

**Before the Independent Hearings Panel  
At Wellington City Council**

**Under** Schedule 1 of the Resource Management Act 1991

**In the matter of** Hearing submissions and further submissions on the  
Proposed Wellington City District Plan – Hearing Stream 6

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**Statement of supplementary planning evidence of Hannah van Haren-Giles  
on behalf of Wellington City Council**

**Date: 13 February 2024**

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## INTRODUCTION:

1 My name is Hannah van Haren-Giles. I am employed as a Senior Planning Advisor in the District Planning Team at Wellington City Council.

2 I have read the respective evidence of:

### **Horokiwi Quarries Limited ID 271 and FS28**

- a. Ross Alan Baker – Corporate
- b. Pauline Mary Whitney – Planner

3 I have prepared this statement of evidence in response to expert evidence submitted by the people listed above to support the submissions and further submissions on the Proposed Wellington City District Plan (the Plan / PDP).

4 Specifically, this statement of evidence relates to the matters of [Hearing Stream 6 – Section 42A Report – Quarry Zone](#).

## QUALIFICATIONS, EXPERIENCE AND CODE OF CONDUCT

5 My [Section 42A Report](#) sets out my qualifications and experience as an expert in planning.

6 I confirm that I am continuing to abide by the Code of Conduct for Expert Witnesses set out in the Environment Court's Practice Note 2023, as applicable to this Independent Panel hearing.

## SCOPE OF EVIDENCE

7 My statement of evidence addresses the expert evidence of those listed above.

## RESPONSES TO EXPERT EVIDENCE

### **Horokiwi Quarries Limited ID 271 and FS28 – Ross Baker and Pauline Whitney**

8 I acknowledge the evidence of Mr Baker which provides a useful overview of Horokiwi Quarries' operations. I consider that SCA-O7 addresses the concerns of Mr Baker in terms of recognising the role and contribution of quarrying activities.

9 Ms Whitney on behalf of Horokiwi Quarries generally supports the relevant recommendations of the Quarry Zone s42A Report, however at paragraph 8.1 of her evidence raises the rezoning of three sites from General Rural Zone (GRUZ) and Natural Open Space Zone (NOSZ) to Special Purpose Quarry Zone (QUARZ) as the only outstanding matter.

#### **Existing Use Certificate**

10 I firstly note the Existing Use Certificate (EUC) attached to Ms Whitneys evidence is not the most up to date version. The revised EUC dated 26 November 2012 is appended to my supplementary evidence. This version helpfully identifies the scope of activities occurring on the site at that date. Of relevance, the EUC does not extend to include cleanfill or overburden activities, as is evident from resource consents<sup>1</sup> granted since the EUC was issued, and most recently a s125 RMA consent extension granted in June 2023 relating to a new overburden site.

#### **Pt Sec 16 Harbour District – rezoning sought from NOSZ to QUARZ**

11 I have not changed my view and continue to recommend as per paragraphs 68 to 77 of my s42A Report that a small portion (containing an existing sediment pond) of Pt Section 16 Harbour District be rezoned from NOSZ to QUARZ, but that the bulk of the lot be retained as NOSZ.

12 In her evidence Ms Whitney has identified the area of the above forementioned consented overburden site and sought that its extent be rezoned to QUARZ as a revised/alternative relief to rezoning the entirety of the NOSZ area to QUARZ. At paragraph 8.18 Ms Whitney acknowledges that the s42A Report recommends rezoning of the sediment pond, but that this rationale ignores the consented overburden area.

13 I do not consider that an approved consent is a sufficient basis to justify rezoning. Particularly given that consent for the overburden site was consented in 2015 and has yet to be given effect to. Without s32 evaluation of the costs, benefits, or effects in support of the request for rezoning, I do not consider there is any evidential or evaluative basis to

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<sup>1</sup> Paragraph 55, [Quarry Zone s42A Report](#)

recommend that the site be rezoned. Sole reliance on a resource consent that has not been implemented is not a definitive reason to rezone.

**Pt Sec 17 and Pt Sec 18 Harbour District – rezoning sought from GRUZ to QUARZ**

14 I have not changed my view and continue to recommend as per paragraphs 59 to 67 of my s42A Report that Pt Sec 17 and Pt Sec 18 Harbour District be retained as GRUZ.

15 I have considered the points raised in paragraph 8.24 of Ms Whitney’s evidence and respond to her comments below.

16 SCA-O7 establishes that the utilisation of the city’s mineral resources from quarrying activities are recognised and provided for. This objective is not associated with only existing quarry operations, nor is it tied to any specific zone. This strategic direction objective does also not supersede the need to consider adverse effects associated with quarrying activities in overlays, including SNAs and SALs.

17 I do not consider that land ownership is a determining factor in zoning decisions. By way of example if Horokiwi Quarries were to own land in the City Centre Zone, this would not dictate that land be zoned QUARZ.

