

**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:**

- (1) EXPERT CONFERENCING; AND**
- (2) AUDIO-VISUAL FACILITIES**

**DATED: 25 OCTOBER 2019**

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

1. This memorandum relates to paragraphs [27] to [29] of the Commissioners' First Minute. Now that all evidence has been exchanged – which has enabled identification of which experts are being called and in which areas - Fulton Hogan Limited (**Fulton Hogan**) considers it appropriate for expert conferencing arrangements to be made.
2. To this end, Fulton Hogan makes the below suggestions for the Commissioners and other parties to consider. Fulton Hogan is happy to assist with finding meeting rooms for venues. It can also make suggestions as to independent facilitators, if that would assist.
3. At this stage, Fulton Hogan is unclear as to which parties have engaged legal counsel. The evidence filed on behalf of Southern Woods Nursery Limited, Brackenridge Services Ltd and Christchurch International Airport Limited identifies solicitors on the record. Accordingly, this memorandum has been copied directly to Mr Schulte and Ms Appleyard.
4. Fulton Hogan's Counsel is willing to engage directly in discussions with the above legal counsel and any other legal counsel that may make themselves known.

### **Areas for expert conferencing and attendees**

5. Fulton Hogan suggest the following conference sessions would be of assistance to the parties and the Commissioners:
  - (a) Landscape and Visual Amenity – David Compton-Moen (Fulton Hogan); Wade Roberston (Selwyn District Council) and Abigail Smith (Christchurch City Council).
  - (b) Application of Schedule 10 of the Land and Water Regional Plan – a discrete topic and conference between Eric Van Nieuwkerk, Nick Eldred and John Kyle (Fulton Hogan); David Just, Lisa Scott and Hannah Goslin (Canterbury Regional Council).
  - (c) Water Quantity and Quality – Eric Van Nieuwkerk, Victor Mthamo and Nick Eldred (Fulton Hogan); Lisa Scott (Canterbury Regional Council).
  - (d) Traffic – Andrew Metherell and Tim Kelly (Fulton Hogan); Andrew Carr (Selwyn District Council); Tim Wright (Christchurch City Council); David Scarlet and Ian Clark (New Zealand Transport Agency).

- (e) Noise – Jon Farren (Fulton Hogan); Jeremy Trevathan (Selwyn District Council); Stephen Chiles (Canterbury District Health Board); Michael Smith (Templeton Residents Assn); Richard Jackett (NZ Motor Caravan Assn).
- (f) Air Quality – Roger Cudmore and Audrey Wagenaar (Fulton Hogan); Deborah Ryan (Canterbury Regional Council); Charles Kirkby (Templeton Residents Assn); Louise Wickham (Canterbury District Health Board).
- (g) Equine Health (and, to the extent made relevant by Dr Fitch, human health) –Alec Jorgensen and Audrey Wagenaar (Fulton Hogan) and Gareth Fitch (N and A McGrath). Dr Jorgensen has not yet provided evidence. Fulton Hogan has engaged him to review the recent evidence from Dr Fitch and (if Dr Jorgensen considers it appropriate) to prepare rebuttal evidence by midday, 30 October.

On reading Dr Fitch's evidence it is apparent that many (if not all) of the opinions expressed depend on the level of dust that is deposited beyond the site. Counsel therefore suggests this conference should occur after a Joint Witness Statement from the Air Quality experts is finalised or, if timing precludes that, after the information needed is identified and provided by the various experts. Counsel is happy to assist with organising this.

- (h) Planners – after assessment of the evidence exchanged it appears to Counsel a planning conference on consent conditions may be worthwhile. Respectfully, there does not appear to be any merit in the planners conferencing on other matters. Other parties or the Commissioners may, of course, express a different view.

If the planners are to conference on conditions, attendee suggestions are: Kevin Bligh (Fulton Hogan); Andrew Henderson (Selwyn District Council); Hannah Goslin (Canterbury Regional Council); Susan Ruston (Christchurch City Council); Richard Shaw (New Zealand Transport Agency); Gemma Conlon (Templeton Residents Assn); and Lara Stace (New Zealand Motor Caravan Assn). It is anticipated this conference would be of most value after JWS's from all other conferences are finalised. To this end, it may be that this conference occurs during the hearing or on 14 November (Mr Bligh is unavailable 12 and 13 November).

