

UNDER THE RESOURCE MANAGEMENT ACT 1991

IN THE MATTER

of a Joint Application by **Hirock Limited** to Palmerston North City Council LU 6962 and Manawatu - Whanganui Regional Council APP-2022203991.00 to Expand Linton Quarry

APPLICANT'S OPENING SUBMISSION

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MAY IT PLEASE THE COMMISSIONER:

1. This is a hearing in respect of Application Version 5 lodged with Palmerston North City Council (LU 6962) and Horizons Regional Council (APP-2022203991.00) on 21 November 2022 for land use consent, earthworks, and discharge consents. The hearing has been set down on the basis that a proper response has been provided to the section 92 request for further information that was made on 29 November 2022.
2. The application and its background are comprehensively summarised in the section 42A report prepared by Ms Adsett.
3. The report provides a clear summary of the site and the surrounding area and of descriptions of the proposed activity that properly reflects the application. The application seeks consent to extract up to 360,000 tonnes of aggregate per year. A consequence of that would be an increase in truck movements to an average of 200 per day subject to a maximum of 250 per day and a maximum rate of 40 movements per hour. Note that the traffic and noise modelling is back to that maximum figure applying for the full 10 hour working day. The expansion of the quarry footprint is an essential component, giving rise to a need to increase the height of the noise bunds up to 5 metres in certain areas. Inevitably a need arises to provide additional overburden sites.
4. Proposed hours of operation remain 7am to 5pm Monday to Friday and 7am to 3pm on Saturday.
5. The Horizons consent requested relates to the existing discharge of treated washwater and stormwater to an unnamed tributary of the Linton Drain, as well as land disturbance and disposal of overburden.
6. There is agreement amongst the planners that overall, discretionary activity consent is required.
7. While I do not propose to address specific submissions in opposition in this opening submission, issues raised by submitters are fully addressed in the

evidence that has been circulated. I will comment further, as required, when exercising my right of reply.

8. In terms of the effects on the environment, the reporting planner identifies the following:

District planning matters

- Landscape and Visual Amenity effects;
- Noise effects;
- Effects on the safe and efficient operation of the roading network;
- Effects on land stability; and
- Effects on the National Grid.

Regional planning matters

- Effects on biodiversity;
- Erosion and sediment control measures; and
- Water quality.

General matters which relate to both District and Regional Councils

- Air Quality and Dust effects;
- Cultural effects; and
- Other matters.

9. Decision-making in this matter is assisted by the Joint Witness Statements provided by the independent experts:

- (a) **Roading** - Joint witness statement of Joe Phillips and Harriet Fraser identifying effects and proposing conditions. The issue of trucks turning from the north into Kendalls Line and crossing the centre line has been subject to further discussion and that will be explained by Mr Phillips. To the extent necessary, the traffic generation and noise conditions agreed to by the applicant for purposes of enforceability may be regarded as *Augier* conditions. I will explain that further in the context of my overall comments on the applicable District Plan rules.

- (b) **Land stability** – You are referred to the JWS of Cameron Line for PNCC and Barry McDowell for the applicant. Ms Adsett has prepared draft conditions in relation to geotech which are agreed to by the applicant.
- (c) **Effects on biodiversity** – The JWS prepared by James Lambie for PNCC and Horizons, and Nyree Fea for the applicant addresses terrestrial and wetland ecology effects.
- (d) **Erosion sediment control measures** – You have a JWS from Kerry Pearce for Horizons and Annette Sweeney for the applicant. They record their agreement in relation to the adequacy of existing erosion and sediment control measures, proposed measures and recommended conditions.
- (e) **Water quality** – The JWS has been prepared by Eric Fa'anoi for Horizons and Marieke Soeter for the applicant. Matters not agreed relate to discharge frequency and the magnitude of risk of Dissolved Reactive Phosphorus (DRP) on the environment. Ms Adsett advises that she is satisfied that the frequency of pumping is not an issue that needs to be canvassed further. As to the magnitude of risk posed by DRP, the pragmatic solution appears to be the proposed monitoring for two years following which the applicant will be required to compare the local situation with that of the surrounding environment – something which has now been defined.
- (f) **Air quality and dust** – The JWS is being prepared by Andrew Curtis for Horizons and PNCC, whose report is attached to the section 42A report. The applicant has recently undertaken dust monitoring. It accepts that such monitoring over a short period during a wet winter is not ideal.
- (g) **Cultural effects** – The applicant has signed a Mana Enhancing Agreement with Rangitane o Manawatu recognising that an unnamed tributary of the Kahuterawa Stream flowing through the quarry site, and the discharge of stormwater and washwater into a farm drain flowing

