

# **NORTHLAND REGIONAL COUNCIL**

## **Report and Decision of the Hearing Commissioner. Hearing held at the Paihia Pacific Resort Hotel, Paihia on 3 – 5 August 2020**

Independent Hearing Commissioner, Dr Rob Liewering, was appointed by the Northland Regional Council to hear and determine the applications lodged by Douglas Craig Schmuck and Interesting Projects Limited. The applications, made in accordance with the Resource Management Act 1991, were lodged on 8 January 2020 and referenced as APP.041365.01.01 and APP.008270.01.03, respectively.

### **Representations and Appearances**

#### **Applicant:**

**Ms C. Prendergast**, Counsel, Henderson Reeves

**Mr D. Schmuck**, Applicant, owner of Doug's Opuia Boat Yard

**Ms J. Kidman**, Applicant, co-owner of Interesting Projects Limited

**Mr B. Hood**, Planner, Reyburn and Bryant Limited

**Mr J. Papesch**, Engineer, Haigh Workman Limited

**Mr P. Stacey**, Air Quality Scientist, GHD Limited

**Dr P. Wilson**, Senior Coastal Scientist, 4Sight Consulting Limited

**Mr M. Farrow**, Landscape Architect, Littoralis Landscape Architecture

**Mr A. Johnson**, Design and Project Engineer, Total Marine Services Limited (written statements)

#### **Submitters:**

**Dr A. Atkinson**

**Mr T. Dunn**

**Mrs M. Larcombe**

**Mr D. Dysart**

**Ms M. Marks**

**Mrs A. Kyriak**

**Mr J. Cooper** for Nga Tarairaka o Ngāti Hine

**Mr M. Rashbrooke**

**Mr H. Nissen** for himself and the Ōpua Coastal Protection Society

**Ms J. Johnson** for the Ōpua Coastal Protection Society

**Submitter Written Statements:**

**Mr P. Clark**

**Mrs J. Clark**

**Northland Regional Council:**

**Mr A. Hartstone**, Consultant Planner, Set Consulting Limited

**Mr P. Maxwell**, Coastal Consents Manager, Northland Regional Council

**Ms A. Sluys**, Hearing Administrator, Northland Regional Council

## **BACKGROUND AND PROCEDURAL MATTERS**

1. This is the report and decision of independent Hearing Commissioner Dr Rob Lieffering. I was appointed by the Northland Regional Council (**NRC**) to hear and decide the application for various resource consents lodged by Mr Douglas Craig Schmuck associated with the operation of a boatyard and the application lodged by Interesting Projects Limited to change conditions of an existing resource consent. For the purposes of this decision the two applicants are jointly referred to as '**the Applicant**' (unless otherwise stated) and the two applications are jointly referred to as '**the Application**' as the applications were lodged together.
2. The Application was lodged with the NRC on 8 January 2020. Mr Schmuck's application was made pursuant to section 88 of the Resource Management Act 1991 (**RMA**) and Interesting Projects Limited's application to change conditions of its existing resource consent was made pursuant to section 127 of the RMA.
3. Mr Alister Hartstone, a consultant planner engaged by the NRC to assist with the processing of the Application, prepared a report pursuant to section 42A of the RMA (**the Staff Report**). Mr Hartstone also prepared an 'Addendum to Section 42A Report' (**the Addendum Staff Report**). The Staff Report was pre-circulated to the parties prior to the hearing as required by section 103B of the RMA.
4. Eight briefs of evidence were prepared by the Applicant, these being from Mr Schmuck, Ms Julie Kidman (co-owner of Interesting Projects Limited), Mr Brett Hood (a planner), Mr John Papesch (an engineer), Mr Peter Stacey (an air quality expert), Dr Peter Wilson (a coastal scientist), Mr Andrew Johnson (an engineer), and Mr Michael Farrow (a landscape architect). The Applicant's briefs of evidence were pre-circulated to the parties prior to the hearing as required by section 103B of the RMA<sup>1</sup>.
5. No briefs of expert evidence were provided by any of the submitters.
6. The hearing commenced at 9:30 am on Monday 3 August 2020 and was held at Paihia Pacific Resort Hotel, Paihia. Mrs Marks opened and closed the hearing with a karakia and I thank her for this.
7. The Staff Report provided an analysis of the matters I must consider under the RMA in making my decision. The Staff Report also included a recommendation that Mr Schmuck's application be granted, subject to a suite of recommended consent conditions, and that the conditions of consent be changed on Interesting Projects Limited's existing resource consent.
8. On 1 July 2020 I issued Minute #1 which included directions to ensure a smooth hearing process. On 26 July 2020 I issued Minute #2 which advised the Applicant that I had only one question of Mr Johnson and that he could answer it in writing and be excused from attending the hearing unless he had rebuttal evidence.

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<sup>1</sup> Mrs Kidman's evidence was circulated on 25 July 2020 instead of 20 July 2020.

9. Minute #2 included a request that the NRC obtain legal advice on two matters, one relating to my ability to make a decision on those parts of the Application which are currently also being considered by the Environment Court, and the other matter relating to what constitutes 'the existing environment'. Minute #2 also requested additional information from Mr Hartstone in respect to advice he had received from NRC staff and that Mr Farrow prepare some comparison images showing the site with and without the proposed coastal structures. I received a response to Minute #2 on 29 July 2020 and this was circulated to the other parties.
10. I received an email from the NRC on 28 July 2020 advising that the Applicant has had discussions with NRC staff regarding further research the NRC had recently undertaken as to the status of some of the existing structures within the coastal marine area (**CMA**) at the subject site. This research suggested Mr Schmuck's existing 'jetty' (wharf) and slipway within the CMA were the subject of 'deemed coastal permits' under section 384(1) of the RMA as they were previously authorised under the Harbours Act 1950. In the NRC's 28 July 2020 email the Applicant asked me, via the NRC, whether, in light of the results of the further research, I still had questions of Mr Farrow and whether he needed to prepare the comparison images that I requested in Minute #2. I advised the Applicants, via the NRC, that I would await the NRC's legal advice on the matter before determining whether I had questions of Mr Farrow. I also advised the NRC that the legal advice should be informed by the further research.
11. On 20 July 2020 I issued Minute #3 which posed two questions in relation to the deemed coastal permits and how the 'existing environment' is dealt with in light of the High Court's decision on *Ngāti Rangī Trust v Manawatu-Whanganui Regional Council*<sup>2</sup> (**Ngāti Rangī**).
12. I pre-read the Application and its supporting documents/reports, the submissions, the Staff Report, and the pre-circulated evidence. I directed that this material be 'taken as read' during the hearing<sup>3</sup>.
13. At the end of the formal part of the hearing an agreed timetable was set for the provision of the Applicant Right of Reply (**the Right of Reply**) in writing. Some additional steps were agreed to in respect of Mr Hartstone's involvement on drafting of conditions with the Right of Reply needing to identify those conditions where there are agreement and those that are not agreed (including reasons).
14. I undertook a site visit on 4 August 2020. I was accompanied by Ms Alissa Sluys, the NRC's hearing administrator. We met Mr Bill Kidman, the co-owner of Interesting Projects Limited. Mr Kidman had no formal involvement in the hearing. During the visit I walked out on the existing wharf and onto the pontoon at its eastern end. I viewed the slipway and walked around the boatyard, including in and around Mr Schmuck's boatshed. I also walked north along the coastal walking track, around the reserve in front of Mr Schmuck's property, and then south along the coastal walkway to Ōpua.

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<sup>2</sup> *Ngāti Rangī Trust v Manawatu-Whanganui Regional Council* [2016] NZHC 2948.

<sup>3</sup> As provided for by section 41C(1)(b) of the RMA.

15. The Applicant's written Right of Reply was due on 28 August 2020, however on that day I received a request, via the NRC, for an extension until 31 August 2020. I agreed to the requested time extension, but the Right of Reply<sup>4</sup> was not delivered until 1 September 2020 and no explanation was provided as to its lateness.
16. Having read the Right of Reply I considered further information was required from Mr Hartstone, Mr Papesch, and the Applicant – I requested this further information in Minute #4A (dated 7 September 2020). I received the further information on 11 September 2020. Having read the responses, I considered there was still confusion regarding whether the Applicant was proposing changes to the pontoon design or not and I requested clarification on this matter in Minute #5 (dated 13 September 2020). I was forwarded an email from the Applicant (dated 17 September 2020) which stated it had reconsidered the proposed changes to the pontoon design and that the design, as included in the Application, was that being sought to be consented. I responded, by way of email, and requested further information on the matter of whether providing reasonable public berthing was being proposed or not – I received responses from the Applicant on that matter on 25 September 2020 and further advice from Mr Hartstone on 28 September 2020. Having read the responses I found there was still conflicting information regarding provision for reasonable public berthing and various email exchanges occurred (via Ms Sluys) to confirm what the Applicant's actual proposal was in that regard.
17. I was also provided a set of 'amended' plans which were referred to by Mr Hood and Mr Hartstone in their responses to Minute #5, however no information was provided as to the origin of these new plans and how they differed from the plans included in the Application and those attached to Mr Hartstone's recommended conditions. I sought clarification of this and Mr Hood advised the changes related to correcting legal descriptions (on one plan), removing the 'turntable' (previously present on the boatyard and used for manoeuvring vessels) from another plan, inclusion of two new fender piles in the CMA to protect the proposed gangway, details of a handrail on the gangway, and inclusion of two 'beach grids' either side of the wharf close to the shoreline – Mr Hood stated these beach grids were not structures and therefore did not require consent. Having reviewed the details of these new plans I noted they were dated after the public notification date and I therefore sought clarification from the Applicant as to what the beach grids were and advice from the NRC whether the two new fender piles (which presumably needed consent) were 'within scope' or not. I received responses to these two queries on 14 October 2020, including yet another set of amended plans with the beach grids removed. In respect of the two new fender piles Mr Hartstone advised me that *"I am satisfied that inclusion of these two piles falls within the scope of the application for reasons similar to those expressed in my email advice to the Commissioner of 16th September 2020"*.
18. Having satisfied myself that I had sufficient information to make my decision I formally closed the hearing on 16 October 2020 and advised the parties of this via the NRC.

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<sup>4</sup> Two separate Rights of Reply were provided, one on behalf of Interesting Projects Limited and one on behalf of Mr Schmuck. For the purposes of this decision I treat them together as a the 'Right of Reply'.

