



RESOURCE CONSENTS HEARINGS PANEL

MINUTES: of a meeting of the Resource Consents Hearings Panel which commenced at 9.00 a.m. in the Council Chamber, Centreway Road, Orewa on Friday, 3 April 2009.

PRESENT:

Chair	Harry Bhana
Crs	Michael Goudie
	Grahame Powell

IN ATTENDANCE:

Reporting Planner	Justin Walters
Team Leader	Steve Seager
Democracy Services Officer	Raewyn Morrison

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3 April 2009

342/04/09 APOLOGIES**AGENDA ITEM NO. 1**

An apology was received from Margaret and Alexander Matheson, submitters in opposition.

343/04/09 A NOTIFIED RESOURCE CONSENT APPLICATION UNDER SECTION 88 OF THE RESOURCE MANAGEMENT ACT 1991

AN APPLICATION FOR CONSENT TO ESTABLISH A COMMERCIAL ACTIVITY WITHIN THE LEIGH SPECIAL CHARACTER ACTIVITY AREA AND EAST COAST RURAL ZONE TO HIRE SNORKELS, MASKS, FLIPPERS, FLOTATION DEVICES, NON MOTORISED ACCESSORIES AND UMBRELLAS, THE SALE OF BOTTLED WATER, ENERGY DRINKS AND SUN BLOCK. THE PROPOSAL ALSO INCLUDES THE DISPLAY OF MAORI ART AND TAONGA AND THE PROVISION OF CULTURAL EXPLANATION TO THE SURROUNDING LANDMARKS

Address: Road Reserve on the southern side of the turn around area at the end of Goat Island Road

APPLICANT: MANUHIRI OMAHA KAITIAKITANGA ORA CHARITABLE TRUST

FILE REF LAN 54854**WARD** Northern**AGENDA ITEM NO. 2**

9.00 a.m. The applicant seeks consent to establish a commercial operation located next to the old toilet block within Council road reserve on the southern side of the turn around and loading area at the end of Goat Island Road and the beach access to Goat Island Marine Reserve. The commercial operation is intended to be operated between the hours of 7.00 a.m. and 7.00 p.m. during the summer months (December through to May) with all associated equipment removed from the location outside these times. The proposed commercial operation would involve the hire of snorkels, masks, flippers, flotation devices, non motorised accessories and umbrellas. The applicant also intends to sell bottled water, energy drinks and sun block. The proposal also includes the display of Maori art and taonga and the provision of cultural explanation to the surrounding landmarks. During the operation of the facility it is intended to have up to 2 full time employees; with these persons being picked up and dropped off so as not to require onsite parking. All wares and equipment will be located on two trailers with airing racks for wet gear and cool bins for water and drinks. Cleaning and sterilisation will be done off site.

The applicant's representative, Ms Claire Phillips, present.

Submitters: Mr Scott Pennington, Mr Rodney Matheson, Mr Ewan Matheson and Ms Valerie Stern (members of the Matheson Family Trust), present.

9.00 a.m. The Chairperson opened the hearing and outlined the meeting procedure.

Commissioner Powell asked for clarification in regard to a possible land swap between the Council and DoC. The reporting planner advised that he had consulted with the Parks Department and been advised that this matter had not gone before the Council.

Ms Phillips distributed and read written evidence on behalf of Manuhiri Omaha Kaitiakitanga Ora Charitable Trust (MOKO). The following was noted:

3 April 2009

Ms Phillips apologised on behalf of MOKO who were unable to be in attendance at the hearing.

Ms Phillips said that the applicants, MOKO, were applying to establish and operate a commercial operation involving the hire of snorkels, masks, flippers, flotation devices, non motorised accessories and umbrellas. MOKO also proposed to sell sunblock. Ms Phillips advised that MOKO no longer wished to sell food or beverages from the operation. The proposal would include the display of Maori art and taonga and the provision of cultural explanation to the surrounding landmarks. The operation was intended to operate between the hours of 7.00 a.m. and 7.00 p.m. during the summer months (December through to May), and it was intended that all equipment would be removed from the location outside these times.

Ms Phillips said that it was also worth noting that the location of the proposal and surrounding area was subject to a claim under the Treaty of Waitangi, therefore in the opinion of MOKO Trust, the ownership of the reserve was in question. MOKO Trust wished to reiterate that their commercial activity would not interfere with the loading space or turning areas of the road network, nor would the operation create any adverse traffic concerns. Ms Phillips said that the effect of the proposal was considered to be no more than minor.

Ms Phillips said that the planning report noted that the neighbouring property owners, 'Matheson Family', had recently obtained a consent for a similar commercial operation. Further, there were a number of submitters raising concerns regarding other commercial activities in the area. Ms Phillips said that 'trade competition' was not a relevant resource consent management issue and did not fall within the jurisdiction of the RMA and the consideration of this consent. She also said that the planning report concluded that from a traffic perspective, consent could be granted provided that the commercial activity vacated the site if the Rodney District Council wished to utilise the Road Reserve in the future. Therefore any potential traffic impacts could be dealt with by the recommended conditions of consent.

