

November 3, 2009

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Your file: 8200-05-8949

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Mr. Greville,

Thank you for your letter of October 2, 2009 giving South Island Sea Kayaking Association (SISKA) this opportunity to respond to the revised plans for Victoria International Marina. While we appreciate this opportunity to comment, we are concerned that other stakeholders and the public have not had the same opportunity. Given the significant impacts of this revised plan the appropriate process would have been for NWPP to require the proponent to deposit this revised plan at the land titles office with an advertisement and a reasonable period for public comment.

In our opinion, the latest drawings continue to raise navigational, access and safety concerns for a wide range of non-powered vessels, not just kayakers. Standards under the Navigable Waters Protection Program (NWPP) require that the review officers and the public are given access to a set of plans that is clear, accurate and complete, with supporting documentation. A review of the revised plans and earlier versions of the site plan indicates that this standard has not been met. In order to act with due diligence, Transport Canada must address the concerns raised in this letter as well as concerns raised in earlier submissions that have not yet been adequately addressed. Please note that in July, 2009 NWPP agreed that the proposed marina site plan should be overlaid on a Canadian Hydrographic Services (CHS) navigational chart so that the impacts on navigation and safety of the proposed work could be clearly and accurately assessed. To date we have not been provided with this document. Has NWPP obtained this from the proponent? When will this document be made available to stakeholders and the public?

If Transport Canada required the proponent to overlay the proposed marina site plan onto Chart 3412 and to report the clearances in navigable water definitions, not as surveyor data references under each structure, stakeholders and NWPP could use the CHS Current and Tide Table, Volume 5 for the Victoria harbour to determine if there is sufficient clearance under the buildings and sufficient water under the vessels to safely use the proposed paddle corridor. By using chart datum, it will be possible to NWPP and stakeholders to determine if the clearances under the structures will be safe for all non-powered vessels including outrigger canoes, stand up paddle board users and row boats.

The proponent's schematics of the ramp leading to the docks should show the clearances based on chart datum at both the land end and the dock end of the ramp for all structures. This method removes the ambiguity about the sea floor contour from the foreshore out under the marina and in particular, along the proposed paddle corridor. This information combined with data from the Current and Tide tables is essential to determine the feasibility of the corridor for all types of non-powered vessels.

Fisheries and Oceans web site defines datum as follows:

"Datum - For navigational safety, depths on a chart are shown from a low-water surface or a low-water datum called chart datum. Chart datum is selected so that the water level will seldom fall below it and only rarely will there be less depth available than what is portrayed on the chart."

Reference: <http://www.dfo-mpo.gc.ca/regions/central/issues-questions/index-eng.htm>

It appears that NWPP has not taken under consideration that clearance under the buildings will decrease over time as a result of changes in sea level due to climate change. According to recent studies, at the current rate of change in sea level the clearances through this corridor could decrease to a point where navigation may not be feasible for the duration of the license of occupancy of the water lots. Refer to Dr. Gordon Greeniaus' letter to NWPP in November 2009.

The clearance under the structures (buildings and bridges) according to the proponent's material is based on geodetic datum. Clearances on a Canadian Hydrographic Chart (CHS) are based on chart datum and not the level of the land as in geodetic datum. Therefore, the clearances under structures need to be measured according to recognized standards for navigable water, chart datum. For example, CHS Chart 3412 of the Victoria Harbour shows clearances under structures such as the Johnson Street Bridge at 5.9 m and the Point Ellice Bridge at 9 m. The NWPP has a duty to assess the proposed work in accordance with the established marine navigational standards. When will clearances based on chart datum be made available to stakeholders and the public?

According to the renderings attached to your letter, the two buildings are supported by pilings within the boundary of the corridor and therefore the paddling corridor appears to be obstructed by pilings. The pilings present safety risks to all non-powered vessels by restricting maneuverability and line of sight.

The limited corridor width of approximately 8 m requires careful maneuvering given its non-linear configuration. The curves require agility and good piloting by kayakers. Since the majority of kayakers paddle in groups passage becomes difficult with increased risk of an accident in the corridor and especially under the buildings. Furthermore, the narrow corridor is inadequate for non-powered vessels to maneuver when there is opposing traffic. Since there are several sets of pilings, the potential safety risk increases further when the paddlers are negotiating the pilings on each side of the two buildings due to the further reduction of space.

In order to navigate this narrow corridor, paddlers operating larger non-powered vessels are presented an extreme hazard. A six person outrigger canoe (OC6) is 15 m long and 2.5 m wide. Paddlers of these large vessels attempting to transit the corridor need to be very highly skilled as they are extremely difficult to steer in the best of conditions and respond relatively slowly to the helm. The proposed paddle route leaves little space to allow for steering difficulties and opposing traffic to transit safely within the corridor and under the buildings.

The revised plan lacks detailed measurements on the separation between the pilings. When will this information be made available to stakeholders and the public? Doug Linton, Director Safety and Standards, Victoria Canoe and Kayak Club (VCKC) has stated that it is unlikely an OC6 could safely navigate through this corridor. He states in his email of October 14, 2009 to NWPP "...many steerspersons will opt to go around the marina on the outside in order to avoid being caught between the proverbial 'rock and the hard place', thereby entering the [approximately] 5m wide zone adjacent to the aircraft taxiway ...". SISKA concurs with the concerns raised by VCKC, an organization of over 400 members who operate large non-powered vessels on the north shore of the Victoria harbour on a year round basis.

