

**Before the Christchurch Replacement
District Plan Independent Hearings Panel**

In the matter of the Resource Management Act 1991 and the
Canterbury Earthquake (Christchurch
Replacement District Plan) Order 2014

And

In the matter of submissions and further submissions on the
Proposed Christchurch Replacement District
Plan (Chapter 8 - Subdivision, Development
and Earthworks (Part))

**OPENING LEGAL SUBMISSIONS ON BEHALF OF FULTON
HOGAN LIMITED (SUBMITTER NO. 1011)**

DATED: 29 June 2015

Tavendale and Partners

Lawyers, Christchurch
Level 3, Tavendale and Partners Centre, 329 Durham Street North
P O Box 442
Christchurch 8140
Telephone: (03) 374-9999, Facsimile (03) 374-6888

Solicitor acting: A C Limmer

MAY IT PLEASE THE PANEL:

- 1 These submissions are presented on behalf of Fulton Hogan Limited (**Fulton Hogan**). Fulton Hogan requested three items of relief in respect of Stage 1 of the Replacement Plan process. Two of those items related to land at Roberts/Buchanans Road that was “greyed out” on the planning maps. Therefore it is pursuing the relevant relief through Stage 2.
- 2 The final item of relief requested was insertion of a policy into Proposal 8. The substance of the request was to achieve policy recognition that gravel extraction can precede urban development of greenfield priority areas as part of the subdivision process – but only in certain circumstances.

What Fulton Hogan wants

- 3 What Fulton Hogan seeks to achieve from its relief is *greater* certainty as to the fate of any such proposal – namely, that in principle the concept is acceptable provided adverse effects and the timing of extraction are appropriate. It cannot attain complete certainty or even a high degree of certainty – non-complying (or fully discretionary) activity status precludes that.
- 4 Fulton Hogan does not expect that all or even most greenfield priority areas will be suitable for quarrying¹. However, where it is suitable it seeks to avoid the prospect of protracted argument – on a consent application being made - about whether or not the Plan allows, in principle, applications for quarrying to be granted within greenfield priority areas as part of a subdivision process (even if effects and timing can be appropriately addressed). This would defeat the approach required in these areas, which is due haste.
- 5 That this is an issue upon which opinions can differ is evidenced by the Decision on Fulton Hogan’s Roberts Road consent and Mr Long’s evidence to this hearing.

¹ Mr Willis’s evidence, dated 8 June 2015, at [48].

- 6 The greenfield priority areas are largely located on the periphery of the urban area. They are a mix of business and residential. As with the Roberts Road quarry, it is quite conceivable that a quarrying proposal will straddle the Rural Zone (in which quarrying is anticipated) and a greenfield priority area. Rather than sacrificing valuable aggregate resource through uncertainty and a lack of planning clarity, Fulton Hogan seeks the Plan provide direction as to when such a proposal would be countenanced.
- 7 It is submitted Fulton Hogan's desire for certainty and clarity is supported by Strategic Objectives 3.3.1(b) and 3.3.2(b).

Why Fulton Hogan wants that degree of certainty

- 8 The reasons for Fulton Hogan's request are transparent:
- 8.1 Beneath western Christchurch lies a high quality gravel resource². Upon further investigation it has become apparent the notified High Quality Gravel Resource Overlay effectively runs along the urban boundary, but not entirely. In any event, the resource itself does not conveniently stop at the urban boundary³.
- 8.2 Once used for urban development, the aggregate resource is 'lost' or 'sterilised'⁴. However, once used for aggregate extraction the land can still be used for urban development⁵.
- 8.3 Fulton Hogan has gained consent to extract aggregate from a greenfield priority area in recent times⁶ and expects similar opportunities to present as greenfield priority areas are progressively developed to the period 2028⁷.

² Mr Willis's evidence, dated 8 June 2015, at [38].

³ As outlined in Mr Willis' evidence at [13], the area of high-quality land-based aggregates is almost ubiquitous across the western Christchurch area, and within that area, there are sites that are earmarked for greenfields development under the Plan.

⁴ Mr Willis' evidence, at [41]; Mr Bligh's evidence, at [13].

⁵ Mr Willis' evidence, at [42] – [43].

⁶ The Roberts Road Quarry, which Mr Willis refers to in his evidence at [46].

⁷ Mr Willis' evidence, at [57].

