PLANNING & ENVIRONMENT COURT OF QUEENSLAND

CITATION:	*Wall, D-G of the EPA v Douglas Shire Council* [2007] QPEC 044
PARTIES:	**TERRY WALL, DIRECTOR-GENERAL OF THE ENVIRONMENTAL PROTECTION AGENCY** Applicant v **DOUGLAS SHIRE COUNCIL** Respondent
FILE NO/S:	BD35 of 2007
DIVISION:	
PROCEEDING:	Determination of preliminary points of law in underlying application for a declaration
ORIGINATING COURT:	Brisbane
DELIVERED ON:	11 May 2007
DELIVERED AT:	Brisbane
HEARING DATE:	20 April 2007
JUDGE:	Judge Robin, QC
ORDER:	Preliminary points determined favourably to the Applicant (EPA)
CATCHWORDS:	*Integrated Planning Act* 1997 Sch 8, Sch 8A – whether or to what extent the chief executive administering the *Coastal Protection and Management Act* 1995 was assessment manager for development by way of operational work "interfering with quarry material" in a "coastal management district" – local government issued to itself development approvals for public toilet facilities in a coastal management district – chief executive's role not confined to the physical interference with "quarry material" – hearing of preliminary points of law inappropriate to resolve issues such as whether work was minor or had "insignificant impact".
COUNSEL:	Hinson SC and Houston for the applicant Gore QC and Everson for the respondent Council
SOLICITORS:	CW Lohe, Crown Solicitor, for the applicant

McCullough Robertson for the respondent Council

[1] The respondent Council seeks determinations to the following effect by its "Amended Notice of Preliminary Points of Law for Determination by the Court":

> "1. That, upon the proper interpretation of the *Integrated Planning Act* 1997 ("IPA"), in respect of work that takes place completely or partly within a coastal management district and on State Coastal land, the Applicant's jurisdiction as either Assessment Manager or Concurrence Agency under Schedule 8, Part 1, Table 4, Item 5(b)(i) of the IPA:-
>
> (a) is limited only to consideration of work that involves acts (or proposed acts) involving the interference with quarry material; and
>
> (b) does not extend to other aspects of development that are declared to be assessable development under Schedule 8 of IPA which involves acts (or proposed acts) subsequent to the interference with quarry material.
>
> 2. That, upon the proper interpretation of IPA, the question whether any work the subject of the current proceeding involves interfering with quarry material for the purposes of Schedule 8, Part 1, Table 4, Item 5(b)(i) of IPA, must be determined with reference only to the acts (or proposed acts) comprising:
>
> (a) excavation of quarry material for the purpose of creating a stable footing for the slab of the toilet block building; and
>
> (b) excavation of quarry material for the purpose of installing two Waterboy HSTP 25 advanced sewerage treatment systems and associated piping.
>
> 3. As a corollary to point 2, that, upon the proper interpretation of IPA, the act of construction of the toilet block building subsequent to the excavation of the quarry material referred to in point 2:
>
> (a) is not operational work which is assessable development; but
>
> (b) rather, is building work that is assessable development.
>
> 4. That, upon the proper interpretation of IPA, the question whether the exemption for "excluded work" (as defined in Schedule 10 of IPA) applies to any work the subject of the current proceeding must be determined with reference only to the acts (or proposed acts) involving the interference with quarry material (as referred to in point 2) and not in any acts (or proposed acts) subsequent to the interference with quarry materials (as referred to in point 3)."

[2] I ordered the setting down of preliminary points on 14 February 2007. The hearing date of 20 April 2007 was fixed by a later order of 27 March 2007. On the first date I gleaned some appreciation of the factual background. See [2007] QPEC 015. The underlying application by the Environmental Protection Agency (EPA) is for a determination that "operational work being interfering with quarry materials on State coastal land[1] above the high water mark … is assessable development under Schedule 8", referring to Item 5(b)(i). The EPA has been cut out of participation in the process whereby the Council applied to itself for and as assessment manager issued to itself the development approval(s) considered necessary for the construction of a toilet block intended for the use of members of the public and located close to the Daintree River. It seems that the project was encouraged, if not initiated by the Wet Tropics Management Authority, which has also provided all or some of the funding for the facilities, which are substantially, but not fully constructed.

