

NORTHLAND REGIONAL COUNCIL

**HEARING OF RESOURCE CONSENT APPLICATIONS FOR ACTIVITIES ASSOCIATED WITH DOUG'S
OPUA BOATYARD, WALLS BAY, OPUA**

APP.039650.01.01

MINUTE #1 OF HEARINGS COMMITTEE

Introduction

1. We have been appointed by the Northland Regional Council (**NRC**) as members of a Hearings Committee to hear and decide resource consent applications by Doug Schmuck ('the Applicant') pursuant to the Resource Management Act 1991 (**RMA**).
2. The general function of this Minute is to set out some preliminary matters in preparation for the hearing, which is set down to commence at 9am on Thursday 17 May 2018 at the Copthorne Hotel and Resort Bay of Islands, Tau Henare Drive, Waitangi.
3. This Minute also responds to procedural matters raised by submitters in response to further information provided by the Applicant on 17 April 2018.
4. In this respect, this Minute covers the following matters:
 - (a) Procedural matters;
 - (b) Prehearing meetings and conferencing;
 - (c) Evidence preparation and circulation;
 - (d) Hearing process and presentations; and
 - (e) Site and locality visit.
5. It is possible that there will be further instructions issued by way of Minute of the Hearings Committee before and after the hearing. All correspondence between the parties and the Hearings Committee will be facilitated by Ms Alissa Sluys at the NRC. Her contact details are provided at the end of this Minute.

Procedural Matters

6. We have recently received three emails from submitters in response to the updated plans and ecology report provided by the Applicant on 19 April 2018. Copies of the emails received from Mr Tom Atkinson, Mr Bill Kearney and Ms Maiki Marks are attached for your information.
7. We have considered the concerns raised by all three submitters and have sought comment on behalf of NRC from the Reporting Officer, Ms Melanie Donaghy, an independent consultant planner (also see attached). Overall, we agree with Ms Donaghy that the updated plans and ecology report provide further clarification of the proposal and are within scope of the application as notified.
8. In particular, we accept the further information provided clarifies the location and extent of the activities included in the public notification of the application. We note Ms Donaghy stated:

The updated drawings clarify the following:

- *The extent of the proposed extension to the Exclusive Occupation Area sought by the application (this shows a southern, eastern and northern extension to the current authorised Exclusive Occupation Area);*
- *The extent of the new proposed seawall / erosion barrier sought by the application. The approximate length of the new proposed seawall as shown on the updated drawings is shown as 48.7m. However, this measurement includes the existing seawall which the new seawall will continue on from. A hand drawn plan included in the application that was notified states the length of the new seawall will be approximately 40m;*
- *The location of the existing authorised working boat mooring/dinghy pull, dinghy ramp and seawall in relation to the proposed new works;*
- *The position of moorings within the mooring filed in relation to the proposed dredging area.*

It is acknowledged that there are minor changes to the measurements of the proposed capital dredging of the approach channel shown on the updated plans from what was notified including the following:

- *Reduction in the channel width by 1m and an increase in the channel length by 5m (increase in total dredge area of 457 square metres);*
- *Reduction in the capital dredge volume by 20.3 cubic metres;*
- *Reduction in the footprint in-ground volume by 49 cubic metres.*

There are no changes to the dimensions or location of the proposed replacement jetty facility including the fixed jetty, gangway, pontoon (marina) and mudcrete grids to what was notified. In addition, the Council's initial assessment that the jetty facility is located below the line of mean high water springs remains unchanged.'

9. We agree with Ms Donaghy that it is not unusual for an applicant to provide further information prior to and during the hearing process and that this is acceptable so long as it is within scope of the application, as publicly notified. We note that the updated plans and the ecology report provided on 19 April 2018 were considered by Ms Donaghy in writing the section 42A Staff Report. We consider submitters will have the opportunity to address any matters raised in the further information during the hearing.
10. For the above reasons, we do not consider the application should be re-notified or that the set hearing date should be deferred.
11. We also agree with Ms Donaghy that there is no mechanism under the RMA to effectively 'stop the clock' and that the Act's requirements to hear and determine the application within the statutory timeframes and without undue delay are clear.
12. We have also been provided with an earlier email from Ms Angie Kyriak (dated 20 April 2018) to NRC seeking clarification about jurisdictional boundaries and the potential need for further resource consents from the territorial authority. We consider these matters can be clarified at the hearing.

