

Before the Hearing Panel appointed by Canterbury Regional Council and
Waimakariri District Council

under: the Resource Management Act 1991

in the matter of: an application by Taggart Earthmoving Limited to
establish, maintain and operate an aggregate quarry
located at the Rangiora Racecourse, 309 West Belt,
Rangiora

Legal submissions on behalf of Ryman Healthcare Limited

Dated: 7 May 2021

Hearing: 4 May to 11 May 2021

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LEGAL SUBMISSIONS ON BEHALF OF RYMAN HEALTHCARE LIMITED

Introduction

- 1 Ryman Healthcare Limited (*Ryman*) lodged a submission opposing Taggart Earthmoving Limited's (*Applicant*) applications for resource consents to establish, operate and maintain an aggregate quarry (*Proposal*) at the Rangiora Racecourse (*Site*).
- 2 Ryman is the owner and operator of the Charles Upham Retirement Village (*Village*), which is located approximately 1 km to the south of the Site.
- 3 By way of summary, Ryman considers the Commissioners do not have sufficient information on the Proposal to fully understand the potential adverse effects and be satisfied that appropriate mitigation will be put in place. As a result, Ryman respectfully requests that the Commissioners refuse consent to the Proposal. In the event the Commissioners are minded to grant consent, Ryman considers further information is required to establish appropriate and robust mitigation measures. In light of the large number of recent amendments to the Proposal, a further process would also be needed to ensure the proposed conditions properly reflect the final Proposal and the mitigation measures.
- 4 Before commencing these legal submissions, Mr Matthew Brown will present a short statement providing a brief introduction to Ryman, the Village, and its residents.

Scope of submissions

- 5 These submissions address the following topics:
 - 5.1 Additional resource consent requirements;
 - 5.2 Inadequate consideration of alternatives;
 - 5.3 The statutory framework;
 - 5.4 Effects on the environment, focusing on:
 - (a) Noise;
 - (b) Air quality; and
 - (c) Groundwater;
 - 5.5 Part 2 of the RMA; and
 - 5.6 Conditions.

Additional resource consent requirements

- 6 The Section 42A Report identifies three additional resource consents required to authorise the Proposal.¹
- 7 The Applicant has accepted that variations to an existing discharge permit and an existing water permit are needed before the Proposal can commence.² It is submitted that a 'condition precedent' should be included on the consents (if granted) to record that requirement.
- 8 The Section 42A Report also identifies the following additional resource consent requirements relating to:
- 8.1 Stormwater discharges from the access road;³ and
- 8.2 Soil disturbance under the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (*NES Contaminated Soil*).⁴

Stormwater discharges

- 9 The Legal Submissions for the Applicant address the stormwater discharge consent requirement. Counsel for the Applicant considers that consent is within the scope of the current application, noting that the application sought all necessary consents for the Proposal.⁵
- 10 It is acknowledged that it is not necessary for an application to identify all relevant rules. However, for the activity to be within scope, the application (or subsequent assessment) does need to have assessed the effects of the stormwater discharges so the decision-maker has the necessary information to adjudicate on the matter.⁶ As no assessment of the relevant effects has been provided for this hearing,⁷ it is submitted the activity is outside the scope of the current application.
- 11 The Applicant needs to show that the stormwater discharges from the access road are permitted, based on a detailed site investigation showing the relevant area is not contaminated, or otherwise seek consent.⁸
- 12 As per the variations discussed at paragraph 7 above, it is submitted that a 'condition precedent' should be included on the consents (if granted) to record this requirement.

¹ Section 42A Report, at [37].

² Section 42A Report, at [42] and [44]. SOE Durand, at [2.19] and [2.23].

³ Section 42A Report, at [45-50].

⁴ Section 42A Report, at [139].

⁵ Legal Submissions, at [12]. SOE Durand, at [2.28].

⁶ *Atkins v Napier City Council* CIV 2008-441-000564.

⁷ Section 42A Report, at [45].

⁸ Section 42A Report, at [48]. SOE Durand, [2.35-2.36].

NES Contaminated Soil

- 13 Additional consent requirements may also arise under the NES Contaminated Soil:
- 13.1 A potential waste pit may be disturbed as part of access road works.⁹ The Legal Submissions for the Applicant note the works are “*expect to comply*” with the NES Contaminated Soil permitted activity conditions.¹⁰ If this is the case, the Applicant should provide further information to verify this statement, as would have been required if the waste pit was identified in the Application.¹¹ In contrast, the Joint Witness Statement says that the final design of the access road will determine if this area will be disturbed.¹² If this is the case, a consent condition is needed to prevent disturbance of this area unless the NES Contaminated Land permitted activity is complied with or consent obtained.
- 13.2 Existing stockpiles of soil and gravel on the site may be used to form the acoustic bunds.¹³ Mr Singson says contamination assessment is not required if this material is re-used on-site.¹⁴ The basis for this statement is unclear given ‘disturbing soil’ is a regulated activity under the NES Contaminated Soil whether or not it is removed from the site.¹⁵ The Joint Witness Statement recommends this matter be addressed through a consent condition.¹⁶ Again, if consent is granted, condition wording will need to be confirmed.

