

**Before a Hearings Committee
appointed by the Dunedin City Council**

Under	the Resource Management Act 1991
And	
In the Matter of	an application under section 88 of the Act by Cargill Contracting Limited for the establishment, including associated earthworks, and use of a contractors yard and a building yard

**Supplementary Closing Submissions on
behalf of **Cargill Contracting Limited****

Dated: 12 June 2019

Introduction

1. These supplementary closing legal submissions are presented on behalf of the applicant, Cargill Contracting Limited (**Cargill Contracting**).
2. Cargill Contracting's application for resource consent to develop and use part of a property in Blueskin Bay as a base for its contracting activities, together with a small builder's yard, was heard by a Hearings Committee in Dunedin on 6 June 2019.
3. The hearing was adjourned to allow Cargill Contracting to complete its right of reply by supplying a revised suite of conditions to the Committee.
4. The Committee advised in a minute dated 10 June 2019 that Cargill Contracting should give close attention to the design of the conditions to ensure that they can achieve effective mitigation of effects and provide certainty to the Committee that the nature and scale of the industrial and retail activities proposed for the site can be adequately controlled.

Revised Conditions

5. The revised conditions of consent are attached as **Appendix 1** to these submissions. The base document is the conditions that were attached as Appendix 1 to the planning evidence of James White for Cargill Contracting. The proposed amendments are shown in tracked changes in **Appendix 1** and explained in chronological order below.
6. Condition 3 has been amended to clarify that later conditions impose additional restrictions on the hours of operation of certain activities, and to explain the "construction" means "earthworks and site establishment".
7. Conditions 6-9, 13, 14 and 18-20 have been amended to:
 - (a) include additional site management measures;
 - (b) provide clarification about any amendments to the Earthworks Management Plan;
 - (c) require record-keeping of the materials used for the establishment of the site; and

- (d) set out a timeframe for as-built records to be provided to the Council following completion of the site establishment works.
- 8. Condition 22 has been amended so that the user of higher construction noise-generating activities will not commence until 7:00am Monday to Friday, in recognition of the residential activity in the vicinity of the site.
- 9. Condition 26 has been amended to require confirmation to the Council of the closure of the existing site access onto State Highway 1.
- 10. Conditions 29, 32, 33 and 36 have been amended to specify timing requirements for certain works to be completed prior to the contractor's and builder's yards on the site commencing operations.
- 11. A new Condition 37 has been included to require confirmation to the Council of construction and appropriate compaction of the bund around the perimeter of the site.
- 12. Conditions 38-40 have been amended to provide greater clarity about the requirements for implementation and maintenance of the Planting Plan.
- 13. New Conditions 43 and 44 have been included to expressly prescribe limits on the nature and scale of the industrial and retail activities proposed for the site:
 - (a) Condition 43 sets out an exclusive list of bulk rural-use materials that will be able to be sold to the public at the site. The intent of this condition is to ensure that any ancillary retail activity is limited to rural-use materials for purchase by Cargill Contracting's rural customers. This will ensure that any adverse effects associated with the ancillary retail activity, such as traffic and noise, are limited and appropriately controlled. It also ensures the ongoing rural service nature of Cargill Contracting's business.
 - (b) Condition 44 sets limits for the builder's yard aspect of the site, proposed to be operated by Mopanui Studios and Homes Limited. It restricts the number of buildings able to be in construction on the site at any one time. The purpose of this condition is to limit the scale of construction activity at the site, which will appropriately

control any resulting adverse noise, traffic and other amenity-related effects.

14. The essence of the new Conditions 43 and 44 is to give the Committee comfort as to the limits on the industrial and retail activities that can take place at the site, and to demonstrate and ensure that the retail activities, in particular, are rural in nature.
15. New Conditions 46 and 47 have been included in response to the Council's Three Waters Assessment and discussion at the hearing about the water connection for the site. The wording of the condition is based off that suggested in the Council's Three Waters Assessment.
16. Condition 49 has been amended to specify the types of activities that constitute "higher noise-generating activities", which are only permitted within specified hours. The condition has also been amended to reflect the 7.30am start time for higher noise-generating activities on Saturdays.
17. Minor amendments for clarification have been made to Conditions 50 and 51.

Consultation with Council's planning team

18. A draft revised set of conditions was provided to John Sule and Andrew Henderson for consideration on 7 June 2019. There has been subsequent correspondence between the parties about the conditions and all comments and amendments suggested by Mr Sule and Mr Henderson have been incorporated into the final revised set of conditions attached at **Appendix 1**.
19. Mr Henderson confirmed today that he was comfortable with the final conditions.

