

Report / Decision on a Non-notified Resource Consent Application

(Sections 95A, 95B, and 104 / 104A)

Application Number:	RMA/2025/3358
Applicant:	Suburban Estates Limited
Site address:	102A Birkdale Drive, Westhaven
Legal Description:	Lot 100 DP 590624
Zoning:	Open Space Community Parks Zone Open Space Metropolitan Facilities Zone
Overlays and map notations:	Environmental Asset Waterway Water Body Setback Fixed Minimum Floor Level Overlay within Flood Management Area Flood Management Area Liquefaction Management Area
Activity Status:	Controlled Activity
Description of Application:	Global consent for soil disturbance on land where an activity identified on the Hazardous Activities and Industries List (HAIL) has been undertaken.

Introduction

Suburban Estates Ltd ('the Applicant') has employed the services of Kelsey Bewley of Davie Lovell-Smith ('the Agent') to apply for a resource consent to undertake soil disturbance associated with the granted subdivision consent RMA/2022/3963 at 102A Birkdale Drive. A burn pit was identified as occurring on the application site, which is a HAIL activity. The site is listed on Environment Canterbury's Listed Land Use Register as having the following HAIL activities:

- A10 – Persistent pesticide bulk storage or use
- A17 – Storage tanks or drums for fuel chemicals or liquid waste

A Detailed Site Investigation has identified concentrations of contaminants above background levels/residential guidelines. During remedial works under RMA/2022/3963 the impacted area of the burn pit was more widespread than initially thought, however this has been remediated with validation sampling confirming the area is suitable for residential use. Earthworks for the subdivision involved the importation of soils from multiple sites.

Following the replacement of soil, some of the future lots will have heavy metals background levels. Therefore, the applicant is seeking a global consent in relation to earthworks during the construction of dwellings on these lots.

Resource consent is required under the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health.

Ms Bewley has proffered the following conditions as part of the proposal:

1. All contaminated soils removed from the site will not be suitable to be disposed of at a cleanfill facility and must be disposed of at a facility whose waste acceptance criteria permit the disposal.
2. Evidence of the disposal of surplus soils from the site to an authorised facility shall be submitted to rcmon@ccc.govt.nz by way of waste manifest and/or weighbridge receipts within 2 months of the excavation.

Existing environment

The application site is known as 102A Birkdale Drive, Westhaven; being an unused portion of the Shirley Golf Course. The application site is legally described as being Lot 100 DP 590624 with an area of 1.64ha. Ms Bewley provides a description of the consent history of the application site within section 1.1 of the AEE which I consider to be accurate and true. Thus, I adopt this summary for the purposes of this report. In addition to this summary I would consider it relevant to note that RMA/2022/3963 has obtained certification under s 223 of the Resource Management Act 1991 ('the Act').

The surroundings environment consists of a mixture of residential activities, the Birkdale Reserve and the remaining area of the Shirley Golf Course.

