

# Recent consenting of mining and quarry developments under the Resource Management Act: case examples

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## Abstract

Increasing attention is being focussed worldwide on the strategic environmental assessment of mining projects, including consideration of cumulative environmental effects. In New Zealand there is now an end in sight for inappropriate delays in resource consent approval of responsible mining projects. This paper investigates six case examples of recently consented mining and quarrying projects, whose applications were notified. It also explores the nature of delays that occurred, the factors that contributed to the delays, and whether the consent process delivered fair and effective public participation and desirable environmental outcomes.

## Introduction

The Two-Yearly Survey of Local Authorities 2003/2004, published in April 2005 by the Ministry for the Environment, records that: 54,600 resource consent applications were processed in 2003/04. Of these fewer than 400 (0.7%) were declined, 77% of all resource consents were processed within statutory time limits, and only 1.2% of resource consents decisions were appealed to the Environment Court. These statistics should be good news for resource consent applicants, and evidence that the Resource Management Act 1991 ('the Act') operates effectively in practice.

But how do recent mining or quarrying consent applications fit with these latest statistics? Have turn-around times for mining project resource consent approvals shortened at last? There are mining projects that over the last decade have taken considerable time in gaining their resource consents. A well-known example is Winstone Aggregates' Pokeno Quarry whose resource consents were lodged in June 1998 but not confirmed by decision of the Environment Court until April 2002, and then not finally settled before the High Court had dealt with a frivolous appeal in March 2003 – a total of almost 5 years in statutory processes.

However, there are increasing numbers of resource consent applications in connection with mining/quarrying activities that have passed through the statutory process without any apparent unnecessary delays. Indeed, where adverse effects on the environment are minor, applications can be processed on a 'non-notified' or 'limited notification' basis. For example, Environment Waikato processed the regional resource consents for the Awaroa 4 coal mine, an 11 million tonne (mt) coal reserve at Solid Energy's Rorowaro operation in Huntly, under the limited notification provisions of the Act. The Awaroa 4 applications were lodged in October 2003 and granted in November 2003, and an appeal subsequently lodged by Waikato Tainui was settled by consent order in March 2004.

This review, however, focuses on six recently consented mining and quarrying projects, whose applications were notified. It is undertaken in response to concerns expressed by the New Zealand mining sector and others that important mining and quarrying projects are subject to unnecessary/unacceptable delays, and that the Act is a significant causal factor.

The objective of the review is to respond to these concerns by:

- Documenting the passage of recent mining/quarrying proposals through the resource consent process.
- Getting feedback on participants' experiences with acquiring consent approvals for mining/quarrying projects, including public participation and environmental outcomes.
- Determining the nature of delays that have occurred, and the factors that have contributed to the delays.

The main costs imposed on mineral use and development associated with delays under the Act are:

- The cost of delaying the benefits that will arise from mining/quarrying. In the short to medium term, these foregone benefits include employment, company revenue, tax revenue, royalties, the use of mineral production for secondary purposes and the flow-on benefits for the local community, regional development, and the national economy.
- The cost escalation risks associated with delay, which arise from contractual and financial obligations.
- Uncertainty as a deterrent to investment.
- The opportunity cost of the time and resources needed for appeals, which deflects resources away from the core business of mining development).

## **What approvals under the Act does a mining/quarrying project require?**

Major mining and quarrying projects are not typically regulated as a single activity, but as a series of discrete activities. Therefore they commonly require many types of approvals under the Act, including land use consent from a territorial authority, and discharge permits, water permits, and land use consents (for earthworks and vegetation removal or for works in beds of rivers), from a regional council.

Although most consents are sought from a regional council, it is generally the district council land use consent that is determinative of whether the mining activity itself may proceed. The process for securing resource consents typically involves consultation with affected parties, iwi and the public, and preparation of an 'assessment of environmental effects' (AEE) that corresponds with the scale and effects that the activity may have on the environment. Unless effects are minor, resource consents are notified. There are council hearings and decisions, and in some cases appeals to the Environment Court. There are rights of appeal on points of law to the High Court. Currently the statutory process of securing consents for mining and quarrying projects typically takes 3 months to 2 years.

### **Status of resource consents that authorise mining /quarrying in district plans**

Local authority plans mainly adopt an effects based approach and do not single out mining as a specific activity to regulate. The plethora of resource use activities for which mining/quarrying operations require resource consents, are classified as 'permitted', 'controlled' or discretionary' in mainstream council plans. However, where multiple consents are involved, the more stringent activity classification applies to the whole proposal – mining/quarrying activities are commonly 'bundled-up' and dealt with as 'discretionary' status applications.

*Discretionary* is defined in the Act, and in practice means that the consent authority has full discretion over whether or not it should grant the consent, the matters it may consider in doing so, and the terms on which it may grant the consent on (provided that they fairly and reasonably relate to the resource management purpose of the application).

There are, however, exceptions where planners have chosen to publish plans that use a broad scale 'zoning' approach to deny access to mineral resources, although the Act does not mention the word 'zone'. As examples, the Proposed Thames-Coromandel District Plan (Decisions version 1999) and the Proposed Waikato District Plan (September 2004) has given mining and quarrying activities 'prohibited status' over broad zones. But the Environment Court<sup>1</sup> found such an application of the Act was not legitimate and appeals from the Council and Coromandel Watchdog were recently dismissed in the High Court<sup>2</sup>. These proposed district plans must now be revisited to provide policy frameworks that allow properly for mining.

## **Case studies: resource management issues**

Six recent case studies of mining and quarrying projects were selected to consider issues/factors contributing to delays, and the extent to which the Act's processes contributed to these delays. These projects, their main issues, and the progress made with their approval processes, are as follows:

### **Cypress underground coal mine – Solid Energy New Zealand Limited (SENZ)**

The Cypress coal resource northeast of Westport, comprises about 4.86 mt bituminous coal, in seams of 8 to 15 metres thick, with a stripping ratio about 6:1, and value about NZ\$850m. The mine area covers the eastern half of Happy Valley on the Stockton Plateau, and extends onto the slopes of the Mt William Range. The area is in forest and scrub along the Mt William Range whereas red tussock grassland covers the Happy Valley floor within the proposed pit area.

In December 2003, SENZ applied to Buller District Council (BDC) for a land use consent to develop and operate the Cypress coal resource. The main activities include an open cast coal mine incorporating two pits, backfilling of potentially acid-generating waste material, stockpiling of soil and vegetation, water management systems, new haul roads, and rehabilitation of completed areas.

SENZ also sought a range of consents from West Coast Regional Council (WCRC) including land use consents for earthworks and vegetation clearance over 266 hectares of the mining permit, land use consents for disturbance of waterways (and placement of structures), water permits for damming and diversion of stormwater and waterways, and discharge permits for the discharge of treated mine water, the deposition of overburden and waste rock to land, and the discharge of dust to air from the operation.

