

Hastings District Council

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OPEN A G E N D A

COMMISSIONER HEARING

(CRAGGY RANGE TRACK REMEDIATION HEARING)

Meeting Date: Tuesday, 11 June 2019

Time: 9.00am

**Venue: Council Chamber
Ground Floor
Civic Administration Building
Lyndon Road East
Hastings**

Hearing Commissioners	Chair: Commissioner Paul Cooney Commissioner Rau Kirikiri
Officer Responsible	Group Manager: Planning & Regulatory Services
Reporting Planner	Consultant Planner – Philip Brown
Committee Secretary	Christine Hilton (Extn 5633)

HASTINGS DISTRICT COUNCIL

**A COMMISSIONER HEARING WILL BE HELD COMMENCING IN THE
COUNCIL CHAMBER, GROUND FLOOR, CIVIC ADMINISTRATION
BUILDING, LYNDON ROAD EAST, HASTINGS ON
TUESDAY, 11 JUNE 2019 AT 9.00AM**

1. APOLOGIES

At the close of the agenda no requests for leave of absence had been received.

2. CRAGGY RANGE TRACK REMEDIATION HEARING

**DOCUMENTS CIRCULATED FOR HEARING - COMPILED AS THREE
SEPARATE DOCUMENTS**

Document 1 The covering administrative report **Pg 1**

Attachments:

Attachment 28 - Planning report 97017#0129 **Pg 9**

The Application and Submissions can be viewed on the Council website and a reference hardcopy is held at the Council Civic Administration Building.

REPORT TO: COMMISSIONER HEARING

MEETING DATE: TUESDAY 11 JUNE 2019

FROM: COMMITTEE SECRETARY
CHRISTINE HILTON

SUBJECT: CRAGGY RANGE TRACK REMEDIATION HEARING

1.0 INTRODUCTION

- 1.1 This is a covering report relating to a hearing commencing on Tuesday, 11 June 2019 which addresses a resource consent application for remediation to the Craggy Range Track.
- 1.2 This agenda can be viewed on the Council website and a reference hardcopy of the Application, Planning Report and associated information and Submissions can be viewed on the Council website and a reference hardcopy is held at the Council Civic Administration Building.
- 1.3 *(Note: For ease of reference, the Recommendations from the attached Planner's Report are also set out below)*

That pursuant to Rule EM6 and EM12 of the Proposed Hastings District Plan (As Amended by Decisions 15 September 2015) and Sections 104, 104B and 108 of the Resource Management Act 1991, resource consent as a Discretionary Activity is GRANTED to Hastings District Council to undertake earthworks for the purpose of removing the remaining sections of the Te Mata Peak Track (Craggy Range Track), to reinstate the original contours of the land, and restore the vegetation cover to pasture on a site located at Waimarama Road, Havelock North and legally described as Lot 3 DP 316592 and Lot 3 DP 408476.

1.0 RECOMMENDATION

- A. That pursuant to rule EM6 and EM12 of the Proposed Hastings District Plan (As Amended by Decisions 15 September 2015) and Sections 104, 104B and 108 of the Resource Management Act 1991, resource consent as a Discretionary Activity is GRANTED to Hastings District Council to undertake earthworks for the purpose of removing the remaining sections of the Te Mata Peak Track (Craggy Range Track), to reinstate the original contours of the land, and restore the vegetation cover to pasture on a site located at Waimarama Road, Havelock North and legally described as Lot 3 DP 316592 and Lot 3 DP 408476.

SUBJECT TO THE FOLLOWING CONDITIONS

GENERAL

1. That unless otherwise altered by the consent conditions, the proposal shall proceed in accordance with the plans and information submitted in the

application Resource Consent: **RMA20190006**, application received **14 January 2019**, specifically:

- a) Completed application form (dated 14 January 2019)
- b) Land use consent and assessment of environmental effects report, prepared by Sage Planning (dated 14 January 2019);
- c) The methodology set out in the technical specification prepared by Frame Group Limited and referenced as 'Craggy Range Track – Te Mata Peak Partial Track Removal Works', Specification No. FGL 18/033/01 (dated January 2019); and
- d) Landscape and Visual Effects Assessment, prepared by Boffa Miskell (dated 11 January 2019).

STOCK ACCESS

2. That stock shall be excluded from the remediated sections of the track (sections A, B and C) for an initial period of 12 months from the completion of the works. At the conclusion of this period, a review of the stability of the remediated surface and the extent of grass cover shall be undertaken by the consent holder and the Council shall be advised of the findings. A further period of stock exclusion may be required by the Environmental Consents Manager if required in order to minimise risk of erosion along the former track surface.

WEED MANAGEMENT

3. That weed removal be undertaken as required to keep the former track alignment free of weeds. Regular weed removal shall occur until such time as there is no significant regrowth and the grass cover is fully established across the earthworks area, to the satisfaction of the Environmental Consents Manager (or nominee).

ACCIDENTAL DISCOVERY PROTOCOL

4. Any person employed to undertake the earthworks and remediation work associated with this consent shall be conversant with the following protocol to ensure they are aware of their obligations under the Resource Management Act, and the Heritage New Zealand Pouhere Taonga Act 2014:

If, at any time during site works potential koiwi (human remains), archaeology or artefacts are discovered, the following discovery protocol is to be followed:

- a) All earthworks will cease in the immediate vicinity (at least 10m from the site of the discovery) while a suitably qualified archaeologist is consulted to establish the type of remains;
- b) All practicable steps must be taken to secure the site and ensure that items uncovered/found remain undisturbed.

- c) If the material is identified by the archaeologist as human, archaeology or an artefact, earthworks must remain on hold in the affected area (as defined by the archaeologist). The consent holder must immediately advise the Environmental Consents Manager, Heritage New Zealand Pouhere Taonga, mana whenua, and Police (if human remains are found), and arrange a site inspection with these parties;
- d) Consultation will be undertaken between the mana whenua, Heritage New Zealand Pouhere Taonga and the Authority holder/project manager to determine the most appropriate course of action.
- e) If the discovery contains koiwi, archaeology or artefacts of Maori origin, representatives from all potentially interested iwi groups are to be provided information on the nature and location of the discovery;
- f) The consent holder shall not recommence works until all relevant authorities and consents have been obtained and recommencement has been approved by the Environmental Consents Manager (or nominee) in conjunction with Heritage New Zealand Pouhere Taonga and mana whenua.

CONSTRUCTION NOISE

- 5. All construction work shall be conducted to ensure that noise measured at the notional boundary of any dwelling or noise sensitive activity does not exceed the Typical Duration Limits Specified in NZS6803:1999.
- 6. All construction noise shall be measured in accordance with New Zealand Standard 6803:1999 "Acoustics – Construction Noise."
- 7. All construction work shall be limited to the hours of 7:00am – 5:00pm Monday to Friday and 8:00am – 5:00pm Saturday (with no work on Sundays or public holidays).

DUST AND DEBRIS

- 8. That the consent holder shall take all measures necessary to ensure the prevention of dust nuisance on adjacent land owners or occupiers, or the transportation of debris beyond the work area. Measures shall include, but are not limited to, the following:
 - a) During dry windy periods the stockpile and exposed earthworks area shall be covered or moistened as required to prevent dust nuisance.
 - b) Should offensive or objectionable dust be observed beyond the site boundary, the activities generating the dust must cease immediately and must not restart until such time as the dust nuisance has been remedied.
 - c) In the event of mud or other debris being carried off the property and deposited on the public carriageway, the consent holder will arrange for its

removal as soon as is reasonably possible.

MONITORING

9. That a monitoring deposit of \$220 (including GST) shall be payable to cover the reasonable costs of monitoring compliance with the above conditions in accordance with Council's schedule of charges. In the event of non-compliance being detected by monitoring or justified complaint and/or the costs of monitoring consent exceeding the deposit, the costs to Council of any additional monitoring shall be paid by the consent holder in accordance with the Council's advertised schedule of fees.
10. That all costs associated with complying with any or all conditions of this consent shall be borne by the consent holder.

WITH THE REASONS FOR THIS RECOMMENDATION BEING

1. The **GENERAL** condition ensures that the development proceeds in accordance with the plans and information submitted and assessed.
2. The **STOCK ACCESS** condition ensures that stock access does not impact on the stability of the earthworks and the establishment of grass cover.
3. The **WEED MANAGEMENT** condition ensures that the establishment of weeds does not compromise grass growth or accentuate the former alignment of the track.
4. The **ACCIDENTAL DISCOVERY PROTOCOL** condition ensures that any incident involving accidental discovery of koiwi, archaeology or artefacts is appropriately managed and communicated.
5. The **CONSTRUCTION NOISE** conditions ensure that the proposal complies with the New Zealand Standard for Construction Noise (NZS6803:1999).
6. The **DUST AND DEBRIS** condition ensures that any adverse effects resulting from the operation of the proposal do not adversely affect adjacent properties or public roads.
7. The **MONITORING** conditions ensure that the consent holder pays the actual and reasonable charges associated with monitoring the consent and that all conditions of consent are monitored for compliance.
8. The **ADVERSE EFFECTS** of this proposal are not significant, and are acceptable in the circumstances, in that:

Landscape Character and Visual Amenity

- The adverse visual and landscape effects arising from the earthworks

required to remove the remainder of the track will be short term and of low magnitude;

- In the context of the existing environment, which includes the effects of the current formed sections of track, the proposed earthworks will facilitate a significant overall improvement in landscape character and visual amenity, particularly over time.

Erosion and Sedimentation

- The methodology for the track removal work incorporates measures to ensure that erosion and sedimentation is managed;
- There is no likelihood of significant erosion or sedimentation occurring and the completed ground profile is expected to remain largely intact even through heavy rain events and overland stormwater flow.

Life Supporting Capacity of Soil Resource

- The temporary loss of productive capacity while stock are prevented from grazing will result in a minimal loss of productive capacity in the context of the District's rural land resource.

Maori Spiritual and Cultural Values

- The earthworks will reduce existing adverse effects on Maori spiritual and cultural values by removing the track, the continued existence of which is strongly opposed by Maori.

9. The proposal is consistent with the **OBJECTIVES, POLICIES** and **OTHER PROVISIONS** of the Proposed Hastings District Plan, in that:

- Any adverse effects on the environment can be mitigated by appropriate conditions, and through the methodology proposed in the application;
- The proposal will remediate existing adverse landscape and visual amenity effects on Te Mata Peak, the landscape qualities of which are afforded the highest level of protection under the Plan's policy framework;
- The proposal will assist in the achievement of outcomes that are more consistent with Maori cultural and spiritual values than the existing situation with the Craggy Range Track in place. Te Mata Peak is a feature of cultural significance to Ngati Kahungunu and hapu, as well as other members of the community, and its remediation is consistent with the objectives and policies of the District Plan;

10. Overall the proposal promotes sustainable management as required by Part 2 of the Resource Management Act 1991 in that:

- It will result in the removal of significant adverse effects on landscape character and amenity, and Maori cultural and spiritual values;
- Any potential adverse effects of the proposed earthworks can be avoided, remedied or mitigated by conditions of consent.

