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planning and environment

WAINUIOMATA CLEANFILL COMPLIANCE

COMPLIANCE ASSESSMENT 4

20 May 2022

USE OF THIS REPORT

This report has been prepared by The Catalyst Group at the request of our client for the purposes for which they intended. Where we have relied on information from external sources, we have referenced these sources as appropriate and assumed them to be accurate. If you are unsure about interpretation of the content of this report, or its use beyond that for which the client intended, please get in touch with us at enquiries@thecatalystgroup.co.nz

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Council*

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CONTRACT REPORT NO:

2022/177

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TABLE OF CONTENTS

- 1. Overview..... 2
 - 1.1 Purpose..... 2
 - 1.2 The Cleanfill 2
 - 1.3 Scope of Assessment 3
 - 1.4 Documents Reviewed3
 - 1.5 Limitations and Assumptions.....4
- 2. Compliance Ratings4
 - 2.1 Compliance Assessment – Summary of Findings4
- 3. Discussion5
 - 3.1 Noise Monitoring.....5
 - 3.2 Complaints.....5
- 4. Summary6

- Appendix A: Wainuiomata Cleanfill – Consent Condition Review.....8

Tables:

- Table 1: Compliance Taking Colour Codes and Description. 4
- Table 2: A full assessment of compliance with the conditions of consent8



1 OVERVIEW

1.1 Purpose

This report documents the results of the fourth external compliance assessment for the Wainuiomata Cleanfill prepared for the consent holder, Hutt City Council. This compliance assessment has been completed by Emily Burns, Marine and Freshwater Scientist at The Catalyst Group (“TCG”) with the assistance of Greg Carlyon, Director.

The deliverables associated with this contract are as follows:

- Review documentation obtained for the Council.
- Undertake a site visit with representatives from the Council and the Community Liaison Group (“CLG”).
- Produce a report for the Council.
- Present the report to the Council and CLG.

This assessment has been prepared pursuant to Condition 25 of resource consent RM190050, which requires the consent holder to *“engage an independent audit of the site on a six (6) monthly basis to ensure that the site is operating in accordance with the conditions of consent”*.

Where I have referred to “the consent holder” or “the consent authority” these are two separate roles held by the Hutt City Council. Alternatively, where I have referred to “the Council” this is a general term and neither refers specifically to the consent holder or the consent authority but the Council as a form of local government.

1.2 The Cleanfill

The Wainuiomata cleanfill site was originally part of a larger lot that included the Wainuiomata wastewater treatment plant (“WWTP”). The site is located at 130 Coast Road, Wainuiomata. On this lot, the WWTP was partly decommissioned in September 2008 and the site was then used as a cleanfill. Hutt City Council and Greater Wellington Regional Council granted resource consent for this cleanfill in August 2011.

The resource consent that was granted in 2011 covered a two stage fill over the course of six years between 2011 and 2017. Stage one involved the creation of a bund to line the site at the Northern side alongside Ngaturi Park. The second stage involved the creation of a bund round the West and Southern sides. This was not completed by the prior consent period end in 2017 but has since been fully filled. In November 2019, the land use consent was renewed to provide for Stage 3; a Southward expansion with additional cleanfill on the site of no more than 12 metres above ground height.

1.3 Scope of Assessment

This report assesses the compliance status of the site with Resource Consent RM190050 held by the consent holder during the assessment period of 30 July 2021 to 2 March 2022. The scope of this assessment covers the conditions outlined in the forementioned consent and does not assess any matters external to this consent. Such matters include:

- Whether the cleanfill operation is consistent with any other National Environmental Standard, or district and regional plan requirements (e.g., compliance with permitted activity standards).
- Any related compliance processes, including the use of enforcement tools.
- The appropriateness of any conditions of consent.
- Matters relating to the relationship between the consent holder and any other party except where requirements are explicitly set out in the consents.
- Matters relating to the Regional Council consents.

This report represents the fourth 6-monthly compliance assessment of consent RM190050. The previous three assessments were undertaken in August 2020, February 2021, and July 2021.

