

In reply please quote LU1700100
Or ask for Alister Hartstone

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14 August 2017

GBC Winstone
PO Box 17-195
Greenlane
Auckland 1546
Attention: Ian Wallace

Dear Ian

Proposed Resource Consent Application before Whangarei District Council

Applicant GBC Winstone
Location Quarry Road
Whangarei 0110
Ref LU1700100

As you will be aware the submission period for the above notified resource consent has now closed.

Receipt of Submissions

Whangarei District Council has received 39 submissions on the application, as set out below:

Name	Postal Address	
Barry Charles Povey & Suzanne Ruth McQuade	P.O. Box 6099, Otaika, Whangarei, 0147	Oppose/Wish to be heard
Deborah and Ian Coates	3 Gastein Road, London, W6 8LT, United Kingdom	Oppose
Ray Tonkin	PO Box 5762 Wellesley St, Auckland 1141	Oppose/Do not wish to be heard
Mr & Mrs Gavin & Jane Edge	1 City View Lane, Acacia Park, Raumanga, Whangarei 0110	Support/Do Not Wish to be heard
Mere Kepa	337 Takahiwai Rd, RD 1 , Whangarei 0171	Oppose/Do not wish to be heard
Mrs Christine Halliwell	4 Omaikao Rd, RD3, Whangarei, 0173	Oppose/Do not wish to be heard
Northport Ltd	PO Box 44, Ruakaka, 0151	Support/ Do not wish to be heard
Firth Concrete	Private Bag 99904, Newmarket, 1149	Support/Do not wish to be heard
Don & Judy Mosley	5 Teal Lane, Raumanga	Oppose/Do not wish to be heard
Damon & Marama Keyte	2 Wattle Lane, Acacia Park, Raumanga, Whangarei, 0110	Oppose/Wish to be heard
SW & CC Roland	P.O. Box 6090, Otaika, Whangarei, 0147	Support/Do not wish to be heard
Debbie Linda Dalton	185 Otaika Rd, Whangarei	Oppose/Do not wish to be heard

Colin Thomas	29 Acacia Dr, Whangarei	Oppose/Wish to be heard
Margaret Thomas	1 Clark McConachy Place	Oppose/Do not wish to be heard
Northland DHB	Private Bag 9742, Whangarei, 0110	Oppose/Wish to be heard
Jasmine Lowe-Arrol & Carson Arrol	10 Acacia Dr, Raumanga	Oppose/Do not wish to be heard
Peter Martin Doel	8 Toetoe Rd, RD10, Whangarei, 0170	Oppose/Do not wish to be heard
Murray John Elmes	33 Acacia Dr, Raumanga, Whangarei, 0110	Oppose/Do not wish to be heard
Christine M Johnston	10 Wattle Lane, Raumanga, Whangarei, 0110	Oppose/Wish to be heard
Aggregate & Quarry Association of New Zealand Inc	P.O. Box 32019, Maungaraki, Lower Hutt, 5050	Support/Do not wish to be heard
Catherine & Lee Sawyer	3 Grove Lane, Raumanga, Whangarei	Oppose/Do not wish to be heard
Acacia Park Landowners Association Inc	P.O. Box 6046, Otaika, Whangarei, 0147	Oppose/Wish to be heard
Caitlin Sawyer & Brent Scott	3 Grove Lane, Raumanga, Whangarei	Oppose/Do not wish to be heard
Chamber of Commerce and Industry Northland Inc	P.O. Box 1703, Whangarei, 0140	Support/Wish to be heard
Taipari Munro	15 West View Crescent, Onerahi, Whangarei, 0110	Oppose/Wish to be heard
Andrew Craig Norman & Francis Charles Spencer	52 Acacia Dr, Whangarei, 0110	Oppose/Wish to be heard
Civil Contractors NZ Inc	P.O. Box 133257, Eastridge, Auckland, 1146	Support/Wish to be heard
Robert George Lyall	3/94 Mill Rd, Whangarei, 0110	Oppose/Do not wish to be heard
Rhondda Taylor	40 Acacia Drive, Raumanga, Whangarei	Oppose/Wish to be heard
Fulton Hogan Ltd	Private Bag 11900, Ellerslie, Auckland, 1542	Support/Wish to be heard
R Mira Norris	36 Otaika Valley Rd, Whangarei	Support/Wish to be heard
Fred Petersen	P.O. Box 48, Whangarei	Support/Wish to be heard
Otaika Marae Komiti	Mira Norris (Chair) 36 Otaika Valley Rd, Whangarei	Support/Wish to be heard
Graham Barton & Mia Barton-Boots	P.O. Box 11057, Whangarei	Oppose/Wish to be heard
Lucas Connew & Stacey Lemon-Connew	16 Wattle Lane, Raumanga	Oppose/Do not wish to be heard
Andrew Wyon Barclay	45 Acacia Dr, Whangarei, 0110	Oppose/Do not wish to be heard

