IN THE MATTER OF	**The Resource Management Act 1991**
AND	**Applications to the Canterbury Regional Council** by SOL Quarries Limited: ref: CRC 193563, CRC 193564 and CRC 193773.
AND	**Application to Christchurch City Council** for land use consent at 93-133 Conservators Road: ref: RMA 2019/373

CLOSING LEGAL SUBMISSIONS FOR SOL QUARRIES LIMITED

Dated 23 December 2020

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MAY IT PLEASE THE COMMISSIONERS

1 Over the course of the hearing, SOL has presented the Commissioners with a comprehensive case on the key issues in dispute from experts, whose views are, for the most part, aligned with the experts in the equivalent area of expertise engaged by the Councils. This includes:

1.1 Traffic effects, involving the effects of traffic movements on the surrounding road network;

1.2 Air quality effects primarily in relation to nuisance effects and health effects including compliance with Regulation 17 of the NESAQ (**NES**);

– Both in consequence of the SOL proposal on its own and cumulatively with the effects of other established quarries in the locality

1.3 Effects on water quality;

1.4 Noise effects;

1.5 Rural character and visual effects.

Relevant policy framework

2 As noted by the Commissioners, a consideration of the effects of SOL's proposal has to be analysed through the policy framework of the relevant plans; the district plan in particular, specifically Policies 17.2.2.12 and 17.2.2.13.

Policy 17.2.2.12

3 New quarrying activity in rural zones other than the Rural Quarry Zone is to be provided for only where the activity (relevantly):

> b. avoids or mitigates effects on activities sensitive to quarrying activities, including residential activities …;
>
> c. internalises adverse environmental effects as far as practicable using industry best practice and management plans, including monitoring and self-reporting;
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> d. manages noise, vibration, access and lighting to maintain local rural amenity values; and
>
> …
>
> f. ensures the sighting and scale of buildings and visual screening maintains local rural amenity values and character.

4 If effects cannot be avoided, it is sufficient that they are mitigated where they potentially impact upon the residents (along Conservators Road in this instance). Guidance as to the extent to which effects have to be mitigated (if not avoided) is signalled in c, which requires that adverse environmental effects be internalised "as far as practicable …". This contemplates that there will not be a complete internalisation of effects.[1]

5 The *Winstone* decision addressed the primary effect of activities that emit adverse effects and identified principles, of which the following are relevant in this case:

> (a) in every case emitting activities should internalise their effects unless it is shown, on a case by case basis, that they cannot reasonably do so;
>
> (b) there is a greater expectation of internalisation of effects of newly established emitting activities than of older activities;
>
> (c) having done all that is reasonably achievable, total internalisation of effects within the site boundary will not be feasible in all cases. There is, however, no requirement in the RMA that this must be achieved;
>
> …

Traffic

6 No issues emerged during the course of the hearing as to the effects of traffic movements on the surrounding road network, and nothing more is said on that in this Reply.

Dust

7 In terms of air quality and 'nuisance' effects of dust, SOL's expert analysis and predictions have been exposed to a rigorous review on behalf of each of the Councils since the application was first lodged. Right up until the close of the hearing, SOL's air quality expert has continued to gather and collate site specific data which validates his original evidence on the background levels of dust.

8 No other submitter called expert evidence on dust (or on any other for that matter), and overall it is submitted that SOL has presented the Commissioners with information sufficient to discharge its evidential burden as to any actual and potential effects associated with dust.

[1] In the *Winstone Aggregate & ors v Matamata-Piako District Council* A49/2002 EnvC at paras [25]-[27] and [34] line of cases the Court has repeatedly reiterated that full internalisation is not achievable for quarrying activities

Site specific data 'gold'

9 Resident submitters misunderstood Mr Bluett's evidence, which is said to have described the data compiled in the Mote Report as 'gold'. However, Mr Bluett was referencing the site specific data collected at the subject site and not the data collated in the Mote Report. He described that data as 'gold' because it was the kind of site specific data that was *not* before the Court in the HGL case.

10 As observed by the HC in the HGL case,[2] the Environment Court had been critical of the fact that there was no comprehensive description of the existing dust environment near the proposed quarry site, which amounted to an insufficiency in the evidence, which is not a feature of the SOL proposal as there is evidence before you as to the background level of dust in the vicinity of the extension site.

11 Mr Bluett had discussed this site specific data in his EIC. Without exception, it was ignored by submitters in the testimony they gave at the hearing, preferring to focus on their criticisms of the Mote Report.

