

**Before the Hearing Panel 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,
CRC211629 and RC205104 to
establish, operate, maintain
and rehabilitate an aggregate
quarry by Taggart Earthmoving
Limited

SUMMARY STATEMENT

**SECTION 42A REPORTING OFFICER
CANTERBURY REGIONAL COUNCIL AND WAIMAKARIRI
DISTRICT COUNCIL
PLANNING – ADELE DAWSON**

DATED: 10 MAY 2021

INTRODUCTION

1. This report is an addendum to my primary Section 42A Officer's Report circulated on the 8th of April 2021. The purpose of this addendum is to provide a summary of my report and respond to matters raised in the evidence and during the hearing.
2. In preparing this addendum report, I have reviewed the following information:
 - a. Applicant evidence circulated 20th of April 2021;
 - b. Evidence of M Cornwall circulated 27th April 2021; and
 - c. Evidence of Mr Van Kekem circulated 27th April 2021.
 - d. Joint witness statement of Mr Morahan and Mr Noon dated 30th April 2021;
 - e. Joint witness statement of Mr Reeve and Mr Farren dated 30th April 2021;
 - f. Joint witness statement of Mr Singson and Ms Iles dated 30th April 2021
 - g. Joint witness statement of Ms Kreleger, Mr Thomas, Dr Rutter and Mr Kalley Simpson following conferencing on the 12th and 16th of April 2021;
 - h. Joint witness statement of Mr Chilton, Mr Van Kekem and Mr Bluett dated 3rd May 2021;
 - i. The applicant's revised proposed consent conditions dated 4 May 2021:

- j. Tracked changes and comments on proposed conditions for CRC204107 (air discharge) discussed between the relevant air quality experts dated 7 May 2021;
 - k. Joint witness statement of Ms Iles and Mr Singson dated 7 May 2021; and
 - l. Joint witness statement of Mr Thomas, Ms Kreleger, Mr Simpson and Dr Rutter following conferencing on 4th and 5th May 2021.
3. The other S42A officers have also prepared addendum reports and my comments below refer to those reports.

SECTION 42A REPORT SUMMARY

4. The Section 42A report covered in detail my understanding of the proposed activity as described in the Assessment of Environment Effects (AEE) and further information responses, an assessment of the relevant District and Regional Plan rules, objectives and policies, a description of the receiving environment and an assessment of the actual and potential effects of the proposal.
5. Broadly, I considered that (based on the information at the time) there was insufficient information to demonstrate that the effects on the environment and neighbouring residents would be acceptable. This information gap was most significant in relation to the potential effects on groundwater quality and the applicant's ability to manage the depth of the excavation relative to real-time groundwater levels and the quality of backfill material being deposited.
6. I concluded that even if the necessary information could be provided, I was concerned that the number of operational requirements and extensive monitoring necessary to manage the activity may be very difficult to comply with and enforce. Due to the sensitivity of the receiving environment, the consent conditions must be adhered to at all times.
7. In relation to the objectives and policies of the relevant statutory documents, my assessment commented on how the proposal (at the time) compared to the relevant provisions and how that view may change if the required further information is provided. I note that I did not take into account the practicality of complying with the consent conditions when undertaking this assessment. My assessment did not include an overall conclusion but identified a number of policies the proposal is at least inconsistent with. Significantly, I considered that (based on the information at the time), the proposal would not give effect to Te Mana o te Wai as described in the NPS-FM.

MATTERS RAISED IN EVIDENCE AND DURING THE HEARING

8. In the following sections I have commented on some key matters raised in evidence and during discussion through the hearing process. Where changes to relevant consent conditions have been suggested, I have explained the required amendments which are incorporated in my revision of the conditions presented by the applicant on the 4th of May 2021.

Site access upgrade

9. Based on the Joint Witness Statement (JWS) of Mr Morahan and Mr Noon, and Mr Morahan's S42A Addendum, the experts no longer have any concerns regarding the safe entry to and exit from the site. I have amended the applicant's proposed condition 7 of RC205104 to more accurately reflect the required upgrade.

