
Notice of Decision by Independent Commissioner

Application for Resource Consent RM 240334

Being an application to Hutt City Council for land use consent to establish and operate a cleanfill

1044 Coast Road, Wainuiomata

2 February 2026

CONTENTS

1.0 Introduction.....	2
2.0 Application sequence.....	6
3.0 Statutory & planning policy considerations	18
4.0 Principal issues in contention	31
Preamble.....	31
Positive effects.....	35
Effects on landscape, rural character and visual amenity values	37
Noise effects	40
Effects on the transport network.....	43
Dust effects	49
Stormwater and flooding.....	50
Other matters	56
5.0 Decision.....	62

SCHEDULE OF APPENDICES

- **APPENDIX 1:** Conditions of Consent

INTERPRETATION

This report uses the following abbreviations and acronyms.

TERM	MEANS
the Act	Resource Management Act 1991
AEE	The assessment of environmental effects prepared by Cuttriss Consultants Ltd dated 15 November 2024 appended to the application for resource consent
Applicant	Kakariki Estate Limited
Change 1	Proposed Change 1 to the Regional Policy Statement for the Wellington Region
Council	Hutt City Council
DOC	Department of Conservation
EiC	Evidence in Chief
GWRC	Greater Wellington Regional Council
NPS	National Policy Statement
NPS-FM	National Policy Statement for Freshwater Management (amended December 2025)

NPS-HPL	National Policy Statement for Highly Productive Land (amended December 2025)
NPS-IB	National Policy Statement for Indigenous Biodiversity (amended December 2025)
NPS-UD	National Policy Statement for Urban Development 2022
NPS-NH	National Policy Statement for Natural Hazards
Plan	Operative City of Lower Hutt District Plan
PDP	Proposed Lower Hutt District Plan
RMA	Resource Management Act 1991
RPS	Regional Policy Statement for the Wellington Region 2013
s42A Report	Report prepared pursuant to section 42A of the RMA (dated 24 November 2025)
Site	1044 Coast Road, Wainuiomata (legally described as Lot 5 DP 551868)

Hutt City Council
Decision of Independent Commissioner
RM 240334

Proposal Description:

Land use application to establish and operate a cleanfill

Applicant:

Kakariki Estate Limited

Site Details:

1044 Coast Road Wainuiomata - legally described as Lot 5 DP 551868

Zoning:

Operative Plan: General Rural

Proposed Plan: General Rural

Overlays & map notations:

Operative Plan: nil

Proposed Plan: Highly Productive Land overlay (withdrawn 15 January 2026)

Activity Status:

Discretionary

Independent Commissioner:

Jason Jones

Summary of Decision:

Having considered all relevant matters under s104 of the RMA, and based on the evidence and submissions presented by the parties to this proposal I find that:

- any actual and potential adverse environmental effects of allowing the activity will be sufficiently managed, including through the imposition of the proposed conditions of consent, such that the effects are acceptable;
- the proposal will result in positive effects, though the nature and extent of those benefits is not fully quantified; and
- the proposal presents no inconsistencies with the relevant national, regional and district planning objectives and policies when fairly read as a whole and is generally consistent with Part 2 of the RMA.

Accordingly, consent is granted subject to the conditions set out in **Appendix 1**.

1.0 Introduction

Report purpose, requirements & outline

- 1.1 The purpose of this report is to outline my decision on the limited notified resource consent application from Kakariki Estate Ltd for land use to establish and operate a cleanfill at 1044 Coast Road in Wainuiomata.
- 1.2 The RMA¹ requires that decisions on notified applications state:
- a. the reasons for the decision;
 - b. the relevant statutory provisions considered;
 - c. the relevant national, regional and district planning policy documents considered;
 - d. the principal issues in contention;
 - e. a summary of evidence heard; and
 - f. the main findings on principal issues in contention.
- 1.3 The RMA also enables me to cross-refer to or adopt parts of the AEE and the s42A Report so as to avoid repeating material.² I have done so where appropriate below.
- 1.4 The remainder of this report is organised as follows:

Section 1: Introduction

Section 1 provides a factual basis for the report, including a brief description of the Site and surrounding environment, the proposal and my role.

Section 2: Account of the sequence leading to this report

Section 2 provides a factual summary of the process leading to this decision report, including notification, submissions and subsequent exchanges between the parties.

Section 3: Outline of statutory considerations and relevant planning policy

This part of the report sets out a summary of the proposal's compliance against the relevant provisions of the Plan, and includes a discussion of the provisions of the RMA that frame my decision-making and of the relevant national, regional and district planning policy framework I have considered.

Section 4: Principal issues in contention

Section 4 summarises the key issues in contention, the evidence presented by the parties, and my findings on the key issues.

Section 5: Decision

The final brief section of the report formally records my decision.

¹ s113(1), RMA

² s113(3), RMA

Site and surrounding environment

- 1.5 The Site is located at 1044 Coast Road, just over halfway between the southern end of suburban Wainuiomata and the South Coast where the Wainuiomata River flows into Cook Strait at Baring Head.
- 1.6 The Site and existing environment are well described in the AEE³ and s42A Report⁴. I adopt those summaries and add the following further descriptions which provide relevant context for evaluative sections that follow.
- 1.7 The Site itself is a large landholding of some 171 hectares. To the west, the Site comprises hill country, whereas the eastern part of the Site comprises two main terraces which are generally flatter and covered in pasture.
- 1.8 The Wainuiomata River (“**the River**”) bisects the Site and flows generally from northeast to southwest. The River has been known to overflow into the lower eastern portions of the Site during historical flooding events caused by heavy rainfall.
- 1.9 In the easternmost portion of the Site adjacent to Coast Road, a small stream (“**the Stream**”) flows from a culvert under Coast Road in a south-westerly direction before turning in a more westerly direction. Here, the Stream forms a mosaic with identified natural inland wetlands before outflowing to the River.
- 1.10 The Stream is one of several waterbodies that carry surface flows from the north and east of the Site, with some discharging to the River before passing through the Site. To the south of the Site, the Catchpool Stream flows in a westerly direction and eventually into the River.
- 1.11 Coast Road itself is a secondary collector road. South of Parenga Street at the urban edge of Wainuiomata, the road transitions from a more urban character with a posted speed limit of 50km/h to a rural road with a posted speed limit of 80km/h. In this rural segment as far south as the Site, the formation of Coast Road has varying widths between 6.5-10m, with traffic lanes varying between 2.5-3m. It is estimated to carry a maximum of 4,063 vehicles per day, and is used by cyclists with increased frequency during weekends, including cyclists returning to Lower Hutt from the Remutaka Cycle Trail. Coast Road also forms part of a school bus route for Wainuiomata Primary School.⁵
- 1.12 The turnaround point for the school bus is in the carpark opposite the existing entrance to the Site, which comprises the Remutaka Forest Park administered by DOC. This entrance point to the Park provides access to the Catchpool campground, day visitor picnic and BBQ areas, day walks, back country tracks, the Wild Coast cycle trail, and six popular DOC huts. A DOC field office and staff accommodation are located approximately 180m north of the carpark entrance and have direct access to Coast Road.⁶
- 1.13 Further to the north, the properties opposite the Site on Coast Road are rural or rural lifestyle in character, generally comprising larger properties that rise to the east and enjoy elevated views over the Site to the River and hill country to the west.
- 1.14 An enclave of four lifestyle properties adjoin the Site’s northeastern corner, comprising numbers 904A, B, C and D Coast Road.

³ AEE, section 2.1

⁴ s42A Report, section 3

⁵ Benner EIC, para 11-16

⁶ Submission from Director-General of Conservation, para 8

The Applicant's proposal

- 1.15 The proposal is described in the AEE⁷ and the s42A Report⁸. I adopt those descriptions, but again note the following key aspects for context and to acknowledge changes to the proposal adopted by the applicant before and during the hearing.
- 1.16 The primary purpose of the proposal is to enable the use of the application Site as a cleanfill. Cleanfills are classified as Class 5 landfill under the *Technical Guidelines for Disposal to Land*⁹ administered by the Waste Management Institute of New Zealand ("**WasteMINZ**").
- 1.17 The cleanfill is to be operated for a period of up to 30 years, in a series of 8 stages. Stages 1-3 are located between the upper terrace area and the Stream where it flows away from Coast Road and toward the River. Stage 4 comprises the easternmost portion of the Site by Coast Road, with stages 5-8 being located in the area between Stage 4 and the Stream/wetland mosaic.
- 1.18 The total area of land to be filled is approximately 9.4 hectares and the overall volume of fill to be authorised is 196,500m³. The stages range in area from 9,200m² to 14,200m² and during all stages of operation, no more than 2,500m² of non-stabilised material is to be exposed at any given time.
- 1.19 The ground level of the Site will be modified by the proposal, with the greatest increase being 3.5m above existing levels. Most ground level changes will be considerably less than this. Fill platforms are to be progressively stabilised and battered at edges.
- 1.20 The cleanfill is only to accept virgin excavated material such as clay, soil and rock that are free of combustible, putrescible, degradable or leachable components with some minor allowance for inert manufactured material and biodegradable/organic material.
- 1.21 The operation of the cleanfill and associated movements of trucks are limited by way of volunteered conditions, which were modified at multiple junctures since the application was lodged. As at the close of the hearing, the following limitations were proposed by the applicant:
- a. truck movements are limited to 18 per day between the hours of 7:30am-5:30pm Monday – Thursday and 7:30am-3:30pm on Fridays, with no truck movements authorised during the following periods:
 - i. school bus operating times in Coast Road;
 - ii. 20 December – 10 January each year;
 - iii. 1 June – 30 September each year;
 - iv. weekends, including any long weekend;
 - v. public holidays; and
 - b. more generous allowance is made for on-site operation of the cleanfill with operating hours being 7:30am-5:30pm Monday – Friday and 7:30am-1:00pm Saturdays, though the same limitations applied to truck movements during the December-January, June to

⁷ AEE, sections 2.2 & 2.3

⁸ s42A Report, section 2

⁹ Technical Guidelines for Disposal to Land – Revision 3.1 (September 2023), Waste Management Institute of New Zealand. Digital version accessed from <https://www.wasteminz.org.nz/our-work/our-guidelines>, December 2025.

September, weekends and public holidays are applied also to the general operation of the cleanfill.

- 1.22 Noise associated with the proposed cleanfill must not exceed a limit of 55 dB $L_{Aeq(15min)}$ when measured at the notional boundary of any dwelling on other properties. The applicant is to prepare a noise and vibration management plan to demonstrate how this limit will be met at all times during the operation of the cleanfill, and noise monitoring is to be conducted during operations to confirm compliance.
- 1.23 Erosion, sediment and dust control measures are to be put in place and itemised in associated management plans.
- 1.24 Boundary planting and riparian/wetland planting is also to be established and maintained to mitigate landscape and visual impacts of the proposed operation.
- 1.25 Prior to any filling activity within a given stage, topsoil is to be removed, stockpiled, and maintained. Once filling for the stage is completed, the topsoil is to be replaced.
- 1.26 A new heavy-duty vehicle crossing to Coast Road is to be formed and maintained for the life of the proposed cleanfill. Existing roadside vegetation on Coast Road is to be trimmed to maintain clear sight lines of trucks entering/exiting the Site. Steps are to be taken to ensure trucks do not track mud and detritus onto Coast Road when existing the Site.
- 1.27 The applicant also volunteered conditions which form part of the proposal. These are discussed in greater detail in Section 4 below.
- 1.28 All of the applicant's application material and evidence – with one exception – made clear that the cleanfill is only for use by the applicant's residential development business and associated contractors. The exception in this case was voiced in the evidence of the applicant's planner, Mr Elliot Thornton, who suggested that while the proposed cleanfill will predominantly be used by the applicant future circumstances may warrant use by other operators.¹⁰ I return to this at various junctures again below.

Role of Commissioner

- 1.29 I was appointed by the Council under delegation on 6 November 2025 to hear and decide the application on the Council's behalf.
- 1.30 My role has not enabled me to introduce evidence about the proposal. Rather, I have relied upon the evidence and associated reference material provided by the Council, applicant and submitters.

Note on participation

- 1.31 As a final introductory matter, I wish to record my gratitude to the parties for the constructive and positive manner in which they participated at the hearing and to their continued efforts to enhance my understanding of the proposal and key issues in contention. As I signalled during the hearing, the presentations from submitters were to a very high standard and assisted me greatly.
- 1.32 I note also my particular thanks to Ms Saritha Shetty and Ms Anna Martin at the Council for their assistance before, during and after the proceedings. I am most grateful for their efforts.

¹⁰ Thornton EIC, para 7.2

2.0 Application sequence

Lodgement & notification

- 2.1 The application was lodged with the Council on 15 November 2024.
- 2.2 The Council requested further information pursuant to section 92 of the RMA on 10 January 2025, with the applicant providing a response on 15 May 2025.
- 2.3 The applicant also issued an addendum to the Council on 26 August 2025 addressing various matters arising since lodgement, including: notification of the PDP; changes to the NPS-HPL forecast by Government; the granting of WGN250145, being a parallel application to GWRC for various discharge permits, land use consent and water permits associated with the operation of the cleanfill; and changes to the application adopted as a result of the section 92 request.
- 2.4 The notification report was completed on 15 August 2025, and limited notification followed with the closing date for submissions being 31 October 2025. I note that this latter date allowed for a 10-day extension to the submission period which the Council granted under section 37 of the RMA.

Submissions

- 2.5 The Council received 10 submissions on the proposal. The matters raised can be summarised as follows:
 - a. support or partial support for the proposal;
 - b. effects on cultural values;
 - c. incompatibility between the proposal and relevant national, regional and district planning instruments;
 - d. opposition to the scale, intensity and duration of the proposal;
 - e. road safety concerns from increased truck movements, and associated damage to the road carriageway;
 - f. concerns that the proposal would exacerbate local flooding effects during periods of heavy rainfall and/or displace floodwaters onto adjoining land;
 - g. concerns that the proposal will increase sedimentation of local waterbodies;
 - h. opposition due to the impact of the proposal on rural character and visual amenity values;
 - i. opposition due to noise and dust generation from proposed operation of the cleanfill;
 - j. concerns that proposal will adversely affect the visitor experience for users of the adjacent Remutaka Forest Park and the health and safety of DOC staff in the vicinity;
 - k. concerns that the proposal may adversely affect native lizards and their habitat;
 - l. lack of confidence that monitoring or enforcement will be effective over time;
 - m. concerns that the proposal would reduce property values; and
 - n. that the application should have been fully notified.

- 2.6 I discuss these matters in further detail in section 4 below except for the latter two points, which I consider here.
- 2.7 As noted in the opening legal submissions from the applicant's legal counsel, Ms Nicky McIndoe, it is well established through caselaw that potential reductions in property values are not relevant considerations under the RMA.¹¹ I have accordingly not considered such matters except to the extent that they may be related to, or derive from, specific adverse environmental effects I address below. For the hearing record, I note also that no party presented me with any evidence to quantify either the probability of property devaluation arising from the proposal or the likely devaluation that may result.
- 2.8 Turning to the notification determination, I recorded in Minute 1 that the Council's notification decision predates my appointment and that my delegation is to determine the matter on a limited notified basis. I reinforced this at the hearing, noting again that I am unable to revisit the notification decision or to extend the participatory rights of a submitter to other individuals and organisations who were not identified as affected parties in that decision. I acknowledge the views by submitters on this matter, but take it no further for the reasons I have expressed.

Pre-hearing procedural matters

- 2.9 Upon my engagement, I issued a minute¹² to the parties to set out some preliminary matters in preparation for a hearing. Specifically, the minute:
- a. summarised preliminary details for the hearing;
 - b. set out a timetable for pre-circulation of expert evidence, legal submissions and written material to be presented by submitters;
 - c. summarised my general expectations for the hearing process and presentations;
 - d. invited parties to advise of any sites/areas for me to consider on my first site visit; and
 - e. acknowledged the interest expressed by multiple parties who were not deemed affected parties by the Council, clarified the limits of my delegation, and noted that the hearing would be open to the public and could be observed by wider interested parties.
- 2.10 I subsequently issued a second minute¹³ to respond to a request made by the applicant to extend the timetable for providing its landscape evidence. The extension was required due to the applicant's previously appointed landscape expert going on parental leave. I recorded in the minute that a one-week extension would be provided for the applicant's landscape evidence but that the balance of its evidence would remain subject to the initial timetable. As a consequence of this change, I:
- a. withdrew any requirement for submitters presenting lay evidence in excess of three pages to pre-circulate that material;
 - b. extended the time for filing opening legal submissions; and
 - c. sought confirmation from submitters whether they intended to call landscape expert evidence so that I could set out a time table for receiving that information in light of the extension granted to the applicant.

¹¹ Applicant's opening legal submissions, para 9.7

¹² Minute 1 dated 6 November 2025.

¹³ Minute 2 dated 21 November 2025.

- 2.11 Following the circulation of Minute 2, I received two requests from submitters to postpone the hearing owing to (respectively): the extension to the applicant's landscape evidence deadline; and to conclusion reached in the section 42A report that a conclusion could not be reached on flooding effects due to a lack of information on stormwater flows.
- 2.12 I responded to these requests in Minute 3¹⁴, ultimately concluding that the submitter request for deferral due to the landscape evidence extension was not sufficiently justified, and that my view on the other deferral request was reserved pending the receipt of the applicant's updated flooding evidence.
- 2.13 I subsequently received no indication from submitters that they intended to call expert landscape evidence and accordingly found no need to provide additional directions on the timing/process for receiving that material.
- 2.14 Upon reviewing the applicant's expert flooding evidence, I was satisfied that scope of new stormwater information addressed was not of such magnitude that it introduced procedural fairness issues for other participants to warrant a hearing deferral. I clarified in a fourth minute¹⁵ that the hearing could accordingly proceed in accordance with the original timetable.

s42A report

- 2.15 The Council's planner, **Mr Dan Kellow**, circulated his s42A Report on 24 November 2024. Mr Kellow is an independent planning consultant with over 25 years' professional experience.
- 2.16 The contents of Mr Kellow's report included:
- a. factual context about the Site, local environment, the proposal, relevant zoning and other statutory planning information;
 - b. a summary of the notification and submission processes for the proposal;
 - c. an assessment of environmental effects focussing on matters relevant to the proposal; and
 - d. an assessment of relevant objectives and policies in applicable national, regional and district planning instruments, and of the proposal's alignment with Part 2 of the RMA.
- 2.17 Attached to Mr Kellow's report were the following:
- a. recommended draft conditions, should consent be granted;
 - b. expert landscape evidence by Ms Linda Kerkmeester;
 - c. expert acoustic evidence by Mr Stephen Arden;
 - d. expert transportation evidence by Mr Luke Benner; and
 - e. expert flood hazard evidence by Ms Kirsty Duff.
- 2.18 **Ms Kerkmeester** is an independent landscape architect with more than 30 years' professional experience. Her evidence outlined the adequacy of the landscape and visual effects assessment attached to the application and the efficacy of proposed mitigation measures. Ms Kerkmeester also addressed matters of relevance to her expertise raised in submissions and commented on proposed conditions. She concluded that the landscape

¹⁴ Minute 3 dated 26 November 2025.

