

# Report / Decision on a Non-notified Subdivision Consent Application

Sections 95A / 95B and 104 and 104C and 221(3)

Application number:	RMA/2022/3611
Applicant:	Braeburn Property Limited
Site address:	320 and 320A Cumnor Terrace
Legal description:	Lot 301 DP 463785, Lot 302 DP 473298 and Lot 305 DP 525615
Zone:	
District Plan:	Industrial General (Portlink Industrial Park)
Overlays and map notations:	
District Plan:	Flood Management Area, Fixed Minimum Floor Overlay within the Flood Management Area, Liquefaction Management Area, Christchurch International Airport Protection Surfaces, Waterway Setback, Ngā Wai Lakes, Rivers and Streams, Portlink Industrial Park Outline Development Plan
Road classification:	Local Road
Activity status:	
Subdivision:	Restricted Discretionary
Land use:	Discretionary
NESCS:	Controlled
s221(3)	Discretionary
Description of application:	Three lot fee simple subdivision, associated earthworks and establishing industrial activities with activity standard breaches

## The proposal

This application was previously described and assessed under the s95 Notification Report dated 11<sup>th</sup> August 2023 (Council Record Reference TRIM23/1200411). The application has since been amended (Council Record Reference Trim23/1557447). I have summarised the key aspects of the application including amendments proposed:

- A three lot fee simple subdivision (boundary adjustment) is proposed. Lot 1 is to contain industrial activities. Lots 2 and 3 are proposed to be vested in Council as esplanade reserves. The net site areas are 10.674ha (Lot 1), 1.199ha (Lot 2) and 0.768ha (Lot 3).
- No changes to the access or existing servicing are proposed in this application. Lot 1 is fully serviced.
- The applicant is proposing to establish industrial activities within the Landscape and Stormwater Area (Green Space) shown on the Portlink Industrial Park Development Plan (ODP). This includes establishing sealed hardstand, bunding, fencing and buildings/outdoor storage areas within this area. This also includes a 2.4m high chain link security fence along the outer edge of the sealed area and a 2.4 metre high solid timber acoustic fence on the top of the bund along the northern boundary. The remainder of the Landscape and Stormwater Area (Green space) is to be landscaped<sup>1</sup>. Any buildings and/or outdoor storage within the ODP Greenspace are to be a maximum height of 5.8 metres measured from finished ground level. This would equate to a height of two stacked containers.
- Immediately outside of the ODP Greenspace area, the remainder of the site will not exceed a maximum height of four containers high (10.4m from finished ground levels) or the same for outdoor storage areas.
- A separate certificate of compliance is currently being applied for in terms of building definitions<sup>2</sup>.
- Parts of the proposal are retrospective in nature including sealed areas, earthworks, bunding along the northern areas, waterway setback intrusions as well as buildings/outdoor storage structures that exceed height requirements.
- Earthworks are proposed to provide drainage along the Haulage Route and established the required landscaping including the construction of a footpath.<sup>3</sup>

<sup>1</sup> The landscaping will be both located in the reserve to vest and Lot 1.

<sup>2</sup> A log storage operation is currently one of the tenancies onsite. This activity will either be in accordance with this application or is complying with Global Consent RMA/2017/1844.

- In terms of the northern bund:
  - The bund is within the Landscape and Stormwater Area (Green space). The bund slopes are at a grade of approximately 1:2 with a metre wide crest, they are 2 metres in height and have an approximate width of 10 metres.
  - The proposed acoustic fence is being relocated as far to the south of the bund crest as possible. The fence is to be in a recessive colour.
  - The north face of the northern bund is to remain in its current state (i.e. rank grass coverage),
  - The vegetation will be as far back from the north face of the bund as possible to retain lizard habitat. This height of the vegetation will reach a maximum height of 16 metres at maturity.
  - The bund crest is between 0.85-1 metres.
  - The footpath along the northern reserve will remain in its current location and would be widened to two metres and consist of a crusher dust formation.
  - The northern area is focused on retaining lizard habitat and providing visual and acoustic mitigation for the containers via a bund and acoustic fence.
- In terms of the southern western area:
  - The bund is to be removed and be replaced by a batter slope extending towards the river from the level of the adjoining industrial yards.
  - The pathway is to be realigned to follow the eastern boundary of the proposed reserve. The existing path will not be altered in this application.
  - The western part of the reserve will be focused on enhancing the riparian margins. As the reserve moves further south, the focus becomes to retain quality bird habitat. Retention of dead trees where safe is optimal in this area as this is required for roosting and a large separation is created between the shared pathway and bird habitat.
  - At the southern entry to the first flush wetland, the site vegetation is likely to contain plants which can survive and thrive in drier conditions.
  - The final area of the reserve in the south will be a general enhancement area which takes into account the dry nature of the area.
- The applicant has proposed a noise management plan condition to ensure best practical options are employed to reduce noise from the site. The noise management plan has assumed a scenario which reflects the proposal and a maximum container stacking of four containers high in the 11m height overlay area. The detail of the noise management condition is a current matter of contention between council officers and the applicant.

Description of site and existing environment
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The application site and surrounding environment are described in paragraphs 5-13 of the AEE submitted with the application. I adopt the applicant's description.

Appendices and Specialist Input
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This report has been prepared with advice from Council Officers detailed below. A copy of their reports has been attached in the appendices. Other appendices include background of consents and a summary of concerns raised by the community.

Appendix	Subject	Specialist
Appendix 1	Summary of Consents on the underlying Land	N/A
Appendix 2	Original Landscape Peer Review and Assessment, Including Graphics	Jeremy Head
Appendix 3	Ecological and Park Assessments (prior to amended application)	Christine McClure, Katie Noakes, Andrew Crossland, Pete Barnes
Appendix 4	Flooding Assessment	Sheryl Keenan
Appendix 5	Earthworks Assessment	Yvonne McDonald
Appendix 6	Environmental Health Assessment	Agnes van der Erf
Appendix 7	Acoustic Peer Review	William Reeve
Appendix 8	Updated Summary of Concerns from the Community	N/A
Appendix 9	Updated Acoustic Peer Review	William Reeve

<sup>3</sup> Retrospective earthworks in terms of the creation of the bund and the filling of the haulage route are also being assessed in this application.

Appendix 10	Updated Landscape Peer Review	Jeremy Head
Appendix 11	Ecologists' confirmation of conditions	Christine McClure, Katie Noakes, Andrew Crossland

### Relevant rules and activity status

Christchurch District Plan

The site is zoned Industrial General.

The site is located in the Portlink Industrial Park Outline Development Plan area.

#### Land use rules

The proposal requires land use consent for a discretionary activity under the following rule(s):

Activity status rule	Standard not met	Reason	Matters of control or discretion	Notification clause
5.4.1.5 RD1	5.4.1.1 P1 New buildings located within the Fixed Minimum Floor Level Overlay in the Flood Management Area	The proposed minimum floor level of the proposed buildings/outdoor storage areas are lower than the required minimum level of 12.3m RL <sup>4</sup>	Discretion limited to: - <b>Setting of minimum floor levels</b> - <b>Mitigation of flooding effects</b>  Assessed against the criteria in 5.4.1.5 RD1 b.	Must not be limited or publicly notified
5.4.1.5 RD2	5.4.1.1 P14 - Filling or excavation within the Flood Management Area in commercial and industrial zones	The height of filling above ground level will exceed 0.3m. The volume of filling above ground level will exceed 20m <sup>3</sup> . The total volume of filling and excavation will exceed 50m <sup>3</sup> .  Earthworks undertaken to form a bund and filling of the haulage road and future works will exceed the depth and volume specified above <sup>5</sup>	Timing, location, scale and nature of earthworks Earthworks method Mitigation of effects as they impact flooding and surface drainage Criteria in 5.4.1.5 RD2 b.	No clause
6.1.5.1.3 RD1	6.1.5.1.1 P1	Any activity listed in Rule 6.1.5.1.1 P1 that exceeds the noise limits in the activity specific standards by 10 dB or less.  The existing activity exceeds noise standards along Tunnel Road.	Rule 6.1.8	No Clause
6.6.4.4 D1	N/A	Rule 6.6.4.4 (D1): Several activities within the water body setback are discretionary given the site is adjacent a Site of Ecological Significance (the Heathcote River and	N/A	No clause

<sup>4</sup> In Chapter 5, Rule 5.4.1.1 P16 permits the outdoor storage of transiting shipping containers in the industrial zone in the Flood Management Zone. Although they are permitted in this standard, it does not restrict containers from achieving the required finished floor level of the zone if they are classified as buildings (which is the opinion of Council officers). In addition, Rule 5.4.1.1 P1 does not exclude containers from meeting the required fixed minimum floor level. There is an ongoing discussion whether a container is a building however the triggering of this non-compliance has little consequence due to the finished ground levels of the site.

<sup>5</sup> It is unknown what the exact volume of earthworks is proposed or has already been undertaken. An as-built has been provided to show the finished levels of this area. Additional earthworks will be required to ensure the proposed reserve is appropriately graded to the Heathcote River and to construct the proposed footpath alignment along the northern and south western area.

Activity status rule	Standard not met	Reason	Matters of control or discretion	Notification clause
		<p>Tributaries, site number SES/LP/25).</p> <p>The activities within the water body setback include:</p> <ul style="list-style-type: none"> <li>o Earthworks relating to the construction of the southwest bund and filling of the haulage road and northern bund,</li> <li>o An acoustic fence on top of the northwest bund which will have a solid structure greater than 20% (100% proposed), and</li> <li>o Containers are proposed to be partly within the waterway setback</li> </ul>		
16.4.4.1.3 RD1	16.4.4.2.1 Maximum height of buildings	Any buildings and outdoor storage areas are proposed to exceed the 11m building height limit area in the Portlink Industrial Park Development Plan	16.7.1.1 – Maximum height of buildings and fencing or screening structure	Must not be publicly notified

#### Subdivision rules

The proposal requires subdivision consent for a restricted discretionary activity under the following rule(s):

Activity status rule	Standard not met	Reason	Matters of control or discretion	Notification clause
5.5.2 C1	-	Any subdivision which creates a vacant allotment within the Liquefaction Management Area is classified as a controlled activity under Chapter 5	Location, size and design of allotments, structures, roads, access, services or foundations as they relate to the liquefaction hazard; Timing, location, scale and nature of earthworks as they relate to the liquefaction hazard; and Liquefaction hazard remediation methods. Criteria in 5.5.2 C1 b.	Shall not be limited or publicly notified.
8.5.1.2 C4	-	Subdivision to create allotments for reserves is classified as a controlled activity and the minimum net site area requirements do not apply.	8.7.3 - Allotments for access, utilities, roads and reserves	8.4.1.1
8.5.1.3 RD2	8.5.1.2 C5	<p>The subdivision shall be undertaken in accordance with the relevant development plan in terms of the key structuring elements.</p> <p>Road access has not been provided to the east of the Kennaway Road extension (Private Road)<sup>6</sup></p>	8.7.4 – General Matters <sup>7</sup>	8.4.1.1

<sup>6</sup> Rule 8.5.1.2 C5 only requires compliance with key structuring elements of an outline development plan in a subdivision which is contained in Chapter 15 or 16 (Industrial or Commercial zoning). Therefore, the non-compliances of the landscape area cannot be considered as part of the subdivision component of the application.

<sup>7</sup> There is no specific matters of discretion for the Portlink Industrial Park Development Plan in Chapter 8.

Activity status rule	Standard not met	Reason	Matters of control or discretion	Notification clause
8.5.1.3 RD2	8.6.8 Wastewater disposal	The proposed wastewater disposal does not comply as a wastewater capacity certificate has not been provided	8.7.4 - General matters 8.8.6 - Servicing	8.4.1.1
8.5.1.3 RD4	-	Subdivision within a Flood Management Area is classified as a restricted discretionary activity.	8.7.4 - General matters 8.8.7 - Flood Management Area	8.4.1.1
5.5.2 C1	-	Any subdivision which creates a vacant allotment within the Liquefaction Management Area is classified as a controlled activity under Chapter 5	Location, size and design of allotments, structures, roads, access, services or foundations as they relate to the liquefaction hazard; Timing, location, scale and nature of earthworks as they relate to the liquefaction hazard; and Liquefaction hazard remediation methods. Criteria in 5.5.2 C1 b.	Shall not be limited or publicly notified.
8.5.1.2 C4	-	Subdivision to create allotments for reserves is classified as a controlled activity and the minimum net site area requirements do not apply.	8.7.3 - Allotments for access, utilities, roads and reserves	8.4.1.1
8.5.1.3 RD2	8.5.1.2 C5	The subdivision shall be undertaken in accordance with the relevant development plan in terms of the key structuring elements.  Road access has not been provided to the east of the Kennaway Road extension (Private Road) <sup>8</sup>	8.7.4 – General Matters <sup>9</sup>	8.4.1.1

Rule 8.4.1.1 specifies that any application for a controlled or restricted discretionary subdivision consent shall not be publicly or limited notified (except in relation to restricted discretionary applications seeking access on to a State Highway). This provision does not apply as the application contains land use non-compliances which do not have any restrictions on the notification decision.

#### National Environmental Standard

The National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES) controls subdivision of land and soil disturbance where an activity on the Hazardous Activities and Industries List (HAIL) is being carried out or is more likely than not to have been carried out.

The application site has been identified as HAIL land therefore the NES applies. The proposal requires consent as a controlled activity under the following regulation(s):

Activity status regulation	Regulation not met	Reason	Matters of control or discretion	Notification clause
Regulation 9(1) Controlled activities	Regulation 8(3) Disturbing soil	The volume of soil disturbed will exceed 25m <sup>3</sup> per 500m <sup>2</sup> (retrospectively).	Specified in Regulation 9(2)	Must not be publicly notified

<sup>8</sup> Rule 8.5.1.2 C5 only requires compliance with key structuring elements of an outline development plan in a subdivision which is contained in Chapter 15 or 16 (Industrial or Commercial zoning). Therefore, the non-compliances of the landscape area cannot be considered as part of the subdivision component of the application.

<sup>9</sup> There is no specific matters of discretion for the Portlink Industrial Park Development Plan in Chapter 8.

Activity status regulation	Regulation not met	Reason	Matters of control or discretion	Notification clause
Regulation 9(3) Controlled activities	Regulation 8(4) Subdividing or changing use	A Detailed Site Investigation exists and the report states that soil contamination does not exceed the applicable standard in Regulation 7.	Specified in Regulation 9(4)	Must not be publicly notified

**Section 221(3) Partial Cancellation of Consent Notice**

Section 221(3) of the Resource Management Act 1991 provides that at any time after the deposit of survey plan, the owner may apply to the Council to vary or cancel any condition specified in a consent notice. Section 88 to 121 and 127(4) to 132 apply to such an application. Section 127(4) requires that consideration be given to persons who may be affected by the change or cancellation of the consent notice.

The following consent notices are currently imposed on the application site:

Consent Notice 9446208.13

This consent notice applied a minimum floor level of 11.80m RL on Lot 301 DP 463785, which includes the entirety of the application site. The District Plan has now superseded this requirement as the minimum floor level requirement is 12.3m RL. This consent notice is therefore proposed be cancelled in part to be removed from the application site. The consent notice also includes a specific foundation design component which is to be retained.

Consent notice 9138592.2 and variation 9750370.5

This consent notice was applied to Lot 303 DP 452437, which also includes the entirety of the application site. This condition required the following restriction:

*“Stormwater runoff from roofs in a 10% ARI storm shall discharge directly to the Heathcote River via a conveyance system separated from roading and hardstand runoff. All roof flows in excess of the 10% ARI will discharge to the vegetated swales.”*

Since the consent notice was imposed, the stormwater system has been changed to require all stormwater in the application site to be discharged into the stormwater swale network and in the future, no roofs in this area will discharge directly into the Heathcote River. It is therefore proposed that this consent notice will be cancelled in part to be removed for the application site.

Consent notice 11294647.10

This consent notice has similarities to 9138592.2 with the additional sentence:

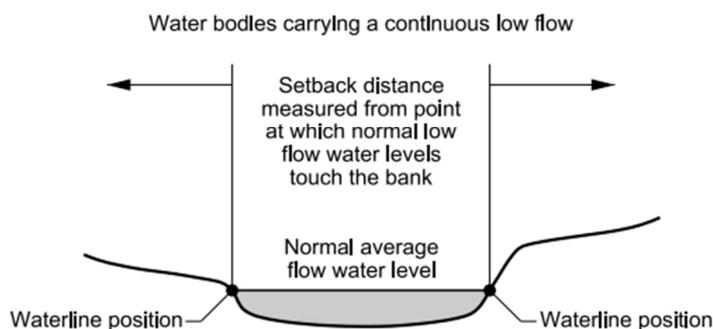
*“The strip of land extending 20m from the Heathcote River shall not be developed with permanent buildings or structures”.*

The proposal is not consistent with this requirement due to the bunding and fencing proposed. If the application is accepted, the consent notice will need to be removed to avoid a clash.

**Waterway Setback Interpretation**

The Heathcote River is identified as a Downstream Waterway which requires a 30 metre from the banks of the waterway. The determination of the ‘bank’ of the waterway is shown in Appendix 6.11.5.3.

waterline as illustrated.



I consider that that the relevant diagram outlined above does not reflect tidal waterways such as the Heathcote River. The diagram contains conflicting descriptions due to requiring a normal low flow water levels and normal average flow water level. The applicant has applied the waterway setback at the low tide mark to reflect the normal low flow water levels definition. My approach differs as I consider the normal flow water level shall be used. It is difficult to determine this level with a tidal waterway however I consider this to be the mid tide as this will the average flow between low and high tides. This creates an additional non-compliance within the waterway setback in terms of structures in the waterway (containers or other buildings/outdoor storage areas). This will be further assessed below in the report.

#### .6.4.4. D1 – Waterway Setback Intrusions to an adjacent waterway

Rule 6.6.4.4 D1 states that any activity listed in Rule 6.6.4.3 adjacent to a site identified as a site of Ecological Significance would be a fully discretionary activity. The application proposes retrospective earthworks occurring within the Heathcote River setback which is identified Ngā Wai and Site of Ecological Significance (SES/LP/25).

The applicant has disputed whether the site is 'adjacent' to the site of ecological significance due to the existing council reserve that is in between the application site and waterway.

Understanding the definition of adjacent and adjoining is required to understand whether the application is a discretionary activity.

The District Plan defines adjoining as below, but it does not define 'adjacent'. The RMA does not define any of the above.

#### *Adjoining*

*has its ordinary dictionary meaning but, if the context requires, includes land separated from other land only by a road, railway, drain, water race, river or stream.*

The Oxford English Dictionary (on-line) defines adjoining as meaning *adjacent, contiguous, neighbouring, physical joined, attached, connected*. It defines adjacent as *next to or very near something else, neighbouring, bordering, contiguous, adjoining*.

