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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SYNOPSIS OF OPENING LEGAL SUBMISSIONS FOR FULTON HOGAN LIMITED

DATED: 14 NOVEMBER 2019

Counsel Acting: David Caldwell
Email: david.caldwell@bridgesidechambers.co.nz
Telephone: 64 21 221 4113
P O Box 3180
Christchurch 8013

MAY IT PLEASE THE COMMISSIONERS

1. The proposed Roydon Quarry offers the Selwyn District and the South-West quadrant of Christchurch City a long-term, cost-efficient, reliable supply of high-quality gravel resource.

2. Unsurprisingly, the Quarry has attracted opposition from residents and organisations nearby, as well as people or organisations who have taken an interest in the local quarry industry for some years now. It is fair to observe that quarrying is currently an activity of interest in Greater Christchurch – including politically.

3. While some find the industry unpalatable, particularly if in close proximity to their every-day activities, the reality is we all rely on and need the aggregate produced. Immediately following the Canterbury Earthquakes, the industry was well poised to meet the unprecedented spike in demand and enjoyed several years of being highly-prized.

4. The phrase "necessary evil" is tempting to use but it is not accurate in this situation. Necessary is correct, but Fulton Hogan has worked especially hard to locate, design and refine this proposal to ensure environmental effects are appropriate and acceptable to the environment it is proposed to nestle within. Fulton Hogan is committed to ensuring this Quarry – if consented – is considerate to its environment and a leading example in the management of effects, both now and as technology evolves over its life.

5. The proposed Quarry site is ideally located in so many ways. It is near the State Highway network, it is not the subject of any particular planning or environmental constraints (such as ecological, historical or cultural) and, importantly, it is close to areas of significant demand. The surrounding environment is already affected by Highway, train and aircraft noise. In large parts it is also affected by high levels of traffic and an intersection with a very poor safety record – which is proposed to be extensively upgraded.

6. Fulton Hogan has sought expert advice throughout the pre-application and application process. This is evident in the large body of evidence before you, including Fulton Hogan's engagement of an additional expert for rebuttal evidence when equine health issues were raised. At the time of preparing these submissions Fulton Hogan is considering the need for additional expertise in response to the recent s42A addendum from Guy Knoyle.

Clarification as to Mr Knoyle's position on the proposed conditions would assist with this.

7. As a general note, the suite of evidence for Fulton Hogan is comprehensive in coverage and self-explanatory in terms of its conclusions. I do not intend reciting it in these submissions nor covering trite statutory assessment matters. However, I am of course happy to elaborate or address you on matters I have not covered and upon which you would like legal argument.

Evidence and key issues

8. At this stage in the process, the key issues appear to be:

   (a) Transport – safety and amenity;

   (b) Noise – including amenity and hypersensitive (i.e. Brackenridge) receivers;

   (c) Dust emissions, including PM_{10};

   (d) Dust-related effects on human health;

   (e) Groundwater quantity.

9. I address each of the above in these legal submissions. They are of some prominence having regard to the expert evidence filed so far.

10. You have also received expert evidence in the areas of:

   (a) Groundwater quality;

   (b) Landscape and visual amenity;

   (c) Rehabilitation;

   (d) Equine health;

   (e) Planning – both in terms of the conditions of consent[1] and the relevant plan provisions.[2]

11. Based on the JWS's relating to each of the above matters (save for planning), it appears little remains in contention between the relevant experts. I do not,

[1] Kevin Bligh
[2] John Kyle

therefore, address these topics further in my opening submissions but I may need to return to them in closing, after hearing submitter presentations.

12. I include a brief discussion of the key planning conclusions toward the end of my submissions.

13. Fulton Hogan company representatives have also filed evidence, which covers:

    (a) Environmental aspirations;

    (b) Consultation;

    (c) Site selection;

    (d) Compliance.