into the Linton Drain. In respect of the removal of the nikau palms, ecological compensation has been provided.

DISTRICT PLAN OVERVIEW

10. There are particular aspects of the Palmerston North City Council District Plan that are specific to it, and which require consideration in the context of granting consent and in applying conditions to any such consent.

Section 2.5: The City View Objectives

"Introduction

The city view objectives reflect the resource management issues for the city and represent the broad outcomes the Plan seeks to achieve."

Of particular relevance are:

- "22. *Appropriate noise standards are in place to protect noise sensitive activities.*
25. *Infrastructure and physical resources of regional or national importance are recognised and provided for by enabling their establishment, operation, maintenance, upgrading and protection from the effects of other activities."*

Section 4: Definitions

"Quarrying

Means the excavation of any kind of material from earth, and includes any works, machinery and plant used in connection with quarrying operations and the storage and processing of materials quarried on site."

11. Quite reasonably, the definition relates to "onsite" activity, not to the distribution via the roading network of material from the site by the consent holder, an independent cartage contractor, or a customer.

Section 6: General Rules

“6.2.6 Rules: Noise

R6.2.6.2 Exclusions from Noise Control Rules

1. Noise from the following activities shall not be controlled using rules in this Plan, but shall be controlled separately by reference to the application of relevant New Zealand Noise Standards, where these are applicable, and to Sections 16 and 17 of the Resource Management Act 1991:
 - a. Aircraft during flight, except where specifically provided for.
 - b. Airport noise shall be managed by reference to NZS 6805:1992 Airport Noise Management and Land Use Planning.
 - c. Noise from helicopters using separate helicopter landing areas that are not otherwise part of an airport, shall be assessed, predicted, measured and controlled by reference to NZS6807: 1994 Noise Management and Land Use Planning for Helicopter Landing Areas as that Standard applies.
 - d. ***Vehicles being driven on a road (within the meaning of Section 2(1) of the Transport Act 1962), or within a site as part of and compatible with a normal residential activity.***
 - e. Trains on rail lines (public or private), including railway yards, railway sidings or stations. This exclusion does not apply to the testing (when stationary), maintenance, loading or unloading of trains.
 - f. Rural activities listed in R9.5.1 and R9.5.2 in the Rural Zone, and grazing and cropping activities, including horticulture, in the Flood Protection Zone.
 - g. Sounds generated by construction, maintenance and demolition activities, and, additionally, sounds generated by soil conservation and river control works carried out or supervised by the Manawatu-Wanganui Regional Council in the Flood Protection Zone, shall be assessed, predicted, measured, managed and controlled by reference to NZS6803:1999 Acoustics – Construction Noise.
 - h. Crowd noise at a park, reserve or any land zoned as Recreation, Racecourse, Conservation and Amenity or Arena.

Explanation

There are some types of activities, particularly that of land transport and of construction, maintenance and demolition, that are appropriate and which could not otherwise meet general noise rules in many circumstances. Crowd noise at a park or at the Arena, for example, is another type of noise which is a reasonable by-product of an activity and which is impossible to control using noise performance standards or rules.

R6.2.6.3 Other Powers

Nothing in this Plan shall prevent the Palmerston North City Council from issuing an Excessive Noise Direction under Section 327 of the Resource

Management Act 1991 or prevent a person from complying with the Direction, nor prevent the Council from serving an Abatement Notice relating to unreasonable noise under Section 322(1)(c) of the Resource Management Act 1991.