[3] On 14 February, the prospect was held out of the whole application being disposed of (against the EPA) by a determination of the preliminary points in the Council's favour. That prospect is no longer offering, the Council now submitting that what can be achieved is definition of the factual matters that need be gone into in the EPA's application.

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[1] By s 17 of the *Coastal Protection and Management Act*

"(1) ***State coastal land*** means land in a coastal management district other than land that is –

(a) freehold land, or land contracted to be granted in fee simple by the State; or
(b) a State forest or timber reserve under the *Forestry Act 1959*; or
(c) in a watercourse or lake as defined under the *Water Act 2000*; or
(d) subject to a lease or licence issued by the State.

(2) In this section –

licence includes a permit or other authority issued under any Act relating to mining, but does not include a permit issued under the *Land Act 1994*, section 771(1)."

[4] This is not the first occasion on which the court has had to consider development in a "coastal management district" (defined in Sch 10 of the *IPA* to mean a Coastal Management District under the *Coastal Protection and Management Act* 1995, other than an area declared as a coastal management district under s 54(2) of that Act): see *Hayday Pty Ltd v Brisbane City Council* [2005] QPEC 102, at [10]. Here, the parties are agreed that the relevant land is within a coastal management district and that it is State coastal land, as defined in s 10, which picks up the definition in s 17 of the 1995 Act. Another relevant Sch 10 definition is:

> ***"assessable development*** means –
> (a) development specified in schedule 8, part 1; or
> (b) for a planning scheme area - development that is not specified in schedule 8, part 1 but is declared under the planning scheme for the area to be assessable development."

[5] Other relevant *IPA* definitions are in s 1.3.5:

> **"*building work*—**
> 1 Building work means—
> (a) building, repairing, altering, underpinning (whether by vertical or lateral support), moving or demolishing a building or other structure; or
> (b) work regulated under the building assessment provisions under the *Building Act 1975* other than IDAS; or
> (c) excavating or filling—
> (i) for, or incidental to, the activities mentioned in paragraph (a); or
> (ii) that may adversely affect the stability of a building or other structure, whether on the land on which the building or other structure is situated or on adjoining land; or
> (d) supporting (whether vertically or laterally) land for activities mentioned in paragraph (a).
> …
> 4 *Building work* does not include undertaking—
> (a) operations of any kind and all things constructed or installed that allow taking, or interfering with, water (other than using a water truck to pump water) under the *Water Act 2000*; or
> (b) tidal works.
> …

operational work—

1 Operational work means—

(a) extracting gravel, rock, sand or soil from the place where it occurs naturally; or

(b) conducting a forest practice; or

(c) excavating or filling that materially affects premises or their use; or

(d) placing an advertising device on premises; or

(e) undertaking work in, on, over or under premises that materially affects premises or their use; or

(f) clearing vegetation, including vegetation to which VMA applies; or

(g) undertaking operations of any kind and all things constructed or installed that allow taking, or interfering with, water (other than using a water truck to pump water) under the *Water Act 2000*; or

(h) undertaking—

(i) tidal works; or

(ii) work in a coastal management district; or

(i) constructing or raising waterway barrier works; or

(j) performing work in a declared fish habitat area; or

(k) removing, destroying or damaging a marine plant; or

(l) undertaking roadworks on a local government road.

2 *Operational work* does not include—

(a) for items 1(a) to (f) and (j), any element of the work that is—

(i) building work other than building work for reconfiguring a lot; or

Example of building work for reconfiguring a lot—
building a retaining wall

(ii) drainage work; or

(iii) plumbing work; or

(b) clearing vegetation on—

(i) a forest reserve under the *Nature Conservation Act 1992*; or

(ii) a protected area under the *Nature Conservation Act 1992*, section 28; or

(iii) an area declared as a state forest or timber reserve under the *Forestry Act 1959*; or

(iv) a forest entitlement area under the *Land Act 1994*."

