

**BEFORE HEARING COMMISSIONERS APPOINTED BY CANTERBURY
REGIONAL COUNCIL AND WAIMAKARIRI DISTRICT COUNCIL**

IN THE MATTER OF

the Resource Management Act 1991

AND

IN THE MATTER OF

Applications CRC204106, CRC204107, CRC204143
and RC205104 – to establish, operate and
rehabilitate an aggregate quarry at 309 West Belt,
Rangiora

**SYNOPSIS OF OPENING LEGAL SUBMISSIONS FOR
TAGGART EARTHMOVING LIMITED**

Dated: 4 May 2021

GREENWOOD ROCHE
LAWYERS
CHRISTCHURCH
Solicitor: Monique Thomas
(Monique@greenwoodroche.com)

Level 3
1 Kettlewell Lane
PO Box 139
Christchurch
Phone: 03 353 0570

MAY IT PLEASE THE COMMISSIONERS:

Introduction

- 1 Taggart Earthmoving Limited seeks resource consents for the establishment, operation and rehabilitation of a quarry on Rural zoned land at 309 West Belt, Rangiora. Taggart is a family owned civil construction and aggregate business. It uses the aggregate which it quarries to support its civil business, and has a crushing and screening facility at 1 Cones Road, Rangiora.
- 2 An ongoing local supply of aggregates is required in North Canterbury. There is currently not enough consented gravel supply left in the Waimakariri District which means that if new sources are not available, gravel will be need to be imported from further afield. If gravel is required to be trucked into the district from other areas, the cost of gravel in the Rangiora area will increase significantly and these costs will be passed onto the end user. Trucking aggregate over long distances can also have significant traffic effects.
- 3 This proposal represents a local, cost-efficient and consistent supply of aggregate without the need for any crushing or screening on site. It is located on a heavy vehicle bypass, close to existing processing infrastructure and close to an area of significant demand.
- 4 The proposal is described in the evidence of Mr Taggart and the relevant technical witnesses but briefly:
 - (a) The quarry is proposed to be 14.5 hectares in size and it will be staged, with only 2 hectares disturbed at a time.
 - (b) A consent duration of 15 years is sought. However as explained by Mr Taggart in his evidence, given the campaign nature of the applicant's business, there may be periods during which there is no active quarrying taking place.
 - (c) The excavation will be up to 5 metres deep. Because groundwater levels can fluctuate, depending on the time of year and rainfall, actual excavation depths will vary but at least 1 metre separation to actual groundwater will be maintained at all times. More material will likely be extracted in summer and

autumn, when groundwater is low, or when longer periods of dry conditions are forecast.

- (d) As quarrying of each stage is completed, the excavation will be backfilled with Virgin Excavated Natural Materials (VENM) to ground level, and returned to pasture.
- 5 Unsurprisingly, these applications have attracted significant interest from local residents. It is fair to observe that quarrying is currently an activity of interest in Canterbury. While some find the industry unpalatable, particularly in close proximity to their every-day activities, the reality is that as a society, we are reliant on quarried aggregate.
 - 6 Some of the submitters' concerns may be due to a perception that a full working quarry (including crushing and screening, and associated dust and noise effects) is to be established on the site. Those activities will not occur as part of the proposal.
 - 7 It is the applicant's position that the effects of this proposal have been appropriately avoided, remedied or mitigated. In my submission the central issue is whether the effects of the proposal, particularly in relation to groundwater, are acceptable.

Consents Required

- 8 The consents required, as identified in the s42A report, are:

Regional Council

- (a) Use of land to excavate material (s9)¹;
- (b) Discharge permit to discharge contaminants to air (s15);
- (c) Discharge permit to discharge contaminants (VENM) to land (s15); and
- (d) Water permit (to divert floodwater) (s14).

¹ I agree with the s42A officer (Ms Dawson) that a Regional land use consent is not required for the deposition of VENM under Rule 5.177 of the LWRP given the depth of the excavation.

District Council

- (e) Land use consent (s9).

Variations

- 9 As noted by Ms Dawson and the applicant's planner (Dr Durand), a variation to the applicant's existing air discharge permit at Cones Road will be needed to enable the processing of material from this site, as well as a variation to water permit CRC160231 to allow water to be applied to the proposed quarry access road and stockpiles. These variations are expected to be straightforward and Ms Dawson agrees that applications for these variations can be lodged at a later date. The applicant acknowledges that any gravel extracted from the site will not be able to be processed at Cones Road until that variation has been granted.

Stormwater Discharge

- 10 Ms Dawson has queried whether a separate consent is also required to authorise stormwater discharges from the access road.
- 11 Under Rule 5.96 of the Canterbury Land and Water Regional Plan (LWRP), the discharge of stormwater from the road would be a permitted activity unless that land is contaminated or "*potentially contaminated*". Submissions have identified a potential historic waste area on the eastern margin of the site, where Taggart intends to create the access road. If Rule 5.96 cannot be relied on, discharge of stormwater from the road would be a discretionary activity under Rule 5.100.
- 12 In my submission, there is scope for you to grant a consent for discharge of stormwater from the road. The application sought all necessary consents required for the proposal² and it is the original application, together with any documents incorporated in it by reference, which define the scope of your jurisdiction³. As the possible need for that consent has only been identified through submissions, the public notice notifying the applications did not

² The application/AEE states on page 13 that "*For the avoidance of doubt, Taggart is seeking consent under the above rules and any other rules which may apply to the activity, even if not specifically noted.*"

³ *Darroch v Whangarei District Council* A018/93 (PT) at page 27

specifically refer to a discharge permit for stormwater. However it is highly unlikely that there would be persons who did not make a submission who would have done so if they were aware that such a consent was also required⁴.

