

## Report / decision to determine notification of a resource consent application

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

**Application number:** RMA/2022/3611  
**Applicant:** Braeburn Property Limited  
**Site address:** 320 and 320A Cumnor Terrace  
**Legal description:** Lot 301 DP 463785, Lot 302 DP 473298 and Lot 305 DP 525615  
**Zone:**  
**District Plan:** Industrial General (Portlink Industrial Park)

### Overlays and map notations:

**District Plan:** Flood Management Area, Fixed Minimum Floor Overlay within the Flood Management Area, Liquefaction Management Area, Christchurch International Airport Protection Surfaces, Waterway Setback, Ngā Wai Lakes, Rivers and Streams, Portlink Industrial Park Outline Development Plan

**Activity Status - subdivision:** Restricted Discretionary  
**Activity Status - land use:** Discretionary  
**Activity Status - NESCS:** Controlled  
**Activity Status - 221(3):** Discretionary

**Description of application:** Three lot fee simple subdivision, associated earthworks and establishing industrial activities with activity standard breaches

### Proposed activity

The proposal is described in paragraphs 14-25 of the assessment of effects contained in the application report. I have summarised the proposal below:

- A three lot fee simple subdivision (boundary adjustment) is proposed. Lot 1 is to contain industrial activities. Lots 2 and 3 are proposed to be vested in Council as esplanade reserve. The net site areas are 10.674ha (Lot 1), 1.199ha (Lot 2) and 0.768ha (Lot 3).
- No changes to the access or existing servicing are proposed in this application. Lot 1 is fully serviced.
- The applicant is proposing to establish industrial activities within the Landscape and Stormwater Area (Green Space) shown on the Portlink Industrial Park Development Plan (ODP). This includes establishing sealed hardstand, bunding, fencing and buildings/outdoor storage areas within this area. This also includes a 2.4m high chain link security fence along the outer edge of the sealed area and a 2.4 metre high solid timber acoustic fence on the top of the bund along the northern boundary. The remainder of the Landscape and Stormwater Area (Green space) is to be landscaped<sup>1</sup>.
- The bunds within the Landscape and Stormwater Area (Green space) are located within the northern and south western areas of the application site. The bund slopes at a grade of approximately 1:2 with a metre wide crest, they are 2 metres in height and have an approximate width of 10 metres.
- The applicant is also proposing industrial activities, buildings, and outdoor storage areas<sup>2</sup> to exceed the 11m building height restriction overlay of the ODP. A staggered height approach is proposed from 11.6m within the in the Landscape and Stormwater Area (Green Space), 13.6m at the start of the 11m height overlay to a final height of 18m. This is to be undertaken as a global land use consent.
- Earthworks are proposed to provide drainage along the Haulage Route and established the required landscaping including the construction of a footpath.<sup>3</sup>

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

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

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

- Parts of the proposal are retrospective in nature including sealed areas, earthworks, bunding along the northern and southwest areas, waterway setback intrusions as well as buildings/structures that exceed height requirements.

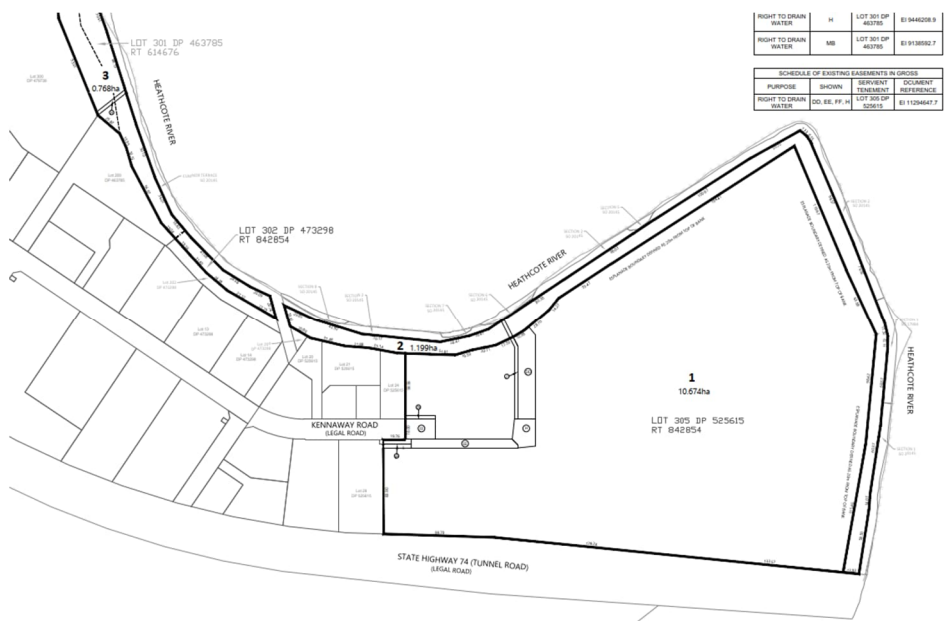


Figure 1: Proposed subdivision plan

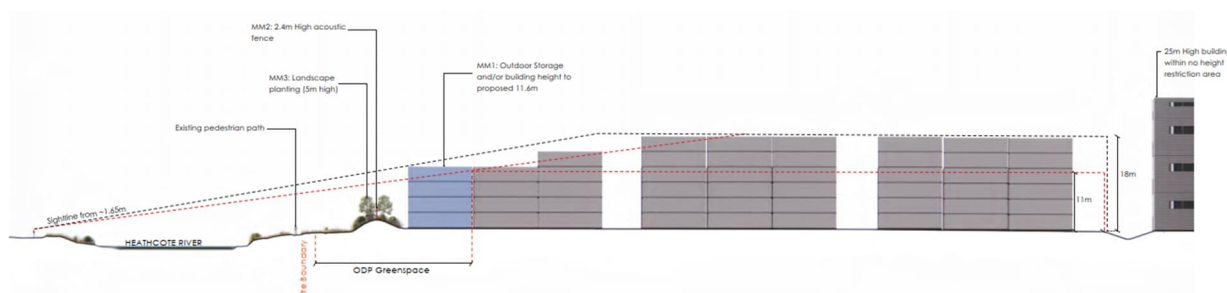


Figure 2: Proposed height intrusion cross section (intrusion down in the black dotted line)

A summary of consents on the underlying land is attached in **Appendix 1** of this report.

## Landscaping changes

Since the lodgement of the application, the applicant has been working with Council to resolve landscaping issues where possible in terms of ecology and recreation values. These have been kept separate to the visual amenity assessment.

The changes include:

- The northern area is focused on retaining lizard habitat and providing visual and acoustic mitigation for the containers via a bund and acoustic fence. The proposed alignment of the footpath is at the toe of the existing bund to provide a greater riparian margin and an attempt to disturb less lizard habitat. At the base and on the slopes, the bund is to contain less dense vegetation in order to provide sunny habitat for lizards<sup>4</sup>. Dense vegetation is proposed at the top of the bund for visual mitigation.
- The northwest area moving to the south west bund will be focused on creating a large riparian margin buffer through dense planting to provide shading for the waterway and provide for associated ecology.
- As the reserve moves further south, the focus becomes to retain quality bird habitat. Retention of dead trees where safe is optimal in this area as this is required for roosting and a large separation is created between the shared pathway and bird habitat.
- At the southern entry to the first flush wetland, the site vegetation is likely to contain plants which can survive and thrive in drier conditions.
- The final area of the reserve in the south will be a general enhancement area which takes into account the dry nature of the area.

<sup>4</sup> A permit for disturbing and/or destroying lizards is required to be applied for under the Wildlife Act 1953.

The purpose of this report is to determine whether the application is processed on a non-notified, limited notified, or publicly notified basis, pursuant to Sections 95A and 95B of the Resource Management Act.

## Specialist Input

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

Officer	Position	Appendix
Jeremy Head	Senior Landscape Architect (Contractor)	Appendix 2
Chris McClure	Herpetologist	Appendix 3
Katie Noakes	Waterway Ecologist	Appendix 3
Andrew Crossland	Ornithologist	Appendix 3
Peter Barnes	Senior Open Space Planner	Appendix 3
Sheryl Keenan	Stormwater Planning Engineer	Appendix 4
Yvonne McDonald	Senior Subdivision Engineer	Appendix 5
Agnes van der Erf	Environmental Health Officer	Appendix 6
William Reeve	Senior Associate Acoustics (Contractor)	Appendix 7

## Description of site and existing environment

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

## Activity status

### Christchurch District Plan

The site is zoned Industrial General.

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

### Activity Status – District Plan

#### Land use rules

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

Activity status rule	Standard not met	Reason	Matters of control or discretion	Notification clause
5.4.1.5 RD1	5.4.1.1 P1 New buildings located within the Fixed Minimum Floor Level Overlay in the Flood Management Area	The proposed minimum floor level of the proposed buildings is lower than the required minimum level of 12.3m RL <sup>5</sup>	Discretion limited to: - Setting of minimum floor levels - Mitigation of flooding effects  Assessed against the criteria in 5.4.1.5 RD1 b.	Must not be limited or publicly notified
5.4.1.5 RD2	5.4.1.1 P14 - Filling or excavation within the Flood Management Area in commercial and industrial zones	The height of filling above ground level will exceed 0.3m. The volume of filling above ground level will exceed 20m <sup>3</sup> .	Timing, location, scale and nature of earthworks Earthworks method Mitigation of effects as they impact flooding and surface drainage Criteria in 5.4.1.5 RD2 b.	No clause

<sup>5</sup> In Chapter 5, Rule 5.4.1.1 P16 permits the outdoor storage of transiting shipping containers in the industrial zone in the Flood Management Zone. Although they are permitted in this standard, it does not restrict containers from achieving the required finished floor level of the zone if they are classified as buildings (which is the opinion of Council officers). In addition, Rule 5.4.1.1 P1 does not exclude containers from meeting the required fixed minimum floor level.

Activity status rule	Standard not met	Reason	Matters of control or discretion	Notification clause
		<p>The total volume of filling and excavation will exceed 50m<sup>3</sup>.</p> <p>Earthworks undertaken to form a bund and filling of the haulage road and future works will exceed the depth and volume specified above<sup>6</sup></p>		
6.1.5.1.3 RD1	6.1.5.1.1 P1	<p>Any activity listed in Rule 6.1.5.1.1 P1 that exceeds the noise limits in the activity specific standards by 10 dB or less.</p> <p>The existing activity exceeds noise standards along Ferry Road.</p>	Rule 6.1.8	No Clause
6.6.4.4 D1	N/A	<p>Rule 6.6.4.4 (D1): Several activities within the water body setback are discretionary given the site is adjacent a Site of Ecological Significance (the Heathcote River and Tributaries, site number SES/LP/25).</p> <p>The activities within the water body setback include:</p> <ul style="list-style-type: none"> <li>o Earthworks relating to the construction of the southwest bund and filling of the haulage road and northern bund,</li> <li>o An acoustic fence on top of the northwest bund which will have a solid structure greater than 20% (100% proposed), and</li> </ul>	N/A	No clause
8.9.2.3 RD1	8.9.2.1 P1 a. Earthworks volume and depth b. Depth of earthworks c. Earthworks gradient	<p>The proposed earthworks will exceed the 50m<sup>3</sup>/ha maximum volume in Table 9)</p> <p>The proposed earthworks will exceed the 0.6m.</p>	8.9.4 Matters for discretion: 8.9.4.1 - Nuisance 8.9.4.2 - Resources and assets (versatile soils) 8.9.4.3 - Land stability 8.9.4.6 - Amenity 8.9.4.7 - Indigenous biodiversity, natural character and landscape features 8.9.4.9 - Sites of Ngāi Tahu cultural significance	8.9.1 a. - Must not be publicly notified

<sup>6</sup> It is unknown what the exact volume of earthworks is proposed or has already been undertaken. An as-built has been provided to show the finished levels of this area. Additional earthworks will be required to ensure the proposed reserve is appropriately graded to the Heathcote River and to construct the proposed footpath alignment along the northern and south western area.

