traffic Management Plan accordingly.

The Council's decision

[128] We are required to give consideration to the Council's decision under s290A RMA. As noted in the introduction to this decision the Council, following a hearing before independent Commissioners, refused consent for the application on a number of grounds. The application has been modified to introduce mitigation measures addressing the adverse effects considered by the Commissioners to in some instances be more than minor. We have considered this modified application under s.104.

[129] The initial application was made under the then operative Auckland District Plan – Rodney Section and assessed by the Commissioners under the provisions of that Plan. Since the initial decision the relevant sections of the Auckland Unitary Plan have been

made operative. The AUP provisions relating to managed fills are quite different from those in the ACDP-RS.

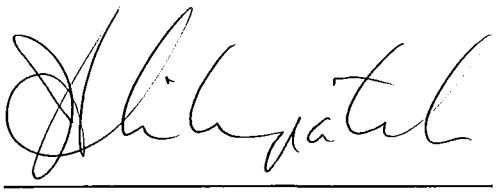
[130] For these reasons we place little weight on the Council decision. We note that the Council now supports the modified application.

Outcome

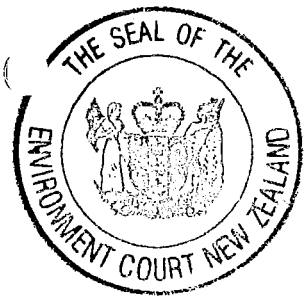
[131] The appeal by Norsho Bulc Ltd is upheld. Resource consents are granted subject to conditions as attached to this decision as Appendix 1.

[132] In relation to costs, given the evolution of the proposal as described in the introductory sections of this decision and in our consideration of the Council's decision, we do not encourage any application. If notwithstanding that indication any party seeks costs, then an application must be made within 10 working days of receipt of this decision and the party against whom costs are sought must respond within a further 5 working days.

For the court:

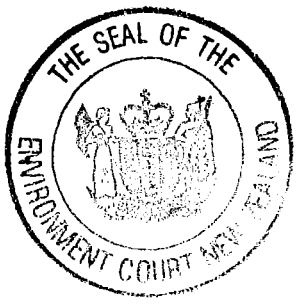


D A Kirkpatrick
Environment Judge



Appendix 1

CONSENT CONDITIONS – NORSHO BULC LTD



CONSENT CONDITIONS – NORSHO BULC LTD

Consent is granted to a managed fill operation and associated activities which will allow for the importation of approximately 600,000m^3 of managed fill over a ten year period.

General Conditions

1. The activity shall be carried out in accordance with the plans referenced below:

Plan / table title and reference	Author	Rev	Date
Draft Site Management Plan	Hazel Hewitt and Associates Ltd		May 2016
Managed Fill Operation – Integrated Earthworks Consents	Hazel Hewitt and Associates Ltd		May 2015
Revised table – Acceptance managed Fill Criteria	Hazel Hewitt and Associates Ltd		August 2015
Sediment Retention Pond Sizes and Supporting Calculations	Hazel Hewitt and Associates Ltd		
Phase A – Erosion and Sediment Control Management Plan for Northern Stage 1, file no 11200/06, sheet C1.1	Airey Consultants Ltd	B	31/08/15
Phase B – Erosion and Sediment Control Management Plan for Northern Stage 1, file no 11200/06, sheet C1.2	Airey Consultants Ltd	B	31/08/15
Phase C – Erosion and Sediment Control Management Plan for Northern Stage 1, file no 11200/06, sheet C1.3	Airey Consultants Ltd	B	31/08/15
Phase D – Erosion and Sediment Control Management Plan for Northern Stage 1, file no 11200/06, sheet C1.4	Airey Consultants Ltd	B	31/08/15
Phase E – Erosion and Sediment Control Management Plan for Northern Stage 1, file no 11200/06, sheet C1.5	Airey Consultants Ltd	B	31/08/15
Overall Plan for Northern Stage 1, file no 11200/06, sheet C1.6	Airey Consultants Ltd	A	31/08/15
Cross Section A-A' & B-B details Northern Stage 1, file no 11200/06, sheet C1.12	Airey Consultants Ltd		Feb 2015
Erosion and Sediment Control Details, file no 11200/06, sheet C1.14	Airey Consultants Ltd		Feb 2015
Sediment Retention Pond 1 Details, file no 11200/06, sheet C1.15	Airey Consultants Ltd	A	31/08/15
Proposed Accessway Plan, file no 11200/06, sheet C2.1	Airey Consultants Ltd	F	14/09/16
Long Section Chainage 300 – 580m,	Airey Consultants	B	30/03/16

file no 11200/06, sheet C2.3	Ltd		
Long Section Chainage 580 – 880m , file no 11200/06, sheet C2.4	Airey Consultants Ltd	C	01/04/16
Long Section Chainage 880 – 1161.78m, file no 11200/06, sheet C2.5	Airey Consultants Ltd	C	01/04/16
Proposed Accessway Chainage 0 to 360m, file no 11200/06, sheet C2.10	Airey Consultants Ltd	A	16/04/16
Proposed Accessway CH 360 to 600m Plan and Proposed Cross Sections, file no 11200/06, sheet C2.11	Airey Consultants Ltd	A	16/04/16
Proposed Accessway CH 600 to 880m Plan and Proposed Cross Sections, file no 11200/06, sheet C2.12	Airey Consultants Ltd	B	16/04/16
Proposed Accessway CH 820 to 1100m Plan and Proposed Cross Sections, file no 11200/06, sheet C2.13	Airey Consultants Ltd	A	16/04/16
Proposed Fencing of Significant Ecolgical Area and Proposed Planting Areas Sheet 1 of 3, file no 11200/06, sheet C2.15	Airey Consultants Ltd	D	21/12/16
Proposed Planting Areas Sheet 2 of 3, file no 11200/06, sheet C2.16	Airey Consultants Ltd	A	12/12/16
Proposed Planting Areas Sheet 3 of 3, file no 11200/06, sheet C2.17	Airey Consultants Ltd	A	19/12/16
Before and After Camera Views Sheet 1 of 2, file no 11200/06, sheet C2.18	Airey Consultants Ltd		March 15
Before and After Camera Views Sheet 2 of 2, file no 11200/06, sheet C2.19	Airey Consultants Ltd		March 15
Stormwater Management Plan, file no 11200/06, sheet C3.1	Airey Consultants Ltd	F	01/04/15

2. The consent holder shall pay the Council an initial consent compliance monitoring charge of $8,400 (inclusive of GST) – ($140 x 60 visits), plus any further monitoring charge or charges to recover the actual and reasonable costs that have been incurred to ensure compliance with the conditions attached to this consent.