In response to questions, Ms Phillips said that:

- There would be 2 trailers of a normal size, purpose built, but not yet purchased; she didn't know the exact area they would occupy.
- The use of the site would only be exclusive during the hours of operation.
- The DoC submission requested cordoning off the site e.g. using markers on the grass, but nothing permanent on the site.
- Outside the hours of operation there would be no evidence of the operation whatsoever.
- The applicant was happy to accept a condition in the event that the Council required the land in future.
- Maori art and taonga would be displayed on the trailers; everything stayed on the trailers. There was no intention for an awning, but there might possibly be a gazebo if it was raining. Literally there would be two trailers with 2 people standing by. There would be no use of the disused toilet.
- A significant area of grassed space would remain; the applicant did not have the exclusive use of the flat area adjacent to the toilet block.
- Vehicles would not be parked on the site. Trailers would be well back from the road reserve (the proposed condition stated 5 metres) so there would be no impinging on the road/loading area.
- There were other people who have hired out snorkels from the carpark (unauthorised).
- Trade competition could not be considered here.
- The application was unique in that the proposal would allow the public to be educated about Ngati Manuhiri.
- People came to Goat Island regardless of whether the activity was there or not.
- She thought excluding drinks was a good idea, especially in regard to the issue of rubbish etc.
- If the business grew the location would probably not be suitable. The proposal was on a Council reserve and was of a temporary nature. The location was suitable for what was proposed.
- She was not aware that Maori art work and taonga would be for sale; she understood the display was for education as opposed to sale of carvings etc as that created a different demand.
- If the Council wanted to put a time frame on the proposal the applicant would be happy with a review condition. For instance, if the Council was not happy about the way things were operating there could be a review.

3 April 2009

- There was question in the applicant's mind over the ownership of the reserve and there was a Treaty of Waitangi claim.
- The applicant was not advised that they would need to enter into a lease, but that would make it a lot more exclusive.
- The rest of the reserve was available for public use, e.g. school groups etc.

Mr Walters said that if consent was granted the consent holder would then need to enter into agreement with the Council in some form, for example a lease etc.

Submitters:

Mr Pennington gave verbal evidence on behalf of the Matheson Family Trust. He read and embellished on the Trust's original submission.

Mr Pennington described the nature of the Matheson Family Partnership, the neighbouring land owners. The Partnership comprised of 8 family siblings who owned the land; the Matheson Family had been in the area for 150 years. Mr Pennington said that the shared private right of way to the Marine Reserve buildings and their property was owned by the Matheson Family Trust and the University of Auckland.

Mr Pennington said that the Matheson Family Partnership had a snorkel hire company at the foot of the section, 10 metres away from where the proposal wanted to set up, but they had ceased operation this year in order to formalise their resource consent with the Council. Effectively they had opened up the bottom part of their farm and the people who hired equipment came by foot and on to private property. He was opposed to MOKO setting up in an area where there was already a similar activity for reasons of public access and safety. He estimated visitor numbers to be in the vicinity of 350,000 per year. He noted that MOKO had an alliance with Seafriends, a dive equipment provider which was located on Goat Island Road. Mr Pennington said his argument was not about trade, but rather that the proposal would duplicate what was already happening in that particular area and he was fighting for activities that already existed.

Mr Pennington described the snorkel hire operation that had existed on the Matheson property for 15 years. He said that the income from this operation contributed to maintenance and repairs on the rural farm. He considered that the Matheson snorkel business reduced congestion and he was concerned that the MOKO proposal would create congestion again and change the direction of the foot traffic and as a result direct people amongst vehicles which was a traffic hazard. He noted that people accessed the turnaround area with trucks, trailers, dive gear, camper vans etc to unloaded equipment. Mr Pennington considered that the area where MOKO wanted to set up would jeopardise a perfect opportunity to remove the old toilets and create a loop system so the road worked in a flowing motion. He also noted that there was no provision for handicapped persons in the loading zone. He considered the area could also be used by a first response unit, especially as there was limited flat land at Goat Island. Mr Pennington reiterated that the Matheson Family opposition was not about trade, it was about the congestion that already existed.

Valerie Stern addressed the Panel. She said that people often didn't see the walkway provided, instead they used the road, which was very narrow, to access the beach. She said that there had been accidents, and near misses; the turn around area was very congested and at bursting point already. The popularity of Goat Island had meant it had outgrown what was envisaged would ever happen and there was no other surrounding ground. She also noted that the road had to be used for wheelchair access. She considered the only alternative area for such a proposal would be up behind the new toilet block or where the existing old bach was.

During the course of the hearing an email was received by the Democracy Services Officer from Council's Resource Consent Administration Team. The email contained a letter from Dyson, Smythe and Gladwell - Lawyers, acting on behalf of Tim Baker and advised that Mr Baker did not wish to speak to his submission in light of the conditions proposed in the planner's report.

Mr Rodney Matheson described how people used the area and set up. On occasion he had noted 5 operators in the area at the same time and he considered the area was already congested. If the proposal by MOKO was successful he believed more people would have to use the beach to 'suit up'.

3 April 2009

Mr Pennington thought that the area should be used for suiting up and that concession holders needed to use the area properly to reduce congestion, however he doubted whether the area could contain all the concession groups.

Mr Ewan Matheson noted that the large Pohutukawa tree in the area blocked the view of the road by vehicles using the private right of way.