¹⁵ Minute 4 dated 2 December 2025.

and visual effects of the proposal can be managed through staging and rehabilitation of works, and screen planting.¹⁶

- 2.19 **Mr Arden** has worked for 18 years as an acoustic consultant in New Zealand and the United Kingdom. His evidence summarised his original review of the application, commented on operative and proposed District Plan compliance and the existing noise environment. Mr Arden also considered submissions relating to noise effects and provided his view on recommended conditions.
- 2.20 Mr Arden expressed the view in his evidence that the noise effects arising from the proposal on 904D Coast Road would be unreasonable, but the effects on all other neighbouring properties would be acceptable on the understanding they would comply with his recommended limit of 55 dB LAeq(15min).¹⁷
- 2.21 **Mr Benner** is an independent transportation engineer with 9 years' professional experience. His evidence included a summary of the existing transport environment, an assessment of the proposal's impact on road safety and a discussion of relevant transportation matters raised by submitters.
- 2.22 Mr Benner's overall conclusion was that any traffic effects of the proposal can be mitigated provided that recommended conditions are imposed.¹⁸
- 2.23 **Ms Duff** has over 10 years' professional experience in hydrology, river geomorphology, river management and emergency management. While Ms Duff considered that the fluvial flood risk from the River would amount to a less than minor effect, she considered that further assessment would be required of localised stormwater and overland flow hazards. Ms Duff recommended that the applicant undertake additional targeted investigations to overcome that shortcoming in the information base.¹⁹
- 2.24 Drawing on the expert views of Ms Kerkmeester, Mr Arden, Mr Benner, Ms Duff and his own assessment of relevant statutory provisions, Mr Kellow concluded that all relevant effects could be acceptably managed by conditions apart from two matters, being: noise effects on 904D Coast Road, which would be unacceptable unless the proposal is modified to impose a 55dBA noise limit; and localised stormwater and overland flow effects for which a conclusion could not be reached until further information is provided as requested by Ms Duff.²⁰

Applicant's pre-circulated evidence

- 2.25 The applicant produced evidence from the following witnesses:
- a. Mr Michael Friday, Director of Kakariki Estate Ltd;
 - b. Mr Kieran Liddicoat, civil engineer and advisor on erosion, sedimentation and dust management;
 - c. Mr Philip Wallace, civil engineer and advisor on flooding;
 - d. Mr Simon Button, landscape architect;
 - e. Mr Gary Clark, transportation engineer;

¹⁶ Kerkmeester EIC, para 52-53

¹⁷ Arden EIC, para 47

¹⁸ Benner EIC, para 47

¹⁹ Duff EIC, para 13-14

²⁰ s42A Report, section 12

- f. Mr Chris Wharam, acoustic consultant; and
 - g. Mr Elliot Thornton, planner.
- 2.26 In his evidence, **Mr Friday** set out the reasons why the applicant is seeking consent for the proposal, and the way the applicant intends to operate the cleanfill and surrounding Site. Mr Friday also discussed the volunteered conditions and responded to certain matters raised in submissions and the s42A Report and other Council evidence.
- 2.27 Mr Friday expressed his commitment to operating the cleanfill in accordance with appropriate conditions and noted the potential for effects to arise on neighbours. In his view, the proposal will assist with controlling development costs for his housing company and in turn on the affordability of new housing, and it will reduce the impacts of transporting clean fill material across the region.²¹
- 2.28 I interpolate here to note that while this application has been made by Kakariki Estate Ltd, Mr Friday noted that the main benefactor of the cleanfill in an operational sense is his development company, Friday Homes. I return to this point at junctures below where relevant.
- 2.29 **Mr Liddicoat** has 14 years' professional experience as a civil engineer. His evidence considered potential erosion, sedimentation and dust effects of the proposal, and responded to related issues raised in submissions and the s42A Report.
- 2.30 In Mr Liddicoat's opinion, the effects of dust, erosion and sedimentation as a result of the cleanfill earthworks have been thoroughly addressed through the consent process and are able to be sufficiently mitigated. He considered that a Dust Management Plan will mitigate dust and provide a framework for compliance, while erosion and sediment controls have been assessed and managed under the consents granted by the GWRC.²²
- 2.31 **Mr Wallace** has over 35 years of experience in river management, river and flood modelling and floodplain management. His evidence described the existing flood/drainage conditions of the Site and area and summarised his assessment of flooding effects, inclusive of additional matters considered in response to submissions and Ms Duff's evidence.
- 2.32 Mr Wallace acknowledged Ms Duff and Mr Kellow's alignment with his assessment that fluvial flooding effects are less than minor and further considered that his updated model demonstrates that local runoff / overland flow effects are negligible.²³
- 2.33 **Mr Button** has 13 years of experience as a landscape architect in New Zealand and the United Kingdom. His evidence provided a clear summary of his assessment of the proposal with regard to landscape character and visual amenity, helpfully clarifying points of difference between the applicant's previous landscape expert²⁴, Ms Kerkmeester and himself. Mr Button also addressed the proposed conditions, submissions relating to his area of expertise and Mr Kerkmeester's evidence.
- 2.34 In Mr Button's view, the proposal has been developed to avoid and minimise adverse effects, the Site is well suited to the proposal, and any landscape or visual amenity effects arising will be acceptable.²⁵

²¹ Friday EIC, para 9.1

²² Liddicoat EIC, para 11.1

²³ Wallace EIC, para 10.1-10.2

²⁴ Ms Caitlin Cook of Designgroup Stapleton Elliott

²⁵ Button EIC, para 12

- 2.35 **Mr Clark** has over 44 years' professional experience in traffic engineering and design and is a recognised road safety auditor. Having reviewed the original assessment of transportation effects conducted by Ms Harriet Fraser, Mr Clark indicated that he could accept and adopt Ms Fraser's view that the proposal can be accommodated within the surrounding road network with any effects being less than minor²⁶. Mr Clark also addressed potential dust generation effects from trucks using internal haul roads, and responded to submissions and Mr Benner's evidence.
- 2.36 **Mr Wharam** has been an acoustic consultant for 14 years. His evidence summarised the existing noise environment and the noise and vibration anticipated from operating the proposed cleanfill. He also addressed relevant matters raised in submissions and Mr Arden's evidence.
- 2.37 In Mr Wharam's view, the noise and vibration effects of the proposal can be appropriately managed through imposing a noise limit²⁷.
- 2.38 **Mr Thornton** has over 20 years' professional experience in Australia and New Zealand. His evidence traversed similar matters to Mr Kellow's s42A Report, and also responded to Mr Kellow's report and the associated evidence from other Council experts.
- 2.39 Mr Thornton considered that that effects arising from the proposal can be managed to an acceptable level through volunteered conditions, noting also where his view on conditions was different to Mr Kellow and other experts for both the Council and the applicant. He also considered the proposal to result in substantial positive effects from: diversion of waste from landfill; reduced construction costs; reduced haulage and greenhouse gas emissions from fill transfer and rehabilitation of streams and wetlands. Mr Thornton also considered the proposal to be well aligned with relevant national, regional and district planning instruments.²⁸
- 2.40 I discuss the substance of the applicant's case in greater detail shortly, and again in section 4 below.

Submitter expert evidence

- 2.41 Submitters circulated material from two experts.
- 2.42 Mr Kenneth and Ms Magdalena Mitchell attached a statement of evidence to their original submission from **Mr Craig Innes**²⁹. Mr Innes has worked as a research analyst since 2002, focussing on contemporary and historical land issues, including land title and land research for the Waitangi Tribunal.
- 2.43 In his evidence, Mr Innes described the comparative analysis he undertook of LiDAR³⁰ data from 2021 and 2025. His analysis indicated that earthworks have been carried out on the Site during this period, including changes to/widening of tracks and apparent filling of water channels. Mr Innes also observed examples where the landscape had been added to and subtracted from over the study period. He attached aerial photos and other mapped content which illustrated the changes he observed. Mr Innes considered that a full LiDAR scan of the property is essential to provide effective monitoring and ongoing compliance with the

²⁶ Clark EiC, para 1.7

²⁷ Wharam EiC, para 15.1

²⁸ Thornton EiC, section 5

²⁹ Dated 31 October 2005

³⁰ Short for 'Light Detection and Ranging', being a remote sensing technique for generating 3D images of land surface.

proposal. Mr Innes also noted that the Site is within the floodplain of the River and that past courses of the River can be seen in the LiDAR data.³¹

- 2.44 Mr Innes circulated a second statement of evidence on 8 December 2005. This statement largely commented on various matters raised in the applicant's evidence, including by Mr Friday, Mr Clark, Mr Thornton, and Mr Wallace. Mr Innes attached additional graphic material to this statement, including map information relating to land he considered to be of significance to Māori.
- 2.45 A second expert assessment was provided by submitters from **Mr Steve James**, Principal Safety Engineer at Urban Connection Limited. Mr James' assessment was presented in the form of a memorandum setting out the results of his initial transport review. The stated purpose of the memo is to provide an initial professional assessment of the transport and road-safety implications of the proposed cleanfill, based on the applicant's material, publicly available data, and verified through a site visit.
- 2.46 Mr James' memo addressed traffic count results commissioned by submitters in early November 2025, commented on proposed truck volumes, access design, existing carriageway widths and overall road safety, including for vulnerable road users. Under each of the relevant topic headings, Mr James recommended 'next steps' to address issues he identified. Mr James also recommended conditions to be imposed if consent is granted, including:
- a. restricted truck hours during school bus pick-up/drop-off or on weekends/public holidays;
 - b. hourly movement caps to prevent convoys;
 - c. shoulder widening (where physically achievable following site verification), pavement strengthening, and edge protection at pinch points;
 - d. advance warning signage and on-site queuing provision;
 - e. GPS-based truck monitoring and monthly reporting to Council;
 - f. independent Road Safety Audits pre-opening and within three months of commencement; and
 - g. that conditions should include measurable and enforceable mechanisms to enable Council to monitor compliance and respond to any safety concerns.

Hearing

- 2.47 The hearing was held at Pelorus Trust Sports House in Gracefield on 15 and 16 December 2025.
- 2.48 I opened proceedings at 9:30am then set out various introductory matters which were mainly of a housekeeping nature. I also identified a small number of preliminary matters that I asked the Council and applicant to respond to during their respective presentations.

Applicant's opening presentation

- 2.49 Following introductions, I invited the applicant to introduce the proposal and present its experts for questioning.

³¹ Innes EiC, para 11-21

- 2.50 **Ms McIndoe** opened the applicant's case with a summary of her legal submissions on behalf of the applicant. She provided an overview of the proposal and the assessments undertaken by the applicant to date. Ms McIndoe also helpfully itemised areas of disagreement between the applicant, the Council reporting team and submitters. She also summarised relevant statutory considerations and indexed the resource consents sought by the applicant.
- 2.51 Ms McIndoe submitted that I am unable to receive submissions from persons not invited to submit on the application, though she accepted also that submitters who were notified were able to call experts and other representatives to speak on their behalf.
- 2.52 Both Ms McIndoe and Mr Thornton raised questions about the lawful establishment of the dwelling on the property at 904C Coast Road. Ms McIndoe initially submitted that in light of the applicant's doubts in that respect, I should not place any weight on any effects of the proposal on the dwelling.
- 2.53 I addressed Ms McIndoe on this matter firstly by confirming with her that, before I could reach any finding on the status of the dwelling, I would need to amass relevant facts which were not available to me at that time of the hearing. I noted that such a process could take some time and asked whether it was the applicant's request that I do so, or whether – given the applicant's findings as to effects – I could avoid such a task and assume that the dwelling is lawfully established.
- 2.54 Ms McIndoe gave an undertaking to address me further on the matter, which she helpfully did in her closing submissions. While she maintained that the dwelling would not form part of the existing environment if not lawfully established, she confirmed that the applicant has no objection to effects on the dwelling being taken into account. Ms McIndoe underscored the applicant's landscape and noise evidence which consider the effects of the proposal on 904C Coast Road would be acceptable whether the direct impacts on the dwelling are considered or not.
- 2.55 I interpolate briefly here to clarify that I have not undertaken any inquiry into the status of the dwelling at 904C Coast Road, and, given Ms McIndoe's clarification have proceeded on the basis that the dwelling is lawful. I add that there was no contest from any party that effects of the proposal on the land at 904C Coast Road are a relevant consideration, including amenity values associated with how that land is enjoyed by its owners. I return to this point again in the context of the presentation from the owners of 904C Coast Road who lodged a submission on the proposal.
- 2.56 Returning to Ms McIndoe's opening, she also addressed various matters raised by the Council reporting team, by submitters, and by the experts called by submitters. On the latter point, Ms McIndoe submitted that I should place no weight on the aspects of Mr Innes' second statement of evidence that clearly fall outside of his stated areas of expertise. I interpolate again here to record that Mr Innes acknowledged in his hearing presentation that some matters raised in his second statement were not appropriate, though he maintained that much of the content was squarely within his expertise.
- 2.57 I also took the opportunity to ask questions on various points of Ms McIndoe. Among other matters, I sought assistance from her to ascertain whether I could take any guidance from the Courts on matters of statutory interpretation and on the structure and efficacy of conditions relating to management plans. Ms McIndoe addressed these matters in closing submissions as I discuss subsequently.

2.58 Ms McIndoe then called each of the applicant's witnesses to summarise their evidence and I took the opportunity to ask questions of each witness. The matters addressed are discussed further in sections 3 and 4 below.

Submitter presentations

2.59 Following the applicant's presentations, I heard from those parties who made submissions on the proposal and wished to be heard. It bears repeating that each of the presentations made by submitters were exceedingly clear and to a very high standard. I briefly summarise the presentations here and address the substance of each further in section 4 below as relevant to different effects topics.

2.60 I first heard from **Ms Fiona Wilson and Mr Nathan Gloag**, who own 904C Coast Road. Ms Wilson spoke of the widespread opposition to the proposal expressed by the local community, not just those who were notified. She expressed regret that the applicant questioned the status of the dwelling on her land, suggesting it was an attempt to undermine her and Mr Gloag's legitimate participation in the notification and hearing processes.

2.61 Ms Wilson spoke to the efforts she and Mr Gloag have taken to enhance the natural values of the land - including the planting of over 2,000 native trees and grasses - and the clear evidence that provides of their intention to live at 904C Coast Road for years to come. Ms Wilson cited the landscape, quietude and the River as the reasons for their committing to the area.

2.62 Ms Wilson then indexed the key adverse effects of the proposal, including on rural character and amenity, heavy vehicle traffic and safety, visual impacts, dust effects, displacement of floodwaters and reduction of floodplain storage, and excessive noise with an industrial character.

2.63 **Carol and Dave Geale** were the second submitters to present at the hearing. Mr and Mrs Geale were represented by a friend, Ms Andrea Brown, who read from a prepared statement. The statement made clear that Mr and Mrs Geale have lived at 993 Coast Road for 22 years, being the property on the eastern side of Coast Road opposite stages 1-3 of the proposed cleanfill.

2.64 As I detail further in section 4 below, the Geales' presentation addressed their concerns about noise and dust generation, flooding, visual impacts, and traffic safety effects.

2.65 **Penny and Christopher Foley**, owners of 925 Coast Road, spoke in support of their submission following the Geale presentation. Ms Foley spoke of their long history living in Wainuiomata, their purchase of their land in 2002 and the subsequent construction of their home some 10 years after. Mrs Foley noted that they are not farmers, but bought their land for the peace and tranquillity it affords and for the rural lifestyle.

2.66 Mr Foley spoke to five key issues raised in their submission, including how the proposal would affect their retirement plan, and about traffic safety, stormwater, dust, and noise effects.

2.67 Mr Foley also outlined how certain steps could be taken to reduce effects on them, though they remain of the preference that consent is withheld. Namely, he sought:

- a. repairs/upgrades to the drainage network in the vicinity of Coast Road;
- b. improved safety measures, including better signage and a reduced speed limit in the area of Coast Road adjacent to the Foley's home;

- c. regular review of the operation and compliance with conditions to ensure effects are not significant; and
 - d. for future monitoring to be informed by input from local residents.
- 2.68 Submitters **Carl and Michelle Spence** were represented at the hearing by **Mr Ken Jackson**, a local landowner whose family has lived and farmed in the area for several generations dating back to the mid-19th century. Mr Jackson's presentation was well organised and included various graphic attachments which he spoke to at various junctures. Some of the key themes Mr Jackson traversed included:
- a. the significant heavy vehicle traffic volumes generated by the activity, the inability of the existing condition of Coast Road to safely cater for that traffic and the potential need for roading upgrades to address shortcomings;
 - b. the need for extensive and ongoing dust management measures which goes against the WasteMINZ guidelines for landfill sites;
 - c. the likelihood that minimum testing of fill material will not be comprehensive enough to detect contaminated soil;
 - d. the ongoing and continuous noise that will be generated by on-site activity and associated truck movements;
 - e. concerns about water quality, fish passage, wetland and stream hydrology;
 - f. incompatibility of the proposal with surrounding land uses;
 - g. poor suitability of the proposal in the local climatic conditions, including very high wind and high rainfall;
 - h. lack of assessment of the suitability of the Site compared to other alternatives, including consideration of site selection guidance in the WasteMINZ technical guidelines; and
 - i. the likelihood that the existing high productivity of Site soil's will be reduced by the proposal.
- 2.69 Mr Jackson's presentation was followed by **Ms Amy Johnson and her husband Darren**, who have owned 904D Coast Road since 2020. The Johnsons built their home themselves in late 2023, having selected the property for its quiet rural character.
- 2.70 Similar to other presenters, the Johnsons spoke to their concerns about flooding effects, traffic safety, noise, dust, visual effects, general site suitability and lack of consideration given to alternative sites.
- 2.71 **Mr and Mrs Mitchell** were the final submitters who provided presentations to the hearing. As noted above, Mr and Mrs Mitchell called evidence from Mr Innes. Prior to Mr Innes' presentation, Mr and Mrs Mitchell were represented by Ms Shana Hoffman, who lives at 904A Coast Road. Ms Hoffman noted that the Mitchells have lived at 935 Coast Road since 1989 and have a deep understanding of the area. Ms Hoffman amplified points raised in the Mitchells' submission regarding flooding effects, dust generation, traffic safety and impacts on rural character and amenity values.
- 2.72 Mr Innes was the final presenter on behalf of submitters. In his introductory comments, Mr Innes responded to points raised in Ms McIndoe's opening submissions about his field of expertise, and the weighting I should afford to Mr Innes' comments in evidence that fall outside that expertise.

2.73 Mr Innes also helpfully provided a reference to the relevant Regional Plan classification of the wetland on Mr Jackson's land which Mr Jackson referred to in his presentation and which is hydraulically connected to the overland flow paths which connect to the Site under Coast Road.

2.74 I further discuss the substance of Mr Innes' evidence in section 4 below.

Council presentation

2.75 Each of the Council witnesses addressed me in turn, providing summaries of the key points in their respective evidence/reports. The experts took the opportunity to respond to matters raised by the applicant and submitters over the course of the hearing, and helpfully responded to various questions from me.

2.76 I discuss the presentations from Council witnesses further in section 4 below.

Oral directions and hearing adjournment

2.77 At the conclusion of Mr Kellow's presentation, he made clear that the Council team would benefit from some additional time to recommend changes to the recommended conditions. I was amenable to receiving that advice, and to allow for Mr Kellow and Mr Thornton to confer with a view of providing me drafting assistance on recommended conditions. Ms McIndoe also helpfully advised at this juncture that the applicant could commit to providing its right of reply in writing following the exchange between the planners.

