

**BEFORE A COMMISSIONER APPOINTED BY THE OTAGO REGIONAL  
COUNCIL AND THE CENTRAL OTAGO REGIONAL COUNCIL**

**IN THE MATTER OF**

the Resource Management Act 1991

**AND**

**IN THE MATTER OF**

applications by Cromwell Certified  
Concrete Limited for resource  
consents to expand Amisfield Quarry

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**MEMORANDUM OF COUNSEL FOR  
CROMWELL CERTIFIED CONCRETE LIMITED**

Dated: 8 December 2021

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**GREENWOOD ROCHE**  
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**MAY IT PLEASE THE COMMISSIONER:****Introduction**

1 In a memorandum dated 11 November 2021, counsel for three submitters (including Hayden Little Family Trust) (the Trust) argued that the hearing of these applications should be deferred under s91 of the Act pending applications for retrospective consents to authorise an historic encroachment (by part of a quarry bund) on Lot 2 DP 508108. Lot 2 DP 508108 was purchased by the Trust in March 2018<sup>1</sup>.

2 In a Minute dated 18 November 2021, the Commissioner stated:

*I am aware that removal of a large amount of material from the bund in question could have the 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.*<sup>2</sup>

3 However the applicant was directed to provide further detail regarding the nature of any consents that may be required should reinstatement of Lot 2 DP 508108 occur.

**Background**

4 The evidence for the applicant has now been lodged. As set out in the evidence of Mr Sutton<sup>3</sup> for the applicant:

- (a) The land for the existing quarry was created by a subdivision in 1994. The subdivided land was fenced by a local fencing contractor. Since then, the quarry has been operated on the basis that the fenced boundary is the correct legal boundary of

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<sup>1</sup> Evidence of Dominic Sutton, paragraph 5.9

<sup>2</sup> Minute, paragraph 9

<sup>3</sup> Paragraphs 7.13 – 7.16

the quarry site, and a 3m high bund was formed along that boundary. From aerial photos, the bund was formed between 1998 and 2003.

- (b) In 2019, Mr Malcolm Little (a representative of the Trust) made the applicant aware that the boundary between the quarry land (Lot 8 DP 301379) and the Trust's land (Lot 2 DP 508108) had been fenced in the wrong place. The mistake made in the location of the fence has resulted in mutual 'encroachments' – some of the applicant's land appears to have been fenced within the Trust's land, and vice versa. This has resulted in part of a quarry bund being located on the Trust's land, and water tanks for the Trust land being placed on the applicant's land (although Mr Sutton understands that the tanks may recently have been removed by the Trust).
- (c) In May 2019, the applicant paid for 100% of the costs of repairing and rabbit fencing the existing fence which is on both properties to prevent any damage to cherry trees which the Trust intended to plant on its land. The applicant offered to undertake a formal boundary adjustment (which the applicant would pay for). The Trust initially agreed to this but requested removal of the building covenant (in favour of the existing quarry which limits the number of dwellings which can be built on land owned by the Trust) in return. The applicant was agreeable to this in principle but in return sought support for the expansion proposal.
- (d) When consideration for the boundary adjustment (and related matters) could not be agreed, the applicant offered to undertake works to relocate the relevant part of the bund back onto the applicant's land and realign the fence line to accord with the correct legal boundary, at the applicant's cost. This was not accepted by the Trust.

