

BEFORE THE NEW PLYMOUTH DISTRICT COUNCIL

UNDER

the Resource Management Act 1991 ("RMA")

IN THE MATTER

of PC18/00049 being a request under section 73(2) of the Act by **HAREB INVESTMENTS LIMITED** to the **NEW PLYMOUTH DISTRICT COUNCIL** for a Private Plan Change to rezone 2 Johnston Street, Waitara from Rural (FUD) to Residential A and Open Space.

STATEMENT OF EVIDENCE TIMOTHY JOHN MULLER ON BEHALF OF HAREB INVESTMENTS LIMITED

1. INTRODUCTION

1.1 My name is Timothy John (Tim) Muller. I am an environmental scientist and hold a Bachelor of Science with Honours in chemistry and a Bachelor of Arts in history from the University of Otago. I am also a Certified Environmental Practitioner (CEnvP) and a licensed asbestos assessor (LAA).

1.2 I have approximately 10 years of experience in environmental consulting, primarily focussed on investigation, risk assessment, and remediation of contaminated sites. Examples of some relevant projects include:

(a) Observation and validation of remedial works for commercial developments in Takanini and Massey North (both in Auckland), both affected by contamination from neighbouring service stations, and with the Massey North site also used for growing strawberries and kiwifruit.

(b) Investigation of industrial sites in Howick and Whangaparaoa (also both in Auckland) and planning, observation and validation of remediation works to support commercial development of those sites.

(c) Investigation and preparation of an Aftercare Management Plan related to ground gas from a Waikato landfill neighbouring residential sites.

(d) Due diligence investigation and remediation options assessment for an industrial chemical storage terminal in Mount Wellington, Auckland, which was affected by non-aqueous phase liquids in groundwater, for a client considering purchasing and redeveloping the site.

(e) Investigation of approximately 15 public sports fields across Auckland for potential contamination associated with persistent pesticide use.

(f) Investigation and observation of remediation and earthworks for various sites with asbestos present in soil, including a public sports field (also a former horticultural glasshouse site) in Mount Wellington, Auckland, a new school development on a former chicken farm in Takanini, Auckland, and a residential subdivision in Cromwell, Otago.

1.3 This evidence is given in support of the Private Plan Change application lodged by Hareb Investments Limited (**HIL**), to rezone approximately 11.54 hectares of land at 2 Johnston Street, Waitara, from Rural Environment Area (with Future Urban Development overlay) to Residential A Environment Area and Open Space B.

1.4 I am authorised to give this evidence on behalf of HIL.

2. INVOLVEMENT IN THE PROJECT

2.1 I was primarily responsible for writing the Preliminary Site Investigation (**PSI**) of the site which was submitted with the Plan Change Request. In preparing this I relied on a range of sources including Council records, historical aerial photographs, site ownership records, and other sources as referenced in the PSI (in particular, Section 1.2).

2.2 I have not visited the site, but have relied on the observations, field sampling and photographs of my colleague Kathryn Hooper, who reviewed the PSI report and is also appearing before this hearing (though in her capacity as a planner, rather than a contaminated land practitioner).

2.3 I have also reviewed the material produced with the Application, including;

(a) the original request application dated 22 November 2018;

(b) the revised application dated 13 March 2019, which was the version notified on 25 June 2019;

(c) Further information provided to the NPDC on 24 February 2020; and,

(d) Further information provided to the NPDC on 16 June 2020.

3. CODE OF CONDUCT

3.1 I confirm that I have read the Code of Conduct for expert witnesses contained in the 2014 Environment Court Practice Note and that I agree to comply with it. I confirm I have considered all the material facts that I am aware of that might alter or detract from the opinions I express. In particular, unless I state otherwise, this evidence is within my sphere of expertise and I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.

4. PURPOSE AND SCOPE OF EVIDENCE

4.1 In this matter, I have been asked by HIL to address the PSI carried out for the site.

4.2 I confirm that I have read the submissions on the Application and the Council Officer's Report. The assumptions, assessment and conclusions set out in my report attached to the Plan Change Request remain valid.

4.3 Except where my evidence relates to contentious matters I therefore propose to only summarise the conclusions set out in my expert technical PSI report.

4.4 My evidence is structured as follows:

- (a) General note on the applicability of the *National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NESCS)* to this plan change (Section 5);
- (b) Summary of findings of PSI (Section 6);
- (c) Matters raised in submissions (Section 7);
- (d) Council Officer's Report & Supporting Specialist Reports (Section 8);
- (e) Proposed Plan Amendments (Section 9); and
- (f) Concluding comments (Section 10).

5. APPLICABILITY OF NESCS

- 5.1 The applicability of the NESCS to private plan changes is somewhat debatable. On land covered by the NESCS, there are only five types of activity which are restricted:
- (a) changes of land use,
 - (b) subdivision,
 - (c) soil disturbance,
 - (d) soil sampling, and
 - (e) removing or replacing fuel storage systems.
- 5.2 Given that subdivision of the land covered by the plan change will occur at a later date and as part of a separate regulatory process, the proposed plan change does not directly involve any of the above activities, except perhaps land use change. However, under the NESCS, 'land use' is defined in terms of the actual activities occurring on the site, and is not necessarily related to zoning (see clause 5(6) of the NESCS and Section 2.1.2, point 5 of the Ministry for the Environment's 2012 *User's Guide* to the NESCS). Perhaps for this reason, neither the *User's Guide* nor the NESCS itself explicitly state whether private plan changes are covered by the NESCS when there is no directly associated subdivision etc.
- 5.3 Regardless of the above issues of interpretation, it was considered that a PSI would be of value in giving NPDC confidence that the land is generally suitable for the residential land use proposed under this plan change.
- 5.4 As detailed below, further investigation and assessment under the NESCS will be needed when an application is lodged for subdivision consent (and the associated change of land use and probable soil disturbance). NPDC will have the opportunity to carry out a more detailed review of contamination-related issues relevant to the specific development proposal at that time.

