

Invitation for Comment on Maraekakaho Quarry Project

Maraekakaho Quarry Project is a Referred Project under the COVID-19 Recovery (Fast-track Consenting) Act 2020

Application name	Maraekakaho Quarry Project
EPA reference	FTC000098
Applicant/s	R W & M C Gale Trustees Limited on behalf of R W & M C Gale Family Trust
Comments due by	19 March 2024
Accessing the application	https://www.epa.govt.nz/fast-track-consenting/referred-projects/maraekakaho-quarry/the-application/

An application has been made by R W & M C Gale Trustees Limited on behalf of R W & M C Gale Family Trust (the applicant) under the COVID-19 Recovery (Fast-track Consenting) Act 2020 (the act) for resource consent for project description (the project).

To comment on the project application, please fill in the details on the attached form and:

- **Email the form to maraekakahoquarry.fasttrack@epa.govt.nz. Please mark in the subject line: "Comments on Maraekakaho Quarry Project Fast-track Application (Your name/organisation) by 19 March 2024"; or**
- **Post** the form to Maraekakaho Quarry Project Fast-track Application, Environmental Protection Authority, Private Bag 63002, Waterloo Quay, Wellington 6140 in time for the form to be received by the **19 March 2024**; or
- **Deliver in person** to Environmental Protection Authority, Grant Thornton House, Level 10, 215 Lambton Quay, Wellington by **19 March 2024**

Comments must be received by the EPA, on behalf of the Maraekakaho Quarry Project Expert Consenting Panel, no later than **19 March 2024**

If your comment is not received by the EPA by **19 March 2024** the Panel is not required to consider your comment (although it may decide to). Under the COVID-19 Recovery (Fast-track Consenting) Act 2020 there is no right to seek a waiver of the time limit.

If you are an iwi authority you may share the consent application with hapū whose rohe is in the project area in the application and choose to include comments from the hapū with any comments you may wish to provide.

Important information

Your personal information will be held by the EPA and used in relation to the project consent application process. You have the right to access and correct personal information held by the EPA.

A copy of your comments, including all personal information, will be provided to the Expert Consenting Panel and the applicant.

If you are a corporate entity making comments on this application, your full contact details will be publicly available.

For individuals, your name will be publicly available, but your contact details (phone number, address, and email) will not be publicly available.

A copy of your comments will also be published on the EPA website. If you believe any of the information you have provided is confidential or sensitive and should be withheld from publication, please highlight the information concerned and provide an explanation to support your request for withholding it. Your comment and explanation will be provided to the Panel for them to decide whether to withhold the information from publication.

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All information held by the EPA is subject to the Official Information Act 1982.

More information on the fast-track consenting process can be found at <https://www.epa.govt.nz/fast-track-consenting/about/>.

More information on the commenting on a fast-track consenting application can be found at <https://www.epa.govt.nz/fast-track-consenting/commenting/>.

Your Comment on the Maraekakaho Quarry

All sections of this form with an asterisk (*) are mandatory.

1. Contact Details

Please ensure that you have authority to comment on the application on behalf of those named on this form.

Organisation name (if relevant)	Hawke's Bay Regional Council		
*First name	Gavin		
*Last name	Ide		
Postal address	Private Bag 6006, Napier		
*Home phone / Mobile phone	+64 275888901	*Work phone	06 835 9200
*Email (a valid email address enables us to communicate efficiently with you)	gavin@hbrc.govt.nz		

2. *We will email you draft conditions of consent for your comment

<input checked="" type="checkbox"/>	I can receive emails and my email address is correct	<input type="checkbox"/>	I cannot receive emails and my postal address is correct
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3. Please provide your comments on this application

If you need more space, please attach additional pages. Please include your name, page numbers and the project name on the additional pages

1. Introduction

The following comments relate to a consent application with the Environmental Protection Authority ('EPA') for the Maraekakaho Quarry Project under the COVID-19 Recovery (Fast-track Consenting) Act 2020, herein referred to as 'the application.'

The comments do not include any statutory considerations nor assessment which would otherwise be required of the Hawke's Bay Regional Council ('HBRC') in its regular role as a consent authority.

