

Kerikeri Cruising Club and Marina Issues

Recommendations for the resolution of the issues that it was agreed need to be considered by the Club and Marina Committee.

1. Maintenance and refurbishment of the fuel jetty and floating pontoon

It is agreed that the fuel jetty and floating pontoon are Club assets which have also been incorporated into the Marina. Both the Club and Marina should contribute to the refurbishment and maintenance of these structures. This is consistent with the legal opinion and the recommendation of the Supervisor that:

- a) The costs of management and maintenance of the fuel jetty falls within the categories of expenses which are deemed to be operating expenses in terms of the Marina Licence rules
- b) Where operating expenses are not incurred solely in respect of the Marina, the Club is to make an apportionment of the relevant operating expense between the Marina and the Club.

Recommendation

1. The “fair proportion” of the costs of the fuel jetty and floating pontoon attributable to the Marina and the Club

Recommended that the Marina should pay 1/3 and the Club 2/3

2. Whether the Marina (Berth Licence holders) refurbishment account should make a “fair” contribution to the cost of the floating pontoon and the recent refurbishment of fuel jetty piles

Recommended that the Marina should pay 1/3 of the cost of the new floating pontoon and 1/3 of the cost of the fuel jetty refurbishment in the last year (2011 – 2012)

3. Who should receive the income from the fuel and water sales?

Recommended that the Marina should retain income from the sale of water and any income from the use of the pump out facility and the Club should retain the income from fuel sales.

2. Maintenance and refurbishment of other shared resources

It is agreed that Item 2.6 of the Marina Licence Rules requires that the Club contribute to the maintenance and refurbishment of those parts of the Marina which are also used by Club Members.

Recommendation

1. The proportion of maintenance and refurbishment costs paid by the Club and Marina for the following structures will be:

1.1. Breakwater	Club 10%	Marina 90%
1.2. Haulout launching ramp	Club 10%	Marina 90%
1.3. Car Park	Club 10%	Marina 90%
1.4. Marina Office building	Club 40%	Marina 60%

1.5. Driveway It is reasonable that the Marina contribute to any refurbishment of the driveway below the Club House. The Statutory Supervisor stated that “it is clear that the berth owners have a responsibility towards the cost of maintaining, repairing, renovating and replacing the driveway this should be a shared expense between the Marina and the Club. The proportion to be contributed by the Marina and the Club is to be decided later and is dependent on the outcome of the next recommendation.

2. The Club should pursue, without delay, a variation in the Resource Consent that will allow the Club to charge members of the public for the use of the access road and launching ramp. Any profit resulting from these charges to be used to maintain the access road.
3. Any refurbishment, maintenance or replacement of structures that requires a contribution from both the Club and Marina, should have the approval of both parties.

3. Calculation of the annual berth licence fees and distribution of other Marina income

The Deed of Participation requires that all profits and losses of the Marina accrue to the Issuer (Deed of Participation 3.1) and the Marina Berth Licence and Rules (Marina Berth Licence 6.1) require that the Berth Licence Holders pay the operating costs of the Marina.

Recommendations:

1. The calculations and presentation of the Marina income and expenditure, and budget accounts should be changed to show the following:
 - 1.1. Rental income from licensed berths split to show:
 - 1.1.1. The administration fee (30%)
 - 1.1.2. The amount that is returned to Berth Licence Holders (70%) as Visitor Pool payments.
 - 1.2. Rental income from unlicensed berths split to show:
 - 1.2.1. The annual marina operating expenses for these berths (equivalent to the operating expenses for 12 metre Licensed Berths).
 - 1.2.2. The rental income in excess of the operating costs
 - 1.3. In the Marina expenses the Management fee, Refurbishment Account contribution and the (70%) Visitor pool payments listed separately from the Operating expenses.
2. The Marina income other than the Annual Marina fees, Licensed Berth rental income and the income for the annual marina operating costs for the unlicensed berths, be used to fund the Refurbishment Account

3. The Marina operating expenses paid by the Berth Licence Holders is the Marina expenses excluding the Refurbishment Account contribution and the (70%) Visitor Pool payments.
4. Annual Marina fees are the operating expenses (as in point 3 above) less the Administration fee for Licensed Berth rental income and the annual Marina Operating expenses for the Unlicensed Berths.

