

**RESOLUTIONS PASSED AT A PLANNING HEARING BY  
HEARING COMMISSIONERS  
HELD ON 29<sup>th</sup>, 30<sup>th</sup> October, 2<sup>nd</sup> and 6<sup>th</sup> November 2009 IN THE  
ARC COMMITTEE ROOM 1, AUCKLAND**

**APPLICATION FOR A RESOURCE CONSENT**

**BY Winstone Aggregates Limited (a Division of Fletcher Concrete &  
Infrastructure Ltd)**

**985 Mount Eden Road, Three Kings, Auckland  
(LUC NO.: R/LUC/2009/743)**

**ACC COMMISSIONERS:** Ms K Sinclair  
Mr B Kaye (ACC Chairman)  
Mr M Savage

**COUNCIL OFFICERS:** Mr Q Budd Team Leader Resource  
Consents  
Mr Mark Weingarth Reporting Planner  
B Royce Consultant Traffic Engineer,  
TES  
Mr Koay Development Engineer  
J Mrs Jacqueline Ahmu ACC-EHO

**ARC HEARINGS COORDINATOR** Ms T Pearce

**APPLICANT:** Winstones Aggregates Limited (WAL)

**APPEARANCES:**

**For the applicant:**

|                    |   |
|--------------------|---|
| Mr Bal Matheson    | Solicitor from Russell McVeagh                        |
| Mr Bernie Chote    | General Manager, WAL                                  |
| Mr Kurt Hine       | Quarry Manager AT Puketutu Island, WAL                |
| Mr Daryl Hughes    | Traffic Engineer, TDC                                 |
| Ms Siiri Wilkening | Acoustic Consultant Marshall Day Acoustic Consultants |
| Mr Andrew Curtis   | Chemical Engineer, URS NZ Ltd                         |
| Mr Graeme Twose    | Geotechnical Engineer, Tonkin and Taylor Ltd          |
| Mr Barnaby Harding | Hydrogeologist, Pattle Delamore Partners              |
| Mr David Serjeant, | Planner, Merestone Ltd                                |
| Mr Robert Burden   | Geochemist, Domain Environmental Ltd                  |

**Submitters:**

|                                    |   |
|------------------------------------|---|
| Envirowaste Limited                | David Kirkpatrick/Kitt Littlejohn-Counsel<br>Scott Rhodes-<br>Laurence Dolan- |
| Watercare/Metrowater               | Alistair Shanks<br>Ilze Gotelli   |
| 3 Kings United Group Inc           | Wyn Hoadley-Counsel<br>Austen Bell (personal submission also)<br>Diane Hill   |
| Antipodean Properties<br>J Anerich | Alison Thompson-Planner<br>R Enwright-Counsel<br>J Arnerich                   |
| South Epsom Planning<br>Group      | Professor Dick Bellamy<br><br>Dr Robertson<br>Mrs Mules                       |
| Bremner Family Trust               | Evidence was tabled.  |

The hearing was closed at 2.40pm on 6<sup>th</sup> November 2009 with the public excluded from the deliberations of the Commissioners. The hearing was a joint hearing between ARC and ACC but decisions on the respective applications have been brought down separately.

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**1.0 BACKGROUND**

The site is a 15ha working quarry with a pit floor between 30m – 40m below the surrounding ground level. Parts of the original quarry have already been reclaimed, most notably to the north and southwest of the site. The land to the north is now used for business purposes with some residential activity and remains in the ownership of the applicant whilst the land to the south and southwest was vested to the Council and is used a public reserve.

Quarrying of the site is a permitted activity under the Operative District Plan and subject to development controls. The existing activity complies with the Business 7 zone development controls and the applicant holds ARC consent until 2030 to dewater to RL 0m (approximately 34m below the existing pit floor). The applicant also holds an ARC air discharge permit that is subject to limit and performance conditions for emissions. As such, existing quarrying operations can continue until 2030.

Approximately 150,000 – 200,000m<sup>3</sup> of scoria is extracted from the site per year for use in construction and roading projects. Scoria is excavated, then loosened and fragmented before being stockpiled on site or taken to a mobile processor to be crushed and screened into various sizes and grades. All of these works occur within the quarry and due to the dynamic nature of quarrying the excavating, stockpiling and processing activities are moved around the pit floor from time to time. Aggregate is distributed by truck out of the quarry in both directions along Mount Eden Road, at a rate of approximately 140 trucks per day (during peak operational seasons).

The present activity is subject to Quarry Management Plan (QMP) which has been compiled with public input from local residents and neighbouring land owners. The QMP establishes when the quarry will operate and the technical details it will need to adhere to. Current operational times are 7:00am – 8:00pm Monday to Saturday and 9:00am – 6:00pm on Sunday and Public Holidays, however it is noted that the

District Plan permits 24/7 activity at the site, where it complies with the zone development controls.

The surrounding area is characterised by a mixture of well established and mature land uses. To the north of the quarry the predominant land use is business consisting of some bulk stores and retail activities. To the south and west of the site the land is zoned as Open Space and consists of formal and informal recreational land including the Big King volcanic cone and Three Kings Reserve. The Three Kings Shopping Plaza shopping centre is located beyond the recreational land to the south of the site. Mount Eden Road runs along the length of the eastern site boundary from north to the south and beyond this the land is zoned Residential and contains a mixture of dwellings fronting onto Mount Eden Road and other local roads. Three Kings School is located to the southeast of the site on the opposite side of Mount Eden Road.

The site is generally enclosed by 2m high chain link fencing to the north, south and west and a 4m high earth bund along Mount Eden Road. This bund is well vegetated with semi-mature trees and bush, therefore it screens the quarry activity from the Mount Eden Road. Access to the site is gained via a 30m wide crossing at the north of the quarry off Mount Eden Road. The north-eastern corner of the quarry generally remains at the same ground level as Mount Eden Road and contains admin buildings, staff facilities, a weighbridge and staff car parking. A haul road into the quarry starts from this area and wraps along the northern and western site boundaries down to the pit floor. In the south-eastern corner of the site is a water treatment station that is leased to Metrowater Ltd, however the facility is not currently operating.

## **2.0 The Proposal**

Winstone Aggregates Limited (a Division of Fletcher Concrete & Infrastructure Ltd) seek resource to reclaim the existing quarry (using cleanfill) over a 7 – 12 year period, as it is intended to cease quarrying operations. The applicant seeks that the consent, if granted, expires in 2030 notwithstanding the predicted period for the fill activity. The activity is termed a controlled fill under the operative Isthmus section of the District Plan even though that term is not actually defined. The works, as proposed, will be phased and initially involve establishing a new second vehicle access whilst continuing the existing quarry activity. Cleanfilling will commence in combination with quarrying for approximately 5 years at which time quarrying will then cease and cleanfilling will become the primary on-site activity in combination with the importation, stockpiling and sale of aggregate.

The final development stage will involve the landscaping of the site. The proposal does not involve any future building or development, however the cleanfill works are said to be completed to a standard which will not prevent any future development as required by the Plan provisions

The Resource Management Act 1991 ('the Act') does not define cleanfill and the MfE definition is not set out in any national statute.

Winstone Aggregates have applied to the ARC to release contaminants into and on the ground that have a higher level than the background levels at Three Kings Quarry, but do not exceed the safety levels defined in Schedule 11 of the Auckland Regional Plan.

The ACC planner's report stated that if the proposed Cleanfill operation were to comply with the MfE 'A Guide to the Management of Cleanfills' and its definition then the activity would be permitted under the Regional Plan and not require ARC consent. However, as the proposed fill may exceed background contamination levels

(but remain within the acceptable human safety levels defined in schedule 11 of the Auckland Regional Plan), restricted discretionary activity consent is required from the Regional Council.

For the purposes of assessing the proposal the Council planner relies on the MfE Cleanfill Management Guide. As such, any reference to 'cleanfill' and 'cleanfill material' was taken to have the following meaning:

'Material that when buried will have no adverse effect on people or the environment'.

As the District Plan provision relates to controlled fill we have taken the applicant's proposal to be for a controlled fill using cleanfill material.

Subsequent to the notification of this application, the applicant in response to the concerns of submitters and requests from Council officers amended the proposed development relocating the proposed second access from 30m north of Graham Breed Drive to 50m north of the Graham Breed Drive. The amended plans were shown in the Traffic Design Group letter of 15th July 2009 and were assessed by the Reporting Planner and Council Traffic Engineers.

The overall width of the proposed second access was not altered and no new reasons for consent were generated by this amendment. We agree with the reporting planner that the proposed accessway amendments were within the scope of the originally notified application.

Following the submission process, the Council sought further information in relation to additional traffic modelling, alternative locations for the second access, pedestrian safety, indicative traffic management plans to deal with fill traffic and confirmation of potential mitigation measures.

The applicant responded in correspondence and reports from specialist consultants. Those reports and correspondence form part of the application.

Also we note, as it is a matter addressed by a number of submitters that the applicant sought a legal opinion from Russell McVeagh concerning the activity classification Council had used in the public notification. Russell McVeagh concluded that the proposal was a discretionary activity overall as the applicant demonstrated that by itself the importation and sale of aggregate activity would comply with noise development controls

Council's reporting planner deemed the proposed activity to be discretionary overall.

We have reviewed this aspect of the proposal having regard to the submissions and evidence presented and are of the opinion that the proposal is a discretionary activity provided that the noise levels from the sale of aggregate comply with the Plan standards.

### 3.0 DECISION 1

Pursuant to Section 37 of the Resource Management Act 1991, the Hearing Commissioners accept the late submissions of Tony & Georgina Miller and OM Lichtnecker because the extension of the submission period will not adversely affect any person.

Pursuant to Section 37 of the Resource Management Act 1991, the Hearing Commissioners do not accept the late submission of Waste Management (A division of Transpacific Industries Group (NZ) Ltd) as the length of time the submission was received beyond the date for closing of submissions is exceeded by more than a reasonable period.