BDC received a total of 347 submissions (310 in support, 35 in opposition and 2 neutral) and WCRC received 279 submissions, many of which were the same as those received by BDC. Those supporting the application pointed to the economic benefit to people of the district, whereas the main grounds of opposition concerned adverse effects on water quality, stream ecosystems, impacts on habitat (including kiwi, land snails and red tussock), acid mine drainage, landscape effects, and emission of greenhouse gases. On 18 June 2004, a joint hearing committee of the WCRC and BDC granted the suite of 20 consents to develop and operate the mine, subject to comprehensive conditions.

Six parties including SENZ, the Director-General of Conservation, Ngakawau Riverwatch Incorporated, Royal Forest and Bird Protection Society of New Zealand Incorporated, and Te Runanga o Ngati Waewae appealed the consents. The appeals were heard in the Environment Court in March 2005. The main issues were:

- Landscape/natural features – whether the mine site constituted part of an outstanding landscape or outstanding natural feature.

<sup>1</sup>New Zealand Minerals Industry Association v The Thames-Coromandel DC EnvC W50/2004.

<sup>2</sup>Coromandel Watchdog of Hauraki Incorporated And Anor V Chief Executive of the Ministry of Economic Development And Anor HC AK CIV 2004-485-1838 [2 September 2005].

- Ecological –
  - a) protection of the red tussock wetland communities;
  - b) protection of *patrickensis* (native land snail); the mine site covers 10% of the distribution range of the snail (200 individuals are affected).
  - c) protection of the spotted kiwi; the mine site is habitat for 10 birds that at worst may not be able to establish territories when displaced.
- Cultural impacts.
- Acid rock drainage (ARD) and stormwater control.

For its part Crown Minerals provided legal submissions and evidence going to economic and planning considerations. In particular Crown Minerals provided an analysis of the relevant statutory planning instruments against the proposal and unchallenged evidence that the thrust of the Buller District Plan is towards utilisation of natural and physical resources.

The Environment Court released its decision in May 2005 (a total of 18 months in the resource consent process) to confirm SENZ’s resource consents. The Court found that overall the Cypress proposal together with its conditions, which require adverse effects be avoided remedied or mitigated, complied with the Act. Amongst the mitigation, SENZ is required to:

- Create a predator proof reserve area and undertake a 30 year habitat enhancement programme over the wider area of the Upper Waimangaroa Valley, and;
- Relocate the red tussock wetland communities for cultivation and return that vegetation onto a restored topography on completion of mining.

Of note, the Court had regard to the economic benefits of the development including job generation rising to 460 in the West Coast region, and \$184m of value added in the region. The Court also considered the local policy response in the district and regional plans towards utilisation of minerals ought to carry some significance in the final outcome. The Royal Forest and Bird Protection Society of New Zealand Incorporated, however, has appealed the decision to the High Court.

## **Macraes – Hyde Shear Zone**

Oceana Gold (NZ) Ltd (Oceana) currently holds 120 “active” resource consents (249 consents in total) from the Otago Regional Council (ORC) and the Waitaki District Council (WDC) to carry out open pit mining activities at Macraes Flat and strike extensions of that mineralised zone, including:

### **1. Golden Bar open pit**

Oceana applied in August 2002 for resource consents from WDC and ORC to authorise activities in connection with extraction of gold from a new open pit located adjacent to Golden Bar Road about 9 km east of their open cast mine at Macraes Flat. Land use consent to construct and operate the Golden Bar pit, waste rock stacks and ore stockpiles, silt ponds, and various tracks and the upgrading of Golden Bar Road was required from WDC. From ORC, the resource consents included water permits to dewater Golden Bar Pit, to dam and divert clean stormwater, discharge permits to stockpile ore and waste rock, for the discharge of settled clean water to local watercourses, and the discharge to air of dust, and also land use consent for stream bed disturbance.

The applications were heard jointly. There were few submitters. One group was concerned with potential road closure and traffic issues on the Golden Bar Road. The company constructed a haul road on its property and the roading issue was solved. Another group of submitters was concerned with water quality in the North Branch and were using the consent process to highlight what they saw as a failure of ORC to appropriately manage waterways and their local estuary. The consent application was granted by Council decision on 21 March 2003 and not subject to any appeals – total of seven months in the formal consent process.

## **2. Frasers West waste rock stack**

In July 2003 Oceana applied to WDC to change its existing land use consent for the Frasers West waste rock<sup>3</sup> stack to enable relocation of the stack by altering its shape and height. Discharge permits to discharge the waste rock and stormwater, and a land use consent for stream bed disturbance, were also sought from ORC. The applications were notified and considered jointly. Five submissions were received, three in opposition and two in support. There was no formal pre-hearing, but there were a number of public and individual meetings with concerned individuals and organisations.

The submitters had concerns about the effect of the application on visual amenity, landscape and heritage values. The issues related to the size of the stack, which was to cover 472 ha and had a capacity of 246 million m<sup>3</sup>. During the consent process, however, Oceana reduced the proposed dimensions of the stack to 346 ha and 120 million m<sup>3</sup>, with the balance of waste rock to be placed at Frasers East stack. Oceana had also reached agreement with the New Zealand Historic Places Trust (NZHPT) to protect two key heritage sites and to redraft the Heritage Management Plan. Loss of other heritage sites had been approved by NZHPT.

The consent was granted in March 2004 but the decision had restricted the north face of the stack to protect historic sites and visual amenity. Oceana appealed details of the stack footprint to the Environment Court on both economic and environmental grounds, i.e. the stack as proposed was significantly closer to Frasers Pit than what had been consented, which allowed savings of \$8.45 million in haulage costs, and production of less greenhouse gas.

A compromise was reached that took account of all parties needs and the appeal was settled by consent order on 23 May 2005 – total of 22 months in the resource consent process. The northern footprint of the waste rock stack was reduced to maintain representative examples of nineteenth century mining sites. There was some trade-off in stack volume for a gain of early access to closer economic dumping space.

## **Favona underground project – Newmont**

In August 2003, Newmont Waihi Gold Limited (through two subsidiary companies) applied to Hauraki District Council (HDC) and Waikato Regional Council (WRC) for a district land use consent and six regional consents to authorise the proposed Favona Underground Project. The Favona ore bodies are quartz vein deposits known to extend to 400 metres below ground level. The proposal is to mine by underground methods at a rate of 300,000tpa to 450,000tpa over a period of 9 to 12 years, via decline.