6. SUMMARY OF FINDINGS OF PSI

- 6.1 Based on the information reviewed (see Section 2 above), it was confirmed that the site has been used historically for horticulture, specifically market gardening and potentially two tunnel houses. Persistent pesticide use associated with horticulture is included on the Ministry for the Environment's *Hazardous Activities and Industries List* (2011). No other hazardous activities were identified as having occurred at the site.
- 6.2 In addition to the desktop sources of information mentioned above, twelve soil samples (S1-S12) were collected in the locations marked in Figure 12 of the PSI report. Seven of these samples (S1-S7) were within a yard area in the central part of the site where several structures were previously located. The remaining samples (S8-S12) were spread across the remainder of the site.
- 6.3 All samples were analysed for the standard laboratory suites known as "heavy metals" (a group of seven toxic trace elements such as arsenic, cadmium and lead) and organochlorine pesticides (OCPs, a group of persistent pesticides and their breakdown products, including DDT and dieldrin). Additionally, five samples collected near former structures were analysed for asbestos in soil.
- 6.4 The results can be summarised as follows:
- (a) No asbestos was detected in the five samples analysed.
 - (b) DDT and breakdown products were present at slightly above the detection limit (and approximately three orders of magnitude below the relevant human health standard) in samples S3 and S9, located within the yard area and near the site's north-western boundary, respectively. No DDT or breakdown products were detected in any of the other ten samples analysed for OCPs, nor were any OCPs other than DDT detected in any of the twelve samples analysed.
 - (c) Toxic trace element concentrations were generally within the expected background range. However, samples S1 and S3-S6, all within the yard area, contained above-background concentrations of one or more of the following elements: arsenic, cadmium, lead and zinc.
 - (d) Cadmium and zinc concentrations in all samples were below the relevant human health standards for residential use.

- (e) Arsenic and lead concentrations were slightly greater than (no more than approximately double) the relevant human health standards for residential land use in samples S3, S4 and/or S5 from the western and northern parts of the yard area. All arsenic and lead concentrations complied with the human health standard for recreational land use.
 - (f) Note that sources for the background concentrations and human health standards referred to above are given in Section 3.3 and 6.2 (respectively) of the PSI report.
- 6.5 Based on these results, the PSI report concluded that the site was suitable for the proposed rezoning, but recommended further investigation once the details of the development were known (i.e. at the subdivision/development stage). The proposed additional investigation work is to include:
- (a) Obtaining and reviewing additional aerial photography to confirm, if possible, whether two tunnel houses referred to in the property file were ever built, and if so where.
 - (b) Commenting on any relevant additional information received from Fire and Emergency New Zealand.
 - (c) Collecting and analysing at least one soil sample per proposed residential lot.
 - (d) Further investigation in the central yard area of the property to delineate (horizontally and vertically) the potential hot spots identified at locations S3-S5.
- 6.6 Some form of remediation/management will also be required when site development proceeds. This will be informed by the results of the additional investigation work summarised above. However, based on the preliminary soil sampling results included in the PSI report (in particular the fact that no contaminants were detected at concentrations exceeding the human health standards for recreational land use), management may be as straightforward as ensuring that the topsoil from the potential hotspots near locations S3-S5 is handled separately and placed in a future park, reserve or road verge as part of site development.
- 6.7 These matters are all able to be addressed at the time of future development/subdivision, including compliance with the NESCS in relation

to soil disturbance, and the mechanisms to require this already exist in legislation.

6.8 To summarise, the information presented in the PSI report enables me to confidently conclude that:

- (a) It is highly unlikely that a risk to the health of future residents will exist at the site due to contaminants in soil, provided that the future land use is generally consistent with that assumed in the PSI report, that further investigation is carried out before residential use or soil disturbance commences (probably during the subdivision consent application process), and that appropriate remediation or management informed by that further investigation is completed.
- (b) At this stage, there is no reasonable cause to suspect that asbestos-contaminated soil is present at the site, and therefore clause 10(1) of the *Health and Safety at Work (Asbestos) Regulations 2016* does not apply to soil at the site. It would still be prudent to consider the possibility of asbestos contamination during future investigations, including (at a minimum) a detailed walkover inspection of the areas near present and former buildings.
- (c) Nonetheless, some of the topsoil at the site contains contaminants at least slightly above background levels. While the preliminary sampling results indicate that most soil is suitable for residential use, soil with above-background contaminant concentrations can not be treated as cleanfill, if removed from the site.

7. SUBMISSIONS

7.1 I have reviewed the submissions received and none raise particular matters within my field of expertise.

8. COUNCIL OFFICER REPORT

8.1 I have reviewed the parts of the Section 42A Report for the Application which are relevant to my evidence, with paragraphs 11.22-11.24 being of most relevance.

8.2 These paragraphs provide an accurate summary of the conclusions of the PSI and I agree with the concluding statements on this issue in paragraph 11.24.

9. PROPOSED POLICIES AND RULES

9.1 I have reviewed the proposed amendments to the Policies and Rules that are attached to Ms Hooper's evidence and I consider these to be appropriate, as far as they relate to soil contamination.

10. CONCLUSION

10.1 My evidence has assessed the soil contamination matters that I am aware of in relation to the Application and I confirm my conclusions that there are no soil contamination issues that would preclude the proposed plan change, and the site is able to be suitable for the proposed residential zoning and future development.

**Tim Muller
Landpro Ltd**

9th November, 2020