

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

SYNOPSIS OF CLOSING LEGAL SUBMISSIONS FOR FULTON HOGAN LIMITED

DATED: 30 January 2020

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

Introduction

1. To date, the hearing into Fulton Hogan's applications for resource consents relating to the Roydon Quarry Proposal has been held over 12 sitting days, within the period 18 November to 11 December. The Panel has received:
 - (a) 40 briefs of expert evidence from witnesses called by Fulton Hogan;
 - (b) 10 briefs of company evidence on behalf of Fulton Hogan;
 - (c) 12 briefs of expert evidence from witnesses called by submitters, in the areas of:
 - (i) Equine health (one brief);
 - (ii) Noise sensitivity of Brackenridge residents (one brief);
 - (iii) Air quality (two briefs);
 - (iv) Noise (three briefs);
 - (v) Planning (three briefs);
 - (vi) Traffic (two briefs).
 - (d) 70 briefs of evidence/statements/submissions from submitters;
 - (e) S42A reports from experts in the areas of:
 - (i) Traffic;
 - (ii) Acoustics;
 - (iii) Landscape;
 - (iv) Water quantity and quality;
 - (v) Air quality;
 - (vi) Contaminated land;
 - (vii) Legal opinions on whether a "use" permit can be sought and whether the proposed rehabilitation conditions will endure after the consents have expired; and
 - (viii) Planning.

- (f) Legal submissions from:
 - (i) Fulton Hogan Limited;
 - (ii) Brackenridge Services Limited (**Brackenridge**);
 - (iii) Southern Woods Nursery Limited (**Southern Woods**); and
 - (iv) Templeton Residents Association (**TRA**).
 - (g) 9 Joint Witness Statements.
2. A good deal of information has been put before the Panel and a number of topics have been covered during the hearing. Fulton Hogan acknowledges the matters raised are many and varied and bear significance to those who raised them. Without detracting from that acknowledgement, several have emerged as the key issues of concern to submitters:
- (a) Traffic effects, being primarily:
 - (i) The effects of traffic movements on those within the urban area of Templeton and on those who live on the more rural roads surrounding the site; and
 - (ii) The safe and efficient operation of the new roundabout at the State Highway 1/Dawsons Road intersection and of the proposed new roundabout at the Jones/Dawsons Road intersection;
 - (b) Air quality effects, being primarily:
 - (i) Health effects;
 - (ii) Nuisance effects; and
 - (iii) Compliance with Regulation 17 of the National Environmental Standard for Air Quality (**NES**);
 - (c) Effect on horses, being primarily:
 - (i) Health effects from dust; and
 - (ii) Adverse reactions to increased traffic;
 - (d) Effects on water quality and quantity;
 - (e) Noise effects;

- (f) Landscape and visual effects; and
 - (g) Effects on soils and future use of the site (rehabilitation).
3. In the area of air quality and dust effects, Fulton Hogan chose to call several different experts with specialised expertise in a sub-category of the broader discipline. Fulton Hogan called Mr Cudmore, Ms Wagenaar, Mr Dawson and Mr Jorgenson. No other submitter called expert witnesses with either Ms Wagenaar's or Mr Dawson's expertise.
 4. In other areas (traffic and water quality and quantity), Fulton Hogan provided you with expert evidence from a lead witness complemented by evidence from a reviewer.
 5. Overall, it is submitted Fulton Hogan has presented you with a comprehensive case supported by detailed expert evidence. In addition, Fulton Hogan remained agile throughout the hearing and modified its proposal and/or draft conditions in response to submitter, Council or Panel concerns.

Areas of expert dispute

6. Expert evidence was also put forward by some submitters and the Councils' Reporting Officers. Usefully, the expert conferences and Joint Witness Statements substantially reduced points of difference between experts. In substance, only two remain:
 - (a) Compliance with Regulation 17 of the NES;
 - (b) Residual noise issues:
 - (i) Whether vehicles with tonal reversing alarms and engine braking capability should be banned from entering the site altogether; and
 - (ii) Whether the heavy vehicle route restrictions that apply between 8pm and 6am should be extended to 7am.
7. There are also some areas of minor disagreement. For example, Dr Fitch and Dr Jorgensen appear to disagree as to the role silicates might play in Inflammatory Airway Disease (**IAD**) in horses (effectively, equine asthma).¹ However, both agreed there is no scientific literature about this. Dr Jorgensen appeared at the hearing and confirmed his position that there would be some

¹ See paragraph 5(c) of the Joint Witness Statement on equine health dated 13 November 2019.

literature on this topic if silicates were indeed a significant causal factor in IAD.² Dr Fitch did not appear to advance the matter any further. It is submitted Dr Jorgensen's more specific and precise evidence must be preferred.

8. It is noted the Planning Officer for Selwyn District Council now supports grant of consent. Ms Goslin for the Canterbury Regional Council has recommended decline of consent due to Regulation 17 of the NES - although it is respectfully submitted her recommendation is somewhat incongruous with the remainder of her most recent evidence.³ It was a surprising conclusion at the time it was presented and it remains so upon re-reading.

Other evidence from submitters

Submitters with expertise

9. Several submitters introduced themselves by reference to their qualifications, then proceeded to proffer opinion. It is submitted their evidence must be treated with the utmost caution for some (or all) of the following reasons:
 - (a) They did not pre-file evidence, as was the direction for all experts;
 - (b) They did not refer to the Environment Court Code of Conduct for Expert Witnesses (nor confirm compliance with it);
 - (c) They made submissions and therefore were not independent; or
 - (d) They were appearing as an advocate for the party they represented and therefore were not independent.
10. Without limiting the applicability of this submission to any submitters who fall into this category, this undoubtedly includes Dr Seddon-Smith and Dr Humphrey. In accordance with Minute 13, Ms Wagenaar has considered and responded to the evidence of these medical professionals.⁴ However, it is submitted their evidence cannot be treated as expert evidence. Dr Humphrey commenced as an advocate for the Canterbury District Health Board then ended with an unsubstantiated and unwritten assertion about silicosis. Similarly, Dr Seddon-Smith's evidence contained a great deal of

² See Summary Statement on behalf of Alec Jorgensen on behalf of Fulton Hogan Limited – Equine Health dated 13 November 2019 at paragraphs 2 to 11, particularly 8 to 11; Joint Witness Statement on equine health dated 13 November 2019 at paragraphs 5(b) to 5(c).

³ Summary statement section 42A Report Officer Canterbury Regional Council Planning – Hannah Goslin dated 11 December 2019 at paragraph 12.3.

⁴ Supplementary statement of Audrey Wagenaar on behalf of Fulton Hogan Limited – Response to Panel request for elaboration dated 29 January 2020.

assertion without substance as well as strident criticism of Ms Wagenaar's evidence, despite her independence and more specialised expertise.

