

Kerikeri Cruising Club Inc

346 Opito Bay Road, R D 1, Kerikeri 0294

Notice of Berth Licence Holders Annual General Meeting 2017

Notice is hereby given that in accordance with clause 8.1 of the Deed of Participation, a meeting of licence holders will be held at the Kerikeri Cruising Club, 346 Opito Bay Road, Kerikeri on Tuesday 26 September 2017 at 7pm.

Further information (Annual Accounts, Chairman's Report & Statutory Supervisor's Report) will be sent to berth licence holders prior to the AGM.

Annual General Meeting 2017 Order of Business

1. Welcome by Chairman - pursuant to clause 5.1 of the Rules for Meetings of Licence Holders, Schedule to the Deed of Participation, a person nominated in writing by the Statutory Supervisor shall preside over the meeting. Mr Jim Murdoch has been nominated by the Statutory Supervisor to preside over the AGM 2017.
2. Receipt of Proxies
3. Apologies
4. Minutes of the Berth Licence Holders Annual General Meeting 22 September 2016
5. Matters Arising from the Minutes
6. Chairman's report
7. To receive the Financial Statements to 30 June 2017
8. To receive the Budget for 2017/2018
9. To receive Statutory Supervisor's report
10. Election of the Marina Committee
11. Extraordinary Resolution to Remove the Statutory Supervisor & Adopt a new Structure
12. General Business

The following information is included with or has been sent with this Notice of Meeting:

- Background information page 4
- Frequently Asked Questions page 5
- Trustee's Biographies page 9
- New Trust Deeds: Deed of Declaration & Deed of Undertaking and the Marina Licence & Rules have been attached/linked to this notice of Meeting.

Meeting Quorum

As per clause 4.1 of the Rules for Meetings of License Holders, Schedule to the Deed of Participation, the quorum for the Annual General Meeting 2017 shall be five Licence Holders present in person or by representative.

Voting

as per clause 13.1 of the Rules for Meetings of Licence Holders, Schedule to the Deed of Participation, a resolution put to the vote at the Annual General Meeting shall be decided on a show of hands unless a poll is demanded by the chairman or the Statutory Supervisor. The Statutory Supervisor has advised that a poll will be required for the vote on the Extraordinary Resolution noted under agenda item 11.

Election of the Marina Committee - Call for Nominations

Under clause 7.12 of the Deed of Participation, The business affairs of the marina must be managed by the Marina Committee on behalf of the Club. The Committee in their management must comply with the requirements contained in the following documents:

- Deed of Participation
- Berth Holders Licence & Rules

These documents will take precedence in all matters pertaining to the management and affairs of the marina."¹

The role of the marina committee is to manage the marina on behalf of the Club in accordance with the Constitution. It does not represent Licence Holders.

With the removal of Statutory Supervisor, cancellation of the Deed of Participation, & creation of the Kerikeri Cruising Club Marina Trust, a Marina Committee is still required by the Kerikeri Cruising Club's Constitution for the purpose of managing the marina on behalf of the Club. The appointment & removal of Marina Committee Members will continue to follow the process detailed in clause 9 of the Club's Constitution.

There shall be a maximum of 7 committee members, all of whom shall be Berth Licence Holders, & financial members of the Club. Marina Committee members may hold office for a maximum term of two years & are eligible for re-election on completion of that term. Five committee members, Phil Harris, Phil Stocker, Kit Staff, Paul Pederson, & Jim Murdoch have now completed their terms. There are therefore five vacancies on the Committee.

A nomination form for Committee members has been included with these papers for your use. "In the event that sufficient nominations in writing are received, those nominations received shall be deemed to be elected. In the event that insufficient nominations are received the Commodore shall then, as necessary call for further nominations at the AGM to fill any remaining vacancies. In the event of excess nominations being received, elections will be by ballot."²

Nominations in writing to the Secretary must be received not later than 5pm 12th September 2017.³

¹ Kerikeri Cruising Club Inc, Constitution & Rules, Amended September 2011: clause 4.11.1

² Kerikeri Cruising Club Inc, Constitution & Rules, Amended September 2011: clause 4.6.1

³ Kerikeri Cruising Club Inc, Constitution & Rules, Amended September 2011: clause 4.6

✂.....

