

**Additional material submitted by Counsel for Te Rūnanga o Ngāti
Mutunga 25.03.21
In response to questions from the Panel**

Red = RNZ mark-up of Conditions proposed in TRC Officers Report
Black = TRONM mark-up

NOTE: This is not Ngāti Mutunga's preferred option but is provided to the Panel for information purposes. For example, the standards in the receiving environment in these conditions would **not** be suitable for a long term consent.

General condition

- a) The consent holder ~~shall~~**must** pay to the Taranaki Regional Council all the administration, monitoring and supervision costs of these consents, fixed in accordance with section 36 of the Resource Management Act 1991.
- b) A pre-start karakia must be undertaken prior to the site remediation and closure works authorised by these consents.

Special conditions

1. These consents authorise the discharge of, for a term of expiring 25 March 2023 and for the sole purpose enabling the site to be safely remediated for an alternative land use(s) in accordance with the standards contained in Conditions 23 (Table 15) and 37 (Site Exit Plan):
 - (a) stormwater and leachate from vermiculture operations and from the orderly closure of such operations, after treatment in the Wetland Treatment System, directly to an unnamed tributary of the Haehanga Stream;
 - (b) stormwater and leachate from composting operations and from the orderly closure of such operations, by irrigation to land;
 - (c) ~~solid organic material to land for composting;~~
 - (d) ~~material stored on Pad 3 as at the date of commencement of these consents~~
~~(“stockpiled material”) to land for use as a soil conditioner;~~
 - (e) stormwater and leachate from stockpiled material to land via irrigation up until the time that stockpiled material is removed from the site; and
 - (f) contaminants to air associated with site ~~operations~~ closure.
2. OPTION ‘A’: The exercise of these consents ~~shall~~**must** be undertaken in general accordance with the Site Exit Plan [dated **X**]
OPTION ‘B’: The exercise of these consents must be undertaken in general accordance with the Site Exit Plan certified by the Taranaki Regional Council under condition 37 of this consent.
[Deleted reference to the application documents here - consents would not be granted in accordance with the application documents].

Commented [SO1]: Discharge of “solid organic material to land for composting” is removed i.e. No more waste material allowed to be composted

Commented [SO2]: This activity requires a separate consent application.

Commented [SO3]: Option ‘A’ – to have a Site Exit Plan that is submitted and approved as part of this consent. Option ‘B’ – to allow TRC to certify a Site Exit Plan after this consent is granted. Ngāti Mutunga seek Option ‘A’.

Acceptable wastes

3. From a date 60 days following the commencement of this consent, no waste or raw materials will be brought or accepted onto the site, except for materials that are required for site remediation. Subject to condition 55 below, the raw materials accepted on site ~~shall~~**must** be limited to solid compostable organic material, consisting of the following:
 - ~~Paunch grass;~~
 - ~~Animal manure from meat processing plant stock yards, and dairy farm oxidation~~
 - ~~pond solids;~~

- Green vegetative wastes;
- Mechanical pulping pulp and paper residue (excluding any pulping wastes that have been subject to chemical pulping or treated or mixed with any substance or material containing chlorine or chlorinated compounds);
- Vegetable waste solids (being processing by-products);
- Fish skeletal and muscle residue post filleting (free from offal); and
- Poultry industry waste (eggs, macerated chicks and chicken mortalities);
- Untreated sawdust;
- Molasses;
- Solid dairy industry waste (cheese, milk powder, casein);
- Sausage waste;
- Domestic household and commercial food scraps from the New Plymouth kerbside collection (bones, fruit, vegetables, meat, bread, dairy, cooked food, paper towels, cut flowers, coffee grounds, tea leaves/bags, eggshells and seafood shells);
- Palm kernel;
- Proliek;
- Food scraps from Powerco and Fonterra;
- Diatomaceous earth mix;
- Activated carbon;
- Ox tails;
- Organic waste from Brooklands Zoo;
- Sheep and lamb skins.

4. Subject to condition (d) below, solid organic compostable material not listed in condition 3 may be accepted on a 'one-off' or temporary basis with the prior approval of the Chief Executive, Taranaki Regional Council ('Chief Executive'). Approval may only be given after the consent holder has made a specific request for authorisation to accept material pursuant to this condition, and provided the Chief Executive with full details of the material including:

- (a) the type of material and its origin;
- (b) the volume;
- (c) the timing/duration of the discharge; and
- (d) any other information that the Chief Executive may reasonably request in order to determine the likely effects of the discharge including chemical analysis.

5. The following materials shall must not be allowed on site:

- (a) material produced as a result of a dissolved air flotation process;
- (b) biosolid waste;
- (c) any waste that may contain human faecal material or body fluids;
- (d) contaminated soil; or
- (e) any oil and gas related waste.

6. The consent holder shall must record the following information for all material accepted onto the site:

- (a) the date and time that the material arrives;
- (b) the type of material with reference to the list of authorised materials in condition 3;
- (c) the weight of each type material; and
- (d) the origin of the material.

The information required by this condition shall must be provided to the Chief Executive, Taranaki Regional Council, within 24 hours of the material arriving on site.

Site operations

7. ~~Until the site is remediated, and up until expiry of this consent, the site shall~~must be ~~constructed and maintained~~ to ensure that, at all times up to a 10 year annual recurrence interval rainfall event:
- (a) stormwater runoff is prevented from entering Pad 1, Pad 2, Pad 3, the Paunch Maturation Pond, and any other area used for vermiculture activities; and
 - (b) all stormwater and/or leachate from Pad 1, Pad 2, Pad 3, the Paunch Maturation Pond, and any other area used for vermiculture activities shall~~must~~ be discharged to land or directed through the Wetland Treatment System unless the material is covered
Until such Pads, Ponds and other areas are remediated in accordance with condition 37.

Note: For the purposes of this condition, the location and extent of Pads 1- 3, the Paunch Maturation Pond, and the worm beds are shown on Figure 1, attached as Appendix 1 of these consents.

8. ~~Until they are remediated, Pad 1, Pad 3 and all worm bed areas shall~~must at all times be ~~constructed, compacted and maintained~~, including by having a positive grade and low permeability, to ensure that runoff flows directly from them without ponding.
9. From a date no more than 60 days following the commencement of these consents the Truck Wash Pond, Irrigation Pond, Paunch Maturation Pond and any pond that may contain stormwater and/or leachate, shall~~must~~ be lined with material that has a permeability not exceeding 1×10^{-9} ms⁻¹ to prevent leakage through the bed or sidewalls.
10. From the commencement of these consents, at intervals not exceeding 24 months, the consent holder shall~~must~~ engage a suitably qualified and experienced person to check the permeability of the ponds referred to in condition 9, and provide a report to the Chief Executive, Taranaki Regional Council, that demonstrates compliance with that condition.
11. Within 3 hours of raw waste material being received, it shall~~must~~ be mixed with greenwaste on Pad 1 in the appropriate proportions for composting, and windrowed so that the composting process begins.
12. Under no circumstances shall~~must~~ will there be any direct discharge of waste material to the 'collection pond', or to the material stockpiled on Pad 3.
13. Within 90 days of these consents commencing the Duck Pond, the Collection Pond and other ponds associated with Pad 3 shall~~must~~ be filled with inert solid material and remediated.

Note: For the purposes of these consents, the 'Collection Pond', the Duck Pond and Pad 3 are shown on Figure 1, attached as Appendix 1 of these consents.

Irrigation

14. From a date no later than 60 days after these consents commencing, the consent holder shall~~must~~ measure and record the rate and volume of discharge from the Irrigation Pond at intervals not exceeding 1 minute to an accuracy of +5%.
15. The consent holder shall~~must~~ provide the Chief Executive, Taranaki Regional Council, with a document from a suitably qualified and experienced person certifying that measuring and recording equipment required by condition 14 ('the equipment') has been:

Commented [SO4]: Some irrigation would still need to occur from leachate/stormwater collected, while the site is under remediation management.

- (a) installed and/or maintained in accordance with the manufacturer's specifications; and/or
- (b) tested and shown to be operating to an accuracy of $\pm 5\%$.

The documentation ~~shall~~**must** be provided:

- (i) within 30 days of the installation of any equipment;
 - (ii) at other times when reasonable notice is given and the Chief Executive, Taranaki Regional Council has reasonable evidence that the equipment may not be functioning as required by these consents; and
 - (iii) no less frequently than once every five years.
16. The consent holder ~~shall~~**must** record the location and area over which wastewater is irrigated and provide the record to the Chief Executive, Taranaki Regional Council, at the end of each calendar month.
17. There ~~shall~~**must** be no discharge to water as a result of irrigating wastewater to land. To achieve this, practices to ensure there is no discharge to water ~~shall~~**must** include, but not necessarily be limited to, ensuring that:
- (a) no irrigation occurs closer than 10 metres to any surface water body;
 - (b) the discharge does not result in surface ponding that lasts longer than 30 minutes;
 - (c) no spray drift enters surface water;
 - (d) the discharge does not occur at a rate at which it cannot be assimilated by the soil/pasture system; and
 - (e) pasture cover within irrigation areas is maintained at all times.
18. Except within a mixing zone extending 30 metres downstream of the Wetland Treatment System discharge (monitoring location HHG000103), the discharges allowed by these consents ~~shall~~**must** not give rise to any of the following effects in the Haehanga Stream or any of its tributaries:
- (a) a rise in carbonaceous biochemical oxygen demand of more than 2.00 gm-3;
 - (b) a concentration of unionised ammonia greater than 0.025 gm-3;
 - (c) ~~the presence of~~ total recoverable hydrocarbons ~~greater than 15 g/m3~~;
 - (d) a concentration of chloride greater than 150 gm-3;
 - (e) the production of any conspicuous oil or grease films, scums or foams, or floatable or suspended materials;
 - (f) any conspicuous change in the colour or visual clarity;
 - (g) any emission of objectionable odour;
 - (h) the rendering of fresh water unsuitable for consumption by farm animals; and
 - (i) any significant adverse effects on aquatic life.
19. ~~After 1 June 2026 the discharges allowed by these consents shall not give rise to a concentration of:~~
- (a) ~~ammonia exceeding 0.4 mg/L (annual maximum) or 0.24 mg/L (annual median); or~~
 - (b) ~~nitrate nitrogen exceeding 3.5 mg/L (annual 95th percentile) or 2.4 mg/L (annual median);~~
- ~~in the Haehanga Stream or any of its tributaries.~~

Pond Systems

20. The Irrigation Pond and the Paunch Maturation Pond **shall must** include storage facilities that can contain a volume of wastewater adequate to manage the volume of stormwater and leachate produced during site rehabilitation operations, and achieve compliance with the conditions of these consents.
21. From a date no later than 60 days after commencement of these consents, the discharges to land and water **shall must** be managed and operated in accordance with a Pond System Management Plan (the 'PSMP') that has been approved by the Chief Executive, Taranaki Regional Council, acting in a certification capacity. The PSMP **shall must** detail management practices undertaken to ensure compliance with the conditions of these consents and maximise treatment capabilities of the two systems. It **shall must** address, but not necessarily be limited to, the following matters:
- (a) how the build-up of sediment and/or sludge will be managed within the treatment systems, how the level of build-up will be monitored including factors that will trigger active management, and the frequency of undertaking the identified measures or procedures;
 - (b) how overloading of each system will be prevented;
 - (c) how available storage in the Pond Treatment System will be managed;
 - (d) how plant die-off within the Wetland Treatment System will be managed, and the frequency and/or timing of undertaking the identified measures or procedures; and
 - (e) how the effectiveness of the Wetland Treatment System in removing Nitrogen is to be demonstrated annually.
22. The discharge from the Wetland Treatment System **shall must** meet the following standards (at monitoring site IND003008):
- (a) the suspended solids concentration **shall must** not exceed 100 g/m³; and
 - (b) the pH **shall must** be between 6.0 and 9.0.

Commented [S05]: Some of these items may not be necessary for a short-term remediation consent.

Soil quality

23. The discharges **shall must** be managed to ensure that no constituent in the soil in any irrigation area exceeds the maximum value shown in the following table:

| Constituent | Maximum value (mg/kg unless otherwise stated) |
|---------------------------------|--|
| Arsenic ¹ | 17 |
| Barium – Barite ² | 10,000 |
| Extractable Barium ² | 250 |
| Cadmium ¹ | 0.8 |
| Chromium ³ | 600 |
| Copper ³ | 100 |
| Lead ¹ | 160 |
| Nickel ³ | 60 |
| Mercury ¹ | 1 |
| Zinc ³ | 300 |
| Sodium | 460 |
| Conductivity | 290 mS/m |
| Chloride | 700 |
| Sodium adsorption ratio | 8 (ratio) |
| TPH C7-C9 | 120 |
| TPH C10-C14 | 58 |
| TPH C15-C36 | 4000 |

| | |
|------------------|-------|
| Naphthalene | 7.2 |
| Pyrene | 160 |
| Benzo (a) pyrene | 0.027 |
| Benzene | 1.1 |
| Toluene | 68 |
| Ethylbenzene | 53 |
| Xylenes | 48 |

¹ SCS – Rural Residential MfE 2011b; ² Alberta Environment 2009; ³ NZWWA 2003, lowest of protection of human health and ecological receptors. (Biosolids to land)

Groundwater quality

24. The consent holder **shall-must** maintain all groundwater monitoring wells on site.
25. The Total Nitrogen discharged to any hectare of land **shall-must** not exceed:
- (a) ~~400600~~ 400 kilograms in any 12-month period for 'cut and carry areas'; or
 - (b) 200 kilograms in any 12-month period for any other land (including grazed pasture).
26. From a date no later than 90 days after these consents commence, irrigation of effluent **shall-must** be managed in accordance with a Nitrogen Management Plan (the 'NMP') that has been approved by the Chief Executive, Taranaki Regional Council, acting in a certification capacity. The NMP **shall-must** detail how effluent irrigation will be managed to ensure compliance with condition 25 above.

Commented [S06]: Katie Beecroft agrees O.R. – 400 kg limit

Riparian planting

27. The consent holder **shall-must** undertake (and maintain) fencing and riparian planting for the entire stream length of the streams on the property, in accordance with the Riparian Management Plan for the property (RMP 90383). The additional fencing and/or riparian planting required, **shall-must** be carried out in accordance with the following programme:

| Length of stream bank to be fenced and/or planted (m) (in addition to that existing on 1 March 2021) | Completion date |
|--|-----------------------------------|
| At least 1000 | 1 August 2021 |
| At least 2000 | 1 August 25 March 2022 |
| All remaining | 1 August 25 March 2023 |

Commented [S07]: A new Plan to specify tree spacing, species composition, maintenance and replacement conditions and buffer widths. (Current plan is inadequate). Billion Trees Programme 'offer' - the contracts have not been signed so cannot be imposed as consent condition ie. cannot be considered as 'mitigation', offset or compensation.

Dust

28. The discharges authorised by these consents **shall-must** not give rise to suspended or deposited dust at or beyond the boundary of the site that is offensive or objectionable. For the purpose of this condition, discharges in excess of the following limits are deemed to be offensive or objectionable:
- (a) dust deposition rate 0.13 g/m²/day; and/or
 - (b) Total suspended particulate concentrations 100 µg/m³ as a rolling 24 hour average
 - (c) ~~suspended dust level 3 mg/m³.~~

Note: For the purposes of this condition, the consent holder's site is defined as Sec 34 Pt Sec 4 Blk II Upper Waitara SD.

Commented [S08]: Residents to comment – this has not been the focus of TRONM's case.

Odour

29. The discharges authorised by these consents ~~shall must~~ not give rise to an odour at or beyond the boundary of the site that is offensive or ~~objectionable~~.

Commented [SO9]: Residents to comment – this has not been the focus of TRONM's case.

Note: For the purposes of this condition:

- The consent holder's site is defined as Sec 34 Pt Sec 4 Blk II Upper Waitara SD; and
- Assessment under this condition will be in accordance with the Good Practice Guide for Assessing and Managing Odour, Ministry for the environment (2016) ~~Good Practice Guide for Assessing and Managing Odour in New Zealand, Air Quality Report 36, Ministry for the Environment, 2003.~~

30. Within 90 days of the commencement of these consents, the site ~~shall must~~ be operated in accordance with an 'Odour Management Plan' (the 'OMP') that has been approved by the Chief Executive, Taranaki Regional Council, acting in a certification capacity. The OMP ~~shall must~~ be prepared by a suitably qualified and experienced person and ~~shall must~~ detail the practices undertaken to ensure that odour is avoided as far as practical and there is no offensive or objectionable odour beyond the site boundary. It ~~shall must~~ address, but not necessarily be limited to, the following matters:
- (a) identification of all activities on site which have the potential to generate odour (e.g. turning compost piles, removing sludge from ponds);
 - (b) the conditions and/or time of day when activities identified under (a) above should be undertaken (e.g. during favourable weather conditions and the identification of those conditions) and/or measures that ~~shall must~~ be implemented to avoid odours arising (e.g. containment measures);
 - (c) measures undertaken to minimise odours during receiving and storing material, and throughout the composting and vermiculture processes (e.g. method(s) used to cover material once received, how anaerobic conditions are maintained);
 - (d) measures undertaken to minimise odours arising in the Wetland Treatment System, and identification of the time of year and/or frequency when undertaken;
 - (e) measures undertaken to minimise odours arising in the Irrigation Pond and associated treatment measures and identification of the time of year and/or frequency when undertaken; and
 - (f) an assessment of alternate treatments or methods available that could further minimise odour, and the reasons that they have not been adopted.