Submitter concerns

11. Putting aside the areas of expert dispute, the topics of prime concern for submitters were:
 - (a) Health impacts from dust;
 - (b) Erosion of amenity from trucks and associated noise; and
 - (c) Negative impacts on horse training facilities as a result of clients perceiving there to be adverse effects of the kind noted in (a) and (b) above.
12. Versatile soils also became an issue of interest in the last few days of hearing. The evidence from submitters is comprehensively responded to in the Supplementary Evidence from Mr Mthamo.⁵
13. As a general comment and with all due respect, it was clear that many submitters were highly concerned about effects that – on the totality of expert evidence before you – are not expected to materialise. Traffic distribution is a good example of this.
14. A large number of submitters made heartfelt presentations based on a fear of several hundred truck movements past their house every day. The sincerity of their concerns is not doubted. However, the evidence of all traffic experts agrees the vast majority of vehicle movements will be on the State Highway or Motorway networks.⁶ Further, the number of quarry vehicles predicted to use the roads where a pre-ponderance of horse-training submitters live, is very small.⁷
15. Towards the end of the hearing Mr Metherell presented supplementary evidence on this issue,⁸ to provide submitters and the Panel with greater reassurance as to predicted traffic flows. Mr Metherell's transport modelling

⁵ Supplementary evidence of Victor Mthamo on behalf of Fulton Hogan Limited dated 29 January 2020.

⁶ Joint witness statement on traffic effects dated 12 November 2019 at paragraph 16 (with the focus of the statement being safety and efficiency of primary access route to SH1); Evidence of Andrew Metherell on behalf of Fulton Hogan Limited – Traffic effects dated 23 September 2019 at paragraphs 72 to 75, 78 and Appendix B, Section 2.3; Statement of evidence of Timothy Wright on behalf of CCC dated 14 October 2019 see for example paragraph 10.4; Statement of evidence of Andrew Carr on behalf of SDC dated 2 September 2019 at paragraphs 42 and 52.

⁷ See for example Supplementary statement of Andrew Metherell on behalf of Fulton Hogan Limited – Transport and local roads dated 9 December 2019 and references in footnote 6 above.

⁸ Supplementary statement of Andrew Metherell on behalf of Fulton Hogan Limited – Transport and local roads dated 9 December 2019.

shows no forecast use of Kirk Road⁹ and only very small increases for Maddisons,¹⁰ Dawsons¹¹ and Curraghs¹² Road. Mitigation has been proposed to address the use of Jones Road between the quarry access and Dawsons Road.¹³

16. In addition, Mr Jolly has now presented a revised Transportation¹⁴ Management and Route Plan (**TMRP**), which contains route restrictions and monitoring requirements to ensure vehicle distribution aligns with the predictions made by Mr Metherell's modelling.¹⁵ If there are unanticipated traffic effects, the conditions of consent can be reviewed pursuant to condition 78(c) of RC185627.

Positive effects

17. Almost entirely, submitters did not engage (and certainly not by way of expert evidence) in the matters addressed by Messrs Copeland and Chilton.¹⁶ Mr Yeoman provided a s42A report on the topic of economic benefit.¹⁷ Whilst it demonstrated a philosophical difference between himself and Mr Copeland as to how large any benefit might be and how non-monetary effects should be addressed, both experts agreed there was an overall benefit. As such, it is submitted there is no need for the Panel to choose which approach it prefers. It can proceed on the basis the Proposal will bring economic benefit to Greater Christchurch and the Selwyn District.¹⁸
18. Mr Chilton's evidence – which was a fundamental precursor to Mr Copeland's economic analysis - was undisturbed by any other expert or submitter.

⁹ Supplementary Statement of Evidence of Andrew Metherell on behalf of Fulton Hogan Limited – Transport and Local Roads dated 9 December 2019 at paragraph 3.8.

¹⁰ Up to one vehicle per hour on the Western section of Maddisons Road in the middle of the day - Supplementary Statement of Evidence of Andrew Metherell on behalf of Fulton Hogan Limited – Transport and Local Roads dated 9 December 2019 at paragraph 3.5.

¹¹ Indicatively up to a few vehicles per hour associated with travel to and from the Northwest - Supplementary Statement of Evidence of Andrew Metherell on behalf of Fulton Hogan Limited – Transport and Local Roads dated 9 December 2019 at paragraph 3.11.

¹² Up to one heavy vehicle per hour - Supplementary Statement of Evidence of Andrew Metherell on behalf of Fulton Hogan Limited – Transport and Local Roads dated 9 December 2019 at paragraph 3.12.

¹³ Supplementary Statement of Evidence of Andrew Metherell on behalf of Fulton Hogan Limited – Transport and Local Roads dated 9 December 2019 at paragraph 3.3.

¹⁴ In some places the evidence or consent conditions put forward for Fulton Hogan calls this the Traffic Management and Routing Plan. They are the same thing.

¹⁵ Supplementary statement of Kelvyn Jolly dated 29 January 2020 at paragraphs 16 to 17..

¹⁶ Evidence of Michael Chilton on behalf of Fulton Hogan Limited – Aggregate Demand and Supply dated 23 September 2019; Evidence of Michael Copeland on behalf of Fulton Hogan – Economics dated 23 September 2019.

¹⁷ Economic assessment by Rodney Yeoman, Attachment 2 to Section 42A Report by Mr Henderson for SDC dated 2 September 2019.

¹⁸ Economic assessment by Rodney Yeoman, Attachment 2 to Section 42A Report by Mr Henderson for SDC dated 2 September 2019; Evidence of Michael Chilton on behalf of Fulton Hogan Limited – Aggregate Demand and Supply dated 23 September 2019 at paragraph 68; Evidence of Michael Copeland on behalf of Fulton Hogan – Economics dated 23 September 2019 at paragraphs 22 to 23, 28.3, 32 and 37.

19. In combination the essential conclusions were:
- (a) If all current supply sources are put together, Greater Christchurch has around 20 to 25 years of gravel resource left;¹⁹
 - (b) But, when that time period is examined more forensically and with regard to geographic positioning and product type, the South-west quadrant of Christchurch City has little supply left. As such, a replacement for Pound Road is needed both in terms of product type and cost-effective delivery to the same demand centres;²⁰
 - (c) Aggregate is very cost-sensitive to travel distance because it is a high volume, low cost product;²¹
 - (d) It is unrealistic to expect quarry operators to behave in an orderly way that sees one quarry exhausted at a time. And such behaviour would reduce competition to the detriment of consumers;²²
 - (e) Ultimately, it is everyone within the Greater Christchurch area who will wear increased aggregate costs because so much of it is used for the infrastructure we all rely upon;²³ and
 - (f) Roydon Quarry will, compared to other alternative sources of supply, give rise to economic benefits in terms of lower aggregate transport costs, production costs and supply prices and employment and income in the Selwyn District and Greater Christchurch.²⁴

Alternative sites

Quarry zone

20. Some submitters suggested a specific quarry zone would be a more appropriate location for this proposal. However, the Selwyn District Plan does not have any quarry zones and the Quarry Zone in the Christchurch

¹⁹ Evidence of Michael Chilton on behalf of Fulton Hogan Limited – Aggregate Demand and Supply dated 23 September 2019 at paragraphs 18 and 36; Evidence of Michael Copeland on behalf of Fulton Hogan – Economics dated 23 September 2019 at paragraph 26.

