

I hereby give notice that a hearing by commissioners will be held on:

Date: Tuesday 10 March 2020
Time: 9.30am
Meeting Room: Boardroom
Venue: Ground Floor, Auckland Town Hall, 301-303 Queen Street, Auckland

HEARING REPORT

**BAYSWATER MARINA, HOBSONVILLE
MARINA AND PINE HARBOUR MARINA**

EMPIRE CAPITAL LIMITED

COMMISSIONERS

Chairperson David Hill
Commissioner Robert Scott

Sam Otter
HEARINGS ADVISOR

Telephone: 09 353 9587 or 021 196 2582
Email: sam.otter@aucklandcouncil.govt.nz
Website: www.aucklandcouncil.govt.nz

WHAT HAPPENS AT A HEARING

At the start of the hearing, the Chairperson will introduce the commissioners and council staff and will briefly outline the procedure. The Chairperson may then call upon the parties present to introduce themselves to the panel. The Chairperson is addressed as Mr Chairman or Madam Chair.

Any party intending to give written or spoken evidence in Māori or speak in sign language should advise the hearings advisor at least five working days before the hearing so that a qualified interpreter can be provided.

Catering is not provided at the hearing. Please note that the hearing may be audio recorded.

The Hearing Procedure

The usual hearing procedure is:

- The applicant will be called upon to present his/her case. The applicant may be represented by legal counsel or consultants and may call witnesses in support of the application. After the applicant has presented his/her case, members of the hearing panel may ask questions to clarify the information presented.
- Should you wish to present written information (evidence) in support of your application please ensure you provide the number of copies indicated in the notification letter.
- Only members of the hearing panel can ask questions about submissions or evidence. No cross-examination is permitted at the hearing.
- After the applicant has presented their case, the chairperson may call upon council officers to comment on any matters of fact or clarification.
- The applicant or his/her representative has the right to summarise the application and reply to matters raised. Members of the hearing panel may ask further questions at this stage.
- The Chairperson then generally closes the hearing and the applicant and their representatives leave the room. The hearing panel will then deliberate “in committee” and make its decision by way of formal resolution.
- Decisions are usually available within 15 working days of the hearing.

A NON-NOTIFIED SECTION 357 APPLICATION BY EMPIRE CAPITAL LIMITED

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	The decisions are available online at the link below and have not been recreated here	
	https://www.aucklandcouncil.govt.nz/have-your-say/hearings/find-hearing/Pages/resource-consent-hearing-documents.aspx?HearingId=267	

Reporting Officer, Robert Andrews

Reporting on an objection to recover costs due to the time taken to process three consents at Bayswater Marina, Hobsonville Marina and Pine Harbour Marina. The reporting officer is recommending, subject to contrary or additional information being received at the hearing, that the objection be **UPHELD IN PART**.

APPLICANT: EMPIRE CAPITAL LIMITED

Report on an objection to additional charges for processing a resource consent application under the Resource Management Act 1991



1. Summary

Objection references:	CST 60337797 (Pine Harbour) CST 60337798 (Bayswater) CST 60337799 (Hobsonville)
Objectors and Date objections received:	Bayswater Marina Limited - 22 September 2109 Hobsonville Marina Limited - 1 October 2019 Pine Harbour Marina Limited - 22 November - 2019
Proposed activity:	Objections to the additional processing costs for three non-notified applications to seek exclusive occupation of the common marine and coastal area (CMCA) over parts of three marinas at Bayswater, Hobsonville and Pine Harbour.

The council has received three objections from David Hollingsworth (Empire Capital Limited) on behalf of the above company applicants under section 357B of the Resource Management Act 1991 ('the Act') to additional charges sought in relation to the processing of the three coastal consents. Although separate applications, decisions and objections, this report covers the objections together as the issues raised are generic to all and discussions and correspondence to date has been on a combined basis.

This report provides relevant background and processing information as well as comment on the grounds of the objections. The processing fees combined are **\$52,509.74** of which **\$12,000.00** was paid as three \$4,000 fixed deposits at the time of lodgement. The overall balance of **\$40,509.74** was invoiced and remains outstanding. Correspondence and discussion by phone and various emails has sought to settle the concerns raised. A hearing was requested if settlement was not possible. This now provides the objector the opportunity to state why they consider the outstanding costs to be unreasonable. This report primarily presents the correspondence and information required for the hearing commissioners to make an informed decision on the objection. The recommendation of this report is to uphold the objection in part.

2. Objection

The three separate notices of objection are provided as **Attachment A**. These were received within the required 15 working day period from the date of invoice. No specific amount of reduction is sought. However, the objections seek significant reduction to a range of processing costs associated with the three reporting planners' case management and

reporting times and the specialist review. In summary, across the three objections I consider these to raise the following concerns;

- (i) The approach by council to have the three applications processed by three separate planners and hence the trebling of charges associated with combined meetings of the planners with the coastal specialist.
- (ii) hourly rates for the reporting planners are too high and/or not commensurate to the officer's inexperience and knowledge of coastal matters.
- (iii) No justification for an engineer or Parks officer review.
- (iv) Section 92 preparation times and peer review times are high.
- (v) The Bayswater consent was effectively an extension of an existing consent that was processed for less than \$5,000 in 2014.
- (vi) The time of the specialist input charges.

A response to the matters raised in the objection are summarised in my various emails provided with **Attachment B**. As part of my cost review I have liaised with council's specialist peer reviewer and two of the reporting planners. I have not meet with the objector. Following my review, a settlement offer, and subsequent counteroffer were provided. As these were on a without prejudice basis, the specific offers have been redacted from the correspondence.

3. Application and invoicing history

The application and AEE for Pine Harbour Marina are provided as **Attachment C**. Those lodged for the Hobsonville and Bayswater marinas are similar in approach and content.

The applications were invoiced separately following the release of separate decisions on each application. The dates and times of the individual tasks undertaken by council's reporting team that have been charged to the applicant are detailed in the invoices and charge sheets provided within **Attachment D**.

A summary of the invoices is;

Application	Total cost	owing	Comment
Pine Harbour CST 60337797	\$21,668.38	\$17,668.38	<ul style="list-style-type: none"> • Includes \$1,233.38 duty commissioner covering the three decisions
Bayswater CST 60337798	\$ 9,815.86	\$ 5,815.86	<ul style="list-style-type: none"> • Subject to 3% late processing discount (\$303.64)
Hobsonville CST 60337799	\$21,025.50	\$17,025.50	<ul style="list-style-type: none"> • No standard administration, document or monitoring fee charged
	_____	_____	
	\$52,509.74	\$40,509.74	

4. Statutory context

Section 36 of the RMA entitles the council to fix charges to recover costs of processing a resource consent application and additional charges where the fixed charge is inadequate:

36 (1) *A local authority may from time to time fix charges of all or any of the following kinds:*

...

(b) *Charges payable by applicants for resource consents, for the carrying out by the local authority of any 1 or more of] its functions in relation to the receiving, processing, and granting of resource consents:*

(c) *charges payable by holders of resource consents, for the carrying out by the local authority of its functions in relation to the administration, monitoring, and supervision of resource consents ..., and for the carrying out of its resource management functions under section 35:*

Section 36 (5) to (7) covers those situations that where the fixed charge is inadequate and entitles the council to fix additional charges in order to recover its actual and reasonable costs. These relevant sections state:

Additional charges

36 (5) *Except where regulations are made under section 360F, if a charge fixed under this section is, in any particular case, inadequate to enable a local authority to recover its actual and reasonable costs in respect of the matter concerned, the local authority may require the person who is liable to pay the charge to also pay an additional charge to the local authority.*

(6) *A local authority must, on request by any person liable to pay a charge under this section, provide an estimate of any additional charge likely to be imposed under subsection (5).*

(7) *Sections 357B to 358 (which deal with rights of objection and appeal against certain decisions) apply in respect of the requirement by a local authority to pay an additional charge under subsection (5).*

Further to the above Section 36AAA sets out the matters that the council must have regard to when fixing charges. This applies to both a fixed charge set in advance, such as a deposit covered by the council's schedule of fees and charges, and any additional charge.

'Section 36AAA Criteria for fixing administrative charges' states;

36AAA (1) *When fixing charges under section 36, a local authority must have regard to the criteria set out in this section.*

(2) *The sole purpose of a charge is to recover the reasonable costs incurred by the local authority in respect of the activity to which the charge relates.*

(3) *A particular person or particular persons should be required to pay a charge only—*

(a) *to the extent that the benefit of the local authority's actions to which the charge relates is obtained by those persons as distinct from the community of the local authority as a whole; or*

(b) *where the need for the local authority's actions to which the charge relates results from the actions of those persons*

‘Section 36AAB Other matters relating to administrative charges’ states;

36AAB (1) A local authority may, in any particular case and in its absolute discretion, remit the whole or any part of any charge of a kind referred to in section 36 that would otherwise be payable.

Section 357B of the RMA provides applicants with the right to object to an additional charge:

357B There is a right of objection,—

(a) for a person required by a local authority to pay an additional charge under section 36(5) ... to the local authority in respect of that requirement:

Section 357D of the RMA sets out the range of actions the council may take when considering an objection to additional charges:

357D (1) The person or body to which an objection is made under sections 357 to 357B may—

(a) dismiss the objection; or

(b) uphold the objection in whole or in part; or

(c) in the case of an objection under section 357B(a), as it relates to an additional charge under section 36(5), remit the whole or any part of the additional charge over which the objection was made.

NB: The provisions of Section 36 were amended on 9 April 2017 by section 20(1) and 20(3) of the Resource Legislation Amendment Act 2017. The amended provisions noted above are relevant to this objection. In brief the relevant Section 36 provisions have not changed but were repackaged into different sections.

5. Analysis

In *Hill Country Corporation v Hastings District Council*¹, the High Court confirmed the section 36 process that a council should follow as comprising several steps.

Using steps can be used to analyse any deficiencies in the council's actions to which the charges relate. The steps are;

- i. What are its actual costs incurred in relation to the activity (including costs charged to it by external consultants)?*
- ii. Are those costs reasonable in relation to the activity, that is, do they meet the section 36(4)(a) threshold?*
- iii. Are those costs satisfied by the fixed charge?*
- iv. If not, what “additional charge” should be levied to recover the balance of the actual and reasonable costs?*

The total processing cost was **\$52,509.74**. Acknowledging the \$12,00.00 deposit, a balance of **\$40,509.74** inclusive of GST remains to be paid.

¹ Hill Country Corporation v Hastings District Council [2010] NZRMA 539 (HC).

In *Barton v Wellington Regional Council*², the Environment Court described “reasonable” to be a genuine and intelligent assessment and subsequent decision on the resources required to deal with the issue at hand³.

The work and times of council’s reporting planners, coastal specialist and peer reviewers were resources required to assess the resource consent applications.

Given the scope of the proposal and the issues involved, these resources in terms of the work and time taken were, in my opinion, reasonably required. The time spent by each staff member can be found in the timesheets and invoices (**Attachment D**). Further I have analysed the particular issues raised by the objector and explained these costs within my email responses. I will not repeat those here however in summary my considerations are;

- (1) Allocating the applications that allowed the opportunity for separate reporting planners to process coastal consents, still involved co-ordinating combined meetings, the division of tasks and a single specialist report. These were all reasonable and typical means of processing such applications and therefore the charges associated with these tasks are not unreasonable. That said, as offered in my correspondence, removing 30 hours of the planners’ reporting times would fully address the argued assessment and report duplication or any learning component.
- (2) The published planner hourly rates are set through a public process and are beyond the scope of an objection process.
- (3) The specialist assessment, meeting and reporting times are divided equally between the consents and are justifiable and reasonable.
- (4) The review costs by the engineer and parks officer were justifiable and generally quite minimal.
- (5) Where charged, the time associated with dealing with legal matters and third parties raising concerns over the proposed exclusive occupation were actions directly related to the applications being processed. The applicant was the sole beneficiary of the consent processing and not the council or third parties. In particular, the necessarily comprehensive notification reporting in part sought to ensure that the assessments were robust and beyond challenge. I consider it realistic that an applicant accepts the reasonableness of this approach when seeking applications to proceed without notice.
- (6) That 50 minutes recorded as administration and charged at \$192.00 and \$195.00 (most likely by the Pine harbour senior planner) could be removed if there was doubt from the task description that it may have been undertaken by one of the administrators.

The planners’ s95 notification reports and decision recommendation reports with conditions comprise, 24 pages (Pine harbour) 24 pages (Bayswater) and 23 pages (Hobsonville). For the type of application and matters needing to be addressed, these lengths reflect what is quite standard and the different planning history and environments of the three marinas. While comprehensive, these reports are not an over assessment or duplication and evidence

² Barton v Wellington Regional Council [2004] NZRMA 337 (EnvC).

³ *Ibid* para 18.

the times and costs that the reporting planners needed to expend in undertaking these statutory processes. The resultant overall processing costs charged are not unusual for applications that raised issues with elected members and a marina users group and in many ways reflected the unusual nature of the applications sought.

The planner reports are provided in **Attachment E** and the Coastal Specialist report as **Attachment F**.

Regarding the current case law approach, I consider that the officer hours under objection are solely attributed to the applications lodged and as occasioned by the applicant. The council cannot refuse to process an application that is accompanied by sufficient information and the appropriate deposit paid. The extent of the benefit of the council's actions in processing the applications fall solely to the applicant as there was no public gain to the wider community. The council's process and reporting response equates to the level of information and matters that needed to be addressed.

Overall discretion

The *Hill Country* approach acknowledges the 'user pay' approach to consent processing and where the criteria of (now section 36AAA) are met and costs invoiced found to be reasonable, then there would typically be no reason for the Section 36AAB(1) absolute discretion to be exercised. My review considered that the costs invoiced by the individual planners are reasonable however acknowledged that on a combined approach the reporting component could be reduced as part of an offer to settle the objections.

A 2017 High Court decision *Porirua v Ellis* infers that it is fair that charges are given a wider consideration as to whether or not they are found to be actual and reasonable under the consideration of Sections 36 of the Act. The objector questions the overall costs compared to what they perceive as a similar application lodged in 2014, failing to acknowledge the considerable change in the planning framework through the introduction of the AUP(OP). Further the objection notes that \$52,509.74 reflects "*being charged three times what we should be*" "*a three times learning process at our expense*" and being "*a grossly inefficient way to deal with the same applications*".

The *Ellis* case considered whether the overall costs were out of the ordinary or disproportionate to the scale and benefit to the applicant as derived from the consents. I do not find that to be the situation assuming the marina assets of the applicant company.

The planners' case management and reporting times are not surprising for processing otherwise untypical types of applications.

6. Conclusion

The actual times spent on the assessments of these applications, to address matters as they arose are reasonable. Given the nature of the sites, the proposals and the events that transpired, I find across the three consents that the **\$40,509.74** additional times and cost as fixed as being true and reasonable.

There is always an argument that the processing could have been more efficient, require less planners, specialist reporting, case management and should not be above the applicant's own planner's costs. However, given an overall judgement as to whether the actions of council staff and consultants and subsequent costs were reasonable, I believe these to be so. Staff have remained focussed solely on the councils' statutory audit and reporting role.

If the commissioners were to consider that some leniency should be provided regarding council's overall discretion, that may be focused towards parts of the reporting associated with the Hobsonville and Pine Harbour applications. However, any combined reduction in this regard I consider should still be quite minor as the reports themselves are not unreasonable and involved separate reporting on separate applications. My recommendation reflects that approach.

7. Recommendation

That, subject to evidence presented at the hearing, pursuant to section 357D of the Resource Management Act 1991, the independent commissioners **uphold in part** the objection by David Hollingsworth (Empire Capital Limited) to the resource consent application processing costs for applications CST 60337797, CST 60337798 and CST 60337799 at Pine Harbour Marina, Bayswater Marina and Hobsonville Marina respectively. The overall costs are reduced by **\$5,850** being the equivalent of 30 hours of planner reporting time and leaving an overall balance of **\$34,659.74** to pay. The reasons for this decision are:

- Council's reporting planners' costs were an appropriate application of resources to deal with the three applications given the issues that were identified.
- Council sought to limit overall costs through combined meetings and division of tasks such as a single section 92 and dealing with public queries. The specialist reporting covered the factual requirement of the application to the depth required
- All elements of the processing directly relate to actions occasioned by the applicant. They are found to be solely for the benefit of the applicant and not the wider community.
- While the costs associated with separate reporting on separate application is reasonable some overall consideration has been provided in terms of the reporting times for the Pine Harbour and Hobsonville applications.
- The costs otherwise are not out of the ordinary or disproportionate relative to the benefit derived from the consents obtained. When charging these additional fixed costs, there are no other reasons as to why the council should consider the use of its overall discretion under section 36AAB(1) of the Act.

Attachments

Attachment A	Notices of objection
Attachment B	Correspondence on the objections
Attachment C	Application and AEE Pine Harbour
Attachment D	Council's invoices and timesheets
Attachment E	Council's s95 and s104 reports and decisions.
Attachment F	Coastal Specialist report
Attachment G	Links to the High Court decisions <i>Hill Country Corporation v Hastings District Council</i> and <i>Porirua City v Ellis</i> ; and Environment Court decision

Barton v Wellington Regional Council to be separately sent to objector and commissioners prior to the hearing



Report prepared by:
February 2020

5

Robert Andrews - Principal Specialist Planner



Report reviewed by:

12 February 2020

James Dowding – Manager Resource
Consents -South

ATTACHMENT A
NOTICES OF OBJECTION

Robert Andrews

From: Robert Andrews
Sent: Wednesday, 5 February 2020 2:00 PM
To: Robert Andrews
Subject: FW: CST60337797 - Final Invoice - 190 Jack Lachlan Dr Beachlands
Attachments: CST60337797 Final Invoice to be Paid.pdf

From: David Hollingsworth <david@empirecapital.co.nz>
Sent: Friday, 22 November 2019 8:34 AM
To: Rohin Khalil <Rohin.Khalil@aucklandcouncil.govt.nz>
Cc: craigshearer@xtra.co.nz; Pine Harbour Accounts <karen@pineharbour.co.nz>
Subject: RE: CST60337797 - Final Invoice - 190 Jack Lachlan Dr Beachlands

Hi Rohin,

I wish to lodge an objection under s357B of the Resource Management Act to the above invoice for the processing of the application for exclusive occupation at Pine Harbour Marina.

I have a number of concerns in respect of these charges:

- We have been charged Administration at \$192 per hour. According to the Council website, Administration work for a resource consent should be levied at \$111 per hour. This is the rate after 1 July 2019, so presumably a lesser rate applied before then.
- Work carried out by the Planner was charged at \$192 per hour up to 1 July 2019, and then \$195 per hour. According to the Council website, Planners should be charging \$168 per hour from 1 July.
- The rate of \$195 per hour is listed as being carried out by a Senior, Intermediate, Principal, or Team Leader.
- The Planner used in the consent application – Rashida Sahib – would appear to be very inexperienced, particularly in coastal matters, had probably never processed a coastal consent before, and should actually be charged at a much lower rate than \$168. It became apparent over a number of meetings and conversations that Rashida had no knowledge of any matter or issue relating to this application. The Planner spending 84 or so hours processing the application, and also needing the advice of a specialist who allocated 13 hours to the application reinforces the junior nature of the processing Planner. Not only is this double dipping, we are in effect paying for the Planner's education;
- There is no justification for an Engineers assessment, or a review of the application by Parks – there was no engineering or parks component to the consent application;
- This application was in essence an extension of an existing consent. It was non-notified, resulting in the extension by around 8 years of the existing occupation consent provisions. This was not a major application – to have spent some 84 hours by the Planner, and around 13 hours by a Specialist, is not acceptable.
- It would appear we were charged less than \$5,000 for a similar consent granted to Hobsonville Marina in 2014;
- Council elected to have the three applications processed by three separate Planners. It is therefore unacceptable to have incurred several hours, and it would appear to have been at least 500 minutes, meeting and discussing the applications across these different Planners, in effect charging treble;
- A very long time appears to have been spent on preparing the S. 92 questions, including up to 120 minutes attending a meeting with two other planners on the 26th of July on s92;
- Given all the meetings with other planners and the specialist, is 290 minutes on a peer review appropriate? Who was the peer? What qualifications and experience did they have? I would query 170 minutes discussing the peer review with the team leader and amending report.

In respect of Specialist Input, I am querying:

- 90 minutes Assessment and writing on 17 May – I note we are also charged assessment and writing by the Planner;
- 90 minutes to print and review an application – it was not that substantial an application, and also duplicates the work carried out by the Planner;
- 90 minutes to recreate a map and some writing on 17 May?
- What is 60 minutes on advice on 31 May, plus 50 minutes meeting with Planners? Was 330 minutes spent in total, or was it 110 minutes charged to three entities?
- Please explain the 210 minutes by the Specialist to draft the memo?

In summary, we will end up being charged three times what we should be, for example, did the Specialist spend 450 minutes on the 14th and 15th of August drafting the tech memos? And if so, why are we then charged for 260 minutes for assessment and report writing on the 23rd of August? We have been told that all three staff were novices in this field, therefore a three times learning process at our expense. This is a grossly inefficient way to deal with the same applications, and has added considerably to the cost. The heavy dependence on a “specialist” confirms their inexperience and inappropriateness for this job.

Kind regards,

David Hollingsworth | CEO
EMPIRE CAPITAL
 LIMITED

M: +64 21 190 3677

E: david@empirecapital.co.nz

W: empirecapital.co.nz

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From: Rohin Khalil <Rohin.Khalil@aucklandcouncil.govt.nz>
Sent: Thursday, 21 November 2019 9:54 a.m.
To: Pine Harbour Accounts <karen@pineharbour.co.nz>; David Hollingsworth <david@empirecapital.co.nz>
Cc: craigshearer@xtra.co.nz
Subject: CST60337797 - Final Invoice - 190 Jack Lachlan Dr Beachlands

Dear sir/madam,

RESOURCE CONSENT APPLICATION –INVOICE ADVICE

The decision on your resource consent application has been finalised.

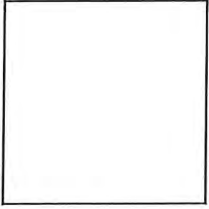
Attached is your debit note for charges relating to the processing of the above application.

Payment options are detailed on the reverse of the debit note.

Thank you in advance for your payment.

Nāku noa, nā,
 Regulatory Support
 Resource Consents
 Auckland Council

Visit our website: www.aucklandcouncil.govt.nz



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From: David Hollingsworth <david@empirecapital.co.nz>
Sent: Friday, 20 September 2019 11:40 AM
To: Nick McCool <Nick.McCool@aucklandcouncil.govt.nz>
Cc: 'Craig Shearer' <craig@craigshearer.co.nz>
Subject: RE: CO27301118207 BP2650003220 Bayswater Marina Limited CST60337798 21 Sir Peter Blake Parade Bayswater 0622

Hi Nick,

I have a number of concerns in respect of these charges:

- We have been charged Administration at \$192 per hour. According to the Council website, Administration work for a resource consent should be levied at \$111 per hour. This is the rate after 1 July 2019, so presumably a lesser rate applied before then.
- Work carried out by the Planner was charged at \$192 per hour up to 1 July 2019, and then \$195 per hour. According to the Council website, Planners should be charging \$168 per hour from 1 July.
- The rate of \$195 per hour is listed as being carried out by a Senior, Intermediate, Principal, or Team Leader. The Planner used in the consent application – Yuto Tsuchiya – is very inexperienced, needed regular education on coastal matters, had probably never processed a coastal consent before, and should actually be charged at a much lower rate than \$168. It became apparent over a number of meetings and conversations that Yuto had no knowledge of any matter or issue relating to this application. The Planner spending 35 hours processing the application, and also needing the advice of a specialist who allocated 13.5 hours to the application reinforces the junior nature of the processing Planner. Not only is this double dipping, we are in effect paying for the Planner's education;
- There is no justification for an Engineers assessment – there was no engineering component to the consent application;
- This application was in essence an extension of an existing consent. It was non-notified, resulting in the extension by 5 years of the existing occupation consent provisions. This was not a major application – to have spent some 35 hours by the Planner, and around 13 hours by a Specialist, is not acceptable.
- It would appear we were charged less than \$5,000 for the same consent granted on 2014;
- Council elected to have the three applications processed by three separate Planners. It is therefore unacceptable to have incurred several hours, and it would appear to have been at least 8, in meeting and discussion the applications across these different Planners, in effect charging treble;
- I note a charge for reviewing the legal advice re Empowerment Act – Bayswater does not have an Empowerment Act;
- A very long time appears to have been spent on preparing the S. 92 questions, including 100 minutes attending a meeting on s92;
- I would query 250 minutes on a team leader review.

In respect of Specialist Input, I am querying:

- A 60 minute discussion with team leader;
- A 60 minute discussion with Principal Planner;
- What is 60 minutes on advice on 31 May, plus 50 minutes meeting with Planners?
- How can the Specialist spend 60 minutes on s.92, on top of the time spent on that by the Planner. Have we in effect been charged \$390 per hour for the s.92 questions.
- 300 minutes by the Specialist to draft the memo?

- Has this 300 minutes also been charged to Hobsonville and Pine Harbour?

I have yet to receive the fees assessment for the other two applications, and I am very concerned that in a number of the items I have mentioned above, we will end up being charged three times what we should be, for example, will I see another 600 minutes for the memo drafting by the Specialist? We have been told that all three staff were novices in this field, therefore a three times learning process at our expense. This is a grossly inefficient way to deal with the same applications, and has added considerably to the cost. The heavy dependence on a "specialist" confirms their inexperience and inappropriateness for this job.

I note our Consultant spent 24 hours preparing the application, a far more complicated and time consuming activity than the processing of it.

Can you please review this invoice and reduce it to a level more commensurate with the amount of work required to complete it. If this invoice cannot be reduced to a reasonable level then I will be requesting a hearing be set up to assess and hear evidence on this invoice.

Kind regards,

David Hollingsworth | CEO
EMPIRE CAPITAL
LIMITED

M: +64 21 190 3677

E: david@empirecapital.co.nz

W: empirecapital.co.nz

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From: Nick McCool <Nick.McCool@aucklandcouncil.govt.nz>

Sent: Wednesday, 18 September 2019 11:09 a.m.

To: David Hollingsworth <david@empirecapital.co.nz>

Subject: RE: CO27301118207 BP2650003220 Bayswater Marina Limited CST60337798 21 Sir Peter Blake Parade Bayswater 0622

Hi David

You will need to provide further information to enable council to undertake a fee review, i.e. are there any specific aspects which seem too high?

A number of s37 extensions were granted MACA consultation etc so the working day calculation appears correct. Do you have any information to the contrary?

The specialist time relates to the coastal specialist managed by Andrew Benson.

Are you also querying the fees associated with the other two applications?

Regards

**Nick McCool | Team Leader | Takapuna / Devonport Area
Resource Consents | North-West**

Ph 09 301 0101 | Extn (44) 3422 | DDI 09 427 3422

Auckland Council, Graham St Service Centre, Level 2, 35 Graham Street

Visit our website: www.aucklandcouncil.govt.nz

Robert Andrews

From: Chantelle Williams
Sent: Tuesday, 15 October 2019 10:22 AM
To: David Hollingsworth
Subject: S357 Objection - Resource Consent Invoice due for payment - 18 Clearwater Cove - Application: CST60337799

Good Morning David

We acknowledge receipt of your s357 Objection for the above resource consent application.

With right of objections against certain decision/s or conditions, this will be considered and processed within the next 20 working days. Should this objection proceed to hearing, at least 5 working days' written notice will be given to the objector of the date, time, and place for a hearing. As a reminder we also note that no work should commence until this objection has been resolved or withdrawn pursuant to s116 of the RMA.

We will review and respond to this objection as soon as reasonably practicable. Should this objection proceed to hearing, at least 5 working days written notice will be given to the objector of the date, time, and place for a hearing. Pursuant to section 116 of the RMA, this consent (or any part thereof) shall not commence until such time as all charges pursuant to section 36 of the RMA, owing at the time of Council's decision is notified, are paid in full to the Council. Thus any objections will be considered on a "without prejudice" basis.

If you have any queries regarding your objection or the process, please contact the Hearings and Resolutions officer for the West area by email clarke.mckinney@aucklandcouncil.govt.nz or phone 09 892-4292 if you wish to discuss further.

Please note that we are currently experiencing delays in processing, however we will endeavour to process your objection as quickly as possible.