Noise and vibration

10. Based on the JWS of Mr Reeve and Mr Farren, and Mr Reeve's S42A Addendum, I consider that the applicant's activities would likely achieve the proposed day-time noise limit. I note that the monitoring recommended by Mr Reeve (and accepted by the applicant) could demonstrate the noise limit is exceeded due to some remaining uncertainties. I am satisfied however that if the monitoring shows an exceedance of the noise limit, the applicant can modify their operations in order to comply. Amendments have been recommended to Condition 19 of RC205104 to reflect the required monitoring.
11. Mr Reeve has commented on the ability of any night-time works to comply with the proposed night-time noise criterion¹. Mr Reeve considers that the noise levels would unlikely be achieved, but that if this was a rare occurrence it would be appropriate to exclude this activity from complying with the limits.
12. I consider that any night-time works could be a rare occurrence but this depends on the frequency of rapidly rising groundwater events and the applicant's ability to manage those events. As the applicant may be able to create a model to forecast such events, this would allow the applicant to pre-empt emergency backfilling and complete this during day-time hours as far as possible. This possible model is discussed further below in the groundwater effects discussion.
13. Mr Farren and Mr Reeve have discussed potential vibration effects. Both experts agree while there may be an increase in perceptible events for dwellings along River Road, there is unlikely to be a difference in the vibration level compared to heavy vehicles currently using River Road. They also agree vibration effects at surrounding properties will be negligible from the use of onsite machinery. Based on this assessment, I consider no consent conditions are required on this matter and vibration effects will be minimal.

Dust discharges

14. Based on JWS from the air quality experts and s42A addendum of Mr Chilton, I remain of the view that the potential health and nuisance effects will be low provided appropriate consent conditions are imposed. The revised condition set includes a number of amendments which have been discussed between the air quality experts. Key changes to the conditions are:

¹ I note any such works would not be compliant with the hours of operation proposed.

- a. The Air Quality Management Plan (AQMP) must include contingency measures for responding to dust suppression or monitoring equipment failure or malfunction;
 - b. Requiring the access road between the sealed edge (50m from River Road) to the racetrack crossing to be stabilised using milled asphalt. The conditions set out the specifications and maintenance of this material.
 - c. The requirement for particulate monitoring to be undertaken when any dust generating activity is within 250m of a sensitive receptor.
 - d. A requirement to construct the acoustic bunds during winter months where possible, otherwise a number of controls are recommended to manage this activity.
15. I note that the applicant has not accepted conditions related to the covering of trucks transporting aggregate between the site and Cones Road. I have retained this mitigation measure based on the advice of Mr Chilton.
16. I note that Mr Van Kekem has not agreed to the PM₁₀ monitoring, however based on the opinion of Mr Chilton, I have retained the PM₁₀ monitoring requirements and the relevant trigger values.
17. Specifically, in relation to the NESAQ, I consider that with the mitigation measures, particularly the stabilisation of the access road with milled asphalt, the Commissioners would not be directed to decline the air discharge permit in accordance with Regulation 17(1). There appears to be agreement among the air quality experts that provided the access road is appropriately stabilised and maintained with contingency measures in place, it is unlikely there will be an increase of PM₁₀ greater than 2.5µg/m³.