ADVICE NOTES

1. *To avoid doubt, except as otherwise allowed by this resource consent, all land uses must comply with all remaining standards and terms of the relevant Hastings District Plan. The proposal must also comply with the Building Act 2004, Engineering Code of Practice and Hawke's Bay Regional Plans. All necessary consents and permits shall be obtained prior to development.*
2. *Under Section 125 of the Resource Management Act 1991 a resource consent will lapse if not given effect to within 5 years of the date the consent was granted, unless an extension is granted under Section 125(1A).*

Attachments:

1	Submission #1 - Environmental Defence	97017#0076	Document 2
2	Submission #2 - Warwick Marshall	97017#0077	Document 2
3	Submission #3 - Rosemary Cunningham	97017#0078	Document 2
4	Submission #4 - Kenneth Charles Miller	97017#0079	Document 2
5	Submission #5 - Ngati Mihiroa	97017#0080	Document 2
6	Submission #6 - Helen Teresa Barlow	97017#0081	Document 2
7	Submission #7 - Stuart Colin Perry - see submission #9		Document 2
8	Submission #8 - Ike Wallace	97017#0083	Document 2
9	Submission #9 - Stuart Colin Perry	97017#0084	Document 2
10	Submission #10 - Robert Earnest Parsons MacDonald	97017#0085	Document 2
11	Submission #11 - Alexandra Bartlett	97017#0086	Document 2
12	Submission #12 - John James McKeefry	97017#0087	Document 2
13	Submission #13 - Paddy Maloney and Anne Maloney	97017#0088	Document 2
14	Submission #14 - Sonya Rahira Walsh and Brendon Hugh Doyle	97017#0089	Document 2
15	Submission #15 - Christine Nepata Kidwell	97017#0090	Document 2
16	Submission #16 - Jacqueline Elizabeth Chambers and Pounamu Tipiwai-Chambers	97017#0091	Document 2
17	Submission #17 - Fiona Hosford	97017#0092	Document 2
18	Submission #18 - Ngati Kahungunu Iwi	97017#0093	Document 2
19	Submission #19 - Waimarama Maori Committee	97017#0094	Document 2
20	Submission #20 - Margaret Adele Kahuirangi Mohi McGoverin	97017#0095	Document 2
21	Submission #21 - Rose Mohi	97017#0096	Document 2
22	Submission #22 - Brian (Bruno) John Chambers	97017#0097	Document 2
23	Submission #23 - Christopher Malcolm Coop and Dale Coop	97017#0098	Document 2
24	Submission #24 - Te Taiwhenua o Heretaunga Trust	97017#0099	Document 2
25	Submission #25 - Te Mata Peak Peoples Track	97017#0100	Document 2

	Society Inc		
26	Submission #26 - Renata Tomoana (Waipatu Marae Committee)	97017#0101	Document 2
27	Submission #27 - Te Mata Park Trust Board	97017#0102	Document 2
28	Planning report	97017#0129	
29	Public Notice	97017#0040	Document 3
30	Description of Proposal and Assessment of Environmental Effects	97017#0035	Document 3
31	Applicant response to request for clarification	97017#0126	Document 3

**REPORT ON NOTIFIED APPLICATION FOR RESOURCE CONSENT
UNDER THE RESOURCE MANAGEMENT ACT 1991 (RMA)****REPORT TO: HEARINGS COMMISSIONERS****MEETING DATE: 11-12 JUNE 2019****FROM: PHILIP BROWN
CONSULTANT PLANNER****SUBJECT:** A PUBLICLY NOTIFIED APPLICATION FOR A RESOURCE CONSENT TO UNDERTAKE EARTHWORKS REQUIRED TO REMOVE THE REMAINING SECTIONS OF THE TE MATA PEAK TRACK (COMMONLY KNOWN AS THE 'CRAGGY RANGE TRACK'), REINSTATE THE ORIGINAL CONTOURS OF THE LAND, AND RESTORE THE LAND COVER TO PASTURE**NOTE:** This is report is not the decision on the application. This report sets out the advice and recommendation of the reporting planner. This report has yet to be considered by the hearing commissioners delegated by Hastings District Council to decide this resource consent application. The decision will be made by the independent hearing commissioners only after they have considered the application and heard from the applicant, submitters, and council officers.

1.0 APPLICATION DESCRIPTION**1.1 Application and property details**

Application number: RMA20190006

Applicant's name: Hastings District Council

Site address: Waimarama Road, Havelock North

Legal Description: Lot 3 DP 316592 and Lot 3 DP 408476

Lodgement date: 14 January 2019

Notification date: 16 February 2019

Submission period ended: 15 March 2019

Number of submissions received: 25 in total, comprising 23 in support and three in opposition. One late submission in support was also received.

103419#0024

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1.2 Application documents

The list of application documents and plans is set out in the recommendation forming part of this report.

1.3 Adequacy of information

The information submitted by the applicant is sufficiently comprehensive to enable the consideration of the following matters on an informed basis:

- The nature and scope of the proposed activity that the applicant is seeking resource consents for.
- The extent and scale of the actual and potential effects on the environment.
- Those persons and/or customary rights holders who may be adversely affected.
- The requirements of the relevant legislation.

There was no formal request for further information under s92 of the Resource Management Act 1991 (RMA) in relation to this application for resource consent. Clarification of some minor matters was sought, and a satisfactory response was provided on 1 February 2019.

1.4 Report and assessment methodology

The application is appropriately detailed and comprehensive, and includes a number of expert assessments. Accordingly, no undue repetition of descriptions or assessments from the application is made in this report.

I have made a separate and independent assessment of the proposal, with technical aspects having been reviewed by independent experts engaged by the council, as needed. Where there is agreement on any descriptions or assessments in the application material, this is identified in this report.

Where professional opinions differ, or extra assessment and /or consideration is needed for any reason, the relevant points of difference of approach, assessment, or conclusions are detailed. Also the implications for any professional difference in findings in the overall recommendation is provided.

This report is prepared by:

**Philip Brown
Consultant Planner**



Signed:

Date:

17 May 2019

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Reviewed and approved for release by: **Murray Arnold**
Environmental Consents Manager



Signed:

Date:

17 May 2019

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2.0 EXECUTIVE SUMMARY

Hastings District Council has applied for a resource consent to undertake earthworks for the purpose of removing the remaining sections of the Te Mata Peak Track (Craggy Range Track), reinstate the original contours of the land, and restore the vegetation cover to pasture.

The applicant requested public notification of the proposal under Section 95A(3)(a) of the Resource Management Act 1991.

A total of 25 submissions, and one late submission, were received.

Overall, following an extensive assessment and review of the application and specialist advice, I consider that the proposal would not result in significant actual and potential effects on the environment, and will enhance the existing environment through removing adverse effects being generated in relation to landscape character and visual amenity, and Maori spiritual and cultural values. Furthermore, the proposal will not be contrary to the relevant statutory provisions.

Therefore, subject to new or contrary evidence being presented at the hearing, it is recommended that the application for a land use resource consent be approved, subject to conditions of consent.

3.0 THE PROPOSAL

The application by Hastings District Council is to undertake earthworks for the purpose of removing the remaining sections of the Te Mata Peak Track (Craggy Range Track), reinstate the original contours of the land, and restore the vegetation cover to pasture.

The AEE prepared by Sage Planning and accompanying documents provide a detailed description of the proposed remediation works. The proposed works have been divided into three sections which reflect the gradient and physical condition of the track as it moves up the hill slope. A summary of the proposed works is copied below (Section 4, Page 5 of AEE prepared by Sage Planning, dated 14 January 2019):

"In summary, the works involve:

- *Division of the remainder of the track into 3 sections: A, B and C (refer to Figure 6);*
- *Using and excavator recovery of the side-cast soil from track construction and placing it on the track bench;*
- *Minor trimming of the batter edge both above and below the track bench;*
- *Importing and placing additional fill material on the track bend to supplement the recovered side-cast material;*
- *Where required, providing a thin layer of topsoil and sowing a ryegrass seed mix on all exposed earthwork faces on areas A and B;*
- *Installing BioCoir coconut matting over the exposed earthworks on areas B and C;*
- *Provision of topsoil/ silt mix on area A and sowing with a ryegrass seed mix to marry in with terrace productive pasture; and*
- *Placing informal limestone rock armouring in selected locations to mitigate isolated water scouring.*

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Key quantity details from that report are summarised as follows:

- Total length of section of track to be removed: 1,335m;
- Recovery of side cast soil: 1,140 lineal metres;
- Additional fill requirement: 140m³;
- Placement of rock armouring: 4m³;
- Sowing of grass seed: 43kg; and
- Laying of 'BioCoir matting': 3,400m²."

The application included a photograph with the various sections of the track highlighted (refer **Figure 1** below) and identified as Section A (yellow), Section B (blue), Section C (red), and the Emergency Works Area (green). This naming convention is used within this report where required.

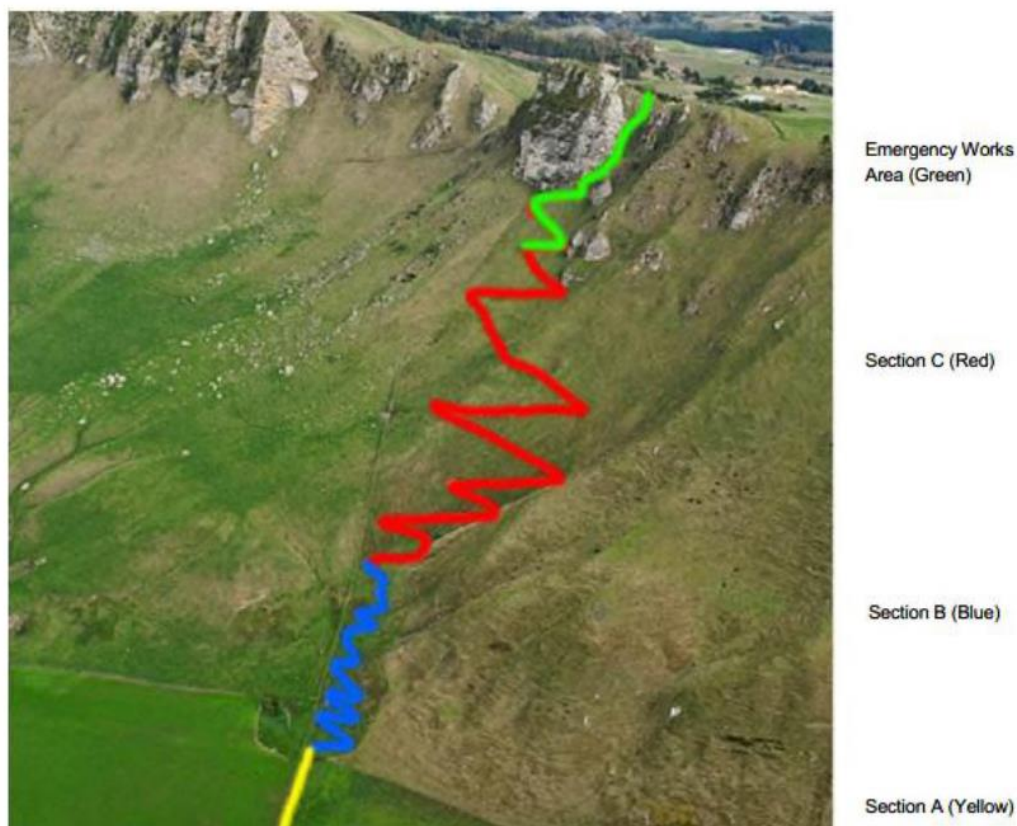


Figure 1: Extent of completed emergency works (in green) and sections of proposed works to remove remaining track"

Earthworks volumes for both cut and fill, and for each section of the track remediation project, are summarised in the table below. The total estimated volume of earthworks, including both cut and fill, is 972m³.

