AK Taihia

From: Doug and Helen
Sent: Wednesday, 10 September 2025 6:22 am
To: AK Taihia
Subject: Fwd: Scan from Paihia Photos
Attachments: 08092025115806-0001.pdf

Good morning Alicia

In response to your 15C hearing notice and comments made in the PDP planning team,s 42A report on the concerns I have raised, I am submitting the entire scope of my evidence in the following emails "A-F" accordingly.

This to make clear my intentions in dealing with the PDP as proposed in conjunction with my site in Opua and the implications of its occupations both on land and in the CMA.

Kind regards

Doug Schmuck

For: Doug's Opua Boatyard

-------- Forwarded Message --------
Subject: Scan from Paihia Photos
Date: Mon, 08 Sep 2025 11:58:38 +1200
From: Paihia Photos
Reply-To:
To:

Number of Images: 34
Attachment File Type: PDF

Device Name: Paihia Photos
Device Location:

Doug's Opua Boat Yard
1 Richardson Street, Opua, Bay of Islands
Ph (09) 402 7035, A/h (09) 407 4577
tutarahill@xtra.co.nz

10 September 2025

Alicia-Kae Taihia
FNDC PDP Team
alicia-kate.taihia@fndc.govt.nz

REF: HEARING 15C TIMETABLE RESPONSE; S21

In response to the 42A report by the Senior Policy Planner and Technical Director for the PDP and limited accommodation for the hearing impaired, at the hearing facilities; I will not be attending the 15C hearing.

Nor will I be attending because of the misrepresentations to the Panel in the 42A report of my initial submissions and those of the subsequent submissions I made at hearing 8 on Open Space matters directly/indirectly affected by the Treaty of Waitangi Act 1975.

Nor because the Panel has not made it clear to the PDP Planning Team of their spoken commitment to resolve Natural Open Space issues on the land and in the CMA regarding my legal occupations that directly affect substantial PDP zoning errors.

Nor because the PDP Team has disregarded/misrepresented not only the written submissions by my expert witness, but his phone conference evidence with them as to my concerns with the scope of the PDP that are in effect, ultra vires to the RMA.

Therefore, because these matters I have raised appear now to be beyond the jurisdiction of the PDP, I am hereby submitting the entire scope of my evidence regarding concerns I have that are likely not only to affect my boatyard, its exclusive occupations both on land and in the CMA, but the entire District as well.

Douglas Schmuck

521

Kerikeri Service Centre "A"

22 SEP 2022

Proposed District Plan submission form

Clause 6 of Schedule 1, Resource Management Act 1991

Feel free to add more pages to your submission to provide a fuller response.

Form 5: Submission on Proposed Far North District Plan

This is a submission on the Proposed District Plan for the Far North District.

Full Name:	DOUGLAS ARAIL SCHMUCK		
Company / Organisation Name: (if applicable)	DOUG'S OPUA BOATYARD		
Contact person (if different):	1 RICHARDSON STREET		
Full Postal Address:	OPUA 0200		
	B.O.I. Ph/Fax (09) 402 7055		
	GST No. 051-243-021		
Phone contact:	**Mobile:** 021 1437719	**Home:** 09 4074577	**Work:**
Email (please print):	TOTARAHILL@XTRA.CO.NZ		

- **Submitter details:**

- (Please select one of the two options below)

~~I **could not**~~ gain an advantage in trade competition through this submission
I **could** gain an advantage in trade competition through this submission

If you could gain an advantage in trade competition through this submission, please complete point 3 below

3. I **am** directly affected by an effect of the subject matter of the submission that:
(A) Adversely affects the environment; and
(B) Does not relate to trade competition or the effect of trade competition

I **am not** directly affected by an effect of the subject matter of the submission that:
(A) Adversely affects the environment; and
(B) Does not relate to trade competition or the effect of trade competition

Note: if you are a person who could gain advantage in trade competition through the submission, your right to make a submission may be limited by clause 6(4) of Part 1 of Schedule 1 of the Resource Management Act 1991

The specific provisions of the Plan that my submission relates to are:
(please provide details including the reference number of the specific provision you are submitting on)

PLEASE SEE ATTACHED SUBMISSION DATED 22/9/22

Confirm your position: Support (Support In-part) Oppose
(please tick relevant box)

My submission is:
(Include details and reasons for your position)

PLEASE SEE ATTACHED SUBMISSION DATED 22/9/2022

I seek the following decision from the Council:
(Give precise details. If seeking amendments, how would you like to see the provision amended?)

PLEASE SEE ATTACHED SUBMISSION DATED 22/9/2022

(I **wish** to be heard in support of my submission)
~~I **do not wish**~~ to be heard in support of my submission
(Please tick relevant box)

If others make a similar submission, I will consider presenting a joint case with them at a hearing
Yes (No)

Do you wish to present your submission via Microsoft Teams?
Yes (No)

Signature of submitter:
(or person authorised to sign on behalf of submitter)

Date: 22/9/2022

(A signature is not required if you are making your submission by electronic means)

Important information:

- The Council must receive this submission before the closing date and time for submissions (5pm 21 October 2022)
- Please note that submissions, including your name and contact details are treated as public documents and will be made available on council's website. Your submission will only be used for the purpose of the District Plan Review.
- Submitters who indicate they wish to speak at the hearing will be emailed a copy of the planning officers report (please ensure you include an email address on this submission form).

Send your submission to:

- **Post to:** Proposed District Plan
  - Strategic Planning and Policy, Far North District Council
  - Far North District Council,
  - Private Bag 752
  - KAIKOHE 0400
- **Email to:** pdp@fndc.govt.nz
- **Or you can also deliver this submission form to any Far North District Council service centre or library, from 8am – 5pm Monday to Friday.**
- Submissions close **5pm, 21 October 2022**
- Please refer to pdp.fndc.govt.nz for further information and updates.

Please note that original documents will not be returned. Please retain copies for your file.

Note to person making submission

Please note that your submission (or part of your submission) may be struck out if the authority is satisfied that at least one of the following applies to the submission (or part of the submission):

- It is frivolous or vexatious
- It discloses no reasonable or relevant case
- It would be an abuse of the hearing process to allow the submission (or the part) to be taken further
- It contains offensive language
- It is supported only by material that purports to be independent expert evidence but has been prepared by a person who is not independent or who does not have sufficient specialised knowledge or skill to give expert advice on the matter.

1 Richardson Street, Opua, Bay of Islands
Ph (09) 402 7055, A/h (09) 407 4577

A SUBMISSSION TO THE

PROPOSED FAR NORTH DISTRICT PLAN (PFNDP)

I am the proprietor and owner of the boat maintenance and repair facility known as Doug's Opua boatyard (DOBY).

This particular commercial activity was the first of its kind in the township of Opua created 1883 and has operated in this capacity since 1966.

Along with a wide spectrum of boat maintenance and repair are several other activities directly connected with recreational and charter vessels, where public access to the CMA is enhanced and controlled on and over the exclusive occupations and structures of DOBY for all of those purposes including a commercial marina.

Furthermore, the scale, intensity, and character of the activities in conjunction with land occupations over the adjoining Esplanade Reserve, created by a road stopping that I undertook pursuant to Part XXI of the Local Government Act 1974, has directly underpinned all that has followed since 1995.

In mid 2020, after twenty seven years of wrangling with issues surrounding (Reverse Sensitivity), all of the matters pertaining to public access over the Esplanade Reserve in juxtaposition with this boatyard, including two Treaty Claims, were adjudicated by five Justices of the Supreme Court. In attendance were myself through Alan Galbraith QC and the FNDC through Jack Hodder QC and the Opua Coastal Preservation Society whom are now bankrupt and defunct; a group of citizens who had been behind and driven these issues through out that time, and eventually into the courts.

With regard to the Operative District Plan there are agreements reached with the FNDC hearings committee for that plan and MEA plan rules within it through the Department of Conservation that were settled before the Environment Court after rezoning of DOBY to commercial from residential. Therefore, having no other gauge by which to set the new zoning at the time. In effect, relying on the rule for (Cross Boundary Activities And Structures) that interfaced with the CMA under the separate authorities of the two councils.

With the above in mind, I have considered closely the PFNDP and have two specific concerns regarding proposed zoning of this site in light that the proposed plan has moved away from a strictly effects basis to an activity doctrine. Therefore the first matter involves 1/5 Beechy St, Opua whereby I believe that this is solely a zoning mistake as there is no way you can have a Rural Production Zone under a property supported by pilings over the CMA without so much as a scrap of dirt to its name accept perhaps in a plant pot. As opposed to the farm I own at 121 Porotu Road, Oromahoe which is now and will always remain in the Rural Production Zone.

The latter concern is of course 1 Richardson St. Opua being DOBY itself. In its case this may also be a mistake by way of no consideration of the implications of existing (Cross Boundary Rules) associated with it when applied uniformly with the MEA at Opua that has now become the Light Industrial Zone (LIZ) that has no equivalence in the Operative District Plan. Let alone by definition as to what the parameters of the activities that are now proposed in the LIZ. And clearly this site is now no longer a commercial site by definition in the PFNDP and should be readdressed along with all the legal implications for these activities that now run with the land both on the site itself; the esplanade reserve; and in the CMA.

I therefore suggest this site should be rezoned to LIZ for to leave it in the MUZ as proposed, is a square peg in a round hole and/or an effort to make the MUZ zone fit. Which clearly should not have happened with direct reference to Rule 12.7.6.1.1 (ix).

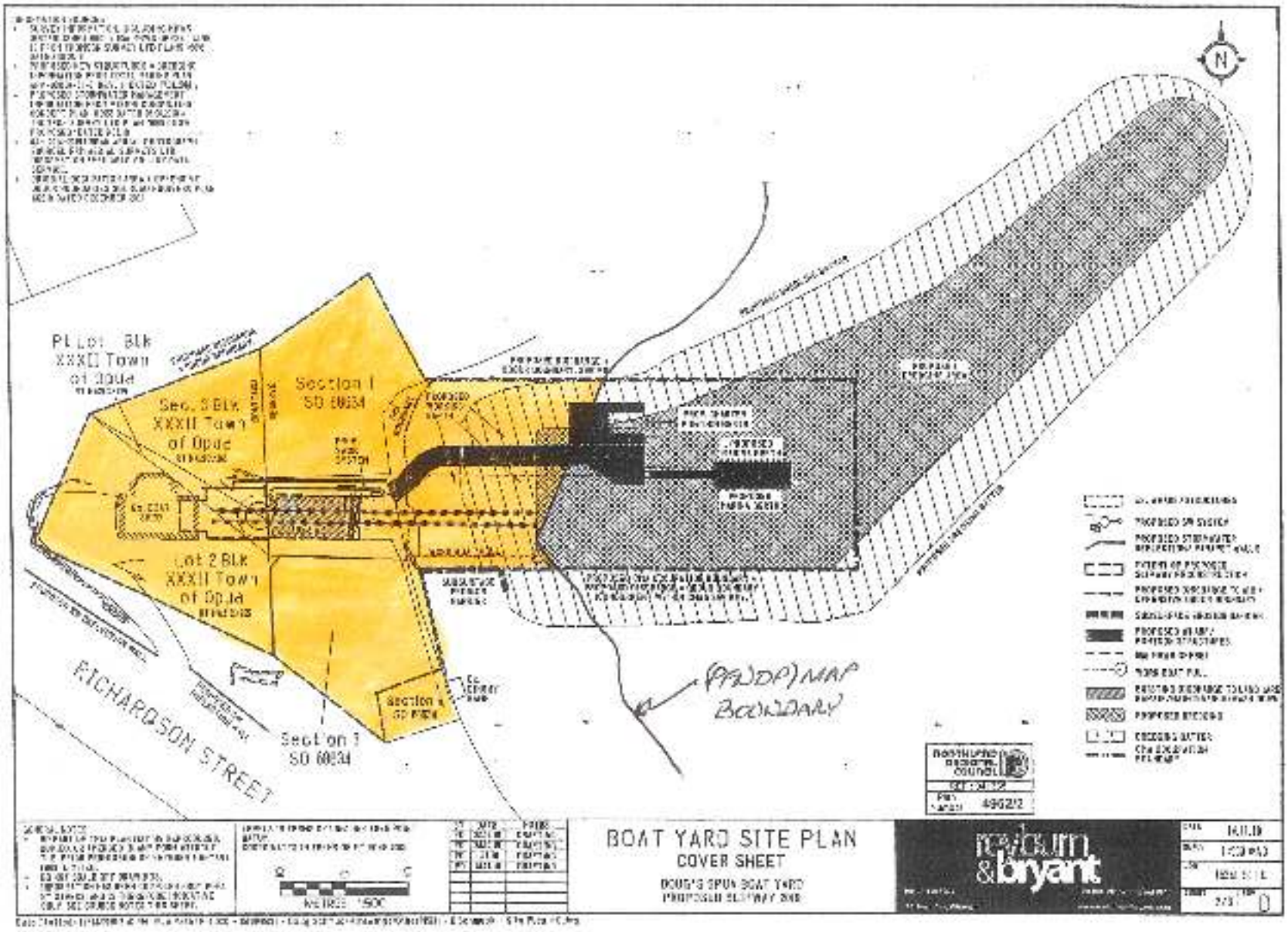
With respect then, and in respect to this submission regarding the proposed change, I attach NRC Plan document for resource consent 041365 4952/2 for an inclusive boundary LIZ designation as marked in orange along with the PFNDP zoning map for 1 Richardson St. Opua also marked in orange; and photographs from 2014/2022 of structures and associated activities in conjunction with the overall site.

In further support of this submission, I also attach the following appendices 1-8 as to the nature of the approved activities; land and CMA occupations; and environmental parameters associated with them that run with these lands of the boatyard, adjoining reserve, and exclusive occupation in the CMA. For none of these issues have escaped the scrutiny of every court in this land and therefore should not be disregarded in the conduct of this new planning doctrine.

Thank you

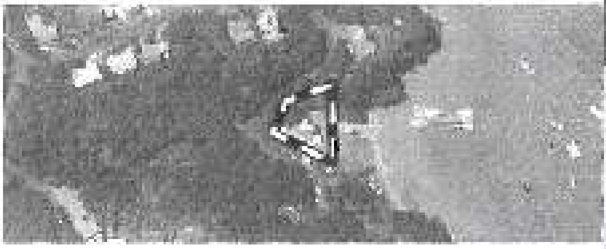
Doug Schmuck
For: Doug's Opua Boatyard

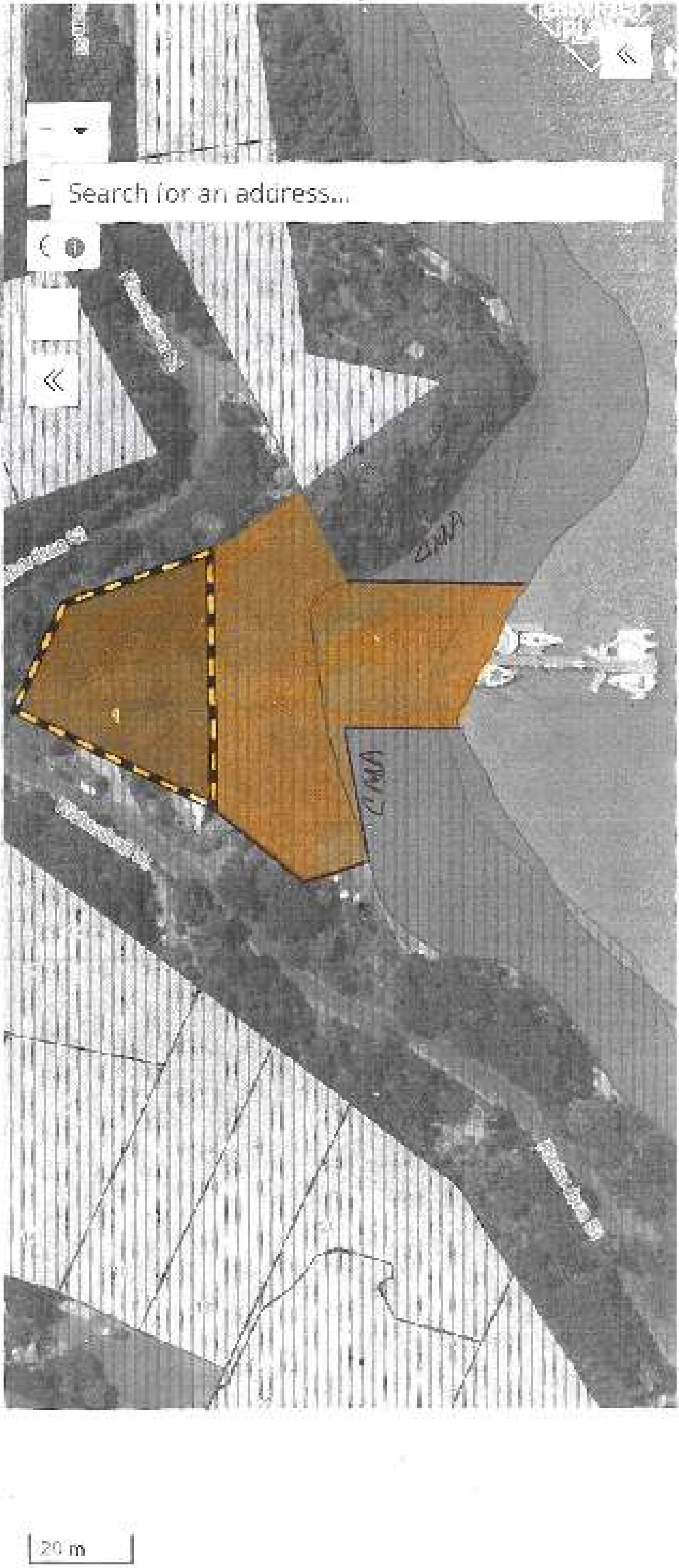
Date: 22 Sept. 2022


Pt Lot Blk XXXII Town of Opua
Sec. 3 Blk XXXII Town of Opua
Section 1 SD 0834
Lot 2 Blk XXXII Town of Opua
Section 3 SD 0834
RICHARDSON STREET
(PPODP) MAP BOUNDARY
N
BOAT YARD SITE PLAN
COVER SHEET
DOUG'S SPUN BOAT YARD
PROPOSED SLIPWAY 2018
newcom &bryant

Far North Proposed District Plan

1 Richardson Street, Opua 0200





Property Specific Proposed District Plan Chapters

View Full Proposed District Plan

Zoom to selected property

Clear selected property

Proposed: 27 Jul 2022
Revision: 26 Jul 2022

The following information applies to this property

Zone

CHANGE TO (LIZ)

~~Mixed Use~~

View section

Overlays

Coastal Environment

View section

Eagle Technology, Land Information New Zealand, GEBCO | Powered by Esri

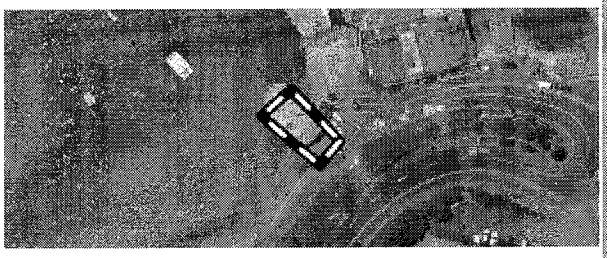

DOUG'S OPUA BOATYARD
1 RICHARDSON STREET
OPUA 0200
"2014"


"FEB. 2022"

Far North Proposed District Plan

APPENDIX 1

1/5 Beechy Street, Opua 0200



Property Specific Proposed District Plan Chapters

View Full Proposed District Plan

Zoom to selected property

Clear selected property

Proposed: 27 Jul 2022
Revision: 26 Jul 2022

The following information applies to this property

Zone

Rural Production

View section

Overlays

Coastal Environment

View section

Natural Hazards and Risks Overlays

Coastal Flood (Zone 3: 100 Year + Rapid Sea Level Rise Scenario)

View section

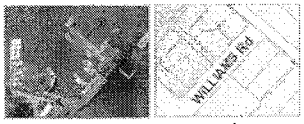
Map Tools

Map Layers

- Non-District Plan Layers
- Zone
- Historical and Cultural Values Overlays
- Specific Controls
- Overlays
- Energy Infrastructure and Transport Overlays
- Precincts
- Natural Environments Overlays
- Designations
- Natural Hazards and Risks Overlays

Transparency

Basemaps



Aerial Light Canvas

Measure

Draw

Text

Print

Legend

Help

12.7 LAKES, RIVERS, WETLANDS AND THE COASTLINE

Wai

Ma te wai, ka ora ai nga mea katoa. Kia tupato te whakahaere mahi o tena, kia u tonu ki te mauri.

Water

Water has a vital quality that nourishes all living things. Let us ensure its purity to retain that essential life force - the mauri of the water.

CONTEXT

Note: For the purposes of this chapter "lakes" include the Waingaro and Manuwai Reservoirs.

The Far North District has an extensive coastline, eight harbours, estuaries, many rivers and streams, lakes and wetlands. The health of these water bodies is vital to sustaining all kinds of life. Human activity, however, can lead to contamination of the water, reduced water quantity and consequential loss of habitats. For example, Lake Omapere and a number of small west coast dune lakes have been contaminated by nutrients and other material in rural run-off to the extent that they are no longer suitable for their indigenous aquatic ecosystems, contact recreation or water supplies, and have degraded aesthetic values. Also, there are several inner harbours and estuaries which, due to contamination from rivers, do not meet the very high standards for shellfish gathering, cultivation, or human consumption e.g. Kawakawa estuary, some areas of the inner Bay of Islands and inner Whangaroa harbour (refer to s17/4 of the Regional Policy Statement for Northland). Maintaining water quality and quantity is therefore fundamental if sustainable management of natural and physical resources is to be achieved.

The District has a surprising scarcity of high quality water resources, despite its large land area. Most of the rivers and streams are relatively short with small catchments which means that sources of potable water are limited. Conserving water quantity is therefore very important, particularly in catchments near to settlements that have the capacity to be utilised as potable water supplies.

Pollution by rural and urban run-off contaminated from non-point source discharges and stormwater is a major cause of deteriorating water quality. Degradation of water quality can have an adverse impact on visual and amenity values. The Northland Regional Council and Far North District Council jointly share responsibility for ensuring that pollution from this, and all other sources, is minimised. While the Northland Regional Council is responsible for the control of discharges of contaminants to air, land and water, and for the use of land and water for the maintenance and enhancement of water quality, Far North District Council has primary responsibility for the subdivision, use and development of land, and for the control of activities on the surface of water. Thus, Far North District Council can manage the location of buildings, impervious surfaces and effluent disposal in relation to riparian margins as one method of addressing the effects of activities on water quality. The Council can also, through its own Strategic and Annual Plans, set priorities for the public provision of stormwater systems and adopt best management practices when implementing its works programme. Accordingly, the Plan provisions are designed to complement those of the Regional Policy Statement and Regional Water and Soil Plan.

Public access to the margins of rivers, lakes and the coastline is highly sought after. In particular, tangata whenua have an interest in gaining access, via traditional paths, to food-gathering areas. Also, there is considerable demand for residential properties with beach frontage and/or sea views, especially along the eastern coastline. As a result, subdivision offers many opportunities to acquire riparian margins and to secure public access where appropriate. This includes the opportunity to have unformed legal road vested as esplanade reserve. However, it will not always be wise to facilitate public access because of conservation, amenity, landscape, heritage, cultural and spiritual values, or topography or safety reasons. In such cases, public acquisition of the riparian margins may be justified in order to protect and preserve those special values.

Historically, some settlements have developed close to, or over, the coast e.g. Mangonui and Rawene. These are recognised as having a special character and are therefore identified as heritage precincts. Some activities also have a need to be located close to, or over, the boundary of the coastal marine area. Where there is a functional need of this kind, the Plan recognises and provides for the circumstances in which development can occur.

Where development occurs within the coastal marine area (under the jurisdiction of the Northland Regional Coastal Plan) there may be adverse effects that occur on the land i.e. within the District. For example, parking associated with marinas can cause traffic problems and loss of amenity in coastal settlements. Co-operation between the two Councils is essential to ensure that all of the adverse effects of an activity located in the coastal marine area are adequately addressed when resource consents are considered. This is one of several cross-boundary issues which need to be resolved.

Far North Proposed District Plan

Full Far North Proposed District Plan

Proposed: 27 Jul 2022
Revision: 26 Jul 2022

Cross boundary matters

Far North District shares its boundaries with Whangarei District Council to the south and Kaipara District Council to the south west. Far North also shares a boundary with the **Northland Regional Council** with respect to the seaward side of mean high water springs.

Cross boundary issues refer to situations where an activity takes place on or near a territorial boundary and where the effects of a particular activity impacts on the territory of an adjacent authority.

While Council's has jurisdiction only within its territorial boundaries, integrated resource management requires coordination and cooperation between authorities for management issues that extend across boundaries and across jurisdictions.

Cross boundary issues are addressed by:

1. Ensuring consistency and a degree of integration between the Far North District Plan and the plans and policy statements of adjoining territorial authorities, as well as the **Northland Regional Council**. This will ensure that the region's resources are managed compatibly, and provide the basis for an assessment of resource consent applications; and
2. Consulting with adjoining authorities on resource management matters, including Plan reviews, Plan changes and resource consent applications as required under the RMA or as is necessary or appropriate. This will include discussions with Council officers, possible notification of applications for resource consent in adjoining authorities and, where appropriate, joint hearings.

12.7.1 ISSUES

12.7.1.1 Land use and subdivision activities adjoining or on lakes, rivers, wetlands or the coastline can reduce their amenity and natural values, including the quality and quantity of water. However, there is significant opportunity to restore, rehabilitate and revegetate these areas through the application of methods set out in this Plan.

12.7.1.2 Wetlands can be adversely affected by land drainage, modification of the natural water levels, vegetation clearances, filling, polluted run-off and stock, reducing the effectiveness of their natural functions of buffering water flows and providing habitat.

12.7.1.3 Some activities depend on being located right next to the water, such as port facilities, shore-based facilities for marine farming, jetties and boatyards, and there is a need to provide for these activities in a way which minimises adverse effects on the natural character of lakes, rivers and the coastline.

12.7.1.4 Recognising and providing for the historic pattern of settlement in some towns whereby buildings are located very close to, or even over, the water.

12.7.1.5 Access to lakes, rivers and the coastline is generally inadequate compared to demand from tangata whenua, residents and visitors. An important way this can be addressed at the time of subdivision as for example in a management plan but, at the same time, there are some places which are inappropriate for public access because of conservation, cultural, heritage, and spiritual values, or topography or safety reasons.

12.7.1.6 Impervious surfaces increase run-off to natural water bodies which can alter their habitat values and physical form through scour and sediment deposition, adversely affect water quality and reduce water quantity in ground and surface water bodies.

12.7.1.7 The degradation of the mauri and wairua of water bodies and adverse effects on kaimoana due to pollution.

12.7.1.8 Human activities can create and exacerbate the risk of erosion and other natural hazards in riparian areas.

12.7.1.9 Vehicles on beaches can have adverse effects, impacting on dune stability, and dune and coastal flora and fauna. Domestic pets, particularly dogs, can have adverse effects on species dependent on riparian areas and the coastal margin. Stock grazing in riparian margins can have adverse effects on habitat values, natural hazards and on water quality.

12.7.2 ENVIRONMENTAL OUTCOMES EXPECTED

12.7.2.1 Use of lakes and rivers which is appropriate in terms of the preservation of the natural character and values of these areas.

12.7.2.2 Riparian margins are enhanced.

12.7.2.3 Activities on, or adjoining, the surface of water bodies are carried out in a way which avoids, remedies or mitigates adverse effects on the environment.

12.7.2.4 Buildings and other impervious surfaces generally set back far enough from riparian margins including from the coastal marine area, so that esplanade reserves, strips or other forms of protection can be achieved in the future if required, except in locations where the types of activity or historic patterns demand otherwise.

12.7.2.5 Enhanced public access to and along lakes, rivers and the coastal marine area.

12.7.2.6 A reduction in the rate of loss or adverse modification of indigenous wetlands.

12.7.3 OBJECTIVES

12.7.3.1 To avoid, remedy or mitigate the adverse effects of subdivision, use and development on riparian margins.

12.7.3.2 To protect the natural, cultural, heritage and landscape values and to promote the protection of the amenity and spiritual values associated with the margins of lakes, rivers and indigenous wetlands and the coastal environment, from the adverse effects of land use activities, through proactive restoration/rehabilitation/revegetation.

12.7.3.3 To secure public access (including access by Maori to places of special value such as waahi tapu, tauranga waka, mahinga kai, mahinga mataitai, mahinga waimoana and taonga raranga) to and along the coastal marine area, lakes and rivers, consistent with ***Chapter 14 - Financial Contributions***, to the extent that this is compatible with:

complete a link or to secure public access to key locations is limited by available finance. Therefore the Council will use a variety of means in order to provide public access whenever such opportunities occur during subdivision and development of land near lakes, rivers and the coastline. However, there will be circumstances where public access is not desirable and, in these cases, the Council will consider conservation measures to be a priority (refer to ***Objective 12.7.3.3***; ***Policies 12.7.4.6*** and ***12.7.4.8*** and ***Methods 12.7.5.2***, ***12.7.5.4***, ***12.7.5.5*** and ***12.7.5.8***).

To enable development that is functionally related to the water, the Plan identifies Maritime Exemption Areas in parts of the coast where riparian margins are not required (***Objective 12.7.3.5***; ***Policy 12.7.4.5*** and ***Method 12.7.5.3***). *In conjunction with Heritage Precincts* (refer to ***Section 12.5***), *this same approach is used to recognise historic patterns of development.*

Activities such as earthworks and land clearance close to water bodies can adversely affect the stability of their margins, water quality and ecosystem viability. Rules in ***Section 12.3*** *together with the provisions of the Regional Water and Soil Plan control excavation and filling. These controls are complemented by rules which limit building and impervious surfaces near riparian margins and by assessment criteria. The restoration and enhancement of riparian areas by stock exclusion and planting can reduce the risk of natural hazards and improve natural character. Proposals to undertake restoration and enhancement initiatives will be taken into account when assessing applications to reduce the required setbacks.*

12.7.6 RULES

Activities affected by this section of the Plan must comply not only with the rules in this section, but also with the relevant standards applying to the zone in which the activity is located (refer to ***Part 2 Environment Provisions***), and with other relevant standards in ***Part 3 – District Wide Provisions***.

Particular attention is drawn to:

(a) ***Chapters 7-10*** in ***Part 2***;
(b) Other sections within ***Chapter 12 Natural and Physical Resources*** (and the ***District Plan Maps***);
(c) ***Chapter 13 Subdivision***;
(d) ***Chapter 14 Financial Contributions***;
(e) ***Section 15.1 Traffic, Parking and Access***;
(f) ***Chapter 17 Designations and Utility Services*** (and the ***Zone Maps***).

Where relevant, refer to other sections of the plan such as Part 2 – Environmental Provisions and other parts of Part 3 – District Wide Provisions as there may be other provisions that need to be considered.

12.7.6.1 PERMITTED ACTIVITIES

An activity is a permitted activity if:

(a) it complies with the standards for permitted activities set out in ***Rules 12.7.6.1.1*** to ***12.7.6.1.6*** below; and
(b) it complies with the relevant standards for permitted activities in the zone in which it is located, set out in ***Part 2 of the Plan - Environment Provisions***; and
(c) it complies with the other relevant standards for permitted activities set out in ***Part 3 of the Plan - District Wide Provisions***.

12.7.6.1.1 SETBACK FROM LAKES, RIVERS AND THE COASTAL MARINE AREA

For the purposes of this rule, lakes include the Manuwai and Waingaro Reservoirs.

Any building and any impermeable surface must be set back from the boundary of any lake (where a lake bed has an area of 8ha or more), river (where the average width of the riverbed is 3m or more) or the boundary of the coastal marine area, except that this rule does not apply to man-made private water bodies other than the Manuwai and Waingaro Reservoirs.

The setback shall be:

(a) a minimum of 30m in the Rural Production, Waimate North, Rural Living, Minerals, Recreational Activities, Conservation, General Coastal, South Kerikeri Inlet and Coastal Living Zones;
(b) a minimum of 26m in the Residential, Coastal Residential and Russell Township Zones;
(c) a minimum of 20m in the Commercial and Industrial Zones.

Provided that these setbacks do not apply:

(i) to activities in a Maritime Exemption Area; or

(ii) to river crossings, including but not limited to, fords, bridges, stock crossings and culvert crossings; or

(iii) to activities related to the construction of river crossings; or

(iv) to pumphouses utilised for the drawing of water from the lake, river or wetland, provided such pumphouse covers less than $25m^2$ in area; or

(v) to buildings and impermeable surfaces associated with utility service structures, provided that they do not exceed 2m in height or 5m in area; or

(vi) to activities associated with the maintenance, replacement and upgrading of existing linear network utilities; or

(vii) where there is a legally formed and maintained road between the property and the coastal marine area, lake or river; or

(viii) to activities associated with marine farming shore facilities on Lot 1 DP197240 (Orongo Bay), Lot 1 DP155347 (Waikare Inlet) and Lot 1 DP190467 (Waikare Inlet); or

(ix) to Doug's Opua Boatyard's existing uses and/or resource consents applicable over Sec 1, 2, 3, & 4 SO68634 (esplanade reserve) CT 121C/187; NRC Plan Map 3231B; and pt Lot 1, Lot 2 & Sec 3 Town Block of Opua XXXII CT 21C/265; or

(x) to activities, buildings and impermeable surfaces associated with the operation of a commercial boatyard on Part Allotment 6, Section 13, Town of Russell.

Note 1: Attention is also drawn to the rules applying in the Coastal Hazard 1 Area (***Rule 12.4.6.3.1***) and Coastal Hazard 2 Area (***Rules 12.4.6.1.1*** and ***12.4.6.2.1***).

Note 2: A schedule of Lakes is provided in ***Appendix 1C***.

12.7.6.1.2 SETBACK FROM SMALLER LAKES, RIVERS AND WETLANDS

Any building and any impermeable surface must be set back from the boundary of lakes (where the lake bed has an area of less than 8ha) smaller continually flowing rivers (where the average width of the river bed is less than 3m) and wetlands except that this rule does not apply to man-made private water bodies.

The setback shall be:

(a) 3 x the area (ha) of the lake (e.g. if the lake is 5ha in area, the setback shall be 15m); and/or

(b) 10 x the average width of the river where it passes through or past the site;

provided that in both cases the minimum setback shall be 10m and the maximum setback shall be no more than the minimum required by ***Rule 12.7.6.1.1*** above;

(c) 30m for any wetland of 1ha or more in area.

Provided that these setbacks do not apply:

(i) to river crossings, including but not limited to, fords, bridges, stock crossings and culvert crossings; or

(ii) to activities related to the construction of river crossings; or

(iii) to pumphouses utilised for the drawing of water from the lake, river or wetland, provided such pumphouse covers less than $25m^2$ in area; or

(iv) to buildings and impermeable surfaces associated with utility service structures, provided that they do not exceed 2m in height or 5m in area; or

(v) to activities associated with the maintenance, replacement and upgrading of existing linear network utilities; or

(vi) where there is a legally formed and maintained road between the property and the coastal marine area, lake or river.

These setbacks do not apply to river crossings or activities related to the construction of river crossings, or to access for the maintenance of existing utility service structures, linear network utilities or pump houses permitted by this rule.

Note 1: Attention is also drawn to the rules applying in the Coastal Hazard 1 Area (***Rule 12.4.6.3.1***) and Coastal Hazard 2 Area (***Rules 12.4.6.1.1*** and ***12.4.6.2.1***).

Note 2: A schedule of Lakes is provided in ***Appendix 1C***.

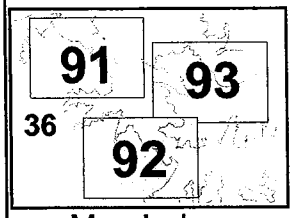
12.7.6.1.3 PRESERVATION OF INDIGENOUS WETLANDS

Any land use activity within an indigenous wetland of $200m^2$ or more that does not change the natural range of water levels or the natural ecosystem or flora and fauna it supports is a

Zone

- Conservation
- Coastal Living
- Commercial
- Coastal Residential
- General Coastal
- Industrial
- Lakes and Rivers
- Point Veronica
- Residential
- Recreational Activities
- Rural Production
- Road
- Coastal Marine
- Designations
- Maritme Exemption Area
- Historic Site
- Notable Tree
- New Zealand Railways Corporation Designation

Note :-
Roads carry the same zoning as the adjoining land. If a boundary between zones follows a road, the zone boundary is located on the centreline of the formed road, or where unformed, the centreline of the legal road



Map Index

Map 92

TE HAUMI
OPUA - OKIATO

200 400 600 m

Scale 1:10,000

DISCLAIMER

Considerable care has been taken to avoid errors and omissions, and the latest information has been included in these District Plan maps. However, even with the greatest care inaccuracies may occur and therefore the Far North District Council cannot accept any responsibility for such errors and omissions.

LEGEND

AREA A

AREA B

SECTIONS 1 - 4 SO 68634 (ESPLANADE)
(SUBJECT TO CONSENT CONDITIONS)
PROPOSED EASEMENT AREAS &
EXISTING USES CU192/1976)

NOTE: THERE ARE EXISTING CONSENTS AND PROCEEDINGS
REFER:
APPENDIX 1 - 1966 COUNCIL AUTHORISATION
APPENDIX 2 - 1976 COUNCIL CONSENT CU 192
APPENDIX 3 - 1989 MINISTER OF CONSERVATION CONSENT PA2035
APPENDIX 4 - 2000 ENVIRONMENT COURT DECISION A26/2000 A135/99
APPENDIX 5 - 2002 ENVIRONMENT COURT ORDER CONSENT NLD 99 7914, RC 2000812
APPENDIX 6 - 2008 NRC CONSENT CON20060791410
APPENDIX 7 - 2009 FNDC OPERATIVE DISTRICT PLAN 12.7.6.1.1(ix) (BUILDING SETBACK)
APPENDIX 8 - 2011 FNDC LETTER CONFIRMING PERMISSION
APPENDIX 9 - 2013 NRC CONSENT CON20120791416
APPENDIX 10 - LEGAL SURVEY PLANS
APPENDIX 11 - 2014 FNDC CONSENT DINGHY RACKS

THIS PLAN SHOWS CONSENTED ACTIVITIES OVER
PRIVATE LAND, ESPLANADE RESERVE (FORMERLY LEGAL ROAD)
AND THE COASTAL MARINE AREA. THESE CONSENTS ARE REFERENCED
IN THE APPENDICES ATTACHED
CONSENTS ARE INCLUDED FROM THE FNDC, NRC, AND ENVIRONMENT COURT

SECTION 1
SO 68634

SECTION 2

AREA OF VEGETATION
STEEP BANK ABOVE ROAD

RICHARDSON STREET
LEGAL ROAD

AREA OF VEGETATION

SEALED

SEAWALL

MHWS

APPROX LOCATION OF WALKING TRACK

APPENDIX 3

This drawing has been prepared solely for the use intended by the client stated on the plan, and must not be used for any other purpose. Thomson Survey Ltd accepts no responsibility for this plan, or any data contained on this plan, to be used for any other purpose.

