

ROYDON QUARRY, TEMPLETON
DIRECTIONS OF THE COMMISSIONERS
MINUTE 2

INTRODUCTION

- [1] Canterbury Regional Council and the Selwyn District Council (the Councils) have provided us with a Joint Memorandum addressing the changes proposed by the Applicant (Fulton Hogan Limited) to the nature of the quarrying activities that were set out in their November 2018 application (Original Application) for the proposed Roydon Quarry.
- [2] The Councils' Joint Memorandum was authored by legal counsel for the Councils and is attached to this Minute.
- [3] The Joint Memorandum states¹ that some submitters consider that the proposed changes to the quarrying activities are not within the scope of the Original Application and have requested that the Councils, in their capacity as consent authorities, should require the Applicant to lodge a new resource consent application.

BACKGROUND AND THE ISSUE FOR DETERMINATION

- [4] In the 16 August 2019 response to a section 92 request for further information from the Councils, the Applicant described changes to the sequencing and intended staging of the gravel extraction activities that would occur over the life of the quarry.
- [5] Those changes are described in paragraphs 10 to 19 of the attached Joint Memorandum.
- [6] The Joint Councils consider that the changes are within the scope of the Original Application and in their view there is no need for a new consent application.
- [7] The Joint Councils' position and the rationale for it is set out in paragraphs 23 to 30 of the attached Joint Memorandum.
- [8] The Joint Councils have requested² that we issue a Minute to all parties setting out:
 - (a) The issue for determination; and
 - (b) Such other directions as the Commissioners consider appropriate to enable the fair and efficient resolution of this scope issue as a preliminary matter, prior to commencement of the scheduled hearing on Monday 18 November 2019.
- [9] We agree that this issue should be determined as soon as possible in a fair and efficient manner prior to the hearing commencing.

DIRECTIONS

- [10] Pursuant to section 41C of the RMA we request that any submitter who considers that the changes to the sequencing and staging of the quarry activities, as set out in the attached Joint Memorandum, are not within the scope of the nature, scale and intensity of the environmental effects set out in the Original Application, provides the Hearings Administrator³ with a legal opinion authored by counsel supporting their view by 4pm on **Tuesday 17 September**.
- [11] We also invite the Applicant to provide us with their view on this issue by way of a legal opinion.

¹ Paragraph 2 of the Joint Memorandum.

² Paragraph 31 of the Joint Memorandum.

³ Refer to Minute 1 for details regarding the Hearing Administrator and how to contact them.

DETERMINATION

[12] We will consider all responses received in conformance with paragraphs [10] and [11] above and thereafter issue a further Minute setting out our findings and Determination on this issue.

PREVIOUS DIRECTIONS

[13] In the meantime, the pre-circulation of material and expert conferencing directed and requested in Minute 1 is to continue as set out and timetabled in that Minute.

CORRESPONDENCE

[14] We remind participants, as was outlined in Minute 1, that they must not attempt to correspond with or contact the Commissioners directly in relation to the matters addressed above. All correspondence relating to the hearing must be addressed to the Hearings Administrator.



Rob van Voorthuysen

Independent Commissioner – Chair - on Behalf of the Commissioners

Dated: 27 August 2019

Attachment:

Joint Memorandum of Selwyn District Council and Canterbury Regional Council, dated 23 August 2019 and authored by Lucy de Latour Legal Counsel for Canterbury Regional Council and Paul Rogers Legal Counsel for Selwyn District Council

BEFORE THE INDEPENDENT HEARINGS PANEL

IN THE MATTER OF the Resource Management Act 1991 ('the RMA')

IN RELATION TO A resource consent application by Fulton Hogan Limited
under section 88 of the RMA for the Roydon Quarry

JOINT MEMORANDUM OF SELWYN DISTRICT COUNCIL AND CANTERBURY
REGIONAL COUNCIL

23 AUGUST 2019

ISSUE FOR CONSIDERATION AND DIRECTIONS

- 1 Selwyn District Council and Canterbury Regional Council (together the 'Consent Authorities') seek directions to enable a decision, prior to commencement of the hearing, as to whether the changes to the staging of gravel extraction (Changes) made by the Applicant within its 16 August 2019 response to a section 92 Resource Management Act 1991 (RMA) request, are within scope of the original application – refer CRC192408-192414, RC185628 (the 'Original Application').
- 2 The Consent Authorities consider the Changes to be within scope of the Original Application. However, some submitters consider the Changes are not within scope and have requested the Consent Authorities require the Applicant to lodge a new resource consent application.
- 3 The Applicant's position on the issue is assumed to be that the Changes are within scope. The matter has not been discussed with the Applicant.
- 4 So as to avoid delay to the scheduled hearing and to ensure an efficient hearing process, the Consent Authorities consider it is appropriate now, to address and resolve this issue of scope as a preliminary matter, prior to commencement of the hearing. They are of the view that there is sufficient information available to the Commissioners to do so.
- 5 Furthermore, they consider a process, whereby persons who have an interest in the issue can participate and be heard on this preliminary issue, can be made available should the Commissioners consider that necessary.

CONTEXT

Background

- 6 The Original Application was lodged with the Consent Authorities in November 2018. The application is for a large scale ground extraction quarry and has generated much interest from and beyond the community in which it is located, receiving many submissions.
 - 7 Extensive pre and post consultation with stakeholders has been undertaken by the Applicant.
 - 8 Extensive preparations for the hearing stage of the process are well advanced. Those preparations involve many qualified experts and lay persons preparing evidence for, and making arrangements to attend the hearing scheduled for November / December 2019.
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- 9 If the hearing were to commence and the issue of scope determined as a preliminary matter with a finding the Changes were out of scope, then assuming the Applicant wished to retain those Changes, further notification would likely follow. That outcome would result in additional costs and delay for all participants.