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Cut and Fill Volumes				
	Length	Rate	Cut	Fill
Section A (195m)	195m			
Strip		0.24m ³	46.8m ³	
Replacement soil				40.0m ³
Total Section A			46.8m³	40.0m³
Section B (285m)				
Recover sidecast material	285m	0.25m ³	71.3m ³	
Place sidecast material	285m	0.25m ³		71.3m ³
Additional fill				50.0m ³
Armouring				2.0m ³
Total Section B			71.3m³	123.3m³
Section C (855m)				
Recover sidecast material	855m	0.35m ³	299.3m ³	
Place sidecast material	855m	0.35m ³		299.3m ³
Additional fill				90.0m ³
Armouring				2.0m ³
Total Section C			299.3m³	391.3m³
Overall Totals			417.4m³	554.6m³

4.0 THE SITE

The site is located on the western side of Waimarama Road, to the south-east of Havelock North. The western boundary of the site contains the rock outcrops that form the ridgeline of Te Mata Peak, while the balance of the land sloping down to Waimarama Road is in pasture. Te Mata Peak is the dominant landscape feature in this area and is of significance at a regional level.

The entire eastern slope of Te Mata Peak and the Craggy Range is identified in the Hastings District Plan as being an outstanding natural landscape with the ridgeline being an outstanding natural feature. The lower slopes alongside Waimarama Road are identified as a significant amenity landscape area.

The Craggy Range Track is located at the southern end of the land parcel and starts at the boundary with Waimarama Road. The track runs straight along the boundary line to the base of the hill slope and then begins to form a 'zig-zag' pattern up to the ridgeline.

The uppermost portion of the track located in the south west corner of the site has been removed and the land stabilised and re-sown with grass seed. These works were undertaken under the emergency works provisions contained in section 330 of the RMA,

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and a retrospective application for resource consent was lodged¹ to authorise the remediation of the land (RMA 20180531). That application, and the emergency works it relates to, is being addressed separately by the Council and is not considered in this report.

There are no significant buildings on the land.

Land to the east, between Waimarama Road and the Tukituki River is relatively flat. It is occupied by the Craggy Range Winery and other pastoral and viticultural land uses. Further to the east, on the far side of the river, the land is mainly in pasture and forestry.

5.0 REASONS FOR CONSENT AND ACTIVITY STATUS

5.1 National Environmental Standards

5.1.1 National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2011 (NЕСS)

This NESCS requires consideration at the time of change in land use, subdivision or earthworks on a piece of land upon which an activity on the Hazardous Activities and Industrial List (HAIL) has more likely than not been undertaken.

The NESCS must be considered as the proposal involves earthworks. It appears that the site has historically been used only for grazing, which is not an activity identified on the HAIL. As there is no evidence to support the possibility that the site has been used by an activity identified on the HAIL, and land use activities will remain as production land, it is considered that the NESCS does not apply to this application.

5.1.2 Other National Environmental Standards

The other National Environmental Standards relate to air quality, sources of drinking water, telecommunication facilities, electricity transmission activities, and plantation forestry. None of these matters are relevant to consideration of the application.

5.2 Operative Hastings District Plan

The Proposed Hastings District Plan as amended by decisions on submissions took legal effect on 12th September 2015. The appeals period closed on 23rd October 2015. All appeals that were lodged against the Earthworks, Mineral, Aggregate and Hydrocarbon Extraction and the Rural Zone have subsequently been determined. In accordance with Section 86F of the Resource Management Act 1991, the rules of the Proposed District Plan relevant to this application must be treated as operative. As such, no assessment is required under the Operative District Plan.

5.3 Proposed Hastings District Plan

The site is identified as Rural Zone under the Proposed District Plan. **Figure 2** below is a copy of the zoning map illustrating the zone that applies to the land and the overlays.

¹ As required by s330A of the RMA.

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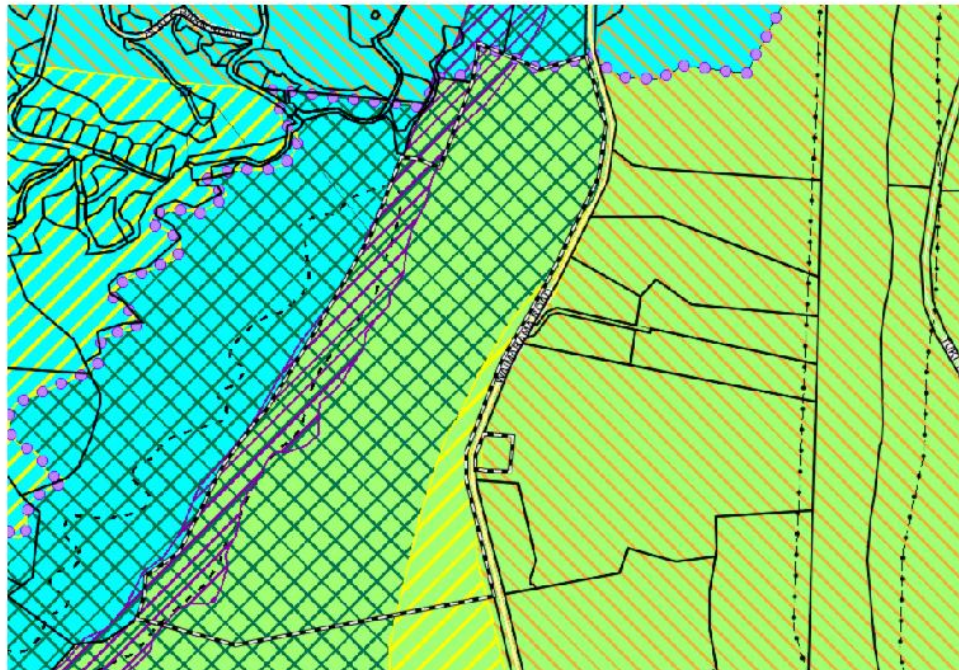


Figure 2: Zoning Map



Figure 3: Zoning Map Legend – indicating overlays across the site

5.3.1 District Wide Activity

The track removal is subject to the earthworks provisions of the District Wide Activities section of the District Plan. Table 27.1.5 of the Earthworks Section sets out the status for earthworks activities. Earthworks are permitted under Rule EM1 of that table, although Rule EM6 states that Permitted Activities not meeting the General Performance Standards and Terms in Section 27.1.6 are Restricted Discretionary Activities.

The extent of earthworks undertaken to facilitate the track removal and reinstate the natural ground contour does not meet the General Performance Standards and Terms on two counts:

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- The earthworks have exceeded the permitted 200m³ annual threshold that applies to Rural Zone sites subject to an ONFL under Standard 27.1.6A²; and
- The earthworks were undertaken on land with a slope likely to be greater than 45° above the horizontal in places³ (Performance Standard 27.1.6C).

It is noted that Performance Standard 27.1.6D restricts the overall vertical extent of any cut/fill face as follows:

- 5 metres in Rural Zone, Nature Preservation Zone & ONFL 7 (excluding ONFL 2 – 6 & 8);
- 2.5 metres in all other Zones;
- 2 metres in ONFL 2 – 6 & 8

Te Mata Peak and Te Mata Peak East Face are identified as ONFL1 in the District Plan. This ONFL is not subject to Performance Standard 27.1.6D, meaning that the maximum vertical extent of any cut/fill face will be the 5m height that applies to sites in the Rural Zone. The section diagrams provided with the application indicate that the cut/fill face height is approximately 3.0m. As such, resource consent is not required under Performance Standard 27.1.6D.

As a result, resource consent is required under Rule EM6 (as the proposal cannot meet the thresholds contained in standards 27.1.6A and 27.1.6C) and is assessed as a Restricted Discretionary Activity.

In addition, Rule EM12 in Rule Table 27.1.5 states that “*Cuts with overall vertical extent greater than 1 metre in ONFL1*” are assessed as a discretionary activity. The overall vertical extent of the cut/fill face height required for remediation of the track is approximately 3.0m, given the proposed methodology that involves trimming of the slope above the track and pulling the lower sidecast material back onto the track bench. As such, the extent of the cut face is likely to exceed 1.0m and resource consent is required as a discretionary activity under Rule EM12.

5.3.2 Land Use

There are no restrictions on earthworks under the Rural Zone provisions or Landscapes Section of the District Plan, as these activities are managed through the District Wide Activity provisions.

5.3.3 Overall Status

Overall the proposal will be considered as a **Discretionary Activity**, being the most stringent status for all the activities being bundled above. It is appropriate to bundle the activities in this case, as the proposal could not proceed without all of the activities being consented.

² The applicant's engineer has estimated a total earthworks volume, including both cut and fill, of 972m³.

³ It is noted that the cross section of the proposed track removal provided by Frame Group Limited identifies the original ground profile as being between 60% and 100% in gradient (between and 30° and 45°). Given that the upper end of the range is expressed as 45°, it is likely that there will be some short sections of the track alignment that exceed this threshold.

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6.0 NOTIFICATION AND SUBMISSIONS**6.1 Notification Background**

The applicant requested public notification of the proposal and Council was therefore required to publicly notify the application under Section 95A(2)(a). Public notice was given on Saturday 16 February 2019, with submissions closing on the 15 March 2019.

