

BEFORE THE HEARING PANEL

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

of applications for resource consent (APP-123534, APP-123548, APP-123526, APP-123550, APP-123535 and APP-123536) from the Regional Assets Section of the Hawke's Bay Regional Council to extract gravel within river channels and berms and coastal margins.

**JOINT WITNESS STATEMENT OF
SIMON BENDALL, GREY WILSON & SVEN EXETER
26 May 2022**

INTRODUCTION

1. This joint witness statement relates to caucusing on the draft conditions for the following resource consent applications – APP-123534, APP-123548, APP-123526, APP-123550, APP-123535 and APP-123536 from the regional Assets Section of the Hawke’s Bay Regional Council to extract gravel within river channels and berm and coastal margins.
2. This caucusing was directed by Hearing Panel Direction Number 2 (Appendix 1) and subsequent Hearing Panel Minute dated 24 March 2022 (Appendix 1).
3. This caucusing was held between the parties’ planning witnesses’ on the following dates:
 - (a) 2 March 2022: Caucusing meeting 1 was held between Simon Bendall, Grey Wilson and Sven Exeter.
 - (b) 23 March 2022: Pre-caucusing meeting to introduce Alison Francis to the group.
 - (c) 25 March 2022: Caucusing meeting number 2, resolving significant number of outstanding issues. Some outstanding questions for both submitters and HBRC, planners instructed to go back to their parties and resolve.
 - (d) 21 April 2022: Causing meeting number 3, continuing the process of resolving and agreement on conditions, this meeting also included the introduction of Tyler Sharrett from Winstone Gravels as agreed to by the Hearings Panel. Some outstanding questions for both submitters and HBRC, planners instructed to go back to their parties and resolve.
 - (e) 10 May 2022: Caucusing meeting number 4, agreement on layout of conditions and condition table, some matters outstanding, planners to go back to their parties to resolve matters.
 - (f) 19 May 2022: Caucusing meeting number 5, continued the process of fine-tuning consent conditions and resulted in there only being a few conditions that were not agreed on as detailed below.

4. Attendees at the caucusing were:
 - (a) Sven Exeter – HBRC consultant processing planner
 - (b) Simon Bendall – HBRC consultant planner for the applicant
 - (c) Grey Wilson – expert planner on behalf of Ngāti Kahungunu Iwi Incorporated and Te Taiwhenua o Heretaunga
 - (d) Alison Francis – mediator on behalf of HBRC
 - (e) Tyler Sharratt – Winstones Aggregates (from 25 March 2022 onwards).

CODE OF CONDUCT

5. We confirm that we have read the Environment Court Practice Note 2014, and in particular Appendix 3 – Protocol for Expert Witness Conferences and agree to abide by it.

PURPOSE AND SCOPE OF CAUCUSING

6. The purpose of caucusing was for the planning experts, on behalf of their parties, to agree as best possible on the draft conditions for the consents applied for.
7. Any matters of disagreement are to be noted and the reasons provided back to the hearings panel.
8. The original date that this joint witness statement was expected was 30 March 2022. Two extensions of time have been requested and approved by the Chair of the Hearings Panel, these extensions were necessary due to delays caused by other work commitments by the parties and Covid.

AGREED MATTERS

9. Refer to Appendix 2.

DISAGREEMENT AND REASONS

10. Refer to Appendix 2 and further detail is as follows:
11. **Consent duration:**
 - (a) The applicant request the consent duration to be twenty (20) years. This reflects the outcome of discussions in pre-hearing with submitters to reduce the twenty five (25) year term sought in the applications. The submitters represented by **Ms Wilson** tentatively agree to this, as long as the conditions remain largely unchanged as result of the final discussions with all parties. Otherwise, the submitters request a consent duration of ten (10) years. The reporting officer recommends a 20-year consent duration as per RRMP and RCEP policy.

