IN THE ENVIRONMENT COURT
AT CHRISTCHURCH

I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI

Decision No. [2025] NZEnvC 213

IN THE MATTER	of the Resource Management Act 1991
AND	an appeal under s120 of the Act
BETWEEN	C J INDUSTRIES LIMITED
	(ENV-2023-CHC-79)
	Appellant
AND	TASMAN DISTRICT COUNCIL
	Respondent

Court:	Environment Judge P A Steven Environment Commissioner C J Wilkinson Environment Commissioner K A Edmonds
Hearing:	at Nelson on 23 – 27 September 2024
Appearances:	S Gepp KC and J Marshall for the appellant J C Ironside for the respondent G Stafford for Te Rūnanga a Ngāti Rārua L Clark for Wakatū Incorporation O Langridge for O & N Langridge D Nightingale for Valley Residents Against Gravel Extraction
Last case event:	20 January 2025
Date of Decision:	26 June 2025
Date of Issue:	26 June 2025

INTERIM DECISION OF THE ENVIRONMENT COURT

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A: The appeal is allowed. The appellant is to file an amended set of conditions and plans addressing the matters discussed in paragraphs [352] – [356], [386] and [398].

B: The court **directs that within 15 working days of the date of this decision**, CJ Industries is to consult with all parties and report to the court with a timeframe within which it anticipates the final condition set could be provided for the court's consideration.

REASONS

Introduction

[1] This proceeding concerns an appeal by CJ Industries Limited against the Tasman District Council's decision on its application for a suite of resource consents to establish a quarry on the application site located at 134 Peach Island Road, Motueka (site).[1]

[2] At first instance, a Commissioner acting on delegated authority of the Council refused consent due to the unacceptable risks of the proposal to groundwater and drinking water quality, the negative impacts on the productive capacity of highly productive land, inadequate mitigation of cultural effects, and inconsistencies with the objectives and policies of the National Policy Statement for Highly Productive Land 2022 (NPS-HPL) and National Policy Statement for Freshwater Management 2020 (NPS-FM).

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1 Legally described as Lot 2 DP 2357 comprised in RT NL77/73 and Lot 2 DP 432236 comprised in RT 524970. The site is owned by Tim Corrie-Johnston, who lives onsite with his family. Other Corrie-Johnston family members are shareholders of CJ Industries, and Mr Des Corrie-Johnston is the director. A related company, Rapid Ridge Ltd, owns the property to the south, at 493 Motueka River West Bank Road, through which access to the site is proposed.

Background

[3] CJ Industries is the only supplier of alluvial aggregate for concrete and sealing chip in the Motueka area. Current demand requires 6,000 to 8,000 tonnes monthly. Alluvial aggregate, particularly river gravel, is essential for concrete manufacturing and sealing chip applications due to its properties that meet New Zealand specifications.

[4] The concrete produced by CJ Industries is widely used in various construction projects, including house builds, factories, sheds, driveways, marae, community facilities, natural hazard recovery, infrastructure and anywhere else that concrete is required. The sealing chip is used in road construction and maintenance.

The site and locality

[5] The site is situated near the western edge of the Moutere Depression at the base of the Arthur Range, within the lower Motueka River Valley. The valley is confined on both sides by steep granite topography. The foothills of the Arthur Range extend to approximately 1 km west of the site. The Arthur Range consists of steep hills which provide the catchment for "Shaggery Stream" which diverts surface water flows from the Arthur Range around the western edge of Peach Island, which is located 1 km upstream of the Motueka-Riwaka Plains.

[6] The site is located on flat to undulating alluvial terraces laid down in the last 500-1000 years as a result of the Motueka River moving back and forth across the river terrace during flood events.

[7] The site is located approximately 6 km west of Motueka and 4.3 km north of the Alexandra Bluff Bridge on a flat undulating alluvial terrace of the Motueka

River (consisting of both river terrace and berm land).[2] It has an elevation between 17 and 20 m above sea level and is partially on an active floodplain of the Motueka River.

[8] A small tributary of the Motueka River flows from south to north along the site's western boundary. Stopbanks are constructed in a "U" shape along the eastern, southern, and western areas of the site.

[9] The site features flat agricultural pastureland spanning approximately 13.5 ha that has been farmed for many decades. It contains an existing house and a shed, accessed via a right of way from Peach Island Road. The remainder of the site is in pasture which is grazed. It is surrounded by rural production activities, including agriculture, horticulture, and rural residential living. The existing environment surrounding the site also includes a number of current and former aggregate quarrying and backfilling sites.[3]

[10] Under the Tasman Regional Management Plan (TRMP) it is zoned Rural 1 and is within Land Disturbance Area 1. The site itself is not subject to any overlay notations but the berm land outside of the Motueka River stopbanks is subject to a flood hazard overlay.

[11] The gravel surface is 0.5 to 1 m below ground level, with topsoil above it. Bore logs indicate the area consists of sandy gravel with lower permeability or organic-rich strata.

[12] The site consists of two lots separated by an unformed legal road, which will be used for site access and haulage. It can also be accessed from the north via

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2 Tasman Regional Management Plan, Ch 2 defines "Berm land" as *land located between the bank of a river and a stop bank on the same side of the river and includes the land between the western Peach Island stop bank and West Bank Road.* The land to be quarried during Stage 1 is classified as berm land in accordance with this definition. The remainder of the property is not berm land because it is protected by the stopbank, or it will not be quarried.

3 Opening submissions for CJ Industries at [16].

Peach Island Road.

[13] Peach Island Road is classified as an 'Access Place'. Nearby, Motueka River West Bank Road is classified as a 'Collector Road', and the Motueka Valley Highway is classified as an 'Arterial Road'.

[14] There are no watercourses within the site and no areas on the site or within 10 m of the proposed works footprint, that meet the definition of a 'natural inland wetland' under the NPS-FM, or a 'natural wetland' under the TRMP.

[15] The site locates within the Motueka Ecological District, which historically supported lowland forests with species like tōtara, mataī, kahikatea, black beech, and silver beech. The original native vegetation has however been completely removed and no vegetation currently within the site constitutes "indigenous vegetation".

[16] The site does not provide core or important habitat for indigenous terrestrial wildlife (e.g. birds, bats, or lizards).[4] Nor does it contain any values that are so significant or so rare or threatened that they should be identified as Significant Natural Area (SNA)[5] (or the like).

[17] The site is within the Motueka, Motupiko catchments and their tributaries are Statutory Acknowledgement Areas which are recognised under the 'Ngāti Kōata, Ngāti Rārua, Ngāti Tama ki Te Tau Ihu, and Te Ātiawa o Te Wakaa-Māui Claims Settlement Act 2014', the 'Ngati Toa Rangatira Claims Settlement Act 2014', and the 'Ngāti Apa ki te Rā Tō, Ngāti Kuia, and Rangitāne o Wairau Claims Settlement Act 2014'.

4 EIC of Tony Payne at [1](a)(iii).

5 TRMP defines Significant Natural Area as *an area of indigenous vegetation or indigenous fauna habitat that has been assessed as significant according to the ecological criteria in Schedule 10C and listed in Schedule 18.1A.*

The proposal

[18] Following the Council's decision, the proposal has been amended and refined to address key concerns. It was further revised after the hearing and subsequent consideration of the conditions and accompanying draft management plans. The proposal is described here in its current form, as it stands before us. CJ industries seeks to:

(a) establish a 6.73 ha quarry for gravel extraction and clean fill deposition.

(b) yield 375,000 to 525,000 tonnes of gravel over 15 years; and

(c) continue to undertake water quality monitoring for two years after quarrying ends.

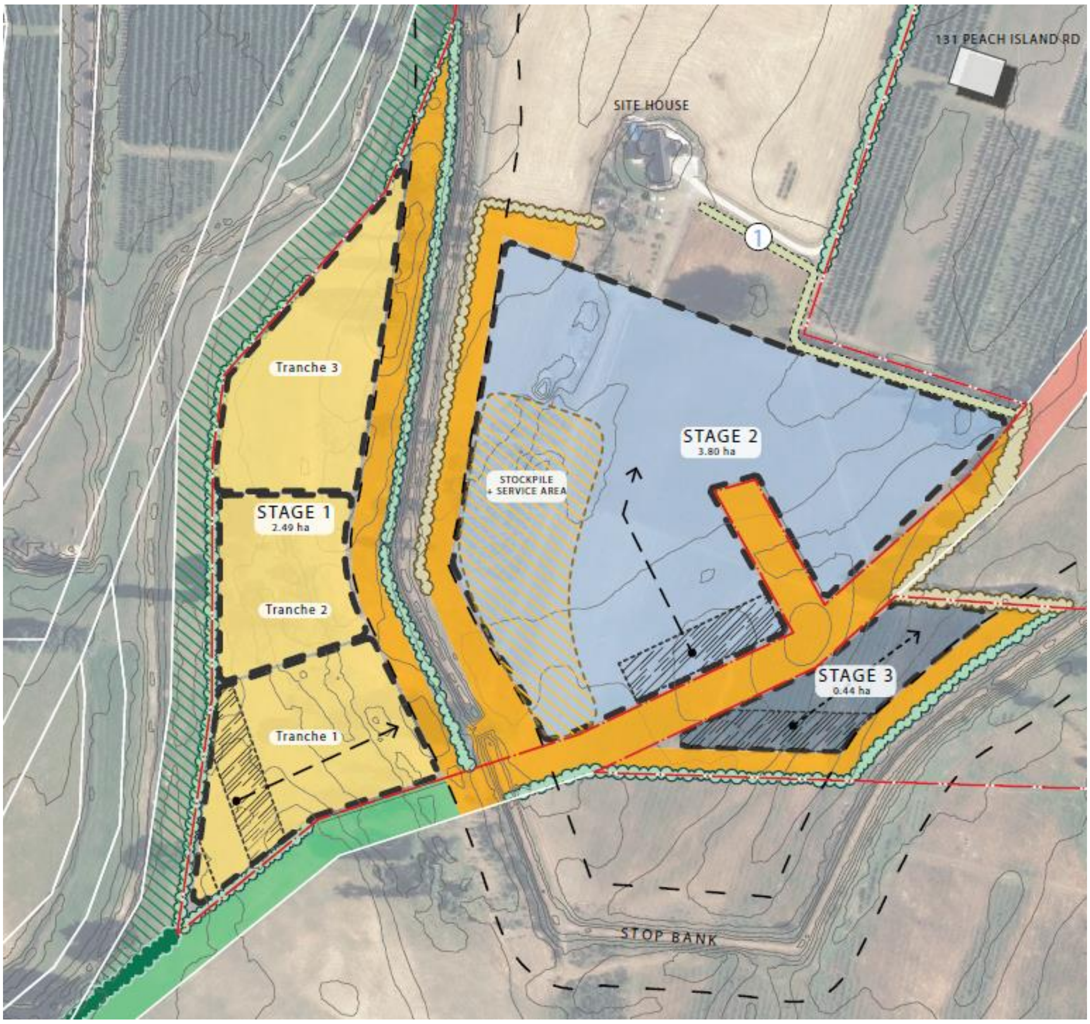

Figure 1: Extract of the site plan filed 25 October 2024

[19] The quarry will operate in three stages:

(a) Stage 1 locates to the west of the stopbank;

(b) Stage 2 is within the stopbank, to the west of the paper road; and

(c) Stage 3 is within the stopbank to the east of the paper road.

[20] Land will be excavated, backfilled and rehabilitated progressively within each stage starting with Stages 2 and 3. Only after successful mitigation planting takes place will Stage 1 commence. The Stage 1 area will be quarried in three 'tranches' from October to March over three consecutive years to mitigate flooding and erosion risks.

[21] No processing, screening, washing, or crushing of gravel will occur on-site. Instead, a "Stockpile and Service Area" will be established on the western side of Stage 2.

[22] Daily operations would involve removing and stockpiling topsoil and subsoil, unless reused the same day. Aggregates will be extracted using an excavator and transported by 30-tonne dump trucks (sometimes referred to as High Productivity Mass Vehicles or HPMV) to the Stockpile and Service Area, where clean fill will also be stored.

[23] The ground level below the stockpiles will be lowered by 1 m to reduce noise and visual effects, with stockpiles not exceeding 4 m in height.

[24] The dump trucks will return clean fill to the extraction site for reinstatement. At the end of each day, clean fill will replace the extracted material in excavation pits, limiting the pit size to 1600 m^2.

[25] Clean fill will be compacted with an excavator bucket, and subsoil and topsoil will be placed on top according to soil management requirements. The rate of pit advancement will vary based on soil depth and groundwater distance, with an estimated daily advancement of 16 linear meters or 320 m^2.

[26] The excavation and backfilling process will proceed in stages, with aggregate beneath the Stockpile and Staging Area excavated last.

[27] The proposal now involves the use of granite clean fill from the appellant's quarry in Riwaka, an amendment made to the proposal since the council decision. Subsoil and topsoil will be separately reinstated, then pasture re-established and managed (except in a flood-prone area where native planting is proposed).

[28] Because of the intermittent nature of the site works and fluctuating groundwater levels, backfilling will be conducted as excavation advances. This adds to the complexity of site operations. It also adds weather-related variability to the precise operations to be conducted on site.

[29] Stock will continue grazing areas of the site that are not actively being quarried or remediated separated from working areas by electric fences.

Statutory framework

[30] In determining this appeal, we have the same powers, duties and discretions as the first instance decision maker (s290, RMA). Having regard to the appealed decision (s290A) we may grant or refuse the land use consents and discharge permits sought and impose conditions as necessary (ss104B and 108).

Parties' position on appeal

CJ Industries Limited

[31] The appellant contends that granting the resource consents will support sustainable management of resources. The aggregate can only be sourced from current or former riverbeds, and supply from current rivers is insufficient to meet demand. Hard rock quarry material is not a suitable substitute, making aggregate quarries necessary to meet the needs of the Motueka community.

[32] Despite being theoretically possible, transporting gravel from sources in other parts of the region to the processing site is significantly more expensive due to similar supply constraints and restrictions. These increased costs are passed on to the end user, rendering this alternative uneconomical.

[33] The alluvial aggregate from Peach Island is essential for housing, infrastructure, and community projects, benefiting social, cultural, and economic wellbeing.

[34] The conditions of consent proposed will manage any effects of the activity according to the objectives and policies of the TRMP and higher order documents. The proposal ensures efficient use of the site, with aggregate extraction in the short to medium term, followed by continued rural production after site rehabilitation.

Tasman District Council

[35] The Commissioner acting on delegated authority of the Council declined consent in the first instance. Through joint witness conferencing, many of the issues of concern to the Council have since been narrowed. The Council has assisted the court throughout the hearing by providing expert evidence and legal submissions to defend its plan in regard to the remaining areas of disagreement.

Section 274 parties

[36] The following parties joined this appeal as interested parties under s274 RMA, all of whom were opposed to the proposal.

Te Rūnanga o Ngāti Rārua

[37] Expressing dissatisfaction with the initial consultation process, Te Rūnanga o Ngāti Rārua joined the appeal opposing the grant of the resource consents on the basis of the inadequacy of the assessment of cultural effects, the adverse effects on groundwater quality (believed to not be adequately avoided, remedied, or

mitigated) and non-compliance with the NPS-FM.

[38] Specifically, they argue that the proposal fails to uphold the principles of Te Mana o Te Wai, mana whakahaere, kaitiakitanga, and manaakitanga and fails to align with the objective and policies of the TRMP regarding groundwater quality and cultural effects. The consent terms are also opposed.

[39] Ngāti Rārua did not call any witnesses, or present evidence at the hearing. Opening legal submission were filed in advance of the hearing. Mr George Stafford, a representative for Ngāti Rārua, attended the hearing.

Wakatū Incorporation

[40] Wakatū Incorporation opposes the relief sought for several reasons: the potential adverse effects of contaminant discharges on groundwater and freshwater, which may not be adequately managed through the draft management plan; inconsistencies with the NPS-FM; and the lack of cultural recognition and consultation. It emphasised the need for a formal Cultural Impact Assessment agreed upon by Mana Whenua iwi to gauge the cultural significance of the area.

[41] Additionally, Wakatū Incorporation expressed concern about the impact of gravel extraction, site rehabilitation, and backfill activities on adjoining properties and the environment, the inappropriateness of the proposed access routes for the extraction site, and the effect of traffic on the integrity of the stopbank. The consent terms are also opposed.

[42] Wakatū Incorporation did not call or cross-examine any witnesses, present evidence at the hearing nor did it make legal submissions, or cross-examine any witnesses. Instead, it had a representative attend the hearing to take notes and maintain a "watching brief" of the proceedings and to respond to any question the court may have for it as a s274 party to the proceeding.

O & N Langridge

[43] From their home, the Langridges have an elevated, panoramic view of the lower Motueka Valley. They live in this river valley for its peace and tranquillity and for the beauty of the natural environment, which they cherish and actively protect. They have an existing resource consent to operate a Yoga and Meditation Centre on their property.

[44] Such an activity requires quiet and tranquil environments. They consider the proposed quarry, located just 1200 m away and within direct line-of-sight, will have significant negative impacts on this venture and their enjoyment of their land as no proposed shelter belts, berms, or other measures could effectively mitigate the noise or visual effects of the quarry.

[45] While understanding the public need for gravel, they believe that establishing gravel mining in this area would be disastrous for the unique natural, recreational, historical, and cultural values of the Motueka River and adjacent land. They fear that the negative impacts could last well beyond the next 15 years if further proposals are granted.

[46] Mr Langridge considers the proposal's impacts are broad and incompatible with the valley floor. He contends that a quarry of this scale and duration would significantly diminish the qualities he, his neighbours, visitors, and the wider community all enjoy.

[47] Mr Langridge attended the hearing and provided a lay statement of evidence, including a short video depicting the special qualities of the location and the things he values about living there.

