BEFORE AN INDEPENDENT HEARINGS COMMISSIONER AT NELSON

COUNCIL REF: RM 200048, 200489 AND 220578

UNDER THE	Resource Management Act 1991
IN THE MATTER OF	Land use consent applications by CJ Industries Limited to extract gravel from 134 Peach Island Road, Motueka from the berm of the Motueka River and on the landward side of the stopbank at Peach Island with vehicle access via a right of way over 493 Motueka River West Bank Road, Crown land and unformed legal road (RM200488 and RM200489); and discharge permit application by CJ Industries Limited to discharge contaminants to land from backfill material associate with the proposed gravel extraction (RM220578)

STATEMENT OF EVIDENCE OF JESSICA LEE HOLLIS ON BEHALF OF VALLEY RESIDENTS AGAINST GRAVEL EXTRACTION INCORPORATED (PLANNING)

Dated: 11 November 2022

QUALIFICATIONS AND EXPERIENCE

1. My full name is Jessica Lee Hollis. I am a resource management planning consultant. I hold a Bachelor's degree in Resource Studies, majoring in Environmental Management, and I am an Associate Member of the New Zealand Planning Institute. I also hold a Postgraduate Certificate in Science with a focus on Māori resource and environmental management, including Māori natural resource policy.

2. I currently operate as an independent resource management consultant based in Mangawhai, in the Northland region, and undertake work throughout New Zealand. I have been employed in resource management planning roles within local government in the Buller, Nelson, Auckland and Northland regions over the past 18 years, including as the Policy and Planning (Consents) Manager at Kaipara District Council from 2017 to 2019.

3. My career to date has been pre-dominated by work as a practicing planner in the area of resource consents, including in the Nelson and Tasman regions. I have also worked in resource management policy development, interpretation and review, and compliance, monitoring and enforcement functions. I am currently contracted by the Ministry for the Environment to assist in the implementation of the COVID-19 Recovery (Fast-track Consenting) Act 2020, including providing advice and recommendations to the Minister for the Environment on applications under that legislation.

4. I have processed a number of resource consents for district councils, including providing planning evidence at hearings, involving mineral and aggregate extraction in the Buller and West Coast regions.

CODE OF CONDUCT

5. I have read and agree to comply with the Code of Conduct for expert witnesses as set out in the Environment Court Consolidated Practice Note 2014. I have also read and am familiar with the Resource Management Law Association / New Zealand Planning Institute "Role of Expert Planning Witnesses" paper. I confirm that the

evidence on planning matters that I present is based on my qualifications and experience, and within my area of expertise. I am not aware of any material facts which might alter or detract from the opinions I express. If I rely on the evidence or opinions of another, my evidence will acknowledge that.

BACKGROUND AND ROLE

6. I was engaged by Valley Residents Against Gravel Extraction Incorporated (Valley R.A.G.E) in June 2022 and I was not directly involved in its submissions on resource consent applications RM200048, 200489 or 220578.

7. In preparing my evidence, I have read the following documents insofar as they relate to the scope of my evidence:

   7.1 Resource Consent Applications and the Assessment of Effects on the Environment prepared by the Applicant, dated 15 June 2020 and 15 July 2022

   7.2 Section 92 requests by Tasman District Council and the responses from the Applicant

   7.3 Submissions of Valley R.A.G.E

   7.4 Submissions of Wakatū Incorporation, Te Ātiawa Manawhenua Ki Te Tau Ihu Trust and Te Rūnanga o Ngāti Rarua

   7.5 Section 42A reports and addendum

   7.6 Statements of evidence prepared on behalf of the Applicant

   7.7 Draft statement of evidence of Mr Iain Campbell (Soil Science – Valley R.A.G.E)

SCOPE OF EVIDENCE

8. The scope of my evidence is generally restricted to planning matters relating to land productivity for RM200488, being the land use consent application to disturb land

for gravel extraction within the Rural 1 zone. I also make brief comments on noise effects in relation to amenity values, and cultural effects.

9. Effects on land productivity and alignment with the relevant planning provisions of the Tasman Resource Management Plan (TRMP) and the National Policy Statement for Highly Productive Land 2022 (NPS-HPL), are outstanding matters of contention between the Council's s42A report author, Ms Susanne Bernsdorf Solly, and the Applicant's planner, Mr Hayden Taylor. Both Ms Bernsdorf Solly and Mr Taylor also acknowledge that they are not in a position to come to a conclusion with respect to cultural effects.

10. My evidence does not address all areas of concern of Valley R.A.G.E. I understand representatives of Valley R.A.G.E are providing separate evidence on a range of matters raised in its submissions.

