

TABLED AT HEARING

Application: *Joint Kula*

Hogan hearing

Date: *9 Dec 2019*

Submission – Roydon Quarry Proposal

Yaldhurst Environment Association –
hau ora inc.

Introduction

The Yaldhurst Environment Association – hau ora inc. represents a large number of households within the Yaldhurst community. Our association was formed to advocate for our community and surrounding areas, primarily in regards to quarrying activities and other environmental activities close to communities, that have a real or perceived effect on the community and/or individual households.

As chairwoman of the association, my role is to advocate for our membership, and as such I am here in my capacity as chairwoman. Our community has been deeply affected by quarrying, and the combined experience from our membership is that the Council, Environment Canterbury and the commissioners involved in past resource consent hearings, have largely dismissed the very real experiences and adverse affects that quarries have on small communities. I am here today to ask the commissioners to decline the proposed quarry. Our membership firmly believes that quarries should not be allowed within such a close proximity to any household or lifestyle block, due to very real health complications and known risks from exposing people and animals to known carcinogens such as PM10 dust and silica dust/crystalline silica.

Background

As chairwoman, I became involved in the establishment of our association when I started to see the very real effects of quarrying on our community. I knew I couldn't simply look the other way when so many people were suffering as a result of quarrying being allowed in our rural zone. Members of our association suffer from bleeding noses, bleeding from the mouth, constant reoccurring chest infections, coughs, wheezing, shortness of breath, exasperated allergy and asthma complications, and eye issues.

Our health in Canterbury should be regarded as paramount, it's a basic human right, and that's why I'm here today. The dust emitted from quarries should be treated as the dangerous, noted carcinogen that is – in other words it should be considered as a noxious gas would. Australians are strengthening their laws over the next four years, the United States have taken a firm line in regards to quarrying and dust, the WHO want to end silicosis within the next five years... and yet in Yaldhurst, Christchurch, quarrying is routinely consented within 150m of homes, and now Templeton residents are facing quarry on their doorstep. This is a breach of our human rights, a mis-application of the Resource Management Act 1991, and the prioritising of the profits and benefits of companies over the lives and health of residents. We feel that our joint experience is highly relevant to this application.

Our Position

Our position is that the consent be DECLINED.

Reasons for our Decision

As commissioners, we understand that it's easy for you to look at the expert evidence before you, and give that more weight than the views of residents. We would like to note some relevant points from the outset that are important and that will be expanded upon.

- A) The "independent" experts used by the quarry industry in all their applications, do regular work for quarry companies. How can they give truly independent reports when they rely on the quarries in Canterbury for ongoing work? We don't think it's unreasonable to insist on genuinely independent experts, and we do not believe the "experts" engaged on this application fall into that category.
- B) Now that the CDHB, and many international medical and dust experts, have confirmed the risks involved with silica dust and PM10 dust, past consents and old information cannot be relied upon. It is negligent to do so and constitutes a breach of the Resource Management Act. Our Councils and ECAN should be leading the charge, so to speak, to protect residents' health, instead of continuing to side with quarry operators and disregard known and certified health advice and developments. I would like to note that Fulton Hogan have published previously on their website and in other correspondence, that Dr. Pink from the CDHB publically confirmed that PM10 is not a health risk. However I was at a meeting with Dr. Pink and a fellow resident, as well as Nadeine Dommissie of ECAN, where Dr. Pink apologised to us personally and corrected his statement, confirming to us that PM10 is a known carcinogen and is very dangerous to residents' health. He clarified his statement by explaining to us that the CDHB is concerned with the overall health of Canterbury, and that the PM10 dust coming from quarries wasn't a threat to the general population, only the catchment close to the quarries. His original statement was grossly misinterpreted and published.

- C) The recent High Court decision of Harewood Gravels and CCC and Yaldhurst Quarries Joint Action Group, which was an appeal from the Environment Court (upheld) made some very important rulings in regards to resource consent hearings regarding quarrying in particular. We feel this is a landmark decision, and one that we hope the commissioners are aware of and will read in entirety before making a decision for this quarry application, as it's case law that is highly relevant and should be understood and considered. Whilst I acknowledge that this case involved a quarry being established nearby other existing quarries, which means it was going to be operating in an air-shed that was already over allocated in terms of dust, it makes detailed references to how expert evidence is to be considered, the burden on experts and quarry operators, and most importantly, that the Environment Court was correct in ascertaining that the **precautionary principle** must be used when considering applications within a rural zone. In the past, lawyers for quarries have argued against the precautionary principle being used, and commissioners have not used the precautionary principle to the best of my knowledge, but my understanding is that this case law should be binding on commissioners, as it now is in the Environment Court in such cases.