HBRC Consenting Team members have had very little contact and consultation with the Applicant and its consultants. A few high-level queries and briefings have occurred, but HBRC has not been involved in preparation of the Applicant's documentation nor seen copies of the final application documents before lodgement with the EPA.

2. Regional planning context

The Hawke's Bay Regional Resource Management Plan ('RRMP') is the operative combined regional policy statement and regional plan applicable to the proposal.

The application is within the area of Plan Change 9 (TANK PC9) which was publicly notified on 2 May 2020. In September 2022, the Council's decisions on the TANK PC9 were issued. The appeal period has closed with over a dozen appeals having been filed in the Environment Court. Given many of the rules in TANK PC9 relate to water, pursuant to s86B(3) of the RMA, the rules of the proposed plan took legal effect at notification of the proposed plan change. As such the activity needs to be assessed under both the rules of proposed TANK PC9 and any relevant rules of the RRMP until any section of the plan change becomes operative.

One other proposed change to the RRMP is in progress, subject to appeal in the Environment Court, with a hearing held on 12-14 March 2024 and to reconvene in late April. That is proposed Plan Change 7 (PPC7) relating to outstanding water bodies. Currently, the PPC7 version in effect is as amended by Decisions (26 June 2021). One matter arising in appeals is whether or not the Ngaruroro River reach near Maraekakaho is an 'outstanding water body.' The Court has received evidence on this matter but is yet to issue a decision.

3. Heretaunga Plains Flood Control and Drainage Scheme

This scheme is one of 23 flood control and drainage schemes in Hawke's Bay. It covers the low-lying river plains of the Tutaekuri, Ngaruroro and lower Tukituki Rivers, providing flood control and drainage benefits for approximately 39,000 hectares of land and protection for approximately 127,000 people. Some land near the coast is at sea-level making drainage essential.

This scheme operates in sub-catchments. This Scheme has evolved over 130 years from the efforts of Local River Boards in the late 1800s to control highly mobile and flooding rivers, through the Hawke's Bay River Board and then the Hawke's Bay Catchment Board. HBRC has had the responsibility for the work since 1989. Within the Heretaunga Plains Flood Protection Scheme, HBRC manages:

- 155km of stop bank and deflection banks
- 577km of river, stream and drainage channels
- 287km of willow, poplar and native trees on the river banks – 'live edge protection' – to reduce erosion and slow flood waters
- 196 structures including, culverts, floodgates, control gates, weirs, rock groynes and pipelines
- 5 detention dams
- 18 pump stations, 7 mobile pumps and 2 emergency generators
- approximately 760ha of land, including river berms and land underlying other Scheme assets.

The main issues now facing HBRC to manage this scheme and the rivers as an asset are –

- consistently reducing the flood risk to the Plains while minimising adverse impacts of flood management methods on the environment

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- sustainably managing the gravel within the river systems, and getting a better understanding of the impact that extraction has on gravel reaching the coast and our beaches
- maintaining the flood capacity of the system in the face of climate change
- maintaining the value of the live edge protection and the stop banks
- balancing landowner and ratepayer expectations, especially on cost, while consistently improving best practice for maintenance
- defining levels of service within each drainage catchment
- co-management arrangements with iwi on Scheme policies and management.

HBRC has an Environmental Code of Practice in place which provides clear standards of practice for river control and drainage works including gravel extraction from several of the major river systems in the central and southern parts of the region.

4. Hawke's Bay Regional Council's Property Interests

To assist the Panel, we briefly summarise HBRC's property interests in vicinity of the subject site.

Ownership and History

Historic photographs show the application site was part of the riverbed pre-1950s. In the intervening 70 years, the Catchment Board then more recently HBRC, have placed considerable edge protection and remediation works along the banks to mitigate lateral erosion on the outside bed of the river and to protect the location of Highway 50 (previous State Highway). These assets include rope and rail groynes, willow planting and a small stop bank.

Currently, HBRC is owner of the following properties adjacent to the subject site:

- Lot 4 DP463659
- Lot 3 DP463659
- Section 1 SO Plan 357839
- Section 2 SO Plan 534560
- Lot 4 DP 11536 (being the 556m² lot at the intersection with SH50).