11. My evidence is structured as follows:

11.1 Introduction

11.2 Executive Summary

11.3 Site and Setting

11.4 Project Description and Consents Required

11.5 Land Productivity

11.6 Noise Effects

11.7 Cultural Effects

11.8 Other Matters

11.9 Conditions

11.10 Conclusions

EXECUTIVE SUMMARY

12. To summarise, my evidence expresses the following opinions in respect to the proposed gravel extraction and associated activities:

12.1 With respect to land productivity, having considered the relevant matters set out in the NPS-HPL, TRPS and TRMP, I consider the applicant has not provided sufficient information to adequately determine the application. In particular, they have not provided an adequate assessment of alternative locations or demonstrated that the proposal provides significant regional public benefit that could not otherwise be achieved using resources within New Zealand. In my view, the applicant cannot justify the development has a functional or operational need to locate at 134 Peach Island Road simply on the basis of economic or property ownership considerations. Based on the information that has been provided, and the evidence of Mr Campbell and Dr Harvey, I consider the proposal will be inconsistent with some, and contrary to other, relevant provisions of the NPS-HPL and TRMP.

12.2 With respect to noise effects, I agree with Ms Bernsdorf Solly that noise effects from the proposal do not fall within the permitted baseline and should not be disregarded under s104(2) of the Act. I consider that a more stringent noise limit than the 55dBA LAeq as specified in the TRMP should be applied to the proposal to ensure that any noise generated is compatible with the ambient and background noise levels in the area, and in recognition of the existing amenity of the receiving environment.

12.3 With respect to cultural effects, having considered the submissions of Wakatū Incorporation, Te Ātiawa Manawhenua Ki Te Tau Ihu Trust and Te Rūnanga o Ngāti Rarua, I consider the applicant has not provided sufficient information to adequately determine the application.

SITE AND SETTING

13. The site and setting has been described in the Application and the s42A report circulated by Council on 4 March 2022. I do not intend to repeat this here.

14. I have viewed the application site from adjoining land, and the wider surrounding area, during a site visit on 2 July 2022. During that site visit I also had the opportunity to view the applicant's quarry operations at Douglas Road, Motueka (again from adjoining land).

15. I agree with Ms Bernsdorf Solly and Mr Taylor's identification of the relevant zoning and overlays under the TRMP.

PROJECT DESCRIPTION AND CONSENTS REQUIRED

16. The project has been described at length in the Application and the s42A report circulated on 4 March 2022, and the addendum to the s42A report and s42A report on the discharge permit application circulated on 28 October 2022. I do not intend to repeat this here.

17. A total of three consents to authorise the proposal have been applied for and publicly notified. As previously noted, the scope of my evidence is generally restricted to planning matters relating to land productivity, cultural effects and noise in relation to rural amenity for RM200488, being the land use consent application to disturb land for gravel extraction.

18. I accept Ms Bernsdorf Solly and Mr Taylor's assessment that the land use consents (RM200488 and RM200489) should be bundled and considered as a discretionary activity.

LAND PRODUCTIVITY

19. In the addendum to her s42A report, Ms Bernsdorf Solly identifies three matters[1] that she considers are in contention relating to land productivity (included within points 19.1 and 19.6 below). Based on my review of the s42A report and addendum,

[1] Bernsdorf Solly (21 November 2022), S42A report addendum, para 9.39, pg 43

Mr Taylor's evidence and Mr Campbell's evidence, I consider that the following matters are in contention:

19.1 the interpretation of the definition of highly productive land;

19.2 whether the flooding risk to the Stage 1 area of the proposal constitutes a permanent or long-term constraint on the land that means the use of the highly productive land for land-based primary production is not able to be economically viable for at least 30 years;

19.3 whether the proposal is a small-scale or temporary land-use activity that has no impact on the productive capacity of the land;

19.4 whether the proposal provides significant national or regional public benefit that could not otherwise be achieved using resources within New Zealand;

19.5 whether there is a functional or operational need for the use or development to be on the highly productive land;

19.6 whether the practical implementation of the Soil Management Plan (SMP) can successfully achieve the outcomes sought and prevent a loss of productive value of the land, and whether the conditions (as volunteered by the applicant) will lead to a degradation in productive capacity.

20. I address these matters in turn below.

Extent of Highly Productive Land / High Productive Value land

21. The definition of 'highly productive land' under the National Policy Statement on Highly Productive Land 2022 (NPS-HPL) has been covered in evidence and I do not intend to repeat it here. There is a difference in opinion between Ms Bernsdorf Solly and Mr Taylor as to what part of the application site should be considered as highly productive land under the NPS-HPL. Ms Bernsdorf Solly concludes that the entire site is defined as highly productive land, whilst Mr Taylor considers that, at most, only 1.3ha of land on the landward side of the stop bank and 1.8ha of land on the river side of the stop bank meets the definition.

22. The evidence of Mr Iain Campbell raises concerns with the report prepared by LandVision Ltd[2] that has been used by the applicant's experts to identify the 1.3ha and 1.8ha of highly productive land. Mr Campbell considers the report "*lacks soil science substance*"[3]. Mr Campbell has considerable experience in the field of soil science, particularly within the Tasman district, and has assessed the soil productivity potential of Riwaka soils (which are the type of soils found on the site) as being of high to moderate soil versatility class and capable of producing a wide variety of crops[4]. Mr Campbell is confident the soils have moderate to high productive potential and considers this is consistent with the highly productive classification the land in the NPS-HPL[5].

