

RESOURCE CONSENTS HEARINGS PANEL

MINUTES: of a meeting of the Resource Consents Hearings Panel which commenced at 9.03 a.m. in the Council Chamber, Centreway Road, Orewa on Friday, 2 July 2010.

PRESENT:

Chair	Alan Watson
Crs	Ross Craig
	John Kirikiri

IN ATTENDANCE:

Reporting Planner	Nick McCool
Team Leader	Ian Bayliss
Democracy Services Officer	Raewyn Morrison

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477/07/10 APOLOGIES**AGENDA ITEM NO. 1**

There were no apologies.

478/07/10 A NOTIFIED RESOURCE CONSENT APPLICATION UNDER SECTION 88 OF THE RESOURCE MANAGEMENT ACT 1991

BY THE NEW ZEALAND TRANSPORT AGENCY TO RETROSPECTIVELY AUTHORISE APPROXIMATELY 6,000M³ OF MATERIAL WHICH WAS PLACED OUTSIDE THE DESIGNATION AT WERANUI ROAD, WAIWERA

Address: Weranui Road, Waiwera

APPLICANTS: NEW ZEALAND TRANSPORT AGENCY

FILE REF R55453**WARD Central****AGENDA ITEM NO. 2**

The applicant seeks retrospective resource consent for 6,000m³ of material that was placed outside the State Highway 1, Northern Gateway Toll Road, Designation Number 401. The material is part of a much larger fill site which received approximately 30,000m³ of material over an area of 8,000m². Approximately 6,000m³ of this material was placed on a neighbouring property and covers an area of 2,000m². The designation enables the construction, operation and maintenance of a public work within a specified area of land with the need for resource consent from the territorial authority; however as 6,000m³ of material was placed outside the designation retrospective consent is required.

The applicant, New Zealand Transport Agency (NZTA) was represented by Paula Brosnahan (Legal Counsel), David Grieg (Senior Resource Planner), and Alastair Lovell (Planning Consultant), present.

Submitters: Colin Wech and Mike Wech, present.

9.03 a.m. The Chairperson opened the hearing and outlined the meeting procedure.

David Grieg opened proceedings for the applicant. Mr Grieg distributed and read written evidence.

Mr Greig said that he had been involved with the preparation process for the application from August 2009 when he attended two meetings with Northern Gateway Alliance (NGA) representatives and Mr Wech, one at Rodney District Council and the other on-site. From these meetings Mr Greig said that he came to understand the Wechs had a number of concerns regarding the Northern Gateway Toll Road and a few relevant to the application including ground surface quality.

Alastair Lovell distributed and read written evidence.

Mr Lovell's evidence addressed the site and surrounding environment, the reasons for the application, the statutory framework for considering the application, the assessment of environmental effects and the statutory assessment of the proposal. He also addressed the consultation undertaken and the submissions received on the application and the Council officer's report and recommended conditions.

Mr Lovell said that the key issues raised in the submission from Mr and Mrs Wech and their son were:

- (a) The application was site specific but there were other earthworks in the vicinity that should be included as they total more than 200m³.

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- (b) There was evidence given in the application that was contrary to the situation; the Wechs would explain this at the hearing.
- (c) A condition of the application agreed between NGA and the landowner was that the land would be fully restored to pasture.
- (d) The application should be made to be inclusive of all the motorway earthworks not just specific to this fill site (i.e. there were scars of bare soil on the Mahurangi/Waiwera Special Character Zone that would otherwise not be attended to.

Mr Lovell said that he considered the key issue to be (c) above, which was to remediate the Wech property and establish grass cover as soon as possible so the Wechs could resume farming on their land. NGA was happy to ensure grass cover was restored on the fill site with the Wech property. Mr Lovell noted that cooperation would be required from the Wechs to ensure that stock was not allowed to access and graze on the site and damage the remediation efforts of NGA before grass cover was properly established.

In conclusion, Mr Lovell said that he considered the adverse effects of the works on the environment would be no more than minor. The works were not contrary to the objectives and policies of the relevant statutory documents, and in particular the Proposed District Plan. No Section 6 (Matters of National Importance), 7 (Other Matters) or 8 (Treaty of Waitangi) matters were triggered by the application and the works promote the sustainable management of natural and physical resources, as defined in Section 5 (Purpose) of the Resource Management Act. In particular Mr Lovell said that he considered that the adverse effects of the works on the environment would be avoided, remedied or mitigated.

Mr Lovell discussed the photographs attached to his evidence.