Marina Committee Nomination Form

To make a nomination, please complete this nomination form and deliver or post it for receipt by 5pm 12th September 2017 to the Secretary, Kerikeri Cruising Club & Marina, 346 Opito Bay Road, RD1, Kerikeri 0294.

I.....(nominator) being a licence holder in the Club's Marina

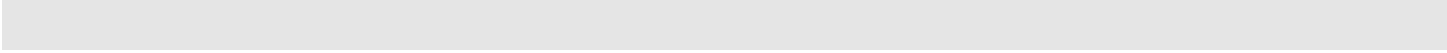
nominate

..... (nominee's name & signature)

for the position of Kerikeri Cruising Club Marina Committee member.

Signed Date

Seconded(seconder) being a licence holder in the Club's Marina.



Removal of the Statutory Supervisor & Adoption of a New Structure

The Financial Markets Conduct Act 2013 (FMCA) has replaced the Securities Act 1978 under which the Kerikeri Cruising Club Marina (KCC Marina) was established. The FMCA removes the requirement for new marinas to have a Statutory Supervisor & allows existing marinas to choose between keeping or removing their Statutory Supervisor.

At the 2016 KCC Marina AGM we discussed this change & berth holders resolved to 'opt out' with KCC then establishing a Steering Committee of 2 Marina Berth Licence Holders & 1 Club representative to explore the options subsequent to 'opting out' & report back.

Having considered the options, the Steering Committee has recommended replacing the Statutory Supervisor with a trust of berth Licence Holders, Club representatives & an independent chair. To achieve this change we need 75% of Licence Holders present (in person or by proxy) to vote in favour of the Extraordinary Resolution set out in this notice of meeting (as below).

The KCC new consent for the marina expires in 2051. Your Marina Berth Licence expires in 2018. Once the new trust structure is in place new licences will be issued.

A consultation meeting to discuss & debate the details was held in July. At the Annual General Meeting of Licence Holders the extraordinary resolutions to adopt the new structure & remove the Statutory Supervisor will be voted on.

As noted in relation to the previously concluded consultation meeting regarding the termination of the Deed of Participation, Trustees Executors Limited (as statutory supervisor) has no role in approving the form and content of any structure proposed to replace the Deed of Participation. It is for licence holders to agree what structure they require going forward and Trustees Executors Limited will support whatever decision the licence holders reach, provided the requirements for properly constituting the licence holders' meeting are complied with and the Extraordinary Resolution (as set out below) is validly passed at that meeting.

Extraordinary Resolution:

That the Licence Holders resolve as an extraordinary resolution to:

- (a) Approve the cancellation (pursuant to clause 13.1 and 13.2) of the Deed of Participation dated 20 December 1996 between Kerikeri Cruising Club Incorporated (KCC) and Trustees Executors Limited (TEL) (Existing Deed) and the release of TEL from all obligations thereunder, to be effected by a termination deed in a form agreed between KCC and TEL; and**
- (b) enter into a new Deed of Declaration & Deed of Undertaking to replace the Existing Deed in the form described in, and provided with, the Notice of Meeting;**
- (c) ratify the appointment of four initial trustees;**
- (d) ratify the appointment of the independent chair of the Trust**
- (e) adopt the Kerikeri Cruising Club Incorporated Berth Licence Rules 2017**

each to take effect on a date agreed between KCC and TEL (proposed to be no later than 2 weeks after the annual general meeting).

*Resolution must be passed as an **extraordinary resolution** meaning a resolution passed by a poll passed by no less than three-fourths (75%) of the votes in favour of the resolution. No amendments are possible at the meeting as proxies will be held for this extraordinary resolution.*

Frequently Asked Questions relating to the removal of the Statutory Supervisor, establishment of a new Trust & Appointment of Trustees

The KCC General Committee & the Marina Steering Committee recommend you vote to remove the Statutory Supervisor & replace it with a new Trust named the Kerikeri Cruising Club Marina Trust. The Trust will comprise of five trustees: an independent chair, & four trustees selected by a joint selection committee made up of three Marina Committee & three KCC General Committee members. The trustee selections will be ratified by the Licence Holders at the Annual General Meeting.