23. I accept the opinion of Mr Campbell, and therefore agree with Ms Bernsdorf Solly, that the entire application site should be considered as highly productive land under the NPS-HPL.

24. Based on the information contained in the s42A report and addendum, and the evidence of Mr Campbell, I also agree with Ms Bernsdorf Solly that the land within the entire application site, which is classified as LUC Class 3, meets the definition of 'high productive value' in the TRMP.

Flooding risk to the Stage 1 area of proposed works

25. Both Ms Bernsdorf Solly and Mr Taylor have concluded that the land within Stage 1 (outside of the stop bank) has limited productive value due to flooding risk. However, as detailed above, Ms Bernsdorf Solly accepts that the land within Stage 1 still meets the definition of 'highly productive land' under the NPS-HPL.

26. Mr Reece Hill states that the land "*outside the stop bank is not suitable for agricultural land development due to soil and land limitations of an inherent seasonally high watertable, flood risk, and variable or shallow soil depth*"[6]. With

[2] LandVision Ltd (May 2021), Peach Island LUC & Soil Survey, Peach Island Road Motueka Valley, CJ Industries
[3] Evidence of Campbell (11 November 2022), para 16, pg 3.
[4] Evidence of Campbell (11 November 2022), para 15, pg 3.
[5] Evidence of Campbell (11 November 2022), para 17, pg 3.
[6] Evidence of Hill (15 July 2022), para 4.2, pg 18

respect to clause 3.10(1)(a) of the NPS-HPL, Ms Bernsdorf Solly, Mr Taylor and Mr Hill agree that the land within Stage 1 has "*permanent or long-term constraints … that mean the use of the highly productive land for land-based primary production is not able to be economically viable for at least 30 years*"[7].

27. Mr Campbell considers that whilst frequently flooded soils are downgraded for potential productive use because of flooding, this does not preclude their use for very productive purposes[8]. Mr Campbell also notes that "*notwithstanding the variable depths, textures, stoniness and drainage differences over small distances, most of the Waimea Plain is under intensive horticulture and or market gardening*"[9], and he provides examples of this for market garden crops and a kiwifruit orchard.

28. Based on the evidence of Mr Campbell, I consider that insufficient evidence has been provided to demonstrate that flood risk, in and of itself (as referred to by Ms Bernsdorf Solly and Mr Taylor), is a permanent or long-term constraint that means the use of the highly productive land for land-based primary production is not able to be economically viable for at least 30 years.

Is the proposal small-scale or temporary?

29. There is a difference in opinion between Ms Bernsdorf Solly and Mr Taylor as to whether the proposal is small-scale or temporary, which is relevant under Clause 3.9(2)(g) of the NPS-HPL. Ms Bernsdorf Solly concludes that the proposal is neither small-scale nor temporary, whilst Mr Taylor considers it is 'debatable' whether the activities are small-scale but considers they are temporary.

30. I agree with Ms Bernsdorf Solly that the proposal is neither small-scale nor temporary. This is also the view of Mr Campbell. Neither of these terms are defined in the NPS-HPL, however the s32 report for the NPS-HPL provides an indication of what was intended by the allowance for small-scale or temporary activities:

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[7] NPS-HPL, clause 3.10(1)(a)

[8] Evidence of Campbell (11 November 2022), para 80, pg 21.

[9] Evidence of Campbell (11 November 2022), para 27, pg 5.

> "***Is a small-scale or temporary land-use activity that has no impact on the productive capacity of the land*** *– this ensures the NPS-HPL does not prevent temporary land-use activities (such as concerts, farmers markets) from occurring on HPL, where it is acknowledged these activities are of a short duration and will not restrict or compromise the land from being used for land-based primary production. It also allows for small-scale activities (eg, a home business run from a farmhouse) where these have no impact on the productive capacity of the land. Guidance will provide more direction to territorial authorities on the range of activities that could be anticipated under this clause*."[10]

31. When compared to the examples used for temporary activities – concerts and farmers markets, and small-scale activities – home business run from a farmhouse, I consider that the proposed gravel extraction does not fit what is intended by either category. This is also supported by the s32 efficiency assessment of Clause 3.9 that details the benefits of enabling "*small-scale (eg, a home business) or temporary land-use activities on HPL that provide an economic benefit to the landowner, <u>while ensuring the predominant use of the land continues to be land-based primary production</u>*"[11] (my emphasis).

Does the proposal provide significant national or regional public benefit that could not otherwise be achieved using resources within New Zealand?

32. Mr Taylor considers the proposal will provide significant national or regional public benefit that could not otherwise be achieved using resources within New Zealand, which is relevant under Clause 3.9(2)(j)(iv) of the NPS-HPL. Ms Bernsdorf Solly considers the applicant has not provided sufficient evidence to demonstrate this.

