

Attachment 1

1. History

A number of boatshed owners applied to stay overnight in their boatsheds and were granted a three year trial consent in September 1997. The subsequent applications to allow the continuation of this practise were heard by a Hearing Committee, comprising of Councillors Buchanan, Gibson and McDavitt, and declined on 20 September 2000. The decision was then appealed to the Environment Court on 13 October 2000.

The Environment Court suggested that Council and appellants enter into mediation, as is the norm for all appeals they receive. Council officers, by direction of the Hearing Committee, have not entered into mediation with the appellants.

At the 7 August 2001 Environment Committee meeting, the appellants presented a proposal, 'Magpie Bay Boating Club', which, attempts to address the concerns of the Hearing Committee. If the proposal addresses your concerns the appellants are hopeful that the Council will enter into mediation and attempt to resolve the appeal.

2. Magpie Bay Boating Club (MBBC) Proposal

The proposal concentrates on the two points that the appellants consider are central to the Council's decision to decline their applications. These points are:

- *Monitoring and enforcement of compliance with consent conditions; and*
- *The effects of redevelopment on the character (as distinct to natural character) of the Camborne Walkway area.*

To address the Hearing Committee's (Sept 2000) concerns about the monitoring and enforceability of consent conditions, the appellants propose to reintroduce the logbook system as a mechanism that will allow the Council to determine compliance with consent conditions.

With regard to the second issue; redevelopment, the appellants propose to forgo the right to alter their boatsheds as outlined in permitted Rule 6 of the Regional Coastal Plan (RCP) in an attempt to mitigate adverse effects on the character and amenity value of Camborne Walkway.

The MBBC will provide mutual support to members for boating activities, the maintenance of boats, moorings and the slipway, manage the regular maintenance of the sewage disposal system, and manage the compliance of members having resource consents for occasional overnight stays (35 nights).

The rules of the MBBC have been outlined in additional information (Appendix 1) sent to me by the appellants on 22 August 2000. These are as follows:

- *Compliance with consent conditions.*
- *Oppose any permanent residential use of boatsheds.*

- *Behave in a low key manner that does not cause offence to local residents or other users of the coastal resource.*
- *Maintain their boatsheds and surrounding area.*
- *No alterations to the sheds other than that necessary for maintenance.*
- *Payment of MBBC fees for the maintenance of the existing sewage system.*
- *Resource consents for overnight stays are not transferable upon change of ownership of the boatsheds.*
- *The MBBC will provide logs of each member's overnight stays every 16 weeks.*

3. **Assessment of Magpie Bay Boating Club Proposal**

The decisions of the Hearing Committee (Sept 2000) referred to a number of issues that could not be addressed by the applicants and resulted in the applications being declined. This report only deals with the issues that the Magpie Bay Boating Club proposal has concentrated on. The other issues are listed at the end of this assessment but are not discussed.

4. **Self Policing**

In 1997 the Hearing Committee acknowledged that overnight stays are contrary to the provisions of the Regional Coastal Plan and could be legitimately declined. However, at that time the applicants convinced the Hearing Committee that adverse effects could be mitigated if the boatshed owners lived up to their commitment to diligently *self police* the consents.

Self policing was meant to go beyond individual compliance and extend to actively ensuring other boatshed owners complied. The concept behind the trial was not only to establish what impacts overnight stays would have on the environment, but also to assess the success of the monitoring and enforcement of the consent conditions.

During the trial period the Council conducted two surveillance programmes to establish the level of compliance with overnight stays consents and to determine whether boatshed owners were staying overnight without resource consent. The surveillance programmes identified a number of boatsheds that were being used illegally for overnight stays and also several consent holders who had not correctly recorded their overnight stays.

Throughout the trial period the Council regularly requested logbooks detailing overnight stays and there were no recorded instances where more than 35 nights were recorded in any one financial year.

The self policing issue was raised because the Council never received a complaint from any overnight stay consent holder about illegal overnight stays even though evidence suggested that this activity had increased during the trial period. The Hearing Committee (Sept 2000) expected, and was given the impression (in 1997) by applicants, that all consent holders would take *steps to ensure other parties also complied*.

The escalation in illegal overnight stays during the trial period, in conjunction with the abuse of the logbook system by some consent holders, was enough evidence that the monitoring and enforcement regime did not work. It was the opinion of the Hearing Committee (Sept 2000) that they clearly could not rely on consent holders to *self-police* the boatshed area. Therefore, the ability of the Council to effectively monitor was diminished to an ineffectual level.

