

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

**In the matter** of the Resource Management Act 1991  
**(RMA or the Act)**

**And**

**In the Matter** of applications to the Canterbury Regional  
Council by **Woodstock Quarry Limited** for  
various resource consents to establish and  
operate a hard rock quarry and a landfill  
**(CRC214073 - CRC214077)**

**And**

**In the matter** of an application to the Waimakariri District  
Council by **Woodstock Quarry Limited** for  
resource consents to establish a landfill and  
associated earthworks at 513 Trig Road  
within an existing quarry **(RC215276 /  
221101189245)**.

**And**

**In the matter** of the submission on the above applications  
by the **Oxford-Ohoka Community Board**

**Comments on behalf of the Oxford Ohoka Community Board re the Applicant's  
information lodged on 15 March 2024**

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Dated: 9 April 2024

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## For the hearing panel:

### Introduction

1. The Oxford Ohoka Community Board (**Board**) submitted on the proposal for a landfill to be established within the footprint of the Woodstock quarry by Woodstock Quarry Limited (**WQL** or **applicant**).
2. Following the provision of comments by other parties on what were understood to be the applicant's final version of the proposed conditions, the applicant sought leave as part of its reply, to provide further information. That included conducting further conferencing of the landfill engineering experts, and the production of a further joint witness statement (JWS) amongst other statements, and further revised conditions. Leave was granted and yet more information was provided by the applicant. The comments that follow relate to that further information.
3. The Board's comments below relate to the following concerns regarding:
  - 3.1. Complexity:
  - 3.2. Current compliance:
  - 3.3. The fish study:
  - 3.4. The waste acceptance criteria:
  - 3.5. The relevance of the ARC Landfill comparison: and
  - 3.6. Precedent effects.

### General comments "redux"

4. The Board reiterates its prior general comments included with its comments on what it thought were to be the final conditions. These include that:
  - 4.1. The Board, and as far as it is aware, the wider Oxford community, remains opposed to the landfill:
  - 4.2. The Board remains particularly concerned (*inter alia*) about the overall impact of extreme weather<sup>1</sup> on this site and on the proposal: and

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<sup>1</sup> Which include: high winds, extreme rainfall, and the myriad effects of climate change.

- 4.3. Similarly, that the composition of the waste proposed for the landfill (if granted) still includes matter with PFAS contamination is the source of considerable unease.
5. To these comments the Board adds that, to the extent that they have not been applied to the conditions of consent through amendment or augmentation, the Board's comments of 27 October 2024 stand. This includes but is not confined to those comments relating to issues identified by Mr Starke as part of the Board's previous response and not addressed in the experts Joint Witness Statement (**JWS**) dated 15 March 2024. The offer to further clarify any comments that are unclear also remains, but it is not intended that all those comments are repeated here.
6. The Board notes that some (though not all) of its 'suggestions' regarding minor or typographical anomalies do appear to have been made. However, without some form of acceptance/rejection table<sup>2</sup>, identifying whether proposed changes have been adopted has proven a complex process. That there are also changes upon changes, all tracked, has unfortunately not assisted this process.

#### **Latest, and continuing, concerns (in respect of information provided since 15 March 2024)**

##### **Complexity**

7. The issue of complexity has become central to the Board's concerns as the iterative process with this application has advanced. In this respect, the Board refers to the note in the JWS prepared by the landfill engineers/technical experts, that:
- “...while technical matters have been resolved on the drawing set and in the amended consent conditions, the underlying complexity of the landfill design and constructability remains a concern to CRC and OOCB technical experts. CRC and OOCB are not aware of a double liner base liner and a steep wall liner in a rock quarry being designed and implemented in New Zealand.”
8. This note underscores a fundamental concern for the Board. That while the landfill design may be technically possible, it is complex to the point where features of that design may not, in fact, prove to be feasible. The question then is what happens next, especially given that a decision to grant consent is likely to be reliant on the design being able to be completed as specified.
9. The complexity issue also goes beyond the design components. The technical complexity also increases the onus on those charged with monitoring the construction and operation of the landfill (if granted). It may lead to pressure on the Peer Review Panel to okay re-designs if certain aspects are unable to be given effect. That raises

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<sup>2</sup> The table of changes at Attachment B to Ms Frazer's evidence provides few clues, outside matters relating to the Community Liaison Group, which only part accept the Board's suggestions.

issues of the equivalency of alternatives, especially given the novel nature of the design and location.