Paragraph 1(h)(ii) is applicable.

[6] The key *IPA* provision is s 3.1.4(1) by which a development permit is necessary for "assessable development" being relevantly development "specified" in Sch 8, Pt 1.

[7] The Chief Executive administering the *Coastal Protection and Management Act* 1995 is identified as assessment manager for applications for operational work that

is tidal work or work carried out completely or partly within a coastal management district in various items in the tables in **Sch 8A Assessment manager for development applications**, including Table 3 Item 6 and Table 4 Items 1 and 7. In Sch 8 Part 1, Table 4 contains in Item 5:

Table 4: Operational works

For tidal work or work within a coastal management district*	
5	Operational work that is – (a) tidal work; or (b) any of the following carried out completely or partly within a coastal management district – (i) interfering with quarry material on State coastal land above high-water mark; (ii) disposing of dredge spoil or other solid waste material in tidal water, other than under an allocation notice under the *Coastal Protection and Management Act* 1995; (iii) draining or allowing drainage or flow of water or other matter across State coastal land above high-water mark; (iv) constructing or installing works in a watercourse and not assessable under item 3 or 4; (v) reclaiming land under tidal water; (vi) constructing an artificial waterway not associated with the reconfiguring of a lot; (vii) constructing an artificial waterway not associated with the reconfiguring of a lot on land, other than State coastal land, above high-water mark if the maximum surface area of water on the waterway is at least 5,000m^2 (viii) constructing a bank or bund wall to establish a ponded pasture on land, other than State coastal land, above high-water mark; (ix) removing or interfering with coastal dunes on land, other than State coastal land, that is in a erosion prone area and above high-water mark.

* Table 4, item 5 commenced 4 October 2004.

[8] It is clear from the foregoing that, tidal work not being involved, a role for the EPA depends on there being operational work interfering with quarry material. The Council concedes that such interference was proposed, indeed, has occurred. For Sch 8 Pt 1 Table 4 Item 5, *IPA* Sch 10 picks up the definition of "quarry material" from the 1995 Act:

> "***quarry material—***
> 1 *Quarry material* means material on State coastal land, other than a mineral within the meaning of any Act relating to mining.
> 2 For item 1, material includes, for example, stone, gravel, sand, rock, clay, mud, silt and soil, unless it is removed from a culvert, stormwater drain or other drainage infrastructure as waste material."

[9] There is much in the 1995 Act to support the view that "quarry material" is seen as something to be exploited by extraction and use elsewhere, typically on the basis of payment to whoever appears entitled, which may be the public. It would seem unlikely in the extreme that anything of that nature will ever occur lawfully along the Daintree River. However, there exists there "quarry material" as defined which the work done to date has interfered with (cf *Cornerstone Properties Ltd v Caloundra City Council* [2005] QPELR 96 at 111); this brings Item 5 into effect. This last observation is subject to the qualification that Item 5 does not apply to "excluded work", a term defined in Sch 10:

> "***excluded work***—
> 1 *Excluded work*, for schedule 8, part 1, table 4, item 5,means maintenance work on a lawful work.
> 2 *Excluded work*, for schedule 8, part 1, table 4, item 5(b)(i), (iii) and (ix), also means—
> (a) minor work that—
> (i) has insignificant impact on coastal management; and
> (ii) is reversible or expendable; or
> (b) work for which an exemption certificate under the *Coastal Protection and Management Act 1995* has been issued.
> 3 *Excluded work* does not include work to which section 4.3.6 applies."

(Section 4.3.6 deals with emergency situations.) We are not concerned with maintenance work here.

[10] There is no exemption certificate. For present purposes, that would be something within the purview of the EPA. Whether work is within 2(a)(i) or (ii) is a matter for judgment. In the first instance, that judgment may be made by the developer. In the next instance, it may be made by the Council (if it receives the development application), whose judgment may or may not be the same. Unsurprisingly, here, given that the Council was both development applicant and assessment manager, the judgment was the same. This would not conclude the matter. Any third party with

standing may contend in the appropriate forum that 2(a) is not satisfied, either as 2(i) or (ii). This requires some factual inquiry. If the outcome is that no more is involved than excluded work, the EPA has no role, whether quarry material is interfered with or not.

