



Friends of the  
**Hauraki Gulf**

Kaitiaki-tanga Tikapa Moana / Te Moananui-ō-Toi

Director-General Penny Nelson  
Department of Conservation  
Head Office  
Wellington

8 August 2022

Ref: OTE-215

Dear Director General,

Thank you for the letter dated 19 July by Henry Weston Deputy Director General, Operations.

I am responding directly to yourself as the permanent head of the Department of Conservation given this is a statutory process, and the Director General is the mandated department official identified in section 5 the Marine Reserves Act (1971).

Mr Weston's letter on your behalf was in response to a letter from the Friends of the Hauraki Gulf sent to you dated 26 June, raising our concerns about the dilatory response thus far by DOC in processing the Hākaimangō-Matiatia (NW Waiheke) marine reserve application, and despite more than a year passing, and its ease of access, a failure by DOC to even undertake a visual inspection of the area.

I must first challenge a fundamental inaccuracy in Mr Weston's letter which is evidently considered by him to be a reason justifying DOC's slow walking of the post public notification process. I refer to his assertion that Department "received the final version of the application on the 18<sup>th</sup> January and did not start any formal assessment of the application before that date." This statement is at best misleading.

The final version of our application was only deemed 'final' because of numerous iterative revisions and amendments which were the outcome of months of discussions between the Friends of the Hauraki Gulf and the DOC Marine Protection Strategy Team. For the record DOC began assessing and reviewing the draft application in June 2021. At which time it employed a private consultant Glen Carbines (who later proved to have a serious conflict of interest – please see correspondence relating to this affair) to review the application. In August DOC produced a 'Pre-notification Preliminary Review' of the application document which the Friends of the Hauraki Gulf were requested to respond to in writing. This iterative process continued over subsequent months mainly by email and regular video conferences. A record of this written correspondence is available if required.

Given this fact, Mr Weston's assurance that DOC is 'working towards providing advice to the Minister by the end of 2022', 18 months after Director General Sanson first confirmed

receipt of the application and issued his instructions, is not a convincing response to our concerns about bureaucratic procrastination. We note that even this date is qualified by Mr Weston as 'indicative only' and is therefore frankly meaningless, it is the opposite to a convincing response.

We are now dismayed to learn that after more than a year of engagement and the completion of the statutory public notification process signed off by DOC, the Department is yet to 'determine whether the proposal meets the purposes of the Marine Reserves Act 1971'. Really? Please explain how this can be asserted more than six months after 'consultation with the Director-General' (section 5 (1) (b)) had been deemed completed and therefore the process to be fit and adequate to go forward to the statutory public notification process. If it was not, the Department has wasted the time of 1303 submitters, the voluntary efforts and time expended by the Friends (and considerable financial costs such as on the statutory newspaper public notices) and whatever amount of public money it cost DOC for parallel public notices and to outsource the process to a private company Public Voice Ltd,

In regard to our advice, indeed repeated requests for DOC to undertake a site visit, it is not a particularly good look to have confirmed that part of DOC's 'technical assessment' is whether DOC needs to make a site visit at all! Instead we are told "if there are any gaps in this existing data, or unresolved questions, then the technical team *may* decide it is necessary to undertake a site visit.' [my italics]. This may be just poorly phrased but as it is worded the statement given other recent events on Waiheke Island, notably the Kennedy Point marina affair, gives a most unfortunate impression about DOC's enthusiasm or even willingness to carry out its statutory conservation mission laid down in section 6 'Functions of Department' of the Conservation Act 1987.

We are also concerned that Mr Weston, again on your behalf, is attributing the tardiness of DOC's process to the Department's evident ongoing, open-ended engagement with 'iwi/hapū'. This despite DOC's and the Friends of the Hauraki Gulf engagement and consultation with tangata whenua and other interested iwi in the months leading up to and during the statutory public notification period. Moreover, despite the explicit timelines set out in the Marine Reserves Act, Mr Weston has suggested that section 4 of the Conservation Act applies not just to the Conservation Act but to other statutes as well, and by inference effectively over-rules the clearly worded sections of the Marine Reserves Act. Section 4 of the Conservation Act is frequently referred to by DOC officials (in contrast to section 6 of the same Act) but it is rarely cited. For the record section 4 states as follows:

**'Act to give effect to Treaty of Waitangi**

This Act shall so be interpreted and administered as to give effect to the principles of the [Treaty of Waitangi](#).'

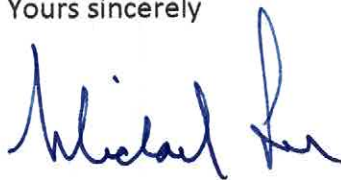
That the department chooses to apply section 4 in its administration of statutes other than the Conservation Act (as section 4 itself clearly states 'This Act') is one matter. However by applying its current interpretation of section 4 to over-rule the Marine Reserves Act, DOC appears to be making up its own laws, and moreover picking and choosing what section of the Conservation Act it chooses to comply with. DOC's current interpretation of section 4,



(and its practical ignoring its nature conservation mission set out in section 6) effectively disregards the deliberate pace of timelines set out in the Marine Reserves Act and the rights of the general public implicit in this Act. Please be advised that we the Friends of the Hauraki Gulf, mindful of the Akaroa marine reserve application process and the findings of the judicial review of DOC's role in that case, are very determined to use Mr Weston's own words to see that this process is 'fair, lawful and robust'.

We are also mindful of a constituency of 93% of 1303 submitters from across New Zealand, including the Ngāti Paoa Trust Board, the local Piritahi Marae, and 70% of submitters who identified as Māori – who have expressly supported this marine reserve application, as well, of course as the many thousands of New Zealanders who are deeply concerned about our marine environment, in particular the state of the Hauraki Gulf Marine Park. We therefore request that that you direct your officials to end this procrastination and provide the Minister of Conservation the timely advice congruent with the timeframe set out in section 5 of the Marine Reserves Act. The vague commitment ('indicative timeline only') of providing advice to the Minister is unacceptable in the circumstances. Finally, 110 days have now passed since the statutory public notification process was completed, we formally request that you provide us with a firm date for the completion of DOC's advice on this application to the Minister. Thank you.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Michael Lee', with a stylized flourish at the end.

Michael Lee  
Friends of the Hauraki Gulf (Inc)