Pre-hearing meetings and conferencing

13. We do not propose to formally direct the undertaking of, or participation in, formal pre-hearing meetings or expert conferencing.
14. However, as a first principle, we encourage parties (Applicant and submitters) to meet and hold discussions prior to the commencement of the hearing. This includes general meetings amongst the parties:
 - To discuss any procedural or substantive matters;

- For submitters to gain a better understanding of what the proposal entails and what the effects and implications may be;
 - For the Applicant to better understand what the submitter’s concerns are and how they might be accommodated; and/or
 - As well as conferencing between any technical experts engaged by any party.
15. We note that conferencing between the parties is not mandatory. However, if any parties are able to constructively discuss issues raised in submissions with a view to facilitating a smooth hearing process, we welcome that.
16. To be clear, the reasons for conferencing are to:
- Clearly identify the areas of agreement and disagreement between the parties; and
 - Enable a more focused and concise hearing process on technical matters.

Evidence Preparation and Circulation

17. Where conferencing is not successful in resolving issues prior to the hearing, we accept that hearing attendance will be necessary for those submitters. In this respect, we anticipate that some parties may wish to call expert witnesses in support of their submissions, while others will opt to ‘go it alone’. In either case, we request that all parties provide Ms Sluys with a list of all individuals that will be presenting evidence on their behalf and an estimate of the hearing time needed no later than **Monday 7 May 2018**. We note that Ms Sluys has already attempted to make contact with submitters in relation to their attendance.
18. In accordance with the provisions of the RMA, we direct the pre-circulation of the following in addition to the NRC’s section 42A Staff Report:
- All expert and non-expert evidence of the Applicant;
 - All expert evidence of submitters wishing to attend the hearing; and
 - Supplementary written statements from those submitters not wishing to attend the hearing, but wanting to table material in support of their submissions.
19. The timetable for pre-circulation is as follows:

Date	Action
24 April 2018	NRC section 42A report circulated to the Applicant and submitters - completed
2 May 2018 by 5pm	Applicant to provide briefs of expert and non-expert evidence to NRC
7 May 2018 by 5pm	All submitters wishing to attend the hearing – to provide a list of evidence authors / witnesses to be called in support of their submission to NRC
9 May 2018 by 5pm	All submitters to provide briefs of their expert evidence (if intending to call)
17 May 2018	Hearing commences

20. For completeness, we confirm that there is no need for any legal submissions or further written statements by submitters to be pre-circulated prior to the hearing, and these will be presented during the hearing.

21. We understand that the NRC will collate any pre-circulated evidence and make it available on the NRC's website.

Hearing Process/Presentations

22. As any expert evidence (both Applicant and submitter) is being distributed to all parties prior to the hearing, and will be read by us prior to the hearing commencing, it will not be necessary for a verbatim oral presentation of the written statements of evidence at the hearing.
23. We direct that each expert witness presenting 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 key points in their statement of evidence – we request that this be limited to no more than two A4 pages.
24. The Applicant's expert witnesses may also provide written rebuttal evidence on other expert statements of evidence provided by another party. However, we remind witnesses that no new evidence shall be introduced, unless it is specifically in response to matters raised in other pre-circulated statements of evidence provided by another party.
25. Non-expert evidence from submitters, including lay evidence or legal submissions shall be tabled at the hearing and read aloud on the day the submitter appears at the hearing. We remind the parties we will have also read all submissions received prior to the hearing and therefore discourage submitters from reading their written submissions verbatim. Again, we are 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 pages); or
 - Highlighting particular points within their evidence during their presentation.
26. With this approach in place, we envisage presentations will be in the order of 15 minutes per speaker, though this is not a fixed time requirement. Our 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 we may have.
27. We want to be clear that all parties (Applicant, submitters and the Reporting Officer) will be given the time they require to adequately present their views. The main reason in favour of pre-circulation 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.

