

RESOURCE MANAGEMENT ACT 1991

APPLICATION FOR RESOURCE CONSENT TO THE SELWYN DISTRICT COUNCIL

APPLICATION NO 145436

APPLICANT ROAD METALS LTD

**SITE A BLOCK OF APPROXIMATELY 284 HECTARES BOUNDED BY
WARDS, SANDY KNOLLS AND KERRS RD, BURNHAM**

NOTICE OF DECISION

Summary of Decision

That the application be granted in part, subject to the amended conditions set out in Appendix 1

Introduction

1. This is an application by Road Metals Limited for consent to a change in conditions for an existing resource consent to operate a shingle quarry and concrete batching plant at Wards Rd near Rolleston.
2. I have been appointed by the Selwyn District Council to hear and decide the application and submissions.

The site

3. The site is a block of 284 hectares bounded by Wards, Sandy Knolls and Kerrs Roads, Burnham, several kilometres to the west of the town of Rolleston.

The application

4. This quarry was established in 2013, as a result of a direct referral application to the Environment Court. The consent is subject to an extensive suite of conditions, of which the relevant ones are
 - Condition 27 which limit total annual output of the quarry to 160,000m³,

- Condition 10 which restricts opening hours to 0630 – 1800 Monday to Friday and 00630-1200 Saturday subject to the following:
 - The site shall not be open to the public prior to 0700.
 - Gravel extraction and crushing and processing aggregate of shall not commence prior to 0730 and crushing and processing of aggregate shall not occur on a Saturday.
 - Concrete batching may commence at 6.00 am except that this may commence at 0300 hours up to 5 days per year.
 - Concrete batching shall not result in more than 4 heavy vehicles entering or exiting the site in any 60 minute period prior to 0730.
 - There shall be no operation on Sundays and public holidays.
 - Condition 38 which limits truck movements to a maximum of 200 daily or a 3 month rolling average of 170.
 - General Condition 1 which is a standard s128 review condition enabling the Council to review the conditions of consent annually to deal with unanticipated adverse effects.
5. There are numerous other conditions which relate to how the quarry is operated. Notably for these proceedings, these include conditions relating to dust control, noise control, and the maximum area of land in use for quarrying at any one time, and other operational matters. There are also regional consents from Environment Canterbury relating to water use and disposal, and discharges to land and air.
 6. The applicant has discovered that the demand for aggregate and concrete is much greater than it had anticipated when it first applied for consent, and that there is also a greater demand for early morning supplies of both shingle and concrete. The application seeks to change the conditions which relate to the total annual output of the quarry, its hours of operation and the daily number of truck movements generated by the quarry. All other conditions would remain the same. Changes to the regional consents have already been granted by Environment Canterbury.
 7. Specifically, the applicant sought the following changes:
 - Condition 27, a maximum annual yield of 500,000 m³ per annum.
 - Condition 10, operating hours, as follows limited to 0600 1900 Monday to Friday and 0600-1300 Saturday, subject to
 - The site shall not open to the public prior to 0630.

- Concrete batching may commence at 0500, except that this may commence at 0300 hours up to 5 days per year.
 - There shall be no operation on Sundays or public holidays.
 - Condition 34, crushing equipment to be used outside the hours of 0730-1900 to be located at least 300 metres from the boundary of any site not owned by the applicant or at an alternative location to be approved by the Council following receipt of a report from a suitably qualified acoustic consultant demonstrating compliance with the consented noise limits.
 - Condition 38, heavy vehicle movements shall not exceed 500 per day calculated over a 3 month rolling average.
 - A new condition requiring reports be prepared after 5 years by suitably qualified acoustic and traffic engineering consultants to assess whether any effects have arisen from traffic movements which were not anticipated at the time this application was considered.
 - A new review condition for the preceding condition.
8. At the conclusion of the hearing and having heard the submitters and reporting officers, the applicant accepted that there should be a daily upper limit for truck movements as well as the 3 month rolling average originally sought.

The submissions

9. The application was publicly notified. 81 submissions were lodged in total, with 23 being in support and 58 in opposition.

The hearing

10. I conducted a hearing on of the application and submissions on 22-23 January 2015. The following people appeared at the hearing.

Applicant

Mr Ewan Chapman, Legal Counsel

Mr Murray Francis, applicant

Mr Johnny Francis, applicant

Mr Andrew Metherall, transport consultant

Mr Stuart Camp, noise consultant

Submitters

Bill Taylor

Sadie Scott

Frank and Robin Lamborne

Simon Locke

Clayton Fairburn

Mark Alexander

Brian Pinches

Terry Dalton

Paul Sharpe

Anne Guard

In addition several submitters who were unable to attend handed in written submissions. I wish to assure all submitters who did not attend or speak at the hearing that I have read and considered their written submissions carefully.

Selwyn District Council

Mr Nick Boyes, consultant reporting officer

Mr Rhys Chesterman, consultant transport engineer

Dr Jeremy Trevathan, noise consultant

Preliminary issues

11. The application was made under section 127 of the Resource Management Act 1991 (the RMA). This section permits applications to be made for changes to the conditions of existing resource consents. There are limits to the use of this section which have been developed by the Courts. The leading case on the matter is *Body Corporate v Auckland City Council*¹ In summary, this established that the use of s127 should be limited to situations where the activities after the change would not be materially different to those originally consented, measured by fact and degree.

¹ 2000 NZRMA 202

This comparison extends both to the actual activities being carried out and also to any adverse effects on the environment.