[11] "Minor work" is not defined; it is patent that in many circumstances there will be room for differing opinions to be held honestly and/or reasonably as to whether proposed work is "minor". The same observation is pertinent as to whether impacts on coastal management are "significant" or otherwise, and whether work is "reversible" or "expendable" (assuming that the meaning of such terms in this context is clear). The developer will be the entity to make the determination in the first instance. The assessment manager charged with processing any development application will have to reach its own decision, which may be a different one, susceptible of challenge in the court. Where there is room for argument, inconvenient or frustrating determinations may be made before a final outcome can be reached. If the local government is applied to, it may (rightly or wrongly) assume or reject the role of assessment manager; if the Chief Executive administering the *Coastal Protection and Management Act* 1995 is invited to be assessment manager under *IPA* Sch 8A Table 4 Item 1, Table 4 Item 7 or Table 3 Item 6 (the Council submitted that the first provision was the relevant one), then, likewise, embracing or rejection of the role may be adjudged erroneous in due course.

[12] The Council's submissions accept that by s 1.3.2(c) of *IPA* carrying out of operational work is "development" and that operational work under s 1.3.5 includes:

> "(h) undertaking –
> (i) tidal works; or
> (ii) work in a coastal management district"

so that, if Item 5(b)(i) does apply, "the EPA is effectively the assessment manager". In the events that happened, by bypassing the EPA, the Council may have committed a development offence by carrying out assessable development contrary to s 4.3.1(1). In those circumstances, the Council contends that a narrow view of what constitutes "interfering with quarry material" under 5(b)(i) ought to be taken. The Council's written outline of submissions put forward these considerations in support of its contention:

> "13. The purpose of schedule 8 part 1 is to set out the 'development specified' as assessable development. Judicial attempts to expound the meaning of the word 'specified' have repeatedly fixed upon unambiguous clarity as being connoted by it[1]. For development to be specified, the description must involve 'clear objective standards capable of producing a result about which every man must agree if he knows the facts and figures and has made his calculations correctly'; it cannot involve 'a matter of estimate (or) assessment … (or) a matter of judgment'[2].
>
> 14. The provisions are intended to enable members of the public (mainly land users, and those interested in land use) to identify with reasonable certainty whether or not development is assessable. This in turn identifies whether a development permit is necessary. There is a heavy penalty for carrying out assessable development without an effective development permit. A determination as to whether development is assessable cannot depend upon matters of opinion as to whether development in fact proposed is adequate for the purpose (as contended for by the wider view).
>
> 15. If development is inadequately designed, other consequences may flow (e.g. a breach of the *Environmental Protection Act* 1994 with respect to environmental offences, or a civil action in negligence) but it cannot have been intended that differences of opinion about issues of adequacy may need to be resolved before determining whether development requires a development permit.
>
> 16. While the definition of 'excluded work' appears to introduce an element of judgment into the determination, consideration must be confined to the particular interference in fact proposed.
>
> 17. For reasons given above, the decision in *Cornerstone Properties Ltd v Caloundra City Council 2005 QPELR 96 (at 110-111)* is distinguishable.

[1] *Tickner v Chapman 1995 89 LGERA 1, 30; see also at 7*
[2] *King Gee Clothing Pty Ltd v Commonwealth 1945 71 CLR 184, 197-198; see also Race Course Cooperative Sugar Association Ltd v AG (Q) 1979 142 CLR 460, 480-481; Mt Marrow Blue Metal Quarries Pty Ltd v Morton SC 1996 1 QDR 347,353"*

[13] As to the implications of use of "specified" in the definition of assessable development, in *Tickner*, Black CJ said at p 7:

> "The area must be 'specified'. Section 10(1)(a) requires that the area be a specified area and this requirement is not satisfied by vague generalities. There must be some reasonable identification of the area.
>
> This conclusion, which follows from the ordinary meaning of the expression 'a specified area', taken in its context, is confirmed by reference to the policy of the section. This requires that members of the public should have an effective opportunity to make a contribution to the decision-making process. If an application could be quite general about the area for which protection was sought it might well be difficult for interested persons to know what was in issue. It should also be noted that the words 'specifying' and 'specified' are used elsewhere in the same section to indicate a requirement of clarity and precision; in s 10(3)(a)(ii) there is a reference to a 'specified date' and in s 10(3)(a)(iii) the operative expression is 'specifying an address'."

