

## **RESOURCE CONSENTS HEARINGS PANEL**

**MINUTES:** of a meeting of the Resource Consents Hearings Panel which commenced at 9.00 a.m. in the Council Chamber, Centreway Road, Orewa on Friday, 22 February 2008.

**PRESENT:**

Chair	Alan Watson
Crs	Ross Craig
	Zane Taylor

**IN ATTENDANCE:**

Reporting Planner	David Hampson
Team Leader	Carl Jenkins
Traffic Engineer	David Mitchell
Committee Adviser	Raewyn Morrison

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### **308/02/08                      APOLOGIES AND ANNOUNCEMENTS**

**AGENDA ITEM NO.        1**

Apologies:

A fax was received from GA Powell to say that the GA and PE Powell Family Trust would be unable to attend the hearing.

Announcements:

There were no announcements.

### **309/02/08                      REQUESTS FOR CONSIDERATION OF URGENT ITEMS**

**AGENDA ITEM NO.        2**

There were no requests for the consideration of urgent items.

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**310/02/08****A LIMITED NOTIFIED RESOURCE CONSENT APPLICATION UNDER SECTION 88 OF THE RESOURCE MANAGEMENT ACT 1991**

**AN APPLICATION FOR LAND USE CONSENT TO CONTINUE TO OPERATE AN EXISTING CLEANFILL BY IMPORTING 30,000M<sup>3</sup> OF MATERIAL AFTER THE DATE PROVIDED FOR BY VIRTUE OF A CONDITION OF CONSENT GRANTED BY THE ENVIRONMENT COURT ON 1 AUGUST 2002. THE MATERIAL TO BE IMPORTED WILL INCLUDE THE IMPORTATION OF TOP SOIL FOR THE PURPOSE OF UNDERTAKING REINSTATEMENT WORKS. IT IS ANTICIPATED THAT THE CLEANFILL WILL BE COMPLETED TOWARDS THE END OF 2007 / BEGINNING OF 2008 WITH THE SUBSEQUENT RESTORATION WORKS NOT EXPECTED TO BE COMPLETED UNTIL 31 DECEMBER 2008. THE APPLICATION WILL NOT INVOLVE AN INCREASE IN THE TOTAL VOLUME OF CLEANFILL PROVIDED FOR BY VIRTUE OF THE CONSENT GRANTED BY THE ENVIRONMENT COURT, NAMELY 250,000M<sup>3</sup>**

Address: 194 Blackbridge Road, Dairy Flat

**APPLICANTS: AQUITA DEVELOPMENTS 2007 LIMITED**

<b>FILE REF</b>	<b>LAN26918/A</b>
<b>WARD</b>	<b>Central</b>
<b>AGENDA ITEM NO.</b>	<b>2</b>

9.00 a.m. The applicant seeks consent to continue to operate the existing cleanfill by importing 30,000m<sup>3</sup> of material after the date provided by virtue of a condition of consent granted by the Environment Court on 1 August 2002. The material to be imported will include the importation of topsoil for the purpose of undertaking reinstatement works. It is anticipated that the cleanfill will be completed towards the end of 2007/beginning of 2008 with the subsequent restoration works not expected to be completed until 31 December 2008. The applicant has confirmed that the application will not involve an increase in the total volume of cleanfilling originally provided for by virtue of the consent granted by the Environment Court, namely 250,000m<sup>3</sup>.

The applicant's representatives, Mr Paul Cavanagh (Counsel), Mr Robin Stevenson (Engineer), Ms Jan Woodhouse (Landscape Architect) and Mr Phillip Brown (Traffic Consultant), present.

Submitters: Ms Alison McMillan and Mr Allen Barr, present.

Cr John Kirikiri and Cr Michael Goudie in intermittent observation.

*Note: The planning report and agenda had incorrectly stated the application was in the Western Ward. It was in fact located in the Central Ward.*

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

Mr Cavanagh distributed and read a written submission. The following was noted:

Mr Cavanagh said that the application did not seek to expand the cleanfill operation beyond the 250,000m<sup>3</sup> originally proposed in the consent, but simply sought to extend the time within which that outcome could be achieved. He noted that there were delays in achieving final consent for the original application and filling operations could not commence until nine months after the ARC consent had been obtained.

Mr Cavanagh briefly described the site, the landfill operation, and addressed the Council's planning report, traffic effects and landscape issues.

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Mr Stevenson distributed and read written evidence. Mr Stevenson also tabled and circulated evidence from Mr Barry MacDonell and Mr Nevil Hegley.

Mr Stevenson's evidence contained the background to the application, a definition of the cleanfill and a description of the site, its topography and neighbouring uses. He described the proposed works proposed; to import approximately 20,000m<sup>3(solid)</sup> of suitable filling material to complete the filling to the required contours to blend into the natural contours of the site. The total volume imported was still the same as the original application of approximately 250,000m<sup>3</sup>. Along with the filling material approximately 5 – 10,000m<sup>3(solid)</sup> of topsoil would be required for the restorative work. It was proposed the area would revert back into pasture. Mr Stevenson addressed the staging of the works, the access to the site, tipping, hours of operation, erosion and sediment control and sediment control specifications and inspections. He discussed the potential effects from the proposed development on the receiving environment under the headings sediment, dust, traffic, noise and final restoration. He commented on the submissions received to the application and consent conditions.

