

RESOURCE CONSENT DECISION

Decision of the Hearing Commissioners

Hearing held in the Council Chambers on 19 - 21 January 2022

Hearing closed on 13 April 2022

This is the report and decision of the Panel, David Mountfort (Chair) and Liz Lambert. We were appointed by the Tasman District Council (TDC or 'the Council') to hear and determine applications lodged by Tasman Bay Asphalt Limited ('the Applicant'), for resource consents to establish and operate an asphalt manufacturing plant (including associated land disturbance and discharges of contaminants) at Bartlett Rd, in the Rural 2 zone near Richmond.

The resource consents applied for are

Land use consent RM201000

To construct and operate an asphalt plant as an industrial activity on land zoned Rural 2.

Land use consent RM201018

Land use consent for earthworks on or within 10 metres of the toe of the stopbank that runs through the eastern berm of the Waimea River to reform and realign the stopbank

Discharge permit RM201002

Resource consent to discharge contaminants to air from the operation of the asphalt plant.

Attendances

Applicant	Ms Sally Gepp and Ms Madeleine Wright - Legal Counsel
	Mr Jarrod Du Plessis - Applicant Company Business Manager
	Ms Jane Bayley - Planning Consultant
	Mr John Morrissey - Consultant Scientist
	Mr Rob Greenaway - Recreation and Tourism Planner
	Mr Martyn O'Cain - Certified Environmental Practitioner (Contaminated Land)
	Mr Chris Bender - Consultant Air Quality Scientist

	Mr Gary Clark - Transport Engineer
	Mr Matthew Bronka - Acoustic Engineer (by Zoom)
	Mr Jeremy Dixon - Isaac Construction Ltd Company Director (by Zoom)
Submitters	Mr Nigel McFadden, Legal Counsel for Edens Rd Fruit Ltd, JS Ewers Ltd, Blackbyre Horticulture Ltd, MG Group Holdings Ltd, Boysenberries NZ Ltd
	Mr Greg Dryden, Horticultural Consultant
	Mr Pierre Gargiulo, General Manager JS Ewers Ltd
	Mr John Iseli, Air Quality Scientist
	Ms Rewa Satory, Acoustic Engineer
	Mr Steven Sutton, Director Edens Rd Fruit Ltd
	Mr Chris Fowler, Legal Counsel for Dr Teece
	Dr David Teece
	Mr Greg Teece
	Ms Sue Thomas
	Mr Graeme Dick
	Mr Bob Chittenden
	Mr David Cartwright
	Ms Marion Georgiev
	Ms Gail Barth
	Mr Aloysius Melis
	Mr Dillon Winkleman
	Mr Kyle Victor
	Ms Sarah Turner
Reporting officers	Mr Phil Doole, Principal Planner Resource Consents
	Mr Leif Pigott, Team Leader - Natural Resources
	Mr Daniel Winters, Team Leader - Environmental Health
	Mr Ari Fon, Consultant Traffic Engineer - Affirm NZ Ltd
Hearing Facilitator	Mr Alastair Jewell Principal Planner Resource Consents

1 Summary

[1] Under delegated authority of Tasman District Council, we **GRANT** the following resource consents:

- | | |
|----------|--|
| RM201000 | To construct and operate an asphalt plant as an industrial activity on land zoned Rural 2 at Bartlett Rd. |
| RM201018 | Land use consent for earthworks on or within 10 metres of the toe of the stopbank that runs through the eastern berm of the Waimea River to reform and realign the stopbank. |
| RM201002 | Discharge permit to discharge contaminants to air from the operation of the asphalt plant. |

2 Procedural matters

- [2] The hearing of this application commenced at 9.30 am on 19 January 2022 and continued over 3 days. Evidence was heard over the course of the day and the hearing was adjourned at 3.00 pm on Friday 21 January 2022. The hearing was held at the Council Chambers.
- [3] We visited the application site and the surrounding area shortly before the hearing so that we could gain a better understanding of the context for the application. This also enabled us to gain a better understanding of the effects of the proposal and the issues that were discussed at the hearing. On the site visit we did not meet with or discuss any matters associated with the hearing with any of the parties
- [4] Before the hearing, a report was produced under section 42A of the RMA ('section 42A Report' or 's 42A Report') on behalf of Tasman District Council ("the Council") by Mr Phil Doole, Principal Planner Resource Consents, and Mr Leif Pigott, Team Leader Natural Resources, in association with Mr Ari Fon, transport engineering consultant) and Mr Daniel Winters, Team Leader Environmental Health.
- [5] The s 42A Report provided an analysis of the matters requiring consideration under the Resource Management Act ("the RMA" or "the Act") and recommended the application should be granted.
- [6] The s 42A Report and the Applicant's and Submitters' technical evidence, were pre-circulated prior to the hearing in accordance with section 103B of the Act. This enabled the application documentation, s 42A Report and pre-circulated evidence to be pre-read and we directed that they be 'taken as read' during the hearing.

- [7] The Hearing was adjourned on 21 January 2022 to enable the provision of information requested throughout the hearing; and for the Applicant to provide a written right of reply and a revised set of proposed consent conditions. We also directed:
- a. The technical experts on air quality to caucus after the hearing and provide a Joint Witness Statement on any matters they could agree on and remaining points of difference.
 - b. Following the caucus, the proposed conditions of consent were amended by the Applicant and circulated to the submitters and the Council officers for comment.
- [8] Following these processes we received closing submissions in reply on behalf of the Applicant and closed the hearing on 13 April 2022.

2.1 Section 113 of the RMA

- [9] Section 113(3) of the RMA states:

A decision prepared under subsection (1) may, -

- (a) instead of repeating material, cross-refer to all or a part of -
 - (i) the assessment of environmental effects provided by the Applicant concerned;
 - (ii) any report prepared under section 41 C, 42A, or 92; or
- (b) adopt all or a part of the assessment or report, and cross-refer to the material accordingly.

- [10] Accordingly, in the interests of brevity and economy, we intend to make extensive use of section 113 of the RMA and focus our assessment of the applications on the principal matters in contention.

3 Introduction

- [11] This decision is made on behalf of the Council by David Mountfort (Chair) and Liz Lambert (the Panel), appointed and acting under delegated authority under sections 34 and 34A of the Act.
- [12] This decision contains the findings from our deliberations on the review of the resource consent applications and has been prepared in accordance with section 113 of the RMA.
- [13] The application, made in accordance with the Act, was lodged with the Council on 25 November 2020.

[14] The applications were publicly notified and also served on 95 owners of the owners along the roads leading to the site and as well as on all iwi recognised in the Statutory Acknowledgements along the Waimea River, and on groups representing users of the river and berm.

4 The proposed activities

[15] A full description of the proposal and the associated suite of resource consents that are required is contained within the application documents provided by the Applicant and described in the s 42A report and are not repeated here.

[16] In summary the Applicant proposes to erect and operate a Marini Latin America Carbon T-Box 130 continuous mix asphalt plant to be installed at a site at 272 Bartlett Rd, next to the Waimea River stopbank, which is leased by Tasman District Council to Downer New Zealand Ltd at Bartlett Road, which is approximately 3.5 kilometres from Richmond.

[17] The attachments to the AEE show the proposed site layout and images and specifications of the plant. Those modules include:

- A four bay dosing module for aggregate (with adjacent control room).
- Conveyor belt linked to a mixing drum module where aggregate is dried and mixed with bitumen from two adjacent trailer units.
- Above the mixing drum module is a bag house module to filter discharges from the burner, before the air is then discharged from a chimney stack, which projects at least two metres above the module.
- Once mixed the asphalt is goes to a silo, used then to load trucks for delivery.

[18] With the exception of the silo module, no foundations are needed.

[19] The plant consists largely of containerised modules that can be brought to the site and assembled and is readily able to be disassembled and transported away when no longer required.

[20] The asphalt plant will only remain in this location for the time that there is a nearby gravel source available. The Applicant has volunteered a condition that once all gravel crushing / extraction stops in the Waimea River Park, the plant will be shifted within six months (or after 20 years of operation, whichever is earlier). Tasman Bay Asphalt Limited ("TBAL") proposes to implement a Restoration and Access Plan for the site and proposes to hand back the site in better condition than it is currently.

- [21] Generally, the asphalt plant will operate during the day, but occasionally it needs to operate into the evening to supply projects that must be undertaken at night. TBAL volunteers conditions limiting operation of the asphalt plant and associated transportation beyond 6.30 pm to 30 days per year.
- [22] The plant is capable of a maximum production rate of 130 tonnes per hour. For the purposes of assessing the effects of the proposed asphalt plant, this theoretical maximum production rate has been used, based on 10 hours per day operation. However, the plant will only run at that maximum production rate occasionally, so the assessment is based on a worst case scenario.
- [23] As the process involves heating and mixing gravel and bitumen, using a diesel-fuelled burner and a revolving drum, exhaust gasses are produced and are to be vented to the atmosphere through a 12.5 metre high stack
- [24] The Applicant has volunteered a condition limiting truck movements to and from the site to a maximum of 80 per day, which equates to a maximum production of 400 tonnes per day. However we were told that a more typical daily rate of production would be 150 tonnes and there would be days when the plant did not operate at all.
- [25] The main inputs into the manufacture of asphalt are crushed gravel, which will be brought to the site across the stopbank by wheeled loaders from the adjacent gravel extraction and crushing operation on the adjacent Waimea River berm, and bitumen, which will be brought to the site by tankers. Very limited quantities of harder gravels not available from the river and other materials required for specialised projects will be brought to the site by truck as required.
- [26] Asphalt will be taken from the site by truck, using a set of local roads, including Bartlett Rd, Pugh Rd, Ranzau Rd and Ranzau Rd West, all of which lead to the State Highway network.
- [27] The proposal includes realignment and restoration of an area of stopbank on the site which has been altered and partly removed by the construction of a gravel crushing plant on it. The crushing plant has been decommissioned and will be demolished.
- [28] The application documents provided an explanation of the proposed activities, and included:
- a. An Assessment of Environmental Effects, prepared by Staig and Smith Ltd, Planning Consultants
 - b. The site plan, elevations and technical specifications of the plant
 - c. An Acoustic Assessment prepared by Bladen Bronka Acoustics Ltd
 - d. A Transport Impact Assessment prepared by Traffic Concepts Ltd.

- e. The records of title for the site
- f. An Air Discharge Assessment of Effects prepared by Pattle Delamore Partners Ltd.

[29] The Council's section 42A Report accurately summarised the applications, and described the consents sought and the application site. The s 42A Report included technical reviews by:

- Phil Doole, Principal Planner
- Leif Pigott, Team Leader - Natural Resources
- Daniel Winters, Team Leader - Environmental Health
- Ari Fon, Consultant Traffic Engineer - Affirm NZ Ltd

5 Preliminary Issues

[30] Two preliminary issues arose prior to or during the hearing, which we discuss first

5.1 National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health 2011 (the NESCS)

[31] Under the NESCS consents are required for any significant disturbance of previously contaminated sites. There is known to be a former landfill in the vicinity of the site, although its exact location, extent, and the nature of any contaminants are unknown. Because of the extent of earthworks required to establish the proposed activities there is the potential for this landfill to be uncovered and contaminants released, which would trigger the need for a consent under the NESCS.

[32] Prior to the hearing Mr Derek McLachlan, legal counsel for the submitters Edens Rd Fruit Ltd and Others, filed a letter with the Council raising concern that the Applicant has sought to include a further application for consent under the NESCS within the body of their evidence. We agreed to hear preliminary submissions on this point at the start of the hearing on the question of whether a separate application should have been made under the NESCS for this aspect. At the hearing Mr McFadden, for the submitters, elaborated on this, in particular that the Applicant has not applied separately for consent under the NESCS and therefore we are unable to consider such an application.

[33] For the Council Mr Phil Doole, a Principal Planner at the Council and the lead author of the Council's report on the applications under section 42A of the RMA, advised that the Council's practice is to issue a separate land use consent if the requirement for consent is only triggered by the NESCS. Otherwise, conditions relating to the NESCS

are generally incorporated into a wider land use consent. Council is therefore comfortable with the Applicant's approach on this.