Westlaw NZ states that:

*"The meaning of the word "adjacent" introduces a degree of uncertainty as to the scope of effects which must be disregarded. It is likely that pre-2003 case law as to the meaning of this term will be relied upon. For example, in Ports of Auckland Ltd v Auckland CC [1999] 1 NZLR 601; (1998) 5 ELRNZ 90; [1998] NZRMA 481 (HC), it was held that "adjacent land" is not confined to land which is adjoining but includes places which are nearby. In that case, the applicant was an adjacent occupier in relation to resource consent applications and was held to be an affected person.*

*Accordingly, adjacent land is unlikely to be limited to land that shares a property boundary with the subject land. In appropriate circumstances, that might enable land across a road to be disregarded when a consent authority is deciding whether to publicly notify, albeit that the effects on the owner or occupier of such land might still result in limited notification."*

Although the site is not directly connected to the waterway site of ecological significance, I do consider it to be adjacent for the following reasons:

- The 30m waterway setback applies to the application site. It would be logical to assess the setback intrusion in terms of the relevant overlays the waterway contains.
- The reserve separating the application site from this area is approximately 8m wide in this area. I do not consider the width is significant enough to disregard the site of ecological significance overlay.

The land use consents RMA92023697 and RMA/2019/1823 granted earthworks to occur within the 30m waterway setback on the condition that no earthworks were to occur with 20m of the waterway. This application now includes setback intrusions within 20 metres of the waterway. Earthworks intruding between 20 and 30m from the waterway are not being assessed as part of this application as these have already been assessed under the previous consents. The current intrusion is in relation works required to the existing bunds, landscaping of Council's proposed reserve, fencing and the proposed footpath realignment. This is further discussed in the s95 effects assessment.

#### *Other Matters*

A planning framework and summary of concerns from members of the public was provided in the original s95 recommendation report which I consider to be still relevant.

#### Compliance History

The Natural and Built Environment Act (NBEA) was given Royal Assent on 23<sup>rd</sup> August 2023. Section 223(2)(f) requires a consent authority must have regard to any prior non-compliance by the applicant and for which enforcement action has been taken under this Act. While the NBEA is not fully operational, applications for resource consents can be declined on the grounds of poor compliance history.

There is an abatement notice currently ongoing which is in terms of the bund, fencing and paving within the ODP greenspace. This is to be addressed via this application. There is no other known enforcement action history of the applicant or relevant contractors for the site. I consider that as this application is addressing the current enforcement action, I consider the application shall not need to apply this provision of the Act.

#### Proposal description

There are inconsistencies with the positioning of the acoustic fence and bund in the acoustic report modelling and landscaping plans. In terms of the location of the bund and fencing, the landscaping plans show accurate locations of these structures.

The applicant's agent has provided confirmation of what is proposed in this application:

*"The application proposes a maximum height limit of 5.8 metres on the sealed area with the ODP Greenspace. This restricts shipping container storage to two-high stacks within this area. Consent is not sought to authorise buildings to extend above 11 metres in height within the ODP 11-metre height limit area. The Powell Fenwick acoustic modelling has demonstrated compliance in a scenario where stacks of containers up to four-high are placed in the area affected by the ODP 11-metre building height limit – and it specifies a three-high stack along the boundary of (but outside) the ODP Greenspace."*

The measurement of building/outdoor storage areas height is guided by the definition of ground levels in the District Plan:

#### *"Ground level*

*means the natural ground level or, where the land has been subdivided, the level of the ground existing when works associated with any prior subdivision of the land were completed, but before filling or excavation for new buildings on the land has commenced."*

As discussed in the original s95 recommendation report, as the site has not been subdivided therefore the original ground level prior to filling needs to be used when measuring building/outdoor storage height. In some places filling up to two metres has occurred therefore in these areas it is unlikely that regular sized containers stacked in four will comply with the standard. The stack of containers in this area are to be a height of approximately 10.4 metres above finished ground level. I note the proposal would comply with building height if the subdivision was completed in advance of any land use consent given effect to as height is measured from the ground level at the time of subdivision.

A certificate of compliance has been applied for to resolve the matter of the building definition.

#### Marginal non-compliance in noise

The applicant and tenants of the application site (Pinnacle Group) are requesting Council to waive the requirement for resource consent pursuant to s87BB of the Act in respect of potential non-compliance with the noise standards affecting Open Space zoned land to the east of the site on the other side of Tunnel Road. They have provided the following commentary:

*"Any non-compliance would be marginal and occasional as set out in the relevant section of the Powell Fenwick report as reproduced below:*

*Noise exposure to Open Space zoned land to the east of the container yard and across Tunnel Rd is calculated to be equivalent to noise exposure to residential properties, that is 48 dB  $L_{Aeq(15 mins)}$  with full screening from containers (compliant with the District Plan limit of 55 dB  $L_{Aeq(15 mins)}$ ), and 56 dB  $L_{Aeq(15 mins)}$  with partial screening from containers (marginally non-compliant with the District Plan limit of 55 dB  $L_{Aeq(15 mins)}$ ).*

*The road traffic noise exposure to the Open Space zoned land from Tunnel Rd is calculated to be above 60 dB  $L_{Aeq(15 mins)}$  within 40 m of the nearest marked traffic lane, significantly above calculated noise from container yard activities. We consider any occasional non-compliance with District Plan daytime noise limits in this zone to be a technical non-compliance with no particular effect.*

The activity, as it relates to the Open Space zoned land to the east, satisfies the criteria for a permitted activity set out at 87BB(1) (a)-(c) subject to Council's agreement as required by s87BB(1)(d)."

I consider that this needs to be assessed as a non-compliance under this application. I note that as the overall proposal is discretionary, the assessment of noise is deemed appropriate irrespective of the above non-compliance. This is further discussed in my report.

I consider that it is useful to provide a background of the activity and why noise has been assessed in this application. Once the application was established onsite, it has generated complaints from the residential locality which identified noise and visual effects as the key issues impacting the residential amenity. Initial monitoring picked up a non-compliance from the rear activity (outside the 11m height overlay) during night time hours however the issue was quickly resolved. All other monitoring performed by Council has not identified any noise non-compliance for the application site to date. Notwithstanding due to the complaints and initial information supplied in the AEE, it was unclear whether the activity did indeed comply with the District Plan.

In addition, due to the impulsive nature of the activity (hoisting and touch down of containers in sporadic manner), the District Plan is seen by Acoustic Specialists to not appropriately cater for protecting of residential amenity in this instance as the special audible characterise penalty is not being applied<sup>10</sup>. It can be difficult to measure the effect on residential amenity for an impulsive noise when noise measurement are 15 minutes in length. This is described in Council's appointed acoustic engineer's Mr Reeve's original assessment. For these reasons above, additional assessment on residential amenity has taken place on top assessing for compliance with the District Plan. I consider there is some discomfort on this approach due to imposing higher assessment standards than the District Plan and that the activity is discretionary due to the waterway setback intrusion only. This activity has evolved from an enforcement action, and the applicant has amended their application to address legal matters in other applications. Notwithstanding I consider an overall residential amenity assessment is required which includes noise effects controls are required to ensure the activity standards stay permitted.

#### Original summary of concerns from members of the public

A summary of issues originally raised by members of the public is further detailed in Appendix 8 of this report. This includes residents of the adjoining residential zones, the Opawaho Heathcote River Network and other members of the public.

The key issues raised by the members of the public include:

- Adverse visual amenity effects viewed from the reserve and residential properties including obstruction of the view of the Port Hills;
- The existing activity on the site is not in keeping with the Industrial General Zone or the Portlink Industrial Park Outline Development Plan.
- Noise and vibration effects from the stacking of containers and associated machinery and handling
- The hours of operation of the application site including different tenancies as it creates noise and light pollution.
- Flooding concerns from the development
- Air pollution from the dust, diesel fumes and fumigation of logs
- The level of non-compliance already occurring on the site including non-compliance with existing consent conditions.
- Conduct of Council during the enforcement and resource consent process.
- Socio-economical fairness due to the location of the activity and residential development
- Landscaping design and the impact on ecology.
- Health and safety for recreational users due to the stacking of containers and risk of falling containers and traffic effects.
- Effects on well being as a result of the non-compliant activity currently occurring and its proposed expansion.
- The location of the industrial zone in close proximity to existing residential areas.
- Depletion of property values.
- The application should be publicly notified and declined.

While most of these issues are being assessed as part of the application due to the nature of the proposed and existing activities onsite, I cannot take into account the following aspects:

- The enforcement actions (including noise measurements) to date as these are a separate process to the resource consent.
- Property values, the price of living and rate increases. Property values cannot be assessed as part of this application. Rates are managed by a different department of Council and the price of living are beyond the control of the resource consenting process.
- The information supplied on LIMs, as this is managed under different legislation and not an RMA matter.

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<sup>10</sup> The special audible characterise penalty is listed in CB4.1 of the NZS6802.

- Reverse sensitivity effects as this would mean that the residential zone and associated activities would have an adverse effect on the establishment of the proposed activity or other permitted industrial activity in the zone.
- The reason the application site was established as an industrial zone. This was established under a previous private plan change. The land is zoned industrial now.
- Whether there are any better locations for the activities. The assessment does not require the consideration of alternative locations, just effects on the environment, affected parties and special circumstances.

#### Updated Summary of Community Concerns

Since the application has been amended, further emails of concerns have been sent to Council Officers. The summary of concern document has been updated and I have summarised the key concerns raised below:

- The definition of bank of the waterway is not being applied correctly.
- Adjacent property owners shall include the owners/occupiers of 40 and 42 Gould Crescent as affected parties.
- There is uncertainty of the proposal as the acoustic modelling and landscape plans are inconsistent with each other.
- The amended landscaping along the northern boundary is considered to be inappropriate and does not align with the ecologists assessments and is a step backwards in terms of visual amenity.
- No structures or materials should intrude the ODP greenspace and it should be retained as an ecological margin.
- Graffiti is likely occur along the proposed acoustic fencing.
- It is considered the noise report has several errors and incorrect assumptions.

#### Effects on the environment and adversely affected persons [Sections 95D, 95E and 104(1)(a)]

As a discretionary activity, the assessment of the effects of the proposal is unrestricted and all actual and potential effects must be considered. Guidance as to the effects that require consideration is contained in the relevant objectives and policies in Chapters 5, 6.1, 6.6, 8, 16, and any associated matters of discretion or control.

In my opinion the effects of this proposal relate to landscape and visual effects, ecological effects, function of reserves and effects on users, noise effects, nuisance, safety effects, construction effects, cultural effects, and subdivision design including natural hazards and contamination. I consider that the following components of my original assessment generally remain the same:

- My conclusion of which properties are adjacent to the application.
- Components of the assessments on effects of bird ecology.
- Tree removal assessment
- Other nuisances
- Safety effects
- Construction effects
- Cultural effects
- Subdivision design
- Natural hazards and subdivision
- Contamination
- Consent notices

For the purposes of this assessment, I consider the following properties to be adjacent:

- 90 Barton Street
- 16, 18, 20, 22, 24, 26, 28, 30 Long Street
- 45 Bamford Street
- 49 Bamford Street
- 27, 27A, 32, 34, 36, 38, 44, 44A, 52, 54 Gould Crescent

I consider these to be adjacent for the following reasons:

- The residential properties have no screening/obstruction of the proposed activities by physical or natural structures i.e. buildings, hills etc;
- Although there is 50-70 metres separation from the proposed activity, the flat topography of the waterway and reserve makes the views of the activity appear closer than views which are obstructed by other features.
- As discussed above being 'adjacent' does not necessarily equate to directly connecting to the application site.

I consider the remainder of the surrounding area is not adjacent because:

- Other residential properties' views from Gould Crescent and Bamford Street/Barton Street are obstructed by other neighbouring properties on Gould Crescent and Long Street.

- Residential properties on Ferry Road: There are multiple reserves, waterway and roads separating these properties from the application site. The residential properties are separated by a major arterial road - Tunnel Road - and are setback over 150m from the application site.

#### Visual Amenity

The original s95 assessment concluded that the visual amenity effects were more than minor. The application has since been amended and includes the following:

- The applicant is proposing buildings/outdoor storage areas up to a height of 5.8 metres from finished ground levels in the ODP Greenspace Area;
- The applicant is proposing the remainder of the site will have a maximum height of four containers/outdoor storage which equates to a maximum height of approximately 10.4 metres from finished ground level. As the height is measured from original ground levels, the height exceedance is up to a metre above the 11m height overlay requirement.

The original and amended application has been peer reviewed by Consultant Landscape Architect Jeremy Head. I have summarised his assessment below:

- The assessment is now restricted to assessing 5.8m high buildings/outdoor storage of materials from finished ground level and up to four containers high for the remainder of the site. The proposal does not affect backdrop views. It was assumed at the time of Mr Head's assessment that the 11m height overlay achieved compliance with building/outdoor storage height. I have further addressed this non-compliance below.
- The tops of the 5.8 m high buildings / outdoor storage of materials within the ODP Greenspace area may be just visible above the existing planting/proposed fencing. Eventually the buildings/ outdoor storage of materials would not be visible when the proposed planting is established and reaches a sufficient height.
- While paving part of the ODP Greenspace Area is unfortunate, the loss of this open space and potential for planting is no longer exacerbated in the amended Proposal through visible buildings other than in the short term.
- From the additional information provided, there appears to be adequate growing conditions for the proposed mitigation planning. However, according to the Novo group report at [16] the test holes are located on the bund crest, not to the south of where the proposed acoustic fence is located - where most of the proposed planting is shown located. However, the Applicant has provided conditions to ensure that any new planting establishes well, and thrives. Mr Head considers this to be acceptable.
- Mr Head's conclusion of effects and locations are listed below.

#### *Summary of visual amenity effects*

View Locations	Type of view	Short term- medium	Medium- Long term including mitigation	Conclusion on scale of effects
853-909 Ferry Road	Long Term, Fixed Views	Negligible	Nil	Less than minor
32-38, 44, 44A, 52 and 54 Gould Crescent	Long Term, Fixed Views	Very Low	Nil	Less than minor
Remainder of Gould Crescent Dwellings	Long Term, Fixed Views	Negligible	Nil	Less than minor
Long Street and Barton Street Dwellings	Long Term, Fixed Views	Very Low	Nil	Less than minor
Views from travellers on the road network, including cyclists and pedestrians within receiving environment	Transient, short term views	Negligible	Nil	Less than minor
Views from travellers on Tunnel Road / SH74 within receiving environment	Transient short term views	Negligible	Nil	Less than minor
Views from recreationists on the public Tow	Transient, short to medium-term views	Very Low	Nil	Less than minor

Path and Tow Path Reserve				
Recreationists on the public riverside paths including the footbridge over the 'Woolston Cut', Gould Reserve, 'Woolston Cut' (constructed) riverbank area, within receiving environment	Transient, Short-term views	Very Low	Nil	Less than minor
Recreationists on the public riverside paths on both sides of the Opawaho / Heathcote River within receiving environment	Transient, Short-Medium Term views	Very Low	Nil	Less than minor

I adopt Mr Head's assessment. I have provided commentary in terms of the elements raised by members of the public:

- Concerns were raised that the owners of 40 and 42 were affected by the proposal. As outlined by the Mr Head all viewpoints are considered to be less than minor including these property owners.
- In terms of the reduction of the open space, as outlined by Mr Head this will not affect the screening or visual amenity effects of the proposed buildings/outdoor storage areas. I do not consider the fence, asphalt, drainage and edging is required to be removed in terms of visual amenity effects.
- I consider the proposal balances the need to address lizard habitat while allows suitable mature species to be established within Lot 1. This is discussed further in this report. I consider this provides appropriate screening for residential amenity for industrial activity as vegetation in this area will be able to reach a maximum of 16 metres in height.
- I have recommended that the applicant maintain the fence until titles are issued for the proposal. This ensures any defacing the fence is addressed while the land is in the applicant's ownership. Once vested, this will be maintained by Council.

In terms of the height exceedance of buildings/outdoor storage areas in the 11m height overlay, Mr Head did not assess this exceedance. Notwithstanding Mr Head assumed that four containers high would be located within this area. I do not consider that further assessment is needed from Mr Head in this regard. There is potential for there to be a maximum 1 metre height exceedance. I do not consider this will differ greatly in terms of visual amenity from a permitted activity. The proposed landscaping volunteered by the applicant will screen the height exceedance in its entirety in time as well. I do not consider the exceedance to create any effect greater than less than minor for adjacent properties.

Overall, I consider the visual amenity effects to be less than minor.

### Ecology

The proposal includes restropective works and proposed structures which have intruded the 30m waterway setback from the Heathcote River. The site and adjoining reserve are habitat for lizards and birds and an important riparian margin for the Heathcote River. The applicant has not provided an ecology report as part of their application as the final landscaping concerns have been resolved with the Council's ecologists and the parks team. Since the release of the original s95 recommendation the applicant has made changes to both the northern and southwestern area to reduce the wider effects on the environment. I refer to separate types of ecology below.

I consider that it is important to note the intent of the District Plan in terms of ecology:

- The Portlink ODP requires dense planting of indigenous species which are more focused on providing ecological habitat for waterway body margins and birds. The mature height of the trees prescribed in Appendix 16.8.3 range from 5 to 7 metres. This tends to not support lizard habitat as they tend to thrive in low lying shrub and plant

species that do not generate as extensive shading. Existing mature vegetation as shown on the ODP is also required to be retained.

- Chapter 6.6. focuses on either protecting, maintaining or enhancing the values and functions of the water body and its riparian margins. The objectives and policies are not specific in terms of which ecology in the riparian margin is prioritised however water quality, biodiversity, bank stability and amenity value are some of the aspects required to be protected or enhanced.
- The function of a downstream waterway setback includes maintaining or enhancing habitat for terrestrial and aquatic animals and plants. I consider this would logically include birds and lizard species as well as plants and aquatic biodiversity. Chapter 8 Objectives and Policies aim to achieve a similar outcome however it is more brief in its description.
- The objectives and policies in Chapter 16 do not directly relate to enhancement of ecology however they refer to recognising stormwater values which include ecological protection in the six values system outlined in Council's Waterway Wetlands Drainage Guide. Again, this is not specific in terms of which areas of ecology should be protected or enhanced.
- While this document is not a Resource Management Act document, the Ōpāwaho Lower Heathcote Guidance Plan is similar in terms of outcomes to those sought in the ODP in terms of an appropriate buffer for river margins, increasing native plantings in the margin. It also focuses on habitats primarily for birds and fish than other species.