Kind Regards

Chantelle Williams | Regulatory Support Officer(NW1)
Phone (09) 301 0101 | DDI: (09) 301 0101 | Extn: (42) 8530
Auckland Council, Level 2, 6 Henderson Valley Road, Henderson
Private Bag 92300, Auckland 1142

Visit our website: www.aucklandcouncil.govt.nz



From: Raj Thimmy Chettiar Subramanya <raj.thimmychettiarsubramanya@aucklandcouncil.govt.nz>
Sent: Tuesday, 1 October 2019 8:05 AM
To: RRegulatorysupport henderson <rregulatorysupporthenderson@aucklandcouncil.govt.nz>
Subject: QUERY: CCM - CO 27301118215 - Resource Consent Invoice due for payment - 18 Clearwater Cove - Application: CST60337799
Importance: High

Hi Team,

We have received below query from customer towards the attached RC invoice.

Please contact customer with regards to his query and keep me updated on this.

Thank you.

Regards,

Sucheendran Raj

Credit Control | Financial Transactions

Treasury & Financial Transactions

Ph 09 977 1692 | Extn 461692



Visit our website: www.aucklandcouncil.govt.nz

Email: creditcontrolnonrates@aucklandcouncil.govt.nz

From: David Hollingsworth <david@empirecapital.co.nz>

Sent: Monday, 30 September 2019 5:04 PM

To: Raj Thimmy Chettiar Subramanya <raj.thimmychettiarsubramanya@aucklandcouncil.govt.nz>

Cc: Sue Ensor <sue@hobsonvillemarina.co.nz>; 'Craig Shearer' <craig@craigshearer.co.nz>

Subject: RE: CCM - CO 27301118215 - Resource Consent Invoice due for payment - 18 Clearwater Cove - Application: CST60337799

Hi Raj,

Further to our phone conversation this morning, I wish to lodge an objection under s357B of the Resource Management Act to the above invoice for the processing of the application for exclusive occupation at Hobsonville Marina.

The reasons for my objection are:

- We have been charged Administration at \$192 per hour. According to the Council website, Administration work for a resource consent should be levied at \$111 per hour. This is the rate after 1 July 2019, so presumably a lesser rate applied before then.
- Work carried out by the Planner was charged at \$192 per hour up to 1 July 2019, and then \$195 per hour. According to the Council website, Planners should be charging \$168 per hour from 1 July.
- The rate of \$195 per hour is listed as being carried out by a Senior, Intermediate, Principal, or Team Leader. The Planner used in the consent application is very inexperienced, needed regular education on coastal matters, had probably never processed a coastal consent before, and should actually be charged at a much lower rate than \$168. It became apparent over a number of meetings and conversations that the planner had no knowledge of any matter or issue relating to this application. The Planner spending 90 hours processing the application, and also needing the advice of a specialist who allocated 16 hours to the application reinforces the junior nature of the processing Planner. Not only is this double dipping, we are in effect paying for the Planner's education;
- There is no justification to involve a subdivision officer – it was a coastal permit;
- This application was in essence an extension of an existing consent. It was non-notified, resulting in the extension by 5 years of the existing occupation consent provisions. This was not a major application – to have spent some 90 hours by the Planner, and around 16 hours by a Specialist, is not acceptable.
- It would appear we were charged less than \$5,000 for the same consent granted on 2014;
- Council elected to have the three applications processed by three separate Planners. It is therefore unacceptable to have incurred several hours, and it would appear to have been at least 8, in meeting and discussion the applications across these different Planners, in effect charging treble;

- A very long time appears to have been spent on report writing;
- 82 minutes on creating a “one drive link” including time on the computer not working!
- This was not a notified consent, yet a huge amount of time and expenses was incurred on the back of a letter from the public.

In respect of Specialist Input, I am querying:

- 240 minutes tech memo writing;
- What is 60 minutes on advice on 31 May, plus 50 minutes meeting with Planners? I note exactly the same was charged to Bayswater – triple dipping?
- I note tech memo drafting on 14/08/2019 – 60 minutes Hobsonville, 90 minutes Bayswater;
- 300 minutes by the Specialist to draft the memo at Bayswater, this also appears to have been charged to Hobsonville.

I have yet to receive the fees assessment for the Pine Harbour application, and I am very concerned that in a number of the items I have mentioned above, we will end up being charged three times what we should be, for example, will I see another 300 minutes for the memo drafting by the Specialist? We have been told that all three staff were novices in this field, therefore a three times learning process at our expense. This is a grossly inefficient way to deal with the same applications, and has added considerably to the cost. The heavy dependence on a “specialist” confirms their inexperience and inappropriateness for this job.

I note our Consultant spent 24 hours preparing the application, a far more complicated and time consuming activity than the processing of it.

Can you please review this invoice and reduce it to a level more commensurate with the amount of work required to complete it. If this invoice cannot be reduced to a reasonable level then I will be requesting a hearing be set up to assess and hear evidence on this invoice.

Kind regards,

David Hollingsworth | CEO
EMPIRE CAPITAL
 LIMITED

M: +64 21 190 3677

E: david@empirecapital.co.nz

W: empirecapital.co.nz

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From: Raj Thimmy Chettiar Subramanya <raj.thimmychettiar@ AucklandCouncil.govt.nz>

Sent: Monday, 30 September 2019 12:14 p.m.

To: David Hollingsworth <david@empirecapital.co.nz>

Cc: Sue Ensor <sue@hobsonvillemarina.co.nz>

Subject: CCM - CO 27301118215 - Resource Consent Invoice due for payment - 18 Clearwater Cove - Application: CST60337799

Importance: High

Hi David,

Thank you for your time over the phone today.

As discussed please email me the reason as why you are disputing the attached invoice and I will get it answered from our Resource Consent team.

Please email me ASAP to hold the collection activity.

Thank you.

Regards,

Sucheendran Raj
Credit Control | Financial Transactions
Treasury & Financial Transactions
Ph 09 977 1692 | Extn 461692



Visit our website: www.aucklandcouncil.govt.nz

Email: creditcontrolnonrates@aucklandcouncil.govt.nz



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ATTACHMENT B
CORRESPONDENCE ON THE OBJECTIONS

Robert Andrews

From: Robert Andrews
Sent: Tuesday, 28 January 2020 11:21 AM
To: 'David Hollingsworth'
Cc: 'craigshearer@xtra.co.nz'; James Dowding; Ian Dobson
Subject: RE: CST60337797 - Final Invoice - 190 Jack Lachlan Dr Beachlands 1
Attachments: Specialist Memo Kala Sivaguru.pdf

Hi David,

Thank you for the response below and our discussion earlier this morning.

I appreciate that both are willing to continue to seek a resolution through further discussion of the objection. However the difference in the suggested settlements is substantial and that appears to leave us with your email of 17th December 2019 that notes; "I therefore confirm our request to have these reviewed at an independent hearing."

In terms of council's assessment of what is reasonable, an offer much below the current without prejudice offer of [REDACTED] already made cannot be justified. Without seeking to prevent further discussion I will arrange for the matter to proceed to a hearing and suggest a date in the first week of March. Typically these hearings take a few hours and will be arranged for mid-morning at a city venue. Can you please inform us what day in the week of the 2nd March will suit. Our hearings team will confirm the date, time and venue for the hearing two weeks prior. I confirm that the hearing will be at no cost to you.

As mentioned this morning my approach will be to provide a brief report to the independent hearing commissioner(s) and include those parts of the email correspondence that already have sent out the councils position. (emails of 11th and 19th December 2019) As this correspondence and the settlement offers were on a without prejudice basis can you please confirm that you agree for this to be provided to the independent commissioners. If not I will redact the settlement offers and offer in response from the correspondence.

Further, please see copy of the specialist report that you wished to review. Copies of planners' reports, the application, timesheets and invoices will also be placed on the hearing agenda.

I look forward to your response.

Ngā mihi | Kind regards
Robert

Robert Andrews | Principal Specialist – Planning
Southern Resource Consenting - Auckland Council
Mob: 027 485 4390 | Email: robert.andrews@aucklandcouncil.govt.nz
Level 3 Kotuku House, 4 Osterley Way, Manukau
Visit our website: www.aucklandcouncil.govt.nz

From: David Hollingsworth <david@empirecapital.co.nz>
Sent: Friday, 24 January 2020 3:35 PM
To: Robert Andrews <Robert.Andrews@aucklandcouncil.govt.nz>
Cc: 'craigshearer@xtra.co.nz' <craigshearer@xtra.co.nz>; James Dowding <James.Dowding@aucklandcouncil.govt.nz>; Ian Dobson <Ian.Dobson@aucklandcouncil.govt.nz>
Subject: RE: CST60337797 - Final Invoice - 190 Jack Lachlan Dr Beachlands

Hi Robert,

Trust you have had a good Christmas and New Year's.

For the reasons outlined in our objections to the amounts charged, we do not feel the offer to reduce the charges by ~~40,000~~ is acceptable, therefore your offer is rejected.

Having said that, we too would prefer to reach an acceptable settlement without proceeding to hearing.

On a without prejudice basis and without Council seeking to justify a cost reduction offer in any manner, we would accept as full and final settlement of these objections, revised invoices of ~~15,000~~ per marina (~~15,000~~ in total).

I look forward to your response.

Kind regards,

David Hollingsworth | CEO
EMPIRE CAPITAL
LIMITED

M: +64 21 190 3677

E: david@empirecapital.co.nz

W: empirecapital.co.nz

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From: Robert Andrews <Robert.Andrews@aucklandcouncil.govt.nz>

Sent: Wednesday, 15 January 2020 8:31 a.m.

To: David Hollingsworth <david@empirecapital.co.nz>

Cc: craigshearer@xtra.co.nz; James Dowding <James.Dowding@aucklandcouncil.govt.nz>; Ian Dobson <Ian.Dobson@aucklandcouncil.govt.nz>

Subject: RE: CST60337797 - Final Invoice - 190 Jack Lachlan Dr Beachlands

Hello David,

Re Cost Objections: Three marina exclusive use applications.

I hope that the New Year finds you well.

I wish to follow up with you as to whether the offer to settle you marina cost objections provided on 19th December 2019 is acceptable.

My preference will be an agreement without the need of a hearing and please feel free to discuss this matter further with me.

However if you prefer is for these objection to be heard, I will be keen to know as soon as possible so that this can be timetabled for the following month.

Kind regards

Robert Andrews

Robert Andrews | Principal Specialist – Planning

Southern Resource Consenting - Auckland Council

Mob: 027 485 4390 | Email: robert.andrews@aucklandcouncil.govt.nz

Level 3 Kotuku House, 4 Osterley Way, Manukau

Visit our website: www.aucklandcouncil.govt.nz

From: Robert Andrews
Sent: Friday, 20 December 2019 10:28 AM
To: David Hollingsworth <david@empirecapital.co.nz>
Cc: craigshearer@xtra.co.nz; James Dowding <James.Dowding@aucklandcouncil.govt.nz>; Ian Dobson <Ian.Dobson@aucklandcouncil.govt.nz>
Subject: RE: CST60337797 - Final Invoice - 190 Jack Lachlan Dr Beachlands

Hi David,

Thank you for your response. We are happy to delay any further consideration until the New Year.

I will be back in the office from 6th January and it will be good within the first two weeks back to confirm whether a settlement can be agreed or whether setting the objections down for a hearing is still required.

Kind regards

Robert Andrews
0274854390

From: David Hollingsworth <david@empirecapital.co.nz>
Sent: Thursday, 19 December 2019 9:37 PM
To: Robert Andrews <Robert.Andrews@aucklandcouncil.govt.nz>
Cc: craigshearer@xtra.co.nz; James Dowding <James.Dowding@aucklandcouncil.govt.nz>; Ian Dobson <Ian.Dobson@aucklandcouncil.govt.nz>
Subject: Re: CST60337797 - Final Invoice - 190 Jack Lachlan Dr Beachlands

Hi Robert, I ~~will not be able to accept your offer~~ and won't be able to consider your offer for a few weeks.

Regards,

Dave Hollingsworth
+64 21 1903677

On 19/12/2019, at 5:14 PM, Robert Andrews <Robert.Andrews@aucklandcouncil.govt.nz> wrote:

Hi David,

It is not council practice to reduce the processing costs invoiced just as a means of avoiding a cost objection hearing. However we are willing to provide a further settlement offer if that is to lead to a quick resolution of these three marina cost objections.

On a without prejudice basis and without seeking to justify a cost reduction offer in any manner, the council as full and final settlement of these objections, offers to reduce the total of the three invoices by ~~the amount of the three invoices~~.

The offer will be subject please to receiving your acceptance by return email before the close of council offices for 2019, being 12.00 noon on Tuesday 24th December 2019.

We look forward to hearing back from you.

Ngā mihi | Kind regards
Robert

Robert Andrews | Principal Specialist – Planning
Southern Resource Consenting - Auckland Council
Mob: 027 485 4390 | Email: robert.andrews@aucklandcouncil.govt.nz
Level 3 Kotuku House, 4 Osterley Way, Manukau
Visit our website: www.aucklandcouncil.govt.nz

From: David Hollingsworth <david@empirecapital.co.nz>
Sent: Wednesday, 18 December 2019 12:07 PM
To: Robert Andrews <Robert.Andrews@aucklandcouncil.govt.nz>
Cc: 'craigshearer@xtra.co.nz' <craigshearer@xtra.co.nz>
Subject: RE: CST60337797 - Final Invoice - 190 Jack Lachlan Dr Beachlands

Thanks Robert,

Whilst we are happy to enter into a discussion about the charges outside of the hearing, I'm of the same view as Craig, and we are some distance apart.

Given the hearing will be at Council's cost, perhaps it would be more economical for yourselves to come back to us with a new proposal?

Kind regards,

David Hollingsworth | CEO
<[image001.png](#)>

M: +64 21 190 3677
E: david@empirecapital.co.nz
W: empirecapital.co.nz

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From: Robert Andrews <Robert.Andrews@aucklandcouncil.govt.nz>
Sent: Wednesday, 18 December 2019 9:48 a.m.
To: David Hollingsworth <david@empirecapital.co.nz>
Cc: 'craigshearer@xtra.co.nz' <craigshearer@xtra.co.nz>
Subject: RE: CST60337797 - Final Invoice - 190 Jack Lachlan Dr Beachlands

Good morning David,

Thank you for your response. I will arrange for the cost objections to the three marina applications to be heard by an independent commissioner in the New Year. With the holiday season upon us this will not be until February at the earliest.

In my discussion with Craig, it appears that we might be quite some distance apart in regards to what we respectively consider to be a reasonable processing cost for the three application. However if you consider that we may be close in regards to the offer made, please know that I'm willing to discuss the matter further outside of the hearing process.

I've copied in the relevant HUB managers Ian Dobson and James Dowding as to our current position and as it is their budgets to which the cost objections relate.

Please feel free to ring if you wish to discuss any of these matters.

Ngā mihi | Kind regards
Robert

**Robert Andrews | Principal Specialist – Planning
Southern Resource Consenting - Auckland Council**
Mob: 027 485 4390 | Email: robert.andrews@aucklandcouncil.govt.nz
Level 3 Kotuku House, 4 Osterley Way, Manukau
Visit our website: www.aucklandcouncil.govt.nz

From: David Hollingsworth <david@empirecapital.co.nz>
Sent: Tuesday, 17 December 2019 5:50 PM
To: Robert Andrews <Robert.Andrews@aucklandcouncil.govt.nz>
Cc: 'craigshearer@xtra.co.nz' <craigshearer@xtra.co.nz>
Subject: RE: CST60337797 - Final Invoice - 190 Jack Lachlan Dr Beachlands

Hi Robert,

Thank you for your email below.

I note the comments you make, however I am still of the view the proposed reduction does not address the issues raised, and the Council's charges are still, in my view, excessive.

I therefore confirm our request to have these reviewed at an independent hearing.

Kind regards,

David Hollingsworth | CEO
<[image002.png](#)>

M: +64 21 190 3677
E: david@empirecapital.co.nz
W: empirecapital.co.nz

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From: Robert Andrews <Robert.Andrews@aucklandcouncil.govt.nz>
Sent: Wednesday, 11 December 2019 5:28 p.m.
To: David Hollingsworth <david@empirecapital.co.nz>
Cc: 'craigshearer@xtra.co.nz' <craigshearer@xtra.co.nz>
Subject: FW: CST60337797 - Final Invoice - 190 Jack Lachlan Dr Beachlands

Dear David,

Re Objection to 3 marina application invoices : Pine harbour, West harbour and Bayswater Marina Applications; CST60337797, CST 60337798, CST 60337799.

I've now had time to review the applications and discuss particular issues with the reporting planners and specialist team leader involved in the processing of the three marina applications.

I have addressed the individual issues of your objection below in the order that they have been raised. I see that the matters raised for one objection has been reproduced for the others so my responses are generic across all three applications.

Additionally I have considered the overall reasonableness of these charges associated with the consenting as a package.

In brief, I do agree that the charges should be reduced and have provided an offer to reduce these charges overall towards the end of this email.

My comments to these matters in the order that they have been raised are;

- We have been charged Administration at \$192 per hour. According to the Council website, Administration work for a resource consent should be levied at \$111 per hour. This is the rate after 1 July 2019, so presumably a lesser rate applied before then.
The pre 30th June 2019 rate for administration work was \$108.00 / hour and 80 minutes across the three consents were placed under the administration group at a total cost of \$254.12. I believe that this work was undertaken by the reporting planner (sending S92 feedback) or the team leader as part of the allocation. This is a small sum and to avoid any doubt a reduction to this rate is provided. The difference will be reduction of \$111.07
- Work carried out by the Planner was charged at \$192 per hour up to 1 July 2019, and then \$195 per hour. According to the Council website, Planners should be charging \$168 per hour from 1 July. *All three planners are either senior or in one case an intermediate planner. Both senior and intermediate planners are charged at the higher rate of 195.00 (or \$192.00 prior to 1 July 2019. The efficiency of the work undertaken is separately addressed below.*
- The rate of \$195 per hour is listed as being carried out by a Senior, Intermediate, Principal, or Team Leader. The Planner used in the consent application – Rashida Sahib – would appear to be very inexperienced, particularly in coastal matters, had probably never processed a coastal consent before, and should actually be charged at a much lower rate than \$168. It became apparent over a number of meetings and conversations that Rashida had no knowledge of any matter or issue relating to this application. The Planner spending 84 or so hours processing the application, and also needing the advice of a specialist who allocated 13 hours to the application reinforces the junior nature of the processing Planner. Not only is this double dipping, we are in effect paying for the Planner's education; *The planners reporting on the Pine Harbour and West Harbour marina consents are senior planners. It is not possible to reduce the set hourly rate as part of your formal objection however the reasonableness of the 84.00 hours charged for the Pine harbour consent is addressed below.*
- There is no justification for an Engineers assessment, or a review of the application by Parks – there was no engineering or parks component to the consent application; *The development engineering checks charged for Pine harbour and Bayswater occurred early in the process and are minimal reviews. It is quite appropriate that these have occurred and wastewater issues were needing to be considered as part of the live aboard options originally being pursued. I consider these times to be reasonable. The Parks review was relevant and lead to a formal memo request for information.*
- This application was in essence an extension of an existing consent. It was non-notified, resulting in the extension by around 8 years of the existing occupation consent provisions. This was not a major application – to have spent some 84 hours by the Planner, and around 13 hours by a Specialist, is not acceptable. *I have reviewed the breakdown of the 84 hours associated with the planners time for the Pine harbour application and those also for Bayswater and West Harbour. For Pine harbour the breakdown includes close to 40 hours of report writing that I do find to be high when considered against the length of the reports prepared and loosely against the time associated with the West Harbour reporting (32 hours). It should be around 32 hours max however there were also reasonable ways through*

the co-ordination of the reporting planners (that did occur) that this should have been reduced further. I consider that 20 hours of this reporting time should be reduced from the Pine harbour application and 10 hours reduced from the West harbour application. In terms of the coastal specialists time, the 42 hours has been split roughly evenly between the three applications. The three sites are different with different consenting histories. The coastal specialist memo is rightly comprehensive and was instrumental in providing the advice required by the planners for the three marinas. There is no time here charged by Andrew Benson the Coastal Team Leader who attended both meetings with the specialist and planners. Neither has his time been charged in communications with your client, berth holder associations, councillors or councils legal team. I see a lot of this work in that which was ultimately charged via the coastal specialist. Overall I consider the coastal specialist times as very reasonable.

- It would appear we were charged less than \$5,000 for a similar consent granted to Hobsonville Marina in 2014; *I do not consider the consents to be similar and there was no exclusive occupation involved with the Pine Harbour marina.*
- Council elected to have the three applications processed by three separate Planners. It is therefore unacceptable to have incurred several hours, and it would appear to have been at least 500 minutes, meeting and discussing the applications across these different Planners, in effect charging treble; *The three applications were processed by three different planners. I do not consider that in itself to be unreasonable in regarding the costs associated with that approach. The two meetings (31/5 & 11/7) of the three planners with council specialist, Coastal team leader and coastal policy planner were co-ordinated in a way where issues common to all applications and marinas could be addressed together. I consider this to have been as much a time saving as the treble charge that you suggest, compared to the specialist dealing with each of the marinas separately. From these meetings much of the assessment work, section 92 requests and further information review , seeking of legal advice etc was co-ordinated between the two senior planners. The planner for Bayswater relied on this work and the generic parts of the reporting from West harbour as a means of streamlining his assessment and reporting times. As you will be aware the planner times for Bayswater were much lower for this reason.*
- A very long time appears to have been spent on preparing the S. 92 questions, including up to 120 minutes attending a meeting with two other planners on the 26th of July on s92. Given all the meetings with other planners and the specialist, is 290 minutes on a peer review appropriate? Who was the peer? What qualifications and experience did they have? I would query 170 minutes discussing the peer review with the team leader and amending report. *Like above, the section 92 responses were co-ordinated by the three planners and there was time associated with this. The reporting planner for Pine Harbour took the lead on the section 92 issues. I consider that there were time savings from this co-ordination although all three planners were involved with particular matters associated with the marina applications that they were processing. In regards to the peer review times, all reports were reviewed by the team leader for the area in which the marina lies and it is the Team leaders times that show on the invoices. This is standard practice and the times associated with this for all applications do not look unreasonable. Additionally the draft West harbour report, from which the Bayswater report was based, was reviewed by the Coastal Team manager. I do not see this as a double up and only re drafting time by the planner has been charged and not this specialist reviewers time.*

In respect of Specialist Input, I am querying:

- 90 minutes Assessment and writing on 17 May – I note we are also charged assessment and writing by the Planner;
- 90 minutes to print and review an application – it was not that substantial an application, and also duplicates the work carried out by the Planner;

- 90 minutes to recreate a map and some writing on 17 May?
- What is 60 minutes on advice on 31 May, plus 50 minutes meeting with Planners? Was 330 minutes spent in total, or was it 110 minutes charged to three entities?
- Please explain the 210 minutes by the Specialist to draft the memo?

In dealing with the above queries together, I comment. The specialist time entries are all from the coastal specialist and do not double up with assessment or reporting times of the planners. The 90 minutes 'print and review' I can only assume is primarily reading the application submitted and collating issues to address as one reviews what has been submitted. The three applications were considered separately and the time associated with each consent noted against those particular applications.

The times associated with the joint meetings with planners however were divided three ways so not triple dipped. I.e. the meeting of 31/5 (150 minutes) was divide as 50minutes to each application, the meeting of 11/7 (120 minutes) was divided at 40 minutes to each application. The total meeting times coincided with the times of the planners at those meetings. In regards to the times drafting the specialist memo, there is one specialist memo that covers the three applications. The times are 210 minutes (Pine Harbour), and 300 minutes for the other marina applications. The total of 13.5 hours does not appear unreasonable for the memorandum that has been prepared. Across the three consents the 42 hours under specialist input includes 3 hours of coastal team leader peer reviews.

I summary, we will end up being charged three times what we should be, for example, did the Specialist spent 450 minutes on the 14th and 15th of August drafting the tech memos? And if so, why are we then charged for 260 minutes for assessment and report writing on the 23rd of August? We have been told that all three staff were novices in this field, therefore a three times learning process at our expense. This is a grossly inefficient way to deal with the same applications, and has added considerably to the cost. The heavy dependence on a "specialist" confirms their inexperience and inappropriateness for this job.

In summary I do not agree that you have been charged three times what was required for these applications. Councils planners deal with a wide range of land use and regional consent applications and most application are unique in terms of the activity sought, site, zoning and various district and regional plan assessments. Time is always require to understand and audit the applications sought, address matters for which further information is needed and then prepare the recommendation reports. There were issues that needed to be addressed as noted in the information request and that the issues of live aboards being removed from the application. There were definitely areas of issue overlap and in places the commonality of one specialist report, joint meetings, division of legal and section 92 work and the Bayswater report following much of the work undertaken by the southern and western planners all were efforts in limiting overall costs. From my enquiries I do accept that none of the planners are specialist in coastal consenting matters and 'learning' in terms of becoming familiar with these coastal issues is inherent in the Southern and Western planners assessment and reporting times taken. The times dealing with the legal matters raised by the Auckland Marina Users Association and the flow on meetings and correspondence with third parties and elected representatives are quite substantial. Some of this time as been absorbed and not on-charged such as the inhouse legal assessment. However while it might appear unreasonable to include the planner time in covering these third party issues, they were directly matters raised by the exclusive occupation applications sought and needed to be directly addressed as part of the planners' notification assessments. Council must be cautious when denying parties a right to be involved in applications that may affect them.

As a means of addressing the issues raised, I consider that ~~20~~ hours of the Pine harbour and ~~10~~ hours of the West harbour reporting planner times should be removed from the invoices. There was also a small time associated with administration that can also be removed. At \$195.00 per hour this is ~~3,900.00~~ plus the ~~\$1,100.00~~ administration time equates to a ~~\$5,000.00~~ reduction.

I have also copied in Craig Shearer with whom I discussed your concerns in some detail earlier today.

If you are accepting of the offer made as a means of resolving the cost objections on these three invoices, can you please respond by return email. A response by next Friday will be appreciated

however I respect that we are rapidly approaching the Christmas closedown so please say if more time is needed. Alternatively you do have a right to have your objection heard by an independent commissioner that will be of no cost to you. I'm happy to discuss what that approach entails with you if you wish or I'm sure Craig can also advise you.

I will be keen to hear back from you.

Kind regards

Robert

Robert Andrews | Principal Specialist – Planning
Southern Resource Consenting - Auckland Council
Mob: 027 485 4390 | Email: robert.andrews@aucklandcouncil.govt.nz
Level 3 Kotuku House, 4 Osterley Way, Manukau
Visit our website: www.aucklandcouncil.govt.nz

From: David Hollingsworth
Sent: Friday, 22 November 2019 8:34 AM
To: Rohin Khalil
Cc: craigshearer@xtra.co.nz; Pine Harbour Accounts
Subject: RE: CST60337797 - Final Invoice - 190 Jack Lachlan Dr Beachlands

Hi Rohin,

I wish to lodge an objection under s357B of the Resource Management Act to the above invoice for the processing of the application for exclusive occupation at Pine Harbour Marina.

I have a number of concerns in respect of these charges:

- We have been charged Administration at \$192 per hour. According to the Council website, Administration work for a resource consent should be levied at \$111 per hour. This is the rate after 1 July 2019, so presumably a lesser rate applied before then.
- Work carried out by the Planner was charged at \$192 per hour up to 1 July 2019, and then \$195 per hour. According to the Council website, Planners should be charging \$168 per hour from 1 July.
- The rate of \$195 per hour is listed as being carried out by a Senior, Intermediate, Principal, or Team Leader. The Planner used in the consent application – Rashida Sahib – would appear to be very inexperienced, particularly in coastal matters, had probably never processed a coastal consent before, and should actually be charged at a much lower rate than \$168. It became apparent over a number of meetings and conversations that Rashida had no knowledge of any matter or issue relating to this application. The Planner spending 84 or so hours processing the application, and also needing the advice of a specialist who allocated 13 hours to the application reinforces the junior nature of the processing Planner. Not only is this double dipping, we are in effect paying for the Planner's education;
- There is no justification for an Engineers assessment, or a review of the application by Parks – there was no engineering or parks component to the consent application;
- This application was in essence an extension of an existing consent. It was non-notified, resulting in the extension by around 8 years of the existing occupation consent provisions. This was not a major application – to have spent some 84 hours by the Planner, and around 13 hours by a Specialist, is not acceptable.
- It would appear we were charged less than \$5,000 for a similar consent granted to Hobsonville Marina in 2014;
- Council elected to have the three applications processed by three separate Planners. It is therefore unacceptable to have incurred several hours, and it would appear to have been at least 500 minutes, meeting and discussing the applications across these different Planners, in effect charging treble;

- A very long time appears to have been spent on preparing the S. 92 questions, including up to 120 minutes attending a meeting with two other planners on the 26th of July on s92;
- Given all the meetings with other planners and the specialist, is 290 minutes on a peer review appropriate? Who was the peer? What qualifications and experience did they have? I would query 170 minutes discussing the peer review with the team leader and amending report.

