

**ISSUES REGARDING POSSIBLE BIAS - INFORMATION FOR COUNCILLOR TOMS.**

- Installation of Mr Hall's Pontoon occurred in April, 2018. Plans were submitted to Council in March, 2018.
- At the time (April, 2018), I contacted Council regarding the restriction to the waterway between my shared pontoon and Mr Hall's pontoon. I also raised concerns about the obstruction to the use of my boat ramp.
- Mr Johnson at 6 Taine Crt, raised his objections with Council, as he was concerned the gangway was located on his property boundary alignment. He was also concerned about boats moored on his pontoon affecting his views.
- Council officers attended Mr Johnson's home and carried out a site inspection. They informed Mr Johnson that the gangway could be located on the property boundary alignment.
- The policy applicable at that time stated that, *in general*, it should be 1 meter of property alignments. He was also informed that a condition would be applied whereby boats would only be permitted to moor on the eastern side of Mr Hall's pontoon.
- Mr Johnson made the comment that it appears the waterway is reduced on that side.
- *The council officer replied, "Yeah it is a bit tight".*
- Despite my requests, council officers failed to attend my address to carry out an inspection.
- There followed an email exchange with a Mr Solatan (CVC Engineer) who informed me that he had investigated the plan and believed Mr Hall's pontoon complied with the plan.
- I informed him that the pontoon's compliance was not the issue, but the condition to moor boats on the eastern side of Mr Hall's pontoon was the issue, as it restricted the use of my facilities.
- I did not get a response to this email.
- I then contacted Mr Hall via email (he did not reside at the premises at this time-it was let as a holiday rental). I raised my concerns with him, outlining the issues that affected me. His response to me was *"Take it up with Council"*.

In summary, over the past three years I have:

- Written to the GM via email
- I engaged a solicitor who has written several letters to the GM and the owner of No 4 Taine Crt, suggesting viable remedies;
- After 3 years no viable remedy has been adopted;
- In 2019 I suggested mediation with Council, I was informed by the GM that affected parties refused to attend;
- App. 18 months after my first complaint and contact with the GM, he agreed to conduct a site inspection. Whilst viewing the pontoons and boat ramp he agreed the location of Mr Hall's gangway/pontoon causes a problem. He said, *"I would not have approved of the location of that pontoon. I can see the problem"*. (contemporaneous notes of conversation retained).
- Despite those comments, the matter remains unresolved;

- In response to one of the Solicitor's letters, the GM indicated, if there was a safety issue, then the license could be amended;

In a letter by the GM to my Solicitor, Mark Glaser, on 5 May, 2020, he states:

***"In order to come to a solution to assist all parties, Council is proposing to install mooring cleats on the western side of the structure at 4 Taine Court (subject to agreement from Mr Hall) with conditions that these are only to be used in times when Mr Beresford as the owner of 2 Taine Court wishes to move vessels. The use of the western side of the pontoon structure should be minimal. I will advise Mr Hall and via Conroy Stewart Spagnolo, Mr A Johnson and Ms A McDonald of this proposed solution.***

***In this correspondence I will also remind the landowners that the land where the structure/s is erected is Council owned land and each structure has specifications as to the approved use and vessels that can moor at it. If Council considers there are any safety concerns with the structure/s or inappropriate use of them then Council may consider taking further action. "***

- I did not reject this suggested solution, through my solicitor I pointed out certain difficulties that may have been encountered as the property was holiday let at that time. Neither my solicitor, nor I, received a response and the GM's proposal never eventuated. No explanation was ever provided as to why this solution was not enacted.
- In 2020, when renewing my insurance on both my boats, I received an update from Club Marine Insurance regarding recent changes to Duty of Disclosure regulations regarding any circumstances that may impact my insurance;
- I informed Club Marine of the circumstances outlined in this letter, providing correspondence and photos;
- The Insurance Company (Club Marine) undertook an assessment of the risk that the current license condition causes;
- I previously informed the GM that my insurance maybe at risk. ( The GM has been informed that insurance is now cancelled.)
- The insurance company responded that they may not be willing to provide me with any insurance cover when utilising my boat ramp or pontoon or navigating to and from those facilities unless the circumstances were changed and the risk was removed. I was required to inform the insurance company if the safety issues were resolved;
- My Solicitor, Mark Glaser also wrote a letter, indicating the insurance issue;
- The GM informed me that lawyers briefed by him have stated they do not believe there are any safety issues but did not address the insurance issue I was facing;
- I asked the GM if his brief to those lawyers included the fact that Club Marine Insurance had assessed the risk and that my insurance policy was compromised due to that risk.
- I have never received a reply to that question;
- If those lawyers were not informed of the insurance risk, then that briefing would be inadequate and the subsequent advice maybe inappropriate;
- If that information was intentionally omitted, then that would bias the advice received;
- If that information was accidentally omitted, then the GM would have an obligation to correct the information provided to those lawyers. Failure to correct a mistake of this nature would be considered bias;
- **To further consider the question of bias, Councillors should assure themselves that this information was provided to Councils' lawyers, by viewing the GM's brief to the lawyers;**

