

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



MEMORANDUM OF COUNSEL – RESPONSE TO MINUTE 7

17 March 2023

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MAY IT PLEASE THE COMMISSIONER

1. This Memorandum responds to Minute 7 and proposes amendments to the timetable in light of Minute 7 and the Applicant's response.

Minute 7, Paragraph 4 – Dr MacNeil evidence

2. Supplementary evidence of Calum MacNeil addressing the Joint Witness Statement relating to Pit Erosion dated 6 March 2023 and Mr Aiken's supplementary evidence dated 19 December 2022 is enclosed. Dr MacNeil's evidence also addresses an additional consent condition and amendments to the Soil Management Plan that the Applicant proposes in response to the Joint Witness Statement-Pit Erosion.

Minute 7, Paragraphs 5-7 - Transportation of clean fill

3. Paragraphs 5-7 of the Minute state:

5 Secondly, I now understand on the basis of evidence of Mr Corrie-Johnston (dated 9 March 2023) that cleanfill material will either be transported to the site from Hau Road or from the other sites listed by Mr Corrie-Johnston including several quarry sites on the West side of the Motueka River. This raises questions regarding the scope of the application as notified. The discharge permit application and AEE - 15 Jul 2022 clearly states in the transport and access section on page 8 that "The truck and trailer units will travel to and from the site to CJ Industries' processing plant at 34 Hau Road, Motueka... This route has been chosen so as to avoid travelling across the busy Motueka River bridge on State Highway 60 as well as through Brooklyn and Motueka Township."

6 It also raises questions about the scope of the assessment of effects of the traffic generated by the proposal. Carting clean fill directly from the three quarries identified in paragraphs 2.1(a) to (c) of Mr Corrie-Johnston's evidence must involve travelling along one of the routes specifically excluded in the above mentioned application and AEE that was publicly notified.

7 I direct that the timetable as outlined in my Minute 5 be placed on hold until the Applicant responds to the matters outlined in paragraph 4 to 6 above.

4. The discharge permit application excerpt that is quoted in paragraph 4 is a restatement, for context, of information included in the land use consent application (RM200488 and RM200489). This restatement says more fully:

Transport and Access

Extracted gravel will be transferred from the on-site stockpile to truck and trailer units by a front-end loader. The truck and trailer units will travel to and from the site to CJ Industries' processing plant at 34 Hau Road, Motueka. No processing or screening of materials will occur on the application site. It is proposed that the truck and trailer units will travel south along the Peach Island paper road, then via a section of marginal strip before entering Motueka River West Bank Road via the established access which services 493 Motueka

River West Bank Road. From here they will continue south until they are able to cross the Motueka River at the closest bridge at Alexander Bluff. This route has been chosen so as to avoid travelling across the busy Motueka River bridge on State Highway 60 as well as through Brooklyn and Motueka Township. Vehicles travelling on Motueka Valley West Bank Road will restrict their speed to 60km/h.

Up to 15 trucks will enter/exit the site each day. Trucks will return with back fill material as often as possible, in order to keep traffic down.

5. The discharge permit application itself (i.e. when not quoting the land use consent application) relevantly provided that:

The proposal involves using cleanfill materials that are pre-screened offsite ...

but did not otherwise comment on the route that vehicles carrying clean fill would take.

6. The land use consent application specified that truck and trailer units travelling to and from Hau Road would use the Alexander Bluff Bridge, rather than the Brooklyn/Motueka River bridge route. The applications were silent on the location of the various sites from which clean fill would be sourced (its origin), and the route that would be taken by vehicles transporting clean fill from those source sites to Hau Road. The applications always envisaged that clean fill would need to originate from a source site (e.g. a quarry or earthworks site), somewhere other than Hau Road. An interpretation of the applications as requiring that clean fill originate at Hau Road (in the sense of being produced there, rather than being brought there from a separate source site) is not correct. In particular, the application was not intended to, and does not, restrict the use of the SH 60 Motueka River Bridge for transporting clean fill from source sites to Hau Road. As set out in the Memorandum of Counsel dated 9 March 2023, the movement of clean fill from source sites to Hau Road is separately authorised.
7. The Applicant now proposes that some clean fill be transported directly from source sites to Peach Island (following inspection and testing at source). Such clean fill would be transported via the SH 60 Motueka River Bridge, to King Edward Street, College Street and Motueka Valley Highway (from there taking the same route as vehicles transiting between Peach Island and Hau Road). This would reduce traffic effects at Hau Road (albeit that these effects are authorised in the Industrial Zone).