LEVEL DATUM: MEAN SEA LEVEL (ONE TREE POINT)
LEVEL ORIGIN: BM DB 84 SO 49470 (A1E9) RL 3.41m
(ADD 1.4m TO EQUAL CHART DATUM)
OPUA RECORD MHWS LEVEL 1.1m (2.5m CHART DATUM)

CONTOUR INTERVAL 1.0m MINOR, 2.0m MAJOR

0 5 10 20 25 m
Bar Scale

THOMSON SURVEY LIMITED
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Ph: (09) 4077360 Fax (09) 4077322
Registered Land Surveyors, Planners & Land Development Consultants

DOUGS OPUA BOAT YARD CONSENTED ACTIVITIES AS OF JULY 2013 SHEET A

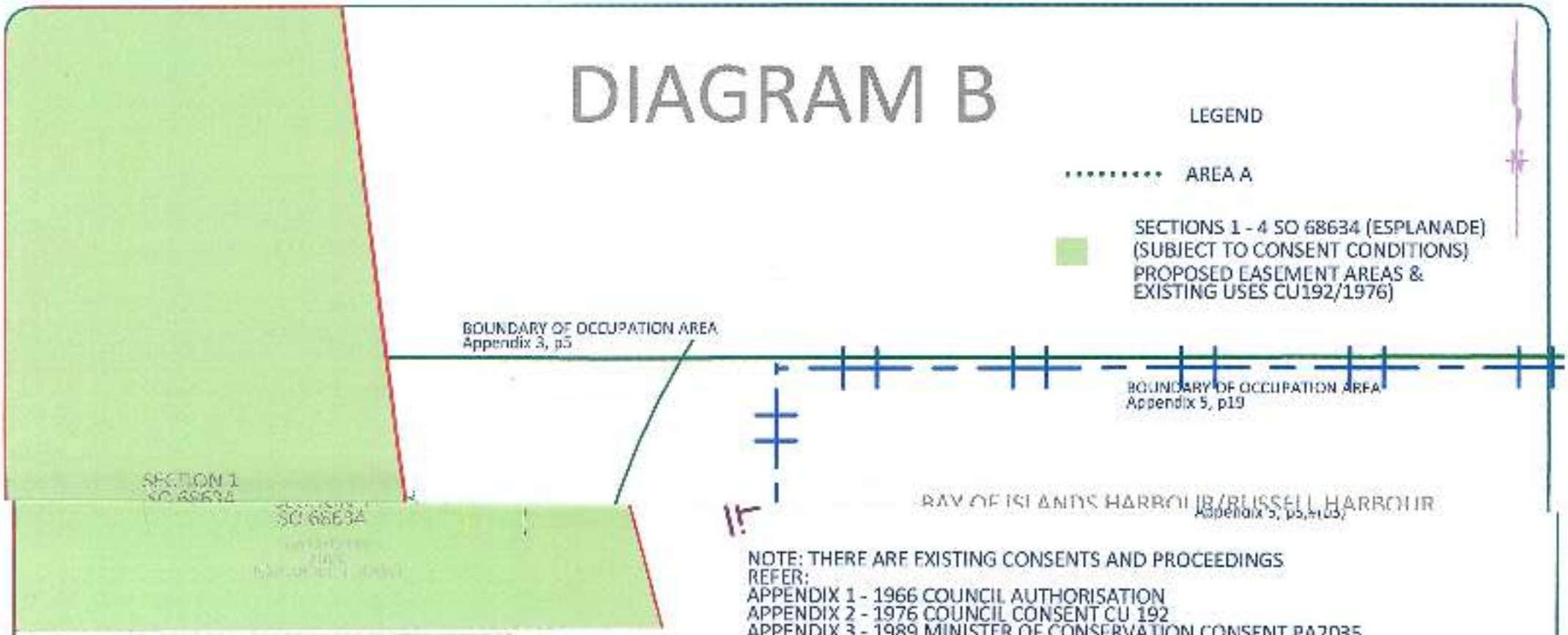
	Name	Date
Survey	SH	18-12-10
Design		
Drawn	SH	28-02-11
Approved		
Rev	SL	23.05.14

8095 APPENDIX PLAN.tcd

ORIGINAL
SCALE 1:250
SHEET SIZE A3

Surveyors Ref. No: 8095
Series
Sheet A

DIAGRAM B



NOTE: THERE ARE EXISTING CONSENTS AND PROCEEDINGS
REFER:
APPENDIX 1 - 1966 COUNCIL AUTHORISATION
APPENDIX 2 - 1976 COUNCIL CONSENT CU 192
APPENDIX 3 - 1989 MINISTER OF CONSERVATION CONSENT PA2035
APPENDIX 4 - 2000 ENVIRONMENT COURT DECISION A26/2000 A135/99
APPENDIX 5 - 2002 ENVIRONMENT COURT ORDER CONSENT NLD 99 7914, RC 2000812
APPENDIX 6 - 2008 NRC CONSENT CON20060791410
APPENDIX 7 - 2009 FNDC OPERATIVE DISTRICT PLAN 12.7.6.1.1(ix) (BUILDING SETBACK)
APPENDIX 8 - 2011 FNDC LETTER CONFIRMING PERMISSION
APPENDIX 9 - 2013 NRC CONSENT CON20120791416
APPENDIX 10 - LEGAL SURVEY PLANS
APPENDIX 11 - 2014 FNDC CONSENT FOR DINGHY RACKS

THIS PLAN SHOWS CONSENTED ACTIVITIES OVER PRIVATE LAND, ESPLANADE RESERVE (FORMERLY LEGAL ROAD) AND THE COASTAL MARINE AREA. THESE CONSENTS ARE REFERENCED IN THE APPENDICES ATTACHED
CONSENTS ARE INCLUDED FROM THE FNDC, NRC, AND ENVIRONMENT COURT

APPENDIX 4

LEVEL DATUM: MEAN SEA LEVEL (ONE TREE POINT)
LEVEL ORIGIN: BM DB 84 SO 49470 (A169) RL3.41m
(ADD 1.4m TO EQUAL CHART DATUM)
OPUA RECORD MHWS LEVEL 1.1m (2.5m CHART DATUM)

CONTOUR INTERVAL 1.0m MINOR, 2.0m MAJOR

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DOUGS OPUA BOAT YARD CONSENTED ACTIVITIES AS OF JULY 2013 SHEET B

	Name	Date
Survey	SH	18.12.10
Design		
Drawn	SH	28-02-11
Approved		
Rev	SL	23.05.14

ORIGINAL
SCALE 1:100
SHEET SIZE A3
8095 APPENDIX PLAN.jcd

Surveyors Ref. No: 8095
Series
Sheet 4

FNDC CONSENT CONDITIONS - ENVIRONMENT COURT CONSENT ORDER - 2002

FOR COPY OF ORIGINAL CONSENT - REFER APPENDIX 5

A. That pursuant to section 105 and section 104 of the Resource Managememt Act 1991, the Far North District Council grants its consent to application number RC 2000812 by DC Schmuck for the following activities and structures on land known as Doug's Opua Boatyal'd (See 2 SO 24139, PtSec 1 SO 16553, Sec 3 SO 46155 Blk XXXII Town of Opua:

1) a (i)	A commercial marine slipway including a turntable and all of its integral parts, fixtures, supporting members, attachments and utilities
a (ii)	A boatyard and a paint cleaning station.
a (iii)	A boat building shed
a (iv)	An office
b (i)	A Stormwater Containment System (CSW) including all tanks, pipes, cables, traps, filters, and utilities.
b (ii)	A Discharge Containment System (CTS) including all tanks, pipes, cables, traps, filters and utilities.
c	To reconstruct and concrete the slipway and boatyard including the replacement of existing tramway rails.

B. That pursuant to section 105 and section 104 of the Resource Management Act 1991, the Far North District Council grants its consent in part to application number RC 2000812 by DC Schmuck for the following activities and structures on the Esplanade Reserve (Sec 1, Sec 2, Sec 3 & Sec 4 as shown on SO 68634):

2) a (i)	A commercial marine slipway including a turntable and all of its integral parts, fixtures, supporting members, attachments and utilities, and non-permeable surfaces
a (ii)	A concrete wash down area with an associated discharge containment system as shown on the attached plan and to be located 10 metres above m.h.w.s.

Assessment of Environmental Sound.

15) The Consent Holder shall submit a Management Plan to the Far North District Council, for approval, within three months of the date of commencement of these consents. The Management Plan shall cover all aspects of:
a) The operation and maintenance of the boat washdown area
b) Contingency measures for unforeseen or emergency situations. The operation and maintenance of the above systems, and the boatyard operations shall be carried out in accordance with the approved Management Plan.

c)The need to minimise effects on the public use of the walking track and the Esplanade Reserve.

C) That pursuant to section 105 and section 104 of the Resource Management Act 1991, the Far North District Council refuses its consent in part to application number RC 2000812 by DC Schmuck for the following activities and structures on the Esplanade Reserve (See 1, Sec 2, See 3 & See 4 as shown on SO 68634):

2) a (ii)	A Stormwater Containment System (CSW) including all tanks, pipes, cables, traps, filters, and utilities.
a (iii)	A Discharge Containment System (CTS) including all tanks, pipes, cables, traps, filters and utilities.
a (iv)	Use of the concrete slipway for boat repair and maintenance.
a (viii)	Existing dinghy racks
(new) xiii	Existing south dinghy ramp.

The District Council will prepare a management plan for the Esplanade Reserve.

APPENDIX 5

THOMSON SURVEY
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DOUGS OPUA BOAT YARD
CONSENTED ACTIVITIES
AS OF JULY 2013
SHEET C

	Name	Date	
Survey			ORIGINAL
Design			SCALE / SHEET SIZE
Drawn	SH	28.02.11	
Approved			A3
Rev	TS	28.01.14	
8095 APPENDIX PLAN.lcd			

Surveyors Ref. No: 8095

Sheet C

View Instrument Details

Instrument No.	10100695.1
Status	Registered
Date & Time Lodged	27 Jul 2015 15:00
Lodged By	Overton, Jennette Ellen
Instrument Type	Easement Instrument

APPENDIX 6

Affected Computer Registers	Land District
NA121C/187	North Auckland
NA21C/265	North Auckland

Annexure Schedule: Contains 5 Pages.

Grantor Certifications

I certify that I have the authority to act for the Grantor and that the party has the legal capacity to authorise me to lodge this instrument ☑

I certify that I have taken reasonable steps to confirm the identity of the person who gave me authority to lodge this instrument ☑

I certify that any statutory provisions specified by the Registrar for this class of instrument have been complied with or do not apply ☑

I certify that I hold evidence showing the truth of the certifications I have given and will retain that evidence for the prescribed period ☑

Signature

Signed by Thomas Biss as Grantor Representative on 14/08/2015 10:43 AM

Grantee Certifications

I certify that I have the authority to act for the Grantee and that the party has the legal capacity to authorise me to lodge this instrument ☑

I certify that I have taken reasonable steps to confirm the identity of the person who gave me authority to lodge this instrument ☑

I certify that any statutory provisions specified by the Registrar for this class of instrument have been complied with or do not apply ☑

I certify that I hold evidence showing the truth of the certifications I have given and will retain that evidence for the prescribed period ☑

Signature

Signed by Thomas Biss as Grantee Representative on 14/08/2015 10:43 AM

***** End of Report *****

Easement Instrument to grant easement or *profit à prendre*, or create land covenant

(Sections 90A and 90F Land Transfer Act 1952)

2009/6229EF
APPROVED
Registrar-General of Land

Grantor

Far North District Council

Grantee

Douglas Craig SCHMUCK and Carl Emanuel SCHMUCK

Grant of Easement or *Profit à prendre* or Creation of Covenant

The Grantor being the registered proprietor of the servient tenement(s) set out in Schedule A **grants to the Grantee** (and, if so stated, in gross) the easement(s) or *profit(s) à prendre* set out in Schedule A, **or creates** the covenant(s) **set out** in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s)

Schedule A *Continue in additional Annexure Schedule, if required*

Purpose (Nature and extent) of easement; *profit* or covenant	Shown (plan reference)	Servient Tenement (Computer Register)	Dominant Tenement (Computer Register) or in gross
Right to access, construct, operate, and maintain a commercial marine slipway, turntable and associated facilities	**DP 487568, marked X, Y, Z**	**CFR NA121C/187**	**CFR NA21C/265**
Right of access to and repair and maintenance of vessel on slipway and/or turnable	**DP 487568, marked W, X**	**CFR NA121C/187**	**CFR NA21C/265**
Right of access to and reconstruction of a commercial marine slipway	**DP 487658, marked T, U, W, X, Y, Z**	**CFR NA121C/187**	**CFR NA21C/265**
Right to maintain existing wooden and stone retaining walls	**DP 487568, marked T, U, V, Z**	**CFR NA12C/187**	**CFR NA21C/265**
Right to discharge contaminants and to emit noise	**DP 487568, marked T, U, V, W, X, Y, Z**	**CFR NA121C/187**	**CFR NA21C/265**

Easements or *profits à prendre* rights and powers (including terms, covenants and conditions)

Delete phrases in [ ] and insert memorandum number as required; continue in additional Annexure Schedule, if required

~~Unless otherwise provided below, the rights and powers implied in specified classes of easement are those prescribed by the Land Transfer Regulations 2002 and/or Schedule Five of the Property Law Act 2007~~

~~The implied rights and powers are hereby~~ **[varied] [negatived] [added to]** ~~or~~ **[substituted]** ~~by:~~

~~[Memorandum number , registered under section 155A of the Land Transfer Act 1952]~~

[the provisions set out in Annexure Schedule **B**]

Covenant provisions

Delete phrases in [ ] and insert Memorandum number as require; continue in additional Annexure Schedule, if required

The provisions applying to the specified covenants are those set out in:

~~[Memorandum number , registered under section 155A of the Land Transfer Act 1952]~~

[Annexure Schedule **B**]

ANNEXURE B

A. An easement over Sec 2 SO 68634 as shown marked X, Y and Z on DP 487568, to permit the following:

1. Construction and maintenance of a commercial marine slipway including a turntable and all of its integral parts, fixtures, supporting members, attachments, utilities and non-permeable surfaces.
2. The movement of boats along the slipway between the dominant tenement and the water.
3. The construction and maintenance of a concrete wash-down area with associated discharge containment systems to be located above a line 10 m above MHWS.
4. The washing down of boats prior to the boats being moved to the dominant tenement for repairs or maintenance or being returned to the water.
5. The erection of screens or the implementation of similar measures to contain all contaminants within the wash-down perimeter.
6. The repair or maintenance of any vessel which by virtue of its length or configuration is unable to be moved so that it is entirely within the adjacent boatyard property.
7. A stormwater and conduit drain.
8. A security light pole.
9. Associated utilities for power and water.
10. Safety signage.
11. A wharf abutment.
12. A concrete dinghy ramp (where this does not otherwise lie within the coastal marine area).

Subject to the following conditions:

1. That all activities shall be carried out in accordance with any relevant resource consent.
2. That in respect of the repair and maintenance of boats, the following shall apply:
   (a) when boats which by virtue of their length or configuration cannot be moved so that they are entirely within the dominant tenement, are placed on cradles located entirely within the dominant tenement but protrude into the airspace above Section 2 SO 68634 and/or Section 3 SO 68634, such boats may be repaired or maintained at any time of the year;
   (b) as a small portion of the turntable encroaches onto Section 2 SO 68634, boat cradles that are located on any part of the turntable but that do not otherwise encroach onto Section 2 SO 68634 may utilise the turntable at any and all times of the year, and boats placed on such cradles may be repaired or maintained at any time of the year;

(c) when boats which by virtue of their length or configuration cannot be moved so that they are entirely within the dominant tenement, are unable to be placed on cradles located entirely within the dominant tenement in accordance with clause (a) above, and are not located on the dominant tenement in accordance with clause (b) above, such boats may be placed on cradles located within that part of Section 2 SO 68634 marked X and Y on DP 487568, and such boats may be repaired or maintained for an aggregated period of no more than 60 days in any 365 day period commencing on or after the date the easement is registered;

(d) no boat cradles or part thereof may be positioned on any part of Section 2 SO 68634 marked Z on DP 487568 other than for the purpose of haulage of a boat;

(e) to enable the Far North District Council to monitor compliance with the 60 day annual usage limit contained in clause (c) above, the boatyard's operator shall continue to keep operational diaries recording the use of the areas marked X and Y on DP 487568 for the repair and maintenance of boats, and such diaries shall be made available to the Council's monitoring officers on request.

B. An easement over Sections 1, 2 & 3 SO 68634 as shown marked T, U, W, X, Y and Z on DP 487568, to permit the following:

Access to and reconstruction of the slipway between the dominant tenement and MHWS and the concreting of that part of the slipway situated above a line 10 metres from MHWS.

Subject to the following conditions:

1. That any earthworks material which is surplus to slipway reconstruction requirements shall be secured within Sections 2 & 3 SO 68634 and secured so that siltation and erosion does not occur, or be removed from the site.

2. That all activities shall be carried out in accordance with any relevant resource consent.

C. An easement 2 m wide over Sections 2 and 3 SO 68634 as shown marked W and X on DP 487568, to permit the following:

Access to, and repair and maintenance of, any vessel standing on the southern slipway tramrail and/or the turntable.

Subject to the following conditions:

1. That all activities shall be carried out in accordance with any relevant resource consent.

2. That this easement shall expire after 10 years from the date of registration, subject to a right of renewal every 10 years, provided that in the event of the boatyard property being redeveloped and alternative access not being provided as part of the redevelopment, any request for renewal will be viewed less favourably.

D. An easement over Sections 1, 2, 3 & 4 SO 68634 as shown marked, G, I, J and K on DP 487568, to permit the following:

1. Existing wooden and stone retaining walls (where these do not otherwise lie within the coastal marine area).

E. An easement over Sections 1, 2, 3 & 4 SO 68634 as shown marked T, U, V, W, X, Y and Z on DP 487568, to permit the following:

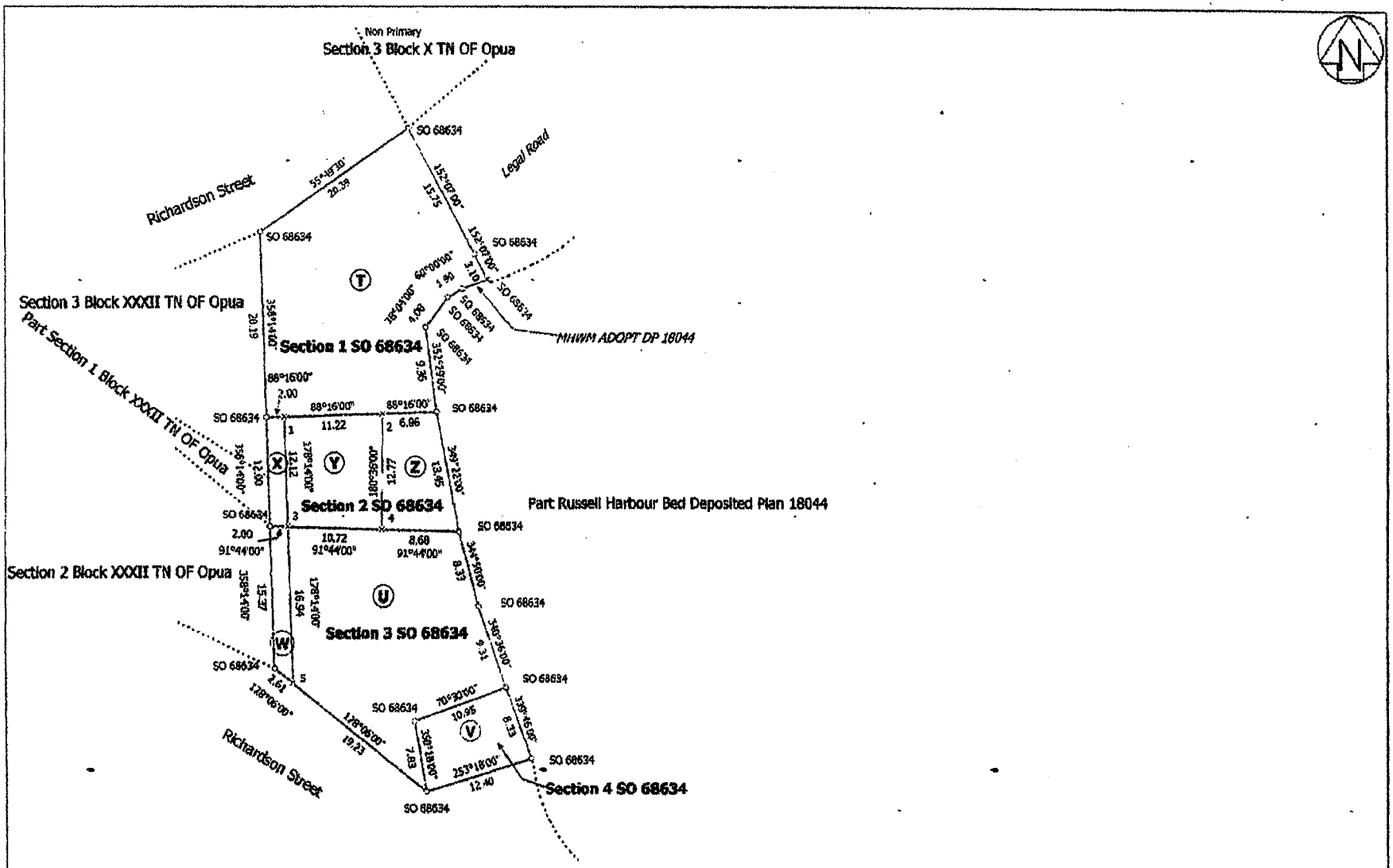
1. The discharge of contaminants to air, soil, and water in accordance with any relevant resource consent;
2. The emission of noise in accordance with any relevant resource consent.

AND the following conditions shall apply in respect to the above easements:

1. The grantee shall keep current a public liability insurance policy for a minimum of $1,000,000 (one million dollars).

2. If required by Council the grantee shall make an inducement payment to Council and/or pay an annual rental as may be agreed upon between the parties

3. The grantee shall surrender the easements to the Council at the Council's request if and when the boatyard ceases to operate, and shall reinstate the area to the satisfaction of the Council.

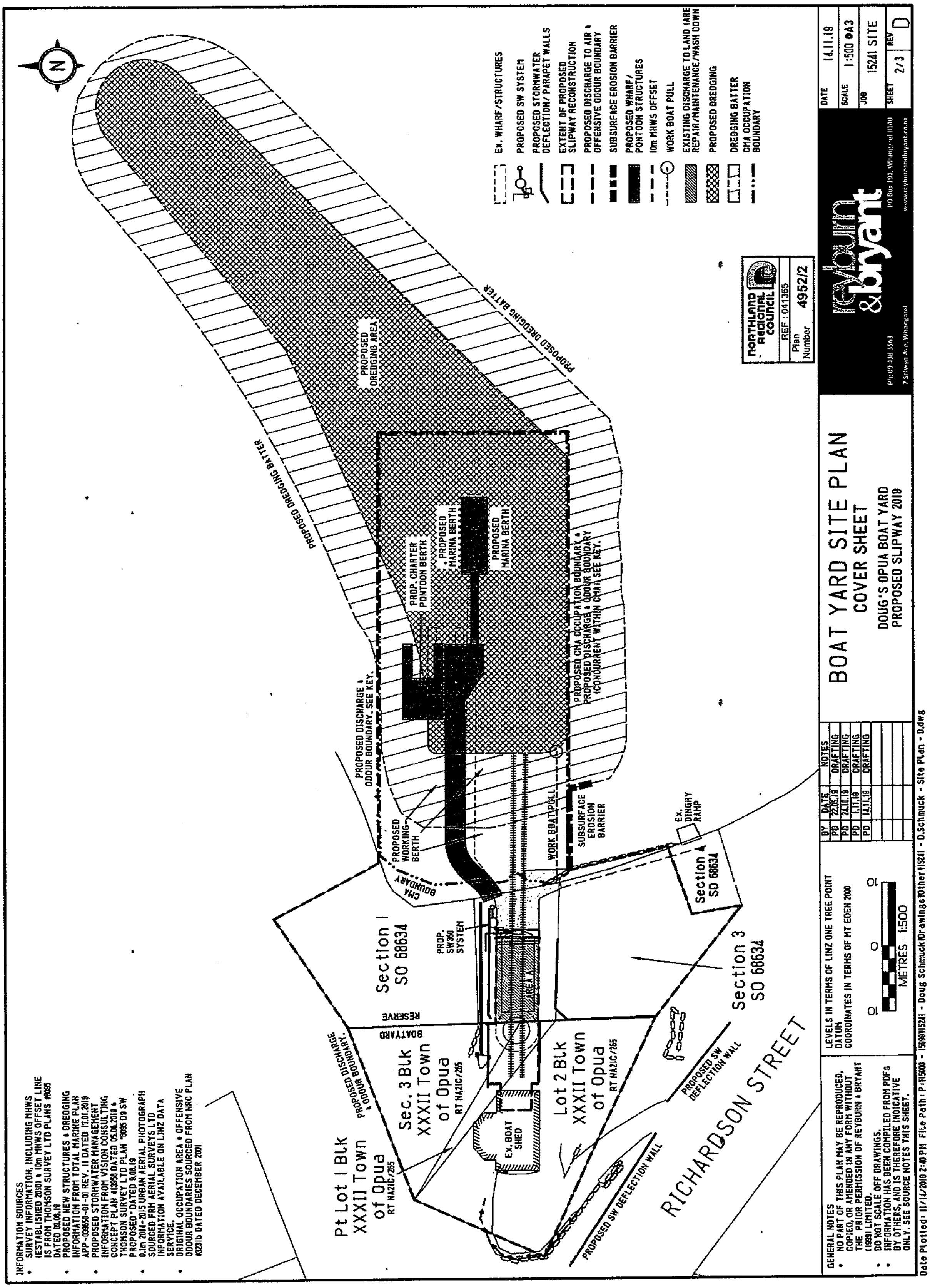


Surveyor's Ref: 8095

T 1/1

Land District: North Auckland Dataset Type: Parcels without Survey Information Digitally Generated Plan Generated on: 19/06/2015 4:18pm Page 1 of 1	Easements On Sections 1 - 4 SO 68634	Surveyor: Denis McGregor Thomson Firm: Thomson Survey Limited	CSD Plan LT 487568

Appendix 7



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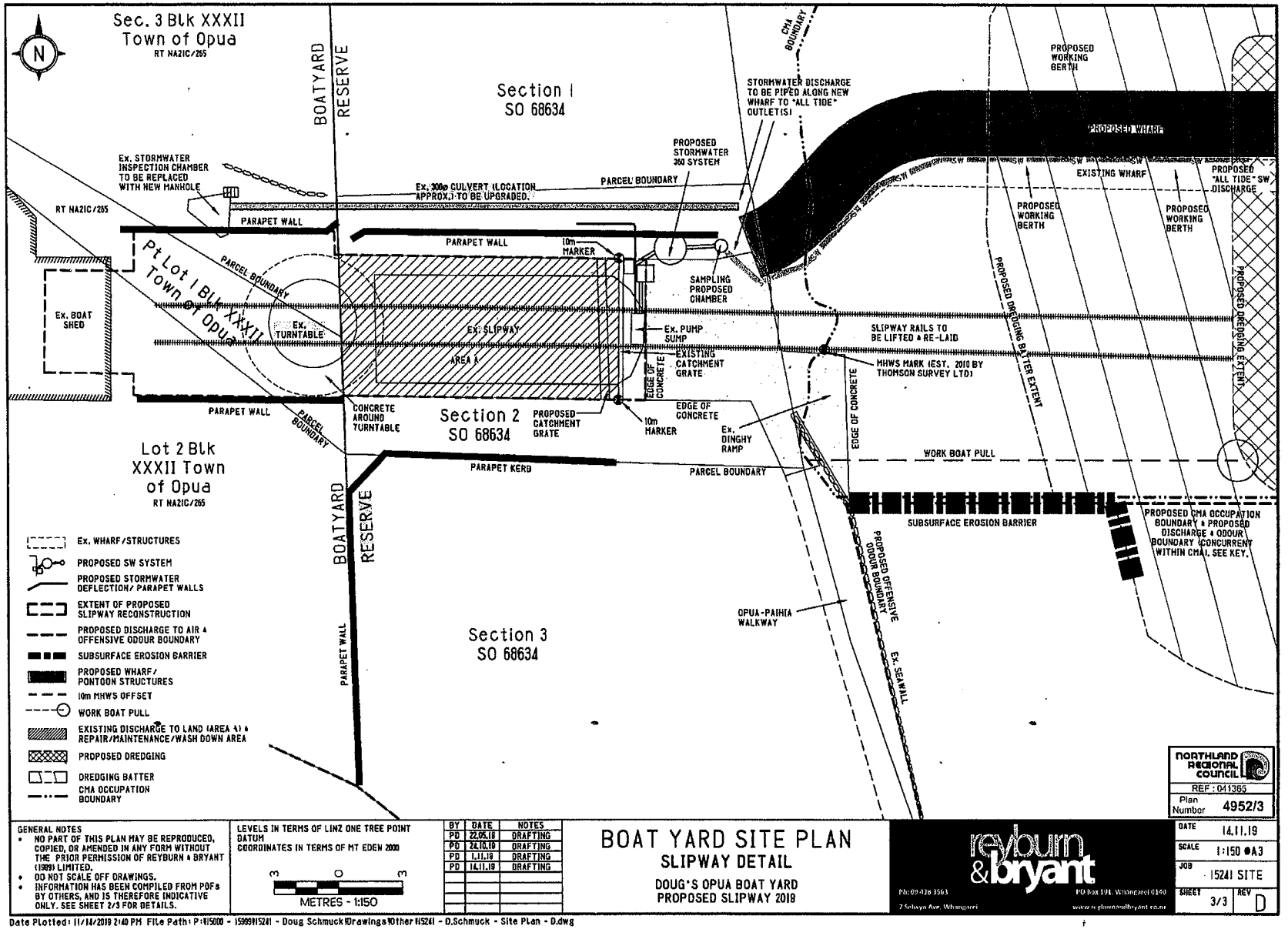

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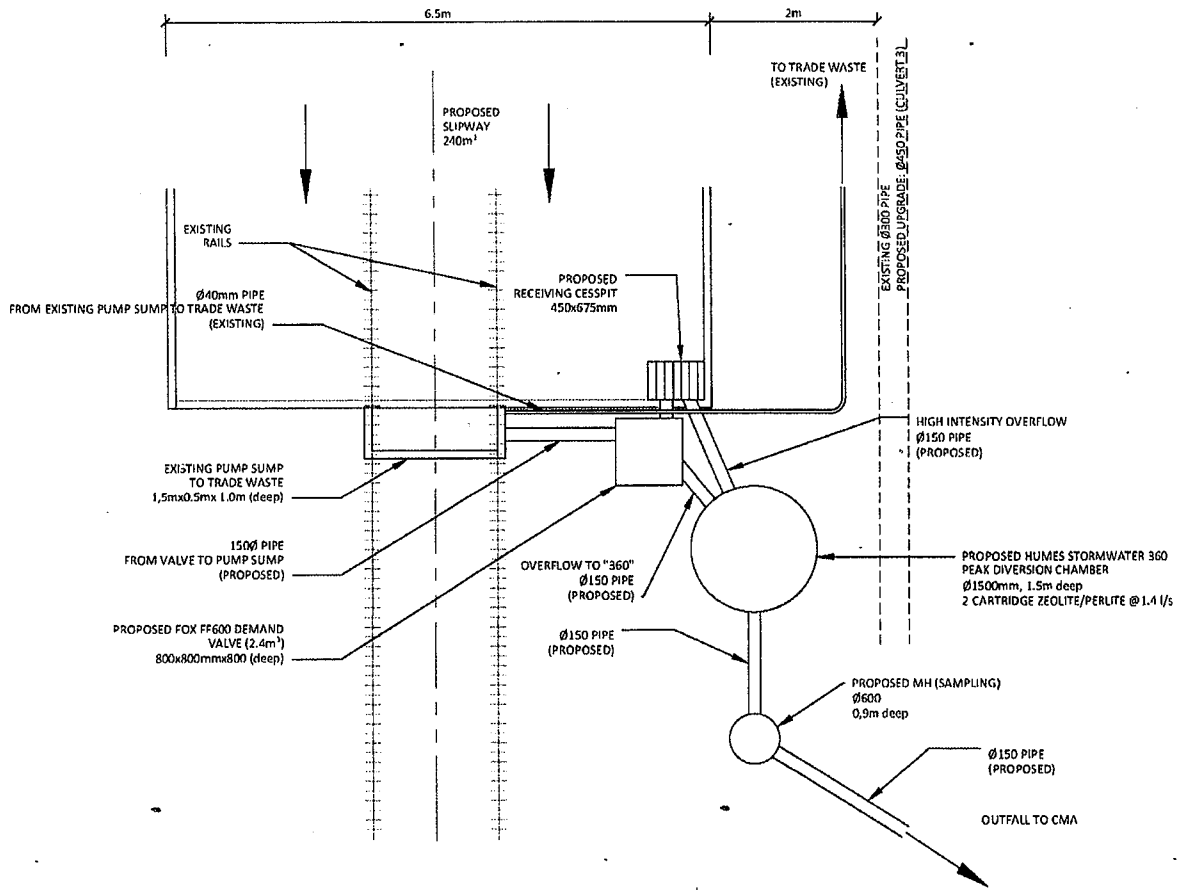
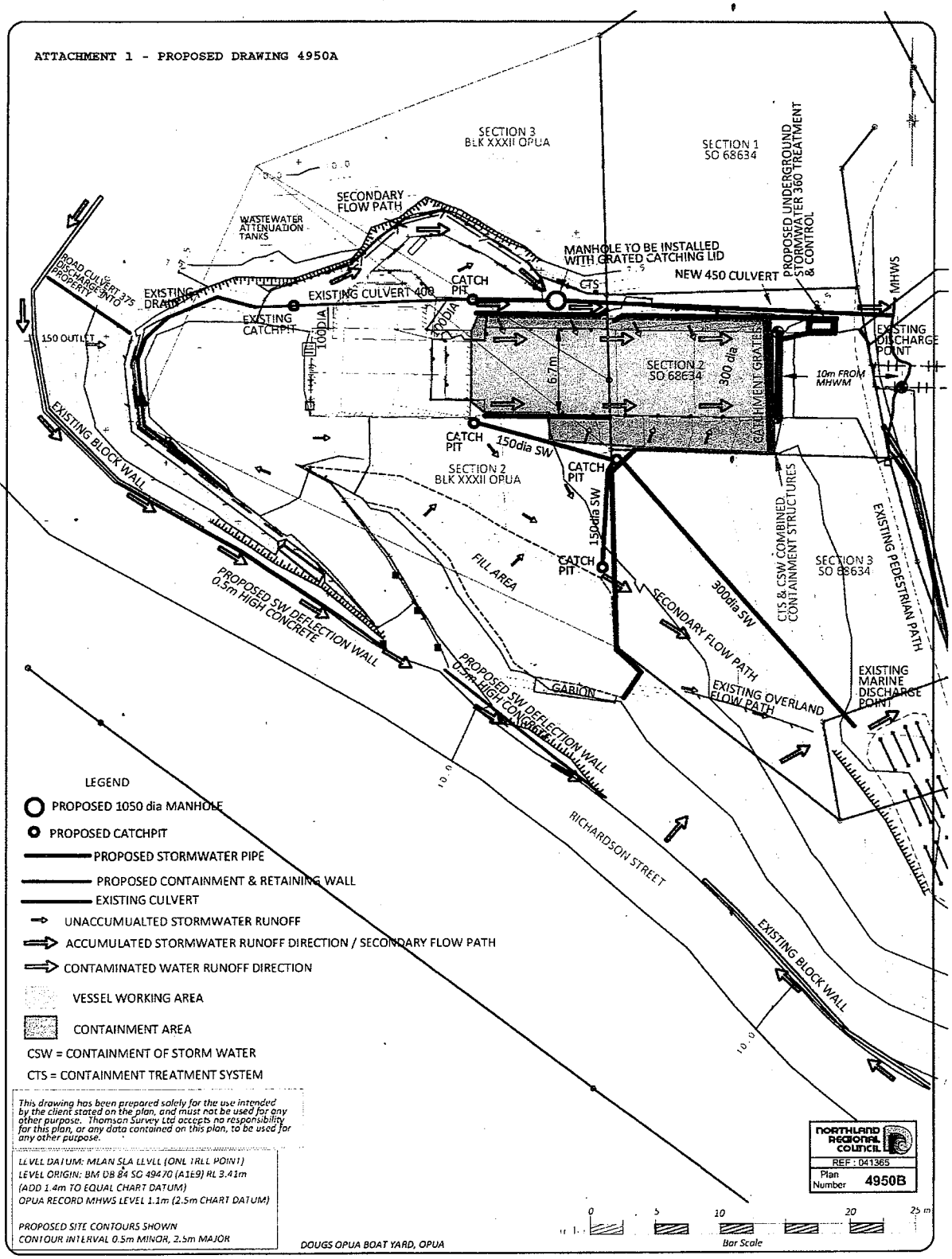


NORTHLAND REGIONAL COUNCIL
REF : 041365
Plan Number 4955

CONCEPT PLAN

VISION CONSULTING Engineers & Planners	CLIENT: DOUG SCHMUCK	PROJECT: DOUGS OPUA BOAT YARD PROPOSED SLIPWAY 2019	DRAWING TITLE: SW AND WW DISPOSAL CONCEPT PLAN	SURVEY DESIGN WP 05/06/2019 DRAWN LP 05/06/2019 CHECKED WP 05/06/2019 APPROVED WP 05/06/2019

SCALE 1:50
SHEET 1 of 01
PROJECT 13954


ATTACHMENT 1 - PROPOSED DRAWING 4950A
SECTION 3 BLK XXXII OPUA
SECTION 1 SO 68634
SECONDARY FLOW PATH
WASTEWATER ATTENUATION TANKS
MANHOLE TO BE INSTALLED WITH GRATED CATCHING LID
PROPOSED UNDERGROUND STORMWATER 360 TREATMENT & CONTROL
NEW 450 CULVERT
MHWS
ROAD CULVERT 375 DISCHARGE INTO PROPERTY
EXISTING DRAIN
EXISTING CULVERT 400
CATCH PIT
CTS
EXISTING CATCHPIT
100DIA
150 OUTLET
700DIA
6.7m
SECTION 2 SO 68634
300 dia
CATCHMENT GRATE
EXISTING DISCHARGE POINT
10m FROM MHWM
CATCH PIT
150dia SW
SECTION 2 BLK XXXII OPUA
CATCH PIT
150dia SW
EXISTING BLOCK WALL
FILL AREA
CATCH PIT
CTS & CSW COMBINED CONTAINMENT STRUCTURES
SECTION 3 SO 68634
EXISTING PEDESTRIAN PATH
PROPOSED SW DEFLECTION WALL 0.5m HIGH CONCRETE
300dia SW
SECONDARY FLOW PATH
EXISTING OVERLAND FLOW PATH
EXISTING MARINE DISCHARGE POINT
GABION
PROPOSED SW DEFLECTION WALL 0.5m HIGH CONCRETE
RICHARDSON STREET
EXISTING BLOCK WALL
LEGEND
PROPOSED 1050 dia MANHOLE
PROPOSED CATCHPIT
PROPOSED STORMWATER PIPE
PROPOSED CONTAINMENT & RETAINING WALL
EXISTING CULVERT
UNACCUMUALTED STORMWATER RUNOFF
ACCUMULATED STORMWATER RUNOFF DIRECTION / SECONDARY FLOW PATH
CONTAMINATED WATER RUNOFF DIRECTION
VESSEL WORKING AREA
CONTAINMENT AREA
CSW = CONTAINMENT OF STORM WATER
CTS = CONTAINMENT TREATMENT SYSTEM
This drawing has been prepared solely for the use intended by the client stated on the plan, and must not be used for any other purpose. Thomson Survey Ltd accepts no responsibility for this plan, or any data contained on this plan, to be used for any other purpose.
LEVEL DATUM: MLAN SEA LEVEL (ONE TREE POINT)
LEVEL ORIGIN: BM DB 84 SO 49470 (A1E9) RL 3.41m
(ADD 1.4m TO EQUAL CHART DATUM)
OPUA RECORD MHWS LEVEL 1.1m (2.5m CHART DATUM)
PROPOSED SITE CONTOURS SHOWN
CONTOUR INTERVAL 0.5m MINOR, 2.5m MAJOR
NORTHLAND REGIONAL COUNCIL
REF : 041365
Plan Number 4950B
0 5 10 20 25 m
Bar Scale
DOUGS OPUA BOAT YARD, OPUA
THOMSON SURVEY
315 Kerikeri Rd
P.O. Box 372 Kerikeri
Email: kerikeri@tsurvey.co.nz
Ph: (09) 4077360 Fax (09) 4077322
Registered Land Surveyors, Planners & Land Development Consultants
DOUGS OPUA BOAT YARD
PROPOSED CONTAINMENT & STORMWATER MANAGEMENT
Name Date
Survey SH 2017
Design
Drawn SL 17.12.18
Approved
Rev SL 13.07.2020
ORIGINAL
SCALE 1:250
SHEET SIZE A3
Surveyors Ref. No: 8095
8095/ENGINEERING/D9/SW PLAN 26.05.2020.kd

Far North District Council

Private Bag 752, Memorial Ave
Kaikohe 0440, New Zealand
Freephone: 0800 920 029
Phone: (09) 405 2750
Fax: (09) 401 2137
Email: ask.us@fndc.govt.nz
Website: www.fndc.govt.nz

Te Kaunihera o Tai Tokerau Ki Te Raki

1 April 2011

Mr Douglas C Schmuck
Doug's Opua Boatyard
1 Richardson Street
OPUA 0200

Dear Doug

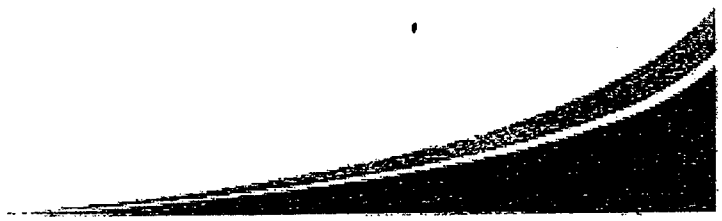
LOCAL PURPOSE (ESPLANADE) RESERVE AT OPUA

I refer to recent discussions involving you, Cr Tom Baker, and Council staff, relating to the local purpose (esplanade) reserve that is located between your boatyard property and the sea, being the reserve legally described as Sections 1-4 SO 68634.