Southern Whangarei Action Group	P.O. Box 11057, Whangarei	Oppose/Wish to be heard
Opania George	65 ToeToe Rd, RD10, Otaika, Whangarei	Support/Wish to be heard
Sarah & Robin Brill	43 Acacia Dr, Raumanga	Oppose/Do not wish to be heard

If you have not received one or more of the submissions listed above, please let me know and they can be provided to you.

Section 92 Request

The Council has yet to receive the Cultural Impact Assessment referred to in the application. On that basis, it is considered necessary to formally request the Assessment pursuant to Section 92(1) of the Resource Management Act.

Pursuant to Section 92A(1) you are required to respond (in writing) to this request for further information within 15 working days of receipt of this letter, being 4th September 2017. You can respond by either;

1. Providing the information requested, or
2. Seeking a later date to provide the information by, or
3. Refusing to provide the requested information.

Processing of this application has been put on hold from 14th August 2017. The processing of the application will restart:

1. When all of the above requested information is received, or
2. From the revised date for the requested information to be provided, if you have provided written confirmation that you are unable;
3. From the date that you have provided written confirmation that you do not agree to providing the requested information, or
4. Fifteen working days from the date of this letter.

If Council does not receive any response to this request for information by the above date, or if you refuse to provide the information, the application will continue to be processed to a decision. This may mean that the application receives a negative recommendation as the requested information is integral to understanding the environmental effects of the proposal.

Process

At this stage, the Council does not intend to hold any pre-hearing pursuant to Section 99 of the Act. A tentative hearing date has been set for the 1 – 3 November 2017, based on your previous advice regarding suitable hearing dates. Two commissioners are likely to be appointed to hear the matter.

In order to meet statutory requirements for pre-circulation of evidence for the tentative hearing dates given above, any Cultural Impact Assessment provided in accordance with the Section 92 request above will need to be available by the end of September 2017 at the latest.

I trust that this is of assistance.

Yours faithfully



Alister Hartstone
Consultant Planner for Whangarei DC

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21 August 2017

Alister Hartstone
Consultant Planner
Whangarei District Council

By email: keryn.ryan@wdc.govt.nz

Dear Alister

RE: GBC WINSTONE RESONSE TO s92 REQUEST – YOUR REF: LU1700100

1. Ms Tancock and I have been engaged to act for GBC Winstone (“GBCW”) in the above application. We are in receipt of the letter dated 14 August 2017 Whangarei District Council (“WDC”) in which WDC make a section 92 request for a cultural impact assessment (“CIA”), and advise that the application has been put on hold until such time as a response to the request is received.
2. Regrettably, GBCW are not in a position to be able to provide the requested CIA. The reasons for this are:
 - (a) WDC have confirmed that the Rurangi Trust (“Trust”) are manawhenua for the purposes of the application and the party that should undertake a CIA;
 - (b) GBCW staff have been involved in extensive discussions regarding the project with the Trust for over 18 months and the Trust was engaged by GBCW in May 2016 to provide a CIA;
 - (c) Despite GBCW’s best efforts to procure a CIA from the Trust, this has not been provided. Efforts have included regular liaison and meetings between the author and Trustees and GBCW staff, offers of assistance with resources including research, file processing and offer of access to a cultural adviser from GBCW’s consultants Boffa Miskell to assist with the preparation and finalising the CIA in a timely manner. However, these offers have not been taken up; and
 - (d) GBCW also appreciates that due to the Trust being mana whenua, this is not a situation where it would be appropriate to commission an outside party to undertake a CIA.

