

BEFORE THE ENVIRONMENT COURT

ORIGINAL

ENV-2006-WLG-000546, 547, 549, 550

ENV-2007-WLG-000017, 18, 24

Decision No. W 030/2008

IN THE MATTER of appeals under section 120 of the
Resource Management Act 1991

BETWEEN KAUPOKONUI BEACH SOCIETY INC

AND D and K RODIE

AND DIRECTOR-GENERAL OF THE
DEPARTMENT OF CONSERVATION
Appellants

AND THE SOUTH TARANAKI DISTRICT
COUNCIL

AND THE TARANAKI REGIONAL COUNCIL
Respondents

AND R A WALLIS LIMITED
Appellant/ Applicant

Court: Environment Judge B P Dwyer, Environment Commissioner P A Catchpole
Environment Commissioner J R Mills

Heard at: New Plymouth on 19 – 23 November 2007. Final submissions received 3
December 2007.

Counsel: A F D Cameron and S W A Grieve for Kaipokonui Beach Society Inc, D and K
Rodie, and the s274 parties

G P Hulbert for the Director-General of Conservation

M G Conway for South Taranaki District Council and Taranaki Regional Council

GB Wilkinson and R P Sutton for R A Wallis Limited



DECISION

Introduction

[1] These are a series of appeals against decisions of the South Taranaki District Council (the District Council) and the Taranaki Regional Council (Regional Council) granting resource consents to R A Wallis Limited (R A Wallis/the Applicant) allowing that company to establish and operate a quarry on land at Kaupokonui, South Taranaki. The quarrying operation requires land use consents from the District Council allowing the establishment, operation and use of the quarry and from the Regional Council allowing the discharge of water into the Kaupokonui Stream and the construction of river protection works in and along the stream.

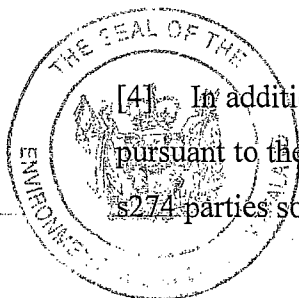
[2] Both Councils granted consent to the applications subject to a number of conditions. In the case of the District Council it declined approval to carry out the quarrying operation on part of the land over which the Applicant had sought consent.

[3] A number of appeals emerged from the consent process.

- R A Wallis appealed against the decline of consent in part and conditions.
- The Kaupokonui Beach Society Incorporated appealed the grant of consents, and, if they should be upheld, requested further conditions. It supported the District Council's decision to decline consent in part.
- D and K Rodie appealed the grant of consent by the District Council, and the grant of consent for the river protection works by the Regional Council. They sought further conditions on the discharge permit. They consequently also supported the District Council's decision to decline consent in part. If the Court was minded to uphold the consents, they asked for further conditions.
- The Director-General of Conservation sought that the District Council consent be declined, unless certain conditions are imposed, and sought further conditions on the Regional Council permits.

(For the sake of brevity we collectively refer to the appellants other than R A Wallis and the Director General as the Appellants).

[4] In addition to the parties identified above, 11 other persons or parties joined the appeals pursuant to the provisions of s274 Resource Management Act 1991 (RMA). By and large the s274 parties sought to have those consents granted by the Councils declined.



The Application

[5] R A Wallis is a long established rural contracting company. Among its operations is the provision of aggregate metal supplies from quarrying which it undertakes in Taranaki. We understand that it supplies metal for rural uses such as resurfacing of farm tracks and to the wider construction industry for use in roading and the like. The company presently has three quarries in Taranaki and we understand those to be well managed and operated.

[6] R A Wallis owns a farm property containing some 88 hectares at 150A – 150B Lower Glenn Road, Manaia (the site) in South Taranaki. The site is contained in 2 certificates of title (240976, TNE 2/361) although only part of the land in the titles is involved in the quarry proposal.

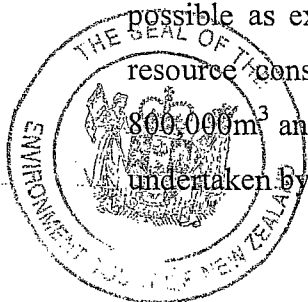
[7] The total area of the site to be quarried is approximately 21.4 hectares divided by the Applicant into four separate *zones*, described as Zones 1, 2, 3, and 4. The quarry zones contain the following areas:

- Zone 1 – approximately 5.45 hectares
- Zone 2 – approximately 9.85 hectares
- Zone 3 – approximately 4.59 hectares
- Zone 4 – approximately 1.50 hectares

21.39 hectares (say 21.4 ha)

[8] Zones 1, 2, and 3 are to be active quarrying zones where excavation and initial processing will take place while Zone 4 is to be used for further processing and stockpiling of processed metal.

[9] The Applicant proposes to excavate Zone 1 first. The estimated period of extraction of this zone is 3 to 5 years. Zone 3 is the second area to be excavated and it is estimated that it will take 5 to 10 years to excavate that zone. Zone 2 is the last area to be excavated and it is estimated that process will take approximately 10 to 15 years. On the basis of those estimates the site could be subject to quarrying operations for up to 30 years although a lesser period is possible as exact volumes of marketable metal have not as yet been established. In the resource consent application documents it was estimated that there would be between 800,000m³ and 1,500,000m³ of marketable metal in the quarry, however a subsequent survey undertaken by the Applicant indicated that up to 1,700,000m³ of material might be available.



[10] The Applicant proposes a quarrying process whereby only 1.5 hectares of land is excavated at any one time. The grass, topsoil and overburden (unusable material between the metal layers) would be removed and stockpiled. In Zone 3 the topsoil and overburden would be used to form earth bunds to visually screen that zone from its neighbours and to assist in noise reduction. As each of the 1.5 hectare areas was exhausted of marketable material it would be backfilled and reinstated to farmland. The net result at the end of the 30 year quarrying period would be that the quarried land was returned to farming use, albeit at a considerably lower level than it is at present.

[11] The quarrying activity in Zones 1, 2 and 3 would be undertaken using a hydraulic digger and portable primary crusher to recover and initially process the metal which would then be transported to the main crushing and processing plant in Zone 4.

[12] Zone 4 would contain screening, crushing and washing facilities together with areas for stockpiling the recovered metal, sand, aggregate and chip. There would be staff and carparking facilities and areas for the loading of trucks, truck manoeuvring and the like.

[13] The process in Zone 4 would include the washing of metal which is to occur no more than once a month with wash water being held in a pond. Sediment from the wash water pond would be emptied as required and used for site reinstatement. Clean water would be used for dust control on site. Material from the ponds would not be discharged to the nearby Kaupokonui Stream however stormwater collected in and around the quarrying site would be discharged to the stream. Zone 4 is situated in close proximity to the stream and in order to protect the quarry works it is necessary for banks to be re-established or strengthened along the stream.

[14] The site is situated in the Rural Zone of the (operative) South Taranaki District Plan (the District Plan). Quarrying is an *extractive industry* in terms of that plan and requires consent as a discretionary activity. The proposed quarry will generate traffic beyond the permitted activity limits provided in the District Plan and that aspect of the operation also requires consent as a discretionary activity. Consent is required from the Regional Council for construction of the flood protection works (discretionary activity) and for the discharge of stormwater (controlled activity).



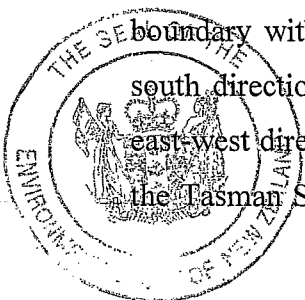
The Existing Environment

[15] Kaupokonui is situated on the South Taranaki coast, west of Hawera. The name was initially given to the area by the people of the Aotea waka who had camped in this vicinity while travelling through South Taranaki. Their chief was Turi o Rongomai. The name *Kaupoko-nui-a-Turi*, which translates to mean *the great head of Turi*, was bestowed upon a prominent cliff head situated at a point where the stream discharges into the sea. Although the name originally applied to the cliff head it has now extended to the beach in this vicinity, the stream and the wider area all of which we refer to as Kaupokonui.

[16] In South Taranaki the predominant land form is that of a ring plain formed by volcanic action from Mount Taranaki. The ring plain extends out to the Tasman Sea where it generally terminates in high steep cliffs at the water's edge. The Kaupokonui Stream has cut into the land in this vicinity and created a river valley containing a series of terraces which descend towards the coast. At the seaward extremity of the stream the river valley takes the form of a small basin. The approximate northern and western boundaries of the basin are formed by the stream itself which in turn is bounded on its northern and western sides by an escarpment and cliffs which merge, as they move towards the coast with a system of high sand dunes extending to the coast itself. The eastern boundary of the basin is formed by a high escarpment which ranges back from the coast in a generally northerly direction until it rejoins the stream some distance back. At its southern extremity the stream discharges into the Tasman Sea through a narrow throat between the sand dunes to the west and the escarpment head (Ka-upoko-nui-a-Turi) to the east.

[17] The total area contained in the basin which we have described appears generally to be somewhere in the order of 15-16 hectares plus. The basin is partially owned by the Applicant as part of its larger farm property and is partially reserve held by the Crown through the Department of Conservation (DOC) and administered by the District Council.

[18] The DOC Reserve (the Reserve) occupies the western side and southern end of the basin. It contains an area of 8.19 hectares. The Kaupokonui Stream forms the northern and western boundaries of the Reserve. On its eastern side the Reserve has an L shaped common boundary with the application site for a distance of some 377 metres in a generally north-south direction and then a smaller common boundary of 58.73 metres in an approximately east-west direction. The southern half of the Reserve comprises a park-like setting adjoining the Tasman Sea and the stream. This area contains a popular camping ground including 12



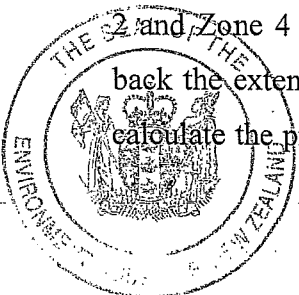
baches, a shop (open during summer months), a caretaker's residence, backpackers' accommodation, recreation, kitchen and ablution facilities.

[19] Eight of the baches are situated towards the northern end of the camp ground in the vicinity of the short common boundary (58.73 metres) which the Reserve shares with the application site in this vicinity. The baches are held on leasehold tenures of 10 years (perpetually renewable). The lessees are not allowed to occupy the baches for more than 8 months per annum. The lessor (DOC) must approve any alterations or additions to the buildings. The baches are all small single storied buildings.

[20] The northern half of the Reserve has the appearance of fairly rough pasture or grazing land. We understand that this portion of the Reserve may be or have been leased to the Applicant for grazing. Towards the middle of the Reserve there is a bridge which gives foot access across the stream to the sand dune system on its western side.

[21] The remaining area of the basin is owned and farmed by the Applicant. Zones 3 and 4 of the proposed quarry are situated in the basin (Zones 1 and 2 being situated on elevated terraces above the basin). As previously identified Zone 3 contains 4.59 hectares and Zone 4 approximately 1.5 hectares. Not all of the Applicant's land in the basin is included in the quarrying proposal. Land along the boundary with the Reserve is not to be quarried and is intended to provide a buffer between the quarry (particularly Zone 3) and the Reserve and camp ground.

[22] There is an existing farm track which leads from the elevated terraces on the Applicant's property down through the escarpment which forms a dividing line between the upper terraces and basin. The terraces are situated approximately 60-70 metres above sea level and 30 or so metres above the level of the basin. Quarry Zones 1 and 2 are situated on these upper terraces. These zones are some considerable distance away from the Reserve and camp ground. The Zone 2 quarry proposal involves quarrying the escarpment which forms the eastern edge of the basin and reducing the height of the escarpment by about 15 metres. A new access track will be formed across the escarpment to provide access between Zones 1 and 2 and Zone 4 (the processing zone). During the course of the hearing the Applicant pared back the extent of quarrying proposed on the escarpment face in Zone 2. It was difficult to calculate the precise extent of the reduction from the evidence given to the Court however on



the face of it roughly half of that part of the escarpment which was to be quarried was removed from Zone 2.

[23] Mr A M Dick (registered valuer) who prepared a brief on valuation issues for R A Wallis stated that up until June 2005 the farm operated as a seasonal supply dairy farm. Since that time the property has been utilised for grazing dry stock with arable areas harvested for maize followed by pasture for winter grazing, then followed by maize again. That pattern was evident in our view of the property including the lower basin where much of Zone 3 appeared to be planted in maize.

Issues and Effects

[24] During the course of the hearing a number of discrete issues were identified for consideration. We propose to identify, briefly discuss and make findings in respect of those issues (both legal and factual) before then turning to consider the matters which we are required to take into account pursuant to RMA and the various relevant instruments to which we are required to have regard. Some of the issues which we identify have a number of distinct sub-issues which must be discussed. The relevant issues are as follows:

- The resource;
- Mitigation measures proposed;
- The coastal environment;
- Ngati Tu and their relationship to the site; _____
- Natural character;
 - wider landscape and natural character issues;
 - the site (particularly in the lower basin);
 - the stream;
 - the escarpment;
- Amenity issues;
 - noise;
 - dust;
 - traffic;
 - cumulative effects.



[25] Mr G B Wallis (the manager of R A Wallis) gave evidence as to the demand for metal for roading and other infrastructure in South Taranaki. Mr Wallis has 19 years experience in _____

quarrying operations. He described the need to provide metal to M4 Transit NZ Specification Grade (M4) which we understand is the grade of metal used in State Highway roading works in the district.