Explanation

As indicated above, some noise is difficult to control through the provisions of the Plan. These cases need to be assessed on a one-by-one basis to determine the appropriateness of seeking an Excessive Noise Order."

12. **COMMENT:** The exclusions are absolute and have nothing to do with the activity status of the land use at the trip origin or its destination.
13. For instance, the fact that aircraft taking off or landing from a particular location may not be a permitted activity under the Plan does not limit the clear exemption in (a) and (c) even though noise may be an undisputed effect of the land use. Likewise, the crowd noise exemption referred to in (h) equally applies whether the assembly is a permitted activity or is one enabled by resource consent granted under the Plan.

Section 9: Rural Zone

14. A notable aspect of the Palmerston North City Council District Plan is that it contains a single Rural zone. There are no protected enclaves of Countryside Living or Rural Residential. At 9.2, 18 Resource Management Issues are listed including:
 3. *The provision for rural-residential development, which avoids remedies or mitigates any adverse effects on the efficient use of resources and on rural environmental and amenity values.*
 4. *The potential adverse effects of forestry development and forest harvesting.*
 5. *The amenity values contained within the area, particularly in terms of landscape values and areas of high natural qualities.*
 6. *The need to provide for a range of non-agricultural uses within the rural area to provide for the social and economic well-being of rural dwellers.*
 7. *The potential for, or existence of, incompatibility between different rural activities, due to the impact of adverse environmental effects."*

“R9.5.1 Permitted Activities:

The following activities are Permitted Activities provided they comply with the specified Performance Standards:

- i. Farming, excluding intensive farming;*
- ii. Horticulture;*
- iii. Soil conservation and rivers control works carried out or supervised by the Manawatu-Wanganui Regional Council or the Palmerston North City Council;*
- iv. The farm-based teaching and research activities of Massey University, and other individuals and/or organisations associated with the University;*
- v. Roads;***
- vi. Demolition or removal of a building, except Scheduled Buildings.”*

15. **COMMENT:** Roads are permitted activities and as already noted are not subject to any noise standards.

In the recent case of *Cable Bay Wine Ltd v Auckland Council* [2022] NZCA 189, the Court of Appeal restated the law in respect of a permitted activity not requiring or being able to obtain the grant of a resource consent – even where it was part of another activity. In that case, a Waiheke vineyard had obtained resource consent to establish a café with part of the intended activity being that patrons could dine outside and walk around the vineyard. Before the consent holder established the new operation, the District Plan changed to make the café activity non-complying. The consent holder could not claim existing use rights. In the event, Justice Cooper held that while the outdoor dining and other outdoor activities formerly permitted activities might have been components of the overall consented activity, they had not been consented and were not protected by the café consent.

16. It follows that in the case of a road serving a quarry, resource consent for vehicles to use that road cannot be sought or obtained by customers, contractors or the quarry operator. That begs the question under the scheme of this District Plan whether or not Council nonetheless seeks to impose conditions on the permitted activity of using a road, including restricting traffic numbers and imposing noise standards where the Plan states that none apply (beyond the unreasonable noise provisions of section 16 and 17 RMA). (Hence my earlier reference to *Augier* conditions.)

"R9.8.3 QUARRYING, INCLUDING THE REMOVAL OF SAND, SHINGLE, SOIL OR OTHER MATERIAL, AND OIL AND GAS EXPLORATION ACTIVITIES

Quarrying, including the removal of sand, shingle, soil or other material is a Discretionary Activity.

Determination Clause

In determining whether to grant consent and what conditions to impose, if any, Council will, in addition to the City View objectives in Section 2 and the Rural Zone objectives and policies, assess any application in terms of the following assessment criteria:

Assessment Criteria

- a. ***The extent to which any adverse effects on the safe and efficient operation of the roading network from the traffic movements generated by activities are avoided, remedied or mitigated.***
- b. *To ensure the provision of adequate on-site parking, loading, manoeuvring and access space to avoid this taking place on roads.*
- c. ***The extent to which the effects of noise, dust and other environmental disturbances on the amenity values of the area, particularly on adjacent residential uses can be avoided, remedied or mitigated.***
- d. *To require any proposed reinstatement works to return the land to its previous, or a better state.*
- e. *The extent to which any effects of the proposal on any area of landscape, environmental or cultural significance, or of particular significance to tangata whenua are avoided, remedied or mitigated.*
- f. *To ensure that the extraction of gravel has no adverse effects on the management of the potential of the river and/or stream to flooding.*
- g. *The extent to which any effects on soil stability can be avoided, remedied or mitigated.*
- h. *The extent to which the proposal retains the productive capability of rural land, especially the productive use of versatile Class 1 and Class 2 soils.*

Explanation

Quarrying within the City frequently takes place at the interface of the land and a river. As such, this area represents a delicate environmental area on which there is the potential for significant adverse effects. Care needs to be exercised to ensure these and other effects such as noise can be mitigated, and that land is restored to a reasonable state at the end of operations."

17. **COMMENT:** Because quarrying is a fully discretionary activity it is accepted that the provision of assessment criteria, while requiring attention to the matters listed, do not impose restrictions analogous to restricted discretionary activity status. The criteria are nonetheless to be considered carefully as effects that the

plan is seeking to address. Criterion (a) does refer to the roading network, but only in the context of safety and efficiency, not as to noise issues.

18. Criterion (c) relating to the effects of noise, dust and other environmental disturbances on amenity values clearly applies to noise and dust generated by the quarry itself. The noise reference however has to be read subject to Rule 6.2.6.2(d) as to the roading exemption. There is no corresponding limitation on the potential sources of dust nuisance.

"9.11 Rules: Noise

R9.11.1 NOISE

Sound emissions from **any activity** [my emphasis] in the Rural Zone when measured at or within the boundary of any land zoned for residential purposes or at or within the boundary of any land in the Rural Zone (**other than land from which the noise is emitted or a road**) shall not exceed the following:

7.00 am – 7.00 pm 50 dB LAeq (15mins)

7.00 pm to 10.00pm 45dB LAeq (15 mins)

10.00 pm – 7.00 am 40dB LAeq (15 mins)

Night-time Lmax 10.00pm – 7.00 am 70dBA Lmax

Explanation

Rural areas are in essence working environment within which there are pockets of residential activity. The rules are intended to provide for normal agricultural activities while controlling noise from a range of other activities which also exist in the rural area, e.g. home occupations. This control does not apply to specific rural activities in rural areas which should be managed by applying the Section 16 requirements of the RMA in the circumstances that they arise. Reference should be made to Section 6, Noise, for those rural activities that are excluded from the above controls and for further general information on noise.

R9.11.2 NOISE INSULATION: ROAD TRAFFIC NOISE

Any new habitable room (including any addition of a new habitable room to an existing building) in a building used by a noise sensitive activity, and any habitable room in a relocated building used by a noise sensitive activity on any site within the Rural Zone must be protected from road traffic noise by complying with the following performance standards:

- (i) Habitable rooms must be at least 20 metres from the designations for State Highways 3, 54 and 57.
- (ii) For any habitable rooms between 20 and 80 metres of the designation for State Highway 3 or State Highway 54, or between 20 and 50 metres of the designation for State Highway 57 between Tennent Drive and Summerhill Drive (known as Old West Road), or between 20 and 50 metres of the designation for State Highway 57 between Staces Road and Napier Road

(known as Fitzherbert East Road), or 20 – 80 metre of the designation for any other part of State Highway 57 either:

- a. A design report prepared by an acoustics specialist shall be submitted to the Council prior to construction of the habitable spaces, demonstrating that road-traffic sound levels will not exceed 40 dB LAeg(24hr) inside all habitable spaces based on the predicted Annual Average Daily Traffic vehicle count 10 years after construction of the habitable room: or
 - b. A design report prepared by an acoustics specialist shall be submitted to the Council prior to construction of the habitable spaces, demonstrating that road-traffic sound levels will not exceed 57 dB LAeg(24hr) outside the most affected part of the building exterior based on predicted Annual Average Daily Traffic vehicle count 10 years after construction of the habitable room.
- (iii) Where new habitable room(s) with openable windows are proposed, a positive supplementary source of fresh air ducted from outside is required at the time of fit-out. The supplementary source of air is to achieve a minimum of 7.5 litres per second per person.