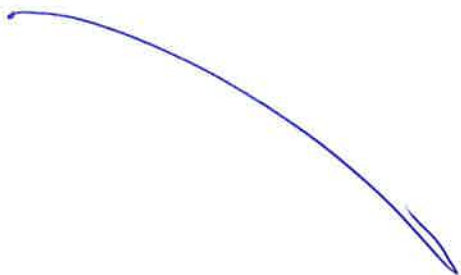
3. While GBCW is actively seeking to work with the Trust with the view to procure a CIA, an update has been sought from them as to the progress of this work (see **attached** letter). GBCW is not able to postpone its consenting requirements indefinitely in circumstances where a CIA may or may not be provided and completed in time for the hearing.
4. GBCW had hoped when it lodged the application that it would be in the position to provide a CIA as part of its application for resource consent. However, because the completion of the CIA is wholly dependent on actions of a third party (as opposed to the Applicant), neither GBCW or WDC are in a position to compel the Trust to provide a CIA (in the event that the Trust ultimately decides not to do so).
5. Obtaining a CIA to assist with assessing the cultural values of a proposal is best practice, but there is no legal statutory requirement or planning provisions that require an Applicant to provide one. There are some situations whereby it is not practicable or a CIA is not forthcoming. GBCW has expended considerable energy attempting to procure a CIA, but despite its best efforts these have been unsuccessful to date.
6. We note that the application has been publicly notified, therefore, those interested iwi have been informed about the application and have been provided the opportunity to submit on the proposal. A number of submissions have been received from local iwi including from the Trustees of the Trust which raise cultural values (which would have otherwise been provided as part of a CIA). GBCW respects the rights of these parties to pursue their position via a submission. Due to the involvement of these parties as submitters in the process, this is not a situation where there will be insufficient information as to potential cultural values of the proposal. The involvement of these submitters, will undoubtedly ensure that any effects on cultural values including any Part 2 matters arising from the proposal are properly considered as part of the resource consent process.
7. GBCW are of the view that WDC cannot utilise its s92 powers to require the Applicant to provide a CIA from the Trust. The RMA does not specially require applicants to consult with mana whenua. To do so, would be contrary to s36A RMA which confirms that there is no legal obligation for the Applicant to consult with any party. In GBCW's view, Council should not be attempting to obtain a CIA in this manner and GBCW request that the s92 request be withdrawn and processing of the application continue in its current form. We look forward to receiving confirmation that this has occurred.
8. Thankyou also for Councils confirmation that the hearing dates have ben confirmed as 8- 10 November 2017.

9. Please do not hesitate to contact me should you wish to discuss this further.

Yours sincerely



Matthew McClelland QC/ Pherne Tancock





16 August 2017

The Trustees
Ruarangi Trust
36 Otaika Valley Road
RD10
Whangarei

Dear Trustees,

OTAIKA QUARRY LANDUSE CONSENT – LU1700100

I would like to take this opportunity to thank the Ruarangi Trust for the on-going feedback and extensive discussion over the past 18 months, as we work through the process of obtaining resource consent for the proposed Pegram block overburden disposal area.

As you are aware, we have formally lodged our resource consent application and Whangarei District Council have commenced processing of this application. Following the closure of public submissions last week (9th August), forty submissions were received (both supportive and opposing). We respect the views of all parties who took the time to express their concerns and position.

We have received submissions requesting the development of a Cultural Management Plan for the Ruarangi Block and citing the absence of a Cultural Impact Assessment (CIA). As a result, Council have formally requested that we provide a CIA. We intend to respond early next week, to inform Council that we cannot require a third party (in this case the Trust) to issue a CIA and that we cannot simply engage another party to prepare this assessment, as it is counter to the strong relationship between the Trust & GBC Winstone, as set out in our joint MOU.

