

In 2007 residents of Whitehills Rd and Kahikatea Flat Rd became alarmed at the prospect of a huge cleanfill site proposed for development on a 24ha property at 297 Whitehills Rd. The residents formed an action group to oppose this proposal and joined the Wainui Environmental Protection Society Inc (WEPS) to mount the opposition through the RMA process.

The community has rallied against this inappropriately located proposal and have been united against this proposal proceeding since 2007 and the fight continues today. The community represented their views at a Resource Consent Hearing held in mid 2009 and were successful in having the resource consent application declined. However in November 2010 the Applicant appealed the declined decision and by doing so dragged the matter into the Environment Court process. Thus we now have to fight the proposal all over again in the Environment Court in 2011.

The current President of WEPS is Peter Airey. Together with WEPS Vice-President, Caitlin Metz, Treasurer Christine Dowsett and Society Secretary Marilyn Dwyer and supported by a number of committee members the Society are resolute in representing the views of the community about the environmental impacts of the proposal and adverse impacts on our amenity values in the district in the Environment Court.

What is proposed?

A cleanfill site being developed By Craig Beecroft and Murdoch Dryden through a company, Kahikatea Land Ltd will eclipse anything else seen in the region with *one million cubic metres* of fill to be dumped over an 7ha area up to a depth of 22 metres on a steep unstable slope for a period of 10 years. The Applicant believes all adverse effects can be mitigated but the community and professional experts do not agree.

The site will be accessed from Kahikatea Flat Rd (*right beside* No 524) via an as yet unformed paper road which will run for 650 metres up a ridge splitting the landscape and the Cox farming property into two halves!

The application is for 180 trucks (360 truck movements) per day, five and half days a week for 10 years. Trucks will travel to the site mainly through Pine Valley Rd and SH 17, although some will also come through Wainui Rd. Trucks are also expected to backload from Flat Top quarry which the Applicant cites as a positive aspect of the proposal and will likely result in over all increase in heavy truck traffic going to and from the quarry. Thus residents in Whitehills Rd, Wainui Rd and Waitoki Rd can look forward to increased heavy truck traffic as trucks leave cleanfill to access FlatTop. Also in the proposal is the loss of 220 metres of stream, removal of mature kauri, pine and other trees as well as native skink habitat. The property borders a beautiful area of covenanted native forest and is surrounded by a number of lifestyle blocks with dwellings close to the boundary or looking directly into the cleanfill activity. Apart from the obvious negative visual impacts the cleanfill will generate dust, noise and odour that does not currently exist today and is considered to be an incongruent activity to the current character of the area and result in higher levels of sediment discharge into the Waipapakara Stream..

The application was initially heard by a Rodney District Council Hearing Committee in which commissioners Harry Bhana and John Childs represented RDC.

On 6 October 2009 this application was DECLINED by the RDC commissioners.

Here follows a summary of the reasons why it was declined: (this is the verbatim summary that appears on pages 7 and 8 of the decision)

DECISION OF THE RODNEY DISTRICT COUNCIL

That pursuant to Sections 104, 104D and 108 of the Resource Management Act, 1991, the notified resource consent application by Kahikatea Land Limited to operate a clean fill activity at 297 Whitehills Road, Wainui, legally defined as Lot 1 DP 70846, is refused consent for the following reasons:

REASONS FOR THE DECISION:

Pursuant to Section 113 of the Resource Management Act 1991, the reasons for this Decision based on our findings of fact, are as follows:

(a) The proposed cleanfill would result in significant adverse effects on the environment particularly in relation to adjacent properties in respect of noise, air emissions (including dust and fumes), visual effects and effects on amenity values together with cumulative effects which are not able to be satisfactorily avoided, remedied or mitigated.

(b) The Geotechnical evidence established that the stability of the fill relied in part on appropriate day to day management of the fill operation. We are not satisfied that we can assume that the appropriate level of management will be applied consistently over the life

of the fill operation. Accordingly we are not satisfied that the adverse effects of potential instability of the fill will be adequately mitigated.

(c) The applicant relied on the construction of the noise bund to mitigate adverse noise and visual effects. We do not consider that the noise bund on the paper road could be authorised in terms of the application as lodged.