### Waterway

The south-west bund is located within the proposed waterway enhancement area. A large riparian margin provides a buffer that provide the following important features:

- Space for regeneration and to protect the terrestrial and aquatic ecology.
- Mature trees assist with keeping the river cool and providing more oxygen to the water and creating an optimal habitat for multiple species.
- Maintain and enhance ecological connectivity to the upper catchments. The Heathcote River, Linwood, Canal, and Banks Peninsula Aquatic Ecology 2020 report included recommendations such as increasing riparian planting and removal of metal contaminated sediments in stormwater basins and waterways.

Ms Noakes (Council's Waterways Ecologist) has commented the area has monthly water quality monitoring and ecological monitoring occurring every five years. The latest ecological monitoring occurred in September 2020<sup>11</sup> with the most downstream monitoring site at Tunnel Road being adjacent to the application site. The report noted most areas within the Heathcote River Catchment had minimal buffering with riparian vegetation, are poorly shaded however contains natural banks. The raw data identified native fish species such as giant and common bully, shortfin eel, black flounder and yellow eye mullet to be present in the surrounding area. None of these species are classified as being at risk and Ms Noakes has noted that this area of the waterway is not identified as an Inanga spawning habitat. Some of the waterway is concrete lined which can have some limitations on ecological values. Ms Noakes considers the waterway ecology has been maintained for the following reasons:

- The instream environment hasn't been altered by the proposal.
- The increase in impermeable surfaces have not created an effect on the existing values.

The main concern raised previously was the bund retrospectively established in the southwestern area. This is now proposed to be removed. In Ms Noakes perspective this will allow the proposal to achieve effective enhancement and riparian margins. Ms Noakes has recommended conditions which reflect the proposed enhancements, minimises effects on the waterway through erosion and sediment control and requires a detailed landscaping plan at the time of detailed design stage. I accept Ms Noakes recommendations and note the applicant has accepted these.

Ms Noakes has noted that while the structures within the northern section are not ideal, it is considered the proposal is an overall positive ecological outcome due to the mitigation proposed.

Part of the haulage route has not been tested for contaminants, the filling present could pose a risk of heavy metals or contaminants leaching into the waterway. This could further degrade the values and ecological health of the waterway and its margins. The applicant has accepted environmental health conditions to address this matter which will pair effectively with erosion sediment and control conditions to minimise any effect on the waterway. Overall, I consider the effects to be less than minor.

### Lizards

Lizards have been identified along the northern area of the site. The lizards identified on the site were Southern grass skinks which have a conservation status of 'At Risk – Declining'. An official lizard survey was undertaken on the 4<sup>th</sup> March 2022, the bund was partially constructed and some parts of it were within the 20m setback. It is therefore difficult to define the exact

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<sup>11</sup> [https://ccc.govt.nz/assets/Documents/Environment/Water/Monitoring-Reports/2020-reports/2020-Heathcote-River-Five-Year\\_atic-Ecology-Monitoring-Report.pdf](https://ccc.govt.nz/assets/Documents/Environment/Water/Monitoring-Reports/2020-reports/2020-Heathcote-River-Five-Year_atic-Ecology-Monitoring-Report.pdf)

number of lizards present in the area prior to these works commencing. Ms McClure (Council's Herpetologist) has noted there were records of a large lizard population on the application site, prior to earthworks and establishment of industrial activities. It is considered highly likely that a substantial number of lizards and substantial area of habitat has been lost as result of the totality of the works occurring on the site. All areas except within 20m of the waterway setback were granted consent prior to the lizard survey. It is likely there are more predators inhabiting the industrial area (i.e. rodents, however this has not been monitored). Notwithstanding Ms McClure's assessment focuses on the impacts of the bund and the proposed enhancement. Although the ODP specifies dense vegetation in the area, the objectives and policies of the District Plan refer to protection and enhancement of overall eco-systems in the riparian margin.

Ms McClure considers the bund itself has reduced lizard populations as well created fragmentation and a reduction of habitat. This has caused a population decline of Southern Grass Skinks in the locality. One benefit of the bund is it has established rank grass on its surface, providing an area of lizard habitat due to its north facing orientation. Ms McClure does not consider this mitigates the overall loss of population and habitat removed by the overall site and the bund's creation.

The applicant has proposed changes to the enhancement in order to minimise or avoid the impact and fragmentation of Lizard habitats. This has been assessed by Council Herpetologist Christine McClure. Ms McClure considers the amended proposal to improve the effects on lizards due to the following reasons:

- The existing path will be extended along part of the northern reserve (the north eastern part will be retained as currently established). This helps to avoid fragmentation in the area from the path to the top of the bund. As lizards are likely to be within proximity to the existing path, Ms McClure has provided recommendations to ensure salvage and relocation of any lizards encountered occurs.
- Ms McClure accepts and supports the retention of rank grass at the bottom and slope of the bund. Members of the public have raised concerns that weeds will overtake the existing rank grass in this area. Ms McClure has noted that while weeds will be present in the area due to the current soil, the rank grass will dominate. The key aim is to retain the existing vegetation and habitat for lizards. This environment will be increased by the removal of woody species.
- The landscaping in Lot 1 (balance allotment) is to be species that cannot reach higher than 16m maturity and will not develop broad canopies. This will ensure that shading in this area is minimal to maintain as much lizard habitat as possible while mitigating visual amenity. Ms McClure considers this to be appropriate.
- The top of the bund within the reserve is proposed to have vegetation that is less dense than proposed in Lot 1 and is lizard friendly. Ms McClure considers this to be appropriate.
- I consider the lack of protection created by the bund is small as only a marginal portion of the bund intrudes into the 20 m waterway setback and the remainder of the site has been established through existing consents.

The applicant has accepted Ms McClure's recommendations. I adopt Ms McClure's assessment and consider the effects to be minor in the wider environment and less than minor for adjacent properties. This is due to the fragmentation of the lizard habitat as a result of the bund however the enhancement will not result in further fragmentation or damage of lizard habitat.

### Birds

Specialist input has been obtained from Council's Ecologist Andrew Crossland. The application site has previously had multiple native and introduced bird species present, this includes at risk or endemic species. The most common bird species to be present along the water margins are Cormorant and Little Cormorant. They are known to night roost in the dead trees along the river margins.

Mr Crossland has noted that over time the bird population has declined in the area due to the redevelopment of the site and industrial zoning. Disturbance would be created by noise, dust, lights and people passing the roosting areas too close. Mr Crossland also considers that construction works have not taken efforts to mitigate bird disturbance in this area. Since the private plan change occurred and the land was re-zoned, the Cormorant night roost has reduced from 100-200 to the highest recent count of 47 birds. The total in 2022 was 28 birds compared to 142 in 2010. In addition, infrastructure required for the industrial zone has removed the pre-existing farmland and wasteland bird habitat. Habitat enhancement or screen vegetation has not occurred to date therefore there has been no mitigation of these effects. Species such as Pukeko, Spur-winged Plover and Paradise Shelduck are considered to have been displaced due to residing in the previous pasture which is now the application site.

The stacked storage of containers en-masse have created both a physical obstacle to cormorants and other birds moving between the roosting trees and the estuary, and have eliminated clear sight lines to the roosts. Bird approach routes have now changed. The containers, fences and other infrastructure have added to the potential collision hazards for incoming birds, which had previously mainly comprised of high tension power lines and tower structures further east and north in the wider area. This is regardless of whether the height of the containers are 11m, lower or higher.

While the industrial activity has removed ecological habitat and has created bird disruption which was not anticipated by the private plan change, I consider that this is not an effect created by this proposal. All works were consented excluding those within 20m of the waterway setback.

In terms of the retrospective works within the 20m setback, Mr Crossland considers the retrospective works have created the following issues:

- The more recent construction of bunds destroyed nesting habitat for some birds such as Pukeko (protected under the Wildlife Act 1953).
- The bunds have also "lifted" the projection of disturbance on the cormorant roosting trees by both permitting people to be elevated higher than the riverbank paths, and by pushing the human movement and activity corridor closer to the base of the river-side trees. These comments are no longer relevant due to the removal of the bund.
- The bunding has provided no benefit to the cormorants and other birds using the riparian trees and the river corridor.

The physical obstacle of the containers or any other building/structure proposed on the application site (at 11m or higher) prevents any enhancement (whether with or without a bund) having a positive effect on bird populations. It is noted that the existing trees along the waterway will be retained where possible. Notwithstanding Mr Crossland considers the enhancement will not create a sufficient ecological habitat for birds. While native tree species will be provided in the esplanade area it is considered that it will not increase the biodiversity of birds populations in the area.

I accept Mr Crossland's assessment. Mr Crossland has provided a high-level comment that noise has not assisted with maintaining existing bird habitat. From my perspective, while the existing activity and proposed activity could create effects on birds in terms of noise, I do not consider it will change with increased/decreased height of containers or outdoor storage. If an industrial building was established noise effects from the current activity could be reduced. Notwithstanding I consider it is hard to quantify in this instance. This is further mentioned in the noise assessment below. Mr Crossland has recommended bird disturbance conditions to mitigate any disturbance while works (including landscaping) commence within the reserves lots. The applicant has accepted these recommendations. Overall, I consider that there is a minor effect on the wider environment and less than minor on adjacent properties.

#### Tree removal

The applicant has removed three trees (English Oaks), within the private stormwater facility area. Their location is identified in the image below:



Figure 1: Location of removed trees.

These trees were required to be retained as part of the outline development plan however Chapter 9 does not identify these trees as significant. The previous City Plan also did not identify these trees to be previously protected. As the trees have been

removed, I do not consider necessary to obtain arborist input. I have obtained specialist input from Mr Crossland who has confirmed that the trees were not important bird habitat as they are not located along the waterway margin. While the trees are not native, Mr Crossland notes the oaks had been established for at least 100 years. The trees have been replaced by a bund.

The applicant's tree specialist has noted the trees needed to be removed for the following health and safety reasons:

- The first tree contained 40% percent dead wood and the branches posed a safety risk for users of the areas;
- The second tree also had die back and a big tear out creating a wound in the stem;
- The third tree has 45% die out which is starting to affect the bigger oaks.

While I consider it not ideal, I consider the effects to be less than minor for the following reasons:

- The trees are not in optimal health
- The remainder of the trees in the area are being retained and have not been affected by the previous works.
- The surrounding area is proposed to be enhanced and landscaped which in time will replace the amenity provided by the trees.

The areas is changing as a result of the proposal/zoning and associated enhancement therefore this will not have significant adverse amenity effect on users of the area or reserve.

#### Overall Ecology Effects

The above ecological assessments have identified adverse effects created by the retrospective works as well as the ability to enhance the site and surrounds to create effective and adequate ecological habitat. I do not consider any ecological effects are created for adjacent properties and there are minor effects on the wider environment. I consider the conditions recommended by the specialists are appropriate and the applicant has accepted these. I consider the effects to be appropriate.

#### Function of reserves and effects on users

Specialist input has been obtained from Senior Open Space Planner Pete Barnes. The purpose of an esplanade reserve is to provide public access and protect relevant ecological values. This aligns with clause 16.4.4.2.3a.ii.c. which avoids uses outside of passive recreation or ecological enhancement.

Mr Barnes agrees with the assessment provided by the Council ecologists and the issues previously raised with CPTED and the proposed pathway are now resolved. Mr Barnes has raised no concerns with the soil levels being at background level for recreational use. I note safety effects have been addressed further below. Mr Barnes considers that the reserves provide for public access and protect relevant ecological values. I accept Mr Barnes assessment. I consider the reserve will provide an amenable environment for its users (recreational and commuter) of the area.

I consider the effects to be no more than minor on the wider environment and less than minor for adjacent properties.

#### Noise effects

The tenants of the application site have provided an acoustic assessment undertaken by Powell Fenwick (PFC) for the existing activity (container handling and processing facility). This noise assessment does not include the 24 hour container operation or other tenancies which are located partially within the 11m height overlay area. The acoustic report has been amended overtime and all reports have been reviewed by Council's appointed Acoustic Engineer, William Reeve. The acoustic report focuses on containers as it is considered to be the worst case scenarios of activities anticipated on the site in terms of adverse effects.

In summary, Powell Fenwick, considered that compliance would be achieved with the noise standards in the District Plan if the following recommendations were implemented:

- During typical operation, stacks of containers parallel to the site boundary will be erected along the Northern sealed edge of the site to form a noise barrier. The container stacks should be continuous with minimal gaps between them as necessary for access.
- The container stacks forming the noise barrier shall be minimum four containers high, except directly in front of the truck route, where container stacks shall be minimum three containers high.
- The container stacks that form the noise barrier should not be moved regularly. Containers that form the noise barrier should nominally only be moved once every 2-3 months on average, noting that this may need to occur more regularly (once per month) on occasion.
- When a gap in the noise barrier is made to access containers in long term storage, the barrier should immediately be rebuilt (within the same day). Moving of containers that are part of the barrier should only occur between 0900 h and 1500 h Monday to Friday.
- No hoist or truck activities shall take place during night time hours.

The applicant has adopted these recommendations and, has also proposed a noise management plan to ensure compliance is achieved. I consider that compliance with the District Plan standards will mean that there are less than minor effects on adjacent properties and the wider environment given the underlying zoning. Notwithstanding at the s104 decision I am of the view that more stringent conditions could be placed on a consent to manage effects beyond the District Plan standard given the discretionary activity status.

Mr Reeve's peer reviews are outlined in Appendix 7 and 9 of this report. Mr Reeve is in general agreement with Powell Fenwick's assessment, and I have summarised his commentary below:

- It is considered that 'bangs or thumps' are examples of sounds with impulsive character, as specified by CB4.1 of NZS 6802. NZS 6802:2008 uses a rating level approach, whereby the sound level is measured over a standard reference time of 15 minutes and adjusted to account for special character (up to +5 dB) and duration (up to -5 dB). This is not applied in the compliance assessment against the District Plan and the plan is therefore more lenient. The day to day levels are likely to create more a nuisance for neighbouring residential zones. Mr Reeve considers that if this stricter requirement is complied with at residential boundaries, it would create a reasonable noise threshold in terms of amenity and avoiding moderate annoyance. If noise levels are higher on infrequent occasions (such as when the barriers are being reconfigured) but remain below the upper residential amenity threshold of 55dB  $L_{Aeq}$  it is not considered particularly problematic.
- Mr Reeve agrees with the findings of the PFC report in terms of noise received in the open space zone and it is considered that the transient nature of use of the reserves, will minimise adverse impact on users. In supplementary commentary, Mr Reeve has commented that the effect on wildlife is not in his expertise however, notes that Ornithologist experts have stated that bird disruption occurs at greater than 70dB  $L_{AFmax}$  but is dependent on context of the site. I refer to Mr Crossland's assessment in this regard.
- It is considered the gaps between containers will only result in small changes to noise levels. The larger gap in the barrier is required for access. This would mean the owners/occupiers of 54 Gould Crescent are more regularly exposed to noise levels which are closer to the level of 53dB  $L_{Aeq}$ . This site is also exposed to traffic noise levels due to being in close proximity to Tunnel Road.
- The original acoustic report presents uncertainties regarding several aspects, including the multiple activities on the site (noise limits apply cumulatively to a site), whether any night time activity is occurring, whether average and maximum noise levels will increase or decrease from what was previously experienced (once the site is fully expanded), and it is unclear what the effects of reflections or vibration are. Notwithstanding the PFC report provided a modelling error of +3dB which resolves most of the issues albeit noise at night and vibrations.
- It is considered the acoustic barrier will not represent a 'best practicable' mitigation option by itself. Noise can be inherently variable but the level of noise from typical events can be reduced by drivers, typically operating in a careful manner including:
  - o Driver training on slow touch-down procedures
  - o Appropriate training and operating procedures (perhaps contained within a noise management plan)
- If the operation hours are 0700-1800 as stated, this would be acceptable to Mr Reeve. Mr Reeve considers these timeframes will not generate moderate annoyance for the majority of the population. This does not guarantee that noise levels at the threshold modelled will not create an annoyance to residents. There is normally a small percentage of the population who are considered affected by the modelled levels and Mr Reeve considers this would place further emphasis on having good site management.
- The noise from containers dropping from a height/being blown over by the wind appears to have occurred on occasion. While these types of events would generate very high levels of noise and vibration, it is expected to occur rarely as they are also undesirable for the operator, and should be given less weight than day-to-day noise from the activity.
- Sleep disturbance for young children during the daytime has been raised as a concern by residents. The underlying District Plan limits do not provide any specific protection for sleep during the daytime, and this would be unusual due to the restrictions it would place on typical activities.
- The bund and acoustic fence location does not match the landscaping plans. Notwithstanding, the Issue B and C are sufficient to demonstrate that if the modelling were updated again, the predictions would remain the same or lower than the original modelling.

I adopt Mr Reeve's assessment. In terms of s95, I agree with his assessment of the open space zone effects and owners/occupiers of 54 Gould Crescent are more impacted by Tunnel Road than the application site. I do not consider the occupiers of the other industrial areas to be affected, as similar activities are operating in these areas. In addition, I consider that the noise management plan will ensure reflections and vibrations are appropriately managed.

The matter of contention relates to:

- how the noise management plan is to be enforced;
- whether further restrictions are required to ensure residential amenity is maintained; and
- s16 is adequately addressed as well as compliance being achieved.

I consider that these matters are for the s104 substantial decision rather notification (s95). I agree with Mr Reeve that further controls are required to manage noise and vibration controls to retain residential amenity of the locality.

As outlined by Mr Reeve, the day-to-day levels are most likely to create a nuisance for neighbouring zones and it is considered that physical barrier and fencing will not represent the best mitigation option on its own. As a discretionary activity, I consider this to be relevant matter to address residential amenity. I note the applicant has accepted specific details required for the noise management plan.

The conditions which are not agreed upon (by the applicant) is in relation to and I have provided further explanation below:

1. Restricting the activity to comply with NZS6802:2008, including the special audible characteristic penalty, which is of a higher standard of the District Plan noise standards.
2. The wording to limit the frequency of changes to the noise barrier to ensure it is enforceable.
3. Including container repair/cleaning activity as activities restricted to daytime hours
4. Restricting the activity to two hoists operating on the site at any one time and up to 16 truck movements are expected to occur in an hour.

It's noted that the applicant has accepted the remainder of noise conditions, as part of their application. In terms of the matters of contention, the applicant has provided the following comments:

- It is suggested the conditions simply require the consent holder to demonstrate compliance by way of noise monitoring via a noise management plan. This allows operators (current and future) the flexibility to undertake their business how they see fit provided compliance is achieved. Further, the conditions would remain relevant for any future activities/operators that may not be container storage related.
- It is the operator's intention to use containers that likely to be on site for a longer period to form the noise barrier. However, these containers are not owned by the operator, and may need to be moved off site with little warning. This is reflected in the condition recommended by AES. While this condition is difficult to enforce, it reflects the fact that the operator does not have complete control over this matter.

I consider that while it is important that conditions require flexibility, due to nature of activity and surrounding locality, more stringent controls are required to retain residential amenity.