In response to questions from the Panel, Mr Lovell said that:

- They wanted to remediate the site by establishing good grass and getting rid of the weeds.
- There shouldn't be any grazing until the grass was well established.
- There were some areas within the designation where grass growth was not as good as it should be, e.g. areas near the rock drain. There were some stormwater issues but in general there was fairly adequate grass cover across the designation.
- They hoped to have agreement between themselves and the Wechs in terms of the appropriate solution.

Ms Brosnahan said that the reason they were at a hearing was that the Wechs had not been willing to provide written approval for that part of the fill outside the designation. NZTA was quite happy to achieve the outcome sought by the Wechs for the full site. There had been a number of meetings with the Wechs since lodgement of the application. She understood the Wechs wanted a hearing as they didn't feel they would get anywhere with a pre-hearing meeting.

Submitters:

Mike Wech distributed and read written evidence.

Mr Wech described the state of the site before the fill had been placed in it. In his opinion the land had not been restored properly; he wanted the site physically restored with the rocks in the fill material removed, then a sealing coat of clay (or similar) which would cut down on the topsoil required. He wanted the topsoil to come from the local area. Mr Wech said that the area could be locked up for quite a while, with stock not being put in the area for some time so that the grass could establish. Mr Wech said that as well as rocks in the fill material there were also fence posts and wire and he wanted to see those items removed too. It would be too big a job for him and his father to do; local contractors would be able to do the job. Mr Wech noted that there was suitable red clay on his father's property on a site less than half a mile away. He said that grass wouldn't grow on quarry tailings (the fill) with hay spread over it and he was not convinced hydroseeding would work as that was reliant on topsoil being present.

10.40 a.m. - 11.05 a.m. Morning tea adjournment.

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Council Officer:

Nick McCool addressed the Panel, the following was noted:

Mr McCool said that he stood by his recommendation to grant consent because the potential adverse effects were no more than minor and the proposed conditions provided mitigation. He referred the Panel to page 89 of the agenda and the description of the receiving environment. Mr McCool said that the stormwater pond had been designed to treat run off from the motorway. With regard to comments about a pre-hearing, Mr McCool said that the Council's Manager; Resource Consents, Ian Dobson, had a meeting on site with representatives of the Wech family and NGA as well as there being a further two meetings when the application was lodged in an attempt to try and get the applicant and submitters to agree; every effort had been made to come to some conclusion.

Mr McCool considered that it would be worthwhile to come to some agreement regarding the proposed condition on topsoil (condition 1) and he referred to the Auckland Regional Council's Technical Publication No. 90 (TP 90), the topsoil depth, the grass and fertiliser. He said that the earthworks would be undertaken in a professional manner. He also noted that the fill site was contoured relatively well to blend in with the surrounding environment. Mr McCool said that it was evident there was currently a lack of topsoil on the fill and some rocks had come through; these matters should be addressed.

Ms Brosnahan presented the right of reply. The following was noted:

Ms Brosnahan said that both parties had entered into discussion in good faith. The Northern Gateway Alliance had offered to remove the rocks and improve the topsoil. It would need to be determined how much topsoil was required so that large rocks didn't migrate through the fill any further. She said that the engineers were also looking at the rip rap and how that might potentially be moved.

Mr Lovell said that he visited the site with a drainage engineer who had looked at the designation and the rip rap. The engineer noted that some of the surface water was missing the rip rap and he had considered there may need to be a 'Y' shaped drain near the fence line. With regard to the eastern side of the fill area, NZTA had approved remediation work to remove the remaining earth bund on the eastern side of the road; potentially there would be topsoil and mulching for grass. He estimated the earthworks required for this work would be well under 50m³, which was a permitted activity in the District Plan.

Ms Brosnahan said that proposed condition 1 (topsoil) could be reworked to state exactly what works would be carried out; this could be done in consultation with the land owner and have a specific time period.

Mr Wech said that it would not be possible to do any work until October.

Ms Brosnahan confirmed that NGA would be willing and able to begin work in October. The issue of a bond was raised. Ms Brosnahan said that with regard to the clay layer, she would need to talk to an engineer.

The Chairperson adjourned the hearing and requested that the applicant respond to a memorandum in regard to the proposed conditions, addressing such issues as:

- Meeting with the Wechs on site within the next week (Mr Lovell, an engineer, a representative from NGA and Colin and Mike Wech).
- That the parties need to be in agreement with the proposed conditions.
- Monitoring by an officer from the Council, then a sign off mechanism.
- A condition regarding erosion sediment control.
- A signed entry agreement.

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Once NZTA had responded to the memorandum there would be an opportunity for Council officers to respond. The Wechs also needed to respond to the Democracy Services Officer stating whether they were happy (or not) with the proposed draft conditions to the effect that they had sighted the draft conditions, were happy with them (or not) and happy for a right of entry on to their property.