10. That the application has involved complexities that appear to go well beyond what might usually be encountered in landfill designs, and that have required such novel solutions, has also made the decision to propose such a landfill harder for the community to understand. Let alone that the community have had to try and understand the details themselves. A process that, as previously advised, has not been aided by the 'moving feast' that has typified this application.
11. Simply put, the Board's view is that, given the technical experts for the Board and the CRC highlight the issue, the level of complexity remains a real concern. That is not to say that anything complex must be avoided. But the lengths to which the applicant has had to go, and which the panel, and the community at large, must rely on to determine whether the risks this landfill presents (in the Boards view) have been adequately addressed, force the Board to continue to question the appropriateness of this proposal.

#### **Current compliance**

12. It is the Board's understanding that the operative District Plan has required, since prior to 2018, that earthworks within 20 metres of a waterway require consent. Under the consents that were granted *prior to* 2018, earthworks with 20m of a waterway were only authorised for the purpose of establishing the access track (RC035759).
13. The 2004 certificate of compliance could not authorise clearance that did not comply with the District Plan, while none of the subsequent resource consent expressly permitted earthworks within 20 meters of a waterway. Given all this, the Board remains confused regarding the authorisation for and compliance of the southern-most extraction area ('Area 1' from the March 2024 inspection map).
14. Since the question of compliance under any new consents (if granted) will be paramount, the Board finds it curious that what appears to be evidence of potential non-compliances prior to 2018 have been effectively ignored. And that, in terms of possible post 2018 non-compliance the only apparent action is to follow up after the landfill application process is completes. Especially when, as far as the Board is aware, that application does not include the quarrying at Area 1.
15. The relevance of the reference in the plan attached to the inspection reports showing a buffer, which includes an approximate stream alignment in 2009, and the circumstances in which the stream alignment has changed, are not detailed. In addition, the locations from which photographs have been taken doesn't appear to have been included which limits the ability to understand what part of Area 1 is being shown in several of the photos.

16. The short point is that while purporting to show that there are currently no issues of compliance at Woodstock Quarry, the evidence is, in the Boards view less clear than it could or should be. That this comment is made in respect of a more straightforward activity (quarrying), as opposed to the complex proposal that has been applied for, does not alleviate the Boards concerns.
17. While the Board understands that it needs to assume that consent conditions will be complied with (if consent is granted), it also considers that the ability to monitor and ensure that this is the case becomes essential when the stakes are high. Especially where, for example, they are intended to control the handling and disposal of potentially high volumes of hazardous waste.

### **The fish study**

18. The Board read with interest the report of the fish study, that was tasked with establishing whether any Canterbury mudfish are present in the Woodstock stream, in the vicinity of Woodstock Quarry, and in the lower wetland that includes the neighbouring Narby property.
19. While the study that was undertaken overnight on 16-17 January 2024 did not find any evidence of mudfish, the Board does have questions regarding the confidence in the findings in relation to what was carried out.
20. The first is that the Board notes in the Department of Conservation Guide<sup>3</sup> for mudfish surveys indicates that the timing for surveys can be restricted, particularly when habitats may become partially or fully dry, which could be the case in mid-January. The Guide notes (at page 15) that:

“In the case of Canterbury mudfish, sampling should be conducted in autumn as this provides information on survival over summer and avoids sampling during the spawning period in spring.”

21. Importantly (from the Board’s perspective), at page 8 of the Guide notes:

“However, to confidently establish the presence or absence of mudfish, potential mudfish habitat should be surveyed using a reasonable number of traps and could even involve several visits at different times of the year.

Remember: absence of mudfish evidence is not evidence of mudfish absence.”

22. Therefore, while it is acknowledged that Instream Consulting Ltd extended the spatial extend and number of traps, the Board does not share (at this stage) the confidence of Dr Greer that no mudfish are present.

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<sup>3</sup> A revised methodology to survey and monitor New Zealand Mudfish, originally produced 2009, Department of Conservation, Wellington (unpublished).

23. The other question that the Board has is, given that mudfish have been found downstream of the lower wetland, even assuming the wetland itself does not contain mudfish (which the Board does not concede, at this stage), at what point/distance do they make an appearance? And is that distance far enough to prevent a potentially toxic waste spill (such as leachate containing PFAS) adversely affecting that population?
24. Again, the Boards short point is that, even if the overnight study carried out found no mudfish, that does not mean it is safe to assume that there are none present, or that populations known to exist are far enough from the proposed landfill site that they and their habitat will not be adversely affected.