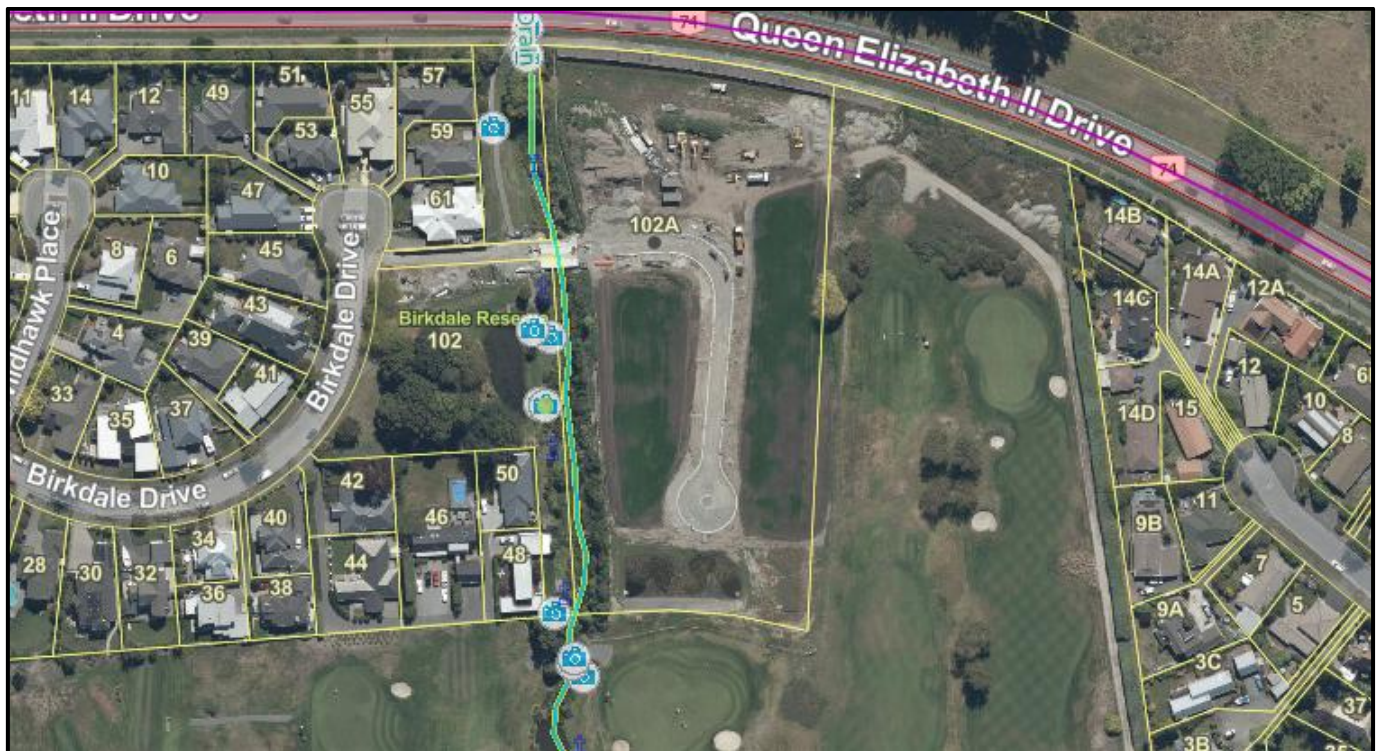


Figure 1: Application site with surrounding environment

Classification of activity

The National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health (NES) seek to ensure that land affected by contaminants in soil is appropriately identified and assessed before it is developed and if necessary the land is remediated or contaminants contained to make the land safe for human use.

The NES controls soil disturbance on land where an activity on the Ministry for the Environment's Hazardous Activities and Industries List (HAIL) is being carried out, has been carried out, or is more likely than not to have been carried out. The application site has been identified as HAIL land therefore the provisions of the NES apply.

Due to the level of contamination being above background levels, the proposal is assessed as being a controlled activity pursuant to Regulation 9 of the NES.

Pursuant to Regulation 9(1) the proposal is a controlled activity under the NES as:

- A Detailed Site Investigation (DSI) of the piece of land exists and has been submitted with this application; and
- The report on the DSI states that the soil contamination does not exceed the applicable standard in Regulation 7, and the report has been provided to the Council.

Regulation 9(5) of the NES provides that applications for controlled activities must not be publicly notified.

The matters which control is reserved is specified in Regulation 9(2) and are as follows:

- (a) *the adequacy of the detailed site investigation, including—*
 - (i) *site sampling:*
 - (ii) *laboratory analysis:*
 - (iii) *risk assessment:*
- (b) *how the activity must be—*
 - (i) *managed, which may include the requirement of a site management plan:*
 - (ii) *monitored:*
 - (iii) *reported on:*

- (c) the transport, disposal, and tracking of soil and other materials taken away in the course of the activity
- (d) the timing and nature of the review of the conditions in the resource consent:
- (e) the duration of the resource consent.

For completeness, I note that:

- The proposed earthworks are a permitted activity under the District Plan as they comply with the rules in Chapter 8

Written approvals [Sections 95D, 95E(3)(a) and 104(3)(a)(ii)]

No written approvals have been provided with the application.

Effects on the environment and adversely affected persons [Sections 95A, 95B, 95E(3) and 104(1)(a)]

The application is a controlled activity under the NES. Regulation 9(2) limits the matters over which control is reserved to:

- (a) the adequacy of the detailed site investigation, including site sampling, laboratory analysis and risk assessment;
- (b) how the activity must be managed (which may include the requirement for a site management plan), monitored, and reported on;
- (c) the transport, disposal, and tracking of soil and other materials taken away in the course of the activity;
- (d) the timing and nature of the review of the conditions in the resource consent; and
- (e) the duration of the resource consent.

Specialist advice on the application has been obtained from Agnes van der Erf, Environmental Health Officer, whose comments are as follows:

- Following the placement of imported soils, soil sampling was completed on each lot, and some lots contain heavy metals just above background levels.
- The testing results show that northern part of the site has been impacted to a lesser extent.
- Conditions are proposed under Section 9 (of the AEE) and these should be adopted.

I accept Ms van der Erf's assessment and recommend that her suggested conditions (being proffered conditions) be incorporated as part of this consent. Subject to compliance with the SMP and other conditions, I am satisfied that the site will be appropriately managed so as to avoid adverse effects on human health.

Notification assessment [Sections 95A and 95B]

Sections 95A and 95B set out the steps that must be followed to determine whether public notified or limited notification of an application is required.

PUBLIC NOTIFICATION TESTS – Section 95A

Step 1: Mandatory notification – section 95A(3)	
Has the applicant requested that the application be publicly notified?	No
Is public notification required under s95C (following a request for further information or commissioning of report)?	No
Is the application made jointly with an application to exchange reserve land?	No
Step 2: If not required by Step 1, notification is precluded if any of these apply – section 95A(5)	
Does a rule or NES preclude public notification for all aspects of the application?	Yes
Is the application a controlled activity?	Yes
Is the application a boundary activity?	No
Step 3: Notification required in certain circumstances if not precluded by Step 2 – section 95A(8)	
Does a rule or NES require public notification?	N/A
Will the activity have, or is it likely to have, adverse effects on the environment that are more than minor? (discussed above)	N/A
Step 4: Relevant to all applications that don't already require notification – section 95A(9)	

Do special circumstances exist that warrant the application being publicly notified?	No
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In accordance with the provisions of section 95A, the application must not be publicly notified.