6.2 Submissions**6.3 Summary of Submissions**

A total of 25 submissions were received within the statutory submission period, with 22 of these being in support of the application and three in opposition. A summary of the matters raised in the submissions is set out in the following table:

Submitter	Support/ Oppose	Summary of submission
Environmental Defence Society – Cordelia Woodhouse (1)	Support	<ul style="list-style-type: none"> - Consent should be granted in its entirety. - EDS previously filed judicial review proceedings on the basis that the Council should have notified the original consent application. - Te Mata Peak is an outstanding natural landscape of regional and national significance and is afforded the highest protection in the Proposed District Plan (Policy LSP2). - The track is visually prominent and conflicts with the perceptual and associative values that classify Te Mata as an ONL. - Te Mata Peak is a sight of cultural significance to tangata whenua as an ancestor and a taonga. It is part of the living cultural landscape. - The harm caused by the track is felt deeply by the Waimārama Māori Community. - The removal of the track will restore the adverse effects on the landscape, the mauri and cultural values associated with Te Mata.
Warwick Marshall (2)	Oppose	Seeks to retain the track as originally proposed with follow up planting of appropriate vegetation to restore hillside to what it may have been
Rosemary Wood (3)	Oppose	<ul style="list-style-type: none"> - Strongly against the removal of the track. - The track was a wonderful initiative, enjoyed by many and a great attraction to the region. - The track does not spoil the environment in any way. - It encourages local children to walk and be fit. - The Peak is unique and we are proud to not only look at it but to walk it.

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Submitter	Support/ Oppose	Summary of submission
Kenneth Miller (4)	Support	Support the HDC submission to reinstate the land as Te Mata peak is our only important land mark
Ngati Mihiroa – Donna Keefe (5)	Support	References sections 6, 7 and 8 of the RMA being the treaty obligations. Agrees mitigation will have temporary effects that are less than minor.
Helen Barlow (6)	Support	<ul style="list-style-type: none"> - Long term resident of Waimarama and values the sacredness of Te Mata Peak. - The excavation of the track hurt to watch and has resulted in unforeseen effects of protesting and damaging articles in the media. - Put it back to its natural state.
Stuart Perry (7) (amended (9))	Oppose	<ul style="list-style-type: none"> - Concerns with the Council in applying for this consent and the financial costs to ratepayers. - Additional works on track will exacerbate the 'damage' to the outstanding natural features and historical/archaeological significance. - If required just close the track and leave nature to take its course. - The application incorrectly claims that the 'wider public' want it removed. Refer to the online petition to retain the track signed by 25,000 people. - It is a noisy minority who want the track removed. - Questions what the natural state of the landscape is. Suggests that if remediation is essential then why not plant native trees and return the landscape to its original state. - Overall, the proposed works are considered unnecessary as if closed to the public and properly fenced nature will take its course and revert back to pasture within a few years.
Ike Wallace (8)	Support	<ul style="list-style-type: none"> - Supports the application because of Sections 6 (b) and (e) and 7 (c) and (f) of the RMA. - Also supports because of Section 7 (c) and (f) and also Section 8 of the RMA, being the Treaty of Waitangi obligations. - Te Mata Peak is of huge importance to the local tangata whenua, the track has caused division in the community. - The process of consenting and constructing the track was quick with no consultation. - The track has caused pain and its visibility in the landscape is a daily reminder to people.
Robert MacDonald (10)	Support	<ul style="list-style-type: none"> - I support the application because of Sections 6 (b) and (e) and 7 (c) and (f) of the RMA.

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Submitter	Support/ Oppose	Summary of submission
		<ul style="list-style-type: none"> - Also support because of Section 7 (c) and (f) and also Section 8 of the RMA, being the Treaty of Waitangi obligations. - Long-standing resident of Waimārama who has seen how the community has changed over time. - The peak is a cultural landmark for the local community and people. - The submission provides a detailed account of their and their family's experience of Te Mata from a personal and cultural perspective. - The submission details concern about the consenting and consultation process relating to the original resource consent for the track by both the Council and Craggy Range Winery. - Tangata Whenua were denied their right to have a say before the consent was granted.
Alexandra Bartlett (11)	Support	<ul style="list-style-type: none"> - Strongly support the application to remove the track. - The construction of the track was a failure by the HDC which the local tangata whenua have been blamed for - The submission explains the cultural importance of the Range to the submitter. - The track brings great sadness and sorrow. - The significance of Te Mata o Rongokako was not taken into consideration by the HDC when granting the original consent. - The reversing of the scar on the cultural landscape is able to occur and be rectified.
John McKeefry (12)	Support	I support the application to remove the remaining sections of the track and reinstate the original contours of the land.
Paddy and Anne Maloney (13)	Support	<ul style="list-style-type: none"> - Consent should be granted in its entirety. - Concerns about the effects on the cultural significance of Te Mata Peak and the non-notification of the original application. - The Peak is an ONL and is a matter of national importance and therefore support the removal of the track so the qualities of the landscape can be restored. - Support the principles of the Treaty of Waitangi and that this proposal is consistent with tangata whenua's desire to have the whole track removed and the natural landform reinstated.
Sonya Walsh and Brendon Doyle (14)	Support	<ul style="list-style-type: none"> - Support application in its entirety. - Support Te Mata being returned to its previous state and sustained for future generations.

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Submitter	Support/ Oppose	Summary of submission
		<ul style="list-style-type: none"> - Te Mata is an important Tipuna of Ngati Kahungunu Tangata Whenua, and Kaitiaki (guardian of Te Mata) and we support their wishes to have the Maunga restored. - The process for approval of the track was inappropriate, particularly in the context of the Treaty of Waitangi rights and obligations.
Christine Kidwell (15)	Support	<ul style="list-style-type: none"> - The consent be granted. - That the works be undertaken and guided within a bicultural oversight with the local tangata whenua. - "My personal view on doing the submission is based on the fact that my ancestor Te Karanemanema Pukanaana o Rongokako was violated. It is with great sadness that coming home to see my ancestor violated in this way very very disheartening." - Concerns about the granting of the original consent and the provisions of the HDP.
Jacqueline Chambers and Pounamu Tipiwai-Chambers (16)	Support	<ul style="list-style-type: none"> - The track was constructed in breach of the HDP and the scar on the cultural landscape should be reversed. - The track has caused a lot of anguish and division amongst people. - The track needs to be removed so the land and people can heal. - The HDP rules need to be reviewed.
Fiona Hosford (17)	Support	Support the removal of the remaining sections of the track, to reinstate original contours of the land and restore the land cover to pasture.
Ngāti Kahungunu Iwi Incorporation (18)	Support	<ul style="list-style-type: none"> - Support the application to remediate the Craggy Range Track via earthworks to reinstate the original contours and mana of the whenua. - The application's rationale for remediation is effectively also a submission on why the construction of the track was inappropriate in the first instance. - Detailed submission that summarises the statutory considerations made in support of the application and an overview of the generic values associated with Te Mata Rongokako and some of the negative impacts as a result of the track being constructed.

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Waimārama Māori Committee - Bernadette Hamlin (19)	Support	<ul style="list-style-type: none"> - The submitter is mana whenua and kaitiaki. - They are directly affected by the Te Mataa Peak Track which has resulted in significant adverse cultural effects. - Supports the granting of the consent in its entirety. - Detailed submission which discusses the relationship with Te Mataa and the harm that was caused by the track's construction. - Te Mataa is an ONL of natural significance which is afforded the highest protection in the proposed District Plan. The landscape effects were not adequately assessed in the processing of the original consent.
Margaret-Adele Kahuirangi Mohi-McGoverin (20)	Support	<ul style="list-style-type: none"> - The consent should never have been issued. - No original engagement with Maori was sought. - No tracks should be allowed on the eastern side of the range ever. - The pristine vista to be preserved for future generations.
Rose Mohi (21)	Support	<ul style="list-style-type: none"> - Strongly supports the application to remove the track - Te Mata Peak is outstanding natural landscape that should have been protected from inappropriate development under the RMA - The Mana Whenua were not consulted on the cultural and historical significance of the land with the installation of the track
Brian Chambers (personal submission) (22)	Support	<ul style="list-style-type: none"> - Strongly support the application to remove the track. - The visual effects of the track are clearly more than minor and the original application should never have progressed without public notification. - Ignoring Maori cultural values was a major omission and an affront to them that has resulted in a very unfortunate racial backlash within the community. - There was inadequate planning for traffic and parking.
Christopher and Dale Coop (23)	Support	<ul style="list-style-type: none"> - We reside across the TukiTuki River from Te Mata Peak and the track is very visible from our property. - We would have opposed the original application if given an opportunity. - Te Mata Peak is a landmark of special significance to the wider community and should be accorded special protection. - The eastern side should remain natural and unscarred indefinitely.

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Te Taiwhenua o Heretaunga Trust (24)	Support	<ul style="list-style-type: none"> - Strongly support the application to remove the track. - The track was built in contravention and breach of the HDC Plan. - Reversing the scar on the cultural landscape is able to occur and be rectified. - The HDC Plan needs to be reviewed.
Te Mata Peak Peoples' Track Society Incorporated (25)	Support	<ul style="list-style-type: none"> - The Society was formed in April 2018 to represent the public interest in the Craggy Range Track and provide a voice for the 24,000 plus people who petitioned in support of the track. - The society supports the application with appropriate conditions and considers it a necessary and inevitable step to resolve community concerns. - The detailed submission raises concerns about Council processes and engagement with the community who wish to achieve walking access to the eastern side of the Craggy Range. - The submission wishes the Council to engage with the community and consider alternative options for walking access.
Renata Tomoana – Chair Waipatu Marae Committee (26)	Support	Strongly supports the works to reinstate the original contours of the land and restore grass cover.

6.4 Late Submissions

One late submission was received, as follows:

Date received	Submitter	Summary of Submission	Support / Oppose
20/03/2019	Te Mata Park Trust Board – Mike Devonshire	Strongly support the remediation to reinstate the land to its original condition, and to the satisfaction of all stakeholders.	Support

6.5 Written Approvals and Other Correspondence

There were no written approvals provided with the application.

Correspondence was received from Heritage New Zealand Pouhere Taonga ('HNZPT'), noting that there are two archaeological site polygons within 50m of the track. HNZPT recommends that an authority is sought prior to works commencing, and that consultation with Te Taiwhenua o Heretaunga is required regarding proposed accidental or on-call discovery protocol.

HNZPT noted that its correspondence was not a formal submission.

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7.0 STATUTORY CONSIDERATIONS

In considering any application for resource consent for a discretionary activity, the Council must have regard to sections 104, 104B, and 108 of the RMA. Considerations under s104(1), which are expressly subject to Part 2 (the purpose and principles of the Act) are set out as follows:

- (a) any actual and potential effects on the environment of allowing the activity; and*
- (ab) any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and*
- (b) any relevant provisions of—*
 - (i) a national environmental standard:*
 - (ii) other regulations:*
 - (iii) a national policy statement:*
 - (iv) a New Zealand coastal policy statement:*
 - (v) a regional policy statement or proposed regional policy statement:*
 - (vi) a plan or proposed plan; and*
- (c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.*

When considering any actual or potential effects, the Council (as consent authority) may disregard an adverse effect on the environment if a national environment standard or the Plan permits an activity with that effect (the permitted baseline). The Council has discretion whether to apply this permitted baseline.

