

Application for Resource Consent

NOTICE OF DECISION

<u>Address:</u>	1 A Westland Road, Mt Cook
<u>Legal Description:</u>	Part Lot 2 DP 10337
<u>Applicant:</u>	Wellington Water Limited
<u>Proposal:</u>	Soil disturbance of contaminated land for the Omaroro Reservoir
<u>Owners:</u>	Wellington City Council
<u>Service Request No:</u>	447741
<u>File Reference:</u>	1057983
<u>District Plan Area:</u>	Open Space C
<u>Notations in District Plan:</u>	None
<u>Activity Status:</u>	Discretionary Activity (Restricted)

DECISION:

Officers, acting under delegated authority from the Wellington City Council (the Council) and pursuant to section 104C of the Resource Management Act (the Act), **grant resource consent** to the proposal to disturb soil on contaminated land at **1A Westland Road, Mt Cook** (being Part Lot 2 DP10337). Consent is granted with a lapse period of **10 years** from the date of this decision, and is subject to the following conditions:

Conditions of Consent:

General:

- (a) The proposed activity as shown on Beca plan 'Overview Plan' Drawing No. 3262332-DA-1001 Rev A dated 29/05/2019, must be undertaken in accordance with the Beca Limited Contaminated Soils Management Plan dated 7 August 2019 (CSMP) and the information provided with the application Service Request No. 447741.

Note: The conditions relating to the Omaroro Reservoir Designation Number 135 need to be met and an outline plan(s) submitted as necessary.

Contamination:

- (b) The consent holder must be consistent with the following standards and guidelines:
- i. Contaminated Land Guidelines No.1 – Reporting on Contaminated Sites in New Zealand (Revised 2011), Ministry for the Environment.
 - ii. Contaminated Land Guidelines No.5 – Site Investigations and Analysis of Soils (Revised 2011), Ministry for the Environment.

- (c) A suitably qualified and experienced practitioner (SQEP) must be involved in a pre-earthworks site briefing with the Engineer's Representative and all personnel involved with the soil disturbance to brief all personnel working on the site of the requirements of the Contamination Soils
- (d) In the event of unexpected contamination and hazardous materials discovery at the site, the Engineer's Representative shall consult with the SQEP who must comply with the procedure outlined in Section 3.2.3 of the Contaminated Soils Management plan.

Monitoring and Review:

- (e) Prior to starting work the consent holder must advise the Council's Compliance Monitoring Officer of the date when work will begin. This advice must include the address of the property and the Service Request number and be provided at least 48 hours before work starts, either by telephone on 04 801 4017 or email to rmonitoring@wcc.govt.nz.
- (f) The conditions of this resource consent must be met to the satisfaction of the Council's Compliance Monitoring Officer. The Compliance Monitoring Officer will visit the site to monitor the conditions, with more than one site visit where necessary. The consent holder must pay to the Council the actual and reasonable costs associated with the monitoring of conditions (or review of consent conditions), or supervision of the resource consent as set in accordance with section 36 of the Act. These costs* may include site visits, correspondence and other activities, the actual costs of materials or services, including the costs of consultants or other reports or investigations which may have to be obtained. More information on the monitoring process is available at the following link:
<http://wellington.govt.nz/services/consents-and-licences/resource-consents/resource-consent-monitoring>.

* Please refer to the current schedule of Resource Management Fees for guidance on the current administration charge and hourly rate chargeable for Council officers.

Notes:

1. The land use consent must be given effect to within 10 years of the granting of this consent, or within such extended period of time pursuant to section 125 of the Act as the Council may allow.
2. Where appropriate, the Council may agree to reduce the required monitoring charges where the consent holder will carry out appropriate monitoring and reporting back to the Council.
3. This resource consent does not authorise any works that also require consent from the Greater Wellington Regional Council. If necessary, separate resource consent(s) will need to be obtained prior to commencing work.
4. Construction noise is managed through the construction noise controls set out in NZS 6803:1999 and adoption of a best practicable option approach in accordance with section 16 of the Act, to ensure that the emission of noise from the site does not exceed a reasonable level.
5. It is possible that archaeological sites may be discovered in the course of the proposed work. Evidence of archaeological sites may include burnt and fire cracked stones, charcoal, rubbish heaps including shell, bone and/or glass and crockery, ditches,

banks, pits, old building foundations, artefacts of Maori and European origin or human burials. The applicant is advised to contact Heritage New Zealand Pouhere Taonga (HNZPT) if the presence of an archaeological site is suspected. Work affecting archaeological sites is subject to a consent process under the Heritage New Zealand Pouhere Taonga Act 2014. If any activity associated with this proposal, such as building modification or demolition, earthworks, fencing or landscaping, may modify, damage or destroy any archaeological site(s), an authority (consent) from HNZPT must be obtained for the work to proceed lawfully. The Heritage New Zealand Pouhere Taonga Act 2014 contains penalties for unauthorised site damage.

