

Proposed Thames Coromandel District Plan

Submission by HG Leach & Company Ltd

Statement of Evidence by William David Burton

My name is **William David Burton**. I hold academic and professional qualifications in planning and resource management. I have been a full Member of the New Zealand Planning Institute since 1978.

I have held planning positions in the public and private sector and currently hold the position of Technical Director – Environment with AECOM in Hamilton.

I have read the Environment Court's code of conduct for expert witnesses and have prepared my evidence in accordance with that code. I confirm that my evidence is within my area of expertise and that I have not omitted to consider material facts known to me that might alter or detract from my expressed opinions.

Introduction

1. HG Leach & Company Limited (HGL) was formed in 1952 and has interests in quarrying, solid waste disposal, contracting and bulk cartage. HGL's primary asset in Thames Coromandel District (TCDC) is the Matatoki Quarry located 10km south of Thames. This quarry was purchased from TCDC in 1997 but was leased and operated by HG Leach for many years before the final purchase. The Matatoki Quarry has operated since the 1960s and proven reserves enable on-going operations at current level for the foreseeable future (50+ years). Aggregate is a strategic resource, accessed where it is situated. Major existing operations need to be recognized and provided for in the relevant planning documents.
2. Matatoki Quarry is a significant aggregate producer currently extracting some 65,000 bank cubic metres (BCM) per year. Once crushed, the aggregate produced equals sales of about 110 truck and trailer loads per week. This is the largest quarry in the TCDC area and an important resource on a regional scale in the Waikato/Thames Valley.

The quarry operation is confined to the area subject of the relevant mining licenses that authorise the activity as discussed below. An adjacent area known as the Cox Block is also used for overburden disposal.

Current Statutory Authorisations

3. When HGL purchased the Matatoki Quarry, it operated in accordance with two mining licenses issued under the now repealed *Mining Act 1971*. In terms of land use authorisation, mining licenses were (and are) a “complete code” for the works concerned and no land use authority (consent or permitted status) was required.
4. This did not extend to regional consents and a full range of authorisations are held for the Matatoki Quarry in terms of diversion, discharges, earthworks, etc. It is also noted that the adjacent Cox Block is used for overburden disposal and is not included in the mining license area. This area was acquired HGL relatively recently and a land use consent for the overburden disposal was issued by TCDC in November 2008 (RMA/2008/274).
5. There are two mining licenses covering the quarry. ML 32 2051, which was issued for a 30-year period in August 1984, expired earlier this year. The other license is ML 32 2051 which was issued for a 25-year period in March 1990. This expires on 16 March 2015. These mining licenses cannot be extended and the current *Crown Minerals Act 1991* regime does not extend “complete code” provision through its system of mining permits.
6. There is no doubt that while these old mining licenses were in effect, they have provided land use authorisation for the Matatoki Quarry. It is, however, much less certain that on their expiry the legal establishment allowed by the mining licenses constitutes legal tests for existing use rights under the RMA. There is an argument that it does not.
7. The Mining Licences authorize the activities on the site as they now stand. If the licences do not provide authorization for the purposes of establishing existing use rights under the RMA, it would be necessary to track back through earlier planning instruments to prove such legal authorization for this purpose
8. In the case of the Matatoki Quarry, it may have been designated in earlier planning instruments as a Council quarry (although this was not the case when the current District Plan was notified in 1997.) Other than that, it would presumably have required a land use consent probably as a discretionary activity or conditional use. In the zone in which it is located.
9. In any event, on this basis, such existing use rights as do exist would be available to the activity as it was at the time the relevant provision requiring consent was introduced. It is very challenging to work back to what was operating at the Matatoki Quarry perhaps 40 or more years ago to determine the extent of any existing use rights as may be available.

10. Notwithstanding whether existing use rights are available, I am uncomfortable with reliance on this mechanism for land use authority where quarries are concerned. Quarries are by nature a changing land use activity and arguments around changes in character, intensity and scale of operations can make reliance on existing use provisions uncertain at best.

11. At the heart of this matter for HGL is the need for certainty. HGL own and operate a large and valuable existing quarry operation. There are few large quarry operations in the TCDC and the Thames Valley generally it is in the interests of the community at large that this activity is clearly provided for in the relevant planning instruments.

Options to address this issue

12. In the absence of reliance on existing use rights, the Matatoki Quarry needs to be provided for as a permitted activity in the District Plan or secure a resource consent for its operations. Accordingly, HGL was most encouraged when the Draft TCDC District Plan included permitted activity status for nominated existing quarries (including Matatoki) in the district.

13. Under this regime, existing quarries were identified and a set of performance standards set. Such standards included:

- A site management and rehabilitation plan is in place (either as a regional consent requirement or separately provided to the council.
- Noise and vibration control.
- Building compliance.