Site and Locality Visits

28. We will be undertaking a general site and locality visit following the hearing.
29. If any party has a desire for us to visit particular sites/localities associated with the application, they should advise us during the hearing or in writing to Ms Sluys.

30. If any party wishes to seek further clarification in relation to this Minute, the hearing process or the proposed timetable, please contact Ms Sluys in the first instance by email to alissas@nrc.govt.nz or by phone on 0800 002 004.

DATED this 30th April 2018

A handwritten signature in black ink, appearing to read 'S. McGarry', is placed on a light green rectangular background.

Sharon McGarry
Hearings Committee (Chair)

A handwritten signature in blue ink, appearing to read 'J. Blaikie', is written in a cursive style.

Councillor Justin Blaikie

Alissa Sluys

From: Melanie Donaghy
Sent: Friday, 27 April 2018 12:47 PM
To: Alissa Sluys
Cc:
Subject: Re: New jetty received 19 April 2018

Importance: High

Follow Up Flag: Follow up
Flag Status: Completed

Good morning Sharon,

As a quick introduction, I am a consultant planner, engaged by the Council part way through the processing of the subject application (post notification). Subsequently, I have read the application detail (including further information), read the submissions, visited the site and completed a report pursuant to section 42A of the Resource Management Act 1991 (the RMA).

In response to the concerns raised in recent emails from three submitters (M Marks, T Atkinson and B Kearney), I provide the following clarification on behalf of the Council:

The updated drawings circulated on 19 April 2018 were requested by the Council in order to have a set of drawings with all of the existing and proposed structures shown, which would provide clarification of the location and extent of activities sought by the application that were notified. All of the activities were subject to the public notice, but were not clearly represented in the various drawings and plans contained in the application documentation as notified.

The updated drawings clarify the following:

- The extent of the proposed extension to the Exclusive Occupation Area sought by the application (this shows a southern, eastern and northern extension to the current authorised Exclusive Occupation Area);
- The extent of the new proposed seawall / erosion barrier sought by the application. The approximate length of the new proposed seawall as shown on the updated drawings is shown as 48.7m. However, this measurement includes the existing seawall which the new seawall will continue on from. A hand drawn plan included in the application that was notified states the length of the new seawall will be approximately 40m;
- The location of the existing authorised working boat mooring/dinghy pull, dinghy ramp and seawall in relation to the proposed new works;

- The position of moorings within the mooring field in relation to the proposed dredging area.

It is acknowledged that there are minor changes to the measurements of the proposed capital dredging of the approach channel shown on the updated plans from what was notified including the following:

- Reduction in the channel width by 1m and an increase in the channel length by 5m (increase in total dredge area of 457 square metres);
- Reduction in the capital dredge volume by 20.3 cubic metres;
- Reduction in the footprint in-ground volume by 49 cubic metres.

There are no changes to the dimensions or location of the proposed replacement jetty facility including the fixed jetty, gangway, pontoon (marina) and mudcrete grids to what was notified. In addition, the Council's initial assessment that the jetty facility is located below the line of mean high water springs remains unchanged.

It is understood that it is not unusual for application information to be clarified, corrected or amended through the Resource Consent process right up to the close of the hearing as long as it is within the scope of the application as notified. It is considered that the updated drawings are within the scope of the application as notified. The drawings were circulated to all submitters and have been referred to in the section 42A report. Submitters (or their experts) will have an opportunity to consider and respond to the clarifications at the hearing.

The Council may request further information from an applicant using section 92 of the RMA at any time, but may only 'stop the clock' if a section 92 request is made prior to notification. Typically timeframes are extended with the applicants agreement if additional information is considered to be required to address matters raised in submissions. In this case, the Applicant contacted the Council following the receipt of submissions to advise that he was going to seek an ecological assessment to address the issues raised in submissions on the application, and this was subsequently provided to the Council on 6 April 2018. The ecological report was circulated to all submitters on 9 April 2018. The section 42A report also references the content of the ecological report.