19. As is evidenced by the above paragraphs, the information the Applicant provided following the hearing necessitated me having to issue several Minutes and emails (via Ms Sluys) in an attempt to clarify matters with the Applicant. The information and responses provided by the Applicant included both conflicting and confusing information (even between their own witnesses) and it has been very difficult for me to pin-down exactly what was being proposed for some aspects of the Application. I record here that the confusing and conflicting information has been a matter of significant frustration for me; however, having been provided with copies of Mr Schmuck's various previous proceedings associated with the subject site, this does not seem to be an unusual behavioural pattern as similar frustrations were expressed by the NRC hearings commissioners in their 2018 decision and the Environment Court in its 2019 decision relating to Mr Schmuck's previous proposal(s). Despite this, I do acknowledge and accept Mr Hood's apology (in one of his emails) regarding the confusion in evidence provided following the close of the formal part of the hearing. I also note the Applicant had, in one response to me, expressed an apparent concern regarding the length of time that had passed since the formal hearing – however, this has been for reason of the Applicant's own making. I make no apology for the length of time taken to close the hearing – had the Applicant provided clearer responses then I would not have needed to repeatedly request clarification on various matters.
20. I would like to thank Ms Sluys of the NRC for the excellent assistance she provided prior to, during, and following the hearing. I also wish to thank those parties who attended the hearing and presented evidence, as well as Mr Kidman for showing me around the subject site.

*Extension of Statutory Timeframes to Notify Application and to Hold and Complete Hearing of the Application*

21. Section 95 of the RMA requires the council to notify an application within 20 working days, and section 103A(2) of the RMA requires that a hearing of the application is completed no later than 75 working days of the close of submissions. Section 37 of the RMA enables the consent authority to extend statutory time limits, subject to the requirements set out in section 37A of the Act.
22. NRC staff have advised me that the period between lodgement of the application and notification of the application was exceeded by 17 working days and that this was, in large part, in due to time taken reaching agreement of the wording of the public notice to ensure that all elements of the activities proposed were adequately provided for. It is my understanding that the NRC has previously used the provisions of section 37 of the RMA to extend the statutory time limits associated with the notification of the application and that the Applicant had been advised of this time extension.
23. NRC staff also advised me the Covid-19 response and subsequent Alert Level 4 lockdown and progressive periods at Alert Levels 3 and 2 have had a significant impact on the ability for the NRC to prepare for, and hold, this hearing within the statutory timeframes prescribed by the RMA. NRC staff have advised me the period of time from the close of submissions to the commencement of the hearing was 83 working days and the hearing period was 55 working days (i.e. 3 August 2020 to my formal closing on 16 October 2020). The total number of working days from the close of submissions to the completion of the hearing was therefore 138 working days, which exceeds the 75 working days specified in section 103A(2) of the RMA by 63 working days.

24. Due to the special circumstances affecting the ability of the NRC to hold a hearing (being the Covid-19 Alert restrictions) and the complexity of the application (requiring additional time for me to get clarification on various matters during the hearing period) I consider it appropriate in this case to extend the statutory time limits specified in section 103A(2) of the RMA by 63 working days. This extension is made pursuant to section 37A(4) of the RMA.
25. In making this decision to extend timeframes under section 37A(4) of the RMA, I confirm that I have taken into account the matters specified in section 37A(1)(a-c) of the RMA - that is, I consider the extension of time will not prejudice the interests of any of the parties; I have taken into account the interests of the community in achieving adequate assessment of the effects of a proposal; and, I have taken into account my duty to avoid unreasonable delay in making my decision.

## **THE APPLICATION**

26. The activities which are the subject of this Application were described in detail in the Application, the Staff Report, and the Applicant's evidence. As such, I do not repeat that information here, however the following is a summary of the key components of the proposal:
- Mr Schmuck operates a boatyard at 1 Richardson Street Ōpua where he undertakes maintenance and repairs on vessels that are hauled out of the coastal waters of Walls Bay, being a small bay within the Ōpua Basin. In this decision I refer to Mr Schmuck's property as '**the boatyard**'.
  - The CMA boundary is located approximately 23.5 metres (**m**) to the east of the boatyard property boundary with the land in between being a local purpose esplanade reserve (**the reserve**) which has a moderate slope.
  - A slipway is used to move vessels from the CMA onto land. The slipway consists of two parallel rail lines on which run devices called 'cradles'. The rail lines currently extend into Walls Bay (i.e. to below the low water line) – according to Mr Hood's Statement of Evidence the slipway extends 31 m into the CMA, but in his Addendum to Evidence he states the slipway extends 65 m into the CMA. Vessels are positioned onto a cradle and a winch, located on the boatyard, hauls the cradle (with the vessel on it) out of the CMA and onto land.
  - The hulls of the vessel are first 'washed', which involves water blasting of the hull and also the topside of the vessel (if needed), followed by grinding and/or sanding. This activity generally takes place on the reserve within an area referred to as '**Area A**' on which Mr Schmuck has an easement to allow certain activities to take place – other easements exist over other parts of the reserve to enable the vessels to be transferred to and from the CMA as well as small areas that allow repairs and maintenance to be undertaken (discussed in greater detail later in this decision).

- The vessel/cradle is then hauled further up the slipway onto the boatyard where various repair and maintenance works are completed, including removal of antifoulant paints by sanding and grinding, application of new antifoulant paints, and painting of the topside of the vessel. Paints are applied by way of rollers, brushes, and spray painting.
- Once the repair and maintenance works are completed the vessel/cradle is lowered down the slipway back to the CMA.
- The boatyard previously had a 'turntable' off which a number of side rails, also referred to as 'spurs', branched off which enabled more than one vessel to be worked on within the boatyard property. The turntable was almost entirely within the boatyard property but part of it did extend into the reserve. Mr Schmuck has recently undertaken works at the boatyard which has included the removal of the turntable and side rails.
- Mr Schmuck owns a wharf which extends ~50 m into Walls Bay – the slipway runs parallel to the wharf on its southern side. Mr Schmuck also owns a floating pontoon which is located at the eastern end of the wharf to which it is connected by way of a gangway. Mr Schmuck undertakes maintenance and repair works on vessels which can be berthed alongside the wharf.
- Mr Schmuck holds several resource consents associated with the structures and their use(s) within the CMA – these consents are not due to expire until 2036. He also holds a number of resource consents (discharge and coastal permits) that authorise the discharge of contaminants into the air, discharges to land, and stormwater discharges to the CMA - these consents expired on 30 March 2018, however in 2017 Mr Schmuck applied for consents for the same activities prior to their expiry and can therefore undertake these activities under section 124 of the RMA. In 2018 a panel of two commissioners declined Mr Schmuck's 2017 application, however he appealed that decision and the Environment Court is yet to make its final decision on that appeal (I discuss this later in this decision).
- Interesting Projects Limited owns a pontoon which is located on the northern side of Mr Schmuck's wharf. That pontoon, and its use and occupation, is authorised by coastal permits held by Interesting Projects Limited.
- Mr Schmuck is proposing to build a new wharf approximately 3 m to the north of the existing wharf and to demolish the existing wharf. The new wharf will generally be the same length as the existing wharf but will be 3 m wide instead of the current 1.5 m width, with a 'flared' section that would be 6 m wide. Three working berths would be available alongside the wharf. A pontoon is proposed at the eastern end of the new wharf (attached to the flared section by way of a gangway) and Mr Schmuck proposes to use the new pontoon as a two berth 'marina'. Interesting Projects Limited's existing pontoon will continue to be used but will be, by virtue of the location on proposed wharf, moved ~4 m north of its current location – the current Application includes a request by Interesting Projects Limited under section 127 of the RMA to change conditions of its coastal permit to allow for this shift in location.



- Mr Schmuck proposes to undertake capital dredging around the new wharf, pontoon, and the approach channel to the wharf to provide all tide access to and around the facility (including the slipway). Water depths would be -1.5 m below Chart Datum (**CD**) and -2.0 m CD around the proposed two berth marina.
- The proposed dredging will include dredge batters. The dredge batter in the vicinity of the slipway will extend into a small part of an existing pipi bed which is located to the south of the slipway. In an attempt to minimise the risk of erosion of the pipi bed, Mr Schmuck proposes to construct a subsurface erosion barrier that would run from the reserve out into Walls Bay (parallel to the slipway) and would be angled to the southeast at its end.
- The slipway is proposed to be reconstructed, both within the CMA and on land. Within the CMA the slipway would be a reduced length of 17.5 m (from its current 31 m) but will be along its current alignment. As part of these works, around 184 cubic metres (**m<sup>3</sup>**) of sediments, some of which have elevated concentrations of metals, around the landward part of the slipway within the CMA are proposed to be removed and disposed of at a facility authorised to accept such material.
- On land the slipway is proposed to be reconstructed so that it has a more even gradient than it currently has (or did) and will involve earthworks which will result in a 'trench' which would have walls ~1 m high within the reserve, increasing to ~2 m within the boatyard property. The Application sought a land use consent from the Far North District Council (**FNDC**) to disturb soil under the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011. The Staff Report stated this component of the Application had already been processed by the FNDC with the land use consent being granted on 22 April 2020. The Staff Report stated no land use consent was required from the NRC (I discuss this later in this decision).
- The working areas within the reserve and within the boatyard property will be reconstructed, including concreting the base area occupying Area A. New infrastructure is proposed to manage wash water and stormwater from the working areas. All water used for washing the hulls of vessels and clean up water will be discharged to the FNDC's reticulated sewerage system (as trade waste). In addition, the 'first flush' rainfall that lands on the working areas is also proposed to be discharged to the FNDC's reticulated sewerage system – subsequent rainfall/stormwater would be directed to a new stormwater treatment system, referred to as a 'Stormwater360 system', prior to being discharged to the CMA by way of a new discharge pipe that would be attached to the new wharf at a point where the discharge would be below the low water mark (i.e. so that the discharge is always to water and not to the foreshore as is currently the case).
- Stormwater from other parts of the boatyard (stormwater that is 'clean' relative to the potentially 'dirty' stormwater from the working areas) would be discharged directly to the CMA without treatment. A number of options are provided for managing the clean stormwater in the Application (and further advanced during the hearing), but all involve this stormwater being discharged to the FNDC's stormwater network (I discuss this later in this decision).

27. Mr Schmuck is seeking a 35-year duration for all the new consents. The application by Interesting Projects Limited is made pursuant to section 127 of the RMA and, as such, would retain its existing expiry date of 30 March 2036.

