

**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 MEMORANDUM OF  
COUNSEL FOR VALLEY RAGE INC**

**4 May 2023**

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## **MAY IT PLEASE THE COMMISSIONER**

### **Introduction**

1. This Memorandum responds to the Memorandum of Counsel for Valley RAGE Inc. The submitter's request for leave for two experts called by Valley RAGE Inc and Mr Langridge to speak at the hearing is strongly opposed. This is an entirely inappropriate attempt by submitters to continuously "have the last word" (including through evidence from the bar in the Memorandum itself) despite having been provided with extensive opportunities to have input into this process.
2. The Applicant submits that the request for leave should be declined, and the content of the Memorandum should be disregarded.

### **Response to Valley RAGE Memorandum of Counsel**

3. The Valley RAGE Memorandum asserts that the Applicant has taken the opportunity to argue the supposed merits of its case again in its reply evidence and legal submissions. The purpose of reply evidence is to respond to evidence from other parties, which is what the Applicant's reply evidence does in all respects. The purpose of reply submissions is to respond to legal issues raised, including by addressing how the evidence should be assessed, and to make submissions on what those matters mean for the decision that the Commissioner must make. The Applicant's reply submissions do this. There is nothing inappropriate in an applicant addressing the merits of its case in light of the totality of the evidence and other matters traversed across the course of a hearing.
4. The Valley RAGE Memorandum complains that the Applicant's Reply material is extensive. The material is extensive because the submitters' evidence raised wide-ranging issues, and because the submitters' subsequent comments on additional evidence, draft conditions and management plans was also wide ranging and detailed. Ms Mae's comments alone run to 118 paragraphs plus two pages of introductory text. The Applicant's witnesses have responded to each of those points (where relevant and not trivial).
5. The Valley RAGE Memorandum asserts that some of the information presented by the Applicant is new. It is entirely appropriate for an Applicant to adapt its proposal (within scope) in response to issues raised. In fact, it has been criticised by members of Valley

RAGE where they perceive it has not done so.<sup>1</sup> The Applicant does not accept that any ‘new’ information (that is not by way of response to evidence and issues raised) has been presented in its reply evidence and legal submissions.

6. Valley RAGE says that a tranced approach was not discussed in the pit erosion caucusing, and continues to assert that the three tranche approach is a substantial change to the application as notified. These statements are both wrong:

a. Staging is discussed in the Pit Erosion JWS; e.g. at point 4:

SA ... Supports more intensive grass striking approaches, taking into account staging of work across the stage 1 area, ...; and think about how much of stage one surface is mined at any time – risk based approach – only break area into (for example thirds, fifths, halves by practicalities), and one third over a summer period and revegetate that, so if experience large event then still have two thirds of flood plain...

b. The proposal is not to wait until all pits within a tranche have been quarried then reinstate at that point, as appears to be assumed by Valley RAGE.<sup>2</sup> Valley RAGE’s statement that “there will now be 5 x 1,600m<sup>2</sup> of these backfilled pits at the end of the mining season, prior to establishment of erosion retarding vegetation” is wrong, as is the statement that there will be a five fold increase in erosion potential, as is Counsel for Valley RAGE’s estimate of the contribution of eroded sediment to the Motueka River long term average annual suspended sediment yield.<sup>3</sup> The proposal is still to have pits no greater than 1600m<sup>2</sup>, ie 20 x 80m, and to quarry and reinstate each pit before beginning the next one. Dividing Stage 1 into tranches puts a limit on the potential area where grass has recently been sown but is not yet established.<sup>4</sup> This is further explained in Mr Aiken’s response to the Commissioner’s questions (to be filed shortly).

7. The Valley RAGE Memorandum asserts that flooding events on the Motueka River have occurred in every season of the year based on Tonkin + Taylor’s analysis of flooding events at the upstream Woodstock gauge. This is demonstrably incorrect, as seen in the observations provided by Ms Le Frantz where no flooding was observed in 2015, 2019 and 2022.