Section 42A Recommendations

14. The s42A reports from Selwyn District and Canterbury Regional Councils (**SDC** and **CRC**) recommended decline of consent on three bases:

    (a) Traffic safety;

    (b) Night-time amenity effects; and

    (c) Regulation 17(1) of the NES for Air Quality (relating to PM_{10} emissions).

15. With respect of each of the three areas of concern:

    (a) The traffic experts involved in conferencing accept there is a technical solution available to address any queuing concerns[3] - principally expansion of the management plan solution already proposed. Accordingly, the JWS indicates resolution of the key safety concern;

    (b) The SDC concerns with night-time activity are not based on noise effects – Dr Trevathan has always maintained the view predicted night-time noise levels are appropriate. All noise experts agreed with this view in conferencing.[4] Mr Henderson was concerned at the amenity effects that might result regardless of the expert noise view. In response, Fulton Hogan has reduced the potential for effects arising from activities between 8pm and 6am. Activities are now proposed to be limited to the load out of trucks and truck movements (and ancillary activities such as

[3] Joint Witness Statement of Transport Experts (12 November 2019) at paragraph 15
[4] Joint Witness Statement of Noise Experts (6 November 2019) at paragraph 11

operation of weighbridge and site offices and cleanfill deposition) on up to a maximum of 60 nights per year;

(c) At the time of writing these submissions there remained expert dissension regarding compliance with Regulation 17(1). I return to the legal considerations applying later in these submissions. At this point I record my submission this is a technical issue only. Mr Cudmore's evidence is clear there are no adverse effects associated with a technical breach of Regulation 17(1) in the present scenario.[5] In addition, there is a solution possible in the way of Regulation 17(3) anyway. I submit it would be most unfortunate for a technical non-compliance to stymie a proposal such as this. If the Commissioners were tending toward such a finding, Fulton Hogan respectfully requests the opportunity to address the Commissioners further on an acceptable offset.

Transport – Safety Effects

16. The JWS generated by the transport witnesses is particularly helpful. It is understood there are no outstanding safety issues, on the basis that:

(a) The already proposed Queue Management Plan is expanded to address southbound (as well as northbound) queuing potential; and

(b) Two "conditions" matters are considered by the expert planners.[6]

17. In principle, Fulton Hogan is content to make what it understands the necessary condition changes to be.

18. The JWS acknowledges the benefit associated with Fulton Hogan's proposed upgrading of the Dawsons/Jones Road intersection.[7] This is a substantial roading improvement and is undoubtedly a significant safety benefit of the proposal.

Transport – Amenity Effects

19. For the most part, the location of the proposal reduces the potential for transport-related amenity effects. Nonetheless, several submitters have expressed concern about vehicle movements on local roads. This topic overlaps with transport-related noise effects.

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5 Rebuttal Evidence of Roger Cudmore (21 October 2019) at paragraphs 20 to 22
6 Joint Witness Statement of Transport Experts (12 November 2019) at paragraph 23
7 Joint Witness Statement of Transport Experts (12 November 2019) at paragraph 9

20. Fulton Hogan's response entails tight control on night-time vehicle movements and discouragement of unnecessary day-time movements on local roads. These measures are in addition to the fact only small vehicle numbers are modelled to choose local routes anyway.

21. Finally, Dr Porter[8] raised concern with impacts on those who suffer from Autism Spectrum Disorder. In particular, increased noise levels. Mr Farren addressed this in terms of quarry operational noise and noise arising from traffic. With respect to traffic noise, Mr Farren concludes there will be negligible additional noise from quarry traffic.

22. Whilst Fulton Hogan has sympathy for the residents of Brackenridge, it is confident in its view the proposed Quarry will not create additional noise, traffic or dust at levels discernible to the residents. Should the Commissioners have any doubt on this point, it is relevant to recall that an assessment of effects under the Resource Management Act (**Act**) is to be *based on normal physiological responses and cannot seek to protect those whose sensitivities might be at the higher end of the scale.*[9]

23. It is relevant that amenity effects on the general population are to be assessed from the "reasonable person" viewpoint and with regard to plan considerations:

> *But certainly individual perceptions of the effects of a proposal on their future amenities will usually not be a sufficient guide to the reasonableness of the effects: people do tend to resist change simply because it is different to what they know. Essentially the test for effects on amenities is one of reasonableness in the given context and that can usually be better informed by reference to the district plan.*[10]

Noise Effects

24. The JWS demonstrates large areas of agreement. With respect to the remaining areas of disagreement, it is evident there are quite divergent views on what is necessary.