Certification by the Chief Executive, Taranaki Regional Council may include, at the consent holder's cost, a peer review by a suitably qualified and experienced person.

31. The consent holder ~~shall must~~ review and update the OMP required by condition 30 and provide it to the Chief Executive, Taranaki Regional Council for recertification before 31 December 2023 and at 2-yearly intervals thereafter. Recertification may include peer review by a suitably qualified and experienced person.
32. The consent holder ~~shall must~~ maintain a monitoring device that continuously records wind speed and direction in the area of the composting activity. The data ~~shall must~~ be provided telemetrically to the Taranaki Regional Council. If this method is not at first technically feasible, the data ~~shall must~~ be provided to the Taranaki Regional Council at a frequency and a form advised by the Chief Executive, Taranaki Regional Council until such a time it is technically feasible to telemetric the data.

Discharge of existing stockpiled waste

33. The discharge of stockpiled material to land for use as a 'soil conditioner' ~~shall must~~ not occur within 10 metres of any surface water.

Commented [SO10]: Not authorised by these consent applications. Outside scope of the current consent applications. Refer S Ongle legal submissions and Attachment 2.

34. The discharge of stockpiled waste to land shall ~~must~~ only occur after:

- (a) the consent holder has provided the Chief Executive, Taranaki Regional Council with the following information:
 - the volume of material to be discharged;
 - (i) a map or aerial image identifying the specific area where the discharge is to occur;
 - (ii) a calculation of the Nitrogen loading of the discharge proposal;
 - (iii) test results from a representative sample of the waste to be discharged showing that it meets the standards shown in the table below;
 - (iv) details of the sampling procedure showing that the test sample is representative of the wastes; and
- (b) the Chief Executive, Taranaki Regional Council, having assessed the information provided advises that the discharge may occur.

| Constituent | Maximum value (mg/kg unless otherwise stated) |
|---------------------------------|--|
| Arsenic ¹ | 17 |
| Barium—Barite ² | 10,000 |
| Extractable Barium ² | 250 |
| Cadmium ¹ | 0.8 |
| Chromium ³ | 600 |
| Copper ³ | 100 |
| Lead ¹ | 160 |
| Nickel ³ | 60 |
| Mercury | 1 |
| Zinc ³ | 300 |
| Sodium | 460 |
| Conductivity | 290 mS/m |
| Chloride | 700 |
| Sodium adsorption ratio | 8 (ratio) |
| TPH C7-C9 | 120 |
| TPH C10-C14 | 58 |
| TPH C15-C36 | 4000 |
| Naphthalene | 7.2 |
| Pyrene | 160 |
| Benzo (a) pyrene | 0.027 |
| Benzene | 1.1 |
| Toluene | 68 |
| Ethylbenzene | 53 |
| Xylenes | 48 |
| Pathogen | |
| E-coli | Less than 100 MPN/g |
| Campylobacter | Less than 1/25g |
| Salmonella | Less than <2 MPN/g |
| Human | Less than 1 PFU/0.25g |
| Adenovirus | Less than 1 PFU/0.25g |
| Helminth ova | |

¹SCS—Rural Residential MfE 2011b; ²Alberta Environment 2009; ³NZWWA 2003, lowest of protection of human health and ecological receptors. (Biosolids to land)

Monitoring Plan

Commented [SO11]: There would still be a monitoring plan to Monitor site-operations during the clean-up. This may however be able to be less stringent because no more waste materials would be coming onto the site.

35. Within 90 days of the commencement date of these consents, the consent holder ~~shall~~must ensure a Monitoring Plan is prepared. The purpose of the Monitoring Plan is to identify the techniques, methodologies and procedures that will be employed to acquire data in relation to, and to monitor compliance with the conditions of these consents, and the effects of the discharges authorised by these consents. The plan ~~shall~~must include at least the following:

- (a) provision for site inspections to be undertaken at least once every week;
- (b) installation of an in-situ water quality monitoring sonde to measure real-time water quality of the Haehanga Stream;
- (c) camera surveillance of the site with images transmitted to the Council in real time;
- (d) requirements for sampling and testing to ensure compliance with the conditions of these consents;
- (e) groundwater sampling and testing to determine the risk that groundwater quality may present for surface water; and
- (f) annual reports that record the information that has been collected in accordance with the consent conditions and compliance with those conditions.

Note: The Taranaki Regional Council assumes responsibility for the preparation and implementation of the Monitoring Plan for annual compliance purposes, however RNZ representatives must also be involved in preparation of this document.

Contingency Plan

36. The consent holder ~~shall~~must develop and regularly update a 'Contingency Plan' that details measures and procedures that will be undertaken to prevent and remedy any environmental effects from a spillage or any discharge of contaminants not authorised by these consents, during the course of site remediation. The plan and any amended versions ~~shall~~must be provided to the Chief Executive, Taranaki Regional Council.

Commented [S012]: There would still be a Contingency Plan for spills during clean-up operations.

Site reinstatement

37. The consent holder must have engaged a suitably qualified and experienced person, approved by the Chief Executive, Taranaki Regional Council, to prepare a Draft Site Exit Plan (SEP) which details how the site is going to be reinstated at the end of its life.

The Draft SEP must be provided to Te Rūnanga o Ngāti Mutunga within 6 weeks of the commencement date of these consents, for the purpose of consultation with that iwi on the Site Exit proposal.

Within 3 months of the commencement date of these consents, the consent holder ~~shall~~must ~~have engaged a suitably qualified and experienced person, approved by the Chief Executive, Taranaki Regional Council, to prepare a Site Exit Plan (SEP) which details how the site is going to be reinstated at the end of its life, provide the SEP to the Chief Executive, Taranaki Regional Council along with any written comments that Te Rūnanga o Ngāti Mutunga or that iwi's nominated expert, have provided on the plan.~~ A bond is required under condition 38, in relation to performance of the SEP.

The draft and final versions of the SEP submitted to the Chief Executive ~~shall~~must address, but is not necessarily limited to, the following matters:

- (aa) characterisation of contaminants for remediation;
- (ab) groundwater investigations to determine flow paths and travel time of groundwater and entrained contaminants;

Commented [S013]:

As above, Ngāti Mutunga seeks ('OPTION A') that this Plan is submitted now i.e. prior to the short-term consent for remediation & closure of the site being granted. These conditions are for 'OPTION B' i.e. that a Plan is submitted after consents are granted.

- (a) how the site will be reinstated so that no raw materials listed or approved under consents #5838 and 5839 ~~conditions 3 or 4 of these consents~~ remain on site after the consent expires;
- (b) how the site will be reinstated so that no partially decomposed material remains on site after the consents expire;
- (c) how all stockpiled waste will be removed from the site and appropriately disposed of in an approved facility;
- (d) how any remaining leachate or sludge, resulting from the operation, will be either removed from the site, buried, treated or otherwise to avoid any adverse effects on groundwater or surface water;
- (e) how irrigated soils and groundwater will be remediated;
- (ea) expected site life for applied contaminants in groundwater and programme for monitoring of groundwater and surface water across that time period;
- (eb) cultural health monitoring according to Ngāti Mutunga tikanga, following the consultation with that iwi and the development of a cultural health monitoring protocol for the site clean-up operations together with cultural procedures to mark the site closure (once it is completed);
- (ec) how any comments received from Ngāti Mutunga or that iwi's nominated expert have been adopted and, if not, reasons those comments have not been adopted;
- (f) timeframes for undertaking the activities identified in association with (a) to (ec) above;
- (g) estimates of costs of reinstating the site; and
- (h) a recommended initial bond quantum. Note: this recommendation is not final, and is subject to the process set out at condition 38 (d)(i) – (iii) below.

The SEP must achieve a standard of remediation so that no constituent in the soil in any area of the site exceeds the maximum value shown in the table in Condition 23 of these conditions.

The first time the SEP is drafted it shall ~~must~~ be submitted for approval to the Chief Executive, Taranaki Regional Council, acting in a certification capacity. Certification (or withholding certification) will be based upon whether the SEP meets the requirements of (a) to (ec) and the standard for soil remediation.

The Chief Executive must provide a decision on certification to the consent holder within 30 working days of receiving the SEP.

In the event that certification of the SEP is withheld, the Chief Executive must give reasons for withholding certification. The consent holder shall be given an opportunity to re-submit the SEP for certification, within a period 45 working days following receipt of the Chief Executive's decision to withhold certification. Resubmission of the SEP must be accompanied by an explanation of how the comments from the Chief Executive or his nominated expert have been adopted and, if not, reasons those comments have not been adopted.

In the event that the Chief Executive withholds certification of the re-submitted SEP, and a dispute arises about the content of the SEP between the consent holder and the TRC, the Chief Executive's decision shall be final.

The SEP shall ~~must~~ be reviewed by a suitably qualified and experienced person approved by the Chief Executive, Taranaki Regional Council, and submitted to the Chief Executive, Taranaki Regional Council for re-approval at 5-yearly intervals. The consent holder shall ~~must~~ implement the approved SEP within the duration of these consents ~~upon expiry~~ of these consents.

Bond

38. Within 6 months of the commencement date of these consents, the consent holder ~~shall~~must enter into an enforceable written agreement (bond agreement) to provide and maintain in favour of the Taranaki Regional Council, a cash bond or bank bond pursuant to sections 108(2)(b) and 108A of the Resource Management Act, on terms and conditions satisfactory to the Taranaki Regional Council in all respects.

The following terms apply in respect of the bond:

- (a) the bond quantum ~~shall~~must be sufficient to ensure compliance with condition 37 above in the event of any default by the consent holder;
- (b) any bank bond ~~shall~~must be in a form used by a bank registered to conduct business in New Zealand and approved by the Taranaki Regional Council;
- (c) the bond agreement ~~shall~~must include the terms and conditions on which the bond will be established, maintained, changed, transferred or surrendered. In the event of the Taranaki Regional Council not agreeing with the consent holder on the terms of the bond agreement, then the dispute ~~shall~~must be resolved through an agreed disputes resolution process or referred to arbitration;
- (d) the initial bond quantum ~~shall~~must be determined as follows:
 - (i) Upon preparing the SEP, and in accordance with condition 37(g) and (h) above, a suitably qualified and experienced person (approved by the Chief Executive of the Taranaki Regional Council) who has been engaged by the consent holder ~~shall~~must make a recommendation as to the initial bond quantum;
 - (ii) The Taranaki Regional Council will then engage a suitably qualified and experienced person to peer review the bond quantum recommended under condition 37(h); and
 - (iii) In the event of the consent holder and the Taranaki Regional Council not reaching an agreement on the initial bond quantum, it ~~shall~~must be assessed by an independent bond assessor appointed by the Taranaki Regional Council, and the decision of that person will be final and binding.
- (e) the bond quantum may be reviewed and reassessed every two years from the date the initial bond quantum is lodged until a date two years after the date on which these consents have been given effect to. The purpose of the adjustment is to reflect changes in the risk profile of the activity at the site. After that, the bond quantum may be reviewed and reassessed by the consent holder and the Taranaki Regional Council at five yearly intervals for the duration of these consents. The method of review must follow the same procedure set out in condition 38(d) above.
- (f) the bond terms and quantum may also be varied or cancelled or renewed at any other time by agreement between the consent holder and the Taranaki Regional Council using the methodology described in condition 38(d); if at any time the amount of the bond is varied under conditions 38(e) or 38(f), then the consent holder ~~shall~~must, within five (5) working days of the replacement bond agreement being executed, put in place a new bond for the varied amount or the additional amount required in excess of the existing bond;
- (g) if the consent is transferred to another party or person, the bond lodged by the transferor ~~shall~~must be retained by the Taranaki Regional Council until a replacement bond is entered into by the transferee to ensure compliance with conditions of the consents unless condition 37 has already been complied with;
- (h) at all times the consent holder ~~shall~~must comply with the terms of the bond or varied bond;
- (i) the consent holder ~~shall~~must reimburse the Taranaki Regional Council for all reasonable costs incurred in developing the bond agreement and any subsequent reviews or reassessments;

- (j) for the avoidance of doubt, the bond agreement may provide for the bond to be held after the expiry of these consents if the SEP is not given effect to and condition 37 not complied with.

Review

- 39. In accordance with section 128 and section 129 of the Resource Management Act 1991, the Taranaki Regional Council may serve notice of its intention to review, amend, delete or add to the conditions of this resource consent by giving notice of review during the month of June each year, for any of the following purposes:
 - (a) ensuring that the conditions are adequate to deal with any adverse effects on the environment arising from the exercise of this resource consent, which were either not foreseen at the time the application was considered or which it was not appropriate to deal with at the time; or
 - (b) setting of specific groundwater quality standards if testing indicates that it is reasonably required to avoid adverse effects on surface water
-

**IN THE DISTRICT COURT
AT TAURANGA**

**CRN13070501773
CRN13070501774
CRN13070501777
CRN13070501779
CRN13070501842**

**BAY OF PLENTY REGIONAL COUNCIL
& TAURANGA CITY COUNCIL
Informants**

v

**'C' SIDE SERVICES LIMITED
Defendant**

Hearing: At Tauranga, Monday 17 March 2014

Appearances: A A Hopkinson and J W Howell for Bay of Plenty Regional
Council ("the Regional Council") and Tauranga City Council
("the City Council")
L C R Burkhardt for 'C' Side Services Limited ("C' Side")

Date: 28 March 2014

RESERVED SENTENCING NOTES OF J A SMITH

Introduction

[1] 'C' Side Services Limited ('C' Side) appeared for sentencing in respect of charges relating to:

- (a) The disposal of demolition waste containing asbestos (the Regional Council charge);
- (b) Breaches of Plan rules relating to clearance and cleanfill disposal in an indigenous vegetation area, cleanfill disposal in a Rural zone,

disposing of demolition waste including asbestos within a Special Ecological Area (SEA); and

- (c) Disposing of cleanfill in breach of Rule 16A.11 of the Tauranga City Plan (**the City Plan**).

[2] There were originally a significantly greater number of charges, but these have been reduced to these five charges against 'C' Side, and the parties have agreed to a Summary of Facts. 'C' Side has entered guilty pleas.

The Charges

[3] There is an overlap between the charges, and I have identified through the course of the hearing three separate issues:

- (a) The disposal of hazardous waste material (asbestos) at the rurally zoned property at 184 Grange Road, Tauranga;
- (b) The use of this site for the use of over 6,000m³ of cleanfill deposited on the site either by 'C' Side, or with their permission; and
- (c) The clearance of vegetation within an SEA under the City Plan.

[4] The defendant company is convicted and the parties are agreed that a fine is the appropriate approach.

The Factual Background

[5] 'C' Side provides digger and truck hire, primarily for the shipping industry, but also undertakes demolition and earthworks. It trades as Walling Enterprises and Dig 'N' Rig.

[6] In November 2009 'C' Side purchased 184 Grange Road which contains an area of 1.57ha. The property is steep-sided and runs down to the western shore of the Waikareao Estuary, near the Daisy Hardwick Walkway. It is zoned Rural in the

City Plan and approximately half of the property is Category 1 SEA as defined in the City Plan.

[7] Annexed hereto and marked **A** is a copy of the City Plan showing the site. Annexed hereto and marked **B** is an overhead photograph of the site showing significant features that will be the subject of discussion in due course.

[8] In 2010 as a result of complaints, Regional and City Council officers visited the site and spoke to Mr Walling, the principal of 'C' Side. It was made clear that works within the SEA required consent and that filling of the site would also require consent.

[9] As a result of further complaints in 2013, Council officers discovered that the site had continued to be filled, and that there had been removal of further areas of SEA. Also during the course of testing, it was discovered that there were areas where remnants of white, brown, and blue asbestos were discovered. These are considered to be highly dangerous materials and require special control and permission for placement.

[10] It was admitted by the applicant that he had not sought or obtained any resource consents for:

- (a) The filling work;
- (b) The clearance of the SEA; and
- (c) The placement of the asbestos.

[11] Annexed hereto and marked **C** is a copy of the site showing the agreed area where further cleanfill works have occurred since April 2011, being the agreed date when the Plan provisions became operative. It can be seen that a large proportion of the site has been involved in such works.

[12] Nevertheless, such works are not significantly over the minimum quantity required under the Regional Plan before consent needs to be sought ($6,000\text{m}^3$ as opposed to $5,000\text{m}^3$ under the Regional Plan). We note that no Regional charge has been brought in this regard.