18 The purpose of the QUARZ is to provide for Wellington’s existing quarries. The Introduction to the QUARZ chapter sets out *‘This zone provides for quarrying activities where quarrying activities may operate as the primary land use activity on the site.’* To my mind quarrying is not, nor has it ever, been a land use undertaken in the GRUZ area of the site. I consider that the extent of the Quarry Zone recommended in the Quarry s42A is appropriate as to what is reasonable to expect the boundary of the Quarry Zone to be.

19 The purpose of existing use rights is to protect lawfully established and existing activities from new rules regulating the activity. Therefore, I consider it to be illogical that I have *‘inappropriately discounted the applicability and relevance of the existing use certificate’* because irrespective of zoning, the PDP will not destroy existing use rights by adopting a rule framework that does not enable those uses. Instead, the zoning should be focused on the range of activities that the PDP seeks to encourage on each parcel of land.

20 The zoning of the site becomes a relevant consideration when the site is considered under the PDP as a whole. The NFL and CE chapters refer to three broad categories of quarrying activities:

- a. Operation of existing/established quarrying activities
- b. Extension of existing/established quarrying activities
- c. New quarrying activities

- 21 Within the NFL chapter, the categorisation of the activity has a significant implication for activity status – permitted, discretionary, or non-complying. In this sense, I agree with Ms Whitney that *‘the rezoning request is somewhat unique given the existing use certificate and the consents that currently exist on the sites’* because the interpretation of whether quarrying activities within the GRUZ site are existing/established, an extension, or new, is not a matter to be decided as part of this process. The relevance of this however, is that if quarrying activities on the GRUZ site are determined to be the ‘operation of existing quarrying activities’ under permitted activity NFL-R5, the change of zone may remove the necessity for resource consent applications associated with adverse effects of quarrying activities on the SAL. In my view this would not be appropriate.
- 22 For the reasons detailed above and set out in my s42A Report, I recommend no further amendments to the Quarry Zone.

13 February 2024

**Hannah van Haren-Giles**

Senior Planning Advisor

Wellington City Council

## Existing Use Certificate

26 November 2012

Service Request No: 255760  
File Reference: 1048648

### Site Details:

<b>Site Address:</b>	39 Horokiwi Road, Horokiwi
<b>Legal Description:</b>	Part Section 18 Harbour District; Lot 1 DP 58444; Section 1 Survey Office 23514; Lot 1 DP 6640; Part Section 16 Harbour District; Lot 1 DP 20888; Lot 8 DP 28139; Lot 2 DP 415604; and Lot 4 415604
<b>Proposal:</b>	Existing Use Certificate for Quarrying Activity
<b>Zoning:</b>	Rural
<b>District Plan Notations:</b>	None
<b>Applicant:</b>	Horokiwi Quarries Ltd (c/o Resource Management Solutions)
<b>Owner:</b>	Horokiwi Quarries Ltd

### Existing Use Certificate:

The relevant provision of section 139A of the Resource Management Act 1991 (the Act) states that:

- (1) *A person may request the consent authority to issue a certificate that—*
- (a) *describes a use of land in a particular location; and*
  - (b) *states that the use of the land was a use of land allowed by section 10 on the date on which the authority issues the certificate; and*
  - (c) *specifies the character, intensity, and scale of the use on the date on which the authority issues the certificate.*

In assessing an application for an Existing Use Certificate the following provisions of section 10 of the Act must be addressed:

- *Whether the use was lawfully established before the rule became operative or the proposed plan was notified (s10(1)(a)(i) of the Act); and*
- *The use must not have been discontinued for a period greater than one year (s10(2) of the Act).*
- *Whether the alteration to the building increases the degree to which the building fails to comply with any rule in the district plan (s10(3) of the Act).*

- *Whether the effects of the use are the same or similar in character, intensity and scale to those which existed before the rule became operative or the proposed plan was notified (s10(1)(a)(ii) of the Act).*

The following report addresses the matters detailed above.

### **Site Description:**

The site comprises nine land parcels containing the Horokiwi Quarry and Asphalt Plant operation. The landscape to the north, east and west of the Asphalt Plant has been substantially modified by the quarry operation, and is occupied in certain locations by a range of quarry facilities with the associated buildings and structures relating to these. Access to the Horokiwi Quarry is from Horokiwi Road.

The asphalt plant was established between 1972-1974. A new asphalt plant was consented in 2009.

### **Proposal:**

The applicant seeks an Existing Use Certificate in relation to Quarrying Activities at the subject site.

### **Current Use of the Site:**

In assessing an application for an Existing Use Certificate it is necessary to consider whether the existing activity is consistent with the activities for which existing use rights would apply, as described under the Section 10 Assessment section of this report.