2.78 I accordingly made oral directions to receive the above information in the sequence summarised, with the reply being due the Friday after the hearing adjournment (19 December 2025).

2.79 Ms McIndoe then indexed the information she intended to address in the reply, including from the applicant's other technical advisors. This further information derived from my questions and requests during the hearing and in response to further comments made by submitters and Council experts over the course of the hearing.

2.80 Having confirmed my alignment with Ms McIndoe's summary, I then adjourned the hearing on the afternoon of Tuesday 26 December.

Post-hearing information & hearing closure

2.81 The information requested in my oral directions was then provided by the Council and applicant over the three days following the adjournment.

2.82 Having reviewed that material I determined I had sufficient information to form a decision on the proposal. I indicated this to the parties in Minute 5 and formally signalled the closure of the hearing process on Monday 22 December 2026.

Site visit

2.83 As indicated in my introductory comments at the hearing, I undertook a site visit to inform my understanding of the proposal, the Site and surrounding environment and the submissions received.

2.84 Specifically, I visited the Site and local environs on Monday 8 December between 10:30am and 12:30pm. I walked the Site perimeter and interior, before accessing the River, then making my way up Coast Road starting from the Catchpool Valley carpark entrance.

- 2.85 I then stopped opposite 993 and walked up and down the road before driving up to opposite #925. From there I walked back along Coast Road to #977 and returned up around the right-angle bend about #919. I then parked up to the northwest of 904 Coast Road and walked back to the shared drive for the properties there.

3.0 Statutory & planning policy considerations

District Plan compliance

Compliance summary

- 3.1 The application identified that the proposal requires resource consent for multiple reasons.
- 3.2 Ms McIndoe included a helpful summary of all the consents sought under the District Plan in her opening submissions. I have copied her summary here, but note for completeness that the reference to 8B 2.2 (e) should be 8B 2.3 (e):

Rule	Activity	Description	Activity status
8B 2.3 (a)	General rural discretionary activity threshold.	The proposal is an activity which does not meet the relevant Permitted Activity Conditions, or relevant requirements of Chapter 14 General Rules.	Discretionary activity
8B 2.3 (c)	Top soil removal	The project will involve temporary topsoil removal	Discretionary activity
8B 2.2 (e)	Landfills	A cleanfill is a class 5 'landfill' and the material is clean waste material for disposal to land	Discretionary activity
14C 2.2 (a)	Noise	Noise will exceed 50dBA on site between 7am and 10pm.	Discretionary activity
14A 5.1(b)	Transport	The Project does not meet the standards relating to driveways and access.	Restricted Discretionary activity
14I 2.2(a)	Earthworks	The proposed earthworks exceed the maximum fill height and volume specified in the district plan.	Restricted Discretionary activity

- 3.3 On the above basis, all parties agreed that the proposal falls as a **discretionary activity** under the Plan.
- 3.4 There are two further compliance matters which are important to note for the formal hearing record, respectively relating to:
- dust nuisance; and
 - commercial activity.

Dust nuisance

- 3.5 It was common ground between the applicant and Council that the applicant has not sought consent to contravene the permitted activity standard for dust in the General Rural Activity Area provisions. That standard requires all outside areas to be surfaced, or managed appropriately so that there shall be no dust nuisance at or beyond the boundary of the Site.

- 3.6 The term ‘dust nuisance’ is defined in the Plan as occurring if there is *visible evidence of suspended solids in the air beyond the site boundary and/or there is visible evidence of suspended solids from a dust source settling on the ground, building or structure of a neighbouring site, or water.*
- 3.7 As noted by Mr Kellow in his hearing presentation, reading the standard and the definition together leads one to the interpretation that any visible evidence of suspended dust leaving the Site as a result of the cleanfill would constitute a dust nuisance. In the absence of conditions limiting otherwise, Mr Kellow considered it almost certain that at some point during the operation of the cleanfill, a dust nuisance – so defined – would result.
- 3.8 I asked Mr Kellow how the Council might address a future dust nuisance if it were to arise. Based on his experience, Mr Kellow explained the Council has discretion as to the steps it might take. If the nuisance is a ‘one-off’, the Council may issue an informal warning and work with the consent holder to modify dust management plans and practices. If nuisance is of a serial nature, the Council might either prompt the consent holder to seek additional authorisation for contravening the permitted activity standard, or take formal enforcement action.
- 3.9 Notwithstanding that the application did not seek to authorise fugitive dust emissions beyond the Site boundary, Mr Thornton’s evidence was that dust generation is associated with various permitted activities in the Rural Zone, including farming and forestry such that it should be considered part of the permitted baseline. He also opined that dust from existing farming activities form part of the existing environment. These factors led Mr Thornton to conclude that dust generation from the cleanfill would be acceptable.³²
- 3.10 Subsequent to the hearing, Mr Thornton and Mr Kellow conferred on the drafting of conditions, including amendments to the conditions related to dust management. As summarised by Ms McIndoe in her closing submissions, those amendments were adopted by the applicant and require (my **emphasis**):
- The Dust Management Plan must now demonstrate how dust will be controlled **to avoid dust nuisance at or beyond the boundary of the Site consistent with the District Plan permitted activity standard**, and include specific measures to manage dust effects during periods of high winds and dry conditions.³³*
- 3.11 With these changes now applied to the conditions, sufficient clarity has been provided that the applicant is not seeking to authorise fugitive dust emissions beyond the Site boundary. All dust generated by the cleanfill must be controlled in such a way that there is no visible evidence of it migrating to neighbouring land or water. This speaks both to compliance with the Plan, and also to the environmental effects of the proposal, which I address in section 4 below.
- Commercial activity*
- 3.12 As noted in the report introduction above, Mr Thornton’s evidence introduced some uncertainty about the extent to which the proposed cleanfill would only be used by the applicant and its contractors as expressed in the application.
- 3.13 I asked Mr Thornton during the hearing whether third-party use of the cleanfill charged at a fee would introduce any further consent requirements, for example by virtue of being

³² Thornton EiC, para 9.3-9.4 & 11.37-11.40

³³ Closing legal submissions, para 15.6

deemed a 'commercial activity'. Mr Thornton's view was that a separate consent would not be required as there is a commercial component inherent in the concept of a cleanfill.

3.14 In his hearing presentation, Mr Kellow confirmed his view that the cleanfill being more widely utilised beyond the applicant's stated intent would not likely result in material changes to the environmental effects of the operation. Had he been aware of such an arrangement, however, he explained that he would have requested further information from the applicant, including for example how it intended to manage truck movements from any number of third-party users. In Mr Kellow's view, the application remains for a cleanfill to be used by the applicant and its contractors, and not as a commercial operation open to others.

3.15 In considering this matter, I find Mr Thornton's view that cleanfills are inherently commercial to be open to interpretation at best. More to the point, I struggle with the relatively late change in approach Mr Thornton's evidence introduces; particularly when Mr Friday's evidence clearly states:

5.1 The cleanfill is intended to be used for the disposal of materials and excess fill from housing developments carried out by, or on behalf of, Friday Homes. The Cleanfill is not intended to be used for other general commercial purposes.

3.16 As noted previously, the applicant's legal submissions and all of its other evidence apart from Mr Thornton's are aligned with Mr Friday's evidence in the above respect.

3.17 Furthermore, the application is also aligned with Mr Friday's evidence, with the introduction in Section 1 stating:

The cleanfill operations are expected to only be associated with housing development carried out by, or on behalf of Friday Homes, and are not intended to be used for other general commercial purposes.

3.18 Relevantly, Condition 1 in the proposed conditions requires that the proposal is carried out substantially in accordance with the information and approved plans submitted with the application except as it is otherwise modified by the conditions. No other conditions, in my reading, would support an interpretation that the cleanfill is authorised for general commercial use.

3.19 For the above reasons, and in the absence of formal change in the application details confirmed by the applicant, I confirm that I have considered the proposal on the basis described by all participants apart from Mr Thornton. It is not for general commercial purposes and is rather intended for use by the applicant and its contractors. On this basis, no additional compliance implications are arising.

Proposed District Plan

3.20 It was common ground also between Mr Kellow and Mr Thornton that there are no rules in the Proposed District Plan for Hutt City which have legal effect.

3.21 As at the close of the hearing, the Proposed District Plan was in a state of some uncertainty owing to the so-called 'plan-stop' imposed by Central Government to prevent plan-making processes over the short-medium term while New Zealand transitions from the RMA to a new planning system.

3.22 Since the hearing adjournment, an application by the Council has been granted by the Minister for the Environment for a partial plan stop exemption, which will enable parts of the proposed plan to continue through the plan-making process under Schedule 1 of the RMA.

- 3.23 I note that both Mr Kellow and Mr Thornton were of the view that limited weight should be applied to the proposed plan given its status and the point in the Schedule 1 process it has reached. They also drew my attention to relevant provisions in the proposed plan, including those identified in part 12 of Mr Kellow's s42A Report which relate to the General Rural Zone, Transport, Earthworks and Noise matters.
- 3.24 I have had regard to those provisions and generally adopt Mr Kellow and Mr Thornton's view that I should apply little weight to them for the reasons they have expressed. I note for completeness that this weighting does not have any material bearing on my findings. That is, if I were to apply greater weight to the proposed provisions, they do not prescribe any direction in my reading that would weigh against the decision I have otherwise reached.
- 3.25 I note that the proposed plan noise standards are discussed in section 4 below regarding noise effects; however, as confirmed by the planners, those standards have no legal effect at this stage that introduce formal compliance requirements. Lastly, I record that the 'highly productive land' overlay and attendant provisions in the notified proposed plan were withdrawn on 15 January 2026 under section 80Q of the RMA.

Resource Management Act 1991

- 3.26 **Section 104** of the RMA sets out the matters I must have regard to in considering the application. As relevant to this proposal, s104 states:

104 Consideration of applications

- (1) *When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to—*
- (a) *any actual and potential effects on the environment of allowing the activity; and*
- (ab) *any measure proposed or agreed to by the applicant for the purpose of ensuring 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; and*
- (b) *any relevant provisions of—*
- (i) *a national environmental standard:*
- (ii) *other regulations:*
- (iii) *a national policy statement:*
- (iv) *a New Zealand coastal policy statement:*
- (v) *a regional policy statement or proposed regional policy statement:*
- (vi) *a plan or proposed plan; and*
- (c) *any other matter the consent authority considers relevant and reasonably necessary to determine the application.*
- (2) *When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect.*
- ...
- (5) *A consent authority may grant a resource consent on the basis that the activity is a controlled activity, a restricted discretionary activity, a discretionary activity, or a non-*

complying activity, regardless of what type of activity the application was expressed to be for.

- 3.27 Matters (1)(a), (ab) and (c) under s104 are described in Section 2 of this report and discussed substantively in section 4 below, along with consideration of Part 2 of the RMA.
- 3.28 The matters I have had regard to under s104(1)(b) are discussed immediately below.
- 3.29 As the proposal is for a discretionary activity, **s104B** is applicable. Under s104B, the application may be granted or refused³⁴, and if granted may have conditions imposed on it³⁵.
- 3.30 **Section 106A** is also applicable. It states:

106A Consent authority may refuse land use consent in certain circumstances

- (1) *A consent authority may refuse to grant a land use consent, or may grant the consent subject to conditions, if it considers that there is a significant risk from natural hazards.*
- (2) *For the purposes of subsection (1), an assessment of the risk from natural hazards requires a combined assessment of all of the following taken together:*
- (a) *the likelihood of natural hazards occurring (whether individually or in combination);*
- (b) *the material damage to land in respect of which the consent is sought, other land, or structures that would result from natural hazards;*
- (c) *whether the proposed use of the land would accelerate, worsen, or result in material damage of the kind referred to in paragraph (b);*
- (d) *whether the proposed use of the land would result in adverse effects on the health or safety of people.*
- (3) *Conditions imposed under subsection (1) must be—*
- (a) *for the purposes of avoiding or mitigating the effects referred to in subsection (1); and*
- (b) *of a type that could be imposed under section 108.*
- (4) *This section does not apply to land use consents if the use of the land for which the consent is sought is—*
- (a) *construction, upgrade, maintenance, or operation of infrastructure; or*
- (b) *primary production activities, as described in the national planning standards.*

- 3.31 The above matters under s106A have framed my consideration of natural hazard effects as further detailed in the portion of section 4 below dedicated to stormwater and flooding. I note also the commonality in aspects of s106A and the NPS-NH, which I discuss in the subsection that follows.

³⁴ S104B(a)

³⁵ S104B(b)

Policy Statements and Plans

National Policy Statements

Overview

- 3.32 Mr Thornton and Mr Kellow agreed that there are National Policy Statements relevant to the proposal; however, they held different views about the breadth of instruments relevant and the relative alignment of the proposal with the various instruments.
- 3.33 In her closing submissions, Ms McIndoe also helpfully drew my attention to changes in national direction made by Government whilst the hearing proceedings were in progress. The timing of those changes coming into effect at 15 January 2026 means that the national direction now applicable is not what would have been relevant if the application was determined earlier. Of most note, the new NPS on natural hazards has been gazetted, and a notable change to the NPS-HPL has been applied which impacts this proposal.
- 3.34 The discussion that follows is organised to record my consideration of the following in turn:
- a. NPS-HPL;
 - b. NPS-NH;
 - c. NPS-IB;
 - d. NPS-FM; and
 - e. NPS-UD.
- 3.35 No party considered that the NZ Coastal Policy Statement or any other national policy statement is relevant to this proposal.

NPS-HPL

- 3.36 Prior to the December 2025 amendment, it was uncontested that the NPS-HPL applied to this proposal. Of most note, the portion of the Site where the cleanfill activity is proposed met the relevant transitional definition of ‘highly productive land’ set out in sections 1.3 and 3.5 of the NPS. This is owing to the land: being Land Use Capability Class 3 (“**Class 3**”) as mapped by the New Zealand Land Resource Inventory; being zoned General Rural; and not being subject to other certain exemptions set out under the NPS.
- 3.37 Relevantly, Clause 3.5 of the NPS-HPL has now been changed by the December 2025 amendments such that highly productive land no longer includes land that is subject to a resource consent application for subdivision, use or development on Class 3 land for any activity other than rural lifestyle, where that consent has been lodged at or after the commencement date. Section 1.3 makes clear that ‘commencement date’ means the date on which the NPS came into force, as identified in clause 1.2(1) – being 17 October 2022.
- 3.38 On this basis, and consistent with Ms McIndoe’s closing submissions, the NPS-HPL is not directly applicable and the Site is no longer required to be treated as highly productive land under the NPS.³⁶
- 3.39 For the formal hearing record, I note that I asked Ms McIndoe during the hearing for assistance in interpreting the former version of the NPS-HPL to assist my consideration of the extent to which the proposal would amount to inappropriate use or development of

³⁶ Closing legal submissions, para 6.2

highly productive land. In particular, I asked Ms McIndoe if she could provide any guidance from the Courts to support the evidence of Messrs Kellow and Thornton that the proposal could satisfy one of the exemption criteria set out in Clause 3.9(2) of the NPS-HPL by virtue of being deemed a “small-scale or temporary land use activity that has no impact on the productive capacity of the land – and by extension.”

3.40 Ms McIndoe referred me to two cases of relevance which support the planners’ interpretation (footnotes omitted):

6.4 *Mr Thornton’s evidence is that this exception applies, as any single stage of cleanfill (being up to 1.5ha) is small scale (0.8 per cent of the 170ha land area), and the cleanfill is temporary. The Section 42A Report agrees the Project could fall within this exception, as the staging of the proposal may mean the land use is small scale.*

6.5 *These conclusions are consistent with relevant caselaw, which establishes that where land use is staged to occur in increments, this can amount to temporary use. Caselaw further provides that where the use is a small portion of the total land area, the land use is small scale.*

6.6 *As provided in paragraphs 6.5 – 6.10 of opening legal submissions, the clause 3.9(2) exception is met as the Project mitigates harm to highly productive land because the Site will remain an operational farm after cleanfilling has concluded.³⁷*

3.41 Though the need to take this assessment any further is now moot due to the 2025 Amendments, I record that the evidence of Messrs Thornton and Kellow, the submissions of Ms McIndoe, and the highly productive land assessment completed by Lowe Environmental Impact in 2023 to inform the application would have led me to a finding that the proposal does not amount to inappropriate use or development of highly productive land as defined in the previous NPS-HPL.

3.42 While the NPS-HPL no longer has direct relevance to the application, the productive potential of the on-site soil resource remains a relevant matter to be considered, as discussed in sections 3 and 4 below.

NPS-NH

3.43 Like the updated NPS-HPL, the NPS-NH took effect from 15 January 2026. It has a single objective, being that natural hazard risk to people and property associated with subdivision use and development is managed using a risk-based proportionate approach.

3.44 The objective is implemented by the following six policies:

- a. Policy 1: When considering natural hazard risk associated with subdivision, use or development, the risk level must be assessed using the risk matrix;
- b. Policy 2: Natural hazard risk associated with subdivision, use and development must be managed using an approach that is proportionate to the level of natural hazard risk;
- c. Policy 3: Where subdivision, use or development is assessed as having very high natural hazard risk, that risk must be avoided;
- d. Policy 4: Where subdivision, use or development, including any associated mitigation measures, will create or increase significant natural hazard risk on other sites, that risk

³⁷ Closing legal submissions, para 6.4-6.6

must be avoided or mitigated using an approach that is proportionate to the level of natural hazard risk;

- e. Policy 5: Natural hazard risk assessment and decisions must be based on the best available information and must be made even when that information is uncertain or incomplete;
- f. Policy 6: The potential impacts of climate change to at least 100 years into the future must be considered.

3.45 The NPS-NH directs that the assessment of natural hazard risk associated with the proposal consider the likelihood and consequences of hazard events occurring. To assist with the consistent application of this direction, the NPS-NH provides a risk matrix³⁸ and two tables³⁹ which respectively frame how likelihood and consequences of hazard events should be classified.

3.46 As noted in Ms McIndoe's closing submissions, the sequence of the hearing is such that the planning and flooding experts did not directly consider the direction in the NPS-NH or utilise the risk matrix or assessment tables in their respective evidence. I am satisfied there is sufficient information in the evidence before me, however, to be applied to the risk matrix and the assessment tables.

3.47 Ms McIndoe assisted me in her closing submissions by contextualising the expert evidence as relates to the NPS-NH:

7.5 Messrs Thornton and Wallace have now considered the NPS-NH and, having regard to policies 3 and 4, and clause 3.3(c), of the NPS-NH, see no reason to refuse consent for the proposed cleanfill. The Project Site is not subject to a very high natural hazard, nor will it create or increase significant natural hazard risk on other sites. Mr Wallace's opinion is that:

- a Only small parts of the cleanfill platforms will be flooded in the modelled 1% AEP event – similar to the 'without cleanfill' scenario. Therefore, while the likelihood of flooding will be 'almost certain', the consequences will be 'negligible', resulting in a 'low risk';*
- b The likelihood of flooding of the Coast Road carriageway is also 'almost certain', but with a 'moderate' consequence. This results in a potentially medium or high risk, but this is the same as the 'without cleanfill' scenario; and*
- c For nearby dwellings, the likelihood of flooding would be rare and therefore 'low risk'. Again, the effect of the cleanfill is nil to negligible.⁴⁰*

3.48 I consider this to be a fair appraisal and accordingly record the following:

- a. the evidence does not support a finding that the hazard risk would be 'very high' as classified in the risk matrix – noting there are five combinations of consequence and likelihood that carry that classification;
- b. given the above, the direction in NPS-NH Policy 3 to avoid very high natural hazard risk is not relevant;

³⁸ Refer NPS-NH, Figure 1

³⁹ Refer NPS-NH, Tables 1 and 2

⁴⁰ Closing legal submissions, para 7.5

- c. as directed by Policy 5, I am satisfied that my assessment is based on the best available information, which includes the modelling and analysis of Mr Wallace, the review of Ms Duff, and the accounts from the submitters and their representatives at the hearing; and
- d. consistent with Policy 6, I note that the assessments before me have taken into account the potential effects of climate change to at least 100 years in the future.