1. Why are we considering not having a Statutory Supervisor?

Under the Financial Markets Conduct Act 2013 the KCC Marina is not a financial product & therefore a Statutory Supervisor is not required. The KCC has a legal contract (Deed of Participation) with a Statutory Supervisor. This is no longer required but to exit the Deed of Participation, a replacement structure must be adopted & Licence Holders must remove the Statutory Supervisor and cancel the Deed of Participation by extraordinary resolution at the Annual General Meeting.

It is not necessary for the Statutory Supervisor to approve any replacement structure - the form & content of any such structure is entirely for KCC & the Licence Holders to agree & there is no recourse to the Statutory Supervisor for anything arising from or related to that replacement structure. Accordingly, while the Statutory Supervisor has reviewed the documents related to the new Trust structure & has provided some comments for KCC to consider, the final content of these Trust documents & the form of the new structure are not its responsibility.

2. What does the Statutory Supervisor do?

The role of the Statutory Supervisor is set out in the former Securities Act & the current Deed of Participation for KCC Marina. These requirements covered both the initial offer of Licences (at the time of construction of the Marina) & the ongoing relationship between KCC & Licence Holders. The Deed of Participation is the statutory document that was required under the Securities Act that 'founded' the Marina Scheme at the outset in 1996 & currently governs the ongoing relationship between KCC, the Statutory Supervisor & the Licence Holders (a copy of this is available on the Club's website <http://www.kerikericruisingclub.org.nz/latest-news.html> & we recommend you read it. If you can't access a copy, contact the Club office).

The Statutory Supervisor's key duties are to:

- Exercise reasonable diligence to ascertain whether or not any breach of the Deed of Participation has occurred
- Do all things it is empowered to do to cause any breach of those terms to be remedied (except if it is satisfied that the breach will not materially prejudice the interests of Licence Holders)

In practice, in addition to dealing with any issues that arise, the Statutory Supervisor holds the funds relating to the Refurbishment Account, receives & reviews the audited annual accounts, six

monthly reports from KCC, the annual report to Licence Holders & the annual budget for the KCC Marina. The Statutory Supervisor also chairs the AGMs of Licence Holders.

3. How will the proposed Trust protect my interests as a Licencee?

The Trust Deed (Deed of Declaration which establishes the new Kerikeri Cruising Club Marina Trust (“Trust”)) has been drafted by taking some of the key responsibilities of the Statutory Supervisor from the Deed of Participation.

The separate Deed of Undertaking between the Club (Manager) & the trustees of the Kerikeri Cruising Club Marina Trust outlines KCCs commitments & obligations to Licence Holders which were also part of the Deed of Participation.

4. What are the purpose & function of the new Trust Deeds?

The Trust Deed (Deed of Declaration) outlines the purposes of the Trust. These are:

- To operate the Refurbishment Account
- To approve KCC’s decisions relating to the management of the Refurbishment account so that the rights of Licence Holders are not diminished
- To ensure the proper operation of the Marina
- To approve KCC’s decisions relating to marina refurbishment
- To mediate in disputes between KCC & Licence Holders

The complete Deed of Declaration has been circulated with the Notice of AGM.

The Deed of Undertaking details the obligations of the Kerikeri Cruising Club & the new Trust when fulfilling the purposes (summarised above). KCC obligations include (but are not limited to):

- Responsibly managing the marina
- Ensuring the marina’s ongoing structural integrity
- Perform all the covenants and undertakings given to the trustees or berth Licence Holders under the Deed of Undertaking or Marina berth license.
- Providing annual audited financial statements
- Calling annual meeting of Licence Holders
- Assigning new licences if a new coastal permit is obtained at the expiration of the existing permit in 2051

The Trust’s obligations include (but are not limited to):

- Establishing bank accounts for the investment of the Refurbishment Account
- Trustees only to be signatories of the Refurbishment Accounts
- Providing dispute resolution between KCC & Licence Holders if required

The complete Deed of Undertaking has been circulated with the Notice of AGM.

Licence Holders will need to read the proposed new Deed of Declaration & Deed of Undertaking provided with this meeting notice. Licence Holders need to satisfy themselves as to the revised level of oversight protection provided by the new Trust structure. These are important consideration & if Licence Holders have concerns they should take independent advice.

