



**McFADDEN McMEEKEN PHILLIPS**  
LAWYERS

30 April 2012

Tasman District Council  
Private Bag 4  
**RICHMOND**

**By email:**  
**jeremy.butler@tdc.govt.nz**

Attention: J Butler

Dear Jeremy

**RE: ADCOCK & DONALDSON - RIGHT OF REPLY**

I **enclose** Right of Reply and tracked conditions in respect to the above matter.

Yours faithfully  
**McFADDEN McMEEKEN PHILLIPS**

**Nigel McFadden**  
Partner

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31650/233374.1/PC

PARTNERS Nigel McFadden, David Phillips, Graeme Downing, Victoria Chisnall  
SENIOR ASSOCIATE Anne Todd-Lambie ASSOCIATE Jennifer Penny

IN THE MATTER OF:      An application for Resource Consent to establish and operate a Motorsport and Recreation Park (Land Use Consent RM100848, RM100872 – RM100875, Water Permits RM100876-RM100877; Discharge Permits RM100878-RM100879)

APPLICANT:              ADCOCK & DONALDSON PROPERTIES LIMITED

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RIGHT OF REPLY

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## **1.0 INTRODUCTION**

1.1 The application by Adcock & Donaldson Properties Limited (“the Applicant”) was for a suite of resource consents pertaining to land use, water permits, and discharge permits in respect of a proposed motorsport and recreation park on land situated at Rabbit Gully Road near Tapawera.

1.2 The application was heard before Commissioners appointed by Tasman District Council on 19, 20 and 21 March 2012. The hearing was adjourned to enable Counsel for the Applicant to provide a written Reply to the Commissioners, at which time the hearing will be closed, and the statutory time frame for the issue of decision commenced.

1.3 This Reply is structured as follows:

- Introduction (1.0)
- Opening comments (2.0)
- Reply to specific named submitters (3.0) – Nelson Forest Limited and LINZ
- General Reply (4.0) in which Counsel will address matters generally raised by submitters
- Response to Officer’s Report (5.0)
- Conditions (6.0)
- Conclusion (7.0)

## **2.0 OPENING COMMENTS**

2.1 Whilst Counsel respects what the submitters have said, generally speaking this case and the Commissioners determination of it is not about the individual personal views of either Applicant or submitters – it is about resource management and in particular it is about the promotion of

sustainable management for the sole purpose of the Act and Section 5 – to enable not only people but also communities to provide for their respective well beings.

- 2.2 It has been said that the definition “*sustainable management*” differentiates between people and communities and people’s interests are not to be submerged in the interests of the community without good reason<sup>1</sup>.
- 2.3 Resource Management is a participatory process – a process into which one inputs, a process into which there is the opportunity to put views so as to better inform the Commissioners in their making of their decision on the application so as to achieve the purpose of the Act. The application of Section 5 of course involves an overall broad judgement of whether a proposal will promote the sustainable management of natural and physical resources – that approach recognises that the Resource Management Act has a single purpose and such a judgement allows for comparison of conflicting considerations and the scale or degree of them and their relative significance or proportion in the final outcome.
- 2.4 It is trite law that the purpose of the Act as defined in Section 5 is not the starting point – it is the finishing point – to be considered in the overall exercise of the Commissioners judgement under Part 2.
- 2.5 A proper interpretation of Section 5 does not allow the definition of sustainable management to be broken up into a number of separate principles – the definition of the term must be taken as a whole, and the constraints or “*cumulative safeguards*” found in Sections 5 (2) (a), 5(2)(b), and 5(2)(c) are refined and given further meaning by Section 6, 7 and 8 –

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<sup>1</sup> See McNamara v Tasman DC W072/99

to inform the application of Section 5, noting that the commencing words of Sections 6, 7 and 8 respectively have different wording.

2.6 It has also been said that the promotion of such sustainable management is the issue under the RMA, not ownership per se<sup>2</sup>. That comment is something to which Counsel will return to when addressing the specific submissions.

### **3.0 REPLY TO SPECIFIC SUBMITTERS – NELSON FORESTS LIMITED (“NFL”)**

3.1 As said, resource management is a participatory process that neither NFL or for that matter Land Information New Zealand have sought to be engaged in, (beyond making submissions and appearing in support of them), in any meaningful way . In particular as to NFL:

- (i) It has refused or neglected to be engaged in the development of conditions by way mitigation even in terms of its presentation to the Commissioners;
- (ii) It has given lip service to attempts on the part of the Applicant and its representatives to consult. Its position throughout and even at the hearing and through its Counsel is simply “no” “we will veto” – that is not participation at all;
- (iii) It has presented to you 2 witnesses who call themselves “expert” (Messrs Arnold and Karalus ) but who are not experts at all – not only are they employees of NFL, reference to their evidence does not show the mark of a truly independent professional, but has the flavour of an advocate.

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<sup>2</sup> See Haddon v Auckland RC (1993) 1BELR NZ8 [1994] NRMA 49

3.2 An expert witness is required to be independent and to assist the Hearing Panel.

3.3 As set out in the Environment Court Consolidated Practice Note 2011:

*“An expert witness has an overriding duty to assist the Court impartially on matter within the experts area of expertise.”<sup>3</sup>;*

*And*

*“An expert witness does not, and must not behave as, an advocate for the party who engages the witness. Expert witnesses must declare any relationship with the parties calling them, or any interest that they might have in the outcome of the proceeding”.<sup>4</sup>*

In Counsel's submission the evidence of Messrs Arnold and Karalus should be seen for what it is – an undisguised attempt to advocate their employer's position. Counsel recognises that that matter will go to weight of the evidence given for NFL, and in that regard their evidence should be seen for what it is and be given very little weight at all.

3.4 Mr Ian Reade and Mr Doug Ashford provided evidence for NFL – Mr Reade in written form, and notably he simply put before the Commissioners in his written statement matters for consideration – he did not attack the application, he did not attack the Applicant's proposed conditions, he said in short that there were certain matters to which the Commissioners may wish to have regard, and some matters which could be added to the various management plans

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<sup>3</sup> 5.2.1 Consolidated Code of Practice

<sup>4</sup> Consolidated Practice Note 5.2.2

- 3.5 Mr Ashford gave verbal evidence, again he did not seek to attack or challenge the evidence for the Applicant at all, but he did recommend that the Rural Fire Service would like to have *“input into the management plan”* – at no time did he negate the value of such a plan nor did he say that the Applicant’s proposals in that regard were flawed. He was concerned that people might *“camp”* on the access road to the Park, and he has expressed his concern, in the case of fire, that *“getting money out of a boy racer”* (a matter addressed clearly by Mr Estall in his evidence), and recommended that *“Lucerne be planted along the fire breaks”*..
- 3.6 All in all the evidence given by Messrs Reade and Ashford, (despite the approach of NFL) did not in Counsel’s submission seriously challenge the application or the proposals at all, rather they made some helpful comments and suggestions, all of which have been covered by either the Applicant’s evidence or are addressed in the conditions which will be dealt with later in this Reply.
- 3.7 In particular, Mr Ashford said that there would be value in establishing a fire weather station, the Applicant agrees and has addressed that in conditions.
- 3.8 Whilst both Messrs Reade and Ashford helpfully advanced matters which they would like to see addressed, the fact is that the proposed Motorsport/Recreational Park although remote is not an *“unsupervised”* space. The park, the events at it and the access will all be supervised – and if there was a necessity for the road to be patrolled making use of a water tanker then that is what the Applicant will do. Of course that is the sort of thing that would come out of the consultation required in respect of the relevant operational plans proffered by the Applicant.

3.9 It may be that if there was an extreme fire hazard, when an event was proposed, through the consultation process in relation to a particular operational plan the event may need to be postponed, or even cancelled. That would be fully expected by the Applicant and the sort of thing a responsible corporate citizen would carry through on.

3.10 The evidence of Mr Karalus was interesting - in paragraph 8 of his rebuttal statement he said that he had not *“received any copy of the draft fire management plan”* – which is surprising because in paragraph 15 of his evidence in chief he refers to the evidence of Mr Ian Reade and Mr Reade at paragraph 29 refers to *“the draft fire management plan Mr Quickfall has attached to his evidence”*, and at paragraphs 41 and 42 Mr Reade comments on the *“fire management methods proposed by the Applicant”* – but Mr Karalus puts it to you that even after having read the evidence of Mr Reade, (which specifically refers to Mr Quickfall's fire management plan), Mr Karalus has not seen it. The statements simply do not bear scrutiny.

3.11 Mr Karalus was asked by Commissioner Collins:

*“Is it your view that people coming to this motorsport park are likely to cause more fires than usual road users”*

- a question Mr Karalus answered in the affirmative. However there is absolutely nothing in his evidence, or in that matter in his response, which could give any credence to his affirmation. There are forests throughout this district on either side of roadways including main highways, and in close proximity to them, as the Commissioners will have no doubt seen on their travel from Richmond through to the hearing venue. Those roads are to all intents and purposes unsupervised in their use (other than



Highway Policing) and one would have thought that Mr Karalus would have a body of evidence to support his position in those circumstances – he had none. In contradistinction, the application site, the access to it and the use of it are supervised – and what exactly is it that motivated Mr Karalus comments? One can only assume a further attempt to advocate.

3.12 Ms Arnold's evidence, in short, simply advocated the position that the road formation is "on their land" and that if NFL wanted to stop the right of way being used by the Applicant then NFL would. In effect the evidence indicated a quite petulant approach thus:

*"Even if you have got a right of way we are not going to let you use it if we so decide".*

3.13 The fact of the matter is that the Applicant has a right of way, and on the basis of the submission of Ms Muller of Crown Law<sup>5</sup>:

*"The right of way is approximately 4.5 kilometres long and 20-26 metres wide."*

- and as Counsel will address shortly, the Applicant is entitled to lay out the right of way over its course. The questions in relation to the access issue are these:

- (i) Is there a right of way enabling access to the land to the application site by the Applicant? - The answer is yes, pursuant to a right of way granted by the Crown;
- (ii) Can the Applicant and its licensees use that right of way? – the answer is yes;

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<sup>5</sup> See Background paragraph 3 Submission for LINZ

- (iii) Can NFL/LINZ stop the Applicant and its Licensees using the right of way in real terms? – the answer is no, although they may require constraints from time to time;
- (iv) Can the Applicant carry out improvements on the course of the right of way? – the answer is yes, but must not hinder the use of the right of way by other users in so doing;
- (v) Does NFL/LINZ have a “*right of veto*” in real terms as the submitters Counsel suggested? – the answer is no.

The upshot is you need simply not concern yourself with the matter of access – beyond being aware it is available.

3.14 True, NFL or LINZ might decide to take some action in the High Court (as Ms Muller suggested) but that is not a matter which should concern you either and further more if NFL/LINZ’s intention to take such a step - do you not think it odd that they have not done so prior to the hearing of this application, given that relief which would be sought by LINZ/NFL is an equitable relief. I suspect that a High Court Judge would be unimpressed that the Crown (which granted the right of way in its terms in the first place) and included reference to Licensees and “*secondary users*”, then lets the Applicant go through a not inexpensive hearing, involving Commissioners, and 3 days of hearing only to then find LINZ/NFL applying after all that to have the terms of the right of way varied. Ms Muller’s comments in that regard were distinctly unhelpful.

3.15 In the course of her evidence, Ms Arnold made a number of comments which indicated a lack of interest in participation in the process at all:-

- (i) As to a traffic management plan she said:

*“We could just ignore a traffic management plan”*

- true, but why would you unless to be obstructive?

- (ii) *"In times of fire danger the Waimea Rural Fire Authority could close the road and we could close the forest during high winds, or for snow"*

- of course they could and the Applicant respects that.

- (iii) And when asked by Commissioner Collins:

*"How big is the problem? – if your brief was not to stop it and find a way to make it work – what would you say?"*

Her response:

*"It is just incompatible. Harvesting is incredibly flexible, it can change, it is very fluid".*

- 3.16 One is left with the only conclusion that NFL and Ms Arnold simply are not interested in being involved in a solution, which would allow for benefits to significant parts of the community, the NFL position is simply to say "no" and avoid co-existence. And there will be no coexistence from the point of view of NFL, because NFL simply does not want to coexist. That is a surprising approach from a company with offshore Directors and Shareholders, and shows a scant regard for the district in which the company operates. As distinct from the approach of the Applicant which has sought to consult, has developed conditions for discussion – but has been rebuffed through out by NFL.

3.17 It was also surprising that no effective response was given by either witnesses for NFL or Counsel as to the authority for the approach taken by NFL. The submitter was specifically asked whether there was “a resolution authorising the position by NFL in its submission or was it the view of staff?”. Similar question was asked on more than one occasion, nothing was provided and no satisfactory answer was given – that failure in Counsel’s submission speaks volumes.

3.18 It was also somewhat odd that the Chief Executive of NFL, who we heard was unable to attend because a family member was having an appendix operation – was unable to find even five minutes to address the Commissioners.

3.19 Counsel for NFL invited you to find that a grant of consent would lead to:

*“...a significant potential for reverse sensitivity and also for cross boundary effects”*

on the basis it appears that there were:

*“...existing legitimate activities in the vicinity in relation to a proposed new activity which might result in restraints being place upon those other already established activities”<sup>6</sup>*

- but there was no evidence whatsoever to justify that submission either. Nowhere did the Applicant suggest anything that might occur through its proposal which “*might result in restraints being placed*” on NFL’s forestry operations. I know that NFL’s witnesses contended that that would happen and indeed Counsel stated:

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<sup>6</sup> NFL/Rowe opening submission – para 5

*“You will hear evidence from Nelson Forests personnel that the proposed motorsport park will result in significant operational constraints”<sup>7</sup>*

– but there was no evidence of such given at all.

### 3.20 Counsel contended:

*“Where the continued presence of the long established activity in the area is nationally, regionally or locally important, constraints should be imposed on the neighbouring new land use not on the existing use.”<sup>8</sup>*

- and referred the Commissioners to Auckland Regional Council v Auckland City Council<sup>9</sup>.

But the Applicant has suggested constraints on its own operations (as have the Council Officers) through conditions and nowhere is there any suggestion of the Applicant placing restraints or actions leading to constraints on NFL.

3.21 Counsel for the NFL then suggested that the Applicant should *“internalise the adverse effects”*<sup>10</sup> – but what are the *“adverse effects”* the submitter wants to see *“internalised”*? – there was no evidence of any - with respect there is no reason whatsoever why the activities cannot co-exist. Other than the contention of the employees of NFL there is nothing to justify Counsel for the submitter’s submission:

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<sup>7</sup> NFL/Rowe Opening submission para 5

<sup>8</sup> NFL/Rowe Opening submission para 6

<sup>9</sup> (1997) 3ELR NZ54

<sup>10</sup> NFL/Rowe Opening submission para 7

*“...this is a classic application in that it seeks to introduce a new activity into a sensitive rural environment, and that activity will conflict with the activities that currently exist. It will create both cross boundary and reverse sensitivity effects to such an extent that consent should be refused.”<sup>11</sup>*

- a submission completely unsupported by any independent evidence on the part of the submitter whatsoever.

3.22 The approach from the submitter appears to be *“we got here first and no one else is allowed to come”* – that must follow from the submitter’s submission:

*“It is significant that an undertaking that assessment of reasonableness, the neighbouring activities have a new risk coming to them. Both Nelson Forest and the Rowes farm existed well before the motorsport park was proposed for this site.”*

- so what? Resource consent applications are made all the time and they are judged according to their merits, having regard to their effects and in relation to the conditions which may be imposed on them to meet the purpose of Section 5. There is no *“primacy”* as contended for the submitter.