### 3.1 DECISION 2

**Pursuant to section 104B of the Resource Management Act 1991, the discretionary activity land use application by Winstone Aggregates Limited to carry out reclamation of the Three Kings Quarry by way of controlled filling (using Cleanfill) and to stockpile and sell imported aggregate that requires resource consent for the following reasons:**

#### ***Operative Auckland City District Plan 1999 – Isthmus Section***

- The reclamation of worked out quarries with controlled filling requires **discretionary** activity consent under Clause 8.7.4.1 of the Operative District Plan.
- The proposal involves the stockpiling and sale of imported aggregate complying with the Business 7 zones development controls. As such, this requires **discretionary** activity consent pursuant to clause 8.7.4.1 of the Operative District Plan.
- Under Rule 5E.7.1C of the Operative District Plan 1999 – Isthmus Section the establishment of a hazardous facility is a **discretionary** activity. The application proposes to undertake a cleanfill operation on an identified contaminated site and import material with trace elements of contaminants higher than background levels.
- The proposed combined cleanfill, quarrying and sale of aggregate activities will exceed the permitted noise level (Rule 8.8.2.2 of the Operative District Plan 1999 – Isthmus) at the eastern interface of the subject site. This is a **discretionary** activity pursuant to Rule 4.3.1.2B (Development Control Modification).

at Three Kings Quarry, 985 Mount Eden Road, Three Kings, Auckland described as Lot 1 DP 37020 be **granted consent.**

It is noted that consent was sought by the applicant for a second access into the site and in making this decision the Commissioners have determined that the proposed second access should **not be granted consent.**

**4.0 Pursuant to section 113 of the Resource Management Act 1991, the following matters have been taken into account in making the decision set out above:**

#### **Relevant Statutory Provisions**

The following provisions of the Resource Management Act 1991 were relevant in the assessment of this application:

- **Part 2 and sections 104, 104B and 108 (discretionary activity).**

#### **Relevant Plan Provisions**

The relevant planning documents considered were:

Auckland City Operative District Plan 1999 – Isthmus Section and in particular the following:

The relevant planning documents considered were:

Auckland City District Plan 1999 – Isthmus Section and in particular the following:

- Part 2 – Resource Management
- Part 4 – General Provisions and Procedures
- Part 4A – General Rules
- Part 5 – Natural and Physical Environment
- Part 5C – Heritage
- Part 5E – Hazardous Facilities
- Part 8 – Business Activity
- Part 12 - Transportation

#### **5.0 Summary of Evidence**

The following evidence has been taken into account in reaching this decision (as well as all submissions lodged):

#### **6.0 Application Material**

- The Assessment of effects entitled '*Three Kings Quarry Cleanfill Proposal, Volume 1: Application for Resource Consent and Assessment of Environmental Effects (February 2009)*' prepared by Richard Compton of Winstone Aggregates, and dated February 2009;
- The report entitled '*Three Kings Quarry – Modelling of Cleanfill Drainage*' prepared by Barnaby C Harding of Pattle Delamore Partnership Ltd, and dated 9<sup>th</sup> October 2008;
- The report entitled '*Assessment of Air Quality Effects from the Proposed Cleanfill at the Winstone Aggregates Three Kings Quarry*' prepared by Andrew Curtis of URS New Zealand Ltd, and dated 30<sup>th</sup> July 2008;

- The report entitled '*Effects of Backfilling Three Kings Quarry on Groundwater Quality*' prepared by Domain Environmental Ltd, and dated 13<sup>th</sup> October 2008;
- The report entitled '*Three Kings Quarry, Cleanfill Operations – Acoustic Report*' prepared by Siiri Wilkening of Marshall Day Acoustics, and dated 17<sup>th</sup> February 2009;
- The report entitled '*Three Kings Quarry Filling, Mt Eden Road, Auckland – Transportation Assessment Report*' prepared by Max Robitzsch of Traffic Design Group, and dated 12<sup>th</sup> June 2008;
- The letter entitled '*Managed Cleanfill at Three Kings Quarry Fill Operations and Development Option Assessment*' prepared by Graeme Twose of Tonkin & Taylor Ltd and dated 1<sup>st</sup> July 2008,
- The letter entitled '*Managed Cleanfill at Three Kings Quarry Fill Operations and Development Option Assessment*' prepared by Graeme Twose of Tonkin & Taylor Ltd and dated 8<sup>th</sup> July 2008,
- The letter entitled '*Three Kings Quarry – Assessment of Backfilling*' prepared by Ian Jenkins of URS New Zealand Ltd and dated 22<sup>nd</sup> October 2008,
- The report entitled '*Historical Contamination Assessment Three Kings Quarry*' prepared by Domain Environmental Ltd, and dated 18<sup>th</sup> February 2009;
- Plans prepared by Harrison Grierson entitled '*Three Kings Quarry*', being Dwg No. 122314-GIG-001, 002, 003, 004 & 005, all drawn on 29<sup>th</sup> August 2008 and plotted on 10<sup>th</sup> October 2008;
- Plans Figure 1 – 5, entitled '*Winstone Aggregates Ltd Three Kings Quarry, Three Kings*' dated September 2007;
- Plan prepared by Traffic Design Group, entitled '*Three Kings Quarry, Three Kings, Auckland, Indicative Layout – Proposed Second Access*' Dwg No. 8823A11A dated 9<sup>th</sup> July 2009;

#### *Council Commissioned Reports*

- The memo entitled '*Resource Consent Application – Traffic Audit 985 Mt Eden Road – Three Kings Quarry*' prepared by Bruno Royce of Traffic Engineering Solutions, and dated 18<sup>th</sup> March 2009;
- The memo entitled '*985 Mount Eden Road, Three Kings: R/LUC/2009/743, Site Contamination Considerations*' prepared by Ruben Naidoo of Auckland City Council, and dated 3<sup>rd</sup> July 2009;
- The memo from Mrs Jacqueline Ahmu of Auckland City Council, dated 6<sup>th</sup> July 2009;
- The memo from Raymond Koay of Auckland City Council, entitled '*Request for Engineering Advice – 985 Mt Eden Road, Three Kings Quarry, Application for Resource Consent Ref: R/LUV/2009/743*' dated 10<sup>th</sup> August 2009;
- Email from Ritashna Maharaj of Auckland City Council, entitled '*Three Kings Quarry – TSAO S92 response*' dated 4<sup>th</sup> August 2009;

- Email from Barry Williams of Auckland City Council, entitled 'Three Kings Quarry – Mt Eden Road – Road Maintenance' dated 23<sup>rd</sup> July 2009;
- The planning report entitled '*Notified report for a discretionary activity resource consent application under the Resource Management Act 1991 at Three kings Quarry, 985 Mount Eden Road, Three Kings, Auckland*' prepared by Mark Weingarth dated October 2009;

#### *Correspondence*

- The letter entitled '*Notified Resource Consent Application for Three Kings Quarry*' prepared by John Earley of Winstone Aggregates and dated 8<sup>th</sup> May 2009,
- The letter entitled '*Application for Resource Consent – ACC Reference R/LUC/2009/743*' prepared by Richard Compton of Winstone Aggregates and dated 21<sup>st</sup> May 2009,
- The letter entitled '*Three Kings Resource Consent – Classification of Activities*' prepared by Bal Matheson of Russell McVeagh and dated 21<sup>st</sup> May 2009,
- The letter entitled '*Three Kings Quarry – Consent to Fill Geotechnical Response to Section 92 Queries from ACC*' prepared by Graeme Twose of Tonkin & Taylor Ltd and dated 15<sup>th</sup> May 2009,
- The letter entitled '*Application for Resource Consent – ACC Reference R/LUC/2009/743: Request for Further Information*' prepared by Richard Compton of Winstone Aggregates and dated 18<sup>th</sup> May 2009,
- The letter entitled '*Application for Resource Consent – ACC Reference R/LUC/2009/743: Request for Further Information*' prepared by Richard Compton of Winstone Aggregates and dated 16<sup>th</sup> July 2009,
- The letter entitled '*Winstone Aggregates Three Kings Quarry, Consent Application, R/LUC/2009/743, Assessment of NZTA Submission*' prepared by Max Robitzsch of Traffic Design Group, and dated 16<sup>th</sup> July 2008;
- The letter entitled '*Winstone Aggregates Three Kings Quarry, Consent Application, R/LUC/2009/743, Section 92 Response*' prepared by Max Robitzsch of Traffic Design Group, and dated 15<sup>th</sup> July 2008;
- The letter from Tim Sinclair of Tonkin & Taylor Ltd, entitled '*Managed Cleanfill at Three Kings Discussion on Potential Vibration Issues*' dated 20<sup>th</sup> August 2009;
- The letter from Richard Compton of Winstone Aggregate, entitled '*Development Contribution for Three kings Cleanfill Activity – Without Prejudice*' dated 25<sup>th</sup> August 2009;
- The letter from Richard Compton of Winstone Aggregate dated 3<sup>rd</sup> September 2009;
- The letter from Richard Compton of Winstone Aggregate, entitled '*Development Contribution for Three kings Cleanfill Activity – Without Prejudice*' dated 17<sup>th</sup> September 2009;
- Submission received between 3<sup>rd</sup> May 2009 and 29<sup>th</sup> May 2009;

- Late submissions and correspondence received between 2<sup>nd</sup> June 2009 and 16<sup>th</sup> September 2009:

*Supplementary information*

- Winstone Aggregates Three Kings Quarry Quarry Management Plan, Adopted July 2007 and Revised May 2008;
- Winstone Aggregates Puketutu Island Quarry Fill Management Plan, Adopted March 2009;
- Ministry for the Environment, A Guide to the Management of Cleanfills, prepared by Beca Carter Hollings & Ferner Ltd, dated January 2002

## **7.0 EVIDENCE PRESENTED AT HEARING**

### **7.1 The Applicant**

**Submissions and evidence was presented at the hearing on behalf of the applicant from the following persons:**

**Legal submissions** on behalf of Winstones Aggregates Ltd from **Mr Bal Matheson**.

**7.2 Mr Matheson** addressed a number of legal matters of relevance to a determination on the applications. He noted the baseline context [at para's. 2.25, 2.35)] in his submissions as well as describing the existing environment at para 2.27. It was put that the applicants position is that the proposed Cleanfill activity will largely fit within the envelope of existing effects and that the additional effects from the cleanfilling and sale of aggregate will 'hardly be discernible' (para 2.31). He also noted that the current quarrying activity had no limitations upon hours of operation or truck movements. In regard to the issue of dewatering Mr Matheson noted that the existing ARC consent was good until 2030. Submissions were made in respect to the proposed conditions of consent and we note that Mr Matheson provided an amended version during the course of the hearings as well as a final one as part of the applicant's right of reply.

**7.3 Mr Bernie Chote**, General Manager, WAL presented evidence addressing a description of Winstone Aggregates and relevant Company policy; a brief description and history of the Three Kings Quarry site; the phasing out of quarrying, the phasing in of the proposed filling and future use of the site. He also addressed what he submitted was the important part that cleanfills play in resource management terms particularly those able to be sited in an urban location. The matter of dewatering of the site in relation to end use options and in the future (beyond 2030) was addressed also. He discussed the extensive consultation undertaken and made some comments on matters arising from the submissions, the Council's proposed conditions and also spoke about matters arising from the Council officer's reports.

**7.4 Mr Kurt Hine** the Quarry Manager at Puketutu Island (a WAL facility) gave evidence around a description of cleanfilling operations and the processes and procedures adopted for managing fill material quality and placement. He also went into a discussion about establishing and maintaining control of processes, procedures and contingency measures through a Cleanfill Management Plan. In addition he made comment on the proposed conditions and submissions.

**7.5 Mr Daryl Hughes**, a Traffic Engineer from Traffic Design Group presented evidence around an assessment of the potential effects arising from the proposal. He also referenced and responded to a peer review of his application report which was carried out by Traffic Engineering Solutions for the Auckland City Council. His evidence covered a discussion on the proposed Cleanfill operations, the assessment methodology he employed in making his assessment, the results of his assessment, the operational and safety effects of the proposal on the State Highway network and the local street network, the proposed second access, truck routing and management, potential damage to roads and debris from trucks and commented on matters raised through submissions.

