

**BEFORE**

an Independent Commissioner  
appointed by Tasman District Council

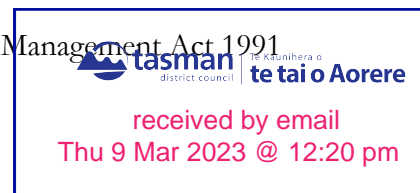
**IN THE MATTER**

of the Resource Management Act 1991

**AND**

**IN THE MATTER**

of an application by C J Industries Ltd  
for land use consent RM200488 for  
gravel extraction and associated site  
rehabilitation and amenity planting and  
for land use consent RM200489 to  
establish and use vehicle access on an  
unformed legal road and erect  
associated signage, and discharge permit  
RM220578



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**MEMORANDUM OF COUNSEL – RESPONSE TO MINUTE 6**

**9 March 2023**

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Counsel: Sally Gepp  
Level 1, 189 Hardy Street  
Nelson 7010  
Tel: 021 558 241  
Email: sally@sallygepp.co.nz

## MAY IT PLEASE THE COMMISSIONER

1. Minute 6 request further information in relation to truck movements and clean fill, along with assistance as to how consent conditions would be worded to address clean fill management. This memorandum addresses those matters and proposes timetabling directions.

### Management of clean fill – definition of Site and conditions

2. Minute 6 records:

11...at the hearing Ms Gepp stated that she considered Hau Road is not part of the application “site”. I heard evidence that quality control of the clean fill is important to manage water quality effects on Peach Island. If Hau Road is not considered as part of the application site, then I seek assistance from the Applicant with respect to how consent conditions would be worded to address clean fill management (reject, stockpile, load, unload, etc) at Hau Road.

3. The application site is 134 Peach Island Road (“Site”). The activity for which resource consent is sought (with respect to clean fill) is resource consent for the discharge of a contaminant to land in circumstances where it may enter water, being as a discretionary activity under Rule 36.1.5.2 of the TRMP. The discharge of clean fill is the activity for which resource consent is sought. The activity for which resource consent is sought is not the sourcing, storage and testing of clean fill material.
4. The manner of storage and testing is relevant to the effects of the discharge. The Applicant is not saying that conditions cannot be imposed in relation to how clean fill is managed and the parameters that it must meet. Provided they are appropriately framed (as addressed below), conditions on clean fill management and quality would “fairly and reasonably relate to the development authorised by the consent to which the condition is attached”<sup>1</sup> and would be directly connected to an adverse effect of the activity on the environment.<sup>2</sup>
5. However, there is no legal requirement for conditions to be limited to activities on the application site:

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<sup>1</sup> *Newbury DC v Secretary of State for the Environment* [1981] AC 578, [1980] 1 All ER 731, applied in *Housing NZ Ltd v Waitakere CC* [2001] NZRMA 202(CA).

<sup>2</sup> Section 108AA(1)(b)(i) RMA.

- a. An example of a condition that applies to aspects of the activity outside the application site is Condition 67 of the Applicant's draft conditions, which requires that:

All trucks shall observe a speed limit of 60 kilometres per hour when travelling along Motueka River West Bank Road.

- b. Conditions applicable beyond the application site are not uncommon: see for example:
  - i. Conditions that require off-site enhancement of biodiversity by pest control, as approved in *West Coast Environmental Network Inc v West Coast Regional Council* [2013] NZEnvC 178.
  - ii. Conditions and management plan requirements relating to offsite biosecurity practices, such as those approved for the New Zealand King Salmon Company Ltd marine farm north of Cape Lambert, approved by a decision of Marlborough District Council.<sup>3</sup>

6. The last example is the most analogous to the present case. The conditions and Biosecurity Management Plan in that consent decision involved the growth of smolt in facilities outside the application site (controlled by the applicant King Salmon), and transfer of smolt from those facilities to the application site, with biosecurity controls to be applied in each case. Those important off-site biosecurity measures are conceptually similar to the off-site management and testing of clean fill proposed by the Applicant in this application.
7. The conditions and Groundwater and Clean Fill Management Plan (GCMP) contain requirements for off-site management of clean fill.<sup>4</sup> Clean fill used for ground reinstatement at the Site must meet the parameters and inspection/testing/handling requirements specified in the GMP, to ensure that the clean-fill does not adversely affect groundwater quality. Such conditions are lawful. The Applicant is due to file amended conditions and an amended GCMP. These will include more stringent and directive clean fill management procedures. Amendments will also be made to address other matters raised in the Groundwater Joint Witness Statement dated 3 March 2023 (final circulated 7 March 2023). However, the Applicant does not consider that substantive

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<sup>3</sup> This decision has been appealed to the Environment Court, but not with respect to biosecurity matters.