²⁰ See for example Evidence of Michael Copeland on behalf of Fulton Hogan – Economics dated 23 September 2019 at paragraphs 11, 14 and 19.

²¹ Evidence of Michael Chilton on behalf of Fulton Hogan Limited – Aggregate Demand and Supply dated 23 September 2019 at paragraphs 15 and 65; Evidence of Michael Copeland on behalf of Fulton Hogan – Economics dated 23 September 2019 at paragraph 22.1.

²² Evidence of Michael Copeland on behalf of Fulton Hogan – Economics dated 23 September 2019 at paragraphs 11 and 19.

²³ Evidence of Michael Chilton on behalf of Fulton Hogan Limited – Aggregate Demand and Supply dated 23 September 2019 at paragraphs 64 to 65; Evidence of Michael Copeland on behalf of Fulton Hogan – Economics dated 23 September 2019 at paragraphs 21.1, 23.5(d), 26.5, 28.3 and 34.

²⁴ Evidence of Michael Chilton on behalf of Fulton Hogan Limited – Aggregate Demand and Supply dated 23 September 2019 at paragraph 68; Evidence of Michael Copeland on behalf of Fulton Hogan – Economics dated 23 September 2019 at paragraphs 22 to 23, 28.3, 32 and 37.

District Plan was not intended to – and simply does not have the capacity to - accommodate new quarries:

The overall strategy for managing aggregate resources and quarrying activity is to retain the existing Rural Quarry ... Zones, where quarrying is a permitted activity, allowing them to 'play out' and be rehabilitated, with the District's longer term aggregate demands being met by new quarries establishing through (discretionary) resource consents within (most) other rural zones.²⁵

21. During formulation of the Christchurch District Plan, several quarrying interests requested zoning of additional land for quarrying purposes. Ultimately, it was agreed between those interests and CCC that the re-zonings would not be pursued. The relevant CCC Officer confirmed this as appropriate on the basis that to do otherwise:

*...would be at odds with the Council's preferred approach for managing and providing for quarrying in the district i.e. favouring a consenting rather than zoning approach;...*²⁶

Waimakariri River

22. Obtaining foreseeable demand from the Waimakariri River was also mentioned. However, the idea of securing substantial quantities from that resource was debunked by the Environment Court in 2006:²⁷

[57] The City Plan emphasises abstraction from the Waimakariri River. However the Gravel Report debunks this as a major long-term source.

23. The Hearing Panel for the Christchurch District Plan passed the following comment on the 2006 Decision:

That decision fundamentally challenged the thinking and validity of City Plan policies that sought to confine quarrying to specific locations while favouring river-based sources of gravel supply. The decision considered the CCC had placed an over-reliance on river-based sources.²⁸

²⁵ Evidence in chief of Adele Radburn for CCC on Chapter 17 Rural, Stage 2 of the Christchurch Replacement District Plan at paragraph 8.1.

²⁶ Evidence in chief of Adele Radburn for CCC on Chapter 17 Rural, Stage 2 of the Christchurch Replacement District Plan at paragraph 11.2(a).

²⁷ *Road Metals Company Limited v Christchurch City Council* [2006] NZEnvC 419.

²⁸ Decision 34 - Chapter 17 Rural, Stage 2 on the Christchurch Replacement District Plan dated 12 August 2016.

24. It is submitted nothing has changed between 2006 and now. It seems universally accepted that river extraction will play only a small part in overall gravel supply for the Greater Christchurch area²⁹ In terms of both quantity and product type, the Waimakariri River is not a reliable alternative to land-based quarries.

Alternative sites generally

25. The Resource Management Act 1991 (**Act**) only obliges the consideration of alternative sites in limited circumstances, through s105 (where there is a discharge) and Schedule 4 in all cases.
26. Section 105(1) requires a consent authority, when considering activities which would breach s15, to have regard to:
- (a) *“the nature of the discharge and the sensitivity of the receiving environment to adverse effects;*
 - (b) *the applicant’s reasons for the proposed choice;*
 - (c) *any possible alternative methods of discharge, including discharge into any other receiving environment”.*
27. In relation to the consideration of alternatives, several principles can be derived from case law. Summarily, these, are:
- (a) the site or method should be a suitable one, but it does not have to be the *most* suitable or the *only suitable* site;
 - (b) An applicant is not required to demonstrate that their proposal is the best use of resources out of available alternatives.³⁰
 - (c) alternative sites and methods should be practicable;
 - (d) It is not the decision maker’s role to substitute its own judgment for that of the applicant.³¹
 - (e) the RMA process is not to be used for licensing purposes;

²⁹ See for example Evidence of Michael Chilton on behalf of Fulton Hogan Limited – Aggregate Demand and Supply dated 23 September 2019 at paragraph 48.

³⁰ *Meridian Energy Limited v Central Otago District Council* [2011] 1 NZLR 482.

³¹ *Tainui Hapu v Waikato Regional Council* (A063/2004) at paragraph [148].

- (f) provided the application is consistent with the sustainable management purpose of the Act, little weight should be given to the question of alternatives.
28. In *Mahuta v Waikato Regional Council*³² the Court considered the effects of waste discharging from a dairy factory. Section 105's predecessor was relevant. The Court determined that it was not required to consider other alternatives under s105 if it was satisfied the discharges would not have significant adverse effects on the water quality of the river.
29. It is submitted the discharge to air will not have significant adverse effects and therefore a section 105 consideration is not necessary. Similarly, there is no evidence that any other part of the proposal – either on its own or in combination with other aspects – will create significant effects for the purpose of Schedule 4.
30. Nonetheless, Mr Stewart explained the site selection process in his evidence. Quite apart from the availability and suitability issues with the Christchurch Quarry Zone and the Waimakariri River, it is submitted Fulton Hogan has more than fulfilled the Resource Management Act's expectations as to alternative sites – under both Schedule 4 and section 105.

Versatile soils

31. The supplementary evidence of Mr Mthamo addresses the issue of versatile soils. He considers whether there are versatile soils at the Roydon Quarry site and what the effect of the proposed Quarry might be on any such soils. He then goes on to discuss how the proposal aligns with relevant provisions of the Canterbury Regional Policy Statement (**RPS**).³³
32. Mr Mthamo concludes the soils at the Quarry site are Land Use Capability (**LUC**) Classes 2 and 3 and are therefore “versatile” in terms of that classification system.³⁴ It is noted the RPS definition of versatile soils is limited to LUC Classes 1 and 2.
33. One of Mr Mthamo's key conclusions is that while the existing soils are versatile (based on their physical and chemical properties), the productivity

³² *Mahuta v Waikato Regional Council* A91/98

³³ Supplementary statement of evidence of Victor Mthamo on behalf of Fulton Hogan Limited dated 28 January 2020.

³⁴ Supplementary statement of evidence of Victor Mthamo on behalf of Fulton Hogan Limited dated 28 January 2020 see in particular paragraphs 13 to 24.

potential is fairly limited having regard to other constraints - including particularly the availability of irrigation and nitrate discharge limits.