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<sup>1</sup> Ms Mae’s comments dated 6 April 2023 include the criticism that “... at times the applicant’s information has exuded a lack of respect for both the community and the environment, and in some cases intimidation. This is most recently displayed by the failure to incorporate recommendations from Council input despite appropriate rationale from the Hearing ...”. For completeness, the Applicant records that it does not accept that it failed to incorporate recommendations from Council where appropriate and rejects Ms Mae’s criticism.

<sup>2</sup> Memorandum, paragraph 7.

<sup>3</sup> Memorandum, paragraph 7

<sup>4</sup> Noting grass strike takes 3-4 weeks (Pit erosion JWS at point 3).

8. The Memorandum quotes “TDC hydrology staff” information on bankfull capacity and annual flood flow to then assert that on average there will be overbank flow on the Motueka River floodplain annually and that this is consistent with Ms Le Frantz’ observations.<sup>5</sup> Mr Aiken has already responded to Valley RAGE’s evidence on flood frequency, including Ms Le Frantz’ flood observations.<sup>6</sup> The assertion by Counsel regarding annual floods is not consistent with Mr Aiken’s evidence or Ms Le Frantz’ observations.
9. The Valley RAGE Memorandum says that “the Applicant’s tranche model relies on a vegetated cover establishing during autumn and prior to winter, and also seems to assume flood events do not occur in summer months which is factually incorrect.” The Applicant does indeed contend that grass will establish during October – March, and that is the rationale for the proposed seasonal restriction. The Applicant does not assume that floods do not occur in summer months. Mr Aiken’s reply evidence addresses flooding by season<sup>7</sup> and expressly agrees that “a reasonable size flood event can happen at any time of the year”.<sup>8</sup> The tranche restriction minimises the area potentially susceptible to erosion should a flood occur while grass is re-establishing.
10. The Valley RAGE Memorandum seeks leave for Dr Harvey to speak at the reconvened hearing “to outline his concerns about the erosion potential and deficiencies in Mr Aiken’s modelling arising from the new three tranche proposal”, to respond to paragraph 24 of the Right of Reply submissions, and to respond to comments by the Applicant’s experts regarding the discharge of sediment into the receiving environment. The Applicant’s response is that:
  - a. The Applicant is entitled to reply to the evidence produced and issues raised. Submitters and their witnesses are not entitled to reply to a reply.
  - b. No new information has been put forward that could possibly justify giving Dr Harvey another opportunity to comment in addition to the opportunities already provided to Dr Harvey, which have included his personal submission, his written primary evidence, his oral presentation to the hearing, his input into Valley RAGE’s comments dated 27 January 2023 on supplementary evidence provided by Mr Aiken, his participation in joint witness conferencing and the Pit Erosion Joint Witness Statement, and his input into Valley RAGE’s comments dated 7

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<sup>5</sup> Memorandum, paragraph 8.

<sup>6</sup> Reply evidence of Simon Aiken at 3.11 – 3.12.

<sup>7</sup> At 3.6 to 3.7.

<sup>8</sup> At 3.8.

April 2023 on the Applicant's additional information and revised conditions and management plans.

- c. If Dr Harvey were to be given an opportunity to speak, in accordance with natural justice Mr Aiken would need to be able to respond. As previously advised, Mr Aiken is not available on the hearing date. He would only be able to respond in writing, which would further prolong what has already been a lengthy and comprehensive hearing process. Further exchanges of comments and counter-comments would be inconsistent with s 18A of the Act which requires every person exercising powers and performing functions under the Act to take all practicable steps to use timely, efficient, consistent, and cost-effective processes that are proportionate to the functions or powers being performed or exercised.
- d. Paragraph 24 of my reply submissions relate to the proposal's consistency with Policy 22 NZCPS, based on the evidence provided. That is properly a matter for legal submissions (including reply submissions) and does not justify providing Dr Harvey with a further opportunity to comment.

