



20 March 2024

Shaun McKenzie



Dear Shaun McKenzie

**Request for Information – Local Government Official Information and Meetings Act (the Act) 1987**

We refer to your official information request dated 22 February 2024. We will answer each of your questions in turn.

*How many complaints about dust management in the Kelson region, has the council received?*

**Response:**

Since 13/12/2007 Council has received 77 dust complaints from the Kelson suburb (note the 2007 dates relates to when Council's current complaints recording system was established).

*How many complaints were received about consent RM180513 and any other consents in the Kelson area by the same developer?*

**Response:**

72 complaints were received relating to the RM180513 otherwise known as the Waipounamu Drive development.



*How many abatement notices have the council issued behind consent RM180513?*

**Response:**

The following abatement notices have been issues in relation to RM180513:

- 9/11/2019 - RMM180003 was issued to Kelson Heights Ltd for non-complying earthworks.
- 18/12/2020 - RMM200022 was issued to Kelson Heights Ltd and Bullock Contracting Limited for breaching the dust management plan certified under conditions 35 and 37 of RM180513.  
29/03/2021 - RMM210012 was issued to Kelson Heights Ltd to cease building work on Lots 2 – 9 until a landscaping plan has been submitted and approved by Council (this abatement notice was uplifted on 20/04/2021).
- 23/02/2024 - RMM240003 was Issued to Genesis Residential Ltd for breaching the District Plan dust rule.  
23/02/2024 - RMM240004 was issued to Kelson Heights Ltd for breaching the District Plan dust rule.

*On Wednesday 16 December 2020, Senior Monitoring & Enforcement Officer Pieter Mans confirmed in writing that an abatement notice had been issued due to dust management plans not being followed for earthworks on Waipounamu drive. Why is a second abatement issue now being delivered?*

**Response:**

Attached are copies of RMM240003 and RMM240004 which set out the reasons why these abatement notices have been issued.

Further, you ask:

*We have been making complaints about the dust and a lack of a dust management plan for nearly 4 years now, why does the council think its acceptable to treat rate payers this way? Why has the council taken no real action?*

This question asks the Council for an opinion, which does not fall under the Act.

You have the right to seek an investigation and review by the Ombudsman of this decision. Information about how to make a complaint is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz) or freephone 0800 802 602.

Please note that this response to your information request may be published on Hutt City Council's website. Please refer to the following link: [www.huttcity.govt.nz/council/contactus/make-an-official-information-act-request/proactive-releases](http://www.huttcity.govt.nz/council/contactus/make-an-official-information-act-request/proactive-releases)

Yours sincerely

Philip Rossiter

Senior Advisor, Official Information and Privacy

23 February 2024

Kelson Heights  
1439 Clevedon-kawakawa Bay Road  
Rd 5  
Papakura 2585

Jessica Hoskins  
Environment and Sustainability  
0272276438  
Jessica.Hoskins@huttcity.govt.nz  
Our reference:RMM240004

ABATEMENT NOTICE RMM240004  
SECTION 324, RESOURCE MANAGEMENT ACT 1991

To: Kelson Heights Ltd

**Hutt City Council gives notice that you must take the following action at 64  
Waipounamu Drive:**

- Cease all dust nuisance at or beyond the boundary of 64 Waipounamu Drive, Kelson.
- Take appropriate action to ensure compliance with the RST Dust Mitigation Plan as required by condition 35 Of RM180513

**The location in respect of which this abatement notice applies is:** A property located on Waipounamu Drive, Kelson, Lower Hutt, which is legally owned by Kelson Heights Limited. The property has a Legal description of LOT 202 DP 589202 RT 1122349.

**You must comply with this abatement notice:** Immediately upon receipt of this notice and no later than 3:00 pm. Friday 1<sup>st</sup> of March 2024.

You must also continue to comply with this notice after 3:00 pm. Friday 1<sup>st</sup> of March 2024.

**This Abatement Notice is issued under Section 322(1)(b)(ii) and 322(2)(b) of the  
Resource Management Act 1991,**

- (1) *An abatement notice may be served on any person by an enforcement officer—  
(b) requiring that person to do something that, in the opinion of the enforcement officer, is necessary to ensure compliance by or on behalf of that person with this Act, any regulations, a rule in a plan or a proposed plan, or a resource consent, and also necessary to avoid, remedy, or mitigate any actual or likely adverse effect on the environment—  
(ii) relating to any land of which the person is the owner or occupier*
- (2) *Where any person is under a duty not to contravene a rule in a proposed plan under sections 9, 12(3), 14(2), or 15(2), an abatement notice may be issued to require a person—*

*(b) to do something that, in the opinion of the enforcement officer, is necessary in order to ensure compliance by or on behalf of that person with a rule in a proposed plan.*