[26] Mr Wallis stated that the site contains aggregate which can be used to produce M4. The property was evidently purchased because of its potential as a source of this aggregate. The evidence of Mr A G Joines (the Applicant's planner) was that the latest survey of the site indicated that up to 1,700,000m³ of marketable material may be recovered from it¹. Mr Joines' evidence was that this might be recovered at rates of somewhere between 30,000-120,000m³ per year.

[27] Mr Wallis testified that there are other sources of M4 in Taranaki but that these were considerably further away from Hawera than the proposed Kaupokonui quarry and accordingly it was more expensive to transport the metal to Hawera from the other quarries. We were uncertain as to the particular significance of transport to Hawera. We understand Hawera to be the largest service town in South Taranaki so we assume that is where the primary demand for the metal is. We accept that the shorter the distance the metal has to be hauled to its point of usage the less the cost will be and the more efficient the process.

[28] Mr Wallis' evidence established that the application site is a potential source of a large quantity of M4 which can be transported to Hawera at a cost that is cheaper than from other existing quarries in South Taranaki.

[29] Evidence in support of the Appellants' position was given by Mr G W Cunningham a quarry management consultant. Mr Cunningham has over 50 years' experience in all aspects of quarrying. Among other things he acted as industry advocate for the Aggregate and Quarry Association of NZ for a period of 16 years during the course of which time he frequently made submissions to Regional and District Councils about quarrying matters. He appeared to the Court to be a highly qualified and knowledgeable witness.

[30] Mr Cunningham analysed the annual demand for aggregates, sand and gravel in the Taranaki region. He extrapolated those figures to the South Taranaki district. He referred to



Transit NZ's 10 year State Highway Plan and Forecast for 2007-2008 to 2016-17 and having done so reached the conclusions that:

- Current quarrying activities within the district . . . *have a combined production capacity which is adequate to meet the district's requirements in an already competitive market*²; and
- . . . *the annual demand for quarried metals in the South Taranaki District should be able to be met, for the period covered by the transit forecast . . . from the existing quarry operations*³.

[31] Mr Cunningham was challenged in cross-examination on his views in this regard. More specifically he was questioned as to the potential impact of possible large projects on demand for aggregate. He said that he was familiar with the effect of such projects on demand for metal having supplied all the aggregate for the Think Big projects and having had involvement with a number of other very large projects in New Zealand. He said⁴ that the effect of such projects is to create a short term uplift in demand which averages out over a period of time. His view was that demand for aggregate in South Taranaki was stable and might even decline if population declined.

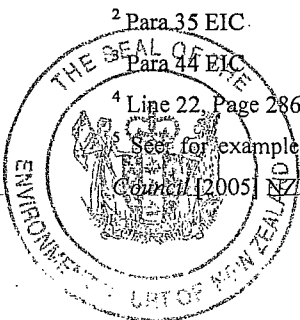
[32] Applicants for resource consent are not obliged to show the need or demand for their proposals⁵ but it is sometimes the case that they will endeavour to demonstrate need or demand as a counterbalancing factor to offset adverse or potential adverse effects. In this particular case the evidence establishes that there is a demand in the Taranaki Region generally and in South Taranaki in particular for significant quantities of aggregate, gravel and sand. The Applicant's proposed quarry would contribute towards meeting that demand. If the Applicant's proposed quarry is not established however, we accept Mr Cunningham's view that the demand can be met by existing quarry resources both now and in the reasonably foreseeable future. We did not have sufficient evidence to enable us to determine issues of comparative efficiency but accept that this quarry would be well situated to efficiently provide metal to Hawera.

² Para 35 EIC.

Para 44 EIC.

⁴ Line 22, Page 286 NOE

⁵ See for example, *Gulf District Plan Association Inc v Auckland City Council* A 101/2003; *Freilich v Tasman District Council* [2005] NZRMA 410.



Mitigation Measures Proposed

[33] The Applicant recognised from the outset of the application process the potential for a quarrying operation to adversely effect its neighbours. For that reason a wide range of mitigation measures were proposed as part of the Applicant's *package*. The Court is obliged to and has had regard to, those mitigation measures in assessing the effects of the proposal.⁶

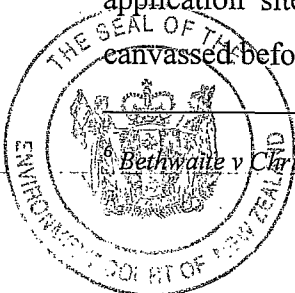
Without exhaustive description the mitigation measures proposed include:

- The construction of a 5 metre high earth bund between the basin quarry areas and the Reserve;
- Provision for review of equipment operation or noise and periodic/annual noise testing;
- Restrictions on the noise to be generated by the quarrying operations;
- Restriction of quarrying in Zone 3 to no closer than 110 metres from the camp boundary;
- Speed and braking restrictions on traffic travelling to the quarry;
- Roading improvements;
- An extensive suite of conditions as to hours and days of operation, including various non-operational periods for quarrying;
- A limitation in the maximum area of the site to be exposed for quarrying at any one time (1.5 hectares);
- Various dust control measures including provision for sealing and/or hard metal on parts of access routes and water spraying;
- Riparian plantings and fencing;
- Provision of riparian buffer areas;
- Reinstatement protocols;
- Archaeological conditions and protocols.

The finer detail of some of these mitigation measures will be discussed in other sections of the decision.

The Coastal Environment?

[34] Much of the debate before us revolved around the issue of whether or not the application site (or part of it) was in the *coastal environment*. That issue was widely canvassed before us by landscape witnesses, planners and counsel. Their views were divided.



[35] The significance of the site (or part of it) being within the coastal environment was readily apparent. A finding to that effect brings into play the provisions of s6(a) RMA as well as various relevant provisions of the New Zealand Coastal Policy Statement (NZCPS). As the case proceeded however, we reached the view that the issue of effects of the proposed quarry on the coastal environment (and whether or not the quarry was appropriate within that environment) was only part of a wider matrix of natural character, landscape and amenity considerations.

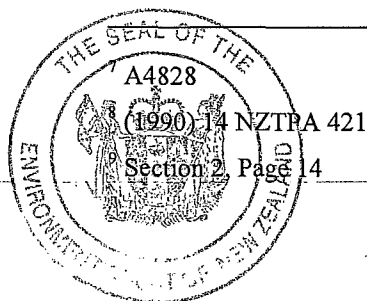
[36] Defining what constitutes the coastal environment in any given instance has been the subject of many decisions of this Court. The starting point for such considerations is not infrequently the decision of the Planning Tribunal in *Northland Regional Planning Authority v Whangarei County Council*⁷. In that case the Tribunal found:

We therefore hold that the term "coastal environment" is an environment in which the coast is a significant part or element, but clearly it is impossible to get an abstract definition which is capable of simple and ready application to any given situation. What constitutes the coastal environment will vary from place to place and according to the position from which a place is viewed. Where there are hills behind the coast, it will generally extend up to the dominant ridge behind the coast. But where the land behind the coast is generally flat there may be difficulty in defining the coastal environment.

[37] More than one party before us referred to the decision of the Planning Tribunal in *Hay v Banks Peninsula District Council*⁸ where the Tribunal commented that determining the extent of the coastal environment in any given situation . . . is one of those theoretically difficult questions which will usually yield to the facts and a liberal dose of common sense.

[38] Reaching a view on whether or not the site is within the coastal environment in this particular case is somewhat complicated by the provisions of the District Plan.

[39] The District Plan identifies a Coastal Protection Management Area around the coast in the Rural Zone. The General Objectives and Policies Section of the District Plan⁹ has this to say about that Area:



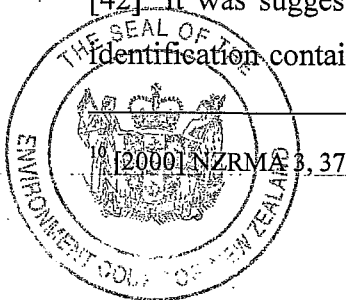
Special provision is made for the coast in the Coastal Protection Management Area within the Rural Zone. This area reflects the extent of the coastal environment and the area within which coastal processes potentially impact on the use, development and subdivision of rural land. The coastal environment in the District is a high energy wave and wind environment and is subject to erosion, and the potential effects of other natural hazards such as sea level rise. It is important in the future management of this environment to avoid natural coastal hazards when providing for subdivision, use and development of land. Within this environment additional protection is also given to the natural character of the coast. This area also represents the interface between land with essentially a natural character and land heavily modified by human processes, principally farming.

There was some dispute amongst the planning witnesses as to interpretation of the above statement. We thought there was little doubt that the District Plan endeavoured (inter alia) to define the extent of the coastal environment in South Taranaki by reference to the Coastal Protection Management Area.

[40] The Coastal Protection Management Area at Kaupokonui as shown on the Planning Maps does not extend to the application site. Although it is difficult to define with precision where the line of the Area might be drawn due to the scale of the Map and a lack of detail we think that it is probably somewhere about the position of the bridge or the line of baches on the camping ground.

[41] We did not understand any counsel to seriously challenge the proposition which we put, that to the extent which the District Plan might purport to have defined the coastal environment by reference to the Coastal Protection Management Area, the Court is not bound by that definition and might determine that the coastal environment extends inland past the line of the identified Coastal Protection Management Area. That proposition simply reflects the findings of the Court in *Chance Bay Marine Farms Ltd v Marlborough District Council*¹⁰ and the subsequent authorities which flow from that decision.

[42] It was suggested that we should be reluctant to depart from the coastal environment identification contained in the District Plan which provides a degree of certainty as to where

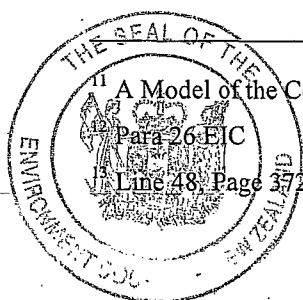


that environment might be in South Taranaki. Ultimately however we did not regard ourselves as bound by the very *broad brush* identification contained in the District Plan. Where the coastal environment might lie at Kaupokonui is a question of fact on which considerable evidence was provided to us by landscape and planning witnesses. We must decide that question of fact on the basis of the evidence before us.

[43] Two of the landscape architects who gave evidence, Mr S Smale (for DOC) and Mr P D Quinlan (for the Appellants) analysed the extent of the coastal environment by application of a conceptual model.¹¹ This model divides the coastal environment into four zones; sub tidal, intertidal, coastal dominance zone and zone of coastal influence. We understand that use of this model has not always been accepted by the Court but on consideration, it seems that all that the model really does is reflect the reality that as one moves inland from the sea, coastal influences (generally) diminish. It appears likely to us that the line of the Coastal Protection Management Area drawn in the District Plan identifies an area where as Mr Quinlan said¹² . . . *all elements are overtly coastal in nature*. In this area the coastal elements are strongly evident due to proximity to the sea and the beach, the dominating nature of the beach cliffs and sand dunes and the tidal nature of the stream.

[44] As one moves back into the river basin from the Coastal Protection Management Area line the coastal influences diminish but do not disappear. Coastal influences remain a significant component of the basin over a wide area. The sand dunes on the western side of the stream continue for some distance and the escarpment which commences at the coast provides the eastern boundary of the basin. The coast is a visible feature from many (but not all) parts of the basin.

[45] A significant factor in our considerations was the evidence given by Mr Smale making the point that the river basin was a *single landscape unit*,¹³ a position with which the Applicant's landscape witness (Mr R A Bain) agreed. It was the opinion of both Messrs Quinlan and Smale that it would be *artificial* to draw a line through the middle of that discrete, physically contained landscape unit and say that one side was in the coastal



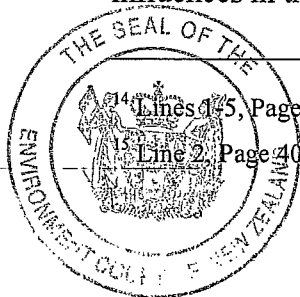
environment and the other side was not. Mr Bain agreed¹⁴ that it would be inappropriate to divide this particular landscape unit with a line and that the basin is ... *an holistic landscape entity*.¹⁵

[46] The coastal environment is just that, an *environment*. It is not a *zone* which might be readily identified by lines on a map. In defining that environment there will frequently be *grey areas* and *blurred edges*. The Kaipokonui basin is a prime example of that. It has various layers. In parts it is overtly riverine, in others overtly coastal and in others a mix of the two. Indeed it could equally be described as a riverine environment although that, in our view, would not exclude it from also being part of the coastal environment. Coastal features are a significant element (although not necessarily the dominant element) in all parts of the basin.

[47] Taking all of those factors into account we reach the conclusion that at Kaipokonui, the river basin together with the sand hills and escarpments which define it form part of the coastal environment. We consider that coastal environment ceases at the escarpment ridgeline and does not extend across the elevated terrace lands where quarry Zones 1 and 2 are largely situated. Those terraces are clearly a separate landscape component and are situated sufficiently far back from the coast as to be separate from it, even though it is possible to see the coast from them.

[48] The assessment as to the extent of the coastal environment in this particular area is a matter of pulling together a whole series of strands and influences. Any one such consideration on its own is probably insufficient to be determinative although the closer one gets to the coast the greater significance the factor of proximity must have. Accordingly we find that Zones 3 and 4 are within the coastal environment as is Zone 2 to the extent that it cuts into the escarpment which defines the eastern extent of that environment.