33. I note that the applicant has provided additional evidence from Dr William Kaye-Blake and Mr Wayne Scott, CEO of the Aggregate and Quarry Association, on this

[10] MfE (2022), National Policy Statement for Highly Productive Land: Evaluation report under section 32 of the Resource Management Act, pg 98

[11] MfE (2022), National Policy Statement for Highly Productive Land: Evaluation report under section 32 of the Resource Management Act, pg 100

point, however I do not consider this evidence is sufficient to clearly demonstrate that the proposal provides significant regional public benefit that could not otherwise be achieved using resources within New Zealand. Neither Mr Kaye-Blake nor Mr Scott have undertaken a detailed analysis of alternative sites (both in the region and elsewhere in New Zealand) that may be available to undertake the proposed gravel extraction, nor a cost-benefit analysis on those sites (as has been undertaken for the application site).

34. Mr Campbell considers that there are other nearby sites where alluvial aggregate is available that will not impact on highly productive land[12]. This aligns with the evidence of Dr Mike Harvey who has referenced Aggregate Opportunities maps by GNS Science that show gravel river deposits near to Peach Island. Mr Harvey advises that "*aggregate is also readily available from other sources (eg Waimea River) that do not seem to impact on highly productive soils*"[13]. In my opinion, the applicant should be required to consider possible alternative locations for the activity in greater detail, including a comparison of the regional public benefits from extraction at those sites. This is particularly important given the strong policy direction of the TRMP and NPS-HPL.

35. Given the importance of this matter to the consideration of the application, i.e. it is a determinative factor for whether the proposed gravel extraction activity is considered an 'inappropriate use of highly productive land', I also consider it would have been appropriate for the Council to have engaged a technical specialist to review the assessment and evidence of Mr Kaye-Blake. Whilst Council is not obliged to do so, a review could provide assurance to both Council and submitters that the methodology and findings are sound. In my opinion, the onus should not be on the submitters to obtain a technical review in an area that is critical to the consideration of the application under the NPS-HPL.

[12] Evidence of Campbell (11 November 2022), para 21, pg 4.

[13] Evidence of Harvey (11 November 2022), para 36, pg 19.

Is there a functional or operational need for the use or development to be on the highly productive land?

36. Ms Bernsdorf Solly and Mr Taylor agree that there is an operational need for the proposal to be located on highly productive land, however they disagree as to whether there is a functional need.

37. With respect to functional need, I agree with Ms Bernsdorf-Solly that there is not a functional need for the proposed gravel extraction to be on highly productive land as alternative sources of aggregate are available (that are not on highly productive land) according to Mr Campbell and as evidence from the GNS Science database referred to in Mr Harvey's evidence. Mr Taylor's evidence details that there is a functional need for the proposal to locate on the application site and in an alluvial river plain environment in general. Whilst aggregate deposits are location specific and therefore aggregate extraction may be limited to river plain environments, this should not be confused with a functional need for aggregate extraction to be on highly productive land. These are two different matters.

38. 'Operational need' is not defined in the NPS-HPL and the s32 report for the NPS-HPL only details that 'established case law' is available on the term. 'Operational need' is defined in the National Planning Standards (that predate the NPS-HPL) as:

> *"…the need for a proposal or activity to traverse, locate or operate in a particular environment because of technical, logistical or operational characteristics or constraints"*[14]

39. In my opinion, the applicant has not provided sufficient evidence that there is an operational need for the proposal to be on highly productive land. The applicant notes the "*site is considered to be a desirable location for gravel extraction to take place because of the high-quality aggregate that is available and the relatively close carting distances*"[15]. The primary drivers for utilising the application site for gravel extraction appear to be that the applicant owns the land at 134 Peach Island and the

[14] MfE (2019), National Planning Standards November 2019, pg 62

[15] Planscapes (NZ) Ltd (June 2020), Application for Resource Consent, pg 6

cost of transporting the material is lower than other sites. However, property considerations are not relevant to decision-making under the Resource Management Act 1991, and I do not agree that reduced transportation costs is sufficient to demonstrate 'operational need'.

40. The applicant should be required to consider possible alternative locations (not on highly productive land) for the activity in greater detail, including a comparison of the technical, logistical or operational characteristics or constraints that exist at alternative sites. This consideration of alternatives should also include the opportunity to extract increased amounts of gravel under the Council's global resource consent. Such an analysis would provide clearer evidence on whether there was an operational need for the proposal to be on highly productive land, or rather whether the proposed location was preferable due to profit margins.

Will implementation of the SMP successfully achieve the outcomes sought and prevent a loss of productive value of the land, or will the proposal lead to a degradation in productive capacity on the site?