12. It was the position of the applicant that its proposal complied with this test. The Council reporting officer Mr Boyes concurred with this. His reasons for this concentrated on the fact that the actual activities being carried out would remain the same, being the excavation and processing of shingle and operation of a concrete batching plant, and the delivery of materials , by truck to various customers. He believed that the changes to hours, volume extracted and truck movements did not amount to a material difference. However he recommended certain reductions to the amendments requested by the applicant to reduce adverse effects, particularly noise.
13. From the outset, I was concerned that at face value, this application amounted to an approximate trebling of volume extracted and truck movements, and a significant intrusion into the more noise-sensitive early morning and early evening hours of the day. It seemed to me that if granted, the revised activity may well be materially different from that originally consented. I accept that the nature of the basic on-site operations would remain the same, but as the extent would be so much greater, both in time and in volume, and in particular truck movements, then the adverse effects might well be materially different, at least in degree. Throughout the hearing I sought to test this with the various presenters from the applicant, the submitters and the Council. As a result I gained a great deal of factual information and conflicting opinions about the significance of various adverse effects. By the end of the hearing I was still lacking understanding about aspects of the materially different test, and in particular much knowledge of how the courts have been applying the test in cases before them. I was also unclear about what to do with the application if I concluded that there would be a material difference. I therefore adjourned the hearing and requested the Council to obtain a legal opinion. This was prepared by Mr Paul Rogers. This legal opinion then was circulated to the parties for them to comment if they wished to, and a number of comments were received. I will return to this later.

The planning framework

14. If the application qualifies for consideration under s127, it would be as a discretionary activity as that section sets out.
15. In his legal opinion Mr Rogers stated that if the application could not be dealt with under s127, then I could go on to consider it under s104 in any case, citing several legal precedents for this
16. If it does not qualify under s127 then the quarrying activity would a be discretionary activity in the Rural (Outer Plains) zoning under the Selwyn District Plan as it appears

to breach a number of permitted activity standards, including earthworks, diesel storage, built storage and waste areas and vehicle generation. Concrete batching would also be a discretionary activity as a Rural Based Industrial Activity.²

Principal issues

17. The potential environmental issues identified by the applicant, the Council reporting officers and the submitters include noise, dust, road safety, road damage and general amenity issues from trucking operations. These issues are almost entirely centred on the truck movements generated by the quarry. I heard little about operations within the quarry itself apart from some discussions by the noise experts about the need for mobile crushing equipment to be located further from boundaries to comply with noise requirements if operating hours are extended into night time hours as defined in the Selwyn District Plan. There is a whole suite of conditions governing how the quarry is operated which would remain in force and which were not part of this application.
18. In this regard the case is very similar to another recent case in the Environment Court concerning a quarry; *Omaka Valley Group v Marlborough District Council*³ where the Court said

[3] There is an unusual element in this case in that it is agreed by the planning witnesses³ called by Simcox, the council and the appellants that the effects of the mineral extraction itself and related on-site effects can be accommodated without significant adverse effects. They wrote

- the physical effects of the quarrying itself can be largely confined to the quarry site; and*
- with adequate on-site management, the physical effects of the quarrying and associated onsite activities would be no more than minor. This could include stormwater discharges.*

[4] The planning witnesses further agreed that the main issue in contention concerns the scale of adverse environmental effects resulting from the use of the roads in the vicinity of the site to transport the material won from the quarry site to the places where it is to be used⁵

• We concur with that assessment. We add that these potential effects relate to both the safe use of these roads and the level of amenity experienced both by users of the roads and those who live and work alongside them.

19. I refer to this at this very early stage in this decision because time and again the applicant sought to convince me that the proposal was not materially different to that originally consented, largely because so much would remain the same, including all the

² These activity classifications were also set out in the original Environment Court decision on this quarry, Decision No 2012 C214. As nothing has changed in that regard I adopt the Court's finding on the activity status.

³ Decision 2012 C237

on-site operations. However, as the Omaka Valley Case demonstrates, the off-site roading effects are critical in a case like this and need to be thoroughly evaluated. In this case references to the operations within the quarry itself are almost irrelevant and the applicant probably placed too much weight on them with regard to the materially different test. I do accept however that the facts in the two cases have a number of differences which need to be kept in mind. One of the most significant differences is that the quarry in *Omaka Valley*, even after the expansion, would still be considerably smaller than the present case, as would the resulting number of truck movements. In fact weekly truck movements there would be less than the current consented daily truck movements for the present case. However this much lower level of traffic did not stop the Court from ordering a suite of roading upgrades to a standard higher than currently exists in the vicinity of this site.

20. The fact that the regional council has granted already resource consents for matters under its jurisdiction such as water takes, water use, discharges to land water and air is not particularly persuasive one way or the other as to the outcome of the present case, as that council's jurisdiction is not over the various amenity and road safety issues which fall for consideration at the district level.

The Site and the Quarry

21. This is a very large site of which only a small part is being actively quarried at any time, and the conditions limit the size of the open quarrying area, and the backup area where shingle is stockpiled, crushed, washed and loaded out. Over time completed areas will be backfilled and operations move on to other parts of the site. The quarry is expected to continue in operation for many years on this basis. These operations have the potential to create adverse effects such as noise, dust and effects on water quantity and quality, and a whole suite of conditions govern this, at both district land use and regional consent level. Nothing about all of these in-quarry operations is being changed other than the rate at which shingle will be extracted and processed. The main effect would be the rate at which operations move through the balance of the site. I was assured that other than the night time noise issue already mentioned, there would be no need to change any of the conditions governing on-site operations. Therefore the hearing of this application has centred almost entirely on the effects of the trucks servicing the quarry and concrete plant.