(d) The proposed activity would be contrary to the objectives and policies of the Operative District Plan and Proposed District Plan 2000 which seek: to protect and enhance the rural character and amenity values of the area within which the application is proposed; to avoid new use and development in hazard prone areas; and, to avoid or minimise conflict between different land uses which can result in adverse effects upon amenity values.

(e) We have determined that neither of the gateway tests of s104D would be met and accordingly we do not have jurisdiction to grant consent to the application.

(f) We further determine that if the gateway tests of section 104D were satisfied consent should be refused on the basis that the application would have significant adverse effects on immediate neighbours and cumulative adverse effects on the wider neighbourhood and because it would not result in the protection and enhancement of the rural character and amenity values that exist in the area within which the application is proposed.

(g) There is nothing unusual or special about the proposal or the site which would justify the grant of consent in the face of adverse effects on the environment and the incongruity with the provisions of the Proposed District Plan that would result.

(h) Although the proposed clean fill activity would enable the applicant and companies associated with major earthmoving projects to provide for their economic welfare it would not enable the community and the people of this area to provide for their social and cultural well-being and for their health and safety. The proposed activity would not maintain and enhance the amenity values or the quality of the environment by virtue of the significant and cumulative adverse effects that it would generate over the ten-year period for which consent was sought.

In terms of our overall broad judgement of whether the proposal will promote the sustainable management purpose of natural and physical resources we find the proposal would not do so.

Rodney District Council

6 October 2009

Despite receiving a comprehensive **NO** from the commissioners, **with robust reasons as to why this proposal is inappropriately located** the Applicant, Kahikatea Land Limited (led by Mr Craig Beecroft and Mr Murdoch Dryden), decided to appeal this decision in the Environment Court.

During a meeting in the North Harbour Sports and Country Club opposite the Dairy Flat Primary School on Thursday 6 August 2009, Penny Webster, then Mayor of Rodney District Council, seemed to be quite unaware of the fact that its own planner (Matthew Paetz) had recommended that this huge cleanfill should be permitted to be established.

At that meeting Mrs Webster said that **RDC would “vigorously defend” the decision made by the Hearing Committee** and that they would as such oppose Kahikatea Land Limited in the Environment Court.

If only to keep RDC honest, WEPS joined in the Appeal process as section 274 parties to ensure our community is well represented in Court. Although in lodging this appeal, the Applicant has reduced the height and volume of the fill from 1.8 to 1.0 million cubic metres, little else has changed.

During 2010 several meetings took place between the applicant, the RDC, the ARC and WEPS and its experts but these “mediation meetings” came to nothing. In fact Kahikatea Land Limited refused to mediate with Stop the Cleanfill Action Group. On Wednesday 4 August 2010 another meeting took place at Simpson Grierson’s office (Legal representatives for RDC) which was attended by WEPS legal counsel, various expert consultants from both RDC and WEPS and a number of WEPS Committee members.

At that meeting Gerald Lanning, counsel for RDC, made a surprise announcement saying that although Council's planner (Rob Scott) had not as yet undertaken a global assessment of the proposal he and the other RDC experts had formed the opinion that given the reduced fill volume everything could be mitigated and handled thru conditions and that this information had been conveyed to RDC already.

Although Gerald Lanning said that RDC had not as yet reconsidered its position in terms of defending its decision and was conscious of the need to have input from STCAG's experts

before doing so, it left us with little doubt that RDC was going to roll-over and start the process of negotiating consent conditions with the applicant.

On 8 December WEPS took the opportunity to educate the newly appointed Rodney Local Board about the situation. Caitlin Metz delivered a very good, professional presentation urging those present (Bob Howard (Chair), Steven Garner (Deputy Chair), Warren Flaunty, Thomas Grace, Tracey Martin, John McLean, James Rolfe, Brenda Steele, June Turner and Penny Webster) to lobby the new Auckland Council Regulatory Committee which was the committee to reconsider the decision to defend the Rodney District Council Hearing Declined decision.

In the discussion that followed the presentation, Warren Flaunty reminded Penny Webster that it was *not* the planners that make the decision – they can only make recommendations – it is *council* that make the decision. Penny replied that while she acknowledged that she had said that she would “vigorously defend” the decision, she also reminded those present that she is only one voice on the regulatory committee of the new Auckland Council.