- 13 The alternative is for the applicant to undertake further investigations of that part of the site before exercising the consents, to confirm whether it does in fact contain any contaminants above background concentrations. If it does, a discharge permit could then be sought under Rule 5.100.

Section 91

- 14 Under s91 of the Resource Management Act 1991 (RMA), a consent authority can determine not to proceed with the hearing of an application if it considers (on reasonable grounds) that:
 - (a) Other resource consents will also be required in respect of the proposal to which the application relates; and
 - (b) It is appropriate, for the purpose of better understanding the nature of the proposal, that applications for any one or more of those consents be made before proceeding further.
- 15 In my submission, s91 should not be engaged given these parts of the proposal (the Cones Road variation, variation of the water permit for the site and potentially a need for an additional discharge permit for stormwater) 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 effects⁵.

Other Permissions Required

- 16 Minute 2 of the Commissioners addressed a matter raised by submitter Mr John Mather regarding s21 of the Racing Industry Act 2020 (RIA) and the use of racing venue land for purposes other than racing. The submitter contended that this hearing could not proceed in the absence of approval from the appropriate racing code to use to the land as proposed by Taggart.

⁴ *Coull v Christchurch City Council* C77/2006 at [11]

⁵ *Zwart v Gisborne District Council* [2014] NZEnvC 96 at [19]

- 17 The Commissioners acknowledged that often several forms of permission are needed under various legislation before developments can proceed. The minute noted⁶ that any permissions required under the RIA are not an RMA matter. I agree with the position reached by the Commissioners.

Section 42A Recommendation

- 18 The comprehensive s42A report prepared by Ms Dawson for the Regional and District Councils has recommended that these applications be declined, primarily related to the risk to groundwater quality and drinking water supplies down-gradient of the site. However she considers that the effects of the proposal may be acceptable if the applicant:

- (a) *Provides further information on the presence of any soil contamination associated with the potential historic waste area and the soil stockpiles on site. If there may be contaminants present, a methodology for addressing that contamination is required.*
- (b) *Adopts stricter waste acceptance protocols which go beyond the requirements of the WasteMINZ guidelines;*
- (c) *Provides a robust groundwater quality monitoring programme;*
- (d) *Describes in further detail how the groundwater alert system will enable management of the 1 metre separation to real-time groundwater levels relative to excavation depth;*
- (e) *Demonstrates that the proposed noise limit can be achieved based on the location of the proposed access road and assesses potential vibration effects; and*
- (f) *Upgrades the site access in accordance with Waimakariri District Council Engineering Code of Practice "Typical Rural Zone Commercial Access" and provides information to determine the appropriate access width⁷.*

⁶ At paragraph 12

⁷ Section 42A report, pages 5 and 6

- 19 Following completion of the s42A report, a number of refinements have been made to the proposal, the most significant being in relation to the VENM acceptance protocol. A more stringent three stage process is now proposed which goes beyond the requirements of the WasteMINZ guidelines. Mr Singson describes this process in his evidence⁸.
- 20 All of the expert technical witnesses for the applicant⁹ (except for Mr Throssell, whose evidence relates to potential flood effects¹⁰) have conferenced with the relevant experts advising the consent authorities, and in the case of air quality, with Mr Van Kekem (the expert for the Community Board).
- 21 It appears that all of the matters identified by Ms Dawson (as set out in paragraph 18 of my submissions) have been addressed through conferencing, with the exception of groundwater quality monitoring. Ms Kreleger, Dr Rutter and Mr Simpson agree that appropriate groundwater quality monitoring conditions could be developed, but do not consider the conditions proposed by the applicant to be sufficiently robust¹¹. It is not clear what particular amendments to those conditions they would like to see, however the applicant has made some refinements to these conditions and is willing to engage with Ms Kreleger, Dr Rutter and Mr Simpson further on this matter.
- 22 The outcomes of conferencing have been documented as follows:
- (a) Joint Witness Statement of William Reeve and Jon Farren (Noise) dated 30 April 2021;
 - (b) Conferencing Statement (Traffic) (Mr Noon and Mr Morahan) dated 30 April 2021;
 - (c) Conferencing Statement (Air Quality) (Mr Bluett, Mr Chilton and Mr Van Kekem) dated 3 May 2021;
 - (d) Joint Witness Statement of Tracy Singson and Samantha Iles (Contaminated Land Experts) dated 30 April 2021; and

⁸ Evidence of Tracy Singson, Section 8

⁹ Matthew Noon (Traffic); Jon Farren (Noise); Jeff Bluett (Air quality); Neil Thomas (Groundwater); Tracy Singson (Backfill)

¹⁰ At the time of preparing these submissions, Mr Throssell had not received a response from Mr Simpson however the applicant's assessment of potential flooding effects does not appear to be disputed.

¹¹ Conferencing Statement (Groundwater), Question 10

(e) Conferencing Statement (Groundwater) (Mr Thomas, Ms Kreleger, Dr Rutter and Mr Simpson) (undated but conferencing held on 12th and 16th April 2021).