Activity status rule	Standard not met	Reason	Matters of control or discretion	Notification clause
16.4.4.1.3 RD1	16.4.4.2.1 Maximum height of buildings	Any buildings and outdoor storage areas are proposed to exceed the 11m building height limit area in the Portlink Industrial Park Development Plan	16.71.1 – Maximum height of buildings and fencing or screening structure	Must not be publicly notified
16.4.4.1.3 RD1	16.4.4.2.3 Landscaped Areas	<p>The proposal does not comply with the requirements of 16.4.4.2.3.a.ii as outlined below:</p> <ul style="list-style-type: none"> <li>Only part of the footpath is being provided along the Northern Landscape and Stormwater Area (Green Space).</li> <li>The erection of buildings, bunding, fences, and sealing are proposing within the Landscape and Stormwater Area (Green Space) which is not for the purpose of landscaping, passive recreation or ecological enhancement.</li> <li>A footpath has not been provided within the stormwater facility which connects to the esplanade reserve.</li> <li>Three trees have been removed in the stormwater basin area which are protected under the ODP.</li> </ul>	16.7.1.7 16.7.3.2.2 – Landscaping in Portlink Industrial Park Development Plan	Must not be limited or publicly notified

### **Subdivision rules**

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

Activity status rule	Standard not met	Reason	Matters of control or discretion	Notification clause
5.5.2 C1	-	Any subdivision which creates a vacant allotment within the Liquefaction Management Area is classified as a controlled activity under Chapter 5	<p>Location, size and design of allotments, structures, roads, access, services or foundations as they relate to the liquefaction hazard;</p> <p>Timing, location, scale and nature of earthworks as they relate to the liquefaction hazard; and</p> <p>Liquefaction hazard remediation methods.</p> <p>Criteria in 5.5.2 C1 b.</p>	Shall not be limited or publicly notified.
8.5.1.2 C4	-	Subdivision to create allotments for reserves is classified as a controlled activity and the minimum net site area requirements do not apply.	8.7.3 - Allotments for access, utilities, roads and reserves	8.4.1.1

Activity status rule	Standard not met	Reason	Matters of control or discretion	Notification clause
8.5.1.3 RD2	8.5.1.2 C5	The subdivision shall be undertaken in accordance with the relevant development plan in terms of the key structuring elements.  Road access has not been provided to the east of the Kennaway Road extension (Private Road) <sup>7</sup>	8.7.4 – General Matters <sup>8</sup>	8.4.1.1
8.5.1.3 RD2	8.6.8 Wastewater disposal	The proposed wastewater disposal does not comply as a wastewater capacity certificate has not been provided	8.7.4 - General matters 8.8.6 - Servicing	8.4.1.1
8.5.1.3 RD4	-	Subdivision within a Flood Management Area is classified as a restricted discretionary activity.	8.7.4 - General matters 8.8.7 - Flood Management Area	8.4.1.1

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

#### National Environmental Standard

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

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

Activity status regulation	Regulation not met	Reason	Matters of control or discretion	Notification clause
Regulation 9(1) Controlled activities	Regulation 8(3) Disturbing soil	The volume of soil disturbed will exceed 25m <sup>3</sup> per 500m <sup>2</sup> (retrospectively).	Specified in Regulation 9(2)	Must not be publicly notified
Regulation 9(3) Controlled activities Blue.Dolphin1	Regulation 8(4) Subdividing or changing use	A Detailed Site Investigation exists and the report states that soil contamination does not exceed the applicable standard in Regulation 7.	Specified in Regulation 9(4)	Must not be publicly notified

#### Section 221(3) Partial Cancellation and Variation of Consent Notices

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

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

#### Consent Notice 9446208.13

This consent notice applied a minimum floor level of 11.80m RL on Lot 301 DP 463785, which includes the entirety of the application site. The District Plan has now superseded this requirement as the minimum floor level

<sup>7</sup> Rule 8.5.1.2 C5 only requires compliance with key structuring elements of an outline development plan in a subdivision which is contained in Chapter 15 or 16 (Industrial or Commercial zoning). Therefore, the non-compliances of the landscape area cannot be considered as part of the subdivision component of the application.

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

requirement is 12.3m RL. This consent notice is therefore proposed be cancelled in part to be removed from the application site. The consent notice also includes a specific foundation design component which is likely to be retained.

#### Consent notice 9138592.2 and variation 9750370.5

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

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

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

#### Consent notice 11294647.10

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

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

The proposal is not consistent with this requirement, therefore if the application is granted, the consent notice will need to be removed to avoid a clash.

#### **Noise**

The applicant is proposing a global consent to cover a range of permitted industrial activities which exceed the prescribed building height (including outdoor storage areas) and occupy part of the open space area. The applicant considers a noise assessment is not required in this application for the following reasons:

- The applicant is not applying for consent to authorise existing or future industrial activities within the site to exceed noise standards therefore compliance with noise standards should be assumed.
- The application site is leased to several tenants. Those tenants are required by way of the lease agreements to comply with all relevant statutes, ordinances, regulation and by laws which include the District Plan.
- Most of the RFI questions raised by Council Officers are in relation to the compliance matter and should not be addressed in this resource consent application. This should be addressed via enforcement.
- The Council does not need to assess components of an activity for which no resource consent is required as the District Plan has determined noise limits.

I consider that it is appropriate to assess noise as part of this application. There is an enforcement history with the existing activity which identifies noise non-compliances. It therefore needs to be confirmed whether the activities (including the different activities proposed) are compliant with noise standards and whether any adverse effects are generated.

I have received further commentary from Council's Legal Counsel confirming this position:

*“The application for consent frames the proposed activity as being for breach of specified rules. That is of course not an appropriate way to define a proposed activity under the RMA (Arapata Trust Ltd v Auckland Council [2016] NZEnvC 236). The RMA clearly contemplates that a consent authority may carry out its own assessment as to:*

- *The nature of a proposal;*
- *The consents required for the proposed activity;*
- *The activity status that applies to the proposed activity under the District Plan; and*
- *Whether it has adequate information to make an assessment of the effects of the proposed activity.*

*The container storage activity has potential adverse effects that include noise. The consent authority is appropriately seeking information about those potential adverse effects. That includes satisfying itself whether statements in the application about the proposed activity complying with permitted activity standards are likely to be correct.”*

The applicant has also received legal advice which is contrary to the above advice which is included in the application documentation (pages 367-368).

### Marginal non-compliance in noise

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

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

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

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

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

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

### **Overall activity status**

Overall, the application must be assessed as a Discretionary activity (being the most restrictive activity status).

## **Planning Framework**

### **District Plan Policy Context**

The relevant objectives and policies are listed in Chapters 5, 6.6, 8, and 16 of the District Plan. To provide context for the application, I have provided a general summary of their intent:

- Chapter 3 contains the strategic objectives which include enabling recovery and enhancement of the district, maintaining a strong relationship with Council and Ngāi Tahu mana whenua, providing a range of opportunities provided for business activities to establish and prosper, manage natural hazard risks, provide good urban growth, and protect and manage the natural and cultural environment. Objective 3.3.10 ensures recovery and long-term economic and employment growth through the provision of greenfield areas. Objective 3.3.14 notes any conflicts between incompatible activities are avoided where they may be significant adverse effects on the health, safety and amenity of people and communities.
- Chapter 4 objectives and policies outline that best practice approaches should occur for investigating land contamination. Any land contamination should either remediate or manage the land to ensure it does not pose a significant risk to human health or the environment.
- The objectives and policies in Chapter 5 are ensuring any development or subdivision are avoided if it poses an unacceptable natural hazard risk. They also ensure that any risk is mitigated appropriately and is not transferred to others. This includes managing liquefaction and inundation risk (fluvial and coastal).
- The waterway setback objectives and policies ensure that any development will either protect or enhance the values and functions of the water body and its riparian margins. This includes relevant ecosystems, water quality, natural character, amenity values, historic heritage, cultural values, and public/customary access.
- Policy 16.2.1.3 defines the Industrial General (IG) zone as “Recognise and provide for industrial and other compatible activities that can operate in close proximity to more sensitive zones due to the nature and limited effects of activities including noise, odour, and traffic, providing a buffer between residential areas and the Industrial Heavy Zone.”
- Overall, the zone and industrial zones are enabling of industrial activities while ensuring amenities of surrounding areas (including residential) are maintained. In particular, the IG zone is intended to become a buffer between industrial heavy zones and residential zones therefore must be compatible to operate



alongside both these zones. The objectives and policies of the industrial chapter anticipate adjoining/immediate residential zones will have a lower amenity level than other residential zones in the city. Overall, in my opinion, the level of effects determines the suitability of an activity, while taking into consideration that industrial activity should be enabled in industrial zones and that there is some anticipation of an amenity level that is less than that expected in a residential zone that doesn't border an industrial one for adjoining areas.

- Noise is managed by limiting sound levels - this includes lower noise standards during night hours to protect sleep and amenity of residential environments (as far as practicable), and specifying location, and duration of noisy activity,. The relevant policies are 6.1.2.1.1 and 6.1.2.1.2.
- The objectives and policies of Chapter 8 are enabling of development if it achieves good design and the anticipated outcomes of the zone. In particular, the objectives and policies give weight to the relevant following matters:
  - The recovery of the district.
  - The design of the subdivision including connections to employment, transport, services, and community facilities (including reserves). Any public open space networks need to be accessible and safe while protecting/enhancing ecological function and biodiversity.
  - The design shall recognise place, context, and setting (locality and district), values (cultural and natural) as well as good transport and infrastructure design.
  - Any earthworks effects created by development shall be avoided or appropriately mitigated, this includes nuisance, amenity, and health and safety.
  - Lastly any subdivision within a development plan must be achieve similar or better outcomes to those prescribed (Policy 8.2.2.9.c). The Outline Development Plan is discussed in detail below.

There is a potential conflict with the need for developing industrial land while retaining amenity of adjacent residential properties. The other chapters ensure adverse effects proposed/occurring are avoided, mitigated or remedied to a level deemed to be acceptable. This is further discussed in the report.

### Portlink Industrial Park Development Plan

The application site is located within Portlink Industrial Park Outline Development Plan and is governed by rules in 16.4.4 and Appendix 16.8.3. I have included the Outline Development Plan below.



Figure 3: Portlink Outline Development Plan

The key structuring elements and features relevant to the application site include:

- There is a continuous Landscape and Stormwater Area (Green Space) which is located along the northern and western boundaries of the site with green connections internal to the site for pathways and stormwater facilities. The Landscape and Stormwater Area (Green Space) extends south to existing

Council's Kennaway Reserve. This area will convert the old haulage route (Cumnor Terrace) into a green connection and pathway. Rule 16.4.4.1.3.a.ii.C requires that there is no erection of buildings, fences, display of outdoor advertisements, parking or vehicles or use for any purpose other than landscaping, passive recreation or ecological enhancement in this area.

- Appendix 16.8.3 outlines the required species to be established in the Landscape and Stormwater Area (Green Space).
- The footpath within the Landscape and Stormwater (Green Space) is required along the northern and western areas and also the stormwater facility area within the application site.
- Some of the existing vegetation (mature trees) within the Outline Development Plan are required to be retained.
- An extension of Kennaway Road is required within the application site.
- The northern area of the ODP has an 11m building height limit area for buildings. The *building* definition in the District Plan is outlined below.
- Any building is required to be setback three metres from Tunnel Road. Landscaping strips are also required along Tunnel Road for a minimum width of 1.5 metres.

