IN THE MATTER OF

The Resource Management Act 1991

AND

IN THE MATTER OF

Application RC185627 to the Selwyn District Council to establish a quarry operation at 107 Dawsons Road and 220 Jones Road, Templeton.

SUMMARY STATEMENT OF ANDREW HENDERSON

PLANNING EVIDENCE

11 DECEMBER 2019
INTRODUCTION

1. I have prepared the section 42A report for the Selwyn District Council. My qualifications and experience are set out in that report. Since preparing that report, my employment has changed and I hold the position of Principal Planner at Jacobs New Zealand, based in Christchurch.

2. In this statement I respond to questions raised by Panel during the hearing, address the Planning Joint Witness Statement, and revisit the key matters and recommendations raised in my original report.

CORRECTION TO S42A REPORT

3. In response to a comment made by Davina Penny, I wish to provide some additional clarity regarding the status of the Temple on Maddisons Road.

4. In my section 42A report, I provided advice in relation to the temple. The relevant paragraphs are produced below for reference:

   34 Many submissions were received from members of the Samadhi Buddhist Vihara, a Sri Lankan Buddhist temple operated by the Trust at 358 Maddisons Road. These submissions all raised concerns at the potential effects of the proposed quarry on the various activities undertaken at the temple. As part of the preparation of this report, I sought advice from the Council and Council’s legal advisors regarding the land use status of the Temple, as an understanding of what consents (if any) were held would be necessary in determining the appropriate baseline to apply when assessing effects.

   35 Advice I received from the Council was that, at the time the Fulton Hogan resource consent application was lodged, no resource consents were held by the Samadhi Buddhist Trust of NZ for the temple and the range of activities it undertakes.

   36 The consent status of the Temple is relevant in determining how actual and potential effects on its activities are assessed. In order to determine whether the temple was operating under any resource consents, or otherwise as a permitted activity, I made enquiries of the Council and its enforcement team. The discussion below represents the outcome of those investigations.

   37 The primary activity undertaken on the site falls within the definition of a Spiritual Activity, defined in the Selwyn District Plan as:

   land and/or buildings used for the public and/or private assembly of people primarily for worship, meditation, spiritual deliberation and ancillary community facilities of a non-commercial nature.

   38 I understand that a range of activities occurs on the site throughout any given week, and that the scale of the activities undertaken on the site exceeds the permitted thresholds for a spiritual activity in the Selwyn District Plan. Legal advice provided by the Council’s legal advisor therefore is that as the temple is operating in the absence of any consents, any adverse effects on it are to be disregarded.
The assessment of potential effects on the Trust's activities will therefore be limited to effects on the activities to a scale and size that would be a permitted activity under the District Plan. I understand that to date that while the Council has advised the Trust that a resource consent is required, no application has yet been made.

5. I agree that Spiritual Activities are not defined or provided for in the Rural Volume of the Plan, and that the definition sits in the Township volume. Nonetheless, the definition captures the activity. The definition does not appear in the Rural Chapter as 'Spiritual Activities' are not provided for as specific activities in the Rural parts of the District. Rule 9.4.1 of the Rural Zone therefore applies. This Rule permits activities that are not Rural or Residential Activities subject to compliance with the stated conditions relating to employee numbers and floor area restrictions. I have incorrectly referred to the temple breaching the permitted thresholds for a spiritual activity, and I should have stated that the temple, as a non-residential or non-rural activity breaches the permitted activity thresholds, particularly the restriction to 100m² of built form, and I apologise for the clumsy wording.

6. I confirm my view that the Temple requires consent for a discretionary activity, as identified in the section 42A report. I can confirm that an application was made to the Selwyn District Council for the Temple on 5 September 2019 to use the site for spiritual purposes, citing a breach of the 100m² floor area restriction that applies in the Rural Inner Plains Zone. My most recent enquiry has determined that the application is currently subject to a request for further information pursuant to section 92 of the Act.

7. I also note that the Temple received consent from Environment Canterbury on 13 June 2019 for the discharge of wastewater from a dwelling and a toilet block facility with a maximum of 80 visitors per day.

8. Given the absence of the required land use consent I therefore remain of the view, relying upon the legal advice obtained by the Council, that the temple and associated activities as they presently exist do not form part of the existing environment and the submissions can be afforded little, if any, weight.