- 23 There are no issues in contention between the traffic experts and there appear to be no material issues between the noise or contaminated land experts.
- 24 The main area of disagreement remaining between the groundwater experts relates to groundwater levels at the site, which Mr Thomas (the applicant's groundwater expert) considers to be an operational issue, and whether the groundwater monitoring conditions proposed by the applicant are adequate.
- 25 There is a large amount of agreement between the air quality experts, including on effects, although Mr Van Kekem considers that he is unable to provide a firm opinion on the effects of the proposal without seeing the final Air Quality Management Plan (AQMP). Mr Bluett and Mr Chilton agree that it is not likely that the proposal would increase the concentration of PM₁₀ in the Rangiora Airshed by more than the amount specified in Regulation 17 of the National Environmental Standard for Air Quality (NESAQ). Mr Van Kekem does not consider that the applicant has supplied sufficient evidence to demonstrate that this will not occur.

Section 104 Considerations

- 26 When considering this application and any submissions received, the matters to which you must have regard (subject to Part 2) are:
 - (a) The actual and potential effects on the environment of allowing the activity (noise, traffic, flooding, air quality, groundwater) (s104(1)(a));
 - (b) The relevant statutory and planning framework (s104(1)(b)); and
 - (c) Any other matters considered relevant or necessary (s104(1)(c)).
- 27 I address each of these matters below.

Actual and Potential Effects

Positive effects

- 28 The proposal will have a number of positive effects, as described in the evidence of Mr Taggart and Dr Durand:
- (a) It will assist in meeting demand for aggregate in the Waimakariri district (of which there is a decreasing supply) without the need for any crushing or screening on site¹²;
 - (b) It will enable continued use of the significant investments in the plant, equipment and buildings at 1 Cones Road. That site plays an important role in the processing, sorting and sale/delivery of aggregate products in North Canterbury and enables aggregates and associated products to be provided to the local community at an affordable price¹³;
 - (c) The Cones Road site currently employs 12 full time equivalent staff, along with up to another 20 staff when there are large scale projects under construction in the area. Without a guaranteed supply of gravel to this site, it would not be viable for the applicant to continue operating in Rangiora which would mean that closure and redundancies would be necessary¹⁴;
 - (d) The proposal will generate direct employment for 3 on site staff, and indirect continued employment for the 12 employees within the Cones Road yard¹⁵; and
 - (e) Taggart has entered into a commercial agreement with the Racecourse Committee for use of the site, and in doing so, will support the ongoing viability of racecourse activities¹⁶.
- 29 The value of gravel extraction is specifically recognised in Policy 4.93 of the LWRP:

¹² Evidence of Paul Taggart, paragraph 3.6

¹³ Evidence of Paul Taggart, paragraph 4.24

¹⁴ Evidence of Paul Taggart, paragraph 4.24

¹⁵ Evidence of Paul Taggart, paragraph 5.16

¹⁶ Evidence of Paul Taggart, paragraph 5.34

Recognise the value of gravel extraction for construction and maintenance of infrastructure, for economic activity, for flood management purposes and for the re-build of Christchurch.

Flooding

- 30 Any effects associated with diversion of floodwater will be negligible and no dwellings would be affected in a Q100, Q200 or Q500 event¹⁷. Flood levels west to the site and east of the site would in fact be decreased in all events modelled¹⁸.

Noise

- 31 Sensitive receivers around the perimeter of the site will experience varying noise levels as the extraction plant moves from stage to stage¹⁹. The maximum noise levels of the proposal are predicted to exceed the applicable daytime permitted activity noise limits in the District Plan by 1 dB²⁰.
- 32 The predicted noise levels are based on several operational scenarios where all equipment is operating continuously and simultaneously in order to represent a worst-case situation. In reality, not all equipment will be operating simultaneously and noise levels will therefore often be lower than the predicted levels²¹.
- 33 Noise limits have been recommended by Mr Farren (and are considered to be appropriate by Mr Reeve²²) which will provide an almost identical level of residential amenity as the District Plan permitted activity noise standards²³.
- 34 With the controls proposed, the activity will result in acceptable noise and vibration effects that will maintain an appropriate level of daytime and night-time residential amenity at the nearest dwellings²⁴.

¹⁷ Evidence of Ben Throssell, paragraph 9.1

¹⁸ Evidence of Ben Throssell, paragraph 5.7

¹⁹ Evidence of Jon Farren, paragraph 7.10

²⁰ Evidence of Jon Farren, paragraph 6.2

²¹ Evidence of Jon Farren, paragraph 5.4

²² Appendix 6 to s42A report, Report of William Reeve, paragraph 79

²³ Evidence of Jon Farren, paragraph 3.4

²⁴ Evidence of Jon Farren, paragraph 6.5

- 35 The Joint Witness Statement of Mr Farren and Mr Reeve specifically addresses the matters raised by Mr Reeve in the s42A report (traffic on River Road, the haul route, stockpile activity and vibration). By way of a summary, Mr Farren and Mr Reeve agree that:
- (a) There will be a change in the character of traffic noise received by residences on River Road, however traffic noise effects will not be significantly different for the dwellings closest to the road.
 - (b) Vibration from quarry trucks using River Road is unlikely to result in a difference in level when compared to heavy vehicles using the road currently. However, the number of perceptible events may increase at the closest dwellings as a result of the increased heavy vehicle traffic.
 - (c) Vibration effects at properties surrounding the site will be negligible.
 - (d) Modelling of the haul route shows that there is negligible change for the dwellings on Huntingdon Drive and the noise levels will remain below the 50 dB L_{Aeq} limit.
 - (e) Modelling of activity above the height of the bunds shows that the predicted levels from this activity remain below 50 dB L_{Aeq} at the closest dwellings on West Belt. Mr Reeve is satisfied that the modelling adequately demonstrates that compliance can be achieved with the 50 dB L_{Aeq} limit for most extraction locations. When extraction occurs in the north-east quadrant, closest to the stockpiles, at the same time as stockpile activity, Mr Reeve considers that there is the potential for a small (less than 2 dB) breach of the proposed limit at the closest West Belt properties.
 - (f) Since the applicant will be constrained by the proposed 50 dB L_{Aeq} daytime noise limit and there are inherent conservatisms in the modelling, Mr Reeve considers that this would be best addressed by a requirement to monitor the actual noise levels from these activities, to confirm the proposed noise limits are being met.