[49] We consider however that the significant issue for us to determine is not whether parts of the quarry are situated within the coastal environment but whether or not quarrying (as proposed) is an *appropriate* activity in this environment. The diminished extent of coastal influences in the quarry areas is clearly a factor to be taken into account in deciding that issue.



¹⁴ Lines 145, Page 400 NOE

¹⁵ Line 2, Page 400 NOE

Ngati Tu and their Relationship to the Site

[50] Mrs M Horsfall, Mr R B Hudson and Mr G H Manuirirangi (jnr) (members of Ngati Tu hapu) gave evidence on behalf of the Appellants. Mr Manuirirangi was the only one of these witnesses who was required to appear and be questioned. Their evidence as to the connections of Ngati Tu with Kaupokonui was unchallenged.

[51] Ngati Tu is a hapu (sub-tribe) of Nga Ruahine iwi. We were told that its rohe is a wedge shaped area extending south from Mount Taranaki and defined by the Otakeho River to the west and the Kapune River to the east. Kaupokonui lies within that area. Two pa of Ngati Tu were situated on elevated sites overlooking the basin at its northern end. These were Pukekohe Pa a fortified village and Tauranga Pa a village settlement.

[52] The extensive sand dunes to which we have referred along the western side of the river are named Otamare. The sand dunes are a burial site of both Ngati Tu/Nga Ruahine and the people who preceded them and are part of a Maori reserve in this area.

[53] We were told that a site of significance to Ngati Tu is an area in the river basin known as Maraekura. This area encompasses much of the flat lands of the basin including what is to be quarry Zone 3. Mr Manuirirangi said that Maraekura was a place of assembly for the inhabitants where various ceremonies and rituals were undertaken and is waahi tapu. It was Mr Manuirirangi's evidence that Maraekura encompassed all of the flat lands lying between Pukekohe Pa on the hills to the west and the eastern escarpment. Mr Manuirirangi's evidence as to the extent of Maraekura was confirmed in the reference book *Maori Life in Old Taranaki* by John Houston.

[54] Another area of significance to Ngati Tu identified by Mr Manuirirangi is the escarpment which forms the eastern boundary of the basin. This escarpment extends along in front of quarry Zones 1 and 2. The Applicant's proposal is that part of the escarpment in front of Zone 2 is to be quarried which will have the effect of lowering the height of the quarried area by some 15 metres. One of the principal reasons advanced for quarrying this area was to provide an access track from the elevated terrace where Zones 1 and 2 are situated down to Zone 4 in the river basin. The access track would also perform a drainage function. The Applicant offered to reduce the extent of the escarpment which was to be quarried but did not withdraw the quarrying proposal over the escarpment in its entirety.



[55] Mr Manuirangi advised that the Maori name for the escarpment was Pariroa which means *the long cliff*. He said that Ngati Tu ancestors were buried within the local cliffs which were considered safe areas where deceased people could lie undisturbed. It was Mr Manuirangi's evidence¹⁶ that Pariroa was used for burials as well as the sand dunes area of Otamare. Mr Hudson also testified¹⁷ that Pariroa was *set aside for burials and should not be disturbed*.

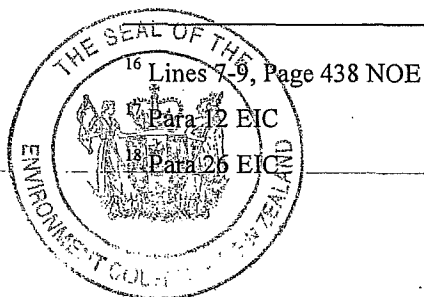
[56] All three Ngati Tu witnesses expressed their strong opposition to the quarrying proposal. Mr Manuirangi put it this way¹⁸

... Kaupokonui is a very special place, rich in history, which for many years now both Maori and Pakeha alike have cherished and appreciated. Our relationship with the land dates back centuries, through the many generations of our ancestors. Again, as kaitiaki our role is to ensure the preservation of Kaupokonui's waahi tapu, urupa, pa tawhito, papa kainga, taonga and other treasured historic sites within the area. . . . The proposed quarrying would severely impair the duties of local tangata whenua. Quarrying would desecrate the land that we as kaitiaki are responsible for. In certain places it would completely destroy waahi tapu and alter the landscape permanently, thus severing any spiritual and cultural ties that we the tangata have with our whenua.

[57] The Applicant's evidence on issues of concern to Ngati Tu was from Mr M Taylor an archaeologist. His evidence primarily consisted of an archaeological assessment undertaken by his consultancy (Archaeology North). Mr Taylor and Ms A Sutton of Archaeology North undertook a site inspection on 20 December 2005 and their written assessment is dated January 2006.

[58] Mr Taylor's evidence came into the Court by consent and he was not called nor cross-examined. Two matters of some significance emerged from reading the archaeological assessment.

- The first is that the assessment was not physically undertaken until December 2005 which post-dates the resource consent application to the Council. Rightly



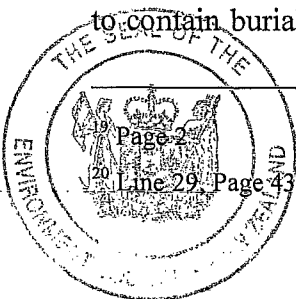
or wrongly this creates an impression that addressing matters of potential concern to iwi was undertaken late in the day.

- Secondly, it is clear from the assessment¹⁹ that Ngati Tu were not consulted by Mr Taylor as part of the assessment process. He relied on consultation undertaken by the Applicant. The assessment appears confined to endeavouring to identify archaeological sites.

[59] We do not wish to be critical of Mr Taylor's evidence. It appears that Archaeology North was given a limited brief and carried out that brief. In his rebuttal evidence Mr Taylor refers to the evidence given by Mrs Horsfall and Messrs Hudson and Manuirirangi. He says that the original archaeological assessment recognised the traditional associations and proximity of traditional places to the proposed quarry development. Mr Taylor noted that NZHPT has granted the Applicant an authority allowing for modification, damage or destruction of archaeological sites subject to recording and investigation conditions. If human remains are encountered work is to cease until the response of tangata whenua has been ascertained.

[60] Conditions requiring notification of tangata whenua in the event of discovery of archaeological material or human remains are quite commonly found in resource consents or in NZHPT approvals. They are often an appropriate response to the undertaking of works such as excavation which have the potential to uncover human or other remains. However we do not consider that such a general requirement is appropriate in this case where there are specific concerns about specific sites which are going to be excavated. If Pariroa does contain burial sites as contended by Mr Manuirirangi then it is clearly inappropriate for it to be subject to excavation without the consent of Ngati Tu in the first place. Indeed Mr Wallis said in a response to the Court²⁰ that he would not wish to desecrate burial sites.

[61] The Court is conscious of the need for caution in relying solely on evidence of oral tradition to establish matters of fact. In this case the evidence of Messrs Hudson and Manuirirangi is uncontroverted to any serious extent. It is not apparent to the Court whether the archaeologists gave any consideration to (or were even aware of) the potential for Pariroa to contain burial sites. The archaeological assessment was undertaken in the course of a one



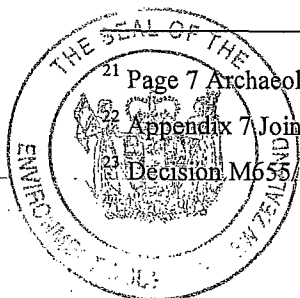
day visit and the field assessment consisted of a *walk over*²¹ of the proposed quarry area. It is not clear from their assessment whether the archaeologists were aware of the extent of excavation of the cliffs of Pariroa which was to be undertaken as part of the quarry proposal. Mr Taylor's evidence in response does not address Mr Manuirirangi's evidence as to the use of Pariroa for burials.

[62] It is interesting to note the contents of the archaeological approval which issued on 31 August 2006 from NZHPT²² which refers to the proposal as approved being . . . *to establish a quarry on the edge of the Kaupokonui Stream, across from Pukekohe Pa*. It is not apparent to us from that document whether NZHPT was aware of the extent of the proposal insofar as Pariroa was concerned. The front page of the approval document describes the archaeological site in question as being . . . *garden soils and possible pits*.

[63] Even adopting a very cautious approach to the evidence as to the possible presence of koiwi in the cliffs of Pariroa, we find that the concerns expressed in this regard have not been adequately addressed in the Applicant's evidence. This was a matter which needed to be investigated by the Applicant in the light of the evidence from Messrs Hudson and Manuirirangi. It was not.

[64] We find that the area which we have described as Kaupokonui is ancestral Maori land as defined by the High Court in *Royal Forest & Bird Protection Society Inc v Habgood & others*²³. Although only a limited part of Kaupokonui remains in Maori ownership, Ngati Tu's ancestral connections with the remainder of the area were uncontroverted before us. Just as importantly the ongoing significance of Kaupokonui to Ngati Tu was amply demonstrated in the evidence of Mrs Horsfall and Messrs Hudson and Manuirirangi.

[65] Mr Manuirirangi was not cross-examined by the Applicant's counsel but did answer questions from the Court. His evidence as to the waahi tapu status of Maraekura (the flat lands in the basin including Zone 3) was general in nature but definite. We accept that all of the flat lands fall within the description of Maraekura as a place. We further accept that ceremonies involving the display of a sacred cloak took place at Maraekura as Mr



²¹ Page 7 Archaeology North archaeological assessment, January 2006

²² Appendix 7 Joines EIC

²³ Decision M655/86

Manuirirangi testified but we have some difficulty in determining precisely how the quarry proposal might impact on the particular waahi tapu status of Maraekura as asserted by Mr Manuirirangi. As we have noted however his evidence as to the significance of Maraekura was unchallenged.

[66] Finally in this regard we note that the Applicant did make efforts to consult with Ngati Tu. There was a meeting at Waikura Marae in June 2005 and subsequently an on site meeting in August 2005. The NZHPT archaeological approval records its appreciation of the efforts made by the Applicant to consult with Ngati Tu. Regrettably (as is not unknown in other cases) there is an issue as to whether or not the Applicant consulted with representatives of Ngati Tu who were entitled to formally put forward the hapu's position with regard to this matter. The argument before us reinforces the need for considerable care when consultation is undertaken.

Natural Character/Landscape Issues

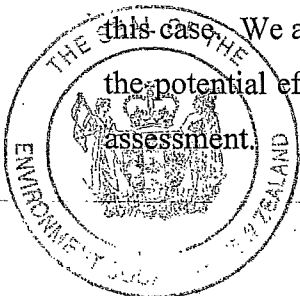
[67] We encompass a range of topics under this heading. Primary evidence as to the various issues which we wish to address was given by the following expert witnesses, in addition to the evidence of Messrs Bain, Quinlan and Smale to whom we have already referred:

- Dr B David – a freshwater ecologist called by the Appellants;
- Dr I C Fuller, a senior lecturer in physical geography at Massey University called by the Appellants;
- Mr G F Gray, a rivers' engineer employed and called by the Regional Council;
- Dr G M Smart, a fluvial consultant and scientist with 30 years professional experience in river behaviour, flood control and sediment transport called by the Appellants.

The planning witnesses also commented on aspects of natural character however we propose to concentrate on the evidence of the witnesses named above in this assessment.

[68] Although natural character and landscape are separate matters there is a degree of connectivity between the two which makes it appropriate for both to be considered together in

this case. We also consider under this heading matters relating to the Kaupokonui Stream and the potential effects of quarrying and alteration of stream flows on the stream as part of our assessment.



[69] There were some differences between the landscape witnesses in their assessment of the extent of natural character of Kaupokonui. Messrs Bain and Smale assessed the degree of natural character as being *moderate*. Mr Quinlan on the other hand considered that the area had a high degree of natural character.

[70] Mr Smale arrived at his assessment of the extent of natural character by the application of environmental performance indicators (EPI's) developed some years ago by the Ministry for the Environment and in particular by reference to a definition of natural character in the coastal environment for use in that context. The definition he used was:

Natural character is a term used to describe the naturalness of all coastal elements.

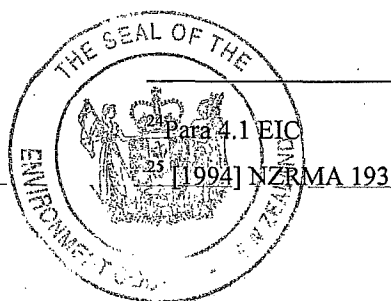
The degree or level of natural character within an area depends on:

1. *The extent to which natural elements, patterns and processes occur.*
2. *The nature and extent of modifications to the ecosystems and landscape/seascape.*
3. *The highest degree of natural character (greatest naturalness) occurs where there is least modification. The effect of different types of modification upon the natural character of an area varies with the context and maybe perceived differently by different parts of the community²⁴.*

[71] Mr Smale went on to assess natural character having regard to three components, being natural elements, natural processes and natural patterns and the extent to which those elements had been modified. Having undertaken that exercise he concluded that Kaupokonui retained a moderate degree of natural character, a view with which Mr Bain concurred.

[72] Mr Quinlan's assessment was that natural character was high. The principal point of departure between himself and the other witnesses related to the effect of pastoral modifications to the land form. He referred to the often cited words of the Planning Tribunal in *Harrison v Tasman District Council*²⁵:

The word "Natural" is a word indicating a product of nature and can include such things as pasture, exotic tree species (pine), wildlife both wild and domestic and many other things of that ilk as opposed to man-made structures, roads, machinery, etc.