10.32 p.m. - 10.49 a.m. Morning tea adjournment.

Council Officer: Justin Walters addressed the Panel. The following was noted:

Mr Walters said that he stood by his recommendation that the application should be granted consent subject to conditions. He noted that consent did not need to be granted in part now that the food and drink component was not part of the application, but he recommended that be kept as a condition of consent. Mr Walters referred the Panel to point 12 of his report and the reasons for his recommendation. He believed the proposal would have no more than minor effects, and that it was not contrary to objectives and policies of the District Plan.

Mr Walters said that he saw the issues as:

- Use of public land
- Traffic
- Visual and general amenity.

With regard to public use of land, Mr Walters said that the application would effectively give MOKO the ability to use that land and it effectively excluded other people, however, the area was used extensively and the proposal would be set back 5m which should provide ample room for loading and unloading etc. Referring to traffic matters, Mr Walters said that the traffic situation as it existed was not brilliant, however he did not believe the proposal would increase congestion in the area especially considering the setbacks from the loading zone. The restriction in hours of setting up/taking down should alleviate issues around the use of the loading zone. Mr Walters noted submitter comments in regard to pedestrians, but he said that situation already existed. The signage for the activity would only be at the site and as people were not being attracted to drive down and see the activity he considered that there would be no additional traffic effects. In regard to visual effects, Mr Walters said that he thought it the best location for a commercial activity as it was well screened which helped to maintain the rural character. In terms of the Act, Part II section 6, there would be positive effects in economic development for local Maori. Mr Walters noted that the resource consent went with the land and would be held by the landowner which would be the Council, and Council as landowner could request MOKO to vacate the site. In regard to defining the area, Mr Walters said that he thought there should be a better site plan.

In response to questions from the Panel, Mr Walters said that:

- There was the potential for the Council to dispossess MOKO and the Council could also potentially put another trader on the site.
- If the land went to DoC their Reserve Management Plan identified the area as a site for commercial operation (even though the land was Council land).
- If the Council asked MOKO to vacate the land it would depend on the level of agreement, whether that was a formal or an informal concession or lease.
- He saw no issue with a review condition.

Ms Phillips presented the right of reply. The following was noted:

Ms Phillips drew the Panel's attention to what she considered to be the key issue of the proposal, i.e. that the proposal was a temporary activity. She said that the applicant would be happy to provide a site plan showing the location. The 2 trailers would not obstruct the road reserve. People came to the reserve anyway, and this would be an added service. With regard to submitters' concern with the sand on the road, she did not think the proposal would exacerbate that situation. Ms Phillips said that in regard to

3 April 2009

access for emergency services, that was a separate issue again; the proposed activity would not obstruct the public road. The applicant would be happy to have a review condition as well as the conditions proposed. She noted that the letter from Tim Baker stated that he did not wish to speak in light of the conditions proposed by the reporting planner and she drew the Panel's attention to the fact that Mr Baker had originally submitted in opposition.

The Chairperson requested that the applicant provide a site plan.

11.15 a.m. The Chairperson adjourned the hearing.

Upon receipt of the site plan the Chairperson issued a memorandum and a copy of the site plan to submitters. The memorandum stated that submitters were able to make further written submissions solely in regard to the information in the site plan. The applicant was then given further time to respond to issues raised by submitters as a result of the memorandum.

The Chairperson closed the hearing at 4.00 p.m. on Friday, 29 May.

The Panel resolved:

Bhana/Goudie

DECISION OF THE RODNEY DISTRICT COUNCIL

That pursuant to Sections 104, 104D and 108 of the Resource Management Act, 1991, the notified resource consent application by Manuhiri Omaha Kaitiakitanga Ora Charitable Trust to:

- 1. establish a commercial activity:**
- 2. display Maori art and Taonga: and,**
- 3. provide cultural explanation of surrounding landforms on an area of road reserve at Goat Island Road, Leigh**

is granted consent for the following reasons.

REASONS FOR DECISION

1. The application does not result in adverse effects on the environment which are more than minor. As a consequence the Panel is satisfied that the application passes the gateway tests of section 104D and falls to be considered under the provisions of section 104.
2. The grant of consent to the application is consistent with the objectives, and policies of both District Plans mainly because it is a relatively low key activity that would be entirely consistent with, and will serve, the natural resource based activities that currently take place in this area.
3. Although the application requires consent as a non-complying activity it will be entirely consistent with activities taking place in the surrounding environment and will not significantly add to or extend the adverse effects that are already generated by the large numbers of visitors drawn to the locality by the special environmental experience that the adjacent Goat Island Marine reserve provides.
4. The grant of consent to the application would be consistent with the principles and purpose of the Resource Management Act 1991 as it would enable the sustainable management of the natural resources of this unique area enabling people to provide for their economic, social, cultural and general well-being as well as for their health and safety while ensuring that adverse effects are suitably avoided, remedied or mitigated and without compromising foreseeable needs of future generations or degrading the life supporting characteristics of air soil or water.

3 April 2009

5. In terms of our overall broad judgement we find that the proposal will promote the sustainable management purpose of natural and physical resources.