- (g) The conditions of consent proposed in the s42A report are generally appropriate. Mr Reeve considers that the monitoring condition should specifically cover noise from the stockpiles²⁵. Mr Reeve agrees that the proposed change set out in paragraph 9.17 of Mr Farren's evidence (to include a night-time L_{AFmax} limit) is consistent with best practice.

Traffic Effects

- 36 There are no areas of disagreement between the traffic experts. Mr Noon and Mr Morahan agree that:
- (a) Existing traffic volumes on the local roads are low enough to sufficiently accommodate the traffic that will be generated by this proposal. No adverse impacts relating to congestion and delays are expected. The proposal is not expected to exacerbate any safety issues in the area.
 - (b) While the access way complies with the District Plan requirements, a further upgrade to widen the access way would be beneficial. This is now proposed by the applicant.
 - (c) Assessment of onsite parking demand is considered accurate and the technical non-compliance with the District Plan parking rule will have no adverse effects.

Air Quality

- 37 The proposed quarry is considered to be a small scale operation from an air quality perspective, both in terms of maximum working area and because no aggregate processing will occur on site²⁶.
- 38 Mr Chilton (for the Regional Council) agrees with Mr Bluett that any adverse effects of nuisance dust will be less than minor²⁷. While Mr Van Kekem (for the Community Board) agrees that the quarry could operate without generating adverse nuisance dust effects²⁸, he considers that he is unable to confirm whether that will be the case

²⁵ This recommendation has been accepted by the applicant – RC205104, proposed condition 19.

²⁶ Evidence of Jeff Bluett, paragraph 5.1

²⁷ Evidence of Jeff Bluett, paragraphs 5.3 and 5.6; Appendix 3 to s42A report – Report of Richard Chilton, paragraph 14

²⁸ Evidence of Donovan Van Kekem, paragraph 54

without being able to view the proposed SOPs for dust management and mitigation (amongst other elements in the proposed AQMP)²⁹.

- 39 Mr Bluett and Mr Chilton agree that any off-site concentrations of PM₁₀, PM_{2.5} and RCS are expected to be well within the relevant human health guidelines and standards. Therefore any negative impacts on human health impacts are considered to be less than minor. Mr Van Kekem considers that there is low potential for the quarry to exceed health based ambient air quality criteria³⁰.
- 40 There are some areas of disagreement in relation to whether general monitoring of dust levels should be for TSP or PM₁₀, and whether the conditions should set trigger levels for additional mitigation of PM₁₀. Mr Bluett and Mr Chilton agree that these matters are best addressed through the AQMP.
- 41 Mr Van Kekem also considers that the conditions should require PM₁₀ monitoring in relation to the Airshed boundary, given Regulation 17 of the NESAQ. I address this matter in paragraphs 60 - 67 of my submissions.

Groundwater

- 42 From their evidence, it appears that Mr Thomas and Ms Kreleger generally agree about the rates of groundwater level rise and about the potential effects of the proposal on groundwater should the controls proposed not be effective, these being:
- (a) Effects from microbial contamination if groundwater were to reach the surface of the excavation;
 - (b) Effects should there be a fuel spill in the excavation; and
 - (c) Effects from saturation of backfill material.
- 43 In terms of these effects:
- (a) The base of the excavation will be maintained 1 metre above the real time groundwater level. However if groundwater were to surface and pond in the excavation, modelling of the

²⁹ Evidence of Donovan Van Kekem, paragraph 43

³⁰ Conferencing Statement (Air Quality) dated 3 May 2020, paragraph 20

potential effect of microbial contamination of ponded groundwater indicates that effects would not be expected to move more than 150 metres beyond the boundary of the excavation. The Council's back up community drinking water bores are located at least 400 metres from the boundary of the site, therefore any hazard from bacterial contamination and/or a spill incident is low³¹.

- (b) Likewise, modelling indicates that the effects of a fuel spill would not move more than 175 metres from the boundary of the excavation. In paragraph 60 of her report³², Ms Iles agrees that the proposed spill response procedures are adequate.
- (c) Ms Kreleger states in her report that "*the risk to groundwater quality from compliant cleanfilling activities below the highest groundwater level should be low, but this depends on a rigorous cleanfill verification and testing procedure...*"³³. Mr Thomas agrees with that statement³⁴.

