

In the Environment Court of New Zealand
Auckland Registry

I Mua I Te Kōti Taiao O Aotearoa
Ki Tāmaki Makaurau

ENV-2023-AKL-160

Under the Resource Management Act 1991

In the matter of An application for a direct referral to the Environment Court under section 87G of the Act for an order granting the applicant's resource consent applications to construct and operate a new asphalt plant at 54 Aerodrome Road, Mt Maunganui, together with an application for consent to authorise the continued operation of the existing asphalt plant on the site pending construction of the new plant

Between **Allied Asphalt Limited**

Applicant

And **Bay of Plenty Regional Council and Tauranga City Council**

Consent Authorities

Statement of Evidence of Dale Andrew Eastham on behalf of Fulton Hogan Limited

Dated 26 April 2024

Counsel acting:

Stephen Christensen

Project Barrister

421 Highgate, Dunedin 9010

p 027 448 2325

stephen@projectbarrister.nz

Qualifications and experience

- 1 My full name is Dale Andrew Eastham.
- 2 I hold a Bachelor of Applied Science, majoring in Natural Resource Management from Massey University, and am an Accredited Commissioner, having completed the Making Good Decisions course.
- 3 I am currently employed as National Manager, Environment and Sustainability, for Fulton Hogan Ltd and have held that position since May 2021.
- 4 My previous work experience includes:
 - (a) 4 years as a Resource Consent Planner at Opus Consultants (Now WSP)
 - (b) Cumulatively approximately 8 years working in operational environmental roles for heavy industrial/manufacturing companies, including on-site and forestry-based operations. These roles included operational oversight of consent compliance functions as well as obtaining new consents, including Hearings & Environment Court processes.
 - (c) Working across the New Zealand Fulton Hogan business, advising on environmental practices for our day-to-day operations, providing advice on business strategy, developing & delivery of training material to all levels of staff, leading and project managing resource consent processes.
- 5 A key function of my current role includes liaising with external parties such as client, regulators and industry groups, representing either parts of the business or the Fulton Hogan business as a whole.
- 6 Fulton Hogan Limited (**Fulton Hogan**) is one of two parent companies that comprise the ownership of Allied Asphalt Limited (**Allied Asphalt**). The Allied board asked Fulton Hogan to provide the required expertise to lead this resource consent project (**Application**). Given my location and expertise in this area, I offered to assist.
- 7 I was involved in the original asphalt plant selection process for other Fulton Hogan locations across the North Island of New Zealand, and was responsible for assembling and overseeing the consultant team working on this consent application process. This role included the scope and oversight of engagement and consultation with stakeholder parties who have an interest in the activities of Allied Asphalt in the Mount Maunganui area.

- 8 This statement of evidence pertains to the consultation carried out with manawhenua and Clear the Air.
- 9 In preparing this statement of evidence I have considered the following documents:
- (a) the AEE accompanying the Application;
 - (b) submissions relevant to the topic of this statement of evidence;
 - (c) statements of evidence prepared on behalf of section 274 parties.
- 10 My workplace is located at 54 Aerodrome Road in Mount Maunganui, at the Fulton Hogan office, which adjoins the Allied Asphalt property. I lived in Tauranga from 2007 to 2011 and moved back to the city in 2019. I am familiar with the specific location and the wider Bay of Plenty region.

Scope of evidence

- 11 I have prepared evidence in relation to:
- (a) the existing environment of the Application Site as it is relevant to my area of expertise;
 - (b) matters raised by submitters on the Application and in statements of evidence;
 - (c) Proposed conditions of consent.
- 12 This evidence has been prepared in response to the Submitter Evidence (Section 274 party) which included some key points which required correcting and a response from the applicant's perspective.

The existing environment

- 13 The status of the Mount Maunganui airshed as polluted for PM₁₀ is well-known and has been a key consideration from the outset for this project in relation to stakeholder engagement, plant configuration and the assessment of locations.
- 14 The Allied Asphalt site is located on land of significance to local hapū, and as an industrial activity, has the potential to generate a range of effects on the whenua as well as the people who live and work in the area.
- 15 Allied Asphalt is one of many different industrial activities that operate within the Mount Maunganui airshed, and contribute to the air emissions, traffic numbers and wastewater generation to a small degree, as part of the role

the company plays in providing for infrastructure maintenance and construction which is vital to the Region's communities and economy.

