

In the matter of the Resource Management Act 1991  
And

In the matter of two appeals pursuant to section 120 of the Act

Between **Sea-Tow Limited**  
ENV-2006-AKL-000548  
(formerly ENV A 0104/05)

And **McCallum Bros Limited**  
ENV-2006-AKL-000533  
(formerly ENV A 0105/05)

**Appellants**

And **Auckland Regional Council**

**Respondent**

**Before the Environment Court**

Alternate Environment Judge D F G Sheppard (presiding)  
Environment Commissioner P A Catchpole  
Environment Commissioner D H Menzies

### **Order of the Court**

~~Having heard the appeals at Auckland on 5, 6, 7, 8, 9, 12, 13, 14, 15 and 16~~  
December 2005; 7 and 8 February, and 27 March 2006 and having issued  
its decision dated 30 May 2006, **this Court hereby orders that:**

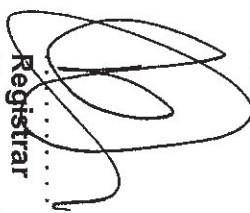
- 1 The appeals are allowed, and the respondent's decision is cancelled; and
- 2 The resource consents are granted to Sea-Tow Limited on the terms and conditions set out in Appendix A to this order, and to McCallum Bros Limited on the terms and conditions set out in Appendix B to this order.

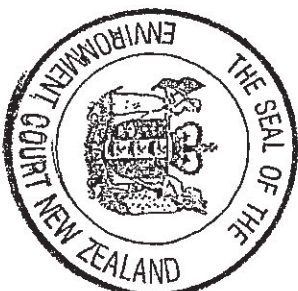


3 Costs are reserved.

Dated at Auckland *12 September* 2006

For the Court:

  
.....  
Registrar  
Environment Court



## Appendix A

### Terms and conditions of coastal permit for Sea-Tow Ltd

GRANTEE: SEA-TOW LIMITED

#### CONDITIONS OF PERMIT:

Purpose of Consent: Extraction of sand, disturbance of sea bed, discharge of excess sea water, shell, sand, occupation of the site

Location: Mangawhai-Pakiri Embayment

#### SPECIAL CONDITIONS

##### Exercise of Consent

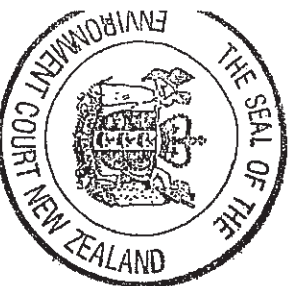
- 1 This consent shall be granted for a term of 14 years, commencing from the date the consent is issued.
- 2 The area of extraction shall be defined as follows:  
  
The extraction area shall be defined as the area whose landward boundary is not less than 100 metres from the crest of the nearshore bar (as measured at the time of extraction), or in the event of such a feature being absent or indistinguishable, shall be defined as being an actual water depth (measured at the time of extraction) of not less than 5 metres. The distance measure shall always take precedence to the depth measure.

The northern limit of the extraction area shall be given by a line connecting the grid references NZMS 260 R08:566 637 and 5688638, and the southern limit shall be defined by a line connecting the grid references NZMS 260 R08:619 543 and 621 546. Extraction shall not take place between the area defined by lines connecting grid references NZMS 260 R08:588 595 and 591 596 to the north and NZMS 260 R08:597 578 and 600 580 to the south (i.e. an area extending approximately 500 metres on either side of Te Arai Point). The seaward limit of extraction shall be defined by an actual water depth (measured at the time of extraction) of not more than 10 metres.

- 3 The maximum extraction of sand in each 12 month period from the commencement of consent shall not exceed 27,000 m<sup>3</sup>.

4

- (a) The maximum extraction of sand in any one consecutive 30 day period shall not exceed 7500 m<sup>3</sup>.
- (b) The sand shall be extracted in approximately equal volumes from the four sub-zones in the extraction sites as defined in Figure 1 as attached to this consent.



- 5 Coarse shell and other marine organisms of more than 50 mm minimum diameter shall be screened from the sand and returned to the seabed at the extraction site.
- 6 The extraction site shall be moved daily within the available extraction area specified for this consent.
- 7 Sand extraction should be located so as to minimise the likelihood of marine life being entrained or destroyed, i.e. it should not occur in areas of high species diversity and/or density. If any such areas are encountered during the exercise of this consent, extraction should cease immediately and be re-located to another suitable site. Any area of high species diversity and/or density encountered should be recorded and reported to the Group Manager, Environmental Management, ARC Environment.