44 Following conferencing, the groundwater experts have reached agreement about the following:

- (a) The general groundwater direction through the site;
- (b) The sources of groundwater;
- (c) The use of the bores identified in the AEE for assessing potential groundwater effects;
- (d) The level of sensitivity of the receiving environment (which is considered to be highly sensitive given the site's location within a drinking water protection zone and over an unconfined aquifer);
- (e) That monitoring of groundwater upgradient and down gradient of the excavation and a stand pipe in the excavation is sufficient to gather adequate data on real time groundwater levels;

³¹ Evidence of Neil Thomas, paragraph 5.5

³² Appendix 5 to the s42A report

³³ Appendix 4 to s42A report, paragraph 175

³⁴ Evidence of Neil Thomas, paragraph 7.18

- (f) That there is a human factor to operating the quarry;
 - (g) That there is no difference in risk between the Council community bores being actively used or as a back up supply;
 - (h) There is *"no issue to groundwater quality arising from the leaching of contaminants from VENM"*;
 - (i) Risk arises from removal of material but this can be managed and reduced by mitigation measures.
- 45 The material area of disagreement between the groundwater experts appears to relate to the conditions proposed in relation to monitoring of groundwater quality and depths.
- 46 By way of a summary, the proposed groundwater conditions for CRC204106 require the following:
- (a) Groundwater levels and quality will be monitored in telemetered bores located upgradient and downgradient of the site. The bores will be accessible to the Regional Council for additional verification sampling³⁵. The bores will be fitted with a telemetry system that sends warnings and alerts to the quarry manager. That data is also available to the Regional Council at all times³⁶. A standing pipe will also be installed within each active working stage³⁷.
 - (b) After 12 months of monitoring to establish baseline water quality³⁸, that data will then be used to establish trigger values for management actions in response to any changes in the monitoring data. The trigger levels are intended to establish if there has been any increase in the concentration of any contaminant across the site³⁹.
 - (c) Sampling will be undertaken every three months⁴⁰. Should an exceedance of the trigger values be identified, a second round of sampling will be undertaken⁴¹. Should that sampling also

³⁵ Proposed condition 6

³⁶ Proposed condition T

³⁷ Proposed condition U

³⁸ Proposed condition 9

³⁹ Proposed condition 28 advice note

⁴⁰ Proposed condition 27

⁴¹ Proposed conditions 29 - 31

identify an exceedance of the values, the consent holder is required to notify the Regional Council and residential occupiers with bores within 500 metres downgradient of the site. It is also required to sample the domestic wells and conduct an investigation into the cause of the exceedance⁴².

- (d) If any domestic bore sample shows an adverse effect on drinking water quality from the quarry, the consent holder must provide an alternative water supply of potable water, an appropriate water treatment system or a deeper well⁴³. Measures to reduce the concentration of the contaminant are also required – these could include cessation of the activities that caused the exceedance, removal (or stabilisation or capping of the contaminant source) or revision of backfill management procedures⁴⁴.

47 Ms Kreleger, Dr Rutter and Mr Simpson do not consider the applicant's proposed conditions to be sufficiently clear or adequate but agree that it would be possible to develop such conditions⁴⁵. The applicant remains willing to discuss this with them further.

Deposition of VENM

48 Mr Singson and Ms Iles agree that the backfill quality assurance and acceptance process is critical in ensuring any effects on groundwater are minimised. That process has been refined and is now proposed to consist of three stages⁴⁶:

- (a) Pre-selection;
- (b) Inspection and additional screening; and
- (c) Audits and verification (sampling will comply with the WasteMINZ guidelines).

49 Ms Iles agrees that this three stage process is appropriate but considers that the desktop pre-selection assessment for greenfield land should be undertaken by a Suitably Qualified and Experienced

⁴² Proposed condition 31

⁴³ Proposed condition 32

⁴⁴ Proposed condition 32

⁴⁵ Statement of Areas of Agreement and Disagreement, Question 10

⁴⁶ Evidence of Tracy Singson, paragraph 8.9

Practitioner (SQEP) rather than by a trained Taggart employee. While it may be more efficient for greenfield sites to be assessed by a SQEP, Mr Singson believes this could also be done by Taggart staff provided suitable training and appropriate tools are provided⁴⁷.

- 50 On the basis of Ms Iles' advice, Ms Dawson considers that the proposed Waste Acceptance Criteria are appropriate⁴⁸.

Potential Historic Waste Area

- 51 A potential historic waste area has been identified by submitters in the vicinity of the proposed access road and the eastern acoustic bund. Soil may need to be disturbed to form the access road. This is expected to comply with the permitted activity conditions for disturbing soil in Regulation 8(3) of the NES. Should that not be the case, a consent can be sought.

Existing Stockpiles on the Site

- 52 There are some existing stockpiles on the site which Ms Iles suggests should also be tested. While Mr Singson agrees that the nature of the material in those stockpiles on the site is unknown, there is no evidence that the stockpiles contain (or are likely to contain) contaminants. The applicant would need to test the material in the stockpiles if it wished to use that material as backfill, to confirm that its meets the backfill criteria.

Alternatives

- 53 Section 105 of the Act is relevant to the applications for discharge permits. It requires that in addition to the matters in s104(1), you must have regard to:
- (a) The nature of the discharge and the sensitivity of the receiving environment to adverse effects; and
 - (b) The applicant's reasons for the proposed choice; and
 - (c) Any possible alternative methods of discharge, including discharge into any other receiving environment.