14. HGL supports this approach and requests that this be re- instated into the Proposed District Plan with existing quarries being shown on the Planning Maps as Quarry Resource Areas (or equivalent name). It is a positive and effective measure to facilitate the on-going operation of existing quarries which as noted for the Matatoki Quarry may not be able to rely on existing use rights nor is that considered to be an appropriate and secure planning authorisation for such activities.

15. This approach is considered to effectively implement the Proposed Regional Policy Statement (PRPS) which includes strong support for the protection of access to significant mineral resources (which are to be mapped). This is addressed in the submission lodged. Here I note that the PRPS provides that sites of significant mineral resources are to be mapped with local authorities to be provided with the outcome of this work to assist them in protecting access to significant mineral resources identified. While

this work has yet to be completed, I see no reason why Districts cannot go ahead with the mapping of such resources and the adoption of appropriate provisions to facilitate the operation of mineral developments through their District Plans.

16. I emphasise that reliance on existing use rights is not in my view a robust mechanism to protect existing quarry operations. Certainly, the resource consent option remains available but this is a costly and uncertain process as all of us who have been involved in major quarry consenting processes will attest to. Positive probation for existing for existing operations through the District Plan as permitted activities would more positively ensure the on-going benefits that major existing quarry operations provide to the community.
17. Again, the need for certainty is emphasised. I am not aware that there are any current land use planning issues arising from the quarry operations that are causing adverse effects on the environment. Given the concerns raised regarding the availability of existing use rights at the site, the opportunity should now be taken to secure the future of the operation by affording permitted activity status to the Matatoki Quarry.

Quarry Buffer Areas

18. In its submission HGL seeks the introduction of quarry buffer areas to protect access to mineral resources from existing sites in the district. I consider this to be a sound approach and one that has recently been adopted by Hauraki District Council in its now operative District Plan Review.

However, the imposition of quarry buffer areas for existing quarries will be effective only if these existing quarries are properly identified – as was proposed in the Draft District Plan.

Staff Report

19. The s42 A report recommends that these submissions by HGL be rejected. Basically, the Proposed Plan has taken the draft plan permitted activity provisions/standards for quarrying in the rural zone and dropped this into the rule as a restricted discretionary activity along with assessment criteria.
20. It seems that the concern regarding the permitted activity approach include:
 - Difficulties in mapping the extent of existing quarries. This is questioned. Clearly the Matatoki Quarry can be readily defined.
 - Concerns regarding reliance on Quarry Management Plans. Again, I question what the issue is here in that permitted activity status would be dependent on the

compliance with the submitted Quarry Management Plan. Where non-compliance occurred, permitted activity status would no longer be available.

A similar provision is included in the restricted discretionary activity rule in the Proposed Plan (37.4 Rule 3.2). How is administration etc. an issue where a permitted activity is involved but not for a restricted discretionary activity?

Further, consistency of the content of the Quarry Management Plan and any conditions of existing consent (where they exist) is a matter to be addressed in accepting the Management Plan for permitted activity purposes.

- The imposition of quarry buffers is also not supported but the staff report notes that there are objectives and policies in various parts of the Proposed Plan that will afford a measure of protection to existing quarries from reverse sensitivity issues. While the policy support is acknowledged and applauded, it would be all the more effective if linked to identified existing quarries and specified buffer areas recorded on the Planning Maps.

Certainly as far as the Matatoki Quarry is concerned, HGL does not consider that the reasons for rejecting the permitted activity approach are justified.

21. I accept that the approach proposed by HGL will involve a number of alterations to the Proposed Plan. If the Committee consider that there is merit in the permitted activity status / identification on the Plans approach, an interim finding to this effect could be made along with a direction to Council staff and the parties interested in this matter (including HGL; Kelsey (Te Kouma Quarry); Tokoroa Family Trust (Tuataewa) to caucus with the intent of developing a detailed set of provisions based on the approach taken in the Draft Plan. The Committee could then require that the matter be reported back to a later hearing date where areas of agreement and disagreement could be identified and addressed.