Section 91

- 14 As the Panel will be aware, it is good resource management practice for all resource consents to be applied for at the same time, so that their effects may be considered together.¹⁷
- 15 The Legal Submissions for the Applicant state that “*s91 should not be engaged given these [additional resource consent requirements] can be broken down into discrete and independently operable parts, and a reasonable assessment can be made of each of those parts without having to consider overlapping or cumulative effects*”.¹⁸ It is agreed that this is the correct legal test.

⁹ SOE Iles, at [30]. SOE Singson, at [9.3.1].

¹⁰ Legal Submissions, at [51].

¹¹ RMA, Schedule 4, clause 3(a).

¹² JWS Contamination, p4.

¹³ Section 42A report, at [353].

¹⁴ SOE Singson, at [9.3.2]. JWS Contamination, p3.

¹⁵ NESCS, Regulation 8(3).

¹⁶ JWS Contamination, p3.

¹⁷ RMA, s91. *Waitakere City Council v Kitewaho Bush Reserve Co Ltd* [2005] 1 NZLR 208 (HC), at [27] and *Zwart v Gisborne District Council* [2014] NZEnvC 96, at [19].

¹⁸ Legal Submissions, at [15].

- 16 However, it is not clear this test is met. In particular, the access road works are an integral part of the Proposal. There are arguably overlapping or cumulative effect issues given the potential for contamination to exacerbate the groundwater and dust risks associated with this Proposal. It is therefore submitted that it is open to the Commissioners to use the s91 deferral power. It is submitted that there is a real case for using that power here given the number of additional resource consent requirements that have been identified.

Inadequate consideration of alternatives

- 17 The Legal Submissions for the Applicant say an assessment of alternative locations and methods is not required because the Proposal does not cross the threshold of 'significant adverse effects'.¹⁹ As I will discuss later, there remains significant uncertainty as to whether appropriate consent conditions can be put in place to ensure the effects of the Proposal do not pass that threshold. In that context, it is submitted that the information requirement does apply.
- 18 Further, in relation to the applications for discharge permits, it is also necessary to consider "*any possible alternative methods of discharge, including discharge into any other receiving environment*".²⁰
- 19 Mr Taggart explains that investigations were undertaken by the Applicant into gravel sources within 10km of its Cones Road yard.²¹ This area of investigation seems rather narrow given Taggart's existing Ashley River source is located 10km away from its yard.²²
- 20 Mr Taggart's evidence discusses river gravel constraints, but does not identify any other land based sources that were considered. During his presentation, Mr Taggart identified that one other site was considered (an airport site), and discarded due to bird strike issues. It does not appear the Applicant in fact considered land based alternatives to any real extent. The Applicant certainly does not appear to have obtained any expert advice on relevant environmental effects at different sites.
- 21 Mr Taggart explains that the Site was preferred for further investigations because of "*its proximity to the Cones Road yard... immediate access to a road identified by the Council for heavy vehicles... the size and availability of the land, the distance to the nearest residences, and [the Applicant's] relationship with the Racecourse and the wider community*".²³ It is submitted that the

¹⁹ RMA, Schedule 4, clause 6(1)(a).

²⁰ RMA, schedule 4, clause 6(1)(d)(ii).

²¹ SOE Taggart, at [4.27 – 4.37].

²² SOE Taggart, at [4.20].

²³ Evidence of Paul Taggart, para 4.35.

Site was identified as preferable for practical and financial reasons, and consideration of alternatives was quickly discounted.

- 22 Given the close location to residential receivers and groundwater sensitivities at the Site, it would have been sensible to consider a range of locations and potential impacts of locating the activity when investigating alternative locations. It is submitted that this lack of information should be borne in mind by the Commissioners when considering the outstanding issues.