Assessment of effects

22. In my opinion the effects that are of concern in this case include noise, dust, road safety and general rural amenity.

Noise

23. As discussed above the application includes a proposal to modify a noise condition relating to the distance from boundaries where mobile crushing plant can be located, in order to achieve compliance with night time noise standards. This is brought about because the proposal to commence operations prior to 7 am would bring the operation into the night time hours, when noise controls are stricter. At present extraction, crushing and process may not commence prior to 0730. The noise experts were agreed that this restriction is not necessary provided night time noise limits are not exceeded. This aspect drew little concern from submitters and seems to me to be an appropriate amendment if the consent as a whole is to be granted.
24. Noise from trucks on the roads was of much greater concern to the submitters and the Council's reporting officer, Dr Trevathan, and in particular the intrusion into early morning or early evening hours. Residents told me that some of them are in the habit of walking, running or riding horses or cycles on the road in the early morning when the quarry has not been operating, in order to avoid the trucks and this opportunity would be lost. Similarly, early evening enjoyment of properties such as outdoor activities would be adversely affected by the extension of operating hours until 7 pm. For the applicant, Mr Chapman argued strongly that noise from trucks using the local roads should not be a relevant issue. He had two reasons for this. Firstly, he said the district plan does not limit noise from traffic using roads, so to consider it in this context would be like a "second bite at the cherry". Secondly, trucks from the quarry are not the only trucks on these roads, so it would be unfair and ineffective to control them in any case. Evidence was given of a substantial increase in traffic, including trucks on Wards and Walkers Rd Roads in the last few years, possibly associated with the steady development of the Izone, which is a new business park nearby which Wards Rd leads directly into. There was also a suggestion that this may be associated with current high levels of logging trucks. The forestry industry is well-known for peaks and troughs and has been in an active phase recently.
25. I accept that few if any district plans attempt to control traffic noise on roads. It would be quite impractical for them to do so. Instead the emphasis has always been on planning measures that
- influence the location of activities, so that noisy activities are not introduced onto quiet roads, or vice versa,
 - limit the scale of activities to limit the impact of traffic generated, or

- provide acoustic screening such as noise bunds, acoustic fencing, double glazing or spatial separation.
26. There is a long history in New Zealand of the planning process engaging with such situations, and quarries have played a significant part in this. Mr Rogers in his legal opinion referred to the *Omakā Valley decision* where the Court considered the effect of truck noise in depth and placed limits on the expansion of a quarry for just this reason, amongst other reasons. That case also considered the issue of the quarry trucks not being the only source of trucks on the road, and concluded that as the quarry would be the predominant generator then it would be appropriate to restrict activities accordingly.
27. Therefore I do not accept that I should disregard the noise from trucks associated with the quarry. The proposal is for a very large increase in truck traffic on surrounding roads and in some cases such as Wards Rd trucks from this site would be the largest contributor and a very significant proportion of all truck traffic.
28. In this case, I accept that there are trucks on Wards Rd and Walkers Rd in particular that are not associated with the quarry. As the applicant proposes to add up to 650 more trucks per day, and most of these would use one of both of those roads, it is apparent that the quarry would by far the largest source of such traffic and the quarry traffic would have a discernible effect on the amenities of the area. Mr Metherell said that the quarry traffic at the proposed levels would be 32% of all heavy traffic on Wards Rd and 24% of all heavy traffic on Walkers Rd.
29. As applied for the proposal is to increase the number of trucks from the present maximum of 200 per day or 170 per day on a three month rolling average to a rolling average of 500 with an upper limit of 650 (as offered in closing submissions). As well there could be shingle trucks in the early morning after 6.30 am, and up to 20 concrete truck movements per hour from 5am. Mr Francis pointed out that it is not unusual for concrete to be delivered as early in the morning as possible, especially in winter months to allow it to set sufficiently in the warmer daytime hours. However the concrete batching plant would not necessarily operate from 5 am every day, it would depend on whether there were forward orders.
30. For the Council Dr Trevathan was concerned about this level of truck traffic so early in the morning, considering that it would cause sleep disturbance. He said that although a single truck movement can cause sleep disturbance, accepted best practice is to limit the number of sleep disrupting events in the early hours as much as possible. He said that there could be up to 15 quarry-related heavy traffic

movements between 0600 and 0700 hours and up to 20 concrete truck movements per hour after 0500 hours. . He was not overly concerned about the noise effects likely volumes of traffic at other times although it would be a slightly larger increase in overall noise than predicated by Mr Camp for the applicant. Mr Camp had estimated an overall increase of 4dBA but Dr Trevathan considered this would be 5dBA. Both accepted that this would be noticeable but not a significant adverse effect during normal daytime hours. Dr Trevathan was prepared to accept a limited provision for early morning concrete deliveries of concrete and would support 5 am starts for this activity on 10 days per year in addition to the 5 days of 3 am starts already permitted. Mr Camp was prepared to support the proposed opening time of 0500 for concrete batching at all times.