The consents sought from HDC allow for activities in connection with mining of the resource through to the rehabilitation of the land and final mine closer, including mine development, construction of stockpiles for ore and waste rock, and construction of service roads, noise bunds, pipelines, a stormwater collection pond, drilling and blasting, and rehabilitation of the land. ‘Non-notified’ consents that authorised the decline exploration proposal had already been obtained in early 2003.

The six regional consents from WRC were to take, use or divert water, including ground and mine water for dewatering the mine, and discharge permits for waste rock into land (as backfill underground or in temporary surface stockpiles), for the discharge of contaminants to air from the mine portal, and for the discharge of treated mine water to ground on completion of the project.

The applications were notified on 9 September 2003. HDC received 256 submissions (232 were in support, 23 in opposition) and, because the submitters were common to both Councils, WRC received a similar number. The submissions in opposition related to highway access,

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<sup>3</sup>Waste rock is rock that contains no or uneconomic quantities of ore, but that must be removed from a mine to enable ore to be extracted. Waste rock is typically disposed of in above-ground stacks or within open pits left by mining.

noise and vibration levels, hours of operation, night time surface activity and lighting, vehicle movements, vent discharges, claims that a buffer zone was needed within which there should be compensation for home owners, water quality concerns, alleged adverse effects of the existing Martha Mine, and general cultural objections.

The consent application was granted by Council decision on 11 December 2003. In granting the consents the Hearing Committee recorded that it was satisfied that the proposal would result in minor effects to the area adjoining the mine only, and that controls could be put in place to avoid, remedy or mitigate any adverse effects including noise, dust, vibration, settlement, and social effects. Nonetheless the grant of consent was subject to appeals by the applicant, Transit NZ, and iwi, and s274 notice from a local resident. The appeals were negotiated and withdrawn or resolved and disposed of through consent order dated 19 August 2004, 1 year after the applications were lodged. The view in Newmont Waihi Gold was that the appeals were all either unreasonable and/or unnecessary – the appeal from iwi had been in respect of mining in general and Treaty issues; Transit’s appeal related to temporary increases in traffic volume on SH2 that were arguably less than the naturally occurring annual increase; and the company’s own appeal had been against unworkable blast vibration conditions.

## **Whangaripo quarry expansions – a tale of two quarries**

The Whangaripo area east of Wellsford is 8 km north of Matakana village - an urban resort village. Traditionally the area has been farmland, zoned ‘General Rural’ but has increasingly been subdivided for lifestyle blocks. The general environs also include plant nurseries, homestays, vineyards, and coastal subdivisions at Omaha. The consent applications for both Whangaripo quarry expansions were contemporaneous. However, the application made by the local operator for a quarry development in a private valley had a smooth statutory passage, whereas the more visible proposal of a large Auckland-based venture attracted intense opposition from a well-resourced community.

### **1. *Wharehine Contractors Limited***

In November 2003 Wharehine Contractors Ltd applied to Rodney District Council (RDC) for consent to increase the extraction rate at their existing Whangaripo Quarry from about 113,000m<sup>3</sup> to 185,000m<sup>3</sup> per annum. The existing quarry is located out of sight within a small valley and has discrete access. Aggregate is trucked through to Wellsford but some goes through to the company’s concrete plant at Matakana. Wharehine Contractors undertook consultation with their neighbours and iwi, who had no issues with the expansion.

RDC notified the consent application in early January 2004 because of issues arising over truck movements. The application attracted a small number of submissions, most supporting the expansion although several submitters opposed the truck movements. The consent went through the Council process smoothly – the application was well prepared by a law firm that used expert evidence to address all affected resources.

The Council hearing was in mid-September 2004 with the decision issued on 13 October 2004. Landscape and visual effects were limited and RDC granted consent subject to conditions. Wharehine Contractors, however, appealed some of the conditions, namely that which required financial contributions to upgrade the road route, and also that which prohibited ‘truck and trailer units’ over Matakana Hill Road. The appeal was settled by negotiation - as the hill road had been upgraded it was difficult for the Council to oppose its use, and a condition allowing a maximum of 20 trucks (including truck and trailers) per day (10 return trips) was agreed to, as well the road maintenance levy was reduced. The Consent Order was issued on 7 September 2005 – the consent application was therefore a total of 22 months in the statutory process.

### **2. *Rodney Aggregate Supplies***

In July 2003 Rodney Aggregate Supplies (RAS), a joint venture of Winstone Aggregates and Fulton Hogan Ltd, applied to RDC and Auckland Regional Council (ARC) for a district land use

consent and regional consents to expand and operate the existing Winstone Aggregates' quarry on the eastern side of Matakana Valley Road at Whangaripo. RAS wanted affordable aggregate for Rodney and North Shore areas, and also for construction of the Puhoi motorway extension.

The quarry had an existing land use consent whose terms allowed production of about 10,000m<sup>3</sup> aggregate per year. Initially an expansion to an annual production of 560,000m<sup>3</sup> was proposed with 3.1 million m<sup>3</sup> of overburden to be placed across the public road in farm land. The life of the quarry would see material extracted from the face of the eastern hillside and a pit developed. The footprint of the quarry is to be enlarged from 6 to 40ha.

The applications were notified; RDC received 291 submissions (33 in support and 258 in opposition), and ARC received 101 submissions including 91 in opposition. Submitters considered that having regard to the local environment, the site was not suitable for the scale and intensity of what was proposed. Their main issues were:

- 1) Traffic issues in relation to trucks using local roads; general wear and tear on roads.
- 2) Visual effects, in particular those on residential properties on a ridge line to the south.
- 3) Ecological: the proposed removal of 2.25ha of native bush, being part of a 'Significant Natural Area' (SNA), where Hochstetter frog has been reported.
- 4) Water quality effects – sedimentation, draw-down of the water table, and diversion of Kotekote Stream.
- 5) Rural amenity (i.e. hours of operation, noise levels, nuisance dust).

The application was subsequently reduced to 280,000m<sup>3</sup> aggregate extraction, the pit development decreased, and other significant mitigation measures proposed. Nevertheless, the general view held by the community that the applicant was a large incoming Auckland company not particularly sensitive to the community's vision, did not change. The pre-hearing meeting had large numbers of attendees and never worked well.

The Joint Council hearing took two weeks; the Council Commissioners formed the view that the proposal was contrary to Part II of the Act and that the applicant had not adequately avoided or mitigated adverse effects. The Committee (by decision dated 9 February 2005) refused the determinative land use consent application to RDC because it considered:

- The overall scale and intensity of the proposal would adversely affect amenity values of the area.
- The visual effects of the expansion to both sides of Matakana Valley Road would give the whole valley the appearance of a quarry.
- The proposed removal of 2.5ha of SNA was not acceptable.
- The realignment of Kotekote Stream could cause significant adverse effects on aquatic ecosystems.

