

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

**AND**

**IN THE MATTER:** of retrospective consent for Harmac Concrete Limited to operate a combined concrete batching plant, landscape supplies, storage and precast concrete manufacturing operation at Kowhai Ford Road, Kaikoura

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**DECISION OF THE HEARING PANEL  
28 JANUARY 2020**

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## **1.0 INTRODUCTION**

- 1.1 The following Commissioners have been appointed by the Kaikoura District Council to act as an Independent Hearing Panel in accordance with section 34A of the Resource Management Act 1991 (**the Act or RMA**).
- Mr Matthew Bonis,
  - Mr Ted Howard; and
  - Mr Clint McConchie
- 1.2 It is confirmed that, under section 39B of the RMA the above are current and accredited hearing Commissioners and have authority to hear and determine the application. No conflicts of interest have been identified.
- 1.3 The application was lodged on 10 August 2018.
- 1.4 Additional material was received on 2 April 2019 and 21 June 2019. That material sought to respond, in part, to information requests from the Council. Those responses are material to the determination as to both the scope of the application, and range of uses finally proposed. These matters are addressed below.
- 1.5 The application was notified, with submissions closing on 20 September 2019. Ten (10) submissions were received, of which seven (7) opposed the proposal. The remainder were in support or neutral to the outcome.
- 1.6 The s42A (of the RMA) officer's report was received on 18 November 2019.
- 1.7 Three minutes were issued by the Hearing Panel to both direct a timetable for exchange of evidence, directions for the Hearing, and to facilitate a request from the Applicant to lodge transport evidence through an amended exchange timetable sequence<sup>1</sup>.
- 1.8 The Hearing was held on Tuesday 10 December 2019, with the Hearing adjourned to allow the Panel to conduct a site visit and provide an opportunity for the Applicant to provide a written right of reply. The Panel received the Applicant Planner's right of reply on the 20 December 2019.
- 1.9 The Hearing was closed by Minute on 10 January 2020.
- 1.10 The appointment of the Panel extends to considering whether the application should be granted consent. This decision records the conclusions and reasoning on that matter.

## **2.0 DESCRIPTION OF THE PROPSAL AND THE SITE**

### *The Proposal*

- 2.1 The exact nature of the application was dynamic through the application, Hearing and subsequent Applicant's right of reply.
- 2.2 The Panel accepts the following has been consistently and clearly applied for<sup>2</sup>:

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<sup>1</sup> Minute 1 dated 19 November 2019; Minute 2 dated 21 November 2019; Minute 3 dated 26 November 2019.

<sup>2</sup> Based on the application as dated 10 August 2018, and amended 2 April 2019.

Retrospective land use consent to extend the activities consented pursuant to consent Application Number 08052 from 7,000m<sup>2</sup> to 3.5 hectares, including:

- Provision for working space for the North Canterbury Transport Alliance (**NCTIR**) for '*storage, laydown and material fabrication by the tunnels and structures teams within the NCTIR programme*' and associated administration offices and staff facilities<sup>3</sup>;
- A maximum of 35 people will be working on the NCTIR site each day;
- Associated hazardous substances each equipped with 2,400 litres of bunding;
- Vehicle and manoeuvring areas and a second access / egress to Kowhai Ford Road, generating a maximum total number of 924 adjusted equivalent car movements (**ecm**) as defined by the Kaikoura District Plan (**the Plan**). The ecm is a conversion ratio for trucks and trailers to equivalent car movements;
- Operational hours of 5am to 7pm seven days per week, with night works not exceeding five days per month from 6pm to 6am; and
- Associated earth bunding and landscaping.

2.3 Further information required by Section 92 of the Act, and received by the Council on 2 April 2019, provided the following clarification:

- '*The consent should be for a period extending until June 2020*<sup>4</sup>.
- With the exception of bulk fuel storage, all hazardous materials will comply with the thresholds in the Plan. The above ground bulk fuel storage tank has a containment capacity of 110%.

2.4 Additional further information received on 21 June 2019 clarified that night works (6am to 6pm) not exceeding five days in any Calendar month would be required only in response to '*emergency situations*<sup>5</sup>.

2.5 Evidence pre-circulated by the Applicant's Planner (26 November 2019) subsequently sought to extend the uses of the expanded site beyond June 2020<sup>6</sup>:

*'The Applicant would like to retain the wider site for light industrial activities and to continue to internalise the effects from the concrete plant after June 2020'.*

The Applicant's Transport witness identifies in evidence that an '*ongoing traffic generation of 300 ecm/day is sought following the end of the retrospective consent period*<sup>7</sup>.

2.6 Finally, in the right of reply (20 December 2020), the Applicant's Planner notes that the s42A report prepared by Mr Marcus Langman '*has correctly assessed the application on the information given to him*' in relation to the duration of consent<sup>8</sup>, but

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<sup>3</sup> Application. 10 Aug 2018 [page 4]

<sup>4</sup> Response to further information request. 2 April 2019 [Page 4].

<sup>5</sup> Response to further information request. 21 June 2019 [Page 2].

<sup>6</sup> Evidence Vaughan [24]

<sup>7</sup> Evidence Metherell [47]

<sup>8</sup> Right of reply. Vaughan [40]

seeks consent for the enlarged site for '*a range of concrete activities and light industrial activities that do not generate objectionable odour, dust or noise*'<sup>9</sup>.

### *The site*

2.7 The site and surrounds are described in the application documents and Council's s42A Report. Relevant matters to this determination are as follows:

- The site is some 4.5km from Kaikoura's zoned urban area.
- The site is located on the southern side of Kowhai Ford Road (rural local road) with two accessways. The eastern most access is located 290m from the intersection with Red Swamp Road (collector road), with the intersection with Mills Road (collector) located some 160m to the south of the Red Swamp intersection.
- Kowhai Ford Road has a sealed carriageway of 7.0m, with no road markings. The section to the west which fords Kowhai River is unsealed.
- Consent was issued for the use of 7,000m<sup>2</sup> of the site which established the existing concrete batching and landscape supplies on the site (Application Number 08052). That consent was subject to a number of conditions, including:
  - one access opposite Harris Lane;
  - screening and planting of a formed landscaped bund along the northern and eastern boundary, with species capable of reaching 8m (Condition 2);
  - noise controls and hours of operation; and
  - a review condition pursuant to section 128 of the Act. This allows the Council to impose additional conditions to deal with any unforeseen adverse effects.
- The surrounding area is rural in nature, with large open areas predominantly related to pastoral farming.
- The existing Downers EDI yard and gravel extraction activities take place some 430m west of the site. These activities are screened to the west, east and south by plantation forestry. Further extraction and aggregate storage activities are undertaken at Kowhai Ford.
- There is a defined NCTIR Haul Route comprising Kowhai Ford Road, Red Swamp Road between Kowhai Ford Road and Mill Road and Mill Road.
- Communications cabling and storage associated with Underground Brown is located between Kowhai Ford Road and the planted bund. These activities and their effects are neither consented, nor form part of this application and have been excluded from the Panel's consideration of the environment pursuant to s104(1)(a) of the Act. Also excluded are the current material and

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<sup>9</sup> Right of reply. Vaughan [48]

aggregate storage activities being undertaken on the site opposite the accessway serving 12 Kowhai Ford Road.

