

**NORTHLAND REGIONAL COUNCIL**  
**HEARING OF RESOURCE CONSENT APPLICATION BY**

**DOUGLAS CRAIG SCHMUCK AND INTERESTING PROJECTS LIMITED**

**MINUTE #1 OF THE HEARING COMMISSIONER**

**Introduction**

1. I have been appointed by the Northland Regional Council (**NRC**) as an Independent Commissioner to hear and decide the application lodged by Douglas Craig Schmuck and Interesting Projects Limited (**the Applicants**). The application is referenced as APP.041365.01.01.
2. The function of this Minute is to set out some preliminary matters in preparation for the hearing which is set down to commence on Monday 3 August 2020 and to respond to a request made by the Applicants for a minor time extension for providing briefs of evidence.
3. In particular, the objective of this Minute is to provide directions for a smooth and easily navigable hearing process for all parties. This requires action from some of the parties in the next few weeks in readiness for the formal proceedings.
4. This Minute covers the following matters:
  - (a) Evidence preparation and circulation – including a revised timetable for briefs of evidence;
  - (b) Hearing process and presentations;
  - (c) Hearing schedule; and
  - (d) Site visit.
5. I may issue further instructions by way of a Minute(s) before the hearing. All correspondence between the parties and myself will be facilitated by Ms Alissa Sluys at the NRC. Her contact details are provided at the end of this Minute.

**Evidence Preparation and Circulation**

6. In accordance with the requirements of section 103B of the Resource Management Act 1991 (**RMA**), the circulation of the following is required prior to the commencement of the hearing:
  - The report prepared by the reporting officer under section 42A of the RMA;
  - All expert and non-expert evidence of the Applicants; and
  - All expert evidence of submitters wishing to be heard at the hearing.
7. I understand a timetable for the pre-circulation of the above has already been circulated by the NRC to the parties.
8. Yesterday the NRC forwarded me correspondence from Mr Brett Hood, the Applicants' agent, which requests a minor amendment to the timetable for the pre-circulated evidence – specifically, the request is for the Applicants to provide their briefs of evidence no later than 9 am on the Monday 20 July 2020 instead of needing to provide it on Friday 17 July 2020. The reason for the time extension request relates to some witnesses having prior commitments due to the school holidays. I agree to the Applicants' request but am happy for a 1 pm deadline instead of the volunteered 9 am deadline – the NRC will still have time to circulate the evidence to the other parties by close of business that day.

9. However, in the interests of fairness, I also consider it appropriate provide the same amount of additional time for the submitters to provide their briefs of expert evidence. I do not consider any party is disadvantaged by this minor extension of the prescribed timeframes because I have applied it equally to all parties (the only parties that may be disadvantaged are myself by having less time to read the evidence provided, and the Applicants in respect of preparing any rebuttal evidence, however it is the Applicants who have requested the minor time extension). Accordingly, the revised timetable is as follows:

<b>Time and Date</b>	<b>Action</b>
<b>1 pm, Tuesday 7 July 2020</b>	Reporting officer’s section 42A RMA report due
<b>1 pm, Monday 20 July 2020</b>	Applicants to provide briefs of <u>expert and non-expert</u> evidence
<b>1 pm, Monday 27 July 2020</b>	All submitters to provide briefs of <u>expert</u> evidence (if calling any expert witnesses – refer Paragraph 10, below)
<b>Monday 3 August 2020</b>	Hearing commencement

10. **Submitters:** please note that it is only those submitters who are intending to call ‘expert’ evidence who need to submit those briefs by 1 pm Monday 27 July 2020. Expert witnesses are experts by virtue of their qualifications, experience, and independence.
11. While not strictly required for council hearings, I expect *all* expert witnesses to comply with Section 7 (Expert Witnesses) of the Environment Court’s Practice Note 2014 in preparing their evidence and/or giving any oral evidence. I ask the parties to remind their experts that those witnesses have an overriding duty to assist me impartially on relevant matters within their area of expertise and they must not be an advocate for the party who engages them. The latest version of the Environment Court’s Practice Note can be found at <https://www.environmentcourt.govt.nz/about/practice-note/>.
12. For completeness, any legal submissions (from the Applicants or any submitter) are to be presented during the hearing and there is no need for these to be pre-circulated.
13. I understand that the NRC will collate all the pre-circulated evidence and make it available to the parties. Further instructions about accessing this information will be conveyed by the NRC following receipt of all materials.