On behalf of the Far North District Council acting as the administering body for the reserve, pursuant to section 40 of the Reserves Act, I wish to confirm that you have permission to do the following on the reserve:

1. To install a concrete pad and footpath (using exposed aggregate grey concrete) in the eastern area of section 2 in the locations shown on Thomson Survey plan 8095 dated 28/2/11.
2. To construct a concrete dinghy ramp on the eastern boundary of, and located partly within, section 2 as shown on plan 8095. (NRC consent may also be needed insofar as the ramp extends below MHWS.)
3. To store rigging on the reserve for up to 5 days at a time and no more than 5 times in any one year, on the western portion of section 3 between the western boundary and the 4-metre contour line as shown on plan 8095.
4. To install 4 horizontal dinghy racks as slipway facilities located within section 2, well clear of the walking track and grassed areas, as shown on plan 8095.
5. To repair/upgrade (in stone) the sea-wall at the south-eastern corner of section 2 as shown on plan 8095. (NRC consent may also be needed insofar as the sea-wall is located partly below MHWS.)
6. To replace the main stormwater drain that lies along the northern side of the slipway on section 2 with a conduit and retaining wall

The above permissions shall be subject to and in conformity with any relevant resource consents and District Plan rules and/or any Northland Regional Council consents issued pursuant to the Resource Management Act.



Other matters agreed are as follows:

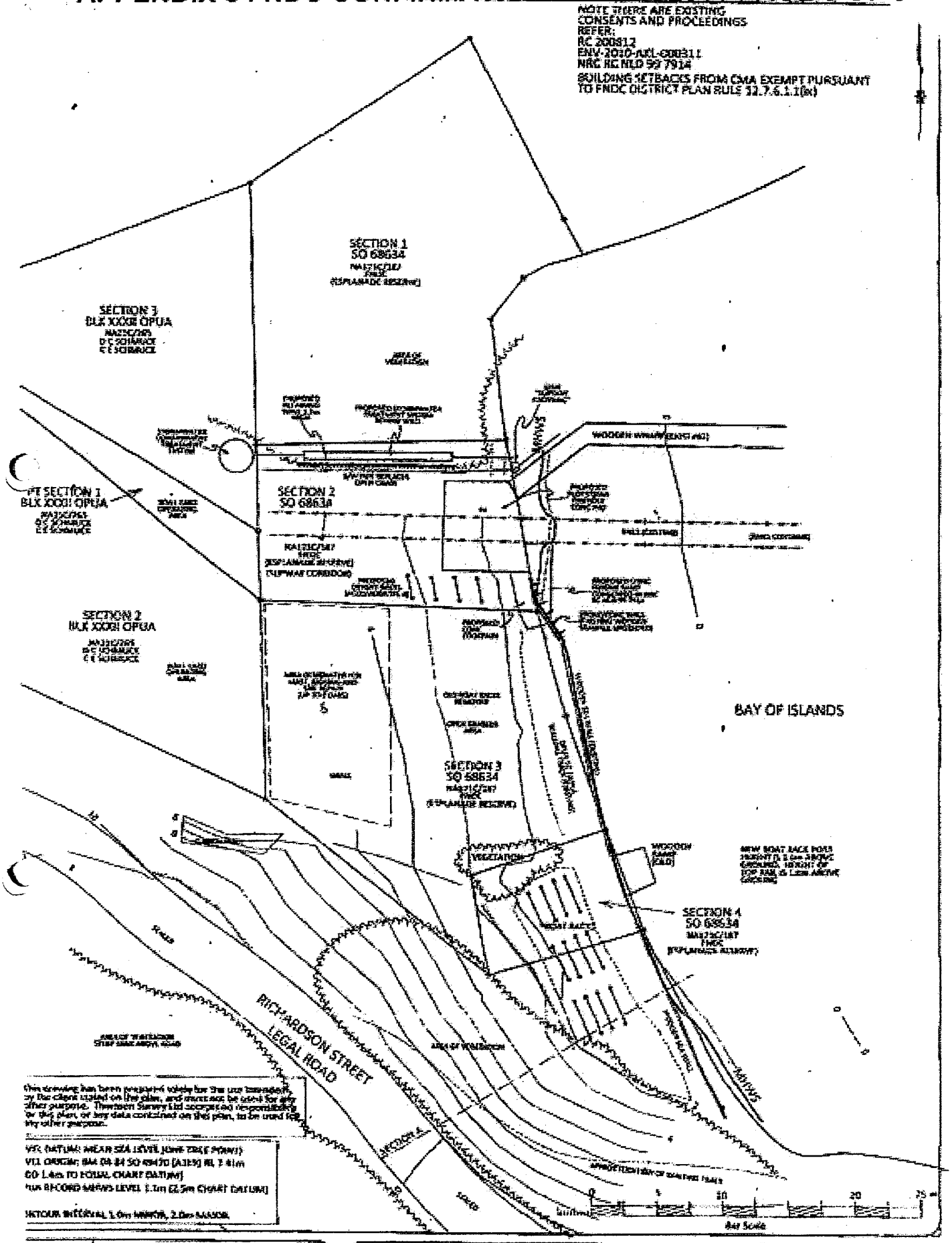
7. That the entire area of section 3 is to remain an open grassed area available for public use, except for any portions of section 3 that may be subject to approved easements and resource consents, and except for the storage of rigging in accordance with item (3) above.
8. That the Council is responsible to arrange for the mowing of the grassed areas of the reserve in the most practical manner in consultation with the boatyard proprietor.

In conclusion, I note that it is our intention in due course, if and when your proposed easements have been approved and registered, that a plan will be produced which will show the items listed in this letter as well as the easements; i.e. the activities approved under sections 40 and 48 of the Reserves Act respectively.

Yours sincerely

W D Edmunds

David Edmunds
Chief Executive



SITE PLAN
DOUGS BOAT YARD
RICHARDSON STREET

PREPARED FOR: DOUGS BOAT YARD

	Name	Date
Surveyed	SH	28-12-10
Designed		
Drafted	SH	28-02-11
Approved		
Area		

ORIGINAL

SCALE 1:250 SHEET SIZE A3

8095 2011-02-28 Site Plan.dgn

Surveyors Ref. No 8095

Sheet 1 of 1

Doug's Opua Boat Yard
1 Richardson Street, Opua, Bay of Islands
Ph (09) 402 7055, A/h (09) 407 4577
touarahil@xtra.co.nz

10 September 2025

Alicia-Kae Taihia
FNDC PDP Team
alicia-kate.taihia@fndc.govt.nz

REF: HEARING 15C TIMETABLE RESPONSE; S21

In response to the 42A report by the Senior Policy Planner and Technical Director for the PDP and limited accommodation for the hearing impaired, at the hearing facilities; I will not be attending the 15C hearing.

Nor will I be attending because of the misrepresentations to the Panel in the 42A report of my initial submissions and those of the subsequent submissions I made at hearing 8 on Open Space matters directly/indirectly affected by the Treaty of Waitangi Act 1975.

Nor because the Panel has not made it clear to the PDP Planning Team of their spoken commitment to resolve Natural Open Space issues on the land and in the CMA regarding my legal occupations that directly affect substantial PDP zoning errors.

Nor because the PDP Team has disregarded/misrepresented not only the written submissions by my expert witness, but his phone conference evidence with them as to my concerns with the scope of the PDP that are in effect, ultra vires to the RMA.

Therefore, because these matters I have raised appear now to be beyond the jurisdiction of the PDP, I am hereby submitting the entire scope of my evidence regarding concerns I have that are likely not only to affect my boatyard, its exclusive occupations both on land and in the CMA, but the entire District as well.

Douglas Schmuck

S21
'13

Doug's Opua Boat Yard
1 Richardson Street, Opua, Bay of Islands
Ph (09) 402 7055, A/h (09) 407 4577
totarahill@xtra.co.nz

20 November 2024

Speaking Submissions before the PDP Independent Hearing Panel; hearing number 8 pursuant to clause 8 (1),(a) of schedule 1 of section 32 of the RMA'91.

With respect, I would like to share the five following observations.

1. That the FNDC Plan Team notified a proposed plan that has extensive zoning that is mapped well outside the boundaries of its jurisdiction. (This because the Natural Open Space Zone is not a term used in conjunction with the Radical Title of the CMA); Ref: sections 30 and 31 of the RMA'91).

2. That other Natural Open Space zoning the FNDC Plan Team applied within its boundary jurisdictions are likely contrary to and/or misrepresentative under the authority of the RMA'91 or for that matter, section 3 of the Treaty of Waitangi Amendment Act 1993. (This in effect, because the FNDC is legally a private person and not a government agency).

3. That the FNDC Plan Team either by mistake or deliberate disregard applied zoning contrary to the authorized rights of ratepayers through rules in the Operational District Plan that are not fit for purpose in regards to the use and resource consents that run with the land. (This because Natural Open Zoning does not at all fit well with the purposes of any reserve owned by the FNDC).

4. That the FNDC Plan Team has zoned land that is contrary to the purpose by which that specific land is held by legislation founded on a Deed of Trust enacted subject to sections 2,4,and 6 of the Public Reserves, Domains, and National Parks Act 1928. Therefore, that land should be recognized as Open Space zoning which was the sole purpose of the Deed in 1932. (This because only a small portion of all the Waitangi Trust land is zoned Opan Space that is held and managed by the Waitangi Trust Board).

5. Conclusion: That these discrepancies in the Proposed District Plan should be re-evaluated and remedied pursuant to section 32 of the RMA'91, which is not in any way a duty and/or responsibility that can be delegated to the submitter by an independent hearing panel. (This because although these concerns are not at this point further submissions pursuant to sub-sections 8 (1),(b) of schedule 1 , they do represent greater aspects of public interest in the CMA and/or regional policy statements that effect public access to and along the CMA and/or any maritime facilities that cross jurisdictional boundaries).

Doug Schmuck
S21.001 & .002; S185.001

ANALYSIS

1993, No. 92

An Act to amend the Treaty of Waitangi Act 1975

[*20 August 1993*

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title—This Act may be cited as the Treaty of Waitangi Amendment Act 1993, and shall be read together with and deemed part of the Treaty of Waitangi Act 1975 (hereinafter referred to as the principal Act).

2. Interpretation—Section 2 of the principal Act is hereby amended by inserting, after the definition of the term "Maori", the following definition:

" 'Private land' means any land, or interest in land, held by a person other than—

"(a) The Crown; or

"(b) A Crown entity within the meaning of the Public Finance Act 1989;".

3. Jurisdiction of Tribunal to consider claims—Section 6 of the principal Act is hereby amended by inserting, after subsection (4), the following subsection:

"(4A) Subject to sections 8A to 8I of this Act, the Tribunal shall not recommend under subsection (3) of this section,—

"(a) The return to Maori ownership of any private land; or

"(b) The acquisition by the Crown of any private land."

This Act is administered in Te Puni Kokiri.

Doug's Opua Boat Yard
1 Richardson Street, Opua, Bay of Islands
Ph (09) 402 7055, A/h (09) 407 4577
totarahill@xtra.co.nz

10 September 2025

Alicia-Kae Taihia
FNDC PDP Team
alicia-kate.taihia@fndc.govt.nz

REF: HEARING 15C – TIMETABLE RESPONSE; S21

In response to the 42A report by the Senior Policy Planner and Technical Director for the PDP and limited accommodation for the hearing impaired, at the hearing facilities; I will not be attending the 15C hearing.

Nor will I be attending because of the misrepresentations to the Panel in the 42A report of my initial submissions and those of the subsequent submissions I made at hearing 8 on Open Space matters directly/indirectly affected by the Treaty of Waitangi Act 1975.

Nor because the Panel has not made it clear to the PDP Planning Team of their spoken commitment to resolve Natural Open Space issues on the land and in the CMA regarding my legal occupations that directly affect substantial PDP zoning errors.

Nor because the PDP Team has disregarded/misrepresented not only the written submissions by my expert witness, but his phone conference evidence with them as to my concerns with the scope of the PDP that are in effect, ultra vires to the RMA.

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Douglas Schmuck

Before the Far North District Council Hearings Committee

In the Matter	of the Resource Management Act 1991 (**Act**)
And	
In the Matter	of the Proposed Far North District Plan.

Evidence of Brett Lewis Hood on behalf of Doug's Opua Boatyard (Submitter numbers S21 and S185)

Dated 15 April 2025

Reyburn and Bryant 1999 Ltd
PO Box 191, Whangarei
Email: brett@reyburnandbryant.co.nz

1. Introduction

1.1 My name is Brett Lewis Hood. I am a planning consultant working for Reyburn and Bryant in Whangarei. I hold a Bachelor of Social Science (Geography) from the University of Waikato and a Master of Philosophy (Resources and Environmental Planning) from Massey University. I am a full member of the New Zealand Planning Institute (MNZPI).

1.2 I have 27 years of experience as a planning consultant in the Northland region. My role has typically been to lead project teams through various resource consent, notice of requirement, and plan change processes, and to provide environmental and strategic planning advice for these projects.

1.3 Most of my work has been in the Northland Region, and so I am very familiar with the history, content, and structure of the Far North District Plan and the higher-level planning documents.

2. Code of conduct

2.1 I have read and agree to abide by the Environment Court's Code of Conduct for Expert Witnesses (2023). This evidence is within my area of expertise. I have not omitted to consider any material facts known to me that might alter or detract from the opinions expressed.

3. Scope of evidence

3.1 This evidence is focussed on the zoning applied to the local purpose esplanade reserve located adjacent to Doug's Opua Boat Yard ("DOBY") and land owned by the Waitangi National Trust Board ("WNTB") at Waitangi, and the Open Space Zones in general.

4. Original DOBY submissions

Submission 021#

4.1 Key matters raised in the submission that remain of concern to the submitter are:

(1) Applying zones to land located in the CMA, including the area of CMA in front of DOBY located at 1 Richardson Street, Opua.

(2) The zone applied to the Local Purpose (Esplanade) Reserve adjoining DOBY.

Submission 185#

4.2 Key matters raised in the submission that remain of concern to the submitter are:

(1) The zoning of land at the Waitangi Treaty Grounds.

5. Concerns relating to inconsistent zoning of esplanade reserves

Assigning District Plan zones to the CMA

5.1 Firstly, it is trite law that district plan zones cannot extend into the CMA. However, there are numerous examples on the PDP maps where areas of CMA have been erroneously mapped as if they were land within the jurisdiction of the District Council. The area of CMA in front of DOBY[1], the area of CMA south of the Opua Marina[2], and the over water Boathouse Apartments immediately next to the Opua car ferry[3] are just three examples (see **Exhibit 1**), but there are many more.

5.2 In my view, the Council must conduct a thorough audit of the maps to ensure that no areas of the CMA are assigned District Plan zones.

Inconsistent zoning of esplanade reserves across the district

5.3 The zones applied to Local Purpose (Esplanade) reserves across the district are inexplicably inconsistent, varying between the 'Natural Open Space Zone', 'Open Space Zone', and 'Rural Production Zone'.

5.4 I note that Section 5.4 of the Section 32 report for the Open Space and Recreation Zones explains that:

- *Those properties that were previously zoned Conversation zone in the Operative plan have now had a name change to Natural Open Space Zone. This largerly (sic) eaplanade (sic) reserves and DOC owned land. This zone will be continually added to as esplanades are created as part of Subdivision.*
- *Those properties that were previously zoned Recreational Activities Zone have had the Open Space Zone applied.*

---

[1] Natural Open Space Zone

[2] Light industrial Zone

[3] Rural Production Zone

5.5 However, there are esplanade reserves (like those at Rawhiti) that are currently zoned 'Conservation Zone' in the Operative District Plan (see Map 30) and yet they are proposed to be zoned 'Rural Production Zone' in the PRP, and the esplanade reserve on the northern side of the river at Haruru is zoned 'Rural Production' in the Operative District Plan and yet it is proposed to be zoned 'Open Space Zone' despite the esplanade reserve on the southern side of the river proposed to be rezoned 'Natural Open Space Zone'. These are just two examples of multiple errors and anomalies in the zones that have been applied to esplanade reserves in the PRP, but there are many others (see **Exhibit 2** to this evidence).

5.6 Applying the 'Rural Production Zone' to reserves of any kind is incongruous with the zone description (see below).

The Rural Production zone is the largest zone in the district and accounts for approximately 65% of all land. The Rural Production zone is a dynamic environment, influenced by changing farming and forestry practices and by a wide range of productive activities. The purpose of this zone is to provide for primary production activities including non-commercial quarrying, farming, intensive indoor primary production, plantation forestry activities, and horticulture. The Rural Production zone also provides for other activities that support primary production and have a functional need to be located in a rural environment, such as processing of timber, horticulture, apiculture and dairy products. There is also a need to accommodate recreational and tourism activities that may occur in the rural environment, subject to them being complementary to the function, character and amenity values of the surrounding environment. This zone includes land subject to the Coastal Environment Overlay, which has provisions to protect the natural character of the coastal environment.

5.7 In my view, the Council must conduct a thorough audit of the PDP maps to ensure that the zoning applied to esplanade reserves across the district is consistent and logical.

6. General concern relating to Open Space zones

6.1 There are two open space zones in the PDP being:

(1) Natural Open Space Zone.

(2) Open Space Zone.

6.2 Each of the zones are described in the plan as follows:

Natural Open Space Zone

The Natural Open Space zone generally applies to public land that is administered by government agencies and includes a variety of parks and historic reserves. In most cases these areas have a high degree of

biodiversity requiring active management.

These are spaces the community values and some are open to the public for limited use where people can relax and enjoy passive recreation and customary activities. Some of these areas are used for cultural activities and are rich in historic heritage and cultural values. Some Natural Open Space land may be subject to treaty settlement claims and may be returned to tangata whenua. If this occurs Council will initiate a plan change to amend the zoning.

The zone anticipates a low level of development to retain the natural values within these areas and where development occurs, it is limited to such things as Department of Conservation huts, kauri dieback cleaning stations and walking tracks.

Open Space Zone

The Far North District has a range of open spaces including large parks areas and smaller neighbourhood parks. These spaces are primarily used for recreation and provide opportunities for relaxation and socialising. Some of these open spaces are located near the coast, lakes, rivers and streams and play a key role in both providing ecological protection as well as access to and along these areas. These public open spaces generally have limited built features and are less developed than areas zoned for active sport and recreation. They may have natural, ecological, cultural and historic heritage values and form an important part of the district's walking and cycling network.

Buildings or structures are limited to those that support the enjoyment of the open space for informal recreation and modest community activities.

6.3 The Natural Open Space zone description states that *"Some Natural Open Space land may be subject to treaty settlement claims and may be returned to tangata whenua. If this occurs Council will initiate a plan change to amend the zoning".* There are two issues with this being:

(1) It is unclear why the description for 'Natural Open Space' land refers to it being subject to potential treaty claims when the description for 'Open Space' land (or any other zones in the District Plan) does not. There is no relationship between the zone applied to land in a District Plan prepared under the RMA, 1991 and the potential for treaty claims under the Treaty of Waitangi Act, 1975; and

(2) Section 6(4A) of the Treaty of Waitangi Act, 1975 states that:

(4A) Subject to sections 8A to 8I, the Tribunal shall not recommend under subsection (3),—

(a) the return to Maori ownership of any private land; or
(b) the acquisition by the Crown of any private land.

The Act defines private land as:

***private land** means any land, or interest in land, held by a person other than—*
(a) the Crown; or
(b) a Crown entity within the meaning of the Public Finance Act 1989

Most Local Purpose (Esplanade) Reserves, including the reserve in front of DOBY, are vested in the FNDC. The FNDC is not a crown entity as defined in the Public Finance Act, 1989, and accordingly the land cannot be returned to tangata whenua as per Section 6(4A) of the Treaty of Waitangi Act, 1975 in any event.

6.4 Section 5.3.3 of the Section 32 report for Open Space and Recreation Zones may provide some insight into the reference to treaty claims in the 'Natural Open Space Zone' description where it states that:

In relation to the Open Space and Recreation zones, Te Runanga O Ngāti Rēhia provided the following feedback:

- *Comment that treaty settlement land should be excluded from the policies and rules in relation to natural open space. Treaty settlement land has been identified and it will be controlled by the treaty settlement land overlay. If a piece of land has a treaty settlement overlay the underlying zone provisions apply to the treaty settlement land unless otherwise specified in the treaty settlement overlay provisions which are more enabling.*[4]

6.5 I note that similar comments were made by Kahukuraariki, Matauri X, Ngati Kuri, Ngai Takoto, Whaingaroa, Ngati Kuta, Te Aupori in respect to 'Rural Production Zone' land that is also located in the 'Treaty Settlement Overlay Area'[5] and yet there is no mention of 'Rural Production Zone' potentially being returned to tangata whenua in the description for the zone.

6.6. The reference to potential treaty claims in the 'Natural Open Space Zone' description appears to be a reaction to the *Te Runanga O Ngāti Rēhia* comment which I think was a reference to existing 'Treaty Settlement Overlay Area' land where the underlying zone is 'Natural Open Space'. While there is some 'Natural Open Space Zone' land zoned that

[4] https://www.fndc.govt.nz/__data/assets/pdf_file/0017/18062/Section-32-Open-Space-and-Recreation-Zones.pdf (Page 16)
[5] https://www.fndc.govt.nz/__data/assets/pdf_file/0017/18071/Section-32-Rural-Environment.pdf (Page 36)

is subject to the 'Treaty Settlement Overlay Area' the vast majority is not.

6.7 In my view the reference to potential treaty claims in the 'Natural Open Space Zone' description only breeds confusion, particularly given the inconsistent zoning applied to Local Purpose (Esplanade) Reserves across the district. In my view it serves no practical purpose and should be removed.

7. What is the correct zone for the Local Purpose (Esplanade) Reserve in front of DOBY?

7.1 The FNDC does not appear to have followed a robust process in determining the appropriate zone for Local Purpose (Esplanade) Reserves, seemingly relying on roll overs from zones in the Operative District Plan[6] – and even then, there are multiple errors. Erroneously rolling over zones from the Operative District Plan without any cognisance of the new zone descriptions has inevitably resulted in anomalies.

7.2 The zone descriptions for the 'Open Space Zone' and the 'Natural Open Space Zone' are identified in Section 6.2 of this evidence. They are unhelpfully similar. However, the main difference is the reference to the Natural Open Space Zone' having a *"high degree of biodiversity requiring active management"*, being *"open to the public for limited use"*, and having *"a low level of development to retain the natural values within these areas and where development occurs, it is limited to such things as Department of Conservation huts, kauri dieback cleaning stations and walking tracks"*. In my view this description is more appropriate for reserves such as the Waipoua State Forest than an esplanade reserve, and indeed this is the zone that has been applied to that forest. Conversely, the description for the 'Open Space Zone' states that "*Some of these open spaces are located near the coast, lakes, rivers and streams and play a key role in both providing ecological protection as well as access to and along these areas" and "they may have natural, ecological, cultural and historic heritage values and form an important part of the district's walking and cycling network"*.

7.3 Based on the respective zone descriptions, in my view the 'Open Space Zone' is a better fit for the district's Local Purpose (Esplanade) Reserves, and certainly for the reserve in front of DOBY, which contains a slipway and associated easements, and the Opua to Paihia walkway.

[6] See Section 5.4 of this evidence.

8. Concerns relating to the zoning of the Waitangi Treaty Grounds

8.1 The Waitangi Treaty Grounds are part of a large 411.4460ha property owned by the Waitangi National Trust Board.[7] They also own the land containing the Waitangi Golf Course.[8]

8.2 The treaty grounds currently have a somewhat inexplicable split zoning of 'General Coastal Zone' and 'Conservation Zone' in the Operative District Plan, while the golf course has a split zoning of 'General Coastal Zone' and 'Recreational Activities Zone'. The treaty grounds are (again inexplicably) proposed to be rezoned entirely 'Rural Production Zone', while the golf course is proposed to have a split zoning of 'Sport and Active Recreation Zone' and 'Rural Production Zone' (nine holes in one zone and nine holes in the other). These zoning proposals make no sense, especially given the descriptions for each zone in the PDP relative to the existing activities. They are also inconsistent with the "roll-over" rationale in the Section 32 report for Open Space and Recreation Zones.

8.3 In my view it is clear that the treaty grounds should be zoned 'Open Space Zone', and the golf course should be zoned 'Sport and Active Recreation Zone'.

9. Relief sought

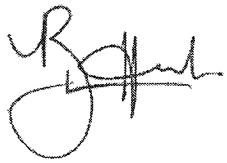
9.1 The following relief is sought:

(1) Remove the reference to treaty claims from the 'Natural Open Space Zone' zone description.

(2) Review all Local Purpose Esplanade Reserves in the district and zone them 'Open Space Zone'. Ensure that no such reserves are zoned 'Rural Production Zone'.

(3) Rezone the Waitangi Treaty Grounds 'Open Space Zone'.

(4) Rezone all of the Waitangi Golf Course 'Sport and Active Recreation Zone'.



[7] Lot 1 DP 326610

[8] Lots 2 and 3 DP 326610

.....

Brett Hood (Planner)

17 May 2025

Before the Far North District Council Hearings Committee

In the Matter	of the Resource Management Act 1991 (**Act**)
And	
In the Matter	of the Proposed Far North District Plan.

Evidence of Brett Lewis Hood on behalf of Doug's Opua Boatyard (Submitter numbers S21 and S185)

Dated 1 May 2025

Reyburn and Bryant 1999 Ltd
PO Box 191, Whangarei
Email: brett@reyburnandbryant.co.nz

1. Introduction

1.1 My name is Brett Lewis Hood. I am a planning consultant working for Reyburn and Bryant in Whangarei. I hold a Bachelor of Social Science (Geography) from the University of Waikato and a Master of Philosophy (Resources and Environmental Planning) from Massey University. I am a full member of the New Zealand Planning Institute (MNZPI).

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4. Original DOBY submissions

Submission 021#

4.1 Key matters raised in the submission that remain of concern to the submitter are:

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(2) The zone applied to the Local Purpose (Esplanade) Reserve adjoining DOBY.

Submission 185#

4.2 Key matters raised in the submission that remain of concern to the submitter are:

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---

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[3] Rural Production Zone

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These are spaces the community values and some are open to the public for limited use where people can relax and enjoy passive recreation and customary activities. Some of these areas are used for cultural activities and are rich in historic heritage and cultural values. Some Natural Open Space land may be subject to treaty settlement claims and may be returned to tangata whenua. If this occurs Council will initiate a plan change to amend the zoning.

The zone anticipates a low level of development to retain the natural values within these areas and where development occurs, it is limited to such things as Department of Conservation huts, kauri dieback cleaning stations and walking tracks.

Open Space Zone

The Far North District has a range of open spaces including large parks areas and smaller neighbourhood parks. These spaces are primarily used for recreation and provide opportunities for relaxation and socialising. Some of these open spaces are located near the coast, lakes, rivers and streams and play a key role in both providing ecological protection as well as access to and along these areas. These public open spaces generally have limited built features and are less developed than areas zoned for active sport and recreation. They may have natural, ecological, cultural and historic heritage values and form an important part of the district's walking and cycling network.

Buildings or structures are limited to those that support the enjoyment of the open space for informal recreation and modest community activities.

6.3 The Natural Open Space zone description states that *"Some Natural Open Space land may be subject to treaty settlement claims and may be returned to tangata whenua. If this occurs Council will initiate a plan change to amend the zoning".* There are two issues with this being:

(1) It is unclear why the description for 'Natural Open Space' land refers to it being subject to potential treaty claims when the description for 'Open Space' land (or any other zones in the District Plan) does not. There is no relationship between the zone applied to land in a District Plan prepared under the RMA, 1991 and the potential for treaty claims under the Treaty of Waitangi Act, 1975; and

(2) Section 6(4A) of the Treaty of Waitangi Act, 1975 states that:

(4A) Subject to sections 8A to 8I, the Tribunal shall not recommend under subsection (3),—

(a) the return to Maori ownership of any private land; or
(b) the acquisition by the Crown of any private land.

The Act defines private land as:

***private land** means any land, or interest in land, held by a person other than—*
(a) the Crown; or
(b) a Crown entity within the meaning of the Public Finance Act 1989

Most Local Purpose (Esplanade) Reserves, including the reserve in front of DOBY, are vested in the FNDC. The FNDC is not a crown entity as defined in the Public Finance Act, 1989, and accordingly the land cannot be returned to tangata whenua as per Section 6(4A) of the Treaty of Waitangi Act, 1975 in any event.

6.4 Section 5.3.3 of the Section 32 report for Open Space and Recreation Zones may provide some insight into the reference to treaty claims in the 'Natural Open Space Zone' description where it states that:

In relation to the Open Space and Recreation zones, Te Runanga O Ngāti Rēhia provided the following feedback:

- *Comment that treaty settlement land should be excluded from the policies and rules in relation to natural open space. Treaty settlement land has been identified and it will be controlled by the treaty settlement land overlay. If a piece of land has a treaty settlement overlay the underlying zone provisions apply to the treaty settlement land unless otherwise specified in the treaty settlement overlay provisions which are more enabling.*[4]

6.5 I note that similar comments were made by Kahukuraariki, Matauri X, Ngati Kuri, Ngai Takoto, Whaingaroa, Ngati Kuta, Te Aupori in respect to 'Rural Production Zone' land that is also located in the 'Treaty Settlement Overlay Area'[5] and yet there is no mention of 'Rural Production Zone' potentially being returned to tangata whenua in the description for the zone.

6.6. The reference to potential treaty claims in the 'Natural Open Space Zone' description appears to be a reaction to the *Te Runanga O Ngāti Rēhia* comment which I think was a reference to existing 'Treaty Settlement Overlay Area' land where the underlying zone is 'Natural Open Space'. While there is some 'Natural Open Space Zone' land zoned that

[4] https://www.fndc.govt.nz/__data/assets/pdf_file/0017/18062/Section-32-Open-Space-and-Recreation-Zones.pdf (Page 16)
[5] https://www.fndc.govt.nz/__data/assets/pdf_file/0017/18071/Section-32-Rural-Environment.pdf (Page 36)

is subject to the 'Treaty Settlement Overlay Area' the vast majority is not.

6.7 In my view the reference to potential treaty claims in the 'Natural Open Space Zone' description only breeds confusion, particularly given the inconsistent zoning applied to Local Purpose (Esplanade) Reserves across the district. In my view it serves no practical purpose and should be removed.

7. What is the correct zone for the Local Purpose (Esplanade) Reserve in front of DOBY?

7.1 The FNDC does not appear to have followed a robust process in determining the appropriate zone for Local Purpose (Esplanade) Reserves, seemingly relying on roll overs from zones in the Operative District Plan[6] – and even then, there are multiple errors. Erroneously rolling over zones from the Operative District Plan without any cognisance of the new zone descriptions has inevitably resulted in anomalies.

7.2 The zone descriptions for the 'Open Space Zone' and the 'Natural Open Space Zone' are identified in Section 6.2 of this evidence. They are unhelpfully similar. However, the main difference is the reference to the Natural Open Space Zone' having a *"high degree of biodiversity requiring active management"*, being *"open to the public for limited use"*, and having *"a low level of development to retain the natural values within these areas and where development occurs, it is limited to such things as Department of Conservation huts, kauri dieback cleaning stations and walking tracks"*. In my view this description is more appropriate for reserves such as the Waipoua State Forest than an esplanade reserve, and indeed this is the zone that has been applied to that forest. Conversely, the description for the 'Open Space Zone' states that *"Some of these open spaces are located near the coast, lakes, rivers and streams and play a key role in both providing ecological protection as well as access to and along these areas" and "they may have natural, ecological, cultural and historic heritage values and form an important part of the district's walking and cycling network".*

7.3 Based on the respective zone descriptions, in my view the 'Open Space Zone' is a better fit for the district's Local Purpose (Esplanade) Reserves, and certainly for the reserve in front of DOBY, which contains a slipway and associated easements, and the Opua to Paihia walkway.

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[6] See Section 5.4 of this evidence.

8. Concerns relating to the zoning of the Waitangi Treaty Grounds

8.1 The Waitangi Treaty Grounds are part of a large 411.4460ha property owned by the Waitangi National Trust Board.[7] They also own the land containing the Waitangi Golf Course.[8]

8.2 The treaty grounds currently have a somewhat inexplicable split zoning of 'General Coastal Zone' and 'Conservation Zone' in the Operative District Plan, while the golf course has a split zoning of 'General Coastal Zone' and 'Recreational Activities Zone'. The treaty grounds are (again inexplicably) proposed to be rezoned entirely 'Rural Production Zone', while the golf course is proposed to have a split zoning of 'Sport and Active Recreation Zone' and 'Rural Production Zone' (nine holes in one zone and nine holes in the other). These zoning proposals make no sense, especially given the descriptions for each zone in the PDP relative to the existing activities. They are also inconsistent with the "roll-over" rationale in the Section 32 report for Open Space and Recreation Zones.

8.3 In my view it is clear that the treaty grounds should be zoned 'Open Space Zone', and the golf course should be zoned 'Sport and Active Recreation Zone'.

9. Relief sought

9.1 The following relief is sought:

(1) Removal PDP zonings from the CMA.

(2) Remove the reference to treaty claims from the 'Natural Open Space Zone' zone description.

(3) Review all Local Purpose Esplanade Reserves in the district and zone them 'Open Space Zone', with particular reference to the local purpose esplanade reserve adjacent to DOBY.

(4) Ensure that no esplanade reserves are zoned 'Rural Production Zone'.

(5) Rezone the Waitangi Treaty Grounds 'Open Space Zone'.

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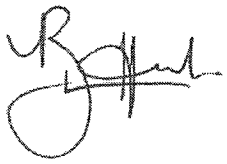
[7] Lot 1 DP 326610

[8] Lots 2 and 3 DP 326610

(6) Rezone all of the Waitangi Golf Course 'Sport and Active Recreation Zone'.



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Brett Hood (Planner)

17 May 2025

Doug's Opua Boat Yard
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Ph (09) 402 7055, A/h (09) 407 4577
colarahill@xtra.co.nz

10 September 2025

Alicia-Kae Taihia
FNDC PDP Team
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REF: HEARING 15C – TIMETABLE RESPONSE; S21

In response to the 42A report by the Senior Policy Planner and Technical Director for the PDP and limited accommodation for the hearing impaired, at the hearing facilities; I will not be attending the 15C hearing.

Nor will I be attending because of the misrepresentations to the Panel in the 42A report of my initial submissions and those of the subsequent submissions I made at hearing 8 on Open Space matters directly/indirectly affected by the Treaty of Waitangi Act 1975.

Nor because the Panel has not made it clear to the PDP Planning Team of their spoken commitment to resolve Natural Open Space issues on the land and in the CMA regarding my legal occupations that directly affect substantial PDP zoning errors.

Nor because the PDP Team has disregarded/misrepresented not only the written submissions by my expert witness, but his phone conference evidence with them as to my concerns with the scope of the PDP that are in effect, ultra vires to the RMA.

Therefore, because these matters I have raised appear now to be beyond the jurisdiction of the PDP, I am hereby submitting the entire scope of my evidence regarding concerns I have that are likely not only to affect my boatyard, its exclusive occupations both on land and in the CMA, but the entire District as well.

Douglas Schmuck

S21
"D"

IN THE ENVIRONMENT COURT OF NEW ZEALAND
AT AUCKLAND

I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKAURAU

Decision [2023] NZEnvC 111

IN THE MATTER OF	an appeal under s 120 of the Resource Management Act 1991 (RMA) concerning conditions of consent imposed on an application under s 88 RMA
BETWEEN	D C SCHMUCK (ENV-2018-AKL-000351) (ENV-2020-AKL-000187) Appellant
AND	NORTHLAND REGIONAL COUNCIL Respondent
AND	M K RASHBROOKE s274 RMA Interested Party (ENV-2020-AKL-000187)

Court: Alternate Environment Judge L J Newhook
Environment Commissioner S Myers

Submissions from: C Prendergast for Appellant
G Mathias and C Sharp for Respondent
M Rashbrooke for Himself

Date of Decision: 30 May 2023
[On the papers]

Date of Issue: 30 May 2023

DECISION OF THE ENVIRONMENT COURT ON RESIDUAL DISPUTE ABOUT SOME OF THE CONDITIONS OF CONSENT

A: Decision making minor changes to 8 conditions of consent and refusing amendment to one remaining condition of consent.

B: Costs reserved.

REASONS

Introduction

[1] The appeal concerns some of the conditions of consent imposed by an Independent Hearings Commissioner appointed by Northland Regional Council on consents issued by him in his decision in November 2020. The consents related to an application by the appellant Mr Schmuck for a suite of consents related to activities variously already conducted by Doug's Opua Boat Yard and some new consents, adjoining an esplanade (local purpose) reserve and its adjacent coastal marine area (**CMA**).

[2] The first aspect of the proceedings relates to some conditions imposed on the grant of consent for demolition and reconstruction of a wharf and some capital dredging within the CMA. The second relates to conditions imposed on grants of consent to continue discharges to ground, air, water, and the CMA.

[3] Associated with the second aspect is reconsideration ordered by the High Court of this Court's decision in the 2018 appeal. This Court's decision had been to decline discharge consents, but the High Court allowed the appeal and remitted the proceeding to this Court for further consideration.[1]

[1] Decision of the High Court *D C Schmuck v Northland Regional Council*, 24 February 2020, [2020] NZHC 590.

[4] In determining the appeal against conditions attached to 5 consents we have considered the long and involved decision of the Hearing Commissioner in November 2020, as we are required to under s 290A RMA. We have done the same with the decision of the two hearing commissioners in the 2018 matter, as resolution of the 2020 appeal will also resolve the 2018 appeal.

[5] The 5 consents concerned, are as follows:

(a) AUT.041365.13.01 – to discharge treated stormwater to the CMA from a proprietary stormwater system.

(b) AUT.041365.14.01 – to discharge contaminants to land from vessel maintenance facilities on Part Lot 1 and Lot 2 Block xxxii town of Opua and Section 3 Block xxxii town of Opua (NA21C/265).

(c) Section 2 SO 68634 (NA121C/187).

(d) AUT.041365.15.01 – to discharge contaminants to air from vessel maintenance activities on the same pieces of land legally described above.

(e) AUT.041365.16.01 – to discharge contaminants to air in the CMA from vessel maintenance activities within occupation area adjacent to the wharf on Part Russell Harbour Bed Deposited Plan 18044 (NA399/138).

(f) An associated consent held by T Dunn and B & J Kidman, (interested parties in support of Mr Schmuck in the 2018 appeal), AUT.041365.05.01 – to occupy space in the CMA in the vicinity of the wharf facility and slipway to the exclusion of others (occupation area).[2]

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[2] To enable the appellant to demolish the existing wharf and construct a new one approximately 3m north of the old one, to provide three working berths alongside, relocate that party's pontoon on the northern side for their boat charter operations, add a new pontoon at the eastern end to be used as a two-berth marina; this consent authorises occupation of the CMA for these altered and new wharf facilities.

[6] Ten other resource consents were granted to the applicant at the same time enabling many activities on and around the wharf, and on the boat yard, which are not subject to appeal.

Cautionary tale

[7] The current presiding Judge and Commissioner have been assigned to this case for approximately the last year.

[8] Like all courts in New Zealand, the Environment Court is pressed, particularly since the pressures brought about by the pandemic.

[9] Parties and readers of this decision might wonder why the case has taken nearly three years to resolve. The following may start to explain.