THE RELEVANT STATUTORY PROVISIONS THAT WERE CONSIDERED:

Overall this application was considered to be a non-complying activity and was considered in terms of sections 104, 104D, and Part 2 of the Act.

OTHER RELEVANT PROVISIONS THAT WERE CONSIDERED:

The provisions of the following documents were considered by the Hearings Panel in reaching this decision.

National Policy Statement Provisions

None applicable

New Zealand Coastal Policy Statement Provisions

Considered broadly relevant

Auckland Regional Policy Statement Provisions

Considered broadly relevant

Proposed Regional Policy Statements Provisions

Not Applicable

Auckland Regional Plan: Coastal Provisions

Considered broadly relevant

Auckland Regional Plan: Air, Land and Water Provisions

None applicable

Plan Provisions

Plan Change Number 55, Rural Provisions

General Objective 3; Objectives 5.1
Policies 5.2 (ii), (iv) & (vi);.

Plan Change Number 26, Residential Provisions

None applicable

Plan Change Number 62, Financial Contributions

Proposed Plan Provisions

Proposed District Plan 2000

Objectives 7.3.1; 7.3.2; 7.3.3;.
Policies 7.4.2; 7.4.3; 7.4.8; 7.8.2.2.2; 7.8.2.2.4; 7.8.2.2.8; 7.8.2.2.9; & 7.2.2.10

3 April 2009

Other Documents

Leigh Reserve Complex Conservation Management Plan – Department of Conservation 12-06-2002.

PREAMBLE

This was an application by the Manuhiri Omaha Kaitiakitanga Ora Charitable Trust (“MOKO”) to use an area of land for commercial activities and for Maori cultural interpretation for the benefit of the large numbers of people visiting the adjacent Goat Island Marine Reserve. The application required consent as a non-complying activity in respect of both plans. The subject site is part of an area vested as public road but is not used for carriageway or vehicular activities although it is used as a temporary unloading facility by visitors and by commercial operators providing activities and facilities for visitors to the reserve. The area is grassed and fringed with vegetation so that although it is close to the public road and to the coast it is not readily visible from public areas except the public road and car park immediately adjacent. The land concerned is zoned Leigh Special Character Area under the Operative District Plan (“ODP”) and East Coast Rural under the Proposed District Plan 2000 (“PDP”). Evidence and submissions from the applicant focused on the lack of any obvious adverse effects on the environment, while submitters were concerned that:

- Approval of the application would result in the use of public land for a private commercial purpose;
- It would prevent the area of land being used for other legitimate public purposes;
- It would obstruct loading and unloading of vehicles;
- It would aggravate traffic congestion and exacerbate a poor traffic safety situation;
- There was no need for additional commercial hire activities to serve visitors to the area and there were more suitable locations such as the Tawharanui Regional Park.

SITE VISIT

The Hearing Panel visited the site on 3 April 2009.

THE PRINCIPAL ISSUES THAT WERE IN CONTENTION:

The principal issues that were in contention were as follows:

1. Whether the appropriateness or inappropriateness of the use of public land for private commercial purposes was a valid consideration in the context of this application for resource consent.
2. Whether the process of considering this application required an evaluation of the competing demands of different groups using the road reserve.
3. Whether the proposed activity would obstruct the loading and unloading of vehicles that currently takes place in the road reserve.
4. Whether the proposed activity would otherwise create traffic congestion and traffic safety issues.
5. Whether there was a need for additional commercial hire activities in this locality.
6. Whether one or other of the Section 104D RMA tests relating to non-complying activities would be met, those being whether the adverse effects of the activity on the environment will be minor

3 April 2009

or whether the application is for an activity that will not be contrary to the objectives and policies of either of the District Plans.

7. Whether the proposal is consistent with the purpose and principles of the RMA, as set out under Part 2 of that Act.

SUMMARY OF THE EVIDENCE HEARD

SUBMISSIONS AND EVIDENCE ON BEHALF OF THE APPLICANT

MS CLAIRE PHILLIPS ON BEHALF OF THE APPLICANT

Ms Phillips described the proposed activities and acknowledged that the application required consent as a non-complying activity. Ms Phillips said that the applicants, MOKO, were applying to establish and operate a commercial operation involving the hire of snorkels, masks, flippers, flotation devices, non motorised accessories and umbrellas. MOKO also proposed to sell sunblock. Ms Phillips advised that MOKO no longer wished to sell food or beverages from the operation. The proposal would include the display of Maori art and taonga and the provision of cultural explanation to the surrounding landmarks. She explained that the locality was one of great significance to the iwi as it was the traditional landing site of the canoe (waka) that brought their forefathers to New Zealand. The activity was intended to operate between the hours of 7.00 a.m. and 7.00 p.m. during the summer months (December through to May), and it was intended that all equipment would be removed from the location outside these times.

Ms Phillips said that it was also worth noting that the location of the proposal and surrounding area was subject to a claim under the Treaty of Waitangi, therefore in the opinion of MOKO Trust, the ownership of the reserve was in question. MOKO Trust wished to reiterate that their commercial activity would not interfere with the loading space or turning areas of the road network, nor would the operation create any adverse traffic concerns. Ms Phillips said that the effect of the proposal was considered to be no more than minor.