⁴⁷ Evidence of Tracy Singson, paragraph 8.9.1

⁴⁸ Section 42A report, paragraph 319

- 54 These matters have been addressed in the evidence of Mr Taggart, Mr Thomas and Mr Bluett.
- 55 In his evidence, Mr Cornwall suggests that quarrying this land will reduce its potential for urban development⁴⁹, and that urban development would be a higher use of the land.
- 56 Your evaluation of these applications is governed by ss104 and 105 of the RMA which do not require a consideration of alternative uses for the site. In any event, there is no evidence that this proposal would reduce its potential for urban development in the future. *Fraser Shingle Limited v Hastings District Council* W7/92 (cited by Mr Cornwall) is not relevant to this proposal⁵⁰.
- 57 Mr Cornwall also suggests that a site near the Rangiora airport may be more appropriate⁵¹. An assessment of alternative locations is required in an AEE if it is likely that the proposed activity will result in any significant adverse effect on the environment⁵². In my submission, this proposal does not cross that threshold.
- 58 Mr Taggart's evidence has provided you with sufficient information as to alternatives, to the extent that is relevant. The issue of alternative locations does not weigh against a grant of consent.

Statutory and Planning Matters

- 59 These have been comprehensively addressed in the s42A report. There are only a couple of those matters on which I wish to comment.

⁴⁹ Evidence of Mr Cornwall, paragraph 22

⁵⁰ That case was decided under the Town and Country Planning Act 1977, not the RMA, and was therefore decided under a different legislative framework. It also involved a situation where the land possessed a "rare combination" of qualities which made it suitable for growing grapes capable of producing wines of the highest quality, and land of that nature was considered "scarce". The land could not be rehabilitated so as to be suitable for growing grapes of the highest quality. There is no suggestion that the land which is the subject of this proposal contains some rare combination of qualities which makes it in need of protection, or that land of this nature is scarce.

⁵¹ Evidence of Mr Cornwall, paragraph 46

⁵² Schedule 4 of the RMA, Clause 6

Resource Management (National Environment Standards for Air Quality) Regulations 2004 (NESAQ)

60 Regulation 17(1) of the NESAQ applies when considering the effects of the proposed quarry on air quality in the air shed. It provides:

17. Certain applications must be declined unless other PM₁₀ discharges reduced

(1) A consent authority must decline an application for a resource consent (the proposed consent) to discharge PM₁₀ if the discharge to be expressly allowed by the consent would be likely, at any time, to increase the concentration of PM₁₀ (calculated as a 24-hour mean under Schedule 1) by more than 2.5 micrograms per cubic metre in any part of a polluted air shed other than the site on which the consent would be exercised;

...

61 The site itself is not located within a Gazetted Airshed but it is located approximately 120 metres from the Gazetted Rangiora Airshed which is considered "*a polluted airshed*".

62 The key words in Regulation 17(1) are "*would be likely, at any time ...*". In my submission, the word "likely" should be given its usual or common definition as it is generally understood. The Cambridge online dictionary defines "likely" as: "*...If something is likely, it will probably happen or is expected*" or "*probably*". This definition is consistent with the decision of Williams J in the case of *Weir v Kapiti Coast District Council* [2013] NZHC 3516. That case was partly concerned with how the council had placed coastal erosion prediction lines on its maps. An issue arose as to whether the Council was obliged to include this information in its 'land information memorandum', which was governed by s44(A) of the Local Government Official Information and Meetings Act 1987. The key part of the section (s44(A)(2)) states:

44A Land information memorandum

(1) ...

(2) *The matters which shall be included in that memorandum are –*

(a) *information identifying each (if any) special feature or characteristic of the land concerned, including but not limited to potential erosion, avulsions, falling debris,... or likely presence of hazardous contaminants, being a feature of characteristic that –*

(i) ...

(ii) ...

63 In considering the use of the word “likely” in that context, Williams J found:

The point is that “likely” unquestionably refers to probability – specifically a state of facts that is more probable than not⁵³.

64 Mr Bluett and Mr Chilton both consider that it is not likely that discharges from the site access road (with mitigation) would increase the concentration of PM₁₀ in the Rangiora Airshed (calculated as a 24-hour mean under Schedule 1 of the NESAQ) by more than 2.5µ/m³. Mr Bluett’s assessment is informed by the mitigation measures proposed and their likely effectiveness based on several studies.

65 This can be contrasted to the test expressed by Mr Van Kekem:

I do not think that the applicant has supplied sufficient evidence to demonstrate that this exceedance will not occur⁵⁴.

66 In my submission, Mr Van Kekem has applied an incorrect test. As a result, he suggests that (as a minimum) the entire access road should be sealed. Alternatively, or in addition to that, he considers that conditions should be imposed requiring PM₁₀ monitoring and that

⁵³ At page 9

⁵⁴ Evidence of Donovan Van Kekem, paragraph 21

the quarry cease operations if that monitoring shows the PM₁₀ limit has been exceeded⁵⁵.

- 67 The access road cannot be moved due to the operational requirements of the racecourse, as Mr Taggart can discuss. Mr Bluett considers that dust from the road can be controlled so as not to exceed the NESAQ and that a condition requiring monitoring of PM₁₀ is not required for the reasons set out in paragraph 31 of the Conferencing Statement.

National Environmental Standard for Sources of Human Drinking Water Regulations 2007

- 68 The purpose of the NES for Sources of Human Drinking Water is to reduce the risk of contamination of drinking water sources. It does this by requiring consent authorities to consider the effects of a proposal on drinking water sources in their decision making.
- 69 Under this NES, consent authorities are required to:
- (a) decline discharge permits which are likely to result in community drinking water becoming unsafe for human consumption following existing treatment (Regulation 7); and
 - (b) place conditions on relevant consents requiring notification of drinking water suppliers if significant unintended events occur (e.g. spills) that may adversely affect sources of human drinking water (Regulation 12).