- [34] We note that this same practice is also followed by other Councils we have experience of. For example the Christchurch City Council, which has had a great deal of experience with redevelopment of contaminated sites since the Canterbury earthquakes, routinely follows this practice.
- [35] In our opinion, what is important is that the obligations under the NESCS are observed and implemented. We consider this can be done by considering the NESCS as part of the land use consent RM201000 as proposed by the Applicant and the Council. The effects of disturbing contaminated soils are relevant issues under the RMA and we consider that they can legitimately be made the subject of conditions on a related land use consent. Relevant conditions have been included in the draft conditions submitted by the Applicant for our consideration.
- [36] If we are not correct in this, it will be possible for the Applicant to make a subsequent application under the NESCS if it proves necessary. Based on our experience, this would probably be a straightforward exercise.

5.2 Activity for which consent is sought does not include gravel extraction

- [37] It was submitted by Mr Chris Fowler, counsel for the submitter Dr Teece, that there is a material gap in the documentation notified with the proposal as the Applicant has not applied for a land use consent for gravel extraction and crushing.
- [38] One of the principal justifications for the siting of the plant advanced by the Applicant was the close proximity of the site to gravel extraction and crushing operations nearby in the Waimea River. The gravel would be brought directly to the plant by loaders from mobile crushing plants located along the river, across the stopbank. This would avoid the need for gravel to be brought to the site from more distant sources, reducing the number of truck movements through the local rural community, with the incremental effects those trucks would otherwise bring.
- [39] Therefore Mr Fowler considered that the applications should not be granted unless it was certain that this gravel source remains available and would be used.
- [40] The compliance status of those extraction and crushing operations is not completely clear. It is a historical operation of longstanding. Although discussed in the evidence, at the hearing and in closing submissions, it was not made clear to us whether it is carried out under specific resource consents, existing use rights, or what the exact status of these operations is under the Resource Management Act 1991. The most relevant information we received was through the section 42A report, which stated that gravel extraction and crushing were underway in this locality in the 1940s and

1950s according to aerial photography and other records held by the Council.¹ In the Applicant's closing submissions and also in oral evidence from Mr Doole at the hearing it was stated that Downer New Zealand Limited, one of the operators at the river and the company from whom the Applicant currently proposes to obtain gravel, holds resource consents granted in 2019 to take and discharge water for use in gravel washing at the site². A copy of this was provided to us. The decision states that "gravel is reportedly crushed on-site after it has been washed" and "the existing operation has been occurring for a number of years (reportedly since at least 1971)" and "expiring consent NN020105 authorises the discharge of water and associated sediment from a gravel washing operation via infiltration from a settling pond to the Waimea River."

- [41] Therefore the Council assumed that there were existing use rights for gravel extraction and crushing at this locality.
- [42] The Applicant states that it was not in the business of gravel extraction. The gravel is simply an input into the production of asphalt, like the bitumen and heating fuel, which it would be buying in from external suppliers.
- [43] We do not consider this is completely decisive on this issue., Firstly, the existence of existing use rights seems likely but has not been conclusively demonstrated. Questions of character, scale and intensity, and continuity would need to be addressed to be conclusive on this. Secondly a resource consent to take water to wash gravel is not a consent to extract and crush gravel. Thirdly there are other operators at the river from whom gravel could be obtained and we know nothing about their compliance status. Finally we have no way of knowing whether the Applicant might choose to or need to obtain the bulk of their gravels from other sources if for any reason its arrangement with Downer New Zealand Limited falls over.
- [44] We do accept that gravel is simply an input that the Applicant needs to purchase in order to make asphalt, and that if it cannot get gravel it will not be able to make asphalt.
- [45] We also accept that the gravel extraction and crushing is likely to be lawful.
- [46] However, it is also true that proximity to this supply, and the reduction in truck movements that results, was stated to be a positive effect by the Applicant which it relies on. If the gravel is merely a commercial input, presumably the Applicant would be able to bring it in from other suppliers if it ceased to be available from the river nearby, at any time until the consent expires. The effects of any additional truck movement resulting have not been assessed as part of this application process. The truck traffic assessment was confined to the movements of trucks taking asphalt away from the site and empty trucks returning, together with a smaller number of trucks

¹ Section 42A report, at paragraphs 4.1 - 4.3

² At paragraphs 3.13 - 3.16

delivering bitumen and fuel and a very limited quantity of harder gravels and crusher dust for use in specialised projects from time to time.

- [47] The ability of the Applicant to rely on alternative sources would be partly constrained by the proposed conditions. These limit total truck movements to and from the site to 80 per day³. However it was clear from the evidence that there would be times when the plant was operating at less than its maximum capacity, and this would provide opportunities when alternative gravels could be brought in. These could include very large truck and trailer units, which would have different characteristics such as noise, dust and visual appearance from the smaller 10 tonne trucks without trailers used for transporting asphalt. Such characteristics were not assessed as part of the application and we are unable to assess this for ourselves due to lack of evidence. However there appears to be nothing in the proposed conditions which would prevent this from occurring, except perhaps condition 1 which limits the activities able to be carried out to those described in information contained in the application.
- [48] So it seems to have been assumed but not actually required that the great majority of the gravels would be brought in from the Waimea River. For example the Applicant has already agreed to the duration of the consent being limited to the period in which gravel continued to be available at the Waimea River sites, or 20 years, whichever comes first.
- [49] We consider this matter could be resolved, if this application is granted, by requiring through a condition that the operator does not bring in crushed gravel from any other source than the Waimea River using the route to the site by the river haul road and across the stopbank at Bartlett Rd, except for small quantities of any specialised materials not available from the river. If for any reason this became impractical then it could be the subject of a further application when the effects of the additional movements could be assessed.
- [50] Therefore we do not consider that we need to enquire into the legality of the gravel extraction and crushing. In any case we lack the evidence to do so.
- [51] It is possible that our concern about inwards truck movements would be addressed by the proposed condition 1, which is a standard generic condition routinely applied to most resource consents, to the effect that the proposed activity is to be carried out in general conformity with the information supplied with the application. The intention to source practically all of the gravel from the operations at the river was certainly signalled in the information accompanying the applications and repeated in the evidence we heard. However we consider it is not beyond doubt, and there can be no harm in having a specific condition on this to prevent any future debate.

³ Proposed conditions 29 & 30.

6 Description of site

- [52] As described in the s 42A report the application site is approximately 3,500 square metres in area. It is within the Rural 2 Zone and Land Disturbance Area 1.
- [53] Immediately to the west of the site is the Waimea River stopbank, berm and bed, which are zoned Rural 2. Immediately to the north, east and south of the site are Rural 1 zoned lands used for intensive horticulture and agriculture.
- [54] The application site location and surrounds are shown in Figure 1 below



Figure 1 - Site of application in relation to Richmond urban area

7 Relevant rules and activity status

- [55] The s 42A Report outlined the relevant rules and the status of the activities under the TRMP at paras 5.1 to 5.6 which is reproduced below:
- 5.1 The Tasman Resource Management Plan (TRMP) zoning and overlay areas for the site are:
- **Zoning:** Rural 2 zone, with the site boundary adjoining a Rural 1 zone.
 - **Area:** Land Disturbance Area 1

- 5.2 The TRMP zoning, notations and overlays are of the site and surrounds are shown in Attachment 9.
- 5.3 The TRMP permitted activity rules contravened by the proposed activities and the resulting activity statuses are listed in the table below.

Activity	Applicable rules	Status
RM201000 Land use - Industrial activity		
To construct and operate an asphalt plant and to build an acoustic barrier, being an industrial activity proposed to be sited in a Rural 2 zone, not operating between 10 pm-6 am; with buildings between 7.5 and 12.5 m in height; a 3m high acoustic barrier fence on boundary*; and noncompliance with vehicle access standards. <i>*Note: the amended position of the acoustic fence may be compliant if now set back 5 m from boundary.</i>	Activity	Discretionary
	17.6.2.1 & 17.6.2.9	
	Building height and setback	Restricted
	17.6.3.1, 17.6.3.2 & 17.6.3.4	discretionary
	Vehicle Access standards	Restricted
	16.2.2.1 & 16.2.2.6	discretionary
RM201002 Discharge permit (contaminants to air)		
To discharge contaminants from the proposed asphalt plant operation to air	Rule 36.3.5.1	Discretionary
RM201002 Land use - Earthworks		
Earthworks on or within 10 metres of the toe of the stopbank that runs through the site that exceeds the permitted activity conditions, for the purpose of re-forming and re-aligning the stopbank	Rules 16.10.2.1 & 16.10.2.2	Restricted discretionary

- 5.4 The applications have been bundled and assessed in this report as a **discretionary activity**.
- 5.5 It is noted that TRMP rule 16.10.3.1 **prohibits** any buildings that have a floor area greater than 15 square metres on the Waimea River berm land – with “berm land” being defined in Chapter 2 of the TRMP as “*land located between the bank of a river and a stop bank on the same side of the river*”. Hence the proposed asphalt plant needs to be located on the inland side of the stopbank.

- 5.6 There is extensive appraisal of other relevant TRMP rules in Section 3 of the amended application dated 9 April 2021, including the Reserves Financial rules for buildings in TRMP Section 16.5.4. The following points are noted:
- a. The Applicant also originally applied for consent to store and use bitumen. However, the proposed bitumen is not a hazardous substance; and the storage of diesel complies with permitted activity rule 16.7.2.1. Therefore consent is not required for storage and use of hazardous substances.
 - b. The Applicant also applied for consent for breaches of rule 16.2.2.1(f) stormwater discharge from access, and rule 16.2.2.3(o) stormwater discharge from parking and loading area, as stormwater is proposed to be discharged to ground through infiltration. However, the proposal is considered to comply with Section 36.4 of the TRMP, specifically permitted activity rule 36.4.2.1.
 - c. With regard to HAIL site 159, the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 applies to the disturbance of soil on a 'piece of land' over which a HAIL activity has or is being undertaken. The proposal involves the disturbance of land within a land parcel containing a HAIL Site. However, due to the large size of the land parcel and the unknown extent of the HAIL site, 'piece of land' remains undefined. Consequently, the extent to which the NES-CS should apply is uncertain and an accidental discovery protocol (for contaminated soils) should be adopted for all land disturbance and may necessitate reassessment under the NES-CS at a later date.

[56] The s 42A Report considered that the applications should be bundled and assessed as discretionary activities, being the most restrictive of the various categories of the rules. We accept and adopt this approach.

8 Submissions

[57] A total of 73 submissions were received, with 23 in support, 45 in opposition, and three neutral, with two being withdrawn prior to the Hearing. 25 submitters indicated they wished to be heard

[58] The key themes in the submissions were summarised in the s42A Report⁴, and the issues themselves were evaluated in Sections 9 – 12 of the report. We consider this is an accurate summary of the key themes and issues. We adopt the summary of

⁴At paragraph 6.10

submissions and do not repeat it here, and we have made our own evaluation of the issues in Section 12 of this decision.

9 Relevant statutory provisions

- [59] We have had regard to the relevant statutory provisions including the relevant sections of Part 2 and sections 104, 104B, 105, 108, and 108AA of the RMA.
- [60] Under section 104(1), and subject to Part 2 of the Act, which contains the Act's purpose and principles, we must have regard to-
- (a) *any actual and potential effects on the environment of allowing the activity;*
 - (ab) *Any measure proposed or agreed to by the Applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will result from allowing the activity;*
 - (b) *Any relevant provisions of a national environmental standard, other regulations, a national policy statement, a New Zealand coastal policy statement, a regional policy statement or a proposed regional policy statement, a plan or proposed plan; and*
 - (c) *Any other matters the consent authority considers relevant and reasonably necessary to determine the application.*
- [61] Under section 104(2), when forming an opinion for the purposes of section 104(1)(a) regarding actual and potential effects on the environment, we may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect. This is referred to as consideration of the 'permitted baseline'.
- [62] The s42A Report stated that there is no permitted baseline for the discharge to air because there is no permitted activity rule in the Tasman Resource Management Plan (the TRMP) that allows such a discharge to air. Similarly there is no permitted activity rule for industrial activities per se in the Rural 1 zone although standards for permitted activities in rule 17.5.1 may provide benchmarks for comparing environmental effects of the asphalt plant proposal, such as noise levels and the traffic movements required for rural production.
- [63] There is a permitted activity rule 16.10.2.1 for earthworks on stopbanks.
- [64] In the complex circumstances of this case we consider that there is little or no value in the consideration of permitted baselines.
- [65] In terms of section 104(3), in considering the applications, we must not have regard to any effect on any person who has given written approval to the application. Written approval was provided by Waka Kotahi and Fish and Game.