Ms Phillips said that the planning report noted that the neighbouring property owners, 'Matheson Family', had recently obtained a consent for a similar commercial operation. Further, there were a number of submitters raising concerns regarding other commercial activities in the area. Ms Phillips said that 'trade competition' was not a relevant resource consent management issue and did not fall within the jurisdiction of the RMA and the consideration of this consent. She also said that the planning report concluded that from a traffic perspective, consent could be granted provided that the commercial activity vacated the site if the Rodney District Council wished to utilise the Road Reserve in the future. Therefore any potential traffic impacts could be dealt with by the recommended conditions of consent.

In response to questions, Ms Phillips said that:

- There would be 2 trailers of a normal size, purpose built, but not yet purchased; she didn't know the exact area they would occupy.
- The use of the site would only be exclusive during the hours of operation.
- The DoC submission requested cordoning off the site e.g. using markers on the grass, but nothing permanent on the site.
- Outside the hours of operation there would be no evidence of the operation whatsoever.
- The applicant was happy to accept a condition in the event that the Council required the land in future.
- Maori art and taonga would be displayed on the trailers; everything stayed on the trailers. There was no intention for an awning, but there might possibly be a gazebo if it was raining. Literally there would be two trailers with 2 people standing by. There would be no use of the disused toilet.
- A significant area of grassed space would remain; the applicant did not wish to have the exclusive use of the flat area adjacent to the toilet block.
- Vehicles would not be parked on the site. Trailers would be well back from the road reserve (the proposed condition stated 5 metres) so there would be no impinging on the road/loading area.
- There were other people who have hired out snorkels from the carpark (unauthorised).

3 April 2009

- Trade competition could not be considered here.
- The application was unique in that the proposal would allow the public to be educated about Ngati Manuhiri.
- People came to Goat Island regardless of whether the activity was there or not.
- She thought excluding drinks was a good idea, especially in regard to the issue of rubbish etc.
- If the business grew the location would probably not be suitable. The proposal was on a Council reserve and was of a temporary nature. The location was suitable for what was proposed.
- She was not aware that Maori art work and taonga would be for sale; she understood the display was for education as opposed to sale of carvings etc as that created a different demand.
- If the Council wanted to put a time frame on the proposal the applicant would be happy with a review condition. For instance, if the Council was not happy about the way things were operating there could be a review.
- There was question in the applicant's mind over the ownership of the reserve and there was a Treaty of Waitangi claim.
- The applicant was not advised that they would need to enter into a lease, but that would make it a lot more exclusive.
- The rest of the reserve was available for public use, e.g. school groups etc.

MS PHILLIPS - ADDRESS IN REPLY

Ms Phillips said that she considered that the key issue of the proposal was that it was a temporary activity. She said that the applicant would be happy to provide a site plan showing the location. The 2 trailers would not obstruct the road reserve. The applicant's proposal would not attract additional people, it would be an added service to those visiting the reserve. With regard to submitters' concern with the sand on the road, she did not think the proposal would exacerbate that situation nor would it increase congestion. Ms Phillips said that the proposed activity would not obstruct the public road or hinder access for emergency services. The applicant would willingly accept a review condition as well as the conditions proposed. She noted that the letter from Tim Baker, who had originally submitted in opposition, stated that he did not wish to speak in light of the conditions proposed by the reporting planner.

SUBMISSIONS AND EVIDENCE ON BEHALF OF THE SUBMITTERS

SUBMISSION BY SCOTT PENNINGTON ON BEHALF OF THE MATHESON FAMILY PARTNERSHIP

Mr Pennington described the nature of the Matheson Family Partnership, the neighbouring land owners, who had been in the area for 150 years. He said that the Matheson Family Partnership had previously operated a snorkel hire company at the foot of the section, 10 metres away from where the applicant proposed to set up, but had ceased operation this year in order to formalise their resource consent with the Council. Effectively they had opened up the bottom part of their farm and the people who hired equipment came by foot and on to private property. He was opposed to MOKO setting up in an area where there was already a similar activity for reasons of public access and safety. He said that the Department of Conservation had estimated visitor numbers to be in the vicinity of 350,000 per year. He noted that MOKO had an alliance with Seafriends, a dive equipment provider which was located on Goat Island Road. Mr Pennington said his argument was not about trade, but rather that the proposal would duplicate what was already happening in that particular area and he was fighting for activities that already existed.

Mr Pennington described the snorkel hire operation that had existed on the Matheson property for 15 years. He said that the income from this operation contributed to maintenance and repairs on the rural farm. He considered that the Matheson snorkel business reduced congestion and he was concerned that the MOKO proposal would create congestion again and change the direction of the foot traffic and as a result direct people amongst vehicles which was a traffic hazard. He referred to a traffic accident involving a car and boat trailer which skidded due to sand on the steeply sloping roadway and which effectively blocked the small bridge giving access to the beach. He noted that people accessed the turnaround area with trucks, trailers, dive gear, camper vans etc to unloaded equipment. Mr Pennington considered that the area where MOKO wanted to set up would jeopardise a perfect opportunity to remove the old toilets and create a loop system so the road worked in flowing motion. He also noted that there was no provision

3 April 2009

for handicapped persons in the loading zone. He considered the area could also be used by a first response unit, especially as there was limited flat land at Goat Island. Mr Pennington reiterated that the Matheson Family opposition was not about trade, it was about the congestion that already existed.