1.4 Documents Reviewed

The following material has been reviewed in preparing this assessment:

- Decision by Independent Commissioner Mr Robert Schofield in relation to a resource consent application made by Tonkin & Taylor Ltd (“T&T”) on behalf of the Council for the expansion of the existing cleanfill at 130 Coast Road, Wainuiomata, dated 18 December 2019 (the “Decision”).
- Wainuiomata Cleanfill Compliance Report 1, prepared by TCG, dated 13 August 2020.
- Wainuiomata Cleanfill Compliance Report 2, prepared by TCG, dated 24 February 2020.
- Wainuiomata Cleanfill Compliance Report 3, prepared by TCG, dated 23 August 2021.
- Site Management Plan (“SMP”) for Cleanfill Operations, prepared by T&T, dated February 2020 (November 2020 update following CLG request)
- Wainuiomata Cleanfill - Draft Noise Management Plan, prepared by T&T, dated February 2020
- CLG meeting minutes from August 2021
- CLG meeting minutes from February 2022
- Complaints register held by the consent holder, looking at entries between 30 July 2021 and 2 March 2022
- Quarterly Wainuiomata Environmental Report (the Dashboard) for the CLG (Aug – Oct 2021) Accessed 10 May 2022
- Quarterly Wainuiomata Environmental Report (the Dashboard) for the CLG (Nov – Jan 2022) Accessed 10 May 2022
- Noise Survey - Peer Review, prepared by Marshall Day Acoustics (26 October 2021).
- Various email communications between the consent holder and regulatory authority, and members of the community (including the CLG), within the assessment period.

1.5 Limitations and Assumptions

This audit relies upon information provided by the consent holder as well as observations made during the site visit on the 3 March 2022. The Catalyst Group team member who prepared this audit was not involved in the previous three audits, so knowledge of prior compliance issues is based on a review of the findings of previous reports.

2 COMPLIANCE RATINGS

The assessment provides a compliance rating for each condition of consent as well as an overall rating for the consent. Table 1 provides a description of the compliance ratings used in this assessment.

Table 1: Compliance Taking Colour Codes and Description.

Compliance Rating	Description
Compliant	Fully compliant with the requirements of the condition.
Non-compliant	Non-compliant with one or more requirements of the condition.
Not assessed	Not enough information is available to assess compliance with one or more requirements of the condition.
Not applicable	The condition is not currently applicable (e.g. it has already been complied with, or compliance is not required during the timeframe of this assessment).

2.1 Compliance Assessment – Summary Of Findings

The Appendix provides a full assessment of compliance with reference to each condition, as well as comments on the reasoning behind the assessment. There are areas where the site has been scored as compliant with an advisory note of improvements to be made. These areas require attention to ensure future compliance with the consent.

Overall, the cleanfill was assessed as NON-COMPLIANT with the consent conditions outlined in consent RM190050.

3 DISCUSSION

3.1 Noise Monitoring

Condition 16 of consent RM190050 requires the consent holder to:

“Undertake noise monitoring of the cleanfill within 30 days of work commencing within Stage 3 and thereafter at three (3) month intervals unless otherwise agreed by the Team Leader Resource Consents, Hutt City Council.”

These results must then be made available to Hutt City Council within two weeks of monitoring taking place. These results can be used to assess whether the operator is compliant with Condition 12 which states noise limits to be adhered to during operation. The requirements of this condition are as follows:

“Noise from any cleanfill deposition activities (excluding emergency and construction works) shall not exceed the following levels when measured at or within the notional boundary of any dwelling existing at the time the consent is granted:

- a. Monday to Friday (excluding public holidays) 7.30 am to 5.00 pm – 50 dB LAeq
- b. Saturday (excluding public holidays) 7.30 am to 12.00 pm – 50 dB LAeq
- c. All other times - 40 dB LAeq
- d. 10.00 pm to 7.00 am (all days) – 75 dB LAfmax”

Accordingly, noise monitoring was carried out on 24 and 30 September 2021 by Tonkin and Taylor (T+T) on behalf of the consent holder and the follow up report for this was produced on 13 October 2021. This report was peer reviewed by Marshall Day Acoustics in a MEMO dated 26 October 2021. Both Marshall Day and T+T were in agreement that the consent holder was compliant with Condition 12 at three of the four monitoring locations. A 3dB exceedance for the day limit was recorded at 199 Coast Road as 53dB LAeq. Marshall Day specified that this difference would be just perceptible by the general populace, however it is an exceedance. To this end, recommendations were made to the consent holder regarding how the noise can be limited further to ensure compliance going forward.

A second round of noise monitoring was scheduled to take place during the assessment period. This was due to take place in December 2021, however it did not go ahead as planned. This was due to no operations occurring at the site at the time of the independent noise expert’s visit. The consent holder must make sure to arrange noise monitoring for a time when a representative sample of day-to-day operations at the site can be gathered.