Backfilling

18. The S42A addendum of Ms Iles confirms that the waste acceptance procedures for importing Virgin Excavated Natural Materials (VENM) are thorough and the proposed frequency of random audits and verification sampling is consistent with the requirements of the WasteMINZ guidelines. Ms Iles does however note that the protocols will not fully eliminate all risks. Mr Simpson remains concerned that that sampling requirements are inadequate to protect the community drinking water supply.
19. I consider the applicant's revised proposal has reduced the potential opportunity for non-VENM material to be deposited at the site but as highlighted by Ms Iles, it does not eliminate the risk. I consider that the only way to eliminate the risk is to not deposit VENM at the site. Further discussion regarding these remaining risks to groundwater quality is provided below.
20. The consent conditions provided in the JWS of Ms Iles and Mr Singson differ from the applicant's proposed conditions dated 4th May 2021. I have endeavoured to update the conditions to reflect their JWS.
21. In relation to the potential waste areas on site, Ms Iles and Mr Singson have proposed conditions on permit CRC211629 requiring investigation of this area prior

to the construction of the access road. I note this is the water permit to divert floodwater, but I have recommended their proposed condition is included on RC205104 the district council land use consent².

22. Ms Iles has identified two important matters where information is still inadequate. The first is what the random auditing procedure will involve and the second is the location of the down-gradient monitoring bores. The potential for a monitoring bore to be located in the same location as the possible waste pit could affect the monitoring results. I consider in order to prepare appropriate consent conditions these matters should be resolved.

Groundwater quality and groundwater users

23. I consider the location of the site within a community drinking water protection zone and the policy direction from the CLWRP protecting drinking water quality³ sets a high threshold for the applicant to meet in order for consent to be granted. I believe the key issue of contention between Council officers and the applicant is the level of risk presented by the proposal and whether sufficient mitigation measures are in place to control and respond to those risks.
24. While I consider there is a high threshold to meet in order to demonstrate potential effects will be acceptable, I also consider a precautionary approach to this assessment is necessary. I think this is particularly important for the consideration of effects which are of low probability but which have high potential impacts. The precautionary approach is described in Policy 7.3.12 of the CRPS in relation to the discharge of contaminants where the effects of an activity either singularly or cumulatively are unknown or uncertain.
25. Based on the S42A addendums of Ms Kreleger and Mr Simpson I remain concerned about the applicant's ability to manage the excavation depth relative to real-time groundwater levels for the following reasons:
- a. In a worse-case scenario, it is not yet clear if the applicant could complete emergency backfilling within 24 hours (as proposed) while also adhering to other consent conditions.
 - b. While it seems theoretically possible that a forecasting model could be created to assist in predicting groundwater level rises (and therefore avoiding the worse-case scenario) it is not a guarantee that this model will be able to be produced and that it will be effective. The suitability of this model cannot be ascertained without reviewing it. I am concerned that if consent was granted and this model could not be produced, the applicant has no

² See Condition AO1

³ Objective 3.8A High quality freshwater is available to meet actual and reasonably foreseeable needs for community drinking water supplies.

Policy 4.23: Any water source used for drinking water supply is protected from any discharge of contaminants that may have any actual or potential adverse effect on the quality of the drinking water supply including its taste, clarity, and smell and community drinking water supplies are protected so that they align with the CWMS drinking water targets and meet the drinking water standards for New Zealand.

alternative method that has demonstrated how the excavation depth will be managed to maintain the 1m separation.

26. In relation to the monitoring of groundwater, I still consider that there remains insufficient information that establishes how the applicant will be able to identify changes in groundwater quality and respond appropriately to any effects. My particular concerns are:
- a. There has been no agreement between the groundwater experts on how to formulate consent trigger values for domestic supply bores that are close to, or already exceeding the guideline values and 50% of the MAV in the NZDWS. I do not have a resolution for this and note that the conditions as drafted, would require the applicant to initiate their 'response to exceedances' for these bores if these triggers are already exceeded.
 - b. It is unrealistic for the applicant to provide an alternative back-up drinking water supply for Rangiora. I recognise this would be the worst-case scenario and the probability of this circumstance eventuating could be very low, however it is not possible to rule out this situation. Based on Mr Simpson's addendum it is not clear if bores could be deepened and if the applicant could fund alternative wells.
27. Given the lack of certainty regarding these important aspects of the proposal, I consider the threshold for granting the consent has not been met. I consider that the proposal would still pose a risk to groundwater quality that is unacceptable and would not give effect to Te Mana o te Wai.

