

B R A M W E L L B A T E

LAWYERS

20 January 2020

[REDACTED]
Safety & Wellbeing Manager
Department of Conservation
PO Box 11089
Stockburn
Christchurch 8443

R Kemper
By email: [REDACTED]

By email: [REDACTED]

GANNET BEACH ADVENTURES

We act for Gannet Beach Adventures (GBA).

We have received instructions in relation to the Incident Investigation Cape Kidnappers Rockfall 23 January 2019.

Incident Report

- 1 It is GBA's view that the report:
 - (a) does not contain important and material details;
 - (b) does not correctly record our client's warnings; and
 - (c) does not record or reference the failure to consult with them.
- 2 We are of the view that these failings mean that the report is not an accurate representation and some respects not fit for purpose.
- 3 We understand that the Department of Conservation (DOC) will not amend the report however we request, on behalf of GBA, that this letter be filed with the report so that GBA's views and position are a matter of public record.

Gannet Beach Adventures

- 4 GBA was established in 1952 and has:
 - (a) been operating and running beach tours at Cape Kidnappers for 67 years;
 - (b) the business's wealth of experience and knowledge of the area including the risks that it posed to visitors is (most likely) unrivalled;

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- (c) an ongoing relationship with DOC in its position as a concessionaire. It has held the concession with DOC since 1987 and is currently the only concessionaire.
- 5 GBA considers that it should have been consulted as soon as Cape Kidnappers was being considered for inclusion as a Best Day Hike. Given the work GBA does in the area, not for recognition but for the public's benefit, and its longstanding relationship with DOC, GBA feels very strongly their views should have been actively sought.
- 6 What actually happened is a far cry from this. GBA only became aware after reading about it on the internet in September 2017.
- 7 Having become aware of the proposal to include Cape Kidnappers as a Best Day Hike, GBA requested and attended a meeting with DOC's Napier Office on 13 November 2017 (███████████, ██████████ and ██████████ were in attendance on behalf of DOC).

Meeting with DOC on 13 November 2017

- 8 At this meeting GBA asked DOC a number of questions including but not limited to:
 - (a) why did you not consult with us?
 - (b) Who decided to include Cape Kidnappers?
 - (c) What were the processes for deciding to include Cape Kidnappers?
- 9 DOC was not able to answer any of these questions, which led GBA to further question the whole process – how was it that two most senior employees of DOC's Napier Office were not involved in the process or even able to answer simple and straightforward questions regarding this matter. In addition, GBA later became aware that ██████████, the Manager of the Napier Office, only walked the beach for the first time on 4 November 2017, after the announcement had already been made.
- 10 GBA also raised a number of concerns that they had with the inclusion of Cape Kidnappers as one of the Best Day Hikes – in particular their safety concerns and potential impact that could result from increased walker numbers walking the beach.
- 11 DOC's notes of the meeting show:
 - (a) That the history of walking tracks at Cape Kidnappers is not good. The first uphill walking track from shelter, first attempt in February 2011 resulted in walker injuries within weeks. The second attempt in 2015 was just as disastrous with a broken ankle on the 2nd day of completion.
 - (b) An acknowledgement from DOC that GBA has not been consulted with and the importance of the relationship between DOC and GBA:

"Recent announcement of Best Day Hike not discussed with GBA in advance"

"Communication and consultation has not been happening"

"DOC recognises importance of relationship and is committed to working on that. Can't change the past but requires willingness to work together moving forward"

- 12 GBA did not feel that the notes provided by DOC were an accurate record of the meeting and so GBA added their comments to the notes and returned them to DOC (no response ever received on these comments).
- 13 Importantly the notes highlight the complete lack of consultation and understanding from DOC:
- (a) *"GBA stated disappointment that the relationship has deteriorated through recent poor treatment of concessionaire, poor maintenance of Reserve area and wasteful spending of DOC resources – example mentioned was the first uphill walking track from shelter, first attempt in Feb. 2011 resulted in walker injuries within weeks. Second attempt in 2015 was just as disastrous – broken ankle on 2nd day of completion"*
 - (b) *"GBA disappointed at DOC decision to actively promote the free walk while they charge a concession on paying passengers"*
 - (c) *"GBA surprised that DOC wouldn't communication (sic) with a company/concessionaire that has operated along the beach for 65 years in all weather and varying beach conditions, before endorsing the walk"*
- 14 A copy of the notes with GBA's comments is attached.
- 15 In addition to highlighting the lack of consultation, it also shows GBA's knowledge of the area and previous attempts to have talks at Cape Kidnappers. Seeing this, makes one speculate how DOC would have approached putting forward and promoting Cape Kidnappers without the benefit of the knowledge and views of GBA.
- 16 Most significantly, why were the details of this meeting not referred to or included in the Incident Investigation. We know that notes of the meeting were prepared as these were sent to GBA.
- 17 The failure to include them is a major oversight, how can concerns raised by a longstanding business, with a concession with DOC, that travels the coastline daily in summer not have been included in the report and how can one rely on the outcomes of the report when the details of this meeting were not included – are there other matters that should also have been included?
- 18 The Investigation Report states that DOC undertook some consultation however the major failings in the consultation process were not highlighted – the failure to consult with the business with the most knowledge and experience of the area was significant (to say the least) and the failure to complete adequate and appropriate consultation with the appropriate parties should be flagged in the report.