## Definition of Building

The District Plan defines buildings as follows:

### Building

means as the context requires:

- a. any structure or part of a structure, whether permanent, moveable or immoveable; and/or
- b. any erection, reconstruction, placement, alteration or demolition of any structure or part of any structure within, on, under or over the land; and
- c. any vehicle, trailer, tent, marquee, shipping container, caravan or boat, whether fixed or moveable, used on-site as a residential unit or place of business or storage; but

excludes:

- d. any scaffolding or falsework erected temporarily for maintenance or construction purposes;
- e. fences or walls that have no structural function other than as a fence or wall for boundary demarcation, privacy or windbreak purposes, of up to 2 metres in height;
- f. retaining walls which are both less than 6m<sup>2</sup> in area and less than 1.8 metres in height;
- g. structures which are both less than 6m<sup>2</sup> in area and less than 1.8 metres in height;
- h. utility cabinets;
- i. masts, poles, radio and telephone aerials less than 6 metres above mean ground level;
- j. any public artwork located in that part of the city contained within Bealey, Fitzgerald, Moorhouse, Deans and Harper Avenues;
- k. artificial crop protection structures and crop support structures; and

in the case of Banks Peninsula only, excludes:

- l. any dam that retains not more than 3 metres depth, and not more than 20,000 m<sup>3</sup> volume of water, and any stopbank or culvert;
- m. any tank or pool (excluding a swimming pool as defined in Section 2 of the [Fencing of Swimming Pools Act 1987](#)) and any structural support thereof, including any tank or pool that is part of any other building for which building consent is required:
  - i. not exceeding 25,000 litres capacity and supported directly by the ground; or
  - ii. not exceeding 2,000 litres capacity and supported not more than 2 metres above the supporting ground; and
- n. stockyards up to 1.8 metres in height.

Advice note:

1. This definition of building is different from the definition of building provided in Sections 8 and 9 of the [Building Act 2004](#), and the effect of this definition is different from the effect of Schedule 1 of the [Building Act 2004](#) in that some structures that do not require a building consent under the [Building Act 2004](#) may still be required to comply with the provisions of the [District Plan](#).

The applicant has proposed this application cover buildings that exceed 11 metres in height within the 11m height overlay as well as outdoor storage areas<sup>9</sup>. It is acknowledged that the applicant has a differing opinion to Council's as to whether stacked containers are classified as buildings. Council officers have obtained legal advice which confirmed containers are buildings for the following reasons;

- It considered that container would broadly fall under clauses a and b as they are moveable 'structures' and would be a placement of a structure over land.
- Containers fall under the RMA definition of 'structure' as they are a device which is fixed to land (which in caselaw does not need to be fixed permanently to land and may be fixed by the weight
- of the object itself).

<sup>9</sup> Outdoor storage area is defined in the District Plan as "means any land used for the purpose of storing vehicles, equipment machinery and/or natural or processed products outside of fully enclosed buildings for periods in excess of 12 weeks in any year. It excludes yard-based supplies and vehicle parking associated with an activity."

- A container has some similarities to a tiny home as it cannot be easily moved and would require machinery to shift, which reinforces the statement above.
- It is arguable that stacked containers that are either currently storing other goods or are placed on the site in preparation to be loaded with goods, are arguably being used for storage and therefore fall within clause c.
- Containers would fit under the equipment definition of outdoor storage area however it does not prohibit them from being viewed as a building unless directly specified in the District Plan. There is nothing in Chapter 16 that would mean the definition of a building and an outdoor storage area are necessarily mutually exclusive.

I consider that the classification of building should be assessed case by case against the following characteristics:

- o Being secured or held in place by another structure to achieve the required height.
- o Having visual characteristics of a building.
- o Fixed to the ground by its own weight or is difficult to remove.
- o Is man made.
- o The timeframe the structure is in a fixed location.

There is a potential to classify stacked pallets, crushed cars, pipes stored onsite with structure supports to be buildings due to meeting some of the criteria above. In my opinion, containers should be classified as buildings for the following reasons:

- I agree with the conclusions of the legal advice provided by Council's legal team.
- Containers do not meet exclusion g. of the building definition as they are not less than 6m<sup>2</sup> in area and are greater than 1.8m in height individually and collectively.
- The height of stacked containers reaches a level that is consistent or higher than industrial buildings that would be established in this zone. Due to their enclosed characteristics, I consider this to have a likeness to other buildings anticipated in the zone.
- Containers can provide a lower amenity value than standard industrial buildings due to the different colouring and varied state of condition. This further discussed in the visual amenity assessment by Mr Head.
- While Chapter 16's objectives and policies do not directly reference buildings (with exception to brownfield sites in Policy 16.2.2.1), they do include references to the suitability of activity including visual effects and its proximity to sensitive activities. If containers were not considered buildings, this would avoid these policies being assessed as it would not trigger any relevant non-compliances. I consider if containers were not classified as buildings this would render the objectives and policies ineffective as a result.

The applicant has, without prejudice, applied for a consent that includes height exceedances by buildings and outdoor storage areas. This would ensure that containers are covered in this application regardless of whether agreement is reached between the applicant and the Council on the definition of buildings. While shipping containers are currently present on the site and likely to be present for the short-medium term, the tenants and activity could change which could require different types of buildings or structures to be established on the site. The applicant is applying for an exceedance that is flexible in terms of what buildings can be placed on site (as long as the activity is a permitted activity in the zone). I consider this also requires assessment of a range of buildings and outdoor storage areas which could exceed the height limit. This would include structures mentioned below which would have structural support to reach the above heights. This is further addressed in the assessment of effects.

### **Permitted baseline**

The applicant has provided a permitted baseline assessment in the following sections of their application document:

- Paragraphs 40-45 of the original assessment of effects.
- Section 3.2 of the original visual effects assessment. It is noted the permitted baseline is noted throughout this report.
- Section 18 of the first request for further information response dated 23<sup>rd</sup> March 2023
- An email from Mr Walsh dated Friday 21<sup>st</sup> July 2023
- Mr Compton-Moen's updated visual effects assessment dated 21<sup>st</sup> July 2023

I have summarised the applicant's points in relation to the permitted baseline:

- They have noted aside from the ground level discussion below, it could be reasonably anticipated permitted activities such as temporary outdoor storage could be stacked higher than 11m (the example provided is stacked cars) and it is not unrealistic that an industrial building could be 20-25 metres in height outside of this area.

- Temporary outdoor storage of items (such as wrecked vehicles) may be stacked higher than 11 metres within this area provided any such storage would not constitute a 'building' as defined in the District Plan. The presence of outdoor storage is reasonable expected in the industrial zone.
- Building height is unrestricted through the remainder of Portlink Industrial Park. In respect of this land, it is not unrealistic to anticipate the construction of buildings approximately 20-25 metres in height.
- An 11m high building will break the skyline of the Port Hills in places when viewed from Gould Crescent and Long Street.
- It is considered with mitigation planting that the proposal maintains visual amenity similar to the permitted baseline.
- While the references to the 'permitted baseline' in the landscape assessment ought to have been qualified with the word 'future', it was prepared in the context of the application which provided the above explanation. The applicant's planner considers Mr Head's reliance on the permitted baseline ignores the reality that the existing ground level will be where building height is measured from in the near future.

As part of the permitted baseline, this would extend to determining building height and ground levels. To measure building heights, buildings are measured from ground level to the highest point of the building. Ground levels is defined under the District Plan as below:

#### Ground level

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

As outlined in the consent history in **Appendix 1**, the site has been consented to be filled up to 11.8m RL to allow future developments on the application site achieve finished floor levels. The applicant has filled the ground levels to a higher level to ensure drainage could occur. Usually, once filling is completed for a subdivision, the land is titled which would classify the fill level as the new ground level under the District Plan. This has not occurred in this instance as the application is a combined subdivision and land use proposal.

Legal advice for Council has been obtained on this matter which confirms the original ground level (prefilling) is where the height should be measured from. This would alter the permitted baseline to anticipate buildings between 9-10 metres which is reasonably lower than the proposal (13.6m at the start of the 11m height overlay area). I therefore consider that applying a permitted baseline is fanciful in this instance. I consider their arguments are more appropriately discussed in the planning context below.

In terms of height, the applicant has noted the height exceedance occurs at the sealed area of what the ODP requires to be greenspace. This would make the non-compliance approximately 13.6m at the worst extent. The height exceedance would be approximately 15.6m in the worst case scenario at the start of the 11m height overlay and would increase to a maximum height of 20 metres. This is further assessed in the assessment of effects.

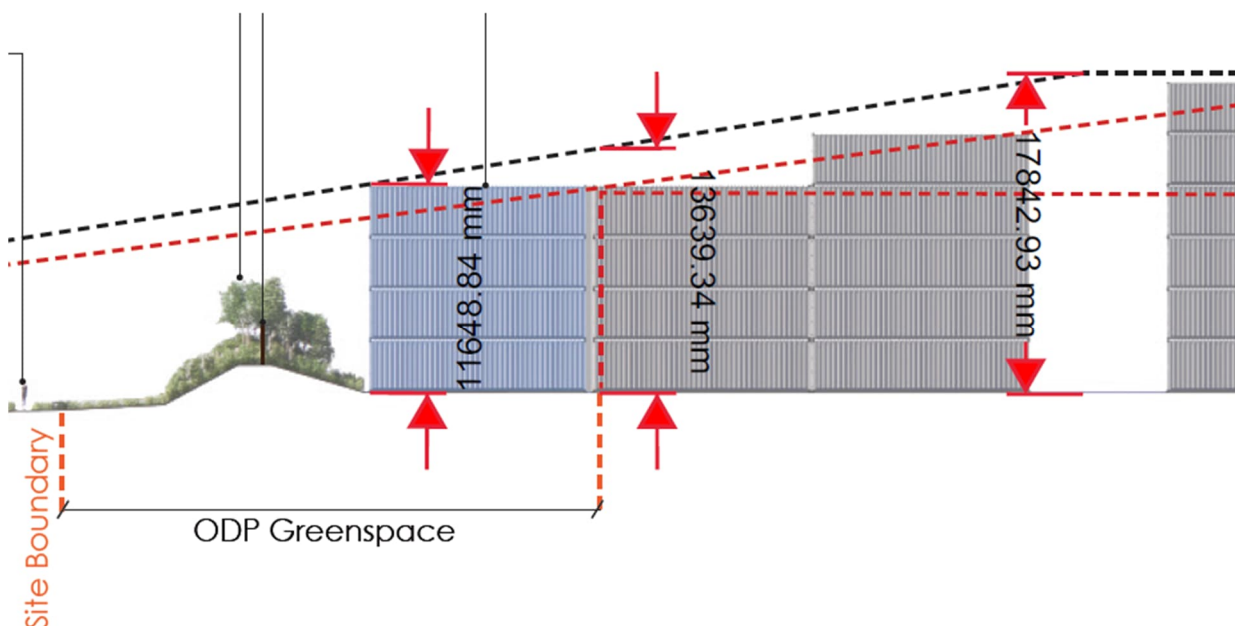


Figure 4: Cross section of proposed intrusion

#### Planning context

While a permitted baseline cannot be applied in this instance, I consider it is important to assess the planning context and what could be expected onsite under the planning framework.

The site has a land use consent granted to fill to allow mitigation of flooding for future buildings. The earthworks consent did not restrict filling higher than 11.8m RL and it is reasonably anticipated that the finished works will be modified to ensure appropriate drainage can occur. Usually, a subdivision consent will follow the earthworks resulting in an established and modified ground level. Sometimes there is a delay between the construction works and completion of the subdivision which is the case in this application. I consider it is reasonable to measure the visual effects from the filled level rather than the original ground level.