3.2 Complaints

During the assessment period of 30 July 2021 to 2 March 2022, there were two complaints received by the consent holder as well as email correspondence surrounding unauthorised motorbike access on site. These are as follows:

- Cleanfill operating out of consented hours on 27 May 2021 (received 19 August 2021)

- Noise report shows a breach of 3dB at one site (received 28 October 2021)
- Email correspondence with council staff in relation to unauthorised motorbike access to the site.

We note that the complaints register and council reporting in respect of complaints is not consistent with the record above. In addition, several other complaints made through various mediums to council have not been logged or addressed. By way of example, we have since been made aware of complaints relating to unauthorised motorbike access to the site, breaches of confidentiality associated with complainants and lack of timely response to queries in relation to landfill management/ operation through the covid closure period.

The complaint associated with a breach of hours for cleanfill disposal to site was supported by photos provided by the complainant. While the activity associated with this complaint occurred in the previous period, the complaint itself arrived in the period of this audit, meaning it is appropriate that the complaint is addressed. The landfill operator and consent holder have declined to accept the position advanced by the complainant and have further suggested the complainant provides an affidavit in support of the complaint. In my opinion, it is appropriate to accept the evidence of the complainant on face value, which indicates a breach of the conditions associated with landfill operating hours. However, I note that the time identified for the breach was marginally outside of the landfill hours and therefore minor in extent

It is acknowledged by the landfill operator and council that unauthorised access to the site is occurring by motor bikes. There is a long record of communication with council on this matter and the issue remains unresolved. This issue is not addressed by consent conditions. However, I have commented on it in my concluding remarks to this report.

4 SUMMARY

This audit is the final one for a full operating period of the cleanfill. Any further assessment will address the closure and restoration more fully.

Several matters were identified to be non-compliant through the audit process, including noise, hours of operation and unapproved operators disposing of cleanfill. These matters were determined to be non-compliant. I note that in the main the level of non-compliance is low, however the conditions are subject to clear numerical thresholds and descriptors for activity for which the consent conditions do not allow variants.

In addition to the non-compliance associated with the conditions there are a several matters of concern raised by the community. This includes the general level of communication from the cleanfill operator and council, breaches of privacy and confidentiality, site management (restoration) and unauthorised motorbike use. In my view, the record of communication between community stakeholders and council demonstrates a low trust environment and high levels of tension with respect to the cleanfill operation. The council has an overriding obligation to operate the cleanfill as consent holder, monitor and enforce the conditions as compliance agency and engage with stakeholders in good faith. While I acknowledge that this is difficult to do at times, those obligations have not been met on several occasions through the last period. This position is not well assisted by the lack of consistency between the record of incidents held by council, recording of complaints from community stakeholders and reporting to council.

The closure of the cleanfill should address a large number of outstanding issues and it is hoped that council

will actively engage with the cleanfill neighbours for the purposes of restoration and rehabilitation of the site post closure.



Appendix A: Wainuiomata Cleanfill – Consent Condition Review

Table 2: A full assessment of compliance with the conditions of consent is provided below.

Cond. #	Consent Condition	Assessment (March 2022)	Compliance Status
1	That the proposal is carried out substantially in accordance with the information and approved plans submitted with the application and held on file at the council.	Generally, the cleanfill is operating in accordance with the submitted plans. The consent holder is participating in regular CLG meetings and is in ongoing communication with the consent authority.	
2	That the consent holder keeps a copy of this decision on site when work starts and makes it available on request to council staff.	A copy of the consent was sighted during the audit.	
3	The consent holder shall ensure that cleanfilling is undertaken in accordance with the publication A Guide to the Management of Cleanfills by the Ministry for the Environment (2002), or any superseding guidance document released and ratified by the Ministry for the Environment. a) Only material such as clay, soil, rock, concrete, dry asphaltic concrete, glass, ceramics, tiles, or brick that are free of combustible or putrescible components or hazardous substances or materials likely to create a hazardous leachate by means of biological breakdown, shall be deposited within the cleanfill site. b) Materials considered to meet the above definition are outlined in Table 4.1 of the publication A Guide to the Management of Cleanfills by Ministry for the Environment (2002).	An assessment of the cleanfill face, discussions with parties at the site visit, materials acceptance criteria and knowledge demonstrated by the site manager indicated compliance with Condition 3.	