It is considered that Mr Reeve's Acoustic standard NZS6802:2008 condition in 1 above needs to be modified to ensure it is clear and enforceable. I have conferred with Council's Compliance and Environment Health Officers (personal communication), and it is considered that this is hard to enforce, as currently recommended by the acoustic specialists. An alternative proposed, is to reduce the length of time that noise is measured to reflect this penalty. This would enable impulsive noises to be measured more accurately against the noise standards, as well provide an accurate reflection of noise experienced by the nearby locality.

It is considered that the wording of the condition, which restricts changes to noise barrier recommended by the acoustic specialist, will be difficult to enforce. By placing a limit on the times the noise barrier is altered per year, will provide certainty and will be practicable to enforce. I have recommended a maximum frequency of five times per year to best reflect the acoustic recommendations however, this has not been agreed by the applicant.

Mr Reeve has recommended that repair and cleaning activity is not undertaken during nighttime hours, which is an extension to the condition that the applicant has already volunteered. Mr Reeve has outlined these activities are likely to generate considerable noise therefore, it is considered that these should be avoided during nighttime hours. The applicant has not provided details of operating hours therefore, members of the community need to anticipate that the activities on site could run from 7am-10pm daily, including weekends, which aligns with the daylight noise standards. I note Mr Reeve anticipated that the operation hours were 0700-1800 however, I consider the extension of hours to 10pm is unlikely to make a difference, due to compliance with daylight standards and the underlying zoning.

In terms of the remainder of disagreement, these elements were described by the applicant in the proposed modelling, which demonstrated compliance. While electric hoists would generate less noise, it is unclear without evidence, how many more hoists can be utilised to retain compliance. I consider this could be addressed in the noise management plan, if it is considered that it should not be a standalone condition.

#### Other Nuisances

Environmental Health Officer Agnes van der Erf has provided commentary on other nuisance matters. Her comments are as follows:

- Any vibrations caused by the container movements would be best addressed through a handling guidance document for the site. This would cover best handling practices that will limit vibrations and noise when the containers are being moved and should be included as part of site induction for new employees with training and regular reviews to keep it current. Any concerns raised by residents in terms of damage to dwellings, it will be a civil matter between the tenants and the residential properties (or their insurer). It is recommended that the applicant and/or tenant complete surveys to understand the dwellings current conditions. In terms of vibrations, it is difficult to measure and enforce as there are only minimal provisions in the District Plan which address this (i.e. construction management during large scale earthworks). A permitted activity without earthworks could occur on site which could create vibrations but not trigger a non-compliance with the District Plan. Notwithstanding, Ms van der Erf's assessment aligns with Mr Reeve assessment in terms of noise, vibration and maintaining residential amenity by enforcing a noise management plan. I consider this to be an adequate mitigation measure within the planning framework.
- With dust there are two areas of concern, day to day wind whipped up movement and that which is a result of earthworks. The ESCP should be sufficient to manage dust during earthworks with limits/stop work in place during times of high wind and any exposed soils dampened down with trucks (if they have access) and sprinklers, with controls on runoff. The ongoing management of the area until grasses/groundcover has time to grow is a bit more problematic. What is suitable for a subdivision may not pass the requirements of river management areas but the parks/reserves team must have some ideas how best to address this. There are soil binders and polymers which seal the surface but I'm not sure if they'd want those near the river.<sup>12</sup>
- Methyl bromide is the usual fumigation pesticide for logs (nzfoa.org.nz) and this is quite dangerous in enclosed spaces but once exposed to air it rapidly dilutes and poses little risk. There are regulations and perhaps a licence involved that either MBI or Worksafe enforce for these types of activities (under the old HSNO legislation) and Council do not have any powers to enforce change. The location where the existing log activity is occurring is at least 100m away from the nearest residents so there is plenty of distance to dilute. Also worth noting the prevailing north east wind will direct it more towards the commercial area. As it is a gas it tends to dissipate upwards on release and if any, only tiny amounts would make it into the reserve and not at volumes to be harmful to people. Provided they undertake the fumigation activity according to WorkSafe Regulations there is no health concern.

I adopt Ms van der Erf's comments. The applicant has agreed to conditions in terms of erosion and sediment control and noise management plan. I consider these matters to be appropriately addressed and the proposal to be appropriate. I consider the effects to be less than minor.

#### Safety Effects

Health and safety effects have been raised as a concern by members of the public. I consider the effects in term of health and safety are less than minor for the following reasons:

- Health and safety is generally outside of the scope of the Resource Management Process.
- It is common practice for containers to be stacked. The activity will be regulated by organisations such as Worksafe and all businesses are required to have health and safety plans under relevant legislation and industry standards.
- In terms of traffic movements, it is unlikely that truck movements will occur adjacent to the residential activities as entering/exiting the Portlink development is either via Chapmans Road or Rutland Street. I do not consider this will create an adverse safety effect in the locality.
- There were concerns raised that tripping hazards along the reserve would increase because of the light pollution from the application site (it is assumed this is due to shadow casting and variations from light). I consider this is less of a concern due to the path being formed with a consistent surface. Where pathway is not being altered is of consistent surface also.
- In terms of the reserve, there may be an adverse effect in perception of safety due to the location of the containers.

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<sup>12</sup> I have received commentary from the parks team that this would be managed through the engineering design phase of the landscaping plans (in accordance with the IDS and CSS). It is difficult for the parks team to assess this matter prior to this point as the land is not owned by Council.

## Construction Effects

The application includes a retrospective works aspect which includes:

- Filling of the haulage route by approximately 600mm to a metre depth;
- The northern bund consisting of 300mm to 600mm topsoil and crushed concrete;
- The south west bund consisting of top soil

The earthworks are in relation to the proposed reserve land and do not include works already carried out within the site. Earthworks and construction effects have been assessed by Council's Subdivision Engineer Yvonne McDonald. Her comments are stated below:

*"Novogroup have applied for subdivision (boundary adjustment) and partially retrospective earthworks consent for the formation of two bunds (northern and southwest) along the Heathcote River, dated December 2022. The subdivision application is to vest the esplanade reserve.*

*The additional lot is esplanade reserve and as such is not able to be built on, so I have no geotechnical conditions.*

*Earthworks to the south, to reinstate the haul road as river bank, have been carried out in part and also 'overfilled'. These earthworks were used to dispose of excess fill from Portlink under the guise of restoring the access track to landscape. The amount of material placed to the south exceeded that needed to restore the riverbank, and has potential to cause flooding issues due to changes in land drainage patterns. I am not sure exactly where the works are at now so will condition on the basis that works are not yet complete.*

*The southwestern bund adjacent to the development has been formed in part within the waterway setback and the reserve lot, from excess site materials overlain with topsoil. The proposed bund is battered at one vertical to two horizontal. The height is not defined and the batter slope of between 3.2 – 4.2 horizontal to one vertical (river side) and 1.8-2.8m horizontal to one vertical (development side) are indicated on the landscape plans. I have suggested conditions around the final cross section and confirmation of compaction to address land stability.*

*The northern bund has been formed in part within the waterway setback and the reserve lot, from crushed concrete overlain with topsoil. The 2.0m height and profile are determined by the landscape and planning requirements. I have suggested conditions around the final cross section and confirmation of compaction to address irregular settlement with the potential to create trip hazards. I have also suggested topsoil depths, to foster landscape success.*

*I understand the channel across the leg of lot 305 towards the south, allowing 75/81 Kennaway Rd to drain directly to the river, has been removed.*

*The applicant has suggested the use of standard conditions of consent to address sedimentation and dust nuisance.*

*Regarding land stability, the applicant states the bulk of the earthworks are already consented and have no effect on the stability of adjacent land. They also offer the planting to improve the stability of the bunds."*

Mrs McDonald has considered that most of the earthwork effects can be mitigated by conditions of consent which are adopted by the applicant. I adopt Ms McDonalds assessment. In terms of amenity for neighbouring properties within the industrial area, I consider that the filling is unlikely to create an adverse effect. In terms of visual and ecological impacts (including effects on waterway setbacks), this further discussed above. Construction works in terms of effects on flood management areas are further discussed below.

The applicant has recommended erosion and sediment control conditions to avoid effects on the environment. I consider the effects to be less than minor and are appropriate.

## Cultural Effects

The proposal is intruding the Heathcote River which is classified as Ngā Wai and site of ecological significance. The following Rūnanga have been consulted on the proposal:

- Ngāi Tūāhuriri Rūnanga
- Te Hapū o Ngāti Wheke (Rāpaki)

I have summarised their comments below:

### Ngāi Tūāhuriri Rūnanga

- Typically, ngā Rūnanga are opposed to waterway setback intrusions due to the negative impacts on the mauri of the wai. However, it is understood that the waterway setback intrusion is for the establishment of an esplanade reserve

which will provide a range of environmental benefits such as an increase in biodiversity and the protection of the waterway from runoff. Therefore, if the recommended consent conditions are provided for, the Rūnanga will not consider themselves to be an adversely affected party.

- Earthworks can uncover previously undiscovered Māori artefacts or wāhi taonga. Therefore, an Accidental Discovery Protocol (ADP) must be in place during all earthworks and all contractors made familiar with this.
- Earthworks can also cause contamination of ground and surface waters through sedimentation if appropriate protection measures are not in place. It is vital that an Erosion and Sediment Control Plan is prepared in accordance with Environment Canterbury's Erosion and Sediment Control Toolbox for Canterbury and implemented on site during all earthworks. This Plan must ensure the protection of Ōpāwaho.
- The Applicant must incorporate indigenous vegetation as mitigation for the boundary adjustment and earthworks within a waterway setback. Should a condition requiring the planting of indigenous vegetation be out of scope for this application, it should, at the very least be provided as an advice note to ensure the stance of the Rūnanga (who hold tino rangatiratanga) is made clear to the Applicant. Indigenous vegetation is an important mitigation measure as it helps with the uptake of nutrients, binding of soils, and increases biodiversity values in the area.

#### Te Hapū o Ngāti Wheke (Rāpaki)

- Water (waterways, waipuna (springs), groundwater, wetlands); mahinga kai; indigenous flora and fauna; cultural landscapes and land - are taonga to mana whenua and they have concerns for activities potentially adversely affecting these taonga. Traditional and contemporary mahinga kai sites and species should be protected and restored.
- Mauri and mahinga kai need to be recognised as key cultural and environmental indicators of the cultural health of waterways and the relationship of Ngāi Tahu to water.
- The catchment is a highly modified environment that has undergone dramatic change in the last 160 years, particularly with regard to the loss of mahinga kai, natural areas and indigenous habitats and ecosystems, and the decline of water quality.
- Papatipu Rūnanga seek to achieve water quality standards in the Ihutai catchment conducive to mahinga kai. This requires the elimination of wastewater and stormwater discharges from waterways over the long term, through a combination of repairs, upgrades, and replacement of existing infrastructure and the use of alternative disposal technologies. Planting riparian margins along waterways and drains to restore habitat, filter run off, and reduce sediment entering waterways will further restore the mauri and cultural health waterways in the catchment.
- Untreated stormwater from the development should not discharge into Ōpāwaho/Heathcote River and stormwater runoff from the development should not enter the riparian buffer zone. Low impact design methods, such as, rain & greywater collection and re-use systems and minimising impervious surfaces is encouraged.
- Te Hapū o Ngāti Wheke (Rāpaki) would prefer a 50-metre setback in this area. However, it is acknowledged that 30 metres is the requirement under current District Plan rules. Industrial activity should not occur within the 30-metre setback from Ōpāwaho/Heathcote River.
- The management of indigenous species within the site should be undertaken with agreement from mana whenua. The Lizard Management Plan should be submitted to Te Hapū o Ngāti Wheke (Rāpaki) for approval prior to works commencing. In addition, if a permit is required from the Department of Conservation for the management of lizards it is likely to be supported by Te Hapū o Ngāti Wheke (Rāpaki).
- Riparian buffers are highly valued for flood control, the maintenance of water quality, mahinga kai and cultural wellbeing. Indigenous planting within the riparian buffer zone is required as per policy WM12.4, P11.8 and TM2.8. Riparian planting enhances the cultural landscape, increases indigenous habitat, filters sediment and sequesters carbon.
- Contaminated material should not be contained within the 30-metre setback from the Ōpāwaho/Heathcote River.
- There should be an accidental discovery protocol in place during all earthworks deal with archaeological finds and protect the interests of mana whenua.
- There should be a stringent erosion and sediment control plan in place for any earthworks required to give effect to the consent and for future development of the site.
- While mana whenua do not support structures and impervious surfaces within waterway setbacks, the esplanade reserve and planting will provide protection for the awa and allow access for people to connect to the waterway.

The Rūnanga consider that if the following proposed conditions are provided for, the Rūnanga do not consider themselves an affected party:

1. Planting of indigenous species within the 30-metre setback from Ōpāwaho/Heathcote River is required to enhance the cultural landscape, increase indigenous habitat, filter sediment and sequester carbon. I consider this to be in relation to the esplanade reserve and bund area present on site as the remainder of the area is sealed.
2. The Lizard Management Plan must be submitted to Te Hapū o Ngāti Wheke (Rāpaki) for approval prior to works commencing.

3. Untreated stormwater from the development must not discharge into Ōpāwaho/Heathcote River and must not enter the buffer zone.

The applicant has accepted these conditions and advice notes proposed by the Rūnanga. I accept the Rūnanga's assessment and consider the effects to be less than minor.

#### Subdivision Design

The suitability of subdivision is dependent on the design of the subdivision including but not limited to

- Roading and accesses to proposed allotments and how they correlate with the adjoining transport networks.
- Servicing and infrastructure proposed and whether they are appropriate.
- Open spaces and reserves proposed and whether any natural and cultural values are established/existing on site.
- Whether natural hazards can be mitigated.
- Whether the subdivision design overall is appropriate.

In terms of allotment design, I note the following:

- The industrial allotment is of the right size and dimension.
- The allotment is compatible with the adjoining industrial subdivision, The development will not preclude development within the outline development plan.
- The transport and open space elements of the ODP are further discussed below or addressed previously.

#### Servicing

The applicant has created servicing for the allotment in co-ordination with right of way approval RMA/2021/3436. Specialist input has been obtained from Council's three waters teams and conditions have been proposed to reflect that a private right of way is to remain currently. The applicant has accepted these conditions. This includes providing evidence of complying with water for firefighting. Overall, I consider the effects associated with servicing to be less than minor.

#### Transport

No roading is proposed in the application which does not align with the requirements of the outline development plan. While only a private road is proposed, due to the Council servicing located within the road, the area has been proposed as right of way in gross/. While it is not owned by Council, public access is still enabled by this. I consider that in the short to medium term this achieves the intent of the outlined development. As a right of way in gross, the access meets the relevant requirements of the District Plan. It is likely that the application site could be further subdivided in the future due to the size of the allotment and the road would be vested at this point. In terms of connectivity the stormwater reserve and right of way in gross will be able to be access by the public. Although the footpath is not proposed within the stormwater reserve, legal access is still present on the site.

In terms of the activity, to an extent heavy vehicle movements are anticipated in an industrial zone. I consider it unlikely that heavy vehicle movements would occur in the adjacent residential zones from this activity as the only access to the site is via Kennaway Road. The applicant has confirmed that the activities proposed and existing will not exceed the high trip generator standards.

Overall, I consider the effects of transport to be less than minor.

#### Natural Hazards

##### Liquefaction Management Area

The applicant has provided a geotechnical report to address the liquefaction effects. It is common practice for Council officers to accept the report and impose a condition which enforces specific foundation design when the site is further developed. Mrs McDonald has reviewed the application and considers the existing consent notice on the title regarding geotechnical matters is still relevant. She proposes to retain this consent notice which will be drop onto the title of the industrial allotment. I adopt Mrs McDonald's assessment and consider the effects of the subdivision in relation to liquefaction are less than minor.

#### Flooding

The site is located within Fixed Floor Overlay of the Flood Management Area. Specialist input has been obtained from Council's Stormwater Planning Engineer Sheryl Keenan.

Ms Keenan has provided a summary of modelled flooding on the application site and surrounding area:

- In terms of the flooding nature of the site, this section of river is located within the highly tidal reach.
- The Council land along the right bank of the river is raised compared to the levels originally in the application site and levels on the opposite bank. At current levels, this Council land would be expected to contain river flows within the river channel on this right bank in present day events up to and including the 1 in 200 year 'major flood event'.

- Sea level rise will result in some extension of flooding from the river on the remaining lower portions of the site following previous consented filling however due to tidal nature of the site, the effects of any displacement would be expected to be extremely limited.
- For the future modelled flood events (following up to one metre of sea level rise) that could have extended into the application site prior to filling, the peak of the critical storm events would be expected to be at high tide, often following a period of flow passing from the estuary to the upstream area even following a design rainfall event in the upstream catchment (i.e. the tidal levels dominate to the extent that very high river flows are paused and reversed for a period). During lower portions of the tidal cycle, even following one metre sea level rise, most events would still be expected to be able to pass downstream without extension beyond the pre-existing raised river margin. At the times where the tidal cycle limits and reverses these river flows, the floodplain would be expected to extend across a very expansive tidal area, with peak flood levels in Gould Crescent very similar to and very much driven by those in the estuary. Even in present day 1 in 10 year modelled events, the critical event resulting in the highest flood levels in the vicinity of Gould Crescent is a 1 in 10 year tidal event, not a 1 in 10 year rainfall event. As sea level rise progresses, this tidal dominance is going to get more pronounced in this area, very much limiting the potential effects of filling, even very extensive filling.

As Ms Keenan has noted displacement to adjacent residential properties is unlikely to be affected by filling on the site due to the tidal nature of flooding present in the Heathcote River. Ms Keenan notes that care should be taken when modifying ground levels to ensure it does not adversely impact on any natural drainage patterns between adjacent sites and that run off from these modified areas is appropriately managed. This is in relation to the sites directly connected to the application site and not sites across the waterway.

The flooding aspects of the application relate to previous works onsite, finished floor levels and retrospective filling of the reserve areas (haulage route and bunding). I discuss these in further detail below.

#### *Existing filling on the application site*

The earthworks on the site (now of a sealed formation) have been previously assessed in the land use consent RMA/2013/1990 (RMA/2019/1823). Notwithstanding, members of the public have raised concerns regarding the development including flooding aspects. Ms Keenan has provided commentary on these aspects:

- Senior Planning Engineer Brian Norton has noted that the Portlink development will be adding a fractional increase to the flow in the Heathcote River (albeit only for storms where the basins are full and bypassing, so well in excess of 25mm rainfall depth), and this will have an infinitesimal effect on water levels in the river as opposed to the comparatively massive tidal fluctuations. This aspect has been addressed in previous consent processes, with the modified works consisting of landscaping areas that will have negligible stormwater runoff effects on sites in other portions of the river floodplain.
- A resident has commented that they were refused permission from Council to seal part of their driveway due to flooding effects in the rainwater catchment and question how the Portlink development were able to seal their site. Council officers have been unable to locate any records of this matter. It is likely that this driveway sealing would currently be allowed with appropriate drainage provisions.
- As noted, safety effects of containers toppling have been assessed above.