[73] Assessment of natural character, even using objective criteria of the sort identified by Mr Smale, invariably involves the application of subjective judgments to some extent. To use the expressions which we did in our discussion of the coastal environment, there will frequently be *grey areas* and *blurred edges*. Our assessment of the natural character of Kaupokonui lies imprecisely somewhere between the *moderate* and *high* assessments of the witnesses.

[74] Mr Smale observed . . . *Coastal erosion and accretion processes and stream hydrology function naturally in a landscape whose distinctive staircase river terrace and dune land landforms remain essentially intact*²⁶. Farm tracks and fences have been constructed and within the river basin the vegetation is primarily pastoral in nature (grasses and crops). Obviously the baches and holiday camp buildings situated at the beach end of the basin diminish the natural character of the basin. However in our view the natural elements remain dominant in the basin overall.

[75] Insofar as assessment of landscape itself is concerned both Mr Smale and Mr Quinlan referred to and applied the landscape assessment criteria identified in *Pigeon Bay Aquaculture Ltd v Canterbury Regional Council*²⁷ and refined in *Wakatipu Environmental Society Inc v Queenstown Lakes District Council*²⁸. They both made the point that consideration of landscape involves more than simply a visual assessment. Landscape assessment is a multi sensory experience involving people's perception of the physical landscape.

[76] We consider the individual Natural Character/Landscape Issues which we have identified in the light of those comments set out above.

The Site (Particularly the River Basin)

[77] Our earlier comments about the natural character of the site were directed particularly at those parts of the site contained within the river basin and its enclosing escarpments, hills and sand dunes. We will concentrate on that area (Quarry Zones 3 and 4) in our assessment.



[78] Dr Fuller undertook a geomorphological appraisal of the river and adjacent valley floor. He commented on the nature of the river and described the valley floor as containing . . . *a classic staircase of several river terraces*²⁹. The terraces descend from the north towards the sea.

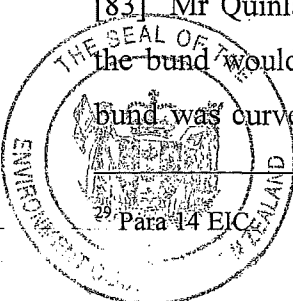
[79] Quarry works in Zone 3 will remove the highest of the terraces. That is an inevitable consequence of the quarrying process. We did not understand Dr Fuller to oppose quarrying on that basis. It was his recommendation that before any work was undertaken there should be a thorough investigation of the site to identify its alluvial history.

[80] Both Messrs Smale and Quinlan discussed the effect of quarrying in Zone 3 and were opposed to it because of its impacts on natural character and landscape values. The quarrying process will reduce the overall ground level of Zone 3 by about 15 metres or so. Once quarrying has been completed (5 to 10 years from commencement) the overall area will be completely reconstituted as pasture and will (presumably) have a natural pastoral appearance albeit at a considerably lower level than currently exists. That is probably an acceptable outcome in the long term however it is in achieving that outcome during the intervening period of quarry works that there are issues.

[81] In order to shield the quarry works in Zone 3 from its neighbours, the Applicant proposes to establish an earth bund some 5 metres high between the operational quarry face and the Reserve. The bund will shift from time-to-time and be reformed as works are undertaken within the quarry in order to provide a visual and noise buffer between the quarry and its neighbours.

[82] Establishment of the bund is a significant mitigation measure offered by the Applicant. We accept that the bund would provide visual screening of the quarry face from the baches and camping ground and would enable the quarry operation to meet District Plan noise level requirements.

[83] Mr Quinlan considered that once grass cover was well established the seaward face of the bund would have an appearance not unlike the face of a terrace scarp especially if the bund was curved rather than straight. Mr Bain was of a similar view. Mr Smale however



considered that *such a bund would be a highly unnatural element in this landscape, and I consider any potential screening benefit would be offset by its adverse effect on natural landform in the zone*³⁰.

[84] We think that Mr Smale is correct. The bund is of such a size and scale that it will appear unnatural in this landscape. It will have an unattractive appearance during the time of deconstruction and reforming. It will signal the presence of the industrial operation behind it. The bund will have only a limited shielding effect on views in any event. Although views of the quarry from the camp and the Reserve will be shielded by the bund, it will remain highly visible from the sand dunes, Pukekohe Pa site and the road coming into the basin.

[85] We consider that the undertaking of quarrying works in Zone 3 will have a significant adverse effect on the natural character of this area. That adverse effect arises from the quarrying operations themselves and from construction of the shielding bund. The quarrying operations involve the establishment of crushers, buildings and a range of associated facilities in the basin. Large piles of metal will be stored in Zone 4. The natural landscape of the basin will be substantially modified and the quarrying works effecting that modification will be visible from the road entering the basin, the river's edge and the elevated sand dunes and pa site. Although the works in Zone 3 will be sheltered from view of the camp by the bund, this in itself introduces a further unnatural element into this landscape.

[86] The Kaupokonui basin is a comparatively small, confined area with limited capacity to absorb or avoid adverse landscape effects of the quarrying operation. For those viewing the area from elevated positions the presence of the quarry will be the dominating landscape experience and for those at lower levels, such as the camp and Reserve, the earth bund will dominate views to the north. In some rural areas such modifications might be of little moment however Kaupokonui is an area given over to recreational activities as well as rural production and its natural character and landscape are important to those who use it for recreational purposes.

The Stream

[87] The river environment was described in these terms by Dr Smart:



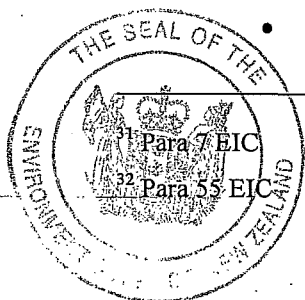
The Kaupokonui is a swift, steep, cobble and boulder bed river, entrenched in alluvial and volcanic ash terraces on the Taranaki ring plain and fed by run off from the slope of Mount Taranaki. The steep slope of the channel gives the river very high kinetic energy and a very high capacity to transport sediment, especially during floods. The capacity to transport sediment greatly exceeds the supply of sediment (from tributaries, river bed and banks) and consequently all fine, silty, sandy sediment has been cleaned out of the channel leaving the waters very clear during non-flood flows (Exhibit 1). In this respect the river resembles the renowned Tongariro Trout Stream on the volcanic plateau³¹.

[88] Dr David assessed the Kaupokonui as a fish habitat and concluded that it had a high diversity of fish fauna by New Zealand standards with at least 14 species (12 native, 2 introduced) known to inhabit the river. He appeared to accept that the effects of quarrying operations on fish life could be adequately mitigated by the imposition of appropriate conditions. He did however have residual concerns as to the effect of removal of large boulders from the river bed (because of the shelter which they provide for fish) and potential effects from high sediment loads caused by quarrying operations or river works.

[89] A number of witnesses referred to a Regional Council study which ranked the Kaupokonui Stream as third out of 46 Taranaki waterways in terms of its recreational value. Mr J D Watts (DOC planner) stated in his evidence³² that a joint study of coastal areas by the Regional Council, District Council, New Plymouth District Council and DOC in 2004 found that Kaupokonui Stream was rated as being of *high* amenity, recreational, cultural/historical and ecological scientific values (high being the highest category).

[90] We think it is obvious that the river is a substantial contributor to the natural character of Kaupokonui. We note our earlier comment that the area generally could be described as a riverine environment as well as a part of the coastal environment. The quarry operations have the potential to diminish that natural character in two respects:

- Firstly, the visual impact of establishing quarry works (particularly the stockpile areas etc in Zone 4) in close proximity to the river's edge;
- Secondly, potential effects on the river and its processes.



[91] Insofar as the matter of visual effect is concerned it must be acknowledged that quarries are frequently and necessarily established in river environments as that is where metal is commonly found.

[92] Mr Bain considered that the visual effects of the quarry works on the river environment would be reduced by the fact that the tallest building (the hopper) would be tucked down into the landscape thereby reducing its visibility from the camp and road. The construction of a raised stream edge would provide shielding and there were to be extensive riparian plantings undertaken.

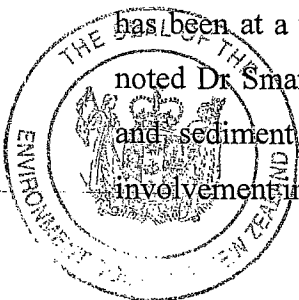
[93] Mr Quinlan had reservations as to the effectiveness of mitigation measures on the experience which users of the river margin would have of the natural character of the river. He pointed to the close proximity to the stream of the quarry, its plant, machinery, drains and ponds, vehicle activity and security fence. It seemed to be common ground that the stream was a popular fishing area which anglers might regularly visit.

[94] Mr Smale was of the view that the plant and facilities could, in principle, be located in Zone 4 as long as appropriate post quarry reinstatement was undertaken to restore the area.

[95] Zone 4 is situated at or close to the northern extremity of the basin. It is about as far away from the camp area as it is possible to be in the basin so any effect on the camp would be minimal. However establishment of the quarry works in Zone 4 would undoubtedly have an adverse effect on natural character of the river environment in the immediate vicinity and would be visible from a number of commonly used vantage points along the river. Whether or not the adverse effects are such that they are fatal to an application of this nature is a matter which we consider as part of our overall assessment.

[96] The effect of the quarry works on the river itself was the subject of evidence from Mr Gray for the Regional Council and Dr Smart for the Appellants.

[97] We do not think it would be unfair to say that Dr Smart's approach to the application has been at a theoretical or scientific level and Mr Gray's at a practical level. As we have noted Dr Smart has some 30 years professional experience in river behaviour, flood control and sediment transport. Mr Gray has 38 years civil engineering experience including involvement in a range of stream and river protection works and systems.



[98] Dr Smart challenged the adequacy of the information provided in support of the application in a number of respects.

[99] We consider that the most significant point of difference between Dr Smart and Mr Gray related to the extent of hydrological investigations required to assess the effect of future flooding on the quarry operation and surrounding land.

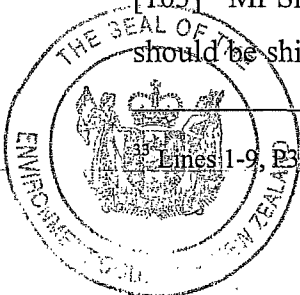
[100] Mr Gray acknowledged the limited extent of the hydrological investigation which the Applicant had undertaken as part of the application process. He considered however that the investigation was appropriate having regard to the nature of the assets (the quarry works and associated equipment etc) which were to be protected by the new stop banks. We think that is a fair assessment. There was nothing in Dr Smart's evidence which led us to the conclusion that there was a risk to property other than the quarry itself which might be brought about in the event of river protection works proving to be inadequate.

[101] Dr Smart raised further concerns as to the lack of investigation as to the extent of the gravel resource and ground water investigations. Mr G B Wallis addressed those matters in his reply. We think that in terms of the gravel resource that again is a matter which is at the risk of the developer. However, we consider that there is some merit in the concerns expressed by Dr Smart as to the lack of investigation of ground water levels (notwithstanding Mr Wallis' views in the matter). We agree with Dr Smart that there should have been a more extensive investigation as to the extent the reservoir of ground water underlying the proposed quarry areas and the potential of that ground water to lead to ponding in the reinstated areas of land.

The Escarpment

[102] The three landscape witnesses (Messrs Bain, Quinlan and Smale) all agreed on the importance of the escarpment (Pariroa) which forms the eastern boundary of the river basin. In the course of his evidence Mr Bain described the escarpment as the most important landscape feature of the basin³³ and agreed that work on it ought to be avoided if practicable.

[103] Mr Smale was opposed to quarrying of the escarpment and recommended that Zone 2 should be shifted at least 50 metres away from the escarpment edge. In cross-examination he



appeared to concede that he could *live with* some modification to the escarpment if there was no other alternative to providing access between Zones 2 and 4 and as long as work on the escarpment is limited. However it emerged from the questioning of Mr Wallis that access between the upper terrace and Zone 4 could be achieved without quarrying the escarpment by use of the existing access track although this would present traffic management issues as it would involve mingling of working quarry traffic and gravel removal traffic.

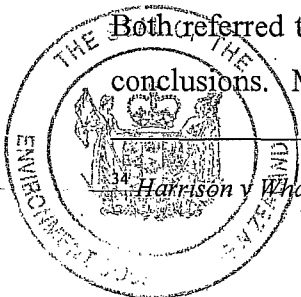
[104] It was apparent that if alternative access was available then Mr Smale was very strongly opposed to the quarrying of the escarpment due to the effect which such work would have on the escarpment and the natural character of the wider basin.

[105] We have already commented on the Applicant's proposal to reduce the extent of work undertaken on the escarpment. Even taking the most generous assessment of the reduction in the area to be quarried we are of the view that the proposal to reduce the height of the escarpment (in the quarried area) by some 15 metres will have a significant adverse effect on the appearance of the escarpment and the natural character of the wider Kaupokonui basin having regard to the fact that the escarpment is the most significant landscape feature in this area.

[106] A matter of particular significance to us in assessing the effect of the quarry on the landscape is the importance of Pariroa to Ngati Tu. We consider that Pariroa is a significant part of the heritage landscape which Kaupokonui constitutes to Ngati Tu. By heritage landscape we mean a landscape or network of sites having heritage significance to tangata whenua or other communities.³⁴ We accept that quarrying on the escarpment may not be visible from some parts of the Reserve and the camp however it will be plainly visible from the Pa sites and many of the areas contained within the Maori reserve. Quarrying will substantially destroy part of the cliffs of Pariroa which are a highly significant site for Ngati Tu.