3.49 The proportionate approach prompted by Policy 2 and the direction in Policy 4 regarding the potential for increased hazard risk off-site are addressed in the effects section below dedicated to stormwater and flooding. Given my related findings in that section and for the reasons expressed above there are no issues of inconsistency with the direction in the NPS-NH that weigh against consent being granted for the proposal.

NPS-IB

3.50 Mr Thornton's evidence was that the NPS-IB is relevant.

3.51 As set out in Section 1.3 of the NPS-IB, this NPS applies to indigenous biodiversity in the terrestrial environment, inclusive of the promotion of restoration and increasing indigenous vegetation cover in natural inland wetlands.

3.52 The stated objective of the NPS-IB is:

- (a) *to maintain indigenous biodiversity across Aotearoa New Zealand so that there is at least no overall loss in indigenous biodiversity after the commencement date; and*
- (b) *to achieve this:*
 - (i) *through recognising the mana of tangata whenua as kaitiaki of indigenous biodiversity; and*
 - (ii) *by recognising people and communities, including landowners, as stewards of indigenous biodiversity; and*
 - (iii) *by protecting and restoring indigenous biodiversity as necessary to achieve the overall maintenance of indigenous biodiversity; and*
 - (iv) *while providing for the social, economic, and cultural wellbeing of people and communities now and in the future.*

3.53 Mr Thornton's evidence focused on those aspects of the NPS-IB which promote enhancement of indigenous biodiversity⁴¹. Principally, those relate to clause (b)(iii) of the above objective and to Policies 13 and 14, which respectively direct:

- a. restoration of indigenous biodiversity is promoted and provided for; and
- b. increased indigenous vegetation cover is promoted in both urban and non-urban environments.

3.54 No other party to the hearing asserted that other aspects of the NPS-IB are relevant.

3.55 Having considered all provisions in the NPS-IB, I adopt Mr Thornton's view that it is relevant to the extent he assessed.

3.56 To that end, I consider that the proposal can be said to promote the restoration of indigenous biodiversity through the required perimeter and wetland planting. There are no

⁴¹ Thornton EIC, para 12.13-12.19

provisions in the NPS-IB that weigh against the granting of consent for the proposal in my reading.

NPS-FM

3.57 Mr Thornton and Mr Kellow agreed that the NPS-FM is relevant given the presence of existing natural inland wetlands on the Site and the proximity to the River; however, they considered that the relevant matters fall principally within GWRC's jurisdiction and have been addressed by the conditions imposed in the related consents granted by GWRC for the cleanfill.

3.58 As noted by Mr Kellow in his s42A Report GWRC concluded that the cleanfill is consistent with relevant policy direction in the NPS-FM as related to the associated applications granted by GWRC last year, including:

- a. Tangata whenua are actively involved in freshwater management (including decision-making processes), and Māori freshwater values are identified and provided for (Policy 2);
- b. direction in Policy 3 that freshwater is managed in an integrated way that considers the effects of the use and development of land on a whole-of-catchment basis, including the effects on receiving environments;
- c. Policy 5, which directs freshwater to be managed to ensure that the health and well-being of degraded water bodies and freshwater ecosystems is improved, and the health and well-being of all other water bodies and freshwater ecosystems is maintained and (if communities choose) improved;
- d. direction in Policy 6 that there is no further loss of extent of natural inland wetlands, their values are protected, and their restoration is promoted; and
- e. that the habitats of indigenous freshwater species, trout and salmon are protected, per Policy 9 and 10.

3.59 In the main, I adopt Mr Kellow and Mr Thornton's shared view that the direction in the NPS-FM is primarily relevant to GWRC's functions under section 30 of the RMA; however, Policy 3 is clear that integrated management across jurisdictional boundaries is required, and to the extent that earthworks and associated mitigation measures are relevant to Council's jurisdiction the NPS-FM does require consideration in the context of this application before me.

3.60 Based on the evidence and information presented at the hearing, I am satisfied that the proposal has been assessed in a manner consistent with Policy 3. Furthermore, no party has tabled any material to support a finding that the proposal is otherwise inconsistent with the balance of the NPS-FM.

NPS-UD

3.61 Mr Thornton and Mr Kellow held different views about the NPS-UD.

3.62 Mr Thornton opined that the NPS-UD is applicable by virtue of Hutt City Council being defined as a Tier 1 Urban Environment under the NPS. In Mr Thornton's view, the proposal aligns with the NPS-UD as it supports a well-functioning urban environment, particularly in

- the urban areas of Wainuiomata and the Hutt Valley and the potential for reduced costs of housing development.⁴²
- 3.63 Mr Thornton emphasised Objective 2 and Policy 1(d) of the NPS-UD in this context, noting their collective direction for planning decisions to improve housing affordability by supporting competitive land and development markets. Mr Thornton noted Policy 1(e) also which directs planning decisions to support reductions in greenhouse gas emissions. As relates to the proposal, Mr Thornton identified the shorter haulage distances for Friday Homes to transport fill materials from construction sites in Wainuiomata to the proposed cleanfill. Overall, Mr Thornton considered the proposal to be consistent with the NPS-UD.⁴³
- 3.64 Mr Kellow's view was that the NPS-UD is not directly relevant to the proposal. In his assessment, the NPS-UD is more relevant to supply and controls on the use of land for residential development. Notwithstanding that view, Mr Kellow's overall opinion was that the proposal is not contrary to the NPS-UD.⁴⁴
- 3.65 I asked Ms McIndoe for assistance regarding the NPS-UD during the hearing, and in particular whether any caselaw has found cleanfilling to be an activity that facilitates urban development – and by extension a well-functioning urban environment. In her closing submissions, Ms McIndoe noted that she was not aware of any such guidance from the Courts regarding cleanfills or other similar activities that may facilitate urban development via reducing housing costs. Her submission was that the proposal enables urban growth by providing cheaper disposal of cleanfill materials from housing developments in Wainuiomata.⁴⁵
- 3.66 In considering the above, I share the view expressed by Mr Thornton and Ms McIndoe that the proposal can be said to support well-functioning urban environments by affording efficiencies in the housing development process.
- 3.67 That said, there is considerable uncertainty based on the information before me as to the extent to which the cleanfill will materially benefit the function of urban environments in Wainuiomata, Hutt City or the wider Region. I accept Mr Friday's evidence at face value that the cleanfill will enhance the efficiency of his operation, and there is no evidence before me to contest that. How extensively those efficiencies will materially enhance housing affordability or overall urban function is less clear.
- 3.68 I also find that Mr Thornton's view that the proposal will support reductions in greenhouse gas emissions needs to be tempered by the other evidence presented by the applicant, including from Mr Friday who noted that his company has development interests further afield than Wainuiomata which may make use of the cleanfill. Certainly, where developments in Wainuiomata make use of the cleanfill Mr Thornton's point is well founded; but the proposal is not limited to such an arrangement and the eventual extent of benefit in this regard would not be known until the cleanfill has completed operation. The proposal can be said to provide opportunities for lower greenhouse gas emissions from transportation of materials, but it does not require such outcomes or prevent the antithesis.
- 3.69 The above points are not to criticise the applicant for desiring flexibility in managing its development interests, nor to imply that I consider the cleanfill operation should be limited to disposal of locally-sourced fill material. They are to say, however, that I have not placed

⁴² Thornton EIC, para 12.1-12.2

⁴³ Thornton EIC, para 12.3-12.6

⁴⁴ s42A Report, para 10.1

⁴⁵ Closing legal submissions, section 5

significant weight on the proposal's hypothetical contribution to a well-functioning urban environment or the affordability of the housing and development market because of the difficulty in quantifying that relationship.

- 3.70 It is equally fair to say that the NPS-UD does not require such a quantification of effects, nor does it express any preference for activities that make greater contributions to well-functioning urban environments compared to others.
- 3.71 Based on the information before me, it is reasonable to conclude that the proposal will assist with the implementation of the NPS-UD even if only to a small degree. Moreover, there is no evidence before me to suggest the proposal is in any way inconsistent with the NPS-UD.

Regional Policy Statement

- 3.72 The RPS is relevant and I have considered both the operative RPS and the version of the RPS as it has been amended by Change 1, which remains under appeal.
- 3.73 The application document includes an assessment of the proposal against the RPS and Change 1, and Mr Thornton took the opportunity in his evidence to emphasise aspects of that assessment in his evidence.
- 3.74 Mr Kellow also assessed these documents in his s42A Report. As itemised by Mr Kellow, relevant topic areas in the RPS comprise: Air Quality; Energy, Infrastructure and Waste; Freshwater; Landscape; Natural Hazards; and Resource Management with Tangata Whenua. I have also considered provisions relating to Climate Change, Integrated Management, Indigenous Ecosystems; and Soils & Minerals.
- 3.75 By way of summary, relevant provisions I have considered include:
- a. integrated management Objective A, and Policy IM.1 which promote a holistic and integrated view to be taken when making resource management decisions;
 - b. the direction in Objective CC.1, Objective CC.3, Objective CC.6 and supporting policies relating to reductions in greenhouse gas emissions, and increased resilience of people and communities to the effects of climate change;
 - c. Objectives 1 and 2 that discharges of dust to air do not affect amenity values and people's wellbeing, and that human health is protected from unacceptable levels of fine particulate matter;
 - d. Objective 11 that the quantity of waste disposed of is reduced and the associated acknowledgement in Section 3.3 of the RPS that cleanfills are one way to extend the life of landfills by diverting clean inert waste from the landfill waste stream;
 - e. Freshwater Objectives 12 and 13, and associated policies to the extent relevant to Council's functions under s31 of the RMA;
 - f. Objectives 16 and 16A and Policy 47 relating to the protection, enhancement and restoration of indigenous ecosystems, including natural inland wetlands;
 - g. Objective 18 that landscape values which contribute to amenity and the quality of the environment are maintained or enhanced;
 - h. Objectives 19-21 and associated policies regarding the risk of natural hazards, and the need to improve resilience to hazards inclusive of climate change impacts;

- i. Objective 29 and Policy 41 which direct land management practice including earthworks to minimise accelerated soil erosion; and
- j. Objective 30 and Policy 59 regarding soil conservation, including versatile Class 1 and 2 soils.

3.76 These matters have informed my consideration of the application and the substance of these matters is addressed principally in my assessment of the applicable topics in section 4 below. For the reasons I traverse in that discussion, I consider that there are no matters of inconsistency arising with the proposal as relates to the relevant objectives and policies in the RPS, including as it is amended by Change 1.

District Plan

3.77 As with the RPS, the application includes an assessment of the proposal against the objectives and policies of the Plan. Mr Thornton again emphasised aspects of that assessment in his evidence.

3.78 With the exception of Policy 8B.1.1.1c which seeks preservation of natural character at the margins of wetland, rivers and lakes Mr Thornton considered that the proposal is consistent with the relevant Plan provisions.⁴⁶

3.79 Mr Kellow also set out a comprehensive assessment of relevant objectives and policies in Section 12 of his s42A Report. I adopt Mr Kellow's assessment, noting however that aspects of the proposal he considered to be unresolved and/or inadequate at the time of writing have now been addressed by changes to the proposal and the conditions adopted by the applicant. As a result, relying on Mr Kellow's assessment as otherwise framed, and for the reasons further discussed on related matters in section 4 below, I find the proposal and associated conditions will sufficiently:

- a. maintain the open character and rural amenity values of the Site⁴⁷;
- b. ensure the proposed topsoil renewal and reinstatement will sustain the intrinsic value of the land and associated visual amenity values⁴⁸;
- c. enable the continued safe, efficient function of the transport network with appropriate access and manoeuvring arrangements⁴⁹;
- d. ensure earthworks are managed to avoid adverse effects on natural features and visual amenity values of the area⁵⁰;
- e. ensure noise generation from proposed activities does not adversely affect amenity values, or health and safety including through imposition of noise limits and a noise management plan⁵¹;
- f. avoid, or not increase the risk to people, property and infrastructure from natural hazards⁵².

3.80 These statutory matters addressed, I now turn to the principal issues in contention.

⁴⁶ Thornton EIC, section 14

⁴⁷ Objective 8B 1.1.1 and Policy 8B 1.1.1

⁴⁸ Objective 8B 1.1.4 and Policy 8B 1.1.4

⁴⁹ Objectives 14A 3.1 and 14A 3.5 and supporting policies 14A 4.2 and 14A 4.6

⁵⁰ Objectives 14I 1.1 and 14I 1.2 and supporting policies 14I 1.1 and 14I 1.2

⁵¹ Objective 14C 1.1 supporting policy 14C 1.1

⁵² Objective 14H 1.1 supporting policy 14H 1.1

4.0 Principal issues in contention

Preamble

Index of issues and preliminary matters

4.1 For this section of the report, I have intentionally focussed my discussion on the key issues in contention as at the close of the hearing. In addition to the statutory provisions I outlined in section 3 above, the matters in contention principally related to:

- a. positive effects;
- b. effects on landscape, rural character and visual amenity values;
- c. noise effects;
- d. effects on the transport network;
- e. dust effects;
- f. stormwater and flooding; and
- g. other matters.

4.2 As relevant, my evaluation of the issues in contention incorporates my consideration of the relevant policy direction summarised in section 3 above.

4.3 Before turning to my consideration of the key issues in contention, I briefly address s104(2) and s104(1)(c) of the RMA and the extent to which they have informed my evaluation.

The permitted baseline – s104(2), RMA

4.4 Mr Kellow and Mr Thornton held different views about the application of the permitted baseline.

4.5 Mr Kellow considered the permitted baseline to be of limited relevance. He noted that the difference in scale between the proposed earthworks volume of 196,500m³ relative to the permitted 50m³ is of such magnitude that the earthworks aspect of the permitted baseline is of no relevance.⁵³ Mr Kellow further elaborated on this point in his hearing presentation, noting that the permitted volume standard in the Plan is not time-bound, meaning that the applicant could not assert that there is a monthly or yearly ability to carry out earthworks up to the maximum volume permitted – rather, it is a one-off compliance trigger once exceeded.

4.6 Mr Kellow noted that the noise limit for the General Rural Zone is 50dBA between 7am and 10pm when received at any point beyond the Site. As I discuss further below in the context of noise effects, I understand from Mr Arden's evidence that the Proposed District Plan noise limit of 55dB L_{Aeq} is effectively 7-8dB higher than the 50dB L₁₀ limit permitted by the operative Plan. Mr Arden described this relative difference as subjectively representing an almost doubling in loudness.⁵⁴

4.7 For similar reasons adopted by Mr Kellow in respect of earthworks volumes, I consider there is little utility in applying the permitted baseline as relates to noise generation.

4.8 Mr Thornton emphasised that rural environments are subject to change and that earth moving, vehicle movements, dust and noise are effects associated with activities permitted

⁵³ s42A Report, para 8.5 & 8.10

⁵⁴ Arden EIC, para 17

in the General Rural Zone, including farming and forestry. He noted also that earthworks associated with farming activities may include intermittent works for drainage purposes, creation of farm tracks, stock piling and creation of bunds. Mr Thornton opined that permitted deposition of fill to form a bund up to 1m adjacent to any site boundary could have similar effects to aspects of the proposal.⁵⁵

- 4.9 Mr Thornton interpreted the 50m³ earthworks volume limit differently to Mr Kellow. Rather than reading the standard as a one-off limit that is exceeded at the point more than 50m³ of earthworks occur on a given site, Mr Thornton's view is that this volume of material could be replicated over and over, provided the works are not 'in the same spot of same purpose at any one time.'⁵⁶
- 4.10 In considering the evidence on this matter, I am more aligned with Mr Kellow for the reasons he has expressed. As noted by Mr Kellow, application of the permitted baseline is ultimately a matter that the Council has discretion to apply on a case-by-case basis; and in this instance, I do not find it assists with assessing the effects of the proposal on the environment.
- 4.11 In particular, the difference between the permitted and proposed earthworks volume, the difference between the permitted and proposed noise generation, and the fact that landfills themselves are classified as discretionary activities under the Plan do not support application of the permitted baseline on those effects topics.
- 4.12 This is not to say that other aspects of the permitted baseline are not helpful to consider. Most notably, where certain permitted transportation standards, such as minimum safe sight distances, can be achieved by the proposal following volunteered mitigation, such application of the permitted baseline is useful in informing the associated assessment of transportation effects associated with the proposed Site access.
- 4.13 In the main, however, I have relied upon the evidence and submissions before me in informing my evaluation of effects, as will be apparent in the relevant topic discussions below.

Other matters considered – s104(1)(c), RMA

- 4.14 There are two additional matters I have considered in informing my assessment of the proposal, both relating to waste management and minimisation.
- 4.15 Mr Kellow, Mr Thornton and several submitters referred to the **WasteMINZ technical guidelines**, and I have had regard to them in assessing the proposal. The stated purpose of the guidelines is to provide technical guidance relating to the siting, design, operation and monitoring of landfills in New Zealand based on local and international experience. The introductory text in section 2.1 of the guidelines conclude with the following:

The final decision on site-specific requirements for a landfill/fill is made by the appropriate regulatory authority, or Environment Court, under the provisions of the RMA, following a comprehensive site-specific assessment of effects on the environment. These Guidelines do not reduce the necessity for the development of site-specific requirements for investigations, design, operations and monitoring.