31. The submitters who reside closest to the roads in the vicinity of the quarry were very concerned about the addition of this amount of heavy traffic especially so early in the morning.
32. Having considered this, I have concluded that the introduction of this amount of heavy traffic in the early morning hours would produce a significant adverse effect for nearby residents and that this would be materially different in degree from the existing consented activity.
33. I am less concerned about the noise effects of the projected numbers of trucks during ordinary working hours. Assuming it is evenly spread throughout the day, it would be less than 50 per hour or 1 per minute. Most people would be awake during these hours, and either away at work or study, or working on their properties and the noise would be a great deal less disturbing. This points to a conclusion that is not the volume of the proposed quarry expansion that is the issue here, but rather the timing of it. If the applicant was proposing to carry out the expanded quarrying and trucking operations within the existing hours then noise would be less of an issue in my opinion.
34. I note that noise is not the only matter of concern about trucks. There are also concerns about dust, safety and general amenity and I discuss that under those headings.

Dust

35. Two of the adjacent roads, Sandy Knolls Rd and Kerrs Rd are unsealed for parts of their length. Sandy Knolls Rd receives very little if any quarry traffic, as virtually all of the demand for shingle and concrete arises in the other direction. There was considerable disagreement between the applicant and the submitters about the

extent of use of Kerrs Rd. The applicant contended that it was little, and that there was no real reason for drivers to use Kerrs Rd at all. The submitters, particularly those who live in Kerrs Rd say it is a more regular occurrence, and that in dry conditions this generates considerable volumes of dust which gets into their homes, is a nuisance and in some cases affects their health. No one appears to have conducted a comprehensive survey of this. However in my site visits I certainly noticed trucks using Kerrs Rd. On my first visit, the first two trucks which emerged from the quarry turned into Kerrs Rd, and then dust generated was certainly obvious and considerable. It seems to me that for traffic trucks heading south or east of Rolleston, Kerrs Rd would offer a slightly shorter route and avoid the slightly complex intersection of Wards and Walkers, which may be why some drivers prefer to use it.

36. By the end of the hearing, and in the closing submissions, the applicant seemed to be acknowledging that perhaps Kerrs Rd was used more regularly than it had initially assumed.
37. I consider this dust nuisance to be unacceptable already when conditions are dry, as they often are in Canterbury, and a proportionate increase in trucks using Kerrs Rd would make that considerably worse. If the application is to be granted, something will need to be done to prevent trucks from using Kerrs Rd unless they are bound for a site on that road. I note that in the *Omaka Valley* case, which involved considerably lower rates of extraction and truck traffic, the applicant volunteered a condition to seal some unsealed roading along the trucking route, and that the proposed weekly volume of truck traffic was less than the present daily volume from this site, and considerably less than the proposed volumes.

Road Safety

38. There was considerable debate about potential road safety effects arising from the proposed expansion. The seal width of the roads in the vicinity varies slightly. Wards Rd outside the site has a sealed width of 6.1 metres to Kerrs Rd, after which it is 6.8 metres wide in to Rolleston. Walkers Rd has a seal width of only 5.8 m from its intersection with State Highway 1 to Two Chain Rd, after which it continues to its intersection with Wards Rd at 6.1m. These two roads carry the majority of the quarry traffic, with some use of Two Chain Rd, Kerrs Rd and Aylesbury Rd. All the roads also have metalled shoulders and wide grass berms. The expert traffic engineers for the applicant, Mr Metherall, and the Council, Mr Chesterman, told me that these road formations are wide enough to allow for trucks to safely pass either other trucks or other traffic, although it may occasionally be necessary for vehicles to move onto the

unsealed shoulders. There is clear evidence of damage to the edge of the seal arising from this, particularly in Walkers Rd.

39. Residents told me however of regularly observing shingle trucks crossing the centre line, and photographic evidence of this was provided. They also talked of trucks “rolling through” intersections where they should be stopping. One submitter provided dashboard camera images demonstrating trucks exceeding the speed limit. They spoke of their experiences when walking, cycling or riding horses on these roads when they are sometimes forced into the grass verges, which can be rough and wet at times. I note that both traffic experts stated that on their various site visits they had observed very little no-motorized traffic on the roads, and this clearly influenced their opinions about road safety. It is possible that their visits were mostly conducted in ordinary working hours rather than the early activities referred to by many submitters.
40. Based on the expert evidence, I reluctantly conclude that this would not amount to a serious safety concern. I accept that as it is clearly possible for vehicles to pass each other and there is refuge available for pedestrians, cyclists and horses. It may well be unsafe for children or inexperienced riders.
41. However there is clearly a strong element of concern, annoyance and inconvenience existing already which could well escalate into feelings of intimidation and fear if truck numbers escalate to the levels projected by the applicant. I will return to this under the heading of amenity.

Road Damage and Congestion

42. Damage to the seal edge has already been discussed. I was surprised that the Selwyn District Council seemed so unconcerned about this. I was told that Walkers Rd is due to be upgraded between SH1 and Two Chain Rd, which is only a very short distance, as this is now part of an arterial route. I note that in the *Omaka Valley* case the applicant there had volunteered a condition for a levy per tonne of shingle carted for the purposes of road upgrading. I would have been prepared to consider such a regime in this case but in the absence of detailed evidence about costings, and in the absence of a clear safety issue I feel unable to take that any further. However it is clearly a matter that could be addressed in future either under the existing review condition or the new roading effects review condition that has been proposed.
43. Much of the quarry traffic will be using the complex intersections where Two Chain Rd, Jones Rd and Hoskyns Rd come together and intersect with State Highway 1 at Rolleston. This is already a difficult intersection, especially for traffic out of Wards Rd

and Two Chain Road which has to attempt a right turn onto Hoskyns Rd, which at peak times is congested and experiences long delays. If truck traffic increases to the levels projected this can only become worse. However this intersection has already been identified as in need of upgrading, and the quarry is only part of the wider picture, which includes the rapid development of the Izone Business Park at this location.