12. **Condition 13 (MOU):**
- (a) Currently there is no agreement on this condition, the outstanding matters being:
- On behalf of HBRC as the applicant, **Mr Bendall** has expressed concerns about what the process will be if the MOU/MOP is not signed or agreed upon. What is the outcome if no MOU/MOP eventuates and how are the remaining conditions then managed? This is a condition that relies on a third party agreement.
 - On behalf of the submitters, **Ms Wilson** has reiterated that a MOU/MOP must be signed before the rest of the conditions progress and this is vital to upholding the intent of the conditions.
 - Mr Exeter** (the reporting officer), considers that while a MOU would be helpful, there is no RMA requirement for a MOU. If the 'MOU' condition is removed, the consent can stand by itself noting that this does not preclude a MOU being progressed between the parties.
13. **Conditions 55-58 (relating to the CIA process):**
- (a) Currently there is no agreement on these conditions, the outstanding matters being:
- On behalf of HBRC as the applicant, **Mr Bendall** reports implementation concerns expressed by the applicant that it can practically comply with this condition as drafted. It is uncertain whether an overarching CIA for each of the consents, which collectively cover a significant area, can be completed within 18 months. The applicant has noted recent examples such as the Clive River dredging proposal where tangata whenua capacity constraints meant that a CIA could not be completed.
 - It is not clear what a Cultural Aspirations Report would entail or how it would be developed, but if this could be clarified it may be appropriate and practical to modify Conditions 55-58 to require such a report (instead of a more detailed CIA). The Cultural Aspirations Report could then inform a programme of site-specific CIA's that are implemented over time and managed through the Tangata Whenua Group. This would allow a targeted approach, starting with the highest priority areas, with any resourcing constraints and timeframes able to be addressed in a more flexible way.
 - The objectives and functions of the Tangata Whenua groups are extensive and can function alongside the programme of site-specific CIA's to effectively manage cultural effects in an ongoing, practical and responsive manner.
 - It is noted that Condition 18 (p) already provides for site specific CIA's to be undertaken through the Tangata Whenua groups.
 - On behalf of the submitters, **Ms Wilson's** position is that a Cultural Impact Assessment (or similar, such as a Cultural Aspirations Report) process is critical to ensure that the carrying out of the consented activities avoids, remedies or mitigates adverse effects on cultural values. Ms Wilson agrees

with the statements of the Reporting Officer in the s42A RMA report in this regard and notes the discussion of the matter in the evidence of Mr Tiuka. The CVR/CIA process enables tangata whenua to ensure that their values and relationships with the awa and surrounding environments, within the context of the proposed activities, are recorded which in turn helps to ensure that section 6(e) of the RMA is recognised and provided for. Ms Wilson notes that the Submitters wish to undertake a CVR/CIA process for the purposes of these consents.

- **Mr Exeter's** (the reporting officer) position is that CIA's should be undertaken in accordance with Schedule 4 of the RMA and be prepared by mana whenua having regard to Mr Tiuka and Mr Apatu's evidence. As I spoke to at the hearing, a catchment wide overarching CIA with more targeted assessments based on where mana whenua direct is practical. If 18 months is too short a timeframe to prepare the CIAs (refer to Mr Bendall's statement above) then extending this to 36 months (i.e. 1 year per catchment) could be considered and the other timeframes in the related conditions (mātauranga etc) could be amended accordingly.

14. **Condition 21b (bottom lines and waahi taonga):**

(a) Currently there is no agreement on one matter pertaining to this condition, the outstanding matter being:

- **Ms Wilson** wishes for Condition 22b ("Tukituki consent reference") to read "waahi taonga, including waahi tapu" as requested by Submitters and in order to achieve consistency with the Hastings District Plan, as an important planning instrument into which significant resource was invested by the Submitters and other tangata whenua. Ms Wilson's view is that the term 'waahi taonga including waahi tapu' is useful in the context of condition 21b and that there should be no issues regarding "frustrating the exercise of the consent" given that the application states that effects on the environment will not be significantly adverse and the intent of this condition is simply to make this explicit.
- **Waahi taonga** is defined in the partially operative Hastings District Plan¹ (HDC) as:
a site or area of significance to tangata whenua and includes but is not limited to:
 - *Old pa sites, excavations and middens (pa tawhito)*
 - *Old burial grounds and caves (ana tupapaku)*
 - *Current cemeteries (urupa)*
 - *Battlefields (wahi pakanga)*
 - *Sacred rocks, trees or springs (toka tapu, rakau tapu and waipuna tapu)*
 - *Watercourses, springs, swamps, lakes and their edges (awa, waipuna, repo, roto)*
- **Mr Bendall** agrees with the intent of the proposed change,

¹ See: <https://eplan.hdc.govt.nz/eplan/#Rules/0/71/1/0/0>

however, questions how compliance can be assessed and whether this change may frustrate the consent, given the wide definition for waahi taonga in the Hastings District Plan (if that is the definition to be used, noting the consents traverse the Central Hawke's Bay District also).