Burchett J was more expansive at 30-31:

> "As a matter of the ordinary meaning of the word 'specified', neither the nomination of Professor Saunders to furnish her report nor the advertisement published by her contains any reference to a 'specified area'. Courts which have considered the meaning of 'specify' in various contexts have treated it as a strong word. In *Gantry Acquisition Corporation v Parker & Parsley Petroleum Australia Pty Ltd* (1994) 51 FCR 554 at 569-570, I referred to it as 'a word which signified precision'. I added:
>
> > 'Even such a word must yield to context, since no word has a meaning which remains rigidly fixed, however it is used. A word is not a locked box with static contents; it is more like a living cell, changing as it responds to the environment, which is its context. But no change wrought by the contextual currents enveloping the word "specify" … can so transform it that it fails to signify a requirement of clarity and precision … Judicial attempts to expound the meaning of the word "specify" have repeatedly fixed upon unambiguous clarity as being connoted by it: *Re Green's Will Trusts* [1985] 3 All ER 455; *Re Paddle River Construction Ltd* (1961) 35 WWR 605 at 618; *A v B* [1969] NZLR 534 at 536; *Bond Corporation Holdings Ltd v*

> *Sulan* (1990) 3 WAR 49 at 64. See also *Re Karounos; Ex parte Official Trustee in Bankruptcy* (1989) 25 FCR 177 at 181, per Sheppard J. In *Jolly v Yorketown District Council* (1968) 119 CLR 347 at 351, Barwick CJ and Owen J equated "specify" with "state in explicit terms", a sense closely corresponding with that adopted by Kitto J in the same case at 352 and by Higgins J in his dissenting judgment in *Federated Engine-Drivers and Firemen's Association of Australasia Broken Hill Pty Co Ltd* (1913) 16 CLR 245 at 284-285. In that last case, Barton J said (at 272): "Things specified must be specific things. Here all is general." Those words might have been written for the present case.'

As in *Gantry Acquisition*, so also in this matter, the comment made by Barton J is plainly apposite. And in this case too there is nothing in the context to wrench the word 'specified' away from its normal meaning. To the contrary, s 10(2) (referring to the *specification* in the declaration') and representations to be furnished) clearly provide an immediate context indicating that the word is used to convey the idea of precise statement.

Moving the discussion to a different plane, I think the scope and purpose of s 10 powerfully support the construction suggested by its language. This is a provision enabling a declaration to be made which may have a far-reaching effect upon Aboriginals with a different ancestral tradition, or who simply deny the authenticity of the tradition alleged; upon individual property owners whose properties may be stricken with unitility overnight; and upon the wider community which may gain or lose much by a particular decision. It is entirely probable, and reasonable, that when Parliament legislated for such consequences, it demanded a precise claim, which could be adequately investigated and debated. It should not be forgotten that the Act is concerned with areas 'of particular significance to Aboriginals in accordance with Aboriginal tradition'. Parliament could hardly have contemplated that an area of particular significance would be incapable of being ascertained so as to be identified in an application. Contemplating a matter of great importance, with the potentiality of greatly affecting a number of people, Parliament used the word 'specified', and it seems to me it did so advisedly."

[14] The leading authority is *King Gee Clothing*, Dixon J's judgment at 197-98 in particular:

> "I think that there are limitations upon the kind of standards or criteria he may employ for building up the prices he fixes. They must, I think, be standards or criteria from which a price may be calculated. It is not enough if the price, or some element entering into its composition, can be obtained only by estimation or by the exercise of judgment or discretion, as, for instance, where apportionment or allocation is required.

