

## **Report and decision of Hearings Commissioners Mr David Hill and Ms Bronwyn Bauer-Hunt**

**Whangarei District Council has delegated all the functions, powers and duties as provided under the Resource Management Act 1991 to the Commissioners to consider and decide the application on behalf of Council. The application was heard in Forum North, Rust Avenue, Whangarei on Monday 16 April to Wednesday 18 April 2018.**

The Hearings Commissioners (David Hill and Bronwyn Bauer-Hunt) heard the resource consent application lodged by GBC Winstone Limited relating to disposal of overburden from the Otaika Quarry, located at Quarry Road, Whangarei. The application, made in accordance with the Resource Management Act 1991 was lodged with Whangarei District Council and referenced as LU1700100 (P084242).

<b>Present</b>	<b>Hearings Commissioners</b> David Hill (Chair) Bronwyn Bauer-Hunt
<b>Applicant</b>	<b>GBC Winstone</b> Phernne Tancock – Counsel Matthew McClelland - Counsel Ian Jones – GBC Winstone Ian Wallace – GBC Winstone Michael Harris – GBC Winstone Chris Edmonds – GBC Winstone Amos Kamo – Cultural Effects Cameron Lines- Geotechnical John Hansford – Surface Water and Flood Hazard Sirri Wilkening – Acoustic Catherine Clarke – Planning Boyden Evans – Landscape Andrew Curtis – Dust Ian Boothroyd - Ecology Michael Copeland - Economics Dr Rod Clough – Archaeology
<b>Consent Authority</b>	<b>Whangarei District Council</b> Alister Hartstone – Reporting Planner Mike Farrow – Landscape Architect Peter Runcie – Acoustic Engineer Juliane Chetham – Cultural Advisor
<b>Submitters</b>	Northland District Health Board (NDHB): Gavin De Klerk – Team Leader, Health Environments Dr Virginia McLaughlin - Medical Officer of Health Louise Wickham – Air Quality Consultant Tony Collins – Chamber of Commerce and Industry Northland Inc Fred Peterson Keith Cocking – Fulton Hogan Ltd Graham Barton Mia Barton-Boots Chrissie Johnston

Francis Spencer  
Andrew Norman  
Sue McQuade – Acacia Park Landowners Association Inc  
Barry Povey  
Colin Thomas  
Rhondda Taylor  
Taipari Munro  
James Corlett – Civil Contractors NZ Inc  
Mira Norris – Otaika Marae Komiti  
Pari Walker  
Opania George  
Marina Fletcher

**In attendance**

Murray McDonald – Manager RMA Consents (WDC)  
Julian Dawson – Counsel for WDC  
Keryn Ryan – Hearings Administrator  
Nicolene Pestana – Hearings Administrator  
Aperahama Edwards – WDC  
Natalie Dey – WDC  
Andrea Cave – GBC Winstone  
Mark McKenzie – GBC Winstone  
Eric Angkinary  
Jennifer Duke  
Vicki-Lee Going  
Kaylee Kolkman – WDC  
Selwyn Norris  
Tapa George  
Jonah Nathan

## **1 Description of the proposed activity and Site**

The applicant, GBC Winstone Limited (GBCW), seeks land use consent from Whangarei District Council to provide for the placement of overburden from the Otaika quarry on the Pegram block, Quarry Road, Raumanga. The quarry has operated since the 1950s with Winstone assuming ownership and operating since 1964. The Pegram block was initially purchased by Winstone in 1985, sold to Pegram in 1992, and repurchased in 2006. It is estimated that some 100 years of aggregate resource remains winnable at the production level proposed. GBCW has designed the overburden disposal area (OBDA) based on the fill volumes attainable within the 35-year term of the regional consents<sup>1</sup>.

Both regional consents and land use consents under the Resource Management Act ('RMA') are required to provide for the placement of overburden on the site. Those activities which require approval from the Northland Regional Council were granted approval on 27 April 2018 and do not come within the jurisdiction of WDC for the purpose of the present application (as discussed later in this decision).

Approximately 2.4 million m<sup>3</sup> of overburden is proposed to be placed in the Pegram block, varying in depth with the underlying topography between 4m and 31m, at a slope angle of 10-12 degrees.

The final footprint of the OBDA is designed to be 16.7 hectares in area.

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<sup>1</sup> Opening legal submissions, para 3(a), footnote 1

<sup>2</sup> [Reading Agency pages 746-758](#)

The overburden disposal activity will occur in two distinct phases being an 'enabling works' phase and a 'general works' phase.

The enabling works are preparatory/ construction works required to be undertaken prior to the successive overburden campaigns during the general works phase. It is anticipated that the enabling works will be completed over the first two earthwork seasons (depending on the weather conditions) – each with a 3-5 year interval between. Larger volumes of earthwork activities (approximately 400,000 m<sup>3</sup> per season) will be undertaken over these first two earthwork seasons of the enabling phase compared to later individual overburden campaigns undertaken in the 7-8 general works phases. This was a design consideration by the applicant, where it was decided to complete the enabling works in close proximity to the residents of Acacia Park as soon as practicable to minimise the duration of activities close to these residents. During the hearing the applicant confirmed that the two earthworks season will not be contiguous but separated by the same 3-5 year campaign intervals as the general works phase.

The general works involve the placement of overburden, and will occur as a series of overburden campaigns. It is estimated that 300,000m<sup>3</sup> of overburden will likely be placed in an individual overburden campaign, depending on the market demand for aggregate and the overburden volume removed from the quarry.

All enabling works and general works will generally be undertaken over the months of October to April, however there may be occasion to deposit overburden at other times. Appropriate erosion and sediment control measures and procedures will be put in place whenever overburden works are undertaken, which will include consideration of the time of year the works are to be undertaken.

As a result, the overburden disposal activity will be an infrequent and temporary but reoccurring activity, lasting between 6-8 months each time, with no works occurring on site for periods of time over the 35-year duration of the regional consents. A 20m wide internal haul road will be constructed for the purpose with an estimated up to 16 dump truck trips each hour over the standard 11 hour day. The area open for overburden placement and working will be limited to 3ha as per the recently granted NRC consent. As a result of hydrogeological investigation the initial footprint of the OBDA was moved further away from the site boundary in the south-western corner of the site to ensure that it avoided any sub-surface kaarst / Whangarei limestone formation and potential sub-surface drainage pathways.

The details are contained in chapter 3 of the AEE and, per s113(3) of the RMA, are cross-referenced rather than repeating those details.

### **The Site**

The following description is modified from the application Assessment of Effects on the Environment (AEE).

The site is located immediately east of the existing Otaika Quarry at Raumanga, Whangarei.

The site is held in two parcels of land. The larger parcel is legally described as Part Lot 2 DP 53728 (with an area of 37.4 hectares) and a smaller parcel legally described as Lot 2 DP 363982 (with a site area of 3.3 hectares). The two parcels that form the subject site are known collectively as the 'Pegram block'.

The site is owned by GBCW, a division of Fletcher Concrete and Infrastructure Limited, and is accessed by Quarry Road, a private road also owned by GBCW. Quarry Road provides direct access from State Highway 1.

The site has a gently undulating terrain, rises generally toward the western, northern and eastern boundaries and flattens out towards the central part of the southern boundary, creating a natural basin land profile.

Highly-modified watercourses and wet seepage areas are located on the Pegram block. The main watercourse on the site is a tributary of the Te Waiiti Stream, which runs generally through the centre of the site in a west to east direction towards Quarry Road, where it is contained in a culvert that runs from the site, under the road, to a wetland area adjoining Otaika Sports Park. This watercourse has relatively steep banks, a gravel bottom and very little riparian vegetation.

Limestone outcrops and siltstone outcrops have been observed at surface level on the site towards its northern boundary and also on adjoining Lot 1 DP 207516 (being 52 Acacia Drive).

The site is predominantly in pasture and is used for stock grazing under lease from a local farmer. There are two pockets of existing mature trees on the site with the largest of these in the middle of the site towards the northern boundary. The western stand comprises a mixture of eucalypts, acacia and totara, and the eastern stand is generally comprised of totara with tanekaha and a few small kauri. There also some small stands of trees and other scattered vegetation on the site, and vegetation located along some sections of the stream. The understory of the trees, the scattered vegetation, the watercourses and other wet areas are all unfenced and fully accessible to grazing stock.

The site is bound to the north by Acacia Park, being a 46-lot gated residential community. The Acacia Park area is zoned Living 3 in the District Plan, which provides for low density residential subdivision and development.

An established residential area located around Smeaton Drive is situated to the east of the site. The site is zoned Living 1, which provides for medium density residential subdivision and development.

The site is bounded immediately to the southeast by Quarry Road. The Otaika Sports Park and Te Waiiti Stream are located immediately beyond Quarry Road. The Otaika Sports Park has an underlying zone of Countryside Living in the Operative District Plan.

The western boundary of the site directly adjoins the established and authorised Otaika quarry operated by GBCW. A land use consent is held by GBCW (formerly Winstone Aggregates) for the continued operation of the Otaika quarry (WDC Council Reference: P041293.LU RC 38907). The Otaika quarry also has an underlying zoning of Countryside Living in the Operative District Plan. The Otaika Quarry [RESCONS-2046405167-15314](#)

and access way also has a Mineral Extraction Area overlay (ME3) and is specifically identified in the Schedule of Existing Mineral Extraction Areas in Appendix 14 of the Operative District Plan.

Beyond the site to the northwest, is the Maori reserve land known as the Ruarangi Block, which is managed by the Ruarangi Trust Board. This Ruarangi block directly adjoins the north-western boundary of the existing Otaika quarry. The Ruarangi Block is zoned Countryside Living and is also located within the buffer area of the Mineral Extraction Area overlay (ME3) as annotated in the District Plan. A Notable Landscape Area is also located on the Ruarangi Block as identified in the District Plan.

A gas pipeline (annotated in the District Plan as designation DVG1) runs along the south-western boundary of the Pegram block. This pipeline is operated by First Gas.

### **Other relevant regional consents**

On 27 April 2017 NRC granted GBCW consents<sup>2</sup> for:

- Placement of overburden fill from Otaika Quarry, including within a Riparian Management Zone and over the bed of an unnamed tributary of Te Waiiti Stream;
- Divert unnamed tributaries of Te Waiiti Stream and stormwater from land disturbance activities;
- Place pipeline structures within the bed of intermittently flowing streams, beneath the overburden fill site; and
- Discharge stormwater to water from land disturbance activities.

Those consents were processed on a non-notified basis and expire on 31 March 2052.

Part of the documentation accompanying that application was a dust management air quality assessment undertaken by Mr Curtis of AECOM<sup>3</sup> which concluded that, with the management mitigation measures proposed, the proposal would satisfy the permitted standard (a) in Rule 9.1.4 of the Regional Air Quality Plan for Northland. That Rule states that the discharge of dust into the air arising from (among other things) quarrying operations, earthworks and cleanfill operations is a permitted activity provided that:

*The discharge shall not result in any offensive or objectionable dust deposition, or any noxious or dangerous levels of airborne particulate matter, beyond the boundary of the subject property.*

Mr Curtis' assessment and conclusion was accepted by NRC and no airborne contaminant discharge consent was required.

As we discuss later in this decision, that matter is important to the issues raised by many submitters, including the Northland District Health Board. It is settled caselaw that the regulation of the discharge of

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<sup>2</sup> Hearing Agenda, pages 446-458

<sup>3</sup> Hearing Agenda, pages 427-444

contaminants to air is a regional council function under s30(f) of the RMA, and that the territorial authority's function under s31 of the RMA in respect of such matters is limited to the consideration of airborne dust as a nuisance or amenity issue. In very simple terms that is the difference between the quality of dust versus the quantity of dust.

## 2 District Plan Rule(s) engaged and activity status

The disposal activity is proposed to take place on land zoned Countryside and, partly, in a Mineral Extraction Area – Buffer Area overlay (ME3) under the operative District Plan. While the balance of the site is zoned Living 3, no disposal is proposed in that zone. The s42A report notes that the MEA extends some 300-350m into the Pegram Block from the quarry boundary. This is clearly shown in the maps attached to Ms Clarke's evidence<sup>4</sup>, which also indicate the portions of enabling and general works, respectively, generally within and outside ME3.

It was accepted that the proposed activity does not comply with the following rules of the operative Whangarei District Plan:

<b>Rule – Mineral Extraction Area</b>	<b>Compliance</b>	<b>Activity Status</b>
Rule 64.3.1 Mineral Extraction	Fails to comply with Clause 3	Restricted discretionary
Rule 64.3.4 Traffic Movements	Fails to comply with Clauses a) – c)	Restricted discretionary
<b>Rule – Countryside Environment</b>		
Rule 38.3.3 Mineral Extraction	Fails to comply with Clause a) limiting excavation to 500m <sup>3</sup> of material in any 12 month period	Restricted discretionary
Rule 38.3.6 Traffic Movements	Fails to comply with Clause b) limiting traffic movements to 30 in any 24 hour period	Restricted discretionary
<b>Rule - Noise and Vibration</b>		
NAV.6.1 Noise Arising from Activities Within Environments	Technical report identifies minor infringement at 5-7 Grove Lane and 11 Grove Lane for general works	Discretionary activity

Overall, the application is to be determined as a discretionary activity.