Statutory framework for decision-making

- 23 The overall activity status of the resource consent applications required for the Proposal is discretionary.²⁴
- 24 The decision-making framework is set out in Section 104 of the RMA. For completeness, the relevant matters for the Commissioners to consider, subject to Part 2 of the RMA, are:²⁵
- 24.1 Any actual and potential effects on the environment of allowing the activity;
- 24.2 Any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity;
- 24.3 Any relevant provisions of relevant statutory planning documents; and
- 24.4 Any other matter the consent authority considers relevant and reasonably necessary to determine the application.
- 25 As the Applicant is also seeking a discharge permit, the Commissioners must also have regard to:²⁶
- 25.1 The nature of the discharge and the sensitivity of the receiving environment to adverse effects; and
- 25.2 The applicant's reasons for the proposed choice; and
- 25.3 Any possible alternative methods of discharge, including discharge into any other receiving environment.

Effects on the Environment

- 26 This section focuses on the Proposal's effects on the environment that are of particular concern to the Village and its residents. It highlights the relevant planning provisions throughout.

²⁴ Section 42A Report, at [192-193]. SOE Durand, at [3.1].

²⁵ RMA, s104(1).

²⁶ RMA, s105.

Noise

- 27 Ryman's submission raised concerns about the potential noise effects of the Proposal, and in particular the assumptions in the Noise Assessment that were not reflected in the draft conditions.
- 28 It is acknowledged that the Noise Assessment confirms the Proposal will generally comply with the relevant District Plan noise limits.²⁷ This outcome is secured by proposed condition 13 (land use consent). The addition of the night time noise limit, as recommended by the Council officer, is particularly supported, given the potential for emergency call outs at night.
- 29 Site preparation activities have been assessed in accordance with the New Zealand construction noise standard NZS6803:1999.²⁸ This standard sets significantly higher noise limits based on the limited duration of construction works.²⁹ In this case, site preparation works (topsoil stripping) will be carried out throughout the consent term, rather than being limited to the first phase. It is submitted that this may create compliance and enforceability issues, as it will need to be clear whether noise is being created by site preparation activities or quarrying activities. For this reason, the Council's amendments to condition 15 to clarify the meaning and extent of 'site preparation activities' are supported by Ryman. Amendments to condition 19 (noise monitoring) may also be useful.
- 30 A critical assumption in the Noise Assessment is the limitation on use of the motor scraper to 3.5 hours per day. This limited duration allows the noise predictions to apply a -5dB correction, without which the Proposal would not comply with the relevant noise limits at all time.³⁰ The Section 42A Report recommends a consent condition to address this point.³¹ It is submitted this proposed condition is appropriate given that is a key assumption of the Noise Assessment.
- 31 The Applicant appears to have accepted the amended noise conditions proposed by Council.³² Overall, it is accepted the proposed conditions (subject to further drafting) will appropriately manage noise effects.

Air quality

- 32 Ryman's submission raised concerns about the potential air quality effects of the Proposal, and in particular the health impacts on the Village's elderly residents. The submission also raised concerns about the adequacy of the proposed mitigation measures.

²⁷ SOE Farren, at [7.14] and [7.16].

²⁸ SOE Farren, at [3.5].

²⁹ NZS6803:1999, C7.2.1 and Table 2.

³⁰ SOE Farren, at [7.8].

³¹ Section 42A Report, at [407-408]. Proposed condition AQ.

³² Legal Submissions, at [35(g)]. JWS Noise, at [6.1].

- 33 The Air Quality Assessment establishes that dust produced by the Proposal will predominately be larger particles ($>30\mu\text{m}$), which settle relatively quickly.³³ It is accepted that no adverse dust amenity impacts on the Village are anticipated given the 1km separation distance.³⁴
- 34 There is agreement between the Applicant and Council experts that the potential human health impacts of the Proposal (PM_{10} , $\text{PM}_{2.5}$ and RCS) are unlikely.³⁵ This assessment is primarily based on the Proposal not including any onsite processing of aggregate. Given the importance of this aspect of the Application, it is submitted that the Council officer's proposed condition H (discharge to air) prohibiting the crushing or processing of aggregate is appropriate.
- 35 The Commissioners are also required to consider the impacts on the Rangiora Airshed under the National Environmental Standards for Air Quality (NESAQ). Regulation 17 of the NESAQ is an absolute bar to the granting of resource consent to a discharge in certain circumstances. As acknowledged, the Air Quality Assessment failed to accurately describe the extent of unpaved access road and assess the PM_{10} discharges from that area (a 'significant' source).³⁶ This issue has subsequently been discussed through expert conferencing.
- 36 The Legal Submissions for the Applicant address the meaning of "likely" in Regulation 17.³⁷ Counsel suggests that Mr van Kekem has applied an incorrect legal test in concluding that the available information is insufficient to demonstrate that an exceedance will not occur.³⁸ However, it is submitted that the Commissioners do need to receive adequate information to be satisfied that an exceedance of the threshold is 'not likely'.
- 37 The Joint Witness Statement acknowledges that the amount of PM_{10} discharged from the site access road is a critical issue.³⁹ The witnesses for Council and the Community Board recommend sealing the road to ensure compliance with Regulation 17.⁴⁰ The witness for the Applicant considers dust from the site access road can be adequately managed through water suppression,⁴¹ but acknowledges that it will not be practical to monitor compliance with Regulation 17.⁴² It is submitted the Commissioners do not have sufficient information to be satisfied that the Regulation 17 will be complied with, unless the site access road is sealed. The balance of

³³ SOE Bluett, at [6.3]. Section 42A Report, at [208].