Intended use of Environment Canterbury Land

28. Commissioner Rogers has sought information on the intended use of land owned by Environment Canterbury located to the east of the racecourse.
29. Environment Canterbury own land parcel Section 1 SO 533423 which is 7.3ha and identified in Figure 1 below.
30. Advice from Colin Brookland, Team Leader Reserves at Environment Canterbury confirms that the land has been under a grazing licence to the Rangiora Racecourse Grounds Committee for many years. The current licence is for a 5-year term starting on January 1st 2021. Waimakariri District Council have approached Environment Canterbury regarding their plans to construct a road on this land but it is understood this is provisional and dependant on agreement with Transpower who have power pylons along the length of the site. Indicative drawings of the road show that only a portion of this land would be required for the road reserve.
31. Mr Brookland was asked if it would be possible to install monitoring bores on this land. His response was that it was likely there would be sufficient space to do so, even if the road was to proceed.

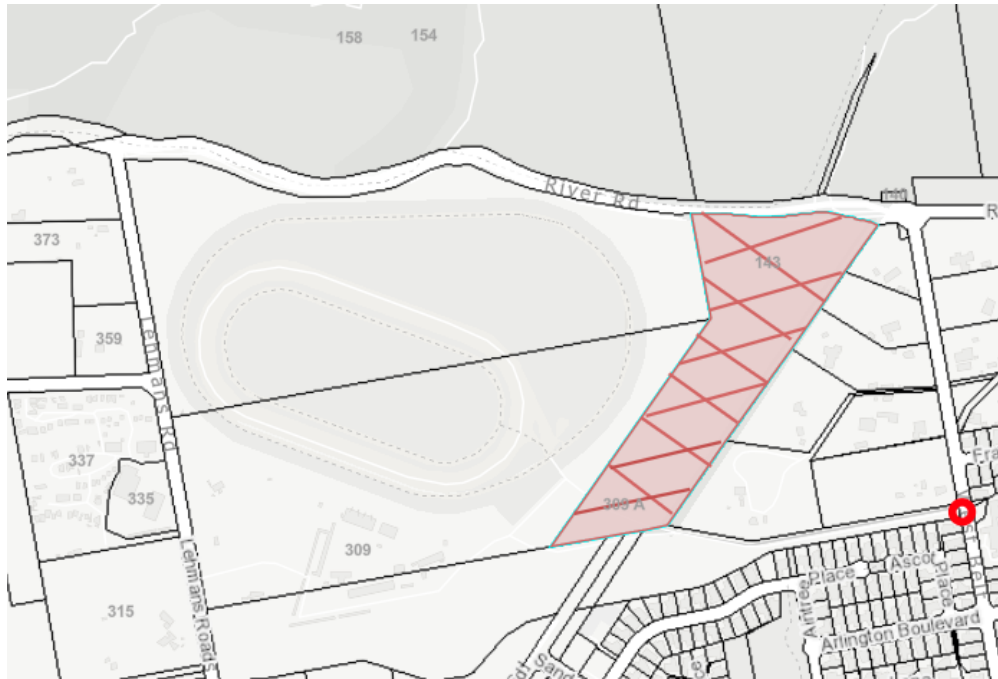


Figure 1: Land owned by Environment Canterbury shown in cross hatch

Future land use to the east of the racecourse

32. Commissioner Rogers has also sought information from WDC regarding the land use zoning in the Proposed District Plan for the land between the racecourse and West Belt.
33. At this stage WDC cannot comment on the likely rezoning of this land as the Proposed District Plan has not been notified, that is, Council is yet to sign off on the final proposal for public notification. As this information is not in the public domain and is subject to a submission period, hearing and decision process it is difficult to comment specifically on the rezoning of the land in question.
34. However, WDC is currently working through zoning options and notes that the infrastructure boundary set out in the CRPS incorporates this area.⁴ In terms of land within the infrastructure boundary, zoning description and density changes are within the scope of the District Plan review. Further, the land currently zoned Res 4B to the east of the quarry site and the small area of land between the current Residential 2 and Res 4B zoning located at 309 West Belt, Rangiora (see Figure 2) are under consideration as being more appropriate to be rezoned residential. The Res 4B zoning is likely to be subject to an Outline Development Plan and the parcel at 309 West Belt is likely to be rezoned to residential, akin to the current Residential 2 zoning.