As Mr Hartstone observed<sup>5</sup> with respect to the extensive list of matters over which Council has restricted its discretion for mineral extraction activities in the Mineral Extraction Area (ME3) and in the Countryside Environment, the overall discretionary activity status has little additional significance.

## 3 Notification and submissions received

The application(s) was received on 25 May 2017 and publicly notified on 12 July 2017 pursuant to Section 95 of the RMA, with submissions closing on 9 August 2017. A total of 42 submissions were

<sup>4</sup> Clarke, Statement of evidence, Attachment 1

<sup>5</sup> s42A hearing report, para 3.9

received. A summary of the written submissions received and the main issues raised is provided in section 4 of the s42A hearing report and we adopt that for present purposes per s113(3) of the RMA.

No late submissions were received.

Written approvals were received from a number of persons, some of which were subsequently withdrawn. The addresses of those that remained valid at the time of hearing were:

- 1, 5-7, 6, and 11 Grove Lane;
- 30 Acacia Drive;
- 1/19, 21, and 23 Awatea Street.

Accordingly, per s104(3)(a)(ii) RMA, no further consideration is given to effects on those properties and persons.

In addition First Gas provided<sup>6</sup> s176 RMA written confirmation (dated 14 December 2016) of consent to carry out works within its Whangarei Pipeline Designation on the boundary of the site.

A summary table of the submissions made is contained at section 4 of the s42A report. That summary was not challenged by any party and, per s113(3) RMA, is adopted and cross-referenced. In responding to submitters' concerns raised, Mr Hartstone grouped the issues into the following broad effect topic areas:

- Amenity;
- Landscape and visual;
- Noise and vibration;
- Traffic;
- Archaeological;
- Historic heritage and cultural; and
- Positive effects.

At the heart of many of those concerns was the issue of the reasonable expectations submitters had regarding the purpose of the ME3 buffer area and what activities were or could reasonably have been anticipated under that overlay.

#### **4 Procedural matters**

Four s41B and 41C RMA directions were issued by the Commissioners addressing a range of matters raised; two of which related to an application for a s42(1)(b) RMA non-disclosure order that we determined was more appropriately dealt with by someone not directly appointed to hear the resource consent application itself.

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<sup>6</sup> s42A hearing report, Appendix 14, page 147  
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By memorandum of counsel dated 17 October 2017 the application was placed on hold with effect 16 October 2017. The application was formally taken off hold and recommenced on 13 March 2018, at which time Addendum 2 and associated information was also lodged, and on 16 March 2018 a s41B RMA direction (#4) regarding evidence timetabling and hearing issued.

## 5 Material received and Evidence heard

The Commissioners received material and heard evidence from the applicant, expert witnesses, submitters, and the council's reporting officer. The following is a summary of the evidence heard at the hearing.

### 5.1 Applicant's evidence

In brief summary the applicant's legal submissions and evidence as presented was as follows:

**Mr Matthew McClelland QC / Ms Pherne Tancock**, Counsel, outlined the OBDA proposal; the proposed conditions and management plans; noted the time-critical nature of the consents sought in view of Otaika Quarry's central production position in supplying 80% of Northland's aggregate demand; the lack of commercially viable alternatives for disposal; the scope of the application made; regional and existing consents held; the company's track record; a summary of the effects as concluded by the corporate and expert witnesses to appear; peer reviews undertaken; positive effects; and commentary on the s42A report and submissions, concluding that the application could and should be granted. Witnesses were introduced and called in the following order:

**Mr Ian Jones**, GBCW General Manager, gave corporate evidence noting that GBCW employs 270 FTE staff; was indirectly responsible for a further 280 FTE in the district, had a direct economic impact on the district economy of \$43.7 million, generated 8.4% of the district's total GDP for the manufacturing sector plus, in 2015, a further \$29.7 million via capital expenditure etc. Furthermore, that Otaika Quarry had supplied 6 million tonnes of aggregate into concrete and roading projects at an opportunity cost of \$60 million if not supplied. Mr Jones stressed the time-critical nature of the present application

**Mr Mike Harris**, GBCW Engineering Geologist, gave evidence about quarry pit planning; the nature of the overburden and its unsuitability for large-scale commercial uses; and described the operational details of the proposed works. Mr Harris explained the existing problem with overburden disposal and the physical limitations of the quarry pit and access to the resource.

**Mr Chris Edmonds**, GBCW Northern Operations Manager, gave evidence about the need for aggregate in Northland; the nature of the resource and expected level of production (400,000m<sup>3</sup>/annum for 100 years); and explained the alternative disposal and use options that had been considered and rejected and the reasons for that.

**Mr Ian Wallace**, GBCW Environmental Projects Leader, gave evidence on the consultation undertaken by GBCW, including with the Ruarangi Trust Board and Te Parawahau Ki Tai, and identified mitigation measures that were proposed as a consequence.

**Mr Boyden Evans**, Landscape Architect, Boffa Miskell Ltd, gave detailed landscape and visual effect evidence, which is discussed further later in this Decision. He provided numerous graphics and photosimulations to demonstrate and support his conclusions.

**Ms Siiri Wilkening**, Acoustical Consultant, Marshall Day Acoustics Ltd, gave acoustic evidence, which is discussed further later in this Decision.

**Mr Mike Copeland**, Economist, Brown, Copeland and Company Ltd, gave evidence on the net economic benefits of the resource and the quarry, including the downstream implications for Northland and the regional economy.

**Dr Ian Boothroyd**, Ecologist, Boffa Miskell Ltd, gave evidence on the effects of the project on the ecological values of the Pegram Block. Having reviewed the terrestrial, wetland and aquatic ecological values, and discussed the mitigation proposed (including 4,200m<sup>2</sup> of revegetation with local native trees and shrub species and fencing), Dr Boothroyd concluded that the mitigation was appropriate and the values to be lost were not of high ecological significance.

**Mr Andrew Curtis**, Air Quality Engineer, AECOM, gave air quality evidence, which is discussed further later in this Decision.

**Mr Cameron Lines**, Engineering Geologist, Tonkin & Taylor Ltd, gave evidence on the geological conditions of the site and ground investigations (residual soils overlying Ruatangata Sandstone and sheared Northland Allochthon siltstone and mudstone), discussed the OBDA geotechnical and slope stability design, groundwater and surface water issues and solutions, confirmed that no void forming geological units underlie the repositioned OBDA, and was satisfied that relevant natural hazards had been identified and resolved. In his verbal closing response Mr Lines clarified the way in which the matted fill, placed during the enabling works, would act as an informal high permeability drainage blanket providing redundancy for the sub-soil drainage network in the event the latter is damaged at any point during construction.

**Mr John Hansford**, Engineering Hydrologist, Tonkin & Taylor Ltd, gave evidence on the existing surface water on the site, described the proposed stream realignment works and diversion, concluding that the effects on surface water and water quality and risks of flooding were negligible and positive, would reduce the flood susceptible area and have no additional adverse effect on downstream properties.

**Mr Amos Kamo**, Strategic Adviser (Cultural), Boffa Miskell Ltd, gave evidence on GBCW's engagement process with manawhenua, which is further discussed later in this Decision.

**Dr Rod Clough**, Archaeologist, Clough & Associates Ltd, gave evidence noting that there were no recorded archaeological sites within the ODBA footprint, the wider Pegram Block, and no scheduled heritage items in the operative District Plan or on the New Zealand Heritage List / Rārangī Kōrero. However, noting that sites were recorded in the wider area – and a largely destroyed shell midden

(since recorded as Q07/1416) occurs within the OBDA - appropriate conditions were recommended and a Heritage NZ authority will be required. Dr Clough assessed the overall adverse effect as being minor.

**Ms Catherine Clarke**, Planner, Boffa Miskell Ltd, gave planning evidence including a detailed assessment against all relevant statutory plans and policy documents, in light of the technical conclusions drawn by the applicant's consultants. Ms Clarke concluded that the application met the overall thrust of those relevant provisions despite the cultural issues remaining unresolved at the time of presentation.

In Reply, Mr McClelland/ Ms Tancock provided summary notes and/or brief rebuttal statements from Messrs Edmonds, Evans, Harris, Kamo, Lines and Wallace. They noted that post-hearing, as we directed, Council and applicant had met and reached agreement on a set of draft conditions (which were provided). In addition they addressed the scope of the application as that relates to the earthworks season (confirming that this would be over two "campaigns" 3-5 years apart); clarified the District Plan's interpretation of the term "construction" (relevant to the question of the applicability of the construction noise standard); the cultural significance of the Pegram block, the weight to be accorded Ms Chetham's evidence in light of her absence to hear the relevant representations made, and whether to include the Ruarangi Trust in the condition set proposed; the relevance of the *Yaldhurst* case to the dust issue to be determined; the appropriate approach to Part 2 RMA considerations; and a response to the buffer area Addendum provided by Mr Hartstone.

## 5.2 Submitters' evidence

The **Northland District Health Board**, Mr Gavin de Klerk, appeared with two witnesses, Dr Virginia McLaughlin (Medical Officer of Health) and Ms Louise Wickham (Senior Air Quality Specialist, Emission Impossible Limited), both of whom had pre-circulated written evidence and provided a brief summary statement at the hearing:

- **Dr McLaughlin** emphasised the public health importance of prevention, commended the establishment of the buffer area for that purpose, expressed concern about potential health effects of dust (citing the Yaldhurst Quarry case as an exemplar), and recommended the retention of the buffer separation from quarrying activities including overburden disposal. Dr McLaughlin expressed surprise that the NRC consents had not been brought to NDHB's attention so that the air quality health matter of concern could have been raised.
- **Ms Wickham** agreed that the buffer represented good "health" planning practice, particularly because of the concern that respirable crystalline silica (RCS), which is understood to be present in the greywacke and greensand, and other particulate matter of less than 10 microns (i.e. PM<sub>10</sub>) are known to cause both acute and chronic health effects and to be carcinogenic. She noted that the applicant had acknowledged that dust emissions would be transported beyond its disposal site. Ms Wickham expressed a preference for the application to be refused if the buffer separation was not retained, but provided some helpful condition directions in the event that we were differently minded.

**Submitters in support** who appeared (Tony Collins - Chamber of Commerce and Industry, Northland; Fred Peterson – Broadspectrum; Keith Cocking – Fulton Hogan Ltd; James Corlett – Civil Contractors Ltd) emphasised the commercial and socio-economic importance of the quarry to Northland and provided further supporting information about cartage cost/distance ratios and rock quality control matters.

**Submitters in opposition** who appeared (Suzanne McQuade – Acacia Oaks Landowners Association Inc and resident with Barry Povey; Colin Thomas; Mia Barton-Boots – Southern Whangarei Action Group and resident with Graham Barton; Rhondda Taylor; Christine Johnston; Andrew Norman and Francis Spencer) tended to focus on the amenity, health and landscape effects of the proposed OBDA , their expectations of the activities that could not occur within the buffer area, and strongly supported the retention of the buffer area separation.

We discuss those submitters who directly addressed cultural matters (Taipari Munro – Ruarangi Trust; Mira Norris – Otaika Marae Komiti; Opania George; Pari Walker and Marina Fletcher) elsewhere in this Decision.

The Commissioners place on record the fact that despite the application causing a palpably emotional reaction on and from submitters in opposition, their representations were made appropriately, respectfully and with due deference to procedure. We acknowledge and are grateful for that.

### 5.3 Council's reporting officer's report and evidence

Council's s42A RMA hearing report was prepared by consultant planner, Mr Alister Hartstone, with technical reviews provided by Mr Mike Farrow (landscape architect), Mr Peter Runcie (acoustic engineer) and Ms Juliane Chetham (cultural advisor). The s42A report recommended that, by a fine balance on the basis of material available at the time of writing, the application be declined because of significant adverse visual and landscape (including cultural landscape) effects which could not be avoided, remedied or mitigated. That report helpfully contained a set of draft conditions in the event that a decision to grant was made.