The Chairperson urged NZTA to work in consultation with Colin and Mike Wech. He suggested that Mr Lovell should be the point of contact for the Wechs.

11.40 a.m. The Chairperson adjourned the hearing.

The Chairperson closed the meeting on Friday, 23 July 2010 at 4.30 p.m. following receipt of the information requested by the Panel and the completion of deliberations.

The Panel resolved:

Craig/Kirikiri

THE DECISION

That, pursuant to Sections 104, 104B and 104C of the Resource Management Act 1991, the limited notified application for retrospective resource consent by the NZ Transport Agency to authorise approximately 6,000m³ of material which was placed outside the NZTA designation for the State Highway 1, Northern Gateway Toll Road at 415 Weranui Road, Waiwera, being Part Allotment 11, Parish of Waiwera, SO 893, is granted consent for the following reasons and subject to the conditions below.

REASONS FOR THE DECISION:

Pursuant to Section 113 of the Resource Management Act 1991, the reasons for this decision are as follows and as described in greater detail in the below "Main Findings":

- 1. The applicant and the submitters have been able to agree on conditions of consent that address the concerns raised by the submitters and which the Hearings Panel sought also to be resolved.**
- 2. The actual and potential adverse effects of the activity on the environment have been assessed and found to be acceptable or minor subject to conditions of consent. Those conditions are particularly in relation to the effective establishment of grass cover on the area that has had the fill placed upon it.**
- 3. The activity has been assessed against the relevant provisions of the Operative District Plan 1993 and the Proposed District Plan 2000 – Operative in Part. It is a discretionary activity and a restricted discretionary activity in those Plans respectively. The activity is not inconsistent with the relevant objectives and policies and the assessment criteria to be applied to it.**
- 4. The activity is not inconsistent with relevant provisions of the Auckland Regional Policy Statement and other regional documents.**
- 5. The activity is consistent with the purpose and principles of the Resource Management Act 1991, as included at Part 2 of the Act.**

THE RELEVANT STATUTORY PROVISIONS THAT WERE CONSIDERED: (Section 113(1) (AA))

Overall this application was considered to be a **discretionary** activity and was considered in terms of Sections 104, 104B and 104C of the Resource Management Act 1991 ("the Act" or RMA").

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**OTHER RELEVANT PROVISIONS THAT WERE CONSIDERED:
(Section 113(1) (ab))**

The provisions of the following documents were considered by the Hearings Panel (“the Panel”) in reaching this decision.

Proposed District Plan 2000 – Operative in Part

East Coast Rural zone provisions

Designation 401

Operative District Plan 1993 as amended by Plan Change 55

Special Character Activity Area, Mahurangi – Waiwera provisions

Auckland Regional Policy Statement

Chapter 2, Regional Overview and Strategic Direction and Plan Change 6

New Zealand Coastal Policy Statement 1994**Hauraki Gulf Marine Park Act 2001.****PREAMBLE:****Background**

The NZ Transport Agency (“NZTA”) is responsible for the planning, building, maintaining and operating of the state highway network. In April 2004 the NZTA established an alliance of organisations, known as the Northern Gateway Alliance (“NGA”), to work in partnership to design and construct the State Highway 1: Northern Gateway Toll Road between Orewa and Puhoi. The NGA comprises the NZTA, Fulton Hogan, Leighton Contractors, URS New Zealand, Tonkin & Taylor and Boffa Miskell. The NGA has applied for retrospective resource consent on behalf on the NZTA in relation to 6,000m³ of material that was placed outside the designated area for the new State Highway.

The Application

NZTA seeks retrospective resource consent for 6,000m³ of material that was placed outside the State Highway 1, Northern Gateway Toll Road, Designation Number 401 (“the designation”). The material is part of a much larger fill site which received approximately 30,000m³ of material over an area of 8,000m². However, approximately 6,000m³ of this material was placed on a neighbouring property owned and occupied by Colin Wech. It covers an area of approximately 2,000m².

The designation for the State Highway (“SH”) enables the construction, operation and maintenance of a public work within a specified area of land without the need for resource consent from the territorial authority. However, because 6,000m³ of material was placed outside the designation retrospective resource consent is required for it.

The fill works that have been carried out are hereinafter in this decision referred to as “the activity” or “the works”.