In conclusion, Mr Stevenson said that:

- All materials brought onto the site would be inspected and logged prior to placing the cleanfill ensuring that no unauthorised fill would be placed in the cleanfill.
- The site was ideally suited for a cleanfill operation with minimal impacts on the surrounding environment.
- The proposed restoration works would ensure that on completion of the cleanfill the final contours would blend into the natural environment of the area.
- Erosion and sediment measures along with any other environmental controls proposed would ensure that the proposed cleanfill, in terms of the relevant matters detailed in Section 104 of the RMA, would employ the best practicable options to minimise sediment and any other discharges from the site. It was considered that any adverse effects of the proposed activity on the environment would be minor and of a temporary nature.
- The proposed extensions of time would allow for the completion of the clean filling operations and allow sufficient time to contour the area to blend in with the natural contours of the surrounding area. Once completed and grassed, the previous cleanfilling operation would be practically unnoticeable.
- The proposed works and associated activities, in terms of the RMA, will employ the best practicable options to minimise any impact on the environment from the site. It was considered that any adverse effects of the proposed activity on the environment would be minor and of a temporary nature and will not be contrary to objectives and policies of RDC.

Mr Cavanagh said that Mr MacDonell's evidence essentially supported the Council planner's report, and it also addressed submissions.

In response to questions from the Panel, Mr Stevenson that when the application was first lodged the applicant thought cleanfilling would be finished within the timeframe. The applicant realised that getting an extension of time would not be a simple operation, and basically had had to re-apply for consent. They had adopted a conservative method of restoration of the cleanfill and had put out the target dates for completion to the end of the year; they knew that they could finish within the timeframe and the applicant had no wish to extend this time any further out. Mr Stevenson reiterated that the applicant categorically knew they could complete works within that time and was more than confident works would be finished this year. He estimated that topsoil would be brought to the site around September – October. He said that if residents had any issues, there was a phone number on the sign at the entrance to the site. From his observations people used cleanfills more in winter than summer; in summer other sites could be utilised. Towards the end of the year there would be a dramatic reduction in trucks using the site. He dealt with the applicant on a weekly basis, and had been involved with the cleanfill from conception to fruition and he was aware almost on a daily basis what was going on.

Mr Cavanagh said that the Council had not had cause for concern about what was occurring on the site and it had not been considered necessary to have the director from the company present.

Mr Stevenson said that Aquita Developments was involved in a number of operations and he described the ownership of the company. To his knowledge, over a 5-6 year period there had been a maximum of 10 complaints.

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Ms Jan Woodhouse distributed and read written evidence. The following was noted:

Ms Woodhouse had been responsible for the original assessment of landscape impacts arising from the then proposed cleanfill operations. She had revisited the site to review her earlier work. She concluded that the additional fill, when combined with the work required to re-contour the top of the fill to conform to contours inherent in the surrounding landscape, was a necessary activity if the consent conditions relating to the final contour were to be complied with. She stated that she did not consider it necessary to try to mitigate the perceived adverse effects, in particular undertaking any enhancement planting with the bush area, as regeneration was occurring naturally since stock had been removed.

In response to questions from the Panel, Ms Woodhouse said that in retrospect she didn't think landscape planting was necessary: She was sure the applicant would be more than happy to have a condition in regard to removal of invasive weeds. With regard to a landscape plan, at this stage she didn't think it addressed anything and didn't think there was a need for it; she didn't think any planting anywhere was required.

Mr Brown distributed and read written evidence. He also circulated photographic evidence and contour maps.

Mr Brown said that in carrying out his assessment he had reviewed the current operation at several times of the day, had a traffic survey carried out under his direction, and reviewed the recommend traffic related conditions of consent contained in the planning report. From his observations he had concluded that there appeared to be no apparent conflict between road users and the truck movements associated with the site. He did not believe that the cleanfill trucks turning at the SH17 intersection and using the affected section of Blackbridge Road were creating operational problems that could be cause for concern from a traffic engineering perspective. In recent weeks construction work had begun on Blackbridge Road, a capital works project involving pavement smoothing and rehabilitation, installation of kerb and channelling on both sides of the road, and increasing the sealed width of the road to 7 metres. He had also inspected the injury and non-injury accident record maintained by Land Transport NZ. From this search he had established that no accidents had been reported involving any type of truck in this section of the road during the searched 5 year period. However, he had noted one accident that involved a truck in January 2007. This occurred at the one way bridge and involved a motorcyclist who, according to the details contained in the accident database, was travelling too fast for conditions, failed to give way, and did not have a motorcycle license.

Mr Brown said that he supported a condition for retention of the island until the operation was completed. Once completed, the island would be removed and the driveway width reduced. He did not see any need for the road shoulder widening to be removed. He requested an additional condition of consent that "legitimised" the island. In conclusion, Mr Brown said that provided the existing cleanfill continued to operate in the manner it has in recent times for the next 6 months or so, and the rehabilitation of the site (expected to be completed by the end of the year) was undertaken as expected, he believed that the effects of the activity would be acceptable from a traffic engineering perspective.

In response to questions from the Panel, Mr Brown said that from his experience, the numbers did tail off and as the site's ability to receive quantities diminished, so too did truck numbers.

10.32 a.m. – 10.49 a.m. Morning tea adjournment.

Submitters:

Mr Allen Barr gave verbal evidence. The following was noted:

Mr Barr said that he had lived in Blackbridge Road for around 19 years. His elderly parents lived with him and used the road as well. He had been opposing the cleanfill operation since 1994 and he still opposed it for the same reasons; the danger of truck movement on the road, destruction of the road, noise, dust etc. He noted that the original application had attracted 70 submissions in opposition and although only 7 submissions had been received in opposition to this application it did not mean that people who hadn't put in submissions did not oppose the application. He had observed damage to the left hand side of the road, damage to barriers and skids marks on the road. He looked forward to the

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day of completion. From talking with neighbours, everyone felt the application would be given consent and go ahead due to fact that the application had operated for 5 years without a major hic-cup. Although he believed there had been breeches, by the time the Council intervened, truck numbers settled down.

