Decision No. W 50 /2004

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of references under Clause 14 of the First Schedule to the Act

BETWEEN NEW ZEALAND MINERAL INDUSTRY ASSOCIATION
(RMA 1870/98)
CHIEF EXECUTIVE OF THE MINISTRY OF ECONOMIC DEVELOPMENT
(RMA 1896/98)
Referrers

AND THE THAMES-COROMANDEL DISTRICT COUNCIL
Respondent

BEFORE THE ENVIRONMENT COURT

Environment Judge C J Thompson

Environment Commissioner W R Howie

Environment Commissioner M P Oliver

HEARING at AUCKLAND: 24 – 27 May 2004

COUNSEL:

R A Fisher and M L van Kampen for the New Zealand Mineral Industry Association [MIA]

R O Macky for the Chief Executive of the Ministry of Economic Development [MED]

S R Brownhill and L P Hinchey for the Thames-Coromandel District Council [TCDC]

B I J Cowper for Coromandel Watchdog of Hauraki Inc, Thames Environmental Society Inc, and Tairua Environmental Society Inc (s.271A/274 parties) [PIPs]

INTERIM DECISION

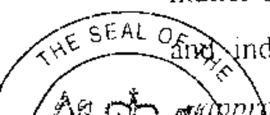
Introduction

[1] The Thames-Coromandel District Council published its Proposed District Plan in 1997. It released a *Decisions* version of the PDP in September 1999. These references are about the provision, or argued lack of it, that the PDP makes for mining and related activities. Shortly before the hearing, the Council modified its stance somewhat and in some respects moved towards the referrers' positions, but not sufficiently to resolve all matters in issue. The PIPs do not accept the Council's modified position and argue for the position contained in the *Decisions* version of the PDP; viz that mining should be *prohibited* in the Conservation and Coastal zones, and in all Recreation and Open Space policy areas. In all other zones and policy areas, it should be a non-complying activity.

[2] The parties have agreed that it would be efficient to ask the Court to initially deal with the references at a relatively high level of abstraction: ie to resolve the issue of an appropriate planning status for mining related activities in the zones created by the PDP. Once that issue is resolved, attention can then be turned to the detail of appropriate objectives, policies, rules, etc. The outcome of this overview decision will turn largely on the view we come to about the place of a *prohibited* status for an activity in the hierarchy of planning controls and the management of effects.

[3] The New Zealand Minerals Industry Association represents twelve operational mining and quarrying companies, and a further fourteen firms involved in the sector as contractors, consultants, and the like. Its purpose is: *To promote and be recognised as a profitable and environmentally responsible industry in New Zealand.*

[4] The Chief Executive of the Ministry of Economic Development has an interest in the matter because the Ministry is responsible for advice to the Government on mineral markets and industries, and manages Crown minerals. It wishes to see the District Plan give *appropriate recognition of mineral and aggregate resources, and provision for their use...*



[5] Coromandel Watchdog of Hauraki Incorporated is an environmental group having as one of its objects: *...to work for the protection of the Coromandel Peninsula...from precious metal mining in inappropriate places and of inappropriate scale and to support careful planning for the economic, social and spiritual well-being of the lands, waters and communities of the Coromandel Peninsula...* It acts as an umbrella organisation for such organisations as the autonomous Thames Environment Society Incorporated and Tairua Environment Society Incorporated, both of which have similar objects, but with emphasis on matters of concern to their immediate locales. All have a common position, which has already been briefly mentioned. They do however accept that the PDP would be improved by a rather more fulsome discussion of minerals, and the strategies to be adopted in dealing with them and the industries surrounding them. We can refer to those parties globally as the Public Interest Parties. [PIPs]

Background

[6] The geographical area covered by the PDP is effectively all of the Coromandel Peninsula and includes a substantial part of the *Hauraki Goldfields*. They are a geological entity extending north to include Great Barrier Island (which is within the jurisdiction of the Auckland City Council) and south past the vicinities of Waihi and Te Aroha (within the jurisdictions of the Hauraki District Council and the Matamata-Piako District Council respectively). The Hauraki Goldfields are a highly mineralised epithermal area containing not only gold but substantial deposits of silver and other ore bodies. There are industrial aggregates present also.

[7] The first proven gold deposits in what became the Hauraki Goldfields were found near Coromandel township in the 1860's, and there is a substantial history of mining on the Peninsula. Interestingly though there has not been a working precious metal mine within the area covered by the PDP for more than sixty years. For any recent precious metal mining history in the general area, one has to look south to the Martha Mine at Waihi and the Golden Cross Mine, both of which are in the Hauraki District. To that extent, the Council does not have recent and direct practical experience to draw upon when it comes to managing the effects of mining. There are quarries in the TCDC area however.

[8] No figures can be given to indicate how much of the Rural, Conservation and Coastal zones created by the PDP could be regarded as likely targets for mining. But between them, those zones cover a very high proportion of the relevant landmass and the historically known areas of mineralisation, which are spread throughout the peninsula. It is therefore not unreasonable to assume that the proposed *prohibited* status, where it applies, will deny access to substantial mineralised areas.

[9] The Council's position now [ie post-hearing] is that it wishes to see:

- *surface mining* as a *discretionary* activity in the Rural zone (outside all policy areas except Maori and Future Development policy areas) and *prohibited* elsewhere.
- *underground mining* as a *discretionary* activity in all zones.
- *mining operations* as a *discretionary* activity in the Rural zone (outside all policy areas except Airfield, Future Development and Maori policy areas) and in the Housing zone (Airfield and Marine activities policy areas), as a *non-complying* activity in the Industrial zone (Heritage, Marine Activities & Service Industrial policy areas and in the Town Centre zone (outside all policy areas except Pedestrian Frontage and Heritage policy areas), as a *permitted* activity in the Industrial zone (outside all policy areas) and as *prohibited* in all other zones and policy areas.

[10] To summarise the positions the parties eventually came to we set out the following Table. The following notes may assist in reading the Table:

- Some generalisations were made in preparing the table as some parties introduced a number of permutations. We have attempted to capture the principal position of each of the parties.
- R & OS indicates Recreation and Open Space Policy Areas.
- Activity Status: P = Permitted C= Controlled D = Discretionary NC = Non-complying PR = Prohibited.
- *Current* refers to the Decisions version of the PDP.
- The PIPs position appears in the *Current Mining* column because they wish to retain the Decisions version status quo.

Zones	Current	Current	Suggested Mining								
	Quarrying	Mining	Surface			Underground			Operations		
		PIPs	TCD	MED	MIA	TCD	MED	MIA	TCD	MED	MIA
Rural Policy Areas											
All except R & OS	NC	NC	D	D	D	D	D	D	D	D	D
R & OS	NC	PR	PR	PR	NC	D	D	D	PR	PR	NC
Outside all Policy Areas	D		D			D			D		
Coastal Policy Areas											
All except R & OS	NC	PR	PR	D	D/NC	D	D	D	PR	D	D/NC
R & OS	NC	PR	PR	PR	PR	D	D	D	PR	PR	PR
Conservation Policy Areas											
All except R & OS	NC	PR	PR	D	D/NC	D	D	D	PR	D	D/NC
R & OS	NC	PR	PR	D	D/NC	D	D	D	PR	D	D/NC
Industrial Policy Areas											
All except R & OS	D	NC	PR	D	D	D	D	D	NC	P/C	P/C
R & OS	D	PR	PR	PR	PR	D	D	D	PR	PR	PR
Housing Policy Areas											
All except R & OS	NC	NC	PR	D	D/NC	D	D	D	D/PR	D	D/NC
R & OS	NC	PR	PR	PR	PR	D	D	D	PR	PR	D
Town Centre Policy Areas											
All except R & OS	NC	NC	PR	D	D/NC	D	D	D	NC	D	NC
R & OS	NC	PR	PR	PR	PR	D	D	D	PR	PR	D/PR

The DOC position

[11] The Department of Conservation elected not to participate in this phase of the hearing of the references, but indicated that it may do so if and when the detail of objectives, policies and rules comes to be considered. It should be mentioned however that the Crown has prohibited access to the DOC *estate* north and north-west of the Kopu-Hikuai Road [SH25A] for any mining purposes. That is something that it may do in its capacity as landowner but it is not a guide, necessarily, in deciding the issue of appropriate planning status under the PDP.

Prohibited activity status

[12] The Concise Oxford defines *prohibit* as *...formally forbid by law, rule etc...* and that seems an entirely appropriate way of regarding the term in this context. In the abstract, *prohibiting* an activity is a legitimate planning tool, but one to be used sparingly and in a precisely targeted way. Section 77B(7) provides that if an activity is so classified; *...no application may be made for that activity and a resource consent must not be granted for it.* It is, therefore, a distinct exception to the permissive, effects based, philosophy of the Act as a whole. It is not, we think, legitimate to use the *prohibited* status as a de facto, but more complex, version of a *non-complying* status. In other words, it is not legitimate to say that the term *prohibited* does not really mean *forbidden*, but rather that while the activity could not be undertaken as the Plan stands, a Plan Change to permit it is, if not tacitly invited, certainly something that would be entertained. We note that the Hauraki District Plan has something of the same format. We do not regard that as a sound precedent, although we do commend other parts of that Plan later in this decision.

[13] We think that the correct approach to a *prohibited* status is that offered by Mr Serjeant, a consultant planner for MIA; viz that it should be used only when the activity in question should not be contemplated in the relevant place, under any circumstances. That would be the first of the two *extreme examples* given in the decision in *Re an Application by Amoco Minerals NZ Ltd* (1982) 8 NZTPA 449:

> To give two extreme examples there could be cases where social and/or environmental factors are so important that no mining should occur on certain land notwithstanding the importance of the mineral resources there; or in another case, the importance of the mineral resources in a particular place in national terms might outweigh very substantial local environmental damage.

That approach both fits the meaning of *prohibited*, and requires a precise targeting of the status at areas of land for which, or circumstances in which, the activity in question should never be contemplated.

[14] That said, we recognise that a significant mining proposal will almost certainly require a Plan Change in any event, because of the many planning issues each will raise, even if resource consents might theoretically be available. That was the basis, for instance, on which the Martha and Golden Cross mines were established in the Hauraki District. But that does not alter the basic proposition that a *prohibited* status should be confined to those activities and those places which truly justify it. Nor should a Plan Change application be forced upon a would be miner in circumstances where the Council should have foreseen all along the possibility of mining interest, and made appropriate provision for that in its plan. As something of an aside, we observe also that under Clauses 25 and 27 of the First Schedule to the RMA the Council can, subject to appeal, decline to accept a Plan Change application for two years after the Plan becomes operative.

[15] As Mr Cowper says in his closing submission, the position has not advanced much on what was said in another extract from *Re an Application by Amoco Minerals*:

> But even if a large scale operation is more likely than one of smaller scale, we have concluded that the question whether it should be permitted on this land should not be answered finally until the nature and extent of the ore body has been ascertained and the proposed mining operations defined more clearly.

We think that view still holds good, and it emphasises the point that unless it can definitively be said that in no circumstances should mining ever be allowed on a given piece of land, a *prohibited* status is an inappropriate planning tool.

Objectives and Policies

[16] In response to an inquiry from the Court as to whether the PDP objectives and policies framework was adequate to administer the range of activity status applied to quarrying, Mr Fisher for MIA advised that their planning consultant, Mr Serjeant, considered that in general the provisions were adequate, but may require some fine tuning, depending on the Court's decision. We presume that the same would apply to the policy framework supporting the range of provisions relating to production forestry.

[17] We understand that most of the outstanding references on the PDP have now been resolved and that the *policy* parts of it (including issues, objectives and policies) are largely finalised, apart from those affected by these proceedings. It was generally acknowledged by the planning consultants for three of the parties (TCDC, MED and MIA) that changes to the policy parts of the PDP would be required to reflect and support any alterations to the activity status of mining.

[18] That said, we mention some provisions of the PDP which are helpful in putting a background to decisions which might be made. We do not suggest these as an exhaustive list of relevant factors, but they seem particularly helpful.

- Section 212: Landscape and Natural Character: this section helps to explain why various areas and types of landscape and character are regarded as important. 212.2.2 sets out the issues of potential degradation of landscape values and natural character by inappropriate development, and leads on to the policies in 212.4.
- Section 221: Land Disturbance and Earthworks: the relevance of this section is self explanatory in the context of mining. The discussion leads to policies in 221.4 designed to avoid, remedy or mitigate the adverse effects of land disturbance and earthworks in particularly sensitive parts of the District. 221.6.2 makes special mention of mining in the context of Land Disturbance and Earthworks and records the concerns about it. It will be apparent from what we have said about the use of the *prohibited* status that while we recognise the concerns, we do not necessarily agree with the methods used to meet them in the PDP, and this section is likely to require the most revision.
- Section 337.5 and Section 337.6 deal with the Open Space and Recreation policy areas which feature in the TCDC's and the PIP's positions as areas of special concern. Open Space policy areas are applied across zones where it is necessary to prevent the erection of structures and buildings in areas subject to natural hazards, to flooding or required for flood control, and on esplanade reserves. It is, essentially, a risk control measure. Recreation policy areas are again not zone specific and are applied to land for recreation reserves, sports grounds and land for recreation and leisure activities. [We note that this policy area is to be the subject of a pending variation.]

[19] All of those provisions, and of course the zones themselves, reflect the special nature of the Coromandel Peninsula, which has never been in dispute. It is a place of exceptional beauty in both its coastal areas and high hinterland. Its extremes of rainfall and steep and unstable topography make its landforms and vegetation vulnerable to erosion and degradation if development is inappropriately placed, or inadequately designed and managed.

The place of mining in the proposed plan.

[20] There is no doubt that minerals and aggregates are *natural and physical resources* in terms of s5. While s5(2)(a) recognises that minerals can be extracted only once, the remainder of the purpose of s5 remains applicable. The PDP did not recognise the issue that minerals historically have been, and continue to be, a significant local (and possibly regional and national) resource and, consequently, that mining is potentially an equally significant activity. Mr Richard Barker, a consulting geologist, gave evidence that conventional geological modelling techniques indicate a potential resource of 20 million ounces of gold and 87 million ounces of silver in the Hauraki Goldfields. Total known and potential resources of all minerals are valued at some $23,863 million. For a District which includes a substantial part of the Hauraki Goldfields and its mineral resources, the absence of them from a significant place in the PDP was a surprising omission, and one which could have other quite significant down-stream planning consequences; eg in making provision for reverse sensitivity issues. That could be a particularly important consideration, given that mining can only take place where the target ore body is to be found. In dealing with a similar issue vis a vis the Transitional Plan in *Cyprus Minerals New Zealand Ltd v Thames-Coromandel District Council* (A6/90) the then Planning Tribunal held that the following objective should be inserted:

> To acknowledge the district, regional and national importance of past mining activity on the peninsula; to recognise the possibility that significant quantities of valuable minerals remain in the ground; to accept that the attention of prospectors towards locating and identifying them will continue; to provide for activities occurring through, or as a result of, such attention on a carefully controlled basis, bearing in mind, (inter alia) the needs: (a) to safeguard the physical environment of the district; and (b) to take account of the social values of the district's inhabitants, and the general economic well-being of the district.

No doubt from a somewhat belated recognition that those issues remain as valid now as they were then, the Council has modified its position on this issue also, and proposes provisions to

be added to the PDP. These we include as Appendix 1 to this decision, and we will say more about the plan provisions shortly.

[21] The exclusion of mining from large tracts of the Peninsula seemed to reflect an attitude towards that industry generally which is, we think, inconsistent with the attitude taken towards other activities which, depending on their nature and scale, have the potential to produce equally adverse effects. Mining was treated differently from, for instance, quarrying and production forestry. Those two activities are provided for throughout the Peninsula, mining was not. But quarrying is a subset of mining, with potentially identical effects. In the case of production forestry the noise, dust, traffic issues, indigenous vegetation issues and general visual effects are, potentially at least, similar to anything likely to be produced by a mining undertaking. The Decisions version defines Production Forestry as [in summary] meaning the management of forests planted primarily for logging and timber production, and including extraction for processing, and planting and replanting. Section 5, subsection 550, Table 1 – Activity Status: Rural Activities, gives it a wide gamut of activity status, depending on the zone. For example:

- Rural zone outside all policy areas – *permitted.*
- Rural zone within Recreation and Open Space policy areas – *controlled.*
- Coastal zone outside all policy areas - *discretionary.*
- Coastal zone within Recreation and Open Space policy areas – *controlled.*
- Conservation zone [all parts] – *controlled.*

The contrast with mining is obvious and marked. In no case is Production Forestry listed as *prohibited.*

[22] To that extent, the PDP was both internally inconsistent and not, as it should be, effects based. If it is able to deal with the effects of quarrying and forestry, then it should be able to deal with mining on equal terms. One would expect that of a Plan designed to assist a territorial authority to perform its function of the integrated management of effects under s31.

Mining and related activities – definitions

[23] The PDP contained this definition of *mining*:

> *Mining* means to take, win or extract, by whatever means, a mineral existing in its natural state in land, or a chemical substance from that mineral, for the purpose of obtaining the

mineral or chemical substance, while producing large volumes of waste material in proportion to the mineral product, but does not include prospecting or exploration or quarrying; and to mine has a corresponding meaning. The definition of mining includes:

(i) the extraction, transport, treatment, processing and separation of any mineral

(ii) the construction, maintenance and operation of any works, structures and other land improvements and of any machinery and equipment connected with mining

(iii) the removal of overburden by mechanical or other means, and the stacking, deposit, storage and treatment of any substance considered to contain any mineral

(iv) the deposit or discharge of any mineral, material, debris, tailings, refuse or wastewater produced from or consequent on, any such operations

(v) the doing of all lawful acts incidental or conducive to any such operations when carried on, at, or near the site where the mining, exploration or prospecting is carried out.

As part of its reconsideration of its original position, the Council has reviewed that definition and now believes that it should be separated into three activity definitions, *surface mining*, *underground mining* and *mining operations*. After considering the evidence given at the hearing it now proposes that they be defined as follows:

Surface mining means taking, winning or extraction of naturally occurring minerals from under or on the land surface utilising open pit, open cast or other recognised surface mining techniques, methods and equipment. It does not include minor surface activities (eg removal of boulders from the surface of the land) which are provided separately under the 'Earthworks' provisions.

Underground mining means taking, winning or extraction of naturally occurring minerals from under the land surface utilising shafts, adits, tunnelling and other recognised underground mining techniques, methods and equipment, and includes surface disturbance associated with underground mining shafts and backfilling of the void with waste rock. It also includes the transport of material beneath the land, but does not include any other aspects of 'Mining Operations.'

Mining operations means operations carried out in connection with mining (for any mineral) carried out at the site where the mining is carried out or any other site and shall include the following:

(i) the transport, treatment, processing and separation of any mineral

(ii) the construction, maintenance and operation of any works, structures and other land improvements and of any machinery and equipment connected with mining

(iii) the removal of overburden by mechanical or other means, and the stacking, deposit, storage and treatment of any substance considered to contain any mineral

(iv) the deposit or discharge of any mineral, material, debris, tailings, refuse or wastewater produced from or consequent on, any such operations

(v) the doing of all lawful acts incidental or conductive to any such operations.

Additionally, and relevant to the dubious distinction between quarrying and mining, the PDP contained a definition of *Earthworks* as follows:

> *Earthworks* means the disturbance of land surfaces by moving, removing, placing or replacing soil, earth or substrate and includes:
>
> (i) quarrying
>
> (ii) prospecting and exploration
>
> (iii) disturbance of land surfaces by moving, removing, placing or replacing soil or earth by excavation, cutting or filling operations
>
> (iv) contouring
>
> (v) roading, driveway and access construction.

The Council now proposes to delete from the definition everything after the word *substrate*, and to delete from the PDP the separate definitions of Quarries and Quarrying. And the definitions of *Prospecting, Exploration, Mining* and *Mineral* contained in the RMA and the Crown Minerals Act 1991 should, the Council proposes, be adopted into the PDP.

[24] We do not see anything particularly useful in defining *mining operations* separately from either type of mining and creating a separate activity category for them. If, as we believe should be the case, the applicant will have a choice of applying for some form of resource consent, or of seeking a Plan Change, the ancillary operations can be dealt with as part of the consent, or part of the Plan Change. The separate definition seems to us to add an unnecessary and unhelpful layer of complication. We would commend the treatment of definitions in section 8.3.1.3 in the Hauraki District Plan as a useful model.

The Hauraki District Plan

[25] We have mentioned that we are less than enthusiastic about the relationship between the *prohibited* status for mining, and express discussion about private Plan Change applications, as contained in the Hauraki Plan. That said, the *prohibited* status in that Plan is confined to surface mining and to town zones, which is a very specific target, and defensible, but we need not take that point further here. In general terms, there are some helpful factors in the Hauraki Plan. Mining and quarrying are not distinguished because their effects are similar.

[26] We readily recognise that different communities should be, and are, free to adopt their own solutions to planning issues in their districts. What suits one, may not suit another. But we temper that view with the observation that the Hauraki Goldfields are all one geological (and natural) resource which happen to cross what are, after all, largely historical and arbitrary local government boundaries, with both the Hauraki and TCDC Districts coming within the same Waikato Region. There is undeniable merit in a reasonably consistent approach to recognising the nature and significance of the resource. More, a reasonably consistent approach would help serve the requirements for integrated management of effects of the use and development of resources: s31. Cross-boundary issues of the use and development of resources are specifically mentioned as giving rise to the possibility of combined plans; - see s80[5]. We are not suggesting that needs to be done here, but the provision does point up the desirability of consistent approaches to similar issues.

General discussion

[27] It is common ground that, in dealing with References on a proposed plan, no party has to satisfy an onus or burden of proof. It is for the Court to decide which of the alternative views put forward by the parties best meets the purpose of the Act [as encapsulated in s5] and meets the requirements of s32. In considering s32, the factors discussed in *Nugent Consultants Ltd v Auckland City Council* [1996] NZRMA 481 can usefully be borne in mind. That is, we should consider whether the proposed control measures:

- are necessary in achieving the purpose of the Act
- assist the Council in carrying out its functions of controlling actual or potential effects of the use, development or protection of land.
- are the most appropriate means of exercising that function.
- have the purpose of achieving the objectives and policies of the plan.

Activity status

[28] What the Council has proposed by way of additions to the PDP certainly improve it, but we still have distinct reservations about it. The proposed Method 221.5.5 and the amended Rule in Section 836 suffer from the fundamental flaws that they:

(a) try to use *prohibited* status as a positive trigger for a Plan Change application; and

(b) still isolate mining as an activity and treat it differently from other industries or activities likely to have similar effects (depending on nature and scale).