Mr Pennington thought that the road reserve area should be used for suiting up (wet suits) and that concession holders needed to use the area properly to reduce congestion, however he doubted whether the area could contain all the concession groups.

MS VALERIE STERN ON BEHALF OF THE MATHESON FAMILY PARTNERSHIP

Mrs Stern said that people accessing the beach often didn't see the walkway provided, instead they used the road, which was very narrow. She said that there had been accidents (including an accident to a child), and near misses; the turn-around area was very congested and at bursting point already. The popularity of Goat Island had meant that visitor numbers to the area had exceeded expectations and there was no other surrounding ground to accommodate them. She suggested a moratorium until other issues associated with visitor congestion were resolved. She also noted that the road had to be used for wheelchair access. She considered the only alternative area for an activity of the kind proposed was behind the new toilet block or in the vicinity of the existing old bach.

MR RODNEY MATHESON ON BEHALF OF THE MATHESON FAMILY PARTNERSHIP

Mr Rodney Matheson described how people used the area and set up. On occasion he had noted 5 operators in the area at the same time and he considered the area was already congested. If the proposal by MOKO was successful he believed more people would have to use the beach to 'suit up'.

THE EVIDENCE OF COUNCIL OFFICERS

REPORT OF JUSTIN WALTERS - REPORTING PLANNER

Mr Walters' report described the proposal and the reasons for the application. He advised that the site was zoned Leigh Special Character Area under the ODP and East Coast Rural under the PDP. The application required consent as a non-complying activity under both of those Plans. He described the site and considered the weighting that should be given to the ODP and the PDP concluding that the ODP should be given the most weight because of outstanding appeals in respect of the rural provisions of the PDP.

Mr Walters advised that the application had been publicly notified and eight submissions in opposition to the proposal had been received with one submission, from the Department of Conservation, that recommended that consent be granted subject to a number of operational conditions.

Mr Walters advised that earthworks up to 200m³ as well as outdoor recreation activities, not including buildings, were a permitted activity in the zone and effects generated by these activities provided the basis for a permitted baseline. However he noted that the Council's formal consent as designating authority under s176(1)(b) of the RMA would be required before any use of the reserve would be permitted.

Mr Walters assessed the effects on rural and coastal character and noted the intentions of the zoning provisions to protect the character that was created by the combination of a low intensity of manmade structures in a high quality landscape. He observed that the activity would occupy a relatively small area of land adjacent to the main area of the beach and would operate during peak periods of visitor activity and that all signs of the activity would be removed from the site at the times it was not operating. Having regard to these matters and the relatively low visibility of the activity outside the immediate area he considered that it would have no more than minor effects on the coastal/rural character or on visual amenity or landscape. He observed that there was evidence that the area was of cultural significance to the local iwi but considered that the nature of the operation would have little adverse effects on cultural heritage matters and that in any event the applicant represented the local iwi. He advised that the

3 April 2009

applicant intended to carry out loading and unloading of the trailer based facilities outside the hours of 9am to 5pm and that subject to conditions he had recommended, the effects of the activities on traffic and parking would be no more than minor. He was of the opinion that the activity would serve those drawn to the beach rather than generate additional activity and accordingly was of the view that there would be no more than minor adverse effects on amenity values. He was satisfied that provided the activities were set back at least 5m from the western edge of the loading area there would be no more than minor adverse effects on public access.

In dealing with the objectives and policies of the plan the report addressed General Objective 3, Objective 5.1 and Policies 5.2 (iv) & (vi), expressing the view that the activities proposed were consistent with these objectives and policies. Mr Walters considered that provided the application was restricted to prevent the sale of food and beverages the activities would also be consistent with Policy 5.2 (ii). He was also satisfied that the application was consistent with Objectives 7.3.1, 7.3.2, 7.3.3, 7.8.2.1.1, 7.8.2.1.2 and Policies 7.4.2; 7.4.3; 7.4.8; 7.8.2.2.2; 7.8.2.2.4; 7.8.2.2.8; 7.8.2.2.9; & 7.2.2.10, of the PDP.

Taking into account the small scale nature of the activities proposed and their generally low key or neutral effects on environmental values and on the ability to sustainably manage physical and natural resources he was satisfied that there were no issues affecting the Regional Policy Statement or other non-statutory regional documents.

Mr Walters described the Leigh Reserves Complex-Conservation Management Plan, noting that its author, the Department of Conservation, had recommended granting approval to the application subject to conditions.

Having addressed the application in regard to the objectives and policies of the Plan and the likely effects on the environment, the report writer concluded that the proposal met both of the gateway tests of section 104D of the RMA and could therefore be considered by the Panel under s104. He considered the proposal was consistent with section 5 of the RMA as it would enable the applicant to provide for the needs of visitors to the area while ensuring that adverse effects on the environment were satisfactorily avoided, remedied or mitigated, without degrading the life supporting capacity of the air, soil or water and without removing resources that were necessary to meet the reasonably foreseeable needs of future generations. He addressed other matters that Part II of the Act required to be considered including s6(e) and s8 matters concluding that overall the grant of consent to the application would be consistent with Part II of the Act.

