

Further to submission by Simon Thomas PD66 - 0002

**Proposed Plan Change 66.
6 August 2021**

Good afternoon Commissioner Caldwell.

There appear to have been two changes made by the Applicant in response to my submission. Both however fail to meet my fallback expectations in the undesirable event that the Plan Change would proceed.

My major concern regarding the establishment of a road crossing to Maddisons Road has not been resolved. This is despite the recommendation from Andrew Mazey (SDC Asset Manager of Transportation), supported by Liz White in the S42A Report, that "The Outline Development Plan is amended to provide the correct notation that there will be no roading or other vehicular access to Maddison Road".

There is not even reference to the unassailable minimum 20 year time restriction and transferability I conceded, and the Applicant making it a restricted discretionary activity will in my view see it challenged in no more than a couple of years. I see the change made as only a token gesture by the Applicant and this should be clear to the Commissioner as well. Given this, Plan Change 66 should only be granted if "The Outline Development Plan is amended to provide the correct notation that there will be no roading or other vehicular access to Maddison Road". If this needs to be stated as a Prohibited Activity, then so be it.

My secondary concern is that even though there has been a concession to implement a 2.5m bund on the northern and eastern boundaries, this does not include the change from Landscape Treatment 1 to Landscape Treatment 4 on the northern boundary. As proposed by the Applicant the development will still be visible once Landscape Treatment 1 has matured.

So, my thrust to oppose and for you to decline remains as per my original 23 Feb 2021 submission which you will already have in front of you.

You will have seen there that amongst other pertinent things, the Applicant already on page 12 of the request for change acknowledges there is great uncertainty in their proposal.

No doubt this is why the Selwyn Districts S42A report has at point 140 Liz Whites comment “I consider the matter is finely balanced” although she then goes on to recommend acceptance.

Well I don’t believe its finely balanced, I believe it’s weighted very much in the rural resident’s favour and should be declined.

In support of this belief, I refer to the court case between Harewood Gravels Company and the Yaldhurst Quarries Join Action Group

(2018) NZHC 3118 November 2018

<https://forms.justice.govt.nz/search/Documents/pdf/jdo/53/alfresco/service/api/node/content/workspace/SpacesStore/e1b518c2-689a-41fc-b4ef-e2b83e2b2b0b/e1b518c2-689a-41fc-b4ef-e2b83e2b2b0b.pdf>

where in an appeal against

(2017) NZEnvC 165 October 2017

<http://www.nzlii.org/cgi-bin/sinodisp/nz/cases/NZEnvC/2017/165.html>

the High Court found that possible accumulation effects on Amenity Values hold a high priority in in any RMA considerations and override amongst other things, uncertainty.

I acknowledge taking things out of context can sometimes distort comprehension, but I strongly believe that in this case the principal and interpretation of the law remains very relevant regardless of context or of any different underlying commercial circumstances.

Copied and italicized following are the concluding clauses of (2018) NZHC 3118 (I've added the red colour for emphasis to some items, and those will be the ones I'll read out today).

The heading itself, "The future" signposts where we should be going and it's not down this Applicants path.

The future

*[323] This judgment on appeal recognises that the correct pathway to quarry consent in the Bund zones is newly tested. There is no error in the pathway taken by the Court. **There is no principle whereby the sacrifice of a few for the 'greater good', is a sustainable environmental outcome.** The Court recognised the importance of quarrying to the economy when it came to its Decision.*

*[324] This judgment is by no means the end of the line for HGL for this site, if it is able to mount a fresh case addressing the material deficiencies in the evidence which the Environment Court identified. The bigger hurdle in front of HGL **is that the judgment of the Environment Court represents a recognition that there is a point at which the accumulation of effects may go too far, to be more than minor even with mitigation, and to be contrary to the Objectives and Policies in the District Plan.***

*[325] The Environment Court has signposted clearly where the evidence fell short across several fundamental elements of effect. In some cases, it was for want of evidence, in others it was not satisfied the persuasive burden on HGL was discharged. **The evidential shortfall is now plain to HGL, and automatically extends to the sum total of these evidential deficits, in determining cumulative effects. These should not be overridden for the clear economic benefits of the consent that HGL seeks for itself,***

and for the community. There may be other alternatives. The stakes are high, no doubt for HGL in a commercial sense, but unquestionably for the residents who have seen, felt and live with the advance of quarrying activities around them. The description that the residents are becoming “sandwiched” between quarries resonates for this judgment.

