

Report / Decision on a Non-notified Resource Consent Application

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

Application Number:	RMA/2023/1945
Applicant:	Sovereign Palms Limited
Site address:	20 Oakbridge Boulevard, 47 Hawkins Road, 1 Selkirk Place, Marshland
Legal Description:	Lot 4000 DP 575457, Lot 4 DP 23089, Lot 5 DP 23089
Zoning:	Residential New Neighbourhood
Overlays and map notations:	Outline Development Plan - Highfield Park (North) Liquefaction Management Area (LMA)
Activity Status:	Restricted discretionary

Description of Application: Global consent for disturbance and removal of contaminated soil in association with new dwelling construction on lots 121 to 136, 150 to 198, and 213 to 254 (except lots 133, 136, and 161) within Stages 3 to 5 of subdivision consented by RMA/2022/927 where an activity identified on the Hazardous Activities and Industries List (HAIL) has been undertaken

Introduction

The applicant seeks a global consent for the disturbance and removal of contaminated soil in association with new dwelling construction on lots 121 to 136, 150 to 198, and 213 to 254 (except lots 133, 136, and 161) within Stages 3 to 5 of a subdivision consented by RMA/2022/927. The applicant estimated approximately 0.3m depth of topsoil disturbance for each lot and a maximum of approximately 244.2m³ of soil disturbance. The volume of soil removal from the site is also proposed to exceed Regulation 8 (3)(d) (ii) of Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011.

Existing environment

The application site and surrounding environment are described in section 2.1 and 2.2 of the application. I adopt the applicant's description.

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.

The proposal requires consent under the NES as it breaches the following provisions:

Pursuant to Regulation 10(2) the proposal is a restricted discretionary activity under the NES as:

- A Detailed Site Investigation (DSI) of the piece of land exists; and
- The report on the DSI states that the soil contamination exceeds the applicable standard in Regulation 7, and the report has been provided to the Council.

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 restricted discretionary activity under the NES. Regulation 10(3) limits the matters over which discretion is restricted to:

- (a) the adequacy of the detailed site investigation, including site sampling, laboratory analysis and risk assessment;
- (b) the suitability of the piece of land for the proposed activity, given the amount and kind of soil contamination;
- (c) the approach to the remediation or ongoing management of the piece of land, including the remediation or management methods to address the risk posed by the contaminants to human health, timing of the remediation, the standard of the remediation on completion, mitigation methods to address the risk posed by the contaminants to human health, and the mitigation measures for the piece of land, including the frequency and location of monitoring of specified contaminants;
- (d) the adequacy of the site management plan or the site validation report;
- (e) the transport, disposal, and tracking of soil and other materials taken away in the course of the activity;
- (f) the requirement for and conditions of a financial bond;
- (g) the timing and nature of the review of the conditions in the resource consent; and
- (h) the duration of the resource consent.

The application was circulated to Council Environmental Health Officer Ms. Agnes van der Erf who advised that the yellow outlined allotments in Figure 1 show that soils remaining on site contain heavy metals, mainly copper and to a lesser extent zinc, arsenic and chromium above background levels, and that red outlined allotments are yet to be formed and a precautionary approach has been taken that some remediation may be required.

On request of the Council, on 21 September 2023 the applicant lodged the updated Site Validation Report (SVR) and Site Management Plan (SMP) to the Council. Ms. van der Erf advised that the SMP is acceptable in terms of managing the contaminants on site, while it did not include lot 231 to 246 (Stage 5) which are red outlined on Figure 1. To address this matter Ms. van der Erf recommended a condition requiring a SMP for above allotments in Stage 5 be submitted to the Council for approval prior to any proposed work.

Ms. van der Erf also advised that as per the SVR the site has not been fully remediated, and that the SVR shows that an area with arsenic present above the residential soil contamination standards is located across the boundaries of Stages 3, 5 and 7. Page 6 of the updated SVR confirms that earthworks have been completed but validation sampling information has not been provided, which impedes Council's confirmation of the arsenic levels remaining on site. Ms. van der Erf recommended a condition requiring the absent arsenic validation sampling be submitted to the Council prior to any site works occurring under this consent. Other conditions relating to mitigating adverse effects created by the proposal are also recommended. I accept the advice and adopt the recommendations of Ms. van der Erf and consider that any adverse effects on the environment created by the proposal will be less than minor in compliance with the conditions. The applicant has reviewed and accepted the conditions.



