

NORTHLAND REGIONAL COUNCIL
HEARING OF RESOURCE CONSENT APPLICATION BY

DOUGLAS CRAIG SCHMUCK AND INTERESTING PROJECTS LIMITED

MINUTE #4A OF THE HEARING COMMISSIONER (AMENDED MINUTE #4)

1. A hearing for the application lodged by Douglas Craig Schmuck and Interesting Projects Limited (**the Applicants**) was held in Paihia between 3-5 August 2020.
2. I received the Applicants' written Right of Reply (**RoR**) on 1 September 2020 and was provided with a Track Changes version (**the TC version**) of the conditions on 2 September 2020.
3. Having read the RoR and proposed conditions, I consider I require further information from Mr Hartstone and the Applicants. This Minute outlines the information I require (I **bold** the names of the respective party who needs to provide the information).

Proposed Conditions

4. I would like to thank Messrs Hartstone, Maxwell, and Hood for the work they have done on amending the conditions in light of my comments on them during the hearing. However, I require further information regarding the conditions which I outline below.
5. Mr Hood, in his Comments on Proposed Conditions included with the RoR, has made a number of suggested amendments to the TC version. I request that **Mr Hartstone** provide me with a brief statement regarding his position on each of Mr Hood's suggested changes (including all the minor changes). Where Mr Hartstone disagrees with Mr Hood I request that reasons be provided.
6. In answers to questions at the hearing Mr Hartstone was unsure whether a security gate on the wharf was warranted and that he would have a think about it. I note Condition 31(c) provides for a security gate so I assume Mr Hartstone has formed a view that such a gate is warranted but that it should be open during the day. I request that **Mr Hartstone** confirms this together with confirmation of the wording he is recommending for clause (c) – I note the TC version shows it as reading "*Unless restricted by working conditions, public access through the security gate shall be available during daylight hours...*", but the version attached to Mr Hood's Comments on Conditions shows the struck-through clause (c)¹ as "*Unless restricted by working conditions, public access through the security gate shall be available during the hours of 0700 – 1800, and 0700 – 2000 during NZ Daylight Savings time...*".
7. Mr Hood states that requiring the security gate to remain open is impractical as it would require someone to lock and unlock the gate seven days a week. I request further information from the **Applicants and Mr Hartstone** on whether there are security gate options available which are able to be automatically locked and unlocked at pre-programmed times without the need for either of the Applicants having to physically lock and unlock such a gate.

¹ Actually listed as the third clause (a).

8. Whilst there appears to be a difference of opinion as to whether Condition 34 needs to be included (metal concentrations in sediments), the version recommended by Messrs Hartstone and Maxwell differs from that recommended by Dr Wilson (in his letter included with the RoR). I request that **Mr Hartstone** clarify why Dr Wilson's condition has been amended and whether the proposed wording achieves the same intent.
9. Condition 38 requires monitoring of water quality to be undertaken. As noted in the TC version, I queried why E coli was specified in Schedule 2 when there did not appear to be any condition specifying water quality standards to be met in terms of E coli. All the other monitoring in Schedule 2 is linked back to some form of standard in conditions except for E coli. I request that **Mr Hartstone** explain why E coli needs to be monitored and if so, whether there should be a water quality standard for E coli specified in a condition.
10. The second part of Condition 62 states *"That proprietary stormwater treatment system shall utilise a demand driven diversion valve that shall automatically direct a minimum of 2.4m³ of wash down water (trade waste) to the public sanitary sewer system as a 'first flush' when the water blaster is activated"*. This wording suggests that the wash down water generated by the water blaster constitutes the 'first flush', however my understanding from Mr Papesch's Further Statement included with the RoR that 'first flush' refers to the runoff that occurs when it first starts to rain. Mr Papesch stated the first 10 mm of rainfall was appropriate in this case provided the work area was first cleaned (if not he considered 25 mm to be appropriate). He also noted that the fox valve is able to divert both the wash water and 'first flush' to trade waste. I request that **Mr Hartstone** provide an amended wording for Condition 62 to reflect the intent that the first 10 mm of rainfall is to be discharged to trade waste in addition to all wash water.
11. Condition 63 (previously Condition 60) specifies limits for various metals and total suspended solids (**TSS**) in the treated stormwater. These limits differ from those previously recommended and the advice note explains the rationale behind the limits. I request further information from **Mr Hartstone** on how the dilution factor of 11 has been derived (i.e. provide justification for it). I note that Policy H.3.3 of the Proposed Regional Plan does not include any standards in respect of TSS and I request further information from **Mr Hartstone** as to the basis of the recommended limit of 100 g/m³ TSS in the condition when it was previously 20 g/m³. Lastly, I request further information from **Mr Hartstone** on why the previous clause (a) has not been included – being a requirement that the treatment system retain all particles larger than 60 µm in diameter.
12. The comments in the TC version on Conditions 67, 85, 90, 91, and 93 includes discussion on an amended offensive odour and air discharge boundary and notes that a new plan is being prepared. An additional plan has been attached to the conditions (Plan 4966) but it shows a "Proposed Offensive Odour & Air Discharge Boundary" which appears to be identical to that on Plan 4952/1 (being the version included in the section 42A report). In answers to questions at the hearing Mr Hartstone stated, in respect of the proposed odour boundary *"The boundaries as drawn currently based on evidence are far larger than required and need to be refined"*. The recommended boundary does not appear to have been refined and I request **Mr Hartstone** provide further information on why he has now changed his opinion on this matter.
13. The front end of the consent document (on the page entitled Appendix A: Recommended Conditions of Consent) includes "AUT.041365.10.01 Earthworks in the coastal riparian management area (for slipway reconstruction)" for Mr Schmuck's consents. I understood from Mr Hood (paragraph 38 in his Evidence in Chief) that this consent was not required as the proposed earthworks were well within the permitted activity thresholds. I also understood that Mr Hartstone agreed with Mr Hood on this matter. I request further information from **Mr Hartstone** whether AUT.041365.10.01 should be included in the listed activities.