Explanation

In some cases there is no line of sight to the road from the noise sensitive activity, for example, because of the topographical elements of the land or an acoustic wall. This may protect the noise sensitive activity from noise effects to the standard stated in R9.11.2 and in that case the requirements of the Plan are considered to have been met. For the avoidance of doubt, a design report in accordance with R9.11.2 will still be required."

19. **COMMENT:** The above Rules repeat the road noise exemption, but in respect of new habitable rooms (including a new house) on or near the nominated roads impose a duty on the receiver, not any control on road users.

Section 20 Land Transport

20. The introduction 20.1, notes the importance of the roading network in a regional sense.

"The roading network is an important element to the City's position as a distribution centre for the lower North Island. The City's geographical position and excellent transport networks have, over the last decade, assisted in developing a number of large warehousing and distribution ventures such as the Woolworths Distribution Centre and Toyota's National Service Centre. Thus, the transport infrastructure as a physical resource, contributes to and is an integral part of the use and development of all other resources within the City."

R20.2 Resource Management Issues

21. **Objective 2** provides:

"The land transport network is safe, convenient and efficient while avoiding, remedying or mitigating adverse effects in a way that maintains the health and safety of people and communities, and the amenity values and character of the City's environment.

POLICIES

2.1 *To restrict the through movement of traffic where the movement has adverse visual, noise and safety effects on adjoining areas **by using the roading hierarchy to direct higher volume and heavy traffic movements on identified arterial routes** and discouraging this traffic from other areas, such as residential areas."*

22. **COMMENT:** Significantly, the method of restricting traffic noise is "by using the roading hierarchy" not through the imposition of conditions limiting the scale of land use.

"R20.4.2 UNLESS OTHERWISE SPECIFIED AS A RESTRICTED DISCRETIONARY ACTIVITY, THE FOLLOWING ACTIVITIES ARE PERMITTED THROUGHOUT THE CITY PROVIDED THEY COMPLY WITH THE RELEVANT PERFORMANCE STANDARDS (A) - (H) BELOW:

- a. ***Roads vested in Council***
- b. *On site loading and vehicle parking spaces*
- c. *Bicycle parking spaces*
- d. *Vehicle crossings for property access*
- e. *Service lanes and onsite-vehicle-queuing facilities f. Landscaping of parking areas."*

COMMENT: Frequently, imposition of noise controls relates to the avoidance of sleep disturbance. In this case, we are dealing with a daytime activity covering five full days a week and up to 3pm on Saturdays. Mr Farren has given consideration to the matter of outdoor noise and in the context the absence of

any quarrying or transportation activity after 3pm on Saturdays with none on Sundays has some relevance to the way people enjoy their outdoor spaces.

Conclusion

23. As the applicant's evidence makes clear, the quarry carries out essential activities, locally and district-wide. All quarrying applications are site specific given the fixed nature of the resource. The expert participants in this process will be familiar with the rather drawn-out process of amending the National Policy Statement on Freshwater Standards and the associated regulations which initially blocked any consenting pathways for a number of activities that might have interfered with the functioning of a wetland, whatever its scale and ecological function. Eventually, quarrying activity joined other infrastructure as necessitating a consenting pathway – because of the economic significance of the activity and the general lack of choice as to location of a quarrying activity.
24. This application has been diligently prepared and exhaustively reviewed by Council and its consultants. In the scheme of things the volumes quarried and removed are not large. The proposed operating hours are not extensive. On-site activity does not involve crushing of the rock, avoiding consideration of the on-site noise and dust generation issues that can arise from that.
25. That said, the quarry will continue to be seen and heard as part of the working rural landscape. Demonstrably, at the scale intended and with the conditions proposed, it can co-exist with the rural and residential activities around it – all in the context of the enabling provisions of the District Plan.



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22 June 2023