8 Any pumping or mechanical equipment used in the process of extracting sand shall be well muffled so as to minimise any detrimental effect the noise may have on adjacent land or recreational users. The noise level shall not exceed 55 dBA, measured as an L10 value on the adjacent coastline. (L10 represents the noise level above which 10% of the values would be exceeded).

9 The consent holder shall not permit or allow any contaminant or material associated with the consent holder's activity to be released into the sea, otherwise than in conformity with this consent. If an incident occurs, the consent holder shall:

- (i) Take immediate steps to ensure mitigation of any adverse effects on the environment of any unforeseen releases.
- (ii) Proceed with all diligence to take all reasonable steps to remedy the effects of any unforeseen releases.
- (iii) Notify the Group Manager, Environmental Management, ARC Environment of the release of any contaminant or material within 12 hours of first detection.
- (iv) If required by the Group Manager, Environmental Management, ARC Environment within 24 hours of the incident occurring provide a written report detailing the nature, manner and cause of the release, the steps taken to remedy or control the release, and measures adopted to prevent any further release of such contaminant or material.

#### Monitoring

10 The consent holder shall keep a daily record of the volume of sand extracted, the date, time, water depth, and sea conditions at each extraction site. The exact position of each extraction site shall be clearly mapped.

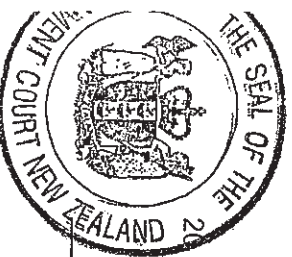
11 The consent holder shall provide to the Group Manager, Environmental Management, ARC Environment a copy of the extraction records and map as detailed in special condition 10. The records and map shall be provided on a three-monthly basis, and must be received within 30 days from the end of the preceding period.

The consent holder shall, on request, make available to the Group Manager, Environmental Management, ARC Environment, company records documenting the volume of sand extracted, including wharf unloading records.



Topographic and bathymetric surveys

- 13 The consent holder shall undertake six monthly topographic surveys (March and September) of the following beach/dune features from 1km north of existing profile P1 to existing profile P8 at a data point at least every 100m along the beach:
- (a) Dune line (i.e. top of dune face).
  - (b) Seaward dune toe (i.e. major change of slope at dune/beach boundary).
  - (c) High tide or most recent storm run up limit (i.e. berm location).
  - (d) Lowest position possible on the beach (i.e. low tide limit).
  - (e) At the existing 11 profile sites (P1 to P8) a greater concentration of ground points will be surveyed to enable the profiles to be generated along the existing profile lines.
- 14 Within five years of the commencement of this consent, and at five yearly intervals thereafter, the consent holder shall undertake a full topographic survey of the beach and fore dune environment over the area for 250m on either side of each of the eleven profiles.
- 15 All topographic surveys are to be undertaken by appropriate instruments and methods to provide survey accuracy of 0.5m in the horizontal and 0.2m in the vertical. All data to be provided in NZMS grid co-ordinates and elevation to MSL datum.
- 16 Within six months of the commencement of this consent and at three yearly intervals thereafter, the consent holder shall undertake a bathymetric survey of the near-shore area out to 25m depth between the two points located 250m to the north of profile P1 and 250m to the south of profile P8, on the track lines shown in Figure 2.3 in Module 3 of the Mangawhai-Pakiri Sand Study.
- 17 The consent holder shall provide topographic and bathymetric survey results to the ARC within two months of survey in a form and with the information reasonably required by the ARC.
- 18 Within five years of the commencement of this consent and at five yearly intervals thereafter the consent holder shall provide the ARC with a full report of all survey results obtained within the five year period including the five yearly topographic survey for that period and all three yearly bathymetric surveys over that period. The report shall be in a form approved by the ARC prior to presentation of the report.
- Review of conditions of consent
- 19 Five years after the commencement of this consent, the consent will be reviewed for the purpose of reviewing the adequacy of the conditions of consent following the topographic and bathymetric surveys referred to in conditions 13-18 above.
- The review will reassess all conditions of consent and primarily consider those conditions which address the following matters:



