



Hastings District Council

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OPEN MINUTES

(Recorded in the form of a Procedural Note)

COMMISSIONER HEARING

Meeting Date: **Commencing on Tuesday, 11
June 2019 and Reconvened on
Wednesday, 12 June 2019**

(Craggy Range Track Remediation)

HASTINGS DISTRICT COUNCIL

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

**AND RECONVENED AT WAIMARAMA MARAE, 6 TAUPUNGA ROAD,
WAIMARAMA ON WEDNESDAY, 12 JUNE 2019**

PRESENT: Chair: Commissioner Paul Cooney
Commissioner Rauru Kirikiri

IN ATTENDANCE: Environmental Consents Manager (Mr M Arnold)
Committee Secretary (Mrs C Hilton)
Tech Services Support (Mr R Clark)

ALSO PRESENT: ***“For The Applicant – Hastings District Council (HDC)”***
Dr James Graham – Pou Ahurea Matua – Principal Advisor:
Relationships, Responsiveness and Heritage, HDC
Laura Bielby – Legal Counsel
Mr J O’Shaughnessy, Group Manager: Planning &
Regulatory Services, HDC
Trevor Butler – Engineering Consultant
Rebecca Ryder – Landscape Architect
Gaylynn Carter – Archaeologist and Heritage Consultant
Janeen Kydd-Smith – Consultant Planner

“Reporting Planner”
Consultant Planner – Philip Brown

“Submitters addressing the hearing on 11/6/19”
Warwick Marshall
Stuart Perry
Xan Harding - Te Mata Peak Peoples’ Track Society Inc

A number of other submitters and/their representative were also present on this date (*their attendance is only specifically noted in the minutes for Wednesday, 12 June 2019, as they were presenting on that date at Waimārama Marae*).

Other submitters and members of the public were also present as observers.

1. APOLOGIES

Prior to the hearing, the following submitters had given their respective apologies as they were unable to attend:

- J McKeefry
- P and A Maloney
- C Woodhouse (Environmental Defence Society Inc)

2. CRAGGY RANGE TRACK REMEDIATION HEARING (RMA20190006)

Prior to the hearing:

Electronically pre-circulated documents/evidence which had been put onto the council website comprised: - (*Numbers in these minutes in italics/brackets denote record numbers in Council's document records system*)

- Covering report (19/415) and Planning Report (97017#0129) together with associated Agenda documentation in three separate documents (CG-14-21-00378 to CG-14-21-00380) - including the submissions (97017#0076 to 97017#0102).
- Applicant evidence document (CG-14-21-00381) [*comprising a covering report (19/558) and attachments (97017#0140 to 97017#0143 inclusive)*].
- Expert Submitter evidence document (CG-14-21-00382) [*comprising a covering report (19/560) and attachments (97017#0144; 97017#0145; 97017#0195 and 97017#0193)*].

(Note: While the above evidence had been pre-circulated electronically prior to the hearing, for ease of reference some hard copies of the written evidence had also been made available at the hearing).

Additional evidence was tabled and circulated at the hearing, as detailed in these minutes.

A series of visuals of the area in question in the form of five power point slides (97017#0271), as forwarded by the Applicant, were made available to be displayed and addressed at appropriate times during the hearing by any parties as required.

At the hearing:

Kaumātua, Jerry Hapuku, gave an opening address to the hearing and gave the karakia (prayer).

A reply to the opening address was given by Commissioner Rauru Kirikiri on behalf of the commissioners. This was followed by a waiata.

Commissioner Paul Cooney (Chair) and Commissioner Rauru Kirikiri introduced themselves. The Chair outlined the process to be followed at the hearing. Cross-examination was not permitted but the parties to the hearing could ask points of clarification of a witness or submitter, through the Chair.

The commissioners had undertaken a site visit the previous day (10 June) accompanied by a graduate planner, Tom Hosford, who had no connection to the application.

The commissioners advised that they had accepted the late submission by Mike Devonshire (Te Mata Park Trust Board).

That pursuant to section 37 of the Resource Management Act 1991, the Hearings Commissioners resolve to extend the timeframe for lodging

submissions in relation to the application for the Craggy Range Track Remediation work from the closing date of 15 March 2019 to 20 March 2019, to enable the late submission from Mr Mike Devonshire (Te Mata Park Trust Board) to be accepted.