In their final response statements:

- **Mr Runcie** indicated that he now understood and accepted that none of the enabling works activities would comply with the MEA noise limits and that it was appropriate to use larger equipment to shorten the time period and therefore reduce the potential adverse noise effect on surrounding receivers – the 5dB difference between smaller and larger equipment being noticeable but not such as to outweigh the benefit of shorter work times. Mr Runcie therefore supported the application of the construction noise standard (NZS 6803:1999) within the context of a Construction Noise Management Plan (CNMP). Mr Runcie recommended further refinements to the relevant draft noise conditions.
- While **Mr Farrow** was in general agreement with Mr Evans' visual effects assessment, he continued to dispute the significance attributed to those effects, particularly for those in the immediate viewing foreground, and considered that there was further scope to refine the overall [RESCONS-2046405167-15314](#)

form of the Overburden Disposal Area (OBDA) so that it related better to the surrounding terrain – acknowledging that this was potentially achievable through the proposed Landscape Management Plan. Mr Farrow was not persuaded that the integrity of the landscape could be maintained through large scale burying, the result of which is that, as he put it, “*the morphology of the terrain is often dramatically altered, so that the legibility of the natural landform is lost*”.

- **Ms Chetham** was unable to attend the final day of the hearing due to an overseas commitment and so did not hear the representations made by Mr Taipari Munro (Chairman, Ruarangi Trust) or Mr Pari Walker, Ms Mira Norris and Ms Marina Fletcher (Hauauru Trust) on behalf of Te Parawhau whanau hapu, Te Parawhau Ki Tai / Te Pouwhenua o Teakiriri Kukupoa Trust and Otaika Marae, or Mr Opania George for Toetoe Marae. However, Ms Chetham concluded in her supplementary statement that the application’s adverse effects on the Ruarangi cultural landscape were unable to be avoided or remedied, and that the measures proposed to address the s6(e) RMA matters of national importance so deficient, that consent could not be granted – acknowledging that the Partnership Agreement under confidential discussion was capable of addressing the s8 RMA Treaty of Waitangi principles.

Having heard the evidence and representations made at the hearing, Council’s final overall response, as presented and summarised by **Mr Hartstone**, was that as the cultural effect matters had been resolved satisfactorily through submissions made during the hearing, and while Council had not changed its opinion on visual and landscape effects, overall the balance between positive and adverse effects had shifted such that, and in view of the regional significance of the quarry operation, consent could be granted with due amendments to the draft conditions earlier proposed.

## 6 Principal issues

The principal issues that were in contention were:

- (a) Whether overburden disposal is a mineral extraction activity;
- (b) Whether there is a relevant and meaningful permitted baseline;
- (c) Whether the statutory district plan quarry buffer area should be used for quarry activities;
- (d) Whether respirable crystalline silica and other PM<sub>10</sub> emissions are a matter for land use consideration;
- (e) Whether the dust management measures are adequate;
- (f) Whether cultural landscape concerns have been appropriately addressed;
- (g) Whether landscape effects can be appropriately mitigated; and
- (h) Whether construction noise effects can be appropriately mitigated.

## 7 Main findings of fact

The principal issues in contention and our main findings on them are discussed next.

- (a) **Mineral extraction** – The application has been pursued on the basis of the overburden disposal being a *mineral extraction activity* rather than *earthworks* – which latter would have attracted a

“lesser” activity status, being an unlimited permitted activity both in the Countryside Environment zone and within the ME3 overlay, subject to the permitted activity standards being met.

Both Ms Clarke and Mr Hartstone accepted that while the definition of *mineral extraction* in the Plan does not explicitly include overburden material (but being an inclusive definition does not thereby exclude it), the disposal of overburden is “inextricably linked” to that core activity.

**Finding:**

We agree that overburden disposal is properly considered part of mineral extraction under the operative District Plan – noting that this omission has been specifically corrected under the Proposed District Plan (PDP) – and therefore the relevant mineral extraction provisions, rather than earthworks provisions, apply.

- (b) **Permitted Baseline** – Having found that the mineral extraction provisions rather than the earthworks provisions apply, it is not necessary to consider whether a permitted baseline applies with respect to earthworks (as had been discussed in the AEE) – except insofar as the Flood Susceptible Area provisions apply that permit earthworks subject to the provision of a relevant specialist report (Rule 56.2.3). We note that Council<sup>7</sup> has accepted that latter baseline as well as the vegetation removal baseline of Rule 38.1.18.

Mr Hartstone’s overall conclusion, however, is that the nature, scale and duration of the proposed activity is such that any comparison with the earthworks, traffic generation and noise that might otherwise be permitted, is fanciful. That conclusion was, sensibly, not challenged by Ms Clarke in her evidence.

**Finding:**

We find that no helpful permitted baseline applies to the overburden disposal activity, albeit the regional consents address those limited matters for which a technical land use baseline might otherwise apply.

- (c) **Quarry Buffer Area**

The function and purpose of the quarry buffer area was the subject of considerable argument during the hearing, and is clearly central to any decision.

In broad terms, the applicant argued that the buffer was established in favour of the quarry against residential encroachment and was therefore available to it for the specified purpose; submitters in opposition argued that the buffer effectively constituted a two-way no-mans’ land, which recognises their respective amenity values and protect both activities from each other,

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<sup>7</sup> s42A report, paras 8.7 - 8.8  
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noting that their reasonable expectation at purchase was that the buffer area, as an area within which no quarry activity would occur, was secured (as far as any plan provision can provide).

In his s42A report, Mr Hartstone notes<sup>8</sup> that:

*“ ...there is no specific guidance in the objectives or policies as to the identification, extent, or primacy to be given to the identified buffer areas. Chapter 64 Mineral Area Extraction Rules provides an explanation of the intention of the buffer area, noting that it is intended as a reverse sensitivity buffer. In the absence of any directive objectives or policies, the specific purpose and intended integrity of the defined buffer area is not clear.*

Ms Clarke also drew our attention to some explanatory text in the operative District Plan<sup>9</sup>, which states:

*In some cases, the Mineral Extraction Area includes a Buffer Area beyond the Active Area of the quarry. In these cases it may not be reasonable to require the quarry operator to comply with all permitted activity rules for mineral extraction, in relation to the Active Area. This approach was recognised by the Environment Court in Winstone Aggregates v Auckland Regional Council A49/2002, where it was held that effects such as noise and vibration could not reasonably and economically be contained within the site, and a reverse sensitivity buffer was imposed.*

She concluded<sup>10</sup> that “... the District Plan provisions do not provide for the Buffer Area of an MEA to be an amenity buffer to protect adjacent properties from the effects of quarrying”.

In response to questions from the Commissioners Mr Hartstone, in a supplementary addendum dated 27 April 2018, outlined his discovery inquiry of Council regarding the derivation of ME3 and the buffer area. He advised that there were no records of how the boundaries were defined, noting that such was not a formal element of the previous Transitional Whangarei County District Plan and does not appear to have been included in the then proposed plan as notified but, rather, emerged via a Consent Order issued by the Court in August 2004. No further information was available. It also appears that the Buffer Area was not in place at the time that the Acacia Park subdivision was granted and the first stages of development commenced.

In opening legal submissions the applicant correctly observed that overburden placement in the buffer area is afforded a restricted discretionary or discretionary activity status, not a non-complying or prohibited one. In other words, such is contemplated either as a RDA subject to stated matters of discretion or as a full discretionary activity (as in the present case).

No further guidance is provided by the operative District Plan.

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<sup>8</sup> s42A report, para 9.28

<sup>9</sup> Operative District Plan, Part E – Resource Areas – Mineral Extraction Area Rules, section 64.1

<sup>10</sup> Clarke, Statement of evidence, para 50

It was common ground that while the rules of the Proposed District Plan (the PDP) have no legal effect at this time with respect to the present application, the objectives and policies do. The relevant provisions were reviewed by Ms Clarke and Mr Hartstone, noting that Quarry Resource Area 3 (as it is proposed to be named) has the same spatial and active/buffer elements as ME3, and that overburden placement is specified within the definition of mineral extraction.

Mr Hartstone also noted that proposed policy QRA 1.3.3 states:

*To identify a Buffer Area within a QRA to:*

- a. Ensure that reverse sensitivity effects are avoided on the Mining Area.*
- b. Ensure noise effects associated with the Mining Area of the QRA do not create adverse effects beyond the Buffer Area.*
- c. Maintain a separation between incompatible land uses by limiting mineral extraction in the buffer area to ensure that adverse effects on adjoining land uses, particularly existing sensitive land uses, are first avoided and otherwise remedied or mitigated.*

and includes proposed policy QRA 1.3.5 which states:

*To avoid, remedy or mitigate the adverse effects of mineral extraction within QRAs, on the ecological, landscape, historic heritage and amenity values of surrounding areas.*

We note that those provisions do not prohibit mineral extraction within a QRA; they require adverse effects to be addressed *if they cannot be avoided*.

Both planning witnesses conclude that the assessment required under both operative and proposed district plans are similar and require no differential weighting.

In Reply, the applicant also reminded us<sup>11</sup> that a reasonable portion of the project footprint (i.e. most of the enabling works) is outside of the Buffer overlay (i.e. is on land currently zoned Countryside north of the overlay Buffer Area).

## **Discussion and Finding**

We note that the explanatory statement identified by Ms Clarke speaks of reverse sensitivity effects by means of the examples of noise and vibration.

On the one hand there is no doubt that noise and vibration effects from the core rock-winning and processing quarrying activities would continue to be protected by the buffer even if that is subject to overburden disposal. It is equally true that new noise effects would be generated by the overburden disposal activity – albeit those may be able to be mitigated to a degree. The explanatory note does not cite dust as one of the effects to be buffered – presumably because the distance from and depth of the pit is such that such nuisance from that source (or the

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<sup>11</sup> Reply submissions, para 38  
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overburden activity at that time) was unlikely in any event – but it would be inappropriate to infer therefore that dust and other amenity effects (as identified in section 5.4.1 of Chapter 5 Amenity Values of the operative District Plan) are excluded from that consideration.

We accept that the purpose of the buffer area is to control reverse sensitivity effects from residential development and, in that sense, to “permit” a level of adverse amenity effect within that buffer. That, of course, does not apply to the area beyond the buffer that has no such overlay and for which the property boundary is the furthest extent to which any non-permitted adverse amenity effect (unless authorised) may occur.

While the question as to what activity is the primary beneficiary of a reverse sensitivity buffer may appear somewhat academic, in that it clearly benefits both sides once established, in the present instance that is a material consideration. Is it the case that such a buffer is in some sense limited to the nature and scale of activity that existed and was reasonably foreseeable at the time it was introduced and made operative? Clearly that cannot be the case since it is intended to control future activities, and reasonable growth on both sides of the buffer is presumed. Furthermore, this is a planning tool, not a covenant-style legal restriction, which functions to provide formal warning but does not, by itself, prohibit activities. Indeed, all it does is signal that if the residential activity comes within the buffer (as it may under discretionary activity Rule 38.4.1) then the right to complain about certain effects will be weighed accordingly. And, of course, the proposed OBDA advances beyond the buffer so that there would be little point in “refusing” the buffer but then having to contemplate an OBDA only on the Countryside zoned land that is closer to the Wattle Lane end of Acacia Park and the Smeaton Residential Area.

Finally we return to the point that mineral extraction activity and its effects are not prohibited from the Buffer Area, albeit perhaps not anticipated in the manner proposed. We therefore find that the activity is not prevented from occurring within the Buffer Area of ME3 / QRA3. It remains for a different process to determine whether some form of land use planning restriction is subsequently required between the OBDA and the residential areas if the present application is granted and proceeds.

**(d) Respirable crystalline silica and other PM<sub>10</sub>**

NDHB had raised its concern about the airborne transmission of respirable crystalline silica (RCS) and other PM<sub>10</sub> as a consequence of overburden disposal within a few hundred metres of residences.

That concern was addressed by Mr Curtis even though, as an air quality issue, it was only on our table, as far as the land use consent sought is concerned, as an amenity rather than health matter. In that regard Mr Curtis cited the relevant regional rule 9.1(4)(1) from the Regional Air Quality Plan for Northland 2003 which states that:

*The discharge of dust into the air arising from:*

(1) *Quarrying operations, earthworks, clean fill operations ...*

is a **Permitted Activity** provided that:

(a) *The discharge shall not result in any offensive or objectionable dust deposition, or any noxious or dangerous levels of airborne particulate matter, beyond the boundary of the subject property.*

As already noted, the NRC had accepted that the proposed discharge was a permitted activity for the purpose of that rule and did not require further consent.

On the specific matter of RCS (i.e. quartz) Mr Curtis accepted that such was a property of the rock quarried but that this was not a property of the topsoil and subsoils. With respect to the overburden he noted<sup>12</sup> that GBCW had analysed the four layers of the overburden (clays, greensand, limestone and greywacke), which indicated the presence of some 20% quartz. However that was extremely well weathered, did not exist as a discrete entity, was therefore unlikely to be available as a quartz dust when placed, and would be wet when excavated and placed therefore further reducing the likelihood of generated dust.