12 Even so, Messrs Chilton and Bluett stand by the relevance and usefulness of the monitoring results reported in Mote. Each describes the conservative nature of that information relative to the circumstances existing at and in the vicinity of the SOL extension site.

13 Mr Bluett notes[3] that the dust sensitivity of residential properties close to the Yaldhurst quarries is high and mirrors the sensitivity of the Conservators Road properties to the effects of dust.

14 However, he also notes that the location of the monitoring sites used for the Yaldhurst quarries ranges between 50m and 190m downwind of the boundary of the quarry area, whereas the Conservators Road properties will be at least 250m downwind and at least 600m from the screening and crushing plant.

Mr Bluett's reply

15 Counsel has instructed Mr Bluett to prepare a response in reply to the evidence given to the Commissioners by the submitters, and to comment on the question of cumulative dust effects that were put to Richard Chilton.[4] Mr Bluett has also responded to the evidence of

[2] At para [123]
[3] In his reply at para 4.5
[4] Statement in Reply of Mr Jeff Bluett dated 17 December 2020

the residents as to their lived experience with dust, which they attribute to the quarries surrounding them, including the photographic evidence presented by the Emmersons.

16 Questions were raised at the hearing as to the location of the monitor and whether it was situated so as to capture a representative picture of the windblown dust from the SOL site. This is addressed in Mr Bluett's reply at paras 3.1 and 3.2.

17 His evidence is that the monitor is located between the quarry and residential properties on Conservators Road during the south-westerly winds, being the winds that would carry dust towards their properties.

18 In Mr Bluett's opinion, the technology and location of the dust monitoring equipment is suitable to capture representative samples of any dust plume emitted from the SOL quarry site during a south-west wind.

19 As to the source of dust experienced on the submitters' properties, although he has provided expert observations on that, Mr Bluett is not able to identify the source of the dust within the submitter's household in any forensic sense.

20 However, his opinions on that are based upon his knowledge as to the location of the submitter's dwelling relative to the surrounding quarries (including distance) in the different wind conditions that are likely to transport dust.

21 Mrs Janssen gave evidence that she is prone to asthma when the quarries are operating. The sincerity of her evidence and her concerns is not doubted by SOL. However, there was no evidence that would allow you to come to a conclusion that the dust that affects the Janssens is attributable to the SOL quarry, which the residents are only downwind of in southerly winds.

22 A consideration of the potential dust effects must be based on normal physiological responses and cannot seek to protect those whose sensitivities might be at the higher end of the scale.[5]

23 It is also noted that the nearby Fulton Hogan and KB sites operate under reasonably lenient parameters when compared to the operating conditions imposed on the existing SOL

[5] On the authority of *Motorimu Windfarm Limited v Palmerston North City Council* W067/08 and *Re Meridian Energy Limited* [2013] NZEnvC 59 at [299]

consents.[6] I say more about that when addressing noise, although the comments I make in that context are also as applicable to dust.

24 The evidence of Dr Chilton and Mr Bluett each withstood the scrutiny of each of the Commissioners, and the objectivity and professionalism of each of these experts is not open to doubt.

25 In terms of Policy 17.2.2.12, the air quality experts are agreed that SOL is using best industry practice methods of mitigation which includes management plans that require monitoring and self-reporting, inter alia.

Allegations of poor management of dust

26 As to the submitters' personal testimony, the concerns around management of the quarries, and allegations of non-compliances, lack of diligence in the implementation of mitigation measures (on dust in particular) and lack of accountability on the part of the quarry operators was heard and understood by the directors of SOL, who were present at the hearing and a response to that is provided in the (**attached**) statement of Mr Simon Apperley, General Manager of the SOL Group.

27 SOL's amended conditions introduce an increased level of due diligence in the day-to-day operation of the quarry to ensure that appropriate and adequate dust mitigation measures (and accountability for achieving the same) are in place at all times.

28 This includes the periods outside the operating hours of the quarry, where, as Mr Apperley explains,[7] there will always be someone on call who is able to remotely monitor conditions on site. All mitigation measures are able to be manually turned on as and when required.[8]

29 SOL now also proposes to fully seal the length of the light vehicle entrance, and to extend the sealing of the Haul Road further within the site for a distance of (approx.) 100 metres to the crushing plant area.[9] SOL will continue its daily washing of the haul road entrance,[10] as it has consistently done in the past.