Advice Note:

The initial monitoring charge is to cover the cost of inspecting the site, carrying out tests, reviewing conditions, updating files, etc, all being work to ensure compliance with the resource consent. In order to recover actual and reasonable costs, inspections, in excess of those covered by the base fee paid, shall be charged at the relevant hourly rate applicable at the time. The consent holder will be advised of the further monitoring charge or charges as they fall due. Such further charges are to be paid within one month of the date of invoice. Only after all conditions of the resource consent have

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been met, will Council issue a letter confirming compliance on request of the consent holder.

Lapse of consent

3. Under section 125 of the RMA, these consents lapse 5 years after the date they are granted unless:

   a. The consents are given effect to; or

   b. The Council extends the period after which the consents lapse.

Commencement

4. The Team Leader – Northern Monitoring, Auckland Council shall be notified at least five (5) working days prior to any work commencing on the subject site.

   Advice Note:

   The above condition requires the consent holder to notify Council of their intention to begin earthworks a minimum of five working days prior to commencement. Such notification is to be sent to the Monitoring Unit at monitoring@aucklandcouncil.govt.nz or 0800 4265169 to advise of the start of works.

5. Prior to the commencement of the earthworks and / or filling activities, the consent holder shall provide a topographical survey plan of the proposed works area.

Managed Fill Management Plan

6. One month prior to the commencement of the managed fill operations the consent holder shall submit a Managed Fill Management Plan (MFMP) to the Team Leader – Northern Monitoring, Auckland Council for approval. The MFMP shall include:

   a. Copies of this consent;

   b. Timeframes for key stages of the works authorised under this consent;

   c. Copies of operational management plans:

      i. Traffic Management Plan (TMP);

   d. Copies of the environmental management plans:

      i. Site and Managed Fill Management Plan (SMFP);

      ii. Geotechnical Management Plan (GMP);

      iii. Ecological Compensation Plan (ECP);

      iv. Erosion and Sediment control plan (ESCP);

      v. Chemical Treatment Management Plan (CTMP);

      vi. Noise and Vibration Management Plan (NVMP); and

      vii. Air Quality Management Plan (AQMP).

Appendix A sets out the requirements for each of the Management Plans listed above.

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Advice Note:

For clarity, the commencement of the managed fill operation is when first truckload of managed fill material is received.

The council acknowledges that the Management Fill Management Plan (MFMP) is intended to provide flexibility of the management of the managed fill activity. Accordingly, the MFMP may need to be updated. Any updates should be limited to the scope of this consent and consistent with the conditions of this consent.

Pre-start meeting

7. Prior to the commencement of any earthworks on the site, the consent holder must hold a pre-start meeting that:

   - is located on the subject site;
   - is scheduled not less than five (5) working days before the anticipated commencement of earthworks;
   - includes Auckland Council officer(s); and
   - includes representation from the contractors who will undertake the works.

   The meeting shall discuss the erosion and sediment control measures, the earthworks methodologies and the landscape mitigation management plan and shall ensure all relevant parties are aware of and familiar with the necessary conditions of this consent.

   A further pre-start meeting shall be held prior to the commencement of the managed fill activity (i.e prior to the consent holder receiving the first truck load of managed fill material). At this second pre-start meeting the meeting shall discuss the measures and information set out above as well as the contents of the Management Fill Management Plan (**Condition 6**).

   Advice Note:

   To arrange the pre-start meeting please contact the Team Leader – Northern Monitoring, Auckland Council on 09 301-0101. The conditions of consent are to be discussed at this meeting. All additional information required by the Council is to be provided two days prior to the meeting.

   In the event that minor amendments to the Erosion and Sediment Control Plan are required, any such amendments are to be limited to the scope of this consent. Any minor amendments are to be provided to the Team Leader – Northern Monitoring, Auckland Council prior to implementation to confirm that they are within the scope of this consent.

Complaints Register

8. The consent holder shall maintain a permanent record of any complaints received alleging adverse effects from or related to the exercise of this permit. This record shall include the following, where practicable:

   a. The name and address of the complainant, if supplied;

b. Date, time and details of the alleged event;

c. Investigations undertaken by the permit holder in regards to the complaint and any measures adopted to remedy the effects of the incident/valid complaint; and

d. Measures put in place to prevent occurrence of a similar incident.

9. A copy of the complaints register required by **Condition 8** shall be provided to the Team Leader – Northern Monitoring, Auckland Council, within two working days of a request being made by Council.

10. The consent holder shall provide the Team Leader – Northern Monitoring, Auckland Council the contact details (name, email and telephone) of the site manager for public communication prior to the commencement of the filling operations.

Site Closure Report

11. A Site Closure Report (SCR) shall be submitted to the Team Leader – Northern Monitoring, Auckland Council within three (3) months following the completion of the filling operations. The SCR shall include all data collected from the commencement date of this Resource Consent and up until the completion of the filling operation. The report shall be to a standard acceptable to the Team Leader – Northern Monitoring, Auckland Council. The SCR shall address the following matters as a minimum:

    a. Summary of the works undertaken, including a statement confirming whether the filling of the site has been completed in accordance with the Managed Fill Management Plan required by **Condition 6** and the conditions of this consent.

    b. Finished surveyed contour plan showing the final contours / levels of the fill area. The final survey and plan shall confirm that the fill was placed to the consented levels and demonstrate that the consented volume has not been exceeded. The surveys shall be completed by a registered professional surveyor.

    c. Summary of the testing undertaken in accordance with the conditions of this consent, including tabulated analytical results, and interpretation of the results in the context of the requirements of **Condition 61**, the contaminated land rules of the Auckland Unitary Plan – Operative in Part and the National Standard for Assessing and Managing Contaminants in Soil to Protect Human Health including for rural residential (25% produce) land use or relevant guideline derived in accordance with the Contaminated Land Management Guidelines, No.2 – Hierarchy and Application in New Zealand of Environmental Guideline Values, Ministry for the Environment (revised 2011).

    d. Copies of all laboratory transcripts.

    e. Disposal dockets for any material removed from the site.

    f. Details regarding any complaints and/or breaches of the procedures set out in the Managed Fill Management Plan required by **Condition 8** and the conditions of the consents.

    g. Copy of the electronic site register/log book.