- [66] Under section 104B, we may grant or refuse the application, and if granted, we may impose conditions under section 108.
- [67] In accordance with section 104(1)(b)(i)-(vi) of the RMA, we have had regard to the relevant statutory provisions of the following documents:
- a. National Policy Statement for Freshwater Management 2020
 - b. National Environmental Standard for Air Quality 2004
 - c. National Environment Standard for Sources of Human Drinking Water 2007
 - d. National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health 2011
 - e. Tasman Regional Policy Statement; (RPS) and
 - f. Tasman Resource Management Plan (TRMP)
- [68] Each of these documents is considered and discussed to the extent relevant in subsequent sections of this decision
- [69] We also considered the submissions received to be directly relevant to our task of determining the application and gave careful consideration to the matters raised in those submissions in accordance with section 104(1)(c) of the RMA.

10 Summary of evidence heard

- [70] Copies of all the written material submitted during the consent process are held by the Council, and the questions and responses during the hearing were recorded and are held on the Council records. In addition, we took our own notes of the verbal statements and verbal evidence presented, and any answers to our questions. We do, however, summarise and refer to relevant elements of the submissions, statements, and evidence in this decision, particularly in our discussion of the various issues raised by these applications.

11 Principal issues

- [71] In assessing the applications before us, we have considered the application documentation and AEE, the s 42A Report and technical reviews, all submissions received and the evidence provided during and after the hearing. In making our assessment, we are required to consider the actual and potential effects of the application on the existing environment, which includes lawful existing activities, permitted activities and any activities authorised by existing resource consents.

- [72] On the basis of the evidence, we consider the principal issues in contention relate to:
- a. Positive effects;
 - b. Transport Effects – Safety and Noise
 - c. Noise from the asphalt plant and from road traffic
 - d. Air quality
 - e. Water quality
 - f. Earthworks and construction
 - g. Effects on values held by iwi.
 - h. Rural amenity .

12 Main findings on the principal issues

12.1 Positive effects

- [73] A number of submissions were received in support of the application with the majority of these supporting the establishment of the asphalt plant because it will improve the resilience and capacity of asphalt supply for the wider region.
- [74] At present asphalt consumers rely on one asphalt provider for the Nelson and Tasman districts. The nearest alternative supplier is based in Marlborough.
- [75] Several submitters noted that the absence of competition in the asphalt market locally had implications for pricing. While this is not a matter we are required to give consideration to, we do acknowledge that an additional supplier would increase resilience and certainty of supply and minimise any economic risks from any breakdown in the current supply chain.
- [76] For the Applicant, Mr du Plessis outlined the benefits of the asphalt plant including the attributes of asphalt which make it a quieter and smoother option than other road surfaces.
- [77] We did not receive any submissions opposing the plant on the basis of an increase in the number of asphalt plants in the district.
- [78] In the Applicant's legal submission Ms Gepp submitted that with population growth and increasing demand for housing and roads the demand for asphalt is also expected to increase. As a result, the proposal will provide significant positive social and economic benefits for the Nelson and Tasman regions.

[79] The Officers' s 42A Report assesses the proposal against a range of statutory requirements and notes in relation to Policy 15 of the National Policy Statement for Freshwater Management that "*communities are enabled to provide for their social, economic and cultural wellbeing in a way that is consistent with this National Policy Statement*" and "*there is significant demand for asphalt in the Nelson Tasman Region as human population in the top of the south grows. The activity is consistent with the NPS-FM.*"

[80] The proposal will have positive effects to the extent that it will increase the certainty and resilience of the supply for providing for regional urban and industrial growth. However, we find that these positive effects are not of themselves significant in the context of the overall environment and we have not relied on them to justify, balance or outweigh any adverse effects which must also be addressed. They have not played a large role in why the application has been found to merit the granting of consent.

[81] Ms Gepp also submitted that

the proposal has positive effects on the natural environment and River Park that will be realized in both the short and long terms. In the short term it will see improved flood protection from reinstatement of the stopbank, improved access to the stopbank, and a new access to the River Park via a path along the back of the Site protected by the acoustic wall. In the long term, the proposal will see the restoration of the Site back into an area that can be used for recreation and which will contain indigenous vegetation to support indigenous habitat. The proposed remediation of this neglected and unsightly site goes well beyond merely addressing the effects of the proposal.

[82] We accept that these would be positive effects of the proposal.

12.2 Effects on values held by iwi.

[83] Eight iwi make up Te Tau Ihu for which Statutory Acknowledgment Areas have been established for the Waimea River and its tributaries. These eight iwi are Ngāti Apa ki te Rā Tō; Ngāti Kuia and Rangitāne o Wairau, Ngāti Koata, Ngāti Rārua, Ngāti Tama ki Te Tau Ihu, Te Ātiawa o Te Waka-a- Māui and Ngāti Toa Rangitira.

[84] Para 7.29 of the s 42A report notes that:

"while the statutory acknowledgements for the Waimea River do not directly apply to the area of riverbed and berm within Lot 1 DP368439, which are part of land vested in Tasman District Council for river control purposes, their intent is to ensure that regard is had for the cultural values of the river."

[85] Submissions on the cultural effects of the application were received from three of the eight iwi - Te Ātiawa o Te Waka-a- Māui, Ngāti Koata, and Ngāti Rārua. The broad concerns raised included:

- a. Adverse cultural and spiritual issues for mana whenua moana iwi

- b. The absence of a Cultural Impact Assessment for the proposal
- c. The absence of any cultural health indicators
- d. The duration of the consents
- e. Adverse environmental effects
- f. Adverse cumulative effects

[86] A “proof of consultation” document was also received from Ngāti Kuia by the Applicant. It included a series of recommendations which broadly covered the same issues as those raised in the submissions.

[87] In his evidence Mr du Plessis outlined the engagement undertaken by the Applicant with iwi submitters in order to address the concerns they had raised in their submissions. (Appendix 2 of his evidence). We are satisfied that the Applicant was committed to supporting the preparation of a cultural impact assessment (CIA) of the proposed activities, even though a CIA was not completed.

[88] The tangata whenua submitters did not appear at the Hearing so regrettably we were unable to question them about their concerns and any potential mitigation of those concerns. We therefore have had to assess the proposed management of effects on Māori cultural values and interests through the examination of the technical evidence around environmental effects and through the drafting of consent conditions for the various activities.

[89] Discharges to land and water are addressed separately in this decision and from the evidence provided on that topic we have concluded that there was no evidence before us that the discharges would lead to unacceptable effects on the receiving environment, including water quality, either in itself or cumulatively.

[90] The concerns around duration of the consents appear to have arisen from the initial application for the activities which included a consent duration of 35 years. It has now been proposed and accepted in the consent conditions that the term of the consents is:

- a. 20 years or for the period that extraction and crushing operating on the Council approved lease areas within the Waimea River Park Reserve, occurs, whichever is the lesser; and
- b. Once all extraction and crushing operations cease within the Waimea River Park Reserve, the Consent Holder shall vacate and remediate the Application Site within six months.

- [91] It is our view that this reduced duration, together with other proposed consent conditions discussed below, will give greater certainty and oversight to tangata whenua in meeting their cultural concerns.
- [92] Of particular concern to iwi submitters is that the establishment of the asphalt plant will lead to further erosion of their ability to exercise kaitiakitanga. To assist in redressing this a range of conditions have identified requirements to provide iwi with information through the course of the exercising of the consents.
- [93] In respect of the resource consent for earthworks and activities in accordance with the National Environment Standard for Contaminated Sites⁵ several conditions require the supplying of information to:
- Te Ātiawa Manawhenua Ki Te Tau Ihu Trust, Te Runanga o Ngāti Rārua, Ngāti Koata, Ngāti Kuia and Ngāti Apa ki te Rā Tō in relation to a certified plan for the realignment of the stopbank and other earthworks within the Plant Area.
 - Te Ātiawa Manawhenua Ki Te Tau Ihu Trust, Ngāti Kuia and Ngāti Apa ki te Rā Tō for the Approved Erosion and Sediment Control Plan.
- [94] Specifically to address cultural concerns, all works under the earthworks and NESCS resource consent shall be undertaken under an Archaeological Accidental Discovery Protocol. In the event that any archaeological site is found all works will cease and Te Ātiawa Manawhenua Ki Te Tau Ihu Trust, Te Runanga o Ngāti Rārua, Ngāti Koata, Ngāti Kuia and Ngāti Apa ki te Rā Tō shall be advised immediately.
- [95] An iwi monitor will would also be invited to be present when earthworks are occurring to realign the stopbank and re-levelling the Plant Area.
- [96] Our finding is that the issues being raised by the submitters in respect to cultural values and interests are being addressed through amendments to the application, technical evidence reviewing the environmental effects and the resource consent conditions.

12.3 Transport effects

- [97] Transport effects from this proposal in our opinion relate to traffic safety, and noise and other general amenity effects from vehicles associated with the asphalt plant. This section relates to traffic safety. Noise and general amenity are discussed below.
- [98] The site is at the western end of Bartlett Rd where it terminates at the Waimea River stopbank. Access to the site by vehicles to the wider legal roading network in the area

⁵ Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011

is available only by Bartlett Rd. This has created some complications for the proposal and raised concerns for many of the submitters, as we discuss below.

- [99] Bartletts Rd intersects with State Highway 60 (SH60) approximately 2.8 kilometres to the northeast. SH60 is the main route from Nelson and Richmond to Motueka, Golden Bay / Mohua and the rural lands and townships on the western side of the Waimea Plains. SH60 intersects with SH6 which is the main route out of the Nelson-Tasman area to the south and west. At first glance the Bartlett Rd / SH60 intersection seems to be the obvious route for trucks servicing the site to use to reach the highway network on route to their destinations. It would provide the straightest and most direct route to the Nelson / Richmond urban area where a large part of the asphalt would be required. However the layout of the intersection is not considered completely suitable by the road controlling authority Waka Kotahi (the NZ Transport Agency or NZTA). Waka Kotahi considers that this intersection, because of its layout, is only suitable for trucks turning left out of Bartlett Rd onto SH60 towards the west, away from Nelson and Richmond.
- [100] Other available but less straightforward routes include Bartlett Rd to Pugh Rd which also joins SH60, and Bartlett Rd to Ranzau Rd West / Ranzau Rd to SH6.
- [101] Physical access to and from the site to SH60 is also available by what is described as the "haul road" along the river berm and out to Blackbyre Rd which intersects with State Highway 60. However the haul road is not a legal road, is not sealed and passes through areas leased by other gravel extraction operators. On our site visit we noticed that trucks using this route were creating significant amounts of dust which was blowing onto adjacent rural land. Blackbyre Rd's intersection with SH60 is formed to a better standard and can and does accommodate right turning traffic, and so several submitters urged us to require that it be used as the main route in and out of the site. However we consider that unless suitable arrangements could be made for legal access to Blackbyre Rd, and for the route to be fully sealed, then that is not a viable option. As no such proposals were being made, we do not consider that route any further.
- [102] Other roads in the vicinity, including Pugh Rd which also intersects with SH 60 are not considered suitable for all movements by Waka Kotahi. The intersection of Ranzau Rd with SH6 is considered to be the most suitable for movements onto and off SH6 in both directions. The Applicant is therefore proposing a rather complex routing system for trucks, with the route dependent on the origin and destination of the trucks. This involves the use of Bartletts Rd, Pugh Rd and Ranzau Rd/Ranzau Rd West for different movements.
- [103] The proposed Truck Route Plan system is illustrated in Figures 2 and 3 below.