## **PLAN RULES AFFECTED**

28. The activities proposed by Mr Schmuck require resource consents from the NRC under various rules of the operative Regional Coastal Plan for Northland (**RCP**), the operative Regional Air Quality Plan for Northland (**RAQP**), and the Proposed Regional Plan for Northland (**PRP**). The operative plans are still relevant as many of the provisions, including the rules, of the PRP are under appeal.
29. The Application sought a land use consent from the NRC to undertake earthworks within the 'Riparian Management Zone' under Rule 34.3 of the operative Regional Water and Soil Plan for Northland (**RWSP**) and in the 'Coastal Riparian and Foredune Management Area' under Rule C.8.3.4 of the PRP. However, subsequent calculations undertaken by the Applicant determined the volumes and area of earthworks were such that no consent for earthworks are required under either of these plans.
30. The Application also indicated that a consent was required under Rule C.6.8.3 of the PRP in respect to the remediation of contaminated land. However, subsequent discussions between the Applicant and the NRC determined that no consent was required under this rule because the land did not fall within the definition of 'contaminated land' under the RMA. It was therefore determined that no consent is required under this rule.
31. Section 1.8 of the Application outlines the various consents being sought and the relevant rules within the RCP and PRP. The activities are variously controlled, restricted discretionary, and discretionary activities.
32. The activities proposed by Mr Schmuck are interrelated to a degree which warranted them being considered together as a 'bundle', with the most restrictive activity status applying to the bundle. In this case, the overall activity status of the bundle is **discretionary**.
33. The application by Interesting Projects Limited is made pursuant to section 127 of the RMA and section 127(3)(a) states that such applications are treated as **discretionary** activities.

## **SITE DESCRIPTION**

34. The site and surrounding areas are described in detail in the Application and I adopt that assessment for the purposes of my decision as provided for by section 113(3)(b) of the RMA. However, some of the key points (which I refer to later in this decision) are:
- The boatyard is situated within Walls Bay, which is a small bay within the Ōpua Basin. The Veronica Channel being located beyond the Ōpua Basin to the northeast.

- The Ōpua Basin includes numerous vessels on moorings, and the Ōpua wharf is located across the Basin from Walls Bay. The Ōpua to Okiato ferry service runs frequently from the Ōpua wharf and travels through the Ōpua Basin.
  - Walls Bay is gently sloping and contains a small beach (~60 m long). A pipi bed is located within the bay that extends south from the existing slipway and oysters are present on the rocks located to the north of the wharf.
  - The reserve consists of grassed areas as well as some native bush. A dinghy rack is located in the southern part of the reserve and a small dinghy ramp enables access onto the reserve from the CMA.
  - A coastal walkway, being part of the Te Araroa Walkway, traverses the reserve close to the CMA boundary.
  - The boatyard is situated within a small steep sided valley which is generally covered in regenerating bush, however numerous residential dwellings are located within the valley. The closest residential dwelling is located ~50 m southwest of the boatshed.
  - The boatyard is zoned 'Commercial' under the Far North District Plan (**FNDP**) and the reserve is zoned 'Conservation' under that plan.
  - The existing slipway and wharf are located towards the northern part of Walls Bay.
35. One other relevant matter regarding the boatyard and the reserve as it currently exists is that several pieces of infrastructure formerly present on the boatyard have recently been removed, namely the turntable and the side rails. In addition, the slipway on the boatyard and reserve down to about the bottom of Area A have been removed. This effectively means that Mr Schmuck currently has a 'clean slate' ahead of his proposed reconstruction of the slipway and stormwater management system.

## **NOTIFICATION AND SUBMISSIONS**

36. The Application was notified on 4 March 2020 and 22 submissions were received, 20 in opposition and two in support.
37. I was provided with copies of the submissions and consider these were accurately summarised in Section 4 of the Staff Report. I adopt that summary for the purpose of my decision as provided for by section 113(3)(b) of the RMA. I discuss the relevant matters within the submissions in later sections of this decision.

## SUMMARY OF EVIDENCE HEARD

38. Section 113(1)(ad) of the RMA requires decisions to include a summary of the evidence heard. There was a significant amount of evidence provided by the Applicant, Mr Hartstone, and the submitters. Instead of summarising each person's evidence, I consider it more appropriate to include summaries of the evidence within each of the 'issues in contention' sections presented later in this decision. I consider that approach to be what is intended by section 113(1)(ac), (ad), and (ae) of the RMA – that is, a decision structured on identifying the issues in contention, summarising the evidence heard on those matters, and then presenting my findings on those matters.

## ASSESSMENT

39. In assessing the Application, I have considered the Application documentation, the submissions received, the Staff Report, the Applicant's evidence, the Addendum Staff Report, the Applicant's Right of Reply, and the advice/information I received in response to the various Minutes issued.
40. I record that the findings I have made and the decision I have arrived at are based on all the evidence before me and my consideration of that material within the context of the statutory framework.

## Statutory Considerations

41. Section 104(1) of the RMA states that, when considering an application for resource consent and any submissions received, I must have regard to:
- (a) *any actual and potential effects on the environment of allowing the activity; and*
  - (ab) *any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and*
  - (b) *any relevant provisions of—*
    - (i) *a national environmental standard:*
    - (ii) *other regulations:*
    - (iii) *a national policy statement:*
    - (iv) *a New Zealand coastal policy statement:*
    - (v) *a regional policy statement or proposed regional policy statement:*
    - (vi) *a plan or proposed plan; and*
  - (c) *any other matter the consent authority considers relevant and reasonably necessary to determine the application.*

42. In terms of section 104(1)(b) of the RMA, Messrs Hartstone and Hood agreed the following statutory planning documents were applicable for this Application:
- The RCP;
  - The RAQP;
  - The PRP;
  - The Regional Policy Statement for Northland (**RPS**); and
  - The New Zealand Coastal Policy Statement (**NZCPS**).
43. Mr Stacey considered the Resource Management (National Environmental Standards for Air Quality) Regulations 2004 (**NES-AQ**) to be relevant. Messrs Hartstone and Hood did not refer to the NES-AQ so I assume they did not consider it to be relevant under section 104(1)(b) of the RMA.
44. In terms of section 104(1)(c) of the RMA, Messrs Hartstone and Hood agreed the Ngā Tikanga mo te Taiao o Ngāti Hine 2008 (Ngāti Hine Iwi Environmental Management Plan)<sup>5</sup> was a relevant 'other matter' for me to consider for this application. I also consider the Walls Bay Reserve Management Plan (**WBRMP**) to be a relevant other matter under section 104(1)(c) of the RMA.
45. Section 104(2) of the RMA states that, when forming an opinion for the purposes of section 104(1)(a), I *may* disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect. This is referred to as the application of the 'permitted baseline'. Section 5.2 of the Application discusses the permitted baseline and notes this concept is limited in this case but presents a list of relevant permitted activities. The Application states that the assessment of effects was prepared 'cognisant' of the permitted activities that could be undertaken. I agree that the permitted baseline is of limited application in this case.
46. When considering a 'replacement'<sup>6</sup> application affected by section 124 of the RMA, as is the case here, section 104(2A) of the RMA states I must have regard to the value of the investment of the existing consent holder. I discuss this in more detail later in this decision.
47. Section 104(3)(a)(ii) states that I must not have regard to the effect on any person who has given written approval to the Application. No written approvals were provided so this section is not relevant to my considerations.
48. Section 104B of the RMA applies in this case as I am dealing with a bundle that has an overall discretionary activity status. This section states that I may grant or refuse the Application sought and, if granted, I may impose conditions under section 108 of the RMA.

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<sup>5</sup> Section 6.14 of the Application and Mr Hartstone referred to this document as "Te Rūnanga o Ngāti Hine Iwi Management Plan", however the correct title is 'Ngā Tikanga mo te Taiao o Ngāti Hine 2008 (Ngāti Hine Iwi Environmental Management Plan)'.

<sup>6</sup> The RMA does not use the term 'replacement' or 'renewal' consents. Section 124 of the RMA applies where the holder of the consent applies for a new consent for the same activity, however these are commonly referred to in the planning profession as 'replacement' or 'renewal' consents.

49. Sections 105 and 107 of the RMA are also relevant in this case because the Application includes discharges of contaminants to land, air, and water.
50. My assessment of the Application considers each of the subsections of sections 104, 105, and 107 of the RMA below.

#### **SECTION 104(1)(a) OF THE RMA – ACTUAL AND POTENTIAL EFFECTS ON THE ENVIRONMENT**

51. The proposed activities will result in various actual and potential effects on the environment. These include both positive and adverse effects.
52. As discussed earlier, the Application includes two separate applications, one by Mr Schmuck for a large number of consents, and one by Interesting Projects Limited to change conditions of consent to enable its existing pontoon to be moved ~4 m to the north of its current position. The application to change conditions is a relatively minor component of the overall Application. In terms of Interesting Projects Limited's Application to relocate its pontoon Mr Hartstone stated *"Any adverse effects associated with the minor relocation of the floating structures and resulting change to the consent conditions are considered as part of the activity to demolish and reconstruct the wharf"*. That is, the effects of moving the existing pontoon are, in themselves, minor but because the pontoon will form part of the overall set of coastal structures it should be considered together with Mr Schmuck's proposal. I agree and have taken that approach in this decision.
53. Mr Hood identified the positive effects associated with the proposal as being:
  - The remediation (removal) of contaminated coastal sediments as part of the capital dredging operation.
  - Best practice management and treatment of stormwater compared to the 'status quo'.
  - Relocation of the existing (upstream) stormwater discharge point to an all tide location. If the consents are not granted the discharge would continue to run across the intertidal area at low tide.
  - Vastly improved all tide access to the beach for mooring owners.
  - All tide access to the working berths.
  - Health and safety improvements through an improved wharf structure.
  - Tighter controls on boat maintenance activities.
  - Reduction in the length of the wharf and slipway in the CMA.
  - Having boat maintenance facilities available for the Northland community is important and a large portion of the community derives social well-being from boating activities.
  - The boatyard serves international yachts, and therefore there are positive economic benefits for ancillary marine industries.

54. The actual and potential adverse effects relate to effects on:
- air quality.
  - water quality.
  - marine ecology.
  - public access to and from the CMA, including use of the wharf.
  - navigational safety.
  - cultural values.
  - landscape, natural character, and amenity values.
55. The Application and the Applicant's experts assessed the actual and potential effects as being, at worst, minor. Most of the submissions in opposition disagreed with various parts of the Applicant's assessment of effects, meaning that most of the actual and potential effects were issues that were 'in contention'.
56. A further matter in contention related to what constitutes 'the existing environment' against which the effects of the proposed activities are to be assessed.
57. I focus the remainder of this decision on the various 'issues that were in contention'.
58. However, I consider it appropriate to first provide a brief summary of the history of the existing consents, relevant Court decisions, and proceedings associated with the site currently being heard by the Environment Court. This summary provides useful contextual information as many of the submitters have been involved with these earlier proceedings and made specific references to them in their written submissions and presentations at the hearing.