- 4.16 The guidelines are self-described as 'forward looking' and set out the following objectives:

⁵⁵ Thornton EIC, para 9.8-9.9

⁵⁶ Thornton EIC, para 9.10-9.11

- a. define clean fill material, controlled fill, managed fill material and waste types intended for disposal to land;
 - b. define classes of landfills/fills based on the types of material to be accepted for disposal, and associated waste acceptance criteria (WAC);
 - c. provide a consistent approach to siting, design, operations and monitoring to reduce the actual and potential effects of landfills/fills on the environment and communities; and
 - d. make current best practice recommendations on key technical requirements for siting, design, operations and monitoring of landfills/fills.
- 4.17 The guidelines also make clear they are not intended to be a detailed technical manual, but rather a source of information from which facility operators and regulatory authorities can seek comprehensive technical, planning and legal advice from appropriately qualified experts.
- 4.18 As noted previously, cleanfills are identified as Class 5 landfills under the guidelines. Section 2.6 of the guidelines sets out descriptions of the different landfill classes, and the following is relevantly provided in relation to cleanfills:
- Stringent siting requirements to protect groundwater and surface water receptors are not required. Practical and commercial considerations such as site ownership, location and transport distance are likely to be the predominant siting criteria, rather than technical criteria.*
- Clean filling can generally take place on the existing natural or altered land without engineered environmental protection or the development of significant site infrastructure. However, surface water controls may be required to manage sediment runoff.*
- Extensive characterisation of local geology and hydrogeology is not usually required.*
- Monitoring of both accepted material and sediment runoff is required, along with operational controls.*
- 4.19 Section 4.3 of the guidelines relating to site selection echoes the above, noting that:
- a. traffic and visual amenity are likely to require consideration, but that the siting approach is likely to be based predominantly on financial considerations in respect of proximity to fill sources, opportunity for site development post-filling, existing land ownership, and site development cost; and
 - b. issues such as stability, surface hydrology and topography will be relevant in relation to sediment control and likely end use of the site.
- 4.20 Section 4.4 of the guidelines detail issues to be considered when identifying potential landfills, noting from the outset the unlikelihood of any site meeting all criteria and the need for trade-offs to be balanced. Some criteria, such as geology, are identified as less relevant for cleanfills compared to other landfill classes – while other criteria, such as hydrology and compatibility with surrounding land uses are relevant to all landfills.
- 4.21 On hydrology matters, the guidelines state (among other matters):
- a. it is generally undesirable to site a landfill in flood plains or areas that may be subject to the impacts of climate change;

- b. local hydrology needs to be considered with respect to the sensitivity of the receiving environment, including proximity to water bodies and wetlands and the latest climate change projections in respect of surface water levels; and
 - c. assessment of the applicable stormwater catchments are recommended.
- 4.22 On surrounding land use compatibility, the guidelines note:
- a. ensuring adequate separation distances/buffers can help preserve the amenity of surrounding areas or avoid unwanted impacts;
 - b. requirements for, and extent of, any buffers should be determined on a case-by-case basis;
 - c. site suitability should be informed by land ownership details, statutory planning considerations, zoning, topography, prevailing weather conditions and other relevant factors;
 - d. landfills in high rainfall areas are generally undesirable and require greater attention to drainage than those in drier areas;
 - e. escarpments or valleys facing the prevailing wind should normally be avoided; and
 - f. potential effects of climate change should be considered.
- 4.23 The guidelines also recommend careful consideration of heavy vehicle traffic generation, including total volumes, the standard and capacity of the road network, the types of road users, and other safety considerations including access design.
- 4.24 Section 5 of the guidelines set out various management measures and section 6 sets out waste acceptance and monitoring guidance. Sections 7 and 8 also provide further operational and monitoring guidance in greater detail. A proportion of the guidance in these sections – for example, relating to the prevention and management of leachate and/or landfill gas – are not relevant to Class 5 landfills where the fill material meets the relevant waste acceptance criteria.
- 4.25 In all of the above respects, the guidelines have assisted me in considering the suitability of the Site for the proposed activity, the need for and efficacy of proposed mitigation. Given the stated purpose of the guidelines, and the caveats regarding their use, I have not applied the guidelines as rigid standards or technical compliance requirements; however, they have provided a useful reference point as I have considered the various key issues in contention.
- 4.26 Mr Thornton also considered that the ***Wellington Region Waste Management & Minimisation Plan 2023-2029*** ('MMP') is relevant. As set out in the opening paragraph of this document, it is the product of the eight Councils of the Wellington Region coming together to set out a plan inclusive of a vision, objectives, targets and action plans to transform how waste is generated, managed and minimised in the Region.
- 4.27 The MMP includes 9 objectives, including multiple aims relating to landfills and the desire to minimise disposal to landfill, including organic waste that can be diverted to other re-use scenarios. The MMP targets a 30% reduction in material disposed of to landfill by 2030.

- 4.28 There is no direction, goals or guidance in the MMP relating to cleanfills and the role they can or should play in implementing the MMP. I consider, however, that the proposal is broadly consistent with the aims of the MMP to minimise waste disposal to landfill of fill and organic material which can otherwise be re-used. This speaks to the benefits of the proposal which I turn to now.

Positive effects

Summary of evidence and presentations

- 4.29 The applicant asserted that the proposal will result in multiple positive effects. I have discussed some of these already in preceding sections above, but note here the purported benefits included:
- a. reduced costs of land development in Wainuiomata and Lower Hutt, leading to increased housing affordability;
 - b. shorter haulage distances to dispose of clean fill material from construction sites, and associated reductions in greenhouse gas emissions from necessary haulage;
 - c. avoidance of, or reduction in, payment of disposal fees at other commercial landfills; and
 - d. diverting clean fill away from and thereby increasing the life of existing landfills where cleanfill is currently disposed of.⁵⁷
- 4.30 In both the AEE and Mr Thornton's evidence a further benefit identified was the reduction in illegal dumping of material; however, Mr Thornton subsequently clarified that such a hypothetical benefit is not relevant to this proposal as the applicant currently disposes of unwanted fill material at appropriate locations.⁵⁸
- 4.31 Mr Thornton also identified the riparian/wetland rehabilitation as a positive effects of the proposal, noting that these measures are generally not necessary to mitigate or offset adverse effects.⁵⁹
- 4.32 Mr Kellow expressed his general agreement that the benefits of the proposal summarised in the AEE could result, though he also noted that such positive effects have not been fully quantified.⁶⁰
- 4.33 Ms Wilson questioned the nature and extent of potential benefits identified by the applicant. She challenged whether any construction cost savings would be passed on to future purchasers and asserted that there is not a demonstrable need for a new cleanfill to be established here given other available options in the Region.
- 4.34 Mr Foley also addressed the benefits of the proposal purported by Mr Thornton in relation to greenhouse gas reductions, reduced traffic flows on wider parts of the transport network, and reduced use of landfill. He saw those less as benefits overall than of a redistribution of effects from other areas to his neighbourhood.
- 4.35 Like Mr Jackson, the Johnsons spoke to relative site suitability and the need for an additional cleanfill when alternatives exist or could be established on more appropriate sites.

⁵⁷ Thornton EIC, para 11.105

⁵⁸ Thornton EIC, para 11.109

⁵⁹ Thornton EIC, para 11.109

⁶⁰ s42A Report, para 9.105

Discussion & findings

- 4.36 Overall, I consider the proposal will result in some positive effects, though the extent of those benefits is unknown and could range from minor to significant.
- 4.37 Addressing the evidence and submissions in detail, I firstly note that the restoration planting of natural inland wetlands on the Site will be net positive. In this respect, I accept the view Mr Button expressed in response to my question during the hearing that this planting is for environmental enhancement more so than effects mitigation. That is, the restoration planting goes beyond the planting that would be required to suitably mitigate any adverse landscape and visual effects of the proposal.
- 4.38 While I adopt Mr Button's view in that respect, there remains some uncertainty as to the end product in the restored wetland areas. The recommended landscape plan identifies areas of the Site to be planted and species to be established in planting areas; however, it does not quantify the extent or density of planting within the dedicated planting areas. I explored with Mr Button whether it would be appropriate to specify a minimum planting density or a period within which a certain proportion of the planting area might be enclosed by overlapping plant canopies. Mr Button expressed the view that such prescription would be difficult in this instance, and that it is preferable to enable future flexibility.
- 4.39 In light of the restoration planting being a volunteered enhancement, rather than a measure required to mitigate effects, I do not find a need to impose a minimum performance standard for the restoration planting. However, the other side of that same coin is that I must also accept that the net environmental result could vary considerably from very low benefits if relatively few species are planted, to significant positive effects if a large number of appropriate species are established and maintained over a long period of time.
- 4.40 The same can be said for any benefits arising from reductions in greenhouse gas emissions from shorter relative haulage distances, and to any housing affordability benefits derived from efficiencies in the land development process realised by Friday Homes through use of the cleanfill. Benefits in both respects could range from very low to moderate based on the evidence presented, and it is difficult to predict where on that continuum such positive effects will fall given the myriad variables in play.
- 4.41 There is a clear strategic benefit identified in the RPS and the MMP in favour of the diversion of fill material from other landfill classes. I acknowledge the proposal clearly aligns with that strategic intent, consistent with the shared view of Messrs Kellow and Thornton.
- 4.42 With the exception of the ecological benefits arising from restoration planting, I consider Mr Foley's point to be well made that the positive effects arising will not be to the benefit of the local community. That said, and as noted by Ms McIndoe, the RMA does not require proposals to deliver public benefits in order to obtain resource consent.⁶¹
- 4.43 Similarly, I note the RMA does not require an examination of alternative sites that may be more well-suited to the proposed activity than the application Site. Such an assessment would be required if the activity is likely to result in significant adverse effects; however, for the reasons I express below I do not consider the magnitude of effects associated with the proposal is that great. It is accordingly not for me to interrogate the extent to which other sites may be superior to the application Site, nor the extent to which the Site is needed when other existing cleanfill disposal facilities are available for use currently.

⁶¹ Closing legal submissions, para 9.4

Effects on landscape, rural character and visual amenity values

Summary of evidence and presentations

- 4.44 All submitters expressed concerns about the impact of the proposal on landscape and visual amenity values.
- 4.45 Ms Wilson noted that she and Mr Gloag will have direct outlook across the Site from the southern part of their land, and that the proposal will not adequately address adverse effects arising on them. Ms Wilson amplified points raised in her submission with Mr Gloag that the proposal would have major and enduring effects on the enjoyment of their property. In Ms Wilson's view, the expert assessments and references to terms such as 'minor', 'low' and 'moderate' do not accurately reflect the impact that will be felt by her and Mr Gloag. She added their view that any degradation of the environment is unacceptable.
- 4.46 The Geales also considered that the proposal would have significant and long-term effects on their visual amenity, including from soil disturbance, trucks and other machinery and regular movement. Like Ms Wilson, Mr and Mrs Geale noted that their amenity is enjoyed throughout their land, not just within or in proximity to their dwelling.
- 4.47 The Johnsons also considered that proposed mitigation measures to lessen visual impact of the proposal would be ineffectual. In their view, more generous planting is required and the planting should be established immediately to allow sufficient time for species to grow before works commence adjacent to their land. In response to questions from me, Ms Johnson noted that she would prefer a greater concentration of native species in the landscape strip along their boundary over the proposed double row of Leyland Cypress.
- 4.48 The Mitchells explained through Ms Hoffman that the proposal would have major adverse impacts on the rural character of the area which they have enjoyed for more than three decades. A key issue for the Mitchells is the 30-year proposed duration of the cleanfill, which they believe to be greater than can be genuinely deemed 'temporary'.
- 4.49 The landscape experts for the Council and the applicant were unanimous that the proposed landscape and visual effects of the proposal could be appropriately managed through conditions, though there was some disagreement as to the detail in the latter respect. Mr Button's evidence included a helpful summary of the areas where he, his predecessor Ms Cook, and Ms Kerkmeester were not aligned, as follows:
- a *In my opinion, short-term visual amenity effects on 965 Coast Road will be **Low Moderate** during operation. In my understanding, Ms. Cook and Ms. Kerkmeester summarise that this effect will be **Low**. In my opinion, this is a non-material difference.*
 - b *I recommend that boundary planting along Coast Road is implemented at 'Stage 1' to ensure sufficient time is given for this planting to mature to assist in integrating the cleanfill into the landscape in views from properties to the north and in views from Coast Road. The current condition set requires that this planting is implemented at 'Stage 2'.*
 - c *I recommend that wetland planting (with the exception of the area of wetland between the two cleanfill areas, which is to be implemented at 'Stage 1') is implemented at 'Stage 3', prior to the completion of cleanfill area 8. This recommendation is consistent with the opinion of Ms. Cook. I understand that Ms. Kerkmeester's opinion is that this planting should be implemented at 'Stage 2', prior to the commencement of cleanfill area 4.*

- d I recommend that Condition 27 is expanded to include design controls over the batter slope of the cleanfill areas. I understand this this was also a recommended mitigation measure by Ms. Cook, however it is currently missing within the condition set.*⁶²

- 4.50 Mr Button noted also the agreement between himself, Ms Cook and Ms Kerkmeester that the adverse effects of the proposal on landscape and rural character would – overall – be low moderate in extent during operation of the cleanfill, becoming very low once the operation is completed.⁶³ Key factors Mr Button cited in reaching this view included:
- a. movement of earth and presence of diggers and other machinery is not uncommon in the rural environment;
 - b. the landform would be permanently changed by the proposal, yet remain commensurate in level with Coast Road and in keeping with the extant pattern of terraces in the local valley floor; and
 - c. the modest size of each cleanfill stage will limit potential effects in an ongoing manner, with progressive stabilisation and remediation eventually making it difficult to distinguish worked areas from surrounding unmodified pasture.⁶⁴
- 4.51 Mr Button generally considered that the visual impact of the proposal on surrounding neighbours, users of Coast Road and users of the Wainuiomata River would be low during operation, transitioning to very low at completion. The exceptions to this were visual effects on the residents of 965 Coast Road as noted above, and on the neighbours at 904C and 904D which he considered to be moderate over the short term, transitioning to low at completion.⁶⁵
- 4.52 To address the latter point, Mr Button recommended that the second stage of mitigation planting originally recommended by Ms Cook in her report supporting the application be brought forward to the same time as stage 1. On the assumption that each stage is anticipated to take, on average, 2-3 years to complete, establishing the boundary planting adjacent to the Stage 4 landfill area from the inception of the operation would allow for some 6-9 years of growth prior to works commencing on Stage 4 and 8-12 years prior to Stage 5 commencing (collectively comprising the areas immediately adjacent to the boundary with 904D Coast Road).⁶⁶
- 4.53 Mr Button noted also that in this area proximate to 904D, the proposed change in ground level is 1-1.2m above existing – which is in contrast to the maximum change of 3.5m in the more southern areas of the cleanfill. That lower level would not restrict views from neighbouring land in his view.⁶⁷
- 4.54 Mr Button’s overall view was that the Site is well suited for the proposed activity and any landscape or visual amenity effects arising are acceptable.⁶⁸
- 4.55 Like Mr Button, Ms Kerkmeester recommended that the second stage of mitigation planting originally recommended by Ms Cook be brought forward to commence from the outset of the cleanfill operation. She emphasised that this should enable the proposed exotic

⁶² Button EiC, para 5.8

⁶³ Button EiC, para 8.3 & 8.6

⁶⁴ Button EiC, para 8.4-8.5

⁶⁵ Button EiC, para 8.14

⁶⁶ Button EiC, para 9.3 & 10.20

⁶⁷ Button EiC, para 10.21

⁶⁸ Button EiC, para 5.9

boundary planting adjacent to 904D Coast Road to be up to 4m in height by the time filling commences on Stage 4 adjacent to the boundary.⁶⁹

- 4.56 Ms Kerkmeester's assessment of visual effects was generally aligned with Mr Button except as noted in the excerpt from Mr Button's evidence included above. That included the view that visual effects during the operation of given stages would be no more than moderate, reducing to very low in most instances at the completion of works.⁷⁰

Discussion & findings

- 4.57 Overall, I adopt the landscape experts' collective view that the proposal can be managed through the application of appropriate mitigation such that the effects on landscape, rural character and visual amenity are acceptable for the reasons they have expressed.
- 4.58 I adopt their assessment that the visual impact of the proposal on all neighbouring land, users of Coast Road and users of the Wainuiomata River will be no more than minor with the exception of the neighbours at 904D Coast Road where the effects will be more than minor. With the requirement now included in the conditions for mitigation planting along the boundary with 904D to be established well in advance of the filling immediately adjacent, in combination with other conditions discussed below, those effects will not, however, be significant.
- 4.59 Regarding the open rural character of the land anticipated in the Plan's policy framework, there is no evidence to support a finding that the proposal will adversely affect the sense of openness. There is likewise no evidence to suggest that the net change in landform can be said to detract from the overall rural character of the Site or wider area.
- 4.60 There will be disturbed areas of earth for sustained periods over the life of the cleanfill, with associated machinery in proximity; however, these will be in discrete parts of the Site, migrating and changing over time as each stage commences, progresses and is then completed.
- 4.61 Related to that, I find that the 2,500m² maximum area of un-stabilised material further minimises the overall visual impact of the proposal at any given time. By comparison, I observe this area is less than half of a typical full-size sports field.
- 4.62 With that limit imposed, along with the requirement to progressively rehabilitate completed areas, the balance of the Site will effectively maintain its existing rural character at any given time. This is further reinforced by the staged approach more broadly, whereby the majority of the cleanfill area – which itself is a small portion of the land area at 1044 Coast Road and an even smaller part of the wider rural landscape – will remain in rural use for the entirety of the operation.
- 4.63 This is not to say that neighbours and users of Coast Road will not notice changes to the landscape. Furthermore, I take at face value the comments from the various submitters who presented that their outlook and associated visual amenity will be affected by the proposal. It is fair for them to question the utility or value of independent expert assessments when their understanding of their own amenity values might be very different to what is represented by the experts. There may well be intervals where landscape and visual effects are more acutely experienced by a given party; however, based on the compelling evidence before me I consider the operation, managed by appropriate conditions, will not be

⁶⁹ Kerkmeester EIC, para 33 & 44

⁷⁰ Kerkmeester EIC, para 23-24

inappropriate in its rural context. I expect it will more closely resemble rural land use practice that might also occur from time to time as opposed to a major industrial activity as some submitters asserted.

- 4.64 I am also satisfied that the relevant conditions are fit-for-purpose, including minor drafting amendments I have made to improve clarity and enforceability (for example Conditions 9 and 11). Related to that, I record also that:
- a. I have not accepted Ms Kerkmeester's recommendation that the Stage 3-8 wetland restoration planting be brought forward in the staging sequence – I rather adopt Mr Button's view that this planting is for environmental enhancement rather than mitigation, and accordingly it is sufficient for the planting to be established prior to the completion of the operation;
 - b. I have adopted the Council reporting team recommendation that completion statements be provided by a qualified landscape expert to confirm that the mitigation planting required to commence from the outset of operations is completed as required by the conditions – this provides an efficient way to demonstrate compliance and ensure the efficacy of mitigation planting;
 - c. related to the above, I have made clear in the review condition at the end of the condition set that review of the management plans (including the landscape plan) is a relevant consideration for future review processes;
 - d. I have also accepted Mr Button's evidence that a two-year maintenance period for planting is appropriate for this proposal and consistent with industry practice – while a longer period may provide greater certainty, there is a further avenue to revisit the efficacy of the mitigation planting through the review condition if unforeseen damage, disease or other factors prompt the need for replacement planting beyond the 2-year minimum;
 - e. I adopt the shared view of the landscape and planning experts that the chamfering of the batter edges for fill platforms required by the conditions will also assist with the remediation and landscape integration of worked areas back to a pastoral landscape upon completion of each stage; and
 - f. I also adopt the amendment agreed by Mr Thornton and Mr Kellow to enable the mitigation planting along the boundary with 904D could be varied from cypress specimens with the agreement of the neighbours – this responds to Ms Johnson's stated preference that alternative native species may be preferable in her view.

Noise effects

Summary of evidence and presentations

- 4.65 Noise generation was another matter of particular concern for submitters.
- 4.66 In her hearing presentation, Ms Wilson noted that the nature of living in this local environment is that much of it is done outdoors: working the land, growing food and general outdoor living. She expressed that the cleanfill would be an unwelcome intrusion into the quietude that underpins the current rural amenity enjoyed by her and others. Ms Wilson considered that the noise generated from the proposal would be akin to an industrial activity and would be excessively loud.

