

## **SUBMISSION TO HEARING ON APPLICATION FOR RESOURCE CONSENT**

### **INTRODUCTION**

1. My name is Michael Smith (Mike), as previously stated in my personal submission I am a permanent resident at Mangakuri Beach. I have an Honours Degree and a Masters Degree in Civil Engineering and am a Chartered Member of Engineering NZ (CMEngNZ), a Chartered Professional Engineer (CPEng), and an International Professional Engineer (IntPE)/APEC Engineer. I also have a Masters in Business Administration (MBA).
2. I am the Secretary/Treasurer and Deputy Chairman of the Mangakuri Beach Management Society. The Chairman of the Society is David Allan.

### **BEACH SOCIETY HISTORY**

3. There are a number of statements made in the evidence by Lawrence Yule that are, in the view of the Society, not relevant to the consent application but the Society feels need to be clarified.
4. Okaihau Holdings Ltd was incorporated in 1967 to manage the settlement at Mangakuri. Each shareholder had a block of land at Mangakuri allocated that they were then entitled to occupy. The occupier owned the shares, but not the land.
5. The original shareholders were close family and friends of Samuel Williams that each had a shared passion for the location and for the preservation of its environment.
6. Property sales at Mangakuri were rare and were, in fact, share transactions with the parcel of shares effectively priced by the value of the land they were attached to. The houses at the beach have generally been passed down the generations rather than sold.
7. Until 1983 the beach properties could only be accessed via a private road across Mangakuri Station. In 1983 lots were formally surveyed and titles were created for each lot. The existing farm track was also surveyed and converted to an easement to make it into a public road.
8. Following the passing of the Companies Act in 1993 Okaihau Holdings developed a Constitution under which each shareholder entered into an agreement with the company. This agreement outlined their formal right to occupy their associated lot and the various obligations of the shareholders with respect to occupying their lot. Each shareholding was formally tied to a property title.

9. In 2003 the Directors of Okaihau Holdings resolved that it was no longer tenable for them to take responsibility for a company that owned land that was occupied by others, given the potential liabilities they may incur as directors. As a consequence, Okaihau Holdings was liquidated in accordance with the Constitution and each shareholder was allocated the title of the land to which they had the right to occupy.
10. To replace the occupation agreements that were part of the company constitution the shareholders resolved to form an Incorporated Society with substantially the same rules. The Society was formed in 2004 with the stated purpose to preserve the asset that is Mangakuri in the best possible state. The title for each property has a covenant requiring the owner to be a member of the Society.
11. There is one particular rule within the Society rules that is of some relevance to the matter of the consent application, which states that no property at Mangakuri may be subdivided to an area less than 1500 m<sup>2</sup>.
12. To correct Mr Yule, there are, in fact, 27 properties at Mangakuri Beach. There are 26 properties along the beach front and 1 property up the hill along Williams Rd.
13. It should also be noted that the trustees are also members of the Society as they are the executors of the estate of the late Pat Williams, which owns one of the properties along the beach. The trustees have not recognised the conflict of interest this represents despite being directly asked about it on several occasions. During the course of the interactions related to the subdivision issue they have insisted on being copied various Society communications.

## **APPLICATION HISTORY**

14. The desire of the station trustees to subdivide the land above Okura Rd only came to the attention of the Society when one of the trustees (John Springford) contacted the Chairman of the Society. This contact was to ask if the Society had any objection to a covenant being placed on the new titles that would be created by their consented subdivision (RM180095) for the owners to be members of the Society. Given the history of the settlement, and the collective concerns about the location of the subdivision, the request created alarm with the beach property owners.
15. Given the concerns raised by the Society members about the consented subdivision the Society sought legal advice on the planning aspects of the consent and the possible actions that could be taken, given that a consent had been granted. This advice identified significant shortcomings in the submitted information and the

approval process completed by the CHBDC. This advice was passed to the CHBDC requesting a response and to be considered as a LGOIMA request.

16. The LGOIMA request information was made available to the Society on 16<sup>th</sup> January 2020. Within that information was an email from John Springford on March 25<sup>th</sup> 2019 to the CHBDC Consents Manager stating:

*Lawrence Yule, our local MP and former Mayor of Hastings, one of our group of trustees, will be astounded to think that the Trust's application has not yet been dealt with.*

17. Additionally, the geotechnical peer reviewer (Lee Paterson) stated, on 21<sup>st</sup> November 2018:

*We recommend that the subdivision currently **not** be granted on the basis of natural hazards /slope stability*

18. On the basis of the legal advice on the planning aspects of the consent, and the above information in the LGOIMA request, the Society members approved seeking a Judicial Review of the consent approval process.