41. Relying on the evidence of Mr Hill, and subject to the activity being carried out in accordance with the SMP, Mr Taylor considers that the proposal minimises and mitigates any loss of the availability and productive capacity of highly productive land. The evidence of Mr Hill states:

> *"…although there will be a temporary loss of productive land (during and immediately following gravel extraction), the soil and land will be restored and no loss of potential productive value will result. In my opinion, the productive capacity of the soil will be restored, and potentially enhanced, within 0-3 years of restoration. As a result, the potential of land productivity to provide for future generations is not compromised."*[16]

42. With respect to the availability of highly productive land, Mr Hill considers that any effects on the productive capacity of the soils will be remedied beyond a 3-year

[16] Evidence of Hill (15 July 2022), para 3.61, pg 18

period. I note the applicant is seeking a consent duration of 15 years (and does not propose to commence works on the Stage 1 area for approximately 6 years), therefore granting consent to this application would make the highly productive land 'unavailable' for productive purposes for up to 18 years.

43. Mr Taylor's evidence appears to be focused on the availability and productive capacity of highly productive land in the long term, however the NPS-HPL seeks to protect highly productive land for use in land-based primary production, both now and for future generations[17]. Mr Taylor has referred to the definition of 'productive capacity' in the NPS-HPL as the "*ability of the land to support land-based primary production over the long term*"[18]. However, this does not imply that the availability of highly productive land should also be considered over the long term as this would contradict Objective 2.1 that seeks to protect the land both now and into the future.

44. In my opinion, a timeframe of up to 18-years does not minimise or mitigate the loss of availability of highly productive land in the district. I discuss consent duration further in paragraph 74 of my evidence.

45. With respect to the loss of productive value and productive capacity of the land, Ms Bernsdorf Solly has raised concerns regarding the practical implementation of the SMP. Similarly, Mr Campbell, based on experience with similar soil restoration projects, is concerned that "irrespective of directive wording and specific mitigation measures in the draft SMP, the likelihood of human error over the project's 15 year timeframe is high"[19]. Mr Campbell is particularly concerned about the soil management measures proposed including with respect to backfilling and the reliance on self-certification of backfill material.

46. Mr Campbell disagrees with Mr Hill that after 0-3 years the site will be fully remediated, and probably better than before, and considers "*the disturbed soils on*

[17] NPS-HPL, Objective 2.1, pg 7

[18] NPS-HPL, Interpretation, pg 4

[19] Evidence of Campbell (11 November 2022), para 44, pg 10.

Peach Island will not be able to be restored to their high potential productive status"[20].

Relevant statutory provisions for land productivity

NPS-HPL

47. I generally agree with the identification of the relevant objective (there is only one) and policies of the NPS-HPL in the s42A addendum.

48. The objective of the NPS-HPL is for highly productive land to be protected for use in land-based primary production, both now and for future generations. I consider the proposal is contrary to this objective as the highly productive land will be 'unavailable' for productive purposes for up to 18 years, and then will have a reduced productive value and productive capacity beyond that time.

49. Mr Taylor notes the NPS-HPL does not provide absolute protection of highly productive land, nor specifies that there should be no loss of highly productive land within a region or district[21]. I accept this; however, Mr Taylor also acknowledges the intent of the objective (as detailed in the s32 report) is to ensure that land uses that are not land-based primary production only occur on highly productive land:

> "• *in circumstances where it is appropriate and necessary*
>
> • *when alternative options have been appropriately considered*
>
> • *where those alternative uses provide wider environmental, economic, social and cultural benefits*"[22]

50. In my opinion the applicant has failed to demonstrate that the proposed gravel extraction on highly productive land is necessary. Alternative options to gravel extraction on the highly productive land have not been appropriately considered,

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[20] Evidence of Campbell (11 November 2022), para 19, pg 3 - 4.

[21] Evidence of Taylor (4 November 2022), para 4.7, pg 39

[22] MfE (2022), National Policy Statement for Highly Productive Land: Evaluation report under section 32 of the Resource Management Act, pg 44

and the gravel extraction activity will provide limited wider environmental, and no cultural, benefits.

51. Policy 1 of the NPS-HPL is highly productive land is recognised as a resource with finite characteristics and long-term values for land-based primary production. In my opinion the proposal does not recognise the long-term values of the site for land-based primary production as it will result in reduced productive value and productive capacity. The proposal is therefore inconsistent with Policy 1.

52. Policy 4 of the NPS-HPL is the use of highly productive land for land-based primary production is prioritised and supported. The proposal does not prioritise nor support the use of the highly productive land for land-based primary production and is therefore contrary to this policy. Mr Taylor considers the proposal is consistent with this policy on the basis the proposal will not impact on the long-term productive potential of the land. I disagree that this policy relates to the long term use of highly productive land as there is no such reference made.

53. Policy 8 of the NPS-HPL is highly productive land is protected from inappropriate use and development. Clause 3.9(1) of the NPS-HPL details that "*territorial authorities must avoid the inappropriate use or development of highly productive land that is not land-based primary production*" (my emphasis). Clause 3.9(2) details that a use or development of highly productive land is inappropriate except where specified circumstances as set out in (a) – (j) apply, and the measures in subclause (3) are applied.

54. Mr Taylor considers that the proposal is not inappropriate as clause 3.9(2)(g) applies – "*it is a small-scale or temporary land-use activity that has no impact on the productive capacity of the land*". As detailed in paragraphs 29 - 31 of my evidence, I do not consider the proposal is small-scale or temporary, and therefore clause 3.9(2)(g) does not apply.