14. Paragraph 45 of the Applicants' RoR summarises the advice Mr Stacey provided in respect of four recommended mitigation measures associated with water blasting activities. The deployable screen is provided for in Condition 83, the wind restrictions in Condition 80, and the operator training appears to be included as a requirement of the Operational Management Plan in Condition 7(g)(ii). Mr Stacey's other recommendation is "*Getting the boats much further up the slipway*" – this is to increase the distance between the water blasting activities and the walkway. I also note that, in answers to questions at the hearing, Mr Schmuck stated "*I agree that you can actually move the boat up further, closer to the shed to water blast so you don't have an impact on the track*". I request further information from **Messrs Hood and Hartstone** on which condition, if any, requires vessels to be pulled up the slipway as far as practicable before they are water blasted. If no such condition exists, then I request **Messrs Hartstone and Hood** to provide me with a recommended condition.
15. As noted in the previous paragraph, Condition 80 includes wind restrictions for water blasting and application of antifoulant and paints, namely when windspeed is >0.5 m/s and the wind is blowing up the slipway through an angle of 45 to 170 degrees – the wind angle restriction is also included in Condition 89 (which may be an unnecessary duplication of Condition 80 as it covers application of all paints, including diisocyanate paints). A question I forgot to ask Mr Stacey at the hearing relates to the wind angles. I had assumed the wind coming from the eastern 'quarter' (between 45 and 135 degrees, being equally 45 degrees north and south of east), however it includes additional southeasterly angles (between 135 and 170 degrees). I request further information from **Mr Stacey** regarding the rationale of the recommended wind angles, in particular the reasons behind why the arc is not equally north and south of east.

Further Information from the Applicant

16. In answers to questions during the hearing Mr Schmuck advised me that the reason why the new wharf was proposed to be constructed north of the existing wharf was because he was worried about navigation issues on the slipway. He stated that he could operate the boatyard effectively if the new wharf was built on its current footprint (albeit with a wider deck) provided the proposed dredging was able to be undertaken. Mr Schmuck stated "*It would have to be such that the old south piling would have to align with the new south pilings and no more further south than that. Taking into account, now, the slipway is much shorter, once behind the end section of the wharf, I do have more room*". I note that the position of the proposed new wharf remains as was applied for (i.e. further to the north of the existing wharf). I request further information from **the Applicants** on why the proposed wharf is proposed to be further north than the existing wharf when, according to Mr Schmuck's evidence, it doesn't need to be.
17. Mr Papesch, in his Further Statement included with the RoR, stated "*The gravity component of the stormwater discharge is subject to the positioning of the stormwater treatment system as is currently before the Environment Court*". The proposed position being within the Reserve between Area A and the coast. I request further information from **Mr Papesch** on why its proposed position is so critical and whether it would work equally well in positions further up the slope of the reserve (e.g. within Area A or within Mr Schmuck's property).

18. The application seeks authorisation to establish two marina berths on either side of a new pontoon at the end of the reconstructed wharf. Condition 20 of the existing consents authorising the existing pontoon restricts its use to the '*casual berthing of craft*'. Evidence was presented at the hearing that the existing pontoon is used not only by the Applicants but also the public – this matter also being confirmed by Mr Allan Richards in his Staff Report for the March 2001 Joint NRC/FNDC Hearing which ultimately lead to the existing consents being issued (via the Environment Court Consent Order) where he stated (page 18 of his Staff Report, being page 159 of the Hearing Agenda):

- (vi)^d Conversely, the proposed pontoon at the end of the wharf will improve the amenity currently provided by the wharf to those people embarking or disembarking from dinghies or other vessels. Wharf steps, like those on this wharf, typically become quickly fouled with marine growth and become slippery. A common and popular solution to this at many marine facilities is to provide a pontoon. The proposed pontoon will be available to all users of the wharf including the public.

It is unclear to me whether the design of the proposed pontoon will, likewise, provide for casual berthing of craft and I request further information from **the Applicants** on whether it does or not. If public casual berthing is not provided for in the current pontoon design, then I request further information from **the Applicants** on what changes to the design of the pontoon could be made to provide for such use in addition to providing for the two proposed marina berths. If design changes are possible to provide for casual berthing at the pontoon, then the Applicants may volunteer such changes if they so choose. I record here that the Applicants are under no obligation to volunteer such changes to their Application – that is, they can advise me that they wish me to make my decision on the design as outlined in the Application, however if that is the case the I still require the information outlined in this paragraph.

Timeframe for Responses

19. I request that Mr Hartstone, Mr Papesch, and the Applicants provide the information discussed in this Minute, via Ms Sluys, no later than **1 pm, Friday 11 September 2020**.

DATED 7 September 2020



Dr Rob Loeffering
Independent Hearing Commissioner