In addition to ground level, I agree with the applicant that the following outdoor storage structures/items would be anticipated in the Industrial General Zone:

- Stacked Pallets
- Concrete (unprocessed and processed), piping and logs and other material stockpiles (in keeping with the permitted standards and is not a waste transfer station).
- Stacked cars and crushed car pieces stockpiled.

The applicant has shown scrap metal piles between 12-14m high and crushed concrete piles (height unspecified) within an Industrial Heavy and Industrial Park zone to outline how these materials could be comparable to the existing containers and future buildings onsite. These stockpiles are located within other industrial zones and have not been measured, nor has the applicant provided evidence of the other examples above could be safely established without structural support (thereby exempt under the definition of building). Notwithstanding I agree stockpiles such as concrete or materials could be piled to a reasonable height however I consider it is unlikely such stockpiles will extend along a similar length or have a similar bulk to the proposed containers and other buildings. These are likely to be various stockpiles rather than a continuous large stockpile. In addition, some stockpiles would not be permitted in this zone if they are considered to be storage of refuse (thereby classified as a heavy industrial activity). I also consider stacked cars, pallets, pipes, and logs would not be able to be established without a structural support system. For this reason, I consider these would be classified as buildings and would require the same assessment as the existing containers and proposed buildings. I therefore consider the applicant's argument relevant but the examples may not be a comparable length and width without requiring a similar assessment as a building.

### **Global Consent**

As noted in the consenting history in **Appendix 1**, a global consent was issued which partly encompasses the application site. A fully enclosed woodshed is currently being established on site in this area as it complies with the conditions of the global consent. A building consent has been issued under record number BCN/2022/8679.

### **Clarification of rules and some non-compliances**

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

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

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

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

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

#### *Adjoining*

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

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

Westlaw NZ states that:



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

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

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

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

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

#### Building height exceedance

If the waterway exceedance was not present on the site, the height exceedance assessment would be limited to the following matters of discretion (Clause 16.7.1.1):

#### **16.7.1.1 Maximum height of buildings and fencing or screening structure**

1. Building height:
  1. The distance the building is setback from any residential zone and the extent to which this mitigates any adverse effects of the increased height.
  2. The extent to which the additional building height may enable the more efficient use of the remainder of the site or the long-term protection of sites of Ngāi Tahu cultural significance identified in Schedule 9.5.6.1, significant trees listed in Appendix 9.4.7.1, or natural features on the site.
  3. The design and appearance of the building in mitigating the visual impact of exceeding the height limit.
  4. The extent to which the building may visually dominate the area it is located in, having regard to the scale and form of buildings in the surrounding area.
  5. The extent to which the location of the building on the site and its visibility minimises visual effects on the surrounding area.
  6. The extent to which the increase in height reflects functional requirements of the activity.
2. Fencing or screening structures in the Industrial Park Zone:
  1. The extent to which visibility is maintained between the building and the street.
  2. The extent to which screening maintains public safety and other Crime Prevention through Environment Design (CPTED) principles.

Although the matters of discretion refer to adverse effects from any residential zone, If the height exceedance was the only non-compliance, Rule 16.4.4.2.1 prevents public notification. Notwithstanding the application is bundled with other non-compliances which include the waterway setback non-compliance which do not preclude either limited or public notification from occurring.

#### Residential Interface Rules

The application site is zoned Industrial General Zone (IG) and immediately adjacent is the Open Space Water Margins Zone (OPWM). The neighbouring residential zones are separated from the IG zone by the OSWM zoning. As a result, most built form standards in Rule 16.4.2 are not applicable to the site, as it does not directly adjoin the residential zoning. In terms of screening and amenity, Rule 16.4.2.7 which requires landscaping or fencing adjoining an open space zone applies. The proposal complies with this standard.

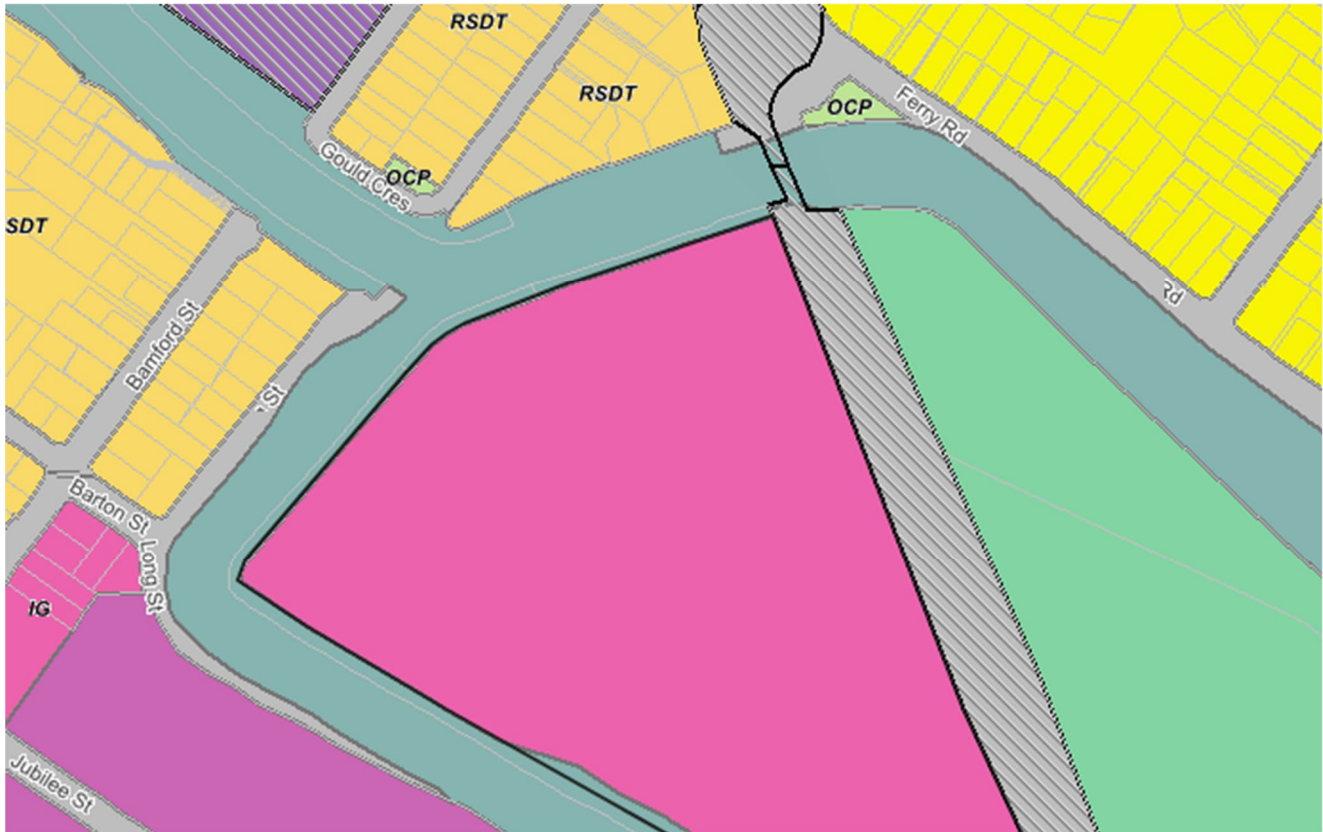


Figure 5: Map of zoning of the application site and locality.

#### Other Matters

Council have collaborated with other parties to create the Ōpāwaho Lower Heathcote Guidance Plan. This document created by the local community board, provides guidance on protecting the Heathcote River. The document is to be utilised by the community, Council and other organisations. I have summarised some key points from the document:

- The protection and restoration of ecology and biodiversity as it is recognised that this area is taonga and Mahinga Kai.
- The worst areas for water quality include the Ōpāwaho Heathcote River section at Tunnel Road adjacent to the site;
- The key aspirations include:
  1. Prioritise the natural environment;
  2. Increase space available for the river margin;
  3. Intensify native planting and reduce the volume of lawn;
  4. Reduce exotic trees and intensify native tree canopy;
  5. Increase shading of the river;
  6. Provide habitat for native fauna;
  7. Create a place of education;
  8. Improve connectivity to the river and between activities.
  9. Enhance social connections.
- This is to provide habitats for birds and fish, reduce contaminants and sediment from entering the waterway, better bank stability and increase people's access to nature.

In terms of the site, relevant aspects include:

- Improving the passageway under Tunnel Road bridge on the true left and true right of both pedestrians and cyclists.
- Infill planting is required to retain existing density as the site is identified as existing dense planting and good riparian planting.

While this report is not mandatory to consider, aspects relevant to the site will be further discussed in the s95 assessment. This matter can also be addressed under s104 assessment as another matter but has been raised in this section for information purposes.

Other documents prescribed under legislation such as the Local Government Act 2002 have weight to consider due to being publicly notified and available. Notwithstanding I do not consider these documents have as much weighting as the Resource Management Act 1991.

## Noise

The District Plan provides detailing on how noise is measured in clauses 6.1.4.1 and 6.1.4.2. Noise is measured at any point within a site receiving noise from an activity (if the site boundary is adjacent to the Transport Zone, the noise standards shall apply at or beyond the far boundary of the transport zone). Any noise measurements shall in accordance with NZS 6801:2008 "Acoustics – Measurement of environmental sound", and assessed in accordance with NZS 6802:2008 "Acoustics-Environmental noise". This includes that the activity location and duration in terms of noise is assessed. Noise generated within a transport zone is not considered in this assessment.

Rule 6.1.5.2.1 outlines the permitted noise limits for residential zones and open space zones:

**Table 1: Zone noise limits outside the Central City**

Zone of <u>site</u> receiving noise from the activity	Time (hrs)	Noise Limit (dB)	
		<u>LA<sub>Eq</sub></u>	<u>LA<sub>max</sub></u>
a. All residential zones (other than in the Accommodation and Community Facilities Overlay)	07:00-22:00	50	n/a
b. All rural zones, except Rural Quarry Zone, assessed at any point within a <u>notional boundary</u>			
c. Specific Purpose (Flat Land Recovery) and Specific Purpose (Ōtākaro Avon River Corridor) Zones	22:00-07:00	40	65
d. Papakāinga/Kāinga Nohoanga Zone			
e. All commercial zones	07:00-22:00	55	n/a
f. All open space zones			
g. All rural zones, except Rural Quarry Zone, assessed at the <u>site boundary</u>			
h. Accommodation and Community Facilities Overlay			
i. All industrial park zones (excluding Awatea and Memorial Avenue)	22:00-07:00	45	70
j. Industrial Office Zone			
k. Specific Purpose (Cemetery, Schools, Tertiary Education, Golf Resort, Defence Wigram and Hospital) Zones			
(Proposed Plan Change 14)			

## Summary of concerns from members of the public

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

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

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



- Effects on well being as a result of the non-compliant activity currently occurring and its proposed expansion.
- The location of the industrial zone in close proximity to existing residential areas.
- Depletion of property values.
- The application should be publicly notified and declined.

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

- The enforcement actions (including noise measurements) to date as these are a separate process to the resource consent.
- Property values, the price of living and rate increases. Property values cannot be assessed as part of this application. Rates are managed by a different department of Council and the price of living are beyond the control of the resource consenting process.
- The information supplied on LIMs, as this is managed under different legislation and not an RMA matter.
- Reverse sensitivity effects as this would mean that the residential zone and associated activities would have an adverse effect on the establishment of the proposed activity or other permitted industrial activity in the zone.
- The reason the application site was established as an industrial zone. This was established under a previous private plan change. The land is zoned industrial now.
- Whether there are any better locations for the activities. The notification assessment does not require the consideration of alternative locations, just effects on the environment, affected parties and special circumstances.

