

# Western Bay of Plenty District Council

## Minutes of Meeting No. CH4 of an Independent Commissioner Hearing held on 1 & 2 July 2019 (Day 1 of 2) in the Council Chamber commencing at 9.30am (both days)

### Present

Commissioner Alan Withy (Chairperson) and Commissioner Richard Bax

### Staff Attendance

R Davie (Group Manager Policy Planning & Regulatory Services), C Watt (Environmental Consents Manager), R Friend (Senior Consents Planner), P Martelli (Resource Management Manager), P Watson (Reserves and Facilities Manager), T Clow (Senior Policy Analyst Resource Management), S Harvey (Roading Engineer East), C-L Ertel (Asset and Capital Manager), K Lawton (Senior Development Engineer Specialist), P van den Berg (Infrastructure Engineer Water), A Price (Senior Consents Planner), S Allport (Consents Technician), M Parnell (Governance Advisor), and B Clarke (Senior Governance Advisor)

### Attendance on Behalf of Council

B Norton (Consultant), M Pennington (Tonkin and Taylor), D McDougall (WestLink) and J Wilton (WestLink)

### Others Present

Mayor G Webber, Councillor J Scrimgeour, five members of the public, and as listed in the minutes.

### HEARING BEFORE PANEL OF COMMISSIONERS – DAY 1

CH4.1                    **[RC11154S - S/B/12320] Application for a Subdivision Consent to Undertake a Protection Lot Subdivision at 239, 295 and 307 Pukehina Beach Road and 2 Gardiner Place, Pukehina made by Property Seven Limited**

Commissioner Alan Withy opened the hearing and welcomed those present. He briefly described his background and experience as a Planner and Commissioner, and noted that he had no conflicts of interest or bias.

Commissioner Richard Bax introduced himself, briefly outlined his background and experience as a Civil Engineer and Commissioner, and noted that he had no conflicts of interest or bias.

### **Chairperson's Instructions**

Commissioner Withy noted that, as Chairperson, he would be the final arbiter in all proceedings. He advised that, under the auspices of the Resource Management Act 1991, no cross-examination would be permitted. However, questions of clarification were acceptable provided they were made through the Chairperson, whose rulings would be final.

Commissioner Withy proposed to follow procedures as set out in Commissioners' Minute No.1 Tabled Item (1) and noted that, due to the complexity and technical nature of evidence, when the time came for right of replies from the author of the Section 42A report (the Council Officer) and the Applicant, both would be accorded the opportunity to call upon their technical advisors in order to carry out robust rights of reply.

He advised that there was a suite of draft Conditions of Consent that had been discussed in consultation between Council Officers and the Applicant. He noted that, while draft conditions were important and would be discussed, they must not be presumed to be an indication of pre-determination. Parties were encouraged to continue with negotiations.

He indicated that it was likely that the Hearing would be adjourned, following all evidence, for the provision and circulation of further information if required, and that this would be managed via Commissioners' Minutes.

He advised that both Commissioners had undertaken a site visit on Thursday, 27 June 2019. However, they were open to conducting a further site visit should that be considered necessary.

### **Introduction of Council Officers**

At the request of the Chairperson, all Council Officers and external persons in attendance on behalf of Council, introduced themselves and noted their role in the Hearing.

At the invitation of the Commissioner, staff outlined housekeeping matters and emergency evacuation procedures on his behalf.

### **Appearances for the Applicant**

At the request of the Chairperson, those appearing for the Applicant introduced themselves and noted their area of expertise, as follows:

1. Kate Barry-Piceno, Legal Counsel representing the Applicant
2. Benjamin Turner, Managing Director (Property Seven Limited), the Applicant
3. Richard Hart, Landscape Architect
4. William Shaw, Principal Ecologist/Director (Wildland Consultants Ltd)
5. Luke Balchin, Consultant Planner (Aurecon)
6. Dr Jan Kupec, Technical Director Ground Engineering (Aurecon)
7. Duncan Walker, Agricultural Consultant (Perrin Ag Consultants)
8. Neill Raynor, Technical Director Water & Land Development (Aurecon)
9. Grant Hammond, Civil Engineer/Director (Technologyworks Limited),
10. Ann Fosberry, Traffic & Road Safety Consultant (Aurecon)
11. Buddy Mikaere, Cultural Consultant
12. Aaron Collier, Planner/Technical Director (Aurecon).

### **Submitters Appearing**

#### **Day 1**

##### Submitters in Support

1. Mark Buchanan
2. Fish and Game NZ represented by Andy Garrick
3. Paul Hickson.

##### Submitters in Opposition

4. James Woods who had submitted with Andrew Eagles.

#### **Day 2**

##### Submitters in Support

5. Bay of Plenty Regional Council represented by Donna Llewellyn (Legal Counsel) and Terrence Long (Senior Regulatory Project Officer).

##### Submitters in Opposition

6. Jeremy Bossaack
7. Dr Jim Miller, Medical Officer of Health (Toi Te Ora/BOPDHB)
8. Liz Woodward (who had submitted with Dennis Woodward)
9. Waihi Beach Drainage Incorporated Society represented by Derek Spratt
10. Conrad Nagle (who had submitted with Bronwyn Nagle)
11. Elizabeth Foster (who had submitted with Jan Fitzgerald)
12. Judy Treloar (who had submitted with Paul Treloar).

### Tabled Items from Submitters

Staff circulated Tabled Item (2), which included the following items provided by Submitters prior to the hearing:

- a) Email dated 11 June 2019 from Submitter Kate Pomare
- b) Email dated 21 June 2019 from Submitter Thomas Sahs
- c) Email dated 27 June 2019 from Submitter BOP District Health Board (Toi Te Ora) (Annaka Davis)
- d) Email dated 28 June 2019 from Submitter Jasnish Gujral
- e) Email dated 29 June 2019 from Submitter Lewis Cormack.

### Evidence for the Applicant

1. a) **Kate Barry-Piceno**, Legal Counsel, appeared on behalf of Property Seven Group, (the Applicant), Tabled Item (3) and addressed the Commissioners with opening legal submissions.

#### Scope of Legal Submissions

- Introduction;
- Witnesses to be called;
- Nature of the application;
- Case for the Applicant;
- Legal framework;
- Issues;
- Non-complying activity status;
- Plan objectives and policies;
- Consistency with other statutory instruments;

10.30am  
10.50am

The Hearing adjourned.  
The Hearing reconvened.

- Section 104D;
- Section 104;
- Actual and potential effects on the environment;
- Having regard to "other matters";
- Comments on the submissions and submitters' evidence;
- Part 2 of the Resource Management Act 1991;
- Conclusions.

Ms Barry-Piceno responded to questions as follows:

- She understood that BOP Regional Council would be speaking to their submission on Day 2 of the hearing, and they may also speak to the draft conditions of consent, which was consistent with an email she had received from that Council (*tabled item 4 below refers*).

- In relation to Part II of the Resource Management Act 1991 (RMA), in her reading of the provisions of the District Plan, and in the context of the Regional Policy Statement (RPS), the broader directions of the RPS related to having planned public infrastructure and development, albeit through consents.  
There was intention, and a broad directive around the protection of prime production activities, and on giving effect to cultural values, water quality and a number of those aspects. In this case, the RPS covered all of those matters, and this application, in fact, "touched on" all of those matters.
- The District Plan rules had conservation forestry as a permitted activity, which anticipated that wetland swamp forest of this nature in its natural state, and associated earthworks, was a permitted activity.
- A small portion of this site (approximately 8 hectares), was going to be used for a non-rural productive use in the context of the District Plan. This application was not contrary to the general primary productive uses, because a significant majority of this site was being used for productive, economically efficient use. It may not be a 'monetary' efficient use, in the sense that it was not a dairy farm, but some monetary recovery was possible, and it was currently being used in an economic way.
- From an ecological and environmental perspective, she considered that the Rural Zone did incorporate a commitment to conservation forestry. However, if the Commissioners adopted the Council Planner's rationale that it had to be dairy farm or primary activity; in her submission, that would mean that this plan did not properly consider Part II matters, and did not give effect to the RPS. It depended upon the interpretation of the District Plan provisions in relation to Part II matters.
- In her submission, the appropriate interpretation of the District Plan, to give effect to Part II, must incorporate wetlands as a permitted rural activity, to give effect to the RPS. The encompassing of this activity in an eco village must be viewed as being enabled by the District Plan and RPS as a whole.

#### **Further Tabled Item in relation to Submitter in Support**

Ms Barry-Piceno Tabled Item (4), which was an email addressed to herself from Donna Llewellyn, the In-House Legal Counsel of Bay of Plenty Regional Council, (a Submitter in Support), and dated 25 June 2019. She noted that the email had confirmed that Terry Long's evidence was the only evidence on behalf of BOPRC in this matter, and that a written statement of BOPRC's position would be presented during the hearing.

## Reporting Planner's Introduction of the Section 42A Report

At the request of the Chairperson, the author of Council's Section 42A report addressed the Hearing and introduced her report.

**2. a) Rochelle Friend**, Senior Consents Planner, Western Bay of Plenty District Council, Tabled Item (5), which she read in full, noting that the recommendation report comprehensively assessed all aspects of the proposed subdivision made by the Applicant. She highlighted the following key components of the report:

- Outline of the development proposal - Section 1, page 10 of the report;
- Resource consent requirements under the Operative District Plan 2012 - Section 4, pages 24-26 of the report;
- Comprehensive Assessment of Effects on the Environment – Section 6, from page 28 of the report;
- Reasons for the recommendation to decline consent to the application – Section 11, pages 102-103 of the report.

Ms Friend advised of minor corrections to the Section 42A report, as detailed in full in tabled item (5), on pages 56, 60, 61, 66, 78, 90, and provided the reasons for these.