The commissioners further advised that they had read all the submissions and the pre-circulated evidence prior to the hearing. Therefore, the Chair asked the expert witnesses to summarise and highlight the key points they wanted to address in their respective evidence. However, the other submitters addressing the hearing may read out their submissions in full when presenting their evidence, if they wished to do so.

Members of the press present were reminded that filming and audio recording for broadcast of the hearing will be restricted to the opening and the applicant's presentation. Any media interviews will be up to the individuals involved and will be conducted outside of the hearings process and venue.

Evidence on behalf of the Applicant - Hastings District Council ("HDC"):

Dr James Graham, Pou Ahurea Matua – Principal Advisor: Relationships, Responsiveness and Heritage, Hastings District Council gave an apology on behalf of the Council, acknowledging the incorrect processing of the resource consent which had allowed the track to be developed. He circulated a written copy of the comments that he had made (97017#0260).

The commissioners acknowledged the apology made on behalf of the council and clarified with the applicant that the latter was saying from a negative situation, hopefully a positive outcome could be achieved between the council and local tangata whenua.

Laura Bielby – Legal Counsel introduced the other expert witnesses who would be addressing the hearing on behalf of the applicant. She noted that evidence from each of these expert witnesses had been pre-circulated to the parties prior to the hearing as required, as listed below. Each of the expert witnesses would in turn address their respective evidence or circulate and present a subsequent summary statement of that evidence when they addressed the hearing.

Laura Bielby circulated and read her Opening Legal Submissions (97017#0248), **on behalf of the applicant** and responded to questions from the commissioners.

The commissioners also sought clarification of the following points:

- how most of the work had been undertaken before any other party noticed.
- as to whether the hearing documentation had stated that the track had originally been intended as a cycling track, as well as a walking track.
- about the retrospective consent granted on 7 June 2019 and requested a copy of the associated conditions.
- that the BioCoir matting was proposed only in Area "C" (shown in red on the displayed power point visuals (97017#0271)) – not in Area "B".

- the applicant's position that the proposed remediation work would be a restricted discretionary activity, while the reporting planner stated it was a discretionary activity.
- that there had been a further omission in the resource consent process – with an archaeological authority being needed from Heritage New Zealand Pouhere Taonga before any remedial work can be undertaken.

During the presentation of the applicant's evidence, drone footage from two videos of the track were shown (97017#0285 and 97017#0284) – with the first video showing the newly placed BioCoir matting (in 2018) and the second video taken several months later (6/6/19). Four still photos from the video footage on 6/6/19 were also shown (97017#0287 to 97017#0290 inclusive).

The hearing adjourned for morning tea at 10.25am
and resumed at 10.48am.

At this point, copies of the retrospective consent (RMA20180531) granted on 7 June 2019 were given to the commissioners (97017#0198; 97017#0122; and 97017#0045).

The commissioners were also given information on the decision (RMA20170324) regarding the earthworks for the track (97017#0012) - including the fact that the track was to be clearly signposted at both ends as being restricted to pedestrians only (no bikes).

As noted at the start of these minutes, the pre-circulated evidence from the applicant's expert witnesses had been combined into a document (CG-14-21-00381) and put onto the council website. The following list details the original evidence from each witness and any subsequent summary statements of evidence presented at the hearing:

- Trevor Butler – Principal Engineering Consultant at Frame Group Ltd - addressing technical issues – initial pre-circulated evidence (97017#0141) and summary statement of evidence (97017#0259).
- Rebecca Ryder – Landscape Architect at Boffa Miskell Ltd - initial pre-circulated evidence (97017#0142) and summary statement of evidence (97017#0250).
- Gaylynn Carter – Archaeologist and Heritage Consultant at Archaeology Hawke's Bay Ltd – initial pre-circulated evidence (97017#0140) and summary statement of evidence (97017#0255) and accompanying site record form and associated information (97017#0254).
- Janeen Kydd-Smith – Principal Planner at Sage Planning HB Limited - initial pre-circulated evidence (97017#0143).

Trevor Butler addressed his summary statement of evidence (97017#0259) **on behalf of the applicant** and responded to extensive questions from the commissioners - clarifying the gradient involved and how the proposed works would be undertaken.

Through the Chair, at this point Rob Enright, Legal Counsel for Waimārama Māori Committee and Waimārama Marae and appearing for the Environmental Defence Society Inc, sought a point of clarification from Trevor Butler regarding the vertical distance from the bottom to the top point of the proposed fill.

