Sections 95, 95A-E, 104, 104B, 106, 108, 108AA and s221

Resource Management Act 1991

Decision/Report

Report pursuant to section 42A of the Resource Management Act 1991 recommending whether or not an application for resource consent should be:

- Publicly notified, limited notified or non-notified
- Granted or declined, and, if granted, the conditions of consent

Decision pursuant to section 113 of the Resource Management Act 1991

APPLICATION NUMBER:	**RC235753**
APPLICANT:	Hughes Developments Limited
BRIEF DESCRIPTION OF APPLICATION:	RC235753: To cancel Consent Notice 12660328.2
SITE DESCRIPTION:	Address: 597 East Maddisons Road Legal Description: - Lot 1 DP 4011 - Lot 4011 DP 596412 Title References: 1152888 and 1152889 Area: 18.9ha and 1.3545ha
ZONING / OVERLAYS	**Operative Selwyn District Plan (2016), Rural Volume** Inner Plains Zone **Partially Operative Selwyn District Plan (Appeals Version – released 27 November 2023)** General Rural Zone Overlays: Plains Flood Management Overlay Liquefaction Damage Unlikely Overlay Urban Growth Overlay
OVERALL ACTIVITY STATUS:	**Discretionary**

The Application

1. This application was formally received by the Selwyn District Council on 7 December 2023.

2. The application proposes to cancel consent notice 12660328.2 on the Record of Titles for Lot 1 DP 596412 and Lot 4011 DP 596412 which states:

   A combined PSI/DSI has been undertaken for this site which has identified a number of HAIL activities. On review of this PSI/DSI, a number of issues were identified which may require further work to be undertaken prior to the PSI/DSI being considered complete. No construction, development or site preparation work shall occur until the PSI/DSI has been resubmitted to Selwyn District Council with all required testing being completed in accordance with the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health and a Remediation Action Plan has been prepared for soil and material that contains concentrations of contaminants in excess of soil contaminants standards or guidelines for residential land use under the National Environmental Standard (NES) for Assessing and Managing Contaminants in Soil to Protect Human Health.

3. The applicant has undertaken further investigational work in accordance with the requirements of the NES and they now consider it to be complete. The applicant has provided a Site Validation Report (SVR), dated 1 December, and completed by ENGEO, to support this.

Background

4. The consent notice requesting to be cancelled was imposed under Condition 4 of RC235753. RC235753 was granted on 25 October 2022 for the subdivision of the application site into two allotments, one being a rural allotment and the other road to be vested in Council. The s224 completion certificate was issued on 8 February 2023. As the s224 has been issued for the subdivision Condition 4 cannot be removed under s127 of the RMA1991.

5. Following RC235753, subdivision consent RC235205, and associated land use consent RC235206, were granted on 26 July 2023 of which the application site forms part of. The application by Hughes Development Limited for the subdivision of the site was granted by the Faringdon Oval Expert Consenting Panel under the COVID-19 Recovery (Fast Track Consenting) Act. It's intended that Faringdon Oval will create ~~approximatley~~approximately 684 residential lots, with a further 462 residential units to be enabled via super lots. The subdivision will adjoin, and be bordered by, Gould's Road, Dunns Crossing Road, and Selwyn Road. The s224 completion certificate was issued for Stage 11 of the subdivision on 17 October 2023. Stage 11 is the stage subject to this s221 application.

6. Conditions 11, 12, 13, 14, 15, 16 and 17 of RC235206 (the land use consent processed concurrently with RC235205) addressed potential contamination of the site (NES). As part of RC235206, ENGEO provided a detailed DSI and prepared a Remediation Action Plan. A condition of the consent requires a Site Validation Report to be provided (Condition 16 of RC235206).

The Existing Environment

7. The application site is currently subject to earthworks which are being undertaken as part of the development of the site for residential purposes (subdivision consent RC235205).

8. The application site fronts Goulds Road and Rangatira Street and is adjoined by other land owned by the applicant which is intended to be subdivided.

