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**MINUTES**  
of the  
**ENVIRONMENT AND PLANNING SUBCOMMITTEE MEETING**  
held  
**9.30, Tuesday, 28 April 2015**  
at  
**Pohara Boat Club, Port Taranaki**

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- Present:** Cr Stuart Bryant (Chairperson)  
Cr Martine Bouillir  
Cr Barry Dowler
- Applicant:** Mr Ben King  
Mr Warwick Heal (Counsel)
- Submitters:** Richard & Sage Cox  
Oliver Brauer  
Katherine Forward (Counsel for Mr Brauer)  
Kim Shrigley (in attendance only)
- Reporting Officers:** Ms Ina Holst-Stoffregen (Consent Planner, Land Use)  
Ms Rowena Cudby (Co-ordinator Land Use Consents)
- In Attendance:** Principal Resource Consents Advisor (M Croxford)

- 1 OPENING, WELCOME**
- 2 REPORTS**
- 2.1 B King**

A Hearing Subcommittee was convened to hear and determine applications lodged by **Benjamin Martin King** ("the Applicant"), for resource consent to operate a commercial activity in a Rural 1 Zone with car parking and access not in accordance with standards. The application, made in accordance with the Resource Management Act 1991 ("the Act"), was lodged with the Council and referenced as RM140528.

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## 1. SUMMARY

The Subcommittee has **GRANTED** resource consent, subject to conditions, for the proposed land use consent, excluding weddings, as described below.

## 2. THE PROPOSED ACTIVITIES

The application is to operate a commercial activity in the Rural 1 Zone within existing buildings and facilities at 65 Patons Rock Road, Golden Bay. A full description of the proposed activities is given on pages 4 and 5 of the application and summarised in Table 1 of Ms Holst-Stoffregen's report.

The proposed commercial activities are focused around music and the arts. The proposal includes a number of activities where groups will use the facilities for practice or learning and also a range of activities where guests will attend an event at the venue including one wedding per year. Both the application and Ms Holst-Stoffregen's report state that, in their opinion, the proposed activities are more akin to "community activities" as defined in the TRMP.

## 3. DESCRIPTION OF THE SITE

The site of the proposed activities is locally known as RiverSea and located at 65 Battery Road, Patons Rock.

The applicant co-owns two adjoining titles, with the activities occurring in venues on the northeastern 11.1289 hectare parcel, legally described as Part Section 70 Takaka District, and the carpark situated on the southwestern 5.3364 hectare site, legally described as Lot 1 DP 398703. The two parcels are held together by a covenant restricting the transfer, lease or disposal of the individual titles except in conjunction with each other.

Access is from Battery Road, a metalled road extending for approximately 230 metres from Patons Rock Road to the coast. The formed access then passes over an esplanade reserve for roughly 100 metres before crossing the frontage of Richard & Sage Cox's property for a further 300 metres. The applicant has an existing right-of-way for access over these two parcels of land. Finally, the access crosses a paper road for 30 metres before entering RiverSea. The right-of-way formation is generally exposed basecourse material, varies in width between 3 and 3.5 metres, is flat and has minimal cross-fall. The cost of maintaining the right-of-way currently falls equally on the applicant and the Cox's.

The buildings at RiverSea are set approximately 140 metres back from the coast and are screened from adjoining properties and farmland by extensive bush and plantings.

The activities are generally to occur in two octagonal buildings identified on the site plan in Appendix 7 of the application. The music lessons are to occur in one of the approved dwellings.

The site is surrounded by farmland on three sides and the coast on to the northeast. The properties adjoining the access from Patons Rock Road are rural-residential in nature. The site is set apart from the settlement of Patons Rock.

#### 4. STATUS OF APPLICATIONS IN TASMAN RESOURCE MANAGEMENT PLAN

Zoning: Rural 1  
 Areas: Coastal Environment Area,  
 Land Disturbance Area 1,  
 Cultural Heritage Site N25-028

Activity	Permitted Activity rule	Applicable rule	Status
To undertake a commercial activity in the Rural 1 Zone	17.5.2.1 (a)	17.5.2.9	Discretionary
- with an access not laid out and constructed in accordance with the standards in Figure 16.2A	16.2.2.1 (a)	16.2.2.6	Restricted Discretionary
- with a parking area that is not sealed or marked out	16.2.2.3 (n)	16.2.2.6	Restricted Discretionary

Overall the proposed activities when bundled are deemed to be a **Discretionary** activity.

#### 5. NOTIFICATION AND SUBMISSIONS

The application was received with the written approvals of Donald and Pamela Gardiner of 238 Onahau Road, Dorothy and Murray Marshall of 5 Battery Road and the New Zealand Transport Agency.