HBRC administers the narrow linear-shaped 'hydro parcel' running south to north from Lot 4 DP11536 to edge of the Ngaruroro River. The 'hydro parcel' features a road that was required to be formed and maintained as a condition of land use consent (RMA20180258) granted to Russell Roads Limited by the Hastings District Council on 29 January 2019.

The 'hydro parcel' accessway is also used by another company to access a gravel processing site on Section 1 SO Plan 357839 owned by HBRC.



Land leasing arrangements

HBRC currently leases part of Lot 4 DP463659 to Russell Roads Limited¹ (herein referred to as the 'existing processing site'). That lease agreement is due to expire in June 2024. The FTC application documents appear to rely on the existing processing site. We think that is unwise. HBRC has not made any agreement or commitment to allow ongoing processing activities on that site by any party let alone the existing lessee or any other entity such as the FTC applicant or another person.

For avoidance of doubt for the Panel, there is no RMA-related matter that limits HBRC's own discretion about if/how it might choose to enter into any future lease arrangements of that land.

The purpose of leasing the land is to facilitate activities which will be of benefit to river management in the Heretaunga Scheme area. Examples of these activities include grazing leases, where the grazing offsets the cost of land management (mowing etc); or hardstanding areas where extractors of riverbed gravel can stockpile material for sorting and screen pre-sale. HBRC considers this approach encourages gravel extraction activities from the river forming part of flood management within scheme areas.

HBRC is not in the position to lease land it owns for commercial activities which are not of benefit to river management or the scheme.

As such, generally HBRC would not support leasing this piece of land in Maraekakaho to entities who are not wholly engaged in gravel extraction from the river. It should also be noted that there are other river bed gravel extractors operating in this vicinity. Russell Roads Limited is not the sole interest in the existing processing site nor HBRC's other nearby landholdings. The Applicant currently does not have any agreement or arrangement with HBRC for land owned or administered by HBRC in the Maraekakaho vicinity.

¹ According to NZ Companies Office records, Russell Roads Limited changed its name to Tupore Infrastructure Limited effective 8 December 2023. Robert William Gale is recorded as the sole Director of that company (as at 18 March 2024).

5. Resource Consenting Matters

Hawke's Bay Regional Resource Management Plan (RRMP)

The applicant has correctly identified a number of activities that are regulated by the Operative Regional Resource Management Plan (RRMP) and Proposed TANK Plan Change.

- Discharge of sediments into water not complying with Rule 47(f) of the RRMP and therefore a **discretionary** activity pursuant to Rule 52.
- Diversion of surface water and groundwater not complying with Rule 56(a) of the RRMP and therefore a **discretionary** activity pursuant to Rule 59 of the RRMP, specifically;
 - Diversion of surface water from excavation and stockpiles from the Ngaruroro River during flow not complying with permitted activity Rule 56 (a)(i).
 - Diversion of surface water associated with the reclamation of a watercourse on the property not complying with permitted activity Rule 56 (a)(ii) and (iii).
 - Diversion of groundwater associated with aggregate extraction not complying with permitted activity Rule 56 (a).
- Discharge of stormwater from an industrial and trade premise not complying with Rule 42 of the RRMP and therefore a **controlled** activity pursuant to Rule 43 and as a **discretionary** activity pursuant to TANK Rule 25.

The applicant has identified they consider the application to comply with soil disturbances and discharges to air. In regard to the discharge to air, the applicant has provided an assessment against the relevant Rule 29 under the RRMP. They propose dust will be managed via a Quarry Management Plan, any water taken for dust suppression will be required to comply with the permitted activity standards for water takes. The applicant has not offered further details of how these matters will be complied with, non compliance with any relevant section of Rule 29 will result in enforcement action.

Resource Management (National Environmental Standard for Freshwater) Regulations 2020 NES-F

The applicant identifies the need for consent under the Regulation 57 of the NES-F as a discretionary activity for reclamation of a waterway. The NES-F states reclamation has the meaning given by the National Planning Standards 2019, these standards define reclamation as:

'the manmade formation of permanent dry land by the positioning of materials into or onto any part of a waterbody, bed of a lake or river or the coastal marine area, and: (a) includes the construction of a causeway; but (b) excludes the construction of natural hazard protection structures....'