With regard to articulated vehicles, the original agreement was that primarily the trucks using the site would be 6 wheelers which had made things far more bearable. By their nature truck and trailer units created much more noise and debris. Mr Barr requested a condition that there be no articulated trucks. He was pleased that the road was being done up as this work was long overdue, but he estimated there was going to be a minimum of 10,000 truck movements after the road was done up and he wondered about potential damage to what would have otherwise been a perfect road. He thought the Council should impose a condition in the event of damage to the road. Mr Barr described the original intention of the bridlepath, being for a nearby riding school. Due to the bridlepath not being completed the riding school had lost income. He reiterated that he would like to see a condition with regard to there being a financial contribution, managed by the Council, so that any damage occurring on the road was repaired. He also requested that the timeframe for completion be definite.

In response to questions from the Panel, Mr Barr said that there were about 130 dwelling in the first 3kms of Blackbridge Road; there was a lot of development occurring in the area. He was astounded that other landfills in the area were operating; he was unable to provide a specific address for the landfills and was not aware of any consents sought. He based 10,000 truck movements on the area that needed topsoil for finishing. With regard to planting, for people buying the land in future, had trees been planted 5 years ago, they would have made the area look nice.

Ms McMillan gave verbal evidence. The following was noted:

Ms McMillan said that she lived in Blackbridge Road for 31 years. Her major concern was not with the completion, which she believed was necessary, but with the effect of inflation on the shift of the completion date. She believed the extension would have an impact on the cost of any restorative work, and that any restorative work that was required on the road should be taken into account. She wondered whether Aquita Developments had taken into account a downturn in the economy.

Council Officers:

Mr David Hampson addressed the Panel. The following was noted:

Mr Hampson said that he was disappointed to hear of the non-compliance in regard to condition 8, the landscaping requirement, and to hear that none was now considered to be required. However, he did agree with Ms Woodhouse that landscaping was not now required. He considered that an additional condition should be imposed reducing the width of the entrance and he requested that a landscaping condition be imposed requiring the frontage to be planted. In terms of restoring the site to pasture anything other than grass seeding would seem unnecessary. He considered the submitter request regarding additional financial contributions not possible. The section of the bridlepath not completed was due to it crossing private property and despite consultation had resulted in this condition being unable to be effected.

Mr David Mitchell addressed the Panel. The following was noted:

Mr Mitchell said that he wished to clarify that with regard to the existing road upgrade and design specifications he had spoken to the Road Design Engineer and the Council's Maintenance Manager who had confirmed that the upgrade had allowed for a significant truck volume, higher than normally allowed for. As with all road upgrades there was a 20 year time frame. He saw no issue with the additional number of truck movements for approximately 1 year and didn't think maintenance requirements and restorative works would be required. There was in any case a 12 month period with regard to the current maintenance works which were envisaged to be completed in March 2008. Mr Mitchell said he had no issue with the central island at the entranceway as it stood at present and that leaving it there at this stage was a sensible approach. He suggested that there be a condition with regard to the island being removed on completion and the access reinstated to a rural access of a 6m width. The rest of the entranceway should go back into pasture. He advised that nothing else like kerbing etc was required.

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Mr Cavanagh gave the right of reply. The following was noted:

Mr Cavanagh said that he wished to stress that the applicant sought short term consent to operate within the ambit of the previous approval. Mr Cavanagh said that he had been involved in the previous application and mediation and he was aware of the concerns of the local community, namely the retention of rural character and amenity associated with that. However, shortly operation would be at an end. Before the cleanfilling operation commenced on the site there had been a very substantial hole in the ground. The cleanfilling operation was restoring the site to its normal contour and rural activity. Referring to the accident discussed by Mr Brown, Mr Cavanagh said that the police had charged the motorcyclist with failing to give way and not having a driver's licence. In view of the concerns about truck traffic on the road, Mr Cavanagh said that trucks were entitled to use the road; it was available for their use. With regard to the issue of the bridle trail, Mr Cavanagh said the reason it had not been completed was because one property owner had not given their consent. He requested that the traffic island be retained until the works had been completed, at which time it would be removed, and that landscaping the entrance area was acceptable to the applicant. In conclusion, he said that he believed the application should be granted consent.

In response to questions from the Panel, Mr Cavanagh said that before the cleanfill began operation the site had been an old quarry which hadn't required a management plan. The site had been unsightly and weed infested. The quarry site, which was flooded and hazardous, had to be drained before cleanfilling commenced. It was consistent with section 5 of the Act that a land resource be restored to its purpose, and if there had been no quarry, a rural activity was assumed as the outcome. There was not a substantial amount of work to be done to restore the landform; upon completion the site would look natural and the contour would be consistent with the surrounding land and the outcome beneficial to the environment.

11.40 a.m. The Chairperson adjourned the hearing.

1.30 p.m. Following a site visit and upon conclusion of deliberations the Chairperson closed the hearing.