Subsequent events

- 19 In March 2018 DOC commissioned a 4-day survey of walkers, however GBA was subsequently advised that the survey was more regarding customer satisfaction than safety issues.
- 20 In May 2018, GBA met with [REDACTED] (DOC) in which GBA raised various safety concerns. The result of this was a discussion with [REDACTED] (Permissions Adviser, DOC Hamilton) who stated in a follow-up email "with regards to safety issues on that stretch of coast I had a good conversation with the District Office about this. The area manager has a keen interest and regularly walks the track, so is fully up to speed with its management. Hopefully the concerns raised this season will prove to be teething issues associated with increasing the popularity of the track. Rest assured the local office are keeping a close eye on it and will take further steps if required. In other parts of the country local

tour operators have seen an increase in customers as a result of the Department promoting tracks. Hopefully in time your business will benefit too." In early October 2018 a new DOC and Police sign was installed at the Camp with no consultation with GBA and importantly it made no mention of cliff dangers.

- 21 In Mid-January 2019, GBA contacted Reg Kemper to request a meeting regarding walker numbers/safety and frustration with local DOC office. Meeting was scheduled for 23 January 2019 but did not occur as the incident took place on the afternoon of 23 January 2019.
- 22 On 8 February 2019, GBA met with Reg Kemper, [REDACTED] and [REDACTED] (all from DOC) at Clifton Café in which there was a discussion about GBA's concerns (notes of the meeting were taken).
- 23 On 13 February 2019, GBA met with [REDACTED] and [REDACTED] (both from DOC) and who were starting the investigation into the incident.
- 24 GBA received a copy of the Investigation Report on 27 June 2019 and were incredulous to discover no reference to the meeting on 13 November 2017.
- 25 GBA has had little further contact from DOC since receiving a copy of the report despite the fact that they are a concessionaire.

Safety Concerns

- 26 GBA has significant safety concerns with Cape Kidnappers being classed as a Best Day Hike and DOC's target of 75,000 unsupervised walkers annually was hard to fathom.
- 27 The increase in walker numbers would bring with it a significant safety risk given the nature of the coastline.
- 28 GBA also found it hard to believe how DOC could be promoting the introduction of such walker numbers to the Reserve and the habitat of a protected species – DOC appeared more interested in tourism than conservation.
- 29 While the slip can be considered an "act of god", the inclusion of Cape Kidnappers as a Best Day Hike dramatically increased the number of unsupervised visitors who were not conversant with the dangers of the area, therefore dramatically increasing the chances of an unsupervised walker being caught up in a slip.
- 30 Slips are not uncommon in the area however these risks are manageable under the correct supervision. Prior to the area being declared a Best Day Hike, the number of people walking the track were minimal and the majority of the visitors were supervised by persons familiar with the area and its risks. Despite slips occurring there have been no injuries to any GBA clients.
- 31 Health and Safety is of major significance to all people and businesses in New Zealand however it appeared to play a minor part of DOC's consideration of the inclusion of Cape Kidnappers. The Incident Investigation suggests that its inclusion of Cape Kidnappers as a Best Day Hike may have been rushed through and that a proper consideration of the safety concerns may have been sacrificed as a result.

32 We feel it important to comment that if GBA had been caught up in the incident with its customers that their health and safety processes and procedures would have been the subject of great scrutiny – why has this not taken place on DOC's processes and procedures for Visitor safety.

Ongoing impact to GBA

33 It is almost 12 months since the incident and GBA is still unable to operate its business pending the results of a report commissioned by the Hastings District Council.

34 Our clients were not able to complete the 2018/2019 season as the beach and DOC Reserve was closed from the date of the incident through to the end of its season and the DOC Reserve remains closed (as at 6/1/2020) despite the season having already begun.

35 Not only is this impacted on GBA personally but it is also arguably impacting on local tourism in the Hawke's Bay. It is particularly hard for GBA to stomach the losses it has and continues to suffer, when it considers that the incident may have been avoided if DOC had completed a proper consultation process.

