

# A local authority's view of mining and the Resource Management Act

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## Abstract

Mining is still a significant economic activity within the Hauraki District. The Martha project is particularly significant. Estimates are that in the order of 850 direct and indirect jobs are derived as a consequence of the Martha project within the Waikato Region.

The Resource Management Act 1991 (RMA) is New Zealand's primary piece of environmental legislation. It sets out to provide the framework for the control of the use, development and protection of almost all physical and natural resources. Minerals are excluded from the sustainability requirements of the legislation but as mining invariably involves the use of land, all the other elements of RMA apply.

The Council's role in dealing with mining changed with the introduction of RMA. It became responsible for administration of those matters that fell within the functions set out in section 31 of the RMA in respect to existing authorisations. Mineral development needed to be considered in the development of the District Plan that the Council is required to prepare.

Implementation of the Act has been a challenge for not only local government but for many industries and resource users since it came into force in 1991. There have been, and are, differing views on both the way it is administered and its intent. The Hauraki District Council has been at the forefront of some of the challenges that are a consequence of the Act. Its reactions to these challenges have been consistent. It treats mining in the same way it treats any other industry. At times this approach has not been understood and without challenge from sections of the community.

## Introduction

This paper provides a Local Authority view of mining in the context of the Resource Management Act 1991(RMA). The view that is being presented is that of a Local Authority Officer who has dealt with issues of mining and the RMA since the Act become operative on 1 October 1991. In fact at 4:30 pm on 1 October 1991 the first RMA consent application that I was to be involved in was lodged at the Hauraki District Council offices. It related to a proposal to replace a conveyor at the Martha Mine in Waihi with a single tunnel.

The views that are expressed in this paper are my own and not those of my employer the Hauraki District Council. However some of the Council's views will be discussed. The paper is structured as follows;

Introduction

Background – some background information on the Hauraki District

Mining & the Hauraki District – a summary of information regarding mining in the Hauraki District

The Statutory Framework – The Resource Management Act – Where it sits

Resource Management Act – a discussion on some of the relevant sections of the Resource Management Act

How the Hauraki District Council has reacted to mining in its statutory planning documents

Community Reactions – some observations

Observations and Conclusions

## Background

The Hauraki District covers an area of 1144 square kilometres and a significant part of the District is dominated by two major river systems - the Piako and Waitakaruru, and the Waihou and Ohinemuri river systems and their associated catchments.

The Piako River catchment consists predominantly of a flat plain through which the Piako River meanders, joined by streams rising in the low rolling hills of the Hapuakohe Range (western boundary of district) before flowing into the Firth of Thames. The catchment was once extensive swampland until land-draining activities began in the early 1900s. Much of the catchment is now well developed with 85% under pasture. It is predominantly an area of intensive dairy farming. The northern coastal boundary of the catchment and District (from Miranda to the Waihou River) is dominated by a low lying mangrove wetland.

The Waihou River catchment is characterised by a broad flat valley through which the Waihou River flows before entering the Firth of Thames near Kopu. The alluvial plateau of this valley acts as a topographic divide between the Waihou River and the Piako River to the west. To the east of this valley the land rises in steep spurs and ridges to the Coromandel Ranges to the north and the Kaimai-Mamaku Ranges to the south. The Karangahake Gorge that dissects the ridge from east to west, through which the Ohinemuri River, the main tributary of the Waihou River flows, divides these two ranges. In the eastern part of the District lies the Waihi basin. This is a roughly circular basin forming the headwaters of the Ohinemuri River. The eastern hills of this basin and the eastern side of the Coromandel Range generally fall steeply to the coast.

As with the Piako Catchment, the main land use of the Waihou River catchment in the valley and basin areas is dairy farming, with some moves in recent years towards horticulture. Gold mining has also recommenced in the Ohinemuri River catchment. Indigenous forest still covers extensive areas of the Coromandel and Kaimai Ranges with most of the area under the stewardship of the Department of Conservation. Mainly sheep and dry stock farming occurs on the eastern hill country.

There are a number of townships located throughout the District, primarily servicing the adjacent rural areas.