The Panel resolved:

**Watson/Taylor**

#### **THE DECISION**

**That, pursuant to Sections 104, 104B and 104D of the Resource Management Act 1991, the limited notified application for resource consent by Aquita Developments 2007 Limited to continue to operate an existing cleanfill by importing 30,000m<sup>3</sup> of material after the date provided for by virtue of a condition of the consent granted by the Environment Court on 1 August 2002 for the property at 294 Blackbridge Road, Dairy Flat, legally described as Lot 2 DP 364442, be 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:**

- (a) The Hearings Panel has considered the actual and potential effects of extending the operation of the cleanfill, for a limited time, up to the end of 2008, and while the proposal will generate some short term adverse effects on rural character and amenity values, it considers that subject to the imposition of appropriate conditions of consent, that the adverse effects on the environment will be minor. The conditions imposed on the consent are to protect rural amenity, to manage traffic effects, to control the volume and duration of the proposed cleanfill, and to ensure the stability of the fill on the site.**

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- (b) The applicant confirmed that the cleanfill operation will continue to be carried out in accordance with the Management Plan submitted in respect of the original application. This Plan adequately addresses the assessment criteria relating to discretionary activities as included in the Operative District Plan as amended by Plan Change 55. Specifically, it is noted that the site will be progressively developed and rehabilitated; traffic effects have been demonstrated to be no more than minor; there is sufficient separation distance between the proposed activity and neighbouring dwellings so that effects in terms of noise and dust are able to be avoided; and, any adverse effects in terms of discharges into local watercourses are able to be avoided through conditions of consent.
- (c) The Hearings Panel is satisfied that extending the time for which the cleanfill operation is able to be carried out can be done without resulting in adverse effects relating to stability, earthworks, silt and dust control, stormwater, and road access that are more than minor. This is subject to the re-imposition of engineering conditions that were imposed on the original consent granted by the Environment Court on the 1 August 2002.
- (d) The proposed mitigation measures (and in particular the land rehabilitation) are considered sufficient to adequately ensure that the potential adverse effects of the proposal will be no more than minor.
- (e) The Hearings Panel is satisfied that subject to the imposition of the conditions of consent imposed for the original application that the proposal is able to be carried out without resulting in effects in terms of traffic safety that are more than minor.
- (f) The proposal is not contrary to the relevant objectives and policies for the General Rural Activity Area in Plan Change 55 and the Proposed District Plan. In particular, it is considered that the location of the cleanfill within a disused quarry, the staged method of operation and the progressive rehabilitation of the site will successfully mitigate adverse effects on the landscape and rural character. The proposal is considered compatible with the existing and foreseeable future qualities and characteristics of the surrounding rural area. The proposal will not result in adverse effects that exceed the identified levels of acceptable environmental effects applicable to the zone.
- (g) The application satisfies the requirements of section 104D of the Act for non-complying activities.
- (h) There are also circumstances that support a grant of consent to the application as a non-complying activity, or exception to the zone provisions, those circumstances being:
- The proposal is located within a former limestone quarry which is currently subject to cleanfill operations by virtue of a resource consent. The existing cleanfill has significantly modified the character of the area and continued operation of the cleanfill will enable the undertaking of reinstatement works to enable the site to potentially be utilised for pastoral farming.
  - The proposal also involves the undertaking of reinstatement works which will enable the re-use of a rural resource which will in turn reinforce the rural character and amenities of the surrounding environment.

Overall, these circumstances are considered to be unusual and are not present, or able to be easily replicated, elsewhere in the district. These factors are relevant in distinguishing this proposal from other possible activities otherwise excluded from the General Rural zone.

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- (i) The proposal is consistent with the Auckland Regional Policy Statement and particularly *Chapter 2 – Strategic Direction*, which contains a set of strategic objectives and policies that are designed to provide for the integrated management of the region's natural and physical resources. The proposal is consistent with these objectives and policies because the potential adverse effects of the proposal can continue to be avoided or mitigated through the imposition and compliance with conditions of consent which will ensure that any effects on the wider environment including water courses will be no more than minor.
- (j) The proposal is considered to be consistent with the sustainable management purpose and principles of Part 2 of the Act, particularly section 5, for reasons including the proposal representing the sustainable management of natural and physical resources.

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

Overall this application was considered to be a **non-complying** activity and was considered in terms of sections 104, 104B and 104D and Part 2 of the Act.

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

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

**Auckland Regional Policy Statement**

Chapter 2, Regional Overview and Strategic Direction

**Proposed Regional Policy Statement**

Proposed Plan Change 6

**Plan Change Number 55, Rural**

Objectives, policies and rules as they relate to the proposal

**Proposed District Plan 2000**

Objectives, policies and rules as they relate to the proposal

**PREAMBLE**

**Background**

The Council's records show that resource consent was granted by the Environment Court by way of a consent order on 1 August 2002 to Aquita Developments Limited to establish and operate a cleanfill on the application site. The consent restricted the maximum quantity of cleanfill to be deposited on the site during the term of the consent to 250,000m<sup>3</sup>.

A further condition was imposed on the consent namely, condition 4 which stated:

*"All cleanfilling operations on the site (including reinstatement works) shall cease within 5 years of the commencement of this consent"*

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An application was lodged with the Council in October 2006 to vary the above condition. The application was lodged pursuant to section 127 of the Act to allow for an extension of time until 31 December 2008 to enable the applicant to complete the cleanfill operations and to undertake associated restoration works. The applicant was informed that the application needed to be lodged and assessed as a new application, rather than under section 127 of the Act. The applicant subsequently submitted the current application on 17 November 2007 to extend the time to 31 December 2008 to enable the completion of the cleanfill operations and to undertake associated restoration works.

