

## CON520: SUBMISSION ON RESOURCE CONSENT APPLICATION

(SECTION 96 RESOURCE MANAGEMENT ACT 1991)

TO: Consents Hearings  
Environment Canterbury  
P O Box 345  
CHRISTCHURCH 8140

Email: [hearings@ecan.govt.nz](mailto:hearings@ecan.govt.nz)  
Ph: (03) 353 9007 Fax: (03) 365 3194

OR: submit by completing an on-line form at:

<https://www.ecan.govt.nz/do-it-online/resource-consents/notifications-and-submissions/notified-consents/>

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FILE: CRC192408, CRC192409, CRC192410,  
CRC192411, CRC192412, CRC192413,  
CRC192414, RC185627

Closing Date: **5.00pm Thursday 6 June 2019**

### Person(s) /Group /Organisation Making the Submission

Full Name of Submitter(s): Brackenridge Services Limited

Postal Address For Service: Level 5, 60 Cashel Street, Christchurch

Contact Phone No(s): 03 353 0022

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Please tick this box if you do not want to receive any communication via email

Contact Person: Jo Appleyard

Name of applicant: Fulton Hogan Limited

### Applications to Environment Canterbury

All of the applications as listed below OR only those as ticked.

- |                          |           |  |
|--------------------------|-----------|--|
| <input type="checkbox"/> | CRC192408 | Land use to excavate material  |
| <input type="checkbox"/> | CRC182409 | Land use to deposit cleanfill  |
| <input type="checkbox"/> | CRC192410 | Discharge contaminants into air  |
| <input type="checkbox"/> | CRC192411 | Discharge contaminants into water from industrial processes              |
| <input type="checkbox"/> | CRC192412 | Discharge stormwater into land   |
| <input type="checkbox"/> | CRC192413 | Discharge contaminants into land associated with deposition of cleanfill |
| <input type="checkbox"/> | CRC192414 | Water permit   |

I / We support the application       I / We oppose the application       I / We are neutral to the application  
(neither support or oppose)

I / We **do** wish to be heard in support of my/our submission\*  
(Note: this means you wish to speak in support of your submission at the hearing)  
\*If others make a similar submission, I will consider presenting a joint case with them at the hearing     Yes     No

OR  
 I / We **do not** wish to be heard in support of my/our submission  
(Note: this means that you cannot speak at the hearing, however you will retain your right to appeal any decision to the Environment Court on any decision made by the Council.)



5.  I/We am / am not a trade competitor for the purposes of section 308B of the Resource Management Act 1991.  
I /We am / am not directly affected by an effect of the subject matter of the submission that (a) adversely affects the environment; and (b) does not relate to trade competition or the effects of trade competition.

  
Signature of submitter or duly authorised agent on behalf of submitter

Date 6 / 6 / 19

**Notes to the submitter:**

1. The person making this submission must send a copy to the applicant as soon as reasonably practicable after serving Environment Canterbury
2. A list of all submissions received will be provided to the applicant.
3. Please be aware that third parties may request a copy of submissions received and that request is subject to the Local Government Official Information and Meetings Act 1987.

**The address for service of the applicant is:**

Fulton Hogan Limited  
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Attn: Kevin Bligh / Geoff England

Email: [submissions@golder.co.nz](mailto:submissions@golder.co.nz)



**SUBMISSION ON AN APPLICATION FOR RESOURCE CONSENT UNDER  
THE RESOURCE MANAGEMENT ACT 1991**

To: Environment Canterbury  
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- 1 This is a submission by Brackenridge Services Limited (*Brackenridge*).
- 2 Brackenridge opposes the application by Fulton Hogan Limited (the *Applicant*) to establish a gravel quarry at a site within a block of land bound by Curraghs Road, Maddisons Road, and Jones Road, Templeton (the *Application*).
- 3 Brackenridge **opposes** the whole of the Application on the basis that it:
  - 3.1 would be contrary to the Selwyn District Plan and the direction as to where such activities should be located (as is consistent with the decision of the High Court in *Harewood Gravels Ltd v Christchurch City Council*);<sup>1</sup>
  - 3.2 does not contain a complete assessment of the adverse effects on air quality under the Canterbury Air Regional Plan (the *CARP*);
  - 3.3 incorrectly assesses the activity status under the *CARP*;
  - 3.4 will have adverse effects (including precedent and plan integrity effects) that are more than minor;

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<sup>1</sup> [2018] NZHC 3118.