- Mr Bendall understands that the rivers themselves are waahi taonga. It is unclear when or how gravel extraction occurring under these consents would be considered to be causing a significant adverse effect in this context.
- However, the maps provided by the Applicant and included as Appendix A to the conditions identify waahi taonga sites, as mapped in the Hastings District Plan, and sites of significance to tangata whenua as mapped in the Central Hawke's Bay District Plan. If the proposed change refers to these mapped sites, then the Applicant can ensure that compliance with the condition is achieved.
- Where sites exist but have not been mapped, appropriate protections can be integrated with practice through the Tangata Whenua Groups, and/or Appendix A could be updated as appropriate.
- The revised condition 22b could then read:
 - All waahi taonga sites and sites of significance to tangata whenua identified in Appendix A.
- Mr Exeter** agrees with the intent of the additional wording however would like to make the following points. The HDC definition of waahi taonga and as noted in Mr Tiuka's and Mr Apatu's evidence is that the waahi tapu is wide reaching covering the awa, sacred rocks and middens. This raises the potential issue of 'frustrating the exercise of consent' should the current and proposed gravel extraction be having significant adverse effects on waahi taonga (which is not my understanding but without a CIA, this remains questionable).
- As noted in Mr Tiuka's evidence: "*Waahi Taonga, Waahi Tapu and Mahinga Kai sites should be identified and protected.*" The applicant has provided new maps which identify waahi tapu and mahinga kai sites (refer to Appendix A of the consent) which must be avoided and protected however the full ambit of waahi taonga sites may not have been mapped nor assessed. The CIA should include assessment on the actual and potential effects on waahi taonga. The CIA would therefore clarify if there are any issues with frustrating the exercise of consent. Notwithstanding the above, to conclude, I am comfortable with the inclusion of Ms Wilson's suggested additional wording provided that it does not frustrate the exercise of the consent and is enforceable. Should the panel include waahi taonga under this consent condition then conditions 53 and 54 (refer to the "Tukituki consent") should also reference waahi taonga.

15. **Tangata whenua group matters:**


- Ms Wilson** notes that the Heretaunga Tamatea Settlement Trust is not included in the Tangata Whenua Group for the Tūtaekūri consent on the basis that they have provided input into these conditions, and it has been deemed appropriate to

include only the hapu groups.

- Condition 13 and 14 under the Ngaruroro and Tūtaekūri consents are new (added by Ms Wilson 23 May 2022) and sets out the Ngaruroro Gravels Tangata Whenua Group and Tūtaekūri Gravels Tangata Whenua Group members.
- **Mr Exeter** is ok with these conditions noting that there are now four tangata whenua groups across the three consents when the original intent (as proffered by the applicant) was for one or two groups. Ideally, a common advice note across the three consents should be added that states that members from each organisation should be the same across the groups for efficiency.
- **Mr Bendall** also notes the request to increase the number of Tangata Whenua Groups from two to four. This request was made after the final caucusing session, so the reasons for the change, and how four different groups over three consents would practically function to achieve their respective objectives, has not been discussed or clarified. An advice note, as suggested by Mr Exeter, may help to clarify the situation, however given the timing of the request this has not been developed.

Date: 26 May 2022

Signed:

A handwritten signature in black ink, appearing to read 'Simon Bendall', written in a cursive style.

Simon Bendall

A handwritten signature in black ink, appearing to read 'Sven Exeter', written in a cursive style.

Sven Exeter

A handwritten signature in black ink, appearing to read 'Grey Wilson', written in a cursive style.

