

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

## **Second Minute of Hearing Commissioner John Iseli**

### **Memoranda of Counsel**

- 1 I have been appointed by the Otago Regional Council and the Central Otago District Council as commissioner under Section 34A of the Act to hear and decide the applications lodged by Cromwell Certified Concrete Limited (the Applicant) in relation to proposed expansion of the Amisfield Quarry at 1248 Luggate-Cromwell Road.
- 2 Following issue of my first minute dated 11<sup>th</sup> November 2021, I have received memoranda from counsel representing some of the submitters and in response from counsel for the applicant. The memoranda discuss matters relating to the proposed timing of the hearing of these applications.
- 3 A meeting using the Teams platform was held with counsel for the parties on the morning of 17<sup>th</sup> November. The purpose of the meeting was to explore the legal and procedural matters raised. A recording of the meeting will be made publicly available. The primary issues raised are summarised as follows:
  - Time available to respond to additional information recently provided by the applicant;
  - Retrospective consents for quarry expansion onto neighbouring land;
  - Overseas Investment Office approval of land purchase;
  - Site visit constraints.

- 4 I have considered the arguments presented in relation to these matters and determine as follows.

#### **Time Available to Respond to Additional Information**

- 5 The applicant provided additional information and reports on 11<sup>th</sup> November 2021. The nature of that information is detailed in the memorandum of counsel for the applicant. I have reviewed the further information and consider that it is not unusually complex or technical. I accept that the information could have been provided in evidence for the applicant in accordance with the assigned evidence exchange schedule.
- 6 I consider that the scheduled time frame for the parties and their experts to respond to this information is sufficient. I find that provision of the additional information by the applicant is not prejudicial to the submitters. Their experts will have had more than three weeks to review the further information before filing evidence in accordance with the schedule outlined in my first minute.

#### **Retrospective Consents for Quarry Expansion**

- 7 Considerable discussion occurred during the Teams meeting regarding the nature of any retrospective consents that may be required for unauthorised expansion of the quarry onto neighbouring land. The issue relates primarily to a bund/stockpiles formed on neighbouring land in approximately 2003 and whether removal of this material may be required.
- 8 Counsel for the submitters' position is that further analysis is required regarding the nature of such consents, and that bundling with these applications should be required because of a potential overlap of environmental effects. Counsel for the applicant's position is that the bund did not breach consents held at the time and there is no intention to lodge an application for removal of the bund. Any possible removal of the bund is viewed as a civil matter between the applicant and the Trust owning the adjoining land.

- 9 I am aware that removal of a large amount of stockpiled material from the bund in question could have potential to result in cumulative effects with the activities under consideration, particularly in relation to dust discharges. However, given that no consents for remediation are currently sought, and the need for any such consents is disputed, I consider that deferral of the hearing awaiting further consents under Section 91 of the Act is not appropriate at this time.
- 10 The applicant is requested to provide further information regarding the nature of any consents required for reinstatement at their earliest opportunity. Counsel for the submitters may provide a response to that information. The applicant has proposed to address this matter in evidence at the commencement of the hearing. The risk lies with the applicant that, if additional information prior to or during the hearing indicates that additional related consents are required, I may decide to defer the hearing pending the application for additional consents under Section 91.

#### **Overseas Investment Office (OIO) Approval of Land Purchase**

- 11 The applicant has been granted OIO approval for purchase of land that is subject to the quarry expansion. Counsel for submitters notes that the approval is subject to obtaining consents by October 2021. Counsel for the applicant responded that the OIO has been informed of the scheduled hearing and intends to review matters at the end of January 2022. The applicant therefore wishes to proceed with the hearing in December, rather than deferring to 2022.
- 12 I accept the view of counsel for the Councils that obtaining OIO approval is not directly relevant to the timing of this hearing process. The Resource Management Act sets out time frames for the hearing process that I will endeavour to meet. Under the Act I have a duty to avoid unreasonable delay.

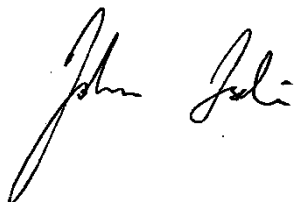
#### **Site Visit Constraints**

- 13 I am aware of the potential difficulties for experts in undertaking site visits under the current Covid restrictions. The councils note that their two air quality experts have not yet visited the site, but intend to do so on 30<sup>th</sup> November 2021. Mr Peter Stacy, air quality expert for submitters, is based in Auckland. However, changes to the Covid restriction currently occurring may allow him to participate in that site visit, or otherwise to arrange a separate visit prior to or during the hearing.

- 14 I have asked the applicant to provide drone footage of the site and neighbouring land, subject to approval of the affected neighbouring parties to fly over their land. I consider that this will assist in enabling the preparation of expert evidence, even if a physical site visit is not possible at that stage. I also intend to provide for experts to visit the site during the hearing process, if they have not been able to do so earlier due to Covid restrictions.
- 15 Such issues with site visit constraints are not unusual in the current Covid environment. The nature of future restrictions remains uncertain. To avoid unreasonable delay, I determine that the hearing should proceed on the scheduled dates.

### **Determination**

- 16 For the reasons detailed above, I determine that the hearing will proceed on 15-17<sup>th</sup> December 2021, as outlined in my first minute. The applicant is requested to provide the following to Ms Bagnall for circulation to all parties:
- Further detail regarding the nature of any consents that may be required for reinstatement of the neighbouring land at the earliest opportunity;
  - Drone footage of the site and neighbouring area by Friday 26<sup>th</sup> November 2021.
- 17 The parties are instructed to address any questions regarding this determination or the hearing process to the hearing administrator, Karen Bagnall at the Otago Regional Council who can be contacted by phone (027 218 4164) or email ([karen.bagnall@orc.govt.nz](mailto:karen.bagnall@orc.govt.nz)).



John G Iseli  
Independent Commissioner

Dated 18<sup>th</sup> November 2021