55. Mr Taylor also considers that the proposal is not inappropriate as clause 3.9(2)(j)(iv) applies – "*it is associated with one of the following, and there is a functional or operational need for the use or development to be on the highly productive land… (v)*

aggregate extraction that provides significant national or regional public benefit that could not otherwise be achieved using resources within New Zealand". As detailed in paragraphs 32 - 35 of my evidence, I consider the applicant has not provided sufficient evidence to demonstrate that the proposal provides significant national or regional public benefit that could not otherwise be achieved using resources within New Zealand. Further, as detailed in paragraphs 36 - 40 of my evidence, I consider the proposal also fails the second limb of 3.9(2)(j)(iv) as there is not a functional need for the proposal to be on highly productive land and the applicant has not provided sufficient evidence that there is an operational need for the proposal to be on highly productive land.

56. I therefore consider that none of the exceptions provided under clause 3.9(2) apply and the proposal represents an inappropriate use of highly productive land. The proposal will be in direct conflict with the avoid directive in clause 3.9(1) and will be contrary to policy 8.

57. For completeness, should the Commissioner decide that the proposal meets either (or both) exceptions under clause 3.9(2)(g) or 3.9(2)(j)(iv), I also consider that the proposal will not minimise or mitigate any actual loss or potential cumulative loss of the availability and productive capacity of highly productive land in the district, as required by clause (3)(a). I have discussed this in paragraphs 41 - 46 of my evidence.

58. Clause 3.10(1) of the NPS-HPL provides exemptions for subdivision, use and development on highly productive land that is subject to permanent or long-term constraint and details that:

> "*Territorial authorities may only allow highly productive land to be subdivided, used, or developed for activities not otherwise enabled under clauses 3.7, 3.8, or 3.9 if satisfied that:*
>
> *(a) there are permanent or long-term constraints on the land that mean the use of the highly productive land for land-based primary production is not able to be economically viable for at least 30 years; and…"*

59. There are additional criteria in subclause (b) and (c) that also need to be met. Ms Bernsdorf Solly considers that it is open to the Commissioner to grant resource consent to Stage 1 as that area of land has limited productive use due to flooding risk and therefore meets the exemption under clause 3.10(1)(a). As detailed in paragraphs 25 - 28 of my evidence I consider that insufficient evidence has been provided to support this assessment.

Tasman Regional Policy Statement (TRPS)

60. I have reviewed the relevant provisions of the TRPS relating to land productivity and agree with Ms Bernsdorf Solly that these are reflected in the provisions of the TRMP. I have therefore not undertaken a separate assessment of the TRPS.

TRMP

61. I agree with the identification of the relevant objectives and policies of the TRMP relating to land productivity in the s42A report.

62. Overall, I agree with Ms Bernsdorf Solly that the proposal is inconsistent with the objectives and policies relating to land productivity. Further, I consider that the proposal is contrary to Objective 7.1.2.1 that seeks to avoid the loss of value for all rural land of existing and potential productive value to meet the needs of future generations, particularly land of high productive value. The proposal is also contrary to Objective 7.1.2.2 as it fails to retain and enhance opportunities for plant and animal production on land with high productive values in the Rural 1 zone.

63. Section 7.50 of the TRMP details the environmental results anticipated in relation to rural environment effects. Clause 7.50.1 anticipates minimal cumulative loss of availability of rural land for plant and animal production purposes, and maintenance of a sustainable level of availability of land of high actual or potential productive value. In my opinion the applicant has not demonstrated that the proposal will achieve this environmental result.

NOISE EFFECTS

64. Following a review of Mr Taylor and Mr Rhys Hegley's supplementary evidence (of 4 November 2022), I understand the only matter that remains in contention between the applicant and council relating to noise is the noise limit, and therefore consent condition wording, that should apply to the proposal.

65. I note that both Ms Bernsdorf Solly and Mr Taylor appear to disagree over whether noise effects from the proposal should be considered as falling within the permitted activity baseline and therefore be disregarded. However, Mr Taylor concludes that "*discounting of adverse effects that form part of the permitted baseline is not relied upon*"[23] for his conclusions on noise effects.

66. For similar reasons as identified by Ms Bersndorf Solly, I consider that noise effects from the proposal should not be disregarded under s104(2) of the Act. I do not consider that permitted activities within the Rural 1 zone, including horticultural and agricultural activities, provide a reasonable comparison of adverse effects to the gravel extraction activity as proposed. Whilst I acknowledge that such permitted activities do generate noise and rural working environments should not be expected to be 'quiet', I agree with Ms Bernsdorf Solly that noise associated with the gravel extraction will be dissimilar in character, intensity and duration. Mr Joachim Lang on behalf of Valley R.A.G.E has also raised the issue of special audible characteristics present in excavator noise.