I include a relevant excerpt from the High Court decision below:

"[317] In the demand for new quarries evidence of the rapid evolution of effects on residents over a very short period is entirely to be expected, with the residents' telling accounts of noise, dust, vibration and intrusion into their residential lives. The Court was rightly careful to evaluate the position of the residents and their protection... That is why the Court was critical of landscape evidence which did not seek to understand the values still enjoyed by these residents. The Court in my view correctly took a precautionary approach when identifying many relevant elements of effect where the evidence fell short, either because it was not provided, not adequately provided, or simply did not persuade the Court. This was entirely for the Court. There are no obvious remedial or mitigating steps available to the residents in practical terms after consent is put into effect other than to shift the axis of their home lives, for example, by certain confined parts of their properties to mitigate effects, or leaving the area."

- D) One of the biggest issues communities such as ours face is the compliance of resource consent conditions, which ties in to the above statement from the High Court. From our experience, we know that mitigation of existing quarries is not enforced by ECAN. Neighbours in Yaldhurst don't even bother to ring the pollution hotline now, as enforcement officers rarely respond and to the best of my knowledge, never issue abatement notices for dust. If this quarry is allowed to proceed, what measures are in place to ensure enforcement officers respond in a timely manner, and that abatement notices will be issued? We need to know that regardless of the conditions imposed, that the quarry will be shut down or face large fines for non-compliance of all consent conditions, including dust going over the boundary. It should not be up to residents to monitor this.

We would also like to point out that we do not see current quarries in Yaldhurst to be implementing best practice in dust mitigation, and we expect this issue to be relevant in regards to this proposed quarry too. Bunds act like a ski jump for dust, and are not an adequate measure to assist with dust mitigation, single water carts are rarely used and do little to assist with dust mitigation, and trucks often operate outside of consented hours. You might ask why there are not hundreds of complaints by residents to this effect?

Because complaint monitoring is not effective and has many shortcomings. Some people are reluctant to complain, and some people stop complaining if they feel that no action is being taken. That is certainly the case in Yaldhurst! Why complain when either no officer turns up, or no abatement notice is ever issued, or the officers' repeatedly tell you they are underfunded and rely on residents to police consent conditions?

E) In no way do we agree with any statements that the effect on residents and neighbouring properties would be "less than minor" in regards to dust. It is easy for a planner to make that assessment, but when you ask that to a person who has lived a peaceful, healthy existence on their long-term property and/or family home, in relation to dust and noise, I would expect their answer to be vastly different. Being exposed to any potentially harmful dust could never, when posed to a reasonable person, be considered as "less than minor". I would also like to reference a flyer given to residents affected by quarrying in Yaldhurst after a very short 3-month monitoring program, which referenced the amount of dust (primarily PM10 dust). Residents were told to keep doors and windows shut following the report, to change heat pump/air conditioning filters regularly, and to not go outside. Surely any person of sound mind can see that living near a quarry and having to keep doors/windows shut is not an acceptable way to live within a rural zone!

F) A further point from the High Court appeal is the following passage, which was from the Environment Court case, and upheld in the High Court and included in their judgment:

"While the proposed use and development of the land supports an activity that has the potential to contribute positively to the economy and the wellbeing of the District, the evidence is not sufficient to conclude the same activity will also support and maintain the function, character and amenity values of the rural environment generally (objective 17.2.1.1). Given this, we are not satisfied the proposal promotes sustainable management of natural and physical resources... As an aside, the court acknowledges the impact on residents of the development of quarrying in this area and their felt sense of frustration, and at times, helplessness, when responding to the applications in respect of which they were notified, and their efforts to 'police' the compliance by neighbouring quarries with the conditions of their consents".