3.23 Counsel for the submitter spent a considerable amount of paper dealing with four matters:

(i) The Applicant’s rights in respect of the right of way – in this regard the Applicant’s rights are as set out in the right of way documentation, and that includes, as confirmed by Counsel to the

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<sup>11</sup> NFL/Rowe Opening submissions para 8

submitter, visitors attending the motorsport park as licensees, when it is said:

*“Thus visitors to the Motorsport Park would fit within the meaning of “Licensee” under the definition of secondary users. Thus under the deed as currently expressed Adcock & Donaldson could use the right of way for access by motorsport visitors.”<sup>12</sup>*

- and confirms the Applicants, and Council’s lawyers respective opinions.

3.24 But then Counsel challenges correspondence by Counsel for the Applicant to Ministers of the Crown in which it was said *“guests and invitees”* are not entitled to access – and by definition they are not, but as Licensee they are – the Crown would not allow the documents to be amended, and therefore the Applicant was left with no choice but to make use of the right of way document in its terms – which they are formally entitled to do. Has Counsel’s view for the Applicant altered? No. The Applicant sought amendment to documents to provide specifically for *“guests and invitees”*, that request was declined, the Applicant is equally happy to make use of the *“Licensee”* process which the drafters of the right of way in the first place, the Crown, allowed for.

(ii) Whether NFL can say “no” to requests to use the right of way?  
Although the Applicant cannot *“obstruct or hamper NFL or its agents, employees or contractors in its or their normal or reasonable use of their land”* and although they cannot cut down *“any forest produce on NFLs land”* (and I find it hard to accept that for the purposes of the right of way document *“forest produce”*

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<sup>12</sup> NFL/Rowe Opening submissions para 15

extends to gorse and broom lying on the right of way), and although NFL can prohibit the use of tracked or heavy vehicles – modern technology is such (if we have to play games) that the Applicant does not need to use tracked vehicles on the right of way.

It is suggested that occasional “*one waying*” of the right of way as suggested by Mr Petrie “*would amount to an obstruction or hampering of the normal or reasonable use of the grantor’s land*”<sup>13</sup> – an interesting intellectual gymnastic – but in fact a nonsense – advocated only by one who wishes to strangle co-existence. It seems that the NFL position is that they would blow as much smoke as they can into the airconditioning in the hope that you will conclude that a grant of consent would be futile. This was specifically addressed in opening for the Applicant, and it seems to me having read the submitter’s legal opening submissions that she also agrees that futility is not an issue which should concern you.

(iii) Reasonableness of Conditions:

It is said for the Submitter that:

*“However access is a fundamental part of your considerations because the conditions you impose must be reasonable. If they are not reasonable, they cannot be imposed”*<sup>14</sup>

But what conditions is the submitter referring to? Is it the conditions first contended by the Officers or is the conditions proffered by the Applicant? It is said:

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<sup>13</sup> NFL/Rowe Opening submissions para 27

<sup>14</sup> NDFL/Rowse Opening Submissions para 31



*"I submit that because of the existence of the power of veto under the Deed and the exercise of that veto by Nelson Forests it is unreasonable to impose any condition that you know that the Applicant cannot achieve"*

I do not accept (nor should it concern you) that NFL has in fact a power of "veto". The word "veto" means:

*"An authoritative objection or prohibition of something that is proposed. The right to make such a rejection or prohibition."<sup>15</sup>*

Counsel reads the document quite differently, sure NFL has the right to require certain things to happen, it cannot "*reject authoritatively*" the ability of the Applicant and its Licensees to use the right of way – there is no power of veto as such – to submit the contrary is a nonsense. I doubt that there is a Court in the land that would accept the proposition – "*you have a right of way but you are simply not able to use it*" But in any event should the right of way document, or NFL's contention on it concern you? - for the reasons set out above they should not.

3.25 Are you entitled to impose conditions on the consent? Yes you are, and you are entitled to impose those conditions as the Council's solicitors opinion confirm. However if you are concerned that NFL will try to orchestrate a situation of frustrating the consent the answer is to simply not impose the right of way upgrading conditions at all. That is the simple way to address the matter. As Mr Petrie said in his evidence there is only a minimal amount of work that needs to be done if push comes to shove and with the assistance of lollipop monitors or even potentially one way traffic over a defined section there will be no traffic difficulties in respect of access to this proposal – and no need to involve NFL/LINZ.

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<sup>15</sup> Collins English Dictionary

### 3.26 Grampian Condition?

It was suggested in the Council Officer's Report that there be a "*grampian condition*". NFL rejects it, and the Applicant rejects it because the imposition of a condition like that would on the submitter's case<sup>16</sup> would provide the trigger to derail any consent you may grant. Simply do not impose a "*Grampian*" condition precedent – thus that matter does not become an issue either.

3.27 Counsel for NFL submits that NFL itself makes a good case for the non-imposition of the Grampian condition – as Counsel for the submitter states<sup>17</sup>:

*"No consent [from NFL] will be forthcoming, and thus it is unreasonable to impose any condition that requires such a consent"*

- If that sadly is the position then do not impose the condition.

#### (iv) Futility?

Counsel then refers to the matter of futility. I do not think there are any cases which are referred to, nor is there any substance to the submission that a grant of consent would be futile, unless you were to impose conditions which would give NFL the whip hand. If NFL does not want the road improvements to be made, which improvements must necessarily be also (Counsel would have thought) for the benefit of NFL as a common user of the right of

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<sup>16</sup> See para 53

<sup>17</sup> Para 53

way, then why do they? There is nothing about the application which necessitate the road works to be done even although the Applicant is prepared to and has the ability being itself a contractor, to them.

(iv) Adaptive Management?

Counsel for the submitter refers to the matter of adaptive management in purist terms. The words “*adaptive management*” in the context of what was said in the opening for the Applicant was simply that plans and operations would be adaptively managed as time goes by – that is exactly what happens when you have a consultative process for the development and management plans – they are adapted through the consultation process and therefore are “*adaptive*”. The purist approach contended for the submitters (and in relation to the marine farming Industry) is simply meaningless in the context of this application.

(vi) Lapse Date?

As to the matter of lapse date Condition 32 of the Staff Report suggests a lapse date for Stage 1 of “*within 10 years*” and for Stage 2 “*within 20 years*”, and it is contended for the submitter:

*“I am not aware that the applicant has sought such a lapsing period, or indeed any variation from the default statutory position”<sup>18</sup>.*

In opening submissions it was indicated that Stage 1 of the consent was “*likely*” to be completed within 5 years.

Section 125 of the Act states (in part):

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<sup>18</sup> NFL/Rowe Opening submissions para 76

*“A resource consent lapses on the date specified in the Consent or, if no date is specified, 5 years after the date of commencement of the consent...” (emphasis added)*

The Commissioners have wholly within their power the ability to set a lapse date as recommended.

(vii) Lack of Water Analysis?

3.28 The submitters through Counsel criticised the Applicant’s case and that of the Council staff as for *“lack of analysis”*. The Applicant made clear that water will be made available for potable and other purposes by way of rain water collection and in the course of the hearing added that water can be brought in by tanker if necessary. Mr Hewitt’s evidence for the submitter related to ground water and it is unclear frankly why Mr Hewitt’s conclusion that testing as to ground water was required, is relevant to the matter of potable water, or for that matter in relation to the lakes, because as the Commissioners heard the lakes will be unsealed thus whatever water is in the ground flows through the lakes, it will not be impounded by them, they are therefore not *“dams”* as contended by the submitter<sup>19</sup>.

3.29 It is said:

*“The lake will be formed from the proposed abstraction of water from Stanley Brook, which can also be called a diversion”<sup>20</sup>*

- the Applicant does not propose diverting water from Stanley Brook at all. Water will *“flow through”* the lakes. As ground water rises so does the lake level, as ground water falls so does the lake levels.

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<sup>19</sup> NFL/Rowe Opening submissions para 87, para 89, para 90

<sup>20</sup> NFL/Rowe Opening submissions para 83

3.30 It is said:

*"In the case of the Rowes, the Applicant has not satisfied them that the proposed lakes will reserve their domestic and/or stock drinking water needs."*<sup>21</sup>

Counsel responds by saying - more to the point the submitter has not shown at all that the proposal will affect the Rowe domestic or stock drinking water needs.

3.31 Effects?

(viii) As to effects generally, the submitter through Counsel refers to Section 3 and states:

*"...the risk of a fire occurring either on the right of way access or on the applicant's land is an effect of high probability, given the combination of the number of persons being introduced to the land, the dry summer period which is commonly experienced in the valley, and the vegetation cover of production forestry in combination with copious amounts of gorse, fern and bracken as understory."*<sup>22</sup>

- But where is the evidence? If this is the case why did the Fire Officer or more particularly Mr Karalus and Ms Arnold give examples of this having occurred and giving clear evidence as to why this particular application on this particular site would be different than in respect of any forest adjoining

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<sup>21</sup> NFL/Rowse Opening submissions para 91

<sup>22</sup> NFL/Rowe Opening submissions para 115

any road anywhere in the district? - They did not. To say something, does not make it a fact.

### 3.32 Precedent?

(ix) The submitter also referred to the matter of “*precedent*”, and it is said:

*“The test for an adverse precedent effect is whether the case can be readily distinguished from others that might arise in the area”,*

And that precedent has not been raised by the Applicant or staff.

*“...presumably because they consider this application such a “one off” application that it will never be replicated anywhere in the district. However, they have failed to consider the aspect of precedence that arises from the grant of consent to a commercial activity in close proximity to production forestry, which results in an increase in fire risk.”<sup>23</sup>*

- It is not just a matter of saying “*there will be a precedent*”. In the Tasman District an activity such as this is considered as a discretionary activity, an application for all manner of “*commercial activities*” can be made throughout the district including near or even in forests and will be considered by the Consent Authority and consent either granted or declined.

3.33 It is drawing a long bow to say that a grant of consent to the application before you could be used as a spring board for somebody else in the district to make an application for some other commercial activity – which the Council would have to grant. If that happens it is because the Plan

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<sup>23</sup> NFL/Rowe Opening submissions para 115

allows for it. Any grant of consent being considered as a “precedent” (in terms of like being treated with like which I suspect is what is being proposed), is untenable as the Environment Court said in R J Berry v Gisborne District Council<sup>24</sup>:

*“We have said in many other decisions, and must say again, that this argument does tend to be overused, and needs to be treated with some reserve. The short and inescapable point is that each proposal has to be considered on its own merits”*

3.34 It is said:

*“I submit there is a significant precedent effect that will arise from the grant of this consent, because future applicants proposing activities, whether commercial or much smaller residential in nature, could fairly (sic) expect lenient treatment with regard to establishing proximity to forestry operations, because as expressed in the Staff Report the imposition of conditions will allow the avoidance, remediation or mitigation of any adverse cross boundary effects”*

- I think the Commissioners are experienced enough to appreciate that each and every application stands or falls on its own merits and set of facts, and a grant of consent to this application is unlikely to lead to anyone expecting “lenient treatment” in respect of “establishing in proximity to forestry operations”. Simply look at the conditions which are proffered by the Applicant and ask the question –

*“If there is a grant of consent here, on conditions, is that likely to bring the integrity of the Plan into question, or to undermine its*

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<sup>24</sup> [2010] NZEnvC ENV-2009-WLG-000003 at 24

*application, or to fetter Council's discretion and thus create some adverse "precedent".*

The answer is no.

3.35 What would result from a grant of application here?

- The ability to establish a motorsport park subject to strict conditions in relation to its establishment and operation. Other than the contention of the submitter, there is simply no adverse effect which has not been addressed by the Applicant, the Officers or the Commissioners – nor any potential *"precedent"* in terms the submitter contends.

**4.0 REPLY TO SPECIFIC SUBMITTER - LINZ**

4.1 The Crown Law Office for LINZ submitted in opposition to the application but called no evidence. Ms Muller took the position of being *"in support of the opposing submission by NFL"* and referred to *"The potential for fire risk from the activity"*. No evidence whatsoever was called by the Crown in this regard but reference is made at paragraph 10 to *"key design and management features"* as referred to in pages 38 and 62 of the consent application.

4.2 LINZs approach is then, following the NFL line, that the Applicant cannot undertake activity on land which *"it does not own or have the right to occupy"* and comments that reference to *"a proposed fire break along the access road presumes that land owned by LINZ will be available to establish a fire break"*. But as the Crown correctly states in paragraph 12(3):



*“The right of way is approximately 4.5 kilometres long and 20-26 metres wide.”*

- 4.3 The Applicant has no desire to remove any pine trees from the LINZ/NFL land nor do any works outside of the course of the right of way – any works it seeks to do will be within the line of the right of way because that is the only place in which it is authorised to do works. Although the application did propose setbacks of a dimension of 30 metres upslope and 20 metres downslope of the right of way – if NFL and LINZ do not want that (and it appears they do not) all well and good – delete that as a condition. The Applicant has done so in the draft conditions **annexed** – applying the approach that if NFL/LINZ do not want the condition, and to exercise it requires their good will which they have said will not be forthcoming, it is logical not to impose the condition.
- 4.4 That said Mr Adcock offered to offset any loss of income to NFL from the right of way widening – that offer was rejected also it appears.
- 4.5 And in that regard I note that Ms Muller also referred you to the provisions of 30 metre/20 metre setbacks from forests along the right of way and indicates that the Crown will not allow that to be done – all well and good, simply do not impose that condition – once the right of way is formed, it will act as a fire break.
- 4.6 An indication was given by Ms Muller that the Applicant would be unable to do any of the works on the right of way simply because there are no powers set out therein to do so, and referred you to the Seventh Schedule to the Land Transfer Act 1952<sup>25</sup>

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<sup>25</sup> See LINZ Opening submissions para 40

The Crown would be aware, no doubt, that the Land Transfer Regulations 2002 have replaced the Land Transfer Act Seventh Schedule and those Regulations specifically incorporate certain rights and powers into easements unless they are specifically negated from them.

4.7 **Annexed** is a copy of Schedule Four of the Land Transfer Regulations 2002 which defines what an “*easement facility*” is and in relation to a right of way is described as meaning “...*that part of the surface of the land described as a stipulated area*” – in this case according to the Crown<sup>26</sup> (and I do not disagree) 20 to 26 metres wide. The stipulated course or area is “*as shown on a plan prepared for the purposes of specifying the easement*” and is referred to “*in a transfer instrument easement instrument or deposit document*”. That of course includes the right of way referred to here because it is shown in the plans provided to you, and included in the right of way as allowed by the Regulations “*a right of way includes the right to the grantee in common with the grantor and other persons to whom the grantor may grant similar rights, at all times, to go over and along the easement facility*” and that right includes:

“(a) *The right to establish a driveway, to repair and maintain an existing driveway and (if necessary for any of those purposes) to alter the state of the land over which the easement is granted;*

(b) *The right to have the easement facility kept clear at all times of obstructions (whether caused by parked vehicles, deposited materials, or unreasonable impediment) to the use and enjoyment of the driveway”*

And in clause 10:

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<sup>26</sup> See LINZ Opening submissions para 3

*“The right to use any easement facility already situated on a stipulated area or course for the purpose of the easement granted;*

*And*

*“If no suitable easement facility exists, the right to lay, install or construct an easement facility reasonably required by the grantee (including the right to excavate land for the purposes of that construction).”*

It is surprising that the Crown did not refer that to you – one would have expected that the Crown Law Office would have made available to you all of the information relevant to the issues raised by them. Why did it not – I suspect that reference to the Land Transfer Regulations did not help its case.