As a discretionary activity, the council may grant or refuse consent (under s104B). If it grants the application, it may impose conditions under section 108.

8.0 ACTUAL AND POTENTIAL EFFECTS ON THE ENVIRONMENT - s104(1)(a)**8.1 Effects that must be disregarded****8.1.1 Any effect on a person who has given written approval to the application - s104(3)(a)(ii)**

No written approvals have been provided.

8.2 Effects that may be disregarded**8.2.1 Permitted baseline assessment - s104(2)**

When considering any actual or potential effects, the Council (as consent authority) may disregard an adverse effect on the environment if a national environment standard or the plan permits an activity with that effect (the permitted baseline). The Council has discretion whether to apply this permitted baseline.

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There is a permitted baseline for earthworks occurring in the Rural Zone and the ONFL, under the following thresholds:

- Maximum volume of 200m³ in ONFL;
- Slope of land subject to earthworks is no greater than 45° above horizontal;
- Vertical extent of the cut/fill face does not exceed 5 metres; and
- Overall vertical cut less than 1m in the ONFL1.

While some of the earthworks for which resource consent is sought would be able to occur as a permitted activity within these thresholds, the majority of the work would not sit within the 'permitted envelope' that is available from a combination of the thresholds. In addition, because the slope of the land may exceed 45° intermittently along the course of the upper section of the track, it is unlikely that permitted earthworks could be undertaken in this location in a manner that largely mirrored the effects of the proposal. For this reason, it is considered that the permitted baseline is of little assistance to this proposal. Accordingly, these effects have not been disregarded.

8.3 Assessment of Effects

While having regard to the above, the assessment of environmental effects outlined below was completed after I had:

- analysed the application (including any proposed mitigation measures);
- visited the site and surrounds;
- reviewed the background to the proposal;
- reviewed the submissions received; and
- taken advice from appropriate experts.

The following actual and potential effects have been identified:

- Landscape character and visual amenity effects;
- Erosion and sedimentation effects;
- Effects on the life supporting capacity of the soil resource;
- Effects on Maori spiritual and cultural values
- Other potential effects; and
- Positive Effects

8.3.1 Landscape character and visual amenity effects

Sections A, B and C of the Craggy Range Track remain in existence and were consented prior to installation (albeit that some have questioned the process and outcome of that consent). As such, the landscape character and visual amenity effects of the current track are of relevance, but only insofar as they form part of the existing environment and would disappear if this application to remove the track is granted.

I also note that the remediation of the upper section of the track, undertaken using the emergency works provisions of the RMA, provides a helpful indication of the likely visual appearance of the former track alignment once the earthworks have been completed and the track removed.

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The applicant has commissioned a landscape and visual effects assessment from Boffa Miskell. That assessment includes detailed consideration of the landscape and visual effects of the track remediation work that is proposed. The report identifies low adverse visual and landscape effects in the short term⁴ and positive visual and landscape effects in the longer term. Specifically, it is concluded⁵:

"The temporary effects of the track will have a low adverse visual effect, largely associated with the installation of the coconut matting. Recognising the matting will biodegrade at about 6 months and a full grass cover established in 12 months the temporary effects will be recognised as part of a remediation action, rather than a permanent visual effect. Over the first 12-month period the visibility of the upper section will diminish and integrate with the surrounding grass cover. It is also recognised that there will be a period of 'bedding in' for the surface whereby the soils will weather and the species mix of grass and weeds along the surface of the track will increase. It is expected that the medium (12month plus) and long term (5years plus) will generate a positive landscape and visual effect, particularly when compared to the track's earlier condition, pre remediation."

As noted in the assessment, the BioCair matting layer on the newly completed earthworks will continue to emphasise the modified 'zigzag' alignment of the track after it is removed. The matting will rot away over time (estimated to begin at around six months) and be replaced with the sown grass. It is likely that the original track alignment will not be readily distinguishable at that stage, and the land will have largely reverted to its former appearance.

From my site visit on 5 February it appeared that the matting laid on the upper section of track had not deteriorated in any way, possibly due to the dry Summer conditions. There was also significant weed growth in or adjacent to the track alignment, where soil had been disturbed by the works. If the matting is more resilient than predicted, it would mean that the short term effects may remain for a little longer than estimated. I also noted that the weeds that had colonised the disturbed soil on the completed emergency works section of the track had a brighter green appearance, relative to the brown pasture. That colour contrast tended to emphasise the former alignment of the track. If consent is granted, I consider that this issue can be remedied with a weed removal programme imposed as a condition.

Based on the assessment contained within the Boffa Miskell report, and my own observations of the completed remediation works on the upper sections of the track, I am satisfied that any adverse visual and landscape effects arising from the earthworks required to remove the remainder of the track will be short term and of low magnitude. In the context of the existing environment, which includes the effects of the current formed sections of track, I consider that the proposed earthworks will facilitate a significant overall improvement in landscape character and visual amenity, particularly over time.

I note that the applicant's landscape assessment has been reviewed for the Council (in its role as consent authority) by Brad Coombs, Principal at Isthmus Group. Mr Coombs has concluded that:

⁴ Boffa Miskell report, page 17, section 6.2

⁵ Boffa Miskell report, page 27, section 9.2

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- The methodology used for the Assessment of the Landscape and Visual Effects of the track remediation proposal is recognised as being consistent with best practice under the RMA for a project of this type;
- The Recommendations and the Conclusions contained within the report are directly related to the relevant issues to the track remediation and the assessment undertaken; and
- The Recommendations and Conclusions in relation to the short term and long term effects of the proposal are clear and supportable.

8.3.2 Erosion and sedimentation effects

The methodology for the track removal work incorporates measures to ensure that erosion and sedimentation is managed. These include the sowing of grass seed, the laying of coconut matting over the exposed soil surface, compression of fill material, and placement of rock armouring in areas where stormwater may flow. In addition, stock are to be excluded from the area of the earthworks until such time as ground cover is completely re-established to avoid loosening of surface soil and subsequent erosion. The area of earthworks is located a substantial distance from any watercourse with the intervening land established in pasture.

In these circumstances, there is no likelihood of significant erosion or sedimentation occurring and the completed ground profile is expected to remain largely intact even through heavy rain events and overland stormwater flow.

8.3.3 Effects on the life supporting capacity of the soil resource

The site has been historically used for pastoral farming, and is in grass. It is anticipated that the land will be grazed again by stock once the earthworks are completed and the land has had a sufficient period to stabilise and for grass cover to establish. At that time, there is unlikely to be any appreciable reduction in the life supporting capacity of the soil resource and its ability to support pastoral farming.

There will be a temporary loss of production from the land while stock are prevented from grazing, although this is unlikely to occur for an extended period and will result in a minimal loss of productive capacity in the context of the District's rural land resource.

8.3.4 Effects on Maori spiritual and cultural values

Te Mata Peak is recognised as a place of significant spiritual and cultural value to iwi. That recognition is codified in the provisions of the District Plan and is evident from the nature of submissions and the strength of feeling that is apparent in their content.

The track's formation lead to strong opposition from iwi, and calls for its removal on the basis that it offends Maori values. Although it may take some time before the land is fully restored and all evidence of the track is erased, the earthworks proposed are required in order to move towards that outcome. As a consequence, I consider that the proposal will reduce existing adverse effects on Maori spiritual and cultural values. The earthworks proposed will not give rise to any further adverse effects on those values when viewed in this context.

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There is little more that can be said in this report about the effects on Maori spiritual and cultural values, as those matters are something for Maori to comment on. Submitters speaking for tangata whenua will have an opportunity to address the Commissioners on this issue at the hearing.

8.3.5 Other potential effects

The track was well used during the period before it was closed or removed (in respect of the upper section), and there are members of the public that wished to see the track retained for recreational use.

However, the track is a private facility on private land and although the consented proposal included a right of way to be created for the public, the track was not completed and the right of way was not created, and the public has no current right to use it other than through the agreement of the owner from time to time. Moreover, there was no obligation on the consent holder to implement the consent. In these circumstances, the track could not be considered as a public recreational asset.

As such, I consider that the removal of the track cannot be viewed as an adverse 'effect' of the proposal in a resource management sense as that outcome could have arisen at any time without the need for approval under the RMA. Accordingly, effects relating to the loss of a recreational facility have not been considered in this assessment.

8.3.6 Positive effects

If it is accepted that there are adverse effects associated with the existence of the current track, in respect of landscape character, visual amenity, and Maori spiritual and cultural values, then the earthworks proposed in the current application have the potential to give rise to positive effects. This is because the works facilitate the removal of the cause of those adverse effects. Although the proposed earthworks will generate some adverse effects, there is likely to be a long term overall improvement in the environment as a result of a consent being granted and subsequently implemented.

9.0 **RELEVANT STATUTORY DOCUMENTS - s104(1)(b)**

9.1 **National Environmental Standards - s104(1)(b)(i)**

9.1.1 National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NESCS)

As outlined above the proposal is not subject to the requirements of the NESCS as no HAIL activities are understood to have occurred on the site.

9.1.2 Other National Environmental Standards

The other National Environmental Standards do not raise any matters that are relevant to consideration of the application.

9.2 **National Policy Statements - s104(1)(b)(iii)**

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There are no National Policy Statements that are of relevance to the proposal.

9.3 New Zealand Coastal Policy Statement - s104(1)(b)(iv)

The purpose of the New Zealand Coastal Policy Statement (NZCPS) is to state policies in order to achieve the purpose of the RMA in relation to the coastal environment of New Zealand. In this instance, the site does not directly connect to the coast and the NZCPS is not relevant.

9.4 Hawke's Bay Regional Policy Statement – s104(1)(b)(v)

The Hawke's Bay Regional Resource Management Plan 2006 (RRMP) includes the regional policy statement (RPS) for the Hawke's Bay Region. While the application does not raise issues that would generally be considered to be of a regional level, there are several objectives in the RPS that are of some relevance:

- OBJ 11** *An ongoing reduction in the extent and severity of hill country erosion.*
- OBJ 14** *The avoidance of loss in the productive capability of land, as a result of reduced soil health.*
- OBJ 26** *The avoidance of any significant adverse effects of water takes, uses, damming or diversion on lawfully established activities in surface water bodies.*
- OBJ 27** *The maintenance or enhancement of the water quality of rivers, lakes and wetlands in order that it is suitable for sustaining or improving aquatic ecosystems in catchments as a whole, and for contact recreation purposes where appropriate.*
- OBJ 31** *The avoidance or mitigation of the adverse effects of natural hazards on people's safety, property, and economic livelihood.*
- OBJ 36** *To protect and where necessary aid the preservation of waahi tapu (sacred places), and tauranga waka (landings for waka).*

It is considered that the proposal is generally consistent with, and is not contrary to the relevant objectives and policies of the Hawkes Bay Regional Policy Statement. The potential for erosion, sedimentation and instability will be managed through the use of BioCoir coconut matting, sowing of grass seed, placement of rock to avoid scour, and the short term exclusion of stock. Te Mata Peak is a site of significance to iwi, and its rehabilitation by removing the track is an outcome that will be more consistent with the cultural significance of this place.