The three main urban areas are those of Waihi, Paeroa and Ngatea. Waihi is located on the eastern side of the Karangahake Gorge and to the south of the Coromandel Ranges. The town developed largely in response to the gold mining industry, which subsequently demised and has revived again in recent years. The town offers a range of servicing activities as well as some manufacturing and industrial activities.

## **Mining and the Hauraki District**

The Hauraki District has had a long history of extractive industry with a particular focus on the mining of gold and silver. This activity has concentrated in the Ohinemuri area. The Hauraki Goldfield lies partly within the Hauraki District. The Hauraki Goldfield yielded 43 million ounces of gold and silver bullion from the 1860s until 1954. This production came from about 50 individual deposits around the Coromandel Peninsula with the largest mining centres in the District being at Waitekauri, Karangahake and Waihi. On the Hauraki Plains,

peat mining has become an important industry. Various quarries operate in the District supplying aggregate for a range of purposes.

As a consequence of the improved gold price in the 1980s two large new mines were developed, one at Martha Hill and the other at Golden Cross.

The Golden Cross mine is of course now in the rehabilitation phase. The Martha mine is currently undergoing an extension that will lead to a larger pit than previously consented and increased production. It is interesting to note that this extension was the subject of not only resource management consents but also approval under the 1971 Mining Act.

There are several peat mining licences granted and applications to mine or prospect pending (Torohape, Pouarua Road South) on the Hauraki Plains. Since 1991 at least one new peat mine has been established under the RMA requirements.

Mining is a significant economic activity within the District. The Martha project is particularly significant. In terms of employment, in June 2000 234 people were employed either by the Waihi Gold Company or its mining contractor. Within the Waikato Region it has been estimated that in the order of 850 direct and indirect jobs are derived as a consequence of the Martha project. I understand that the cost of the extension is in the order of \$70 million over the two year construction period. In the context of a town of 4800 people that is a significant economic impact.

Within the context of the District Council the Martha mining operation and its associated property holdings pay general rates. The mine, as do all quarries in the District also pay a differential general rate. The Martha project on its own contributes 4% of the Council's general rate levy. Its portion is in excess of \$250,000.

Mining, and particularly gold mining, by any description is a significant economic activity in the District. The Martha Mine is probably the single largest private enterprise employer in the District.

## **The statutory framework**

The Resource Management Act 1991 (RMA) is New Zealand's primary piece of environmental legislation it sets out to provide the framework for the control of the use, development and protection of almost all physical and natural resources. Decisions are to be made on these matters against a sustainability principle that is discussed in the next section of this paper.

Mining particularly for minerals other than coal was prior to the RMA a matter dealt with under the Mining Act 1971. This was often described as after amendments in 1984 as a "complete code" and included requirements for environmental matters to be taken into account.

Minerals are excluded from the sustainability requirements of the legislation but, as mining invariably involves the use

of land, all the other elements of RMA apply. The allocation of the mineral resource and access thereto are matters dealt with under the Crown Minerals Act 1991.

There are some interesting transitional matters that influence my views about “Mining and the RMA”.

## Resource Management Act

Territorial Local Authorities are statutory bodies charged with various functions under RMA. In particular their duties are set out under Section 31

“ Section 31

“(a) The establishment, implementation, and review of objectives, policies and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district:

(b) The control of any actual or potential effects of the use, development, or protection of land, including for the purpose of the avoidance or mitigation of natural hazards and the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances:

(c) The control of subdivision of land:

(d) The control of the emission of noise and the mitigation of the effects of noise:

(e) The control of any actual or potential effects of activities in relation to the surface of water in rivers and lakes:

(f) Any other functions specified in the Act.”

Under the Act, district plans are mandatory. They are to be prepared by territorial authorities in the manner set out in the First Schedule to the Act. Section 72 defines the purpose of district plans, which is “... to assist territorial authorities to carry out their functions in order to achieve the purpose of this Act”.

