

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

4 April 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 Applicant's revised conditions and supplementary evidence, provided on 28 March 2022 (**Revised Proposal**), and in response to the Commissioner's 4th Minute, dated 9 March 2022 (**Minute**).
- 2 This Memorandum sets out the remaining issues of concern in the Revised Proposal insofar as they relate to matters raised in the Minute, namely:
 - (a) Clean fill deposition and site rehabilitation
 - (b) Sampling of monitoring bores and associated conditions
 - (c) Community Liaison Group
 - (d) Bond
 - (e) Revised conditions and plans

Clean fill deposition and rehabilitation

- 3 The Applicants state that cleanfilling of the Site does not form part of the Proposal. Despite that intention, it does not appear willing to volunteer a condition precluding that outcome in the future. Instead, revised conditions are proffered which seek to restrict cleanfill deposition within 10m of waterbodies / above groundwater level, and require the origin of cleanfill and its deposited location to be recorded.
- 4 While the restrictions are a starting point, they will serve little utility in preventing any adverse and undesirable effects of potential contamination concerns, given they do not apply prospectively.
- 5 An 'Annual Work Plan' type condition, as suggested in the Submitter's comments on revised conditions (dated 14 February 2022) would provide for more effective oversight of proposed cleanfill operations, so that any potential contamination issues likely to arise can be picked up and addressed in advance, rather than simply obtaining a 'register' after the fact. The Revised Proposal now includes condition 61(f) to include details of the 'work plan for the next 12 months including... [location of PM10 monitors]'. This however does not give any further indications of what should be included in the work plan, nor any ability for the Council to have a say in whether it is appropriate or requires amendment.

- 6 As provided in the Submitter's comments on conditions, a prospective annual work plan is a common condition applied across the QLDC District in relation to quarry proposals, and recognises the need to work in good faith with consent holders as to their intended operations. The following is an example condition taken from a QLDC operation, and it is suggested could be helpfully applied and modified for this proposal, to ensure the same effective level of prospective oversight can actually occur.

Annual work programme

- (a) Prior to commencement of any works on the site and within 30 days following the anniversary of the grant of this consent in each year, the consent holder is required to submit to the CODC Team Leader: Resource Consents for certification, a proposed annual work programme detailing the expected operations proposed for the forthcoming 12 months. The proposed annual work programme shall include:
- (i) Detail and quantities of material removed and cleanfill delivered, including overburden moved and commodities recovered.
 - (ii) A description of any surveying undertaken with Mine Plans supplied as GIS files in terms of NZTM or NZMG co-ordinates.
 - (iii) A summary of the mining method employed.
 - (iv) A summary of the processing method.
 - (v) A forecast of production during the following year.
 - (vi) A summary of remaining resources.
 - (vii) A description of proposed mining and cleanfill activities for the following year.
 - (viii) A summary of rehabilitation activities.
 - (ix) Results of noise compliance monitoring in accordance with the conditions of this consent and the district Plan permitted noise standards.
 - (x) If no quarrying and/or cleanfill activities are proposed during the forthcoming twelve months the permit holder shall give reasons for this in the proposed annual work statement.

- (xi) Where quarrying and/or cleanfill activities are proposed, the proposed annual work statement shall be accompanied by plan(s) and, where applicable, shall provide details of the quantity and grades of building stone and aggregate to be recovered, the quarrying methods to be used, the anticipated location of quarrying, the extent and direction of quarrying and the estimated period of quarry operation. As well as identification of where cleanfill material will be placed, along with quantity and grades of material delivered to the site.
- (xii) If requested, the consent holder shall supply further information on the work proposed for the forthcoming twelve months.
- (xiii) If requested the consent holder shall provide a modified proposed annual work statement and/or plan(s) for written acceptance.
- (xiv) The consent holder shall comply with the current accepted annual work statement and plan(s) (where applicable) that may include modifications to the initially accepted annual work statement and plan(s).

Sampling of monitoring bores and associated conditions

- 7 The groundwater monitoring framework continues to preclude the bore located within Lot 2 DP 508108 (owned by Haden Sinclair Little, Tessa Leanne Nyhon). The bore is identified as G41/ 0346 and is used for domestic water supply and supply of water to orchard workers onsite.
- 8 The Submitters are concerned that this bore, downstream from the Site could be affected by operations and should be included within the monitoring network. No explanation appears to have been provided by the Submitters, and no evidence tabled, as to why inclusion of this bore would not be appropriate in light of the objectives of the monitoring framework, and despite the Submitter's requesting its inclusion in the hearing and in post-hearing comments on conditions.
- 9 The location of this bore is identified below:



Community Liaison Group

- 10 The addition of this new condition is supported, however it may also be prudent to include:
- (a) The requirement to circulate an agenda of information in advance of the meeting (and within a prescribed minimum timeframe);
 - (b) The requirement to invite any Council enforcement officer to attend the meeting and any meeting minutes to be forwarded to the Council's enforcement/ compliance team.

Bond

- 11 The revised bond condition comes a long way in terms of meeting the Submitters' concerns. However, remaining uncertainties and suggested additions are:
- (a) The default bond amount of \$200,000 appears arbitrary and is not based upon any reliable information or external review / independent quote. It should be deleted. The bond amount should be set based upon at least two quotes being provided from a SQEP, and calculated by applying a 150% multiplier to the higher of the quotes.
 - (b) The bond shall be registered on the titles of the Site prior to the commencement of any works on the Site. The bond document is to be approved by council's solicitors and all costs of setting up and registering the bond are to be borne by the applicant.

- (c) The purpose of the bond should be to implement the full rehabilitation plan and associated conditions (condition 49), not some sort of subset or summary of conditions as proposed in the Revised Proposal at 62.

Conditions and plans

- 12 A number of differences remain between the Submitters and the Applicant's Revised Proposal as to the most appropriate conditions of consent. As per the Commissioner's Minute, this reply has been limited to the outstanding matters raised, however for the record, this does not limit or replace the Submitters' previously tabled concerns on the conditions.



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