- Proximate to the site are a modest cluster of residential activities established on allotment sizes of between 2.0ha and 2.8ha. The more immediate include:
    - 12 Kowhai Ford Road (80m);
    - 140 Red Swamp Road (140m);
    - 209 Red Swamp Road (150m);
    - 208 Red Swamp Road (240m); and
    - 388 Mill Road (270m).
  - 12 Kowhai Ford Road was consented on 15 May 2012 for visitor accommodation (application Number 12019) for up to 14 overnight guests in temporary lodgings.
- 2.8 There is nothing inherently wrong with the applicant seeking to retrospectively consent activities undertaken on the 3.5ha site. The prosecution and enforcement sections of the Act are to be used as the punitive arm of the statute, not the consenting regime (*Colonial Homes vs Queenstown Lakes District Council W104/95*).
- 2.9 The corollary is that those activities and their effects, in being unlawfully established, are not to be taken into account in terms of a determination of the 'environment' for the purposes of s104(1)(a).
- 2.10 The Panel considers that the environment at a macro level, for the purposes of s104(1)(a) is dominated by the rural environment, and its associated character and amenity.
- 2.11 At a micro level, the environment exhibits characteristics reflective of the smaller scale rural lifestyle activities being undertaken on sites below 4ha surrounding the site, including the consented visitor accommodation activities undertaken at 12 Kowhai Flat Road.
- 2.12 Also, at that finer grain, the environment includes the consented operations of Application Number 08052, and vehicle movements associated with the Downer EDI yard, extraction activities at Kowhai Ford, and diminishing vehicle activities associated with the NCTIR haul route. These activities present a contrasting 'rural industrial working' environment but are of a scale and intensity that does not undermine the integrity of the wider rural character and amenity.

### 3.0 ACTIVITY STATUS

#### *Activity Status*

- 3.1 The site and surrounds are located within the Rural Zone.
- 3.2 The proposal is a **discretionary activity** under the Plan due to a breach of:
- **Rule 22.7** for Industrial and Commercial activities seeking to locate in the Rural zone; and

- **Rule 9.4.2(2)** for the storage of 10,450 litres diesel storage where 3,000 litres is permitted.
- 3.3 The Panel notes that a restricted discretionary status is also applied to the following elements of the proposal:
- **Rule 12.8.2** Vehicle Crossings designed in accordance with Appendix J;
  - **Rule 12.8.4** High Traffic Generation;
  - **Rule 9.4.2** Hazardous Substances – Primary and secondary containment; and
  - **Rule 22.8.2** – Noise limits in the Rural zone.
- 3.4 With the inclusion of a breach of Rule 12.8.2, the Panel accepts the compliance assessment provided by Mr Langman<sup>10</sup>.

#### **4.0 NOTIFICATION AND SUBMISSIONS**

- 4.1 A total of ten (10) submissions were received. Objections raised by the seven (7) in opposition can be broadly categorised as:
- Traffic issues (safety, function and integrity of the supporting network, and noise).
  - Noise effects, including hours of operation, plant and generated vehicle trips.
  - Hazardous substances stored on the site.
  - The scale and incompatibility of activities with rural amenity and character.
  - Dust trespass beyond the site (extended yard and site access).
  - Implications on Te Rūnanga o Kaikōura as kaitiaki, including protection of taonga and mahinga kai.
  - Impacts on consented businesses in the area.
- 4.2 Submissions in support identified:
- Benefits associated with consolidating recovery activities with the current consented operations.
- 4.3 Overall, the primary concerns come under the broad umbrella of rural amenity, or rural ambience.

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<sup>10</sup> Section 42A Report. Langman [3.1].

## 5.0 THE LAW

- 5.1 Section 104 of the RMA provides that when considering the application for resource consent and any submissions received, the Decision maker must, subject to Part 2, have regard (relevantly) to:
- Any actual or potential effects on the environment of allowing the activity (s104(1)(a));
  - The relevant provisions of the Canterbury Regional Policy Statement (2013) and the Kaikoura District Plan (2007) (s104(1)(b)); and
  - Any other matter considered relevant and reasonably necessary to determine the application (s104(1)(c)).
- 5.2 The decision whether to grant or refuse an application for a discretionary activity is made under s104B of the Act and entails a judgement that is informed by the matters set out in s104<sup>11</sup>.
- 5.3 In terms of a consideration of Section 104(1)(b) of the RMA, both Planners<sup>12</sup> agreed that recourse would be held to the Canterbury Regional Policy Statement (2013) given that the Kaikoura District Plan had not been reviewed since the CRPS became operative.
- 5.4 The Panel is also able to disregard an adverse effect of an activity on the environment if the District Plan permits an activity with that effect in accordance with s104(2) of the Act (known as the 'permitted baseline'). On this occasion, we have declined to apply the permitted baseline. Having heard from Mr Langman and Ms Vaughan, we find that it would be fanciful to discount effects associated with bunding and site clearance as set out in the applicant's right of reply [19]. We cannot envisage a 3.5ha example related to such earthworks for agricultural machinery storage, baleage or the like. Regardless, the erection of bunds as put forward by Ms Vaughan are not of particular concern in this case. The concern is the industrial uses of the site, and any comparison to rural activities therefore loses relevance.
- 5.5 Pursuant to s108 if the Panel grants the application, it may impose conditions.

## 6.0 THE HEARING AND APPEARANCES

### *The Applicant*

- 6.1 **Ms Rachel Vaughan**, a qualified and experienced Planner provided a brief synopsis of her assessment in the application and submitted evidence.
- 6.2 In terms of the receiving environment, she considered that the activities proposed were compatible with the character and amenity of the surrounding environment.
- 6.3 Ms Vaughan identified that noise generated from the site on surrounding uses was predominantly from consented batching operations, but that the applicant would also abide with the additional restraint on operating hours sought within the s42A Report.

