

11. 12. 2008

**BURWOOD/PEGASUS COMMUNITY BOARD
17 NOVEMBER 2008**

**Minutes of a meeting of the Burwood/Pegasus Community Board
held on Monday 17 November 2008 at 5pm in the Board Room,
Corner Beresford and Union Streets, New Brighton**

PRESENT: David East (Chairman), Nigel Dixon, Tina Lomax, Gail Sheriff,
Tim Sintes, Linda Stewart and Chrissie Williams.

APOLOGIES: Nil.

The Board reports that:

PART A - MATTERS REQUIRING A COUNCIL DECISION



1. BREEZES ROAD - PARKING RESTRICTIONS

Further to Clause 12 (Part C) of these minutes, the Board also discussed the benefits of providing kerbside parking limit lines ('parking ticks') as an additional parking control measure along the affected sections of Breezes Road.

BOARD RECOMMENDATION

That in accordance with the Council's Parking – Kerbside Parking Limit Lines Policy (October 1996), 'parking ticks' be approved as an exemption for implementation at vehicle entranceways on Breezes Road between Wainoni Road and Pembroke Street.

2. OWLES TERRACE - FUTURE USE (REVITALISATION) – FORMER LANDFILL



General Manager responsible:	General Manager City Environment, DDI 941-8608
Officer responsible:	Property Consultancy Manager
Author:	Barry Woodland, Property Consultant, Property Consultancy

PURPOSE OF REPORT

1. The purpose of this report is to submit the Board's recommendation that the Council resolve to approve:
 - (a) A resolution that will prevent residential development on Area C in line with previous resolutions regarding the balance of the Owles Terrace site (80 Owles Terrace);
 - (b) The retention of Area C as Open Space Reserve and its inclusion as an integral part of the proposed (and adopted) 'Withells Island Riverside Park' concept plan for the wider Owles Terrace site.
2. As was outlined in a seminar briefing to the Board on 6 October 2008, these recommendations are consistent with recent Council resolutions and provide the Council with an opportunity to create further certainty and impetus around the future use of, and strategic planning for, the wider Owles Terrace site.

EXECUTIVE SUMMARY

3. This report is relatively lengthy and reiterates much of the information included in a previous report to the Council in October 2007. However, the composition of the Board and Councillors has changed since then and, accordingly, it was considered prudent to include some of this history as it relates to, and directly supports, the staff recommendations referred to in this report.

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4. Owles Terrace is the site of a former landfill. Since amalgamation in 1989, and re-zoning of a large area of the site to L1 in 1998, the site has remained largely under-utilised and inaccessible to the public. Repeated attempts to sell and/or develop areas of the site have been unsuccessful, largely due to its status as a former landfill, uncertainty regarding potential site contamination issues and the inherent costs and risks associated with its remediation. Area C, at the southern end of the site, is zoned open space and currently maintained as grassed reserve (refer **Attachment 1**).
5. Two recent future use reports the to Council (dated 21 September 2006 and 11 October 2007) considered the contamination, legal and liability issues associated with the site (excluding Area C) and resulted in the Council resolving to prevent residential development on the site and to support the development of the site as a riverside park open to the public. Specifically, the 11 October 2007 report resulted in the adoption of the following resolution by the Council:
 - (a) *A resolution that will prevent residential development on the site (excluding Area C);*
 - (b) *The adoption of the staged concept plan for the site (excluding Area C) – the 'Withells Island Riverside Park';*
 - (c) *The immediate implementation of Stage 1 of the concept plan, and; approval of the additional budget of \$200,000 required for the implementation of the staged concept plan (over the next four years to 2011); (Stage 1 \$120,000; Stage 2 \$230,000 over the next years – current allocation \$50,000 pa).*
 - (d) *The retention of Areas A and B (and the wider L1 portion of the site) in freehold fee simple ownership, and their inclusion as an integral part of the proposed riverside park;*
 - (e) *The investigative work necessary to establish the viability of, and options for, residential development on 'Area C'. This includes (1) an independent soils report to establish the composition, and status, of Area C, and (2) the process (including timeframe and cost) for rezoning Area C to permit residential development.*
6. At the time of this resolution, Area C was the only area of the wider Owles Terrace site which had not previously been subjected to any soils testing and, as such, its status was unknown. This report deals specifically with 1(e) of the resolution.
7. **Resolution 1(e)(1)** An independent soils report for Area C has now been completed by MWH New Zealand Limited (MWH), dated September 2008 (refer **Attachment 2** Executive Summary). This report confirms that the soil contamination, landfill gas and foundation issues affecting Areas A and B (which resulted in resolutions 1(a) – (d) - above) affect, in equal measure, Area C. Specifically the report concludes that:

'The test pitting investigation, soil logging and laboratory analysis of the soil samples confirm that the sub-surface material encountered within Area C is significantly the same as previously discovered at Owles Terrace. It is therefore prudent to conclude that Area C will need to be subjected to similar mitigation measures as those proposed for Owles Terrace.'
8. As with Areas A and B the main concern with Area C relates to landfill gas in terms of its potential existence in Area C and its potential migration from the main refuse layer into Area C. The report also reiterates that the recommended mitigation measure (trenching), which has an estimated cost of \$200,000, would not, categorically, guarantee that contamination of Area C would not occur now or in the future. In addition to being adjacent to the 'inferred area of the refuse layer' on its northern boundary, Area C shares its southern boundary with the Council's Shoreham Courts development in Admirals Way which has been affected by specific contamination and slumping incidents.