3.5 is proposed in an area that is generally not an appropriate location to establish a quarry given the concerns raised in the Yaldhurst Air Quality Monitoring Report 2018 (the *Yaldhurst Report*); and

3.6 the Application is contrary to the Selwyn District Plan more generally, the CARP, the Resource Management Act 1991 (*RMA*), and other relevant RMA documents.

## **BACKGROUND**

4 Brackenridge is an independent subsidiary company of the Canterbury District Health Board that provides support and services to children, young people, and adults with disabilities and autism in Canterbury. Brackenridge is also a significant employer in the Templeton area.

5 Brackenridge was established in 1999 following the closure of the Templeton Centre due to a government push towards the deinstitutionalisation of services for people with disabilities. Brackenridge Estate was opened in Templeton to provide support for these people in 14 homes.

6 Undertakings were made by the Government of the time that Brackenridge Estate would provide residents with "a home for life." This has given certainty to residents, families, friends, staff and the community and led to expectations that Brackenridge would provide a safe and pleasant residence for all its residents for a long time into the future.

7 Millions of dollars have been invested in Brackenridge by the Crown on behalf of taxpayers to create purpose built homes in support of people with disabilities.

8 Today, Brackenridge supports people to live in 40 homes in suburbs across Christchurch and Rolleston. It also provides residential respite services, day and vocational services.

9 Many of the persons living at these premises have autism (autistic spectrum disorder) and other impairments and experience heightened sensory impacts – this means they are significantly more susceptible and sensitive to the 'effects' around them. They are also highly sensitive to the emotional cues of other people.

10 This submission is therefore also made on behalf of the vulnerable people Brackenridge provides services for – many of whom are not able to speak for themselves and live in close proximity to the proposed quarry site.

## **BRACKENRIDGE FACILITIES AT TEMPLETON**

11 Brackenridge supports 130 people in the Templeton community.

12 Brackenridge Estate (the *Estate*) is located at 150 Maddisons Road and provides for 62 people who live permanently in 11 homes. Brackenridge

Estate also provides respite support allowing persons to stay 1-2 nights per week at 3 homes in the Estate.

- 13 Many of the people at the Estate have lived there since the establishment of Brackenridge, and prior to that at the Templeton Centre which was established in 1929.
- 14 Brackenridge also provides for 8 people who live in two homes at Globe Bay Drive and Iraklis Close, Templeton.
- 15 Brackenridge Estate is approximately 1.15 kilometres from the proposed quarry site and the Globe Bay Drive and Iraklis Close properties are approximately 720 metres away.
- 16 Brackenridge has a long term lease over Brackenridge Estate with twenty years to go. Relocating Brackenridge's residences to mitigate the effects of the proposed quarry is not an option. Brackenridge do not have the resources available to do this.

### **CONCERNS REGARDING THE APPLICATION**

- 17 It is noted that to grant the Application would be contrary to the decision of the High Court in *Harewood Gravels Ltd v Christchurch City Council*.<sup>2</sup> There, the High Court affirmed the decision of the Environment Court<sup>3</sup> declining an application for a new quarry in Yaldhurst. The Environment Court considered that there were extra constraints that should be placed on new quarrying activities where these were proposed outside of any Rural Quarry Zones in the Christchurch District Plan.<sup>4</sup> This is expressly outlined in Policy 17.2.2.12 of the Christchurch District Plan.
- 18 While the proposed quarry in this Application falls just outside of the Christchurch District Plan (therefore also outside of the Templeton Quarry Zone) and the Selwyn District Plan does not have equivalent 'rural quarry zones,' the approach in this decision should be adopted to ensure against the proliferation of quarrying in rural areas without adequate consideration of cumulative effects. The concerns as to effects as expressed by both the Environment Court and the High Court in the *Harewood Gravels* case are equally applicable here.