Rebecca Ryder circulated and addressed her summary statement of evidence (97017#0250) **on behalf of the applicant**. She showed the earlier noted drone footage in the form of two videos and four still photos from the video footage and responded to questions from the commissioners.

Gaylynne Carter addressed her summary statement of evidence (97017#0255) and accompanying site record form and associated information (97017#0254) **on behalf of the applicant**. She responded to extensive questions from the commissioners - outlining the procedure and time frame involved in applying for an archaeological authority from Heritage New Zealand Pouhere Taonga and explaining the point at which iwi became involved in this process.

Janeen Kydd-Smith addressed and summarised her initial pre-circulated evidence (97017#0143) **on behalf of the applicant**, but did not present a summary statement of evidence. She confirmed that the applicant's view that the proposed remediation work would be a restricted discretionary activity; and that the BioCoir matting was only proposed in Area "C". The commissioners did not ask any questions of Mrs Kydd-Smith at this point in the hearing.

This concluded the presentation of the evidence on behalf of the applicant.

The hearing adjourned for lunch at 12.10pm
and resumed at 1.05pm.

Presentation of evidence by Submitters:

Warwick Marshall circulated and read his statement of evidence (97017#0262) and responded to questions from the commissioners.

Stuart Perry addressed his statement of evidence (97017#0261) and responded to questions from the commissioners.

Xan Harding addressed the hearing **on behalf of the Te Mata Peak Peoples' Track Society Inc ('the Society')**. He had previously forwarded two letters (dated 30/10/18 and 13/2/19) containing legal opinions prepared for the Society (97017#0144 and 97017#0145) which had been pre-circulated as expert submitter evidence. At the hearing he displayed and addressed a power point presentation (97017#0283). He responded to questions from the commissioners.

The commissioners noted that they had earlier asked the legal counsel for the applicant, Laura Bielby, to comment on the two legal opinion letters presented by the Society - in respect of whether those letters appeared to have taken a "back to front" approach in addressing the issues involved - as they did not believe it was fair to ask Mr Harding to comment on those legal aspects.

The hearing adjourned at 2.15pm

The hearing would reconvene on Wednesday, 12 June 2019
at Waimārama Marae

HASTINGS DISTRICT COUNCIL

MINUTES OF A RECONVENED COMMISSIONER HEARING
HELD IN THE COUNCIL CHAMBER, GROUND FLOOR,
CIVIC ADMINISTRATION BUILDING, LYNDON ROAD EAST, HASTINGS
COMMENCING ON TUESDAY, 11 JUNE 2019

AND RECONVENED AT WAIMARAMA MARAE, 6 TAUPUNGA ROAD,
WAIMARAMA IN THE WHARENUI ON WEDNESDAY, 12 JUNE 2019 AT 10.30AM
(FOLLOWING A PŌHIRI AT THE MARAE)

PRESENT: Chair: Commissioner Paul Cooney
Commissioner Rauru Kirikiri

IN ATTENDANCE: Environmental Consents Manager (Mr M Arnold)
Committee Secretary (Mrs C Hilton)
Tech Services Support (Mr R Clark)

ALSO PRESENT: ***“For The Applicant – Hastings District Council (HDC)”***
Dr James Graham – Pou Ahurea Matua – Principal Advisor:
Relationships, Responsiveness and Heritage, HDC
Laura Bielby – Legal Counsel
Mr J O’Shaughnessy, Group Manager: Planning &
Regulatory Services, HDC
Rebecca Ryder – Landscape Architect
Gaylynne Carter – Archaeologist and Heritage Consultant
Janeen Kydd-Smith – Consultant Planner

“Reporting Planner”
Consultant Planner – Philip Brown

“Submitters addressing the hearing on 12/6/19”
Rob Enright – Legal Counsel for Waimārama Māori
Committee and Waimārama Marae and appearing for the
Environmental Defence Society Inc
Robert MacDonald – on behalf of the Trustees of
Waimārama Māori Committee and Waimārama Marae
Diane Lucas – Landscape Architect - on behalf of
Waimārama Māori Committee of Waimārama Marae
Adele Mohi-McGoverin
Rose Mohi
Megan Exton – Legal Counsel appearing for Mr P and Mrs A
Maloney
Marei Apatu – Te Kaihautū, Te Taiwhenua o Heretaunga -
on behalf of Te Taiwhenua o Heretaunga Trust
Ngāhiwi Tomoana – Chairman of Ngāti Kahungunu Iwi
Incorporated
Ngaio Tiuka - Ngāti Kahungunu Iwi Incorporated
Bruno Chambers

Other submitters and members of the public were also present as observers.