Mr Walters recommended the Panel grant consent to the application subject to conditions.

During Ms Phillips presentation on behalf of the applicant Mr Walters was asked about the letter of consent from the Parks Department of the Council. He said that if consent was granted the consent holder would then need to enter into agreement for tenure of the reserve with the Council (as landowner), for example a lease or similar arrangement.

Mr Walters addressed the Panel after the applicant and submitters had presented their evidence and submissions. He confirmed his recommendation that the application should be granted consent subject to conditions and observed that the consent did not need to be granted in part now that applicant had withdrawn the food and drink component, but he recommended that the exclusion of food and drink sales be kept as a condition of consent. Mr Walters referred the Panel to Section 12 of his report and the reasons for his recommendation. He believed the proposal would have no more than minor effects, and that it was not contrary to objectives and policies of the District Plan.

Mr Walters said that he saw the issues as:

- Use of public land
- Traffic
- Visual and general amenity.

3 April 2009

With regard to public use of land, Mr Walters said that the application would effectively give MOKO the ability to use that land and it effectively excluded other people, however, the area was used extensively and the proposal would be set back 5m which should provide ample room for loading and unloading etc. Referring to traffic matters, Mr Walters said that the traffic situation as it existed was not satisfactory, however he did not believe the proposal would increase congestion in the area especially considering the setbacks from the loading zone and the restriction in hours of setting up/taking down which should alleviate issues around the use of the loading zone. Mr Walters noted submitter comments in regard to pedestrians, but he said that situation already existed. The signage for the activity would only be at the site and as people were not being attracted to drive down and see the activity he considered that there would be no additional traffic effects. In regard to visual effects, Mr Walters said that he thought the site selected was the best location for a commercial activity as it was well screened and that helped to maintain the rural character. He said that in terms of the Part II section 6 of the Act, there would be positive effects in the creation of opportunities for economic development for local Maori. Mr Walters noted that the resource consent went with the land and would be held by the Council, as landowner. The Council could request MOKO to vacate the site at any time. In regard to defining the area, Mr Walters said that he thought there should be a better site plan.

In response to questions from the Panel, Mr Walters said that:

- There was the potential for the Council to dispossess MOKO and the Council could also potentially put another trader on the site.
- There had been some discussion about the surplus land being transferred to the Department of Conservation and if the land went to the Department, their Reserve Management Plan identified the area as a site for commercial operation (even though the land was Council land).
- The Council's powers to request MOKO to vacate the site would depend on the nature of the tenure agreement, whether that was a formal or an informal concession or lease.
- He saw no issue with a review condition to enable re-assessment of effects once the facility was operating.

THE MAIN FINDINGS OF FACT:

BASIS

The main findings of fact determined by the Hearings Panel that have led to the above decision and the reasons for that decision are as follows. They have been reached after visiting the site and locality, considering the application, the evidence and submissions heard at the hearing, the report prepared by the reporting planner, all the relevant statutory and planning provisions, as well as the principal issues that were in contention.

GATEWAY TESTS OF SECTION 104D RMA

We agree with Mr Walters that the adverse effects on the environment that would arise if consent was granted to the application would be no more than minor and that subject to the conditions to be imposed the proposed activities would not be contrary to the objectives and policies of either the ODP or the PDP. As a consequence we consider that the gateway tests imposed by section 104D have been met and as a consequence the Panel is able to consider the application under the provisions of section 104.

PRIVATE USE OF PUBLIC LAND

We do not consider that the appropriateness of allocating Council land (and whether any fee should be paid) is a matter of direct relevance to consideration of this application under the RMA. Those matters involve the Council's role as landowner and not its role as a consent authority. However we observe that although the Council's Parks Department gave "affected persons consent" to the resource consent application this did not include any undertaking that the reserve would be made available to the applicant and there was no formal tenure arrangement produced. Furthermore, as observed by Mr Walters, a formal consent by the Council as the designating authority responsible for the Public Road is required under

3 April 2009

section 176(1)(b) before the use can commence. An advice note to this effect has been attached to the conditions of consent and the Panel assumes that any necessary tenure arrangements can be formalised with the Parks Department at the same time as this written consent is being obtained.

COMPETING USES OF THE RESERVE

We are satisfied that the availability of the road reserve for other activities can be managed by restricting the area of land available for the applicant's activities to a defined and cordoned area around the trailers (as recommended in the Department of Conservation submission). We have proposed a specific condition in that regard. To ensure that this condition effectively provides for reasonable access to the road reserve for members of the public, (other than those wishing to patronise the applicant's facility), a review condition is provided to enable further evaluation of the effectiveness of these measures once the applicant's facility is fully operational.

OBSTRUCTION TO LOADING AND UNLOADING OF VEHICLES, TRAFFIC CONGESTION AND TRAFFIC SAFETY

We are satisfied that the applicant's proposal to site the trailers at least 5.8m from the edge of the sealed area together with the conditions requiring the applicant to set up and pack up before 9 am or after 5 pm, will ensure reasonable access for the loading and unloading of vehicles by other members of the public. We accept the expert opinion of the consultant Traffic Engineer that, subject to the conditions restricting the hours of the applicants use of vehicle access, there would be no more than minor adverse effects and note that this opinion was reviewed and confirmed when these traffic issues were raised by submitters.