As the appellants say themselves, the formation of the club is a mechanism for self-policing members *only*. They do not propose to take steps to ensure other parties also comply with consent conditions and the rules of the RCP. There is nothing new in the proposal that addresses the concerns of the Hearing Committee (Sept 2000) relating to self policing issues.

5. **Log Book System**

The log book system used during the trial period failed to work. The system was the only mechanism that the Council could use to ensure that consent holders complied with the conditions of their consent. The Council relied on the integrity of all consent holders to record the nights they stayed. The evidence from the trial suggested that consent holders did not satisfactorily comply with this requirement.

Where a consent condition is proposed, which has proven to be ineffective in the past, the Hearing Committee is entitled, when making their decision, to take that into account in determining whether or not a condition was likely to be adequate to avoid, remedy, or mitigate adverse environmental effects. It was considered that the earlier condition relating to the use of logbooks was unsatisfactory and could not ensure that the consent holders were operating within the bounds of their resource consents. The lack of practicality of the log book condition was taken into account when the Hearing Committee (Sept 2000) was making their decision. Ultimately, the Hearing Committee could not draft conditions that could be managed or enforced.

The MBBC proposal to submit logbooks still does not offer a solution to the problems outlined above. The lack of practical enforceability of this condition, by default allowed some consent holders to live in their boatsheds full time during the trial period. There are cases where this is still happening. The appeal process allows (all) the appellants to continue using their boatsheds for overnight stays while the appeals are decided upon.

The Council's inability to enforce conditions relating to the number of nights stayed, by default allows owners to live in their boatsheds on a full time basis, which had, in essence, turned the Camborne Walkway into a de-facto residential area. The trial period clearly demonstrated this situation.

6. **Adverse Effects on the Character of Camborne Walkway**

The Hearing Committee (Sept 2000) was of the view that the character of Camborne Walkway had changed since the trial started. The Hearing Committee (Sept 2000) had hoped to retain the character of the area when the trial began but creeping changes have altered it. The increase in the intensity of use and scale of the boatsheds has

adversely effected the area and has impacted on the distinctive atmosphere of the Pauatahanui Inlet.

As stated above, the MBBC propose to address the Committee's concerns by forgoing the right to extend, alter, or add to their boatsheds as outlined in permitted Rule 6 of the Regional Coastal Plan (RCP). They are also willing to undertake no further development of their boatsheds beyond normal maintenance. There are also serious issues here about how the Council could enforce something that the appellants can do as a given right (Rule 6 is a permitted activity). Preliminary legal advice sort by the Council suggests that enforcing such an agreement would be unfeasible and unenforceable if the accord was broken.

More to the point I believe that the appellants forgoing their rights to develop their boatsheds does not address the concerns of the Committee. It is the intensity of use of the boatsheds i.e. being used as baches that has affected the character of the area, creeping changes in the size of the structures is a result of this change in use. As the character of Camborne Walkway has changed, the amenity value of the area has also been adversely affected.

7. **Amenity Values**

The Resource Management Act, 1991 includes amenity values in its definition of the environment. Amenity value is about the perception of an area and peoples' appreciation of its pleasantness, aesthetic coherence as well as cultural and recreational attributes. The amenity value of Camborne Walkway has been altered because of the change in the boatsheds use, i.e. from a recreational boating area, to a part residential or part holiday resort. The use of boatsheds for accommodation purposes gives the perception of private property and therefore deters the community from using that public space.

It was the Hearing Committee's opinion that the use of boatsheds for accommodation purposes would invariable add to the community's sense of loss, alienation, uncertainty, and an increased feeling of encroaching into people's lives. It is these factors, which combined to have adverse effects on the amenity value of the Pauatahanui Inlet.

The appellants forgoing their rights to develop their boatsheds does not adequately address the issues outlined above. Forgoing development rights cannot mitigate the adverse effects of using a boatshed for accommodation purposes.

8. **Other Issues**

MBBC has only attempted to address certain aspects of the Hearing Committee's decision. Apart from the issues concerning monitoring and enforcement of compliance with consent conditions and the effects of redevelopment on the character of the Camborne Walkway area, the proposal does not adequately address the following components of the decision:

- *Boatsheds being a Limited Coastal Resource*

- *Cross Boundary Issues i.e., Residential Standards, Car Parking*
- *Cumulative Effects*
- *Financial Contributions*
- *Integrity of the Regional Coastal Plan*

9. **Conclusion**

I do not consider that the appellants' proposal has adequately addressed the concerns of the Hearing Committee's decision. Further, as I am unable to suggest alterations to the proposal that would mitigate these concerns, I do not consider it appropriate to enter into mediation with the appellants. The Hearing Committee (Sept 2000) recommended the application should be declined, a stance that does not facilitate mediation.