

**IN THE ENVIRONMENT COURT
AT WELLINGTON**

ENV

IN THE MATTER of the Resource Management Act 1991

BETWEEN **WINSTONE AGGREGATES, A DIVISION OF
FLETCHER CONCRETE AND
INFRASTRUCTURE LIMITED**

Appellant

AND **HAWKE'S BAY REGIONAL COUNCIL**

Respondent

**NOTICE OF APPEAL TO ENVIRONMENT COURT
29 AUGUST 2008**

RUSSELL McVEAGH

B J Matheson /
A A Arthur - Young
Phone 64 9 367 8000
Fax 64 9 367 8163
PO Box 8
DX CX10085
Auckland

WINSTONE AGGREGATES, A DIVISION OF FLETCHER CONCRETE AND INFRASTRUCTURE LIMITED appeals against the decisions ("**Decisions**") by the Hawke's Bay Regional Council ("**Council**") on the Proposed Regional Coastal Environment Plan ("**PRCEP**").

Decision

1. Winstone Aggregates made submissions and further submissions on the PRCEP.
2. The Decisions were issued on 19 July 2008, and the Council has indicated that appeals were to be lodged by 29 August 2008. The Decisions approved the PRCEP with modifications.
3. Winstone Aggregates appeals the whole of the Decisions.

Reasons for appeal

4. The reasons for this appeal are as follows:
 - (a) The Decisions in their present form:
 - (i) Will not promote sustainable management of resources and will not achieve the purpose of the Resource Management Act 1991 ("**Act**").
 - (ii) Are contrary to Part 2 and other provisions of the Act.
 - (iii) Will not meet the reasonably foreseeable needs of future generations.
 - (iv) Will not enable social, economic and cultural well being.
 - (v) Are otherwise contrary to the purposes and provisions of the Act and other relevant planning documents.
 - (vi) Are inappropriate and inconsistent with the purpose and principles of the Act.
 - (vii) Are not necessary to avoid, remedy or mitigate the adverse effects of the proposed activity.
 - (viii) Do not represent the most appropriate means of exercising the Council's functions, having regard to the efficiency and effectiveness of other available means and are therefore not appropriate in terms of section 32 and other provisions of the Act.

5. In particular, and without limiting the generality of paragraph 4 above:

Decision 73 - Section 32 analysis:

- (a) The section 32 analysis relating to policies, rules and other PRCEP provisions relating to Coastal Hazard Zones ("**CHZ**"), the extraction of gravel from the coastal marine area ("**CMA**")

(including for the Westshore Renourishment Scheme) and the application of a range of restrictive rules is inadequate.

- (b) The PRCEP provisions are not in accordance with the requirements of section 32(3), and have inappropriately and inadequately evaluated section 32(4) including over-emphasising the elements of policy and control relating to risk of coastal hazards.
- (c) There has been no assessment in the section 32 analysis of the effect of the CHZs on Industrial zoned land at Awatoto, including that owned by Winstone Aggregates.

Decision 74 - withdraw the PRCEP:

- (d) Winstone Aggregates appeals the decision to reject its submission seeking that the PRCEP be withdrawn in its entirety.

Decision 544, 545 and 546 - Discharges - 27.2 and 27.5:

- (e) Winstone Aggregates appeals the decisions that only partially accept its submission that a rule be provided for incidental discharges of dust and sediment particles from established land use activities of processing, storage and sale from its sites at Awatoto.
- (f) Discharges from moveable plant only are covered under Rule 70: all other such discharges become discretionary in the PRCEP.
- (g) The Council's decision refers to Rule 71 and provides for "discharges of dust to air arising from loading, unloading, transport and conveyance of goods and materials" but does not provide for the incidental discharge of dust and sediment from the established land use activity of aggregate processing, storage and sale at Awatoto. This would become a discretionary activity under Rule 9 (or possibly Rule 62). Only moveable plant is covered under Rule 70.
- (h) No provision has been made in the decisions for incidental discharges of sediment in or onto land or onto land where it may reach water from activities which are otherwise lawfully established or operated. Because of the site location and wording of Rules 17 and 18, discharges to land are excluded at least in part from the activity.