- 4.67 Mr and Ms Geale also consider that the noise generated from the proposal will be more than minor when received from their land.
- 4.68 As immediately adjoining neighbours of stages 4-6, Mr and Mrs Johnson expressed concern about noise generation from the proposal, both in terms of the overall intensity of the noise, and the mechanical nature of the noise sources. The intensity of noise predicted by the acoustic experts would be unreasonable in their view.
- 4.69 On behalf of Mr and Mrs Spence, Mr Jackson told me that the ambient noise environment in the area is strongly nature-based, with bird song and cicadas being prominent. While farm machinery, quad bikes and the like are also part of the local environment, Mr Jackson stressed these are intermittent in nature. Mr Jackson also emphasised the topography of the area, noting that noise travels up the valley to elevated positions where many residents live and that on calm days noise can travel long distances. In Mr Jackson's view, the proposal will exceed acceptable noise levels to the detriment of local character.
- 4.70 At the time that the s42A Report was circulated, the view of Mr Arden and Mr Kellow was that the noise effects of the proposal would be unacceptable, particularly in relation to noise received at 904D Coast Road⁷¹. This finding was based largely on predicted exceedances of the daytime 55 dB $L_{Aeq(15min)}$ noise limit in the proposed District Plan, which also aligns with the upper noise limit for residential receivers in New Zealand Standard NZS6802:2008 'Acoustics – Environmental Noise'. As noted by Mr Arden, the recommended limits in the standard are for the protection of people's health and amenity.⁷²
- 4.71 Based on the original application and conditions volunteered by the applicant, Mr Arden described the potential noise received at 904D Coast Road as significantly exceeding the 55 dB standard and unreasonable.
- 4.72 Both Mr Arden and Mr Kellow considered that, should a limit of 55 dB $L_{Aeq(15min)}$ when received at the notional boundary of other properties be applied to the cleanfill, it would not amount to unreasonable noise and the effects would be acceptable.⁷³ This would be inclusive of 904D Coast Road, though it was common ground that imposing such a limit may have the effect of reducing the footprint of the cleanfill where it adjoins 904D.
- 4.73 Mr Wharam shared Mr Arden's view that the 55 dB limit is consistent with NZS6802 and that applying that limit along with a notional boundary is the best assessment approach. Mr Wharam was also aligned with Mr Arden in considering that compliance with this limit is indicative of noise effects being appropriately managed.⁷⁴
- 4.74 Both Mr Wharam and Mr Thornton expressed the view that the full suite of conditions recommended by Mr Kellow where not needed. Mr Wharam considered that, if a noise limit is imposed, there is no need to then set conditions relating to machinery type, setbacks or time of use.⁷⁵ Mr Thornton expressed similar sentiments, however, his view was also that noise limits need not be imposed provided that a noise management plan is prepared, certified and followed⁷⁶. In this way, Mr Thornton did not adopt Mr Arden and Mr Wharam's shared recommendation of imposing a 55 dB limit.

⁷¹ S42A Report, para 9.70 and Arden EIC, para 38

⁷² Arden EIC, para 18

⁷³ S42A Report, para 9.70 and Arden EIC, para 39

⁷⁴ Wharam EIC, 8.5-8.6

⁷⁵ Wharam EIC, 12.6 & 12.9

⁷⁶ Thornton EIC, para 11.80-11.90

- 4.75 Subsequent to the hearing, Mr Thornton and Mr Kellow agreed that the 55 dB limit should be imposed as recommended by the acoustic experts, and that the other conditions recommended by Mr Kellow could be accordingly pared back for the reasons expressed by Mr Wharam. The conditions relating to the noise management plan were retained, along with a prohibition on tonal reverse alarms on any on-site machinery.

Discussion & findings

- 4.76 With the imposition of the 55 dB $L_{Aeq(15min)}$ noise limit now applied in the recommended conditions, I am satisfied that the noise effects of the proposal will be no more than minor and acceptable.
- 4.77 As agreed by Mr Wharam and Mr Arden, this is an industry accepted limit for protecting residential health and amenity, and I find no reason why that limit should not be imposed on this application to address noise impacts on neighbouring properties. I accept also Mr Wharam and Mr Arden's view that the operative Plan noise limit, while quieter than the 55dB limit, is no longer considered best practice.
- 4.78 On the comparison between the operative and proposed Plans, Mr Thornton's evidence suggested that Mr Kellow only supported an outcome where permitted noise standards are complied with, and that non-compliance is unacceptable. By extension, Mr Thornton suggested Mr Kellow's recommendation amounts to a view that non-compliance should be deemed a prohibited activity, which is not the case under the Plan.
- 4.79 Mr Thornton's view in this respect ignores that consent is required under the *operative*, rather than the proposed District Plan. The applicant has sought consent to generate greater noise than permitted by the Plan. The acoustic experts have agreed that it is appropriate to allow for that exceedance, provided that the 55 dB limit is adhered to. That this louder limit also aligns with the new permitted activity limit in the proposed District Plan is not contested; but that relationship does not support Mr Thornton's assertion that Mr Kellow has adopted an overly conservative reading of the rules that are currently applicable. Instead, Mr Kellow has relied upon the shared view of two qualified experts that the 55 dB limit is appropriate for this particular application, in accordance with the relevant New Zealand Standard. I am aligned with Mr Kellow in that regard.
- 4.80 In response to Mr Thornton's evidence that a noise limit is not necessary and that noise effects can be effectively addressed by a management plan, I sought assistance from Ms McIndoe as to the appropriateness of such an approach drawing on any guidance she could impart from the Courts. She helpfully noted the following in her closing submissions (footnotes omitted):

15.5 Caselaw and the Environment Court Practice Note 2023 provide that conditions must provide for certain outcomes and specific standards. Management Plans are useful to identify what steps are to be taken to ensure the conditions are achieved.

- 4.81 This aligns with my understanding of the role of management plans: they are a means to explain how outcomes and limits can be achieved, and are not themselves the limits. Where consent is granted to contravene a noise standard, and no secondary limit is imposed, there is considerable uncertainty as to what the net environmental outcome will be. The resulting noise could be fully compliant, or it could be considerably higher than the permitted limit to the extent of being unreasonable. While a management plan might assist in avoiding the latter, it does not prevent it. In contrast, an express limit clearly sets out the environmental outcome. Accordingly, I do not share the view expressed by Mr Thornton in his evidence that

a limit need not be imposed. The same can be said in the context of dust effects, which I discuss shortly.

- 4.82 Along related lines, with the noise limit in place, I am satisfied that details about the type of machinery, the duration of its use and its position relative to Site boundaries can be detailed in the management plan – it does not need to be stipulated in standalone conditions. Where Mr Thornton and Ms Kellow have agreed a streamlining of the conditions is appropriate in that respect.
- 4.83 Mr Arden addressed this matter further in his hearing presentation. He noted that the original operational-based conditions were derived from the recommendations in the acoustic assessment attached to the application, though he acknowledged the applicant's desire to depart from some of those recommendations to enable greater operational flexibility. Mr Arden clarified that retaining some of the operational detail as conditions could be helpful, but that the 55 dB limit is the key method to assure appropriate noise outcomes. In response to a question from me, Mr Arden confirmed that operational details could appropriately be a matter for the noise management plan.
- 4.84 I also asked Mr Arden for real-world examples of noise sources to understand how loud 55dB is. He estimated the heating and air unit in the hearing venue to be generating between 40-50 dB, and equated 55 dB to standing close to a refrigerator. Those examples further support a finding that the agreed noise limit is not unreasonable in my view.
- 4.85 I discuss operating hours of the cleanfill in more detail under the transport effects section below, but note that the associated limits are relevant also to noise effects. To that end, there will be large parts of the year where there is no noise generated from the cleanfill, and on most operating days, noise will be intermittent in nature. There is also no noise to be generated from the cleanfill during night-time hours at any time, which will avoid impacts on sleep disruption.
- 4.86 As with the landscape and visual effects discussion above, I note that I have made some editorial changes to the agreed noise conditions for clarity and enforceability. Most notably, I have added a clause to Condition 25 to make it more express that the cleanfill must be operated in a manner to ensure the 55 dB noise limit is complied with at all times.

Effects on the transport network

Summary of evidence and presentations

- 4.87 Another matter universally raised by submitters was the impact of the proposal on the safety and efficiency of the transport network.
- 4.88 Mr and Mrs Geale voiced their experience that Coast Road can be a dangerous road environment under existing conditions, and in their view, warning/safety signage would not reduce traffic safety risks effectively.
- 4.89 Speaking of his and Mrs Foley's daily experiences along Coast Road, Mr Foley described the driveway to 925 Coast Road as a 'hell of an entrance' with low visibility in both directions. He added that exiting the property is 'a bit of a Hail Mary' and that it is even worse making a right turn into the driveway when the Foley's return from regular dog walks in the Remutaka Forest Park to the south. Mr Foley noted also that rubbish and recycling trucks use pilot vehicles for safety purposes and that both their post and rubbish collection point is located

- outside 919 Coast Road as their own access provides unsafe stopping locations for service vehicles.
- 4.90 Mr Jackson stressed the importance of understanding the capacity and standard of the road. He was critical of Ms Fraser's reliance on old traffic count information, noting that more recent count data obtained by local residents is more representative. In particular, Mr Jackson suggested that the previous data overstated typical heavy vehicle traffic on Coast Road, and therefore diminished the relative increase in heavy traffic introduced by the proposal.
- 4.91 Mr Jackson also noted that the condition of Coast Road is poor in several places, with a narrow, windy formation and limited shoulders. In his view, the transportation assessments supporting the proposal have been inadequate.
- 4.92 The Johnsons also addressed traffic safety impacts, drawing on the report from Mr James. In particular, they emphasised the constrained nature of Coast Road and the difference in traffic count data they obtained versus the data relied upon by the applicant and Mr Benner. They also expressed a desire for greater assurance that children and their families would not be at risk when being dropped off, picked up or waiting at the school bus collection points.
- 4.93 Through Ms Hoffman, the Mitchells also expressed concerns about traffic safety, particularly for school children and cyclists.
- 4.94 While I was unable to ask questions of Mr James about the report he prepared on behalf of submitters, I found his report helpful in identifying matters where further clarification was required to understand traffic safety effects. I took the opportunity to question Mr Clark and Mr Benner on several points which derived from Mr James' comments and recommendations, and have accordingly taken some time below to step through those aspects in detail. As will be evidenced from the final conditions in Appendix 1, many of Mr James' recommendations have been applied.⁷⁷
- 4.95 Turning to Mr Benner's evidence and presentation, he addressed submitter comments about the condition and formation of Coast Road in his evidence. He shared submitter observations that Coast Road is narrow in parts with varying shoulder widths and limited forward visibility in areas due to roadside vegetation. However, he considered the constrained nature of the road assists in regulating vehicular operating speeds, which in turn is positive for road safety. Mr Benner expected that to continue to be the case should the application be granted.⁷⁸
- 4.96 Acknowledging the submitters' observations that there is currently a very low frequency of heavy vehicle traffic on Coast Road, Mr Benner noted that the presence of more trucks will increase the risk of trucks crossing the centreline particularly in narrower stretches of the road. To address this, Mr Benner recommended an audit be conducted prior to the cleanfill operation to identify where additional warning signage should be installed, for example to warn of narrowing, presence of cyclists, turning trucks and the like.⁷⁹
- 4.97 Mr Benner noted that the signage audit could assist with increased safety for cyclists and horse riders; however, he noted also his expectation that these modes will make more frequent use of the road on the weekends. Given that, the increased likelihood for heavy

⁷⁷ Including: restricted truck movements during school bus service, weekends and public holidays; hourly movement caps; advance warning signage; measurable and enforceable mechanisms for monitoring and responding to safety concerns.

⁷⁸ Benner EiC, para 33

⁷⁹ Benner EiC, para 34

- vehicles being unable to maintain lane discipline and noting also the DOC submission as relates to increased weekend users of the Remutaka Forest Park, Mr Benner recommended that truck movements to and from the cleanfill should not occur on Saturdays or Sundays⁸⁰.
- 4.98 On the matter of safe sight distances, Mr Benner considered the conditions requiring berm vegetation to be maintained at a low height near the proposed access will enable clear visibility beyond the minimum 181m standard. In his view, northbound drivers will have ample time to see a truck exiting the cleanfill and vice versa.⁸¹
- 4.99 Mr Benner also originally recommended additional conditions requiring a wheel wash station at the exit point of the cleanfill, and repair works to the local road environment where heavy vehicles might lead to accelerated wear and tear.
- 4.100 At the outset of the hearing, I requested further information from the parties regarding the rural school bus service. Mr Benner assisted by clarifying the current operating times of the service, and the existence of four dedicated stops used by the service between the Site and the Wainuiomata urban area. In response to a further question from me on this point, Mr Benner clarified he did not have any particular concerns for the safe operation of the service despite the increase in projected heavy vehicle movements, noting only around 4 truck movements might be expected to coalesce with the bus service on a given day.
- 4.101 Mr Benner also addressed questions I asked on Day 1 by confirming the Council has no planned works to upgrade the condition of Coast Road, but is aware that some repairs are required. He advised that any repairs or upgrades would be subject to Council prioritisation across the network and have an unknown timeframe. Mr Benner clarified also his understanding that Wellington Water have any known works planned to maintain, repair or upgrade existing culverts in Coast Road.
- 4.102 I also asked Mr Benner whether he held any particular concerns associated with increased truck movements and the constrained sightlines for some local residents entering/existing their properties – principally in light of the presentation from Mr Foley. He addressed the geometry of Coast Road in proximity to the Foley’s driveway, noting that the driveway could be fully concealed from a southbound vehicle. Mr Benner added that should an accident occur whereby a southbound truck travelling at 60km/hr struck a car at the driveway access point, it could potentially be beyond a survivable limit. He later clarified that the Foley’s driveway was the only access point of material concern in this regard.
- 4.103 To address that risk, Mr Benner suggested that increased sightlines could be provided by removing or maintaining vegetation to a low height at 1044 Coast Road and potentially 904D Coast Road. When I asked if such mitigation would be commensurate with the level of risk introduced by the proposal, Mr Benner suggested it might not be, but that it would nevertheless be a positive from a safe system perspective.
- 4.104 Further exploring this point, Mr Benner acknowledged that the limiting factor might be vegetation on 904D, and removal of vegetation there is beyond the scope of this application; however, it may still provide some benefit to improve sight lines if possible as relates to 1044 Coast Road. That prompted me to explore alternatives with Mr Benner, include lower speed limits or motion-based indicators of turning vehicles. Mr Benner noted the former is an uncertain and lengthy process, made more difficult with the current Government’s position.

⁸⁰ Benner EiC, para 42-43 & 47

⁸¹ Benner EiC, para 46

While the motion-based indicator may be a useful tool in a more populated or busy area, he did not consider it well-suited to application here.

- 4.105 Mr Clark's view was that Coast Road is able to safely and efficiently accommodate truck movements associated with the proposal. Like Mr Benner, he also considered that the conditions requiring trimming and maintenance of berm vegetation adjacent to the proposed Site access would ensure safe sight distances are achieved in excess of minimum requirements.⁸²
- 4.106 Mr Clark was also aligned with Mr Benner that prohibiting truck movements on weekends would minimise exposure and risk to cyclists; however, he did not share Mr Benner's view that wheel wash facilities and ongoing maintenance responsibilities for damage to Coast Road should be conditions if consent is granted.⁸³ Mr Clark also supported the signage audit recommended by Mr Benner, and confirmed in response to my question at the hearing that the audit should extend from the Site back to the urban edge of Wainuiomata.
- 4.107 Like Mr Benner, Mr Clark turned his attention to available data of recent reported vehicle crashes in the area. Both experts noted that heavy vehicles were not involved in any of the reported crashes. While Mr Benner thought careful attention to the increased truck movements from the proposal is prudent when considering the reported crash types, Mr Clark considered the relevant consideration in that respect is the maintenance of safe sightline from the proposed Site access point, which is assured by the consent conditions.⁸⁴
- 4.108 Mr Clark also addressed the main points raised in Mr James' report in a supplementary statement of evidence he spoke to at the hearing. Mr Clark illustrated how he had considered those points, and confirmed that his overall view on the scale and nature of traffic effects from the proposal was unchanged.
- 4.109 Mr Clark was not in attendance on Day 2 of the hearing, so I asked Ms McIndoe to seek further comment from Mr Clark in relation to the school bus service and sightlines for 925 Coast Road to be attached with her closing submissions.
- 4.110 On the school bus service, Mr Clark provided the following assessment of the four existing bus stops:

365 Coast Road Stop – the road is around six metres wide with narrow 200mm wide shoulders. The road is straight with good sightlines. There is a wide driveway, which I would expect the bus driver to partially park in. Trucks can pass the bus safely, albeit partially on the opposite side of the road.

671 Coast Road – The road is around six metres wide with a very wide (around six metres) and very long unsealed shoulder of around 110 metres. The road has a relatively straight approach from the north and to the south is a moderate bend. The bus can move clear of the carriageway to pick up students. The truck can pass within the traffic lane.

421 Coast Road – The road is around 5.5 metres wide with 200mm wide shoulders. The road is straight with good sight lines. There is a driveway for 421 Coast Road and on the opposite side of the road there is a wide unsealed pull-off area. I am not sure why the bus picks up students on the inbound journey from the opposite side of the road, but I suspect the driver uses the pull-off area, which allows the driver to move clear of the traffic lane. It is unclear if the bus driver uses this area in the afternoon and faces the wrong direction or uses the driveway for 421. If the bus

⁸² Clark EiC, para 4.1

⁸³ Clark EiC, para 4.2

⁸⁴ Clark EiC, para 7.4-7.5

driver uses the driveway the bus will partially obstruct the traffic lane. Trucks can pass safely albeit partially on the opposite side of the road.

The Forest Park Stop – this is located south of the access to the cleanfill and shouldn't create a safety issue.

As noted in the hearing, the legal speed limit past a stopped school bus is 20 km/h.

Based on the pick up and drop off locations my view about the safety of trucks using the road when the school is operating remains as I stated in the hearing. They can operate safely together.⁸⁵

- 4.111 Regarding the access at 925 Coast Road, Mr Clark firstly noted that any visibility shortcomings comprise the existing environment with the access being approved by Council. He added that the sight distances appear to be around 75m in each direction, and given the location in proximity to the sharp bend, Mr Clark estimated that truck speeds here would likely be around 65km/hr.
- 4.112 Mr Clark noted that at 60km/hr, the required safe stopping distance is 64m and at 70km/hr it is 83m under the Normal Design Domain in the relevant Austroads guidance. In Mr Clark's view, while the sight distances are poor, a truck travelling in each direction should be able to stop should a vehicle movement be occurring at the Foley's access point. Mr Clark also considered that the truck volumes from the proposal are unlikely to change the current levels of service for this access and the effects can therefore be said to be minor.
- 4.113 Mr Clark also took the opportunity to further address submitter comments that their traffic count data should be preferred. Mr Clark noted that the data provides a good snapshot in time. He identified that the key point is that the location of the counter is on the faster, straighter section of Coast Road where operating speeds are closer to the posted 80km/hr limit. Mr Clark noted that data aligns well with the speed estimates set out in his evidence. He added that the count data illustrates that some drivers travel at speeds well over the posted speed limit in this location, though they are generally outside the operating times for the cleanfill.