34. Mr Mthamo's assessment is consistent with the approach endorsed by Judge Treadwell in *Canterbury Regional Council vs Selwyn District Council*.³⁵ Appendix 2 to the decision lists a series of factors to be considered in determining versatility, consistent with the Table 2 at paragraph 36 of Mr Mthamo's evidence. The Environment Court went on to say *one can have an extremely good soil which would be disqualified for a farming use by one or several of the factors above*.³⁶
35. Mr Mthamo's evidence is that while the soils are versatile, they will be just as versatile - and might actually be more versatile as the existing land - once quarrying has ceased and the land is rehabilitated.³⁷
36. During the hearing, Policy 5.3.1 of the RPS was identified as being relevant to consideration of versatile soils. Counsel conferred with Mr John Kyle following the hearing and he advised Objective 3.23 and Policy 5.1.1 might also be considered of relevance. Mr Mthamo's evidence assesses each of the RPS provisions and concludes that Fulton Hogan's proposal is consistent with Objective 3.23 and Policies 5.3.1 and 5.1.1 having regard to the rehabilitation and mitigation measures in the Draft Quarry Rehabilitation Plan and the relevant consent conditions.

Potential adverse human health effects

37. Ms Wagenaar's evidence addresses the potential human health effects of the proposed Quarry. Evaluating the relevant air quality criteria and Mr Cudmore's air quality assessment, Ms Wagenaar concludes (relevantly):
 - (a) Potential health effects associated with off-site exposure to respirable crystalline silica are extremely low;³⁸
 - (b) Exposure to particulate matter in the immediate vicinity of Roydon Quarry, will be well below applicable air quality standards and guidelines;

³⁵ *Canterbury Regional Council v Selwyn District Council* [1997] NZRMA 25.

³⁶ *Canterbury Regional Council v Selwyn District Council* [1997] NZRMA 25 at Appendix 2.

³⁷ Supplementary statement of evidence of Victor Mthamo on behalf of Fulton Hogan Limited dated 28 January 2020 see in particular paragraphs 25 to 40.

³⁸ Evidence of Audrey Wagenaar on behalf of Fulton Hogan Limited – Potential risks to human health dated 23 September 2019 at paragraphs 28.5 and 50.

- (c) Potential health effects associated with off-site exposure to particulate matter will result in low to negligible health risks depending on the ambient air quality concentrations.³⁹ Ms Wagenaar explained this was the best that could be said because the air quality guidelines for exposure are based on an acceptable or tolerable level of risk. It is not possible to conclude there will be "no potential" or "zero" health risk.⁴⁰
38. Ms McKay in her evidence referred to the "egg shell-skull rule". As counsel understood it, her evidence urged the Hearings Panel to ensure there would be no risk to her son who has pre-existing health concerns. She submitted that Fulton Hogan needs to take the community as they are, including any existing and heightened sensitivities.
39. The egg shell-skull principle applies in tort.⁴¹ Under the Act, an assessment of effects 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.*⁴² The test for assessment of adverse effects on persons under The Act is based on the experience of an "ordinary reasonable person". It is also not for Fulton Hogan to prove that there are no adverse effects associated with the proposed activity.⁴³
40. In summary, it is submitted on the evidence that any actual or potential adverse effects on human health from the proposed quarry will be minor or less than minor.

Extant noise issues

41. The JWS of the noise experts identifies two residual areas of disagreement:⁴⁴
- (a) The complete prohibition of tonal reversing alarms and vehicles with engine braking capability, from the site; and
 - (b) The extension of heavy vehicle route restrictions to 7am, from the currently proposed 6am.

³⁹ Evidence of Audrey Wagenaar on behalf of Fulton Hogan Limited – Potential risks to human health dated 23 September 2019 at paragraph 38.

⁴⁰ Evidence of Audrey Wagenaar on behalf of Fulton Hogan Limited – Potential risks to human health dated 23 September 2019 at paragraph 38.

⁴¹ In summary, the principle requires a tortfeasor to take the victim as they find them. It only applies if a duty of care and a breach of the duty of care has been established.

⁴² *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].

⁴³ *Kuku Mara Partnership (Forsyth Bay) v Marlborough District Council* EnvC W025/02;

⁴⁴ Joint Witness Statement on noise dated 6 November 2019.

Tonal reversing alarms

42. Conditions 41 and 42 already ensure tonal reversing alarms:
- (a) Are not fitted on quarry-based equipment or trucks owned by the consent holder; and
 - (b) Are not used on site between the hours of 8pm and 6am.
43. The same is true for engine brakes during that same period. That the relevant conditions can be complied with is assured by the restriction on vehicles accessing the site within those hours, to only Fulton Hogan-controlled fleet. Mr Jolly confirms that trucks within the control of Fulton Hogan can be directed to comply with rules and therefore the conditions of consent are entirely reliable and enforceable in regard these noise sources during these hours.
44. The issue, then, comes down to extending these controls to the 10 hours of day-time operations. Fulton Hogan's position is two-fold:
- (a) Such restrictions are not practicable; and
 - (b) Such restrictions are unnecessary.
45. The expert noise witnesses for other parties have not meaningfully engaged with either of the above issues. Their evidence assumes Fulton Hogan can control what its customers do, with *some management effort*.⁴⁵ Fulton Hogan considers that to be a significant understatement and misunderstanding of the actual position.⁴⁶
46. In any event it is submitted such a restriction is unnecessary to manage noise levels. From the outset, it must be borne in mind that this discussion only relates to noise during day-time hours. In addition, tonal reversing alarms are only relevant if vehicles need to reverse. Mr Chittock has explained the configuration of the site and the fact that only trucks depositing clean fill will need to reverse. Further, those instances of reversing will be between 30-60 seconds only, depending on whether it is only a truck or a truck and trailer unit.
47. Given that only about 25% of trucks to the site will be depositing clean fill anyway, and given that some of those trucks will not rely upon tonal

⁴⁵ Statement of evidence of Stephen Chiles for Canterbury District Health Board in relation to Acoustics dated 14 October 2019 at paragraph 22.

⁴⁶ Addressed in evidence of Kelvyn Jolly for Fulton Hogan Limited.

reversing alarms, and given further the existing day-time noise environment, it is submitted tonal reversing beepers during the day will not be a noise source of annoyance. Consequently, a complete prohibition of such vehicles is a disproportionate response and not justified on the evidence.

Engine braking

48. With respect to engine brakes, the Transportation and Route Management Plan discourages use of these even if a vehicle is fitted with them. In addition, Mr Farren explained that around 1% of trucks have these fitted and their use is entirely at the driver's discretion.⁴⁷
49. If the absolute maximum of 600 trucks were to enter the site in one day, only around 400 of them would not be within Fulton Hogan's control and therefore potentially going to use engine brakes. Of that 400, around 1% might have such brakes fitted – that is only 4 trucks. Of those 4 trucks, the use of engine brakes is at the driver's discretion and that driver would have been inducted and signed onto the Code of Conduct for the site. This includes compliance with the TMRP which discourages the use of engine brakes.
50. It is submitted the risk of annoyance from engine brakes is minimal – as concluded in Mr Farren's evidence.⁴⁸ Again, it is submitted a prohibition on trucks with engine braking potential entering the site would be a disproportionate response to a very slight potential.