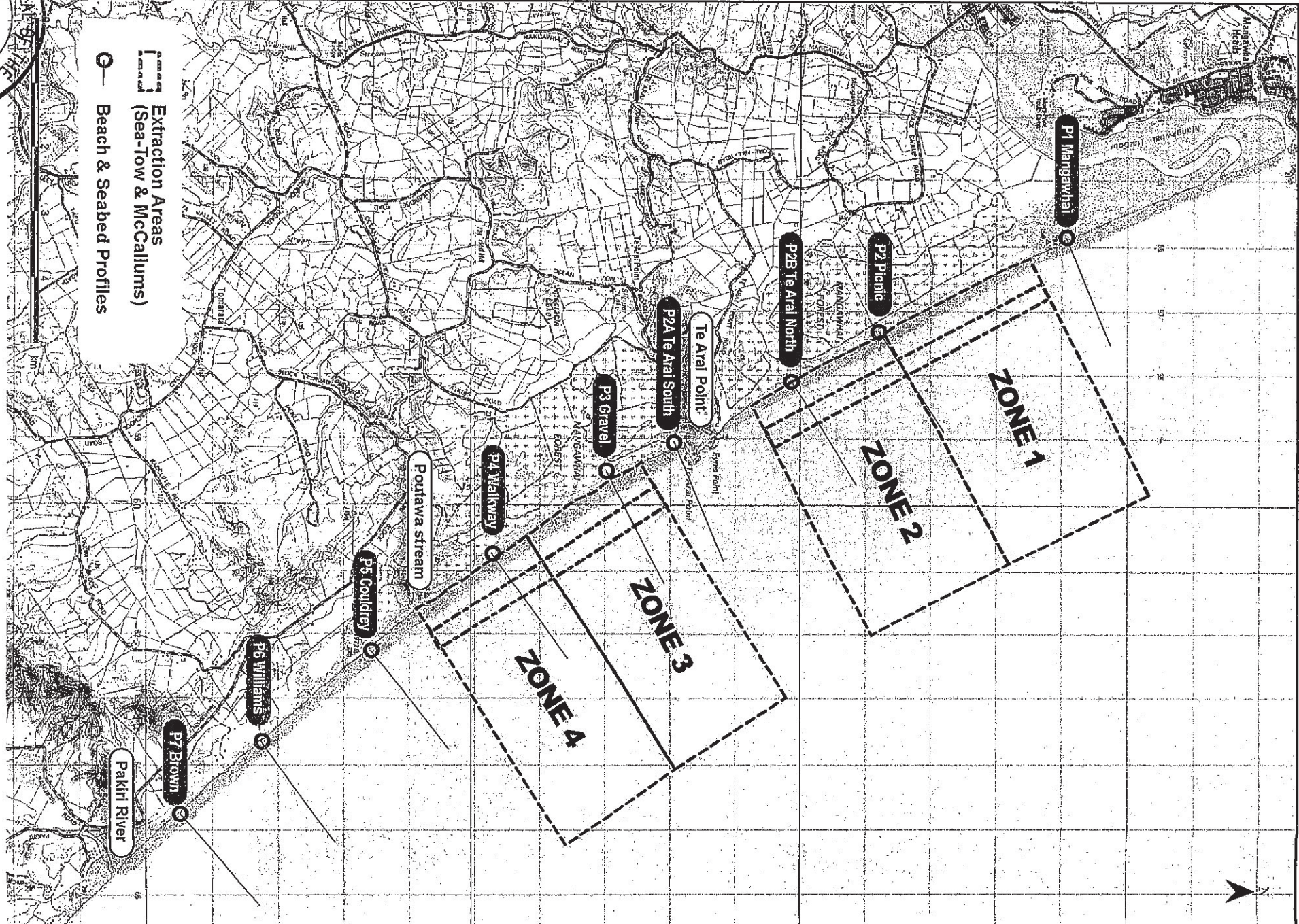
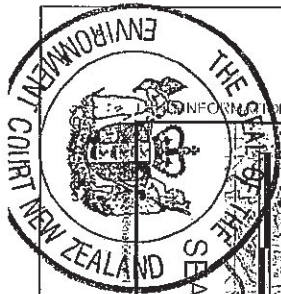
- (a) The volume of sand allocated for extraction.
  - (b) The extent and location of the extraction site.
- 21 One year after the commencement of this consent and at 12 monthly intervals thereafter, the conditions of consent may be reviewed if:
- (a) If the volume of sand within the beach profile (0 – 3.5m) shows loss at three adjacent profile sites sustained over three consecutive surveys.
  - (b) The excursion distances at +1.0m or +2.0m or +3.5m contours at three adjacent profile sites are all landward over three consecutive surveys.
- 22 If following a review, any variations to the conditions of consent are recommended, these shall be implemented within 12 months from the date of the review.

