

**BEFORE**

Independent Commissioners 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

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**MEMORANDUM OF COUNSEL IN RESPONSE TO MINUTE 1**  
**23 June 2022**

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## MAY IT PLEASE THE COMMISSIONER

1. This Memorandum of Counsel responds to Minute 1 dated 20 June 2022.
2. The Minute directs the Applicant to clarify:
  - a. The type of fill material to be backfilled with respect to the Waste Management Institute New Zealand (WasteMINZ) Technical Guidelines for Disposal to Land 2018 (“WasteMINZ Guidelines”).
  - b. Whether a discharge permit for discharge of contaminants to land is required to carry out the backfill activity.
3. The Applicant has sought advice on backfill material since lodging the application. The advice received is that the backfill should constitute material meeting the clean fill definition in the WasteMINZ Guidelines, as set out in Table 1 below:

<b>Table 1: Summary of acceptable clean fill material</b>	
<b>Material</b>	<b>Discussion</b>
Natural materials sourced onsite.	<ul style="list-style-type: none"> <li>• Uncontaminated soil, clay, rock and gravel.</li> <li>• Quarry overburden comprising sand, clay and other soils (but specifically excluding peats, loams, topsoils and other soils with high organic content).</li> <li>• Other inert natural materials arising from quarry operations provided that the volume of biodegradable matter (i.e., vegetative matter) in any material buried shall not exceed 2% by volume per load.</li> </ul>
Natural materials sourced offsite	<p>Uncontaminated, natural materials arising from construction/excavation operations at uncontaminated sites and other quarry operations but specifically excluding any material sourced from any site listed on the Tasman District Council Hazardous Activities and Industries List register (as defined by the Ministry for the Environment) that is known to have been occurring before the date the clean fill material is received. This includes the following materials:</p> <ul style="list-style-type: none"> <li>• Rock, stone, gravels, soils, and other inorganic inert natural.</li> <li>• Overburden/construction/excavation material comprising sand, clay and other soils (but specifically</li> </ul>

**Table 1: Summary of acceptable clean fill material**

<b>Material</b>	<b>Discussion</b>
	<p>excluding peats, loams, topsoils and other soils with high organic content).</p> <ul style="list-style-type: none"><li>• Other inert natural materials provided that the volume of biodegradable matter (i.e., vegetative matter) in any material buried shall not exceed 2% by volume per load.</li><li>• Imported fill material will only be accepted if total soil contaminant concentrations are below regional soil background concentration limits.<sup>1</sup></li></ul>

4. The Applicant confirms that the consent conditions to be circulated with its evidence will include a requirement for all backfill to meet the parameters in Table 1.
5. The materials described in Table 1 do not constitute contaminants as defined in the Resource Management Act 1991.<sup>2</sup> Accordingly, consent to discharge contaminants to land is not required for the backfill activity.<sup>3</sup>



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Sally Gepp

Counsel for CJ Industries Limited

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<sup>1</sup> WasteMINZ (2018) only provides regional limits for some parameters which doesn't include the Tasman region. It is expected that regional soil background concentration limits will come from "Background concentrations of trace elements and options for the managing of soil quality in the Tasman and Nelson Districts" - Landcare Research (2015).

<sup>2</sup> **contaminant** includes any substance (including gases, odorous compounds, liquids, solids, and micro-organisms) or energy (excluding noise) or heat, that either by itself or in combination with the same, similar, or other substances, energy, or heat—

(a) when discharged into water, changes or is likely to change the physical, chemical, or biological condition of water; or

(b) when discharged onto or into land or into air, changes or is likely to change the physical, chemical, or biological condition of the land or air onto or into which it is discharged

<sup>3</sup> See for example: *Southland Regional Council v Johnstone Construction Ltd* [2021] NZDC 7590. This issue will be addressed further in legal submissions.