Section 75(1) (contents of district plans) states that a plan shall:

“make provision for such of the matters set out in Part II of the Second Schedule as are appropriate to the circumstances of the district, and shall state:

(a) The significant resource management issues of the district; and

(b) The objectives sought to be achieved by the plan; and

(c) The policies in regard to the issues and objectives, and an explanation of those policies; and

(d) The methods being or to be used to implement the policies, including any rules; and

(e) The principal reasons for adopting the objectives, policies, and methods of implementation set out in the plan; and

(f) The information to be submitted with an application for a resource consent, including the circumstances in which the powers under Section 92 may be used; and

(g) The environmental results anticipated from the implementation of these policies and methods; and

(h) The processes to be used to deal with issues which cross territorial boundaries; and

(i) The procedures to be used to review the matters set out in paragraphs (a) to (h) and to monitor the effectiveness of the plan as a means of achieving its objectives and policies; and

(j) Any other information that the territorial authority considers appropriate; and

(k) Such additional matters as may be appropriate for the purpose of fulfilling the territorial authority’s functions, powers and duties under this Act.”

Of course all these are designed to achieve the main objective of the Act being the sustainable management of our physical and natural resources. Section 5 of the Act embodies some principles that are somewhat of a touchstone outside of the legislative arena. The concept of sustainability just makes good old common sense. The section is always a good point to start and end discussion on these matters.

Section 5 “(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.”

The legislation therefore requires a TA to undertake the task of establishing a framework on behalf of its community for managing the effects of activities. The essence is that we are to manage the effects of activities. That is to say in a pure way we need to identify all the effects of all the activities and

determine if and when we should intervene. There are of course further tests in the legislation against which we must measure our desire or perceived need to intervene. I will refer later to the issue of effects vs. activities. It is fair to say that many of us still struggle with the need to separate effects from activities.

I earlier dealt with the relationship between the RMA and the Mining Act of 1971. As a consequence of the legislative change, the District Council became a party to existing Mining Licences. It exercises the role of the Minister of Energy in respect to those matters that are within its functions under Section 31 of the RMA as a direct outcome of Section 108 of the Crown Minerals Act.

“108. Administration of existing privileges—

(1) Notwithstanding section 107(1)(c) but subject to section 109, the functions, powers, and duties—

(a) That, before the commencement of this Act, would have been exercisable by the Minister of Energy in respect of an existing privilege, or of any condition of an existing privilege, or of any condition of an existing privilege, or of any provisions of an Act that relate to an existing privilege; and

(b) That concern matters that are within the functions of a local authority under section 30 or section 31 of the Resource Management Act 1991—

shall be exercisable by the appropriate consent authority within the meaning of that Act; and the provisions of the Act relating to the existing privilege, with all necessary modifications, shall apply accordingly.”

Thus, as was found in the consenting process for the extension to the Martha Mine, a dual process can (and in that case was) be required. The circumstance that follows the implications of section 108 include the need for a dual notification process together with separate decision making relating to the same proposal that must be undertaken in the correct sequence and be guided by different criteria. Briefly, in the Martha case the Council was required first to notify a request for consent under RMA, hold a hearing and make a decision on the consent applications and notify its decision. Having decided the RMA application it can then consider any request to vary the conditions of the Mining Licence (103D of Mining Act 1971).

If it decides to propose to vary the conditions, the Council has to give public notice to that effect. Having given notice, objections are the made to the Environment Court who undertakes an enquiry and makes a recommendation back to the “minister”. This is a confusing and unhelpful process. In my mind it would have been simpler if the legislation had required the process of a proposed variation to follow that set out for a resource consent.

The process brought with it an interesting, if somewhat incorrect and time consuming view of mining licence provisions and variations to conditions and work plans.

## How the Hauraki District and its community have reacted

### The Hauraki District

The Council’s role in dealing with mining changed with the introduction of RMA. It became responsible for administration of those matters that fell within the functions set out in section 31 of the RMA in respect to existing authorisations under the Mining Act and the Coal Mines Act. Mining and mineral development needed to be considered in the development of the statutory District Plan that the Council is required to prepare.

Minerals are included in the definition of natural and physical resources, although the non-renewable character of minerals is also recognised. A key resource management issue in this respect for the Council was to recognise and provide for mineral resource use and development, yet at the same time, ensure that the effects of mineral utilisation are managed in a way that provides an appropriate level of protection for the District’s other resources, amenities and ecosystems. This requirement is no different to the way the Council has approached other industrial activities. That is the Council has recognised and provided for industrial activities while at the same time providing an appropriate level of protection to resources, amenities and ecosystems.