Route restrictions between 6am and 7am

51. The proposed conditions control route choice completely between the hours of 8pm and 6am, by directing that only Fulton Hogan-controlled fleet can use the site at those times.
52. The noise experts (aside from Mr Farren) want route choice constrained until 7am also. It is submitted, on the strength of Mr Metherell's analysis, that such a constraint is unnecessary. The additional traffic on local roads attributable to the quarry will be minimal, when considered in the context of the existing and expected traffic environment.
53. Additionally, such a constraint would create practical difficulties for Fulton Hogan. An absolute prohibition could only be guaranteed by Fulton Hogan if

⁴⁷ Rebuttal evidence of Jon Farren on behalf of Fulton Hogan Limited – Noise dated 21 October 2019 at paragraph 16.

⁴⁸ Rebuttal evidence of Jon Farren on behalf of Fulton Hogan Limited – Noise dated 21 October 2019 at paragraph 17.

it had direct control of those vehicles. This would only occur if it effectively did not open its gates to customers until 7am. Because a reasonable amount of the work involving aggregate starts early, this would inconvenience customers unless Fulton Hogan found another way to supply them between 6am and 7am. It could do this by transporting stock to Miner's Road for collection during that one hour slot. But transportation of aggregate (and double-handling) comes at a cost. In the circumstances, it is submitted any additional cost is not warranted.

Perception of the Quarry on the viability of existing businesses in the area that train elite racehorses

54. The Panel sought commentary on potential adverse effects arising from the “perception” of a quarry on the viability of existing businesses in the area that train elite racehorses.⁴⁹ By way of summary, it is submitted that a “perception”, and in the present case what appears to be a fear of such perception, is not of itself an effect.
55. The Panel's role is to assess the actual and potential effects on the environment, rather than make its decision on, what in essence amounts to a concern of a perception impacting on the submitters' businesses.
56. The relevance of perception has been addressed in a number of cases. For example, in *Living in Hope Inc v Tasman District Council*⁵⁰ issues arose in relation to the establishment of a crematorium in a rural zone. The Court accepted that some people would be uncomfortable with death and dying and did not wish to live in close proximity to a funeral home, crematorium or cemetery. The Court went on to note that it did not consider discomfort on the part of some individuals to the mere presence of a particular facility amounted to an adverse effect on amenity values. It stated:⁵¹

“If that was the case, any proposal would be vulnerable to the discomforts of its opponents no matter how irrational or ill-founded those discomforts might be.”

57. That situation is analogous to the present case. The concern expressed by, in particular Mr McGrath, can be described as a “discomfort” or a fear that

⁴⁹ Hearing Panel Minute 13 – Reply matters and reconvened hearing dated 19 December 2019.

⁵⁰ *Living in Hope Inc v Tasman District Council* [2011] NZEnvC 157.

⁵¹ *Living in Hope Inc v Tasman District Council* [2011] NZEnvC 157 at paragraph [124].

clients will go elsewhere due to their perceptions about what a quarry in the vicinity might mean.

58. In *City Rail Link Limited*⁵² the Court stated at [64]:

“It is also relevant to restate that decisions in cases like this should not be made based on peoples’ fears that might never be realised.”

59. In *Shirley Primary School v Christchurch City Council*⁵³ the Court held:

“Whether it is expert evidence or direct evidence of such fears, we have found that such fears can only be given weight if they are reasonably based on real risk.”

60. In some respects, the issue raised by the submitter is comparable to the question of how relevant property values are, to an effects assessment. It is useful to again refer to the *City Rail* case, which held adverse effects on land and property values are not in themselves a relevant consideration. The Court stated at [63]:

“If property values are reduced as a result of activities on adjoining land, the devaluation would reflect the effects of that activity on the environment. The correct approach is to consider those effects directly rather than market responses because the latter can be an imperfect measure of environmental effects.”

61. It is submitted the principles that have been developed in the body of cases above are readily applicable to the current situation. Here, I submit the economic effects arising from perceptions, or not based on fact, and which may or may not eventuate and which may or may not impact on the relevant business, cannot be a matter taken into account. It is your role to assess the probative evidence in relation to effects on the environment of the proposed quarry.

62. You have the benefit of expert equine evidence from Dr Jorgensen⁵⁴ and, although more generic in nature, Dr Fitch. In addition, they prepared a Joint Witness Statement which evidenced a very high level of agreement.⁵⁵ You have also received ample evidence regarding noise, dust and traffic

⁵² *City Rail Link Limited (CRRL) (Successor to Auckland Transport) & Ors v Auckland Council* Decision No. [2017] NZEnvC 204.

⁵³ *Shirley Primary School v Christchurch City Council* [1999] NZRMA 66 at paragraph [193].

⁵⁴ Rebuttal evidence of Alec Jorgensen on behalf of Fulton Hogan Limited – Equine Health: Dr Fitch evidence dated 30 October 2019.

⁵⁵ Joint Witness Statement on equine health dated 13 November 2019.

movements. Your determination must properly be made with reference to that, rather than a concern that some people might not believe that evidence and therefore not be persuaded.

63. The “*correct approach*” here is to consider the effects directly rather concern yourselves with an apprehension as to “*market responses*”.

Brackenridge Services Limited

64. At the outset, Fulton Hogan acknowledges the value and importance of Brackenridge and the services it provides. It has considerable compassion for the residents, their families and the caregivers at Brackenridge. Fulton Hogan accepts without reservation its place within the Templeton community. It engaged openly with the Brackenridge representatives prior to the hearing and it has listened carefully to the evidence provided.
65. Ms Appleyard submitted Fulton Hogan had failed to assess effects on residents in Globe Bay Drive and Iraklis Close. Since that time, Fulton Hogan sought and obtained details of those properties on a confidential basis. Upon receipt of the specific house numbers, Fulton Hogan asked its experts to re-consider the earlier assessment of effects which was based on more generic locations. Their responses to Counsel were as follows:
- (a) In terms of traffic, Mr Metherell advises:
- (i) it would be difficult to deduce a traffic effect in the immediate vicinity of those properties;
 - (ii) any vehicles on those roads would be servicing building sites or road / utility maintenance and that would be very infrequent – there would be no distinguishable effect between the proposal and if the material was sourced from a different consented quarry;
 - (iii) In terms of Jones Road, the assessment and modelling indicates very low volumes of heavy traffic on the adjoining section of Jones Road. It is expected that heavy vehicles from the site will use State Highway 1 in preference to Jones Road through Templeton, and this is also encouraged by the TMRP (as per conditions of consent). Any occasional use that does occur will

be difficult to discern against background levels of heavy traffic use of the road;⁵⁶ and

- (iv) In terms of wider use of the road network by residents, the quarry development includes road mitigation works where the site traffic has the biggest change – between the site access and SH1. This will improve existing levels of road safety for all users of that area.