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[6] See Table 1. Quarries within a 1500 m radius of SOL Quarries circulated by Ms Cooper at the Commissioners' request
[7] In his Statement dated 17 December 2020
[8] Statement of Mr Apperley dated 17 December 2020 at para 14
[9] Statement of Mr Apperley dated 17 December 2020 at para 4
[10] More about that is said in responding to the allegations of non-compliance in the documents attached to these submissions

Effects on water quality – Cleanfill activities

30 The updated conditions:

30.1 outline the due diligence inquiries to be undertaken by both SOL and any clients who propose to deliver cleanfill to the site, in accordance with the recommendations of Mr Freeman and the experts engaged by CRC;[11]

30.2 reinstate the condition requiring that the background level of soil contamination on the sites from which cleanfill is sourced shall not exceed that of the extension site, as depicted by the Canterbury maps referenced in the relevant condition.

31 In terms of the extraction activities, SOL proposes to retain at least 1 m of separation between the maximum excavation depth and the highest recorded groundwater level, and there is no dispute as between the Applicant and the CRC that the separation distances proposed by SOL are inadequate and need to be amended in the manner suggested by Mr Emmerson.

32 All 3 "monitoring bores" align with the recommendations in Amber Kreleger's Report for the CRC. One is a new bore will be installed up-gradient of the existing Quarry (in order that it is not affected by the infill/cleanfill of the existing Quarry) with 2 bores down-gradient of the Quarry extension, capturing any effect on down-gradient water supplies.

33 With these conditions in place, it is considered that the actual and potential adverse effects arising from the cleanfill activities on water quality will be less than minor.

Cumulative noise effects

34 The Commissioners put questions to each of Mr Smith and Dr Trevathan on whether there would be unacceptable cumulative noise from each of the quarries in addition to that produced at the SOL extension site.

35 As the HC found in the HGL case,[12] the key issue before the Environment Court was not whether HGL would comply with the district plan noise standard, but whether the HGL noise, with all other noise sources, changes the ambient noise levels, and the effect of amenity on any such change.

[11] Ms Iles and Dr Massey
[12] At para [107]

36 However, HGL had involved a new quarry, which is not a feature of the proposal before you here. With the extension of the SOL quarry, the noise emanating from the site will not be additive to the existing noise source, but will continue for a longer period of time at the same levels as are currently experienced.

37 The application here is distinguishable from the HGL case.

38 The concept of 'cumulative effects' is typically applied in the situation where the additional effect has a synergistic association with the existing effects and results in an increase in the overall effect.[13]

39 In *Kuku Mara Partnership v Marlborough District Council*[14] the Court said of this concept:

> If an existing activity has adverse effects and a proposed activity also has an adverse effect even if only minor, which would add to the existing effects, then the definition, requires a consideration of both.

40 As to that possibility, each of the experts was unequivocal that there would be no noticeable cumulative adverse noise effects. The reasons for their predictions were equally clear; due to the distance between each of the quarries and from the residents along Conservators Road, and their location relative to each of the quarries in the different winds. Accordingly, there is not likely to be any cumulative noise experienced by the receivers in excess of 50 dBA Ldn.

41 In answer to questions, Dr Trevathan stated that the exposure to noise if the SOL extension is consented would not likely lead to any annoyance, and would not be unreasonable, even if there may be longer periods where there will be a noise exposure from one or more of the quarries (i.e. less 'respite'), albeit at levels that comply with the district plan.

42 The term 'respite' was used by a number of those present at the hearing, although it is not a term that is particularly apt in a situation where the exposure is to 'externalities' in doses considered to be acceptable under the district plan.

43 Dr Trevathan in particular emphasised the 'acceptability' of a daily exposure to noise at the daytime level set by the plan, which, in his expert opinion, would not be unreasonable and would not likely lead to annoyance, even if experienced for longer periods during the day and/or for more days (even every day).

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[13] In *Dye v Auckland RC* [2002] 1 NZLR 337 it was described as a gradual build-up of consequences as a result of a combination of effects

[14] [2005] L11 ELRNZ 466

44 It suffices to say that the evidence of the acoustic experts has to be preferred over that of Ms Bealey, particularly the reasons why she could not accept the expert opinions were not explained.

Why is it that the residents lived experience does not match the outcomes predicted by the experts (on noise)?

45 That question cannot be answered in any complete sense, however, in respect of noise, it should be noted that the level of protection on other quarry sites is not as sophisticated as that proposed by SOL as Dr Trevathan (and Ms Bealey) explained.

46 The KB quarry consents (for instance) do not have any limits on the use of the crushers, which are mobile plant and are able to be used anywhere on site. There is no requirement for these machines to be located on the gravel pit floor as is proposed by SOL. The KB consents also permit concrete crushing, and the use of a jaw crusher is not excluded by the terms of their consents, as well as gravel crushing on site.