25. Mr Farren addresses these in his evidence (as noted in the JWS) and will update you in his summary to the extent needed. Mr Metherell will also comment to the degree there is overlap, particularly on the matters at paragraphs 17 – 19 of the JWS.

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8 For Brackenridge Services Ltd

9 *Motorimu Wind Farm Ltd v Palmerston North City Council* W067/08 26 September 2008 at [327]; *Re Meridian Energy Limited* [2013] NZEnvC 59 at [299].

10 *Port Gore Marine Farms v Marlborough District Council* [2012] NZEnvC 72 at [213]

26. Some of the matters are affected by practical constraints (for example, tonal reversing alarms on non-Fulton Hogan fleet, and the prohibition of any fleet with engine brakes). Fulton Hogan proposes to manage both these issues completely at night-time by offering a condition that only allows Fulton Hogan-controlled trucks during that period.

27. During the day, Fulton Hogan considers the issue will be adequately managed by:

    (a) The configuration and design of the site, which minimises the need for reversing;

    (b) Discouraging visiting fleet from using tonal reversing alarms;

    (c) The modernisation of fleet, which is moving away from tonal reversing alarms and engine brakes;

    (d) Discouraging the use of engine brakes, including through signage at site entry and exit points.

28. Mr Farren is satisfied that any residual noise generated from these two sources will be acceptable.

Dust Emissions

29. Mr Cudmore has provided extensive evidence and rebuttal evidence on the issue of discharges to air – in this case, focussed on dust and PM_{10} in particular. He also attended a full day's conferencing with the other air quality experts. At the time of writing these submissions counsel has requested but not received a JWS from that conference.

30. Mr Cudmore, Mr Chittock and Mr Jolly explain how the proposal is remarkable in how it proposes to manage discharges to air. In the first instance, the potential for discharges has been reduced by design. This includes extensive sealing of internal roads and limitations on open excavation and rehabilitation areas.

31. After reduction in potential effects, Fulton Hogan is proposing comprehensive conditions to ensure mitigation and monitoring techniques that will manage emissions to a very high level. Mr Jolly confirms he has been part of regular Fulton Hogan project meetings to ensure proposed conditions of consent are

practical and outcomes envisaged are achievable.[11] It is submitted this is to be commended, as it is so often the case that the operational view of conditions is not sought at an early stage. This affords the Commissioners greater confidence as to the prospects of the conditions being fulfilled, including the sophisticated suite relating to dust discharges.

PM_{10} and Regulation 17(1)

32. Although I have not seen a JWS on air quality yet, I understand the experts remain in disagreement as to whether Regulation 17(1) will be complied with. This is a matter of some moment to all parties, because an activity that cannot comply with Regulation 17(1) needs to provide an PM_{10} offset or the activity is prohibited.

33. Having read the various items of evidence and Ms Goslin's section 42A report, it is submitted there is a misapplication of Regulation 17(1) throughout.

