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| Resource Management Act 1991 | CCC logo Black&White |
| **Report / Decision on a Non-notified Resource** **Consent Application**(Sections 95A, 95B, and 104 / 104A / 104B / 104C) |

*Applications lodged on/after RMA amendments on 30 September 2020*

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| **Application Number:** | **RMA/+** |
| **Applicant:** | + |
| **Site address:** | + |
| **Legal Description:** | + |
| **Zoning:** | + |
| **Overlays and map notations:** | + |
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| **Activity Status:** | + |
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| **Description of Application:** | Soil disturbance associated with + on land where an activity identified on the Hazardous Activities and Industries List (HAIL) has been undertaken. |

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| **Introduction** |

The applicant seeks resource consent for soil disturbance and soil removal associated with the construction of +. The application site was previously used for +, which is a HAIL activity. The site is listed on Environment Canterbury’s Listed Land Use Register as +.

*Outline the level of contamination, and extent of soil disturbance, e.g.* A Detailed Site Investigation has identified concentrations of contaminants above background levels/residential guidelines. Soil disturbance activities will include minor scraping of topsoil to establish a new foundation for the dwelling, and the creation of a new driveway and paved areas.

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

*Note any other consents required or applied for, e.g. from ECan*

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| **Existing environment**  |

*Briefly describe the site and surrounding environment and insert an aerial photo. Cross reference the AEE where possible.*

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| **Classification of activity** |

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

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

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

* **Regulation 8(3)(c)** – the volume of soil disturbance will exceed 25m³ per 500m² (approximately +m³ proposed).
* **Regulation 8(3)(d)(ii)** - the volume of soil to be removed from the site will exceed 5m³ per 500m² (approximately +m³ proposed).

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

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

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

OR

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

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

OR

Pursuant to Regulations 10(4) and 11 the proposal is a discretionary activity under the NES as the activity is not otherwise provided for as a permitted, controlled, or restricted discretionary activity. Specifically, a Detailed Site Investigation (DSI) of the piece of land has not been carried out / has not been provided to the Council.

For completeness, I note that:

* The proposed earthworks are a permitted activity under the District Plan as they comply with the rules in Chapter 8
* Victor Mthamo, Council Stormwater and Waterways Planning Engineer, has confirmed that stormwater discharged from the proposed works into the stormwater network can occur under the Comprehensive Stormwater Network Discharge Consent held by the Council.

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

No written approvals have been provided with the application.

OR

The applicant has obtained written approval from the owners and/or occupiers of the following properties:

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

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

(a) the adequacy of the detailed site investigation, including site sampling, laboratory analysis and risk assessment;

(b) how the activity must be managed (which may include the requirement for a site management plan), monitored, and reported on;

(c) the transport, disposal, and tracking of soil and other materials taken away in the course of the activity;

(d) the timing and nature of the review of the conditions in the resource consent; and

(e) the duration of the resource consent.

OR

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

(a) the adequacy of the detailed site investigation, including site sampling, laboratory analysis and risk assessment;

(b) the suitability of the piece of land for the proposed activity, given the amount and kind of soil contamination;

(c) the approach to the remediation or ongoing management of the piece of land, including the remediation or management methods to address the risk posed by the contaminants to human health, timing of the remediation, the standard of the remediation on completion, mitigation methods to address the risk posed by the contaminants to human health, and the mitigation measures for the piece of land, including the frequency and location of monitoring of specified contaminants;

(d) the adequacy of the site management plan or the site validation report;

(e) the transport, disposal, and tracking of soil and other materials taken away in the course of the activity;

(f) the requirement for and conditions of a financial bond;

(g) the timing and nature of the review of the conditions in the resource consent; and

(h) the duration of the resource consent.

OR

The application is a discretionary activity under the NES. As such, the Council’s assessment is unrestricted and all actual and potential effects of this proposal must be considered. Guidance on the effects that should be taken into consideration can be found in the purpose of the NES, which is to ensure that land affected by contaminants is assessed before it is developed, and if necessary the land is remediated or managed so it is safe for human use.

Specialist advice on the application has been obtained from +, Senior Environmental Health Officer, whose comments are summarised as follows:

***Summarise*** *EHO comments*

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

**Stormwater discharge**

Consideration is also given to discharge from the site as a result of the activity. There is the potential for rainwater falling on contaminated excavations to come into contact with contaminated soil and become contaminated itself.