5. Would there be cost benefit to removing the Statutory Supervisor?

The current Statutory Supervisor’s base annual fees are \$15,000 per annum & any additional fees for extra-ordinary issues.

Under the proposed arrangement the four elected trustees will not be paid. The independent Chair will receive a small honorarium. A smaller fee for an independent Chair over the remaining 35 years of the current consent is anticipated.

6. What is the standing of KCC & you a Licensee?

KCC holds the consents to occupy the sea bed & water space & owns the Marina structure. As a Licensee you have a licence from KCC to occupy your specific berth. Your licence expires in 2051 once the new trust structure has been put in place.

7. How do I preserve the value of my Licence?

By voting in favour of the Extraordinary resolution at the Annual General Meeting you can increase your level of involvement in the governance & management of the KCC Marina through the appointment of trustees under the Deed of Declaration. This continued involvement should ensure Licence Holders rights are preserved.

8. What is the process for adopting a new legal structure & the removing the Statutory Supervisor?

The current Deed of Participation requires the approval of 75% of those voting (in person or by proxy) on the Extraordinary resolution at the Annual General Meeting to cancel the current Deed of Participation & enter into a new Deed of Declaration and Deed of Undertaking.

9. If we fail to reach agreement on removing the Statutory Supervisor, what happens?

The status quo remains, however the Statutory Supervisor has advised that they will be requiring changes to the current Deed of Participation to reflect certain of the provisions of the FMCA & potentially any new obligations. It is anticipated that costs of a new Deed of Participation will be significant & there will be ongoing Statutory Supervisor fees subject to any future increases.

10. Have other marinas gone down the same path to remove their Statutory Supervisor?

Whitianga Marina & OBC Marina have removed their Statutory Supervisors. Other marinas are at various stages of considering whether or not to remove a Statutory Supervisor. Some marinas have not been required to have a Statutory Supervisor for various reasons.

11. Would you need a Statutory Supervisor now if constructing a marina?

No

12. How does the voting process work?

Voting will be held under an Extraordinary resolution at the Annual General Meeting. Each marina berth licence has one vote. Votes may be made in person or by proxy.

13. What would be the liabilities of the five trustees?

They would be indemnified by appropriate insurance and included in running costs of the Marina Scheme paid by Licence Holders.

14. How long would the trustees be expected to serve?

The Trust Deed (Deed of Declaration) will require that each trustee must retire after no more than three years since their appointment but they will be eligible to offer themselves for re-nomination. The independent chair has a term of five years & may also be re-appointed.

15. When would the first five trustees be appointed & the trust deed put in place?

The ratification of the first trustees will be voted under the Extraordinary Resolution at the Annual General Meeting of the KCC Licence Holders. Please refer to the biographies of the trustees (including the independent chair) which is included in this notice of meeting. If the Extraordinary resolution is passed, the new Trust Deed is proposed to take effect no later than 2 weeks after the Annual General Meeting.

16. What changes are planned regarding the KCC Marina Committee?

No changes to the Marina Committee.

17. What changes are planned regarding the Marina Berth Licence & Licence Rules?

The Marina Berth Licence & Berth Licence Rules have been redrafted to reflect the changed structure & copies of the updated documents are being circulated with the meeting packs relating to the Annual General Meeting.

Draft copies of these documents are available at <http://www.kerikericruisingclub.org.nz/latest-news.html>. For Licence Holders without email contact details hard copy will be posted.

18. What changes, if any, were made to the documents as a result of the consultation meeting with Licence Holders?

Two key changes were made:

- The Clubs intention to renew licences in 2051 if a new consent is obtained was added to the Marina Licence.
- The 2 year limit on how long a berth could be in the visitor pool was amended so that this period could be extended with the permission of the Club.

Trustees Biographies

Trustee & Independent Chair - Keith Ardern JP, CA

Keith worked in Kerikeri from 1984 to 2011 as a Chartered Accountant in Public Practice. As well as running a thriving business, he served the Kerikeri community through several different organisations as a Board Member.

These organisations include, Kerikeri Retirement Village (29 years), Primary & High School Boards of Trustees (10 years), Kerikeri Cruising Club Committee (10 years), & The Rotary Club of Kerikeri (6 years). While on the Kerikeri Cruising Club committee he fought the IRD for 7 years for a substantial GST refund. IRD agreed to settle out of Court, & these funds are still being paid to Club/Marina.