[13] Further investigations revealed that the cost of removal of the asbestos would be prohibitive (well over \$100,000) and instead, the City Council has reluctantly agreed to consider a replanting and maintenance programme in respect of the site. Thus the parties have agreed that enforcement orders should be made which would include:

- (a) Formal identification that the site is a hazardous site and should be listed in both the relevant Regional and District Plans accordingly, and
- (b) That any construction or works to be done on this site should require peer reviewed reports addressing the hazardous materials on site.

[14] The parties agreed that they would forward an agreed set of these enforcement orders to the Court as soon as possible. This did not occur as the parties are in dispute on the extent of works.

[15] The dispute relates to whether the SEA and buffer zone covering the driveway should be included in the remediation. An area of 42m^2 is already excluded, but the defendant seeks to exclude a further 100m^2 (approx). I note that no exact measure is given and this figure is derived by adding 762m^2 in the area bordered by the yellow line, shown on the map in Annexure **D**, plus 42m^2 area bordered by dotted yellow line, to arrive at 804m^2 . Counsel for the defendant gives a re-vegetated total area of 700m^2 .

[16] The argument for the defendant seems to be that the defendant should be able to access, develop and use the site. It is not the purpose of enforcement orders in prosecutions to provide benefit to the defendant from the offending.

[17] I conclude that the yellow area should be remediated subject to an option to substitute the dotted yellow 42m² box for the solid yellow 42m² box. I acknowledge that a resource consent is required for the works and if 'C' Side seeks to further vary the area they can make application for resource consent to do so. I am not in a position to consider all factors relevant to different areas being remediated.

[18] I proceed on the basis of the enforcement order as set out in Annexure **D** hereto.

The Court's Approach

[19] The company is clearly convicted on all offenses, is subject to the enforcement orders set out, and the question for this Court is the appropriate outcome. The parties are agreed that a fine is appropriate, and that the enforcement orders made by this Court are also relevant to that outcome.

[20] The parties have also agreed that in the broad terms already described, the Court can take into account those enforcement orders.

[21] The parties have also agreed that the Court should adopt a three-stage approach to such offending:

- (a) Firstly, setting a starting point, having regard to the gravity of the offending:
 - (i) The culpability of the offender
 - (ii) The nature of the environment
 - (iii) The extent of damage inflicted;
 - (iv) Size and wealth of the offender and the nature of its operation;
 - (v) Reference to the maximum penalties prescribed for the offence;

- (vi) Consideration of sentencing levels for similar offending; and
 - (vii) Ensuring that the cost of penalties cause the polluter to internalise the environment cost and foster the principle of environmental responsibility.
- (b) The second stage is for personal, aggravating and mitigating features of the offender to be considered and to make appropriate adjustments to the starting point; and
- (c) Finally, making any appropriate discounts for such things as guilty plea, financial circumstances of the defendant, or other matters.

The Sentencing Act

[22] There are a number of provisions in Section 7 of the Sentencing Act which are relevant in this case. Although denunciation and accountability are important, I have concluded that deterrence of other persons from committing the same or similar offences is a key purpose of these proceedings.

[23] In this regard, the Regional Council has noted that there have been several cases where contractors have removed asbestos without proper consents or arrangements being made. There was a suggestion that it was the responsibility of the landowner or the Council when granting the demolition consent to identify all hazardous materials. There is evidence that neither the Council nor owner did so.

[24] I have concluded that this cannot be a defence to the action, and given the entry of a guilty plea, it must be accepted that the defendant had liability to ensure that the demolition material it was removing was asbestos-free.

Asbestos Material

[25] Mr Walling did make some enquiries, but acknowledges that those enquiries were incomplete. I agree with Ms Burkhardt that this is a matter of carelessness, rather than deliberateness.

[26] Nevertheless, it is the responsibility of contractors to ensure that the materials they place in the cleanfill are not contaminated. In this case, it cannot be said that the discovery of asbestos over a wide area of the site could be a mistake or an inconsequential inclusion within general waste. In fact, I understand that there was something in the order of 300m³ of asbestos, and I cannot accept that the contractor or its workers would not have identified this during the course of the demolition.

[27] Not only is the material dangerous to the workers who removed it, given its highly fragmented state, but it remains dangerous in perpetuity if it is exposed or disturbed in any way. Given the way in which it has been dispersed over the site, I accept that this introduction of highly dangerous material constitutes an ongoing health hazard to members of the community for the foreseeable future.

[28] I acknowledge that it can be managed through proper capping and continued vigilance in respect of the site, but I remain concerned that it may be disturbed at some point in the future at which time it would again constitute a significant health hazard. Keep in mind when considering the effects on the environment that this Court is obliged to consider inter-generational issues under Section 5 of the Act, and the containment of highly fragmented asbestos of this sort on this site constitutes an ongoing health hazard in perpetuity.

[29] In relation to the SEA site, it constitutes a similar ongoing danger. I do not see any aggravated level of danger because there are plants on the site. Asbestos is not absorbed by plants and it is disturbance of the asbestos which is of concern.

[30] Overall, I must regard the culpability in respect of the asbestos at the moderate to high end, although I accept that there was carelessness rather than wilfulness in respect of its cartage and placement, but nevertheless has been highly fragmented and now constitutes a significant danger to members of the public.

[31] Given its proximity to the Waikareao Estuary and other residential areas, it remains a continuing danger. It's danger may be reduced by significant capping. There would also need to be steps to ensure that there was no prospect in the future of it being dug up or disturbed by others, either intentionally or unintentionally. In

my view, that risk remains whatever steps are taken in terms of the Enforcement Orders.

The SEA

[32] I turn now to consider the question of the cleanfill and the SEA. It was suggested that both of these issues could be merged with that of asbestos. However, I am unable to do so. In my view the removal of the vegetation is entirely separate to the question of cleanfill. The vegetation area in question here is only some 372m² out of something in the order of 5,000m² of fill area.

[33] The Council had a report prepared by Wildland Consultants to discuss the areas in question. The parties are agreed that the area in question is all within Zone 8, which was described by Wildland Consultants as follows:

8. Mamaku-tree privet-(brush wattle) – (flowering cherry)/kawakawa – Chinese privet forest

This area has a cover of mamaku and tree privet (*Ligustrum lucidum*) with occasional brush wattle and flowering cherry (*Prunus* sp.) over a subcanopy of kawakawa and Chinese privet (Plates 10 and 11). Occasional ponga (*Cyathea dealbata*) and karamu are also present in the canopy. Abundant exotic lianes cover the canopy locally, including Japanese honeysuckle and jasmine (*Jasmine polyanthum*). Occasional grey willow is present, mainly towards the lower end of the hillslope. German ivy (*Delairea odorata*) is common in the uphill part of this unit.

[34] Although identified as a SEA, the actual value of the 372m² in question here is not particularly high. I would have put it in the low/moderate category, that with management to remove and reduce exotics could have eventually moved towards native indigenous vegetation.

[35] Keep in mind that the outcome under the enforcement orders is likely to yield a higher quality outcome within 10 years than if the vegetation had not been removed. Nevertheless, there is the impact within that 10 years of the loss of this area and its consequent filling with other materials.

[36] Overall, the effect on the environment here is low/moderate, taking into account the agreed enforcement action for the re-establishment of the vegetation.

[37] In respect of the deliberateness of the defendant however, there appears to be no reason advanced as to why this was done without a resource consent. Mr Walling was clearly aware of the need for one after 2010, and chose to adopt a course of deliberate and wilful defiance of those requirements. This must be seen as an aggravating factor of the offending and overall, probably places this matter into the moderate category.

The Cleanfill

[38] The cleanfill contains some contaminants, including asbestos, and photographs show wood and other organic items from time to time. Nevertheless, the issue in this case is largely the covering of around 5,000m² of the site with some 6,000m³ of fill. Clearly some of that has been imported, with other fill being as a result of cutting other areas on the site.

[39] The intended outcome is to improve the slope of the site and make it suitable for building. Whether that can be achieved with the level of organic materials in the waste is not a matter for current consideration.

[40] There is no evidence that there has been any impact of this fill on the Waikareao Estuary, although there clearly was the potential to do so. There was no signs of any sediment reduction techniques being utilised, and it is indeed fortuitous that the defendant did not cause any damage which would significantly increase the Starting Point.

[41] Nevertheless, I recognise that there was the small potential for sediment contamination. However, I would have described the impacts of the level of fill in this case as minor, but for the deliberate and wilful actions of Mr Walling. It is clear that he did so knowing that a consent was required, and again, this aggravates the nature of the offending from the low/moderate category to moderate.

Starting Points

[42] It is difficult to find an exact comparable starting point. Ms Burkhardt sought to rely on some air discharges cases relating to burning asbestos, but I find those entirely inappropriate and unrelated to the activities involved here.

[43] In *Bay of Plenty Regional Council & Anor v Waikato Demolition*,¹ the Court was faced with a person who had illegally cleanfilled and burnt some materials, not including asbestos. The starting points in this case were \$12,000 for the air discharge, and \$30,000 for fill. In *Auckland City Council v A H Construction & Anor*,² an earthworks case exposing asbestos, the Court adopted a starting point of \$100,000. Neither case is directly on point, and these cases do not involve questions of clearly ecological areas.

[44] Ms Burkhardt suggested that all matters should be dealt with as one, and suggested a starting point of \$45,000. In discussion, this was divided between the key offences, of:

- (a) asbestos, at \$15,000; and
- (b) vegetation clearance and cleanfill at \$30,000.

[45] I disagree with such a proposition. Mr Hopkinson suggested a combined starting point of around \$130,000. As the Court of Appeal has noted in *Machinery Movers*³ and in other cases, fines under the Act should not be seen as a licence fee for the works to be undertaken. At \$30,000 starting point, there is no doubt in my mind that contractors would see this as a low fee compared with the cost of applying for and complying with a resource consent to maintain a proper cleanfill site. In my mind it also bears no proper relationship to the maximum fines in this case which are \$600,000, or the deliberateness with which the action were undertaken.

¹ CRI-2012-063-003168

² CRI-2008-004-029235 & 28831

³ [1994] 1NZLR492

[46] When I come to consider the asbestos case, it appears to me that we have starting points in respect of oil spills where there is a small amount of oil (1,000 – 2,000 litres) which has a potential long-term effect on the environment, the starting points are \$50,000 - \$70,000. Compare this with the current suggested starting point in respect of asbestos, a pernicious material which will persist in the environment and continue to pose a danger to the welfare, health and safety of citizens (under Section 5 of the Act). It seems to me that a starting point of \$15,000 is well astray of an appropriate relationship with other cases, such as oil spills or effluent.

[47] Mr Hopkinson took a different approach of examining the asbestos and then the cleanfill SEA issues, and arrived at a starting point of around \$130,000. I acknowledge that there are crossovers between the various offences here, i.e. the asbestos was part of the cleanfill and the clearance of the SEA was to allow the cleanfill, and thus suggestion that there should be a 10% of maximum fine adopted for each would be inappropriate on the totality principle.

[48] I have concluded that I need to mark out the asbestos case separately because it is a prosecution by the Regional Council rather than the City Council. I have also decided that I need to mark out the removal of the SEA as a separate issue to the cleanfill, and that given there is no sufficient volume in this case to have any form of tariff or direct comparison, I need to adopt a reasonable approach by analogy to other cases of pollution, such as dairy effluent to land (not water) and oil pollution (taking into account that that is generally to water).

The asbestos

[49] In the end I have concluded that a starting point in respect of the asbestos must conservatively be \$30,000, being 5% of the maximum penalty. This takes into account the lack of deliberateness in respect of its application, but nevertheless, its dispersion over the site in a highly fragmented state. This also assumes the enforcement orders are made minimising its effect.

The cleanfill and the SEA

[50] In relation to both the cleanfill and the clearance of the SEA, the aggravating feature of deliberateness must be taken into account in the starting point. And in that regard I have concluded that a starting point for the clearance of the SEA should be \$30,000; and for the cleanfill, \$35,000.

[51] In reaching a conclusion on cleanfilling, I need to take into account that Mr Walling was deriving income by avoiding paying tipping charges himself and allowing others to use his property.

Totality

[52] Looking at this matter on a totality basis, this has a starting point overall of \$95,000.

[53] Although this could be criticised as low for the offending in this case, I appreciate in these figures there is the ability for some movement between the various categories, but that overall a starting point of some \$95,000 is appropriate.

[54] Comparing with similar cases, the deliberateness of these actions marks them out. Although the area in question is small, the deliberateness marks out this offending as does the motive profit. The cleanfill figure might more properly be \$40,000, but I recognise overlays with the other offending.

Aggravating and Mitigating Features personal to the offender

[55] Ms Burkhardt sought a total of around 20% discount for good character and remorse (10%) and remedial restoration work (15%).

Good Character and Remorse

[56] I acknowledge that the company has had no previous offences and is generally of good character. I am unable to identify any element of remorse, beyond the entry of a guilty plea, which would constitute the exceptional remorse envisaged by the Court of Appeal in the relevant decisions.

[57] It seems all the more difficult to argue for such remorse in circumstances where the party has deliberately refused to comply with earlier Council instructions, which is the very matter that has led to the charges. I would allow for good conduct at a maximum of 5%, and consider that in the circumstances is relatively generous.

[58] As for the rehabilitation work, I am told that this is likely to cost in the order of \$11,000 - \$12,000. It is clear that there is no allowance of dollar for dollar expenditure for work done. Much of this work is essential to provide for the protection of the residents of Tauranga. I also acknowledge that there would be some improvement to the SEA area over the 10 year period.

[59] However, the remediation is significantly cheaper than removal of the material which was the City Council's (and the Court's) preference. Essentially, the defendant would avoid the significant costs and retain their objective of developing the site.

[60] I have concluded that no allowance should be made for the rehabilitation work. This leaves a reduction of \$4,750, leaving \$90,250.

Early Guilty Plea

[61] There is no question that the defendant should be entitled to a full reduction for early plea of 25%, and this was not argued by Mr Hopkinson.

OUTCOME

[62] I look at the outcome in the round, taking into account the enforcement orders. I have concluded that although the outcome is well above that envisaged by counsel, it is appropriate given:

- (a) The need to separate this offending from a licence cost;
- (b) The potential ongoing use of the land;
- (c) Avoidance of significant removal costs; and

(d) Deliberateness of the clearance and filling.

[63] Therefore, this yields a fine of \$67,687.50, together with Court costs.

[64] The fine is to be attributed as follows:

- (a) CRN-13070501773 - \$22,687.50 plus \$132.89 (Court costs) + \$113.00 (solicitor's fee);
- (b) CRN-13070501774 - \$22,000 plus \$132.89 (Court costs) + \$113.00 (solicitor's fee);
- (c) CRN-13070501777 – Convicted and discharged with no further costs;
- (d) CRN-13070501779 – Convicted and discharged with no further costs;
- (e) CRN-13070501842 - \$23,000 plus \$132.89 (Court costs) + \$113.00 (solicitor's fee)

[65] I attribute slightly more to the asbestos charge given the avoidance of removal costs.

[66] Ninety-percent (90%) of the fine for CRN-1307050173 is to be paid to the Regional Council. Ninety-percent (90%) of the balance of the fines are to be paid to the City Council.

Enforcement Orders

[67] These orders are made pursuant to those provided by the parties, annexed hereto as **D**. The enforcement orders may be enforced in the Environment Court by application, or by application for separate proceedings.