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Community Liaison Committee

12.

a. The consent holder shall establish and maintain a Community Liaison Committee to consider and discuss the operations and effects of the managed fill on a regular basis, subject to the invitees' willingness to participate. This Committee shall comprise:

   i. A representative of Auckland Council appointed by the Team Leader - Northern Monitoring.

   ii. At least two representatives from the consent holder company, one whom is involved in operations and one whom is involved with management.

   iii. At least two representatives of Blackbridge Road Environmental Protection Society Inc.

b. Contact details (phone and email) of all committee members shall be circulated at the first meeting.

c. The Committee shall be convened by the consent holder, who shall meet the administrative meeting costs. The consent holder shall convene the first Committee meeting prior to the commencement of the managed fill activity and shall meet thereafter at a frequency of not less than twice yearly from the commencement of these consents, and unless otherwise agreed between the consent holder and the other committee members.

d. The purpose of the committee shall be to disseminate information, to hear concerns of committee members and to discuss ways of addressing those concerns. The consent holder shall keep the minutes of all meetings, and shall no less than 15 days before each meeting distribute to each committee member a copy of the last meeting's minutes along with copies of relevant reports detailing matters relating to compliance with conditions of these consents. Such copies shall include (but not be limited to):

   i. A report on timeframes for key stages of the works authorised under these consents;

   ii. Any report on the truck number movements required by these consents;

   iii. A copy of the managed fill management plan (MFMP) or any approved changes to the MFMP.

e. The Consent Holder may, in consultation with the Team Leader – Northern Monitoring, Auckland Council, develop and modify the form and forum for the Community Liaison Committee over time and may use other consultative mediums (including electronic or web-based mediums) to assist with achieving the outcomes of this condition.

f. Contingent on receiving approval in writing from the Team Leader – Northern Monitoring, Auckland Council , the Consent Holder may discontinue the Community Liaison Committee once it is apparent that attendance at the

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Community Liaison Committee is at a level which indicates a lack of desire from the Blackbridge Road Environmental Protection Society to utilise this forum.

g. In determining whether to approve the discontinuance of the Community Liaison Committee, the Team Leader – Northern Monitoring, Auckland Council shall have regard to the consultation undertaken by the consent holder with the attendees of the Community Liaison Committee or obtain a record of consultation with those attendees.

Monitoring and Review

13. Auckland Council Officers shall have access to the property for the purpose of carrying out inspections, surveys, investigations, tests, measurements and/or to take samples, and to view the records of any measurements the Consent Holder is obliged to record and the register of complaints. Access however must be pre-arranged with the consent holder due to OSH regulations.

14. All personnel working on the site shall be made aware of and have access to the contents of this consent document and the associated MFMP.

Conditions relating only to land use consents LAN-64858 (filling operation), REG-64859 (earthworks) and REG-64861(streamworks)

Duration

15. LAN-64858 shall expire 10 years after the date 'works commence'. The 'works commence' refers to when the Consent Holder accepts the first truckload of managed fill material. The pre-start meeting required by **Condition 7** must occur 5 working days prior to the date that 'works commence'.

    If the date is not advised of when work has commenced, the date will be taken as the granting of these consents unless they have been surrendered or been cancelled at an earlier date pursuant to the RMA.

16. The Consent Holder must notify the Team Leader – Northern Monitoring, Auckland Council at least 2 working days prior to the arrival of the first truckload of managed fill material.

Site register

17. An electronic fill site register of each fill load tipped shall be kept with the following information:

    - Date and time of delivery
    - Account holder's name
    - Vehicle registration
    - Vehicle capacity
    - Origin (address from where the fill material originated) and type of material being deposited e.g. topsoil, clay, aggregate, soil (including any known land use history of source if possible)

- Copies of laboratory details of analytical testing (where required)
- Signature
- Daily tally of vehicle deliveries
- Tonnage of fill tallied on a daily basis.

The register is to be available for inspection by Team Leader – Northern Monitoring, Auckland Council , or similar person upon request. The site register information shall be provided on a six monthly basis to the Team Leader – Northern Monitoring, Auckland Council at all times.

Streamworks

18. Prior to the cleaning out and infilling of any of the stream channels authorised by the granting of consent REG-64861, details regarding the methods for fish relocation from the existing stream channels shall be provided for the written approval of the Team Leader – Northern Monitoring, Auckland Council . Any fish relocation requirements shall be undertaken by a suitably qualified freshwater ecologist. Written confirmation that the works have been carried out appropriately in this regard, shall be provided to the Team Leader, Northern Monitoring prior to cleaning out and infilling commencing.

19. The ecological enhancement measures within the approved ECP shall be implemented progressively starting within the first planting season following the commencement of filling operations and shall be completed by the completion of the third planting season following the commencement of filling operations.

20. The fencing of the riparian margins to be planted as part of the ecological enhancement measures can be staged provided that:

    a. All fencing must be completed within 3 years from the commencement of the filling operations; and

    b. The east/west stream buffer shall be fenced at least 20m from the wetted margin, all other streams in the north eastern portion of the site shall be fenced at least 10 metres from the wetted margin; and

    c. Fencing of the buffer area of the east/west stream immediately to the north of the managed fill must be completed following the completion of earthworks required for the preparation of the site and prior to the commencement of filling operations (for avoidance of doubt this relates to all buffer areas to the south of east/west stream).

Written confirmation shall be provided to the Team Leader – Northern Monitoring, Auckland Council, within 60 days of completion of the ecological enhancement measures, confirming that the measures within the approved ECP have been completed in accordance with the above requirements.

21. Vegetation removal: Scouting/Surveying and rescue wildlife condition

    a. Prior to the removal of the native vegetation on the site, the consent holder shall employ a suitably qualified and experienced ecologist/herpetologist to carry out the following methods:

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i. place Artificial Cover Objects (ACO's) or Live Capture Traps (e.g. pitfall traps or funnel traps which need to be checked daily by a suitably qualified and experienced ecologist/herpetologist) on site for *at least five days and nights*, or

ii. any other scouting/surveying method agreed between the consent holders ecologist/herpetologist and the Team Leader (*North/West*) Biodiversity.

b. Following the scouting/surveying required above, if indigenous lizards are found to be present on site, a suitably qualified and experienced ecologist/herpetologist shall be onsite during the removal of any native vegetation to supervise all and any habitat removal in order to search for and rescue any indigenous lizards found and relocate them to the suitably alternative location on the site.

c. Upon completion of works, all findings resulting from the scouting and search and rescue during native vegetation removal condition shall be recorded by a suitably qualified and experienced ecologist/herpetologist on the Department of Conservation's Amphibian and Reptile Distribution Scheme (ARDS). A copy shall also be sent to the Team Leader (North/West) Biodiversity.

Limitation of earthworks area

23. The maximum area open (bare earth) at the site at any one time during any earthworks season (1 October – 30 April of any year) shall be no greater than 3.0ha (combined) and no greater than 1.5ha (combined) during any winter season (1 May – 30 September) unless an increased limit has first been approved in writing by the Team Leader – Northern Monitoring, Auckland Council, at least two weeks prior to 30 April of any year.

Abandonment or Completion

24. Upon abandonment or completion of earthworks on the subject site, all areas of bare earth shall be permanently stabilised against erosion to the satisfaction of the Team Leader – Northern Monitoring, Auckland Council within 10 working days of abandonment/completion.

This shall include contouring, compaction, and stabilisation of the earthworked area, and fencing to a stock proof standard to keep stock off the area until complete grass cover has established. Stock proof fencing of the earthworked area is only applicable if there is potential for stock to gain access onto the area to be stabilised.

