

**BEFORE**

An Independent Commissioner  
appointed by Tasman District Council

**IN THE MATTER** of the Resource Management Act 1991



**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, land  
use consent RM200489 to establish and  
use vehicle access on an unformed legal  
road and erect associated signage, and  
RM220578 to discharge contaminants to  
land (backfill material)

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**MEMORANDUM OF COUNSEL FOR APPLICANT**  
**30 September 2022**

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## MAY IT PLEASE THE COMMISSIONER

### Introduction

1. The National Policy Statement for Highly Productive Land 2022 (“NPSHPL”) was approved by the Governor General on 12 September 2022 and comes into force on 17 October 2022. The applicant considers that the NPS HPL is relevant to its application for land use permit RM200488 for gravel extraction and site rehabilitation and associated permits.
2. As the NPSHPL post-dates the application, this memorandum:
  - a. Sets out the applicant’s position on application of the NPSHPL, to be further elucidated in evidence and legal submissions.
  - b. Requests leave to file evidence addressing the NPSHPL at the same time that the applicant files its evidence on the application for a discharge permit (RM220578).

### Applicant’s position on application of the NPSHPL

3. The NPSHPL contains objectives and policies applicable to “highly productive land”. “Highly productive land” is defined as:<sup>1</sup>

means land that has been mapped in accordance with clause 3.4 and is included in an operative regional policy statement as required by clause 3.5 (but see clause 3.5(7) for what is treated as highly productive land before the maps are included in an operative regional policy statement and clause 3.5(6) for when land is rezoned and therefore ceases to be highly productive land)

4. Clause 3.5(7) applies because maps produced in accordance with clause 3.4 have not yet been included in an operative regional policy statement as required by clause 3.5. Clause 3.5(7) says:

(7) Until a regional policy statement containing maps of highly productive land in the region is operative, each relevant territorial authority and consent authority must apply this National Policy Statement as if references to highly productive land were references to land that, at the commencement date:

(a) is

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<sup>1</sup> Clause 1.3 Interpretation

(i) zoned general rural or rural production; and

(ii) LUC 1, 2, or 3 land; but

(b) is not:

(i) identified for future urban development; or

(ii) subject to a Council initiated, or an adopted, notified plan change to rezone it from general rural or rural production to urban or rural lifestyle.

5. The site does not contain LUC 1 or 2 land. The site has been identified by the applicant's consultants as containing areas of LUC 3 land, as shown in the image at p 6 of the Soil Management Plan attached to Mr Hill's evidence, copied below. One area of LUC 3 is on the landward side of the stopbanks (shaded blue) and the other area is on the river side of the stopbanks (shaded pink):



6. The applicant intends to confirm in evidence that these areas are LUC 3 as contemplated by the NPSHUD, noting that the NPSHUD includes the following guidance in clause 3.4(5):

(5) For the purpose of identifying land referred to in subclause (1):

(a) mapping based on the New Zealand Land Resource Inventory is conclusive of LUC status, unless a regional council accepts any more detailed mapping that uses the Land Use Capability classification in the New Zealand Land Resource Inventory; and

(b) where possible, the boundaries of large and geographically cohesive areas must be identified by reference to natural boundaries (such as the margins of waterbodies), or legal or non-natural boundaries (such as roads, property boundaries, and fence-lines); and

(c) small, discrete areas of land that are not LUC 1, 2, or 3 land, but are within a large and geographically cohesive area of LUC 1, 2, or 3 land, may be included; and

(d) small, discrete areas of LUC 1, 2, or 3 land need not be included if they are separated from any large and geographically cohesive area of LUC 1, 2, or 3 land.