- 16 There are only two companies in the Bay of Plenty which produce asphalt products. Allied Asphalt is one of these, with two plants (one in Mount Maunganui, the other south of Rotorua), the other being Higgins with a single plant located in Mount Maunganui, close to Allied Asphalt's location.
- 17 The current site has reticulated stormwater and trade waste services, is located to adjacent major transport routes and is centrally located to serve our customers' needs. Aerodrome Road also has a reticulated natural gas supply readily available.

Iwi and hapu consultation

- 18 Neither Allied Asphalt, nor Fulton Hogan, can state what the effects of the proposal are on cultural values specifically – it is understood and accepted that this is something only the representative parties can state. To enable understanding of what this might be, consultants were engaged early in the process to open a line of dialogue with relevant parties. Allied Asphalt has prepared a record of consultation with cultural representatives (attached as Appendix 1) to illustrate the on-going efforts made in this area.
- 19 In July 2020 (when the original application for renewed operation of the current plant was being prepared), the Regional Council advised that Whareroa Marae wanted to be consulted with individually and specifically. GHD was therefore engaged to carry out this task.
- 20 As stated in the AEE, the application was put on hold, requiring more information to be provided to council. This led to a complete re-think of the project and company direction. Allied Asphalt agreed to seek only short term operation of the current plant and instead move as quickly as possible to a new plant, in line with the others being obtained across the North Island by Fulton Hogan Limited, and consistent with what we understand to be the expectation that all industrial emitters need to accept responsibility for reducing particulate emissions to air from their operations so that over time the amount of particulate in the airshed reduces.
- 21 This led to an extended period of no contact with interested iwi and hapū groups whilst the project was re-framed, a team of consultants engaged, and a new draft application prepared. In the interim, the councils were kept informed as to the progress being made. In late 2020, the information

required to enable effective consultation was ready and GHD began arranging a hui.

- 22 As per the record of consultation, this hui took place on 3 March 2022 via Teams due to health risks due to the on-going Covid-19 presence. Numerous topics were covered, including:
- (a) An explanation of the work done to-date, including the pivot to use of an all-new, low emission plant
 - (b) General opposition in principle by iwi and hapū to the use of a site within the Mount Maunganui airshed
 - (c) Assessment of effects from a cumulative impact perspective
 - (d) Consideration of alternative locations
 - (e) Cultural impact assessment
 - (f) Future hui to include an on-site visit to Allied Asphalt
- 23 I believed that the results of the air quality assessment report would be of interest, so when these were available in October, communications were made to organise the follow-up hui as had been discussed. However, agreed dates could not be found prior to the application being lodged in December.
- 24 On 8 March 2023 an on-site hui was held. Minutes Allied Asphalt took of the day were not agreed to afterwards, although we were never able to establish the exact issue that Ngāti Kuku representatives held with the minutes (refer to consultation timeline). A response clarifying the discrepancy between the recorded minutes and the Ngāti Kuku's position has never been received.
- 25 At the end of March Allied Asphalt felt a more effective cultural engagement consultant was required and Sam Hema was engaged instead, replacing GHD.
- 26 Through April 2023, leading up to public notification by the regulators, correspondence continued to establish a constructive dialogue between Allied Asphalt and hapū representatives. On 8th May 2023 a response was received from Whareroa Marae stating that Ngāti Kuku hapū concerns had not been adequately considered and they would instead address the matter through Environment Court processes. A formal submission was subsequently received from Ngāti Kuku when the application was notified. Noting comments about the resourcing in time and cost from submitters,

Allied Asphalt arranged and funded a Friend of the Submitters to assist as required.