The expressions to which I refer are 'fix and declare', 'maximum prices,' words repeated in each power; and the expression 'specified,' which is used in two connections.

By the nature of the duty imposed upon the subject I mean the obligation to keep the prices at which he sells below definite limits, limits which of necessity must be clearly ascertainable. The extremely heavy punishments to which, under the *Black Marketing Act*, a sale above those limits exposes the seller illustrates the reasons for authorizing only maximum prices that are clearly ascertainable.

It needs no imagination to see that in drafting an order for the fixing of prices for an important trade many difficulties must be encountered and it would be impossible to avoid ambiguities and uncertainties which are bound to arise both from forms of expression and from the intricacies of the subject. But it is not to matters of that sort that I refer. They depend upon the meaning of the instrument and they must be resolved by construction and interpretation as in the case of other documents. They do not go to power. But it is another matter when the basis of the price, however clearly described, involves some matter which is not an ascertainable fact or figure but a matter of estimate, assessment, discretionary allocation, or apportionment, resulting in the attribution of an amount or figure as a matter of judgment. When that is done no certain objective standard is prescribed; it is not a calculation and the result is not a price fixed or a fixed price. That, I think, means that the power has not been pursued and is not well exercised.

With respect to the Order under consideration, I am of opinion that such a thing has happened in the provisos to pars 6, 7 and 11. These provisos are all in the same form. Their purpose is to modify the effect, lest it prove too favourable to the seller, of a percentage charge to cover indirect labour costs allowed in the scheduled list of prices for manufacturers, semi-manufacturers and makers-up, if they keep the prescribed records. No advantage will be gained by setting out the somewhat intricate direction by which it is sought to effect this end, a direction partly contained in the proviso and partly in the schedules. It is enough to say that, to carry out the direction, it is necessary to ascertain, among other things – (1) the value of the hours the employees of the manufacturer, semi-manufacturer or maker-up were engaged on indirect labour in respect of the goods to which the detailed costs set down in the prescribed records relate; (2) the value of (direct and) indirect manufacturing labour paid for in three months, less the amount not applicable to men's, youths' and boys' outerwear under the Order.

I do not think that the proposition needs any elaboration that neither of these two elements can be found by a process of calculation. To discover what, in a large undertaking, are indirect labour costs and to distinguish them alike from direct labour costs and from manufacturing overhead charges, an item also covered by percentage, requires dissection, allocation, estimation, and perhaps apportionment, involving judgment, estimation and opinion, matters about which there can be no exactness, certainty or common agreement in result. In other words, it deserts clear objective

> standards capable of producing a result about which every man must agree if he knows the facts and figures and has made his calculations correctly. These observations apply with even greater force to the second of the two foregoing elements upon which depends fulfilment of the direction contained in the proviso. For, in an establishment manufacturing and disposing of a great variety of garments, I venture to think that, except by estimation and allocation depending upon judgment and opinion, you cannot determine what are the direct and indirect labour costs not applicable to male outerwear. The same result, therefore, is not necessarily produced by everybody who correctly follows the directions given by ascertaining the maximum price. That consideration appears to me to take the proviso outside the power given by reg. 23(1A). Were it otherwise, no trader, however careful, could be sure what would be held to be the maximum prices within which, under the severest penalties, he must sell his goods."

[15] It is noteworthy that in those cases invalidity of an application purporting to be made under a statute and of a Prices Regulation Order purporting to be made under a statute were held to be the consequence of failure to "specify". Here, the task in hand is one of construing the *IPA* rather than assessing whether there has been compliance with its requirements. According to the Macquarie Dictionary, specified would mean "specifically named or mentioned".

[16] The difficulties for developers, councils and others pointed to by the Council here do not command much sympathy. Once it is appreciated that the location of work proposed is within a coastal management district (which one would expect anyone who read *IPA* and who followed up references to the *Coastal Protection and Management Act* to discover easily), prudence would dictate obtaining an exemption certificate, or some less formal indication from the EPA or that it had no interest in being assessment manager, whether because work proposed was excluded work, or because it was not within the operational work listed in Item 5, or on some other basis. Pursuit of such a course ought not to be excessively consuming of time or resources.