47 Moreover, the height of the KB crushers (when at natural ground level) sit proud of the bunds. It cannot be ruled out that the crushers or other KB machinery that are heard by some of the residents are those that are operating on either the KB or Fulton Hogan quarry sites.

Relevance of residents' view on rural character and amenity values

48 Some of the submitters placed significant store on the Environment Court decision in *Yaldhurst Quarries Joint Action Group v CCC*,[15] particularly in the extent that the Court relied upon the "expertise" of the residents in this locality in describing the rural character and amenity values they enjoyed.

49 The residents' views were said to have been taken seriously in circumstances where the Commissioners had never adequately listened to them, and had proceeded to grant consent in the face of opposition they had raised.[16]

50 It is correct that the Environment Court was critical that the experts engaged in the HGL case had made no attempt to ascertain the residents' perspective, although the HC emphasised[17] that the residents do not have any veto over a proposal due to their concerns

[15] [2017] NZEnvC 165, which was upheld on appeal to the High Court in *Harewood Gravels Co Ltd v CCC* [2018] NZHC 3118
[16] According to the evidence of Mr Mahoney
[17] At para [226]

that it may impact negatively on their amenity. The HC agreed that the residents' evidence is 'prime evidence', although it has to be subjectively assessed within the policy framework of the district plan.

51 As to that, it needs to be emphasised that the zone is not a rural residential and/or rural lifestyle zone. A rural lifestyle level of amenity may once have been enjoyed by the residents, although their expectations have to be tempered to reflect that this is in fact a rural productive zone.

52 Moreover, the HGL application was declined due to poverty in the evidence that prevented the Court from being satisfied that either of the threshold tests for a non-complying activity could be met.

53 Much opposition was raised to the fact that SOL proposed to screen the activities to be conducted on the quarry site with shelterbelt plantings and bunds. The residents' opinion was that they would know what was going on behind the bund and the trees. However, Policy 17.2.2.12 contemplates that visual screening may be used to achieve internalisation and/or mitigation of adverse effects.

54 Accordingly, the screening (in this case, primarily shelterbelts and within those, the bunding) cannot be said to give rise to adverse effects that militate against a grant of consent (due to an impact on rural amenity values and character).

Effects on amenity values not equal to landscape effects

55 For the CCC, Ms Dray undertook an assessment of the effects of the proposed quarrying activity on the landscape values of the site and wider environs. In her role, which she described as being "an advocate for the landscape",[18] she was also opposed to the shelterbelts, bunding, and to the rehabilitated state of the quarry (long term) if it were not to be restored to the ground levels existing today.

56 However, there is no specific reference in the dedicated policies for new quarries and rehabilitation of quarry sites to landscape effects, as the focus is on rural character and amenity values.

[18] Counsel does not agree that the role of a landscape architect is to advocate for the landscape as Ms Dray explained. The expert's role is to undertake a landscape assessment to inform planning and resource management decisions as an independent and objective expert, and notes that Ms Dray's portrayal of her role is inconsistent with the role of an expert as described in the Code of Conduct for an expert witness as published in the Practice Notes 2014 of the Environment Court. An expert witness cannot be an advocate for any party or interest in a given case

57 The evidence of Ms Dray does not support a decline of consent. The RMA concept of 'amenity values' necessarily encompasses the landscape attributes, although the definition of amenity embraces a wide range of other elements as well. More importantly, an assessment of effects on amenity values is not the same as, and cannot be substituted with an assessment of the effects on landscape in the manner undertaken by Ms Dray.

Water allocation

Permitted and consented allocation

58 For SOL it is submitted that there is an adequate available supply of water to meet its daily needs of a minimum of 200 cumecs per day. The permitted and consented volumes would meet this need without resort to the water available from the Selwyn District Council (**SDC**) Stock Water Race.

59 As foreshadowed in my Opening, Ms McLintock for the CRC has raised an argument in relation to the proposal to use a permitted allocation of water (from the existing bore) in conjunction with a consented allocation acquired from the Higgs (from the second bore) for the purpose of dust suppression (which would include irrigation of the vegetation on rehabilitated quarry land and the bunds).

60 Ms McLintock advanced that argument at the hearing, although it is fair to say that the rationale behind Ms McLintock's view on this matter remains somewhat illusive, although I understand that it has to do with the allocation limits in the LWRP.