## **5.0 GENERAL REPLY**

5.1 Counsel thinks that it can fairly be said that in general terms the submitter could be encapsulated in the following statements:

- (i) There will be an impact on stock (Rowe) and noise and animals “do not grow well stressed standing in the corner of a paddock”

The Applicant responds by saying that there is a considerable separation between the proposed motorsport park and the Rowe’s house, and that there is proposed for a “*buffer area*” between the park and the Rowe’s paddocks.

- (ii) That there are:

*“Enormous water demands generated by the proposed Motorsport Park [which] will obstruct or intersect significant amounts of water that would otherwise end up in the Creek and the gravels and would flow on downstream...”*

The Applicant responds that potable water will, as the application shows, be provided from rain water collection, or if necessary tanker, and there would be no water “taken” from the Creek, and the ponds levels will fluctuate with ground water – which will not be impounded but will flow through.

- (iii) That dirt track motorcross would require 200,000-300,000 litres of water for pre-soaking

The Applicant responds that it is not aware where Mrs Rowe obtained that information from, pre-soaking is required, but if necessary water will be brought in by tanker for the application if there is not already sufficient water on site.

- (iv) That construction activities will lead to sedimentation *“through activities in the stream bed and all the way along the valley”*

The Applicant responds that any construction plan will contain sediment control measures and of course a resource consent will be required.

- (v) That Fish & Game have not been consulted and no survey of the Creek has been undertaken

The Applicant responds that Fish & Game are not a submitter either, and it was fully open to Mrs Rowe to undertake a fish survey if she thought it necessary for evidential purposes – she clearly did not.

- (vi) *“The conditions proposed on page 88 of the application are not good enough”*

The Applicant responds, it is fully open to Mrs Rowe to comment on conditions and in detail rather than simply saying they are *“not good enough”* – that is not really of any help at all.

- (vii) Noise – and it is said that it is unclear *“what degree of noise”* will emanate from the park

The Applicant responds that detailed evidence was produced from Mr Malthus for the Applicant, that evidence was not challenged by Mr Caradus and so it was clear to them what the noise was likely to be and their evidence was not challenged .

- (viii) *“Will the access road be policed to minimise [fire risk]”*

The Applicant responds wherever the access road requires monitoring it will be patrolled and if necessary by tanker.

- (ix) That the use of the facility might lead to *“boy racers” “doing something illegal at night in a variety of places around the district”*

The Applicant responds that whilst Mrs Rowe referred to what she called the *“Tranter paper”* in answer to her concern was addressed to her evidence by Mr Eric Davy –notably the matters in respect of

which she expresses her concern were obviously not sufficient to draw any opposition from the New Zealand Police to the application.

- (x) The risk of fire and escape is of concern to Mrs Rowe.

The Applicant responds that the provision of the pond is likely to lead to a better situation than at present in terms of fire but in any event the Applicant acknowledges Mrs Rowe's comment "*I cannot imagine either Kim or myself preventing people from trying to escape a fire*" - the Applicant would not expect otherwise.

- (xi) That the road from Motueka is a "*wiggly highway*" with "*many bends*" and "*exciting road to race*" (Leyland).

The Applicant responds that whilst may be the view of Mrs Leyland, it is clearly not a view shared by such as Mr Davy who has had many years in road policing in this district. He of course referred to the road as being more than adequate.

- (xii) "*A motorsport park would change the present state of sustainable nature of ... of the [Tapawera] community, particularly in relation to noise, air, and traffic and their impact on the local environment*". (Spence)

The Applicant responds that whilst Mrs Spence's views are respected, the Applicant does not intend to change the nature of the Tapawera community, it will bring work to the community, both direct and indirect and that must necessarily lead to economic benefits not only to the community, but also to the region. The evidence of the Applicant, particularly that of the Business

Development Agency and Dr Brent Wheeler make that abundantly clear.

- (xiii) The land is better used for food production and it is “*good agricultural land*” (T Leyland).

The Applicant responds that the submitter’s position is not shared by either Andrew Burton, the land productivity analyst for the Tasman District Council, or by Mr Dick Bennison in his evidence.

- (xiv) That the use of Olivers Road will lead to safety risk, dust, and noise. (Drake).

The Applicant responds that the matter of noise has been fully addressed by witnesses for the Applicant, and matters such as dust and safety are addressed both by management plans (which are consulted upon as set out in the conditions) and by conditions of consent.

- (xv) Water will be an issue.

The Applicant responds that the matter of water supply was addressed fully in the evidence of Ms Andrew.

## **6.0 THE OFFICER’S REPORT**

- 6.1 There was nothing raised in the course of the Officer’s oral presentation, having heard the full evidence of both Applicant and submitters which cause them to change the position recommending approval set out in their reports.

- (a) Mr Ley suggested that the right of way could be 4.5 metres in width with a half metre shoulder either side and there was ample scope for that given the 20 to 26 width of the right of way course. Mr Ley also confirmed that as ticketing was proposed on the Applicant's site queuing would not be an issue, and he expressed the view that if there was scope for passing bays at 50 metre intervals if any one way system was countenanced – again something that could be allowed for within the width of the right of way. Mr Ley also reconfirmed:
- (i) There was ample room on the Motueka Valley Highway for school bus drop offs, and
  - (ii) Once the weeds along the course of the right of way were eradicated there was *“plenty of room”* for access purposes.
- (b) Mr Caradus, Council's noise control officer reconfirmed the process for obtaining a liquor licence for the site, and addressed the matter of noise from concerts (as raised by Mrs Rowe) and stated:

*“From my perspective it is easier to deal with amplified music than noise from machinery”*

He dispelled the comments of submitters as to *“overnight stays”* and referred the Commissioners to the requirement of the Camping Ground Regulations, he said also:

- (i) *“There is unlikely to be a problem with noise at the Rowe place”*; and
- (ii) *“Two thirds of the time the sea breeze blows up the valley and would take the noise away from the Rowes”*; and
- (iii) *“My belief is that noise on the right of way will comply (with Plan Standards) and if it does not then we can action it”*.



He did not challenge any of the evidence given by the Applicant

- (c) Mr Jack Andrew – Mr Andrew said that in his views the main issues were access, traffic, fire, and water. He said that he considered Council Officers dealing with the application on a “*structured plan*” base was the appropriate way to deal with matters “*so that people knew what to expect and where to expect it*”. As to the matter of “*reverse sensitivity*” Mr Andrew said:

*“This is an isolated place where noise etc can be patrolled”.*

And

*“In this district, if you were going to find such a site, it will be in a forest setting”*

And that:

*“Having heard from Mr Ashford and Mr Estall I am satisfied that there is sufficient evidence for the Commissioners to make a decision.”*

This is a matter of judgement – the Resource Management Act is not a risk free statute and:

*“I consider that a balanced consent should be granted”.*

- (d) Mr Mike McKiggan – Mr McKiggan addressed the submissions and made the point when addressing the matter of water:

*“In terms of the permitted baseline, the Applicant could plant the whole block in forestry and suck up all the water that was available, the Applicant has offered Nelson Forest Limited some 60 hectares of forest, if that was cut down it would allow more water to be available in Rabbit Gully.”*

He said that it had occurred to him that:

*“If the primary concern was the loss of water, that was created by Nelson Forest Limited’s plantings. If there is “reverse sensitivity” as Counsel [for the submitter] contends, that can be sheeted back to NFL.”*

It is submitted that after three days of evidence the fact that Council Officers reconfirmed their recommendations from within their specific areas of discipline, indicates that consent should be granted.

## **7.0 THE CONDITIONS:**

- 7.1 The Commissioners will all recall that in opening a set of conditions were made available for consideration by the Commissioners and for comment by the submitters and Council staff. No meaningful comment was made by submitters other than to criticise the conditions (including those suggested by Officers) as being “*unreasonable*” in terms of enforcement or “*inadequate*”. No adverse comment was made by the Officers in relation to the conditions.
- 7.2 In the course of the hearing various matters arose which the Applicant concludes should be included within the conditions. Accordingly,

annexed to this reply is a full set of conditions using the Officer's conditions as a base with tracked changes and amendments made to reflect matters that arose in the course of the hearing, including the matter raised in respect of the LINZ/NFL case. Particular attention is drawn to:

- (i) The addition at the end of Condition 1 of the preamble "General" to the conditions:

*"Notwithstanding the above, where there is any apparent conflict between the information provided with the application and any condition of this consent, the condition shall prevail"*

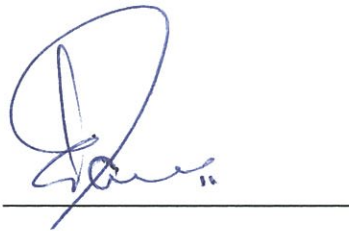
- so as to address amendments which may have occurred since the application papers were first lodged with Council

- (ii) To Condition 4 by deletion of the words *"property access"* by the diagram and the insertion of the word *"Olivers Road"* so that there is no misunderstanding as to what intersection is to be upgraded.
- (iii) As to condition 8(b) the insertion of a definition of *"dry conditions"* inserted on the advice of Mr Roger Estall;
- (iv) The addition of a new condition 35 requiring the consent holder to maintain a minimum dedicated 30,000 litres of water supply (by tank or pond) for fire fighting purposes
- (v) The addition of a new condition 36 requiring that any lakes or ponds are to be of sufficient depth to allow for helicopter borne monsoon bucket *"dipping"* in the event of fire.

- (vi) The addition of a new condition 37 requiring the consent holder to install and maintain a fire weather station for the purposes of monitoring fire weather indices at the site.
- (vii) The addition of a new condition 38 requiring the manager's house to be established and occupied on a permanent basis prior to commencement of any commercial activity on the site.
- (viii) The addition of a new condition 39 requiring the consent holder to cut, mow or crush combustible vegetation (other than trees intended for commercial harvest) along the width of the right of way.
- (ix) The addition of a new condition 40 precluding dogs being on the motorsport park during any event.
- (x) In addition there had been amendments to the various plans to include other parties in the consultation process for development of those plans including the Waimea Rural Fire authority, Nelson Forests, users of the shared access road, and the Police.
- (xi) The deletion of conditions in respect of which the goodwill of LINZ/NFL would be required.

**8.0 CONCLUDING COMMENTS:**

8.1 As said in opening, the application of Section 5 requires an overall broad judgement of the balancing of conflicting considerations. It is submitted that allowing for that balancing in making the overall broad judgement the application should be granted subject only to a judicious imposition of conditions.



Counsel for the Applicant

Dated: *25 April 2012.*

Databases > NZ Law Partner Legislation and Cases > Regulations of NZ > L > Land Transfer  
Regulations 2002 > Schedule 4 Rights and powers implied in easements



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## Land Transfer Regulations 2002

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# Schedule 4

## Rights and powers implied in easements

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## Land Transfer Regulations 2002

### Schedule 4

#### 1 Interpretation

In this schedule, unless the context requires otherwise,—

**dominant land**, in relation to an easement, means the land that takes the benefit of the easement and that is described by reference to the register in a transfer instrument, easement instrument, or deposit document

**easement facility**,—

- (a) in relation to a right to convey water, means pipes, pumps, pump sheds, storage tanks, water purifying equipment, other equipment suitable for that purpose (whether above or under the ground), and anything in replacement or substitution:
- (b) in relation to a right to convey electric power or a right to convey telecommunications and computer media, means wires, cables (containing wire or other media conducting materials), towers, poles, transformers, switching gear, other equipment suitable for that purpose (whether above or under the ground), and anything in replacement or substitution:
- (c) in relation to a right of way, means that part of the surface of the land described as the stipulated area:
- (d) in relation to a right to drain water, means pipes, conduits, open drains, pumps, tanks (with or without headwalls), manholes, valves, surface boxes, other equipment suitable for that purpose (whether above or under the ground), and anything in replacement or substitution:
- (e) in relation to a right to drain sewage, means pipes, conduits, pumps, tanks (with or without headwalls), manholes, valves, surface boxes, other equipment suitable for that purpose (whether above or under the ground), and anything in replacement or substitution:
- (f) in relation to a right to convey gas, means pipes, conduits, valves, other equipment suitable for that purpose (whether above or under the ground), and anything in replacement or substitution

**grantee**, in relation to an easement,—

- (a) means—
  - (i) the registered proprietor of the dominant land; or
  - (ii) the person having the benefit of an easement in gross; and
- (b) includes the agents, employees, contractors, tenants, licensees, and other invitees of the grantee

Nigel:

Databases > NZ Law Partner Legislation and Cases > Regulations of NZ > L > Land Transfer  
Regulations 2002 > Part 2 Instruments > 10 Rights and powers implied in easements



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## Land Transfer Regulations 2002

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### 10 Rights and powers implied in easements

For the purposes of section 90D(1) of the Act,—

- (a) the different classes of easement to which implied rights and powers apply are set out in clause 2 of Schedule 4;
- (b) the provisions set out in clauses 3 to 9 of Schedule 4 are implied in each class of easement to the extent indicated in those provisions;
- (c) the provisions set out in clauses 10 to 14 of Schedule 4 are implied in each class of easement.



**grantor**, in relation to an easement,—

- (a) means the registered proprietor of the servient land; and
- (b) includes the agents, employees, contractors, tenants, licensees, and other invitees of the grantor

[**repair and maintenance**, in relation to an easement facility, includes the replacement of the easement facility.]

#### History Note - Regulations of New Zealand

"repair and maintenance": this definition was inserted, as from 8 October 2007, by reg 11(1) Land Transfer Amendment Regulations (No 2) 2007 (SR 2007/261).

**servient land**, in relation to an easement, means—

- (a) the parcel of land over which an easement is registered and that is described by reference to the register in a transfer instrument, easement instrument, or deposit document;
- (b) a stipulated course or stipulated area

**stipulated course or stipulated area**, in relation to any of the classes of easements referred to in these regulations, means the course that—

- (a) is shown on a plan prepared for the purpose of specifying the easement; and
- (b) is referred to in a transfer instrument, easement instrument, or deposit document.

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Regulations 2002 > Schedule 4 Rights and powers implied in easements > Rights and powers implied in  
easements granting certain rights > 6 Rights of way



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## Land Transfer Regulations 2002

### Schedule 4

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#### 6 Rights of way

(1)

A right of way includes the right for the grantee in common with the grantor and other persons to whom the grantor may grant similar rights, at all times, to go over and along the easement facility.

(2)

The right to go over and along the easement facility includes the right to go over and along the easement facility with or without any kind of—

- (a) vehicle, machinery, or implement; or
- (b) domestic animal or (if the servient land is rural land) farm animal.

(3) A right of way includes—

(a)

the right to establish a driveway, to repair and maintain an existing driveway, and (if necessary for any of those purposes) to alter the state of the land over which the easement is granted; and

(b)

the right to have the easement facility kept clear at all times of obstructions (whether caused by parked vehicles, deposit of materials, or unreasonable impediment) to the use and enjoyment of the driveway.

Databases > NZ Law Partner Legislation and Cases > Regulations of NZ > L > Land Transfer Regulations 2002 > Schedule 4 Rights and powers implied in easements > Rights and powers implied in all classes of easements > 10 General rights



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## Land Transfer Regulations 2002

### Schedule 4

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#### 10 General rights

- (1) All the easements referred to in this schedule include—
- (a) the right to use any easement facility already situated on the stipulated area or course for the purpose of the easement granted; and
  - (b) if no suitable easement facility exists, the right to lay, install, and construct an easement facility reasonably required by the grantee (including the right to excavate land for the purpose of that construction).
- (2) The grantor must not do and must not allow to be done on the servient land anything that may interfere with or restrict the rights of any other party or interfere with the efficient operation of the easement facility.
- (3) The grantee must not do and must not allow to be done on the dominant land or the servient land anything that may interfere with or restrict the rights of any other party or interfere with the efficient operation of the easement facility.