Specialist input has been provided from + who recommends … ***paraphrase*** *their recommendations* e.g. an advice note requiring that the stormwater from the site following construction is to be conveyed via a sealed system to discharge to the CCC stormwater network (not to ground within the site). He/She comments that the standard requirements around Erosion and Sediment Control and compliance with site management plans submitted should be sufficient to limit the water quality effects during construction.

I accept +’s advice and I am satisfied that the activity will be able to be suitably managed in terms of stormwater discharge.

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| **Notification assessment [Sections 95A and 95B]** |

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

**PUBLIC NOTIFICATION TESTS – Section 95A**

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

*Comment on any of the above matters that are applicable. Regulation 9(5) of the NES provides that applications for controlled activities under the NES shall not be publicly notified.*

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

**LIMITED NOTIFICATION TESTS – Section 95B** *(delete if public notification is required)*

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

*Comment on any of the above matters that are applicable.*

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

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

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

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

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

It is noted that the discharge of stormwater from the site will/is likely to require resource consent from Environment Canterbury under the +++. *An advice note to this effect is recommended. The applicant has already obtained this consent.*

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

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

Taking guidance from recent case law[[1]](#footnote-1), the District Plan is considered to be the mechanism by which Part 2 is given effect to in the Christchurch District. The Plan has recently been reviewed, and was competently prepared through an independent hearing and decision-making process in a manner that appropriately reflects the provisions of Part 2. Accordingly, no further assessment against Part 2 is considered necessary.

*OR discuss the relevant provisions of Part 2 if the application involves coastal hazards, as the District Plan has not yet given effect to the higher order documents relating to these and is therefore incomplete in relation to such applications*

*Discuss any other relevant matters not already addressed in the report.*

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| **Recommendations** |

That, for the above reasons:

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

B. The application **be granted** pursuant to Sections 104, 104A/104B/104C, 108 and 108AA of the Resource Management Act 1991, subject to the following condition:

1. The development shall proceed in accordance with the information submitted with the application, including the stamped approved plans entered into Council records as RMA/+.

*Possible conditions which may be included or modified on the advice of the EHO:*

1. All works on the site shall be undertaken in accordance with the provisions set out in the Contaminated Land and Environmental Management Plan prepared by +, dated +.
2. Soil disposal:
	1. Any soils within the hydrocarbon impacted areas require testing prior to soil disposal. A copy of the soil test results must be provided to the Council before any soil disposal is undertaken. These should be emailed to envresourcemonitoring@ccc.govt.nz *(delete if no hydrocarbons)*
	2. Any soils removed from the site during the course of the activity must be disposed of to a facility authorised to accept the material.
	3. Evidence of soil disposal to an authorised facility such as weighbridge receipts or waste manifest should be submitted to the Christchurch City Council's Environmental Compliance Team within two months of completion of works. This should be emailed to envresourcemonitoring@ccc.govt.nz.
3. The integrity of any structure designed to contain contaminated soil or other contaminated materials must not be compromised.
4. Any investigations with respect to the removal of underground storage tanks (USTs) at the site shall be carried out in accordance with the current edition of the Ministry for the Environment, Guidelines for Assessing and Managing Petroleum Hydrocarbon Contaminated Sites in New Zealand. The results of the investigation must be emailed to envresourcemonitoring@ccc.govt.nz within three months of the completion of works. *Note – if the application includes removal of tanks you will need to add the relevant NES Regulations into the planning framework section.*
5. In the event of discovery of an underground storage tank and/or associated infrastructure (e.g. pipework), the consent holder shall undertake measures to determine the appropriate course of action in accordance with the Accidental Discovery Protocol + , prepared by +, dated +.
6. In the event that soils are found that have visible staining, odours and/or other conditions that indicate soil contamination, then work must cease until a Suitably Qualified and Experienced Practitioner (SQEP) has assessed the matter and advised of the appropriate remediation and/or disposal options for these soils. The applicant shall immediately notify the Environmental Compliance Team by email to envresourcemonitoring@ccc.govt.nz of this matter. Any measures to manage the risk from potential soil contamination must be approved by the Christchurch City Council. *(for situations where there is a risk of discovery of contamination during works. Can be used as an advice note where the risk is almost negligible)*
7. Standard construction methods for controlling erosion and sediment migration shall be implemented prior to the commencement of soil disturbance work and maintained until the soil is reinstated to an erosion-free state.