General Amenity

44. As already discussed, the levels of truck traffic are projected to increase markedly, in the order of three times. This is not regarded as a safety issue by the experts and I somewhat reluctantly accept their conclusions on that. Nor would it infringe specific noise controls, simply because the Selwyn District Plan, in common with almost all district plans, does not set out to regulate traffic noise directly.
45. However, submitters told me that some of them are in the habit of walking, running or riding early in the mornings or in the late afternoon and early evenings when the quarry trucks are not currently present. Many of them spoke of their concerns when having to drive past quarry trucks on the road, particularly when pedestrians or riders were also nearby. They are concerned about the damage to roads such as seal edge breakage and potholes. They consider that enjoyment of early evening activities would be made less enjoyable with more heavy trucks passing their properties. Dust is also a particular concern for residents of Kerrs Rd.
46. It seems very apparent to me that quarry-related heavy traffic generates considerable concern among local residents. That concern ranges along a spectrum from unease and disquiet at one end through anxiety and annoyance through to actual fear at the other extreme. It is a mixture of perceptions about noise, dust, road safety, inconvenience, irritation and disruption of recreational activities. All of these concerns would increase if any increases in the level of quarry-related heavy traffic are to occur and concerns would move along the spectrum accordingly. . I was not persuaded that these concerns are not soundly-based. However it is very difficult to put a figure on an acceptable upper limit and I received no expert evidence about this.
47. Mr Chapman seemed to be saying that amenity concerns are restricted to noise and road safety only, and having disposed of those I should have no further concerns. I do not accept that. Firstly, I do not accept the argument that road noise should be disregarded because it is not directly regulated by the district plan. Secondly, amenity has a much wider definition than those two matters. Mr Chesterman in particular,

although he was prepared to conclude there would be no road safety concerns, pointed out that there might be wider amenity concerns that go beyond road safety but which were outside his expertise to comment on. The definition of amenity values in the Resource Management Act is “*means those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes*”. In this case, notions of pleasantness and for some people recreational attributes of the area are an important and relevant factor and would inevitably be adversely affected.

48. In the end I have concluded that an increase in annual volume of extraction and truck movements over and above the present consent limits is possible without excessive impacts on general amenity, provided this is kept predominantly within ordinary daylight hours when most residents would be awake and many of them away from home at work or study. I consider that the proposed earlier opening hours would affect noise and general amenity excessively for the reasons already stated. I accept there is a case for some limited early opening hours for concrete batching and delivery.
49. It is difficult to set acceptable upper limits for both annual volumes and daily truck movements. However, although I can see that some increase is possible, to more than treble the level of activity seems to me far too big an increase to absorb in one step when the effects are so difficult to predict. I consider a good case was made for some additional early concrete batching activity. The applicant itself did not expect that this would need to occur every day. I was much less convinced by the applicant's case for early morning shingle delivery. This seemed to me to be speculative and opportunistic rather than based on any real analysis of the factors that might cause such a demand. I was not convinced that recipients of shingle could not arrange to have it delivered the previous day for example if they planned an early start. While any business is perfectly entitled to attempt to maximise its output, this has to be tempered by the management of its effects. Put shortly, I consider the environmental costs of the extended hours proposal would almost certainly exceed the benefits to the applicant.
50. In closing submission Mr Chapman said that the need for extended hours was being driven by the greater rates of extraction. I was bemused by this. I do not see how an approximate trebling of volume extracted from 160,000 to 500,000 m³ could possibly be handled in the relatively short extra hours proposed. If that was really the case I would be even more concerned about the impact on the general amenity values of

the area as this would amount to an extra 450 trucks per day in the early morning and late afternoon hours. I would have expected such a large increase to be much more evenly spread throughout the day.

51. .I do not consider the additional hour between 1200 and 1300 hours on a Saturday should pose too much of a difficulty.

Statutory considerations

Resource Management Act 1991

52. When considering an application for resource consent and any submissions received, the consent authority must have regard to the matters listed in Sections 104B of the Resource Management Act 1991. Subject to Part II of the Act, which contains the Act's purpose and principles, including matters of national importance, the consent authority shall have regard to:

Any actual and potential effects on the environment of allowing the activity.

Any relevant provisions of a plan and of a national environment standard.

Any other matter the consent authority considers relevant and reasonably necessary to determine the application.

53. Part 2 of the RMA sets out the purposes of the Act. In section 5 one of these purposes *is enabling people and communities to provide for their health and well-being*, noting that this purpose is constrained by the need to avoid remedy or mitigate adverse effects. I note that this case demonstrates both aspects of sustainable management. It would clearly provide an opportunity for the applicant, and all its clients to provide for their economic well-being

54. . It would also come with an increase in adverse effects as outlined above.

55. Section 6 of the Resource Management Act contains a number of matters of national importance that must be recognised and provided for. I do not consider any of them relevant to this case.

56. Section 7 also requires me to have particular regard to a number of matters including

(b) the efficient use and development of natural and physical resources:

(c) the maintenance and enhancement of amenity values:

(f) maintenance and enhancement of the quality of the environment:

57. Operating and expanding the quarry would be an efficient use of the shingle resource, as would be the benefit of its location closer to the local market than many

of the other sources of supply. Adverse effects on amenities and the quality of the environment are also important considerations.