The proposed filling in of the existing water channel meets the definition of reclamation. The applicant has provided an ecological effects assessment undertaken by Boffa Miskell² which proposes offsetting the applicant considers sufficient to meet the requirements of the effects

² Boffa Miskell (1 December 2023) *Maraekakaho Quarry Assessment of Ecological Effects*. Report prepared by Boffa Miskell Limited for R W & M C Gale Trustees Limited on behalf of R W & M C Gale Family Trust.

management hierarchy which is required by Reg 57 of the NES-F prior to granted a consent for a discretionary activity.

HBRC ecologists have not reviewed the Boffa Miskell report and findings. HBRC considers it would be prudent to review this report to ensure that conclusions are concurred with.

Resource Management (National Environmental Standards for Sources of Human Drinking Water) Regulations, 2007 (NES-D)

The applicant has provided information about the nearest registered drinking water supplies, being the Maraekakaho School Bore which is not downgradient of the proposed activity. The applicant has relied on the hydrological assessment by Aqualinc³ that the groundwater is flowing in a west to east direction and that Aqualinc have '*conservatively estimated that any discharge of sediment to groundwater would have no impact on ground or surface water quality beyond 40 m of the location of the disturbance*'. On this basis, the applicant has determined that there is not likely any effect on registered drinking water abstraction points and that the provisions of the NES-D do not apply.

Regulations 7 and 8 of the NES-D limit a consent authority granting consent to a discharge activity where it has the potential to affect a registered drinking water supply that provides no fewer than 501 people with drinking water for not less than 60 days each calendar year. The nearest downgradient drinking water supply bores at Omaha (Source ID G00799) and Portsmouth Road (Source ID G00782). These are part of the Hastings District Council reticulated supplies. According to Taumata Arowai, the Omaha Bores supply 126 people⁴ and therefore NES-D Regulations 7 and 8 do not apply. However, Portsmouth Road Bore is part of the Hastings urban supply which services a population of 64,764⁵. As detailed below, the hydrology assessment by Aqualinc has not assessed potential for contamination of groundwater other than from sedimentation. We consider that contamination could occur from other sources (for example, from hazardous substance spills and bacterial contamination from birds using the excavation, including following completion of the excavation works). This should be assessed regarding the potential impact on downgradient drinking water supplies and Regulations 7 and 8 of the NES-D.

NES-D Regulation 12 applies to an activity that has the potential to affect a registered drinking water supply that provides no fewer than 25 people with drinking water for not less than 60 days each calendar year. Regulation 12 requires a consent authority to impose a condition on a resource consent requiring the consent holder to notify a registered drinking water supply if an event occurs that may have a significant adverse effect on the quality of water at any abstraction point. The applicant is not seeking resource consent to discharge anything other than sediment and as above, have relied on the Aqualinc report which states that the activity is unlikely to cause an effect on groundwater outside a 40m radius from the disturbance. However, contamination from other sources should be considered such as

³ Aqualinc Water and Soil Intelligence (4 December 2023) *Hydrological Report Maraekakaho Quarry Project Site*.

⁴ Taumata Arowai - Omaha Drinking Water Supply Details. [Online] Available: <https://hinekorako.taumataarowai.govt.nz/publicregister/supplies/view/?id=2d7390fd-cbca-ec11-a7b6-0022489436d9> [accessed 13/03/2024]

⁵ Taumata Arowai - Hastings Urban Drinking Water Supply Details. [Online] Available: <https://hinekorako.taumataarowai.govt.nz/publicregister/supplies/view/?id=e3ad5677-29cf-ec11-a7b6-0022489436d9> [accessed 14/03/2024]

bacterial contamination and spills into the excavation. If the Panel consider this might occur, then a condition must be imposed in accordance with Regulation 12.

6. Environmental Effects

Effect on Groundwater

HBRC scientists have been unable to review the application documents due to limited capacity and officer leave commitments in the timeframe required by the Panel.

The findings of the Aqualinc Report should be reviewed by a suitably qualified and experienced water resources scientist with technical expertise in surface and groundwater interactions and potential for contamination. We consider a peer review necessary to review the assumptions, methods, findings, recommendations and mitigation measures of this hydrological report given the vulnerability of the underlying unconfined aquifer; location of the works upgradient of several drinking water sources; and fact that this activity seeks to create a permanent change in the interaction of groundwater and surface water in this location. This is considered in scope of the application given the diversion of groundwater sought and discharge of contaminants into ground and surface water.