9.5 Proposed Hastings District Plan (As Amended by Decisions September 2015) - s104(1)(b)(vi)

9.5.1 Proposed District Plan Assessment Criteria

The District Plan sets out a number of assessment criteria for consideration when assessing an application for resource consent in respect of earthworks and land disturbance.

The Plan states that those criteria identify the matters that the Council has restricted its discretion over when assessing applications for restricted discretionary activities. For

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discretionary activities, as in this case, the Plan states that Council's assessment is not restricted to these matters, but it may consider them.

I consider that the assessment criteria provide a helpful framework for consideration of the application, ensuring that all relevant matters are properly considered. The relevant assessment criteria contained in Section 27.1.7 of the District Plan are set out below, together with my comments.

Assessment Criteria Section 27.1 - Earthworks

27.1.7A Land Disturbance and Vegetation Clearance

(a) *The effects of land disturbance and vegetation clearance will be assessed in terms of their effects on:*

- (i) *The life-supporting capacity of soils.***
- (ii) *Soil erosion and stability.***
- (iii) *Soil Runoff and Sedimentation.***
- (iv) *Natural landforms and contours.***
- (v) *Flora and fauna.***
- (vi) *Significant cultural, ecological and historic heritage sites***
- (vii) *Composition and characterises of any fill used.***

(b) *In making an assessment, regard will be had to the following:*

- (i) *The extent of removal of vegetation, topsoil and subsoils at any one time.***
- (ii) *Methods to separate soil horizons during stripping.***
- (iii) *Measures to safeguard the life supporting capacity of stockpiled soils.***
- (iv) *The potential or increased risk of hazards from the activity, including potential risk to people or the community.***
- (v) *Sediment control measures***
- (vi) *Rehabilitation of site***
- (vii) *Land capability and potential end uses of the site***
- (viii) *Information on any relocation of fill on or offsite.***
- (ix) *Siting, construction and maintenance of internal access roads.***
- (x) *Effect on flow paths and floodways.***
- (xi) *Measures to avoid disturbance of archaeological sites***

Comments:

In terms of matter (a):

- The intention of the works is to reinstate the natural profile of the land and the soil that was modified. That outcome will enable the ground to be revegetated with pasture and grazed by stock once the land has stabilised and the grass has fully established;
- The methodology for the works will ensure that the potential for erosion, sedimentation, and instability is minimised, through the use of coconut matting, the sowing with grass, the exclusion of stock, and the placement of rock armouring where stormwater flows may be channelled;
- The proposed works are intended to restore the natural landform and contours;

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- The track removal will have positive effects in terms of remediating the site, which is of significant cultural value to iwi; and
- The fill material will largely be sourced from the side cast soil located below or above the track alignment. This material was originally removed to form the track, so can appropriately be reinstated into position. The relatively small volume of additional imported fill is unlikely to be significantly dissimilar to the existing composition of the soil on site and, in any event, represents a small proportion of the total fill material to be sourced.

In terms of matter (b):

- The volume of earthworks proposed, while greater than the permitted activity threshold, is not disproportionate to the size of the site and the magnitude of the work;
- There is no earth being removed from the site;
- Stockpile soil will be in place for a relatively short time, given the limited duration of the remediation works;
- The works will not create hazards to people or the community. The track in its current state does not appear safe to use and public use is not enabled;
- Potential for sedimentation will be addressed appropriately through the use of the BioCair matting and, where required, rock armouring;
- The disturbed ground will be sown with grass to stabilise the soil against erosion;
- Once the ground has consolidated and the grass has fully established (estimated to be at some time after 12 months from completion of the works), the land will be able to return to its former pastoral use with productive capacity unaltered;
- The earthworks will not impact on overland flow paths; and
- There is no conclusive evidence of any archaeological sites within the area of the proposed earthworks, although it would be appropriate to impose a condition addressing accidental discovery protocols if consent is to be granted.⁶ A brief archaeological assessment by Archaeology Hawkes Bay was attached to the application (as Attachment C). That report identified some potential for archaeological features in the vicinity of the track, and recommended that an Archaeological Authority is sought from HNZPT. That is a matter for the applicant to consider if consent is granted. The proposed condition requiring adherence to an accidental discovery protocol will be sufficient to protect archaeological features until such time as an Authority is obtained.

27.1.7B Visual Impact

(a) The visual effects of the activity will be assessed in terms of its potential effect on:

- (i) The residential or recreational (including tourism) use of land in the vicinity of the activity.**
- (ii) The existing character of the locality and amenity values.**

(b) In making that assessment regard shall be had to:

- (i) Planting, screening and other amenity treatment to minimise visual impact.**

⁶ Particularly given the advice received from HNZPT, noting that there are two archaeological site polygons within 50m of the track.

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- (ii) **Site location including locality, topography, geographical features, adjoining land uses.**
- (iii) **Height of soil stockpiles and cuttings.**
- (iv) **Rehabilitation of the site, including contouring, landscaping and re-vegetation.**
- (v) **Duration, rate and extent of extraction.**
- (vi) **Lighting – intensity, direction and positioning of lighting in relation to the effects of glare on the surrounding environment and adjacent land uses.**

Comments:

- The completed works will be able to be viewed from a relatively large visual catchment to the east of the site. There are residential, recreational, and tourism-related (Craggy Range Winery) sites in that area. However, it is considered that the removal of the track will reduce visual effects on these land uses over time as the distinctive 'zigzag' alignment of the track fades into the background of the grass-covered slopes;
- While there is no potential for screening of the area of earthworks, it will be planted in grass of the same species as the pasture that surrounds it in order to mitigate the visual impact in the medium and longer term;
- It is anticipated that the earthworks would be completed over a relatively short period of time. The emergency works to remediate the upper section of track were completed within a nine-day period, which suggests that the works to remove the remaining sections of track might be undertaken approximately within a month;
- A stockpile will be required to store the additional fill material needed to complete the work. The applicant has advised that the stockpile will be approximately 10m x 20m in size, located on level ground immediately adjacent to the track near the entrance from Waimarama Road;
- The stockpile and all open cuts will no longer exist at the completion of the work; and
- The site of the earthworks will be rehabilitated.

27.1.7C Effects on other land uses and adjoining properties

The extent to which the activity will interfere with, or adversely affect, the current use of the land on which the activity is sited, or adjoining land uses. Consideration will be given to any potential effects of the proposed activity on adjoining properties and land uses, such as effects on surface drainage patterns, dust nuisance, or adverse effects on adjoining buildings. Permanent effects will be given more weight than temporary effects. Consideration will also be given to methods to avoid adverse effects on land use activities which are allowed in the zone where the activity is located, such as distance of activities from boundaries, and methods to avoid disturbance to adjoining properties, including livestock, particularly during birthing, and dust on fruit, particularly during harvesting season.

Comments:

- The earthworks would necessitate the temporary cessation of grazing on or adjacent to that part of the site, although that has already occurred. The duration of this restriction will be for as long as it takes for the newly sown grass to become fully

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established. That period is anticipated to be for approximately 12 months, but may be extended if the grass is not sufficiently robust to withstand grazing. This is a temporary effect which, according to the assessment criterion, is to be given less weight than a permanent effect; and

- The earthworks will have no effect on adjacent land uses.

27.1.7D Noise

In assessing the impact of noise, regard shall be had to the noise sensitivity of the receiving environment, including adjacent land uses, where it is proposed to undertake the activity. Consideration will also be given to hours of operation of the activity.

Comments:

- The works will be undertaken over a short period of time, estimated to be around one month in duration. Compliance with construction noise standards would need to be achieved over that time; and
- There are no sensitive receivers of noise (such as dwellings) within several hundred metres of the earthworks location.

27.1.7F Earthworks within Outstanding Natural Landscapes (ONFL)

Earthworks within an ONFL will be designed and located to minimise adverse visual effects. In particular, the extent to which any such development will:

- Where practicable, minimise the location of large scale earthworks on prominent rural ridgelines, hill faces and spurs.***
- Be designed to minimise cuttings across hill faces and spurs.***
- Where practicable, minimise the number of finished contours that are out of character with the natural contour.***
- Demonstrate what visual mitigation is proposed to minimise the visual intrusion of the work, including proposals to ensure the successful establishment of any plantings.***

Comments:

- The earthworks will be within a prominent landscape element. However, they are of relatively small scale and are intended to reduce the landscape impact that was previously arising from the formation of the Craggy Range Track;
- The works are proposed in order to remove the cut across the hill face and reinstate the natural contour of the ground that existed before the track was formed; and
- Visual mitigation will primarily occur through re-establishment of grass over the area of disturbed land. It is considered that weed control should also be undertaken. The weed incursion along the alignment of the former track is significant, and the weeds are noticeably greener and taller than the pasture. As a result, the weeds emphasise the location of the former track across the hill slope.

Conclusion in respect of assessment criteria:

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Overall, it is considered that the activity is consistent with the relevant assessment criteria outlined above.

9.5.2 Proposed District Plan Objectives and Policies

As might be expected, many of the matters raised in the relevant objectives and policies are addressed in detail through the assessment criteria discussed above.

However, for completeness, the relevant objectives and policies from the Natural Features and Landscapes section and the Earthworks section of the Plan are set out below and discussed. Although the site is within the Rural Zone, there are no provisions of that zone that are impacted on by the proposal.

