

SAND AND GRAVEL EXTRACTION

AT

FITZROY BAY

Office of the
PARLIAMENTARY COMMISSIONER FOR THE ENVIRONMENT
Te Kaitiaki Taiao a Te Whare Pāremata

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SAND AND GRAVEL EXTRACTION AT FITZROY BAY

Introduction

I have received a number of complaints concerning the mining operations being carried out at Fitzroy Bay by Horokiwi Quarries Ltd.

The complaints were concerned with:

- (a) The consent application process followed by The Hutt City Council and Wellington Regional Council in dealing with consent applications from the Royal Forest and Bird Protection Society and from Horokiwi Quarries Ltd for activities in Fitzroy Bay.
- (b) The legality of mining operations in Fitzroy Bay.
- (c) The opinion that sand and gravel mining in Fitzroy Bay was not appropriate in the area.
- (d) Uncertainty of ownership of the accreted land.
- (e) Conditions made on consents granted not in accord with advice and submissions made at the hearing on measures for environmental protection.

As the complaints about processing of consent applications appeared to allege unreasonable actions by public authorities personally affecting the complainants I passed these complaints on to the Office of the Ombudsman for investigation under the Ombudsmen Act 1975.

The other complaints (b) to (e) I assessed to involve allegations of unsatisfactory public authority management. These are matters which can be investigated under Section 16 (1) (b) of the Environment Act 1986.

Background

Fitzroy Bay is located to the east of Bluff Point between Pencarrow Head and Baring Head, facing Cook Strait on a very exposed and dynamic coast. Waves provide the energy for movement of sediments in a generally northerly direction and their movement gives a potential for sediment build-up in Fitzroy Bay. The primary supply of both sand and gravel along the coast is from the Orongorongo River and although over time this supply is highly variable it can be expected to continue. (Hastie 1989¹)

The Bay has conservation and amenity values as a piece of rugged coast, a nesting site for Banded Dotterel and a location of some regionally rare or threatened dune and gravel beach plants and associated insects. Also there are regionally significant wetlands associated with Lakes Kohangapiripiri and Kohangatera which are of particular scientific interest.

¹ Hastie W J: (1989) East Wellington Harbour and South Coast Coastal Mining Investigation. Tech. Report L1989/1 Land Information Dept. Wellington Regional Council.

Quarrying for sand and gravel has been carried out in the Fitzroy Bay area since 1909. During this time there have been several attempts to control mining activity in the Bay without obvious effect. The miner has a *Profit a Prendre* agreement to secure mining rights on private land in the Bay but there has been uncertainty as to whether, in the past, the appropriate approvals had been given for mining on public land i.e. the foreshore and the accreted area. This may have arisen because of the uncertainty over land boundaries and the fact that the formed vehicle track does not follow the alignment of the legal road which marks the seaward boundary of private land.

History of Consent Process

The Lower Hutt Branch of the Royal Forest and Bird Protection Society (RFBPS) sought consent from The Hutt City Council to provide protection for some of the biological features of the Bay through a proposal to rehabilitate and revegetate mined areas, erect fences and signs, and establish a walkway. The hearing of this application was adjourned until an application over the same area, by Horokiwi Quarries for various consents relating to their sand and gravel extraction operation, had been received. Hearings were then held to consider the two applications together.

A joint hearing between the Wellington Regional Council and The Hutt City Council was held on 8 and 9 March 1994 and resulted in the granting of consents to Horokiwi Quarries Ltd to extract, process and transport sand and gravel from the coastal marine area below mean high water springs (MHWS), from accreted and *Profit a Prendre* private land to the landward side of the MHWS, and for the taking and discharge of water and the placement of structures to facilitate this.

The Royal Forest and Bird Protection Society (Lower Hutt Branch) application was declined by The Hutt City Council except for consent to erect signs to mark natural features in accord with their application.

Since the granting of the consents an agreement has been made between Horokiwi Quarries Ltd and the Department of Conservation for the northern boundary of the approved mining area to be moved some 150 metres south to be 50 metres south of the wreck of the *Paiaka*. The two parties also agreed that excavation at the southern end of the area between the formed and legal roads will result in a dished effect rather than steep-sided pits.

A mining permit has been granted by the Ministry of Commerce, and the Department of Survey and Land Information has made access arrangements (as required by the Crown Minerals Act 1991) with the Company in respect of the unalienated Crown land represented by the accretion area.

No appeals were lodged against any of the decisions of the consent authorities.

Legality and Appropriateness of Mining Activity

The complaints made to me allege that public authorities had, until the recent granting of consents, allowed Horokiwi Quarries Ltd and its predecessor companies to carry out unauthorised sand and gravel extraction at Fitzroy Bay. As matters now stand, Horokiwi Quarries Ltd's operations are fully authorised.

The consents held by Horokiwi Quarries Ltd. were granted after systematic evaluation, including environmental effects assessment, of the Company's current and proposed operations. This was a process in which The Hutt City Council, Wellington Regional Council, and parties who responded to the opportunity provided by the Resource Management Act 1991 to make submissions on the application for consents and to participate in the associated hearing, examined, among other matters, the appropriateness of sand and gravel extraction operations at Fitzroy Bay.

The appropriateness of sand and gravel extraction was also an issue considered during the preparation of the East Harbour Regional Park Draft Management Plan (1994). The Plan was produced after consultation with a number of authorities and recognises mining as an established activity at Fitzroy Bay.

The outcome of the consent application and Draft Management Plan processes indicates that sand and gravel extraction is an activity that can be accommodated at Fitzroy Bay without undue loss of environmental value.

Management of Environmental Effects

Conditions placed on the consents granted by the Wellington Regional Council and The Hutt City Council require the Company, amongst other things, to maintain detailed records of sand and gravel extraction, to monitor the foreshore profile as a check against erosion and to actively rehabilitate mined areas, including the area immediately in front of Lake Kohangatera (where mining is to cease and the area is to be recontoured and rehabilitated within four years). Rehabilitation trials using local indigenous vegetation are to be carried out by the Company and recontouring work is not to be carried out over the Banded Dotterel nesting period of September to December.

These conditions appear to achieve the same ends as the proposals for which the Royal Forest and Bird Protection Society sought consent, and address many of the concerns raised by objectors to Horokiwi Quarries Ltd's application.

In negotiation with the Company, the Department of Conservation obtained undertakings from Horokiwi Quarries to move their northern boundary of operations to a point about 50 metres south of the *Paiaka*. This will increase the separation of extraction activities from in front of the Regional Park, enhancing amenity values and recreational opportunities in this area. Also, the Company agreed that any pits (whose area and depth is limited by consent conditions) created in the non-renewable areas will not be left with steep banks but rather will be left as a dished effect so the landscape character of the area is not fundamentally compromised.

East Harbour Regional Park Management Plan

The East Harbour Regional Park comprises land administered by the Wellington Regional Council, The Hutt City Council, and the Department of Conservation but does not cover any private land. Mining on the *Profit a Prendre* land will not fall under the jurisdiction of the Regional Park Draft Management Plan.

The draft plan's management policy does however recognise the need for coordinated overall management of the Park by the Wellington Regional Council.

Also the Regional Council will, subject to landowner agreement, manage the accreted lands adjoining the Park on behalf of the legal owner in accordance with the plan and will negotiate the rationalisation of land administration with other land-owning agencies in the East Harbour Regional Park.

Community Interest and Liaison

There is a community interest not only in the Park but in conservation management and rehabilitation in the Fitzroy Bay area. It would be useful to harness this energy and interest through the Park Management Plan, making provision for liaison and coordination of activities between agencies and with community groups and commercial organisations within the Park such as Horokiwi Quarries Ltd.

I have been impressed with efforts taken elsewhere to recognise the community's environmental management interests in particular enterprises. A Heads Of Agreement between the Company and a liaison group representing the community could formalise the exchange of information about environmental issues and concerns and establish a channel of communication between the two parties. I commend this approach to the Company and the community groups interested in protecting environmental values at Fitzroy Bay. It could be assisted by the Regional Council which as coordinator could also come to an arrangement with a representative local group which could report to Council on their perception of compliance with the consent conditions.

Coordination of Monitoring and Enforcement

Because of the multiplicity of agencies with responsibilities in the area, I have concerns about the coordination of monitoring and enforcement activities. Uniformity in monitoring and enforcement should occur and it therefore seems appropriate for there to be a joint meeting of authorities to establish a common framework and to assess whether monitoring could be assigned to one agency. At the very least it would be useful for one agency to act as the first point of contact for the public on any environmental issues in the area. This would seem most appropriately to be the Wellington Regional Council because of the East Harbour Regional Park and the intention of the draft management plan to provide for the management of a "coastal" land use area. Participation in such discussions by an interest group representative of the community would assist in ensuring community understanding and support for the process.

Responsibility for Accreted Land

Clarification of land boundaries, ownership and confirmation of jurisdiction, particularly of the accreted land, is needed. The Department of Survey and Land Information needs to resolve this issue preferably in a way which enhances the concept of the East Harbour Regional Park and simplifies its management.

The current draft management plan for the East Harbour Regional Park provides a vehicle to facilitate these conclusions.

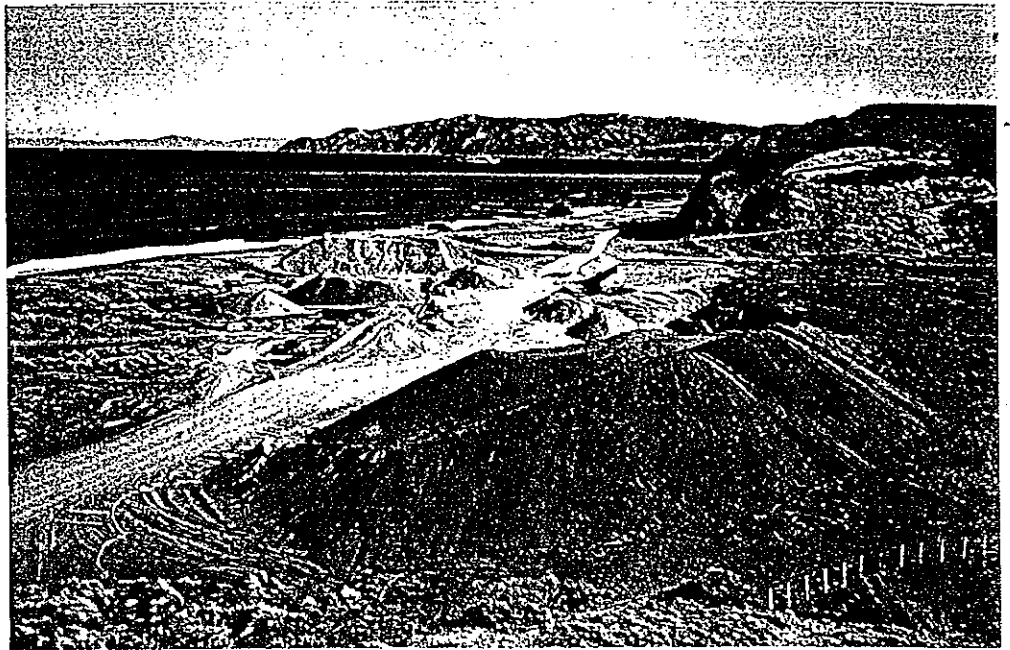
Recommendations

- 1 That the Wellington Regional Council convene a meeting of the relevant consent authorities, interested groups and the Company to:
 - Establish common standards for compliance monitoring and enforcement procedures.
 - Promote the concept of a single agency receiving initial complaints.
 - Promote a community/Company liaison arrangement.
 - Decide if there is any community group role in environmental monitoring and/or management in Fitzroy Bay, and define what that role is.
- 2 That the Department of Survey and Land Information, in consultation with affected public authorities, allocate the environmental management responsibilities of the accretion within Fitzroy Bay in a way that fosters the proposals for the East Harbour Regional Park and is compatible with its management plan.
- 3 That a group representative of the local community and interest groups (possibly under the umbrella of the East Harbour Environmental Association) negotiate a liaison arrangement with the Horokiwi Quarries Ltd to provide a forum for the exchange of information, development of rehabilitation plans, and reporting of progress in relation to conservation issues and environmental management of the impacts of sand and gravel recovery from Fitzroy Bay.



**FITZROY BAY
SAND AND GRAVEL
MINING AREA**

Stock-piled material in front of Lake Kohangatera - to be removed and area recontoured and rehabilitated.



Looking south-east towards Baring Head. Approximate landward boundaries of approved mining operations area marked.



Looking north-west.
Approximate landward
boundaries of approved mining
operations area marked.



Note: Areas marked are
indicative only.