Only those applications to ARC for activities required to continue the existing quarry operation were allowed. RAS considered the ARC should have made its decisions based on the merits of each regional application before it, rather than deferring decision-making on that which sought authorisation for resource use incidental to the expansion.

RAS appealed the Joint Council decision and, after considerable negotiation between the principal parties, put a significantly modified proposal before the Court. Key elements of the modified proposal are: 1) the height of the pit face is reduced by 50 metres; 2) the SNA is retained; 3) the overburden areas are redesigned into smaller areas, and managed so as to delay placement on the western side of Matakana Valley Road for 12 years; 4) a 'site and sound' bund will be created to maximise overburden use and to provide mitigation for properties to the south; 5) overburden removal will only be undertaken during the summer construction season, and restricted to 3ha open each time, and 5) the realignment of Kotekote Stream to be abandoned.

Mediation had been a ‘packed event’ and the s274 parties<sup>4</sup> agreed to allow the Councils to act in their best interests. Both Councils then reached a position where they viewed the revised proposal as a sustainable proposition. Expert witnesses conferred and agreed on conditions, and neither Council opposed the modified proposal before the Court. However, the proposal was still unacceptable to the s274 parties. The s274 parties included residents on Matakana Valley Road itself (the closest of which subsequently withdrew their opposition having come to an arrangement with RAS), residents along a road on the ridgeline to the south of the valley – some with a view down to the quarry site, and other parties living more distantly but with concerns about traffic safety and rural amenity.

The main issues the Court dealt with were:

- 1) Noise standards and hours of operation;
- 2) The control of truck traffic to and from the quarry site;
- 3) General effects on rural residential amenity involving the balance between production and lifestyle activity in the General Rural Zone.

A Court is not bound to adopt the views of an expert, even where they are uncontradicted<sup>5</sup>. For the RAS proposal, despite expert acoustic evidence by the appellant that a day time limit of 55dBA L<sub>10</sub> was appropriate (H<sup>7</sup> 52dBA L<sub>eq</sub> as in the Proposed District Plan), the Court considered the existing noise level at notional boundary of 50dBA L<sub>10</sub> struck a reasonable balance between the proposed operation and maintaining rural amenity for neighbouring residents. Hours of operation were set at 6.00 am to 6:30 pm, Monday to Saturday, which were not the extended hours RAS had sought based on the noise limits permissive in the relevant plan.

It was, as had also been the case for the neighbouring Wharehine Contractors quarry, the local delivery traffic to the Matakana district (amounting to about 10% of the total) via the narrow winding road over Matakana Hill to the south of the quarry, which was of particular concern. The Consent Order that was before the Court for the Wharehine Contractors quarry extension, provided for a maximum of 20 truck (10 return trips) per day over Matakana Hill. The Court considered it would be equitable for the same terms for truck movements over Matakana Hill to apply to RAS. Although RAS accepted such terms, the s274 parties did not – they remained opposed to any truck movements over Matakana Hill from the quarry site.

The Court found that the winning of aggregates from the RAS site to be an efficient use of the resource, a legitimate activity for a ‘general rural production zone’, and that the proposal met the overarching purpose of the Act. The consents were granted subject to a revised set of conditions. Those conditions also included a requirement for a one-off payment of \$20,000 to RDC for traffic calming measures – pinch points and paving strips in Matakana. The Environment Court decision was released on 5 September 2005 – the proposal spent a total of 25 months in the resource consent process.

## **Timelines for the case studies, and process outcomes**

It is difficult to tease out that part of the process involving approvals under the Act from the overall time commissioning of a mining operation takes. All the time from inception to development may require significant interaction with the Act’s framework, particularly as environmental considerations now increasingly permeate every step of a mining/quarrying project, from initial investigations to operation.

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<sup>4</sup> The term ‘s274 parties’ in this paper refers to persons party to any proceedings before the Court who represent a relevant aspect of public interest or have an interest in the proceedings that is greater than the public generally. The Act has a wider meaning at section 274 (1)(a).

<sup>5</sup> R v Tobin [1978] 1 NZLR 423

However, much of the pre-application time spent on mining projects, which involves feasibility studies and assessment of environmental effects, would occur in any environmental regulatory regime. Nevertheless the obligation to consult with affected parties, iwi and the public can be significant and complex, and may add considerably to the pre-application period. As examples, the preparation of Solid Energy's AEE and the draft application for the Cypress Coal Mine took some 5 years (although that was interrupted by corporate decision), whereas the Wharehine Contractors' application was prepared in less than 4 months. Newmont Waihi Gold undertook a comprehensive consultation programme over about two years before it lodged the Favona mine consent application.

However, the key periods during which the Act is likely to be adding to project timelines are from lodgement of approvals to council-level hearing and decision, and for appeals, the time to get to hearing and decision at the Environment Court. The approval timelines for the six case studies are represented schematically in Figs. 1 to 6 (Appendix 1).

The time lines show that all six of the case studies were with the statutory approval process (from lodgement to Environment Court decision) for about two years or less. The most important factors in these relatively short timelines were:

- All district and regional applications were made within the same time period.
- There were joint council hearings.
- A high level of specific detail on each of the projects was provided.
- The applications were lead by law firms.

### **Generic factors contributing to delays**

The term 'delay' in this review is used as shorthand for 'significant time elapsed'. In examining the factors contributing to delays, the intention is to establish whether such delays were unnecessary or avoidable delays, and which may be reduced. For large mining projects the causes of delay are complex and cannot fairly be attributed to any single factor. However, mining projects will tend to have significant impacts on the natural and built environment, whether adjacent to urban areas or in rural or wilderness areas. Therefore although the scale of the project and the sensitivity of the receiving environment are mainly addressed throughout the pre-application stage, the applicant is inevitably required to respond further to such factors throughout the statutory process, as they are causal in attracting submissions in opposition.

Broad-scale lack of compliance with statutory timelines under the Act for the case studies is not generally a significant cause of delays, as shown by the relatively short time that the major projects – Cypress Coal Mine, Favona underground, and Rodney Aggregates quarry extension – were formally within the RMA processes. Large scale delays in the statutory process are simply not evident from the six case studies.

Council consents staff and their consultants are highly professional and have strong customer service ethics. It is difficult, for example, to perceive of 'unnecessary' delays in West Coast Regional Council's and Buller District Council's processing of the consent applications for the Cypress Coal Mine, when the applications were received in early December 2003 and heard in early May 2004. Furthermore, given that this processing period included the Christmas/New Year 'black-out' period, the complexity of the applications, and the number of submissions received, the consent authorities were indeed expeditious in their duties. Although there were some logistical 'problems' when sorting out the hearing dates, such as the availability of the Hearing Commissioners and SENZ's staff, consultants and legal advisors, these actions did not result in unnecessary delay.