The District has a range of existing and potential extractive industries operating, based on minerals (gold, silver etc), metal for roading and foundations, sand extraction for industry and building and peat for garden supplies. The established extractive industries range in size from single operators to open cast mines.

These extractive industries provide products that the Hauraki District considers are important to the district, region and nation. The activities associated with mineral resource utilisation constitute an important component of the District’s economic base, through employment generation and the use of local goods and services.

Mining, like many other land uses, has the potential to generate significant environmental effects. Some of these effects are generally positive (e.g. employment, income) while others have the potential to create adverse environmental conditions. These effects can be managed by the application of performance standards and appropriate objectives and policies.

The Hauraki District has in place an operative District Plan. In the development of the Plan the Council considered that the District Plan would have a role in:

- recognising the existence and location of mineral resources;
- providing an appropriate framework for the utilisation of those minerals;
- balancing the conflict between access to minerals, and utilisation, development and protection of resources on the surface;

- avoiding, remedying or mitigating any adverse effects of extractive industry operations; and
- integrating the provisions of the District Plan with other Plans under the Resource Management Act 1991 (e.g. regional plans, coastal plans) and the provisions of other legislation (e.g. Crown Minerals Act 1991).

As a consequence the Hauraki District Plan therefore provides for amongst other things:

- establishing an appropriate activity status for exploration, prospecting and mining in the different parts of the District;
- requiring mining activities to conform to the appropriate performance standards;
- specific zones for operating mines established under the Mining Act 1971; and
- providing a mechanism whereby the zoning of land which is the subject of approved surface mining operations can be changed to reflect that activity.

The effects of prospecting and exploration activities are generally minor because the amount of work to be undertaken only involves limited sampling and information gathering. This limited activity is provided for in all the zones, generally as a permitted activity, outside specific identified features (waahi tapu, archaeological sites). Where the purpose of the zone may not be compatible with some prospecting and exploration activities, (especially the Conservation zones), then a resource consent may be required in order that an assessment of the potential effects can be undertaken.

The effects of mining and excavations have the potential to not only have a significant effect on the environment, but also may be contrary to the objectives and policies of the particular part of the District. A resource consent process generally provides an appropriate assessment means.

For the Martha mine the area covered by the mining licence is identified in the District Plan by a separate zone, the Martha Mineral Zone. The zone provides that the activities that are able to occur in the licence area can be undertaken without resource consent. The District Plan does not place any additional control over the site other than that which is provided by the conditions of the mining licence.

There are some concerns that surface mining (the term includes quarries) in an urban zone would result in long-term (if not permanent) removal of land for urban activity purposes, or may be inappropriate in the context of overall planning for the district. The Council needed to find an appropriate mechanism for addressing these conflicts. These conflicts cannot easily be dealt with inside the “normal” consent process but rather are more suitably considered through a plan change process.

In the urban zones, surface mining has been given a prohibited activity status. This is an option available under the Act that prevents resource consent applications being made for the activity.

However the allocation of prohibited activity status does not mean, contrary to some views expressed by a section of the community, that surface mining will be prevented from taking place in these zones. In effect, the Council adopted a policy direction that any surface mining proposal in the urban zones was to be processed and assessed by means of a private request for a plan change.

In the event of a plan change request being approved by Council, any proposed surface mining would take place within a tailor-made zone.

In respect of the extension to the Martha Mine, the District Plan provided for this as a discretionary activity in the relevant zones and the proposed extension was assessed through the resource consent process and variation to the mining licence. A special policy area the Extended Martha Mine Area (EMMA) was included in the Plan. This described Surface Mining as a discretionary Activity within EMMA area.

It is important to note that the Council’s views on quarries and other surface mines that may be proposed in the urban zones are consistent. It is also important to note that in most other zones in the District, mining and mining activities remain a discretionary activity. In particular in the Rural Zone that makes up the largest portion of the District mining remains a discretionary activity. As set out earlier, prospecting activities are generally a permitted activity. The other point to note is that underground mining is, as with many other activities, not specifically identified as one with effects that require some form of special approach. Most activities are provided for throughout the district as (unless otherwise permitted) discretionary.