1. APOLOGIES

The apologies were as noted in the minutes of the first day of the hearing.

2. CRAGGY RANGE TRACK REMEDIATION HEARING (RMA20190006) ...Continued...

Councillor Bayden Barber, Waimārama Marae and local hapū member, welcomed those attending this session of the hearing on the Marae.

Kaumātua, Jerry Hapuku, addressed the hearing and gave the karakia (prayer).

A reply to the opening address was given by Commissioner Rauru Kirikiri on behalf of the commissioners.

The Chair, Commissioner Paul Cooney, thanked the Marae for the warm welcome they had extended to those attending this hearing and for hosting this hearing in its wharenuī.

Members of the press present were reminded that filming and audio recording for broadcast of the hearing had been restricted to the pōhiri. There was to be no filming or audio recording in the wharenuī. Any media interviews will be up to the individuals involved and will be conducted outside of the hearings process and venue.

Evidence on behalf of the Applicant - Hastings District Council (“HDC”):

Dr James Graham, Pou Ahurea Matua – Principal Advisor: Relationships, Responsiveness and Heritage, Hastings District Council gave an apology on behalf of the Council, repeating the comments he had made on the first day of the hearing acknowledging the incorrect processing of the resource consent which had allowed the track to be developed. He circulated a written copy of the comments that he had made (97017#0260).

Continuation of the presentation of evidence by Submitters:

Rob Enright, Legal Counsel for Waimārama Māori Committee and Waimārama Marae and also appearing for the Environmental Defence Society Inc made some opening comments. He introduced **Robert MacDonald** and also expert witness **Diane Lucas**.

Robert MacDonald addressed the hearing, **on behalf of the Trustees of Waimārama Māori Committee and Waimārama Marae**, and read his detailed affidavit that had been prepared for the High Court (97017#0351). He responded to questions from the commissioners - emphasising that if the application had been notified Waimārama would have lodged an objection. He accepted the apology from the Council.

In response to further questions from the commissioners, Mr MacDonald explained that it wasn't until the track was almost completed they could appreciate the scale and nature of the works. They then attended scheduled Māori Committee meetings and followed certain steps in that process before being mandated by Waimārama to address this issue on their behalf, which had taken a number of weeks.

Rob Enright, Legal Counsel for Waimārama Māori Committee and Waimārama Marae and also appearing for the Environmental Defence Society Inc circulated and read his Legal Submissions (97017#0352). He also circulated a copy of an Environment Court Decision - *Western Bay of Plenty District Council v Bay of Plenty Regional Council [2017] NZEnvC 147 - (97017#0357)*.

Mr Enright responded to questions from the commissioners, noting the importance of involving mana whenua and hapu groups; suggesting a plan change to protect the cultural landscape; and noting the ongoing duty of Council to monitor this aspect. He also asked the commissioners to consider including some observations in their decision regarding inadequacies in the District Plan relating to the protection of the Peak, given its cultural significance.

The commissioners noted that some of the points made by Mr Enright had also been raised the previous day by the **Te Mata Peak Peoples' Track Society Inc (the "Society")**.

Mr Enright was asked to comment on the two legal opinion letters (97017#0144 and 97017#0145) presented as expert submitter evidence by the Society - in respect of whether those letters appeared to have taken a "back to front" approach in addressing the issues involved. The commissioners had also asked this question of the applicant's legal counsel earlier in the hearing.

Landscape Architect, Diane Lucas, addressed the hearing **on behalf of Waimārama Māori Committee of Waimārama Marae**. She spoke to her pre-circulated expert written evidence (97017#0195) and addressed the set of pre-circulated eleven A3 colour attachments (97017#0193) and responded to extensive questions from the commissioners. Further copies of the sets of the colour attachments were circulated at the meeting (97017#0193 and 97017#0353).

Following the hearing, Diane Lucas forwarded an updated version of her written evidence (97017#0356) which incorporated a reference to the definition of the "hogback" land formation, in response to a question raised by the commissioners, as well as the additions to her conclusions as had been outlined at the hearing.

In response to a question from the commissioners, Mr Enright commented on the matter of the ownership of the land in question. The commissioners would also ask the applicant to comment on this aspect later in the hearing.