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9. Given that the soils report findings for Area C mirror those for Areas A and B, the Council's Legal Services Unit has confirmed that Buddle Findlays' previous legal opinion, which the Council was cognisant of when arriving at its resolution dated 11 October 2007 (regarding Areas A and B), applies equally to Area C. This concluded that it is 'difficult to assess with accuracy the potential causes of action against the Council and the exact risk of liability'...and that....'the existence of an indemnity does not obviate its legal or moral responsibilities to ensure that the land is safe for subsequent residents and users'. *In short, whether the Council decides to sell, develop or lease the site, its liability for any future contamination event remains in perpetuity.*
10. From a development perspective the 'extraordinary' and potentially unexpected costs associated with developing a former landfill site (and the required measures to mitigate any current and future contamination event) undermine the financial feasibility of doing so to the point where it is simply not economic. As previously reported, repeated, and unsuccessful, attempts to secure alternative owners/developers in the open market for the wider Owles Terrace supports this view. There has also been no interest in developing Area C from Business Units within the Council.
11. **Resolution 1(e) (2)** Area C is currently zoned O2 (Recreation and Open Space Reserve) and vested in the Council as reserve in trust for recreation. To permit residential development on Area C would require: (1) a City Plan zone change, and; (2) the formal revocation of Area C's current Reserve status. In addition to the substantial time (three to four years on appeal) and cost (up to \$100,000 excluding appeal and Council staff time and costs) associated with a City Plan zone change, the success of this process would also be contingent upon the reversal of a previous Commissioners decision which (in response to strong public opposition) rejected a proposed zone change for Area C from Open Space Reserve to L1 residential in the late 1990's. Furthermore, the work associated with this required zone change is not currently included in the City Plan team's priority project programme. The Council would therefore need to (1) approve an extension to this programme, and; (2) underwrite the associated costs of the City Plan process. Revocation of Area C's Reserve status would follow a formal, concurrent, publicly notified and equally contentious process.
12. **Summary** As with Areas A and B, the legal and financial justification for selling or developing Area C for residential purposes is tenuous at best. Given that the contamination, legal, development and Council liability issues affecting Area C are the same as those which led to the 11 October 2007 resolution in relation to Areas A and B, this report recommends that the resolution preventing residential development on the site be extended to include Area C and that Area C be included as an integral part of the proposed riverside park concept for the wider Owles Terrace site.

FINANCIAL IMPLICATIONS

13. Area C is currently open to the public and maintained as grassed reserve. The costs associated with its annual maintenance are currently budgeted for. Retention of Area C as Open Space Reserve, and its inclusion as an integral part of the proposed 'Withells Island Riverside Park' concept for the wider site, will have no impact on these costs in the short to medium term as it will be 'business as usual' from a maintenance perspective.
14. Any longer term revitalisation and conditioning works associated with Area C as part of Stage 2 of the concept plan (refer paragraph 5 – 19(c) above) will be included in the capital works budget for the wider site, a bid for which is included in the current LTCCP round.

Do the Recommendations of this Report Align with 2006-16 LTCCP budgets?

15. No specific provisions for this property, other than mentioned above.

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LEGAL CONSIDERATIONS

16. **Contaminated Sites and Council Liability** Given the history of the site as a former landfill, previous reports to Council, and the conclusions contained in MWH's recent soils investigation report into Area C (September 2008), we requested an updated legal opinion regarding the Council's liability should it decide to sell and/or develop all, or part, of Area C. This opinion confirmed that Buddle Findlay's legal opinion dated 25 June 2007 applies equally to Area C – copy available on request.
17. On the assumption that the Council makes full disclosure of the presence of contaminants to any prospective developer/purchaser and that it implements (or ensures the developer/purchaser implements) the appropriate 'risk management strategies', the report concludes that, broadly, the risk of liability is low.
18. However, and by way of qualification, it should be noted that the inherent (and substantial) costs associated with these 'risk management strategies' seriously undermine the feasibility of developing the site for residential or other use purposes. Furthermore, the report also concedes that it is *'difficult to assess with accuracy the potential causes of action against the Council and the exact risk of liability'...*and that...*'the existence of an indemnity does not obviate its legal or moral responsibilities to ensure that the land is safe for subsequent residents and users'*.
19. In short, *the risk liability associated with the site stays with the Council in perpetuity*. This fact, together with the ongoing issues affecting many other former Council landfill/contaminated sites, raises the question of whether the Council should continue to contemplate developing these sites or whether it is more commercially prudent and responsible to actively manage them as vibrant recreational park/reserve areas. In the context of its previous resolution regarding Areas A and B, the Council elected to do the latter.

Have you considered the legal implications of the issue under consideration?

20. Yes. Refer to paragraphs 17 - 20 (above).

Do the recommendations of this report support a level of service or project in the 2006-16 LTCCP?

21. Owles Terrace has been identified in the Council's Annual Plan as an operationally redundant property therefore requiring resolution as to its future use. Previous reports have essentially attended to this and this report serves to finalise a remaining issue arising from those previous Council considerations.

Do the recommendations align with the Council's strategies?

22. Refer paragraph 22.

CONSULTATION FULFILMENT

23. No consultation is required apart from addressing resolution 1(e) (1) and (2) as outlined in the Council resolution dated 11 October 2007, namely:

1(e) The investigative work necessary to establish the viability of and options for, residential development on 'Area C'. This includes (1) an independent soils report to establish the composition, and status, of Area C, and (2) the process (including timeframe and cost) for rezoning Area C to permit residential development;

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STAFF RECOMMENDATION

That the Council resolve to approve:

- (a) A resolution that will prevent residential development on Area C in line with previous resolutions regarding the balance of the Owles Terrace site (80 Owles Terrace);
- (b) The retention of Area C as Open Space Reserve and its inclusion as an integral part of the proposed 'Withells Island Riverside Park' for the wider Owles Terrace site;

BOARD RECOMMENDATION

That the Council resolve to approve:

- (a) The prevention of residential development on Area C in line with previous resolutions regarding the balance of the Owles Terrace site (80 Owles Terrace);
- (b) The retention of Area C as Open Space Reserve and its inclusion as an integral part of the proposed 'Withells Island Riverside Park' for the wider Owles Terrace site;
- (c) That the Council be requested to give urgent consideration to funding the removal of stockpiles, removal of fencing, levelling and grass sowing of the balance of the site excluding Area C.

(Note: Gail Sheriff requested that her vote be recorded against recommendation (a) & (b) above.)

BACKGROUND (THE ISSUES)

Area C – Options for Residential Development.

24. The extent of the Owles Terrace site is illustrated in Attachment 1.

Owles Terrace, the site of a former landfill, has been the subject of a number of future use reports over the years, the most recent of which (11 October 2007) considered future use options for Areas A and B and resulted in Council resolving to approve:

- (a) *A resolution that will prevent residential development on the site (excluding Area C);*
- (b) *The adoption of the staged concept plan for the site (excluding Area C) – the 'Withells Island Riverside Park';*
- (c) *The immediate implementation of Stage 1 of the concept plan, and; approval of the additional budget of \$200,000 required for the implementation of the staged concept plan (over the next four years to 2011); (Stage 1 \$120,000; Stage 2 \$230,000 over the next four years – current allocation \$50,000 pa);*
- (d) *The retention of Areas A and B (and the wider L1 portion of the site) in freehold fee simple ownership, and their inclusion as an integral part of the proposed riverside park;*
- (e) *The investigative work necessary to establish the viability of, and options for, residential development on 'Area C'. This includes (1) an independent soils report to establish the composition, and status, of Area C, and (2) the process (including timeframe and cost) for rezoning Area C to permit residential development.*

25. This current report specifically addresses resolution 1 (e). In this regard the issues affecting Area C are largely the same as those which influenced the review of future use options (including residential development) for Areas A and B in the October 2007 report to Council. This resulted in the resolution preventing residential development on the wider Owles Terrace site (excluding Area C).