Valley Residents Against Gravel Extraction

[48] Valley Residents Against Gravel Extraction (Valley RAGE) is an incorporated society formed in 2021 in response to the proposed gravel extraction

project. It comprises more than 60 members who live in or around the Motueka Valley area including on or near Peach Island. Valley RAGE and a number of its members (as individuals) submitted on the first instance applications.

[49] Despite amendments to address initial defects, Valley RAGE considers the proposal piecemeal and unworkable, citing concerns about the loss of productive capacity due to soil compaction and handling. They consider key aspects of the methodology and management plans remain unclear.

[50] Valley RAGE argues that the adverse effects on groundwater quality and productive land have not been adequately mitigated, making the proposal inconsistent with relevant planning documents. They seek the appeal be declined, stating that the proposal does not achieve the sustainable management purpose of the RMA and that the proposed quarrying activities would significantly alter the quiet rural valley, impacting the tranquillity and wellbeing of residents and visitors.

[51] At hearing the court heard lay evidence from several members opposing the project.[6] Dr Iain Campbell, Soil Scientist/Geologist, also gave independent expert evidence on the Society's behalf.

District plan context

[52] The TRMP is the relevant version of the district plan in relation to the proposal, the provisions of which provide guidance and/or direction on our consideration of the disputed issues.

[53] The TRMP applies to the use of resources within particular zones, areas and sites throughout the Tasman district to manage adverse environmental effects, promoting sustainable management.

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6 Anthea Garmey; Darrin Bisley; David Kellogg; Graham Peacock; Helen Webster and Max Clark.

[54] The TRMP is described as an effects-management focussed plan, that contains few enabling provisions. In relation to aggregate extraction, it does not specifically enable aggregate extraction, although it includes a policy of protecting areas of specific value such as hard rock aggregate resources from encroachment from other activities.[7]

[55] The site is contained within a Rural 1 zone, being one of three rural production zones in the district.

[56] The introductory text in Chapter 7 identifies issues for these productive areas as being the fragmentation of rural land, the establishment of rural land without any productive use of the land, and the occurrence of residential activities in rural locations that may create reverse sensitivity effects.

[57] Rural-residential living opportunities are provided for in the Rural 3 zone, containing the least productive soils within the rural zones of the district.

[58] Provisions of particular relevance to the proposal are contained in Chapter 5 Site Amenity Effects, Chapter 7 Rural Environment Effects, Chapter 9 Landscape and Chapter 12 Land Disturbance Effects.

[59] Objectives and policies of particular relevance to the issues raised in this appeal include (in summary):

(a) Objectives 5.1.2 and 5.2.2 and implementing policies that address matters of amenity, these being general provisions of district wide application, which address management of the effects of change in land use in both the urban and rural environment;
(b) Objectives 7.1.2 and 7.2.2.1 and implementing policies in relation to the use of rural land for uses other than for plant and animal production;

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[7] Policy 5.1.3.3.

(c) Objective 7.4.2 and implementing policies on rural character and amenity values;

(d) Objective 9.2.2 and implementing policies in relation to retention of rural characteristics and rural landscapes; and

(e) Objective 11.1.2 and supporting Policy 11.1.3.in relation to the traffic effects of the proposal, including on amenity values.

[60] Relevant provisions on rural character and amenity values warrant particular reference. These are:

(a) Objective 5.2.2[8] which is:

> Maintenance and enhancement of amenity values on site and within communities throughout the District.

(b) Objective 7.4.2[9] which is:

> Avoidance, remedying or mitigation of the adverse effects of a wide range of existing and potential future activities, including effects on rural character and amenity values;

(c) Policy 7.4.3.3 which is:

> To provide for the maintenance and enhancement of local rural character, including attributes as openness, greenness, productive activity, absence of signs, and separation, style and scale of structures.

[61] As to these provisions, we accept that where potential adverse effects on rural character and amenity values cannot be fully avoided, the focus must turn to whether they are adequately remedied or mitigated.

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8 None of these district-wide policies that implement this objective have particular relevance to this proposal.

9 This provision mirrors Objective 5.1.2 which applies on a district-wide basis.

[62] In considering whether the proposal achieves the appropriate level of remediation or mitigation, this evaluation must account for the local rural character where the proposal is to be established, with reference to the attributes identified in the wording of the policy (openness, greenness etc).

[63] As do many district plans throughout the country, this plan requires the "maintenance and enhancement of amenity values". However, this objective only appears in Chapter 5 which is of district-wide application.

[64] In Chapter 7, this policy requirement applies to local rural character with reference to specified character and attributes of the rural location.

[65] Maintenance and enhancement of local rural character must be understood with reference to the parent objective (Objective7.4.2), which as we have stated, adopts the effects management hierarchy rather than directing avoidance. "Maintain" allows a council to protect rather than preserve or enhance, whereas to "protect" means to "keep safe from harm or injury".[10]

Resource consents required for proposal

[66] In summary, the proposal requires three resource consents:

(a) two land use consents:

(i) one for the extraction of gravel, stockpiling of topsoil, amenity plantings, and reinstatement of quarried land as a restricted discretionary activity under Rules 16.10.2.2 and 18.5.2.4, and as a discretionary activity under Rule 17.5.2.9;[11]

(ii) the second to erect onsite health and safety signage and establish a second vehicle crossing, and access via an unformed legal road

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10 *Canyon Vineyard Ltd v Central Otago District Council* [2021] NZEnvC 136 at [147], citing *Port Otago Ltd v Dunedin City Council* EnvC C04/02.

11 RM200488.

as a controlled activity under Rule 16.1.5.3 and as a restricted discretionary activity under Rule 16.2.2.6.[12]

(b) one discharge permit for the discharge of clean fill to excavated land as a discretionary activity under Rule 36.1.5.2.[13] [14]

[67] When assessing multiple resource consent applications involving different activity classes under s87A RMA, the applications must be bundled under the most stringent activity class. As a result, the proposal is to be assessed as a discretionary activity under s87A(4) RMA.

[68] The planning witnesses were not agreed on the approach of the TRMP in relation to quarrying activities, and whether, as a discretionary activity they are anticipated in the Rural 1 Zone. However, this is not an issue that warrants consideration. Within the objective and policy framework of the TRMP it is an irrelevant question.

[69] We are inclined to agree with the Commissioner who took the view that only permitted activities are anticipated. Provision for quarrying as a discretionary activity gives rise to no presumption for or against a proposal; the effects of a new proposal must be considered on a case-by-case basis.

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12 RM200489.

13 RM220578.

14 During the hearing, the court questioned the scope of the discharge permit, which authorises the "discharge of contaminants being clean fill to land". The appellant maintains the permit is appropriate, as it accounts for potential changes in groundwater chemistry (such as elevated aluminium concentrations) resulting from the replacement of natural alluvial aggregate with granite. This the appellant argues classifies the clean fill as a "contaminant" under the RMA. In contrast, the deposition of soil to land is generally not considered a "discharge of contaminants" under the RMA, as soil rarely comes into contact with groundwater and, when it does, it is unlikely to alter its chemistry. Onsite soil replacement does not introduce new contaminants, and imported soil is managed to prevent chemical changes. Other potential contaminants, such as fuel or *E. coli* are managed through land use conditions rather than discharge permits. See CJ Industries memorandum dated 25 October 2024 at [6]-[10].

Evolution of conditions

[70] As mentioned, the proposal and the conditions of consent have evolved throughout the course of this proceeding. For clarity, we record that the conditions were revised twice following the hearing. These revisions were made in response to matters raised during the hearing, subsequent consideration of the conditions and accompanying draft management plans, and in recognition of the need to ensure alignment with good practice as outlined in the Environment Court Practice Note 2023.

[71] The appellant filed a memorandum of counsel dated 25 October 2024, which informed the closing submissions made by the Council and Valley RAGE. That memorandum described and enclosed what were referred to as "volunteered" new and amended conditions, intended to address issues raised during the hearing. The land use consent and discharge permit were accompanied by revised draft management plans dated 25 October 2024, including:

(a) draft Soil Management Plan;
(b) draft Dust Management and Monitoring Plan;
(c) draft Noise Management Plan; and
(d) draft Groundwater and Clean Fill Management Plan.

[72] The memorandum also confirmed that the Landscape Mitigation Plan, Stage 1 River Terrace Restoration Plan and Maintenance and Establishment Plan relied upon remain unchanged from the version dated June 2024.[15]

[73] CJ Industries closing submissions recorded it made further changes to the volunteered condition. A copy of the land use consent and discharge permit conditions were attached to submissions dated 18 December 2024. Throughout the remainder of our decision, any reference to a condition or draft management

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15 EIC of Elizabeth Gavin, Attachment 1, Figs 3 and 4.

plan refers to the versions described above, unless otherwise specified.

Assessment of environmental effects

Matters not in dispute

[74] The JWS Planning records there is no dispute between the parties and their respective experts regarding the following effects of the proposal. It is agreed that these effects are appropriately avoided, remedied, and mitigated by the conditions of consent proposed at that time.

[75] While the conditions sought have since evolved considerably over the course of this proceeding, we are satisfied that the conditions relating to these undisputed matters have not been altered to an extent that would affect the conclusions reached by the parties and their experts, rather the amendments give us increased confidence in their conclusions. We accept the positions detailed in the JWS and refer to them briefly here for completeness.

Terrestrial ecology

[76] Provisions of relevance to terrestrial ecology in the TRMP include Objective 12.1.2 which seeks to ensure the avoidance, remediation, or mitigation of adverse environmental effects resulting from land disturbance activities, specifically those impacting indigenous animal and plant habitats, culturally significant sites or areas, indigenous biodiversity, and the intrinsic ecological values of affected ecosystems.

[77] Further, provisions such as Objective 8.2.2 and its supporting policies, seek the maintenance and enhancement of the natural character of the margins of rivers, and Objective 12.1.2 and its supporting policies in relation to avoidance, remedying or mitigating the adverse effects of land disturbance on habitats and ecosystems. Additionally, Objective 10.1.2 and supporting Policy 10.1.3.2 seek to protect and enhance indigenous biological diversity and integrity of terrestrial,

freshwater and coastal ecosystems, communities and species.[16]

[78] Mr Tony Payne, an independent expert ecologist called by the appellant, gave evidence that the site has been heavily modified from its original natural state and now mainly supports exotic pasture grasses, a few mature exotic trees, and some weed species. With no indigenous vegetation or wetlands, and limited habitat value for native wildlife, he considers the proposed gravel extraction, its associated effects,[17] and the subsequent 1.35 ha of rehabilitation planting, using eco-sourced trees, shrubs, and hedges will result in an ecological net-benefit over the medium-term, being 5-15 years.[18]

[79] He concluded the proposal will not have adverse effects on terrestrial ecology that are more than negligible.[19]

Flooding, Erosion and Climate Change

[80] The TRMP promotes the identification of hazard-prone areas, the implementation of land use controls, and the development of resilient infrastructure. Relevant provisions relating to flood and geotechnical hazards are contained at Chapter 13 (Natural Hazards) which outlines a strategic framework for managing the risks associated with natural hazards by avoiding or mitigating the adverse effects of natural hazards (like flooding, coastal erosion, slope instability, and earthquakes) on people, property, and the environment. The provisions seek to manage areas subject to natural hazard to ensure that development is either avoided or appropriately mitigated, depending on the degree of risk.[20]

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16 EIC of Hayden Taylor at [189].

17 Including dust and vehicle movements.

18 EIC of Tony Payne at [1](g).

19 EIC of Tony Payne at [1](b).

20 Relevant provisions include Objective 13.1.2.1 and Policies 13.1.3.1, 13.1.3.4, 13.1.3.9, 13.1.3.13 and 13.1.3.14.

[81] Mr Aiken, water resources consultant for the appellant, conducted a worst-case scenario modelling and reviewed the draft Landscape Mitigation Plan and Stage 1 River Terrace Restoration Plan prepared by Boffa Miskell. As to the impact of climate change, Mr Aiken considers that:[21]

(a) the proposed quarrying and clean filling will conclude by 2040–2041, making long term climate change projections (beyond 2090) irrelevant;
(b) the consent conditions address the short term climate impacts;
(c) the proposal will not worsen flood risk for 1% or 10% AEP events, even if their frequency increases; and
(d) any increased inundation would be an operational matter, not an adverse effect.

[82] The proposal's continuous backfilling and revegetation will ensure there is no permanent change to floodplain hydraulics. Further, no critical infrastructure or dwellings will be built on the floodplain. As such, long term climate change impacts on the site are expected to be negligible.

[83] Provided the proposed gravel extraction operates in accordance with the conditions (such as restoring ground levels after inundation and revegetating the floodplain) there will be no adverse effects on flood flows. The floodplain would function hydraulically as it did before, and the activity is unlikely to impact the long term stability of the stopbank, generate offsite effects or alter floodplain conveyance or storage.[22]

[84] The effects of the proposal on the integrity of the stopbanks and on land stability effects for neighbouring properties was addressed in the evidence of Mr Averill, Geotechnical Engineer for the appellant. He considers that the stability and function of the stopbanks will not be affected by the proposed excavation

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21 EIC of Simon Aiken at [27].
22 EIC of Simon Aiken at [24].

works or associated truck movements. Any potential impacts on adjacent land stability can be managed with proper batter angles, and settlement from vehicle movements can be mitigated by placing a sacrificial fill layer.[23]

[85] Notwithstanding this conclusion, the appellant has volunteered a setback distance for excavations of 20 m from the southern boundary of the Stage 3 area, to address concerns raised by Wakatū Incorporation, who own the adjacent land.

Surface Water Quality and Aquatic Ecology effects

[86] The relevant provisions of the TRMP focus on protecting water quality, managing stormwater, and preventing hazardous discharges. Expert evidence indicates the proposal aligns with TRMP objectives and policies and will not adversely affect surface water quality or ecological values.

[87] In particular, Dr Calum MacNeil freshwater ecologist for the appellant, assessed the effects of the proposed extraction on surface water quality, particularly regarding the potential of the proposed extraction works to degrade instream ecological values through increased fine sedimentation. He noted that extraction from the application site is less potentially ecologically damaging to the river than if extracted from the active river channel.[24]

[88] Since the site is a former riverbed located away from the Motueka River and other water bodies, he concluded the effects will be less than minor. He considers the proposed mitigation measures to be appropriate and effective in protecting instream ecological values in both the Motueka River and the unnamed stream to the west. He also considers any effects on surface water quality to be less than minor and notes that, even during extreme flood events, the works will

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23 EIC of David Averill at [32].
24 EIC of Dr Calum MacNeil at [24].

have no discernible impact on the river's ecological values.[25]

Positive effects

[89] The JWS Planning records agreement between the planners, Mr Taylor and Ms Bernsdorf Solly, that there will be positive effects associated with the proposal.[26] This was also recognised at first instance.[27]

[90] Ms Elizabeth Gavin, landscape planner and Mr Payne both confirm in their evidence that the proposal will have positive effects on terrestrial ecology, with the 1.35 ha planting of native forest through eco-sourced planting, contributing to ecological restoration of the Stage 1 River Terrace which is predicted to achieve a net ecological gain as well as positive natural character/visual amenity effects in the long term (over and above what is required to mitigate the effects of the activity).[28]

[91] In addition, counsel for the appellant submitted that the proposal would have positive social and economic benefits. Despite the extent to which alluvial aggregate could be sourced from elsewhere being in contention, counsel submits there are few other sites in the region that would meet the requirements for a new alluvial aggregate quarry.

[92] Further demand cannot be met from other rock types or from aggregate extracted from rivers and that travel costs associated with bringing material from outside the region mean it is not economical to supply local concrete and sealing chip demand using imported product.

[93] A further consideration put forward by the appellant is that compared to a scenario where aggregates are sourced from further away, the proposal will result

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25 EIC of Dr Calum MacNeil at [54].

26 Planning JWS dated 19 September 2024 at 1(d).

27 Decision of the Hearing Commissioner at [221]-[226].

28 EIC of Elizabeth Gavin at [68] and EIC of Tony Payne at [74].

in a significant reduction in greenhouse gas emissions.[29]

[94] Counsel explained that 90 people are employed by CJ Industries and associated concrete and civil construction businesses that are reliant on aggregate. Dr Kaye-Blake prepared an economic assessment of the proposal for the appellant. Based upon a cost-benefit analysis, Dr Kaye-Blake considers that the net benefit to Tasman District of the proposal to quarry in this location, as opposed to bringing aggregate from outside the Motueka area (assuming imported aggregate is available), is $3.60 million over 15 years.[30]

[95] Dr Kaye-Blake considers this economic benefit greatly outweighs the economic cost of the loss of pastoral production on the site over the duration of the consent.[31] Relative to not granting consent which would necessitate the sourcing of aggregates from more distant locations.

[96] Mr Scott considers that the proposal could provide a significant regional benefit through providing aggregate to meet current and increasing demands for aggregate based products (concrete and sealing chip) for essential infrastructure including homes, roads, marae, and coastal and flooding infrastructure.[32]

[97] The appellant contends that the evidence of Mr Corrie-Johnston, Mr Scott and Dr Kaye-Blake supports a finding that the positive economic effects associated with the granting of consent benefit the wider economy rather than being benefits to the appellant.

Application of the permitted baseline

[98] When having regard to any actual and potential effects of the proposal in accordance with s104(1)(a) the court may disregard the adverse effects of an

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29 Opening submissions for CJ Industries at [140](d).

30 Opening submissions for CJ Industries at [82]-[83].

31 EIC of Bill Kaye-Blake at [96].

32 EIC of Wayne Scott at [2], [25].

activity if a National Environmental Standard or the district plan itself permits an activity with that effect (s104(2)), "the permitted baseline". Application of the permitted baseline was not the subject of agreement between the appellant and the Council.