In conclusion, Ms Friend advised that she was supported by a number of Council experts who, along with herself, were available throughout the hearing to respond to any questions of clarification.

There were no questions of Ms Friend at this time.

## Continued Evidence for the Applicant

**1. b) Benjamin Turner**, Managing Director of Property Seven Group, (the Applicant), had pre-circulated evidence.

### Scope of Pre-circulated Evidence

- The Eco-Village concept within a nature reserve;
- Water quality;
- Eco-Village design, values and principles;
- Contribution to the community;
- Wetland management;
- Mana whenua;
- Community consultation;
- Council Planner's report;
- Conclusion.

Mr Turner addressed the hearing verbally as follows:

- His intention was to provide a benefit to the community. He had met with most of the people involved in this Hearing.
- There were always problems with projects and the scale of this proposal would be challenging.
- He sought to work together with others to find compromises and solutions, because it was a worthwhile project and would make a massive difference.
- He felt some frustration with the building industry and with what was happening in the environment in general. Inaction frustrated him.
- He had encountered people finding fault with what he proposed. Option A was the beautiful wetland and Option B was the dairy farm.
- He had not anticipated the difficulties encountered with this project. It was just as challenging to take this land from its current state and to create something beautiful, as it would be to use it for a dairy farm.

There were no questions of Mr Turner at this time.

- c) **Richard Hart**, Landscape Architect, appeared on behalf of the Applicant, and had pre-circulated evidence dated 4 June 2019. He Tabled Item (6) and spoke to Powerpoint Presentation (A). Mr Hart presented his pre-circulated photographic evidence, and then his supplementary evidence. He noted that his supplementary evidence was provided in response to matters raised in the evidence of Conrad Nagle, Julie Cross, Nicholas Cutting, and three members of the Pukehina Ratepayers and Residents Association.

#### Scope of Supplementary Evidence

- Boundary bund configuration;
- Inter-relationship between existing properties and the proposed development;
- Plantings by design;
- Existing landform and proposed landform;
- Existing Pukehina dune landform and buildings;
- Perimeter drains to prevent flooding of low-lying land;
- Farm fencing;
- Potential loss of privacy;
- Public walkways;
- Lot numbers and locations;
- Papamoa waterways a genuine amenity;
- Loss of exotic trees;
- Relative heights;
- Outlook change from pastoral to wetland.

Mr Hart responded to a question as follows:

- Neil Raynor, a civil Engineer and expert witness for the Applicant, would provide a comprehensive answer in relation to mean high water and storm water matters during the presentation of his evidence.
- His understanding was, essentially, that the subject site was below high tide, and that a volume of storm water needed to be pumped.

Bryan Norton (Consultant on behalf of Council) advised that the Motiriki data indicated average sea level and that 'mean high water mark' was the average 'spring' tide.

Mr Hart responded to further questions as follows:

- The bund existed now, and storm water flowed in its natural way, but he understood that the flow would be improved as the drain would be widened and upgraded.
- The only walkways, shown as 'proposed', were from Gardner Place, and along Pukehina Beach Road. It was not possible to stop people walking bunds, but if it became popular, that needed to be managed in some way.
- It may be that the bund was viewed as a community asset that was manageable. They were quite valuable and a genuine amenity.
- If the safety of children was a concern for residents an option was to fence their own properties. Within the site, the bund area would be an open environment, and it would be his preference not to have fences from the camp ground to Gardner Place, as it would change the aesthetics of the landscape and environment. However, he acknowledged that safety around water was of national importance, and not just on the subject site.
- Other experts for the Applicant would address the maintenance of drains. The bund would provide access for machinery. He understood the Management Trust would manage this.

Ms Barry-Piceno responded to questions as follows:

- In relation to concerns expressed by Submitters that the development could get part way through and fail due to lack of funding, with the result that there could be a worse drainage situation than currently, William Shaw would be addressing the matter of a Trust when he presented his evidence.
- It was her understanding that using a Trust when there was a requirement for ongoing drainage maintenance was a common occurrence under Section 108 conditions.



- Trusts could operate as a separate entity, such as this one, or maintenance could sit with the consent holder. In terms of obligations for enforcement, conditions could be imposed relating to bonds, and the Trust would act as the mechanism for maintenance.
- In terms of the proposal and security for the Applicant, the concept such that nothing was granted until such time as the funding was there. In terms of the legal mechanisms, the conditions addressed that.

Commissioner Withy advised that he would be interested to hear how the Trust was to be managed and funded.

12.30pm  
1.00pm

The hearing adjourned.  
The hearing reconvened.

### **Continued Evidence for the Applicant**

- d) William Shaw**, Principal Ecologist/Director (Wildland Consultants Ltd), appeared on behalf of the Applicant, and had pre-circulated evidence. He supplementary evidence Tabled Item (7) and addressed the Hearing.

#### Scope of Pre-circulated Evidence

- Background;
- Ecological context;
- Nutrient status of canals and receiving waterways;
- Statutory context and definitions;
- Vegetation and habitats;
- Fauna;
- Current ecological values and constraints;
- Potential ecological effects of the proposed subdivision;
- Overview of opportunities for ecological enhancement;
- Wetland creation;
- Indigenous revegetation;
- Ecological values of the proposed wetland complex;
- Potential protection lots;
- Formal protection and ongoing management;
- Potential consent conditions for private lots;
- Restoration and indigenous revegetation plan;
- Submissions in opposition;
- Submissions in support;
- Neutral submissions;
- Section 92 request;
- Comments on the Council Officer's report;
- Conclusions.

### Scope of supplementary evidence

- Mosquitoes;
- Effects on existing trees and birdlife;
- Financial sustainability of the wetland area.

Mr Shaw responded to questions as follows:

- The matter of whether the seed funding was 'up front' or per lot as they were sold was a question best answered by another expert witness, Mr Collier.
- The subject property was by the canal. If the drainage was pumped out of the canal and ceased, in a worst case scenario, most of the property, other than higher ground, would be reverted to a wetland.
- The canal was tidal, and tidal inflows up the canal would extend at least up to the Main Road Bridge. If the excavation pods had been undertaken or partially completed, it would revert to a very large wetland with a mixed cover of native and other species. It would become ecologically significant and this would not take long. Therefore, at some point in time, if this proposal 'fell over', the worst case scenario would be a large wetland which would not be as good as the result the Applicant was aiming for.
- A scenario where there had been excavations, roadworks formed, some houses built on the site, but the trust fund was not sufficient, from a health and safety aspect this was a valid question. It was dealt with in his report, to some extent, but working as a team it had not been particularly considered. If the balance of the property had not been excavated, and was not subject to high water levels, it would depend on the subsequent elevation and what became flooded due to the cessation of drainage solutions.
- If the proposal went ahead and a Trust was formed, there had been a strong focus on discussion with Fish and Game; iwi and the BOP Regional Council about Trust membership. Those parties/entities would be able to ensure there were suitable people available to joint the Trust.
- Management of the entire site needed to be addressed in the conditions of consent.

### **Matters of Clarification**

Ms Barry-Piceno responded to questions as follows:

- The Heads of Agreement was thoroughly vetted by Legal Counsel for the BOP Regional Council, and the various parties associated to it. In the context of any risk that might be associated, it certainly had legal scrutiny by a number of parties.
  - In relation to Tabled Item (4), being an email addressed to herself from Ms Llewellyn, the in-house Legal Counsel of Bay of Plenty Regional Council, dated 25 June 2019; she advised that the BOPRC had conditional support based on the proposed conditions. The mitigation of effects through conditions were an important part of that conditional support. The wetland was endorsed. Concerns referenced in the submission around flooding and natural hazards had been addressed through reports, and proposed conditions. They may also be addressed through further conditions imposed by the Commissioners if consent was granted.
- e) **Luke Balchin**, Consultant Planner, (Aurecon NZ Limited), appeared on behalf of the Applicant, and had pre-circulated evidence, which he requested be taken as read.

#### Scope of Pre-Circulated Evidence

- Consultation with Wetland Trust Members and local Councils;
- Consultation with affected parties and submitters;
- NZ Transport Agency in relation to the proposal;
- Department of Conservation in relation to the proposal;
- WBOPDC pre-lodgement meeting;
- Collaboration with the BOP Regional Council;
- BOP District Health Board in relation to the proposal;
- Ngati Whakahemo – interactive workshop;
- Consultation with Submitters from the community;
- Conclusion.

Following consultation with parties present, the Commissioner noted that there was no requirement for Mr Balchin to further expand upon his pre-circulated evidence, which had been well written.

There were no questions of Mr Balchin at this time.

- f) **Duncan Walker**, Agricultural Consultant (Perrin Ag Consultants), appeared on behalf of the Applicant, and had pre-circulated evidence.

#### Scope of Pre-circulated Evidence

- Discussion on land use versatility;
- Permitted land use activity under the Regional and District Plans;

- Ecological and water quality effects;
- Efficiency of maintaining subject property in rural production activities;
- Conclusions.

Mr Walker responded to questions as follows:

- The land versatility assessment was dependent upon manmade interventions such as drainage, and there were costs to maintain the land.
- The level of management required to keep the land versatile would increase over time with sea level rise.
- The land could be operated as a dairy farm, and relative to other farm land, it was significantly more challenging. The limitations were wetness, and the drop from the water table, soils if poorly drained, would lead to pugging and damage. It was a free-draining soil.
- To achieve the water quality targets would require some land use change. With the cost of land production, mitigation to achieve certain targets and the relationship with overall production, the risk was expediential.
- On the one hand there would be reduced nitrous oxide emissions from pastoral grazing entering the surrounding water bodies, but there was potential increased loading of nitrogen from dwellings. In terms of the relationship his figures were a projection, but when factored in, the overall reduction of emissions from dwellings was greater, assuming there was a public wastewater system that did not return waste to the ground.
- The primary reduction from dairy farming would be beneficial.