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26. At that stage Area C, which is directly adjacent to the inferred area of the refuse layer and Area B, was the only part of the Owles Terrace site which had not been subject to any soils testing.
27. The conclusions from a more recent soils investigation report on Area C by MWH dated September 2008 (MWH 2008 'Area C' Report) has confirmed that the soil contamination, landfill gas and foundation issues affecting Areas A and B affect, in equal measure, Area C, with specific reference to which MWH concluded:

'The test pitting investigation, soil logging and laboratory analysis of the soil samples confirm that the sub-surface material encountered within Area C is significantly the same as previously discovered at Owles Terrace. It is therefore prudent to conclude that Area C will need to be subjected to similar mitigation measures as those proposed for Owles Terrace'.

28. For a copy of the Executive Summary from the MWH 2008 'Area C' Report refer Attachment 2.

Site Description

29. Owles Terrace is the site of a former landfill, the route of the Avon River having originally followed what is now the Owles Terrace/Union Street/Admirals Way roadway (refer Attachment 1). Since amalgamation in 1989 the site has been largely under-utilised. The administrative offices, storage buildings and sealed areas of the former Council yard are situated at the northern end of the site. Part of the site was re-zoned L-1 in 1998 (the shaded area and areas marked A and B). The remainder of the site is zoned O2 (Recreation and Open Space Reserve) the majority of which is vacant and inaccessible to the public with the exception of the riverside walkway and the southern end of the site (Area C) which is maintained as a grassed reserve. The Council owned Shoreham Courts development in Admirals way is situated in the south west corner of the site.

Background: Future Use Reports and Council Resolutions (to October 2007)

30. Historically Owles Terrace, which has a history of known contamination, has been blighted by virtue of its former use as a landfill and uncertainty over its future use. However, the results of two more recent soils investigation studies by MWH and subsequent resolutions of the Council has introduced some clarity around future use options and strategic planning for the site.
31. The first of these soils reports by MWH (dated January 2006) established an 'inferred outline of the refuse layer' on the site which, in turn, identified Areas A and B as being areas which were adjacent to, but not on the refuse layer, and, therefore, possibly capable of development.
32. Subsequent 'Requests for Proposal' tenders from potential purchasers/developers of the wider Owles Terrace site and then, more specifically, Areas A and B were invited in 2003 and 2006. These yielded limited interest and an, ultimately, unsuccessful outcome. This was due, primarily, to the continuing uncertainty surrounding the contaminated nature of the site and the substantial, and additional, development costs associated with mitigating the inherent contamination risks and liabilities.
33. As a consequence of this the Council resolved on 21 September 2006 that:
 - (a) *The tender process for Owles Terrace be concluded with all tenders declined.*
 - (b) *The shaded areas in the attached plan (Attachment 2) – Attachment 1 in this report - be developed as a riverside park in conjunction with the existing reserve but to remain in Fee Simple, with a reserve development programme to be reported back to the Community Board*
 - (c) *The areas marked A and B be retained by the Council for further development of other options including sale or lease with reporting back through the Environmental Diversity Portfolio Group and Chairperson of the Board.*

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34. The evaluation of other options for Areas A and B (resolution 3 above) resulted in the Council resolution dated 11 October 2007 (refer paragraph 25 above) which precluded residential development on the site (excluding Area C). A brief summary of the evaluation process which led to this resolution is outlined below under the following headings:
- (a) Site Contamination
 - (b) Legal Considerations
 - (c) Development Constraints
 - (d) Council Liability.
35. This is considered important, in terms of consistency, as these factors are equally relevant in considering *'the viability of, and options for, residential development on Area C'*, as Area C has now been found to be *'significantly the same'* as Areas A and B and the wider Owles Terrace site in terms of its *'sub-surface material'*.

Site Contamination

36. Following the 21 September 2006 Council resolution (refer paragraph 27) a further, and more detailed, soils investigation study was subsequently undertaken by MWH (dated March 2007) which analysed the specific contamination issues affecting Area B. The report findings, which MWH indicated applied equally to Areas A and B, concluded that although soil and groundwater contamination was considered to be within the guideline values for residential development the main concern related to landfill gas both in terms of its physical existence in Area B and also its potential migration from the main (and adjacent) refuse layer into Area B. Specifically:
- (1) *Some evidence of landfill gas was encountered in monitoring wells installed within the refuse layer. Migration of this gas into Area B is possible.*
 - (2) *The cost of guaranteeing that any landfill gas is captured before entering Area B is estimated to be in excess of \$200,000 and may not, in practice, be practical. ('trenching' option).*
 - (3) *Compared to the capture of landfill gas, it is likely to be more economic to incorporate gas protection measures and management plans in Area B. However, this will reduce the perceived value of the land for residential purposes".*
37. MWH confirmed that the reason for concluding that the 'trenching' option (2) may be 'impractical' arises from the likely inability to physically 'key in' the trench due to the nature of the underlying soils, and the flushing effect of the tides caused by the proximity of the site to the ocean and river.
38. These conclusions, which have significant legal and development feasibility implications (refer paragraphs 29 (2) and 30 (3) below), apply in equal measure to Area C, given that the 2008 MWH report confirmed that *'the sub-surface material encountered within Area C is significantly the same as previously discovered at Owles Terrace.'* and that *'.. migration of this (landfill) gas into Area C is possible, as is the generation of landfill gas within Area C'.*

Legal Considerations

39. From a legal perspective an overriding consideration is the fact that liability for any contamination arising now or in the future, whether the Council retains Area C or sells it off to a third party for development, reverts to the Council in perpetuity (refer 'Legal Considerations' above, paragraphs 17-20).