8. Whether an amendment is within scope of the original application is a question of degree, depending on the particular facts.¹ Amendments cannot increase the scale or intensity of an activity or significantly alter its character or effects.²
9. The Applicant submits that the alternative transportation approach described at paragraph 7 is within the scope of the applications. The only change from the description of traffic movements in the application is that some clean fill (which always had to originate somewhere other than Hau Road) would be taken to Peach Island instead of being taken to Hau Road, unloaded, re-loaded then transported to Peach Island. The route to be used is substantially the same. No additional effects arise that would render this approach outside the scope of the applications.
10. The extent of the area that needs to be considered as being potentially affected by adverse traffic effects is to be decided in the context of each particular case. The focus must be on the effects arising from a particular proposal in the context of the particular environment into which it is sought to be transposed.³ Traffic effects are not limited to the boundary of a site or the closest key intersection, but do not extend to effects well beyond the site (such as, in this case, effects of vehicles using the SH60 Motueka River Bridge to bring clean fill from source sites). The Applicant submits that the scope of its assessment of traffic effects is appropriate.

Timetable

11. The Applicant requests that the timetable towards a final hearing now resumes.
12. The following amendments to the timetable in Minute 5 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
n/a	Responses to questions in Minute 7 – 17 March 2023
Applicant's revised conditions and updated draft management plans circulated – 3 March	Applicant's revised conditions and updated draft management plans circulated – 21

¹ *Waitakere CC v Estate Homes Ltd* [2007] 2 NZLR 149, (2006) 13 ELRNZ 33, [2007] NZRMA 137(SC)

² *Darroc v Whangarei DC* A018/93.

³ *Laidlaw College Inc v Auckland Council* [2011] NZEnvC 248 at [1], [29]–[30] and [37]–[40].

2023	March 2023
Submitters' comments on revised conditions and management plans circulated - 17 March 2023	Submitters' comments on revised conditions and management plans circulated – 30 March 2023
n/a	Submitters response to Applicant information circulated on 9 and 17 March – 30 March 2023
Council officers' comments on revised conditions and management plans – 24 March 2023	Council officers' comments on revised conditions and management plans – 6 April 2023
n/a	Council response to Applicant information circulated on 9 and 17 March – 6 April 2023
Right of reply and rebuttal evidence circulated – 31 March 2023	Right of reply and rebuttal evidence circulated – 20 April 2023 ⁴
Hearing – to be set	Hearing – to be set

13. The Applicant would be assisted by an indication of which witnesses the Commissioner wishes to hear from at the final hearing, in order to determine availability for a hearing date. The Applicant assumes this will be limited to witnesses who file evidence as part of the Applicant's right of reply but would appreciate confirmation of this.



Sally Gepp

Counsel for CJ Industries Ltd

⁴This period has been extended (originally 5 working days) taking into account Easter and school holidays.

Alastair Jewell

From: Sally Gepp <sally@sallygepp.co.nz>
Sent: Friday, 17 March 2023 3:28 pm
To: Alastair Jewell
Subject: RM200488, RM200489 and RM220578 CJ Industries
Attachments: 20230317 Memorandum of Counsel.pdf; 20230317 Supplementary surface water quality evidence.pdf

Dear Alastair

I attach:

- Memorandum of Counsel in response to Minute 7
- Supplementary evidence of Calum MacNeil in response to Minute 7

Regarding the dates you proposed, I am available but I will need to check with witnesses before confirming.

Regards

Sally Gepp
Barrister

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