6. Rights of objection to the conditions specified above may be exercised by the consent holder pursuant to section 357A of the Act. Any objection shall be made in writing, setting out the reasons for the objection within 15 working days of this notification or within such extended period as the Council may in its discretion allow.

Reasons for Decision:

1. Pursuant to section 95A and 95B of the Act, there are no mandatory requirements to notify the application, the effects of the proposal on the environment will be less than minor and there are no affected persons. There are no special circumstances.
 2. Pursuant to section 104 of the Act, the effects of the proposal on the environment will be acceptable.
 3. The proposal is consistent with the outcomes sought by the relevant National Environment Standard (NES).
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DECISION REPORT

NATIONAL ENVIRONMENTAL STANDARDS

The Resource Management (National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011

The Resource Management (National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NESCS) came into effect on 1 January 2012. The NESCS applies to land that currently has, or historically had, an activity or industry undertaken on it that is included in the Ministry for the Environment Hazardous Activities and Industries List (HAIL).

The playing fields subject to the proposal (Wellington Town Belt – Recreational purposes for upper and lower fields) have been subject to persistent pesticide use associated with the maintenance of the sports turf. A Detailed Site Investigation (DSI) and two Preliminary Site Investigations (PSI) have been carried out. The DSI concludes that the soil contamination does not exceed applicable standards in Regulation 7 of NESCS. In addition, the Preliminary Site investigation (PSI) for the upper field reported that the site may have been the location of a clay brick manufacturing facility. Therefore the proposed works will be occurring on a HAIL site and are potentially subject to the requirements of the NESCS.

The NESCS terms land that is considered to be ‘potentially or actually affected’ as a ‘piece of land’. Activities on a ‘piece of land’ include subdivision, land use change, soil disturbance, soil sampling and removing fuel storage systems. Resource consent is required in this instance for soil disturbance activities that do not meet the conditions for permitted activities under the NESCS.

SITE DESCRIPTION

The applicant’s Assessment of Environmental Effects (AEE) includes a description of the site and its immediate surroundings. I consider that this description is accurate and it should be read in conjunction with this report.

PROPOSAL

The AEE also includes a description of the proposal that I adopt. The applicant’s proposal description should be read in conjunction with this report. In summary the proposal requires soil disturbance of contaminated land for the Omaroro Reservoir for duration of 10 years.

ACTIVITY STATUS

National Environmental Standard:

Resource consent is required under the following regulation NESCS and rule of the plan:

Regulation 9	Controlled Activity
A DSI exists for the site and organochlorine pesticides are above background concentrations. The proposal does not comply with Regulation 8(3)(c), (d)(ii) and (f) which specifies no more than 25m ³ per 500m ³ soil disturbance, that a maximum of 5m ³ per 500m ³ may be removed off-site and duration of the activity will be no longer than 2 months. Whereas this application proposes 1000m ³ (845m ³ allowed) soil disturbance, 1000m ³ (169m ³ allowed) removed off-site and	

<p>duration of the activity will be longer than 2 months.</p> <p>Resource consent is required as a Controlled Activity in accordance with Regulation 9.</p> <p>The Council’s control is reserved over the following matters:</p> <p>(a) Adequacy of the detailed site investigation; (b) Activity management, monitoring and reporting; (c) Transportation, disposal and tracking of soil; (d) The timing and nature of the review of conditions; (e) The duration of any works.</p>	
<p>Rule 32.2.1 The use of any contaminated land, or potentially contaminated land is a Discretionary Activity (restricted) in respect of:</p> <p>32.2.1.1 The level, nature and extent of contamination in relation to the proposed use, development or subdivision</p> <p>32.2.1.2 The methods to address the risks posed by contaminants to public health and safety</p> <p>32.2.1.3 The effects of contamination on built structures, ecological and amenity values, soil quality and the wider environment</p> <p>32.2.1.4 The approach to the remediation and / or on-going management of the contaminated land and the mitigation measures (including monitoring) proposed to avoid adverse effects on public health, safety and the environment including the provision of a Remediation Plan or a Site Management Plan.</p>	<p>Discretionary Activity (Restricted)</p>

Overall the proposal is assessed as a **Discretionary Activity (Restricted)**.

WRITTEN APPROVALS

There were no written approvals provided.

SECTION 95 ASSESSMENT AND DECISION

Public Notification - Section 95A:

Mandatory Public Notification:

Mandatory public notification is not required as the applicant has not requested public notification [s95A(3)(a)], there are no outstanding section 92 matters [s95A(3)(b)], and the application has not been made jointly with an application to exchange recreation reserve land under section 15AA of the Reserves Act [s95A(3)(c)].