**7.6 Ms Siiri Wilkening** an acoustic Consultant from Marshall Day Acoustic Consultants addressed noise performance standards, set out her assessment of the existing noise levels on the site and surrounds and also discussed construction noise levels. She set out the relevant aspects of the proposed operations and the associated noise levels including consideration of noise attributable to increased truck numbers. The submissions in respect of noise were discussed as was the Council Planner's report and recommended conditions. Ms Wilkening also produced a supplementary statement of evidence through the applicant's right of reply. She addressed the consequences of the applicants offer to forgo the proposed second access to the site, discussed the noise effects arising from use of a steel roller compactor and highlighted the intent to retain the existing bund by the road for as long as possible if the second access was still proposed. Her supplementary evidence confirmed that where a single access (existing) was used then the noise conditions set out at proposed condition 19 still remain valid. In order to strengthen her conclusions she also recommended wording amendments to proposed Condition 19 in regards to a monitoring regime when fill is being undertaken above RL 70. Similarly when addressing the use of a roller for fill compaction she recommended a new condition 19(A) requiring noise modelling prior to any self propelled compaction equipment being used, to ensure noise standards will be met

**7.7 Mr Andrew Curtis**, a Chemical Engineer with URS NZ Ltd gave evidence around the nature of the existing air environment, the potential emissions associated with a Cleanfill operation, proposed mitigation measures to minimise the effects of emissions, submissions and a response to those, matters raised in Council officers reports including recommended conditions with concluding comments around his assessment of the proposal.

**7.8 Mr Graeme Twose**, a Geotechnical Engineer from Tonkin and Taylor Ltd described in his evidence the proposed sequence for filling the quarry, a discussion around the range of operational options available for carrying out the fill activity, an assessment of the magnitude of surface settlement that could occur after the filling is complete for each of the options he discussed, comments on the implications of the potential settlement on subsequent site development for a range of possible future uses once the fill is completed. He also discussed vibration effects in relation to the proposed second access and in respect of equipment placing fill. His evidence also addressed submissions and the Council officers' reports including recommended conditions.

**7.9 Mr Barnaby Harding** a Hydrogeologist with Pattle Delamore Partners gave evidence on the geology and hydrogeology of the site. He discussed his assessment of the effects of the proposal on groundwater quality resulting from the fill drainage that will be generated and from rainfall runoff. He also discussed the effects of the proposal on groundwater levels.

**7.10 Mr David Serjeant**, a consultant Planner (Merestone Ltd) gave evidence addressing the relevant planning matters and discussed the likely effects of the proposal. His evidence addressed the permitted baseline matter and he submitted that as the quarrying will continue for some time and as it is a permitted activity to do so then the baseline consideration matter is of some significance to an assessment of the proposal. He also noted that there is an existing air discharge permit and that the filling can operate within the scope of that consent. He also submitted that the permitted baseline was relevant to a consideration of noise and landscape matters. Similarly his evidence argued that there was no limit on truck movements from the existing quarry and that the Cleanfill activity fell within the scope of that baseline-noting it was the construction of the proposed second access that raised a need for a consent. As noted later in this decision report the Commissioners have determined that the second access should not proceed in any case.

The findings of the applicants other experts was referenced and Mr Serjeant concluded that subject to appropriate conditions the proposal could be granted consent. Mr Serjeant also presented a supplementary statement of evidence through the applicant's right of reply. That statement focussed on the matter of whether the sale of aggregate where it did not meet the noise standards for the zone may mean that aspect of the proposal became a non-complying activity. His evidence submitted that as the existing sale of aggregate met the noise standard there was no discernible reason why the proposed sale of imported aggregate would not also meet the noise standard.

He went to note that even if the proposal was found to be non-complying in that respect that he had carried out an assessment of the proposal under the relevant section 104D provisions of the Act and that his conclusion was still that the proposal meets all relevant statutory tests. In addition Mr Serjeant revisited the matter of noise and traffic effects. His evidence noted that the proposal would meet a 60dBA standard at the residential boundaries of nearby properties but not the 55dBA standard. He also noted that given the applicant in their right of reply had offered to forgo the proposed second access to the site, that Ms Wikenings' assessment of the noise effects arising from use of the existing access only showed that any effects will remain as being no more than minor.

He also addressed the relevant objectives and policies of the Plan (in relation to a section 104D assessment) and noted that by using only the existing entrance for the proposal the effects will reflect a lesser change to the existing environment. His conclusion was that even if the proposal was a non complying activity in part or whole in relation to the District Plan provisions that the both of the gateway tests of section 104D are met and the proposal can be approved.

**7.11 Mr Robert Burden** who is Geochemist with both Domain Environmental Ltd and Riley Consultants Limited gave evidence on chemical related aspects of the proposal. He addressed the chemical composition of the Cleanfill material that will be used, what acceptance criteria are to be used to maintain a Cleanfill quality, the potential effects of Cleanfill on the chemical composition of rainfall runoff, the potential effects of Cleanfill on the chemical composition of drainage passing through the fill, the potential effects of Cleanfill on groundwater quality beneath Three Kings quarry, and the potential effects of Cleanfill on groundwater quality if dewatering ceases.

He also addressed submissions around his area of expertise and commented on the Council officer's reports and the proposed conditions. A key part of his evidence was centred on the definition of Cleanfill and why Cleanfill did not have to comply with a standard that meant it could not exceed the chemical characteristics of the natural

soils at the site. His submission was that the prime test was that there be no significant adverse effects on the receiving environment. Mr. Burden also provided supplementary evidence as part of the applicant's right of reply. He responded to the evidence from Dr. Robertson (who gave evidence on behalf of South Epsom Planning Group).

In essence the evidence was around the matter of whether the Cleanfill was actually that having regard to the statutory context in relation to the ARC's Air, Land and Water Plan. His evidence addressed the contamination standards that should be applied to the top 2m of Cleanfill and also the random monitoring sampling frequency of 1 in every 150 truckloads-which he stated was appropriate and met MfE guidelines and was endorsed by ARC and ACC in the proposed conditions of consent.

## **8.0 SUBMITTERS**

**Evidence was presented at the hearing on behalf of the following submitters.**

### **8.1 Envirowaste Limited.**

**Mr Kirkpatrick** (and Mr Kitt Littlejohn) presented legal submissions on behalf of the submitter and called two witnesses. Their submissions noted that they didn't oppose a Cleanfill per se but opposed a landfill which they argued was what the proposal represented as it allowed for the deposition of material other than Cleanfill. They went on to say it would be unlawful to grant consent for anything other than what was applied for. Their argument revolved around their position that the proposal will not meet the legal definition of a Cleanfill activity. As the site is not considered to be a contaminated site they submitted that the nature of the fill material which contained contaminants above those found in the existing background environment took the proposal beyond a Cleanfill activity. The definition in the ALW Plan was referenced which includes reference to Cleanfill activities having no adverse effects on people or the environment. They also raised issues with the proposed scope of management plans and submitted that many of the matters that were to be addressed in those were rightfully more appropriately addressed in conditions of consent.

The first of their witnesses, **Mr Rhodes** is the national Environmental Coordinator for Envirowaste. His evidence discussed the availability of material within the Auckland Region that met the definition of Cleanfill. Basically his evidence set out to show that using analysis results for the Greenmount Closed Landfill 71% of the material there met the definition of Cleanfill thus adequate material was available such that WAL did not need to use material with contaminants at the levels their proposal identifies.

The second witness, **Mr L Dolan** who was an independent environmental consultant, addressed the matter of Cleanfill and an appropriate condition that could be used to ensure fill material is only Cleanfill. He referenced a number of the identified contaminants that may be found in material that WAL may deposit and stated that those were not appropriate for a Cleanfill activity. Reference was made to Schedule 10 of the PARP"ALW and the permitted activity rule at 5.5.41 therein.

His submission was that if consent was granted on the basis of the proposed ARC conditions of consent than the proposal would not be a Cleanfill activity. His premise was that fill material could contain contaminants up to the background concentrations for volcanic soils in the region but not beyond those. His recommended condition related to the ARC applications and is not an ACC matter other than in respect of how the quality of fill interfaces with the assessment criteria for controlled filling under the Operative District Plan and the need to maintain a range of options for future use of the filled site.

**8.2 Watercare/Metrowater** presented evidence as joint submitters.

**Alistair Shanks**, a qualified engineer employed by Watercare gave evidence that addressed matters around retention of groundwater quality so as to preserve future options for use of such water as a potable supply for the region. He noted Watercare was not opposed to the fill operation provided that adequate controls are in place to protect water quality. He proposed various amendments to the proposed ARC conditions of consent.

**Ize Gotelli** attended on behalf of Metrowater and did not present written evidence but answered question from the Hearings Panel.

**8.3 3 Kings United Group Inc** (The Group)

**Wyn Hoadley** appeared as Counsel for the Group. She noted the Group accepted the existence of the current consent applicable to the use of the site. However she went to state that the proposal will significantly increase the amount of dust and noise from the proposed use of the site, it will increase contamination levels and reduce pedestrian and traffic safety. She also submitted that the Group wished to see dewatering cease before cleanfilling is allowed to commence. Reference was made to the proposed reliance in conditions on management plans yet to be formulated. In that respect the Group sought more specific conditions of consent which then could be supported by related management plans. She also noted the lack of engagement by the applicant with the submitters in respect of the process to formulate those plans.

The ongoing role of the Site Liaison Group was raised as an issue for the submitter. The need to identify the future end use of the site once filling terminated was also noted as a key issue. The matter of whether the fill material was to be Cleanfill was also raised. As such if the fill was contaminated then her submission was that the proposal would be for a landfill and would require new resource consent applications.

**Diane Hill** a local member of the Group gave evidence in support of the Group's submissions. The matter of dewatering and the effects on residential properties (subsidence) was raised. Concerns were expressed over the consultation process undertaken by the applicant. It was submitted also that the proposal be deferred until the 'super City' was in place. The need to define the end use of the filled site now not later was stressed.

The number of vehicle movements and the adverse effects from those was stated as a major issue. In particular the fact that the proposed movements were from trucks was seen as a distinguishing adverse effect. The location of the proposed second accessway was raised as an issue in regards to safety for residents and the nearby school pupils and staff. She noted that if the proposal was approved that all tracks should have covers to reduce dust and that Cleanfill material testing occur for all loads at the point of origin. An independent company should be used for testing fill material.

**Mr. Austen Bell** also gave evidence for the Group as well as for his (personal submission).

His evidence addressed a range of environmental matters of concern to the Group. Adverse effects on residential amenity were a prime issue of concern to the submitter. The generation of dust was seen as a major adverse effect and the size of the dust particles was highlighted as a matter that had not been properly considered in his opinion. He referenced the ineffectiveness of the existing dust monitoring

equipment which in his opinion didn't capture all dust events. In respect of that matter he sought that the current Air Emission Management Plan (under an existing ARC consent) be cancelled and that a new Plan be formulated that addressed the smaller sized dust particles that were currently not detected.

His evidence also addressed the matter of dewatering activities and effects. Reference was made to subsidence effects on residential buildings and he provided photographs showing evidence of cracking in structures. His opinion was that the subsidence was causing this and was directly attributable to dewatering. His evidence also showed through documented correspondence that there is no insurance (NZ Earthquake Commission) payable for damage where natural subsidence causes damage.

Another issue of concern was potential contamination of the Three Kings aquifer and he sought that a clay liner and impermeable membrane be put in place before filling commenced. Reference also was made to the proposed World Heritage prospect for the Three Kings Cone and Tuff Ring to gain heritage status. Another matter raised was the suggestion that a compensation package be devised for adversely affected residents.

Mr Austen also raised (as did other submitters) the need to identify now the future use of the filled area. He submitted that a quarry Park was a preferred outcome. He also suggested that the 1915 Reserves and Volcanic Protection Act was being breached and that a 40 degree slope must be maintained on the eastern slopes of Big King cone. Finally reference was made to flora and fauna found at the site and the need to preserve those.