#### *Finished Floor levels*

The existing containers are not meeting the required floor levels of the fixed floor level overlay within the flood management area. Ms Keenan has provided the following commentary.

*"I understand from the application (page 65 of 22/1718272) that existing ground levels across the site vary from approximately 11.9m to over 12.8m in the areas where containers and any other future buildings are to be placed (i.e. outside swale and vehicle access areas). Containers placed across the majority of the site would therefore be expected to comply with the District Plan FMA FFL compliance level of 12.3m. If any containers or future structures were to be placed without significant ground clearance in the lower portions of the site, these might fall slightly below this level. While not a materials expert, I suspect that this would not result in 'material damage' to the containers if they were inundated, however obviously there could be significant contents damage, and we wouldn't want to see contamination of the floodwaters from some of the products potentially transported in these. Any likelihood of inundation though is limited to significant flood events following significant sea level rise. The modelled 'major flood event' level at this site following one metre sea level rise is 12.02m. Any structure placed above the proposed ground levels is likely to exceed this level in FFL. There are significant uncertainties in this modelled level, especially relating to the extremity of future tidal and rainfall events with the changing climate, which is why the District Plan adopts a minimum 400mm freeboard above raw model results, however this has been modelled based on the best currently available projections of these factors. I would strongly recommend that any future permanent site structures be placed with a minimum FFL set 400mm above the 'major flood event' model results available at that time (i.e. 12.42m currently)."*

I accept Ms Keenan's assessment.

#### *Reserve*

The proposed reserve has retrospective filling works which include the old haulage route and the north bund. Ms Keenan has summarised her assessment of these elements separately:

#### *Bunding*

- This additional bunding is occurring in areas of site that would not be expected to be subject to flooding in present day flood events as this is located either on or behind the pre-existing raised land along the river margin. The only potential exception to this would be if there were any very limited areas of low-lying land following the previous consented filling that were directly connected via private stormwater outfall to the river without any non-return valve protection.
- In future flooding events following significant sea level rise, flood levels will extend up to this bund. Where this is proposed to be within Council land, It is recommended that the implications of saline floodwaters against this formation are considered by Council for future maintenance consequences.
- With the filling as currently existing on site, as river levels rise in future events, there are still areas where this flooding could extend into the site, flooding into the areas behind the sections of bunding. The bunding on the contours and bund plan though is limited to the NW boundary leaving a large portion of the SW boundary unbunded. This will ensure that this bunding is not acting as a continuous stopbank feature in the future. This is safer from a flood hazard perspective, especially if these haven't been formed to stopbank design and construction standards. The majority of this bunding is alongside the application site and river bank areas, so there is generally a low likelihood of unacceptable effects on drainage patterns for immediately adjacent properties but care should be taken at the southern boundary of this.

#### *Haulage Route*

- As initially formed, there were some concerns with potential stormwater drainage effects for immediately adjacent sites and stormwater facilities, along with erosion and sediment control concerns. The issues have generally been addressed now, with remaining requirements to be conditioned.
- The stormwater reserve opposite Vaila Place appears to have been designed with an overland spill level to the river of 11.3m. Based on the survey provided, it appears likely that this level is exceeded, but by less than 100mm. This should be conditioned to be restored and maintained, unless this is assessed to not cause unacceptable effects and approved by Council.
- The haulage route filling is located on and behind the original higher level land along the river. This filling therefore doesn't constrain flood conveyance along the river in present day flooding events. This would remove some volume from the floodplain storage in larger future flood events following sea level rise, however this is extremely limited when compared to the floodplain displacement of the original consenting (assessed at the time to not have unacceptable effects on flooding patterns) and as noted above, due to the significant tidal influence on flooding in this area, this is considered to be acceptable.

It has been recommended by the Subdivision Engineer and other council officers that the Haulage Route formation shall be of a 2% sheeting to drain appropriately into the waterway. Ms Keenan considers this is appropriate and will not affect her flooding assessment above.

I adopt Ms Keenan's assessment.

#### *Overall flooding conclusion*

Overall I consider the flooding effects to be less than minor and have no effects on the wider environment.

#### *Contamination*

The application site is registered as a HAIL site and categorised as A10 - Persistent Pesticides Bulk Storage or Use. The applicant has performed retrospective works in terms of the north and south west bund and haulage route. The applicant obtained Detailed Site Investigation (DSI) from KPES Limited. The DSI was only in relation to the bunds only as shown in the figure below:

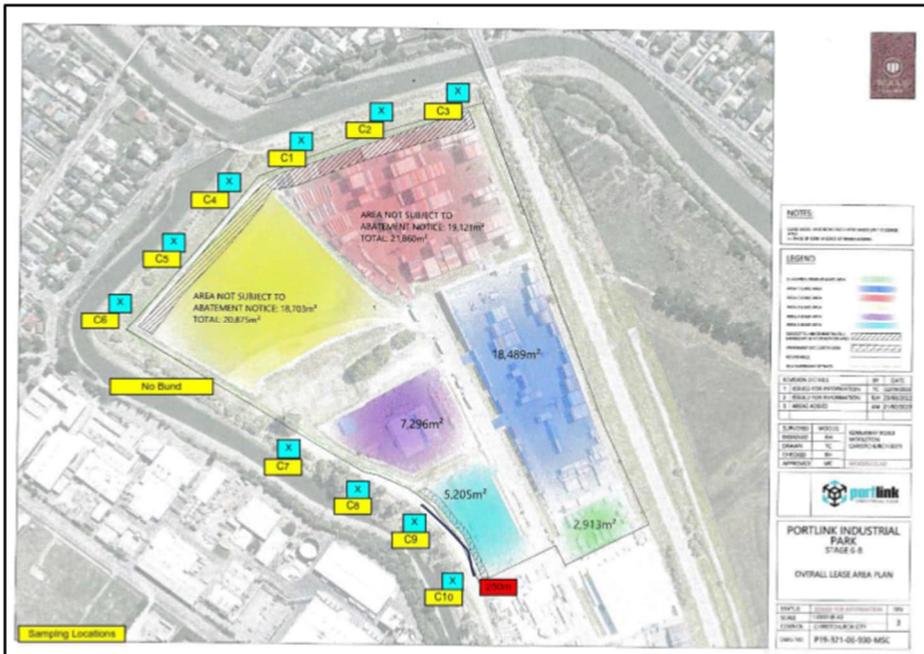


Figure 4.1: Sampling Locations

Figure 2: location of soil testing

The DSI contained the following results:

- At all locations industrial / commercial, recreational and residential soil value guideline criteria were met.
- The underlying / original background values was slightly exceeded for some analytes but were very close to meeting this standard.
- There was consistency in soil value along the length of the stop banks.
- Asbestos was detected at one sample location (i.e location C3 at 0.2m depth) but at less than residential concentration values.

The DSI has been reviewed by Council’s Environmental Health Officer Agnes van der Erf. Ms van der Erf agrees with the DSI conclusions and notes the following:

- If soils were to be removed from the bund and taken off site, they may not be suitable for cleanfill disposal, depending on the receiving landfills disposal criteria.
- Information was received by Council in late 2022 regarding some asbestos containing material (ACM) in a stockpile located near the haulage road. Testing of this product confirmed it was asbestos however its presence was not extensive within the stockpile and limited to a patch. It is unknown what became of this stockpile and the material contained. There is a risk, albeit low, that some ACM may remain in this area.
- Any future earthworks on the haulage road at volumes that would trigger the National Environmental Standards for Contaminated Soils (NESCS), would require a soil investigation.
- The subdivision will be controlled under the NESCS and any excess soil may not be suitable for disposal as cleanfill.

The fill established on the haulage route has not been tested. It is likely that it would provide similar results however there is uncertainty. Ms Van der Erf has recommended the following conditions:

- o Any soils removed from the site during the course of the activity must be disposed of to a facility authorised to accept the material. 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, Attention: Team Leader Environmental Health by way of email to [rcmon@ccc.govt.nz](mailto:rcmon@ccc.govt.nz), no later than 20 working days following this disposal.
- o Any earthworks or removal of soil on the haulage road shall require testing to confirm that the soil is suitable to remain onsite.

*Advice note: A RAP and/or site validation report may be required if testing shows the soils to be above recreational contamination levels.*

- o In the event that soils are found to have visible staining, odours and/or other conditions that indicate soil contamination, then work must cease until a Suitably Qualified and Experienced Practitioner (SQEP) engaged by the consent holder has assessed the matter and advised of the appropriate remediation and/or disposal options for these soils. The consent holder shall immediately notify the Council Attention: Team Leader Environmental Health, by way of email to rcmon@ccc.govt.nz. Any measures to manage the risk from potential soil contamination shall also be communicated to the Council prior to work re-commencing.

The latter two conditions ensure any potential contamination found on the haulage route is adequately addressed. This ensures that any effects from land contamination is minimised as part of the proposed effects. The applicant has accepted these recommendations. I accept Ms Van der Erf's assessment and consider the effect to be less than minor.

#### Section 221(3)

As described above, the applicant is proposing to vary and partially cancel the consent notices on the title. I consider the applicant reasoning for these to be removed is acceptable and avoids irrelevant matters from remaining on the title of the application site. I consider the effects to be less than minor and acceptable.

#### Conclusion of Effects

I consider that for the reasoning above, the effects on adjacent neighbouring properties and the wider environment to be less than minor. The applicant has volunteered conditions (albeit components of noise) as part of their application which will mitigate, avoid or remedy any short and long term adverse effects. I do not consider the noise conditions not agreed upon create a notification issue.

#### 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

- Step 1. The application does not meet any of the criteria for mandatory notification in section 95A(2).
- Step 2. The application does not meet any of the criteria in section 95(A)(5) precluding public notification. Although Rule 8.4.1.1 a. precludes public notification of the subdivision consent there is no such rule for the land use activity.
- Step 3. There are no rules or NES requiring public notification, and any adverse effects on the environment will be no more than minor (section 95A(8)).
- Step 4. There are no special circumstances that warrant public notification (section 95A(9)). For completeness I do not consider that special circumstances apply to this application for the following reasons:
  - The objectives and policies are direct in the expectation of protecting amenity of neighbouring residential zone while enabling development in the area. I consider the adjacent area is no different to other residential zones in the district which adjoin industrial general zones.
  - There is some ambiguity in terms of the definition of building and the expectation of outdoor storage spaces and that there is an ongoing enforcement process concurrently being processed alongside this application. I consider all issues raised in this application have been adequately assessed by the effects assessment.
  - While there is a high amount of public interest in activity on the site, the proposal is not exceptional, abnormal or unusual as the merits of the application can be assessed.

#### Limited notification assessment

- Step 1. There are no affected groups or persons as outlined in section 95B(2) and (3).
- Step 2. The application does not meet any of the criteria in section 95B(6) precluding limited notification, as there are no rules precluding it and the application is not for a controlled activity land use consent.
- Step 3. As discussed above, no persons are considered to be affected under section 95E (sections 95B(7) and (8)).
- Step 4. There are no special circumstances that warrant notification to any other persons (section 95B(10)).

#### Conclusion on notification

There is no requirement for public or limited notification of either the subdivision or land use aspect of this application.

Notification recommendation

That, for the reasons outlined above, the application be processed on a non-notified basis pursuant to sections 95A and 95B of the Resource Management Act 1991.

Reported and recommended by: Rachel Cottam, Senior Planner

Date: 22/12/2023

Notification decision

SECTION 104 ASSESSMENT

Relevant objectives, policies, rules and other provisions of the District Plan and Plan Change 14 [Section 104(1)(b)(vi)]

Regard must be had to the relevant objectives and policies in the Christchurch District Plan. I consider that the proposal is consistent with the objectives and policies in the District Plan.

Subdivision

The objectives and policies for subdivision and development are focused on connectivity and suitability of subdivision design, preserving amenity/natural features and providing allotments for the anticipated use. The relevant objectives and policies for this application are listed in 8.2.2, 8.2.2.1, 8.2.2.2, 8.2.2.3, 8.2.2.4, 8.2.2.5, 8.2.2.6, and 8.2.3, 8.2.3.1, 8.2.3.2, 8.2.3.3, 8.2.3.4 and 8.2.3.5.

The proposed allotments are suitable for the anticipated land use of industrial activity as discussed previously in this report. I consider the design of the subdivision generally meets the requirements of the ODP. I consider the proposal to be consistent with the objectives and policies of Chapter 8.

Transport

Objective 7.2.1 'Integrated transport system for Christchurch District' seeks an integrated transport system that is safe and efficient, responsive to needs, supports communities, reduces dependency on private motor vehicles and promotes the use of public and active transport, and is managed using the one network approach. In this instance, and noting that my discretion is restricted to those matters over which the District Plan specifies, I consider the relevant policies to consist of:

Earthworks

The proposal will facilitate development of the site while ensuring that people and property are protected during, and subsequent to, the works. This is consistent with the relevant policy direction within Chapter 8 'Subdivision, Development and Earthworks' of the District Plan. In particular, the proposal accords with; Objective 8.2.4 'Earthworks' and attendant Policies 8.2.4.1 'Water quality', 8.2.4.3 'Benefits of earthworks', and 8.2.4.4 'Amenity, and Objective 8.2.5 'Earthworks health and safety' and accompanying Policies 8.2.5.1 'Land stability', 8.2.5.2 'Nuisance', 8.2.5.3 'Vehicle movement', and 8.2.5.4 'Earthworks design'.

Natural Hazards

The relevant objectives and policies of Chapter 5 are 5.2.2.1.1, 5.2.2.1.2, 5.2.2.1.3, 5.2.2.1.4, 5.2.2.1.8, 5.2.2.1, 5.2.2.3.1. These policies ensure no development occurs in places where effects of a natural hazards are unacceptable. The objectives and policies also provide guidance with managing and assessing natural hazards. As outlined in the s104 and 106 assessment, the adverse effects of natural hazards are less than minor and the proposal is consistent with the objectives and policies of Chapter 5.

Noise

I consider the objectives and policies 6.1.2.1, 6.1.2.1.1 and 6.1.2.1.4 to be relevant for this application. The objectives and policies seek to;

- Enable land use activities to contribute Christchurch's economic, social and cultural wellbeing by managing noise effects on amenity values, health of people and communities which are consistent with the anticipated outcomes of the receiving environment (residential environment).

These noise effects can be managed by limiting sound levels, location and duration of activities for sensitive activities. There is a matter contention between the applicant and Council officers on whether amenity values are managed appropriately as discussed in the s95/104 Report. With the recommendations I have proposed, I consider that the proposed mitigation will ensure that any noise created by the activity and subdivision will be acceptable in terms of amenity values. I consider the applicant's recommendations will not reflect this policy and creates a tension with this policy notwithstanding the application will comply with noise standards. I do not consider the tension is creating the proposal to be contrary to objectives and policies.

#### Waterway

The relative objectives and policies for this proposal are listed in 6.6.2, 6.6.2.1, 6.6.2.1.1, 6.6.2.1.2 and 6.6.2.1.3. The proposal includes proposed enhancement of waterways and landscaping that will maintain and enhance the environment, and an erosion and sediment control plan that will ensure the health of the waterway and aquatic life are protected and maintained. I consider the proposal is consistent with the objectives and policies.

#### Plan Change 14

The site is identified as being within the Tsunami Management Area qualifying matter. The relevant objectives and policies in Chapter 5 seek that development, subdivision and land use that would provide for intensification of any site shall be avoided, unless the risk is acceptable. The rules do not have legal effect but the proposed objectives and policies must be considered. No rule/s relating to the Tsunami Management Area apply to applications until a decision on the Plan change is made (possibly around May 2024).

The relevant policy is listed below:

#### **5.2.2.5.2 Policy – Managing development within Qualifying Matter Tsunami Management Area**

- a. Within the Tsunami Management Area Qualifying Matter, avoid development, subdivision and land use that would provide for intensification of any site, unless the risk to life and property is acceptable.**

I note there have been submissions for and against the overlay and related rules, objectives and policies. In addition the s42A report has been released where Sarah Oliver, the Council planner reporting on these provisions has recommended that the Tsunami Risk Management Area only apply to relevant residential zones and some commercial centres (as Portlink is an industrial zone it would not be included in the Tsunami Risk Management Area. If Ms Oliver's recommendation is accepted by the Independent Hearings Panel). A future Plan Change (12) would address the response required (i.e possible extension of the TRMA to other zones). Notwithstanding the development is creating allotments which are permitted in size for the zone. As such I consider the risk to life and property resulting from the subdivision is no different from compliant use of the parent site and is acceptable under Policy 5.2.2.5.2. The proposal is therefore consistent with Policy 5.2.2.5.2 as notified; however, no weighting need be applied.

#### Conclusion

The proposal is consistent with the objectives and policies of the District Plan and PC14.

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

The NES for Assessing and Managing Contaminants in Soil to Protect Human Health is relevant to the application as a HAIL activity is being carried out or is more likely than not to have been carried out on the land. The relevant provisions are discussed in previous sections of this report.

The District Plan gives effect to the relevant provisions of higher order documents referred to in s104(1)(b), including the Regional Policy Statement and Regional Plans. As such, there is no need to specifically address them in this report.

The NPS-UD which came into effect on 20 August 2020. The Council has commenced the plan change process to give effect to the NPS-UD, with PC14 including provisions enabling urban intensification around centres and other amenities, services, and transport corridors, however is at an early stage in the process and its rules do not yet have legal effect. As discussed above, the application is not considered to be inconsistent with the relevant provisions in the plan change.

Any other matters which are relevant and reasonably necessary to determine the application [Section 104(1)(c)]

There are no other matters relevant to the consideration of this application.

Part 2 of the Resource Management Act 1991 [Section 104(1)]

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

Taking guidance from case law<sup>13</sup>, the District Plan is considered to be the mechanism by which Part 2 is given effect to in the Christchurch District. It was competently prepared through an independent hearing and decision-making process in a manner that appropriately reflects the provisions of Part 2.

Section 104(3)(d) notification consideration

Section 104(3)(d) states that consent must not be granted if an application should have been notified and was not. No matters have arisen in the assessment of this application which would indicate that the application ought to have been notified.