After the public meeting was over (the remainder of the meeting was closed to the public) this suggestion to lobby the Auckland Council Regulatory Committee was discussed and a letter supporting the community was drawn up. WEPS received an electronic copy from Raewyn Morrison, Committee Secretary of the Local Board Services

It read as follows (reproduced here verbatim)

17 December 2010

The Chairperson
Regulatory Committee
Auckland Council
Private Bag 92300
AUCKLAND 1142

Dear Councillor Raffills

**Presentation to the Rodney Local Board
from the Wainui Environmental Protection Society**

The Rodney Local Board received a presentation from the Wainui Environmental Protection Society at its business meeting on the 8th December 2010 on the issue of a Clean Fill application at Whitehills Road.

The Board received advice that the matter is being reported to the Regulatory Committee on Monday the 21st December to consider whether the Auckland Council can continue to oppose the application in its amended form. The Board agreed that it would like to provide some comment on the matter in the consideration of the matter by the Regulatory Committee.

The Committee will be aware of the strong community concerns regarding this application for a Clean Fill in this location. The Rodney Local Board is seeking some assurances that the strong community views are a matter that will be fully considered in your Committee's deliberations. We understand that the original application has been amended and reduced in volume and a number of the previous impacts have been revised. We have been advised that many of the previous Council experts are now satisfied with the amended application.

Our Board would like to make the following comments as an input into your Committee's consideration of this matter:

- That the environmental and social effects associated with the amended application are robustly assessed.
- That the strong community objections to the application are taken into account.
- That the earlier concerns of the Independent Commissioners who rejected the original application are being fully tested and addressed in the amended application.
- That no future costs of mitigation will fall to the community or the Rodney Local Board.

- That there is likely to be significant costs for a sector of the community if they are left to defend the matter in the Environment Court.

The Rodney Local Board is cognisant of the regulatory responsibilities that reside with the Auckland Council and we would hope that the local opinions and concerns are matters that can be taken into account in your deliberations.

Yours faithfully



Bob Howard

RODNEY LOCAL BOARD CHAIRPERSON

Despite these efforts on 21 December 2010 at the Council Chambers in the Auckland Town Hall the new Auckland Council Hearings Committee (Chairperson Councillor Noelene Raffills, JP, Councillors Arthur Anae, Cameron Brewer, Michael Goudie and Penny Webster met to discuss and debate the appeal and decided, in their wisdom, *not to defend the Commissioners decision* on the Whitehills Rd cleanfill.

This was a huge let-down for the local community after years of fighting it on their own, and then holding out hope that firstly Rodney, and then the Auckland Council would do the right thing and back their ratepayers, District Plan and a strong Commissioners' decision.

We are all hugely disappointed with both the Rodney Council and this very bad decision of the new Auckland Council. However we will fight on - in court and in whatever other forum is possible. WEPS members believe that this simply should never have been allowed to get this far if there had been competence on the part of the Rodney District Council in the early and latter stages of this application

So why did the Committee decide to override the commissioners' decision and why did they totally ignore the recently developed Rural Strategy document? This document makes it very clear that the cleanfill site is in a "Mixed Rural Production Environment" which specifies that "new utility sites such as major quarrying and clean filling *should be discouraged acknowledging the expectations of lifestyle activities in the area* (page 28 Rodney District Council Rural Strategy Adopted September 2010)

When we asked Penny Webster to comment on this decision all she could say was that even though she was part of that committee, she "had to step aside from the decision" and that "she had done her best but it was not good enough", saying she no longer had the influence that she used to have. This does not bode well for rural communities and their issues getting a fair hearing under the new formed super-city.

The Committee is resolute in fighting the application through the Environment Court and to do so has had to engage professional experts to represent the environmental impacts of this proposal in court. If this proceeds the significant adverse effects will remain with our community for at least the next 10 years. And if granted the Applicant can at a later stage apply to extend the timeframe and/or scope of the cleanfill site. Our community could well have to live with this large scale industrial activity for the next 15 – 20 years. Your friends and neighbours continue to believe this application is wrong for our area; we agree with the RDC decision to decline the Application and are preparing once again to defend the amenity values, landscape attributes, safety on local roads and rural character of our district that we all enjoy, this time in the Environment Court.

Eventually the Applicant will have to accept they have made a poor business decision in proposing an inappropriate activity for Waitoki. Our committee prides itself on having argued this issue on the facts, by presenting well researched information, engaging experts to provide independent and verified professional opinions and keeping to the truth. We welcome the support of all in the wider district as this project could have dramatic effects on many people.