Advice Note:

Should the earthworks be completed or abandoned, bare areas of earth shall be permanently stabilised against erosion. Measures may include:

- *the use of mulching*
- *top-soiling, seeding and mulching of otherwise bare areas of earth*
- *aggregate or vegetative cover that has obtained a density of more than 80% of a normal pasture sward*

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The on-going monitoring of these measures is the responsibility of the consent holder.

It is recommended that you discuss any potential measures with the Council's monitoring officer who will guide you on the most appropriate approach to take. Please contact the Team Leader – Northern Monitoring, Auckland Council for more details. Alternatively, please refer to Auckland Regional Council, Technical Publication No. 90, Erosion & Sediment Control: Guidelines for Land Disturbing Activities in the Auckland Region.

Erosion and Sediment Control

25. A silt fence, constructed in accordance with GD2016/26, shall be installed below the excavations required to construct the sediment retention ponds, prior to the construction of the ponds commencing.

26. Prior to bulk earthworks commencing, a certificate signed by an appropriately qualified and experienced person shall be submitted to the Team Leader – Northern Monitoring, Auckland Council to certify that the erosion and sediment controls have been constructed and or updated in accordance with the ESCP as referred to through **condition 6** of this consent.

    Certified controls shall include the clean water diversions and sediment retention pond. Certification for these measures shall be supplied immediately upon completion of construction of those measures. Information supplied if applicable, shall include:

    a. Location of the structure;

    b. Contributing catchment area;

    c. Shape of structure/control (including dimensions);

    d. Position of inlets/outlets; and

    e. Stabilisation of the structure.

27. There shall be no deposition of earth, mud, dirt or other debris on any public road or footpath resulting from earthworks activity on the subject site. In the event that such deposition does occur, it shall immediately be removed to the satisfaction of the Team Leader – Northern Monitoring, Auckland Council . In no instance shall roads or footpaths be washed down with water without appropriate erosion and sediment control measures in place to prevent contamination of the stormwater drainage system, watercourses or receiving waters.

    Advice Note:

    In order to prevent sediment laden water entering waterways from the road, the following methods may be adopted to prevent or address discharges should they occur:

    - *provision of a stabilised entry and exit(s) point for vehicles;*
    - *provision of wheel wash facilities;*
    - *ceasing of vehicle movement until materials are removed; and/or,*
    - *cleaning of road surfaces using street-sweepers.*

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It is recommended that you discuss any potential measures with the Team Leader – Northern Monitoring, Auckland Council who may be able to provide further guidance on the most appropriate approach to take. Alternatively, please refer to Auckland Council, Technical Publication No. 90, Erosion and Sediment Control Guidelines for Land Disturbing Activities in the Auckland Region.

28. All earthworks shall be managed to ensure that no debris, uncontrolled soil, silt, sediment or sediment-laden water is discharged from the subject site either to land, stormwater drainage systems, watercourse or receiving waters. In the event that discharge occurs, works shall cease immediately and the discharge shall be mitigated and/or rectified to the satisfaction of the Team Leader – Northern Monitoring, Auckland Council.

29. The operational effectiveness and efficiency of all erosion and sediment control measures specifically required by the erosion and sediment control plan referred to through **condition 6** shall be maintained throughout the duration of earthworks activity, or until the site is permanently stabilised against erosion. A record of any maintenance work shall be kept and be supplied to the Team Leader – Northern Monitoring, Auckland Council on request.

30. The site shall be progressively stabilised against erosion at all stages of the earthwork activity, and shall be sequenced to minimise the discharge of sediment and contaminants to air, groundwater or surface water.

Advice Note:

Earthworks shall be progressively stabilised against erosion during all stages of the earthwork activity. Interim stabilisation measures may include:

- *the use of waterproof covers, geotextiles, or mulching; or*
- *aggregate or vegetative cover that has obtained a density of more than 80% of a normal pasture sward.*

It is recommended that you discuss any potential measures with the Council's monitoring officer who may be able to provide further guidance on the most appropriate approach to take. Please contact the Team Leader – Northern Monitoring, Auckland Council for more details. Alternatively, please refer to GD 2016/26

<u>Geotechnical</u>

31. All monitoring instruments (except the groundwater piezometers within fill material) must be installed prior to commencement of filling works.

    i. Piezometers within the fill material shall be installed as filling progresses.

    ii. These instruments must be installed under observation/supervision by KGA Geotechnical Limited or other suitably qualified geotechnical engineer.

32. KGA Geotechnical Limited or other suitably qualified geotechnical engineer shall undertake all engineering inspections during construction and at the following hold points:

a. Following topsoil stripping.

b. Construction of subsoil drainage to confirm the adequacy of drainage and to direct the Contractor to construct additional drainage measures, if required.

c. Inspection of silt pond construction.

d. Inspection of shear key and undercuts to confirm adequacy

e. Regular (3 monthly) fill inspections to ensure the:

i. Nature of the soil visible in the embankment is acceptable as managed fill material;

ii. Maximum loose lift thicknesses of the fill prior to compaction are not exceeding specified dimensions;

iii. Correct number of passes of appropriately sized tracked machines / compaction equipment are being applied to each layer of fill; and

iv. Range of undrained shear strengths of each completed fill layer fall within agreed / specified limits.

33. Stormwater around the fill area shall be managed (by swale drains) and checked on a daily basis by operations staff to avoid ponding.

Landscaping planting

34. The consent holder shall submit a Landscape Mitigation and Management Plan (LMMP) for approval by the Team Leader, Northern Monitoring, Auckland Council. The Plan shall be submitted and approved prior to the commencement of any earthworks.

35. The LMMP shall include the following information which shall be generally consistent with the plans referenced in condition 1 and the evidence of Ms Jan Woodhouse to the Environment Court dated April 2017:

a. The location, shape and extent of the proposed earthworks, mounds and bunds for the purpose of visual mitigation. The design and location of the mounds and bunds shall be generally consistent with the Airey Consultants drawing numbers 11200/06 C2.1 Rev F, 11200/06 C2.12 Rev B, 11200/06 C2.13 Rev A and 11200/06 C2.16 Rev A however the profile of the bunds shall be such that they merge naturally with the existing landform.

b. Proposed planting for the purpose of visual mitigation. The landscape mitigation planting shall be generally consistent with Airey Consultants drawing numbers 11200/06 C2.15 Rev D, 11200/06 C2.16 Rev A and 11200/06 C2.17 Rev A, and Appendices A and B of the evidence of Jan Woodhouse. For clarity, the landscape mitigation planting only relates areas B1-B3, D, E and F on the plans referenced above; the planting of the riparian margins forms part of the ecological compensation works.

c. An implementation and maintenance programme including measures to control weed and pest species within the areas to be planted for the life of the managed fill operation.