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<sup>11</sup> *Stirling vs Christchurch City Council* [2011] 16 ELRNZ 798(HC) [53]

<sup>12</sup> Vaughan Evidence in Chief [64], Section 42A Report Langman [7.6]

- 6.4 She considered, based on the evidence of Mr Metherell (Traffic Engineer for the applicant) that impacts on the safety, efficiency and function of the road network were acceptable and needed to be considered in the context of Red Swamp Road being notated as a NCTIR haul route. In terms of generated traffic and associated effects on surrounding neighbours, she suggested that these would not be discernible from existing or permitted uses.
- 6.5 Conditions associated with dust control were also accepted.
- 6.6 In response to questions from the Panel, Ms Vaughan was initially of the view that Policy 5.3.1 of the CRPS was not relevant to the proposal. She conceded that the activities undertaken were Industrial, but that the activities did not need to adjoin or locate within the urban area as these were related to the aggregate extraction activities at Kowhai River. Ms Vaughan expressed the view that there were no appropriate sites within the Kaikoura urban area that could accommodate the proposal.
- 6.7 Ms Vaughan set out the retrospective nature and history associated with the proposal and expressed the view that the activities are anticipated under Clause 14 of the Hurunui / Kaikoura Earthquakes Recovery (Coastal Route and Other Matters) Order 2016 which provided for earthquake recovery.
- 6.8 Ms Vaughan concluded that she was of the view that the proposal was consistent with the respective provisions of the CRPS and District Plan, and consent should be granted, subject to conditions. She volunteered a condition which would seek to establish a community liaison group.
- 6.9 **Mr Kelvin McMillan**, who is the Area Manager, Road Metals Ltd, helpfully set out the uses undertaken at the site; the need to coalesce earthquake recovery operations and the relationship with consented batching activities undertaken on site. He identified that the scale of NCTIR pre-casting was reducing, but that the modular pre-cast blocks able to be produced also had a function in terms of garages, (farm) sheds, houses, and (temporary) slip or slope stabilization/protection and flood mitigation works that would extend beyond the life of the NCTIR occupancy.
- 6.10 In response to questions from the Panel, Mr McMillan corrected an initial response as to the source of material processed at the site. He stated that only material sourced from the Kowhai River is used in the concrete batching operations on this site. He also identified that consent beyond June 2020 was now being sought given the investment made with the facility.
- 6.11 **Mr Andrew Metherell**, a qualified and experience Transport Engineer provided a synopsis of his evidence. He agreed with the submitters that the integrity of the wider road network was impacted, but that as the site is part of a defined NCTIR haul route, management and remediation is a function of agreement between the Council and NZTA.
- 6.12 In terms of road safety, he identified that there were no recorded crash incidents associated with trucks on the network; that road user visibility was appropriate, as were visibility and sight lines associated with access.
- 6.13 Mr Metherell identified that seal on Kowhai Road reserve would need to be extended to accommodate right turn manoeuvres associated with the 'new' additional access. The increased seal width would be necessary to maintain the integrity of the formed



carriageway and reduce dust nuisance. He confirmed that 160 daily vehicle movements were consented by the concrete batching operations and posited that the requirement to increase the sealed carriageway be attached to the capacity of 300 daily vehicle movements which he understood to be sought beyond June 2020.

- 6.14 **Mr Kevin Cole**, resident and property owner at 12 Kowhai Ford Road provided a brief statement. That statement addressed Mr Cole's concerns with:
- The absence of information contained within the application, inconsistency in terms of outcomes sought, and the cessation of consent;
  - The use of the site for third party interests that were not identified in the consent application;
  - Effects associated with activities being undertaken on the site, including dust and noise, in particular reversing beacons.
- 6.15 Mr Cole outlined that the effects from the activities were incompatible with his consented guest accommodation and llama trekking business that was located 50m from the proposal site. He stated that the proposal if consented would degrade rural amenity and character to an unacceptable level, as it essentially represented an industrial operation locating within a rural environment.
- 6.16 He did not accept that the effects of the proposal were largely generated from consented activities on the site, or were not discernible from truck movements or activities undertaken in the wider environment.
- 6.17 Mr Cole concluded by stating that he wished to see the site restored, including the removal of the bund and the site reinstated to its previous condition.
- 6.18 **Mr Korey Gibson** representing Te Rūnanga o Kaikōura highlighted a number of matters in the submission. He expressed concerns as to industrial activities within the Kowhai floodplain and potential threats to mahinga kai. He expressed concerns as to potential health risks from dust trespass, and also questioned why the bund had not yet been planted. He expressed a view that if retained, the applicant should consider the whakapapa of particular trees and plant species endemic to the area.
- 6.19 Finally, Mr Gibson advised the Panel and the applicant to better consider the environmental impacts of the proposal. He quoted a Māori Whakataukī that roughly translates to: "If we look after our environment, it will look after us".
- 6.20 Mr Gibson confirmed to the Panel that he had not gained a clear understanding as to what was envisaged by the Applicant for the site post June 2020.
- 6.21 The Panel then heard from **Mr Marcus Langman**, Planning Officer for the Council.
- 6.22 Mr Langman confirmed to the Panel that the premise of the application as lodged was cessation of the activity in June 2020 with the site to then be returned to a pre-quake baseline. He cautioned the Panel that granting consent beyond June 2020 would prejudice other submitters and raise issues of scope and vires.
- 6.23 In response to questions, Mr Langman stated that the Council's Traffic Engineer (Mr Mark Millar) was satisfied that improvements to the access would resolve any concerns with the transport network, but that with a cessation of activities in June 2020 access improvements may not be required, as subject to measures to control dust mitigation.

- 6.24 Mr Langman considered that whilst traffic safety and efficiency were acceptable, effects on rural amenity and noise from traffic generation were more than minor. He noted that this matter was finely balanced, but concluded that the short duration of consent, its purpose as associated with recovery efforts, and the proposed limitation on hours would make amenity effects acceptable. He was consistent and clear that such a view would not be sustained were industrial activities to occur on the site in perpetuity.
- 6.25 Mr Langman considered that the activities being undertaken on the site were deemed as 'industrial' activities under both the Plan and Canterbury Regional Policy Statement (**CRPS**). He considered that the activity was inconsistent with urban form and growth provisions contained in the CRPS, and the localised character and amenity provisions contained in the Plan.
- 6.26 In response to questions Mr Langman agreed that were consent not to be issued beyond June 2020, a condition requiring bund planting would be inefficient, subject to rehabilitation of the site and landscaping as required under the consent Application Number 08052.
- 6.27 On behalf of the applicant, Ms Vaughan advised that she would provide response by written right of reply. The Fourth Minute of the Panel specifically stated that such include:
- “Formal correspondence as to NCTIR’s recorded duties and responsibilities with regard to restoration of the proposal site when activities on the site commenced”.*
- 6.28 The Panel adjourned the Hearing at approximately 2:30pm. The Panel then visited the site aided by Mr McMillan, and the property at 12 Kowhai Ford Road aided by Mr Cole. During that visit the Panel were able to see the extent of dust trespass from the subject site extending beyond the northern extent of the Kowhai Ford carriageway. The Panel also noted the extent of truck movements occurring proximate to the site, in particular to what appeared to be an informal, and likely unlawful, aggregate deposit area immediately adjoining 12 Kowhai Ford Road.
- 6.29 The Right of Reply was received from Ms Vaughan on 20 December 2019. The right of reply: reiterated the view that the activity was compatible with rural amenity; that the proposal did not conflict with relevant provisions in the CRPS and District Plan; and whilst conceding that information associated with the consent as lodged limited the application to June 2020, that consent for a range of (undefined) light industrial activities could be provided in perpetuity.
- 6.30 The Panel noted that the right of reply did not contain the explicitly requested information as to site rehabilitation.