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Reasons for Application

Resource consent is required for the following reasons

Operative District Plan 1993 as amended by Plan Change 55

The subject site is zoned Special Character Activity Area, Mahurangi-Waiwera under the Operative District Plan as amended by Plan Change 55. The Development and Environmental Controls, Standards – Conservation of Landscapes Rule 3.3(1)(b) states that the excavation or deposition of topsoil, spoil, soil or other materials (excluding farm silage pits) up to and including 200m³ in Special Character Areas (that include the Mahurangi-Waiwera Special Character Area) is a discretionary activity. The activity involved greater than 200m³ of earthworks and is therefore a discretionary activity requiring resource consent.

Proposed District Plan 2000 – Operative in Part

The subject site is zoned East Coast Rural under the Proposed District Plan 2000 – Operative in Part. Rules 7.9.4.2.1 and 7.9.4.2.2 provide for excavation and/or deposition of soil, spoil or earth, and deem that earthworks in the East Coast Rural zone that exceed 200m³ is restricted discretionary activity. The activity involved greater than 200m³ of earthworks and is therefore a restricted discretionary activity requiring resource consent.

Overall the application is for a discretionary activity**Site and Locality**

The site is located at 415 Weranui Road, Upper Waiwera. The topography of the site is moderate rising from Weranui Road to the fill location where it flattens out before rising again to the ridge. The submitted assessment of environmental effects states that *“the site originally sloped downwards from a small ridge in the south to form a steep to undulating gully running in a north-northwest direction towards the new Waiwera stormwater pond.”*

The site is used for pastoral farming purposes and is covered in a mixture of grass and native bush. The fill site batters have been stabilised relatively well with grass. However the top of the fill has had poor grass uptake and consists mainly of clay fill and rock.

The neighbouring properties are used for pastoral farming or rural-residential living. Mr Wech's property is one of the largest lots. The new SH runs in a north-south direction and is located immediately to the east of the subject site.

Notification

The application was notified on 4 May 2010 and submissions closed on 2 June 2010. Two submissions in opposition were received and were described in the Council planner's report as below:

Name	Address	Main Concerns	Relief Sought
Colin James and Joan Elaine Wech	415 Weranui Road, Waiwera	That the application is site specific and does not include other earthworks in the vicinity.	That the land be fully restored, top soiled and grassed. Put the topsoil on.
Mike Wech	Weranui Road	That the application is site specific and does not include other earthworks in the vicinity.	That the land be fully restored, top soiled and grassed. Put the topsoil on. That the application includes all motorway earthworks.

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**THE PRINCIPAL ISSUES THAT WERE IN CONTENTION:
(Section 113(1) (ac))**

The principal issues that were in contention were:

- (1) Whether the details of the works that have been carried out can be arranged in a manner that satisfies the submitters' concerns.
- (2) Whether the activity is consistent with the relevant provisions of the District Plan documents applicable to it, including the objectives and policies and assessment criteria.
- (3) Whether the Section 104 provisions of the Act have been satisfactorily addressed, those including any actual or potential effects on the environment of allowing the activity; any relevant provisions of the District Plan; and, consideration of the regional planning documents.
- (4) Whether the activity is consistent with Part 2 of the Act.

**SUMMARY OF THE EVIDENCE HEARD:
(Section 113(1) (ad))**

The below is a brief summary of the evidence which is otherwise recorded in minutes of the hearing. Further, the main points of the evidence that have been determinative of the decision are outlined in the "Main Findings" below.

Applicant

NZTA was represented by planners David Greig and Alastair Lovell and legal counsel, Paula Brosnahan.

Mr Greig introduced the application. Mr Lovell presented evidence in which he described details of the background to the application, the application itself and the statutory considerations. His evidence included useful photographs of the site and the alignment of the new SH. Mr Lovell commented on earlier meetings with the Wechs (Colin Wech as the site owner and his son Mike who is a neighbour, both being submitters). They had been unable to reach agreement which had resulted in the current application being notified and proceeding to a hearing. He described the concerns of the Wechs as follows:

- a) The application is site specific but there are other earthworks in the vicinity that should be included as they total more than 200m³.
- b) There is evidence given in the application that is contrary to the situation which needs to be explained.
- c) A condition of the application agreed between NGA and the Wechs was that the land would be fully restored to pasture.
- d) The application should be made to be inclusive of all the motorway earthworks not just specific to this full site, that is, there are scars of bare soil on the Mahurangi/Waiwera Special Character Zone that will otherwise not be attended to.

Mr Lovell pointed out the key issue was c) and that NGA was happy to ensure that occurred. It will require co-operation from the Wechs to ensure that stock is not allowed to access or graze on the site and damage the remediation efforts of NGA before grass cover is properly established. He concluded that the activity met the relevant statutory tests of the RMA.