[107] Finally with regard to landscape and natural character generally we refer to the wide range of matters addressed by Messrs Quinlan and Smale in undertaking their assessments.

Both referred to and applied the (modified) *Pigeon Bay* assessment criteria in reaching their conclusions. Mr Bain largely restricted his assessment to purely visual considerations. We



think that this led him to underestimate the effects of the proposed quarry operations in landscape terms. In our view establishment of the proposed quarry (Zones 2, 3 and 4) in the confined Kaupokonui basin would have significantly adverse effects on landscape and natural character values.

Amenity Issues

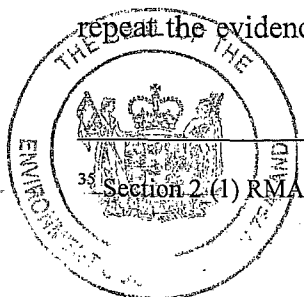
[108] Much of the Appellants' case revolved around the effect which the proposed quarry operation might have on the amenity values of Kaupokonui. Amenity values are...*those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence and cultural and recreational attributes.*³⁵

[109] We received an immense volume of evidence regarding amenity matters. Part of the Appellants' case was the evidence of some 37 witnesses who gave evidence as to their connections with Kaupokonui and the features of that place which they valued.

[110] The evidence of these witnesses came into the Court by consent. None of the 37 to whom we have referred was cross-examined. Mr Wilkinson for the Applicant made the point in his closing submissions that although the evidence in question was *unchallenged* or *accepted* as to what was said in a factual sense that did not extend to accepting the conclusions which the witnesses drew, nor the weight which might be given to their evidence in our determination.

[111] Members of the Court have closely considered this evidence which comes from persons who, in some cases, have connections with Kaupokonui extending back to the nineteenth century and early days of the twentieth century. One of the witnesses had personal associations with Kaupokonui extending back to the 1920s. Other witnesses had family and personal associations with the area extending back 50 years or more.

[112] The range of witnesses included bach owners, campers, caravaners, nearby landowners, fishers, white baiters, general recreationalists and surfers. We do not propose to repeat the evidence of these witnesses in any detail in this decision. The importance of their



evidence was that it identified many of the features of Kaupokonui which contribute to and make up its amenity values. Those features might be summarised thus:

- A sense of remoteness engendered by the sunken basin nature of Kaupokonui notwithstanding its proximity to main roads, settlements etc.
- Its quiet and general tranquillity with the natural sounds of birdlife, the sea and river being the predominant noises much of the time.
- Ready access to the beach and sea.
- The presence of the river which is used for swimming, fishing, white baiting, general recreation and relaxation.
- The dominance of natural features, notwithstanding the presence of the camp and baches which are tucked in to one corner of the basin
- The sand dunes of Otamare and the Maori reserve land which (with the consent of Ngati Tu) are widely enjoyed by users of the camp for walking and recreation.
- The low level, primarily agricultural, nature of development within the basin generally.

[113] Our site visit largely confirmed the evidence given to us about the amenity values of Kaupokonui. The camp facilities and baches are in a location and are of a scale which are in harmony with the surrounding environment and do not dominate it. The agricultural activities of grazing and cropping fit in with the natural character of the basin and development, such as fencing and tracks, is relatively low key. The various natural and physical qualities and characteristics of the area detailed in the evidence of the Appellants' witnesses were plain to see.

[114] It is accordingly evident that Kaupokonui is a place of very high amenity values. We did not understand the Applicant to challenge that proposition. The issue to be determined is the likely effect of a quarrying operation on those amenity values. Such effects potentially arise in the four ways which we have identified namely:

- noise effects
- dust effects
- traffic effects
- cumulative effects.



Noise effects

[115] Expert evidence on the matter of noise was given by two witnesses:

- Mr D P Ellerton a senior consultant in the firm of Marshall Day Acoustics. Mr Ellerton had prepared an acoustic report which formed part of the initial application documents to the Council and was called as a witness by the Applicant.
- Mr M J Hunt an environmental noise consultant who was called by the Appellants.

[116] The evidence of both acoustical consultants came into the Court by consent. Neither was cross-examined. By and large that the evidence of Mr Ellerton and Mr Hunt was in agreement. Their position was that based on the *worst case scenario* (namely at the point of operations closest to the camp and baches) operation of the quarry might be undertaken in a manner which complied with the noise emission standards contained in the District Plan. That evidence in each case was predicated on the basis that identified mitigation measures would be put in place particularly those restricting the quarry site and its hours of operation and establishment of the noise bund. The District Council had the Applicant's initial acoustic assessment peer reviewed by Mr N Lloyd of Acousafe Noise Control Solutions as part of its assessment process. Mr Lloyd's conclusions were apparently the same as those of Messrs Ellerton and Hunt. Mr Lloyd did not provide a brief of evidence to the Court.

[117] Both Messrs Ellerton and Hunt identified the relevant noise standard as being that contained in Rule 10.02.1 of the District Plan which provides:

10.02.1 Rural Zone

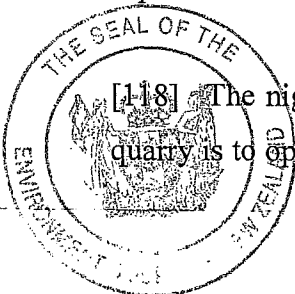
(i) *Noise generated by any activity (except those that are exempt under 10.01.4) in the Rural Zone shall not exceed the following limits when measured at or within the boundary of any other Rural Zoned site:*

7am-10pm 55dBA L₁₀

10pm- 7am 45dBA L₁₀

10pm- 7am 75dBA L_{max}

[118] The night time (10pm-7am) noise limits contained in the rule are not relevant as the quarry is to operate only during daylight hours. The standard contained in the District Plan is

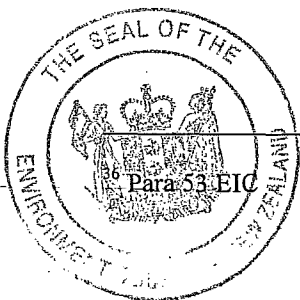


consistent with the recommendations for upper noise limits to be received at *residential sites* pursuant to *NZS6802:1991- Assessment of Environmental Sound*.

[119] The other expert witness who provided evidence to the Court about noise effects was Mr Cunningham. He is not an expert on acoustic matters but rather on the establishment, management and operation of quarries. Mr Cunningham had reservations as to the adequacy of the investigations undertaken by Mr Ellerton to establish the noise effects of the quarry. He pointed to inadequacy of information contained in the initial acoustic assessment as to the extent and specifications of the equipment to be used in the quarrying operation.

[120] In carrying out his assessment of noise from the proposed quarry (which was the basis of his calculations of noise effects from the proposed quarry) Mr Ellerton visited an existing R A Wallis quarry and took noise measurements of its machines in operation. The extent of the measured observations were not explained to us nor were the circumstances in which those observations were made. Mr Cunningham's evidence identified a substantial number of factors which will determine the extent of noise generated by any quarrying operation. These factors include (inter alia) the size of the boulders being crushed, the size of the crusher, the matrix from which boulders must be removed, the extent of machinery operating simultaneously, weather conditions, operator competence and site layout all of which contribute to the extent of noise which will be generated by a quarry operation.

[121] It was Mr Cunningham's experience that in order to ensure adequate mitigation of the noise impact of quarry operations on nearby dwellings a separation distance of at least 500 metres is required. We think that this 500 metres could best be described as a *rule of thumb* based on his long involvement in the quarrying industry. We also understood the thrust of Mr Cunningham's evidence to be that a 500 metre separation distance would adequately deal to the variables which he had identified and ensure compliance with noise standards. He made the point that... *you can measure noise levels with a skilled operator working under strict supervision and compliance would hopefully be achieved. However, with an ill-disciplined operator working with poor supervision at the same location, non compliance with consent conditions can result.*³⁶



[122] The Applicant has agreed to a noise limit of 50dBA L₁₀ measured at the boundary of the site, to address concerns as to the effect of noise from its operations. Mr Hunt supported lowering the noise limit to that level to achieve a more acceptable and reasonable level in this particular area. Mr Ellerton's view was that noise level at this limit could be achieved and Mr Hunt appeared to accept that. In the light of Mr Cunningham's reservations as to the practicalities of achieving such a standard however it would be necessary for particularly strict monitoring conditions to be applied should any consent be granted.

[123] In amenity terms however it appears to us that there is a much more significant issue to be considered than just compliance with the standard contained in the District Plan or the proposed noise condition. That arises out of the existing noise characteristics of Kaupokonui and the nature of the noise to be generated by the quarrying operations.

[124] A consistent theme of the Appellants' witnesses was the quiet and tranquillity of Kaupokonui. According to those witnesses the noise environment in this area is dominated by the natural sounds of the beach, the river and birdlife.

[125] There was no serious challenge to the evidence of local residents as to that present noise environment. Mr Hunt took a series of ambient sound level measurements from four sites at Kaupokonui during a site visit on 5th April 2007. Mr Hunt's investigations led him to conclude that the background noise level (L₉₅) in the vicinity on that day was 39-35 dBA. He commented:

7.6 Overall, the ambient sound levels were found to be quite low typical of daytime rural sites located away from the influences of road traffic or man made sound sources such as industrial plants or factories.

7.7 The ambient sound levels measured in the area almost wholly comprised distant sea sounds and other "natural" sounds such as the sounds of birds and insects. For a very minor portion of the time, ambient sound levels in the area were affected by the sounds of a distant tractor, farm animals and other rural sources³⁷.

[126] Mr Hunt's ambient sound level measurements were taken at four sites over short periods of time during the course of a one day visit. They are accordingly of limited value but



are entirely consistent with the descriptions of the noise environment given by the Appellants' witnesses.

[127] In his rebuttal evidence³⁸ Mr Ellerton testified as to measuring a background noise level of 43dBA L₉₅ on two occasions. His evidence did not identify the noise generation source giving rise to those ambient levels however we note the following statement in his rebuttal evidence:³⁹

11 Mr Rodie contends the beach and surrounding area is a low noise environment and therefore any intrusive noise from adjacent site activities is unacceptable. I cannot agree with the suggestion that the noise environment is necessarily or always low, the sea noise alone can be significant either as a steady background noise or indeed a more prominent thundering sound.

Mr Ellerton's comments as to the significance of the background sea noise seem consistent with Mr Hunt's comments about *distant sea sounds*⁴⁰ and the evidence of the Appellants' witnesses as to the dominance of natural sounds including the sea in this vicinity.

[128] We do not think that there was any serious dispute that the type of noise to be generated by the quarrying operation would be substantially different from the natural and (occasional) agricultural type noises which presently predominate at Kaupokonui. Mr Wallis acknowledged that in response to a question from Commissioner Mills⁴¹. He accepted that to be a *valid point*.

[129] Mr Cunningham went into some detail as to the sort of noise generated by quarrying operations. Among other things he identified the impact noise being noise made when a moving object such as a heavy excavator bucket comes into contact with a large embedded boulder. He described the noise created by the stone crushing process and the length of time per day which crushers might have to operate to achieve the maximum suggested annual output 120,000 m³ (1500-1800 hours year).⁴²

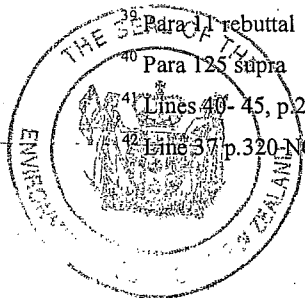
³⁸ Para 6

³⁹ Para 11 rebuttal

⁴⁰ Para 125 *supra*

⁴¹ Lines 40-45, p.244; Lines 1-9, p.245 NOE

⁴² Line 37 p.320 NOE- Line 3 p.322 NOE



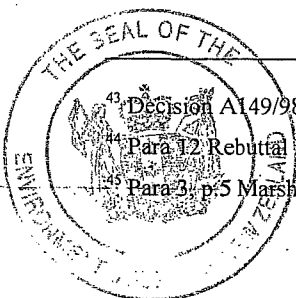
[130] In *Mobil Oil New Zealand v Taupo D.C*⁴³ the Court recognised that noise may have an adverse effect on amenity, notwithstanding compliance with District Plan noise standards.

[131] We consider that when regard is had to the nature of the noise to be generated by the quarry and its possible duration (even allowing for considerably fewer hours of operation than the worst case scenario identified by Mr Cunningham), there will be an adverse amenity impact on occupants of the holiday camp and baches notwithstanding compliance with District Plan noise standards or the even more conservative standard volunteered by the Applicant.

[132] Mr Ellerton contended that the adjacent farm land could have heavy agricultural machinery used on it which might generate a noise level of 55dBA L₁₀ between 7am and 10pm as of right.⁴⁴ However it appears to us highly unlikely that such equipment would be used for the potential period of time over the year that the quarry might operate. Mr Wallis acknowledged that the amenity effects of noise from a quarry operation were quite different from the types of noise generated by tractors and agricultural machinery.

[133] A further aspect of noise which must be considered is the construction of earth noise bunds in Zone 3. As we have noted previously the bunds will move as the strip of land being quarried moves. This will require reconstruction of the bunds as each area of the quarry opens up. We understand that construction of the bunds is necessary to ensure that the quarrying operation complies with the noise levels proposed.