### **The waste acceptance criteria**

25. As noted in the general comment above, the Board notes that it does not appear that the Waste Acceptance Criteria have changed as part of the latest information provided. However, in light of the comments on complexity, compliance and potential adverse effects above, the Board reiterates that ideally it would prefer that any consent granted (if any) did not include the acceptance of 'special' hazardous waste.
26. The Board has found the discussion of the class of landfill, and the ability to accept plainly hazardous substances such as waste containing PFAS (and other forever chemical variants) that follows, rather confusing. It repeats its concern that, if the state of the art facility at Kate Valley will not accept PFAS, then a landfill like that at Woodstock, should not either.

### **The relevance of the ARL decision comparisons**

27. The Board accepts that there may be points of comparison between the Environment Courts approach in the *ARL decision*<sup>4</sup> and the current application by WQL. However, the Board notes the following.
28. Firstly, the reference to infrastructure policies and the need to reconcile (as a first step) where they pull in different directions. It appears that the applicant is suggesting that trade-offs might be considered in relation to "essential" infrastructure (a term taken from its 'overall approach' section). Where that infrastructure is important to the community, to the extent that it is objectively essential, then the Board would have few issues with that overall approach. However, the Board says not all infrastructure assumes such community importance and questions whether the case has been made that the Landfill at Woodstock should be considered in that light.

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<sup>4</sup> *Te Runanga o Ngāti Whatua v Auckland Council* [2023] NZEnvC 277

29. Second, and following on from that point, the observations regarding the impact of avoidance policies from the Supreme Court’s decision in *Port Otago*<sup>5</sup> plainly relate to the alignment of Policies in the National Coastal Policy Statement and the impact of avoidance policies on infrastructure that is recognised as being of *National* Importance. Therefore, extrapolating those comments to potentially excuse adverse effects in the case of the WQL application may be going too far. However, the use of a structured analysis is accepted as best practice, which is not a novel or exceptional approach.
30. On the issue of the s.104D test, it is more accurately termed a threshold test, though there may be cases when the threshold is clearly not met at an early stage in the consideration of the application. As this application has shown, the question of whether effects are more than minor can entail a significant amount of evidence and assessment. However, the Board’s view is also that whether the proposal will achieve the s.104D threshold requires a judgement on the nature of the adverse effects and whether any avoidance, remediation and mitigation *will*<sup>6</sup> be achieved, or whether any offset or compensation will be sufficient. This appears to be what the Court in the ARL decision means when it speaks of “the potential”.
31. Whether WQL has gone far enough to “address the... tensions” does relate to the issue of whether they are unavoidable. The Board notes that absent the landfill they would not exist.

#### **Precedent effects**

32. The Board accepts that for a non-complying activity the likelihood of a precedent effect is diminished. However, in the case of landfills in the Waimakariri District, the Board has become aware of other potential applicants that appear to be awaiting the outcome of the WQL application before proceeding with their own application<sup>7</sup>.
33. Given the expectation that a decision maker will treat like with like, how a new application is treated will also depend on the similarity of the site and circumstances, and of the specific effects created under the subsequent application.
34. The Board’s understanding is also that such new applications are not planned for the Oxford-Ohoka Board area. However, the Board’s purpose in raising these issues is to ask that when determining the WQL application, the expectations in terms of the level and quality of information and level of baseline information provided can be made as clear as possible so that other communities having to deal with such applications can be spared the piece-mean approach that the Board considers has been applied at Woodstock. That approach has impacted the ability of the community to participate

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<sup>5</sup> *Port Otago Ltd v Environmental Defence Society Inc.* [2023] NZSC 112

<sup>6</sup> Which the Board recognises is “more likely than not” but must still be proven.

<sup>7</sup> Update: It is understood that a landfill application by Protranz Ltd. was made to Ecan on 1 April 2024.

(though has not dampened the desire in that respect) and, inevitably, the costs incurred.

35. Any new applicant should be on notice that the original application needs to be more robust. Whether that occurs is another matter, but the Board can only try.

### **Conclusions**

36. The new information, while appreciated and, again, attempting to resolve some discrete matters of detail that remained in contention, does little to assuage the Board's overall concerns regarding the WQL application.
37. The location remains problematic, while the impacts may potentially be catastrophic. The existence of a hazardous waste facility in the foothills close to Oxford and several watercourses, does not feel sensible or safe. The complexity of the responses to those concerns simply amplify the question: is this the right place for such a facility?
38. The Board remains of the view that consent should be declined.

Dated 9 April 2024

Signed:



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