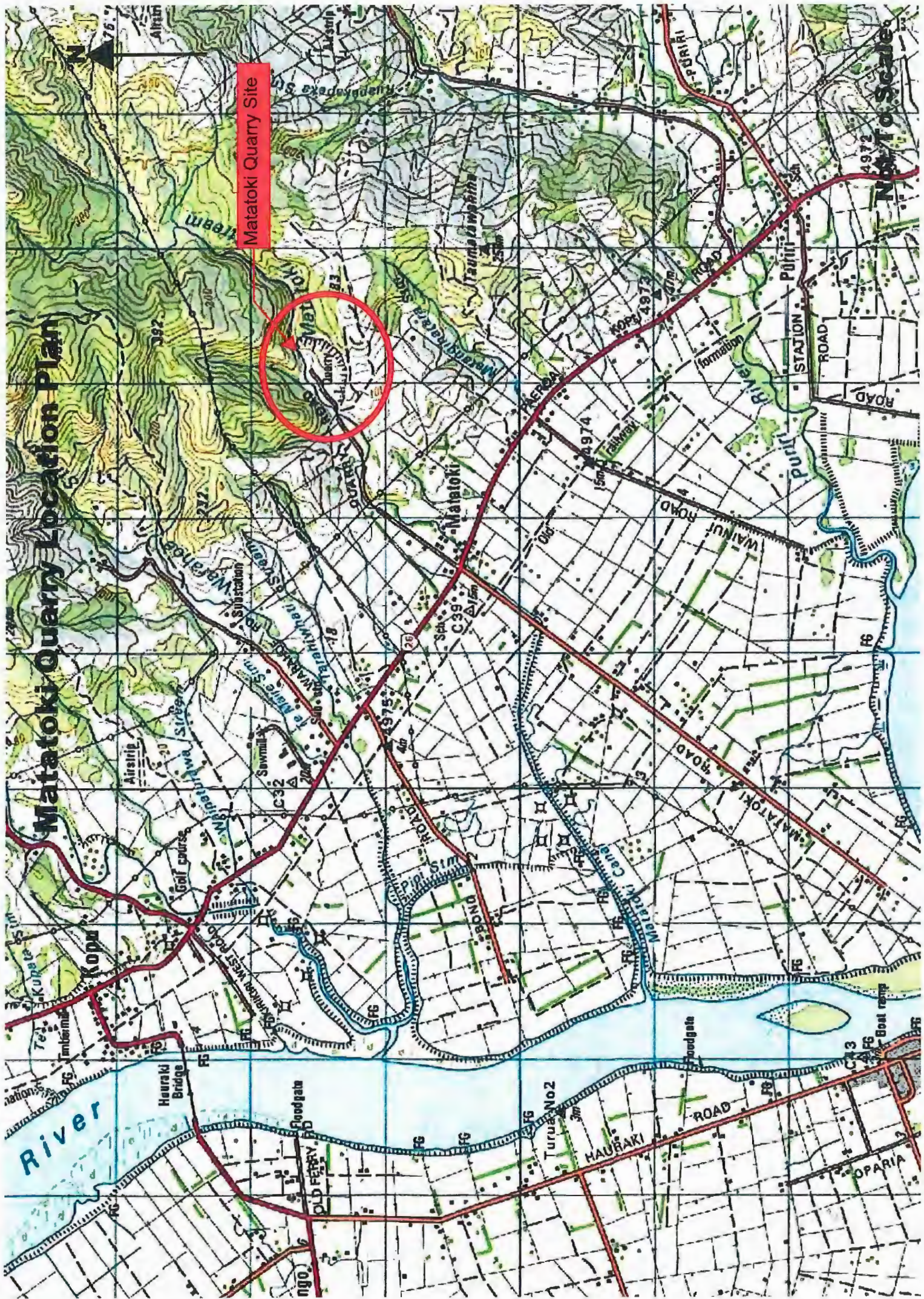
For its part HGL would welcome the opportunity to progress a solution in this manner.

The District Plan review is a chance to provide for key resource development opportunities in the area. HGL is strongly of the view that existing major quarries be afforded positive protection in the manner recommended.

Conclusion

HGL seek the following outcomes as per the submission lodged:

- Reinstate Rule 39.2.1 from the Draft District Plan as a new provision in Section 37 (presumably 37.3.3) including the performance standards and Table showing the existing quarries
- Identify existing quarries on the Planning Maps (i.e. in existence as at notification)
- Identify a Quarry Buffer Area of 250m minimum around the existing quarries and make appropriate amendments to relevant objectives and policies relating to reverse sensitivity issues (apply to buffer areas)
- Include appropriate definitions for:
 - Quarry Resource Area
 - Quarry Reverse Sensitivity Area



Matatoki Quarry Location Plan

Matatoki Quarry Site



River

North to Scale

SCHEDULE OF AREAS.		C.T.	AREA.
SECTION	PT. 17	PT. 424/472	53 3500 ha
BLK. XII, THAMES S.D.	LOT 1 D.P.S. 30534	424/471	4 1000 ha
TOTAL LICENCE AREA			63 4700 ha