61 In terms of the LWRP, the site is within a catchment that is fully allocated, and that is not disputed by SOL. However, there is a permitted allocation provided for under the LWRP for which a CoC has been issued to SOL. This is used for dust suppression purposes on the existing quarry site. The permitted allocation was the subject of a CoC issued by the CRC following lodgement on 28 September 2015. A copy of that is **attached** to these submissions (**the Permitted Take**).

62 The CoC was issued under Rule 5.114 LWRP, which, at the time the CoC was sought, had stated that:

> The taking and using of less than 5 L/s and more than 10 m^3 but less than 100 m^3 per day of groundwater is a permitted activity, provided the following conditions are complied with:
>
> a. The site is more than 20 ha in area; and
>
> b. The bore is located more than 20 m from the site boundary where that adjoining site is in different ownership, or any surface waterbody.

63 The water take proposal also complied with Proposed Plan Change 4 to the LWRP which amended the permitted activity condition so that it reads:[19]

> The taking and using of less than 5 L/s and more than 10 m³ but less than 100 m³ per property per day of groundwater on a property more than 20 ha in area is a permitted activity, provided the following conditions are complied with:
>
> a. The bore is located more than 20 metres from the property boundary, or any surface water body.

64 A CoC is deemed to be a resource consent which authorises the activity described therein, although nothing much turns on that fact for the purpose of responding to the issue Ms McLintock has raised.

LWRP allocation framework

65 The Permitted Take is one of a number of small and community water takes for which permitted activity status applies under the LWRP,[20] which, as stated in the LWRP, relate to water takes for small and community water takes and construction, including road maintenance. These permitted takes are in addition to an individual's rights to take water in accordance with s14(3)(b) of the RMA.[21]

66 The LWRP also states that any take that does not comply with the permitted activity standards is to be considered under the rules for other water takes (Rules 5.121 to 5.132).[22] Accordingly, a 'take and use' that complies with the volumetric and property area limits in Rule 5.114 but does not comply with the bore separation distance is constituted a restricted discretionary activity by 4.114A. The relevant effects to be considered would be limited to the effects of not meeting that separation distance from a nearby bore.

67 Under the LWRP, the allocation framework only has any regulatory 'teeth' in relation to a water take and use for which resource consent is required. That is because there is no control able to be exerted by the CRC as to the extent to which the permitted allocations are taken advantage of and actually used.

68 There is no overriding cap on the volume of water able to be taken under this permitted activity rule, other than the property specific volumetric limits specified in the rule itself. The same applies to the statutory permitted takes authorised by s14(3)(b) of the RMA.

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[19] The amended rule introduced by a proposed plan change is the operative rule for present purposes
[20] In Chapter 5
[21] Per Introductory Note 2 on page 127 LWRP
[22] Introductory Note 1

69 Accordingly, the use of the Consented Take in conjunction with the Permitted Take does *not* lead to an increase in the allocation of water (or an over-allocation) within the relevant catchment, which appears to be Ms McLintock's overriding concern.

Consented take

70 The consented take from the second bore is allowed to be used for irrigation of the land area depicted in the plan attached to the consent, part of which has been acquired by SOL for the quarry extension. The take and use consent was originally consented for the growing of grass (ready lawn) (**the Consented Take**).

71 Although the application of the water to the land (by SOL) will be for a (very slightly) different purpose (dust suppression as well as the irrigation of grass), that is irrelevant for the purpose of responding to the specific issue Ms McLintock has raised.[23]

72 Until recently, the Permitted Take was being used by SOL for its existing quarry at the same time that the Consented Take was being used for the irrigation of land in conjunction with the (former) ready lawn business operated on what was the Higgs land, without complaint from the CRC.

73 Now that SOL has acquired part of that land, the Consented Take is able to be used by SOL on the site it has acquired from the Higgs' for irrigation of grass (i.e. the land in its current state) in conjunction with the exercise of the Permitted Take used for dust suppression on the **existing** quarry site (as it has done since 2016). No complaint could or has been raised about that by the CRC.

74 The question appears to be whether the Permitted Take is able to be used in conjunction with the Consented Take now (partially) transferred to SOL for the purpose of dust suppression (including irrigation of grass) on the existing **and** the quarry extension sites.[24]

75 I cannot identify any legal principle that could be seen as an impediment to the combined use of the takes as proposed by SOL. I address the legal opinion for the CRC further on.