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Submitters

Mike Wech spoke on behalf of his father Colin and himself. He worked through a copy of the application in which he had added written comments that disputed some of the statements in it. Their concerns included:

- The retrospective resource consent needing to include other works that do not appear to have been consented.
- The full site needing to be returned to the landowner as land capable of pastoral farming activities, topsoiled and grassed rather than just surface prepared for erosion prevention.
- The rip rap rock protection that had been positioned to receive flow from a sub-soil drain was not positioned in a manner to prevent scouring. It needed to be altered.
- Some of the remedial works to the ground cover had been dissolved and washed away with the rain.
- The amount and coverage of mulch and topsoil needs to be more to be effective because otherwise the surface will revert back to dusty and rocky spoil.

Council Officers

The Council's planning report for the hearing was from Nick McCool. In his report he covered all the relevant matters and recommended consent subject to two conditions. One recommended condition specifically addressed the placement of topsoil and seeding over the fill area. At the hearing Mr McCool confirmed that remained his advice to the Panel.

Right of Reply

Paula Brosnahan addressed a number of the matters that had been discussed during the hearing including whether a potential agreement between the parties was possible. Ms Brosnahan expressed the view that the applicant wished to resolve the details which may, on the basis of the discussions during the hearing, involve an adjournment. On behalf of the applicant Ms Brosnahan was happy to see a course of action that led to a satisfactory resolution between the applicant and the submitters.

We record, for the purposes of statutory time frames in the RMA, that Ms Brosnahan's right of reply on behalf of the applicant was not completed in order to provide the time necessary as part of an adjournment to endeavour to resolve the situation between the applicant and the submitters.

HEARING PROCESS

During the hearing the Panel had the opportunity to discuss with each party their respective positions. It appeared that there was a potential resolution of the differences between the applicant and the submitters which could usefully be explored before any final decision was made on the application. Each of the two parties needed, in the opinion of the Panel, to move a little more in the direction of each other in order to achieve such a resolution. With the concurrence of the parties the Panel adjourned the hearing so that specified actions could be carried out as the basis for a potential agreement. Those actions were explained by the Panel at the hearing and were an attempt to resolve the issues between the applicant and the submitters as far as the land included in the resource consent is concerned. The Panel pointed out to the Wechs that issues relating to land outside the land that was included in the application was not a matter the Panel had any jurisdiction to address; it had to focus on the application before it.

The specified actions are set out in the letter of 2 July 2010 from the Committee Advisor for the Council and were, in brief:

- The applicant and the submitters to agree on the actual works needed on the submitter's land.
- The applicant and the submitters to meet on site with the applicant having an engineer available to advise on related issues of stormwater flows on the site, particularly the rip rap rock protection.
- Associated conditions of resource consent were to be prepared and agreed by the applicant and the submitters.
- The submitters were to confirm in writing that they were happy (or not) with the conditions.
- The submitters were to advise the Council in writing of their permission for the applicant to gain entry to the site for the purposes of carrying out the works.

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With the above completed the Panel would then be able to determine the manner in which it would decide the resource consent application. If there was agreement between the parties then the Panel would provide the Council's reporting officer with the opportunity to comment on the proposed conditions. The letter of 2 July 2010 set out an associated timetable for these actions to be carried out.

As stated in that letter the Panel highlighted that the adjournment and the process to be carried out was on the basis of the parties acting in good faith, as was indicated at the hearing. The Panel was firmly of the view that the best outcome for the process was for the applicant and the submitters to be in agreement, even if some compromise by them both may be needed to do so.

THE ADJOURNMENT

An email dated 12 July 2010 was received from Ms Brosnahan which attached a letter of the same date from NZTA describing a meeting with the submitters on 7 July 2010 and stating that an agreement on the works that are needed on the land had been reached. As part of that site meeting, the letter records that Colin Wech will:

- Provide access to the fill area using the farm track from Weranui Road for the remediation works to the fill area.
- Regulate access to the fill area for stock grazing in consultation with the NGA.
- Provide his written approval for the NZTA/NGA to access the fill area to carry out the remediation works.

These three points were included as advice notes in the agreed set of resource consent conditions. The letter also records that the parties visited an area to the east of the designation that was of concern to Mr Wech, discussed the issues Mr Wech felt needed to be resolved by the NGA, and that the NGA/NZTA will address those issues separately from the current resource consent process.

The Council's Committee Advisor provided the Panel members with an email dated 15 July 2010 in which she confirmed having received a copy of the recommended conditions upon which the Wechs had both signed their agreement.