#### **Vulnerable persons**

- 19 Brackenridge is concerned that the Application will have a significant negative impact on the vulnerable people with intellectual disabilities, autism, and fragile complex medical conditions it provides for who have lived in the area for a significant amount of time.

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<sup>2</sup> [2018] NZHC 3118.

<sup>3</sup> *Yaldhurst Quarries Joint Action Group v Christchurch City Council* [2017] NZEnvC 165.

<sup>4</sup> At [48].

- 20 The people on behalf of which Brackenridge makes this submission have intellectual disabilities and often experience communication difficulties, some of whom are even unable to communicate orally. Many of these vulnerable people are not able to speak for themselves or find it significantly difficult to participate in council processes such as the process for this Application.
- 21 For persons with communication challenges, the identification and assessment of health impacts is more problematic than for a person who is able to fully communicate. On this basis, a higher standard of risk assessment is paramount to ensuring the health of these vulnerable people when considering the Application.
- 22 Without limiting Brackenridge's opposition to the entire Application, Brackenridge is particularly concerned about the following potential adverse effects of the Application:

**Dust**

- 23 A number of people who live at Brackenridge Estate have high health needs (for example many have a number of significant health conditions, physical disabilities, and intellectual disabilities). These make them far more susceptible to the effects of the proposed quarry, and in particular dust (for example vulnerable persons are far more predisposed to bronchial health issues which could have the potential to result in serious and life threatening illness).
- 24 Brackenridge shares a number of concerns expressed in Environment Canterbury's (*ECan*) Request for Further Information dated 31 January 2019. In particular on the Applicant's assessment of the Canterbury Regional Air Plan (the *CARP*). Brackenridge does not consider the *Response to Request for Further Information* (the *Response*) dated March 2019 addresses all these concerns.
- 25 Firstly, there is no adequate explanation or assessment in either the Application or the Response as to how or why the activity status for air discharges was assessed or interpreted. There is no explanation to the assumptions made by the Applicant that certain Rules in the *CARP* precede others. Brackenridge considers the Applicant's assessment of the *CARP* is incorrect for the following reasons:
- 25.1 In the Response, it states that the cleanfilling proposed will not comply with condition 1 of Rule 7.49 which provides the discharge of contaminants into the air from the disposal of cleanfill is a permitted activity provided certain conditions are met. This is followed by the conclusion that the activity is therefore captured by Rule 7.63(1). This is incorrect as Rule 7.63(1) *excludes* activities where condition 1 of Rule 7.49 is not met;
- 25.2 The Response and the Application also suggest that the activity is a discretionary activity falling under Rule 7.63(2) as an "*industrial or trade premise and is not managed by Rules 7.47-7.62*";



25.3 Under the CARP, 'industrial or trade premises' is defined as follows:

***Industrial or trade premises (RMA) means***

*[...]*

*c. any other premises from which a contaminant is discharged in connection with any industrial or trade process;*

*but does not include any production land.*

This is further defined:

***Industrial or trade process (RMA)***

*Includes every part of a process from the receipt of raw material to the dispatch or use in another process or disposal of any product or waste material, and any intervening storage of raw material, partly processed matter, or product.*

25.4 It has been assumed by the Applicant that quarrying is an industrial or trade process, however, the definition contemplates the process "from receipt of raw material." The definition does not include the extraction or quarrying of raw material. As a comparison, the definition of 'handling' does:

***Handling***

*Means extraction, quarrying, mining, processing, screening, conveying, blasting, or crushing of any material*

25.5 On the above basis, the proposed site is not an industrial or trade premise and therefore the activity Rule 7.63 would not apply;

25.6 This would mean (for both reasons outlined above) that Rule 7.64 would apply which provides that the discharge of contaminants into air which does not comply with condition 1 of Rule 7.49 is a **non-complying activity**;

26 It is also Brackenridge's view that there has not been a proper assessment of the potential effects of the discharges.