7. The remainder of this analysis assumes that the areas previously identified as LUC 3 remain LUC 3 for the purpose of the NESHPL.
8. The land is not identified for future urban development or subject to a Council initiated, or an adopted, notified plan change to rezone it from general rural or rural production to urban or rural lifestyle. Accordingly, the two LUC 3 areas are “highly productive land” in terms of Clause 3.7 of the NPSHPL.
9. The structure of the NPSHPL is that it provides a “default” objective and policy direction that highly productive land is protected for use in land-based primary production, both now and for future generations.<sup>2</sup> In particular, Policy 8 provides:

Policy 8: Highly productive land is protected from inappropriate use and development.

10. However, that default approach is subject to a number of specific and directive provisos or exceptions. Clause 3.9 is of most relevance to use and development of highly productive land. Relevant parts of clause 3.9 are set out below:

- (1) Territorial authorities must avoid the inappropriate use or development of highly productive land that is not land-based primary production.
- (2) A use or development of highly productive land is inappropriate except where at least one of the following applies to the use or development, and the measures in subclause (3) are applied:

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<sup>2</sup> Objective 2.1 and Policies 1, 4 and 8.

(j) 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:

(iv) aggregate extraction that provides significant national or regional public benefit that could not otherwise be achieved using resources within New Zealand.

(3) Territorial authorities must take measures to ensure that any use or development on highly productive land:

(a) Minimises or mitigates any actual loss or potential cumulative loss of the availability and productive capacity of highly productive land in their district; and

(b) Avoids if possible, or otherwise mitigates, any actual or potential reverse sensitivity effects on land-based primary production activities from the use or development.

11. The proposed activity:

a. is provided for under clause 3.9(2)(j)(iv) and

b. can meet the requirements of clause 3.9(3).

12. Accordingly the activity is not “inappropriate development” in terms of clause 3.9 and Policy 8.

13. In the alternative, the activity would also meet clause 3.9(2)(g):

(g) it is a small-scale or temporary land use activity that has no impact on the productive capacity of the land.

14. Clause 3.10 contains additional exemptions for highly productive land subject to permanent or long-term constraints. 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 all of the criteria in 3.10(1) are met. They are:

(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

(b) the subdivision, use, or development:

- (i) avoids any significant loss (either individually or cumulatively) of productive capacity of highly productive land in the district; and
- (ii) avoids the fragmentation of large and geographically cohesive areas of highly productive land; and
- (iii) avoids if possible, or otherwise mitigates, any potential reverse sensitivity effects on surrounding land-based primary production from the subdivision, use, or development; and
- (c) the environmental, social, cultural and economic benefits of the subdivision, use, or development outweigh the long-term environmental, social, cultural and economic costs associated with the loss of highly productive land for land-based primary production, taking into account both tangible and intangible values.

15. In addition, to meet 3.10(1)(a) the applicant must demonstrate that the permanent or long-term constraints on economic viability cannot be addressed through any reasonably practicable options that would retain the productive capacity of the highly productive land, by evaluating options such as (without limitation):

- (a) alternate forms of land-based primary production:
- (b) improved land-management strategies:
- (c) alternative production strategies:
- (d) water efficiency or storage methods:
- (e) reallocation or transfer of water and nutrient allocations:
- (f) boundary adjustments (including amalgamations):
- (g) lease arrangements.

16. The applicant does not need to rely on clause 3.10 because its activity is provided for in clause 3.9. However, the applicant submits with respect to clause 3.10 that the LUC 3 land on the river side of the stop bank comes within clause 3.10 because the land:

- a. is subject to permanent or long-term constraints in terms of clause 3.10(a) and (c); and
- b. the activity will achieve the effects management requirements of clause 3.10(b).

### **Additional evidence**

17. While the applicant's evidence to date contains material relevant to the NPSHPL, it was directed at relevant Tasman Resource Management Plans rather than the NPSHPL objectives and policies. Accordingly, the applicant seeks leave to file additional evidence addressing the NPSHPL. The applicant proposes that this additional evidence could be filed at the same time that the applicant files evidence on the discharge permit application.



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Sally Gepp  
Counsel for CJ Industries Limited