LIMITED NOTIFICATION TESTS – Section 95B

Step 1: Certain affected groups/persons must be notified – sections 95B(2) and (3)	
Are there any affected protected customary rights groups or customary marine title groups?	No
If the activity will be on, adjacent to, or might affect land subject to a statutory acknowledgement - is there an affected person in this regard?	No
Step 2: If not required by Step 1, notification is precluded if any of the following apply – section 95B(6)	
Does a rule or NES preclude limited notification for all aspects of the application?	No
Is this a land use consent application for a controlled activity under the District Plan?	No
Step 3: Notification of other persons if not precluded by Step 2 – sections 95B(7) and (8)	
Are there any affected persons under s95E, i.e. persons on whom the effects are minor or more than minor, and who have not given written approval? (<i>discussed above</i>).	No
Step 4: Relevant to all applications – section 95B(10)	
Do special circumstances exist that warrant notification to any other persons not identified above?	No

In accordance with the provisions of section 95B, the application must not be limited notified.

Relevant objectives, policies, rules and other provisions of the District Plan [Section 104(1)(b)(vi)]

The application is a permitted activity under the District Plan and is therefore consistent with its objectives and policies.

Relevant provisions of a National Environmental Standard, National Policy Statement, Regional Plan, Regional Policy Statement or Coastal Policy Statement [Section 104(1)(b)]

The National Environmental Standard for managing contaminants in soil to protect human health is discussed above.

Part 2 of the Resource Management Act and any other relevant matters [Section 104(1) and 104(1)(c)]

The above considerations are subject to Part 2 of the Act which outlines its purpose and principles.

Taking guidance from case law¹, the District Plan is considered to be the mechanism by which Part 2 is given effect to in the Christchurch District. The Plan has recently been reviewed, and was competently prepared through independent hearing and decision-making processes in a manner that appropriately reflects the provisions of Part 2. Accordingly, no further assessment against Part 2 is considered necessary.

Natural hazard risk [Section 106A]

Section 106A² enables a consent authority to refuse to grant a land use consent, or grant a consent subject to conditions, if it considers that there is a significant risk from natural hazards. There are no grounds to refuse consent to this application or impose conditions under s106A.

Recommendations

That, for the above reasons:

¹ R J Davidson Family Trust v Marlborough District Council [2018] NZCA 316

² Introduced by the Resource Management (Consenting and Other System Changes) Amendment Act 2025, with effect from 21 August 2025

- A. The application be processed on a **non-notified** basis in accordance with Sections 95A - 95F of the Resource Management Act 1991.
- B. I consider that sufficient information has been provided to determine that the application is a Controlled Activity; therefore, the resource consent application must be granted pursuant to s 104A(a) of the Act.
- C. The application **be granted** pursuant to Sections 104, 104A, 108 and 108AA of the Resource Management Act 1991, subject to the following condition:
1. The development shall proceed in accordance with the information submitted with the application, including the stamped approved plans entered into Council records as RMA/2025/3443.
 2. Any soils removed from the Lots 1-15 & 23 on the approved plans must be disposed of to a facility authorised to accept the material. The lot owner must submit evidence (i.e. weighbridge receipts or waste manifest) of the disposal of surplus soils from the site to an authorised facility to the Council, Attention: Team Leader Environmental Health by way of email to rcmon@ccc.govt.nz, no later than 20 working days following this disposal.
 3. Standard construction methods for controlling erosion and sediment migration shall be implemented prior to the commencement of soil disturbance work and maintained until the soil is reinstated to an erosion-free state.

Advice Notes:

- Disposal of tested soils to location other than Burwood Landfill or an approved landfill facility with respect to any hydrocarbon impacted soils may also need the approval of Environment Canterbury.
- **Monitoring** will be carried out to ensure the **conditions are complied with** and that the development proceeds in accordance with the plans and details which were submitted with the application.

The Council will require payment of its **administrative charges** in relation to monitoring, under section 36 of the Resource Management Act 1991. The monitoring programme administration fee and initial inspection fee will be charged to the applicant with the consent processing costs. If more than one inspection, or additional monitoring activities (including those relating to non-compliance with conditions), are required, the additional time will be invoiced to the consent holder when the monitoring is carried out, at the applicable hourly rate. The current monitoring charges are outlined on the [Resource Management Fee Schedule](#).

Reported and recommended by: Vincent Ashman – Senior Planner

Date: 21 October 2025

Decision

That the above recommendation be adopted for the reasons outlined in the report.

Delegated Officer:



Nathan Harris
Team Leader Planning
30/10/2025