27 The Assessment of Air Quality Effects (the *Air Assessment*) (Appendix D of the Application) does not consider whether discharges from the activities will cause "an offensive or objectionable effect beyond the boundary of the property of origin" as per the criteria in Schedule 2 of the CARP:

27.1 Brackenridge considers such an assessment is crucial in determining whether the adverse effects of the activity will be minor or more than minor as required under the non-complying activity status of the proposal;

- 27.2 While the Air Assessment does use the words '*offensive or objectionable beyond the site boundary*' and claims to assess in accordance with Schedule 2 of the CARP, Brackenridge notes that there is no assessment/mapping of circumstances where (i.e. based on wind speed and humidity) the effects will be offensive and objectionable beyond the boundary;
- 27.3 Brackenridge further notes that the limits of suspended dust contained in 3.1.3 of the Air Assessment relate to standards for human health. It is possible that even where these limits are reached, the discharge may still be offensive or objectionable. This is not considered by the Air Assessment; and
- 27.4 It is also questionable how the Application can assert at 6.4.2 that residences beyond 250 metres of the proposed quarry extraction "*are not expected to experience any significant dust impacts resulting from the proposed quarry.*" Brackenridge does not consider this assertion has been demonstrated.
- 28 Brackenridge is also concerned that the exposed areas, as defined on page 9 of the Air Assessment do not include "*any areas where backfilling or rehabilitation is occurring*" suggesting it is very much possible that there will be more than 40ha of 'technically' exposed area. For example where a large exposed area is in the process of being backfilled and/or rehabilitated. It does not appear this was taken into account in the Air Assessment.
- 29 Brackenridge further notes in relation to the results of the Yaldhurst Air Quality Assessment (the *Yaldhurst Assessment*) (which reported on dust nuisance from 7 quarries in Yaldhurst, Christchurch (the *Yaldhurst Quarries*)):
- 29.1 The Yaldhurst Assessment indicates that there have been a number of complaints around dust nuisance coming from the Yaldhurst Quarries. The ECan website further shows complaints made directly in relation to Fulton Hogan's Yaldhurst Quarry.<sup>5</sup> The Yaldhurst Assessment found 13 exceedances of the suggested dust limits.<sup>6</sup> Brackenridge considers this in itself demonstrates the potential adverse effects of the proposed activity and that it is likely similar effects will be experienced by the Templeton community;
- 29.2 Brackenridge considers the Yaldhurst Assessment to be a conservative assessment of the dust from the Yaldhurst Quarries due to the "*unusually high level of rainfall during the monitoring period.*"<sup>7</sup> This appears to be outright rebutted by the Applicant's Air Assessment which at 4.2.2 suggests that these rainfalls would have had a negligible effect on the results of the test. This is questionable.

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<sup>5</sup> <https://www.ecan.govt.nz/get-involved/news-and-events/2017/working-together-to-resolve-quarry-dust-issues/>

<sup>6</sup> Yaldhurst Air Quality Assessment, p 46.

<sup>7</sup> Yaldhurst Air Quality Assessment, p 47.

Had those rainfalls not occurred and the summer been dryer, the results of the monitoring would likely have exceeded dust limits more than the 13 exceedances found in the assessment; and

29.3 The Air Assessment further distinguishes that the quarries tested at Yaldhurst were significantly more “*extensive and intensive*” than those proposed in the Application. While it is accepted that the Yaldhurst assessment tested 7 quarries, this statement is not true. This statement was made with reference to the fact that each of the Yaldhurst Quarries have fixed processing plants and several operate portable processing plants, and cleanfilling is undertaken at the site. The proposed quarry in the Application would also conduct such operations – further the Response in replying to question 1(b) states that aggregate from the Miners Road quarry site will also be processed at the proposed quarry. Therefore, it is likely to be just as “*intensive*” as the Yaldhurst sites.

30 For the reasons set out above, Brackenridge does not consider that the assessment of the rules of the CARP, or the assessment of the effects as under the CARP are adequate.

31 The Application is therefore incomplete.

#### **Noise and traffic**

32 Brackenridge is also concerned about the adverse effects of noise and traffic on persons with intellectual disabilities, autism and physical disabilities. It is essential for these vulnerable persons to be in a location that is quiet and with limited heavy activity nearby. That is why Templeton was initially chosen to house these persons – being a quiet rural town.