#### Written approvals [Sections 95D, 95E(3)(a)]

No written approvals have been provided with the application.

#### PUBLIC NOTIFICATION TESTS [Section 95A]

Section 95A sets out the steps that must be followed to determine whether public notification is required:

<b>Step 1: Mandatory notification – section 95A(3)</b>	
<i>Has the applicant requested that the application be publicly notified?</i>	<b>No</b>
<i>Is public notification required under s95C (following a request for further information or commissioning of report)?</i>	<b>No</b>
<i>Is the application made jointly with an application to exchange reserve land?</i>	<b>No</b>

Public notification is not mandatory under this section.

<b>Step 2: If not required by Step 1, notification is precluded if any of the following apply – section 95A(5)</b>	
<i>A rule or NES precludes public notification for all aspects of the application</i>	<b>No</b>
<i>The application is a controlled activity</i>	<b>No</b>
<i>The application is a boundary activity</i>	<b>No</b>

Public notification is not precluded under this section as the application has a discretionary waterway setback non-compliance which requires assessment of whether public or limited notification is required.

<b>Step 3: Notification required in certain circumstances if not precluded by Step 2 – section 95A(8)</b>	
<i>Does a rule or NES require public notification?</i>	<b>No</b>
<i>Will the activity have, or is it likely to have, adverse effects on the environment that are more than minor? (discussed below)</i>	<b>Yes</b>

#### Assessment of effects on the environment

When assessing whether the adverse effects on the environment will be, or are likely to be, more than minor, any effects on the owners and occupiers of the application site and adjacent properties must be disregarded pursuant to section 95D(a). Accordingly, this part of my assessment focuses on the wider environment beyond the

application site and adjacent properties. For the purposes of this assessment, I consider the following properties to be adjacent:

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

I consider these to be adjacent for the following reasons:

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

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

- Other residential properties' views from Gould Crescent and Bamford Street/Barton Street are obstructed by other neighbouring properties on Gould Crescent and Long Street.
- Residential properties on Ferry Road: There are multiple reserves, waterway and roads separating these properties from the application site. The residential properties are separated by a major arterial road - Tunnel Road - and are setback over 150m from the application site.

As a discretionary activity, the Council's assessment of this proposal is unrestricted and all actual and potential effects must be considered. Guidance as to the effects that require consideration is contained in the relevant objectives and policies, and any associated matters of discretion or control. In undertaking this assessment, I have had regard to the planning context and consider the permitted baseline is not applicable in this instance.

For efficiency purposes I have also assessed the effects of the proposal on the adjacent and wider environment collectively to avoid duplication in the report. In my opinion the effects of this proposal relate to landscape and visual effects, ecological effects, function of reserves and effects on users, noise effects, nuisance, safety effects, construction effects, cultural effects, and subdivision design including natural hazards and contamination.

### **Landscape and Visual Effects**

The applicant has provided a visual impact assessment (VIA) by Nika Ken and Chris Greenshields and a later assessment from David Compton-Moen from DCM Urban Design Limited. I have summarised their key findings below:

- The application site is considered modified with very low natural character and an easily identifiable industrial character. Due to the location of the site on the fringe of the industrial area and directly adjacent to the Heathcote River, development of the site has greater potential to produce perceived visual effects when compared with some other industrial sites, due to the site's proximity to existing non-industrial surroundings. Despite this, the site is considered to have low sensitivity to change.
- It is considered that 11m high buildings will break the skyline of the Port Hills in places when viewed from the southern facing viewpoints. While the proposed will be 11.6m at a closer distance, the height difference is low due to both scenarios breaking the skyline. The authors have included mitigation in their permitted baseline argument and have noted that as vegetation reaches maturity of 8m, any remaining visibility of the built form within the green space is considered comparable to a permitted baseline and a similar level of visual amenity. While it is accepted that outdoor storage (including shipping containers) has lesser aesthetic appeal compared to buildings (where architectural form and materiality can reduce visual effects), and likely result in a change to the perceived pleasantness of the site and surrounding environment, the potential visual bulk, height and scale remains comparable. Presence of outdoor storage is common within industrial zoned land and therefore can be reasonably expected.
- A series of visualisations have been completed from pedestrian walkways across the Heathcote River to the north of the site which show the existing view, the view with an 2.4m high acoustic fence, view with a vegetation height after 5 years at a height of 4-5m and vegetation at a mature height of 8 metres. The indigenous vegetation proposed to be planted on the bund (in accordance with the ODP) will provide a suitable level of screening of buildings and/or outdoor storage overtime. The maximum magnitude of change prior to mitigation is low which results in less than minor effects after mitigation.

- The visualisations provided by the applicant present containers stacked higher than the proposal (due to using past images). The implementation of the proposed height limit would further reduce the dominance of the containers and reintroduce almost complete similar views to the Port Hills ridgeline. With restored views to the ridgeline and a green boundary masking the site, it is considered that this will maintain an acceptable level of visual amenity for those using the Heathcote River Walkway in this area, while any perceived visual impact on the outlook of residents would also be considerably mitigated.
- It is considered 300mm depth of soil to the bund is of a sufficient depth and quality for the proposed planting. The landscaping firm Outer Space have now confirmed they found depths ranging from 0.8m to 1m in topsoil on the bund which will further assist the success rate of the proposed planting.
- Changes to the landscape concept affect planting on the northern bund face, where lizard habitat likely exists in this area. Based on herpetological advice, the planting of the bund face is proposed to change to lower growing species suitable for lizard habitat – whereas taller vegetation may (over time) overhang and shade out this habitat, which is not favourable for lizards. The crest and southern side of the bund remains planted for visual screening purpose and provides an approximate 5m vegetation buffer for screening. The change does not alter the findings of the visual assessment.
- Further examples of outdoor storage were provided including material estimated to be stacked to a height of 12-14m. Other materials could include crushed cars, crushed concrete or construction demolition material.
- The industrial heavy zone on Long Street (west of the site) does not have a maximum height limit. It is noted that views through to the Port Hills and notably Montgomery Spur (viewed from Ferry Road) are not protected from future development of the site or future industrial buildings in the adjacent zoning.
- A 31m high structure in a general industrial area (after the 11m height overlay further south) is not considered fanciful with the following potential examples:
  - Drying towers for a Milk Powder factory
  - Warehouses for distribution centres which require high stud heights to accommodate storage or logistic facilities.
  - Manufacturing buildings
  - Power plants.
  - Silos for the storage.

The applicant's landscape report has been peer reviewed by Council appointed Landscape Architect Jeremy Head. His assessment is attached as Appendix 2 of this report. This includes an updated assessment on the 10<sup>th</sup> August 2023. Mr Head agrees with:

- The site and context description.
- Assessment methodology.
- In some cases, the likely visual effects (view points 1,2,5,6 ,7 and 8 in the VIA) arising from the proposal.
- The 11.6 height limit having little additional effect when compared to the 11m maximum permitted building height.
- Permitted built development within the site will obscure some people's views of parts of the Port Hills / Crater Rim landscape from some viewpoints north of the site (Attachment 5).
- The climatic conditions would allow mitigation to be established around 8 metres.
- That several buildings may be as high as 31m within the no height limit part of the site.
- Loose stockpiles of uncontained materials can exceed heights that are proposed in this application.

Mr Head's view differs in terms of the visual effects from certain locations and the conclusion of the applicant's Visual Impact Assessment. I have summarised his main concerns:

- It is considered the receiving environment is more extensive and includes residents of Ferry Road and Barton Street, travellers on the road network, recreational users on the public riverside tracks including the Tow Path, footbridge over the 'Woolston Cut', Gould Reserve and riverbank area including the Opawaho/Heathcote River and 'Woolston Cut'.
- Mr Head considers the landscape context of the surrounding residential area to be of a moderate quality which is lessened by the surrounding road network and industrial zoning adjoining.
- In terms of the expected planning context, potential items which would be anticipated as outdoor storage include pallets, pipes, construction timber, logs, scrapped vehicles and metal and stockpiles. Most of these items could not be stably/safely stacked at 11m height without a structural support (therefore being identified as a building) and therefore not relevant for a permitted baseline argument. The stockpiles noted in the applicant's assessment are likely to be of a different bulk and scale from the constructed buildings or containers, which can be erected with vertical sides appearing blocky. The stockpiles presented appears to be 9-10m in height when using the green 1.8m high boundary fence as a relative

height. The stacked shipping containers would have a marginally worse visual effects than stockpiled loose material.

- Shipping containers have a poorer aesthetic appearance than permanent walled/roofed buildings and other outdoor storage equipment mentioned above. It is considered that the visual effects of the outdoor storage items above would be slightly better than shipping containers due to shipping containers' 'bulky and visual 'solidity'. Containers are considered the worst case scenario for building and outdoor storage areas anticipated in the zone.
- The Applicant largely bases their findings on the difference between an 11 m high building and an 11.6 m high building inside the greenspace area. No mention is made of the effects of the proposed graduated height to 18 m further south within the 11 m height limit area. Further, it is unclear if the Applicant's effects conclusions are 'post mitigation', and if the effects are 'low' where they sit on the equivalent RMA scale. Building up to 18m high is substantially more than the permitted baseline. While an 18 m height limit may be less discernible from some nearby locations to the north and from ground level, the graduated height up to 18 m will be dominant from the east, with these effects falling on occupants with permanent long-term views including the occupants of fifteen dwellings on Ferry Road. While this area is further away and Ferry Road is a busy road network, this will intrude the vistas of the port hills/Montgomery Spur. The maximum 18m building height above the new site level cannot be fully mitigated from views from the east by what is proposed even in the long term, as the 'stepping effect' will not benefit these parties.
- While the impact of encroachment into the Greenspace is considered low, it does not mean this encroachment is appropriate as it has several adverse effects on landscape, beyond the visual.
- It is the combined effect of the location (encroachment into the open space) and height exceedance that creates an effect on the eight properties on Gould Crescent and Nine on Long Street and from 90 Barton Street, the activity will appear to loom up higher and the 4.4m mitigation (bund and fence) will have less screen effect as they would if the buildings were outside of the green space area.
- In terms of mitigation proposed, the landscaping will not achieve mitigation of the buildings/outdoor storage areas for the following reasons:
  - o There is no indication when the proposed vegetation will reach heights of 8m.
  - o The bund is constructed from crushed concrete with a 300-1m topsoil layer. Trees species are not likely to survive in this level of topsoil over compacted crushed concrete. It is highly unlikely that the plants will thrive and will eventually be overtaken by rank grass. It therefore unlikely that the proposed vegetation will reach to 8m in height at maturity.
  - o The 2.4m acoustic fence while providing screening will provide a non-natural, continuous form adjacent to the highly natural river corridor and is not anticipated in the outline development plan. While this will be resolved in time, it does not mitigate this effect from the short-medium term. This will be an effect particularly to users of the esplanade reserve.
  - o The acoustic fence will provide a uniform barrier to conceal the lower levels of the site.

Mr Heads conclusions on locations are listed below:

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

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

I agree with Mr Head's assessment. I consider that the proposal is a departure from the permitted baseline and expected planning context (post subdivision) of the site due to height exceedance of up to 18m and intrusion into the open space at 11m. This combined with the landscaping issues will limit the effectiveness of the mitigation measures proposed by the applicant and potentially lengthen the temporary effects period. I consider the use of mitigation tools will not avoid or mitigate the adverse effects on residential amenity. While the adjoining residential zone will experience a lower amenity than other residential zones not adjacent to an industrial zone I consider that the proposal creates an adverse amenity effect that is not anticipated in this area and does not provide adequate buffer between residential and industrial activities. I consider a **more than minor** effect is created on the wider environment due to the effects created on the recreationalist along the Opawaho/Heathcote River and residents of the Ferry Road properties listed above.