- g) Dr Jan Kupec**, Technical Director Ground Engineering (Aurecon NZ Limited), appeared on behalf of the Applicant, and had pre-circulated evidence.

#### Scope of Pre-circulated Evidence

- Current site setting;
- Proposed development;
- BOP Regional Council Regional Policy compliance;
- Conclusions.

Dr Kupec responded to questions as follows:

- From an engineering perspective, investigations so far were, broadly, to classify and understand the lie of the land. In its current form, the land was too low lying for requirements.

- The detailed design to follow would include much higher geotechnical investigations and geophysical testing to see where bore lines were, and where areas would be created. These would determine the need for ground improvements, construction, surcharging and other things, so there was an entire suite of geotechnical investigations to be done at the design stage.
- It would not matter if zoning was rural or for high density, the geotechnical investigations would still have to be done. However, sufficient investigations had been undertaken to justify the use of the land.
- From a resilience perspective, less than 40 lots or 40 houses were anticipated. If the land shape was not as good as anticipated, there was the potential to lose some of those lots, however, if the main water pipeline was lost, then there would be 100% failure.
- Each house would have a 30,000 litre water tank as a back up to water mains. Water pipes were less brittle or prone to damage. There had been water breaks in areas such as Christchurch, but only in areas impacted by natural spreading. The main issue was with brittle pipe infrastructure.
- It was his understanding that the floor levels in this proposal would be approximately 4.2ms. In terms of flooding, it was a 1-in-2,000 years tsunami event. There were more important things to consider currently. As long as houses were going to be above the inundation level, that was alright.
- He had not specifically looked at canal construction, as that was not part of his brief. This was a standard canal, and any issues could be easily addressed. The houses would be constructed over 2ms higher than the canals.
- Part of the report included an assessment of the natural spreading hazard, which was the main issue at Pukehina Beach Road. It would be managed in order to offset distances. If it was found that the threshold was still exceeded, a mitigation would be provided along the boundary. This was a standard engineering treatment to ensure that works on the site did not increase the risk.
- They had already undertaken assessments to ensure that the material on the site was suitable. The Met service investigation would determine the sequence of when to take material out to fill it.
- They would use the most competent material, and continue to specify material for use. That would be part of the detailed design.
- They had assessed soil suitability for ground improvement and determined that the site itself was suitable. There was a mixture of sands and silts present under water. They had looked at methods available locally, such as turning the ground or use of a storm column so, depending upon water flow and ground water flow, they

would select the best method. It also depended on the detail of the design.

- The width and distance between the ground and boundary was not a problem. They were looking at relatively good performing soils. It was not complicated, but was about ground improvement for vibration. As part of the conditions of consent there would be a peer review undertaken.

### **Matter of Clarification**

Duncan Walker, Agricultural Consultant (Perrin Ag Consultants) on behalf of the Applicant, advised that he wished to provide clarification in relation to his evidence on septic treatment. He wished to note that the original modelling that was undertaken included septic tanks for each house or property.

- h) Neill Raynor**, Technical Director Water and Land Development (Aurecon NZ Limited), appeared on behalf of the Applicant, and had pre-circulated evidence. He Tabled Item (8) supplementary evidence in response to matters raised by Submitters, and spoke to aerial photographs/maps.

#### Scope of Pre-circulated Evidence

- Existing site description;
- Existing stormwater;
- The proposed development;
- Wastewater;
- Potable water;
- Stormwater and groundwater;
- Proposed flood management;
- On site stormwater management;
- Lot stormwater and road stormwater;
- Groundwater;
- Conclusion.

#### Supplementary Evidence

- Perimeter bund configuration;
- Groundwater;
- Changes in flood storage.

Mr Raynor responded to questions as follows:

- He had looked at two months of tidal records from the Ohiwa Harbour, and in terms of the Motoriki data, what these records showed was that the higher of the high tides were approximately 1.2ms from that data. Of the records

- of water levels in the canals, this appeared to be consistent.
- The Trust would be responsible for looking after the pump, the purpose of which was to provide drainage to that area of rural land.
  - The pump would be oversized in terms of its function, but it would provide function to that portion of that land. It was critical to neighbouring properties for their drainage, which was why they had purposely kept properties connected to it.
  - In terms of a rainfall or big flood event and the impact on the area post development, it would be a better host than the current situation. There was no discharging now through those pumps that were operating, whereas, the volume of run-off that would come off this land post development would be less. With the depth of ponding it would be less than it would be currently.
  - With the proposal additions, it would lessen the conditions that would require those landowners to look after those systems. With maintenance and what was required for the particular treatment proposed, there was an alarm system that would be installed as a proposed consent condition. That would go to a contractor who would be required to respond to the alarm.
  - The Council would be required to monitor resource consent conditions and enforce these, but he understood that the Trust would also have responsibility where relevant.
  - In terms of an apparent lack of agreement from members of the Waihi Drainage Society, they were not submitters. What was proposed would have a positive effect on the land drainage system.
  - The site had been topographically surveyed by the survey team. The lead surveyor had surveyed against all matters required and he was well versed in those matters. His understanding was that included tidal records from the Ohiwa Harbour and the Motoriki data, and a network of benchmarks had been established, but this was not his field of expertise.
  - In terms of the existing culvert under the road, currently this was 50 diameter, and it was intended to enlarge that to 150 diameter to achieve as much gravity flow from drainage upstream and to provide greater discharge during rainfall. A worse case scenario would be a difference in water levels between one side and the other. The intention was to improve, and that aspect could be covered.
  - The road had a tendency to pond. He had undertaken some work since the cross-section drawing had been submitted, in relation to swales, distances and manoeuvrability of vehicles. There was sufficient distance to avoid ponding on the road, and the roads would be lower than the building platforms.

- The purpose of the design criteria was to manage all the drainage pumps and to reduce the flooding on land. In terms of drainage pumps, there was a performance criteria where water had to be drained. The intention was that water could go into the lakes.
- In terms of the modelling they had undertaken, if they modelled for the catchment as indicated on the map, potentially, they could accommodate higher water levels. Overall there was a benefit and it was not critical.

Mr Raynor further responded to questions from the floor, (through the Commissioner), providing highly detailed technical information in relation to accommodating secondary flows; pumps upstream of Pukehina Beach Road; areas 1 and 4 functions; gravity flows; water discharges; pump functions; current land drainage systems; sea level rise; inflows and outflows; modelling methods for events; catchments and canals.

In response to a request from Ms Barry-Piceno, the Commissioner advised that he would now hear the evidence of a Submitter, as his address was in relation to matters Mr Raynor had just raised, and in order to release the Submitter from the hearing that day.

### **Submitter in Support**

3. a) **Mark Buchanan**, a Submitter in Support, indicated the location of his property on the map, and addressed the Hearing verbally, speaking in support of his written submission as follows:
- He farmed on the western side of the subject site, had been farming there for forty-two years and was familiar with drainage issues.
  - He had listened to Mr Raynor's evidence and had identified with what had been said.
  - They had retired on a small area which was too low lying and it had reverted to its natural state as rushes.
  - The park was adjoining.
  - There had been comments about the pump and whether or not it would be over-capacity, but there would be a drain that would run around the outside of that development that would drain into that pump.
  - With the development of the area down to Pukehina Beach, the stormwater there ran into a drain. The water arrived on these properties more quickly as development continued on the beach subdivision. The pumps were required to deal with the stormwater off the beach subdivision, more so now than in the past.



#### Mr Buchanan in response to questions

- The rushes were a natural vegetation that grew in the area. He had not treated the area any differently in terms of turning water into it. It was in the natural state.
- The area he spoke of was approximately 5 hectares in size. There were other similar areas and the same would happen to them if the land was retired and left in its natural state. These areas were not a lot of value in terms of farming.
- He had been a committee member of the drainage society for a short time. He had stated in his submission that he had confidence in the engineering solutions. As a farmer and member of the drainage society, he had confidence in the engineers and did not see it being an issue for him.
- He considered that the development would be beneficial, as it would be a far better resolution for the drainage of water than going under Pukehina Beach Road.
- The proposal would be beneficial for his land, as the way drainage worked on the dairy farm, properly functioning pumps were needed to remove the water. He suspected the proposed pumps and functions would be greater.
- He did not see the proposal being an issue for the land on the other side of the canal. One risk for farming there now was the accumulation of flood water from higher up in the catchment which made its way down here. There was a spillage which had spilled over into this catchment and the difficulty now was that there was no outfall for that water other than to be pumped out.
- Any water in a catchment outlined by the beach and stop banks required to be pumped out. He did not want floodwater getting into a catchment if it could not be dealt with by drainage pumps. The bunds were the protection he would like to see, and he was confident that solutions from the engineers would be satisfactory.
- Certain areas paid drainage rates towards the drainage society, and he envisaged that would have to continue in the future in some way as the drains would still need to be maintained.

#### **Continued Evidence for the Applicant**

- 1. i) Grant Hammond**, Civil Engineer/Director (Technologyworks Limited), appeared on behalf of the Applicant, and had pre-circulated evidence which related to his review of the on-site wastewater design aspects of the subdivision application, and was in response to Mr Long of BOPRC. He noted that his evidence could be taken as read.

### Scope of Evidence

- Assessment of the on-site effluent treatment and land disposal;
- Mr Long's statement of evidence;
- Conclusion;
- Opinion.