**The reasons for this notice are:**

1. On 23<sup>rd</sup> June 202, Hutt City Council issued a resource consent RM180513 for the construction of 89 dwellings, bulk earthworks, vegetation, civil works, and the creation of roads at 64 Waipounamu Drive, Kelson.
2. On the 18<sup>th</sup> of March 2022 a council compliance officer received a complaint coming from the above mentioned site. Council officers visited the site and no dust was observed.
3. On the 3<sup>rd</sup> of February 2022 a council compliance officer emailed Trishn Nand of Macroventures was contacted by council regarding the dust mitigation plan following dust complaints.
4. On the 18<sup>th</sup> of December 2023 a council compliance officer received a complaint regarding dust from the above mentioned site. Council officers visited the site no dust was observed but photos and videos were submitted by the complainant of dust.
5. On 21<sup>st</sup> of December 2023 a complaint was received regarding dust from the above mentioned site regarding dust. A council compliance officer emailed Jerry Spinks, Chris Mason, Jo Cushen and Fred Witton regarding dust mitigation.
6. On the 15<sup>th</sup> of January 2024 a complaint was received regarding dust from the above mentioned site. A council compliance officer emailed Chris Mason and called Fred Witton regarding dust mitigation.
7. On the 2<sup>nd</sup> of February 2024 a complaint was received regarding dust from the above mentioned site. Council arranged a site visit with a compliance officer from Greater Wellington Regional council.
8. On the 9<sup>th</sup> of February 2024 a compliance officer went to 64 Waipounamu Drive to observe the dust mitigation measures. There was no dust found leaving the boundary during this visit, but it was discussed that hydroseeding and polymer would take place by the 16<sup>th</sup> of February which Fred Witton told council would mitigate dust.
9. On the 11<sup>th</sup> of February 2024 Council received a dust complaint and photos from the above mentioned site. A council compliance officer responded to the complainant to send videos and photos and notify when dust occurs again.
10. On the 14<sup>th</sup> of February after receiving photos from the above complainant a council compliance officer went to the complainant's property and neighbouring property. Dust was felt from these complainants back yards.
11. On the 19<sup>th</sup> of February a council compliance officer took a proactive visit to a complainants address and did not observe any dust but did see it gathered beyond the above mentioned boundary. The council compliance officer confirmed there was no hydroseed in place.

12. On the 21<sup>st</sup> of February a complaint was received regarding dust from the above mentioned property. A council compliance officer went to the complainants address and observed a dust nuisance at or beyond the boundary.

13. Rule 8B 2.1.1 (b) of the Operative Hutt City District Plan 2024 Dust:

*All outside areas shall be surfaced, or managed appropriately so that there shall be no dust nuisance at or beyond the boundary of the site.*

14. There was no resource consent granted by Hutt City council to breach this rule 8B 2.1.1 (b)

15. The consent issued under RM180513 granted in 2018 stated in condition 35:

Prior to works commencing on site a Dust Management Plan (DMP), addressing each stage of earthworks, must be submitted to the Team Leader Resource Consents prior to the commencement of all work on site. The DMP must outline how the best practice methods outlined in the RST Mitigation Plan (as submitted as part of the further information response dated 2 September 2019) will be implemented. The specific controls that will be employed during each stage of the earthworks must be implemented for the duration of the site works and continue until the site stops producing dust.

16. The consent issued under RM180513 granted in 2018 stated condition 37 states:

All works on site shall be undertaken in accordance with the Dust Management certified under condition 35 of this consent.

17. Section 9 of the Resource Management Act 1991 (RMA) requires that no person may use any land in a manner that contravenes a rule in a district plan, unless expressly allowed by a resource consent or existing use is allowed by section 10 or 10A of the RMA

18. Rule 8B 2.1.1 (b) of the Operative Hutt City District Plan states the following.

All outside areas shall be surfaced, or managed appropriately so that there shall be no dust nuisance at or beyond the boundary of the site.

19. Resource Consent RM180513 provides a breach of the earthwork's rules, however, does not provide a breach of the Hutt City District Plan.

20. By contravening Rule 8B 2.1.1 (b) of the Operative Hutt City District Plan 2024, the consent holder has, in the opinion of an enforcement officer, committed an offence under section 332(2)(b) of the Resource Management Act (1991).

21. Resource consent RM180513 provides conditions that should adequately address the environmental effects of all earthworks, which includes dust mitigation. If the following conditions are met, there should not be a breach of Rule 8B 2.1.1. (b):

Condition 35:

Prior to works commencing on site a Dust Management Plan (DMP), addressing each stage of earthworks, must be submitted to the Team Leader Resource Consents prior

to the commencement of all work on site. The DMP must outline how the best practice methods outlined in the RST Mitigation Plan (as submitted as part of the further information response dated 2 September 2019) will be implemented. The specific controls that will be employed during each stage of the earthworks must be implemented for the duration of the site works and continue until the site stops producing dust.

Condition 37:

All works on site shall be undertaken in accordance with the Dust Management certified under condition 35 of this consent.

22. Kelson Heights Limited is required to take action to mitigate the dust nuisance beyond the property of 64 Waipounamu Drive to ensure further contraventions of the RMA 1991 do not occur.

**If you do not comply with this notice, you may be prosecuted under section 339 of the Resource Management Act 1991 (unless you appeal, and the notice is stated explained below).**

You have the right to appeal to the Environment Cour against the whole or any part of this notice. If you wish to appeal, you must lodge a notice of appeal in form 49 with the Environment Court within 15 working days of being served with this notice.