- 27 On 18th December 2023, in response to the submission received by Whareroa Marae and Ngāti Kuku, a letter was sent from the applicant, seeking a hui to better understand the submitter's position and concerns specifically. A copy of this letter is included as Attachment 2. A response to this letter has not been received as yet.
- 28 Following a Pre-hearing mediation day facilitated by Commissioner Myers on 14 February 2024, a letter was sent to Joel Ngātuere (who represented the hapū that day), responding to his offer for the applicant to bring its experts to meet with hapu representatives at Whareroa Marae to further discuss aspects of the application and understand how concerns might be addressed. A copy of this letter is included as Attachment 3. No response to this offer has been received to date.
- 29 In paragraph 15 of his evidence, Mr Scott states the consultation with mana whenua was 'rudimentary' and abandoned around the time of the application. To my knowledge Mr Scott was not involved in any of the consultation to which he refers. In my opinion, although there is always room for improvement in hindsight, efforts to engage started early and persisted for an extended period of time up to and post consent lodgement and public notification.
- 30 I personally understand the point raised by hapū representatives regarding the multiple demands on their time and attention and endeavoured to ensure that communications were always made with this respectfully in mind.
- 31 In paragraph 76, Mr Scott states no consideration of the impacts on Ngāti Kuku has been included in the alternatives assessment. The record of consultation shows that on-going efforts were made to understand this perspective, but ultimately the applicant cannot definitively state this on Ngāti Kuku's behalf, and positive engagement from the hapū's end was never forthcoming to enable a Cultural Impact Assessment to be completed.
- 32 In paragraph 95 of his evidence, I believe Mr Scott is understating the reduction in emissions that the new plant will bring to Allied Asphalt and the airshed, instead attributing the improvement solely to the change in fuel selection. Throughout the consultation for this project, I have used the analogy of a 1990-vintage car being compared to a brand new car – they may look similar and do similar things in the eyes of a lay-person, but the

emissions they produce in the process are vastly different through the use of modern emission containment and filtration processes.

- 33 In the evidence of both Awhina and Joel Ngātuere, the on-going, sometimes simultaneous, and demanding nature of the consultation efforts by applicants regarding consent applications in the Mount Maunganui airshed is made clear, and both the applicant and I personally wish to acknowledge this point clearly.
- 34 The on-going demands on the time and resources of cultural representatives was recognised by the applicant in 2021 as the revised proposal took shape, directly resulting in the engagement of specific consultants for the consultation with the relevant parties. The value of hapū input has never been questioned throughout, but until the statements of evidence were received, no specifics as to what the viewpoints entailed was received, other than recognition of the significant level of environmental improvement proposed, but an in-principle objection to Allied Asphalt continuing to operate within the airshed.
- 35 In paragraphs 39-44, Ms Ngātuere outlines the need for a 'Unique Solution' to address cultural impacts, and in paragraph 35 of Mr Ngātuere's evidence, the dislike for a Kaitiaki Working Group-type solution is expressed. This stance has been made clear to me and the applicant throughout the consultation process, but no alternative has ever been put on record by either Ms or Mr Ngātuere for the applicant to consider and respond to.
- 36 In the absence of constructive communications with hapū representatives, Allied Asphalt has put forward an application and draft conditions which I believe represent a genuine intent to respect the sustainable management purpose of the Resource Management Act, balancing the need for economic activity that enables wellbeing, whilst avoiding and otherwise minimising the effects to the extent possible. Review of this performance is allowed for through the voluntarily offered condition of review every ten years. This protects the significant investment required to bring new technology at scale to raise the bar on industrial activities in the airshed whilst enabling a mechanism to drive on-going improvement throughout the plant's lifespan.

Consultation with local residents

- 37 Clear the Air have been active in the Mount Maunganui area for a number of years, and it was considered certain that they would be involved in the consultation process when the revised proposal for a new plant was begun.