³⁴ SOE Chilton, at [28] and [36].

³⁵ SOE Chilton, at [49]. SOE van Keken, at [44]. JWS Air Quality, at [20].

³⁶ SOE van Kekem, at [11-21]. SOE Chilton, at [58].

³⁷ Legal Submissions, at [62].

³⁸ Legal Submissions, at [65-66].

³⁹ JWS Air Quality, at [12].

⁴⁰ JWS Air Quality, at [14].

⁴¹ JWS Air Quality, at [31].

⁴² JWS Air Quality, at [33].

evidence supports the Council officer's proposed amendment to condition 10(p) (discharge to air) and condition 10 (land use).

- 38 Another key issue is the proposed dust monitoring. Mr Chilton recommends PM₁₀ monitoring (instead of the TSP monitoring originally proposed by the Applicant) based on consistency with other quarry applications and practicality/affordability.⁴³ However, as explained by Mr van Kekem, this recommendation does not reflect the assertions that the primary particulate emissions will be TSP.⁴⁴ It is submitted that TSP monitoring should be reinstated to ensure the key effect of the Proposal is appropriately managed, and at the very least to confirm that PM₁₀ monitoring is an accurate proxy.⁴⁵
- 39 As it stands, visual monitoring (under condition 9 (discharge to air)) is the only monitoring mechanism for the predominant dust fraction. As the Council officer notes, it is unclear how that will be monitored outside of normal operating hours.⁴⁶ It is submitted that TSP triggers and monitoring may assist to fill that gap.
- 40 Mr Chilton also recommends that "*at least two monitors should be operated at all times given the [site] is surrounded by sensitive locations on three of its sides*".⁴⁷ Mr Bluett agrees that one monitor should be installed at the western boundary, but is "*not convinced*" of the need for a second permanent monitor.⁴⁸ Given the sensitivity of the surrounding environment, it is submitted that sufficient monitoring is essential, including to inform the annual reviews of the AQMP. The Council officer's proposed condition L (discharge to air) is supported.
- 41 There is some discussion in the expert evidence as to whether air quality triggers should be included in the consent conditions or identified in the Air Quality Management Plan (AQMP).⁴⁹ Setting trigger levels in the conditions is more certain, whereas setting trigger levels in the AQMP is more dynamic. As it stands, the purpose of the AQMP is to identify the actions required to ensure compliance with the conditions of consent (*inter alia*). It is therefore submitted that the other conditions need to be sufficiently certain to give the AQMP a clear purpose.⁵⁰ The inclusion of trigger values in the conditions helps to achieve this outcome. If trigger values are not included in the conditions, a more specific qualitative

⁴³ SOE Chilton, at [71]. SOE Bluett, at [13.9]: agrees with this recommendation. JWS Air Quality, at [21].

⁴⁴ SOE van Kekem, at [27].

⁴⁵ JWS Air Quality, at [23].

⁴⁶ Section 42A Report, Appendix 1, p160.

⁴⁷ SOE Chilton, at [73].

⁴⁸ SOE Bluett, at [13.11].

⁴⁹ SOE Bluett, at [13.10]. SOE van Kekem, at [48].

⁵⁰ *Re Canterbury Cricket Association Inc* [2013] NZEnvC 184 at [125].

purpose for the AQMP will be required to ensure the robustness of the certification process.

- 42 The Council Officer also proposed new conditions to:
- 42.1 Ensure dust does not give rise to offensive, objectionable, noxious or dangerous effects beyond the boundary of the site (condition F (discharge to air)). This condition is supported, and is consistent with RMA and Canterbury Air Regional Plan requirements.⁵¹
- 42.2 Ensure water suppression is applied at all times during dry weather, and not as a back-up measure (condition 10(c) (discharge to air)). This condition is supported, as it reflects the assumptions of the evidence presented.
- 43 The Applicant has accepted the Council's recommended amendments to conditions.⁵² Overall, it is submitted the sealing of the access road and additional monitoring would be necessary to appropriately manage dust effects. Without that mitigation, it is submitted that the Commissioners cannot grant consent.