76 It is trite law that a person is able to obtain successive consents in respect to the same property on the authority of *Sutton v Moule*.[25] Where there are multiple consents in

[23] A use of the consented water take is able to be pursued if that is thought to be necessary on the authority of *Aotearoa Water Action Inc v CRC* [2020] NZHC 1625
[24] Noting that for the purpose of the permitted activity rule, the definition of 'property' encompasses the existing quarry site and the extension site. I set that out definition out in my Opening Submissions for SOL
[25] *Sutton v Moule* (1992) 2 NZRMA 41

respect of a property, it is a matter of interpretation as to whether they are to be construed as operating alongside one another or whether one (the later consent) overrides another consent issued earlier in time.

77 There is no legal authority for the proposition that land cannot be used for a consented activity and a permitted activity at the same time. This is likely because it is trite law that it can be so used.

Response to CRC legal opinion on water allocation issue

78 I have now had the opportunity to read the opinion from Wynn Williams dated 17 December 2020. A striking feature of the opinion is that it does not mention that the takes are from two separate bores. The takes are intended to be used on the one single 'planning unit' comprising land within more than one Certificate of Title for the same use, albeit they are takes from two separate bores, which can be used separately or at the same time.

79 As earlier concluded, SOL disagrees with the contention that conditions of Rule 5.114, which pertain only to the Consented Take, would be 'compromised' if the Consented Take is to be taken and used for dust suppression on the same site,[26] because the water is to be taken from a separate bore under a separate permission authorising a take from that bore.

80 Simultaneous take and use of the water from each of the bores does not compromise SOL's ability to continue to meet the Rule 5.114 conditions (pertaining to the separation distance from nearby bores and/or the volumetric limits) reflected in the CoC (pertaining to the Permitted Take).

81 Wynn Williams place much store on the wording of s14, in the extent that it states that a person is not prohibited from "taking … water" if it is expressly allowed by a rule in the plan or a resource consent, as though a property owner can only rely on a single source of authority, i.e. a permitted activity status in terms of the plan *or* a resource consent. However, that is not a tenable interpretation of that section, the effect of which is that one or other of the authorities must exist to avoid being in breach of the RMA.

82 The situation arising here is little different to the situation that often arises in a farming operation where there is more than one point of take for water used in the irrigation of a farm, where water is supplied from two (or more) different take points. In that scenario,

[26] The extension site

the conditions of each of the consents will have to be met, whether or not the consents are used at the same time.

'Holistic' or 'bundled' approach wrong in law

83 The fact that two (or more) consented takes (or even a permitted and a consented take) are to be used for the same purpose on a property[27] does not mean that each of the takes has to be looked at 'holistically', as though the combined volume was taken from any one single take point. This appears to be the reasoning advanced for the CRC.

84 A similar issue arose in the High Court decision of *Marlborough District Council v Zindia Limited*,[28] a decision (curiously) relied upon by Wynn Williams for its stance that the Consented and Permitted Takes have to be looked at holistically, which comes close to, if not equates to, taking a 'bundling' approach.

85 In *Zindia*, the Court had to consider the construction of a resource consent that authorised the use of land for forestry. The question was whether the Environment Court had erred in bundling all activities as one for the purpose of determining activity status, including the permitted aspects of the overall forestry activity.

86 Wynn Williams relies on *Zindia* to support its view that the CoC for the Consented Take cannot here be relied upon in conjunction with the Consented Take to a supply of water for the quarry. However, the High Court confirmed that consent is not required for a permitted activity that is a component of the overall intended use of the land.

87 Moreover, in this situation the CoC for the Permitted Take was issued in 2015, whereas the Consented Take was authorised in 2018 and transferred to SOL in 2020. These 'authorised' activities do not form part of the overall bundle of activities for which consent is now sought by SOL, but would be exercised alongside them. No issue of 'bundling' or taking a 'holistic' approach as advocated by Wynn Williams arises, as it had done in the *Zindia* case.

88 In any event, in *Zindia*, the High Court agreed with the Council that a permitted activity could not be 'bundled' into an application for more restricted activities for which consent was required. The Court stated that 'bundling' ought not be used when discussing permitted activities, because 'bundling' only applies to a case where a resource consent application has been submitted comprising multiple activity classes.

[27] Including a property as defined in the LWRP (set out in my Opening Submissions)
[28] [2019] NZHC 2765

Adequate water supply available to SOL

89 The reality is that SOL now has access to three separate sources of water, and setting aside the potential for irrigation restrictions in the driest period of the year,[29] any combination of two of the takes would be sufficient to meet SOL's maximum water demand. However, if the Stock Water Race were to be relied upon as one of the two primary sources, the third could be used during periods where any restrictions applied.