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40. Retention of Area C as Open Space Reserve would enable Council to control these risks more effectively and would be consistent with the Council's most recent resolution (11 October 2007) regarding long term use of the site. Disposal will place the Council liable for any costs (financial, social, environmental or other) associated with any future contamination event. In this regard there have been a number of specific contamination/slumping incidents (requiring remediation and further mitigation) encountered with the Council owned Shoreham Courts housing development in Admirals Way at the south end of the Owles Terrace site. This area is directly adjacent to Area C.
41. There are examples of other ongoing incidents on similar Council owned former landfill sites around the City mainly utilised for the Council's housing portfolio, some of which were the subject of a remediation programme four years ago. These will continue to demand the ongoing financial commitment of the Council to mitigate and remediate incidents which, in turn, will continue to erode any financial margins which were initially contemplated from development or sale of such sites. These factors, the inevitable negative press comment, and the Council's ongoing legal liability are compelling reasons in favour of retaining these sites as reserve or recreation reserve areas. Examples of this are the sites at Jeffreys Road, the former Westminster Street Yard and Ferrymead Park, where this approach has been adopted successfully with significant community benefit.

Development Constraints and Options

42. Several previous attempts to sell areas of the wider Owles Terrace site proved unsuccessful largely due to the inherent risk and costs associated with mitigating potential contamination issues on the site. Development options for the site, and specifically, Areas A and B, (and more recently Area C) were re-visited with due consideration being afforded to:
 - (a) The (impractical) option to fully remediate the site (remove all contaminated material) – estimated cost \$10,000,000. (the remediation cost for Area C alone is estimated to be in the region of between \$1,000,000 to \$3,600,000).
 - (b) The additional requirement arising from the 2007 MWH report which recommended 'trenching' around Area B (and, similarly, Area C) 'to prevent gas migration from the refuse layer into Area B (or Area C); minimum cost \$200,000'. It is important to stress that MWH consider there is no guarantee that this solution will work in practice.
 - (c) Where building is contemplated, the additional minimum costs associated with gas protection measures and management plans designed to reduce the risks associated with potential contamination events.
 - (d) The ongoing effect on land and building values of the sites landfill stigma and contamination uncertainty.
43. The 2008 MWH report confirms that these factors affecting the development potential of Areas A and B apply equally to Area C.
44. A further issue for potential developers of Area C (over and above the significant extraordinary costs for Areas A and B outlined above) is the requirement to secure (1) a City Plan zone change, and; (2) the revocation of Area C's Reserve status, in order to permit residential development on land which is currently zoned O2 (Recreation and Open Space Reserve) and vested in the Council as reserve in trust for recreation. The time and cost investment associated with this process is considerable and the outcome uncertain (refer paragraph 51 and 52 below).

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45. Unsolicited interest in Area C and the wider site continues to be registered from developers from time to time. This is to be expected given the relative shortage of similarly large sized sections in the City and the perceived opportunities associated with its development for residential purposes. However, the reality for third party developers is that the combined effect of high remediation costs, reduced land and building values, 'extraordinary' costs and ongoing risk, reduces margins and profit levels to an uneconomic level. As reported in the 11 October 2007 report to the Council, Housing New Zealand (for low cost housing) and a private developer (for residential subdivision purposes - introduced through the Council's Strategic/Economic Support Unit) tested the market but subsequently withdrew their interest for the reasons outlined above.
46. These qualifications would apply equally to any other potential options for Area C, for use as elderly persons housing, childcare facilities and so on or for sale to Ngai Tahu or any other parties.
47. The contaminated nature of the site is also at odds with the concept of developing a residential eco-village type development on the site which, typically, contemplates a high level of self-sufficiency in terms of garden produce, water supply and so on, which would not be possible given the potential hazards associated with the site. The alternative option of developing a (presumably non-residential) 'showcase' facility designed to provide people with the opportunity to visit, and view first hand, the principles of the eco-village concept at work, would require a significant number of paying patrons to make the venture feasible. Some extensive market research would be required to test this.

Council Liability

48. With specific regard to the Owles Terrace site legal opinion confirms that it is '*difficult to assess with accuracy the potential causes of action against the Council and the exact risk of liability*'...and that...'*the existence of an indemnity does not obviate its legal or moral responsibilities to ensure that the land is safe for subsequent residents and users*'.

Area C – Resolution 1 (e)

49. Resolution (1)(e) of Council dated 11 October 2007 resolved to approve:

The investigative work necessary to establish the viability of, and options for, residential development on 'Area C'. This includes (1) an independent soils report to establish the composition, and status, of Area C, and (2) the process (including timeframe and cost) for rezoning Area C to permit residential development;

50. With regard to (1), the independent soils report into Area C by MWH (2008) has established that Area C is significantly the same as the rest of the Owles Terrace site, in respect to which Council has previously resolved (in October 2007) to prevent residential development and to include the site as an integral part of the proposed riverside park.
51. If the Council were to reverse this rationale and resolve to allow residential development on Area C (refer resolution 1 (e) (2) above) a City Plan change would be required to accommodate this. There are a number of issues to be considered in this regard.
 - (a) **City Plan Zone Change** This would involve reversing a previous commissioners decision which included Area C. In 1998, the Council applied to have Area C re-zoned from Open Space Reserve to L1 to permit residential development. Following submissions, and in response to strong public opposition against residential development at the southern end of the site (Area C), the commissioner ruled against residential development on Area C and confined the new L1 residential zone to the northern end of the Owles Terrace site (refer Attachment 1).

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- (b) **Revoke Reserve Status** A concurrent, separate process would be required to uplift Area C's Recreation and Open Space Reserve status which, like the City Plan change process, would be subject to statutory process, public submission and objection.
- (c) **Process – Timeframe** The City Plan process would be publicly notified and if, as seems likely, it is subject to appeal, it could take three to four years for a decision to be confirmed. Typically, even where no appeal is involved, the process could take 18-24 months to complete plus a further six months to register and execute the re-designated certificate of title. The process would include: Environmental Impact Assessment; initial consultation process; recommendation to the Council for approval to proceed; City Plan team to prepare full text for a plan change (assessment made against the Resource management Act/City Plan provisions); consultation and a full hearing in the Environment Court; possible appeal process; Minister's approval; Department of Conservation approval, and; if successful, the full preparation, registration and execution of title documentation of title documentation through the Crown/Land Information New Zealand. The process for reserve revocation, which would run concurrently, would also be subject to submission and objection.
- (d) **Process – Cost** We are advised by David Mountfort (City Plan Team Leader) that estimated costs for the City Plan change process would be in the order of \$50,000 to \$100,000. This assumes there is no appeal and excludes Council staff time and costs.
- (e) **LTCCP** The Area C plan change is not currently budgeted for and as such, the Council's approval would be required to (1) extend the City Plan Team's priority project programme and funding to include the plan change work, and; (2) underwrite the cost of the City Plan change process.

