

**Before Independent Commissioners Appointed by the Canterbury Regional Council and Selwyn District Council**

**In the matter of**            The Resource Management Act 1991

**And**

**In the matter of**            Applications by **Fulton Hogan Limited** for all resource consents necessary to establish, operate, maintain and close an aggregate quarry (**Roydon Quarry**) between Curraghs, Dawsons, Maddisons and Jones Roads, Templeton

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**MEMORANDUM OF COUNSEL FOR FULTON HOGAN LIMITED AS TO  
ADDITIONAL REBUTTAL EVIDENCE**

**DATED: 22 OCTOBER 2019**

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## **MAY IT PLEASE THE COMMISSIONERS:**

1. On 21 October 2019 Fulton Hogan Limited (**Fulton Hogan**) filed 14 statements of rebuttal evidence on various topics. In this memorandum Fulton Hogan seeks minor amendments to earlier timetable directions<sup>1</sup> for additional rebuttal evidence (responding to the additional submitter evidence received after 14 October 2019).

### **Timetable amendments sought**

2. The following, additional submitter evidence has been received by Fulton Hogan (after the 14 October exchange date):
  - (a) Evidence of Louise Wickham for Canterbury District Health Board (Air Quality). This was received by Fulton Hogan on Thursday 17 October 2019.
  - (b) Evidence of Dr Porter for Brackenridge Services Ltd (Psychiatrist). This was provided to Fulton Hogan on Tuesday 22 October (today) at 8:23am.
  - (c) Evidence of Dr Fitch (Equine Veterinarian) for N and A McGrath. This was also provided to Fulton Hogan today at 8:23am.
  - (d) Evidence of Davina Penny (layperson). This was also provided to Fulton Hogan at 8:23am today and is some 60 pages long (not including the attachments, which run to hundreds of pages).
3. With respect to the expert evidence mentioned above, Fulton Hogan respectfully requests the following timetabling amendments (with reasons discussed further below):
  - (a) Rebuttal of Ms Wickham's evidence to be filed by 5pm on Tuesday 5 November.
  - (b) Rebuttal of Dr Porter and Mr Fitch's evidence to be provided by 12pm (midday) on Wednesday 30 October.
  - (c) Rebuttal (if any) of Ms Penny's evidence to be provided by 12pm (midday) on Wednesday 30 October.

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<sup>1</sup> Contained in Minutes 4, 7 and 8

### **Ms Wickham's evidence**

4. Mr Cudmore has undertaken a preliminary assessment of Ms Wickham's evidence. He is aware it only requires rebuttal evidence to the extent the issues raised are new or different to those from the other witnesses who have discussed air quality concerns (rebuttal of the evidence from such witnesses was filed yesterday).
5. Even despite his additional rebuttal evidence on this basis, Mr Cudmore has advised that Ms Wickham's evidence raises numerous issues not raised by other submitters (and therefore not already addressed by Mr Cudmore and others). In particular, Mr Cudmore has advised Counsel:
  - (a) *...her evidence has substantial new analysis to support her claims that PM10 will be non-compliant with the NES and Regulation 17 and that lower trigger values are needed as well as continuous RCS monitoring;*  
and
  - (b) *To support her conclusions she has undertaken a significant reworking of various data sets and the Yaldhurst Report on Air Quality.*
6. Mr Cudmore cannot undertake anything more than a high-level review before the initial deadline (for rebuttal) of this Thursday (24 October), because of the plethora of new data, graphs and analysis to respond to.
7. To give the Panel the best available evidence on this topic, Fulton Hogan (and Mr Cudmore) respectfully seek an extension of time for filing of rebuttal to Ms Wickham's evidence. Counsel notes other witnesses will also be involved in rebutting Ms Wickham's evidence, although Mr Cudmore's brief will be the most extensive.

### **Dr Fitch and Dr Porter evidence**

8. N and A McGrath obtained an extension for Dr Fitch's evidence to Friday last week (i.e. the 18<sup>th</sup> of October). His evidence was not filed with the Regional Council until late last night and not provided to Fulton Hogan (except by the Regional Council) this morning (22 October). Ordinarily this would be a minor delay but the rebuttal timetable is very tight. Accordingly, Fulton Hogan seeks an extension until midday 30 October. This takes into account that Monday is not a working day.

9. Brackenridge Services Ltd sought an extension for Dr Porter until 4pm yesterday (21 October). Dr Porter's evidence was not provided to Fulton Hogan until this morning, via the Regional Council and in conjunction with the provision of Dr Fitch's evidence. Again, this is only a minor delay but Fulton Hogan respectfully requests a slight extension of time until midday, 30 October 2019. This coincides with the extension sought in respect of Dr Fitch's evidence and also takes into account Labour Day.
10. Counsel notes Fulton Hogan's desire to file rebuttal evidence of Dr Porter and Dr Fitch prior to midday 30 October, if at all possible. However, it may be that new witnesses are required and the directions sought cater for that. Whether new witnesses are needed is under consideration at the present time, now that the evidence has been received.

### **Ms Penny evidence**

11. Ms Penny has filed an extensive brief. While her evidence is non-expert (and therefore technically not late), Fulton Hogan proposes to have its experts review the evidence and advise whether it raises issues that have not already been addressed in rebuttal. It considers this would be of assistance to the Panel given the prolixity of the evidence. In the event Fulton Hogan witnesses identify new issues, Fulton Hogan seeks an accommodation in the timetable to provide rebuttal evidence of this brief also. At this stage, an extension to midday 30 October would also seem appropriate.

Dated 22 October 2019

  
**D C Caldwell**  
Counsel for the Applicant