Regulation 7

- 70 Regulation 7 applies to an activity that has the potential to affect a registered drinking water supply that provides no fewer than 501 people with drinking water for not less than 60 days each calendar year⁵⁶. It states:

⁵⁵ Evidence of Donovan Van Kekem, paragraph 29

⁵⁶ Regulation 6

Granting of water permit or discharge permit upstream of abstraction point where drinking water meets health quality criteria

A regional council must not grant a water permit or discharge permit for an activity that will occur upstream of an abstraction point where the drinking water concerned meets the health quality criteria if the activity is likely to—

- (a) introduce or increase the concentration of any determinands in the drinking water, so that, after existing treatment, it no longer meets the health quality criteria; or*
- (b) introduce or increase the concentration of any aesthetic determinands in the drinking water so that, after existing treatment, it contains aesthetic determinands at values exceeding the guideline values.*

71 Based on the advice of Ms Kreleger and Mr Simpson, Ms Dawson considered that the proposal (as it stood at the time her report was written) "could" increase the concentration of contaminants to the extent that water quality no longer meets the NZDWS health quality criteria or aesthetic determinand guideline values⁵⁷. She considered that further information was required to inform the water quality monitoring programme and demonstrate rigorous methods to ensure only VENM is deposited.

72 However the legal test is whether the activity is "likely to" either:

- (a) introduce or increase the concentration of any determinands in the drinking water, so that, after existing treatment, it no longer meets the health quality criteria; or
- (b) introduce or increase the concentration of any aesthetic determinands in the drinking water so that, after existing treatment, it contains aesthetic determinands at values exceeding the guideline values.

73 Mr Thomas confirms in his evidence that any effects of filling with VENM on groundwater quality is likely to be limited to a small change in groundwater chemistry, within the range of natural fluctuations⁵⁸

⁵⁷ Section 42A report, paragraph 525

⁵⁸ Evidence of Neil Thomas, paragraph 7.18

Groundwater will remain suitable for drinking water purposes⁵⁹. Therefore Regulation 7 does not act as a bar to the granting of these consents.

Regulation 12

- 74 Regulation 12 applies to an activity that has the potential to affect a registered drinking water supply that provides no fewer than 25 people with drinking water for not less than 60 days each calendar year. It provides:

Condition on resource consent if activity may significantly adversely affect registered drinking water supply

- (1) *When considering a resource consent application, a consent authority must consider whether the activity to which the application relates may—*
 - (a) *itself lead to an event occurring (for example, the spillage of chemicals) that may have a significant adverse effect on the quality of the water at any abstraction point; or*
 - (b) *as a consequence of an event (for example, an unusually heavy rainfall) have a significant adverse effect on the quality of the water at any abstraction point.*
- (2) *If the consent authority considers that the circumstances in subclause (1) apply, and it grants the application, it must impose a condition on the consent.*
- (3) *The condition must require the consent holder to notify, as soon as reasonably practicable, the registered drinking-water supply operators concerned and the consent authority, if an event of the type described in subclause (1) occurs that may have a significant adverse effect on the quality of the water at the abstraction point.*

- 75 Ms Dawson states in her report that the Rangiora Eco Holiday Park provides water for between 25 and 100 people and is therefore subject to Regulation 12⁶⁰, however I note that supply is up-gradient of the quarry site and therefore does not have the potential to be affected by the proposal.

⁵⁹ Evidence of Neil Thomas, paragraphs 3.5, 5.12

⁶⁰ Section 42A report, paragraph 526

- 76 Ms Dawson considers that in terms of Regulation 12, there "*could be adverse effects*" on drinking water⁶¹. However the legal test is whether such an event "*may have a significant adverse effect*" on the quality of the water at any abstraction point.
- 77 Mr Thomas has modelled the effects of a spill and microbial contamination should groundwater pond in the excavation. The modelling shows that effects from a spill would not be expected to move more than 150 metres beyond the boundary of the excavation. Likewise, modelling indicates that the effect of a fuel spill would not move more than 175 metres from the boundary of the excavation⁶².
- 78 The Council bores are located at least 400 metres from the boundary of the site, therefore Mr Thomas considers that the hazard from bacterial contamination and/or a spill incident is low⁶³. Notwithstanding this, a condition is proposed which requires any event (e.g. spillage of chemicals or ponding of groundwater) to be advised to both the Regional and District Councils⁶⁴. Any exceedance of groundwater quality trigger levels is also required to be reported to the Regional Council⁶⁵.
- 79 For completeness, it is also noted that under Regulation 14 of this NES, a consent authority may impose more stringent conditions on a consent than required by the regulations. Mr Thomas does not consider that such conditions are necessary and no particular conditions have been suggested by Ms Kreleger, Dr Rutter or Mr Simpson.

Objectives and Policies - Regional and District Plans

- 80 Dr Durand, the planning witness for the applicant, broadly agrees with Ms Dawson's conclusion that the proposal is consistent with relevant objectives and policies in relation to noise, traffic, air quality and flooding. Ms Dawson has expressed some reservation about the consistency of the proposal with relevant policy documents in terms of potential effects on groundwater, based on the proposal as it stood when she prepared her report. Dr Durand does not share

⁶¹ Section 42A report, paragraph 528

⁶² Evidence of Neil Thomas, paragraph 3.6

⁶³ Evidence of Neil Thomas, paragraph 5.5

⁶⁴ CRC204106 Land use consent to excavate material, proposed condition 40

⁶⁵ CRC204106 Land use consent to excavate material, proposed condition 31

those reservations, having had the benefit of reading the evidence of Mr Thomas and Mr Singson before he undertook his planning assessment. Dr Durand considers that the proposal and its effects are consistent with policy in relation to groundwater provided the proposed conditions of consent are imposed⁶⁶.