90 SOL is aware that the CRC has also signalled a separate issue in the context of the Consented Take acquired from Higgs; that is, whether it is able to be used for dust suppression in addition to irrigation of vegetation (bunds). SOL does not consider that this is an issue, and even if it was, a change in the use of the water could readily be sought.

91 SOL also understands that the CRC prefers to limit the term of all quarry permits to coincide with the expiry term of the stock water race consents held by SDC. Mr Hedley addresses this in para 112 of his EIC, although he notes that by the time the SDC Stock Water Race consents expire, there is likely to be a much reduced water demand for the remaining quarry life.

92 SOL's amended conditions propose a solution to the water supply issue that is considered appropriate in terms of providing certainty to the Commissioners that there will be an adequate supply of water for dust suppression purposes, and for the related purpose of irrigating vegetation on the bunds and stockpile surfaces, including after the SDC Stock Water Race consents expire, assuming they are not renewed by the SDC, which they may well be.

93 SOL proposes a condition whereby it must satisfy the Council that it has a minimum of 200 cumecs of water before the activities authorised by the consent commence, and at the expiry of the consent to take water from the SDC Stock Water Race, in the event that those consents are not renewed.

Quarry site rehabilitation

94 In terms of the policy on rehabilitation, this is to ensure sites of quarrying activities are rehabilitated to enable subsequent use of land for another permitted or consented activity, first and foremost.

[29] In terms of the water from the stock water race

95 The rehabilitated landform is "to be appropriate" having particular regard to the matters set out in Policy subcl 3 a – g matters. There is nothing in this policy to suggest that original ground levels must be reinstated as contended by Ms Dray (for the CCC).

96 Instead, the requirement is that the landform be appropriate having particular regard to (relevantly) the surrounding landform and drainage pattern, inter alia, although the availability of cleanfill material, including topsoil, is also of relevance, as Mr Apperley confirms.[30]

97 SOL intends that the site be rehabilitated to achieve the descriptive outcome set out in Ms Smetham's evidence in chief (at her para 72), and that has been incorporated into the amended conditions, and as a requirement of the Rehabilitation Management Plan.

Bond

98 SOL maintains that the bond requirement has not been justified by the CRC, and it is irrelevant that other quarries recently consented have had the same condition imposed.

99 There is now a requirement to rehabilitate quarries under the district plan. There is nothing in Policy 17.2.2.13 to support the imposition of a bond in the district plan, or under the LWRP, pursuant to which water quality concerns legitimately arise.

100 A bond may be more appropriate where the effects of concern are likely to endure beyond the expiry of the consent, although in this instance, rehabilitation will occur progressively throughout the term of the consent and has to be completed before the consent expires.

101 If the CCC and/or the CRC hold concerns that the rehabilitation is not being carried out in accordance with consent conditions, it has its enforcement armoury to invoke.

102 SOL proposes a condition along the lines of a condition mentioned by the Chair during the hearing whereby a responsible officer of the company (the consent holder) must provide formal confirmation in writing as to the financial viability of the company in terms of its obligations to rehabilitate the site under the consent (or words to that effect).

Alternative sites – Quarry Zone

103 Some submitters suggested that the quarrying ought to be confined to a dedicated quarry zone. As stated in Opening, the district plan does not provide for the future supply of

[30] See Statement of Mr Apperley dated 17 December 2020

aggregate from a dedicated quarry zone, and submissions[31] seeking that outcome were rejected by the IHP.

104 Commissioners have already been provided with a copy of the relevant part of the IHP decision, and will have made yourself familiar with the discussion on that. On behalf of Mr Mahoney,[32] the submission was made at the hearing that there has been a systemic failure in the IHP plan review process, although that is rejected for SOL.

105 There is no basis to suggest that the regulatory framework confirmed by the IHP is an inappropriate or unsustainable approach to the future aggregate supply.

106 Moreover, the Rural Zones surrounding the city are all intended to function as rural productive zones; there is no provision for rural lifestyle opportunities within the CCC limits, which are deliberately and by 'higher order' directive confined to the adjoining Waimakariri and Selwyn districts,[33] and accordingly, it is a mischaracterisation to describe the zone as a lifestyle zone as many of the submitters did.

Need for aggregate

107 Counsel for Mr Mahoney made much of the fact that SOL did not bring any evidence demonstrating a need for the aggregate, although that submission overlooks that there is no obligation upon an applicant to justify the need for an activity, or in any sense to demonstrate that it is a viable business proposition.