Destination	In-bound movement	Out-bound movement
Western	Route colour: Orange Description: Pugh Road – right turn onto Ranzau West Road – left turn onto Bartlett Road	Route colour: Red Description: Bartlett Road – left turn onto SH 60
Northern	Route colour: Yellow Description: Pugh Road – right turn onto Ranzau West Road – left turn onto Bartlett Road	Route colour: Green Description: Bartlett Road – right turn onto Ranzau West Road – Ranzau Road – left turn onto SH 6
Southern	Route colour: White Description: left turn from SH 6 – Ranzau Road – Ranzau West Road – left turn onto Bartlett Road	Route colour: Blue Description: Bartlett Road – right turn onto Ranzau West Road – Ranzau Road – right turn onto SH 6

Figure 2 – Truck Route System



Figure 3 – Truck Route Plan (road name annotated version from s42A Report Attachment)

- [104] There would be two exceptions to this.
- a. Trucks will not use the Ranzau Road route to or from the Application site between 8.15 am-9.15 am and 2.45 pm-3.25 pm. During those times, trucks that would otherwise use Ranzau Road will use the yellow route, unless (b). below also applies.
 - b. Where there is a road closure blocking use of one of the specified routes trucks that would use that route may use an alternative route as necessary to reach their destination.
- [105] These exceptions are intended to allow for temporary road closures, and to keep Ranzau Rd free of trucks associated with the site out of Ranzau Rd during the main pick up and drop off times at the school.
- [106] To reach the highway network, the majority of the truck movements would therefore use Bartlett Rd, Ranzau Rd West and Ranzau Rd, with a lesser number using Bartlett Rd only or Bartlett Rd and Pugh Rd.
- [107] Waka Kotahi has accepted the Truck Routes Plan and provided affected party approval to the application on that basis.
- [108] All of these roads have rural dwellings on them and Ranzau Rd also has a primary school and a large church complex opposite the school which we were told is used on weekdays by a variety of groups including the school. There is a pedestrian crossing on Ranzau Rd outside the school and footpaths along both sides of it. The pedestrian crossing operates as a controlled Kea crossing before and after school. Parents accompany children to and from school on foot or by car. The Great Taste cycle trail passes along Ranzau Rd from near SH6 to Pugh Rd.
- [109] There are two large existing industrial operations in Ranzau Rd, a sawmill and a fertiliser plant, which also generate truck movements.
- [110] It is proposed that there would be up to 80 truck movements per day. The majority of these would be between the hours of 7.00 am - 6.30pm. On up to 30 days per year asphalt would be able to be transported from the site until 10 pm. These days would be called "exception events" and are to enable roading authorities to carry out work at night .
- [111] Traffic safety was therefore a major concern for residents.
- [112] Expert evidence on transport matters for the Applicant was given by Mr Gary Clark, a qualified and experienced engineer specialising in transport. In summary Mr Clark said

- [113] Most of the traffic movements to and from the Asphalt Plant are towards Nelson and Richmond, as this is where most of the asphalt is required. Some of the product may go to Motueka and south of Richmond but this is expected to be in limited quantities.
- [114] The road network has sufficient capacity to accommodate the relatively small flows (a maximum of 80 truck movements per day which will be reached on bigger projects, with a typical day seeing something around 40 truck movements from the Asphalt Plant.
- [115] The roads in the area can safely accommodate the truck movements noting the reduced speed zones and excellent forward visibility on the straight roads in this area.
- [116] The analysis included a search of the crash history, inspection of all the possible truck routes, a safety assessment, consideration of capacity constraints, an analysis of the effects on vulnerable road users, calculations around trip generation, the school and key intersections.
- [117] Overall, his analysis and assessment was that that any effects of the asphalt plant can be managed through the Truck Route Plan and conditions of consent, and are less than minor. In particular he emphasised that the roads are straight, visibility is good, there is a 60 km/h speed on Ranzau Rd, and the trucks would be operated by skilled drivers. He also pointed out that all the roads concerned are already used by trucks and farm machinery on an unrestricted basis, although the numbers of these are lower.
- [118] Numerous submitters included traffic safety among their concerns. No expert evidence was presented by submitters on traffic safety. Submitters who spoke to their concerns at the hearing included
- a. Sue Thomas, who strongly preferred that trucks use Edens Rd. This intersects with SH6 to the south of Ranzau Rd. She pointed out that children from the school cross Ranzau Rd to the church premises frequently throughout the day and that it is difficult for staff to supervise them effectively at all times.
 - b. Bob Chittenden, who considered that truck movements should be only by Bartlett Rd to SH60 and that this intersection should be upgraded before the proposal proceeded.
 - c. Greg Teece, who was particularly concerned about traffic safety around the school, and for people using Bartlett Rd to access the Waimea River Park.
 - d. Linda Atkins, who was particularly concerned about trucks using Ranzau Rd. She said that this road is narrow, due to the cycleway and concrete kerbing along it. She said when cars are parked along the road traffic is forced to cross the centreline. In addition a traffic island at the intersection with SH6 makes the intersection difficult for trucks to negotiate and there has been an incident

where a logging truck rolled here. She said that there are no turning lanes on Ranzau Rd so other traffic will be held up whenever a truck is waiting at the intersection.

[119] Expert evidence for the Council was given by Mr Ari Fon, a qualified and experienced traffic engineer. In his summary he said

- Based on the existing local road traffic volumes, the truck movements associated with the asphalt plant will generate a noticeable amount of traffic on these roads. The generated truck movements will be more obvious on those roads with lower existing traffic volumes and a lower number of truck movements, namely Bartlett Road and Ranzau Road West.
- On Bartlett Road the additional 80 truck movements are approximately twice the current number of truck movements. On Ranzau Road West the additional truck movements are approximately equal to the existing number of truck movements, so overall truck movements on Ranzau Road West when asphalt trucks use this road will be double that of the existing.
- For the higher volume roads of Pugh Road and Ranzau Road, the additional truck movements associated with the asphalt plant will be lower than current truck movements, but they will still result in noticeable increases. On Ranzau Road, 80 additional truck movements per day represents an increase of approximately 60 % of existing truck movements. Based on the Truck Routes plan included in the TIA, Pugh Road will only cater for one-way truck movements, so will be subject to 40 additional truck movements when in use by asphalt trucks. These additional movements represent an increase of just under 40% of existing trucks.
- The truck movements associated with the asphalt plant should be adequately catered for within the local roading network. The local roads are of a sufficient standard, with appropriate speed limits and adequate capacity to cater for the proposed number of truck movements. The adoption of the Truck Routes plan avoids right-turning truck movements at the higher risk intersection of Bartlett Road and SH60.

[120] He acknowledged that the Applicant has stated that all truck movements associated with diesel, bitumen and delivery of off-site sourced aggregate (including crusher dust) will fit within the maximum of 80 truck movements per day once averaged.

[121] He concluded that the truck movements associated with the asphalt plant should be adequately catered for within the local roading network. The local roads are of a sufficient standard, with appropriate speed limits and adequate capacity to cater for the proposed number of truck movements. The adoption of the Truck Routes Plan avoids right-turning truck movements at the higher risk intersection of Bartlett Road and SH60.

Evaluation

- [122] It was made very clear to us that those submitters who are resident in the area are very concerned about the safety effects of the trucks using the local road networks, especially Ranzau Rd and we acknowledge that. They are thoroughly familiar with the area and their submissions were carefully and thoughtfully written and presented.
- [123] We were also presented with evidence from two traffic engineers who are qualified and very experienced in traffic safety assessments, and who were satisfied that the Applicant's proposals would result in no more than minor adverse effects. In addition to that Waka Kotahi has accepted the Applicant's proposals and would have taken its own internal expert advice before doing so.
- [124] It is possible that the submitters have not sufficiently understood the scale of the transport operations. The overall maximum of 80 truck movements over a 10 hour day would at most result in eight truck movements per hour, or one per 7.5 minutes. This would be the maximum and movements would be fewer than this at other times when the plant was less busy. This should allow adequate time to safely negotiate situations such as parked cars, pedestrians and cyclists safely and without creating undue delays or congestion. The Applicant has responsibly recognised the need to completely avoid the busy school start and finish times.
- [125] As well as the maximum truck journey limit, there is also to be a Traffic Management Plan which among other things will ensure truck drivers are trained and familiar with the local issues and their obligations.
- [126] Alternative routes have been suggested which would certainly result in less truck traffic through the more intensely-developed Ranzau Rd. These include the haul road to Blackbyre Rd, and Edens Rd to SH6, presumably via Pugh Rd. Both these roads are available, less intensely developed, have lower traffic levels and better intersections with the highways, including turning lanes. However the haul road route is not a legal road and is not sealed, creating a potential dust nuisance. Edens Rd would be available but we did not hear any detailed assessment of its suitability from the traffic engineers.
- [127] We were also told that Waka Kotahi may be considering upgrades to the intersections of Bartlett Rd and Pugh Rd with SH60, but that nothing has been approved or budgeted. Because of that we are unable to consider those prospects. Should that come about a variation of consent could be applied for.
- [128] First of all we need to ask ourselves if we are sufficiently concerned about traffic safety effects on Ranzau Rd to justify either declining the application or directing the Applicant to consider any of the alternatives.
- [129] We have concluded that we should accept the direct advice of the experts for the Applicant and the Council, and the acceptance by Waka Kotahi who has its own

expertise. We therefore conclude that the traffic safety effects of the application would be no more than minor, and acceptable.

12.4 Noise from the asphalt plant and from road traffic

[130] Adverse effects from noise could arise from the operations of the asphalt plant, and from truck traffic.

[131] Expert evidence on noise for the Applicant was provided by Mathew Bronka, who is a qualified and experienced acoustic engineer.

[132] Mr Bronka summarised his evidence as follows⁶

- Noise from the proposed asphalt processing plant operations is generated from two main activities including the processing and loading of asphalt on the subject site in addition to truck movements on surrounding rural roads.
- The site and associated truck movements will operate from 7 am - 6.30 pm Monday to Friday and 7 am-6.00 pm Saturday for typical day-to-day activities.
- For up to 30 times per year, the asphalt plant will operate until 9 pm on any of Monday through Saturday, with associated truck movements until 10 pm.
- The predicted noise ratings for the asphalt plant are predicted to be 17 dBA or more, below the maximum permitted TRMP daytime limit of 55dB LAeq between 7 am - 9 pm for the Rural 1 and Rural 2 for the most affected residential receivers.
- For day-to-day operations, noise from asphalt processing on site between 7 am - 6.30 pm (7 am – 6 pm Saturday) will be 1 – 6 dBA below the background L₉₀ levels at the most affected residential receivers and expected to be barely noticeable, having no effect on residential acoustic amenity for internal and external living areas.
- During the evening periods when asphalt processing is proposed to operate until 9 pm, noise from the asphalt plant may occasionally be noticeable during quiet periods, such as times between vehicles passing on nearby roads, but, adequately low as to have no impact on the residential activities such as rest or relaxation.
- Whilst evening asphalt processing plant may occasionally be perceptible for 30 times per year, it will be audible only during quiet background noise lulls and will not be distracting or annoying to residential activities involving rest or

⁶ Matthew Bronka, Evidence in chief para's 2.1-2.17

relaxation. As a result, there is no adverse effect expected for all residential receivers in the surrounding area.