Other navigational concerns have been raised by operators of non-powered vessels who are forced to proceed around the marina between the aircraft taxiway on the north side of Pelly Island and the perimeter of the marina structure. Earlier submissions have provided evidence of serious safety concerns with respect to this mix of marine and aircraft traffic in the congested area, complicated by the effects of the wave attenuator and mega-yacht traffic. Will NWPP and Lori Young as part of the operational review respond to the navigational and safety issues raised by stakeholders including Harbour Air Seaplanes, Victoria Harbour Ferries, Ocean River Sports, VCKC and other organizations? Refer to Irene Faulkner's letter of September 21, 2009.

The alternative is to paddle around the exterior of the marina next to the taxiway. The distance between the marina and the edge of the taxiway appears to be approximately 8m. This creates unacceptable risks associated with mixing powered vessels, aircraft and non-powered vessels in a restricted space. These risks of congested traffic in a restricted area were previously documented in SISKA's submissions between December 2008 and August 2009 to NWPP. Evidence of these navigational and safety concerns are contained in the letter from Irene Faulkner dated September 21, 2009 on behalf of SISKA to Jim Prentice, Minister of the Environment, a copy of which was forwarded to Transport Canada Minister, John Baird. At the public meeting in Victoria on September 22, 2009, Ms. Faulkner presented a copy of the letter to the panel chair in the presence of Lori Young, Regional Director, Programs – Pacific, who is in charge of the operational review of the proposed marina. Will NWPP and Lori Young respond publicly to the submissions of September 21 and 22, 2009 as part of Transport Canada's operational review?

Paddling under the two buildings presents additional safety risks beyond the issue of the pilings. Visibility becomes an issue as a paddler's vision must quickly adjust from bright sunlight to the darkness under the buildings several times during their transit. Low light days and evenings will add to the risk to paddlers. Under both lighting conditions, it could be difficult to recognize and avoid other paddlers.

There is the strong probability debris and sea plant material will collect behind the marina driven by prevailing winds and tides. The accumulation of the debris will eventually create a navigational hazard to paddlers and could block access to the paddlers. This could force paddlers out around the marina and the mixed traffic issue arises once again. How will NWPP address this navigational hazard as part of their review process?

With the larger non-powered vessels unable to navigate safely through the narrow corridor, the effects of the wave attenuator come to the forefront for vessels paddling around the exterior of the marina structure. We refer you to earlier submissions to NWPP authored by Dr. Gordon Greeniaus regarding the measurement of the reflective wave particularly when westerly winds are blowing against the attenuator. In July 2009 Transport Canada agreed to obtain a peer review of the proponent's wave attenuator study and the negative impacts on navigational safety. At the public meeting on September 22, 2009, Lori Young reiterated Transport Canada's commitment to this peer review. What is the status of the review and when will Transport Canada release this information to stakeholders and the public?

In an earlier submission, SISKA raised concerns about effects on navigation and safety of this marina if the use of this marina were to change in use from a marina for mega-yachts to a marina for a larger number of smaller boats. Evidence was provided earlier that Transport Canada officials are on record as stating that such a change in use would raise serious concerns with respect to traffic safety. This is because the current Victoria Harbour traffic scheme requires smaller boats to use the traffic separation lanes on the south side of the harbour. Previous requests for information on what conditions Transport Canada would put in place to prevent this change in use have not been answered. Due diligence requires that Transport Canada puts conditions in place to prevent such a change in use. What are Transport Canada's intentions to ensure that the best interests of stakeholders and public are protected with respect to this issue?

Although SISKA is responding in detail to this revised plan, our position on the revised marina has not changed. The scope and the location of the proposed marina are such that attempts to mitigate concerns by making minor changes to the site plan are not effective. This project will substantially impede safe navigation and public access to these waters. The plan attached to your letter of October 2, 2009 does not adequately mitigate stakeholder's concerns regarding navigation nor does it protect public access to these waters. The approval of the project proposed by Community Marine Concepts LP on the north shore of the Victoria harbour will effectively alter the use of this area from the current public use to private use. The approval of this project is counter to the stated mission of the Navigable Waters Protection Division to preserve the public right of unimpeded safe navigation. This protection applies equally to all vessels including a wide range of small non-powered vessels. It is not consistent with NWPP's mandate to focus on mitigation of concerns from kayakers only.

According to the NWPP guidelines, the public is entitled to access a set of clear, accurate and complete plans and to participate in a fair and transparent public consultation process. In order to restore our trust in the review and approval process, the integrity, transparency and accountability are of primary importance. It is SISKA's contention that Transport Canada has not responded effectively to requests for information from stakeholders or effectively addressed concerns about navigation and safety that have been identified. Therefore Transport Canada has not met its obligations.

It is our expectation that the serious concerns raised by SSKA and other stakeholders will be seriously considered and acted upon. This is how Transport Canada can demonstrate that NWPP and the Pacific Region Programs Branch that is carrying out the operational review will fulfill their mandates to protect public access to these navigable waters and maintain operational safety of Victoria Harbour.

Attached is a site plan of the proposed marina overlaid on the current Port of Victoria Traffic Scheme that demonstrates the extent to which navigation by non-powered vessels could be impeded by this project. See Appendix A.

Respectfully,

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Mayor Dean Fortin and members of Victoria City Council

Appendix A

The following embedded file (pvts08_megamarina_detail.pdf) uses the existing Port of Victoria Vessel Traffic Scheme with the proposed Victoria International Marina overlaid.