Groundwater

- 44 The potential impacts of the Proposal on groundwater are a critical issue. The Site is located in drinking water protection zones which *"have been established to protect the quality of the groundwater resource accessed for public supply of drinking-water"*.⁵³ All of the relevant experts agree that the receiving environment is highly sensitive.⁵⁴
- 45 As noted by Mr Brown, the Village operates two groundwater bores to the south of the Site. These bores were not identified by the Applicant or the Council as down-gradient of the Site, although they are used for irrigation purposes (not drinking water).⁵⁵ The Village is connected to the town water supply, and therefore potentially reliant on the community backup supply.
- 46 The planning framework prioritises the protection of groundwater, and includes highly directive provisions relating to groundwater impacts:
- 46.1 The National Policy Statement for Freshwater Management 2014 (*NPSFM*) sits at the top of the planning hierarchy. Objective 1 prioritises the health and wellbeing of water bodies, then the health needs of people, and finally the ability

⁵¹ RMA, s314(1)(a)(ii). Policy 6.8.

⁵² JWS Air Quality, at [38].

⁵³ CRC, "The current state of groundwater quality in the Waimakariri CWMS zone", October 2016, page i.

⁵⁴ JWS Groundwater, question 8.

⁵⁵ Assessment of Groundwater Effects, Figure 1. SOE Kreleger, at [70].

of people and communities to provide for their social, economic and cultural wellbeing.

- 46.2 The National Environment Standard for Sources of Human Drinking Water Regulations 2007 (*NESDW*) needs to be considered as the Site is upstream of community supply wells that are part of a network serving more than 17,000 people.⁵⁶ Regulation 7 is an absolute bar to the granting of consent. Accordingly, the Commissioners will need to be satisfied the Proposal is not likely to result in the water not meeting health quality criteria or aesthetic guideline values.
- 46.3 Similar to the NPSFM, the Canterbury Regional Policy Statement (*RPS*) prioritises the life supporting capacity of freshwater ecosystems and actual or reasonably foreseeable requirements for community water supplies (Objective 7.2.1). It also contains directive requirements to manage activities to maintain water quality at set standards (Policy 7.3.6). Importantly, it also directs decision-makers to adopt a precautionary approach to the discharge of contaminants where the effects on fresh water bodies are unknown or uncertain (Policy 7.3.12).
- 46.4 The Canterbury Land and Water Regional Plan (*CLWRP*) requires high quality freshwater to be available to meet the actual and reasonably foreseeable needs for community drinking water supplies (Objective 3.8A). It prioritises community drinking-water supplies over economic activities (Policy 4.5). It precludes the granting of consents that will cause a water quality limit to be breached (Policy 4.7). The *CLWRP* also requires drink-water supply sources to be protected from discharges that may affect the quality of the drinking water, including its taste, clarity and smell, and to ensure community drinking water supplies meet the relevant targets and standards (Policy 4.23). It also enables the extraction of gravel provided adverse effects are minimised and remediation minimises ongoing risk of groundwater contamination (Policy 4.94).

47 The key concerns in relation to groundwater are:

- 47.1 The lack of information about groundwater levels and groundwater quality;
- 47.2 The difficulty in achieving the separation depth to groundwater; and
- 47.3 The potential for contamination of groundwater.

Lack of information

48 The Applicant measured groundwater levels at four bores on the Site on 21 April 2017. This information represents a 'snapshot in

⁵⁶ Section 42A report, at [523].

time' so the Applicant has relied on other monitoring bores to establish maximum and average groundwater levels and anticipated rates of groundwater level rise.⁵⁷

- 49 The relevant experts do not agree on the appropriate methodology to determine that information from monitoring bore data:
- 49.1 The Applicant's expert, Mr Thomas, relied on evidence obtained from bore M35/0142. The Council's expert, Ms Kreleger, notes that this bore uses monthly data instead of daily data, and therefore high groundwater levels can be easily missed between the measurement dates.⁵⁸
- 49.2 Therefore, Ms Kreleger assessed if daily data from other nearby bores could be used to better predict highest groundwater levels and fluctuations and used a different bore (M35/2677) to assess groundwater levels at the Site.
- 49.3 Mr Thomas acknowledges that there is "*some uncertainty regarding the data from bore M35/0142*" but still disagrees with Ms Kreleger's recommendations.⁵⁹
- 50 The different methodologies have resulted in different results.⁶⁰ This disagreement remains following expert conferencing.⁶¹
- 51 Similarly, the Applicant presented groundwater quality data for the wider area, but did not undertake any measurements at the Site.⁶²
- 52 This lack of investigations undertaken by the Applicant is particularly concerning given the potential groundwater impacts of the Proposal and strong policy direction to protect groundwater. The Applicant is essentially asking the Commissioners to make a decision in an information vacuum.
- 53 To address this lack of information, the Council officer has recommended that baseline monitoring be carried out.⁶³ The Applicant has accepted a 12 month baseline monitoring period.⁶⁴ However, as it stands, the draft conditions do not set out a clear baseline monitoring protocol. They do not prevent quarrying activities from proceeding until baseline monitoring is carried out and do not set out the requirements for reporting on the baseline

⁵⁷ SOE Thomas, at [4.11]. SOE Kreleger, at [52-56].