- Noise from the loading-out operation between 9 pm – 10 pm will be 14 dBA below the TRMP night-time limit of 40 dB LAeq and will be 4 dBA below the existing background levels of 30 dBA L₉₀, and so is not expected to be perceived or noticeable for residential receivers, therefore having no effect.
- Noise from trucks using the surrounding rural roads is not subject to the permitted TRMP noise limits and there is currently no applicable noise standard used in New Zealand for increased traffic on roads due to private activities.
- With a worst-case scenario of 8 truck movements per hour, a maximum increase of 1-2 dBA is predicted for LAeq(24hr) 24 hr period, or the typical daytime hour LAeq(1hr) between 7 am-6.30 pm (7 am – 6 pm Saturdays). This increase is not expected to be noticeable due to the fluctuating character of traffic noise over a daytime period and not expected to cause any adverse noise effects to residential acoustic amenity.
- During the evening / night periods when truck movements may operate past 6.30pm / 6 pm up to 10 pm, a worst-case scenario with eight truck movements per hour is predicted to increase existing hourly traffic noise levels by 3 – 7 dBA. This increase is expected to be noticeable due to the lower traffic volumes experienced in rural areas.
- This increase will be reduced significantly when trucks operate at lower volumes, and at reduced frequency as trucks will use a variety of routes from the site. The overall noise effect from evening truck operations is not expected to cause a significant disturbance to evening residential activities such as relaxation or dining but may have an increased risk of causing sleep disturbance, if bedroom windows are open and residents are sleeping before 10 pm.
- As road traffic noise is commonly assessed after 10 pm when considering protection of sleep disturbance, it is not expected that the proposed truck movements during the evening period up to 10 pm, for up to 30 times per year will cause ongoing annoyance or disturbance to daytime residential activities not involving sleeping.
- The cumulative noise increase from existing rock crushing operations close to the Asphalt Plant site and Blackbyre Road is predicted to be less than 1 dBA to the assessed asphalt processing plant and therefore not expect to have any additional effects to those considered. Rock crushing operations are only expected to occur for up to three weeks a year.

- The Sports Youth Fishing Club use of ponds located approximately 800 metres to 1.5 kilometres from the site is predicted to experience a noise rating level of 35dB LAeq. This noise level may be occasionally faintly audible above the lower background noise level of the rural and natural environment, but sufficiently low to be non-intrusive and conducive to allow enjoyment of external recreational activities such as fishing. Although not directly applicable, for context this noise level is within acceptable criteria suitable for a residential bedroom of 30 – 35 dB LAeq to ensure protection of sleep disturbance.
- The proposed 3m noise barrier, originally recommended to control evening / night-time operation noise (no longer proposed except for 30 days per year) will be retained, reducing daytime noise levels even further to the closest affected residencies to the south-east. Concern has been raised over the effectiveness of the noise barrier in relation to the Carbon T-Box 130 plant reaching a height of ~6 metres. The noise barrier is considered to be effective due to the predominant noise source being the burner and compressors located at low level, below 3 metres height.
- Noise from truck manoeuvres at road junctions demonstrated no significant increase in measured sound exposure levels (“SELs”) when compared to full speed truck pass-bys.

[133] His overall conclusion was as follows⁷

I have assessed the potential noise effects from the proposed asphalt plant operations on the subject site in addition to noise from truck movements on surrounding rural roads.

Due to the noise predictions of asphalt processing on site being barely audible above the existing background noise levels during the 7am-6:30pm (7am-6:00pm Saturdays) when typical operations are proposed, there will be no adverse effect on the residential acoustic amenity for all receivers using internal or external living areas.

For the limited number of evening operations of up to 30 times per year, noise from the asphalt processing plant may be audible and noticeable during quiet periods when no vehicles use nearby roads. Whilst audible during quiet periods, the absolute noise level is adequately below WHO recommended criteria for internal and external living areas and therefore not considered to have any significant impact on the overall acoustic amenity of nearby receivers.

Noise from truck operations during the typical operating hours is not expected to cause any impact on the acoustic amenity of residential receivers due to the maximum increase of 1-2dBA over existing traffic noise LAeq(1hr) levels.

⁷ Matthew Bronka, Evidence. paras 9.1 - 9.6

Noise from truck operations during the evening periods (6:30pm/6:00pm-10pm) is expected to result in a noticeable increase from the existing traffic noise. This may be slightly distracting only for the closest receiver buildings to the nearby roads during the most sensitive internal and external residential activities such as rest or relaxation, but not distracting for less sensitive activities such as dining, conversation, watching television or radio.

Due to the limited number of evening operations (30 times per year), the increase in traffic noise due to the truck operations is not expected to significantly impact on the overall acoustic amenity of residential receivers.

- [134] Expert evidence for submitters Eden's Rd Fruit and others was provided by Ms Rewa Satory, also a qualified and experienced acoustic engineer.
- [135] With regard to noise from the asphalt plant, Ms Satory differed slightly from Mr Bronka. This was largely because Mr Bronka allowed for the main sources of plant noise, being the burner and compressor to be at or below 1.0 metres in height and below the proposed acoustic barrier. However she considered that there would likely be plant items at a higher level than the acoustic barrier. As a result she assessed that Mr Bronka may have overestimated the effect of the noise barrier by 2 – 4 dB. However this would still comply comfortably with the daytime noise limits for a permitted activity in the Tasman Resource Management Plan (the TRMP), which is 55 dB L_{Aeq} .
- [136] With regard to nighttime activities when the plant could be operating until 9pm up to 30 nights per year as an "exception event" under the proposed conditions, Ms Satory estimated that the TRMP limit could be exceeded by 1-2 dB between 6–9pm on Saturday nights at the nearest affected residences at 208 Bartlett Rd and 202 Edens Rd⁸. However the proposed conditions require that the plant not operate beyond 6 pm on Saturdays other than loading out finished product which could continue until 10 pm.⁹
- [137] Ms Satory also discussed plant noise received on the river walkway. She said that based on existing activity here the predicted noise levels would be acceptable as absolute noise levels are moderate and will only be elevated for a short portion of the walkway.
- [138] With regard to noise from trucks on the roads, Ms Satory agreed with Mr Bronka that noise levels from eight trucks per hour travelling at 80 km/h would be 55 dB L_{Aeq} (1hr) received at a dwelling 10 metres from the road. She said that the two most affected dwellings would be at 154 and 208 Bartlett Rd because all vehicles will travel past these two dwellings before the various routes diverge. She calculated that at eight

⁸ The TRMP night-time noise limits commence at 10 pm on weeknights but at 6 pm on weekends.

⁹ Proposed condition 20.

heavy vehicles per hour 154 Bartlett Rd would receive 54 dB Laeq and 85 dB LAFmax and 208 Bartlett Rd would receive 50 dB Laeq and 78 LAFmax.

[139] She agreed with Mr Bronka that until 6 pm the noise effects of these heavy vehicles would be minimal as there is likely to be only a small change in average noise levels and the absolute noise levels are moderate. However she disagreed with Mr Bronka on the situation after 6 pm because she thought his estimate of existing traffic levels was too high and based on a more realistic scenario noise levels from heavy vehicles could increase by up to 14 dB which would cause a noticeable decrease in amenity during the evening. Occupants of affected dwellings might have to adapt their sleeping behaviour, or their dwellings, to manage this additional road noise.

[140] She considered that this would be a minor overall noise effect earlier in the evening, but that it would be appropriate to prohibit heavy vehicles movements later in the evenings after 9 pm on weekdays and 6 pm on Saturdays, corresponding to the night-time noise limits in the TRMP. In rebuttal to Mr Bronka she said that while she disagreed with some of his calculations, overall the difference of opinion between them was not so much about the actual levels of noise, but whether or not the level of noise in the evenings would be acceptable or not. Her opinion was that it would not be acceptable at a number of properties.

[141] In rebuttal Mr Bronka disagreed with Ms Satory about the evening noise levels. He said that Ms Satory's estimate of existing traffic noise in the evenings was too low, so the difference due to the increase traffic movements was too low. He said that

"it is my opinion that due to the lower traffic noise in the evening periods, the increase in noise from the proposed evening truck movements will be noticeable and less desirable, but not to the extent that it will cause a disturbance or distraction to typical evening residential activities. This is on the basis that very similar traffic noise levels are experienced during the daytime periods up until 6.30 pm. Existing residential activities when residents are awake and typically dining or relaxing are similar in sensitivity, if not the same, as activities carried out during the daytime periods."¹⁰

[142] He went on to say that there is sufficient time between 10 pm and 7 am for sleep

[143] Numerous of the written submissions were concerned with noise effects and a number of submitters who appeared at the hearing discussed their concerns about noise effects, including Mr Chittenden, Mr Cartwright, Mr Victor and Ms Turner.

[144] For the Council the expert evidence on noise was presented by Mr Daniel Winter, the team leader Environmental Health at the Council. He has post graduate qualifications in Acoustics and Noise Control and has previously worked in the industry for 18 years as a consultant and at Auckland Council.

¹⁰ Bronka, rebuttal evidence at para 2.6

[145] In his report written before the hearing he generally agreed with Mr Bronka's approach and conclusions, although his evidence was based on earlier information that night-time operations would be limited to 20 nights per year rather than the 30 eventually adopted. He considered noise effects from the plant itself would be minor and acceptable and it was the noise from heavy trucks during evening hours that was the main issue. By the time of the hearing he was aware that 30 days were proposed but this did not affect his conclusion. He noted that the principal difference between Mr Bronka and Ms Satory was whether the existing ambient noise level was 49 dB Leq or 41 dB Leq but in any case, the noise levels from passing trucks would be the same. It is the level of the increase that they disagree on. He would have been more comfortable with truck movements ceasing by 9pm rather than 10pm.

Evaluation

- [146] We agree with the expert witnesses that any adverse noise effects from the plant would be less than minor and acceptable. That includes both the nearest residences and for recreational users of Bartlett Rd and the River Park. While the plant would certainly be audible to people moving along the road and into the park, this would be a brief experience and the noise will be substantially reduced by the acoustic barrier proposed to be erected, which consists of a 1 metre high bund and a 2 metre high acoustic fence.
- [147] We also agree that noise levels from heavy trucks during daytime hours would be noticeable but acceptable.
- [148] We have therefore carefully considered the difference in opinion between the noise experts relating to evening hours. We accept Mr Bronka's estimate of the existing background noise levels. We note that his calculations are based on averaged noise levels such as LAeq(1hr). He does not refer to the maximum noise levels of trucks passing when drawing his conclusions. Nor does he refer to the longer sleep requirements for children.
- [149] We have concluded that it would be preferable for the night-time truck movements to cease by 9 pm, as suggested by Mr Winter. This will provide longer sleep opportunities for children, and the opportunity for adults to have more quiet time to relax before sleeping, and also for adults who may need to or prefer to sleep earlier.
- [150] With that amendment we have concluded that the overall effects of noise associated with the applications would be no more than minor, and acceptable.

12.5 Air quality

- [151] The application has raised three key air quality effects of the Asphalt Plant:
- a. Effects on human health

- b. Effects on horticultural crops
- c. Odour

a. Effects on human health

- [152] Expert evidence was presented on behalf of the Applicant by Mr. Bender in relation to emissions, dust and odour.
- [153] The MARINI Latin America Carbon T-Box system is designed for a production rate of up to 130 tonnes per hour. The air discharge report accompanying the application (Appendix 5 of the application) is based on this rate for the assessment of effects of the air discharge. We noted that in both the written application and via confirmation at the Hearing that the Applicant does not intend that the plant operates at the 130 tonnes per hour capacity because it is limited by the turn-around time of the truck fleet (one truck per 15 minutes, 10 tons capacity per truck), and because of projected demand. A limit of 40 return truck movements per day is provided for in the conditions and this limits the effective maximum production per day to 400 tonnes. The Applicant also stated that this plant would operate at lesser levels than this on some days depending on demand. The assessment was a “worst case” one based on the theoretical capacity of the plant. Understandably this may have caused high levels of concern among submitters.
- [154] The manufacture of asphalt produces several contaminants, primarily from the combustion of the fuel and to a lesser extent from fugitive emissions on site. The key contaminants are carbon monoxide, oxides of nitrogen, particulate matter, sulphur dioxide and volatile organic compounds.
- [155] Mr Bender’s air quality assessment was based upon best practice guidance^{11 12}, and on atmospheric dispersion modelling using CALPUFF, a computer model widely used for assessments of this type. In his modelling Mr. Bender assumed continuous operation of the Asphalt Plant for 10-hours per day at the maximum possible production rate of 130 tonnes per hour for every day of the two-year modelling period. Other key modelling assumptions included manufacturer guaranteed emissions rate of particulate of 20 mg/m³ and diesel sulphur content of 10 ppm and a consumption rate of 780 l/hour¹³. The Council Officers’ Report noted that the modelling is therefore conservative and we agree with that.
- [156] The key finding of the modelling is that the cumulative effects of discharges from the Asphalt Plant stack together with the existing background contaminant

¹¹ *Good Practice Guide for Assessing the Effects of Discharges to Air from Industry*. MfE, 2016

¹² *Good Practice Guide for Atmospheric Dispersion Modelling*. MfE, 2004

¹³ The consumption rate was provided by Mr Pigott at para 11.3 of the s 42A report.

concentrations are well within the relevant assessment criteria for all contaminants and averaging periods.