[134] Mr Ellerton's predictions of noise levels were based on the assumption that the earth bund was in place.⁴⁵ He appeared to acknowledge in the initial Acoustics Report that construction noise during bund formation will exceed the levels generated during quarrying. However no further information is provided as to these noise levels other than that NZS6803:1999 would apply to such construction activities and would be complied with. We note that NZS6803:1999 contemplates daytime construction activity noise received in residential zones or dwellings in the order of 75dBA Leq and 90dBA L_{max} on weekdays and Saturdays.



⁴³ Decision A149/98 (para 54)

⁴⁴ Para 12 Rebuttal Evidence

⁴⁵ Para 3, p.5 Marshall Day Acoustic Report (Appendix J-Application Documents)

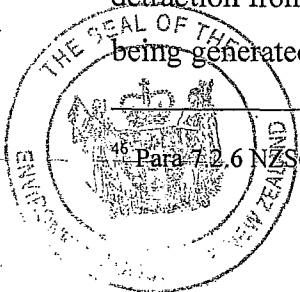
[135] We were not given any information as to the number of times the bunds would need to be reformed in Zone 3 (we assume that it might be 3 –5 times) nor how long such reformation would take. On the basis of the evidence before us we conclude that during this process noise levels higher than those provided for in the District Plan will be generated but will comply with the guidelines identified in NZS6803:1999. We note that NZS6803:1999 provides that in setting construction noise limits it is necessary to take into account the nature of land uses adjoining the site, community expectations and other local conditions⁴⁶.

[136] Having regard to all of the above we reached the following conclusions in respect of noise in the quarrying operations generally:

- Provided the earth bund is in place the quarrying operations themselves can comply with District Plan noise level requirements at the point closest to the baches and camp.
- Noise levels during bund formation and reformation are likely to exceed District Plan noise level requirements at some point as they move from the commencing area for quarrying in Zone 3 (the point furthest away from the camp) but will be required to comply with NZS6803:1999 requirements.
- The noise environment of Kaupokonui will be substantially changed by the quarrying operations.

[137] We consider that latter point is a significant consideration insofar as impact of the quarrying proposal on amenity values is concerned. The noise environment of Kaupokonui will change from one which is presently dominated by the natural sounds of sea, river and wildlife to one where the industrial noises of a quarrying operation are a prominent feature. The nature and character of those quarrying noises is substantially different from the natural noises which presently contribute towards enjoyment of the area.

[138] The Kaupokonui Reserve has been enjoyed by generations of users over many decades. Amongst the qualities and characteristics which have contributed to that enjoyment is the peace and tranquillity of the area dominated by natural sounds. Even at the noise levels at which it is proposed the Applicant will operate, its operation will provide a substantial detraction from the present amenity values of Kaupokonui because of the nature of the noise being generated and its potential duration.



Dust

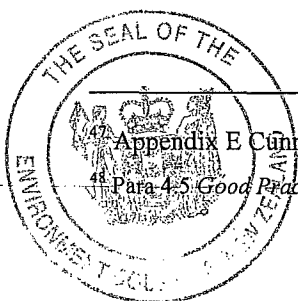
[139] An acknowledged effect of quarrying operations is the generation of dust. It was the position of the Applicant and the Regional Council (being the relevant authority) that dust discharges from the quarrying operations are a permitted activity and that no consent was required for them. Evidence as to the provisions of the Regional Air Quality Plan for Taranaki (the Air Plan) was given by Ms A M Lambert, a consents officer employed by the Regional Council.

[140] Ms Lambert advised that discharges to air from quarries are governed by the provisions of Rule 17 of the Air Plan. Rule 17 provides that discharges to air from quarries are permitted provided that they comply with the following standards/ terms/ conditions.

- *Discharge must not result in offensive or objectionable odour or dust at or beyond the boundary of the property*
- *Discharge must not result in noxious or toxic levels of airborne contaminants at or beyond the boundary of the property*
- *Discharge must not result in dangerous levels of airborne contaminants at or beyond the boundary of the property, including but not limited to any risk of fire or explosion.*

[141] It was Ms Lambert's view that the Wallis quarry would comply with the requirements of this particular rule and that the discharge of dust from the quarry was accordingly permitted.

[142] During the course of the hearing we expressed reservations as to the vires of Rule 17 as compliance or non-compliance with the standards appear to be extremely difficult to measure. We understand that the rule is of a kind commonly used in air plans and as a condition of resource consents and we note from the Ministry for the Environment document- *Good Practice Guide for Assessing And Managing The Environmental Effects Of Dust Emissions, (Good Practice Guide)*⁴⁷ that such conditions and rules are a *viable method for the control of subjective issues such as dust...nuisance.*⁴⁸ For the purposes of our discussion we will regard Rule 17 and its conditions as intra vires.



[143] Ms Lambert's assessment that the quarry operation will meet the requirements of the rule is based on the following factors:

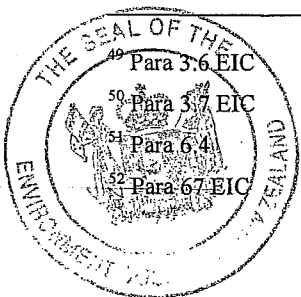
- All quarries presently operating in Taranaki do so under the permitted activity rule and none hold air discharge consents.⁴⁹
- The Applicant's proposed mitigation measures would attend to dust control, namely;
 - limiting the exposed area for quarrying, storage and metal processing at low level and furthest away from adjoining properties
 - sealing the first 100 metres of access track
 - use of irrigation lines or water cart to dampen the track and quarry area.⁵⁰

[144] Similarly it was Mr Wallis' evidence that the company's current quarry operations meet the dust emission condition, that it was a responsible quarry operator and that it would take appropriate steps to implement dust control mitigation measures of the type identified in the resource consent application,⁵¹ his evidence and the evidence of Ms Lambert.

[145] Mr Cunningham was considerably less confident that the quarry would not generate dust which was a nuisance to its neighbours. He referred to the *Good Practice Guide* as well as his own experience in quarry management in assessing the potential of this quarry to generate dust which adversely affected its neighbours (more particularly the camp and its occupants). Mr Cunningham gave examples⁵² of quarry activities which have the potential to generate dust, namely:

- Crushing and screening (dry screening)
- Conveyor transfer
- Stockpiling and loading
- Exposed and open areas including new bunds without established vegetation.

[146] Mr Cunningham went on to raise a series of specific concerns about dust:

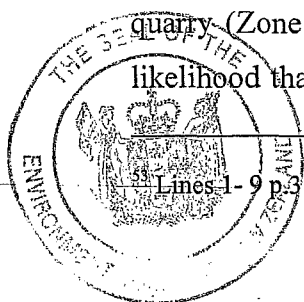


- He expressed the view that even if the *Good Practice Guide* methods were implemented there was no guarantee that dust from the exposed quarry faces and working areas could be contained within the quarry site.
- At this particular site he considered there was a high risk of significant adverse effects in extreme wind speed conditions especially as work got closer to the boundaries of the site. Even if work was stopped surface dust could still be transported by wind.
- Dust migrates downwind, ie it blows for a distance, settles and may then be uplifted and transported further away by another wind.
- Each time a bund is built the finished surface would be bare of vegetation and wind would lift fine dust from these surfaces which might be carried some significant distance.
- The battered slope of the upland face of a five metre high bund in high wind speed conditions would have the same effect as the upper side of an aircraft wing, increasing wind speed over the top of the unvegetated bund.

[147] As with his concerns about noise, Mr Cunningham's principal concern about potential dust nuisance from the site arose out its proximity to the camp and Reserve. He again referred to his 500 metre *rule of thumb* in terms of separation from a sensitive environment. In response to a question from Commissioner Mills he proffered the view that 300 metres might be a sufficient buffer distance for dust protection as opposed to 500 metres for noise.⁵³

[148] Mr Cunningham was questioned at some length as to his views on dust. In response to questioning from Mr Wilkinson he acknowledged that the wind speed that he had identified as being problematic (18 metres per second), translated to somewhere in excess of 60 kilometres per hour which is a very strong wind indeed. It also appeared that the most common wind was away from the camp. Again in response to questioning from Mr Wilkinson he acknowledged that it was incumbent upon the operator to comply with the requirements of the rule in the Air Plan and for the Regional Council to oversee such compliance.

[149] Mr Cunningham remained adamant however that because of the proximity of the quarry (Zone 3 in particular) to the camp and the Reserve that there was a high degree of likelihood that it would create dust problems for its neighbours, notwithstanding the sorts of



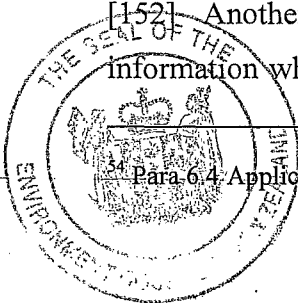
mitigation measures (primarily watering) that the Applicant proposed. He made the point on more than one occasion that separation from neighbours was the principal technique to avoid dust problems and that in this case the separation was inadequate. Mr Cunningham stated that he would not be prepared to run this quarry because of his concerns about dust (interalia).

[150] We found Mr Cunningham to be a highly credible witness. He is certainly not an opponent of quarries. His evidence establishes that the issue of dust control from the quarry operation was not given adequate attention at the time of the application nor by the Regional Council. We accept that other quarry operations in Taranaki apparently comply with Rule 17 of the Air Plan. However dust emission issues are discussed in a quite brief and cursory fashion in the application document.⁵⁴ The application simply states that... *the activity, by its very nature, is likely to create limited amounts of dust, but given the location and generally damp conditions of operation, dust will not have an adverse effect on adjoining properties.* No qualitative information or assessment of any kind is provided to support that statement. It is the location of the quarry in close proximity to the Reserve and camp which is the primary issue of concern to Mr Cunningham.

[151] The *Good Practice Guide* identifies a series of matters to which Councils should have regard in determining whether or not there is an offensive effect from a dust discharge. The first of those matters is what is known as the FIDOL factors (Frequency, Intensity, Duration, Offensiveness, Location). In so far as the *Location* aspect of the FIDOL factors is concerned the *Good Practice Guide* identifies ... *the location of the dust nuisance having regard to the sensitivity of the receiving environment* as being a relevant assessment factor. We consider that in this case there is a sensitive receiving environment due to the proximity of the camp and Reserve and the high degree of amenity at Kaupokonui. We do not know whether the other quarries referred to are in comparable situations. Even accepting that the Applicant is a responsible operator and will carry out its quarry operations applying appropriate dust control methods we are not satisfied on the basis of the evidence which we have seen that quarrying in Zone 3 and stockpiling etc in Zone 4 can be undertaken in a manner that avoids adverse dust effects on the camp and Reserve.

[152] Another point which emerged from Mr Cunningham's evidence is the lack of any information whatever regarding current ambient dust levels in the Kaupokonui environment.

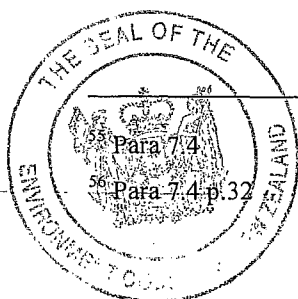
⁵⁴ Para 6.4 Application document.



Neither the application documents nor the evidence on behalf of the Regional Council provide that information. It was Mr Cunningham's evidence that such information can be and commonly is obtained by many Regional Councils. Atmospheric dust levels can be measured by a horizontal atmospheric deposition gauge. Mr Cunningham advised that he had provided such gauges to a number of local authorities in New Zealand, including the Taranaki Regional Council. He testified that if he was involved in establishing a new quarry operation he would expect that prior to embarking on any resource consent application a series of atmospheric measurements to identify pre-existing ambient dust levels in the area were taken. Such measurements should be taken over as long a period as possible, preferably up to a year. The availability of such information is important in order to assess whether or not there has been any increase in ambient dust levels generated by the quarry activity when it is established.

[153] The *Good Practice Guide* identifies *trigger levels for assessing dust nuisance*.⁵⁵ In the case of deposited dust the trigger level is 4 g/ m²/ 30 days deposited dust as an increase above background concentrations. That is the trigger level used by Mr Cunningham in assessing whether or not a quarry operation is creating objectionable dust. We note that the *Good Practice Guide* states⁵⁶ *...however, in highly sensitive residential areas deposition rates in the order of 2 g/m² / 30 days, above background concentration may cause nuisance.*

[154] There is simply no information before the Court which enables us to adequately assess the proposition that because other quarries in other places in Taranaki do not generate objectionable levels of dust then it may be assumed that this quarry will not. If issues as to the levels of dust being generated by a quarry at Kaupokonui were raised it would be extremely difficult (if not impossible) to identify the extent of dust being generated above background levels in the absence of information as to background levels pre-quarrying. We assume that such a deficiency could be overcome by way of a condition requiring background level monitoring for a reasonable period before quarrying started. However the absence of any significant information on dust levels or consideration of the sensitive receiving environment in this case has led us to the conclusion that the Applicant and Regional Council have approached this matter on a quite cursory basis.



Traffic

[155] The Applicant has estimated that annual production from the quarry will be somewhere in the order of 30,000-120,000 m³. We understand from Mr Cunningham's evidence that 120,000m³ equates to 180,000 tonnes.