- 38 To ensure an understanding of the current and historical issues around air quality in the Mount Maunganui area being raised by the community, I undertook to attend facilitated sessions on behalf of Allied Asphalt to ensure that the Applicant was represented and to better guide the project overall. There were, and still are, multiple parallel working groups on the topic, and I elected to attend the series attended by the major industrial parties, rather than the general Mount Maunganui Air Quality Working Group (MMAQWG).
- 39 The views and input from Clear the Air were sought early on, and Ms Jones was contacted as a representative to explain Allied Asphalt's choice to review the application and construct a new plant; what the process going forward would entail, and how Clear the Air and members of the public would get opportunities along the way to contribute.
- 40 Ms Jones (paragraph 17) and Ms Kelway (paragraph 19) both misrepresent the meeting with Allied Asphalt which I attended. Only Ms Jones was present along with myself and Mr Palmer, and while the meeting was not minuted as it was an informal conversation, the intent was to clearly explain the improved proposal being prepared and to provide reassurance that the residents of Mount Maunganui would have an opportunity to submit on the application with full transparency.
- 41 At this meeting, no guarantee of zero effects was given (paragraph 17 of Ms Jones evidence), and no "pleading for new locations" was done (paragraph 19 of Ms Kelways evidence). I maintain that it was a good faith conversation by all parties to ensure clear understanding of expectations and intent.
- 42 Referencing Ms Kelway's (paragraph 15) and Ms Hughes' evidence (paragraph 21), Allied Asphalt believes that the updated proposal lodged in 2023 is the best means of addressing past consent compliance issues, and that the proposal represents a much-improved proposal from that originally submitted in 2020. This is an example of a company acknowledging its contribution to the airshed and endeavouring to set an example for other industries to follow, by investing in and implementing the best available technology to reduce emissions to insignificant levels and committing to on-going investment and improvement over the lifetime of the asset.

Proposed consent conditions

- 43 The proposed consent conditions attempt to find a balance between not demanding on-going commitment of time and resources by hapū representatives and the public, whilst providing transparent reporting and data through the regulator to demonstrate consent compliance.

- 44 My Batchelar’s reply evidence responds to the issues raised in relation to cultural conditions by Mr Scott (acknowledging that Mr Scott does not support consent being granted) and proposed amendments to conditions take these issues on board.
- 45 Allied supports the principle of a more integrated approach being taken to consent monitoring by iwi and hapū at Mount Maunganui, and if our proposal provided a catalyst for this to occur, we would be happy to work with others to achieve this.

Conclusion

- 46 Once the need for an improved and significantly-revised proposal was recognised in 2021, efforts were begun to engage with iwi and hapū and external stakeholders in a constructive and respectful manner. Allied Asphalt staff and Board members listened to my advice on this matter throughout and acted upon it without exception.
- 47 I acknowledge, as does Allied Asphalt, the resolute position of Clear the Air and hapū that they oppose not just the continued operation of an asphalt plant within the Mount Maunganui airshed, but the ongoing presence of industry that unavoidably causes emissions to air generally. This position was acknowledged throughout consultation, along with requests for other constructive contributions to the discussion more aligned with the direction of the relevant RMA plan provisions as discussed in Mr Batchelar’s evidence.
- 48 Whilst there is always room for improvement in hindsight, it is my opinion that all consultation was undertaken by Allied Asphalt in good faith and with respect for the views of other parties– the updates to the proposal post-lodgement reflect this sincerity.