In recent years, HBRC have processed resource consent applications for similar activities over the unconfined aquifer. We have considered the main receptors of potential effects on groundwater from excavations are groundwater users downgradient of the site. We have also considered that the removal of the protective layer of unsaturated material overlying the water table can make it easier for contaminants to reach the saturated strata and there is less opportunity for attenuation of contaminants within the unsaturated zone. For other activities, we have considered maintaining separation between base of excavations and groundwater table is key to reducing risks to groundwater quality and downgradient water supplies.

Groundwater Quality

The Aqualinc Report considers that suspended sediments have been found to only extend 40m into an aquifer before filtration removes them, relying on one piece of literature but noting no other relevant studies have been found for New Zealand. It is not clear whether the aquifer and environmental conditions referred to in the literature are comparable to the subject site.

There is no discussion of potential for contamination of groundwater through other sources, such as bacterial contamination from animal life, such as birds, once the groundwater is exposed and the impact this may have on downgradient drinking water users.

The assessment focuses on existing groundwater users from registered bores, but we note that there may be unregistered bores that are being relied on for drinking water by surrounding residential uses (i.e. bores drilled prior to the resource consenting requirements for new bores in the region).

The applicant has provided a Quarry Management Plan including measures to avoid spills or leaks of fuel. Aqualinc have not provided any assessment of potential effects on any

downstream receptors if fuel was spilt within the excavation during the exercise of the resource consent. This is reasonable as the applicant is not seeking consent to discharge hydrocarbons. However, we would request the Panel ensures the conditions of consent, if granted, are worded to ensure every precaution is taken to prevent hydrocarbons from entering the surface water in the excavation given that the effect on downstream receptors of this event happening is unassessed.

Groundwater Quantity

Effects on the existing groundwater users and aquifer recharge have been found to be minor and the changes not considered to be discernible by the Aqualinc Report. It is not clear what criteria the report has used for the scale of the effects, and we question whether cumulative effects of this activity have been adequately assessed. This is further assessed in the following sections.

Effect on Surface Water

Effects on the water race and the Ngaruroro River have been found to be minor and the Aqualinc report considers that the changes not considered to be discernible. As per the above comments, it is not clear what criteria has been used for the scale of effects and any cumulative effects of the activity should be assessed.

As expanded on below, the Aqualinc Report identifies that the activity results in a stream depleting effect on the Ngaruroro River. This river is significantly overallocated based on the TANK allocation provisions. The conclusion that the effects of the activity on surface water would be minor requires further consideration.

The water race described in the application is part of an existing resource consent (AUTH-121460-05) for conveying water to allow the irrigation of 822 hectares of pasture and crops, 200 hectares of viticulture and 134 hectares of pip fruit' among other consented uses. Aqualinc reports the following:

'the stream depletion effect on the Water Race / Watercourse 1 is a yearly average of 4.0 l/s (346 m³/d) and a 7 day maximum of 10.0 l/s (864 m³/d), which is 1.3% of the consented flow within the Water Race of 800 l/s. Thus, the hydrological effect on the Water Race is considered to be minor.'

As above, we question what criteria the Applicant used to conclude the effect on the water race is minor. We also consider the potential effect that this may have on the existing consented activities taking water from the water race.

Water Take?

The applicant is currently not seeking consent to take and use water, however a diversion of groundwater is sought.

Schedule 30 of the Proposed TANK Plan Change provides allocation limits for water abstractions from specified water quantity areas. Schedule 33 notes that the groundwater allocation limit is limited to existing use only – i.e. the allocation limit is the total amount allocated to consents granted prior to 2 May 2020. The surface water allocation for the Ngaruroro River in the Proposed TANK Plan Change is currently overallocated (1,300L/s

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allocable and 1,883L/s estimated as allocated). We noted above that the Proposed TANK Plan Change is under appeal. Allocation limits of the Ngaruroro River are a matter raised in at least one of those appeals and is a highly contentious issue.

The site is located in Zone 1 Groundwater in the Ngaruroro Groundwater Quantity Area. Groundwater takes in Zone 1 are managed as surface water takes given proximity to the Ngaruroro River and direct stream depletion effects. This is illustrated by the Aqualinc Report, which identifies the Ngaruroro River and water race will contribute most of the water lost via evaporation in the lake (87% to 98% of loss).