Discussion & findings

- 4.114 Overall, I consider that the adverse effects of the proposal on the safe, efficient function of the transport network will be adequately managed by the conditions of consent such that they are acceptable.
- 4.115 In considering the evidence and presentations on this matter, I firstly note that all parties agreed that the heavy vehicles should not access the Site on weekends in order to minimise potential effects on cyclists and horse riders using Coast Road. This will have the added benefit of avoiding truck traffic on Coast Road when vehicles accessing the Remutaka Forest Park are generally at their highest during normal weeks.
- 4.116 It was also universally supported that the cleanfill not operate on public holidays or long weekends which again will avoid any potential conflict from heavy vehicles where elevated numbers of vehicles may be using the road. There will also be extended periods during summer holidays and all winter months when the conditions preclude operation of the cleanfill.

⁸⁵ Refer Appendix A, Closing legal submissions

- 4.117 While the evidence of Mr Benner and Mr Clark was that the truck movements associated with the proposal could operate without resulting in any adverse safety effects on children and families utilising the local rural school bus, the applicant has nevertheless volunteered to amend the application such that no trucks will operate on Coast Road during times when the bus is operating. I consider this will adequately avoid any safety issues that might have otherwise resulted from trucks and the school bus operating simultaneously.
- 4.118 Related to this, I adopt the consequential change to the conditions agreed by Mr Thornton and Mr Kellow which will allow for a third delivery truck in a given hour provided that the overall number of trucks per day does not exceed the original limit of 18. This is an appropriate refinement to the conditions in my view, given the applicant's offer to limit movements during the morning and evening school bus operation periods.
- 4.119 I am also satisfied that safe sight distances will be maintained for the new Site access through the imposition of Condition 31 and the associated drawing. I rely on Messers Benner and Clark in finding this will ensure vehicles travelling at the posted speed will have ample ability to see trucks entering and existing the Site, and vice versa.
- 4.120 I also accept the shared view of Mr Benner and Mr Clark that the proposed passing bay configuration on the application plans, along with the associated condition will manage on-site manoeuvring requirements appropriately.
- 4.121 I note also that Mr Kellow and Mr Thornton have agreed to the final wording of conditions to manage the design and function of the Site access, including prevention of detritus being tracked onto the road from vehicles exiting the Site. Mr Kellow signalled that the previous recommended conditions relating to the washdown area and a vehicle crossing management / maintenance plan were no longer required as a result. I adopt their recommended changes accordingly.
- 4.122 I also rely on Mr Clark and Mr Benner's shared view that the most appropriate method for addressing any general residual operational safety issues for trucks using Coast Road is through the audit of road signage. While Mr Thornton's preference was that the audit only affect the 100m of Coast Road adjacent to the Site access, I adopt the shared view of Mr Clark and Mr Benner that it should account for the entire length of Coast Road from south of the access to the start of the urban area at Parenga Street. This is recorded in the final condition (#19).
- 4.123 I have also added a specific matter to be addressed in the audit condition to recommend the warning signage in the approaches to 925 Coast Road. I am grateful to Mr Benner and Mr Clark for their detailed consideration of this point. It was evident from Mr Clark's analysis that the existing situation is likely to meet safety design at estimated operating speeds, but is also very close to the minimum distance recommended.
- 4.124 Given Mr Clark's analysis and Mr Benner's related reservations that a crash involving a truck travelling at that lower estimated speed might be beyond a survivable limit in this location, I consider it is appropriate for some mitigation to be applied. That said, the clear evidence presented by multiple parties is that heavy vehicles have historically used this route for forestry and other activities, and may use the route in the future. That is, the usual operation of Coast Road allows for heavy vehicle traffic.
- 4.125 Mr Benner's recommendation of vegetation maintenance, and the potential alternative of lowering the posted speed limits both have limitations as explained by Mr Benner. Furthermore, Mr Benner was equivocal whether these methods are commensurate with the

level of safety risk. In light of these limitations and the agreed position of the transport experts that the signage audit is the primary mechanism to address general residual safety issues in constrained parts of Coast Road, it is appropriate in my view that the audit provides mandatory recommendations on the positions of 'hidden driveway' signs (or similar) in the approaches to the Foley's driveway. Again, this is now required in Condition 19.

Dust effects

Summary of evidence and presentations

- 4.126 Each of the submitters who presented at the hearing expressed concerns about dust generation, sedimentation and other physical earthworks effects. This included concerns about respiratory health impacts, curtailment of time spent outdoors due to nuisance or health impacts and contamination of drinking water from roof collection.
- 4.127 Mr and Mrs Geale added that the anxiety about such impacts would adversely affect their mental wellbeing as well, noting that Mrs Geale suffers from existing respiratory health conditions. The Geales are further concerned that fill material being sourced from urban areas will contain other contaminants, including lead and asbestos, which could compound health risks from dust.
- 4.128 Mr and Mrs Geale also cited Mr Thornton's evidence which identified the prevailing wind direction as being from the northwest. While Mr Thornton suggested that local characteristic is grounds to find that wind will not be blown towards neighbouring properties, the Geales clearly illustrated that their property is immediately downwind from the cleanfill when the prevailing wind conditions are present. Mr and Mrs Geale also challenged Mr Thornton's suggestion that dust generation is already a common effect of existing farming activities and that the cleanfill will result in similar effects.
- 4.129 I asked Mr and Mrs Geale about previous experience they could recall of major dust generation from historical rural activity on the Site. They spoke of generally good farm management practice from previous operators, but noted that in certain conditions, fugitive dust from the Site would reach their land. Mr Geale also gave insight into the swirling nature of the wind in this part of the local valley, and that even when the wind is generally blowing in one direction, it will shift and turn when it interacts with local topography and vegetation.
- 4.130 Mr Foley echoed Mr Geale's comments about the swirling nature of the wind in this part of the valley, noting also the extreme force of the wind in the area. To illustrate the latter point, he noted that special engineering design was required to address wind when the Foleys built their home.
- 4.131 Mr Jackson amplified Mr and Mrs Spence's concerns about dust, expressing doubt that proposed mitigation and suppression will be effective. Mr Jackson echoed the sentiments of other presenters that the area is characterised as a very high wind zone, with winds unpredictably changing direction.
- 4.132 Like submitters who presented before them, Mr and Mrs Johnson were also concerned about dust generation from the cleanfill. They echoed previous comments about the strength and variability of wind in the area, and the potential for fugitive dust to lead to nuisance effects, adverse health effects and contamination of drinking water from roof collection.
- 4.133 Ms Hoffman's presentation on behalf of Mr and Mrs Mitchell raised similar concerns.

- 4.134 I have already traversed the salient aspects of Mr Kellow and Mr Thornton's evidence on dust generation at the outset of section 3 above and do not repeat that here.

Discussion & findings

- 4.135 In light of my earlier discussion on 'dust nuisance' and associated compliance with relevant Plan requirements, my discussion here can be fairly brief.
- 4.136 As noted in Ms McIndoe's closing, the conditions have now been amended so that the dust management plan must demonstrate that the cleanfill will avoid a dust nuisance at or beyond the boundary of the Site, consistent with the permitted activity standards.
- 4.137 The upshot of this is that the cleanfill must not generate dust beyond the boundary of the Site, either suspended in air or such that it visibly accumulates on neighbouring land, buildings, structures or water. Consent has not been sought by the applicant to contravene this standard, so any dust nuisance occurring during the operation will result in compliance implications for the applicant.
- 4.138 This requires the cleanfill to be operated to a high standard to prevent fugitive dust. In the event any nuisance does arise, as Mr Kellow noted, this could result in enforcement action, the Council requesting the applicant to obtain the necessary consents, and/or a revisiting the dust management plan as recorded in the review condition.
- 4.139 I am also satisfied that the dust management plan conditions are fit-for-purpose, including the information requirements recommended by Mr Kellow and Mr Thornton, and the requirement for the plan to be designed in accordance with the current regional guidelines.
- 4.140 Accordingly, I am satisfied that the conditions will ensure any dust effects of the proposal are negligible.

Stormwater and flooding

Summary of evidence and presentations

- 4.141 Both Ms Wilson and Mr and Ms Geale expressed concerns about the proposal to the extent that it would enable a large amount of fill to be placed in a known floodplain. These submitters also voiced concerns that flooding effects will be exacerbated by climate change. The Geales also noted potential upstream impacts from future intensification of Wainuiomata with increased runoff from associated impervious surfaces.
- 4.142 Mr Foley spoke to his observations of existing stormwater flows, in particular the underperformance of the existing culverts that drain the eastern hills under Coast Road into the Site. He noted the presence of local springs in the area which result in permanent base flow in the culverts and associated drainage paths. He added that the culverts are incapable of coping with existing stormflows and that there is associated damage to the road adjacent from historical events. In his view, the proposal will exacerbate these conditions.
- 4.143 As summarised in section 2 above, Mr Jackson's presentation on behalf of Mr and Mrs Spence was comprehensive on stormwater and flooding matters. He noted that the Site is in a high rainfall area, and that this will only be exacerbated by climate change. In his view, the Site being located in such an area, also characterised as a floodplain near a meandering river streams and wetlands makes it a poor choice when considering the WasteMINZ guidelines.

- 4.144 Mr Jackson also spoke to his extensive experience with historical flooding events in the valley. In his view, that experience raised concerns for Mr Jackson as to the accuracy and reliability of Mr Wallace's modelling. For example, Mr Jackson considered that historical photos referenced by Mr Wallace would have been taken after peak flood flows, meaning the model would not be representative of the actual events. He noted also an omission of Mr Wallace considering the latest flood modelling data from GWRC and NIWA, as well as a lack of consideration given to the impact of future intensification of Wainuiomata.
- 4.145 Mr Jackson also expressed concern about the local overland flow path that drains the eastern hill catchments to the River via the Site. Where this flow path enters the Site via the existing culvert under Coast Road opposite the driveway to #919, high flows during heavy rains are known to overtop Coast Road. The culvert itself, as noted above, remains full of water days after even minor rainfall due to local topography and hydrology. Mr Jackson is concerned that the fill proposed on the Site will only make these conditions worse with flow paths being further constrained.
- 4.146 In her presentation, Ms Johnson echoed other submitters observations that this part of the valley has been prone to repeated major flooding events. In the Johnsons' view, while the flood modelling carried out by Mr Wallace can be considered a useful tool, it lacks sufficient consideration of real-world experience of previous events. Like Mr Foley, the Johnsons noted the poor performance of existing culverts and drains in Coast Road and the Site vicinity. In their view, adoption of the precautionary principle in considering risks from hazards is sufficient grounds for withholding consent.
- 4.147 Ms Hoffman also voiced the Mitchells' concerns on flooding, nothing they oppose the filling in the River floodplain and are concerned about the adverse effects that would arise from that, including erosion, increase in peak flows, changes to groundwater hydrology and stress on the River system.
- 4.148 Mr Innes also addressed this issue in his presentation. He noted that while Mr Wallace updated his model to include inflows from the eastern hill areas which were not expressly modelled in earlier analysis, Mr Innes could not see any evidence that the model captures flows on the main overland flow path entering the top end of the application Site. This drainage path, I note, is the same focussed on by Mr Foley, Mr Jackson and Ms Johnson in their respective presentations. Mr Innes also expressed the view that Mr Wallace should have made clear the specific additional flows his updated model allowed for so that it could be clearly understood and tested by others.
- 4.149 Responding to a question from me, Mr Innes clarified that a particular concern he holds for the proposed filling in the floodplain owes to the meandering and historically changeable nature of the River's main flow channel. Mr Innes spoke to his experience that rivers of this nature are subject to dramatic and rapid changes, and that use of flood models for predicting effects of flood displacement and upstream intensification/dwell time in the catchment may not be fully reliable.
- 4.150 As noted above, Mr Wallace utilised a computer model to aid his assessment of flooding effects. The model was based in part on an earlier model calibrated by GWRC, but with updates applied with newer data and refined modelling techniques. The model outputs were compared against photos from historical floods to test confidence in the model's reliability.
- 4.151 Mr Wallace compared the model results for a 100-year flood event simulation for the existing situation and the proposed cleanfill with finished platforms. Mr Wallace assessed the

resulting change in flood depth over Coast Road and around neighbouring dwellings as ‘insignificant’, identifying only small increases in lower-lying portions of neighbouring areas. The changes in flooding effects were assessed by Mr Wallace as otherwise being confined to the Site.⁸⁶

- 4.152 Mr Wallace took some time in his presentation to step through the three key aspects for calibrating the model, being: river bathymetry, roughness and flow parameters. On bathymetry, Mr Wallace advised that his original model relied upon a combination of LiDAR data and river cross sectional data from 2021 sourced from GWRC. Mr Wallace also noted that – in response to Mr Innes’ evidence – he obtained more recent 2025 LiDAR data and compared it to the 2021 dataset. He clarified that there was little difference between the two and that his conclusions would not be changed as a result.
- 4.153 Regarding channel and surface roughness of the floodplain, Mr Wallace’s starting point was roughness data generated by GWRC in 2011. Through his site visit and analysis of aerial photos, Mr Wallace modified the roughness parameters to better reflect current conditions. In some cases, a lower roughness coefficient was applied, whilst in others, the coefficient was increased. An example of the latter was in relation to the stream running along the Site’s eastern boundary with Coast Road, which is now characterised by greater concentration of vegetation than earlier conditions. Mr Wallace also increased the resolution to the spatial variation for other vegetation and roading features; however, he did not modify the roughness parameters for the River channel.
- 4.154 Turning to inflow parameters, he noted that a key starting point was to scale up data from GWRC’s local flow monitor during the 2004 flood event to equate to a 100-year flood with allowance for climate change impacts. Mr Wallace attached peak flow data from GWRC dating back to 1980, which illustrated the 2004 event was by far the largest event measured. He explained also that the 100-year event is typically considered the industry standard design scenario for this type of proposal and location, with larger, less frequent events sometimes being used to assess hazard risk for more significant urban development projects.
- 4.155 Mr Wallace noted that inflows from Scholes Creek and Catchpool Stream were also used in the model. In response to submissions and the evidence from Mr Innes and Ms Duff, Mr Wallace added additional inflows from the hill area sub-catchments to the northeast of the Site, which drain towards the River. Mr Wallace explained that, in adopting this additional allowance for flow, it amounts to double counting that effect, due to the original GWRC modelling for Scholes Creek already allowing for inflows from those sub-catchments. At the hearing, Mr Wallace spoke to a map to illustrate the position of, and relative quantum of flow contributed by, the various sub-catchments that informed the model.
- 4.156 Mr Wallace explained that, as the sub-catchments themselves are ungauged, the appropriate way to estimate flow volume is proportional to the catchment area to the power of 0.8, which is the assumption he applied in the model. To account for the possibility of the model underpredicting flows based on that assumption, Mr Wallace undertook sensitivity analysis by increasing the assumed inflows from the sub-catchments further. The result, as explained by Mr Wallace, was that very little change was observed in the model output.
- 4.157 In considering the model results of the flows from the northeastern sub-catchments, Mr Wallace noted these flows generally flow over Coast Road and are captured by the Stream

⁸⁶ Wallace EIC, para 5.2

channel running along the eastern portion of the Site. Only a small portion of the lower part of the cleanfill area was observed as being inundated from these flows according to Mr Wallace.

- 4.158 In terms of off-site effects, Mr Wallace explained that the model predicted only very small increases to the flood depths in low lying parts of 904D and 904C Coast Road. The underlying flood depths predicted by the model in these lower lying parts of the two properties under the 'without-cleanfill' scenario range from 0.5m up to 2m above ground level. The model predicts an increase of between 10-12mm on 904C and around 15mm on 904D. Mr Wallace also noted that the model predicts all flood flows on the eastern side of the cleanfill to be contained within the Stream channel such that no increase in depth on Coast Road is observed. On that basis Mr Wallace concluded that the cleanfill will not exacerbate the flood hazard on surrounding properties or Coast Road.
- 4.159 Mr Wallace also spoke to earlier sensitivity analysis he undertook with greater assumed roughness in the the River and floodplain. As with the sub-catchment sensitivity analysis he undertook, this earlier work produced little change in model output, which gave Mr Wallace confidence in the model's reliability.
- 4.160 I asked Mr Wallace during his presentation whether he would support the use of a post-construction survey to confirm that the finished fill platforms are consistent with what he has assessed. He confirmed his view that would be a useful addition to the conditions.
- 4.161 Mr Wallace analysed photos attached to Mr and Mrs Johnson's submission against his model results and aerial imagery. In his view, the photos correlated well with the model results which again gave him further confidence in the reliability of the model. He clarified also that he compared the time stamps on relevant photos with available flow information to understand how the observed flow conditions in the photos related to the peak flow of the relevant event. For example, he adjusted the model for the 2021 flood event in light of the 2021 photo by increasing local runoff flows.
- 4.162 Addressing the submitter concerns about the overland flow path from the northeastern sub-catchment, Mr Wallace's observations aligned with submitter views that the roadside culverts adjacent to the northern end of the Site are poorly maintained, with tailwater conditions in the downstream watercourse and partially blocked or silted culvert outlets. To account for this, Mr Wallace calibrated the model to assume the culverts will be ineffective/blocked. The net result observed by Mr Wallace was a small increase in the tailwater in the eastern stream during the 100-year event, and even less during smaller, more frequent events – typically in the order of 20mm or less, with isolated reaches in the watercourse increasing by up to 100mm. In Mr Wallace's view the performance of the culverts will be unaffected by the proposal.⁸⁷
- 4.163 I asked Mr Wallace to consider a hypothetical scenario whereby comprehensive upgrades to the culverts may be carried out in the future, and his view was that overland flows during a 100-year event would still be of such volume that they would likely overtop the culverts and flow over the road. Culverts might help with smaller events on the order of 10-20 year events in his view, but not the larger event he modelled.
- 4.164 Mr Wallace also looked at decades worth of available aerial imagery dating back to the middle of last century to observe floodplain behaviour. The closest the River channel appeared to be to the cleanfill on Mr Wallace's analysis was in the period between 1980-1995.

⁸⁷ Wallace EIC, para 9.14

Since 1995, the channel has been at least 150m from the cleanfill, expanding more recently to 200m. Given that distance and the proposed construction of the cleanfill, Mr Wallace did not hold any concerns associated with future breakout events of the River.

- 4.165 As noted previously, Ms Duff originally signalled her alignment with Mr Wallace that the flood risk from the River as a result of the proposal is less than minor. Like some submitters, however, Ms Duff's EiC noted that Mr Wallace's assessment did not expressly consider localised stormwater and overland flow path hazards.
- 4.166 I asked Ms Duff at the hearing whether Mr Wallace's subsequent model recalibration addressed her concerns in the above respect. She considered that the approach Mr Wallace adopted to assessing the sub-catchments was consistent with best practice for his model type. In her view, the updated model correctly captures the overland flow path that she and submitters sought further consideration of and assesses the effect accurately.
- 4.167 Ms Duff added that long-section data she requested illustrates that there is sufficient change in elevation to maintain flow velocity in the Stream channel to the east of the cleanfill platforms. She noted Mr Wallace's analysis that the Stream channel would be more constrained by the raised platforms, but also that the flood flows would remain in the channel. In Ms Duff's view, a condition requiring the landowner to monitor the Stream channel over time to remove any large debris would further ensure the channel is capable of conveying flood flows without upstream impacts arising.
- 4.168 Mr Wallace subsequently signalled his agreement that such a condition may be of some minor benefit; however, he noted that vegetation growth could have a similar effect and it would be difficult to stipulate appropriate details in the condition. Neither Mr Thornton, nor Mr Kellow subsequently recommended a condition in this regard.
- 4.169 In her hearing presentation, Ms Duff responded to the point raised in Mr Jackson's presentation about Mr Wallace's assessment not being informed by the latest modelling data from NIWA and GWRC. She noted that the NIWA model is built at a national scale and the GWRC model was built at the regional scale mainly to highlight areas of significant hazard risk. When providing flood advice, GWRC relies upon more detailed local modelling rather than the coarser Regional model referenced by Mr Jackson. In this context, Ms Duff stressed the importance of understanding that each model will be designed to suit specific purpose.
- 4.170 In the comments he contributed to the applicant's reply, Mr Wallace signalled his alignment with Ms Duff's appraisal that the NIWA and GWRC models take a more broad-brush approach, with the latter including a caveat that the model is to inform strategic and policy decisions, not property-level decision-making.
- 4.171 Ms Duff noted that GWRC's local model for the River is relatively old and due to be updated. In the meantime, she noted that Mr Wallace's model is newer, with updated data and is more fit-for-purpose for application in this particular context. She noted also that it specifically tests the difference in the pre- versus post-cleanfill scenario, which other models referred to do not.