## **7.0 SUBSTANTIVE DECISION – SECTIONS 104/104B RMA**

### *Cessation date - Scope*

- 7.1 Ms Vaughan requested in evidence and the right of reply that the consent should encapsulate 'light industrial activities' and extend beyond June 2020. This

contradicted information provided which established a cessation of activities after June 2020<sup>13</sup>.

- 7.2 The Panel understands that further information required under s92 of the RMA cannot widen an application, but such material may limit the application and consent<sup>14</sup>. Furthermore, whilst amendments can be made, they are only permissible if they are within the scope defined by the original application; this means that amendments cannot increase the scale or intensity of an activity or significantly alter the character or effects of the proposal<sup>15</sup>.
- 7.3 In response to questions it was clear to the Panel that neither the Council Officer nor Submitters accepted that the proposed application was intended to extend beyond June 2020.
- 7.4 Seeking to widen the application during the hearing process to undertake a range of 'light industrial activities' post June 2020 is outside the scope of the application as originally lodged and beyond our jurisdiction to consider. If we accepted this proposition it could potentially impact on the statutory rights of others who may have otherwise sought to be involved in the process.
- 7.5 We noted that it is incumbent on the Applicant to ensure a coherent and robust description of the proposal and effects pursuant to s88 of the RMA is lodged. Considerable time has been invested by the Panel (and undoubtedly submitters) to ascertain the exact nature and scope of the proposal.
- 7.6 If the application was to be changed to extend beyond June 2020 then in our view it would have needed to be relodged with an up-dated assessment and re-notified.
- 7.7 The Panel therefore considers that the cessation date of any consent able to be granted by this application is 30 June 2020.

#### *Effects on the Environment (s104(1)(a))*

- 7.8 Having addressed the scope issue we have gone onto carefully considered the evidence provided to us, including presented evidence, responses to our questions and material contained in all submissions received. In summary, the points of contention are:
- Impacts on rural amenity and character, including dust;
  - Impacts related to noise, including hours of operation; and
  - Impacts related to traffic.
- 7.9 We consider that matters associated with hazardous substances are appropriately addressed and agreed between the Planners on the basis that storage will comply with respective HSNO regulations.
- 7.10 We appreciate the insights provided to us by Mr Gibson in terms of values to mana whenua. We consider that as a consequence of the overall decision, controls and

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<sup>13</sup> Response to Information Request 2 April 2019; Right of Reply 20 December 2020.

<sup>14</sup> *Clevedon Protection Soc Inc vs Warren Fowler Ltd (1997)* 3ELRNZ 169.

<sup>15</sup> *Darroch vs Whangarei DC A018/93*

cessation, and the requirement for site restoration, that adverse effects on natural and cultural values and cultural landscapes to be no more than minor.

- 7.11 In terms of the concerns raised by Mr Cole as to loss of property values, we note that the definition of the 'environment' in s2 of the RMA clearly includes *economic* considerations as separate to *amenity values*. Accordingly, economic consequences should not be disregarded, but these are to be considered as a consequence of a tangible reduction in amenity values.
- 7.12 To consider both a reduction in amenity values and cumulatively account for a consequential reduction in market value would inflate the actual impacts of a proposal. Therefore, if the conclusion reached was that amenity values were degraded by a proposal, it would stand to reason that the market value of adjoining properties was also diminished.
- 7.13 Regardless Mr Cole did not provide any determinative evidence on this matter. We have therefore focused on a consideration of amenity effects.

#### Impacts on rural amenity and character, including dust

- 7.14 Amenity is defined in s2 of the RMA as:

*"... those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes."*

- 7.15 The Panel notes that there is no one descriptor of the District's Rural zone, or its amenity expectations. The Panel however acknowledges that **Objective 22.2.1** outlines the need to provide for activities that sustain the amenity and environmental values of the rural environment, and maintain the quality of the rural environment recognising the working nature of the rural environment, provided conflicts are minimised (**Policy 22.2.2.3**).
- 7.16 In addition, development is to be managed so that sites remain open with a rural character when viewed from roads (**Policy 22.2.2.1(b)**), and the amenities, quality and character of rural environments is retained (Anticipated Outcome 22.5.2).
- 7.17 The Panel has determined that the environment for the purposes of s104(1)(a) is predominantly agricultural and pastoral and whilst containing at a micro level activities presenting a contrasting 'rural working' environment, these are not of a scale and intensity that undermines the integrity of wider rural character and amenity which is dominated by openness, pastoral farmland and associated dwellings, and interspersed shelterbelts.
- 7.18 The amenity values of the rural area of Canterbury is also of concern in the Operative CRPS. As identified in the evidence of Mr Langman, **Objective 5.3.1** seeks to ensure sustainable development in a manner that maintains and enhances amenity values (clause 5); and that reverse sensitivity effects and conflicts between incompatible activities are avoided or mitigated (**Objective 5.3.2**)
- 7.19 This aspect of the proposal was the most substantial issue to adjoining submitters objecting to the proposal. Collectively, their concerns expressed that the traffic movements, hours of operation, dust generation, vehicle and machinery noise were akin to an industrial activity.

- 7.20 The applicant's case was that any adverse effect on rural amenities from operations is largely compatible with the existing environment, vehicle movements are largely indistinguishable from existing movements, and that the activities being undertaken are not visible from the adjoining rural environment because of the substantial exterior bunds.
- 7.21 We accept the planning evidence of both Ms Vaughan and Mr Langman that the visual impact of these activities is mitigated by the bunding on the site, and proposed landscaping. We therefore accept that these effects will be minor and limited to views into the site at the entranceways. Furthermore, given the cessation of the site activities in June 2020 and its subsequent rehabilitation, the absence of landscaping of the bunds is not considered to create effects which are more than minor.
- 7.22 We do however accept the views of submitters, including the evidence of Mr Cole that rural amenities are not just determined by what can be seen. It was apparent from the submissions, the evidence of Mr Langman and from our site visit that even where the on-site activities are not immediately visible, the adjoining occupiers are subject to continuous reminders of its presence through such things as dust, vehicle movement and noise, and machinery operations. Such activity might be normal in an industrial setting, but we consider they can diminish the amenities of a rural area.
- 7.23 We reject entirely the contention from Ms Vaughan that Mr Coles would not be able to discern the frequency and extent of heavy vehicles generated from the activity, or that he is responsible for acoustic insulation mitigation associated the applicant's proposed activities. Mr Coles has obtained resource consent for his accommodation business; it is in this situation the responsibility of the new entrant that needs to manage or otherwise internalise the effects being generated.
- 7.24 We do not accept that the rural area in the vicinity is however a place of unspoilt rural tranquillity or quiet repose. The existing environment does contain some activities representative of a rural industrial environment, in this instance aggregate extraction operations associated with Kowhai Ford and Downers EDI. These activities, being related to gravel extraction are identified in the Plan (**Policy 22.2.2.8**). In addition, as a NCTIR haulage route there are additional, albeit declining, truck movements on Kowhai Ford Road. Regardless, and in removing from our consideration the unconsented existing operations, rural amenity and character in the area remains represented by open space and intermittent noise and vehicle movements.
- 7.25 The issue for the Panel, is whether the proposal would, if granted, dominate a surrounding rural environment that at present is largely characterised by openness, significant visual separation between buildings and intermittent noise and vehicle movements.
- 7.26 We consider that that the effects generated by the proposed activity are (that is beyond those effects associated with consent Application Number 08052), on the face of it, unable to be entirely absorbed into this environment in a manner that would uphold and maintain those values, and hence retain the dominant rural character and amenity.
- 7.27 Accordingly, we concur with Mr Langman that the adverse effects on rural amenity and character are moderate to significant. We consider that were there scope to consider activities and effects beyond June 2020 that this matter alone would be a substantial factor in declining consent.