52. We are advised by David Mountfort that approval for the Plan Change would not be a foregone conclusion.

THE OBJECTIVES

- 53. Until recently Area C was the only area of the wider Owles Terrace site which had not been subjected to an independent soils investigation report. Completion of the 2008 'Area C' report by MWH has addressed this shortfall.
- 54. In the context of the site contamination, legal considerations, development constraints and Council liability issues relating to the site (as discussed in paragraphs 28-31 above) recent Council resolutions have resolved to prevent residential development on the Owles Terrace site (excluding Area C) in favour of its retention as fee simple/reserve land and its development as a riverside park.
- 55. These previous resolutions, the fact that Area C is 'significantly the same' (in terms of sub-surface material) as the rest of the Owles Terrace site, the previous contamination and subsidence issues experienced on the adjacent Admirals Way site, and, the significant time, cost and political issues associated with the City Plan re-zoning and reserve revocation processes, have provided the context within which future use options for Area C have been considered (below).

THE OPTIONS

Option 1

- 56. **Maintain the status quo** Area C is currently grassed down as an open (to the public) space reserve subject to minimum standard maintenance provisions. As such it is a reasonably tired and isolated asset which is likely to remain so without a positive, strategic plan for its future development. As a minimum risk mitigation strategy MWH recommend that the grass coverage across the site is maintained and any bare patches of soil are re-seeded.

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Option 2

57. **Sale of Areas C for development and/or subdivision** This option envisages sale of the site to a third party for subsequent development or sub-division. The mitigation, legal and financial issues associated with the contaminated nature of the site seriously undermine this as a feasible, and prudent, option for the Council. In the case of Area C there is also the additional, and significant, time, cost and public consultation issues inherent in attempting to secure a plan change and reserve revocation to permit residential development, either for the Council or the developer.
58. The risk of liability for any contamination issues sits with the Council in perpetuity, irrespective of whether it retains or sells the land. MWH has indicated that the risk of long term contamination incidents being experienced on the site cannot be entirely discounted given the unique flushing effect associated with the site, which, in practice, may also potentially render the recommended remediation measures impractical. Repeated attempts to sell the site in the open market have proved unsuccessful due to the 'extraordinary' costs and risks associated with it.
59. Owles Terrace is similar, in some respects, to a number of other Council-owned landfill/contaminated sites in Christchurch where, for many years, the Council grappled with the issue of whether to sell/develop prior to deciding to confirm future use as a park; an outcome which, arguably, is the best, and least risky, outcome for these sites.

Option 3

60. **Council as Developer of Area C** This option envisages the Council retaining Area C in fee simple and assuming the role of developer, with potential to promote low cost housing, elderly persons housing, childcare centre, eco-village, other potential 'community' uses and so on. The factors affecting development are similar to those outlined above in Option 2, although the absence of an external developer (and developers margin) provides the potential of a greater financial return to the Council.
61. However, the 'extraordinary' and potentially unexpected costs associated with mitigating contamination related issues during and after construction has the potential to seriously erode any anticipated development returns. There is no apparent interest from City Housing in this option and Transport and Greenspace has indicated that it opposes any development on the site (other than as a reserve) given the uncertainty regarding contamination and its implications on potential returns and future legal and financial liability.
62. Developing the site and/or leasing facilities to third parties (for elderly persons, childcare or other purposes) carries with it the issue of public perception associated with developing community or other facilities on a known contaminated site.
63. The Council would also be required to commit to the substantial time and costs associated with securing a plan change and reserve revocation to permit residential development.

Option 4

64. **Development of Area C as an integral part of the wider Riverside Park** The independent soils report by MWH (2008) has confirmed that the site contamination, legal considerations, development constraints and Council liability issues which applied to Areas A and B apply equally to Area C. This, and the considerable time, cost and political fallout arising from the required City Plan change to permit residential development on Area C, supports the integration of Area C as an integral part of the concept plan to develop Owles Terrace as a riverside park.

2 Cont'd

65. This option is supported by the asset owning unit, Transport and Greenspace, who would drive the day-to-day operation and long term development of the riverside park as envisaged by the (Council approved) Concept Plan and Reserve Development Programme which includes:

Stage 1: (Year 1)

- Integration of Area A with the Council yard/buildings and existing Power Boat Club building/ground lease area
- Clean up of the former Council yard area: removal of stockpiles, bins, general refuse
- Upgrade of existing storage, 'administrative' and open storage buildings
- Relocation of fences to create the general footprint and 'leased' area demarcations envisaged by the concept plan, including the integration of the Power Boat Club building and ground leased recreation reserve
- Formalise lease agreements with Surf Life Saving Canterbury and the Waka Ama group (and others if required).

Stage 2: (Years 2 – 4)

- Integration of the wider reserve (including Area B and Area C) with the Stage 1 area
- Remove rubbish, stockpiles, fences: tidy the wider Owles Terrace site
- Topsoil to required areas; grass down reserve; general conditioning of the site
- Open the Withells Island Riverside Park to the public.

Stage 3 (Year 5 onwards)

- Further improvements to park amenities; additional commercial leasing ventures: as demand dictates.

66. The site (excluding Area C), which had remained vacant, largely unmaintained and closed to the public for many years, is now benefiting from these incremental enhancements. The former Council compound has been tidied of rubbish, stockpiles and redundant structures, access to the river from the compound for water-based users has been substantially enhanced through the provision of an all-weather vehicular access track and pontoon and the existing buildings are in the process of being improved to a 'tenant ready' condition. Negotiations are underway to place the existing users on a more formal lease arrangement.

THE PREFERRED OPTION

Option 4

67. Years of uncertainty regarding the use of the site arose largely as a result of the extraordinary issues associated with the likely nature, extent and long term implications arising from the former use of the site as a landfill. These factors will always be open to interpretation but what is not in dispute is the fact that whether the Council sells or develops Area C the liability for any future contamination incident(s) lies fairly and squarely with the Council, in perpetuity.
68. Repeated attempts to secure alternative owners/developers and development options for the site (excluding Area C) proved unsuccessful and, arguably, given that the issues surrounding Area C are identical, this will likely be the case for Area C even if a decision is made to re-zone the land to permit residential development.

