

Before a Commissioner appointed by the Otago Regional Council and the Central Otago Regional Council

Under the Resource Management Act 1991

In the matter of applications by Cromwell Certified Concrete for resource consents to expand Amisfield Quarry

Memorandum of Counsel on behalf of the Hayden Little Family Trust, Nicola and Bryson Clark, and Amisfield Orchard Limited

14 February 2022

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May it please the Commissioner

- 1 This memorandum of counsel is filed on behalf of the Hayden Little Family Trust, Nicola and Bryson Clark, and Amisfield Orchard Limited (collectively, the **Submitters**) in response to the Commissioner's minute dated 22 December 2021 and the Applicant's memorandum of counsel dated 4 February 2022.
- 2 The Submitters have reviewed the two proposed sets of conditions provided with the Applicant's memorandum. A marked-up version of the Applicant's proposed set of conditions for the full proposal is attached as **Appendix A** to this memorandum. A marked-up version of the Applicant's proposed set of conditions for the deepening of the existing quarry only is attached as **Appendix B** to this memorandum.
- 3 The following is only a brief summary of comments contained in the attached sets of conditions. Further reasoning and detailed revised wording is attached.

Revised set of plans needed to be included in consent

- 4 The consent should include a full set of plans to avoid any uncertainty or ambiguity as the Application progresses through the hearing process. This includes all relevant plans, such as landscaping and bunds proposed, earthworks and levels, site plan, and an extraction and mine plan. The inclusion of a full set of plans 'stamped as approved' are integral to the consent and such a condition is standard practice - see for example quarry consent RM171009 (QLDC, Gibbston). The plans that have been provided within the application are at a high level of abstraction – for example, no contour information is given on the proposed mounding, in particular in relation to the area of encroached land.
- 5 The consent should also include a draft Noise Management Plan and a draft Quarry Management Plan. As stated in the Submitter's case, these plans are integral to the effects of the proposal, probably already exist in some form (for current operations) and should form part of the consent.

Interaction with other consents required and held

- 6 The Applicant should be required to surrender the existing consents to avoid any confusion regarding which conditions apply and which activities can occur in future.
- 7 The consent should have a finite term in order to avoid any interpretation issues regarding whether or not the consent itself remains in force. The

issue in the absences of such conditions was recently at issue in the Saddle Hill litigation in Dunedin.¹

- 8 The Applicant needs to obtain consent for remediation and retrospective mining of the encroachment land. This is likely to have cumulative effects with the overall proposal.

Landscaping and pre-mining requirements

- 9 Further certainty is required over key parameters of the bund establishment and maintenance, including the existing bunds which have not been maintained to date. Certainty should be provided with respect to species types and ground cover minimums etc. in accordance with standard practice.
- 10 More certainty is also required regarding the provision of safety fencing, the requirement to consult with adjoining neighbours and weed and pest mitigation.
- 11 Key parameters of the landscaping plan to be certified need to be specified in consent conditions. For example:
 - (a) a predominance of grasses and groundcover native species planted in a naturalistic pattern that approximates the natural patterns of the surrounding landscape;
 - (b) all planting shall comprise the following species (listed);
 - (c) achieve a minimum coverage of 90% of the exterior face of each mound. Per AQ JWS;
 - (d) be planted at a minimum nursery grade of PB5 (2-2.5 litre) and spacings of no greater than 1m;
 - (e) Provide details of pest protection on the mounds; and
 - (f) Ensure that land area between the boundary of adjacent sites and the exterior face of mounds is maintained in a tidy condition, including ongoing weed management.

¹ *Saddle Views Estate Ltd v Dunedin City Council* [2017] NZHC 1727.

- 12 The final contours of all mounds on the site shall be submitted to the Central Otago District Council team leader: resource consents.

Ground water monitoring

- 13 The Discharge Consent should include Bore G41 0346 in the monitoring programme on the same basis as other bores identified and potentially affected through ground water interference.

Work programme conditions rather than annual plan

- 14 The consent should include an annual work programme condition, rather than an annual report, in accordance with best practice. This will ensure the condition is prospective rather than retrospective.
- 15 Again, this is best practice and common in quarrying consents, such as RM171009 referred to above.

Bond and review conditions

- 16 The conditions should include a more enforceable condition for registration on the certificate of title. The current condition is an arbitrary amount, and does not specify for what purpose the bond is to cover or how that figure was arrived at.
- 17 The bonded amount shall be sufficient to cover all costs associated with the rehabilitation condition, and it should be calculated by applying a 150% multiplier to either the higher of two quotes from suitable contractors. The bond may be released upon completion of the rehabilitation works, to the satisfaction of Council. A condition of this nature is more standard practice in similar consents, in Counsel's experience.
- 18 Review condition wording has been included which is not linked to the scale of effects, but rather whether effects are occurring which were either unforeseen at the time of granting consent or otherwise as a change of circumstance.

Dated this 14th day of February 2022



Rosie Hill
Counsel for the Submitters