## **Matters in respect of which Fulton Hogan does not suggest conferencing**

6. Counsel has not suggested a conference regarding economic benefit or demand and supply. The reasons for this are:
  - (a) No other party has called an expert in aggregate demand and supply; and
  - (b) The differences between Michael Copeland (Fulton Hogan) and Rodney Yeoman (Selwyn District Council) are confined to the magnitude of benefit the Proposal might bring. Their differing assessments on this point are underlaid by philosophical differences on whether – or how – adverse effects are monetised. Respectfully, Counsel does not see how a conference between the experts could take matters further than the evidence already in. No other party has called an expert economist.

## **Order and facilitation of conferences**

7. As per Appendix 3 of the Environment Court Practice Note, Counsel expects each of the conferences will be facilitated by an appropriate and independent person. It is anticipated the Councils will have person(s) in mind or already arranged. Counsel has given some thought to this matter and has several names that could be considered, if the Councils wanted that information.
8. In terms of order, while many of the conferences will be independent there are some which would benefit from other JWS's being available or at least other items of information available. In addition, Counsel is aware that several Fulton Hogan witnesses have availability constraints throughout the next few weeks. In addition, not all evidence has been exchanged yet.
9. The following order and dates are therefore suggested, as starting points:
  - (a) Landscape and Visual Amenity - it is suggested this occurs on **Wednesday 30 or Thursday 31 October**. How long the sessions require is difficult to estimate. Because timeframes are not overly-amenable to re-convening conferences if they are not concluded, we suggest each conference is scheduled for a day but on the basis it may not require all of that time.
  - (b) Application of Schedule 10 of the Land and Water Plan – based on the availability of Fulton Hogan's experts, we suggest either **Thursday**

**31 October, Friday 1 November or Monday 4 November.** It is hoped this session would culminate in clear statements as to what assumptions the wider Water discussion (which could follow on immediately afterward) should proceed on.

- (c) Water Quality and Quantity – to follow after the Schedule 10 discussion, also on either **Thursday 31 October, Friday 1 November or Monday 4 November.** Some of the attendees to his conference will be present for the Schedule 10 discussion. They can stay on. Any not needed for the wider Water Quantity and Quality conference can leave.
- (d) Transport – we understand a meeting of some experts was planned on **Monday 4 November** anyway, so we suggest conferencing occur that same day with an independent facilitator.
- (e) Noise – Jon Farren has canvassed availability of the other experts. The only dates that work for all who have replied (Mr Smith has not, as yet), are **6 and 7 November.**
- (f) Air Quality - after 5 November (being the date for Fulton Hogan rebuttal of Louise Wickham evidence). Mr Cudmore's availability is limited after rebuttal is filed (and before the 11 November date). It is suggested **Friday 8 November in Auckland** might be the best solution as Mr Cudmore is the only Christchurch-based expert in this group and he is in the North Island that day. It is understood only Ms Ryan would need to travel if the venue is in Auckland.
- (g) Equine Health – this issue has only recently been the subject of evidence and rebuttal is yet to be filed. It is not entirely clear if a conference is needed. If one is, it is anticipated it would be a relatively short conference and given the geographical spread of the three witnesses attending, it might be able to occur by phone or audio-visual links.
- (h) Planning – conditions of consent. Preferably after other JWS are finalised. Neither Mr Bligh or Mr Kyle are available on 12/13 November. In which case a variation to the Commissioners' initial directions may be required to accommodate a later conference regarding conditions of consent. It may in fact be of more benefit anyway, if the conference on conditions occurs later in the process.

### **The role of Counsel in upcoming conferences**

10. Counsel for Fulton Hogan will assume responsibility for production of agendas, as anticipated by Section 3 of Appendix 3 of the Practice Note.
11. Counsel does not consider it necessary to produce a Summary of Facts and Issues. The evidence filed by all experts to-date makes that clear. It is intended the agenda will make clear the points upon which discussion would be useful.
12. To assist in preparing relevant agendas, Counsel invites suggestions from the experts for all parties. These are needed promptly.

### **Request for audio-visual link**

13. Ms Wagenaar (witness for Fulton Hogan) is based in Canada. Fulton Hogan respectfully requests that she is able to attend the relevant conferencing sessions by way of audio-visual link.
14. Until all evidence was received it was difficult to know whether Ms Wagenaar would be best to attend the hearing in person. As it is, Fulton Hogan makes the same request for audio-visual link in terms of Ms Wagenaar's appearance at the hearing. However, if it becomes evident that the Commissioners would be better assisted by her appearance in person, that can be arranged.
15. Mr Dawson is based in Australia. Fulton Hogan does not consider he needs to attend any expert conferences. At this stage, however, Fulton Hogan intends calling him in person, at the hearing.

Dated 25 October 2019

  
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**D C Caldwell**  
Counsel for the Applicant