Cond. #	Consent Condition	Assessment (March 2022)	Compliance Status
4	<p>Prior to accepting cleanfill material from off-site, the consent holder shall submit for approval to the Team Leader Resource Consents, Hutt City Council, a Site Management Plan (SMP) in accordance with Ministry for the Environment's "A Guide to Management of Cleanfills" dated January 2002 or superseding guidance documents. The SMP shall outline the proposed operation of the cleanfill, including the procedures and controls to manage the site, and at a minimum shall include descriptions of:</p> <p>...1 All works on site must be in accordance with the SMP and any subsequent amendments to the SMP must be to the satisfaction of the Team Leader Resource Consents, Hutt City Council.</p>	<p>As noted in the audit for the period ending July 2021, there is inconsistency with relation to complaints received, responses to those complaints and reporting in line with the site management plan.</p> <p>Determinations made to close the cleanfill for a period of time through late December 2021 were undertaken in a way that was inconsistent with the protocols set out in the management plan. The incidents and communication responses from council were less than minor in the context of effects generated on a per incident basis, but more significant on a cumulative basis.</p> <p>Accordingly, consent holder is not operating on a basis that is in accordance with the SMP.</p>	
5	<p>Prior to accepting cleanfill material from off-site the consent holder shall invite local residents and any other interested members of the community to participate in a Community Liaison Group (CLG). This group will thereafter meet on a three-monthly basis following the commencement of the consent (or at a timeframe otherwise agreed by the parties involved) and shall give the opportunity for residents and Council representatives to discuss operations and environmental remediation at the Cleanfill. Invitations will be sent to CLG members at least 4 weeks prior to suggested meeting days. The minutes from these meetings shall be provided to the Team Leader, Resource Consents within three (3) working days of the meeting occurring. The primary purpose of the CLG is to provide a mechanism for the consent holder and community members to meet in person and discuss operations at the site. This includes, but is not limited to:</p> <ul style="list-style-type: none"> • Providing comment on the draft SMP as specified under 	<p>The CLG meets on a regular basis and receives significant time investment from community members and representatives as well as council staff. The most recent meeting was held on 24 February 2022. The minutes are provided to the Team Leader within three working days of each meeting.</p> <p>I note that there are significant unresolved issues between parties to the CLG. In my opinion, these will only be addressed with improved level of communication from council staff and the closure of the cleanfill.</p>	

Cond. #	Consent Condition	Assessment (March 2022)	Compliance Status
	condition 6 below • Informing CLG participants of construction activities, as required under condition 14 • Consultation on the draft Environmental Restoration Plan, as required under condition 23 • Review of the findings of the independent audit as required under condition 25 • Informing CLG participants of any operational changes at the site, and • Providing feedback to the consent holder about the operation of the cleanfill.		
6	Prior to submitting the SMP to Hutt City Council for approval, the consent holder shall provide a draft copy of the SMP to members of the CLG and submitters to the Stage 3 consent and provide them with the opportunity to provide comment upon the document. Where comments have not been accepted the reasons why shall be included with the submission of the SMP to HCC. CLG members and submitters shall be provided a minimum period of five (5) working days to review and provide comments.	Compliance with this condition was confirmed in the previous audit.	
7	Prior to accepting cleanfill material from off-site the consent holder shall seal the access road internal to the site between the site gate and the site entrance kiosk shown in Drawing 84466.005-20 attached in Appendix D of the AEE.	Compliance with this condition was assessed in the previous February audit and not considered here as this event is outside of the assessment period and is captured in the compliance register.	

