

4 March 2025

Westland District Council
36 Weld Street
Private Bag 704
Hokitika 7842

Attention: Olivia Anderson

By email

Dear Olivia

Advice re activity status of Mananui sand mining application

1. Introduction

1.1 Thank you for your email of 16 January 2025 requesting a legal opinion regarding the application by Westland Mineral Sands Ltd (**WMSL** or **applicant**) to conduct sand mining at 713 Ruatapu Road (State Highway One, SH1), Mananui¹ (**Site**). You have specifically requested that we consider the interpretation of the relevant operative Westland District Plan (**District Plan**) rules triggered by the proposed operation (**Proposal**).

2. Executive summary

2.1 The appropriate approach to interpretation of the District Plan is to start with the definitions in order to identify which rules (and associated standards) apply. This will determine the overall activity status of a proposal.

2.2 We are of the view that mining, as defined in the District Plan, provides for some buildings or other infrastructural elements in so far as those are necessary for core extraction activity. This would include limited structures directly associated with the dredging rig itself, such as staff rooms and bathrooms for the staff. However, we do not consider that the definition is so broad as to cover the substantial complex of buildings and structures that house the associated elements of the mine's business, such as processing the mined material, laboratories, and workshops (**Plant Area**). These are more appropriately treated as Industrial Activities and/or possibly Accessory Buildings, both of which are defined by the District Plan.

2.3 As there are no zone-specific rules for Industrial Activities and/or Accessory Buildings in the rural zone, these elements of the Proposal are discretionary activities if the discretionary standards in Table 5.7 are met. If the standards are not met, the activities then default to non-complying under rule 5.6.2.1.

¹ Legally described as Lot 3 DP 366769 BLK VII Māhinapua Survey District.

2.4 The exemption for mining in the catchall discretionary activity rule 5.6.2.2 C is immaterial because these parts of the Proposal are not mining.

3. Background

3.1 WMSL has applied for all resource consents necessary to construct, operate and maintain a mineral sand mine, including associated infrastructure.² The Proposal involves establishing the necessary infrastructure and processing of the mineral sand deposit previously identified on the Site.³ Specifically, the Proposal involves:

- a. extracting mineral sand ore from a mining strip area;
- b. pumping the ore to a wet concentrator plant (**WCP**) located on the western side of the site;
- c. extracting heavy mineral concentrate; and
- d. returning the un-mineralised sand to the mining void.⁴

3.2 In addition to the WCP where the processing of the ore occurs, the other buildings in what has been referred to as the Plant Area include the main site office, maintenance workshops, and laboratory.⁵ The total footprint of the Plant Area is 3860m². The single largest building is the WCP, with a gross ground floor area of 2000m².

3.3 We understand that the applicant considers the Proposal to be a restricted discretionary activity under rule 5.6.2.2.D - Mining, and, as such:

- a. the Standards in 5.7 do not apply;⁶and
- b. the activity does not default to a non-complying activity under 5.6.2.1 because of a failure to meet standard.

3.4 In support of the Proposal being a restricted discretionary activity, the applicant is of the view that:

- a. The matters of discretion included in the restricted discretionary mining rule includes the establishment of the associated infrastructure needed for mining business.
- b. Table 5.7 does not apply to restricted discretionary activities, and the ground floor area standards therefore do not apply to the associated infrastructure.
- c. The general rules in part 8 of the District Plan do not apply to mining in the rural zone/policy unit, as there is no specific cross reference to these provisions. The applicant accepts that there is an exception to this in relation to rule 8.9.2 (access to the State Highway).⁷

² AEE at 4.1.

³ AEE at t 1.2.

⁴ AEE at t 1.6.

⁵ AEE at 4.37.

⁶ AEE at 5.3.

⁷ Anderson Lloyd Opinion, at [20].

4. Defined terms relevant to the Proposal

4.1 The following terms are defined in Part 9 of the District Plan which we consider to be relevant to determine the activity status of the Proposal:

Mining means to take, win, or extract, by whatever means, a mineral existing in its natural state in land, or a chemical substance from that mineral, **for the purpose of obtaining the mineral or chemical substance**; but does not include prospecting or exploration; and 'to mine' has a corresponding meaning.

Industrial Activity means any activity involving the production, **processing**, assembly, servicing, **testing, repair** and/or storage and warehousing of any **materials**, goods, products or **vehicles** and includes transportation facilities and freight depots but does not include odorous activities specified in Appendix G.

Accessory Building on any site means a building, the use of which is incidental to that of any other building or buildings on the site... In relation to a site on which no building has been erected the building must be incidental to any permitted activity.