## **HISTORY AND CURRENT ENVIRONMENT COURT PROCEEDINGS**

59. The boatyard was established in 1966 and the boatshed (workshop) was built in 1972. The existing slipway was constructed in 1979 and the (then) owner had planning consent to use the slipway for access only – it did not allow work on vessels to be done on the land between the boatyard and the CMA (the area that is now the reserve). The existing wharf was constructed in 1989. The slipway and the wharf were the subject of a license issued under the Harbours Act 1950. These licenses became coastal permits under section 384 of the RMA with no expiry dates (**the deemed coastal permits**). The deemed coastal permits cover the existing wharf and slipway structures and their occupation of the CMA. Mr Schmuck bought the property in 1994.
60. The land between the boatyard and the CMA was formerly a 'paper road' and that road was 'stopped' in 1998 by the FNDC and it became an esplanade reserve as defined in section 2(1) of the RMA for the purposes specified in section 229 of the RMA. The reserve is administered and managed by the FNDC. The turntable used by the boatyard was partly on the reserve and the slipway extends over the entire width of the reserve from Mr Schmuck's boatyard property to the CMA.

61. In 1999 the FNDC granted various easements in favour of Mr Schmuck's boatyard property to regularise various activities to be on parts of the reserve. Those easements were made under section 48 of the Reserves Act 1977 and required the consent of the Minister of Conservation. The easements, how they were established and consented to, and what activities they allow to be undertaken by Mr Schmuck on the reserve have been the subject of numerous court proceedings, resulting in a case heard by the Supreme Court in 2019. The Supreme Court found the easements to be valid; that easements can be granted for a private commercial purpose; and that the FNDC's decision (as delegate of the Minister of Conservation) to consent the easements was validly made. The result being that the decision of the FNDC in respect of the easements was reinstated.
62. In 1997 Mr Schmuck applied for several resource consents associated with the boatyard and the structures within the CMA, including construction of a new pontoon at the end of the existing wharf to which it would be connected by way of a gangway. In 2002 the Environment Court made an order by consent which granted the resource consents from the NRC and the FNDC but refused consent for some of the FNDC activities (**the 2002 consents**). The NRC consents for the structures within the CMA expire on 30 March 2036 and the 'discharges' expired in April 2006.
63. In 2006 Mr Schmuck applied for new (replacement) consents for the discharges and the NRC issued consents for those discharges in May 2008 (**the 2008 consents**). Those consents expired on 30 March 2018 except the discharge of stormwater to water (an unnamed tributary of the Veronica Channel) which expired on 30 March 2009 – that stormwater discharge needed to be discontinued upon its connection to the discharge pipe to the wharf.
64. In September 2017 Mr Schmuck applied for new (replacement) consents for the 2008 consents. The following month (October 2017) Mr Schmuck applied for several consents associated with a proposed redevelopment of the site – this application being similar to the current Application but with some differences. The September and October 2017 applications were processed together by the NRC, and a hearing was held in May 2018 (including a reconvened hearing in August 2018). The hearings commissioners issued their decision in November 2018 (**the 2018 NRC decision**) and refused consent for a variety of reasons, including:
  - Inadequate management systems for stormwater and 'wastewater'<sup>7</sup>.
  - Lack of certainty that the Applicant can or will comply with proposed conditions.
  - Lack of details on the refurbishment planned for the slipway.
  - Insufficient evidence to demonstrate the discharges can be adequately controlled.
  - The effects of moving the wharf five metres to the north to be undesirable based on increased intrusion on the natural character of the land and sea interface.
  - The increased exclusive occupation of the CMA would have significant impact on public use and access to Walls Bay.

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<sup>7</sup> I understand this to be wash water.



- Disturbance and dredging of contaminants around the wharf have the potential to resuspend heavy metals in the water column and disperse them across Walls Bay leading to significant adverse effects on marine ecology and potential human health effects.
  - Insufficient land-based infrastructure to support the proposed marina.
  - The marina is inappropriate in this location due to conflicts with existing activities, public access and use, and adverse amenity effects on the reserve and walkway.
65. Mr Schmuck appealed the 2018 NRC decision to the Environment Court and he subsequently abandoned the 'new activities' component of appeal so that the Court only needed to deal with the (replacement) discharges. The Environment Court heard the appeal in April 2019 and issued its decision in July 2019 (**the 2019 Environment Court Decision**). It is my understanding that additional evidence (to that provided to the NRC commissioners in 2018) was provided to the Court in respect of the discharges. The 2019 Environment Court decision found that consents could be granted for the activities '*on the applicant's site*', with some small allowance for some work within Area A and a 5 m '*working zone*' for air quality control. Beyond this small allowance the Environment Court concluded it had no power to grant consent in respect of the reserve as it was not part of the application for renewal (by virtue of incorrect legal descriptions) and there was no justification under section 105 of the RMA to allow for discharges on the reserve given the activity could be provided for adequately on the boatyard site.
66. Mr Schmuck appealed the 2019 Environment Court decision to the High Court, alleging various errors of law. The High Court heard the appeal in February 2020 and issued its decision in March 2020. The High Court accepted there were three errors of law and set aside the 2019 Environment Court decision and remitted the matter back to the Environment Court for further consideration, including directions that the discharge permits applied to the activities on the reserve as well as the boatyard.
67. Ms Prendergast advised me that the Environment Court has yet to set a date to rehear the case.
68. It is my understanding that Mr Schmuck's 'live' appeal with the Environment Court means that he can continue to exercise the 'expired' consents that authorise the discharges by virtue of section 124 of the RMA.
69. I sought legal advice from the NRC whether there is anything precluding me from making a decision on the application(s) for discharges which, for all intents and purposes, are essentially the same as those still in front of the Environment Court. That advice confirmed there was nothing in resource management legislation that precludes successive applications.
70. The reason I present some of the findings of the 2018 NRC decision is that many of the submitters on the current application were also submitters on that application and had referred to it during the hearing. Mr Schmuck has clearly attempted to 'fill some of the gaps' by engaging additional experts and commissioning additional studies. Further, a number of the Applicant's own experts made reference to the 2019 Environment Court proceedings. However, I record here that, whilst the 2018 NRC decision and the 2019 Environment Court decision provide useful contextual information, I have made my determination solely on the basis of the evidence presented during the current proceedings.

## **ISSUES IN CONTENTION**

71. I discuss the issues that were in contention in the following sections, setting out the evidence in front of me and my findings on those issues as required by section 113(1)(ae) of the RMA. The issues in contention that I have identified are:
- a) What constitutes the 'existing environment';
  - b) The effects of the proposed coastal structures on natural character, landscape, and visual amenity values;
  - c) The effects of the proposed activities on the users and values of the reserve;
  - d) The effects of the proposed activities on water quality and marine ecology, in particular the existing pipi bed;
  - e) The effects of the proposed activities and structures on public access; and
  - f) The effects of the proposed activities on cultural values.
72. I record here that a number of submitters raised issues associated with matters I cannot consider or make decisions on. Those matters related primarily to the earthworks that have already been undertaken on the boatyard property and those proposed to be undertaken on the reserve. The main concern of the submitters regarding these proposed works being that the creation of the 'trench', within which the reconstructed slipway and working area would be placed, resulting in a 'severance' of the reserve (considered to be a significant effect by a number of submitters) – that is, the trench would create a perceived and/or actual barrier for the public to cross over from the grassed southern part of the reserve to the bushed slopes to the north of the slipway. As discussed earlier in this decision, no resource consents are required from the NRC for earthworks and I am therefore unable to consider those actual and potential effects. I am, however, able to consider the effects of the proposed discharges within the boatyard property and Area A on the users and amenity values of the reserve, a matter which I discuss later in this decision.

### **Existing Environment**

73. What constitutes the 'existing environment' against which the effects of the proposed activities are to be assessed, was an issue in contention. This was not necessarily a matter which was in contention as a result of the contents of the submissions, but rather a matter which I raised prior to and during the hearing.
74. The Application was lodged on the basis that most of the consents being sought would 'replace' existing consents held by Mr Schmuck. Only three of the proposed activities, namely the subsurface erosion barrier, capital dredging, and the two marina berths, were entirely 'new' activities.

75. The existing environment for activities which are being re-consented is somewhat unique and the Application did not appear to appropriately assess this. The leading case on the matter is the High Court's decision on Ngāti Rangi (referenced earlier in this decision). That case dealt specifically with 're-consenting' of regional council water permits and Collins J agreed that the approach taken by the Environment Court in *Port Gore Marine Farms Limited v Marlborough District Council*<sup>8</sup> (**Port Gore**) was the correct approach in terms of whether the activities for which replacement consents are being sought form part of the existing environment under section 104(1)(a) of the RMA – the *Port Gore* case dealt with re-consenting of three existing marine farms and the Environment Court found (at para 140) that “...we must imagine the environment, for the purposes of section 104(1)(a) of the Act, as if the three marine farms are not actually in it...”.
76. The Application, and the Applicant's experts, essentially assessed the effects of the proposed activities against the existing activities (i.e. the 'status quo'), noting that the proposed mitigation measures would result in 'improvements' in terms of effects compared to the status quo, particularly the effects associated with the discharges. Whilst such improvements are to be encouraged and applauded, from a strict RMA perspective it is the effects of the discharges (as applied for) which need to be assessed, not the difference between what is proposed and the status quo (or historic discharges).
77. In terms of the coastal structures, the Application took the same approach of comparing the effects of the proposed structures against the existing structures. The structures which result in the most significant effects, particularly in terms of visual, natural character, and amenity effects, are the wharf and pontoon. In this case the Application has been prepared on the basis of a very early replacement application, some 16 years ahead of the expiry of its existing consent. Again, on the basis that the Application is for a replacement consent, the existing environment against which the effects of the proposed wharf should be assessed would be Walls Bay with the existing wharf and pontoon not being present (following the *Ngāti Rangi* and *Port Gore* decisions). However, the current situation is not so straightforward.
78. As discussed earlier, the slipway and existing wharf (excluding the pontoon) are deemed coastal permits (both for the structures and their occupation of the seabed) by virtue of section 384 of the RMA. Such deemed coastal permits have no expiry – that is, they create an enduring authorisation for the structures. They can therefore be considered as part of the existing environment. The Application made no mention of these deemed coastal permits and, in fact, it was explicit that the new consents (if granted) would replace those consents which authorised the placement, use, and maintenance of the existing wharf (and slipway for that matter) as well as their occupation. That is, the Application clearly stated the new consents would replace the 2002 consents (granted by way of the Environment Court consent order) which include consents “(01)” and “(02)” that authorise the placement, use, and maintenance of, *inter alia*, a wharf and slipway, respectively. Further, consent “(09)” of the 2002 consents authorises the occupation of the seabed by the wharf and slipway structures.

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<sup>8</sup> *Port Gore Marine Farms Limited v Marlborough District Council* [2012] NZEnvC 72.