The application was limited notified on 5 November 2014 to three landowners. The submissions are:

Richard & Sage Cox	Owners of 34 Battery Road	Shared ROW user
Oliver Brauer and Kim Shrigley	Owners of 18 Battery Road	
Taria Mason	Occupier at 8 Battery Road	

#### 6. PROCEDURAL MATTERS

During the applicant's right-of-reply Mr Heal effectively said that neither Mr and Mrs Cox nor Mr Brauer had presented expert evidence and instead had presented lay evidence with rhetoric, ambiguity and a lack of objectivity implying that their submissions should not be given any weight compared with the impartial expert evidence presented for the applicant.

Our position regarding what comprises evidence is that individual submitters are able to present information and make observations regarding that information. What they cannot do, unless appropriately qualified, is present expert opinions. We have treated both the Cox's and Mr Brauer's submissions on that basis. Their observations form part of the evidence, alongside the expert evidence we received from the applicant and reporting officers, and we have weighed them accordingly as described below. We understand this to be essentially the same approach as taken by the Environment Court when it considers evidence presented by non-expert submitters.

We also note that the application proposes to lawfully establish the range of activities that are currently taking place at the site. Therefore, we consider that both the Cox and Brauer submissions speak from a position of experience and credibility when it comes to describing their experience of the adverse effects of the activities. What we must consider though is the scale of the adverse effects in both the local and wider contexts.

Finally, we note and appreciate Ms Holst-Stoffregen's declaration of previous attendance at events at the venue. We do not consider that this creates a bias given her decision to no longer attend the events when she became aware of the consenting issues. Golden Bay Mohua is a small community and we consider it is almost impossible to be part of the community and not be expected to attend some of the wide range of events that are held by this diverse community.

## **7. EVALUATION AND FINDINGS ON THE PRINCIPAL ISSUES**

We now identify the principal issues that were in contention and our findings in relation to those issues. Based on the application documents, the contents of the officer's report and evidence circulated prior to the hearing, all of the submissions (written and verbal), and our own observations during our site visit, we consider the principal issues of contention to be:

- a) The traffic effects as a consequence of the activities;
- b) The potential loss of rural amenity to residents adjoining the access;
- c) The range of activities applied for; and
- d) The potential of adverse effects on cultural heritage

We now address each of the principle issues in turn. For each we discuss firstly the evidence and submissions, and then state our findings on each of the issues.

### **a) The traffic effects as a consequence of the activities**

We consider that the main issue in contention for this application is the adverse effects upon the residents adjoining the access way to the site as a result of the potential increase in traffic generated by the proposed commercial activity. A number of traffic related effects were raised by the submitters and having considered all of the information presented we consider that the potential loss of rural amenity, capacity of the access for the additional vehicle movements and the safety of users of the access are the key issues. The potential loss of rural amenity as a consequence of the traffic effects has been included in section (b) below.

First we consider the scale of the traffic related effects given that the expected increase in traffic as a consequence of the activity was in contention between Mr Cox and the expert evidence of Mr Ashworth and Mr Ley. The original application submitted by Mr King, states that the average vehicle movements per day generated by the proposed activities will increase by 20.3 with a peak vehicle movement associated with a house concert to be up to 35 vehicles over a one hour period leading up to the event and again after the event. This approach has been endorsed by Mr Ashworth in the traffic assessment received by Council on 3 March 2015 and in the memorandum by Mr Ley dated 26 March 2015. It was clarified for us that a vehicle entering and then leaving the site would be counted as two vehicle movements.

Mr Cox has contested that the vehicle movements associated with the range of activities has been significantly under-estimated. In his opinion, the vehicle movements based on the table of activities within the application were in the order of between 8,000-10,000 vehicle movements per year. All submitters highlighted concerns regarding traffic movements generated by those setting up or servicing events that had not been included within the table. For weddings this could be considerable for a number of days either side of the event as well as on the day. Mr Cox also gave the example of activities he considered were associated with the writers' residencies that would generate additional traffic.

Mr Brauer also raised an issue with the use of the average daily additional vehicle movements as in his opinion the proposal will generate bursts of activity relating to specific events, especially with evening events. He considered that the events with high participant numbers will tend to be seasonal given the current residents tendency to spend the six month period over winter abroad. He contended that the use of average vehicle movements per day is not a good representation of the number of vehicles associated with specific events.