2 Cont'd

69. Recent Council resolutions have recognised these legal, development and other impediments and resolved to prevent residential development on the balance of the site (excluding Area C) in favour of its development as a vibrant water-based riverside park. This has been instrumental in reversing the long term inertia associated with the Owles Terrace site to the extent that a number of approved 'Stage 1 Concept Plan' initiatives are now underway which will ultimately result in Owles Terrace being open to, and available for the enjoyment of, the public for the first time in many years.
70. For these reasons there is a strong legal, commercial and community case for supporting this option.

PART B - REPORTS FOR INFORMATION



3. DEPUTATIONS BY APPOINTMENT

3.1 AVON/HEATHCOTE ESTUARY IHUTAI TRUST

Linda Rutland and Alex Drysdale representing the Avon/Heathcote Estuary Ihutai Trust, addressed the Board and outlined the steps required and the processes being initiated by the Trust to have the estuary classified as a Wetland of International Importance under the Ramsar Convention on Wetlands.

The Trust invited the Board to provide a letter of support for the project.

The Chairman thanked the Trust's representatives for their presentation.

The Board **received** the information and the Chairman advised that the request would be discussed with staff and would come back to the Board in the near future.

4. PRESENTATION OF PETITIONS

Nil.

5. NOTICES OF MOTION

Nil.

6. CORRESPONDENCE

The Board **received** tabled items of correspondence from the Bexley Residents' Association dated 9 October and 11 November 2008. It was **agreed** that the correspondence be referred to the appropriate staff for consideration and response back to the Association.

7. BRIEFINGS

Nil.

8. RESIDENTS ASSOCIATIONS/COMMUNITY GROUPS

The New Brighton Residents' Association had been invited to update the Board on current activities and issues, however, owing to the recent passing of Mr Steve Luke, the group's attendance was deferred to a future meeting.

The Board expressed condolences to the Association for its loss.

9. COMMUNITY BOARD ADVISER'S UPDATE

The Board **received** information from the Community Board Adviser on forthcoming Board related activities over the coming weeks.

10. BOARD MEMBER'S QUESTIONS

Nil.

**PART C - REPORT ON DELEGATED DECISIONS
TAKEN BY THE BOARD**

11. CONFIRMATION OF MINUTES – 3 NOVEMBER 2008

The Board **resolved** that the minutes of its ordinary meeting held on 3 November 2008, be confirmed.

12. BREEZES ROAD - PARKING RESTRICTIONS

The Board considered a report seeking approval to amend and ratify various parking restrictions on Breezes Road between Wainoni Road and Avondale Road. The proposal also involved associated cycle lanes, bus stops and short-term school pick-up and drop-off areas.

The Board also considered the matter of including parking limit lines (parking ticks) for vehicle entrances along the affected section of Breezes Road.

A Board recommendation to the Council on this aspect is detailed in Clause 1 (Part A) of these minutes.

The Board **resolved** to approve:

- (a) That all the existing parking restrictions on the north-west side of Breezes Road commencing at its intersection with Wainoni Road and extending in an north-westerly direction to the intersection of Avondale Road, be revoked.
- (b) That all the existing parking restrictions on the south-west side of Breezes Road commencing at its intersection with Wainoni Road and extending in an north-westerly direction to the intersection of Avondale Road, be revoked.

South West Side of Breezes Road

- (c) That the stopping of vehicles be prohibited at any time on the south-west side of Breezes Road commencing at the intersection with Wainoni Road and extending in a north-westerly direction for a distance of 20 metres.
- (d) That a "bus stop" be installed on the south-west side of Breezes Road commencing at a point 35 metres north-west from its intersection with Wainoni Road and extending in a north-westerly direction for a distance of 19 metres.
- (e) That the stopping of vehicles be prohibited at any time on the south-west side of Breezes Road commencing at a point 85 metres north-west from its intersection with Wainoni Road and extending in a north-westerly direction for a distance of 145 metres.
- (f) That a "bus stop" be installed on the south-west side of Breezes Road commencing at a point 230 metres north-west from its intersection with Wainoni Road and extending in a north-westerly direction for a distance of 10 metres. *(Please note that although this appears short there are vehicle entrances either side which provide adequate manoeuvring area.)*
- (g) That a "bus stop" be installed on the south-west side of Breezes Road commencing at a point 384 metres north west from its intersection with Wainoni Road and extending in a north-westerly direction for a distance of 17 metres.
- (h) That the parking of vehicles be restricted to a maximum period of five minutes, 8am-9am and 2.30pm-3.30pm Monday-Friday, school days only, on the south-west side of Breezes Road commencing at a point 401 metres north-west from its intersection with Wainoni Road and extending in a north-westerly direction for a distance of 28 metres.

12 Cont'd

- (i) That the stopping of vehicles be prohibited at any time on the south-west side of Breezes Road commencing at a point 429 metres north-west from its intersection with Wainoni Road and extending in a north-westerly direction for a distance of 44 metres.
- (j) That the parking of vehicles be restricted to a maximum period of 5 minutes, 8am-9am and 2.30pm-3.30pm Monday-Friday, school days only, on the south-west side of Breezes Road commencing at a point 473 metres north-west from its intersection with Wainoni Road and extending in a north-westerly direction for a distance of 24 metres.
- (k) That the stopping of vehicles be prohibited at any time on the south-west side of Breezes Road commencing at a point 521 metres north-west from its intersection with Wainoni Road and extending in a north-westerly direction for a distance of 19 metres.
- (l) That the stopping of vehicles be prohibited at any time on the south-west side of Breezes Road commencing at the intersection with Pembroke Street and extending in a north-westerly direction for a distance of 66 metres.
- (m) That a "bus stop" be installed on the south-west side of Breezes Road commencing at a point 72 metres north-west from its intersection with Pembroke Street and extending in a north-westerly direction for a distance of 18 metres.
- (n) That the stopping of vehicles be prohibited at any time on the south-west side of Breezes Road commencing at a point 96 metres north-west from its intersection with Pembroke Street and extending in a north-westerly direction for a distance of 50 metres.