In respect of Specialist Input, I am querying:

- 90 minutes Assessment and writing on 17 May – I note we are also charged assessment and writing by the Planner;
- 90 minutes to print and review an application – it was not that substantial an application, and also duplicates the work carried out by the Planner;
- 90 minutes to recreate a map and some writing on 17 May?
- What is 60 minutes on advice on 31 May, plus 50 minutes meeting with Planners? Was 330 minutes spent in total, or was it 110 minutes charged to three entities?
- Please explain the 210 minutes by the Specialist to draft the memo?

In summary, we will end up being charged three times what we should be, for example, did the Specialist spend 450 minutes on the 14th and 15th of August drafting the tech memos? And if so, why are we then charged for 260 minutes for assessment and report writing on the 23rd of August? We have been told that all three staff were novices in this field, therefore a three times learning process at our expense. This is a grossly inefficient way to deal with the same applications, and has added considerably to the cost. The heavy dependence on a “specialist” confirms their inexperience and inappropriateness for this job.

Kind regards,

David Hollingsworth | CEO
<image003.png>

M:+64 21 190 3677

E: david@empirecapital.co.nz

W:empirecapital.co.nz

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From: Rohin Khalil

Sent: Thursday, 21 November 2019 9:54 a.m.

To: Pine Harbour Accounts ; David Hollingsworth

Cc: craigshearer@xtra.co.nz

Subject: CST60337797 - Final Invoice - 190 Jack Lachlan Dr Beachlands

Dear sir/madam,

RESOURCE CONSENT APPLICATION –INVOICE ADVICE

The decision on your resource consent application has been finalised.

Attached is your debit note for charges relating to the processing of the above application.

Payment options are detailed on the reverse of the debit note.

Thank you in advance for your payment.

Nāku noa, nā,
Regulatory Support
Resource Consents
Auckland Council
Visit our website: www.aucklandcouncil.govt.nz

<image004.jpg>

CAUTION: This email message and any attachments contain information that may be confidential and may be LEGALLY PRIVILEGED. If you are not the intended recipient, any use, disclosure or copying of this message or attachments is strictly prohibited. If you have received this email message in error please notify us immediately and erase all copies of the message and attachments. We do not accept responsibility for any viruses or similar carried with our email, or any effects our email may have on the recipient computer system or network. Any views expressed in this email may be those of the individual sender and may not necessarily reflect the views of Council.

ATTACHMENT C
APPLICATION AND AEE PINE HARBOUR

25 April 2019

Auckland Council
Private Bag 92300
AUCKLAND 1142

Attention: The Manager, Coastal Consents

Dear Sir

RE: COASTAL EXCLUSIVE OCCUPATION RESOURCE CONSENT APPLICATION BY PINE HARBOUR MARINA LIMITED

I am writing on behalf of Pine Harbour Marina Limited to apply for a coastal consent for the following activities:

- Exclusive occupation of the seabed at Pine Harbour Marina;
- To provide for "live aboards" within the Marina basin;

I enclose the following:

- i. Background information, consents required, aerial photo and plan of the exclusive occupation area;
- ii. An assessment of the environmental effects of the proposal as required by the relevant statutory provisions of the Resource Management Act 1991 (RMA) and Auckland Unitary Plan;
- iii. Notification assessment, conclusions, and recommended conditions;
- iv. The previous occupation consent granted 17 February 2014.

The Auckland Council Resource Consent Application Form A has been completed and is attached.

Please invoice Pine Harbour Marina Limited (see Application Form for address) directly for the deposit fee of \$4,000 (including GST).

Yours sincerely

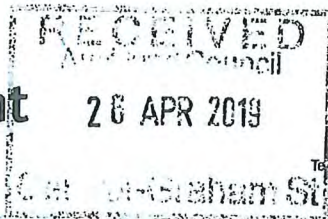


Craig Shearer
Principal
Shearer Consulting Limited

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Application for resource consent



Resource Consents Department Under Section 88 of the Resource Management Act 1991

To: Auckland Council
Private Bag 92300
Auckland 1142



You may post or deliver your application to your nearest Auckland Council service centre.

This form provides the council with your contact information and details about your proposal. If you need help completing this form or you are unsure about which form to use, visit aucklandcouncil.govt.nz/resourceconsents where you will find helpful guidance notes, or contact the council on 09 301 0101.

If you fail to complete this form and provide the necessary information, including the deposit fee, your application may not be accepted for processing. See [Guidance Note 3](#).

Office use only

Application number(s):
CST 60337797

Receipt number:

Receipt date:

Deposit paid:

Consent:

District

Regional

Stream number:

1. Site location details

Site(s) to which this application relates is described as

Number: **adjacent to 190** Street: **Jack Lachlan Drive**

Suburb: **Pine Harbour, Beachlands**

Legal description(s): **Below mean high water spring - no title**

2. General application details

This application is for (tick all the boxes necessary to cover the proposal):

- Land use consent (district/city)
- Subdivision consent
- Discharge permit
- Coastal permit
- Water permit

The application will be assessed under the Auckland Unitary Plan (Operative in part). If there are any other operative legacy plan provisions that apply, please indicate.

- Auckland Central Area
- Hauraki Gulf Islands
- Auckland Isthmus
- Franklin
- Manukau
- North Shore
- Papakura
- Rodney
- Waitākere
- Coastal
- Air, land, water
- Farm dairy discharges

Is consent required under a National Environmental Standard (NES)?

Yes (tick applicable) No

- NES for Air Quality
- NES for Drinking Water
- NES for Telecommunication Facilities
- NES for Electricity Transmission Activities
- NES for Assessing and Managing Contaminants in Soil to Protect Human Health
- Other

3. Additional resource consents required

3.1 Are any additional resource consent(s) required for this proposal but not being applied for under this application?

No Yes (give details)

3.2 Advise of any existing consents and the date at which they expire.

Provide consent numbers and an assessment of the value of the investment of the existing consent holder (for the purposes of section 104(2A)).

Consent number 39483; Expires 17 August 2046

Estimated value >\$50 million

4. Applicant's details (all invoices will be made out to and sent to the applicant unless otherwise stated in section 6):

4.1 Applicant's full name

The name of the consent holder who will be responsible for the consent and any associated costs unless otherwise stated in section 6.

Last name:

First name(s):

Last name:

First name(s):

or

Company/trust/organisation: **Bayswater Marina Limited**

Contact person/all trustee names:

David Hollingsworth

Physical address: **190 Jack Lachlan Drive**

Pine Harbour, Beachland

Postcode: **2147**

Postal address (if different from above): **21 Sir Peter Blake Parade**

Bayswater

Postcode: **0622**

Phone (day):

Mobile: **021 1903677**

Email: **david@empirecapital.co.nz**

The applicant is the:

owner

occupier

leasee

prospective purchaser (of the site to which the application relates)

other (please specify)

Has a consent to occupy the coastal marine area at Bayswater Marina

4.2 Name and address of each owner and occupier of land to which the application relates (if different from above):

Name: **The Crown**

Address:

Postcode:

5. Agent's or consultant's details.

All correspondence will be sent to the agent and may also be sent to the applicant unless otherwise stated in section 6.

Company: **Shearer Consulting Limited**

Contact: **Craig Shearer**

Postal address: **PO Box 60-240 Titirangi**

Postcode: **0644**

Phone (day):

Mobile: **021 735914**

Email: **craig@craigshearer.co.nz**

Preferred contact: email phone

6. Alternative addresses for correspondence and payee of invoices

All correspondence (excluding invoices) sent to:

applicant agent/consultant other (name and address)

Name: **Pine Harbour Marina Limited**

Address: **21 Sir Peter Blake Parade**

Postcode: **0622**

All invoices made out to and sent to:

applicant agent/consultant other (name and address)

Name: **Pine Harbour Marina Limited**

Address: **21 Sir Peter Blake Parade**

Postcode: **0622**

7. Description of proposed activity (if insufficient space, please provide on additional pages)

Provide for exclusive occupation and for live aboards at the Marina.

8. Other activities

Choose either:

there are no other activities that are part of the proposal to which this application relates

the other activities that are part of the proposal to which the application relates are as follows:

(Describe the other activities. For any activities that are permitted activities, explain how the activity complies with the requirements, conditions, and permissions of any Plan or regulation so that a resource consent is not required for that activity under section 87A(1) of the RMA).

9. Pre-application information

Have you had a pre-application meeting with the council regarding this proposal?

Yes

No

Copy of meeting record attached

Date of meeting:

If 'yes', provide the pre-application meeting reference number and/or name of staff member:

10. Site visit requirements

10.1 Is there a locked gate, security system or dog(s) restricting access to the site by council staff?

Yes

No

10.2 Provide details of any entry restrictions or hazards that council staff should be aware of, e.g. health and safety, organic farm, measures to inhibit the transfer of Psa-V etc.

11. Notification of your application

Are you requesting that the application be publicly notified?

Yes

No

If 'yes', please provide an executive summary below and an electronic version of your application for notification purposes. Please refer to the Standards for submitting documents electronically found at the council's website aucklandcouncil.govt.nz/resourceconsents

12. Mana Whenua cultural values assessment and the Auckland Unitary Plan (Operative in part) (AUP(OP))

12.1 Is your proposal located within a "Site and Place of Significance to Mana Whenua" as identified in the AUP(OP)

Yes

No

12.2 Is your proposal an activity that has the potential to generate effects on Mana Whenua and their relationship with their ancestral land, water, sites, waahi tapu and other taonga)?

Yes

No

12.3 If 'yes' to 12.1 or 12.2, have you contacted all the relevant Mana Whenua groups to establish whether their values are affected by your proposal?

Yes

No

12.4 If 'yes', please provide details with your application of all Mana Whenua groups contacted and their responses.

Please note that providing this information with the lodgement of your application will assist in processing your application in a timely manner. If you have not provided the relevant information your application may need to be placed on hold while this information is obtained.

In any case, please note that the council can assist you in determining which Mana Whenua groups should be approached. For more information refer to the "Engaging with Mana Whenua" page at aucklandcouncil.govt.nz

13. Information to be submitted with your application

To satisfy the requirements of section 88(2) and Schedule 4 of the Resource Management Act 1991 (RMA), please attach the following information to your application:

Accept/Reject

- four copies (including one unbound) of all information, including plans, for all applications. Refer to Guidance note 2 for guidance on the preparation of plans
- application deposit fee – refer to the council's fees and charges schedule. Indicate method of payment below:

<input checked="" type="checkbox"/> cheque attached amount paid \$ _____	<input type="checkbox"/> credit card	<input type="checkbox"/> customer account customer acc/number: _____
---	--------------------------------------	---

- Certificate(s) of Title less than three months old for the site to which this application relates. Attach the title and any consent notices, covenants, easements attached to the title if relevant or affected by the proposed activity
- locality plan or aerial photo. Indicate the location of the site in relation to the street and other landmarks. Show the street number of the subject site and those of adjoining sites
- optional: detail(s) of the resource consent(s) being applied for including reference to specific rule(s) and reasons for consent
- an assessment of effects on the environment in accordance with Schedule 4 of the RMA at a level of detail that corresponds with the scale and significance of the effects that the proposed activity may have on the environment. This may require one or more technical specialist reports. Include a full description of the proposed activity, the effects that may be generated and how these would be managed. For more information refer to Schedule 4 of the RMA and the council's Guidance note 1
- an assessment against the matters in Part 2 of the RMA. This may be included in your AEE or in a separate document. For more information refer to Schedule 4 of the RMA and the council's guidance note 1
- an assessment against any relevant provisions of a statutory document (e.g. district and regional plans, the AUP(OP), National Policy Statements etc.). This may be included in your AEE or in a separate document. For more information refer to Schedule 4 of the RMA and the council's guidance note 1
- include other information required by the relevant section of the AUP(OP) and legacy district plan and regional plans, the RMA or any regulations made under that act
- include details (name, postal and site address) of consultation undertaken (including with iwi) and any responses from persons consulted. For more information refer to Schedule 4 of the RMA and guidance note 1
- a completed checklist where relevant to your application.

14. Additional information – for regional consents or permits only under AUP (OP) and legacy operative regional plans

14.1 Map reference of proposed works: mE 1777122.57 mN 5915563.78

Use New Zealand Transverse Mercator (NZTM), e.g. 1756730mE 5919740mN.

Ensure that the location of your activity is marked to an accuracy of 10 metres on your location plan. You can obtain your map coordinates and an aerial photo from the Auckland Council GeoMaps (GIS viewer) found on the home page of the council's website, aucklandcouncil.govt.nz

14.2 Please provide the map reference of discharge points if relevant.

Map reference of proposed discharge or take point(s):

Is the discharge/take location on the same property as the application site?

Yes No

If 'no', complete the details below.

Name or property owner (if not the same):

Address:

Postcode:

Legal description:

Documentation confirming easement and/or covenants for wastewater, including a certificate of title for the property where the discharge occurs.

If required, also attach land owner approval.

14.3 Give the name of any stream, river or lake (or if the stream is unnamed, state which water body it is a tributary of).

Stream name: _____ or tributary of: _____

14.4 Please indicate the duration for which you are requesting a permit (if relevant):

35 years

15. Signature of the applicant(s) or agent

Please read these notes before signing the application form

Payment of fees and charges
The council may charge the applicant for all costs actually and reasonably incurred in processing this application. Subject to the applicant's rights under sections 357B and 358 of the RMA to object to any costs, the applicant undertakes to pay all and future processing costs incurred by the council. The council may issue interim invoices for applications. If any steps, including the use of debt collectors and/or lawyers, are necessary to recover unpaid processing costs, the applicant agrees to pay all collection costs. If this application is made on behalf of a trust (private or family), a society (incorporated or unincorporated) or a company, in signing this application the applicant binds the trust, society or company to pay all the above costs and guarantee to pay all the above costs in their personal capacity. Refer to the council's fees and charges schedule found at: aucklandcouncil.govt.nz/resourceconsents

Note: some regional permits include ongoing annual charges in addition to the processing fee. These are payable by the consent holder.

Development and financial contributions
When granting consent to certain activities, the council may levy a monetary contribution. Development contributions are levied under the Local Government Act 2002 in accordance with the council's Development Contribution Policy. Financial or reserve contributions are levied under the RMA under the relevant district plan. When such contributions become due, the consent holder is responsible for their payment. Unless otherwise advised, the name and contact address of the person responsible for payment of any contributions will be taken as the applicant.

Alternative contact and address for development and financial contributions:

Name: _____

Address: _____

Postcode: _____

Site visit
By signing this form, if you are the owner of the application site, you confirm that the council may undertake a site inspection.

Privacy information
The council requires the information you have provided on this form to process your application under the RMA and to collect statistics. The council will hold and store the information, including all associated reports and attachments, on a public register. The details may also be made available to the public on the council's website. These details are collected to inform the general public and community groups about all consents which have been processed or issued through the council. If you would like to request access to, or correction of any details, please contact the council.

Declaration for the applicant or authorised agent or other

I/we confirm that I/we have read and understood the notes above.

If a private or family trust is the applicant, at least two New Zealand-based trustees are required to provide contact details and sign this form.

Applicant's name:

Applicant's signature:

Date:

Applicant's name:

Applicant's signature:

Date:

Continued overleaf...

Applicant's name:

Applicant's signature:


Date:

Declaration for the agent authorised to sign on behalf of the applicant

As authorised agent for the applicant, I confirm that I have read and understood the above notes and confirm that I have fully informed the applicant of their/its liability under this document, including for fees and other charges, and that I have the applicant's authority to sign this application on their/its behalf.

Agent's full name: **Craig McGregor Shearer**

Agent's signature:



Date: 25 April 2019

1. AUCKLAND COUNCIL CONSENT APPLICATION FORM

- This has been completed separately, as part of the application.

2. BACKGROUND

Pine Harbour Marina Limited (PHML) owns and operates a 570-berth marina at Beachlands, Auckland. Apart from the marina basin, PHML occupies several hectares of adjacent land which provides services to the marina and berth holders, commercial services, and extensive car parking in support of the berth holders and the ferry terminal which is located within the marina precinct. The marina basin is zoned as Coastal – Marina Zone in the Auckland Unitary Plan (“AUP”).

The spatial extent of the area of exclusive occupation and live aboards proposed in this application is shown on the attached plan (Figure 2) and covers an area of approximately 10 ha. The area provides for marina and ferry service activities including berthage. There is no proposal to change the extent of the Marina area or those areas occupied, as part of the application. No works are proposed. The Marina Zone also extends outside the actual marina basin.

Of note is that part of the marina basin is privately owned, having been declaimed at the time of construction of the Marina. The privately-owned areas are those berthage areas to the east of the basin, piers A to D.

Exclusive occupation

On 16 August 2011 consent was granted to PHML for occupation of the Coastal Marine Area with a marina at Pine Harbour. A copy of the consent is appended to this application. The consent provided for occupation on a non-exclusive basis, with the public having the right of access to the marina. However, under the terms of the consent PHML is able to temporarily restrict public access for health and safety reasons and security reasons. The consent was granted for a 35-year term, to expire on 16 August 2046.

This application is made to facilitate the extension of the term of the consent.

Empire Capital Limited owns three marinas – Bayswater, Hobsonville and Pine Harbour Marinas. All three have existing occupation consents with varying terms and varying conditions. Separate applications are being made for new exclusive occupation consents, with live aboards, for all three marinas. The aim is to achieve consistency of approach, term expiry and conditions for all three marinas. This will in turn assist in the development of consistent and uniform management systems and processes across all three marinas. Berth holders and the marina operator will achieve a greater certainty of long-term tenure. It will also provide the maximum term for development and investment purposes at the marinas, and will provide more certainty for Auckland Transport ferry services.

No additional works or development are proposed at Pine Harbour.

The consenting framework in the Auckland region is confusing. The AUP provides for existing marina berths, including occupation and use by vessels to be moored, as a permitted activity in the Coastal-Marina Zone. It does not provide specifically for ‘exclusive’ occupation. However, the Council’s interpretation is that exclusive occupation is a component of occupation and consent is not needed.

Figure 1: Aerial Photo of Pine Harbour Marina and adjacent land



Occupation being a permitted activity creates difficulties for those seeking long term use of the CMCA. Unlike activities on land, there is generally no private title conferring ownership rights in the CMCA, except those of the Crown, with the exception at Pine Harbour Marina of that land declaimed at Pine Harbour. Therefore, there is no certainty of use. This certainty can only be provided through the resource consent process. Without this certainty there is no ability to prevent a member of the public from locating their vessel adjacent to a jetty which has been licenced to somebody else. Access to the jetties and other infrastructure can occur unabated if occupation is a permitted activity.

The permitted activity status of occupation in the Marina Zone can only last as long as the AUP provides for it as a permitted activity. If circumstances were to change and the AUP is amended to require consent be applied for, then the occupation rights only last until a decision is made on a new application in accordance with those changed provisions. This situation makes it impossible to guarantee berth licences for berth holders as the marina owner is not able to guarantee the long-term tenure that a resource consent would otherwise provide.

Fortunately, the recently notified AUP Proposed Plan Change 15 ("PC 15") is proposing a new rule be added to the Activity Table in the Coastal – Marina Zone provisions to provide for greater certainty. 'Exclusive' occupation of the CMCA by a structure or activity that would otherwise be permitted is proposed to be a restricted discretionary activity.

Under section 88B(3) of the Resource Management Act a rule in a proposed plan has immediate legal effect if the rule (a) protects or relates to water. This application relates to the occupation of coastal water so PC15 has immediate legal effect in this instance.

This application is therefore one for 'exclusive' occupation of the CMCA at Pine Harbour Marina.

Live Aboards

There has always been some confusion around the status of those wanting to live aboard vessels in marinas. Some of the earlier consents granted limited live aboards in consent conditions to a certain, restrictive time frame. It was because of such conditions and the ill-defined status of live aboards that other marinas owned by the parent company of Pine Harbour Marina Limited applied for and were granted consents 2014 which included for people to live aboard vessels at those marinas. The owner of PHML also wishes to replace this existing occupation consent with a similar approved consent including live aboards, albeit with a termination date being 35 years.

Over the years the number of live aboards has been steady to the extent that there can be numerous people at any one time living on board vessels moored in Pine Harbour Marina. The Marina provides on-shore facilities for these people and a sewage pump out sewage facility is programmed to be provided by 1 August 2019. No vessel is permitted to empty any waste directly to the marina area basin part of their approval to live aboard. Bathroom, washing and toilet facilities are all provided on land for the use of those living aboard vessels and for other berth holders.

The AUP is silent on how live aboards are to be dealt with. Council has considered live aboards as not being an RMA activity requiring consent. However, this provides no certainty for those living on board vessels as the AUP rules could change. Live aboards were included as part of the occupation consent application at other marinas and to avoid doubt consent was granted for the activity.

The approach in this application is to consider the two applications together and bundle them so they are considered under the Exclusive Occupation activity class, Restricted Discretionary Activity. This provides certainty of use to the marina operator and to those living aboard vessels.

3. CONSENTS AND RELEVANT PLAN PROVISIONS

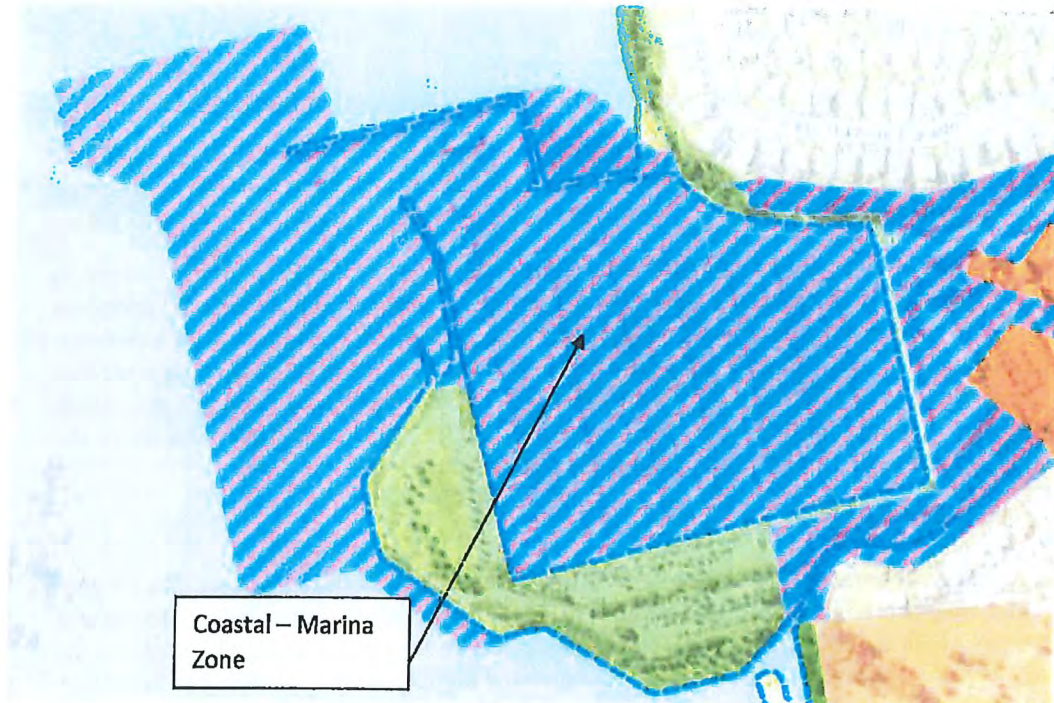
Activity to be Authorised	Auckland Unitary Plan	Activity Status
Occupation of the common marine and coastal area, including exclusive occupation and live aboards.	F3 Coastal – Marina Zone, Activity Table F3.4.3 (A30) existing marina berth including occupation and use by a vessel to be moored – permitted.	Permitted Activity
	Proposed Plan Change 15, Auckland Unitary Plan	
Exclusive occupation of the common marine and coastal area, including for live aboards.	F3 – Marina Zone, Activity Table F3.4.3 (A34) Exclusive occupation of the common marine and coastal area by a structure or activity that would otherwise be permitted. As live aboards are considered to be a part of occupation, then for clarity exclusive occupation for liveaboard is also considered to require consent as a restricted discretionary activity.	Restricted Discretionary Activity

Overall the application is assessed as being a **Restricted Discretionary Activity**.

Figure 2: Exclusive occupation area



Figure 3: Showing the Coastal – Marina Zone at Pine Harbour Marina



4. ASSESSMENT OF THE ENVIRONMENTAL EFFECTS OF THE PROPOSAL AGAINST RELEVANT STATUTORY PROVISIONS

4.1 Overview

When considering an application for a restricted discretionary activity the consent authority must have regard to Part 2 of the RMA, and section 104C, and 108.

Under Section 104C and subject to Part 2 of the RMA:

- (1) When considering an application for a resource consent for a restricted discretionary activity, a consent authority must consider only those matters over which—
 - (a) a discretion is restricted in national environmental standards or other regulations:
 - (b) it has restricted the exercise of its discretion in its plan or proposed plan.
- (2) The consent authority may grant or refuse the application.
- (3) However, if it grants the application, the consent authority may impose conditions under section 108 only for those matters over which—
 - (a) a discretion is restricted in national environmental standards or other regulations:

(b) it has restricted the exercise of its discretion in its plan or proposed plan.

4.2 Permitted Baseline

The permitted baseline test is relevant to this application. Under section 104(2) of RMA,

“When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if a national standard or the plan permits an activity with that effect”.

Within the Coastal - Marina Zone new and existing marina berths including occupation and use by a vessel to be moored are permitted, and marine and port facilities and marine and port accessory structures and services are also permitted activities, along with their occupation of the common marine and coastal area. Therefore, any adverse effects of use and occupation of the Marina may be disregarded under s104(2,) and it is only the effects of “exclusive” occupation that needs consideration in terms of the effects upon the environment – those effects over and above the permitted baseline which need assessment in the application.

4.3 Existing environment

The existing environment is the state of affairs that a consent authority must take into account when assessing the effects of an activity and includes the current receiving environment as it might be modified by the implementation of resource consents which have been granted. In the case of PHML’s application, the existing environment comprises the receiving environment resulting from the exclusive occupation consent granted in July 2011. This consent provides for a further 27 years of exclusive occupation and live aboards until 2046.

This consent has been implemented and the environment is one where exclusive occupation and live aboards are currently in existence and can be so for a further 27 years.

The overall actual and potential environmental effects of the proposal therefore need to be assessed in the context of the existing consents and the environment created by them.

4.4 Standards

The standards listed in F3.6 apply to all activities listed as restricted discretionary activities in Table F3.4.3. These standards have been assessed and they all apply to activities not found in this application. F3.6 also says, in respect to standards, that the provisions in the Coastal – General Coastal Marine Zone apply to the coastal marine area of the Coastal – Marina Zone unless otherwise specified in the following provisions. The standards in the General Coastal Marine Zone have also been assessed as having no relevance to this application.

4.5 Relevant matters of discretion/assessment criteria - AUP F3.8.1 and F3.8.2

The following addresses the Matters of discretion, under F3.8.1 alongside the relevant assessment criteria set out in F3.8.2. The Council reserves its discretion/considers the relevant assessment criteria for restricted discretionary activities.

(1) for all restricted discretionary activities:

(a) the effect of the construction or works methods, timing and hours of Operation - No construction is proposed;

(b) the location, extent, design materials and landscaping - no materials are to be used and landscaping does not form part of the application;

(c) the effects on coastal processes, ecological values, water quality and natural character – There will be no changes to these values as the existing structures are all consented and the application only provides for exclusive occupation and live aboards. The permitted baseline provides for occupation, and the existing environment provides for exclusive occupation for a further period of 30 years.

(d) the effects on public access, navigation and safety - Public access, navigation and safety will not be affected by extending the term of the consent and by continuing the practice of people living aboard their vessels. The existing physical environment has existed for over 30 years and no changes are proposed to it as part of this application. Public access to the Marina will continue with exclusion being implemented for safety and security, and for good marina management purposes. Therefore, there will be no adverse effects on public access, navigation and safety resulting from this application over and above the currently existing environment.

(e) the effects on existing uses and activities - There will be no effects on existing uses and activities at the Marina.

(f) the effects on Mana whenua values - The values of Tangata Whenua at the Marina will not be affected as no changes are proposed.