67. As the application is for a discretionary activity, consideration needs to be given to whether the site overall is a suitable location. I agree with Ms Bernsdorf Solly that the test with respect to noise is not whether the noise levels can be met, but whether the potential adverse effects of the noise are going to detract from the rural amenity of the area, and whether the noise is reasonable[24].

68. I agree with Ms Bernsdorf Solly, Mr Daniel Winter from council and Mr Lang, that a more stringent noise limit than the 55dBA LAeq as specified in the TRMP should be applied to the proposal. I note that Mr Winter and Mr Lang have differing views on

[23] Evidence of Taylor (15 July 2022), para 3.28, pg 18

[24] Bernsdorf Solly (4 March 2022), S42A report, para 8.5, pg 30

the appropriate noise limit, but I consider this should be set to ensure that any noise generated is compatible with the ambient and background noise levels in the area, and in recognition of the existing amenity of the receiving environment.

69. I understand that Mr Lang has raised a number of additional concerns in his evidence regarding the noise report of Mr Hegley.

CULTURAL EFFECTS

70. Ms Bernsdorf Solly and Mr Taylor both acknowledge they are not in a position to come to a conclusion with respect to cultural effects. Ms Bernsdorf Solly raises concern that the proposal is inconsistent with the National Policy Statement on Freshwater Management 2020 (NPS-FW) and the TRMP in relation to cultural values, but regardless she considers it is open to the Commissioner to grant consent for Stage 1.

71. I have reviewed the submissions from Wakatū Incorporation, Te Ātiawa Manawhenua Ki Te Tau Ihu Trust and Te Rūnanga o Ngāti Rarua. In my opinion the matters raised have not been sufficiently addressed by the applicant or in the s42A report and addendum.

OTHER MATTERS

72. Tasman District Council and Nelson City Council adopted the Nelson Tasman Future Development Strategy 2022-2052 (NTFDS) on 29 August 2022. The NTFDS is a 30-year high-level strategic plan that outlines areas in the regions, including outside of existing urban environments, where there is potential for future housing and growth. The NTFDS has been prepared in accordance with direction of the National Policy Statement on Urban Development 2020 and has followed "*months of community engagement, detailed feedback, and informative deliberations*"[25], including 568 submissions.

[25] https://www.tasman.govt.nz/my-council/key-documents/more/future-development-strategy/

73. The NTFDS identifies two areas of land described as T-17 Mytton Heights Hills, located to the east of the application site, as a Rural Tasman Growth Area (shown in Figure 1 on the following page). The land is identified for future rural residential development with an anticipated yield of approximately 540 dwellings based on a density of 1-2 dwellings per hectare. The NTFDS does not provide indicative timeframes for re-zoning of the T-17 land but details that the staging and rollout of growth areas will be set out in annual implementation plans in response to market information and feedback, and annual monitoring results. However, what can be concluded from the NTFDS is that via a thorough public participatory process, the land immediately to the east of the application site has been identified as a growth area that will enable council to provide sufficient development capacity.