- (b) As to dust, Mr Cudmore notes that the properties are more than 700m from the Roydon Quarry site boundary and are within the Templeton township. At this distance all air quality experts agreed any potential health effects would be negligible.⁵⁷

- (c) With regard to noise, Mr Farren states – in response to Dr Porter’s paragraph 12 - the quarry activities will not increase existing noise levels at the specific dwellings.⁵⁸ Based on the ambient noise level data held by Mr Farren, the dwellings are already subject to an elevated ambient noise environment dominated by traffic noise and aircraft overflights.

He acknowledges that quarry noise may be discernible from time to time at locations outside of the dwellings, albeit at a low level, but inside the dwellings quarry noise is unlikely to be audible.

The residents already reside in an environment that is affected by noise (traffic, aircraft, Ruapuna) and elevated levels of dust at various times.⁵⁹ It is submitted any discernible effects outside the houses and only at some times, must be seen in that context.

66. In response to Panel questions, Ms Cartwright noted that traffic volumes in the vicinity of the houses had already increased and are expected to increase even more in the future (regardless of the quarry). The Brackenridge witnesses also confirmed the most medically compromised residents are in the further-away accommodation on Maddisons Road.

⁵⁶ Supplementary evidence of Andrew Metherell on behalf of Fulton Hogan Limited – Transport and Local Roads dated 9 December 2019 at paragraphs 2.1, 2.5 3.1 to 3.3; Summary Statement of Andrew Metherell on behalf of Fulton Hogan Limited dated 13 November 2019 at paragraphs 17 to 19 and 43(a); Rebuttal evidence of Andrew Metherell on behalf of Fulton Hogan Limited – Transport dated 21 October 2019 at paragraphs 17, 55 and 80; Joint Witness Statement dated 12 November 2019 at paragraph 17; Evidence of Andrew Metherell on behalf of Fulton Hogan Limited dated 23 September 2019 at paragraphs 72, 75 to 77 and 140 to 141.

⁵⁷ Joint Witness Statement on Air Quality dated 9 December 2019 at paragraphs 9 and 12.

⁵⁸ Supplementary rebuttal evidence of Jon Farren on behalf of Fulton Hogan Limited – Noise and Dr Porter’s evidence dated 30 October 2019 at paragraphs 5 to 7 in particular.

⁵⁹ Addressed in evidence of Roger Cudmore and Jon Farren for Fulton Hogan Limited.

67. Contrary to the legal submissions advanced for Brackenridge, it is submitted potential effects on its houses and residents have been appropriately assessed by the relevant experts, including cumulatively. In my submission the particularly high level of agreement between the experts on the key environmental effects must guide you towards a finding that cumulative effects are acceptable.
68. Because the experts have confirmed there will be no noticeable change in the environment, around either the main Brackenridge Estate site or the residential properties in Globe Bay Drive and Iraklis Close, it is submitted there was and is no need for any other special or different assessment to occur.
69. The legal submissions for Brackenridge discussed the bell curve and its application here.⁶⁰ In my submission there is no need for the Commissioners to undertake an arithmetic analysis of the percentages of those who reside at the Brackenridge residences as against the total population of Templeton to see whether they are within or without the 5%. Fulton Hogan has not had to ignore or dismiss any effects on Brackenridge. Its primary position is that this proposal will not have adverse effects as the relevant environment will not be altered in a discernible way.
70. As to effects of low probability and high potential impact, such an assessment requires two enquiries. The first issue is the assessment of the degree of probability of something occurring and the second requires an assessment of the consequences of it occurring.
71. The legal submissions for Brackenridge contained alarming assertions linking the proposal to death of residents at Brackenridge.⁶¹ These legal submissions were not supported by expert evidence, despite the very grave nature of them. Dr Porter advised he was not a respiratory physician so the effects of dust were not within his area of expertise. He also conceded it was very difficult to say what kind of noise and at what level adverse effects might occur. He advised that research is, by necessity, based on clinical experience and observation because most people in the relevant research group are unable to communicate.
72. When asked whether noise from aircraft and motor-racing was difficult to manage at the present time, Dr Porter responded by saying it was simply

⁶⁰ See paragraph 15.

⁶¹ See for example paragraphs 32 and 33.

impossible to tell. He said it was hard to see a clear relationship between the onset of noise and the deterioration of mental state.

73. Faced with a legal submission as to a potential effect of high potential impact (in this case, death), you are required to assess the likelihood of such a grave consequence occurring. Is there a real or plausible potential? In my submission and based on the evidence, there is not.

Roundabout options

74. Fulton Hogan advanced two options for the formation of a roundabout to address traffic safety concerns at the Jones Road / Dawsons Road intersection. Option 1 involves is a four-arm intersection between Jones Road west and Dawsons Road (**Option 1**). Option 2 is a three-arm intersection (**Option 2**). Improvements to the Jones Road / Dawsons Road intersection is a condition precedent of any land use consent granted for Roydon Quarry (Condition 14 of RC185627).
75. In order to construct Option 1, Fulton Hogan would need to acquire land owned by the Christchurch City Council (**CCC**). CCC advised during the course of the hearing that the land required for Option 1 may be used for a cemetery and might not be available for the proposed roundabout. Fulton Hogan has therefore focussed its efforts on Option 2 in this hearing. However, it wishes to retain the flexibility to pursue Option 1 if CCC changes its position and seeks consent conditions that allow either.
76. All expert traffic witnesses agree that either of the two roundabout options *will improve the situation at an intersection which currently has a poor safety record and can satisfactorily accommodate quarry related traffic.*⁶²
77. The Panel requested more information about how Option 2 would be advanced if consent is granted. The process and approvals required for Option 2 are set out in **Appendix A**. To advance Option 1, Fulton Hogan will only need to address the realignment of roads and associated physical works. No road stopping is required.
78. In summary, implementation of either roundabout Option entails an additional process to be followed. The outcome of that process cannot be guaranteed, but approval is a viable and realistic outcome.

⁶² Joint witness statement of Andrew Carr, Andrew Metherell, Tim Kelly, John Falconer, David Scarlet and Ian Clark on Traffic effects dated 12 November 2019 at paragraph 8.

79. The merits for consent or a decision under the LGA is in relation to the road itself.⁶³ It is difficult to conceive of how either Option could be rejected by either Council if their discretion is being exercised lawfully and reasonably. This is particularly so when the unsafe nature of the current intersection arrangement is taken into account. By requiring construction of either Option prior to commissioning of the quarry, all risk is borne by Fulton Hogan.