- 7.28 Predicated on the cessation of consent in June 2020, in conjunction with a requirement to rehabilitate the site and limitations on hours of operation, as discussed below, the Panel considers that temporal effects on rural amenity are minor.
- 7.29 In terms of dust nuisance, the Panel agrees with Mr Langman and the submission evidence of Mr Coles that dust trespass is a substantial issue. This was also apparent from having viewed the site and operations. The Panel considers that a condition seeking that dust nuisance be internalised, including through the use of use of water truck to suppress dust on windy days would need to be imposed with any grant of consent.

#### Impacts related to noise, including hours of operation

- 7.30 Several submitters raised issues in terms of the disruption associated with vehicle movements<sup>16</sup>, particularly as these related to operation hours and sleep disturbance.
- 7.31 The Panel notes that it is unrestricted in terms of its ability to consider effects, given the status of the proposal as a discretionary activity. In terms of noise, this means that traffic noise on the network as generated by the activity can legitimately be considered. We note that an assessment of vehicle noise did not form part of the acoustic assessment provided by the applicant<sup>17</sup>.
- 7.32 We accept Mr Langman's views, based on the experiences provided by these submitters, that movements prior to 7am result in significant effects on the amenity of neighbouring properties. We acknowledge that Ms Vaughan also conceded this point, accepting that a limitation on heavy vehicles to or from the site prior to 7am should be imposed.
- 7.33 The Panel disagrees with the exception to the operating hours requested by Ms Vaughan to provide for 'emergencies'. Whilst we accept that such events could be infrequent, an absence of clarity as to what constituted an 'emergency', coupled with perceived issues associated with administration and enforcement means that the Panel considers that the exclusion cannot be provided for.
- 7.34 We note that subject to those limits, operating hours would be constrained to the daytime noise period expressed in the Plan<sup>18</sup>, ensuring that night-time noise amenity was maintained.
- 7.35 Subject to these limits, and the June 2020 cessation, the Panel is satisfied that noise effects are no more than minor.

#### Impacts related to traffic

- 7.36 Mr Metherell identified that the assessed generation maximum of 804ecm from combined activities on the site represented a post-earthquake recovery peak, and that typical movements from the NCTIR part of the site was on average 10 heavy

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<sup>16</sup> Canterbury Health Board, A Scott, J Marsden and R Arona, M&N Ingram, K Cole, T&R Ross, and S Luecht.

<sup>17</sup> Response to Information Request. June 2019). Appendix 1. Food and Heath Standards.

<sup>18</sup> District Plan. Rule 22.8.2

vehicles / day, and 18 light vehicles / day. This accords with the anecdotal evidence provided in submissions.

- 7.37 Accordingly, the Panel considers that the assessed maximum traffic flows in Mr Metherell's evidence represents a retrospective assessment associated with peak recovery works being undertaken on the site; those maximums will not be replicated through to the cessation of activities in June 2020.
- 7.38 Overall, the Panel accepts the evidence of Mr Metherell that the movements onto the adjoining roading network can be undertaken in a manner that does not affect transport safety or network efficiency to a more than minor degree.
- 7.39 For completeness, resource consent is also required in relation to the eastern NCTIR access onto Kowhai Ford Road. A compliant access requires a 10m depth of seal into the site and widening on the opposite side of the access as required in Appendix J of the Plan.
- 7.40 The Panel agrees with Mr Metherell that contextually, the widening of Kowhai Road at the access point is not needed for vehicles to safely pass turning vehicles given the low-moderate traffic volumes and speed environment.
- 7.41 The Panel does however consider that there would be benefits in sealing the entranceway in terms of dust suppression. However, we concur with Mr Metherell that the access improvements do not represent efficient mitigation, given the temporal nature of the consent. In its place, the Panel considers the imposition of a condition in relation to use of a water truck to manage dust trespass could provide sufficient mitigation, and that the rehabilitation plan extends to remediation and re-grassing of that part of the road corridor that has been impacted by right turning movements from the NCTIR access.
- 7.42 In terms of the degraded nature of the surrounding network, the Panel concurs with Mr Metherell and Mr Langman that this is a matter that is to be addressed by the Council and NCTIR<sup>19</sup>.
- 7.43 Overall, the Panel considers that effects on the transport network are no more than minor, predicated on the actual volumes of vehicles being generated, the cessation of activities in June 2020 and site rehabilitation, and the need for ongoing site management to internalise dust trespass.

#### Positive effects

- 7.44 We are required by s104(1)(a) to consider both the adverse, and positive effects of the proposal.
- 7.45 In this instance, we accept that the positive effects associated with the proposal are substantial.
- 7.46 Principally, the origins of the activity are intrinsically linked to the Hurunui Kaikoura Earthquake series which commenced on 14 November 2016. The ability to quickly configure infrastructural responses to respond in a timely manner to the rebuild of State Highway 1 and rail route required quick and co-ordinated decision making to provide for the planning, rebuilding and recovery of affected communities, and

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<sup>19</sup> S42A Report. Langman [6.10].

reopen strategic road and rail links. In that context, the consolidation of the NCTIR related activities with the consented and certified Harmac Concrete Limited concrete batching plant was logical and pragmatic.

- 7.47 In addition, we also consider that there are a number of functional and operational benefits ascribed to the proposal. Principally as these relate to on-site storage, logistics and management given the interrelationship between the NCTIR storage, fabrication and tunnels and structures team and existing consented operations at the site.
- 7.48 We also acknowledge that there are individual positive effects ascribed to Harmac and the applicant, including production and storage of 'lego' blocks for use in infrastructure projects, but we consider those benefits to be minor in relation to the scale of other negative effects.

### Overall Conclusion of Effects

- 7.49 Having the advantage of viewing the site, we agree with Mr Langman and the submitters that the effects of the proposal will be more than minor, specifically as these relate to dust trespass, noise and transport movements. We consider the activities undertaken on the site are generally inconsistent with rural amenity, and incompatible with surrounding rural (and consented) uses. Mitigating this to some extent however is the short duration of the application.