North West Side of Breezes Road

- (o) That the stopping of vehicles be prohibited at any time on the north-west side of Breezes Road commencing from its intersection with Avondale Road and extending in a south-easterly direction for a distance of 185 metres.
- (p) That a "bus stop" be installed on the north-west side of Breezes Road commencing at a point 185 metres south-east from its intersection with Avondale Road and extending in a south-easterly direction for a distance of 11 metres. *(Please note that although this appears short there are vehicle entrances either side which provide adequate manoeuvring area.)*
- (q) That the stopping of vehicles be prohibited at any time on the north-west side of Breezes Road commencing at a point 100 metres south east from its intersection with Avondale Road and extending in a south-easterly direction to its intersection with Eglinton Street.
- (r) That the stopping of vehicles be prohibited at any time on the north-west side of Breezes Road commencing from its intersection with Eglinton Street and extending in a south-easterly direction for a distance of 36 metres.
- (s) That the stopping of vehicles be prohibited at any time on the north-west side of Breezes Road commencing at a point 83 metres south east from its intersection with Eglinton Street and extending in a south-easterly direction for a distance of 75 metres.
- (t) That the stopping of vehicles be prohibited at any time on the north-west side of Breezes Road commencing at a point 208 metres south-east from its intersection with Eglinton Street and extending in a south-easterly direction for a distance of 45 metres.
- (u) That a "bus stop" be installed on the north-west side of Breezes Road commencing at a point 253 metres south-east from its intersection with Eglinton Street and extending in a south-easterly direction for a distance of 18 metres.
- (v) That the stopping of vehicles be prohibited at any time on the north-west side of Breezes Road commencing at a point 324 metres south-east from its intersection with Eglinton Street and extending in a south-easterly direction to its intersection with Wainoni Road.

13. PROPOSED ROAD NAMING – SUBDIVISION OFF HORSESHOE LAKE ROAD

The Board considered a report setting out a request received from the subdivider (Ngai Tahu Property Limited) for a review of the Board's decision made on 20 October 2008 in respect of the naming of a new road in the subdivision off Horseshoe Lake Road.

Tina Lomax moved, seconded by Chrissie Williams that the Board approve the subdividers preferred name of 'Waikakariki Place', and rescind its decision made on 20 October 2008 regarding the name Puna Ora Place.

The motion was put to the meeting and declared **lost** on division No 1 by four votes to three, the voting being as follows:

For (3): David East, Tina Lomax, Chrissie Williams.
Against (4): Nigel Dixon, Tim Sintes, Gail Sheriff, Linda Stewart

Further, the Board **resolved** that the previously approved road name be corrected to **Te** Puna Ora Place.

14. CHRISTCHURCH GARDEN CITY TRUST – FUNDING REQUEST

The Board considered a report detailing a funding request from the Christchurch Garden City Trust for a flowering plant display to be provided in the New Brighton Mall over the summer period.

The Board **resolved** to allocate \$7,580 from its 2008/09 Discretionary Response Fund to the Christchurch Garden City Trust to provide planter boxes for a flowering plant display in the New Brighton Mall as a trial over the coming summer period.

15. BURWOOD/PEGASUS YOUTH DEVELOPMENT FUNDING SCHEME- APPLICATIONS

The Board considered two reports from eight applicants seeking funding assistance from the Board's Youth Development Funding Scheme.

The Board **resolved** to approve the following allocations from its 2008/09 Burwood/Pegasus Youth Development Fund:

- (a) Holly and Ruby Hunt \$200 each, to support their attendance at the Showcase Dance Championships in Australia from 13 to 19 January 2009.
- (b) Levi Cunniffe and Jason Copley \$100 each, to support their attendance at the New Zealand Student Jump Jam Leader Finals in Auckland from 20 to 21 November 2008.
- (c) Daniel Parker \$200, to represent St Bede's College at the Southern Skies Cricket Development Tournament in Brisbane from 7 to 14 December 2008.
- (d) Elijah Hapi and Uriah Solheim \$200 each, to represent the South Island Under 17 Basketball Team at the Basketball Pacific Slam in Sydney from 10 to 20 January 2009.
- (e) Marseille Lucas \$500, to support her student exchange to Germany in December 2008 and January 2009.

16. COMMUNITY BOARD - CODE OF CONDUCT

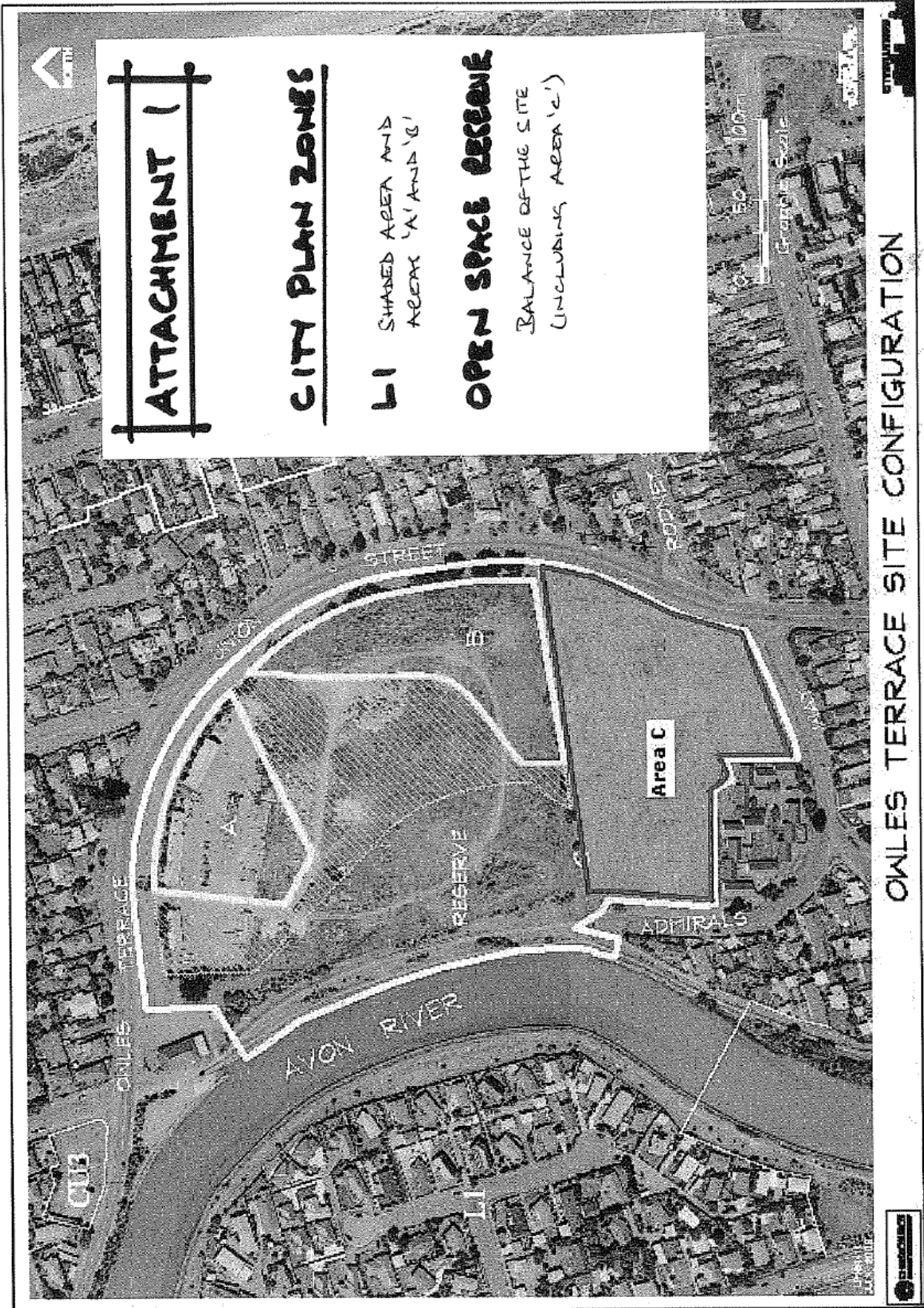
The Board considered a report from the General Manager Regulation and Democracy Services regarding the adoption of a revised Community Board Code of Conduct.