[99] The purpose of a permitted baseline is to assist the assessment of the proposal as a whole, rather than being an activity-by-activity comparison of its component parts. The intent is to simplify the resource consent process by allowing the consenting authority to focus only on those effects that exceed the effects of those activities that are permitted under a district plan or national environmental standard.[33]

[100] If the activity permitted by the plan will create some adverse effect on the environment, that adverse effect does not count, rather it is part of the permitted baseline in the sense that it is deemed to already affect the environment. The consent authority is only entitled to have regard to adverse effects of discretionary and non-complying activities that were "other or further" than those adverse effects permitted as of right that are brought into account.[34]

[101] Consent authorities are not compelled to disregard permitted effects, but rather have a discretion to do so. The *Lyttelton Harbour Landscape Protection Assn Inc v Christchurch City Council*[35] decision sets out the factors to be considered when determining whether to exercise the discretion to apply the permitted baseline. The factors are summarised as follows:[36]

(a) the plan must include a permitted activity that allows for a meaningful comparison of adverse effects with the proposed activity;

33 *Mahora Residents Society Inc v Hastings District Council* [2024] NZHC 3322 at [34]-[38].

34 *Mahora* at [29], citing *Arrigato Investments Ltd v Auckland Regional Council* [2002] 1 NZLR 323 at [29].

35 *Lyttelton Harbour Landscape Protection Assn Inc v Christchurch City Council* ENV Christchurch C55/06, 11 May 2006.

36 At [21].

(b) the court must be given strong reasons to either apply or not apply the permitted baseline;

(c) if parties believe the permitted baseline test is helpful, they should agree on which permitted activities to compare. If they disagree, the court must assess the merits of each position;

(d) there must be enough evidence about both the proposed activity and the hypothetical permitted activity to allow a proper comparison of their adverse effects;

(e) if the permitted activity is fundamentally different in kind or purpose from the proposed activity, the baseline may not be appropriate;

(f) applying the baseline must not undermine the RMA's overarching purpose and principles, particularly Part 2.

[102] Similarly, the Environment Court recently confirmed in *Mahora Residents Society Inc v Hastings District Council*[37] that the correct and well-accepted approach to permitted baselines is to identify a non-fanciful activity that could occur on the site without needing a resource consent, consider the effects such an activity would have and compare those effects with the effects of the proposed activity.[38]

[103] A key question in deciding whether to apply the permitted baseline is whether doing so aligns with the purpose of the Act. Rigid adherence to the baseline may not always lead to an assessment that reflects the guidance of Part 2. The less a proposed activity resembles permitted activities, the less likely the baseline will apply. Similarly, the more an activity diverges from the plan's objectives and policies, or differs in purpose from what the plan authorises, the less appropriate it is to apply the baseline.

[104] Where an applicant invites the consent authority to disregard permitted effects, it must provide credible evidence of realistic, non-hypothetical examples

37. *Mahora Residents Society Inc v Hastings District Council* [2024] NZHC 3322.

38 At [30].

of permitted activities with measurable effects. This enables a meaningful comparison between the proposed activity and what is permitted.

[105] Ms Bernsdorf Solly considers that the permitted baseline should not be applied, as the activity's overall effects differ from those typically permitted within the Rural 1 zone. She does not consider the Rural 1 Zone can be said to anticipate an activity, that in terms of the scale of excavation, is an order of magnitude of about 300 times the permitted threshold.[39]

[106] To justify application of the permitted baseline, she considers that the permitted baseline must provide a useful and realistic comparison to the effects of the proposal as a whole, and not specific effects of the proposal.[40] She submits that the permitted baseline allows the court to disregard an adverse effect of the activity where an activity with that effect is permitted. It does not require that the effects of the proposal as a whole are similar to the effects of a permitted activity.[41]

[107] Mr Taylor's evidence states a range of activities could be undertaken on the site as of right, with effects sufficiently similar to those of the proposal to warrant inclusion in the permitted baseline assessment. The activities listed below are submitted to have comparative effects to those that would result from the proposal. These include effects such as traffic, productive capacity, visual amenity, noise, dust, and erosion or sediment movement:[42]

(a) horticultural and agricultural activities and associated vehicle movements, which could involve heavy machinery;
(b) disturbance or recontouring of up to 1 ha of the site each year. This could include activities like cultivation;
(c) formation of any road or track up to 100 m per hectare;

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39 EIC of Susanne Bernsdorf Solly at [32]-[37].
40 Planning JWS dated 19 September 2024 at 3(d).
41 EIC of Susanne Bernsdorf Solly at [34].
42 EIC of Hayden Taylor at [39].

(d) vehicles on public roads.

[108] Mr Taylor states that the effects of these permitted activities could result in effects similar to those arising from the proposal. Importantly, he records that the effects that are similar to those of permitted activities (visual/landscape, noise, dust) are not in contention.[43] The JWS Planning records agreement that these are appropriately managed and are no more than minor.[44] Mr Taylor therefore opines that the difference of opinion is not critical to consideration of the proposal.[45]

[109] We agree with Mr Taylor. As will be discussed the permitted baseline is applied in considering such effects below but given the agreement that these effects are adequately avoided or mitigated discussion of this any further is of limited assistance.

Matters in dispute

[110] We now consider the potential effects of the proposal in contention.

Whether potential cultural effects have been suitably assessed and addressed

[111] At the close of the hearing the cultural effects of the proposal remained a point of contention. Of note, Ngāti Rārua had expressed in submissions its concern over the adequacy of cultural engagement and assessment, opposing the consent but indicating a willingness to be involved in determining the conditions of consent if granted.[46]

[112] Following further engagement with representatives of Ngāti Rārua and Wakatū Incorporation after the hearing, the appellant amended[47] and reordered

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43 EIC of Hayden Taylor at [40].
44 Planning JWS dated 19 September 2024 at 3(c).
45 Reply evidence of Hayden Taylor at [5].
46 Opening submissions for Ngāti Rārua at [7]-[10].
47 Conditions 12-17, 68A and 127.

some of the conditions, including combining two conditions into one.[48] The amendments made incorporated several cultural and environmental mitigation measures. These include staff cultural inductions,[49] a pre-commencement Cultural Audit,[50] and a Cultural Health Indicator (CHI) monitoring programme.[51]

[113] The CHI monitoring programme required by condition 16 of the land use consents requires the consent holder to fund Te Ātiawa o Te Waka a Māui[52] and Ngāti Rārua to carry out a monitoring programme to be carried out at multiple stages of the project, with all associated costs covered by the appellant and the framework established prior to any earthworks.

[114] Condition 15, meanwhile, requires the consent order to enquire whether a pre-commencement Cultural Audit, is of interest to Te Ātiawa o Te Waka a Māui and/or Te Rūnunga o Ngāti Rārua and if it is desired, to fund this.

[115] Both conditions 15 and 16 are not only volunteered but also constitute *Augier* conditions which the court could not normally impose.

[116] Additional measures included to mitigate adverse cultural effects include avoiding the use of chemical dust suppressants,[53] adhering to Accidental Discovery Protocols,[54] and removing exotic trees after quarrying activities conclude.[55]

[117] Both Ngāti Rārua and Wakatū Inc have since confirmed the draft conditions are acceptable, with Wakatū Inc clarifying that this does not equate to

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48 Conditions 14 and 127 regarding accidental discovery now identified as condition 12.
49 Condition 13.
50 Condition 15.
51 Condition 16.
52 Te Ātiawa o Te Waka a Māui submitted on the application for consent at the Council hearing stage but did not join this appeal.
53 Condition 56.
54 Condition 12.
55 Condition 27(a).

support for the proposal.[56]

[118] The appellant submits that, with these agreed conditions, cultural effects have been appropriately avoided, remedied, or mitigated. We agree.

Amenity effects

[119] The amenity effects of the proposed activities were a key issue raised in submissions, particularly from submitters who reside or own land in proximity to the application site. Experts agreed that, individually, these effects are appropriately avoided remedied or mitigated by the volunteered conditions so as to be no more than minor when each is considered individually. Dispute remains however, as to the cumulative toll of these effects on the amenity of the area.[57]

[120] In their evidence, residents expressed deep concern about how they believe the proposal will impact them. They emphasised that the cumulative impacts of the quarry such as noise, traffic, and visual disruption, will significantly degrade the quality of life and natural environment in the Motueka Valley. In their view, this will make country living stressful and unpleasant by undermining the peace, beauty, and rural character of the Motueka Valley, diminishing both their quality of life and emotional connection to the area.[58]

[121] Residents all spoke of their desire to maintain the present amenity of their rural lifestyle, which was described as a peaceful and tranquil environment where noise associated with surrounding farming, orchard and rural-residential activities is "barely noticeable".[59]

[122] They also fear that granting these consents will set a precedent for further

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56 Email from Rowena Cudby to Hayden Taylor dated 11 December 2024, filed as an attachment to the appellant's closing submissions on 18 December 2024.

57 Planning JWS dated 19 September 2024 at 1.

58 EIC of Anthea Garmey, Darrin Bisley, David Kellogg, Graham Peacock, Helen Webster, Max Clark and Ollie Langridge.

59 EIC Graham Peacock at [9].

development, threatening the safety and enjoyment of local activities and the broader landscape. Additionally, they express sincere concern about potential risks to their water supply. A common view as described by Mr Kellogg is that the grant of consent for a "large scale commercial gravel extraction" would be unconscionable given it would be at the expense of the "peaceful, idyllic lifestyle[s]" cherished by the community.[60]

[123] Valley RAGE submissions state the residents consider the adverse effects they will experience extend beyond those effects in their homes and outdoor areas, but also include the effects while going about their daily lives, including walking, biking and driving along Motueka River West Bank Road.[61]

[124] Counsel for Valley RAGE referred to *Harewood Gravels Company Ltd v Christchurch City Council*[62] where the HC quoted the Environment Court's statement that:[63]

> … visual amenity is important, as is the effect on amenity of any change in background levels of noise, dust, vibration and increase in volume of HGV movements. *Change per se* does not constitute an adverse effect on rural character or amenity. To test the scale and intensity of effects and change, the baseline environment must be established.

Traffic

[125] Vehicles will transport gravel from the site to CJ Industries' processing yard in Hau Rd, Motueka by back-filling empty trucks. Vehicles will also bring clean fill from CJ Industries' Riwaka Quarry to Peach Island. Mr Gary Clark, traffic engineer. provided expert evidence for the appellant.

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60 EIC of David Kellogg at [14].

61 Valley RAGE opening submissions at [30].

62 *Harewood Gravels Company Ltd v Christchurch City Council* [2018] NZHC 3118.

63 At [77].

[126] The proposal has been limited to 30 truck movements per day[64] using designated truck routes (HPMV routes) along with fewer than 10 light vehicle/class1 trips for staff; totalling less than 40 vehicle movements per day. The nature of the activity is that this will equate to two trucks inward and two trucks outward per hour when gravel is being removed from the site (condition 66). Mr Gary Clark notes this is a maximum with some movements in one week and none in others depending on demand and site management.[65]

[127] The conditions of consent require the site access at 493 Motueka River West Bank Road, to be upgraded within the road reserve to ensure that, with minor improvements to and maintenance of sight distances[66] and access width,[67] the road network can safely and efficiently accommodate the activity.[68]

[128] In particular the proposal as now presented reduces heavy vehicle movements to the processing plant located on Hau Road from that considered by the Commissioner. As discussed, the amended proposal requires clean fill to be sourced from the Riwaka Quarry, removing the possible additional movements that could have been generated by third parties delivering clean fill to Hau Road.

[129] Mr Gary Clark's evidence records he considered the vehicle movements past sensitive areas, such as near the Marae and Papakāinga. Trucks travelling past the marae and papakāinga will naturally slow to under 40 km/h due to a moderate curve at the intersection, mitigating any safety concerns. With fewer than four trucks per hour the traffic volume is minimal and would blend with existing flows.

[130] He notes that this is consistent with the Commissioner's decision which

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64 15 in, 15 out.

65 EIC of Gary Clark at [57].

66 Conditions 32 and 33 of Land Use permit require tree removal.

67 Condition 35 of land use permit requires bank recontouring/widening to accommodate truck and trailers.

68 Conditions 32-37 of the land use permit.

stated that provided the maximum truck movements are not exceeded[69] the overall traffic impact would remain negligible.[70] Condition 68A has been volunteered as an *Augier* condition by the appellant requiring it to ensure that trucks do not pass the marae while noise sensitive outdoor events take place (e.g. tangihanga).

[131] The concerns raised by Valley RAGE have been addressed in Mr Gary Clark's evidence in reply.[71] Acknowledging the concern regarding increased heavy vehicle use of Motueka West Bank River Road, Motueka Valley Highway and Motueka Bridge (SH60), he notes that both roads and the bridge are on designated HPMV routes approved by Tasman District Council and the NZ Transport Agency as suitable for heavy and long vehicles and that there are no restrictions on the number of vehicles using these routes.[72]

[132] He explains the HPMV designation of Motueka West Bank River Road was considered during the development of the Tasman Great Taste Trail, which led to a speed limit reduction to 80 km/h to better accommodate the use of the road by cyclists Additionally, the applicant has volunteered to limit truck speeds to 60 km/h travelling along Motueka River West Bank Road (another *Augier* condition).[73]

[133] Conditions provided in closing submissions, include proper amendments to condition 68 to expressly state that trucks must not pass through Brooklyn. Mr Gary Clark considers this in conjunction with the proposed speed restrictions and the truck route using Alexander Bridge will minimise the impact on other road users improve safety for cyclists.[74] Further, in relation to cyclist safety Mr Gary Clark notes that trucks provide better visibility for drivers, allowing them to see

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69 Condition 64 at that time limited maximum truck movements to 30 heavy vehicle movements per day (15 in, 15 out) which is the same as what is now proposed.

70 EIC of Gary Clark at [59]-[62].

71 Reply evidence of Gary Clark at [4]-[15].

72 Reply evidence of Gary Clark at [12].

73 Reply evidence of Gary Clark at [9]-[10].

74 Reply evidence of Gary Clark at [19].

cyclists and other road users more easily and are operated by professional drivers familiar with the route and its constraints.[75]

[134] Mr Max Clark, a resident represented by Valley RAGE, recounts the Council's traffic expert's comments at the first instance hearing about the proposal, the doubling heavy vehicle movements along Motueka West Bank River Road.[76] Mr Gary Clark however, explains evidence of the sort that is based on percentage increases can be misleading on low-volume roads. Despite the percentage increase being high the road experiences low traffic flows so the percentage increase overstates the actual risk.[77]

[135] The crash rate is low (averaging one crash per year over a 9 kilometre stretch), and occur less than once every five years between Alexander Bridge and the site access. The crashes recorded have been a result of driver error rather than road design. Mr Gary Clark states this indicates the road operates relatively safely.[78]

[136] Mr Gary Clark's evidence (which the Council's expert agreed with) based on current crash records, the low number of vehicle movements, vehicle speeds and the mitigation measures proposed concluded that the effects of the Proposal to be less than minor based on the number of truck movements associated with the activity, the reduced speed of trucks associated with the activity and the level of risk being low, subject to the identified mitigation measures such as the conditions that address speed limits,[79] the aforementioned access upgrades,[80] and movement limits.[81]

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75 Reply evidence of Gary Clark at [5].
76 EIC of Max Clark at [7].
77 Reply evidence of Gary Clark at [12].
78 Reply evidence of Gary Clark at [15].
79 Land use condition 69.
80 Land use conditions 32-40.
81 Land use condition 66.

[137] Further refinements have been made to the conditions since he made that assessment, but we do not consider the amendments to be of the nature that would alter his conclusion.

[138] The proposal aligns with TRMP transport objectives, ensuring safe and efficient road use without compromising amenity or environmental values. Specifically, the proposed activities are in a location with appropriate access to roads that are able to safely and efficiently accommodate vehicle movements associated with the activity, and the site access will be appropriately designed and located to achieve consistency with Policies 11.1.3.2, 11.1.3.3, 11.1.3.6 and 11.2.3.3.

[139] Further, Policy 11.1.3.12 seeks to facilitate a regional cycle trail. The Tasman Great Taste Trail has already been achieved and uses Motueka River West Bank Road. As part of the Council hearing process, the appellant agreed to work with the Trust to help facilitate the addition of further off-road sections of the trail, and a condition of consent was volunteered in respect of this.[82] The proposal therefore aligns with the policy and will not hinder the trail's use or development.[83]

Noise

[140] Noise from quarrying activities can impact nearby communities and lead to complaints that may restrict operations. While noise can be managed at the source or where it is received, quarries must follow the RMA's requirement to avoid unreasonable noise using the best practicable methods (s16, RMA). However, compliance with permitted noise standards may still be challenging, often requiring expert acoustic assessments to evaluate and manage potential effects.

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82 Condition 5 of the land use consent.

83 This addresses the concerns re increased Traffic on Motueka River West Bank Road raised by Mr Peacock. He stated in his EIC at [23]: "The road is narrow and winding and in places there is little or no verge to walk on. I think it is dangerous for cyclists and pedestrians to compete with heavy trucks and other vehicles for space. There are already too many heavy trucks using this road, and increased heavy traffic from the quarry will increase the risk".

[141] Mr Hegley gave expert acoustic evidence for the appellant. Mr Hegley had measured the ambient noise levels on the site and using best practice computer noise modelling, modelled the noise from the proposal, including the noise of the trucks while using the surrounding road network.[84]

[142] In addition to the requirement to comply with specified noise standards for construction and operational activities, Mr Hegley recommended the following measures, which have been included as conditions of consent, to mitigate the noise effects:[85]

(a) construction and maintenance of a 3 m grassed bund to screen 131 Peach Island Road;[86]
(b) requirement that all vehicles operating on the site be fitted with broadband, rather than tonal reversing alarms;[87]
(c) sealing the access road to the stockpile to reduce body rattle from the trucks;[88]
(d) lining the trays of trucks operating on the site with a plastic deck liner to reduce the impact noise resulting from the loading and a requirement to immediately address any maintenance issues that will create noise;[89]
(e) limitations on the hours of operation, hours of heavy machinery operation and provision of a Christmas holiday shut-down period;[90] and
(f) preparation and implementation of a Noise Management Plan (NMP)

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84 EIC of Rhys Hegley at [1]-[2].
85 EIC of Rhys Hegley at [26].
86 Land use consent condition 29, shown in Landscape Mitigation Plan.
87 Land use consent condition 59.
88 Land use consent conditions 35 and 36.
89 Land use consent conditions 60 and 60A. This addresses concern raised by Mr Peacock in his EIC where at [8] referring to a gravel extraction activity near his property during the summer of 2018 he states he could clearly hear the sounds of the gravel being loaded into trucks.
90 Land use consent condition 64.