### **THE SITE AND THE PROPOSAL**

The site formerly comprised a limestone quarry and is located on Blackbridge Road approximately 2km west of the intersection of Blackbridge Road and State Highway 17. The cleanfill is located at the rear of the site and is initially accessed by way of a sealed driveway off Blackbridge Road, with that access continuing into the site with a metalled surface. A 1.63ha section at the north-eastern corner of the site has been subdivided off from the cleanfill site (leaving that at 12.18ha) to create a rural-residential lot around the existing household unit. The immediate locality is characterised by rural-residential and lifestyle properties with associated pastoral grazing land uses.

The application seeks consent to continue to operate the existing cleanfill by importing 30,000m<sup>3</sup> of material after the date provided for by virtue of the condition of consent granted by the Environment Court on 1 August 2002. The applicant has stated that the application has been submitted because:

*"It will not be possible to complete the cleanfill in the timescale set out in the Consent Order due to the delays experienced through the initial Environment Court process in obtaining resource consent".*

The material to be imported will include the importation of topsoil for the purpose of undertaking reinstatement works. It is anticipated by the applicant that the cleanfill will be completed towards the end of 2007 / beginning of 2008 with the subsequent restoration works not expected to be completed until 31 December 2008.

The applicant has confirmed that the application will not involve an increase in the total volume of cleanfilling originally provided for by virtue of the consent granted by the Environment Court, namely 250,000m<sup>3</sup>.

### **NOTIFICATION**

The application was limited notified on 28 September 2008 to a large number of properties along Blackbridge Road. Seven submissions were received, six in opposition to the application and one in conditional support of it.

### **REASONS FOR A RESOURCE CONSENT APPLICATION**

Resource consent is required for the following reasons:

#### **PLAN CHANGE 55 TO THE OPERATIVE DISTRICT PLAN**

The proposed activity is provided for as a discretionary activity in the General Rural zone of Plan Change 55. Subject to complying with the site management plan requirements contained under Rule 10.2(b)(i), cleanfilling operations in excess of 1,000m<sup>3</sup> are a discretionary activity pursuant to Rule 9.3. In this instance a Management Plan was submitted with the original application and the applicant has confirmed that the cleanfill will continue to be operated in accordance with the Management Plan. Consequently, the proposal falls to be assessed as a discretionary activity.

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**PROPOSED DISTRICT PLAN 2000**

The proposal is a non-complying activity in the General Rural zone of the Proposed District Plan 2000. Cleanfilling operations in excess of 1,000m<sup>3</sup> are a non-complying activity under Rule 7.9.2 as amended by Council's Decision Report 2112. A check of Council's Schedule of Appeals to the Proposed District Plan has confirmed that there are no appeals regarding this rule.

Overall the application is a non-complying activity.

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

The principal issues that were in contention were:

- Whether one of the section 104D tests of the Act can be met; that either, the adverse effects of the activity on the environment are minor or, the application is for an activity that will not be contrary to the objectives and policies of the relevant district planning documents.
- Whether conditions could be applied to the activity that would serve to satisfactorily avoid and/or mitigate any adverse effects to a level that those effects are minor.
- How the matter of the applicant contributing to roading improvements to Blackbridge Road, considered necessary as a consequence of truck movements associated with the activity, should be addressed.
- Whether there are circumstances applying to the application that provide for it to be granted consent as an exception to the District Plan provisions.
- Whether the proposal is consistent with the Regional Policy Statement.

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

Mr Paul Cavanagh, QC as legal Counsel submitted that the application is to permit the importation and placement of fill and topsoil remediation not exceeding 30,000m<sup>3</sup> of clean fill and topsoil to complete the restoration of the former quarry site in a manner that does not seek to expand the cleanfill operation beyond the 250,000m<sup>3</sup> originally proposed in the consent. The proposal would simply extend the time within which that outcome may be achieved. He pointed out the planning evidence would show that there were delays in achieving final consent and filling operations could not commence until 9 months after the Auckland Regional Council consent had been obtained and that the Regional Council had already granted an extension to the term of its consent through to 31 December 2008.

Mr Cavanagh stated it is important to note that access to the site is strictly controlled by the applicant who is then well able to ensure the truck movements are limited to those specified by the relevant condition to this effect and to also ensure the trucks are not overloaded and do not exceed the voluntary speed limits (70kph) on Blackbridge Road.

Mr Robin Stevenson, civil and quarry engineer, provided written evidence describing the background to the cleanfill and the proposed works. He stated it is proposed to import approximately 20,000 m<sup>3</sup>(solid) of suitable filling material to complete the filling to the required contours to blend into natural contours of the site, the total volume imported being the same as the original applications for approximately 250,000m<sup>3</sup>(solid). That would be imported until August-October of this year and approximately 5,000 -10,000m<sup>3</sup>(solid) of topsoil would also be brought in from August to December of this year, that being required for the restoration work and the reversion of the area back into pasture.

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Mr Stevenson tabled written statements of evidence from Mr Nevil Hegley and Mr Barry MacDonell addressing noise and planning considerations respectively. He discussed the range of potential effects associated with the proposal and in addressing the submissions received he referred to the strict control the applicant keeps on the truck operators using the cleanfill; earlier works carried out in relation to road safety; and, there being another fill site further up Blackbridge Road. On behalf of the applicant he confirmed there were no issues with the recommended conditions as detailed in the officer's report upon the application.

In responding to questions from the Commissioners Mr Stevenson confirmed and gave assurances that the cleanfilling and restoration works would be completed by 31 December 2008 in accordance with what was sought by the application. This is a particularly important point in terms of assuring local residents and the Council that this is a finishing time associated with the cleanfill operation at the site. Mr Stevenson said he was confident the works could be finished in that time period and that the applicant had adopted a conservative approach to the time needed for completion of the works.