Nevertheless, the number of submissions and then the appeals by affected parties, public, iwi, the consent authority and the mining company all take time. Even a single appeal can prolong the project development process considerably. Where there are appeals, the time taken for the

Environment Court can contribute to delays, but criticism of inappropriate delays at the Court end are now outdated. As example, the appeals to the Environment Court on the Cypress consents took only 9 months from lodgement to Court decision. This timeframe comprised 5 months upfront during which negotiation and discussion took place to otherwise remove parties and pull together expert evidence, whereas 4 months only passed from exchange of evidence to delivery of the Court's decision. It would be fair to say the Environment Court is often able to move quickly when there is a need to do so.

As part of this current review of case histories of mining consents, the responses of stakeholders (including applicants, councils, and submitters) to three questions about delays, public participation, environmental outcomes, are collated as follows:

### **Stakeholders' views on what causes delays**

1. Opposition based on opportunistic objectors who are more concerned about extracting value from the process.
2. Inappropriate objections from special interest groups, e.g. a local community group who oppose an application because it is not "in the general community interest". Stakeholders reported instances of individuals using the Community Group to push their own particular interests.
3. Submissions (solicited) in support may actually cause extra work.
4. Council staff turnovers mean that new staff need to be continually brought up to speed.
5. Delays in delivering a decision because a Hearing Committee is not obliged to close the hearing. One stakeholder reported that it had been through numerous consent hearings and had only ever had one hearing closed (at cessation of the hearing). Even in situations where the panel had not requested further information, the company reported it had never received a decision within the statutory timeframe.
6. Appeals represent an opportunity for any submitters to unnecessarily delay a project.
7. Statutory interest groups that can cause delay or require modification of the consent proposal because a separate authorisation is required from that statutory group, e.g., the Historic Places Trust.
8. Inappropriate objections from s274 parties, where those parties are not directly affected.
9. The reluctance of some appellants to engage in mediated resolution of the matters of concern and the refusal of the same parties to name their technical experts/witnesses, which precludes any early exchange of evidence. Furthermore the late circulation of evidence can mean that matters raised are not able to be considered properly until just before and during the hearing.

The risk is that these smaller scale delays can potentially compound into significant unnecessary timeframe delays.

### **Stakeholders' views on public participation**

Stakeholders were asked whether the consent application process delivered effective public participation. The general view was that there are ample and possibly excessive opportunities for public participation that are well used but can be abused. For 'non-notified' applications effective public participation is achieved by virtue of the requirement for affected person's written approval. Otherwise the effectiveness of public participation was not viewed as constrained by the existing processes, but rather it depends on the people/parties involved in the processes.

Where a proposal attracts a large number of wide-ranging submissions, the effectiveness of public participation will always be contentious. Public participation options, such as pre-hearing meetings, appear less likely to achieve concurrence when large numbers of submitters are

involved. This failing is stultified when there are submitters who are philosophically opposed to the proposed activity (e.g. mining/quarrying) taking place in any shape or form, or the applicant is not prepared to modify its proposal. The effectiveness of public participation is also constrained by the inability of the average person to understand and respond to the planning/judicial process, e.g. the mediation in connection with the RAS quarry extension application.

Of note, in all six cases, the applicants engaged in full consultation prior to finalising their applications. Indeed, for the Cypress project, SENZ went so far as paying for the Regional and District Councils to engage experts prior to lodging the consent to enable a full review of the application. This strategy meant that consultation, or at least that part which was undertaken once the draft was complete, was undertaken over a period of 4 months. As far as SENZ was concerned this investment was worthwhile and the public consultation resulted in an overwhelming number of submissions in support of the application. Nevertheless, there was no pre-hearing meeting for the Cypress mine proposal, although SENZ was prepared to, and did, meet with individual submitters to address their concerns. Regardless of SENZ's consultation efforts, given that the proposal required a hearing, those who wished to be heard on their submissions had the opportunity to do so.

### **Stakeholders' views on environmental outcomes/consent conditions**

Stakeholders were asked whether the consent application process delivered desirable environmental outcomes. However, as actual environmental management outcomes do not begin to be achieved until a mine/quarry is constructed and operating, it is the sufficiency of the consent conditions of the six cases that is more to the point.

In general, applicants considered that the consent process is robust and capable of producing good, balanced development/environmental outcomes provided it is applied and administered properly, although some applicants felt the process had only marginal impact on the environmental outcomes. Consent authorities and submitters considered that the public processes had improved the environmental outcomes. Submitters, in particular, held an overarching view that "*it matters nought the conditions but how Councils enforce those conditions*" which, in their view, is variable around the country.

Generalities aside, for the Cypress Mine proposal, although the vast majority of consent conditions imposed by the Consent Authorities remained unchanged during the appeal process, the Environment Court did place additional "state of the art" conditions in terms controls on activities and standards for rehabilitation. From the environmental perspective these are designed to achieve a very high standard of outcome, e.g. the provision for direct transfer and maintenance of 12ha of red tussock communities.

For the RAS quarry expansion, the company did not consider an overall environmental gain was achieved through the consent process and did not perceive the effects-based principle of the Act was consistently applied. The restrictions on truck movements using Matakana Valley Road, in the face of supporting expert traffic evidence, will require each truck to travel a further 14 km return each day (with additional green house gas emissions). The reduced hours of operation will likely double the operation's energy requirements. RAS also considered the terms of the consent did not particularly balance the needs of the wider community against the limited number of directly affected residents.

### **Comparisons to consenting of other major projects**

Current turn-around times for securing mining project resource consent approvals are comparable to those for other major project developments. As example, CentrePort Limited's revised resource consent application to dredge DDT-contaminated sediments (arithmetic DDT sample mean is over six times the ER-M level<sup>6</sup>) from port berths within Wellington Harbour was lodged on 26

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<sup>6</sup> The ER-M level (Effects Range – Medium) is the concentration of a substance at which toxic effects on organisms are probable.

March 2003, heard by Commissioners in late June 2003 (unfortunately the application had no legal advocacy), and was declined in mid-August 2003, found not to merit a grant of consent. Another 16 months passed, along with corporate changes, before the terms of that application were negotiated and disposed of through consent order.

However, where the designation process is required (e.g. a typical major roading project or a new alignment for transmission lines) turn-around times for planning approvals can be significantly greater than for mining projects. Although there are exceptions, where designation is involved the approval process for major roading projects can take around five years.

## **Conclusions and suggestions**

This study suggests that the timeframe for major mining project resource consent approvals has shortened in recent years so that turn-around times are now between 1 and 2 years. Certainly, fast-tracking of notified resource consent applications is not yet a reality but with efficient management and other conditions being supportive, the notified process can be reduced to 6 months or less.