- In 2020 I consulted with a senior officer from NSW Roads & Maritime, who reaffirmed that Maritime Safety Regulations are being breached, based on plans and information I provided;
- My Solicitor, Mr Mark Glaser, indicated the matter may have to be determined by the Land & Environment Court, should an agreeable remedy not be found;
- In a letter from the GM to the Solicitor, the GM stated on legal advice he did not believe the Land & Environment Court has Jurisdiction;
- I have also been advised by the A/GM that NCAT (Civil and Administrative Tribunal) do not have jurisdiction, based on legal advice. Councillors should view that advice to properly assess the matter;
- I have asked both the GM and A/GM, what Jurisdiction would deal with this matter and did not receive a reply;
- I have contacted both the Office of Local Government and NCAT, who advised in this situation, the Council has an obligation to inform a person of the appropriate jurisdiction where the matter can be heard;
- Despite several further requests via email and in person, I have not received a reply from the A/GM;
- Failure to provide an answer is against both Office of Local Government and NCAT advice and displays an unwillingness to assist me or is potentially a conscious bias action;
- This is just one example of, what I consider, is unprofessional behaviour and certainly has the perception of bias;
- Given the various responses and inaction by certain council officers and questions by some councillors, I submit that I have been subject to various forms of confirmation bias;
- Confirmation bias is a significant issue addressed in the curriculum of the Leadership Development Program at the Australian Institute of Police Management:

*Confirmation bias: This bias occurs when decision makers seek out evidence that confirms their previously held beliefs, while discounting or diminishing the impact of evidence in support of differing conclusions.*

- Given all the circumstances of this matter I firmly believe I have been subjected to Confirmation Bias
- In a meeting with the GM, Mayor and Councillor Toms, I suggested that Mr Hall's lease be amended (to include a condition of repositioning his boat - 2 meters forward) I submitted that should Mr Hall refuse this condition then CVC could take the Mr Hall to NCAT for a Determination.
- I was later informed by Laura Black that, on legal advice, NCAT does not have jurisdiction.
- Councillors should view that advice to assess its validity, based on:
- My legal advice states that NCAT has a very wide jurisdiction and the matter could be heard under the following:

**NCAT Consumer & Commercial Division**

**The following Acts and subordinate legislation confer jurisdiction on NCAT's Consumer and Commercial Division.**

**Civil Procedures Act 2005**

## CIVIL PROCEDURES ACT 2005 No 28

## Definitions

(1) In this Act—

civil proceedings means any proceedings other than criminal proceedings.

claim for relief includes—

- (a) a claim for possession of land, and
- (b) a claim for delivery of goods, and
- (c) a claim for the recovery of damages or other money, and
- (d) a claim for a declaration of right, and
- (e) a claim for the determination of any question or matter that may be determined by the court, and

**(f) any other claim (whether legal, equitable or otherwise) that is justiciable in the court. costs, in relation to proceedings, means costs payable in or in relation to the proceedings, and includes fees, disbursements, expenses and remuneration. court includes tribunal.**

Consequences of current situation:

- The condition currently imposed causes a safety issue which contravenes Council Policy.
- Mooring conditions have the impact of breaching Marine Safety Regulations;
- A lease amendment would have no financial impact or negative impact on Mr Hall's amenity. The present condition limits use to one side of the pontoon only. He would simply be required to moor his boat 2 meters forward. This does not require any re-engineering at all;
- A lease amendment does not interfere with access to boating facilities on his property or access to the waterway;
- Mr Johnson, at No 6 Taine Crt would not be affected in any way by Mr Hall re-positioning his boat;

Impact on Mr Beresford:

- On 21 January this year he received a letter from Club Marine Insurance cancelling the insurance on both his boats. (This followed a letter regarding a risk assessment carried out by Club Marine)
- Further, Club Marine Insurance advised that he must inform any other insurance companies the reasons my current insurance was cancelled. This makes it impossible for me to gain boat insurance;
- He is in a situation whereby he lost the use of his boats;
- It is reasonable that Mr Beresford questions the legal advice received by Council regarding the safety issues, as Club Marine Insurance has assessed the risk and accepted there are significant safety issues. This led to the insurance problem. It's reasonable to assume a Court or Tribunal would take that fact into account.
- The losses to Mr Beresford due to the Council not amending the subject Lease (license ) condition are highly unfair and unreasonable.
- The only place he could have moored his wet berth boat and be able to gain insurance is at Yamba Marina. If forced to do this, then this costs significant mooring fees.
- Mr Hall has not suffered any similar impact.
- He stated this matter has cost him \$3000 in legal fees. Incurring that cost was his own decision. These costs appear to arise from the fact that Mr Hall did not wish to correspond with Mr Beresford via emails, instead advised Mr Hall to contact his solicitor. Again, this was his own decision.
- It should be noted that Mr Beresford also incurred far greater legal costs associated with dealing with Council, as the GM advised that correspondence was to be directed to ~~COUNCIL~~ COUNCIL MEETING - 27 JULY 2021

lawyers.

- Mr Beresford incurred significant costs in having to have his serviced at Yamba Marina, as he was unable to use his boat ramp due to tenants occupying the neighbouring pontoon at that time. This was a cost of \$1100.00.
- Other issues that impact Mr Beresford:
- Some time following the installation of the subject pontoon, Council introduced a Deed of Lease issued to owners of pontoons, jetties etc. A clause within that lease states:

#### 4.8 No Nuisance

*The Lessee must not do or permit or suffer to be done in or upon the Premises anything which may be or become a nuisance or annoyance or cause damage or inconvenience to the Council or neighbouring owners or occupiers provided that, for the purposes of this clause, the Lessee will not be regarded as being in breach of it if it is complying with the terms of this Lease and any directions or orders or notices given to it by any Relevant Authority.*

- During a meeting with the GM and Mayor, the GM stated that he may have to terminate Mr Hall's Lease (referencing Clause 4.8). In response I stated, that wasn't necessary but the lease should be amended in such a way as to clear any choke point and allow me to use my boat ramp unobstructed and have my insurance re-instated;
- The GM told me he would write a letter to Mr Hall to that effect, following this meeting;
- Immediately prior to our recent meeting with Laura Black (attended by the Mayor, Councillor Toms, Mr & Mrs Hall) I asked Mr Hall if he had received any letters from the GM. He told me he hadn't;
- I was further misled by the GM, when informed he would write to Mr Hall;
- In documentation provided to Councillors and myself, there is a plan that purports to be scale drawings. This documentation consists of several different plans of different scales, superimposed on each other, then photo-copied;
- This is biased in itself as the scale of Mr Beresford plans are much larger than the scale of Mr Hall's plans, giving a biased impression of the 2 pontoons and boat ramp;
- Attached is a true scale drawing showing both our facilities, which when compared to the drawings provided by the A/GM are distinctly different;
- In recent CVC Business paper there is a staff recommendation, that includes several options. One option is to terminate my boat ramp lease;
- This options suggests this will resolve the issue;
- This option would impose significant loss, as my property would be devalued. Waterfront properties with boat ramps are highly valued;
- As there is no suggested option that has any negative impact on Mr Hall, this option is also biased against me;
- The option that Council "Do nothing" is also biased as I will not be able to have my boat insurance re-instated;
- Further, I have had to sell my boat, as the lack of use causes serious maintenance issues and general devaluation;
- Councils lack of any meaningful action, leading to me having to sell my boat, is also bias as Mr Hall has not suffered any similar impact and retains full use of his boat and pontoon;

- Council's inaction has only had a negative impact on me, there has been no negative impact on Mr Hall as he has retained full use of his facilities at all times;
- Based on reliable legal advice, Council has the ability and legal means to have this issue dealt with, either by NCAT or a Court, should Council not be able to resolve the matter with Mr Hall, as it is Mr Hall's Lease that needs to be amended to resolve the problem;
- By Council choosing not to pursue this legal avenue would be perceived as bias, as the original approval of the pontoon, with certain conditions, was imposed by Council and not by Mr Beresford.
- It can only be resolved between Council and Mr Hall.

Further information:

- It should also be noted that in 2019, I sent several emails to Mr Hall, discussing the impact boats moored on his pontoon were having and suggested several options, that he consider a proposal to moor boats on the western side of his pontoon;
- I received a letter from his solicitor stating that my emails were intimidating him and that further contact was too be with his solicitor and I was to take the matter up with Council;
- I have retained the emails I sent to Mr Hall and I responded to his solicitor clearly pointing out that nothing in my emails contained anything of an intimidating nature and would go no where near meeting the threshold of intimidation;
- I did not receive a reply to this response and I believed his intention was to somehow bully me into dropping the whole issue.

- Attachment - Pontoon plan- showing my boat ramp and shared pontoon (2 Taine Crt) and pontoon at No 4 Taine Crt.