Databases > NZ Law Partner Legislation and Cases > Regulations of NZ > L > Land Transfer  
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all classes of easements > 11 Repair, maintenance, and costs



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## Land Transfer Regulations 2002

### Schedule 4

#### 11 Repair, maintenance, and costs

(1)

If the grantee (or grantees, if more than 1) has (or have) exclusive use of the easement facility, each grantee is responsible for arranging the repair and maintenance of the easement facility, and for the associated costs, so as to keep the facility in good order and to prevent it from becoming a danger or nuisance.

(2)

If the grantee (or grantees, if more than 1) and the grantor share the use of the easement facility, each of them is responsible equally for the repair and maintenance of the easement facility, and for the associated costs, for the purposes set out in subclause (1).

(3)

If the easement is in gross, the grantee bears the cost of all work done outside the servient land.

(4)

The parties responsible for maintenance under subclause (1) or subclause (2) [or subclause (5)] (as the case may be) must meet any associated requirements of the relevant local authority.

[(5)

The grantor or grantee must promptly carry out at that party's sole cost any repair and maintenance of the easement facility that is attributable solely to an act or omission by that party.]

[(6)

However, if the repair and maintenance of the easement facility is only partly attributable to an act or omission by the grantor or grantee,—

(a)

that party must pay the portion of the costs of the repair and maintenance that is attributable to that act or omission; and

(b)

the balance of those costs is payable in accordance with subclause (2).]

[(7)

The costs of any electric power used for the conveyance of water must be apportioned between users of the water in proportion to their usage of the water.]

#### History Note - Regulations of New Zealand

Clause 11(4) was amended, as from 8 October 2007, by reg 11(2) Land Transfer Amendment Regulations (No 2) 2007 (SR 2007/261) by inserting "or subclause (5)" after "subclause (2)".

Clause 11(5) to (7) was inserted, as from 8 October 2007, by reg 11(3) Land Transfer Amendment Regulations (No 2) 2007 (SR 2007/261).

Databases > NZ Law Partner Legislation and Cases > Regulations of NZ > L > Land Transfer Regulations 2002 > Schedule 4 Rights and powers implied in easements > Rights and powers implied in all classes of easements > 12 Rights of entry



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## Land Transfer Regulations 2002

### Schedule 4

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#### 12 Rights of entry

- (1) For the purpose of performing any duty or in the exercise of any rights conferred under these regulations or implied in any easement, the grantee may—
- (a) enter upon the servient land by a reasonable route and with all necessary tools, vehicles, and equipment; and
  - (b) remain on the servient land for a reasonable time for the sole purpose of completing the necessary work; and
  - (c) leave any vehicles or equipment on the servient land for a reasonable time if work is proceeding.
- (2) The grantee must ensure that as little damage or disturbance as possible is caused to the servient land or to the grantor.
- (3) The grantee must ensure that all work is performed in a proper and workmanlike manner.
- (4) The grantee must ensure that all work is completed promptly.
- (5) The grantee must immediately make good any damage done to the servient land by restoring the surface of the land as nearly as possible to its former condition.
- (6) The grantee must compensate the grantor for all damages caused by the work to any crop (whether ready for harvest or not) or to any buildings, erections, or fences on the servient land.

Databases > NZ Law Partner Legislation and Cases > Regulations of NZ > L > Land Transfer Regulations 2002 > Schedule 4 Rights and powers implied in easements > Rights and powers implied in all classes of easements > 13 Default



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## Land Transfer Regulations 2002

### Schedule 4

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#### 13 Default

if the grantor or the grantee does not meet the obligations implied or specified in any easement,—

- (a) the party not in default may serve on the defaulting party written notice requiring the defaulting party to meet a specific obligation and stating that, after the expiration of 7 working days from service of the notice of default, the other party may meet the obligation:
- (b) if, at the expiry of the 7-working-day period, the party in default has not met the obligation, the other party may—
  - (i) meet the obligation; and
  - (ii) for that purpose, enter the servient land:
- (c) the party in default is liable to pay the other party the cost of preparing and serving the default notice and the costs incurred in meeting the obligation:
- (d) the other party may recover from the party in default, as a liquidated debt, any money payable under this clause.

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Regulations 2002 > Schedule 4 Rights and powers implied in easements > Rights and powers implied in  
all classes of easements > 14 Disputes



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## Land Transfer Regulations 2002

### Schedule 4

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#### 14 Disputes

If a dispute in relation to an easement arises between parties who have a registered interest under the easement,—

- (a) the party initiating the dispute must provide full written particulars of the dispute to the other party; and
- (b) the parties must promptly meet and in good faith try to resolve the dispute using informal dispute resolution techniques, which may include negotiation, mediation, independent expert appraisal, or any other dispute resolution technique that may be agreed by the parties; and
- (c) if the dispute is not resolved within 14 working days of the written particulars being given (or any longer period agreed by the parties),—
  - (i) the dispute must be referred to arbitration in accordance with the Arbitration Act 1996; and
  - (ii) the arbitration must be conducted by a single arbitrator to be agreed on by the parties or, failing agreement, to be appointed by the President of the District Law Society (being the District Law Society that has its headquarters closest to the land).

**ATTACHMENT 1**  
**RM100848 - Recommended Conditions**

**CONDITIONS**

**General**

1. The Motorsport Park shall be developed and operated in accordance with the documentation submitted in the application and in general accordance with the attached Plans RC02 to RC10 dated 22 November 2010 Provided however that the proposals staging is not limited to the staging identified in Schedule 3.

**Northern Buffer Area**

2. The development shall provide for an amenity buffer area to be maintained in trees within the area coloured dark and lighter green on attached Plan RC03 dated 22 November 2010.

Forest harvesting and replanting of commercial forestry may occur within the amenity buffer area provided that at all times (unless prevented by a natural disaster or fire) within the amenity buffer area there is a minimum of 50 metres continuous width of 15 year old or older trees in place from the western boundary right across to the eastern boundary of the property. Motorsport park activities within the buffer area shall be limited to mountain biking and rally road tracks located generally as shown on Plan RC03 dated 22 November 2010.

**Noise**

3. Noise generated by the activity on the site, when measured at or within the notional boundary of any dwelling on any adjacent site in a rural zone, or at or within the boundary of any site within the residential zone, does not exceed:

	Day	Night	Saturdays 6.00 pm to 9.00 pm Sundays and Public Holidays
L <sub>Aeq</sub> (15 mins)	55dB	40dB	40dB
L <sub>AFmax</sub>		70dB	



Note:

Night = 9.00 pm to 7.00 am inclusive.

Day = all other times but excluding Saturdays 6.00 pm to 9.00 pm, Sundays and Public Holidays.

Noise must be measured and assessed in accordance with the provisions of NZS6801:2008 Acoustics -measurement of environmental sound and NZS6802:2008 Acoustics -environmental noise.

Note: for the avoidance of doubt "*notional boundary*", in relation to noise means:

(a) a line 20 metres from the façade of any rural dwelling that is most exposed to the noise source; or

(b) the legal boundary of the site of the dwelling, where this is closer to the dwelling than (a).

## **Roading -Intersection Upgrades**

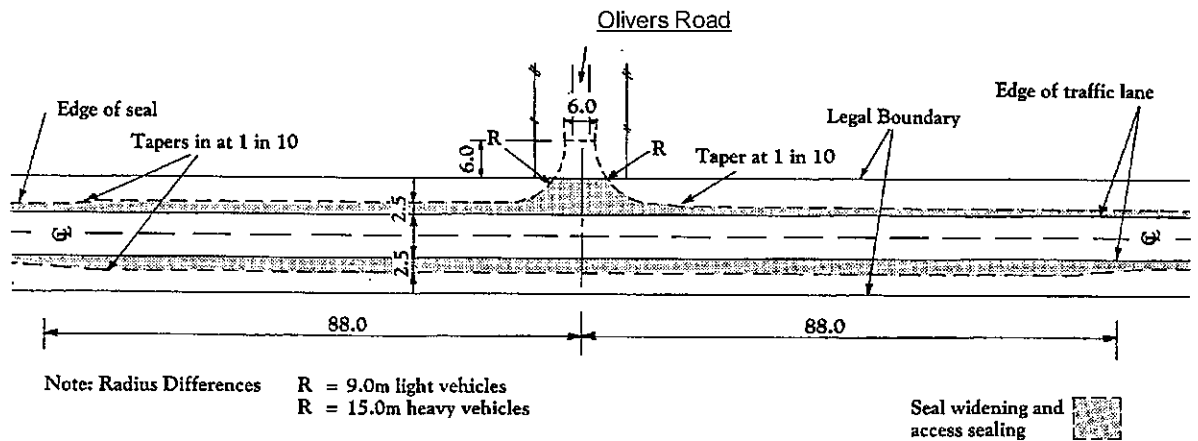
### **4. Motueka Valley Highway and Olivers Road Intersection**

- (a) Prior to the commencement of any motorsport ~~park~~-event activities, or buildings, the consent holder shall undertake improvements to the north and south of Olivers Road on the Motueka-Tapawera Highway so that 248 metres of clear sight visibility is achieved from a point 1.8 metres back from an inferred limit line when installed on Olivers Road.

**Advice Note:** The applicant's report from Traffic Design Group notes that approximately 0.8 metres will need to be removed from the crest of the Motueka Valley Highway. It was noted by Council engineering staff that an area of roadside bank to the north also restricts visibility for drivers exiting Olivers Road approximately 130 metres north on the east side of the Motueka Valley Highway.

- (b) The intersection shall be upgraded to the standard intersection plan as per diagram three of Section 16.2(c) of the TRMP( see below) but with the two coat chip seal extending as part of the upgrade into Olivers Road for a distance of **20 metres** from the white edge line of the Motueka Valley Highway.

### ***Olivers Road -Motueka Valley Road Intersection***



*Note: Diagram not to scale. All dimensions are in metres.*

**Notes:** Light vehicle means a motor vehicle up to 3500 kg gross laden weight  
 Heavy vehicle means a motor vehicle over 3500 kg gross laden weight

- (c) Pavement markings and signage to the standard for a "Give Way" intersection is required following the completion of the intersection upgrade and before any events take place.

## 5. Olivers Road Upgrade

- (a) Prior to the commencement of any motorsport park event activities or buildings, the consent holder shall undertake the following upgrades to the 600 metre length of Olivers Road:

- road carriageway widened to a minimum width of 5 metres;
- sloped side edges of 600mm;
- side drains on both sides of the road with regular cut off/break outs to these drains and draining to an approved system;
- vegetation clearance to at least 1.0 metres outside the side drain;
- a 16.0 metre diameter turning head shall be formed at the eastern end of Olivers Road.

- (b) Dust suppression on Olivers Road -until Olivers Road is sealed the consent holder shall ensure that dust suppression is

undertaken on Olivers Road before and during any motorsport event.

- (c) The consent holder shall ensure that traffic counts are undertaken on Olivers Road on a yearly basis over a total of 4 weeks inclusive of the two weekends that are expected to be the busiest in the year. The counts shall identify the flows by hour of day and day of week and are only required until Olivers Road is sealed for the full length. These counts are to be undertaken by a traffic counting firm approved by Council's Transportation Manager. An analysis is to be undertaken to evaluate estimate the average daily vehicle count (vpd) across the four weeks of data collected. Each year a copy of the traffic count and analysis are to be forwarded to Councils Coordinator of Compliance.

### **Olivers Road Sealing**

6. Olivers Road shall be sealed for the full length of the public road where the average daily traffic count in accordance with condition 5(c) reaches 700-200 vehicles per day (350-100 vehicles in, 350-100 vehicles out) and shall be sealed with a two coat seal as set out in the current Tasman District Council Engineering Standards and Policies 2008. ~~Once traffic counts on Olivers road reach 700 vehicles per day (ie 350 vehicles in, 350 vehicles out) then the approximately 600 metre length of Olivers Road and turning head shall be sealed with a two coat seal as per the current Tasman District Council Engineering Standards and Policies 2008.~~ The minimum width of the sealed surface shall be 5.0 metres.

### **Engineering Plans**

7. All engineering works required by conditions 4, 5 and 6 shall be shown on engineering plans and to the requirements as set out in the Tasman District Council Engineering Standards and Policies 2008. No work shall commence until the Engineering plans have been received and approved by Council's Engineering Manager. The consent holder shall meet the Council's costs of certification and inspection of those works.
8. Right of way and legal road reserve access upgrade

(a) Prior to the commencement of any motorsport ~~park event~~ activity the consent holder shall undertake improvements to the new right of way and legal road reserve from the eastern end of Olivers Road to the subject site to provide an access that meets the following standards:

(i) a minimum ~~6.04.5~~ 6.5 metre wide gravel carriageway with -4% crossfall and with a ~~minimum-maximum~~ operating speed of 30 kph:

- ~~Two 0.6 metre feather edges~~ two x1.0 metre feather edges;
- purpose built side drains;
- ~~adequate delineation(eg fencing) of the downside slope of the track~~;
- constructed to comply with Council's Engineering Standards and Policies 2008 unless otherwise agreed by Council.NZS:4404 (2010) road standard (volunteered by the applicant and amended by Council's Engineering Department).

~~(ii) a gate shall be installed at the eastern boundary end of Olivers Road to restrict public access at the times the park is not open;~~

~~the road upgrade shall be undertaken to ensure that separation from the adjoining forest is in accordance with any separation required under the approved Fire Management Plan shall be realigned to establish a 30 metre setback from the forest on the uphill side and 20 metre setback on the downhill side;~~

~~locked gates shall be installed on all private side roads;~~

~~security fences and/or barriers shall be installed between the boundary of the site and Nelson Forests Ltd site to prevent unauthorised access to forestry areas.~~

~~(volunteered by applicant)~~

(ii) - The matter of maintenance or the right of way once formed is a matter for the easement documents and the general law.

(b) In dry conditions - the consent holder shall suppress dust from vehicles travelling to and from the motorsport park. - Dust suppression on the right of way shall be undertaken at any time, when, measured in accordance with the National Rurtal Fire

Authority's "Fire Danger Rating System", conditions exist where the Drough Code exceeds 300, the Build Up Index exceeds 55, and the Fire Weather Index exceeds 32.

### **Grampian Condition**

- ~~9. Prior to the commencement of any motorsport park activity or buildings authorised by this consent the consent holder shall implement condition 8(a)(i) & (ii).~~

### **Fencing and Firebreaks**

9. Prior to the commencement of any motorsport event:
- (i) A security fence shall be installed at the consent holder's cost between the boundary of the site and Nelson Forests Limited's site to prevent unauthorised forest access.
  - (ii) A firebreak or firebreaks of a minimum of 30 metres in width within the site and around the motorsport park perimeter where it meets production forest shall be installed and thereafter maintained to ensure flammable vegetation is not present within their site and planted in lucerne along the common boundary with Nelson Forests Limited's land.

### **Signs**

10. "No public access" signs shall be erected at the entry to all side roads off the main access from the intersection of Motueka Valley Highway and Olivers Road to the subject site. No single sign shall exceed 2 m<sup>2</sup> in size.

### **Directional Signage**

11. The consent holder may erect a Tasman District Council Tourist Facility Directional (Brown) sign on the existing sign post supports or at the intersection of State Highway 6 and the Motueka Valley Highway having first obtained the written approval of the New Zealand Transport Agency.
12. The consent holder shall erect directional signs at all access intersection places from the intersection of the Motueka Valley

Highway and Olivers Road to the motorsport park property. Each sign shall only contain directional information including distance to the motorsport park to direct traffic into the on site parking area. Each sign shall be between 0.5 m<sup>2</sup> and 1 m<sup>2</sup> in the area. Sign post locations on legal TDC roads shall be approved by the Councils Transportation Manager.