Ms Holst-Stoffregen clarified that based on the information within Table 1 of her report the likely increase in traffic generated by the consented activities was approximately 7,200 vehicle movements per year. We note from Mr Ley's evidence that the average daily trip generation within rural properties can be as low as four to six and that in residential properties this can be up to ten per day. He considers that the increase in vehicle movements per day as a result of the average is equivalent to three extra users of the access. Furthermore, Mr Ley advises that traffic counts for Battery Road average at 55 vehicles per day.

We are satisfied that the expected increase of traffic associated with the activities has been adequately estimated both by Mr Ashworth and Mr Ley. We are not convinced that this varies significantly from the volume presented by Mr Cox. However, we do note the seasonality of events and traffic peaks associated with certain events and we now turn our mind to the effects of this.

Mr Ashworth in his report acknowledges that regardless of the average there will be significant increases in traffic volumes over short durations in association with certain events. He states that, in his opinion, the increase is light in terms of the existing right-of-way capacity and safety provided that certain mitigation measures are implemented. These include the construction of passing bays, improvements to the serviceability of the right-of-way and the introduction of traffic calming measures to improve safety. The applicant has volunteered to introduce these mitigation measures as part of the consent. Mr Ley agrees with the proposed mitigation measures in order to cope with these peak periods. Furthermore, Mr Ley states he considers that Battery Road is of a formation standard capable of catering for the increase in traffic.

From a traffic safety perspective, Mr Cox raised a number of safety issues regarding the access including speed of users of the access, near misses when exiting his driveway and inundation of the access during flooding or king tides. Mr Brauer also noted that in his opinion and from observations those making deliveries to the site drive the fastest, tending to observe the 50kmph speed limit rather the road conditions.

Both Mr Cox and Mr Brauer considered that the applicant be required to open an existing unformed paper road from Patons Rock Road to the southwest of the site as an alternative to using the existing legal access.

We note that the only expert evidence regarding traffic safety and the formation standard of the existing access from Patons Rock Road to the site was presented by Mr Ashworth and Mr Ley. They have both stated in their evidence that with improvements the access can adequately cater for the additional traffic. We will address the issues regarding the amenity of those adjoining the right-of-way later. However, with regards to the ability of the access from the junction with Patons Rock Road to the site, we are satisfied that with the imposition of the specified mitigation measures the access will be able to cope with the additional traffic and that there is no need from a traffic safety perspective to require the use of an alternative access.

**b) The potential loss of rural amenity to residents adjoining the access**

All submitters have stated that there will be a loss of their rural amenity as a consequence of the increased traffic generated by the proposed activities. The Cox's and Mr Brauer both describe their appreciation of the area as lacking road noise and providing peace and quiet in a tranquil location. The main adverse effects raised by the submitters on their rural amenity arise from the traffic accessing the site and are summarised as dust, noise and headlights.

Battery Road and the right-of-way have been constructed with a metal surface. Mr Ashworth notes that any increase in traffic will result in an increase in dust given the surface material. He states that both driver behaviour and the condition of the surface will determine the extent of the dust problem. Influencing driver behaviour by encouraging a slow speed environment and improving the surface material will both have a mitigating influence on the generation of dust. Mr Ashworth's report outlines measures that can be imposed to control speed, which as well as providing dust mitigation will also have the effect of improving traffic safety.

Given the expert evidence presented to us we consider it unreasonable to impose a condition requiring resurfacing the whole of Battery Road or the right-of-way. However, we do consider that where maintenance or new works are required by this consent then it is reasonable to specify a material that is less likely to produce a significant amount of dust. Also, imposing traffic calming measures such as an advisory speed sign and plantings will reduce the level of dust.

We are not persuaded by the arguments of Ms Forward or Mr Brauer that commercial activities in general are out of keeping with the rural environment either in general or specifically related to the Patons Rock area nor that authorisation of the commercial activities applied for will create a precedent which may open the gate to other proposals. We note that a commercial activity requires consent in all of the rural zones within the Tasman District and that the activity status is discretionary and not non-complying or prohibited. This does not exclude commercial activity from the zone but flags that each must be considered on its own merits.

We agree with Mr Heal in his right of reply that rural amenity is neither defined nor guaranteed within the rural environment. We consider that those adverse effects of

the increase in vehicle movements can be mitigated by conditions of consent and that the proposal is not out of keeping with the rural environment.

**c) The range of activities applied for**

The application included a range of activities that have been described as commercial, community and recreational. Ms Holst-Stoffregen gave guidance within her report as to the difference between commercial and community activities. Ms Cudby provided guidance in the hearing on the difference between a commercial and a recreational activity, the latter being a permitted activity in the Rural 1 zone.