(g) consent duration and monitoring - The consent duration applied for is the maximum to support the functional lifetime of the Marina facilities, to assist in development of long-term plans for the Marina, including licensing of marina berths, and to provide long term certainty of use.

(2) For food and beverage:

(a) traffic and parking – No food and beverage is proposed and no changes to traffic movements will occur.

(3) for marine industry other than the maintenance and servicing of vessels:

(a) the effects from additional traffic as well as any parking requirements – this application is not for marine industry, and there will be no change to traffic movements resulting.

(4) for maritime passenger operations and facilities established after 30 September 2013:

(a) the effects from additional traffic as well as any parking requirements - Not relevant to the application.

(5) for structures or buildings in the coastal marine area and buildings on land:

(a) effects on views to and from the surrounding area, and the visual amenity effects from the presence of the structure – No new structures or buildings are proposed in the application, and no intensification of berthage is proposed.

(6) for occupation of the common marine and coastal area:

(a) the effects of the location, extent, timing and duration of the occupation, including exclusive occupation:

The location and extent of the exclusive occupation proposal is identical to that existing at present. This existing environment has been in existence for over 30 years. No physical changes are proposed in this application. The only change proposed is to extend the duration for a further 8 years on top of the remaining time left to run on the existing consent. The consent, if granted will expire in 2054, compared with the existing consent expiring in 2046.

This application recognises however that, as set out in the existing consent, public access to the marina basin and breakwaters shall be available at all reasonable times, while public access to the marina piers and berth may be restricted. As with the existing consent, public access to the piers, berths and breakwaters may be restricted at times for:

- Safety and security reasons. For example, for security reasons marina management needs to have the option to close pontoons off to the public if there are safety threats or security threats to vessels and those living on vessels.
- Reasons of good marina management where access by the public is reasonably preventing, interfering with, or hindering the consent holder or its licensees from making full and effective use of the marina area. This is particularly the case where a berth holder may depart from their berth for the day and potentially someone else may be moor at their berth. Without exclusive occupation rights there is no obvious recourse to require them to depart from the site.

There is no intention to prevent people from boating, kayaking etc within the marina – see those areas on Figure 2 which are not subject to exclusive occupation.

4.6 Summary of effects

The proposal is considered to have no effects on the environment over and above the permitted baseline and the existing environment. It provides for the ongoing use of an existing facility, that will meet the needs of berth holders and those people who have chosen from time to time to live on board vessels moored in the Marina. It will continue to provide opportunities for those members of the public wanting to access the marina facilities and will not prevent those who may wish to take vessels or small craft into the marina basin. The proposal does however provide the necessary tools for marina management to restrict access for safety, security and good management reasons.

4.7 Part 2 of the RMA

A detailed assessment of Part 2 of the Act has not been undertaken because recourse need only be had to it if the relevant statutory documents are invalid, incomplete or uncertain. The AUP has been prepared with full consideration of Part 2 of the Act and thus there is no need to refer to Part 2. Therefore, as the proposal is consistent with the AUP, then it is consistent with the purpose and principles of the Resource Management Act 1991.

5. NOTIFICATION

In AUP F3.5, Notification, any application for resource consent for an activity that is listed in Table F3.4.3 is subject to the normal tests for notification under the relevant sections of the Resource Management Act 1991. Exclusive occupation is listed in Table F3.4.3 under PC15.

An application must be publicly notified if the activity will have or is likely to have adverse effects on the environment that are more than minor, if the applicant requests it or if a national environmental standard or a rule in a plan requires it. An application may also be publicly notified if special circumstances exist.

There is no request by the applicant to publicly notify these applications. There does not appear to be any special circumstances as the activities for which consent is sought have been carried out for over 30 years and there is an existing consent which provides for the activities for many more years.

Overall in respect of the matters over which the AUP Coastal - Marina Zone has restricted its discretion, the adverse effects of the application are less than minor. There is no national environmental standard requiring notification. The application should proceed without notification or limited notification.

It is recommended that processing of the application proceed on a non-notified basis.

6. PROPOSED CONDITIONS AND DURATION OF CONSENT

A maximum term of 35 years is sought for the consent. There are no reasons why the Marina will not exist over the next 35 years and thus it is considered appropriate the duration be 35 years in accordance with section 123 of the RMA.

In respect of conditions, it is suggested similar conditions be imposed on all three marinas owned by PHML's parent company. Apart from the preliminary conditions – charges to be paid and activity to be in accordance with the plans and information submitted with the application – these conditions suggested are:

Occupation

4. This consent authorises the consent holder to occupy the common marine and coastal area with the marina, provided that:

- a. Public access to the marina, piers and breakwater shall be available at all reasonable times except as expressly set out below.
- b. Public access to the piers, berthage areas and breakwater may be restricted at times for safety and security reasons, and for reasons of good marina management where access by the public is reasonably preventing, interfering with, or hindering the consent holder or its licensees from making full and effective use of the marina area.

5. Areas of exclusive occupation of the common marine and coastal area shall be in accordance with the plan identified in consent condition 3 (the general condition requiring compliance with the plans submitted).

6. The consent holder may, as a result of pier and berthage configuration, amend the area of exclusive occupation. Prior to the change being implemented, any change must be approved by the Team Leader - Coastal.

7. Plans identifying any new marina berth layout and changed areas of exclusive occupation shall be provided to the Team Leader – Coastal.

Sewage pump-out facility.

8. A sewage pump-out facility shall be available for public usage at all times as from 1 August 2019. It shall be maintained in good working order by the consent holder, at its cost.

7. CONCLUSION

The application is for Restricted Discretionary Activity consent for exclusive occupation of the coastal marine area at Pine Harbour Marina in those areas within the Coastal – Marina Zone. Included in this application consent is also sought to include the living aboard on vessels at Pine Harbour Marina. This practice has been occurring for a number of years and this application aims to provide long term certainty for this use.

Overall there will be no adverse effects on the environment and the proposal is consistent with Part 2 of the Act.

It is recommended that the consent application be granted.

ATTACHMENT D
COUNCIL INVOICES AND TIMESHEETS

Debit Note



Auckland Council
Private Bag 92300
Auckland 1142
09 301 0101

aucklandcouncil.govt.nz

GST Number: 104-736-998

Pine Harbour Marina Limited
PO Box 54
Beachlands 2147

Date: 21 November 2019
Contract: 27301117898
Debit Note: 250100449233

Application: CST60337797
Location: 190 Jack Lachlan Drive Beachlands Auckland 2571
Description: Provide for exclusive occupation and for live aboards at the Marina.

Product	Description	Reference	Amount
RCDEPPRO	Processing deposit	250100337422	-\$4,000.00
RCADM	Administration processing		\$333.00
RCCOMMR	Commissioner		\$1,233.38
RCDOCS	Documentation		\$90.00
RCMONITOR	Monitoring fee		\$330.00
RCTIME	Time Sheet		\$19,682.00

This is an adjustment to a previous invoice.
Payment is due immediately
All items are GST inclusive unless marked with *

Total Amount	\$17,668.38
Payment/Credit Allocated	\$0.00
Amount Due	\$17,668.38

Page 1 of 6

Remittance Advice

Log into your internet banking site and select "One off payments" and complete all the payee information as shown below.

Internet Banking /
Bill Payment

Payee name	Payee account number	
AUCKLAND COUNC	12-3113-0131289-00	
Details to appear on payee statement		
Particulars	Code	Reference
Pine Harbour	27301117898	250100449233

Please see overleaf for other payment options



AKLACC2501004492330001766838311299990000000000

⑈ 18 ⑈ 250 100449233

⑈000 1 766838⑈880

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Payment Options

Online:

Auckland Council website You can pay your bill online at aucklandcouncil.govt.nz/pay by either method below. Simply follow the instructions provided on the site.

Credit Card - you can pay with Visa or Mastercard. Payments will incur a convenience fee of 1.75 per cent of your payment amount.

Account2Account - a free online payment system that allows you to make a secure bank transfer via your internet banking. Banks that support this system are ANZ, ASB, BNZ, Kiwibank, TSB and Westpac.

Internet Banking:

Direct Credit Log into your internet banking site and select "One off payments" and complete all the payee information as shown below.

Payee name		Payee account number
AUCKLAND COUNC		12-3113-0131289-00
Details to appear on payee statement		
Particulars	Code	Reference
Pine Harbour	27301117898	250100449233

Please direct all remittance advices to direct.credit@aucklandcouncil.govt.nz

In Person:

Auckland Council You can pay your bill by cash, cheque or Eftpos upon presentation of your invoice at any Auckland Council service centre, a list of which can be found at www.aucklandcouncil.govt.nz. Credit card payments are also accepted for Visa, Mastercard and Amex. A surcharge of 1.75 per cent is incurred for credit card payments.

Mail Post to Private Bag 92300, Auckland 1142.
To ensure your payment is correctly credited to your account, please attach the remittance advice to your cheque. For your security, please do not send cash.

Breakdown of Time Charges

Debit Note: 250100449233

Application: CST60337797

Address: 190 Jack Lachlan Drive Beachlands Auckland 2571

Applicant: Pine Harbour Marina Limited

Description: Provide for exclusive occupation and for live aboards at the Marina.

Time Entry Date	Group	Activity Description	Comments	Rate (\$/Hr)	Time (mins)	\$ Amount
28/05/2019	Administration	Advice	Scanned relevant docs to the planner	192.00	30	\$96.00
12/08/2019	Administration	Assessment	Send S92 feedback to agent	195.00	20	\$65.00
	Subtotal					\$161.00
28/06/2019	Engineer	Assessment	DE assessment.	162.00	15	\$40.50
	Subtotal					\$40.50
16/07/2019	Parks	Assessment	Review of Application and preparation of s92 request	195.00	120	\$390.00
	Subtotal					\$390.00
16/05/2019	Planner	Assessment	Preliminary assessment and liaison with NW hub and coastal specialist team and Plan and Places.	192.00	100	\$320.00
20/05/2019	Planner	Discussion/Advice to/from Other Staff	Discussion with processing planner at NW hub and principal planner	192.00	90	\$288.00
22/05/2019	Planner	Discussion/Advice to/from Other Staff	Team Leader briefing of the application	192.00	40	\$128.00
23/05/2019	Planner	Assessment	Assessment of application, associated documents and discussion with specialists and other planners doing the permits.	192.00	240	\$768.00
23/05/2019	Planner	Assessment	MACAA relevance to the application	192.00	30	\$96.00
24/05/2019	Planner	Assessment	Acceptance letter for the 3 permits and discussion with the coastal team, forwarded iwi consult email to agent	192.00	120	\$384.00
24/05/2019	Planner	Assessment	Letter to agent on MACAA and iwi consultation	192.00	60	\$192.00
24/05/2019	Planner	Discussion/Advice to/from Other Staff	internal discussion with processing planner	192.00	30	\$96.00
24/05/2019	Planner	Discussion/Advice to/from Other Staff	Various email conversations with the specialists	192.00	70	\$224.00
28/05/2019	Planner	Assessment	Assessment of application and formulate question to be discussed in meeting with coastal team and other planners	192.00	120	\$384.00
28/05/2019	Planner	Assessment	Manua whenua consultation email and liaison with planners	192.00	40	\$128.00
29/05/2019	Planner	Assessment	Draft questions to coastal specialists. Discussions with agent on iwi matter & expiry term. Read through permits/approva	192.00	110	\$352.00
31/05/2019	Planner	Administration	Travel to and back from central office - Graham Street	192.00	60	\$192.00

Breakdown of Time Charges

Debit Note: 250100449233

Application: CST60337797

Address: 190 Jack Lachlan Drive Beachlands Auckland 2571

Applicant: Pine Harbour Marina Limited

Time Entry Date	Group	Activity Description	Comments	Rate (\$/Hr)	Time (mins)	\$ Amount
31/05/2019	Planner	Assessment	Prepare for meeting with coastal team and other planners	192.00	60	\$192.00
31/05/2019	Planner	Meeting	Meeting with Coastal Team and other planners processing marina applications.	192.00	120	\$384.00
14/06/2019	Planner	Discussion/Advice to/from Other Staff	Discussions with principal planner south	192.00	25	\$80.00
21/06/2019	Planner	Assessment	Internal discussions	192.00	20	\$64.00
24/06/2019	Planner	Assessment	Assessment for s92, review legal opinion, information from coastal team.	192.00	150	\$480.00
02/07/2019	Planner	Customer Enquiry	Agent called to discuss consultation in relation to MACAA and update on application	195.00	50	\$162.50
03/07/2019	Planner	Assessment	S92 request	195.00	120	\$390.00
03/07/2019	Planner	Discussion/Advice to/from Other Staff	Discussion with coastal team and other planners	195.00	25	\$81.25
09/07/2019	Planner	Assessment	S37 and update records, liaise with specialist and update agent	195.00	20	\$65.00
11/07/2019	Planner	Meeting	meeting with the Coastal Team and other processing planners for Marinas.	195.00	145	\$471.25
12/07/2019	Planner	Assessment	Assessment of land ownership and liaise with coastal team.	195.00	60	\$195.00
12/07/2019	Planner	Discussion/Advice to/from Other Staff	Liaise with parks on exclusive use of footpaths etc	195.00	25	\$81.25
17/07/2019	Planner	Assessment	Assessment of comments from parks specialist	195.00	15	\$48.75
26/07/2019	Planner	Assessment	refinalise s92 and prepare for the meeting	195.00	60	\$195.00
26/07/2019	Planner	Meeting	Combined meeting with Coastal team and Planners	195.00	120	\$390.00
29/07/2019	Planner	Assessment	Consolidate S92 and send to Andrew Benson for review	195.00	150	\$487.50
30/07/2019	Planner	Assessment	Finalise S92 and send to the agent	195.00	130	\$422.50
02/08/2019	Planner	Assessment	Going through minutes of meeting and various correspondence with the council team	195.00	30	\$97.50
06/08/2019	Planner	Assessment	Review S92 response, clarification email to Andrew Bensons - Coastal Team.	195.00	60	\$195.00
03/08/2019	Planner	Assessment	Correspondence with Agent - Craig. Various correspondence with council officers.	195.00	10	\$32.50
22/08/2019	Planner	Assessment	S95 assessments, discuss with specialist, assess specialist memo and S95 report writing	195.00	300	\$975.00

Breakdown of Time Charges

Debit Note: 250100449233

Application: CST60337797

Address: 190 Jack Lachlan Drive Beachlands Auckland 2571

Applicant: Pine Harbour Marina Limited

Time Entry Date	Group	Activity Description	Comments	Rate (\$/Hr)	Time (mins)	\$ Amount
23/08/2019	Planner	Assessment	Assessment and report writing	195.00	260	\$845.00
26/08/2019	Planner	Assessment	Review of relevant statutory documents	195.00	120	\$390.00
26/08/2019	Planner	Report Writing	Draft section 104 report	195.00	120	\$390.00
27/08/2019	Planner	Assessment	Assessments and report writing. Discussions with staff	195.00	120	\$390.00
28/08/2019	Planner	Assessment	Assessments and notification report	195.00	120	\$390.00
29/08/2019	Planner	Assessment	Assessments and complete s95 report	195.00	270	\$877.50
30/08/2019	Planner	Report Writing	Assessments and Section 104 assessments	195.00	320	\$1,040.00
02/09/2019	Planner	Assessment	Finalise the report recommendation and provide for Team Leader review. Prepare Duty Commissioner documents	195.00	180	\$585.00
03/09/2019	Planner	Assessment	Duty commissioner docs preparation	195.00	25	\$81.25
03/09/2019	Planner	Assessment	Discuss with Leader after peer review and amend report.	195.00	170	\$552.50
03/09/2019	Planner	Peer Review	Peer review report and recommended decision & conditions	195.00	120	\$390.00
05/09/2019	Planner	Assessment	Complete recommendns reports. final sign off. Complete DC draft decisions. Create one-drive, send link to Principal plan	195.00	230	\$747.50
05/09/2019	Planner	Peer Review	Final review of report before dispatching to Duty Commissioner for consideration.	195.00	20	\$65.00
09/09/2019	Planner	Assessment	Receive decisions from DC. Stamp plan and send decision to agent	195.00	35	\$113.75
09/09/2019	Planner	Assessment	Update records and S37 letter	195.00	30	\$97.50
15/11/2019	Planner	Assessment	record keeping - updating and SAP, billing.	195.00	120	\$390.00
	Subtotal					\$16,387.00
16/05/2019	Specialist Input (RC)	Discussion/Advice to/from Other Staff	Advice to planner/TL on the application + discussions	192.00	60	\$192.00
17/05/2019	Specialist Input (RC)	Assessment	Assessment + writing	192.00	90	\$288.00
17/05/2019	Specialist Input (RC)	Assessment	Printed + reviewed the application docs	192.00	90	\$288.00
17/05/2019	Specialist Input (RC)	Report Writing	Recreated the map + some writing	192.00	90	\$288.00

Breakdown of Time Charges

Debit Note: 250100449233

Application: CST60337797

Address: 190 Jack Lachlan Drive Beachlands Auckland 2571

Applicant: Pine Harbour Marina Limited

Time Entry Date	Group	Activity Description	Comments	Rate (\$/Hr)	Time (mins)	\$ Amount
24/05/2019	Specialist Input (RC)	Administration	Emails	192.00	30	\$96.00
31/05/2019	Specialist Input (RC)	Advice	Advice	192.00	60	\$192.00
31/05/2019	Specialist Input (RC)	Meeting	Meeting with planners	192.00	50	\$160.00
05/06/2019	Specialist Input (RC)	Discussion/Advice to/from Other Staff	Discussion with TL	192.00	45	\$144.00
11/07/2019	Specialist Input (RC)	Meeting	Meeting with planners	195.00	40	\$130.00
13/08/2019	Specialist Input (RC)	Discussion/Advice to/from Other Staff	Discussion with TL	195.00	60	\$195.00
14/08/2019	Specialist Input (RC)	Report Writing	Tech memo drafting	195.00	120	\$390.00
15/08/2019	Specialist Input (RC)	Report Writing	Tech memo drafting	195.00	90	\$292.50
	Subtotal					\$2,655.50
22/05/2019	Subdivision Officer	Research	Search title in Landonline	192.00	15	\$48.00
	Subtotal					\$48.00
	Total					\$19,682.00

Debit Note



Auckland Council
 Private Bag 92300
 Auckland 1142
 09 301 0101
aucklandcouncil.govt.nz
 GST Number: 104-736-998

Bayswater Marina Limited
 21 Sir Peter Blake Parade
 Bayswater
 Auckland 0622

Date: 17 September 2019
 Contract: 27301118207
 Debit Note: 250100412808

Application: CST60337798
 Location: 21 Sir Peter Blake Parade Bayswater 0622
 Description: Provide for exclusive occupation and for live aboards at the marina

Product	Description	Reference	Amount
RCDEPPRO	Processing deposit	250100334256	-\$4,000.00
RCADM	Administration processing		\$333.00
RCADM	Late processing discount		-\$9.99
RCDOCS	Documentation		\$90.00
RCDOCS	Late processing discount		-\$2.70
RCTIME	Time Sheet		\$9,696.50
RCTIME	Late processing discount		-\$290.95

This is an adjustment to a previous invoice.
 Payment is due immediately
 All items are GST inclusive unless marked with *

Total Amount	\$5,815.86
Payment/Credit Allocated	\$0.00
Amount Due	\$5,815.86

Remittance Advice

Log into your internet banking site and select "One off payments" and complete all the payee information as shown below.

Internet Banking /
 Bill Payment

Payee name		Payee account number
AUCKLAND COUNC		12-3113-0131289-00
Details to appear on payee statement		
Particulars	Code	Reference
Bayswater Ma	27301118207	250100412808

Please see overleaf for other payment options



AKLACC2501004128080000581586311299990000000000

⑈ 18 ⑈ 250 1004 1 2808

⑈ 000058 1586 ⑈ 880

Payment Options

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Auckland Council website You can pay your bill online at aucklandcouncil.govt.nz/pay by either method below. Simply follow the instructions provided on the site.

Credit Card - you can pay with Visa or Mastercard. Payments will incur a convenience fee of 1.75 per cent of your payment amount.

Account2Account - a free online payment system that allows you to make a secure bank transfer via your internet banking. Banks that support this system are ANZ, ASB, BNZ, Kiwibank, TSB and Westpac.

Internet Banking:

Direct Credit Log into your internet banking site and select "One off payments" and complete all the payee information as shown below.

Payee name		Payee account number
AUCKLAND COUNC		12-3113-0131289-00
Details to appear on payee statement		
Particulars	Code	Reference
Bayswater Ma	27301118207	250100412808

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To ensure your payment is correctly credited to your account, please attach the remittance advice to your cheque. For your security, please do not send cash.

Breakdown of Time Charges

Debit Note: 250100412808

Application: CST60337798

Address: 21 Sir Peter Blake Parade Bayswater 0622

Applicant: Bayswater Marina Limited

Description: Provide for exclusive occupation and for live aboards at the marina

Time Entry Date	Group	Activity Description	Comments	Rate (\$/Hr)	Time (mins)	Gross	Discount	\$ Amount
28/05/2019	Administration	Advice	Scanned relevant docs to the planner	192.00	30	\$96.00	-\$2.88	\$93.12
	Subtotal					\$96.00	-\$2.88	\$93.12
16/05/2019	Engineer	Assessment	Check application. Advise planner.	192.00	30	\$96.00	-\$2.88	\$93.12
	Subtotal					\$96.00	-\$2.88	\$93.12
07/05/2019	Planner	Administration	Allocation	192.00	15	\$48.00	-\$1.44	\$46.56
13/05/2019	Planner	Assessment	reading application documents / rules assessment / searching property file and job allocation to specialists	192.00	90	\$288.00	-\$8.64	\$279.36
14/05/2019	Planner	Assessment	discussion re MACA / cultural assessment process	192.00	30	\$96.00	-\$2.88	\$93.12
16/05/2019	Planner	Assessment	discussion with a principal planner and DE	192.00	45	\$144.00	-\$4.32	\$139.68
21/05/2019	Planner	Assessment	reading a letter from an interested party / sending an email to principal planner	192.00	15	\$48.00	-\$1.44	\$46.56
23/05/2019	Planner	Assessment	organizing site visit / going through original consent documents / coordinating with other offices for consistency	192.00	50	\$160.00	-\$4.80	\$155.20
27/05/2019	Planner	Assessment	Finding old documents for the planner	192.00	15	\$48.00	-\$1.44	\$46.56
27/05/2019	Planner	Assessment	internal discussion / responding to emails and phone call	192.00	20	\$64.00	-\$1.92	\$62.08
28/05/2019	Planner	Assessment	reading correspondence from other planners	192.00	10	\$32.00	-\$0.96	\$31.04
28/05/2019	Planner	Site Visit	site visit / assessment on site	192.00	75	\$240.00	-\$7.20	\$232.80
29/05/2019	Planner	Assessment	drafting questions for Friday's meeting with Coastal Team / discussion with Principal Planner	192.00	100	\$320.00	-\$9.60	\$310.40
31/05/2019	Planner	Meeting	meeting with other planners and coastal team	192.00	150	\$480.00	-\$14.40	\$465.60
06/06/2019	Planner	Administration	sorting out site photos	192.00	10	\$32.00	-\$0.96	\$31.04
06/06/2019	Planner	Assessment	reading emails, emailing other planners and principal planner for clarification	192.00	85	\$272.00	-\$8.16	\$263.84
07/06/2019	Planner	Administration	sharing documents with other planners	192.00	5	\$16.00	-\$0.48	\$15.52

Breakdown of Time Charges

Debit Note: 250100412808
 Application: CST60337798
 Address: 21 Sir Peter Blake Parade Bayswater 0622
 Applicant: Bayswater Marina Limited

Time Entry Date	Group	Activity Description	Comments	Rate (\$/Hr)	Time (mins)	Gross	Discount	\$ Amount
07/06/2019	Planner	Assessment	reviewing principal planner's advice on liveboards	192.00	15	\$48.00	-\$1.44	\$46.56
17/06/2019	Planner	Assessment	reviewing legal advice given re Empowerment act / License	192.00	20	\$64.00	-\$1.92	\$62.08
18/06/2019	Planner	Advice	emailing costal TL re interested parties	192.00	10	\$32.00	-\$0.96	\$31.04
19/06/2019	Planner	Administration	File searching	192.00	20	\$64.00	-\$1.92	\$62.08
19/06/2019	Planner	Assessment	checking Kennedy point marina file	192.00	15	\$48.00	-\$1.44	\$46.56
21/06/2019	Planner	Assessment	emailing re s92 request / reading correspondence	192.00	15	\$48.00	-\$1.44	\$46.56
24/06/2019	Planner	Administration	emailing other planners	192.00	5	\$16.00	-\$0.48	\$15.52
28/06/2019	Planner	Assessment	s92 request - drafting questions / discussions	192.00	50	\$160.00	-\$4.80	\$155.20
03/07/2019	Planner	Assessment	reviewing correspondences from other planners	195.00	15	\$48.75	-\$1.46	\$47.29
05/07/2019	Planner	Administration	organizing meeting re s92 matters	195.00	10	\$32.50	-\$0.98	\$31.52
11/07/2019	Planner	Meeting	preparing for the meeting / attending the meeting	195.00	125	\$406.25	-\$12.19	\$394.06
12/07/2019	Planner	Advice	reviewing correspondence around s37 and s92 matters	195.00	10	\$32.50	-\$0.98	\$31.52
23/07/2019	Planner	Advice	discussion re s92 matters	195.00	10	\$32.50	-\$0.98	\$31.52
24/07/2019	Planner	Advice	corresponding internally re s92	195.00	10	\$32.50	-\$0.98	\$31.52
26/07/2019	Planner	Assessment	finalizing s92 questions, tweaking them following meeting, sending it for consolidation	195.00	25	\$81.25	-\$2.44	\$78.81
26/07/2019	Planner	Meeting	meeting s92 matters	195.00	100	\$325.00	-\$9.75	\$315.25
30/07/2019	Planner	Administration	sorting out correspondences sent by coastal team	195.00	10	\$32.50	-\$0.98	\$31.52
30/07/2019	Planner	Assessment	s92 - revising the letter / putting application on hold	195.00	10	\$32.50	-\$0.98	\$31.52
08/08/2019	Planner	Assessment	internal correspondence re notification assessments	195.00	10	\$32.50	-\$0.98	\$31.52
08/08/2019	Planner	Report Writing	writing proposal / background and reasons sections	195.00	60	\$195.00	-\$5.85	\$189.15
12/08/2019	Planner	Report Writing	completing background section / site description and parts of 95A assessment.	195.00	100	\$325.00	-\$9.75	\$315.25

Breakdown of Time Charges

Debit Note: 250100412808
 Application: CST60337798
 Address: 21 Sir Peter Blake Parade Bayswater 0622
 Applicant: Bayswater Marina Limited

Time Entry Date	Group	Activity Description	Comments	Rate (\$/Hr)	Time (mins)	Gross	Discount	\$ Amount
12/08/2019	Planner	Report Writing	95A and B assessments	195.00	155	\$503.75	-\$15.11	\$488.64
13/08/2019	Planner	Report Writing	104 assessments obs and pols and NZCPS assessment	195.00	55	\$178.75	-\$5.36	\$173.39
13/08/2019	Planner	Report Writing	completing s014 assessments	195.00	70	\$227.50	-\$6.83	\$220.67
14/08/2019	Planner	Assessment	discussion with coastal team	195.00	10	\$32.50	-\$0.98	\$31.52
16/08/2019	Planner	Report Writing	editing report following internal reviews / drafting conditions	195.00	60	\$195.00	-\$5.85	\$189.15
21/08/2019	Planner	Assessment	reviewing coastal specialist memo / incorporating coastal specialist review	195.00	45	\$146.25	-\$4.39	\$141.86
21/08/2019	Planner	Report Writing	editing report following internal review	195.00	35	\$113.75	-\$3.41	\$110.34
29/08/2019	Planner	Assessment	TL review, comment, discussion, signoff	195.00	120	\$390.00	-\$11.70	\$378.30
03/09/2019	Planner	Report Writing	revising report following TL review / preparing DC decision, completing admin tasks, sending documents for DC signoff	195.00	130	\$422.50	-\$12.68	\$409.82
09/09/2019	Planner	Administration	checking DC decision / emailing other staff members / issuing decision / emailing interested parties	195.00	40	\$130.00	-\$3.90	\$126.10
09/09/2019	Planner	Administration	saving documents, working out days and emailing admin	195.00	55	\$178.75	-\$5.36	\$173.39
	Subtotal					\$6,895.50	-\$206.91	\$6,688.59
13/05/2019	Specialist Input (RC)	Advice	Assess & respond to ww query	192.00	15	\$48.00	-\$1.44	\$46.56
14/05/2019	Specialist Input (RC)	Assessment	Printed application docs + quick review	192.00	90	\$288.00	-\$8.64	\$279.36
15/05/2019	Specialist Input (RC)	Discussion/Advice to/from Other Staff	Discussion with TL	192.00	60	\$192.00	-\$5.76	\$186.24
17/05/2019	Specialist Input (RC)	Discussion/Advice to/from Other Staff	Discussion with Principal planner	192.00	60	\$192.00	-\$5.76	\$186.24
24/05/2019	Specialist Input (RC)	Administration	Emails	192.00	30	\$96.00	-\$2.88	\$93.12
31/05/2019	Specialist Input (RC)	Advice	Advice	192.00	60	\$192.00	-\$5.76	\$186.24
31/05/2019	Specialist Input (RC)	Meeting	meeting with planners	192.00	50	\$160.00	-\$4.80	\$155.20
05/06/2019	Specialist Input (RC)	Discussion/Advice to/from Other Staff	Discussion with TL	192.00	45	\$144.00	-\$4.32	\$139.68

Breakdown of Time Charges

Debit Note: 250100412808
Application: CST60337798
Address: 21 Sir Peter Blake Parade Bayswater 0622
Applicant: Bayswater Marina Limited

Time Entry Date	Group	Activity Description	Comments	Rate (\$/Hr)	Time (mins)	Gross	Discount	\$ Amount
06/06/2019	Specialist Input (RC)	Assessment	Discussions + drafting s92 questions	192.00	60	\$192.00	-\$5.76	\$186.24
11/07/2019	Specialist Input (RC)	Meeting	Meeting with planners	195.00	40	\$130.00	-\$3.90	\$126.10
13/08/2019	Specialist Input (RC)	Report Writing	Drafting memo	195.00	120	\$390.00	-\$11.70	\$378.30
14/08/2019	Specialist Input (RC)	Report Writing	Tech memo drafting	195.00	90	\$292.50	-\$8.78	\$283.72
15/08/2019	Specialist Input (RC)	Report Writing	Drafting the memo	195.00	90	\$292.50	-\$8.78	\$283.72
	Subtotal					\$2,609.00	-\$78.28	\$2,530.72
	Total					\$9,696.50	-\$290.95	\$9,405.55

Debit Note



Auckland Council
Private Bag 92300
Auckland 1142
09 301 0101

aucklandcouncil.govt.nz

GST Number: 104-736-998

Hobsonville Marina Limited
PO Box 66
Westpark Village
Auckland 0661

Date: 10 September 2019
Contract: 27301118215
Debit Note: 250100408865

Application: CST60337799
Location: 18 Clearwater Cove West Harbour
Description: Provide for exclusive occupation and for live aboards at the marina.