Mr Curtis also noted that the greatest potential for health effects had been identified from the fine highly fractured quartz particles, which would not be found in overburden. In that latter regard he referenced Winstone's occupational workplace monitoring (being at the point at which the greatest risk exposure would occur – being staff who operate the crushers) which indicated that the quartz concentrations were "...well less than the New Zealand Workplace Exposure Standard of 0.1 mg/m<sup>3</sup> (100 µg/m<sup>3</sup>), and in fact with a couple of exceptions values were less than 0.02 mg/m<sup>3</sup> (20 µg/m<sup>3</sup>)"<sup>13</sup>.

With respect to other PM<sub>10</sub>, Mr Curtis noted that the dust typically generated from overburden activities (as opposed to quarrying or mining) was of the larger TSP<sup>14</sup> particles (typically greater than 50 microns), which are not respirable. As a consequence he disagreed with Ms Wickham that PM<sub>10</sub> monitoring as the main management tool for controlling dust nuisance should be required, also noting that it was the larger TSP fractions that are most likely to be detected off-site by neighbours. Mr Curtis also disagreed<sup>15</sup> with Ms Wickham on the question of imposing a lower guideline for PM<sub>10</sub> than the NES guideline value of 50 µg/m<sup>3</sup> – noting that the NES guideline was already stricter than the WHO guideline value, which the latter accepted would afford protection from substantial morbidity or mortality.

Mr Curtis' analysis and conclusions on this matter were peer reviewed, at his suggestion. Ms Prue Harwood (Senior Associate – Environment Engineering, Beca Limited) was engaged for

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<sup>12</sup> Curtis, Statement of evidence, paras 10.33-10.41

<sup>13</sup> Curtis, Statement of evidence, para 10.31

<sup>14</sup> Total Suspended Particulates

<sup>15</sup> Curtis, Supplementary evidence, para 3.23

that purpose and her peer review provided as an attachment to the evidence of Mr Wallace. Ms Harwood confirmed Mr Curtis' assessment. In addition, Mr Curtis' assessment was also peer reviewed by Dr Jennifer Salmon (Auckland UniServices Ltd) on behalf of Te Pouwhenua o Tiakiriri Kukupa (and included as an appendix to the CIA report provided by Ms Fletcher). Dr Salmon also confirmed Mr Curtis' assessment.

Finally we asked counsel for the applicant in reply to address the Court's 2017 decision on *Yaldhurst* – being aware that the Court had, in that case, determined the correct approach to the question of “dust” jurisdiction. Counsel reviewed that case in Reply confirming the Court's finding that the land use jurisdiction was limited to a consideration of dust emission effects aside from their quality as a contaminant.

### **Finding**

Without detracting from Dr McLaughlin's “in principle” prevention approach, we are not persuaded on the evidence that RCS or PM<sub>10</sub> is of sufficiently high actual risk that we need to take the matter further – regardless of jurisdiction. Clearly if we had material doubt on the matter we could have adjourned for further information – which may have required a response from the Regional Council. We have concluded that such a step is not necessary.

#### **(e) Dust nuisance**

Mr Curtis described the dust assessment work undertaken, noting that he considered the potential receiving environment in this instance, Acacia Park, to be of Moderate to High Sensitivity under the Ministry for the Environment's *Good Practice Guide for the Management of Dust* (2106) with respect to TSP. Based on a dust monitor located at 11 Grove Lane for the period October 2016 to August 2017 the short-term (1 hour) concentrations were typically less than the 100 µg/m<sup>3</sup>, with the average 24 hour concentrations typically less than 20 µg/m<sup>3</sup> (the High sensitivity guideline threshold values being 200 µg/m<sup>3</sup> and 60 µg/m<sup>3</sup> respectively).

A comparison of wind rose data between that collected at Golden Bay Cement's Portland site (approximately 6kms from the subject site) and that collected at Whangarei Airport showed sufficient similarity that Mr Curtis was confident of the representativeness of his assessment of likely wind effects and dust transport. He concluded that in winds of greater than 10 m/s, 12 properties (including 3 for which written approvals had been supplied) could experience dust deposition when works are close to the site boundary. Observing that “no dust” is not a requirement of any plan or the MfE Guide, and referencing TSP monitoring from Winstone's Cottle Block overburden site adjacent to Belmont quarry over four campaigns, Mr Curtis advised that ambient TSP concentrations there rarely exceeded 60 µg/m<sup>3</sup> as a 1-hour average – well below the existing typical Grove Lane measured concentrations.

With standard good practice measures, including TSP monitoring and wind speed considerations, and taking into consideration distance and the fact that placement would progressively move away from residences, Mr Curtis was confident that dust nuisance would be properly managed.

While some submitters were concerned about the potential effect, for example, on roof collected drinking water, general outdoor amenity and after-hours dust control, those matters were satisfactorily addressed by Mr Curtis in his evidence. At the end of the day, if the predictions prove not to be reflected in the reality of the situation, which we do not anticipate, the remedy is clearly in the conditions imposed.

### **Finding**

We are satisfied that with the measures imposed the potential for dust nuisance on neighbouring residences arising from overburden placement activities can (and should) be managed with minimal adverse effect. That, of course, relies upon good active management – which cannot be conditioned – but the applicant is an experienced operator and, in view of the length of time that the quarry and its operations still has to run, has a strong incentive to be a good neighbour. At the same time it would be prudent for neighbours to establish a constructive relationship with the applicant so that in the event that nuisances do materialise, there is a ready conduit for remedial action. Having heard from submitters and applicant alike we have no reason to think that will not happen.

#### **(f) Cultural landscape**

The matter of determining a clear definition under the RMA with respect to *Cultural Landscapes* has provided some challenges.

Mr McClelland QC, in his opening submissions accepted that Ruarangi is a site of significant cultural value to the mana whenua hapū of the area, albeit the applicant did not accept that the project would result in significant cultural effects or that the effects are incapable of mitigation. This position is as a result of having carried out a series of engagement hui with both Te Powhenua o Tiakiriri Kukupa Trust (TPTK), representing the Te Parawhau Ki Tai hapū (who are manawhenua and have kaitiaki status in relation to the site) and also with Ruarangi Trust. He confirmed that a relationship agreement was in place with TPTK (a copy of which was provided to us), with the parties already working on co-designing a Maturanga Maori Environmental Monitoring Plan.

As Ms Chetham noted in her Assessment of Cultural Effects<sup>16</sup>:

*“There is no singular definition for “cultural landscapes”. The concept of cultural landscapes gained a lot of traction in the 1990s but has not has such an impact in New Zealand as in countries like Australia and Canada, where World Heritage cultural landscape criteria and categories have filtered into national and local heritage management. Although the terms “landscape“ is not defined in the RMA or the New Zealand Coastal Policy Statement 2010 (NZCPS), various descriptions have emerged through evolving practice and case law. The*

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<sup>16</sup> Chetham, S42A report, Attachment 7, section 3.2  
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ICOMOS NZ Charter defines cultural landscape as “an area possessing cultural heritage value arising from the relationships between people and the environment”. The New Zealand Institute of Landscape Architects, for instance, describes “landscape” as reflecting “the cumulative effects of natural and cultural processes”. The “Te Aranga Cultural Landscapes Strategy” was developed by the Ministry for the Environment in conjunction with Te Puni Kokiri and recognised the concept of a Māori cultural landscape, stating:

*“In Aotearoa the term cultural landscape was adopted ... to acknowledge a Māori world view that physical landscapes are inseparable from tupuna, events, occupations and cultural practices. These dimensions remain critical to cultural identity and a Māori sense of place”.*

She considers that, in a broad sense, the concept of cultural landscape is implicit in the definition of “historic heritage” as defined in s2 of the RMA, and further stated<sup>17</sup>:

“There is recognition in the RPS that concepts such as cultural landscape can be problematic; ie. In section 2.5 Issues of significance to tangata whenua – participation in resource management:

(e) *The inclusion of Maori concepts, values and practices within resource management processes is frequently limited and ineffective.*

The explanation given for this is:

***The inclusion of Maori concepts, values and processes***

*The main reason why the inclusion of Maori concepts, values and processes is frequently limited and ineffective is the absence of accepted and / or agreed methodologies to integrate kaitiakitanga into RMA processes. For example, there are no agreed methodologies for determining cultural landscapes.”*

In her Cultural Impact Assessment (CIA) Ms Fletcher did not provide a definition of cultural landscape as such, however she did refer to the protection of cultural landscape and heritage values of the Pegram Block and the surrounding environs, and the relationship of the landscape to cultural values. She noted<sup>18</sup> in particular, that: “... *cultural heritage is related to expression, identify and connection and is of paramount importance to Te Parawhau. Tangata whenua values and relationships with ancestral lands, waters, sites, wahi tapu and taonga include both tangible and intangible values that need to be assessed and provided for.*”

The Hauauru Trust further examined the archaeological assessment report produced by Dr Clough and, with the financial support of GBCW, also obtained an independent peer review of the geotechnical and hydrological assessment reports. By doing so, illustrating the interwoven relationship between the whenua, people, cultural values, practices and therefore the landscape.

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<sup>17</sup> Chetham, Supplementary statement of evidence, para 26

<sup>18</sup> Fletcher, Cultural Report Assessment of Effects on Maori Values, Part 3 section 3.1

Moreover, Mr Evans<sup>19</sup> noted that:

*Change in a landscape does not, of itself, necessarily constitute an adverse landscape or visual effect. Landscape is dynamic and is constantly changing over time in both subtle and more dramatic transformational ways and these changes are both natural and human induced. What is important in terms of managing landscape change, is that adverse effects are avoided or sufficiently mitigated to ameliorate the effects of change on valued landscape characteristics or qualities, which are susceptible.*

Mr Kamo in turn accepted that the Pegram Block and surrounding area was a landscape of cultural significance to the hapū – as was evident from all the information provided and confirmed by both Ms Chetham and Ms Fletcher.

The adverse effects of concern to Ms Chetham were that on the lower slopes of the Ruarangi range the landscape will be substantively modified, including permanent modification of the northern and western slopes of the Pegram block; alteration of the watercourse path (a permanent diversion of approximately 500m); planting of non-native species along the boundary and finished slopes; and various works phases of the OBDA proposal e.g. haul roads to be constructed and the trucks and equipment on site; a potentially moderate adverse effect on the urupa and whanau-owned properties on Toetoe Road and Te Rewarewa blocks.

We note (and accept) Mr Evans' response that there are no views of the Pegram Block, Otaika Quarry or Ruarangi Block from the urupa itself.

Ms Chetham also noted that the mitigation package offered to Ruarangi Trust is well crafted, as it recognises some of the issues faced by the Trust, and that agreements establish a valid pathway towards achieving the intent of the RMA. However, she observed, such agreements do not *mitigate* any effects on the cultural landscape itself.

Te Parawhau, through their engagement of Ms Fletcher, identified cultural effects of concern which included air quality; dust; adverse ecological impacts; water quality and aquatic life; geology/hydrology; noise and landscape. As Mr Walker summarised, all these matters were addressed through a combination of independent peer reviews carried out on the geology/hydrology and air quality reports, and the draft consent conditions proposed e.g. the Matauranga Maori Environmental Monitoring Plan.

Finally we note that Mr Walker and Ms Norris were quite clear in response to questions from us that no particular cultural significance attaches to the particular land on and over which the OBDA is proposed. The mere fact of being a route to and from Ruarangi did not, as we understood, afford that part of the landscape any special status. To allow of that importance would, effectively, mean that any and every piece of land connected to a significant place, however remote, would

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<sup>19</sup> Evans, Statement of evidence, para 8.7  
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necessarily constitute a cultural landscape (and the term would then cease to have any practical significance or utility).

### **Finding**

Both Ms Chetham and Ms Fletcher demonstrated the strong intergenerational occupation that mana whenua have held with the land, evidenced by the numerous archaeological sites in the area and the narratives passed down through the generations.

Mr Wallace in his conclusions confirmed that through the numerous hui held between 2016-2018 the effects of the project were better understood as discussions advanced with the Ruarangi Trust and Te Parawhau Ki Tai. He noted that consultation stalled with Ruarangi Trust as a result of the divergence of views amongst trustees as to the significance of the impact of the proposal.

Additional assessments, peer reviews and cultural advice were sought to address the concerns relayed by the Trust, and most have now been addressed to the satisfaction of TPTK, if not Ruarangi Trust (although the Trust itself, properly constituted, appeared to have no formal position on the matter).

With regard to tangata whenua and cultural effects we agree with Mr Hartstone that the relevant adverse effects on cultural values have been identified, and that those effects are acceptable to tangata whenua in the context of the RMA. We also agree with Ms Clarke that the process of engagement, current and proposed agreements<sup>20</sup> with the Ruarangi Trust<sup>21</sup> and TPTK, together with the cultural assessments prepared by Ms Chetham and the Ms Fletcher of the Hauauru Trust, go a “considerable “way towards meeting the tangata whenua policy directives in the RPS.