34. Regulations 17(1) and 17(3) apply when considering the effects of the proposed quarry on air quality in the air shed. They provide:

> *"17.* ***Certain applications must be declined unless other PM_{10} discharges reduced***
>
> *(1) A consent authority must decline an application for a resource consent (the proposed consent) to discharge PM_{10} if the discharge to be expressly allowed by the consent would be likely, at any time, to increase the concentration of PM_{10} (calculated as a 24-hour mean under Schedule 1) by more than 2.5 micrograms per cubic metre in any part of a polluted air shed other than the site on which the consent would be exercised;*
>
> *…*
>
> *(3) Sub-clause (1) does not apply if –*
>
> *(a) a consent authority is satisfied that the applicant can reduce the PM_{10} discharge from another source or sources into each polluted air shed to which sub-clause (1) applies by the same or greater amount than the amount likely to be discharged into the relevant air shed by the discharge to be expressly allowed by the proposed consent; and*
>
> *(b) the consent authority, if it intends to grant the proposed consent, includes conditions in the consent that require the reduction or reductions to take effect within 12 months after*

[11] Statement of Evidence of Kelvyn Jolly (23 September 2019) at paragraph 20

the consent is granted and to then be effective for the remaining duration of the consent."

35. The Fulton Hogan site is located adjacent to Christchurch City's urban air shed. The Christchurch air shed is *"a polluted air shed"* as assessed against the criteria in Regulation in 17(4)(a).

36. The key words in Regulation 17(1) are *"would be likely, at any time …"*. It is submitted the word "likely" should be given its usual or common definition as it is generally understood. The Cambridge online dictionary defines "likely" as: "…*If something is likely, it will probably happen or is expected"* or *"probably"*. It is this definition that should be applied to the Regulation.

37. The interpretation advanced is supported by the finding of Williams J in the case of *Weir v Kapiti Coast District Council* [2013] NZHC 3516. This case was partly concerned with how the council had placed coastal erosion prediction lines on its maps. An issue arose as to when the Council was obliged to include this information in its 'land information memorandum', which was governed by s. 44(A) of the Local Government Official Information and Meetings Act 1987.

38. The key part of the section was section 44(A)(2) which states:

> ***44A Land information memorandum***
>
> *(1) …*
>
> *(2) The matters which shall be included in that memorandum are –*
>
> *(a) information identifying each (if any) special feature or characteristic of the land concerned, including but not limited to potential erosion, avulsions, falling debris,… or likely presence of hazardous contaminants, being a feature of characteristic that –*
>
> *(i) …*
>
> *(ii)…*

39. In considering the use of the word "likely" in that context Williams J found:[12]

> *The point is that "likely" unquestionably refers to probability – specifically a state of facts that is more probable than not.'*

[12] at [50]

40. This interpretation is in line with the ordinarily understood definition of the term and should be the preferred interpretation in the context Regulation 17(1).

41. Further guidance as to the interpretation of Regulation 17 can be found by considering the NES as a whole and the way in which "likely" is used elsewhere in it. This is supported by section 34 of the Interpretation Act 1999 as well as the judgment of McMullin J in *Transport Ministry v Simmonds* [1973] 1NZLR 359 at 363:

> *In my view the meaning to be given to the word "likely" where it is used in a statute or regulation will depend on the statute or regulation and the context in which the word is used.'*

The Judge went on to find that in the particular circumstances there, it had to be more than a 'bare possibility.'

42. It is submitted the way "likely" is used elsewhere in the NES is synonymous with it being at least 'more probable than not'. The word is used frequently throughout the Regulations. It is submitted that had Parliament intended for the standard to equate to a mere possibility, the Regulations would have been drafted accordingly or the words "might", "may" or "possibly" would have been used.

43. An example is section 3, dealing with interpretation for 'high temperature hazardous waste incinerator' where the temperature must be greater than 850 degrees Celsius as measured:

> *(a) near the inner wall of the incinerator; or*
>
> *(b) at another point in the combustion chamber where the temperature is <u>likely</u> to represent the temperature in the incinerator*

It is apparent the use of "likely" there indicates it is intended to mean more than just "probably", otherwise the provision would not make sense.

44. In the RMA context, the Supreme Court has confirmed that context is key.[13] In essence, the meaning of a term will always be flavoured by the words around it.

45. Mr Cudmore undertakes a detailed assessment of the likelihood and concludes it is likely that the Regulation 17(1) limit will be achieved.[14] In doing so

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13 *Environmental Defence Society Incorporated v New Zealand King Salmon Company Limited* [2014] NZSC 38 at [94] to [96], [100] to [102].