Dale Andrew Eastham

Dated this 26rd day of April 2024

Appendix 1
Consultation Timeline

2020		
12 May	Initial consent application for discharge to air lodged	
9 July	Whareroa Marae confirm desire for separate, specific consultation	Requested through BOPRC communications, message conveyed via Brian to Lezel Botha at GHD
2021		
17 November	Email from BOPRC directing consultation to be increased	BOPRC noted that consultation had lapsed (whilst revised plant selection and new proposal & consulting team were shaped up). Contact details were provided by Council. Draft AEE not available at this time
18 November	Iwi contact information passed to GHD for scoping purposes, to engage GHD to facilitate and advise on consultation	Details given to Shaun Hamilton, Darlene Dinsdale able to develop proposal based on this information
3 December	Craig confirms to BOPRC timeline for iwi consultation	Engagement of Darlene at GHD, aim of hui on-site prior to Christmas & more in Feb/Mar 2022
2022		
24 January	Darlene confirming contact with iwi	Looking to set up meeting within fortnight
17 February	Darlene confirmed iwi groups have information	Ngāti Kuku, Ngāi Tukairangi & Ngāi Te Rangi, Nathan James, Ngawiki Dickson, Awhina & Joel Ngatuere all have the information and are considering. Hoping for on-site Meeting 24 Feb.
23 February	Hui postponed till March 3 due to covid risks	Initial feedback via Darlene was that proposal was being viewed positively.
3 March	Hui via Teams including Allied Project team and representatives of Ngāi	Aim was to re-introduce the project to iwi groups, and facilitate engagement. Feedback from iwi attending the meeting was that they were opposed to any heavy

	Tukairangi, Ngāti Kuku, Te Kapu o Waitaha	<p>industry in the airshed, and that the plant would still contribute to air pollution even though it will be an improvement over the existing plant. Requested consideration of cumulative effects of the discharge into the airshed, and consideration of alternative locations.</p> <p>Cultural impact assessment / cultural values assessment was discussed, with further arrangements to be made after the meeting.</p> <p>Site visit also discussed.</p>
Mid-October	Correspondence began with iwi, aiming to arrange a further hui and site visit in November	Unsuccessful landing a date that worked for iwi attendees in 2022
19 December	Updated application lodged with Council	
2023		
February – March	Ongoing correspondence around a suitable date for hui and site walkover	
8 March	Hui and site walkover	Iwi attendees - Aroha Kopae and Nathan James (Ngāti Kuku); Hayden Henry (Ngāi Tukairangi)
23 March	Hui minutes circulated to hui attendees and others who were not able to attend on the day	<p>Key discussion points:</p> <p>Overview of proposal and technical assessments.</p> <p>Nathan James provided context of the history of the area, which was formerly part of the Whareroa Block and Hori Ngatai's garden.</p>
24 March	<p>Response from Hayden Henry requesting change to terminology around being an iwi representative.</p> <p>Email from Aroha Kopae with concerns that some</p>	<p>Craig Batchelar followed up with Aroha on 31 March 2024 but no response received.</p> <p>After some miscommunication between GHD, iwi groups & Allied, Darlene was removed from the Project team.</p>

	kōrero was missing from the meeting minutes. Proposed to send a draft with additional text	
6 April	Email sent suggesting a further hui with dates suggested for April	Sam Hema engaged to support iwi consultation
11 April	Follow up on 6 April email, and suggestion of further dates in April or May	
12 April	Aroha Kopae advised Ngāti Kuku were not satisfied with the level of information provided to them, and suggested inviting Allied to Whareroa Marae to present.	
13 April	Hayden Henry advised that Ngāi Tukairangi would also like to be advised of the discussions at Whareroa Marae	
13 April – 1 May	Attempts by Sam Hema to contact Ngāti Kuku representatives by phone / email to arrange hui at Whareroa Marae	
4 May	Email sent advising iwi/hapū that public notification of the application was imminent	
8 May	Awhina Ngatuere responds and states that Whareroa Marae and Ngāti Kuku are affected by the proposal and feel that they haven't been understood or addressed by Allied or the consultant team.	

	She stated that Ngāti Kuku will go through due process and environment court to ensure their priorities and concerns are heard.	
12 May	Applications publicly notified, with submissions closing on 12 June.	
16 June	Direct referral to the Environment Court requested.	
17 June	Submission received from Ngāti Kuku	
18 December	Letter sent to Ngāti Kuku (via Awhina Ngatuere) requesting a further opportunity to understand Ngāti Kuku's values and relationships with the Mt Maunganui area.	No response received to date
2024		
14 February	Environment Court mediation including Ngāti Kuku representatives	Joel Ngatuere expressed interest in kōrero at Whareroa Marae
12 March	Dale Eastham email to Joel Ngatuere following up on suggestion of further discussion.	No response received to date