We are satisfied that the cultural landscape has been properly considered and provision made for it – i.e. by avoidance. The essence of a cultural landscape, as we perceive the issue from an RMA perspective, is that it holds significance relative to other material parts of the landscape. – such as the articulation of maunga as boundary markers of a rohe or because it has importance in itself – such as a wāhi tapu. The Pegram Block does not, it appears, have that association or intrinsic value.

In Reply, the applicant noted<sup>22</sup> that Te Parawhau Ki Tai, as manawhenua, had expressed reluctance for Ruarangi Trust to be recognised in the conditions of any consent for reasons including the evident fact that the Trust is currently not in a position to participate as fully as is required. Furthermore, as was evident to us, the application has no adverse effects that impinge directly upon Ruarangi. As such the current dialogue between the applicant and Ruarangi Trust

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<sup>20</sup> Which include scholarship and internships along with nursery and/or riparian planting projects beyond the site.

<sup>21</sup> Mr Wallace noted in his verbal response at closing that a Memorandum of Understanding with Ruarangi Trust has been in place since 2006.

<sup>22</sup> Reply submissions, paras 22-23

does not need to be captured through the conditions of this consent and can continue separately (and the applicant has given an undertaking to continue to pursue that course).

Having considered that proposition we agree that is appropriate.

**(g) Landscape and visual amenity**

The largest effect clearly is that of a change to the existing landscape and vista. That will be reformed and, while design modifications can assist, as will revegetation and tree planting, the eventual landform – which is some 2 generations away - will not be as natural as it currently is. The respective landscape witnesses accepted that general proposition. Indeed Mr Evans accepted that there would be “high visual amenity effects” for those Acacia Park properties in the visual front line, for both the enabling and the general works phases. Mr Evans<sup>23</sup> identified those properties, absent the four written approval properties, as numbers 29, 31 and 52 Acacia Drive, being the properties of submitters Colin and Margaret Thomas, Graham Barton and Mia Barton-Boots, and Francis Spencer and Andrew Norman respectively.

Some 500m of permanent stream (the mainstem of Te Waiiti Stream) will be diverted through a newly constructed channel to the east (assessed overall by Dr Boothroyd<sup>24</sup> as having low-moderate ecological values, no particular ecosystem significance, and no taxa of conservation interest), stabilised, fenced and riparian planted.

As noted by Mr Evans, the changes to the landscape will occur progressively and incrementally over the 35-year period. Numbers of existing trees will be removed to be replaced over time by a substantial amount of new planting. The localised modification of the landform will have high adverse biophysical effects, to be mitigated over time as the final OBDA landform is completed. The depth of overburden placement is between 4m and 31m reflecting the complex nature of the existing topography. Mr Evans concluded that the most significant adverse landscape effects, occurring during the operation phase, related to the landform and character. He anticipated that all adverse effects would reduce over time to a level of low significance due to the mitigation measures proposed, the reinstatement of a rural landscape, and acceptance of the new landform. That assessment was summarised in Table 1 of Mr Evans’ statement.

Visual simulations were produced from 13 representative viewpoints and the level of visual effect significance assessed – summarised in Table 2 of Mr Evans’ statement – over 3 time frame bands representing the enabling works, general works and completion phases (5, 6-30 and 35 years respectively). The three properties referred to above fell in the high visual effect category until completion after 35 years, at which point Mr Evans concluded the effect would reduce to moderate.

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<sup>23</sup> Evans, Summary of evidence, paras 2.6 and 4.5

<sup>24</sup> Bothroyd, Summary statement of evidence, para 24

Mr Evans also noted that the height of the final OBDA landform had been designed such that the views and outlook from those dwellings in Acacia Park that currently enjoy views across the Pegram Block to the countryside and Whangarei Heads beyond remain unobstructed – i.e. a finished height below the floor level of those dwellings.

A permanently fenced, 10m wide tree planted strip will separate Acacia Park from the Pegram Block, with progressive tree planting on the final surfaces of the overburden slopes facing Acacia Park and Smeaton Drive. That planting will commence once the enabling works are completed. Mr Evans confirmed that the applicant would undertake weed control and general vegetation management on an on-going basis.

Mr Farrow was in broad agreement with Mr Evans' assessment, as already noted, his main concern being that the relevant management plans enable proper and on-going engagement with Council (among others) so that they evolve appropriately over time. As a result of submissions heard, Mr Farrow was not convinced that the magnitude of visual effect was, in all cases, accurately captured. He was sympathetic to the request from submitters that native plants be used wherever practicable, noting that the final ground (subsoil) conditions may not be conducive to larger native species.

### **Discussion and Finding**

It was common ground that there will be an adverse landscape and visual effect from the proposed OBDA – and that this would be significant and enduring for a few. However, the landscape is not, setting cultural landscape aside for the moment, classified as having particular significance at a national, regional or local scale and therefore attracts no particular statutory protection. That is not to say that the landscape is unimportant; it does, however, mean that there is no strict impediment to changing it in the manner sought.

During the hearing we were live to the question as to whether a smaller or lower finished “structure” would be sensible and/or practicable. It became evident that to materially reduce the effect on the “front line” would negate the purpose of the application – i.e. to enable the quarry to continue to produce rock for the foreseeable future (we accept that the alternatives discussed – including use of greensand as a fertiliser / soil conditioner or aggregate supplement<sup>25</sup> - meant that there is no obvious and commercially feasible alternative at this time and in the critical time frame advised by Mr Jones<sup>26</sup>). Having said that we raised the question as to what the applicant intended after 35 years – since the resource has an estimated 100-year life – and submitters indicated a concern that the remaining part of the Pegram Block could then be used bringing the OBDA even closer to the Smeaton residential area. We were told that no such longer-term strategy has been developed – and we leave that future land use matter to Council to reflect on further.

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<sup>25</sup> Harris, Notes from Closing verbal submission

<sup>26</sup> Jones, statement of evidence, paras 12 and 14

We note that the applicant has been active in securing a number of properties in the immediately affected viewing area. That has certainly reduced the number of parties who are most affected. It has not, however, eliminated that matter. There is no obvious halfway house on this matter. Nor is there realistic mitigation – planting will produce that over time but given the staged “campaigns” and the time it takes for vegetation to establish to an adequate screening dimension, this is not a short-term solution.

We therefore find that the landscape and visual effect on a particular few people and properties is significantly adverse and is only amenable to mitigation over an extended time period. For many others it will be obvious but of diminishing significance.

**(h) Construction noise**

Equipment sound levels based on the information provide to Ms Wilkening by the applicant were expected to range from 108 to 117 dBA (with lighter equipment up to 112 dBA)<sup>27</sup>.

Subject site ambient noise levels<sup>28</sup> were generally below 50 dB L<sub>Aeq</sub>.

An initial point of difference between Ms Wilkening and Mr Runcie (and Mr Hartstone) was over the question as to whether all the enabling works should be regulated as construction works, or only some of them, notwithstanding that the operative District Plan sets specific noise limits for mineral extraction.

That issue broadened out at the hearing as to whether all the works (enabling and general) were in effect construction works since the OBDA was a construction throughout. Reference to the operative District Plan required cross-reference to the definition of *construction* in the Oxford English Dictionary (9<sup>th</sup> Edition) and to New Zealand Standards. In Reply, the applicant provided those definitions which, as observed, are capable of extension to the entire proposal albeit the applicant is only seeking to use the Construction Noise standard for the enabling works (and the more restrictive operative District Plan noise provisions for all general works).

By the close of the hearing the applicant and Council agreed that *NZS 6803:1999 Acoustics - Construction Noise* could and should be used for the enabling works subject to the preparation of a Construction Noise Management Plan - i.e. 70 dB L<sub>Aeq</sub> and 85 dB L<sub>Amax</sub>.

As the general works will be undertaken across two spatial “categories” – the ME3 overlay and the Countryside Environment zone – which have different noise limits (55 dB L<sub>Aeq</sub> and 50 dB L<sub>Aeq</sub> respectively) – it was agreed that, for simplicity of enforcement and monitoring (if necessary), the ME3 limit of 55 dB L<sub>Aeq</sub> should apply (Ms Wilkening noting<sup>29</sup> that her assessment – using<sup>30</sup>

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<sup>27</sup> Wilkening, Statement of evidence, paras 6.1-6.2

<sup>28</sup> Wilkening, Statement of evidence, para 5.3

<sup>29</sup> Wilkening, Summary of Statement of evidence, para 10

<sup>30</sup> Wilkening, Statement of evidence, paras 8.15-8.16

detailed 3D topographical information and taking into account terrain shielding and meteorological conditions - showed that compliance with both/either was achievable).

While submitters raised concerns about heavy vehicle noise – prompted it appeared by construction noise from recent work on the adjacent Otaika sportsfield – Mr Edmonds noted in reply that the quarry will use different (i.e. modern) earthmoving equipment with quieter exhausts and closed-in 4 stroke motors such that the comparison (with 46 year old McKenzies Terex master scrapers with GM s-stroke exposed engines with straight exhausts) is not valid.

### **Finding**

We find that the activity, both enabling works and general works, can be undertaken and managed in accordance with the relevant noise sound limits and that while that noise will be audible to many, it is not such as to create an adverse effect that, in compliance with those limits, requires further attenuation.

## **8 Relevant statutory provisions**

### **8.1 Policy statements and plan provisions**

In considering this application, the Commissioners have had regard to the matters outlined in Section 104 of the RMA. In particular, the Commissioners had particular regard to the relevant provisions of the following planning documents:

- i. National Policy Statement for Freshwater Management 2104;
- ii. Regional Policy Statement for Northland 2016 (RPS);
- iii. Regional Water and Soil Plan for Northland (2014);
- iv. Regional Air Quality Plan for Northland 2003 (RAQP)
- v. Operative Whangarei District Plan 2007;
- vi. WDP Plan Changes 85 (Rural), 85A (Rural Countryside Environment) and 102 (Minerals); and
- vii. Proposed Whangarei District Plan (Appeal Version March 2018).

We note that the relevant provisions of those documents were comprehensively outlined in Appendix 15 of the application documentation and throughout the evidence of Ms Clarke (including Attachment 2 relating to the three plan changes) and sections 6 and 9 of the s42A report and supplementary statements of Mr Hartstone, the two planning witnesses. Other witnesses and parties also referred to various provisions. There was no particular dispute about the provisions as such – albeit there was some disagreement about matters of interpretation and weight – and therefore we do not repeat or recite those provisions but, per s113(3) RMA, cross-refer to those sections of the material before us.

From the above documents we note, in particular, as identified by Ms Clarke and Mr Hartstone, that the recently operative RPS explicitly defines *regionally significant mineral resources* at Policy 5.1.4 based on 8 criteria (one or more of which need to be satisfied). The Otaika quarry clearly qualifies under that provision, and the associated provisions emphasise the importance of protecting those resources in order to enable their efficient utilisation. Indeed RPS Policy 5.1.3 requires the *avoidance* of adverse

effects on the use and development of regionally significant mineral resources (including through reverse sensitivity provisions in district plans) – a policy that presumably is meant to be read in light of the caselaw on the word “avoid” following the earlier Supreme Court’s rulings on *King Salmon*.

While the overburden and its placement is patently not the mineral resource, the ability to extract the mineral resource obviously depends upon the ability to remove and dispose of whatever lies over the resource. By necessary implication then, overburden disposal engages those policies.

That, of course, does not give the applicant a *carte blanche*, but it is a very strong directive, one that has quite recently become operative in the light of significant caselaw interpretation, and one that is enjoined on decision makers to implement unless there are strong countervailing reasons.

## 8.2 Part 2 RMA matters

Regardless of whether we are required, or not, to consider Part 2 of the RMA (while awaiting the Court of Appeal’s clarification post-RJ *Davidson Family Trust* etc), we have done so.

In considering this application, the Commissioners have taken into account the relevant principles outlined in Sections 6, 7 and 8 of the RMA as well as the overall purpose of the RMA as stated in Section 5.

In particular we have:

- recognised and provided for the s6(e) matter of national importance relating to the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga;
- had particular regard to s7(a) kaitiakitanga; 7(b) the efficient use and development of natural and physical resources; 7(c) the maintenance and enhancement of amenity values, 7(f) the maintenance and enhancement of the quality of the environment, and 9(g) any finite characteristics of natural or physical resources; and
- taken into account the s8 principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

We are persuaded that the application, albeit having significant effects on some persons and the existing landform, satisfies the provisions of the relevant statutory documents and sustainable management purpose of the RMA and, with the suite of conditions adopted, should be granted.

## 9 Conditions

We have generally accepted the set of draft conditions provided at the close of the hearing. The main exception is the deletion of the requirement to involve Ruarangi Trust directly for the reason note in this Decision.

During the hearing we openly discussed the possibility of a residents liaison group to facilitate on-going dialogue between the applicant and community. On further reflection we have concluded that using the existing landowners association as a conduit is sufficient at this time, with the confident expectation that should a wider reference group be required or considered desirable then that can be organised outside

of the conditions of consent – or, of course, if issues arise that require a review of conditions of consent, could be imposed at a future time if that is deemed appropriate to the issue.