14 Evidence in Chief at para 123

Mr Cudmore undertook a detailed and careful assessment of the nature of the activity, the qualities of the particular proposal and the proposed mitigation and its likely effectiveness. I submit his evidence is compelling. This can be contrasted to the "test" expressed by Ms Wickham:

> *I am not confident that…the proposal will not on occasion breach the NES for PM_{10}.*[15]

46. Ms Wickham's "test" does not satisfy the requirement as set out in the Regulations for whether a breach is "likely" and is couched in terms that are far too subjective to be of use when assessing the application in light of Regulation 17(1). Ms Wickham's test appears to suggest a "possibility" or "chance" that it might happen, but cannot be relied upon to the degree of certainty required.

<u>PM_{10} Offsets and Regulation 17(3)</u>

47. It is fair to observe Fulton Hogan's case has advanced on the basis compliance with Regulation 17(1) will be achieved. As such, Fulton Hogan has not presented you with large amounts of argument or evidence on PM_{10} offsets – which would be irrelevant if you agree with the position on Regulation 17(1).

48. In my submission, to qualify for an offset under Regulation 17(3):

    (a) Fulton Hogan will need to satisfy you it can reduce the PM_{10} discharged from another source into the air shed, by the same or greater amount than that likely to be discharged into that air shed by the proposed Roydon Quarry consent;[16] and

    (b) Consent conditions require the reduction to take effect within 12 months after the consent is granted, and be effective for the remaining duration of the consent.[17]

49. I submit the purpose of Regulations 17(1) to 17(3) is to prevent resource consent being granted for material PM_{10} discharges, unless there is no overall increase of PM_{10} discharges into that same air shed. Put another way, the intent is that new discharges do not make existing air pollution worse.

50. This "no overall increase" purpose is met by Regulations 17(2) and 17(3) as follows:

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15 Evidence of Louise Wickham (17 October 2019) at paragraph 99
16 Regulation 17(3)(a).
17 Regulation 17(3)(b).

(a) Regulation 17(2) provides for "no overall increase" by ensuring no new consents are granted unless they are for renewing an existing consent enabling the same or less PM_{10} discharges in the air shed.

(b) Regulation 17(3) similarly provides for "no overall increase" by ensuring no new consents are granted unless the consent applicant removes at least as much PM_{10} from other sources discharging into the same air shed.

51. Mr Cudmore's final rebuttal brief (in response to Ms Wickham's evidence) notes there is ample scope for deriving an offset from Fulton Hogan's existing operations.[18] As such, while a specific offset proposal is not in front of you I submit Fulton Hogan has demonstrated one is very likely to be available. If you get to the point in your decision-making that you would grant consent but for the absence of a detailed offset proposal, I respectfully request you issue an interim decision and allow Fulton Hogan the opportunity to advance a detailed offset proposal for your consideration.

Dust-Related Effects on Human Health

52. As a general proposition, dust emissions have the potential to cause nuisance and/or health effects. Mr Cudmore addresses the expected frequency and level of dust discharges. His assessments and opinions are complemented by the evidence of Ms Wagenaar (toxicologist). She builds upon the evidence provided by Mr Cudmore to form a view on which health criteria/standards/guidelines are applicable to the proposal and how the proposal compares to those criteria/standards/guidelines.

53. No other party has called an expert with Ms Wagenaar's qualifications. Other witnesses have purported to offer views on topics within her expertise,[19] but the weight afforded to those opinions must be considered carefully. In my submission, Ms Wagenaar's conclusions on the matters within her expertise must prevail. Her key conclusions relate to human health risks arising from Respirable Crystalline Silica and $PM_{2.5}$ and PM_{10} emissions. In both instances, she concludes the project is acceptable.