Objectives and policies of the Selwyn District Plan

58. The objectives and policies of the district plan were discussed by Mr Boyes. In particular he focussed on Part B3 of the Rural Volume, which is entitled “People's Health, Safety and Values”. Within this he focussed particularly on the Quality of the Environment section, identifying two objectives and a group of related policies, as follows

Objective B3.4.1

The District's rural area is a pleasant place to live and work in.

Objective B3.4.2

A variety of activities are provided for in the rural area, while maintaining rural character and avoiding reverse sensitivity effects.

RURAL CHARACTER Policy B3.4.1 Recognise the Rural zone as an area where a variety of activities occur and maintain environmental standards that allows for primary production and other business activities to operate.

Policy B3.4.3 Avoid, remedy or mitigate significant adverse effects of activities on the amenity values of the rural area.

Policy B3.4.4 Ensure that any adverse effects arising from “rural based” industrial activities in the Rural (Inner Plains) Zone of a size and scale beyond what is permitted by the District Plan and “other” types of industrial activities in all Rural zones are avoided, remedied or mitigated to the extent that the adverse effects are no more than minor.

Policy B3.4.12 Recognise temporary noise associated with short-term, seasonal activities as part of the rural environment, but ensure continuous or regular noise is at a level which does not disturb people indoors on adjoining properties.

Policy B3.4.19 Ensure new or upgraded road infrastructure and new or expanding activities, which may have adverse effects on surrounding properties, are located and managed to mitigate these potential effects.

59. Mr Boyes also identified policy B3.4.12 which recognises temporary short term seasonal noise from rural activities, and Policy B3.4.15 which relates to dust, but this is confined to stockpiles and temporary activities. I am not sure of the relevance of these two policies, as this would not be temporary, short term or seasonal noise and

this case the only dust issue arises from heavy traffic on unsealed roads. Perhaps the point is that these provisions set out a limit for noise and dust that should be reasonably expected from rural activities and beyond that avoidance, mitigation or mediation should be required.

60. From these provisions, Mr Boyes concluded that the district plan has an expectation of productive rural-based activities such as quarries occurring and that residents need to expect a certain amount of generated effects. He considers the concrete operation less closely rural-based and not anticipated and promoted to the same extent. As well as the objectives and policies he pointed out a statement in the introductory section of the Rural Volume which includes quarrying, but not concrete manufacture, in a list of rural activities that need to be recognised and provided for. Therefore he considered quarrying more worthy of recognition than the concrete operation, and so was prepared to accept the additional scale and extended operating hours for the quarry as applied for, but to limit the additional hours for concrete batching to an additional 10 days only.
61. I accept that these are the relevant district plan provisions, but do not reach quite the same conclusions from them as Mr Boyes. It is a matter of how much weight one gives to these different provisions. I have concluded that the quarry is already recognised and provided for and an expansion of its activities can be accommodated which would continue that recognition and provision. It is simply a matter of deciding on the appropriate extent of that expansion. Policies B3.4.1 and B3.4.3 require that process of recognising and providing for rural-based activities but also managing their effects. I consider considerable weight should be placed upon the two objectives, which recognise the role of rural activities but require a pleasant living environment and the management of adverse environmental effects. Overall I consider a limited expansion of quarrying and concrete manufacturing activities that mitigates the adverse environmental effects would be consistent with these objectives and policies but that granting the application in total would go too far and would be contrary to them.

Other relevant documents

62. The Recovery Strategy under the CERA Act needs to be considered. The expanded quarry activities would certainly assist with the timely and cost-efficient earthquake recovery effort in this part of Canterbury, so are consistent with that strategy, but nothing I heard convinced me that the needs of earthquake recovery are so pressing that the application must be granted in its entirety. There are other quarries and other

concrete batching plants not too far away, and evidence was given by a construction company project manager that materials for local projects are still being sourced from Christchurch operators. The applicant's own evidence was also that a good deal of the demand was for "business as usual" projects such as motorway construction, development of the Izone and normal urban development as set out in the Greater Christchurch Urban Development Strategy, all of which arises independently of the earthquake.

63. I also accept that the proposal is consistent with the Canterbury Regional Policy Statement, particularly with the provisions relating to earthquake recovery, urban development and infrastructure. Again, nothing in that document assists with determining the scale of activity that should be permitted, and it also clearly recognises the need to manage adverse effects. I would not go as far as to find it consistent with RPS provisions relating to landscape as these are at least sub regional in scale and scope and not really meant to be applied at this very local level. Other than that quibble I adopt their reasoning and accept the proposal would be achieve the objectives and policies of the RPS.

Section 127 considerations

64. As discussed above I have been concerned about the application of section 127 in this case, and in particular how to apply the test of whether the changed activity would be materially different measured by fact and degree, as set out in the *Body Corporate Case*. I have derived considerable assistance from the legal opinion provided by Mr Rogers, particularly on the question of whether materially different applies to the extent of the activities themselves, or also refers to differences in the adverse effects. I now understand that it applies also to the adverse effects. He also clarified that truck noise is able to be considered as an adverse effect on amenity values even though the district plan does not directly regulate this noise at source. He also clarified that even if I find that section 127 cannot be applied, I could still go on to consider the application under section 104.
65. Mr Chapman submitted that the question of whether or not to use section 127 is outside my jurisdiction as the Selwyn District Council has already made a procedural decision to process the application that way. That may be so but it does not actually get him very far. That is because firstly I could then decide to decline the application outright if I consider that it fails the materially different test. Secondly, whatever the Council decided under s127, section 104 (5) of the Resource Management Act provides that a consent authority may grant a resource consent on the basis that the

activity is a controlled activity, a restricted discretionary activity, a discretionary activity, or a non-complying activity, regardless of what type of activity the application was expressed to be for.