9. **Figure 1** (below) confirms the location of the lots subject to this application, being Lot 1 DP 596412 and Lot 4011 DP 596412.



Figure 1: Location of the lots subject to this consent notice cancellation application

Statutory Considerations

10. The following section of the RMA is relevant to cancelling a consent notice:

221 Territorial authority to issue a consent notice

(1) *Where a subdivision consent is granted subject to a condition to be complied with on a continuing basis by the subdividing owner and subsequent owners after the deposit of a survey plan (not being a condition in respect of which a bond is required to be entered into by the subdividing owner, or a completion certificate is capable of being or has been issued), the territorial authority shall, for the purposes of section 224, issue a consent notice specifying any such condition.*

(2) Every consent notice must be signed by a person authorised by the territorial authority to sign consent notices.

(3) At any time after the deposit of the survey plan,—

(a) the owner may apply to a territorial authority to vary or cancel any condition specified in a consent notice:

(b) the territorial authority may review any condition specified in a consent notice and vary or cancel the condition.

(3A) Sections 88 to 121 and 127(4) to 132 apply, with all necessary modifications, in relation to an application made or review conducted under subsection (3).

(4) Every consent notice shall be deemed—

(a) to be an instrument creating an interest in the land within the meaning of section 51 of the Land Transfer Act 2017, and may be registered accordingly; and

(b) to be a covenant running with the land when registered under the Land Transfer Act 2017, and shall, notwithstanding anything to the contrary in section 103 of the Land Transfer Act 2017, bind all subsequent owners of the land.

(5) Where a consent notice has been registered under the Land Transfer Act 2017 and any condition in that notice has been varied or cancelled after an application or review under subsection (3) or has expired, the Registrar-General of Land shall, if he or she is satisfied that any condition in that notice has been so varied or cancelled or has expired, make an entry in the register and on any relevant instrument of title noting that the consent notice has been varied or cancelled or has expired, and the condition in the consent notice shall take effect as so varied or cease to have any effect, as the case may be.

11. This application is being considered as a **Discretionary** activity.

National Environmental Standards

National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES-CS)

12. The proposal is not a change of use of the land and therefore the NES-CS does not apply.

Written Approvals (Sections 95D(e), 95E(3)(a) and 104(3)(a)(ii))

13. The provision of written approvals is relevant to the notification and substantive assessments of the effects of a proposal under sections 95D, 95E(3)(a) and 104(3)(a)(ii). Where written approval has been provided, the consent authority must not have regard to any effect on that person. In addition, that person is not to be considered an affected person for the purposes of limited notification.

14. No written approvals have been provided, and no persons are considered potentially adversely affected as discussed in the assessment section below.

Notification Assessment

Assessment of Adverse Environmental Effects (Sections 95A, 95B, 95D and 95E)

Assessment

15. The assessment of the proposed consent notice cancellation is Discretionary. As such, the Council's discretion is unrestricted, and all adverse effects related to the proposed changes must be considered.

16. The consent notice was imposed by Condition 4 of RC225649 because at the time of processing the Preliminary Site Investigation (PSI) and Detailed Site Investigation (DSI) prepared by ENGEO identified potential HAIL activities on the application site. The HAIL activities, and potential soil contamination, were identified as being limited to proposed Lot 1. Given that no soil disturbance was proposed within the boundaries of proposed Lot 1 as part of the subdivision works, at the time, the applicant offered to accept a resource consent condition (Condition 4) requiring that a consent notice be registered on proposed Lot 1 stating that contamination within the lot shall be remediated prior to future development. Although the consent notice has also been registered on the Record of Title for Lot 4011 DP 596412 this was not required.

17. To support the removal of the consent notice from the titles the applicant has provided a Soil Validation Report (SVR), completed by ENGEO, confirming that the site has been remediated to the point that it is now suitable for residential land use in accordance with the requirements of the NES-CS. The SVR applies to Faringdon Oval as a whole (RC235205) although for the purposes of this s221 assessment the conclusions reached in relation to Lot 1 DP 4011 and Lot 4011 DP 596412 only require consideration.