54. It is important to distinguish between perceptions or fears of adverse effects, and a real risk of adverse effect. A general allegation, perception or fear that there will be adverse effects does not constitute evidence of the same. It is an

[18] Supplementary Rebuttal Evidence of Roger Cudmore (6 November 2019) at paragraph 63

[19] For example, the evidence of Dr Fitch and Ms Wickham, as discussed by Ms Wagenaar in her Rebuttal Evidence dated 30 October and 5 November 2019, respectively

established practice in the RMA jurisdiction that there is no place for the Court (and thus any RMA decision-maker) to be influenced by mere perceptions of harm which are not shown to be well founded.[20] If it is found on probative evidence that there is unlikely to be any actual or potential effect on the environment of allowing the activity, then the fact that some people remain fearful is not a relevant matter to be taken into account. The Court has confirmed that fears can only be given weight if they are reasonably based on real risk,[21] and ill-founded perceptions are not an adverse effect.[22]

Water Quantity

55. The site already has the benefit of a water permit to take and use water for irrigation. Fulton Hogan has applied for either a variation to that permit or a new "use" permit, so that water may also be used for quarry purposes – principally, aggregate washing, dust suppression and irrigation of landscaping and rehabilitation efforts.

56. The relevant s42A Report for the Regional Council expresses the view a s127 application cannot be made in the manner proposed by Fulton Hogan originally. However, it concludes the same outcome can be achieved by the issue of a separate and new, "use" permit.

57. Under either approach, the new/amended use of water is to be considered as a fully discretionary activity. All of the same considerations apply to your assessment of whether it should be granted. Accordingly, Fulton Hogan is content to pursue either means of obtaining the required authorisation. For the avoidance of doubt, Fulton Hogan maintains its position that section 127 is a viable option in this case. However, it does not consider it necessary for you to make a decision on this point because Fulton Hogan concurs with the Regional Council's view that section 14 enables the grant of a new "use" permit.

58. Initially, there was disagreement between Regional Council and Fulton Hogan experts as to the "reasonable use" volume that would attach to the existing irrigation permit. After reviewing Fulton Hogan's evidence, Mr Just has revised his calculations and now agrees the reasonable use volume which would

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20 *Northern Wairoa Dairy Co v Dargaville Borough Council* (A181/82); *Affco v Hamilton City Council* (A3/84); *Purification Technologies v Taupo District Council* [1995] NZRMA 197; *Contact Energy v Waikato Regional Council* (A4/2000); *Beadle v The Minister of Corrections* (A74/2002).

21 *Shirley Primary School v Christchurch City Council* [1999] NZRMA 66 at [193].

22 *Living in Hope Inc v Tasman District Council* [2011] NZEnvC 157 at [211]; *McCain Foods (NZ) Limited v Hawke's Bay Regional Council* [2016] NZEnvC 241 at [79].

attach to the existing permit, approximates to the annual volume required (and reasonable) for the new use.

59. The experts' agreement on this point is recorded in the JWS relating to Water Quantity. Fulton Hogan is therefore not seeking to use water in greater volumes that could occur as of right under the existing permit. Consequently, I submit the new "use" permit does not give rise to the potential for any adverse effects in relation to water quantity.

Statutory Planning Assessment and Conditions of Consent

60. Mr Kyle addresses the provisions of relevant planning documents. Mr Bligh focusses on the conditions of consent. Fulton Hogan has elected to divide the overall planning task in this manner, to ensure each area of importance is addressed in full. With a project of this scale and importance, compiling conditions is a mammoth task in itself.

Plan Provisions and Part 2

61. Mr Kyle concludes the proposal is consistent with the applicable planning framework and further, there are no directive provisions which would militate against the grant of consent. Mr Kyle further concludes the proposal is supported by the purpose of principles enunciated in Part 2 of the Act – to the extent Part 2 is relevant here.

62. Summarily, the evidence from Mr Kyle is to the effect the same outcome is achieved whether you have recourse to Part 2 or not. Because of this, it is submitted you do not need to trouble yourself about whether – or the extent to which – you need to have regard to Part 2.