Section 106

*s106 Consent authority may refuse subdivision consent in certain circumstances*

- (1) *A consent authority may refuse to grant a subdivision consent, or may grant a subdivision consent subject to conditions, if it considers that—*
- (a) *there is a significant risk from natural hazards; or*
  - (b) *(repealed)*
  - (c) *sufficient provision has not been made for legal and physical access to each allotment to be created by the subdivision.*
- (1A) *For the purpose of subsection (1)(a), an assessment of the risk from natural hazards requires a combined assessment of—*
- (a) *the likelihood of natural hazards occurring (whether individually or in combination); and*
  - (b) *the material damage to land in respect of which the consent is sought, other land, or structures that would result from natural hazards; and*
  - (c) *any likely subsequent use of the land in respect of which the consent is sought that would accelerate, worsen, or result in material damage of the kind referred to in paragraph (b).*

This section of the Act is particularly relevant in relation to geotechnical concerns following the Canterbury earthquakes. The land is identified as being within the Liquefaction Management Area in the Christchurch District Plan and rule 5.5.2a applies as the allotments are vacant. The land is classified by CERA as Green Zoned - no technical category.

Tsunami Risk

The site is located within the tsunami management area in Plan Change 14. This has been addressed in detail above and I consider this does not need revisiting.

Flooding

Flooding has been assessed in the original s95 notification report and above. I consider this assessment to be still relevant and the effects to be acceptable.

Geotechnical

The application has been assessed by Council's Senior Engineer Yvonne McDonald. Mrs McDonald has commented that she considers the underlying subdivision consent conditions to be sufficient to address the internal lots and the future subdivision.

I accept the advice provided to me regarding the risk of natural hazards, and conclude that there are no grounds to refuse consent under section 106(1)(a). In terms of section 106(1)(c) I am satisfied that adequate legal and physical access is provided to each allotment.

Section 104 Recommendation

<sup>13</sup> R J Davidson Family Trust v Marlborough District Council [2018] NZCA 316

## LAND USE CONSENT

- (A) That the application be processed on a non-notified basis in accordance with Sections 95A – 95E of the Resource Management Act 1991.
- (B) That the application be granted pursuant to Sections 104, 104B, 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 plans submitted with the application.
  2. All earthworks associated with the creation and formation of the subdivision shall be carried out in accordance with the conditions of subdivision consent.

### Landscaping – Lot 1 – Northern Landscaping Area

3. Except where otherwise required by other conditions of this consent, the proposed landscaping shall be established in accordance with the landscape plans dated 22/09/2023, prepared by DCM Urban Design Limited, forming pages 2-11 in the Stamped Approved Plans.
4. Prior to landscaping works commencing onsite, a Landscape plan and an accompanying Design Report shall be submitted for acceptance to the Landscape Approval Team (Email:landscapeapproval@ccc.govt.nz). The purpose of the landscape plan is to achieve lizard friendly habitat and to fully screen the activity within Lot 1 along the northern bund.

The detail of the landscaping shall include but not be limited to:

- From the footpath expansion to the top of the bund, the rank grass shall be retained. Any woody species (including but not limited to gorse, broom, lupin, and blackberry) and Tasmanian Ngaio in this area shall be removed.
- The 2.4 m high acoustic fence shall be established within Lot 1 and be finished in a recessive colour.
- The planting strip within Lot 1 (from the acoustic fencing to the 2.4m high Chain Link Fence) shall include tree and shrub planting that reaches a mature height of approximately 16 metres and a canopy width that does not cause excessive shading over the acoustic fence or require excessive clearance over the existing chain link fence. The planting shall comprise locally eco-sourced indigenous trees, shrubs and plants reflect the Wet Plains: TŌTARA – bellbird – mataī, older plains ecosystem list from [Christchurch Ecosystems \(lucas-associates.co.nz\)](http://ChristchurchEcosystems.lucas-associates.co.nz).

*Note: The Landscape Approval Team will consult with Council waterways ecologist and herpetologist in the acceptance of the plan.*

5. The landscape approvals team will either certify the landscape plan and design report as achieving the purposes of condition 4, or refuse to certify it, within 10 working days of receipt.

*Advice note: Should the Landscape Approvals Team refuse to certify the landscaping plan, then they shall provide a letter outlining why certification is refused based on the parameters contained in these conditions. In the case that the landscaping plan is refused, the subsequent certification process shall follow the same procedure and requirements as outlined in Condition 4.*

*Note: This process can align with the subdivision landscaping requirements outlined in Condition 8.*

6. The proposed landscaping shall be established on site within the first planting season (extending from 1 April to 31 August) following the issue of the consent.
7. All landscaping required for this consent shall be maintained. Any dead, diseased, or damaged landscaping shall be replaced by the consent holder within the following planting season (extending from 1 April to 31 August) with a similar species. Maintenance includes the removal of woody weeds.

### Noise & Operational Management Plan

8. Except when the noise barrier is being changed in accordance with condition 11, the Consent Holder shall ensure that all activities on the site do not exceed the following noise limits at any point within a residential zone:

0700 – 2200 hours: 50 dB LAeq (5 min)

At all other times: 40 dB LAeq (5 min) and 65 dB LAFmax

9. No hoist or truck activities, or container repair / cleaning activity shall take place during night-time hours as defined in the District Plan (2200-0700 hours).
10. A noise barrier shall be erected along the northern sealed edge of the site. The noise barrier shall comprise a continuous stack of containers adjacent to, but outside of, the Portlink Outline Development Plan Landscape and Stormwater Area (Green Space) for the length of the edge of the seal with space for access at the end of these lengths. The barrier shall be a minimum of four containers high except north-west of the central truck path where it shall be a minimum of three containers high. Gaps between containers in the noise barrier shall be no wider than 1 m.

Any containers behind the noise barrier must not be closer to the boundary than the ends of the noise barrier.



11. The noise barrier shall be changed no more than five times in any calendar year. A change in the barrier includes any movement of a container located within the noise barrier. The consent holder is responsible for recording the number of times the noise barrier is altered and shall make the information available on Council's request. Records must be kept for a minimum of 12 months.

When the noise barrier is changed, the barrier shall immediately be rebuilt (within the same day). Any moving of containers that are part of the barrier shall only occur between 0900 h and 1500 h Monday to Friday.

12. The consent holder shall establish a maintenance schedule for the acoustic fence (located within the Portlink Outline Development Plan Landscape and Stormwater Area (Green Space)) and sealed surfaces on the site to ensure that noise and vibration effects are managed.

13. A maximum of two hoists shall operate at any time to manage noise levels.

14. The activity shall be managed by a noise management plan (NMP) to achieve Condition 8-13 above.

15. The Consent Holder shall submit a Noise Management Plan (NMP) prepared by a suitably qualified and experienced acoustic engineer for certification by the Resource Consents Manager (via email to [rcmon@ccc.govt.nz](mailto:rcmon@ccc.govt.nz)) within 3 months of the commencement of this consent. The NMP shall address the following as a minimum:
  - a. Person responsible for NMP implementation.
  - b. Training of staff regarding the relevant noise standards that apply.
  - c. Education and training of staff and non-staff/contractors to manage noise and vibration.
  - d. Activity risk analysis for noise generation
  - e. Method for recording and handling complaints.
  - f. Maintenance schedules and reporting outlined in Conditions 11-12.
  - g. Non-compliance contingency measures.

16. This NMP is to be assessed for certification by the Resource Consents Manager (or their nominee) as to whether it complies with Condition 15. If certified, the NMP will thereafter form part of the Approved Consent Document.

*NOTE: The Resource Consents Manager will either certify, or state that the NMP does not comply with condition 15, within 20 working days of receipt. Should the Resource Consents Manager consider that the NMP does not comply with these conditions, then they shall provide a letter describing their assessment of non-compliance.*

17. Should the Resource Consents Manager not certify the NMP, the Consent Holder shall submit a revised NMP to the Resource Consents Manager for certification within 20 working days. The certification process shall follow the same procedure and requirements as outlined in Conditions 15-16 including timing.

18. The NMP may be amended at any time by the Consent Holder. If the activity is altered on the site, an updated management plan shall be submitted to Council. Any amendments to the NMP shall be submitted by the consent holder to the Resource Consents Manager for certification as outlined in Conditions 15-17 including timing. Any amendments to the NMP shall be:

- a) for the purposes of improving the measures outlined in the NMP for achieving the NMP purpose (see condition 15);
- b) consistent with the conditions of this resource consent; and
- c) prepared by an appropriately qualified and experienced acoustic engineer.

If the amended NMP is certified, it becomes the certified NMP for the purposes of Condition 15 and will thereafter form part of the Approved Consent Document.

19. A copy of the approved NMP shall be kept on the premises at all times.

20. Pursuant to Section 128 of the Resource Management Act 1991, the Council may serve notice on the consent holder of its intention to review, in whole or in part, conditions 1-19, in order to deal with any adverse effect on the environment which may arise from the exercise of this consent and which it is appropriate to deal with at a later time.

#### Containers within the Portlink Outline Development Plan Landscape and Stormwater Area (Green Space)

21. Any containers within the Portlink Outline Development Landscape and Stormwater Area (Green Space) shall be limited to a maximum height of 5.8 metres from the sealed ground level of the site.

#### Water Supply for Firefighting – Activity

22. The consent holder shall provide evidence to Council (by email [rcmon@ccc.govt.nz](mailto:rcmon@ccc.govt.nz)) that Fire and Emergency New Zealand has accepted the proposed firefighting water supply is in accordance with the alternative firefighting water sources provisions in SNZ PAS 4509:2008.

#### Advice Notes

##### Monitoring

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 programme administration fee of \$102.00 to cover the cost of setting up the monitoring programme; and
- (ii) A monitoring fee of \$175.50 for the first monitoring inspection to ensure compliance with the conditions of this consent; and
- (iii) Time charged at an hourly rate if more than one inspection, certification of conditions, or additional monitoring activities (including those relating to non-compliance with conditions), are required.

The monitoring programme administration fee and inspection fees 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.

#### PARTIAL CANCELLATION AND VARIATION OF CONSENT NOTICES RMA/2022/3611

That the application be granted pursuant to Sections 104, 104B and 221 of the Resource Management Act 1991 subject to the following conditions:

1. The partial cancellation of consent notice CONO9138592.2 shall occur at the time of s224 certification of subdivision consent RMA/2022/3611. The partial cancellation shall only relate to Lot 303 DP 452437.
2. The partial cancellation of consent notice CONO11294647.10 shall occur at the time of s224 certification of subdivision consent RMA/2022/3611. The partial cancellation shall only relate to the application site.
3. The variation of consent notice CONO9446208.13 shall occur at the time of s224 certification of Subdivision Consent. The variation shall delete the following requirement:

*"All finished floors levels of structures shall be set to a minimum elevation 11.80m RL Christchurch City Datum."*

*Note: The variation is in relation to the application site only.*

Advice note:

A certificate under section 221(3) to cancel the consent notice will be issued with the section 224 condition certificate for this subdivision.

It is your responsibility to ensure that this documentation is lodged with Land Information New Zealand in order to ensure that the consent notice documentation attached to your record of title is changed and reflects the removal of the protection.

If an Authority and Instruction form is required to register this document with Land Information New Zealand please contact Council's contract solicitors Anderson Lloyd to action this form. This will be at the applicant's expense.

## SUBDIVISION CONSENT

(A) That the application be processed on a non-notified basis in accordance with Sections 95A – 95E of the Resource Management Act 1991.

(B) That the application be granted pursuant to Sections 104, 104C and 106 of the Resource Management Act 1991, subject to the following conditions imposed pursuant to Sections 108, 108AA and 220 of the Resource Management Act 1991:

1. Scheme Plan and Staging

1.1 General Survey Plan

The survey plan, when submitted to Council for certification, is to be substantially in accordance with the stamped approved application plan.

1.2 Amalgamations

The following amalgamation condition has been approved by Land Information New Zealand. The condition is to be included in the digital Title Plan dataset.

That Lots 2 and 3 hereon be held in the same record of title.

See Request 1832545

1.3. Allotment to Vest Local Purpose (Esplanade) Reserve Lots

Lots 2 and 3 are to be vested as Local Purpose (Utility) Reserve.

*Advice Note - A Local Purpose (Esplanade) Reserve, including any landscape improvements, shall hold no credits towards the final Reserve Development Contributions Assessment*

*Advice note - Any underground infrastructure across land to be vested as Reserve will require an easement application in compliance with s239, prior to the issuing of s224 certificate.*

1.4 Service Easements

If any service easements are required to protect services crossing other lots shall be duly granted or reserved.

Easements over adjoining land or in favour of adjoining land are to be shown in a schedule on the Land Transfer Plan. A solicitor's undertaking will be required to ensure that the easements are created on deposit of the plan.

1.5 Easements over Reserves (Local Purpose Reserves)

Easements over land that is to vest in the Council as local purpose reserve are to be shown on the survey plan in a Schedule of Easements. A solicitor's undertaking shall be provided to ensure that the easement is registered on the subject reserve at the time title is created. A section 223 certificate will not issue until such time as a section 239 certificate is obtained from Council.

*Advice note: Council does not issue s239 approval for recreation reserves.*

1.6 Existing easements under reserve to vest

If the Council requires the retention of existing easements over land that is to vest in the Council as Local Purpose Reserve a certificate pursuant to Section 239(2) of the Resource Management Act 1991 will be required to be obtained.

*Advice note: Council does not issue s239 approval for recreation reserves.*

1.7 Public Utility Sites

Any public utility site and associated rights of way easements and/or service easements required by a network operator are approved provided that they are not within any reserves to vest in the Council.

1.8 Plans for Geodata

The surveyor is to forward a copy of the title plan and survey plan to the Subdivision Planner (that issued the consent), Resource Consents Unit as soon as the plan has been lodged (or earlier if possible) for checking at Land Information New Zealand for entering into the Council GIS system.

## 2. Quality Assurance

### 2.1 Asset Design and Construction

All infrastructure assets to be vested in the Council are to be designed and constructed in accordance with the Christchurch City Council's Infrastructure Design Standard (IDS) and the Construction Standard Specifications (CSS).

*Advice note - Any underground infrastructure across land to be vested as future local purpose Utility Reserve will require an easement application in compliance with s239, prior to the issuing of s224 certificate.*

### 2.2 Quality Assurance

The design and construction of all assets shall be subject to a project quality system in accordance with Part 3: Quality Assurance of the IDS.

Prior to the commencement of physical works on site, the Consent Holder shall submit to the Planning Team – Subdivision Engineers a Design Report, plans and Design Certificate complying with clause 3.3.2 of the IDS, for review and acceptance under clause 2.10 of the IDS 2022. The Design Report and engineering plans shall provide sufficient detail to confirm compliance with the requirements of the IDS and this consent, including compliance with Condition 2.1 Asset Design and Construction.

Prior to the commencement of physical works on site, the Consent Holder shall submit to the Planning Team – Subdivision Engineers a Contract Quality Plan and the Engineer's Review Certificate, complying with clause 3.3.3 of the IDS, for review and acceptance by Council under Clause 2.11 of the IDS 2022.

Prior to the issue of certification pursuant to section 224 of the Resource Management Act 1991 (as part of the future subdivision consenting stage), the Consent Holder shall submit to the Planning Team - Subdivision Engineers an Engineer's Report and an Engineer's Completion Certificate complying with clause 3.3.4 of the IDS, for review and acceptance under clause 2.12 of the IDS 2022. The Engineer's Report shall provide sufficient detail to confirm compliance with the requirements of the IDS and this consent, including compliance with consent conditions requiring mitigation measures with respect to any liquefaction and lateral spread hazards.

Advice note: Part 3 of the IDS sets out the Council's requirements for Quality Assurance. It provides a quality framework within which all assets must be designed and constructed. It also sets out the process for reporting to Council how the works are to be controlled, tested and inspected in order to prove compliance with the relevant standards. It is a requirement of this part of the IDS that the Consent Holder provides certification for design and construction as a prerequisite for the release of the section 224(c) certificate.

Any reference to 'Engineering Acceptance' under further conditions of consent refers to the process set out above.

All liquefaction hazard and lateral spread mitigation on site shall be designed in accordance with the recommendations in the Engeo Geotechnical Wetland Assessment, Reference 17065.000.000\_09 dated 13 December 2021.

All infrastructural assets to be vested in the Council shall be designed and constructed in accordance with the Infrastructure Design Standard (IDS) 2022 and the Construction Standard Specifications (CSS).

Asset structures shall include but not be limited to gravity and pressure pipelines, manholes, chambers, valves, hydrants, stormwater treatment devices, culverts or any other physical asset to be vested in Council including road pavements. Bridges and pump stations shall be designed to importance level 3 (IL3) as defined in NZS 1170.

In addition to the above, to be considered suitable in terms of section 106(1A)(a) and (b) of the Resource Management Act, all proposed infrastructure shall be designed to resist the effects associated with earthquake induced liquefiable soils and lateral spread from a seismic event as defined in condition above.

To mitigate liquefaction (vertical settlement) hazards and lateral spread (horizontal displacement), any proposed asset structures shall be designed for a seismic event with a 25 year return period under the serviceability limit state (SLS) event and with a 500 year return period for the ultimate limit state (ULS) event as defined by NZS 1170.5:2004.

Beyond a SLS seismic event, it is recognised asset structures may become progressively less serviceable

*Advice note: The quality assurance may need to be recertified against the future subdivision consent*

### 2.3 Traffic Management

An approved Traffic Management Plan (TMP) shall be implemented and no works are to commence until such time as the TMP has been installed. The TMP must be submitted to the Council through the following web portal <http://www.myworksites.co.nz>.

### 2.4 Laterals for rear Lots

All private stormwater laterals (serving rear lots) shall be installed under a single global Building Consent or Building Act Exemption by a Licensed Certifying Drain Layer and the compliance documents forwarded to Council's Subdivision Team as part of the Section 224c application.

If approved under a building consent, passed 252 (FS and SW drains) mandatory building inspections pursuant to the Building Code and the Code Compliance Certificate is required prior to the issue of the s224 Certificate.

If approved under a Building Act Exemption, a PS3 form and as-builts will be required to be provided and accepted prior to the issue of the s224 Certificate.

### 2.5 CCTV Inspections

Pipeline CCTV inspections are to be carried out on all gravity pipelines to be vested in compliance with the Council Standard Specifications (CSS): <https://www.ccc.govt.nz/consents-and-licences/construction-requirements/construction-standard-specifications/pipeline-cctv-inspections/>

### 2.6 Services As-Built Requirements

As-Built plans and data shall be provided for all above and below ground infrastructure and private work in compliance with the Infrastructure Design Standards (IDS): <https://www.ccc.govt.nz/consents-and-licences/construction-requirements/infrastructure-design-standards/as-built-survey-and-data-requirements/>

*Advice Note: this includes RAMM and costing data (GST)*

As-Built Plans are to be provided for any easements in gross over pipelines. The plans are to show the position of the pipelines relative to the easements and boundaries.

#### *As-Builts (Reserves and Street Trees)*

The Consent Holder shall submit As-Built plans for any landscape improvements on land to be vested as reserve and for any street trees, in accordance with IDS, Part 12 As-Builts records once the trees are planted.

