

Before Independent Hearing Commissioner

Under the Resource Management Act 1991

In the matter of applications by Cromwell certified Concrete Limited to the Otago Regional Council and Central Otago District Council for discharge permits, a water permit and a land use consent relating to expansion of an existing quarry at 1248 Luggate-Cromwell Road

Memorandum of Counsel regarding timetabling

11 November 2021

Submitter's solicitors:

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**anderson
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May it please the Commissioner

Introduction

- 1 We act for Nicola and Bryson Clark, Amisfield Orchard Ltd, and the Hayden Little Family Trust (**Submitters**) in respect of this Application.
- 2 In response to the Commissioner's Minute and Directions received today, the Submitters have the following issues in respect of the proposed timetabling set down:

Further information

- 3 The Application has been on hold, pending the receipt of further information to be provided by the Applicant, since June 2021. Further information has been provided in part as of yesterday, 10 November 2022.
- 4 Counsel's initial review of that information is that the matters provided are substantial, technical / complex, and new in this process. In particular, a number of reports are new and detailed, including in particular the report from Insight Economics. As a result, the Submitters are now considering the need to call additional expert evidence to respond to these matters, which was not originally anticipated, based upon the notified application.
- 5 Counsel also understands that additional further information is to be provided, the indicative date for which is today, however that information is yet to come to hand.
- 6 As a result of the above, the Submitters' experts have indicated that the evidence exchange timetable is not workable in order to provide sufficient time to respond to additional information provided (and yet to be received).

Related consents required to be bundled

- 7 Counsel is aware of encroachment / trespass issues related to the Applicant's existing operations on adjacent land owned by the Hayden Little Family Trust. These matters are detailed in the submission provided by that Submitter. It is understood that the Applicant is in the process of obtaining retrospective consents for this area of unlawful operations, and it is considered that such consents are required to be bundled with the current Application, in order for a full understanding of cumulative environmental effects over the site.

- 8 The criteria for when to decide to 'bundle' an activity is set out in the Environment Court case of *Southpark Corporation Limited v Auckland City Council*:

"... a consent authority can consider a proposal in the round, not split artificially into pieces, that approach is not appropriate where:

(a) one of the consents sought is classified as a controlled activity or a restricted discretionary activity; and

(b) the scope of the consent authority's discretionary judgment in respect of one of the consents required is relatively restricted or confined, rather than covering a broad range of factors; and

(c) the effects of exercising the two consents would not overlap or have consequential or flow-on effects on matters to be considered on the other application, but are distinct.¹

- 9 To assess the activity as a whole and in the round, all relevant criteria of the bundled activities in question will be relevant for consideration. Under s104 the authority must have regard to any actual and potential effects on the environment of allowing the activity. "Effect" has a wide interpretation under s3, and to give effect to that, regard must be had to all relevant assessment matters of the activities being assessed in the round together.
- 10 There is obvious overlap, in terms of environmental effects, between consents required through this Application for expansion of the quarry site, and the requisite retrospective consents required for unlawful expansions onto adjacent land. Consideration of each of those aspects will affect the other and the applications should be bundled and considered together.

Site visit constraints

- 11 Among other matters, the Submitters are intending to call expert air quality evidence. Peter Stacey, the expert in this matter resides in Auckland and has therefore been unable to conduct a site visit given current Covid-19 restrictions. Under the current timetabling approach, for Submitter evidence due in December, it is highly uncertain as to whether this Mr Stacey will be available for a site visit before then.

¹ *Southpark Corporation Limited v Auckland City Council* [2001] NZRMA 350 at [15]

- 12 The inability to undertake a site visit is a significant disadvantage to the Submitters, given the Applicant's experts have been able to, and can therefore prepare their evidence based upon this.
- 13 If evidence exchange is pushed out until the new year, it is much more likely that travel restrictions will have eased such as to facilitate this.

Overseas Investment Office (OIO) Approval

- 14 Counsel understands that the Applicant has made an application for overseas investment in sensitive land at Lot 3 DP 301379, being part of the application site (Case 201710148).
- 15 It is further understood that conditions associated with approval of this case pertain to obtaining consents the subject of this Application, by October 2021. Given that date has elapsed, and Counsel has received no indication that extensions to these conditions have been sought, the Applicant is now likely in breach of this OIO Approval.
- 16 For these reasons, the Application should be put on hold pending either an explanation of these approval conditions and associated timeframes, or the further resolution of this matter through the OIO.
- 17 This matter is critical to the operation of the site and therefore the extent to which the consents sought are likely to occur / be implemented.

Direction sought

- 18 Taking into account all of the above matters, the Submitters therefore respectfully request the following directions:
 - (a) That the Application be deferred pending application for additional consents under section 91 RMA, and that further information be provided by the Applicant in respect of this matter; and
 - (b) That the Application remain on hold pending receipt of further information and explanation by the Applicant in respect of the OIO matters raised in this Memorandum; and
 - (c) That a revised hearing date and evidence exchange timetable be set down for the first quarter of 2022, in order to accommodate the above, as well as time required by the Submitters to assess new and pending further information and site visit availability.

19 Counsel is available to attend any pre hearing teleconference / meetings in order to discuss the above directions sought, if required.

Dated this 11th day of November 2021

Maree Baker-Galloway/Rosie Hill
Counsel for the Submitters