> detailing the best practicable option for ensuring the noise standards are complied with.[91]

[143] Mr Hegley concluded that with the proposed mitigation measures, operational noise levels will be well below the TRMP's rural zone limits and consistent with existing ambient sound. While audible at the nearest houses, the noise is considered reasonable and will not affect community amenity. Truck noise on local roads is too low to impact residents, and no further mitigation is needed. Noise effects on people and birdlife were assessed, with no significant concerns identified.[92]

[144] It is important to note that the evidence of Mr Langridge had expressed concern that the proposal will create noise which will negatively impact their property and surrounding properties as well as adversely impact their business venture.[93] Mr Langridge's concerns were shared by all other residents who gave evidence at the hearing.

[145] At the hearing, Mr Hegley was cross-examined by Mr Langridge as to the robustness of his modelling leading to his noise predictions. Mr Hegley stated that his predictions had been conservative wherever possible, for instance, by assuming eight truck movements per hour in terms of noise associated with road trucks bringing material in and exporting it from the site, when he had been told that truck movements would be limited to three per hour.[94]

[146] His assessment considered predicted noise against measured ambient levels. He further confirmed that the model had been constructed based on actual contours of the topography of the location, accounting for the topography of the Waimea Plain and surrounding hills where many of the residents opposing the

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91 Land use consent conditions 18(b) and 22.

92 EIC of Rhys Hegley at [75]-[83].

93 EIC of Ollie Langridge at [6]-[12].

94 NOE at p 178 l 23-28.

appeal own dwellings.[95]

[147] Mr Hegley's evidence demonstrates that predicted noise levels at their property will be very low, significantly lower than could be expected at this property as a result of permitted activities on adjoining land, and also significantly lower than the existing ambient noise levels from vehicles on the adjacent road network.[96]

[148] Mr Hegley predicts that quarry noise received at the Langridge property would be only 25-27dB L_{eq} during excavation activities, and 20dB L_{eq} when only truck loading is taking place which is significantly lower than the existing ambient noise levels from traffic on the adjacent road network.

[149] On the basis of Mr Hegley's evidence the noise effects of the proposal are reasonable and will comply with permitted noise standards. We find that the noise associated with the proposal is reasonable and typical for a rural working environment. The proposed conditions of consent will ensure noise remains within acceptable limits.[97] Accordingly, we find that any effects on amenity, including for nearby residents and recreational users, are minor at worst.

[150] Valley RAGE had relied on *Mobil Oil New Zealand Ltd v Taupō District Council*[98] as authority that:

> the test is not whether the plan's noise levels are met but are the potential adverse effects of noise going to detract from the residential amenity of the neighbourhood and will the noise be reasonable.

[151] However, that 1998 decision pre-dates development of the permitted baseline concept and amendments to s104(2) to codify the permitted baseline. We

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95 NOE at p 182 l 20 – p 183 l 11.

96 EIC of Rhys Hegley at [73].

97 Land use conditions 59-63.

98 *Mobil Oil New Zealand Ltd v Taupo District Council* ENV Auckland A149/98, 16 December 1998.

agree with the appellant that the TRMP permitted noise standards provide a good indication of the expectations of the zone, and the fact that the court may legally disregard such noise effects reinforces this.

Dust

[152] Objective 5.1.2 of the TRMP outlines the need to avoid, remedy, or mitigate the adverse effects of land use on neighbouring properties and on natural and physical resources. Policy 5.1.3.9 highlights the need to manage dust and other particulate emissions, while Policy 5.1.3.14 emphasises the need for sufficient flexibility in managing rural amenity impacts.

[153] Chapter 7 Rural Environmental Effects addresses rural land fragmentation, non-rural land use, and the protection of rural character and amenity. Key policies restrict non-rural activities that may conflict with primary production (Policy 7.2.3.12), support rural activities despite effects like noise or odour (Policy 7.4.3.2), and exclude incompatible uses where adverse effects cannot be managed (Policy 7.4.3.4). Objective 7.4.2 focuses on managing the effects of current and future activities on rural character and amenity.

[154] Chapter 12 Land Disturbance Effects, targets the environmental impacts of land disturbance activities such as cultivation, excavation, and vegetation clearance. Objective 12.1.2 aims to avoid, remedy, or mitigate adverse effects, including sedimentation and debris entering waterways.

[155] The air quality evidence of Mr Bluett addresses the adverse effects associated with dust generated on site from the proposed activities. No aggregate crushing will occur on site. Potential dust sources from the proposal include excavation, transport, stockpiling, and rehabilitation. These could affect residential amenity, health, ecology, and nearby horticultural operations.[99]

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99 EIC of Jeffrey Bluett at [3]-[4].

[156] The standards in condition 51 requires there be no noxious, dangerous, objectionable, or offensive dust beyond the boundary of the site. In addition to achieving that standard condition 52 requires dust control measures to reflect the best practical option for controlling dust. These effects will be managed through measures outlined in the Dust Management and Monitoring Plan (DMMP).[100] Such measures include road sealing,[101] water suppression[102] using an existing water permit,[103] and activity restrictions during sensitive wind conditions and horticultural periods.[104] Expert evidence concludes that, with these measures, dust effects will be less than minor.[105]

[157] The appellant's reply submissions record dust effects are predicted to be less than minor, and there is no expert evidence to counter that assessment.[106]

<u>Landscape and visual effects</u>

[158] To limit visual effects from the proposed works, visual mitigation planting is planned around the periphery of the works area and along the western side of the proposed access. This planting is detailed in a Landscape Mitigation Plan and an associated Maintenance and Establishment Plan.[107]

[159] The visual effects of the proposal are relevant, given the visibility of the site from neighbouring properties, public roads, and private property in the

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100 Required by land use consent conditions 18(d) and 24 and related to the operational standards detailed in conditions 51-57.

101 Land use consents conditions 35 and 36

102 Land use consents condition 56.

103 The existing water permit was varied in 2022 to authorise use of water sufficient for dust suppression. The consent holder Mr Corrie-Johnston has authorised CJ Industries to use this water in accordance with the conditions of the permit. The permitted take retains ample water for ongoing irrigation of pasture and landscaping, including the areas to be rehabilitated.

104 Conditions 53 and 54.

105 EIC of Jeffrey Bluett at [117].

106 Appellant's reply submissions at [84].

107 Land use consent conditions 48 and 27.

surrounding hills.

[160] Visual effects will be mitigated through:[108]

(a) locating the stockpile area behind the stop bank berm, set 1m below ground level and no higher than 3 m above ground level to reduce adverse visual effects outside of the site;
(b) restricting the size of the excavation pit to no greater than 1600 m^2 at any one time;
(c) requiring the site to be progressively revegetated;
(d) the landscape mitigation plan which forms part of the application (as appended to the evidence of Ms Gavin);
(e) staging the application so that Stage 1 can only be excavated after mitigation is established.

[161] The expert evidence of Ms Gavin specifically addresses landscape and visual effects. Ms Gavin considers visual and landscape effects from a range of vantage points, including surrounding dwellings and roads. She concludes that, with proposed mitigation plantings, adverse effects would be low-moderate overall, being 'minor' in RMA terms.[109]

[162] Only the land to be quarried during Stage 1 is classified as berm land. The remainder of the property is not berm land because it is protected by the stopbank, or it will not be quarried. Residents questioned the likely viability of plants located on the river side of stopbanks where they may be subject to flooding. Mr Payne expressed a high degree of confidence that the proposed planting will establish successfully.[110]

[163] Ms Gavin notes the moderate positive effects associated with the

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108 EIC of Elizabeth Gavin at [86](c).
109 EIC of Elizabeth Gavin at [4].
110 EIC of Tony Payne at [60]-[64].

restoration of the Stage 1 area over long term and that any adverse visual effects are not permanent.

[164] Having considered the expert evidence and revised consent conditions the court is satisfied that adverse effects on the visual amenity of residents of the surrounding areas, general members of the public who may be able to view the site from public vantage points, and also effects on the overall character and amenity values of this rural location will be no more than minor and will reduce over time as mitigation plantings become more established.

[165] Traffic, noise, dust, landscape, and visual amenity cumulatively. An important factor to record here is that Ms Bernsdorf Solly adopted the view that the proposal is not consistent with TRMP objectives and policies insofar as they relate to amenity values. These include Objective 5.1.2 and associated Policies 5.1.3.1 and 5.1.3.9; Objective 5.2.2 and associated Policy 5.2.3.8; Objective 7.4.2 and associated Policy 7.4.3.4; Objective 9.2.2 and associated Policy 9.2.3.3. She remains of the opinion that, where policies relate to amenity values, these policies are not met due to the **cumulative amenity effects.**

[166] In response to Mr Taylor's and Ms Gavin's reply evidence, she noted that she has not considered combined effects, but cumulative effects on amenity. In other terms she has assessed "all factors that contribute to the "pleasantness" of an area". The full extent of amenity effects cannot be assessed by "slicing and dicing" and assessing effects in isolation.[111]

[167] Mr Taylor criticises the position Ms Bernsdorf Solly has adopted as leaving it to residents to address the cumulative effects. While acknowledging that the residents' evidence is relevant to assessing amenity effects, Mr Taylor refers to the evidence of Ms Gavin, Mr Bluett and Mr Hegley. Mr Taylor considers that Ms Bernsdorf Solly is mistaken in her application of cumulative effects, explaining by

111 Planning JWS dated 19 September 2024 at 1(g).

way of example that an accumulation of dust from the proposed activity in conjunction with dust effects from a neighbouring activity would be an example of cumulative effects. He states that the accumulation of varying effects that are less than minor in order to obtain an overall 'more than minor' level of effects is not justified, or consistent with the concept of cumulative effects.[112]

[168] Chapter 5 of the TRMP addresses matters of amenity, specifically Objectives 5.1.2 and 5.2.25 and supporting Policies 5.1.3.1 , 5.1.3.9 , 5.2.3.4 and 5.2.3.8. This extends to the impact of traffic noise on amenity values, as addressed by Objective 11.1.2 and supporting Policy 11.1.3.4. We are satisfied, on the basis of expert advice, that amenity values on the site and in the surrounding community will be maintained.

[169] Policy 7.4.3.2 is noted, which acknowledges that rural activities may involve levels and types of effects that may not meet standards typically expected in urban areas. This concept is also reflected in policy 5.1.3.1. Within this context and through managing effects to avoid impacting adversely on other productive rural activities, and rural character and amenity values, consistency with Objective 7.4.2 and supporting Policy 7.4.3.4 is achieved.

[170] The court is satisfied that the proposal is consistent with Objective 8.2.2, supporting Policies 8.2.3.4 and 8.2.3.7, and Objective 9.2.2 and supporting Policies 9.2.3.3, 9.2.3.4 and 9.2.3.5. These relate to maintaining the natural character of the margins of rivers and of the contribution that rural landscapes make to the character and amenity values of the district. In particular, Policy 9.2.3.4 encourages landscape enhancement and mitigation of changes through landscape analysis and planting proposals throughout rural areas. Based on the advice of Ms Gavin, it is evident that the proposal achieves this.

[171] With regard to dust effects, Objective 34.1.2 and supporting Policies

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112 Reply evidence of Hayden Taylor at [26].

34.1.3.1 , 34.1.3.4 and 34.1.3.8 are relevant. It is important to note that, as detailed in Policy 34.1.3.4, the TRMP provides for the management of dust as ancillary to land use activities rather as discharges in their own right, and to take them into account when assessing the land use activities that may generate dust.

[172] Based on the expert evidence of Mr Bluett, the mitigation measures proposed and the improvements to the conditions initially proposed, the court is satisfied that there are now adequate standards specifying what dust management is to achieve. Condition 51 requires there to be no noxious, dangerous, objectionable or offensive dust beyond the boundary of the site. In addition the dust management plan is to further demonstrate best practicable options to ensure that dust is managed on site to minimise the adverse impacts of potential dust discharges on the receiving environment. The proposal not only met the objectives and policies in this regard but also provides greater direction as to what is appropriate for this activity in this location.

[173] Overall, we consider that traffic, noise, dust, landscape and visual effects will be appropriately managed through the conditions of consent and through strict adherence of the management plan requirements. This gives us confidence in concluding that the effects including in combination with each other, on amenity values are reasonable, and will be no more than minor.

Methods of operation: whether the site can be quarried and remediated in the manner intended

[174] Valley RAGE raised concerned as to whether the site could be quarried and remediated as intended., and also whether the Council is adequately resourced to ensure compliance. Regarding the latter, a consent authority should not refuse an application based on an assumption that the applicant will fail to comply with the conditions of consent.[113]

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113 *New Zealand Kennel Club Inc v Papakura District Council* ENV Wellington W100/2005, 28 November 2005.

[175] The Council has a statutory obligation to monitor compliance and to enforce the conditions of consent. It must therefore ensure it is appropriately resourced to fulfil this obligation. It is common practice, particularly where enforcement resources are limited, for Council's to adopt a risk-based approach. This may include, for example, the use of a risk matrix to prioritise monitoring efforts, focussing on consent holders with a history of non-compliance or where there is a higher degree of uncertainty.

[176] The conditions of consent proffered by the appellant in closing includes trigger levels and parameters that the management plans are required to meet.[114] This approach aligns with Judge Newhook's observation in *Remediation (NZ)*,[115] that such matters should not be left entirely to be determined by management plans.[116] We agree with the appellant's submission that *Remediation (NZ)* does not displace the proposition that a consent authority is entitled to assume that consent conditions will be complied with rather it is authority for the proposition that in order to grant consent the court needs to be satisfied that the design and operation of a proposed activity, and the evidence as to how effects will be managed, are consistent with future compliance with the proposed consent conditions.

[177] We record also that the appellant has proposed the inclusion of a bond as security for remediation. While Valley RAGE has submitted that it considers the bond's value is insufficient and should be increased to cover potential costs associated with repairing the community water supply and remediating the aquifer,

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114 See land use conditions 85, 89 and 92 relating to groundwater level triggers. Discharge permit conditions 26 and 27 relating to concentrations of contaminants in groundwater chemistry. Discharge condition 28 outlines the sampling required should a trigger level be exceeded, condition 24 the analysis requirements for that sampling and conditions 29 and 30, the next steps based on outcome of that analysis. Condition 32 requires reporting made available to the Council to include any exceedance of contaminant trigger concentrations. Similarly, discharge conditions 21, 28(c) and 31 similarly detail the requirements should a trigger level listed in table be exceeded. Noise limits are set in conditions 61 and 62 of the land use consent. Condition 53 states no material shall be disturbed if wind speed is higher than 7.5m/s (27km/h).

115 *Remediation (NZ) Ltd v Taranaki Regional Council* [2024] NZEnvC 213.

116 At [466].

we do not consider this will be necessary. We discuss this in our evaluation below.

[178] Mr Corrie-Johnston has provided evidence detailing at length how the proposed quarry would be operated.[117] He explained site preparation will include upgrading the access bridge and entrance, constructing the access road with stormwater and sediment controls, building stopbank ramps and a gravel course, installing a weather station and water monitors, creating noise bunds, planting vegetation, enhancing site security, and setting up a dust suppression system.

[179] Before any extraction begins, property boundaries and setbacks from key features like stopbanks will be surveyed and clearly marked. Staff cultural inductions, the pre-commencement cultural audit will take place and the framework for the CHI monitoring programme established.[118] CJ Industries and its advisors will complete and submit the required management plans to an independent certifier before providing these to the Council.[119] This removes the potential for deemed certification in circumstances where the Council does not respond within a specified timeframe.[120] This approach is consistent with *Eyre Community Environmental Safety Society Inc v Canterbury Regional Council*[121] and *Christchurch City Council v Canterbury Regional Council*[122] and reflects Ms Bernsdorf Solly's recommendation in response to the court's questions on this matter.[123] Further, CJ Industries must notify the Council of its intended start date for operations.[124]

[180] As earlier described, the project involves three proposed stages. Based on

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117 EIC of Tim Corrie-Johnston and evidence in reply of Tim Corrie-Johnston.

118 Land use consent conditions 13, 15 and 16.

119 Land use consent condition 18.

120 Land use conditions 18-24 and discharge permit conditions 10-11 were amended to specify a different method of management plan certification.

121 *Eyre Community Environmental Safety Society Inc v Canterbury Regional Council* [2020] NZEnvC 138.

122 *Christchurch City Council v Canterbury Regional Council* [2019] NZEnvC 118.

123 NOE at p 468-469.

124 Land use consent condition 17.

Ms Gavin's landscape advice, work will begin in Stages 2 and 3 to allow mitigation planting to establish before Stage 1 commences. The proposal has also incorporated Mr Bluett's recommendation that no quarrying or clean fill placement should occur within 100 m of orchards between January and May as condition 54.[125]

[181] To ensure that vegetative cover establishes before winter, condition 104 limits quarrying and placement of clean fill, subsoil and soil in Stage 1 to the months of October to March. In conjunction, these conditions limit the occurrence of Stage 1 quarrying and placement of clean fill, subsoil and soil within 100 m of orcharding activities to only take place in October, November and December. This seasonal restriction will require works to alternate between Stages 2 and 3 at different times of the year. The aggregate beneath the designated Stockpile and Service Area will be extracted last.