Product	Description	Reference	Amount
RCDEPPRO	Processing deposit	250100335145	-\$4,000.00
RCTIME	Time Sheet		\$21,025.50

This is an adjustment to a previous invoice.
Payment is due immediately
All items are GST inclusive unless marked with *

Total Amount	\$17,025.50
Payment/Credit Allocated	\$0.00
Amount Due	\$17,025.50

Page 1 of 7

Remittance Advice

Log into your internet banking site and select "One off payments" and complete all the payee information as shown below.

Internet Banking /
Bill Payment

Payee name	Payee account number	
AUCKLAND COUNC	12-3113-0131289-00	
Details to appear on payee statement		
Particulars	Code	Reference
Hobsonville	27301118215	250100408865

Please see overleaf for other payment options



AKLACC2501004088650001702550311299990000000000

⑈ 18 ⑈ 2 50 1 00 4 0886 5

⑈ 000 1 70 2 5 50 ⑈ 880

Payment Options

Online:

Auckland Council website You can pay your bill online at aucklandcouncil.govt.nz/pay by either method below. Simply follow the instructions provided on the site.

Credit Card - you can pay with Visa or Mastercard. Payments will incur a convenience fee of 1.75 per cent of your payment amount.

Account2Account - a free online payment system that allows you to make a secure bank transfer via your internet banking. Banks that support this system are ANZ, ASB, BNZ, Kiwibank, TSB and Westpac.

Internet Banking:

Direct Credit Log into your internet banking site and select "One off payments" and complete all the payee information as shown below.

Payee name		Payee account number	
<input type="text" value="AUCKLAND COUNC"/>		<input type="text" value="12-3113-0131289-00"/>	
Details to appear on payee statement			
Particulars	Code	Reference	
<input type="text" value="Hobsonville"/>	<input type="text" value="27301118215"/>	<input type="text" value="250100408865"/>	

Please direct all remittance advices to direct.credit@aucklandcouncil.govt.nz

In Person:

Auckland Council You can pay your bill by cash, cheque or Eftpos upon presentation of your invoice at any Auckland Council service centre, a list of which can be found at www.aucklandcouncil.govt.nz. Credit card payments are also accepted for Visa, Mastercard and Amex. A surcharge of 1.75 per cent is incurred for credit card payments.

Mail Post to Private Bag 92300, Auckland 1142.
To ensure your payment is correctly credited to your account, please attach the remittance advice to your cheque. For your security, please do not send cash.

Breakdown of Time Charges

Debit Note: 250100408865

Application: CST60337799

Address: 18 Clearwater Cove West Harbour

Applicant: Hobsonville Marina Limited

Description: Provide for exclusive occupation and for live aboards at the marina.

Time Entry Date	Group	Activity Description	Comments	Rate (\$/Hr)	Time (mins)	\$ Amount
13/05/2019	Planner	Administration	spoke to Craig re Coastal specialist questions, and email to him	192.00	8	\$25.60
13/05/2019	Planner	Administration	Email Corres with Kala re AEE	192.00	6	\$19.20
20/05/2019	Planner	Administration	email Kala re consent and the need for CMT consultation in CMA? , email Yuto and Robert re their coastal consents	192.00	12	\$38.40
20/05/2019	Planner	Discussion/Advice to/from Other Staff	Emails discussion with Kala re section 92 questions on the application and temp for CMT consultation	192.00	23	\$73.60
20/05/2019	Planner	Discussion/Advice to/from Other Staff	Phone with Rob re consent Coastal and one that he is dealing with Pine Harbour	192.00	23	\$73.60
20/05/2019	Planner	Discussion/Advice to/from Other Staff	email to Kala	192.00	6	\$19.20
21/05/2019	Planner	Discussion/Advice to/from Other Staff	email corres with internal specialists re consents, and the need for CMTs engagement, blurb for CMTs	192.00	43	\$137.60
23/05/2019	Planner	Assessment	phone call with Rashida, section 92 assessment, and drafting emails	192.00	125	\$400.00
24/05/2019	Planner	Administration	email with interested parties	192.00	23	\$73.60
24/05/2019	Planner	Discussion/Advice to/from Other Staff	Rashida re MACAA and further information matters, two phone calls and emails cores	192.00	68	\$217.60
27/05/2019	Planner	Discussion/Advice to/from Other Staff	email corres to councillors re consent and scope of the application, discussion with manager re public interests	192.00	115	\$368.00
28/05/2019	Planner	Administration	drafting iwi consultation facilitation and email to application requests, updated newcore to add worklist	192.00	26	\$83.20
28/05/2019	Planner	Assessment	identifying issues, emails corres with other planners for other consent lodged by the same applicant	192.00	49	\$156.80
28/05/2019	Planner	Assessment	phone call with Rashida re questions	192.00	13	\$41.60
28/05/2019	Planner	Assessment	AUP OP section 32 report and PC15 in the context of the application	192.00	86	\$275.20
30/05/2019	Planner	Administration	Email to Andrew to add one more question	192.00	4	\$12.80
30/05/2019	Planner	Meeting	meeting with Cr Waston and Walker re Hudsonville Marina consent including travel time 2.30-3.45	192.00	75	\$240.00
30/05/2019	Planner	Site Visit	site visit including travel time 9.30-11.20	192.00	110	\$352.00
31/05/2019	Planner	Assessment	email to Legal team re application empowering act and seabed licence	192.00	23	\$73.60
31/05/2019	Planner	Meeting	meeting - 10-12.35 for three applications and who is doing what, legal input discussion, principle policy input	192.00	155	\$496.00

Breakdown of Time Charges

Debit Note: 250100408865
 Application: CST60337799
 Address: 18 Clearwater Cove West Harbour
 Applicant: Hobsonville Marina Limited

Time Entry Date	Group	Activity Description	Comments	Rate (\$/Hr)	Time (mins)	\$ Amount
04/06/2019	Planner	Assessment	drafting email seeking legal input on consent re empowering act and seabed licence and public interests	192.00	36	\$115.20
07/06/2019	Planner	Assessment	application memo to the Councillors to address the matters at hand 8.05-9.45, for all three applications	192.00	100	\$320.00
18/06/2019	Planner	Assessment	review legal email re Empowering Act and seabed licence 10.27-10.46	192.00	19	\$60.80
18/06/2019	Planner	Assessment	email to Andrew re consent process, email corres with applicant and June Kearny	192.00	23	\$73.60
20/06/2019	Planner	Assessment	review aup op coastal marina, cma, and precinct chapters for s92 questions 3.15-5.32	192.00	137	\$438.40
21/06/2019	Planner	Advice	email responses to Councillor Walker's requests	192.00	26	\$83.20
21/06/2019	Planner	Assessment	finalising s92 requests for Hebronville Marina, call, email Rashida re consolidating the application requests, to 11.25	192.00	145	\$464.00
24/06/2019	Planner	Assessment	emails from the coastal team and June Kearney, differences btw this and past consents, legal clarification etc	192.00	126	\$403.20
03/07/2019	Planner	Assessment	call with Rashida, s37 letter, email to agent, SAP update, email to legal team re applications 11.26-12.30	195.00	64	\$208.00
03/07/2019	Planner	Assessment	Email with coastal TL Andrew re legal input on matters need to be clarified	195.00	23	\$74.75
04/07/2019	Planner	Administration	email corres with Andrew and other planners on the applications	195.00	6	\$19.50
04/07/2019	Planner	Assessment	email corres with Andrew Bensen and Yuto re meeting next week	195.00	13	\$42.25
08/07/2019	Planner	Assessment	reviewing PC15 decision came out on 20/06/2019 to see the changes	195.00	48	\$156.00
09/07/2019	Planner	Assessment	Reviewing the email from Craig and Andrew re consents, and Andrew's email, and changes to S92 draft	195.00	36	\$117.00
11/07/2019	Planner	Assessment	drafting s92 for livaboard section then Craig's email came through, review legal email re seabed licence, and RMA relati	195.00	82	\$266.50
11/07/2019	Planner	Meeting	Meeting - Coastal team meeting and Kath Coombes - Live aboard arrangement and exclusive occupation	195.00	120	\$390.00
15/07/2019	Planner	Assessment	amend s92 and adding one more question to it re difference between existing and proposed, Andrew email	195.00	32	\$104.00
23/07/2019	Planner	Administration	email to Andrew re legal input, and update SAP re onhold, s37 dates, and add notes in system 9.49-.10.18	195.00	29	\$94.25
23/07/2019	Planner	Administration	Review Andrews's email re existing environment and scope of s92	195.00	8	\$26.00
24/07/2019	Planner	Administration	email with other planner and Andrew re s92 questions for the application	195.00	23	\$74.75
24/07/2019	Planner	Administration	email with other planner trying to organise meeting for s92	195.00	4	\$13.00

Breakdown of Time Charges

Debit Note: 250100408865
 Application: CST60337799
 Address: 18 Clearwater Cove West Harbour
 Applicant: Hobsonville Marina Limited

Time Entry Date	Group	Activity Description	Comments	Rate (\$/Hr)	Time (mins)	\$ Amount
25/07/2019	Planner	Assessment	amending s92 questions for the Marina and incorporating Andrew's comments and coastal team FR!	195.00	96	\$312.00
26/07/2019	Planner	Meeting	meeting in centre re the applications and draft s92 questions. 1.45-2.45	195.00	60	\$195.00
30/07/2019	Planner	Assessment	review sea bed licence and all WHRG email corres and how that fit in the consent	195.00	96	\$312.00
30/07/2019	Planner	Report Writing	report writing on the application	195.00	186	\$604.50
31/07/2019	Planner	Assessment	reviewing legal input and how seabed licence should not be considered under this consent	195.00	42	\$136.50
31/07/2019	Planner	Report Writing	report - Duty commissioner report recommendation	195.00	285	\$926.25
01/08/2019	Planner	Assessment	follow up email to Craig - re statutory acknowledgement, n Hobsonville Marina	195.00	20	\$65.00
01/08/2019	Planner	Meeting	meeting with David and Craig 1.30-3.15	195.00	105	\$341.25
01/08/2019	Planner	Report Writing	permitted baseline, Operative plan and PC15	195.00	32	\$104.00
02/08/2019	Planner	Assessment	email to Rashida re consent and private ownership issue, cant issue consent for that part	195.00	9	\$29.25
02/08/2019	Planner	Assessment	replying to Craig's email and email Andrew, Rashida, and Craig re time extension	195.00	22	\$71.50
02/08/2019	Planner	Report Writing	report writing - receiving environments and public notification draft parts	195.00	240	\$780.00
05/08/2019	Planner	Report Writing	finish pub and lim notification recommendation, and partly drafting s104 decision up NZCPS 1.25-4.32	195.00	187	\$607.75
08/08/2019	Planner	Administration	email to Andrew re draft report	195.00	6	\$19.50
08/08/2019	Planner	Assessment	initial check of s92 responses and drawings required to be amended to mirror the existing arrangement	195.00	4	\$13.00
08/08/2019	Planner	Report Writing	finalising draft for Andrew to review, add conditions etc 1.35- 5.06	195.00	211	\$685.75
09/08/2019	Planner	Administration	email to Craig to follow up on plans, and update the SAP	195.00	14	\$45.50
12/08/2019	Planner	Administration	off hold section 92 and save uplift date in SAP, email Rashida re DC name	195.00	5	\$16.25
13/08/2019	Planner	Administration	set up DC Decision report template	195.00	6	\$19.50
13/08/2019	Planner	Administration	email corres with other planners re reports, and email to Andrew re memo and conditions, update plan in report	195.00	23	\$74.75
13/08/2019	Planner	Report Writing	duty commissioner Decision on both notification and decisions, shorten the recommendation 9.48-10.34,10.46-11,1.32-3.26	195.00	174	\$565.50

Breakdown of Time Charges

Debit Note: 250100408865
 Application: CST60337799
 Address: 18 Clearwater Cove West Harbour
 Applicant: Hobsonville Marina Limited

Time Entry Date	Group	Activity Description	Comments	Rate (\$/Hr)	Time (mins)	\$ Amount
15/08/2019	Planner	Administration	pdfs files and saving into SAP for documenting	195.00	12	\$39.00
15/08/2019	Planner	Assessment	quick call to Craig re total area of exclusive occupation, save email reply	195.00	8	\$26.00
16/08/2019	Planner	Report Writing	report - amending the reports based on Andrew's comments and contentions around the application 10.11-12.00	195.00	109	\$354.25
20/08/2019	Planner	Report Writing	amend report for exclusive occupation based on AB's comments	195.00	83	\$269.75
21/08/2019	Planner	Report Writing	amending the report based on Andrew's comments	195.00	230	\$747.50
22/08/2019	Planner	Report Writing	amending report, reading through all emails from interested party, in cooperating their concerns into report cover basis	195.00	379	\$1,231.75
23/08/2019	Planner	Report Writing	Amending and finalising recommendation report - for exclusive occupation at the marina 11.27-1.27	195.00	120	\$390.00
28/08/2019	Planner	Assessment	review Sam's comments on the report, and making some changes	195.00	12	\$39.00
28/08/2019	Planner	Peer Review		195.00	90	\$292.50
28/08/2019	Planner	Report Writing	report - amend and finalize the recommendation report 9.02-9.54, sending report bk to Sam 3mins	195.00	55	\$178.75
29/08/2019	Planner	Report Writing	amending report and sending it back to Sam for review	195.00	58	\$188.50
30/08/2019	Planner	Administration	organizing emails and other inform for DC review 3.08-5.18	195.00	130	\$422.50
30/08/2019	Planner	Report Writing	report - writing decision on behalf of duty commissioner, 9.18-10.48, done record sheet, email TL, Andrew 10.50-11.42	195.00	142	\$461.50
02/09/2019	Planner	Administration	email to Rashida and Yuto re s92 uplift date, and email to Rashida re DC review 2.31-3.01	195.00	30	\$97.50
02/09/2019	Planner	Administration	creating one drive link for the files and fighting computer on the link not working, and pdf not showing 19+38+25	195.00	82	\$266.50
09/09/2019	Planner	Administration	SAP update to approve consent	195.00	12	\$39.00
09/09/2019	Planner	Administration	emalling application re decision and email TL and coastal TL re consent granted, update U Drive	195.00	31	\$100.75
	Subtotal					\$17,791.50
13/05/2019	Specialist Input (RC)	Assessment	Printing + review	192.00	120	\$384.00
15/05/2019	Specialist Input (RC)	Report Writing	Tech memo writing	192.00	240	\$768.00
16/05/2019	Specialist Input (RC)	Discussion/Advice to/from Other Staff	Emails/phone calls to planners and email to the consultant	192.00	90	\$288.00

Breakdown of Time Charges

Debit Note: 250100408865
 Application: CST60337799
 Address: 18 Clearwater Cove West Harbour
 Applicant: Hobsonville Marina Limited

Time Entry Date	Group	Activity Description	Comments	Rate (\$/Hr)	Time (mins)	\$ Amount
27/05/2019	Specialist Input (RC)	Peer Review	tech memo	192.00	20	\$64.00
28/05/2019	Specialist Input (RC)	Administration	Scanned relevant docs to planners	192.00	30	\$96.00
31/05/2019	Specialist Input (RC)	Advice	Advice	192.00	60	\$192.00
31/05/2019	Specialist Input (RC)	Meeting	Meeting with planners	192.00	50	\$160.00
11/07/2019	Specialist Input (RC)	Meeting	Meeting with planners	195.00	40	\$130.00
12/08/2019	Specialist Input (RC)	Peer Review	tech memo review	195.00	60	\$195.00
14/08/2019	Specialist Input (RC)	Assessment	Reviewed s92 response + emails to planners+agent	195.00	90	\$292.50
14/08/2019	Specialist Input (RC)	Peer Review	tech memo review	195.00	60	\$195.00
15/08/2019	Specialist Input (RC)	Report Writing	Editing comments	195.00	60	\$195.00
16/08/2019	Specialist Input (RC)	Peer Review	tech memo input	195.00	30	\$97.50
19/08/2019	Specialist Input (RC)	Peer Review	tech memo	195.00	20	\$65.00
	Subtotal					\$3,122.00
29/05/2019	Subdivision Officer	Assessment	Landonline searches, titles & documents.	192.00	20	\$64.00
24/06/2019	Subdivision Officer	Assessment	Landonline searches, lease, fee simple titles & relating doc's.	192.00	15	\$48.00
	Subtotal					\$112.00
	Total					\$21,025.50

ATTACHMENT E

**COUNCIL'S S95 AND S104 REPORTS AND
DECISIONS**

Notification and substantive report for application for resource consent under the Resource Management Act 1991

Restricted discretionary activity

1. Application description

Application number: CST60337797 (Coastal Permit)
Applicant: Pine Harbour Marina Limited
Site address: Coastal Marine Area adjacent to 190 Jack Lachlan Drive, Beachlands

Auckland Unitary Plan (Operative in part)

Zoning: Coastal – Marina Zone

2. Locality Plan



Figure 1 – Locality Plan

Source: Auckland Council GIS

3. The proposal, site and locality description

Proposal

Mr Craig Shearer of Shearer Consulting Limited has provided a description of the subject site in a form and manner that is accepted by council. Having undertaken a site visit, I concur with that description of the proposal and the site and have no further comment. This can be found in the Assessment of Environmental Effects (AEE) titled: '*Coastal Exclusive Occupation Resource Consent Application by Pine Harbour Marina Limited*' and dated 25 April 2019.

The applicant seeks exclusive occupation of the common marine and coastal area (CMCA) over parts of the Marina including marina piers, berth spaces, breakwater structures, gangways shown below in Figure 2.

No physical works/construction activities are proposed as part of this application. The application is solely for the exclusive occupation of some existing structures and spaces at the existing Marina.

4. Background



Figure 2 Plan showing the proposed exclusive occupation area hatched

✳ Marina basin in private ownership and excluded from this application

✳ Ferry Terminal

Part of the marina basin is privately owned by the applicant, having been declaimed at the time of construction of marina, therefore berth areas and other structures to the east of the marina basin, including piers A to C, and parts of D are excluded from this application.

Live-aboards

The initial application involved living aboard arrangement at the Marina, however this is no longer the case. The applicant has confirmed in an email dated 11th July 2019 that they do not wish to proceed with the 'live-aboards' proposal under this application.

Existing Consents

Resource Consent 46128 was granted on 19 February 2015 to PHML for maintenance dredging of the marina basin, entrance and approach channel.

Coastal permit 39483 was granted on 17 August 2011 to PHML for occupation of the coastal marina area within the marina complex on a non-exclusive basis. This consent expires on 16 August 2046. I note that this existing occupational consent may have been issued in error for that portion of the marina basin which is privately owned (i.e the declaimed portion) by PHML.

Development at Pine Harbour Marina

The applicant obtained a planning approval in 1985 to establish the Pine Harbour Marina.

PHML has been granted resource consent (LUC60305157 - 7 June 2018) to construct four buildings for commercial and residential activities on the existing carparking area (landward of the coastal marine area) of the Marina.

Iwi Consultation

Council facilitated the mana whenua values consultation with the relevant iwi groups at the request of the applicant on 28 May 2019. At the completion of the engagement process no responses were received from any of the mana whenua representatives who were contacted.

Iwi	Action required	Comment from iwi
No Responses Received...	None	CVA Facilitation Service has not received any responses from any of the mana whenua groups contacted.

Table 1: Consultation summary

Customary Marine Title engagement under Marine and Coastal Area (Takitai Moana) Act 2011 (MACAA)

As the application relates to the occupation of the common marine and coastal area, Customary Marine Title (CMT) applicants are required to be consulted under the MACAA. The applicant has sought the views of the relevant CMT groups directly and has provided email correspondences to the Council to demonstrate that. Only one applicant (who has applied for the CMT under the MACAA) responded stating that she objects to the proposal proceeding until the Crown has provided her with the funding to be able to assess this application.

Specialist Input

Aspects of the proposal has been reviewed and assessed by the following specialists:

- Andrew Benson – Team Leader Coastal & Water Allocation
- Kala Sivaguru – Senior Specialist

5. Reasons for the application

The relevant operative plan and proposed plan provisions

In assessing an application, the relevant provisions requiring consideration are:

- Auckland Unitary Plan (operative in part) (AUP(OP)); and
- Proposed Plan Change 15: Improving consistency of coastal provisions.

Proposed Plan Change 15 (PC 15) was notified on 29 November 2018. The intent of PPC 15 is to provide clarity and improve consistency for the coastal provisions of the AUP(OP), rather than seeking a new outcomes or directions for the plan as stated on page 15 of Council's Section 32 Evaluation Report for PC 15. It remains a proposed plan until it is signed off by Minister of Conservation. As the application was lodged after PC 15 was notified, the rules in PC 15 have legal effect and hence forms part of the reasons for consents. Notwithstanding their legal effect status, legal effect of a proposed rule has no implications in the s95 notification assessment, as all proposed plan provisions are considered only under the s104 assessment.

Accordingly, the relevant provisions requiring consideration are:

- those provisions of the AUP(OP) that are not subject to proposed plan changes but relevant to the assessment of the application and which became operative on 15 November 2016; and
- those provisions of the AUP(OP) that are identified as subject to proposed plan change under PC15 which have immediate legal effect under s86B (3) and therefore are treated as operative (subject to weighting).

Plan Change 15

- Rules F3.4.3(A33) and (34) are new rules of relevance to the subject application
 - Rule F3.4.3(A33) is applicable as this recognises that the areas zoned for marinas, minor ports, ferry terminals and the defence bases have a higher degree of development than other areas and can have safety or security reasons that justify exclusive occupation in some areas. It explicitly refers to the exclusive occupation of the CMA.
 - Rule F3.4.3(A34) applies to any type of occupation, including exclusive occupation and other occupation. The intent of introducing rule (A34) was that it is triggered if a different party other than the current consent holder proposes an activity in the same area.

The wording means that it is also triggered where there is an existing consent held by a party proposing a new activity/structure -they do not need a new occupation consent provided the proposed activity meets any limits under the existing consent. However, the existing coastal permit (39483) is for occupation of the CMA only on a non-exclusive basis, therefore the proposed changes for exclusive occupation of the CMA is not in accordance with the existing consent and therefore a restricted discretionary activity consent is triggered under these rules.

No other plan changes are considered relevant for the assessment of this application as they relate to chapters other than Coastal. Accordingly, resource consent is required for the following reasons:

Coastal Permit (s12(2)(a)) – CST60337797

Auckland Unitary Plan (Operative in part)

F3. Coastal – Marina Zone

- Restricted discretionary activity for the exclusive occupation of the wave attenuation device in the common marine and coastal area. The breakwater structure is a wave attenuation device. Rule F3.4.3 (A27)

Note: *Occupation (including exclusive occupation) of the common marine and coastal area with the gangways and berths is a permitted activity under Rule F3.4.3 (A30) of AUP(OP).*

Proposed Plan Change 15

- Restricted discretionary activity for the exclusive occupation of the common marine and coastal area by an activity that would otherwise be permitted. The proposal is not consistent with the existing coastal permit. Rule F3.4.3 (A33)
- Restricted discretionary activity for occupation of the common marine and coastal area by an activity that would otherwise be permitted where the area to be occupied is already the subject of an existing occupation consent. The proposed 'exclusive' occupation of the CMCA is not in accordance with the existing 'non-exclusive' occupation consent. Additionally a longer term of occupation is sought than what has been authorised under the existing consent. Rule F3.4.3 (A34)

The reasons for consent are considered together as a **restricted discretionary** activity overall.

Public notification assessment (sections 95A, 95C-95D)

Section 95A specifies the steps the council is to follow to determine whether an application is to be publicly notified. These steps are addressed in the statutory order below.

Step 1: mandatory public notification in certain circumstances

No mandatory notification is required as:

- the applicant has not requested that the application is publicly notified (s95A(3)(a))
- there are no outstanding or refused requests for further information (s95C and s95A(3)(b)), and
- the application does not involve any exchange of recreation reserve land under s15AA of the Reserves Act 1977 (s95A(3)(c)).

Step 2: if not required by step 1, public notification precluded in certain circumstances

The application is not precluded from public notification as:

- the activity is not subject to a rule or national environmental standard (NES) which precludes public notification (s95A(5)(a)); and
- the application does not involve one or more of the following activities exclusively: a controlled activity; a restricted discretionary or discretionary activity for a residential activity

(as defined in s95A of the RMA) or a subdivision; a boundary activity; or a prescribed activity (s95A(5)(b)).

Step 3: if not precluded by step 2, public notification required in certain circumstances

The application is not required to be publicly notified as the activity is not subject to any rule or a NES that requires public notification (s95A(8)(a)).

The following assessment addresses the adverse effects of the activity on the environment, as public notification is required if the activity will have or is likely to have adverse effects on the environment that are more than minor (s95A(8)(b)).

Only those effects that relate to matters that are within the council's discretion under the rules are considered in this assessment. These relevant matters specified under F3.8.1 of the AUP(OP) are listed below:

- F3.8.1 (1) under the current operative district plan
 - (d) the effects on public access, navigation and safety;
 - (e) the effects on the existing use and activities;
 - (f) the effect on Mana Whenua values;
 - (g) consent duration and monitoring
- F3.8.1 (6) under the proposed plan change 15
 - (a) the effects of location, extent, timing and duration of the occupation, including exclusive occupation

No other effects have been taken into account in this assessment.

Adverse effects assessment (sections 95A(8)(b) and 95D)

Effects that must be disregarded

Effects on persons who are owners and occupiers of the land in, on or over which the application relate, or of land adjacent to that land

There is no ownership over the CMCA, however adjoining sites proposed for exclusive use are marked by A-E as follows:



Figure 3: Adjoining sites

A: 190 Jack Lachlan Drive - land to the south (part of) and east, owned by the applicant

B.: 190 Jack Lachlan Drive – marina basin under private ownership by the applicant.

C: 230R Jack Lachlan Drive - land to the south (part of), owned by the Council and leased to the applicant for carparking purposes.