<sup>4</sup> Draft discharge permit conditions 9, 17, 18, 19, 20 and Parts 3, 4.1 and 4.2 GCMP

amendments are required to the manner in which the conditions are framed (in terms of the “site” issue raised in Minute 6).

8. A condition requiring that clean fill is sourced from, stored at or tested at a specified location (or locations) prior to being accepted at the Site would not be lawful, as it would not meet the requirements for conditions set out in paragraph 4.

#### **Sources of clean fill**

9. Paragraph 10.b of Minute 6 requests that the applicant clarify the clean fill sources.
10. For the reasons set out above, the Applicant submits that the locations that clean fill will be sourced from is not relevant to the Commissioner’s determination. Despite that position, further clarification of clean fill sources is provided in the third supplementary evidence of Tim Corrie-Johnston.
11. Paragraph 10.c of Minute 6 requests more information about the facility that will be created at Hau Road to screen potential fill material, reject unacceptable material, stockpile acceptable material and load/unload the material. It is important to clarify with respect to clean fill sources that the applicant would not source “acceptable” clean fill by screening it out of mixed material that partly meets and partly does not meet the clean fill parameters. The volume of material involved means that if material appears not to meet the clean fill parameters, it would not be used. Similarly, if material appeared to meet the clean fill parameters but testing indicated it was unsuitable, it would not be used.

#### **Locations for inspecting and testing clean fill**

12. Mr Corrie-Johnston stated in his primary evidence that clean fill will be brought to Hau Road, where it will be inspected visually and additional testing as specified in the GMP carried out. Mr Corrie-Johnston’s third supplementary evidence clarifies that where the applicant has full physical control of a cleanfill source site, the material will be inspected and tested at the source site and does not need to be brought to Hau Road. Hau Road would be used for inspection and testing of material that has been sourced by the applicant at a source site that it does not have physical control of (e.g. sourced from slip reinstatement). Specific procedures are proposed for each clean fill source.

#### **Hau Road site**

13. As set out above, the Applicant submits that the activity for which resource consent is sought is the deposition of clean fill at Peach Island. Whether the storage of clean fill at

Hau Road is authorised is not a question that is relevant to the determination of its application for a discharge permit. Despite that position, further clarification is provided below, and the relevant documents are attached to Mr Corrie-Johnston's third supplementary evidence.

14. The applicant's operations at 34-36 Hau Rd are authorised by a combination of:

- a. Industrial Zone permitted activity rules applicable to 34 Hau Road.
- b. Resource Consent RM070640, applicable to 36 Hau Road.

15. Storage/testing of clean fill is authorised at Hau Road:

- a. In the Industrial Zone:
  - i. Any land use is a permitted activity that may be undertaken without a resource consent, if it complies with permitted activity conditions. Certain activities are excluded (such as residential activities and community activities).<sup>5</sup> Storage of clean fill is not one of the excluded activities.
  - ii. Industrial activities are defined "as the use of land and buildings for the primary purpose of manufacturing, fabricating, processing, packing, storage, maintenance, or repair of goods, but does not include home occupations". The use of the Hau Road site will not be for the primary purpose of storage of clean fill. Storage and testing of clean fill would otherwise come within this definition.
  - iii. There are relevant permitted activity conditions relating to outdoor storage and stockpiles of material. Outdoor storage areas must be screened where directly exposed to immediately adjoining sites zoned Residential.<sup>6</sup> Stockpiles must be contained or maintained so that dust does not cause an adverse effect at, or beyond, the boundary of the site.<sup>7</sup> Storage of clean fill prior to its transfer to the Site can meet those requirements.