The consent process commonly, but not always, achieves the best environmental outcome. Applicants generally found the process to be satisfactory, including the 2 year turn-around time, although where a project had a tight commissioning timeline, that turn-around time could become problematic.

The use of a lawyer as an advocate for the consent proposal, the provision of a high level of specific detail on the project at the application stage, and an awareness of communities that are well resourced, are all important.

Short-term nuisance delays during the statutory process do occur that commonly relate to inappropriate submissions. The more problematic delays may arise from section 274 'public interest' parties, where those parties are not directly affected. The question here is - should equal weight (or appeal rights in the first instance) be given to all submitters under the Act, whether or not they are directly affected? For example, it is difficult to see how groups such as Forest and Bird are adversely affected (as an organisation) other than in the abstract. Yet in terms of environmental advocacy and biodiversity outcomes Forest and Bird has a definite role. Would shortening the consent process help? Perhaps, but in the notified process it is important for the public to have a say which of itself mandates a meaningful hearing. It is difficult to truncate timeframes early without cutting off people's rights to participate. Perhaps the realistic solutions are to expand the capacity of the Environment Court and councils to reject vexatious and frivolous objections, and to strengthen the powers of the Environment Court to award costs.

It might also be helpful for the Court to introduce tighter controls through Practice Notes requiring parties to an appeal to identify their case, and to ensure experts confer so that issues may be streamlined. As important, are that parties need to operate within Court rules or face additional costs.

Of some practical value would be the expeditious development of a national environmental standard for noise. The mix of regulatory and non-regulatory approaches in the Resource Management and Electricity Legislation Amendment Act 2005, including the requirement that the majority membership of hearing panels is "accredited" and empowering all hearing panels with more inquisitorial powers, should further minimise delays and improve decision-making.

## **Acknowledgements**

The author wishes to acknowledge the mining/quarrying companies, consent authorities, submitters and consultants who were engaged with for their willingness to make their views known, and for the positive professional relationships that developed from those engagements.