Figure 1 Sampled area subject to investigation
 Source: Topsoil Investigation Report (Davis Ogilvie) lodged with the application

Conclusion

Overall, I consider that the effects on the environment are able to be mitigated through compliance with recommended conditions such that they will be less than minor and acceptable. There are no affected persons.

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

<i>Step 1: Mandatory notification – section 95A(3)</i>	
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
<i>Step 2: If not required by Step 1, notification is precluded if any of these apply – section 95A(5)</i>	
Does a rule or NES preclude public notification for all aspects of the application?	No
Is the application a controlled activity?	No
Is the application a restricted discretionary or discretionary activity for a subdivision?	No
Is the application a restricted discretionary or discretionary activity for residential activity?	Yes
Is the application a boundary activity (other than a controlled activity)?	No
<i>Step 3: Notification required in certain circumstances if not precluded by Step 2 – section 95A(8)</i>	

Does a rule or NES require public notification?	No
Will the activity have, or is it likely to have, adverse effects on the environment that are more than minor? (discussed above)	No
<i>Step 4: Relevant to all applications that don't already require notification – section 95A(9)</i>	
Do special circumstances exist that warrant the application being publicly notified?	No

In accordance with the provisions of section 95A, the application must not be publicly notified.

LIMITED NOTIFICATION TESTS – Section 95B

<i>Step 1: Certain affected groups/persons must be notified – sections 95B(2) and (3)</i>	
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
<i>Step 2: If not required by Step 1, notification is precluded if any of the following apply – section 95B(6)</i>	
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?	No
<i>Step 3: Notification of other persons if not precluded by Step 2 – sections 95B(7) and (8)</i>	
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? (discussed above).	No
<i>Step 4: Relevant to all applications – section 95B(10)</i>	
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 recent 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 an independent hearing and decision-making process in a manner that appropriately reflects the provisions of Part 2. Accordingly, no further assessment against Part 2 is considered necessary.

Recommendations

That, for the above reasons:

- A. The application be processed on a **non-notified** basis in accordance with Sections 95A - 95F of the Resource Management Act 1991.

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

- B. The application **be granted** pursuant to Sections 104, 104C, 108 and 108AA of the Resource Management Act 1991, subject to the following condition:
1. The development shall proceed in accordance with the information and documents submitted with the application.
 2. Prior to the commencement of the works, the consent holder shall provide the evidence that the arsenic contamination at C75 sampling point is remediated and validated such that the area is suitable for residential use. Validation sampling information shall be provided to Council by email rcmon@ccc.govt.nz.
 3. No later than 10 working days prior to the commencement of the works for lots 231 to 246, a Site Management Plan (SMP) for these lots shall be prepared by a Suitably Qualified and Experienced Practitioner. This shall be provided to Council by email to rcmon@ccc.govt.nz.
 4. Other than the lots specified in Condition 3, the works shall be undertaken in accordance with the Site Management Plan prepared by Davis Ogilvie, dated 6th September 2023. Work on Lots 231-246 shall be undertaken in accordance with the Site Management Plan provided under condition 3 above.
 5. All contaminated soils removed from the site will not be suitable to be disposed of at a clean-fill facility and must be disposed of at a facility whose waste acceptance criteria permit the disposal.
 6. No later than 20 working days following the disposal, the consent holder shall 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 by email rcmon@ccc.govt.nz.
 7. In the event of contamination discovery, e.g. visible staining, odours and/or other conditions that indicate soil contamination, the work must cease until a Suitably Qualified and Experienced Practitioner (SQEP) has assessed the matter and advised of the appropriate remediation and/or disposal options for these soils.

Advice Notes:

- This resource consent covers soil disturbance/earthworks only. A separate consent is required for any bulk and location non compliances on the site.
- 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.
- The Council will require payment of its administrative charges in relation to monitoring of conditions, as authorised by the provisions of section 36 of the Resource Management Act 1991. The current monitoring charges are:
 - (i) A monitoring fee of \$218.80 to cover the cost of setting up a monitoring programme and carrying out one inspection to ensure compliance with the conditions of this consent; and
 - (ii) Time charged at an hourly rate if more than one inspection or additional monitoring activities (including those relating to non-compliance with conditions), are required.

The monitoring programme administration fee and initial inspection fee will be charged to the applicant with the consent processing costs. Any additional monitoring time will be invoiced to the consent holder when the monitoring is carried out, at the hourly rate specified in the applicable Annual Plan Schedule of Fees and Charges.

Reported and Recommended by: Adrian Xu

Date: 2 October 2023

Decision

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

Delegated Officer:

J. Gregg

Jonathan Gregg
Team Leader Planning
02/10/2023 01:54 pm