

## S133A Consideration and Decision

### Resource Consent Application Details

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<b>Applicant:</b>	GBC Winstones Limited
<b>Location:</b>	Quarry Road, Otaika
<b>Reference:</b>	LU1700100 and P084242
<b>Decision:</b>	Consent granted date 6 <sup>th</sup> June 2018 – Land use consent to provide for the placement of overburden from the Otaika Quarry on the Pegram Block
<b>Report prepared by:</b>	Alister Hartstone, Consultant Planner

### S133A Details and Recommendation

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Section 133A of the Resource Management Act specifies that ‘A consent authority that grants a resource consent may, within 20 working days of the grant, issue an amended consent that corrects minor mistakes or defects in the consent.’

A formal letter was received by Whangarei District Council from Mr Ian Wallace of GBC Winstones on the 3<sup>rd</sup> July 2018 stating that ‘GBC Winstones has noted in reviewing this Decision, that Condition 10(b) is not consistent with the description of the proposal. The proposal does not include the construction of noise barriers / bunds as referred to in Condition 10(b).’ The letter requests that, for reasons specified in the letter, that the Council amend Condition 10(b) under Section 133A as follows:

(b) ~~Noise generated by the Enabling Works activities to secure the site and construct noise bunds/barriers noise shall not exceed the long-term limits in NZS 6803: 1999 Acoustics – Construction Noise.~~

In considering this request, Council has sought advice from Mr Peter Runcie of SLR Consulting Limited, who provided expert evidence as the Council’s acoustic specialist prior to and at the hearing. Mr Runcie has confirmed that reference to noise bunds and barriers is not required in the condition. In addition, the evidence of Ms Siiri Wilkening provided on behalf of the applicant at the hearing specifically addressed the need for such structures as part of the activity. Paragraphs 8.42 and 8.43 of her evidence clearly addresses this matter and identifies that such structures do not represent the ‘...best practicable option in terms of noise effects.’

On the basis of the above advice, there does not appear to be any evidential basis for the condition wording as it stands.

A review of the documentation exchanged between the applicant and Council’s reporting planner when drafting the conditions under the instructions of the Hearings Commissioner panel has been undertaken. It shows that the initial set of conditions prepared by the Council was referred to the applicant for review and comment. The response included the specific reference to provision of noise bunds and barriers as being deleted, in accordance with the applicant’s expert evidence. This change was accepted by the Council’s acoustic specialist, but the wording was later reinstated as part of the iterative process of reviewing and amending conditions for reasons unknown. Those conditions were finalised and provided to the Commissioners, and then formalised as part of the Decision.

Therefore, it is recommended that Condition 10(b) of the consent granted to GBC Winstones Limited be amended as requested in accordance with Section 133A of the Act, on the basis that it is identified as a minor mistake in the consent.

## Section 37 Consideration

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It is noted that the formal advice received from GBC Winstones on the 3<sup>rd</sup> July 2018 was 19 working days after the date of issuing the decision. Section 133A requires a council to issue an amended decision within 20 working days of the grant of consent. If the Council is to determine that an amended decision can be issued, then it first must consider extending the timeframe for doing so under Section 37 and 37A of the Act. Section 37(1)(a) allows a local authority to extend a time period specified in the Act, whether or not the time period has expired. Section 37A sets out the matters that require consideration and sets some limits on the extent of any extension.

In this case, the Council is extending the 20 working day limit set under Section 133A in order to properly consider and decide on the request by GBC Winstones to correct a minor error in a condition of consent. To do so, it is considered that an additional 10 working days is required (effectively until Tuesday 17<sup>th</sup> July 2018). This is less than twice the maximum time period specified as per Section 37A(2)(a) and (4).

Section 37A(1)(a)-(c) sets out the relevant matters that the Council must take into account in deciding whether to extend any time frame. Those relevant matters are:

- (a) *the interests of any person who, in its opinion, may be directly affected by the extension or waiver; and*
- (b) *the interests of the community in achieving adequate assessment of the effects of a proposal, policy statement, or plan; and*
- (c) *its duty under section 21 to avoid unreasonable delay.*

The only person likely to be affected in any way by the granting of the extension is GBC Winstones, the extension has no impact on community interest in the assessment of any proposal (noting that in this case a decision has already been made), and granting the extension will not cause unreasonable delay.

It is therefore considered that an extension to the 20 working day time frame specified under Section 133A, for the purpose of considering and issuing a decision to correct a minor error in a resource consent, can be granted. The extension is for a period of 10 additional working days.

## Decision

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Pursuant to Section 133A of the Resource Management Act 1991, approval is given to the minor correction to Condition 10(b) of the Notice of Decision issued to GBC Winstones Limited referenced as LU1700100. The wording of the amended condition is to read as follows:

- (b) *Noise generated by the Enabling Works shall not exceed the long-term limits in NZS 6803: 1999 Acoustics – Construction Noise.*

In granting this decision, and pursuant to Section 37 and 37A, an extension to the 20 working day time frame specified under Section 133A, for the purpose of considering and issuing a decision to correct a minor error in a resource consent, is granted. The extension is for a period of 10 additional working days.



Mr David Hill (Chair)  
Independent Hearings Commissioner

13 July 2018  
Date