Mr Hammond responded to questions as follows:

- There were 'pros and cons' with most on-site drainage systems. It was the Applicant's choice as to what would be required to meet the rules of the BOPRC.
- The on-site system being provided was a single pump system from one provider in NZ. They had their own subsidiary company. One condition should be included that there be a requirement that the Landowner must engage that subsidiary company for maintenance, and to have an optional monitoring panel that enabled any alarms to be sent back to the owner. The service provider had a monitoring system with alarms they could respond to automatically. So, the landowner had a contract with the service provider, and that provider undertook remote monitoring of alarms.
- The subdivision proposal put forward in the Landscape Plan footprint, supplementary area and garage area. The BOPRC Onsite Regional Plan indicated how to assess occupancy on the number of bedrooms, but if there was another room, such as a games or media room which could be changed into a bedroom by the use of different furniture, the risk was that a landowner could change the dwelling to four bedrooms, for example. Therefore, there would be a need to have an allowance for occupancy as well. In that case, occupancy could exceed the nine persons calculated, so he recommended an occupancy maximum of nine, which impacted on wastewater.
- The nature of this development was to be an eco-system, where there would be efforts to responsibly reduce wastewater volume and find solutions.
- In terms of the sustainability of the fill as a drainage medium, particularly if compacted to form building platforms, and suitability for the wastewater effluent proposal, the fact that the soil was being reworked, it would become over-compacted, so it would become category 2 not category 3. It was about managing earthworks to achieve suitability for onsite soakage as well. The proposal had identified building platform areas and balance areas to ensure applying appropriate measures to both those areas.

- There was some uncertainty because formal testing had not yet been undertaken. He had recommended that this needed to happen to ensure suitability and appropriate compaction.
- In relation to the comparison between septic tank systems and pump or septic tank and settling systems, those were all viable systems. The system being proposed here was for onsite treatment, but at a later time, it could be converted to a community system. This was not a system that would become redundant.
- The NZ standard for an onsite system was 200litres per day (the same as Australian standards), so it was a joint standard. Then it went down to 180 or 160litres. This was for assessing water consumption
- In terms of the separation distance of the tank and effluent system, the discussion was about water contamination from a bore. He was not familiar with separation distance in that context.
- If there was a separate tank system as primary with no secondary treatment, then 100% reserve area must be provided, but this land could be reduced if there was a secondary system. 50% was an industry standard based on risk assessments.
- Solar power was still to be considered at the detail design stage, as all the systems required power. He understood that each property would be supplied with power connection to the system, although they could choose to go off the grid.

The Chairperson advised that as the Applicant had not yet finished presenting evidence, and there were Submitters in attendance who had been scheduled to speak, with the leave of the Applicant, he would provide an opportunity for submitters to speak following the adjournment. Following which, the Commissioners would hear further evidence from the Applicant.

This proposed change to the Hearing procedure was agreed to by the Applicant.

3.20 pm

The hearing adjourned.

3.30 pm

The hearing reconvened.

### **Submitter in Opposition**

- 3. b) James Woods**, represented Andrew Eagles, CEO of the NZ Green Building Council (NZGBC), his co-submitter to their submission in opposition.

Mr Woods spoke to Powerpoint Presentation (B), and in support of their written submission.

#### Scope of Presentation

- Better places, proven;
- NZ Green Building Council (NZGBC);
- NZGBC rating tools;
- Pukehina Eco Development vision;
- Agenda, Appendix R – sustainability;
- The meaning of an inadequate building code;
- Challenges;
- How to ensure development lived up to claims of sustainability;
- Why we have rating tools;
- A residential sustainability rating tool for NZ;
- A holistic and measurable tool;
- Homestar version 4;
- Transition to a low-carbon economy;
- Results for New Zealanders.

Mr Woods responded to a question, noting that, in terms of 150 hours in an eco-development, there was no way of proving that these houses were actually eco, without rating them as eco-sustainable certified homes.

#### **Submitters in Support**

c) **Andy Garrick**, was in attendance representing Fish and Game NZ (Eastern Region Fish and Game Council), which had pre-circulated a submission in support of the application. He addressed the Hearing verbally as follows:

- His involvement was in terms of discussions on ongoing management of the estuary. Other than that, he had been involved in working with Mr Shaw on ecological perspectives.
- They had not been engaged with the Waihi Drainage Society at this time, and not about this matter, although they had had involvement before this application.

#### Scope of Submission

- Comments on the Application;
- Decision sought.

Mr Garrick responded to questions as follows:

- Fish and Game NZ had been extensively consulted. It believed that the eco-village concept was innovative and

forward thinking while positively enhancing the environment.

- Fish and Game NZ had a mandate to provide opportunities for bird hunting and improving the habitat for game birds. In other areas there had been a great loss, so the number one appeal for them was to provide that environment for hunters.
- If the proposal proceeded, it would be done on a controlled and limited basis, taking into account other activities in that area. What was proposed was already a permitted activity on farms.
- The largest remaining wetland for the Bay of Plenty was the lower Kaituna. When that came into being in the 1980's, there was angst from the farming community who were draining land. There were concerns that this was a loss of wetland, but there was also concern over drainage rates.
- Two of the existing pumps on the subject property were assets of the Waihi Drainage Society, and there would be an expectation that there would be continued payment for those. Other groups would need to have relationships established. These were things that were part of the business of operating and working with the community. He did not see this as an issue.
- If referring to the proposal to vest ownership of the wetland with this Trust, this was possibly a matter for the Commissioners to consider along with conditions.

**d) Paul Hickson** addressed the Hearing verbally, speaking to his written submission in support of the application.

#### Submission Points

- He was in support of the whole concept of an eco-village, which was visionary, and supported the provision of additional housing in this part of the Bay of Plenty.
- The site was a prime locality and using sustainable coastal management techniques, should be allowed to proceed.
- He was involved with Te Puke EDGE, and since 2005 had submitted that there was uneven growth distribution in the Bay of Plenty.
- There was a need for infrastructure, roads, schools and facilities for developments and the Te Puke township was close by.
- The proposal fitted the vision for the area and was a beneficial concept.
- He was a member of the Waihi Drainage Society, and considered that, while some things may not fit in with that, Engineers would be capable of solving any issues.
- He had observed dune planting. Sustainability could be achieved through good engineering solutions and sustainable environmental practices.

There were no questions of Mr Hickson.

### **Continued Evidence for the Applicant**

- 1. j) Ann Fosberry**, Traffic & Road Safety Consultant (Aurecon NZ Limited), appeared on behalf of the Applicant, and had pre-circulated evidence. She spoke to Tabled Item (9), supplementary evidence.

#### Scope of Evidence

- An overview of findings from the original Integrated Transport Assessment (ITA) and further information submitted to NZ Transport Agency and of information provided to Council as part of the Section 92 request;
- Additional information to clarify issues raised by Submitters and the Officer's report;
- Suggested conditions of consent related to transport should consent be granted.

#### Scope of Supplementary Evidence

- Evidence provided in response to matters raised in the evidence of Conrad Nagle, Julie Cross, Nicholas Cutting, and three members of the Pukehina Ratepayers and Residents Association, and Suzanne and Brent Spillane in relation to the following:
  - a) Gardiner Place access to wetland walkways;
  - b) Beach access;
  - c) Speed on Pukehina Parade.

Ms Fosberry responded to questions as follows:

- The Applicant was now prepared to fund the upgrade of the intersection and works.
- In terms of shared space and the surfacing to assist speed reduction, the surfacing would be part of the detailed design, but what was being used currently was stamped asphalt, which could be textured and coloured. This could change the whole look of the environment.
- Lighting had not been discussed at this stage, but she believed that the sealed carriageway needed to be lit for pedestrian safety. This would be a matter for discussion between Council, the Applicant and engineers.

- A matrix was used to input traffic and pedestrian volumes and how the carriageway would be used. They proposed to use that during the design stage and to consult with Council.
- Council had requested a 17 metres wide road reserve. In terms of traffic ability they would look to use a ground reinforcing product. There were plenty available. These were design details that could be discussed.
- In relation to safety and the proposed shared space with vehicles and pedestrians, they anticipated a speed limit of no more than 20kph. She had provided a graph in her evidence in relation to pedestrians and speed.
- As it was part of the overall walkway, there would be people other than those living there who would use the area. There were lots of green spaces to be utilised, for picnic areas, for example. Landscaping and structure of the green spaces had been done in accordance with how the properties would be structured.
- Vehicle crossings/edges would be reinforced. Recessed parking areas would potentially be treated in the same way as having green space, so they could be utilised.
- In relation to access on to State Highway 2, the Applicant had liaised with NZ Transport Agency, who had responded to all their queries. NZTA had not required any upgrading to the intersection, and the agency had not requested the inclusion of anything else.

**Ms C-L Ertel**, Asset and Capital Manager, WBOPDC, responded to questions as follows:

- Council made a financial contribution to the Waihi Beach Drainage Society each year. Technical staff also provided assistance, (as and when required), on a number of different projects.
- The urban catchment of Pukehina sat within Council's eastern comprehensive stormwater consent, which was currently out for submissions.

**k) Buddy Mikaere**, Cultural Consultant, appeared on behalf of the Applicant and had pre-circulated evidence. He provided a mihi, then spoke to Tabled Item (10), supplementary evidence, noting that his evidence should be read in conjunction with that of other witnesses, mentioned as relevant in his evidence.

#### Scope of Evidence

- Comments on the tangata whenua consultation effort;
- Comments on the cultural and related environmental issues identified;
- Comments on the Officer's Report;

- Issues of proposed mitigation and remedial or avoidance measures;
- Review of the application against the intent of Sections 6(e), 7(a), and 8 of Part II of the RMA for compliance.

#### Scope of Supplementary Evidence

- Responses to the evidence of Terrence Long of the Bay of Plenty Regional Council and, in his opinion, his failure to properly consider the cultural aspects of the proposed wastewater disposal method for the Matuku Moana proposal.
- He was disappointed with the lack of address of cultural matters in the Officer's report.
- Water quality was the main environmental issue.

