

WAINUI ENVIRONMENTAL PROTECTION SOCIETY INC.

Chairman's Report 3 Nov 2011

As Chairman of both WEPS and STCAG this report covers all matters relevant to both entities.

THE QUARRY BATTLE (Redvale)

No change or developments in past 12 months. The property remains for sale.

The matter of \$14,000 awarded against Redvale in favour of WEPS was considered, but costs of recovering outweighed the return and the matter has been parked.

If anyone ever wanted to start the quarry up again they would need to apply to RDC for variations to the consent and requirements of the enforcement order. These applications would need to be publicly notified and no doubt would provoke the ire of the neighbours. Getting the quarry going would be near impossible, in particular, in today's difficult economic climate. Given the very large number of conditions, the court should never have allowed this huge project to go ahead in this badly chosen site.

If there is no activity on Redvale site in period of 5 years then consent will lapse.

THE CLEANFILL BATTLE (KLL)

The major issue of concern to WEPS in the past year is the application by Kahikatea Land Limited (KLL) to operate a massive cleanfill on a property in 297 Whitehills Road, with access to the site from Kahikatea Flat Rd by developing an unformed legal road.

Key issues and developments in past 12 months included:

- KLL appealed the 2009 Council Hearing Decision (RDC declined, ARC approved the application) . KLL appealed both decisions.
- KLL submitted revised application and much reduced size & height of Cleanfill from 1.2 mill m3 to 625,000 m3 (compacted fill)
- The proposal would still see the cleanfill operation continue for a minimum of ten years creating dust, noise and visual pollution in our community.
- Import 1.0 million cubic metres of loose soil, clay, bricks, concrete etc, compacting this volume to 625,000 cubic metres.
- Involve up to 360 truck movements per day on Kahikatea Flat Rd (one every 2 minutes!) which will affect traffic volumes on SH17, Pine Valley Road and Wainui Road.
- Operate 5 & 1/2 days a week, 7am - 6pm, and 8am to 1 pm Saturdays
- Destroy 210 metres of stream and remove mature Kauri trees and
- Dump the cleanfill material over 7 hectares of land which is recognised as unstable landform and expect this to remain stable forever.

The subcommittee of WEPS, Stop The Cleanfill Action Group (STCAG) have poured considerable time, effort and money into vigorously opposing this cleanfill application. The reason for this strong opposition is that the proposed cleanfill is inappropriately located and will adversely affect the wider community in the Waitoki/Wainui/Dairy Flat areas, amenity values as well as many residents immediately surrounding the site.

Mediation.

Kahikatea Land Ltd appealed the Rodney District Council decision and ARC decision. STCAG, as a sub-committee of WEPS, lodged a S274 on the KLL appeal, and also lodged an appeal against the ARC decision to approve the cleanfill. STCAG, along with RDC and ARC were involved in several mediation sessions which sought to address the issues in contention. Mediation was total waste of time with KLL stating they had no intention to proceed with mediation unless STCAG accepted the outcome of a cleanfill. Details as to how the cleanfill might operate and what conditions would apply were either not provided or extremely poorly defined.

While RDC's then mayor, Penny Webster, had originally given WEPS an undertaking that the Hearing Committee decision would be "vigorously defended" by the RDC, it became increasingly obvious under the new supercity structure that the Council and its experts were working towards supporting the revised application under the belief that "all the effects of this proposed cleanfill could be contained or mitigated, subject to a comprehensive set of conditions". This was confirmed by council and its representatives at meeting on 3 Nov 2010.

- Environment Court set a date for evidence exchange 26 Nov 2010
- STCAG engaged a suite of experts (noise, dust, traffic, engineering, planning, landscape, environmental) to prepare evidence.
- STCAG took further advice on geotech (Aiden Nelson) – who recommended that the evidence of Matuska would be very difficult to counter on technical grounds in court. Roly Orense was not available as he was pulled into Christchurch earthquake full time.
- Iwi (Glenn Willcox) confirmed their opposition to the Application as they had in the Council Hearing process.
- In late November KLL requested an extension of evidence exchange, and Court agreed and moved to sequential evidence exchange on a delayed time table
 - KLL by 10 Dec 2010
 - RDC/AC by 28 Jan 2011.
 - STCAG by 18th Feb 2011.
 - Rebuttal 4th Mar 2011.
- A huge amount of work and effort from members of STCAG in Nov 2010 – Feb 2011 period went into evidence preparation and working with our experts to mount our case.
- Evidence was exchanged mostly in line with these dates, although a few days delayed in most cases.