13. All directional signs shall be erected prior to any motorsport taking place at the motorsport park and one sign shall note the 24 hour availability of petrol at Tapawera and distance to it.
14. The consent holder may erect traffic safety and warning signs at any time and at any place along the ROW and Rabbit Gully Road to identify any natural, road repair work or other hazard including fire and forestry operations risks. No single sign shall exceed 2 m<sup>2</sup> in size.

### **Car Parks**

15. For ~~“activities” the~~ The numbers of car park, cars and trailer parks and coach parks provided onsite parking for the proposed activities and buildings shall be in accordance with the number of vehicle parks provided in the parking column of Schedule 3 Table 1 and 2 of this consent.

**Advice Note:** Schedule 3 Table 1 and 2 were also contained on pages 9 to 13 and pages 95 to 99 of the application.

### **Car Park Setback and Formation**

16. All car parking and vehicle manoeuvring areas shall be: finished with an all weather surface; setback at least 20 metres from the top of the bank of any watercourse; and designed so that runoff drainage is directed to rain gardens with capacity to entrap and retain pollutants and silt.

### **Dust and Odour**

17. The emission of dust and odours from the construction and operation of the motorsport park on the subject site shall be so controlled that it is not pervasive, objectionable or offensive at the notional boundary of

any dwelling existing at 19 March 2012 (or substitute the date of the consent if granted).

**Advice Note:** For the avoidance of doubt notional boundary, in relation to dust and odour noise means:

- (a) a line 20 metres from the façade of any rural dwelling; or
- (b) the legal boundary of the site of the dwelling where this is closer to the dwelling than (a).

### **Gravel Extraction and Crushing**

18. Extraction and crushing of gravel shall be limited to gravel sourced on the subject property and shall also be limited to that required for development and maintenance of the motorsport park and its access from Olivers Road to the subject site.

**Advice Note:** additional resource consents would be required for the gravel to be extracted and/or crushed on site for use beyond, or sale off the subject site or its access to Olivers Road.

### **Location and Height of Buildings**

19. The location and height of all buildings shall be restricted to within the general locations for buildings identified on the master plan for the subject property and in Schedule 2 "Proposed Buildings" of this consent (taken from pages 100 and 101 of the application). Within the building areas all buildings shall be set back a minimum of 30 metres from the drip line of trees in an exotic forest plantation and 30 metres from any internal property boundary and within the setback no flammable vegetation shall be permitted.
20. Any application to Council for a building permit shall be accompanied by a report assessing the flood hazard risk to the proposed building site(s) during rainfall events having a range of magnitudes up to at least a 2% annual exceedence probability of occurrence. This assessment shall include the possible depth, duration and velocity of flood flows over any proposed building site and shall be undertaken by a suitably qualified and experienced chartered professional engineer or hydrologist. The report shall, where necessary, indicate if any flood hazard risk to buildings in rainfall events up to 2% AEP will be mitigated and if so, how this will be undertaken.

21. The height of any building shall not exceed 7.5 metres except for buildings that are specifically identified by a greater height in Schedule 2 of this consent.

Height shall be measured in accordance with the definition in Chapter 2 of the Tasman Resource Management Plan, quoted below:

*“Height, in relation to the building, means the vertical distance between ground level at any point and the highest part of the building immediately above that point. For the purpose of calculating height, account is taken of parapets, but not of:*

- (a) radio and television aerials, provided that the maximum height normally permitted by the rules for the zone is not exceeded by more than 2.5 metres;*
- (b) chimneys (not exceeding 1.1 metres in any direction); or finials, provided that the maximum height normally permitted by the rules for the zone is not exceeded by more than 1.5 metres.*

**Advice Note:** for the avoidance of doubt, ground level is defined in the Tasman Resource Management Plan as follows:

Ground level means the natural ground level, or where that has been altered by subdivision, means the actual finished ground level when all works associated with the subdivision of the land are completed, and excludes any excavation or filling associated with the building activity.

## **Colours**

22. The exterior of the building shall be finished in colours that are recessive and which blend in with the immediate environment. The consent holder shall submit to the Council's Consent Planner, Richmond for approval prior to applying for building consent the following details of the colours proposed to be used on the walls and roof of the building:

- (a) the material to be used (eg paint, colour steel);
- (b) the name and manufacturer of the product or paint;
- (c) the reflectance value of the colour;



- (d) the proposed finish (eg matt, low-gloss, gloss); and
- (e) either the BS5252:1976 (British Standard Framework for Colour Coordination for Building Purposes) descriptor code, or if this is not available, a sample colour chip.

The building shall be finished in colours that have been approved by the Council.

**Advice Note:** the consent holder should engage the services of a professional to ensure the exterior cladding and colour selection are compatible with the long term durability of the building material in the subject environment and in accordance with the requirements under the Building Act 2004.

### **Lighting Control**

- 23. All outside lighting and lighting from light towers shall be directed downwards with hoods to minimise light spill upwards into the night sky.

### **Sale of Liquor**

- 24. ~~The consent holder shall ensure that whenever liquor is sold within the motorsport park all drivers of vehicles leaving the motorsport park are given a breathalyser test. The breathalyser test shall be administered within the subject property.~~ The consent holder shall ensure that whenever liquor is sold within the motorsport park, spectator and visitor management (specifically mitigation against intoxicated drivers) is in strict accordance with the approved Traffic Management Plan and Event and Noise Management Plan.

### **Indigenous Bush**

- 25. The small stand of indigenous forest within the subject property at approximately 2498471/5978349 be retained and managed to prevent stock and weed invasion and to encourage its retention and regeneration.

### **Aerodrome and Heliports**

26. The aerodrome and heliports shall be constructed and operated in strict compliance with New Zealand Civil Aviation requirements and standards at all times.
27. During all drag racing events and all racing circuit events (including practices) the aerodrome shall be closed for operation half an hour prior to the starters flag and half an hour after the last vehicle has crossed the finish line.
28. There shall be no public access to any part of the aerodrome or heliport at any time. Public access shall be controlled by fencing and/or barriers, and by signage in prominent locations. The operator shall supply at least one on site marshal at the aerodrome and heliport during events to direct passengers and to control public access to aircraft and operational areas. The marshal(s) shall be in radio communication with aircraft.

Advice note: conditions 26, 27 and 28 were volunteered by the applicant.

### **Operations Plan**

29. The consent holder shall at all times have an up to date site operations plan. The scope of the operations plan shall include the matters listed in Schedule 1 of this consent and "New Activity Management Plans" produced under condition 30 of this consent.

The operations plan shall include the organisational structure and shall include an up to date list of contacts including at least two alternative 24 hour contacts in the event of an emergency.

The operations plan shall be maintained and updated by the park operator.

The following users shall be provided with at least one copy of the complete operations plan and any subsequent updates, and shall be required to comply with the management plans as relevant:

- (i) park operations company
- (ii) event organisers
- (iii) clubs and organisations using the park

- (iv) construction project managers and contractors
- (v) Tasman District Council.

The following shall also apply to the Operations Plan

- (a) Following consultation of the Management Plans as set out in Table 1, the final plans be submitted to the consultation parties listed for comment;
- (b) The consultation parties shall have the opportunity to make comment within 7 days;
- (c) The Management Plans referred to in Table 1 shall be submitted to Council for approval (as indicated in Table 1), prior to any works taking place. Any recommendations of the Medical Officer of Health and the Principal Rural Fire Officer (for the relevant plan as listed) will be considered in the final approval of the relevant plan by Tasman District Council;
- (d) The preparation, amendment and review of the Management Plans as listed in Table 1 shall be undertaken at the cost of the consent holder.

**Advice Note:** the matters for the operation plan are listed in Schedule 1 of this consent.

### **New Activity Management Plan**

30. That prior to the commencement of any individual activity authorised by this consent a management plan shall be submitted to the Council's Coordinator of Compliance or his/her delegate, for approval. The individual activity management plans shall as a minimum detail include:

- (a) a description of the activity
- (b) the hours of operation
- (c) a plan showing the location of the area to be used and identification of buildings, parking areas, rainwater gardens and any lighting proposals
- (d) a fire management plan
- (e) dust management proposals for Olivers Road until it is sealed

- (f) any other details that the Council's Coordinator of Compliance considers necessary and which are reasonably related to the proposed activity in the motorsport park
- (g) ~~for any activity or event expected to generate 1000 vehicles per day a large event management plan is to be prepared by a qualified Traffic Engineer and Environmental Health professional. The large event plan shall address the matters outlined in condition 31 of this consent~~ for any activity or event expected to generate 1000 vehicles per day an Event Management Plan shall be prepared by a suitably qualified and experienced person. The Event Management Plan shall address the matters contained in condition 31 of this consent.

### **Large Event Management Plan**

~~31. Prior to the holding of events of any sort, motorsport activities, music festivals or other events at the subject property that will, or is expected to, generate 1000 vehicles per day or more, a Large Event Management Plan will be prepared by a suitably qualified Traffic Engineer and an Environmental Health Officer. The Large Event Management Plan shall be prepared in consultation with the New Zealand Transport Agency, NZ Police, Waimea Rural Fire Service and the Council's Transportation Manager and Council's Coordinator of Regulatory Services and a Council Compliance Monitoring Officer and then shall be submitted to the Council's Coordinator of Compliance or his delegate for approval.~~

~~— The Large Event Management Plan shall include the following:~~

- ~~— (a) the resources and equipment to be employed to manage the safe and efficient movement of traffic through the State Highway 6/Motueka Valley Highway intersection and Olivers Road/Motueka Valley Highway Road intersections;~~
- ~~— (b) emergency vehicle access;~~
- ~~— (c) estimates of the volumes of traffic, numbers of people and hours of operation;~~
- ~~— (d) event site layout, parking, location of food stalls, toilet, rubbish (including requiring security staff to take all reasonable steps to exclude glass from the subject property and ROW access);~~

~~potable water facilities, accident and emergency personnel and equipment, and adequate shelter to provide relief from the effects of extreme heat or cold that can occur at the site;~~

- ~~— (e) a fire and dust management plan for both the site access from Olivers Road/Motueka Valley Highway intersection and for within the site;~~
- ~~— (f) location and manning of checkpoints for drug and alcohol checking and breathalysing;~~
- ~~— (g) a single point of contact to field general enquiries and complaints and the procedures for dealing with them.~~

### **Lapsing of Consent**

32. The consent RM100848 may be undertaken in stages with the Section 125 lapse date for Stage 1 being within 10 years of the consent becoming effective and for Stage 2 within 20 years.

**Advice Note:** the general outline of Stages 1 and 2 are set out in Schedule 3 of this consent. It is acknowledged that there is no condition requiring that staging and the staging shown in the application and Schedule 3 is indicative only.

### **Review**

33. That pursuant to Section 128(1)(a) and 128(1)(c) of the Resource Management Act 1991, the consent authority may review any conditions of the consent (within two years from the date of issue of this consent and thereafter within one month of the anniversary of the date of this consent) for any of the following purposes:
- (a) to deal with any adverse effect on the environment which may arise from the exercise of the consent and which it is appropriate to deal with at a later stage; or
  - (b) to deal with inaccuracies contained in the consent application that materially influenced the decision made on the application and are such that it is necessary to apply more appropriate conditions; or
  - (b) to assess the appropriateness of imposed compliance standards, monitoring regimes and monitoring frequencies and to alter these accordingly.

### **Cost Recovery**

34. The consent holder shall be responsible for payment of any reasonable costs associated with the monitoring, review or exercise of this consent which are incurred by the Council and Council's Compliance Officers.

### **Emergency Fire Fighting Supply**

35. The consent holder shall maintain a minimum dedicated 30,000 litres water supply (tank or pond) for firefighting purposes.

### **Lakes**

36. Any lakes or ponds shall be of sufficient depth to allow for helicopter borne monsoon bucket "dipping" in the event of fire.

### **Fire Weather Station**

37. The consent holder shall install and maintain a fire weather station for the purposes of monitoring fire weather indices.

### **Manager's House**

38. Prior to commencement of any commercial activity on the site, the Manager's house shall be established and occupied on a permanent basis.

### **Vegetation Clearance along Right of Way**

39. The consent holder shall cut, mow or crush combustible vegetation (other than trees intended for commercial harvest) across the width of the right of way.

### **Dogs**

40. No dogs to be admitted to the Motorsport Park during any event when vehicles are active, save for working dogs and guide dogs.

### **Notification of Major Events**

41. The consent holder shall notify any major events (as defined in this consent) proposed on its website at least one month prior to the date of holding of the event.

## SCHEDULE 1 - OPERATIONS PLAN CONTENT

Management Plan	Content to include (but not limited to)	To be prepared in consultation with Consultation to be had with	Council to approve
<u>Activity (separate activity Management Plan for each individual activity – refer condition 30)</u>	<ul style="list-style-type: none"> <li>• <u>Activity description</u></li> <li>• <u>Hours of operation</u></li> <li>• <u>Location Plan</u></li> <li>• <u>Fire Management Plan</u></li> <li>• <u>Dust management proposals for Olivers Road</u></li> </ul>	N/A	Yes
Aircraft	<ul style="list-style-type: none"> <li>• Local approach and departure procedures and height limitations</li> <li>• Facilities schedule</li> <li>• Operating restrictions</li> <li>• Runway group rating and aircraft restrictions</li> <li>• Aircraft parking capacity limitations</li> <li>• Security</li> <li>• Marshalling procedures</li> </ul>	CAA	No
Construction	<ul style="list-style-type: none"> <li>• Fire prevention and risk mitigation</li> <li>• Sedimentation mitigation and stormwater management</li> <li>• Traffic management</li> <li>• Dust suppression</li> <li>• Riverbed works</li> <li>• Affected party notification</li> <li>• Accidental discovery of heritage/archaeological artefacts</li> </ul>	Waimea Rural Fire Authority  Fish & Game  Tasman District Council  Nelson Forests Ltd	Yes
Ecology	<ul style="list-style-type: none"> <li>• Stream reinstatement programme</li> <li>• Riparian planting programme</li> <li>• Lake habitat programme</li> <li>• Monitoring programme</li> </ul>	Tasman District Council staff  Iwi	Yes
Environmental	<ul style="list-style-type: none"> <li>• <u>Solid waste management and Waste minimisation including maintaining access road and removal of all waste and unlawful dumping</u></li> <li>• Green building requirements</li> <li>• Carbon offset programme</li> <li>• Solar capture</li> <li>• Rain harvesting</li> </ul>	Sustainable Business Network  <u>Nelson Forests Limited</u>  <u>Medical Officer of Health</u>	No
Event and Noise Management	<ul style="list-style-type: none"> <li>• TRMP noise standards</li> <li>• <u>Noise mitigation measures including measures to avoid disrupting forestry operations and communications and to avoid reverse sensitivity (cross boundary) effects</u></li> <li>• Sale of liquor management</li> <li>• Noise monitoring</li> <li>• Complaints record</li> <li>• Complaints procedure</li> </ul>	Owners of Lot 2 DP6891(Rowe)  TDC staff  <u>Nelson Forests Ltd</u>  <u>Public Health Service/Medical Officer of Health</u>	Yes