Conclusion

20. We trust that the revised conditions satisfactorily address matters raised at the hearing. Counsel is available should you require any further clarification or information.

A handwritten signature in blue ink, appearing to read 'J M G Leckie'.

J M G Leckie

Counsel for Cargill Contracting Limited

Appendix 1

Recommended conditions of consent

UPDATED – ~~22 May~~12 June 2019

GENERAL:

1. All works and activities under this consent shall be carried out in general accordance with the consent application received by the Council on 6 November 2018 and updated on 5 March 2019, except where modified below.
2. The consent holder is liable for the Council's costs associated with the monitoring of this resource consent under Section 35 of the Resource Management Act 1991.
3. Subject to any additional restrictions in Conditions 21, 22, 48 and 49, Hours of operation for the activities authorised under this consent are restricted to:

ConstructionEarthworks and site establishment:

6am to 8pm Monday to Saturday, 10am to 2pm Sunday

Operation of contractors yard (and ancillary retail):

6am to 8pm Monday to Saturday, 10am to 2pm Sunday

Operation of builders yard:

7am to 5.30pm Monday to Saturday

4. Within ten working days of each anniversary of the date of this decision the Council may, in accordance with Sections 128 and 129 of the Resource Management Act 1991, serve notice on the consent holder of its intention to review the conditions of this resource consent for any of the following purposes:
 - a. to deal with any adverse effects on the environment that may arise from the exercise of the consent which were not foreseen at the time the application was considered and which it is appropriate to deal with at a later stage;
 - b. to deal with any adverse effects on the environment which may arise from the exercise of the consent and which could not be properly assessed at the time the application was considered; and
 - c. to avoid, remedy and mitigate any adverse effects on the environment which may arise from the exercise of the consent and which have been caused by a change in circumstances or which may be more appropriately addressed as a result of a change in circumstances, such that the conditions of this resource consent are no longer appropriate in terms of the purpose of the Resource Management Act 1991.

CONSTRUCTION:

Earthworks:

5. Prior to commencing any earthworks on site, the consent holder shall submit an Earthworks Management Plan to the Council for approval.

6. The Earthworks Management Plan shall detail the procedures and protocols that will be implemented when earthworks are undertaken on site for the effective management of potential adverse effects, including:
 - a. measures for the control of dust and prevention of dust nuisance, for example using sprinklers and water carts, or ceasing work in times of high dust-causing wind;
 - b. measures to control stormwater flows and silt and sediment during earthworks, including:
 - i. using silt traps (in the form of fabric filter dams or straw bales);
 - ii. using site drainage paths to address the potential for egress of water from the site via secondary flow paths;
 - iii. ensuring that the path of stormwater is not displaced from ephemeral flow paths into neighbouring properties;
 - iv. minimising exposed areas;
 - v. ~~using~~ specifying the processes to stabilise the site in preparation for inclement weather;
 - c. measures to minimise the risk of contamination of waterways, including:
 - i. controlling discharges of wet concrete;
 - d. measures for the safe and efficient management of traffic, for example:
 - i. temporary signage advising of the works;
 - ii. parking instructions for site workers;
 - iii. provision of site worker parking on site where construction activities permit;
 - e. making contact details of the site manager available to the public and maintaining and regularly responding to a complaints register.
7. Once approved by the Council, a All earthworks ~~must~~ shall be undertaken in accordance with the Earthworks Management Plan.
8. The Earthworks Management Plan must be reviewed at two monthly intervals during the earthworks period and, if necessary, amended and submitted to the Council for approval so as to ensure the effective management of potential adverse effects. Once amendments have been approved, the amended Plan shall be considered to be the Earthworks Management Plan for the purposes of Condition 7.
9. The Heritage New Zealand Pouhere Taonga Archaeological Discovery Protocol should be adhered to in undertaking any earthworks on the site.
10. All practical measures must be undertaken to minimise the risk of contamination to the waterway.
11. All practical measures must be undertaken during the works to minimise sedimentation in the waterway.
12. All machinery must be clean and well maintained before entering the work site.
13. Any rock/gravel/soil to be used for the works must be clean and placed rather than dumped into position. Records must be kept, and made available to the

Council upon request, of the source and quality of materials imported to the site, and materials must be free of contamination.

14. There must be no works undertaken within Careys Creek in relation to this consent.
15. The toe of the fill must be sufficiently armoured against erosion and sediment loss to Careys Creek.
16. Slopes may not be cut steeper than 1:1 (45°) without specific engineering design and construction, approved by the Council.
17. Slopes may not be filled steeper than 2h:1v (27°) without specific engineering design and construction, approved by the Council.
18. ~~At~~ Within three months of the completion of the earthworks, as-built records of the final extent and thickness of any un-engineered fill must be recorded and ~~made available~~ provided to the Council ~~on request~~.

