

Papers show Carter was advised to back marina

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By Ruth Berry

Conservation Department officials advised Chris Carter to uphold the Environment Court's decision to grant consents for the Whangamata marina, papers filed in the High Court show.

They also reveal several officials expressed their nervousness about the minister's decision to meet interested parties over the issue early this year, warning "the whole thing could be a fast trip to the High Court".

Mr Carter has the statutory authority to determine whether to grant coastal resource consents after recommendations are made by the Environment Court.

In March he declined a court-approved application for two consents by the Whangamata Marina Society for the \$10 million, 205-berth marina.

He was concerned about the destruction of the salt marsh adjacent to the proposed marina basin to provide parking and the effects of the development on iwi.

The society has filed for a judicial review of the decision, which will be heard in the High Court next month.

DoC papers requested by the society's lawyers and filed with the court detail some of the advice given by various department officials.

A departmental submission to Mr Carter on December 9, soon after the Environment Court decision, said "the department invites you to accept the recommendation of the Environment Court that the application be approved and that the conditions of consent recommended by the court be imposed.

"Your department staff consider that the permit could be granted as recommended by the court."

Included in the submission was a further reason why Mr Carter should approve the consents.

In 1998 then Conservation Minister Nick Smith instructed the department's Waikato conservator to withdraw as a submitter in opposition to the society's proposal and to negotiate an agreement on mitigation measures to protect the dotterel habitat.

A consent order was signed and the department took no further part in the proceedings.

"Legal advice in regard to later proceedings was that as the consent order had been tabled at and accepted by the court, the order stood and although there had been a change of minister it was not appropriate to resile from the order or to attempt to re-enter proceedings."

Emails contained in the High Court files record concerns from various department officials about Mr Carter's decision to come to the region and hear the different views of the community.

Paul Hardy, an official from the region's Marine Conservation Unit, warned "the meeting poses risks as the parties opposing the marina have had their opportunity to state their case. I hope the applicant is also to be met with. The whole thing could be a fast trip to the High Court."

The unit's Wellington manager, Felicity Wong, noted in an email back to Mr Hardy in early February: "Everyone is rightly very nervous about the minister's meeting on this subject. You'll need to ensure the minister is well-briefed about the sensitivities before he meets with anyone on this and ensure he ventures no view to anyone."

Another unit manager, Guy Kerrison, noted in an email to Ms Wong and Mr Hardy that he was "very concerned" about Mr Carter's meeting plans.

"He is the consent authority and shouldn't be meeting with parties and particularly shouldn't be talking about the merits of the case with anybody."

A subsequent DoC briefing to Mr Carter the day before he announced his decision, and released to the Herald, does not proffer a view on what decision the minister should reach, but warned the \$1.2 million

and nine years put into securing the project by the society meant a decision to depart from the court's views "should not be taken lightly".

Further to this article but not part of Herald Article.

*The Environment Court was not aware of the Consent signing.
Mr Hardy did not pass on Ms Wong's concerns to Chris Carter.
These points were clarified in the Judicial Review, 2006.*