Mr Mikaere responded to questions as follows:

- If crossing the Waihi estuary in terms of rohe and iwi, he clarified that Ngati Whakahemo had affiliations to the Te Arawa Federation, so there was no dispute in tribal terms to this scheme.
- In terms of how far east or south east you would go to enter the Te Arawa rohe, it was just south of Matata, which was just a bit further down the coast.
- He had referred to infrastructure issues and the situation in Welcome Bay in terms of wastewater disposal.

- I) **Aaron Collier**, Planner/Technical Director (Aurecon NZ Limited) appeared on behalf of the Applicant and had pre-circulated evidence, which he spoke to.

#### Scope of Evidence

- Overview of proposal and design;
- Comments on the Council Officer's report;
- Other consents;
- Status;
- Gateway test;
- Objectives and policies;
- Environmental effects;
- Conclusions on the Gateway test;
- Further assessment;
- Relevant plans and policy statements;
- Other matters;
- National Policy Statements;
- Section 106 considerations;
- Part II matters;
- Conclusions.

Mr Collier noted that the draft conditions that had been tabled today by Council staff, were the third set of such conditions.



He advised that he had not had the opportunity to review them today, but would do so that night.

He then provided an update and explanation for those in attendance, in relation to proposed conditions of consent as follows:

- A retreating bond proposed as a new condition;
- Condition 6: addressed certainty around engineering;
- Condition 14: addressed Wetland Trust management and responsibilities and the potential requirement for the set up of a resident's society;
- The idea of establishing a community representative;
- Proposed additional pump;
- Addressing a seeding fund for the Trust and when it was proposed;
- Condition 20: series of consent conditions developed by Mr Lawton and Mr Shaw around the ecological matters;
- Conditions 21 & 22: appeared relatively agreed between ecologists;
- Condition 24; septic tanks, solar power, heating and coolant requirements being the matters Mr Hart and Mr Turners evidence related to;
- Conditions 26 to 35: taken effectively from Mr Hart's design guidelines but somewhat refined and easier to assess, as discussed with Mr Watt;
- Landscaping and fencing conditions agreed with council staff, as was Condition 39 around landscape species, site layout, setbacks, solar aspects in terms of built form;
- Condition 51: Financial contributions and related review conditions;
- Conditions 53 to 70: There were relatively standard engineering conditions which had been slightly reordered and they incorporated contamination;
- Conditions 62 to 70: Tonkin and Taylor conditions which had been strengthened by referring to requirements for various conditions to be undertaken by Category 1 Geotechnical Engineers, and specialised individuals with specialist skills in relation to soil and earthworks;
- Conditions 71 to 74: related to reserves, these issues relatively settled;
- Conditions 75 to 84: collaborative conditions on wastewater between Mr Long and Mr Hammond. Mr Hammond has suggested 2 further conditions which he had incorporated;
- Condition 80: this was not unusual. Council had a record at building consent stage and that is where compliance to that condition would be checked;
- Conditions 85 to 89: related to standard noise and construction;
- Conditions 90 to 103: related to roading conditions;

- Conditions 104 to 109; related to utilities matters;
- Conditions 110 to 113; related to engineering certifications;
- Condition 114: new condition suggested by Mr Raynor to monitor ground water;
- Condition 115: required dialogue and was about monitoring and overseeing works on site. It also dealt with cultural matters on site;
- He had accepted the Council's proposed Advice Notes.

Mr Collier responded to a question in relation to condition 90: Lot 400 being vested as a road, noting that this was provided for under Condition 6, and that the road embankment and related works would be constructed at the same time.

Commissioner Withy thanked all in attendance and advised that the hearing would now adjourn and be reconvened the following day, Tuesday, 2 July 2019 at 9.30am.

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The meeting was adjourned at 5.15 p.m.

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**Minutes of Meeting No. CH4 of an Independent Commissioner Hearing  
held on 2 July 2019 (Day 2 of 2) in the Council Chamber  
commencing at 9.30am**

**Present**

Commissioner Alan Withy (Chairperson) and Commissioner Richard Bax

**Staff Attendance**

R Davie (Group Manager Policy Planning & Regulatory Services), C Watt (Environmental Consents Manager), R Friend (Senior Consents Planner), P Martelli (Resource Management Manager), T Clow (Senior Policy Analyst Resource Management), C-L Ertel (Asset and Capital Manager), K Lawton (Senior Development Engineer Specialist), S Allport (Consents Technician), M Parnell (Governance Advisor), and B Clarke (Senior Governance Advisor)

**Attendance on Behalf of Council**

B Norton (Consultant), M Pennington (Tonkin and Taylor), D McDougall (WestLink) and J Wilton (WestLink)

**Others Present**

Mayor G Webber, Councillor J Scrimgeour, two members of the public, and as listed in the minutes.

**HEARING BEFORE PANEL OF COMMISSIONERS – DAY 2**

CH4.1            **[RC11154S - S/B/12320] Application for a Subdivision Consent to Undertake a Protection Lot Subdivision at 239, 295 and 307 Pukehina Beach Road and 2 Gardiner Place, Pukehina made by Property Seven Limited**

**Commissioner's Introduction**

Commissioner Alan Withy (Chairperson) welcomed those present and invited staff to provide clarification with regard to items being tabled that morning, which were identified as follows:

1. Tabled Item (11) was an email correction from Council staff, noting that Contents page 3, on the 9<sup>th</sup> line, in relation to the WestLink report date, should be corrected from 7 August 2018 to 7 August 2019.

2. Tabled Item (12) was from Submitter John Hamblyn, owner of the Pukehina Motor Camp, and had been received that morning.

Staff also tabled an updated Schedule of Submitters showing the speaking order for the day.

### **Continued Evidence for the Applicant**

1. **m) Kate Barry-Piceno**, Legal Counsel, appeared on behalf of the Applicant and advised as follows:

- The Applicant had received a comments document from Council staff at a late hour last night. As a result, there had not been sufficient time for the Applicant's team to view them until early that morning, and then only briefly.
- In the meantime, Mr Collier and Mr Raynor had been rapidly working to address changes arising from Tonkin and Taylor.
- The Applicant did have the latest set, and would be continuing communications with a view towards finalising a draft set of conditions of consent.
- In the context of the substantive engineering conditions, it may be helpful if Mr Collier spoke to these and they were put on the screen for viewing.

### **Commissioners' Clarification**

For the information of those present, Commissioner Withy noted that it was highly likely that the Hearing would be adjourned later that day, and there would be opportunities for parties to consider and review all documentation, as needed. He advised that the Commissioners were aware that a suite of draft conditions of consent was under discussion amongst parties, and that this was still a "work in progress". He also provided clarification on the role of Ms Friend, Council's Senior Consents Planner and also the author of the Section 42A report.

### **Continued Evidence for the Applicant**

- n) **Aaron Collier**, Planner/Technical Director (Aurecon NZ Limited) appeared on behalf of the Applicant to continue his evidence. He advised as follows:

- In relation to the consent conditions received from Council staff last night, he confirmed that he now had a current version of the draft conditions of consent to be considered.
- In relation to the engineering conditions themselves, he had considered those raised yesterday, and had worked on them last night. However, there were now a number of

further engineering conditions that had been put forward by Council Officer, Mr Lawton, which he had not seen until this morning. He would need to consolidate these engineering conditions, and would see how far he could progress this review by the end of the day.

- He had no supplementary evidence to present apart from his original evidence.

### **Submitter in Support**

3. e) **Donna Lewellyn**, In-House Legal Counsel for the Bay of Plenty Regional Council, Tabled Item (13) "Statement of Position for BOPRC" dated 2 July 2019 on behalf of the author, Nassah Steed, Team Leader Environmental Policy, BOPRC, who was unable to attend. She sought the leave of the Commissioners to accept a Legal Counsel presenting the statement of a Planner.

#### Scope of BOPRC's Statement of Position

- Structure and Scope;
- Heads of Agreement;
- BOPRC's Submission/comments;
- Versatile land fragmentation and rural production activities;
- Structure plan requirements;
- Natural hazards;
- Ecological values needing to be addressed by advice notes.

In speaking to the tabled Statement of Position, Ms Lewellyn noted the following:

- The BOPRC was fully supportive of the ecological wetland proposal, and was now supportive of the ecological village subdivision proposal, subject to appropriate conditions of consent.
- The BOPRC would welcome the opportunity to work with the appropriate parties in relation to the work in progress; including on any revised draft conditions of consent arising from the Hearing that may be relevant to its interests.

Ms Llewellyn responded to a question, noting the following:

- The establishment of a Trust to manage the wetlands and Trust appointees had been provided for in the Heads of Agreement. This was the controlling entity on which the regional council had one representative.
- That representation was a strong indication of the regional council's commitment to being involved in such a large wetland area, and in consideration of the risk in estuarine areas and in diverting away from farming.

- The regional council's interest may extend to funding for plantings.

f) **Terrence Long**, Senior Regulatory Project Officer, BOPRC, appeared in support of the Application, noting a correction to the table on page 5 of his evidence, as the ingredient 'Tricolsan' (used to fight plaque germs) may have been removed from the product Total toothpaste. He spoke to his pre-circulated submission.

#### Scope of Submission

- Outline of the proposal;
- OSET Regional Plan and Section 92 request for further information;
- The Applicant's response;
- Meeting with the Applicant's agents;
- The TechnologyWorks report dated 17 May 2019;
- Conditions of consent.