*Advice note: The as-builts can be supplied post s224 certifications on the provision of a 100% bond.*

### 2.8 Earthworks

- 2.8.1 All filling and excavation (including vegetation clearance) work shall be carried out in accordance with Environmental Management Plan (EMP) which shall include an Erosion and Sediment Control Plan (ESCP). Unless approved as part of a separate ECan resource consent for stormwater discharge or ECan resource consent for excavation/filling the EMP will require formal acceptance by Christchurch City Council's Subdivision Engineer and three water quality assurance officer (via email to [rcmon@ccc.govt.nz](mailto:rcmon@ccc.govt.nz)) prior to any work starting on site.

The EMP shall be designed by a suitably qualified person and a design certificate ([Appendix IV in IDS Part 3](#)) supplied with the EMP for acceptance at least 5 working days prior to the works commencing. The best practice principles, techniques, inspections and monitoring for erosion and sediment control shall be based on ECan's Erosion and Sediment Control Toolbox for Canterbury <http://escanterbury.co.nz/>.

- 2.8.2 The EMP shall include (but is not limited to):
- The identification of environmental risks including erosion, sediment and dust control, spills, wastewater overflows, dewatering, and excavation and disposal of material from contaminated sites;
  - A site description, i.e. topography, vegetation, soils, etc;
  - Details of proposed activities;
  - A locality map;
  - Drawings showing the site, type and location of sediment control measures, on-site catchment boundaries and off-site sources of runoff;
  - Mechanisms to avoid sedimentation, inappropriate run off and unauthorised discharge into the waterway
  - Drawings and specifications showing the positions of all proposed mitigation areas with supporting calculations if appropriate;
  - Stabilised entrance/exit and any haul roads;
  - Site laydown and stockpile location(s) and controls;
  - Drawings showing the protection of natural assets and habitats;
  - A programme of works including a proposed timeframe and completion date;
  - Emergency response and contingency management;
  - Procedures for compliance with resource consents and permitted activities;
  - Environmental monitoring and auditing, including frequency;
  - Corrective action, reporting on solutions and update of the EMP;
  - Procedures for training and supervising staff in relation to environmental issues;
  - Contact details of key personnel responsible for environmental management and compliance.

*Note: IDS clause 3.8.2 contains further detail on Environmental Management Plans.*

Advice Note:

*Any changes to the accepted EMP must be submitted to the Council in writing following consultation with the Council's Subdivision Engineer. The changes must be accepted by the Subdivision Engineer prior to implementation.*

- 2.8.3 The accepted EMP referred to in condition 2.8.1 shall be implemented on site over the entire construction phase. No earthworks shall commence on site until:
- a. All measures required by the EMP, including the associated ESCP, have been installed;
  - b. An Engineering Completion Certificate (Appendix VII in IDS Part 3), signed by an appropriately qualified and experienced engineer, has been submitted to the Council. This is to certify that the erosion and sediment control measures have been properly installed in accordance with the accepted EMP;
  - c. The Council has been notified (via email to [rcmon@ccc.govt.nz](mailto:rcmon@ccc.govt.nz)) no less than 3 working days prior to work commencing, of the earthworks start date and the name and details of the site supervisor.
  - d. The contractor has received a copy of all resource consents and relevant permitted activity rules controlling this work.
- 2.8.4 Run-off must be controlled to prevent muddy water flowing, or earth slipping, onto neighbouring properties, legal road (including kerb and channel), or into a river, stream, drain or wetland. Sediment, earth or debris must not fall or collect on land beyond the site or enter the Council's stormwater system. All muddy water must be treated, using at a minimum the erosion and sediment control measures detailed in the site specific Erosion and Sediment Control Plan, prior to discharge to the Council's stormwater system.

*Note: For the purpose of this condition muddy water is defined as water with a total suspended solid (TSS) content greater than 50mg/L.*

- 2.8.5 The ESCP measures shall be maintained over the period of the construction phase, until the site is stabilised (i.e. no longer producing dust or water-borne sediment). The ESCP shall be improved if initial and/or standard measures are found to be inadequate. All disturbed surfaces shall be adequately topsoiled and vegetated or otherwise stabilised as soon as possible to limit sediment mobilisation.
- 2.8.6 Dust emissions shall be appropriately managed within the boundary of the property in compliance with the *Regional Air Plan*. Dust mitigation measures such as water carts, sprinklers or polymers shall be used on any

exposed areas. The roads to and from the site, and the site entrance and exit, must remain tidy and free of dust and dirt at all times.

- 2.8.7 Any fill and topsoil placed to the haul road, in the area shaded yellow in the Design Final Contours & Bund Plan Rev 1 (page 92 TRIM 22/1718272), shall be shaped to drain generally from the lot boundary to the river. This area shall not be generally filled to a level higher than that on the existing lot boundaries.
- 2.8.8 Crushed concrete shall not be placed in the proposed esplanade reserve outside of the northern bund.
- 2.8.9 The Northern bund shall be retained at a maximum fill batter angle of one vertical to two horizontal and shall be planted and all other filled areas shall not exceed a of one vertical to four horizontal. All planted areas on the bunds must be designed and constructed in association with the site and geotechnical conditions to ensure that the soil quality, volume, depth and drainage will be appropriate for successful tree/plant establishment and long term growth and development. Where insufficient soil is present imported first class unscreened topsoil shall be installed as specified in the CSS Part 1, clause 38 Topsoil, Part 2, clause 9 Topsoil Placement, Part 7, 6.6 Tree Pit, with a minimum of 300mm depth of topsoil at the edges of the bund where low planting is to be established.
- 2.8.10 All construction debris and rubbish shall be removed from the future and existing esplanade reserve.
- 2.8.11 Existing vegetation shall be protected during earthworks, in accordance with IDS, Part 10.4.2 Existing vegetation.
- 2.8.12 Any change in ground levels shall not cause a ponding or drainage nuisance to neighbouring properties.
- 2.8.13 At the completion of the work an Earthfill report, including an Engineer's Completion Certificate complying with clause 3.3.4 of the IDS, shall be submitted to the Council at [rcmon@ccc.govt.nz](mailto:rcmon@ccc.govt.nz) so that the information can be placed on the property record. This report shall detail depths, materials, compaction test results and include as-built plans showing the location and finished surface level of the fill and bunds.

### 3. Geotechnical

#### 3.1 Geotechnical and Low Pressure Sewer Design

Any ground remediation on the site, provided to geotechnically strengthen the land to withstand seismic events, shall be preserved intact for at least 2m from future wall alignments. The strengthening may include layers of geotextile fabric and geogrids integral to the foundation systems for any buildings requiring foundations. Any deep service trenches or pump unit installations, which require excavation through the strengthening, must be installed further than of 2m from any wall and on the road side of the building.

*Advice Note: Condition 3.1 is an ongoing condition of Consent for which a consent notice pursuant to s221 of the Resource Management Act will be issued.*

### 4. Water Supply

- 4.1 The Point of Supply for this site shall be the existing DN250 PE100 water main in Kennaway Road. The connection to Council's pressurized water supply network shall have a backflow prevention device which will be a high hazard device (reduced pressure zone device). The water connection will not be installed until the Council has received confirmation from the applicant that the approved backflow prevention device has been installed. The backflow prevention device is to be installed inside the boundary in private property at the point of supply as close as practical to the water meter.

*Advice note: Detailed information about Backflow prevention can be found on the Council website. To change the hazard rating, the property owner can request the Council review the hazard rating at their premises. Alternatively, the property owner may provide the Council with a report from a suitably qualified person advising of the risk category for the property. Water mains shall be extended along the full length of roads to vest and be terminated with temporary hydrants as per the requirements of the Infrastructure Design Standard. r.*

- 4.2 The internal water network will be a private network designed as a full high pressure water reticulation network and in accordance with the NZ Fire Service Fire Fighting Water Supplies Code of Practice NZ4509:

2008 by a suitably qualified person using the supply pressures for the future Rocky Water Supply Zone as documented in "Christchurch City Council Water Supply Rezoning: Final WS Rezone Source and Sprinkler Design Pressures" and will be installed by a Licensed Certified Plumber under a Building Consent or Building Act Exemption.

*Advice Note 1: The water supply network within the site will remain private as long as the road remains in private ownership. If the private Right of Way is to vest as legal road in the future then the water supply network and layout must meet the future relevant standards at the time of road vesting.*

*Advice Note 2: The developer has indicated that they intend to develop the water supply network within the site in accordance with the IDS, CSS and NZ Fire Service Fire Fighting Water Supplies Code of Practice NZS 4509:2008. Developing the water supply network to current Council standards does not guarantee that it will meet future relevant standards as the NZ Water Reform and the introduction of regional water entities may result in significant changes to infrastructure standards and requirements.*

*Advice Note 3: The Council's Subdivisions Engineer of the Three Water & Waste Asset Planning Team (or the equivalent person employed by the future regional water entity) shall be consulted and involved in the review of the water supply network at the time of road vesting.*

## 5. Sewer

5.1 Each lot shall be serviced by a private Local Pressure Sewer Unit.

5.2 The Approved Sanitary Sewer Outfall for this site shall be the existing DN90 PE100 local pressure sewer main in Kennaway Road.

5.3 Each lot shall have a Boundary Kit located within the Right of Way outside the boundary of the lot. The pressure lateral from the Boundary Kit is to extend at least 600mm into the net site of each lot.

5.4 Properties in a Right of Way shall be serviced by a single private pressure main. An isolation valve shall be installed on the private pressure main at the boundary of the Right of Way and the public road. Private easements shall be created over Pressure Sewer Systems in private Rights of Way. The pressure system in the private Right of Way shall be installed by a trade-qualified drainlayer at building consent stage in accordance with the Requirements for Local Pressure Sewer Units specified under a Building Consent.

5.5 The following conditions shall be recorded pursuant to Section 221 of the RMA in a consent notice registered on the titles of each residential lot:

- Each lot shall be served by a local pressure sewer unit comprising a pump and storage chamber which can accommodate at least 24 hours average dry weather flow to be supplied by Aquatec, EcoFlow or similar.
- The property owner shall retain ownership of the local pressure sewer unit complete with pump, chamber and control equipment. The property owner will be responsible for the operation and maintenance of the complete system.

*Advice Note: This is an on-going condition and a consent notice will be issued under section 221 of the Act at the time of section 224(c) certificate.*

## 6. Access Construction Standards

6.1 The access formation shall be designed and constructed in accordance with the CCC Infrastructure Design Standard. Physical works shall not commence until a Council engineering officer confirms that the Design Report, Plans and Design Certificate complying with clause 3.3.1 of the IDS and the Contract Quality Plan and Engineer's Review Certificate complying with clause 3.3.2 has been received and accepted by Council.

## 7. Transport

### 7.1 Traffic Safety Audit

The applicant shall provide traffic safety audits undertaken by a suitable qualified independent traffic engineer at the works completion (post construction).

8. Greenspace

8.1 Reserve Landscape Plans

- 8.1.1 Landscape Plans and an accompanying Design Report for Reserves (Lots 2 and 3) are to be submitted to the Technical Design Services and CCC Ecologists (Landscape Architecture and Environment Team at [landscape.approval@ccc.govt.nz](mailto:landscape.approval@ccc.govt.nz)) for acceptance.

Note: Council Ecologists will assist with the acceptance process of the landscaping plans.

- 8.1.2 The Landscape Plans and Design Report are to provide sufficient detail to confirm compliance with the requirements of the IDS, the CSS, and the WWDG (current versions).: All landscaping required by this condition is to be carried out in accordance with the accepted plan(s) at the Consent Holder's expense, unless otherwise agreed. All Landscaping shall be in general accordance with approved plans pages 2 to 11 and shall include requirements in conditions 9.

- 8.1.3 Prior to Council's practical completion inspection and acceptance, the consent holder shall submit (to the Landscape Architecture and Environment Team at [landscape.approval@ccc.govt.nz](mailto:landscape.approval@ccc.govt.nz)) all required completion documentation in accordance with IDS 10.3.4 Engineer's Report and the Quality Assurance System, to provide evidence that the work is completed in accordance with the accepted plans, the IDS, CSS and WWDG (current versions), and the conditions of consent.

- 8.1.4 The Consent Holder shall maintain all landscape assets on Reserve Lots 2 and 3 to the standards specified in the CSS (current version) for the 24 months Establishment Period (Defects Liability), from the date of Council's practical completion acceptance until a final inspection and acceptance of the landscaping by Council. Acceptance shall be based upon the criteria outlined in the CSS, Part 7 Landscapes (current version).

- 8.1.5 The Consent Holder is to maintain an accurate and up-to-date monthly report on the condition of the landscape assets and the works undertaken during the Establishment Period. The report shall be submitted to the Landscape Architecture and Environment Team at [landscape.approval@ccc.govt.nz](mailto:landscape.approval@ccc.govt.nz) within five days of the end of each month during the Establishment Period. (Refer sample report: *Landscape Construction Monthly Establishment Report*, CSS, Part 7 Landscape (current version)).

- 8.1.6 The Consent Holder shall enter into a separate bond with Council to the value of 50% of the cost to replace and establish all plants, trees and turf on reserves. The bond shall be held for the Establishment Period of a minimum of 24 months and shall be extended by a further 12 - 24 months for the replacement planting(s), as required. The bond shall be released after the landscape assets have been inspected and accepted by Council at final completion / handover.

*Advice note: Where works have not obtained practical completion acceptance by Council prior to the issuing of the Section 224(c) certificate, the value of the bond will be 100% of the cost of all landscape improvements.*

- 8.1.7 Any replacement plantings and extended establishment period required due to plants, trees and turf not being accepted are to be carried out at the Consent Holder's expense.

8.2 Final Completion / Handover (Reserves and Streetscapes)

Prior to Council's final completion inspection and acceptance of the assets at the end of the 24 month Establishment Period, the Consent Holder shall submit all required completion documentation in accordance with IDS Part 2:2.12 Completion of Land Development Works and the Quality Assurance System, to provide evidence that the work has been completed and maintained in accordance with the agreed standards and conditions of this consent.. Where it is not possible to determine the condition of the assets due to seasonal constraints (e.g. trees not being in full leaf) then the final inspection and final completion may be delayed until the condition of the assets can be accurately determined.

The final inspection shall include a site visit by Council Ecologists to provide confirmation of implementation of the approved landscaping plan.

9. Esplanade Reserve and Ecology
- 9.1 Except where otherwise required by other conditions of this consent, the proposed landscaping shall be established in general accordance with the landscape plans dated 22/09/2023, prepared by DCM Urban Design Limited, forming pages 2 to 11 in the Stamped Approved Plans.
- 9.2 The detailed design landscaping plans shall be submitted for acceptance in accordance with Condition 8. The detail of landscaping plan shall include but not limited to:

*General Landscaping requirements*

- Trees and plants shall be indigenous species and locally eco-sourced
- Any earthworked area in the esplanade reserve with exception to the northern area shall be shaped with a 2% slope from the edge of allotment to the top of the bank where possible;
- No planting or removal of plants shall occur within Council existing land (Secs 1,2,6,7,8 SO 20145) except in regard to the northern boundary. This shall ensure community planting already established shall not be removed/destroyed.
- The shared footpath shall be 2m wide and consist of crusher dust, constructed in accordance with CSS part 6, 8 Gritted Footpaths. The location shall be in accordance with the landscaping plan (Approved Plans pages 2 to 11) with exception to the northern section outlined below.
- Tree and Plant species shall reflect the Wet Plains: TŌTARA – bellbird – mataī, older plains ecosystem list from [Christchurch Ecosystems \(lucas-associates.co.nz\)](http://Christchurch Ecosystems (lucas-associates.co.nz)).

*Northern Section*

- The footpath extension shall be located to where the existing path is established and widened to be two metres in width with a crush dust formation, constructed in accordance with CSS part 6, 8 Gritted Footpaths. Any existing indigenous species within this area shall be transplanted in a similar location or retained where possible.
- From the footpath expansion to the top of the bund, the rank grass shall be retained. Any woody species (including but not limited to gorse, broom, lupin, and blackberry) and Tasmania Ngaio in this area shall be removed
- The 2.4 m high acoustic fence shall be established within Lot 1 and be finished in a recessive grey/green or brown hue with a light reflectance value no higher than 15% LRV.
- The 2.4m high acoustic fence shall be maintained until s224 certification has occurred  
*Note: This includes repainting if defacement either side of the fence has occurred.*
- The planting strip within Lot 1 (from the acoustic fencing to the 2.4m high Chain Link Fence) shall include tree and shrub planting that reaches a mature height of approximately 16 metres and a canopy width that does not cause excessive shading over the acoustic fence or require excessive clearance over the existing chain link fence. The planting shall comprise locally eco-sourced indigenous trees, shrubs and plants reflect the Wet Plains: TŌTARA – bellbird – mataī, older plains ecosystem list from [Christchurch Ecosystems \(lucas-associates.co.nz\)](http://Christchurch Ecosystems (lucas-associates.co.nz)).
- Species on top of the bund in Lot 2 shall be Lizard Friendly Tree and Shrub species and shall not cause excessive shading. These species shall assist in screening the proposed acoustic fence. This shall include but not be limited to:
  - Cordyline australis
  - Kunzea robusta
  - Leptospermum scoparium
  - Sophora microphylla

*Western*

- A new footpath is to be established western and southwestern areas and is setback from approximately four metres from western boundary of Lot 1. The new footpath shall connect the existing cycle way footpath along the haulage route in Lot 3.
- The existing footpath along the western and south western area shall remain and no works shall occur in this area.
- The man made channel adjacent to Lot 21 DP 525615 shall be filled in.
- The general enhancement planting shall consist of dense vegetation. The western area shall be primarily focused on the waterway margins and riparian habitats for waterfowl, swampbirds, herons.

*South Western*

- A new footpath is to be established western and southwestern areas and is setback from approximately four metres from western boundary of Lot 1. The new footpath shall connect the existing cycle way footpath along the haulage route in Lot 3.
- The existing footpath along the western and south western area shall remain and no works shall occur in this area.
- Existing trees (including dead trees which do not pose a health and safety risk) along the south western areas shall be retained where possible for bird habitat and roosting. Any works near existing trees shall be in accordance with IDS Part 10.4.2 Existing vegetation.
- The southern areas shall focus on general enhancement and may focus on plant species which can endure drier conditions (including but not limited to Coprosma and Matagouri)

*Note: Existing trees located on Council land are protected by the District Plan rules and the Tree Policy which must be adhered to for works within their vicinity.*

9.3 The proposed landscaping shall be established on site within the first planting season (extending from 1 April to 31 August) following the DOC permit approval.

10. Lizards – Northern Portion of Lot 2

10.1 Prior to commencement of any physical works within areas identified as lizard habitat, the consent holder shall submit a copy of an approved DOC wildlife permit and attached lizard management plan to Council.