Site Design:

19. The wastewater disposal system installed must be appropriate for the soil conditions in the area, with the disposal area located a minimum of 50 metres from any waterway.
20. The site design must ensure that overland stormwater flow paths are not materially interrupted, and any permanent structures should be situated ~~should be located~~ so as to avoid any adverse effects from local ponding during storm rainfall events.

Construction Noise:

21. Noise generated from construction activities must comply with the limits for long term duration construction in the New Zealand Standard Acoustics – Construction Noise NZS 6803:1999.
22. Higher construction noise-generating activities are only permitted between ~~6.30~~ 7.00am and 8pm Monday to Friday, 7.30am and 6pm Saturday, and 10am and 2pm Sunday. Outside these hours (but within the general hours of operation), only quiet activities are permitted.

Construction Lighting:

23. Light spill measured 1.5m above ground level at the boundary of the site must not exceed one Lux between 8pm and 7am, Monday to Sunday.
24. All site lighting during construction (except from headlights of vehicles) must be cut-off or fully shielded to avoid shining or deflecting light directly onto adjoining or nearby properties.

25. All site lighting during construction (except from headlights of vehicles) must be directed away from roads and any adjacent properties.

State Highway:

26. Prior to the site becoming operational, the existing site access onto ~~the~~ State Highway 1 shall must be permanently closed by removing the gate and reinstating the fence and water channel in this location, and confirmation of the closure provided to the Council.
27. At least seven working days prior to any works being undertaken that may affect the State Highway road reserve, the consent holder must prepare and submit an *Agreement to Work on State Highways* and a Traffic Management Plan to the NZ Transport Agency's network outcomes contractor.
28. Once the existing site access onto the State Highway has been closed the consent holder shall obtain written confirmation from NZ Transport Agency's network outcomes contractor that the works have been completed to meet the NZ Transport Agency requirements. This confirmation shall be provided to the Council.

Roading and Access:

29. The vehicle access into the site must be a maximum 9.0m formed width, hard surfaced from the edge of seal of King Street, to a distance of not less than 5.0m inside the property boundary, and be adequately drained for its duration. The access must be formed prior to the operation of the contractor and builder yards on the site.
30. The vehicle access must be constructed to the Council's Specifications for the Construction of Industrial Vehicle Entrances.
31. The signage for the site must be located wholly within the site boundaries.
32. The first 45.0m of King Street, beginning at the edge of the existing seal, must be upgraded to achieve a 6.0m wide carriageway, comprising two 3.0m vehicle lanes with appropriate pavement construction and water tables, within three months of the commencement of operation of the contractor and builder yards on the site.
33. Detailed engineering plans showing the upgrades of the first 45.0m of King Street, beginning at the edge of the existing seal, ~~must~~shall be submitted to the Council's Transport Group for approval prior to the commencement of the upgrade.
34. Upon completion of the upgrade of King Street, the consent holder must test all works to demonstrate that they meet the acceptance requirements of the Council's Code of Subdivision and Development, or alternative appropriate engineering guidelines.

35. Upon completion of the testing, the consent holder must obtain certification that all works have been constructed in accordance with the approved plans and Code of Subdivision and Development or alternative guidelines, and as built plans must be provided to the Council's Transport Group for approval.
36. Pursuant to section 116 of the Resource Management Act 1991, the contractor and builder yards must not commence operation until such time as the site must not become operational prior to the consent holder either acquiring ownership of the parcel of land between the consent holder's property and King Street, or otherwise provides evidence of approval to utilise this piece of land for access purposes to the Council.

POST CONSTRUCTION:

Bund Certification:

37. Within three months of the completion of the construction of the bund, the consent holder must provide confirmation to the Council that it has been constructed and appropriately compacted.

Planting Plan:

- 37-38. Landscaping and planting of the site must be undertaken in accordance with the plan title "Planting Plan, Cargill Contracting Yard, Evansdale" prepared by Sally Brown Garden Design, ~~which was~~ provided to the Council with the consent application, and appended to this consent.
- 38-39. All landscaping and planting must be implemented within 12 months of completion of construction works on the site.
- 39-40. Upon completion, a All landscaping and planting must be maintained thereafter in accordance with the Planting Plan approved under Condition 38.7. Any dead or diseased tree or plant must be replaced as soon as practicable, including by replacing within 12 months any dead tree or plant.