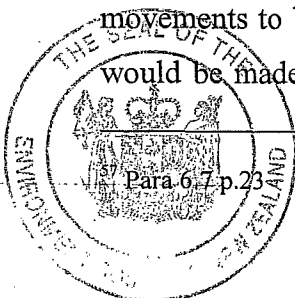
[156] Demand for metal is seasonal. The quarry *season* runs from October to May but peak demand period is apparently late January to the end of May. The application document stated⁵⁷:

The quarry will generate additional trucking on Lower Glenn Road. It is expected that the Applicant potentially transport out up to 30 truck and trailer loads of metal per day. Local farmers and contractors may also collect track metal in their own vehicles and this traffic is anticipated to be in the vicinity of four vehicles per day. Together with a staff of two persons the total average number of vehicle movements (cars and trucks) likely to be generated is not anticipated to exceed 40 on any one day, which equates to an average maximum of no more than three outward vehicle movements per hour on any one day.

[157] In his evidence for the Applicant Mr Joines stated that during peak times in late summer the daily rate of metal removed could be as high as 600m³ per day which equated to 68 truck movements and further that it was possible in the future that quantities of up to 1000m³ per day might be removed over short periods of time. We understood that Mr Joines and the Applicant's calculations as to vehicle numbers was based on truck and trailer units carrying 18m³ in total. On that basis removal of 1000m³ would require 55 vehicles or 110 vehicle movements per day.

[158] Condition 17 of the resource consent granted by the District Council restricted quarry related heavy vehicle movements to a maximum of 60 truck movements per day. The Applicant appealed against that condition and sought that it be replaced by a condition restricting quarry related heavy vehicles to a maximum average of 34 truck movements per day presumably over 12 months.

[159] Mr Cunningham queried the Applicant's calculations as to the number of traffic movements to be generated by the quarry. He did not accept the assumption that deliveries would be made by truck and trailer units carrying 18m³. He said that in his experience the



quarrying industry and contractors used a range of large and small truck unit configurations to transport product from quarry to the point of use and that site conditions at the point of use would determine the size, type and number of trucking units which would be used.

[160] Mr Cunningham studied product dispatch dockets from at least eight quarry operations spread throughout the North Island which led him to the conclusion that the average truck load volume dispatched from the proposed quarry would be somewhere between 11-13m³ rather than the 18m³ which formed the apparent basis of the Applicant's calculation of numbers of vehicle movements. He calculated on that basis that the number of heavy vehicle movements required to shift 1000m³ would be somewhere between 153-182. Even working on the lesser daily rate of 600m³ per day, this would amount to between 92 and 109 truck movements per day as opposed to the 68 calculated by Mr Joines.

[161] In rebuttal Mr Wallis claimed that if 1000m³ was being moved to service a large contract, this would almost certainly be done in 18m³ lots for cost efficiency reasons. That may well be right however we have reservations as to the overall accuracy of the Applicant's calculations as to traffic movements.

[162] Another aspect of the traffic issue which emerged from Mr Cunningham's evidence was that quarries do not necessarily generate traffic at a consistent rate over the course of the day. Mr Cunningham identified⁵⁸ that contractors might commonly arrive together at a quarry enmasse at the start of the day as they need the metal to get on with their day's work. Later in the day there might not be any trucks at all arriving. He gave the example of a quarry which held a resource consent precluding operations commencing prior to 7am. The operator was served with an abatement notice by the local Council because of the number of trucks which arrived at the site prior to 7am and were queued up waiting to get in, as soon as the gate was opened.

[163] We understood that the point Mr Cunningham was making was that traffic effects from a quarrying operation need to be assessed on the basis of quite high numbers of vehicles arriving on site over a shorter period of time rather than a constant stream of traffic at a steady rate throughout the day. Mr Cunningham's evidence raises significant issues about the



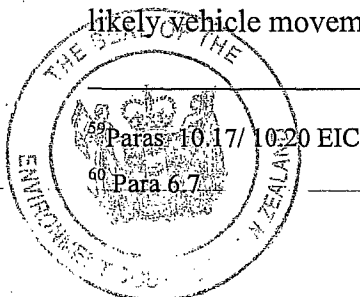
accuracy of the Applicant's estimates as to number of quarry-related vehicles which might use the local roading network and the times at which those vehicles might do so.

[164] Evidence as to traffic matters was given by the District Council's planning witness Mr B A Sutherland.⁵⁹ Mr Sutherland addressed a number of the conditions imposed by the Council to deal with roading concerns including a requirement for the Applicant to contribute to widening of the road carriageway by two metres. He referred to condition 17 which specified a maximum of 60 quarry related heavy vehicle movements per day. He explained that this figure... *was intended to provide for sufficient movements for the quarry to be able to operate without undue restriction, while at the same time minimising the risk of traffic safety effects on Lower Glenn Road and its intersection with State Highway 45.*

[165] Mr Sutherland also stated that at the Council hearing the Applicant had not identified a maximum daily number of heavy vehicle movements in spite of being requested to do so. He expressed the view that specifying a maximum number of heavy vehicle movements rather than an average number as requested by the Applicant provided certainty for the residents and enabled easy monitoring of compliance.

[166] We agree in principle with the approach adopted by the Council. If condition 17 was to be based on averaging that would not enable adequate control of the potential effects on road safety generated by comparatively high numbers of vehicles using the roading network over a limited period of time and would make compliance monitoring very difficult.

[167] However, it is now apparent from both the Applicant's evidence and from Mr Cunningham's that the quarry simply could not operate efficiently if it was required to comply with the 60 heavy vehicle movements per day required by condition 17. Condition 17 appears consistent with the expectation expressed by the Applicant in the application papers⁶⁰ that up to 30 truck and trailer loads of metal might be transported out per day (ie 60 movements) but that expectation is itself at odds with the subsequent statement contained in the application that it is not anticipated that there will be more than 40 vehicle movements per day. It is also inconsistent with the evidence of the Applicant and Mr Cunningham as to likely vehicle movements generated by the quarry.



[168] We did not hear any evidence from a traffic engineer. We are unable to adequately assess the potential impacts on road safety nor on the amenity of neighbouring properties and other road users of heavy traffic movements in the number identified in the evidence of Mr Cunningham or even those calculated by Mr Wallis and Mr Joines. We are not prepared to assume that because Transit did not submit on the proposal that it might have no concerns about traffic safety issues at the point where Lower Glenn Road joins State Highway 45. Transit's consideration of traffic implications would have (presumably) been based on its consideration of the application papers which indicated considerably lower heavy traffic movements from the quarry than the evidence has established.

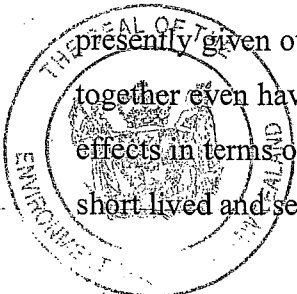
[169] We accept Mr Sutherland's view that the quarry operation has the potential to generate adverse traffic safety effects on other road users in this vicinity. The evidence before us did not even address let alone satisfy us as to the issue of whether or not traffic safety concerns had been adequately avoided, remedied or mitigated when regard is had to the numbers of traffic movements which might potentially be generated by the quarry operation.

[170] The District Council had identified that the roading system could safely cater for 60 heavy vehicle movements per day generated by the quarry and no party challenged that. It is now apparent that 60 movements per day would not enable the quarry to operate efficiently and is considerably lower than the maximum number of movements which might be generated at times of peak production, even on the basis of the Applicant's own figures.

Cumulative Effects

[171] We have endeavoured to identify and separately assess those effects generated by the proposed quarrying operation which might impact on the amenity values of Kaupokonui. There is, however a danger that in compartmentalising those effects, the cumulative effects of various aspects of the proposed quarry are overlooked.

[172] It will be apparent from our earlier comments that Kaupokonui is a place which has very high amenity values. We consider that a significant contributor to those amenity values is the enclosed and somewhat cut off nature of the Kaupokonui basin whose limited area is presently given over to agricultural and recreational activities. These activities co-exist easily together even having regard to the fact that farming can and frequently does produce adverse effects in terms of noise, dust, smell, traffic movements and the like. Those effects tend to be short lived and seasonal.



[173] The quarrying proposal introduces a starkly industrial aspect into the basin in Zones 3 and 4. Whilst the quarrying operations which generate noise, dust and traffic will be primarily undertaken between October and May, the visual effects of the quarry will be apparent year round. The evidence established that the camp and baches at Kaupokonui are used throughout much of the year also.

[174] We accept that quarries will commonly be established in and near rivers or in rural situations. In this case, it is proposed that a substantial industrial operation with its attendant noise, dust, traffic and general industrial effects is to be established in an environment high in amenity value and visited and used by people for that reason. We consider that the introduction of quarrying activities into that environment would have significant cumulative adverse effects on its amenity values.

Section 104 RMA

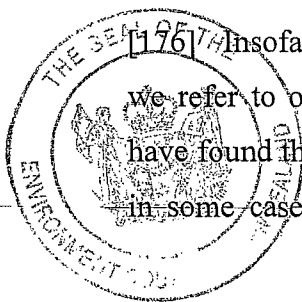
[175] Section 104(1) RMA identifies the matters to which we are required to have regard in considering this application. It provides:

104 Consideration of applications

(1) *When considering an application for a resource consent, and any submissions received, the consent authority must, subject to Part 2, have regard to –*

- (a) any actual and potential effects on the environment of allowing the activity; and*
- (b) any relevant provisions of—*
 - (i) a national policy statement;*
 - (ii) a New Zealand coastal policy statement;*
 - (iii) a regional policy statement or proposed regional policy statement;*
 - (iv) a plan or proposed plan; and*
- (c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.*

[176] Insofar as the matter of actual and potential effects on the environment is concerned, we refer to our earlier discussion on landscape, natural character and amenity issues. We have found that the proposed quarry will have significant adverse effects on these matters or, in some cases, (more particularly, potential adverse effects arising out of dust and traffic



movements) the applicant has not satisfied us that potential adverse effects have been accurately identified and addressed.

[177] We think that this particular application largely stands and falls on the question of effects. Ultimately that was where most of the evidence and argument submitted by the parties was directed. Planning witnesses for the various parties (all of whose evidence came in by consent) addressed the various planning instruments identified in s104(1) and commented on them. We think that it is correct to say that in most instances the provisions to which we were directed were of a general nature reflecting the provisions of Part 2 RMA. We do not seek to diminish the significance of the planning documents in this case, but consider it is its effects which will be determinative of the outcome in this case. There are however two of the documents referred to in Section 104(1)(b) to which we wish to make brief reference in this case, those being:

- The New Zealand Coastal Policy Statement (NZCPS)
- The District Plan.

NZCPS

[178] We have found that Kaupokonui lies within the coastal environment. That finding brings relevant provisions of NZCPS into play. In this case it appears that there are two policy provisions of NZCPS which are of particular relevance when considering this application, namely:

- Policy 1.1.1 which provides:
It is a national priority to preserve the natural character of the coastal environment by:
 - a. *encouraging appropriate subdivision, use or development in areas where the natural character has already been compromised and avoiding sprawling or sporadic subdivision, use or development in the coastal environment;*
 - b. *taking into account the potential effects of subdivision, use, or development on the values relating to the natural character of the coastal environment, both within and outside the immediate location; and*
 - c. *avoiding cumulative adverse effects of subdivision, use and development in the coastal environment.*



- Policy 1.1.3 which provides:

It is a national priority to protect the following features, which in themselves or in combination, are essential or important elements of the natural character of the coastal environment:

- a. *the collective characteristics which give the coastal environment its natural character including wild and scenic areas;*
 - i. *significant representative examples of each landform which provide the variety in each region;*
 - ii. *visually or scientifically significant geological features; and*
 - iii. *the collective characteristics which give the coastal environment its natural character including wild and scenic areas;*
- b. *characteristics of special spiritual, historical or cultural significance to Maori identified in accordance with tikanga Maori; and*
- c. *significant places or areas of historic or cultural significance.*

[179] In terms of Policy 1.1.1, it appears to us that the substantive issue is whether or not the particular use or development proposed in this instance is *appropriate*. We accept that natural character has already been compromised by the conversion of part of the basin to agricultural use and part for use as a motor camp. However, these activities have been readily accommodated within the basin for the reasons which we have previously identified⁶¹. Notwithstanding the compromises affected by these activities, the basin retains a moderate to high degree of natural character.

[180] We consider that the proposed quarry development is not *appropriate* in the sense that it introduces further change in the natural character of this part of the coastal environment whereby the quarrying process and its related structures will become the predominant features of the basin. The effects of this particular proposed use and development on the natural character of the coastal environment will be significant and adverse for these reasons.

[181] Insofar as Policy 1.1.3 is concerned, we consider that the important issue is the protection of Pariroa. All of the landscape witnesses identified this escarpment as being a



particularly significant landscape feature at Kaupokonui. It is also of course a place of major cultural significance to Maori.

[182] Even if we had not reached the conclusion that the quarrying activities would intrude significantly into the coastal environment, we would still have found that they had significant adverse effects on natural character, landscape and cultural values. That is why we made the comment earlier in the decision⁶² that a finding as to whether or not the quarry site is situated in the coastal environment would not necessarily be determinative of the outcome. Our finding that much of the quarry site is within the coastal environment adds further weight to the findings which we have made, however.

District Plan

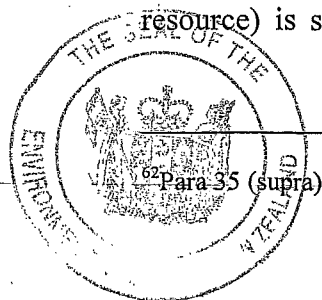
[183] Mr Wilkinson for the Applicant made the point that *extractive industries* are provided for as discretionary activities in the rural zone by the District Plan. Metal quarries are included within the definition of extractive industries.