Mr Long responded to questions as follows:

- There was no public wastewater system available. In its absence, there was the option of a centralised wastewater system. That could create a distance of separation between people and their waste.
- There were always two issues that must be considered and dealt with. From a public health perspective, it was about microbes and bacteria viruses, and environmentally, it was about persistent materials that were in the waste. An on-site wastewater system, typically, did not deal with those persistent materials in the waste. A community system, because of the greater residency time, would deal with them better, although some would persist. It also created a greater distance between the point of discharge and the back lawn on which the children played.
- There were some constraints on the further development of the Pukehina community. Many people had owned a property there for some years, and may have aspired to retire or redevelop the property. Due to the requirements of wastewater disposal, they were finding it difficult to enlarge the 'footprint' on the property and allow sufficient space on the property for wastewater disposal.
- He was aware of some issues at Pukehina where, for whatever reason, there were multiple homes on the one residential lot. There were very small septic tanks which did not treat the waste well, and there was discharge into soak-holes, which did not treat the waste well. There were also boggy areas within properties because of these overloaded systems. In such cases, there were no options for a replacement wastewater system because all of the land was consumed by units, driveways and communal areas.

- If there was a centralised system available, there was likely to be desire to connect into that system. In the past, there was a proposal to reticulate Pukehina and have a pipeline going across the estuary to Little Waihi and then to the wastewater plant on top of the hill. That had been opposed and did not proceed, but many people had wanted that to happen. It had been opposed by iwi who did not want a pipeline going under the estuary.
- The Pukehina area was not identified as "at risk" in the National Policy Statement.
- The On-Site Effluent Treatment Regional Plan (OSET) did not specifically deal with cultural matters.
- The new draft OSET plan was working towards some sort of conclusion by the end of the year. There were a number of matters that needed to be addressed, and one was the question of density with wastewater systems. While a wastewater system could be fitted on a small piece of land, the question was whether or not it was desirable to do so.
- In the regional council's view, it was not desirable to have multiple small properties all utilising all of their available space to dispose of their wastewater.
- There was a proposal to introduce a density rule, so there would be a maximum number of wastewater systems per hectare. BOPRC had met with Waikato Regional Council (WRC), had discussions with them and seen the materials they used for their systems. He could not say what would be included in the draft OSET plan, but he was persuaded by that evidence that Regional Council should do something similar. That would be quite different to this site, where there was an under 2,000 square metres sump.

Ms Llewellyn made the following closing comments:

- The subject catchment was not currently described in the Regional Policy Statement as a catchment "at risk".
- Elaborating on the rebuttal evidence of Mr Hammond, which had noted that the proposal in relation to the on-site treatment was within, (and was consistent with), the requirements of the OSET Plan's permitted activities; the BOPRC had no issue with that. However, the regional council considered that, given the characteristics of this site and with the design proposal, it would be preferable in terms of managing the effects, to consider other options.
- The evidence of Mr Hammond was acknowledged and was accepted as having been through questioning and consideration in the current state (as proposed).
- It was acknowledged that there was considerable technical, environmental, and other evidence that must be balanced. It may be that a further cost-benefit analysis debate was to be had by the Applicant. It was desirable on the part of the Regional Council, to have the best

technology in land areas of design when there was a flood estuarine environment.

Mr Long responded to questions as follows:

- He was concerned that earthworks, and possibly the construction of the bund, would effect groundwater.
- The Pukehina community was divided into two parts for wastewater disposal, those on the seaward side of the road and the others on the landward side. Some had land that sloped down to the swamp at the back, and many of those properties had elevated ground water. When designing an on-site wastewater system, those areas where there was elevated groundwater needed to be excluded. There would be issues if the groundwater was raised.

The Commissioner advised that he would now hear from a Submitter who required to be released from the Hearing.

### **Submitters in Opposition**

3. g) **Jeremy Rossaak**, Submitter in Opposition, addressed the Committee verbally and in support of his written submission.

#### Submission Points

- This project was not the restoration of a wetland, but the development of the land into a river and pond system. This was a complete new development. It was mining the ground to get landfill to place houses in a wetland system, and it was a mistake.
- What was being proposed could not be considered to be of the same ecological value, and was misleading. Wetlands were filter systems, and this wetland struggled to filter properly with inflow and outflow currently.
- True restoration of this wetland would be to fill in the drainage channels and allow the wetland to return to its original state, which was a marsh.
- If this wetland was used in any way for stormwater or aquifer, it could not be described as having ecological value, and was not restoration.
- The proposed eco-village would increase the demands on the Pukehina community, and he questioned what structures or benefits would be put into the community.
- He was not against wetland restoration, but was against redevelopment of the wetland for financial gain. If this proposal was approved, there had to be "checks and balances", including fines for non compliance, as it must function as a wetland.



- He was concerned that this proposal could set a precedent for a river and pond system, as it may become the 'gold standard', and he considered that any other such developments around the country would never be of a higher standard.
- The farmers had received financial gains from this land for years, and they could choose to give it back to the people.
- He requested that the number of people per property be carefully considered.

Mr Rossaak responded to questions as follows:

- He did not live at Pukehina, but owned a holiday home there.
- He was not an ecologist so his submission was made as a lay person.
- He would describe the Pukehina community as being friendly, with many people enjoying fishing or holidays there. It had a long narrow road that extended for approximately 5kms. He knew all his neighbours and many were permanent residents.
- The community was a mix of holiday makers and residents, with the number of permanent residents increasing. At a guess, he would estimate there were approximately 30% of the population permanently living there, possibly more.

### **Matter of Clarification**

**Rochelle Friend**, Senior Consents Planner, WBOPDC, addressed the Hearing, advising that occupation data was referenced in her report in paragraph 2.4.

10.40am  
11.00am

The hearing was adjourned.  
The hearing was reconvened.

### **Submitters in Opposition continued**

- h) Dr Jim Miller**, Medical Officer of Health, represented Toi Te Ora Public Health unit for the Bay of Plenty District Health Board, and Tabled Item (14), a 'Position Statement on Sanitary Services'. He spoke to the tabled item and the original submission in opposition to the Application.

#### Submission Points

- Public health was about communities and populations, so Toi Te Ora looked at this on a large scale.

- Day-to-day living aspects determined a high level of public health, such as appropriate housing, and this was where Toi Te Ora opened up discussion with local authorities.
- Toi Te Ora and the Bay of Plenty District Health Board (BOPDHB) had no concerns with the restoration of wetlands, as long as they were managed well. Their main concern was to ensure that there was no risk to public health.
- The key concern was that the proposed eco-village would have all the characteristics of a fairly large town, and that what had been proposed was not adequate for a community of this size and scale. There could be some issues in terms of environmental contamination and nuisance to health, and also health risk.
- It was recognized there was the desire to promote sustainable development, however, development without appropriate infrastructure could become unsustainable in the long term.
- In general, from a public health point of view, connection with nature was beneficial.
- The main issues in the original submission had been around natural hazards; land being low lying and at risk from flooding. The proposal was to use rainwater and on-site disposal where moving people into the wetland.
- Managing wastewater on-site remained an area of more concern to the BOPDHB itself. They had raised concerns about this with the Applicant prior to the application. It was not the most health protective solution. There had been open and frank discussions with the Applicant, however, the DHB did not feel entirely reassured that public health would be protected over the long term.
- It was his view, that on-site sewer systems were acceptable where connection to articulated systems was not an option. This was in line with the DHB position. There was a position in public health that it was best to keep people and their waste separate. Waste contained a range of gastrointestinal pathogens. Simply being in close proximity of waste was in, and of itself, a risk.
- On site systems could, and did, fail due to inadequate maintenance. From evidence, they often failed over the life span of their use.
- Another issue of concern was the knowledge that in many similar sized communities, such as Tanners Point, there had been problems with on-site systems, and they had to have maintenance zones where the Council took more interest and control.
- During his involvement over the last twelve years, a number of communities had struggled in this regard, such as Ongare Point.

- In every case he had been involved in, it had been extremely difficult for all the parties, including Council, to reach an agreement. All of these had required considerable effort from the communities and Council, and had to have subsidized support to afford the solutions that were required to be put in place.
- There was an opportunity to learn from those experiences where there had been problems in local communities.
- It was important to look at that risk and acknowledge the seriousness of this issue. Some cautions should be applied when the natural hazards assessment was considered.
- On-site systems may be more robust during natural hazards than articulated ones, but there should be careful consideration.
- The proposal to use rain water on site needed more clarification. His understanding was that there was insufficient local water to supply this development. The question was whether there would be sufficient potable water. The onus appeared to come down to owners.
- The development of such a large community in wetlands raised the question of pest management. With insects and mosquitoes, the view appeared to be to accept these if living in a wetland, but this was an intentional development and needed careful consideration. When creating a small town, development of this size required extremely good planning and services.
- Council, particularly with regard to potable water and sanitary services, must give robust consideration to protecting community health. He considered there was some considerable health risk from this proposal for the community.
- Over the last ten years, Toi Te Ora had seen health risks arise with communities this size. There would need to be reviews within a decade, to see if the systems were developing problems.
- Due to the risks to public health, Toi Te Ora and the Bay of Plenty District Health Board were not supportive of this development, as it was currently proposed, at this time.

Dr Miller responded to questions as follows:

- There were no new sanitary subsidies available. There was a subsidy for Matata, which had a problem with reticulation, so that subsidy was still "on the table", but there had been no new subsidies for some time.
- He understood that the on-site system at Pukehina was not currently causing any concerns. Communities were often effected when there were holiday homes and not as many full time residents.

- i) **Liz Woodward**, who had submitted with **Dennis Woodward**, appeared in opposition, Tabled Item (15), and spoke to the original and tabled submissions.

Scope of Original Submission

- Who would pay for ongoing maintenance of the eco-village area?
- Environment issues for non-beach-side property owners;
- Traffic issues from increased population in the area;
- Flooding during rain or flood events.