Appendix 2
December 2023 Letter to Ngāti Kuku/ Whareroa Marae



allied asphalt

18th December 2023

Ngāti Kuku
c/- Hapū representative Awhina Ngatuere

MANUFACTURERS OF ALL GRADES OF HOT BITUMINOUS MIXES

MANUFACTURING PLANTS:

Aerodome Road, Mt. Maunganui - Ph: 07 575 9015

50 State Highway 5, Rotorua - Ph: 07 347 2005

Kia ora Awhina

Allied Asphalt and Ngāti Kuku

Allied Asphalt Limited is keen to meet with Ngāti Kuku so that we can better understand Ngāti Kuku's values and relationships with the land and air in the Mt Maunganui area. It is our hope that with better understanding, and by sharing with Ngāti Kuku our own values and aspirations, our future activities as part of the Mt Maunganui community will be better informed and respectful of Ngāti Kuku's values.

While there has been some engagement between Ngāti Kuku and Allied representatives in relation to the consenting project for the new asphalt plant, that engagement has, at least from our perspective, not been as productive as it could be. I cannot help but feel that with changing personnel we have been talking past each other, and have not connected in a meaningful way.

I am also conscious that Ngāti Kuku has a range of historical and current concerns, some of which are unrelated to and not able to be solved by Allied, but which still impact on the way Ngāti Kuku views our current and proposed activities.

Allied has been a part of the Mt Maunganui community for many years, and we hope that we will continue to be in the community for many years to come. It is our desire to have a meaningful relationship with Ngāti Kuku as part of that, built on mutual understanding and respect.

To that end, my Board and I would welcome the opportunity to meet with you and other appropriate tribal leaders *kanohi ki te kanohi*. Please let me know if this is an opportunity that Ngāti Kuku would see value in, and we can look to lock in a suitable time.

Ngā mihi

Brian Palmer
Operations Manager – Allied Asphalt Limited





Appendix 3
Letter 14 February 2024 to Joel Ngātuere


File Message Help Tell me what you want to do


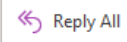



Delete Archive Reply Reply All Forward Share to Teams Guppy Rd Prose... To Manager Team Email Move Tags Editing Immersive Translate Zoom

Delete Respond Teams Quick Steps Language Zoom

Allied Asphalt contact

 EASTHAM, Dale
 To  teahikouka@gmail.com
 Cc  CALEY, Helen;  PALMER, Brian

 You forwarded this message on 12/03/2024 2:52 pm.

 Reply  Reply All  Forward  

Tue 12/03/2024 2:52 pm

Tēnā koe Joel,

I'm catching up on the actions out of the mediation now that we've finished all the evidence that needed to be submitted to the Court.

I really appreciated your korero during the mediation day – honest and forthright conversations were helpful in moving everyone's understanding forward on parties' perspectives and important issues. It was a significant time commitment by yourselves and Clear the Air representative and I hope it was seen as useful time spent.

You indicated it would be good to have another discussion prior to the Hearing directly with Allied (including the FH representatives here), and possibly some of the specialists who have helped develop the application, to allow time to dive into stormwater design questions and perhaps some other topics also.

Allied are keen to take up this offer – we can bring along whatever specialists you would like to talk to at the time & location that suits. If Clear the Air representatives would like to join in, we would be happy to have them included also.

Looking at my notes, the areas you would like to discuss included (as a starter):

- Hazardous substances – use, storage, emergency procedures
- Stormwater – collection, management & treatment
- Contaminated land

All my contact details are below, and I've copied in my colleague Helen Caley and Allied Asphalts General Manager Brian Palmer also. We're looking forward to hearing from you at your convenience, but feel free to give me a call anytime if you need to.

Ngā mihi maioha,

Dale

Dale Eastham | National Manager - Environment and Sustainability | Fulton Hogan Ltd | 54 Aerodrome Road, Mount Maunganui, Tauranga 3116| Private Bag 12016, Tauranga Mail Centre, Tauranga 3143, New Zealand| Phone +64 7 575 6157| +64 27 212 4142| Web www.fultonhogan.com