D: 230R Jack Lachlan Drive - land to the west, carpark and recreational area owned by the Council

E: 33R Puriri Road – land to the south (part of), east and north, are public footpath owned by the Council.

Any effect on a person who has given written approval to the application:

No persons have given their written approval to the application.

Effects that may be disregarded

Permitted baseline

The permitted baseline refers to the effects of permitted activities on the subject site. The permitted baseline may be taken into account and the council has the discretion to disregard those effects where an activity is not fanciful.

In terms of the AUP(OP), the occupation of the CMCA by/with marine and port activities is a permitted activity. Marine and port activities are activities associated with the navigation, anchoring, moorings, berthing, manoeuvring, refuelling, storage, servicing, operation, maintenance and repair of vessels.

The only matter requiring consent under AUP(OP) is the exclusive occupation over the breakwaters. As the exclusive occupation of the berths, piers, and gangways in the CMCA are permitted under rule F3.4.3(A30), any adverse effects on these can therefore be disregarded when assessing the effects of this application. It is only those effects associated with exclusive occupation of the breakwaters will be assessed under this application, against the operative plan provisions.

PC 15 introduces new rules (F3.4.3 (A33) and (A34)) with respect to occupation and exclusive occupation which have immediate legal effects, however at the time of writing this report, it remains a proposed plan, and legal effect of a proposed rule has no implications in the s95 notification assessment, as any 'permitted baseline' consideration should only be in relation to the operative plan provisions.

Assessment

Receiving environment

The receiving environment beyond the subject site includes permitted activities under the relevant plans, lawfully established activities (via existing use rights or resource consent), and any unimplemented resource consents that are likely to be implemented. The effects of any unimplemented consents on the subject site (in this case, the CMCA) that are likely to be implemented (and which are not being replaced by the current proposal) also form part of this

reasonably foreseeable receiving environment. This is the environment within which the adverse effects of this application must be assessed.

The following is considered part of the receiving environment:

- The permitted activities described above and the lawfully established activity for the 'non-exclusive' occupation of the CMA.
- There is no unimplemented coastal permit or permit hold by other parties, other than PHML, the consent holder.

The effects associated with the above forms part of the environment within which the application is considered and assessed.

Adverse effects assessment

As the application is for a restricted discretionary activity, Council's discretion is restricted to the following relevant matters:

Effects on public access, navigation and safety

Public access to the Marina will continue with exclusion over parts of the Marina, this includes the berth areas and piers. The applicant, who is the Marina operator, has stated that they only seek to be able to exclude people from breakwater areas during certain times, such as during night time hours (dusk to dawn), during adverse/stormy weather and sea conditions, when maintenance, repair/replacement activities are being undertaken and whilst maintaining the berth space for use of the berth holder.

Notwithstanding the above, public access from other waterways/water space area to the piers within the Marina basin will not be restricted.

I note the following from the section 92 response provided by the agent, Mr Craig Shearer dated 6 August 2019:

"Giving the public unhindered access to the piers has proven to be a hindrance in the past. Piers are generally narrow, with berth holders often carrying items such as fishing equipment, boat supplies and so on – having to manoeuvre around the general public, often with children in tow, is hazardous and leads to the risk of people falling into the water – the baby drowning at Whitianga Marina is a case in point. Without restrictions, the general public fish off the piers and breakwaters, and we have also seen instances of jumping and swimming off the piers. This is a dangerous activity as boat owners cannot see people in the water, and the additional risk posed by stray electrical currents – recognised internationally as the most common cause of drowning in marinas."

I also note a list of incidences that have been recorded by the applicants in recent times under the section 92 response compromising safety of Marina operation. Thus the proposal for exclusive occupation is for operational and safety reasons and for good marina management purposes.

The application has been reviewed and assessed by Council's Coastal Specialist, Dr Kala Sivaguru (refer to memo dated 19 August 2019), her comments are as follows:

"The areas for which the right of exclusive occupation is sought are all within existing lawful marinas, which are within areas specifically zoned for marina activities. Exclusive occupation is

sought for only part of the marina complexes, for operational and safety reasons. The applicant does not seek to exclude the public from all parts of the marina complexes, for example the right of exclusive occupation is not sought for the marina fairway areas. Further, whilst the right of exclusive occupation has been sought, the applicant has stated they only seek to be able to exclude people from parts of the CMCA at certain times, eg. in daylight hours and during benign weather/sea conditions the public will be able to use the breakwaters.

The marinas occupy space that were not subject to high public use prior to the construction of the marinas. They are now high use areas, primarily by berth holders/occupiers, but also because they enable public access to, from and along the CMA via provision of public amenities-boat ramps - and via use of the breakwaters eg: for fishing purposes and sightseeing. Additionally, public transport services - ferry services - operate to/from the marinas. I consider neither the continued occupation of the CMCA with the marinas or the exclusive occupation of berths, piers and breakwaters will have a more than minor adverse effect on the public use of the CMCA. In part that is because the public in effect would only be excluded from a relatively small part of the CMCA, and there is lots of other space in the CMCA for people to use, in the vicinity of the marinas.

In regards to exclusive occupation for the gangways/piers, these structures are integral to the provision of appropriate berth space and access to/from berthed vessels. They have been designed and constructed for specific use, not as public access structures."

The primary purpose of the breakwaters is to create and provide ambient conditions for boat storage. They are demonstrably required for that purpose. They also provide (secondary purpose perhaps) a means for public access to the CMA. In my opinion exclusive occupation rights for the marina breakwaters would not have more than minor adverse effects on the environment. However, I also consider it appropriate that the degree/extent of 'exclusive right' is limited by occupational and safety needs, ie only when there is good reason to exclude the public eg. during hours of darkness and in stormy weather sea conditions."

Dr Sivaguru further stated that whilst it is difficult to forecast the potential demand for use of CMCA in 25-35 years time, I suggest the exclusive occupation of the marina berths, gangways/piers, and breakwaters is unlikely to adversely affect the general use of the CMCA.

I adopt Dr Sivaguru's specialist assessment on the application.

With the assessments above, I consider that the change in the activity from 'non- exclusive' occupation to 'exclusive occupation' over parts of the CMCA would only be for the reasons stated above and public will have adequate access to the breakwater areas at all other times. Therefore I consider that the proposal for exclusive occupation over parts of the CMCA as sought would have no more than minor adverse effects.

The applicant stated that preventing access by the general public to the piers by way of locked security gates is generally considered best practice, and is a practice used at most Auckland marinas. The applicant's intentions is to install locked gates in the future, however this does not form part of this application. The public will be informed of any access restrictions with the necessary signage, however this also does not form part of this application.

No changes are proposed to the physical structures and functioning of the marina, therefore there would be no additional effects on navigation and safety aspects. Additionally, any potential adverse effect relating to construction matters, coastal processes, ecological values, water quality, existing use by other business at the Marina will not change.

The existing ferry service will continue to operate and the ferry berthing area and terminal is located within part of the Marina basin which is privately owned by the applicant.

Effects on the existing use and activities

The 520 berth Marina will continue to operate, however there will be restrictions on public access on parts of the Marina to ensure its safe and efficient operation as discussed above. The berthholders will continue have access to the piers and berthage areas. The public will be able to use the breakwater areas during daylight hours and during benign weather/sea conditions.

The public would only be excluded from a relatively small part of the CMCA, and there is lots of other space in the CMCA for people to use, in the vicinity of the Marina.

The existing public boat ramp will continue to provide access for the general public to the CMCA.

With the above, I consider that any adverse effects will be no more than minor.

The effect on Mana Whenua values

Council facilitated the mana whenua values consultation with the relevant iwi groups and at the completion of the engagement process no responses were received from any of the mana whenua representatives who were contacted.

The effects on Mana Whenua are therefore considered to have been adequately addressed and any effects on Mana Whenua will be less than minor.

Consent duration

The applicant is seeking a consent duration of 35 years for an exclusive occupation. The Coastal Specialist considers this duration acceptable, given the level of investment, they are successful marina complexes, operation is in a Marina zone, and adverse effects on the environment being no more than minor. I accept the 35 year consent duration.

Adverse effects conclusions

Overall, I consider that the adverse effects on public access, existing use and activities, effects on mana whenua and the duration of consent will have no more than minor effects on the environment, for the reasons discussed above.

Step 4: public notification in special circumstances

If an application has not been publicly notified as a result of any of the previous steps, then the council is required to determine whether special circumstances exist that warrant it being publicly notified (s95A(9)).

Special circumstances are those that are:

- Outside of the common run of applications of this nature;
- Exceptional, abnormal or unusual, but something less than extraordinary or unique; or
- Circumstances which make notification desirable, notwithstanding the conclusion that the adverse effects will be no more than minor.

In this instance I have turned my mind specifically to the existence of any special circumstances and conclude that there is nothing exceptional or unusual about the application, and that the proposal has nothing out of the ordinary run of things to suggest that public notification should occur because:

- The proposal is not considered outside the common run of applications of this nature as exclusive occupation for the same activities at other marinas has been granted consent, examples are Bayswater Marina and Hobsonville Marina.
- The Marina is in an area of the CMCA that is specifically zoned for marina activities, and the proposal is consistent with that. The marina has been in existence and operation for quite some time, without having significant adverse effects on public access to, from and along the CMCA. Public will only be excluded from parts of the CMCA and during certain times due to operational and safety reasons and for good marina management purposes. Notwithstanding the above, public access from waterways/water space area to the piers will not be restricted.

Public notification conclusion

Having undertaken the s95A public notification tests, the following conclusions are reached:

- Under step 1, public notification is not mandatory.
- Under step 2, there is no rule or NES that specifically precludes public notification of the activity, and the application is for activities other than those specified in s95A(5)(b).
- Under step 3, public notification is not required as the application is for an activity that is not subject to a rule that specifically requires it, and it is considered that the activity will not have adverse effects on the environment that are more than minor.
- Under step 4, there are no special circumstances that warrant the application being publicly notified.

It is therefore recommended that this application be processed without public notification.

6. Limited notification assessment (sections 95B, 95E-95G)

If the application is not publicly notified under s95A, the council must apply the steps set out in s95B to determine whether to limited notify the application. These steps are addressed in the statutory order below.

Step 1: certain affected protected customary rights groups must be notified (s95B(2))

There are no protected customary rights groups. The relevant customary marine title (CMT) groups (who have applied for the recognition of CMT under the MACAA) have been engaged under MACAA provisions at the beginning of the consenting process.

Only one applicant (who has applied for the CMT under the MCAA) responded stating that she objects to the proposal proceeding until the Crown has provided her with the funding to be able to assess the application. Her claim of customary rights in the common marine and coastal area

has not been determined by the Crown and the status of her customary interests has not been recognised.

In addition, the council must determine whether the proposed activity is on or adjacent to, or may affect, land that is subject of a statutory acknowledgement under schedule 11, and whether the person to whom the statutory acknowledgement is made is an affected person (s95B(3)).

Within the Auckland region the following statutory acknowledgements are relevant:

- Te Uri o Hau Claims Settlement Act 2002
- Ngāti Manuhiri Claims Settlement Act 2012
- Ngāti Whātua Ōrākei Claims Settlement Act 2012
- Ngāti Whātua o Kaipara Claims Settlement Act 2013
- Te Kawerau ā Maki Claims Settlement Act 2015
- Ngāti Tamaoho Claims Settlement Act 2018
- Ngāi Tai Ki Tāmaki Claims Settlement Act 2018

In this instance, the proposal is in the CMCA which is identified as falling within a statutory acknowledgement area associated with the Ngai Tai Ki Tamaki Claims Settlement area for Pine Harbour Marina. This is one of the groups that have already been consulted, using Council's Iwi Facilitation Service, and this particular iwi group have not raised any concerns. Ms Terri McNair, Regulatory Support Officer for the Council confirmed on 20.6.19 that Ngai Tai was one of the Iwi consulted.

The agent Mr Craig Shearer had a separate meeting with Gabriel Kirkwood of Ngai Tai on site on 26 June and after the site visit Mr Shearer confirmed that they have no issues with the proposal.

There are no outstanding matters in relation to any iwi within the statutory acknowledgements area.

Step 2: if not required by step 1, limited notification precluded in certain circumstances

The application is not precluded from limited notification as:

- the application is not for one or more activities that are exclusively subject to a rule or NES which preclude limited notification (s95B(6)(a)); and
- the application is not exclusively for one or both of the following: a controlled activity, other than a subdivision, that requires consent under a district plan; or a prescribed activity (s95B(6)(b)).

Step 3: if not precluded by step 2, certain other affected persons must be notified

As this application is not for a boundary activity or a prescribed activity, there are no affected persons related to those types of activities (s95B(7)).

The following assessment addresses whether there are any affected persons that the application is required to be limited notified to (s95B(8)).

In determining whether a person is an affected person:

- a person is affected if adverse effects on that person are minor or more than minor (but not less than minor);
- adverse effects permitted by a rule in a plan or NES (the permitted baseline) may be disregarded;
- the adverse effects on those persons who have provided their written approval must be disregarded; and
- as a restricted discretionary activity, only those effects that fall within the matters of discretion restricted under the plan can be considered. These matters are listed in the public notification assessment section of this report.

Adversely affected persons assessment (sections 95B(8) and 95E)

No persons are considered to be adversely affected by the proposal because:

- The application is for a restricted discretionary activity and as such Council's discretion is restricted to the effects associated with relevant matters specified under F3.8.1(1)(d-g) of the AUP(OP), in particular relating to effects on public access, navigation, and safety; existing uses and activities; mana whenua values; consent duration.

As assessed under the Public Notification section above, under this report, the receiving environment comprises of permitted baseline and the lawfully established activities. It is only the effects of "exclusive" occupation that needs to be considered in terms of adversely affected parties.

- With regard to effects on adjoining sites landward of the CMCA proposed for exclusive use, refer to Figure 3:
 - 190 Jack Lachlan Drive - land to the south (part of) and east, owned by the applicant there any effects on this party is disregarded.
 - With regards to Council owned land around the section of CMCA proposed for exclusive occupation, it is considered that as there are no physical works or changes proposed as part of this application, there are no material effects on this party. The public carparking area which is not leased by the applicant will continue to be provided for the general public. There will also be no changes to the use of the recreational area along the west. The public footpath will continue to provide public access around the CMCA.

It is also noted that part of marina basin is under private ownership by the applicant and there any effects on this party is disregarded

- A correspondence from Pine Harbour Berth Holders Association (PHBHA) dated 20 May 2019 and Auckland Marina Users Association (AMUA) dated 28 May 2019, suggested that the application be fully notified. The correspondences stated that the application was for exclusive occupation rights over the entire marina basin and for "live-aboard" use.

I acknowledge that the exclusive occupation proposed is not over the entire marina basin, but over parts of marina where it is required as explained earlier in this report. Additionally, part of marina basin shown in Figures 2 and 3 is under private ownership by the applicant. The berth space for use of the berth holders will be maintained and the exclusive occupation of the berth spaces will provide certainty of use for the berth holders. Additionally, the "live-

aboard” component of the application has been withdrawn by the applicant. I consider any adverse effects on PHBHA and AMUA to be less than minor.

- There are no other coastal permit holders that would be affected by the proposed exclusive occupation over the CMCA because the applicant is the sole consent holder.
- The relevant mana whenua groups have been appropriately engaged through the application process. None of the groups responded to the consultation requests. Representatives of Ngai Tai Ki Tamaki Tribal Trust had a separate meeting with the agent and confirmed that they have no issues with the proposal. There are no outstanding matters in relation to the iwi.
- In relation to CMT applicants under MACAA, their views on the application have been sought by the applicant. Not all the CMT applicants have responded to the request, but one that responded stated that she objects to the proceeding until the Crown has provided her the funding to assist with the cost of her claim for customary interests in the CMCA. Her claim for customary marine title has not been legally recognised at the time of writing this report. Therefore there are no outstanding matters in relation to the CMT applicants.

Step 4: further notification in special circumstances

In addition to the findings of the previous steps, the council is also required to determine whether special circumstances exist in relation to the application that warrants it being notified to any other persons not already determined as eligible for limited notification (excluding persons assessed under section 95E as not being affected persons).

Special circumstances are those that are:

- Exceptional, abnormal or unusual, but something less than extraordinary or unique;
- Outside of the common run of applications of this nature; or
- Circumstances which make limited notification to any other person desirable, notwithstanding the conclusion that no other person has been considered eligible.

In this instance I have turned my mind specifically to the existence of any special circumstances under s95B(10) and conclude that there is nothing exceptional or unusual about the application, and that the proposal has nothing out of the ordinary run of things to suggest that notification to any other persons should occur. The proposal is for the exclusive occupation of existing marina and associated structures including breakwaters within in an area that is zoned Marina Zone. The proposed exclusive occupation over the existing structures/areas in the CMCA is anticipated by the AUP(OP) and is not considered to be out of the ordinary, and one that would require limited notification.

Limited notification conclusion

Having undertaken the s95B limited notification tests, the following conclusions are reached:

- Under step 1, limited notification is not mandatory.
- Under step 2, there is no rule or NES that specifically precludes limited notification of the activity, and the application is for an activity other than those specified in s95B(6)(b).

- Under step 3, limited notification is not required as it is considered that the activity will not result in any adversely affected persons.
- Under step 4, there are no special circumstances that warrant the application(s) being limited notified to any other persons.

It is therefore recommended that this application be processed without limited notification.

7. Notification recommendation

Non-notification

For the above reasons under section 95A this application may be processed without public notification.

In addition, under section 95B, limited notification is not required.

Accordingly, I recommend that this application is processed non-notified.



Name: Rashida Sahib
Senior Planner - Resource Consents

Date: 2 September 2019

Approved for release

Sections 95A and 95B recommendation approved for release to the duty commissioner for determination.



Name: Robert Chieng
Team Leader - Resource Consents

Date: 2 September 2019

Recommendation on an application for resource consent under the Resource Management Act 1991



Restricted discretionary activity

Application number: CST60337797 (Coastal Permit)
Applicant: Pine Harbour Marina Limited
Site address: Coastal Marine Area adjacent to 190 Jack Lachlan Drive, Beachlands

Proposal:

The applicant seeks exclusive occupation of the common marine and coastal area (CMCA) over parts of the Marina including marina piers, berth spaces, breakwater structures, gangways shown below in Figure 1.

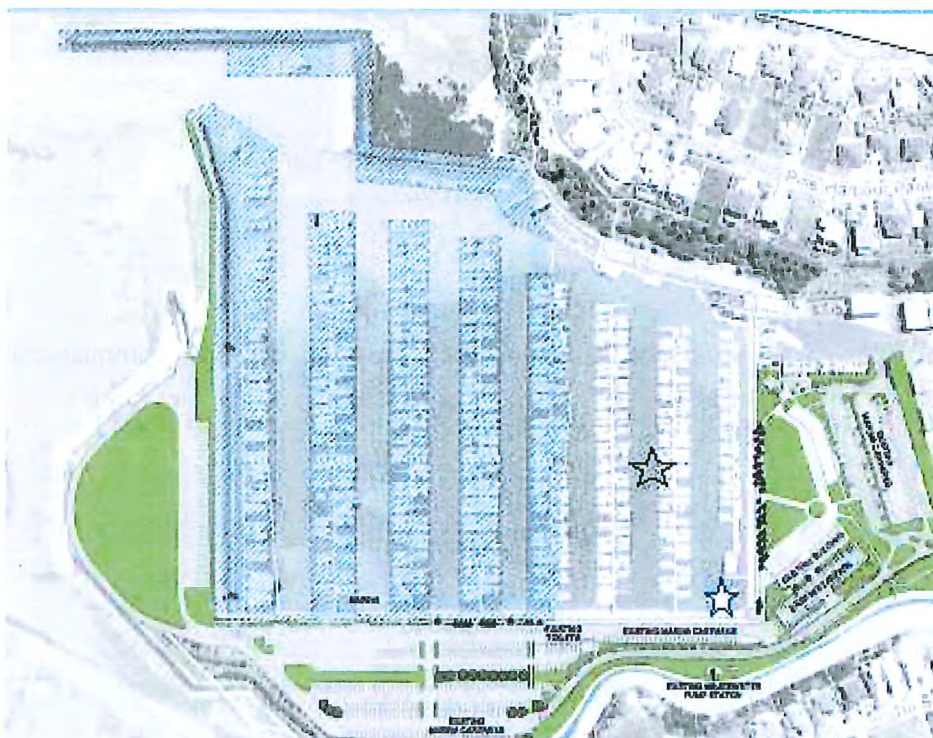



Figure 1 Plan showing the proposed exclusive occupation area hatched

 Marina basin in private ownership and excluded from this application

 Ferry Terminal

No physical works/construction activities are proposed as part of this application. The application is solely for the exclusive occupation of some existing structures and spaces at the existing Marina.

Resource consent is required for the following reasons:

Coastal Permit (s12(2)(a)) – CST60337797

Auckland Unitary Plan (Operative in part)

F3. Coastal – Marina Zone

- Restricted discretionary activity for the exclusive occupation of the wave attenuation device in the common marine and coastal area. The breakwater structure is a wave attenuation device. Rule F3.4.3 (A27)

Note: *Occupation (including exclusive occupation) of the common marine and coastal area with the gangways and berths is a permitted activity under Rule F3.4.3 (A30) of AUP(OP).*

Proposed Plan Change 15

- Restricted discretionary activity for the exclusive occupation of the common marine and coastal area by an activity that would otherwise be permitted. The proposal is not consistent with the existing coastal permit. Rule F3.4.3 (A33)
- Restricted discretionary activity for occupation of the common marine and coastal area by an activity that would otherwise be permitted where the area to be occupied is already the subject of an existing occupation consent. The proposed 'exclusive' occupation of the CMCA is not in accordance with the existing 'non-exclusive' occupation consent. Additionally a longer term of occupation is sought than what has been authorised under the existing consent. Rule F3.4.3 (A34)

Recommendation

I recommend, under sections 104, 104C and Part 2 of the RMA, that this resource consent is **GRANTED**.

Reasons

The reasons for this recommendation are:

1. The application is for restricted discretionary resource consent, and as such under s104C only those matters over which council has restricted its discretion have been considered. Those relevant matters are noted below and assessment below are carried out against these specified matters:

Auckland Unitary Plan Operative in Part

- F3.8.1. (1) for all restricted discretionary activities:
 - (d) *the effects on public access, navigation and safety; and*
 - (e) *the effects on existing uses and activities;*
 - (f) *the effects on Mana whenua values; and*
 - (g) *consent duration and monitoring.*

Proposed Plan Change 15

- F3.8.1 (6) for occupation of the common marina and coastal area:
 - (a) *The effects of the location, extent, timing and duration of the occupation, including exclusive occupation*
- 2. In accordance with an assessment under ss104(1)(a) and (ab) of the RMA, the actual and potential effects from the proposal are found to be acceptable, because:
 - a. The application does not involve any change to the physical structures within the CMCA in the Marina, therefore any potential adverse effects are not anticipated.
 - b. The proposed exclusive occupation over parts of the existing Marina have been assessed by Council's coastal specialist Dr Kala Sivaguru, with her assessment of the application reviewed by Coastal & Water allocation specialist unit, Team Leader, Mr Andrew Benson. Dr Sivaguru considers the potential effects relating to proposed exclusive occupation is balanced against the applicant's intent to only exclude public access to that part of the marina in the CMCA for operational and safety reasons. Dr Sivaguru's comments are quoted below:
 - *"The areas for which the right of exclusive occupation is sought is within an existing lawful marina, which are within an area specifically zoned for marina activities. Exclusive occupation is sought for only part of the marina complex, for operational and safety reasons. The applicant does not seek to exclude the public from all parts of the marina complex, for example the right of exclusive occupation is not sought for the marina fairway areas. Further, whilst the right of exclusive occupation has been sought, the applicant has stated they only seek to be able to exclude people from parts of the CMCA at certain times, in daylight hours and during benign weather/sea conditions the public will be able to use the breakwaters;*
 - *The existence and occupation of the Marina within that portion of the CMCA has enabled the access to the CMCA in the marina by different personnel, including berth holders/occupiers, and the general public. This is accomplished via provision of public amenities by the marina structures – boat ramp and jetty, and via the use of breakwaters, eg: for fishing purposes and sightseeing as well as the provision of ferry services which operate to/from the marina. The continued occupation of the CMCA by the marina, or the exclusive occupation of the marina structures shown in the provided plan is considered acceptable as the public would only be excluded from a relatively small part of the CMCA, and there is lots of other space in the CMCA for people to use, in the vicinity of the marina;*
 - *The applicant states one of the reasons for seeking exclusive occupation for the marina berths and associated gangways is to provide certainty of use. The applicant states that as berthing is a permitted activity they could not exclude non-berth holders from berthing their vessels in spaces that are specifically provided by the marina complex for their berth holders. Following the general principle (established via case law, (Hume Vs Auckland Regional Council CA 262/01), that public access is not required to be provided for if exclusion is reasonably necessary to achieve the purpose of a coastal permit, it is considered the same principle, or concept, either*

does or should apply to the marina structures that the right of exclusive occupation might not be necessarily required to achieve the applicant's purpose. However, the case law pertains to a circumstance where an occupation consent was required, whereas in this circumstance the AUP (OP) provides for occupation by the marina structures as a permitted activity under rule A30. Notably Plan Change 15 has specifically provided for exclusive occupation. However, consent to exclusively occupy (as sought) would make matters more certain for the marina operators, while ensuring that public access to the CMCA is still provided for by the applicant;

- In regards to exclusive occupation for the gangways/piers, these structures are integral to the provision of appropriate berth space and access to/from berthed vessels. They have been designed and constructed for specific use, not as public access structures; the exclusive occupation of these structures are particularly provided for by the operative rule F3.4.3 (A30) as a permitted activity;
 - The primary purpose of the breakwaters is to create and provide ambient conditions for boat storage. They are demonstrably required for that purpose. They could also provide a means for public access to the Coastal marina area. The exclusive occupation of the breakwaters at the Marina is considered acceptable as the degree/extent of 'exclusive right' is limited by occupational and safety needs, i.e. only when there is good reason to exclude the public. For instance, during hours of darkness and in stormy weather sea conditions; and
 - Whilst not strictly relevant, s104 (2A) RMA requires when considering an application affected by section 124 (replacement of existing consents) the consent authority must have regard to the value of the investment of the existing consent holder. s124 does not strictly apply as the existing resource consent is not due to expire. Nonetheless it is clear the marina complex and operations associated with it are significant investments; and
 - Whilst it is difficult to forecast the potential demand for use of the CMCA in 25-35 years time, it is considered the exclusive occupation of the marina berths, gangways/piers, and breakwaters are unlikely to adversely affect the general use of the CMCA."
- c. There is an existing coastal permit which includes non-exclusive occupation of the CMCA, not due to expire for another 27 years. The current proposal relate to changes to the extent of the non-exclusive occupation to exclusive occupation for 35 years, in essence an additional term of 7 years.
- d. No persons on the adjoining sites are considered to be affected by the proposed exclusive occupation over parts of CMCA as:
- No physical works or changes are proposed under this application.
 - Part of the Marina basin is privately owned by the applicant.
 - The landward side of the Marina is predominantly owned by the applicant.
 - Part of the adjacent car parking area is owned by the Council and leased to the applicant.

- The other car parking areas, recreation areas and public footpaths around the marina basin will continue to be available for public use.

Additionally, the berth spaces will be maintained and the exclusive occupation of the berth spaces will provide certainty of use for the berth holders.

- e. In terms of effects on mana whenua values, the relevant mana whenua groups have been appropriately engaged through the Cultural Values Assessment Facilitation process by the Council. None of the groups responded to the consultation requests. Representatives of Ngai Tai Ki Tamaki Tribal Trust had a separate meeting with the agent and confirmed that they have no issues with the proposal. There are no outstanding matters in relation to the iwi.
 - f. In terms of positive effects, this consent will provide the applicant with long term certainty of the marina operations, provide consistency of approach, term expiry, and similar conditions for all three marinas (namely Hobsonville Marina, Pine Harbour Marina and Bayswater Marina), all of which is managed and operated by the applicant.
 - g. With reference to s104(1)(ab), there are no specific offsetting or environmental compensation measures proposed or agreed to by the applicant to ensure positive effects on the environment and/or within the relevant matters of discretion.
3. In accordance with an assessment under s104(1)(b) of the RMA, the proposal is found to be consistent with the relevant statutory documents, insofar as they relate to the matters over which discretion is restricted. In particular:

New Zealand Coastal Policy Statement 2010 (NZCPS)

Objectives 3 & 4 and Policies 2(d), 6(2)(e) and 19(3) are considered relevant which recognises the importance of mana whenua values, public access and recreational opportunities. The proposal is considered consistent with these aspirations.