## 10 Decision

Pursuant to Section 104 of the Resource Management Act 1991, the Commissioners grant land use consent to GBC Winstone Limited relating to the disposal of overburden from the Otaika Quarry, located at Quarry Road, Raumanga, Whangarei, (Part Lot 2 DP 53728 and Lot 2 DP 363982) subject to the conditions included as Attachment 1 below.

## 11 Reasons for the decision

Consent is granted for the reasons discussed throughout this decision and, in summary, because:

- (a) the application is consistent with the relevant provisions of the statutory planning documents;
- (b) the adverse land use effects of the application can be mitigated to a substantial degree, albeit on a longer timeframe, and those that remain can be managed through conditions of consent;
- (c) while there will be material visual effects on a few persons and properties, those effects are outweighed by the benefits of allowing the activity to proceed; and
- (d) granting consent promotes the wider sustainable management purpose of the RMA.

Issued this 6th day of June 2018



**David Hill (Chair)**  
**Independent Hearings Commissioner**

## Attachment 1: Conditions of Consent

**Acting under delegated authority pursuant to s34A of the Resource Management Act 1991, the land use application by GBC Winstone Limited for resource consent to place overburden on the Pegram Block (Part Lot 2 DP 363982 and Part Lot 2 DP 53728) at Quarry Road, Raumanga, Whangarei is granted subject to the following conditions:**

### General conditions

1. The overburden disposal activity shall be carried out generally in accordance with the plans and all information submitted with the application and in evidence, including as detailed below:
  - Document entitled 'Application for Land Use Consent and Assessment of Environmental Effects ('AEE') Prepared for GBC Winstone' dated 1 June 2017, prepared by Boffa Miskell Limited, inclusive of the Addendum to Section 4.1.11 – Noise and Vibration and Section 4.3 – Activity status – Land use consent dated 1 June 2017 prepared by Boffa Miskell Limited, and the Addendum to Section 5.13 – Effects on Cultural Values, Section 5.15 – Suggested consent conditions, Section 7.2 – Consultation, Tangata Whenua, prepared by Boffa Miskell Limited, dated 13 March 2018 and Updated Appendix 4 – Concept Plan of Proposal, Otaika Quarry, Proposed Overburden Disposal Area, Assessment of Environmental Effects, Updated at 12 March 2018;
  - Document entitled 'Pegram Block Overburden Disposal - Ecological Assessment prepared for GBC Winstone' dated 16 March 2017 prepared by Boffa Miskell Limited, inclusive of the document entitled 'Memorandum: Otaika Quarry: Pegram Block Overburden Disposal – Ecological Assessment, Land Use Consenting Matters' dated 10 May 2017 prepared by Boffa Miskell Limited (refer Appendix 5 of the AEE);
  - Document entitled 'Otaika Quarry – Proposed Overburden Disposal Area' Acoustic Report dated 22<sup>nd</sup> May 2017 prepared by Marshall Day Acoustics Limited (refer Appendix 6 of the AEE);
  - Document entitled 'Overburden Placement, Pegram Block Otaika Quarry, Whangarei: Archaeological Assessment' dated March 2017 prepared by Clough and Associates (refer Appendix 7 of the AEE);
  - Document entitled 'Overburden Placement, Pegram Block, Otaika Quarry, Whangarei – Landscape and Visual Effects Assessment' dated 22 May 2017 prepared by Boffa Miskell Limited (refer Appendix 8 of the AEE); and inclusive of the revised Figure 16 provided to Whangarei District Council on 12 July 2017 and the Document entitled 'Memorandum: Otaika Quarry, Pegram Block OBDA, Ruarangi Block', dated 9 March 2018, prepared by Boffa Miskell Limited,
  - Document entitled 'Otaika Quarry – Pegram Block Overburden Disposal: Assessment of Adverse Effects on Flood Risk' dated 22 May 2017 prepared by Tonkin and Taylor Limited and Document entitled Surface Water Hydrology Assessment, dated May 2017, prepared by Tonkin and Taylor Limited (refer Appendix 9 of the AEE);
  - Document entitled 'Otaika Quarry – Pegram Block Overburden Disposal: Assessment of Adverse Effects of Land Stability' dated 5 May 2017 prepared by Tonkin and Taylor Limited, inclusive of the appended Preliminary Geotechnical Assessment dated March 2017 prepared by Tonkin and Taylor Limited and Document entitled 'Memorandum: Otaika Quarry, Pegram Block Geotechnical Drilling' dated 28 September 2017 prepared by Tonkin and Taylor Limited (refer Appendix 10 of the AEE); and the Document entitled 'Otaika Quarry, OBDA Geotechnical Addendum Report', dated March 2018, prepared by Tonkin and Taylor Limited;
  - Document entitled 'Assessment of Adverse Effects arising from the Erosion and Sediment' and Document entitled the 'Otaika Quarry – Pegram Overburden Disposal Area - Erosion

- and Sediment Control Management Plan' dated 1 June 2017 (refer Appendix 11 of the AEE);
- Document entitled 'Memorandum – Whangarei District Council – Relevant District Plan Rules – Air Quality' dated 1 May 2017, prepared by AECOM NZ Limited, and Document entitled 'Dust Management Assessment – Pegram block' dated 17 March 2017, prepared by AECOM NZ Limited, and the Document entitled 'Memorandum: Assessment of off-site effects associated with Overburden Placement on the Pegram Block' dated 25<sup>th</sup> September 2017 prepared by AECOM NZ Limited;
  - Document being Correspondence from GBC Winstone to the Whangarei District Council regarding Pegram Overburden Disposal Area: Overview of Other Options Considered for the Disposal of Overburden at Otaika Quarry, dated 12 March 2018;
  - Document entitled 'Economic Assessment of Overburden Disposal on Pegram Block, prepared by Brown, Copeland and Co. Limited, dated 13 March 2018; and
  - Document entitled 'Otaika Quarry, Proposed Overburden Disposal Area, Cultural Report, Assessment of Effects on Maori Values' dated 12 March 2018, prepared by Hauauru Trust.

## **Conditions to be met prior to commencement of all physical works approved under this consent**

### **Management Plans**

2. The consent holder shall submit the following documents to the Whangarei District Council's Compliance Officer for certification, at least 20 working days prior to the commencement of any physical works approved under this consent taking place on the site:

- a) An **Overburden Management Plan**.

The purpose of the Overburden Management Plan shall be to describe the practices and procedures to be adopted by the Consent Holder to ensure compliance with the conditions of this land use consent.

The Plan shall clearly identify those matters and works to be carried out in (i) the Enabling Works Phase, and (ii) the General Works Phase (also referred to as a series of overburden campaigns).

The Overburden Management Plan shall include:

- A plan showing the boundaries of the overburden placement area with the Mineral Extraction Area (ME3 - Winstone Aggregates – Otaika Quarry and access way) and Countryside Environment as defined in the Operative District Plan, at the time of the approval of this land use consent;
- A plan showing topography, drainage, natural watercourses, existing vegetation cover and any other significant landforms or features within the Overburden Disposal Area;
- The anticipated life span of Overburden Disposal operation;
- The estimated volume of overburden material to be placed within the Overburden Disposal Area, and finished heights;
- The location and dimensions of the enabling works, including indicative haul roads and internal circulation routes, shear key and toe bunds, toe buttress and placement of any matted foundation material, filling of gully systems and watercourses and creation of new stream channels;
- The anticipated location and dimensions including the anticipated height and volume of overburden material to be placed in the General Works phase and confirmation that the maximum active working area fully exposed at any one time shall be 3 hectares excluding haul roads, batter slopes, and topsoil mounds;

- Details of proposed setbacks of any enabling works and overburden disposal operations from site boundaries, and landscaping and screening measures;
  - The number of people proposed to be employed, and parking spaces provided on-site;
  - A description of the proposed methods of any enabling works or overburden disposal operations including stripping and placement of material;
  - A description of future proposed rehabilitation programme required for completion of each stage, and description of the rehabilitation programme to be undertaken on completion of disposal of all overburden as approved under this consent (noting that Condition 16 requires specific detail regarding completion works for each overburden campaign).
- b) An **Ecological Management Plan** prepared by a suitably qualified and experienced ecologist that conforms with the content and conclusions contained in the document entitled 'Memorandum: Otaika Quarry: Pegram Block Overburden Disposal – Ecological Assessment, Land Use Consenting Matters' dated 10 May 2017 prepared by Boffa Miskell Limited (refer Appendix 5 of the AEE).

The purpose of the Ecological Management Plan shall be to ensure the ecological mitigation measures described in the above document are implemented and maintained for the duration of this consent.

At least 30 working days prior to the commencement of any enabling works, the consent holder shall invite the Te Pouwhenua o Tiakiriri Kukupa Trust (trading as Te Parawhau Ki Tai) or their successors (the Pouwhenua Trust) to provide input into the development and implementation of the Ecological Management Plan. If 30 working days have elapsed from the date on which the Consent Holder invited the Trust to provide input to this Management Plan, and no input (including advice requesting an extension of time) has been provided by the Trust, it shall be considered that the Trust does not wish to provide any input, and the Ecological Management Plan can be submitted to the Whangarei District Council.

The Ecological Management Plan shall include:

- Identification of those matters and works that are to be carried out in (i) the Enabling Works Phase and (ii) the General Works Phase (referred to as a series of 'overburden campaigns' in this consent);
- Details regarding the timing of all proposed works, noting that some activities such as relocation of fish downstream is required to be undertaken and completed before any physical works approved under this consent commence;
- Details of the proposed riparian planting associated with the stream diversion and lower Te Waiti Stream, inclusive of all stock control measures, and maintenance measures for a 5-year period following the completion of the riparian planting, to ensure planting success;
- Details of a pest and weed programme, including implementation timeframes and monitoring criteria that can be used to measure success; and
- A record of consultation undertaken by the Consent Holder with the Pouwhenua Trust on the development and implementation of the Ecological Management Plan.

*Advice Note: Ecological Management Plan*

*The Council recognises that the works required to implement the ecological mitigation measures will be undertaken during the Enabling Works Phase, and that pest and weed control and maintenance will be undertaken as required, for the duration of the consent.*

- c) A **Dust Management Plan** prepared by a suitably qualified professional prepared generally in accordance with the Document entitled 'Memorandum – Whangarei District Council – Relevant District Plan Rules – Air Quality' dated 1 May 2017, prepared by AECOM NZ Limited, and Document entitled 'Dust Management Assessment – Pegram block' dated 17 March 2017, prepared by AECOM NZ Limited, and the Document entitled 'Memorandum: Assessment of off-site effects associated with Overburden Placement on the Pegram Block' dated 25<sup>th</sup> September 2017 prepared by AECOM NZ Limited.

The purpose of the Dust Management Plan is to manage the consented activities so as to ensure there is no dust nuisance beyond the subject site.

At least 30 working days prior to the commencement of any enabling works, the consent holder shall invite the Te Pouwhenua o Tiakiriri Kukupa Trust (trading as Te Parawhau Ki Tai) or their successors (the Pouwhenua Trust) to provide input into the development and implementation of the Dust Management Plan. If, 30 working days has elapsed from the date on which the Consent Holder invites the Trust to provide input in to this Management Plan, and no input (including advice requesting an extension of time) has been provided by the Trust, it shall be considered that the Trust does not wish to provide any input, and the Dust Management Plan can be submitted to the Whangarei District Council.

The Dust Management Plan shall include:

- Identification of those matters and works that are to be carried out in (i) the Enabling Works Phase and (ii) the General Works Phase (referred to as a series of 'overburden campaigns' in this consent);
- Description of the methods of mitigation and operating procedures including monitoring equipment and procedures. This shall include specific measures for all haul road dust management, vehicle speed limits, stockpile management, and re-establishment of exposed soils and overburden following completion of enabling works and any subsequent overburden campaigns;
- Description of methods for the visual monitoring of dust emissions from the site, that are to be visually monitored at least once every working day, and recorded in a daily log for the duration of the Enabling Works and any subsequent overburden campaigns.

