

# High Court rules out marina appeal option

One of two judicial avenues for marina opponent SKP Inc has come to a dead end.

The incorporated society applied to the High Court for leave to appeal out of time against a 186-berth marina complex at Kennedy Point, which would include a floating car park.

The appeal was against the Environment Court's ruling that upheld the decision by independent planning commissioners to grant a resource consent for the proposed development.

At the same time as the High Court application was filed in August 2018, SKP also applied to the Environment Court asking it to recall its decision and rehear the matter. SKP had to convince the High Court judge that it was in the interests of justice to extend the time for an appeal. In a decision released on Wednesday 24 April, Justice Gault declined to allow the appeal to go ahead, saying the better course for SKP to pursue is the alternative re-hearing application to the Environment Court.

The grounds for the two separate applications were essentially the same:

That the marina developer, Kennedy Point Boatharbour Limited (KPBH) had consulted the wrong Ngāti Paoa representative. Ngāti Paoa has recognised territorial, or mana whenua, status in resource consent matters relating to Waiheke.

KPBH consulted with and got the support of Ngāti Paoa Iwi Trust (Trust). It is a post-Treaty of Waitangi settlement governance entity but it is preceded in time by Ngāti Paoa Trust Board (Board).

Some time ago the Board was recognised by the Māori Land Court as having authority to speak for the iwi on resource consent matters but had been inoperative administratively during a critical period in the marina approvals process. The Board says it learned too late of the development proposal but is against it.

Both of SKP's applications were put on hold while the Board and the Trust applied to the Māori Land Court to rule on which of them had the right to speak for the iwi on resource consent matters. A decision of that court at the end of last year found more in favour of the Trust than the Board, but

the Board has since appealed that decision to the Māori Appellate Court. The Board and the Trust are also undergoing mediation ordered by the Maori Land Court to seek a resolution to the issue.

SKP's submissions in the High Court centred on claims that the Environment Court had been misled by the failure of KPH and Auckland Council to acknowledge the Board's existence and mandate from the Māori Land Court.

SKP maintained it had brought the appeal as soon as it reasonably could. KPBH opposed the application and argued it had suffered prejudice as a result of SKP's ten-week delay in filing its application.

Following the release of Justice Gault's decision SKP is remaining positive.

"The High Court has determined that SKP has a significant case to be heard, albeit that the Environment Court is the more appropriate and direct forum for that case to be heard," says SKP's chairperson David Baigent.

"We are ecstatic that our concerted and dedicated efforts to protect the environment and to uplift the mana of Ngāti Paoa were acknowledged by the court today."

Tony Mair, the principal director and shareholder of KPBH declined to comment, preferring to let the court's decision speak for itself. • Rob Brennan

<b>Cash Loans</b>	<b>WIN \$500!</b>	<b>Hassle Free</b>
 <b>Cars &amp; Boats</b> 	 <b>Weddings &amp; Funerals</b>	
<ul style="list-style-type: none"> <li>*Paying Bills</li> <li>*Council Rates</li> <li>*Holidays</li> <li>*School Fees</li> <li>* Car repairs, WOFs</li> <li>*Vet's bills</li> <li>...made easy!</li> </ul>	<p>Waiheke winners have collected <b>over \$43,000</b> so far in our Flexipay Card Monthly Draw.</p> <p style="text-align: center;"><b>NOW</b></p> <p>Every dollar of every loan - as well as every dollar spent on your</p>  <p>qualifies for the monthly draw</p> <p style="text-align: center;"><b>AND</b></p> <p>continues to qualify to be drawn for the next 12 months.</p>	<ul style="list-style-type: none"> <li>*Fast Cash Loans</li> <li>*Personal loans</li> <li>*Business Loans</li> </ul> <div style="text-align: center;">  <p><i>We are local and we care for our customers</i></p> </div>
Te Huruhi Finance   <a href="http://www.flexipay.co.nz">www.flexipay.co.nz</a>   P.O Box 73 Oneroa Waiheke Island 1840   Phone 372 7076		