Scope of Tabled Item

- Rates assessment costs and maintenance costs;
- Wetland area;
- Home owners' view-scape;
- Roading / traffic movements;
- Rain events.

Ms Woodward responded to a question, noting that they lived in Te Puke, but had a holiday batch in Pukehina Parade.

- j) **Derek Spratt**, Secretary/Treasurer, Waihi District Drainage Incorporated Society, appeared in opposition, Tabled Item (16), and spoke to it. He was supported by **Grant Rowe** (the Society Chairperson).

Scope of Original Submission and Tabled Item

- The Applicant;
- History of the Waihi Drainage District;
- Wetland creation;
- Ownership and future management;
- Residential subdivision component;
- Earthworks and construction;
- Stormwater and flood management;
- Proposed hydrology and drainage;
- Proposed flood management;
- Operation water management;
- Consultation;
- Waihi Land Drainage Society;
- Landscape Assessment Report;
- Conclusion.

Mr Spratt responded to questions in relation to the area the Society was responsible for; Society membership; the Society was incorporated; and the impact of the 18 May 2005 flood event.

- k) Conrad Nagle** who had submitted with **Bronwyn Nagle** in opposition to the application, Tabled Item (17), and spoke to the tabled item. He noted that Appendix A of the tabled document was a survey that they had conducted and it included the signatures of many concerned people in the community.

Mr Nagle was supported by Julie Cross, Nicholas Cutting, Brody Cummins, John and Judy McEnally, who all permanent residents of Pukehina Beach. Ms McEnally and Mr Cummins were also members of the Pukehina Ratepayers Society.

#### Scope of Tabled Item

- Introduction;
- Current situation;
- Evidence of Luke Balchin;
- Concerns;
- Requests for clarification;
- Summary.

In response to a question, Mr Nagle advised that he understood he had the mandate of the Pukehina Ratepayers Society to represent them, but could not provide evidence in the form of a resolution. He undertook to provide this to Council Staff following the hearing.

The Commissioner thanked the group for their submission and advised that a position as a community representative on the Trust was open. The mechanism for determining who that representative would be was yet to be determined.

- l) Elizabeth Foster**, who had submitted with **Jan Fitzgerald**, in opposition, Tabled Item (18) and spoke to the tabled item and the original written submission.

#### Scope of Tabled Item

- Broad eco-village principles;
- Submissions;
- Pukehina Beach Ratepayers Association Submission & Public Consultation;
- Non-compliant activity within the WBOPDC Plan;
- Bay of Plenty Regional Land Transport Plan;
- Landfill;
- Natural Flood Zone Area;
- State Highway 2 intersection;
- Existing roading;
- Activity completion;

- Wetlands upkeep and Trust;
- Conclusions.

Ms Foster responded to questions as follows:

- She was a lay person when speaking about the Gateway Test.
- She believed that many people lived in Pukehina because they liked the lifestyle, it was considered to be 'laid back', and many enjoyed the boating and fishing. There were not a lot of services or facilities, and there was no ability for growth, as it was located on a peninsula and was surrounded by Rural zoned land.
- There was a mix of permanent residents and holiday makers. She could only give an estimate that the mix could be up to 50/50. There were people living and working there, and not just retired people.

**m) Judy Treloar**, who had submitted with **Paul Treloar**, (Treloar Trusts Partnership), in opposition, spoke to the original written submission.

#### Submission Points

- The Treloar family had been farming in the vicinity since the 1950's.
- They had owned a property on the beach for approximately 14 years. The 160 hectare property was highly productive rural land. There was not a lot of flat Rural zoned land in the Bay of Plenty.
- The current farming practices were not in question.
- Replacing this land with urban development and an eco-village was not supplying food sources. If food sources had to be imported, this would have a negative eco-carbon effect.
- Reference was given that this land had been removed from its natural state, but so had most of New Zealand to enable people to live, work and play here. Native land had been cleared for settlers to exist.
- Creating more urban development at a distance from any city and at the cost of productive farming land was not a benefit.
- She questioned whether Council would use this as a test case, and considered that neighbouring properties were likely to be the "next cab off the rank" for development.
- The floodgates should not be opened for further Rural zone residential developments.
- The principles of SmartGrowth were to control urban development and service infrastructure.

- A development was classed as urban development if connected to a wastewater scheme. The proposal discussed individual systems, but a development this size should be classed as an urban development.
- In other Rural zones, titles were not issued until native planting had been done. That should be the case with this development, and in fact, planting should be established before titles were issued to have consistency with the District Plan.
- The District Plan had recently reviewed floodable and hazard zones in the District to update them in terms of sea level rise. Any development like this build, which was on low lying land, would be at risk.
- If approved, they considered that this Application would set a precedent and would open up similar subdivision applications, consents and building on such sites.
- Much consideration must be given, in such an area, to the effects of an additional 150 homes with access to and from the beach. There needed to be more than one access where there were developments. Road widening may be required to allow traffic more than one-way access. She would not want to see the access blocked for the current residents.
- The ability to satisfactorily manage the wetland once it had been developed was questioned. They already had issues with BOPRC and the Department of Conservation (DOC), who were unable to agree on who was responsible for the embankment on the estuary, and the debris and broken rock walls. This meant that two of the parties to the Heads of Agreement for this proposal had not been able to agree and find solutions to problems. They were concerned that this was not legal and it was not desirable. With a further large wetland area to be responsible for, the Trust was unlikely to be able to agree.
- They were unsure if the Heads of Agreement had actually been signed, and were deeply concerned about the reliability of the parties to that trust, particularly given the Applicant's history of liquidation. They were extremely concerned about the ongoing effects of the proposal, hence their objection.

Ms Treloar responded to a question, advising that they were permanent residents at Pukehina Parade.

### **Conclusion of the Hearing of Submitters**

Commissioner Withy noted there were no other submitters in attendance who had indicated they wished to be heard and, therefore, the Hearing of Submitters was concluded.

### **Commissioner's Instructions for Remaining Hearing Procedure**

Commissioner Withy briefly outlined the normal order of the remainder of proceedings, but noted that both the Applicant and Council staff were supported by a large number of technical persons who may be required to speak or respond to questions of clarification. He perceived that this would not necessarily be the best way forward, in terms of the time remaining that day. He suggested that the Applicant's team and the relevant Council staff may wish to discuss and determine the best way to proceed with their evidence.

Through the Commissioner, Ms Barry-Piceno, Legal Counsel for the Applicant, suggested that the best way forward may be to focus on the draft engineering conditions of consent, and for Mr Collier to present his remaining evidence or comments, and for Ms Friend and Ms Watt to speak on behalf of Council on the Council reports. She noted that the Council chamber was available during the lunch adjournment, should the Council planners wish to enter into a discussion in terms of input into the draft conditions. She further noted that the Applicant had a Right of Reply, with the understanding that there could be some collaboration on the draft conditions during the adjournment. She also noted her time constraint, in that she must withdraw from the Hearing by 3.00pm, in which case, her Right of Reply would need to be provided in writing following the Hearing, but her experts could speak.

Through the Commissioner, Mr Watt, Council's Environmental Consents Manager, provided an explanation of Council's current position, noting that, as Council Staff had put forward a number of additional engineering conditions since the previous day, these would require negotiations. Council staff would make themselves available during the adjournment to see what could be progressed. They were ready to present the Council Officer's reply.

Commissioner Withy thanked the parties for their input, and noted that he would be most interested to hear any results of discussions during the adjournment. He further noted that, as there were a number of Submitters remaining who obviously wished to hear the remaining proceedings, the adjournment would be forty minutes.

1.00pm

The hearing was adjourned.

1.40pm

The hearing was reconvened.

### **Continued Evidence for the Applicant**

1. m) **Aaron Collier**, Planner/Technical Director (Aurecon NZ Limited) appeared on behalf of the Applicant, and addressed the Hearing in response to matters raised as follows:



- It had been implied that the subdivision would result in the complete loss of 150 hectares of production land, and that this would set a precedent. The Applicant disagreed that this was the case.
- The Applicant agreed that there were some tensions around water quality and heritage, but did not agree in relation to District Plan matters.
- The catchment was not identified as at risk”, however, it was at risk in terms of technical criteria to the Regional Council. There was no doubt since he first visited the site, that it was the most degraded of any water body he had seen. This was supported by a whole suite of technical evidence of water quality that had been done.
- The Applicant had done his best to address structure plan requirements, and provision had been made in regard to natural hazards.
- There had been a volume of comments around wetland. Wetlands were productive for use, were a permitted activity, and their efficiency and was not just use by economy.
- He had added further conditions to the suite of conditions in terms of the Trust’s obligations, requirements and provisions. These included reporting back to Waihi Beach on a number of matters, and membership being made up of Waihi Beach, and Fish and Game NZ. He had also included a “retreating bond” provision which meant that, as each part of the wetland was transferred, the bond reduced down in value.
- There was an additional suite of traffic conditions with additional requirements that had brought in a different concept than the simple one that Ms Fosberry had worked.
- There were additional conditions that Council’s Mr Lawton had suggested. Many were repetitive and needed to be condensed down.
- In response to the BOPRC’s Mr Long, there were conditions around numbers occupying dwellings and garages. It was also suggested that permeability be increased from 1.5 through to a maximum of 3.
- Mr Raynor had some comments around the Tonkin and Taylor conditions.

### **Commissioner’s Instructions**

The Commissioner advised as follows:

- He was comfortable in allowing the conditions to remain a ‘work in progress’, but would need to see a set of agreed conditions, clearly identifying those still in dispute, before formally closing the hearing.

- It was accepted that some weeks may be needed for the exchange of draft conditions. He was cognisant of the complexity of the issues before this Hearing, and would allow the time necessary to get the best set of conditions possible.
- He and Commissioner Bax were of the view that such time and effort would be worth spending, as judgement may fall one way or the other, it could be that the conditions provided the detail required.
- Ms Barry-Piceno had supplied the legal framework, but any consent would be on the basis of evidence.