Under the TANK rules, which carry legal effect pursuant to s86B of the RMA, the permitted allowance for new groundwater takes is 5m³/day and 10L/s, and once operative, there is no consenting pathway for the take and use surface or groundwater from new takes that do not comply with the permitted activity standards. The Aqualinc Report finds that the lake evaporative losses would range between 1L/s and 15.8 L/s and the volume would range between 85 – 1,362m³/day.

If HBRC received an application for a new groundwater take in the location of the proposed activity for the volume and rate of water loss of the lake via evaporation, this would be a prohibited activity pursuant to TANK Rule 12 (once operative).

Although the applicant is not currently seeking resource consent to take and use water, we question whether the rate and volume of water lost by evaporation caused by creating the lake should constitute a water take pursuant to s14 of the RMA. The question here is whether the activity meets the activity description of Rules TANK 6-13 of a '*take and use of water*'. We consider seeking legal advice on this matter would be prudent. Regardless, the volume of water that would be lost to evaporation is considered significant in the context of this river-groundwater system, particularly considering the allocation limits that have been introduced, and this should be given careful consideration.

Ecological Impact

HBRC scientists have not had time or capacity to review the application, or any supporting documentation in the timeframe for comments as invited by the Panel. The findings of the Boffa Miskell Report should be peer reviewed by a suitably qualified and experienced ecologist with technical expertise in freshwater ecology and riparian terrestrial ecology interactions.

Flood Risk

At 9.2 of the Riley Report, it is noted that the proposed activity has the potential to increase flood levels within neighbouring properties, even with mitigation. The report considers this effect to be minor given that the areas affected are in pasture with no buildings identified in these areas. It is not clear what criteria the report has used to reach the minor effect conclusion, however the impact of flooding at neighbouring properties because of the activity should be considered regarding how the neighbour's property rights might be impacted. Under a normal consenting process, a minor environmental effect on any person would constitute that person being affected pursuant to s95E of the RMA and would require those affected person(s) to be notified pursuant to s95B of the RMA.

The Riley Report has had a high-level review by the Hawke's Bay Regional Council and the following notes have been made about the assessment:

- The flood assessment report is missing a few minor details regarding some model parameters.
- A model log in the appendix would have been useful to note all key input parameters. The report provides modelled flood level/depth maps but it does not provide maps showing the model domain, boundaries, etc. or the pre- and post-development terrain simulated in the model. These maps would be useful for reviewing the model setup and to better understand/visualise the impacts of the proposed activity on flood risk and neighbouring properties.
- The flood assessment and modelling undertaken looks to be appropriate for assessing the potential effects on flood levels, however there is no assessment regarding potential effects on velocities which could potentially increase the risk of erosion/scour. Areas of potential concern include neighbouring properties, HBRC river control assets (e.g. edge protection, planting, groynes, etc.) and the proposed stream re-alignment.
- The report indicates the modelling used a fixed roughness value. If model roughness were modified to spatially represent the landcover and vegetation, for both pre- and post-development scenarios, this may provide additional insight into the effects on velocities and could be used to assess the effects of potential mitigation options if required.

7. General Administration Comments

Should the consents be granted, then it is HBRC's preference that these activities be treated as separate consents with specific authorisation numbers, certificates and consent conditions. This is consistent with HBRC's consenting protocol and will assist with the implementation of consents and subsequent monitoring and reporting responsibilities. We can provide the Panel / EPA with relevant authorisation numbering upon request.

It is acceptable to include a schedule of general conditions which attach to all consents, particularly if/where this avoids duplication and is preferred by the applicant.

Consent durations should reflect the temporary, ongoing or permanent nature of the activities and be consistent with HBRC durations for consents.

RMA s128(1) review clause consent conditions should present regular review opportunities throughout the duration of consents. We can provide the Panel with advice on how HBRC typically does this for other similar consents.

The proposed conditions require further review by HBRC, ideally following a response to matters outlined in this feedback and the feedback from other parties. This would include working with the applicant to propose amendments to and/or additional conditions as considered appropriate.

Thank you for your comments