J A Smith

District Court/Environment Judge

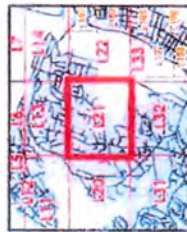
Annexure A

Section 1 - L21



City Plan

Planning Map

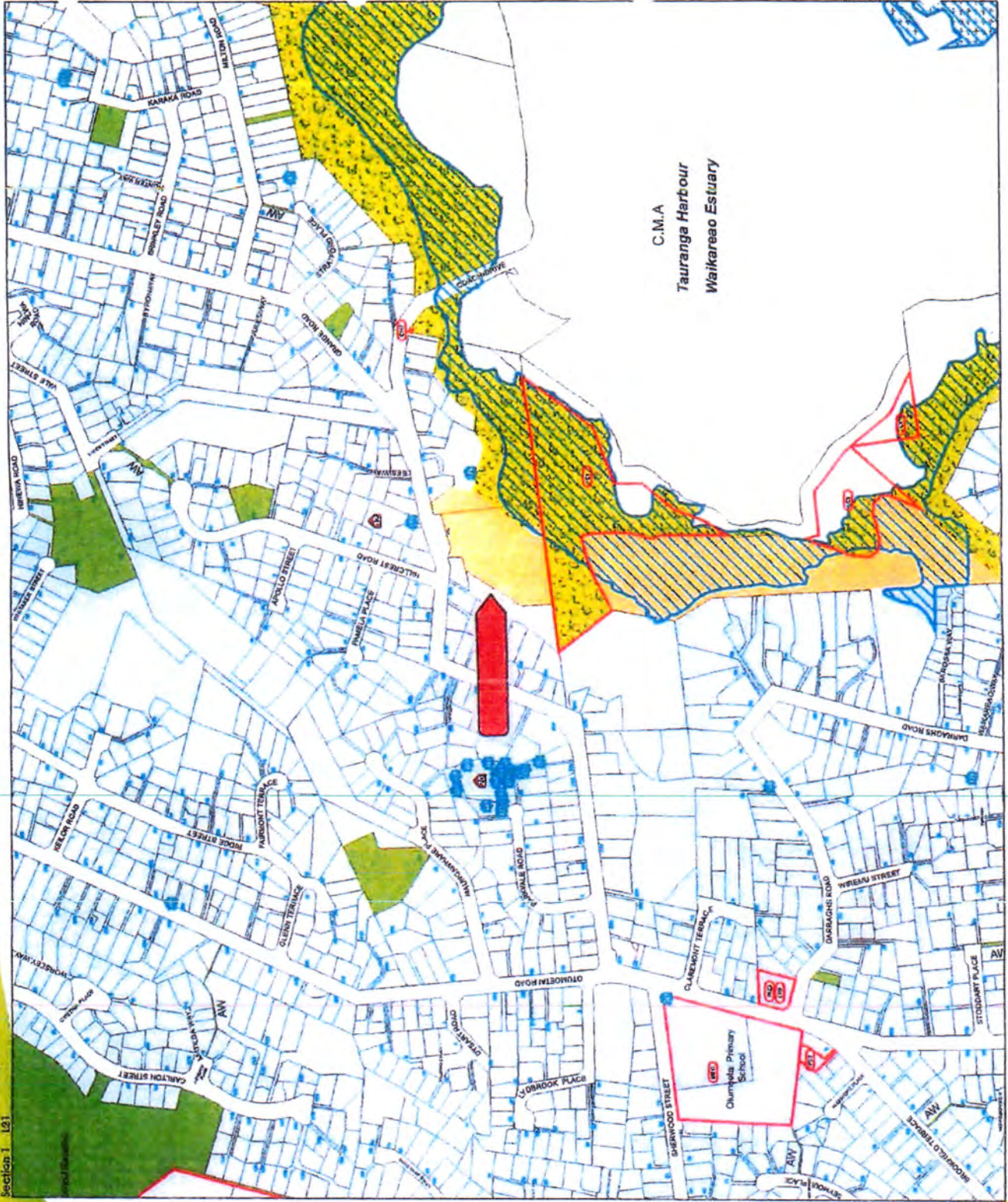


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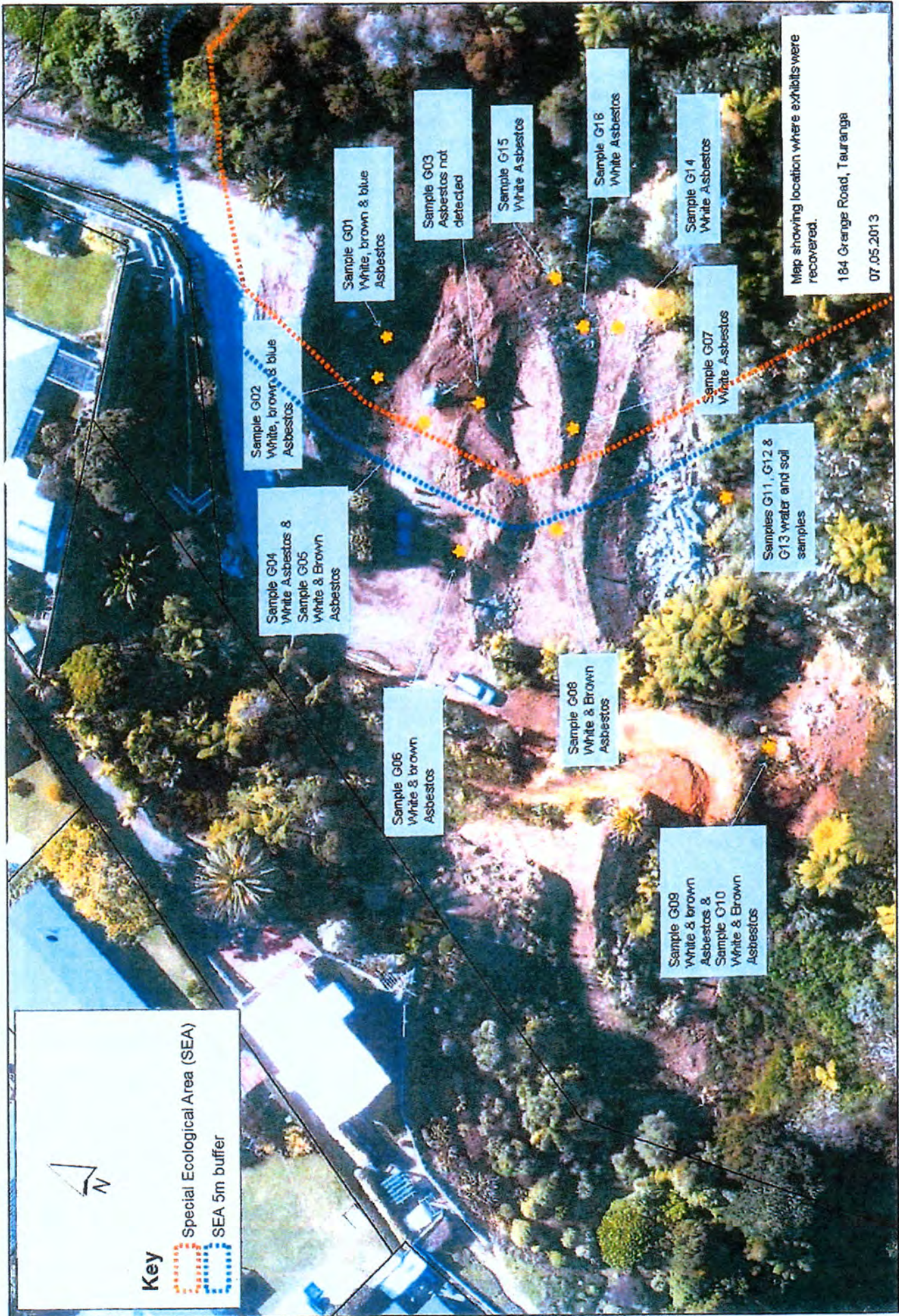
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Tauranga City

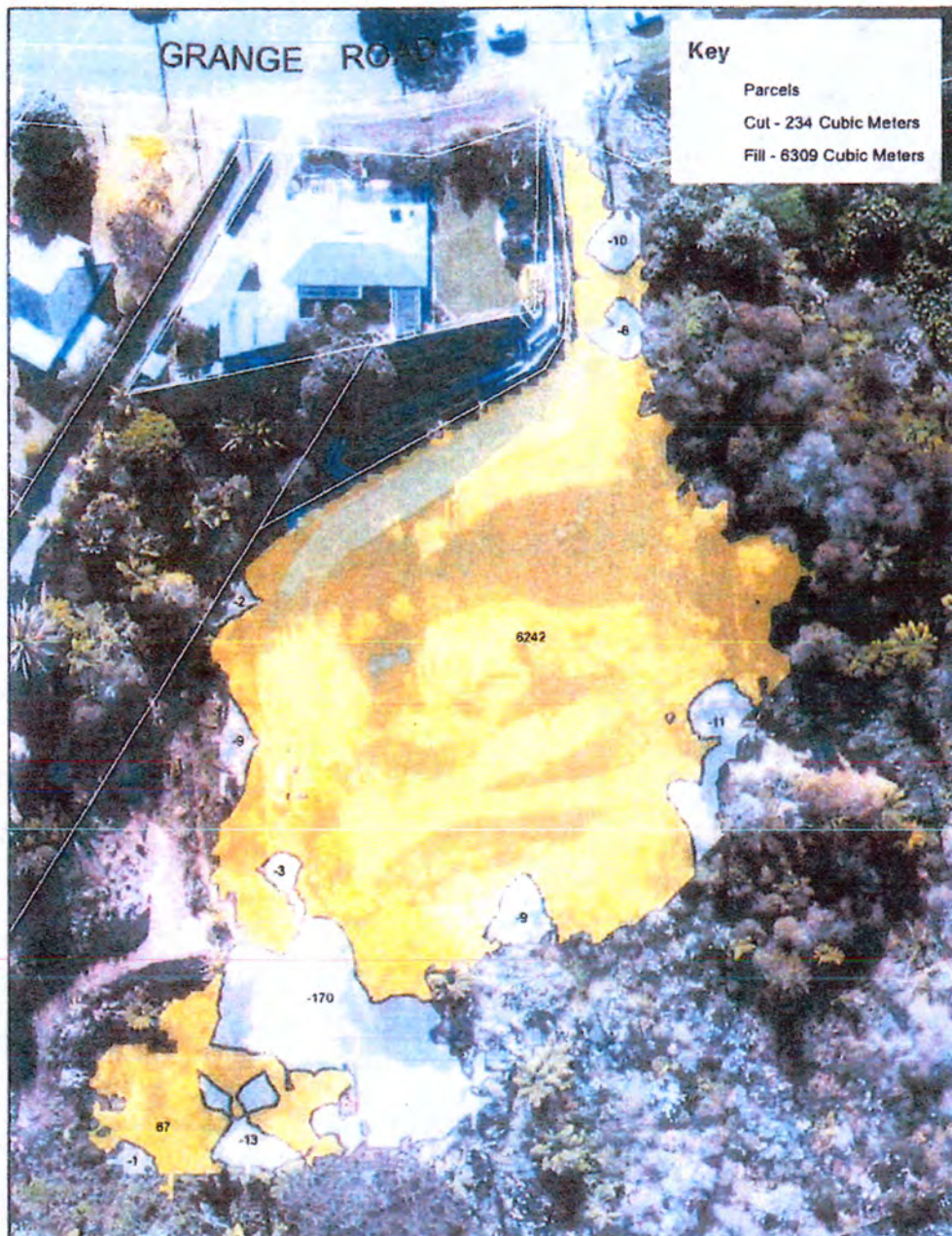


Annexure B



Annexure C

FIGURE FROM TCC - EARTHWORKS CUT AND FILL



184 Grange Road
Cut and Fill Volumes between the dates of
18-11-2011 to 7-5-2013
Aerial Photo flown - 7-5-2013



1:550

Annexure D

IN THE DISTRICT COURT
AT TAURANGA

CRN13070501773
CRN13070501774
CRN13070501777
CRN13070501779
CRN13070501842

BETWEEN

BAY OF PLENTY REGIONAL
COUNCIL

TAURANGA CITY COUNCIL

Informants

AND

'C' SIDE SERVICES LIMITED

Respondent

Court: Environment Judge J A Smith sitting alone pursuant to Section 279
of the Act
In chambers at Auckland

Date: 28 March 2014

ENFORCEMENT ORDER

[1] Within two months of the date of the enforcement order being made, 'C' Side Services Limited will:

[a] Submit to Bay of Plenty Regional Council for approval a management plan for covering and managing the asbestos containing material that has been deposited at the site. That management plan will include:

[i] A method of covering the identified fill area to ensure that potentially asbestos containing material is not discharged to air,

where such method is to be approved by the Bay of Plenty Regional Council;

- [ii] Provision for regular monitoring and reporting to ensure that the site is not disturbed and the cover material remains intact;
 - [iii] Restrictions for regular monitoring and reporting to ensure that the site is not disturbed and the cover material remains intact;
 - [iv] Restrictions on the use of the land where asbestos containing material has been identified;
 - [v] Approval requirements if earthworks are required to be undertaken in the area where asbestos containing material has been identified.
- [b] Submit to Tauranga City Council for approval a list of the indigenous vegetation it will plant in the Special Ecological Area.

[2] Within two months of the approvals required above being given, 'C' Side Services Limited will apply for, as a comprehensive suite, any resource consents necessary for:

- [a] The remediation of contaminated land at the site;
- [b] The re-planting of vegetation at the site within the area marked yellow on the map annexed hereto. The area marked solid yellow with 42m² marked in it may be substituted with the area marked dotted yellow with 42m² in it, at 'C' Side Services Limited's option. If the defendant seeks to vary that area, resource consent must be sought and granted to such change as part of these applications; and
- [c] Will use best endeavours to seek conditions that 'C' Side Services Limited (or any successor in title/new purchaser) will maintain the re-planted area over a period of five years to assist the new vegetation to become established.

[3] Within one month of obtaining the resource consents required above, 'C' Side Services Limited will commence implementation of the remediation plan at the site.

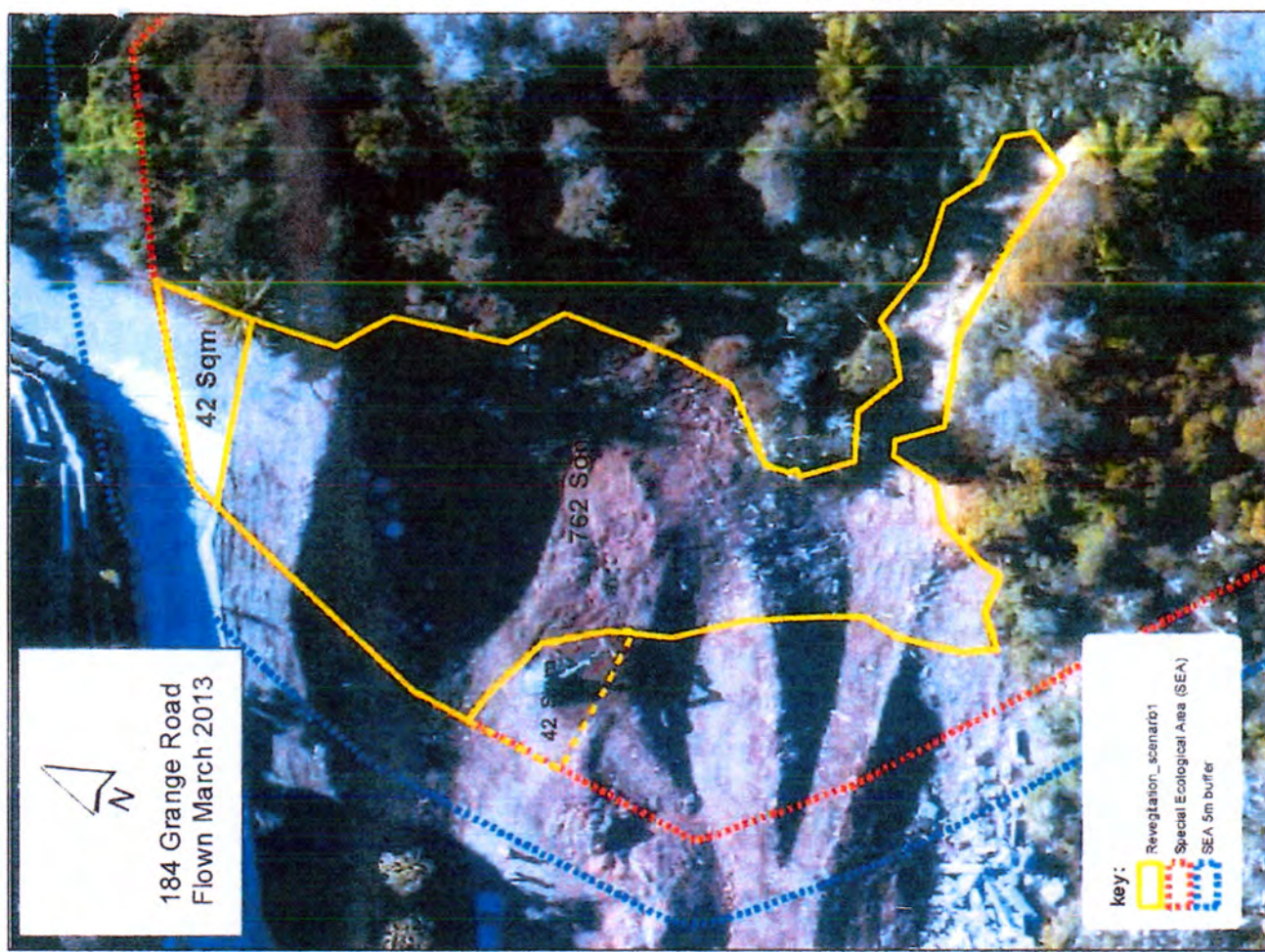
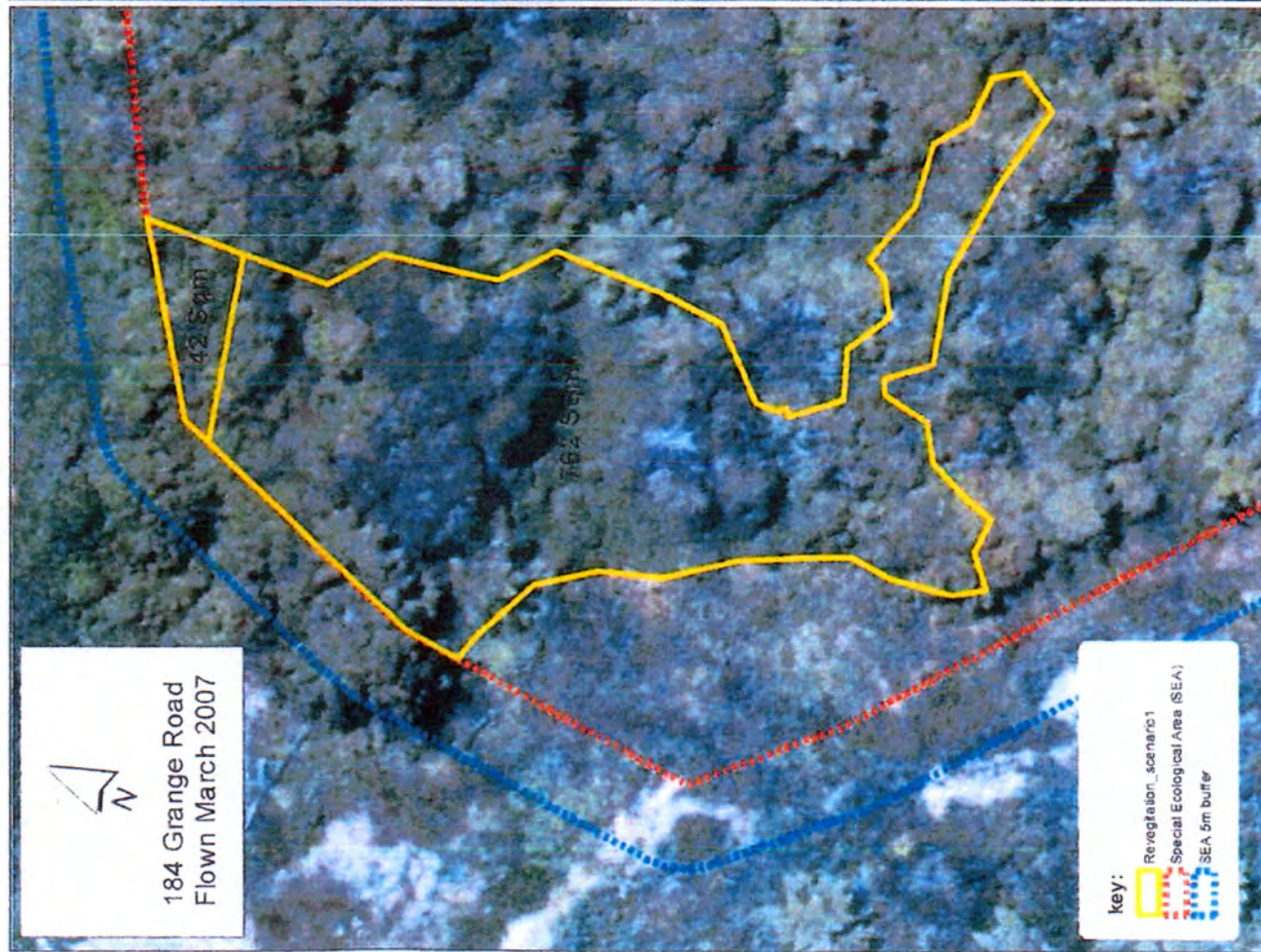
[4] Within one month of completion of the remedial work on site, 'C' Side Services Limited will commence the re-planting project which is to involve:

- [a] Removing all weeds in the relevant area;
- [b] Carrying out understorey planting in that area of a type and quantity of indigenous vegetation that has been approved by Tauranga City Council;
- [c] Planting trees in that area, of a type and quantity that has been approved by Tauranga City Council.

[5] The replanting project will be completed within four months of commencement.



J A Smith
District Court/Environment Judge



Area for Re-vegetation - Scenario 1 - 762 Sqm + 42 Sqm

ORIGINAL

Refer page 8

BEFORE THE ENVIRONMENT COURT

Decision No. A 089 /2009

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an appeal under section 120 of the Act

BETWEEN ORC LIMITED
(ENV-2008-AKL-000079)
Appellant

AND AUCKLAND CITY COUNCIL
Respondent

Court: Environment Judge L J Newhook
Environment Commissioner H A McConachy
Environment Commissioner RM Dunlop

Representation: Mr C Whata and Ms F Lupis for ORC Limited
Mr W S Loutit and Ms S A Carnachan for the respondent
Ms J L van den Bergen for Kings Plant Barn (s.274 party)
Mr B Watts for Erik Enterprises Limited trading as Orakei Dive Shop
(s.274 party)
Mrs Vink and Mr G Smith for the Volcanic Cones Society (s.274 party)
Mr W J Tuohey for himself (s.274 party)
Mr O E Hayward for Mrs M J Hayward and himself (s.274 party)
Mr G B Horton for the Orakei Residents Society (s.274 party)
Mr J Olsen for himself (s.274 party)

FINAL DECISION OF THE ENVIRONMENT COURT

A. Land use consent confirmed.

The consent is subject to the conditions attached.



Final Decision (ORC and Auckland City Council).doc (sp)

[1] On 23 July 2009 we issued an Interim Decision¹ holding that the decision of the respondent should be reversed, and indicating that land use consent could be granted, subject to conditions being settled. The appeal had concerned a proposal by ORC for a residential apartment development with a small retail component at 228 and 234B Orakei Road in Auckland City's eastern suburbs. A revised proposal had been put forward between the time that council issued its decision, and our hearing. The council was by that time in support of the granting of consent in the main, subject to concerns about financial contributions. The other parties had been wholly or partly in opposition to the proposal.

[2] We directed that the parties work on further aspects of the draft conditions that had been considered during the hearing. That has now been done, and a final draft submitted.

[3] Mr Hayward filed two further submissions about matters of concern to him, regrettably in the main amounting either to an attempt to re-litigate issues or raise matters beyond the jurisdiction of this Court, despite our caution to parties at the end of the Interim Decision.

[4] The revised conditions, reviewed and agreed between ORC and Auckland City Council, have been considered in detail by the Court. All matters that we required be addressed, have been completed in a satisfactory manner. These included attention to issues in the dripline of a large pohutukawa tree at 234B Orakei Road, care with works in the vicinity of a remnant of a volcanic tuff ring, a requirement for the display of explanatory material adjacent to the remnant of the tuff ring, adjustment of some existing carparking spaces, provision for marking out a pedestrian way on the right of way access down the northern side of the site, provision for a non-audible warning light above a garage door entrance to covered parking, design of access arrangements to the site during construction, design of traffic control mechanisms at the entrance to the site, repositioning of the advertising sign of Kings Plant Barn, and the carrying out of restoration works and replacement landscaping (as part of financial contributions) on the esplanade reserve that is to vest in a council.



Decision No A 058/2009

Final Decision (ORC and Auckland City Council).doc (sp)

[5] Mr Hayward sought to re-litigate matters relating to the creation of the footpath on the right of way, excavation into the remnant tuff ring, and adverse effects on his residential property (zoned Business 4). As already indicated, these matters have either been dealt with in our Interim Decision, or are outside the jurisdiction of this Court (the marking out of the footpath). We take them no further.

[6] The consent foreshadowed in our Interim Decision is confirmed, subject to the conditions attached to this decision. No applications for costs have been lodged, and that issue is now also closed.

DATED at Auckland this 30th day of September 2009.

For the Court:



L J Newhook
Environment Judge



REVISIONS TO PROPOSED CONDITIONS

(AUGUST 2009)

Definitions

Dive Shop - The dive premises and business at 234 Orakei Road.

Kings - Kings Plant Barn Limited, the business at 236 Orakei Road.

Affected Parties - The owners/occupiers of 234, 234A and 246 Orakei Road and the businesses at 230 to 236 Orakei Road.

Activity in Accordance with Application and Plans

1. The Consent Holder shall carry out the proposed activity in accordance with the District Plan and with the documentation submitted to the Auckland City Council as part of Application number LUC20060699201, except as necessary to reflect the updated revision drawings and plans prepared in relation to the Environment Court hearing of this matter, in which case the activities shall be carried out generally in accordance with those documents which include:

1. Plans "Revised 141 Unit Scheme Orakei Apartments 228 Orakei Road, Orakei" prepared by Mitchell & Stout Architects Ltd, as per the table below:

| Drawing Title | DWG # | REV # | REV DATE |
|---|-------|-------|----------|
| SITE PLANS | | | |
| Site Plan | A1.01 | A | 20/10/08 |
| LEVEL PLANS | | | |
| Lower Ground RL5.30 Car park -1 | A1.11 | - | 20/10/08 |
| Lower Ground RL8.30 Car park -2 | A1.12 | - | 20/10/08 |
| Upper Ground RL 11.90 | A1.13 | - | 20/10/08 |
| Level 1 – RL 14.90 | A1.14 | A | 20/10/08 |
| Level 2 – RL 17.90 | A1.15 | A | 20/10/08 |
| Level 3 – RL 20.90 | A1.16 | A | 20/10/08 |
| Level 4 – RL 23.90 | A1.17 | A | 20/10/08 |
| Roofs | A1.18 | A | 20/10/08 |
| SECTIONS | | | |
| Long Sections AA & BB | A2.10 | A | 20/10/08 |
| Cross Sections CC& DD | A2.11 | A | 20/10/08 |
| ELEVATIONS | | | |
| Elevation South - Orakei Road, Blocks 1,2 | A2.12 | A | 20/10/08 |
| Elevation East - ROW Blocks 2,3,5 | A2.13 | A | 20/10/08 |
| Elevation North – Block 4,5 | A2.13 | A | |
| Elevation West – Block 4, 1 | A2.14 | A | 20/10/08 |
| Elevation North - Block 1 | A2.14 | | |



| | | | |
|--|-------|---|----------|
| SUN STUDIES | | | |
| Sun Study 10.00 hrs | A3.01 | A | 20/10/08 |
| Sun Study 1500.00hrs | A3.02 | A | 20/10/08 |
| PERSPECTIVES | | | |
| View A Orakei Rd Approach - Trees at 5 m | A4.01 | A | 20/10/08 |
| View B Orakei Rd Entry - Trees at 5 metres | A4.03 | A | 20/10/08 |
| View C Block 4 from Orakei Rd | A4.05 | A | 20/10/08 |
| Orakei Rd Entry | A4.06 | A | 20/10/08 |
| ADDITIONAL INFORMATION | | | |
| Aerial with Plan Overlay | A5.01 | | 20/10/08 |
| ROW Ownership Plan | A5.02 | A | 20/10/08 |
| ROW Entry Plaza Plan | A5.03 | | 20/10/08 |
| ROW Entry Plaza Elevation | A5.04 | A | 20/10/08 |
| ROW Entry Plaza Perspective | A5.05 | A | 20/10/08 |
| Central Community Area Plan | A5.06 | | 20/10/08 |
| Central Community Area Perspective | A5.07 | | 20/10/08 |
| Central Community Area Sections | A5.08 | A | 20/10/08 |
| Courtyard Landscape Sketches | A5.09 | | 20/10/08 |
| Materials & Colour Board | A5.11 | A | 20/10/08 |
| Esplanade Reserve Plan | A5.12 | A | 20/10/08 |
| Typical Apartment Layouts | A5.13 | | 20/10/08 |
| Revised Carpark Entry | A5.14 | | 16/12/08 |

2. Typical Section - Cedar Rain Screen prepared by Mitchell and Stout Architects (November 2008).
3. Assessment of Landscape and Visual Effects (Attachment of Figures) to the evidence of Rachel de Lambert, October 2008, figures 5-8, and 15-21.
4. Area of Protected Cliff Face Plan (120728-200-PCF Rev A) Concept Design, prepared by Harrison Grierson Consultants, dated 01/02/08.
5. Construction Noise, Vibration and Dust Management Plan, 228 Orakei Rd (Rev C - Draft for Discussion), dated 2 December 2008.
6. Proposed Earthworks Assessment 228 Orakei Rd, Remuera (January 2008) (Appendix B, Blyde).
7. Earthworks Plan, (120728-200-EW Rev D) Concept Design, prepared by Harrison Grierson Consultants Ltd, dated 23/01/08.
8. Earthworks Cut and Fill Plan (120728-200-CF Rev A) Concept Design, prepared by Harrison Grierson Consultants Ltd, dated 23/01/08.
9. Erosion and Sediment Control Plan (120728-201 Rev C) Concept Design, prepared by Harrison Grierson Consultants Ltd, dated



17/01/07.

10. Erosion & Sediment Control Details Sheets 1 and 2 (1207218-202 Rev A and 120728-203 Rev A) Concept Design, prepared by Harrison Grierson Consultants Ltd, dated 17/01/07.
11. Dust Management Plan prepared by Harrison Grierson Consultants Ltd, dated January 2008.
12. Traffic Management Plan for Demolition, Excavation and Construction Period Proposed Development, 228 Orakei Rd, Orakei, (20 October 2008).
13. Tree 1 Dripline (15 December 2008) (120728-DP01) prepared by Harrison Grierson.
14. Survey Drawing 126547 SS05 (15 December 2008) prepared by Mr Murray.
15. Revised car park entry drawing A5-14 (16 December 2008) prepared by Mr Mitchell.

Monitoring

2. The consent holder shall pay the Council a consent compliance monitoring charge of \$5000.00 (inclusive of GST), plus any further monitoring charge or charges to recover the actual and reasonable costs that have been incurred to ensure compliance with the conditions attached to this consent. (This charge is to cover the cost of inspecting the site, carrying out tests, reviewing conditions, updating files, etc, all being work to ensure compliance with the resource consent).

The \$5000.00 (inclusive of GST) charge shall be paid as part of the resource consent fee and the consent holder will be advised of the further monitoring charge or charges as they fall due. Such further charges are to be paid within one month of the date of invoice.

Amalgamation of Lots

3. Prior to construction commencing the leasehold lots shall either be held together as one site in such a way that they cannot be disposed of independently without the prior consent of Council or a further leasehold title will be issued that incorporates the whole of the development site. Written confirmation thereof shall be provided to the Council (Resource Consents Monitoring Leader), prior to the commencement of construction.

Heritage

4. If any archaeological or traditional sites including human remains are exposed during site works, then the following procedures shall apply:
 - (a) Immediately when it becomes apparent that an archaeological or traditional site has been exposed, all site works shall cease;



- (b) The site supervisor shall immediately secure the area in a way that ensures that any artefacts or remains are untouched;
- (c) The site supervisor shall notify tangata whenua (Ngati Whatua o Orakei), the New Zealand Historic Places Trust, the Department of Conservation, City Planning of the Auckland City Council and in the case of human remains the Police, that an archaeological or traditional site has been exposed, so that appropriate action can be taken. This includes such persons being given a reasonable time as determined by the Council to record and recover archaeological features discovered before work may recommence on the site.

A letter shall be supplied to Council (Resource Consents Monitoring Leader) at the completion of works to notify whether any archaeological or traditional sites were found during consent.

Construction Hours

- 5. All demolition, earthworks and construction works shall be restricted to the hours between 7.30am to 6.00pm Monday to Friday and 8.00am to 1.00pm Saturday. No work shall occur on Sundays or public holidays.

Construction Noise, Vibration, Dust and Air Quality

- 6. The noise arising from the site preparation and construction phase shall at all times comply with the limits prescribed in Tables 2 & 3 of NZS6803P:1984 Acoustics – Construction Noise. In all cases, the limits shall be taken from the long term duration column of both tables.

All noise measurements and assessments shall be carried out in accordance with the provisions of the standard.

- 7. The vibration arising from the works shall at all times comply with the assessment criteria and vibration limits specified in the German Standard DIN 4150 Part 3:1986 "Structural Vibration in Buildings – Effects on Structures", (DIN4150).
- 8. Prior to demolition, piling or earthworks commencing, the consent holder shall complete a pre-construction condition survey of the buildings and structures immediately adjacent to the subject site. The survey shall include, (where possible) consultation with the occupants and owners of the building or structure. The survey shall record the pre-construction condition of each of the buildings and structures surveyed. The results of the survey shall be used to determine the applicable category of vibration limits from the DIN 4150 standard for each building or structure. A copy of the survey is to be supplied to Council (Resource Consents Monitoring Leader) and to the owner and occupier of each building or structure prior to works commencing. For clarity, any reference to structures in this condition includes the swimming pool at 234 Orakei Road.
- 9. Vibration monitoring shall be undertaken by the consent holder at the commencement of the demolition, piling, and the excavation phases of work. The results shall be reported to the Resource Consents Monitoring Leader, within 3 working days of the monitoring taking place. Where monitoring relating to demolition, piling, or excavation within 15 metres of the Dive Shop, the results shall be reported to the Monitoring Leader,



Resource Consent within 3 working days of the monitoring taking place. Such monitoring may only cease with written approval from the Dive Shop and Council (Resource Consents Monitoring Leader) based on prior monitoring results.