- [157] For the submitters Mr Iseli raised concerns about the whether or not the modelling included condensable particulate matter (PM), or only filterable PM as the former is expected to be a significant component of asphalt plant emissions.
- [158] In response to this Mr Bender re-modelled the emissions for the plant to capture both condensable and filterable particulate matter. The revised modelling incorporated the revised stack height of 12.5 metres¹⁴ and a reduced efflux velocity which, while primarily designed to address dust and odour effects, would also reduce the fine PM concentrations experienced by persons in the immediate vicinity of the plant.
- [159] Mr Bender's primary evidence concluded that the adverse effects of air contaminant discharges from the Asphalt Plant on the surrounding environment and on human health will be at a less than minor level. Mr. Pigott, on behalf of the Council, agreed with this. Mr. Iseli noted that distance between the plant and residential properties was expected to be sufficient to prevent adverse effects at these locations in relation to human health.

b. Effects on horticultural crops

- [160] The effects of air discharges on horticultural crops were not traversed in the Applicant's AEE and the Air Discharge Assessment of Effects report by Pattle Delamore Partners Ltd.
- [161] The issue was raised by a number of submitters – Edens Road Fruit Ltd, JS Ewers Ltd, Boysenberries NZ, MG Group Ltd, and Blackbyre Horticulture Ltd, - who provided expert evidence from Mr. Iseli (air quality) and Mr Dryden (horticulture) in relation to this issue. Mr Sutton and Mr Gargiulo also provided evidence in their roles as a director and general manager respectively of two of the submitters listed above.
- [162] The nearest crops are to the Asphalt Plant are boysenberries which, at their closest point, are approximately 60 metres from the plant¹⁵. This property is owned by Edens Road Fruit Ltd.
- [163] We acknowledge the concerns expressed by submitters as to the potential effects on their crops from dust and odour and the potential impact of this on sales of those crops. Given this we are particularly mindful of having to be satisfied that any adverse effects on the crops could be avoided, remedied or mitigated.
- [164] Mr Iseli commented on dust effects on crops as part of his overall air quality assessment. While acknowledging that he does not have specific expertise in relation

¹⁴ Amended by agreement between Applicant and Submitters to 12.5 metre height as advised at the Hearing

¹⁵ Legal submissions McFadden / McLachlan para.12

to the effects of dust on commercial crops he did provide commentary on the inclusion of a dust control plan for the subject site and the adoption of a precautionary approach through the imposition of best practice dust controls and monitoring in combination with a setback distance from sensitive crops.

- [165] Mr Dryden provided evidence on the most critical times of the year when pip fruit, berry fruit and market garden crops are the most sensitive to dust and/or contamination. For berry fruit the most sensitive time is around harvesting – mid December to late January. Mr. Dryden has researched studies on uncontrolled dust from unsealed roads on crops and suggested that the likely maximum distance at which uncontrolled dust could affect boysenberries is 50 – 150 metres. Although his primary focus was dust, he also expressed concern about other potential chemical taints that could lead to fruit being rejected. In his verbal presentation he noted that a distance of 150 metres from a source is likely before there is a decline in dust.
- [166] Mr Sutton provided a statement of evidence as a submitter. He outlined his experience with dust when the now-disused gravel crusher on the site previously operated and from trucks and equipment on the site. He noted that the application had not addressed the issues of dust and odour causing taint to crops, and the high risk of taint (which is addressed separately below).
- [167] Mr Gargiulo provided a statement of evidence as a submitter. As a market gardener he expressed his concern about the possibility of a scenario where problems with the asphalt plant disperse contaminated air over his open field crops. He noted that random testing of his crops for chemical exceedances occurs through the Ministry for Primary Industries. Mr Bender subsequently advised that these Maximum Residual Level tests are for agricultural compounds applied directly by the grower, such as pesticides.
- [168] In his rebuttal evidence Mr Bender agreed with Mr Iseli that the dust control measures should be included in a comprehensive dust management plan which should be certified as part of any resource consent.
- [169] Mr Bender also provided a minimum level of site management practices for the control of fugitive dust.

c. Odour

- [170] Mr Sutton and Mr Gargiulo both expressed concern about the potential for tainting of fruit and other produce grown in the vicinity of the plant due to odour discharges.
- [171] They were also concerned about odour effects on horticultural field workers, especially during the boysenberry pruning season over the winter.
- [172] Expert evidence was produced for the horticultural submitters by Mr Iseli, an air discharge expert, and Mr Dryden, a horticulture consultant, on this matter. Neither

presented evidence that concerns about tainting would materialise, although they considered that this might occur. Mr Iseli expressly states that he does not have specific expertise in this matter Mr Sutton acknowledges that he has been unable to find any examples of crops being tainted by industrial activities.

- [173] We note and accept that there is no research available that suggests industrial odour or particulate emissions have a tainting effect on vegetables or berries¹⁶. Mr Bender's odour assessment is extremely conservative. It uses the highest odour variable (80,000 OU) he could find (which is well above the examples provided by Mr Iseli of 10,000 OU - 35,000 OU). It assumes that the asphalt plant is operating 10 hours a day, every day for a year at maximum capacity which cannot occur under the proposed conditions, as we discuss above. It focuses on the most intense level of odour experienced 0.5 % of the time. Odour levels will be less 99.5% of the time.
- [174] The upshot of all that is that overall frequency of exposure of the crops to any discernible odour will therefore be low, and the likelihood of tainting effects is negligible. The same is likely to be the case for horticultural field workers.
- [175] The horticultural submitters' concerns regarding tainting are no doubt genuine but are simply not borne out on the evidence. The Courts have long been cautious to emphasise that factual evidence of an actual or potential effect should be preferred over perception that an effect may occur. Ms Gepp referred to case law in her closing submission that it was well established that fear (perception) of an effect occurring should not result in resource consent being refused where technical factual evidence indicates the risk of that effect is acceptable¹⁷.
- [176] On behalf of the submitters Mr Iseli considered fugitive odours, such as from the transfer of hot mix asphalt into trucks for offsite transport and from breather valves on bitumen and asphalt storage silos, may present the highest risk to crops in terms of tainting.
- [177] Mr Bender undertook air dispersion modelling to estimated odour emissions to assess the potential odour effects on people at different distances from the site. In doing, and consistent with TBAL's overarching approach to assessing effects, he took a cautious approach as outlined above. To account for the new stack and respond to issues raised by Mr Iseli, Mr Bender remodelled odour as part his rebuttal evidence. The outcomes of that assessment are that odour at the nearest residence is lower than guideline levels for places of high sensitivity, and that the highest concentrations of odour are tightly confined around the site and are at acceptable levels.

¹⁶ Gepp: Opening submission for Applicant para 4.25 (d)

¹⁷ Gepp: Closing submission for Applicant para. 3.70 citing - Opening submission *Shirley Primary School v Christchurch City Council* [1999] NZRMA 66.

The Council Officers' s 42A Report

- [178] In the Officer's response at the Hearing Mr Pigott provided the Council's assessment of air discharge matters. Mr Pigott is the Team Leader Natural Resource Consents at Tasman District Council and has a number of years' experience as a scientist specialising in air quality.
- [179] In relation to human health effects Mr Pigott agreed with the submission from the Nelson Marlborough District Health Board that the stack height, as originally proposed, is very low for a plant of this size. He noted in his verbal reply that the amended stack height of 12.5 metres should not be the limit as best practice may be higher. He agreed with the inclusion of a consent condition requiring the certification of an Air Quality Management Plan.
- [180] The Council Officers' s42A Report had minimal commentary on the effects of the discharge of contaminants to air on horticultural crops. It was noted that there is potential to get an adverse effect from dust from the unsealed roads on the river berm, and that a dust management plan will be in place to limit the fugitive emissions of dust from the work site.

Joint Witness Statement

- [181] Before the adjournment of the Hearing on 21 January 2022 we discussed with the parties our preference for an iterative process for comment on conditions by parties before the Applicant's right of reply.
- [182] In particular we sought further clarification on the expert evidence in respect to air quality heard from Mr Bender, Mr Iseli and Mr Pigott with regard to the specifics of any conditions that they consider to appropriately manage adverse effects, and we directed that they caucus on the matter to refine their concerns and to identify possible improvements. This covers both conditions relating to the air discharge consent and any appropriate conditions on the land use application to manage fugitive emissions from the site.
- [183] The outcome of the caucusing of is a Joint Witness Statement which is summarised as follows:
- The experts agreed that the outstanding matters to resolve through the conferencing process are issues related to the effects on crops from dust and tainting from odorous discharges from the proposal¹⁸.

Dust

- Mr Iseli notes that subject to sealing of areas of the site with truck movements, including paths to the loadout area and the aggregate bins, adverse effects on

¹⁸ Joint Witness Statement

crops resulting from dust from the site can be minimised. Provided that an appropriate plan is attached to conditions showing the areas to be sealed that include the main truck movement areas, and that good dust management practices are used at the site, Mr Iseli considers that adverse dust effects from the site are likely to be acceptable.

- Mr Pigott and Mr Bender agree that subject to sealing these areas and implementation of dust management procedures in a certified air quality management plan (AQMP), dust from the site can be adequately managed.

Odour

- The experts agreed that odour emissions from the proposal are the main unresolved issue in regard to potential effects, in particular the potential for tainting of boysenberries from odour. This issue has remained unresolved due to the absence of any evidence or research proving or disproving the risk of tainting of fruit from industrial emissions of this type.
- Mr Iseli is of the view that fugitive odours present the highest risk of tainting due to the low height of the discharges during truck loadouts and the close proximity of the boysenberry crop. Mr Iseli has therefore recommended that the truck loadout area be enclosed, with the emissions extracted and incinerated through the main stack, in order to reduce to potential for adverse effects on crops. Mr Iseli noted that best practice in this case is to direct the fugitive emissions through the asphalt mixing drum, so that the odorous compounds can be incinerated in the burner before being extracted through the asphalt plant stack. Mr Iseli has also proposed a condition which would require the design of the extraction system to be certified by a qualified engineer prior to construction.
- Mr Bender noted that TBAL has accepted the recommendation and has agreed to build an enclosure around the truck loadout area, however that due to the configuration of the plant, directing the air extracted from the loadout area through the existing stack is not the most practicable in terms of plant layout. Furthermore, as the asphalt plant is required by the consent to stop operating by 6 pm, whereas loadout activities may occur up until 9 pm, therefore the burner will not necessarily be operating during the loadout periods.
- TBAL instead proposes to construct an enclosure around the loadout area which includes ventilation of extracted air above the loadout area and near the storage silo at a height of 12.5 metres above surrounding ground level. The enclosure will include two roller doors to allow entry and exit of trucks, and which will be closed during the loadout process.