### *Relevant Objectives, Policies and Other Provisions of the Plan (s104(1)(b))*

- 7.50 There was little dispute as to the relevant objectives and policies.
- 7.51 There was also no dispute as to the application of provisions within the CRPS, given the likelihood of incomplete coverage or uncertainty in the District Plan which preceded the operative CRPS.

### Canterbury Regional Policy Statement 2013

- 7.52 The provisions in contention are **Objective 5.3.1** and Objective 5.3.2 and associated policies. Based on the consideration of effects above, the proposal does not trouble provisions in Chapter 11 (Natural Hazards) and Chapter 18 (Hazardous Substances).
- 7.53 The CRPS defines 'Urban Activities' as:
- "A concentration of residential, commercial and/or industrial activities, having the nature of town or village which is predominantly non-agricultural or non-rural in nature".*
- 7.54 The Panel considers that the proposal is defined as an 'Urban Activity', noting that the site is largely dedicated to material storage, road rebuild and cabling, as well as manufacturing. Ms Vaughan conceded this point during questions, noting *'the activity would be a better fit in an Industrial zone'*. We disagree with Ms Vaughan's contention in her right of reply [commencing 18], that there is a discretion to be applied as to whether Industrial activities are contained within the definition of 'Urban Activities'.



7.55 As an urban activity, **Objective 5.2.1** and associated **Policy 5.3.1** seeks to manage the growth and form of urban areas in the Region.

**Objective 5.2.1** seeks that:

*Development is located and designed so that it functions in a way that:*

1. *achieves consolidated, well designed and sustainable growth in and around existing urban areas as the primary focus for accommodating the region's growth; and*
2. *enables people and communities, including future generations, to provide for their social, economic and cultural well-being and health and safety; and which:*

Associated **Policy 5.3.1** states:

To provide, as the primary focus for meeting the wider region's growth needs, sustainable development patterns that:

1. *ensure that any*
  - a. *urban growth; and*
  - b. *limited rural residential development occur in a form that concentrates, or is attached to, existing urban areas and promotes a coordinated pattern of development;*
2. *encourage ..and*
5. *encourage high quality urban design, including the maintenance and enhancement of amenity values.*

7.56 The Oxford dictionary definition for ensure:

*means to make certain that (something) will occur*

7.57 The Oxford dictionary definition for attached mean:

*means joined, fastened or connected.*

7.58 In relation to urban activities the CRPS is unequivocal and directive; where urban activities are not in a form that concentrates, or are attached to the existing Kaikoura urban area - these provisions of the CRPS are not achieved. Accordingly, the proposal is contrary to these provisions of the CRPS.

7.59 **Policy 5.3.2** sets out the respective development conditions associated with growth as follows:

*To enable development ... which:*

1. *ensure that adverse effects are avoided, remedied or mitigated, including where these would compromise or foreclose:*
  - a. *...;*
  - b. *...;*
  - c. *the productivity of the region's soil resources, without regard to the need to make appropriate use of soil which is valued for existing or foreseeable future primary production, or through further fragmentation of rural land;*
  - d. *...;*
2. *avoid or mitigate:*
  - a. *natural and other hazards, or land uses that would likely result in increases in the frequency and/or severity of hazards;*
  - b. *reverse sensitivity effects and conflicts between incompatible activities, including identified mineral extraction areas;*  
*and*
3. *integrate with:*

- a. *the efficient and effective provision, maintenance or upgrade of infrastructure; and*
- b. *transport networks, connections and modes so as to provide for the sustainable and efficient movement of people, goods and services, and a logical, permeable and safe transport system.*

7.60 The Panel did not receive any evidence as to whether the activity would foreclose future productive potential but consider that with rehabilitation this is not a material consideration.

7.61 The Panel have concluded that the proposal, were it to continue beyond June 2020 would have a significant and detrimental effect on surrounding rural amenity; hence would be contrary to **Policy 5.3.2.2(b)** creating effects on adjoining activities which fundamentally are predicated on rural character and amenity being maintained.

7.62 However, with the cessation period of the consent, and the need for improved mitigation such as controlling dust trespass, the Panel considers the proposal to be only inconsistent with this provision.

7.63 **Policy 5.3.8** seeks the integration of land use and transport, including the safe, efficient and effective use of transport infrastructure. Based on the evidence of Mr Metherell, control on hours of operation and mitigation of dust trespass, the Panel considers that the proposal is not inconsistent to this policy.

7.64 Lastly, **Policy 5.3.12** seeks to:

*Maintain and enhance natural and physical resources contributing to Canterbury's overall rural productive economy in areas which are valued for existing or foreseeable future primary production, by:*

1. *avoiding development, and/or fragmentation which;*
  - a. *forecloses the ability to make appropriate use of that land for primary production; and/or*
  - b. *results in reverse sensitivity effects that limit or precludes primary production.*
2. *enabling tourism, employment and recreational development in rural areas, provided that it:*
  - a. *is consistent and compatible with rural character, activities, and an open rural environment;*
  - b. *has a direct relationship with or is dependent upon rural activities, rural resources or raw material inputs sourced from within the rural area;*
  - c. *is not likely to result in proliferation of employment (including that associated with industrial activities) that is not linked to activities or raw material inputs sourced from within the rural area; and*
  - d. *is of a scale that would not compromise the primary focus for accommodating growth in consolidated, well designed and more sustainable development patterns.*

7.65 Whilst the Panel acknowledges that a proportion of the activities undertaken on the site are predicated on raw materials sourced from the rural area, the majority of activities undertaken in the NCTIR site area are not, nor are they compatible with the dominant rural character and open rural environment of the area. However, the Panel agrees with Mr Langman that the temporary nature of the consent does not compromise longer term rural production. Accordingly, and subject to conditions including the requirement for site rehabilitation, the proposal is not inconsistent with this provision.

7.66 Overall, it is concluded that the proposal is contrary to **Policy 5.3.1** and does not further the attainment of **Policy 5.3.2**.