Management Plan	Content to include (but not limited to)	To be prepared in consultation with Consultation to be had with	Council to approve
	<ul style="list-style-type: none"> <li><u>Avoidance of business and operational disruption for permitted forestry activities, including road closures.</u></li> </ul> <p><b>Reason: response to evidence for Nelson Forests Limited</b></p>	Liquor licensing authority	
Fire	<ul style="list-style-type: none"> <li>Risk mitigation</li> <li>Emergency equipment</li> <li>Safety and emergency procedures, <u>including trigger levels for elevated fire risk and minimum responses for each level of risk</u></li> <li>Fuel storage</li> <li>Evacuation procedures</li> <li>Mobile water tank unit with pump</li> <li>Fire breaks and minimum setbacks</li> <li><u>Access security, monitoring and prosecution</u></li> <li><u>Requirement for rural fire training for motorsport organisers/staff and site caretaker</u></li> <li><u>Plan to be reviewed annually, or prior to the establishment of any new activity, and updated accordingly</u></li> <li><u>Monsoon patrolling right of way for events wielding 300 plus vehicles</u></li> <li><u>Stop/Go paddle men for events generating 300 plus vehicles</u></li> <li><u>Adequate insurance</u></li> <li><u>Compliance with all relevant building regulations</u></li> <li><u>Monitoring Fire Weather Indices</u></li> </ul>	<p>Waimea Rural Fire Authority Principal Rural Fire Officer</p> <p>The occupier of the land currently Nelson Forests Ltd</p> <p>Nelson Fire Service</p> <p>Or other appropriately qualified and experienced person</p>	Yes, <u>on the recommendation of the Principal Fire Officer</u>
Hazardous substances	<ul style="list-style-type: none"> <li>Storage requirements and design standards</li> <li>Refuelling restrictions</li> <li>Spill kit and safety equipment locations and requirements</li> <li>Emergency procedures</li> </ul>	<p>Owners of Lot 2 DP 6891(Rowe) Public Health Service</p> <p>The occupier of the land currently Nelson Forests Ltd</p> <p>Or other appropriately qualified and experienced person</p>	Yes
Landscape	<ul style="list-style-type: none"> <li>Planting plan (separate plan for each activity as it is developed)</li> <li>Riparian planting plan</li> <li>Maintenance programme</li> </ul>		No
Stormwater	<ul style="list-style-type: none"> <li>Design standards and specification</li> <li>Sediment removal programme</li> <li>Maintenance programme</li> </ul>	Owners of Lot 2 DP6891(Rowe)	Yes
Traffic	<ul style="list-style-type: none"> <li>Intersection control</li> <li>Marshalling</li> </ul>	NZ Transport Agency	Yes

Management Plan	Content to include (but not limited to)	To be prepared in consultation with Consultation to be had with	Council to approve
	<ul style="list-style-type: none"> <li>• Parking</li> <li>• <u>Access management and maintenance including Right of Way and avoiding disruption to other Right of Way users</u></li> <li>• Speed restrictions</li> <li>• Dust suppression</li> <li>• Evacuation procedures</li> <li>• Compliance and enforcement measures</li> </ul>	Nelson Forests Ltd  Users of the shared access road <u>Regional Rooding Police Manager</u>	
Wastewater	<ul style="list-style-type: none"> <li>• Design standards and specification including treatment and water quality standards</li> <li>• Maintenance programme</li> </ul>	Owners of Lot 2 DP6891(Rowe) <u>Public Health Service</u>	Yes
Water	<ul style="list-style-type: none"> <li>• Design standards and specification including treatment</li> <li>• Maintenance programme</li> <li>• Abstraction limits</li> </ul>	Owners of Lot 2 DP6891(Rowe) <u>Public Health Service</u>	Yes
<u>Recreational Water</u>	<ul style="list-style-type: none"> <li>• <u>Management and operation of the lakes for contact recreation</u></li> </ul>	<u>Public Health Service</u>	<u>Yes</u>

## SCHEDULE 2: PROPOSED BUILDINGS

**Note: Building locations shown on the masterplan are indicative only.**

Building	Location and Details	Setbacks	Height
Caretaker's house (plan RC07)	Commercial precinct	Complying	Complying
Amenities block, campground (plan RC07, RC08)	Commercial precinct	Complying	Complying
Amenities and storage block, kids' pee wee track (plan RC18)	Commercial precinct	Complying	Complying
Accommodation and conference centre (plan RC18 and RC19)	Commercial precinct  19 accommodation units  2 conference buildings containing meeting and conference facilities; restaurant, café, bar; office; and ancillary facilities	Complying	11m
Amenities block, off-road racing circuit (plan RC11)	Motorsport precinct	Complying	Complying
Amenities block, rally road amenities area (plan RC12)	Motorsport precinct	Complying	Complying
Amenities block, motocross and lake area (plan RC13)	Motorsport precinct	Complying	Complying
Amenities block, supermoto area (plan RC14)	Motorsport precinct	Complying	Complying

Pit buildings (plan RC15)	Motorsport precinct 20 private pit buildings	Complying	Complying
Clubroom and display (plan RC15)	Motorsport precinct Two-storey clubrooms located above pit buildings: clubrooms, museum, display area, offices, corporate boxes, commentary box, and ancillary activities	Complying	11m Commentary box up to 15m
Drag strip pit buildings (plan RC16)	Motorsport precinct 13 pit buildings Amenities block	Complying	Complying
Drag strip buildings	Motorsport precinct 2 x amenities blocks; 1 x trauma centre; commentary / control tower	Complying	Complying Commentary tower up to 12m
Amenities block, confidence course (plan RC20)	Non-motorsport precinct	Complying	Complying
Amenities block, luge area (plan RC21)	Non-motorsport precinct	Complying	Complying
Lighting towers (number and location to be determined)	Motorsport precinct	Complying	Up to 15m

### SCHEDULE 3: PROPOSED ACTIVITIES

**Table 1: Stage 1 Schedule of Activities (in no particular order)**

Activity	Associated Facilities	Ablutions	Parking
<b>Motorsport Activities</b>			
Motocross track (refer plan RC05 and RC13)	<ul style="list-style-type: none"> <li>parking</li> <li>ablutions</li> <li>landscaping</li> </ul>	Shared	Shared, 64 cars and trailers, 14 cars
Main lake, activities in the surface of water (jet ski, cable wakeboarding, provision for water skiing -plan RC04 and RC13)	<ul style="list-style-type: none"> <li>parking</li> <li>ablutions</li> <li>launch ramp</li> <li>landscaping</li> </ul>		
Supermoto area (plan RC05 and RC14)	<ul style="list-style-type: none"> <li>parking</li> <li>ablutions</li> <li>landscaping</li> </ul>	Dedicated	Dedicated, 40 cars and trailers
Off-road racing track (buggies and quad bikes -plan RC04)	<ul style="list-style-type: none"> <li>parking</li> <li>ablutions</li> </ul>	Dedicated	Dedicated, 45 spaces plus 3 coach parks

Rally road (5.2km plan RC03 and RC12)	<ul style="list-style-type: none"> <li>• parking</li> <li>• ablutions</li> <li>• office</li> </ul>	Dedicated	Dedicated, 24 spaces
Clubroom pit area stage 1 (plan RC15)	<ul style="list-style-type: none"> <li>• parking</li> <li>• first level 20 x pit buildings</li> <li>• ablutions</li> <li>• landscaping</li> </ul>	Dedicated	Dedicated, 36 cars plus coach parking
Dragstrip (400m), runout (400m) and return road which forms a basic sealed circuit (plans RC06, RC07, RC16, RC17)	<ul style="list-style-type: none"> <li>• parking</li> <li>• 13 x pit buildings</li> <li>• spectator embankments x 2</li> <li>• ablutions block</li> <li>• refuse station</li> <li>• helipads x 2</li> <li>• marshalling area</li> <li>• meeting rooms</li> <li>• first aid centre (future trauma centre)</li> </ul>	Dedicated	<p>Dedicated</p> <p>75 competitor spaces</p> <p>256 visitor spaces east side</p> <p>103 visitor spaces west side</p>

<b>Non-Motorsport Activities</b>			
Sale of liquor (special licences for temporary events and on licences for accommodation providers)	<ul style="list-style-type: none"> <li>• initially temporary</li> </ul>	Shared	N/A
Airstrip (500 metres, plan RC06)	<ul style="list-style-type: none"> <li>• aircraft parking</li> </ul>	Shared (all facilities)	Dedicated aircraft parking area
Driver training school using various tracks	<ul style="list-style-type: none"> <li>• parking</li> <li>• ablutions</li> </ul>	Shared	Shared
Vehicle testing on various tracks	<ul style="list-style-type: none"> <li>• ablutions</li> </ul>	Shared	N/A
Children's pee wee track (motocross plans RC07, RC18)	<ul style="list-style-type: none"> <li>• parking</li> <li>• ablutions</li> <li>• storage shed</li> <li>• amenity lakes</li> <li>• children's playground</li> </ul>	Dedicated playground	Shared with drag strip parking west sides (103 spaces)
Mountain bike tracks (various plans and RC19)	<ul style="list-style-type: none"> <li>• parking</li> <li>• ablutions</li> </ul>	Shared with other activities	Shared with other activities
Regional Cycle Trail Link ( <i>to be confirmed</i> )	<ul style="list-style-type: none"> <li>• ablutions</li> <li>• accommodation</li> </ul>	Shared with other activities	Shared with other activities
Mountain bike park (plan RC07, RC19)	<ul style="list-style-type: none"> <li>• parking</li> <li>• ablutions</li> </ul>	Shared with campground (stage 2)	Dedicated, 62 cars
Zip line (flying fox) course (location to be determined)	<ul style="list-style-type: none"> <li>• parking</li> <li>• ablutions</li> </ul>	Shared	Shared
Confidence course (plan RC09, RC20)	<ul style="list-style-type: none"> <li>• parking</li> <li>• ablutions block</li> <li>• landscaping</li> </ul>	Dedicated	Dedicated, 24 cars
Caretaker's house (plan RC07)	<ul style="list-style-type: none"> <li>• landscaping</li> </ul>	Dedicated in-house	Dedicated, 2 cars

Access roads	<ul style="list-style-type: none"> <li>• Motueka Valley Highway upgrade</li> <li>• access road upgrade</li> </ul>	N/A	N/A
Off-site signs	<ul style="list-style-type: none"> <li>• one directional sign at the intersection of State Highway 6 and the Motueka Valley Highway</li> <li>• one directional sign at the intersection of the Motueka Valley Highway and Olivers Road</li> <li>• “restricted access” or “no public access” signs along the side roads on Olivers Road</li> </ul>	N/A	N/A
Infrastructure	<ul style="list-style-type: none"> <li>• Sewage. Portalooos and 5 x ablution blocks plus caretaker’s house.</li> <li>• Water. Collection and use of roof water on all buildings. Abstraction from bores for centralised storage and domestic use.</li> <li>• Stormwater. Discharge to ground and use of swales from impervious surfaces.</li> <li>• Earthworks. Estimated approximately 30,000m<sup>3</sup> required in stage 1, plus lake excavation.</li> <li>• Culverts/bridges. 7 x culverts/bridges (2 x off-road racing; 2 x rally road; 2 x supermoto; 1 x main access road).</li> </ul>		

**Table 2: Stage 2 Schedule of Activities (not in any order)**

Activity	Associated Facilities	Ablutions	Parking
<b>Motorsport Activities</b>			
Kart track (plan RC06, RC15)	<ul style="list-style-type: none"> <li>• parking</li> <li>• ablutions</li> </ul>	Shared with club pit rooms	Shared with club pit rooms (36 spaces)
Clubroom pit area stage 2 (plan RC15)	<ul style="list-style-type: none"> <li>• second level museum, display and corporate boxes</li> <li>• third level clubrooms and commentary box</li> </ul>	Dedicated stage 1	Dedicated stage 1
<b>Non-Motorsport Activities</b>			

Commercial buildings (plan RC07)	<ul style="list-style-type: none"> <li>• 4 x buildings</li> <li>• Parking</li> </ul>	Shared with drag strip	Dedicated 12 spaces plus overflow
Accommodation (plan RC07, RC18, RC19)	<ul style="list-style-type: none"> <li>• 19 self-contained accommodation unites, 6-8 people each</li> <li>• bar and restaurant</li> <li>• conference facility</li> </ul>	Communal facilities	Dedicated 36 spaces plus shared overflow parking
Campground (plan RC07, RC19)	<ul style="list-style-type: none"> <li>• ablutions block</li> </ul>	Dedicated	Dedicated on-site
Zorb and luge/buggy track (plan RC09, RC21)	<ul style="list-style-type: none"> <li>• parking</li> <li>• ablutions block</li> <li>• access road</li> </ul>	Dedicated	Dedicated, 44 spaces
Open recreation space for community concerts and events (plan RC08)	<ul style="list-style-type: none"> <li>• ablutions</li> <li>• parking</li> </ul>	Shared with campground and temporary portaloos	Shared, overflow
Overflow parking (plan RC07)			Overflow parking for 1135 cars and provision for coaches
Access roads	<ul style="list-style-type: none"> <li>• internal link roads</li> </ul>		
Infrastructure	<ul style="list-style-type: none"> <li>• Sewage. 4 x individual on-site systems plus communal system for accommodation.</li> <li>• Water. As for stage 1.</li> <li>• Stormwater. As for stage 1.</li> <li>• Earthworks.</li> <li>• Culverts/bridges. 3 culverts/bridges (2 x access between drag return road and kart track; 1 x access to accommodation).</li> </ul>		

## **RM100872 -STORAGE OF HAZARDOUS SUBSTANCES - DRAFT CONDITIONS**

1. The storage and use of hazardous substances shall be in general accordance with the information in support of application RM100872. Where there are any apparent conflicts or inconsistencies between the information provided and the conditions of this consent, the conditions shall prevail.

In particular all storage facilities will be designed and operated strictly in accordance with the relevant standards. Mitigation measures shall include, but not be limited to:

- dedicated storage areas
- on-site containment and bunding
- fire fighting equipment and facilities
- restrictions on the storage quantities (200 litres per competitor)
- On-site storage (e.g. fuel-trailers) will be stored in dedicated areas with bunding and appropriate setbacks from Stanley Brook Stream.
- Refuelling will be limited to dedicated areas within the site with are out-of-stream and which contain bunding.
- On-site accidental spill kits will be required, which will include equipment to contain and clean up any accidental spills.
- Access to storage areas will also be restricted to competitors and officials only.
- All operators will also be required to comply with a Hazardous Substances Management Plan (HSMP), forming part of the Operations Manual. This HSMP shall be submitted for approval to the Council's Co-ordinator Compliance Monitoring within 6 months of the granting of this consent.

### **Site Design and Layout**

2. Any surface or container used to store or contain any hazardous substances must be sealed and impervious to the hazardous substance.

3. The maximum quantity and type of hazardous substances stored and/or used on site shall not exceed those as specified in Table 1 below ( details to be provided by the applicants ) .

**Table 1**

<b>Substance</b>	<b>Quantity (litres)</b>	<b>Mass</b>
Methanol	Xx,000	X tonnes
Diesel	xx,000	x tonnes
Diesel	xx,000	x tonnes
Diesel	xx00	x tonnes
Diesel	X00	x tonnes
Diesel	xx0	x tonnes
Petrol	xx,000	x tonnes
LPG	x,000	x tonnes
Miscellaneous cleaning chemicals	8,000	8 tonnes
Smaller quantities of miscellaneous hazardous substances stored and used on site include boiler water treatment product and compressed gases such as Oxygen, Acetylene, Ethylene and Argon.		