[182] Regarding security, Mr Corrie-Johnston explains his house is adjacent to the quarry site, and security cameras will be installed around the area. Public access to Peach Island is legally available via a paper road connecting to Motueka River West Bank Road at the island's northern end. However, this road merges into paddocks near the residential area and does not extend to the southern end, effectively making it a dead end. As such, installing a gate to restrict access is not considered necessary, as public entry via the paper road is unlikely.

[183] As to extraction methodology Mr Corrie-Johnston explains topsoil and subsoil will be removed from the day's extraction area and stockpiled.[126] For Stage 1, the only topsoil that will remain in the Stage 1 area is that required for the day's rehabilitation. All other Stage 1 topsoil will be stored on the landward side of the stopbank. Aggregate will then be extracted using an excavator and carted from

125 Land use consent condition 54. As condition 104 limits Stage 1 quarrying and placement of clean fill, subsoil and soil to the months of October to March and thus this means Stage 1 quarrying and placement of clean fill, subsoil and soil within 100 m of orcharding activities can only take place in October, November and December.

126 EIC of Tim Corrie-Johnston at [70].

the burrow[127] by dump trucks or loader.

[184] The aggregate will be stockpiled in the stockpile and service area located behind the stopbank.[128] The base of the stockpile will be 1 m below ground level. The maximum height will be 4 m (so 3 m above surrounding ground).[129] Clean fill will also be stockpiled in that area. At all times sufficient clean fill will be stored on site to allow for backfilling of any open areas.[130] Dump trucks returning to the extraction pit from the stockpile will bring clean fill that will be tipped into the extraction site and compacted using the digger bucket.

[185] The extraction site will move daily. The rate of advancement will vary depending on depth of topsoil and subsoil, and the distance to groundwater. The daily rate of advancement is expected to be 16 linear meters or 320 m^2. Condition 99 restricts the maximum pit size to no greater than 1600 m^2 (i.e. 20 m wide x 80 m length) though the shape may vary from time to time.[131]

[186] Only one excavation pit will be open at any time, unless one pit has been completed and the excavation of a new pit is commencing, in which case two open excavations are permitted.[132] It is likely that the pit[133] would be extracted and fully reinstated within a month. If an alternative aggregate source becomes available from elsewhere (e.g. through Council's global river consent) part of a pit may be left open for longer, but the conditions require that this not exceed six months.[134] Further, it is envisaged that extraction, carting to the stockpile and the return of

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127 The term "burrow" in this context refers to a pit or excavation site where aggregate materials are extracted for use elsewhere. These pits are temporary and are created to source fill material or aggregate for building roads, embankments, or other infrastructure.

128 As depicted on the Site Plan appended to the conditions filed 25 October 2024.

129 Land use consent condition 76.

130 Land use consent condition 100. The advice note records that this condition has been volunteered to demonstrate that there will at all times be sufficient clean fill available to enable backfilling of the excavation pit in the event of rising groundwater levels.

131 Land use consent condition 99.

132 Land use consent condition 101.

133 Referred to as strip in conditions.

134 Land use condition 112.

fill would only need to take place around one week each month on average.

[187] From the stockpiles, aggregate will be unloaded onto truck and trailers with sound deadening deck liners in place using a loader.[135] The loader will also be used to load clean fill from the stockpile onto the dump truck for site reinstatement. These truck and trailer units will haul aggregate via a set route and will return loaded with clean fill to minimise truck movements unless there is already a full stockpile of clean fill on the site. CJ industries "eroad" GPS system will record the number of truck routes and vehicle movements and will alert the quarry manager if the speed limits are exceeded.[136]

[188] At first instance, the Commissioner expressed doubt that the management plans would be able to be implemented on a continuous basis by the Site Manager alone.[137] This was in part due to the complexity of ensuring clean fill coming from multiple sites met waste acceptance criteria, and the need for a suitably qualified and experienced practitioner to be available across multiple sites.[138]

[189] The complexity as to clean fill quality is removed by the volunteered condition requiring a single clean fill source, which has already been tested to ensure its suitability for use at Peach Island. As the proposal currently stands, the Site Manager, Mr Corrie-Johnston, will have primary responsibility for ensuring compliance with the conditions of consent and the associated management plans, and that staff receive adequate training so that works are conducted during operating hours comply with the consent conditions and management plans.

[190] The Site Manager's daily pre-start checks will include:

(a) windspeed checks;

(b) groundwater levels and programming the excavator GPSs; and

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135 Land use condition 60.

136 Land use consent condition 70.

137 Decision of the Hearing Commissioner at [283].

138 At [284].

(c) rain forecast to ensure that the site is prepared for a weather event.

[191] Mr Corrie-Johnston states that while the Site Manager holds many responsibilities, the Site Manager can generally manage these alone. That is aided by the adoption of automated systems, where possible. In terms of the above responsibilities, wind speed and direction will be measured using an ultrasonic wind sensor that will be mounted on a 5 m high mast.

[192] The metrological monitoring station[139] will be coupled with a data logger and telemetry system that will send live data to a cloud database system capable of sending out alerts[140] to key quarry staff via text message and email to ensure that the appropriate dust management and mitigation measures are in place. Alternatively, the telemetry system can also be configured to automatically turn the pump to the sprinkler system on and off based on the pre-defined wind speed limits. As to groundwater levels, the water levels measured by the data loggers, will be checked and entered into the excavator GPS. This means the excavator operator will know the exact depth they cannot go beyond. The GPS will also record the actual depth of excavation and this information will be made available to Council.

[193] Further, he records that CJ Industries intends to hire a suitably trained part-time worker who can be brought in as needed. Additionally, if the Site Manager is away, a temporary replacement will be appointed. This will be another staff member who has received training in the consent conditions and management plans. The Site Manager will be fully aware of compliance obligations under the consent (both active and passive).

[194] Mr Corrie-Johnston is confident sufficient staffing will be in place to ensure compliance with consent obligations and a range of Standard Operating Procedures (SOPs) reflect the volunteered consent and Management Plan

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139 Required by land use consent condition 57.

140 When average wind speeds exceed 7.5 m/s during two consecutive 10-minute periods.

conditions. Despite being in draft form, if consent is granted these will be updated to reflect the final conditions and Management Plans. These SOPs will then be made available to all staff working at the Peach Island site, and compliance with the SOPs will be an employment requirement.

[195] CJ Industries has an Environmental Compliance Officer, Mr Markham, whose duties include auditing resource consent compliance, reporting to company directors and Council, health and safety, and complaint response. If this application is granted, a quarry manager or trained supervisor at Riwaka Quarry will be responsible for ensuring clean fill material is extracted and handled in accordance with the Groundwater and Clean Fill Management Plan (GCMP) (including the SOP).

[196] Operating hours will be limited to between 7am and 5pm Monday to Friday. However, having considered submissions the appellant has further restricted site operations to require that no heavy machinery (excavator, dump trucks, bulldozer, loader) is started and no extraction or backfilling will occur before 7:30am. The only activity occurring between 7am and 7:30am will be staff vehicles arriving on site, plus pre-start checks and safety checks.

[197] Apart from servicing (e.g. an oil change by trained personnel) heavy vehicle maintenance will not occur at the site. Refuelling would occur at the end of each day, using a Ute with a fuel tank or towing trailer with a fuel tank which transports the fuel to the heavy machinery. Heavy machinery will be parked close to where the vehicle is used (burrows or stockpiles) when not in use. There will be a dedicated parking area for Utes close to the stockpile. Fuel trailers will be kept in a bunded area. If heavy rain is forecast, all machinery will be moved inside the stopbank.

[198] The site layout will provide for vehicles to deposit fill and then loop around to the point at which they load up. Trucks will only need to reverse when they are approaching the clean fill stockpile to dump fill. Any vehicle used onsite will be

required to have a broadband-type reversing alarm.

[199] Following the hearing the appellant's reply submissions record that minor operational changes were made to address issues raised during the hearing. A new requirement for the perimeter of reinstated land is to be clearly marked with temporary stock fences (or similar) to make clear that vehicles must not drive on those areas.[141]

[200] In closing submissions Ms Gepp states that operational details are only relevant to the extent they actually relate to an effect of the activity on the environment. She submits, and we agree, that sufficient information has been provided.[142] We consider that this provides sufficient certainty to support our decision-making, based on the information before us.

[201] Despite Valley RAGE's assertions that the proposal is piecemeal and unworkable, Ms Gepp submits that it is in fact neither. She submits the proposal has evolved to address issues of concern around groundwater protection and to minimise impacts on productive capacity, but each aspect of its evolution has been carefully thought through and all facets of the application have been extensively assessed by independent technical experts. She submits the proposal has the most comprehensive and stringent environmental controls of any of the appellant's previous quarries and other quarries referred to in evidence. This reflects the changing regulatory landscape.[143]

Groundwater quality effects

[202] Potential effects on groundwater quality were a significant reason for consent being declined in the first instance. The two key issues were the risk of exposure of groundwater in open pits and risk of groundwater becoming

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141 Land use condition 121.

142 Closing submissions for CJ Industries at [4].

143 Closing submissions for CJ Industries at [6].

contaminated through the deposition of contaminated clean fill.

[203] Potential effects on groundwater quality were a significant reason for consent being declined in the first instance. The two key issues were risk of exposure of groundwater in open pits and risk of groundwater becoming contaminated through the deposition of contaminated clean fill. The Commissioner accepted expert evidence that groundwater exposure was unavoidable and that consent conditions lacked clarity.

[204] While both experts agreed that adherence to the GCMP would prevent adverse effects, the Commissioner remained concerned about implementation and condition complexity. He also found the proposed contamination trigger levels too lenient, potentially allowing water quality degradation and deemed the response to contamination inadequate and concluded that the proposal was inconsistent with the NPS-FM.

[205] The changes that have been made to the proposal in relation to groundwater quality matters, specifically include the use of a single source of backfill material,[144] the setting of groundwater quality trigger levels[145] and compliance limits based on baseline water quality levels.[146]

[206] Valley RAGE resident Mr Peacock records concern as to the potential effects on groundwater quality especially the potential risks to the drinking water supply. TRMP Objective 5.1.2 and its associated policies aim to ensure that land use activities do not adversely affect the enjoyment and use of neighbouring properties or degrade natural and physical resources. Specifically, Policy 5.1.3.11 focuses on preventing contaminants from spreading beyond the property where they originate.

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144 Land use condition 115 requires all clean fill material to be sourced from Riwaka Quarry.

145 See land use consent condition 85, 89 and 92 relating to groundwater level triggers.

146 See discharge permit conditions 18, 26 and 27.

[207] Objective 12.1.2 seeks to ensure that land disturbance activities do not lead to significant soil loss, erosion, slope instability, sedimentation of water bodies or contamination of surface and subsurface water systems. It also aims to protect aquatic habitats, maintain the natural appearance of landscapes, and safeguard areas of cultural or ecological significance.

[208] The associated policies[147] under this objective guide how land disturbance should be managed to minimise risk by encouraging mitigation measures that reduce sediment runoff, encourage the retention of vegetation cover, and require appropriate erosion and sediment control measures. These policies also support the identification of high-risk areas and the application of stricter controls in those zones to prevent long term environmental degradation.

[209] Objective 33.1.2.1 seeks to ensure that the discharge of contaminants does not result in adverse effects on the environment, particularly on water quality, aquatic ecosystems, and the various uses and values associated with land and water resources. Recognising that discharges can degrade water quality, harm aquatic life and compromise the suitability of water for uses such as recreation, drinking, irrigation, and cultural practices, the objective emphasises the importance of maintaining the physical, chemical and biological integrity of land and water.

[210] The associated Policies 33.1.3.1 – 33.1.3.8 encourage preventing or minimising any resulting contamination from discharges, require treatment or mitigation measures before discharges occur, promote land use practices that reduce the risk of runoff and leaching, prioritises the protection of sensitive environments and high-value water bodies and the management of discharges in a way that aligns with community values and environmental sustainability.

[211] The appellant's submissions record there were disputes or uncertainties in some witnesses' opinions relating to consistency with national and regional water

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147 TRMP, Policies 12.1.3.1-12.3.1.5.

policy.[148] The appellant submits that effects on groundwater are managed so as to be entirely consistent with relevant national and regional policy direction.

[212] The groundwater issues were significantly narrowed by the start of the hearing, and the remaining issues in dispute were confirmed by Dr Rutter as being appropriately resolved so that, while she could never say there is no risk, she was satisfied residual effects were less than minor and the risk acceptable.[149]

[213] Counsel for Valley RAGE sought to establish a lack of assessment of contamination risk to the drinking water bore close to Mr Corrie-Johnston's house through questions that were put only to Dr Rutter and not to Mr Nicol. Mr Nicol's evidence explains why it was not necessary to specifically model the potential for *E.coli* to impact that bore. Dr Rutter confirmed she had not taken any issue with his evidence on this point.[150]

[214] Based on the JWS Groundwater, Ms Bernsdorf Solly recorded her opinion in the JWS Planning that apart from her concern regarding the exposure of groundwater in an open pit and the remediation of any contamination, all her concerns were satisfactorily addressed by the conditions of consent as discussed in the JWS Groundwater (2).

[215] The experts agreed that there should be restrictions on land use for a period of time immediately post-rehabilitation to allow the rehabilitated soils to redevelop to a sufficient quality to support land use. A single tested and approved clean fill source will be used and sufficient clean fill will always be on-site to backfill excavated pits. Land use condition 126 requires limits on stocking rates for at least three years and that cultivation is avoided for at least three years.

[216] Following three years, Dr Hill does not recommend any restrictions on land

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148 Opening submissions for CJ Industries at [25].
149 NOE, p 489.
150 NOE, p 482.

use of the rehabilitated areas, as he considers that after three years the soils will have developed to a sufficient quality to be capable of supporting a land use similar to what occurs at the proposed clean fill site now.

[217] Groundwater levels at the site fluctuate between 0.5 and 5.1 m below ground level, affecting extraction depth. As Mr Nicol states, there will always be some uncertainty in this respect.[151] Excavation into groundwater fluctuation zones will only occur with adequate clean fill and machinery available to prevent accidental inundation.

[218] At least 1 m of original material will be maintained between the pit base and groundwater, with deeper excavations allowed only under stable weather conditions. These must be backfilled the same day if groundwater levels rise or weather warnings are issued. The Site Manager will check the water level on the data loggers as part of the pre-start checks. That level will be entered into the excavator GPS which will ensure the excavator operator will know the exact depth they cannot go beyond. The GPS will record the actual depth of excavation and this information will be made available to Council.

[219] A comprehensive water quality monitoring and management plan includes a year of baseline monitoring, annual sampling of downgradient bores, condition surveys, contaminant analysis, and reporting to the Council.

[220] Actions will be taken if trigger levels are exceeded, and an annual monitoring report will be prepared and submitted to the Council.

[221] Expert evidence recommended that in order to protect groundwater:[152]

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151 Evidence in reply of Ryan Nicol reply at [13].

152 EIC of Tim Corrie-Johnston at [75]. He states he relies on Mr Nicol's evidence and the volunteered conditions and the Groundwater and Clean Fill Management Plan.

(a) maximum excavation depth is no less than 0.3 m above groundwater level or in some circumstances no less than 1 m above groundwater level;

(b) all excavations to depths between 1 m and 0.3 m above groundwater level must be undertaken during dry weather conditions.

[222] Detailed spill management measures have been incorporated into the GCMP and the conditions of consent. Land use conditions 80 and 82 require the machinery used on site to be maintained and operated in a manner that minimises spills.[153] The requirements include that no heavy vehicle maintenance will occur on site apart from servicing measures such as oil changes (but only by trained personnel) which must be conducted in a manner that do not result in leaks or spoils and this must occur within designated areas of the site.

[223] Refuelling of machinery and overnight parking will not occur in proximity to the excavation pits and refuelling must occur at distances greater than 20 m from both surface water and exposed groundwater. All fuel is to be stored behind stopbanks or above the 100-year flood level. Mobile tankers, when not being used for refuelling, will be stored in designated areas at the site.[154]

[224] The experts agree that spill management criteria of this kind will ensure the potential impact on groundwater is appropriately managed.

[225] Having reviewed the monitoring data collected to date, the groundwater experts agree the use of the proposed methodology for determining trigger concentrations is reflective of existing groundwater quality variations and is a practical approach for setting trigger concentrations.

[226] The experts are agreed that if calculated trigger concentrations are greater

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153 Land use consent condition 26 outlines the requirements for the GCMP to address response and mitigation to a spill.

154 Land use consent condition 81.

than half maximum acceptable value (MAV), then an independent groundwater scientist shall review the data and determine an appropriate trigger concentration. The requirement incorporated into the proposed conditions for the discharge permit is that an independent groundwater scientist will review all trigger concentrations and the data used to calculate these.

[227] Groundwater quality monitoring will be undertaken as described in the updated GCMP and the discharge consent conditions.[155] The proposed groundwater quality monitoring includes the sampling and testing of dedicated monitoring bores located downgradient of the clean fill site at quarterly intervals after clean filling activities commence.

[228] With respect to the groundwater conditions, we note further amendments were made to conditions to address points made by Valley RAGE and the Council, specifically:[156]

(a) both land use condition 85 and discharge condition 18 require that bore heads are locked;

(b) land use condition 88 defines "stable groundwater level trends" as an increase of more than 0.15 m over a 6-hour period in any monitoring bore. This is the more conservative approach recommended by Mr Nicol as opposed to assessing groundwater levels based on averaging across multiple bores;

(c) the definition of "decreasing or stable flow" for the purpose of land use condition 88(b) has been provided by Mr Nicol, based on an assessment of flow data from TDC Woodmans Bend flow recording site. The definition includes flows that show increases in flow over a 6-hour period but allows for "a greater rate of increase with the agreement of TDC". No party opposed this definition;

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155 Discharge permit conditions 18-25.