# Appendix 1: Approval timelines

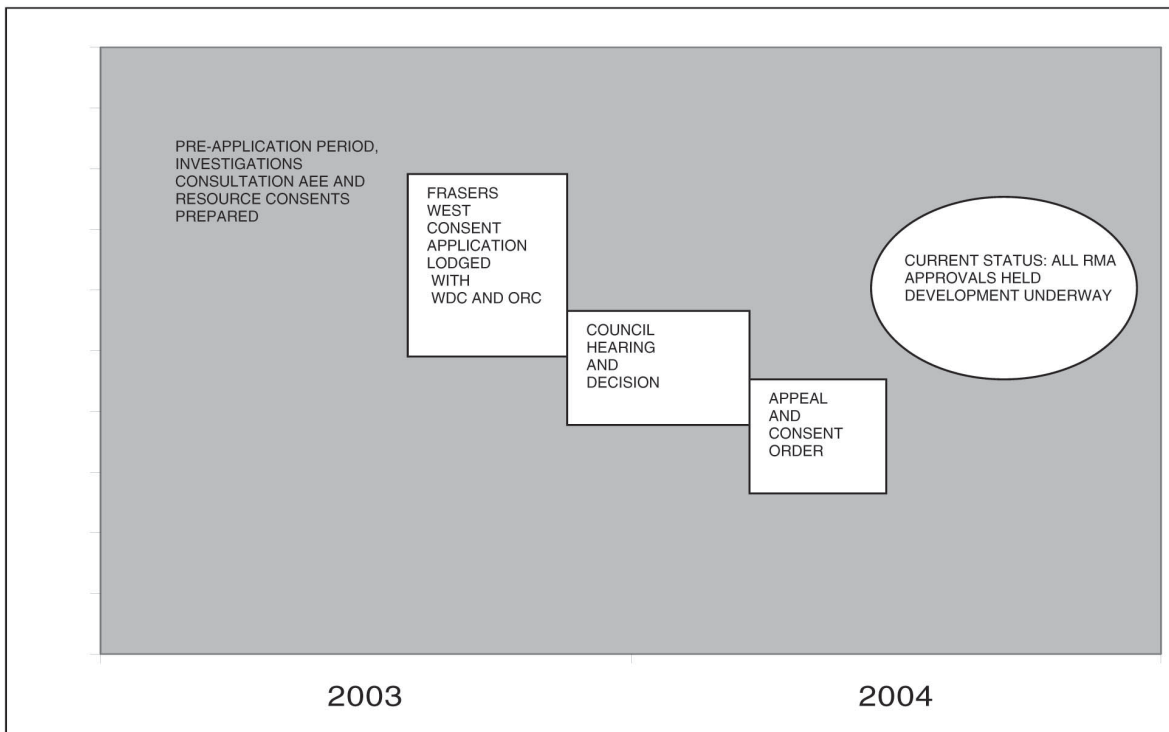


Fig. 1: Frasers West waste rock stack approval timelines

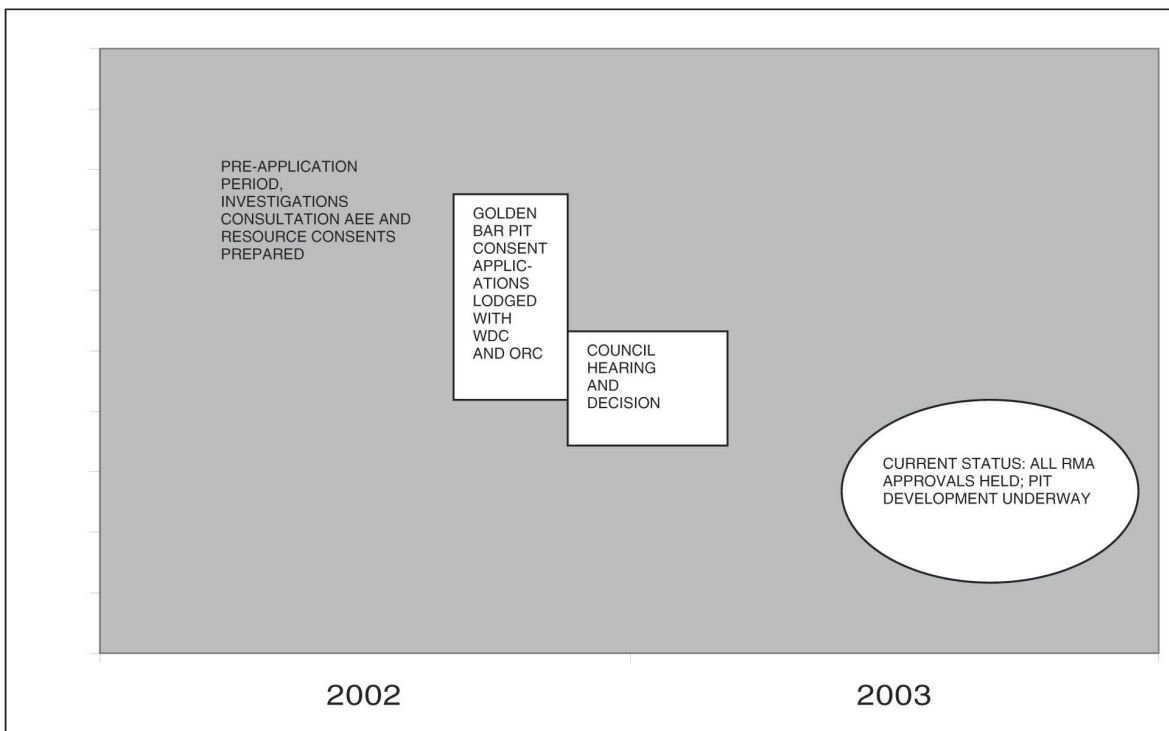


Fig. 2: Golden Bar Open Pit approval timelines

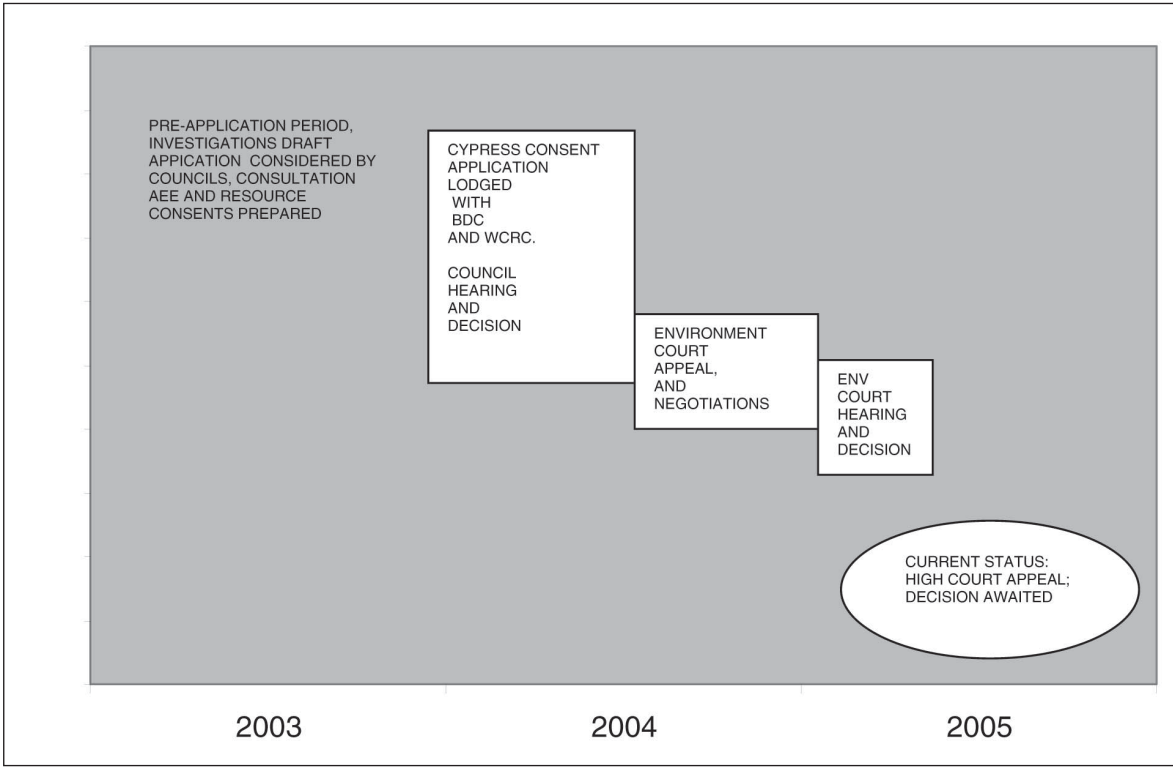


Fig. 3: Cypress coal mine approval timelines

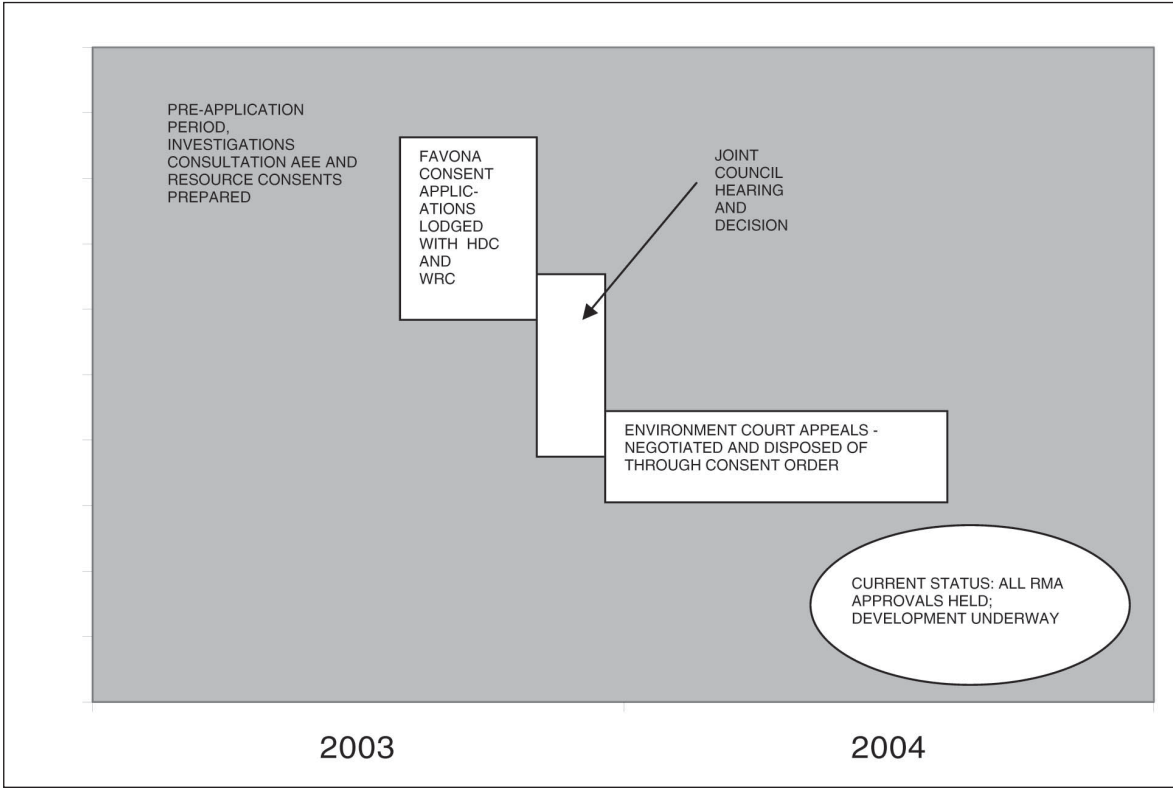