Having considered the proposal it is clear to us that it is a commercial activity especially those relating to tuition where there clearly a service being offered on site that is being paid for. We note that with the exception of weddings, the submitters did not raise concerns with the specific activities. We note Mr Cox's statement that the existence of the purpose made buildings should not be used to justify granting of consent. However, we do note in Ms Holst-Stoffregen's report that the buildings were lawfully established and that this is an appropriate use of those facilities.

During the hearing we were advised that the applicant agreed to remove weddings from the list of proposed activities. We consider that weddings were the one event that had the potential to have the greatest adverse effects on those properties adjoining the access. Weddings have been deleted from the activities authorised by the consent.

**d) The potential of adverse effects on cultural heritage**

Ms Mason raised a number of issues relating to potential adverse effects on the cultural heritage of the area. These included the use of chemical stabilisation to control dust and possible effects from runoff on kai moana in the Patons Rock area and the earthworks in or adjoining the coastal marine area for widening or formation of passing bays. Ms Holst-Stoffregen advised that the application was circulated to local iwi for comment as part of Council's standard procedure and that no feedback was received prior to the decision regarding notification. We do share Ms Mason's concerns regarding the use of a chemical stabilisation agent and note that resource consent is most likely needed for this application. We have included an advice note to the decision reminding the applicant of their obligations if items or material of archaeological significance are uncovered during any site works.

**Other Matters**

We note that a range of other relevant matters were covered in the application, staff report and expert evidence, which were not at issue and we have accepted the assessments put forward in the staff report accordingly.

## **8. RELEVANT STATUTORY PROVISIONS**

### **8.1 Policy Statements and Plan Provisions**

In considering this application, we have had regard to the matters outlined in Section 104 of the Act.

In particular, we have had regard to the relevant provisions of the Tasman Resource Management Plan (TRMP), and particularly those provisions including objectives and policies that were referred to in the officer's reports and other evidence presented to us.

### **8.2 Part 2 Matters**

In considering this application, we have taken into account the relevant principles outlined in Sections 6, 7 and 8 of the Act, as well as the overall purpose of the Act as presented in Section 5.

## **9. DECISION**

Pursuant to Sections 104 and 104B of the Act, we **GRANT** consent for the land use activities applied for, excluding weddings, subject to conditions, (as attached).

## **10. REASONS FOR THE DECISION**

### **Effects on the Environment**

Having regard to the foregoing appraisal of the key issues that have been raised through the evidence and submissions, and taking account of the conditions of consent we have imposed, we conclude that any effects on the environment, particularly with regard to traffic, and rural character and amenity will be minor.

### **Objectives and Policies of the TRMP**

We have specifically considered the relevant provisions within Chapter 5.1 (Adverse Off-Site Effects), 5.2 (Amenity Values), Chapter 7.4 (Rural Character and Amenity Values), and Chapter 11.1 (Effects on Transport Safety and Efficiency) of the TRMP. Due to the minor adverse effects on transport safety and efficiency and on rural character and amenity of the environment, compared to the activities that can be carried out "as of right" in the rural zone, we consider that the proposal is generally consistent with the objectives or policies in those Chapters.

### **Purpose and Principles of the Act**

Adopting a broad overall judgement approach to the purpose of the Act, we are satisfied that the proposal is consistent with Part 2 and achieves sustainable management of natural and physical resources as set out in Section 5 of the Act.



## 11. COMMENTARY ON CONDITIONS OF CONSENT

The reporting officer put forward a draft set of conditions for the consent applied for in her report. We have generally adopted those proposed conditions with some minor editing, except for the following matters:

- Table 1 in Proposed Condition 3 has been amended by deleting the last column headed Maximum Number of Vehicles. The Panel considers that by limiting the number of participants per activity, encouraging carpooling and by imposing traffic calming measures then limiting the number of vehicles may become difficult to enforce and regardless is self-limited by the number of participants.
- Proposed Conditions 6 and 7 have been combined to cover the one issue.
- Proposed Condition 8 (now Condition 7) has been extensively edited to require the Consent Holder to complete works to upgrade the accessway. The Panel agrees with Mr Heal in paragraphs 34 to 38 of his submission that the on-going maintenance performance standards are adequately covered and protected by the terms of the right-of-way easement instrument.
- Proposed Condition 9 requiring the positioning of two traffic marshals along the accessway is not considered to be practicable, and we have deleted it. The information sheet required in Condition 6 of the consent is considered to be sufficient to encourage driver behaviour to be modified.
- An Advice Note had been added regarding any site works and the protocol to follow if any items of archaeological significance are disturbed including the need to contact local iwi and Heritage New Zealand.

Date Confirmed:

Chair: