



SECTION 42A REPORT

Officer's written right of reply 19 December 2024

Hearing 8 Mineral Extraction Chapter

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Appendix 1.1: Officer's Recommended Amendments Mineral Extraction



1 Introduction

1.1 Background

1. My full name is Lynette Morgan. I am the writer of the original Section 42A Report for Hearing 8 on the Proposed District Plan: Mineral Extraction (ME).
2. In the interests of succinctness, I do not repeat the information contained in Section 2.1 of the Section 42A report and request that the Hearings Panel ("the Panel") take this as read.

2 Purpose of Report

3. The purpose of this report is primarily to respond to the evidence of the submitters and provide my right of reply to the Panel. In this Report I also seek to assist the Panel by providing responses to specific questions that the Panel directed to me during the hearing, under the relevant heading.

3 Consideration of evidence recieved

4. I have only addressed those sections and evidence where I consider additional comment is required. I have grouped these matters into the following headings:
 - a) relationship with other Overlays including Ecosystems and Indigenous Biodiversity Chapter;
 - b) spatial extent of Mineral Extraction overlay Puketona - Consent Order and Bellingham's quarries;
 - c) policies - ME P3, P4, P5 and P6; and
 - d) rules - ME R4 – CON4.
5. In order to distinguish between the recommendations made in the s42A Report and my revised recommendations contained in Appendix 1.1 of this report:
 - a) Section 42A Report recommendations are shown in black text (with underline for new text and ~~strikethrough~~ for deleted text); and
 - b) Revised recommendations from this Report are shown in red (with red underline for new text and ~~strikethrough~~ for deleted text)
6. As a result of recommendations in the Section 42A Report and this Right of Reply, where I reference provisions in this report, I use the new reference number (consistent with renumbered provisions in **red text** in **Appendix 1.1**).
7. For all other submissions not addressed in this report, I maintain my position set out in my original s42A Report.



3.1 Key Issue 1- Mineral Extraction Framework and Relationship with other Chapters

Overview

Relevant Document	Relevant Section
Section 42A Report	Key Issue 1 – Mineral Extraction Framework and Relationship with other chapters From Paragraph 80-86
Evidence in chief Forest and Bird	Paragraph 42- 44

Analysis

8. Forest and Bird (F&B) submitted that reference to the provisions in the Ecosystems and Indigenous Biodiversity (EIB) chapter should be included in the notes section of the Mineral Extraction chapter to make it “abundantly” clear that the EIB rules apply to ME activities.
9. While cross referencing is something that is generally sought to be minimised across the PDP, I agree with F&B, the EIB chapter should be included in the Notes to enable clarity and avoid confusion.

Recommendation

10. I recommend the Overview be amended by adding the following: into Appendix 1.1 – Officers Recommended Mineral Extraction Chapter Provisions

Depending on the scale, mineral extraction can have adverse effects including on amenity, landscape values, [natural character](#), [indigenous biodiversity values](#),

This chapter also provides for mineral extraction activities, exploration and prospecting outside of the Mineral Extraction Zone with rules contained in the zones and the relevant district wide chapters, [including the Natural Environment Values chapters and Coastal Environment chapter](#).

Section 32AA Evaluation

11. The recommended amendment provides consistency and clarity to the plan user while ensuring plan users understand what Rules apply to the Mineral Extraction Zone.



3.2 Key Issue 2 - Spatial Extent of Mineral Extraction - Puketona Quarry and the Consent Order and Bellingham Quarries

Overview

Relevant Document	Relevant Section
Section 42A Report	Key Issue 2 – Spatial extent of Mineral Extraction overlay - Puketona - consent order Not in the original report
Section 42A Report	Key Issue 2 – Spatial extent of Mineral Extraction overlay - Bellingham Quarries From Paragraph – 93-105
Evidence in chief – Mr David Brett King	Attached consent order to his email dated 1 November 2024
Evidence in chief – Mr Andrew Christopher McPhee	From Paragraph 19-27 and 36-40
Evidence in chief -Jarrod Bellingham and David Bellingham	Hearing presentation
Supplementary Evidence on Request of Hearing Panel - Mr Andrew Christopher McPhee	Entire statement

Analysis

Puketona Quarry

12. Mr King provided an Environment Court Consent Order ENV 2006-Akl-000144 dated 18 January 2007 (the Order). Parties to the Order were David Brett and Wendy Maxine King, McBreen Jenkins Construction Limited and the FNDC.
13. The Order is in respect of land adjacent to and including the site of the Puketona quarry under the management of Ventia Ltd. The Order provided:

"FNDC has resolved to initiate a plan change or variation process, at the request of McBreen Jenkins Limited, in respect of the mineral zone to include all or part of Lot 1 DP 164802 and to remove the Outstanding landscape overlay from that site. PROVIDED THAT that before the plan change or variation process has commenced, a management plan which includes rehabilitation of all parts of the mineral zone which are no longer actively quarried (on both Pt 6



DP3938 and Lot 1 DP 164802) is prepared by McBreen Jenkins and approved by council."

14. A map showing area "A" and "B" also formed part of the Order. The map showed the agreed reduced "Minerals zone". The Order agreed Area "A" was not to be part of the existing mineral zone and changed the area to rural production.
15. The Order also recorded:

"that any plan change/ variation to extend the minerals zone shall not include the land indicated on the attached SO plan 348598 as Area 'B' This tract of land is intended to operate as a buffer area for neighbouring properties Lots 1 and 2 DP 195714."
16. Both parcels ("A" and "B") were to remain rural production. To help all submitters and the Panel a map depicting the map in the Order was provided. The map also showed the Puketona Quarry mineral extraction overlay as notified and showing an area in white being Lot 1 DP 164802 which Ventia Ltd is seeking form part of the mineral extraction zone. The map is named 'Puketona Quarry consent order'.
17. To date no operator/owner of the site including Ventia Ltd have provided FNDC with a management plan for approval to being the rezoning process.
18. Ventia Ltd is seeking all the parcel of land Lot 1 DP 164802 be zoned Mineral extraction.
19. Mr Andrew McPhee submitted in evidence *"there is minimal risk for Council to rezone Lot 1 DP 164802 Mineral Extraction zone given the proposed PDP framework, which requires any expansion or new mineral extraction activity to submit a mineral extraction area management plan"*.
20. Mr Andrew McPhee evidence was based on the following premise:

the PDP now supports 'activities' based provisions and ME-R4 'Expansion of existing mineral activities' generally fulfils the information requirements sought in the Environment Court consent order through the matters of control, and through ME-S1 (a mineral extraction area management plan).

 - a) *the Mineral Extraction zone only provides for mineral extraction activities at a time when consent is sought and a mineral extraction area management plan is provided (ME-S1), which is a requirement of ME-R4 CON-1. The matter of presenting a mineral extraction area management plan will ultimately be provided, should Ventia wish to expand its operations.*
 - b) *The matters required by the Environment Court consent order are addressed through the following information requirements within ME-S1:*



- *areas for extraction (including pits and faces), storage (including overburden), stock piling, processing and distribution;*
 - *the proposed methodology for clean filling any areas of the quarry;*
 - *Rehabilitation anticipated for the site following the completion of mineral extraction.*
21. The evidence of Mr McPhee also stated it was “reasonable to draw a conclusion that the Environment Court Consent Order required the management plan prior to rezoning being approved because the operative district plan is an effects-based district plan.”
22. Clarification was sought about the current status of the Consent Order i.e it still valid and have ‘effect’. Legal advice was obtained which confirmed as follows:
- a) there is no time limit or expiry date on the Consent Order, it remains current and valid as a whole.
23. I have considered Mr McPhee’s evidence. Ventia Ltd seek the Mineral Extraction Zone be expanded to include all of Lot 1 DP164802. The evidence on behalf of Ventia Ltd relies on an assessment of the appropriateness of the activity, and its spatial extent, as part of an expanded operation via a controlled activity and the associated requirement for a management plan. They also assume mineral extraction activities are appropriate in all of Lot 1 DP 164802, where as the Consent Order clearly contemplated that not all the land parcel may be appropriate for rezoning. In my opinion, whether rezoning all or part of the site for mineral extraction activities, the merits of the spatial extent of that zone must be considered first. In effect, the approach promoted by Mr McPhee in his evidence is pre-empting an appropriate assessment of the spatial extent of the zone. In my opinion, this is not appropriate.
24. While I accept management plans are one tool in the tool box in managing the effects of mineral extraction activities, it is not the only tool. Any additional area considered for the mineral extraction zone will require a full range of assessment under s32 and other relevant parts of the statutory framework. In addition, the proposed framework still provides a consenting pathway without rezoning, albeit as a discretionary activity.
25. Without a management plan it is difficult to assess the potential effects on the environment from expansion of the Mineral Extraction zone, such as archaeology, ecology, landscape, noise, traffic, etc.
26. For the reasons above it is not appropriate to rezone all of Lot 1 DP 164802.



Bellingham Quarries

27. Jarrod and David Bellingham (Bellingham's) presented evidence at hearing seeking the expansion of Hobbs Road (S7.001) Tangaoke Quarry (S7.004) and Te Hapua Quarry (S7.005). These quarries have resource consents and management plans.
28. Bellingham's no longer seek an extension of Paranui Limeworks quarry (S7.003) due to the limited longevity of the site. This quarry operates on an existing use rights.
29. Bellingham's evidence was Hobbs Road, Tangaoke Quarry and Te Hapua Quarry were significant extraction sites, and the expansion of the quarries was needed for the Far North. They also stated that these sites meet multiple criteria of what determines if a quarry should be zoned Mineral Extraction as set out in paragraph 74 of my s42A report.
30. I refer to paragraph 53 of this Reply and the 12 Maps which accompanied my s42A report. The evidence presented at hearing demonstrates these quarries meet many of the criteria required by the RPS for regionally significant mineral resources.
31. Bellingham's gave further evidence that their FNDC consent 217023-RMALUC was not included in the in the notified PDP overlay. I refer to the Map of the Lamer Road site accompanying my 42A report which has been spatially explained in paragraph 53 of this reply. The suggested Mineral Extraction Zone on that map extends the area significantly and includes the area approved as part of FNDC consent 217023-RMALUC.
32. The Maps identify the areas being sought are in the recommended Mineral Zone. However, I do not recommend the quarries be expanded any more than the recommended Mineral Extraction Zone in my s.42A report.

Recommendation

33. Puketona - I maintain my position and recommendation in respect of Lot 1 DP 164802 as set out in Key Issue 2 of my Section 42A Report.
34. Bellingham's - I agree the quarries meet the criteria required by the RPS for regionally significant resources.
35. However, I do not support expansion any further than the suggested Mineral Extraction Zone as set out in Key Issue 2 of My Section 42A report and mapped on the maps accompanying that Report.



Section 32AA Evaluation

36. Not required as no changes are recommended other than the section 32AA which accompanied my early recommendation in respect of the recommendation of a Mineral Extraction Zone at paragraphs 90-92.

3.3 Key Issue 3 - Policies

Overview

Relevant Document	Relevant Section
Section 42A Report	ME P3, P4, P5 and P6 From Paragraph 118-131
Evidence in chief Forest and Bird	From paragraph 24-41

Analysis

- 37. I have grouped these Policies as one as the evidence of Mr Tim Williams was essentially the same in respect of ME P3, P4, P5 and P6, namely the policies are inconsistent with FNDC’s obligation to give effect to the NPS-IB and the NZCPS.
- 38. Mr Williams submitted mineral extraction activities should not be expressly provided for outside the Mineral Extraction Zone. Instead, the effects of ME activities should be managed appropriately under the relevant policies and rules contained in other chapters of the plan. However, this would create a situation where only existing consented activities were provided for as this is only what is captured by the zone. This is an unreasonable imposition in my opinion, particularly for small scale farm quarries and quarries provided for under the NES-PF.
- 39. Mr Willaims also gave evidence the word “significant” had been unintentionally omitted from ME-P5 noting the policy should have read “avoid significant adverse effects”.
- 40. I agree with F&B there needs to be a strengthening of the reference to the Ecosystems and Indigenous Biodiversity chapter and some of the polices were inconsistent with others.
- 41. In addition to the evidence of F&B, I have reviewed the activity status of mineral extraction activities (excluding farm quarries) in the Coastal Environment, ONLs, ONFs and ONC. I have discussed the matter with the authors of the reports relating to Hearing 4 and I note the following activity classes for mineral extraction:



	Within CE, outside ONC	Within CE, in ONC	Within ONL and ONF outside CE	Within ONL and ONF within CE
Extension of existing mineral extraction activity	Discretionary	Non Complying	Discretionary	Non Complying
New mineral extraction activity	Prohibited	Prohibited	Prohibited	Prohibited

42. There is a clear direction in the rule framework that new mineral extraction activities in these overlays are to be prohibited and expanded existing activities are to be undertaken with care. However, I note that there are no quarries in the Coastal Environment identified in the PDP. Therefore, I now recommend changes be made to ME-P3, ME-4 and ME-P6 and ME-P5 be deleted. Those changes would be as follows:

ME-P3	<p>Provide for mineral extraction, and processing outside a Mineral Extraction Zone where:</p> <ul style="list-style-type: none"> a. <u>there is a public benefit derived from the activity;</u> b. <u>it is located outside of the Coastal Environment, Outstanding Natural Features and Outstanding Natural Landscapes and Natural Environment Overlays;</u> c. <u>adverse effects on indigenous biodiversity are avoided, remedied, mitigated, offset or compensated in accordance with the Ecosystems and Indigenous Biodiversity chapter;</u> d. <u>the location is sufficiently away from Urban zones, Carrington Estate, Kauri Cliffs, Orongo Bay, Quail Ridge and Māori Purpose Special Purpose zones and Settlement and Rural Residential zones;</u> e. <u>significant adverse effects are avoided; and</u> f. <u>other adverse effects are avoided, remedied or mitigated.</u>
ME-P4	<p><u>Enable farm quarries within the Rural Production zone where they are limited in scale and operation, and located outside of the following sensitive environments:</u></p> <ul style="list-style-type: none"> a. <u>coastal environment;</u> b. <u>outstanding and high natural character areas in the coastal environment;</u> c. <u>sites and areas of significance to māoriMāori.</u> d. <u>historic heritage sites and areas; and</u> e. <u>outstanding natural landscapes and features and outstanding natural landscapes.</u>
ME-P5	<p>Avoid adverse effects, and avoid, remedy or mitigate other adverse effects from new and the expansion of existing mineral extraction activities on the characteristics and qualities of the following, where located outside of the Coastal Environment Overlay:</p> <ul style="list-style-type: none"> a.—Outstanding Natural Landscapes; b.—Outstanding Natural Features;



	<p>c.—Areas of significant indigenous vegetation and significant habitat of indigenous fauna¹; d.—Historic and cultural values; and e.—Sites and Areas of Significance to Māori.</p>
ME-P6	<p>Avoid adverse effects of new; and the expansion of existing, mineral extraction activities in areas of Outstanding Natural Character areas, Outstanding Natural Landscapes, and Outstanding Natural Features , within the characteristics and qualities which make up the following within the Coastal Environment:</p> <p>a.— Outstanding Natural Landscapes; b.— Outstanding Natural Features; and c.— Outstanding Natural Character.</p>

43. I recommend that the above changes be accepted.

Section 32AA Evaluation

44. The recommended amendment provides consistency and clarity to the plan user and ensures the EIB rules will apply to such activities while ensuring plan users understand what Rules apply to the Mineral Extraction Zone.

3.4 Key Issue 4 - Rule 4- CON 3

Overview

Relevant Document	Relevant Section
Section 42A Report	Paragraph 139-142
Evidence in chief - Mr Andrew Christopher McPhee	From paragraph 47-51

Analysis

45. Mr McPhee in evidence stated it was unclear why there is a need for CON-3 within ME-R4, stating it was unclear what CON-3 was attempting to control, over and above that which the Northland Regional Council was controlling through the resource consent process.