10. If any exceedance of the relevant noise or vibration limits is determined, the consent holder shall cease whatever action is responsible for generating the movement or noise until such necessary corrective actions are taken that will enable continuation within complying levels.
11. If the consent holder is unable to gain access to any property to conduct vibration monitoring, then the consent holder may appoint Auckland City Council to perform the monitoring on their behalf. The consent holder shall meet all costs of the monitoring.
12. The consent holder shall, prior to any works commencing on the site, offer to install monitors to measure carbon monoxide (CO), carbon dioxide (CO₂), oil, mist, hydrocarbons and oxygen levels, with alarm functions, at the Dive Shop. The consent holder shall meet the costs of operation of these monitors for the duration of the construction period.
13. The consent holder shall provide the Dive Shop with sufficient hand held air quality test kits to enable the Dive Shop to demonstrate tank air quality to any customers who so inquire.
14. The consent holder shall on a monthly basis meet the cost of professional cleaning (including chemicals) for the Dive Shop pool as reasonably required throughout the construction period.
15. The consent holder shall on a monthly basis meet the costs of any cleaning of the Dive Shop required as a result of the effects of construction.
16. The consent holder shall on a monthly basis meet the cost of any additional air charcoal filters or molecular sieves required as a result of the effects of construction (over and above filters and sieves required in the previous 12 month period) at the Dive Shop throughout the construction period.
17. The consent holder shall on a monthly basis compensate the operator of the Dive Shop, for costs incurred during the construction period associated with additional running time of the compressor due to contamination as a result of construction effects, and extra staff costs associated with re-filling the tanks. The operator of the Dive Shop shall notify the consent holder in each instance that these costs are incurred.
18. The consent holder shall submit, prior to any works commencing on the site, a Construction Noise, Vibration and Dust Management Plan, (CNVDMP) to the satisfaction of Council (Resource Consents Monitoring Leader).
19. Prior to the submission of the CNVDMP to Council, it shall be submitted to the operator of the Dive Shop, for approval in relation to matters relating to the Dive Shop. That approval shall not be unreasonably withheld, and shall be provided within two weeks of the receipt of the CNVDMP. In the event that any particular clause of the CNVDMP is not acceptable to the Dive Shop, it shall be referred to the Council to certify or amend as appropriate.



20. The CNVDMP shall specify the following as a minimum, and shall have particular regard to the mitigation of the noise, dust and vibration received by the nearest affected receivers including, but not limited to, the Affected Parties:

- (a) Identification of any other noisy construction activities that may potentially approach or breach the appropriate noise levels.
- (b) Identification of any activity that may potentially approach or breach the appropriate vibration levels as specified in DIN4150.
- (c) For each activity likely to generate vibration, mitigation methodologies should be identified.
- (d) Corrective action measures specified should non-compliances with the permitted noise or vibration levels be detected.
- (e) Identification of the potential sources of dust from the application site.
- (f) The details of the mitigation measures required to control dust generated from earthworks machinery, any rock breaking, vehicle movements, stockpiling of soil, unpaved surfaces, deposits on public roads and construction activities.
- (g) The dust monitoring methodology and frequency for deposition dust and total suspended particles.
- (h) The number and location of the monitoring stations to be positioned on the boundary of sensitive areas.
- (i) Identification of procedures in respect of CO and CO₂ monitoring, including:
 - (i) details of air quality monitors and alarms to be installed;
 - (ii) contaminant trigger levels for shutting off construction equipment;
 - (iii) procedures for the consent holder to follow in the event that there is an exceedance of the trigger levels - including shutting down any equipment operating in the area.
- (j) That at all times construction equipment and machinery is to be kept as far as possible from the compressor at the Dive Shop.
- (k) The details of induction procedures to be undertaken with all contractors to provide information in respect of the importance of maintaining air quality at the Dive Shop, as well as information in respect of construction parking, access, loading, and the need to take extra caution when undertaking earthworks adjacent to the Dive Shop pool.
- (l) The consent holder shall ensure that the dust levels measured at the site boundaries or at the approved sampling locations shall comply with the trigger values set out in Table 7.1 of the



Good Practice Guide for Assessing and Managing the Environmental Effects of Dust Emissions, Ministry for the Environment (2001), or the local background levels, whichever is lower.

- (m) The consent holder shall ensure that any exceedances of the dust trigger values are reported to Council (Resource Consents Monitoring Leader) within 24 hours and immediate corrective action is undertaken.
- (n) The consent holder shall ensure that all other monitoring results are provided to Council (Resource Consents Monitoring Leader) on a fortnightly basis. Monitoring results shall also be available to the Affected Parties on request.
- (o) The consent holder shall ensure that the earthworks or construction activities does not result in any odour or airborne and deposited dust beyond the property boundary of the site that is determined to be noxious, objectionable or offensive. This requires the consent holder to undertake good practice measures such as those described in Section 8 of the Good Practice Guide for Assessing and Managing the Environmental Effects of Dust Emissions, Ministry for the Environment (2001).
- (p) A complaints management system must be developed and implemented. It must specify the responsible persons for maintaining the complaints register, procedures to be followed in investigating and resolving complaints and procedures for reporting complaints to Council, including the name and position of the responsible Council officer.
- (q) The name and contact telephone numbers of the Site Manager or other persons responsible for supervision of the works, implementation of the CNVDMP and complaint receipts and investigations.
- (r) If any complaints are received regarding vibration, dust and noise monitoring and reporting shall be undertaken in accordance with condition 9 to establish whether the activities are complying with the relevant standards set out in the CNVDMP.
- (s) The consent holder shall avoid where possible adverse effects upon Affected Parties, the right of way and the public road in relation to the demolition of buildings and earthworks activity. The consent holder shall consult with Affected Parties in respect of maintaining reasonable access and egress prior to the submission of the CNVDMP to Council.
- (t) A description of the consultation undertaken with the Affected Parties.
- (u) A copy of the final CNVDMP shall be provided to the Affected Parties.



Remediation of a Contaminated Site

21. The consent holder shall, after demolition but prior to the commencement of excavation or construction works, undertake detailed investigations including soil sampling and testing for the areas of 228 and 234B Orakei Road that have not been investigated. The investigations must be in accordance with the Ministry for the Environment's - Guidelines for Assessing and Managing No 5: Site Investigation and Analysis of Soils, 2004, and the consent holder shall provide a contamination report with the testing results to the satisfaction of Council (Resource Consent Monitoring, Leader).
22. The consent holder shall, if required as a result of Condition 21, submit an amended Remediation Action Plan to the satisfaction of Council (Resource Consent Monitoring Leader) and then undertake remediation works in accordance with the approved Remediation Action Plan.
23. Should an amended Remediation Action Plan as detailed in condition '22' not be required, the consent holder shall undertake the remediation works in accordance with the Site Contamination Assessment of Effects (AEE) and Remedial Action Plan – 228 and 234B Orakei Road, prepared by Pattle Delamore Partners Ltd, dated August 2007.
24. The consent holder must ensure that the remediation works are observed by an environmental engineer and submit to Council (Resource Consent Monitoring Leader) as may be required a report from the environmental engineer confirming that the remediation strategies as detailed in the Remedial Action Plan have been implemented.
25. The consent holder shall prior to backfilling ensure the imported soil is tested at a rate of not less than one sample per 50 cubic metres and meets the ARC clean fill criteria.
26. The consent holder shall, following completion of remediation earth works, undertake a validation exercise to confirm the performance of the remediation works and to identify residual contamination at the site and provide to satisfaction of Council (Resource Consent Monitoring Leader) a Site Validation Report. The Site Validation Report shall include, but not be limited to:
 - (a) soil test results for the excavated and remaining materials;
 - (b) soil test results for imported soil;
 - (c) groundwater test results if any;
 - (d) scaled plans (plan and elevation views) showing the location and installation details of the geofabric barrier and any ground sealing including clean soil backfilling; and
 - (e) an on-going monitoring and management plan; and
 - (f) evidence of disposal of contaminated materials in a licensed facility.
27. Any area of the site, which is under remediation, shall be isolated/closed off from the rest of the site to prevent any unauthorised access to the satisfaction of Council (Resource Consents Monitoring Leader).



28. The consent holder shall provide a designated area for loading contaminated soil into dedicated containers for transport to an approved landfill to the satisfaction of Council (Resource Consents Monitoring Leader).
29. The consent holder shall dispose of all excavated soil in a landfill licensed to accept contaminated material and provide the landfill receipts to Council on completion of earthworks.

Erosion and Sediment Control

30. The consent holder shall develop and submit a long-term Site Management and Monitoring Plan for approval to the Team Leader, Resource Consent Monitoring, Auckland City. The Plan must include details of measures to be considered, in the event of future earthworks, in any of the areas which have residual contaminated soil. The District Plan will set out management practices for restricting exposure and access to residual contaminated soil in the area of the Pohutukawa tree (Tree 12) which is to be retained on 234B Orakei Road.
31. The Site Management and Monitoring Plan approved in satisfaction of condition 30 shall be implemented prior to any works occurring on site and maintained for the duration of works to the satisfaction of Council's Resource Consents Monitoring Leader.

Excavations

32. Prior to the commencement of construction works, or approval of any building consent in relation to the project the consent holder shall submit for approval of the Council (Resource Consents Monitoring Leader, and in consultation with the arborist in respect to works in the vicinity of trees) a report on temporary and permanent retaining structures and in the basement construction prepared by a chartered engineer with experience in geotechnics and structural engineering. The report shall address stability on adjoining sites and shall cover (but not be limited to):

- soil stability
- soil shrinkage
- vibration
- trees
- ground heave
- support of neighbouring buildings & structures (including the Dive Shop swimming pool)
- batter details
- retaining wall deflections
- construction sequence
- temporary propping of walls
- groundwater drawn down

No works shall commence until the report has been approved by Council (Resource Consents Monitoring Leader and the Building Consents Team Leader) and a copy of the report has been provided to the Affected Parties.

33. Prior to the commencement of any works on the site, the consent holder shall provide to the Council (Resource Consent Monitoring Leader) for approval, a Construction Management Plan (CMP) that shall include specific details relating to the construction and management of all works



associated with this development. A copy of the CMP should be provided to the Affected Parties when it is submitted to Council. It should include but not be limited to:

- Contact details of the site/project manager/supervisor ie, phone, fax, mobile & e-mail.
- Contact details of the Council Officer responsible for monitoring compliance and managing complaints.
- A site plan showing the following information:
 - (i) Specific measures to be adopted to maintain the site in a tidy condition, and includes, rubbish storage & disposal areas for each stage of the development;
 - (ii) Any on-site unloading areas and storage areas for building materials and machinery for each stage of the development;
 - (iii) The location of a large notice board(s) that clearly identify the name, telephone number and address for service of the site/project manager;
 - (iv) Location of workers conveniences ie, smoko sheds, toilets, site offices etc which shall not be located near the site boundary with 234 Orakei Road;
 - (v) Location of the main access points to and from the site for heavy trucks and machinery and how these are formed and maintained;
 - (vi) Location of existing cess pits on site;
 - (vii) Location of any on-site subcontractors and workers vehicle parking;
 - (viii) Identification of any protected trees, including street trees, which are to remain (subject to other consent conditions and approvals); and
 - (ix) Measures to provide adequate fencing during the construction period.
- The name and contact details of the Council approved arborist who will oversee/supervise all tree works for the site.
- Restrictions on the size of machinery to the site due to street trees and other access impediments.
- Measures to be adopted to ensure that pedestrian access past the works is provided, except in those instances where the pavement must be opened (eg for the laying of services), and that such access is safe, including measures to be adopted to ensure that the main access point to and from the site for heavy trucks and machinery are directly from Orakei Road and not via the shared driveway where practicable. In the event that pedestrian access is restricted, this shall be for the minimum period necessary for the works to be carried out.



- Measures to ensure that traffic at both access points will be limited to only left hand turns in and out, or right hand turns regulated by coordinated temporary traffic signals.
- Specific measures to ensure that access to neighbouring properties is not restricted, which may include 'no stopping' areas or yellow lines on the right of way.
- Proposed hours of demolition, excavation and construction activities (this should comply with any other condition limiting working hours).
- Details of complaint handling procedures including the contact details of the person responsible for managing complaints.
- The location of an area designated for the loading of contaminated materials.
- Measures to be adopted to ensure that the Affected Parties and that their visitors and customers and all emergency vehicles are able to access their properties and parking areas including customer parking areas at all times and that such access is safe and efficient.
- Measures to be adopted to ensure that any deterioration in or damage to the right of way as a result of the exercise of this resource consent is rectified immediately.
- Measures to be adopted to maintain the site in a tidy condition.
- Procedures to be followed to ensure that those working in the vicinity of identified heritage features to be retained or relocated are aware of the heritage values of these features and the steps which need to be taken to meet the conditions applying to work in this area.
- Procedures to be followed to ensure that geological documentation of the site is undertaken during the excavation phase including:
 - (i) Notifying interested geological parties of the location and timetable for excavation of the site including nearby universities (University of Auckland, Geology Department; Massey University, Institute of Natural Resources, University of Waikato, Geology Department), and the Auckland Museum, GNS Science, Auckland Regional Council, Auckland City Council, Geological Society of New Zealand.
 - (ii) If an interested party is able to commit staff/students to examine excavations at an appropriate time, provide to the site and a reasonable period of time to undertake the documentation (1-3 days).
- Confirmation that the location of the required piles will not impact directly on the face of the tuff ring.

34. No fill material shall be placed as part of the final development without specific geotechnical investigation and design. Placement of such fill shall be under the supervision of a Chartered Professional Engineer (with geotechnical experience), who shall certify to the Council (Resource Consents Monitoring Leader) within one month of placement, that the fill has complied with the design criteria and has been placed as specified.
35. The consent holder shall protect and retain the remnant tuff ring as shown on the drawing 120728-200-PCF Rev A dated 1 February 2008.



36. A viewing window shall be provided and an entrance to the development within the basement entrance retaining wall in the location of Pohutukawa tree No.1 to provide the public with access to view the tuff in its natural state. An oblique aerial photograph of the Orakei Basin shall be displayed together with an explanation of the geological significance of the tuff ring. This explanation shall be to the satisfaction of the Council's Chief Advisor City Heritage.
37. The consent holder shall employ best practice to ensure the excavation, retaining structures and associated works are designed, constructed and operated so as to avoid any damage to existing buildings, structures (including the Dive Shop pool) and services surrounding the site.
38. In the event that any damage is caused as a result of the exercise of this consent, the consent holder shall undertake any repair work necessary, or choose to pay for the necessary repair work, as soon as practicably possible.
39. The consent holder shall ensure that public liability insurance is obtained for a minimum sum of \$10,000,000.00 prior to works commencing on the site.

Licensed Cadastral Surveyors Certificate

40. The consent holder shall engage a licensed cadastral surveyor to certify and demonstrate to Council that the completed building complies with maximum height controls (Rule 7.8.1.2A) of the Auckland City Operative District Plan 1999 (Isthmus) except where consent has been granted to exceed this rule in accordance with the Plans entitled Long Section AA & BB (Revision A), Cross Section CC and DD (Revision A), Elevation South Orakei Road (Revision A), Elevation East – ROW and Elevation North (Revision A), Elevation West – Block 4.1 (Revision A), North Elevation Block 1 (Revision A), Drawing Numbers V643 A2-10 to A2-14 (Revision A) prepared by Mitchell Stout Architects dated 20 October 2008. This must be submitted in writing and include a survey plan that either:
- (a) work completed is in accordance with the levels and dimensions on the approved plans; or
 - (b) there are differences to approved plans in levels and dimensions of work completed to this stage, but the differences do not breach the Auckland City Operative District Plan 1999 (Isthmus), provided that what remains to be built beyond this stage will be built in accordance with approved plans.

In the event of (b), the certificate shall also specify the differences. In either event, work shall not proceed beyond this stage until receipt of the above required certificate to the satisfaction of the Council (Resource Consents Monitoring Leader).

Building finishes and servicing details

41. Prior to commencement of any works relating to building construction, details of the exterior finishes of the buildings (eg materials, textures, colours and their reflectivity values) shall be submitted to the satisfaction of Council (Resource Consent Monitoring Leader in consultation with Council Chief Advisor, City Heritage and Senior Urban Designer). To avoid delays, the consent holder is advised to discuss the proposed



services with the Council's Chief Advisor and Senior Urban Designer prior to submitting these details to the Council.