Summary

36 GBA disputes the claim made in the Incident Investigation report that consultation did take place. In November 2017, DOC admitted to GBA that there had been no consultation; apologised for the failure to consult and stated that communication needed to improve however this is not reflected in the Incident Investigation report.

37 GBA believes that DOC should hold themselves accountable for:

- (a) failing to complete appropriate and comprehensive consultation with stakeholders, iwi and other affected parties;
- (b) failing to consider the concerns and warnings of a business that has been operating that stretch of coastline for 67 years;
- (c) failing to consult with a business that holds a long-standing concession with them at Cape Kidnappers;
- (d) failing to record details in the Incident Investigation of a meeting which would (in GBA's opinion) put DOC in a poor light.

38 Given these failings, DOC should shoulder responsibility for the increased risks, to the closing of that stretch of the beach for an extended period of time and for GBA's loss of revenue which is still continuing.

39 We ask that a copy of this letter be attached to and kept with the Incident Investigation Cape Kidnappers Rockfall 23 January 2019.

Yours faithfully
BRAMWELL BATE LIMITED



Edward Bostock
Director
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Notes from Meeting with DOC and Gannet Beach Adventures 13/11/17

Discussed issues over time. *Long history of GBA not agreeing with DOCS management of Cape walk. Some productive meetings had in the past i.e. with [REDACTED]. 2011 walking track a disaster, lots of loose gravel as a result a woman that did the track broke her wrist. Loose gravel will continue to come down.

*Long history of previous owners not agreeing with DOC management of Cape Reserve. Current owners have worked alongside DOC management to improve relationship. GBA stated disappointed that the relationship has deteriorated through recent poor treatment of concessionaire, poor maintenance of Reserve area and wasteful spending of DOC resources – example mentioned was the first uphill walking track from shelter, first attempt in Feb. 2011 resulted in walker injuries within weeks. Second attempt in 2015 was just as disastrous – broken ankle on 2nd day of completion.

Recent announcement of Great Day Hike not discussed with GBA in advance. ** DOC recognises importance of relationship and is committed to working on that. Can't change the past but requires willingness to work together moving forward.

**GBA acknowledge their concession payment (\$20,000 for 2016/17 season) doesn't go to Cape Kidnappers directly but feel they would like to see some value from that.

GBA disappointed at DOC decision to actively promote the free walk while they charge a concession on paying passengers.

GBA surprised that DOC wouldn't communication with a company/concessionaire that has operated along the beach for 65 years in all weather and varying beach conditions, before endorsing the walk.

Communication and consultation has not been happening i.e. when contractors doing work, announcement of Great Day Hikes etc.

***Contract not renewed, is DOC going to increase presence? Will maintenance continue to standard? DOC acknowledges communication has been poor. Review outcome in 1 month.

***GBA asked who made the decision and why. DOC made decision in 2016, by then Area Manager [REDACTED]. GBA only found out in November 2017 (after 20 years of contracts), when making a phone enquiry. Decision was made because GBA had said they would like more of a DOC presence at Cape. GBA felt decision was more of a personal decision and apologised for misunderstanding. GBA questioned why their contract had stated "clean daily" and now DOC feel that twice weekly will be fine. GBA felt decision was ill-informed as with no consultation/surveying DOC had no real information on cleaning requirements, daily usage and other jobs GBA conducts alongside the contract.

GBA felt there will be a drop in standards and possibly at a higher price to the taxpayer, so requested that DOC measure mileage from DOC Cottage to Napier Office to help calculate costs.

GBA requested that DOC walk track from shelter to beach (maintained by GBA up till 1st November) and track from Cottage to Plateau Colony.

Tide times? Sign at shelter requires updating daily, who is going to do this? Now has 3 months tide times with specific information as to when to start return to Clifton. DOC to review signs and relevance.

List of weekly tasks

- Toilets cleaned twice (Wednesday and on the weekend with the staff using the cottage)
- Restock any toilet paper as required
- Ensure the tide times are relevant for the next month period.
- Check water tank at shelter, fill if required
- Note any maintenance required
- Clean signs\ information panels at top and at shelter
- Check all gates self-close
- Grub or spray thistles\weeds along edge of track
- Remove any excess build-up of loose gravel along track

List of monthly tasks

- In addition to the list above
- Fill water tank at shelter
- Waterblast interior and exterior of shelter
- Undertake maintenance as per observations, restock cleaning chemicals
- Download track counter
- Waterblast toilet pans
- Waterblast shelter
- Clean out spouting
- Remove any overhanging vegetation along track.
- Spray water tables for weeds
- Mow lawns around cottage .

DOC and GBA to work in relationship and transparency. Phone conversations where possible and face to face at least pre and post season. Follow up with emails and copy all in to ensure everyone understands what is happening.

Sorry this makes for long reading but I do feel this needs to be written rather than “he says, she says” at a later date.