### Hearing Process/Presentations

14. The pre-circulated evidence is being distributed to all parties prior to the hearing and, as such, will be read by me prior to the hearing commencing – that is, it is ‘taken as read’. This means it will not be necessary for a verbatim oral presentation of the written statements of evidence at the hearing. I direct that each witness presenting expert evidence:
- be introduced and asked to confirm their qualifications and areas of expertise;
  - confirm the matters of fact and opinion contained in the statements of evidence;
  - identify any corrections to be made; and
  - provide a summary of their evidence to draw attention to the key points in their statement of evidence (in particular the reasons for disagreement with any other experts in their field of expertise) - I request this be limited to no more than two A4 pages.
15. The Applicants’ witnesses may also provide written rebuttal evidence on other expert statements of evidence provided by another party. I remind the Applicants’ witnesses that no new evidence may be

introduced, unless it is specifically in response to matters raised in other pre-circulated statements of evidence provided by another party.

16. Non-expert evidence from submitters, including lay evidence or legal submissions, does not need to be pre-circulated and shall, instead, be tabled at the hearing and read aloud on the day of the hearing. I remind the parties that I will have also read all the written submissions that were lodged on the application and therefore discourage submitters from reading their written submissions verbatim. Again, I am happy for submitters presenting to speak to a summary of their submission by either:
  - a separate tabled statement that condenses the key points from evidence (i.e. a couple of A4 pages); or
  - highlighting particular points within their evidence during their presentation.
17. With the above approach in place, I envisage presentations for all persons (expert and non-expert), except legal presentations, will be in the order of 15 to 20 minutes per speaker, though this is not a fixed time requirement. My intent in signalling this is less a stipulation that speakers rigidly adhere to an imposed time limit, and more a *guide* for those wondering how long their presentation is likely to last. Further time may be required to answer any questions I may have.
18. I want to be clear that all parties (Applicants, submitters, and the reporting officer) will be given the time they require to adequately present their views. The main reason the RMA directs pre-circulation of evidence is to minimise the time required for all parties to be present at the hearing itself. This expedited process will not, however, be at the expense of any party's ability to fully participate in the process.

#### **Hearing Schedule**

19. The hearing has been set down for three days. The normal sequence of presentations will be the Applicants presents their case, the submitters then present their case/submission, and then the reporting officer will have an opportunity to respond to matters raised in evidence or during the hearing. Finally, the Applicants will be given the opportunity to deliver their Right of Reply. This may either be orally or in writing and I will discuss this in more detail towards the end of the hearing. In the event the Applicants present their its Reply orally, then I request a written copy also be provided.
20. In terms of the submitters, Ms Sluys will contact those who indicated they wish to speak at the hearing (i.e. wished to be heard) to:
  - I. Confirm that the party still intends to attend the hearing and to speak to their submission; and
  - II. Get an indication of the time required/requested to present their case (bearing in mind the guideline times discussed earlier in this Minute).

#### **Site and Locality Visit**

21. At this stage I am proposing to undertake my site visit during the morning of Tuesday 4 August 2020. I will discuss the logistics of my visit on the first day of the hearing. I would ask the Applicants to make arrangements for somebody not associated with the hearing to meet me at the site and to act as a guide. That person will solely be there to show me around and they are not to proffer any opinion on any aspect of the application.
22. If any party has a desire for me to visit particular sites/localities associated with the application, they should advise Ms Sluys as soon as practicable.

## **NRC Contact Details**

23. If any party wishes to seek further clarification in relation to this Minute or the hearing process please contact Ms Sluys in the first instance, email: [alissas@nrc.govt.nz](mailto:alissas@nrc.govt.nz) or phone 0800 002 004.

**DATED** 1 July 2020

A handwritten signature in black ink, appearing to read 'Rob Lieffering', written in a cursive style.

Dr Rob Lieffering  
Independent Hearing Commissioner