66. In the end I have decided that the matter can be resolved by considering and allowing the application in part under section 127, by separating the application into its component parts and refusing or reducing the scale of the activities which would in my opinion fail the materially different test to the point where they would not fail under that test. In case that approach is wrong in law, I record that I would have reached the same conclusion had I considered the application purely under s104.

Outcome

67. Dealing with each of the proposed changes in the light of the discussion above I find as follows.

Condition 10 operating hours

68. The proposed changes to Conditions10 regarding hours of operation of the quarry on Mondays to Fridays and Saturday mornings would result in adverse effects on the amenity values enjoyed by nearby residents by causing sleep disturbance and substantially reducing the opportunity for outdoor recreation activities free from the effects of heavy traffic on the roads. This would be a materially different change because such opportunity is largely available at present in the early morning and early evening and would be effectively removed by the proposed changes. However this change would not cause a materially different effect on the Saturday afternoons. For the same reason the site should not be open to the public prior to 7 am. I note that this condition could be better worded. Not being open to the public prior to 7 am was intended to ensure that trucks could not enter the site to collect gravel for delivery before that time , and so is intended to delay the start of heavy traffic movements. However the applicant has a fleet of its own trucks which could be loaded up the day before and ready to depart by 6.30 am when operations are permitted to commence. This could be simplified simply to refer to no inwards or outwards movements of heavy vehicles prior to 7 am. However I see no reason to prevent gravel being extracted, crushed and processed before 0730. There would be no discernible effects of this beyond the quarry provided the additional condition recommended by Mr Camp regarding separation distances in night time hours is included. Concrete batching can be permitted to commence at 0500 on no more than 10 days per year in addition to the 5 days with 0300 starts already permitted without causing materially different effects. The limitation on concrete truck movements to no

more than 4 per hour at these times would make it unworkable for filling occasional larger orders, so the removal of this restriction is acceptable. However, as noted already I see little harm in extending the Saturday operation to 1300 hours.

Condition 27 Annual extraction cap

69. The change from 160,000 m³ to 500,000 m³ per year would be excessive in my opinion and a materially different change in scale and degree. This would be the case simply considering the words literally, but I also consider that in conjunction with the greater numbers or heavy trucks that would be generated there would be an adverse effect on the amenity values enjoyed by nearby residents, as discussed earlier. I do accept that there could be an increase in annual yield and truck movements during normal working hours. It is difficult to assess exactly how much that should be given the paucity of evidence I received on this. I think that moving from 160,000m³ to 500,000m³ in one step could prove to be imprudent and have the potential to become an unfortunate experiment. I have decided to proceed more cautiously and limit the increase to 320,000 m³. This should provide an ample opportunity for the applicant to contribute in a meaningful way to the increased demand it has encountered without overly affecting local amenity values.

Condition 34(a) mobile crushing equipment location

70. This clause was only applicable in the early stages of the quarry while the initial pit was excavated and is now redundant and can be removed. The suggested replacement clause (a) is appropriate if the applicant wishes to work in the quarry during early morning hours prior to 0730.

Condition 38 Truck movements

71. Like the annual cap, it is difficult to quantify exactly how much of an increase is appropriate, but provided this does not commence before 0700 hours I believe there is some scope for an increase in permissible truck movements. As I have doubled the annual extraction cap it would be appropriate to double this figure as well. There was considerable debate at the hearing about whether there should be both daily and 3 month rolling average limits, the applicant considering that the two figures were alternatives and the submitters and the Council reporting officer considering that both are intended to apply together. I agree with the latter position. Otherwise it would be possible for numbers to go very high indeed on a daily for short periods to fulfil large orders and there was some evidence that this has already occurred. I accept that the original wording is ambiguous and Mr Boyes has suggested an amendment to

correct this. Therefore I consider that the 3 month rolling average should be lifted to 350 per day and the daily maximum to 400.

New Proposed condition 38A

72. This condition proposes that there should be reports produced by traffic and acoustic experts after a time to assess whether any unanticipated effects from traffic have occurred. The applicant proposed that these reports be produced after 5 years and Mr Boyes for the Council preferred 2 years. I consider 5 years would be too long to wait if adverse effects were occurring, but that 2 years may not be long enough for any, relevant effects to have developed enough to be noticeable, so I will settle this period at 3 years. Associated with this is a new review condition relating to any outcomes from the expert reports which I accept as desirable.

Dust control

73. A new condition is required to ensure greater efforts are made to discourage the use of Kerrs Rd by shingle trucks, unless delivering to a property in that road.

General Condition 1 - Review Condition

74. Although not requested by anyone I have taken the liberty of redrafting this condition slightly to accord what I understand to be best practice, which is that a general review condition should specify a date during the year when a review of conditions may be commenced.

The decision

75. My decision therefore is that pursuant to Section 104 and 1127 of the Resource Management Act 1991 the application is granted in part, to the extent of the amended conditions set out in Appendix 1 below. The submissions in support and opposition are allowed and disallowed in part accordingly. My reasons for this decision have been stated throughout this text.