79. It seemed odd to me that the 2002 consents appeared to include authorisations for the same activities that are covered by the deemed coastal permits. Ms Prendergast explained that the wording of the 2002 consents did not reflect what was actually applied for by Mr Schmuck and to what was publicly notified – Mr Schmuck’s application that led to the 2002 consents only sought to ‘use and maintain’ the existing structures in the CMA, but to then also place, use, and maintain new structures, including a proposed pontoon. Mr Schmuck provided a copy of the public notice and the joint NRC-FNDC decision which confirmed this to be the case. However, for some reason (unknown to me and the Applicant), the final NRC decision also ended up authorising the ‘placement’ of the existing wharf and slipway, including their occupation of the seabed. The same authorisation wording was carried over to the Environment Court consent order that resulted in the final 2002 consents.
80. I sought advice on this from NRC staff, through Mr Hartstone, and was advised by Mr Paul Maxwell (NRC’s Coastal Consents Manager) that the deemed coastal permits were, in fact, still valid despite the authorisation wording of the 2002 consents.
81. A further complicating factor in this case is that Mr Schmuck is proposing to construct a new wharf ~3 m north of the existing wharf and the proposed wharf will be wider than the existing (but essentially the same length). That results in two additional questions. First, is the Application actually for a ‘replacement’ consent and second, if consent were granted for the new wharf would it have any deemed coastal permit status? In terms of the first question, section 124 of the RMA provides some help as it is commonly relied on by consent holders of expiring consents (discussed earlier in this decision). That section clearly states that it applies where an application is for a new consent for the same activity. In this case the proposed wharf is not the same as the existing wharf, both in terms of its width and its location. I therefore do not agree with the Applicant that the Application is for a replacement consent for the wharf. In terms of the second question, Ms Prendergast advised me that the new wharf would have the benefit of retaining the deemed coastal permit status as far as the occupation of the seabed is concerned, but agreed it would not cover the structure itself – that is, that part of the deemed coastal permit relating to the wharf structure would be extinguished. Mr Maxwell disagreed and advised me that the occupation of the seabed by the new wharf would not be covered by the existing deemed coastal permit for the existing wharf and he recommended (should consent be granted) that a condition be imposed requiring the surrender of those parts of the Deemed Coastal Permit AUT.005359.01.01 that relate to ‘the jetty’ (being what the existing wharf is referred to in that permit). He noted that the deemed coastal permit would still apply to the slipway as it is being reconstructed within its existing deemed coastal permit authorised footprint area.
82. Ms Prendergast presented a brief discussion on the matter of ‘existing environment’ in her opening legal submissions. She stated (my emphasis) *“The existing environment with respect to the new (early replacement) coastal permits is as set out in paras 7 and 8 of Mr Hoods [sic] evidence:...”*, namely that the existing wharf and slipway form part of the existing environment through to 2054 (the expiry date being

- sought for all of Mr Schmuck's consents<sup>9</sup>), but the Interesting Projects Limited pontoon, Mr Schmuck's existing gangway and pontoon form part of the existing environment only until 2036 (being their consent expiry dates). For the discharge permits she agreed that the approach of *Ngāti Rangi* and *Port Gore* was correct but that some recognition of legacy effects needed to be taken into account.
83. In her written Right of Reply, however, Ms Prendergast provided additional discussion on the matter, quoting several new cases not previously mentioned during the hearing. An important difference in the Right of Reply to her opening legal submissions was that she now stated (my emphasis) *"The application before the hearing is not seeking to 'renew' that coastal permit [being the 2002 consents for the wharf, slipway, pontoon etc] some 16 years ahead of its expiry date. It is a completely new application for a coastal permit seeking a 35 year term..."*. She reiterated that the correct approach in respect of the existing environment was that outlined in her opening legal submission (discussed in the previous paragraph of this decision).
84. For the discharge permits, the Right of Reply included discussion on the relevance of the FNDC's land use consent that provides for Mr Schmuck to undertake specific boatyard activities on parts of the reserve abutting the boatyard. Ms Prendergast stated *"Here, the FNDC land use consent is of indefinite duration. The activities authorised by the consent can lawfully continue. None of the circumstances under the Act providing for a consent to be terminated apply. In particular, neither Council has raised any enforcement issues and nor is Mr Schmuck intending to stop exercising the consent. As a consequence, the environment as it exists includes the existing lawful land use activities and the legacy effects of the discharges, on the basis that they are granted and implemented consents over which the NRC has no control"*. Accordingly, she stated that the principles of *Port Gore* did not apply to the discharge permits. She considered the existing environment *"...must include the existing lawful land use activities and the legacy effects of the discharges."*

### **Findings – Existing Environment**

85. I find the existing environment against which the effects of the proposed discharges need to be assessed under sections 104(1)(a) and (b) of the RMA is that which would exist without the currently authorised discharges that are the subject of this Application occurring. Any legacy effects associated with the historic discharges, provided they are as a result of complying with the previous consents, do form part of the existing environment. I find Ms Prendergast's arguments that the FNDC land use consent is a relevant consideration in terms of the discharges rather confusing and irrelevant in this regard. As a side note, this argument was put forward only in the written Right of Reply when it could have been part of her opening legal submissions and I could then have tested that evidence. Including it in the Right of Reply constitutes 'new evidence', something which I reminded the Applicant should not be included in the Right of Reply.

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<sup>9</sup> The Applicant referred to '2054' as being the expiry year being sought, however the Application sought a 35-year duration for Mr Schmuck's consents which would mean the consents would expire in 2055.

86. In terms of the various coastal structures, I find the existing environment to include the existing wharf (excluding Mr Schmuck's pontoon and the Interesting Projects Limited pontoon) and the slipway within the CMA. The existing wharf and the slipway within the CMA are authorised by way of deemed coastal permits (without an expiry date) – that authorisation includes the structures and the occupation of the seabed. Existing resource consents (except those being replaced) form part of the existing environment. However, this case is not so straightforward as the proposal is seeking to demolish the existing wharf and to build a new (and somewhat different) wharf nearby as essentially a replacement structure. I find it is appropriate, in this case, to compare the difference in effects between the proposed wharf and the existing wharf.
87. I think it is arguable whether the Interesting Projects Limited pontoon and Mr Schmuck's pontoon (the latter authorised by the 2002 consents) form part of the existing environment or not. In terms of the Interesting Projects Limited pontoon, it is authorised (by way of its own coastal permit) to 2036 but it is effectively part of the overall wharf structure/facility. The Application seeks to move this pontoon ~4 m to the north. In terms of Mr Schmuck's pontoon, the Application clearly states that it is seeking a very early replacement consent for that pontoon (some 16 years ahead of its expiry), a fact confirmed both in Ms Prendergast's opening legal submissions and in the Staff Report. Curiously, I note that Ms Prendergast stated, in the Right of Reply that *"The Commissioner considers both parts of the application seek renewal/replacement type consents..."* – I have never asserted this to be the case but had merely noted that the Application clearly stated it was for early replacement consents, a position confirmed by Ms Prendergast in her opening legal submissions. On the basis that this is an early application for a replacement consent for the pontoon, then the findings in *Ngāti Rangī* apply and this pontoon is not to be considered as part of the existing environment.
88. As is evidenced by the discussion presented in this section, it is not entirely clear whether the existing wharf and the two pontoons are to be considered as part of the existing environment or not. In the event that my findings outlined above are incorrect, then the existing environment may need to be considered absent of the existing wharf and pontoons. I was not provided with clear advice one way or the other, however I record here that I tested the evidence under both scenarios in respect of the existing environment being *'with wharf and pontoons'* and *'without wharf and pontoons'*. I discuss this further in the next section of this decision.
89. For completeness, those parts of the (to be reconstructed) slipway located on land and the boatshed clearly do form part of the existing environment.

### **Effects of the Coastal Structures on Natural Character, Landscape, and Visual Amenity**

90. The proposal will result in changes to the existing natural character, landscape, and visual amenity. The proposal includes the construction of a new (replacement) wharf that would be located ~3 m north of the current wharf and reconstruction on the slipway within the CMA. In addition, a new subsurface erosion barrier is proposed to be installed to minimise erosion of the existing pipi bed. Outside of the CMA (i.e.

on land) works are proposed in respect of reconstructing the slipway, earthworks, creation of the 'trench', and alteration of the boatshed. No resource consents are required from the NRC for the development works on the land so their direct effects on natural character, landscape, and visual amenity are not a matter I can consider, however those effects do contribute to cumulative effects and are, to that extent, relevant.

91. Mr Farrow, a registered landscape architect, provided expert evidence in respect to the actual and potential effects of the proposal on natural character, landscapes, and visual amenity. The Application included a detailed report<sup>10</sup> on these effects (included as Appendix 2 to the Application) which Mr Farrow authored (**the LLA Report**). Instead of repeating the material in the LLA Report, I adopt it for the purpose of this decision as provided for by section 113(3)(b) of the RMA.
92. The LLA report assessed the effects of the proposal against what currently exists – that is, the difference in effects.
93. Mr Farrow considered the potential visual effects from several vantage points to account for the different viewing audiences (affected persons) – these included users of the coastal walkway, users of Walls Bay foreshore, nearby residences (including those that overlook Walls Bay), users of Ōpua Wharf, vessels, more distant residences, and road users. Mr Farrow considered the adverse visual amenity effects to range from 'very low' to, at worst, 'low', the latter applying to users of the coastal walkway and possibly also residences on Richardson Street and Sir George Back Street (where those residences have views that include Walls Bay). Mr Farrow considered this magnitude of effect to qualify as being 'less than minor' in RMA terms.
94. In terms of effects on landscape, Mr Farrow considered the boatyard and the existing structures within the CMA to be an integral part of the Ōpua maritime landscape. He considered the perceptible change resulting from the proposal will be extremely limited with the most tangible difference being the boatshed becoming more recessive due to its fresh cladding. Mr Farrow assessed the magnitude of adverse landscape effect as being 'very low' – therefore also 'less than minor' in RMA terms. The boatyard and Walls Bay are not identified as being within any significant or outstanding natural landscape area under any of the relevant statutory planning documents.
95. Mr Farrow outlined that natural character can span from 'totally modified' at one extreme to 'entirely natural' at the other. Mr Farrow noted the 'site' (being the boatyard, reserve, and Walls Bay) had not been defined as having any '*heightened natural character by assessments that inform the Regional Policy Statement for Northland*'. Despite this, he considered the site to sit marginally more towards the natural end of the spectrum than totally modified and therefore had a measure of 'sensitivity'. Mr Farrow considered the proposal would not shift the natural character balance to a lesser level than currently exists. He particularly noted that shifting the wharf nominally closer to the headland would not be influential upon the experience of natural character. In addition, he considered the slightly larger 'footprint' of the wharf and pontoon on the surface of the sea to not be particularly perceptible nor would

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<sup>10</sup> Doug's Opua Boatyard Proposed Wharf and Land-based Facilities Upgrade – Assessment of Landscape, Natural Character and Visual Effects, prepared by Littoralis Landscape Architecture (March 2019).