### Ecology Effects

The proposal includes restropective works and proposed structures which have intruded the 30m waterway setback from the Heathcote River. The site and adjoining reserve are habitat for lizards and birds and an important riparian margin for the Heathcote River. The applicant has not provided an ecology report as part of their application as some of the final landscaping concerns have been resolved with the Council's ecologists and the parks team. The Council ecologists have provided assessments of the application in **Appendix 3** which outline the remaining issues (some of which are retrospective in nature).

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

- The Portlink ODP requires dense planting of indigenous species which are more focused on providing ecological habitat for waterway body margins and birds. The mature height of the trees prescribed in Appendix 16.8.3 range from 5 to 7 metres. This tends to not support lizard habitat as they tend to thrive in low lying shrub and plant species that do not generate as extensive shading. Existing mature vegetation as shown on the ODP is also required to be retained.
- Chapter 6.6. focuses on either protecting, maintaining or enhancing the values and functions of the water body and its riparian margins. The objectives and policies are not specific in terms of which ecology in the riparian margin is prioritised however water quality, biodiversity, bank stability and amenity value are some of the aspects required to be protected or enhanced.
- The function of a downstream waterway setback includes maintaining or enhancing habitat for terrestrial and aquatic animals and plants. I consider this would logically include birds and lizard species as well as plants and aquatic biodiversity. Chapter 8 Objectives and Policies aim to achieve a similar outcome however it is more brief in its description.
- The objectives and policies in Chapter 16 do not directly relate to enhancement of ecology however they refers to recognising stormwater values which include ecological protection in the six values system outlined in Council's Waterway Wetlands Drainage Guide. Again, this is not specific in terms of which areas of ecology should be protected or enhanced.

- While this document is not a Resource Management Act document, the Ōpāwaho Lower Heathcote Guidance Plan is similar in terms of outcomes to those sought in the ODP in terms of an appropriate buffer for river margins, increasing native plantings in the margin. It also focuses on habitats primarily for birds and fish than other species.

### Waterway

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

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

Ms Noakes (Council's Waterways Ecologist) has commented the area has monthly water quality monitoring and ecological monitoring occurring every five years. The latest ecological monitoring occurred in September 2020<sup>10</sup> with the most downstream monitoring site at Tunnel Road being adjacent to the application site. The report noted most areas within the Heathcote River Catchment had minimal buffering with riparian vegetation, are poorly shaded however contains natural banks. The raw data identified native fish species such as giant and common bully, shortfin eel, black flounder and yellow eye mullet to be present in the surrounding area. None of these species are classified as being at risk and Ms Noakes has noted that this area of the waterway is not identified as an Inanga spawning habitat. Some of the waterway is concrete lined which can have some limitations on ecological values. Ms Noakes considers that regardless of the bund erection and proposal, the waterway ecology has been maintained for the following reasons:

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

The key concern is the loss of potential for effective enhancement and riparian margins because of the location of the proposed bunds. Ms Noakes' reasons are outlined as follows:

- The bunds will make it difficult to create a natural and adequate riparian buffer and therefore successful enhancement will not be achieved. While the bund materials may not be contaminated, it is unlikely to contain a suitable proportion of natural topsoil/composition for establishing vegetation to its full potential/scale. Landscape species planted at the original / natural ground level are likely to establish, and be more successful/reach suitable heights, as opposed to being planted at an elevated height on an artificial bund. If it was guaranteed that the plants would be successfully established, it would be appropriate however the slope of the bund makes it uncertain.
- If vegetation is unsuccessful, it does not achieve the wide functioning riparian margin sought by the District Plan for downstream waterways. This reduces the buffer the riparian margin creates. This will adversely affect the following Esplanade Reserve values - ecology, ecological habitat, character and amenity.
- The increase in impermeable surfaces have the potential to cause the value of the buffer to be diminished in the riparian margin.
- It overall removes the opportunity to enhance the reserve successfully. The application site is an important part of the Heathcote River Catchment as it provides connectivity and migration pathways for the upstream catchment (instream and along riparian margins). As most of the Heathcote River riparian margins are heavily urbanised it places importance on obtaining a larger margin in this area to protect the ecological connectivity of the catchment.

I adopt Ms Noakes assessment.. I consider the proposal's potential effect on the immediate and wider environment to be no more than minor.

Part of the haulage route has not been tested for contaminants, the filling present could pose a risk of heavy metals or contaminants leaching into the waterway. This could further degrade the values and ecological health

<sup>10</sup> [https://ccc.govt.nz/assets/Documents/Environment/Water/Monitoring-Reports/2020-reports/2020-Heathcote-River-Five-Year\\_atic-Ecology-Monitoring-Report.pdf](https://ccc.govt.nz/assets/Documents/Environment/Water/Monitoring-Reports/2020-reports/2020-Heathcote-River-Five-Year_atic-Ecology-Monitoring-Report.pdf)

of the waterway and its margins. While this could be resolved via conditions, it is difficult to conclude effects in this respect. I consider that this could increase the effects to more than minor.

### Lizards

Lizards have been identified along the northern area of the site. The lizards identified on the site were Southern grass skinks which have a conservation status of 'At Risk – Declining'. An official lizard survey was undertaken on the 4<sup>th</sup> March 2022, the bund was partially constructed and some parts of it were within the 20m setback. It is therefore difficult to define the exact number of lizards present in the area prior to these works commencing. Ms McClure (Council's Herpetologist) has noted there were records of a large lizard population on the application site, prior to earthworks and establishment of industrial activities. It is considered highly likely that a substantial number of lizards and substantial area of habitat has been lost as result of the totality of the works occurring on the site. All areas except within 20m of the waterway setback were granted consent prior to the lizard survey. It is likely there are more predators inhabiting the industrial area (i.e. rodents, however this has not been monitored). Notwithstanding Ms McClure's assessment focuses on the impacts of the bund and the proposed enhancement. Although the ODP specifies dense vegetation in the area, the objectives and policies of the District Plan refer to protection and enhancement of overall eco-systems in the riparian margin.

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

In addition, McClure has concerns that enhancement (through dense planting of taller vegetation) will further affect the population and increase fragmentation of lizard habitats for the following reasons:

- Firstly, if the bund was established with vegetation that benefits lizards this would assist in enhancement however it is unlikely to allow the regeneration the population to its previous numbers.
- Fragmentation is likely to occur due to the location of a new footpath (whether it is in original location or at the toe of the bund). Any excavation work will likely result in destroying lizards and habitat.
- If tall tree and shrub species are placed on the top of the bund it will create shading on the remaining lizard habitat on the site. Even though the bund will be north facing, any shading will reduce the habitat area and could defeat the purpose of the enhancement (this aligns with the applicant's herpetologist report). This would still be relevant even if the bund was removed in this area.

I consider that four enhancement scenarios (ranging from best case scenario to worst case scenario in terms of effects on lizards) could occur which include:

- If the footpath is widened at its current location and amenity planting mitigation is not successful (as raised by concerns from both Mr Head and Ms Noakes).
- If the footpath is widened at its current location and amenity planting mitigation are successful.
- If the footpath is relocated to the toe of the bund (as preferred by other Council ecologists and Council Parks Team) and amenity planting mitigation is not successful.
- If the footpath is relocated and amenity planting mitigation is successful.

Ms McClure considers that the reduction of the lizard population and habitat in the overall industrial development area (including the bund) outweighs the proposed ecological enhancement benefits. The area of the bund and the property fence line is the remaining area of lizard habitat post-development works. It is noted that the Applicant's herpetologist has provided similar advice that aligns with that of Ms McClure. There is an option to salvage the remaining lizards which would protect the population and remove the need for less dense vegetation along the northern bund. It would not remedy or mitigate the effects that have already occurred but would avoid further effects created by the proposed enhancement and footpath realignment and is also a costly exercise.

I accept Ms McClure's advice and consider there are two substantial issues; the bund's construction has contributed to reducing populations numbers/fragmentation, and a future enhancement with dense vegetation/excavation works has the potential further reduce the population and habitat. While landscaping works are exempted consent in Chapters 6.6 and 8.9, there is still a need to assess the effects of the works on lizards under the subdivision chapter and outline development plan as well noting a wildlife permit is required for the works.

I consider the lack of protection created by the bund is small as only a marginal portion of the bund intrudes into the 20 m waterway setback and the remainder of the site has been established through existing consents. In terms of enhancement, to determine effects, the worst case scenario has been examined which will reduce the lizard population in the area where the lizards are remaining and further fragmentation of lizard habitats. I consider

this creates a **more than minor** adverse effect on a species that are at risk/declining which will have implications that traverse wider than the site. This does not assess the scenario that the bund material is removed and replaced with appropriate top soil. This is likely to provide greater adverse effects than assessed above. I acknowledge this presents a conflict with the intended outcomes of the visual amenity assessment.

### Birds

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

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

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

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

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

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

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

I accept Mr Crossland's assessment. Mr Crossland has provided a high-level comment that noise has not assisted with maintaining existing bird habitat. In my perspective, while the existing activity and proposed activity could create effects on birds in terms of noise, I do not consider it will change with increased/decreased height of containers or outdoor storage. If an industrial building was established noise effects from the current activity could be reduced. Notwithstanding I consider it is hard to quantify in this instance. This is further mentioned in the noise assessment below.

I consider that the previous plan change has created the adverse effects Mr Crossland has observed and while not ideal these are anticipated/created by the District Plan or previous consents. In my view, the proposal does not create a greater effect however it does not enhance bird habitat. This effect does not change even if the bund is successfully planted with vegetation. In the substantive decision it may be difficult to mitigate this effect however I do not consider this effect creates an adverse impact on adjacent properties. Rather it is a potential cumulative



effect on the wider environment, but it is difficult to quantify due to the established industrial activity effects also created. I consider that the overall effects on birds are **no more than minor** adverse effects on the wider environment.

#### Tree removal

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



*Figure 6: Location of removed trees.*

These trees are required to be retained as part of the outline development plan however Chapter 9 does not identify these trees as significant. The previous City Plan also did not identify these trees to be previously protected. As the trees have been removed, I do not consider necessary to obtain arborist input. I have obtained specialist input from Mr Crossland who has confirmed that the trees were not important bird habitat as they are not located along the waterway margin. While the trees are not native, Mr Crossland notes the oaks had been established for at least 100 years. The trees have been replaced by a bund.

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

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

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

- The health and safety of users of the area outweigh the amenity lost by the trees being removed.
- The remainder of the trees in the area are being retained and have not been affected by the previous works.
- The surrounding area is proposed to be enhanced and landscaped which in time will replace the amenity provided by the trees.
- The areas is changing as a result of the proposal and associated enhancement therefore this will not have significant adverse amenity effect on users of the area or reserve.

#### Overall Ecological Effects

The above ecological assessments have identified adverse effects created by the retrospective works as well as the ability to enhance the site and surrounds to create effective and adequate ecological habitat. Some of the issues can be mitigated by the proposed enhancement, for example waterway enhancement, however the bund or proposed vegetation will not achieve enhancement and also create fragmentation of the existing habitat.

The main effect is that the dense vegetation created along the northern bund (if successful) could create further impacts on lizards populations which have been impacted by retrospective works and the industrial activity. Overall, I consider a wider environment effect is created which is **more than minor**.

### Function of Reserves and effect on users

In terms of visual effects on reserves I rely on Mr Head's advice. Specialist input has been obtained from Council's Senior Open Space Planner Peter Barnes. Mr Barnes notes that the purpose of an esplanade reserve is to provide public access and protect relevant ecological values. This aligns with clause 16.4.4.2.3a.ii.c. which avoids uses outside of passive recreation or ecological enhancement.