[10] The extent of documentation for a case concerning a handful of conditions of consent, is more than daunting. It fills an entire filing box. It appears to have been the expectation of parties that we would consider every last page in this whole set of proceedings that commenced at council level back in November 2017. It is clear from the decision of the Hearing Commissioner in 2020, and we think also from the decision of the two Hearing Commissioners in the first matter appealed, that they found the complexities raised by parties and the sheer volume of materials, equally daunting. We have sympathy for them.

[11] Many substantial statements of evidence have been filed, and clearly that was the pattern in the two proceedings before Hearing Commissioners.

[12] It has not been possible to prioritise resolution of these appeals in the circumstances of such egregious abuse of resource management processes. Ironically and fortuitously the sting was essentially taken out of that situation by the ability of the Court to grant approval for early commencement of

consents for many of the physical works, under s116 RMA in June 2022.[3] Other aspects of the consents have had some of the urgency taken out of them by reason of the fact that predecessor consents that technically expired in 2018, have been enabled to continue in operation under s124 RMA, application for the new consents having been made prior to expiry. Reliance on these provisions may not be considered entirely satisfactory as regards the effects on the environment, but the main (2020) appeal is only against the detail of a small number of conditions of consent and the Court has needed to prioritise its business bearing that in mind.

[13] One procedural feature that we have kept in the back of our minds is that Mr Rashbrooke is a s274 party only in respect of the 2020 appeal against conditions.

[14] As a final preliminary matter, the Court conveyed to the parties in directions on 11 November 2022 that it considered that a hearing set down for two weeks later would be unnecessary and the resources of the Court and the parties could be better, and more cost effectively employed. The Court cancelled the hearing. It directed instead that legal submissions should be filed, limited strictly to matters within jurisdiction, and set a timetable. The parties were directed to focus on the provisions of s 104, s 105 and s 108AA RMA, unless there were other matters of law the parties considered to be within jurisdiction.[4]

[15] As a corollary the directions included that when filing and serving submissions pursuant to the timetable, parties were to advise the Court which

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[3] [2022] NZEnvC 113 (Judge Newhook).

[4] The direction also expressly recorded that the Court did not want relitigation of the decisions of the many courts that have heard litigation about this boat yard over the years. And that it did not want repetition of the statements of evidence. Also, it did not believe that matters of property law including current historical ownership patterns, easements, leases and licences, were within jurisdiction. Similarly with matters of "criminology" and insurance practice. Similarly, comparisons of current boat yard work practices with those of previous occupiers.

witnesses they wished to cross-examine and what the questions would be. The parties were warned that any questions were to be strictly within jurisdiction and would be assessed by the Court to ascertain if there was a need for an in-court or electronic hearing and a site inspection. Parties were asked to bear in mind that the Court has some familiarity with the site and its surrounds.

[16] In the event no party sought a hearing. Only the appellant's counsel suggested possible topics for cross-examination but qualified that by expressly recording that the appeal would be appropriately heard on the papers and that was the appellant's preference.

The conditions under appeal and proposed subsequent amendment

[17] As noted in our introduction, the subject conditions can be divided into two groups. The first relates to the terms upon which the consent holder might be empowered to restrict public access to the wharf facilities (conditions 31-34 and the 2020 consent); and the second to amendments proposed to the water discharge conditions (condition 61) and discharge of contaminants to air (conditions 70, 77, 87, 92 and 95).

[18] At the time the parties filed primary submissions the appellant and the respondent had agreed what they considered to be appropriate amendments to these conditions of consent. Mr Rashbrooke filed 54 pages of submissions which in significant measure took on the appearance of evidence and in many places did not conform with the directions of the Court on 11 November 2022. He was highly critical of the amendments agreed between the appellant and the respondent. His input did however trigger an acknowledgment from the respondent that an amendment agreed in the descriptor of Consent AUT.041365.15.01 could be misinterpreted. Counsel for the respondent filed a brief memorandum on 25 November recommending reversion back to the wording for that descriptor employed by the Hearing Commissioner.

Conditions concerning occupation of the CMA

[19] The agreements reached between the appellants and the Council concerning conditions 31-34, were attached to the evidence-in-chief of Mr P Maxwell.[5] The effects of the amendments can be summarised as follows:

(a) Public access to the dinghy ramp to the south of the wharf and beach landings on both sides of the wharf should be available at all times, except when slipway operations restrict access to the north beach landing next to the wharf (condition 31(a)).

(b) Public access through the security gate may be restricted by the consent holder at all times (condition 31(b)).

(c) The consent holder may prohibit swimming, fishing, and collection of sea food from the wharf structures and the bringing of equipment onto the structures (condition 31(c).

(d) The consent holder may restrict public access onto the wharf up to the security gate for health and safety and operational reasons when working berths are occupied by vessels or berthing is in process (condition 31(d)).

(e) Signage must be erected to advise the public of the terms of access and the contact number(s) for the consent holder or nominated representative (condition 31(e)).

(f) The public can arrange with the consent holder to berth vessels at the marina facility pontoon and/or any other available working berth area alongside the wharf between the hours of 0700-1800 (0700-2000 during NZDT) (Condition 32), provided that the requirements of condition 32(a)-(f) are met.

(g) An emergency where a consent holder cannot unreasonably withhold consent for the public to berth at the wharf facilities is defined as "an urgent, sudden, and serious event or an unforeseen

[5] Pages 329-331 in the Evidence Bundle.

change in circumstances that necessitates immediate action to remedy harm or overt imminent danger to life, health, or property (advice note to condition 32).

(h) The consent holder is no longer required to take all practicable steps to ensure the vessels berthed at the marina pontoon do not overhang the eastern face of the pontoon (condition 33 deleted in its entirety).

[20] Features of the area and the proposed (and existing) developments have been viewed by us on plans exhibited in the Common Bundle at pages 167 and 168.

The arguments about CMA occupation conditions

[21] The appellant and the Council offered submissions that set out accurately the legal position that has developed through guidance from the Court of Appeal, the High Court and the Environment Court.

[22] Mr Rashbrooke took an entirely different approach, providing extensive quotes from the enormous quantity of documentation in this matter, focussing in particular on quoting paragraphs from the decision of the commissioner that he appeared to favour.

[23] Mr Rashbrooke submitted that the changes agreed concerning condition 31 were not in accordance with the notice of appeal which he said limited its focus to (c) in that condition.[6] We consider it wrong to endeavour to confine the appellant, the respondent, and this court to such narrow considerations. We are of the view that the changes agreed between the appellant and the respondent can logically include other parts of the conditions that may need to be attended to, consequential on replacing

[6] He offered a similar criticism concerning condition 34 which he said was not targeted in the appeal.

condition 31(c) with new wording.

[24] Mr Rashbrooke provided a six-page "Addendum" to his 54 page submission, headed "Practical Considerations Regarding Public Access to the Jetty in the CMA". Like many features of the 54 page submission, the Addendum seeks to offer new evidence contrary the directions made by the court (for instance he asserted: *"yachties and boaties don't tend to follow normal work or office hours"*, and he recorded personal feelings about what could amount to "unnecessary privatisation" of public area *"for no other purpose than personal convenience and/or desire to feel in "control" of a shared public space without having to show any consideration to another person's reasonable needs, desires or expectations with regard to that space or even the need to discuss this with them"*).

Legal framework

[25] We start with s 6(d) RMA which requires that the maintenance and enhancement of public access to and along the coastal marine area... are recognised and provided for as matters of national importance. We turn then to s 108(2)(h) which lists types of conditions of consent may include, noting that in respect of any coastal permit to occupy any part of the common marine and coastal area, a condition [may be included] detailing the extent of the exclusion of other persons.

[26] Section 122(5) RMA provides as follows:

(5) Except to the extent—
(a) that the coastal permit expressly provides otherwise; and
(b) that is reasonably necessary to achieve the purpose of the coastal permit,
no coastal permit shall be regarded as—

> *(c) an authority for the holder to occupy a coastal marine area to the exclusion of all or any class of persons; or*
>
> *(d) conferring on the holder the same rights in relation to the use and occupation of the area against those persons as if he or she were a tenant or licensee of the land.*

[27] Prior to 2002 the use of "and" between subsections (a) and (b) might have been thought to express a conjunctive requirement; however the Court of Appeal of *Hume v Auckland Regional Council*[7] held the expression between (a) and (b) to be disjunctive, and the subsections were intended to create independent exceptions to the subsequent provisions. We interpret this to mean that exclusive occupation (for lawful purposes) may be either express, or implied, in the consent.

[28] We note that certain relevant statutory instruments discuss public access to the CMA, and limits that may arise. These include the New Zealand Coastal Policy Statement, the Northland Regional Policy Statement, the Regional Coastal Plan for Northland, and the Proposed Regional Plan for Northland. Relevant provisions within these instruments were discussed and analysed for the court by Mr P D I Maxwell, Coastal and Works Consent Manager for the Council, and Mr B L Hood, planning consultant called by the appellant. We have considered these aspects carefully, but will not increase the length of this decision by repeating them and analysing them in the way the witnesses did. Suffice it to say we accept their statements.

[29] The Court of Appeal decision in *Hume* in fact occurred early in a line of cases concerning jetties and wharfs on Kawau Island, north of Auckland. In *Coleman & Elmore v Rodney District Council and Ors*[8] the plaintiffs sought judicial review of the Council decisions to grant consent to a jetty on a non-notified basis with exclusive rights to use the jetty and (including other things) conduct a boat repair business there, with public access restricted to

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[7] [2002] 3 NZLR 363 at [20]-[22].
[8] High Court Auckland 25/9/2004, CIV-2003-404-3167 (Heath J).

protect public health and safety and ensure a level of security for the boat repair business, ensuring the safety of the public, and to enable operation of the business. The High Court declined judicial review relief, referring to the decision of the Court of Appeal in *Hume* and holding that there can be exceptions to the default rule giving emphasis to public use of jetties – to be considered on a case by case basis.[9]

[30] The Environment Court also considered and applied *Hume* the following year concerning another wharf structure on Kawau Island, in a case called *Coleman v Rodney District Council*[10]. The court considered relevant legislation, planning documents, and effects on the environment both positive and adverse, and held that the purpose of the RMA would be served by reducing the extent of potentially conflicting uses on the wharf by (in summary) excluding the public from it except in emergencies, bringing vehicles, building materials and other non-domestic goods; conducting themselves in dangerous objectionable or offensive manners or interfering with or damaging any property of the consent holder lawfully stored on the jetty; and obstructing the consent holders use of the jetty for access to private property.

[31] These decisions may be seen in some contrast to the decision of the Environment Court in 1998, *Kyriak v Northland Regional Council*[11], which happened to concern the present boatyard and charter yacht jetty. The decision turned somewhat on the then state of planning provisions and some allied permits, noting that various kinds of permit were issued for different statutory purposes.

[32] As argued by counsel for the appellant in the present case, issues may now be framed in different statutory contexts, including the more rigorous

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[9] *Coleman* Decision (HC) cited above at [66]-[72].
[10] Decision A122/2005.
[11] Decision C146/98.

and onerous Health and Safety at Work Act 2015.

[33] We agree that it is possible to interpret the Court of Appeal decision in *Hume* to the effect that in appropriate circumstances it may be possible to impose conditions excluding the public almost completely when necessary to avoid potential conflict with the purposes of the permit. We add that it may be more appropriate for this to be expressed in conditions rather than left to implication and uncertainty under s 122(5)(b).

[34] Based on our detailed consideration of the evidence included the relevant provisions of the Act and statutory instruments, and evidence about air effects on the environment, we hold:

(a) Section 122(5) RMA allows coastal permits to expressly enable occupation of the CMA to the exclusion of others where reasonably necessary to achieve the purposes of the coastal permit;

(b) The primary purpose of the wharf facilities in the present case is for commercial chartering, boat maintenance activities, and marina berths, with recreational activities not generally compatible (similar to many marina facilities established in New Zealand);

(c) It is unarguably the case that the operation of the charter business, the mooring of vessels, boat maintenance activities, and berthing in marina berths, compose a risk to the general public using wharf facilities past the security gates unsupervised;

(d) We find that it is reasonably necessary to exclude the public from the wharf facilities in the manner described above, in order to achieve the purpose of the coastal permit;

(e) The public will be able to enjoy a quite significant part of the wharf facilities and surrounding environment with minimal restrictions, noting particularly the emphasis on the restrictions

being out past the security gate on the jetty where the facilities just described are proposed;

(f) We accept the belated acknowledgment on behalf of the council to revert to the wording of the hearing commissioner concerning the descriptor mentioned above, to avoid uncertainty or ambiguity.

[35] In its submissions the respondent suggested that the court might favour the inclusion of a condition about review under s 128 RMA, should it have a concern that once the consent is in effect the holder might have too much discretion in managing public access.

[36] The court does not have that concern.

[37] Counsel for the appellant replied on that point by submission on 25 November 2022, but we have not needed to consider those matters.

Discharge consent conditions – proposed amendments

[38] The following are the matters the subject of agreement between the appellant and respondent:

(a) Air discharge boundary, both as to label or description and its position – involving reference to conditions 70, 77, 87, 92 and 95;

(b) Clarification of where scraping, water blasting, and wet sanding can take place – concerning condition 61.

[39] For the legal context, we have considered not only s 108AA RMA, but also s 108(2)(e) and s 108(8) RMA. Under (2)(e), a discharge permit to do something that would otherwise contravene s 15 RMA may include a condition requiring the holder to adopt the best practicable option to prevent or minimise any actual or likely adverse effect on the environment of the discharge and other discharges (if any) made by the person from the same site

or source.

[40] Section 108(8) requires that before deciding to grant a discharge permit subject to a condition described in the last provision, the consent authority shall be satisfied that, in the particular circumstances and having regard to:

> *(a) The nature of the discharge and the receiving environment; and*
> *(b) Other alternatives, including any condition requiring the observance of minimum standards of quality of the receiving environment –*
>
> *The inclusion of that condition is the most efficient and effective means of preventing or minimising any actual or likely adverse effect on the environment.*

[41] We accept the submission on behalf of the respondent, that a key consideration is any actual or potential effects that the discharges will have on the surrounding environment, including any reverse sensitivity effects (s104(1)(a) RMA). Following the decision of the Environment Court in *Winstone Aggregates v Matamata-Piako District Council*[12], in every case an activity should internalise its effects unless it is shown that cannot reasonably be done.

[42] We have again carefully considered the evidence of Mr Maxwell and Mr Hood, as well as that of a clean air consultant called by the appellant Mr P W Stacey who had a particular familiarity with the current boatyard operation. Based on his detailed reasoning, we accept his recommendation in paragraph 43 of his evidence-in-chief that given proximity of particulate monitors to the source placed approximately 3m from the discharge point, the results of the

[12] (2004) 11 ELRNZ 48 at [7]-[9].

monitoring would provide a worst-case assessment of potential discharges from the site and there would be limited opportunity for the particulate to disburse before reaching the monitor. In his paragraph 44 he said he considered that it was reasonable to assume particulate concentrations would be experienced at residential locations would be much less than the values measured by the particulate monitor, as they are located at least 35m from generating activities.

[43] We accept the evidence of the witnesses that the agreed conditions are appropriate in the following respects:

(a) A dust collection system must be attached to sanding and grinding devices (condition 79);
(b) Sanding, grinding, water blasting, antifouling and painting can only be undertaken in certain wind conditions (conditions 81-82);
(c) A screen must be erected between the blasting area and the walking track during water blasting (condition 85);
(d) The use of paints must not exceed certain volumes (conditions 89-90).

[44] We accept the evidence of Mr Stacey at paragraphs [39] and [41] of his evidence-in-chief, that scraping, and sanding have no potential to cause air quality effects; that the water blaster will not cause any health effects; and any odours observed beyond the Air Discharge Boundary are unlikely to be considered offensive or objectionable by a counsel enforcement officer. His evidence that these features, taken together with mitigation measures, should produce a scenario in which the discharges would only be minor, seems logical and reasonable.

[45] Concerning amenity on the reserve and walking track, from a reverse sensitivity perspective, we note that no party has appealed against the

granting of consent, so the appropriateness of boat maintenance activities at the boatyard is not an issue before us.

[46] Relying again on the evidence of Mr Stacey and others, it appears logical to us that the consent holder is unable to completely conceal the activities within the boundaries of the site, and the effects of the activity have been minimised as much as possible courtesy of sensible conditions of consent being put forward. We note that the air discharge boundary covers only a small part of the reserve, and we accept that most people using the reserve will be walking through, so the effects on walkers would be transitory. Any water plume or paint odour discharges are unlikely to occur frequently and will be low in intensity and under most circumstances and would occur for a limited duration of time. These things again point to the discharges being minor.

[47] Concerning condition 61, we approve the proposed amendment to clearly state the area where scraping, water blasting, or wet sanding of vessel hulls can occur is "Area A" as shown on NRC plan 4966A (Reyburn & Bryant 27.08.20) and it being appropriate before vessels are pulled as far as practicable into the boatyard.

[48] In their respective submissions, Mr Rashbrooke and Ms Prendergast debated whether the changes to the location of the air discharge boundary and to conditions 70, 77, 87, 92 and 95 are intended to include more of the reserve and the Te Araroa Trail within the discharge boundary and as Mr Rashbrooke termed it "*gain more uses of more of the reserve area for more boatyard activities*" than was granted by the hearing commissioner.

[49] We accept the submission of Ms Prendergast, on the evidence in front of us, that the amendment to the location of the boundary does not include a change to the location of the activities provided for by the affected conditions.

[50] We agree that the boundary should be called an "air discharge boundary", which seems more accurate and less pejorative in the circumstances.

[51] Regrettably, once again Mr Rashbrooke largely appears to be endeavouring to seek relief outside the scope of the appeal, particularly in relation to the esplanade reserve and the Te Araroa Trail.[13] There are unfortunately many other instances scattered throughout his submissions. Mr Rashbrooke has not himself appealed the consents.

Conclusion

[52] We approve the amendments agreed to conditions between the appellant and the respondent, with the qualification about the descriptor in AUT-041365.15.01 described above. The **consents**, along with the **conditions of consent** as finally approved are attached as Appendix **A**.

[53] We reiterate that this decision resolves both the 2018 and 2020 appeals.

L J Newhook
Alternate Environment Judge

[13] Examples, from among many, include paragraphs 3 and 5 of the introduction to his submissions, and paragraph 7 in his Part Three.

Appendix A

DOUGLAS CRAIG SCHMUCK,

To carry out the following activities associated with a boatyard operation on Part Lot 1 and Lot 2 Block XXXII Town of Ōpua and Section 3 Blk XXXII Town of Ōpua (NA21C/265); Section 2 SO 68634 (NA121C/187), Part Russell Harbour Bed Deposited Plan 18044 (NA399/138) and in the coastal marine area at and adjacent to Walls Bay, Ōpua, Bay of Islands between location coordinates 1701619E 6091913N and 1701491E 6091813N.

AUT.041365.01.01	**Demolish and construct a wharf facility in the coastal marine area, including alterations to the wharf, floating pontoons, piles, stormwater pipe(s) (attached to wharf), marina berths, slipway, signage, ladders, security and safety lighting, and security gate.**
AUT.041365.02.01	**Reconstruct a slipway in the coastal marine area, inclusive of slipway, turning block, and associated cabling.**
AUT.041365.03.01	**Place a hard protection structure, being a subsurface erosion barrier, in the coastal marine area.**
AUT.041365.04.01	**Occupy space in the coastal marine area with structures, including a wharf facility, a workboat mooring and associated dinghy pull, and a hard protection structure.**
AUT.041365.05.01	**Occupy space in the coastal marine area in the vicinity of the wharf facility and slipway to the exclusion of others (occupation area).**
AUT.041365.06.01	**Use the slipway in the coastal marine area for minor vessel maintenance.**
AUT.041365.07.01	**Use the wharf facility structures and three working berth areas adjacent to the wharf in the coastal marine area for the purposes of vessel maintenance and chartering.**
AUT.041365.08.01	**Use two berths associated with the wharf facility pontoon as a marina in the coastal marine area.**
AUT.041365.09.01	**Disturb the foreshore and seabed in the coastal marine area during demolition and removal of unwanted structures, wharf facility and slipway reconstruction, and construction of a subsurface erosion barrier.**
AUT.041365.11.01	**Capital dredging around berths, fairway and slipway in the coastal marine area.**
AUT.041365.12.01	**Maintenance dredging to maintain vessel berths, fairway and slipway in the coastal marine area.**
AUT.041365.13.01	**Discharge treated stormwater to the coastal marine area from a proprietary stormwater system.**
AUT.041365.14.01	**Discharge contaminants to land from vessel maintenance activities on Part Lot 1 and Lot 2 Block XXXII Town of Ōpua and Section 3 Blk XXXII Town of Ōpua (NA21C/265); and Section 2 SO 68634 (NA121C/187).**
AUT.041365.15.01	**Discharge contaminants to air from vessel maintenance activities on Part Lot 1 and Lot 2 Block XXXII Town of Ōpua and Section 3 Blk XXXII Town of Ōpua (NA21C/265); and Section 2 SO 68634 (NA121C/187).**
AUT.041365.16.01	**Discharge contaminants to air in the coastal marine area from vessel maintenance activities within an occupation area adjacent to the wharf on Part Russell Harbour Bed Deposited Plan 18044 (NA399/138).**

Subject to the following conditions:

General Conditions

1 The council's assigned monitoring officer shall be notified in writing of the date that the installation of the proprietary stormwater treatment system is intended to commence, at least two weeks prior to the works. Notice shall also be provided to the council's assigned monitoring officer two weeks prior to the intended date of commencement of the wharf facility demolition, construction, and/or maintenance works, capital dredging, and each maintenance dredging operation on each occasion.

2 The Consent Holder shall arrange for a site meeting between the Consent Holder's contractor(s) and the council's assigned monitoring officer prior to the installation of the proprietary stormwater treatment system, and also prior to the wharf facility demolition and construction works. No works shall commence until the council's assigned monitoring officer has completed the site meeting on each occasion. If this site meeting cannot occur during this period due to the council's assigned monitoring officer not being available, then works can commence on the date specified in the notice provided in accordance with Condition 1.

Advice Note: *Notification of the intended commencement of works may be made by email to info@nrc.govt.nz.*

3 As part of the written notification required by Condition 1, the Consent Holder shall provide written certification from a suitably qualified and experienced person to the council's assigned monitoring officer to confirm that all plant and equipment entering the coastal marine area associated with the exercise of these consents is free from unwanted or risk marine species.

4 All structures and facilities covered by these consents shall be maintained in good order and repair.

5 Any activities undertaken on land and any activities in the coastal marine area associated with the boatyard activity authorised under this consent shall avoid any debris being discharged into the coastal marine area.

6 Noise levels associated with the exercise of these consents shall not exceed those set out in Schedule 1 **attached**.

7 The Consent Holder shall submit an updated Operational Management Plan to the council's Compliance Manager for certification within three months of the date of commencement of these consents. The Operational Management Plan shall cover all aspects of:

(a) The operation and maintenance of the wharf;

(b) The operation and maintenance of the slipway;

(c) Measures to minimise the discharge of contaminants to coastal waters during operation or maintenance of the slipway or during maintenance activities undertaken on or adjacent to the wharf;

(d) The operation and maintenance of the wash-water collection and disposal system, including as-built plans of the system;

(e) The operation and maintenance of the stormwater treatment system, including as-built plans of the stormwater treatment system;

(f) Measures to minimise the discharge of contaminants to ground;

(g) Measures to minimise the emissions and any adverse effects on the environment from the discharges to air including

(i) Temporary signage to alert persons that painting is taking place and to maintain a minimum 15 metre separation from the activity.

(ii) Training procedures which explain the correct use of the water blaster to minimise the effects associated with water spray;

(h) Contingency measures for unforeseen or emergency situations.

Advice Note: *The council's Compliance Manager's certification of the Operational Management Plan is in the nature of certifying that adoption of the Operational Management Plan is likely to result in compliance with the conditions of these consents. The Consent Holder is encouraged to discuss its proposed Operational Management Plan with council monitoring staff prior to finalising this plan.*

8 The operation and maintenance of the boatyard operations, the wharf facilities and marina facility shall be carried out in accordance with the most recent version of the certified Operational Management Plan. If there are any differences or apparent conflict between these documents and any conditions of these consents, the conditions of consent shall prevail.

9 The Consent Holder shall relodge the Operational Management Plan for certification in accordance with Condition 7 in consultation with the council's assigned monitoring officer at no greater than three yearly intervals. The reviewed Operational Management Plan shall not take effect until its certification by the council's Compliance Manager.

10 A copy of these consents shall be provided to any person who is to carry out the works associated with these consents. A copy of the consents shall be held on site, and available for inspection by the public, during demolition, construction, and/or maintenance activities and dredging.

11 In the event of archaeological sites or kōiwi being uncovered, activities in the vicinity of the discovery shall cease and the Consent Holder shall contact Heritage New Zealand Pouhere Taonga. Work shall not recommence in the area of the discovery until the relevant Heritage New Zealand Pouhere Taonga approval has been obtained.

Advice Note: *The Heritage New Zealand Pouhere Taonga Act 2014 makes it unlawful for any person to destroy, damage or modify the whole or any part of an archaeological site without the prior authority of Heritage New Zealand Pouhere Taonga.*

12 The Consent Holder, on becoming aware of any discharge associated with the Consent Holder's operations that is not authorised by these consents, shall:

(a) Immediately take such action, or execute such work as may be necessary, to stop and/or contain the discharge;

(b) Immediately notify the council by telephone of the discharge;

(c) Take all reasonable steps to remedy or mitigate any adverse effects on the environment resulting from the discharge; and

(d) Report to the council's Compliance Manager in writing within one week on the cause of the discharge and the steps taken or being taken to effectively control or prevent the discharge.

For telephone notification during the council's opening hours, the council's assigned monitoring officer for these consents shall be contacted. If that person cannot be spoken to directly, or it is outside of the council's opening hours, then the Environmental Emergency Hotline shall be contacted.

Advice Note: *The Environmental Emergency Hotline is a 24 hour, seven day a week, service that is free to call on 0800 504 639.*

13 These consents shall lapse five years from commencement unless before this date the consents have been given effect to in accordance with section 125(1A) of the Resource Management Act 1991. The various consents will be deemed to be given effect to as follows:

(a) Bundle A

(i) AUT.041365.01.01-AUT.041365.05.01, AUT.041365.09.01, AUT.041365.11.01 and AUT.041365.12.01– Demolition, construction, dredging, maintenance dredging and occupation consents.

Deemed to be given effect to when demolition and dredging commences.

(b) Bundle B

(i) AUT.041365.06.01 – AUT.041365.08.01 - Use of the Slipway, Wharf and Marina Facility

(ii) AUT.041365.13.01 – Discharge of Treated Stormwater to the Coastal Marine Area

(iii) AUT.041365.14.01 – Discharge to Land

(iv) AUT.039650.15.01 – Discharge Contaminants to Air From land

(v) AUT.039650.16.01 – Discharge Contaminants to Air in the Coastal Marine Area

Deemed to be given effect to when boat maintenance activities re-commence (either on land or in the CMA).

14 Prior to the expiry or cancellation of these consents, those structures, other materials and debris located in the coastal marine area associated with these consents shall be removed, and the coastal marine area shall be restored to the satisfaction of the council's assigned monitoring officer, unless an application has been properly made to the council for the renewal of these consents or the activity is permitted by a rule in the Regional Plan.

15 The council may, in accordance with section 128 of the Resource Management Act 1991, serve notice on the Consent Holder of its intention to review the conditions annually during the month of July for any one or more of the following purposes:

(a) To deal with any adverse effects on the environment that may arise from the exercise of the consent and which it is appropriate to deal with at a later stage; or

(b) To require the adoption of the best practicable option to remove or reduce any adverse effect on the environment; or

(c) To review discharge to air conditions relating to controls over timing of, and equipment used for, application of antifoulant and equipment to mitigate effects of air discharges.

The Consent Holder shall meet all reasonable costs of any such review.

Surrender of Consents

16 The Consent Holder shall in writing to the council and within one month of the completion of the wharf and marina facility construction works, surrender resource consents AUT.007914.01.03, AUT.007914.02.01, AUT.007914.07.01, AUT.007914.08.01, AUT.007914.09.01, and those parts of Deemed Coastal Permit AUT.005359.01.01 that relate to occupation of coastal marine area by, and use of, a jetty structure.

Advice Note: *That part of the deemed coastal permit AUT.005359.01.01 relating to occupation of the coastal marine area by a slipway does not need to be surrendered.*

AUT.041365.01–AUT.041365.09 – Conditions relating to Wharf and Marina Facility, Subsurface Erosion Barrier, Slipway, Dinghy Ramp, Stormwater Culverts, Workboat Mooring, and Dinghy Pull

17 These consents apply only to the structures and facilities identified on the **attached** Reyburn and Bryant Limited drawings referenced as Northland Regional Council Plan Numbers **4952/1, 4952/2,** and **4952/3** and the **attached** Total Marine Limited drawings referenced as Northland Regional Council Plan Numbers **4953/1, 4953/2, 4953/3, 4953/4, 4953/5,** and **4953/6.**

18 The structures and facilities shall be constructed and maintained in accordance with the **attached** Reyburn and Bryant Limited drawings referenced as Northland Regional Council Plan Numbers **4952/1, 4952/2,** and **4952/3** and the **attached** Total Marine Services Limited drawings referenced as Northland Regional Council Plan Numbers **4953/1, 4953/2, 4953/3, 4953/4, 4953/5,** and **4953/6.**

19 As part of the notification required by Condition 1 of this consent, a Demolition and Construction Management Plan (DCMP) shall be submitted to the council's Compliance Manager for certification. As a minimum, the DCMP shall include the following:

(a) The expected duration (timing and staging) of the demolition and construction/refurbishment works including disposal sites for unsuitable material.

(b) Details of sediment controls (e.g. silt curtains/screens) to be established during the demolition and construction works, including during dredging for the slipway refurbishment.

(c) The commencement and completion dates for the implementation of the sediment controls.

(d) Measures to ensure protection of the shellfish bed during the works.

(e) Monitoring procedures to ensure adverse effects on water quality beyond works area in the coastal marine area are minimised.

(f) Measures to prevent spillage of fuel, oil, and similar contaminants.

(g) Contingency containment and clean-up provisions in the event of accidental spillage of hazardous substances.

(h) Means of ensuring contractor compliance with the DCMP.

(i) The name and contact telephone number of the person responsible for monitoring and maintaining all sediment control measures.

The Consent Holder shall undertake the activities authorised by this consent in accordance with the certified DCMP. Certification and compliance with the DCMP does not override the requirement to comply with any/all other conditions of this consent.

Advice Note: *The council's Compliance Manager's certification of the DCMP is in the nature of certifying that adoption of the DCMP is likely to result in compliance with the conditions of this consent. The Consent Holder is encouraged to discuss its proposed DCMP with council monitoring staff prior to finalising this plan.*

20 The seaward end of the wharf and marina facility pontoon shall be marked with the number **41365** in black lettering on a white background clearly displayed and in such a manner as to be clearly visible from the sea.

21 On completion of the construction of the wharf and marina facility pontoon, subsurface barrier, culverts, and dinghy pull, the Consent Holder shall provide to the council's assigned monitoring officer a plan defining the location of the features within the coastal marine area, such plan to include suitable GPS co-ordinate data (using Transverse Mercator 2000) in order for the council to be able to locate the features.

22 All rock or other materials used in the construction of the subsurface erosion barrier shall be free from material that could contaminate the adjacent foreshore.

23 All vehicles or equipment entering the coastal marine area associated with the exercise of these consents shall be in good state of repair and free of any leaks e.g. oil, diesel etc.

24 An oil spill kit, appropriate to the plant and equipment being used, shall be provided and maintained on site during demolition, construction and/or maintenance works.

25 Works associated with demolition, construction and/or maintenance of the structures and facilities shall only be carried out between 7.00 a.m. and sunset or 6.00 p.m., whichever occurs earlier, and only on days other than Sundays and public holidays.

26 Any discharges to water arising from the exercise of these consents shall not result in any conspicuous oil or grease film, scums or foams, floatable or suspended materials, or a reduction in natural visual clarity of more than 20%, or emissions of objectionable odour in the coastal water, as measured at any point 10 metres from the facilities during demolition, construction, or maintenance of the facilities.

27 Immediately upon completion of the installation of the wharf and marina facility structures (and associated capital dredging) the Consent Holder shall notify the following organisations

in writing of the installation of the facilities. Evidence of this notification shall be provided to the council's assigned monitoring officer.

Hydrographic Surveyor
Land Information New Zealand
PO Box 5501
Wellington 6145

Far North District Council
Private Bag 752
Kaikohe 0440

The Maritime Safety Inspector Maritime New Zealand
PO Box 195
Ruakākā 0151

The Consent Holder shall include a scale plan of the completed works with the notification.

28 The Consent Holder shall have the structural integrity of the wharf and marina facilities, and slipway structures inspected and reported on by a Chartered Professional (Structural) Engineer. The first inspection shall be undertaken prior to July 2035 and the wharf and marina facility structures shall be re-inspected at ten yearly intervals prior to the month of July in 2045, with a final inspection undertaken prior to 31 January 2054, being six months before the expiry date of this consent. An inspection report from the Chartered Professional Engineer shall be provided to the council's assigned monitoring officer within two weeks of completion of the inspection. The inspection report shall identify any maintenance that is required, the timeframe within which this maintenance is required to be carried out, and shall confirm, or otherwise, the ongoing structural integrity and security of the structures.

29 The Consent Holder shall carry out all the maintenance required as a result of the inspections undertaken in accordance with Condition 28 within the timeframe(s) prescribed in the inspection report. The Consent Holder shall notify the council's assigned monitoring officer, in writing, as soon as the maintenance works have been completed on each occasion. This notice shall be accompanied by a statement from a Chartered Professional (Structural) Engineer confirming that any identified maintenance works have been undertaken to his/her satisfaction as prescribed in the inspection report.

30 In the event of failure or loss of structural integrity of any part of the wharf and marina facilities covered by this consent, the Consent Holder shall immediately:

(a) Retrieve all affected structure elements and associated debris that might escape from the marina and dispose of these on land where they cannot escape to the coastal marine area; and

(b) Advise the Regional Harbourmaster for Northland and the council's Compliance Manager of the event and the steps being taken to retrieve and dispose of the affected structures and debris.

Advice Note: *The purpose of this condition is to avoid navigation safety being compromised by floating debris and avoid contamination of the coastal marine area.*

AUT.041365.05– Occupation of Space in the CMA

31 The Consent Holder shall have exclusive occupancy of the area of seabed within the boundary of the area marked 'Proposed CMA Occupation Boundary' shown on the **attached**

Northland Regional Council Plan Number **4965**. The Consent Holder shall allow public access to and through the occupation area, and public access to, and use of the facilities subject to the terms below:

(a) Public access to the dinghy ramp to the south of the wharf, and beach landings on both sides of the wharf, are to be available at all times except during any operations of the slipway that will restrict access to the north beach landing next to the wharf;

(b) Public access past the security gate, and within the charter boat and marina berth areas, may be restricted by the Consent Holder at all times.

(c) The consent holder may prohibit swimming, fishing and collection of seafood from the wharf structures and prohibit the bringing of equipment by the public onto the structures for health and safety reasons (unless loading or unloading a vessel in accordance with Condition 32).

(d) The consent holder may restrict public access on to the wharf up to the security gate for health and safety and operational reasons when working berths are occupied by vessels and/or vessels are in the process of berthing at the wharf.

(e) Signage shall be erected on the wharf to advise the public of the terms of access to and use of the wharf and a contact number(s) for the consent holder(s) or their nominated representative.

Advice Note: The nature of these restrictions is in recognition that the wharf and the occupation area used for commercial chartering and boat maintenance purposes and that recreational activities within the occupation area are generally not compatible with those purposes.

32 Subject to arrangement with the Consent Holder in advance, the Consent Holder shall allow the public to berth vessels (i.e. vessels not associated with the Consent Holder's boat maintenance operations and marina, or Great Escape Yacht Charters) at the marina facility pontoon and/or any other available working berth area alongside the wharf for the purpose of loading/unloading passengers, crew, stores, and small equipment between the hours of 0700-1800, and 0700-2000 during New Zealand Daylight Savings time provided that:

(a) The Consent Holder and/or his representative is present or the Consent Holder and/or his representative has given permission for the vessel to berth without the Consent Holder and/or his representative being present; and

(b) The vessel is berthed for no more than 1 hour; and

(c) The vessel is not left unattended; and

(d) There is no discharge to the coastal marine area; and

(e) No swimming occurs from the vessel, wharf or marina pontoon; and

(f) No vessel maintenance occurs.

The Consent Holder shall not withhold permission for public vessels to berth at the marina facility pontoon and/or other available berth area alongside the wharf at any time in an emergency if there is available berth space at the facilities.

Advice Note: For the purposes of this condition an 'emergency' is an urgent, sudden, and serious event or an unforeseen change in circumstances that necessitates immediate action to remedy harm or avert imminent danger to life, health, or property.

33 DELETED.

34 The Consent Holder shall erect a sign on the wharf and marina facility pontoon detailing the terms of public berthage outlined in Condition 32. The sign shall also include a contact phone number(s) of the Consent Holder or their nominated representative to enable berthing arrangements to be made.

AUT.041365.06 –AUT.041365.08 – Use of the Slipway, Wharf and Marina Facility

35 Maintenance of vessels and structures shall not occur outside of the hours 0700-2200 seven days a week, and such maintenance works shall comply with the noise standards specified in the **attached Schedule 1**, except in emergencies which directly involve the safety of people or vessels.

36 There shall be no discharge of untreated sewage into the coastal marine area from vessels berthed at the marina. For compliance purposes, the need for water quality sampling for any *Escherichia coli* (*E coli*) associated with discharges of untreated sewage shall be determined in accordance with the **attached Schedule 2** by way of direct observation of discharges as well as by identification of the presence of human PCR markers within water samples from the marina where these are not present in background water quality.

37 The median concentrations of total copper, lead, zinc, chromium, nickel, and cadmium as measured from at least three samples in intertidal or subtidal sediment, taken at any point 10 metres from the southern edge of the slipway and/or within the area of the wharf facility working berths, shall not exceed the median concentrations measured in previous years from similar locations. Once sediment metal concentrations decrease below the coastal sediment quality standards being:

- 65 milligrams per kilogram of total copper,
- 50 milligrams per kilogram of total lead;
- 200 milligrams per kilogram of total zinc;
- 1.5 milligrams per kilogram of total cadmium;
- 80 milligrams per kilogram of total chromium; or
- 21 milligrams per kilogram of total nickel.

they shall not at any future time exceed these coastal sediment quality standards.

38 No vessel shall be used for overnight accommodation while berthed at the working berths or marina, unless either:

(a) The vessel is equipped with a sewage treatment system specified in Schedule 5 and 7, or is compliant with Schedule 6, of the Resource Management (Marine Pollution) Regulations 1998 and which is installed, maintained, and operated in accordance with the manufacturer's instructions; or

(b) The vessel is equipped with a sewage holding tank that has an effective outlet sealing device installed to prevent sewage discharges, this device remaining activated in the sealed state or position at all times while the vessel is secured to the structures; or

(c) The vessel is equipped with a portable toilet on board. For the purposes of this condition a portable toilet is defined as a sewage containment device constructed of impermeable materials which is fully self-contained and removable, and consists of two

independently sealed chambers comprising a water holding tank and a sewage holding tank separated by a slide valve; or

(d) The vessel (if equipped with a built-in through hull toilet facility and no sewage holding tank) has an effective outlet sealing device installed on the toilet facility, with the outlet sealing device from the toilet facility being maintained in a sealed state, and the toilet sealed, at all times while the vessel is secured to the structures.

39 No discharge of wastes (e.g. sewage, oil, contaminated bilge water) shall occur from any vessel occupying the working berths or marina berths, or from any other activity carried out at the facilities unless the discharge is authorised by a resource consent, or is permitted by a rule in a Regional Plan, or by provisions of the Resource Management (Marine Pollution) Regulations 1998.

40 The working berths shall not be used for the permanent mooring of any vessel. For the purposes of this condition "permanent mooring" means the use of the working berths for longer than 10 consecutive days or the use for other than repairs and maintenance or survey work which, because of their nature, requires a vessel to be located at the wharf for a longer period.