Duration of all consents and enduring conditions

Duration of consent

80. Fulton Hogan has sought an unlimited duration for the land use consents from both CCC and SDC and a 35 year term for the discharge consents for Roydon Quarry. It has also applied to either change the conditions of its existing water permit (CRC182422) pursuant to 127(3)(a) of the Act. CRC182422 expires on 1 July 2032, or be granted a new “use” permit with a 35 year term. The Panel has the power to grant the consents on the basis sought.⁶⁴
81. Ms Goslin for CRC has recommended a duration of only 13 years for all the requisite consents. Her rationale is so that the proposal can be thoroughly assessed through the renewal process. She discussed a possible reduction in water volume.
82. The Court in *PVL Proteins Ltd v Auckland Regional Council*⁶⁵ provided guidance on making a decision on the appropriate term for a resource consent:

[27] A decision on what is the appropriate term of the resource consent is to be made for the purpose of the Act, having regard to the actual and potential effects on the environment and relevant provisions of applicable instruments under the Act, the nature of the discharge, the sensitivity of the receiving environment to adverse effects, the applicant's reasons, and any possible alternative methods of discharge, including to another receiving environment.

[28] Relevant factors in making a decision on the term of the resource consent include that conditions may be imposed requiring adoption of the best practicable option, requiring supply of information relating to the exercise of the consent, requiring observance of minimum standards of

⁶³ See for example *Re Tasman District Council* ENV 65/2007 at [19] in respect of a decision to stop a road, citing *Ruapehua District Council* A83/2002 at [38](ii).

⁶⁴ Resource Management Act 1991, section 123.

⁶⁵ *PVL Proteins Ltd v Auckland Regional Council* A061/01.

quality in the receiving environment and reserving power to review the conditions.

(Citations omitted)

83. The Court went on to say:

Uncertainty for an application of a short term, and an applicant's need (to protect investment) for as much security as is consistent with sustainable management, indicate a longer term.⁶⁶ Likewise review conditions may be more effective than a shorter term to ensure conditions do not become outdated, irrelevant or inadequate.⁶⁷

84. The consents sought by Fulton Hogan have been comprehensively and thoroughly assessed through this hearing process. Fulton Hogan accepts the water take consent may be revised upon expiry and re-application. However, the unavailability of water under CRC182422 is provided for in the conditions of consent (Condition 27 of CRC192410) and requires Fulton Hogan *to assess the need to temporarily cease some or all parts of site operations requiring water usage to manage dust, including any mobile processing and acceptance of cleanfill, until such time when water can be taken again.* Any risk of water being unavailable, either now or after expiry of CRC182422, is addressed in conditions and it is a commercial risk assumed by Fulton Hogan. Mr Cudmore has confirmed that dust from passive sources is far less than from the activities listed.
85. Safeguards are provided in the consent conditions for responding to, inter alia, public and community concerns and complaints, both through the review conditions and the Community Liaison Group.
86. It is respectfully submitted that Ms Goslin's recommendation as to duration is commercially naive and environmentally unnecessary. This is a quarry with an expected life of 45 plus years. A 13-year term – and all the uncertainty that brings along with the costs of another full consenting process – would be quite remarkable. Particularly when the length of time for establishment and fulfilment of substantial condition precedents is taken into account.
87. In all the circumstances, it is submitted an unlimited term for the land use consents and a 35 year term for the discharge consents sought by Fulton

⁶⁶ *Prime Range Meats v Southland Regional Council* C127/98; *Brightwood v Southland Regional Council* C143/99.

⁶⁷ *Medical Officer of Health v Canterbury Regional Council* [1995] NZRMA 49.

Hogan is reasonable and the consents, if granted, should be granted on that basis.

Enduring consent conditions

88. A question arose during the hearing about whether conditions requiring remediation could endure beyond the expiry of consent. Ms Goslin provided the Panel with a legal opinion from Wynn Williams addressing the issue.⁶⁸ Ms Goslin relies on the opinion to conclude the conditions of consent should be amended to require rehabilitation of the site to be undertaken before the expiry of the consents.⁶⁹ It is submitted this is an overly-cautious and unnecessary approach.
89. It is also an approach that makes the 13 year duration even more untenable. If a 12 month allowance for rehabilitation is removed on top of a five year lapsing period and the precedent works required, there is very little time left for actual quarrying. Despite the resource being suitable for a 45 year quarry.
90. The legal advice relied upon by Ms Goslin supports the imposition of conditions requiring rehabilitation and subsequent monitoring beyond the life of the consents. It concludes such conditions would be valid and lawful under ss 108 and 108AA of the ACt and relevant case law.⁷⁰
91. Conditions requiring replanting of vegetation or the restoration of any natural or physical resource are specifically contemplated by s108(2). The cases of *Auckland City Council v Easton*⁷¹ and *Bay of Plenty Regional Council v Waaka*⁷², are examples of where the Environment Court has found compliance with conditions can be required notwithstanding a consent had been surrendered or had expired.
92. The *Waaka* decision is directly relevant. The Court in that case was required to consider whether a condition requiring the rehabilitation and covering a landfill site endured and could be enforced after the consent expired. The Court in that case concluded that the continuing conditions of consent were not avoided by the surrender or expiry of consent. The rehabilitation

⁶⁸ Summary statement - Section 42A Reporting Officer Canterbury Regional Council - Hannah Louise Goslin dated 11 December 2019, attached memorandum.

⁶⁹ Summary statement - Section 42A Reporting Officer Canterbury Regional Council - Hannah Louise Goslin dated 11 December 2019 at 9.5.

⁷⁰ See for example *Newbury District Council v Secretary of State for the Environment* [1981] AC 78; *Waitakere City Council v Estate Homes Limited* [2006] NZSC 112; *Cookie Munchers Charitable Trust v Christchurch City Council* W090/08 [2008] NZEnvC 363.

⁷¹ *Auckland Regional Council v Easton* A075/2009 [2009] NZEnvC 208.

⁷² *Bay of Plenty Regional Council v Waaka* [2008] NZEnvC 223.

condition was *intended to take effect at the end of or after the operation consented to* and the Court concluded suggesting a consent holder could avoid that condition simply by not undertaking the work during the term of the consent would ... be to undermine the basis of the consent itself. The Court's decision in *Waaka* was cited with approval in *Re Rodney District Council*⁷³ when discussing conditions of consents that might be seen to require fulfilment after expiry of the consent itself.

93. Wynn Williams' opinion concludes that rehabilitation and monitoring conditions can endure following expiry of the resource consent provided: the conditions are clearly framed and intended to be complied with at the end or after expiry of the consent; and the conditions do not require work that would otherwise require a resource consent. Counsel agree with this conclusion and submit the conditions proffered by Fulton Hogan meet these criteria.
94. Notwithstanding its conclusion above, the advice from Wynn Williams goes on to identify such conditions as having some risk for reasons that, in my submission, are not persuasive. It is submitted the risk is overstated and Ms Goslin's subsequent re-drafting is an over-reaction.
95. It is accepted each case will turn on its facts. In this case it is submitted the risk of the rehabilitation and related monitoring conditions, if tested, being found not to endure beyond the expiry of the consents is more properly considered very slim. The conditions have been drafted and are clearly intended to remain enforceable beyond expiry of the consent(s). The requirements of the conditions clearly set out what Fulton Hogan is required to do and over what time period.
96. It is difficult to conceive of a reason why the rehabilitation and monitoring conditions would not be enforceable. Such an approach would also be inconsistent with s138(3) of the Act, which provides a person who surrenders a consent remains liable to complete any work required to give effect to the consent (unless otherwise directed).