MATTERS RAISED BY COMMISSIONERS

Paparua Water Race

9. The Applicant's site is serviced by the Paparua Water Race. Information relating to the operation of this water race is available through the SDC website. The excerpt from the scheme map below shows that the site has a Main Line running down the Curraghs Road side of the property and a Local or Lateral Line running down the Dawsons Road side of the property. There also appears to be a small lateral line extending into and terminating within the site toward the north eastern corner. I have appended a full copy of the Scheme map to this report for reference. It is available on the Council's website.
In relation to the operation of the Paparua Water race, Selwyn District Council’s Asset Manager has generally advised that:

- Council does not guarantee flow in its water races.
- Consent is required to use the WR for irrigation. Irrigation is at times limited due to low river flows. An irrigation roster is publicised on the Council’s website.
- There is a process to follow to close parts of the race. All affected landowners must agree before an application can be made.
- If the race is in the way or proposed works, directing the race around the work area is an option.

Development Contributions

The Commissioners requested information regarding development contributions. I have received advice from the Council’s Development Contributions Officer, who has provided the attached table indicating the nature of contribution that could be taken by the Council.

Development Contributions in the Selwyn District are governed by the Council’s Development Contribution Policy, approved by the Council on 20 June 2018. The Policy was developed and is administered under the Local Government Act. Section 2.14 of that Policy states

The Council’s use of development contributions
The Council will use development contributions only on the activity for which they are collected. This will be undertaken on an aggregated project basis for each of the activities.

Appendix 1 of the Policy identifies the range of roading projects in the vicinity and wider area that contributions could be put towards. I have a hard copy of the policy available if required and will otherwise provide an electronic copy of the Policy to Ms. Cooper to circulate if required.

The Panel will note that the quantum of the development contribution presented in the attached spreadsheet differs from that in the section 42A report. I have been advised by the Development Contribution Officer that the earlier version was incorrect and did not equate one truck and trailer entering and leaving the quarry to the equivalent of 12 car movements (i.e. one truck and trailer is the equivalent of 6 cars). This has now been corrected.
Vesting of new road

15. The Council’s Asset Manager – Transportation has advised me that he anticipates the new roundabout and roading improvements will be vested in the Council and form part of the Council’s local public roading network, and that any redundant part of Jones Rd would be stopped following the LGA road stopping process.

16. In order to be vested as road, the new roundabout and roading improvements will be required to be on their own title, and as such will require a subdivision consent at some point. Any works to vest will require the Council’s prior approval as to detailed plans and specifications and will be required to be in accordance with Council’s Engineering Code of Practice, matters that would ordinarily be covered in a subdivision consent. If any of the works affect the portion of Dawsons or Jones Road controlled by the Christchurch City Council, then appropriate approvals will also be required to be obtained from that authority.

Staging

17. The Panel has asked for views on staging, and whether the Quarry could be consented such that there could be a review or compliance targets to be met before moving to further stages. The conditions of consent foreshadow this to some degree, requiring certain elements to be completed before quarrying can be commenced (such as bund formation, planting, and timing opening of the quarry in relation to CSM2), and requiring progressive rehabilitation and limits on the area that can be worked at any one time.

18. I agree that it is possible to further refine this approach through conditions should the Panel be so minded. This was not a focus of the Planning conferencing, with the focus being on the management of effects through conditions generally.

Versatile Soils

19. The Selwyn District Council has a report entitled Baseline Assessment: Versatile Soils (DW015) on its District Plan review website, dated 12 December 2018. I was unaware of this document when I prepared my s42A report.

20. Figure 5 of this report, titled ‘Overview of Soils in Selwyn Central Ward and Springs Ward Area’, appears to indicate that the subject site is underlain by LUC Class 2 and 3 soils. I have a hard copy of the document available and will also provide an electronic copy of this report to Ms. Cooper for circulation should you require it.

21. The relevant provisions in the Statutory planning instruments have been covered in evidence already before the Panel. The following few paragraphs traverse these briefly.

22. The Operative District Plan has one Policy that is directly relevant to versatile soils, being:

VERSATILE SOILS

Policy B1.1.8

Encourage residential development to occur in and around existing townships.
23. The principal policy protection afforded to versatile soils in the District Plan therefore is limited largely to encouraging residential growth around the existing townships. This application is not for the expansion of an urban area and is therefore not relevant to this application.