18. The request to remove the consent notice has been reviewed by Ms Madeline Sinha (Science Analyst) from Environment Canterburys' Contaminated Lands Team. The feedback received from Ms Sinha is that 597 East Maddisons Road (Lot 1 DP 4011) has been successfully remediated so that although contaminants on site remain above background levels, they are below the residential soil contaminant standards under the NES and therefore the site is appropriate for residential development. Remediation of Lot 1 DP 4011 included the excavation and disposal of affected soil offsite.

19. The SVR did not cover Lot 4011 DP 596412 and was not necessary given that the consent notice did not need to be placed on this lot.

20. For the reasons discussed, including the feedback from Environment Canterburys' Contaminated Lands Team, I consider that it is acceptable for the consent notice to be removed from the Records of Title for both lots.

Conclusion

21. I conclude that the adverse effects of the proposed changes will be less than minor.

22. I conclude that the adverse effects on the wider environment will be less than minor.

Public Notification (Section 95A)

23. Section 95A states that a consent authority must follow the steps in the order given to determine whether to publicly notify an application for resource consent.

Step 1: mandatory public notification in certain circumstances (sections 95A(2) and 95A(3))	Y	N
Has the applicant requested that the application be publicly notified?	☐	✓
Is public notification required under section 95C (no response or refusal to provide information or agree to the commissioning of a report under section 92)?	☐	✓
Has the application has been made jointly with an application to exchange recreation reserve land under section 15AA of the Reserves Act 1977?	☐	✓

*If the answer to any of the above criteria is yes**,** the application must be **publicly notified**, and no further Steps are necessary.*

*If the answer is no, continue to **Step 2**.*

Step 2: public notification precluded in certain circumstances (sections 95A(4) and 95A(5))	Y	N
Are all activities in the application subject to one or more rules or national environmental standards that preclude public notification?	☐	✓
Is the application for one or more of the following, but no other types of activities:		
• A controlled activity?	☐	✓
• A boundary activity only (as per the definition of "boundary activity" in s 87AAB of the Act)?	☐	✓

*If the answer to any of the above criteria is yes, continue to **Step 4**.*

*If the answer is no, continue to **Step 3**.*

Step 3: public notification required in certain circumstances (sections 95A(7) and 95A(8))	Y	N
Is the activity subject to a rule or national environmental standard that requires public notification?	☐	✓
Will the activity have, or is it likely to have, adverse effects on the environment that are more than minor?	☐	✓

*If the answer to any of the above criteria is yes**,** the application must be **publicly notified**, and no further Steps are necessary.*

*If the answer is no, continue to **Step 4**.*

Step 4: public notification in special circumstances (section 95A(9))	Y	N
Do special circumstances exist in relation to the application that warrant public notification?	☐	✓

*If the answer is yes, the application must be **publicly notified**.*

If the answer is no, do not publicly notify the application, but determine whether to give limited notification of the application.

24. In conclusion, in accordance with the provisions of section 95A, the application must not be publicly notified and a determination on limited notification must be made, as follows.

Limited Notification (Section 95B)

25. Section 95B states that a consent authority must follow the steps in the order given to determine whether to give limited notification of an application for resource consent, if it is not publicly notified under section 95A.