**Table 1**

<b>Substance</b>	<b>Quantity Stored on site permanently</b>	<b>Temporary storage quantity during events (excluding fuel stored in vehicle fuel tanks)</b>
<u>Agrichemicals for farming operation</u>	<u>400 litres</u>	<u>n/a</u>
<u>Fuels and oils for farm operation</u>	<u>400 litres</u>	<u>n/a</u>
<u>LPG</u>	<u>2000kg total, stored in Portable gas bottles</u> <u>45kg</u> <u>90kg</u> <u>210kg</u>	<u>n/a</u>
<u>Motor fuels and oils for event participants</u>	<u>None</u>	<u>Fuel 60 litres per participant</u> <u>Oil 10 litres per participant</u>
<u>Miscellaneous cleaning chemicals</u>	<u>8,000 litres</u>	<u>n/a</u>



<u>Substance</u>	<u>Quantity Stored on site permanently</u>	<u>Temporary storage quantity during events (excluding fuel stored in vehicle fuel tanks)</u>
<u>Smaller quantities of miscellaneous hazardous substances stored and used on site including boiler water treatment product and compressed gases such as Oxygen, Acetylene, Ethylene and Argon.</u>	n/a	n/a

**Advice Note:**

Any minor increase in the volumes of the above table will require a change of conditions application under Section 127. Any significant increase will require a new resource consent.

**Emergency and Spill Management**

4. Any part of the site where a hazardous substance spill may occur shall be serviced by a spill containment system that is:
  - (a) constructed from impervious materials resistant to the hazardous substances used or stored on the site; and
  - (b) able to prevent the discharge of any spill or other unintentional release of any hazardous substance, or the discharge of any contaminated stormwater or water used in firefighting into any surface or groundwater system.
  
5. Appropriate, clearly visible signage indicating the type and properties of hazardous substances held on-site shall be located on or near all storage containers holding hazardous substances (including the storage tanks, and any sheds containing any assortment of cleaning chemicals) to inform emergency services.

**Advice Note:**

Regular communication with the emergency services (in particular, the Fire Department) is recommended to ensure and maintain their familiarity with the site and the hazards present.

6. Appropriate fire extinguishers shall be provided in suitable locations on the site for fire-fighting purposes. The location of these instruments shall be noted in the Spill Contingency Plan required by Condition 8.

### **Operation, Monitoring and Maintenance**

7. All secondary containment facilities for hazardous substances held on-site shall be regularly checked to ensure their integrity. Written records of these inspections shall be held on-site and presented to the Co-ordinator Compliance Monitoring on request.
8. At least one copy per location of an Emergency and Spill Contingency Plan prepared for the site shall be located in a visible and accessible location with the spill kits required by Condition 11. An additional copy of this plan shall be held in a central, accessible location in the office area. The emergency and spill contingency plans shall be accompanied by a full copy of all material safety data sheets for all hazardous substances held on site. The spill kit shall reflect the requirements of Condition 11.

#### **Advice Note:**

All staff involved in the handling and/or use of hazardous substances shall be familiar with the site's emergency and spill contingency plan and confirmation of this training should be documented in the records held on-site.

9. The Emergency and Spill Contingency Plan required by Condition 8 shall contain, but not be limited to, at least two site contact names and contact telephone numbers (including after hours), contact telephone numbers for all emergency services, detailed procedures for dealing with spills, contact numbers for liquid waste collection and removal companies and contact details for the Council (including after hours). A copy of this plan shall be forwarded to the Council's Co-ordinator Compliance Monitoring within 6 months of the granting of this consent.
10. Any changes to the site's Emergency and Spill Contingency Plan shall be in accordance with the conditions of this consent and shall be submitted in writing to the Council's Co-ordinator Compliance Monitoring prior to their implementation.

11. Spill kits shall be provided on-site in all areas where hazardous substances are stored. These kits shall be visible, appropriately labelled and readily accessible by all staff. These kits shall contain absorbent materials, cleanup materials, personal protective equipment and the locations shall be clearly identified in the site's Emergency and Spill Contingency Plan required by Condition 8.
  
12. Any spillage of hazardous substances on-site shall be dealt with in a manner that minimises risk to human health and the environment. In the event of a spill, the Consent Holder shall take all practicable measures to minimise contaminants' entry to the stormwater system.  
  
13. The Consent Holder shall keep an accurate written record of all accidents or incidents involving the spillage of hazardous substances and shall supply these to the Council's Co-ordinator Compliance Monitoring on request. Any spillage of hazardous substances where the substance is not collected and removed from site shall be reported immediately (within 24 hours) to the Council's Co-ordinator Compliance Monitoring.
  
14. All waste material containing hazardous substances (including any material associated with spill cleanup) shall be removed on a regular basis off-site and disposed of at a facility authorised to receive such material.

### **Monitoring Bores**

15. The Consent Holder shall install a minimum of four groundwater monitoring bores as required by RM100875 to allow for the monitoring of groundwater contamination, with one bore to be upstream of any motorised vehicular activity, two bores to be located downstream and in the vicinity of the aquatic motorsports lakes, and one bore to be downstream of the main hazardous substance bunded storage area to ensure no seepage of hydrocarbon etc to ground water.

### **General Conditions**

16. The facility shall be operated in accordance with the relevant Hazardous Substances & New Organisms Act 1996 (HSNO) requirements, and the

operators handling the substances shall have current Approved Handler Certificates.

17. The Council may, during the month of July each year, review any or all of the conditions of the consent pursuant to Section 128 of the Resource Management Act 1991. The purpose of such a review would be:
  - (a) to deal with any adverse effect on the environment which may arise from the exercise of the consent that was not foreseen at the time of granting of the consent, and which is therefore more appropriate to deal with at a later stage; or
  - (b) to require the Consent Holder to adopt the best practical option to remove or reduce any adverse effects on the environment resulting from the exercise of this consent and/or to alter information collection and reporting requirements of this consent; or
  - (c) to require consistency with any relevant Regional Plan, District Plan, National Environmental Standard or Act of Parliament.

### **Expiry**

18. This consent shall expire on ~~X-X-20XX~~ (35 year term of consent).

**RM100873 - INSTALL CULVERTS AND BRIDGES - DRAFT CONDITIONS  
AND  
RM100876 - DIVERT WATER - DRAFT CONDITIONS**

**CONDITIONS**

1. The installation of any culverts and bridges, and any diversion of water to facilitate their construction shall be in general accordance with the information in support of applications RM100873 & RM100876. Where there are any apparent conflicts or inconsistencies between the information provided and the conditions of this consent, the conditions shall prevail.
2. The Consent Holder shall contact Council's Co-ordinator Compliance Monitoring at least 24 hours prior to commencing works for monitoring purposes.
3. ~~Any intended culverts and bridges shall not alter the natural course of the Stanley Brook or reduce the channel's capacity to convey flood flows in more than a minor way. Any culverts and bridges shall be placed and maintained to ensure Stanley Brook Stream retains floodway capacity to convey Q50 flood flows.~~
4. Any culverts and bridges shall not cause any increase in upstream water levels, which may cause flooding on neighbouring properties.
5. Any culverts and bridges shall be installed under the design and supervision of a chartered professional civil engineer.
6. The Consent Holder shall ensure that any culverts and bridges are constructed in such a manner as to minimise sedimentation and contamination to the Stanley Brook during construction.
7. The Consent Holder shall ensure that for the duration of this consent any debris build-up in the vicinity of any culverts and bridges is promptly removed, to prevent obstruction of the bed and banks of the watercourse and ensure that adequate scour protection measures such as rock

armouring are installed and maintained as necessary, to prevent scouring of the bed and banks of the watercourse.

8. A sediment control plan shall be determined and implemented prior to construction of the works commencing and maintained until revegetation of bare soil surfaces occurs.
9. The Consent Holder shall ensure that the minimum of works in the water shall be undertaken.
10. All machinery on the work site shall be refuelled, and any maintenance works undertaken, in such a manner as to prevent contamination of land and surface water. Spillage of contaminants into any watercourse or onto land shall be adequately cleaned up so that no residual potential for contamination of land and surface water run-off from the site occurs. If a spill of more than 20 litres of fuel or other hazardous substance occurs, the Consent Holder shall immediately inform Council's Co-ordinator Compliance Monitoring.  
:
11. All construction equipment, machinery, plant, and debris are to be removed from the site at completion of the works.
12. The Consent Holder shall ensure that a copy of these resource consents RM100873 & RM100876 are provided to all parties undertaking the work authorised by these consents and that copies shall be on-site at all time during construction.
13. Council may, for the duration of these consent, during the month of July, review the conditions of the consent pursuant to Section 128 of the Resource Management Act 1991 to:
  - (a) deal with any adverse effect on the environment that may arise from the exercise of the consent and which it is appropriate to deal with at a later stage; or
  - (b) to require compliance with operative rules in the Tasman Resource Management Plan or its successor; or

- (c) when relevant national environmental standards have been made under Section 43 of the Resource Management Act 1991.
14. ~~Pursuant to Section 125 of the Act, this consent shall lapse 5 years after the date of this consent unless either the consent is given effect to, or the Council has granted an extension pursuant to Section 125(1)(b) of the Act. Once the consents have been given effect to, all works shall be completed within 6 months.~~ Pursuant to Section 125 of the Act, this consent shall lapse 10 years after the date of this consent unless either the consent is given effect to, or the Council has granted an extension pursuant to Section 125(1)(b) of the Act.

**Advice Note:**

The consents are given effect to once the works commence.

15. ~~This consent expires on xx XXXX 2047.~~ 35 year term – see previous consents

## **RM100874 -EARTHWORKS AND LAND RECONTOURING - DRAFT CONDITIONS**

### **CONDITIONS**

1. That works associated with the land disturbance are completed out in general accordance with the application submitted.
2. The Consent Holder shall contact Council's Co-ordinator Compliance Monitoring at least 24 hours prior to commencing any works, to enable compliance with Condition 1 above.
3. The Consent Holder shall ensure that the proposed earthworks and land recontouring shall have no increase in upstream or downstream flooding.
4. Any work undertaken on culverts shall be in such a manner as to minimise sedimentation and contamination of any water flows from these culverts during and after construction. Adequate scour prevention measures such as rock armouring shall be constructed as necessary, to prevent scouring at the culvert outlets.

### **~~EROSION, SEDIMENT AND DUST CONTROL~~**

- ~~5. An Erosion, Sediment and Dust Control Plan for each stage of any earthworks shall be prepared by the Consent Holder and forwarded to the Council's Co-ordinator Compliance Monitoring for approval prior to the commencement of works to confirm that adequate mitigation of potential sediment, erosion and dust effects in respect of the proposed works shall be implemented.~~

~~The Erosion, Sediment and Dust Control Plan shall:~~

- ~~(a) be prepared in accordance with Tasman District Council Engineering Standards & Policies 2008;~~
- ~~(b) clearly define the sediment and erosion control measures and dust control measures to be implemented for each stage of the works~~



~~authorised by these consents. The plan shall include, but not be limited to:~~

~~(i) a locality map detailing as a minimum the location of roads, property boundaries, surface waterways and crossings, stormwater management measures and the direction of stormwater flows, and the erosion, sediment and dust control measures proposed;~~

~~(ii) a site description;~~

~~(iii) a detailed programme of works identifying:~~

~~(a) each stage of construction;~~

~~(b) the volume of earthworks proposed.~~

~~(iv) contour information at suitable intervals to show the contour of the land within and around the area of works;~~

~~(v) detailed drawings and specifications of all designated erosion and sediment control measures including contingency measures, on-site catchment boundaries, and off-site sources of run-off and design information as is necessary to demonstrate that run-on water is controlled, "clean" and "dirty" water is separated, and the receiving networks are protected from uncontrolled discharges;~~

~~(vi) remediation of the site following completion of the works.~~

Management and Control of erosion, sediment and dust control shall be undertaken in accordance with the Construction Management Plan. The Construction Management Plan shall be prepared in accordance with the Tasman District Council Engineering Standards and Policies 2008 and shall include the following:

~~(i) A locality map detailing as a minimum the location of roads, property boundaries, surface water ways and crossings, stormwater management measures and the direction of stormwater flows, and the erosion, sediment and dust control measures proposed;~~

~~(ii) Site description;~~

~~(iii) A detailed pattern of works identifying:~~

~~(a) Each stage of construction;~~

~~(b) The volume of earthworks proposed;~~

~~(iv) Contour information at suitable intervals to show the contour of the land within and around the area of works;~~

~~(v) Detailed drawings and specifications of all designated erosion and sediment control measures including contingency measures, on-site~~

catchment boundaries and off-site sources of run off and design information as is necessary to demonstrate the run-on water is controlled "clean" and "dirty" water is separated, and the receiving networks are protected from uncontrolled discharges;

- (vi) Remediation of the site following completion of the works.
6. Run-off and sediment control measures shall be of sufficient size, be suitably constructed for the purpose and maintained, so that adverse effects of stormwater run-off are no more than minor.
  7. The Consent Holder shall adopt the best practical means to ensure that run-off and sediment control measures shall not cause the production of conspicuous oil or grease films, scums or foams, or floatable or suspended material in any receiving water.
  8. As far as is practicable, any earthworks should not be carried out during periods of wet weather.
  9. The Consent Holder shall ensure that all machinery is maintained and operated in a manner which minimises to the greatest extent practicable any spillage of fuel, oil and similar contaminants to water or land, particularly during machinery refuelling, servicing and maintenance. Maintenance, refuelling and lubrication of machinery shall not be carried out within 20 metres of any surface water body.
  10. Spillage of contaminants into any watercourse or onto land shall be remediated so that no residual potential for contamination of land and surface water run-off occurs. If a spill of more than 20 litres of fuel or other hazardous substance occurs, the Consent Holder shall immediately inform Council's Co-ordinator Compliance Monitoring. The Consent Holder shall ensure that all contractors working under this consent are informed of and understand this requirement.

## **Monitoring Bores**

11. The Consent Holder shall install a minimum of four groundwater monitoring bores as required by RM100875 to allow for the monitoring of groundwater contamination, with one bore to be upstream of any motorised vehicular activity, two bores to be located downstream and in the vicinity of the aquatic motorsports lakes, and one bore to be downstream of the main hazardous substance bunded storage area to ensure no seepage of hydrocarbon etc to ground water.
  
12. All cut and fill batters and faces exposed during works shall be sufficiently stabilised using appropriate erosion control techniques as soon as is practicable after all construction is complete, so as to minimise potential slope instability and stormwater run-off erosion effects on the exposed earthworks. Site rehabilitation and revegetation should be completed as soon as practicable on completion of the earthworking components.

**Advice Note:**

Appropriate erosion control techniques may include, but are not limited to, geotextile fabrics, mesh, vegetation or grass cover. The Consent Holder is referred to Auckland Regional Council's TP 90 publication for further guidelines.

13. The Consent Holder shall not sell any gravel extracted from the site earthworks or transport any gravel off-site.

**Advice Note:**

A separate application for resource consent will be required before any gravel can be sold should sufficient quantities be available and the applicant wishes to do so.

## **Noise Levels**

14. The Consent Holder shall ensure that all activities are designed and conducted and that the equipment used on site is maintained so that the noise generated by activities on the site shall not exceed an uncorrected noise level of 55 dBA  $L_{10}$  and 80 dBA  $L_{max}$  measured at the notional boundary of any adjacent dwelling over a measurement period of 15 minutes during the hours of operation as controlled by the condition above.

Noise shall be measured and assessed in accordance with the provisions of NZS 6801:1991 (Measurement of Sound) and NZS 6802:1991 (Assessment of Environmental Sound).

15. The Consent Holder shall ensure that all excess soil, vegetation and other materials resulting from the works are removed from the site on completion of the works to the satisfaction of the Council's Co-ordinator Compliance Monitoring, and that the site is left in a neat and tidy condition. No soil material or vegetation shall be left where it may enter water or result in the contamination or destruction of any natural/stream habitat.
16. In the event of Maori archaeological sites (eg, shell midden, hangi or ovens, garden soils, pit depressions, occupation evidence, burials, taonga) or koiwi (human remains) being uncovered, activities in the vicinity of the discovery shall cease. The Consent Holder shall then consult with the New Zealand Historic Places Trust's Central Regional Office (PO Box 19173, Wellington, telephone (04) 801 5088, fax (04) 802 5180), and shall not recommence works in the area of the discovery until the relevant Historic Places Trust approvals to damage, destroy or modify such sites have been obtained.