[17] It will be recalled that the Council appears to concede that the EPA is assessment manager for a limited part of the relevant work, namely what is installed within quarry material; its case is that it, as the local government, is assessment manager for other parts of the work, which might be considered "building work" in the present context, rather than "operational work"; the building in its above ground aspects would be considered as separated from its footings, slab, in-ground treatment facilities and pipes, and the like. The distinction, which quarantines the EPA's role strictly to actual direct physical interference with quarry material, is a rational one and may be seen as consistent with the *Coastal Protection and Management Act*'s principal focus on quarry material as a resource to be "allocated" and extracted in ways authorised pursuant to the Act. See Pt 5 of Ch 2 (s 73 ff). The Council's development impinges only in a limited way (said to be less than 50 m^2) on the potential availability of quarry material (assuming that so much of it as may be moved or covered up has some value). One may speculate that there is never going to be any serious prospect of exploitation of quarry material adjacent to the Daintree River. Be that as it may, the definitions are clear; literal application of them brings the EPA in as assessment manager for some operational work unless it be established that the definition of "excluded work" is satisfied in the circumstances, which cannot be gone into in the present hearing.

[18] I am not persuaded that "interfering with quarry material" should be confined to direct interference. Quite apart from whatever influence the total building may have within its footprint and curtilage, there may be much wider potential impacts of concern not for quarry material alone, but for the river and its banks, particularly downstream towards the coast within the coastal management district. The facility will, it is hoped, effectively treat human waste; in that it may fail, despite the

Council's confidence; the EPA contends that the proposed building itself is inadequately designed, and may disintegrate in foreseeable conditions, generating rubble to be distributed widely, maybe worse. Here, the EPA's concerns appear to be proper, valid ones in terms of "coastal management"; there is little room for contentions that it should have no role in the assessment of the development.

[19] One would take the practical course to be, and I think the legal position is this: once there is identified operational work that is interfering with quarry material (unless there is an exemption certificate or equivalent, or it is shown after all parties with standing have had an opportunity to be heard that there is no more than "excluded work" involved), the EPA (more correctly the Chief Executive identified in Sch 8A) is assessment manager, because that is what Item 5(i)(b) triggers; it would be an unattractive course to read down the assessment manager role. In my opinion the better view is that the inclusion of any interference with quarry work triggers the operation of the item (if the exceptions cannot be shown to apply) and it is artificial to read the item down and restrict it to the most confined sphere of application possible. The deliberateness with which the arrangements now in place have been arrived at is indicated by Sch 8A Table 1 by which the local government is assessment manager for "(e) operational work mentioned in Schedule 8, Part 1, Table 4, Item 5(b)(vi)".

[20] It may well be that the EPA will be unreceptive to being saddled with responsibility for all aspects of assessment that thus come its way. There are possibilities of exemptions being granted by certificate or determinations that certain aspects represent excluded work. The EPA's attitude may well be influenced by its judgment of what "coastal management" in the particular coastal management district requires, of which something further will be said below.

[21] One would hope that in accordance with the *IPA* philosophy, a "one stop shop" approach can somehow be implemented by cooperative endeavours. There is no reason for thinking that according to the EPA the primary assessment manager role would create any greater difficulty than would the Council's suggested splitting of the work into components. The certainty and clarity the Council craves for development applicants are protected here by acknowledging the EPA as assessment manager.

[22] In the result, I favour what the Council's submissions called the "wider" view, rather than the "narrower view" contended for by it.

[23] It has not been necessary to decide whether to receive as evidence Mr Collins' expert report, which is said to provide an evidentiary basis for some of the EPA's contentions, for example that the impacts of a properly designed building would be surprisingly large (compared with the comparatively modest ones of the present proposal). As a general rule, it seems undesirable to receive such reports on a preliminary hearing like the present one. The Council had no opportunity to answer Mr Collins; it might be seen as having encouraged the obtaining of his report by its own reliance on promotional material about the merits of the waste treatment system it has installed.