Step 1: certain affected groups and affected persons must be notified (sections 95B(1)-(4))	Y	N
Are there any affected protected customary rights groups, as defined in s 95F?	☐	✓
Are there any affected customary marine title groups, as defined in s 95G (in the case of an application for a resource consent for an accommodated activity (as defined in the Act))?	☐	✓
Is the proposed activity on or adjacent to, or may it affect, land that is the subject of a statutory acknowledgement made in accordance with an Act specified in Schedule 11; and is the person to whom that statutory acknowledgement is made an affected person under s 95E?	☐	✓

*If the answer is yes, **notify the application to each affected group/person** and continue to Step 2.*

*If the answer is no, continue to **Step 2**.*

Step 2: limited notification precluded in certain circumstances (sections 95B(5) and 95B(6))	Y	N
Are all activities in the application subject to one or more rules or national environmental standards that preclude limited notification?	☐	✓
Is the application for a controlled activity only and not a subdivision of land?	☐	✓

*If the answer is yes, continue to **Step 4**.*

*If the answer is no, continue to **Step 3**.*

Step 3: certain other affected persons must be notified (sections 95B(7)-(9))	Y	N
In the case of a "boundary activity", is an owner of an allotment with an infringed boundary an affected person?	☐	✓
For any other activity, are there any affected persons in accordance with section 95E of the Act (as assessed in the Assessment of Adverse Environmental Effects above)?	☐	✓

*If the answer is yes, **notify the application to each affected person** and continue to **Step 4**.*

*If the answer is no, continue to **Step 4**.*

Step 4 – Limited notification in special circumstances	Y	N
Do any special circumstances exist in relation to the application that warrant notification to any other persons not already determined to be eligible for limited notification (excludes persons assessed under section 95E as not being affected)?	☐	✓

*If the answer is yes, **notify the application to those persons**.*

If the answer is no, do not notify anyone else.

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

Notification Recommendation

27. I recommend that the application RC235753 is processed on a **non-notified** basis in accordance with sections 95A-E of the Resource Management Act 1991.

Report by: Charlotte Scotchbrook, Senior Resource Management Planner	Date: 22 February 2024

Notification Decision

28. For the reasons set out in the report above, the Notification Recommendation is adopted under delegated authority.

 Rosie Flynn, Team Leader Resource Consents	Date: 23 February 2024

Section 104 Assessment

29. Section 104 of the Act sets out the matters the Council must have regard to when considering an application for resource consent.

30. Section 104(1), in particular, states as follows:

> ***104 Consideration of applications***
>
> *(1) When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2 and section 77M* [Effect of incorporation of MDRS in district plan]*, have regard to–*
>
> *(a) any actual and potential effects on the environment of allowing the activity; and*
>
> *(ab) any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and*
>
> *(b) any relevant provisions of—*
>
> *(i) a national environmental standard:*
>
> *(ii) other regulations:*
>
> *(iii) a national policy statement:*
>
> *(iv) a New Zealand coastal policy statement:*
>
> *(v) a regional policy statement or proposed regional policy statement:*
>
> *(vi) a plan or proposed plan; and*
>
> *(c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.*
>
> *…*

31. Section 104(2) states that a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan, i.e. the operative plan, permits an activity with that effect.

32. Section 104B applies to discretionary and non-complying activities. It allows that the consent authority may grant or refuse the application, and, if granted, it may impose conditions under s 108.

Section 104 – Effects on the Environment

33. An assessment of the adverse environmental effects of the proposal was completed above as part of the notification section of this report. That assessment is equally applicable to section 104 and is applied as such.

34. It is also appropriate to consider the positive effects of the proposal at this section 104 stage. The proposal will remove a consent notice that is no longer relevant.

35. I consider that the adverse effects on the environment resulting from the proposal will be less than minor. In relation to positive effects, the proposal will remove a consent notice that is no longer required. On balance and overall, I conclude that the adverse effects of the proposal will be less than minor.

Section 104(1)(b) – Relevant Provisions of Statutory Documents

District Plans (section 104(1)(b)(vi))

Operative Plan – Objectives and Policies

36. The Operative Plan objectives and policies that I consider relevant relate to natural resources, more specifically B1.1 Land and Soil. Objective B1.1.1 and Policy B1.1.10 seek to avoid adverse effects on people's health and wellbeing through the exposure of contaminated soil. The SVR has confirmed that the site meets the residential standards for development under the NES. The application is therefore consistent with the relevant policy framework.