**8.4 Antipodean Properties** were represented by Alison Thompson who is a consultant Planner.

She submitted on a range of matters for her clients who own the Tree Kings Plaza shopping centre. A prime issue was the concern that the proposal did not threaten the redevelopment of Three Kings Plaza and that it did not create amenity issues particularly in regards to the surrounding road network.

The focus of the submission was that the proposal avoided, remedied or mitigated any adverse effects. She addressed her opinion that the permitted baseline in regards to vehicle movements was not opened in reality as there were a number of practical limitations that constrained traffic generation levels and thus the baseline comparison may be incorrect. In her view the proposal represented a significant (530%) increase in movements. She noted that the duration of existing consents and any new consents granted should align (We note that is the applicants proposal).

She noted that if consent was to be granted then a number of revisions should be made to the proposed conditions of consent. Those included matters relating to the Traffic Management Plan and requiring the use of dedicated traffic routes (rather than indicative routes). No access should be provided from Graham Breed Drive. Concerns over dust were raised she requested a dust monitor at the eastern boundary of the site by the Plaza.

She also sought that truck movements be limited on a daily count basis and not the 4 weekly average proposed in the ACC hearings report proposed condition 17. Also it was requested that the second access sought by the applicant should be decommissioned with 3 months of the filling activity terminating. She supported the

proposed use of section 128 review conditions but requested that the reviews should be ongoing (and not 2 yearly) and should reference the level of truck movements as a trigger.

#### **8.5 J Anerich** was represented by **Robert Enright**, his Counsel.

**Mr Enright** presented submissions and then called Mr Anerich who gave evidence. Mr Enright addressed a number of matters related to adverse effects upon Mr Anerich's property and family. The second accessway was opposed based on the significant adverse effects that were seen to arise from both its construction and use. Reference was made to the difference between effects from commuting traffic on Mt Eden Road and the effects arising from truck movements. It was also highlighted that the new accessway was directly opposite the submitter's house (noting that it had been moved to there from the earlier position put up in the application as lodged due to concerns over its proximity to the School and Graham Breed Drive). He raised the jurisdictional issue of whether the proposal was non-complying if the sale of imported aggregate did not comply with the District Plan noise standards

He referenced the applicants Counsel's suggestion that the aggregate sale noise matter be considered separately to the other activities as a means to ensure that the noise standard was met. In his submission the 'splitting' of the activities was not a proper approach. He also suggested that the permitted baseline approach was not mandatory and that a discretion exists as to whether it was considered or not. In that regard he submitted that the second accessway did not within the baseline anyway. On the other hand he submitted that if the 24/7 activity baseline approach did hold good, then there will be a significant cumulative effect when the existing and new activities are combined. In conclusion he noted that if consent was granted that based on the applicant's assessment there was no reason why consent to the second accessway should be declined as use of the existing access is a feasible option.

**Mr Anerich** then gave evidence. He submitted that he was one of the most affected parties given the proposed second accessway. He noted the lack of consultation with him when the second accessway was moved from the originally proposed location. His evidence addressed traffic and noise effects, dust effects, safety for people, monitoring the quality of the fill material, effects on ground water quality, the effects of the second accessway on his access to his property, effects on his personal amenity values, and the effects arising from stormwater.

He also noted the buffering effects he enjoys from the existing planted mound on the applicants site. That would disappear if the second accessway was constructed. He also noted the effects from tree removals to form the accessway (which led to Commissioner Sinclair raising the matter of why no consents had been sought for that activity. A subsequent application was tabled to the Commissioners the next day and that raised other jurisdictional matters).

#### **8.6 South Epsom Planning Group (SEPG)**

**Professor Richard Bellamy** led the evidence in support of their submissions. He set out at the outset 5 main questions that his evidence covered. They included whether sequenced restoration of the quarry was in the public interest, whether the proposal complies with the Business 7 zone provisions, was the Cleanfill actually Cleanfill, what level of engineering is required to future proof options for future land use and

whether sufficient has been done to ensure that adverse effects are avoided, remedied or mitigated.

Mr Bellamy set out the history of the SEPG and their long standing involvement (35 years) in matters pertaining to the use of the site as a quarry and the dewatering matter and the use of groundwater for a potable water supply. He referenced a 10 year old recommendation to ACC from an Independent Commissioner that a comprehensive plan setting out long term use of the site was needed and expressed concern over the lack of action by Council in that respect. He stressed the SEPG view that the proposal was not for a Cleanfill activity at all. He did make it clear that the submitter favours a programme of progressive restoration of the site using Cleanfill.

As the site should be filled the submitter did not oppose the application in its entirety. He submitted that it was vital to engineer the fill so that there was not a 20 year wait for the fill to settle before some future land use activity was able to be established. In his view the lack of attention to that important aspect meant that the objectives for the Business 7 zone were not met and that the proposal did not meet the assessment criteria addressing provision for future zoning and related land uses.

In essence there was seen to be a need to define compaction standards now so that future use options were not foreclosed. He referenced the Plan provisions wherein controlled filling excluding refuse disposal was a discretionary activity. He also submitted that as the compaction standard has not been addressed then the matter of effects arising where dewatering ceases have not been properly considered in relation to end use potential. His submission then addressed in detail the issue around whether the fill was in fact to be Cleanfill and thus whether the application was correctly notified and assessed (similar to Mr Kirkpatrick's argument). He then addressed concerns over the aquifer and water quality. He also refuted the applicant's analogy in their analysis to activities at Puketutu Island. In SEPG's opinion the use of a liner was seen as paramount to maintain water quality.

At this point he called Dr Robertson to give his evidence.

**Dr Robertson** an environmental chemist was called as SEPG's first witness.

The witness addressed a number of matters including his opinion that the acceptance criteria proposed by the applicant for Cleanfill do not meet MfE guidelines. He supported the SEPG's submission that a clay liner was necessary to protect groundwater quality. In his opinion, if that did not occur then strict compliance with the MfE guidelines was necessary. He went to evaluate at some length a number of material and substances that may form part of Cleanfill. He discussed the issues around total petrol hydrocarbons (TPH). The thrust of his detailed evidence was around the levels of contaminants that could exist if material was to fall within the definition of Cleanfill. He also addressed the random sampling process that was proposed by the applicant and the proposed conditions of consent and suggested only 0.07% of fill material would actually be tested under the proposed method. In essence his view was that if anything other than Cleanfill did occur a clay liner must be used.

**Mr Bellamy** then returned to his evidence at para 5.2.

He reiterated that the proposal was not for a Cleanfill activity in the submitter's opinion. He went on to discuss the matter of compaction standards and the effect of groundwater rise. Reference was made to Mr Koay of ACC who reported on that

matter. A Fill Management Deposition Plan provided as a condition of consent was not perceived to be an acceptable solution to the issue. Reference was made to the need to have conditions of consent as the prime means of addressing effects and that management plans should follow from those. The thrust of his evidence here was the need for a defined engineering standard that preserved future use options.

Mr Bellamy then called Mrs Mules to present her evidence.

**Mrs Pip Mules**, a local resident was called as their second witness. Her evidence was also presented in support of their personal submission. She raised concerns about the consultation and liaison processes engaged in by the applicant. Her evidence addressed dewatering and subsidence issues. She also addressed dust and traffic effects. The effects of heavy traffic pushing people to use residential streets instead of main roads was raised. She also noted that Meola Creek is being adversely affected by the dewatering activities. Her submission also sought that a community driven end use for the site be developed.

**Mr Bellamy** then returned to his evidence at para 7.2

The number of truck movements and the proposed second accessway were addressed by Mr Bellamy. He submitted only the existing entrance should be used.

In conclusion Mr Bellamy reiterated the need for Cleanfill to indeed be that, that the aquifer should remain unpolluted, as the fill is over an aquifer higher standards than otherwise apply should be used, potable use of the aquifer must be preserved, appropriate engineering standards must be applied to preserve future use options and proper Cleanfill should be used up front and when a future use Mater Plan is devised then the nature of the fill could be re-evaluated.

### **8.7 Bremner Family Trust**

Evidence was tabled on behalf of the Bremer Family Trust. That evidence addressed concerns over the effects of the proposed second accessway and the proposed increase in noise levels to 60dBA for the residential boundaries (particularly on Sundays and public holidays). If consent was granted they requested that a s128 review condition addressed noise matters.

**We note that the Commissioners undertook a site visit prior to the hearing.**

### **9.0 Principal Issues in Contention**

**The principal issues in contention we have identified following our reading of the application documents and the submissions and hearing the evidence are related to:**

- Dust effects on residential properties
- Noise effects and whether the sale of imported aggregate will meet noise standards or if not, whether the proposal should be treated as a non-complying activity
- Effects on residential amenity
- Traffic effects especially in relation to heavy vehicle movements in terms of frequency and disturbance on nearby residents

- The nature of the fill material and whether it legally constitutes “Cleanfill”. This was primarily an ARC issue in terms of the activity status of the proposal under the Air Land and Water Plan. The ACC District Plan provides for controlled filling as a discretionary activity which by definition excluded refuse disposal
- Effects of the proposal on water quality and the future use of groundwater for potable purposes
- Need for a clay liner to reduce contamination risk
- The need for and effects of the proposed second access to the site
- Proposed hours of operation and the maximum volume of truck movements
- The use of Management Plans and their relationship to conditions of consent
- The final form of the filled area
- The compaction and stability characteristics of the filled area and consequent potential future use

## **10.0 Main Findings of Fact**

### **10.1 Dust effects on residential properties**

During the course of the hearing we heard evidence from the applicant and submitters on this matter. The nature of the existing dust monitoring regime was canvassed and it was confirmed that while monitoring is carried out as required under existing ARC conditions of consent there still will be instances when dust may well be carried beyond the immediate site. It was noted by the Commissioners that the air discharge permit expires in 2012, and that there is a likelihood if this is not renewed that the responsibility for managing dust issues will transfer to ACC. The matter of whether evidence of dust on surrounding properties can be directly attributed to the quarrying activities was not able to be accurately determined however. Notwithstanding that it is our opinion that there is need to address dust management through conditions of consent relating to the application to ACC to carry out a controlled fill.

### **10.2 Noise effects and whether the sale of imported aggregate will meet noise standards or if not, whether the proposal should be treated as a non-complying activity**

The activity of the sale of imported aggregate, taken in isolation, would meet the district plan noise standards applicable to that activity. Noise generated from the combination of quarrying, clean filling and sale of aggregate, would infringe the Business 7 Noise Controls.

In this context, it was submitted by counsel for Mr Arnerich that the activity status may be non-complying (or at least that this issue was “far more arguable than the applicant contends” – see Mr Enright paragraph 14)

Mr Enright referred us to the Court of Appeal decision in *Body Corporate 97010 v Auckland City Council* [2000] 3 NZLR 513 and paragraphs [21]-[23] in particular, in support of his submission that there was an overlap of the effects of both the sale of

aggregate and the clean filling operation (e.g. in relation to truck movements); and that it was artificial to separate out those effects.

We agree that all effects of the whole operation require consideration together. That is the basis of the applicant's noise consultant's evidence presented to us.

As we understand the passage in the Court of Appeal's decision, the Court was addressing the circumstances when multiple land use consent applications in respect of the same development overlap in terms of their effects, leading to a need for public notification of all applications for consent. That is a different question from establishing the activity status of the sale of imported aggregate under the District Plan. We are satisfied that the proposal is a discretionary activity. We have also concluded that the proposal overall is consistent with relevant District Plan objectives and policies and that its generated effects are no more than minor, given the context of this proposal and the existing operation in particular.