Mr Nevil Hegley, acoustic consultant, had his evidence tabled. It confirmed that the current operation is operating within the noise levels set for the site by the earlier resource consent.

Mr Barry MacDonell, planning consultant, had his evidence tabled. It stated that he concurred with the analysis in the Council planner's report; agreed that the relevant statutory assessment criteria were met; and, that the conditions as recommended by the Council's planner were appropriate in granting consent to the application.

Ms Jan Woodhouse, landscape architect, presented written evidence in which she considered landscape and visual matters. She observed that the perimeter of the site was not planted in accordance with the earlier condition of resource consent and that the shape of the landfill does not (as yet) comply with the proposed contour, that requiring more fill. Ms Woodhouse concluded the additional fill sought by way of the current application would address the contouring situation. She considered that the amenity planting required as a condition of the original consent was not now necessary because that planting will not now have time to grow to a sufficient height to mitigate perceived adverse effects. It was therefore not necessary to undertake any enhancement planting as bushes were regenerating naturally as stock has been removed from the site.

Mr Phillip Brown, traffic engineer, presented written evidence. He had been involved with the original application and had carried out further analysis in relation to the current application. He referred to the upgrading works currently being carried out upon Blackbridge Road by the Council which would result in a roading environment that is better than the one that is being used by the cleanfill related traffic (and other traffic) in the last five years, and that should address the road maintenance/standard issues raised by a number of the submitters.

Mr Brown agreed with the findings and conclusions reached by the Council's traffic engineer and reporting planner that these matters are satisfactorily addressed. He considered the existing central median island outside the site, providing direction for traffic entering and exiting site, should be encapsulated into the recommended conditions of consent due to the benefits it provides and further, that it be removed when the cleanfill operation is ceased. At that time too the site entry/exit facility should be reinstated to an appropriate width to the satisfaction of the Council.

All the witnesses for the applicant were of the view that consent could be granted to the application subject to the conditions recommended by the Council's reporting planner.

### **Submitters**

Mr Allen Barr spoke to his submission in opposition to the application. Mr Barr and his family have resided at 221 Blackbridge Road for some 19 years and had continually opposed the cleanfill and any proposals for a clean fill upon this site since 1994. This was for reasons that relate to road danger, road damage, noise, dust and general disruption associated with the operation.

Mr Barr pointed out many of the residents were opposed to a continuance of the operation on the basis that there had been an understanding it would be completed at the end of last year. He felt many persons were too tired to fight any more and was of the view that the application was likely to be approved despite their opposition to it. He was concerned that the road was currently being upgraded

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but if consent was granted to a continuance of the cleanfill operation then damage would result making the upgrading works somewhat futile. The applicant should be making a contribution to continued road maintenance accordingly. Mr Barr was concerned that the Council's development engineer had recommended the deletion of some earlier conditions on the original consent that he still saw as relevant and was also of the view that some landscape planting should be included as part of the site restoration works.

Mrs Alison McMillan spoke to her earlier submission. Mrs McMillan, along with her husband resides at 236 Blackbridge Road. She was explicit in her opposition to the application being based upon the damage to the road resulting from heavy traffic associated with the cleanfill and particularly the costs of road improvement works to remedy such damage. Such costs would continue to increase over time, particularly with the delay in the completion of the cleanfill operation upon the site. Mrs McMillan saw such costs falling to the applicant with an appropriate cost adjustment being made to recognise the work that will need to be carried out to the road following the completion of the cleanfill in close to one year's time.

### **The Council Officers**

Mr David Hampson, consultant planner, had prepared the planning report for the Council on the application. That report addressed all the relevant issues including details of the site and proposal, consideration of the relevant district planning provisions and an assessment of the effects on the environment. At the hearing he confirmed his advice that consent should be granted to the application subject to conditions. Mr Hampson expressed concern that the earlier landscape planting condition had not been met and that the applicant now sought to carry out no such planting on the site. He stated that the matter of financial contributions relating to the activity had been taken into account in the earlier consent.

Mr David Mitchell, consultant traffic engineer, spoke to his earlier advice to the Council that he was satisfied that the traffic effects on the environment overall are only minor taking account of the fact that the remaining volumes of cleanfill that are being applied for are not greater than what was originally approved, and effectively it is only a time extension that is sought involving the same cleanfill capacity.

Mr Mitchell stated the existing road upgrading being carried out by the Council did allow for higher than normal truck use, recognising the cleanfill operation; that the Council's development engineer has no issues with the one year extension of time sought by the applicant; and, that the maintenance period associated with the existing upgrading being carried out expired after the lapsing date for any consent granted by way of the current proceedings, expiring in March 2009, which would give the opportunity for the Council to carry out any associated maintenance that may be necessary at that time. He confirmed the removal of the central median island outside the site should be a condition of consent and that reinstatement of the entry/exit facility to the site should be to a 6m width at the boundary at the applicant's cost.

### **Right of Reply**

Mr Cavanagh provided a right of reply in which he pointed out the application sought a short-term consent to operate within the terms of an earlier approval. He referred to the situation of the site as essentially being a "hole in the ground" at the start of the cleanfill process and the improvement to the local environment that results from the cleanfilling activity, and further, the fact that trucks are entitled to be operated upon the road and that roading improvements being carried out by the Council facilitate such heavy vehicle activity. Mr Cavanagh also stated that the matter of the bridle paths included as a condition of the earlier consent had, he believed, been earlier addressed in the consent order process such that that particular condition was no longer required. He concluded the consent should be granted and accepted conditions upon reinstatement of the access to the site and some landscape planting around that access point.