11. With regard to the request for Dr Campbell to provide further comments at the hearing, and the reasons given for this request:<sup>9</sup>

- a. Dr Campbell had the opportunity to address the Appleby site in his written evidence and in the JWS. Other than a general comment that he has been involved with soil restoration and land rehabilitation issues in Tasman and Marlborough for more than 40 years, his evidence does not record his involvement in remediation of the Appleby site, which may in itself be a breach of the Environment Court Code of Conduct for Expert Witnesses given Appleby is an example of successful site remediation and as such is directly relevant to the issues raised in Dr Campbell's evidence.
- b. Given the issues raised in Dr Campbell's evidence regarding previous rehabilitation attempts in the region and the extent to which Valley RAGE's case relies on disputing the effectiveness of the Applicant's remediation proposal, the agenda for the Land Productivity JWS identified that one of the topics for discussion would be:

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<sup>9</sup> Valley RAGE Memorandum paragraphs 11-13.

4. If one or more of you rely on previous attempts to rehabilitate soil as the basis for your opinion at 3, what are the areas of agreement/disagreement between you regarding what those examples showed and their relevance to the proposal.

In accordance with that agenda point, Dr Hill provided information about the Appleby site to Mr Jewell in advance of the conference, so that it could be provided to the joint witness conference participants for consideration at the conference. Dr Campbell was therefore alerted to Dr Hill's intention to refer to the Appleby site, and was provided with ample opportunity to address this site, including any differences with the Peach Island site, during conferencing. There is no proper basis for Valley RAGE to seek a further opportunity for Dr Campbell to comment on this matter at this stage.

- c. Counsel for Valley RAGE now asserts that Dr Campbell inspected the Peach Island site area and "took samplings from around the boundary".<sup>10</sup> There is no evidence of this happening, or when. If this is correct, it should have been stated in Dr Campbell's evidence in accordance with clause 7.3(a)(viii) of the Environment Court Code of Conduct 2014 (which applied when Dr Campbell produced his evidence).<sup>11</sup> Counsel for the Applicant was entitled to rely on Dr Campbell's evidence in making the submission that Dr Campbell had not undertaken a site inspection. In any event, Counsel's reference to sampling from around the boundary appears to confirm that Dr Campbell has not undertaken a site inspection.
- d. Dr Campbell has already provided evidence relating to the effects of replacing existing subsurface material with cleanfill.<sup>12</sup> Dr Hill's reply evidence includes a reply on this matter.<sup>13</sup> There is no basis for Dr Campbell to be given an opportunity to further comment on Dr Hill's reply.
- e. Additional soil monitoring was included in the revised Soil Management Plan lodged on 23 March 2023. Submitters were given the opportunity to comment on the revised management plans (and did so). Dr Hill's reply evidence addresses

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<sup>10</sup> Paragraph 13.

<sup>11</sup> 7.3 Evidence of an expert witness

(a) In any evidence given by an expert witness, that person must, in the witness's statement or affidavit (if the evidence is in writing) or orally (if the evidence is being given orally):

(viii) describe any examinations, tests, or other investigations on which she or he has relied, and identify, and give details of, the qualifications of any person who carried them out;

<sup>12</sup> Dr Campbell primary evidence at paragraph 79.

<sup>13</sup> Dr Hill Reply at 3.45 – 3.48.

this monitoring and responds to submitter comments. There is no basis for Dr Campbell to be given an opportunity to further comment on Dr Hill's reply.

12. With regard to Ollie and Natalya Langridge, Valley RAGE's Memorandum says that my reply submissions make incorrect assumptions about the operating times and days of the yoga and meditation centre. My legal submissions record that "the retreats will generally occur on weekends (as recorded in Council decision RM 211153)." Counsel for Valley RAGE's submission that there will be amenity impacts on the consent is not sustainable in light of Mr Hegley's uncontested evidence regarding noise levels at the Langridge property. My legal submissions also draw on the uncontested evidence of Mr Hegley and Mr Payne regarding effects on terrestrial fauna. There is no basis for the Langridge's to be afforded the opportunity to further respond on these or any other matters.
13. It is only due to the hearing date being extended by a week that Valley RAGE is in a position to make the requests in its last minute Memorandum.
14. The request for further opportunities to present should be declined and the content of the Memorandum from Valley RAGE disregarded.



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Sally Gepp

Counsel for CJ Industries Ltd