Cond. #	Consent Condition	Assessment (March 2022)	Compliance Status
8	Within three (3) months of the Stage 3 operation commencing the consent holder shall install a portable wheel-wash on-site. This wash should be appropriately sized to cater for the heavy vehicles visiting site, should be of a pressure washing variety and should be designed to recycle wash water. Prior to the installation all practicable measures shall be undertaken to avoid unreasonable material from being tracked onto Coast Road. In the event material tracks onto Coast Road, it must be swept clear within 12 hours of being deposited.	The wheel wash is in operation (sighted during the site audit). It is assessed as compliant.	
9	No more than 75 trucks per day shall be permitted to access the site for the purpose of depositing cleanfill material.	The dashboard shows that between August and January the maximum number of truck movements on site was 75. This condition is assessed as compliant.	
10	The consent holder will ensure that access to the site for the purpose of cleanfill deposition is granted only to approved commercial operators.	A register is maintained on site detailing the operator that has visited along with accompanying information. If the operator is not registered, the necessary forms are provided if necessary. Our identifying information was obtained before we entered the site. A complaint identified to council (RF560564) identified the potential discharge of domestic waste at the cleanfill (photos supplied 21 January 2022). An assurance was not provided by the cleanfill operator that this material was deposited by a registered operator. The overall assessment is non-compliant.	
11	Within one month of the completion of each sub-stage of the Stage 3 filling (as identified in the fill sequencing plan identified in the SMP), the consent holder shall ensure that the particular sub-stage is progressively stabilised (i.e. via hydroseeding or similar mechanism). The stage should then be monitored and maintained until 80% grass cover has been established.	I sighted the planting activity associated with closure and rehabilitation of each sub-stage. The native planting programme is well in excess of the standards set out in the condition. I do note that the maintenance programme being undertaken has impacted vegetation planted at site. This condition is assessed as compliant.	

Cond. #	Consent Condition	Assessment (March 2022)	Compliance Status
12	<p>Noise from any cleanfill deposition activities (excluding emergency and construction works) shall not exceed the following levels when measured at or within the notional boundary of any dwelling existing at the time the consent is granted:</p> <p>a. Monday to Friday (excluding public holidays) 7.30 am to 5.00 pm – 50 dB LAeq</p> <p>b. Saturday (excluding public holidays) 7.30 am to 12.00 pm – 50 dB LAeq</p> <p>c. All other times - 40 dB LAeq</p> <p>d. 10.00 pm to 7.00 am (all days) – 75 dB LAfmax</p>	<p>The reporting available in relation to noise monitoring at site by T+T- reviewed by Marshall Day Acoustics identifies a breach of 3dB beyond the 50dB limit. This is acknowledged by both parties as a non-compliance, although noted to be imperceptible. This is assessed as non-compliant.</p>	
13	<p>Site construction activities shall be assessed (and measured where appropriate) in accordance with NZS 6803: 1999 "Acoustics - Construction Noise"</p>	<p>This is not applicable.</p>	
14	<p>The consent holder shall notify the Team Leader, Resource Consents, Hutt City Council, and members of the CLG of any construction activities taking place and their expected duration, at least five (5) working days prior commencement of those activities.</p>	<p>We note that the communication with neighbouring stakeholders in relation to cleanfill construction activities and changes to operation appears to be poor. This was identified in the previous audit.</p>	
15	<p>The Noise Management Plan (NMP) prepared by Tonkin and Taylor Ltd (dated November 2017) shall be updated within two (2) months of approval of this resource consent. Any subsequent changes to the operation of the cleanfill relevant to noise generation will require a review of the NMP and any amendments shall be sent to the Team Leader Resource Consents for approval. The ongoing operation of the cleanfill shall be in accordance with the approved NMP.</p>	<p>This matter was addressed at condition 12. Non-compliance detected inconsistent with the noise management plan. This is assessed as non-compliant.</p>	

Cond. #	Consent Condition	Assessment (March 2022)	Compliance Status
16	The Consent holder shall undertake noise monitoring of the cleanfill within 30 days of work commencing within Stage 3 and thereafter at three (3) month intervals unless otherwise agreed by the Team Leader Resource Consents, Hutt City Council. All noise monitoring results shall be made available to Hutt City Council within two weeks of completion of each monitoring visit.	The noise monitoring for the most recent 3-month period detected non-compliance beyond the 50dB limit. See note at condition 12.	
17	The cleanfill shall only operate within the hours of Monday to Friday 7.30am – 5.00pm and Saturday 7.30am – 12.00pm, excluding public holidays (except where deposition of fill is required outside these hours/days for emergency civil works).	There was a verified breach of hours for the cleanfill. The timing of the breach was just outside the opening hours, so the extent of the breach was minor. However, this is an overall non-compliance.	
18	The consent holder shall ensure that the operation is managed in a manner to ensure that no dust nuisance occurs beyond the boundary of the site. Measures for control will be outlined in the SMP and must include the presence of a watercart (or similar water source suitable for managing the generation of dust) on-site at all times that filling occurs.	I did not observe dust issues while conducting the site visit. The consent holder was compliant with the dust management measures outlined in the site management plan.	
19	That if the consent holder finds taonga (a thing of tangible or intangible value treasured in Māori culture) on the site, the consent holder must contact iwi representatives, the Heritage New Zealand, and the Council within 24 hours. All work in the area must stop immediately and may not resume until iwi representatives and Council staff have carried out a site inspection and the Council gives its approval.	This was addressed on site, and we were informed that no discoveries of this nature have been made, nor are they likely to be.	
20	The final batter slopes shall be designed and certified by a suitably qualified geotechnical engineer and certification shall be provided to the Team Leader Resource Consent within three (3) months of the cleanfill reaching capacity.	Not yet fully completed.	