41 Monitoring and testing of water and sediment quality in the vicinity of the facilities shall be undertaken in general accordance with the **attached Schedule 2**. The testing programme may, upon consultation between the council's Compliance Manager and the Consent Holder, be amended, subject to the agreement of the council's Compliance Manager. Various elements of the approved monitoring and testing programme may be carried out by the Consent Holder with the agreement of the council's Compliance Manager.

AUT.041365.01–AUT.041365.03 and AUT.041365.09–AUT.041365.12 – Disturb the Foreshore during Demolition, Construction and Maintenance of a Wharf and Marina Facility and Associated Structures, and During Dredging

42 Prior to the commencement of demolition, construction, and dredging works and before the site meeting required by Condition 2, the footprint of the sub-surface erosion barrier and dredging area (including batters) within the inter-tidal area identified on the **attached** Total Marine Services Limited drawing referenced as Northland Regional Council Plan Number **4953/5** shall be determined and generally marked with white survey pegs driven into the foreshore. The pegs shall be removed upon completion of the dredging works and construction of the subsurface erosion barrier shall be completed in accordance with the drawings identified in Condition 18.

43 Foreshore disturbance from demolition, construction and dredging activities authorised by these consents shall avoid disturbance of the shellfish beds located on the intertidal beach outside of the footprint of the sub-surface erosion barrier and dredging area identified in Condition 42.

44 Prior to dredging and slipway reconstruction works, a Pipi Relocation Plan shall be prepared by a suitably qualified ecologist and submitted to council's Compliance Manager for certification. The Pipi Relocation Plan shall include, but not be limited to, details of the methodology to:

(a) Assess the potentially affected areas of sediment for the presence of pipi;

(b) Remove pipi from sediments to be dredged or excavated;

(c) Provide measures to enhance pipi survival and re-establishment;

(d) Limit and otherwise contain contaminated sediment losses within a secure area above Mean High Water Springs; and,

(e) Relocate pipi to an unaffected area of Walls Bay.

Advice Note: *The Compliance Manager's certification of the Pipi Relocation Plan is in the nature of certifying that adoption of the plan is likely to result in compliance with the conditions of this consent. The Consent Holder is encouraged to discuss its proposed plan with council monitoring staff prior to finalising this plan.*

45 The Consent Holder shall relocate all excavated pipis in accordance with the certified Pipi Relocation Plan required by Condition 44. On completion and prior to commencement of any dredging activity, the Consent Holder shall provide written certification from a suitably qualified ecologist to the council's Compliance Manager confirming that the works have been completed in accordance with the certified Pipi Relocation Plan.

AUT.041365.10–AUT.041365.12 – Earthworks and Capital and Maintenance Dredging (including removal of contaminated sediments)

46 A Dredging and Mooring Management Plan, certified by the Regional Harbourmaster for Northland, shall be submitted to the council's assigned monitoring officer prior to the commencement of dredging. The Dredging and Mooring Management Plan shall be developed in consultation with, and be certified by, the Regional Harbourmaster for Northland and, as a minimum, shall contain the following information:

(a) Details regarding timing and progression of dredging;

(b) The proposed location of spoil disposal; and

(c) A navigational safety plan to address safe passage across the Veronica Channel.

The Dredging and Mooring Management Plan shall contain written direction of the Harbourmaster to authorise the movement of any mooring and attached vessel within the designated Mooring Zone that is affected by the proposed capital dredging. The removal and relocation of any mooring shall be undertaken by a mooring contractor approved by the Harbourmaster.

Advice Note: *The Regional Harbourmasters certification of the Dredging and Mooring Management Plan (DMMP) is in the nature of certifying that adoption of the DMMP is likely to result in compliance with the conditions of this consent. The Consent Holder is encouraged to discuss its proposed DMMP with council maritime staff prior to finalising this plan.*

47 A Contaminated Sediment Remediation Plan shall be submitted to the council's assigned monitoring officer for certification prior to the commencement of dredging. The Contaminated Sediment Remediation Plan shall, as a minimum, contain the following information:

(a) The extent of area from which contaminated sediment will be remediated;

(b) The proposed remediation methodology;

(c) Identification of the personnel responsible for the proposed works; and

(d) Any validation and/or ongoing monitoring requirements.

48 The remediation of contaminated sediment shall be carried out in accordance with the certified Contaminated Sediment Remediation Plan required by Condition 47. Upon completion of the proposed works, the Consent Holder shall provide to the council's assigned monitoring officer a Site Validation Report confirming the extent of remediation works and results of validation testing.

49 Where in-situ soil treatment by immobilisation is adopted as part of the certified Contaminated Sediment Remediation Plan required by Condition 47, the Consent Holder shall ensure that any temporary stockpiling and treatment of materials on the site is located and treated in a manner such that no material or untreated stormwater generated from any stockpile enters the coastal marine area.

50 Dredging operations shall be undertaken in accordance with the certified Dredging and Moorings Management Plan certified under Condition 46.

51 Dredging shall be confined to the defined dredging area identified on the **attached** Total Marine Services Limited drawing referenced as Northland Regional Council Plan Number **4953/3**.

52 The depth of capital dredging and any subsequent maintenance dredging shall not exceed 1.5 metres below chart datum, with the exception of the marina berths that shall not exceed 2.0 metres below chart datum, and batters shall not exceed 1:6 and 1:4, as detailed on the **attached** Total Marine Services Limited drawing referenced as Northland Regional Council Plan Number **4953/3**.

53 On completion of the capital dredging the Consent Holder shall provide to the council's assigned monitoring officer a plan defining the location and final depths of the dredging area and batters within the coastal marine area, including suitable GPS co-ordinate data (using Transverse Mercator 2000) in order for the council to be able to locate the extent of the dredging.

54 All dredged spoil shall be fully contained whilst being transported to the disposal site and shall be disposed of on land at a location authorised to take such material.

55 The council's assigned monitoring officer shall be notified in writing as soon as capital dredging is completed, and on completion of each maintenance dredging operation.

56 No discharge of wastes (e.g. sewage, oil, bilge water) shall occur from any vessel associated with the exercise of this consent unless the discharge is authorised by a resource consent, or is permitted by a rule in a Regional Plan, or by provisions of the Resource Management (Marine Pollution) Regulations 1998.

57 Dredging works shall only be carried out between 1 April and 30 September.

58 Work associated with the dredging shall only be carried out between sunrise and sunset, as defined in the New Zealand Nautical Almanac, and appropriate navigation signals shall be shown at all times during dredging activities.

59 The exercise of these consents shall not cause any of the following effects on the quality of the receiving waters, as measured at or beyond a 100 metre radius from the dredger:

(a) The visual clarity, as measured using a black disk or Secchi disk, shall not be reduced by more than 50% of the background visual clarity at the time of measurement;

(b) The turbidity of the water (Nephelometric Turbidity Units (NTU)) shall not be increased by more than 50% of the background turbidity at the time of measurement;

(c) The total suspended solids concentration shall not exceed 40 grams per cubic metre above the background measurement;

(d) The production of any conspicuous oil or grease film, scums or foams, or floatable or suspended materials, or emissions of objectionable odour; or

(e) The destruction of natural aquatic life by reason of a concentration of toxic substances.

60 Monitoring of dredging shall be undertaken in accordance with the **attached Schedule 3**.

AUT.041365.13, AUT.041365.14, and AUT.041365.15 – Discharge Stormwater and Discharges to Land and Air

61 The scraping, water blasting or wet sanding of vessel hulls shall only occur on the slipway area's on Part Lot 1 and Lot 2 Block XXXII Town of Opua and Section 3 Blk XXXII Town of Opua (NA21C/265); and within the area of Section 2 SO 68634 (NA121C/187) 10 meters or more landward of the coastal marine area. All vessels shall be pulled up the slipway as far as is practicable before any water blasting, wet abrasive blasting, wet sanding of the vessel superstructure (other than hulls) commences, and before any painting, antifouling, and/or maintenance operations commence. For the purposes of this condition 'as far as is practicable' means as far as possible whilst still enabling the Consent Holder to work and access those parts of the vessel closest to the boat shed after any preparatory works to hulls on Area 'A' as shown on the **attached** Reyburn and Bryant drawing referenced as Northland Regional Council Plan Number **4952/3**.

Advice Note: *The purpose of this condition is to maximise, as far as practicable, the separation distance between any vessel and users of the reserve land, including users of the coastal walking track.*

62 Prior to any discharge activities commencing, a wash water collection and proprietary stormwater treatment system shall be constructed and commissioned. The wash water collection and proprietary stormwater treatment system shall be constructed in accordance with the design identified in the Vision Consulting Limited Report dated 7 June 2019 and shall be configured in accordance with the **attached** Vision Consulting Limited drawing referenced as Northland Regional Council Plan Number **4955**. The location of the wash water collection and proprietary stormwater treatment system may either be as shown on the **attached** Vision Consulting Limited drawing referenced as Northland Regional Council Plan Number **4955** or entirely within 'Area A' shown on the **attached** Reyburn and Bryant drawing referenced as Northland Regional Council Plan Number **4952/3**.

63 The discharge of treated stormwater shall be at an all-tide location as shown on the **attached** Total Marine Services drawing referenced as Northland Regional Council Plan Number **4953/2** and shall be either:

(a) Via connection and extension to the existing culvert on the northern side of the slipway (subject to obtaining approval to change AUT.031242.01.01); or

(b) If a change to AUT.031242.01.01 is not granted, via a separate pipe extending from the proprietary stormwater system to an all-tide location.

64 The discharge of non-working area stormwater shall be in accordance with either:

(a) The **attached** Thompson Survey drawing referenced as Northland Regional Council Plan Number **4950B**, noting that this option is dependent on obtaining a further change to AUT.031242.01 and/or other consents; or

(b) If a change to AUT.031242.01 and/or other necessary consents are not granted, the **attached** Thompson Survey drawing referenced as Northland Regional Council Plan Number **4950A** and in accordance with Condition 63 (a) or (b).

AUT.041365.13 – Discharge Treated Stormwater to the Coastal Marine Area

65 All stormwater from areas of land used for the washing, cleaning, or maintenance of vessels shall be directed to a proprietary stormwater treatment system for treatment prior to discharge to the coastal marine area. The proprietary stormwater treatment system shall utilise a demand driven diversion valve that shall automatically direct all wash down water to the public sanitary sewer (as trade waste). In addition, the 'first flush' of 10 millimetres of rain falling on the areas of land used for the washing, cleaning, or maintenance of vessels shall also be directed to the public sanitary sewer and shall not be discharged to the coastal marine area. The consent holder shall ensure that the slipway is cleaned after any water blasting of vessels.

66 Concentration of any contaminants in the stormwater discharge, as measured at the outlet of the stormwater treatment system, shall not exceed:

(a) 0.014 milligrams per litre of total copper;

(b) 0.048 milligrams per litre of total lead;

(c) 0.165 milligrams per litre of total zinc;

(d) 100 milligrams per litre of total suspended solids.

Advice Note: *The limits on heavy metal concentrations in the stormwater discharge have been calculated by applying a dilution factor of 11 to the coastal water quality standards required by Policy H.3.3 of the Proposed Regional Plan for Northland (PRP).*

67 To assess compliance with Condition 66, the Consent Holder shall monitor the stormwater discharge in accordance with **attached Schedule** 2. To enable the collection of samples from the proprietary stormwater treatment system, easy and safe access shall be provided, at all times, to a point immediately after the outlet from the treatment system and prior to the connection to the Far North District Council stormwater discharge pipe.

68 The discharge of stormwater from the proprietary stormwater treatment system shall not result in any of the following effects, as measured at or beyond a 20 metre radius from the stormwater outlet:

(a) Cause the pH of the receiving water to fall outside of the range 6.5 to 9.

(b) Cause the production of any conspicuous oil or grease films, scums or foams, or floatable or suspended materials in the receiving water.

(c) Cause any emission of objectionable odour in the receiving water.

(d) Cause any significant adverse effects on aquatic life or public health.

69 The proprietary stormwater treatment system, and all associated equipment, shall be adequately maintained so that it operates effectively at all times. The Consent Holder shall keep a written record of all maintenance carried out on the proprietary stormwater treatment system and shall supply a copy of this record to the council's assigned monitoring officer immediately on written request.

AUT.041365.14 – Discharge to Land

70 The discharge of contaminants to land authorised by this consent shall only occur on Part Lot 1 and Lot 2 Block XXXII Town of Ōpua and Section 3 Blk XXXII Town of Ōpua (NA21C/265); and within 'Area A' within Section 2 SO 68634 (NA121C/187) as identified on the Reyburn & Bryant drawings referenced as Northland Regional Council Plan Numbers **4952/1**, **4952/2** and **4952/3**.

71 High and low pressure water blasting, and wet abrasive blasting of vessel hulls shall be confined to concrete and bunded areas on the areas identified as 'Area A' and within Pt Lot 1 Blk XXXII Town of Ōpua, Lot 2 Blk XXXII Town of Ōpua, and Section 3 Blk XXXII Town of Ōpua on the **attached** Reyburn and Bryant drawing referenced as Northland Regional Council Plan Number **4952/3**. Wash water from water blasting and wet abrasive blasting shall be discharged to trade waste via the wash water collection system to be installed and operated under Conditions 62 and 65.

72 When the water blasting, wet abrasive blasting, or wet sanding operations are being undertaken, the wash water collection system shall automatically direct wash water to a pump chamber and then to attenuation tanks prior to discharge to trade waste/public sewer (through the use of a fox valve or similar). The catch pit shall be sized so that it does not overtop during water blasting.

73 All visible waste, including discoloured water, shall be hosed from the washdown pad immediately after completion of any water blasting operation. The wash water collection system shall be sufficiently flushed following pressure blasting activities to ensure that contaminated washdown water is not disposed of to coastal waters via the stormwater network.

74 All work areas shall be bunded to prevent debris from vessel maintenance entering water bodies. The bunding shall be sufficiently impermeable to prevent leakage of contaminants.

75 Washdown areas and work areas used for dry or wet sanding, spray painting and other boat maintenance activities shall be cleared of accumulations of residues, paint flakes and any other debris at the end of each work session, or by the end of each working day, whichever occurs first.

76 All waste material, including antifouling residue, paint flakes and marine growth, removed from vessel hulls or generated from the cleaning or maintenance of vessels, shall be stored on Doug's Opua Boat Yard in a sealed unit prior to being disposed of at an off-site facility that is authorised to accept such wastes. The Consent Holder shall provide evidence by way of tracking verification (e.g. receipts) of the disposal location, upon written request from the council's assigned monitoring officer.

AUT.041365.15 – Discharge Contaminants to Air on Land

77 The discharges of contaminants to air authorised by this consent shall only be undertaken landward of mean high water springs within the area labelled 'Boatyard Activities Air Discharge Boundary' on the **attached** Reyburn and Bryant drawing referenced as Northland Regional Council Plan Number **4966A**.

78 This consent does not authorise dry abrasive blasting activities.

79 The preparation or smoothing of vessel hulls or superstructure, including removal or smoothing of antifouling, using a sanding or grinding device shall not be undertaken unless an appropriate dust collection system, that is operating effectively, is attached to the device.

80 A permanent weather station capable of measuring wind speed and direction at a height of 6 metres above ground level shall be installed and maintained on the boatyard site.

81 Sanding and grinding operations shall only be undertaken when the wind speed, as measured by the weather station required by Condition 80, is between 0.5 and 5 metres per second, measured as an hourly average.

82 Water blasting and/or the application of antifouling and/or application of all paints shall only be undertaken when the windspeed, as measured by the weather station required by Condition 80, is greater than 0.5 metres per second and when apparent wind on the slipway is from the northeast to the south-southeast between 45 and 170 degrees.

83 All spray application of antifouling paint shall comply with Environmental Protection Authority rules, including setting up of a controlled work area around the vessel being coated with antifouling paint.

84 Temporary signage shall be placed and maintained on the edge of the reserve and at the bottom of the slipway during painting activities notifying the public that painting of vessels is taking place. The signage shall be designed to comply with the requirements of the Environmental Protection Authority rules.

85 A temporary screen shall be erected between the blasting area and the walking track at all times during high pressure water blasting to mitigate the effects of spray drift.

86 All equipment used to avoid or mitigate any adverse effects on the environment from emissions to air shall be maintained in good working order.

87 The Consent Holder's operations shall not give rise to any dust, overspray, or odour beyond the 'Boatyard Activities Air Discharge Boundary' identified on the **attached** Reyburn and Bryant drawing referenced as Northland Regional Council Plan Number **4966A** which is noxious, dangerous, offensive or objectionable in the opinion of a council monitoring officer.

88 Daily records of all occasions when water blasting, wet abrasive blasting, and spray coating activities are undertaken shall be kept by the Consent Holder. These records shall be made available to the council's assigned monitoring officer on written request and include:

(a) Details of vessels being water blasted/wet abrasive blasted;

(b) Item(s) being spray coated;

(c) Location at which spray coating occurred;

(d) Date and time (hours) of operation each day, including a record of the wind speed and direction at the commencement and conclusion of works on each day;

(e) Number of spray coating units being used; and

(f) Types and volumes of coating materials applied.

89 The maximum daily paint application rate for all paints, excluding those which contain diisocyanate compounds, shall not exceed 30 litres per day.

90 The use of diisocyanate based paints shall be not exceed 15 litres per year.

91 The Consent Holder shall advise the council's assigned monitoring officer, in writing, when diisocyanate painting is to occur at least 24 hours beforehand on each occasion.

AUT.041365.16 – Discharge Contaminants to Air in the Coastal Marine Area

92 The discharges of contaminants to air authorised by this consent shall only be undertaken within the coastal marine area labelled 'Coastal Marine Area Air Discharge Boundary' identified on the **attached** Reyburn and Bryant drawing referenced as Northland Regional Council Plan Number **4966A**.

93 The preparation or smoothing of vessel hulls and the application of paint, including antifouling, shall not be undertaken in the coastal marine area except for minor repairs not exceeding 200 millimetres in diameter which shall only be undertaken within the area marked 'Proposed CMA Occupation Boundary' shown on the **attached** Reyburn and Bryant drawing referenced as Northland Regional Council Plan Number **4965**.

94 The preparation or smoothing of vessel or facility superstructure or hulls (in the case of minor repairs) using a sanding or grinding device shall not be undertaken unless a dust collection apparatus that is operating effectively is attached to the device.

95 The exercise of this consent shall not give rise to the discharge of contaminants which, in the opinion of a council monitoring officer, are noxious, dangerous, offensive, or objectionable beyond the 'Coastal Marine Area Air Discharge Boundary' identified on the **attached** Reyburn and Bryant drawing referenced as Northland Regional Council Plan Number **4966A**.

96 The exercise of this consent shall not give rise to the discharge of contaminants into water or onto the seabed.

EXPIRY DATE: All Consents 31 JULY 2055

SCHEDULE 1

ENVIRONMENTAL STANDARDS – NOISE

CONSTRUCTION NOISE

Based on Table 2, NZS 6803: 1999 "Acoustics – Construction Noise", Standards New Zealand:

Time of Week	Typical Duration	Typical Duration (dBA)		Short-term Duration		Long-term Duration	
		L_{eq}	L_{max}	L_{eq}	L_{max}	L_{eq}	L_{max}
Weekdays	0630 – 0730	60	75	65	75	55	75
	0730 – 1800	75	90	80	95	70	85
	1800 – 2000	70	85	75	90	65	80
	2000 – 0630	45	75	45	75	45	75
Saturdays	0630 – 0730	45	75	45	75	45	75
	0730 – 1800	75	90	80	95	70	85
	1800 – 2000	45	75	45	75	45	75
	2000 – 0630	45	75	45	75	45	75
Sundays and public holidays	0630 – 0730	45	75	45	75	45	75
	0730 – 1800	55	85	55	85	55	85
	1800 – 2000	45	75	45	75	45	75
	2000 – 0630	45	75	45	75	45	75

Construction Sound levels shall be measured in accordance with New Zealand Standard NZS 6803:1999 "Acoustics – Construction Noise". Measurement shall be at any point on the line of Mean High Water Springs (MHWS) on the adjacent foreshore any point 100 metres from the jetty and marina facility.

Note:

- "Short-term" means construction work any one location for up to 14 calendar days.
- "Typical duration" means construction work at any one location for more than 14 calendar days, but less than 20 weeks.
- "Long-term" means construction work at any one location with a duration exceeding 20 weeks.

OPERATION NOISE

For operational noise generated by activities in the boatyard and the wharf and marina seaward of the line of MHWS, the following noise limits shall be complied with when measured at or within the notional boundary of any dwelling not under the control of the Consent Holder:

Time Period (Mon – Sun)	*Noise Limit*
0700 hrs to 2200 hrs	*55dBA LAeq(15min)*
2200 hrs to 0700 hrs	*45dBA LAeq(15min)*
	75dBA LAmax

Sound levels shall be measured in accordance with New Zealand Standard NZS 6801:2008 Measurement of Environmental Sound, and assessed in accordance with NZS 6802:2008 Acoustics – Environmental Noise.

Notes: 1. Noise levels L_{10} , L_{max} and L_{eq} are measured in dBA. Definitions are as follows:

(a) dBA means the sound level obtained when using a sound level meter having its frequency response A-weighted. (See IEC 651).

(b) L_{max} means the maximum noise level (dBA) measured.

(c) L_{10} means the noise level (dBA) equalled or exceeded for 10% of the measurement time.

(d) L_{eq} means the time average level.

SCHEDULE 2

TESTING PROGRAMME FOR WATER AND SEDIMENT QUALITY

DURING OPERATION OF WHARF AND MARINA FACILITY

Water Quality Sampling

Testing shall be carried out for *Escherichia coli* (*E. coli*). Faecal source tracking, using PCR analysis for human markers, may be triggered should the *E.coli* levels be found to be above background levels or 50% above relevant Microbiological Water Quality Guidelines, whichever is lower.

Samples shall be taken within the footprint of the wharf and marina facility, the precise location(s) of which will be determined following consultation by council monitoring staff with the Consent Holder. If the sampling locations cannot be agreed then such sites shall be set by council. A minimum of one sample shall be submitted for *E.coli* testing from within the area of the wharf and marina berths, and an upstream and a downstream control site. PCR analysis may not necessarily be undertaken on all elevated results within the marina from a single sampling event but will include, as a minimum, the upstream control and at least one marina site.

A minimum of four one off sampling events shall be undertaken within the marina annually. Sampling shall be undertaken over a period of a slack tide. Should sampling identify the need for further investigations, these shall be targeted to specific areas and undertaken in liaison with the Consent Holder.

Marine Sediment Quality Sampling

Testing for metals in the seabed from within the vicinity of the wharf and marina facility shall be carried out annually and at two control sites located at least 50 metres from the facilities (the locations of these sites are to be agreed by the council and the Consent Holder). If the sampling locations cannot be agreed then such sites shall be set by council. Samples shall be collected from the top two centimetres of the sediment. Sediments shall be analysed for the following:

- Total copper
- Total zinc
- Total lead
- Total chromium
- Total nickel
- Total cadmium

The sampling shall establish median concentrations of the above metals from composite samples of intertidal or subtidal sediment measured at any point 10 metres from the facilities and from at least three representative locations. Results of this monitoring shall be reported to the council's assigned monitoring officer in writing within one week of the result being obtained from the laboratory.

TREATED STORMWATER DISCHARGE

The stormwater discharge shall be sampled at least once annually at point of discharge, being after the proprietary system before any mixing, during a moderate rainfall event following an extended dry period. Samples shall be analysed for total suspended solids (TSS), total copper, total lead, and total zinc and the result compared against the discharge standards specified in Condition 66. Results of this monitoring shall be reported to the council's assigned monitoring officer in writing within one week of the result being obtained from the laboratory. A sample may also be collected from a pre-treatment location and a post treatment location.

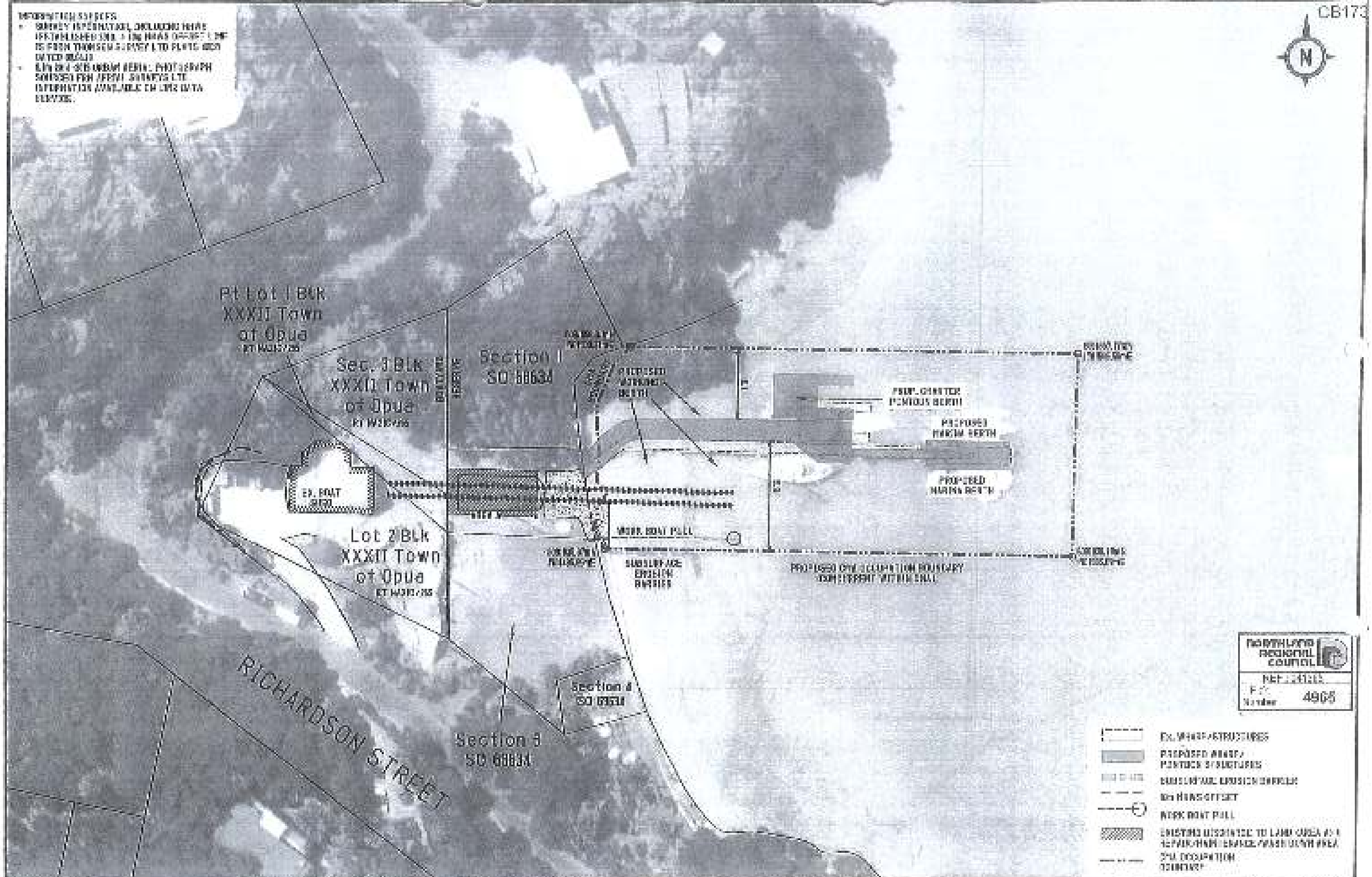
SCHEDULE 3

DREDGE MONITORING PROGRAMME

During dredging operations, daily inspections of the waters adjacent to the dredge excavation areas shall be undertaken by the dredging contractor, or the Consent Holder's nominated agent, in order to identify any visually observable change in clarity (turbidity) of the receiving waters at or beyond 100 metres from the point of the dredging operations. Results of the daily inspections shall be recorded in a written log book by the Consent Holder or the Consent Holder's nominated agent, and submitted weekly to the council's assigned monitoring officer by email.

Should the visual inspection indicate any change in clarity at or beyond 100 metres from the point of the dredging operations, then the Consent Holder shall implement the following monitoring programme to assess compliance with the relevant conditions of this consent.

Clarity measurements, using Secchi disc methods, shall be made at the boundary of the down-current edge of the mixing zone within the area of changed clarity. The same measurements shall be taken at least 50 metres up-current from the dredging activity as control measurements for comparison with the down-current effect measurements. Three measurements shall be made at each upstream and downstream location and the median shall be used to assess compliance with the water quality standards stated and identified in the consent. Water samples shall also be collected at the edge of the mixing zone and at the control sites for analysis of total suspended solids (TSS) and turbidity (NTU) for analysis for compliance against the standards in Condition 59. Results of this monitoring shall be reported to the council's assigned monitoring officer in writing within one week of the occurrence of monitoring.



GENERAL NOTES
- NO PART OF THIS PLAN MAY BE REPRODUCED, COPIED, OR AMENDED IN ANY FORM WITHOUT THE PRIOR PERMISSION OF REYBURN & BRYANT
- DO NOT SCALE OFF DRAWINGS.
- INFORMATION HAS BEEN COMPILED FROM PDFs BY OTHERS, AND IS THEREFORE INDICATIVE ONLY. SEE SOURCE NOTES THIS SHEET.

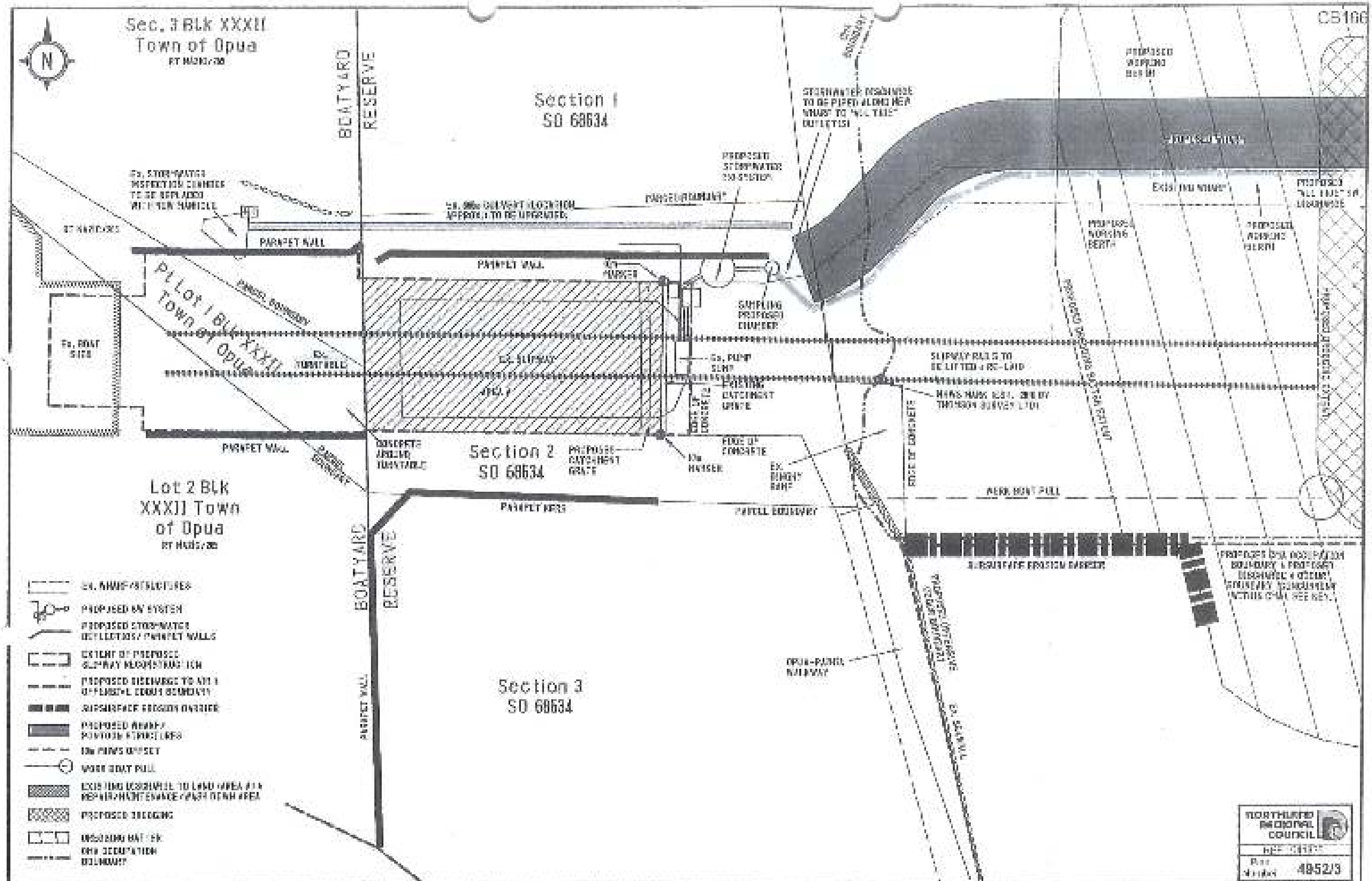
METRES 1:500

PROPOSED EXCLUSIVE OCCUPATION AREA

DOUG'S OPUA BOAT YARD
PROPOSED SLIPWAY 2018

reyburn & bryant

DATE	27.08.20
SCALE	1:500 @A3
SHEET	1/2
REV	B



GENERAL NOTES

LEVELS IN TERMS OF LINZ ONE TREE POINT DATUM

METRES - 1:150

NORTHLAND REGIONAL COUNCIL

BOAT YARD SITE PLAN

SLIPWAY DETAIL

DOUG'S OPUA BOAT YARD
PROPOSED SLIPWAY 2018

reyburn & bryant

DATE	23.08.20
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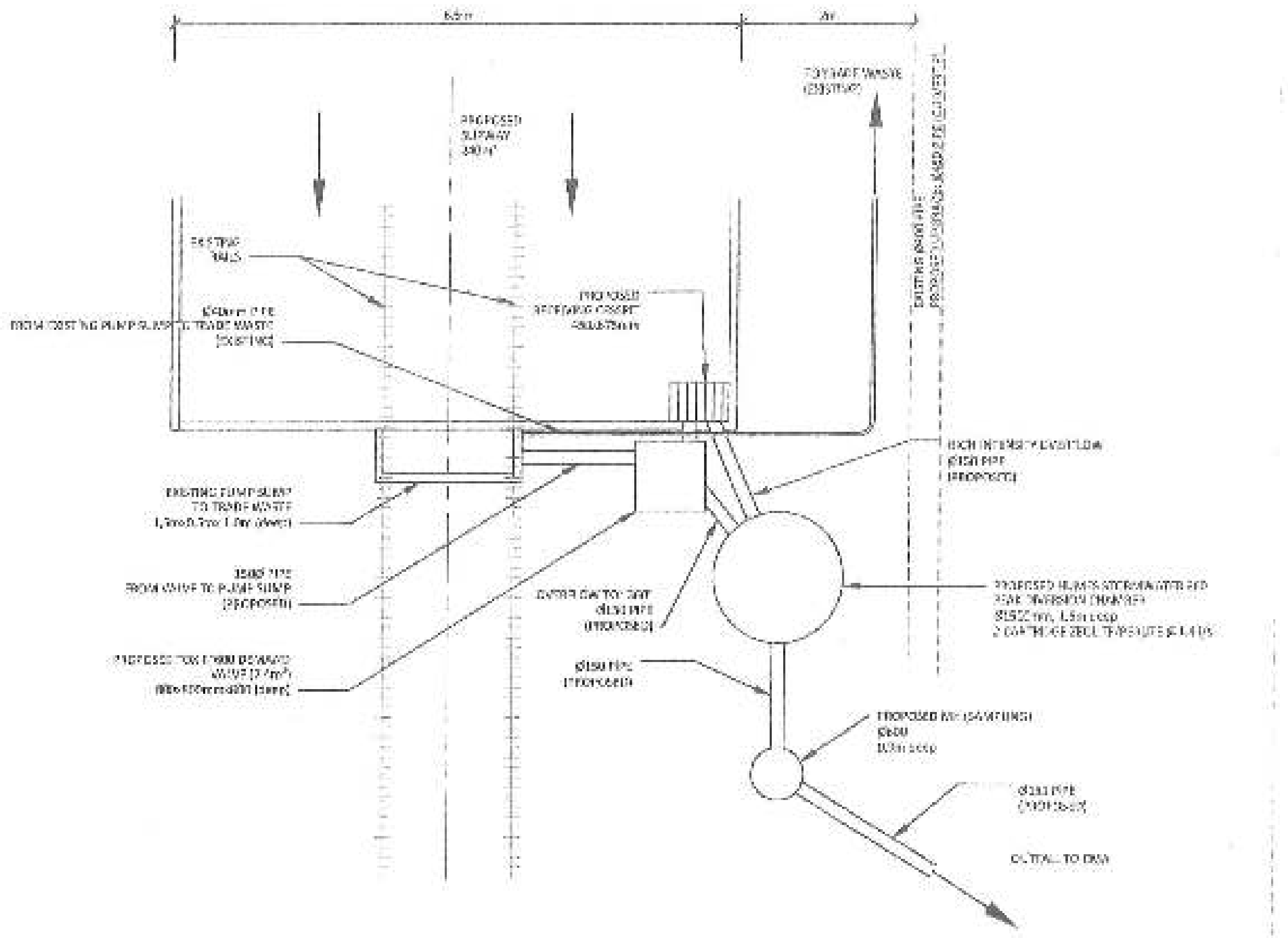
JOB	15241 SITE
SHEET	3/3
REV	E