Grey Wilson

APPENDIX 1:

Hearings Panel Direction Number 2 & Subsequent Minutes

**Before the Hearing commissioners appointed by the Hawke's Bay Regional
Council.**

In the Matter of the Resource Management Act 1991 (The Act)

And


In the matter of Applications by the Regional Assets Section , Hawke's Bay
Regional Council to remove gravel and undertake other earthworks at various
locations along the Ngaruroro River , Tukituki Catchment Rivers and the
Tutaekuri River to the coast .

Hearing Panel Direction Number 2

Directions

1. Prior to the hearing being adjourned on the 10th of December 2021 , we directed the parties to confer and agree to a timetable for the applicant to revise draft conditions of consent and for the parties planning witnesses to then attend expert conferencing with the objective of reaching consensus on an agreed set of conditions .
2. On the 17th of December 2021 we received a memorandum from Counsel for the applicant setting out an agreed timetable . Accordingly we make the following directions to be observed by the parties :
 - I. **By 4th February 2022**, the applicant is to circulate a new set of conditions taking into account the matters the Panel raised during the hearing , including proposed management plans with defined objectives or requirements to be included in the revised conditions . The conditions are also to set out the objectives of any Kaitiaki Group(s)proposed by the applicant .
 - II. Planners caucusing will be held on **the 2nd March 2022**. Representatives of the submitters will be invited to attend .
 - III. **By the 18th March 2022** the applicant will circulate draft management plans to the submitters and consent authority .
 - IV. **On the 25th March 2022** , a final caucusing session will be held if required and a joint witness statement prepared and signed by Mr Bendall , Ms Wilson and Mr Exeter listing the matters on which the planners agree , the matters on which there is disagreement , and the reasons for that is to be provided by this date. .If caucusing is not required , a joint witness statement is to be provided by this date.
 - V. **By 30th March 2022** the applicant is to provide its written reply.

Leave is reserved to any party to seek further directions from us or clarification of the above



Paul Cooney

Chair

Dated the 18th of December 2021

Minute of Hearing Panel

The Panel understands caucusing is to take place on the 25th of March 2022 between the applicant and submitters to finalise a revised set of proposed conditions if the gravel extraction consents are granted.

In our Direction No 2 we directed that the applicant was to circulate a new set of conditions by the 4th of February 2022 that took into account the matters raised by the Panel during the hearing that primarily concerned the lack of specificity in the earlier conditions .

We had anticipated that the new set of conditions circulated by the applicant would be the subject of caucusing for the purpose of reaching agreement , further refinement or where conditions are not agreed to for the reasons to be provided . The position of the respective parties are to be set out in a joint witness statement signed by Mr Bendall, Ms Wilson and Mr Exeter.

We would like the parties to focus on the content of the conditions and the matters they should address rather than any deficiencies in the process or evidence which are issues for consideration by the Panel.


Panel Chair

24th March 2022

Minute No 2

The Panel understands good progress has been made toward finalising a revised set of conditions as a result of caucusing on Friday the 25th of March 2022 between representatives of the applicant and iwi submitters but more time is required to complete caucusing .

Accordingly the Panel is prepared to extend the caucusing timetable as follows:

- 1) The parties are to resume caucusing on or about the 7th of April 2022 and subject to 2) below lodge with the Panel a final set of conditions and joint witness statement by the 14th April 2022.
- 2) If more time is required to complete caucusing after the 14th April the parties shall conference by the 21st of April 2022 and lodge with the Panel a final set of conditions and joint witness statement by the 28th of April 2022.
- 3) Counsel for the applicant shall file submissions in reply also by the 28th of April 2022.

The Panel wishes to record its appreciation to the parties for the efforts they are making to finalise a draft set of conditions.