The additional information that has been supplied by the Applicant and referred to by Mr Atkinson, Mr Kearney and Ms Marks was received by the Council prior to the completion of the section 42A report and has been assessed and considered as part of that report. The matters referred to in the ecological report or on the updated plans are matters that are subject to the application and are able to be considered during the hearing of the application. The section 42A report has been circulated to submitters for consideration in accordance with the requirements specified by section 42A(3)(a) of the RMA.

In respect of Mr Kearneys concerns regarding the hearing process and the ability of the Council to proceed. The RMA prescribes the timeframes under which a hearing of an application must be held (unless these timeframes have been extended with the agreement of the Applicant). The Council is constrained by the requirements of the RMA to hear and decide the application.

I trust that this clarifies the concerns raised in the three emails from submitters to the application. Please do not hesitate to contact me should further clarification be required on any of the above matters.

Kind regards,

Melanie Donaghy

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Please consider the environment before printing this e-mail.

Alissa Sluys

From:
Sent: Tuesday, 24 April 2018 2:49 PM
To: Alissa Sluys
Subject: RE: Resource Consent Application - APP.039650.01.01 - D C Schmuck - Updated plans
Categories: Saved to IRIS

Dear Ms. Sluys,
Good morning.

I communicated with you, pursuant to your invitation "to contact me". Now, it appears, I should have addressed to the "hearings administrator"; please accept my apologies, for writing to the wrong person. Thank you for ensuring that my "comments" have been passed to the hearing panel. I notice you said that "at the hearing", I would have an opportunity to "raise these concerns". Thank you for that, but I am afraid that is not good enough. This submission is founded upon the fact that the 4 plans in question are "fundamental to the applicant's application for new and early replacement consents". Because they are fundamental, the proposed date for hearing is nugatory, and cannot proceed. Please forward to me (if necessary, through the hearings administrator) the material I asked for; if I do not receive a reply on or before the 2nd May 2018, it will be necessary to apply for a prohibition order in respect of the hearing presently (unlawfully) listed for the 17th May. Regards, Bill.

On 24 April 2018 at 08:40 Alissa Sluys <alissas@nrc.govt.nz> wrote:

Good morning Bill,

Further to your below request, I advise that all communications between any party and the hearings panel must go through the hearings administrator. Accordingly, I have passed your below comments on to the hearings panel.

You will, at the hearing, have an opportunity to speak to your submission and to raise these concerns.

Regards



Ali Sluys
Consents and Hearings Administrator
Northland Regional Council | Te Kaunihera ā rohe o Te Taitokerau

DDI 09 470 1290

A 36 Water Street, Whangārei 0110

P 0800 002 004 **24 HR ENVIRONMENTAL HOTLINE** 0800 504 639



From:
Sent: Tuesday, 24 April 2018 5:57 AM
To: Alissa Sluys <alissas@nrc.govt.nz>
Subject: Re: Resource Consent Application - APP.039650.01.01 - D C Schmuck - Updated plans

Dear Ms.Sluys,

I refer to your emails, below. And to your request, to "contact me", about "questions". I note that the 4 "updated" plans attached, were each submitted to your office on 19 April 2018, the self-same day on which you wrote to me (19/4/2018 ; 17:06). You refer to the plans as "updated", and as being "lodged by the applicant in support of {his} resource consent application APP.039650.01.01". The subject plans do NOT fall into that category at all ; they are not "updated", and do not fall within or "in support of" the applicant's "application for new and early replacement consents". Rather, these plans are fundamental to the applicant's "application for new and early replacement consents"; they should have been lodged before (or at) the "hearing of the abovementioned application" was fixed for the 17th May 2018. That date was clearly fixed by the "Council's Hearing Committee"; I should be obliged if you would advise me of the names and addresses of members of that Committee, including its Chairman, in order that I may advise them. Regards, Bill Kearney.

On 19 April 2018 at 17:06 Alissa Sluys <alissas@nrc.govt.nz> wrote:

Good afternoon

RESOURCE CONSENT APPLICATION APP. APP.039650.01.01 – D C SCHMUCK - APPLICATION FOR NEW AND EARLY REPLACEMENT CONSENTS FOR ACTIVITIES ASSOCIATED WITH DOUG'S OPUA BOAT YARD IN WALLS BAY, OPUA

Please find attached updated plans submitted by the applicant in support of resource consent application APP.039650.01.01. – Structures, discharges and dredging for Doug's Opu Boatyard.