[29] In general terms, and with the exception of the PIPs, the parties have achieved considerable movement towards positions with which each can live. We deduce that the MIA would not be too distressed if surface mining in some of the parts of the District in which it is presently *prohibited* became a *non-complying* activity. The issue we see about that is the question of the *thresholds* in (now) s104D. It will rarely, if ever, be the case that the adverse effects of a substantial, and particularly surface, mining proposal will be minor. For a *non-complying* activity to have any prospect at all of success, it will be necessary for the proposal to be not contrary to the objectives and policies of the relevant plan. Considerable care would be necessary in framing fair and relevant Objectives and Policies to ensure that, despite a nominal *non-complying* status, the end result was not a tacit prohibition: see *Wellington International Airport Ltd v Wellington City Council* (W102/97) at p47.

[30] It might be argued that if the effects of an activity are likely to be more than minor, a *non-complying* status is indicated, but in the end the differences between *non-complying* and *discretionary,* when it comes to activities which generate significant effects, are mostly those of perception and attitude. Where an activity is specifically given *non-complying* status, as opposed to acquiring it by default because it does not meet specified standards, that tends to indicate a presumption against the activity. But there is the possibility that it might win through if its effects can be sufficiently avoided, remedied or mitigated, and it does not do violence to the objectives and policies of the Plan. A *discretionary* status, on the other hand, tends to indicate a more neutral stance towards the activity, while still reserving the option of refusing consent if its adverse effects cannot be avoided, remedied or mitigated sufficiently to allow its positive effects to outweigh them.

Result

[31] Drawing those threads together, we think that the following categories of status will avoid the issues surrounding the over-use of a *prohibited* status, and reasonably meet the requirements of Part 2 and the *Nugent* tests. There should not, as discussed, be a separate status for *mining operations*.

Zone	Underground mining status	Surface mining status
Rural: except Recreation and Open Space policy areas	Discretionary	Discretionary
Rural: Recreation and Open Space policy areas	Discretionary	Non-complying
Coastal: except Recreation and Open Space policy areas	Discretionary	Non-complying
Coastal: Recreation and Open Space policy areas	Discretionary	Prohibited
Conservation: except Recreation and Open Space policy areas	Discretionary	Non-complying
Conservation: Recreation and Open Space policy areas	Discretionary	Non-complying
Industrial: except Recreation and Open Space policy areas	Discretionary	Discretionary
Industrial: Recreation and Open Space policy areas	Discretionary	Prohibited
Housing: except Recreation and Open Space policy areas	Discretionary	Non- complying
Housing: Recreation and Open Space policy areas	Discretionary	Prohibited
Town Centre: except Recreation and Open Space policy areas	Discretionary	Non-complying
Town Centre: Recreation and Open Space Policy areas	Discretionary	Prohibited

[32] We recognise the particular places of the coastal and conservation areas of the Peninsula. It is reasonable to adopt a presumption (in the sense discussed in para [30]) that any form of industrial development in those areas should be required to prove itself against challenging criteria. That would justify, on *Nugent* principles, the adoption of a *non-complying* status. It is an easy step to take the same view about Housing and Town centre

areas. The Recreation and Open Space policy areas (see para [18]) readily qualify for a higher degree of protection still, (except in the Rural zone) and we think that they fulfil the requirements for a *prohibited* status we have discussed. We recognise that, with the exception of retaining a *prohibited* status in those areas, what we set out in para [31] is, in general, a degree more restrictive than the PDP already provides for Production Forestry. To that extent it might be regarded as inconsistent with what we have said before. We make no apology for that. We have adopted a precautionary and conservative view, but one which we think remains consistent with principle.

[33] As discussed at the hearing, we invite the parties to confer and to revisit the PDP provisions to provide a policy framework to provide for mining, giving effect to these broadly stated views. Leave is of course reserved to return to the Court for any further assistance, directions or clarification which might be helpful. We would ask counsel to give the Court a progress report on that work by 15 October 2004.

Costs

[34] Costs are reserved.

DATED at WELLINGTON this 30th day of July 2004

For the Court:

C J Thompson
Environment Judge