Chair

29th March 2022

APPENDIX 2:

Table of Conditions

HAWKE'S BAY REGIONAL COUNCIL GRAVEL EXTRACTION DRAFT CONDITION AGREEMENT

Notes from meeting 25/03/2022

Updated 27/03/2022

Further update 21/04/2022

Further update 10/05/2022

Final update 26/05/2022

TUKITUKI GRAVEL CONSENT APP-123526 & APP-123535

Condition number	Agreement	Matters of disagreement/clarification
Condition duration	No	HBRC want 20 years and Submitter is ok with 20 years as long as conditions remain largely unchanged (i.e., if the position of Ms Wilson on those matters where agreement has not been reached, is accepted by the Panel particularly with regard to the MOU as a precursor to the Tangata Whenua Groups and the CVR/CIA conditions).
Preamble	NEW	Added as part of discussion around giving effect to Te Mana o Te Wai, all in agreement
1-3	Yes	
4	Yes	
5	Yes	
6	Yes	
7	Yes	
8	Yes	
9	Yes	
Notification Requirements		
10	Yes	
11	Yes	
12	Yes	
Tangata Whenua Ops Management Group...		
13	No	Outstanding matters to be resolved:

	Not agreed and wording not confirmed	<ul style="list-style-type: none"> - What happens if MOU/MOP not signed, is there a timeframe that could be attached to this action? - Hearings Panel may wish to consider what happens if no MOU/MOP eventuates – as this is vital to the success of many other conditions. - 21/04/2022: - Put a one year timeframe. - Grey – this MOP must be signed before the rest of the conditions progress. Could go back to s127 process. - Simon – difficult, relying on a third party arrangement, what happens if after a year this isn't signed, - Sven – shouldn't need a MOU/MOP, should be from a higher governance level, however, can see the benefits of a MOU in the absence of very prescriptive consent conditions and iwi having meaningful governance at HBRC
14-18	Yes	
19	Yes (conditional)	Come back after looking at conditions 59 & 61. Ongoing outstanding issues regarding CIA – dealt with in JWS
20	Yes	
Operational Requirements		
21	Yes	
22	Yes (conditional)	Grey added in Waahi Taonga in 21(b), Simons concerns that the rivers are Waahi Taonga, isn't this an issue? Submitters want Waahi Taonga as defined in the HDC plan. Simon will check in with HBRCs team on their views on this. Mark this in JWS as not agreed on. Grey considers this as a consistency of approach across planning frameworks.
23-25	Yes	
26	NEW	Brought in from Ops Plan for specificity
27	NEW	As above
28	NEW	As above
29	Yes	
30	Yes	
31	NEW	
32	Yes	
33	Yes	

34	Yes	
35	Yes	
36-37 (split into two)	Yes	
38	NEW	Come from the OMP
39	NEW	Come from the OMP
40	NEW	Come from the OMP
41	Yes	
42	Yes	
43	Yes	
44	Yes	
45	Yes	
Management Plans		
46-52	Yes	
53	Yes	
54	Yes	
55	Yes	
56-59	No	<p>Issues around whether this needs to be in there. What is the risk of a CIA being needed? Could this be a hot spot approach? Who might want a CIA who isn't already involved in the TWG?</p> <p>Keep these in – Grey to go back to submitters and decide whether condition 18 (O) and/or 56-59. Submitters to get together directly with applicant. Simon and Grey to report back on this. Simon's preference 18(o) approach.</p> <p>Addressed in JWS.</p>
60-63	Yes	
64-66	Yes	
67-68	Yes	
Monitoring Requirements		
69	Yes	
70	Yes	
71-73	Yes	
Reporting and Review		
74	Yes	

75	Yes	
76	Yes	
77	Yes	
78	Yes	
79	Yes	
80	Yes	

NGARURORO GRAVEL CONSENT APP-123548 & 123550

Condition number	Agreement	Matters of disagreement/clarification
12	No	MOU condition – refer to comments under the Tukituki consent condition (13) above
13-14	No	Addition of new groups in contention, refer to JWS
20	No	Addition of waahi taonga – refer to comments under the Tukituki consent condition (21) above
54-57	No	CIA conditions - refer to comments under the Tukituki consent conditions (56-59) above
All other conditions agreed		

TUTAEKURI GRAVEL CONSENT APP-123534 & APP-123536

Condition number	Agreement	Matters of disagreement/clarification
12	No	MOU condition – refer to comments under the Tukituki consent condition (13) above
13-14	No	Addition of new groups in contention, refer to JWS
20	No	Addition of waahi taonga – refer to comments under the Tukituki consent condition (21) above
54-57	No	CIA conditions - refer to comments under the Tukituki consent conditions (56-59) above
All other conditions agreed		