24. Other Policies in the Selwyn District Plan relate to the protection of soils generally, including:

**Policy B1.1.6**
Encourage initiatives by Environment Canterbury and landowners to reduce the adverse effects of activities on soil structure and soil erosion.

**Policy B1.1.7**
Avoid removing large quantities of topsoil from sites unless
- The site will be covered in hard standing; or
- The topsoil will be replaced and the site replanted, when the activity ceases.

25. The Canterbury Regional Policy Statement includes limited provisions relating to soils, as follows:

**Policy 5.3.2 Development Conditions**
To enable development including regionally significant infrastructure which:
1. ensure that adverse effects are avoided, remedied or mitigated, including where these would compromise or foreclose:
   a. ..;
   b. ..;
   c. the productivity of the region’s soil resources, without regard to the need to make appropriate use of soil which is valued for existing or foreseeable future primary production, or through further fragmentation of rural land;

**Objective 15.2.1 Maintenance of Soil Quality**
Maintenance and improvement of the quality of Canterbury’s soil to safeguard their mauri, their life supporting capacity, their health and their productive capacity

**Policy 15.3.1 Avoid, remedy or Mitigate Soil Degradation.**
In relation to soil:
1. to ensure that land-uses and land management practices avoid significant long-term adverse effects on soil quality, and to remedy or mitigate significant soil degradation where it has occurred, or is occurring; and
2. to promote land-use practices that maintain and improve soil quality.

26. Prior to completing this statement, I sought confirmation from Environment Canterbury that there were no other provisions relating to versatile soils that had been overlooked. The advice I received confirmed my statement above that there are limited policies.

27. These provisions have been assessed in my section 42A report, the evidence of Mr. Kyle, and in Appendix K (Statutory Assessment) of the application as notified. I note that Mr. Mthamo’s evidence has addressed rehabilitation and replacement of topsoil. The conclusion I reached in my original report was that the proposal is consistent with these provisions. Having considered
Mr. Mthamo's evidence on the proposed rehabilitation and that of Mr. Kyle, I remain of the view that the proposal is consistent with these (limited) provisions.

**Activity Status**

28. In Paragraphs 21 and 22 of my section 42A report I identified that a non-compliance with an access standard potentially resulted in a non-complying activity status. This was because the application as lodged, in the Form 9 relating to the applications to the Selwyn District Council, included a reference to a breach of Rule 4.5.1.6, which relates to accesses onto Arterial Roads. The Plan identifies that a breach of that particular standard is a non-complying activity. However, the proposed quarry does not have an access onto an arterial road, and the rule is therefore of no relevance to the application. There are no other rules that would make the proposal a non-complying activity, and I therefore confirm my view that the proposal requires consideration as a discretionary activity overall.

29. In this regard I note that Mrs. Greenfield stated on 10 December that the proposal is a non-complying activity. I do not believe this to be the case. Rule 9.1.2 of the Rural Section of the District Plan states that any activity not complying with the relevant rules has the same status of the rule with which it does not comply. None of the Rules that are breached are stated as non-complying activities.

30. As the Panel is aware, as a discretionary activity, you are not required to be satisfied that the adverse effects of the proposal are less than minor. That is a test reserved for non-complying activities. The application of section 104 of the Act requires an overall balancing approach having considered the actual and potential effects and the relevant Statutory and district plan provisions.

**Activities beyond Consent Expiry**

31. Mr. Mthamo, the Applicant's rehabilitation witness, raised the question of whether quarrying should be provided for up until the expiration of the consent, inferring that rehabilitation-related activities should be able to endure beyond the expiration date. The Panel requested views as to whether this was possible, and invited comment from officers in this regard.

32. Ideally in my opinion, all activities contemplated by a consent should be required to occur within the life of the consent, as this provides certainty for applicants, consent authorities and submitters. However, as noted by Ms. Goslin, Environment Canterbury sought legal advice on this matter, which has noted that in some circumstances, it may be appropriate for activities to endure beyond the expiration date, provided that

- the conditions are clearly framed and are intended to be complied with at the end of or after the consented activity; and
- the conditions do not necessitate work that would otherwise require a resource consent.

33. I acknowledge therefore that it is possible for conditions to endure beyond the expiry of a consent. Considering the cautions in the legal advice, do I consider it more appropriate and consistent with standard practice that all activities be completed before the consent expires.
Bund removal at rehabilitation

34. I noted that during discussions last week there appeared to be uncertainty about whether the bund was to be disestablished and used for rehabilitation purposes or was to remain. I note that paragraph 7.4 of the Landscape Experts Joint Witness Statement states that all the landscape witnesses agreed that the bund should be removed at the end of quarrying, and as part of the Rehabilitation Management Plan.