### **Applicant's Evidence continued**

Mr Collier responded to questions as follows:

- In terms of the effects of the gateway test, effects would be "de minimis". He was satisfied that there were no effects that were outstanding that could not be addressed.
- The difference of opinion between himself and Ms Friend was around the Rural objectives and policies. He considered the proposal got through the gateway test in terms of those objectives and policies. The objectives in the Rural zone specified the outcomes. There were five remaining objectives that were not in agreement with Ms Friend and himself.
- In terms of Objective 1, versatile land capability being maintained, his view was that the land, in terms of its current versatile land capability, could not be maintained long term.
- In terms of Objective 2, in the Rural chapter, around the effective use and Rural land use, this was about using land efficiently, and to do that it must be sustainable (under Section 5 of the RMA). He was comfortable the proposal met this test.
- In terms of Objective 3, protection and enhancement, ecological heritage and outstanding landscape feature, it was not about protecting what was there, but about enhancing the land resource existing.
- In terms of Objective 7, around cost and efficient use of infrastructure, there were no major infrastructure issues for Council.
- There were no issues in terms of relationships with iwi and their land.
- The policies in the Rural Land chapter were achieved. The land was being used for range of productive uses, including the wetlands as they were of use and were provided for.

- In terms of fragmentation of land, this was either avoided or minimised. His view was that this proposal minimised the fragmentation.
- He considered that the proposal met the gateway test because of these objectives and policies, and overall, it passed through both 'limbs' of the test.

Mr Collier in response to questions:

- The proposed site was a vast area of the land plains that went down into the estuary. A "sense of scale" in terms of land taken out of farming was included in his report. The scale was very large in terms of wetland and was quite significant.
- He had applied his test, and looked at the intention of Part II matters. He did not consider that the Commissioners needed to consider Part II. In terms of the parts of that around sustainable resources, they did apply, including some of the cultural matters. Public access to coastal environment could be considered under the Commissioners' broad jurisdiction.

### Reporting Officer's Comments

- b) Rochelle Friend**, Senior Consents Planner, and author of the Section 42A report, Tabled Item (19) and addressed the Committee noting that, due to the complexity of the issues posed by this Application, with the approval of the Commissioners, she would like each of Council's specialists to comment directly on their area of expertise, as it related to the Application before them.
- c) Mark Pennington**, Consultant of Tonkin & Taylor, noted that he was assisting Council in relation to drainage and stormwater matters, and he spoke to Tabled Item (19).

#### Scope of Reply

- Drainage and groundwater;
- Pump upstream of Pukehina Beach Road;
- Groundwater monitoring;
- Climate resilience;
- Resilience and sustainability.

There were no questions of Mr Pennington.

- d) Guy McDougall**, Consultant of Tonkin & Taylor, noted that he was assisting Council in relation to the regulatory review of geotechnical issues associated with the proposed development, and he spoke to Tabled Item (19).

Scope of Reply

- Lateral spreading risk to neighbouring properties in an earthquake, and the significant amount of ground improvement that may be required;
- Lack of overall certainty.

There were no questions of Mr McDougall.

- e) Ken Lawton**, Senior Development Engineer (WBOPDC), spoke to Tabled Item (19).

Scope of Reply

- Pukehina Beach Road;
- Proposed intersection;
- Proposed internal road;
- Preloading – G1 report;
- Construction activity;
- Bore logs / soil strata;
- Ground soakage stormwater / effluent;
- Geotechnical G1 report;
- The ponds;
- Summary.

There were no questions of Mr Lawton.

- f) Justine Wilton**, Council contractor's Transportation Engineer, spoke to Tabled Item (19).

Scope of Reply

- Rural / urban;
- Shared space;
- Safe space for pedestrians;
- Roadside swale maintenance;
- Lighting within the subdivision;
- Roadside hazard;
- Speed issues not fully resolved;
- Mail delivery.

There were no questions of Ms Wilton.

- g) Tony Clow**, Senior Policy Analyst Resource Management, (WBOPDC), spoke to Tabled Item (19).

Scope of Reply

- Rural protection lot subdivision / or not;
- Rural protection lot rules – feature must be of value to the District, i.e. exist;

- Applicant's alternative view on whether the wetland needs to exist;
- The resource consent is not for a proposed wetland;
- Rural protection lot rules – the limit is five on-site lots;
- A subdivision using the protection lot rules as a guide;
- Issues relating to planning precedent / integrity effects;
- Objectives and policies – general summary;
- Natural environment;
- Rural – Objectives 1, 3, 4, 5, and 6;
- Rural – Policy 1, 2, 3, 4, and 9.

There were no questions of Mr Clow.

- h) Phillip Martelli**, Resource Management Manager, (WBOPDC), spoke to Tabled Item (19).

Scope of Reply

- Regional Policy Statement breaches;
- Lot sizes over 2,000m<sup>2</sup> not considered urban;
- Conditions proposed by Applicant residential in nature;
- Eco-village was a type of settlement, not a rural subdivision;
- Being a residential type of subdivision, the District Plan Residential Section Objectives and Policies became relevant;
- Proposal contrary to Objective 3 and Policies 1 and 4;
- National Policy Statement on Urban Development Capacity;
- Summary.

There were no questions of Mr Martelli.

**Matter raised on Behalf of Applicant**

Ms Barry-Piceno, Legal Counsel on behalf of the Applicant raised the fact that Mr Martelli and Mr Clow, as expert witnesses, had not stated their experience, qualifications or adherence to the code of conduct.

Commissioner Withy advised that he was comfortable with Mr Martelli and Mr Clow tabling their written replies.

Ms Friend agreed that the information, as requested, would be provided.

**Reporting Officer's Comments**

- i) Rochelle Friend**, Senior Consents Planner addressed the Committee with the remainder of her response following the hearing of all evidence, as outlined in Tabled Item (19).

### Scope of Reply

- Information provided;
- Effects;
- Submissions;
- Mitigating conditions;
- Conclusion.

Mr Friend responded to a question, noting that, based on the evidence she had read and heard, she confirmed her position and recommendation that the Application be declined.

### **Applicant's Right of Reply**

- n) **Kate Barry-Piceno**, Legal Counsel for the Applicant, advised that she reserved the right to provide a suite of written closing legal submissions by way of the Applicant's Right of Reply.

### **Commissioner's Adjournment of the Hearing and Instructions**

Commissioner Withy noted that the Hearing now stood adjourned, subject to the provision of further information between all parties, and his further instructions on the process that would be provided in the form of "Commissioner Minutes".

The following expectations were recorded:

Ms Barry-Piceno, Legal Counsel for the Applicant requested, with the leave of the Commissioners, that she be permitted to email her representatives when she was back at work on 24 July 2019. They would provide a guide to responses that had already been advocated.

The Commissioner suggested the Applicant's Right of Reply propose a timeline, and he would then seek advice from Council Officers Mr Friend and Mr Watt with regard to the time line. Following this he would produce a Commissioner Minute for release to all parties.

Ms Barry-Piceno advised that conditions could be provided to Council by the end of the week, being Friday, 5 July 2019.

Ms Barry-Piceno raised concerns that in Council's Right of Reply, matters had been raised that had been with Council for some months. These were matters that were in the Application from the beginning. She considered that the Right of Reply should be on matters raised by Submitters during the Hearing, and other evidence and comments made during the Hearing.

The Commissioner advised that he would issue a minute, and set out requirements.

### Final Statement of Council

Through the Commissioner, Mr Watt, Council's Environmental Consents Manager, gave a general summary of Council's process, noting that there had been 1,400 pages of information processed, and two requests for further information based on planning needs. He noted that in March 2019, Council had been approached by the Applicant, who was insistent that the application go to Hearing in April 2019.

He advised that Ms Friend had requested further information due to gaps that needed to be expanded upon, however, he noted that the information provided by the Applicant had never actually been complete.

Finally, he advised that given the volume of information, and the complexity of the issues involved with this Application, Council's Officers had acquitted themselves appropriately and well, and he was confident that their efforts had been robust, along with those consultants who had assisted Council.

### Final Address of Commissioner

Commissioner Withy thanked all parties and noted that he would be issuing a 'Commissioner minute' in due course. He confirmed that the Applicant would have a Right a Reply. He further noted that the Commissioner Panel did not have all the information required to close the hearing and then declared the Hearing adjourned.

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The Hearing was adjourned at 3.05pm.

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**Minute Note 1:** After the adjournment of the Hearing, documentation was circulated to all parties as follows:

- A. **Commissioners' Minute No. 1** dated 26 June 2019 (pre-hearing instructions) [was circulated to all parties on 27 June 2019.](#)
- B. **Commissioners' Minute No. 2** dated 4 July 2019, [was circulated to all parties on 4 July 2019.](#)
- C. **Commissioners' Minute No. 3** dated 11 July 2019, [was circulated to all parties on 11 July 2019.](#)

- D. **Commissioners' Minute No. 4** dated 7 August 2019, [was circulated to all parties on 7 August 2019.](#)
- E. **Commissioners' Minute No. 5** dated 10 September 2019, [was circulated to all parties on 10 September 2019.](#)

**Minute Note 2:** The Commissioners' Panel formally **closed** the Hearing on 9 October 2019 [and all parties were notified on 9 October 2019.](#)

**Minutes Note 3:** The **DECISION** dated 30 October 2019 and signed by both Independent Commissioners of the Hearings Panel, **as attached** [was circulated to all parties on 30 October 2019.](#)

*Hyperlink to website decision is as follows:*

[Commissioners Panel Decision - Eco Village](#)

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