You also have the right to apply in writing to Hutt City Council to change or cancel this notice in accordance with Section 325A of the Resource Management Act 1991.

The Hutt City Council **authorised the enforcement officer who issued this notice.** Its address is: Hutt City Council, 30 Laings road, Private bag 31912, Lower Hutt 5040.

**The enforcement officer is acting under the following authorisation:** A warrant of authority issued by the Hutt City Council, pursuant to section 38 of the Resource Management Act, authorising the officer to carry out all or any of the powers as an enforcement officer under the Resource Management Act 1991.

X   
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Jess Hoskins  
Compliance and Enforcement officer

Friday, 23 February 2024





23 February 2024

Genesis Residential Ltd  
Manor Consultancy Limited, Po Box 15283,  
Tauranga  
Tauranga, 3144

Jessica Hoskins  
Environment and Sustainability  
0272276438  
Jessica.Hoskins@huttcity.govt.nz  
Our reference:RMM240003

ABATEMENT NOTICE RMM240003  
SECTION 324, RESOURCE MANAGEMENT ACT 1991

To: Genesis Residential Ltd  
Address:

**Hutt City Council gives notice that you must take the following action at 64  
Waipounamu Drive:**

- Cease all dust nuisance at or beyond the boundary of 64 Waipounamu Drive, Kelson.
- Take appropriate action to ensure compliance with the RST Dust Mitigation Plan as required by condition 35 Of RM180513

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- (b) *requiring that person to do something that, in the opinion of the enforcement officer, is necessary to ensure compliance by or on behalf of that person with this Act, any regulations, a rule in a plan or a proposed plan, or a resource consent, and also necessary to avoid, remedy, or mitigate any actual or likely adverse effect on the environment—*
- (i) *caused by or on behalf of the person; or*

- (2) *Where any person is under a duty not to contravene a rule in a proposed plan under sections 9, 12(3), 14(2), or 15(2), an abatement notice may be issued to require a person—*
- (b) to do something that, in the opinion of the enforcement officer, is necessary in order to ensure compliance by or on behalf of that person with a rule in a proposed plan.*

**The reasons for this notice are:**

1. On 23<sup>rd</sup> June 202, Hutt City Council issued a resource consent RM180513 for the construction of 89 dwellings, bulk earthworks, vegetation, civil works, and the creation of roads at 64 Waipounamu Drive, Kelson.
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13. Rule 8B 2.1.1 (b) of the Operative Hutt City District Plan 2024 Dust:  
*All outside areas shall be surfaced, or managed appropriately so that there shall be no dust nuisance at or beyond the boundary of the site.*
14. There was no resource consent granted by Hutt City council to breach this rule 8B 2.1.1 (b)
15. The consent issued under RM180513 granted in 2018 stated in condition 35:  
Prior to works commencing on site a Dust Management Plan (DMP), addressing each stage of earthworks, must be submitted to the Team Leader Resource Consents prior to the commencement of all work on site. The DMP must outline how the best practice methods outlined in the RST Mitigation Plan (as submitted as part of the further information response dated 2 September 2019) will be implemented. The specific controls that will be employed during each stage of the earthworks must be implemented for the duration of the site works and continue until the site stops producing dust.
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18. Rule 8B 2.1.1 (b) of the Operative Hutt City District Plan states the following.  
*All outside areas shall be surfaced, or managed appropriately so that there shall be no dust nuisance at or beyond the boundary of the site.*
19. Resource Consent RM180513 provides a breach of the earthwork's rules, however, does not provide a breach of the Hutt City District Plan.
20. By contravening Rule 8B 2.1.1 (b) of the Operative Hutt City District Plan 2024, the consent holder has, in the opinion of an enforcement officer, committed an offence under section 332(2)(b) of the Resource Management Act (1991).
21. Resource consent RM180513 provides conditions that should adequately address the environmental effects of all earthworks, which includes dust mitigation. If the following

conditions are met, there should not be a breach of Rule 8B 2.1.1. (b):

Condition 35:

Prior to works commencing on site a Dust Management Plan (DMP), addressing each stage of earthworks, must be submitted to the Team Leader Resource Consents prior to the commencement of all work on site. The DMP must outline how the best practice methods outlined in the RST Mitigation Plan (as submitted as part of the further information response dated 2 September 2019) will be implemented. The specific controls that will be employed during each stage of the earthworks must be implemented for the duration of the site works and continue until the site stops producing dust.

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You also have the right to apply in writing to Hutt City Council to change or cancel this notice in accordance with Section 325A of the Resource Management Act 1991.

The Hutt City Council **authorised the enforcement officer who issued this notice.** Its address is: Hutt City Council, 30 Laings road, Private bag 31912, Lower Hutt 5040.

**The enforcement officer is acting under the following authorisation:** A warrant of authority issued by the Hutt City Council, pursuant to section 38 of the Resource Management Act, authorising the officer to carry out all or any of the powers as an enforcement officer under the Resource Management Act 1991.

X 

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Jess Hoskins  
Compliance and Enforcement officer

Friday, 23 February 2024