

NORTHLAND REGIONAL COUNCIL
HEARING OF RESOURCE CONSENT APPLICATION BY

DOUGLAS CRAIG SCHMUCK AND INTERESTING PROJECTS LIMITED

MINUTE #5 OF THE HEARING COMMISSIONER

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 a response to my Minute #4A from the Applicants and Mr Hartstone on 11 September 2020.
3. Having read the latest responses, I consider I require further information from the Applicants and possibly also Mr Hartstone because there is uncertainty on whether the application is, or is not, being amended to include the amended pontoon design.

Amended Pontoon Design

4. It is my understanding from the responses received that the pontoon design included in the Application does not provide for casual berthing by the public (or 'reasonable public berthing' as suggested by the Applicants). This understanding is on the basis that if it were provided in the design included in the Application then there would be no need for the Applicants' to provide an amended design which provides for such berthing.
5. Paragraph 12 of Mr Schmuck and Mr and Mrs Kidman's letter (**the Schmuck/Kidman letter**) appears to suggest that I am 'directing' the pontoon must include provision for public berthing. That is not correct, and my Minute #4 does not, in any way, direct that.
6. Further, paragraph 13 of the Memorandum of Counsel states (my emphasis) "*The statement [being the Schmuck/Kidman letter] also addresses the changes that could be made to allow for reasonable public berthing at the marina pontoon. It proposes an additional finger to the existing pontoon to provide for "casual" public berthing of no longer than an hour at any one time, in accordance with a number of proposed conditions. Should that not be acceptable, the applicants will revert to the application as lodged and considered to date."* It is unclear whether or not the Applicants are, in fact, putting forward the amended pontoon design or not. The responses received seem to be asking me to pick one of two options (i.e. the original or the amended pontoon design). I record here that it is up to the Applicants to nominate the proposal (option) for which it is seeking consent – it is not the role of the decision maker to pick between alternatives/options. I require the Applicants to confirm which option it is seeking consent for.
7. In the event the Applicants are putting forward the amended pontoon design, then I request the NRC, through Mr Hartstone, to advise whether the proposed amendment is 'within scope' or not. Mr Hartstone will need to consider the established tests regarding the extent to which changes can be made to applications whilst still being within the scope of the original application as lodged and notified. I am happy to receive Mr Hartstone's advice on this by way of email.
8. In the event that the Applicants are putting forward the amended pontoon design, I question why the Reasonable Public Berthing area on the Total Marine Services Limited drawing (attached to the Schmuck/Kidman letter) is labelled "Marina Berths / Reasonable Public Berthing". The drawing shows two other Marina Berths (as applied for) so it is unclear why the words "Marina Berths" appear beside

“Reasonable Public Berthing” in that area of the pontoon – this may be a typographical error and, if left, adds confusion as it could be construed that there are in fact three marina berths being provided.

9. If I have interpreted the Applicants’ response correctly, a number of additional conditions regarding the use of the amended pontoon design are considered necessary if it is to be consented. The Schmuck/Kidman letter suggests that ‘additional time’ would be needed to draft such conditions. I consider that entirely appropriate if the amended pontoon design is being put forward (and is within scope), however I would request that any such conditions be worked on with input from Mr Hartstone so that they are effective and enforceable – it may well be that other similar facilities are consented in Northland that might include conditions which could be applicable in this context.

Timeframe for Responses

10. The timeframes for responses will depend on whether the Applicants are amending their application to include the amended pontoon design or not. The Applicants shall advise the NRC whether they are putting forward the amended pontoon design or not no later than **4 pm, Tuesday 15 September 2020**, being the same timeframe for Mr Papesch to provide his response to Minute #4A.
11. If the Applicants **are not** amending their application to include the amended pontoon design, then the Applicants’ final comments on Mr Hartstone’s response to Minute #4A shall be provided no later than **4 pm, Friday 18 September 2020**, as previously agreed.
12. If the Applicants **are** amending their application to include the amended pontoon design, then the NRC, through Mr Hartstone, shall advise whether the amended pontoon design is ‘within scope’ or not. This advice shall be provided no later than **4 pm, Wednesday 16 September 2020**.
13. If the NRC considers the amended pontoon design **is not** within scope then the Applicants’ final comments on Mr Hartstone’s response to Minute #4A shall be provided no later than **4 pm, Friday 18 September 2020** (i.e. the same timeframe as outlined in paragraph 11, above).
14. If the NRC considers the amended pontoon design **is** within scope then the Applicants’ final comments on Mr Hartstone’s response to Minute #4A and any additional volunteered conditions relating to the use of the public berthing at the pontoon shall be provided no later than **4 pm, Friday 25 September 2020**. As discussed earlier in this Minute, those conditions shall be discussed with Mr Hartstone and where there is any difference of opinion (or difference in recommended or volunteered conditions) then the reasons for the differences shall be provided by the Applicants and Mr Hartstone.
15. All information and correspondence shall be provided to Ms Sluys who will circulate it to the parties and myself.

DATED 13 September 2020



Dr Rob Loeffering
Independent Hearing Commissioner