 OR

1. The Erosion and Sediment Control Plan prepared by + (dated +) must be implemented and maintained at all times until the soil is reinstated to an erosion-free state.
2. A Site Validation Report shall be provided to the Council at least two months after completion of works by way of email to envresourcemonitoring@ccc.govt.nz *(for situations where remediation is needed)*
3. Following completion of the proposed works, the applicant shall supply to the Council an ongoing, long term site management plan that informs the site owners on how any subsequent work on the property that may involve the handling or disturbing of soils, paving, decking or the permeable barrier may be carried out safely. This should be sent by email to envresourcemonitoring@ccc.govt.nz.
4. Should any archaeological material or sites be discovered during the course of work on the site, work in that area of the site shall stop immediately and the appropriate agencies including Heritage New Zealand and the Ngai Tūāhuriri Rūnanga (on behalf of local Mana Whenua) shall be contacted immediately. *Include on all consents for archaeological sites*

**Advice Notes:**

1. This resource consent covers soil disturbance/earthworks only. A separate consent is required for any bulk and location non compliances on the site.
* The applicant should be aware that a separate resource consent will / may / is likely to be required from Environment Canterbury for the discharge of stormwater from this site. Environment Canterbury can be contacted on 355-9007 or 0800 324 636.
* Disposal of tested soils to location other than Burwood Landfill or an approved landfill facility with respect to any hydrocarbon impacted soils may also need the approval of Environment Canterbury.
* This may be an archaeological site as specified in the Historic Places Act 1993. An archaeological site is any place in New Zealand that was associated with human activity that occurred before 1900, and is or may be able through investigation by archaeological methods to provide evidence relating to the history of New Zealand.  Sections 10 to 20 of the Historic Places Act apply, and any destruction, damage, or modification of any part of the site must first be authorised by Heritage New Zealand. Please contact Heritage New Zealand on ph. 365-2897 before commencing any further work on the land.
* **Monitoring** will be carried out to ensure the **conditions are complied with** and that the development proceeds in accordance with the plans and details which were submitted with the application.

 The Council will require payment of its **administrative charges** in relation to monitoring, under section 36 of the Resource Management Act 1991. The monitoring programme administration fee and initial inspection fee OR document verification fee will be charged to the applicant with the consent processing costs. If more than one inspection, or additional monitoring activities (including those relating to non-compliance with conditions), are required, the additional time will be invoiced to the consent holder when the monitoring is carried out, at the applicable hourly rate. The current monitoring charges are outlined on the [Resource Management Fee Schedule](https://www.ccc.govt.nz/assets/Documents/Consents-and-Licences/resource-consents/P-301-Resource-Management-Fee-Schedule.pdf).

* **Development Contributions *Where DCs NOT Payable***

 No development contributions are payable on this consent.

**Development Contributions *Where DC assessment is available***

Insert table and Advice notes prepared by DC Assessors here

**Development Contributions *Where DC assessment is NOT yet available***

Please note that a development contribution may be required under the provisions of the CCC Development Contributions Policy applicable at the time of application. The Council requires Development Contributions to be paid prior to the issue of the Code Compliance Certificate for a building consent, commencement of a Resource Consent, the issue of a section 224 certificate for a subdivision consent, or authorisation of a service connection.

Development contribution requirements are as defined in Council’s Development Contributions Policy established under the Local Government Act 2002. Full details of the policy are available from our website at [www.ccc.govt.nz/consents-and-licences/development-contributions/](https://aus01.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.ccc.govt.nz%2Fconsents-and-licences%2Fdevelopment-contributions%2F&data=05%7C01%7CCatherine.Elvidge%40ccc.govt.nz%7Ccf15a64b9dd14f614a4e08da5303853c%7C45c97e4ebd8d4ddcbd6e2d62daa2a011%7C0%7C0%7C637913571821548078%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=P0iXpXhavO1f06jBKwi%2FULsCUyGJpZoeXBDExBiPVjE%3D&reserved=0). If you have any queries in relation to this matter, please contact one of our Development Contribution Assessors on phone (03) 941 8999 or email developmentcontributions@ccc.govt.nz.

**Reported and Recommended by:** type your name and position **Date:** type it in

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| **Decision** |

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

**Delegated Officer:**

[Insert digital signature]

OR

**Commissioner: *(Conflict of Interest*** [***Form P-426***](http://wwwlocal.ccc.govt.nz/unit/EPAandIE/Planning/P426_ConflictOfInterestForm.dot.lnk) ***also needs to be signed by commissioner)***

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| Name: |  |  |
| Signature: |  |  |
| Date: |  |  |

1. R J Davidson Family Trust v Marlborough District Council [2018] NZCA 316 [↑](#footnote-ref-1)