In accordance with the actions to be carried out the agreed recommended conditions were then forwarded to the Council's reporting officer for comments. Those comments were received on 16 July 2010 and suggested amendments to the recommended conditions as follows:

Condition 3

This requires the removal from the fill area of visible rocks greater than 100mm and debris material. The officers' note that will leave a lot of smaller rocks presumably on the basis that 150 to 200mm of top soil will cover them. The officers advise that as these rocks could still "float" to the surface of the top soil it would be preferable to run a roller over the area to push these rocks and other debris down into the existing surface. This may be by way of another condition.

Condition 5

This stipulates a grass seed rate of 5kg per hectare for clover and 30kg per hectare for perennial rye grass. The Auckland Regional Council Technical Publication No.90, Erosion and Sediment Control, at Table 1.6, Grass Seed and Fertiliser Application Rates, requires 45kg per hectare for clover and 120kg per hectare for permanent rye grass. The officers recommend that the rate be increased accordingly.

Condition 6

The officers stated that from past experience it is noted that if mulch contains weeds then weeds would grow. It is therefore recommended that sterilised straw mulch or similar is used.

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Condition 7

The officers advise that rather than nominating "the Council" it would be preferable to nominate a specific Council officer such as the Environmental Protection Officer.

New Condition

The officers sought an additional condition to read "*At least seven days prior to the work commencing the resource consent holder shall notify the Council's RMA Compliance Administrator by telephone (0800 426 5169) the expected date of work commencing.*"

We therefore received all these details as the basis for our further considerations. Following email contact between the respective Panel members, we agreed on accepting the recommended conditions from the two parties as the basis for our decision on the application. The additional comments from the Council's officers present some difficulty insofar as we do not wish to change the conditions given they have been agreed upon by the two parties. However, to address that situation, we have included those details in the conditions of consent as advice notes. In this manner, the "integrity" of the agreement between the two parties is not affected.

Further, on the basis of the agreement that has been reached between the parties, we have assumed that Ms Brosnahan does not need to complete a right of reply for the applicant. We have accordingly closed the hearing as at 23 July 2010 which has seen the process of the adjournment and the agreement completed within a three week period. The parties are to be commended for reaching agreement.

**MAIN FINDINGS:
(Section 113(1) (ae))**

The main findings of fact determined by the Hearings Panel that have led to the above decision and the reasons for that decision are as follows. They have been reached after considering the application, visiting the site, the evidence at the hearing, the report prepared by the Council's reporting planner, all the relevant statutory and planning provisions, as well as the principal issues that were in contention.

The Panel finds that:

Effects

The actual and potential effects on the environment arising out of the activity are detailed in the assessment of environmental effects included with the application and in the Council's planning report.

The site and locality have high environmental and landscape values but in this location the area has been substantially modified by the construction of the SH to the extent that the works do not have any significant effects in relation to landscape, ecological and amenity values. The works have been carried out so that the contour of the fill site merges into the existing landform to give the visual appearance of a continuous landform. This creates a flatter topography that is more suited to pastoral farming. The ability of the filled area to effectively be used as farmland does however depend upon the effective re-establishment of grass cover upon it. That has not been achieved over all of the fill area to date and has therefore been a principal consideration in the adjournment.

We are satisfied that, with the agreed conditions, this can be achieved in a manner whereby there are no adverse effects on the existing farm land or farming operations. Further, the agreed conditions address the drainage arrangements on the site that are a concern to the Wechs.

Overall, the effects of the activity, subject to the satisfactory implementation of the conditions we have imposed on the retrospective consent, will be satisfactory and no more than minor on the local environment.

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Permitted Baseline

The Panel has not had regard to the “permitted baseline” approach to assessing the adverse effects of the activity. Whilst we may disregard an adverse effect if the District Plan permits an activity with that effect we did not find the need to do so in this case.

Positive Effects

The infilling of the gully on the subject site does have some benefits in improving the ability of that part of the land to be used for farming purposes. Again, that does depend on effective grass cover being established on the filled area.

District Plan Objectives and Policies

The Proposed District Plan is the Plan which we are to give the main weighting to in our assessment of the application. Both the Operative District Plan and the Proposed District Plan include objectives and policies that address the following:

- The control of erosion and sediment during the works in order to minimise the potential adverse effects on the quality of water and water habitat.
- Activities not dominating or having significant adverse effects on the landscape.
- Activities not representing urban encroachment.
- Activities not impacting upon land or issues of concern to local Maori.

The activity is consistent with these provisions. Satisfactory erosion and sediment controls were utilised during the works and the fill area has been contoured to be compatible with the surrounding landscape. The fill area can be returned to pasture and not impact upon concerns for urban encroachment. Further, Iwi protocols were established at the start of the SH project and any areas which may be of concern were protected from any proposed works associated with it.

