

BEFORE THE CANTERBURY REGIONAL COUNCIL AND THE WAIMAKARIRI DISTRICT COUNCIL

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

AND

Resource consent applications by Taggart Earthmoving Limited (The applicant) to establish, maintain and operate an aggregate quarry located at the Rangiora Racecourse, 309 West Belt, Rangiora. In particular the applicant has applied for the following resource consents from-

Canterbury Regional Council;

*CRC 204106- A land use consent to excavate material;

*CRC204107- A discharge permit to discharge contaminants into air from an industrial or trade premise or process;

*CRC204143- A discharge permit to discharge contaminants to land from backfilling with virgin excavated natural materials;

*CRC 211629- A water permit to divert flood water.

Waimakariri District Council;

*RC 205104- A land use consent to establish, maintain and operate an aggregate quarry in the Rural Zone

MINUTE 3- FURTHER DIRECTIONS- FURTHER INFORMATION AND RIGHT OF REPLY.

11 MAY 2021

INTRODUCTION

- 1 Toward the conclusion of day five of the hearing, we sought the views of participants present as to next steps. To provide further context, the presentation of the section (s) 42A Officer's summarised reports and comment from Officers on the Applicant evidence had been completed. Among other things those Officer comments identified a lack of information from the Applicant on some relevant issues.
- 2 Given those particular Officer opinions we explored with the Officers, the Applicant and Submitters their views on next steps.
- 3 The Applicant is in favour of providing further information to respond to the Officer opinions relating to lack of information. The Applicant suggested a 3 working week time line to provide that information. Other parties would need have opportunity to consider and respond to any further Applicant information.
- 4 A cycle of a 3 week sequence was discussed allowing comment from other parties. We noted if this approach were to be adopted the Applicant would also still have a right of reply to exercise.
- 5 Submitters queried if Commissioners seeking further information was a usual part of the process and or allowed. We understood the Submitter preference was to conclude the process based on the information and evidence presented by the Applicant. However if we were to request further information Submitters wished to be able to consider that information and be given adequate time to respond to it.
- 6 We understood the Officers to be neutral on the issue of whether or not we should seek or allow the Applicant to provide further information.
- 7 We also discussed the proposed condition set that had been in circulation during the 5 days of hearing. The Applicant and Officers have been during expert conferencing exchanging views on the content and wording of proposed conditions.
- 8 While sets of proposed conditions have been available throughout the hearing process to date only some submitters confirmed they had accessed and read the proposed conditions.
- 9 So ensuring Submitters have had a reasonable opportunity in terms of time allowing for the evolution of proposed conditions during the hearing process is an issue for us.
- 10 Following this exchange we informed participants we would consider the matters above and arrive at a decision, then issue a minute conveying that decision in the form of directions for the final stages of the hearing process.

POWERS- FURTHER INFORMATION

- 11 Section 41C (3) provides the particular statutory power for us to request the Applicant to provide further information. The word "may" is included within the subsection. So we have a discretion to request or not.

Considerations

- 12 First and fore most we have considered if we consider we need more information to be able to reach a decision. Second we have considered if we

were to request further information what it would be and if on a reasoned basis that information is likely to be available. Finally we have considered effects on the participants and the hearing process if we did so request. We have also taken into account that the applicant still has a right of reply to exercise.

- 13 As to the right of reply we note it is a reply. The Applicant within a reply is not entitled to provide fresh information beyond that required to respond or reply to the matters already raised within the evidence, reports, submissions and information presented. The applicant can exercise the reply by having both its experts reply to relevant matters as well as responding by way of legal submissions.
- 14 If an Applicant exceeds the scope of a reply then based on procedural fairness and process grounds we are entitled to and must exclude fresh evidence that exceeds the scope of the reply from our deliberations and decision.
- 15 Taking into account the information we have available to us we consider we do have sufficient information to consider all of the matters that sections 104,104B,105,107 and s108 and Part 2 of the Resource Management Act require us to in reaching a decision on the application.
- 16 Some of the further information identified within the Officer reports including ground contamination investigations, a suitable forecasting model enabling responses to groundwater fluctuations and related backfilling sequences and demands may either not be available or take some considerable time to secure.
- 17 We are also mindful this application has been on foot for a considerable period of time allowing opportunity for the Applicant to provide what information it considers necessary and relevant to support its request for consent to the proposal. Providing all necessary and relevant information is the Applicant's responsibility.
- 18 We also note that while processing these consents the Council have exercised powers under the RMA to request further information.
- 19 The application has been live for some considerable period of time. Requesting further information would have the effect of further elongating an already long process. All participants would need commit further time and resources. While Council and hearing related costs are recoverable from the Applicant, Submitters are not able to seek cost recovery. Already Submitters have expended substantial resources on the process to date.
- 20 We have already noted the Applicant still has a right of reply to exercise to respond to matters in contention.

Outcome on Further Information Request

- 21 So for all of these reasons we have determined not to request the Applicant to provide us with further information.

REMAINING ISSUES

Conditions

- 22 To ensure the Submitters have an opportunity to comment on proposed conditions we direct that any comments they may wish to make should be made to the proposed condition set presented with Adele Dawson's S42A presentation.
- 23 Submitters should add their name and date to the proposed condition set they are commenting on, making any changes, additions or deletions using track changes. Submitters can also add an extra column to the table adding

comments relating to changes in the same manner the s42A comments and recommendations are currently noted.

- 24 If Submitters do wish to comment on the S42A proposed condition set they are to do so within 10 working days of the date of this minute is posted on the relevant page of Environment Canterbury's web page providing those comments within that time period to the Hearings Consents Officer, Alison Cooper (Hearings@ecan.govt.nz) who will place them on the relevant Environment Canterbury web page and circulate them to the Applicant and s42A Officers.

Reply

- 25 The Applicant is to exercise its right of Reply, strictly in reply, within 15 working days of the date this minute is posted on Environment Canterbury's web site. The Applicants final conditions set is to be included within that reply. The Applicant shall appropriately identify within that set differences in conditions it promotes compared with Submitters and s 42A Officers.

Next Steps

- 26 The Hearing will remain adjourned until such time we issue a further minute recording the close of the Hearing. Under the RMA the maximum period a hearing can remain adjourned following the exercise of the Right of Reply is 10 working days.
- 27 Following close of Hearing the RMA provides, subject to our power to extend time, that a decision is to be available 15 working days after close of the hearing.

Other Matters

- 28 If any party has any issue with the information/directions or wishes to undertake any contact with the Panel, please do so by contacting Alison Cooper, Hearings Consent Officer (Hearings@ecan.govt.nz) as soon as possible following receipt of this minute.

Paul Rogers

Independent Commissioner – Chair - on Behalf of the Panel