⁴ Map A, Chapter 6

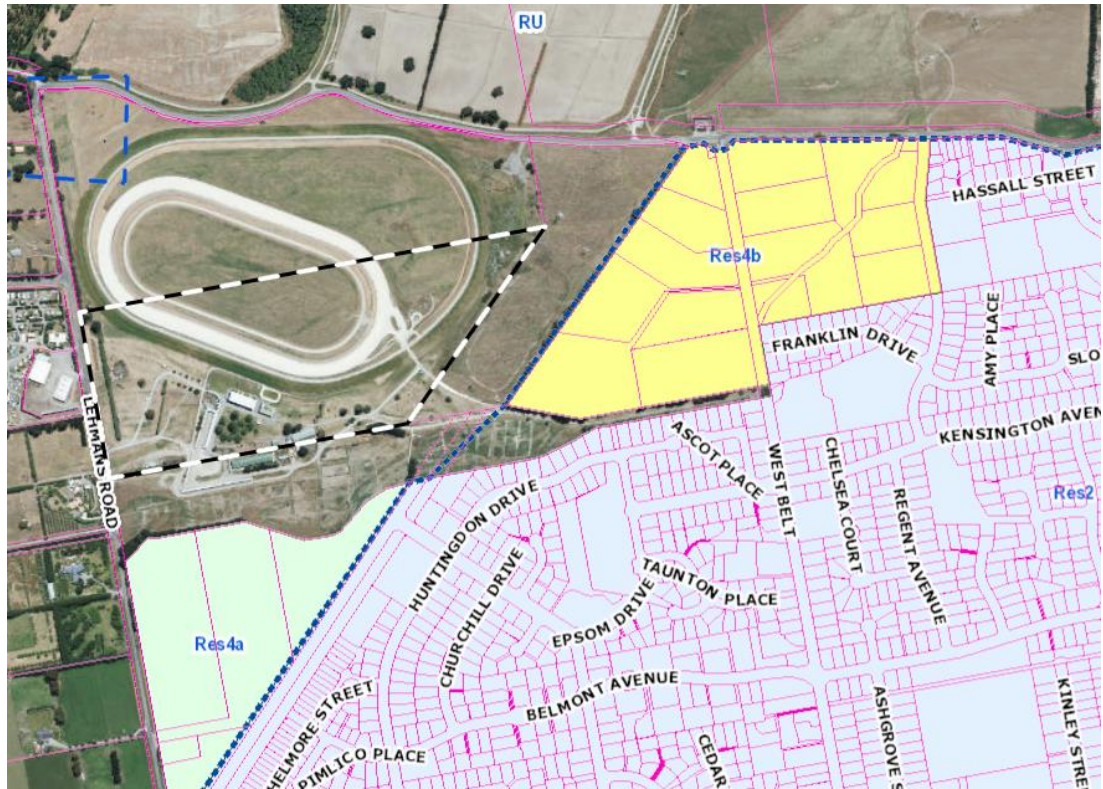


Figure 2: Current residential zoning east of the racecourse

35. In relation to the racecourse land at 309 West Belt, I note there has been a recent subdivision consent granted to create four allotments of varying sizes.⁵ This consent relates to the southern most lots owned by the racecourse and I understand the subdivision purpose was to create lots for the proposed bypass road. A copy of the approved subdivision plan is attached as Appendix A.
36. In terms of the indicative timeframe for the proposed bypass between Lehman's Road and River Road, the Waimakariri District Council Draft Infrastructure Strategy 2021 – 2051 indicates this would proceed in 2030-2031.