⁵⁸ Officer's Report, Report of Amber Kreleger, para 48.

⁵⁹ Evidence of Neil Thomas, para 7.12.

⁶⁰ SOE Thomas, at [4.24-4.26].

⁶¹ JWS Groundwater, questions 4 and 5.

⁶² SOE Kreleger, at [67].

⁶³ Conditions R, 6 and 9 (land use consent).

⁶⁴ SOE Thomas, at [7.29].

environment.⁶⁵ They also do not clearly set out how long term monitoring will be conducted monitoring conducted.⁶⁶

- 54 The lack of information and appropriate conditions to fill the lacunae is significant. If the Commissioners are minded to grant consent, careful amendments to the conditions will be required to address this matter to ensure potential adverse effects to groundwater do not occur. Without that, it is submitted that consent should be declined.

Difficulty in achieving 1m separation depth

- 55 There is agreement between the relevant experts that maintaining a 1m separation depth is necessary to protect the groundwater in this location.
- 56 At other sites, quarrying stops at 1m above the highest groundwater level.⁶⁷ But, at this Site, quarrying is proposed to extend below that level. Maintaining the 1m separation requires a highly complex arrangement of mitigation measures: the quarrying campaigns to focus on dry periods, accurate real-time monitoring of groundwater levels, and emergency backfilling in the case of groundwater level rises.
- 57 Ms Kreleger recommends a number of conditions to address the risks associated with these measures. Based on the information currently available, Ryman supports these recommendations to minimise potential groundwater risks:

57.1 Limiting excavation depth to average groundwater levels:⁶⁸

- (a) Mr Thomas does not agree with the average levels identified by Ms Kreleger.⁶⁹ The levels calculated by Ms Kreleger are an estimate only. It is therefore submitted that the average groundwater levels referred to in the Council condition should be determined through baseline monitoring.
- (b) Mr Thomas also disagrees with the recommended limit on the basis sufficient material is available to ensure a 1m separation distance will be maintained even during extreme groundwater level rises.⁷⁰ However, the conditions proposed by the Applicant do not clearly establish how real-time groundwater levels will be accurately monitored and responded to (condition 6 and 7). The Council Officer has proposed some

⁶⁵ The Council Officer commentary on condition 9 (land use consent) refers to this matter, but no amendments to the condition have been proposed.

⁶⁶ Section 42A Report, Schedule 1, commentary on condition 9 (land use consent).

⁶⁷ SOE Kreleger, at [177].

⁶⁸ SOE Kreleger, at [151-152]. Condition 5 (land use consent).

⁶⁹ SOE Thomas, at [7.26].

⁷⁰ SOE Thomas, at [7.26].

additional conditions to provide for an electronic monitoring and alert system (conditions 6, S, T and U), but suggests further information is needed to complete the conditions. It does not appear that the Applicant has accepted and completed the conditions.

- 57.2 Limiting the excavation area within 1m or below the highest groundwater level to 0.5 ha⁷¹ and require a minimum volume of backfilling material be stored on-site at all times:⁷² The proposed condition is limited to 10,000 m³ of material, rather than the 34,500 m³ of material proposed by the Applicant. Given the reliance placed on this backfill volume by the Applicant, it is submitted that this condition should be updated to refer to that figure at a minimum. However, the relevant experts also do not agree that the proposed on-site stockpile is adequate for potential backfilling needs.⁷³ As the consent conditions require baseline monitoring, it is submitted there may be room to amend the stockpile volume required to reflect the groundwater results.
- 57.3 Backfilling to occur within a set timeframe, unless groundwater is standing in the pit:⁷⁴ This recommendation does not appear to have been reflected in the Council officer's amended conditions. It is unclear whether it is accepted by the Applicant.
- 58 Following expert conferencing, the relevant experts still do not agree that the proposed groundwater depth or groundwater quality monitoring is adequate, although they suggest that it would be possible to develop a solution.⁷⁵ As noted by the relevant experts, the proposed solution will need to allow for human error.⁷⁶ It is submitted that a number of failsafes will be required given the inherent risks in the system. Notably, the evidence for the Applicant has not referred to any other quarry utilising this system.
- 59 There are a number of outstanding issues between the relevant experts. It may be possible for these matters to be addressed through consent conditions. However, given the high sensitivity of the receiving environment, it is submitted the solution will need to be carefully considered and – importantly – practical to implement. Without those conditions, it is submitted that the potential adverse effects of the Proposal have not been appropriately addressed, particularly given the directive requirements of the planning framework, and consent should be declined.