These changes will correct the current practice of allowing the profits of the Marina to accrue to Berth Licence holders as a reduction against the annual operating costs. In using this profit (i.e. the income from the Marina other than Annual Marina Fees and Licensed Berth Rental income) to refurbish and maintain the Marina, the Club will be using the income from the asset that it owns to maintain that asset. It should also be noted that provided maximum use is made of the Refurbishment fund for all “major refurbishment or replacement of fixed and floating structures”, there should be little or no increase in the Berth Licence Holders Annual fee resulting from these changes.

4. Calculation of the marina management fee

It is agreed that the Deed of Participation explanation of the Management fee is confusing and at odds with the Licence Berth Rules. It is also agreed that it is not possible to calculate the Management fee from the Annual Marina fees as suggested in the Deed of Participation, as this involves a circular argument with an ever decreasing fee. Members of the sub-committee also feel that the term Management fee is unfortunate as this does not convey the true nature of the fee.

Recommendations

1. In future the Marina Management fee should be calculated as a percentage of the Marina Operating expenses (as defined in the Berth Licence rules) excluding the Management fee, the Refurbishment Account payment and the Visitor Pool payments.
2. Unless otherwise requested the Management fee should be set at 10% of the operating expenses.

5. Berth licence maximum transfer prices

It is agreed that it was intended that the maximum transfer prices of berths would only increase in line with the annual CPI. This was the intention for both Stage 1 and Stage 2 berths and was clearly stated in the Stage 2 Prospectus. It is also recognised that this has not been consistently followed since 2003. The maximum transfer price increase has been greater than the CPI and the largest increase has been for the smaller berths.

Recommendations

1. The maximum transfer price in 2012 for all berths should be set at 47.2% (CPI increase between 2003 and 2012) greater than the maximum transfer price in 2003. (See table below)

Berth Size	Cost in 2003	Max. transfer price in 2012	Recommended maximum transfer price
10 metre	?	\$40,015	\$40,015
12 metre	\$33,000	\$48,576	\$48,576
14 metre	\$42,000	\$60,883	\$61,824
16 metre	\$52,000	\$73,834	\$76,544
18 metre	\$61,000	\$85,915	\$89,792
20 metre	\$72,000	\$100,681	\$105,984
25 metre	\$102,000	\$140,954	\$150,144

2. In future the maximum transfer price of any berth should only increase each year by the annual CPI published by the Reserve Bank.
3. The maximum transfer price will be the same for all berths of the same size, regardless of the price paid when the berth licence was last sold.

6. Fair allocation of annual marina fees to different berth sizes

Recommendation

The Marina Committee should re-examine the way in which the Annual Marina fees are distributed between berths of different size. Consideration should be given to charging the Annual Marina fee on a per metre basis for all berths.

7. Contributions to and the use of the marina refurbishment funds

It is agreed that the requirement in the Deed of Participation that the Refurbishment Account be adequate to maintain the Marina for the following 3 years is no longer appropriate. The Variation to the Deed has the effect of making the Licences perpetual provided that the Resource Consent is renewed, whereas the originally the Licence ended in 2018 and had no value at that time. This means that the Refurbishment Account needs to be adequate to maintain the value of the Licence Berth Holder's investment in their Berth Licence.

Recommendations

1. The purpose of the Refurbishment Account and the change from the original intention of the Deed of Participation should be made explicit to the Berth Licence Holders.
2. Further consideration should be given to how far into the future it is reasonable to predict the refurbishment and replacement requirements of the Marina, in order to maintain the value of a berth licence.

8. The role of the Marina Committee

The role of the Marina Committee was discussed at length and members of the group expressed different opinions. It was agreed to make no recommendations about this issue.