He agrees with the assessment provided by Council ecologists and considers that the bunds (northern and south western) do not assist with the ecological reserves values. If a bund (in particular, the south west bund) remains, and vegetation growth/potential is not maximised, this will significantly affect the following Esplanade Reserve values - ecology, ecological habitat, character and amenity. From a reserve /asset owner perspective Mr Barnes considers any bund located within the Esplanade Reserve imposes unnecessary challenges to construct a re-aligned pedestrian access track within the relatively narrow Esplanade Reserve, managing CPTED concerns and accommodates the variety of ecological habitat. Mr Barnes notes the landscaping species and design proposed are adequate and not opposed.

Mr Barnes has raised no concerns with the soil levels being at background level for recreational use. I note safety effects have been addressed further below.

I adopt Mr Barnes' assessment. As the purpose of the reserve includes protecting ecological values, my conclusions from my ecology assessment above is relevant for this assessment. In addition, the access of the reserve has some challenges. While these affects may not affect users adversely, the wider environment is impacted due to the effects on ecology created. I do not consider the outcomes of the ODP have been achieved in this application. Overall, I consider the effects on the function of the reserve to be **more than minor**.

### Noise Effects

The tenants of the application site have provided an acoustic assessment by Powell Fenwick for the existing activity (container handling and processing facility). This noise assessment does not include the 24 hour container operation or other tenancies which are located partially within the 11m height overlay area. I have summarised their key findings:

- A comprehensive description of the activity and the noise generated has been provided in Section 3 of the report.
- The road traffic noise, noise from other industrial sites and background noise sources have the potential to contaminate noise measurements. While most sources can be excluded from measurements, the traffic noise (variable throughout the day) makes it challenging to take a direct measurement of the activity. The report has resolved this issue by measuring noise on two separate occasions.
- The results are listed below:

Receiver of Noise	Noise level without acoustic fence	Noise level with acoustic fence installed.	Noise Level with Gap made in the containers	Noise Level with gap made in the containers without acoustic fence	Noise Level with partial screening	Noise with full screening from containers
Residential Area (Including the Long Street locality)	49 dB LAeq (15 mins)	44dB LAeq (15 mins)	54 dB LAeq (15 mins)- 49dB LAeq (15 Mins) with duration adjustment applied.	56 dB LAeq (15 mins)	n/a	n/a
Open Space Zoned Land (east of the application site and across Tunnel Road)	n/a	n/a	n/a	n/a	56 dB LAeq	48 dB LAeq (15 mins)

- The noise exposure of the open space zoned land to the east of the activity has minor non-compliance due to the land having partial screening by the containers. The report notes that the traffic noise exposure in this area is above 60dB  $L_{Aeq}$  (15 mins) and therefore is significantly above the noise created by the activity and the activity is creating no particular effect.
- In terms of the residential zone, if marginal exceedances do occur when there is a gap in the noise barrier, noise levels are expected to remain below the WHO recommended limit for annoyance. Furthermore elevated noise levels will only occur on occasion and for a short period of time (1-2 hours every 2-3 months), whereas the WHO limit for annoyance is a continuous level of noise exposure.
- To ensure that noises does not exceed 50db Ldn, the following aspects need to be in place:
  - o The containers when stacked at five containers high provide for an effective noise barrier. It is expected stacked containers 2-4 containers high will be in front of the acoustic sound barrier (which can occur several rows back from the northern edge of the seal as is necessary). The container stacks should be continuous with minimal gaps between them as necessary for access. Containers shall be 3 containers high if in front of a truck route.
  - o The fence will provide additional screening, particularly to the gaps that are inevitably formed between container stacks. The construction of the fence shall have a minimum surface mass of 10 kg/m.
  - o The container stacks that form the noise barrier should not be moved regularly. Containers that form the noise barrier should nominally only be moved once every 2-3 months on average, noting that this may need to occur more regularly (once per month) on occasion.
  - o When a gap in the noise barrier is made to access containers in long term storage, the barrier should immediately be rebuilt (within the same day). Moving of containers that are part of the barrier should only occur between 0900 h and 1500 h Monday to Friday.
  - o No hoist or truck activities shall take place during night time hours.
  - o Up to two hoists operate on the site at any one time, and up to 16 truck movements are expected to occur in an hour.

The report has been peer reviewed by Council appointed Acoustic Senior Associate William Reeve. His assessment is in **Appendix 7** of this report. I have summarised his findings below:

- It is considered 'bangs or thumps' are examples of sound with impulsive character as specified CB4.1 of NZS 680. NZS 6802 uses a rating level approach where the sound level is measured over a standard reference time of 15 minutes and adjusted to account for special character (up to +5 dB) and duration (up to -5 dB). This is not applied in the compliance assessment against the District Plan and the plan is therefore more lenient. The day to day levels are likely to create more a nuisance for neighbouring residential zones. Mr Reeve considers that if this stricter requirement is complied with at residential boundaries, it would create a reasonable noise threshold in terms of amenity and avoiding moderate annoyance. If noise levels are higher on infrequent occasions (such as when the barriers are being reconfigured) but remain below the upper residential amenity threshold of 55dB  $L_{Aeq}$  it is not considered particularly problematic.
- Mr Reeve agrees with the findings of the PFC report in terms of noise received in the open space zone and it is considered that the transient nature of use of the reserves will minimise adverse impact on users. In supplementary commentary, Mr Reeve has commented effects on wildlife is not in his expertise but notes ornithologist experts have stated that bird disruption occurs greater than 70dB  $L_{AFmax}$  but is dependent on context of the site. I refer to Mr Crossland's assessment in this regard.
- It is considered the gaps between containers will only result in small changes to noise levels. The larger gap in the barrier is required for access. This would mean the owners/occupiers of 54 Gould Crescent are more regularly exposed to noise levels which are closer to the level of 53dB  $L_{Aeq}$ . This site is also exposed to traffic noise levels due to being in close proximity to Tunnel Road.
- There is uncertainty about the report results due to:
  - o There being multiple activities on the site and only one tenancy has been assessed in the noise assessment. District Plan noise limits apply cumulatively to a site.
  - o While it is generally accepted that the current/proposed activity by Pinnacle Corporation is the loudest during the day, it is unclear whether there is any night time activity on other tenant sites. If activities were occurring before 0700 hours it is likely the night time limits could be exceeded which could create awakening events.
  - o As the activities will occur closer to the residential properties on Long Street and additional screening is proposed, it is not clear whether average and maximum noise levels will increase or decrease from what was previously experienced.
  - o There are higher levels shown in the contour for Gould Crescent
  - o It is unclear what the effect of reflections or vibrations created by the proposal is

- The PFC report however provides a typical modelling error of +3dB. This is considered to resolves most of these issues albeit noise at night and vibrations (however already addressed). While there would be better acoustic screening from the proposal, noise occurring before 0700 hours could be problematic (noting this is not proposed in the application). The traffic noise, secondary effect of reflection and vibration events are likely to add to the overall perception of noise effects but Mr Reeve considers it can be mitigated. Due to these uncertainties Mr Reeve considers that a conservative noise limit outlined in the above standard should be utilised in this application.
- It is considered the physical screening will not represent a 'best practicable' mitigation option by itself. Noise can be inherently variable but the level of noise from typical events can be reduced by drivers typically operating in a careful manner including:
  - o Driver training on slow touch-down procedures
  - o Appropriate training and operating procedures (perhaps contained within a noise management plan)

If the operation hours are 0700-1800 as stated, this would meet Mr Reeve's proposed threshold of acceptability for residential locations.
- Mr Reeve considers the threshold will not generate moderate annoyance for the majority of the population. This does not guarantee that noise levels at the threshold modelled will not create an annoyance to residents. There is normally a small percentage of the population who are considered affected by the modelled levels and Mr Reeve considers this places further emphasis on having good site management.
- The noise from containers dropping from height/being blown over by the wind appears to have occurred on occasion. While these types of event would generate very high levels of noise and vibration, it is expected to occur rarely as they are also undesirable for the operator, and should be given less weight than day-to-day noise from the activity.
- Sleep disturbance for young children during the daytime has been raised as a concern by residents. The underlying District Plan limits do not provide any specific protection for sleep during the daytime, and this would be unusual due to the restrictions it would place on typical activities.

I accept and adopt Mr Reeve's advice. It is difficult to reach a conclusion on noise effects when other tenancies have not been assessed in this application. There is potential for collective effects to be present due to the activities within different tenancies. Notwithstanding the applicant has not proposed a noise management plan to be implemented on the application site. While this can be placed as a condition in the substantial decision, I consider without a management plan, it will create at least a **minor** effect on the adjacent residential properties. I do not consider the noise effects to have a more than minor effect on the wider environment for the following reasons:

- I do not consider the occupiers of the other industrial areas to be affected as similar activities are operating in these areas.
- As Mr Reeve has noted, the transient use of the reserves are unlikely to create anything other than a minor effect.
- The wider residential area such as behind Long Street or the remainder of Gould Crescent and Ferry Road properties are further separated by the activity by houses, Ferry Road and/or Tunnel Road. I consider that these areas will have lower sound measures due to their distance and physical barriers in between them and the application site.

### Other Nuisances

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

- Any vibrations caused by the container movements would be best addressed through a handling guidance document for the site. This would cover best handling practices that will limit vibrations and noise when the containers are being moved and should be included as part of site induction for new employees with training and regular reviews to keep it current. This will not prevent incidents occurring from time to time. This is consistent with Mr Reeve's assessment above. Any concerns raised by residents in terms of damage to dwellings, it will be a civil matter between the tenants and the residential properties (or their insurer). It is recommended that the applicant and/or tenant complete surveys to understand the dwellings current conditions.
- With dust there are two areas of concern, day to day wind whipped up movement and that which is a result of earthworks. The ESCP should be sufficient to manage dust during earthworks with limits/stop work in place during times of high wind and any exposed soils dampened down with trucks (if they have access) and sprinklers, with controls on runoff. The ongoing management of the area until grasses/groundcover has time to grow is a bit more problematic. What is suitable for a subdivision may not pass the requirements of river management areas but the parks/reserves team must have some

ideas how best to address this. There are soil binders and polymers which seal the surface but I'm not sure if they'd want those near the river.<sup>11</sup>

- Methyl bromide is the usual fumigation pesticide for logs (nzfoa.org.nz) and this is quite dangerous in enclosed spaces but once exposed to air it rapidly dilutes and poses little risk. There are regulations and perhaps a licence involved that either MBI or Worksafe enforce for these types of activities (under the old HSNO legislation) and Council do not have any powers to enforce change. The location where the existing log activity is occurring is at least 100m away from the nearest residents so there is plenty of distance to dilute. Also worth noting the prevailing north east wind will direct it more towards the commercial area. As it is a gas it tends to dissipate upwards on release and if any, only tiny amounts would make it into the reserve and not at volumes to be harmful to people. Provided they undertake the fumigation activity according to WorkSafe Regulations there is no health concern.

I adopt Ms van der Erf's comments and I consider there are less than minor effects arising from nuisances created by the proposal..

### Safety Effects

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

- Health and safety is generally outside of the scope of the Resource Management Process.
- It is common practice for containers to be stacked. The activity will be regulated by organisations such as Worksafe and all businesses are required to have health and safety plans under relevant legislation and industry standards.
- In terms of traffic movements, it is unlikely that truck movements will occur adjacent to the residential activities as entering/exiting the Portlink development is either via Chapmans Road or Rutland Street. I do not consider this will create an adverse safety effect in the locality.
- It is noted while the light pollution created is not ideal from a health and safety perspective, it is likely that the reserve to vest will be unlit therefore there will be a similar level of effects in terms of tripping hazards. In terms of the reserve, there may be an adverse effect in perception of safety due to the location of the containers. While this is unlikely to occur it may contribute to cumulative adverse amenity effects for users.