The detail of the activity that is currently occurring on the site (as listed in the application) is as follows:

- Stripping
- Blasting
- Transport of excavated material
- Crushing and screening
- Stockpiling; and
- Transportation from the site

A number of ancillary activities are also listed, notably being asphalt and emulsion production. This activity has separate resource consent under SR 201239. A number of other resource consents, including SR116171 and SR141774 relate to the upgrade of administration buildings and weigh station on site, and the expansion of an overburden area.

The applicant has also presented a list of tonnages produced over the last 13 years, indicating a constant but variable output with a range.

### **Section 10 Assessment:**

In order to determine whether the proposal would qualify for existing use rights, the proposal has been assessed against the relevant provisions of section 10 of the Act below.

*Lawfully Established:*

The applicant has presented a decision from the Town and Country Planning Appeal Board, dated 9 February 1977 which confirmed that the quarry “*is permitted to carry on quarrying operations as a conditional use in the Wellington City.*” The decision goes onto state;

*“The operation is to be permitted pursuant to a schedule by way of conditional use and the land area set aside for the permitted use to exclude escarpment faces which might have a visual impact when viewed from the direction of the Wellington harbour.”*

The Wellington City Council District Plan was made operative on 27 July 2000. The Wellington City Council undertook a Plan Change which changed the Rural and Ridgelines and Hilltops Area objective, policies and rules relevant to the site. Plan Change 33 was made operative on 20 November 2009. From the information submitted by the applicant, it is clear that the activity had begun long before either the District Plan, or Plan Change was made operative.

On the basis of the above, I consider the test of lawful establishment under section 10(1)(a)(i) of the Act is satisfied.

*Discontinuance:*

The applicant has stated that the overall site has been used for quarrying since (at least) “about 1934 and has been carried out continuously ever since.”

The applicant has submitted that on the 29<sup>th</sup> August 1924 a Certificate of Title was issued to a quarry manager and timber merchant. A variety of quarrying related property transactions were completed over the subsequent years.

Information has been provided that in 1953 the Crown utilised the site for quarrying purposes. The applicant has provided also provided a yearly break down of tonnages of material produced at the site between 1999 and 2011.

This assorted evidence of ongoing use of the site for the concurrent quarrying use is accepted to leave no doubt that the activity has been in operation for a significant length of time.

The activity, therefore, is considered to be continuous in terms of section 10(2) of the Act.

*Degree of Non-Compliance:*

The applicant is not seeking to alter the activity as it currently operates and, as a result, does not challenge section 10(3) of the Act

Therefore section 10(3) of the Act is met.

*Effects:*

The applicant has information detailing the relationship between ownership of the various land parcels held by Horokiwi Quarries Limited and that the scale of quarrying undertaken in specific areas of the site does not remove quarrying rights from ‘unused’ areas of the greater site.



The applicant has provided caselaw and submitted that whilst individual land parcels/areas of the greater site have been specifically quarried at different points in time, this does not “*derogate from the fact that, in law, the whole of the land was used for mining or extractive purposes*” (Re Omya NZ Ltd [2004] NZRMA 104 (EnvC)). Further, the applicant has stated in relation to the activity effects “*it is self evident that that these effects [traffic impacts, noise, dust] are similar in character, scale and intensity.*” In relation to effects on visual amenity and landscape values, and effects on terrestrial ecology including indigenous vegetation, the applicant has submitted a ‘Landscape and Visual Assessment’ (refer information from Boffa Miskell Ltd).

The scale of effects has been visually demonstrated with submitted aerial photos contrasting the scale of the quarry from 1996 to 2010. I accept that the scale of the quarry has marginally increased, but do not believe these challenge section 10(1)(a)(ii) of the Act as the actual quarry activity is substantially the same in terms of type of activity, area of the site and scale of landform change.

The applicant has also provided images of the site from various view points (Oriental Bay, McEwan Park Petone, and Sunhaven Drive Newlands) with projected future quarrying activities to 2017.

The applicant has provided a yearly break down of tonnages of material produced at the site between 1999 and 2011. This breakdown shows the volume of material is relatively stable. It is therefore possible to conclude that the scale of quarrying activity on the site has generally been in keeping with quantities generated at the time that the District Plan and Plan Change 33 were made operative.

Accordingly, section 10(1)(a)(ii) of the Act is met.

### **Conclusion:**

For the reasons detailed above I conclude that the quarrying activity was lawfully established prior to the current District Plan becoming operative and would qualify for existing use rights under section 10A of the Act.

### **Decision:**

The Wellington City Council certifies that the quarrying activity described in the application was a use of land allowed by section 10 of the Act on 26 November 2012 and issues this **Existing Use Certificate** under section 139A of the Act accordingly.

Report prepared by: Brett Smith

Brett Smith  
**Delegated Officer**

Lisa Hayes  
**Delegated Officer**

Delegated Authority Code: (20)