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

The findings determined by the Hearings Panel, that are in addition to points already made above in the "Reasons for the Decision", and that have led to the above decision are as follows. They, along with the Reasons, have been reached after considering the application, the submissions, the evidence and submissions at the hearing, the report prepared by the reporting planner, all the relevant statutory and planning provisions, the principal issues that were in contention and from a site visit. The Panel finds the following.

- (a) The concerns by submitters for impacts on Blackbridge Road and for contributions to roading improvements have been addressed with the condition in this respect on the earlier consent that addresses the amount of heavy traffic to and from the cleanfill site on the basis of the amount of material to be moved to it.
- (b) The assurance given by the applicant that 31 December 2008 will see an end to the cleanfill and restoration works at the application site is accepted. The Panel accepts that assurance being made by representatives of the applicant but does however observe in doing so, that it would have expected a Director of the applicant company to have been at the hearing for that purpose.
- (c) The existing central median traffic island at the site entry/exit serves a useful purpose but need not be a specific condition of consent given there was no indication it is to be removed. However removal of it at the end of the operation, and reinstatement of the entry/exit to the site, is necessary and is a condition of consent.
- (d) That some landscape planting on the site is appropriate to mitigate the adverse effects of the proposal. Such planting needs to be at the road entry/exit for the site but there should also be some more general tree planting across the site in order to enhance its appearance and be consistent with the treed nature of other sites in the neighbourhood. This is covered by a condition of consent.
- (e) The matter of compliance with the earlier condition relating to the provision of a bridle path was not clear from the hearing. The Panel has re-imposed that condition on consent to this current application but with the option of the applicant/consent holder demonstrating to the Council that it has been met.

**LAPSING OF CONSENT:**

Pursuant to Section 125 of the Resource Management Act 1991, this resource consent will expire on 31 December 2008 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:**

1. **(general)** The cleanfilling operation shall proceed in general accordance with the information provided in the land use consent application and plans drawn by Hazel Hewitt and Associates Ltd, dated February 2000 and November 2006 and numbered 1122/1, 1a and 1 respectively, and in accordance with amendments as required by the conditions of this consent.

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2. (**hours of operation**) The hours of operation shall be:

Monday to Friday: 7.30 a.m. to 5.30 p.m.

Saturday: 8.00 a.m. to 1.00 p.m.

No operations on Sundays or Public Holidays.

3. (**maximum quantity of cleanfill**) The maximum quantity of cleanfill to be deposited on the site during the term of this consent is 30,000m<sup>3</sup> uncompacted.

4. (**duration of cleanfill activity**) All cleanfilling operations on the site (including reinstatement works) shall cease by 31 December 2008.

*Note: This condition has been imposed based on the assurances given by the applicant at the hearing.*

5. (**noise**) The noise level generated by any cleanfilling operation or associated activity conducted on the site shall comply at all times with the following noise standard:

The corrected noise level (L10) as measured at the notional boundary shall not exceed 50dBA.

*(Notional boundary is defined as a line 20 metres from the façade of any rural dwelling or the legal boundary where this is closer to the dwelling.)*

The background noise level (L95) as measured on or close to the boundary of any site shall not exceed 45dBA.

Notwithstanding the above standards and compliance with them, the relevant provisions of any legislation or Council Bylaws may also be invoked by the Council to control any noise which has become excessive.

Noise levels shall be measured and assessed in accordance with the requirements of New Zealand Standards NZS 6802:1991 Methods of Measuring Noise and NZS 6802:1991 Assessment of Noise in the Environment, except that all measurements shall be carried out at the notional boundary as defined above.

The noise shall be measured with a sound level meter complying with international standard IEC 651(1979) Sound Level Meters: Type 1.

Prior to the commencement of the activity, the consent holder shall forward to the Council a certificate from an acoustical engineer stating that the above performance standards will be met. As soon as practicable following the commencement of the activity, the consent holder shall forward to the Council a commissioning report demonstrating that the activity meets the above performance criteria.

6. (**truck movements**) There shall be no more than an average of 60 truck deliveries to the site per day, as averaged over one month. In absolute terms, there shall be no more than 90 truck deliveries in any one day. On Saturdays the maximum number of truck deliveries shall be 30.

7. (**traffic safety**) The transportation of cleanfill to the site shall not occur with either truck or trailer units or trucks with an overall length exceeding 15 metres.

8. (**security gate**) A gate shall be installed and maintained at the site entrance/exit on Blackbridge Road and shall be securely locked at all times outside authorised operating hours.

9. (**landscaping plan**) A landscape planting and implementation plan comprising:

- roadside planting either side of the access to the site when the access is narrowed to a rural standard; and

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- landscape planting within the site to address views of the site when approaching the site from a westerly direction along Blackbridge Road

shall be prepared to the satisfaction of the Council's Consents Manager within two (2) months of the date of this consent. The landscape planting within the site should include some scattered trees or alternatively grouping of trees in similar fashion to those trees on other sites in the neighbourhood, all with the intention of improving the overall amenity of the site. All landscape planting shall be undertaken within the first planting season following the completion of this consent.