Thus any proposed underground mine would be considered on the basis of its particular effects in the same way as say an abattoir or dairy factory.

The provisions of the Hauraki District Plan are the product of an exhaustive informal and formal process. The Council undertook a process that included a non-statutory draft as well as a series of public workshops and informal and formal discussions. The Plan was notified as proposed in October 1994 and was finally operative in July 1997. The provisions in respect to mining and mineral development were the most contentious in the Plan’s development (Waihi is at the foot of the Coromandel). Interest from anti mining and green groups was high as was the interest from the mineral industry and other Councils who faced the same or similar issues.

While the mineral industry took an active part in the Plan process and lodged a number of appeals (references) against the Plan’s provisions these were settled without the need for formal hearings.

## **The community**

I referred earlier to the issue of effects vs. activities, and the difficulty that seemed apparent in coming to terms with the difference. This is no more so than in the perception that the community or at least some parts of the community has shown

with regards to mining. My experience has been that for many the focus of opposition to mining has been more to do with the activity, those who benefit and philosophical opposition to the activity than with definable effects. I am aware of an iwi group who openly state that they are historically and philosophically opposed to mining.

This expression of what appears to be an activity based opposition has made both the development of policy and implementation of those policies a point of conflict between the Council and elements of the very community that the Council is elected to represent. It is more than the commonly recognised NIMBY (not in my backyard) opposition that seems to be generated by large developments. Consequently the Council acting in the manner I have described (treating mining as it would any other industry) is often seen as being on the same side as an industry applicant.

Councils of course need to always act impartially when dealing with contested applications. Regrettably that approach is sometimes seen by people on both sides of the “fence” as being on one side or the other. Of course, the Council can also be equally seen by an industry applicant, as being on the same side as an opponent to the industry, when it accepts or takes seriously an argument put forward by that opponent. For my part, I can say that at Hauraki we take great care to ensure that appropriately qualified people evaluate “technical matters”. Some times they may question assumptions made or presented by applicants – that is part of the process. The whole point of the RMA and our role is to ensure that as a “community” we manage the use and development of natural and physical resources in a way that meets the Section 5 test of sustainability.

For me it is like being the very thin (almost transparent) slice of ham in a dry ham sandwich. In some ways the law is the very hot old English mustard challenging the tastebuds.

## Observations and conclusions

It is nine years since the Resource Management Act came into force. Implementation of the Act has been a challenge

for not only local government but for many industries and resource users. There have been and are differing views on both the legislation as it is administered and the intent of parliament. In some respects the Hauraki District Council has been at the forefront of some of the challenges that are a consequence of the Act.

Hauraki is one of the few district Councils that must deal with mining in a Resource Management context. It is the only North Island Council with a hard rock gold mine. Consequently it has been required to not only deal with mining issues through its District Plan but also deal with the reality that it has in its midst not only an active mine (at one time there were two) but also known areas of gold deposits some of which are worthy of exploitation.

It also has a politically active community that includes anti-mining and green elements.

Since 1991 it has dealt with three major mining-related applications all of which have been the subject of much community interest and in some ways controversy.

Against the background of RMA and the still relevant sections of the 1971 Mining Act the Council has granted at least one consent for a peat mine, granted consent to an extension to the Martha Mine, defended that decision in the Environment Court and also granted a now lapsed consent for tunnels at Waihi. It has of course also developed a District Plan.

The Council’s reaction to these challenges has been consistent. It treats mining in the same way it treats any other industry. At times this approach has not been understood and was not without challenge from those sections of the community who do not understand or who for whatever reason oppose the particular proposals. Mining is at the simplest level an industrial activity. It may have the potential for significant adverse effects but so do many other industrial activities. Sadly I am aware that others do not always take the approach that has been adopted by the Hauraki District.

## Author

MICHAEL JOHN MAGUIRE (Mike) has been the Planning & Environmental Services Manager for the Hauraki District Council since 1991. He has been responsible for implementing the transition of the Council into the Resource Management Act era. Mike has managed the development of a District plan that has dealt with mining in one of the few areas of New Zealand that has active gold mining. He has also managed consent process for mining developments at Waihi. Mike is a member of the New Zealand Resource Management Law Association.