37. Overall, I consider the proposal to be entirely consistent with the Operative Plan.

Partially Operative Plan – Objectives and Policies

38. The Partially Operative Plan objectives and policies that I consider relevant relate to contaminated land. CL- 01 and CL-P1 seek to ensure human health and the environment are protected from the adverse effects of contaminated land. With regards to CL-P1 the focus is on requiring any proposal for subdivision to appropriately

remediate or manage contamination to protect people and the environment. As the SVR has confirmed that the site has been appropriately remediated for residential use/residential subdivision then I consider the application to be consistent with the relevant objective and policy.

39. Overall, I consider the proposal to be entirely consistent with the Partially Operative Plan.

Other Relevant Documents (section 104(1)(b)(i)-(v))

Canterbury Regional Policy Statement (CRPS)

40. The District Plans give effect to the relevant higher order documents, including the CRPS. Therefore, I consider there is no need to assess these provisions.

National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES-CS)

41. The NES-CS was discussed earlier in this report, with my conclusion being that it does not apply to this application.

Section 104(1)(c) – Other Matters

42. There are no other matters considered to be of relevance to this proposal.

Section 104(3)(d) – Notification consideration

43. Section 104(3)(d) states that a consent authority must not grant a resource consent if the application should have been notified and was not. This consideration under s 104 does not raise any issues that would lead me to the conclusion that the application should have been notified. Therefore, it is my view that section 104(3)(d) does not preclude the granting of consent in this case.

Part 2 – Purpose and principles

44. The consideration under section 104 is subject to Part 2 of the Act – Purpose and principles.

45. The purpose of the Act is contained within section 5 and it is to promote the sustainable management of natural and physical resources. *Sustainable management* means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while: sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and avoiding, remedying, or mitigating any adverse effects of activities on the environment.

46. The other sections of Part 2, sections 6, 7 and 8, address matters of national importance, other matters and Te Tiriti o Waitangi (the Treaty of Waitangi) respectively.

47. The relevant District Plans have been prepared having regard to Part 2, with a coherent set of policies designed to achieve clear environmental outcomes; therefore, taking into account relevant case law, I consider that assessment under Part 2 is unlikely to be necessary. For the sake of completeness, however, Part 2 is briefly assessed below.

48. In addition to section 5, I note that the following clauses of Part 2 would be particularly relevant:

7(c) the maintenance and enhancement of amenity values
7(f) the maintenance and enhancement of the quality of the environment.

49. Based on my assessment of the proposal in this report, I conclude that the proposal will be consistent with Part 2 of the Act, as the application site has been remediated which in turn assists with maintaining and enhancing the quality of the environment.

Conclusions

50. This application is to cancel consent notice 12660328.2 on the Record of Titles for Lot 1 DP 4011 and Lot 4011 DP 596412. The consent notices relate to contamination and the need to comply with the requirements of the NES-CS if earthworks or further development of the site is to occur.

51. The application is being considered as a Discretionary activity.

52. No persons are considered to be adversely affected and effects on the wider environment are less than minor.

53. The proposal is entirely consistent with the Operative District Plan and the Partially Operative District Plan.

54. Having considered all relevant matters, on balance and overall, I conclude that the application may be granted.

Recommendation

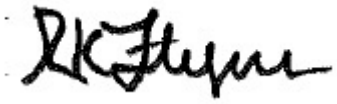
55. I recommend that the application (RC235753) to cancel consent notice 12660328.2 on the Record of Titles for Lot 1 DP 4011 and Lot 4011 DP 596412 be granted, pursuant to pursuant to sections 108, 108AA, and 221 of the Resource Management Act 1991.

56. Consent notice 12660328.2 shall be cancelled.

Report by: Charlotte Scotchbrook, Senior Resource Management Planner	Date: 22 February 2024

Decision

For the reasons set out in the report above, the Recommendation is adopted under delegated authority.

 Rosie Flynn, Team Leader Resource Consents	Date: 23 February 2024