- Date for Environment Court was set down for 23 May 2011.
- Following evidence exchange and rebuttal, in accordance with Environment Court process, all experts (KLL, Council and STCAG) engaged in caucusing to clarify where their views and evidence differed and whether compromise (eg different conditions) could be reached. Each set of experts had to provide court with a joint statement setting out which matters they agreed upon, and any matters of disagreement.
- April 20th Peter Airey & Caitlin Metz & Gerard Zwier met with all STCAG experts at Ellis Gould to review rebuttal evidence and caucusing where we were advised
 - each of the technical areas (except Planning and Landscape) had arrived at joint statements more or less agreeing with the proposal but with additional conditions
 - The access road had appeared to be an insurmountable issue for KLL proposal with gradient of 17%, where as industrial use is limited to 9%. KLL engineers proposed a modified, widened access road with gradient reduced to 14%. This complies with design for rural roading, not withstanding proposed industrial use. Traffic experts then agreed this was satisfactory for a rural road.
 - Renee Davies our Landscape expert remained positive that a case against the cleanfill could be sustained on amenity values.
 - Planning - O'connor Planning stated that in absence of technical evidence for declining the application that they could no longer sustain a planning argument in Environment Court.
 - EllisGould recommended that proceeding to Court was fool hardy in this situation and could provoke the ire of court, resulting in costs being awarded against us.
 - EllisGould offered to cap their costs at March accounts if STCAG withdrew from Court proceedings and paid in full.
- Faced with this new information an alternative action was taken to attempt to negotiate an exit with KLL, where by STCAG would withdraw it's interest in the case in return for payment of outstanding costs, and an undertaking that KLL would abide by all current conditions as well as any additional conditions that the court might decide.
 - A CONFIDENTIAL Heads of Agreement was drawn up and negotiated
 - This was signed, including a caveat over the title at 297 Whitehills Rd which would give STCAG leverage over timely payment
 - The HOA requires that both KLL and STCAG/WEPS only make public statements over the court case that are jointly agreed.
- 16th May 2011 EllisGould notified the Environment Court that STCAG withdrew interest in the KLL proceedings
- Given the late withdrawl the Environment Court Judge Smith, fresh from Three Kings Quarry Landfill case, had read all the evidence and came out with a decision on 29th June approving the Application, but subject to many additional conditions including
 - A total of 159 conditions
 - Confirming reduced height (RL 80) and volume of fill (625k M3)

- Widened access road, with curbing and appropriate water run off attenuation.
- Sealing of internal haul road
- Vastly modified mitigation planting, including the change from exotic to native plantings, more extensive screening of access road and site works.
- Enhanced protection for existing native plantings
- Bond of \$440,000
- Increased local representation on Community Liaison Group (CLG)
- Increased screening (xray + inspection) of all incoming loads, plus analytical testing
- **Consent was granted by the Environment Court on Tues 9 Aug 2011**
- STCAG received payment of funds from KLL on 7 Oct 2011, and caveat of 297 Whitehills Rd was removed.
- Payment of costs to all experts and debtors has since occurred. We negotiated a waiver on penalty interest where that had been lodged by some experts.
- First CLG meeting is scheduled for 16th November
- Other highlights in past 12 months
 - Topp Twins concert Feb 5th at Ascension bringing in \$8000 from Topp Twins plus ~\$2000 in donations at the event
 - Donation of Morrie Minor (Adrian Tulloch), with sale netting over \$4000
 - Continued financial support from members
- Despite the consent being granted it is yet to be established whether the operation is economically viable given the extensive list of 159 onerous conditions, the greater cost of forming access road, the current economic situation, the existing available cleanfill capacity in the greater Auckland area and a community that remains opposed in principle to the operation. It seems unlikely that a large, prudent operator like Fulton Hogan or Winstones would wish to assume these risks. KLL itself has stated that it does not have the expertise or experience to operate such a business and we believe their intention is to sell at soonest opportunity.

While the battle is lost, the war is not. We have come through the court process with a much smaller cleanfill, a positive bank balance and a very robust list of conditions. We now need to remain strong and united as a community in confronting this undesirable activity. We also need to comply with Heads of Agreement with KLL – in particular as it relates to public communications and confidentiality of the settlement. However any failure of KLL to abide by consent conditions must be challenged vigorously.

THANKS TO WEPS COMMITTEE MEMBERS

I would like to personally express thanks to all committee members through the many challenges and tribulations of past year. It has been an emotional roller coaster ride. In particular I'd like to thank Caitlin Metz for her many hours of dedication to evidence preparation, and some very stressful negotiations with KLL. I'd also like to thank Gerard

Zwier for his years of dedication, expert advice and resilience in leading WEPS in the Redvale case and the guidance and wisdom provided to STCAG in the KLL case. Gerard has resigned from the committee but remains a loyal member of WEPS. Stay in touch Gerard and good luck for your new endeavours! Thanks also to Christine Dowsett for expert preparation of accounts, managing our finances and payments to experts. It has been especially difficult over the past few months when experts have been chasing accounts that were overdue. Thanks also to Marilyn Dwyer for her record keeping, minute taking and continued efforts in raising money through Trade Me activity.

For those of you who already paid your \$50 subscription fee for 2011 – Many thanks!
For those who have not, please see attached form.

Peter Airey

A handwritten signature in black ink, appearing to read 'Peter Airey', with a large, stylized flourish extending to the right.

Chairman
Wainui Environmental Protection Society Inc

2011 Membership/Donation

Stop The Cleanfill Action Group (STCAG)

A subcommittee of the Wainui Environmental Protection Society Inc. (WEPS)

Over the last four years STCAG members have raised over \$200,000 to pay for its legal representation and expert witnesses in the Resource Management Hearing and Environment Court proceedings that resulted in a positive outcome, if not the one we truly desired and hoped for. We do need to remain strong and united as a community group to ensure the cleanfill, if it is ever activated, complies in full with all conditions. Should this occur STCAG needs to be ready to take action, including possible legal action which will require significant funding. While we don't have a pressing need for funds, we encourage all members to renew their membership and annual fees.

Because WEPS has gained charitable status, one third of your donation can be reclaimed from IRD at the end of this financial year.

Please give generously! Your financial assistance is greatly appreciated.

Name: _____
Address: _____
Phone: _____
Email: _____

Annual membership \$50 pp Donation \$ _____

Amount enclosed/banked \$ _____

Method of payment (tick one)

Cheque
(Please make cheques out to Stop The Cleanfill Action Group)

Direct Bank deposit
to ASB Account No 12-3046-0404987-00
Name: WEPS Inc - Stop The Cleanfill Action Group
Address: PO Box 300 348, Albany, Auckland

Please send this completed form to:

Stop The Cleanfill Action Group
P O Box 300 348, Albany, Auckland
Thank you for your support.