Restriction of bores within 50m of earthworks

37. Commissioner Rogers has sought clarification as to why submitter Geoffrey Brown understands that a bore is required to be located more than 50m from an excavation.
38. During the hearing Mr Brown (who owns the Rangiora Eco Holiday Park) described that Environment Canterbury required him to relocate his existing bore to increase the separation from the effluent field on the property. He also explained that it was his understanding that the bore would need to be located more than 50m from an excavation and posed the question as to whether the quarry pit may be too close to his bore, BW24/0537.
39. I have reviewed the CLWRP to determine if there are any relevant restrictions which could explain Mr Brown's understanding. I note the following:

⁵ RC195415

- a. Rule 5.7 permits the discharge of wastewater from an existing on-site wastewater system into land. Condition 5(e) restricts discharges within 50m of a bore used for water abstraction.
- b. Rule 5.103 permits the installation, maintenance and use of a bore subject to conditions. None of these conditions specify separation distances between a bore and any activity.
- c. Rule 5.113 permits the taking and using of less than 5 L/s and 10m³ per property per day of groundwater provided the bore is located more than 20m from the property boundary, or any surface water body.
- d. Rule 5.175 permits the excavation of land over aquifers. Again, this rule also does not include any minimum separation distance to a bore.

Complexity of conditions/economic viability

- 40. In my S42A report I noted my concerns regarding the complexity of conditions and whether they were practical to comply with and also if the conditions necessary to manage effects could affect the economic viability of the operation.
- 41. I agree with Mr Shulte that the economic viability of the proposal is the 'applicant's business'. I did raise this as a concern due to how it might influence the applicant's ability to adhere to the consent conditions and therefore manage potential environment effects. I note that the applicant has agreed to the imposition of a bond. Provided that bond is in place prior to the commencement of quarrying and covers all necessary rehabilitation, monitoring and potential remediation responses, I do not have concerns about the applicant's ability to meet the costs of complying with the consent conditions.
- 42. In relation to the complexity and practicality of the consent conditions, my concerns remain. One example of these concerns is that the applicant has not demonstrated emergency backfilling could occur while complying with all other constraints such as noise limits, hours of operation and air quality limits. Additionally, the stockpiles proposed on site are now required (at least in part) for emergency backfilling and the applicant appears to assume the maximum stockpile volumes proposed will always be in place. However, it has also been stated these stockpiles will be dynamic with the AEE noting that aggregate from Stockpile B would be available for removal when trucks could not access the quarry pit before 10am. I am therefore unclear if sufficient material will always be available onsite for emergency backfilling.
- 43. The Quality Planning website sets out the legal principles and good practice guidelines for drafting conditions, one of which is "fair, reasonable and practical".⁶ The guidance goes on to say "they [consent conditions] must be as certain as possible and compliance must be physically and technically be able to be achieved." Given the uncertainty in how the applicant will manage the operations, I consider that the consent conditions as drafted do not align with good planning practice. In particular, it is not clear if the conditions can physically or technically be complied with.

⁶ Quality Planning: *Drafting Consent Conditions*. <https://www.qualityplaning.org.nz/node/914>

44. Based on the proposal presented I consider the risks associated with the complexity of the conditions are carried by the environment and the surrounding residents rather than the applicant. Given the significance of the potential consequences, I consider this is not appropriate.

CONSENT CONDITIONS

45. I have provided a further revision of the applicant's consent conditions. This version notes where there is agreement/disagreement with the applicant's suggested changes of 4 May 2021. I have also recorded additional amendments necessary either based on the JWS or where I consider additional improvements are required.

CONCLUSIONS

46. Given the above, I have not changed my recommendation and remain of the view that the consents should be refused.

Signed:



Date:

10 May 2021

Name:

Adele Dawson

Consultant Consents Planner

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