We find that the activity is consistent with the objectives and policies of both the respective District Plans.

District Plan Assessment Criteria

The Operative and Proposed District Plans include assessment criteria for the purposes of assessing the respective discretionary and restricted discretionary activity status of the works. These address a number of matters including natural hazards; landscape and amenity values; ecological values; water quality and quantity; and, the duration of works.

The works are able to meet these assessment criteria on the basis of being carried out in an appropriate manner without producing any adverse effects on the local environment.

Regional Planning

The relevant regional planning documents are the Auckland Regional Policy Statement 1999 (“RPS”) and the Auckland Regional Plan: Sediment Control 2001 (“Sediment Control Plan”). The RPS addresses significant resource management issues for the region. It has provisions of relevance to this application relating to water quality, stormwater and sediment discharges. These provisions are further developed in the Sediment Control Plan.

The evidence was that the appropriate erosion and sediment control measures were installed to mitigate the effects of the fill site in accordance with Technical Publication 90 of the Auckland Regional Council and in accordance with the conditions of an existing resource consent which was granted by the ARC for earthworks associated with the SH development in the Waiwera catchment. The works are not inconsistent with these regional planning documents in terms of there being no concerns placed before us in these respects and from our considerations of them. Our conclusion does rely on the conditions agreed between the parties and imposed by way of consent conditions on the application.

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New Zealand Coastal Policy Statement 1994 (“NZCPS”)

The NZCPS contains policies relating to the management of the coastal resource. The approach taken by the applicant to date, and the actions to be taken by way of the conditions on the consent, ensure that the works are consistent with the provisions of the NZCPS.

Hauraki Gulf Marine Park Act 2001 (“HGMPA”)

The HGMPA is relevant because the site and locality lie in the catchment area of the Hauraki Gulf. For the reasons discussed below regarding Part 2 of the RMA, the activity does not conflict with any provisions in this other legislation.

Any Other Matters

There are no other matters considered relevant to our determination of this application. We note there are non-statutory documents of the Council being “Vision Rodney” and “Planning Rodney” which are essentially statements about the future of the district. There are no features of the activity that would conflict with the statements in these documents.

Section 104 of the Act

The provisions of Section 104 are therefore satisfied by the activity, in terms of the considerations of effects on the environment and the provisions of relevant planning documents.

PART 2 OF THE ACT

The activity is consistent with the purpose of the Act in promoting the sustainable management of the natural and physical resource of the land concerned in the application. It will provide for the use of that land in a manner which enables the landowner to provide for his wellbeing whilst sustaining the potential of that land resource to meet the reasonably foreseeable needs of future generations; safeguarding the life-supporting capacity of the water, soil and ecosystems; and, avoiding, remedying or mitigating any adverse effects of the activity on the environment.

The activity does not raise any matters of national importance, (Section 6 of the Act). Whilst matters of the coastal environment, landscapes and indigenous vegetation may not be of national importance, they are nonetheless important in the context of this locality but are satisfactorily addressed by the activity. In relation to other matters (Section 7 of the Act) the activity will see the efficient use and development of the natural and physical resource of the land in this location. This will be in a manner that does maintain and enhance amenity values and the quality of the environment. There are no matters that we need to take account of in relation to Maori considerations in terms of Sections 6, 7 and 8 of the Act.

In the circumstances the activity is consistent with the purpose and principles of the Act, as included at Part 2 of it.

RETROSPECTIVE CONSENT

Dealing with this application by way of a retrospective consent is not an ideal manner for doing so. The Panel can rightfully expect that the organisations involved with the application would have such matters sorted out given the scale and nature of the SH project they are carrying out and the comprehensive manner in which they need to approach the matter of requirements for designation and resource consents. Be that as it may, RMA case law states there is nothing inherently wrong with retrospective consents and the consent parts of the Act are not to be used as a punitive arm.

In this case the parties have now shown a willingness to work together to resolve their differences. In this respect the Panel has been pleased to be able to aid in the facilitation of resolving those differences and acknowledges the goodwill by both parties to achieve an effective outcome to these proceedings.

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LAPSING OF CONSENT:

Pursuant to Section 125 of the Resource Management Act 1991, this resource consent will expire 5 years after the date of commencement of consent unless, before the consent lapses;

- (a) the consent is given effect to; or
- (b) an application is made to the Council to extend the period of consent, and the Council decides to grant an extension after taking into account the statutory considerations, set out in Section 125(1)(b) of the Resource Management Act 1991.