42. Prior to commencement of any works relating to building construction, details of the proposed servicing for the buildings (eg, lift towers, service rooms and ventilation shafts) shall be submitted to the satisfaction of Council (Resource Consent Monitoring Leader in consultation with Council's Senior Urban Designer). To avoid delays, the consent holder is advised to discuss the proposed services with the Council's Urban Designer prior to submitting these details to the Council.
43. Prior to commencement of any works relating to building construction the consent holder shall submit a final set of detailed design plans to the satisfaction of the Council (Resource Consents Monitoring Leader). These plans must clearly illustrate:
 - (a) The design and location of all streetscape/right of way elements such as lamp posts, seats, waste disposal bins, bicycle stands, signs, banners, and paving materials and walls and retaining walls.
 - (b) Adequate public surveillance of the stairs which lead into the development from the right-of-way between Blocks 3 and 5, and into the northernmost courtyard apartment of Block 3. To achieve this, balustrades to these stairs, and the walls to the planters which adjoin them, should not exceed legal minimum heights (currently 1100mm) required by the New Zealand Building Code.
 - (c) The provision of kitchen windows for every end residential unit of Block 2 facing Orakei Road, in order to provide additional opportunities for informal surveillance.
 - (d) The location of electricity and water meters, vents, transformers and the like.
 - (e) The location of satellite dishes and TV aerials at a centralised facility on each block if possible.
44. Prior to commencement of any works relating to building construction, a lighting plan for the parking areas, the vehicle entrance, exterior spaces, paths, and bridgeways shall be submitted to the satisfaction of the Council (Resource Consents Monitoring Leader). The purpose of this plan is to maximise safety and security for all of the workers, residents, visitors and members of the public to the proposed development.
45. Prior to installation of the mailboxes, the consent holder shall supply details of their distribution and location to the satisfaction of Council (Resource Consents Monitoring Leader).
46. A sign that is clearly visible to potential visitors to the residential complex shall be placed near the main entrance to the residential units that clearly advises the location of all units. The sign shall be erected prior to occupation of the buildings and maintained thereafter to the satisfaction of Council (Resource Consents Monitoring Leader).



47. All drapes, curtains or blinds for the development shall be a consistent colour across the development or any other colour of less than 55% reflectivity.

Acoustic Noise

48. The L_{10} noise level and maximum level (L_{max}) arising from any activity at or within the boundary of any residential zoned property shall not exceed the following limits:

| | | |
|--------------------------|-------------------|-----------------------------------|
| Monday to Saturday | 7.00am to 10.00pm | L_{10} 50dBA |
| Sunday & Public Holidays | 9.00am to 6.00pm | |
| At all other times | | L_{10} 40dBA L_{max} 75dBA |

The L_{10} noise levels and maximum level (L_{max}) arising from any activity measured at or within the boundary of any adjacent site (not held in common ownership) within the same mixed use zoning shall not exceed:

| | |
|-------------------|-----------------------------------|
| 7.00am to 10.00pm | L_{10} 60dBA |
| 10.00pm to 7.00am | L_{10} 55dBA L_{max} 75dBA |

49. Internal Acoustic Privacy

Compliance with the following internal noise levels within residential units is required:

- (a) In all bedrooms:

- 10.00 pm - 7.00 am, no more than 35dBA (L_{10})
- 7.00 am - 10.00 pm, no more than 45dBA (L_{10})

In all other habitable rooms, no more than 45dBA (L_{10})

This is based on the noise level at the boundary of the site with any Strategic, Arterial or Collector Road or Business 2, 3, 4, Mixed Use or Special Purpose 3 (Transport Corridor) zoned site, being 65dBA (L_{10}), with an average design spectrum to be determined by field measurements of the relevant noise sources, (for each façade).

- (b) At the same time and under the same physical conditions as the internal noise levels in (a) above, all bedrooms and other habitable rooms will be adequately ventilated in accordance with the Building Code.

After completion of the construction of the building, the consent holder shall submit a report to the satisfaction of Council (Resource Consent Monitoring Leader), which is signed by a suitably qualified acoustician, and which certifies that the building has been built in compliance with the noise and ventilation rules in (a) and (b) above.



- (c) In assessing compliance with the ventilation requirements of the Building Code for the purposes of part (b) of this rule above, no source or means of ventilation shall be taken into account unless:

It is available at all times while achieving the internal noise levels required under part (a) of this rule. For example, adjustable doors, windows or louvres may not be relied upon to meet the ventilation requirements of the Building Code if they can be adjusted to allow internal noise levels to exceed those specified in part (a) of this rule, above.

- (d) The noise shall be measured with a sound level meter complying at least with the International Standard IEC 651 (1979): Sound Level Meter, Type 1.

50. In the event that complaints are received in respect of noise disturbance from the compressor in writing from at least one resident of the apartments by the Council, the consent holder shall, if requested by the operator of the Dive Shop, relocate the compressor to a suitable location within the Dive Shop site as soon as reasonably practicable after the request.

Refuse Disposal

51. Facilities for the storage, collection and disposal of refuse shall be provided on the site at all times to the satisfaction of the Council (Resource Consents Monitoring Leader). Prior to the occupation of the building, a copy of a waste management plan (including recycling facilities) shall be lodged with the Council by the consent holder, which shall include designated sites for refuse bins for the collection and storage of glass, paper, plastic and metal cans as outlined in the resource consent plans. The required plan shall be prepared to the satisfaction of the Council (Resource Consents Monitoring Leader) and shall be in accordance with the Council's waste reduction policy and indicate refuse collection times which shall be outside the hours of 7am to 9am and 4pm to 6pm Monday to Friday. Collection times shall not occur between the hours of 10pm to 6am (week days) and 10pm to 9am (weekends and public holidays) so as not to interrupt sleep of occupants of buildings in the vicinity.

The waste management plan required by the above condition shall also detail the methodology by which the bins shall be emptied and include a statement confirming that at no time shall any bins be stored or left on the footpath or unattended in public view.

Traffic and Parking

52. All access, parking and manoeuvring areas shall be formed, provided with an all weather surface, drained and marked out to the satisfaction of the Council (Resource Consents Monitoring Leader), prior to the occupancy of any apartment.
53. Prior to commencement of works on the construction of buildings, the consent holder shall submit for Council (Resource Consents Monitoring Leader) approval for a final car parking plan which includes:



- (a) The allocation of parking spaces with a maximum on-site parking provision of 295 parking spaces including:
- 29 spaces will be allocated for visitors to the residential units
 - 14 for the café
 - 3 for the retail unit
- (b) Three (3) parking spaces on-site shall be designated for the disabled, as per the requirements of NZS 4121:2001. One parking space located externally and two parking spaces located internally close to basement lift entrances.
- (c) The 12 external car parks shall be allocated as visitor parking for the café and retail outlet and marked accordingly. Staff parking and remaining parking for the cafe and retail area is to be provided on Car Park Level 2 and marked accordingly. Spaces marked S23-26 shall not be allocated for visitor parking.
- (d) Resident visitor parking shall be conveniently located to the basement lift entrances on Car Park Level 1. Any visitor parking shall not be stacked parking.
- (e) The vacant area adjacent to parking space numbered S51 on Car Park Level 1 is to be left clear as shown on approved plan entitled Lower Ground RL5.30 Car park 1, Drawing No. V643 A1-11 (Revision A) dated 20 October 2008 prepared by Mitchell & Stout Architects.
- (f) The layout of spaces S11 – S14 on Car Park 2 and S23 – S26 on Car Park 1 are to be redesigned, so that vehicles can exit in a forwards direction. The layout of these spaces will need to reflect the revisions in drawing A5-14 (16 December 2008).
- (g) An internal management plan is to be provided including road marking, signage and vehicle speed calming measures.
- (h) Mirrors or other similar devices shall be installed on the central column north of space D2 and the wall of the internal stairs opposite the ramp on Level 8.30 (Car Park 2) to allow oncoming vehicles to see vehicles exiting from spaces D1, D2 and S18.
- (i) Mirrors or other similar devices shall be installed on the column adjacent to space S21 and internal wall adjacent to D50 on level 5.30 (Car Park 1), to allow oncoming vehicles to see vehicles exiting from spaces S27 and S51 respectively, to the satisfaction of Council (Resource Consents Monitoring Leader).
- (j) The manoeuvring aisle in both car parking levels shall be one way only and shall be painted with sufficient directional markings to make this clear to users.
- (k) The three lockers opposite space D50 on Car park Level 2 shall be relocated without resulting in any further non-compliance to rules or the scope of this consent.



- (l) Details of the right of way access to the site which shall provide a 6m carriage way for vehicles in addition to a 2m delineated footpath for pedestrians.
 - (m) The final car parking plan shall be in general accordance with the revisions in drawing A5-14 (16 December 2008).
 - (n) A static, non-audible warning light is to be installed by the parking garage door. This light shall be screened from the view of the residential property at 234A Orakei Road.
54. The consent holder shall provide a 'no entry' sign and painted directional arrows and give way markings on the westbound lane of the aisle in the north eastern corner of the car park on both levels.
 55. The consent holder shall ensure that the main access to the car park is graded to abut the right of way at the relative level of the proposed footpath.
 56. The consent holder shall ensure that a footpath along the right of way which will link the site to Orakei Road of at least 2m wide is included in the final design and shall submit a final plan to Council showing the width of the footpath and carriageway prior to commencing works.
 57. The footpath on Orakei Road shall be extended along the full road frontage of the 228 Orakei Road to the satisfaction of Council (Resource Consents Monitoring Leader) in accordance with Council's Code of Urban Subdivision, (Section 8 Appendix A). The cost of this shall be borne by the consent holder. All works shall be completed to the satisfaction of Council (Resource Consents Monitoring Leader).
 58. The consent holder shall install, to the satisfaction of Council (Resource Consents Monitoring Leader) a vehicle detector loop on the main entrance security system, which is able to detect vehicles and cyclists. Alternatively a manual opening system shall be installed which opens the entrance gate for cyclists and pedestrians. Details of the system are to be supplied to Council (Resource Consents Monitoring Leader) prior to construction of the buildings commencing.
 59. All driveway crossings no longer required are to be reinstated as verge and/or footpath and the kerbs replaced to the satisfaction of Council (Resource Consents Monitoring Leader). The cost of this shall be borne by the consent holder.
 60. The consent holder shall provide confirmation to the Council (Resource Consents Monitoring Leader) that each stacked car parking pair shall be allocated to the same residential unit or if allocated as staff parking is from the same business entity. Only 1 pair of staff parking spaces are to be stacked.
 61. Prior to commencement of any works relating to this application, the consent holder shall provide to the satisfaction of Council (Resource Consent Monitoring Leader, in consultation with Manager Transport Assets and Operations) a traffic management plan. The following is a list of issues that shall be addressed in detail in any traffic management plan being prepared for the demolition earthworks, and construction activity.

- ingress/egress to/from site



- materials storage
 - truck unloading/loading, particularly hours of operation and that truck movements shall be outside of peak hours.
 - concrete deliveries
 - rubbish removal
 - truck movements to the site
 - truck waiting
 - truck cleaning (including a requirement that requires vehicles accessing or exiting the site to be washed down on site, and the proposed location of onsite wheel wash facilities)
 - subcontractors vehicles
 - workers vehicles
 - crange
 - cherry pickers
 - pedestrian movements and pedestrian control/safety
 - all weather protection for pedestrians
 - needs of other property owners/occupiers affected by the works and how those needs will be met (including parking, servicing, access requirements).
 - equipment to be used for control of traffic
 - details of all signage
 - on street parking controls and liaison with Parking Services
 - impact on street lighting
 - liaison with emergency services
 - liaison with public transport and road transport organisations
 - how to keep footpaths and roadway clean and uncluttered
 - site sheds (on or over the street).
 - measures to be adopted to ensure that residents and businesses along the right of way and all emergency vehicles are able to access their properties and parking areas including customer parking areas at all times and that such access is safe and efficient.
-
- measures to be adopted to ensure that any deterioration in or damage to the right of way as a result of the exercise of this resource consent is rectified either immediately or as soon as practicable, depending on the nature of the damage.
 - details of complaint handling procedures including the contact details of the person responsible for managing complaints and the contact details of the Council officer responsible for monitoring compliance and managing complaints in relation to compliance with the traffic management plan.
 - Measures to ensure that traffic at both access points to the site will be limited to only left hand turns in and out, or right hand turns regulated by coordinated temporary traffic signals, prior to the installation of permanent traffic signals which are to be operational prior to occupation.
 - provision for a covered walkway for the safety of pedestrians during construction of the residential apartments.
 - Provision for trucks over a specific weight (to be specified in the plan) are to be limited to the hours of 6.00am - 10.00pm Monday to Friday, and 9.00am - 10.00pm weekends and public holidays.
 - Provision for a double amber flashing signal display to alert eastbound motorists on Orakei Road to a traffic signals queue.

NB

The traffic management plan needs to take account of the full potential effects of the activity on the public space (road, footpath, etc) and on the right of way.



The contractor will need to have evaluated:

- (a) The traffic conditions
- (b) Existing traffic and parking controls
- (c) Physical features
- (d) Visibility restrictions
- (e) Access requirements of other lawful users of the existing driveway .

62. Engineering plans of the proposed traffic signal design for the intersection of Orakei Road and 228 Orakei Road entrance, which includes pedestrian crossings, signal phasing and locations of the bus stops, shall be submitted for review and approval by the Council (Resource Consents Monitoring Leader) in consultation with the Manager, Transport Safety, Assets and Operation prior to the commencement of the development and shall be in general accordance with Concept Design Plan - Signal Access Option, 228 Orakei Road (Beca Drawing Number 3813673-C-001 dated March 2009 amended as "Revision B" submitted to the Environment Court on 7 August 2009.
63. Kings has an advertising sign located on the traffic island on the north eastern side of the intersection ("Sign"). The consent holder shall obtain any necessary consents and approvals required to relocate the Sign to a suitable alternative location, to be selected in consultation with Kings, prior to finalising the detailed design of the intersection upgrade. The relocation of the Sign shall occur in conjunction with the traffic signals intersection upgrade, and the cost for this work shall be met by the consent holder.
64. Prior to the transfer of any obligations under this consent to a body corporate, the consent holder shall meet all costs associated with the signalised intersection, including:
- intersection design;
 - the safety audit of the design;
 - the reasonable costs associated with the Council's review;
 - traffic signal software design;
 - the intersection construction;
 - the reports necessary to formalise the traffic signals and any on street management requirements;
 - the commissioning of the traffic signals; and
 - the preparation and delivery of as-built data in accordance with the Council's standard requirement.

Handover of the signalised intersection will be upon formal inspection and acceptance by the Assets Manager, Transport Safety, Assets and Operation.

Trees

65. A suitably experienced, Council approved arborist ('nominated arborist') shall be employed by the consent holder, at the consent holder's expense, to monitor, supervise and direct all works within the drip line or in the vicinity of those protected trees to be retained, for the duration of the works.



66. Prior to any site works commencing, a pre-commencement site meeting shall be held with the consent holder's project manager/site foreman and arborist and Council's Resource Consents Monitoring Leader and arborist. The applicant's nominated arborist shall be acceptable to Council. The purpose of the meeting is to enable the conditions of consent that pertain to the retained vegetation to be explained by the nominated arborist to all contractors or sub-contractors who will be working on site within the drip-line of, or adjacent to, any protected vegetation that is covered by the consent.
67. The consent holder's arborist shall provide monitoring report as necessary to Council (Manager Resource Consent Monitoring and the Council arborist) during the excavation process to monitor compliance with conditions of consent 64 to 80 and to evaluate general tree health and to make recommendations on how the overall tree management programme could be improved.
68. Prior to the works commencing a detailed maintenance and irrigation programme shall be submitted to the satisfaction of Council (Resource Consents Monitoring Leader), in respect of the long-term care of the Pohutukawa tree No.1, (referenced as tree 1 in the report entitled Orakei Apartments 228 Orakei Road, Remuera, An Arboricultural Implication Report on the Proposed 146 Apartment Development prepared by Specimen Tree Company Ltd December 2007). This should include monitoring of soil moisture levels, the addition of mulch as required, fertilisation, inspection of the anchoring system and long term irrigation measures. These details shall include but not be limited to the following:
- (a) Before excavation and construction works begin the ground area within the dripline of Pohutukawa tree (No.1), shall be mulched and irrigated to create a suitable area that will encourage additional root growth. This shall take place as soon as possible to allow the tree to initiate root growth within this area prior to the subsequent excavation and root severance that will be required.
 - (b) The layer of mulch within the dripline of the Pohutukawa tree (No.1) shall consist of a 50mm layer of Garden Mix installed directly on the existing ground level then a 100mm layer of well aged mulch installed over the layer of garden mix. This layer shall be regularly inspected and mulch added to ensure that the level is maintained at a minimum depth of 75mm. Where the embankment is too steep to adequately retain mulch, these areas shall be covered with hessian or a similar product to aide with the conservation of soil moisture. This material shall be secured to the bank with regular inspection to ensure that it remains in place.
 - (c) The irrigation system shall have the facility to monitor the existing moisture content of the soil to have a base line as comparison. The moisture levels within the existing soils shall be maintained at optimum levels to promote tree health and regular weekly inspections of the soil moisture levels are to be taken for the first three months then fortnightly for the following nine months. It is anticipated that over the winter months little or no watering will be required but the soil moisture levels shall be monitored on a monthly basis and remedial action taken where necessary.