[326] There are obvious commercial outcomes which HGL and interested parties, including GAG residents, may wish to pursue. But for one element as to noise, the Decision of the Environment Court represents a commendably thorough and correct approach to a multifaceted set of required considerations. In the end, the Court has simply reached a conclusion based on the evidence that this consent, having regard to all relevant and no irrelevant considerations, and in its evaluation of the accumulation of effects constitutes a step too far on what is known, and otherwise that there is insufficient evidence in several critical respects on which the Court might have been able to reach another conclusion.

G. DISPOSITION

[327] The appeal is dismissed

The most relevant clauses for (2017) NZEnvc 165 are 312-315.

I don't believe SDC have given proper, if indeed any, consideration to (2018) NZHC 3118 November 2018 and have erred in their recommendation.

It would not be the first time.

I don't have the resources to research deeper and present more fully or to engage and pay for expensive “expert” collaboration, but I can read, and a lot of things should be self-evident. They are to me.

Considering :

1. The Judgement of (2018) NZHC 3118 emphasising the need for certainty and the need to assess accumulative effect. Nor the Judgement finds is there any assumption that there is principle whereby the sacrifice of a few for the 'greater good', is a sustainable environmental outcome (in this case the sacrifice of "many" though).
2. Liz Whites S42A comment "of finely balanced", displays that there is no assured certainty of demand or development impact or assessment of accumulative effect on amenity.
3. By the Applicants own admissions on page 12 "In the absence of a detailed development proposal there is some uncertainty as to the potential landscape and rural character effects". So there we are, they've said it themselves, no certainty, no way to assess accumulative effect on anything.
4. By the Applicants own rather contradictory admissions elsewhere on page 12 that the surrounding transport network (Hoskyns Road or Jones Road) have been assessed and found to be general acceptable but then adds they may apply in the future to use Maddisons Road yet add the extent of that use is not known at present. Hardly definitive and would be the thin edge of a wedge for an eventual unchallengeable incursion into that Road, the fait accompli they no doubt seek.
5. The economic effects of potential impacts on roading and servicing infrastructure at page 13 has not even been attempted to be defined or quantified neither initially nor as importantly ongoing for many years ahead. Nova's comment at point 41 "not a given" is hardly a comprehensive statement on accumulative effect. If the comment at point 43 "In my opinion, I do not consider there will be a noticeable change in traffic on Maddisons Road as a result of the Plan Change" is to be anything other than words, there needs to be inclusion of my suggested 20 year restriction or making a road crossing a Prohibited Activity.
6. An added area of uncertainty in relation to Industrial Land Availability is acknowledged by the Statement of Evidence of Timothy Carter where at page 3 point 15 he states that the Our Space report confirmed "that there is sufficient industrial land zoned across Greater Christchurch to meet anticipated demand through to 2048" and while challenged by the Carter

Group, point 17 acknowledges that further promised work has not yet been done. How uncertain is that.

7. It is interesting to note that both of the applicant's Industrial Land expert statements (which to me seem incredibly similar in a number of aspects) include the acknowledgement that they are not familiar with the Our Space document. Funny that! This should throw doubt on the contents of both "expert" statements.
8. We also note that an alternative site had been offered in the original submissions - "PC66-0012 Pinedale and Kintyre Enterprises" and for reasons unknown to us but may well be known to the Applicant this submission has been withdrawn. Regardless, the alternative site must still be there.
9. The visual amenity of the rural residents and other travelers along Maddisons Road has not been sufficiently protected, due to the use of Landscape Treatment 1 on the northern boundary rather than Landscape Treatment 4, and the lack of requirement for "early establishment of landscaping, which will give time for screening and growth to provide effective mitigation" as acknowledged in the Statement of Anne Wilkins at point 50.
10. It would appear in the Statement of Anne Wilkins at point 57 that the amenity of rural residents is unavoidably compromised by the inevitable industrial creep. That doesn't seem to me to be a basis of good planning.
11. ECan's ambivalence and inherent uncertainty adds weight to my contention that there has not been adequate consideration of the accumulative effect on amenity to rural residents.

There is no doubt this application should be declined because of overwhelming inadequate recognition of:

1. RMA Purposes and Principals 7(c) "the maintenance and enhancement of amenity values" and
2. The uncertainty of some Section 32 assessments in relation to "Environmental and Economic Effects".

This is a more than reasonable and correct contention.

All other things in my original submission remain.

I am of course more than willing to field any queries or whatever you may require of me.

And when that's done I thank you in anticipation for your hopefully favourable consideration to decline.

Simon Thomas

6 August 2021