⁷¹ SOE Kreleger, at [102].

⁷² Condition P.

⁷³ JWS Groundwater, question 16.

⁷⁴ SOE Kreleger, at [158-159].

⁷⁵ JWS Groundwater, question 9 and 10.

⁷⁶ JWS Groundwater, question 12.

Potential for contamination

- 60 There is agreement between the relevant experts that restricting backfill to virgin natural excavated material (*VNEM*) will ensure groundwater chemistry impacts are low.⁷⁷
- 61 The relevant experts also agree that the impacts of microbial contamination or a chemical spill are unlikely to extend more than 150-175 metres from the excavation boundary, and will therefore not extend to the Council bores.⁷⁸ The Applicant notes that the proposed conditions require an event to be advised to both the Regional and District Councils.⁷⁹ As it stands, condition 40 (land use consent) required the CRC Manager to be informed, but not the District Council. An amendment to this condition is needed.
- 62 The key contamination risk is the potential for non-compliant material to be deposited at the Site. It is noted that the Applicant has now proposed a *"more stringent three stage process ... which goes beyond the requirements of the Waste MINZ guidelines"*.⁸⁰ The relevant experts agree this process is appropriate to manage the risk.⁸¹ Significant amendments to the conditions are required to reflect this new process. If conditions cannot be drafted that give certainty that this stringent process will be properly carried out, it is submitted that consent should be declined.
- 63 There is one outstanding area of disagreement between the experts – whether the pre-selection assessment should be undertaken by a Suitably Qualified and Experienced Practitioner (*SQEP*) or a trained Taggart employee.⁸² Given the risks and complexity, it is submitted this task should be undertaken by a *SQEP*. Further, it is submitted that this task should be undertaken by an independent person to further minimise the risks.

Potential adverse effects could have significant implications

- 64 As the Commissioners will be aware, drinking water has been a subject of significant interest in recent times. This is a matter of great concern especially given the recent studies showing that *"Canterbury's town drinking water supply had the highest nitrate levels in the country"*.⁸³ This follows WDC's finding last year that private well users in the area were subjecting themselves to arsenic, manganese and nitrates, which can lead to significant adverse

⁷⁷ SOE Kreleger, at [123]. SOE Thomas, at [7.18].

⁷⁸ SOE Thomas, at [x]. SOE Kreleger, at [x].

⁷⁹ Legal Submissions, at [78].

⁸⁰ Legal Submissions, at [19].

⁸¹ JWS Contamination, at 2-3.

⁸² JWS Contamination, p3.

⁸³ Radio New Zealand, Conan Young, "Canterbury homeowners to get free water check for nitrate levels", 27 April 2021.

health effects.⁸⁴ The findings highlight the susceptibility of water supplies in the region and their importance.

- 65 Any potential risk to drinking water should not be treated lightly. This is particularly evident following the Government's Inquiry into the major outbreak of campylobacteriosis in Havelock North (*Havelock Inquiry*). The Havelock Inquiry highlighted the extreme importance of providing safe drinking water to communities. In particular, the Havelock Inquiry found "*there is little understanding amongst the New Zealand public about the number of people who are consuming water that is not demonstrably safe, the large numbers of people who become ill every year, or the burden this places on the country including, at its highest, through lost lives.*"⁸⁵
- 66 The Village's residents are the highest priority for Ryman. Given their vulnerability, Ryman is very concerned with any health effects that could result from any contamination of the community's drinking water. The community should not be required to accept unnecessary risk to its drinking supply on behalf of a private company.

Part 2 of the RMA

- 67 The Legal Submissions for the Applicant and the Section 42A Report consider it is necessary to have regard to Part 2 in considering these applications.⁸⁶ This position is based on relevant planning documents being prepared prior to higher order planning documents, as well as the insertion of section 6(h) in 2017.
- 68 The Court of Appeal decision *Davidson* establishes that reference to Part 2 is unlikely to add to the decision-making process where a plan has been prepared in a manner that appropriately reflects the provisions of Part 2.⁸⁷ The fact that relevant planning documents were prepared prior to higher order planning documents does not require a Part 2 consideration. Rather, those higher order planning documents need to be carefully considered.
- 69 Accordingly, it is submitted that consideration of Part 2 would not assist. Unless appropriate consent conditions can be reached, it is submitted that the Proposal is inconsistent with the relevant planning directions as set out earlier and consent should be refused.
- 70 If the Commissioners consider consideration of Part 2 is necessary, it is submitted that the same conclusion should be reached on the basis that the Proposal – without appropriate conditions – will:

⁸⁴ Emma Dangerfield, Stuff, "Study of private wells in Waimakariri finds excessive levels of toxins", 19 February 2020, at <https://www.stuff.co.nz/the-press/news/north-canterbury/119644235/study-of-private-wells-in-waimakariri-finds-excessive-levels-of-toxins>

⁸⁵ Havelock Inquiry, Stage 2, para 91.