The daily log shall record:

- (i) Any dust control equipment malfunction and any remedial action taken;
  - (ii) Any visible emissions of dust observed leaving the site, the source(s) and any resulting remedial action;
  - (iii) Any use of sprinklers or a water cart, the frequency of use and the volume of water used for dust suppression;
  - (iv) Weather conditions, including rainfall, wind direction and speed and temperature;
  - (v) The date and signature of the person entering the information.
- Procedures for responding to accidental dust nuisance discharges;
  - Procedures for the use of water or liquid suppression to minimise dust emissions (e.g. water carts, K-lines, or polymers);
  - Procedures for the operation, maintenance and calibration of any meteorological monitor including any meteorological exceedance alert thresholds and contingency measures;
  - Procedures for the operation, maintenance and calibration of any Total Suspended Particulate (TSP) trigger levels including any TSP exceedance alert thresholds and contingency measures; and
  - A record of consultation undertaken by the consent holder with the Pouwhenua Trust on the development and implementation of the Dust Management Plan.
- d) A **Landscape Rehabilitation Plan** prepared by a suitably qualified landscape architect prepared generally in accordance with the document entitled 'Overburden Placement, Pegram Block, Otaika Quarry, Whangarei – Landscape and Visual Effects Assessment' dated 22 May 2017, prepared by Boffa Miskell Limited.

The purpose of the Landscape Rehabilitation Plan shall be to ensure the landscape mitigation measures described in the above document, are implemented and maintained for the duration of this consent.

At least 30 working days prior to the commencement of any enabling works, the consent holder shall invite the Te Pouwhenua o Tiakiriri Kukupa Trust (trading as Te Parawhau Ki

Tai) or their successors (the Pouwhenua Trust) to provide input into the development and implementation of the Landscape Rehabilitation Plan. If, 30 working days have lapsed from the date on which the consent holder invites the Trust to provide input into this Management Plan, and no input (including advice requesting an extension of time) has been provided by a Trust, it shall be considered that the Trust does not wish to provide any input, and the Landscape Rehabilitation Plan can be submitted to the Whangarei District Council.

The Landscape Rehabilitation Plan shall include:

- Those matters and works that relate to the Enabling Works Phase, and may include those matters and works that relate to the General Works Phase (noting Condition 14 requires a 'Overburden Campaign - Landscape Rehabilitation Plan' for each overburden campaign);
- The configuration of the final Overburden Disposal Area footprint and its overall shape and form, including completed landform profiles.

In the event that the extent of overburden placement during the General Works Phase ceases before the full extent of the final Overburden Disposal Area (2.4 million m<sup>3</sup> of overburden placement) is undertaken, the Landscape Rehabilitation Plan shall include the configuration of a revised finished landform including its overall shape and form;

- Details of tree planting, specifically the format and composition of the screen planting along the boundary of the subject site with Acacia Park residential area, to be undertaken prior to and during the Enabling Works, and prior to the commencement of any General Works (overburden campaigns) in general accordance with Figure 16 of the document entitled 'Overburden Placement, Pegram Block, Otaika Quarry, Whangarei – Landscape and Visual Effects Assessment' prepared by Boffa Miskell Limited, as revised and dated 12 July 2017 and having regard to the of any feedback from residents on the screening planting along the boundary, as required to be sought by Condition 4 below;
  - Details of site rehabilitation, inclusive of planting regimes, timeframes, and maintenance measures, to be implemented at the end of the Enabling Works Phase. This shall include the location of tree planting to be carried out on the overburden slopes at the completion of the enabling works phase, and the revegetation of a minimum area of 4,200 m<sup>2</sup> directly adjacent to the Eastern Tree block using a range of locally sourced tree and shrub species, in general accordance with Figure 16 – Vegetation Mitigation Plan of the document entitled 'Overburden Placement, Pegram Block, Otaika Quarry, Whangarei – Landscape and Visual Effects Assessment' prepared by Boffa Miskell Limited, as revised and dated 12 July 2017;
  - The location of tree planting carried out on the overburden slopes commencing at the completion of the Enabling Works Phase and continuing through the General Works Phase;
  - Maintenance regimes, inclusive of timeframes, for all boundary and amenity planting to be implemented as part of the Enabling Works Phase for the duration of the consent; and
  - A record of consultation undertaken by the Consent Holder with the Pouwhenua Trust on the development and implementation of the Landscape Rehabilitation Plan.
- e) A **Construction Noise Management Plan**, to be prepared by a suitably qualified and experienced acoustician, for the purpose of noise management during the Enabling Works only.

The Construction Noise Management Plan shall be prepared with reference to Annex E of *NZS 6803:1999 Acoustics – Construction Noise* and shall be consistent with the noise restrictions identified under Condition 10 below.

The Construction Noise Management Plan shall include:

- Details of the applicable noise criteria;
- Details of the programme of works and hours of operation;

- Identification of surrounding noise sensitive receivers;
- Details of the best practicable options for management, monitoring and mitigation measures to ensure compliance with the relevant noise criteria.

### **Amendments to Management Plans**

3. Any amendments to the Management Plans required as a condition of this consent must be limited to the scope of this consent. The Consent Holder shall advise the Whangarei District Council's Compliance Officer of any amendments to the Plans, prior to implementation, to confirm that they are within the scope of this consent.

#### Advice Note: Management Plans – Scope of Amendments

*The Council recognises that changes in management techniques, technology and demand for quarry material will evolve over the duration of this consent. The Management Plans are intended to provide flexibility both for the consent holder and the Council for the management of the overburden disposal area at Otaika Quarry. Accordingly, it is recognised the Management Plans may need to be amended over time.*

*Amendments which affect the Consent Holder achieving the purpose of the Management Plan in the conditions of this consent may require an application in accordance with s.127 of the RMA.*

### **Input from residents on screening planting along boundary**

4. At least 30 working days, prior to the commencement of any physical works, the Consent Holder shall invite the residents and owners of the following properties, which directly adjoin the subject site, to provide input into the screen planting along the boundary of their property and the subject site as part of the development of the Overburden Campaign – Landscape Rehabilitation Plan.
  - Lot 1, DP 207516;
  - Lot 24, DP 187896;
  - Lot 1, DP 370738;
  - Lot 2, DP 370738;
  - Lot 27, DP 187898;
  - Lot 28, DP 187898;
  - Lot 29, DP 187898;
  - Lot 30, DP 187898;
  - Lot 31, DP 187898; and
  - Lot 32, DP 187898;

In particular, input should be invited on the format and composition of the screen planting along the boundary of the subject site with Acacia Park to be undertaken. If, 30 working days have lapsed from the date on which the Consent Holder invites the resident and owner to provide input into the Plan, and no input (including advice requesting an extension of time) has been provided by any resident(s) and/or owner, it shall be considered that the resident and/or owner does not wish to provide any input, and the Plan can be submitted to the Whangarei District Council.

### **Pre-start meeting – Enabling Works**

5. Following certification of the Management Plans identified in Conditions 2 (a)-(e), the Consent Holder shall hold a pre-start meeting to facilitate the implementation of Management Plans. The meeting shall:
  - a) Be located on the subject site;
  - b) Be scheduled not less than five working days before the anticipated commencement of any physical works taking place on the site;
  - c) Include an invitation to Whangarei District Council's Compliance Officer and Te Pouwhenua o Tiakiriri Kukupa Trust (trading as Te Parawhau Ki Tai) or their successors (the Pouwhenua Trust);
  - d) Include representation from the contractors (if appropriate) who will undertake the works.

The meeting shall discuss measures and methodologies to be implemented to ensure compliance with the conditions of this consent and shall ensure all relevant parties are aware of and familiar with the necessary conditions of this consent.

The following information shall be made available by the Consent Holder at the pre-start meeting, as appropriate:

- a) Timeframes for key stages of the Enabling works;
- b) Copies of the Management Plans certified under Condition 2(a)-(e) above; and
- c) Copies of relevant Northland Regional Council consent(s).

The Consent Holder shall be responsible for ensuring that minutes of any meeting is provided to Whangarei District Council's Compliance Officer within 5 working days, following the meeting taking place.

#### **Notification of Council five (5) working days prior to enabling works commencing**

6. The Whangarei District Council's Compliance Officer shall be notified in writing at least five (5) working days prior to any physical works associated with the Enabling Works Phase commencing on the subject site. This condition applies to both enabling works phases.

#### **Complaints Register**

7. At all times, the Consent Holder shall keep a Complaints Register, to register any complaints regarding all aspects of the overburden disposal operations at the site related to the exercise of this consent received by the Consent Holder. The register shall record;
  - a) The date, time and duration of the event / incident that has resulted in a complaint;
  - b) The location of the complainant when the event / incident was detected (if possible specify the nature of the incident e.g. noise or dust nuisance);
  - c) The possible cause of the event / incident;
  - d) The weather conditions and wind direction at the site when the event / incident allegedly occurred;
  - e) Any corrective action undertaken by the Consent Holder in response to the complaint;
  - f) Any other relevant information.

The register shall be available to Whangarei District Council on request.

*Advice Note: Where the Council receives complaints directly from any person, it shall direct those complaints to the Consent Holder in the first instance.*

### **Implementation of 'Enabling Works'**

#### **Enabling works to accord with certified Management Plans**

8. All works undertaken during the Enabling Works Phase in the Management Plans under Condition 2 (a)-(e) above, are to be undertaken and completed in accordance with the certified Management Plans.

On completion of all works in the Enabling Works Phase, the Consent Holder shall provide to the Whangarei District Council's Compliance Officer, written confirmation from suitably qualified and experienced professional(s) to verify compliance with the Management Plans in Conditions 2(a)-(e). Where appropriate, the written confirmation may be supported by suitable evidence (for example, photographs) to verify compliance with the Plans.

#### **Written notice to Council and other parties at least one (1) month prior to commencing Enabling works**

9. A least 20 working days prior to the commencement of each phase of the Enabling Works, the Consent Holder shall provide a written notice to the Whangarei District Council's Compliance Officer, the Ruarangi Trust (or their successor), the Acacia Park Landowners Association Inc and to all residents within 150 metres from the footprint of the Enabling Works (as defined on the Plan – entitled 'Written notice to be provided to Properties within 150 metres of Overburden Footprint' attached to this consent.)

This written notice shall include:

- a) The start and anticipated completion dates of the works;
- b) A description of the nature of the works including the working hours; and
- c) Contact name for any queries or complaints regarding the works. The contact details shall accord with the information provided as part of the Complaints Register in Condition 7.

Confirmation that written notice has been provided in accordance with this condition shall be provided to the Council's Compliance Officer before works commence.

In the event that any details provided in the written notice change during the Enabling Works, the Consent Holder shall advise in writing the Whangarei District Council's Compliance Officer, the Ruarangi Trust (or their successor), the Acacia Park Landowners Association Inc, and all residents within 150 metres of the footprint of the Enabling Works.

*Advice Note: This condition will be used to formalise the commencement and completion dates for the enabling works.*

#### **Performance standards for Enabling works**

10. All activities carried out on the site during the Enabling Works, shall comply with the following:
  - a) No machinery shall operate outside the hours of Monday – Friday 7.00am – 6pm, and Saturdays 7.30 am – 2.30 pm. No works are to be undertaken on Sundays and public holidays.
  - b) Noise generated by the Enabling Works activities to secure the site and construct noise bunds/barriers shall not exceed the long-term noise limits in *NZS 6803: 1999 Acoustics – Construction Noise*.
  - c) Noise levels shall not exceed 45dB  $L_{Aeq}$  and 70 dB  $L_{AFmax}$  at the notional boundary of properties zoned Living 3 and the site boundary of properties zoned Living 1 at all times outside those hours specified in Condition 10(a) above.
  - d) All stockpiles of topsoil material shall not exceed 3 metres in height and shall be setback at least 5 metres from any side boundary and shall be set back at least 20 metres from any watercourse.

*Advice note: The Council recognises that some properties including the properties at 5-7 and 11 Grove Lane, provided written approval in accordance with s.104(3)(a)(ii), RMA, which forms part of the proposal.*

#### **Noise measurement report – Enabling works**

- 11 To ensure compliance with Condition 10(a), (b), and (c) above, within three (3) months of any Enabling Works commencing, the Consent Holder shall submit to Whangarei District Council's Compliance Officer a noise report prepared by a suitably qualified and experienced acoustician with noise measurement results to confirm compliance with the noise limits set in the referenced conditions.

#### **Geotechnical confirmation - Enabling works**

12. Within three (3) months of completion of all Enabling Works, the Consent Holder shall provide to Whangarei District Council's Compliance Officer, written confirmation from a suitably qualified and experienced geotechnical professional to verify that all works, inclusive of the construction of the shear key and toe buttress, and placement of matted material, have been completed generally in accordance with the document entitled 'Otaika Quarry – Pegram Block Overburden Disposal: Assessment of Adverse Effects of Land Stability' dated 5 May 2017 prepared by Tonkin and Taylor Limited, inclusive of the appended Preliminary Geotechnical Assessment dated March 2017 prepared by Tonkin and Taylor Limited.

### **Implementation of 'General Works' (overburden campaigns)**

#### **General works to accord with certified Management Plans**

13. All works undertaken during the General Works Phase ((also referred to as a series of 'overburden campaigns' in this consent) in the certified Management Plans under Condition 2 (a) - (d) and the Overburden Campaign – Landscape Rehabilitation Plan under Condition 14, shall be undertaken and completed in accordance with those certified Plans.