Decision 739 - Issue 17.1:

- (i) Winstone Aggregates appeals the decisions that reject its submission seeking that Issue 17.1 be amended to recognise that aggregate extraction for the widest purposes for supporting the local economy may in some circumstances be appropriate and desirable.
- (j) The Issue in Chapter 17, Disturbances, Depositions and Extractions in CMA, under 17.1, sets out a number of beneficial reasons for "dredging and spoil disposal", but does not

acknowledge that extraction of material can be of economic benefit to the region. This does not provide a fair reflection of one of the relevant issues under this heading.

Decision 772 - Policy 17.1, Guideline 2(c):

- (k) Winstone Aggregates appeals the decisions that reject its submission seeking that Policy 17.1, Guideline 2(c) be amended by adding that the adaptive management approach may be appropriate in relation to commercial or community (eg Council) extraction.
- (l) The Guideline for Chapter 17 relates to the removal of material in the coastal marine area. Guideline 2(c) refers to alternative sites and reasons for the location of extraction for commercial purposes as explained in 17.5. Given Winstone Aggregates' experience in re-consenting an extraction operation which has been established for a lengthy period within the region, the Guideline should acknowledge the concept of adaptive management. No adequate reason is given for the rejection of Winstone Aggregates' submission. This is inappropriate and unreasonable.

Decision 820 - Extraction - 27.6:

- (m) Winstone Aggregates appeals the decision to reject its submission seeking the extraction of up to 50,000m³ year from the CMA be a discretionary activity.
- (n) The decision is misleading, in that while it states that Rule 120 already classifies extraction of sediment of up to the volume to be discretionary, this is overridden by the provisions of Rule 91 for the Winstone Aggregates' extraction area which makes any extraction over 5 m³ "per property" in the CHZ1 area per 6 months a non-complying activity. By definition this area extends into the CMA.
- (o) At the time of notification, part of the CMA adjacent to the Winstone Aggregates' sites was included in the CHZ1 area. Winstone Aggregates sought to remove this notation from the CMA, but this submission was rejected (the decision not only rejected the submission, but increased the extent of the notation in the CMA out to 200m from MHWS along the whole of the CHZ1 area, pursuant to a definition change).
- (p) The extraction of material (up to 50,000 m³/year) from within the CMA should be a discretionary activity.
- (q) The provisions as they stand are unreasonable, inappropriate and unjustified.

Decision 1166 - Gravel Extraction - 28.4.2(c):

- (r) Winstone Aggregates appeals the decision to only partially accept its submission seeking to delete paragraph 28.4.2(c).

- (s) The decision is unreasonable and inappropriate in that it singles out gravel extraction as the only activity for which financial contributions can be taken.
- (t) While the decision links paragraph 28.4.2(c) to another part of the PRCEP, that other part refers to gravel extraction from river beds only, and in any case requires contributions to be applied to river beds for purposes which should not be caused by consented extraction activities, ie, gravel extraction permits are normally used as a means of river bed management and flood mitigation (rather than exacerbating effects) by the Council.
- (u) The decision is also unclear and confusing, as while paragraph 28.4.2(c) refers generically to gravel extraction, paragraph 29.2.3 (which the earlier paragraph has been amended to refer to), relates only to extraction from river beds.

Decisions 1357, 1358, 1369 and 1370 - Coastal Hazard Zones:

- (v) Winstone Aggregates appeals the decisions which only partially accept and otherwise reject its submissions on the CHZs affecting its site at Awatoto and the nearby area.
- (w) The decisions are not in accordance with the expert evidence presented by Winstone Aggregates at the hearing of the submissions and is not in accordance with measured and observed trends in the vicinity over a very long period.
- (x) Further, the methodology used by the Council to establish the CHZs is inadequate and inappropriate, and the findings are not in accordance with measured and observed trends in the vicinity over a very long period. No changes appear to have been made in terms of Map 31 (now Maps 65 and 66).
- (y) The reasons given for the decisions effectively acknowledge that the information on which the decisions were made is inadequate, and that costs are transferred to applicants effectively to "disprove" the Council's inadequate information in any future application for resource consent.
- (z) It is inappropriate and unreasonable to include the CMA within a CHZ.
- (aa) The decisions are unreasonable and inappropriate and will not lead to sustainable integrated management of natural and physical resources.

Decisions 1426 and 1457 - Objective 15.2:

- (bb) Winstone Aggregates appeals the decisions rejecting its submissions seeking to delete Objective 15.2 and add a new Objective 15.1A, and also in respect of the only partial acceptance of its submissions on the associated Guidelines which have been substantially modified to include instruction relating to land use zoning in District Plans.