Preclusion to Public Notification:

There is no preclusion to public notification as the relevant rule in the District Plan does not preclude notification of the application [s95A(5)(a)] and the application is not for one of the activities listed at sections 95A(5)(b)(i) to 95A(5)(b)(iv) of the Act.

Public Notification – Rule/Adverse Effects:

Public notification is not required as the application does not include an activity that is subject to any rule in the District Plan or relevant NES that requires public notification and it has been determined in accordance with section 95D that adverse effects on the environment will not be more than minor [s95A(8)(a) and (b)]. Refer to the assessment of effects and conclusions below.

Special Circumstances:

There are no special circumstances that warrant public notification under section 95A(9). None of the circumstances of the application are exceptional or unusual.

Limited Notification - Section 95B:

Customary Rights and Marine Title Groups, and Statutory Acknowledgements:

There are no protected customary rights groups or customary marine title groups that will be affected by the proposal, and the proposal is not on, adjacent to, or likely to affect land subject to a statutory acknowledgement [s95B(2)(a) and (b) and s95B(3)].

Preclusions to Limited Notification:

There is no preclusion to limited notification as there is no rule in the District Plan or relevant NES that precludes limited notification of the application [s95B(6)(a)], and the application is for neither a district land use consent with Controlled activity status or an activity prescribed by regulations made under section 360H(1)(a)(ii), which precludes limited notification [s95B(6)(b)].

Limited Notification - Affected Persons:

Limited notification is not required as the effects on any person will be less than minor [s95B(8)]. Refer to the assessment of effects and conclusions below.

Special Circumstances:

I have considered whether there are special circumstances that exist relating to the application that warrant limited notification to any persons who have not been excluded as affected persons by the assessment above [s95B(10)]. There are no special circumstances that warrant limited notification under section 95B(10). None of the circumstances of the application are exceptional or unusual.

Public and Limited Notification Decision:

For the reasons set out above, the application does not require either public or limited notification.

ASSESSMENT OF ADVERSE EFFECTS

Potential Adverse Effects – NESCS:

Contamination:

The site is not identified on the Greater Wellington Selected Land Use Registry (SLUR) as meeting the Hazardous Activities and Industries List (HAIL) criteria but the site is considered to meet the criteria as it is likely that persistent use of pesticide has occurred for the maintenance of the two sports fields.

A Detailed Site Investigation (DSI) and two Preliminary Site Investigations (PSI) have been undertaken and supplied as part of the application. One of the PSI reports is for the upper field and the other is for the lower field. The DSI was undertaken by Beca (dated 7 August 2019, reference 3262332) covers all the soil disturbance of contaminated land for the Omaroro Reservoir. The DSI report notes potential contamination sources include pesticides use, brickworks and fill containing building materials. The DSI concludes that the soil contamination does not exceed applicable standards in Regulation 7 of NESCS.

The Council's Earthworks Engineer, Mr John Davies, has undertaken an assessment of the proposal, reviewed the Beca report, and notes there are no test results exceeding the NESCS thresholds. Mr Davies noted that there are some heavy metals, pesticides and PHA (Polycyclic aromatic hydrocarbons), therefore the site is considered low risk with respect to contamination. However, due to the proposed scale of the excavation Mr Davies considered it reasonable that monitoring by Suitably Qualified and Experienced Practitioner (SQEP) and development of Contaminated Site Management Plan (CSMP) was undertaken. The applicant's proposal includes a CSMP along with suggested conditions of consent. Mr Davies considers that the application can be supported from a contaminated land view point, if the conditions recommended by the applicant are imposed.

I concur with Mr Davies assessment and accept the applicant's recommended conditions. The applicant was offered a final review of the draft conditions and has agreed to them. I consider that the proposal will have a less than minor effect on human health and on the environment.

Conclusion

I therefore conclude the overall actual and potential effects to be less than minor with no persons being adversely affected.

SECTION 104 ASSESSMENT - SUBSTANTIVE DECISION

Section 104(1)(a) – Effects Assessment:

Adverse Effects:

An assessment of the effects on the environment has been made above. The matters discussed and the conclusions reached are also applicable with regard to the adverse effects assessment under section 104(1)(a) of the Act and no further assessment is required.

I consider the AEE prepared by the applicant to be a fair and accurate assessment of the likely and potential effects of the proposal. I therefore adopt the applicant's AEE. No further analysis is required.

Positive Effects:

I consider the proposal to have the following positive effect:

- Provision of the Omaroro Reservoir as a citywide infrastructure asset.

Conclusion:

Overall, I consider that the effects of the proposal on the environment will be acceptable.

Section 104(1)(ab) – Measures to ensure positive effects to offset or compensate for any adverse effects on the environment:

The applicant has not proposed or agreed to any measures to ensure positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity.