- it switch the structure to becoming unduly dominant. Overall, Mr Farrow considered the effects of the proposal on natural character to be very low – therefore also ‘less than minor’ in RMA terms.
96. While the Application and the LLA Report was based on the difference in effects between the proposal and the existing environment, Mr Farrow’s Statement of Evidence included discussion on what the effects would be if the comparison was against a scenario where the wharf facilities (which I take to mean the wharf and the two pontoons) were not present. He did this because he had been advised (by Mr Hood I understand) that the ‘existing environment’ could include a theoretical scenario after 2036 whereby the existing structures had been removed. This was considered relevant to consider given Mr Schmuck was applying for a 35-year duration and the comparison against a ‘no wharf’ scenario would therefore cover the period between 2036 and the requested expiry of 2054<sup>11</sup>.
97. When compared against a ‘no wharf and pontoons’ scenario, Mr Farrow stated the effects would inevitably be higher. He stated that, taking account of the immediate context of the site, inserting the proposed activities into the CMA existing in an unmodified state would result in natural character, landscape, and visual amenity effects that would be ‘moderate-low’ – equivalent to ‘minor’ in RMA terms.
98. In answers to questions regarding the comparison of the proposal against a ‘no wharf and pontoons’ scenario, Mr Farrow considered there would be greater visual amenity effects for users of the walkway as they came around the headland from the north – that is, when they are first able to view Walls Bay. He considered these immediate effects would be, at worst, ‘moderate’ but he stated that users would then continue along the walkway and get a different view of the site, thereby tempering the initial impression/level of effect such that overall the visual amenity effect on them would be moderate-low. He stated that effects on a moving audience differs to, say, a static audience.
99. None of the submitters presented expert evidence in respect of natural character, landscape, or visual amenity effects of the coastal structures.

***Findings – Effects of the Coastal Structures on Natural Character, Landscape, and Visual Amenity***

100. I find that the effects of the coastal structures on natural character and landscape values to be ‘very low’, equivalent to ‘less than minor’ in RMA terms.
101. I find that the effects of the coastal structures on visual amenity will be, at worst, ‘moderate’ for users of the walkway as they come around the headland from the north but the magnitude of these effects reduce as the users continue along the walkway where the adverse effect on them would be moderate-low, equivalent to ‘minor’ in RMA terms.
102. I rely heavily on Mr Farrow’s expert evidence in making my findings on the magnitude of such effects, but, having spent some time at and around the site, I agree with his assessment.

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<sup>11</sup> The Applicant’s experts referred to ‘2054’ as being the expiry year being sought, however the Application sought a 35-year duration for Mr Schmuck’s consents which would mean the consents would expire in 2055.



## Effects of the Activities on Users and Values of the Reserve

103. The Application seeks authorisation to undertake various activities on the boatyard property plus within Area A of the reserve which have the potential to result in actual and potential effects on other parts of the reserve. The activities which have the greatest potential to result in effects on the reserve are the discharges of contaminants to air.
104. Mr Schmuck described the sequence of events and associated activities as vessels are placed on cradles within the CMA, then hauled out of the water along the slipway (using a winch located on the boatyard) to a position where the vessel was within Area A. There the vessels are washed using a water blaster – while this is primarily targeted on the hull area, the topsides of the vessels may also be washed if that is considered necessary. Mr Schmuck stated that scraping, sanding, and grinding also occurs here after which the vessel is hauled further up the slipway and onto the boatyard property where repair and maintenance work take place – he noted that most vessels are able to be accommodated within the boatyard property when repair and maintenance works occur, however some parts of larger (longer) vessels would overhang into Area A after being hauled as far up the slipway as they can.
105. Section 4.10 of the Application outlines how often and how long water blasting, sanding/grinding, application of antifoulants, and painting of vessels typically occur per year, however this section does not explicitly identify on which parts of the slipway each of these activities take place (or are proposed to take place).
106. The current Operation Management Plan (**OMP**) for the entire operation states *“Operations on Area “A” may include washing, scraping [sic] chipping, both wet and dry sanding, chemical removal, water and/or controlled sand blasting of any part of the hull and deck, or equipment attached to the hull or deck, in preparation of a vessel for maintenance/repair, or reconstructions prior to being relocated into the boatyard behind the demarcation line of Area “B” (as shown on plans 8095 and 3231c)”*.
107. Mr Stacey described the various activities which involved, or had the potential to result in, discharges to air, these being water blasting, sanding/grinding, and application of antifoulants and paints. His description of where the various activities occur differed somewhat from the contents of the OMP. He confirmed water blasting took place in Area A, but stated sanding, grinding, scraping, and application of antifoulants and paints (currently) occur ‘further up the slipway’, but acknowledged that larger vessels may extend over the boundary of the boatyard property into the reserve (i.e. within Area A).
108. Mr Stacey stated the proposed reconstruction of the slipway would influence how air discharges are dispersed as the retaining walls (to the north and south of the slipway) would essentially act as a screen, reducing the potential for emissions to travel ‘beyond the slipway’. Further, he stated *“The reconstruction of the slipway will allow paint preparation and painting activities to be undertaken further up the slipway closer to the boat shed than previously possible. This will provide a greater level of separation between these activities and people using the reserve or walkway”*.

109. Mr Stacey considered the greatest potential for particulate discharges to come from the sanding and grinding of vessels to remove antifoulant. As wind speeds increase so too does the potential for particles released from these activities to travel further from the source. Mr Stacey outlined monitoring undertaken at the site in June 2018, the results of which showed one day on which the maximum 1-hour total suspended particulate (TSP) exceeded the Ministry for the Environment's (MfE) trigger level. He stated if these activities occurred for long periods of time there would be a potential for the MfE's 24-hour TSP trigger to be exceeded, however, based on advice from Mr Schmuck that such activities occur for no more than 2 hours per day, Mr Stacey considered these activities would not result in a dust nuisance.
110. Mr Stacey addressed the NES-AQ which includes a standard for particulate matter with an aerodynamic diameter of less than 10  $\mu\text{m}$  ( $\text{PM}_{10}$ ). Based on a conservative assumption that all the measured TSP was equivalent to  $\text{PM}_{10}$ , he stated the highest inferred 24-hour concentration of 38  $\mu\text{g}/\text{m}^3$  was less than the 50  $\mu\text{g}/\text{m}^3$  specified in the NES-AQ.
111. Despite these findings, Mr Stacey recommended scraping, grinding, and sanding of vessels should only be undertaken when wind speeds are less than 5 m/s (as a 60 second average) and, based on the wind data collected at the site, he considered such a restriction would not unduly hinder boatyard operations. In addition, he recommended that sanders and grinders be required to be fitted with vacuum attachments. The Applicant's proffered conditions included these recommendations as requirements. In answers to questions, Mr Stacey confirmed these recommended mitigation measures were not being implemented during the monitoring he undertook in terms of TSP, however he stated such measures would certainly reduce the measured TSP concentrations, but that it was difficult to say by how much.
112. Mr Stacey stated, with these mitigation measures in place, dust nuisance and health effects associated with sanding, grinding, and scraping activities 'beyond the boundary' would be less than minor.
113. Mr Stacey stated water blasting had the potential to generate particulate discharges as material, such as sediments, barnacles, and other sea crustaceans are removed from the vessel. He stated these had the potential to cause nuisance effects but that negligible amounts of particulate matter would travel beyond Area A. Mr Stacey noted the amount of water spray generated by water blasting is dictated by the angle of the water blaster nozzle – if the nozzle is above the horizontal there is potential to create significant spray that could travel 'some distance' beyond the slipway/working area. He recommended there should be a requirement for all personnel using the water blaster to be '*suitably trained in the correct use of the water blaster*' and that this requirement should be incorporated into the OMP.
114. Mr Stacey stated that, while water droplets may travel beyond the 'working area', they are unlikely to contain any '*significant traces of contaminants that could cause health or nuisance effects*'. However, he later also stated that any water spray that does travel away from the working area can cause amenity effects on the reserve and walkway.

115. Mr Stacey noted a moveable screen (~2 m high) is placed landward of the walkway to '*control the movement of water spray*' when water blasting occurs. A number of submitters considered this screen to be ineffective because it is located 'downslope' of the vessel being worked on, meaning its effective height is insufficient to prevent water spray affecting users of the walkway.
116. In answers to questions, Mr Stacey recommended that water blasting activities only be allowed to occur when the wind is blowing from the east (i.e. towards the boatyard and away from the walkway) and above 0.5 m/s. He stated such a condition was proffered but upon review of the conditions admitted no such condition had, in fact, been included. The Applicant's Right of Reply included a condition which Mr Stacey had reviewed and agreed to.
117. Mr Stacey stated that, provided the water blaster users are suitably trained, water blasting takes place under the specified wind conditions, and the moveable screen is erected by the walkway, that users of the walkway would experience '*no spray*'.
118. The Applicant's Right of Reply summarised the advice Mr Stacey provided in respect of four recommended mitigation measures associated with water blasting activities. Three of those measures, namely use of a deployable screen, the wind restrictions, and the operator training, were included as requirements in the proffered conditions. However, Mr Stacey's fourth recommendation of "*Getting the boats much further up the slipway*" to increase the distance between the water blasting activities and the walkway was not included as a proffered condition. In answers to questions, Mr Schmuck stated "*I agree that you can actually move the boat up further, closer to the shed to water blast so you don't have an impact on the track*". I requested further information from Messrs Hood and Hartstone on how Mr Stacey's recommendation would best be included in the conditions. Mr Hood considered the requirement would best be included in the OMP and he did not see the need for this requirement to be specifically noted in the conditions. Mr Hartstone agreed that it should be included in the OMP, but he considered it should be specifically stated in the conditions in the list of matters that the OMP needed to cover.
119. Mr Stacey stated the application of antifoulants and paint to vessels had the potential to generate air emissions that could cause health and odour effects. In terms of potential health effects, he stated it was the volatile organic compounds (**VOCs**) in the solvent portion of paints that posed the greatest health risks. To assess the health risks Mr Stacey undertook a modelling exercise and included a receptor (person) located within the reserve 15 m from the source as well as the nearest residence located ~35 m from the source – the model was set up on the basis that vessels were painted only between 10 am and 6 pm during periods when winds were from the northeast-southeast quarter at speeds greater than 0.5 m/s, these being conditions recommended by Mr Stacey to minimise potential effects and in the Applicant's proffered conditions. The modelling showed all VOC concentrations to be below relevant assessment criteria<sup>12</sup>.

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<sup>12</sup> The criterion used for the various VOCs were based on the hierarchy presented in the Good Practice Guide for Assessing Discharges to Air from Industry, produced by the MfE in 2008 – these were detailed in the report included as Appendix 15 of the Application.