Section 17.1 Natural Features and Landscapes

Objective LSO1 *The factors, values and associations that define the District's Outstanding Natural Features and Landscapes are identified, and are protected from inappropriate subdivision, use, and development.*

Policy LSP2 *Protection of the present landscape qualities of Te Mata Peak shall be afforded the highest priority through the District Plan.*

Policy LSP3 *Buildings, Plantations, Earthworks and Network Utilities will be regulated on identified Outstanding Natural Features and Landscapes throughout the District taking into account the ability of the activity to integrate into the receiving landscape and the sensitivity of that landscape.*

Section 27.1 Earthworks, Mineral, Aggregate and Hydrocarbon Extraction

Objective EMO1 *To enable earthworks within the Hastings District while ensuring that the life-supporting capacity of soils and ecosystems are safeguarded and adverse effects on landscapes and human health and safety are avoided, remedied or mitigated.*

Policy EMP1 *Require the repasture or revegetation of land where vegetation is cleared in association with earthworks, prospecting and extraction of aggregates or other minerals.*

Policy EMP4 *Allow earthworks and the prospecting of minerals where the adverse effects on the environment will be minor.*

Policy EMP5 *Control earthworks, exploration and mining activities to ensure that any adverse effects on the natural and physical environment, and the amenity of the community, adjoining land uses and culturally sensitive sites are avoided, remedied and mitigated.*

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Objective EMO5 *To ensure that earthworks and mineral extraction do not compromise outstanding natural features, historic heritage and cultural heritage features (including archaeological sites).*

Policy EMP13 *Permanent visual scars resulting from earthworks and mineral extraction will be restricted on identified Outstanding Natural Landscapes throughout the District.*

Assessment of Objectives and Policies:

The weighing up of a proposal's consistency with the objectives and policies requires that an overall assessment is made of how the proposal 'sits' within the policy framework of the Plan, rather than whether each objective and policy is individually satisfied. As such, it is the overall intent of the above objectives and policies that has been assessed in this case.

The Act guides this assessment by requiring that a proposal is not contrary (i.e. not opposed to or repugnant to the overall objectives and policies).

Comments:

Te Mata Peak is a prominent landmark within the district, and its landscape qualities are strongly protected through the provisions of the Proposed District Plan. Policy LSP2 seeks that protection of the landscape qualities of Te Mata Peak be afforded the highest priority through the District Plan.

It is a feature of cultural significance to Ngati Kahungunu and hapu, as well as other members of the community. Buildings and structures are strictly controlled on the upper slopes of Te Mata Peak.

It is considered that the proposal to remove the Craggy Range Track is consistent with this policy framework. The track created a visible scar on the slopes of Te Mata Peak that has diminished its landscape qualities, although the visual effect of the track has diminished to some extent over time as grass has re-established and become higher due to the exclusion of stock. The removal of the track is more aligned with the outcomes sought by the Plan than its retention. The short term visual effects arising from the earthworks will lead to a remediation of the landscape over time, and restore the eastern slopes of Te Mata Peak to their former condition.

The disturbed ground will be revegetated with grass and the overall effects of the earthworks over time will be diminish to the point where they are no longer significant. The landscape, amenity and cultural effects arising as a result of the Craggy Range Track will be remedied through the works that are proposed.

For these reasons, I consider that the proposal is consistent with the relevant objectives and policies of the Proposed District Plan.

10.0 OTHER MATTERS – Section 104(1)(c)

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There are no other matters that are considered reasonably necessary to determine the application. The nature of the application, as a discretionary activity overall, does not raise precedent effects or bring into question the integrity of the District Plan.

11.0 PART 2 OF THE RESOURCE MANAGEMENT ACT 1991

The Act seeks to promote the sustainable management of natural and physical resources. Part 2 of the Act deals with the purposes and the principles of the Act.

Recent case law⁷ has suggested that in most instances there is no need to refer back to the purpose and principles of the RMA (Part 2) in determining an application for resource consent. The implication of this decision is that, when decision-makers are considering an application for resource consent under section 104(1) of the RMA, they would generally only need to have recourse to Part 2 of the RMA if the relevant statutory planning documents have not been prepared in a manner that appropriately reflects Part 2. It may however be appropriate to refer to Part 2 even where the planning documents have been competently prepared with a coherent set of policies.

In this case, where the proposal is comprised of restricted discretionary activities and discretionary activities that are specifically addressed in the Plan, it is unlikely that a fulsome review of Part 2 will add significant value. I do not consider that the Proposed District Plan provisions are in any way invalid, incomplete or uncertain in respect of the proposal. However, for completeness, I consider that:

- The proposal is consistent with the sustainable management purposed of section 5 of the RMA insofar as it will provide for the health and safety of the community by removing potentially unsafe sections of the Craggy Range Track while remedying adverse effects on the environment;
- The proposal recognises and provides for “*the protection of outstanding natural features and landscapes from inappropriate subdivision, use and development*” (section 6(b)), and “*the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other Taonga*” (section 6(e));
- In respect of section 7, the proposal provides for “*the maintenance and enhancement of amenity values*” (section 7(c)) and the “*maintenance and enhancement of the quality of the environment*” (section 7(f));
- While Part 8 (Treaty of Waitangi) may not be directly relevant to determining the application, it is clear from the submissions received that iwi wish to have the Craggy Range Track removed from Te Mata Peak and the ground restored.

In light of the points raised above, I consider that this application is consistent with Part 2 of the Resource Management Act 1991.

12.0 CONCLUSION

Having had regard to the matters set out in Section 104, the actual and potential effects on the environment, the relevant objectives and policies of the Proposed District Plan, mitigation measures and other matters, it is considered that the application represents sustainable management in terms of Part 2 of the Resource Management Act 1991 and, subject to conditions of consent, can be granted.

⁷ *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316

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Item 2

Attachment 28

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RECOMMENDATION

- A. That pursuant to Rule EM6 and EM12 of the Proposed Hastings District Plan (As Amended by Decisions 15 September 2015) and Sections 104, 104B and 108 of the Resource Management Act 1991, resource consent as a Discretionary Activity is **GRANTED to Hastings District Council** to undertake earthworks for the purpose of removing the remaining sections of the Te Mata Peak Track (Craggy Range Track), to reinstate the original contours of the land, and restore the vegetation cover to pasture on a site located at Waimarama Road, Havelock North and legally described as Lot 3 DP 316592 and Lot 3 DP 408476.

SUBJECT TO THE FOLLOWING CONDITIONS:**GENERAL**

1. That unless otherwise altered by the consent conditions, the proposal shall proceed in accordance with the plans and information submitted in the application Resource Consent: **RMA20190006**, application received **14 January 2019**, specifically:
 - a) Completed application form (dated 14 January 2019)
 - b) Land use consent and assessment of environmental effects report, prepared by Sage Planning (dated 14 January 2019);
 - c) The methodology set out in the technical specification prepared by Frame Group Limited and referenced as 'Craggy Range Track – Te Mata Peak Partial Track Removal Works', Specification No. FGL 18/033/01 (dated January 2019); and
 - d) Landscape and Visual Effects Assessment, prepared by Boffa Miskell (dated 11 January 2019).

STOCK ACCESS

2. That stock shall be excluded from the remediated sections of the track (sections A, B and C) for an initial period of 12 months from the completion of the works. At the conclusion of this period, a review of the stability of the remediated surface and the extent of grass cover shall be undertaken by the consent holder and the Council shall be advised of the findings. A further period of stock exclusion may be required by the Environmental Consents Manager if required in order to minimise risk of erosion along the former track surface.

WEED MANAGEMENT

3. That weed removal be undertaken as required to keep the former track alignment free of weeds. Regular weed removal shall occur until such time as there is no significant regrowth and the grass cover is fully established across the earthworks area, to the satisfaction of the Environmental Consents Manager (or nominee).

ACCIDENTAL DISCOVERY PROTOCOL

4. Any person employed to undertake the earthworks and remediation work associated with this consent shall be conversant with the following protocol to ensure they are aware of their obligations under the Resource Management Act, and the Heritage New Zealand Pouhere Taonga Act 2014:

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If, at any time during site works potential koiwi (human remains), archaeology or artefacts are discovered, the following discovery protocol is to be followed:

- a) All earthworks will cease in the immediate vicinity (at least 10m from the site of the discovery) while a suitably qualified archaeologist is consulted to establish the type of remains;
- b) All practicable steps must be taken to secure the site and ensure that items uncovered/found remain undisturbed.
- c) If the material is identified by the archaeologist as human, archaeology or an artefact, earthworks must remain on hold in the affected area (as defined by the archaeologist). The consent holder must immediately advise the Environmental Consents Manager, Heritage New Zealand Pouhere Taonga, mana whenua, and Police (if human remains are found), and arrange a site inspection with these parties;
- d) Consultation will be undertaken between the mana whenua, Heritage New Zealand Pouhere Taonga and the Authority holder/project manager to determine the most appropriate course of action.
- e) If the discovery contains koiwi, archaeology or artefacts of Maori origin, representatives from all potentially interested iwi groups are to be provided information on the nature and location of the discovery;
- f) The consent holder shall not recommence works until all relevant authorities and consents have been obtained and recommencement has been approved by the Environmental Consents Manager (or nominee) in conjunction with Heritage New Zealand Pouhere Taonga and mana whenua.

CONSTRUCTION NOISE

5. All construction work shall be conducted to ensure that noise measured at the notional boundary of any dwelling or noise sensitive activity does not exceed the Typical Duration Limits Specified in NZS6803:1999.
6. All construction noise shall be measured in accordance with New Zealand Standard 6803:1999 "Acoustics – Construction Noise."
7. All construction work shall be limited to the hours of 7:00am – 5:00pm Monday to Friday and 8:00am – 5:00pm Saturday (with no work on Sundays or public holidays).

DUST AND DEBRIS

8. That the consent holder shall take all measures necessary to ensure the prevention of dust nuisance on adjacent land owners or occupiers, or the transportation of debris beyond the work area. Measures shall include, but are not limited to, the following:
 - a) During dry windy periods the stockpile and exposed earthworks area shall be covered or moistened as required to prevent dust nuisance.
 - b) Should offensive or objectionable dust be observed beyond the site boundary, the activities generating the dust must cease immediately and must not restart until such time as the dust nuisance has been remedied.

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- c) In the event of mud or other debris being carried off the property and deposited on the public carriageway, the consent holder will arrange for its removal as soon as is reasonably possible.

MONITORING

9. That a monitoring deposit of \$220 (including GST) shall be payable to cover the reasonable costs of monitoring compliance with the above conditions in accordance with Council's schedule of charges. In the event of non-compliance being detected by monitoring or justified complaint and/or the costs of monitoring consent exceeding the deposit, the costs to Council of any additional monitoring shall be paid by the consent holder in accordance with the Council's advertised schedule of fees.
10. That all costs associated with complying with any or all conditions of this consent shall be borne by the consent holder.