- 8.4 The demand for gravel is high and is expected to remain so for the foreseeable future⁸. Quarries with consented lives of 7 years are being worked out within 3 years⁹.
- 8.5 Distance from demand has a significant impact on the cost-effective supply of gravel¹⁰. There is only a limited amount of good gravel close to demand. Once it is gone, it is gone (either by way of extraction or urban development).
- 9 The greenfield priority areas sit on the periphery of Christchurch's urban area and as such are ideally located in terms of distance. They also adjoin Rural land, which is where new quarrying activities are anticipated to locate¹¹.

The appropriateness of Fulton Hogan's request

- 10 Mr Bligh has assessed Fulton Hogan's request against the Strategic Directions as decided thus far¹², the Canterbury Regional Policy Statement (**RPS**)¹³, the Land Use Recovery Plan (**LURP**)¹⁴ and the Land and Water Regional Plan (**LWRP**)¹⁵. His evidence identifies the same provisions Mr Long has referred to as well as a number of additional objectives and policies. In particular, Mr Long has not paid express regard to Objective 3.3.15:

Temporary construction and related activities...are enabled by:

...

- (d) *Recognising the importance of aggregate extraction, associated processing (including concrete manufacturing) and transportation of extracted and processed product to support recovery.*

- 11 Mr Bligh accepts that in order to implement the Strategic Directions, give effect to the RPS and meet Part 2 of the RMA, adverse effects

⁸ Mr Willis' evidence, at [30] – [34].

⁹ Mr Willis' evidence, at [47].

¹⁰ Mr Willis' evidence, at [36].

¹¹ Under Proposal 17 of Stage 2 of the Christchurch Replacement District Plan.

¹² Mr Bligh's evidence, at [22] – [25].

¹³ Mr Bligh's evidence, at [20] – [21].

¹⁴ Mr Bligh's evidence, at [17], [20], [26] and [28].

¹⁵ Mr Bligh's evidence, at [21].

must be managed appropriately. What is appropriate management in greenfield priority areas will probably differ from Rural areas, although this will always turn on the particular context.

- 12 Mr Bligh and Mr Willis depose that the type of quarrying activity likely to occur in greenfield priority areas is small-scale with commensurately small effects¹⁶. Mr Bligh has suggested additional wording in the policy so a proposal is only given policy recognition if its effects are appropriately managed. In this way and like Objective 3.3.15(d), the policy refrains from being *inherently overriding* despite aggregate extraction being *an important matter in the recovery*¹⁷.
- 13 Mr Long, in his summary statement, raised an objection to the relief sought on the basis Objective 3.3.7(c) prevents anything *other than* urban activities from locating within greenfield priority areas. Mr Bligh prefers an interpretation that prevents urban activities occurring outside of the urban limits¹⁸. The opening legal submissions for the Council are silent on this Objective¹⁹.
- 14 As a form of delegated legislation, the Replacement Plan is subject to the usual rules of statutory interpretation.²⁰ These start with the requirement of s 5(1) of the Interpretation Act 1999, which provides:

5 Ascertaining meaning of legislation

(1) The meaning of an enactment must be ascertained from its text and in the light of its purpose.

- 15 In my submission, Mr Bligh's interpretation should be preferred as it is consistent with the words of Objective 3.3.7(c) and its purpose when viewed against the following:

15.1 The origins of the wording of Objective 3.3.7(c), namely the notified version of Policy 3.6.2.3 (Urban Containment)²¹.

¹⁶ Mr Willis' evidence at [53] and [54]; Mr Bligh's evidence, at [33].

¹⁷ Decision 1: Strategic Directions and Strategic Outcomes (and Related Definitions), dated 26 February 2015, at [301(c)].

¹⁸ Because the matter was not raised by Mr Long until he gave his summary statement last week, leave is respectfully sought for Mr Bligh to also address this issue in his summary statement.

¹⁹ Opening Representations/Legal Submissions for Christchurch City Council (Proposal 8 – Subdivision (Part)), dated 22 June 2015, at [17.1]

²⁰ *Spackman v Queenstown Lakes District Council* [2007] NZRMA 327 (HC), at [38].

15.2 The “reasons” given in Council’s section 32 report for Policy 3.6.2.3: *“This policy is equivalent to the direction given in Canterbury Regional Policy Statement Objectives 6.2.1 recovery framework (sub-section 3)...”* and related CRPS objectives and policies²².