The Board **resolved** to adopt the revised Community Board Code of Conduct, with immediate effect.

The meeting concluded at 7.25pm

CONFIRMED THIS 1st DAY OF DECEMBER 2008

**DAVID EAST
CHAIRMAN**



11. 12. 2008

Burwood/Pegasus Community Board 17.11.2008

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ATTACHMENT 2 TO CLAUSE 2

ATTACHMENT 2



Meeting the challenge

Christchurch City Council

Report

Owles Terrace Site Investigation

Area C

September 2008





Christchurch City Council
Owles Terrace, New Brighton
Site Investigation – 'Area C'

Executive Summary

Background

- MWH has undertaken an investigation at a site known as "Area C; off Owles Terrace, South New Brighton, Christchurch. Area C is currently a reserve/park under the jurisdiction of Christchurch City Council. The site is located immediately south of a known closed landfill which has been extensively investigated and reported on in the past by MWH New Zealand Ltd. These areas are referred to in the report as Areas "A and B" (see Figure 1 Appendix A).
- Historical records show that a meander of the Avon River originally looped along what is now Owles Terrace and the eastern boundary of the site. This loop in the river was reclaimed and used as a landfill in the early part of the 20th century.
- The investigation included the excavation of 12 test pits and the collection of soil samples for laboratory analysis to determine concentrations of contaminants. All test pits were excavated to a maximum depth of 4mbgl, or until groundwater was encountered. The geology exposed within each test pit was logged in detail, and the identification of any waste materials or signs of landfill operations was noted.

Soil Contamination

- Fill material, (substantially non-organic) has been identified across the Area C site. Laboratory analysis of the samples has identified soils with elevated concentrations of Polycyclic Aromatic Hydrocarbons (PAH); specifically benzo[a]pyrene (BaP), within the surface soils above relevant residential guideline criteria. Elevated concentrations of BaP and arsenic, above residential guidelines were also detected in deeper soil samples.
- It is considered that further treatment / remediation would be required prior to any future residential development. Such remediation may take the form of the excavation of the top 500mm of soil across Area C and replacement with clean imported fill. A non-biodegradable filter cloth should be placed at the base of the excavation prior to backfilling to provide a distinct separation zone. This will ensure that any future residents can participate in 'normal' outdoor activities without being exposed to contaminants that are above the human health protection guidelines. A remediation strategy of this nature is estimated to cost in the order of NZ\$3,600,000.
- As an alternative remediation method; non-biodegradable filter cloth could be placed over the existing ground surface before placing 500mm of clean top soil above. This would provide the same level of protection to future residents as the excavation of the soil but the cost would be significantly less. This remediation method is estimated to be in the order of NZ\$1,000,000.

Landfill Gas

- No landfill gas monitoring was carried out within the footprint of Area C however, landfill gas monitoring has been undertaken in Area A and results show that the refuse layer is generating landfill gas. Migration of this gas into Area C is possible, as is generation of landfill gas within Area C.
- Given the proximity of Area C to Area A, mitigation measures for the migration of landfill gas would be necessary for any future development within Area C. The cost of capturing landfill gas before it enters Area C is estimated to be in excess of NZ\$200,000 and may not, in practice, be practical. On the basis that this isolation is not possible, the same landfill gas mitigation measures would be required for residential development within Area C, whether it was generating landfill gas or not.

ATTACHMENT 2 TO CLAUSE 2 Cont'd



Christchurch City Council
Owles Terrace, New Brighton
Site Investigation – 'Area C'

Foundation Issues

- The most significant foundation issues in Area C identified by the investigations were the presence of compressible fill materials, compressible natural peat and liquefiable natural sand layers. Due to these issues we recommend that all significant structures constructed on the site adopt piled foundations.
- The need for piling within Area C is highlighted by findings from a building assessment carried out at the adjacent Shoreham Courts housing complex in April 2002. Significant damage has occurred to these buildings, with the unpiled floor slabs settling in the order of 50mm relative to the piled external walls. Repair attempts at floor re-levelling have been made however; cracking of this re-levelled floor indicates that ground movement is still ongoing. This movement is caused by the ongoing decomposition of waste material and is consistent with observations at other Christchurch City Council landfill sites which are of similar age and composition to the landfill at Owles Terrace.
- The site is highly likely to be prone to lateral spread in a significant earthquake due to the presence of liquefiable material near the riverbank along the western portion of the site. Mitigation measures recommended include the adoption of piled foundations and an appropriate construction set-back distance from the river bank.
- Christchurch City Council Sub-Division Unit will need to determine if the mitigation measures proposed in this report are sufficient for it to grant consent under Section 106 of the Resource Management Act.
- The test pitting investigation, soil logging and laboratory analysis of the soil samples confirm that the sub-surface material encountered within Area C is significantly the same as previously discovered at Owles Terrace. It is therefore prudent to conclude that Area C will need to be subjected to similar mitigation measures as those proposed for Owles Terrace.