Section 104(1)(c) - Any other matters

- 81 Ms Dawson has assessed the proposal against the relevant provisions of the Mahaanui Iwi Management Plan. She considers the proposal to be consistent with that document⁶⁷.
- 82 The Canterbury Regional River Gravel Management Strategy (October 2012) was prepared under the Local Government Act 2002 and provides a framework for managing the extraction of gravel from rivers across Canterbury. That strategy was not prepared under the RMA, but it was publicly notified for submissions and an independent hearing was held. Its focus is on rivers, rather than land based quarrying, therefore it has limited relevance and weight when it comes to this proposal but it does highlight:
- (a) There is increasing demand for fluival gravel but the sustainable supply volume is relatively small;
 - (b) That residential and commercial development and construction of infrastructure are dependent on the ability to access, extract, process and transport gravel economically from both land and river sources⁶⁸;
 - (c) That the need for a sufficient supply of gravel to sites located near fixed infrastructure is a key concern for some extractors⁶⁹; and
 - (d) That the cost of transport as a total percentage cost of extraction is also a key issue for the wider extraction industry – and particularly for those using the aggregates for construction⁷⁰.

⁶⁶ Evidence of Michael Durand, paragraphs 5.39 and 5.40

⁶⁷ Section 42A report, paragraph 548

⁶⁸ Page 5

⁶⁹ Page 6

⁷⁰ Page 7

Part 2

83 I agree with Ms Dawson that it is appropriate when considering these applications (with the exception of the air discharge application) to have regard to Part 2 matters given:

- (a) The Canterbury Regional Policy Statement (CRPS) was made operative in January 2013 and neither it nor the LWRP gives effect to the National Policy Statement for Freshwater Management 2020.
- (b) The District Plan was made operative in 2005, prior to the CRPS being prepared and made operative. Additionally, s6(h) was inserted into the RMA in 2017.

84 Section 5 is enabling. It seeks to enable various aspects of the community, including people in the community, to achieve their aspirations and goals provided adverse effects will be appropriately avoided, remedied or mitigated. The provision of infrastructure and housing for people must be regarded as a very important outcome for their health and wellbeing. Aggregate is an essential component of that welfare, and the timely and cost-efficient provision of this in the local area is a matter of importance⁷¹.

85 In terms of s6, the proposal is consistent with s6(h) (*the management of significant risks from natural hazards*). Modelling confirms that any potential effects of the proposed acoustic bund and conveyance channel on flood depth and flood hazard in a large flood event will be negligible.

86 In terms of s7, the following matters are relevant:

- (b) *The efficient use and development of natural and physical resources;*
- (c) *The maintenance and enhancement of amenity values;*
- (f) *Maintenance and enhancement of the quality of the environment.*

⁷¹ *Road Metals Company Ltd v Selwyn District Council* [2012] NZEnvC 214 at [260]

- 87 The proposal is an efficient use and development of natural and physical resources, especially in regard to:
- (a) Meeting demand for aggregate in the Waimakariri district (of which there is a decreasing supply) without the need for any crushing or screening on site;
 - (b) Utilising existing processing infrastructure and avoiding the need for new processing infrastructure elsewhere;
 - (c) Ensuring aggregate remains affordable for the local market; and
 - (d) Supporting the ongoing viability of racecourse activities.
- 88 Mr Farren confirms (and Mr Reeve agrees) that amenity values and the quality of the surrounding environment will be maintained. Mr Thomas confirms that with the conditions proposed, groundwater quality will be maintained.
- 89 In terms of s8, no submission has been received from Te Ngāi Tūāhuriri Rūnanga or Ngāi Tahu. The advice received from MKT has indicated an overall neutral position to the proposal and consent conditions have been proposed to address the comments received⁷². Therefore in my submission there are no specific s8 matters requiring consideration.

Conditions

- 90 A comprehensive suite of draft consent conditions have been proposed. To assist the Commissioners, Dr Durand has marked up the set of conditions included in the s42A report to identify those changes which have not been accepted by the applicant (and the reasons for this), as well as any further amendments recommended by the applicant's experts. He can speak to these when presenting a summary of his evidence. The conditions may of course further evolve during the course of the hearing, in which case a final set of the applicant's proposed conditions could be filed with closing legal submissions.

⁷² RC205104, proposed conditions 25 - 30

Conclusion

- 91 This proposal is a sustainable and efficient use of resources and existing processing facilities. Its adverse effects can be suitably avoided, remedied or mitigated by the imposition of consent conditions. In particular, any risk of potential effects on groundwater is acceptably low and has been appropriately minimised through the backfill acceptance and screening processes now proposed.
- 92 Subject to the imposition of appropriate conditions of consent, the proposal is generally consistent with the provisions of the relevant planning instruments.
- 93 Overall, given the clear overall benefits and demand for aggregate in this area, the purpose of the Act is best served by granting these consents.

DATED this 4th day of May 2021



M A Thomas
Counsel for Taggart Earthmoving Limited