Site Management Plan:

- 40-41. Prior to the site becoming operational, the consent holder shall prepare and submit a Site Management Plan to the Council for approval.
- 41-42. The Site Management Plan must detail the procedures and protocols that will be implemented during the operation of the activities on site for the effective management of potential adverse effects, including:
- a. measures for the control of dust and prevention of dust nuisance, for example sprinklers and water carts;
 - b. measures for the ongoing control of stormwater flows and silt and sediment;
 - c. measures for the safe and efficient management of staff and visitor traffic;
 - d. training of staff in relation to best practice site work and management;

- e. making contact details of the site manager available to the public and maintaining and regularly responding to a complaints register;

Activities:

- 43. The public sale of landscaping goods at the site is limited to the sale of the following bulk rural-use materials:
 - a. fencing supplies;
 - b. fence posts;
 - c. gates;
 - d. fencing wire;
 - e. gravels;
 - f. rock;
 - g. aggregates;
 - h. bark chips;
 - i. chipped wood;
 - j. mulch;
 - k. pipes;
 - l. culverts;
 - m. head walls;
 - n. sumps;
 - o. water troughs;
 - p. tanks; and
 - q. bagged cement.
- 44. The use of part of the site for a building construction yard will be limited by the following requirement:
 - a. a maximum of two buildings may be under construction on the site at any one time.

Infrastructure:

- 45. The on site wastewater disposal system must be serviced regularly recording the time, date and any maintenance undertaken, with these details provided to the Council on request.
- 46. An “Application for Water Supply” shall be submitted to the Council for approval to establish a water connection to the site from the Warrington restricted water scheme. Details of how this lot is to be serviced for water shall accompany the “Application for Water Supply”:
 - a. If approved, a storage tank with an air gap must be installed, and capacity of at least 2 days storage for domestic use is recommended (2m³-5m³);
 - b. The tank must have an air gap for backflow prevention which meets the New Zealand Industry Standard Field testing of backflow prevention devices and verification of air gaps NZ backflow testing standard 2011.
- 42.47. If the Application in Condition 46 is not approved, activities on the site must not commence until such time as an alternate water supply and appropriate firefighting provision has been secured and confirmed to the Council.

Noise:

43-48. Noise generated from activities on site must comply with the relevant noise limits under the District Plan.

44-49. Higher noise-generating activities, including starting and operating heavy machinery on the site, and the use of construction equipment (hammers, powered saw, sanders, grinders, and nail guns) are only permitted between 7am and 7pm Monday to ~~Saturday~~Friday and 7.30am and 6pm Saturday. Outside these hours (but within the general hours of operation), only quiet activities are permitted.

Lighting:

45-50. Light spill from lighting, whether security or otherwise, measured 1.5m above ground level at the boundary of the site must not exceed one Lux between 8pm and 7am, Monday to Sunday.

46-51. All site lighting (except from headlights of vehicles) must be cut-off or fully shielded to avoid shining or deflecting light directly onto adjoining or nearby properties, and be directed away from roads and any adjacent properties.

Advice notes:

All aspects of the works on site must be compliant with Parts 4, 5 and 6 of the Dunedin Code of Subdivision and Development 2010.

Private drainage issues and requirements (including any necessary works) are to be addressed via the building consent process.

Certain requirements for building on the site may be stipulated via the building consent process and are likely to include the following points:

- *Stormwater from driveways, sealed areas and drain coils is not to create a nuisance on any adjoining properties.*
- *Surface water is not to create a nuisance on any adjoining properties.*
- *For secondary flow paths, the finished floor level shall be set at the height of the secondary flow plus an allowance for free board.*
- *As required by the New Zealand Building Code E1.3.2, surface water resulting from an event having a 2% probability of occurring annually shall be set at the height of the secondary flow plus an allowance for free board.*
- *The site lies in an area where underlying soils have been identified as having potential for amplified movement and liquefaction during a significant seismic event.*
- *The cases for seismic loading are normally addressed at building consent stage.*
- *The Council's Building Control Authority will ask for verification that the site is 'good ground' in accordance with NZS3604, Section 3.1.*

The vehicle crossing, between the road carriageway and the property boundary, is within legal road and will therefore require a separate vehicle entrance approval from DCC Transport to ensure that the crossing is constructed in accordance with the Dunedin City Council Vehicle Entrance Specification (note: this is not included in the resource consent process).

As the proposed site preparation works (earthworks) will not affect the normal operating hours of the transportation network, the consent holder will not require a traffic management plan (TMP). If that position changes, the consent holder will require a TMP prepared by a suitably qualified person. The TMP would need to be approved by DCC Transport prior to any works commencing.