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<sup>5</sup> Rule 17.4.2.1(a)

<sup>6</sup> Rule 17.4.2.1(d)

<sup>7</sup> Rule 17.4.2.1(f)

- iv. Earthworks in Land Disturbance Area 1 is a permitted activity provided it complies with permitted activity conditions.<sup>8</sup> Earthworks associated with depositing and removing clean fill can comply with the permitted activity conditions.
- b. On Rural 1 zoned land, land use is permitted if it complies with permitted activity standards. Industrial and Rural Industrial Activities are not permitted. Storage of clean fill is not, by itself, an Industrial or Rural Industrial Activity but when considered alongside other existing uses of the site it likely comes within the definition of a Rural Industrial Activity.<sup>9</sup>
- c. RM070640 authorises a range of activities on 36 Hau Road that are connected with the industrial activities on 34 Hau Road. Activities authorised include storage of landscape supplies, gravel storage, and erection of a building 24m x 24 m “for use of storage of materials associated with CJ Industries’ activities on the adjoining land”. Clean fill storage comes within the activities authorised by RM070640, either as landscaping supplies, or as storage of materials associated with CJ Industries’ activities on the adjoining land (which include storage and processing of quarry products).
- d. Transport (access parking and traffic) is managed under TRMP Part 16.2. Land use under Part 16.2 is permitted, provided permitted activity standards are met. The existing Industrial and Rural Industrial activities on the Hau Road site comply with these permitted activity standards, and there is no reason to consider that transportation of clean fill would not similarly be able to similarly comply. There are no limitations on traffic movements associated with permitted industrial uses in the Industrial Zone, and similarly no limitations on traffic movements under RM070640.

16. Accordingly, the Applicant submits that the storage of clean fill at Hau Road and the transportation of clean fill to/from Hau Road are authorised.

### **Clean fill screening, handling and stockpiling facility**

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<sup>8</sup> Rule 18.5.2.1.

<sup>9</sup> **Industrial activity** means the use of land and buildings for the primary purpose of manufacturing, fabricating, processing, packing, storage, maintenance, or repair of goods, but does not include home occupations. **Rural industrial activity** means the use of land and buildings for an industrial activity that depends on produce harvested from plant and animal production, or the sea, or any other land-derived product, including any sawmill, timber treatment plant, abattoir, stockyard, packhouse, cold storage, rural contractor’s depot, and the processing of minerals and quarry products.

17. The Minute states that when the site visit was undertaken on 9 December 2022, the Commissioner was shown where clean fill screening, handling and stockpiling would be undertaken, and there was no facility in place at the time of the site visit.
18. Mr Corrie-Johnston has worked with Mr Nicol to produce a Standard Operating Procedure for clean fill handling from source to use. This includes details of the facilities that must be used to secure and separate clean fill stockpiles. The Standard Operating Procedure will form part of the revised GCMP that the Applicant is due to file.

### Information in relation to traffic movements

19. Paragraph 10.a of Minute 6 requested that Mr Clark reconsider his traffic evidence taking into account the fill material that will be brought to Hau Road for screening, handling and stockpiling prior to clean fill being transported to Peach Island. For the reasons set out above, the Applicant submits that these traffic movements are authorised. Mr Clark's Third Supplementary Statement of Evidence dated 7 March 2023, which responds to the Minute 6 direction, is filed with this Memorandum.

### Timetable

20. Provision of the evidence accompanying this memorandum, along with release of the Joint Witness Statements on 6-7 March 2023, make it necessary to amend the timetable. The following amendments are proposed for the Commissioner's consideration:

Step/Date in Minute 5	Proposed Step/Date
Caucusing of technical experts re productive land, groundwater quality, pit erosion issue (Stage 1) – 17 February 2023	Caucusing of technical experts re productive land, groundwater quality, pit erosion issue (Stage 1) - Received 6-7 March 2023
n/a	Responses to requests for information in Minute 6 – 9 March 2023
Applicant's revised conditions and updated draft management plans circulated – 3 March 2023	Applicant's revised conditions and updated draft management plans circulated – 13 March 2023
Submitters' comments on revised conditions and management plans circulated - 17 March 2023	Submitters' comments on revised conditions and management plans circulated – 23 March 2023

n/a	Submitters response to applicant information circulated on 9 March – 23 March 2023
Council officers' comments on revised conditions and management plans – 24 March 2023	Council officers' comments on revised conditions and management plans – 30 March 2023
n/a	Council response to applicant information circulated on 9 March – 30 March 2023
Right of reply and rebuttal evidence circulated – 31 March 2023	Right of reply and rebuttal evidence circulated – 6 April 2023
Hearing – to be set	Hearing – to be set




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Sally Gepp  
Counsel for CJ Industries Limited