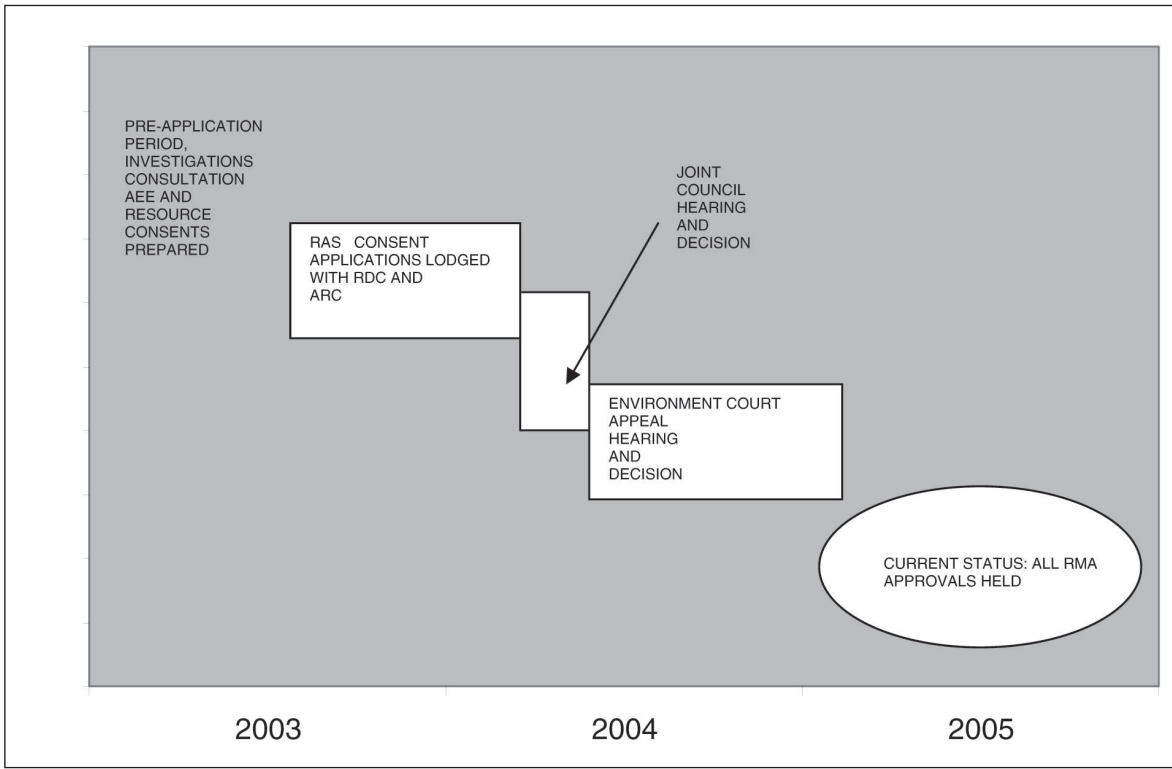
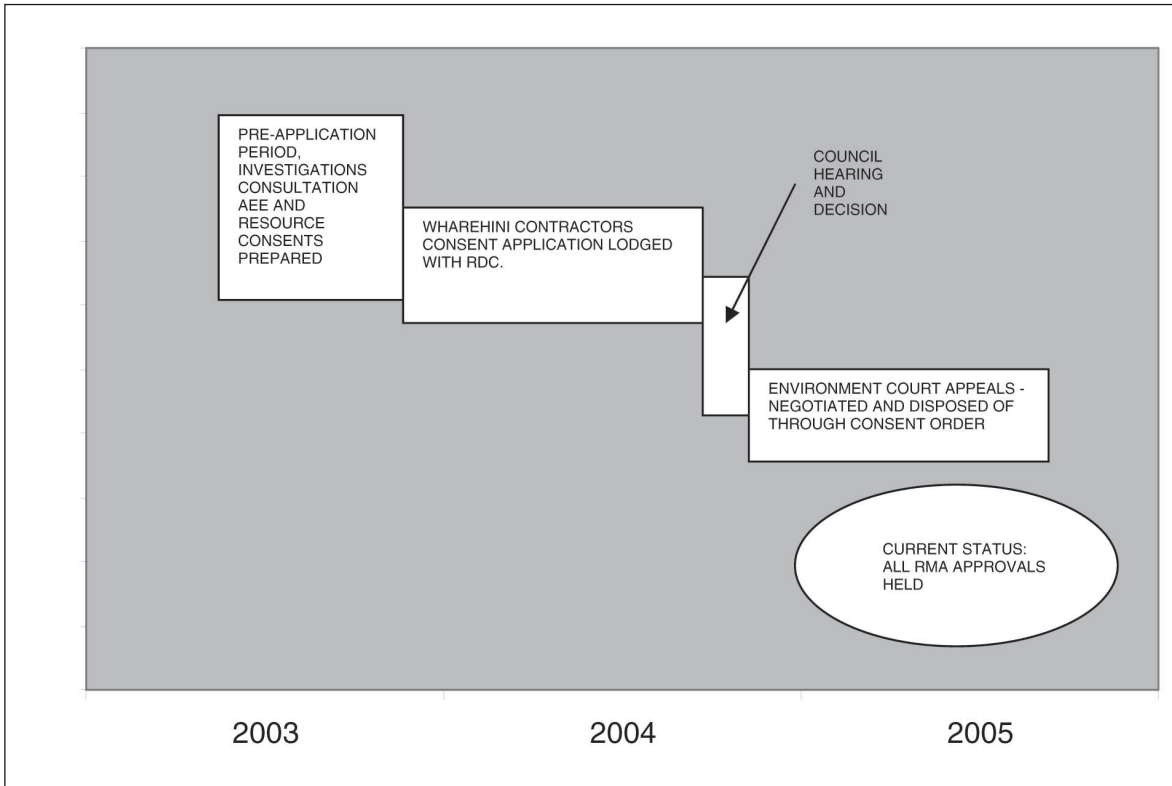


Fig. 4: Favona underground project approval timelines



**Fig. 5:** Rodney Aggregates Supplies Whangaripo Quarry extension approval timelines



**Fig. 6:** Wharehini Contractors Limited Whangaripo Quarry extension approval timelines