The Changes

- 10 The Original Application provided details in relation to quarrying operation and extraction, explaining that the quarrying extraction activities would occur in stages (Section 4.3 Page 18 and Figure 07 of the Original Application).
- 11 In particular, the Original Application provided that the quarrying activity would commence in the centre of the site in an area described as the initial extraction area and would then continue in stages, from Stage 1 (being at the southernmost point of the site) through to Stage 5 (being at the northernmost point of the site). That is, with the exception of the initial extraction area, the quarrying would start at the southern end of the site and progressively move north (refer to Figure 07).
- 12 The Original Application also detailed the extent of quarrying extraction areas open for extraction at any one time, stating that no more than 40 ha would be excavated.
- 13 Post notification of the Original Application, the Consent Authorities issued two requests for further information (RFI) pursuant to section 92 RMA.
- 14 A response to the RFI was received from the Applicant on 16 August 2019 (RFI Response) and that response, at Part A section A.1 on pages 1 - 3, altered the operation and extraction staging plan contained in the Original Application.
- 15 Specifically, the RFI Response provides that the quarrying activity will now commence in the "green central processing area" identified in the middle of the site on Figure 1, Page 2 section A.1.1.3.
- 16 Once quarrying of the "green central processing area" is complete, the extraction activity then moves to the south of the site (but located on the eastern side of the site). This is referred to as Stage 1 (see Figure 1 on Page 2 section A.1.1.3 of the RFI Response).
- 17 Once extraction of Stage 1 is complete, the extraction then moves north, again on the eastern side of the site, referred to as Stage 2, again identified on Figure 1.
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- 18 The extraction activity then moves into Stage 3 as identified on Figure 1 which is located immediately to the west of Stage 2, and immediately north of the centrally located green processing area.
- 19 In addition to the change to extraction sequencing, the RFI Response also reduces the maximum extraction area from 40 ha (as provided for in the Original Application) to 26 ha at any one time (see Table 1 page 2 section A.1.1.2).

LEGAL TEST TO DETERMINE SCOPE

- 20 The legal test is whether the activity for which consent is now sought is significantly different in scope or ambit from that originally applied for and notified in terms of:
- (a) Scale or intensity of the proposed activity; or
 - (b) The altered character of effects/impacts on the proposal.¹
- 21 Although, not a means of applying or answering the above test, regard should also be had to the issue of fairness/prejudice to other parties. In particular, consideration should be given as to whether it is plausible that there might be other parties, who would have submitted on the changed proposal.

CONSENT AUTHORITIES' POSITION

- 22 The two fundamental changes to the activity are the sequencing of when and where on the application site the excavation activity is to occur, and the maximum level of extraction that can occur at any one time.
- 23 It is the joint position of the Consent Authorities that the Changes are within scope of the Original Application. The key reason for this is that the overall scale and intensity of the activity and the character of effects has either remained the same or reduced as a result of the changes set out in the RFI Response.
- 24 The change in sequencing, or staging, does not change the nature of the activity, nor does it change its scale or intensity. The Original Application sought authorisation for the activity to occur across the entire site and the Changes do not seek to amend this. Rather the alteration to the staging changes the timing and location of excavation within the application site.
- 25 Additionally, the Changes seek to reduce the maximum area which can be exposed and excavated at any one time, from 40 ha under the Original Application, to 26 ha. Although this does not alter the nature or character of the effects (dust and

¹ *Atkins v Napier City Council* (2008) 15 ELRNZ 84 (HC), at [20].

noise predominantly)), in the view of the Consent Authorities, due to the reduction in excavation area, the intensity or impact of the effects is likely to be reduced.

- 26 It is acknowledged that due to the Changes, the excavation activities on site are now occurring in a different sequence to that which was originally applied for and as a result, some parties may be affected by the proposal sooner (or later) than they originally anticipated.
- 27 For example, under the Original Application, stage 5, the northernmost area of the site, was the last area proposed to be excavated. A person located near that part of the site was, under the Original Application, not likely to experience any anticipated effects for some time after commencement of site activities. The Changes alter the sequencing and therefore alter when any effects might occur. The Consent Authorities consider the sequencing does not change the scale, character or intensity of effects, rather it simply changes when in time the effects might occur.
- 28 In any event, as mentioned above, given the reduced excavation area, the Consent Authorities consider the Changes will actually reduce the intensity or impact of the anticipated effects.
- 29 Finally, when taking into account the proposal as a whole and its possible effects, it is not plausible to conclude there may be other parties who would have submitted on the amended proposal. Given quarrying is sought to be authorised over the entire site (the Changes do not alter this), it is reasonable to conclude that any party occupying or owning land in the vicinity of the application site concerned about quarrying activities, would have lodged a submission, irrespective of the staging.
- 30 So for these reasons, the Consent Authorities do not consider the Changes to give rise to an issue of prejudice or unfairness to other parties.

REQUEST FOR DIRECTIONS

- 31 The Commissioners, following consideration of this memorandum, are requested by the Consent Authorities, to issue a minute to all parties setting out:
- (a) The issue for determination; and;
 - (b) Such other directions as the Commissioners consider appropriate to enable the fair and efficient resolution of this scope issue as a preliminary matter prior to commencement of the scheduled hearing on Monday 18 November 2019.
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Dated 23 August 2019.



Lucy de Latour

Legal Counsel for Canterbury Regional Council



Paul Rogers

Legal Counsel for Selwyn District Council