In his reply, counsel for the applicant indicated that the company was willing to forgo the second accessway, although it was not to be taken as formally amending its application. It is the second accessway both in terms of its construction and subsequent use by trucks, that is the principal concern of Mr Arnerich. The position of that accessway also introduces other considerations and potential effects in relation to third parties such as the local school. Commissioners have concluded that the second accessway should not be allowed. One consequence of this is that the effects of concern to Mr Arnerich are substantially, if not wholly, avoided.

### **10.3 Effects on residential amenity**

We have considered the application detail and the evidence put to us and formed the opinion that the proposal overall will maintain residential amenity provided that the proposed conditions of consent are enforced. In reaching that conclusion we note that the proposed second accessway is not considered appropriate and thus consent should be refused for that part of the proposal. As noted above there is also a need to rigorously monitor dust and even though there are applicable conditions relating to the ARC air discharge consent in terms of the applications to ACC, dust is a matter that has amenity related consequences and accordingly we find that there is a need to address this matter in a condition of consent.

### **10.4 Traffic effects especially in relation to heavy vehicle movements in terms of frequency and disturbance on nearby residents**

We have considered the likely effects of traffic movements and note that there is already an existing quarrying activity on the site which will gradually phase out as filling increases in volume. To some extent, but not completely, the Cleanfill traffic movements will replace those currently associated with quarrying. However the nature of the Cleanfill movements is likely to differ from quarrying related movements and there will be differing effects arising such that a reliance on a baseline context argument is not appropriate in our view. In particular we note that the proposed second accessway will lead to more than minor adverse effects on those people closest to that entrance and the existing access, which has a known characteristic around effects, is a preferable entrance to the site

We agree with submitters that truck movements will have a different effect to those associated with the commuting traffic on Mt Eden Road and note that in our view, one of the main differences will be the effects associated with stopping and turning into the site. When leaving the site any delays experienced will be confined to the site and will have no more than a minor effect on any external parties.

We also are of the opinion that due to the proximity of residential properties, and noting the potential effects of the proposal, that it would be reasonable to specifically limit by condition the hours of activity for Cleanfill purposes (controlled fill) and also the daily number of vehicle movements. In that regard we agree with the evidence of Antipodean Properties that a daily maximum is appropriate as a control mechanism rather than an average measurement taken over four weeks.

**10.5 Dewatering effects on surrounding properties located within an identified “dewatering zone” (noting here that the applicant has consent from the ARC to carry out dewatering until 31/12/2030)**

We have considered all relevant evidence in regards to the matter of dewatering, noting that the applicant has a valid consent from the ARC to carry out this activity. We also note that no expert evidence was submitted by any of the opposing submitters on this matter. The key point in relation to the matters raised by submitters was that dewatering may have adverse effects upon ground water quality and/or compaction of the fill area. The applicant has indicated in their expert evidence that they will continue to dewater until that consent terminates in 2030. Their evidence has shown that whether or not dewatering occurs, ground water quality will not be adversely affected.

While evidence was put forward by opposing submitters alleging subsidence to residential buildings as a result of dewatering the evidence did not adequately substantiate that linkage in our opinion. No expert evidence was put forward by them in support of that position. We are of the opinion that provided there is ongoing monitoring of the existing dewatering activities then there is no identifiable basis for refusing consent to the controlled fill activity as is sought by the applicant.

**10.6 The composition of the fill material and whether it legally constitutes “Cleanfill”. This was primarily an ARC issue in terms of the activity status of the proposal under the Air, Land and Water Plan. The ACC District Plan provides for controlled filling (which excludes refuse disposal) as a discretionary activity.**

This matter was a focus for many of the submitters. In essence the proposition advanced by submitters was that as the fill material did have contaminants that exceeded background levels then the material was not Cleanfill. To the contrary, the applicant, both through their expert evidence and in the closing submissions by their legal counsel, submitted that the test in the MfE guidelines referred to ‘when buried will have no adverse effects on people or the environment’ (para 4.5 Bal Matheson closing submissions) and that the applicant’s evidence supported the fill material achieving that outcome.

We have carefully considered the evidence from both Mr Burden and Mr Dolan in that respect and conclude that provided the sampling regime and methods for managing the quality of the Cleanfill are rigorous then the proposal will fall within the term ‘Cleanfill’ and as such as a controlled fill activity will be consistent with the District Plan requirement to provide for future use of the filled area (subject to other matters we discuss elsewhere on compaction and engineering standards for that fill).

**10.7 Effects of the proposal on water quality and the future use of groundwater for potable purposes**

We have considered fully the applicants assessments and evidence as well as that advanced by the opposing submitters. In particular we reference the evidence from Mr Harding, Mr Burden and Mr Robertson. We have formed the opinion after

carefully reviewing all of the evidence that whether dewatering continues or ceases the proposal will provide for a satisfactory level of fill drainage dilution such that the groundwater resource will not be adversely affected and that it will remain available as a potential potable water supply. We note in that regard as advised by the Metrowater witness that the existing (not currently operating) water treatment plant will require upgrading should that ever occur.

#### **10.8 Need for a clay liner to reduce contamination risk**

This matter was raised by submitters in association with a discussion around the extent and nature of any contaminants in the fill material and the potential adverse effects on groundwater. We have considered this matter in relation to our assessment of the maintenance of a potential for the use of groundwater for potable purposes. Our findings, based a review of the relevant expert assessments is that there no necessity for the quarry area to be lined prior to the activity of Cleanfill occurring. We reach that conclusion having had regard to the evidence on both the nature of the Cleanfill and the level of contaminants therein as well as the effects that may arise from the filling activity in regards to fill drainage and cross contamination potentials. In our opinion the proposal will secure the necessary environmental outcomes such that risk of contamination is minimised and a liner is not required.

#### **10.9 The need for and effects of the proposed second access to the site**

The proposed second access was raised as a matter of concern by a number of submitters. During the hearing the need for consents to be sought to remove protected trees arose. The applicant responded by filling an "application" which was then reported on by Council officers who provided that information to the Hearings Panel on the basis that the application could be amended accordingly and addressed through the hearing process. A number of jurisdictional matters arose from that action. Fortuitously, in their right of reply the applicant agreed to forgo the proposed second accessway should that be the Commissioners decision. No decision was made in relation to the tree removal "application".

Having had regard to the evidence presented and the applicants' case for needing the second accessway we are of the opinion that the longer delays that will be experienced on the site as a result of only using the existing access are preferable overall to the adverse effects that will arise as a consequence of putting in a second access as proposed.

For that reason, and noting that the applicant did not go so far as to withdraw the proposal for a second access, we believe this aspect of the proposal should be refused consent. The effects on the nearby residents and the school in terms of amenity, noise and safety are likely to be more than minor and there are insufficient positive benefits in respect of the applicant's case to justify those adverse outcomes.

#### **10.10 Proposed hours of operation and the maximum volume of truck movements**

We note that the applicant indicated in the application documents that the proposed hours of use will be similar to those of the existing operations-even though there is a theoretical 24/7 ability to operate where the Plan development controls are met

That is set out in the Council planners report at Part 4 where they state;

*"The present activity is subject to Quarry Management Plan (QMP) which has been compiled with public input from local residents and neighbouring land*

owners. The QMP establishes when the quarry will operate and the technical details it will need to adhere to. Current operational times are 7:00am – 8:00pm Monday to Saturday and 9:00am – 6:00pm on Sunday and Public Holidays, however the District Plan permits 24/7 activity at the site, where it complies with the zonal development controls. The applicant envisages that the cleanfill operation will adopt the existing times of operation.”

In our opinion the proposed filling activity should be limited as to hours noting the volumes (and associated effects) of the maximum number of truck movements for which consent is sought. The evidence for Antipodean Properties, the South Epsom Planning Group and J Americh raised those matters as prime issues

#### **10.11 The use of Management Plans and their relationship to conditions of consent**

We concur with the submitters who have raised this matter as an issue. The proposal must be subject to explicit conditions of consent that address the key matters which are required to be managed to avoid, remedy or mitigate adverse effects. Management Plan can only be used as a means of giving effect to specific conditions.

#### **10.12 The final form of the filled area**

This matter relates to the future range of land use options that will exist under differing fill methods and whether or not dewatering continues or ceases. The proposal will create a landform having contours that are acceptable in that they provide for a reasonably flat land area which will suit a range of future use options. We consider the proposal acceptable in this respect.

#### **10.13 The compaction and stability characteristics of the filled area and consequent potential future use**

Following the above matter we note that considerable evidence was put up by submitters in regards to the need for absolute certainty over fill engineering and compaction and stability matters so that future land use options were not prejudiced.

We agree with the need to ensure that fill management is in accordance with engineering standards that do not foreclose future use options. For that reason, and based on the evidence and application assessments, we are of the opinion that filling for the first 5 years must meet a compaction standard that enables it to be used for residential activities. During that time we hope that the Council, the applicant and the Site Liaison Group can work towards defining a long term plan for future land uses such that the subsequent fill compaction standard can be tailored to those uses. In that respect the matter of dewatering or not must also be addressed.

A condition of consent is therefore appropriate to ensure that standard of filling is met.

## 11.0 ASSESSMENT

### Section 104

The Commissioners have carried out their assessment of the application as a discretionary activity under section 104 subject to Part 2 and in relation to

- Any actual and potential effects – both adverse and positive – on the environment
- Any relevant provisions of the relevant planning documents and
- Any other matter considered relevant and reasonably necessary to determine the application.

*Note: This application was lodged prior to the enactment of the Resource Management Amendment Act 2009. In accordance with the transitional provisions contained in section 160 of subpart 2, this application will be assessed and determined under the Principal Act, as if the Amendment Act had not been enacted.*

### 11.1 Effects on the Environment

In considering the proposal the Commissioners have proceeded on the basis that the current quarrying operations can continue, subject to the various consents held from the ARC in respect of an air permit to discharge dust (expires August 2012), a water permit to take water to dewater the quarry, provide for dust suppression and for municipal water supply purposes (expires December 2030) and a water permit to take groundwater for dust suppression (expires December 2030).

The matters we have considered are set out below.

- The Proposals Effects on the Character and Visual Amenity of the Surrounding Area (Resultant Landform, Intensity, Scale & Nature of Use)
- Traffic and Parking Effects (Proposed Second Access, Traffic Congestion, Road & Pedestrian Safety, Parking, Road Maintenance & Cleaning)
- Effects on the Local Residential Amenity (General Effects, Noise & Vibration, Dust and Air Quality)
- Effects on Stormwater Runoff and Drainage (Stormwater Runoff & Drainage, Infiltration & Pollution of Groundwater, Sediment Control)
- Effects on Infrastructure (Local Services, Dewatering)
- Contamination Effects (Groundwater contamination, Cleanfill Management Plan, Sampling, Testing & Screening, & Ground Contamination)
- Site Stability
- Other Effects (Safety & Security, Heritage & Culture)
- Cumulative Effects
- Positive Effects

## **11.2 Summary of Effects:**

We have considered the weight of evidence presented by all parties, the assessment documents presented by the applicant as well as the assessments by the Council's reporting officers. In carrying out our assessment we note that quarrying is a permitted activity in the Business 7 zone.

We are of the opinion that the proposal will not result in any adverse visual or landscape effects that are more than minor. The final landform will be grassed and will essentially be viewed as a large open space area with park like characteristics at that point in time. During the filling operation there will be some adverse visual effects from a limited number of locations but in our view no more than what may be expected in association with continued quarrying.