### **Overburden Campaign – Landscape Rehabilitation Plan**

14. Prior to the commencement of each and every General Works Phase ('overburden campaign'), the Consent Holder shall submit an **Overburden Campaign - Landscape Rehabilitation Plan** to the Whangarei District Council's Compliance Officer for certification.

The Overburden Campaign - Landscape Rehabilitation Plan shall be prepared by a suitably qualified and experienced landscape architect prepared generally in accordance with the document entitled 'Overburden Placement, Pegram Block, Otaika Quarry, Whangarei – Landscape and Visual Effects Assessment' dated 22 May 2017 prepared by Boffa Miskell Limited.

The purpose of the Overburden Campaign Landscape Rehabilitation Plan shall be to ensure the landscape mitigation measures (including contouring and planting) described in the above document are implemented and maintained either prior to and/or on completion of the overburden campaign.

At least 30 working days prior to the commencement of any overburden campaign, the Consent Holder shall invite the Te Pouwhenua o Tiakiriri Kukupa Trust (trading as Te Parawhau Ki Tai) or their successors (the Pouwhenua Trust) to provide input into the development and implementation of the Overburden Campaign - Landscape Rehabilitation Plan. If, 30 working days have lapsed from the date on which the Consent Holder invites the Trust to provide input in to this Plan, and no input (including advice requesting an extension of time) has been provided by the Trust, it shall be considered that the Trust does not wish to provide any input, and the Plan can be submitted to the Whangarei District Council.

The Overburden Campaign - Landscape Rehabilitation Plan shall detail:

- Configuration of the Overburden Disposal Area footprint and its overall shape and form resulting from the earthworks campaign, including completed landform heights and profiles;
- Any tree planting, specifically the format and composition of the screen planting along the boundary of the subject site with Acacia Park to be undertaken, prior to the commencement of any overburden campaign;
- Site rehabilitation, inclusive of planting regimes, timeframes, and maintenance measures, to be implemented at the end of the overburden campaign, including the location of any tree planting carried out on the overburden slopes
- Specific details regarding a finished overburden height, contour, and planting regime in the event that the overburden campaign either ceases for any reason, or is the final overburden campaign.
- A record of any consultation undertaken by the consent holder with the Pouwhenua Trust on the Overburden Campaign - Landscape Rehabilitation Plan.

### **Written notice to Council and other parties at least (1) one month prior to the commencement of the General works (overburden campaigns)**

15. A least 1 month prior to the commencement of each and every overburden campaigns, the Consent Holder shall provide a written notice to the Whangarei District Council's Compliance Officer, the Ruarangi Trust (or their successor), and to all residents within 150 metres from the footprint of the Enabling Works (as defined on the Plan – entitled 'Written notice to be provided to Properties within 150 metres of Overburden Footprint' attached to this consent.)

This written notice shall include:

- a) The start and anticipated completion dates of the works;
- b) A description of the nature of the works; and
- c) Contact name for any queries or concerns regarding the works. The contact details shall accord with the information provided as part of the complaints register.

Confirmation that written notice has been provided, in accordance with this condition shall be provided to the Council's Compliance Officer before works commence.

In the event that any details provided in the written notice change during the General Works, the Consent Holder shall advise in writing the Council's Compliance Officer, the Ruarangi Trust (or their successor) and all residents within 150 metres of the Overburden Footprint.

**Written notice to Council of completion of an overburden campaign**

16. Within three (3) months of completion of each and every overburden campaign, the Consent Holder shall provide the following to the Whangarei District Council's Compliance Officer:
- a) Written confirmation from a suitably qualified landscape architect to verify that compliance has been achieved with the details contained in the certified Landscape Rehabilitation Plan under Condition 14 above regarding site rehabilitation to be implemented after each earthworks campaign.
  - b) Written confirmation from a suitably qualified and experience geotechnical professional to verify that the placement of overburden has been undertaken in accordance with sound engineering practice associated with the placement of overburden, and in general accordance with the document entitled 'Otaika Quarry – Pegram Block Overburden Disposal: Assessment of Adverse Effects of Land Stability' dated 5 May 2017 prepared by Tonkin and Taylor Limited, inclusive of the appended Preliminary Geotechnical Assessment dated March 2017 prepared by Tonkin and Taylor Limited.

**Limitation on material**

17. All material imported onto the site shall be restricted to overburden material which has been removed from the adjoining Otaika Quarry, except for any topsoil that may be required for site rehabilitation purposes.

**Performance standards for General Works (overburden campaigns)**

18. All activities carried out on the site during the General Works Phase (for each and every overburden campaign) shall comply with the following:
- a) No machinery shall operate outside the hours of Monday to Friday between 7.00 am and 6.00 pm and Saturdays between 7.00 am and 2.30 pm. No works are to be undertaken on Sundays and public holidays.
  - b) Noise levels shall not exceed 55dB  $L_{Aeq}$  between 7.00 am to 6.00pm on Monday to Friday and 7.00 am to 2.30 pm on Saturday, at the notional boundary of properties zoned Living 3 and the site boundary of properties zoned Living 1, and shall be measured and assessed in accordance with NZS6801 and 6802:2008.
  - c) All stockpiles of topsoil material shall not exceed 3 metres in height and shall be setback at least 5 metres from any side boundary and shall be set back at least 20 metres from any watercourse.
  - d) The maximum active working area that will be fully exposed at any one time shall not exceed 3 hectares, excluding haul roads, batter slopes, and topsoil mounds
  - e) All vehicles including trucks operating within 200 metres of the site boundary adjoining properties in the Acacia Park, shall limit their speed to 20 km/hr or less. To ensure this occurs, suitable signage shall be erected on the site limiting speed to 20 km/hr, and such signage is to be erected and visible for the duration of each earthworks campaign.
  - f) Reversing alarms on all vehicles on the site shall be the broad band "hissing" type and not the high pitched 'pip' unless the safety case precludes this substitution of devices.

*Advice note: The Council recognises that some properties including the properties at 5-7 and 11 Grove Lane, provided written approval in accordance with s.104(3)(a)(ii), RMA, which forms part of the proposal.*

**Noise monitoring report**

19. To ensure compliance with Condition 18 (a), (b), and (c) above, within three (3) months of each and every overburden campaign commencing as part of the General Works Phase, the consent holder shall submit to Whangarei District Council's Compliance Officer, a noise report with noise measurement results to confirm compliance with the noise limits set in the referenced conditions.

**Written confirmation of landscape mitigation in final rehabilitation works**

20. On completion of the last overburden campaign to be undertaken during the General Works phase, the consent holder shall provide to the Whangarei District Council's Compliance Officer written confirmation from a suitably qualified landscape architect that the rehabilitation works identified in the certified Overburden Campaign - Landscape Rehabilitation Plan certified under Condition 2(d)

have been completed and maintenance measures are in place to ensure long term success of the final rehabilitation works including all planting. The written confirmation shall be provided within 12 months of the date of completion of all physical works associated with the last earthworks campaign, that date of completion being as advised under Condition 15 above.

**Input by tangata whenua into management of site**

21. Prior to the disturbance of vegetation or soil disturbance as part of any Enabling works or in new areas of proposed overburden disposal on the site, the consent holder will notify the Te Pouwhenua o Tiakiriri Kukupa Trust (trading as Te Parawhau Ki Tai) or their successors, of the plans to commence disturbance of vegetation or soil disturbance in previously undisturbed areas.
22. Prior to the removal of any topsoil required for the placement of overburden material, representatives of the Te Pouwhenua o Tiakiriri Kukupa Trust (trading as Te Parawhau Ki Tai) or their successors acting as cultural monitors in accordance with mātauranga Maori, shall be provided with the opportunity to attend a walkover of the site and shall be provided with access to the site in order to observe the removal of all topsoil in order to undertake cultural monitoring.
23. At least annually, the consent holder shall extend an invitation to the Te Pouwhenua o Tiakiriri Kukupa Trust (trading as Te Parawhau Ki Tai) to meet to discuss the works and activities authorised by this consent.
24. The Consent Holder shall extend an invitation to meet the Trust no less than 20 working days prior to the commencement of any intended commencement date of any Enabling works or an overburden campaign authorised by this land use consent.

When these meetings take place, the Consent Holder shall take minutes of each meeting and distribute these minutes to the meeting attendees within 10 working days of the meeting. These minutes should be provided to the Whangarei District Council, upon a request from the Council.

25. The Consent Holder shall invite Te Pouwhenua o Tiakiriri Kukupa Trust (trading as Te Parawhau Ki Tai) to engage on the development and implementation of a monitoring programme based on mātauranga Maori.

The objective of the mātauranga Maori monitoring programme is to provide for the monitoring of customary needs and values of the Trust, and shall as a minimum, seek to include:

- a) Identification of key matters that the monitoring programme shall address in terms of mātauranga Maori;
- b) Identification of the role of the Trust in the implementation of the monitoring programme;
- c) The methodology, locations and frequency of the monitoring programme. The methodology may include the development of 'cultural indicators' and 'cultural health indices' for this monitoring programme; and
- d) Reporting requirements to the Trust.

The Consent Holder shall provide opportunities for representatives of the Trust to implement the mātauranga Maori Monitoring programme, including through the implementation of the Ecological Management Plan (required by Condition 2(b) above), the Landscape Rehabilitation Plan (required by Condition 2(d) and 14 above) and the Dust Management Plan (required by Condition 2(c) above).

**Review condition under s.128 of RMA**

26. In accordance with section 128 of the Resource Management Act 1991, the Whangarei District Council may serve notice on the Consent Holder of its intention to review Conditions 2(a), (b) and (c), Condition 10 (a), (b), (c), and (d), Condition 14, and Conditions 18(a) – (c), at least three months following the commencement of the consent, and in one year intervals thereafter. Any review will be for the purpose of:
  - a) Addressing any significant adverse effect on the environment arising from the exercise of this consent that was not foreseen at the time the application was determined and are is not currently avoided, remedied, or mitigated by the implementation of Management Plans, or
  - b) Requiring the Consent Holder to adopt the best practicable option to remove or reduce any adverse effects on the environment.

All costs associated with any review shall be met by the Consent Holder.

## Advice Notes

1. Prior to the commencement of the overburden disposal works (including any enabling works and general works) an Authority must be applied for under Section 44(a) of the Heritage New Zealand Pouhere Taonga Act 2014 ('HNZPTA') and granted by Heritage NZ. The Authority should cover all proposed works in case additional unidentified subsurface remains are exposed during preparation works for overburden disposal works.
2. In the event of koiwi tangata (human remains) being uncovered, work should cease immediately in the vicinity of the remains and the Te Pouwhenua o Tiakiriri Kukupa Trust (trading as Te Parawhau Ki Tai) or their successors, Heritage NZ and the NZ Police should be contacted so that appropriate arrangements can be made.
3. If any urupa, traditional sites, taonga (significant artefacts), koiwi (human remains) or other artefact material is discovered during vegetation clearance, overburden removal, or quarry activities, the consent holder shall adopt the following procedure:
  - a. work in the immediate vicinity of the sites that has been exposed shall cease;
  - b. the site supervisor shall immediately secure the site in a way that ensures that any remains or artefacts are untouched;
  - c. the site supervisor shall notify iwi representatives Te Pouwhenua o Tiakiriri Kukupa Trust (trading as Te Parawhau Ki Tai) or their successors, Heritage New Zealand, Northland Regional Council and Whangarei District Council.

The notification in (c) above shall allow the notified persons a reasonable time to record and, if necessary, recover archaeological or cultural features discovered before excavation work may recommence at the exposed site.

4. Prior to disturbance of vegetation or soil disturbance in new areas, the Consent Holder shall ensure that all site managers, operators, contractors and other relevant personnel receive a briefing and detailed explanation of the consent holder's obligations under the Accidental Discovery Protocol specified by Heritage New Zealand Pouhere Taonga.
5. Section 357 of the Resource Management Act 1991 provides a right of objection to this decision. An objection must be in writing, setting out the reasons for the objection and delivered to Council within 15 working days of the decision being notified to you. A fee may be payable to cover the costs of processing any objection.
6. A copy of this consent should be held on site at all times during the Enabling and General Works Phases approved under this consent.
7. The Consent Holder shall pay all charges set by Council under Section 36 of the Resource Management Act 1991, including any administration, monitoring and supervision charges relating to the conditions of this resource consent. The Consent Holder will be advised of the charges as they fall.
8. The conditions of consent include specific requirements for the Consent Holder to invite identified third parties to input to the preparation of Management Plans. The third party invitation to partake in preparing the documents does not provide for any power of veto, nor any power to challenge, the final contents of any Management Plan where such a condition applies. The conditions are included to provide for constructive input into the Management Plans only.
9. The Council may engage suitable qualified and experienced experts at any time for the purposes of ensuring compliance with the conditions of this consent, particularly in terms of noise monitoring and landscape rehabilitation.