Cond. #	Consent Condition	Assessment (March 2022)	Compliance Status
21	The consent holder shall manage cleanfill activities to generally avoid the placement of concrete and building rubble and other material not easily compacted in the part of the site affected by the 1:100-year floodway (as shown in Appendix D of the AEE), unless appropriate rock armouring is installed on the southern edge of the fill area.	Erosion protection has been installed by the consent holder in accordance with this condition.	
22	By 19 June 2022, cleanfilling shall cease, with restoration of the site in accordance with the Environmental Restoration Plan to commence during the next planting season following approval of the Environmental Restoration Plan.	<p>Hutt City has now identified that the cleanfill has closed and is no longer receiving material – May 2022. Full site restoration is not concluded and is subject to further assessment.</p> <p>As stated in the Guide for the Management of Closing and Closed Landfills in New Zealand (2002), a closed landfill is defined as one that no longer accepts waste therefore cleanfilling has ceased and this is assessed as compliant.</p> <p>We note that there is ongoing activity at site to assist with post closure. The council and its agents will need to conduct this work in the way that is consistent with the relevant conditions, in good faith with the community and with clear lines of communication to the neighbourhood liaison group.</p>	
23	That the consent holder shall submit an Environmental Restoration Plan for Stage 3 of the cleanfill to the Team Leader Resource Consents for approval within three (3) months of the cleanfill reaching capacity or by the lapse date, whichever is sooner. The environmental restoration plan shall include measures to grass or landscape any exposed areas and ensure the site is left in a suitable condition to enable use of the site as a reserve in future. The plan will have regard to the guidance prepared by GWRC titled 'Restoration Planting – A Guide to Planning Restoration Planting Projects in the Wellington Region' and will be informed through consultation with the CLG.	An environmental restoration plan has been produced by T+T in February 2022 thereby meeting the three-month timeframe required by this condition. The plan has regards to the guidance prepared by GWRC in relation to restoration planting. The plan contains details on the planting perimeters on site as well as the type of plants to be used. Also included in the plan is a tentative outline for plant maintenance to be carried out until 2024.	

Cond. #	Consent Condition	Assessment (March 2022)	Compliance Status
24	The consent holder shall control weeds and maintain the plants in accordance with the procedures set out in the Environmental Restoration Plan required by Condition (23) for a duration of three (3) years.	There is active management at site both in relation to weeds management and restoration planting. I have noted some challenges in respect of maintenance activity at the site. This is assessed as overall compliant.	
25	The consent holder shall engage an independent audit of the site on a six (6) monthly basis (following the exercise of this consent) to ensure that the site is operating in accordance with the conditions of consent. All costs of this audit shall be borne but the consent holder. The consent holder shall invite the Team Leader Resource Consents and representatives from the CLG (with a minimum of ten (10) working days' notice of the scheduled date) to be in attendance to observe the audit process. The findings of this audit shall be provided to Team Leader Resource Consents and the CLG.	The consent holder has undergone previous audits in August 2020, February 2021 and July 2021. The Team Leader and CLG were invited to attend the fourth audit held on the 3 March 2022. There was no representative of the consent holder in attendance for the site visit.	
26	Hutt City Council may review any or all conditions of this consent by giving notice of its intention to do so pursuant to section 128 of the Resource Management Act 1991, on a six-monthly basis following the commencement of this consent, for any of the following reasons: a. To review the adequacy of any plan and/or monitoring requirements, and if necessary, amend these requirements outlined in this consent. b. To deal with any adverse effects on the environment that may arise from the exercise of this consent; and which are appropriate to deal with at a later stage. c. To enable consistency with any relevant District Plan(s) or any National Environmental Standards or Regulations. d. The review of conditions shall allow for the deletion or amendment of conditions of this consent; and the addition of such new conditions as are shown to be necessary to avoid, remedy or mitigate any significant adverse effects on the environment.	No review has been undertaken during the assessment period.	



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