In respect of traffic effects we are of the opinion that provided the activity is limited to the use of the existing entrance only, then the traffic effects from the proposal will be consistent with an ongoing quarry activity provided that the hours of the Cleanfill activity and associated truck movements are capped on a daily basis. There is sufficient area on the application site to manage the stacking up of trucks leaving the site should that occur. The evidence from the respective traffic engineers confirms that Mt Eden Road has capacity to cater for the vehicle movements associated with the proposal and that no safety issues will arise. The evidence also indicated that there will be no adverse effects on the wider roading network and we concur with that view.

An issue was raised around the need to use covers on trucks to minimise dust and spillages. We agree with that approach and a condition of consent should require that WAL addresses that matter in the relevant management plan.

In terms of residential amenity and overall environmental effects we are of the opinion having read the material and heard the evidence that any effects will be no more than minor. We do note that there is a need to address dust nuisance and that appropriate monitoring is required as is an associated section 128 review condition.

## **11.3 Objectives and Policies**

Relevant objectives and policies have been identified in the application material, the Council's planning report and were addressed in the evidence. We note that the filling activity is provided for in the zone as a discretionary activity and is a necessary consequence of a quarrying activity in such a location.

We agree with the assessment by the Council's reporting planner and the applicant's planning witness Mr Serjeant, that the proposal is consistent with the relevant objectives and policies.

**11.4 Overall, we find that the proposal is not contrary to the objectives and policies of the relevant district plan.**

## **11.5 Section 104(1) Matters**

### **11.5.1 Positive Effects:**

The proposal will result in a positive effect in that a quarrying activity in an urban location will be phased out. The site will be remediated to a form where it can be used for some future urban purpose. The ultimate outcome from the proposal will result in a cessation of large numbers of heavy truck movements to the site.

### **11.5.2 Assessment Criteria:**

District Plan assessment criteria have been used by the Council planner to assist in the evaluation of this proposal and the Commissioners accept the conclusion that overall, the proposal is consistent with the relevant assessment criteria

### **11.5.3 Part 2 of the Resource Management Act 1991**

In taking a step back as is required in terms of the Part 2 evaluation, it is clear that the purpose of the Act is recognised and provided for, particularly in terms of section 7(c) and 7(f). The Commissioners are able to conclude that the application promotes the sustainable management of the natural and physical resources that are found

## **12.0 Reasons for the Recommendation**

Pursuant to section 113(1)(a) of the Act the reasons for this decision are

- (a) In terms of section 104(1)(a) of the Resource Management Act 1991, the granting of consent to the applicant's proposal will result in no more than minor adverse effects on the environment due to the specific management measures that are to be implemented through a combination of conditions of consent and associated management plans.
- (b) The proposal will retain the ability to use groundwater for future potable water supply purposes which represents a sustainable use of a natural resource.
- (c) In terms of section 104(1)(b) of the Resource Management Act 1991, the proposal is not contrary to the objectives and policies of the Operative Auckland City District Plan 1999 – Isthmus Section, and in particular the Residential 7 zone provisions, and the Natural Hazards and Transportation parts of the District Plan nor any other relevant policy statements.
- (d) In terms of section 104(1)(c) of the Act, other relevant matters, including monitoring, have been considered in the determination of the application.
- (e) In terms of Part 2 of the Act, the proposal is an efficient use of land as a resource as the filling activity will result in an activity (quarrying) that is no longer appropriate long term in an urban environment being terminated and the site being remediated by a controlled fill using cleanfill material which will enable the remediated land to be used for an appropriate urban use

### 13.0 CONSENT CONDITIONS

Pursuant to Section 108 of the Resource Management Act 1991 this consent is subject to the following conditions:

#### Staging of Conditions

**Stage 1 Conditions: Pre-development** – Conditions required to be met prior to works commencing on site;

**Stage 2 Conditions: Development in progress** – Conditions required to be met throughout the period of works on site;

**Stage 3 Conditions: Post-Cleanfill Completion** - Conditions required to be met following cleanfill completion; and

**Other** – Conditions that relate to the development in its entirety.

#### **Activity in Accordance with Application and Plans**

- (1) Except as otherwise required by any other condition of this consent, the proposed activity shall be carried out in accordance with the plans and all information submitted with the application, and information subsequently provided in response to section 92 RMA requests for further information other than in respect of any plans and other application details showing and referencing a proposed second access which shall be amended by the deletion of that proposed second access in its entirety (as that access is refused consent).
- The Assessment of effects entitled '*Three Kings Quarry Cleanfill Proposal, Volume 1: Application for Resource Consent and Assessment of Environmental Effects (February 2009)*' prepared by Richard Compton of Winstone Aggregates, and dated February 2009;
  - The report entitled '*Three Kings Quarry – Modelling of Cleanfill Drainage*' prepared by Barnaby C Harding of Pattle Delamore Partnership Ltd, and dated 9<sup>th</sup> October 2008;
  - The report entitled '*Assessment of Air Quality Effects from the Proposed Cleanfill at the Winstone Aggregates Three Kings Quarry*' prepared by Andrew Curtis of URS New Zealand Ltd, and dated 30<sup>th</sup> July 2008;
  - The report entitled '*Effects of Backfilling Three Kings Quarry on Groundwater Quality*' prepared by Domain Environmental Ltd, and dated 13<sup>th</sup> October 2008;
  - The report entitled '*Three Kings Quarry, Cleanfill Operations – Acoustic Report*' prepared by Siiri Wilkening of Marshall Day Acoustics, and dated 17<sup>th</sup> February 209;
  - The report entitled '*Three Kings Quarry Filling, Mt Eden Road, Auckland – Transportation Assessment Report*' prepared by Max Robitzsch of Traffic Design Group, and dated 12<sup>th</sup> June 2008;
  - The letter entitled '*Managed Cleanfill at Three Kings Quarry Fill Operations and Development Option Assessment*' prepared by Graeme Twose of Tonkin & Taylor Ltd and dated 1<sup>st</sup> July 2008,

- The letter entitled '*Managed Cleanfill at Three Kings Quarry Fill Operations and Development Option Assessment*' prepared by Graeme Twose of Tonkin & Taylor Ltd and dated 8<sup>th</sup> July 2008,
- The letter entitled '*Three Kings Quarry – Assessment of Backfilling*' prepared by Ian Jenkins of URS New Zealand Ltd and dated 22<sup>nd</sup> October 2008,
- The report entitled '*Historical Contamination Assessment Three Kings Quarry*' prepared by Domain Environmental Ltd, and dated 18<sup>th</sup> February 2009;
- Plans prepared by Harrison Grierson entitled '*Three Kings Quarry*', being Dwg No. 122314-GIG-001, 002, 003, 004 & 005, all drawn on 29<sup>th</sup> August 2008 and plotted on 10<sup>th</sup> October 2008;
- Plans Figure 1 – 5, entitled '*Winstone Aggregates Ltd Three Kings Quarry, Three Kings*' dated September 2007;
- Plan prepared by Traffic Design Group, entitled '*Three Kings Quarry, Three Kings, Auckland, Indicative Layout – Proposed Second Access*' Dwg No. 8823A11A dated 9<sup>th</sup> July 2009;
- The letter entitled '*Notified Resource Consent Application for Three Kings Quarry*' prepared by John Earley of Winstone Aggregates and dated 8<sup>th</sup> May 2009,
- The letter entitled '*Application for Resource Consent – ACC Reference R/LUC/2009/743*' prepared by Richard Compton of Winstone Aggregates and dated 21<sup>st</sup> May 2009,
- The letter entitled '*Three Kings Resource Consent – Classification of Activities*' prepared by Bal Matheson of Russell McVeagh and dated 21<sup>st</sup> May 2009,
- The letter entitled '*Three Kings Quarry – Consent to Fill Geotechnical Response to Section 92 Queries from ACC*' prepared by Graeme Twose of Tonkin & Taylor Ltd and dated 15<sup>th</sup> May 2009,
- The letter entitled '*Application for Resource Consent – ACC Reference R/LUC/2009/743: Request for Further Information*' prepared by Richard Compton of Winstone Aggregates and dated 18<sup>th</sup> May 2009,
- The letter entitled '*Application for Resource Consent – ACC Reference R/LUC/2009/743: Request for Further Information*' prepared by Richard Compton of Winstone Aggregates and dated 16<sup>th</sup> July 2009,
- The letter entitled '*Winstone Aggregates Three Kings Quarry, Consent Application, R/LUC/2009/743, Assessment of NZTA Submission*' prepared by Max Robitzsch of Traffic Design Group, and dated 16<sup>th</sup> July 2008;
- The letter entitled '*Winstone Aggregates Three Kings Quarry, Consent Application, R/LUC/2009/743, Section 92 Response*' prepared by Max Robitzsch of Traffic Design Group, and dated 15<sup>th</sup> July 2008;
- The letter from Tim Sinclair of Tonkin & Taylor Ltd, entitled '*Managed Cleanfill at Three Kings Discussion on Potential Vibration Issues*' dated 20<sup>th</sup> August 2009;

- The letter from Richard Compton of Winstone Aggregate dated 3<sup>rd</sup> September 2009;

### **Consent Conditions and Management Plans**

- (2) A copy of all Resource Consents and the management plans required by them shall be kept at site during the exercise of those consents

### **Predevelopment Conditions**

#### **Monitoring**

- (3) The consent holder shall pay the Council a consent compliance monitoring charge of \$2000.00 (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 \$2000.00 (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.
- (4) The controlled (cleanfill) fill shall be engineered to a compaction and stability standard that enables future residential use of the land. This condition may be reviewed where a proposed Plan Change or review (or any resource consent addressing the use of the site as a whole) indicates that future uses will demand a lesser standard of compaction. The consent holder shall provide an annual report to the Manager (Resource Consent Monitoring Leader) (hereafter referenced as the Manager) that confirms the engineering standards that have been achieved for the fill
- (5) The final (upper) 2m of fill material must meet the Auckland City Council Human Health Guideline Values for Residential Land Uses. The consent holder shall provide a completion report to the Manager that confirms that those standards are met.

#### **Operational Conditions**

- (6) All cleanfill placement and management works shall be undertaken in accordance with the Cleanfill Management Plan as described in Condition 15.
- (7) The following operations shall be carried out:
  - a) All trucks transporting fill shall report to a designated reception area at the site entrance on Mt Eden Road.
  - b) The fill of all incoming loads shall be visually inspected at the site.
  - c) All necessary records and documentation as per the Cleanfill Management Plan shall be obtained and maintained.