⁸⁶ Legal Submissions, at [83].

⁸⁷ *Davidson v Marlborough District Council* [2018] NZCA 316, at [74-75].

- 70.1 Not enable people and the community in Rangiora to provide for their social, economic and cultural wellbeing and for their health and safety;
 - 70.2 Undermine the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations of residents of Rangiora;
 - 70.3 Fail to safeguard the life-supporting capacity of air, water, soils, and ecosystems; and
 - 70.4 Fail to avoid, remedy or mitigate the various adverse effects on the environment.
- 71 On that basis, it is submitted that consent should be declined.

Consent conditions

- 72 Ryman is concerned that there are some important inconsistencies between the Application and the proposed consent conditions that will need to be resolved if consent is granted, including:
- 72.1 Land use consent, proposed condition 3 limits Saturday works to 7am-6pm. The Noise Assessment is based on Saturday works concluding at 3pm.⁸⁸ Mr Taggart confirms this end time.⁸⁹ If consent is granted, this condition will need to be amended to reflect the Application.
 - 72.2 Land use consent, proposed condition 11 limits vehicle movements to a maximum of 250 per day (125 in / 125 out). The Transport Assessment is based on a maximum of 240 vehicle movements per day.⁹⁰ If consent is granted, this condition will need to be amended to accurately reflect the Application.
- 73 There are a number of other general issues with the conditions, including (by reference to Appendix 1 to the Section 42A Report):
- All resource consents*
- 73.1 No condition 1. Given the complexity of the proposal, it is unlikely to be possible to capture all elements of the application within specific conditions;
 - 73.2 Condition 1: the deletion of the 5m limit is opposed. While groundwater conditions are likely to require lesser depths, this overall maximum should be retained;

⁸⁸ SOE Farren, at [5.3].

⁸⁹ SOE Taggart, at [5.8].

⁹⁰ Evidence of Jeffrey Bluett, para 6.2. Evidence of Matthew Noon, para 6.5 and 14.8.

- 73.3 Condition 16 presumes certification of management plans after a certain timeframe. This condition is not appropriate given the matters that could proceed without certification;
- 73.4 Condition 20: it is unclear why the Council has deleted “the steps taken by the Consent Holder to investigate the complaint”.

Discharge to air

- 73.5 Condition 8: Dry weather conditions will need to be defined.

Land use consent

- 73.6 Condition 11: Best Practicable Option (BPO) has been replaced with best management practices. The purpose of this amendment is unclear given BPO is an industry understood term.
- 73.7 Condition 13(j): A condition assuming non-compliance with conditions is not appropriate.
- 73.8 Condition 13(n) and (o): Inconsistent with condition 22 as amended.
- 73.9 Condition AG: This condition provides for the bond to continue after the consent duration. It is unclear whether monitoring would also continue to determine if any such remediation was needed.

District consent

- 73.10 Condition 17: The purpose of the QBMP is recorded as an advice note and is therefore not binding on the Consent Holder. The purpose of a management plan is a critical component of the condition to ensure a proper certification process.

- 74 A number of aspects of the Proposal have changed since the Application was lodged, and even since the Applicant’s evidence was lodged. There are a large number of amendments that would be required to the draft consent conditions to reflect those changes. It is highly important that the conditions are clear and workable to ensure compliance given the significant risks of any non-compliance in this case. Accordingly, if minded to grant consent, it is submitted that the Commissioners should direct the Applicant to file an updated version of the draft conditions and provide a process for submitters (including Ryman) to comment on those draft conditions.

Conclusion

- 75 For all of the above reasons, it is submitted that the Commissioners do not have sufficient information on the Proposal to fully understand the potential adverse effects and be satisfied that appropriate mitigation is proposed. As a result, Ryman respectfully requests that the Commissioners refuse consent to the Proposal. If the Commissioners are minded to grant consent, Ryman seeks that the Commissioners request further information and impose a further

process to ensure the proposed conditions will implement the necessary mitigation.

Nicola de Wit
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7 May 2021