- Mr Iseli notes that he is uncertain as to whether the loadout enclosure proposed by TBAL will be sufficient to adequately reduce the risk of tainting on the boysenberries and this will depend on the final design of the enclosure, extraction system, and associated stack, He considers the best practicable option for this site of extraction and incineration via the asphalt plant stack should be implemented as a precautionary measure, if consent is granted.
- Mr Iseli maintains the opinion that potential adverse effects on sensitive horticultural crops such as boysenberries would be best prevented by a minimum 200 metres separation distance between the asphalt plant and sensitive activities. In this case that would require selection of an alternative site.
- Mr Bender considers that TBAL's proposal will reduce the impact of fugitive discharges by extracting the odorous emissions from the truck loadout from ground level up to a height of 12.5 metres, where they will result in reduced impacts at ground level. Given the lack of any evidence that such industrial discharges may result in tainting, Mr Bender considers that the relatively low level of effects generated by the proposal generally, and including the extracted odours from the loadout area, are unlikely to have any measurable impact on the surrounding crops.
- Mr Bender further notes that proposed condition 29 of the air discharge consent allows the Council to review the conditions of consent should adverse effects from dust or odour be experienced beyond the site boundary. Should the boysenberry crops be shown to be adversely impacted from the operation of the plant, conditions may be imposed upon the consent holder to further mitigate the discharges.

Evaluation

- [184] With regard to dust, we are satisfied that with the conditions requiring that the entire site is sealed and vehicles moving around it would have very low speeds, the potential for dust contamination of nearby crops from dust is very low.
- [185] With regard to contamination from odour or chemical residues, there is simply no evidence that this would occur or has occurred in other similar situations.
- [186] With regard to fugitive odours from the loading out operation we are satisfied that with the enclosing of this operation and the venting of emissions through a 12.5 metre high stack that was agreed to by the Applicant, odours will be dispersed to the extent that contamination of nearby crops is very unlikely to occur. We accept that although passing these emissions through the burner would be desirable, it is not practical when loading out may occur when the burner is not operating.
- [187] Overall we are satisfied that the operations of the plant will not cause more than minor adverse effects in respect of air discharges. With the imposition of appropriate

conditions as amended and agreed through caucusing or as required by us we are also satisfied that fugitive emissions will cause no more than minor effects.

- [188] However, we consider there would be value in adding the issue of crop contamination to the review condition under section 128 of the RMA, in case clear evidence of crop contamination ever emerges.

12.6 Discharges to land and water

- [189] No application has been made for a resource consent for the discharge of contaminants to land where they may enter water or for a discharge to water. The Applicant is relying on the permitted activity status of any discharge of this nature. The activities covered under the resource consent application for earthworks and stop-bank works will be managed in accordance with a certified dust, erosion and sediment control plan to minimise the risk from sediment.

- [190] The greatest risk of contamination comes from the storage of diesel on the site and the application complies with the standard for a permitted activity of no more than 5,000 litres stored on site. This permitted activity is subject to conditions specified in the Tasman Resource Management Plan.

- [191] Several submitters raised concerns about adverse effects on freshwater as a result of the operation of the Asphalt Plant, in particular leaching for discharge to ground from the Proposals operations and of stormwater, particularly given “well-draining river gravels”, impacting and contaminating the Waimea River and groundwater sources (the latter providing drinking water sources of local residents).

- [192] In his submission Mr Cartwright spoke of the potential for groundwater contamination from hydrocarbons and other contaminants from the process, with significant contamination already across the Waimea Plains. He expressed his concern that accidents can happen.

- [193] Mr Melis spoke to his concern about the proximity of the asphalt plant to the Waimea River and the requirement for discharges from the plant during normal operations and that the risk of unintended discharges in the event of a malfunction or climate event must be able to be tightly contained.

- [194] Although not referenced in their written submission Kyle Victor and Sarah Turner did refer to the potential effects on water tables in their verbal submission, stating that high nitrate levels were already being dealt with.

- [195] Dr Morrissey presented evidence on behalf of the Applicant. His summary of the effects are as follows:

“The effect of deposition of airborne contaminants on surface water bodies is assessed as negligible, based on predicted deposition rates from the Asphalt Plant.”

Consequently, and for the same reasons, the risks to groundwater from the deposition of trace contaminants are negligible and probably lower than those to surface water bodies because a portion of them are likely to be adsorbed on to soil particles. Deposition of particulate matter will not have a detectable effect on groundwater or stormwater.

Estimated inputs of particulates (dust) and contaminants to surface water bodies and groundwater are negligible, so adverse effects are not expected and neither remediation nor mitigation are considered necessary. Any potential adverse effects from a bitumen or diesel spill will be avoided by adherence to the proposed Emergency and Spill Contingency Plan.

In response to submitters' concerns about contamination of groundwater and the Waimea River, I consider that the risk of adverse effects on groundwater are negligible because of the methods of storage of diesel and bitumen, the very low solubility of bitumen, and the low predicted rates of airborne contaminants. Potential adverse effects of airborne contaminants on the Waimea River are also expected to be negligible based on estimates of deposition rates of airborne contaminants."

Evaluation

- [196] In his verbal response at the hearing Mr Pigott, for the Council, noted that residents and irrigators rely on groundwater and there is a high level of connectivity to the river. The sealing of the site will increase the amount of stormwater running off the site. However he concluded that the overall risks to water quality were less than minor. This will satisfy the requirements of the National Environmental Standard for Sources of Human Drinking Water.
- [197] While we accept and understand the submitters' concerns in respect to discharges, there was no evidence before us that the discharges would lead to unacceptable effects on the receiving environment, including water quality, either in itself or cumulatively. Dr Morrissey's evidence was based on modelling undertaken using a worst-case scenario and has not raised any red flags for us in terms of adverse effects that would be more than minor. In most situations any effects would be negligible.
- [198] We agree with the Applicant's evidence conclusions drawn in the s 42A Report in response to submissions on the risk from contaminants derived from the Asphalt Plan to groundwater and the Waimea River and associated aquifer".

12.7 Earthworks and construction

- [199] The evidence from various witnesses for the Applicant was that substantial earthworks are required to prepare the site for the installation of the plant. This will include the removal of the existing redundant crushing plant on the site, the realignment and reconstruction of the stopbank, the installation of the acoustic bund, the levelling and preparation of the site for the installation of the asphalt plant and the sealing of the

site and traffic routes around it. It may also include the remediation of a former landfill known to be close to the site approximately 200 metres to the north. Its precise location, extent and composition are not known and there is the possibility of it being affected by construction activities and contaminants encountered.

[200] Typically, earthworks of this magnitude can cause effects such as of noise, dust, sedimentation of waterways, and mud and debris on surrounding roads unless managed appropriately.

[201] There is a historic landfill about 200 metres to the north of the site. Its exact location, extent and composition are not known.

[202] Expert evidence on this was given by Mr O’Cain for the Applicant. He wrote that

The Application site may be a “piece of land” to which the NESCS applies, due to former use of the wider site as a landfill. For the sake of caution, it is being treated as such by the Applicant. I recommend that land disturbance is managed in accordance with an accidental discovery protocol (ADP) that is required as a condition of consent. That approach aligns with the approach being taken on the surrounding gravel extraction and crushing site.

The NESCS applies to a “piece of land” where an activity or industry described in the Hazardous Activities and Industries List (HAIL) is being undertaken, or has been undertaken, or where it is more likely than not that an activity or industry described in the HAIL is being or has been undertaken on it (Regulation 5(7)).

However, I understand that the extent and precise location of the landfill within the site is unknown.

The NESCS requires resource consent for land disturbance where permitted activity standards are not met. These include that the volume of the disturbance of the soil of the piece of land must be no more than 25 m³ per 500 m². I understand that the proposed earthworks will exceed that standard if the piece of land is assessed as the Application area.

Consent may also be required for “changing use” of the piece of land.

Unless a detailed site investigation exists, land disturbance and change of use that does not meet permitted standards is a discretionary activity.

In my opinion, it is not practicable to undertake a detailed site investigation prior to the granting of the consent due to the existing crusher plant location and on the basis that no material is expected to be removed from the site. It is not necessary to have a detailed site investigation as the works can be managed in accordance with an accidental discovery protocol, as discussed below.

I recommend that the sequence of operations on the site is as follows:

- a. Removal of the gravel crusher, realignment of the stop bank and levelling the site occurs in accordance with the requirements of the ADP;
- b. Benchmark the site (analytical testing) prior to installing the asphalt plant;
- c. Install and operate the asphalt plant;
- d. Remove the asphalt plant;
- e. Re-test the site and remediate if necessary to return the site to benchmark condition or similar;
- f. Re-level the site, topsoil and plant with appropriate vegetation.

[203] With regard to this, if site preparations encounter the landfill, this would trigger the requirements of the NESCS and consent would be required under that. We have previously discussed whether or not that can be dealt with as part of the land use consent and do not need repeat that.

[204] Evidence about the reconstruction of the stopbank was given in the evidence of Jane Bayley, the Applicant's planning consultant. She said that

The Applicant seeks to remove the existing Crushing Plant which is located partially on the stopbank, and realign the stopbank from the Bartlett Road end, around the proposed Asphalt Plant Site to reconnect with the stopbank to the north of the site. The stopbank is currently compromised from past activities, including (anecdotally) using it as source of gravel, and its position has been altered. The stopbank formation will consist of a 4m wide driveable formation along its top, and its sides will be 1V:2H. Two vehicle crossings are required across the stopbank, one at either end of the application site. These ramps will be at a gradient to enable vehicles to traverse the stopbank. The ramps would be removed once the activity ceases.

Prior to construction of the stopbank, Engineering Plans would be provided to Council for approval as to the final design of the stopbank. At the same time, an Erosion and Sediment Control Plan (ESCP) would also be provided which will address how the works will be undertaken to avoid, remedy and mitigate any offsite effects. A draft of the latter has been provided in Mr Du Plessis' evidence. Work on the stopbank realignment would be undertaken in dry periods, outside of the fish spawning period. The works on the realignment of the stopbank shall be undertaken as quickly as possible to avoid a breach in the stopbank.¹⁹

Evaluation

[205] Because of the rural location, distance from sensitive receivers and distance from waterways, we consider that the effects of construction noise will be negligible. The activities covered under the resource consent application for earthworks and stop-

¹⁹ Planning Evidence of Jane Bayley at para's 5.2-5.7

bank reconstruction is proposed to be managed in accordance with a certified dust, erosion and sediment control plan to minimise any risk from these activities. We accept that this would ensure any adverse effects from the reconstruction of the stopbank and the general site preparation would no more than minor and acceptable.

[206] With regard to the former landfill site, we accept the evidence of Mr O’Cain and conclude that with the proposed accidental discovery, testing, and remediation that is proposed, this would ensure that any effects would be less than minor and acceptable. The conditions proposed by the Applicant and the Council provide for this.

12.8 Rural amenity

[207] There were a range of issues raised by the application and through submissions which are broadly covered by the term “rural amenity”. These are

- Noise emissions
- Traffic
- Impact on recreation and river access
- Rural character / zoning
- Lighting
- Visual – stack height
- Visible plume from stack
- Odour
- Dust

[208] Several of the above issues are covered in separate sections of this decision. The outstanding ones are:

- Rural character / zoning
- Lighting
- Visual – stack height
- Visible plume from stack

Rural character / zoning

- [209] In their verbal submissions Kyle Victor and Sarah Turner expressed their complete dissatisfaction with the location of an industrial plant in the Rural 2 zone. The plant will be clearly visible in rural landscape and they do not agree with this or the lighting of the plant.
- [210] Marion Georgiev questioned how there can be consideration for industrial operation with known dangers to the environment in a Rural 2 zone which is all food growing. A similar question was raised by Gail Barth in respect of location of heavy industry in industrial zone.
- [211] Dr Teece submitted that the proposal is not contemplated in the rural zone and is an out-of-zone activity. Dr Teece's concerns were particularly related to the effects of traffic outside his property and these effects are dealt with in a separate section of this decision.
- [212] In closing legal submissions from the Applicant, Counsel noted that the starting proposal is for a discretionary activity which may be granted or declined.
- [213] Where discretionary activities are provided for in a zone, this indicates the activity may be considered appropriate having regard to its effects and relevant plan provisions. While permitted activities are provided for "as of right" they are not the only activities contemplated in a zone."