15.3 The wording of Objective 6.2.1(3) of the CRPS:

Recovery, rebuilding and development are enabled within Greater Christchurch through a land use and infrastructure framework that:

...

(3) avoids urban development outside of existing urban areas or greenfield priority areas for development, unless expressly provided for in the CRPS.

16 When viewed in this context, it is submitted the purpose of Objective 3.3.7(c) is to contain urban development, not to exclude interim non-urban activity (such as quarrying) from establishing in greenfield priority areas.

17 With regard to your duty under section 32AA, it is submitted the costs of Fulton Hogan’s preferred policy are low whereas the potential benefits are high. The policy does not alter the activity status of quarrying, therefore full discretion remains to decline consent or impose conditions as to effects, lapsing periods, expiry dates and rehabilitation requirements. Mr Long suggests it is a cost if the Plan would be more enabling with the proposed policy than without it²³. It is accepted the proposed policy may result in grant of proposals that might otherwise be declined (on the basis quarrying activities are not expected to occur in greenfield priority areas).

18 However, in my submission, there are far more benefits associated with this outcome than costs. I submit the potential costs will be low if there is wording which mandates appropriate management of effects

²¹ Addressed in Mr Bligh’s summary statement.

²² Council’s section 32 Report, notified on 27 August 2014, at pages 21 and 22.

²³ Mr Long’s answer to cross-examination Counsel, Hearing Transcript (23 June 2015), page 70, line 44.

and prioritises attainment of Objective 3.3.4. In addition, any activity within these areas is likely to be small-scale and, by necessity, short-lived.

- 19 Conversely, I submit the potential benefits are high in that aggregate could be sourced close to urban demand and one piece of land may deliver on two Strategic Objectives – urban development and aggregate extraction. As outlined in the evidence, quarrying can occur in tandem with outline development planning so that infrastructure (such as roading layout, underground services, stormwater treatment areas) can be incorporated into remediation works²⁴.
- 20 Part 2 of the Act is relevant to your decision on the relief sought²⁵. Fulton Hogan's request brings several Section 7 matters to the fore, including in particular:
- 20.1 The efficient use and development of natural and physical resources;
- 20.2 The maintenance and enhancement of amenity values;
- 20.3 Any finite characteristics of natural and physical resources.
- 21 It is submitted in the right circumstances, allowing extraction of aggregate from greenfield priority areas provides opportunity for maximum benefit to be realised from the land resource. It also provides a means of reducing the cost of urban development to society through sterilisation or loss of good quality aggregate close to demand - a finite resource. The maintenance and enhancement of amenity values can be addressed through the necessarily short-lived nature of any such proposals and consent conditions. Fulton Hogan's revised wording conveys the intention that such activities are only appropriate where effects can be appropriately managed.
- 22 Following a consideration of the evidence, Fulton Hogan therefore puts a refined proposal forward for your consideration:

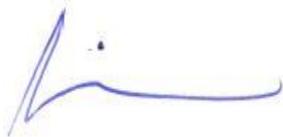
²⁴ Mr Willis' evidence, at [56].

²⁵ Section 74(1)(b) of the Act.

8.1.2.1 – Recovery activities

- a. Ensure that subdivision processes enable recovery initiatives including by facilitating:
- i. subdivision of greenfield and intensification areas;
 - ii. the issue of fee simple title where the following permitted or approved initiatives occur:
 - A. conversion of a residential unit into two residential units;
 - B. conversion of a family flat into a residential unit;
 - C. replacement of a residential unit with two residential units;
 - D. Enhanced Development Mechanism; or
 - E. Community Housing Redevelopment Mechanism.
 - iii. conversion of the type of tenure from a cross lease or unit title to fee simple;
 - iv. subdivision of a cross lease or unit title site arising from the updating of the a flat plan or unit plan.
- b. Provide for extraction of aggregate from greenfield sites, in conjunction with subdivision, prior to urban development occurring, in circumstances where:
- (i) The site will be backfilled and/or rehabilitated to a standard suitable for the intended urban development within a timeframe that does not impede the intended future use.
 - (ii) Adverse effects on nearby urban activities are minimised.

Dated: 29 June 2015



A C Limmer
Counsel for Fulton Hogan Limited