### Construction effects

The application includes a retrospective works aspect which includes:

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

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

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

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

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

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

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<sup>11</sup> I have received commentary from the parks team that this would be managed through the engineering design phase of the landscaping plans (in accordance with the IDS and CSS). It is difficult for the parks team to assess this matter prior to this point as the land is not owned by Council.

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

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

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

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

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

### **Cultural Effects**

The site is adjoining a Ngā Wai - the Heathcote River. The site is associated with two Katiaki; Ngāti Wheke and Ngāi Tūāhuriri Rūnanga. Council on behalf of the applicant have conducted consultation with the Katiaki and the following comments have been provided.

#### Ngāti Wheke

- The 30 metre setback from the river is a minimum which must be maintained (includes the reserve and waterway setback) and protected as a buffer zone for the river
- Indigenous planting must be established within the 30 metre setback. Planting must be locally sourced and suitable for the conditions.
- No contaminated material may enter the 30 metre setback.
- Stormwater runoff from the development must not enter the buffer zone.
- Earthworks – Previously consented earthworks activity must not imply that any further consent for this activity is guaranteed. It must be reviewed and the activity status must reflect the significance of the area.

#### Ngāi Tūāhuriri Rūnanga

- Typically, ngā Rūnanga are opposed to waterway setback intrusions due to the negative impacts on the mauri of the wai. However, it is understood that the waterway setback intrusion is for the establishment of an esplanade reserve which will provide a range of environmental benefits such as an increase in biodiversity and the protection of the waterway from runoff. Therefore, if the recommended consent conditions are provided for, the Rūnanga will not consider themselves to be an adversely affected party.
- Earthworks can uncover previously undiscovered Māori artefacts or wāhi taonga. Therefore, an Accidental Discovery Protocol (ADP) must be in place during all earthworks and all contractors made familiar with this.
- Earthworks can also cause contamination of ground and surface waters through sedimentation if appropriate protection measures are not in place. It is vital that an Erosion and Sediment Control Plan is prepared in accordance with Environment Canterbury's Erosion and Sediment Control Toolbox for Canterbury and implemented on site during all earthworks. This Plan must ensure the protection of Ōpāwaho.
- The Applicant must incorporate indigenous vegetation as mitigation for the boundary adjustment and earthworks within a waterway setback. Should a condition requiring the planting of indigenous vegetation be out of scope for this application, it should, at the very least be provided as an advice note to ensure the stance of the Rūnanga (who hold tino rangatiratanga) is made clear to the Applicant. Indigenous vegetation is an important mitigation measure as it helps with the uptake of nutrients, binding of soils, and increases biodiversity values in the area.

The applicant has accepted the recommendations of the local Runanga. I note that if the haulage route soil was identified as contaminated, the Ngāti Wheke Katiaki would consider themselves affected. Overall I consider the cultural effects are less than minor.

## **Subdivision Design**

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

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

In terms of allotment design, I note the following:

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

## *Servicing*

The applicant has created servicing for the allotment in co-ordination with right of way permission RMA/2021/3436. The water supply servicing is to remain in private ownership while the stormwater and sewer infrastructure is to be vested into Council. Most of the work has been completed and the applicant has volunteered in the right of way approval to place conditions which ensure the relevant servicing is appropriately vested.

As no changes are proposed as part of this application, I consider the effects associated with servicing to be less than minor.

## *Transport*

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

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

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

## **Natural Hazards and subdivision**

### *Liquefaction Management Area*

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

## **Flooding**

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

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

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



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

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

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

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

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

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

#### *Finished Floor levels*

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

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



I accept Ms Keenan's assessment.

#### *Reserve*

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

#### *Bunding*

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

#### *Haulage Route*

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

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

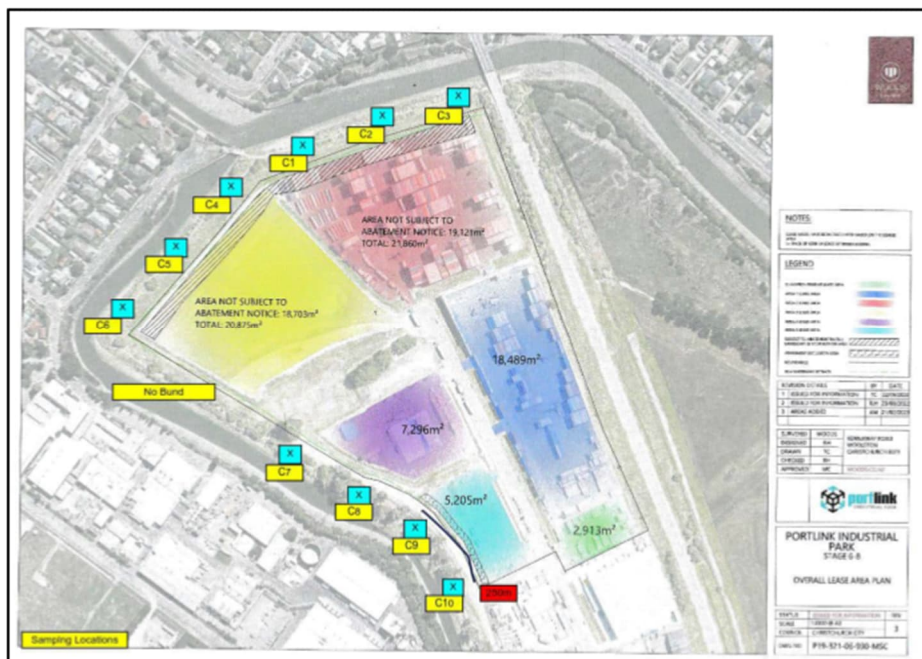
I adopt Ms Keenan's assessment.

#### **Overall flooding conclusion**

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

#### **Contamination**

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



**Figure 4.1: Sampling Locations**

*Figure 7: location of soil testing*

The DSI contained the following results:

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

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

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

I accept Ms van der Erf assessment and consider the effects of the bunds to be less than minor.

The fill established on the haulage route has not been tested. It is likely that it would provide similar results however there is uncertainty. It could be addressed as a condition as part of the substantial activity however I cannot provide a conclusion of effects due to the lack of information.

### *Consent Notices*

The applicant is proposing to partially cancel and vary the existing consent notices. I consider the effects of the cancellation are less than minor for the following reasons:

- Specific foundation requirements are likely to be transferred down to ensure any future buildings are built to the required building standards.
- Minimum floor levels imposed on the consent notice are no longer relevant as the District Plan has superseded this requirement.
- The stormwater system has since changed to require all discharge to be treated prior to the release to the Heathcote River.

- The above consent notice conditions are not likely to create an effect on neighbouring properties and the wider environment as the standards have been updated to be a higher level.
- The application proposes to extend activity into the 20m setback from the Heathcote. This will depend on whether this is accepted as part of the proposal as a whole. The consent notice itself changing will not have an adverse effects on neighbouring properties and the wider environment.
- The matters above can be resolved in the s104 assessment by conditions.

### Combined Residential Amenity Effects

I consider that the proposal is likely to create collective adverse effect on residential amenity for the wider locality. All aspects create a **more than minor** effect collectively for the following reasons:

- It is considered by myself and Council specialists that the containers will provide a greater bulk and visually dominating appearance than other buildings and outdoor storage examples due to their location and appearance in the short term and potentially the long term (depending on the success of mitigation). In my view this effect extends wider than the applicant has concluded, including users of the Heathcote River and residential properties along Ferry Road.
- The bulk form proposed (including the northern bund and associated fencing) is also required to provide for noise mitigation which may prevent the above built form being reduced in height. If these elements were to be changed to reduce visual effects, it is likely to create a greater effect with noise. Council have not received a complete noise assessment for all tenancies which make it difficult to assess the cumulative effects of all existing activities occurring on the site.
- These aspects create a perceptual concern of safety to the members of the public due to their required height and noise/vibrations created. This will assist decreasing the level of residential amenity in the locality. While perception is an intangible measure, I consider it to be an important aspect to consider in understanding residential amenity. This can be seen by the concerns raised by members of the public. While this is a s95 notification decision, the public concerns as to the effects align with views raised by the specialists.

### Conclusion of Effects

For the reasons outlined above, I consider there to be **more than minor** effects in terms of the following:

- Visual Effects
- Ecological Effects
- Function of Open Spaces
- Combined Residential Amenity Effects

#### 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?	Yes/No
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While I have concluded that the effects are more than minor, for completeness I do not consider that special circumstances apply to this application for the following reasons:

- The objectives and policies are direct in the expectation of protecting amenity of neighbouring residential zone while enabling development in the area. I consider the adjacent area is no different to other residential zones in the district which adjoin industrial general zones.
- There is some ambiguity in terms of the definition of building and the expectation of outdoor storage spaces and that there is an ongoing enforcement process concurrently being processed alongside this application. I consider all issues raised in this application have been adequately assessed by the effects assessment.
- While there is a high amount of public interest in activity on the site, the proposal is not exceptional, abnormal or unusual as the merits of the application can be assessed.

#### Conclusion on public notification

Having evaluated the application against the provisions of section 95A, my conclusion is that the application **must publicly notified**.

#### LIMITED NOTIFICATION TESTS [Section 95B]

Where an application does not need to be publicly notified, section 95B sets out the steps that must be followed to determine whether limited notification is required.

#### 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 <a href="#">statutory acknowledgement</a> , is there an affected person in this regard?	N/A

<b>Step 2: Preclusions to limited notification – section 95B(6)</b>	
Does a rule or NES preclude limited notification for all aspects of the application?	No
Is the application for a land use consent for a controlled activity under the District Plan?	No

There are no preclusions to limited notification under this section.

<b>Step 3: Notification of other persons if not precluded by Step 2 – sections 95B(7) and (8)</b>	
For a boundary activity, are there any affected owners of an allotment with an infringed boundary under s95E?	N/A
For other activities, are there any affected persons under s95E, i.e. persons on whom the adverse effects are minor or more than minor, and who have not given written approval?	Yes

### Assessment of affected persons

The statutory context for assessing the adverse effects of this application on the environment is outlined earlier. It is equally relevant to the assessment of affected persons, which extends to include the owners and occupiers of adjacent properties.

If the commissioner reaches a differing opinion on public notification, I consider that there are at least minor effects on the adjacent properties in terms of:

- Visual Amenity effects
- Noise

Additionally, there is discretion to disregard the effects of permitted activities where relevant (section 95E(2)(a)). I note that as discussed there is no similar permitted activity on the site in terms of height. I consider that the owners and occupiers of the following properties are affected persons because the adverse effects on them are likely to be minor or more than minor, and they have not given their written approval to the application:

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

<b>Step 4: Relevant to all applications – section 95B(10)</b>	
Do special circumstances exist that warrant notification to any other persons not already identified above (excluding persons assessed under s95E as not being affected)?	Yes/No

I do not consider that special circumstances apply for the reasons outlined in the s95A(9).

### Conclusion on limited notification

Having evaluated the application against the provisions of section 95B, my conclusion is that the application **must be limited notified** to the affected persons listed above.

### RECOMMENDATION

That, for the reasons outlined above, the application **be publicly notified** in accordance with section 95A of the Resource Management Act 1991

**Reported and recommended by:** Rachel Cottam, Senior Planner

**Date:** 11<sup>th</sup> August 2023

**Reviewed by:** Sean Ward, Planning Team leader

**Date:** 11<sup>th</sup> August 2023

### Decision

Decision maker notes

**Commissioner:**

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_