Proposed Cemetery on CCC land.

35. The Panel has heard from the CCC and its planning expert, Ms. Ruston, that the Council intends to establish a new Cemetery and recreational facility on the land it owns on the eastern side of Dawsons Road. As you were told, the land has been earmarked in the Council’s LTP for these purposes.

36. The site is zoned Rural Urban Fringe in the Christchurch District Plan. There are no provisions for cemeteries in the Rural Urban Fringe Zone, and unless enabled by a Designation or Plan Change (to create a Special Purpose – Cemetery zone), a new cemetery will require resource consent for a non-complying activity.

37. The site is not presently designated for Cemetery or recreation purposes in the Christchurch District Plan, and I am not aware of any resource consent or pending plan change that would enable the activities.

38. I therefore agree with Ms. Ruston that the proposed cemetery does not form part of the existing environment, and accordingly any effects of the proposed quarry on a future cemetery that as yet appears to have no statutory approvals should not form part of your consideration.

Existing Husky Rescue Operation

39. The Panel has heard that there is an existing Husky Rescue activity occurring on part of the site. It is my understanding from discussions with the Council’s regulatory manager that this activity is being undertaken as a permitted activity and that no resource consent is required. The Applicant will provide you with comments on any agreements they have with the operator.

Key Concerns in s42A report

40. Finally, turning to my original section 42A report, in Paragraph 168 I concluded that

Overall, my assessment of the proposal leads to the conclusion that provided the safety matter relating to queuing of trucks between the rail crossing and the State highway is appropriately resolved, and that night time activities do not occur, the potential adverse effects of the application can be appropriately avoided, remedied or mitigated. While I have appended a set of amended conditions to this report, I consider that consent should not be granted unless the applicant is able to satisfactorily demonstrate that the truck queuing issue and effects on the State highway can be avoided, or appropriate measures are put in place to address the matter.

41. Following on from this, the recommendation following paragraph 172 was that:
Resource consent be declined pursuant to sections 104 and 104B of the Resource Management Act 1991 unless the Application is amended in order to

(i) include appropriate measures to avoid adverse effects arising from trucks queuing between the Main Trunk railway line crossing and the State Highway; and

(ii) remove all activities proposed to occur between 8:00pm and 6:00 am (i.e. no night time activity).

42. My original concern regarding the truck queuing matter arose from the report of Mr. Carr, who expressed concern that the modelling that was available at the time the reports were prepared was insufficient to allay his concerns regarding the safe and efficient operation of the roading network.

43. Following the conferencing of the traffic experts, the Traffic Joint Witness Statement has addressed this matter, with all the traffic experts agreeing that there are solutions available to mitigate these concerns, and that this can be managed through conditions of consent.

44. I also note that the NZ Transport Agency has agreed with the modelling and the conditions, and the Panel has been presented with updated modelling that demonstrates how the network is predicted to operate.

45. I therefore consider that this matter has been satisfactorily addressed.

46. With respect to night time operations, my original view was that there should be no operations between 2000 and 0600, based on my opinion that operating through the night on up to 150 nights per year would have adverse effects on the amenity of residents.

47. The Applicant now seeks consent for operations on up to 60 nights per year (between 8pm and 6am), as shown in Table 1 in the conditions included as part of the Planning Joint Witness Statement. My agreement to these hours is noted in the Planning Joint Witness Statement dated 29 November, in Paragraph 14. Having considered the evidence of the noise experts, and particularly the points agreed in the Noise Experts’ Joint Witness Statement, I agree that the night time activities proposed will comply with the night time noise limits and agree overall that the conditions proposed are appropriate to manage any adverse effects.

48. In summary, the matters that I raised in my original section 42A report that led to a recommendation to refuse consent have now been addressed through expert evidence, joint witness conferencing and the amended conditions agreed through the Planning expert conferencing.

49. Accordingly, I no longer hold the view that the land use consent should be refused, and wish to change the recommendation in my section 42A such that it reads:

Resource consent be granted pursuant to sections 104 and 104B of the Resource Management Act 1991, subject to conditions imposed under section 108 of the Act.

50. I am happy to answer any questions.