- (d) The excavation adjacent to the Pohutukawa tree (No.1) shall be undertaken in such a way that minimises root disturbance. The excavations shall be located outside the dripline of Pohutukawa Tree (No.1) and be no closer than 4.3m from the centre of the trunk. The construction of a suitable permanent or temporary system shall then be undertaken and should incorporate sufficient drainage to prevent the area becoming water logged and to maintain existing soil moisture conditions.
- (e) Prior to the installation of the proposed temporary or permanent retaining wall system all large visible surface roots in the location of where the wall will be installed shall be cleanly cut by a competent arborist to minimise damage to the tree. All roots to a minimum depth of 600mm below the surface shall be exposed via hand excavation or using a small excavator under the supervision of the consent holders nominated arborist and all roots cleanly severed back to the excavation face.
- (f) Details of the proposed anchoring system for Pohutukawa tree (No. 1) including the monitoring and maintenance programme. This system shall be in accordance with the methods set out in the Supplementary Statements of Mr Thompson, Mr Caldwell, and Mr Mitchell dated 16 December 2008.

ADVICE NOTE

1. *Due to the degree of root severance required as part of the excavation works, the tree is to be anchored back to an appropriately engineered foundation utilising appropriately rated props and slings around its trunk. This will be required during and post construction. The exact position and number of the slings required will need to be finalised once an engineering solution has been finalised. It is recommended that regular inspection of the tree and anchoring system are carried out as part of a regular monitoring program. It would be anticipated that ongoing adjustment and/or replacement of the slings would be required. Following the completion of works on site yearly inspection of the tree and anchoring system should be undertaken. It is not proposed that this anchor system become the primary anchoring system for the tree. It is proposed to act as a precautionary measure to prevent the tree slipping down the embankment until which time sufficient replacement roots are able to establish and provide the required stability.*
69. Any site preparatory earthworks with the proposed esplanade reserve shall protect and retain all established native vegetation over 2.0 metres in height excluding weed species, and in particular Tree Number 11 on the 'Tree Positions Survey Plan'. Within the proposed esplanade reserve, earthworks are permitted only for the purpose of landscaping, and including the boardwalk provided there are no adverse effects on the retained vegetation.
70. If in the opinion of Council (Resource Consents Monitoring Leader in consultation with Council's arborist) Pohutukawa tree (No.1) becomes unstable or is in a state of irreversible decline the tree shall be replaced with a minimum 6.0m high Pohutukawa tree in close proximity to its original location. The condition of the replacement tree shall be monitored to the satisfaction of the Council (Resource Consents Monitoring Leader in consultation with the Council's arborist) and irrigated for a minimum period of five years from the completion of works. Any costs in relation to



Council granting their approval to remove and replace the tree shall be met by the consent holder. The consent holder must also consult with the owner of 234A Orakei Road to ascertain how any necessary tree removal work might be best undertaken to avoid damage to and disruption of the use of that property. The outcome of such consultation shall be reported by the consent holder to the Council's Resource Consents Monitoring Leader, and shall be taken into account by that Officer when considering granting approval of any related tree work.

71. When working within the dripline of any protected tree or tree to be retained (as referenced Tree Numbered, 3, 8, 9, 10 and A, B, C & D in the District Plan attached to Council arborist report dated 20 December 2007) all roots larger than 35mm diameter shall be retained and protected. Other roots shall be cleanly cut back to the edge of excavations using a sharp implement such as a handsaw or secateurs. All exposed roots and root ends shall be protected from drying out. This shall be done by covering the excavated roots immediately with hessian (or similar) and ensuring that the material is kept damp. Excavations shall be lined with plastic prior to any concrete pour. The plastic is to remain in place as a permanent root barrier. Backfilling shall be by carried out by hand held tools.
72. All underground services shall be located outside the dripline of any protected trees to be retained.
73. The erection of temporary protective fencing to protect the trees (as referenced Tree Numbered 1, 3, 8, 9, 10 and A, B, C & D in the District Plan attached to Council arborist report dated 20 December 2007) shall take place before any site works, including demolition, begin. The purpose of the temporary protective fencing is to provide an area around the retained trees that will facilitate their successful retention during the construction process.

The temporary protective fencing shall be constructed from wire mesh attached to a sturdy framework of freestanding scaffolding or posts minimum. It shall be constructed to a minimum height of 1.8m and is to remain in place for the duration of the project. Signs shall be attached to the temporary fence stating that it is a tree protection area and there shall be no unauthorised entry.

The consent holder will be responsible for maintaining the condition of this temporary protective fencing to the satisfaction of Council (Resource Consents Monitoring Leader). The condition, repair and location of the temporary protective fencing should be regularly inspected as part of a routine tree-monitoring programme.

74. The area within the temporary protective fencing is to be considered a total exclusion zone as follows:
- No storage of diesel, cement, building materials, site huts, spoil etc within the delineated area.
 - No spillages of substances likely to be injurious to tree health within seepage distance of the delineated area.
 - No alteration to the dimensions of the delineated area without the prior approval of the nominated arborist.



- No access into or works within the delineated area without the prior approval of the nominated arborist.

75. During the demolition and the construction works no vehicle or machinery shall be positioned, wheeled or driven within the drip-line of any protected tree to the satisfaction of Council (Resource Consents Monitoring Leader) unless it can be kept within the bounds of an existing sealed surface or prior approval is obtained from the nominated arborist.
76. Washings from concrete trucks and/or associated machinery shall not contaminate any area within the vicinity of protected trees or areas that are required for landscaping to the satisfaction of Council (Resource Consents Monitoring Leader).
77. The excavations of the southern basement wall adjacent to the northern edge of the three Pohutukawa trees (referenced No 8, 9 & 10 in the report entitled Orakei Apartments 228 Orakei Road, Remuera, An Arboricultural Implication Report on the Proposed 146 Apartment Development prepared by Specimen Tree Company Ltd December 2007)) shall be no closer than six metres from the base of the trees. The ground area shall be retained using a pile type system. These excavations are to be under the direct supervision of the consent holder's approved arborist.
78. The existing concrete within the dripline of any tree to be retained (trees 3, 8, 9, 10 and A) shall be broken up by hand operated tools. Care is to be taken to avoid damaging roots, with any damaged roots being cleanly cut to the excavation face. The removed concrete shall be immediately replaced with a layer of topsoil (to cover the area and to prevent the roots from drying out) to a maximum depth of 100mm.
79. The excavations for the construction of the proposed stairs down the embankment shall be undertaken under the supervision of the consent holder's nominated arborist. The first 600 mm of excavations required for the piles shall be undertaken by hand only, using hand held tools only. When roots over 35mm diameter are encountered the pile shall be relocated to accommodate the roots. The stairs shall be engineered to accommodate the relocations of piles if required.
80. All exposed roots and root ends shall be covered with hessian or similar and kept damp to prevent them from drying out. It is the responsibility of the site manager to notify the consent holder's nominated arborist, if the hessian dries out or becomes detached.
81. The pruning of the Pohutukawa tree (No.8) shall be restricted to the removal of secondary branches to provide clearance of the proposed emergency stairwell of apartment block 1 and shall be undertaken under the supervision of the consent holder's approved arborist.
82. The existing ground levels within this 6m from the base of the Pohutukawa trees (numbers 8, 9 and 10) shall not be altered in any way- no excavation or fill except for works such as mulching and the like necessary to ensure the continued wellbeing of the trees.



Landscaping

83. The design of the landscape treatment of the site shall be in general accordance with the "Landscape Proposals Plan by Boffa Miskell drawing number A06065-001 Rev E, dated 6.12.07. A detailed landscape plan, implementation and maintenance programme for the entire site shall be prepared by a registered NZILA Landscape Architect and submitted to the satisfaction of the Council (Resource Consent Monitoring Leader in consultation with the Chief Advisor, City Heritage and Arborist) prior to any landscaping work commencing on the site. This landscaping plan shall include:
- (a) details of any perimeter gates and fences, retaining walls, walls and hard paving areas
 - (b) construction details of roof terrace planters;
 - (c) details of the plant sizes at the time of planting and intended species including;
 - seven appropriate replacement trees. These trees shall have a minimum root ball size of 160L (or equivalent) and a minimum height of 3 metres at the time of planting. The replacement trees are to be maintained thereafter.
 - the specimen and or screening trees along the Orakei Road frontage shall be of an approximate height of 4.5 m such that when planted that there is three meters of canopy above the level of Orakei Road. The selection of tree species shall be to the satisfaction of the Council arborist and may include tulip trees (Liriodendron) or similar species.
 - Planting for the 'roof terrace' planters
 - (d) The landscaping shall be implemented and maintained in accordance with the approved landscaping plan within the first planting season following the completion of the works on the site. The landscaping shall be irrigated and maintained thereafter.
 - (e) The consent holder shall ensure that the body corporate is obliged to maintain planting including roof terrace planting.
 - (f) Engineering details to confirm the combined weight of the tree/soil and planter box are calculated correctly when positioning these planter boxes so that they can be engineered into the design of the car park and building structure and landscaping.
 - (g) Details of how landscaping and trees in planter boxes are to be maintained thereafter with sick and declining trees replaced with appropriate replacement trees as required. (Size and species to be included).
 - (h) The Landscaping between the buildings and along Orakei Road shall be undertaken so that the location of any specimen or screening trees shall be on the roadside of any retaining



structure required for the development of the site and at a suitable distance from any retaining structure so the selected trees can develop in a less restricted environment.

- (i) Plant species chosen for the esplanade reserve and landscaping of the stormwater pond area shall include the species recommended in Appendix 2 of Dr. Clunie's evidence dated 20 October 2008 including a minimum of at least 4 Tawapou [Planchonella].
- (j) A programme of weed eradication on the subject site to precede landscaping works and planting, in accordance with Dr. Clunie's evidence dated January 2008 (using measures and procedures outlined in paragraph 25 of the ecology report dated November 2007).

84. The landscaping for the development site shall have been implemented prior to the occupation of the buildings to the satisfaction of the Team Leader (Resource Consents Monitoring).

Tree Bond

85. Prior to commencement of work on the site the consent holder shall lodge the sum of \$20,000 with the Council as security for the performance of conditions 63-80. The consent holder shall either lodge the bonded sum with the Council as a cash deposit or execute a guaranteed bond agreement, with a registered trading bank as the surety.

- (a) The bond document shall be prepared by the Council. The consent holder shall pay to the Council any costs incurred by the Council in relation to the preparation, execution, variation or release of the bond. The preparation of any bond (as required by (i) above) be to the reasonable satisfaction of the consent holder.
- (b) If during implementation of the consent, as a consequence of a negligent or deliberate act on the part of the consent holder or another acting on the consent holder's behalf, the trees (referenced as 1, 8, 9, and 10 in the report entitled Orakei Apartments 228 Orakei Road, Remuera, An Arboricultural Implication Report on the Proposed 146 Apartment Development prepared by Specimen Tree Company Ltd December 2007) to which the bond relate are damaged in any way, the Council may direct a qualified Arborist to undertake remedial work on the tree. The costs of that work shall be a debt immediately due and payable by the consent holder to the Council upon demand and may be deducted from the bonded sum.
- (c) If during implementation of the consent, as a consequence of a negligent or deliberate act on the part of the consent holder or another acting on the consent holder's behalf, the trees (referenced as 1, 8, 9, and 10 in the report entitled Orakei Apartments 228 Orakei Road, Remuera, An Arboricultural Implication Report on the Proposed 146 Apartment Development prepared by Specimen Tree Company Ltd December 2007) to which the bond relate are removed or die, the Council may undertake removal of the dead or dying tree(s)



and plant a replacement tree(s). The cost of such works, and the cost of maintenance of any replacement tree(s) for the following 12 months shall be a debt immediately due and payable by the consent holder to the Council upon demand and may be deducted from the bonded sum shall also be deducted from the bond.

- (d) Where the damage referred to in (c) above, will, in the opinion of the Council, place the bonded tree at risk over a longer time period, then a portion of the guaranteed bond equal to the value of replacement tree(s) will be held for a further period of [1 year] from the date the consent was granted.
- (e) Subject to Clause (b) and (c) above, 50% of the \$20,000.00 bond will be released after the issue of the buildings Completion Certificate, and the balance (50%) held until 2 years after the date the Completion Certificate is issued.
- (f) The consent holder shall register the bond against the certificate of title (Lot 1 DP 112856 CT275571 and Pt Lot 2 DP112865 CT320343) for the site at the consent holder's expense and shall provide a copy of the registration to the Council (Resource Consents Monitoring Leader) prior to the commencement of works on the site.

Contributions

86. An esplanade reserve shall be vested in the Council, in accordance with Rule 5B.8.1 of the District Plan, prior to the occupation of any buildings. The process for the vesting shall be set out in a memorandum of understanding between the Council and the consent holder. The memorandum of understanding shall also cover financial contributions payable, taking into account agreed improvements to the proposed esplanade reserve, other Council land and the acquisition of land by the Council. Prior to the vesting of the esplanade reserve all removal of former car parking surfaces, weed eradication and replacement landscaping shall be implemented as set out in the Esplanade Enhancement Report of Nigel Clunie, April 2007.

ADVICE NOTES

1. *The applicant needs to obtain all other necessary consents and permits, including those under the Building Act 2004 and other relevant statutes, and comply with all relevant Council Bylaws. It is further noted that this consent does not constitute building consent approval. Please check as to whether or not a building consent is required under the Building Act 2004. If a building consent application is already lodged with Council or has already been obtained, you are advised that, unless otherwise stated, the use shall not commence until conditions of this resource consent have been met. Furthermore, if this consent and its conditions alter or affect a previously approved building consent for the same project, you are advised that a new building consent may need to be applied for.*
2. *This resource consent will expire five years after the date of commencement of consent unless: (a) It is given effect to before the end of that period; or, (b) Upon an application made prior to the expiry date,*



the Council fixes a longer period. The statutory considerations, which apply to extensions, are set out in section 125(1)(b) of the Resource Management Act 1991.

3. Except as provided for by this consent, no works on or within the dripline of trees protected by Council's General Tree Protection Rules and Heritage Rules contained in the Auckland City Operative District Plan 1999 (Isthmus) may proceed without a resource consent. This includes the installation of services to the site.
4. A copy of this consent should be held on site at all times during the establishment and construction phase of the activity.
5. Please be advised further that Section 120 of the Resource Management Act sets out the right of appeal to the Environment Court.
6. The Council's administrative charges for receiving, processing and granting an application or for any specified or additional matter in accordance with section 36 of the Act or any regulation under the Act, or as necessary to enable the Council to recover its actual and reasonable costs in respect of this application, must be paid in full within 14 days of the receipt of the invoice for this decision and this consent shall not be exercised prior to such payment.
7. The consent holder shall be advised of Council requirements outlined in Metrowater Development and Connection Standards issued Feb 2005, particularly the requirements for:
 - Stormwater treatment devices and ARC consents
 - Clearance requirements for works in relation to Public Services
 - Protection of services in relation to construction activities.
 - Water supply connections
 - Fire Fighting Water supplies
 - Details shall be provided with the building consent application.
8. All street lighting provisions shall be the owners' responsibility and shall be separately metered and deemed private in all respects, including but not limited to power supply plant and equipment. Council will not be responsible or liable for any costs or all costs associated with street lighting for this development.
9. A network utility charge will be applied with any water meter application to Metrowater.
10. Design plans, calculations, including NZ Fire Service endorsement confirming adequacy of fire supply, hydrant spacing, fire truck access shall be submitted during engineering approval stage.
11. Building Fire Risk Classification and details of fire fighting water supply demands for the apartment complex are to be provided at the time of building consent application and shall include installation of an approved sprinkler system and supplementary supply such as booster pumps and/or header tanks if deemed necessary.
12. The management and collection of the private stormwater reticulation shall comply with the requirements of the building code and relevant Auckland City policy and bylaws.



13. *Geotechnical assessment prepared by a professional geotechnical engineer to address land stability and modification associated with engineered earthworks and foundation design of structures*
14. *The above-mentioned reports and plans should be prepared in accordance with the Contaminated Site Management Guidelines No. 1 Guidelines for Reporting on Contaminated Sites in New Zealand, Ministry for the Environment, 2003.*
15. *The Dust Management Plan is to be prepared according to the Ministry for the Environment, Good Practice Guide for Assessing and Managing the Environmental Effects of Dust, 2001.*
16. *The consent holder shall obtained approval from Auckland City Environment for any new public drains or connections and/or modifications to the public stormwater systems.*
17. *The consent holder shall obtain approval from Auckland City Environment for any proposed public wastewater systems, including pumping stations and storage facilities, sewers connections and/or modification to existing public sewers.*
18. *The consent holder shall ensure that all common private drainage systems shall provide individual wastewater connections for each dwelling.*
19. *The consent holder shall obtain approval from Auckland City Environment for any required construction and/or alteration to the public water supply system.*
20. *The footpath along the southern edge of the right of way shall be constructed in accordance with the standards of Austroads Part 13 – Guide to Traffic Engineering Practice, Pedestrians (2005)*
21. *For the avoidance of doubt, the requirement for a 2 metre wide footpath and 6 metre wide vehicular carriageway along the right of way which services the site, is an essential condition of this consent.*
22. *Upon creation of the body corporate all maintenance and obligations of this consent shall transfer to the body corporate. The consent holder will advise the Affected parties of the contact details of the person within the body corporate responsible for ensuring ongoing compliance with the conditions of consent.*