[24] Coastal management is defined in s 11 of the *Coastal Protection and Management Act* to include the protection, conservation, rehabilitation, management and ecologically sustainable development of the "coastal zone", which in terms (s 15(b)) includes:

> "(b) all areas to the landward side of coastal waters in which there are physical features, ecological or natural processes or human activities that affect, or potentially affect, the coast or coastal resources."

Section 4 is, in part:

> "4 **How coastal management is to be achieved**
> Coastal management is to be achieved by coordinated and integrated planning and decision making, involving, among other things, the following—
> **(a) Coastal management plans**
> • Preparing coastal management plans that—
> …
> (**b) Coastal management districts**
> • Declaring coastal management districts in the coastal zone as areas requiring special development controls and management practices.
> **(c) Use of other legislation**
> • Using other relevant legislation wherever practicable to achieve the object of this Act."

and follows the enumeration of the Act's main objects, which include:

> "(c) provide, in conjunction with other legislation, a coordinated and integrated management and administrative framework for the ecologically sustainable development of the coastal zone; and
> (d) encourage the enhancement of knowledge of coastal resources and the effect of human activities on the coastal zone."

[25] The geographical extent of the zone is indicated by the definition of coast in s 10, as all areas within or neighbouring the "foreshore", a defined term. See the Schedule Dictionary.

[26] The legislative intent to regulate development in any coastal management district could not be clearer. That Dictionary adopts *IPA* meanings of assessable development and "assessment manager", as to which the version available to me (Reprint 3) contains the following note:

> "Under section 3.1.7 (Assessment manager) of the Integrated Planning Act, the *assessment manager,* for an application for a development approval is generally the local government for the area in which the development is to be carried out. However, in some circumstances, it may be another entity prescribed under a regulation under that Act or decided by the Minister administering that Act."

A corresponding Note 21 explains "concurrence agency". In the Act itself Ch 2, Pt 3 (s 54 ff) provides for declaration of coastal management districts and Pt 6 (s 103

ff) establishes a regime for assessment leading to possible approvals for assessable development in the coastal zone, in which the Chief Executive may be assessment manager or a concurrence agency. The assessment regime is reminiscent of that under *IPA*, but not identical. The conditions that may be imposed are ones the Chief Executive considers "appropriate for coastal management": s 106.

[27] The various determinations sought by the Council are inappropriate and will be refused. I am in agreement with the EPA's submissions in the following respects:

> "10. Operational work for Item 5 includes the entirety of the undertaking of works in a coastal management district. Where that work does not interfere with quarry material, it is not assessable under Item 5(b)(i). Where that work does interfere with quarry material it is assessable.
>
> …
>
> 16. In the case of paragraph (b)(i), interfering with quarry material is the relevant descriptor. Once that descriptor is engaged, operational work being work in a coastal management district which is, wholly or partly, interfering with quarry material, is assessable development.
>
> 17. Item 5(b)(i) is not to be read, as the respondent apparently would have it, as though it said 'operational work that is *only* interfering with quarry material' or 'operational work *to the extent that* it is interfering with quarry material'. To construe Item 5(b)(i) in that way is erroneous because it draws artificial and unstated distinctions between different aspects of the work required to be undertaken to execute a single project, and thus segments and complicates the administration of IPA.
>
> 18. The definition of 'quarry material' embraces all physical terrestrial materials, i.e. stone, gravel, sand, rock, clay, mud, silt and soil, other than waste material removed from drainage infrastructure. The purpose of that definition and Item 5(b)(i) is to require any interference with land as a physical object where that land is State coastal land to be the subject of a development permit granted following an assessment of that interference.
>
> **Scope of Excluded Work**
>
> 19. Excluded work is work which is operational work and which has the additional characteristics described in the definition of excluded work. The undertaking of work in a coastal management district is operational work, and it is that work which needs to be considered in applying the definition of excluded work. Since that operational work includes what

would in other circumstances be defined as building work the definition of excluded work and in particular the words ‘minor work’ in paragraph 2(a) requires consideration of the entirety of the work and the consequences of that work.”