## **SUBDIVISION RATIONALE**

19. When asked about the rationale for the subdivision the response, from John Springford, was that funds were required to pay down the debt the trust incurred from a “recent” purchase of land. This land was a block of 245 hectares on Kairakau Rd that was actually bought by the trust in 2007.
20. Later communications stated that the proceeds from the subdivision were required to cover additional costs incurred for repairing fencing and other property following the flooding in April 2011. An analysis of the financial statements lodged by the trust with the Charities Commission shows that these additional costs over the previous year were approximately \$50,000.
21. In further discussions the trust advised that the proceeds were required because the station was a difficult farm and the imposition of new regulations (e.g. fencing waterways) required capital.
22. Prior to the current rationale provided by Mr Yule in his evidence, the most recent explanation was that the trust needed to reinvest in the farm but was not generating sufficient cash through operations and therefore needed to raise some capital. The figure of \$1,000,000 of new capital required was provided.

23. Following the advice provided in Paragraph 22 the trust sold the station homestead for \$850,000.

### **COMMUNICATIONS WITH THE SOCIETY**

24. As stated in Paragraph 14, there were no communications with the Society, or any of its members, prior to obtaining the original subdivision consent (RM180095).
25. Following the request to approve adding a covenant to the new titles there were various meetings and discussions between the Society Committee members and the trust, and also between trustees and individual Society members. These meetings were cut short by the trust (John Springford) after the LGOIMA request was made to the CHBDC.
26. John Springford also made contact with one Society member, and significantly affected property owner, in an email on 6<sup>th</sup> July 2019 where he stated, amongst other things:

*If it would be of interest to you and your family, the trustee would be willing to offer you a "First Right of Refusal" to purchase the section behind you when the development gets underway.*

The member's response on 7<sup>th</sup> July 2019 was a polite explanation of the reaction of the Society and its members to the proposal, with a closing line:

*I'm happy to meet with you when you're back but it's probably best if all communication is done via David and the committee to ensure the process doesn't get fragmented.*

27. A further meeting was held jointly with the trust and the CHBDC (9<sup>th</sup> September 2020) to discuss the concerns of the Society.
28. Another meeting was held with Peter Tod (Trust Chairman) and John Springford where David Allan advised them of the information the Society received under the LGOIMA request, and that the Society intended to seek a Judicial Review. The trustees advised that they would be continuing with their plans regarding the subdivision regardless of any action the Society took.
29. The Society also contacted the CHBDC seeking a way to review the approved consent without requiring a Judicial Review. The Society was not successful.
30. Following all of the above, the Society lodged a request for a Judicial Review in November 2020.

31. In the subsequent time the trust has continued with the subdivision plans and have completed the additional engineering studies now before this hearing. In the course of that work Mr Yule made various approaches to individual members of the Society as he has referenced in his evidence.
32. Regarding the referenced boundary error in Mr Yule's evidence, the Society and the member affected do not see this issue as any way related to the subdivision work. Mr Yule tried to make the resolution of the issue contingent on the member's support for the subdivision. Upon researching the issue, it is clear that the boundary error has been in existence for many years and pre-dates the purchase of the property by the current owners. It is notable that the previous owner was a Mangakuri Station manager, and the property was gifted to him by the trust as a recognition of his long service to the station. It is unlikely, therefore, that the trustees were unaware of the boundary error.
33. Other communications were made with the same Society member referenced in Paragraph 26, and this was related to the removal of the old macrocarpa trees also referenced by Mr Yule. This member advised the Society that:

*I have already told Lawrence (on more than one occasion) that the appropriate channel for communication is via the Beach Society not us ... as individuals.*
34. Both members affected by the actions of Mr Yule requested the Society committee to act on their behalf to ensure that the communications and issues didn't get fragmented.

## **STATION FINANCES**

35. The Society does not consider that the trust's ability to profitably farm on Mangakuri Station is of any relevance to the decision on the consent application. That "significant resources have been spent" is interesting but is also not relevant.
36. Mr Yule has stated in his evidence that the farm is not making money and can't make donations. As a charitable trust the financial statements for the trust are supposed to be available on the Charities Commission website which would allow verification of Mr Yule's statement. However, the financial statements for the year ended 30 June 2023 have not yet been uploaded to the website despite being due by 31 December 2023. Late filings (by as much as 11 months) have been a characteristic of the trust for the last 6 years.

## GENERAL CONCERNS

37. With reference to Paragraphs 11 and 13, it is noted that the trust is also a member of the Society and has agreed to abide by the rules of Society. One key rule is that no property shall be subdivided into sections of less than 1500m<sup>2</sup>. Exceptions to this are where the section is less than 1500m<sup>2</sup> anyway, or where a special dispensation was obtained from the Society at its formation. It is noted that the trust applied for, and received, a subdivision consent for its property (original section size 2505m<sup>2</sup>) at the beach (RM220218). Clearly subdividing 2505m<sup>2</sup> cannot result in two sections of at least 1500m<sup>2</sup>. This subdivision was also sought without any communication to the Society and is a clear contravention of the agreed Society rules.
38. It is noted that a total of 24 submissions were received on the consent application, and 23 of these were from Mangakuri property owners or the Society. The remaining submission was from Fire and Emergency NZ. Not one of the other 23 submissions were in favour of the proposed development, demonstrating the universal opposition to the application.



Mike Smith  
Secretary/Treasurer, Deputy Chairman  
Mangakuri Beach Management Society