(our emphasis)

Mining

4.2 We are of the view that mining (as defined) is limited to the extraction of the mineral from its natural state in land, rather than the full suite of activities that may be required prior to or following extraction. Our reasons for that are as follows:

- a. In the context of the definition, mining is expressed as a verb (ie to take, to win, to extract).
- b. The definition does not refer to all activities that take place in a mine prior to or following extracting the mineral (eg vegetation clearance required to prepare the site to enable extraction, processing the minerals, separation of the valuable mineral, facilities required to obtain, test and store the minerals, crushing) other than the physical act of extracting, taking or wining of minerals.
- c. If the intention was for mining to include the full 'end to end' process carried out by a mining operator, it would have been worded and structured differently.
- d. The District Plan definition of mining is similar to that found in the Crown Minerals Act 1991 (**CMA**). The CMA includes a separate definition for 'mining operations', which means 'operations in connection with mining, exploring, or prospecting for any Crown owned mineral including the extraction, transport, treatment, processing, and separation of any mineral ...'⁸ We consider that if the intention had been for the District Plan definition of mining to be wider than that in the CMA, and potentially include what that Act refers to as 'mining operation', the definition of mining in the District Plan would be different. We would have expected such an intention to have been reflected by the definition of mining in the District Plan adopting phrases found in the CMA definition of 'mining operations'. No such phrases have been included.
- e. The objectives and policies for mineral extraction are focused on the land disturbance associated with mining, and do not address the area or built form of associated parts of the mining business.

⁸ Crown Minerals Act 1991, s 2.

- 4.3 The applicant’s counsel has suggested that the matters to which the Council has restricted its discretion supports a wider interpretation of mining.⁹
- 4.4 We do not consider that District Plan definition of mining is ambiguous , and reference to wider matters is therefore not necessary to resolve the meaning. Even if the definition was ambiguous, the matters set out above in 4.2 support the narrower interpretation.
- 4.5 We note that matters of discretion are distinct from definition, and should not be used to expand the definition where its meaning is otherwise clear.

Industrial Activity or Accessory Building

4.6 In our view, there are at least two different defined activities that will take place at the Site. We have already addressed the mining aspect. The activities that relate to the processing, testing and repair of materials and vehicles, which are not captured within the definition of mining, are a collection of industrial activities, as defined in the District Plan. As set out below, those activities would be discretionary under rule 5.6.2.2 C if the standards for discretionary activities are complied with, and non-complying activities under rule 5.6.2.1 if the standards are not complied with.

5. Rules and standards for the Mining and Industrial Activities

- 5.1 Mining within the rural zone/policy unit is a restricted discretionary activity under 5.6.2.2D. The matters of discretion/control are broad and include the bulk and location of any buildings.
- 5.2 The applicant’s counsel has suggested that ‘discretionary’ is used to capture both restricted discretionary and discretionary activities.¹⁰ However, this is inconsistent with the balance of the opinion, which relies on there being a distinction between the two categories, with the discretionary activity standards in table 5.7 not applying to the restricted discretionary activity of mining.¹¹ The implication of this interpretation is that the catchall non-complying rule cannot be triggered as a result of a mining activity’s failure to meet standards that do not apply.¹²

Table 5.7

- 5.3 Mining, as a restricted discretionary activity, is not subject to the standards in table 5.7. There is no provision that requires mining specifically, or restricted discretionary activities generally, to comply with these standards, and the standards themselves do not apply to restricted discretionary activities.
- 5.4 The non-mining activities, as explained above, are industrial activities under the District Plan. As there is no specific rule for such activities, the general discretionary rule 5.6.6C for any activity that meet discretionary standards applies. The catchall rule at 5.6.2.1 applies if these standards are not met.
- 5.5 For completeness, we note that the specific exception for mining in rule 5.6.2.2 C is not relevant because the activity being assessed is industrial and not mining, as set out in 4.4 above.

⁹ Anderson Lloyd Opinion at [14]-[17].
¹⁰ Anderson Lloyd Opinion at [3], referring to 2.3.1.
¹¹ Above at [8], and [12].
¹² This is the interpretation favoured by the previous RFI.

Part 8

5.6 Part 8 is entitled 'General Rules' and provides performance standards for all activities in all zones. Most of the standards in Part 8 do not apply to the mining activity, because rule 5.6.2.2D does not include any reference to that part. The standards also do not apply to the catch all discretionary rule 5.6.2.2C for the same reason.

6. Conclusion

6.1 While the Proposal includes mining, we consider that the buildings and activities within the Plant Area are not mining as defined by the District Plan. This element of the Proposal is an industrial activity. As there is no specific rule for industrial activities in the rural zone/policy unit, the Plant Area would be subject to catch-all 'any other activity' discretionary rules where standards are met and catch-all non-complying rules where standards are not met.

6.2 The standards that are to be referred to are those set out in table 5.7, which includes maximum gross ground floor areas, and noise standards.

6.3 We trust the above is sufficiently clear, but if there are any questions arising, please feel free to contact us. We understand that a copy of this advice is to be provided to the applicant, and we are of course happy to discuss the matter with them directly if that would be of assistance.

Yours faithfully

Rice Speir



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