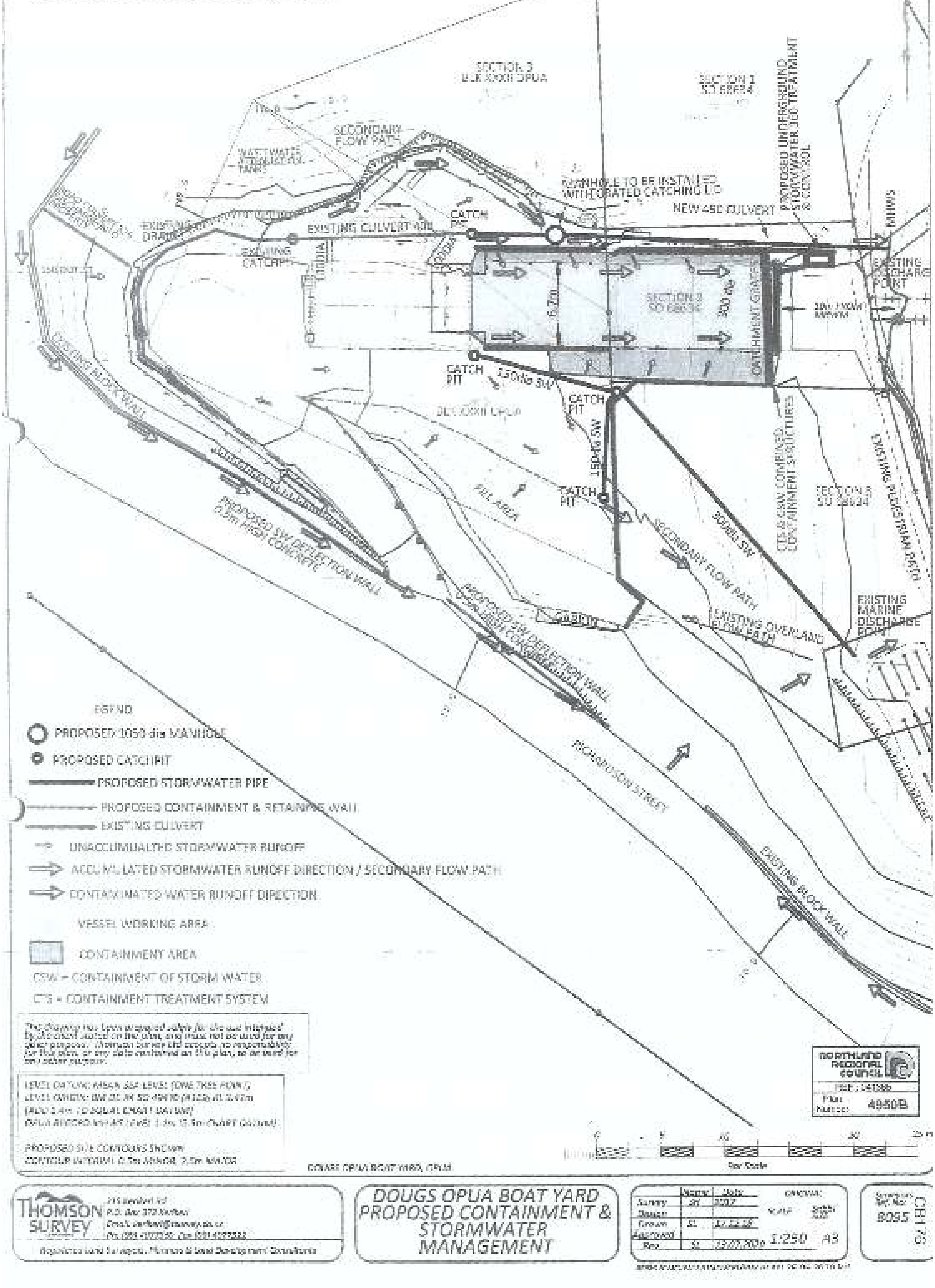
Plan Number 4952/3

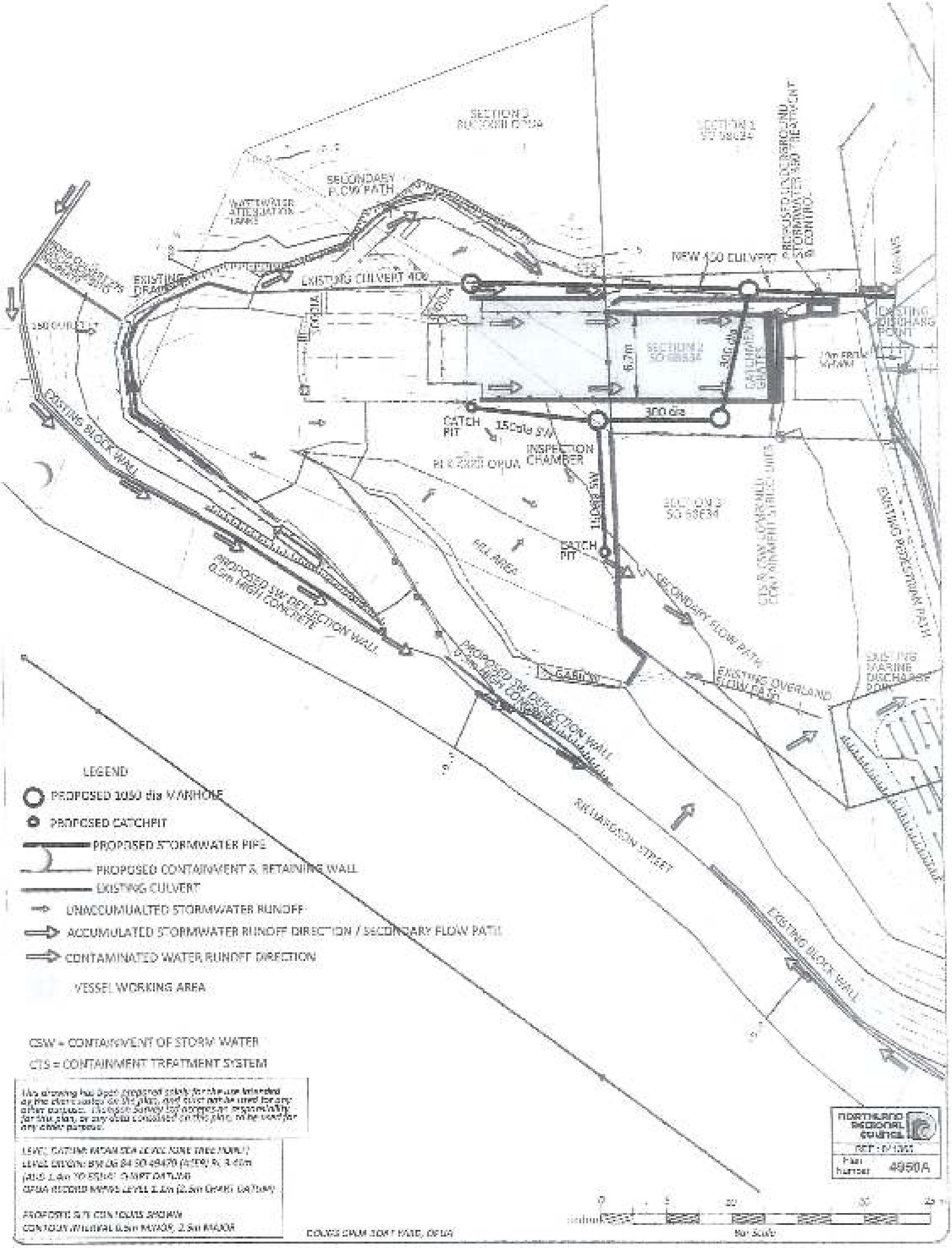


VISION CONSULTING Engineers & Planners	CLIENT: DOUG SCHMUCK	PROJECT: DOUGS OPUA BOAT YARD PROPOSED SLIPWAY 2019	DRAWING TITLE: SW AND WW DISPOSAL CONCEPT PLAN

SURVEY		
DESIGN	WP	
DRAWN	P	
CHECKED	WP	
APPROVED	WP	

ATTACHMENT 1 - PROPOSED DRAWING 4950B





THOMSON SURVEY

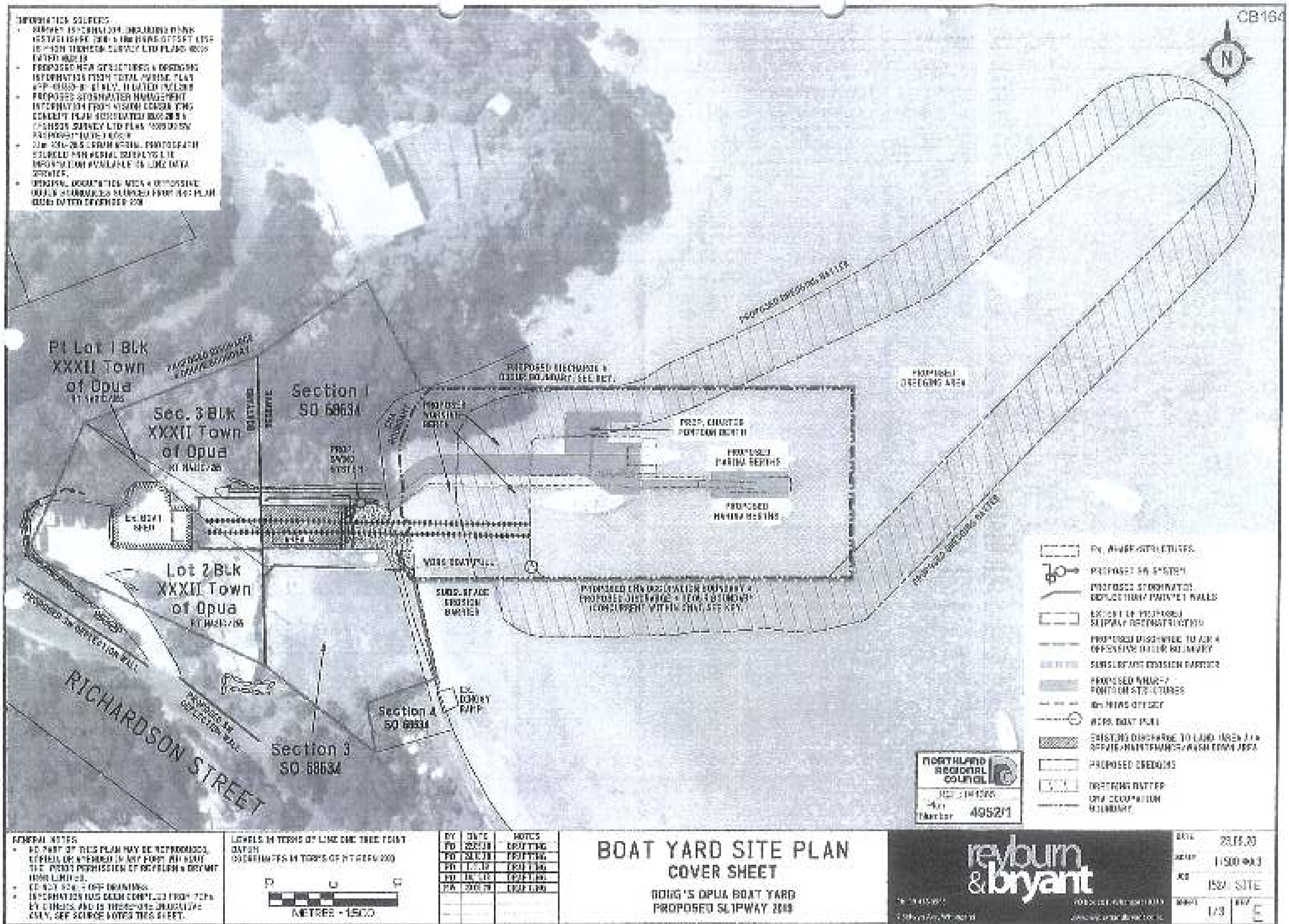
Registered Land Surveyors, Planners & Land Development Consultants

DOUGS OPUA BOAT YARD PROPOSED CONTAINMENT & STORMWATER MANAGEMENT

	Name	Date
Survey		2017
Design		
Drawn		
Approved		
Rev.		

ORIGINAL SCALE 1:250 A3

CB173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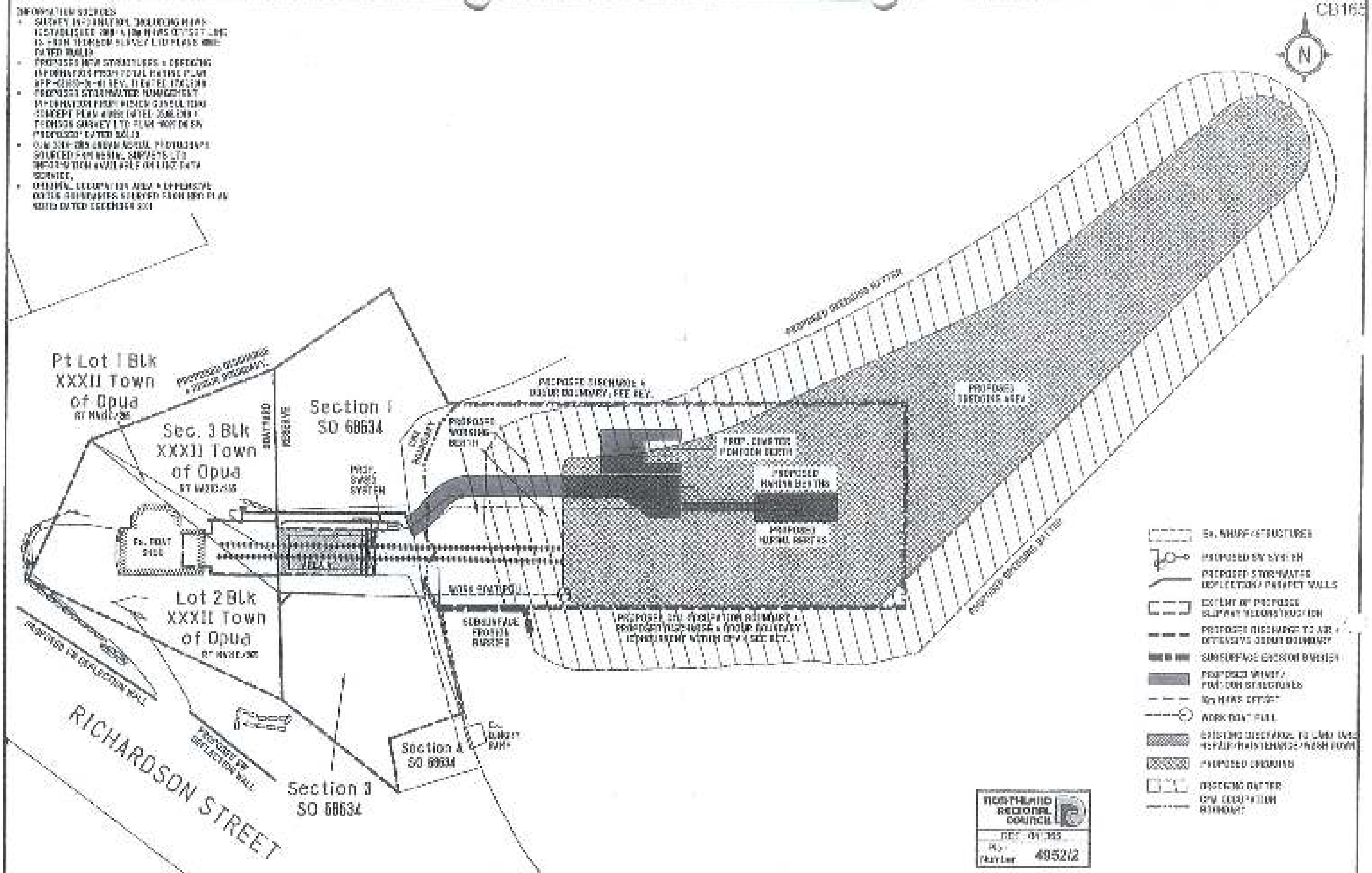
Sec. 3 Blk XXXII Town of Opua
Lot 2 Blk XXXII Town of Opua
Section 1 SO 68634
Section 3 SO 68634
Section 4 SO 68634
RICHARDSON STREET
Ex. BOAT SHED
PROPOSED DISCHARGE & ODOUR BOUNDARY, SEE KEY.
PROP. CHARTER PONTOON BERTH
PROPOSED MARINA BERTHS
PROPOSED MARINA BERTHS
PROPOSED WORKING BERTH
WORK BOAT PULL
SUBSURFACE EROSION BARRIER
PROPOSED DREDGING BATTER
PROPOSED DREDGING AREA
Ex. DINGHY RAMP
Ex. WHARF STRUCTURES
PROPOSED SW SYSTEM
PROPOSED STORMWATER DEFLECTION/ PARAPET WALLS
EXTENT OF PROPOSED SLIPWAY RECONSTRUCTION
PROPOSED DISCHARGE TO AIR & OFFENSIVE ODOUR BOUNDARY
SUBSURFACE EROSION BARRIER
PROPOSED WHARF / PONTOON STRUCTURES
WORK BOAT PULL
PROPOSED DREDGING
DREDGING BATTER
CMA OCCUPATION BOUNDARY
NORTHLAND REGIONAL COUNCIL
Plan Number 4952/1
METRES - 1:500
BOAT YARD SITE PLAN
COVER SHEET
DOUG'S OPUA BOAT YARD
PROPOSED SLIPWAY 2019
reyburn & bryant
SHEET 1/3
REV E



BY	DATE	ALTER
		DRAFTING
		DRAFTING
		DRAFTING
		DRAFTING

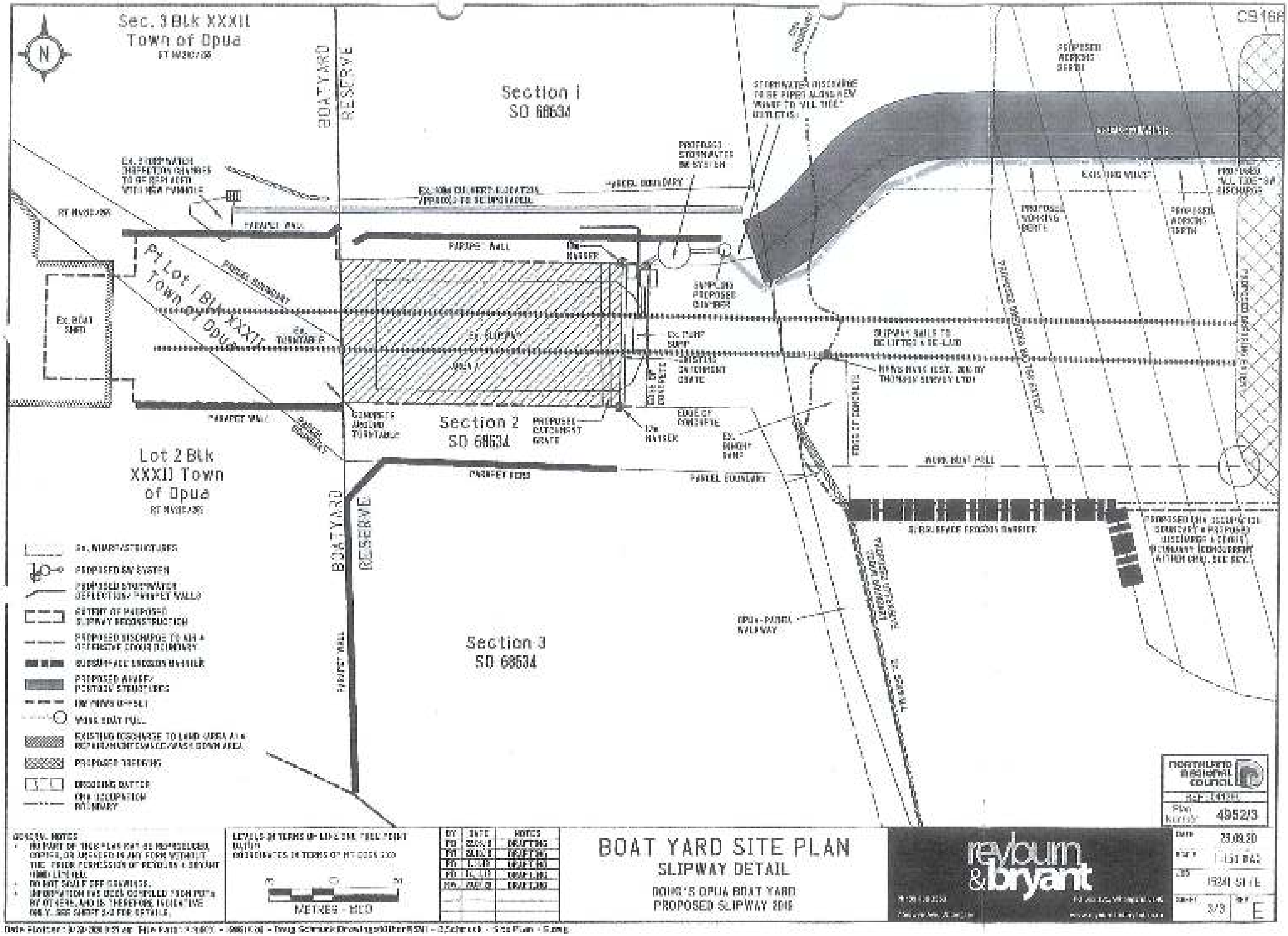
METRES 1:500

BOAT YARD SITE PLAN
COVER SHEET

DOUG'S OPUA BOAT YARD
PROPOSED SLIPWAY 2019

reyburn & bryant

SCALE 1:500 @A3
JOB 1521 SITE
SHEET 2/3 REV E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Town of Opua
Section 1
SO 68634
Section 2
SO 68634
Section 3
SO 68634
Lot 2 Blk
XXXII Town
of Opua
Pt Lot 1 Blk XXXII
Town of Opua
BOATYARD
RESERVE
PARAPET WALL
Ex. BOAT SHED
WORK BOAT PULL
PARCEL BOUNDARY
SLIPWAY RAILS TO BE LIFTED & RE-LAID
PROPOSED WORKING BERTH
EXISTING WHARF
PROPOSED STORMWATER SW SYSTEM
SUBSURFACE EROSION BARRIER
Ex. WHARF/STRUCTURES
PROPOSED SW SYSTEM
PROPOSED STORMWATER DEFLECTION/ PARAPET WALLS
EXTENT OF PROPOSED SLIPWAY RECONSTRUCTION
SUBSURFACE EROSION BARRIER
PROPOSED WHARF/ PONTOON STRUCTURES
WORK BOAT PULL
PROPOSED DREDGING
DREDGING BATTER
CMA OCCUPATION BOUNDARY
METRES - 1:500
BOAT YARD SITE PLAN
SLIPWAY DETAIL
DOUG'S OPUA BOAT YARD
PROPOSED SLIPWAY 2019
reyburn & bryant
NORTHLAND REGIONAL COUNCIL
4952/3
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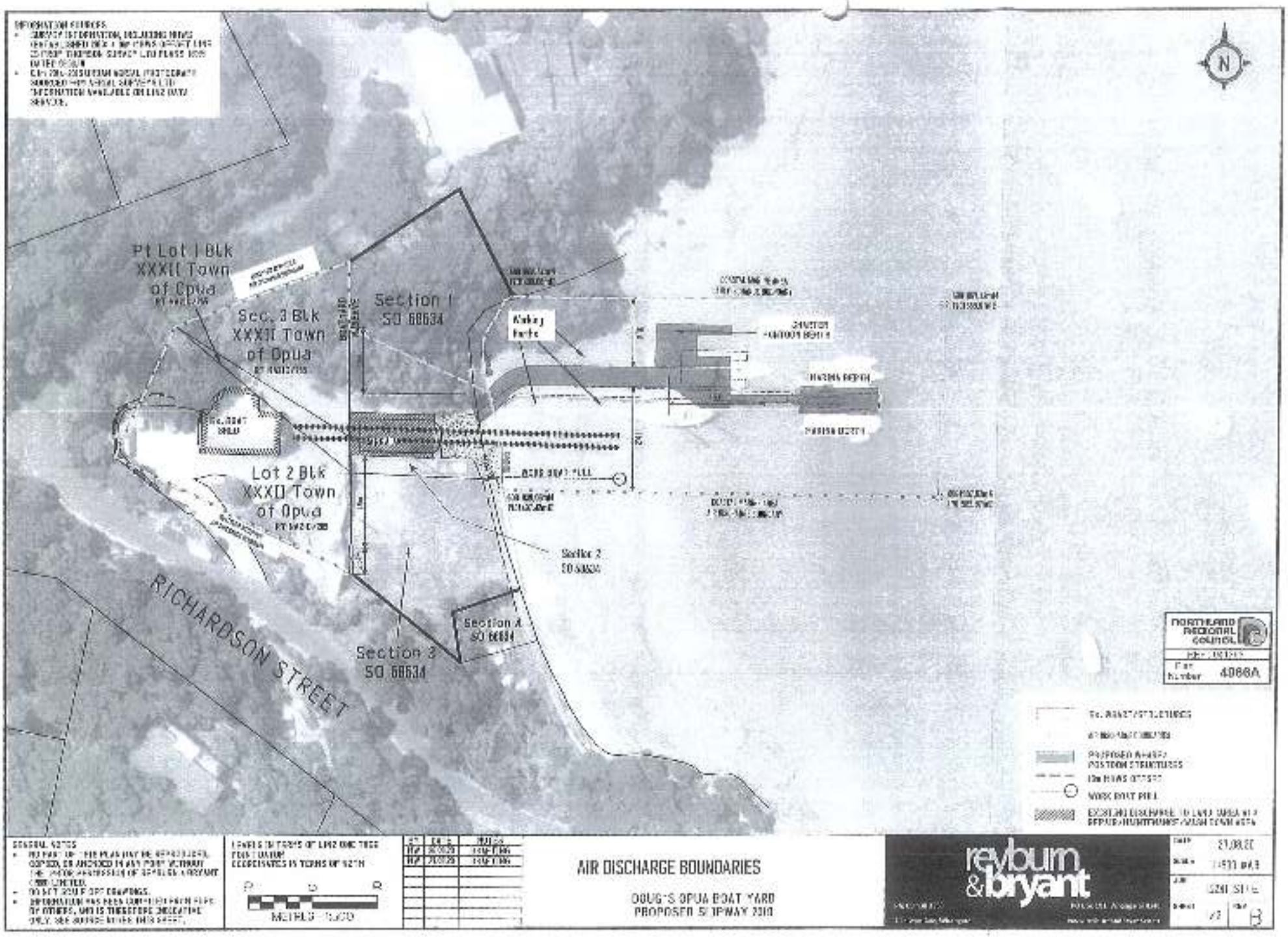
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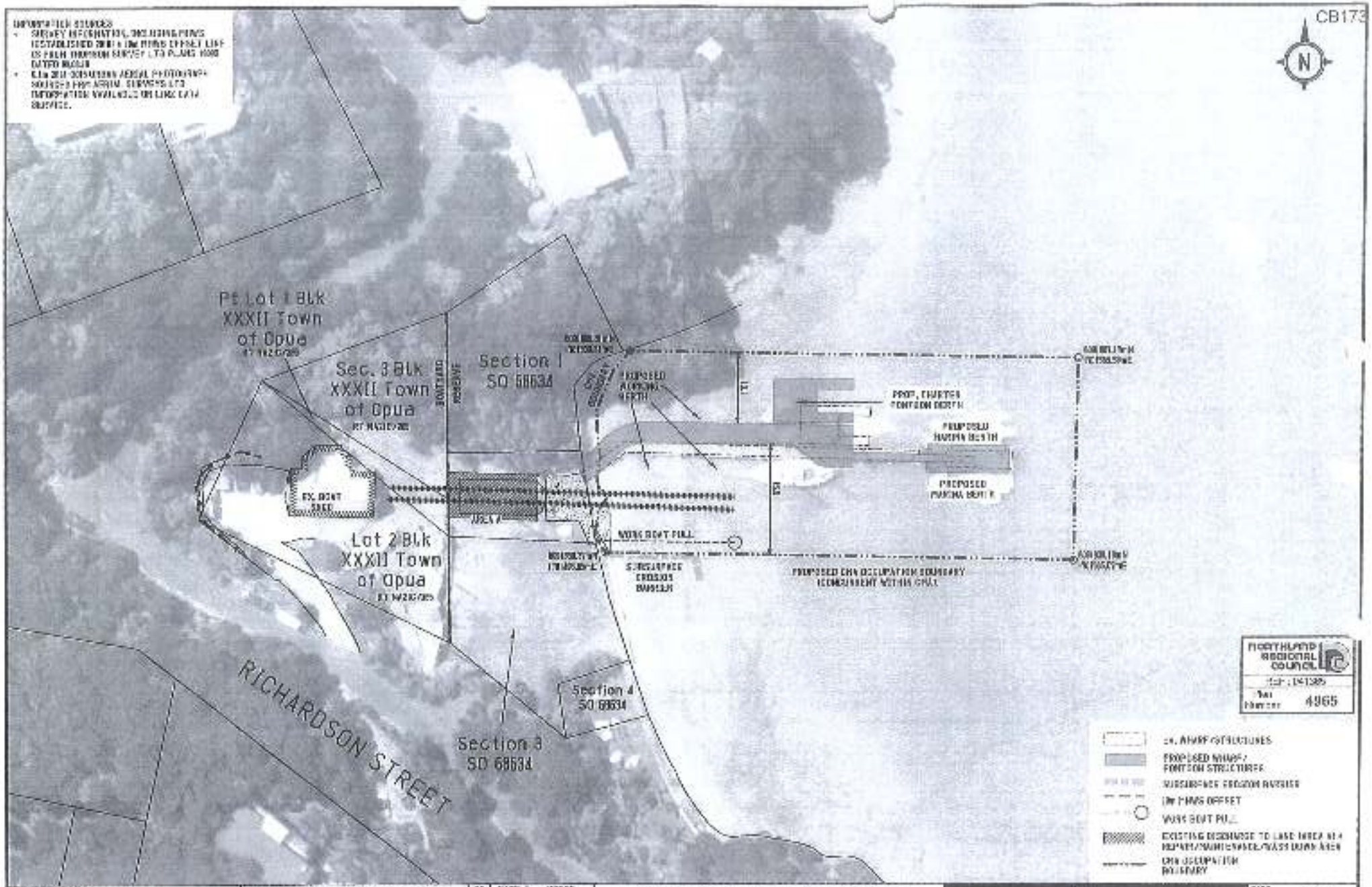
Sec. 3 Blk XXXII Town of Opua
Section 1 SO 68634
Lot 2 Blk XXXII Town of Opua
Section 2 SO 68634
Section 3 SO 68634
Section 4 SO 68634
RICHARDSON STREET
N
NORTHLAND REGIONAL COUNCIL
File number 4066A
AIR DISCHARGE BOUNDARIES
DOUG'S OPUA BOAT YARD
PROPOSED SLIPWAY 2010
reyburn & bryant



IMPORTANT NOTES
- SURVEY INFORMATION, INCLUDING PINS ESTABLISHED 2018 & LW MHWS OFFSET LINE BY FARR THOMSON SURVEY LTD PLANS 4965 DATED 8/2018
- 0.5m 2018 ORTHOPHOTO AERIAL PHOTOGRAPH SOURCED FROM ARRIVA SURVEYS LTD INFORMATION AVAILABLE ON LINZ DATA SERVICE.

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LEVELS IN TERMS OF LINZ ONE TREE POINT DATUM
COORDINATES IN TERMS OF NZTM

METRES 1:500

ID	DATE	NOTES
RA	25.10.18	DRAFTING
RA	31.10.18	DRAFTING

PROPOSED EXCLUSIVE OCCUPATION AREA

DOUG'S OPUA BOAT YARD
PROPOSED SLIPWAY 2019

reyburn & bryant

DATE	25.10.18
SCALE	1:500 @ A3
JOB	0521 SITE
SHEET	1/2
REV	B

Date Plotted: 5/10/2019 Share File Farm Portion - 0521(SI) - Doug Schenck\Drawings\Sites\0521 - 3.Schedule - Proposed Exclusive Occupation Area - B.dwg

Doug's Opua Boat Yard
1 Richardson Street, Opua, Bay of Islands
Ph (09) 402 7055, A/h (09) 407 4577
totarahill@xtra.co.nz

10 September 2025

Alicia-Kae Taihia
FNDC PDP Team
alicia-kate.taihia@fndc.govt.nz

REF: HEARING 15C – TIMETABLE RESPONSE; S21

In response to the 42A report by the Senior Policy Planner and Technical Director for the PDP and limited accommodation for the hearing impaired, at the hearing facilities; I will not be attending the 15C hearing.

Nor will I be attending because of the misrepresentations to the Panel in the 42A report of my initial submissions and those of the subsequent submissions I made at hearing 8 on Open Space matters directly/indirectly affected by the Treaty of Waitangi Act 1975.

Nor because the Panel has not made it clear to the PDP Planning Team of their spoken commitment to resolve Natural Open Space issues on the land and in the CMA regarding my legal occupations that directly affect substantial PDP zoning errors.

Nor because the PDP Team has disregarded/misrepresented not only the written submissions by my expert witness, but his phone conference evidence with them as to my concerns with the scope of the PDP that are in effect, ultra vires to the RMA.

Therefore, because these matters I have raised appear now to be beyond the jurisdiction of the PDP, I am hereby submitting the entire scope of my evidence regarding concerns I have that are likely not only to affect my boatyard, its exclusive occupations both on land and in the CMA, but the entire District as well.

Douglas Schmuck

321
"E"

Supreme Court of New Zealand
Te Kōti Mana Nui

NOTICE OF RESULT OF APPEAL AGAINST DECISION IN CIVIL PROCEEDINGS

SC 66/2018
CA119/2017
CIV-2015-488-19

BETWEEN	Douglas Craig Schmuck **Appellant**
AND	Opua Coastal Preservation Incorporated Far North District Council **Respondent(s)**

I, Dale Robinson, Deputy Registrar of the Supreme Court of New Zealand, do hereby certify that at a sitting of the Supreme Court, at Wellington on the 29th day of October 2019, there was delivered the judgment of the Court whereby -

IT WAS ADJUDGED that

A The appeal is allowed.

B The decision of the second respondent as delegate of the Minister of Conservation to consent to the challenged easements referred to at [32] of the Reasons of the Court is reinstated.

C Costs are reserved.

D Leave is reserved to the parties to apply for consequential orders if required.

GIVEN under my hand and seal of the said Supreme Court, at Wellington, this 29th day of October 2019.

Dale Robinson
Deputy Registrar

TO: Appellant
Respondent(s)
Court of Appeal Registrar
High Court Registrar at Whangarei

THE SEAL OF THE SUPREME COURT NEW ZEALAND

85 Lambton Quay, P O Box 61, Wellington, New Zealand, DX SX 11224
Telephone 64 4 918 8222 Email: supremecourt@justice.govt.nz

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 66/2018
[2019] NZSC 118

BETWEEN	DOUGLAS CRAIG SCHMUCK Appellant
AND	OPUA COASTAL PRESERVATION INCORPORATED First Respondent
	FAR NORTH DISTRICT COUNCIL Second Respondent

Hearing:	9 and 10 July 2019
Court:	Glazebrook, O'Regan, Ellen France, Williams and Arnold JJ
Counsel:	A R Galbraith QC, J A Browne and C H Prendergast for Appellant J D Every-Palmer QC and D F McLachlan for First Respondent J E Hodder QC, J G A Day and S W H Fletcher for Second Respondent
Judgment:	29 October 2019

JUDGMENT OF THE COURT

A **The appeal is allowed.**

B **The decision of the second respondent as delegate of the Minister of Conservation to consent to the challenged easements referred to at [32] of the Reasons of the Court is reinstated.**

C **Costs are reserved.**

D **Leave is reserved to the parties to apply for consequential orders if required.**

REASONS
(Given by O'Regan J)

Table of Contents

Dispute over use of reserve

[1] This appeal is a continuation of years of controversy about the use by the appellant, Mr Schmuck, of land within an esplanade reserve in Walls Bay, Opua in the Bay of Islands, for his boat repair business operated under the name Doug's Opua Boatyard (the Boatyard).

[2] The appeal is against a decision of the Court of Appeal,[1] which allowed an appeal by Opua Coastal Preservation Incorporated (the Society) against a decision of the High Court.[2] The Court of Appeal quashed a decision of the second respondent, the Far North District Council (the District Council), acting as the delegate of the Minister of Conservation (the Minister), to consent to the grant by the District Council of certain easements over the reserve to Mr Schmuck.

[3] The appeal raises issues about the extent of the power of the administering body of a reserve to grant easements over the reserve under s 48 of the Reserves Act 1977 and the nature of the role of the Minister (or the Minister's delegate) in consenting to the grant of such easements under the same section. It also raises issues about the nature of activities that can be the subject of an easement.[3] In order to provide the necessary context for the discussion of these issues, we first set out the factual background.

Facts

The Boatyard

[4] The Boatyard was established in 1966 and the workshop on the Boatyard land was built in 1972. The land between the Boatyard and the sea was an unformed road. The then owner had planning consent for a slipway to cross the unformed road from

---

1 *Opua Coastal Preservation Inc v Far North District Council* [2018] NZCA 262, [2018] 3 NZLR 538 (Winkelmann, Brown and Gilbert JJ) [CA judgment]. Leave to appeal to this Court was granted, the approved ground being whether the Court of Appeal was correct to allow the appeal: *Schmuck v Opua Coastal Preservation Inc* [2019] NZSC 7.

2 *Opua Coastal Preservation Inc v Far North District Council* [2017] NZHC 154 (Fogarty J) [HC judgment].

3 See below at [49]–[54] for a more detailed outline of the issues arising in the appeal.

the sea to the Boatyard, but this was for access only – it did not allow work on boats to be done on the unformed road.

[5] Mr Schmuck purchased the Boatyard in 1994.

[6] There was no direct evidence about the volume of work undertaken at the Boatyard. The management plan issued by the District Council and the Northland Regional Council (the Regional Council) for the Boatyard in 2014 refers to "the limited number of vessels hauled at this site", which indicates the volume is low.

The Society

[7] The Society's statement of claim states that it is a society incorporated under the Incorporated Societies Act 1908 for the purpose of preserving and protecting the Opua coastal area. It was formed in December 2014. The Chairman of the Society, Mr Henry Nissen, deposed that the Society was formed after many individuals expressed interest in being parties to judicial review proceedings that were being contemplated by him and others in respect of the District Council's decisions relating to the Boatyard. He said the Society has a great deal of support in Opua and the wider Bay of Islands community.

The esplanade reserve is created

[8] In 1998, the District Council stopped the unformed road. The consequence of this was that the unformed road land became an esplanade reserve as defined in s 2(1) of the Resource Management Act 1991 (the RMA) for the purposes specified in s 229 of the RMA.[4] We will refer to it as "the reserve". The road was stopped with the intention of granting easements to Mr Schmuck to regularise certain activities and installations on the area that became the reserve.

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4 Local Government Act 1974, s 345(3).

[9] Section 229 of the RMA provides:

> **229 Purposes of esplanade reserves and esplanade strips**
>
> An esplanade reserve or an esplanade strip has 1 or more of the following purposes:
>
> (a) to contribute to the protection of conservation values by, in particular,—
>
> (i) maintaining or enhancing the natural functioning of the adjacent sea, river, or lake; or
>
> (ii) maintaining or enhancing water quality; or
>
> (iii) maintaining or enhancing aquatic habitats; or
>
> (iv) protecting the natural values associated with the esplanade reserve or esplanade strip; or
>
> (v) mitigating natural hazards; or
>
> (b) to enable public access to or along any sea, river, or lake; or
>
> (c) to enable public recreational use of the esplanade reserve or esplanade strip and adjacent sea, river, or lake, where the use is compatible with conservation values.

The Boatyard and the reserve

[10] The Boatyard is located to the west of the land comprising the reserve. There is a slipway from the sea that runs over the beach and the reserve to a turntable that is located mostly on Boatyard land but partially on reserve land. The turntable allowed for boats to be turned onto a number of slipways in the Boatyard, including one running north/south close to the border between the Boatyard land and the reserve (which meant a person working on a boat on this slipway needed to be on reserve land when accessing one side of the boat). This was known as the southern slipway tramrail.

[11] When boats are dragged up the slipway, they are washed while still on the slipway, that is, on reserve land. They are then moved to the Boatyard land for further

work.[5] But if the boat is too big to fit on the Boatyard land, part of the boat will remain on the reserve side of the turntable while work is carried out on it.[6]

[12] A survey plan showing the slipways and identifying the relevant easement areas is attached as Annexure 1.

1999: Easement decision

[13] In 1999, the District Council decided to grant various easements that would have regularised the activities carried out by Mr Schmuck on the reserve. The decision to grant the easements was made under s 48 of the Reserves Act, which we will discuss in detail later. That section requires the consent of the Minister (or the Minister's delegate) to any such grant. In addition, the Boatyard activity itself required resource consents.

2000: Minister's (partial) consent

[14] In 2000, the Northland Conservator (the Conservator), an employee of the Department of Conservation (DoC) who, at that time, had delegated authority from the Minister to give or withhold consent under s 48 of the Reserves Act, consented to some of the easements granted by the District Council. Consent was granted for the easements allowing boats to pass over the reserve on the slipway to the Boatyard. Consent was refused for easements that would have authorised the repair and maintenance of boats on reserve land. The Conservator considered the latter were not capable of being granted under s 48 of the Reserves Act and were contrary to the purposes of esplanade reserves under s 229 of the RMA. Mr Schmuck did not accept this outcome and the easements were never formalised.

2002: Resource consents

[15] Mr Schmuck sought resource consents to allow him to undertake some activities associated with the Boatyard business on reserve land. In 2002, the

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5 The Court of Appeal said if the only service provided in respect of a boat is cleaning (a boat valet service), the boat would be returned to the water without ever entering the Boatyard: CA judgment, above n 1, at [7]. This is disputed. We revert to this below at [61]–[66].

6 The Court of Appeal said sometimes the whole boat remains on reserve land while it is being worked on: CA judgment, above n 1, at [7]. This is also disputed. See below at [77]–[94].

Environment Court made an order by consent under which the Regional Council and the District Council granted resource consents for certain activities on reserve land. These included the maintenance, repair and washing down of boats on the slipway on reserve land and allowed certain structures to be placed on reserve land. But this did not obviate the need for easements over the reserve to permit these activities to be carried out.

[16] The Director-General of Conservation was a party to the Environment Court proceeding in which the consent order was made.

2004: Easement decision

[17] In 2004, Mr Schmuck made a new application for easements. The District Council agreed to grant some easements but not easements for washing-down, repairing and maintaining boats on the reserve land. Mr Schmuck refused the partial grant. He threatened judicial review on the basis the District Council's decision was both unreasonable and predetermined.

2006: Commissioner's recommendation

[18] In early 2005, Mr Schmuck made a further application for easements. The District Council appointed an Auckland barrister, Mr Alan Dormer, as an independent commissioner (the Commissioner) to hear the application and make a recommendation to the District Council. The Commissioner considered that the District Council had the power to grant the easements sought under s 48(1)(f) of the Reserves Act and recommended that the District Council grant them.

2006: Easement decision

[19] The District Council accepted the Commissioner's recommendation and in 2006 it exercised its power under s 48 of the Reserves Act to grant the easements sought, subject to the Minister's consent as required under s 48. We will call this "the 2006 easement decision". We will revert to this aspect of the case later.