### **Advice Note:**

The discovery of any pre-1900 archaeological site (Maori or non-Maori) which is subject to the provisions of the Historic Places Act needs an application to the Historic Places Trust for an authority to damage, destroy or modify the site.

17. Pursuant to Section 128 of the Resource Management Act 1991, the Consent Authority may review the conditions of these consents for any of the following purposes:

- (a) to deal with any adverse effect on the environment which may arise from the exercise of these consents, and which it is appropriate to deal with at a later stage;
  - (b) to require the Consent Holder to adopt the best practicable option to remove or reduce any adverse effect on the environment;
  - (c) to assess the appropriateness of imposed compliance standards, monitoring regimes and monitoring frequencies and to alter these accordingly; and
  - (d) to change the compliance standards imposed by conditions of this consent to standards which are consistent with any relevant regional plan, district plan, or Act of Parliament.
18. ~~Once the consent has been given effect to, all works at that site shall be completed within 24 months.~~

### **Expiry**

19. ~~This resource consent expires on xx XXXX 2017. —(35 year term)~~

### **Lapse Date**

19. Pursuant to Section 125, of the Resource Mangement Act, this resource consent shall lapse 10 years after the date of this consent unless either the consent is given effect to, or the Council has granted an extension pursuant to Section 125(1)(b) of the Act.

**RM100875 - CONSTRUCTION OF GROUNDWATER MONITORING BORES -  
DRAFT CONDITIONS ( THERE IS NO UNALLOCATED GROUNDWATER  
AVAILABLE FOR EXTRACTION )**

**CONDITIONS**

1. The Consent Holder shall ensure that all the work carried out during the construction of any bores is of a standard that conforms with good drilling practice, including full compliance with the New Zealand Standard for Drilling of Soil & Rock: NZS 4411:2001 (or subsequent versions) and the bores shall comply with the following:

Maximum Bore Depth (m):                   xx metres deep  
Bore Diameter:                                   xxx millimetres

2. All bore head casings and reticulation shall be located or suitably constructed and sealed to avoid ingress into the bores of any surface water, including floodwater or foreign matter.

**Yield Test**

3. A yield test of at least 1 hour of pumping shall be carried out on any new bores with flow rates, draw down and pumping time recorded for the pumped bore and this data shall be provided in the bore log (required in Condition 4 below) to be submitted to Council upon completion of drilling.

**Monitoring Bores**

4. The Consent Holder shall install a minimum of four groundwater monitoring bores to allow for the monitoring of groundwater contamination, with one bore to be upstream of any motorised vehicular activity, two bores to be located downstream and in the vicinity of the aquatic motorsports lakes, and one bore to be downstream of the main hazardous substance banded storage area to ensure no seepage of hydrocarbon etc to ground water.

### **Soil and Water Testing**

5. The Consent Holder shall forward the results of any soil and water testing to Council within three months of being undertaken.
  
- 6 **Notwithstanding Condition 5, any risk identified to any nearby drinking water or surface water of leaching from this site arising from the monitoring being undertaken shall be notified to Council immediately.**

### **Records to be Kept**

7. The Consent Holder or their agent shall supply fully completed bore logs to the Council's Resource Scientist, Water as soon as is practicable, but not later than three months, following completion of the construction of the bores. The bore logs shall be in a form and to a standard satisfactory to the Council, and shall include where available:
  - (a) results of any step pump test carried out on the bores;
  - (b) results of any chemical analyses performed on underground water taken from the bores; and
  - (c) results of any pressure test(s) carried out on the bores.

### **Measuring and Sampling Facilities**

8. The bores construction shall provide adequate facility and access for future water quality sampling such as a hand-operated tap-valve that is located at least 0.33 metres above ground level (unless otherwise specified by special condition) and is sourced from the direct pump outlet, before the reticulation encounters pressure tanks/reservoir/treatment plant.

Where there is reticulation back pressure at the bore head, a one-way valve shall be fitted for maximum efficiency, and in that case the water sampling point shall be on the bore pump side of the one-way valve.

9. Bore construction shall provide adequate facility and access for future vertical lowering of a 3 centimetre diameter probe that allows water level readings to be taken.

### **Lapsing of Consent**

10. ~~Pursuant to Section 125 of the Act this consent shall lapse 1 year after the date of this consent unless either the consent is given effect to, or the Council has granted an extension pursuant to Section 125(1)(b) of the Act. In addition, once the consent has been given effect to, all works shall be completed within 1 year.~~

The condition should read:

Pursuant to Section 125 of the Resource Management Act this consent shall lapse 10 years after the date of this consent unless either the consent is given effect to, or the Council is granted an extension pursuant to Section 125(1)(b) of the Act.

### **Notification of the Council**

11. For monitoring purposes, the Council's Resource Scientist, Water shall be notified of the intention to drill any new bore no less than 24 hours before drilling commences.

### **Driller Copy**

12. The Consent Holder shall provide a copy of this consent to their driller prior to any work commencing.



**RM100876 - DIVERT WATER - DRAFT CONDITIONS  
&  
RM100877 - TAKE WATER - DRAFT CONDITIONS**

**CONDITIONS - GENERAL**

1. Pursuant to Section 128 of the Resource Management Act the Council may, at any time for the duration of these consents, review any or all of the conditions of the consents for all or any of the following purposes:
  - (a) dealing with any adverse effect on the environment which may arise from the exercise of the consents that was not foreseen at the time of granting of the consent, and which is therefore more appropriate to deal with at a later stage; or
  - (b) requiring the Consent Holder to adopt the best practicable option to remove or reduce any adverse effect on the environment resulting from the water take or discharge; or
  - (c) reviewing the frequency, duration, quantity of the discharge authorised by this consent if it is appropriate to do so; or
  - (d) to comply with national environmental standards made under Section 43 of the Resource Management Act 1991.
  
2. ~~The diversion and taking of water from the Stanley Brook is for the purpose of filling the man-made aquatic motorsport park lakes only and is not for abstraction or consumptive uses. Rainwater harvesting from building roofs or trucking in of potable water shall be required to provide for human consumption.~~

The diversion and taking of water from the Stanley Brook is for the purposes of filling the man-made aquatic motorsport park lakes only and is not for abstraction for human consumption. This consent authorises occasional top up of the man-made lakes (as distinct from under ground water recharge), subject to the following conditions:

- (i) Top up may only occur if a minimum rate of flow of not less than 80% of the flow rate prior to take for top up is maintained;
- (ii) Diversion from the Stanley Brook Stream for top up shall not extend longer than 24 hours in any 7 day period;
- (iii) Top up shall not occur during any period of water rationing.

- ~~3. The Consent Holder shall ensure that any abstraction of water from the Stanley Brook is to lined and sealed recreational aquatic motorsport lakes and that after their initial buffering filling period that flow into and subsequent flow out of the lakes achieves hydraulic neutrality ie. there shall be no net loss of downstream water flow as a result of the lake construction and water detention; nor loss of Stanley Brook stream flow to ground.~~
4. All erosion and sediment control measures shall be installed prior to the commencement of any disturbance or deposition in riparian margins, and shall be maintained until all disturbed areas are stabilised and/or revegetated.
5. The Consent Holder shall adopt the best practical means to contain or prevent the movement of disturbed soil or vegetation into water, which may include, but are not restricted to:
  - (a) run-off controls around the area of disturbance, such as filter fences, cut-offs, culverts and water tables to prevent scour, gulying or other erosion;
  - (b) providing undisturbed buffers between the land disturbance and any waterbody -including filter fences;
  - (c) sediment traps of size adequate to contain and treat sediment-laden run-off water;
  - (d) any other measures appropriate to the nature and scale of the land disturbance.
6. ~~The resource consents RM100876 and RM100877 shall expire 2 years after the commencement of construction.~~ The resource consents RM100876 and 100877 shall expire 35 years after the commencement of construction.
7. ~~These consents if unimplemented shall lapse on 13 November 2014.~~

Pursuant to Section 125 of the Resource Management Act, this resource consent shall lapse 10 years after the date of this consent unless either the consent is given effect to, or the Council has granted an extension pursuant to Section 125(1)(b) of the Act.



**RM100878 -DISCHARGE WASTEWATER - DRAFT CONDITIONS  
&  
RM100879 -DISCHARGE GREYWATER - DRAFT CONDITIONS**

**CONDITIONS**

1. The design, construction and operation of the wastewater treatment and land application systems shall be in general accordance with the requirements of the Tasman Resource Management Plan ( or its successor) and in addition with AS/NZS 1547:2000, unless inconsistent with the conditions of this consent, in which case these conditions shall prevail.
  
2. The applicant shall provide a full design of each individual on-site wastewater system to Council when applying for the building consent for each proposed stage of the Motorsport Park proposal. This shall define the maximum design loading daily discharge rate (MDL). The maximum rate of discharge shall be determined in accordance with AS/NZS 1547:2000 or TP58 (Auckland Council technical document).

**Advice Note**

Specific care must be taken to ensure that any individual wastewater treatment system can cope with the intermittent loads

3. The treated wastewater entering the land application areas, as measured at the sampling point required to be installed in accordance with Condition 11, shall comply at all times with the following limits:
  - (a) the 5 day biochemical oxygen demand (BOD<sub>5</sub>) in any single sample shall not exceed 150 grams per cubic metre; and
  - (b) the concentration of total suspended solids (TSS) in any single sample shall not exceed 150 grams per cubic metre.

*(as opposed to secondary treated effluent standards as suggested by the applicants.)*

4. The wastewater treatment systems shall be fitted with an audible and visual alarm and the land application areas shall be located more than:

- (a) 20 metres from any surface water body, including the margin of a wetland but not including any stormwater drain that diverts water from the disposal field or any wetland constructed as part of the treatment system;
  - (b) 20 metres from any bore used for potable water supply;
  - (c) 5 metres from any adjoining property or road boundary;
  - (d) 20 metres from the edge of any other domestic wastewater disposal field.
5. There shall be no ponding of wastewater on the ground surface, or any direct discharge or run-off of wastewater to surface water.
6. The construction and installation of the wastewater treatment plant and land application systems shall be carried out under the supervision of a person who is suitably qualified and experienced.
- That person shall provide a written certificate or producer statement to the Council's Co-ordinator Compliance Monitoring prior to the exercise of this resource consent. This certificate or producer statement shall include sufficient information to enable the Council to determine compliance with Conditions 1, 3, and 11 and shall also confirm the following:
- (a) that all components of the wastewater system (including the treatment plant and the land application area) have been inspected and installed in accordance with standard engineering practice and the manufacturer's specifications;
  - (b) that all components of the wastewater system are in sound condition for continued use for the term of this resource consent.
7. The Consent Holder shall submit a set of final "as-built" plans to the approval of the Council's Co-ordinator Compliance Monitoring, showing the location of all components of each wastewater treatment and land application system. For the purpose of this condition, the Consent Holder shall ensure that the "as-built" plans are drawn to scale and provide sufficient detail for a Council Compliance Monitoring Officer to locate all structures identified on the plans, including the sampling point required to be installed in accordance with Condition 10. For the avoidance of doubt, to

facilitate staged development and up-scaling as development proceeds, final "as built" plans shall be submitted in stages for each stage of development, or for expansion of up-scaling of the wastewater treatment system

8. No grazing stock shall be allowed access to the land application areas at any time. In the event that such stock are held elsewhere on the properties, suitable fences shall be installed around the land application areas to prevent access by such animals.
9. Suitable reserve land application areas shall be kept available for future use of wastewater disposal in each proposed effluent field area. These reserve areas shall be at least 5 metres from the property boundary and remain undeveloped. For the purpose of this condition, "undeveloped" means that no buildings or structures shall be constructed on the area set aside as reserve land application areas, however the reserve areas may be planted with trees or other vegetation.
10. A sampling point to allow collection of a sample of the treated wastewater shall be provided at a point located after the final pump-out chamber and before the point where the wastewater discharges to the land application area on each proposed system.

### **Maintenance and Monitoring**

11. Samples of the treated wastewater shall be collected 6, 12 and 24 months following the first exercise of this consent from the sampling point referred to in Condition 10. The samples shall be tested for BOD<sub>5</sub> and TSS by an accredited environmental testing laboratory. Results of these tests shall be forwarded to the Council's Co-ordinator Compliance Monitoring within 10 working days of the results of each test being received by the Consent Holder.

The samples required by this condition shall be taken at times where the facilities are being used in a typical fashion. The samples shall be taken using laboratory supplied containers and according to the procedures directed by the accredited environmental testing laboratory and shall be transported to the laboratory under chain of custody.

12. The Consent Holder shall enter into, and maintain in force at all times, a written maintenance and monitoring contract with an experienced wastewater treatment plant operator, or a person trained in the wastewater treatment operation by the system designer, for the ongoing maintenance of the treatment and land application systems.

The contract shall specify the frequency of treatment plant inspections and maintenance during the term of this resource consent and shall include an inspection and maintenance schedule that is in accordance with the conditions of this consent.

A signed copy of this contract shall be forwarded to the Council's Co-ordinator Compliance Monitoring prior to the exercise of this consent.

13. Notwithstanding Condition 11, the wastewater treatment and land application systems shall be inspected and serviced at least every 6 months and a copy of the service provider's maintenance reports shall be forwarded to the Council's Co-ordinator Compliance Monitoring within 2 weeks of each inspection. The inspection reports shall include, but not be limited to, the following information:
  - (a) the date the inspection was undertaken and the name of the service provider;
  - (b) a list of all components of the treatment and land application systems that were inspected and the state of those components;
  - (c) any maintenance undertaken during the visit or still required, and a timetable for the expected completion of this work;
  - (d) a description of the appearance of the filter/s and tanks;
  - (e) the location and source of any odour detected from the system; and
  - (f) a description of the appearance of the land application area (ponding, vegetation growth, etc).

## Review of Consent Conditions

14. The Council may, during the month of July each year, review any or all of the conditions of the consent pursuant to Section 128 of the Act for all or any of the following purposes:
- (a) to deal with any adverse effect on the environment which may arise from the exercise of the consent that was not foreseen at the time of granting of the consent, and which is therefore more appropriate to deal with at a later stage; and/or
  - (b) to require the Consent Holder to adopt the best practical option to remove or reduce any adverse effects on the environment resulting from the discharge; and/or
  - (c) to review the contaminant limits, loading rates and/or discharge volumes and flow rates of this consent if it is appropriate to do so; and/or
  - (d) to review the frequency of sampling and/or number of determinands analysed if the results indicate that this is required and/or appropriate;
  - (e) to require consistency with any relevant Regional Plan, District Plan, National Environmental Standard or Act of Parliament.
15. On the sale of the properties these consents shall be transferred to the new owners of the property.

## Lapsing of Consent

16. ~~These consents will lapse five years unless the consent is either:~~
- ~~a) given effect to; or~~
  - ~~b) the Council has granted an extension pursuant to Section 125(1)(b) of the Act.~~

Pursuant to Section 125, this resource consent shall lapse 10 years after the date of this consent, unless either the consent is given effect to, or the Council has granted an extension pursuant to Section 125(1)(b) of the Act.



## Expiry

17. ~~These resource consents expire fifteen years after the commencement of any approved discharge.~~ These consents will expire thirty five years after the commencement of any approved discharge.