CONDITIONS OF CONSENT:

Pursuant to Section 108 of the Resource Management Act 1991, this consent is subject to the following conditions, (and it is noted that these conditions are exactly as has been agreed between the applicant/consent holder and the submitters):

1. (erosion and sediment control) The consent holder shall prepare an erosion and sediment control plan ("ESCP") for the remedial works covered by this consent in accordance with Auckland Regional Council Technical Publication Number 90 – Erosion and Sediment Control Guidelines for Land Disturbing Activities in the Auckland Region ("TP90"). The ESCP shall be provided to the Council for approval prior to any works commencing on the fill area.
2. (herbicide) In September 2010 (weather permitting), the consent holder shall twice apply (one week apart) herbicide to the fill area in accordance with NZS 8409:2004 Management of Agrichemicals.
3. (debris removal) In October 2010 (weather permitting), the consent holder shall remove from the fill area visible rocks (greater than 100mm) and debris material.

Advice Note: The Council's officers have noted that this debris removal will leave smaller rocks that could still "float" to the surface of the top soil. It would be advisable to run a roller over the area to push these rocks and other debris down into the existing surface as part of this debris removal exercise.

4. (top soil) At least two weeks after the first application of the herbicide required by Condition 2, the consent holder shall evenly spread a 150-200mm layer of top soil over the fill area. The consent holder shall endeavour to spread the top soil without creating "dishes" or other depressions. The top soil used on the fill area shall include 10-20% sand and 5-20% humus or organic material, with the balance being silt or clay-sized particles.

Advice Note from the Hearings Panel:

The idea of laying a clay cover over the fill area before the top soil is spread was raised at the hearing. That may be something the consent holder and the Wechs wish to do.

5. (grass) Once top soil has been applied to the fill area as required by Condition 4, the consent holder shall sow seed on the fill area at a rate of 5kg per hectare for clover and 30kg per hectare for perennial rye grass.

Advice Note:

The Council's officers have noted that the Auckland Regional Council Technical Publication No.90, Erosion and Sediment Control, at Table 1.6, Grass Seed and Fertiliser Application Rates, requires 45kg per hectare for clover and 120kg per hectare for permanent rye grass. The rate could be increased accordingly.

6. (mulching) Once seed has been sown on the fill area as required by Condition 5, the consent holder shall place a layer of straw mulch over the fill area.

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Advice Note:

The Council's officers have noted that past experience has shown that if mulch contains weeds then weeds would grow. The consent holder may therefore wish to use sterilised straw mulch or similar.

7. (monitoring) The Council, the consent holder and Mr Colin Wech (the landowner) will meet on the fill area after each of the following stages of remedial works to inspect and for the Council to approve each stage of the works:
- (a) Preparatory works (i.e. herbicide applications and debris removal required by Conditions 2 and 3);
 - (b) Topsoil spreading (required by Condition 4); and
 - (c) Seeding and mulching (required by Conditions 5 and 6).

Advice Note:

The Council's officers have noted that the Council's "Environmental Protection Officer" is the appropriate officer to carry out the Council's function in this Condition.

8. (completion) The Council, the consent holder and Mr Wech (the landowner) will meet on the fill area in April 2011 and each three months thereafter as necessary until the Council consider there is sufficient turf establishment and the works required by the consent have come to an end.
9. (charges) The consent holder shall pay to the Council within one month of the issue of this consent, the cost, including specialist services, staff time and administration for the processing of the application for this consent together with initial charges for the inspections noted in Conditions 7 and 8.

Monitoring deposits will be invoiced by the Council together with the consent processing charges.

Should further monitoring be required to ensure compliance, the Council will recover the actual and reasonable costs that are incurred for this monitoring as set out in the Council's Schedule of Fees and Charges.

ADVICE NOTES:

- A. The Waiwera fill site was created by the NZTA as part of the Northern Gateway Toll Road. The "fill area" is that part of the Waiwera fill site works that were undertaken on the Wech property (415 Weranui Road, Waiwera).
- B. It is understood that Mr Colin Wech (the landowner) will:
- a. Permit the consent holder to gain entry to the fill area for the purpose of carrying out the works required by this consent;
 - b. Provide the consent holder with access to the fill area using the farm track from Weranui Road; and
 - c. Ensure that the fences and gates containing the fill area will be secured to ensure no stock will access the fill area for six months following the laying of the new topsoil as required by Condition 4.

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- C. It is recommended that at least 7 days prior to the work described in the above conditions commencing that the consent holder notifies the Council's RMA Compliance Administrator by telephone (0800 426 5169) of the expected dates for the works occurring. *(This is an advice note recommended by the Council's officers).*

Carried

CONFIRMED AS A TRUE AND CORRECT RECORD THIS 19TH DAY OF AUGUST 2010

MAYOR

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