Discussion & findings

- 4.172 Overall, I consider that the flood hazard risk of the River and the effects of localised stormwater flows have been sufficiently assessed by Mr Wallace. I rely on his assessment and Ms Duff's review in finding the effects of the proposal will be acceptable in both respects.

- 4.173 As noted in section 3, my assessment has been informed by s106A of the RMA, in particular the matters to be taken together at 106A(2)(a)-(d). My assessment has also been informed by my consideration of the NPS-NH and relevant RPS direction on natural hazards and flooding.
- 4.174 While a computer model will not necessarily predict every future flood event with absolute accuracy, I consider Mr Wallace's model is an appropriate tool to utilise and represents the best information available to inform an assessment of likely effects. I rely also on Ms Duff's view that Mr Wallace's model has been appropriately calibrated to inform that assessment, consistent with current good practice. I also accept the shared view of Ms Duff and Mr Wallace that the model is more fit-for-purpose and to a finer level of detail than the NIWA or GWRC Regional models referred to by Mr Jackson.
- 4.175 Furthermore, Mr Wallace has applied appropriate conditions and sensitivities in my view to account for potential model inaccuracies arising from assumptions used, inclusive of more recent updates to account for in-flows from local sub-catchments. The model also accounts for the effects of climate change out to a 100-year planning horizon and correlates well with the evidence of historical flooding events discussed by submitters.
- 4.176 I rely on Mr Wallace and Ms Duff's shared view that the modelled change in flood depths on neighbouring properties as a result of the proposal does not amount to an increase in hazard risk. The observed increases are in the order of 10-15mm over land where underlying flood depths are predicted to be 500mm to 2m. Moreover, no increase in flood depth is predicted on Coast Road as a result of the proposal. In my view, it is reasonable to conclude these effects are no more than minor.
- 4.177 I note also my satisfaction that existing requirements in the Plan will suitably address increased runoff potential in Wainuiomata from future urban development. As noted by Ms McIndoe in her closing submissions, existing policies and rules in Chapters 4F and 5E of the Plan require new development in the main urban areas of Wainuiomata to be hydraulically neutral. This sets a regulatory imperative for new urban development that post-development flows should not materially increase relative to pre-development conditions – or where that does occur, an assessment on downstream effects of allowing that increase will be assessed through a resource consent process.
- 4.178 Regarding Ms Duff's recommendation that the Stream should be monitored over time to ensure that any large debris is removed to prevent blockages, I accept Ms McIndoe's submission that there are some practical difficulties in framing such a condition. As noted by Mr Wallace, heavy vegetation growth in the Stream could have the same or similar impact as large debris; but as noted by Ms Duff in response to my questions, it is not desirable to maintain vegetation in the Stream too heavily so as to avoid increasing velocity and the associated possibility of increased scour and erosion. There is likewise a need to be express about what constitutes 'large debris' for the purposes of monitoring and enforcement.
- 4.179 Moreover, Ms Duff did not present any evidence to suggest that the up-stream conditions are conducive to regular blockage in the Stream within the site due to mobilisation of large debris. Should an unforeseen effect arise from blockage, and it is not otherwise addressed by the applicant through its own land management practice, this could be an appropriate issue for the review condition to address.

Other matters

Overview

- 4.180 I briefly detail several other matters arising from the submissions and hearing, comprising the following:
- a. effects on recreational values;
 - b. ecological effects;
 - c. requests for Site surveys;
 - d. cultural effects;
 - e. cross-boundary considerations with GWRC's jurisdiction;
 - f. effects on land productivity; and
 - g. cumulative effects.

Effects on recreational values

- 4.181 This issue stems from submissions raising concerns about the impact of the cleanfill on recreational users of the Wainuiomata River and Remutaka Forest Park.
- 4.182 In the latter respect, I understand from the 20 November 2025 letter provided by Mr Brent Tandy on behalf of DOC, that the department met with representatives from the applicant to discuss its submission on the application. Mr Tandy signalled that DOC's concerns regarding users of the Park and the associated use of its field office were sufficiently addressed in the proposed amendments to the conditions volunteered by the applicant prior to the start of the hearing.
- 4.183 Overall, I consider the submitter is best placed to speak on the associated effects on its users and accept at face value the department's satisfaction that the proposal has been appropriately modified. There is no other evidence to find the cleanfill will adversely impact recreational values associated with the Forest Park.
- 4.184 Regarding users of the River, I adopt Mr Kellow's analysis that the proposal will not result in unacceptable effects. Public access to the river is not impeded by the proposal, and the separation of the cleanfill from the River's esplanade is generally some 195m away. Based on the evidence before me, including the shared view of the landscape experts, I do not consider the proposal will reduce recreational values for users of the River.

Ecological effects

- 4.185 This issue also stems in part from the DOC submission, particularly in relation to lizard habitat on the Site. Submitters raised issues relating to freshwater quality, aquatic habitat and fish passage, which I address below in the context of cross boundary issues.
- 4.186 My consideration of this matter has also been informed by the assessment from RMA Ecology commissioned by the applicant as attached to the application.
- 4.187 As with the recreational effects matter above, Mr Tandy's letter signalled DOC's satisfaction that potential effects on lizard habitat would be sufficiently managed by the conditions ultimately volunteered by the applicant. This includes, most notably, a requirement to implement a protocol in the event a native lizard is sighted. I rely on that advice, noting also

that the department's herpetologist agrees with the applicant's ecologist that the Site does not comprise suitable lizard habitat and are unlikely to be present.

- 4.188 As noted above, the inclusion of native terrestrial and wetland plants through mitigation planting will have positive ecological effects, noting the conclusion in the applicant's assessment that there will be a net biodiversity gain as a result of the proposal. I also adopt RMA Ecology's view that the setbacks from waterways and wetlands, combined with appropriate erosion and sediment controls will sufficiently manage associated freshwater habitat values.
- 4.189 For the above reasons, I consider that any adverse ecological effects will be managed by the conditions such that they are no more than minor, and the net environmental result for ecosystem values at the completion of the operation will be positive.

Requests for Site surveys

- 4.190 This issue derives from Mr Innes' evidence and his recommendation that a full LiDAR scan of the property be undertaken. Mr Innes clarified in a line of questioning from me on this point that his recommendation for full LiDAR survey of the entire Site related to the historical compliance issues he raised in his evidence; however, he advised also that it would be useful for establishing a future benchmark for compliance should the cleanfill proceed.
- 4.191 On that point, I asked Mr Innes whether he was present for Mr Liddicoat's presentation, and in particular whether the high-resolution drone imagery used as a reference by Mr Liddicoat would provide a suitable alternative to LiDAR in Mr Innes' view. Mr Innes clarified that he was not sufficiently experienced with the drone survey method to provide any comment on its relative suitability.
- 4.192 I took the opportunity to ask Mr Innes the same question I put to Mr Liddicoat and other experts whether future survey data – say in the form of data collection points at the top of finished cleanfill platforms for each stage – would be useful for confirming the operation of the cleanfill is consistent with the details of the consent application should consent be granted. Mr Innes reiterated his preference that the cleanfill not proceed, but that such an approach would be appropriate for demonstrating ongoing compliance.
- 4.193 Mr Liddicoat shared Mr Innes' view in this latter respect; however, he did not share Mr Innes' view that a full LiDAR survey of the Site is required. In his view, such investigations would be redundant to the drone survey already completed, adding that the survey was carried out by a licensed surveyor using photogrammetry techniques and that this would provide a suitable benchmark for future compliance without additional LiDAR.
- 4.194 Ultimately, all experts appearing at the hearing agreed that post-completion surveys of each stage would be an appropriate tool to apply to confirm finished platforms are as proposed and assessed in the application. I accordingly adopt the condition requiring this as eventually recommended by Mr Thornton and Mr Kellow. This, combined with the existing drone imagery survey commissioned by the applicant should provide a sufficiently clear and enforceable basis for determining future compliance.
- 4.195 To the extent that Mr Innes' evidence and recommendations regarding the need for LiDAR survey also relate to questions of historical non-compliance by the applicant, I am ultimately limited from acting on those recommendations by my delegation.
- 4.196 Ms McIndoe addressed this in detail in her closing submissions, including as it related to Ms Johnson's presentation and associated reference to documents Ms Johnson obtained from

GWRC relating to previous compliance investigations. As noted by Ms McIndoe, none of those documents tabled by Ms Johnson confirm that GWRC has issued any abatement notices, enforcement order, infringement notice or conviction under the RMA. By extension, the documents do not disclose non-compliances which require consideration under RMA sections 104(2EA) or 108(da).⁸⁸

- 4.197 I accept Ms McIndoe's submissions in this respect, as well as her appraisal of how this relates to my delegation in these proceedings. Namely, I have no delegated authority on matters outside of the consent application, including any retrospective inquiry powers into past practice by the applicant.
- 4.198 Ms McIndoe clarified also that the applicant holds four existing resource consents from GWRC for activities on the Site, inclusive of authorisation to extract gravel from, and carry out works within, the River. Some of these existing authorisations may well relate to certain changes to the Site Mr Innes drew my attention to, but irrespective it is not for me to investigate that or take the question of historical compliance any further. Delegation for such matters sits with GWRC and the Council.

Cultural effects

- 4.199 Some submitters questioned whether the proposal is consistent with relevant mana whenua values, and/or asserted the proposal would result in adverse cultural effects.
- 4.200 Mr Innes also included spatial analysis of land to the south of the Site he considered to have historical value to mana whenua, inviting me to classify that land as a site of significance in a manner similar to the method utilised in the proposed District Plan⁸⁹.
- 4.201 While no iwi authority was identified as an affected party or included in the list of parties who were notified of the application, Mr Kellow clarified that Port Nicholson Settlement Trust were informed of the application consistent with usual Council practice. The Trust was given the opportunity through that process to identify any concerns with the proposal and to provide information that might inform the Council's notification and decision-making processes. As noted by Mr Kellow, no comments were received.
- 4.202 In considering this matter, I record that I have no indication from mana whenua whether or not the proposal would affect relevant cultural values for the Site or wider area. I likewise make no direct inference from the lack of comment from the Trust as an indication of its likely view. I simply note that iwi have been invited to comment and have chosen not to do so.
- 4.203 I also record my reluctance to adopt Mr Innes' suggestion that I should effectively treat land to the south of the Site as a de facto site of significance to Māori. This is not the appropriate forum for such an exercise, nor has my consideration of that possibility been informed by relevant mana whenua input.
- 4.204 Based on the information before me, there is no evidence that would weigh against the granting of consent due to cultural effects.

Cross-boundary issues

- 4.205 Several submissions raised concerns about effects which are relevant to matters under GWRC's jurisdiction and/or where GWRC and Council's jurisdiction coalesce. These include:

⁸⁸ Closing legal submissions, para 8.1

⁸⁹ Noting the sites identified in the notified proposed plan overlay have been withdrawn as at January 2026

water quality; fish passage; wetland hydrology; soil contamination; and erosion and sediment control.

- 4.206 In relation to the first three of these matters, I consider water quality effects, fish passage and wetland hydrology to be relevant to GWRC's functions as administered under the Natural Resources Plan and National Environmental Standards for Freshwater. It is not for me to consider those matters except to the extent that the proposed land use activity subject to this application takes integrated management direction from the NPS-FM. I find my consideration in that respect can largely focus on erosion and sediment control, which I turn to shortly.
- 4.207 Regarding soil contamination from deposited fill materials, I ultimately accept the shared view of Mr Kellow and Mr Thornton that such matters need not be managed by the application before me. In my view, this matter, including the frequency and process for testing imported fill relates to GWRC's functions to control discharges of contaminants to land under RMA section 30(1)(f). This contrasts with Council's function under section 31(1)(b) to prevent or mitigate effects of the development, subdivision or use of land that is already contaminated. For these reasons, and noting also that the GWRC consent includes extensive conditions for the management or avoidance of soil contamination, I adopt Mr Kellow and Mr Thornton's view that such measures should not be duplicated in the conditions for this application.
- 4.208 Turning lastly to erosion and sediment control, I consider this to be a matter where Council should maintain some oversight in the exercise of consent, particularly in light of the integrated management direction of the NPS-FM. Mr Thornton's point is well-made that where unnecessary duplication of administrative functions can be avoided, it should be. I also adopt his view that where consent conditions relate to a common issue across district and regional applications – such as bulk earthworks – the conditions should generally be aligned, unless there is good reason to do otherwise.
- 4.209 That said, each Council's functions relate to different aspects of the earthworks activities. A notable difference in this respect is that GWRC will have a greater focus on water quality outcomes from the discharge of stormwater carrying suspended sediment from worked areas; whereas, the Council's relevant function relates to the control of the effects arising from the use and development of the land.
- 4.210 Taking one of the erosion and sediment control plan conditions recommended by Mr Kellow as an example, relevant information requirements include locations of temporary stockpiles, and the nature of stabilisation and rehabilitation methods for worked areas. These matters relate to regional considerations such as impacts on wetlands and waterbodies; however, their design and implementation will also have implications on the nature and duration of associated landscape and visual effects. To achieve good integrated management of these earthworks-related matters, I share Mr Kellow's view that Council is warranted in maintaining a certification and review role in the administration of the erosion and sediment control plan.
- 4.211 It may be that one of the Councils takes a lead role in the future administration of the control plan and Ms Martin noted at the hearing that Council is very familiar in working collaboratively and efficiently with GWRC on these very types of cross boundary matters. I accordingly have adopted Mr Kellow's recommendation that conditions 36-38 be retained, noting my alignment with Mr Thornton signalled above that their drafting is common to the

related conditions imposed by GWRC. I have also added a note under these conditions signalling the intent for administrative alignment where possible.

Land productivity

- 4.212 My consideration of this matter has been affected by the recent amendments to the NPS-HPL as discussed above. As the Site is no longer deemed highly productive land in the NPS, the attendant policy direction regarding inappropriate use and development is no longer applicable. I note the direction in the RPS regarding Class 1 and Class 2 soils is also not relevant.
- 4.213 In contemplation of this change, Mr Kellow and Mr Thornton recommended that certain agreed conditions could be deleted if the NPS-HPL is amended to exclude Class 3 soils from highly productive land. That included deletion of a clause under the condition dedicated to site rehabilitation, and deletion of three conditions relating to the preparation, certification, content, and implementation of a topsoil management plan.
- 4.214 While their recommendation is appropriate in the context of the NPS-HPL and the RPS, regard must also be given to the general direction in Objective 8B 1.1.4 in the Plan to ensure topsoil removal sustains the intrinsic values of the land, and the associated direction under related Policy a. that topsoil removal only occurs where the intrinsic values of the land can sustain that activity.
- 4.215 While these provisions do not speak to the highly productive nature of soils in the same way as the NPS-HPL or RPS, they use directive language and set a clear expectation that intrinsic values of soils subject to topsoil removal are not lost. The associated explanation and reasons to the objective and policy make clear that land subject to topsoil removal should be rehabilitated to a state that ensures long-term sustainability for plant growth. The explanation and reasons also set out that a site analysis and a rehabilitation plan will be required.
- 4.216 In this context, I have considered the applicant's productive land assessment, which provides the following key information:
- a. addition of the cleanfill layer under the topsoil will have only a minor impact on the underlying gravel layer becoming compacted;
 - b. where soil macro-structure is a key component of productive capacity, excavation can lead to a lower productive capacity – observations of Site indicated the soil structure is poor;
 - c. the likely key to the Class 3 status of the existing Site soils is the soil texture and microstructure – and these features present a lower risk in reduced productive capacity from excavation and repacking;
 - d. the soils of the Site are well suited to modification through excavation and reinstatement; and
 - e. the establishment of the cleanfill is unlikely to cause a reduction in productive capacity where appropriate design and management is incorporated.
- 4.217 For the reasons above, I consider that the rehabilitation condition should retain a requirement to reinstate stripped topsoil after cleanfilling in a manner that maintains its intrinsic value to support uses compatible with the pre-cleanfill situation. Given the applicant's assessment that the operation presents a low risk to reducing productive

potential, and given the land is no longer deemed ‘highly productive’ in a statutory sense, I accept Mr Kellow and Mr Thornton’s recommendation that the topsoil management plan can be removed from the condition set.

- 4.218 I am satisfied that, with the drafting of the clause added to the rehabilitation condition, combined with the requirement for compliance with the condition to be demonstrated by a qualified expert, the intrinsic value of the topsoil can be sustained and the impact on the productive capacity of the land will be no more than minor.

Cumulative effects

- 4.219 The definition of ‘effect’ in the RMA includes any cumulative effect which arises over time in combination with other effects.
- 4.220 I was not made aware of any activities or processes occurring in the local environment which, when combined with the effects of this proposal, would result in cumulative effects of any concern.
- 4.221 I adopt Mr Kellow’s view that such effects are less than minor. In the event that such effects arise in the future, the review condition will allow an appropriate means to investigate the extent to which this proposal contributes to those effects and, if necessary to address those effects through changes to the operation.

Conditions (s104B(b))

- 4.222 I have discussed various conditions in the preceding sections. In addition to those more detailed comments, I note I have reviewed all of the conditions to ensure they are fit-for-purpose and valid.
- 4.223 With the application of the conditions attached, I find the proposal will sufficiently avoid, remedy or mitigate any adverse effects and will also result in positive effects as I have outlined above.

Part 2

- 4.224 Decisions on resource consent applications are ‘subject to Part 2’ of the RMA, which sets out the Act’s sustainable management purpose.
- 4.225 Ms McIndoe referred me to relevant caselaw⁹⁰, which provides that it is unnecessary to refer back to Part 2 if the relevant provisions of the applicable planning instruments have already given substance to the purpose and principles in Part 2.
- 4.226 There is no evidence before me to suggest that there are any gaps, inconsistencies or other reasons to revert to Part 2 on this application.

⁹⁰ *RJ Davidson Family Trust v Marlborough District Council*. CA97/2017 [2018] NZCA 316

5.0 Decision

- 5.1 For the reasons set out above and acting under delegated authority on behalf of the Hutt City Council, consent is hereby **granted** to Kakariki Estate Limited for land use to establish and operate a cleanfill at 1044 Coast Road, Wainuiomata.
- 5.2 Consent is granted subject to the conditions set out in **Appendix 1**.

Date of Decision: 2 February 2026



Jason Jones
Independent Commissioner

APPENDIX 1

Conditions of Consent
(attached separately)