108 Moreover, SOL's case is not presented to you on the basis that the positive effects of the activity (which have to be treated as a given[34]) outweigh any adverse effects. SOL's evidence was deliberately focused on the issues raised in the officer reports, and in the submissions as to the potential for adverse effects.

Enforcement issues

109 The original application prepared by GHD for SOL identified[35] that "it is proposed to have a 10,000 litre diesel tank on site to be used for the refuelling of machinery". The specifications for the tank were included in the application, and that was recorded in para 2.5 of the Commissioners' Decision where they record the proposal as including:

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[31] On behalf of some of the submitters
[32] From Counsel
[33] Pursuant to the directive provisions of the CRPS
[34] And these are acknowledged by the EC in its decision, as recorded by the HC at para [54]
[35] At para 3.8

- Storage of diesel in 10,000 litre tank on hardstand for refuelling;
- That a test certificate for the tank had been supplied to the Commissioners stating that it would comply with HAZNO Act requirements;
- That refuelling was to be undertaken using a tank with an electric pump up to 500 litres;[36]
- That the 10,000 litre tank was not to be permanently stored on the pit floor;
- That refuelling could occur within the pit (using a portable tanker) provided that it was not to occur within 20 metres of any standing water within the pit, amongst other conditions.[37]

110 The (smaller) **portable tanker** is regulated by the CRC consent condition 45 that states that:

> When refuelling:
>
> a. There shall be no refuelling within 20 metres of flowing water;
> b. The pump shall be attended at all times during refuelling;
> c. Refuelling shall only be undertaken using:
> i. an up to 500 litre double skinned tank with an electric pump contained inside the tank's outer skin; and
> ii. a double skinned hose line with a transparent outer skin and an auto shut off nozzle;
> iii. A "spill mat" capable of absorbing oil and petroleum products, and of a minimum size of 1.5 metres by 1.5 metres, shall be positioned under the fill point in order to intercept any spill from the nozzle.
> iv. The "spill mat" detailed in clause iii shall be replaced following the absorbance of spills with a cumulative volume of 10 litres or more or if otherwise damaged to such a state that it can no longer adequately intercept and absorb any spills.
> v. A spill kit, that is capable of absorbing the quantity of oil and petroleum products that may be spilt on site at any one time, shall be kept on site at all times.
> vi. A written spill response plan ("the plan") shall be developed and communicated to all persons undertaking activities authorised by this consent and a copy kept on site at all times. The plan shall detail the methods and processes to be used by the consent holder to clean up a spill and shall include, but not be limited to:
> a. emergency contact information for the Canterbury Regional Council Pollution Hotline;
> b. emergency contact information for a waste management service provider with appropriate qualifications and equipment for cleaning up spills of oil and petroleum products;

[36] Condition 45
[37] See condition 47 RMA2018505

c. instructions for operating the spill kit kept on site in accordance with clause (v);

d. instructions for removing and disposing of contaminated material in a manner suitable to ensure no contamination of ground water or surface water occurs.

111 Accordingly, SOL is able to have two fuel storage tanks on site; one permanent and one mobile tanker. Mr Hedley has replied to the numerous allegations of non-compliance alleged by the submitters, having conferred with SOL management team, and on-site staff. SOL's response to those allegations is separately contained in a document **attached** to these Closing Submissions.

112 It is sufficient to note that Mr Hedley has not identified any non-compliances with the existing operation as alleged by the Emmersons, other than a technical non-compliance associated with the size of the mobile fuel tanker, which was regulated under the CCC consent.

Concluding comments

113 There are numerous relevant objectives and policies of the plan and I do not intend to refer to those in any detail at all in these closing submissions. It is sufficient to note that the consistency or otherwise of the proposal turns upon the conclusions you reach on the assessment of actual and potential effects.

114 Based upon the evidence as to the effects of SOL's proposal, it is considered that:

114.1 the proposal sufficiently and adequately "manages noise, vibration, access … to maintain local rural amenity values" for the purpose of Policy 17.2.2.12(a)(ii)(D), and

114.2 that a sufficient level of accord is achieved with other relevant objectives and policies of all relevant RMA instruments.

115 The facts and predications as to the level of actual and potential effects of SOL's proposal are distinguishable from those arising in the HGL case, and to a material extent.

116 The evidence that was missing in the HGL case has been produced by SOL.

117 In a very real sense SOL's proposal amounts to a continuation of the same activities consented to SOL in 2016, albeit that the activities will be closer to the residents along Conservators Road

118 A grant of the consents sought by SOL on the conditions it has proposed would give effect to and achieve the purpose of the RMA.

P A Steven QC
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