Currently Keith serves the Tauranga community on the Board of Age Concern, through the Rotary Club. He chairs a recently formed trust called the Tauranga Community Trust, is the Rotary District 9930 Treasurer, & a Justice of the Peace.

Keith works as a mortgage adviser providing financial advice to families needing mortgages. He is married to Adrienne & they have 6 grandchildren.

Keith is delighted to be asked to support the Kerikeri Cruising Club once again.

Trustee - Rex Barnaby

Rex has been a Club member since 1975. He has been involved with the marina & was one of the group who put up risk capital for the marina development. Rex has been a marina licensee since it opened in 1993. Rex farms in Northland & lives locally.

Trustee - Douglas (Doug) Galbraith

Doug was born in Takapuna, educated at Takapuna Primary & Grammar schools. He then trained as a plumber, gaining Craftsman qualification. After running the family business, he moved to Kerikeri in 1978.

Doug joined the Kerikeri Cruising Club, chaired the New Clubhouse building committee, & the initial Marina Committee for six years during development. Doug is a Kerikeri Cruising Club Life Member & Club Patron.

Trustee - John Graham

John has been a Club member for over 40 years & has owned 4 yachts in that time. He had a role in selling some club land so the 'new' clubhouse could be built. John then became a member of the Marina Committee & spent about 7 years finally getting stage one completed. John was also a Trustee (President for 2 years) for the Kerikeri Civic Trust which took many years of hard work to complete. John owned Kerikeri Paper Plus for over 20 years & have been retired for 16 years. He would be happy to serve the Club for which he has a great affection

Trustee - Anthony (Tony) Hood

Tony is the Owner Operator of 100% Errol Rogers & Managing Director of Breton Ltd, in Kerikeri. He has a Diploma in Business Management, & has held a number of positions within a variety of companies, both New Zealand & multinationals ranging from Product Management through Sales Management, to Operations Management & General Management. Tony has been a member of the Kerikeri Cruising Club for over 13 years & a Berth Licence holder for 5 years.

Proxies

Berth licence holders may exercise the right to vote either by being present or by proxy. A proxy is entitled to attend, be heard, and vote at a meeting. A proxy must be appointed by notice in writing signed by the licence holder. A body corporate which is a berth licence holder may appoint a representative to attend a meeting on its behalf in the same manner as that in which it could appoint a proxy.

A proxy need not be a berth holder. A proxy may be made in favour of the Chairman.

If you wish to appoint a proxy please:

deliver or post your proxy form (next page) to "The Chair, Kerikeri Cruising Club Berth License Holders Meeting, C/- Kerikeri Cruising Club, 346 Opito Bay Road, RD 1, Kerikeri"

or

complete the proxy form, scan & email it to info@kerikericruisingclub.org.nz

for receipt by 12 noon on Monday 25 September 2017.

Proxy forms will not be accepted at the meeting & must be received as outlined in the instructions above.

Proxy Form

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I..... being a licence holder in the Club's Marina do hereby appoint

or meeting Chairman.....
of (proxy's address)

.....
as my proxy at the Annual General Meeting of Berth Licence holders to be held at the Kerikeri Cruising Club on 26 September 2017 (scheduled to start at 7pm) and at any adjournment thereof.
Signed Date

Resolution Proxy Vote

I, a Berth License Holder
of marina berth, hereby register my vote by proxy for or against the following:

Extraordinary Resolution:

That the Licence Holders resolve as an extraordinary resolution to:

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- (b) enter into a new Deed of Declaration & Deed of Undertaking to replace the Existing Deed in the form described in, and provided with, the Notice of Meeting;
- (c) ratify the appointment of four initial trustees;
- (d) ratify the appointment of the independent chair of the Trust
- (e) adopt the Kerikeri Cruising Club Incorporated Berth Licence Rules 2017 each to take effect on a date agreed between KCC and TEL (proposed to be no later than 2 weeks after the annual general meeting).

For

Against

Please place a tick inside the box indicating whichever your preference is.

Resolution must be passed as an extraordinary resolution meaning a resolution passed by a poll passed by no less than three-fourths (75%) of the votes in favour of the resolution.