10. (**footprint of cleanfill**) The maximum footprint of the cleanfill shall be no more than 3.8 hectares, excluding access roads and maneuvering areas.
11. (**maximum disturbed area**) The maximum disturbed area, excluding access roads and maneuvering areas, shall at no time exceed 0.5 hectares.
12. (**storage of hazardous substances**) There shall be no hazardous substances deposited in the cleanfill, and all loads are to be visually checked by the site operator at the time of deposition. The applicant shall prepare a hazardous substance emergency response plan, to the satisfaction of the Council's Consents Manager, prior, to the commencement of operations on the site.
13. (**odours**) Beyond the boundary of the cleanfill site there shall be no objectionable odour caused by material deposited at the site, as determined by a Council Environmental Health Officer.
14. (**signage**) All signage associated with the cleanfilling activity shall comply with the District Plan.
15. (**cleanfill deliveries**) The consent holder shall submit a six (6) monthly report to Council including the following information, and shall make this information available to Council on request, at all times:
  - a) The total number of truck deliveries to the site on a monthly basis.
  - b) The registration number of each truck making a delivery of cleanfill to the site, along with the estimated volume of cleanfill material deposited, the source of the cleanfill, and time and date of delivery.
  - c) The percentage of untreated timber and other 'non-cleanfill' material as defined in the District Plan, relative to cleanfill material deposited on the site during the reporting period.
16. (**archaeological findings**) In the event of an archaeological site being uncovered, work is to cease immediately in the vicinity of the discovery and the NZHistoric Places Trust Regional Archaeologist contacted so that appropriate action can be taken before work may recommence.
17. (**aftercare monitoring**) Following the completion of filling and reinstatement works on site, Council shall continue to monitor the site for an after care period of a further two years. Inspections shall be undertaken at six monthly intervals. The purpose of these inspections shall be to monitor, but is not limited to, the following matters: slope stability, ground settlement, and success of the final revegetation programme.
18. (**limitation on type of material**) Material imported onto the site shall be restricted to clean fill which is defined as *"materials of natural content, such as soil, clay, concrete, brick or demolition materials, which are free of combustible materials and are not subject to biological or chemical breakdown, but does not include*

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*domestic, commercial and industrial wastes, hazardous wastes, or timber, or trees and garden trimmings; provided that in the case of demolition materials, minimal quantities not exceeding 5% of any one truck load of untreated timber still firmly embedded or attached to concrete or brickwork is acceptable."*

19. **(public access)** The site shall not be open to the general public in relation to the clean fill operation.
20. **(management plan)** The management plan prepared by Hazel Hewitt and Associates Limited dated August 2002 approved under RMA26918 shall continue to be strictly adhered to at all times.
21. **(review of management plan)** The management plan shall be subject to a 6 month review from the date of consent.
22. **(dust control)** All necessary actions shall be taken to prevent a dust nuisance to neighbouring properties and public roads; including, but not limited to:
  - The staging of areas of the works;
  - The retention of any existing shelter belts and vegetation;
  - The installation and maintenance of wind fences and vegetated strips;
  - Watering of all haul roads and maneuvering areas during dry periods;
  - Spraying of load dumping operations;
  - Suspension of all operations if necessitated by the prevailing conditions.
23. **(protection of the roads)** All necessary measures, including, but not limited to, metal led (not limerocked) access roads and manoeuvre areas, permanent tip-heads, wheel washing facilities and high pressure hoses, shall be installed and operated to prevent the deposition of slurry, clay or other materials on the roads by vehicles leaving the site. Should material be deposited on the road it shall be removed immediately, and the site shall be closed until it can operate without material being carried onto any road to the satisfaction of the Council's Consents Engineer.
24. **(retention and reinstatement of site access)** The existing curved median island dividing inbound from outbound vehicles at the entry to the site shall be retained through to the completion of the cleanfill and remediation activities. Upon completion of the remedial works, the access shall be narrowed and formed to a rural access standard (as per RDC Standards for Engineering Design and Construction, 180.00 Sheet 3.9), to a width not exceeding 6 metres at the boundary. The existing widened areas on Blackbridge Road adjacent to the site shall be retained as part of the existing formation.
25. **(bridle paths)** The consent holder shall submit information to the satisfaction of Council that the bridle path, referred to under condition 24 of RMA L26918 which was imposed by the Environment Court via a Consent Order dated 1 August 2002, has been provided. This information shall be submitted to Council within 28 working days from the date of this consent. Should it be determined that the bridle path has not been provided in accordance with the requirement of condition 24, it shall be provided within 3 months of the date of this consent.
26. **(grass cover)** All areas affected by the works shall be regrassed, revegetated or otherwise protected from wind and water erosion within two months of the completion of the works.
27. **(health and safety plan)** The cleanfill activity hereby approved shall continue to be operated in accordance with the detailed traffic management plan and the health and safety plan submitted to and approved by the Council's Consents Engineer under RMA26918.

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28. **(administration fee)** The consent holder shall pay to the Council the administrative fee for processing this application for resource consent within one month of the date of issue of this consent.
29. **(monitoring/supervision)** The consent holder shall pay to the Council the actual and reasonable costs of monitoring the conditions of the resource consent. The consent holder will be advised of the charges as they fall due covering the fair and reasonable costs incurred by the Council.

**Advice Notes:**

1. Prior to the commencement of the operation, the consent holder will need to obtain all necessary consents, permits and authorisations as may be required by the Auckland Regional Council.
2. The consent holder should ensure that all drivers of trucks delivering cleanfill to the site are made aware that pedestrians, and horses and riders often use Blackbridge Road, and that care is required accordingly.

**Carried**

The meeting closed at 1.30 p.m.

CONFIRMED AS A TRUE AND CORRECT RECORD THIS 24TH DAY OF APRIL 2008MAYOR

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