David Mountfort

Hearings Commissioner

8 May 2015

APPENDIX 1- REVISED CONDITIONS OF CONSENT

Note Text inserted is shown in **bold and underlined**. Text To be deleted is shown as ~~struck through~~

Condition 10 Opening Hours

The hours of operation shall not exceed 0630 – 1800 Monday to Friday and 0630-1200 **1300** Saturday subject to the following:

- **Except for concrete batching** the site shall not be open to the public prior to 0700 **or after 1800 hours Monday to Friday and prior to 0700 or after 1300 hours on a Saturday**
- **No outwards deliveries of products other than concrete may leave the quarry prior to 0700.**
- ~~Gravel extraction and crushing and processing of aggregate shall not commence prior to 0730 and crushing and processing of aggregate shall not occur on a Saturday~~
- **Concrete batching may commence at 0500 hours on up to 10 days per calendar year and in addition may commence at 0300 hours up to 5 days per calendar year. The consent holder shall keep records of the number of concrete truck movements into and out of the site prior to 0700 hours and shall provide these to the Council on Request.**
- There shall be no operation on Sundays and public holidays
- ~~Concrete batching shall not result in more than 4 heavy vehicles entering or exiting the site in any 60 minute period prior to 0730.~~

Condition 27 Annual Cap

The quantity of aggregate extracted on the site shall not exceed 460,000 **320,000** cubic metres, based on a rolling 12 month period. The consent holder shall demonstrate compliance via the recording of monthly measurements of the total quantity of gravel, sand and other natural material excavated to within an accuracy of 10%. This data shall be provided to the Selwyn District Council within 2 months of the anniversary of this consent or otherwise upon request.

Condition 34 Crushing Equipment

Any crushing equipment shall be located at least 175 metres from the boundary of any site not owned by the applicant and shall also be located at a depth of at least 4 metres below the existing ground level, subject to the following exceptions

- (a) ~~A single mobile crushing plant may be located at least 175 metres from the boundary of any site not owned by the applicant, but at existing ground level, for a period of up to 6 months when the quarry is first being established.~~

- (a) Any crushing equipment operated from 0630 to 0730 hours shall be located at least 300 metres from the boundary of any site not owned by the consent holder.
- (b) Any extraction of gravel between the hours of 0630-0730 shall be at least 70 metres from the boundary of any site not owned by the consent holder.
- (c) The required minimum setback for any crushing equipment may be varied upon receipt by Council of a report from a suitably qualified acoustic consultant demonstrating compliance with the consented noise limits for a specific alternative operating location and scenario.

Condition 38 Truck Movements

~~Heavy traffic volumes shall not exceed a maximum of 200 heavy vehicle movements per day or 170 heavy vehicle movements per day calculated over a 3 month rolling average. The consent holder shall keep a record of these volumes which shall be provided to the Council on request.~~

Heavy traffic volumes shall not exceed

- (a) a maximum of 400 heavy vehicle movements per operating day and
- (b) 340 heavy vehicle movements per operating day calculated over a 3 month rolling average. The consent holder shall keep a record of these volumes which shall be provided to the Council on request.

The 3 month rolling average shall be calculated by dividing the total heavy vehicle movements over the three month period divided by the number of operating days within that period. The consent holder shall keep a record of these volumes which shall be provided to the Council on request.

New Condition 38A Traffic and Acoustic Reports

Three (3) years following the grant of change of consent RC145436, the consent holder shall submit to the Council a report prepared by a qualified acoustic consultant and a report prepared by a registered traffic engineer to assess whether any effects resulting from traffic movements have arisen which were not anticipated at the time the change was granted.

New Condition 42A Restriction on use of Kerrs Rd

- (a) No driver of a heavy vehicle under the control of the consent holder shall travel along Kerrs Rd for the purpose of departing from or returning to the quarry except for the purpose of delivering quarry products to a site in that road.
- (b) The consent holder shall develop and maintain a protocol for the conduct of drivers of vehicles not under its control. As a minimum this protocol shall discourage the use of Kerrs Rd for quarry-related traffic as much as possible. It should also draw attention to the need to be particularly aware of the health and safety of other road users in the vicinity of the quarry including pedestrians, runners and horse and cycle riders and to be courteous towards them. The protocol shall be provided to all drivers of heavy vehicles not under the control of the consent holder using the quarry and to all transport firms regularly using the quarry.

- (c) The consent holder shall erect and maintain prominent signage near the exit from the quarry drawing attention to the need to avoid the use of Kerrs Rd unless delivering to an address in that road.
- (d) This condition shall lapse if Kerrs Rd is sealed to a minimum width of 6.5 metres.

General Conditions

- ~~1. The conditions of this consent may be reviewed annually by the Selwyn District Council in accordance with section 128 of the Resource Management Act 1991 for the purpose of dealing with any adverse effects on the environment which may arise from the exercise of this consent.~~
- 1. Pursuant to Section 128 of the Resource Management Act 1991, the Council may review the conditions of consent by serving notice on the consent holder within a period of one month following any anniversary of the date of this decision, in order to deal with any adverse effects on the environment which may arise from the exercise of this consent and which it is appropriate to deal with at a later stage.**
2. For the purposes of this consent, certification by the Council means assessed by Council staff or consultant acting in a technical certification capacity to determine whether the document or matter is consistent with or sufficient to meet the conditions of this consent.
- 3. Without limiting general condition 1 above, following the receipt of the reports required by condition 38A, condition 38 may be reviewed by the Selwyn District Council in accordance with section 128 of the Resource Management Act 1991 in order to address any unanticipated environmental effects.**