156 CJ Industries memorandum dated 25 October 2024 at [5] and closing submissions for CJ Industries [90]-[102].

(d) the use of the term "heavy rain event" in land use condition 89(d), instead of "heavy rainfall" for consistency with condition 92A;

(e) the deletion of the term "high rainfall event" from discharge condition 18(c), given its similarity to "heavy rain event", while retaining the specified threshold for heavy rain, being "daily rainfall greater than 30 mm recorded over 24 hours".

[229] Valley RAGE submits that the proposal's effects on groundwater are inappropriate and unmitigated. That submission does not reflect the evidence of the appellant which we accept.

[230] We are satisfied that the volunteered conditions of consent and the management plans will adequately address the potential for adverse effects on groundwater quality. As to the contention that the bond should cover the costs of rehabilitating the aquifer should it become contaminated, we will address that later.

Effects on productive land

[231] We now turn to consider the effects of the proposal on productive land. Although the Council addressed this issue in the context of both the TRMP and the NPS-HPL, this latter instrument must take priority in our consideration of this issue.

National Policy Statement on Highly Productive Land (NPS-HPL)

[232] The NPS-HPL was gazetted shortly before the first instance hearing commenced in 2022.[157] It directs councils on how to identify and manage highly

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157 The application for land use consents that are the subject of the appeal was lodged with the Council on 15 June 2020. The application for a discharge permit was lodged on 15 July 2022. The NPS-HPL came into force on 17 October 2022, approximately one month before the Council hearing commenced on 21 November 2022.

productive land under the RMA.

[233] The NPS-HPL has a single overarching objective "highly productive land is protected for use in land-based primary production, both now and for future generations." The nine policies collectively aim to give effect to this objective by recognising highly productive land as a finite and valuable resource (Policy 1) and requires its management to be integrated with freshwater and urban development planning (Policy 2).

[234] Councils are required to identify and map this land for inclusion in regional and district planning documents (Policy 3). The use of HPL for primary production is to be prioritised and supported (Policy 4), while its rezoning for urban (Policy 5) or rural lifestyle development (Policy 6), as well as its subdivision (Policy 7), is to be avoided unless specific exceptions apply. The NPS-HPL also seeks to protect highly productive land from inappropriate use and development (Policy 8) and to manage reverse sensitivity effects, ensuring that new activities do not constrain existing or future primary production (Policy 9).

[235] In accordance with cl 3.5(7) of the NPS-HPL, the site is to be treated as highly productive land.[158] The proposed use of the site does not fall within the definition of *land based primary production.*[159] The court has to determine whether a proposal is in "conflict with the intentions of the NPS-HPL*"*.[160] The issues in dispute relate to the application of exceptions to the avoid directive in cl 3.9. This clause seeks to give effect to the policy direction to protect highly productive land from inappropriate use and development (Policy 8).

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158 The mapping exercise required by cl 3.4 has not yet been undertaken so cl 3.5(7) applies given the land is: zoned TRMP Rural 1, the site is identified in the New Zealand Land Resource Inventory as LUC 3, it has not been identified for future urban development and there is no relevant plan change to rezone the land to urban or rural lifestyle.

159 Land-based primary production means production, from agricultural, pastoral, horticultural, or forestry activities, that is reliant on the soil resource of the land.

160 *Gibbston Vines Ltd v Queenstown Lakes District Council* [2023] NZEnvC 265 at [47].

[236] Clause 3.9(1) states:

> Territorial authorities must avoid the inappropriate use or development of highly productive land that is not land-based primary production.

[237] Mr Ironside for the respondent submits that the Supreme Court in *Environmental Defence Society Inc v New Zealand King Salmon Co Ltd*[161] provided guidance as to the interpretation of "avoid" in the context of national policy statements prepared under Part 5 of the RMA. The Supreme Court determined "avoid" has its ordinary meaning of "not allow" or "prevent the occurrence of".

Clause 3.9(2) – when use of highly productive land is not "inappropriate"

[238] Clause 3.9(2) identifies exceptions to that avoid direction. It specifies a range of circumstances when a "use" is not "inappropriate". Two of these (potentially) relate to the proposal before us:

> (2) A use or development of highly productive land is inappropriate except where at least one of the following applies to the use or development, and the measures in subclause (3) are applied:
>
> …
>
> (g) it is a small-scale or temporary land-use activity that has no impact on the productive capacity of the land:
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> …
>
> (j) it is associated with one of the following, and there is a functional or operational need for the use or development to be on highly productive land:
>
> …
>
> (iv) aggregate extraction that provides significant national or regional public benefit that could not otherwise be achieved using resources within New Zealand.
>
> …

161 *Environmental Defence Society Inc v New Zealand King Salmon Co Ltd* [2014] NZSC 38 at [96].

> (3) Territorial authorities must take measures to ensure that any use or development on highly productive land:
>
> (a) minimises or mitigates any actual loss or potential cumulative loss of the availability and productive capacity of highly productive land in their district; and
>
> (b) avoids if possible, or otherwise mitigates, any actual or potential reverse sensitivity effects on land-based primary production activities from the use or development.
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[239] The appellant submits that these clauses should not be interpreted as mutually exclusive. The specific mention of aggregate extraction in cl 3.9(2)(j) does not preclude the possibility that such a proposal could also fall under other provisions of cl 3.9, the other possibility being cl 3.9(2)(g). We accept that, and note the proposal only need satisfy one of these exception pathways.

[240] Further, in interpreting the available exception pathways we take guidance from the High Court's recent decision in *Te Rūnanga o Ngāti Whātua v Auckland Council*[162] where Justice Whata considered a similar exception pathway provided by the NPS-FM, he stated:[163]

> … it is necessary to observe that as with the avoid policies themselves, any express exceptional pathway standards must be read in light of their purpose and context. They cannot be so rigid as to make the exception standard impossible to satisfy, but they must be sufficiently robust to achieve the purpose of those standards, that is to only allow activity that is demonstrably needed, minimises the scale of adverse effects as far as is practicable and is justified.

[241] Where a use meets an exception listed in cl 3.9(2), that use of land is not inappropriate where the measures in sub cl (3) are applied.

[242] As this is a requirement whichever of the cl 3.9 gateways are invoked, we

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162 *Te Rūnanga o Ngāti Whātua v Auckland Council* [2024] NZHC 3794.
163 At [285].

consider this provision before moving to our consideration of the two relied upon by the appellant.

Clause 3.9(3)

[243] Subclause (3)(a) directs territorial authorities to take measures to ensure that any use or development on highly productive land minimises or mitigates any actual loss or potential cumulative loss of the availability and productive capacity of highly productive land in the district.

[244] Subclause (3)(b) requires that the proposal "avoid if possible, or otherwise mitigates any reverse sensitivity effects on land-based primary production activities from the use or development".

[245] "Mitigate" and "minimise" both connote making an effect smaller. The appellant submits that in this context these terms were intentionally chosen to make clear that the expectation is to reduce the extent of loss rather than avoiding loss altogether. This interpretation is consistent with the nature of cl 3.9, which makes provision for activities to take place on highly productive land even where they would result in some loss of highly productive land.[164]

[246] We agree. Throughout the proposed consent term, land that is not actively being worked will continue to be grazed (being the existing land use on the site). Such a reduction in the availability of highly productive land will be minimal in the court's view.

[247] "Productive capacity" in relation to land, as it is defined in the NPS-HPL means:

> … the ability of the land to support land-based primary production over the long term, based on an assessment of:

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164 As was the case in *Re New Zealand Transport Agency – Waka Kotahi* [2024] NZEnvC 133. Referred to in opening submissions of CJ Industries at [145].

(a) physical characteristics (such as soil type, properties, and versatility); and

(b) legal constraints (such as consent notices, local authority covenants, and easements); and

(c) the size and shape of existing and proposed land parcels

[248] It is not defined by reference to a particular type of output or intensity of use, but rather by the ability to support land-based primary production over the long term. As the appellant submits, neither a short term loss of capacity for productive use, nor a longer term reduction or narrowing of the types of productive uses to which that land could support over the long term, will be contrary to sub cl (3).

[249] The JWS Productive Land records disagreement as to the extent and impact of change on the site post-quarrying as the specific changes to soil structure, biology, chemistry and the time that is necessary to restore these properties are unknown. The experts have differing opinions in this regard. However, it is agreed that "the SMP is a best endeavour to minimise any loss of productive capacity of highly productive land".[165]

[250] According to Dr Hill's evidence, restoration in accordance with the Soil Management Plan is entirely achievable provided that the SMP is followed. He anticipates that any effects on the productive capacity of the site will be remedied within the first three years following remediation. Both Ms Langford and Dr Campbell disagree indicating the timeframe for recovery of soils disturbed by excavation, storage and reinstatement is not realistically achievable within such a brief period.

[251] While this remains a matter of contested expert opinion, through careful management of all soil-related activities, including revegetation and the management of post-placement land use following reinstatement of the soil it is expected that soil quality will improve and that the deeper, more uniform

165 Productive land JWS, at 12.

reinstated soils will at least retain the productive capacity of the site.

[252] Further, as Ms Gepp observes in her closing submissions, the experts in cross-examination were unable to proffer any further mitigation measures that would minimise the loss of availability and productive capacity of the land.[166]

[253] It is important also to note that the way cl 3.9(3) is phrased reads as if it is aimed more at the territorial authorities' plan-making functions rather than as a requirement in determination of individual resource consent applications, given its concern focusses on taking measures in relation to highly productive land "in the district".

[254] We are satisfied that the cl 3.9(3)(a) requirements to minimise or mitigate any actual loss or potential cumulative loss of the availability and productive capacity of highly productive land in the district are met. It would be too rigid an interpretation to require no loss of availability or productive capacity occur, if that were the intended purpose then this would be unworkable. A commonsense interpretation of this clause clearly contemplates some loss of productivity.

[255] While not addressed by the parties, we are satisfied that no reverse sensitivity effects are in issue in relation to this proposal for the purpose of cl 3.9(3)(b).

Clause 3.9(2)(g)

[256] The first exception pathway is cl 3.9(2)(g) which provides an exception for land use activities that are either small in scale or temporary in nature, provided they have no impact on the land's productive capacity.

[257] The JWS Productive Land records agreement that change and degradation will occur from this activity, but disagreement as to whether the change and

166 Closing submissions for CJ Industries at [45].

degradation could be considered small scale, temporary and whether it would impact on the productive capacity of the land.

[258] The planning witnesses also remain in disagreement as to whether the proposed activities are "temporary" and whether the site's productive capacity would be impacted.

[259] The requirement that there be "no impact in the productive capacity of the land" must be considered in conjunction with consideration of whether or not loss of productive capacity has been adequately mitigated or minimised, this being a requirement discussed above, that also applies in the context of cl 3.9(3)(a).

[260] The term "small-scale or temporary" is not defined and must therefore be interpreted in context. The evidence before us focuses on whether the activity is "temporary" rather than the scale of the activity. Ms Bernsdorf Solly considers that the 15-year duration for which consent is sought is not sufficiently short to be considered "temporary".[167]

[261] Mr Taylor provides additional context to this by explaining that while the overall consent term is 15 years, the quarrying activity will not occur continuously across the entire site for that duration. Instead, the activity will be conducted intermittently and in stages. Each stage will involve excavation, backfilling, and rehabilitation of specific areas, with the remainder of the site, including other stages, remaining in productive use (grazing).

[262] For any given portion of land (excluding the stockpile area), Mr Taylor states the maximum period of disturbance from topsoil removal to replanting after reinstatement is approximately six months. This is submitted to be a sufficiently brief period that the activity should be considered temporary in nature, particularly in the context of the NPS-HPL's focus on long term productive land use. On this basis, counsel for the appellant submits that the proposal qualifies as a temporary

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167 EIC of Susanne Bernsdorf Solly at [82]-[89].

land use.[168]

[263] Counsel for the respondent Mr Ironside, submits that a prolonged process for restoring soil properties and productive capacity is not what is contemplated under cl 3.9(2)(g). He submits that a strict interpretation of cl 3.9(2)(g) requires that there be no impact on the productive capacity of the land at all.[169]

[264] Further, he disputes the appellant's characterisation of the works impact on productive capacity, arguing that it does not accurately reflect the nature of the proposal. Mr Ironside submits that the excavation will involve the permanent removal of significant quantities of alluvium and aggregate from the site, permanently altering the composition of the site's fluvial soils which will be replaced with clean fill sourced from Riwaka Quarry. Subsoils and topsoils will be reinstated, and an alternative source of subsoil may be required to restore original ground levels. He submits that these are permanent changes and thus the activity cannot be considered "temporary".[170]

[265] Mr Taylor considers that "productive capacity", as defined in the NPS-HPL, refers to the land's ability to support land-based primary production over the long term, taking into account a range of factors. This does not impose a 'nil effects' threshold.

[266] The appellant's position is that adherence to the SMP will ensure that the removal, management and placement of soil avoids or minimises impacts on soil properties both before and after placement. It is further submitted that, over the long term, the re-established soil will retain or potentially exceed, the soil versatility (and range of land use options) of the original soil on the site.

[267] Supporting this interpretation the evidence of Dr Hill and Mr Nelson

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168 Opening submissions for CJ Industries at [148].
169 Opening submissions for the Council at [16]-[17].
170 Opening submissions for the Council at [11]-[17].

indicates that the reinstated land will support land-based primary production over the long term. Mr Taylor refers to the examples provided by Dr Campbell of what he considers to be unsuccessful examples of reinstatement of productive land.[171] Mr Taylor however, considers that these would satisfy the requirements of cl 3.9(2)(g) as those sites are now used for horticulture, demonstrating that the mineral extraction was temporary, and the land remains available for productive use.[172]

[268] Effects on the productive capacity of the *region's* productive land are minimised through the proposed term of consent, which is longer than the minimum term that would be required to extract the site's aggregate resource. This enables CJ Industries to make use of river-based aggregate sources when these are made available by the respondent, which extends the time before a new land-based quarry is needed.

[269] We agree that a zero effects threshold would be too stringent an expectation. Referring again to Justice Whata's rejection to a "no material harm" threshold when considering a requirement to "avoid" in *Te Rūnanga o Ngāti Whātua v Auckland Council*.[173] Justice Whata rejected the objection to that approach in respect of the NPS-FM, citing a passage in *Port Otago*:[174]

> This Court in *Trans-Tasman* said the standard was protection from material harm, albeit recognising that temporary harm can be material. Although in a different context, the comments were nonetheless applicable to the NZCPS. It is clear from *Trans-Tasman* that the concepts of mitigation and remedy may serve to meet the "avoid" standard by bringing the level of harm down so material harm is avoided."
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> …

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171 EIC of Dr Iain Campbell, Appendix 2.

172 Evidence in reply of Hayden Taylor at [14].

173 *Te Rūnanga o Ngāti Whātua v Auckland Council* [2024] NZHC 3794.

174 At [294], Whata J quotes the summary of Glazebrook J in *Port Otago Ltd v Environmental Defence Society Inc* [2023] NZSC 112 at [65].

> … the avoidance policies in the NZCPS must be interpreted in light of what is sought to be protected, including the relevant values and areas and when considering any development, whether measures can be put in place to avoid material harm to those values and areas.

[270] We take guidance from this passage. We consider that employment of the minimise and mitigate concepts in these exception pathways serves to meet the "avoid" direction by bringing the level of harm down so that that material harm is avoided.

[271] We are satisfied that some elements of the cl 3.9(2)(g) gateway (in relation to impact on productive capacity) are satisfied by this proposal. However, we refrain from making a finding on whether the proposal passes through this gateway, as the appellant had placed greater reliance on application of the cl 3.9(2)(j)(iv) gateway in legal submissions.

Clause 3.9(j)(iv)

[272] The other relevant exception is cl 3.9(2)(j)(iv) which specifically allows for aggregate extraction where there is a functional or operational need for the associated use to be located on highly productive land. This provision requires that the use must provide a significant national or regional public benefit that could not otherwise be achieved using resources available within New Zealand.

[273] The appellant submits the activity of aggregate extraction is clearly covered by cl 3.9(2)(j). However, the question arises whether it also covers the deposition of clean fill. Without receiving submissions on this issue, the Commissioner at first instance, held that it does not. The appellant contends that this conclusion is incorrect.[175]

[274] Such an interpretation would render the exception difficult to rely upon as

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175 Opening submissions for CJ Industries at [132].

mitigation of effects on productive value (as required by sub cl (3)) will typically necessitate reinstatement of the land, which in turn requires the deposition of clean fill.

[275] Counsel Ms Gepp submits that the inclusion of the phrase "associated with" extends the application of the clause to uses associated with the aggregate extraction, such as the deposition of clean fill. The sole purpose of the deposition of the clean fill is to achieve rehabilitation of the quarried land. Deposition of the clean fill will reinstate ground levels, and associated land use options, following aggregate extraction. It is connected to the aggregate extraction activity and would not occur independently. We agree.

[276] The National Planning Standard defines "functional need" as "the need for a proposal or activity to traverse, locate or operate in a particular environment because the activity can only occur in that environment."[176]

[277] Ms Gepp's submissions take guidance from the leading authorities on that term: *Te Rūnanga o Ngāti Awa v Bay of Plenty Regional Council*[177] and *Poutama Kaitiaki Charitable Trust v Taranaki Regional Council*.[178] In *Te Rūnanga o Ngāti Awa* the Court of Appeal found that the activity of water bottling had a functional need for a rural location, given that is where the water is located.[179]

[278] *Poutama Kaitiaki* dealt with the context of functional need in the context of the reference in cl 3.22 of the NPS-FM, the definition for which is the same as that appearing in the National Planning Standards that we must consider. The Court in that case held that the focus is not on a particular location, but the need for an

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176 Opening submissions for CJ Industries at [133], referring to National Planning Standards, Definitions.

177 *Te Rūnanga o Ngāti Awa v Bay of Plenty Regional Council* [2022] NZCA 598 (subject to appeal to the Supreme Court).