46. Mr McPhee also gave evidence there was nothing in the Section 32 Report that identifies the need to include control over extraction volumes. He stated the proposed limits were arbitrary and did not recognise quarrying activities are a demand driven enterprise.



47. I disagree with Mr McPhee's submission the proposed limit is arbitrary. As noted at paragraph 140 of my S42A report resources consents via the Management Plan provide for a maximum annual volume to recognise the variability of the extraction rates. It is up to the various companies how they manage their extraction rates to meet demand. Variation in extraction above consented limits have the potential to create noise, traffic and dust effects that were otherwise unanticipated by the consented activity. It is therefore appropriate that these are considered where expansion is occurring.

48. The other issue is if there was no annual authorized annual extraction volume it would be difficult to manage and enforce those quarries that operate under exiting use rights.

Recommendation

49. I maintain my position and recommendation in respect of Lot 1 DP 164802 and as set out in Key Issue 2 of my Section 42A Report.

Section 32AA Evaluation

50. Not required as no changes are recommended.

4 Additional Information / Questions from the Hearing Panel

51. After the conclusion of the hearing the Panel raised the following questions:

a) The panel sought an explanation of the additional maps provided with the 42A Report:

52. 12 maps were provided, for the assistance of submitters and the Panel. Each map identified the quarries in the PDP and discussed in the s42A report. The purpose of the maps was to spatially demonstrate the following:

a) the notified PDP mineral extraction overlay which was shown by a crossed mustard shaded area;

b) the new suggested mineral extraction zone which is outlined in solid red line;

c) the PDP zone where the suggested mineral zone sits within; and

d) two red circles,

i. one solid red circle which represents the current 100M setback;

ii. the other a dotted red circle, which demonstrates what 500M setback would look like.

53. Clarification was sought in respect of the status of the Lamer quarry and the quarry's Resource Consent. This was relevant given the recommendation



made at hearing to amend the recommendation of the S42A report to Quarry to include the Lamer Road in the Mineral Extraction Zone, which resulted in an expansion of the spatial extent of quarry.

54. Provided with the S42A reports was a copy of the Resource Consent for all the quarries which were not operating on existing use rights. Lamer Road, Resource Consent is dated 19 August 2020 – AUT.003015.02.07.
55. The Resource Consent set out all the parcels of land applicable to Resource Consent of Lamer Road quarry those parcels are:
 - a) 5183686 Lot 1 DP 172915 NA102D/189, NA102D/190;
 - b) 4956379 Part Section 49 Block X Takahue SD NA17D/411;
 - c) 5005349 Lot 1 DP 43463 NA1826/47;
 - d) 4962900 Part Section 29 Block X Takahue SD NA406/9;
 - e) 4927062 Lot 1 DP 49811 NA1B/1477;
 - f) 5158050 Part Section 57 Block X Takahue SD NA17D/411; and
56. The total parcels of land that make up Larmer road is six. The parcels are shown in the Larmer Road map outlined by a solid red line and form the suggested mineral extraction zone. The Map provided in respect of Larmer Road is the map demonstrating the new suggested Mineral extraction Zone of which I recommend at the beginning of the hearing.
57. Paragraph 77 of s42A report, sets out the criteria if a quarry should be determined a Mineral Extraction Zone, Lamer Road meets the criteria as set out in paragraph 77 a) and b)
58. Clarification was sought in respect of Mr McPhee professional opinion about the use of the word “enable” within the Mineral Extraction Zone Rule Framework when addressing his evidence in respect of ME -P2.
59. Ventia Ltd did not make a submission on ME-P2 so any evidence made in terms of ME-P2 is out of scope of their original submission.
60. However, if the panel is seeking FNDC planning advice on the words ‘enable’ and /or “provide for” with respect to the policy direction in relation to a specified rule status this was also addressed as part of Hearing 4. Each term should be considered along with the relevant activity’s ability to create adverse effects in its context. However, ‘enable’ is considered a more active term than ‘provide for’ which is more passive. There is no specific rule status that needs be attributed to either terminology.