Conclusion

97. These legal submissions do not include a response to the issues raised regarding PM10 and Regulation 17. An addendum addressing that matter will be filed within the next couple of days.

⁷³ *Re Rodney District Council* [2010] NZEnvC 85.

98. On all other matters it is submitted:
- (a) There is a high level (almost entire) of expert agreement; and
 - (b) Many of the concerns raised by lay-persons were predicated on effects that are not predicted (by the experts) to arise.
99. Fulton Hogan acknowledges the many and varied concerns the community and expert witnesses have raised with it since consultation commenced. Through the process to date it has endeavoured to conduct itself according to the principles of transparency, availability and open-mindedness. To this end it has modified the proposal and the proposed conditions of consent, where appropriate.
100. The proposal Fulton Hogan pursues is of considerable significance to it, the constituents of Greater Christchurch and of course the community within which it is proposed to operate. The proposal will ensure a long-term supply of an aggregate product essential to infrastructure development and, therefore, community wellbeing. Fulton Hogan has, before and during this consent process, committed to ensuring this can be delivered alongside rigorous management of potential adverse effects. Fulton Hogan has presented its proposal with pride – a proposal it considers to be an exemplar in the way it is designed, proposed to be managed and rehabilitated throughout its productive life.

Dated 30 January 2020



D C Caldwell
Counsel for the Applicant

Appendix A – Process for advancing Option 2 for Jones Road / Dawsons Road roundabout

101. Jones Road and Dawsons Road are boundary roads between Selwyn District and Christchurch City. Accordingly, each Council has control to the middle line of these roads. Both would be involved in the approvals needed to advance Option 2. Option 2 lies within Fulton Hogan's landholding. However, Option 2 involves the realignment of the roads and associated physical works and therefore requires formal stopping of parts of Jones Road and Dawsons Road. The processes will run in parallel but it is anticipated authorisation of the physical works will be conditional on the roads being stopped.

Realignment of roads

102. Both SDC and CCC would need to approve physical formation of the roundabout option (**Works**) and associated works. SDC will need to approve the parts of the Works that are in its district and CCC will need to provide approval where the Works connect to a road controlled (wholly or partly) by CCC. KiwiRail may also be involved in this process if the changes proposed are considered to impact the rail corridor. Once approval is given, a survey will be completed to legalise the realigned road.

103. The survey would be completed as a Survey Office plan to allow for different parts to be actioned as and when required. Once the survey plan is approved as a survey, the legalisation of the new realigned road can be completed either by (a) a transfer instrument - dedicating the land as road, or (b) by gazette notice - gazetting the land as road. A title would be requested for the balance of the Fulton Hogan land. There may also be a need for amalgamations with adjoining land and these could be undertaken at the same time.

104. This process will also be required to be undertaken if Option 1 for the roundabout is advanced.

Road stopping

105. Option 2 also includes parts of Dawsons and Jones Roads to be stopped. Again this process will involve both SDC and CCC and any other adjoining land owners. Road stopping can be undertaken pursuant to the Public

Works Act 1981 (**PWA**)⁷⁴ or the Local Government Act 1974 (**LGA**)⁷⁵. The relevant provisions from the PWA and LGA are annexed as Appendix X.

106. The PWA road stopping process involves a declaration by the Minister of Lands, by notice in the Gazette. The stopping is not publicly notified. Because the amount of road involved here is small, this could be undertaken with the consent of all affected adjoining landowners and relevant roading local authorities.⁷⁶ If the relevant consents are given, the road will be stopped. Once a road, or part of it, has been declared to be stopped the land can be dealt with as if it had been stopped under the LGA.⁷⁷
107. The LGA process requires public notification and consideration of any objections in relation to the road stopping.⁷⁸ If no objections are received, the road can be stopped by the Council.⁷⁹ If objections are received, the Council can either decide to allow the objection(s) and not to stop the road or refer consideration of the merits of the closure to the Environment Court.⁸⁰ The Minister of Lands' consent would also be required as the roads proposed to be stopped are rural roads.⁸¹ This is a procedural rather than substantive step.
108. If the road is stopped, it can be dealt with by the respective councils. Options include transferring the land to Fulton Hogan and amalgamating the land with adjoining land parcels.
109. In summary, SDC and CCC have discretion to determine whether to follow the PWA or LGA procedures. CCC have a Road Stopping Policy which applies to all proposed road stoppings and includes criteria for determining the appropriate statutory process. A copy of the Road Stopping Policy is annexed as Appendix X. SDC does not have a Road Stopping Policy but its website records that it will follow the process in the LGA.⁸²
110. Under the CCC Road Stopping Policy, whether the PWA or the LGA process is followed will largely depend on whether the relevant parties consent to the stopping, whether the stopped roads will be amalgamated into adjoining land

⁷⁴ Public Works Act 1981, ss 116 to 117.

⁷⁵ Local Government Act 1974, section 342 and Schedule 10

⁷⁶ Public Works Act 1981, s116. The parties to consent would be CCC (as an adjoining landowner and roading authority), Fulton Hogan (as an adjoining landowner) and SDC (as roading authority).

⁷⁷ Public Works Act 1981, s117.

⁷⁸ Local Government Act 1974, Schedule 10, clauses 2 and 3

⁷⁹ Local Government Act 1974, Schedule 10, clause 4.

⁸⁰ Local Government Act 1974, Schedule 10, clause 5.

⁸¹ Local Government Act 1974, s342(1).

⁸² <https://www.selwyn.govt.nz/services/roads-And-transport/road-stopping-notice>

parcels, and whether there are adverse effects from the road stopping proposal.

111. In a situation such as this - where there has been extensive opportunity for the public to comment on the proposal including the proposed roading improvements - it is quite feasible the PWA process would be followed. Over 450 submissions have been made and the safety benefits of the Options are agreed by all independent traffic experts. Another publicly notified process is unlikely to evince any further information. If people were concerned about what it would mean for them, it is reasonable to assume they would have submitted on this application.
112. If the PWA process is followed, the only way the road stopping would not proceed is if one or more of the relevant parties refuse to give consent. Consent could only be withheld for a valid roading consideration and any decision to withhold consent must be lawful and reasonable. It is hard to envisage why any party would withhold consent here when there has been expert consensus about the safety improvements associated with both Options.
113. An unreasonable decision to withhold consent could be subject to judicial review.
114. If the LGA process is followed, the Councils have discretion to accept or reject an application to initiate a road closure and discretion as to whether the road closure itself should be approved. As with any decision of this nature, the Councils must exercise their discretion lawfully and any decision made must be reasonable.
115. In the case of CCC, discretion must also be exercised having regard to criteria in the Road Stopping Policy. One of the relevant criteria is traffic safety – *Does the access or egress of motor vehicles on this section of road constitute a danger or hazard to the road users?* Again, the safety benefits associated with either proposed improvement is not controverted by any expert evidence.