We appreciate the considerable time and energy that Marina Fletcher has spent preparing a CIA and appreciate that this is no easy task. As previously offered, we are more than happy to provide additional support/resource here if required to finalise its preparation. We would be grateful for an update as to when the Trust expects that it might be in a position to provide the CIA so that we are able to include this information in our response to the Council. From a timing perspective, GBC Winstone is also keen to ensure (where appropriate) that any matters raised in the CIA are able to be considered and/or addressed as part of its resource consent process.

A number of submitters have also requested that GBC Winstone work with the Trust to develop a Cultural Management Plan for the Ruarangi block. We are happy to provide additional support / resourcing to develop this plan, if required. It is our preference that this is developed in accordance with our MOU and we are happy to advance these discussions when the Trust is in a position to do so, but these do not need to be rushed.

We are keen to understand any remaining concerns that the Ruarangi Trust may have and based on the submissions received, we understand further discussion is required ahead of the pending Resource Consent Hearing.



Once again, I would like to thank the Trust for the on-going, extensive discussions over the past 18 months and work towards completing the CIA to date and look forward to receiving this document and progressing our discussions in respect of the application in the near future.

Yours sincerely

Ian Wallace
Environmental Projects Leader

Keryn Ryan

From: Ian Wallace (GBC Winstone) <Ian.Wallace@gbcwinstone.co.nz>
Sent: Wednesday, 20 September 2017 3:56 PM
To: Alister Hartstone
Cc: Murray McDonald; Consents Admin; caroline@legalchambers.co.nz
Subject: RE: Section 92 request - GBC Winstones Otaika Quarry overburden consent LU1700100

Hi Alister,

Thank you for your email and apologies for the delayed reply.

To date we have not received a Cultural Impact Assessment, however I understand Marina Fletcher is in the final stages of preparing one.

We are relatively comfortable with Council's intention to commission the preparation of a report which assesses the cultural concerns relating to our proposal and consent application. However, prior to the commissioning of this report we are keen to understand the scope and terms of reference for this assessment? Can Council also confirm the author(s) and any potential conflicts of interest?

I'll be in touch if there is any update from our end.

Many thanks,



IAN WALLACE
Environmental Projects Leader

MOB: +64 (21) 673 430

www.gbcwinstone.co.nz

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From: Alister Hartstone [mailto:alister@setconsulting.co.nz]
Sent: Thursday, 14 September 2017 08:57
To: caroline@legalchambers.co.nz
Cc: Ian Wallace (GBC Winstone) ; 'Murray McDonald' ; ConsentsAdmin@wdc.govt.nz
Subject: Section 92 request - GBC Winstones Otaika Quarry overburden consent LU1700100

Good morning Sir / Madam

Thank you for your letter dated 21st August 2017 in relation to the above matter, and more particularly regarding the request made under Section 92 for provision of a Cultural Impact Assessment ('CIA'). I apologise for the delay in responding formally but it has taken some time to seek legal advice and confirm discussions with the relevant Council staff. In short, it is accepted that the applicant cannot provide the CIA on the basis that a third party is preparing and providing it. However, rather than withdrawing the Section 92 request, the Council will accept the response in your letter as providing additional information regarding consultation undertaken by the applicant to address cultural issues.

In subsequent discussions with Ian Wallace of GBC Winstones, it is understood that GBC Winstones are still hopeful of receiving a CIA that can be provided in support of the application, and there are ongoing discussions with Ruarangi Trust members regarding cultural concerns. On that basis, the Council is willing to allow some time in which to provide that CIA. However, if nothing is received by cob Wednesday 20th September 2017, the Council will commission a consultant to prepare a report pursuant to Section 42A of the Resource Management Act to assist it in assessing cultural effects associated with the proposal. Council is of the view that the submissions received are not sufficiently detailed to assist in assessing the extent of cultural effects. In the absence of any CIA provided by the applicant and any detailed submissions, some form of evidence is necessary to assist both the Council and Commissioners in clarifying the extent of these effects.

While a tentative hearing date has been set, in the event the Council is required to commission the report, it will try (but cannot guarantee) to have any report ready in time to meet the necessary statutory timeframe requirements for pre-circulation. Failing that, the hearing date may need to change to accommodate these timeframes.

I trust that this is of assistance.

regards

Alister Hartstone BREP(Hons) MNZPI | Director



p. 0277555607

e. alister@setconsulting.co.nz