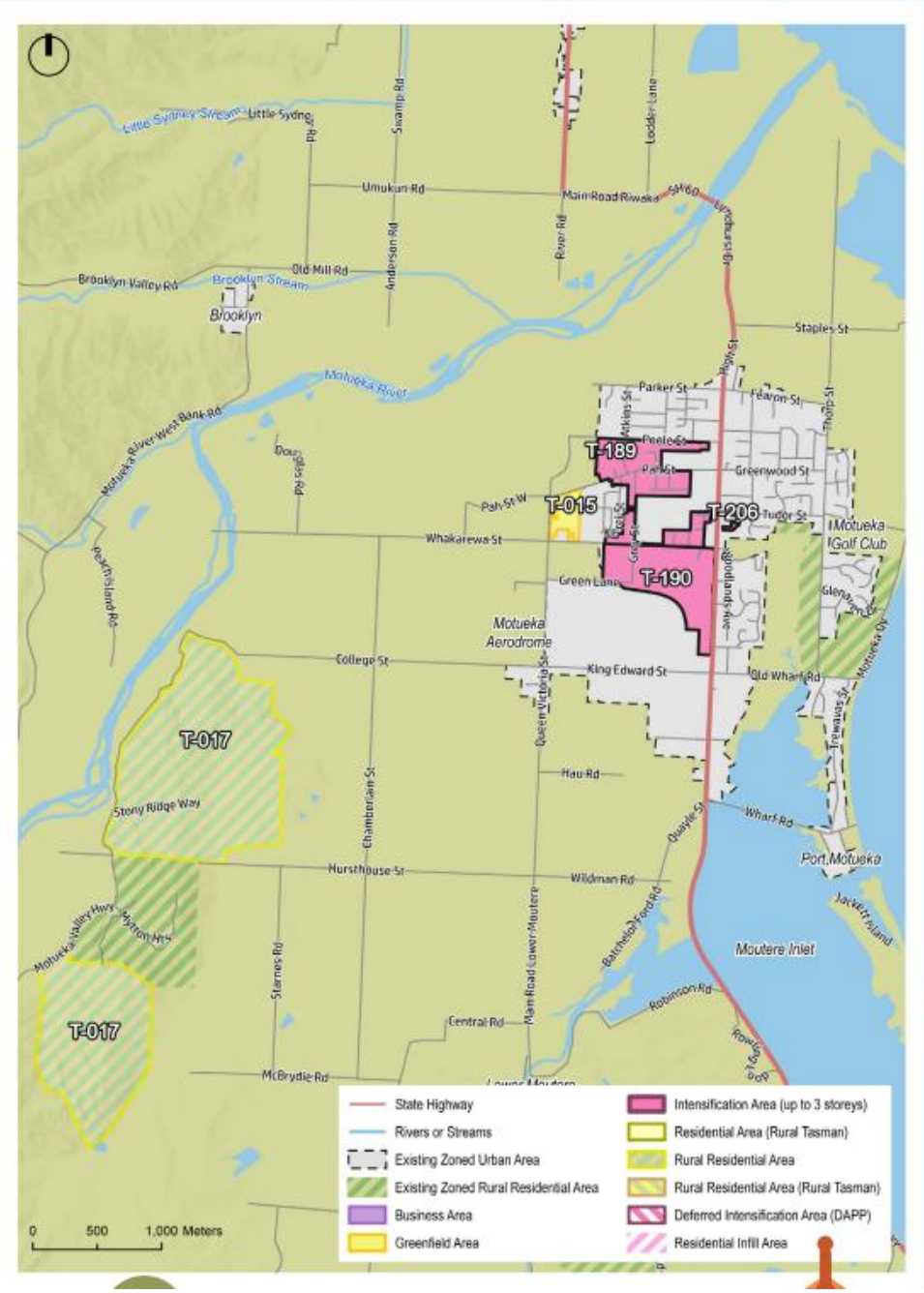

Figure 1: Showing T-017 Mytton Heights Hills as per the NTFDS

74. Whilst the NTFDS may have limited weight in terms of the receiving environment for this application, I consider it is relevant with respect to the consent duration sought by the applicant. Mr Taylor states that "*duration of consent is a method used to address uncertainty about the adverse effects of consent, particularly if the sensitivity of the receiving environment may change over time. In this case, a significant level of expert advice is available to provide a high level of certainty regarding adverse effects, which have been confirmed to be no more than minor, and; the local receiving*

environment is well understood"[26] (my emphasis). In my opinion, the identification of the land to the east of the site in the NTFDS as a Rural Tasman Growth Area with an approximate yield of 540 dwellings is relevant to the consideration of consent duration. The sensitivity of the receiving environment has the potential to change within the 15-year consent duration sought by the applicant, and a lesser consent duration should therefore be considered.

CONDITIONS

75. As previously noted, Mr Campbell is concerned that "*irrespective of directive wording and specific mitigation measures in the draft SMP, the likelihood of human error over the project's 15 year timeframe is high*"[27]. Mr Campbell is specifically concerned about the measures proposed regarding backfilling at the site and the reliance on self-certification of backfill material.

76. I agree with Mr Campbell that if the material and methodology of backfilling is critical to the success of the rehabilitation of the site for future productive purposes, then the reliance on self-certification is not appropriate.

77. I have not provided detailed evidence on the conditions of consent as I consider there are substantive barriers to the granting of the consent that are yet to be resolved. I anticipate that the potential wording of consent conditions, should the Commissioner consider it is appropriate to grant consent, may be further refined through the hearing. I can be available to participate in expert caucusing on consent conditions in the event the Commissioner considers that is appropriate.

CONCLUSION

78. The proposal requires land use consents and a discharge permit under the TRMP. The land use consents (RM200488 and RM200489), when bundled together, have been identified by the Council planner, Ms Bernsdorf Solly, and the applicant's planner, Mr Taylor, as a discretionary activity.

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[26] Evidence of Taylor (15 July 2022), para 3.122, pg 56

[27] Evidence of Campbell (11 November 2022), para 44, pg 10.

79. With respect to land productivity, having considered the relevant matters set out in the NPS-HPL, TRPS and TRMP, I consider the applicant has not provided sufficient information to adequately determine the application. Based on the information that has been provided, and the evidence of Mr Campbell and Dr Harvey, I consider the proposal will be inconsistent with some, and contrary to other, relevant provisions of the NPS-HPL and TRMP.

80. With respect to noise effects, I agree with Ms Bernsdorf Solly that noise effects from the proposal do not fall within the permitted baseline and should not be disregarded under s104(2) of the Act. I consider that a more stringent noise limit than the 55dBA LAeq as specified in the TRMP should be applied to the proposal to ensure that any noise generated is compatible with the ambient and background noise levels in the area, and in recognition of the existing amenity of the receiving environment.

81. With respect to cultural effects, having considered the submissions of Wakatū Incorporation, Te Ātiawa Manawhenua Ki Te Tau Ihu Trust and Te Rūnanga o Ngāti Rarua, I consider the applicant has not provided sufficient information to adequately determine the application.

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Jessica Hollis