Adele Mohi-McGoverin addressed the hearing and spoke to a power point presentation, which incorporated notes and a video (97017#0375 and 97017#0241). She responded to questions from the commissioners.

Rose Mohi addressed the hearing and spoke to a power point presentation (97017#0286) and associated notes (97017#0358). She responded to questions from the commissioners.

A copy of notes from kuia Peggy Kurupai Nelson dated 29.9.1998 had been referred to at the hearing – these were forwarded by Diane Lucas (97017#0355).

The hearing adjourned for lunch at 1.15pm
and resumed at 2.00pm.

Megan Exton, Legal Counsel, circulated and read her **Submissions** (97017#0244) **on behalf of her clients P and A Maloney** who were long term local residents, but who were unable to be at the hearing. She responded to questions from the commissioners.

Marei Apatu, Te Kaihautū, Te Taiwhenua o Heretaunga addressed the hearing **on behalf of Te Taiwhenua o Heretaunga Trust**. He was joined by **Ngaio Tiuka - Ngāti Kahungunu Iwi Incorporated**.

Marei Apatu displayed and addressed a power point presentation (97017#0279). He also tabled a copy of the Cultural Impact Assessment document (97017#0332) – Te Matā...Te Mata te Tipuna. He also noted the apology made by the Council. He responded to questions from the commissioners, highlighting that the path forward needed to be robust.

Ngāhiwi Tomoana – Chairman of Ngāti Kahungunu Iwi Incorporated joined Marei Apatu and Ngaio Tiuka.

Ngāhiwi Tomoana responded to questions from the commissioners and noted the reluctance of hapū to give up their secrets and sacred sites. Discussions between the land owners, council and iwi needed to take place so each site was appropriately addressed.

Bruno Chambers addressed the committee and backgrounded his family's association with the area, having farmed it for five generations. He responded to questions from the commissioners; acknowledged the council's apology; and supported a call for a plan change and for policies that were not open to interpretation.

The hearing adjourned for afternoon tea at 3.55pm
and resumed at 4.17pm.

The Reporting Planner, Consultant Philip Brown presented his response (97017#0301) to the matters raised in evidence during the hearing, including

an amended set of draft conditions. The commissioners did not ask any questions of Mr Brown.

Laura Bielby, Legal Counsel gave the **Right-of-Reply on behalf of the applicant (97017#0347)** addressing the issues raised at the hearing and also addressing the track changes shown in relation to the proposed conditions (97017#0345).

In response to an earlier question from the commissioners, **Mr J O'Shaughnessy, Group Manager: Planning & Regulatory Services, HDC** addressed the matter of who owned the land. It was owned by Mr and Mrs Drabble, with Craggy Range Winery being the occupier of the land. There was an agreement with the land owners for council to undertake the emergency works. There was also a verbal agreement with the land owners that if consent was granted for the remedial works, that council will be able to undertake those works.

The commissioners thanked all parties for their attendance at the hearing and again thanked Waimārama Marae for hosting this second day of the hearing.

Councillor Bayden Barber, Waimārama Marae and local hapū member, made some closing comments supported by a waiata.

Kaumātua, Jerry Hapuku closed the hearing with a karakia (prayer).

The meeting adjourned at 4.53pm

Note: Evidence presented at each day's session that had not been available to circulate during that session was received and electronically sent to the commissioners, applicant and submitters (as appropriate) at the end of that day or as soon as possible thereafter. The respective Council document reference numbers are annotated in brackets in the minutes for all evidence.

The following information was subsequently issued or received (in the order shown below) and was forwarded to the commissioners and/or sent to the other parties as appropriate:

- 14 June 2019 – Covering email, information request letter and Hastings District Council's response forwarded by Megan Exton, Legal Counsel for P and A Maloney, in response to questions asked by the commissioners – to clarify the timing of when her clients had voiced objections to the track (97017#0359 to 97017#0361).
- Hearing formally closed by the commissioners on Thursday, 20 June 2019 (97017#0385 and 97017#0386).
- Signed decision issued by the commissioners on Wednesday, 10 July 2019 (**97017#0403**) and circulated to all parties.
- Updated signed decision with two minor corrections issued (under Section 133A of the RMA 1991) by the commissioners on Wednesday, 17 July 2019 (**97017#0409**) and circulated to all parties.

(Note: The above noted Updated signed decision (**97017#0409**) is saved into the Council's system as a separate document, but forms part of these minutes).