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d. Provisions for replacement of plants, or species where appropriate, that die or are in poor health.

36. All earthworks, including bunding, mounding and topsoiling, of the landscape mitigation measures shall be completed prior to the commencement of filling operations on site (note this does not prevent the importation of fill material required to complete the landscape mitigation works). All landscape mitigation/screen planting, other than any enhancement/canopy planting and replacement planting required, shall be completed before the end of the planting season following the commencement of filling operations. Once established, the planting is to be maintained for the life of the managed fill operation.

Landscape Bond

37.

a. Pursuant to Section 108(2)(b) and 108A of the Resource Management Act 1991 a bond shall be entered into to cover all the maintenance (including the replacement and removal of dead specimens) aspects of the LMMP approved under Condition 35 and implemented under this condition for a period of not less than 3 years from the commencement of filling operations.

b. The amount of the bond shall be based on the approved schedule of the maintenance costs supplied in the LMMP submitted under Condition 35.

c. The bond shall be prepared by the Council's solicitor at the expense of the applicant and shall be drawn up if required by the council in a form enabling it to be registered pursuant to Section 109 of the Resource Management Act 1991 against the title to the land to which this bond relates.

d. The bond may be either a cash bond or bond that is guaranteed by a recognised trading bank in New Zealand. The bond shall be reduced by 33% in any one year on certification by an appropriately qualified person that the recommendations and maintenance operations identified in the LMMP approved under Condition 35 has been effectively carried out.

e. Notwithstanding any transfer of title by the consent holder to a new owner, the consent holder or subsequent nominees or representatives are to continue the implementation of the LMMP approved in Condition 35 for the 3-year period.

Hours of operation

38. Trucks visiting the site as part of the managed fill operation shall arrive no earlier than 7.00am Monday to Friday and no trucks shall enter the site after 5.00pm Monday to Friday. No trucks shall deliver fill material to the site on Saturdays, Sundays and public holidays and for a two week period over the Christmas period (23 December – 5 January).

39. The hours of operation of works on the site associated with the fill activity shall be as follows:

Monday to Friday	6.00am to 6.00pm
Saturday	8.00am to 1.00pm

No works shall be undertaken on the site on Sundays and public holidays and for a two week period over the Christmas period (23 December – 5 January). The works to be undertaken on a Saturday shall be limited to machine maintenance work, initial site preparation such as the construction of landscape bunds and mounds, the shear key and sediment control ponds and drainage as well as minor works, drainage, stripping and site maintenance.

Noise and Vibration

40. Noise level generated by the filling operation activity (including the use of a diesel generator to power the weighbridge) on the site when measured within the notional boundary of any existing dwelling shall comply with the maximum noise level of 55dBA/L_{eq} Noise levels shall be measured and assessed in accordance with the requirements of New Zealand Standards NZS 6801:2008 *Measurement of Sound* and New Zealand Standard NZS 6802:2008 *Acoustics – Environmental Noise.*

41. Monitoring of noise emission levels from the activity shall be undertaken at representative locations around the subject site as follows:

    a. Within four weeks of the commencement of operation of the managed fill;

    b. The results of the noise monitoring shall be provided to Team Leader – Northern Monitoring, Auckland Council within 14 days of the noise monitoring being undertaken;

    c. In the event that such monitoring reveals that the 55dBA/L_{eq} maximum noise limit is being exceeded, the Consent Holder shall take immediate remedial action to ensure that the noise limits are complied with unless further consents are obtained.

42. Construction noise from activities on the site shall comply with, and shall be measured and assessed in accordance with NZS 6803:1999 Acoustics – Construction Noise. For the purposes of this condition, construction works shall include the following activities:

    a. Establishment and maintenance of any cut-off or diversion drains, including clean water diversion drains, and silt fences, bunds and decants;

    b. The construction, removal, re-location, modification and maintenance of the shear key and toe bund and any temporary noise bunds designed as noise barriers;

    c. Excavation and maintenance of any settling ponds and perimeter drains around cuts, fills or borrow areas;

    d. Formation of accessways and associated swales;

    e. Final land surface reinstatement or treatments;

    f. Construction of temporary site access roads, public road entrances;

    g. Construction of the landscape mitigation measures;

but shall not include the following activities (which are associated with progressive routine cleanfill operations):

i. Progressive internal drain construction, including sediment drains, silt fences, bunds and decants (other than those within the proposed formed legal road) clearance maintenance or re-construction (as distinct from initial drain construction);

ii. Progressive site clearance, including progressive vegetation removal and progressive topsoil stripping and stockpiling;

iii. Progressive contouring, top-soiling and land-forming of cleanfill over-burden dump sites.

43. If justified noise or vibration complaints occur as a result of the works (as assessed by Council Officers) the consent holder shall engage an acoustic or vibration consultant at their cost to advise on whether the activities approved under these consents comply with the permitted standards. The noise and/or vibration assessment shall be carried out when the filling activity is in full operation.

Should noise and vibration levels exceed the permitted activity standards then noise or vibration mitigation measures recommended by the acoustic or vibration consultant shall be immediately implemented by the consent holder, and remain in place for the duration of the filling operation, to the satisfaction of the Team Leader – Northern Monitoring – Auckland Council unless further consents are obtained. The consent holder shall confirm in writing that the recommended noise and vibration mitigation measures have been implemented.

Dust and Odour

44. There shall be no dust or odour beyond the subject site as a result of the earthworks/filling activity that in the opinion of the Team Leader – Northern Monitoring, Auckland Council, is noxious, offensive or objectionable.

Automated atmospheric particulate monitor system

45. For the purpose of measuring dust conditions to the neighbouring dwellings located near the north-eastern and eastern boundaries of the filling area, one fully automated atmospheric particulate monitor system that is designed with an alert system is to be installed on the site's eastern boundary (midway between the dwellings at 246A Blackbridge Road (Lot 2 DP 434049) and 246B Blackbridge Road (Lot 3 DP 434049)) throughout the filling operation, which include construction related works. Once the dust monitor system is installed, the monitor is to be operated at all times with an alert system to be implemented and to be set off to alert the site operator and the manager of the filling operation. The alert system is to be set off when the trigger levels have been exceeded. The trigger levels can be found in Table 4 of the Good Practice Guide for Assessing and Managing Dust (Ministry for the Environment, 2016). These trigger levels are:

a. 1-hr averaging period = 250 µg/m³

b. 24-hour averaging period (rolling average) = 80 µg/m³

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46. When the dust monitor alert system is set off, action shall be taken to manage dust to an appropriate level as soon as practicably possible. Measures to be undertaken to mitigate, remedy or avoid dust effects to an appropriate level include but are not limited to:

    a. suspension of all operations if necessitated by the prevailing wind conditions;

    b. watering of all access roads, manoeuvring areas and stockpiles during dry periods and;

    c. top-soiling and grassing stockpiles if they are not worked for more than 1 month.

