

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of application RM200488 and RM200489,
CJ Industries, 134 Peach Island Road,
Motueka

BEFORE **Tasman District Council**

Minute # 2 of the Hearing Commissioner – Procedural Matter

1. I have received a memorandum of counsel regarding consent for discharge of contaminants dated 4 July 2022 (attached). This memorandum responded to the questions raised in Minute 1 dated 20 June 2022.
2. The memorandum identified that an additional resource consent will be required to undertake the backfill activity referred to in the land use consent applications. The consent required is a discharge permit to land. The memorandum considered there is jurisdiction to grant consent for discharge to land from the backfill activity as part of the current proposal. Two case law decisions were attached for me to consider. The memorandum stated that the Applicant's identification of an additional rule applicable to the backfill activity does not in any way change the nature of the activities for which consent was sought.
3. In other words, once the discharge permit application is made to the Council, the Applicant seeks to bring the discharge permit application into the current proposal directly via the hearing process.
4. The land use consents were publicly notified. The application material made reference to backfilling and the nature of this backfill with an assessment of effects.
5. However, I have decided that it is inappropriate for me to allow the discharge permit to be brought into the current proposal hearing process directly for the following reasons:
 - a. The process proposed by the Applicant gives rise to natural justice issues. The reference to land use consents in the public notice required the public to delve into the application material to discover that the backfill activity has potential discharge of contaminant issues. There is a significant risk that the omission of the discharge permit to discharge contaminants to land in the public notice may have resulted in members of the public (who might otherwise have made a submission) not taking an interest in the proceedings and failing to submit;
 - b. Discharge permit applications are treated differently under the RMA to land use consents with different considerations in terms of the existing environment, policy, statutory tests, effects assessment and environmental outcomes;
 - c. The discharge permit to land application makes it apparent that contaminants will be discharged to land and these contaminants (or any other contaminant emanating as a result of natural processes from that contaminant) may enter

water. In this case the site is immediately adjacent to the Motueka River which is subject to a Water Conservation Order. Simple reference to backfill activity in a land use consent does not have the same inference.

6. I consider on reasonable grounds that it is appropriate, for the purpose of better understanding the nature of the proposal that application for a discharge permit be made before proceeding further.
7. Therefore, in accordance with section 91, I have determined not to proceed with the hearing of the application for a resource consent until such time as a discharge permit application is lodged, a notification decision is made and followed through, and the discharge permit application has effectively "caught-up with the timetable of the current proposal.
8. The deferral outlined in paragraph 7 will take effect from 18 July 2022 following receipt of the Applicant's evidence relating to the current proposal, which is due on 15 July 2022.
9. I direct that Mr Alastair Jewell circulate this minute to all parties to the proceedings.

Dated: 7 July 2022.



Craig Welsh

Chairman

BEFORE

Independent Commissioners appointed
by Tasman District Council

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

of an application by C J Industries Ltd
for land use consent RM200488 for
gravel extraction and associated site
rehabilitation and amenity planting and
for land use consent RM200489 to
establish and use vehicle access on an
unformed legal road and erect
associated signage



**MEMORANDUM OF COUNSEL REGARDING CONSENT FOR DISCHARGE OF
CONTAMINANTS**

4 July 2022

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MAY IT PLEASE THE COMMISSIONER

1. The Applicant's Memorandum of Counsel in Response to Minute 1 dated 23 June 2022 advised that consent to discharge contaminants to land is not required for the backfill activity because it is cleanfill.
2. The Applicant has subsequently received expert advice that in this context cleanfill is a contaminant as defined by s 2(b) RMA.
3. The Applicant therefore advises that a discharge permit for discharge of contaminants to land is required to carry out the backfill activity using cleanfill.
4. The application as lodged with Council did not specifically identify a requirement for resource consent to discharge contaminants to land under s 15 RMA. However, there is nevertheless jurisdiction to grant consent for discharge to land from the backfill activity. This is because consents authorise activities, not breaches of rules (*Duggan v Auckland Council* [2017] NZHC 1540; *Macpherson v Napier City Council* [2013] NZHC 2518), and the activities for which consent was sought included backfilling of the excavation pits as part of quarrying the site. The Applicant's identification of an additional rule applicable to those activities does not in any way change the nature of the activities for which consent was sought.
5. The Applicant apologises for any inconvenience over the change in position on this issue. It will be addressed further in the Applicant's legal submissions.



Sally Gepp

Counsel for CJ Industries Limited