Auckland Unitary Plan Operative in Part

Regional Policy Statement

The following objectives and policies are considered applicable:

B8. Toitū te taiwhenua - Coastal environment - Objective B8.3.1(4) and Policies B8.3.2(1) and (3) are applicable.

B8.4 Public Access and Open Space - Objective B8.4.1(1)-(3) and Policies (1), (2) (3(a)(f) and (g)

B8.5. Managing the Hauraki Gulf/Te Moana Nui o Toi/Tikapa Moana - Objectives (1) and (3) and Policies

The proposal is considered consistent with the above provisions as:

- Public access to that part of the CMCA, including water spaces surrounding the berths and breakwater access from the land will continue to be retained and provided at all reasonable times, with the exception of times when exclusion is necessary in relation to public health or safety, security, good marina operation and management purposes as explained above. There will be no material effects on social, economic and cultural well-being of people and communities.

- Mana Whenua values have been recognised as part of the application by way of consultation and engagement with groups that have their values over the area.
- There are no physical changes or works proposed to the Marina, therefore the proposal would not affect the life supporting capacity of the Gulf. The continued occupation and use of the CMCA by the Marina would promote recreation in and enjoyment of the Gulf.

F2 Coastal – General Coastal Marine Zone

The Objectives F2.14.2(1)-(3) and (5) and Policies F2.14.3(1)-(2) and (5) ensures that public use and access is available and any exclusion of the public is temporary and short term required for public health and safety or operational purposes. Rights of exclusive use, and/or restricting public access, is necessary to enable the operation and safe operation of the activities within the Marina. At the same time the need to exclude the public over parts of the CMA has been demonstrated as necessary by the Marina operator.

F3 Coastal – Marina Zone

In relation to Objective F3.2(5) and Policies F3.3(8) and (9), whilst it is acknowledged that marina piers, berth spaces, breakwater structures, gangways have a functional need for a coastal location, the proposal will ensure that this function is maintained. Public access to a small area of the CMCA will be restricted however the breakwater areas will still be available unless where it is necessary for public health, safety, security or operational reasons. The other areas within the vicinity of the subject CMCA will still be available for public use and recreation. The existing public boat ramp will continue to provide access for the general public to the CMCA.

No weighting is considered necessary as Proposed Plan Change 15 does not introduce any new objectives and policies for the Marina Zones, and it seeks the same policy direction as the AUP(OP).

4. As a restricted discretionary activity, the other matters that can be considered under s104(1)(c) of the RMA must relate to the matters of discretion restricted under the plan. In this case the following other legislation considered relevant is:

Marine and Coastal Area (Takutai Moana) Act 2011 (MACAA)

The proposal is consistent with the aspirations of the above provisions. Public rights of access, navigation, and fishing and the importance of the common marine and coastal area will still be recognised, with the exclusion over small parts of the CMCA.

The applicant has sought views with the relevant Customary Marine Title (CMT) applicants under MACAA requirements. Not all the CMT applicants have responded to the request. The only applicant responded stated that she objects to the application until funding from the Crown is received to assist her with the application. It is noted that her customary interest claim over that section of the CMCA has not been legally recognised by the Crown, therefore her customary rights over that part of the CMCA is undetermined at this stage. Therefore there are no outstanding matters in relation to the CMT applicants.

5. There is no need to look to Part 2 of the RMA in making this decision, as the objectives and policies and matters of discretion of the relevant statutory documents were prepared having

regard to Part 2 of the RMA and they have captured all relevant planning considerations. They also contain a coherent set of policies designed to achieve clear environmental outcomes and provide a clear framework for assessing all relevant actual and potential effects. An assessment against Part 2 would not add anything to the evaluative exercise

6. The applicant has sought a 35 year term for the exclusive occupation activities. This term is considered acceptable under s123 of the RMA.
7. Overall the proposal is acceptable as exclusive occupation is over small part of the Marina, public access otherwise will be maintained.

Conditions

Under sections 108 and 108AA of the RMA, I recommend that this consent is subject to the following conditions:

General Conditions

1. Areas of exclusive occupation must be in accordance with the documents and drawings and all supporting additional information submitted with the application, detailed below, and all referenced by the council as resource consent number CST60337797:
 - Application Form and Assessment of Environmental Effects titled '*Coastal Exclusive Occupation Resource Consent Application by Pine Harbour Marina Limited*', prepared by Craig Shearer of Shearer Consulting Limited and dated 25 April 2019; and
 - Section 92 responses prepared by Shearer Consulting Limited:
 - Dated 6 August 2019 - response letter, draft resource consent conditions and updated plan
 - 14 August 2019 - updated plan
 - '*Plan of Exclusive Seabed Occupation: Pine Harbour Marina- Jack Lachlan Drive Pine Harbour*', referenced OC-001(B), prepared by PB&A Architects, dated 24.04.2019.
2. Under section 125 of the RMA, this consent lapse five years after the date it is granted unless:
 - a. The consent is given effect to; or
 - b. The council extends the period after which the consent lapse.
3. The consent holder shall pay the council an initial consent compliance monitoring charge of \$330 (inclusive of GST), plus any further monitoring charge or charges to recover the actual and reasonable costs incurred to ensure compliance with the conditions attached to this consent.

Advice note:

The initial monitoring deposit is to cover the cost of inspecting the site, carrying out tests, reviewing conditions, updating files, etc., all being work to ensure compliance with the resource consent. In order to recover actual and reasonable costs, monitoring of conditions, in excess of those covered by the deposit, shall be charged at the

relevant hourly rate applicable at the time. The consent holder will be advised of the further monitoring charge. Only after all conditions of the resource consent have been met, will the council issue a letter confirming compliance on request of the consent holder.

Duration of Consent

4. Consent to exclusively occupy the common marine and coastal area with the berths, piers and breakwater, shall expire on 9 September 2054 (35 years) unless it has lapsed, been surrendered or been cancelled at an earlier date pursuant to the RMA.

Exclusive Occupation

5. The right to exclusively occupy part of the common marine and coastal area is only to the extent necessary to enable the primary purpose of the structures and berth spaces; and

Public access can only be excluded for safety, security, and efficient marina operational reasons, including:

- during night time hours (dusk to dawn)
- during adverse/stormy weather and sea conditions
- when maintenance, repair/replacement activities are being undertaken
- maintaining the berth space for use of the 'berth holder'.

Maintenance

6. The gangways, piers, berths, and breakwaters shall be maintained in good condition for the duration of the consent.

Surrender of Permit

7. Upon the commencement date of this coastal permit (CST60337797), the permit holder shall make an application to surrender coastal permit referenced 39483 granted on 17 August 2011.

Advice notes

1. Any reference to number of days within this decision refers to working days as defined in s2 of the RMA.
2. For the purpose of compliance with the conditions of consent, "the council" refers to the council's monitoring inspector unless otherwise specified. Please email monitoring@aucklandcouncil.govt.nz to identify your allocated officer.
3. For more information on the resource consent process with Auckland Council see the council's website: www.aucklandcouncil.govt.nz. General information on resource consents, including making an application to vary or cancel consent conditions can be found on the Ministry for the Environment's website: www.mfe.govt.nz.

4. *If you disagree with any of the above conditions, and/or disagree with the additional charges relating to the processing of the application(s), you have a right of objection pursuant to sections 357A and/or 357B of the Resource Management Act 1991. Any objection must be made in writing to the council within 15 working days of your receipt of this decision (for s357A) or receipt of the council invoice (for s357B).*
5. *The consent holder is responsible for obtaining all other necessary consents, permits, and licences, including those under the Building Act 2004, and the Heritage New Zealand Pouhere Taonga Act 2014. This consent does not remove the need to comply with all other applicable Acts (including the Property Law Act 2007 and the Health and Safety at Work Act 2015), regulations, relevant Bylaws, and rules of law. This consent does not constitute building consent approval. Please check whether a building consent is required under the Building Act 2004.*

Recommendation prepared by:



Name: Rashida Sahib
Senior Planner
Resource Consents (South)

Date: 5 September 2019

Approved for release

Recommendation approved for release to the duty commissioner for determination.



Name: Robert Chieng
Team Leader
Resource Consents (South)

Date: 5 September 2019

Decision on an application for resource consent under the Resource Management Act 1991



Restricted discretionary activity

Application number: CST60337797 (Coastal Permit)
Applicant: Pine Harbour Marina Limited
Site address: Coastal Marine Area adjacent to 190 Jack Lachlan Drive, Beachlands

Proposal:

The applicant seeks exclusive occupation of the common marine and coastal area (CMCA) over parts of the Marina including marina piers, berth spaces, breakwater structures, gangways. No physical works/construction activities are proposed as part of this application. The application is solely for the exclusive occupation of existing structures and spaces at the existing Marina.

Resource consent is required for the following reasons:

Coastal Permit (s12(2)(a)) – CST60337797

Auckland Unitary Plan (Operative in part)

F3. Coastal – Marina Zone

- Restricted discretionary activity for the exclusive occupation of the wave attenuation device in the common marine and coastal area. The breakwater structure is a wave attenuation device. Rule F3.4.3 (A27)

Note: *Occupation (including exclusive occupation) of the common marine and coastal area with the gangways and berths is a permitted activity under Rule F3.4.3 (A30) of AUP(OP).*

Proposed Plan Change 15

- Restricted discretionary activity for the exclusive occupation of the common marine and coastal area by an activity that would otherwise be permitted. The proposal is not consistent with the existing coastal permit. Rule F3.4.3 (A33)
- Restricted discretionary activity for occupation of the common marine and coastal area by an activity that would otherwise be permitted where the area to be occupied is already the subject of an existing occupation consent. The proposed 'exclusive' occupation of the CMCA is not in accordance with the existing 'non-exclusive' occupation consent. Additionally a

longer term of occupation is sought than what has been authorised under the existing consent. Rule F3.4.3 (A34)

Decision

I have read the application, supporting documents, and the report and recommendations on the application for resource consent. I am satisfied that I have sufficient information to consider the matters required by the Resource Management Act 1991 (RMA) and make a decision under delegated authority on the application.

Acting under delegated authority, under sections 104, 104C and Part 2 of the RMA, the application is **GRANTED**.

Reasons

The reasons for this decision are:

1. The application is for restricted discretionary resource consent, and as such under s104C only those matters over which council has restricted its discretion have been considered. Those relevant matters are noted below and assessment below are carried out against these specified matters:

Auckland Unitary Plan Operative in Part

- F3.8.1. (1) for all restricted discretionary activities:
 - (d) *the effects on public access, navigation and safety; and*
 - (e) *the effects on existing uses and activities;*
 - (f) *the effects on Mana whenua values; and*
 - (g) *consent duration and monitoring.*

Proposed Plan Change 15

- F3.8.1 (6) for occupation of the common marina and coastal area:
 - (a) *The effects of the location, extent, timing and duration of the occupation, including exclusive occupation*

2. In accordance with an assessment under ss104(1)(a) and (ab) of the RMA, the actual and potential effects from the proposal will be acceptable, because:
 - a. The application is for a restricted discretionary activity, in terms of the assessment of the adverse effects on the environment, Council's discretion is restricted to the relevant matters specified under F3.8.1 (1)(d-g);
 - b. The application does not involve any change to the physical structures within the CMCA in the Marina. Therefore, any potential adverse effects associated with construction matters, use of materials and landscaping, coastal process, ecological values, water quality, navigation, existing uses by other business at the marina will not change to those which exist;

- c. There is an existing occupation coastal permit of the CMCA, which is not due to expire for another 27 years.
- d. The effects on public access will be minor because:
- o The areas for which the right of exclusive occupation is sought are all within the existing lawful marina which is specifically zoned for marina activities. Exclusive occupation is only sought for part of the marina complex and for operational and safety reasons. This is consistent with the policy intent of the Marina Zone. While exclusive occupation has been sought, any exclusion of people from parts of the CMCA will only be at certain times, being:
 - o during night time hours (dusk to dawn)
 - o during adverse/stormy weather and sea conditions
 - o when maintenance, repair/replacement activities are being undertaken
 - o maintaining the berth space for use of the 'berth holder'; and
 - o In regard to exclusive occupation for the gangways/piers, these structures are integral to the provision of appropriate berth space and access to/from berthed vessels. They have been designed and constructed for specific use, not as public access structures and noting that the exclusive occupation associated with structures under Table F3.4.3 rule (A30) is a permitted activity under the AUP (OP); and
 - o In terms of the breakwaters, the primary purpose of the breakwaters is to provide ambient conditions for boat storage. While noting that exclusive occupation is proposed over the breakwaters, that the extent of 'exclusive right' is limited by occupational and safety needs as proposed by the applicant.
- e. No persons on the adjoining sites are considered to be affected by the proposed exclusive occupation over parts of CMCA as:
- No physical works or changes are proposed under this application.
 - Part of the Marina basin is privately owned by the applicant.
 - The landward side of the Marina is predominantly owned by the applicant.
 - Part of the adjacent car parking area is owned by the Council and leased to the applicant.
 - The other car parking areas, recreation areas and public footpaths around the marina basin will continue to be available for public use.

- f. In terms of effects on mana whenua values, the relevant mana whenua groups have been engaged. Representatives of Ngai Tai Ki Tamaki Tribal Trust had a separate meeting with the agent and confirmed that they have no issues with the proposal.
- g. With reference to s104(1)(ab), there are no specific offsetting or environmental compensation measures proposed or agreed to by the applicant to ensure positive effects on the environment and/or within the relevant matters of discretion.
3. The proposal is consistent with the relevant statutory documents, insofar as they relate to the matters over which discretion is restricted. In particular:

Auckland Unitary Plan Operative in Part and Proposed Plan change 15

Objective 5 and policies 8 &9 are considered relevant (no new objectives or policies are introduced under PC15). The proposed activity is consistent with these provisions as follows:

- The marina and its associated structures has a functional need to be located in the CMCA; and
- The proposed exclusive occupation of the marina piers, gangways acceptable as they have been designed and constructed for specific use, not as public access structures; the public access to the breakwaters will only be restricted where it is necessary for public health, safety, security and operational reasons;
- The existing public boat ramp and jetty which will continue to provide access for the general public to the CMCA; and

No weighting is considered necessary as proposed plan change 15 does not introduce any new objectives and policies for the Marina Zone, and it seeks the same policy direction as the current Auckland Unitary Plan Operative in part.

4. As a restricted discretionary activity, the other matters that can be considered under s104(1)(c) of the RMA must relate to the matters of discretion restricted under the plan. In this case, the matter where AUP (OP) has restricted its directions have been addressed above and with conditions imposed accordingly.
5. In the context of this restricted discretionary activity application, where the relevant objectives and policies and matters for discretion in the relevant statutory documents were prepared having regard to Part 2 of the RMA, they capture all relevant planning considerations and contain a coherent set of policies designed to achieve clear environmental outcomes. They also provide a clear framework for assessing all relevant potential effects and there is no need to go beyond these provisions and look to Part 2 in making this decision as an assessment against Part 2 would not add anything to the evaluative exercise.
6. The applicant has sought a 35 year term for the exclusive occupation activities. This term is considered acceptable under s123 of the RMA.

Conditions

Under sections 108 and 108AA of the RMA, this consent is subject to the following conditions:

General Conditions

1. Areas of exclusive occupation must be in accordance with the documents and drawings and all supporting additional information submitted with the application, detailed below, and all referenced by the council as resource consent number CST60337797:
 - Application Form and Assessment of Environmental Effects titled '*Coastal Exclusive Occupation Resource Consent Application by Pine Harbour Marina Limited*', prepared by Craig Shearer of Shearer Consulting Limited and dated 25 April 2019; and
 - Section 92 responses prepared by Shearer Consulting Limited:
 - Dated 6 August 2019 - response letter, draft resource consent conditions and updated plan
 - 14 August 2019 - updated plan
 - '*Plan of Exclusive Seabed Occupation: Pine Harbour Marina- Jack Lachlan Drive Pine Harbour*', referenced OC-001(B), prepared by PB&A Architects, dated 24.04.2019.
2. Under section 125 of the RMA, this consent lapse five years after the date it is granted unless:
 - a. The consent is given effect to; or
 - b. The council extends the period after which the consent lapse.
3. The consent holder shall pay the council an initial consent compliance monitoring charge of \$330 (inclusive of GST), plus any further monitoring charge or charges to recover the actual and reasonable costs incurred to ensure compliance with the conditions attached to this consent.

Advice note:

The initial monitoring deposit is to cover the cost of inspecting the site, carrying out tests, reviewing conditions, updating files, etc., all being work to ensure compliance with the resource consent. In order to recover actual and reasonable costs, monitoring of conditions, in excess of those covered by the deposit, shall be charged at the relevant hourly rate applicable at the time. The consent holder will be advised of the further monitoring charge. Only after all conditions of the resource consent have been met, will the council issue a letter confirming compliance on request of the consent holder.

Duration of Consent

4. Consent to exclusively occupy the common marine and coastal area with the berths, piers and breakwater, shall expire on **6 September 2054 (35 years)** unless it has lapsed, been surrendered or been cancelled at an earlier date pursuant to the RMA.

Exclusive Occupation

5. The right to exclusively occupy part of the common marine and coastal area is only to the extent necessary to enable the primary purpose of the structures and berth spaces; and
- Public access can only be excluded for safety, security, and efficient marina operational reasons, including:
- during night time hours (dusk to dawn)
 - during adverse/stormy weather and sea conditions
 - when maintenance, repair/replacement activities are being undertaken
 - maintaining the berth space for use of the 'berth holder'.

Maintenance

6. The gangways, piers, berths, and breakwaters shall be maintained in good condition for the duration of the consent.

Surrender of Permit

7. Upon the commencement date of this coastal permit (CST60337797), the permit holder shall make an application to surrender coastal permit referenced 39483 granted on 17 August 2011.

Advice notes

1. *Any reference to number of days within this decision refers to working days as defined in s2 of the RMA.*
2. *For the purpose of compliance with the conditions of consent, "the council" refers to the council's monitoring inspector unless otherwise specified. Please email monitoring@aucklandcouncil.govt.nz to identify your allocated officer.*
3. *For more information on the resource consent process with Auckland Council see the council's website: www.aucklandcouncil.govt.nz. General information on resource consents, including making an application to vary or cancel consent conditions can be found on the Ministry for the Environment's website: www.mfe.govt.nz.*
4. *If you disagree with any of the above conditions, and/or disagree with the additional charges relating to the processing of the application(s), you have a right of objection pursuant to sections 357A and/or 357B of the Resource Management Act 1991. Any objection must be made in writing to the council within 15 working days of your receipt of this decision (for s357A) or receipt of the council invoice (for s357B).*
5. *The consent holder is responsible for obtaining all other necessary consents, permits, and licences, including those under the Building Act 2004, and the Heritage New Zealand Pouhere Taonga Act 2014. This consent does not remove the need to comply with all other applicable Acts (including the Property Law Act 2007 and the Health and Safety at Work*

Act 2015), regulations, relevant Bylaws, and rules of law. This consent does not constitute building consent approval. Please check whether a building consent is required under the Building Act 2004.



Greg Hill - Duty Commissioner

6 September 2019



Pine Harbour Berth Holders Association

Auckland Council
Resource Consents
Attention:-

Alan Moore Alan.Moore@aucklandcouncil.govt.nz
Yuto Tsuchiya Yuto.Tsuchiya@aucklandcouncil.govt.nz

By Email

20 May 2019

Dear Sirs

Pine Harbour Marina Ltd – Consent Application for Exclusive Occupation and Live Aboards

We are aware that Pine Harbour Marina Ltd has made a consent application for the above.

Pine Harbour Berth Holders Association Inc (PHBHA) requests Council that the resource consent application by Pine Harbour Marina Ltd (PHML) for exclusive occupation rights over the entire marina basin and for "live aboard" use until the year 2046 be publicly notified.

The reasons given by PHML for seeking the consent relate to providing certainty of tenure, undefined business efficiencies, preventing "squatters" from use of berths and jetties and formalising recent live aboard use. These reasons do not justify a consent for exclusive occupation of the entire basin area or continued live aboard use.

PHML's desire to extend the term of their current consent (granted in 2011) and achieve other suggested benefits related to business efficiency can be achieved by relatively minor changes to the conditions of their existing consent.

In addition there has been no assessment of the environmental effects of live aboard use; which was prohibited when the marina was first developed.

PHML, the public and berth holders have lived with the existing non-exclusive occupation for more than 30 years at Pine Harbour. Members of our association have never heard of a vessel coming into the marina and "squatting" on a berth or jetty. PHML own the marina piers and associated infrastructure and by convention have exclusive occupation of the areas occupied by those structures. There is logic and precedent to consider exclusive occupation also being granted for the associated berth spaces.

PHML's application states that even with a right of exclusive occupation they will not change the existing public access arrangements to the marina waterways or infrastructure. So why is exclusive occupation of the entire marina basin so important to PHML?

Resource Management Act case history involving Auckland Regional Council shows that exclusive occupation rights have been denied in similar situations and it would be rare to grant such rights; particularly for the reasons argued by PHML.

Pine Harbour
Berth Holders Association Inc.

Po Box 124
Beachlands, Auckland 2147

Website: www.phbha.nz
Email: info@phbha.nz



Pine Harbour Berth Holders Association

In particular, RMA case history shows that occupation rights for structures and activities are considered as separate issues. This approach reflects Part 2 Section 6(d) of the RMA which identifies “the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers” as a matter of national importance.

Based on information researched by PHBHA the granting of a consent for exclusive occupation of any part of the coastal marine area has been subject to rigorous legal scrutiny under the RMA. In essence it appears exclusive occupation rights are only applicable for the space occupied by marina structures. Exclusive occupation rights are not reasonably required for the activities that are conducted within the remainder of the marina basin other than berth spaces. Council’s own existing guidelines for consent applications for CMCA occupation are consistent with the above position.

The request for exclusive occupation is a special circumstance that warrants notification of the application.

Granting the request by PHML could have the effect of further alienating the marina and associated Common Marine and Coastal Area from public use and could reduce the effectiveness and intent of planning controls.

The timing of PHML’s consent application also appears to be premature as the Council Planning committee gave approval for the preparation of a region wide marina strategy on 5 March 2019. PHBHA expect the strategy approach could and should consider the implications of existing consents, their conditions and tenure and their impact on future development at all of the regions marinas.

In addition processing of this consent would be a first under newly amended rules of the Auckland Unitary Plan (Plan Change 15); which should be tested openly and transparently and not through a non-notified consent process.

With respect to the request for a consent to formalise recent live aboard arrangements allowed by PHML, such arrangements were previously precluded by berth licence conditions and the original seabed licence and were not considered as a part of the existing occupation permit granted in 2011.

There has been no subsequent or thorough assessment of the environmental effects of intended live aboard use; the extent of which is not discussed in the application. For example it would be worthwhile understanding the intended extent of live aboard use and to compare water quality between marinas with and without live aboards. PHML’s intention to provide pump out facilities and existing berth licence conditions do not adequately address the increased risk for accidental or deliberate effluent discharge within the marina.

PHBHA are wary that there may be undisclosed commercial motives for the consent application for exclusive occupation and note that PHML’s owner is also seeking similar consents at Bayswater and Westpark/Hobsonville marinas. PHBHA are worried PHML could be considering the opportunity for future developments such as the pontoon houses being considered at Fairway Bay, Whangaparaoa.

<http://fairwaybay.co.nz/pontoon-houses-see-building-consent/>

Notification would enable PHBHA and other stakeholders to at least provide input to the conditions to be imposed under any consent and help ensure these and other relevant issues are addressed appropriately.

Pine Harbour
Berth Holders Association Inc.

Po Box 124
Beachlands, Auckland 2147

Website: www.phbha.nz
Email: info@phbha.nz



Pine Harbour Berth Holders Association

Marinas are a scarce and valuable asset in the Auckland region and should be a focal point for all marine recreational activities. Granting private owners and operators exclusive occupation rights to any part of the Common Marine and Coastal Area needs rigorous public scrutiny.

Should you have any questions or require any further information please contact the undersigned.

Yours sincerely

Richard Steel – Committee Member, On Behalf of Pine Harbour Berth Holders Association Inc
Home +64 9 537 3450
Mobile +64 21 537 349
Email – richard.alecia.steel@gmail.com



The Chief Executive
Auckland Council,
Private Bag 92300,
Auckland 1142

BY EMAIL
28 May 2019

Attention Mr Stephen Town

Cc Councillor Bill Cashmore – Deputy Mayor
Cc Councillor Chris Darby – Chairman Planning Committee
Cc John Watson – Councillor
Cc Wayne Walker – Councillor
Cc Relevant Community Boards and Chairs

Dear Mr Town

Governance Instruments for Marinas and Relevance to Current Resource Consent Applications for Exclusive Occupation and “Liveaboards” at Pine Harbour, Bayswater and Hobsonville Marinas

Many of Auckland’s marinas were established and licenced under relevant provisions of the Harbours Act 1950 prior to the enactment of the RMA. The clear intent was to establish marinas as community recreational assets wherein Empowering Acts and seabed licences and other lease arrangements together with marina berth licences were the mechanism and legal instruments for development, occupation and ongoing management. These documents contain cross references and are interdependent, and remain in force and effect.

The seabed and berth licences provide for renewable periods up to a maximum term. At the end of the maximum term, the performance of the licensee and the terms and conditions of the seabed licence are subject to review prior to granting any further term. Any new seabed licence is to be offered by Council (as the Licensor) to the licensee (the marina operator) on a first right of refusal basis.

Importantly the terms and conditions of seabed licences cover more than seabed occupation. The licences include important contract type obligations and conditions that protect the interests of Council and berth holders (sub-licensees).

It is through the above governance arrangements that Council protects and manages marinas as community recreational assets. Private marina operators are operating under a licence from Council and accordingly marinas, comprising the occupied seabed and land created through reclamation, are not privately owned.

Subsequent to the enactment of the RMA some marina operators have applied for Coastal Occupation Permits. However Section 384 of the RMA makes it clear the existing seabed licences were “deemed to be a coastal permit” granted under the RMA. Clearly any coastal occupation permits should therefore be consistent with the previously mentioned governance arrangements and should not be considered in isolation. The RMA and resource consents are not intended nor designed to be a substitute for the Empowering Acts and licensing arrangements.



Council has recently received three coastal “exclusive occupation” permit and “liveaboard” consent requests from the operator of Pine Harbour, Bayswater and Hobsonville marinas. The applicant has requested that the applications be processed on a non-notified basis.

The applicant fails to make any reference to the governance instruments nor the relevant terms and conditions therein. For example, the terms and conditions of the original seabed and/or berth licences typically precluded “liveaboards”.

We also note that the applicant has made a number of assertions regarding the benefits that will accrue to berth holders if the consents are granted. There has been no consultation with the relevant berth holder associations who consider the statements made regarding berth holder benefits are simplistic and disingenuous.

There are existing “exclusive occupation” permits at all three marinas. All three consents were non-notified. From a review of the consent decisions it is evident the applicant and Council did not consider the terms and conditions of the Empowering Acts, seabed licences or berth licences which were in force and effect at the time those applications were processed. For example the end date of the existing occupation permit at Hobsonville is 2049 and exceeds the end date of the maximum term of the seabed licence which is 2035.

We draw your attention to section 425 of the RMA as well as the cross reference therein to section 384. It is clear that Council should have considered the interdependencies with the Empowering Acts, seabed licences and berth licences when processing the existing occupation permits; but did not do so.

With respect to the current applications we believe Council must either;

- decide not to accept the applications for processing; or
- notify these applications under the special circumstances provisions provided by Section 95A (9) of the RMA.

The complexity of the interdependencies between the governing documentation and coastal occupation permits as well as Council’s own involvement as licensor and vested owner of reclaimed marina land are clearly special circumstances as provided for under Section 95A (9). It is also apparent that there has been no meaningful assessment of the risks of adverse environmental impact of “liveaboards” in the present or prior applications; nor reference to relevant terms and conditions of the governance documents. Public scrutiny is warranted and prudent.

If Council decides that it will process all or any of these three applications without notification we request a full and detailed explanation that addresses the points we have made above.

With respect to the application for Pine Harbour we note that governance for this marina is an anomaly as Council allowed PHML to surrender the seabed licence with effect from 1 January 2011. It appears that the surrender was related to a dispute between Council and PHML regarding seabed licence fees. Continued occupation of the seabed was subsequently approved when a non-notified occupation permit was granted in August 2011. In a Settlement Agreement dated 2013 other important obligations of the licensee (PHML) that were present in the seabed licence and which protected the interests of both Council and berth holders were overlooked. For example Council no longer has oversight of long term maintenance and there is currently no condition that requires the



operator to dredge the marina and approach channel or hold the long term refurbishment fund in a trust account.