47. A record (throughout the filling operation) of the dust levels from the automated particulate monitor system is to be kept and to be made available for inspection by the Team Leader – Northern Monitoring, Auckland Council or similar person upon request. The record of the dust level from the automated dust monitor shall be provided on a six monthly basis to the Team Leader – Northern Monitoring, Auckland Council or similar person at all times.

48. All necessary measures shall be taken to prevent a dust nuisance to neighbouring properties and public roads; including, but not limited to:

    - The sealing of the site access road from the road entrance on Blackbridge Road to the wheel wash station.
    - Installation of a wheel wash facility.
    - Cleaning of the sealed access road as required.
    - Watering of all access roads, manoeuvring areas and stockpiles during dry periods;
    - Top-soiling and grassing stockpiles if they are not worked for more than 1 month;
    - Limiting vehicle speeds;
    - Suspension of all operations if necessitated by the prevailing conditions.

Traffic, Roads, Access and Parking

49. The use shall be restricted to a maximum of 80 truckloads of fill material (160 truck movements) in any one day, Monday to Friday.

50. There shall be no trucks or vehicles associated with the filling operation parked and / or queued on Blackbridge Road except where the trucks are waiting to turn onto Dairy Flat Highway from Blackbridge Road.

51. An enhanced warning system shall be installed either side of the one way bridge on Blackbridge Road prior to any filling works commencing. The system shall include a detector or activation button which triggers a flashing symbol to alert motorists travelling in both directions along Blackbridge Road that pedestrians, cyclists or horse riders are crossing the bridge.

52. On-site access shall not have grades that exceed 20%.

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53. If in the opinion of the Team Leader – Northern Monitoring, Auckland Council the road surface of Blackbridge Road within 50 metres either side of the site entrance is damaged as a result of the filling activity, beyond normal wear and tear expected, the consent holder shall repair the road surface to the satisfaction of the Team Leader – Northern Monitoring, Auckland Council. Such repair shall be at the expense of the consent holder.

Advice note:

The developer or contractor is advised that they will need to apply for a Corridor Access Request via www.beforeudig.co.nz prior to the commencement of works.

Public access

54. The site shall be secured by locked gate to prevent access by the general public.

Conditions relating only to REG-64860 – fill material

Duration

55. Discharge permit (REG-64860) shall expire 35 years after the date 'works commence'.

Advice note:

The works commence period commences from the arrival of the first truckload of fill material, which must be advised to the Team Leader – Northern Monitoring, Auckland Council. If the date is not advised of when work has commenced, the date will be taken as the granting of these consents unless they have been surrendered or been cancelled at an earlier dated pursuant to the RMA.

Cleanfill Cap

56. All imported Cleanfill material used to form the final cover, top 0.5m, shall:

    a. Comply with the definition of 'cleanfill' in the Ministry for the Environment publication 'A Guide to the Management of Cleanfills' (2002); and

    b. Be solid material of an inert nature; and

    c. Not contain hazardous substances or contaminants above recorded natural background levels of non-volcanic soils of the site.

Advice note:

*Background contamination levels for the site receiving cleanfill referred to by **condition 58** can be found in the Auckland Regional Council, Technical Publication No. 153, Background concentrations of inorganic elements in soils from the Auckland Region (2001).*

Managed Fill

57. All imported Managed Fill material shall:

    a. Comply with the definition of 'managed fill' as set out in the Auckland Unitary Plan – Operative in Part (Updated 14 December 2016).

b. Shall be placed at a depth 0.5 m or more below the surface of the new filling contours.

c. Shall be below the maximum chemical concentrations for fill as set out in the Table 1 below (managed fill acceptance criteria).

Testing of Material

58. Analytical testing of all imported fill material shall be undertaken for the chemical parameters listed in Table 1 below at a rate of no less than 1 sample per 500m^3 of imported fill material, excluding those loads from sites that have been pre-tested and/or pre-approved..

59. Fill originating from any horticultural site, or from any sites where there is evidence to suggest that an activity outlined on the Ministry for the Environments Hazardous Activities and Industries List has been, or is currently being, carried out, shall only be accepted by the consent holder:

a. Where those sites have been sampled and tested in accordance with the Contaminated Land Management Guidelines number 5 – Site Investigation and Analysis of Soils, Ministry for the Environment, revised 2011, by a suitably qualified and experienced contaminated land professional; and

b. Where the results of those investigations have been provided to the consent holder; and

c. Where those results meet the fill acceptance criteria as specified in Table 1 below.

60. The analytical testing required above shall demonstrate that the chemical parameter concentrations in the imported fill set out in Table 1 below are not exceeded.

Parameter	**Maximum Truckload Fill Concentration (<0.5m depth)**	**Maximum Truckload Fill Concentration (>0.5m depth)**
Arsenic	12	16
Cadmium	0.65	0.75
Chromium (total)	55	275
Copper	45	308
Lead	65	152
Mercury	0.45	0.71
Nickel	35	105
Zinc	180	380
TPH C7 –C9 C10 – C14 C15 – C36	 * * *	 20 50 100
Benzo(a)pyrene (equivalent)	*	2.15

DDX (DDT+DDD+DDE)	0.0	0.7

Table 1: Proposed Managed Fill Acceptance Criteria (mg/kg)

*Below the limit of detection for the screen level TPH, PAH, and OCP respectively.

Advice Note:

Any fill containing a potential contaminant that is not listed in Table 1 shall not be accepted unless the concentration of the contaminant is below the maximum concentration recorded in non-volcanic Auckland Soils (the Auckland Regional Council, Technical Publication No. 153, Background concentrations of inorganic elements in soils from the Auckland Region (2001).

Fill Inspection / Rejection

61. All fill loads shall be visually inspected at the tipping point disposal. The load shall be exposed, and spotters or plant operators fully trained in inspection and rejection procedures shall be used to verify the deposited material meets the criteria set out in Site and Fill Management Plan (SFMP) as required above. The load must be inspected within a maximum of 24 hours of being deposited onsite and prior to being added to the fill structure.

62. If any imported fill that does not meet the acceptance requirements identified in the SFMP required above or exceeds any of the maximum truckload fill concentrations listed in Table 1 above (managed fill acceptance criteria), it shall be removed to a suitably consented off-site disposal facility within two weeks of receiving laboratory test results confirming unacceptability. If the material fails any visual and olfactory checks then the material shall be rejected immediately.

Sampling and Testing During Fill Operation

63. All sampling of imported managed fill material, cleanfill and sediments from the sediment retention pond, shall be supervised by a suitably qualified and experienced contaminated land professional. All sampling shall be undertaken in accordance with the relevant conditions of this consent and Contaminated Land Management Guidelines number 5 – Site Investigation and Analysis of Soils, Ministry for the Environment, revised 2011. The person undertaking the sampling, under the supervision of a suitably qualified and experienced contaminated land professional must be trained in correct sampling procedure and the requirements of Contaminated Land Management Guidelines number 5 – Site Investigation and Analysis of Soils, Ministry for the Environment, revised 2011.