2007: Minister's consent withheld

[20] The Minister's consent to the easements granted by the District Council was not forthcoming, however. In 2007, the Conservator sent Mr Schmuck a draft report from a DoC official that recommended that the Conservator should consent to some of the easements (relating to access and use of the slipway) but refuse consent for others (relating to carrying out work on reserve land and discharging contaminants) on the basis that they were not capable of being authorised under s 48.

[21] Mr Schmuck made submissions to the Conservator and raised the possibility of seeking a declaratory judgment as to whether s 48(1)(f) allowed for the grant of easements of the kind that the Conservator considered to be incapable of authorisation. No declaration was sought and Mr Schmuck embarked on an effort to have provisions inserted into the Reserves and Other Lands Disposal Bill permitting the District Council to grant him the easements sought.[7] The consent process was placed on hold in the meantime. But the proposed legislative amendment foundered and eventually the consent process was reactivated.

2013: Minister's (partial) consent

[22] In 2013, the District Council asked DoC to determine whether to consent to easements granted by the 2006 easement decision. The Conservator was provided with a report by a DoC official, Mr Ashbridge, recommending that the Conservator consent to some of the easements, including for the movement of boats along the slipway, and decline consent to those easements related to the washing-down, repairing and maintaining of boats, and the discharge of contaminants on the basis that they were not capable of being granted under s 48. On 27 August 2013, the Conservator, as the Minister's delegate, adopted that recommendation and issued a decision consenting to the grant by the District Council of some easements, but not those just described. In effect, the Conservator's position remained as it had been in 2007.

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7 See Reserves and Other Lands Disposal Bill 2008 (237-2), cls 34A–34C; and Reserves and Other Lands Disposal Bill 2008 (237-3).

2013: Delegation of Minister's consent power

[23] Later in 2013, the Minister issued an Instrument of Delegation for Territorial Authorities exercising his power under s 10 of the Reserves Act to delegate to territorial authorities a number of the Minister's powers, functions and duties under the Reserves Act (these were set out in the Instrument in some detail). The delegation applied where the relevant territorial authority was the administering body of a reserve. In the present case, this meant that the Minister's power to consent to any easement granted by the District Council under s 48 could be exercised by the District Council itself.[8]

2014: Environment Court decision

[24] In 2014, the Environment Court made declarations that the land use resource consents obtained by Mr Schmuck in 2002 for the activities contemplated by the easements sought remained valid.[9]

2014: Permission decision

[25] In late 2014, the District Council resolved "as landowner and administering body" to grant "permission" to Mr Schmuck to undertake activities on the reserve land authorised by the resource consents. In effect, this purported to authorise the activities for which Mr Schmuck had sought (and the District Council had agreed to grant) easements, including those for which the Minister's consent had been refused. We will call this "the 2014 permission decision".

2015: Heath J's judgment

[26] Mr Schmuck applied for judicial review of the decision of the Conservator, as the Minister's then delegate, to decline the easements relating to carrying on work on the reserve land. The Minister, DoC and the District Council were parties to this proceeding. The Society was not. There was a preliminary question hearing before

---

8 The High Court and Court of Appeal were critical of this delegation: HC judgment, above n 2, at [77]–[79]; and CA judgment, above n 1, at [40]. However, its validity is not challenged in this appeal.

9 *Schmuck v Far North District Council* [2014] NZEnvC 101.

Heath J on the interpretation of s 48(1)(f). He made two important determinations in relation to the issues arising in this appeal.[10]

[27] First, he rejected the proposition that the power to grant easements in s 48(1)(f) was limited to easements required to convey substances over reserve land.[11] He found that, contrary to the position of the Conservator,[12] the easements for washing down, repairing and maintaining boats and the discharge of contaminants were capable of being granted under s 48 and there was jurisdiction for the Minister to consent to the grant of such easements.[13]

[28] Second, in the course of determining the above issue, he addressed the question of whether the grant of the easements give Mr Schmuck illegitimate occupation rights of reserve land. He found that the easements would not give rise to a degree of occupation that would remove the ability to grant the easements.[14]

[29] Heath J quashed the decision of the Conservator to decline consent for some of the easements and remitted the consent decision in respect of those that had been declined to the Minister, or the Minster's delegate, for reconsideration. There was no appeal against Heath J's judgment.

2015: Consent decision

[30] After Heath J's judgment was delivered, there was correspondence between the District Council and DoC about who would make the decision as to whether the Minister's consent should be given to the easements granted under the 2006 easement decision, with each initially requesting the other to make the decision. The effect of the Minister's 2013 delegation was that the decision could be made by either body.[15] DoC advised the District Council by letter that the District Council should make the decision. It said the decision must be considered on its merits with an open mind. It

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10 *Schmuck v Director-General, Department of Conservation* [2015] NZHC 422 [Heath J's judgment].
11 At [22].
12 See above at [20] and [22].
13 At [30].
14 At [28].
15 Section 10(6) of the Reserves Act provides that the delegation of a decision-making power by the Minister does not prevent the Minister from exercising the power.

also noted there is a Treaty of Waitangi claim over the area and advised the District Council that, in exercising the Minister's consent power as delegate of the Minister, it was required to give effect to Treaty principles, pursuant to s 4 of the Conservation Act 1987.

[31] The District Council eventually accepted that it should act on the Minister's delegation and determine whether the Minister's consent should be given to the easements for which consent had been declined by the Conservator in 2013. The District Council received a lengthy report from its in-house counsel, Mr Swanepoel, to inform its consideration of the issues arising in relation to the proposed consent decision. The District Council accepted his recommendation that consent be granted. In 2015, in its capacity as delegate of the Minister, it gave consent to all of the easements granted by the 2006 easement decision. We will call this "the 2015 consent decision".

Easements granted and registered

[32] After the consents were granted, the easements were executed and registered. In each case the dominant tenement was the Boatyard land and the servient tenement was the reserve land. The plan attached to this judgment as Annexure 1 identifies the areas of the reserve referred to in the easement document as areas T, U, V, W, X, Y and Z. The terms of the easements are set out below. The easements that are subject to challenge in this appeal are easements A4, A5, A6 and C. We will call these "the challenged easements". They are highlighted in bold below. The terms of the executed and registered easements are:

> A. An easement over [the land comprised of the areas marked X, Y and Z on the plan (the XYZ area)] to permit the following:
>
> 1. Construction and maintenance of a commercial marine slipway including a turntable and all of its integral parts, fixtures, supporting members, attachments, utilities and non-permeable surfaces.
>
> 2. The movement of boats along the slipway between the dominant tenement and the water.
>
> 3. The construction and maintenance of a concrete wash-down area with associated discharge containment systems to be located above a line 10 m above MHWS.

4. **The washing down of boats prior to the boats being moved to the dominant tenement for repairs or maintenance or being returned to the water.**

5. **The erection of screens or the implementation of similar measures to contain all contaminants within the wash-down perimeter.**

6. **The repair or maintenance of any vessel which by virtue of its length or configuration is unable to be moved so that it is entirely within the adjacent boatyard property.**

7. A stormwater and conduit drain.

8. A security light pole.

9. Associated utilities for power and water.

10. Safety signage.

11. A wharf abutment.

12. A concrete dinghy ramp (where this does not otherwise lie within the coastal marine area).

Subject to the following conditions:

1. **That all activities shall be carried out in accordance with any relevant resource consent.**

2. **That in respect of the repair and maintenance of boats, the following shall apply:**

   (a) **when boats which by virtue of their length or configuration cannot be moved so that they are entirely within the dominant tenement, are placed on cradles located entirely within the dominant tenement but protrude into the airspace above [the XYZ area] and/or [the land comprised of the areas marked U and W on the plan (the UW area)], such boats may be repaired or maintained at any time of the year;**

   (b) **as a small portion of the turntable encroaches onto [the XYZ area], boat cradles that are located on any part of the turntable but that do not otherwise encroach onto [the XYZ area] may utilise the turntable at any and all times of the year, and boats placed on such cradles may be repaired or maintained at any time of the year;**

   (c) **when boats which by virtue of their length or configuration cannot be moved so that they are entirely within the dominant tenement, are unable to be placed on cradles located entirely within the**

dominant tenement in accordance with clause (a) above, and are not located on the dominant tenement in accordance with clause (b) above, such boats may be placed on cradles located within that part of [the XYZ area] marked X and Y on [the plan], and such boats may be repaired or maintained for an aggregated period of no more than 60 days in any 365 day period commencing on or after the date the easement is registered;

(d) no boat cradles or part thereof may be positioned on any part of [the XYZ area] marked Z on [the plan] other than for the purpose of haulage of a boat;

(e) to enable the Far North District Council to monitor compliance with the 60 day annual usage limit contained in clause (c) above, the boatyard's operator shall continue to keep operational diaries recording the use of the areas marked X and Y on [the plan] for the repair and maintenance of boats, and such diaries shall be made available to the Council's monitoring officers on request.

B. An easement over [the areas marked T, U, W, X, Y and Z on the plan], to permit the following:

Access to and reconstruction of the slipway between the dominant tenement and MHWS and the concreting of that part of the slipway situated above a line 10 metres from MHWS.

Subject to the following conditions:

1. That any earthworks material which is surplus to slipway reconstruction requirements shall be secured within [the XYZ and UW area] and secured so that siltation and erosion does not occur, or be removed from the site.

2. That all activities shall be carried out in accordance with any relevant resource consent.

C. An easement 2 m wide over [the areas marked W and X on the plan], to permit the following:

Access to, and repair and maintenance of, any vessel standing on the southern slipway tramrail and/or the turntable.

Subject to the following conditions:

1. That all activities shall be carried out in accordance with any relevant resource consent.

2. That this easement shall expire after 10 years from the date of registration, subject to a right of renewal every 10 years, provided that in the event of the boatyard

property being redeveloped and alternative access not being provided as part of the redevelopment, any request for renewal will be viewed less favourably.

D. An easement over [the areas marked T, U, V, and Z on the plan], to permit the following:

1. Existing wooden and stone retaining walls (where these do not otherwise lie within the coastal marine area).

E. An easement [over the areas marked T, U, V, W, X, Y and Z on the plan], to permit the following:

1. The discharge of contaminants to air, soil, and water in accordance with any relevant resource consent;

2. The emission of noise in accordance with any relevant resource consent.

AND the following conditions shall apply in respect to the above easements:

1. The grantee shall keep current a public liability insurance policy for a minimum of $1,000,000 (one million dollars).

2. If required by Council the grantee shall make an inducement payment to Council and/or pay an annual rental as may be agreed upon between the parties.

3. The grantee shall surrender the easements to the Council at the Council's request if and when the boatyard ceases to operate, and shall reinstate the area to the satisfaction of the Council.

Relevant context

[33] As mentioned earlier, the Boatyard was granted resource consents by both the District Council and the Regional Council pursuant to a consent order made in the Environment Court in 2002. The resource consent from the District Council authorises certain activities on the reserve land. These include washing down boats prior to their being moved to the Boatyard or on their being returned to the water. Screens are required to be erected to contain contaminants within the wash-down perimeter. Repairs and maintenance are not allowed except to a vessel that is too big to be moved entirely on to the Boatyard land – and then only in area "A", which is part of the XYZ area of the easement. The District Council has the right to review these and other conditions of the resource consent on a regular basis.

[34] The resource consents from the Regional Council complement those from the District Council. One of the conditions of those resource consents is that Mr Schmuck

as consent holder is required to submit a management plan to the Regional Council relating to, among other things, the operation and maintenance of the slipway. The management plan must be reviewed at three yearly intervals.

[35] The Regional Council granted renewed resource consents for the discharge of wash water and contaminants in 2008.

[36] The management plan contemplated by the resource consents was reviewed and updated by the Regional Council and the District Council in 2014.[16] There are nine "factors of management", the relevant one for present purposes being:

> The slipway operations and maintenance of the boat wash-down area "A" [part of the XYZ area] including notice of any repair or maintenance work on vessels in or over-hanging that area, but above 10 meters of the MHWS/CMA; that is unable to be moved entirely within the consent holders [sic] site, by virtue of their length or configuration … .

[37] In the section headed "Procedures for factors of operational management", there is reference to washing and associated activities to clean and strip hull and deck areas "in the preparation of a vessel for maintenance or repair prior to being relocated into the boatyard proper".

[38] There is also a requirement that Mr Schmuck give notice by email to the District Council "as to the proposed duration of any maintenance, repair, and/or haulage … on any given vessel standing on its cradle within or overhanging area "A" that cannot be moved by virtue of its length and configuration entirely within the boatyard site …".

[39] Both parties drew upon the terms of the resource consents and the management plan to support their interpretations of the easements.

Recent developments

[40] Prior to the hearing of the appeal counsel filed a joint memorandum outlining changes that have occurred since the decision of the Court of Appeal was issued. In particular, Mr Schmuck has removed the rails, including the southern slipway tramrail,

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16 There has since been a further review but this postdates the 2015 consent decision.

which run from the turntable to different parts of the Boatyard as part of a general downsizing of the Boatyard operations. Mr Schmuck is also reconstructing the slipway from the sea to the shed on Boatyard land and in future will need only this central rail running from the shed through the turntable to the water. A diagram filed by the parties showing the rails that have been removed is attached as Annexure 2.

[41] As the southern slipway tramrail has now been removed, the issues related to easement C will be of no practical significance unless Mr Schmuck changes his mind about the removal of the southern slipway tramrail, which we are advised is unlikely. We will, however, set out our views in relation to easement C because it has not been formally removed from the ambit of the appeal.

The present proceedings

[42] The Society's judicial review claim in the High Court challenged two decisions, the 2014 permission decision[17] and the 2015 consent decision.[18] The 2006 easement decision is not under challenge in these proceedings. The High Court quashed the 2014 permission decision and there was no appeal against that aspect of the High Court decision.[19] It is therefore not necessary for us to say anything more about the 2014 permission decision.

[43] In relation to the 2015 consent decision, the Society's judicial review claim related to only part of that decision: the decision to consent to the grant of easements A3, A4, A5, A6, C and E. The Society did not challenge the decision to consent to the other easements, and does not object to the presence of the slipway or the use of the slipway to convey boats from the sea to the Boatyard and vice versa. Nor does it object to the use of the turntable which is partially located on area X of the reserve.

[44] The principal argument for the Society in the High Court was that the 2015 consent decision was invalid in relation to the easements just mentioned because those easements were not capable of being authorised as easements under s 48(1)(f) of the Reserves Act. This argument failed in the High Court.

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17 See above at [25].
18 See above at [31].
19 HC judgment, above n 2, at [34]–[42].

[45] In considering whether those easements were capable of being granted under s 48(1)(f) of the Reserves Act, the Court of Appeal first asked whether the easements could be properly classified as easements at all. If its answer to that was in the negative, that would mean the Minister could not reasonably consent to the granting of the easements. And even if the answer to that were in the affirmative, there still remained the question of whether they were the type of easement provided for in s 48 of the Reserves Act.[20]

[46] The Court of Appeal acknowledged that its consideration of these issues involved revisiting Heath J's judgment in respect of which there had been no appeal and in reliance on which the District Council had acted when making the 2015 consent decision.[21]

[47] The Court of Appeal found that, with some exceptions, the rights conferred pursuant to the easements in question were not capable of a valid grant of easement. As the District Council, acting as the Minister's delegate, had proceeded on the basis that those easements were capable of a valid grant of easement, it had proceeded on an incorrect view of the law and it thus acted under an error of law. So the Court of Appeal quashed the aspects of the 2015 consent decision subject to challenge in the Society's judicial review claim, except in respect of easements A3 and E.[22]

[48] The Court of Appeal also disagreed with Fogarty J's description of the requirements for a Ministerial consent decision under s 48 as being limited to acting as a check on the District Council.[23] The Court of Appeal considered that the Minister's discretion was not constrained in this way.[24]

The issues

[49] The primary issue before us is the scope of the power to grant easements under s 48 of the Reserves Act, which in turn informs the scope of the Minister's power

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20 CA judgment, above n 1, at [53].
21 At [54].
22 At [100]–[101] and [119]. At [119] the Court refers to the 2015 consent decision as "unreasonable … as it was informed by an error of law". Its analysis indicates that it is the error of law which is the foundation of the invalidity not any unreasonableness on the part of the District Council.
23 HC judgment, above n 2, at [82].
24 CA judgment, above n 1, at [110].

under that section to consent to the grant of such easements. This requires a consideration of the terms of s 48(1)(f) and the overall statutory context of the Reserves Act.

[50] In order to determine the primary issue, it is first necessary to address the broader land law issue, namely whether the challenged easements are in fact capable of being easements at all. As indicated above, the Court of Appeal found that for the most part they were not, and this is challenged on further appeal to this Court.

[51] If we determine that the challenged easements were capable of being easements and their grant was within the power in s 48, we then need to address whether the 2015 consent decision of the District Council (as delegate of the Minister) was lawfully made. The High Court considered it was. The Court of Appeal considered it was not, but this was because it considered the challenged easements were not capable of being easements. It did not consider there was any illegality in the 2015 consent decision insofar as it related to easements A3 and E, which it held were capable of being easements.

[52] In addition to the issues already mentioned, the Society raised a number of new issues in this Court. It will be necessary for us to decide whether we can deal with those issues and, if so, how we should do so. The principal argument was that in making the 2015 consent decision, the District Council gave insufficient consideration to Treaty of Waitangi claims over the area that includes the reserve.

[53] As mentioned, the Court of Appeal's consideration of whether the challenged easements were capable of being validly granted under s 48 involved a reconsideration of Heath J's judgment. A question arises as to whether issue estoppel or an analogous form of estoppel applies to Heath J's judgment (having regard to the fact that the Society was not a party to the claim that led to Heath J's judgment).

[54] Finally, there is also a question as to the impact of the fact that the easements (including the challenged easements) were registered. In particular, there is a potential issue as to whether registration of the easements gave Mr Schmuck an indefeasible

interest, such that they could not be defeased by the later decision to quash aspects of the 2015 consent decision.

Are the challenged easements valid?

[55] We deal first with the challenged easements. As mentioned earlier, consent was given for the easements other than those relating to the washing down, repairing and maintaining of boats and the discharge of contaminants in 2013. So the easements under consideration by the Court of Appeal were easements A3, A4, A5, A6 , C and E. The Court of Appeal upheld the 2015 consent decision in relation to easements A3 and E in the decision under appeal. Those still in issue (the challenged easements) are, therefore, easements A4, A5, A6 and C.

[56] For an interest in land to be an easement, it must possess the following three characteristics:[25]

(a) There must be a dominant tenement (the land deriving the benefit of the easement) and a servient tenement (the land over which the easement is exercisable).[26] In this case, the dominant tenement is the Boatyard land and the servient tenement is the reserve.

(b) The right must accommodate (that is, confer a benefit on) the dominant tenement as opposed to a personal benefit on the owner of the dominant tenement.[27]

(c) The right claimed must be capable of being the subject matter of the grant of an easement. This incorporates a number of requirements: that the easement be in sufficiently clear terms; that it is not so precarious

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25 *Re Ellenborough Park* [1956] Ch 131 (CA) at 163. See CA judgment, above n 1, at [56]. The additional requirement referred to in *Re Ellenborough Park* and by the Court of Appeal is that the owners of the dominant and the servient tenements must be different persons. This is no longer a requirement in New Zealand: see Land Transfer Act 2017, s 108(3).

26 However, it is possible to have an easement in gross in New Zealand (that is, an easement in favour of a specified person, rather than specified land): see Property Law Act 2007, s 291. Under that Act and the Land Transfer Act 2017, the terminology used in connection with easements is "burdened land" rather than servient tenement and "benefited land" rather than dominant tenement. As the Court of Appeal and counsel used the traditional terms, we will do the same.

27 This requirement would not apply to an easement in gross.

> that it is liable to be taken away by the servient owner; that it is not so extensive or invasive as to oust the servient owner from the enjoyment and control of the servient tenement; and that it does not impose on the servient owner an obligation to spend money or do anything beyond mere passivity.[28]

[57] It is only the second and third of these that is in issue in this case.

[58] The Court of Appeal found the challenged easements were not capable of being the subject matter of a grant. This was because they were too uncertain in their terms and/or they conferred a benefit on Mr Schmuck (and his Boatyard) personally rather than on the Boatyard land. We will consider each of the easements individually to assess whether the Court of Appeal was right to conclude they were invalid.

[59] Counsel for Mr Schmuck, Mr Galbraith QC, raised the question of the admissibility of extrinsic evidence in relation to the interpretation of the easements, given they are registered documents. He referred to the observation in the reasons of William Young and O'Regan JJ in *Green Growth No 2 Ltd v Queen Elizabeth the Second National Trust* that, generally, such registered documents should be interpreted without regard to extrinsic evidence that is particular to the original parties and not apparent on the face of the register.[29] We do not consider the question arises in the present case. The extrinsic material relied upon is the resource consents (to which the easements are subject) and the management plan (required by the resource consents). These are admissible on the approach set out in *Green Growth*.[30] That is because a reasonable future reader of the easement document could be expected to be aware of them and would recognise them as relevant and the resource consent, which refers to the management plan, is expressly and repeatedly referred to in the easement document.

[60] We now turn to the assessment of the individual easements.

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28 *Regency Villas Title Ltd v Diamond Resorts (Europe) Ltd* [2018] UKSC 57, [2019] AC 553 at [58] per Lord Briggs JSC. See also *Registrar-General of New South Wales v Jea Holdings (Aust) Pty Ltd* [2015] NSWCA 74, (2015) 88 NSWLR 321 at [64].

29 *Green Growth No 2 Ltd v Queen Elizabeth the Second National Trust* [2018] NZSC 75, [2019] 1 NZLR 161 at [74]. Glazebrook J agreed with this aspect of their reasons: at [151].

30 At [74(c)].

Easement A4

[61] To recap, easement A4 is an easement over the XYZ area to permit:

> The washing down of boats prior to the boats being moved to the dominant tenement for repairs or maintenance or being returned to the water.

Condition 1 requires this activity to be carried out in accordance with any relevant resource consent.

[62] The Court of Appeal accepted that a right to wash down a boat on reserve land before it is moved to the dominant tenement might be the subject of a valid easement. But it considered that the easement was broader because it also allowed washing down of boats on reserve land and returning them to the water as part of something like a boat valet service, which would be conducted entirely on the reserve land. It did not consider that the easement as drawn was adequately focused upon support of the dominant tenement to be a valid easement but thought that a more narrowly drawn easement allowing washing down of a boat before it is moved to the dominant tenement might be the subject of a valid grant.[31]

[63] Mr Galbraith said that this interpretation of easement A4 was inconsistent with easement A2, which permits the movement of boats along the slipway between the dominant tenement and the water, but not otherwise. He said when considered in this context, the correct interpretation of easement A4 is that it permits washing down of boats prior to being moved to the dominant tenement for repairs or maintenance, or washing down of boats after they have been repaired or maintained on the dominant tenement and are being returned to the water.[32] He said this interpretation made the scheme of the easements coherent and allowed them to fit together. He said there was nothing in the evidence indicating that Mr Schmuck was conducting a boat valet operation (or contemplating doing so) and the Society did not suggest there was any such operation.

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31 CA judgment, above n 1, at [80]–[81].

32 If easement A6 comes into operation, the repair or maintenance could occur partly or wholly on the dominant tenement.

[64] Mr Galbraith said that this was an unusual case because the parties to the easements, Mr Schmuck and the District Council, were satisfied with the easements and were attempting to uphold them. He argued that the Court of Appeal's unduly narrow interpretation of the easements was wrong in principle, because the Court ought to have been trying to give effect to the easements contended for by the parties if it could. He cited for that proposition the statement of Lord Briggs JSC in *Regency Villas Title Ltd v Diamond Resorts (Europe) Ltd*.[33] In that case Lord Briggs JSC said, after observing that the parties intended to confer a property right in the nature of an easement rather than a personal right: "That being the manifest, common intention, the court should apply the validation principle ("ut res magis valeat quam pereat") to give effect to it, if it properly can."[34] A similar observation was made by Latham LJ in *Jackson v Mulvaney*.[35]

[65] For the Society, Mr Every-Palmer QC supported the Court of Appeal's interpretation. He noted that the wording of easement A4 replicated the wording of the relevant paragraph of the 2002 resource consents. Mr Every-Palmer argued that the observation of Lord Briggs JSC in *Regency Villas* was inapplicable where the servient tenement was a reserve rather than private land. This was because of the public nature of a reserve, which the administering body holds on behalf of the public for the purposes for which the reserve was created (in this case the purposes set out in s 229 of the RMA). We accept that a public reserve is different from private land but we see no reason to take a different approach to interpretation of an easement for that reason, unless the easement conflicts with the statutory purposes of the reserve. We do not consider it does in this case.

[66] We consider the interpretation for which Mr Schmuck contends is an available interpretation and one that better coheres with the scheme of the easement document, especially easement A2. Adopting the approach outlined in *Regency Villas*, we

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33 *Regency Villas*, above n 28.

34 At [25]. The Latin maxim referred to by Lord Briggs JSC translates broadly as "so that the matter may flourish rather than perish". See also, in a different context, the observation of the Court of Appeal in *Fletcher Challenge Energy Ltd v Electricity Corporation of New Zealand Ltd* [2002] 2 NZLR 433 (CA) at [58]: the Court "will then do its best to give effect to [the parties' intention to enter into a contract] and, if at all possible, to uphold the contract despite any omissions or ambiguities".

35 *Jackson v Mulvaney* [2002] EWCA Civ 1078, [2003] 1 WLR 360 at [23].

interpret easement A2 as allowing the washing down of boats only when they are about to be moved to the Boatyard for repair or maintenance work or are being moved from the Boatyard to the water after such work. In light of that interpretation, there is no doubt the easement supports the dominant tenement, as the Court of Appeal recognised.[36]

Easement A5

[67] Easement A5 is an easement over the XYZ area that permits:

> The erection of screens or the implementation of similar measures to contain all contaminants within the wash-down perimeter.

Condition 1 requires this to be carried out in accordance with any relevant resource consent.

[68] The Court of Appeal observed that the wording of this easement contemplated the erection of screens but was imprecise as to whether they were fixed to the ground or fixed to the boat cradle. It envisaged it would be the latter but this needed to be stated in the easement. It concluded that the easement as drawn was too uncertain to be valid.[37]

[69] Mr Galbraith said the purpose of the easement was to implement measures to contain contaminants in order to comply with Mr Schmuck's resource consents. The easement is directed to this purpose and should not be invalidated because it does not prescribe the precise nature of the screens or other protective measures. He emphasised the ability of the District Council to monitor the use of screens and the containment of contaminants under the resource consents and the management plan.

[70] The Society argues that if Mr Schmuck's interpretation is accepted, the easement would give Mr Schmuck a discretion to do what he likes to contain the contaminants.[38]

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36 CA judgment, above n 1, at [81].

37 At [82].

38 At the hearing, Mr Every-Palmer suggested photographs of the screen used by Mr Schmuck showed it was outside this confined area. It is not possible for us to determine whether that is right or not. If it is, that might indicate non-compliance with the terms of the easement, but we do not see it as affecting the interpretation of the easement itself.

[71] The requirement that an easement must be capable of reasonably exact description is an aspect of the fourth requirement set out in *Re Ellenborough Park*.[39] If it is so vague or so indeterminate so as to defy precise definition, it cannot rank as an easement.[40] However, the authors of *Gale on Easements* observe that "there appears to be no reported case in which an express grant of a supposed easement has been held to create no easement because the wording of the grant is too vague".[41]

[72] We do not think the easement as drafted is too uncertain to be a valid easement. The purposes of the screens is clear. So too is their required location within the XYZ area given that they must contain contaminants in the concrete wash-down area constructed and maintained under easement A3. This is a confined area. The fact that the purpose of the easement is to allow for measures required by the resource consents to contain contaminants does not seem to us to affect the interpretation of the easement. Nor do we consider it matters whether the screens are attached to the cradle holding the boat being washed down or fixed to the ground. We therefore respectfully disagree with the Court of Appeal's assessment that the easement is too uncertain to be valid.

Easement A6

[73] Easement A6 is an easement over the XYZ area that permits:

> The repair or maintenance of any vessel which by virtue of its length or configuration is unable to be moved so that it is entirely within the adjacent boatyard property.

[74] This easement is subject to condition 1 (requiring it to be carried out in accordance with the relevant resource consent) and also the detailed requirements of condition 2. The Court of Appeal interpreted this easement as permitting not only the repair and maintenance of vessels that are partly on Boatyard land and partly on reserve land, but also vessels that are located entirely within the areas marked X and Y within the reserve.[42]

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39 See above at [56](c).

40 EH Burn and J Cartwright *Cheshire and Burn's Modern Law of Real Property* (18th ed, Oxford University Press, Oxford, 2011) at 640.

41 Jonathan Gaunt and Paul Morgan *Gale on Easements* (20th ed, Sweet & Maxwell, London, 2017) at [1-44].

42 CA judgment, above n 1, at [63(b)] and [67].

[75] The Court of Appeal saw a number of difficulties with the easement given its broad interpretation of the scope of the permission granted. In particular:

(a) The Court considered that the easement did not satisfy the requirement that an easement must confer a real and practical benefit on the dominant tenement.[43] However it considered that, if the easement had been limited to allowing the overhang of boats in the Boatyard onto the reserve, and possibly a right to enter the reserve to work on those boats, this might satisfy that requirement.[44]

(b) The Court concluded that the right granted by the easement, as it interpreted it, was not capable of forming the subject matter of an easement. This was because it undermined the ability of the District Council to exercise meaningful control over the XYZ area. Rather, the rights conferred were so extensive and uncertain that they amounted to joint occupation of area XYZ of the reserve.[45]

[76] As to the first of these concerns, the Court of Appeal referred to *Re Ellenborough Park* as authority for the proposition that a right over land does not amount to an easement unless it accommodates and serves the dominant tenement, and is reasonably necessary for the better enjoyment of that tenement.[46] That can be contrasted with a personal benefit to the owner of the land. The Court of Appeal accepted that where a business is well established on a site so that its operation is properly seen as connected to the use of the land (as the Boatyard is in this case), an easement may be validly granted that supports the operation of the business on the land.[47]

[77] Mr Galbraith did not take issue with the Court of Appeal's statement of the law, but queried its application to easement A6, even as interpreted by the Court of Appeal. His principal argument was that the Court of Appeal had interpreted the

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43 At [68] and [78].
44 At [66]–[67].
45 At [77]–[78].
46 At [56(b)] and [64], citing *Re Ellenborough Park*, above n 25.
47 At [65], citing *Clos Farming Estates Pty Ltd v Easton* [2002] NSWCA 389, (2002) 11 BPR 20,605 at [30].

easement to allow for a boat to be entirely located on reserve land while undergoing repairs and maintenance, when, properly interpreted, this was not permitted. Rather, the easement permitted repairs and maintenance to a boat that was located partly on the dominant tenement (the Boatyard land) and partly on reserve land. Once that interpretation was adopted, then even on the Court of Appeal's own analysis, the easement accommodated the dominant tenement, not just the business located on the dominant tenement.

[78] Mr Every-Palmer was also content to adopt the Court of Appeal's view of the law. He emphasised that, while an easement that benefitted a business operated on the dominant tenement may meet this requirement, that could not extend to an activity that is carried on entirely on reserve land, as easement A6 did on the interpretation of the Court of Appeal, which he supported.

[79] We also accept the Court of Appeal's statement of the law.[48] Lord Briggs JSC in *Regency Villas* said that the question of whether an easement accommodates the dominant tenement is a question of fact and depends on whether the right serves the normal use and enjoyment of the dominant tenement.[49]

[80] We consider it is arguable that, even on the Court of Appeal's interpretation, the easement accommodates the dominant tenement because even if the vessel being worked on were located entirely on reserve land, the work would be undertaken as an element of the business operating on the dominant tenement. But we do not need to engage with the legal argument because we accept the interpretation of the easement advanced by Mr Schmuck. We consider that the word "entirely" in easement A6 signals that it is dealing with the situation where the vessel is partly, but not completely, on Boatyard land. This is supported by:

(a) condition 2(a), which also uses the term "entirely" and refers to boats that "protrude into the airspace above" areas of the reserve;

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48 *Re Ellenborough Park* has, since the Court of Appeal's decision, been affirmed by the United Kingdom Supreme Court in *Regency Villas*, above n 28, at [48]–[52] and [81].

49 *Regency Villas*, above n 28, at [43].

(b) condition 2(b), which refers to boats on cradles located on the turntable. The turntable is partly on Boatyard land and partly on reserve land; and

(c) condition 2(c), which refers to boats which "by virtue of their length or configuration cannot be moved so that they are entirely within the dominant tenement".

[81] The Court of Appeal considered the fact that condition 2(c) allowed for boats to be placed on cradles located within areas X and Y of the XYZ area to be repaired meant that all of the boat would be on the reserve land when under repair.[50] While the language is not as clear as it could be, we consider the repeated references to "entirely within" the Boatyard in easement A6 and conditions 2(a) and (c) signal that the intention is that the easement allows for repairs of boats located partly on Boatyard land and partly on reserve land. It also allows for a cradle or cradles to be located on reserve land, but only where the cradles cannot be located entirely on Boatyard land because of the length or configuration of a particular boat. If there were two or more cradles required for a boat (as the use of the plural "cradles" in condition 2(c) appears to allow for), the easement allows the cradle to be entirely on reserve land, not for the boat to be entirely on reserve land. The boat must be at least partly on Boatyard land.

[82] Mr Galbraith noted that condition 1 required the activities permitted by easement A6 to be carried out in accordance with the resource consent. He argued the resource consent therefore aided interpretation of the easement. He noted that conditions 4 and 9 of the resource consent resolved concerns expressed by the Court of Appeal. Condition 4 provides that no materials, tools or other items are to be placed or left on the reserve except when necessary to haul a boat up the slipway or when repair or maintenance work is carried out on a vessel in area "A", which is a small part of the XYZ area. Condition 9 prohibits any vessel being left on the slipway within the reserve except as permitted under the resource consent. In practice this means a vessel can remain on the slipway only within area A and, given the small size of that area, it cannot be intended a vessel that fits entirely within that area could be left there. This is because a vessel that would fit in area A would clearly fit inside the Boatyard and

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50 CA judgment, above n 1, at [63(b)] and [67]. See also above at [74].

thus would not meet the condition of easement A6 that it can be availed of only when a vessel does not fit inside the Boatyard.

[83] Mr Every-Palmer accepted the resource consent was a legal overlay which could inform one's view as to the realistic uses of the reserve but argued it did not affect the interpretation of the easement.

[84] We consider that the resource consent does assist the interpretation of the easement given condition 1 regulates the operation of the easement. The Court of Appeal interpreted easement E by reference to the resource consent and management plan. We accept Mr Galbraith's submission that this approach was also appropriate in interpreting easement A6.

[85] Once it is accepted that easement A6 permits repair and maintenance work only on boats located partly on Boatyard land and partly on the XYZ area of the reserve, the argument that it does not accommodate the use and enjoyment of the dominant tenement largely falls away. As a matter of fact, it clearly supports the business operated on the dominant tenement by allowing repair and maintenance work to be carried out on vessels that do not fit completely within the boundaries of the Boatyard. That is sufficient connection with the dominant tenement to satisfy the requirement that the easement must confer a real and practical benefit on the dominant tenement.

[86] We turn now to the second concern raised by the Court of Appeal: the rights created were so uncertain and extensive that they effectively allowed Mr Schmuck joint occupation of area XYZ of the reserve.

[87] The Court of Appeal relied on *Copeland v Greenhalf*.[51] That case concerned a claim to an easement by prescription, rather than by grant. Upjohn J rejected the claim, finding the claimed right to park vehicles on the easement land without restriction was too extensive to constitute an easement. We consider *Copeland* is of

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51 *Copeland v Greenhalf* [1952] Ch 488 (Ch).

doubtful authority now. It is, as just noted, a case about a claim based on prescription not grant. It has been criticised and doubted.[52]

[88] The test for whether an easement amounts to joint occupation is usually formulated as whether the proposed easement would leave the servient owner without reasonable use of their land.[53] This is commonly termed the ouster principle. But in *Moncrieff v Jamieson*, Lord Scott doubted the correctness of the ouster principle. He observed that every easement will bar some use of the servient land and that sole use for a limited purpose was not inconsistent with the servient owner's retention of possession and control.[54] While "reasonable use" is traditionally assessed by reference to the servient tenement as a whole, Lord Scott considered the relevant inquiry is the impact upon the land subject to the easement.[55] In Lord Scott's view, the correct test is "whether the servient owner retains possession and, subject to the reasonable exercise of the right in question, control of the servient land".[56]

[89] More recently, in *Regency Villas*, Lord Briggs JSC noted that the extent of the ouster principle was a matter of some controversy, which he did not find necessary to resolve. He later added:[57]

> ...the ouster principle rejects as an easement the grant of rights which, on one view, deprive the servient owner of reasonable beneficial use of the servient tenement or, on the other view, deprive the servient owner of lawful possession and control of it.

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52 See *Moncrieff v Jamieson* [2007] UKHL 42, [2007] 1 WLR 2620 at [56] per Lord Scott who questioned whether it could truly be said, as Upjohn J had said in *Copeland*, that the defendant in that case was "claiming the whole beneficial user of the strip of land" subject to the easement. In *Moncrieff*, it was held that a servitude (the Scottish equivalent to an easement) giving access included a right to park vehicles, in contrast to the outcome in *Copeland*. See also Peter Luther "Easements and exclusive possession" (1996) 16 Legal Studies 51; and the report of the Law Commission of England and Wales *Making Land Work: Easements, Covenants and Profits à Prendre* (Law Com No 327, 2011) at [3.207]–[3.211], where the Commission recommended that the ouster principle should be abolished.

53 *London & Blenheim Estates Ltd v Ladbroke Retail Parks Ltd* [1992] 1 WLR 1278 (Ch) at 1288; and *Batchelor v Marlow* [2001] EWCA Civ 1051, [2003] 1 WLR 764 at [8]–[9].

54 *Moncrieff*, above n 52, at [54]–[55].

55 At [57].

56 At [59]. Lord Neuberger endorsed the test proposed by Lord Scott. However, he reserved his position given it was not necessary to decide the point: at [143].

57 *Regency Villas*, above n 28, at [61].

[90] For reasons we will come to, we do not think it is necessary to resolve this controversy either.[58]

[91] The Court of Appeal's interpretation of easement A6 led it to conclude that the easement was too broad because the District Council could not be said to retain possession and, subject to the reasonable exercise of the rights in question, control of the reserve. So the rights under easement A6 gave Mr Schmuck at least joint occupation of the reserve.[59] In particular:

(a) there was no limit on the time that boats protruding into the reserve could be worked on under condition 2(a);[60]

(b) there was a limit under condition 2(c) of 60 days per year, but the Court thought this was unclear as to whether it meant 60 working days or 60 multiplied by 24 hours;[61]

(c) the scope of activities required for repair and maintenance work was wide, and there was no limit on who and how many people could enter the reserve to work on the boats protruding into it;[62]

(d) the words "[not] entirely within the dominant tenement" did not make it clear that this was because the relevant boat was too big to fit on the Boatyard land when no other boats were on that land impeding the subject boat or just that the fact other boats were occupying the space on the Boatyard land prevented all of the subject boat fitting on that land;[63]

(e) there were health and safety concerns;[64] and

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58 This was also the view of the Court of Appeal: CA judgment, above n 1, at [60].
59 At [78].
60 At [71].
61 At [63(b)].
62 At [71].
63 At [72].
64 At [75].

(f) there were no limits on what materials could be taken onto the reserve by Mr Schmuck to do repair and maintenance work.[65]

[92] Mr Every-Palmer supported the Court of Appeal's analysis. He pointed to the possibility that the Boatyard operation could become more intensive in the future. If that happened, work on the reserve could increase, the number of employees present on the reserve could increase and greater impediments could be imposed on other users of the reserve as a result. If these possibilities became reality, that would exacerbate the concerns raised by the Court of Appeal.

[93] We consider the concerns raised by the Court of Appeal were overstated:

(a) In relation to (a), we do not consider a time limit is required to make an easement valid. It needs to be remembered the area on which overhanging boats may be repaired is a small part of the reserve.