This is the same in our area of Yaldhurst, which I should point out is located quite a few kilometers from the group who took Harewood Gravels to court. Those residents are not members of our association. Residents are forced to 'police' existing quarries, in an effort to force them to meet their consent conditions. ECAN enforcement officers are unhelpful and do not do their job, which is to issue abatement notices when they can state "in their opinion, that a condition has been breached". Instead they try to tell us that it must be proved "beyond reasonable doubt", which is a blatant mis-statement. They also disregard photo evidence of water carts not being used, of dust not being mitigated, video footage of dust billowing from boundaries,

trucks accessing the sites outside of permitted hours and so on. It is an unfair burden to place on residents, and once again, ongoing and cumulative effects must be carefully given weight to. A 500m minimum setback from the proposed quarry boundary, as well as a setback of 500m minimum from the quarry boundary to the any crusher, would at least provide an additional safeguard for residents, and rid them of at least some of the burden of monitoring conditions. We strongly believe that a minimum distance of 500m from any quarrying activity measured from the boundary of the quarry, is crucial to protecting the health of residents. It also goes a long way to allowing them ongoing enjoyment of their existing environment. I would like to point out that we also have a huge concern over the dust emitted from trucks, both from their movements in general and from their uncovered loads. A trip down Miners Road in Yaldhurst shows the dust from trucks every day, so regardless of a 500m setback, dust will still be a heartbreaking reality for residents, who up until now have had quiet enjoyment of their properties.

And finally, I would like to point out to the commissioners that the testimony of residents' must be treated as prime evidence equal to that of an expert, again determined by the High Court in the Harewood Gravels case. I urge the commissioners to give weight to the testimony of Yaldhurst residents, who have experienced first hand the reality of living near quarries. Also, the testimony of local Templeton residents should also be treated as expert, so long as they are clearly stating what the current environment is like.

"[226] The criticism of the Court's approach to the evidence of the landscape experts is in my view entirely misplaced. The Court said that the experts did not (so far as it knew) engage with the residents' views that their amenity is adversely impacted by quarrying activity taking place in the locality. That is simply to point to the need for an understanding of the experience and concerns about amenity including rural character of those affected, and for those elements to be objectively brought to account, recognising their inherent subjectivity. What better evidence in the first place is there than that of those who experience and live with the effects, provided their evidence is objectively assessed against the provisions of the District Plan and other expert evidence? The Court was not in error in observing the need for this fundamental step. A querulous and unreasonable stance taken by a resident will never prevail, but their living experience, not overstated, must be prime evidence. It is easy to dismiss or minimise the views of affected persons as subjective, yet theirs are the experiences of the very effects and amenity with which the Court is concerned."

Further Considerations

I would also like to reference case law one more time, as it came up in our recent Road Metals quarry extension hearing by the lawyer for Road Metals, Ewan Chapman, and may well be referenced in this hearing by lawyers for the applicant. In (*Contact Energy Ltd v Waikato RC*), Mr Chapman argued that "there is not place in the process for the court or commissioners to be influenced by mere perceptions of risk which are not shown to be well founded." Can I point out that quarry dust is not a "mere perception of risk"? Residents living in the immediate vicinity of quarries have genuine, verifiable health issues. These health affects are verifiable by their own doctors and by Medical Officer of Health Dr. Alistair Humphrey, who I

understand has already presented his submission. So in this instance, the commissioners must take this very seriously as an existing effect, not a "mere perception". It is also not a perception, but industry-wide knowledge, that greywacke stone comprises a high level of silica. Fulton Hogan and Winstones both acknowledge this on their website, that greywacke is made up of up to 40% (or more) silica, and this is our primary aggregate in Christchurch. Therefore, it is not only PM10 and other dust that residents will be contending with, but silica dust and crystalline silica dust too. The affects of that dust could be fatal.

Internationally, guidelines are becoming more stringent in regards to noxious and carcinogenic dust, and we are starting to see that the situation in Yaldhurst has been allowed to reach a critical level, with very little help from relevant authorities until recently. We ask you to please seriously consider the experience of Yaldhurst residents and our wider community, and decline this proposal. Our commissioners only have to consider the explosion of cases in Australia in regards to often fatal exposure to silica dust, to understand what a serious issue quarry dust presents to communities. It is the opinion of our membership that quarries should be located in rural areas **many** kilometers from communities, where they can establish large scale quarrying activities that do not compromise the health and rural amenity of any household or community. Scare tactics about the price of aggregate going up if this happens are just that – scare tactics. If the price of aggregate goes up, then so be it. Roads will still be made, and health is more important than a small increase in the price of a supply material.

I thank you for taking the time to consider our application.