178 *Poutama Kaitiaki Charitable Trust v Taranaki Regional Council* [2022] NZHC 629. This decision pre-dates the Court of Appeal decision in *Te Rūnanga o Ngāti Awa* but follows the High Court decision which was to like effect.

179 At [152].

activity to locate in a "particular environment," which is a much broader concept than a "location"[180] and that this is a context and fact-specific enquiry.[181]

[279] Ms Gepp further submits, there is significant overlap between highly productive land and river plains where alluvial aggregate is found. However, the question is not whether the quarry has a functional need to locate on highly productive land, rather it is whether it has a functional need to locate in the environment where the highly productive land is located.[182]

[280] She submits that aggregate deposits are 'location specific' in that they can only be sourced from where the aggregate is physically present and accessible to the industry. The "environment" in which extraction must occur is one that contains river gravel. Accordingly, the proposal has a functional need to locate within this environment; an environment that also happens to contain highly productive land.[183]

[281] "Operational need" is defined in the National Planning Standard definitions as meaning: "the need for a proposal or activity to traverse, locate or operate in a particular environment because of technical, logistical or operational characteristics or constraints".[184]

[282] In *Poutama Kaitiaki* the Court recorded that this term was included in the National Planning Standards "to cover situations where there are valid reasons why an activity should be enabled to occur in a particular location". Mr Scott and Mr Corrie-Johnston have outlined the quarry's operational need to be in this environment (in particular, the need to be located close to its processing site).[185]

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180 At [53]-[55].
181 At [58].
182 Opening submissions for CJ Industries at [134].
183 Opening submissions for CJ Industries at [134].
184 Opening submissions for CJ Industries at [135].
185 EIC of Wayne Scott at [14], EIC of Tim Corrie-Johnston at [31].

[283] Dr Kaye-Blake's analysis assesses the cost-benefit of carting aggregate from Peach Island compared to Richmond/Appleby or Tapawera, to derive the economic value to the region and the averted emissions achieved by enabling extraction from this site.

[284] He calculated a net benefit of $3.6 million through enabling utilisation of the Peach Island aggregate source (a 4.58 percent loss of productivity in aggregate production averted) compared with sourcing aggregate from further afield. He assessed that benefit to be significant to the region.

[285] In addition, averted emissions amounted to 366 tonnes of CO2-e annually. The respondent's challenges to Dr Kaye Blake's evidence in cross-examination and in legal submissions did not undermine his evidence. We agree with the appellant's position thus far.

[286] The issue remaining in dispute is whether the use of land as proposed will provide significant national or regional benefit that could not otherwise be achieved using resources within New Zealand. We adopt Ms Gepp's use of the term "significance/alternatives threshold" when discussing this.[186]

[287] Whether a regional public benefit is "significant" is context dependent. What constitutes a significant benefit may differ from one region to the next. The nature of the benefit may also vary. For example, it could arise from the addition of employment opportunities or the provision of a specific aggregate source for a particular project.

[288] The Environment Court is yet to consider the significance/alternatives threshold. Although the court is not bound by a decision of an Expert Consenting Panel (the panel), Ms Gepp alerted the court to the Panel's analysis in *Brookby*

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186 Opening submissions for CJ Industries at [136]-[146].

Quarry Stage 3[187] which she considered may assist the court in making findings on this aspect of the NPS-HPL.

[289] The panel addressed the phrase "provides a significant national or regional public benefit that could not be achieved using resources within New Zealand" as it is used in cl 3.11 of the NPS-IB in the context of addressing a functional or operational need for an activity to locate in a specific location.

[290] The panel states that whether there is "significant national or regional public benefit" requires consideration, not just of availability of the resource but also the accessibility, local supply, pressure on the roading network, savings in freight costs, road wear and tear, and emissions. The panel explained it is the:[188]

> significant public benefit provided by the proposal that is the "yardstick" and that "resources within New Zealand" should be considered adopting a "real-world" approach with reference to consented and accessible aggregate extraction resource.

[291] Ms Gepp submits the appellant has assessed possible alternative locations by considering consented and accessible aggregate extraction resources as possible alternatives as well as considering the suitability of unconsented sites. Further, she submits the adoption of a "real world" approach to the significance/alternative's threshold, as adopted in *Brookby*, is particularly important.[189]

[292] We agree. The relevant question is whether the public benefit could be achieved using alternative resources within New Zealand, not merely whether aggregate could be sourced elsewhere. Given the high transport costs associated with aggregate, sourcing it from distant sites can reduce its public benefit. This

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187 Expert Consenting Panel decision on Brookby Quarry Stage 3 dated 2 October 2024. This refers a decision of an Expert Consenting Panel constituted under the Covid-19 Recovery (Fast-track Consenting) Act 2020 that was released following the hearing prior to final reply submissions.

188 At [398].

189 Closing submissions for CJ Industries at [13].

understanding is reflected in cl 3.9(2)(j)(iv) of the NPS-HPL, which deliberately refers to whether the public benefits, rather than just the material, could otherwise be obtained elsewhere.

[293] In this case, the proposal offers various benefits by supplying the demand for availability and utility of the aggregate product, as well as the regional economic and environmental efficiencies.[190] The key question is whether these economic and emissions-related benefits are significant in the sense of being important or noticeable within the region.

[294] As Ms Gepp submits, the evidence supports that they are. We agree that the significance of a proposal involving aggregate extraction must be assessed based on the public benefit of the specific activity, not the general value of aggregate as a resource. Mr Scott's evidence also described the significant regional benefit that the project provides through provision of aggregate to meet current and increasing demands for aggregate-based products for essential infrastructure. His evidence was not undermined by cross-examination.

[295] In the Tasman region (and across New Zealand), demand for aggregate is high and increasing. This demand is not met by a single large supplier but from distributed sources. That is the nature of aggregate production. No single source can meet the region's needs.

[296] In this context, significance relates to the proposal's contribution to meeting local demand and the associated regional economic benefits that accrues from that. Ms Gepp submits that is best assessed through the type of averted productivity loss analysis undertaken by Dr Kaye-Blake. We agree.

[297] The respondent submitted that the significant regional public benefit should be "plain and obvious"[191] and that "it is appropriate to expect that a

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190 Emission reductions.
191 Closing submissions for the Council at [12].

significant regional public benefit should be one that is obvious and able to be clearly identified". Mr Ironside suggested that it would be met by something like "a very significant development plan that needs access to this resource in a high-population centre, and therefore ..., or there's a road that needs to be extended, widened, straightened, et cetera, to make traffic move more efficiently".

[298] However, we agree with the appellant's rejection to this approach. There is no legal or logical basis to find that development in high population centres (only) or straightening a road to make traffic move more efficiently would provide regionally significant benefit but provision of economically efficient aggregate to Motueka to address the needs of its community and the wider region would not.

[299] Some level of impact on productive land is anticipated by the exception pathways and that impact is dealt with under cl 3.9(3)(a), not through the benefits/alternative's threshold. That said, in determining the net benefit of the proposal Dr Kaye-Blake's cost-benefit analysis *does* factor a "cost" for effects on productive land and still concludes that the net outcome is a regional benefit.

[300] So to bring together our evaluation of the proposal under this exception pathway, we agree that there is both a functional and operational need for the proposed activity to occur at the site as that is where the aggregate is located. Further, we accept that alternative locations have been considered but are impracticable.

[301] We accept also that the aggregate resource will have a regionally, if not nationally significant benefit in meeting current demand for this resource, the various uses of which will have positive benefits for the wider public not just the appellant. The proposal involves aggregate extraction that provides significant national or regional public benefit that could not otherwise be achieved using resources within New Zealand.

[302] The uncontested evidence is that there will be positive economic effects for the region in two ways. First, there is a benefit that accrues from the cost of

sourcing aggregate from this site rather than a site further afield. Second, the economic assessment assumes aggregate is available from elsewhere, when in fact it is constrained everywhere. This site provides a source of aggregate that is in high demand and short supply. Positive effects accrue to the sectors that use concrete and sealing chip from the supply of those high value products.

Clause 3.10

[303] Clause 3.10 contains a separate enabling provision for the use of HPL that is not otherwise enabled by the cl 3.9(2) gateways. This applies to land that is subject to permanent or long term constraints that mean the use of the HPL for land-based primary production is not able to be economically viable for at least 30 years. "Long term constraint" means a constraint that is likely to last for at least 30 years.

[304] To come within this clause, the use or development must avoid any significant loss of productive capacity of highly productive land in the district and avoid fragmentation of large and geographically cohesive areas of HPL. This clause could have application to the land within Stage 1. However, in light of our conclusion on application of the cl 3.9(2)(g) exception pathway, we do not need to consider this clause.

Other relevant statutory planning documents

[305] Section 104(1)(b) RMA lists the statutory planning documents to which regard must be had. In determining the application of these documents to the proposal we were assisted by the evidence of Mr Taylor and Ms Bernsdorf Solly. In addition to their evidence, the experts JWS Planning largely recorded agreement on the relevant planning documents, but for the NPS-HPL addressed below and discussed as to the proposal's effects on productive land.

National Policy Statement for Freshwater Management

[306] The NPS-FM is relevant to this proposal as it involves land disturbance near freshwater bodies and the proposed quarrying and backfilling of the land has the potential to affect groundwater beneath the site. This NPS seeks to ensure the sustainable management of New Zealand's freshwater resources through its policies which require that:

(a) freshwater must be managed in a way that prioritises the health and wellbeing of water bodies, reflecting Te Mana o te Wai[192] as a fundamental principle (Policy 1);

(b) tangata whenua must be actively involved in freshwater management, including decision-making, and their values and relationships with freshwater must be recognised and provided for (Policy 2);

(c) freshwater management must be integrated, taking into account the effects of land use and development across entire catchments, including downstream environments (Policy 3);

(d) degraded water bodies and ecosystems must be improved, while the health of all other water bodies must be maintained or enhanced, guided by the National Objectives Framework (Policy 5);

(e) the significant values of outstanding water bodies must be protected (Policy 8), as must the habitats of indigenous freshwater species (Policy 9);

(f) the habitat of trout and salmon must also be protected, provided this does not conflict with the protection of indigenous species (Policy 10);

(g) communities must be enabled to provide for their social, economic, and cultural wellbeing in ways that are consistent with the overall objectives of the NPS (Policy 15).

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192 This is a concept that refers to the fundamental importance of water and recognises that protecting the health of freshwater protects the health and wellbeing of the wider environment.

[307] Such a framework enables local authorities to prioritise the health and wellbeing of water bodies, followed by the essential needs of people before other uses.

[308] We note that during the course of this proceeding s104(2F) RMA was inserted into the RMA.[193] This section states that when considering an application and any submissions received, a consent authority must not have regard to cl 1.3(5) or Objective 2.1 of the NPS-FM which relate to the hierarchy of obligations.[194] Further, cl 3.22(1)(e)(i) was amended so that the loss of natural inland wetlands must be avoided, their values protected, and their restoration promoted except where the regional council is satisfied that the activity is necessary for mineral extraction and its associated operations.[195]

[309] While acknowledging these developments to the NPS-FM, we do not consider these relevant to the proposal before us as the proposal does not involve prioritising competing interests regarding the take and use of water nor does the site contain any natural inland wetlands.

[310] Dr MacNeil and Mr Nicol have addressed consistency with the NPS-FM in their evidence, concluding that they are satisfied that the proposed activities will be consistent with it, including preservation of Te Mana o te Wai and the protection of drinking water resources.[196]

[311] Mr Taylor's evidence recorded he concurs with the opinion of Mr Nicol that the intent of the NPS-FM does not extend to avoiding all discharges that may alter groundwater chemistry from its existing water chemistry. As noted by Mr

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193 By s23 of the Resource Management (Freshwater and Other Matters) Amendment Act 2024.

194 There is a hierarchy of obligations in Te Mana o te Wai that prioritises first, the health and wellbeing of water bodies and freshwater ecosystems; second, the health needs of people (such as drinking water) and third, the ability of people and communities to provide for their social, economic, and cultural wellbeing, now and in the future.

195 Resource Management (Freshwater and Other Matters) Amendment Act 2024.

196 EIC of Ryan Nicol at [104] and EIC of Calum MacNeil at [49].

Nicol in his evidence, Policy 5 requires that freshwater is managed to ensure that the health and wellbeing of waterbodies is maintained, not that the concentration of individual groundwater chemicals must not change at all.

[312] The JWS Planning records the planners are both satisfied that the proposal is consistent with the provisions of the NPS-FM.

National Policy Statement for Highly Productive Land

[313] As discussed earlier, the proposal is consistent with the NPS-HPL.

National Policy Statement for Indigenous Biodiversity

[314] The NPS-IB provides a national framework for protecting, maintaining, and restoring indigenous biodiversity across New Zealand. It directs councils to identify and manage significant natural areas, protect the habitats of native species, and promote ecological restoration. It also requires councils to work in partnership with tangata whenua, ensuring Māori values and knowledge are integrated into biodiversity management.

[315] The parties agree that the proposal is consistent with the NPS-IB.[197] Mr Payne's EIC explains the proposal satisfies the objectives set out in the NPS-IB and will maintain indigenous biodiversity so that there is at least no overall loss in indigenous biodiversity.[198]

[316] Of note, Policy 13 requires councils to promote the restoration and enhancement of indigenous biodiversity. This is particularly relevant to the proposal given the existing degraded state of the sites indigenous biodiversity which will be improved as part of the rehabilitation of the site which will require

197 Planning JWS at [9](b).
198 EIC of Tony Payne at [1], [66].

indigenous plantings on 1.3 ha of the site and the removal if exotic tree species.

Tasman Regional Policy Statement

[317] Objective 6.7 and Policy 6.2 of the Tasman Regional Policy Statement (TRPS) stress the importance of ensuring mineral resources (including gravels by definition under the Crown Minerals Act 1991) can be accessed. Further, issue 6.9 acknowledges that minerals are locationally fixed, must be extracted where they occur, and may underlie land of high productive value.

[318] The TRPS, has not been amended to give effect to the NPS-FM, the NPS-HPL or the NPS-IB.

[319] The JWS Planning records the parties planning witnesses agree that the TRMP gives effect to the TRPS, therefore the TRPS does not require separate consideration.[199]

Water Conservation (Motueka River) Order 2004 and s217 RMA

[320] The Water Conservation (Motueka River) Order 2004 (Motueka WCO) is relevant, as the Motueka River, located east of the site, is referenced in Schedule 2 of the Order. Section 217 RMA prevents a consent authority from granting a discharge permit to discharge water or contaminants into water if doing so would contravene any restriction, prohibition, or other provision of a Water Conservation Order (WCO).

[321] The relevant restrictions specify that no resource consent shall be granted for activities that would cause a material alteration to a river channel shape, meandering pattern, or braided characteristics, or where they involve discharges into Schedule 2 waters that may lead to physical, biological, or chemical changes

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[199] Planning JWS at [9].

in those waters.

[322] The current proposal does not involve a direct discharge into the Schedule 2 waters and will not affect the river's morphology. Both Mr Nicol and Dr MacNeil have confirmed that neither the clean fill discharge component of the proposal nor any potential erosion or sediment transport would breach the parameters set by the WCO.[200] The planners agree with this assessment.[201]

Our evaluation

[323] While the issues in dispute are narrow, the application is for a discretionary activity, and as such, it must be considered under ss104B and 104 RMA, having regard to all potential effects and relevant planning provisions.

[324] As stated in the appellant's legal submissions, the RMA is not a no-effects statute. Every activity has some form of an effect and an approach of prohibiting activities with any adverse effects at all would not enable positive effects, or allow people to provide for their social, cultural or economic wellbeing, or be consistent with the authorities on how "avoid" policies are to be interpreted and applied, while accounting for whether there will be material harm.[202]

Relevance of precedent

[325] The matter of precedent is raised in submissions and by Council. The concern is whether the grant of consent to this proposal would result in the Council being more likely to approve similar activities in the future. Several resource consents have been granted for quarrying in the vicinity of the site, including on non-berm Rural 1 land. These either pre-dated the introduction of

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200 EIC of Ryan Nicol at [73], EIC of Calum MacNeil at [51] and opening submissions for the appellant at [179].

201 Planning JWS at [9](b).

202 Opening submissions for CJ Industries at [33].

the NPS-HPL or have since lapsed.[203]

[326] Ms Bernsdorf Solly considers precedent to be a relevant issue, but only in relation to land on the landward side of the quarrying activity.

[327] Counsel for the appellant, Ms Gepp and Mr Marshall, refer to the Court of Appeal decision in *Dye v Auckland Regional Council*[204] and submit that granting a resource consent does not create a legal precedent in the strict sense. As no two applications are ever likely to be the same, albeit one may be similar to another, the most that can be said is that the granting of consent may influence how another application is considered.

[328] While consistency in applying legal principles is essential, each application is fact-specific. Although one decision may influence another, the degree of influence depends on how similar the cases are. The extent of that influence will depend on the extent of the similarities.[205]

[329] Mr Taylor's evidence reiterated that position. He stated precedent is not a matter of concern, as any future applications for such an activity are provided for in the TRMP as discretionary activities and will therefore be assessed on the application's individual merit.

[330] The granting of consent for any future proposed quarrying activity would be based on the premise that it is provided for, and therefore consistent with, provisions of the NPS-HPL. Accordingly, no issue of precedent would arise.

[331] The JWS Planning records both witnesses agree that a high level of detailed and site-specific expert assessment has been undertaken in respect of the current proposal, and detailed management plans and mitigation measures have been

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203 EIC of Susanne Bernsdorf Solly at [63]-[64].

204 *Dye v Auckland Regional Council* CA86/01, 11 September 2001.

205 CJ Industries legal submissions at [46]-[48], referring to *Dye* at [38]-[39] and [41]-[42].

proposed. The planners therefore agree this would be a mitigating factor where precedent is of concern, as the extent of those measures may well distinguish this proposal from future proposals.