[184] The Objectives and Policies section of the District Plan contains a number of objectives which are relevant to consideration of this Application. They are as follows:

2.03.1 OBJECTIVES

- (a) *Access to the coastline is maintained and enhanced wherever practicable.*
- (b) *Protection and enhancement of the rural character and amenity values and access to fresh air, open space and privacy.*
- (c) *Maximising the use of existing facilities and physical resources wherever appropriate.*
- (d) *Protection of natural features, places, flora, fauna and landscapes.*
- (e) *Adverse effects of noise, vibration, odour, dust, glare and nuisance are avoided, remedied or mitigated.*

[185] The objectives to which we have referred place considerable weight on avoidance of adverse effects on the various matters identified and protection of landscapes etc. Objective 2.03.1(c) which seeks to maximise the use of physical resources (in this case the gravel resource) is subject to the caveat *wherever appropriate*. In a general sense the issue of



whether Kaupokonui is an *appropriate* site for the establishment of a quarry having regard to the adverse effects which we have identified is the determinative issue before us.

[186] Rural Zone Rule 3.01.4 (a) provides that extractive industries (quarrying and mining) are discretionary activities. All discretionary activities are subject to performance standards but additionally Rule 3.05.2 contains *Additional Rules for Extractive Industries*. For the purposes of our consideration the most significant Additional Rule is Rule 3 which provides:

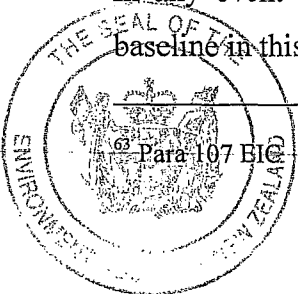
(3) *No extractive industry shall be permitted where it is likely to impact on outstanding natural features, outstanding landscapes, heritage sites, or values identified as requiring protection.*

[187] The evidence does not establish that there were any outstanding natural features or outstanding landscapes which might be impacted by the quarrying proposal. Neither Kaupokonui nor the places in it to which we have referred are identified as heritage items or heritage sites in Schedule 1 of the District Plan. The expression *values identified as requiring protection* is vague and is not defined in the District Plan. Mr Watts was of the opinion that the expression could extend to the values identified in the Objectives as requiring protection⁶³. Objective 2.03.1(b) seeks protection of rural character and amenity values which might accordingly fit within Additional Rule 3 if Mr Watts is correct. There was no argument before us on that matter and we do not make any definitive ruling in that regard.

[188] In his rebuttal evidence for the Regional Council, Mr Sutherland suggested that the permitted baseline may be of some assistance in determining this appeal. He gave the example of a transport company operating a depot on a rural site in Manaia where shipping containers were stored, loaded and unloaded. Mr Sutherland said that such activity was permitted in the Rural Zone and that associated heavy vehicle movements were similarly permitted, unless they reached an *unusual level*. We understood him to suggest that this possibly provided a baseline for comparison for traffic effects from the quarry:

[189] We were unable to find the Rule which provided for the depot to be a permitted activity, although it might possibly be regarded as a commercial activity which is permitted.

In any event we simply do not consider that there is any case for application of such a baseline in this instance because:



- There was no evidence before us which might enable any assessment of the degree of likelihood of a transport depot establishing in the basin at Kaupokonui. At first glance it seems highly unlikely.
- We refer to our earlier comments and concerns about traffic movements. We are unable to make any realistic comparison with the example given by Mr Sutherland in terms of the extent of traffic movements involved.
- We refer to the considerations identified by the Court in *Lyttelton Harbour Landscape Protection Association Inc v Christchurch City Council*⁶⁴ which are suggested to enable baseline comparisons. No analysis of that kind has been undertaken in this case.

The District and Regional Councils' Decisions

[190] Section 290A RMA requires us to have regard to both the District and Regional Councils' decisions in making our determination. We have done so. In this instance the Court has had the benefit of evidence from a wider range of witnesses than the Councils and cross-examination of witnesses which may lead us to reach different conclusions to the consent authorities.

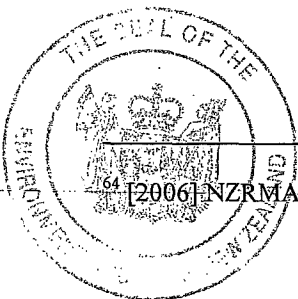
Outcome – Part 2 RMA

[191] We now consider whether or not consent will be granted to the application. That requires consideration and application of s5 RMA informed by the matters set out in ss6 and 7.

[192] Section 5 provides:

5 Purpose

- (1) *The purpose of this Act is to promote the sustainable management of natural and physical resources.*
- (2) *In this Act, sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while—*
 - (a) *Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*



- (b) *Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
- (c) *Avoiding, remedying, or mitigating any adverse effects of activities on the environment.*

[193] The term natural and physical resources*includes land, water, air, soil, minerals, and energy, all forms of plants and animals (whether native to New Zealand or introduced), and all structures*⁶⁵. Clearly the metal which the applicant wishes to quarry is a natural and physical resource. Similarly Kaupokonui, the river, the Reserve and camp grounds are natural and physical resources.

[194] We must determine whether or not the development of the proposed quarry to enable extraction of the mineral resource which it contains, promotes sustainable management. In reaching that decision we must apply the *overall broad judgement* identified in *North Shore City Council v Auckland Regional Council*⁶⁶. That broad judgement requires us to assess conflicting considerations and weigh their relative significance in the decision which we arrive at. In undertaking that exercise RMA attributes particular significance to a number of matters which it identifies in ss6 and 7. We consider those matters now.

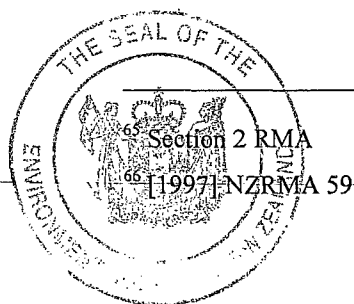
Section 6

[195] Section 6 identifies matters which are of *national importance* and requires that they be weighted accordingly in our considerations. It provides as follows:

6 *Matters of national importance*

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

- (a) *The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:*



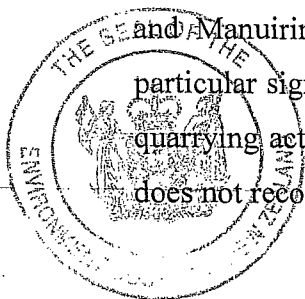
- (b) *The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:*
- (c) *The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:*
- (d) *The maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:*
- (e) *The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.*
- (f) *The protection of historic heritage from inappropriate subdivision, use, and development*
- (g) *The protection of recognised customary activities.*

We consider the following parts of s6 are relevant to these current proceedings.

[196] *The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision use and development.* These matters are a significant issue in this instance. We have found that Kaupokonui lies within the coastal environment. We have identified that the quarry development will adversely affect the natural character of Kaupokonui. Similarly we consider there will be an adverse impact on the natural character of the stream margin. We consider that the quarry development proposed in the Kaupokonui basin is *inappropriate* because of the adverse effects which it will have on the natural character of the area.

[197] *The maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers.* Part of the Applicant's proposal is for the vesting of esplanade reserves along the Kaupokonui Stream which will assist and formalise access for fishers and recreationalists.

[198] *The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga.* The evidence of Mrs Horsfall and Messrs Hudson and Manuirangi identify that Kaupokonui is Maori ancestral land. It contains sites of particular significance to Ngati Tu. More particularly, on the basis of the evidence before us, quarrying activities on Pariroa are likely to involve disturbance of burial sites. The proposal does not recognise or provide for this matter.



Section 7

[199] Section 7 identifies a number of matters to which particular regard is to be had in the decision making process. It provides as follows:

7 Other matters

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to—

- (a) *kaitiakitanga:*
- (aa) *the ethic of stewardship:*
- (b) *the efficient use and development of natural and physical resources:*
- (ba) *the efficiency of the end use of energy:*
- (c) *the maintenance and enhancement of amenity values:*
- (d) *Intrinsic values of ecosystems:*
- (e) *repealed.*
- (f) *maintenance and enhancement of the quality of the environment:*
- (g) *any finite characteristics of natural and physical resources:*
- (h) *the protection of the habitat of trout and salmon.*
- (i) *the effects of climate change:*
- (j) *the benefits to be derived from the use and development of renewable energy.*

Again we identify what we consider are the relevant s7 matters for our consideration.

[200] *Kaitiakitanga.* There was no dispute over Ngati Tu's claim to exercise kaitiakitanga in this area. The evidence established the longstanding historic relationship of Ngati Tu with Kaupokonui. The concept of kaiakitanga does not extend to a presumption that tangata whenua effectively hold power of veto over proposals an area where they exercise that kaiakitanga. However s7(a) does require that tangata whenua concerns as to the possible impacts of development in areas and sites of interest to them must be seriously considered and given particular regard in our considerations.

[201] *The efficient use and development of natural and physical resources.* The Applicant's proposal to extract the metal resource in a situation where it is within easy cartage distance of Hawera seems to be an efficient use of the resource.



[202] *The maintenance and enhancement of amenity values.* Effect on amenity values is one of the principal issues raised in this appeal. For the reasons which we have previously identified we consider that development of the quarry is likely to have significant adverse effects on amenity values at Kaupokonui, and that Kaupokonui is an area where maintenance of amenity values is particularly important.

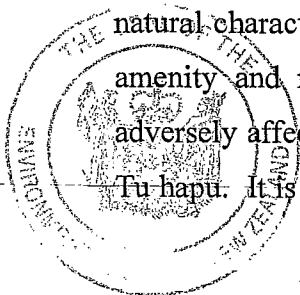
[203] *Maintenance and enhancement of the quality of the environment.* We consider that similar considerations and conclusions apply in this area as those relating to amenity values.

[204] *Any finite characteristics of natural and physical resources.* The evidence of Mr A R Matheson (planner) for the Appellants was that Kaupokonui was one of only half a dozen or so places in the South Taranaki area providing direct access to the coastal environment. Mr Matheson was not cross-examined so that his evidence in that regard remains unchallenged. Even taking a cautious approach to Mr Matheson's evidence, we consider that Kaupokonui has special features which elevate it to the *limited resource* category and that protection of that resource requires particular consideration.

Outcome

[205] We have considered all of the above matters in determining these appeals. There are positive effects from the quarry proposal which will accrue to the Applicant and promote its financial wellbeing as well as to the community in providing an efficient source of material which is required to enable the provision of community infrastructure and development. However, we also find that resources to meet those community requirements are available elsewhere in the district. There will be some enhancement of public access along the margins of Kaupokonui Stream if this proposal goes ahead.

[206] On the other hand, the adverse effects arising out of the proposal are significant and considerably outweigh the positive. In general terms we consider that the Applicant and its advisors have failed to adequately factor into their considerations the confined nature of the Kaupokonui basin where the quarry is to be established. We agree with Mr Cunningham's assessment that it is a sensitive receiving environment. This is an area of moderate to high natural character and high amenity values. It is a place which is valued and enjoyed for its amenity and recreational attributes and has been for decades. Those attributes will be adversely affected by the quarry operation. Kaupokonui is of particular significance to Ngati Tu-hapu. It is valued by them for their traditional associations with the area as well as for the



qualities and amenities which others also enjoy. The quarry operation involves the use of an area which may possibly contain burial sites.

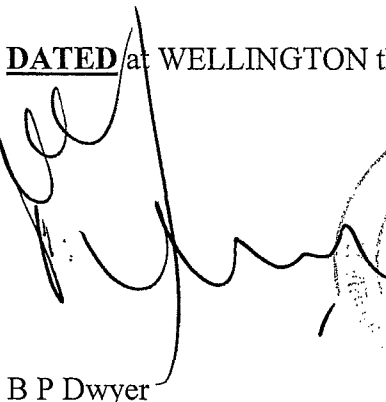
[207] Taking all of those matters into account, we consider that it is inappropriate that quarrying operations be undertaken in proposed quarry Zones 3 and 4. The District Council reached a similar conclusion in respect of Zone 3. Nor do we consider that quarrying ought to be allowed in those parts of Zone 2 intruding into the eastern escarpment (Pariroa) which is a particularly prominent landscape feature and may possibly be a burial site. It may be the case that the remaining parts of Zones 1 and 2 are suitable for quarrying and that some river works could be accommodated in Zone 4, however that would require such a *re-jigging* of the initial applications that any such proposal should come back before the two Councils as fresh applications.

[208] Accordingly, we determine that all of the appeals against grants of consent ought be allowed, and that the appeal against refusal of consent in Zone 3 and conditions ought be declined. The outcome is that the applications for resource consents made by R A Wallis Limited are hereby declined in toto.

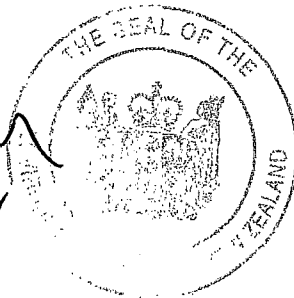
Costs

[209] Costs are reserved. It is our initial view that costs should lie where they fall. The Applicant conducted its case in an efficient and appropriate fashion. It was (largely) seeking to defend consents granted by the Councils. If any of the successful Appellants wishes to make a costs application, it is open for them to do so within 10 working days from the date of this decision though such applications are not encouraged. Any replies are to be lodged within a further 10 working days. Any applicant for costs may then respond within a further five working days to any relevant matter raised for the first time in a reply.

DATED at WELLINGTON this 19th day of May 2008



B P Dwyer



Environment Judge