63. If you are confronted with a different opinion as the hearing proceeds, the following points from last year's Court of Appeal decision in *Davidson* are relevant*:*

    (a) *King Salmon* does not *prevent* recourse to Part 2 for resource consents and the findings in *King Salmon* can be characterised as a contextual rejection of the overall judgment approach. While the High Court's approach has been rejected, the Court of Appeal has taken a nuanced approach to how decision-makers should approach Part 2 which will necessitate an analysis of the specific context.

(b) Where regional and district plans are engaged, the obligation to "*have regard to*" those plans under section 104(1)(b) should be a "*fair appraisal of the objectives and policies read as a whole*".[23]

(c) Where a plan has been prepared with appropriate regard to Part 2 and with a "*coherent set of policies designed to achieve clear environmental outcomes*", consent applications should be assessed with regard to the provisions of the plan and recourse to Part 2 would be unlikely to add anything.[24] Where there is doubt over the preparation of a plan appropriately reflecting the provisions of Part 2 it will be "*required to give emphasis to Pt 2*".[25]

(d) The Court suggested that competent preparation of a plan may provide assurance to a consent authority that recourse to Part 2 will not add anything. However, where the consent authority does not feel assured or is in doubt it will be *"appropriate and necessary*" to refer back.[26]

Conditions of Consent

64. Mr Bligh has updated the conditions proposed by Fulton Hogan to take account of submitter evidence and (to the extent possible) JWS's. Mr Bligh has endeavoured to capture key expert assumptions and recommendations into the condition set provided with his Summary Statement.

65. In his Summary Statement to the Panel, Mr Bligh will identify any recommendations made by Fulton Hogan witnesses which have not been drafted into conditions and explain why.

66. At the time of drafting Mr Bligh's Summary (and the refined conditions), the JWS on air quality was not available. Accordingly, there may be further changes required.

67. In addition, it may be appropriate for planning witnesses to conference on consent conditions after the Fulton Hogan case is presented to the Panel. A day during the week of 25 November could be used for this purpose.

Order of Fulton Hogan Witnesses

68. **Annexed** to these submissions is a table outlining:

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23 *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316 at [73]
24 At [74]
25 At [75]
26 At [75]

(a) The proposed order of Fulton Hogan's witnesses; and

(b) Their areas of expertise (where relevant).

69. Fulton Hogan has attempted to group its witnesses carefully so the information you need to ask questions of one person has either been provided by the person (or persons) preceding them or will be provided by a witness subsequent.

70. For the areas covered by:

(a) Mr Metherell and Mr Kelly (Transport); and

(b) Mr van Nieuwkerk and Mr Eldred (Groundwater Quality);

It is suggested you may find it useful to hear from both witnesses first (e.g. Mr Metherell followed by Mr Kelly) then ask questions of both at the same time. The same is suggested for Mr van Nieuwkerk and Mr Eldred.

Dated 14 November 2019

D C Caldwell
Counsel for the Applicant

ORDER OF FULTON HOGAN WITNESSES

WITNESS	EXPERTISE
Craig Stewart (FH)	Fulton Hogan
Don Chittock (FH)	Consultation & Project Development
Kelvyn Jolly (FH)	Operations
Kevin Bligh	Planning - Proposal, Consultation, Conditions
Michael Chilton	Aggregate Demand and Supply
Michael Copeland	Economic Effects
Alec Jorgensen	Equine Health
Bruce Dawson	Separation Distances and Victorian EPA Guidelines
Roger Cudmore	Air Quality
Audrey Wagenaar (Canada) By AVL or phone (*Note time difference)*	Toxicology and Health
Eric Van Nieuwkerk	Water – Quantity and Quality
Nicholas Eldred	Water Quality
Victor Mthamo	Rehabilitation and Water Quality
David Compton-Moen	Landscape and Visual
Andrew Metherell	Traffic Effects
Tim Kelly	Traffic Effects Review
Jon Farren	Noise and Vibration
John Kyle	Planning - Statutory Assessment