[332] We do not consider precedent is a factor to consider in our assessment of this proposal.

Section 104

[333] Under s104(1) of the RMA, the consent authority must consider applications "subject to Part 2" of the RMA specifically ss5, 6, 7 and 8. Consideration under Part 2 is appropriate where the consent authority has doubt as to whether the planning documents have been prepared in a manner that appropriately reflects Part 2.

[334] Valley RAGE acknowledges some attempts have been made to address the proposal's defects, but it remains of the view that under s104 the project is not a proposal of the kind that should be granted consent. We do not agree.

[335] Having had regard to the actual and potential effects on the environment of allowing the activity we are satisfied that the effects will range from less than to no more than minor, and that the conditions of consent, which include those of an *Augier* nature, are sufficient to secure the mitigation measures.

[336] We have considered the relevant provisions of the NPS-FM, NPS-HPL, TRPS and the TRMP. We have assessed the proposal against the relevant objectives and policies of each and are satisfied that the proposal achieves sufficient consistency with these policy documents.

Section 104B

[337] Section 104B applies to the consideration of discretionary activities. It directs that where a consent authority has determined to grant the application it

may impose conditions under s108. The conditions of consent were addressed above. We are satisfied that these conditions adequately mitigate the adverse effects.

Sections 105 and 107

[338] Having considered the expert advice in respect of groundwater quality matters, the court is satisfied that sufficient regard has been had to the matters detailed at s105(1) of the RMA, and that none of the effects detailed at s107(1)(c)-(d) of the RMA will occur. As such, s107 does not preclude the granting of the discharge permit sought for the proposed discharge of clean fill to land.

Sections 108, 108AA and 108A

General observations

[339] Resource consent conditions must meet the requirements of ss108 and 108AA, RMA. The latter includes a requirement that the condition must either be agreed by the applicant or be directly connected to an adverse effect of the activity on the environment or an applicable rule or be related to administrative matters that are essential for efficient implementation of the consent.

[340] A useful starting point for considering conditions is the Practice Note. Clause 10.4 outlines key principles for standards of good practice. Importantly, a resource consent, including its conditions, must stand on its own and be capable of being interpreted and applied independently. The conditions of consent must not undermine the consent itself or unreasonably restrict individual rights.

[341] Conditions presented to the court must be clear, coherent, certain, enforceable and properly justified. They should specifically reflect the activity for which consent is sought, including any modifications suggested or offered throughout the hearing, and must promote sustainable management.

[342] Conditions should apply specifically to the elements or aspects of the activity requiring resource consent and should not simply list all documents presented with the application.

[343] It is important that conditions explicitly state clear performance standards (as opposed to leaving these to be determined at a later date). Where expert certification or oversight is required, the condition must state clear parameters and specified standards in relation to this.

[344] Any condition volunteered by an applicant that could not normally be imposed (e.g., an *Augier* condition) must be specifically identified, along with the basis for its inclusion.

[345] We acknowledge the additional work by the appellant to sharpen up the conditions and to ensure that the draft management plans are fit for purpose.

[346] We note our decision refers to some, but not all, of the revised conditions. This does not mean that our conclusions were not informed by the conditions we have not specifically mentioned.

Proposed conditions

[347] Prior to the filing of the closing conditions, penultimate conditions (dated October 2024) were the focus of closing submissions. The appellant filed the condition set (dated December 2024) to address the matters raised in closing submissions and in response to the closing submissions of the respondent and Valley RAGE.

[348] We do not need to deal with every detail of the appellant's amended consent conditions and the basis for them. However, we consider it important to highlight several issues before addressing the conditions where challenge is raised. In so doing, we do not set out all amendments sought to the conditions, despite having considered and rejected the same.

Identification of approved plans

[349] Condition 1 as provided in closing lists various documents with which all work shall accord. Counsel for CJ Industries, submits this no longer refers to evidence, instead it references an "Approved Plan set, dated 25 October 2024". The memorandum states that the "Approved Plan set" comprises the Site Plan and the Plan of Monitoring Bores.

[350] Condition 1 of the discharge permit adopts the same approach and this is again reflected by closing conditions dated 18 December 2024.[206]

[351] Given the ongoing evolution of the proposal throughout the hearing process we consider it necessary to update this condition, as many of the referenced documents are now significantly outdated.

[352] It is our view that further refinement to these conditions is necessary. Rather than referencing a bundle of documents, the condition should list and identify (with reference to plan title and date etc) all plans to which the consent relates. These must be approved by the court.

Comments on management plans

[353] Management plans should not be referred to in condition 1. The requirement to comply with the certified management plans should be included in condition 18. Parties are to consider whether a clause should be included explicitly stating that the role of the management plans is subservient to the conditions of consent.

[354] The relevant draft management plans are those dated 25 October 2024. We consider that these draft management plans should be amended prior to our final decision. This would reduce the likelihood of people preparing and certifying the

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206 CJ Industries memorandum dated 25 October 2024 at [5].

management plans which must meet the standards and requirements set out in conditions, while also being in general accordance with the draft management plans.

[355] We direct a final check and revision of the draft management plans in line with our decision.

[356] Further, we note that the definitions of "stable groundwater level trends", "decreasing or stable flow" and "heavy rain event" were amended throughout the proceeding as mentioned earlier. The parties are to ensure that any references to definitions used in the draft management plans appropriately reflect those included in conditions.

Certification of management plans

[357] In closing submissions, Valley RAGE raised particular issues with the certification conditions contained in the October 2024 condition set.[207] Valley RAGE also opposes the revised approach to certification of a management plan by an independent certifier for three reasons.

[358] The first objection is that independent certification is being used in place of standards in conditions. That is not correct. The standards to be achieved are set out in the conditions.

[359] The second objection is that the independent certifier is certifying that implementation will achieve compliance with the consent and that is inappropriate because the certifier does not know whether the consented activities are in fact being carried out in accordance with the plans. Counsel submits that the independent certifier [should] be required to certify (following review of the actual practice on the ground at the site) that the design and operational procedures the consent holder proposes to undertake fulfil the conditions [and] are consistent

[207] Closing submissions for Valley RAGE at [21]-[36].

with the requirements of the consent conditions.

[360] The appellant's response is that independent certification is not in the nature of certifying that the consent activities are in fact being carried out in accordance with the management plans. That is a matter for the consent holder (to comply) and for the Council's monitoring and enforcement functions. Certification can only ever relate to ensuring one document (a management plan) implements another (conditions).

[361] As an example we note that condition 22 for noise for all activities on site (other than construction activities) now states that the role of the respective management plans is to set out the actions required to comply with the standards specified in conditions 61 and 62, as well as demonstrating the best practicable option to ensure that the emission of noise from activities on site does not exceed a reasonable level.

[362] The third objection is that the independent certifier approach removes the ability of the Council to decline to accept, or make recommendations to management plans, and say the Council should retain final sign-off.

[363] The appellant opposes that approach on the basis it would add another layer of review and certification to the management plan process, by someone without relevant expertise. It also would not address the workability concerns that Ms Bernsdorf Solly referred to in recommending the independent certifier method.

[364] After careful consideration of this point, we have concluded it is not necessary or justified for the Council to retain the final sign-off.

[365] Valley RAGE seeks a condition requiring an independent certifier oversee the site works and ensure they comply with the management plans and conditions at all times.[208] The example they gave is from *Eyre Community Environmental Safety*

[208] Closing submissions for Valley RAGE at [29].

Society Inc v Canterbury Regional Council.[209]

[366] The appellant submitted that a requirement for an independent monitor throughout the 15–17 year term would be unreasonable and also fail the requirements of s108AA, RMA. The *Eyre* case concerned consents for a large water storage dam behind dam embankments of 4.5 – 12.5 m height. The dam was an engineered structure. The New Zealand Dam Safety Guidelines 2023 specify formal peer review of investment, design and construction by an independent experienced engineer as best practice for this type of dam, and the court treated those Guidelines as "the yard stick". In that case, a condition requiring an independent engineer to oversee construction (expected to take 12 to 20 months) was imposed in accordance with those Guidelines.[210]

[367] Counsel submits extrapolating a specific engineering requirement, one that accords with published best practice for engineered structures, to the present application would not be appropriate.

[368] We agree with the appellant and accept that an independent monitor is not necessary or justified.

Condition addressing Riwaka Quarry Consent status

[369] A key change, as part of the proposal before us, pertains to the conditions volunteered as condition 115 of the land use consents and condition 17 of the discharge permit in relation to the sourcing of clean fill from outside the site. The chapeau of these conditions is phrased as follows:

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209 *Eyre Community Environmental Safety Society Inc v Canterbury Regional Council* [2020] NZEnvC 138.

210 The condition is discussed at [127] and [152] of *Eyre Community Environmental Safety Society Inc v Canterbury Regional Council* [2016] NZEnvC 178. Closing submissions for CJ Industries at [98].

> All clean fill material sourced from offsite shall be granite clean fill material sourced from the quarry at 44 Takaka Hill Road, …

[370] The quarry here referred to is the appellant's Riwaka Quarry.

[371] Clean fill will be extracted from and stockpiled at the Riwaka Quarry in accordance with standard operating procedures. From there it will be transported to the site by the appellant via a range of routes including State Highway 60, Pah Rd, Motueka Valley Highway and Motueka River West Bank Road – but not including via Brooklyn.

[372] The roads are suitable for this purpose as there are no weight or geometric constraints. Records will be kept noting the date and volumes delivered to site and those records will be kept on site and readily made available if the Council requests to inspect these.[211]

[373] The JWS Planning records agreement among Ms Bernsdorf Solly, planner for the Council and the appellant's planner, Mr Taylor, that due to the form of the volunteered conditions of consent, the proposed quarry could not proceed without the Riwaka Quarry consents.

[374] Given the proposal involves progressive backfilling as excavation advances, that excavation cannot begin (and the consents accordingly cannot be given effect to) unless the Riwaka Quarry sourced clean fill is available for backfilling purposes.

[375] To address this, Ms Bernsdorf Solly sought the inclusion of a condition explicitly preventing commencement of the activities until the Riwaka Quarry consents are granted, while Mr Taylor did not consider such a condition necessary.[212]

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211 Land use consent condition 115.
212 EIC of Susanne Bernsdorf Solly at [26].

[376] We record a condition of the kind sought[213] is outside the ambit of the controls able to be imposed as conditions of the land use consents and discharge permit under s108, RMA. Further, it fails to meet the requirements of s108AA(1)(b) as it is not connected to an effect of the proposal, an applicable rule, nor does it relate to essential administration matters.

[377] As the appellant has not agreed to this condition, it cannot be imposed under s108AA(1)(a). The risk that the land use consent and discharge permits may not be able to be exercised, and would subsequently lapse, is a risk that the applicant takes in volunteering the conditions as sought.

[378] However, this matter has since become a moot point. Mr Tim Corrie-Johnston's reply evidence states that CJ Industries had reached agreement with the relevant parties in that separate consent application and Council has since received confirmation that those parties no longer oppose the consent being granted.[214] The appellant's reply submissions record the land use consent and discharge permit for the Riwaka Quarry site were granted on 16 December 2024.[215]

Video surveillance – clean fill activities

[379] Valley RAGE sought the inclusion of a condition requiring video surveillance of all truck movements into the site.[216] The appellant opposed this request, expressing concern about the feasibility of implementing such a condition and the uncertainty surrounding its potential benefits versus costs. This matter was not the subject of evidence nor put to any witnesses. Further, existing conditions already include requirements to adequately manage clean fill quality.[217]

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213 Making one application contingent on the other.
214 Reply evidence of Tim Corrie-Johnston at [14].
215 Closing submissions for CJ Industries at [93].
216 Closing submissions for Valley RAGE at [38].
217 Closing submissions for CJ Industries at [101].

Rehabilitation

[380] The Council sought the following:[218]

> Condition 118B(f): Delete the words **at least moderately well or** … so as to achieve the same drainage class as prior to excavation activities.
>
> Condition 118B(g): For similar reasons delete the words: **at least imperfectly drained, preferably moderately well or** … .
>
> [Council's emphasis]

[381] The appellant did not support those amendments as Ms Langford's evidence that the soils are currently "well drained" is based on how drainage characteristics of Riwaka silt loam are described in Nelson (2003), rather than on the conditions of the site's soils.[219]

[382] Dr Reece Hill's evidence is that the soils are currently variable, including "well drained" and "moderately well drained". In any event, "moderately well drained" soils will not limit land use in Stages 2 and 3 and will not be the overriding factor determining the LUC classification of these areas.[220] It is "nothing more than a slight limitation" and would still provide a versatile soil,[221] particularly with reduced variability, as discussed by Mr Nelson.

[383] Even if Ms Langford's evidence is preferred, a requirement for "moderately well drained" reinstated soils would adequately mitigate the project's effects on highly productive land. Requiring reinstated soils to be "well-drained" rather than "moderately well drained" is overly onerous, especially given that the NPS-HPL requires cl 3.9 activities to "minimise loss" rather than "avoid any adverse effects"

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218 Closing submissions for the Council at [22].
219 NOE at p 402-403, closing submissions for CJ Industries at [92].
220 EIC of Dr Reece Hill at [136].
221 NOE p 226 at l 1-9.

on highly productive land in the district. We agree.

[384] The Council's submission on land use consent condition 126 and the associated SMP clauses acknowledged that the new condition is a recast of what had previously been included at cl 11.4 of the draft SMP. The Council understands that the Groundwater JWS contemplates future land use being determined following revegetation and inspection by a soil expert, and that such restrictions may exclude any stock grazing for a period of time.

[385] Condition 126 should not assume that stock grazing will occur during the first three years of reinstatement. Instead, it should be confined to the restriction at subclause (d) "no cultivation and use of under-sowing techniques" with any further land use, such as stock grazing, subject to certification by a suitably qualified soils expert and any restrictions they impose.[222]

[386] The respondent further considers cl 11.4(1), (2) and (3) of the SMP should be redrafted to address the need for a future land use certification process.

[387] The appellant considers that condition 126 responds to the Groundwater JWS by imposing strict controls on the types of activities that may occur during the first three years of soil and pasture reinstatement. Ms Gepp submits that the outcome now sought by the appellant that there be no grazing of stock at all during the first three years of reinstatement and that a future certification process by a suitably qualified expert before *any* stock grazing can occur was not put to any witnesses and was not recommended by Dr Rutter. Pasture growth will still need to be managed so this also creates operational issues.[223]

[388] We accept the appellant's response and do not consider this necessary.

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222 Closing submissions for the Council at [22].
223 Closing submissions for CJ Industries at [92].

Post-rehabilitation use

[389] Valley RAGE sought that *definition of minimum stocking rate be included*.[224] The appellant considered a definition unnecessary, suggesting that this should be a matter of farming judgment informed by the requirement to achieve healthy revegetation. They submitted that if however, a rate is to be specified, Dr Hill recommends that 8 stock units/ha would be appropriate.[225] We agree it is appropriate to leave this as a matter of farming judgment.

Bond

[390] Section 108(2)(b) states that a bond may be required as a condition of consent and s108A sets out the parameters for such a condition. A bond condition has been volunteered as a condition of consent by the appellant and it relates to the remediation requirements.

[391] Ms Gepp explained in closing that the proposed bond condition aligns with s108A of the RMA. Although it does not fall within the specific categories listed in s108A(1)(a) – (c), those provisions are inclusive rather than exclusive, as indicated by the word "including".[226] The bond secures a positive action – the provision of a water supply – which is consistent with the purpose of the section and has previously been accepted by the Environment Court.[227]

[392] In the alternative, the appellant submitted it can be included on the basis it is an *Augier* condition.

[393] We accept that the condition is consistent with s108A and accordingly see no need to specifically conclude that it is an *Augier* condition in case any question

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224 Closing submissions for Valley RAGE at [40].

225 Closing submissions of CJ Industries at [101].

226 Closing submissions of CJ Industries at [87].

227 *Morgan v Whangarei District Council* ENC Auckland A021/07, 20 March 2007 at [53].

should arise about its status in the future.

[394] We acknowledge Valley RAGE considers the bond should reflect the value required to remedy the costs of fixing the community water supply if contamination were to occur and repairs were required to remedy the aquifer.[228] We do not consider that necessary given the existing mitigation measures have been agreed to avoid, remedy or mitigate that risk.

Noise conditions 61 – 63

[395] Condition 62 sets a maximum noise level of 55 dBA $_{Leq}$ (day) when measured at or within the notional boundary of any dwelling (where the notional boundary is a line 20 m from any side of a dwelling, or the legal boundary where this is closer to the building).

[396] Condition 61 addressed noise associated with construction work. That term is defined in condition 62, which applies to all other noise. In condition 62, the Advice Note states that construction work is said to apply to activities defined as construction under NZS 6803:1999, including the construction of the earth bund and the haul road with the gravel extraction operation or truck movements which are covered by condition 62.

[397] Construction noise has different noise standards – 70dB$_{LAeq}$ and 85dB $_{LAFmax}$ – and is differently measured (condition 61). Noise associated with construction activity is measured 1 m from the most exposed façade of any dwelling located beyond the site.

[398] We consider that the Advice Note contained in condition 62 should be removed. The construction work should be limited to construction of the earth bund and the haul road, rather than being open ended.

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228 Opening submissions of Valley RAGE at [29].

Outcome

[399] We are satisfied that on the basis of our assessment, resource consents are able to be granted. However, before we are able to issue a final decision, we require a further set of conditions be filed addressing the relatively minor matters raised throughout this decision at paragraphs [352] – [356], [386], [398] and including the most up to date plans and management plans.

[400] Accordingly, the court **directs that within 15 working days of the date of this decision**, CJ Industries is to consult with all parties and report to the court with a timeframe within which it anticipates the final condition set could be provided for the court's consideration.

For the court

P A Steven
Environment Judge