Administration

- 23 The consent holder shall not transfer the whole or any part of the holder's interest in the permit unless the prior written approval of the Group Manager, Environmental Management, ARC Environment is obtained.
- 24 The servants or agents of ARC Environment shall be permitted access to the relevant parts of the property at all reasonable times for the purpose of carrying out inspections, surveys, tests, measurements or taking samples.
- In the context of this consent, property is defined as including all barges and floating plant operating both within and outside of the consent area, and includes unloading facilities and storage areas.
- 25 The consent holder shall pay to ARC Environment an administrative charge fixed in accordance with Section 36 (1) of the Resource Management Act, or any additional charge required pursuant to Section 36 (3) of the same Act, payable in respect of this resource consent.
- 26 This consent is conditional upon consent holder paying and continuing to pay the contribution due from it towards the costs of the Mangawhai/Pakiri Sand Study, and in the event that it fails to do so for one month from the date on which any such payment is due it shall not extract any further sand pursuant to this consent until all monies due by it in respect of the Sand Study have been paid.







SEA-TOW LIMITED AND MCCALLUM BROS LIMITED PAKIRI  
SAND EXTRACTION APPEAL ENV A 104/05 & A 105/05.

JUNE 2006  
MCCBR-PI-001

Figure 1



## Appendix B

### Terms and conditions of coastal permit for McCallum Bros Ltd

GRANTEE:            McCALLUM BROS LIMITED

#### CONDITIONS OF PERMIT:

Purpose of Consent:    Extraction of sand, disturbance of sea bed, discharge of excess sea water, shell, sand, occupation of the site

Location:             Mangawhai-Pakiri Embayment

#### SPECIAL CONDITIONS

##### Exercise of Consent

- 1    This consent shall be granted for a term of 14 years, commencing from the date the consent is issued.
- 2    The area of extraction shall be defined as follows:  
  
The extraction area shall be defined as the area whose landward boundary is not less than 100 metres from the crest of the nearshore bar (as measured at the time of extraction), or in the event of such a feature being absent or indistinguishable, shall be defined as being an actual water depth (measured at the time of extraction) of not less than 5 metres. The distance measure shall always take precedence to the depth measure.

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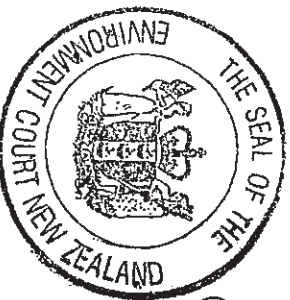
The northern limit of the extraction area shall be given by a line connecting the grid references NZMS 260 R08:566 637 and 568638, and the southern limit shall be defined by a line connecting the grid references NZMS 260 R08:619 543 and 621 546. Extraction shall not take place between the area defined by lines connecting grid references NZMS 260 R08:588 595 and 591 596 to the north and NZMS 260 R08:597 578 and 600 580 to the south (i.e. an area extending approximately 500 metres on either side of Te Arai Point). The seaward limit of extraction shall be defined by an actual water depth (measured at the time of extraction) of not more than 10 metres.

- 3    The maximum extraction of sand in each 12 month period from the commencement of consent shall not exceed 49,000 m<sup>3</sup>.

4

(a)    The maximum extraction of sand in any one consecutive 30 day period shall not exceed 7500 m<sup>3</sup>.

(b)    The sand shall be extracted in approximately equal volumes from the four sub-zones in the extraction sites as defined in Figure 1 as attached to this consent.





- 5 Coarse shell and other marine organisms of more than 50 mm minimum diameter shall be screened from the sand and returned to the seabed at the extraction site.
- 6 The extraction site shall be moved daily within the available extraction area specified for this consent.
- 7 Sand extraction should be located so as to minimise the likelihood of marine life being entrained or destroyed, i.e. it should not occur in areas of high species diversity and/or density. If any such areas are encountered during the exercise of this consent, extraction should cease immediately and be re-located to another suitable site. Any area of high species diversity and/or density encountered should be recorded and reported to the Group Manager, Environmental Management, ARC Environment.