Lighting

- [214] The nearest residence is approximately 590 metres to the south of the site at 202 Edens Rd²⁰. Lighting is required for the 30 evenings per year when the plant operates up to 9 pm and in winter will likely be required in the early morning and early evenings within standard operating hours. Outside of these times the site will not be required to be lit. The conditions require that the lighting is directed away from residences, and directed towards the ground, to avoid excess light spill.

Visual – stack height

- [215] Several submissions referred to the visual impact of the stack on the amenity of the area. In his evidence for the Applicant on the effects on recreation from the proposal Mr Greenaway attempted to view the application area and the existing processing plant from the Great Taste Trail²¹. He noted that it cannot be seen unaided from the Trail bridge across the Wairoa River and he could not locate any other setting on the Great Taste Trail where the existing plant is visible.

²⁰ Bayley Planning Evidence para 4.5

²¹ Greenaway Recreation Evidence para 5.8

Visible plume

[216] At para. 4.6 of Mr Bender's Memorandum he notes that a white steam plume will typically be visible at the stack, particularly during cool weather. Particulate matter present in the plume may be faintly visible as the steam dissipates, however the use of a bag filter for emission control will keep particulate emissions to a minimum.

[217] In the s.42A report Mr Doole noted the following:

"Although not entirely consistent with the receiving environment as the activity is proposed within one of the gravel extraction lease areas, the proposed additional industrial activity will however have a cumulative effect on rural character in establishing more non-rural production activities. However as the activity is connected to the existing gravel extraction activity and is located within this activity I consider this rural character effect to be minor."

[218] In relation to visual effects Mr Doole also noted:

"The proposed acoustic wall and bund will provide some screening of the asphalt plant to the south and east, and the stop bank will also limit some visibility to the west. However, the 11-metre²² maximum height of the plant in relation to the three-metre high wall means it will be clearly visible in the rural landscape and is not entirely consistent with an expected rural character and visual amenity. In that regard, the proposed location is within the Downer lease area and the plant will replace an old gravel crushing plant, and the visual effects of the two are comparable. Moreover the applicant has stated that the container-based structure is re-locatable and can be fully removed from the site, although it would take a week or two, which can be seen as a potential remediation of the long term visual effects.

Lighting of the work site would be required, however the applicant has volunteered that any associated light spill will be controlled and directed away from any other sites, and the acoustic wall will also limit light spill effects. Overall, given the receiving environment and proposed screening the visual effects in the rural environment are considered to be minor."

[219] Counsel for the Applicant addressed the appropriateness of the zone in her opening and closing legal submissions and outlined why the site is an appropriate location for an asphalt plant. Broadly speaking these are that the zoning provides for an application for an industrial activity such as those to be considered as a discretionary activity in the Rural 2 zone; secondly the asphalt plant is directly next to its source of aggregate reducing truck movements and corresponding reductions in air discharges, noise, traffic and amenity effects; and thirdly the status of the Richmond Airshed (where it exceeds the requirements of the NES for Air Quality 2004) means that an asphalt plant could not be located within that airshed.

²² Amended by agreement between Applicant and Submitters to 12.5 metres height as advised at the Hearing.

[220] Overall we find that the activity is appropriate for this zone given the management of amenity effects that are proposed. On the evidence placed before us we find the visual effects of the activity to be less than minor and are further satisfied that the rehabilitation of the site following the ceasing of its use for an asphalt plant will enhance the amenity of the area.

13 Whether the proposal is consistent with, or contrary to, the relevant objectives and policies.

[221] The application documents contained detailed analysis of the proposals against the relevant objectives and policies of the relevant documents, including

- The National Policy Statement on Urban Development 2020
- The National Policy Statement on Freshwater Management 2020
- The Tasman Regional Policy Statement
- The Tasman Resource Management Plan
- The Waimea River Park Management Plan.

[222] The conclusion in the application documents was that the proposals were not contrary to the suite of relevant objectives and policies in these documents.

[223] The Council's reporting officers generally agreed with these conclusions, while noting some further relevant provisions that had not been identified and assessed but which the proposals were consistent with in any case.

[224] In her evidence the Applicants planner, Ms Bayley referred to and adopted the original analysis as well as the reporting officers' analysis of the additional provisions identified²³.

[225] In closing submissions Ms Gepp addressed the TRMP objectives and policies, particularly in regard to the appropriateness of the site in the rural zone, and rural amenity. She made the point that the activity is discretionary, and therefore is able to be considered in a rural zone. She rejected the argument that this rural environment should be treated as a quiet residential zone rather than a working environment and discussed the strategic reasons why the site was selected and the mitigation measures that have been included to address adverse effects to an appropriate level²⁴.

²³ Jane Bayley evidence at Section 9

²⁴ Colsinf submissions at paragraphs 3.33-3.36

[226] After making our own evaluation of the key issues raised by the applications and concluding that in all cases the effects would be no more than minor, we accept and adopt the evidence and conclusions of the applicant's witnesses and the reporting officers on this suite of objectives and policies and prefer it to the submissions and evidence from the submitters on this.

14 Other matters

[227] While not constituting key issues per se a number of other matters arose during the course of the hearing that require some comment.

Financial contribution

[228] The first matter relates to whether a financial contribution could be levied by the Council on this proposal. Mr Doole referred to this in the s42A report. He considered the asphalt plant would bring financial benefit to the local community, so did not recommend a financial contribution be required.

[229] We simply note that we received no evidence on the quantum of a financial contribution that might be required, so are unable to make a finding on it. In any case the Council may be in a position to reconsider this if it wishes to when a building consent is applied for.

Non-expert technical evidence

[230] Another matter is non-expert evidence, especially the evidence about overseas asphalt plants and overseas papers on the effects of asphalt plants cited by several submitters. In closing, Ms Gepp submitted that this evidence should be given no weight because it was not given by expert witnesses or their relevance explained to us. One example of this is photographs of an asphalt plant in Berkley, California, produced by Dr Teece which appears to be an older, much larger plant than the current proposal. Another example is a USEPA study of emissions of typical emissions from different asphalt plant designs. It is an older study and Mr Bender relied instead on emissions factors in a later USEPA report. Mr Piggot for the Council agreed that the first EPA report is dated and he agreed with the emissions factors used by Mr Bender.²⁵

[231] We accept Ms Gepp's submissions on this. It is important when making comparisons or relying on information found on the internet that the material is relevant. When the issues are technical, it is likely that only a person with training and experience in the field will be able to make the comparisons correctly and to assess the relevance. In legal terms credible expert evidence should always be preferred over competing non expert evidence.

²⁵ Closing submissions at paragraphs 3.17-3.22

Cumulative effects

- [232] Counsel for Edens Road and Ors submitted that there would be cumulative effects from the nearby gravel extraction activity and use of the site for storage of processed gravel. No details were provided as to which effects are potentially accumulative. Ms Gepp submitted that claims of cumulative effects are not substantiated:
- [233] We consider that there could be cumulative effects for people accessing the River Park from Bartletts Rd for recreational purposes. First, they would need to pass the asphalt plant and experience a degree of noise, odour and an unattractive visual appearance. Then they might pass close to the gravel extraction, crushing and transporting operations, including the loaders bringing gravel to the plant, and this would also create noise, odour and unsightliness, as well as the prospect of dust.
- [234] However we consider this would be a transitory experience and quickly over. Such people would be moving either to the river itself, which is some distance away, or perhaps moving upriver through the park and would soon be away from these effects. We judge that any such cumulative effect would be no more than minor.
- [235] It is difficult to see how any of the other effects we considered in Section 12 of this decision could combine to produce a cumulative effect, as they are mostly very different from each other and all have been assessed as having effects that would be no more than minor following amendment Rural amenity might be an exception to this, as it is made up of a number of effects, but effects on rural amenity diminish quickly with distance from the plant. and it would be double counting to assess rural amenity in combination with distinct effects such as noise, odour and traffic as these have been assessed separately.

15 Part 2 of the Resource Management Act 1991

- [236] We find that, the proposal gives effect to Part 2 of the RMA and will promote the sustainable management of natural and physical resources.
- [237] Under section 5 the proposals will
- a) enable people and communities to provide for their social, economic, and cultural well-being and for their health and safety
 - b) sustain the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
 - c) safeguard the life-supporting capacity of air, water, soil, and ecosystems; and
 - d) avoid, remedy, or mitigate any adverse effects of activities on the environment.

- [238] The proposals will therefore achieve the sustainable management purpose of the RMA.
- [239] Section 6 sets out eight matters of national importance that must be recognised and provided for. We consider three of these are relevant to this case, including.
- (a) *The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:*
 - (d) *the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:*
 - (e) *the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:*
- [240] In regard to (a), the application site is close to a significant river, but separated from it by a wide berm and a stopbank, which we consider will preserve the natural character of the river. In regard to (d) the layout of the proposal preserves access from Bartlett Rd across the stopbank to the river. In regard to (e) we consider the conditions the conditions volunteered sufficient to protect the relationship.
- [241] We therefore consider that the proposals are consistent with section 6 of the RMA.
- [242] With regard to section 7, there are a number of other matters that we must have particular regard to. Those that we consider relevant include kaitiakitanga and the ethic of stewardship, the efficient use and development of natural and physical resources, the maintenance and enhancement of amenity values and the quality of the environment.
- [243] For the reasons we set out in our evaluation of the various issues in Section 12 of this decision, we consider that the proposal will achieve all these matters.
- [244] Section 8 requires us to take into account the principles of the Treaty of Waitangi. No representatives of the iwi attended the hearing. None of the applicant's expert witnesses or the Council officers addressed the Treaty. However, for the reasons we outlined in Section 12.2 of this decision we consider that the proposal would be consistent with the Treaty principles.
- [245] Therefore we find that, the proposal gives effect to Part 2 of the RMA.

16 Overall finding

[246] Following the hearing of evidence and having regard to all the information in front of us we concur with the overall findings and recommendations in the s42A report.

[247] In exercising our delegation under sections 34 and 34A of the RMA and having regard to the foregoing matters and sections 104, 104B, 108, 128, and Part 2 of the RMA, we determine that the resource consent applications be granted. Our reasons have been stated throughout this decision.

17 Conditions

[248] Under section 108 of the RMA, these consents are subject to the conditions set out in Attachment 1 (RM201000 – land use consent), Attachment 2 (RM201002 – discharge permit), RM201018 (land use consent – earthworks).

[249] We have made several amendments to the conditions put forward by the Applicant in closing submissions following the consultation process after the hearing. These include

- Reducing the hours of operating the plant and transporting asphalt during exception events to 8 pm and 9 pm respectively. Reasons for this are set out in our discussion of noise in Section 12.4 of this decision.
- An additional condition to ensure that gravel is sourced almost exclusively from the Waimea River berm except for very limited quantities of specialised materials. Reasons for this are set out in our discussion of preliminary issues at Section 5.2 of this decision.
- Amendments to the section 128 review conditions to allow for a review in the event that crop contamination occurs. This was requested by Edens Rd Fruit Ltd and others. For the applicant Ms Gepp said that this would be unnecessary as the matter would be covered by clause (a) of the proposed general review condition, but we think that could be debateable. We therefore conclude that there can be no harm in a specific clause to the same effect.
- We draw attention to the fact that a section 128 review does not allow consents to be terminated so amendments to conditions cannot prevent the activity for which consent has been granted. Therefore a review under section 128 could not lead to the cancellation of the consents, and there must be some practical way

for the operations to be modified to allow for the operation to continue in a modified form²⁶ before a consent could be varied on review.

19 May 2022



David Mountfort
Hearing Commissioner (Chair)



Liz Lambert
Hearing Commissioner



²⁶ *Minister of Conservation v Tasman District Council* (NZHC CIV-2003-485-1072, 9 December 2003)