120. In answers to questions, Mr Stacey confirmed that odour effects could still occur despite the fact the VOC concentrations were below the relevant assessment criteria. He noted whenever paints are used there is *'...potential on occasions for odours to be detected within the reserve and walkway'* and the frequency and duration of such odours is dependent on the type of paint used, the frequency of use, the amount used, and the wind conditions at the time. Overall, Mr Stacey considered the potential for odours to be encountered within the reserve or on the walking track to be 'very low'<sup>13</sup> because of the infrequent use of paints (70 hours per year for antifoulants and 15 hours per year for paints) and the proffered conditions in relation to wind direction and speed that must exist before painting is allowed.
121. In answers to questions, Mr Stacey appeared to be unaware of the proposed 'odour boundary' and what that boundary was intended to achieve. The existing consents have a specified odour boundary which exists over the entire boatyard site, almost the entire reserve (i.e. all of Sections 1-3 SO 68634), and a large area within the CMA around the wharf and pontoon. The conditions on the existing consents do not allow any offensive or objectionable odours at or beyond this boundary. I asked Mr Stacey whether he considered users of the walkway or reserve should be allowed to be exposed to offensive or objectionable odours from the proposed activities – his response was that it would not be appropriate. I asked him what distance from the odour sources would constitute an appropriate odour boundary (within which offensive and objectional odours would be allowed/authorised) and he responded that, based on compliance with the proffered conditions, a boundary of *"no more than 10 to 15 m from the source of the discharge"* would be appropriate.
122. Mr Hartstone had recommended an odour boundary which extended over the boatyard property but also most of the reserve land (i.e. Sections 1-3 SO 68634) as well as the exclusive occupation area within the CMA. In answers to questions Mr Hartstone stated that, having heard the evidence of Mr Stacey, *"The boundaries as drawn currently based on evidence are far larger than required and need to be refined"*. The conditions provided following the hearing did not include any amended/refined odour boundary and in Minute #4A I asked Mr Hartstone why he had changed his position from what he advised me during the hearing. He responded by stating *"It would be possible to reduce the boundaries to extend no further than 15 metres from the slipway within the two reserves. However, that would introduce an arbitrary boundary across reserve land that would need to be defined for the purpose of managing / monitoring discharges and odour on the reserve land. Defining this boundary would not preclude the public using the reserves but it could raise potentially complicated compliance matters for both the Council and the consent holder given the purpose of the Boundary and its potential location running across the middle of a public reserve"*. Mr Hartstone considered *'the most appropriate approach'* in respect of the odour boundary was to have it covering most the reserve land (i.e. Sections 1-3 SO 68634), the boatyard property, and the exclusive occupation area within the CMA as was shown on the plan attached to the conditions.

<sup>13</sup> I note Mr Stacey used this descriptor in paragraph 90 of his Statement of Evidence but also 'low' in paragraph 91.

123. The Application included a conceptual plan to enhance the reserve, as presented and discussed in the LLA Report included as Appendix 2 to the Application. The Applicant made it clear that any work to implement the concept plan was not part of the Application because it would need the approval of the FNDC who administers the reserve. The Applicant included the plan to show what *could* be done rather than any specific mitigation of the proposed activities that may affect the reserve.
124. Many of the submitters presented evidence regarding the importance of the reserve to the local community. A number of them stated the reserve was essentially the last remaining reserve adjacent to the coast in the Ōpua area.
125. Mrs Larcombe stated Walls Bay was, prior to the construction of the boatyard and slipway, a popular swimming and picnic area for the families from Kawakawa and Moerewa who travelled to Ōpua by train to enjoy a day at the beach. She stated when she was a student at Ōpua School the students had swimming lessons at the beach.
126. Mrs Marks stated that from 2010 all her energies had been taken up coordinating a FNDC approved hapu and community project to restore and beautify the reserve. With donations of timber they built the dinghy racks at the southern end of the reserve and undertook works to remove long grass, weeds, and waste from the reserve.
127. A number of submitters made reference to the WBRMP, prepared by the FNDC following a public consultation process and adopted in February 2013. These submitters expressed concerns that changes were made to the WBRMP in October 2014 by the FNDC without any public consultation – those changes related to acknowledging activities associated with the boatyard are able to be undertaken on parts of the reserve and a revised plan being attached to the WBRMP.
128. Many of the submitters presented photographic evidence of activities undertaken in the past which had affected users of the reserve, in particular the water blasting undertaken within Area A with water spray affecting the walkway despite the use of the screen.
129. Many of the submitters considered all boat maintenance activities should be undertaken entirely within the boatyard property – some outlined amended configurations/alignments of the slipway that Mr Schmuck could construct that would enable all washing, maintenance, and repair work to be done entirely within the boatyard property.
130. In answers to questions, Mrs Kyriak stated that the activities authorised by the easements in favour of Mr Schmuck within Area A are restricted to washing of vessels and not any scraping, sanding, or grinding.
131. Mr Rashbrooke stated that the proffered conditions in respect to limitations on what activities can be undertaken under specified wind conditions were too complex to understand. Further, he expressed serious concerns in respect of how compliance with these conditions would be assessed.
132. Many submitters considered it unacceptable for any discharges, be they from water blasting or odours, to extend beyond the boatyard boundary and into the reserve. Several of the submitters provided photographic evidence of past boat maintenance operations on the reserve showing adverse effects on users of the reserve. These primarily related to water blasting operations.

133. Mr Dunn (a submitter in support of the Application), whose residence overlooks the boatyard and is the closest neighbour (~50 m to the southeast), confirmed that he had never, in the 20 years he has lived there, experienced any “...overspray odours from water blasting or painting...”.

***Findings – Effects of the Activities on Users and Values of the Reserve***

134. I find that the proposed activities which result in discharges of contaminants to air have the potential to result in significant adverse effects on users of the reserve, including users of the walkway, with the activities within Area A posing the greatest risk to those users more so than activities undertaken entirely within the boatyard property. The closer the activities are to the users the greater the risk.
135. I find Mr Schmuck has the ability to undertake most, if not all, of the activities within the boatyard property provided the vessels are hauled up the slipway as far as is practicable before any work occurs on them, including water blasting. The only time that work would need to be undertaken within Area A would be where a long vessel is to be worked on that may partially overhang into Area A, however even under such a scenario the vast majority of the vessel would still be within the boatyard property.
136. Mr Stacey’s evidence clearly recommends that the vessels should be hauled up the slipway as far as practicable before being water blasted so as to maximise the distance from users of the walkway – the greater the distance the lower the risk of adverse effects. I agree with Mr Stacey and I note that Mr Schmuck also agreed and confirmed that vessels could be taken further up the slipway than currently occurs before being water blasted to minimise effects on walkway users. I consider this to be a key mitigation measure and one that should be clearly specified as a condition of consent rather than only being included in the OMP as recommended by Mr Hood. It is well accepted in the planning profession that critical mitigation measures should be specified in conditions and not left to be addressed via a management plan – management plans should be limited to non-critical operational processes that lie behind a performance or operational standard.
137. I find that hauling the vessels up the slipway as far as practicable will also mean the length of the proposed concreted wash water collection area within Area A could be reduced, meaning the proposed Stormwater360 treatment system could then also be located within Area A rather than further downslope outside Area A as is currently proposed. Mr Papesch confirmed (in response to Minute #4A) that it would be possible to locate the Stormwater360 treatment system just above the grated channel drain entirely within Area A.
138. While Mr Schmuck has easements over the reserve, which include for the “...washing down of boats prior to being moved to the dominant tenement for repairs and maintenance...”, the easements state the activities are subject to various conditions, including that they be “...carried out in accordance with any relevant resource consent”. While the previous resource consents issued by the NRC allowed for washing of vessels within Area A, there is not automatic guaranteed right afforded to Mr Schmuck for the same activities to be undertaken through a replacement or renewal consenting process. The Application in front of me is ‘new’ and I am not obligated to allow the activities that were previously consented to occur on Area A to be re-consented if they result in unacceptable effects or if there are alternatives available to Mr Schmuck to reduce actual and potential effects on the amenity for users of the reserve and the

- walkway. The existing easements only reflect what was previously authorised and they in themselves do not create any 'rights' (or permissions) under the RMA.
139. Whilst not a 'finding', I do make the observation that what appears to be authorised by the 2008 consents and the easements as they relate to Area A is restricted to the 'washing down' of vessels. However, the OMP approved by both the NRC and FNDC appears to authorise a multitude of other activities within Area A, namely *"...scrapping [sic] chipping, both wet and dry sanding, chemical removal, water and/or controlled sand blasting..."*.
140. I find that sufficient evidence has been provided by the submitters to show that historic practices at the boatyard facility have resulted in adverse effects on the amenity for the users of the reserve and walkway. However, I find that the proposed mitigation measures, including full compliance with the proffered conditions and a new condition requiring vessels to be hauled up the slipway as far as practicably possible before any work on them commences, will significantly reduce these adverse effects to an acceptable level.
141. I find that, provided the proffered conditions are complied with, offensive or objectionable odours will be restricted to within a short distance of where antifoulants and paints are applied. Most of the vessels likely to be worked on will be able to be accommodated within the boatyard property, with occasional longer vessels overhanging slightly into Area A.
142. I find that, provided the proffered conditions are complied with, there is a very low likelihood nuisance dust effects beyond a short distance of where sanding and/or grinding is to occur. The key mitigation measures in this regard relate to wind direction and speed restrictions, as well as the requirement for dust collection systems to be attached to any sanding or grinding devices.
143. I find it appropriate to have two separate dust, overspray, and odour boundaries, one relating to land-based activities and one relating to activities within the CMA.
144. I find the appropriate land (i.e. above the CMA) 'Offensive Odour and Air Discharge Boundary' to be the boundary of the boatyard property and part of the reserve land contained in Section 2 SO 68634 – consisting of Area A plus the area to the north and south of Area A up to the boundary with Sections 1 and 3 SO 68634, respectively. I consider this to be an appropriate boundary because: a) it is unlikely that members of the public will be present within this area when vessels are being worked on; b) there are large areas of other parts of the reserve (i.e. Sections 1 and 3 SO 68634) where members of the public should not be subjected to offensive or objectionable odours, dust, or overspray; and c) odour, dust, and water spray generating activities occur occasionally and the potential effects are temporary. I disagree with Mr Hartstone that having a reduced boundary (to that which he recommended as including all the reserve land contained in Sections 1-3 SO 68634) would be problematic or complex from a compliance perspective.