33 Sensitivity to sensory experiences is a feature of Autistic Spectrum Disorder (ASD) and is indeed amongst the diagnostic criteria (DSM5). In one study 94.4% of patients with ASD presented with distinct sensory abnormalities. Noise is a frequent hypersensitivity and people with ASD sometimes describe noise which is comfortable to others as being intensely distressing and even “painful”. This can depend on the type of noise.<sup>8</sup> Sensitivity to proprioceptive experiences such as the sensation of vibration is also common and once again can be very distressing.

34 Another feature of autism is a pre-occupation with particular objects or subjects. Mechanical objects are frequently involved in this pre-occupation. The presence of diggers and other large machinery close to the homes of people with severe ASD may result in an increased risk of people leaving their homes in order to examine this machinery and being exposed to risks associated with doing so.

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<sup>8</sup> Gillingham G 1995 Autism: handle with care!: understanding and managing behavior of children and adults with autism. Future Education Inc.

35 Brackenridge is particularly concerned with the safety of these persons due to the significant traffic movements that will result from the proposed quarry. The residents of Globes Bay Drive and Iraklis Close use the Jones Road access to their residences. Increased traffic along this road will result in increased road use risk to these persons.

36 Brackenridge have multiple residents who suffer from severe ASD around the proposed Quarry area. Behavioural disturbance is common but is generally well managed by keeping disturbance and change in sensory stimulation to a minimum. This is likely to be threatened by anything which would result in increased noise disturbance or increased vibration. Any increase in disturbance has the potential to result in increased self-harm and aggression.

37 Brackenridge considers the adverse traffic effects will be significantly greater than what is indicated in the Integrated Transportation Assessment (the *Traffic Assessment*) (Appendix C of the Application):

37.1 The statutory assessment at 3.5.9.4 Appendix K of the Application states that:

*"The vehicle movements associated with the quarrying activities from the site access proposed along Dawsons (Arterial Road identified in Appendix E9) and any surrounding local roads including Jones Road, are expected to be up to 1500 heavy vehicle movements per day, and an additional 150 vehicle movements per day for light vehicles."*

Brackenridge notes that the Application only considers traffic effects that relate to Fulton Hogan traffic movements (both in relation to number of movements and proposed traffic routes). It is very likely that increased traffic movements will not be limited to only Fulton Hogan vehicles. Brackenridge therefore considers the effects of traffic and associated noise will be more than minor to the persons, in particular, residing at Iraklis Close and Globe Bay Drive;

37.2 There is no guarantee in the Application that smaller rural roads in and around the quarry will not be used by vehicles associated with the quarry. The Traffic Assessment assumes these traffic movements will be very low but does not recommend restrictions on what routes should be taken in and out of the quarry (other than where the site should be accessed from);

37.3 in its Response, the Applicant states that some of the aggregate from the Miners Road quarry site will be processed at the proposed quarry. It does not specify what traffic routes these trucks might take and it seems likely that some of the smaller rural roads may be used to get between the two quarries (for example Dawsons Road and Kirk Road). This will create further effects not contemplated in the Traffic Assessment;

37.4 at 9.1 of the Traffic Assessment it states that the proposed quarry will likely replace the existing Fulton Hogan Pound Quarry over time.

There is no consideration in any of the assessments contained in the Application of the effects of this closure – it is likely that following the closure of the Pound Road quarry, the proposed quarry will become the Applicant’s main quarry site and that all effects (and in particular traffic) will subsequently increase.