We also draw your attention to a subtle yet potentially significant inconsistency in all three applications. Based on the written text the areas of exclusive occupation stated therein (e.g. 10.5 ha) would encompass the entire basin and infrastructure at each marina. However the attached plans show the proposed areas of exclusive occupation as the areas occupied by the breakwaters, piers and berths. The total area of these elements at each marina are significantly less than the area stated in the text. This subtle inconsistency may be associated with the applicant's request for an unusual degree of flexibility to subsequently "amend" the area of exclusive occupation identified in the plans.

In addition we note that Council has received several relevant letters and emails from West Harbour residents and ratepayers Chairperson, June Kearney. Her communications have repeatedly drawn attention to the existence of the Empowering Act and seabed licence for Westpark/Hobsonville marina. In this regard June Kearney has repeatedly drawn attention to the discrepancies between these governance instruments, the terms of leases granted to the marina operator and rules within the Auckland Unitary Plan. She has frequently questioned the legality of Council's/Panuku's continuing interest in relinquishing freehold title of marina land in favour of the licensee despite the aforementioned governance instruments remaining in force and effect.

You will also be familiar with the efforts of this Association to encourage Council to put in place a long term strategy for the regions marinas. A comprehensive regional strategy should be used to inform decisions on matters such as related consent applications and licence renewals.

We trust that Council will carefully consider all of these factors and recognise and act upon its obligations to respect the terms and conditions of Empowering Acts, seabed licences and berth licences and protect and manage the use of the regions marinas as community recreational assets.

We respectfully ask that you acknowledge receipt of this letter and also confirm that this letter will be made available to the Principal Planner-Consents, the processing planners and the respective decision makers for notification determination.

Yours sincerely

A handwritten signature in black ink, appearing to read 'R. Steel', is written over a light blue horizontal line.

Richard Steel
Chairman - On Behalf of Auckland Marina Users Association
Mobile – 021 537 349
Email – richard.alecia.steel@gmail.com
Auckland Marina Users Association
P O Box 28373, Remuera, Auckland 1685

ATTACHMENT F
COASTAL SPECIALIST REPORT

Technical Memo –Specialist Unit

To:	Kimberley Li, Yuto Tsuchiya, Rashida Sahib
CC:	Andrew Benson, Team Leader – Coastal & Water Allocation
From:	Kala Sivaguru , Senior Specialist-Coastal
Date:	19 August 2019

1.0 APPLICATION DESCRIPTION

Application and property details

Applicant's Name:	Hobsonville Marina Limited, Pine Harbour Marina Limited, Bayswater Marina Limited
Activity type:	Activity (Exclusive occupation)
Purpose description:	To exclusively occupy the common marine and coastal area exclusively with berths, piers, gangways and breakwaters within the existing marina complexes.
Service centre application number:	CST60337799 (Hobsonville), CST60337797 (Pine Harbour), CST60337798 (Bayswater).
Site address:	Hobsonville Marina (CMA adjacent to 18 Clearwater Cove), Bayswater Marina (CMA adjacent to 21, Sir Peter Blake Parade), Pine Harbour Marina (CMA adjacent to 190 Jack Lachlan Drive and 96 Karaka Road, Beachlands)

2.0 PROPOSAL, RULES, SITE AND LOCALITY DESCRIPTION

2.1 Proposal and Rules

A description of the application is detailed in the documents titled:
 "Coastal Exclusive Occupation Resource Consent Application by Hobsonville Marina Limited", prepared by Shearer Consulting Limited, dated 25 April 2019.
 Coastal Exclusive Occupation Resource Consent Application by Pine Harbour Marina Limited", prepared by Shearer Consulting Limited, (no date).
 Coastal Exclusive Occupation Resource Consent Application by Bayswater Marina Limited, prepared by Shearer Consulting Limited, dated 25 April 2019.

The applicant for all three marinas are seeking exclusive occupation consent for berthage areas, piers and breakwaters. The right to occupy the common marine and coastal area (CMCA) within the remainder of the marinas is a permitted activity under the Auckland Unitary Plan, Operative in Part (AUP (OiP)).

All three applications initially applied for live aboard activity consent, however this part of the application has been withdrawn.

Exclusive occupation is a right to occupy part of the common marine and coastal area (CMCA) usually for a specific purpose at the exclusion of other parties/people.

Hobsonville Marina

Hobsonville Marina Limited (HML) owns and operates a 592-berth marina at West Harbour, Auckland. The spatial extent of the area for which exclusive occupation is sought in this application is provided in an updated plan (plan attached).

Pine Harbour Marina

Pine Harbour Marine Limited (PHML) owns and operates a 570-berth marina at Beachlands, Auckland. The spatial extent of the area for which exclusive occupation is sought in this application is provided in an updated plan (plan attached).

Bayswater Marina

Bayswater Marina Limited (BML) owns and operates a 418-berth marina at Bayswater, Auckland. The spatial extent of the area for which exclusive occupation is sought in this application is provided in an updated plan (plan attached).

AUP (OiP)

Activity	AUP (OiP) Rules relevant to the activities
Occupation of CMCA with/for berths and piers/gangways in the marina	Table F3.4.2; Rule (A30): New and existing swing moorings and marina berths, as a permitted activity
Occupation of the CMCA with breakwaters	Table F3.4.3; (A27): Wave attenuation devices within marina breakwaters (occupation and use), as a Restricted Discretionary Activity

AUP-Plan Change 15 (Decision report)

Activity	Proposed Plan Change 15, AUP (OIP)
Exclusive occupation of the CMCA with/for berths and piers/gangways and breakwaters	Table F3.4.3; Rule (A33): Exclusive occupation of the CMCA by a structure or activity that would otherwise be permitted, as a Restricted Discretionary Activity.
	Table F3.4.3; Rule (A34): Occupation of the CMCA by an activity that would otherwise be permitted where the area to be occupied is already the subject of an existing occupation consent, as a Restricted Discretionary Activity.

2.2 Background, Existing environment and permitted baseline

All three marinas are existing lawful marina complexes, operating in areas of the CMA specifically zoned for marina activities.

Hobsonville Marina

On 25 July 2014 consent (REG-2014-643) was granted to HML for occupation of the CMCA with a marina, including exclusive occupation of the CMCA with marina piers, berth spaces and the breakwater structures. This consent also authorises the activity of living aboard vessels berthed in the marina and maintenance dredging from within the marina basin and the navigation channel leading out and into the marina basin. This consent expires in July 2049.

The Waitemata City Council (West Harbour) Empowering Act 1979 provided for the establishment/operation of Westpark/Hobsonville Marina. Subsequently, a seabed license was granted for the occupation and use of the site (Westpark Marina). The seabed license is more or less a deemed coastal permit, providing the right of occupation and including matters such as the requirement/obligation for maintenance dredging.

Pine Harbour Marina

On 16 August 2011 consent was granted to PHML for occupation of the CMCA with the marina complex on a non-exclusive basis. This consent expires on 16 August 2046.

Bayswater Marina

On February 2014 consent 42548 was granted to BML for occupation of part of the CMCA

with the marina, and to undertake the activity of living aboard vessels the Marina. The consent provides for exclusive occupation of part of the CMA with gangways, pontoons and jetties at the marina, the breakwater, and the berth areas. This consent expires on 28 February 2049.

The existing environment and permitted baseline consist of:

The AUP (OIP) provides for occupation of the CMCA by/with marine and port activities as a permitted activity, (permitted baseline). Marine and port activities are activities associated with the navigation, anchoring, moorings, berthing, manoeuvring, refuelling, storage, servicing, operation, maintenance and repair of vessels.

2.3 Site description

All three existing marinas are in the Marina Zone in the AUP (OIP).

Site descriptions are in the applications and in the previous consent application reports.

3.0 TECHNICAL ASSESSMENT OF EFFECTS

3.1 Assessment of effects on the environment

The marinas have a functional need to be located in the CMCA.

The areas for which the right of exclusive occupation is sought are all within existing lawful marinas, which are within areas specifically zoned for marina activities. Exclusive occupation is sought for only part of the marina complexes, for operational and safety reasons. The applicant does not seek to exclude the public from all parts of the marina complexes, for example the right of exclusive occupation is not sought for the marina fairway areas. Further, whilst the right of exclusive occupation has been sought, the applicant has stated they only seek to be able to exclude people from parts of the CMCA at certain times, eg. in daylight hours and during benign weather/sea conditions the public will be able to use the breakwaters.

The marinas occupy space that were not subject to high public use prior to the construction of the marinas. They are now high use areas, primarily by berth holders/occupiers, but also because they enable public access to, from and along the CMA via provision of public amenities- boat ramps - and via use of the breakwaters eg: for fishing purposes and sightseeing. Additionally, public transport services - ferry services - operate to/from the marinas. I consider neither the continued occupation of the CMCA with the marinas or the exclusive occupation of berths, piers and breakwaters will have a more than minor adverse effect on the public use of the CMCA. In part that is because the public in effect would only be excluded from a relatively small part of the CMCA, and there is lots of other space in the CMCA for people to use, in the vicinity of the marinas.

The applicant states one of the reasons for seeking exclusive occupation for the marina berths and associated gangways is to provide certainty of use. The applicant states that as berthing is a permitted activity they could not exclude non-berth holders from berthing their vessels in spaces that are specifically provided by the marina complexes for their berth holders. Following the general principle (established via case law, eg. Hume Vs Auckland Regional Council CA 262/01), that public access is not required to be provided for if

exclusion is reasonably necessary to achieve the purpose of a coastal permit, I consider the same principle, or concept, either does or should apply to the marina structures that the right of exclusive occupation might not be necessarily required to achieve the applicant's purpose. However, the case law pertains to a circumstance where an occupation consent was required, whereas in this circumstance the AUP (OiP) provides for occupation by the marina structures as a permitted activity. Perhaps that is a significant difference and the same general principle does not apply. Notably Plan Change 15 has specifically provided for exclusive occupation. However, consent to exclusively occupy (as sought) would make matters more certain for the marina operators, and in my opinion would not have a more than minor adverse effect on public use of the CMCA.

In regards to exclusive occupation for the gangways/piers, these structures are integral to the provision of appropriate berth space and access to/from berthed vessels. They have been designed and constructed for specific use, not as public access structures.

The primary purpose of the breakwaters is to create and provide ambient conditions for boat storage. They are demonstrably required for that purpose. They also provide (secondary purpose perhaps) a means for public access to the CMA. In my opinion exclusive occupation rights for the marina breakwaters would not have more than minor adverse effects on the environment. However, I also consider it appropriate that the degree/extent of 'exclusive right' is limited by occupational and safety needs, ie only when there is good reason to exclude the public eg. during hours of darkness and in stormy weather sea conditions. I note the degree of public use of the Bayswater Marina breakwater (a floating breakwater) was a contentious issue that was determined at the Environment Court level. The Environment Court found that there were times that it would be appropriate to limit public access on/to it. The Bayswater Marina operator has successfully operated a locked gate to limit access at appropriate times.

Whilst not strictly relevant, s104 (2A) RMA requires when considering an application affected by section 124 (replacement of existing consents) the consent authority must have regard to the value of the investment of the existing consent holder. S124 does not strictly apply as the existing resource consents are not due to expire. Nonetheless it is clear the marina complexes and operations are significant investments, and arguably that is a matter to consider in terms of s104 (1) (c) RMA (other matters).

Whilst it is difficult to forecast the potential demand for use of CMCA in 25-35 years time, I suggest the exclusive occupation of the marina berths, gangways/piers, and breakwaters is unlikely to adversely affect the general use of the CMCA.

In context of the locations of the marinas, the existing environment, and the permitted baseline, I consider exclusive occupation of part of the CMCA as sought would not have more than minor adverse effects on the environment.

Summary:

Exclusive occupation resulting in limited access to parts of the CMCA, ie the berths, piers, gangways and breakwaters in the marina would not have more than minor adverse effects on the environment, as people and other users would not be unnecessarily excluded from the CMCA, subject to adherence with recommended conditions and good practice.

4.0 STATUTORY CONSIDERATIONS

4.1 Statutory assessment

The applicants have indicated they will consider surrendering part or all of the existing consents for the marinas should the exclusive occupation consent be granted for these applications. If the existing consents are not surrendered in part or whole the consent holder will need to comply with all consent conditions.

4.2 Duration of consent: Section 123

The applicant has sought a 35 year term for the exclusive occupation activities. Given the level of investment, they are successful marina complexes, operation is in a Marina zone, and adverse effects on the environment will be no more than minor I recommend 35 year term of consent.

5.0 CONDITIONS

5.1 Conditions

Should consent be granted, the following conditions are recommended for the exclusive occupation of all three marinas:

All charges paid

- X1. This consent (or any part thereof) shall not commence until such time as the following charges, which are owing at the time the Council's decision is notified, have been paid in full:
- (a) All fixed charges relating to the receiving, processing and granting of this resource consent under section 36(1) of the Resource Management Act 1991 (RMA); and
 - (b) All additional charges imposed under section 36(3) of the RMA to enable the Council to recover its actual and reasonable costs in respect of this application, which are beyond challenge.
- X2. The consent holder shall pay any subsequent further charges imposed under section 36 of the RMA relating to the receiving, processing and granting of this resource consent within 20 days of receipt of notification of a requirement to pay the same, provided that, in the case of any additional charges under section 36(3) of the RMA that are subject to challenge, the consent holder shall pay such amount as is determined by that process to be due and owing, within 20 days of receipt of the relevant decision.

Activity in accordance with plans

- X.3 Areas of exclusive occupation of the CMCA shall be in accordance with the plan and all information submitted with the application, detailed below:

Reports:

- "Coastal Exclusive Occupation Resource Consent Application by Hobsonville Marina Limited", prepared by Shearer Consulting Limited, dated 25 April 2019.
- 'Coastal Exclusive Occupation Resource Consent Application by Pine Harbour Marina Limited', prepared by Shearer Consulting Limited, (no date).
- Coastal Exclusive Occupation Resource Consent Application by Bayswater Marina Limited, prepared by Shearer Consulting Limited, dated 25 April 2019.
- S92 response prepared by Shearer Consulting Limited, dated 06 August 2019.

Plans:

- Plan of Exclusive Seabed Occupation: Hobsonville Marina, dated 2019/04/24
- Plan of Exclusive Seabed Occupation: Pine Harbour Marina, dated 2019/04/24
- Plan of Exclusive Seabed Occupation: Bayswater Marina, dated 2019/08/05

Exclusive Occupation

X.4 The right to exclusively occupy part of the common marine and coastal area is only to the extent necessary to enable the primary purpose of the structures and berth spaces; and

Public access can only be excluded for safety, security, and efficient marina operational reasons, including:

- during night time hours (dusk to dawn)
- during adverse/stormy weather and sea conditions
- when maintenance, repair/replacement activities are being undertaken
- maintaining the berth space for use of the 'berth holder'.

Maintenance

X.5 The gangways, piers, berths, and breakwaters shall be maintained in good condition for the duration of the consent.

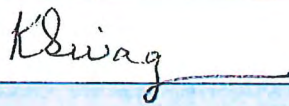
Duration

X.6 Consent to exclusively occupy the common marine and coastal area with the berths, piers and breakwater, shall expire on xxxx (35 years) unless it has lapsed, been surrendered or been cancelled at an earlier date pursuant to the Resource Management Act 1991.

6 REVIEW

Memo prepared by:

Dr. Kala Sivaguru



**Senior Specialist - Coastal
Specialist Unit, Resource Consents**

Date:

20 August 2019

Memo and technical review reviewed and approved for release by:

Andrew Benson



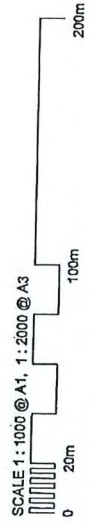
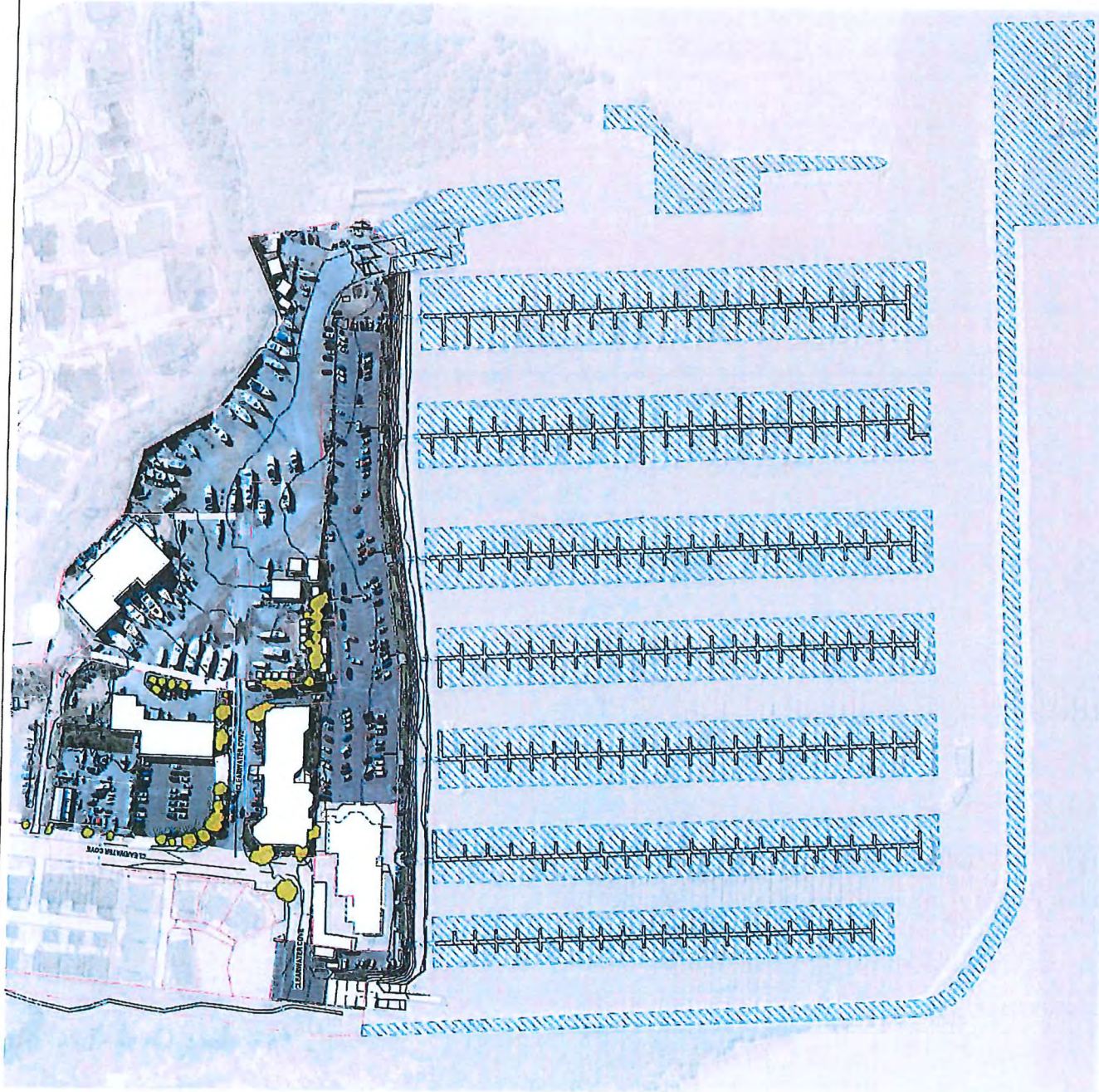
**Team Leader, Coastal & Water Allocation
Specialist Unit, Resource Consents**

Date:

20 August 2019



AREAS OCCUPIED BY BERTHS AND BREAKWATER



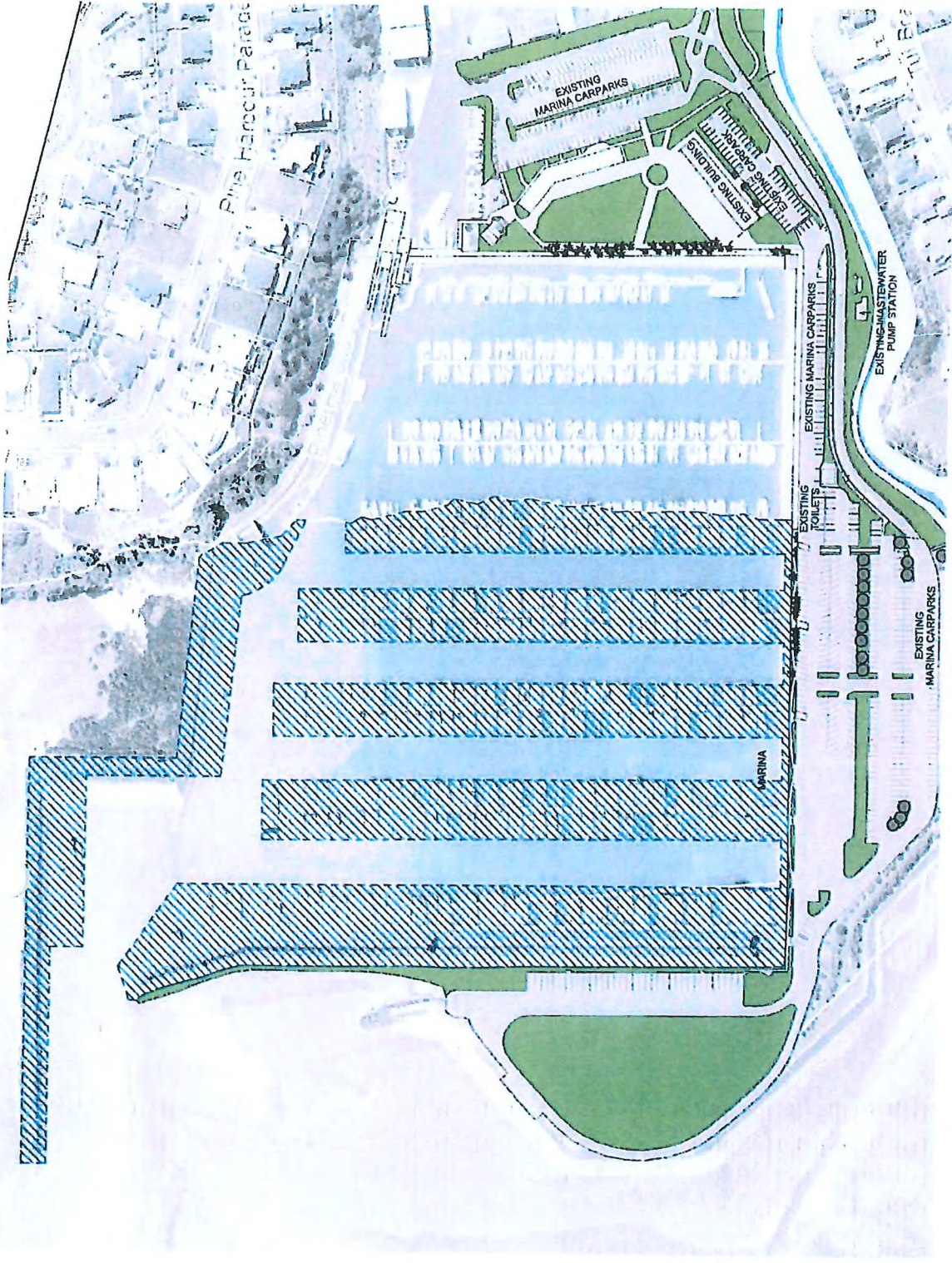
HOBSONVILLE MARINA | 13 - 19 CLEARWATER COVE | OC-001.

HOBSONVILLE
AUCKLAND 0618
OCCUPATION CONSENT | 2019-04-24

[B]

PLAN OF EXCUSIVE SEABED OCCUPATION | 1:1000 |

PB&A
ARCHITECTS
Pty. Dorm & Associates Limited



SCALE 1:1000 @ A1, 1:2000 @ A3
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AREAS OCCUPIED BY BERTHS AND BREAKWATER

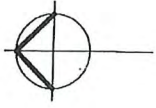
PLAN OF EXCLUSIVE SEABED OCCUPATION | 1 : 1000

PINE HARBOUR MARINA | JACK LACHLAN DRIVE
 PINE HARBOUR

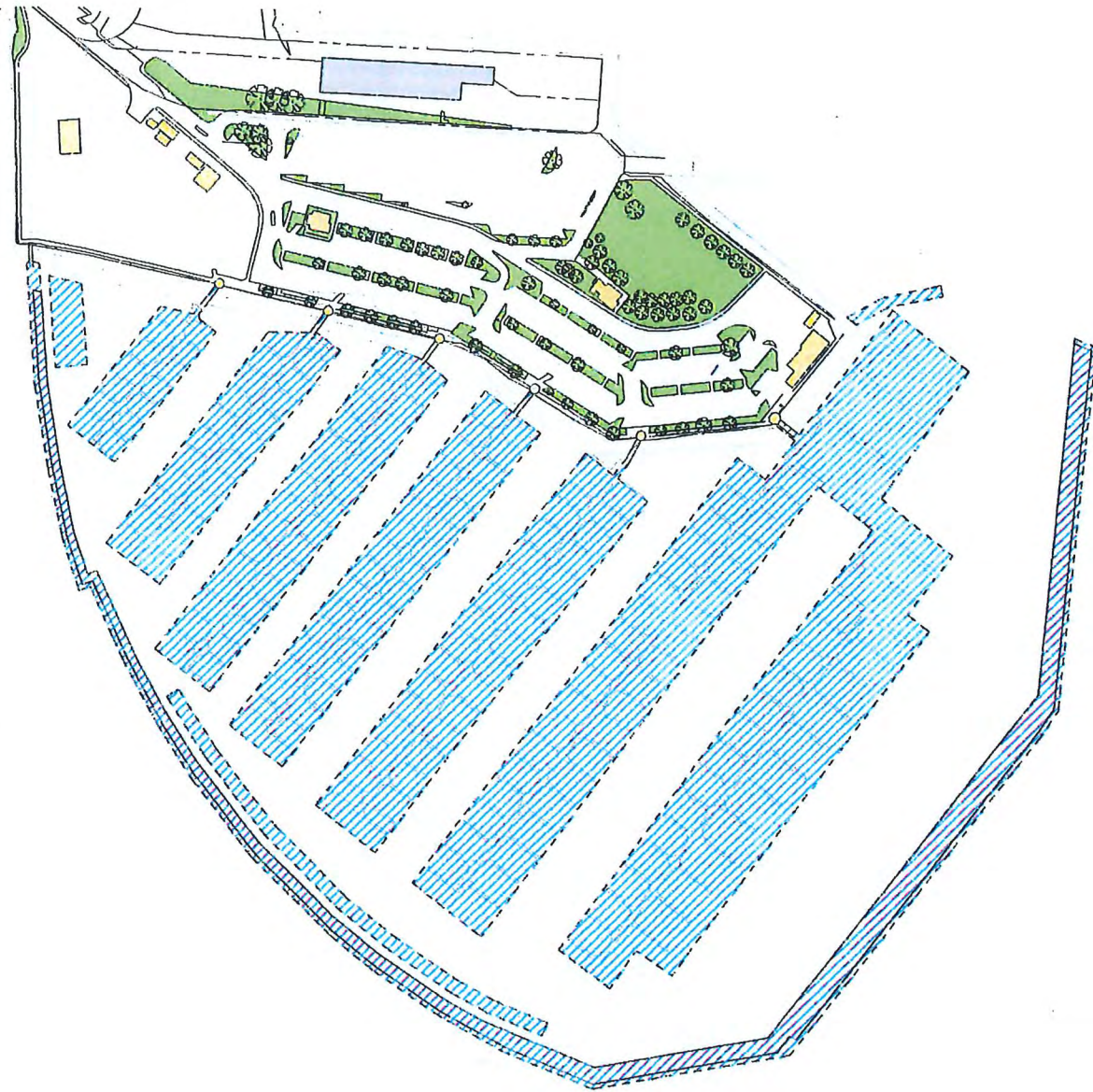
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OCCUPATION CONSENT | 2019-04-24

[C]



AREAS OCCUPIED BY BERTHS AND BREAKWATER



PLAN OF EXCLUSIVE SEABED OCCUPATION | 1:1000 |

BAYSWATER MARINA | 21 SIR PETER BLAKE PARADE
BAYSWATER

OC-001.

OCCUPATION CONSENT | 2019-08-05

[B]