64. Results of testing shall be provided to the Team Leader - Northern Monitoring, Auckland Council on a 6 monthly basis.

Advice note:

Sampling and testing are required to comply with the Ministry for the Environment's Contaminated Land Management Guidelines (revised 2011), all testing and analysis is

to be undertaken in a laboratory with suitable experience and ability to carry out the analysis. For more details on how to confirm the suitability of the laboratory please refer to Part 4: Laboratory Analysis, of Contaminated Land Management Guidelines No.5.

Sediment Contaminant Sampling at Fill Completion

65. Sediment from the base of the sediment pond shall be sampled and analysed at the end of the filling operation. The sample shall only be collected after a period of at least 5 days from the last activation of the chemical treatment, i.e. flocculants being added to the sediment pond. The sample shall be tested for all of the parameters set out in Table 1 above with regard to managed fill acceptance criteria (including mercury) and the results sent to the Team Leader – Northern Monitoring, Auckland Council for review within one (1) month of the activation of the chemical treatment.

66. Sample results of the sediment from the base of sediment pond required by the condition above shall be compared to the ISQG – low trigger value in Table 3.5.1 (Recommended sediment quality guidelines) of Australian and New Zealand Guidelines for Fresh and Marine Water Quality (ANZEC 2000). If the sediment has contaminant concentrations above the ISQG – low trigger value, then an assessment of the environmental effect shall be undertaken to determine whether the exceedance(s) are attributable to the managed fill activity, and identify any potential adverse effects on surface water quality associated with the exceedance(s). The Team Leader – Northern Monitoring, Auckland Council shall be made aware of the exceedance(s) within five (5) working days of them being identified, and shall be provided with a copy of the assessment within one month

67. If the sediment sample results of the assessment undertaken in accordance with the above condition identify that the exceedance(s) in contaminant concentrations are attributable to discharges from the managed fill and adverse effects on surface water quality are occurring, then a contaminant contingency plan shall be provided with the required assessment of environmental effects to the Team Leader– Northern Monitoring, Auckland Council. The contingency plan shall be prepared by a suitably qualified and experienced contaminated land professional. The contaminant contingency plan will outline the measures and timescales to be undertaken by the consent holder to reduce or mitigate the adverse effects from the contaminant concentrations from the pond sediments on the receiving environment. The mitigation measures shall therein be implemented in accordance with the timeframes advised by the Team Leader – Northern Monitoring, Auckland Council.

Advice note:

Contingencies can include (but not be limited to) removal of the pond sediments and filling in the pond with cleanfill material or removal of the pond sediments and leaving the pond to become an ornamental feature onsite receiving surface water runoff from the stabilised fill site.

68. Results of testing shall be provided to the Team Leader - Northern Monitoring, Auckland Council on a 6 monthly basis.

Advice note:

Sampling and testing are required to comply with the Ministry for the Environment's Contaminated Land Management Guidelines (revised 2011), all testing and analysis is to be undertaken in a laboratory with suitable experience and ability to carry out the analysis. For more details on how to confirm the suitability of the laboratory please refer to Part 4: Laboratory Analysis, of Contaminated Land Management Guidelines No.5.

GENERAL ADVICE NOTES

1. *As the site will contain managed fill, any re-development of the site or earthworks within the vicinity of the fill area may require consent under the 'National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2011'.*

2. *In the event of archaeological site evidence (e.g. shells, middens, hangi or ovens, pit depressions, defensive ditches, artifactual material or human bones) being uncovered during construction, the consent holder shall ensure that operations shall cease in the vicinity of the discovery and that the archaeologist, Auckland Council, is contacted so that the appropriate action can be taken before any work may recommence there. Should earthworks on the site result in the identification of any previously unknown archaeological site, the land disturbance – Regional Accidental Discovery rule [E12.6.1] set out in the Auckland Unitary Plan Operative in part (November 2016) shall be applied.*

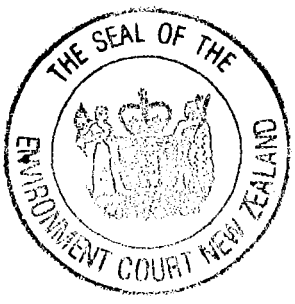
3. *The HNZPTA 2014 provides for the identification, protection, preservation and conservation of the historic and cultural heritage of New Zealand. Under s.2 of the Heritage New Zealand, an archaeological site is defined as a place associated with pre-1900 human activity where there may be evidence relation to history of New Zealand. All archaeological sites are protected under the provisions of the Heritage New Zealand Pouhere Taonga Act 2014 (HNZPTA). It is an offence under this Act to destroy, damage or modify any archaeological site, whether or not the site is entered on the Heritage New Zealand (HNZ) Register of historic places, historic areas, wahi tapu and wahi tapu areas. An authority is required for such work whether or not the land on which an archaeological site may be present is designated, or a resource, demolition or building consent has been granted, or the activity is permitted in a regional or district plan. It is the responsibility of the applicant (consent holder) to consult with the HNZ about the requirements of the HNZPTA and to obtain the necessary authorities under the HNZPTA should these become necessary as a result of any activity associated with the proposed development.*

4. *The consent holder shall obtain all other necessary consents and permits, including those under the Building Act 2004 and Signage Bylaws etc. This consent does not remove the need to comply with all other applicable Acts (including the Property Law Act 2007), regulations, relevant Bylaws, and rules of law. This consent does not constitute building consent approval. Please check whether a building consent is*

required under the Building Act 2004. Please note that the approval of this resource consent, including consent conditions specified above, may affect a previously issued building consent for the same project, in which case a new building consent may be required.

5. *A copy of this consent should be held on site at all times during the establishment and operation of the activity.*

6. *Compliance with the consent conditions will be monitored by Council in accordance with section 35(d) of the Resource Management Act. This will typically include site visits to verify compliance (or non-compliance) and documentation (site notes and photographs) of the activity established under the Resource Consent. In order to recover actual and reasonable costs, inspections, in excess of those covered by the base fee paid, shall be charged at the relevant hourly rate applicable at the time. Only after all conditions of the Resource Consent have been met, will Council issue a letter on request of the consent holder.*



APPENDIX A (Management Plan Requirements)

Condition	Management Plan
6	Managed Fill Management Plan (MFMP)
1	Site and Fill Management Plan
1, 6	Erosion and Sediment Control Plan
6	Traffic Management Plan (TMP)
6	Geotechnical Management Plan (GMP)
6	Chemical Treatment Management Plan (CTMP)
6	Noise and Vibration Management Plan (NVMP)
6	Ecological Compensation Plan (ECP)
6	Air Quality Management Plan (AQMP)

Managed Fill Management Plan (MFMP)

The MFMP is the overarching management plan for the managed fill activity and includes those components listed below.