WITH THE REASONS FOR THIS RECOMMENDATION BEING:

1. The **GENERAL** condition ensures that the development proceeds in accordance with the plans and information submitted and assessed.
2. The **STOCK ACCESS** condition ensures that stock access does not impact on the stability of the earthworks and the establishment of grass cover.
3. The **WEED MANAGEMENT** condition ensures that the establishment of weeds does not compromise grass growth or accentuate the former alignment of the track.
4. The **ACCIDENTAL DISCOVERY PROTOCOL** condition ensures that any incident involving accidental discovery of koiwi, archaeology or artefacts is appropriately managed and communicated.
5. The **CONSTRUCTION NOISE** conditions ensure that the proposal complies with the New Zealand Standard for Construction Noise (NZS6803:1999).
6. The **DUST AND DEBRIS** condition ensures that any adverse effects resulting from the operation of the proposal do not adversely affect adjacent properties or public roads.
7. The **MONITORING** conditions ensure that the consent holder pays the actual and reasonable charges associated with monitoring the consent and that all conditions of consent are monitored for compliance.
8. The **ADVERSE EFFECTS** of this proposal are not significant, and are acceptable in the circumstances, in that:

Landscape Character and Visual Amenity

- The adverse visual and landscape effects arising from the earthworks required to remove the remainder of the track will be short term and of low magnitude;

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- In the context of the existing environment, which includes the effects of the current formed sections of track, the proposed earthworks will facilitate a significant overall improvement in landscape character and visual amenity, particularly over time.

Erosion and Sedimentation

- The methodology for the track removal work incorporates measures to ensure that erosion and sedimentation is managed;
- There is no likelihood of significant erosion or sedimentation occurring and the completed ground profile is expected to remain largely intact even through heavy rain events and overland stormwater flow.

Life Supporting Capacity of Soil Resource

- The temporary loss of productive capacity while stock are prevented from grazing will result in a minimal loss of productive capacity in the context of the District's rural land resource.

Maori Spiritual and Cultural Values

- The earthworks will reduce existing adverse effects on Maori spiritual and cultural values by removing the track, the continued existence of which is strongly opposed by Maori.

9. The proposal is consistent with the **OBJECTIVES, POLICIES** and **OTHER PROVISIONS** of the Proposed Hastings District Plan, in that:
 - Any adverse effects on the environment can be mitigated by appropriate conditions, and through the methodology proposed in the application;
 - The proposal will remediate existing adverse landscape and visual amenity effects on Te Mata Peak, the landscape qualities of which are afforded the highest level of protection under the Plan's policy framework;
 - The proposal will assist in the achievement of outcomes that are more consistent with Maori cultural and spiritual values than the existing situation with the Craggy Range Track in place. Te Mata Peak is a feature of cultural significance to Ngati Kahungunu and hapu, as well as other members of the community, and its remediation is consistent with the objectives and policies of the District Plan;
10. Overall the proposal promotes sustainable management as required by Part 2 of the Resource Management Act 1991 in that:
 - It will result in the removal of significant adverse effects on landscape character and amenity, and Maori cultural and spiritual values;
 - Any potential adverse effects of the proposed earthworks can be avoided, remedied or mitigated by conditions of consent.

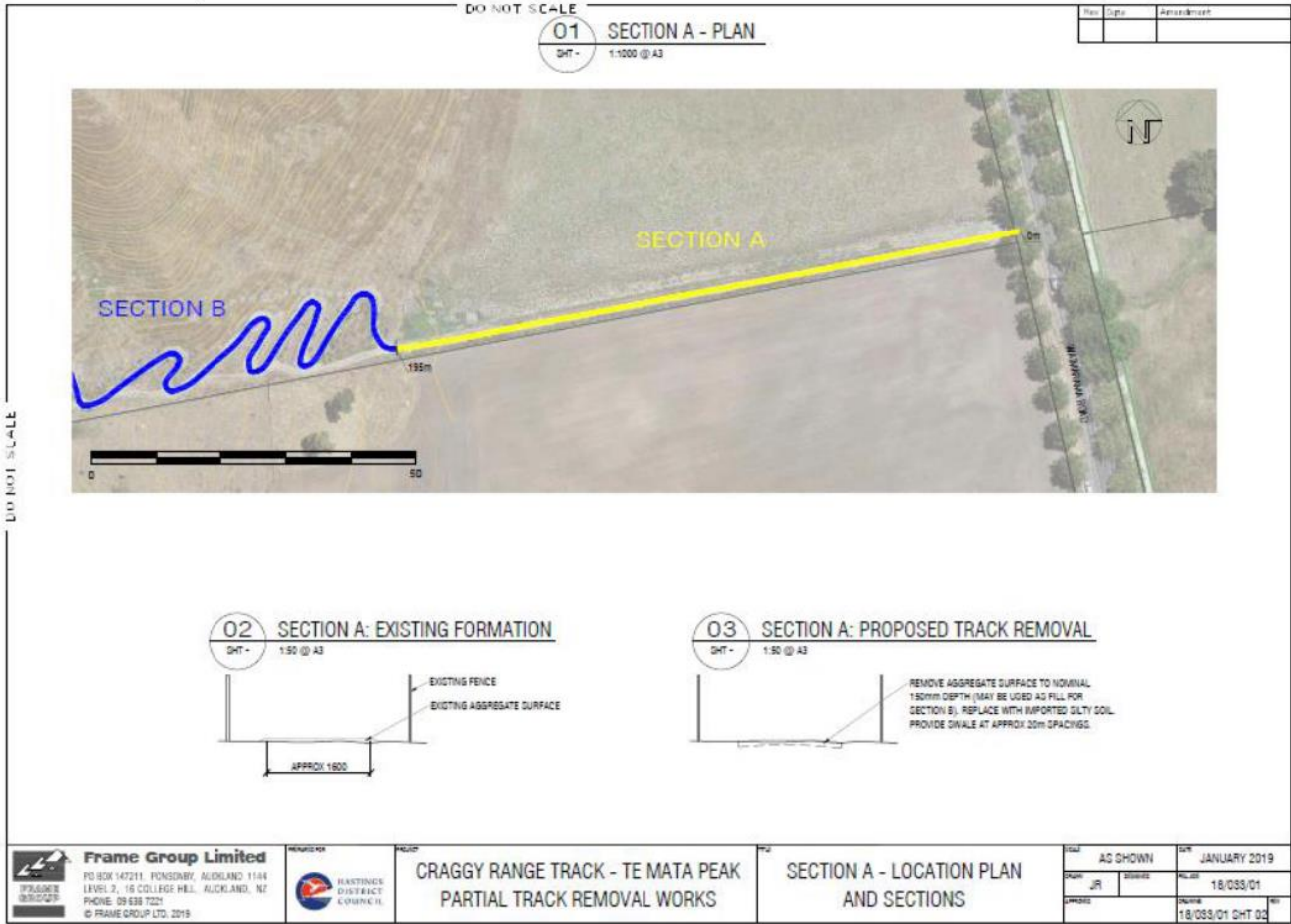
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ADVICE NOTES:

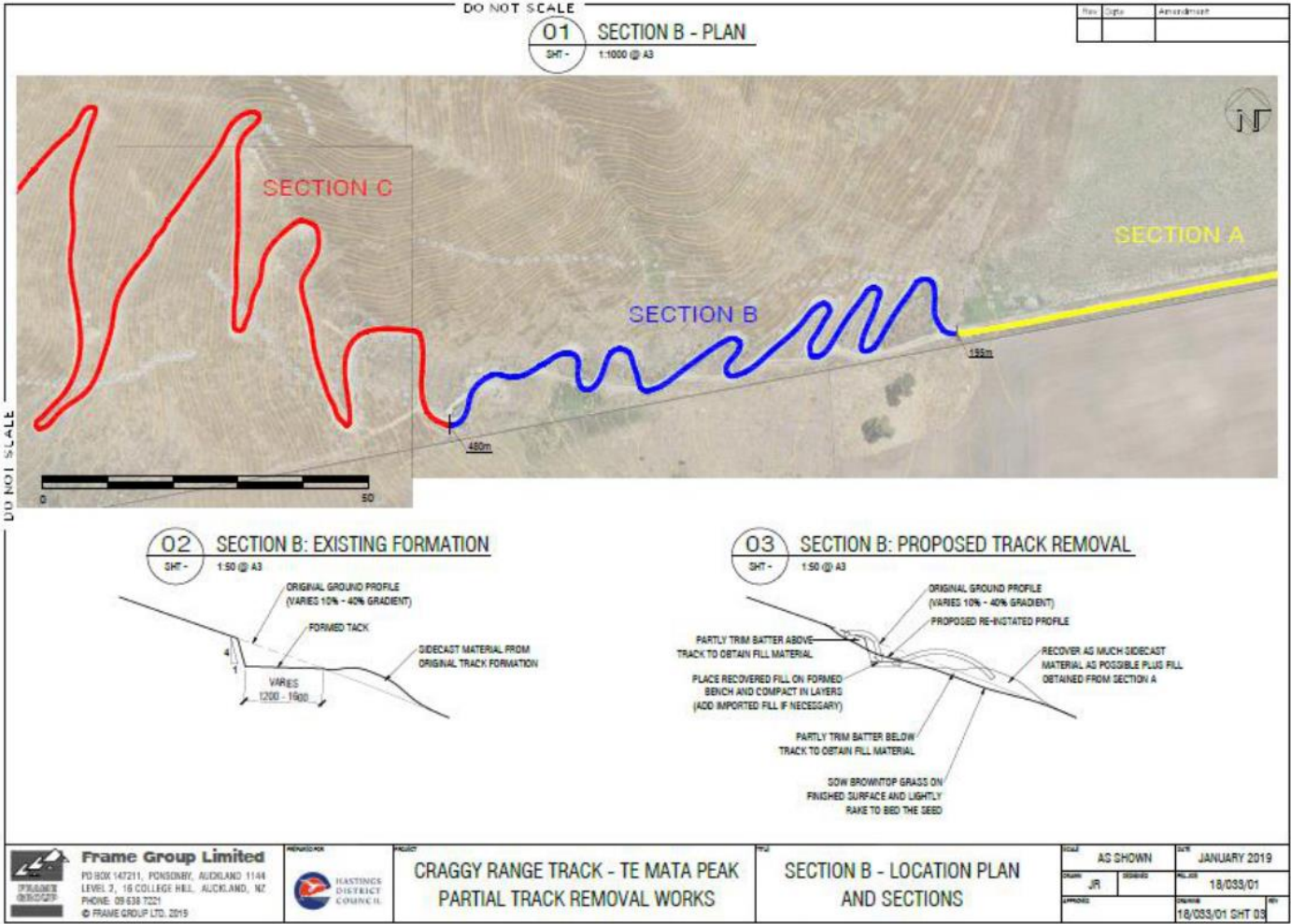
1. *To avoid doubt, except as otherwise allowed by this resource consent, all land uses must comply with all remaining standards and terms of the relevant Hastings District Plan. The proposal must also comply with the Building Act 2004, Engineering Code of Practice and Hawke's Bay Regional Plans. All necessary consents and permits shall be obtained prior to development.*
2. *Under Section 125 of the Resource Management Act 1991 a resource consent will lapse if not given effect to within 5 years of the date the consent was granted, unless an extension is granted under Section 125(1A).*

Appendix A – Track Sections – Plans 18/033/01 SHT 02 – 04
(HDC reference 97017#0035)



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