- (cc) While changes have been made to Objective 15.2, the wording of concern to Winstone Aggregates has been replaced in Objective 15.1A. Both Objective 15.1A and 15.2 are aimed at "avoiding development" (in CHZ1 areas) and "avoiding inappropriate development" (CHZ 2/3 areas) within the CHZs.
- (dd) Winstone Aggregate's land at Awatoto unreasonably and inappropriately remains subject to CHZ1 and CHZ2 zoning. It is unreasonable to limit the use of the land when such use does not add to coastal hazards or risk to people or public infrastructure, when the land is zoned for industrial use within the operative and proposed District Plans, and when the land is currently used for industrial / aggregate purposes.
- (ee) The decision inappropriately and unreasonably fails to take account of the economic effect on the wellbeing of people and communities, as well as the landowner.
- (ff) The effect of the Objective and its likely outcome are significant in terms of Winstone Aggregates' activities and operations which are of benefit to the community and local economy. That land should be able to be used to be developed on the basis of commercial risk, provided that the use and development does not involve risk to people, public infrastructure or personal investment (eg peoples' homes).

Decisions 1547, 1564, 1642, 1625 and 1634 - Development in the Coastal Hazard Zones:

- (gg) Winstone Aggregates appeals these decisions which reject its submissions on rules applying to development in the coastal environment, specifically within the identified CHZs and the application of rules relating to sediment stored on its Awatoto site.
- (hh) While changes have been made to the rules which allow for the maintenance and very minor extensions to existing buildings in the CHZ1 and CHZ2 areas, any increase in floor area over 20m² in CHZ2 to an existing building, or a new building larger than 20m² is a restricted discretionary activity. Similarly, any building which extends seaward of an existing building in CHZ1 is also restricted discretionary, and any substantial floorspace is non-complying. This is clearly focussed on residential situations, and is unreasonably and inappropriately restrictive for industrial locations.
- (ii) In terms of on-site sediment storage, the wording of footnotes 80 and 82 are ambiguous and unclear in that it is not clear exactly what the status of these activities is, given the restrictive nature of the rules for the CHZ areas.
- (jj) The inclusion of extraction over 5m³ per site per six month as a non-complying activity in Rule 91 is unreasonable, inappropriate and unnecessary.

Decision 1626 - Westshore Renourishment - Rule 90:

- (kk) Winstone Aggregates appeals the decision rejecting its submission on the quantity of material available to be extracted as a controlled activity under Rule 90.
- (ll) The movement of gravel along the Napier beach has been the subject of a range of studies and the sediment budget is well-understood.
- (mm) The Rule provides as a controlled activity the extraction of 50,000m³ of material which is the equivalent to all but 15,000m³ of the available sediment budget. This will potentially have the effect of significantly limiting the volume available for extraction by Winstone Aggregates.
- (nn) Given that Winstone Aggregates has resource consent to extract 35,000m³ for the duration of the PRCEP, the provision made in Rule 90 is an unsustainable, unreasonable and inappropriate volume. (The available known volume of sediment available each year is 65,000m³, however 50,000m³ is provided for as a controlled activity - ie cannot be declined, and there is an existing consent in place for a further 35,000m³. The total consented removal, or consentable as a controlled activity, is therefore 85,000m³ compared to an available amount of only 65,000m³.)
- (oo) The Rule does not appropriately or efficiently provide for the integrated management of the beach gravel resource, or for the wellbeing of the people and communities of Hawkes Bay.

Decision 1407 - Coastal Hazard Zone 1 extension:

- (pp) Winstone Aggregates appeals the decision (or lack of any decision) relating to part 7 of its submission, bullet point 4, which sought that the extension of the CHZ1 be deleted from its site and from the CMA. No decision appears to have been made on the matter, and while the mapped area has disappeared from the Plan maps, the CHZs has been extended into the CMA on the basis of a change to the definition of Coastal Hazard Zone 1 in Part I, Glossary.
- (qq) The active part of the CMA does not comprise a "Hazard Zone" and no specific hazard-based provisions should apply to this area. The use of the CMA is already controlled by other provisions of the PRCEP.
- (rr) The change to the definition effectively rejects Winstone Aggregates submission, without specifically addressing Winstone Aggregate's submission or providing any reason for doing so.