- d) Any load with obvious evidence of contamination (for example discolouration or odours) shall not be disposed of on the site unless it clearly meets all acceptance criteria contained in this consent.
- (8) Fill originating from any horticultural site, from any site located within the area covered by Auckland City Council District Plan – Central Area Section, or any sites listed on the Ministry for the Environment’s Hazardous Activities and Industries List (HAIL) shall be accepted only with appropriate soil testing data, obtained from a suitably qualified person, to confirm that the cleanfill meets acceptance criteria set out in Condition 11.
- (9) Fill originating from any site providing more than 200m<sup>3</sup> of cleanfill shall only be accepted with appropriate documentation of the suitability of the cleanfill in the form of a Site Investigation Report, or Site Validation Report, that has been prepared in accordance with the Ministry for the Environment guidelines *Reporting on Contaminated Sites in New Zealand, Contaminated Land Guidelines No. 1*, November 2003 (or equivalent standards as approved in writing by the Manager and which has been prepared in reference to the limits in Condition 11).
- (10) Analytical testing of imported fill, not previously tested by the fill generator, shall be undertaken for the chemical parameters listed in Condition 10 and at a rate of not less than 1 in every 150 incoming trucks or 1400 tonnes, which ever comes first shall be undertaken.
- (11) The analytical testing shall demonstrate that chemical parameter concentrations in the imported fill are not greater than the cleanfill acceptance criteria listed below:

| Parameters                        | Cleanfill < 2m depth from finished level (mg/kg) | Cleanfill > 2m depth (mg/kg) |
|-----------------------------------|--|------------------------------|
| Arsenic                           | 30   | 100                          |
| Cadmium                           | 1  | 7.5                          |
| Copper                            | 325  | 325                          |
| Chromium                          | 400  | 400                          |
| Nickel                            | 320  | 320                          |
| Lead                              | 250  | 250                          |
| Zinc                              | 1160   | 1160                         |
| TPH                               |  |                              |
| C <sup>7</sup> - C <sup>9</sup>   | 120  | 500                          |
| C <sup>10</sup> - C <sup>14</sup> | 510  | 510                          |
| C <sup>15</sup> - C <sup>36</sup> | 1000   | 5600                         |
| DDT                               | 0.7  | 12                           |
| BaP                               | 0.27   | 215                          |

- (12) All monitoring, chemical analyses and sampling shall be carried out by suitably qualified personnel in accordance with Ministry for the Environment *Contaminated Land Management Guidelines No. 5, Site Investigation and Analysis of Soils* and the Cleanfill Management Plan for the site, or equivalent standards approved in writing by the Manager

- (13) If the imported fill does not meet the cleanfill acceptance criteria listed in Condition 11 above the fill shall be rejected and removed to a suitably authorised off-site disposal facility, within two weeks of receiving laboratory test results confirming unacceptability.
- (14) A written report to the Manager, detailing the reasons for rejection of imported fill, the final disposal location of the rejected fill, volume of such fill disposed of, and copies of the laboratory test results shall be provided to the Manager within one month of disposing of the rejected fill

**Cleanfill Management Plan:**

- (15) Not less than 3 months prior to the commencement of cleanfill activities authorised by this consent, a Cleanfill Management Plan (CMP) shall be provided to the Manager for written approval. The Manager may inform the consent holder of any aspects of the CMP, or subsequent changes considered to be inconsistent with achieving compliance with the provisions of the consent. The CMP shall include, but not be limited to, the following:
  - a) A list of relevant Resource Consent conditions.
  - b) Site management structure and responsibilities.
  - c) A cleanfill material definition that will prevent acceptance of fill that would have more than minor adverse effects on people and the environment.
  - d) Fill acceptance criteria for the parameters to be monitored and tested.
  - e) Pre-approval procedures for off site acceptance.
  - f) Fill acceptance, rejection, sampling, testing and quarantine procedures for material not subject to pre-acceptance approval including recording and reporting.
  - g) A contingency plan for dealing with contamination identified subsequent to placement of the fill.
  - h) Describe the means to maintain the following information for the life time of this consent and two years thereafter:
    - i. Load inspection.
    - ii. Monitoring, testing and sampling documentation relating to fill material acceptance.
    - iii. Training procedures for staff and a record of employees who have undertaken relevant training.
  - i) Plans for cleanfill and associated earthworks over the next 12 months.
  - j) Measures that allow for the tracking of fill to the final disposal location on-site.
  - k) Details of the proposed works around any stockpiles of fill, including quarantine areas, to minimise the potential of contamination mitigation via stormwater runoff, in particular, keeping stockpiled material away from temporary and permanent surface water ponds, and bunding to contain stormwater runoff.

**Reporting**

- (16) An Annual Compliance Report shall be submitted to the Manager by 30 June each year which provides an analysis of the operation of the CMP. The report shall be prepared by a suitably qualified person to a standard acceptable to the Manager and shall consider all data collected from the commencement date of this Resource Consent and up until 31 May prior to reporting. On the basis of this report the Consent Holder may submit recommended changes to the CMP to the Manager for approval.
- (17) The Manager may require a review of the Cleanfill Management Plan at the times specified in Condition 36. Any changes resulting from a review whether in response to the Managers requirement or as initiated by the Consent Holder shall be submitted to the Manager for review prior to becoming operational. The Manager may advise the Consent Holder, in writing, if any aspects of the Plan are considered to be inconsistent with achieving the provisions of the consent.

#### **Traffic Management Plan**

- (18) Not less than three (3) months prior to the commencement of cleanfill operations authorised by this consent, the Consent Holder shall prepare, and submit for review to the Manager, a Traffic Management Plan (TMP) to ensure compliance with conditions of this Resource Consent.

The Council will advise the Consent Holder in writing if any aspects of the TMP are considered to be inconsistent with achieving compliance with the provisions of this consent. The TMP may form part of an overall management plan for the site.

The TMP shall include details of site traffic management practices, and the monitoring and reporting required for compliance. This shall generally address, but not be limited to the following details:

- (a) Ingress and egress to/from the site.
- (b) Indicative routes to the site from the State Highways
- (c) Parking for contractors and workers.
- (d) Details of how traffic will be managed, including overflow parking for truck waiting to deliver fill or collect aggregate from the site
- (e) Location of any traffic signage required and any proposed signage for traffic management purposes during operations
- (f) Contact details of the site manager.
- (g) The consent holder shall use all reasonable endeavours to ensure that heavy vehicles carrying cleanfill to the site are covered and do not use local roads unless absolutely necessary.

#### **Site Traffic Safety Plan – Drivers Code of Conduct**

- (19) For the purposes of ensuring the safety of all transportation modes, i.e. motorists, cyclists and pedestrians, and to minimise the effects of site traffic on the community, the Consent Holder shall develop and implement a Site Traffic Safety Plan – Drivers Code of Conduct (STSP) for all traffic visiting the site which shall address the following:
  - (a) consideration for all other transport modes and road users beyond the site, particularly those in the immediate vicinity of any site access point;
  - (b) attention to vehicle maintenance for vehicles travelling to and from the site on public roads;

- (c) the requirement for vehicular users of the site to be made aware of the presence of Three Kings and Carlson Schools, and that during school terms best endeavours shall be made to avoid arriving at the site in the hours between 0830 to 0930 and 1430 to 1530;
- (d) appropriate signage to be erected at any site access point reminding drivers to take care, particularly during the hours in (c) above, and also "Trucks Crossing" signage to alert pedestrian traffic on the western side of Mt Eden Road to a potential hazard, as required by condition (26) of this resource consent.
- (e) a procedure for monitoring and reporting, by drivers and/or members of the public, of any safety incidents or breaches of the STSP. All such events reported under this condition shall also be reported to the Manager and at the Site Liaison Group (SLG) meeting following such reported incidents.

The STSP shall be brought to the attention of all drivers and/or vehicle owners using the site. Furthermore the STSP shall be developed in consultation with the Site Liaison Group and the Principals, or their nominees, of Three Kings and Carlson Schools.

To the satisfaction of the Manager the consent holder shall take all practicable steps to ensure that:

- (a) safe pedestrian access and thoroughfare shall be maintained on all footpaths adjacent to the site.
- (b) drivers using the site shall be made aware of the preferred routes to and from the site as indicated in the TMP, and that the use of engine brakes for vehicles travelling through Mt Eden Village and along Mt Eden Road outside the subject site is to be avoided
- (c) all signage shown on the TMP is to be erected and maintained in good order during the exercise of this Resource Consent

### **Construction Noise Management Plan**

- (20) The consent holder shall prior to the commencement of any construction or site development works, submit a Construction Noise Management Plan (CNMP) prepared by a person suitably qualified in environmental acoustics to the satisfaction of the Manager. The CNMP shall include but not be limited to:
  - (a) A description of the final construction methodology, including a list of potentially noisy plant and equipment, the estimated noise levels and the approximate locations within the site;
  - (b) Predicted noise levels and where the predicted noise levels exceed the relevant noise limits set out in Condition 29a, specific noise mitigation measures must be implemented which may include but not be limited to acoustic screening, alternative equipment etc;
  - (c) Noise monitoring must be undertaken at the onset of works that are likely to exceed the relevant noise limits. Additional monitoring will be required to be undertaken in the event of any complaints received.
  - (d) In the event of the measured noise levels exceeding the relevant standard, the Manager must be notified without delay and further mitigation options shall be investigated and implemented;
  - (e) A complaints management system must be 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 and

- (f) The name and contact telephone numbers of the Site Manager or other persons responsible for supervision of the works, implementation of the Noise Management Plan and complaint receipts and investigations.

### **Signage**

- (21) Prior to the cleanfill activity commencing, the consent holder shall erect signs at the existing access way off Mt Eden Road which detail:
  - (a) that the cleanfill is a private operation,
  - (b) that access is not open to the general public,
  - (c) hours of operation and when the gates will be opened to customer vehicles,
  - (d) that fill material is restricted to cleanfill,
  - (e) contact details, including after hours emergency contactsThe signs shall be made and erected to the satisfaction of the Manager.

### **Road Condition Survey**

- (22) Prior to commencement of cleanfill activity, the Consent Holder in conjunction with a representative of Manager shall undertake a carriageway condition survey of Mount Eden Road, between points 50m north and south of the existing and proposed site access ways. The condition survey shall include a photographic or video record of the specified section of carriageway and footpaths at crossing location.

### **Road Maintenance Agreement**

- (23) Following the road condition survey, and prior to the commencement of the cleanfill activity, the Consent Holder shall enter into a maintenance agreement with Council's, Transport Operations (or subsequent local authority equivalent) to cover the costs of repair of any damage to public carriageways and footpaths (and associated road components) within the zones surveyed under condition (22), attributable to the site activities authorised by this Resource Consent

### **Air Quality Monitoring Equipment**

- (24) Prior to the commencement of the Cleanfill operation dust monitors recommended in the Consent Holder's report 'Assessment of Air Quality Effects' shall be installed in accordance with, and incorporated into the Air Quality Management Plan required by, ARC Permit 21875.

### **Development in Progress conditions**

#### **Hours of Operation**

- (25) The hours of operations for the cleanfill activity and sale of imported aggregate activities shall be between 7am to 10pm Mondays to Saturdays and 9am to 6pm on Sundays and public holidays except that ancillary activities (such as maintenance of machinery) may occur outside of those

hours where such activities are in compliance with the conditions of this consent including Condition 28(a).

### **Pedestrian Refuge**

- (26) For the purpose of ensuring pedestrian safety, the consent holder shall appoint, at their cost, a professional traffic engineer to provide a design for a pedestrian refuge island on Mount Eden Road at an appropriate location between Graham Breed Drive and the entrance to Three Kings School to the satisfaction of the Councils Traffic and Safety Operations Manager. The facility shall then be installed at the consent holder's expense. The refuge is to be installed prior to cleanfilling operations commencing.

### **Truck Movements**

- (27) In accordance with the details of the resource consent application, no more than 375 trucks shall enter the site per day. A register shall be kept on site which records all truck movements to and from the site, and shall include the category of vehicle, i.e. identification as a four, six or eight wheeler, articulated truck or truck and trailer heavy vehicles and a copy of it shall be submitted to the Resource Consent Monitoring Leader on a quarterly basis to certify compliance with this condition.