APPROVED

CERTIFIED CORRECT

Deputy Chief Surveyor
221 319

Total Area... 63 4700 ha

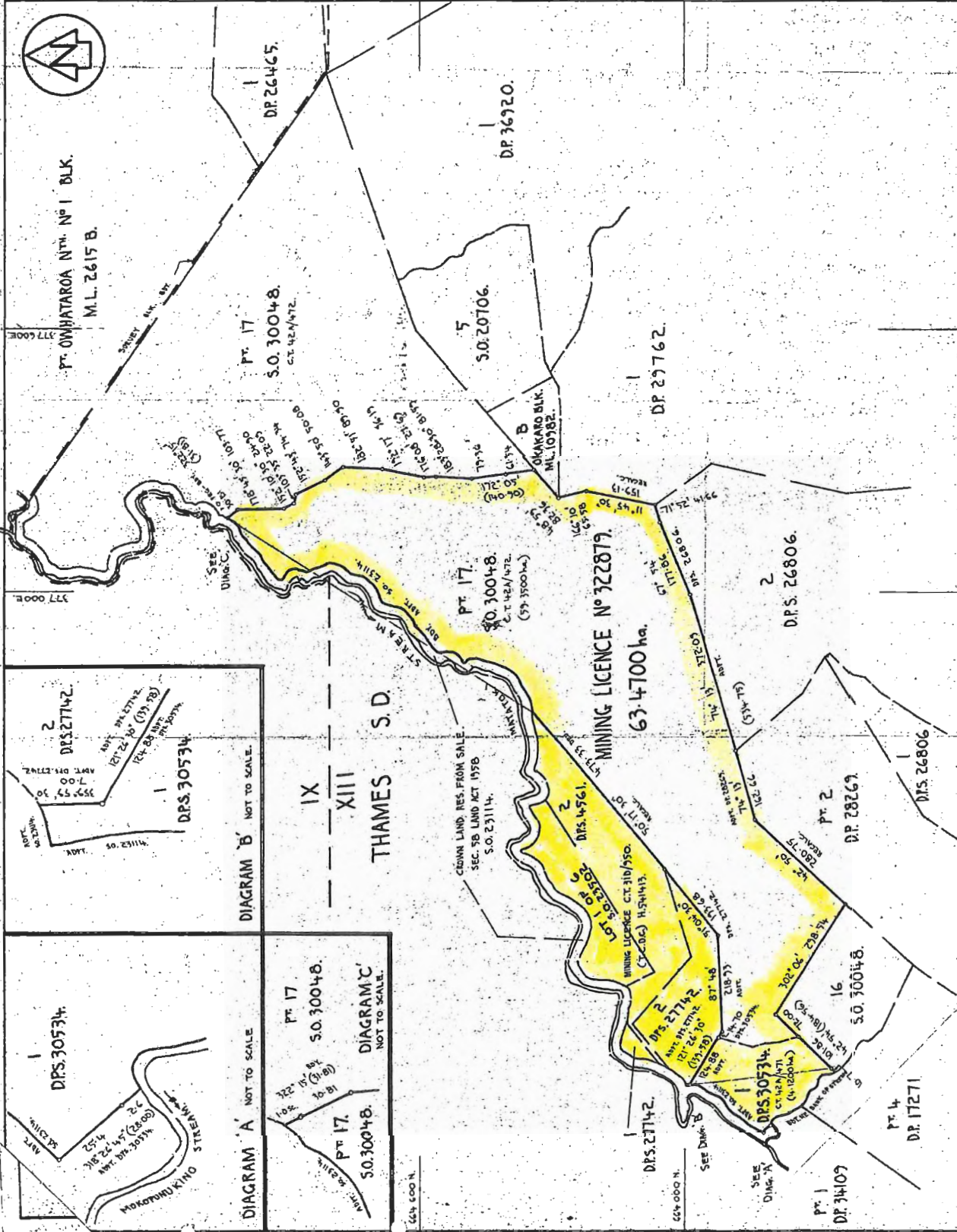
Comprised in C.T. 424/471 ALL SECTIONS

I, **TREVIS CLAUDE DAVIES**
Registered Surveyor and holder of an annual practicing certificate for who may act as a registered surveyor pursuant to section 25 of the Survey Act 1988 hereby certify that this plan has been made from surveys conducted by me or under my directions, that both plan and surveys are correct and have been made in accordance with the Survey Regulations 1982 or any regulations made in substitution thereof.

Dated at **DUNEDIN**, this 20th day of **SEPTEMBER** 1989

Field Book...
Examined...
Approved as to Survey...
Deposited this... day of... 1989

Approved as to Survey...
District Land Registrar
SO 58336



LAND DISTRICT SOUTH AUCKLAND
SURVEY BLK. & DIST. XIII THAMES
NZMS 261 SHT. T.12 RECORD MAP NO 33

PLAN OF MINING LICENCE NO 322879 OVER LOT 1 D.P.S. 30534 AND PT. SEC. 17, BLK. XIII, THAMES S.D.

TERRITORIAL AUTHORITY THAMES COROMANDEL DISTRICT
Surveyed by M. J. DUNWOODIE (REF. 2453)
Scale 1:6000 Date OCTOBER 1989