Relief sought

- 6. Winstone Aggregates seeks the PRCEP be withdrawn in its entirety.

7. As an alternative to the primary relief set out in paragraph 6, Winstone Aggregates seeks the following relief:
- (a) That an adequate section 32 analysis be undertaken in respect of the matters outlined in this appeal.
 - (b) Amend the rules in 27.2 and 27.5 as sought in the original submission.
 - (c) Amend Issue 17.1 by adding the following wording or similar:

In some locations, extraction of material within the CMA may provide for the economic wellbeing of the region.
 - (d) Either add to Guideline 2(c), or provide for a new Guideline under Guideline 2 or 3 as follows (or words to similar effect):

When considering applications for extraction of material from the coastal marine area, regard shall be had to the concept of adaptive management, and the ability of natural processes to restore or replenish the material.
 - (e) Specifically provide in 27.6 that the activity status remains discretionary rather than non-complying, as requested in the original submission (ie ensure that Rule 120 overrides Rule 91 in relation to the CMA).
 - (f) Delete 28.4.2(c).
 - (g) Amend the PRCEP map 31 (now maps 65 and 66) as sought in Winstone Aggregates' submission and in line with evidence presented at the hearing, or alternatively, remove the CHZ1 line and the CHZ2 area from map 31 (now maps 65 and 66) in the vicinity of the Awatoto site.
 - (h) Remove the Coastal Hazard notation in any form from within the CMA (originally mapped, now included by means of definition).
 - (i) Delete Objectives 15.1A and 15.2, or alternatively amend them to enable activities which do not increase coastal erosion risk or risk to people to establish on privately-owned appropriately-zoned land within the coastal environment, including within the CHZs, or alternatively amend the wording of the Guidelines in Table 9 to achieve the same intent.
 - (j) Provide for development of structures as provided for in the Industrial Zone in the District Plan on the Winstone Aggregates site at Awatoto.
 - (k) Under 27.6, change footnotes 80 and 82 to state that the activities described in 80b and 82c are not limited by this Rule.
 - (l) Amend Rule 91 to enable extraction of up to 50,000 m³/year of in-situ sediment within CHZ1 to make it clearly not apply to extraction of gravel from the CMA (and so that Rule 120 applies

in these circumstances), or remove the CMA from the CHZ1 by a change in the definition of CHZ1.

- (m) Reduce the volume available as a controlled activity in Rule 90 to 15,000m³/year.
- (n) Amend the PRCEP glossary to reinstate the earlier wording of the term "Coastal Hazard Zone 1", or to otherwise provide for the CHZ to apply no further seaward from the line than the MHWS.
- (o) Provide that the CHZ does not apply adjacent to the Winstone Aggregates site at Awatoto or anywhere else within the CMA.

8. Winstone Aggregates also seeks:

- (a) Such further other orders, relief or other consequential or other amendments as considered appropriate and necessary by the Court to address the concerns set out herein; and
- (b) Costs of and incidental to this appeal.

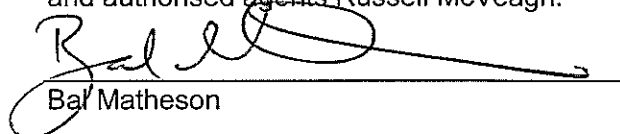
Attachments

9. The following documents are attached to this notice.

- (a) A copy of Winstone Aggregates' original and further submissions.
- (b) A copy of the Decisions.
- (c) A list of names and addresses of persons to be served with a copy of this notice.

**WINSTONE AGGREGATES, A DIVISION OF
FLETCHER CONCRETE AND
INFRASTRUCTURE LIMITED** by its solicitors
and authorised agents Russell McVeagh:

Signature:



Bal Matheson

Date:

29 August 2008

Address for Service:

C/- Kevin Bligh
Winstone Aggregates
PO Box 17195
Greenlane
Auckland

TO: The Registrar of the Environment Court at Wellington

AND TO: The Council

Advice to recipients of copy of notice of appeal

How to become a party to proceedings

1. If you wish to be a party to the appeal, you must lodge a notice in form 33 with the Environment Court within 30 working days after this notice was lodged with the Environment Court.
2. You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see form 38).

Advice

If you have any questions about this notice, contact the Environment Court Unit of the Department for Courts in Auckland, Wellington, or Christchurch.