Site Fill Management Plan (SFMP)

As required by Condition 6 of this consent, the SFMP shall include, but not be limited to, the following:

1. Incorporate the requirements of the conditions of consent;
2. Site management structure and responsibilities;
3. Schedule of regular site inspections to ensure the compliance with the SFMP's and conditions of the consent;
4. Waste acceptance criteria for the parameters to be monitored and tested for the Managed Fill and Clean fill importation;
5. Load inspection procedures;
6. Incoming load screening and sampling procedures;
7. Fill rejection and quarantine procedures for imported materials including recording and reporting requirements;
8. A contingency plan for dealing with non-compliant materials identified subsequent to placement of the fill;
9. Training procedures for staff and a record of employees who have undertaken relevant training;
10. Details of the proposed works around any stockpiles of fill, including quarantine areas, to minimise the potential of contamination migration via stormwater runoff;
11. Details of the proposed surface water and sediment quality monitoring for the managed fill site, including details of the monitoring locations, chemical parameters frequency, trigger levels, contingency measures and reporting requirements;

Erosion and Sediment Control Plan (ESCP)

As required by Condition 6 of this consent, the ESCP shall include, but not be limited to, the following:

1. Erosion and sediment controls including specific design;
2. Supporting calculations;
3. Catchment boundaries for the sediment controls;
4. Location of the works, and earthworks operations;
5. Details of construction method to be employed including timing and duration;
6. A staging programme for managing the exposed area including progressive stabilisation considerations;
7. Details of drying areas for fill material, which must be within the maximum exposed area of the footprint;
8. Shall be designed to an appropriate scale.

Traffic Management Plan (TMP)

As required by Condition 6 of this consent, the TMP shall include, but not be limited to, the following:

1. Control of access to the site;
2. Traffic control adjacent to the site;
3. Erection of signage, with Auckland Transport's approval, close to the Drury Lane intersection and close to the Dairy Flat Highway intersection that advises all motorists not to pass a stationary school bus at speeds greater than 20 km/hr (the legal requirement);
4. Upgrade of the one-way bridge priority signage, with Auckland Transport's approval;
5. Measures to protect the public, including riders, pedestrians and cyclists;
6. Details on the trimming or removal of any vegetation to either side of the access to the one lane bridge on Blackbridge Road to maximise sight distances or in the vicinity;
7. Details to remove the long grass and tree stump located in the road berm to the west of the site access;
8. Details on how drivers are to be informed that engine braking is to be avoided on Blackbridge Road where practicable;
9. The piping of the six short sections of roadside open channels along Blackbridge Road, identified in the traffic evidence of Mr Phillip Brown and Mr Don McKenzie to the Environment Court dated 27 January 2017 and 1 May 2017, and topping with fine aggregate;
10. The repositioning of the limit line on Postman Road so that it is 6.0 metres back from the marked centreline of the road, the marked edge line is also to be appropriately repositioned and tied into existing markings and the trees on the eastern side of the road reserve on the Highway to the north of Postman Road are to be trimmed with Auckland Transport's approval;
11. The issuing of hi-visibility vests to every student of Dairy Flat Primary School living on Blackbridge Road who catches the school bus (to be signed for by parents).

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Geotechnical Management Plan (GMP)

As required by Condition 6 of this consent, the GMP, to be prepared by KGA Geotechnical Limited or other suitably qualified geotechnical engineer shall include, but not be limited to, the following:

1. Monitoring to be carried out through-out construction and five years following practical completion;
2. Trigger levels and appropriate actions;
3. Measures to protect the instruments during construction.

Chemical Treatment Management Plan (CTMP)

As required by Condition 6 of this consent, the CTMP shall include, but not be limited to, the following:

1. Specific design details of the chemical treatment system based on a rainfall activated methodology for the site's sediment retention ponds;
2. Monitoring, maintenance (including post storm) and contingency programme (including a record sheet);
3. Details of optimum dosage (including assumptions);
4. Results of initial chemical treatment trial;
5. A spill contingency plan.
6. Details of the person or bodies who will hold responsibility for long-term maintenance of the flocculation treatment system and the organisational structure which will support this structure

Noise and Vibration Management Plan (NVMP)

As required by Condition 6, the NVMP shall refer to all noise management measures to demonstrate compliance with 55dBA/Leq maximum noise level and detail all methodologies that will be employed to demonstrate compliance with the rule.

The noise and vibration management plan shall include, but is not limited to the following:

1. Work sequence for the managed fill;
2. Machinery and equipment to be used;
3. Hours and operation, including times and days when noisy works would occur;
4. Methods for monitoring and responding to complaints about works noise and vibration.

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Environmental Compensation Plan (ECP)

As required by Condition 6 the ECP, shall include, but is not limited to the following:

1. It shall be in general accordance with the evidence of Mr Nick Goldwater to the Environment Court dated 1 February 2017 outlining ecological enhancement measures to be undertaken along the riparian margins of the streams located in north-eastern portion of the subject site (Lot 4 DP 166787) as well as along the main stream channel flowing west to east through the site.
2. The ECP shall also include details of the riparian planting works including but not limited to the following:
    a. Plans in A3 format showing where the riparian planting is to be carried out along the margins of the streams in the north eastern portion of the site and the stream running from west to east through the property, including a list of species, their locations and densities.
    b. Details regarding timing of works and techniques of weed and plant management measures for a period of no less than 5 years or until such time that 80% canopy closure has been achieved throughout the planted areas.
    c. Details confirming how the areas identified in the ECP are to be legally protected in perpetuity.
    d. Details of how the riparian margins will be permanently fenced, and any staging in accordance with Condition 20.

Air Quality Management Plan (AQMP)

The AQMP as required by Condition 6 shall include, but is not limited to the following:

1. Measures to be used to mitigate the effects of dust during the construction and operation of the managed fill;
2. Criteria used to determine when the measures will be used to mitigate the effects of dust;
3. Details of the design and operational factors used to ensure that open areas are minimised;
4. Procedures for maintaining the access road to ensure that it is appropriately maintained and cleaned;
5. Provisions for temporary cover and the use of sprinklers;
6. The location, operation and maintenance of the dust monitoring equipment;
7. Details on any dust suppressant chemicals that will be used on site, including the supplier's application rates suitability for particular locations;
8. A list of the key responsibilities (such as the use of the water truck) and who will be responsible for implementing these and making day-to-day decisions;
9. The measurement of atmospheric particulate which will cause the alarm to be triggered on the fully automated atmospheric particulate monitor;
10. The actions to be taken once the alarm has been triggered.