In this case I consider that no measures are necessary as the effects on the environment will be acceptable.

Section 104(1)(b) - Relevant Planning Provisions:

I have had regard to provisions of the following planning documents:

- National Environmental Standards
- National Policy Statements
- The New Zealand Coastal Policy Statement
- The Wellington Regional Policy Statement
- The District Plan.

Higher Order Planning Documents:

I have given regard to the higher order planning documents specified at section 104(1)(b)(i) – (vi) of the Act. As described above, the NESCS is applicable to this application. However, it is my opinion that there are no other National Environmental Standards or any National Policy Statements that are directly relevant to the consideration of this proposal. Similarly, the New Zealand Coastal Policy Statement is not relevant. The proposal is considered to accord with the general strategic direction of the Wellington Regional Policy Statement.

National Environmental Standard:

I have had regard to the NESCS and the effects of the proposal are acceptable as mentioned above. In particular I consider that the proposal will have a less than minor effect on human health.

District Plan:

I have had regard to the objectives and policies of the District Plan. The following objectives and policies and assessment criteria are considered relevant to the proposal:

- Objective 31.2.1; Policies 31.2.1.2-31.2.1.4.
- Assessment criteria 32.2.1.5 – 32.2.1.8

Regard has been had for the objectives and policies and assessment criteria listed above. Overall, for the reasons discussed in this Decision Report, I consider that the proposal is

acceptable in terms of the assessment criteria and is consistent with the objectives and policies as set out above.

Section 104(1)(c) - Other Matters:

Lapse Period

The applicant has requested a lapse period of 10 years for this resource consent to align with the Omaroro Reservoir Designation duration. This designation is now included in the District Plan (Designation No.135) with a 10 year duration. The applicant has requested 10 years as restoration of the playing fields will be one of the final phases of the reservoir construction. Therefore the requested lapse period is acceptable for this proposal and the decision accordingly includes a 10 year lapse period.

A note is added to the General Condition above relating to the conditions of the Omaroro Reservoir Designation and the requirement to submit an outline plan(s) as necessary.

There are no other matters that the Council needs to consider when assessing the application.

PART 2 – PURPOSE AND PRINCIPLES OF THE ACT

Part 2 of the Act sets out the purpose and principles of the legislation, which as stated in section 5, is “*to promote the sustainable management of natural and physical resources*”. Section 5 goes on to state that sustainable management should enable “*people and communities to provide for their social, economic and cultural wellbeing and for their health and safety whilst (amongst other things) avoiding, remedying or mitigating any adverse effects of activities on the environment*”.

In addition, Part 2 of the Act requires the Council to recognise and provide for matters of national importance (section 6); have particular regard to other matters (section 7); and to take into account the principles of the Treaty of Waitangi (section 8).

SECTION 108 CONDITIONS

In accordance with section 108 of the Act, I have included the following requirements, via conditions, on the decision:

- To undertake the proposal in accordance with the information provided within the application and the approved plans.
- Contamination discovery procedure.
- Monitoring and Review.

The Council must not impose conditions under section 108 unless:

1. Section 108AA(1)(a) – The applicant agrees to the condition
2. Section 108AA(1)(b) – The condition is directly connected to:
 - An adverse effect of the activity on the environment (s108AA(1)(b)(i)) and/or
 - An applicable district or regional rule, or NES (s108AA(1)(b)(ii))
3. Section 108AA(1)(c) – The condition relates to administrative matters that are essential for the efficient implementation of the relevant resource consent.

In this case, the conditions satisfy section 108AA(1)(b) of the Act for the reasons discussed above. In addition, the applicant has agreed to the conditions. Therefore section 108AA(1)(a) and (b) are satisfied.

The Council's standard monitoring conditions are applied in accordance with s108AA(1)(c).

CONCLUSION

National Environmental Standard:

The effects of this proposal are acceptable and the proposal is consistent with the regulations of the NES. Having applied section 104 of the Act resource consent can be granted subject to appropriate conditions.

District Plan:

The effects of this proposal are acceptable and the proposal is consistent with the objectives and policies of the District Plan. Having applied section 104 of the Act resource consent can be granted subject to appropriate conditions.

REASONS FOR DECISION

The reasons for the decision are informed by the analysis above. The principal reasons for the decision are summarised as follows:

1. Pursuant to section 95A and 95B of the Act, there are no mandatory requirements to notify the application, the effects of the proposal on the environment will be less than minor and there are no affected persons. There are no special circumstances.
2. Pursuant to section 104 of the Act, the effects of the proposal on the environment will be acceptable.
3. The proposal is consistent with the outcomes sought by the relevant NES.

Report prepared by: Trevor Garnett



Trevor Garnett
Delegated Officer

30 September 2019

Delegated Authority No. (1 & 2)



Bill Stevens
Delegated Officer

30 September 2019