*Advice notes: A site specific lizard management plan shall be prepared by a suitably qualified herpetologist as part of this application. The lizard management plan will identify any areas of lizard habitat to be impacted by construction/excavation works. This document will describe the measures that will be taken to mitigate the adverse effects of the modification on lizards and their habitat at the site. The lizard management plan will be sent to Te Hapū o Ngāti Wheke (Rapaki) once received by Council.*

10.2 In any areas where lizard habitat will be detrimentally impacted (damaged, destroyed, removed), lizard salvage and relocation works will be required. This work is to be undertaken by a suitably qualified herpetologist.

10.3 Where possible all areas of identified lizard habitat shall be retained and protected from damage during construction works. Strategies such as the installation of a silt/sediment fence to form a partition between the construction site and areas of habitat that will not be affected by work, shall occur.

10.4 Lizards found outside the northern portion of Lot 2 and Lot 3. – Accidental Discovery Protocol

Any incidental discoveries of lizards while undertaking construction within the project footprint shall be documented and reported to the Councils herpetologist:

- Construction activities will stop/be restricted to beyond 10 meters of the place of discovery.
- Report to the herpetologist the location and a description of the lizard sighted (as much detail of the lizard as possible).
- If the lizard is in danger of being injured or killed, capture the lizard using both hands being careful not to grab it by the tail and place in a container with damp soil and some leaf litter. Ensure to create breathing holes in the container for the lizard.
- If the lizard appears uninjured, contact the herpetologist or Environmental manager for direction on where to relocate the lizard.
- If the lizard is injured, then contact the project herpetologist for advice on how to proceed.

11. .... Birds – South Western Esplanade Reserve

11.1 ... Where possible, works (including vegetation clearance) shall avoid bird breeding seasons (of September to February (annually)) or June to February if cormorant (shag) species commence breeding). If works are undertaken they should comply with Condition 11.2.

..... *Advice note: Wetland birds are most sensitive to noise and vibration disturbance during the wetland bird breeding seasons (September to February inclusive).*

11.2... If works commence in the period 1 September to 15 February, the consent holder should ensure:

- a. A suitably qualified person inspects the proposed area of works, no earlier than 8 days before any works are carried out, and locates any breeding sites of protected native birds. A "suitably-qualified Bird surveyor" is defined as someone who has a minimum of 160 hours field experience

locating and monitoring the nests of ground-nesting and tree-nesting riverine, coastal and estuarine birds.

- b. The person carrying out the inspection should prepare a written report that identifies all the located bird-breeding or nesting sites. These should be made known to the consent holder and contractors working on site. The Report shall be submitted for acceptance to the Christchurch City Council's Resource Consents Unit (via email to [rcmon@ccc.govt.nz](mailto:rcmon@ccc.govt.nz)) prior to any work starting on site.
- c. If the person carrying out the inspection deems that any part of the works activity may be undertaken at a distance less than 100m to any nesting protected bird species, this must be clearly detailed on the report. Exclusion distances may differentiate between "episodic" disturbance (disturbance that occurs for less than ten minutes e.g. trucks driving past a nest situated near an accessway; or a person walking past undertaking an asset inspection or a making a quick maintenance pass) and "prolonged" disturbance (disturbance that occurs for more than 10 minutes at a time)
- d. The name and qualifications of the person carrying out the inspection must be provided with the report.
- e. Where work ceases for more than eight days, the site must be re-inspected for bird breeding and nesting sites in accordance with parts (a) to (d) of this condition.

*Advice note: The recommended exclusion zone for activities resulting in "prolonged" disturbance is 50m for nests and broods of chicks; whereas for activities resulting in "episodic" disturbance, or where nests or chicks are not in line of sight to the source of disturbance (e.g. an island of screening vegetation is situated between the nest or chicks and the source of disturbance), the distance may be reduced to a minimum of 25m where provided for by the bird survey report recommendation.*

11.3 ..... Vehicles and/or machinery shall not operate within 100 metres of protected native birds which are nesting or rearing their young.

11.4 ..... All persons exercising the consent shall not bring dogs on site during the bird-nesting season.

## 12. Health of Land

12.1 Any soils removed from the site during the course of the activity must be disposed of to a facility authorised to accept the material. 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, Attention: Team Leader Environmental Health by way of email to [rcmon@ccc.govt.nz](mailto:rcmon@ccc.govt.nz), no later than 20 working days following this disposal.

12.2 Any earthworks or removal of soil on the haulage road shall require testing to confirm that the soil is suitable to remain onsite.

*Advice note: A RAP and/or site validation report may be required if testing shows the soils to be above recreational contamination levels.*

12.3 In the event that soils are found to have visible staining, odours and/or other conditions that indicate soil contamination, then work must cease until a Suitably Qualified and Experienced Practitioner (SQEP) engaged by the consent holder has assessed the matter and advised of the appropriate remediation and/or disposal options for these soils. The consent holder shall immediately notify the Council Attention: Team Leader Environmental Health, by way of email to [rcmon@ccc.govt.nz](mailto:rcmon@ccc.govt.nz). Any measures to manage the risk from potential soil contamination shall also be communicated to the Council prior to work re-commencing.

## 13. Telecommunications and Energy Supply

13.1 All lots shall be provided with the ability to connect to a telecommunications and electrical supply network at the boundary of the net area of each lot. For rear lots, evidence shall be provided by the surveyor (in the form of as-builts and / or photos) that ducts or cables have been laid to the net area of each lot.

13.2 The consent holder is to provide a copy of the reticulation completion letter from the telecommunications network operator and the s224 clearance letter from the electrical energy network operator.

## 14. Cultural Values

- 14.1 Planting of indigenous species within the 30 metre setback from Ōpāwaho/Heathcote River is required to enhance the cultural landscape, increase indigenous habitat, filter sediment and sequester carbon.
- 14.2 The Lizard Management Plan must be submitted to Te Hapū o Ngāti Wheke (Rapaki) for approval prior to works commencing.
- 14.3 Untreated stormwater from the development must not discharge into Ōpāwaho/Heathcote River and must not enter the buffer zone (Esplanade reserve).
15. Accidental Discovery
- 15.1 In the event of the discovery/disturbance of any archaeological material or sites, including taonga (treasured artefacts) and koiwi tangata (human remains), the consent holder shall immediately:
- Cease earthmoving operations in the affected area of the site; and
  - Advise the Council of the disturbance via email to [rcmon@ccc.govt.nz](mailto:rcmon@ccc.govt.nz)
  - Advise appropriate agencies, including Heritage New Zealand Pouhere Taonga and the local Mana Whenua (Ngāi Tūāhuriri Rūnanga and Ngāti Wheke) of the disturbance.

*Advice Note: Please be aware that an archaeological site may be any place that was associated with human activity in or after 1900, and provides or may be able to provide, through investigation by archaeological methods, significant evidence relating to the historical and cultural heritage of New Zealand.*

- 15.2 In the event that soils are found to have visible staining, odours and/or other conditions that indicate soil contamination, then work must cease until a Suitably Qualified and Experienced Practitioner (SQEP) engaged by the consent holder has assessed the matter and advised of the appropriate remediation and/or disposal options for these soils. The consent holder shall immediately notify the Council Attention: Team Leader Environmental Health, by way of email to [EnvResourceMonitoring@ccc.govt.nz](mailto:EnvResourceMonitoring@ccc.govt.nz). Any measures to manage the risk from potential soil contamination shall also be communicated to the Council prior to work re-commencing.
16. Consent Notice
- 16.1 The following consent notice pursuant to Section 221 of the Resource Management Act 1991 will be issued by the Council:

Geotechnical and Low Pressure Sewer Design – Lot 1

Any ground remediation on the site, provided to geotechnically strengthen the land to withstand seismic events, shall be preserved intact for at least 2m from future wall alignments. The strengthening may include layers of geotextile fabric and geogrids integral to the foundation systems for any buildings requiring foundations. Any deep service trenches or pump unit installations, which require excavation through the strengthening, must be installed further than of 2m from any wall and on the road side of the building.

Sewer – Lot 1

Each lot shall be served by a local pressure sewer unit comprising a pump and storage chamber which can accommodate at least 24 hours average dry weather flow to be supplied by Aquatec, EcoFlow or similar.

The property owner shall retain ownership of the local pressure sewer unit complete with pump, chamber and control equipment. The property owner will be responsible for the operation and maintenance of the complete system.

*Note: Council will prepare the Consent Notice.*

17. Goods and Services Taxation Information
- 17.1 The subdivision will result in non-monetary contributions to Council in the form of land and/or other infrastructure that will vest in Council. Council's GST assessment form is to be completed to enable Council to issue a Buyer Created Tax Invoice.

ADVICE NOTES FOR CONSENT HOLDERS, TO BE READ IN CONJUNCTION WITH THE DECISION

Lapsing of this consent

This resource consent for subdivision will lapse 5 years after the date of commencement of consent (i.e. the date of this letter) unless it has been given effect to by the Council issuing a certificate pursuant to Section 223 of the Resource Management Act 1991.

Application may be made under Section 125 of the Resource Management Act 1991 to extend the duration of the resource consent, and this must be submitted and approved prior to the consent lapsing.

#### Lapsing of s223 Certification

The s223 certificate will lapse 3 years after the date of issue if the certified plan has not been deposited in accordance with Section 224 of the Resource Management Act 1991. The s223 certificate can be re-certified only if the subdivision consent has not lapsed.

#### Cultural Advice notes

The Te Hapū o Ngāti Wheke (Rāpaki) Runanga have provided the following advice notes:

- Low impact design methods, such as, rain and greywater collection and re-use systems and minimising impervious surface area is encouraged. Refer to Ngāi Tahu Subdivision and Development Guidelines for low impact design methods endorsed by mana whenua.
- A stringent erosion and sediment control plan should be in place during all earthworks required to give effect to the consents and until such time as all exposed soils have been stabilized.
- No contaminated material should be contained within the 30-metre setback from Ōpāwaho/Heathcote River.
- Industrial activity within the 30-metre setback is not supported.
- Previously consented earthworks activity does not imply that any further consent for this activity is guaranteed. It must be reviewed, and the activity status must reflect the significance of the area.
- Stormwater runoff from the development must not enter the riparian buffer zone.

Should a permit be required from the Department of Conservation for the management of Lizards, this is likely to be supported by Te Hapū o Ngāti Wheke (Rāpaki).

#### Your Rights of Objection

If you do not agree with the Council's decision on this resource consent application, the conditions, or any additional fees that have been charged, you may lodge an objection with the Council under Section 357 or 357B of the Resource Management Act 1991. You have 15 working days from the date you receive this letter within which to lodge your objection to the decision. Objections to additional fees must be received within 15 working days of the date on which you receive the invoice. Your objection must be in writing and should clearly explain the reasons for your objection.

#### Commencement of this consent

The commencement date for your resource consent is the date of this letter advising you of the Council's decision, unless you lodge an objection against the decision. The commencement date will then be the date on which the decision on the objection is determined.

#### Development Contributions

No development contributions are payable on this consent.

#### Payments to Council

If any payments to Council are to be made through internet banking please email the details to [resourceconsentapplications@ccc.govt.nz](mailto:resourceconsentapplications@ccc.govt.nz) and a tax invoice will be raised. The internet banking details are:

Bank: *Bank of New Zealand*  
Account Name: *Christchurch City Council*  
Account Number: *02 0800 0044765 003*

The information you need to enter to help us identify your payment will be specified at the bottom of the invoice (i.e. Particulars, Code and Reference details).

Please note that all payments will be credited to our account on the next business day. Any payment made without the details above may take some time to be lodged against the correct account.

Please email [resourceconsentapplications@ccc.govt.nz](mailto:resourceconsentapplications@ccc.govt.nz) to notify us when you have made payment.

#### Council Site Characteristics Information

The Councils Site Characteristics Information on this site is as follows:

Development	Council records show there is a specific condition on the use of this site: Consent Notice
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Constraint	
Development Constraint	Council records show there is a specific condition on the use of this site: Well on Property
District Plan	Property or part of property within the Christchurch International Airport Protection Surfaces overlay, which is operative.
District Plan	Property or part of property within the Nga Wai Rivers overlay, which is operative.
District Plan	Property or part of property within the Tsunami Management Area qualifying matter, which has been publicly notified
District Plan	Property or part of property subject to a requirement for an esplanade reserve or strip if subdivided.
District Plan	Property or part of property within the Liquefaction Management Area (LMA) Overlay, which is operative.
District Plan	This property or part of this property is close to at least one waterway. It may be within the setback for a Downstream Waterway (except Mona Vale). Within that setback, District Plan rules apply to activities including buildings, earthworks, fences and impervious surfacing. Any part of the property within the setback will be affected by those rules. Rules associated with this waterway are operative under the District Plan.
District Plan Zone	Property or part of property within the Industrial General Zone, which is operative.
District Plan Zone	Property or part of property within the Open Space Water and Margins Zone, which is operative.
Ecan Requirement	There may be objectives, policies or rules in a regional plan or a regional bylaw that regulate land use and activities on this site. Please direct enquiries to Canterbury Regional Council (Environment Canterbury).
Ecan Requirement	A resource consent or permit may also be required from the Canterbury Regional Council or other territorial authority, particularly with respect to water bodies managed by those authorities. Please refer to the relevant regional plan and any relevant bylaws, and contact the Christchurch City Council if you are uncertain which authority manages the water body in question.
Electoral Ward	Property located in Heathcote Electoral Ward
Flooding Related	The Council has a report, Coastal Hazard Assessment for Christchurch District (2021), which indicates this area may be susceptible to coastal flooding. The 2021 report considers areas that might be at risk over the next 100 years and beyond as a result of sea level rise. To find out how your area might be affected go to <a href="http://www.ccc.govt.nz/coastalhazards">www.ccc.govt.nz/coastalhazards</a> .
Flooding Related	Property or part of property within the Flood Management Area (FMA) Overlay which is operative.
Flooding Related	This property or parts of the property are located within the Fixed Minimum Floor Overlay level in the Christchurch District Plan, which is operative. Under this plan pre-set minimum floor level requirements apply to new buildings and additions to existing buildings. The fixed minimum floor level can be searched at <a href="http://ccc.govt.nz/floorlevelmap">http://ccc.govt.nz/floorlevelmap</a> . For more information please contact a CCC duty planner on 941 8999.
Flooding Related	This property or parts of this property lie within the observed, reported or estimated flood extent of one or more of the flood events between February 2011 and April 2014. For more information please refer to <a href="https://ccc.govt.nz/reports/">https://ccc.govt.nz/reports/</a> or phone council on 941-8999.

Flooding Related	This property, or parts of this property are predicted to be within the extent of a 1 in 50 year flood event. For new developments a minimum finished floor level may be required for flood limitation purposes under the Building Code. For more information please refer to ( <a href="https://ccc.govt.nz/floorlevelmap">https://ccc.govt.nz/floorlevelmap</a> ) or phone 941 8999.
Flooding Related	This property may be affected by flooding by some tsunami scenarios as shown in reports by GNS and NIWA commissioned by ECan and CCC. Links to reports can be found at <a href="https://ccc.govt.nz/tsunami-evacuation-zones-and-routes/">https://ccc.govt.nz/tsunami-evacuation-zones-and-routes/</a> and on ECan's web site <a href="https://www.ecan.govt.nz">https://www.ecan.govt.nz</a> by searching for the terms tsunami hazard.
Flooding Related	This property is in the orange tsunami evacuation zone, and should be evacuated immediately after a long or strong earthquake, or when told to by an official civil defence warning. Residents should make a plan for where they would go in a tsunami evacuation and stay out of this zone until told it is safe to go back. More information can be found at <a href="https://ccc.govt.nz/services/civil-defence/hazards/tsunami-evacuation-zones-and-routes/">https://ccc.govt.nz/services/civil-defence/hazards/tsunami-evacuation-zones-and-routes/</a>
Ground Characteristic	This property is located in an area known to have been filled. The year the fill occurred is Unknown. The filling was, according to the Council's records carried out in an uncontrolled manner and comprises Mixed Fill with Demolition Material.
Ground Characteristic	Christchurch City Council holds indicative information on liquefaction hazard for Christchurch. Information on liquefaction, including an interactive web tool, can be found on the Council website at <a href="http://ccc.govt.nz/liquefaction">ccc.govt.nz/liquefaction</a> . Depending on the liquefaction potential of the area that the property is in, the Council may require site-specific investigations before granting future subdivision or building consent for the property.
Ground Characteristic	Council records show that site contains Soft Ground. Predominant Ground Material: Silt Reason for Assessment: N/A Should further buildings be proposed on this site, specific foundation design may be required.
Land Characteristic Other	Land Information New Zealand (LINZ) engaged Tonkin and Taylor to provide a Geotechnical Report on Ground Movements that occurred as a result of the Canterbury Earthquake Sequence. The report indicates this property may have been effected by a degree of earthquake induced subsidence. The report obtained by LINZ can be accessed on their website at <a href="https://www.linz.govt.nz">https://www.linz.govt.nz</a> and search Information for Canterbury Surveyors.

#### Archaeological Sites

This site may be an archaeological site as declared by Heritage New Zealand Pouhere Taonga. Under Section 43 of the Heritage New Zealand Pouhere Taonga Act 2014, an archaeological site may be any place that was associated with human activity in or after 1900, and provides or may be able to provide, through investigation by archaeological methods, significant evidence relating to the historical and cultural heritage of New Zealand. Please contact Heritage New Zealand Pouhere Taonga on [infosouthern@heritage.org.nz](mailto:infosouthern@heritage.org.nz) or (03) 357 9629 before commencing work on the land.

#### Allocated Street Numbers

Street number allocation was not available at time of granting this consent. For any street number allocation enquiries please email [streetnumbering@ccc.govt.nz](mailto:streetnumbering@ccc.govt.nz)

#### Trees

Existing trees located on Council land are protected by the District Plan rules and the Tree Policy which must be adhered to for works within their vicinity.

#### Future Cancellation of Amalgamation Condition

To cancel the amalgamation condition a document pursuant to section 241(3) of the Resource Management Act 1991 will be required from the Council. Although the execution of such a document is not a subdivision consent the Council will need to be satisfied that similar requirements to a subdivision consent have been met before cancelling the amalgamation condition. There is a fee for this, as per the Subdivisions Fees Schedule.

#### Lighting in Private Ways

The Council does not require lighting within private ways, nor will it accept the ongoing maintenance or running costs associated with lighting within the private way. Any proposal to light the private way shall include a method of payment of the ongoing costs by the benefiting owners.

**Building consent requirements**

This subdivision consent has been processed under the Resource Management Act 1991 and relates to planning matters only. You will also need to comply with the requirements of the Building Act 2004. Please contact a Building Consent Officer (941-8999) for advice on the building consent process.

Reported and recommended by: Rachel Cottam, Senior Planner

Date: 22/12/2023

Decision
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