**Consents required to remove the part of the bund beyond the legal boundary**

- 5 Mr Allison's evidence describes how the material placed on Lot 2 DP 508108 could be removed so as to either avoid any discharge of dust, or comply with permitted activity Rule 16.3.5.2 in the Air Plan:

*...Removal of that part of the bund would be straightforward. 95% of that material is clean washed pea-gravel, and therefore has low potential to generate dust. A loader and dump truck could pick up the material, and the truck would transport it back into the quarry. This could be done within two weeks with one loader and digger/truck (or faster with more equipment) and to avoid generating any dust, could be done in winter or sprayed with a water cart while the work is being done<sup>4</sup>.*

- 6 Rule 16.3.5.2 provides:

**16.3.5.2 Discharges from the sorting, crushing, screening, conveying and storage of powdered or bulk products - permitted activity**

The discharge of contaminants into air from the sorting, crushing, screening, storage and conveying (including loading and unloading) of fertilisers, grains, berries, coal, coke, wood chips, sawdust, wood shavings, bark, sand, aggregates, and other powdered and bulk products whether in dry or liquid form, where:

- (1) The total capacity of outside storage of bulk materials is less than 1,000 m<sup>3</sup> if located on a site in Air Zone 1 or 2; and
- (2) The crushing and screening of bulk materials is at a rate less than 100 tonnes an hour;

is a *permitted activity*, providing any discharge of odour, or particulate matter is not offensive or objectionable at or beyond the boundary of the property.

- 7 It appears that removal of the material would not trigger a need for any other regional consents.
- 8 A land use consent from the District Council would be required (as a discretionary activity) for breach of Standard 4.7.6J (b) *Extraction and Displacement Activities* which limits the quantity of earthworks which may be undertaken on one site to 3000m<sup>3</sup>.

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<sup>4</sup> Paragraph 8.2

### **Retrospective consent**

- 9 The s42A report raises the issue of whether retrospective consent is needed to authorise the parts of the bund which are located outside of the quarry's legal boundary.
- 10 If a subdivision consent is sought to alter the legal boundaries between the two Certificates of Title, the material which has been placed on Lot 2 DP 508108 need not be removed, provided any retrospective consent needed is obtained. The s42A report for the District Council states that a retrospective land use consent from the District Council would be required (as a restricted discretionary activity)<sup>5</sup>.
- 11 If a subdivision consent were to be sought, any retrospective land use consent needed could be sought at the same time.
- 12 Rather than rely on the grant of a retrospective consent, the applicant proposes a condition requiring that a new 3m high section of bund be formed within the quarry's legal boundary. A plan showing the proposed location of the new section of bund is attached to this memorandum.

### **Conclusion**

- 13 Removal of the part of the bund which is located on Lot 2 DP 508108 does not form part of the proposal to which these applications relate, therefore s91 of the Act does not apply.
- 14 Any resource consents which may be required to remove the material on Lot 2 DP 508108 (or to allow it to remain) can be sought in due course, once it is known whether/how the encroachment will be rectified (such as by way of boundary adjustment or otherwise). Cumulative dust effects will not arise, given the evidence of Mr Allison.

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<sup>5</sup> At paragraph 5.6

- 15 With the condition proposed which requires formation of a new section of bund within the quarry boundary, the quarry deepening and expansion proposal is not reliant on retention of any parts of the bund on Lot 2 DP 508108, or on any retrospective consent which may be required being obtained.



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Monique Thomas  
Counsel for Cromwell Certified Concrete Limited

8 December 2021



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JAT19474 - Cromwell Certified Concrete Limited - Permit applications for expansion of the Amisfield Quarry\CAD\19474\_01\_QUARRY\_PLAN\_REV E.dwg Plotted: 04.11.2021



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Client  
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**SITE PLAN**

Rev.	Date	Revision Details	By	Surveyed	Signed	Date	Job No.	Drawing No.
A	21.7.20	50m setback around neighbouring dwelling	slb				19474	01
B	22.7.20	setback area expanded	slb					
C	9.9.21	Bunding added, active area reduced	slb	Drawn	Signed	Date		
D	20.9.21	Bunding changed, wording added	slb	SLB		4.6.20		
E	4.11.21	Bunding changed, Quarry area reduced	slb	Designed	Signed	Date		
							Datum & Level	Rev.
							NZTM 2000 & MSL	E

Scale  
**1:1500.000 @ A1**  
**0.333333 @ A3**