NEED FOR ADDITIONAL COMMERCIAL HIRE ACTIVITIES

We agree with Mr Walters that we are unable to take into account concerns raised regarding the availability of other hire facilities providing the same services. We find that is a matter which falls within the definition of "trade competition" and that we are specifically prohibited under section 104 (3) (b) from taking such matters into account.

CONCLUSION AS TO FINDINGS

We conclude that, subject to the conditions to be imposed, the use of part of this road reserve for the proposed activity would enable the applicant and visitors to the area to provide for their health, safety, economic, social, cultural and general welfare while having no more than minor adverse effects on the environment. We accordingly find that the sustainable management of natural and physical resources would be appropriately met by granting consent to the application.

CONDITIONS

LAPSING OF CONSENT

Pursuant to Section 125 of the Resource Management Act 1991, this resource consent will expire 5 years after the date of commencement of consent unless, before the consent lapses;

- a) the consent is given effect to; or
- b) an application is made to the Council to extend the period of consent, and the Council decides to grant an extension after taking into account the statutory considerations, set out in section 125(1)(b) of the Resource Management Act 1991.

3 April 2009

CONDITIONS OF CONSENT:

Pursuant to Section 108 of the Resource Management Act 1991, this consent is subject to the following conditions:

- 1) **(general)** The development shall proceed in general accordance with the application submitted, and correspondence dated 8 December 2008, 17 December 2008 and 22 December 2008 except as amended by the conditions below.

Note: This consent does not include guiding within Leigh Reserves Complex and appropriate concessions will need to be obtained from the Department of Conservation.

- 2) **(hours and months of operation)** The commercial operation shall not operate outside the period 7am to 7pm, 7 days a week from 1 December to 31 May. Outside the period of operation all associated structures including signage and rubbish associated with the commercial operation shall be removed from the site.
- 3) **(setup and pack up)** Set up and pack up shall not occur between 9am to 5pm on the days that the commercial operation is permitted to operate and no structures, vehicles, signage or other materials associated with the commercial operation shall be in the loading zone within these times.
- 4) **(location of commercial activity)** The trailers used as a base for the commercial activity shall be located as shown on the site plan prepared by BK Design, dated April 09, and entitled "Proposed Trailer Site, Goat Island Road Leigh". The trailers shall be located no more than 2m apart. The commercial activity shall be contained within a cordon set out a maximum of 2.5 metres from the sides and rear of the trailers and at the front of the trailers the cordon shall extend a maximum of 1m from the drawbars. Before the activity commences the applicant shall provide to the Team Leader Resource Consents of the Council, the details of the method of cordoning off that it proposes to use. The activity shall not commence until the Team Leader Resource Consents is satisfied that the method of cordoning will be effective in containing the activity and will not unduly compromise the safety of people using the reserve.
- 5) **(staff numbers)** A maximum of 2 staff (including any owner operators) shall be onsite and working on the commercial operation at any one time.
- 6) **(staff parking)** Staff shall be picked up and dropped off at the site with no parking occurring onsite or on the roads around and within the Goat Island Marine Reserve Complex.
- 7) **(signage)** A maximum of 2 signs with a height of 1.1metres and a total combined area of 1.8m² of signage shall be associated with the commercial activity.
- 8) **(signage and advertising)** Advertising and signage for the commercial operation shall be restricted to onsite signage on the southern side of Goat Island Road adjacent to the loading zone and shall not be located on the sealed road.
- 9) **(cleaning)** All cleaning and disinfecting of equipment shall occur off site.
- 10) **(retail activity)** Any retail activity shall not include the sale of food or drink.

3 April 2009

Review Condition

- 11) **(inspection of operation by monitoring officer)** Three months after the commencement of this activity, the Monitoring Officer of the Council will inspect the operation of the activity to ensure that it does not unduly restrict other members of the public from using the reserve for purposes for which it had been used prior to the applicant's activity commencing. In the event that this inspection (or inspections), discloses that the activity does unduly restrict other members of the public from using the reserve for these purposes the Council may determine to review the consent under Section 128 of the Act.
- 12) **(resource consent and monitoring charges)** The resource consent holder shall pay to the Council within one month of the issue of this consent or prior to the activity commencing (whichever is earlier) the cost, including specialist services, staff time and administration for the processing of this application together with initial charges for the following inspections:

Environmental protection 4 x site visit.

Monitoring deposits will be invoiced by the Council together with the consent processing charges.

Should further monitoring be required to ensure compliance, the Council will recover the actual and reasonable costs that are incurred for this monitoring as set out in the Council's Schedule of Fees and Charges.

ADVICE NOTE

- 1) The applicant is advised that:
- a) The activities authorised by this resource consent are not permitted to commence until the applicant has obtained formal written consent from the Council under Section 176(1)(b) of the Resource Management Act 1991.
 - b) This consent does not include any right to occupy the road reserve for the activities that are authorised and any formal tenure arrangements will need to be separately negotiated with the Parks Department of the Council.

CarriedCONFIRMED AS A TRUE AND CORRECT RECORD THIS 2ND DAY OF JULY 2009MAYOR

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