## Kaikoura District Plan

- 7.67 In her right of reply, Ms Vaughan draws the Panel's attention to Chapter 7 of the District Plan which seeks to manage 'Development and Tourism'.
- 7.68 Ms Vaughan references Objective 7.4.1 and associated Policy 7.4.2.1 in terms of her argument as to zoned capacity limitations. The Panel concludes that these provisions are explicitly related to 'commercial activities' have little or no relevance to the proposal. The Panel do however acknowledge **Policy 7.3.2.1** which states:
- "To ensure that existing physical infrastructure is used efficiently by accommodating additional urban development within the existing urban areas or on the periphery of these areas".*
- 7.69 This provision of the Plan is similar to **Policy 5.3.1** of the CRPS, and seeks to ensure (that is 'make certain') that urban development is contained or attached to the existing urban area. Consequently, the Panel also concludes that the proposal is contrary with this provision.
- 7.70 Chapter 12 of the Plan contains a number of transport related objectives and policies. These seek respectively, as set out in the Section 42A report of Mr Langman, to:
- Provide for the safe and efficient use of transport infrastructure (**Objective 12.2.1, Policy 12.2.2.1**);
  - To ensure appropriate access, and internalised parking and manoeuvring (**Policy 12.2.2.4, Policy 12.2.2.5, Policy 12.2.2.9**); and
  - To avoid, remedy or mitigate actual or potential adverse effects of transport (**Objective 12.3.1, Policy 12.3.2.7**).
- 7.71 Based on the evidence of Mr Metherell, the Panel has concluded that the proposal upholds the safe and efficient use of transport infrastructure. Primarily, this is a consequence of the network being able to absorb traffic generated from the site, noting the reduction in movements post recovery, and that NCTIR and the Council have an ongoing role to play in terms of restoring the integrity of Kowhai Ford Road.
- 7.72 Similarly, the Panel has considered that with the cessation of activities in June 2020, that a temporary access without carriageway widening and an internalised sealed access is appropriate, subject to improved dust suppression.
- 7.73 Lastly in terms of adverse effects from road movements generated by the activity, the Panel considers that the proposal will not be inconsistent with these provisions, on the basis of the temporal nature of the consent, in combination with the conditions imposed.
- 7.74 Overall, the Panel does not consider the proposal to be inconsistent or contrary to the Transport related provisions of the Plan.
- 7.75 Chapter 22 sets out the expectations, and relevant Objectives and Policies of the Plan as applicable to Rural zone amenity and environmental qualities.
- 7.76 **Objective 22.2.1.1** states:
- To encourage and provide for activities that sustain the amenity and environmental values which are part of the rural environment and which maintain and enhance the quality of the rural environment, while recognising that parts of the Rural Zone are also a working environment involving activities such as farming and forestry.*

7.77 Associated relevant policies include:

**Policy 22.2.2.1** which states:

*To ensure that effects from the scale and siting of development (building height, building setbacks and building density) are managed so that:*

- a. *development will not unreasonably detract from the privacy or outlook of neighbouring properties.*
- b. *sites remain open and with a rural character as viewed from roads;*
- c. *the character and scale of buildings is compatible with existing development within the surrounding rural area.*
- d. *the effects of an activity on one site do not have a significant adverse effect on activities on another site.*

**Policy 22.2.2.3**

*To retain an open and spacious character in the rural areas of the District, with a dominance of open space and plantings over buildings, and where the potential for conflict between activities is minimised.*

**Policy 22.2.2.4**

*To maintain clear distinctions between urban and rural areas through zoning and the provision of performance standards to assist in protecting the character and quality of the rural area.*

**Policy 22.2.2.5**

*To avoid or mitigate the effects of activities that cause unpleasant living or working conditions for people in the rural community, or that have significant adverse effects on the quality of the environment.*

The explanation and reasons to the provisions, include:

*Acceptance of the effects of rural activities reflects the close economic, social and physical links between the rural area and the people who live within it. Notwithstanding a general acceptance of certain effects, rural residents should be able to enjoy a level of amenity consistent with a rural environment.*

Lastly, the anticipated environmental results (Section 22.5) anticipated include:

1. *Retention of a lower density of development in the general rural area, without undue levels of complaints or conflicts relating to rural amenity.*
2. *Retention of the amenities, quality and character of the different rural environments within the District.*

7.78 The Plan provisions are considered to be coherent in seeking to ensure the retention and dominance of rural character and amenity, as characterised by attributes such as a sense of open space, a low density character, maintenance of a clear distinction between urban and rural uses (through zoning), and accepting a range of effects where these are compatible with rural uses, and are consistent with the level of amenity consistent with a rural environment.

- 7.79 The Plan does anticipate that the rural zone is relatively robust and can support a range of ‘rural working’ activities. However, the provisions, when read collectively require that such activities can be supported provided rural amenity and character is maintained and enhanced.
- 7.80 The Applicant’s case is that any adverse effects on rural amenity are limited, and largely compatible with rural amenity and character.
- 7.81 The Panel disagrees. It considers the activities undertaken on site, if they were to be undertaken in perpetuity would substantially undermine the integrity of rural amenity in this area, and would accordingly be contrary to a number of the provisions above, in particular **Objective 22.2.1.1, Policy 22.2.2.1(d), Policy 22.2.2.4 and Policy 22.2.2.5**. Were that the case, the Panel would have little hesitation in considering the proposal contrary to these provisions. However, given the cessation of activities in June 2020 and application of conditions the Panel considers that the proposal will not further these provisions, but will not be contrary to them.

#### Overall evaluation on Objectives and Policies

- 7.82 Overall, we consider the proposal can be said to be contrary to a number of key objectives and policies in the CRPS and District Plan, primarily as these relate to ensuring ‘urban’ activities are contained within, or attach to existing urban areas. We also consider that the proposal is inconsistent with a number of relevant policies as to maintaining rural amenity and character.
- 7.83 We acknowledge that as a discretionary activity, the activity cannot be expected to find complete support in the objectives and policy framework, but when the policy framework is considered in its entirety, the proposal – were it to be undertaken in perpetuity, could be clearly at best, inconsistent with that framework.

#### *Other Matters (s104(1)(c))*

##### Precedent

- 7.84 In terms of precedent, and the effect of granting consent upon the integrity of the Plan, we note guidance in High Court decision *Rodney District Council vs Gould [2006] NZRMA 217*, which identifies that a consideration of precedent is not a mandatory consideration, but a matter that the decision maker must have regard to depending on the circumstances of the particular case.
- 7.85 In this instance, the Panel considers that the proposal is materially distinguishable and unusual that takes it well out of the ordinary, such that precedent or integrity impacts are not material considerations.
- 7.86 The Panel specifically identifies that the links of the activities being undertaken on the site to the recovery efforts associated with the Kaikoura Earthquake sequence in combination with the cessation date of consent distinguish this proposal. Those factors would diminish considerably were the applicant seeking general industrial uses in perpetuity.

## Hurunui / Kaikoura Earthquakes Recovery (Coastal Route and Other Matters) Order 2016 (the Order)

- 7.87 The Panel were invited by Ms Vaughan to make a decision on relevance of clause 14 of the Order to the application<sup>20</sup>.
- 7.88 The Panel declines to make such a decision, noting the mandate of this hearing is narrowed by section 34A of the Resource Management Act 1991.
- 7.89 Furthermore, the Order ceased to have effect on 31 March 2018. Also, it was apparent from the Panel's site visit that a number of the activities undertaken on the site would strain those activities otherwise provided for by Clause 14 as these related to 'temporary depots and storage facilities'.
- 7.90 Accordingly, the Panel affords no weight to the Order.