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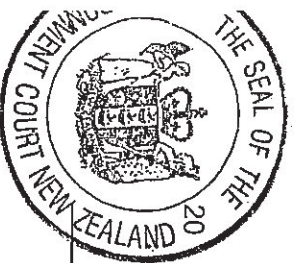
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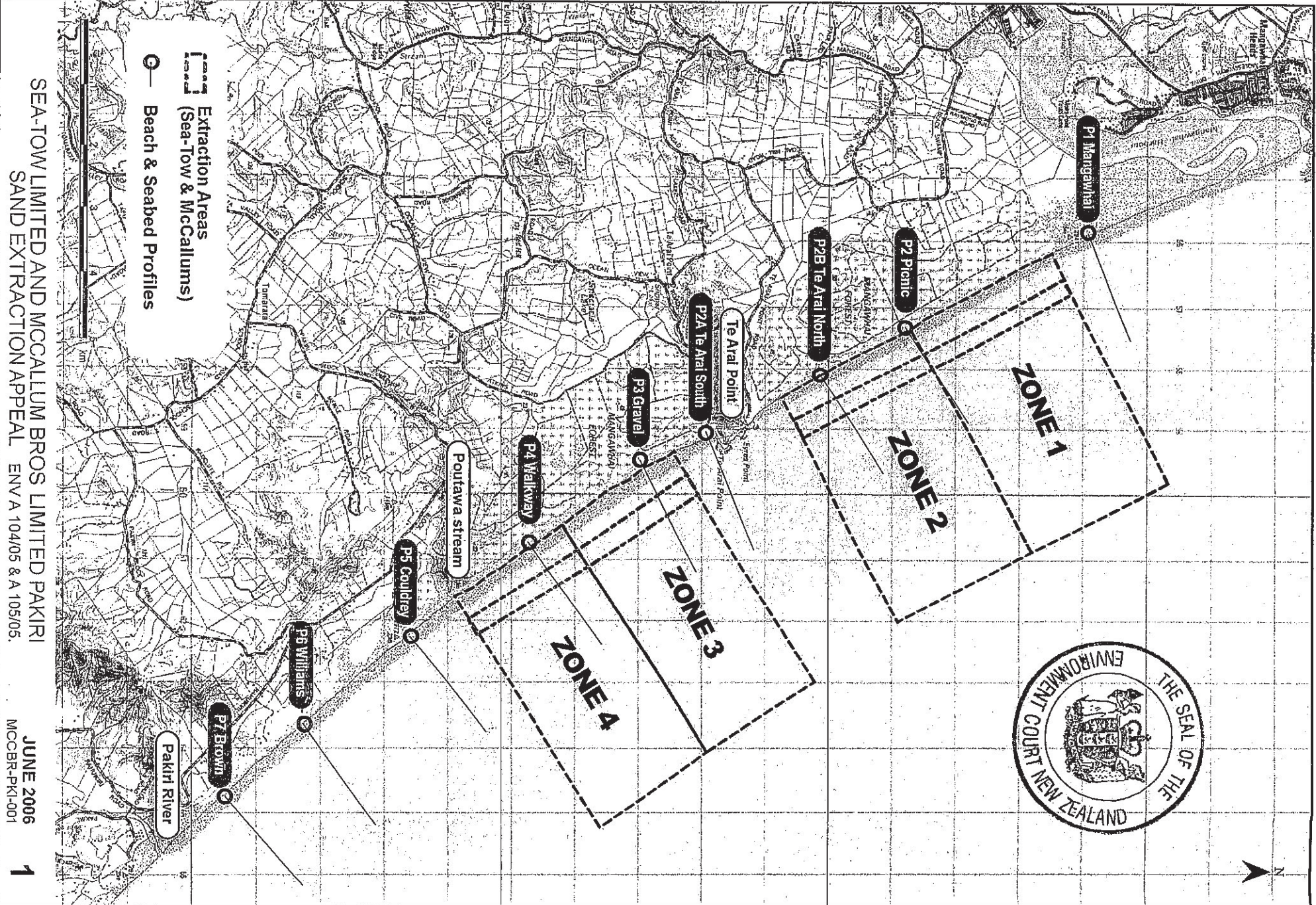
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26 This consent is conditional upon consent holder paying and continuing to pay the contribution due from it towards the costs of the Mangawhai/Pakiri Sand Study, and in the event that it fails to do so for one month from the date on which any such payment is due it shall not extract any further sand pursuant to this consent until all monies due by it in respect of the Sand Study have been paid.







SEA-TOW LIMITED AND MCCALLUM BROS LIMITED PAKIRI SAND EXTRACTION APPEAL ENV A 104/05 & A 105/05.

JUNE 2006 MCCBR-PK1-001

Figure 1