If you have any questions, please do not hesitate to contact me.

Regards



Ali Sluys

Consents and Hearings Administrator

Northland Regional Council | Te Kaunihera ā rohe o Te Taitokerau

DDI 09 470 1290

A 36 Water Street, Whangārei 0110

P 0800 002 004 **24 HR ENVIRONMENTAL HOTLINE** 0800 504 639



Alissa Sluys

From: Maiki Marks
Sent: Thursday, 26 April 2018 12:47 PM
To: Alissa Sluys
Subject: New jetty received 19 April 2018
Attachments: Schmuck new jetty.pdf

Kia ora Alissa

The attached document show the applicant has significantly changed his application after it was publicly notified, 20 December 2017. The changes in the attached document are significantly different to the jetty diagram provided earlier (before submissions closed). The jetty and clearly impacts on the walkway(Te Araroa Trail) which is under FNDC's jurisdiction.

I have now received two documents after submissions closed - An Ecological Report and the attached new jetty.

For these reasons I would like the NRC to re-notify the entire applications for resource consent as a joint FNDC/NRC application to take into account land use and Walls Bay Esplanade Reserve.

Nga mihi
Maiki

Alissa Sluys

From: Tony Atkinson
Sent: Monday, 23 April 2018 11:09 PM
To: Alissa Sluys
Subject: urgent attention dereliction of process

Categories: Saved to IRIS

To Elisa Size
Northland Regional Council

Dear madam,

re Resource application notified 20 December 2017; notified **19 April 2018 Radically modified plan**

APP.039650.01.01

I have received your advisory on a revised plan for APP.039650.01.01: and a ecology report, that was absent from the notified plan.

namely :

Proposed replacement of a commercial wharf, pontoon and slipway including earthworks and dredging in the Opuia Town Basin, drawn 19 April 2018.

This email is to inform that I considerably more than just object to receiving this revised plan, which in point of fact, is so radically expanded, that it is a new plan.

Isn't this prima facie corruption of the process for managing resource applications and how did this happen?

To explain. These original private marina plans, which my written submission pointed out showed no sign of professional planning, contained errors in the metrics, was devoid of important details, contained 5 sides of A4 which were indecipherable, was unbound, scrambled and without an index page, are now null and void. That's a relief.

Looking at it another way. (which will in the course of time reveal that this application was intended predominantly as a decoy, to distract those preparing the Opuia communities High Court Appeal on the questionable governance at Scmuck /FNDC level).

When an entity applies for resource consent my own experience has taught me that NRC will use best practice through a completeness check list. You stop the clock on processing when deficiencies are found in the completeness of the application. This application, for some reason, was rushed through your check list without its seabed ecology report, devoid of metrics for the volume of the reclamation sought, factual inaccuracy regarding the existing wharf length, etc.

I'm sorry Ms Size. NRC will have to notify this application again once your completeness check list can be signed off, not as has happened here, BEFORE the application is complete.

Why this applicant wasn't told rather smartly, at the outset, that **these resources are spoken for**, is appalling. (circa 1993 Opuia's population claimed the Town Basin as a recreational asset in the face of a similar application. At that time determinedly re directing marina development to use resources not in the Basin). (overlooking the fact that FNH took no notice of this and for itself created a number of exclusive private finger piers in the Basin, off the West of the wharf).

This APP has required a huge reallocation of local personal resources to comprehend, cogitate and regrettably seek a way to wrest control of the narrative from a clearly failed NRC process.

I know enough to know that here, the errors in process are so monumental that the 17 May Hearing will primarily be concerned with exposing why this NRC process has gone so badly wrong.

I apologise for landing this on your head but just copy it on to who ever you think should be shouldering this botched process.

If your NRC is clever it will confront the botched process head on. Inform the applicant to start again. full stop. Any legal challenge to such action is easily defended by NRC taking the step in the previous sentence. Entirely appropriate damage control. thats it from me for now

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