### **Noise Control**

- (28)(a) Any activity on the site associated with cleanfill operations at the Three Kings Quarry shall not exceed the following noise limits at residentially zoned land fronting Mount Eden Road between street numbers 904 and 944 (including 14-16 Kingsway):

|                          |  |                       |
|--------------------------|--|-----------------------|
| Monday to Saturday       | 7.00am to 10.00pm                                  | L <sub>10</sub> 60dBA |
| Sunday & Public Holidays | 9.00am to 6.00pm                                   |                       |
| At all other times       | L <sub>10</sub> 45 dBA<br>L <sub>MAX</sub> 75 dBA, |                       |

At all other residentially zoned land noise limits as per the table below shall not be exceeded.

|                          |  |                        |
|--------------------------|--|------------------------|
| Monday to Saturday       | 7.00am to 10.00pm                                  | L <sub>10</sub> 55 dBA |
| Sunday & Public Holidays | 9.00am to 6.00pm                                   |                        |
| At all other times       | L <sub>10</sub> 45 dBA<br>L <sub>MAX</sub> 75 dBA, |                        |

*N B - Noise shall be measured and assessed in accordance with NZS6801:1991 and NZS6802:2008*

- 28(b) Within 3 months of the commencement of the cleanfill activity the consent holder shall submit to Manager a report demonstrating that the activity meets the noise standards outlined in this condition.
- 28(c) The consent holder shall undertake further monitoring confirming compliance with the noise limits when the majority of the cleanfill operation is occurring above RL 70m and following this at a 6 monthly interval.
- 28(d) Should the consent holder propose to use self propelled compaction equipment, a suitably qualified acoustical consultant shall, prior to the equipments use, undertake noise modelling to predict noise levels to demonstrate that the revised cleanfill procedure will not generate noise in excess of the noise limits in Condition 18(a). Monitoring confirming compliance with the noise limits shall be conducted within one month of implementation of the revised procedures.
- 28(e) The existing vegetated earth bund parallel to Mount Eden Road shall be retained for the duration of the controlled (cleanfill) filling activity.

### **Fill Volumes**

- (29) This Resource Consent does not authorise any filling of the site beyond and above the contours shown on Figure 2 – Proposed Landform for Cleanfill Consents, (Drawing 122314-FIG-002 dated 29/08/08 and prepared by Harrison Grierson Consultants) as submitted with the application.

### **Sale of Aggregate**

- (30) The sale of aggregate to the general public is not permitted.

### **Control of Deposition of Material on Public Roads**

- (31) All necessary measures, including, but not limited to maintenance of access roads and manoeuvring areas, wheel washing facilities shall be installed and operated to prevent the deposition of sediment, and any other materials on the public roads by vehicles leaving the site. Should material be deposited on the road to an extent considered significant by the Manager it shall be removed immediately by and at the cost of the Consent Holder.

### **Dust Suppression**

- (32) All necessary actions shall be taken to prevent any dust nuisance from the controlled (cleanfill) filling to neighbouring properties and public roads, reserves and areas outside of the subject site. These include, but shall not be limited to:
- (a) Staging of areas of works
  - (b) Retention of existing vegetation and bunds around the perimeter of the site

- (c) The installation and maintenance of wind fences and where practicable vegetated strips as the fill level rises
- (d) Watering down of internal haul roads which are not metalled or adequately sealed.
- (e) Watering down fill materials which are dry and / or contain dust substances.
- (f) Suspension of cleanfill operations if necessitated by the prevailing weather conditions
- (g) Providing dust prevention monitoring records to Manager on a 3 monthly basis after commencement of the cleanfill activities to ensure on-going compliance with this condition.

#### **Vibration Controls**

- (33) Vibration from the cleanfill activity and associated compaction of fill shall not exceed the levels permitted by clause 8.8.2.7 of the Operative District Plan.

#### **Post Cleanfill Completion conditions**

##### **Finished Contour Plan and Landscaping**

- (34) Within 3 months of the completion of the controlled (cleanfill) works the consent holder shall submit to the Manager an as built contour plan of the site and shall implement a landscaping plan to be submitted for approval of the Manager that will ensure that the site is left in an appropriate state given its urban location. It is anticipated that the site will be grassed with appropriate plantings along all boundaries.

##### **Final Cleanfill Validation Report**

- (35) If in the reasonable opinion of the Manager information and data provided in the Annual Compliance Reports tendered under Condition (16) are insufficient to demonstrate the final 2m depth of fill complies with Auckland City Council's Human Health Guideline Values for Residential Land Use then the Consent Holder shall provide a cleanfill validation report on the completion of fill, to the satisfaction of the Manager.
  - (a) The consent holder shall consult with the Manager and Council's Environmental Health Officer (Contamination) prior to undertaking the validation exercise to ensure that the proposed validation methodologies are appropriate.
  - (b) The validation report shall be in respect of the top 2m of fill and shall:
    - (i) Show the final filled levels on an appropriately scaled site plan, including the relative levels prior to and post fill completion, as well as showing the location by grid co-ordinate references of the fill material defined by its compaction and stability characteristics;
    - (ii) Specify the status of the fill at each location by grid co-ordinate references on a appropriately scaled plan in terms of the chemical parameter acceptance criteria set out in Condition 11;
    - (iii) Demonstrate that the site is suitable for residential land use with

respect to the levels of contamination in the uppermost 2m of soil.

In the event of the validation report identifying contamination levels in excess of the Council's Human Health Guideline Values for Residential Land Uses in the top 1m of fill, the consent holder at their own expense will remediate that top 1m of fill to the extent necessary to comply with the Guideline Values.

### **Review Conditions**

- (36) The conditions of this consent may be reviewed by the Manager (Resource Consent Monitoring Leader) pursuant to Section 128 of the Resource Management Act 1991, by the giving of notice pursuant to Section 129 of the Act, in one or more of the following times:
- June 2011
  - June 2012
  - June 2013 and at two yearly intervals thereafter.

The purpose of the review shall be;

- (a) To deal with any adverse effects on the environment which may arise from the exercise of the consent, where it is appropriate to deal with such effects at a later stage; or
- (b) To require a consent holder to adopt the best practicable option to avoid or mitigate any adverse effects on the environment; or
- (c) To deal with any other adverse environment effect, which the exercise of the consent may have an influence on.
- (d) To review the engineering standards for the controlled fill as set out in Condition 4.
- (d) To alter the monitoring requirements, including requiring further monitoring, or increasing or reducing the frequency of monitoring and/or frequency of reporting.

### **Traffic Review**

- (36a) If after the Cleanfill activity commences it becomes evident that the traffic generated by the development is causing an operational or safety problem on the surrounding road network, determined by accidents, complaints to Council, or by observations and data collected by suitably experienced Council staff, within a two year period of the consent to fill being exercised, then the applicant will be required to appoint, at their cost, a professional traffic engineer to investigate and recommend means of rectifying any problem(s) identified, to the satisfaction of the Council and Council's Traffic Safety and Operations. Should the recommended means of rectifying issues which are attributable to the Consent Holders activities be physical works, then these physical works shall be installed at the consent holders expense. Provided that the total financial obligation of the Consent Holder under this condition shall be limited to \$20,000. If the recommended physical works exceed \$20,000, then the Consent Holder acknowledges that the recommendations for such works constitute a reason for Council to review this condition, pursuant to s128 of RMA.

## **Cessation of Cleanfill Activity**

- (37) Should the consent holder cease or abandon work on-site, they shall first take adequate preventative and remedial measures to control sediment discharge and site stability, and shall thereafter maintain these measures for so long as necessary to prevent sediment discharge from the site and ground stability within the quarry pit. All such measures shall be of a type, and to a standard, which are to the satisfaction of the Manager (Resource Consent Monitoring Leader).

## **Expiry**

- (38) This consent will expire on 31st December 2030 unless it has lapsed, been surrendered or been cancelled at an earlier date pursuant to the Resource Management Act 1991.

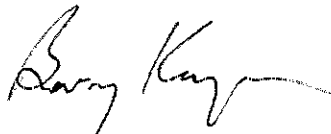
### **Advice notes**

- 1 *Subject to section 198 of the Local Government Act 2002 and Auckland City Council's Policy on Development Contributions, a development contribution is payable on this proposal. A notice of assessment will be sent out which outlines the quantum of the contribution payable for this consent. Please note that with respect to this development, building consents will not be released, code of compliance certificates will not be issued, and*
- 2 *The Consent Holder is advised that in accordance with the existing Quarry Management Plan (July 2007) and the provisions of the District Plan at clauses 8.7.4.1 and 8.7.4.2, that prior to the commencement of cleanfill operations the Quarry Management Plan (July 2007) is required to be amended, in consultation with the Site Liaison Group, to include the cleanfill and sale of imported aggregated activities.*
- 3 *The applicant needs to obtain all other necessary consents and permits, including those under the Building Act 2004, 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. If the tree/s to which this consent relates are not located on land owned by the consent holder, the approval of the tree owner/s or an order to be made by the court under Section 129C of the Property Law Amendment Act 1952 may need to be obtained to give effect to the consent.*
- 4 *Pursuant to section 125 of the Resource Management Act 1991, this resource consent will expire 5 years after the date of commencement of consent unless, before the consent lapses;*
  - *the consent is given effect to; or*
  - *an application is made to the consent authority to extend the period of the consent, and the consent authority decides to grant an extension after taking into account the statutory considerations, set out in section 125(1)(b) of the Resource Management Act 1991.*

- 5 A copy of this consent should be held on site at all times during the establishment and construction phase of the activity.
- 6 The consent holder is requested to notify Council, in writing, of their intention to begin works, a minimum of fourteen days prior to commencement. Notification should be provided on the Resource Consent Monitoring - Notice of Works Starting form included with this consent decision. Notification can be submitted the following ways;
- By email to [rcmadmin@aucklandcity.govt.nz](mailto:rcmadmin@aucklandcity.govt.nz)
  - By post to Auckland City Environments, Private Bag 92516, Wellesley Street, Auckland 1141. Attention: Resource Consent Monitoring Administrator
  - By fax to 09 353 9186. Attention Resource Consent Monitoring Administrator
- If there is no Resource Consent Monitoring - Notice of Works Starting form attached to this decision please contact Councils Resource Consent Monitoring Administrator on 09 353 9186 to request a copy.
- 7 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.
- 8 The consent holder shall comply with all relevant Council Bylaws. In particular the consent holder shall comply with Part 27 of the Auckland City Consolidated Bylaw, which addresses signage, or seek a dispensation from the Bylaw.
- 9 Pursuant to section 127 of the Resource Management Act 1991, the consent holder may apply to the Council to change or cancel any of the conditions imposed on this consent (other than any condition as to the duration of the consent).
- 10 The conditions of consent apply to the consent holder and all persons, companies, contractors and agents, including sub-contractors, carrying out works on the site and activities authorised by this consent.
- 11 The Consent Holder is advised that in accordance with the existing Quarry Management Plan (July 2007) and the provisions of the District Plan at clauses 8.7.4.1 and 8.7.4.2, that prior to the commencement of cleanfill operations the Quarry Management Plan (July 2007) is required to be amended, in consultation with the Site Liaison Group, to include the cleanfill and sale of imported aggregated activities.

Mr Barry Kaye

Chairman:



Date: 8<sup>th</sup> December 2009