(b) In relation to (b), we consider the first possible interpretation suggested by the Court of Appeal is the correct interpretation.[66]

(c) In relation to (c), the scope of activities may be wide, but there is a clear limitation that they involve repair and maintenance work on a vessel, only on the part of a vessel overhanging from the Boatyard land and only in a small area of the reserve. We do not see the lack of further detail as invalidating the easement.

(d) In relation to (d), we have concluded above the provision is for boats located partly on Boatyard land and partly on reserve land in accordance with condition 2(c) only.

(e) In relation to (e), we see health and safety concerns as being matters for resolution under the resource consents and management plan and

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65 At [76].

66 The resource consent, which specifies the permitted hours of work on the reserve land (7 am to 8 pm on Monday to Friday, and 8 am to 8 pm on Saturdays, Sundays and public holidays), supports this interpretation.

[98] The Court of Appeal considered that, as drafted, the scope of this easement meant the District Council did not have the ability to control areas W and X and therefore the easement deprived the District Council of reasonable use of the land.[68] The Court of Appeal's concern was that the easement did not specify the extent of use, the number of persons entering the reserve for the purpose of working on vessels on the southern slipway and the nature of the tasks they would undertake (beyond the requirement for compliance with resource consents). It noted "[a]s an aside" there was uncertainty about the term.[69] We will come back to this.

[99] The Society supported the Court of Appeal's view. It argued that the right given to Mr Schmuck by easement C amounted to joint occupation of the reserve.

[100] Our comments on easement A6 apply equally to this easement. We do not consider the omission of the details highlighted by the Court of Appeal invalidates an otherwise uncontroversial and limited easement, when it is considered in the context of the other easements and the fact that it would involve working on a single vessel at any time. Given that the vessel being worked on would be on the rail in the Boatyard, the easement would be availed of only to work on one side of the vessel. It is hard to see why any concern about numbers of people working at one time arises. The limited area of the easement and the fact that work would be on one vessel at any one time ensures the number of workers located on areas W and X would always be limited. We agree with Mr Galbraith's submission that exhaustively stating limits is not a requirement of a valid easement. That applies even more so in this case where the District Council is also the regulator and so can determine the practical effect of the condition that Mr Schmuck must comply with the resource consent.

[101] We agree with the Court of Appeal that the condition as to term and renewals is not well drafted. However, the Court of Appeal did not suggest this infelicity of expression invalidated the easement and we see no reason to come to a different view.

[102] We are satisfied easement C is a valid easement.

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68 CA judgment, above n 1, at [85].
69 At [86].

[98] The Court of Appeal considered that, as drafted, the scope of this easement meant the District Council did not have the ability to control areas W and X and therefore the easement deprived the District Council of reasonable use of the land.[68] The Court of Appeal's concern was that the easement did not specify the extent of use, the number of persons entering the reserve for the purpose of working on vessels on the southern slipway and the nature of the tasks they would undertake (beyond the requirement for compliance with resource consents). It noted "[a]s an aside" there was uncertainty about the term.[69] We will come back to this.

[99] The Society supported the Court of Appeal's view. It argued that the right given to Mr Schmuck by easement C amounted to joint occupation of the reserve.

[100] Our comments on easement A6 apply equally to this easement. We do not consider the omission of the details highlighted by the Court of Appeal invalidates an otherwise uncontroversial and limited easement, when it is considered in the context of the other easements and the fact that it would involve working on a single vessel at any time. Given that the vessel being worked on would be on the rail in the Boatyard, the easement would be availed of only to work on one side of the vessel. It is hard to see why any concern about numbers of people working at one time arises. The limited area of the easement and the fact that work would be on one vessel at any one time ensures the number of workers located on areas W and X would always be limited. We agree with Mr Galbraith's submission that exhaustively stating limits is not a requirement of a valid easement. That applies even more so in this case where the District Council is also the regulator and so can determine the practical effect of the condition that Mr Schmuck must comply with the resource consent.

[101] We agree with the Court of Appeal that the condition as to term and renewals is not well drafted. However, the Court of Appeal did not suggest this infelicity of expression invalidated the easement and we see no reason to come to a different view.

[102] We are satisfied easement C is a valid easement.

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68 CA judgment, above n 1, at [85].
69 At [86].

Is there power to grant easements for commercial operations on an esplanade reserve?

[103] In the Court of Appeal, the Society argued that s 48(1)(f) did not confer a power to grant easements for private commercial activity to be conducted on a reserve. This was rejected by the Court of Appeal.[70] A similar argument had been rejected by Heath J and by Fogarty J.[71]

[104] The Society gave notice under r 20A of the Supreme Court Rules 2004 supporting the judgment of the Court of Appeal on two other grounds, one of which was that the Court of Appeal had erred in its conclusion about the scope of s 48(1)(f).[72]

[105] Mr Every-Palmer said that, interpreting s 48 from its text in light of its purpose, as required by s 5 of the Interpretation Act 1999, led to a conclusion that s 48(1)(f) did not confer a power to grant easements for private commercial work on a reserve. This inevitably focused on the power of the District Council as grantor of the easements, rather than the District Council as delegate of the Minister in granting consent. As already mentioned, the 2006 easement decision (that is, the District Council's decision to grant the easements) is not under challenge in this appeal. However, the argument was put on the basis that, because the District Council had no power to grant the consents, the Minister could not have the power to consent to their grant.

[106] Section 48 provides as follows:

> **48 Grants of rights of way and other easements**
>
> (1) Subject to subsection (2) and to the Resource Management Act 1991, in the case of reserves vested in an administering body, the administering body, with the consent of the Minister and on such conditions as the Minister thinks fit, may grant rights of way and other easements over any part of the reserve for—
>
> (a) any public purpose; or

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70 At [99].

71 Heath J's judgment, above n 10, at [22]–[27]; and HC judgment, above n 2, at [73].

72 The Society did not, however, cross-appeal against the Court of Appeal's finding that easements A3 and E were valid easements that had been lawfully granted and consented to under s 48(1). In its written submissions, it made it clear this did not indicate it agreed with the Court of Appeal's finding about easements A3 and E and intimated that, if it succeeded in resisting Mr Schmuck's appeal, leave should be granted for it to cross-appeal against the Court of Appeal's decision in relation to easements A3 and E. This was not pursued at the hearing and on our approach to the case it is not a live issue.

(b) providing access to any area included in an agreement, lease, or licence granted under the powers conferred by this Act; or

(c) the distribution or transmission by pipeline of natural or manufactured gas, petroleum, biofuel, or geothermal energy; or

(d) an electrical installation or work, as defined in section 2 of the Electricity Act 1992; or

(e) the provision of water systems; or

(f) providing or facilitating access or the supply of water to or the drainage of any other land not forming part of the reserve or for any other purpose connected with any such land.

(2) Before granting a right of way or an easement under subsection (1) over any part of a reserve vested in it, the administering body shall give public notice in accordance with section 119 specifying the right of way or other easement intended to be granted, and shall give full consideration, in accordance with section 120, to all objections and submissions received in respect of the proposal under that section.

...

[107] Mr Every-Palmer argued that the catch-all phrase "for any other purpose connected with any such land" in s 48(1)(f) needs to be considered in the context of s 48 as a whole and also within the statutory scheme of the Reserves Act.

[108] In relation to s 48, Mr Every-Palmer's argument was that the easements contemplated by s 48 were in two broad categories [73] the facilitation of utility services (s 48(1)(c), (d) and (e)); and access and the provision of basic amenities to other land (s 48(1)(f)). He said a literal interpretation of the catch-all phrase at the end of s 48(1)(f) would override Parliament's intention to limit easements to those two broad categories. Thus, he argued, the phrase "any other purpose" had to be read as "any other *similar* purpose". The "other purpose" referred to in s 48(1)(f) must have a connection with the other powers conferred by that paragraph. He did not suggest this was an application of the ejusdem generis principle, but rather just interpreting the provision in light of its context. He was right to reject the application of the ejusdem generis maxim because there is, in fact, no "genus" in s 48(1)(f) that could limit the general wording at the end of the provision.

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[73] In addition to the provisions for public purpose easements (s 48(1)(a)) and access easements in respect of licences and leases granted under the Reserves Act (s 48(1)(b)).

[109] Mr Every-Palmer also discussed the scheme of the Act, highlighting the specific powers given to administering bodies in relation to different types of reserves and the constraints imposed on those powers. He said that in the absence of a specific provision, commercial activity should not be permitted on a reserve. We do not accept that submission. As the Court of Appeal noted, the restrictions on an administering body's power to enter into leases or licences of reserve land (in ss 61 and 74 of the Reserves Act) do not apply to the grant of easements under s 48.[74] So the fact that the powers to enter into leases and licences are confined to certain specified purposes does not mean the power to grant easements is similarly confined.

[110] Nor do we consider that s 48(1) itself should be interpreted in a manner that imposes a restriction on commercial activities that is simply not mentioned in that subsection. Most of the uses for which easements may be granted under the other paragraphs in s 48(1) to which Mr Every-Palmer referred are themselves commercial uses.[75]

[111] Mr Galbraith pointed out that it would have been simple for Parliament to use the phrase "for any other similar purpose" or "for any like purpose" if that had been its intention. He noted that "for any like purpose" is used elsewhere in the Act.[76] We agree this tends to suggest that the more general wording in s 48(1)(f) means what it says.

[112] Mr Galbraith also highlighted that there were a number of references in the Reserves Act to the carrying on of commercial activity on reserves, which counted against the argument, based on the scheme of the Act, advanced by Mr Every-Palmer. Again, we agree.

[113] We conclude that the Court of Appeal was correct that there is no justification to read down the meaning of the phrase "for any other purpose connected with any

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74 CA judgment, above n 1, at [94].

75 Fuel pipelines, water pipelines and electricity installations, for example.

76 Reserves Act, s 61(2A)(a), s 61(2A)(b) and s 109(3). The first two of these were included in the Act by Reserves Amendment Act 1978, but the words "or any like purposes" appeared in s 109 from the time of enactment of the Reserves Act.

such land" in s 48(1)(f) to exclude easements for commercial activities.[77] We therefore reject the Society's argument on this point.

Was the 2015 consent decision unlawful?

[114] In its r 20A notice, the Society argued that the District Council as delegate of the Minister had acted unlawfully in the 2015 consent decision for four reasons. In its submissions these reasons were revised and reduced to three:

(a) The District Council (as delegate of the Minister) failed to undertake a sufficiently thorough review. A subset of this ground is that the District Council (as delegate of the Minister) did not engage adequately with tangata whenua and Treaty of Waitangi issues relating to the reserve.

(b) The District Council (as delegate of the Minister) failed to identify that the District Council (as grantor) did not undertake appropriate balancing between the purposes of the reserve and the easements.

(c) The District Council (as delegate of the Minister) considered and consented to easements that were materially different from those that had been considered by the Commissioner and the District Council (as grantor).

[115] Mr Every-Palmer accepted that these were matters that had a different focus from the points made in the r 20A notice but asked that the Court consider them, arguing there was no prejudice to the other parties. Counsel for the other parties objected to this, pointing out that the Society's case has changed at each stage of the proceeding.[78] They pointed out that there was no lower court decision on most of these grounds. This meant that this Court would have to address the issues as first and final Court.

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77 CA judgment, above n 1, at [99].
78 A point also noted by the Court of Appeal: at [112].

[116] In his oral submissions, Mr Every-Palmer addressed the Treaty point referred to above on the basis that this was the strongest point and if the Court did not accept his submissions in relation to it, then it would also not be with him on the other points.

The nature of the Minister's consent power under s 48

[117] We are satisfied we should address one aspect of the argument about the thoroughness of review. We had full argument on the role of the Minister (or Minister's delegate) when asked to consent to easements that have been granted by the administering body under s 48. The High Court and Court of Appeal came to different views on this issue. The District Council argued that this point had important precedential value not just for it but for other territorial authorities exercising the Minister's consent power under the Instrument of Delegation.

[118] In the High Court, the Society submitted that the District Council, before reconsidering the Minister's consent decision as required by Heath J's judgment, ought to have re-advertised the application and then considered whether or not to consent with the benefit of any further submissions received in response. Fogarty J rejected this. He said the consent of the Minister was "a check, not a full consideration starting again as it were".[79]

[119] The Court of Appeal did not consider the role was as limited as Fogarty J said it was. It described the task of the Minister or Minister's delegate as "akin to judicial review".[80] It accepted that the Minister was not required to undertake a full merit-based assessment of the proposed easements, but added:[81]

> ... we see nothing in the statutory language or scheme of the Reserves Act to suggest that in exercising the discretion to consent or not to consent, the Minister is limited to checking the Council's decision-making processes.

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79 HC judgment, above n 2, at [81]–[82].
80 CA judgment, above n 1, at [41].
81 At [106].

[120] Later, the Court of Appeal acknowledged that it is the body granting the easement that is required to consider objections made under s 48(2) of the Reserves Act. It added:[82]

> We therefore agree with Fogarty J that the same full consideration of objections is not mandatory for the Minister. However we disagree with the Judge that the Minister's consent role is limited to acting as a check on the Council. There is nothing in the statutory scheme that suggests the Minister's discretion is so constrained. To the contrary, it suggests that the Minister remains free to take a different view to Council as to whether an easement should be granted having regard to issues of jurisdiction (as the Minister earlier did in this very matter) and as to the purposes of the Act.

[121] The Court of Appeal's view was that, in exercising the s 48(1) consent discretion, the Minister was required to have regard to legal constraints on the rights that can be conferred under the Reserves Act and the purposes of the Reserves Act. It saw these as mandatory considerations for the Minister.[83]

[122] As mentioned earlier, the Minister delegated his consent function to territorial authorities.[84] In the present case, the delegation meant the District Council effectively wore two hats because it was the administering body of the reserve and also delegate of the Minister. So it had to decide in its former capacity whether to grant the easements and in its latter capacity whether to consent to the grant of the easements. As already noted, in the present case the District Council appointed the Commissioner to undertake the public consultation process required by s 48(2) and acted on his recommendations in granting the easements in the 2006 easement decision.

[123] The delegation was effected under s 10 of the Reserves Act. The relevant provisions of that section are subss (1), (3) and (6), which provide:

> **10 Delegation of Minister's powers**
>
> (1) The Minister may from time to time delegate any of his or her powers and functions under this Act (not being the power to approve any bylaw) to any individual, committee, body, local authority, or organisation, or to any officer or officers of the Department specified by the Minister, either as to matters within his or her jurisdiction

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82 At [110].
83 At [111].
84 Above at [23]. The Instrument of Delegation for Territorial Authorities was signed by the then Minister, Hon Dr Nick Smith MP, on 12 June 2013.

> generally, or in any particular case or matter, or any particular class of cases or matters, or in respect of any reserve or reserves.
>
> ...
>
> (3) Subject to any general or special directions given by the Minister, any person, committee, body, local authority, organisation, or officer to which or to whom any powers have been so delegated may exercise those powers in the same manner and with the same effect as if they had been directly conferred on that person, committee, body, local authority, organisation, or officer by this Act and not by delegation.
>
> ...
>
> (6) No such delegation shall prevent the exercise by the Minister himself or herself of any of the powers and functions conferred on him or her by this Act.

[124] A letter dated 8 July 2013 from DoC to local authorities accompanying the Instrument of Delegation included the following explanation:

> There is an expectation that local authorities will maintain a distinction between their role as the administering body of a reserve and their role as a delegate of the Minister.
>
> It is important to note that the decision making function, whereby the merits of the proposal are considered, is a fundamental responsibility of the reserve administering body. The Minister is not the decision maker, but has, instead, a supervisory role in ensuring that the necessary statutory processes have been followed; that the administering body has taken the functions and purposes of the Reserves Act into account in respect of the particular classification and purposes of the reserve; that it has considered any objections or submissions from affected parties; and that, on the basis of the evidence, the decision is a reasonable one.

[125] Counsel for the District Council, Mr Hodder QC, argued that the Minister's power under s 48(1) was a supervisory power. The Minister was not obliged to, but was entitled to, undertake a deeper review. He argued the advice given by DoC to territorial authorities, which we have reproduced above, correctly described the task that territorial authorities were required to undertake when exercising the Minister's consent power as the Minister's delegate. He disputed the Court of Appeal's characterisation of the task as "akin to judicial review".

[126] Mr Hodder argued the scheme of s 48 supported his position. The sequence of steps leading to the execution and registration of an easement begins with the request for an easement; the administering body then gives public notice and must consider

the submissions received;[85] the administering body then decides to grant the easement (with conditions if appropriate), subject to the Minister's consent. The Minister or his or her delegate then consents (again, applying conditions if appropriate). Any easement that is granted must comply with the RMA.[86] He emphasised it is the administering body, not the Minister, that is required to engage with the public and which makes the decision as to whether or not the easement should be granted.

[127] This sequence means that by the time the Minister's consent power is engaged, there will have been a full consideration by the administering body of public feedback and RMA issues by the body required by s 48 to do this. In those circumstances, there is no basis for imposing on the Minister any greater role than a supervisory role, ensuring the earlier steps in the sequence have been carried out in accordance with the legislative requirements.

[128] Mr Hodder argued that the analogy with judicial review could be seen as suggesting "inappropriate legalism". He submitted the requirement is better described as the Minister (or Minister's delegate) being sufficiently informed to make a reasonable supervisory decision whether or not to consent and, if so, whether to impose conditions.

[129] Mr Hodder took issue with the Court of Appeal's conclusion that the 2015 consent decision was unreasonable because of an error of law about the validity of the easements and the antecedent finding that the legality of the easements was a mandatory consideration. As we have found the easements were valid, this no longer has practical impact. While we can see some concern about the characterisation of the 2015 consent decision as "unreasonable", we think the Court of Appeal meant no more than that if the Minister consented to the grant of easements that on review by a court were found to be invalid, the fact the administering body had purported to grant them and the Minister had purported to consent to that grant could not "cure" that invalidity.

[130] It is clear that the Minister is entitled to give general or special directions in relation to the delegation under s 10(3) and, once those directions are given, the

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85 Reserves Act, ss 48(2), 119 and 120.
86 Reserves Act, s 48(1).

decision-making power that has been delegated must be exercised subject to those general or special directions. It is notable, therefore, that the letter accompanying the Instrument of Delegation described the delegated role as a supervisory one: ensuring that the necessary statutory processes have been followed; that the functions and purposes of the Reserves Act have been taken into account; that the administering body has considered objections or submissions from affected parties; and that the decision is reasonable. That is what led Fogarty J to describe the role as a "check". We see the terms "check" and "supervisory" as useful shorthand descriptions of the role but neither provides a comprehensive description. We agree with the Court of Appeal that the Minister or the Minister's delegate cannot consent to an invalidly granted easement, and to that extent must have regard to the legal constraints on the rights that can be conferred under the Act. But we do not consider that the Minister is under any obligation in process terms to reconsider the matters taken into account by the administering body in granting the easement, so long as they are within the administering body's powers.

[131] In characterising the Minister's power as supervisory, we are not intending to create any artificial limit on that power. All we are saying is that there is no requirement to re-run the process already undertaken by the administering body of the reserve. However, if the Minister takes a different view of the situation from that taken by the administering body, there is nothing to stop the Minister refusing to consent to a decision that the administering body has made lawfully and which the administering body considers is reasonable. We agree with the Court of Appeal that the Minister is free to take a different view from that of the administering body as grantor. But there is also nothing requiring the Minister to reconsider matters decided by the administering body and the Minister does not act unlawfully if he or she does not do so.

[132] We accept Mr Every-Palmer's submission that the Minister's decision is not a rubber-stamping exercise.[87] But we do not think that undermines our description of the Minister's power above. In the absence of any statutory requirements as to process, it is for the Minister (or Minister's delegate) to determine what is relevant to

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87 See *Hastings District Council v Minister of Conservation* [2002] NZRMA 529 (HC) at [50(a)].

the decision and the manner and intensity of the inquiry into any such matter (beyond the essentials of checking that the statutory process has been undertaken by the administering body and that the easement was lawfully granted), subject only to challenge on grounds of unreasonableness.[88]

[133] We think Mr Hodder was correct that the concerns the Society has about the challenged easements really relate to other steps in the sequence of decision-making in relation to the easements. The Society's primary concern about public access to the reserve is better directed at the process undertaken by the Commissioner and the decision by the District Council (as the local agency best informed about those issues and accountable to the local people affected by the issue) to grant the easements than at the Minister's consent decision.[89] Its concern about compliance with the RMA is better directed to the resource consent process, which, we understand, the Society has been involved with since the Court of Appeal's decision was delivered.[90]

The process leading to the 2015 consent decision

[134] The Society argues the approach of the District Council to the consent decision was not sufficiently thorough. It is notable that, despite its views as to the nature of the consent power, the Court of Appeal had no concerns about this in relation to the easements it found were capable of being easements, easement A3 and E.

[135] We do not intend to engage further with this point. To a large extent, the Society's case in this context relied on its submission as to the nature of the consent process, which we have rejected. We accept that the point was not pleaded and was not in the r 20A notice, and there would be unfairness to the other parties if we were to decide the point as first and last court. This is compounded by the fact that we would be evaluating the process against the background of our conclusions as to the

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88 *R (Khatun) v Newham London Borough Council* [2004] EWCA Civ 55, [2005] QB 37 at [35] per Laws LJ for the Court. See also *R (Balajigari) v Secretary of State for the Home Department* [2019] EWCA Civ 673, [2019] 1 WLR 4647 at [70]; and *R (on the application of Campaign Against Arms Trade) v The Secretary of State for International Trade* [2019] EWCA Civ 1020 at [59].

89 As noted above at [42], the 2006 easement decision is not under challenge in these proceedings.

90 See *Schmuck v Northland Regional Council* [2019] NZEnvC 8; and *Schmuck v Northland Regional Council* [2019] NZEnvC 125.

nature of the process, when the Society's submissions were based on a different understanding of what the process required.

Treaty of Waitangi considerations

[136] Mr Every-Palmer advanced the argument in this Court that the District Council had failed to engage with tangata whenua and failed to give sufficient consideration to the Treaty claims over the area that includes the reserve.[91]

[137] It is difficult for us to discern whether there is substance to this argument. It is significant that the Society is the party advancing the argument, rather that the Treaty claimant. Mr Every-Palmer said there are iwi members involved with the Society but that is quite a different thing from the relevant iwi or hapū (or their representative) being parties to the proceeding. We cannot do the issue justice on the basis of the evidence before us and without allowing the District Council a fair opportunity to respond. We are also reluctant to address the issue in proceedings to which the relevant Treaty claimants are not represented. We do not therefore engage further with this argument.

Other grounds

[138] We see the other grounds of challenge to the 2015 consent decision in the same light. They needed to be advanced and addressed at first instance to be properly considered by this Court.

Issue estoppel

[139] We do not need to address the question of whether issue estoppel or something analogous to it arises in relation to Heath J's judgment. We indicated at the hearing that if it did arise and we agreed to address it, we would seek further submissions. As it transpires, the issue is now moot and we say no more about it.

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[91] A witness for the Society, Ms Marks, gave evidence that there are three Treaty claims on the area that includes the reserve. One of them (Wai 2424) was made by Ms Marks and relates to environmental degradation in Walls Bay.

Indefeasibility of title

[140] The impact of the registration of the easements after they were formalised (following the 2015 consent decision) did not arise in the High Court because that Court upheld their validity. In the Court of Appeal, the issue was potentially live. In the Court's judgment as first issued, the Court noted that "although the easements are registered, the respondents [the District Council, the Minister and Mr Schmuck] do not plead or rely upon indefeasibility of title as relevant to any relief should the Society succeed with its appeal".[92] Subsequently the judgment was recalled and re-issued with the words "plead or" removed.[93] The Court of Appeal reserved leave for the parties to apply for consequential orders if required, in light of the fact that the easements in issue had been registered.[94]

[141] The position before this Court was that Mr Schmuck wished to rely on indefeasibility if his appeal otherwise failed. But neither of the Courts below had addressed the issue. We indicated at the hearing that we would call for further submissions on the issue if the issue arose and we considered it was appropriate to deal with it. As we have found the easements are valid, the issue does not arise.

Result

[142] The appeal is allowed. The decision of the District Council as delegate of the Minister to consent to the challenged easements is reinstated.

Costs

[143] We reserve costs. Both Mr Schmuck and the District Council claimed costs. The Society sought an order that costs lie where they fall in the event that it was unsuccessful in the appeal on the basis that the case concerns a matter of real public interest beyond the interests of the Society, the Society's position had merit and the Society acted reasonably in the conduct of the proceedings. The District Council disputes the last of those. We seek submissions from the parties on that issue and on

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92 CA judgment, above n 1, at [54].

93 *Opua Coastal Preservation Inc v Far North District Council* [2018] NZCA 510. The Court refused to call for and hear further submissions on indefeasibility as Mr Schmuck sought.

94 CA judgment, above n 1, at [120].

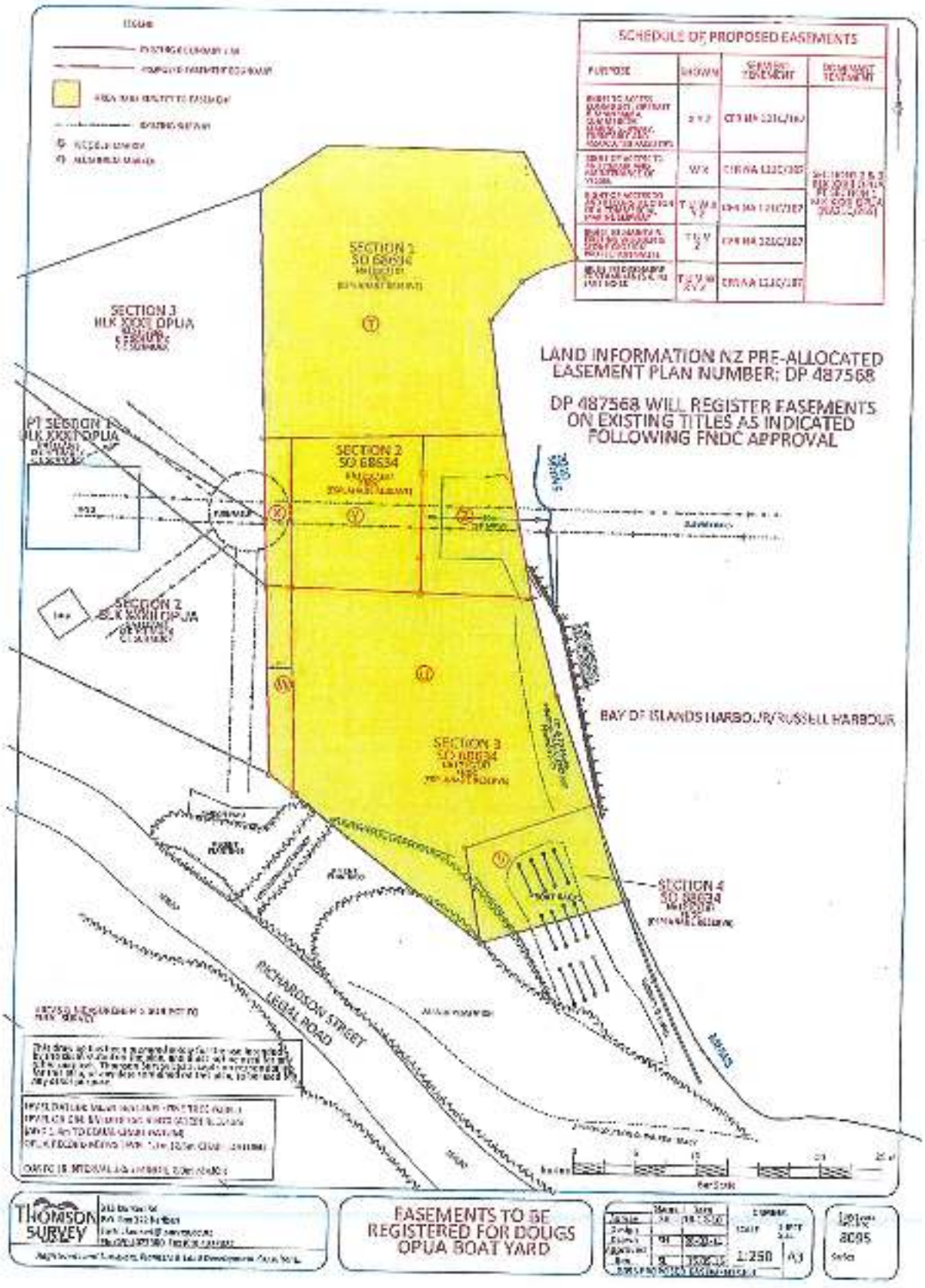
costs generally, both in this Court and the Courts below (unless the parties are able to agree on costs). Submissions from Mr Schmuck and the District Council should be filed and served by 15 November 2019, submissions from the Society by 29 November 2019 and reply submissions from Mr Schmuck and the District Council by 6 December 2019.

Leave reserved

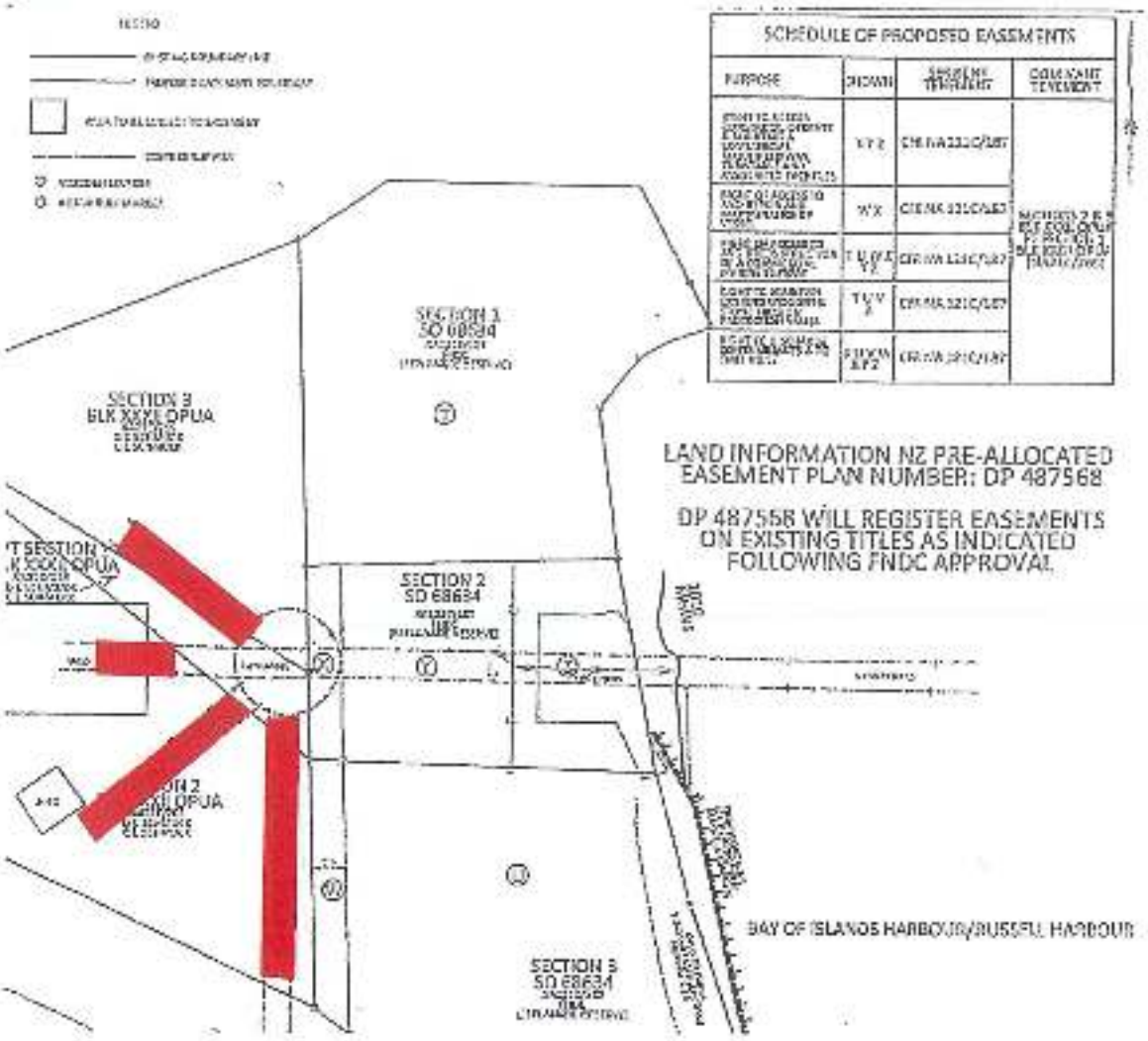
[144] We are unsure as to whether the challenged easements have been removed from the register and, if so, whether any formal steps are required to reinstate them. We reserve leave to the parties to apply for consequential orders if required.

Solicitors:
Henderson Reeves Lawyers, Whangarei for Appellant
Bennion Law, Wellington for First Respondent
Law North Lawyers, Kerikeri for Second Respondent

ANNEXURE 1


SCHEDULE OF PROPOSED EASEMENTS
PURPOSE
SHOWN
SERVIENT TENEMENT
DOMINANT TENEMENT
SECTION 2 SO 68534
SECTION 3 BLK XXXI OPUA
PT SECTION 1 BLK XXXI OPUA
SECTION 2 BLK XXXII OPUA
LAND INFORMATION NZ PRE-ALLOCATED EASEMENT PLAN NUMBER: DP 487568
DP 487568 WILL REGISTER EASEMENTS ON EXISTING TITLES AS INDICATED FOLLOWING FNDC APPROVAL
BAY OF ISLANDS HARBOUR/RUSSELL HARBOUR
SECTION 4 SO 68534
RICHARDSON STREET LEGAL ROAD
THOMSON SURVEY
EASEMENTS TO BE REGISTERED FOR DOUGS OPUA BOAT YARD
1:250
A3

ANNEXURE 2


SCHEDULE OF PROPOSED EASEMENTS
PURPOSE
SECTION 1 SO 68634
SECTION 3 BLK XXXI OPUA
SECTION 2 SO 68634
SECTION 3 SO 68634
LAND INFORMATION NZ PRE-ALLOCATED EASEMENT PLAN NUMBER: DP 487568
DP 487568 WILL REGISTER EASEMENTS ON EXISTING TITLES AS INDICATED FOLLOWING FNDC APPROVAL
BAY OF ISLANDS HARBOUR/RUSSELL HARBOUR

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10 September 2025

Alicia-Kae Taihia
FNDC PDP Team
alicia-kate.taihia@fndc.govt.nz

REF: HEARING 15C – TIMETABLE RESPONSE; S21

In response to the 42A report by the Senior Policy Planner and Technical Director for the PDP and limited accommodation for the hearing impaired, at the hearing facilities; I will not be attending the 15C hearing.

Nor will I be attending because of the misrepresentations to the Panel in the 42A report of my initial submissions and those of the subsequent submissions I made at hearing 8 on Open Space matters directly/indirectly affected by the Treaty of Waitangi Act 1975.

Nor because the Panel has not made it clear to the PDP Planning Team of their spoken commitment to resolve Natural Open Space issues on the land and in the CMA regarding my legal occupations that directly affect substantial PDP zoning errors.

Nor because the PDP Team has disregarded/misrepresented not only the written submissions by my expert witness, but his phone conference evidence with them as to my concerns with the scope of the PDP that are in effect, ultra vires to the RMA.

Therefore, because these matters I have raised appear now to be beyond the jurisdiction of the PDP, I am hereby submitting the entire scope of my evidence regarding concerns I have that are likely not only to affect my boatyard, its exclusive occupations both on land and in the CMA, but the entire District as well.

Douglas Schmuck

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SUBMISSIONS TO THE

THE

SUPREME COURT OF

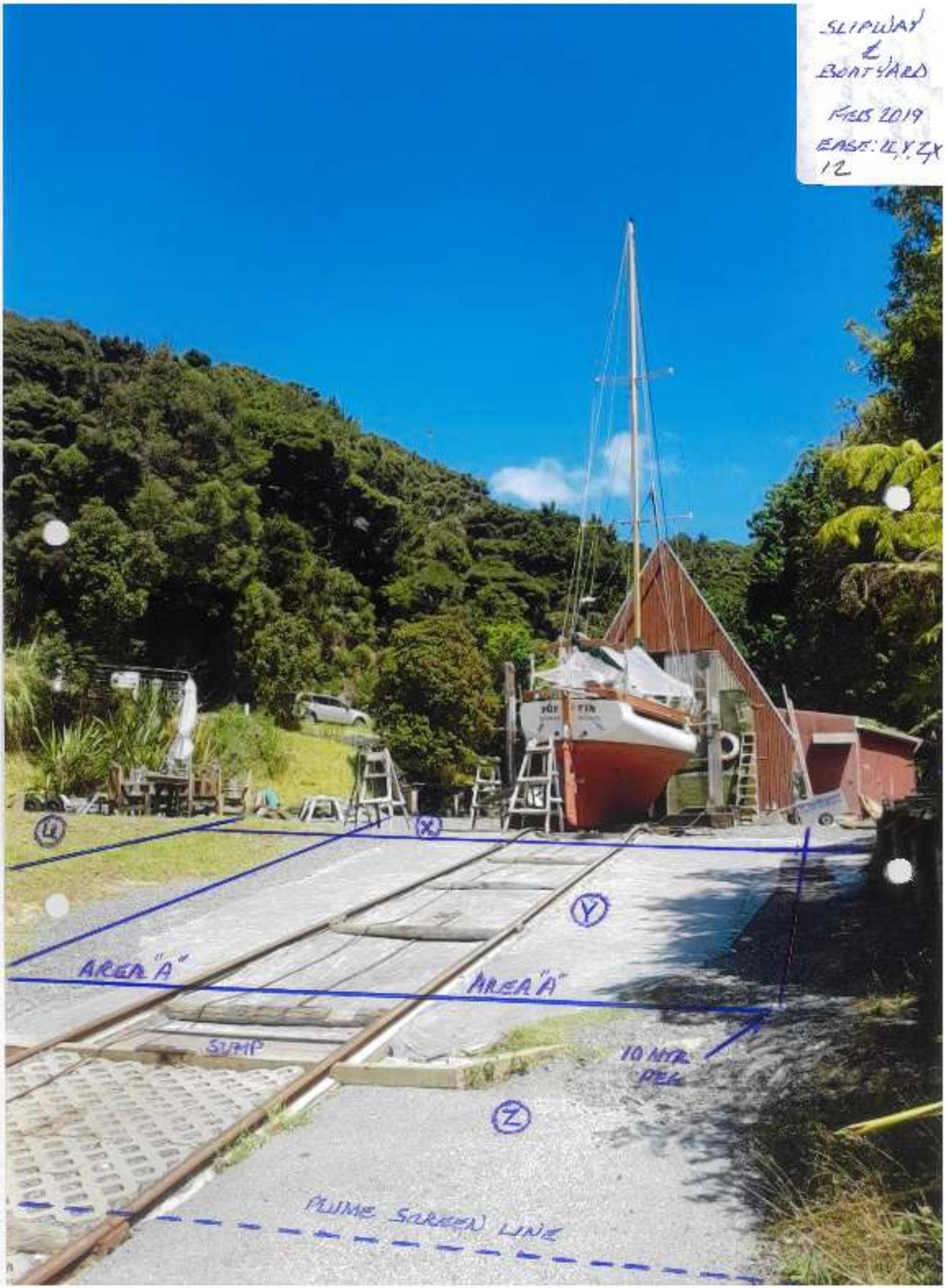
NEW ZEALAND

9 AND 10 JULY 2019

WASH DOWN
AREA "A"
FEB 2019
EASE: 4, 7, 2

WASH DOWN
AREA "A"
FOR LOTS
EASE: 4, 7, 2


U
Y
X
WASH DOWN
AREA: "A"
EASE: U,X,Y
FEB 2019


SLIPWAY & BOATYARD
FEB 2019
BASE: LY, ZX
12
(W)
(X)
(Y)
AREA "A"
AREA "A"
SUMP
10 MTR PEG
(Z)
PLUME SCREEN LINE

WHARF
GROUNDS &
SLIPWAY
FEB, 2019

AK Taihia

From: Doug and Helen
Sent: Wednesday, 10 September 2025 8:42 pm
To: AK Taihia
Subject: Fwd: Fwd: Fwd: Pictures

Good evening Alicia

Please attach these photos as S21 "G" as a representation of the structural occupations as of early 2025 on land and in the CMA; and now within weeks of completion of the adjoining house. The building at the head of the slipway is a new commercial boat shed, office, work shop, and winch room.

Kind regards

Doug Schmuck