- 38 Taking this into account, Brackenridge is not convinced that the traffic mitigation measures proposed will result in effects that are no more than minor on these vulnerable persons.
- 39 Further, Brackenridge considers the noise limits proposed in the Application do not go far enough to ensure that effects will be no more than minor and that the amenity of the area is retained. Brackenridge considers:
- 39.1 it is unclear how the noise limits in Table 5 of the Application relates to the Operational Noise Assessment at 7.1 of the Acoustic Assessment (Appendix I of the Application) which predicts that the night time noise levels will exceed those limits in the Selwyn District Plan;
- 39.2 the proposed operating hours are not appropriate and should be more aligned with both the respective District Plans. Further, Brackenridge does not consider it necessary or appropriate to have a different ‘evening’ operating time and proposes the following operating times as being more appropriate (and consistent with the Selwyn District Plan):
- (a) Daytime – 07:30 – 18:00;
- (b) Night-time – 18:00 – 07:30;
- 39.3 that the noise limits proposed would allow for extensive night-time activities and truck movements and suggests that these should be restricted significantly given the nature of the area and residences nearby.
- 40 It is also unclear how the construction noise levels fit into these proposed noise limits. There is no mention of construction noise limits or the NZS6803:1999 Construction Noise Standards in the Selwyn District Plan. The Application states at 6.7.3.1 that the highest predicted noise level is 71 dB L<sub>Aeq</sub> at 319 Maddisons Road.
- 41 Brackenridge considers these factors will have a significant impact on its resident’s wellbeing and general quality of life and therefore considers that noise from construction, operation and vehicles related to the proposed quarry will have a more than minor effect on vulnerable persons within the vicinity.
- 42 Brackenridge’s facilities already experience significant noise and vibration from the current use of surrounding roads by heavy vehicles. This has, at times, upset some residents with ASD and Brackenridge anticipates *any*

increase will continue to impact these residents and disrupt the amenity value of both the Estate and homes in Templeton.

#### **Further concerns**

- 43 There has been much anxiety experienced by staff and family members of those at Brackenridge in relation to the proposed quarry who are particularly concerned about the impacts of the various hazards and adverse effects that will be created and imposed on those seeking refuge in Templeton. In turn, this stress and anxiety will inevitably be transferred onto these vulnerable people that could result in significant psychological stress.
- 44 Brackenridge considers that the proposed site is not an appropriate location for a quarry and that other locations for the proposed quarry should have been considered more carefully and not dismissed.
- 45 Brackenridge notes that the proposed duration of this consent is also significant. Where such an activity is proposed for a full 35 year term, assessment of all effects must be completed and scrutinised objectively – there is no room for assumptions. Such an assessment has not been demonstrated in this Application.

#### **Cumulative effects**

- 46 The cumulative effects of all of the matters identified above – including dust, noise, traffic – will result in effects that are more than minor. These effects will greatly impact the enjoyment and quality of life the residents at Brackenridge will experience. They cannot be looked at purely in isolation, the combination of them all is the true 'effect' of the proposed quarry.
- 47 The houses on the Estate were promised as a home for life. Many of these vulnerable people have lived at Maddisons Road for almost their entire lives. Moving from their homes is not a practical choice for them or their families. For those who live in the community homes with autism and intellectual disabilities, a change of house is likely to have a dramatic effect on their wellbeing.
- 48 The people Brackenridge supports who live in this area Brackenridge are also particularly susceptible to changes of residence. In many instances they live in these homes because it was difficult to find suitable supported accommodation after their previous home (Templeton Hospital) was closed or because of the unavailability of suitable alternative homes. Decompensation, behavioural disturbance and mental health problems are frequent following moves of residence.
- 49 The people Brackenridge supports in homes in Templeton comprise some of the most complex individuals, who do not have an equal and equitable social voice in society due to their disability – and who are consequently already disenfranchised on many levels. Consequently, their values, interests, health and safety are not served by creating more "busy-ness", noise and disruption around their homes from quarrying and related activity.

## RELIEF SOUGHT

- 50 Brackenridge will be directly adversely affected by the proposal contained in the Application.
- 51 Brackenridge seeks that the Application be **declined**.
- 52 Alternatively, should the Application be granted, Brackenridge seeks (in addition to comprehensive conditions carefully managing all effects) a condition that the Applicant pays the cost of any required Brackenridge home/service relocations/upgrading needed as a result of the quarrying activity.
- 53 Brackenridge wishes to be heard in support of this submission.

**Signed** for and on behalf of Brackenridge Services Limited by its solicitors and authorised agents Chapman Tripp:

Date: 6 June 2019



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Jo Appleyard  
Partner

A copy of this submission has been served on:

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