## Hurunui / Kaikoura Earthquakes Recovery

- 7.91 The Panel however ascribes substantial weight to the activities undertaken on the site in terms of their contribution to the recovery of nationally significant infrastructure surrounding Kaikoura to the north and south, including the State Highway and rail corridor, both of which are defined in the CRPS as critical infrastructure and regionally significant infrastructure.
- 7.92 These matters are expressed in the Planning evidence of both Ms Vaughan and Mr Langman, and are seen a key consideration in terms of the weighing up the matters expressed in s104 in terms of granting consent for the retrospective nature of the proposal, despite obvious disruption to neighbouring properties. The Panel agrees.

## **8.0 OUTCOME**

- 8.1 The Panel consider that the matter is finely balanced. We have concluded that the proposal does give rise to effects on rural amenity and character that are more than minor; in conjunction we have concluded that the proposal is contrary to relevant development provisions that seek urban activities to consolidate or to be attached to existing urban areas. Were the proposal a non-complying activity – that would be the end the matter, as neither disjunctive tests in s104D would be satisfied.
- 8.2 However, the proposal is for a discretionary activity, and pursuant to s104 the Panel is to consider the matter having regard to the relevant factors in s104(1), which includes the ability to consider 'other matters'. Weight between the matters in s104(1)(a), (b) and (c) is to be afforded subject to the discretion of the Panel based on the circumstances and merits of the proposal.
- 8.3 The Panel considers that those factors that lead to the establishment of activities on the site have been logically demonstrated as related with the recovery efforts associated with nationally significant infrastructure and Kaikoura's infrastructure. In conjunction, the Panel is of the view that the cessation date of June 2020 and the requirement, as imposed via condition, for the rehabilitation of the site as well as

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<sup>20</sup> EIC Vaughan [21]

conditions relating to operating hours and dust suppression will reduce the clash with respective provisions in the CRPS and Kaikoura District Plan which seek to establish a long term defensible zoned boundary between rural and urban land uses, and reduce to an acceptable level amenity effects on adjoining rural land owners.

- 8.4 We therefore conclude that the purpose of the Act is better served by granting consent to this application, subject to a range of conditions.

## 9.0 DECISION

- 9.1 That pursuant to Section 104B of the Resource Management Act 1991 retrospective consent is **granted** to operate a combined concrete batching plant, landscape supplies, storage and precast concrete manufacturing operation at Kowhai Ford Road, being Lot 2 DP10194, as a discretionary activity subject to the following conditions which are imposed under section 108 of the Act.

### General Conditions

1. The proposal shall proceed in general accordance with application and the accompanying site plan stamped *Approved Plan for R.C. 1538, as modified by further information requests* and held at Kaikōura District Council with the exception of compliance with the conditions below.
2. In accordance with section 128 of the Resource Management Act 1991, the Kaikōura District Council may review any or all of the conditions of this consent by giving notice of review during June in any year after granting consent for the purpose of ensuring that the conditions are adequate to deal with any adverse effects on the environment arising from the exercise of this consent, which were not foreseen at the time of application or where it was not appropriate to deal with at that time.
3. The consent holder shall meet all actual and reasonable costs incurred by this Council in monitoring, enforcement and administration of this consent.
4. In accordance with section 35 of the Resource Management Act, monitoring of compliance with the consent will be undertaken by a council officer within six months of the date that the consent is given effect to.

### Term of Consent

5. Activities not otherwise provided for by consent Application Number 08052 shall cease no later than Tuesday 30 June 2020.

### Site remediation

6. The full remediation of the consent holder's site, excluding that area otherwise provided for by consent Application Number 08052 shall be completed by 30 June 2021; full remediation shall be completed when all works to replace overburden, top-soil and re-grass the site have been undertaken. Rehabilitation of the site shall comprise (but not be restricted to the following measures):

- a) Removal of all machinery and all non-site related storage from the site;
  - b) Spreading of topsoil across the excavated portion of the site, to a depth not less than 0.3m;
  - c) Sowing all rehabilitated areas with grass using hydro seeding or other such methods to achieve a minimum 80% grass cover. This shall be maintained for at least two calendar years;
  - d) Replacing with top-soil and regrassing that section of the Kowhai Ford Road road reserve where vehicles associated with site activities accessing or egressing the eastern (NCTIR) access have denuded the grass coverage adjacent to the formed and sealed carriageway;
  - e) Re-establishing and planting of bunds as set out in the consent for Application Number 08052, as labelled 'Consent Site Plan' Job No.1015-06 Draft 3 which identifies the landscaping and bund requirements associated with the concrete batching operations consented under that application; and
  - f) Creating a finished stable and free draining landform capable of supporting light pastoral farming.
7. Removal of earth bunds and the placement of bund material as top-soil in the excavated area shall only be undertaken between 7:00am and 10:00pm and noise from these activities, and associated earthmoving equipment shall not exceed 55dBA  $L_{eq}$  when measured at or within the notional boundary of any dwelling on any other site.

### **Flood hazard and hazardous substances**

8. The consent holder shall provide certification to Council from a suitably qualified flood engineer that the diesel storage contained on the site is securely held on a hardstand area that is higher than the 1:200yr (0.5% AEP) flood height.

*Note that the activity is required to comply with the Health and Safety at Work (Hazardous Substances) Regulation 2017. This resource consent does not constitute authorisation under this regulation.*

### **Operating hours and heavy vehicle movements**

9. The hours of operation for activities under this consent shall be:
- a) 6am to 7pm Monday to Saturday
  - b) 9am to 4pm Sunday
10. There shall be no heavy vehicle movements to or from the site between 7pm and 7am.
11. There shall be no night-time operations (7pm to 6am) on the site.

*Note: This condition does not constrain activities pursuant to Sections 330, 330A or 330B of the Resource Management Act 1991.*



12. The consent holder shall adopt best practice technology to reduce nuisance noise associated with reverse safety beepers, where these do not reduce on-site worker safety.

**Dust**

13. The discharge of dust into air shall not be offensive or objectionable beyond the boundaries of the site;

14. A water sprinkler system, cart or truck is to be available on the site at all times, for use at any time and used as required for the suppression of dust on the unpaved section of the site and access points to Kowhai Ford Road.

15. The consent holder shall ensure that sediment / debris is not carried onto Kowhai Ford Road by vehicles generated from activities undertaken on the site;

**10.0 RIGHT OF APPEAL**

10.1 In accordance with section 120 of the Resource Management Act 1991, the applicant and / or any submitter may appeal to the Environment Court against the whole or any part of this decision within 15 working days of the notice of this decision being received. The address for the Environment Court is:

The Registrar  
Environment Court  
PO Box 2069  
CHRISTCHURCH

10.2 Any appeal must be served on the following person and organisations:

- Kaikoura District Council
- The applicant;
- Every person that made a submission on the application.

10.3 Failure to follow the procedures in sections 120 and 121 of the Resource Management Act 1991 may invalidate any appeal.

**Dated** this 28<sup>th</sup> day of January 2020.



.....  
Matt Bonis  
Commissioner (Chair)



.....  
Ted Howard  
Commissioner



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Clint McConchie  
Commissioner