145. While not an issue in contention, for completeness I record here my findings in relation to potential effects associated with discharges to air within the CMA. The Application seeks authorisation to discharge contaminants to air from minor works undertaken on vessels that are berthed at the wharf. These activities include smoothing of the topside (superstructure) of vessels using sanding devices (with vacuum dust collection apparatus). No preparation or smoothing of the hulls are proposed except for very minor 'spot' (<200 mm diameter) applications of antifoulants using a brush. I find these activities will result in negligible effects on air quality within the CMA and I find the appropriate CMA 'Offensive Odour and Air Discharge Boundary' to be the boundary of the exclusive occupation area.
146. My findings are consistent with the intent of the WBRMP as it relates to potential conflicts between reserve users and the boatyard operations on the reserve. I consider the WBRMP to be a relevant 'other matter' under section 104(1)(c) of the RMA. I discuss the relevant parts of the WBRMP in the following paragraphs.
147. The WBRMP presents the vision for the reserve, including objectives and policies to achieve that vision. The vision being:
- The Walls Bay Esplanade Reserve enables access to the coastal walkway, contributes to the protection of conservation values of the Opuia harbour and enables public recreational use of the esplanade area and adjoining harbour through the provision of appropriate facilities.*
148. The WBRMP notes that "...the intention of this plan is to achieve responsible management of the natural landscape and recreational values of the Reserve for community benefit and enjoyment in continued co-existence of the Boatyard".
149. Objective 4 of the WBRMP is "To minimise the effects of the boatyard on the public use of the walking track and esplanade reserve". There are five associated policies to achieve Objective 4, with Policy 2 stating "Ensure pedestrian access to and through the Reserve is safe and boat maintenance activities have minimal effect on the public".
150. The WBRMP includes an administrative Objective (unnumbered) which states "To ensure the Reserve is managed in terms of its classification for the enjoyment of the public now and in the future" with its associated Policy 2 stating "To ensure public use of the reserve should not, to any significant extent, be prejudiced by unconsented boatyard related activities".
151. The WBRMP notes the existence of the 2002 consents and the easements in favour of the boatyard. It also notes the FNDC's resolution of 30 October 2014 granting permission for Mr Schmuck to undertake consented activities on part of the reserve (the areas being identified on a plan attached as Appendix 3 to the WBRMP).



152. As discussed earlier in this section, a number of submitters considered Mr Schmuck could, and should, undertake all the washing and maintenance activities entirely within the boatyard property and not on reserve land – for example by reconfiguring the slipway such that vessels are hauled up beside the boatshed. Whilst I agree that, on the face of it (based on my observations during my site visit), this appears to be entirely feasible (especially given that Mr Schmuck is essentially dealing with a ‘clean sheet’), that is not the proposal in front of me. I must make my decision on the Application as presented and on the evidence in front of me, which I have done. However, I do make the observation here that I am certain that the level of opposition to this Application (and Mr Schmuck’s earlier applications), would have been significantly less had Mr Schmuck’s proposal been to undertake all washing and maintenance works on the vessels entirely within the boatyard property.

### **Effects on Water Quality and Marine Ecology**

153. The proposal includes activities which have the potential to affect the water quality and the marine ecology within Walls Bay. These activities include the discharge of stormwater, excavation of contaminated sediment around the slipway in the area where it enters the CMA, dredging (capital and maintenance), and the replacement of the wharf (demolition and construction). These are discussed below.

#### *Stormwater Discharges*

154. Currently all wash water and rain that falls on the ‘Yard Work Area’ and ‘Area A’ is discharged to the FNDC’s sewerage system. The proposed upgrades of the slipway will involve construction of a work area with a concrete base. All wash water and the ‘first flush’ of stormwater generated following rainfall is proposed to be discharged to the FNDC’s sewerage system. All post-first flush stormwater is proposed to be directed to a new stormwater treatment system (referred to as the ‘Stormwater360 system’ or the ‘storm filter’). Treated stormwater would then be discharged to the CMA via a new pipe attached to the replacement wharf out to a distance which ensures the stormwater discharge is to water at all parts of the tidal cycle.
155. Other work is proposed on the boatyard to separate ‘clean’ stormwater from that generated on the working areas. A number of options are still being considered on how the clean stormwater would be discharged, these include discharging to the FNDC’s existing stormwater pipe(s).
156. Mr Papesch presented evidence on the proposed wash water and stormwater management system. Mr Papesch described the proposed use of a ‘fox valve’ which is able to divert water to either the FNDC’s sewerage system or to the Stormwater360 treatment system. At all times when water is being used (i.e. during water blasting operations and washing down of work area) the fox valve ‘opens’ and water is diverted to a holding tank/pumping chamber (referred to sometimes as the ‘trade waste pump system’) from which the water would be pumped to the FNDC’s sewerage system. Once water use stops the fox valve closes – when it then rains the stormwater runoff from the working area will flow into the chamber within which the fox valve is located and the water level rises to a point where it activates a float switch

- which then opens the fox valve and the stormwater in the chamber is diverted to the trade waste pump system – this process repeats a pre-set number of times until the equivalent of 10 mm of rainfall depth (constituting the ‘first flush’) has been diverted to the trade waste pump system, after which the fox valve remains closed and any further stormwater is diverted to the new Stormwater360 system.
157. Mr Papesch stated a rainfall depth of 10 mm is reasonable to assume for the first flush component needing to be discharged to the FNDC’s sewerage system, subject to a condition requiring cleaning of the working area after water blasting. In this case 10 mm of rain falling on the proposed working area of 218 m<sup>2</sup> would result in 2.18 m<sup>3</sup> of water being diverted by the fox valve to the trade waste pump system and then to the FNDC’s sewerage system.
158. Mr Papesch noted the Application included use of the existing pump sump to convey the wash water and first flush to the FNDC’s sewerage system, but he noted that was no longer in operation and it would be opportune to install a new trade waste pump system to convey the wash water and first flush to the FNDC’s sewerage system – he identified a standard “E/one Simplex pump chamber” as being an appropriate example and one that could cope with the anticipated inflows from either the water blaster or first flush stormwater (on the basis that the 10 mm fell in one hour).
159. Mr Papesch noted the fox valve system and the trade waste pump system relies on electricity. He stated it was ‘unlikely’ that wash water would discharge to the Stormwater360 system during any power outages as the wash water system similarly relies on pumps and electricity – that is, no wash water would be generated during power outages. However, under a power outage scenario occurring during the first flush period, there is a chance that this first flush volume would not enter the trade waste pump system but would, instead, enter the Stormwater360 system and then be discharged to the CMA and that this system is not reliant on electricity and works by way of gravity. Mr Papesch stated the likelihood of such a scenario occurring to be ‘low’ but noted that, if it did occur, the first flush stormwater would still receive treatment before being discharged to the CMA. He considered the potential impact of such an unlikely discharge to be low.
160. Stormwater that is not diverted to the trade waste pump system and then to the FNDC’s sewerage system is proposed to be treated by way of the Stormwater360 system prior to discharging to the CMA. The Stormwater360 system involves the use of cartridges through which the stormwater flows – various types of cartridges are available which can be selected to remove contaminants likely to be in the stormwater. The Applicant proposes to use cartridges that contain a zeolite/perlite mix which have the ability to remove metals. The system also removes total suspended solids (TSS). Mr Papesch stated the Stormwater360 system was ‘widely accepted’ (for example by Auckland Council) and such systems had been installed and used within Northland (e.g. at Ōpua Marina). He stated the system would achieve a ‘suitable level of treatment’ for the stormwater in terms of copper, lead, zinc, and TSS.

161. Dr Wilson presented evidence on historic water quality testing that had been undertaken by the NRC within Walls Bay. In terms of the Stormwater360 system he stated that, based on published information, this system is designed to achieve high removal rates of fine sediments, metals (including dissolved metals), and nutrients. Dr Wilson noted the Stormwater360 system met Auckland Council's stormwater design guidelines for removal of >75% TSS. He concluded that the proposed system would ensure the *"...water quality requirements at the boundary of the 10 m mixing zone to be readily met..."*. In terms of the water quality standards beyond a 10 m mixing zone, Dr Wilson recommended the 2018 Australian and New Zealand Guidelines for Fresh and Marine Water Quality be used, namely those that provide 95% species protection, being applicable to 'slightly to moderately disturbed systems'.
162. Mr Hood, relying on advice from Dr Wilson and Mr Papesch, stated the Stormwater360 system could be configured to *"...achieve compliance with the minimum water quality standards in the PRP"*. In answers to questions Mr Hood stated Policy H.3.3 of the PRP included coastal water quality standards that must be met 'after reasonable mixing'. Mr Maxwell stated that the NRC's preferred approach was to set a discharge standard to which dilution factors are applied (to account for reasonable mixing) to ensure the receiving water standards specified in the PRP are met. In this case the Applicant's initial proposed treated stormwater discharge standard was 20 mg/L<sup>14</sup> TSS, 0.02 mg/L copper, 0.01 mg/L lead, and 0.05 mg/L zinc, however in the final conditions (which were worked by Messrs Hood, Hartstone, and Maxwell) these were changed to 100 mg/L TSS, 0.014 mg/L copper, 0.048 mg/L lead, and 0.165 mg/L zinc with an advice note stating that a dilution factor of 11 was used to derive these discharge standards from the water quality standards specified in Policy H.3.3 of the PRP. The coastal water quality standards in Policy H.3.3 of the PRP do not have a standard for TSS but do for copper (0.0013 mg/L), lead (0.0044 mg/L), and zinc (0.015 mg/L).
163. I requested further information regarding the derivation of the dilution factor of 11. Mr Hartstone advised this had been determined by NRC staff using Table 3.3 of a 2020 report entitled "Whangarei Harbour Stormwater Dilution Modelling" prepared for the NRC by eCoast Limited. The dilution factor of 11 being based on a small catchment size (Catchment A – less than 15,000 m<sup>2</sup>) using a 30-metre mixing zone and 1-year return period rainfall event. Mr Hartstone advised that a similar mixing zone / dilution factor for point of discharge water quality sampling had been applied to the Ōpua Marina boatyard consents.
164. Mr Hartstone stated the proposed stormwater treatment system was an appropriate response to improve the current state of stormwater management on the site. He noted the Stormwater360 system was *'accepted practice'* for stormwater treatment to the CMA and, subject to conditions, the adverse effects of the stormwater discharges were considered to be less than minor.

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<sup>14</sup> Various units of concentration were used by various witnesses and I have converted them to mg/L for ease of comparison.

165. Mr Cooper referred me to Section 15 of the Ngā Tikanga mo te Taiao o Ngāti Hine 2008 (Ngāti Hine Iwi Environmental Management Plan) which covered water, including coastal waters. He did not discuss specific objectives or policies of this Plan, however the Plan confirms that water is of special significance to Ngāti Hine and that discharges of pollutants or contaminants to natural waterways should be avoided (Policy 4 of Section 15) and further pollution of the oceans is unacceptable (Policy 9 of Section 15). These policies aim to achieve Objective 1 of Section 15 of the Plan which seeks to protect and enhance the mauri of water in ways which enable Ngāti Hine to provide for its physical, social, economic, and cultural wellbeing for future generations.

*Removal of Contaminated Sediment within the CMA*

166. The Applicant is proposing to remove ~37 m<sup>3</sup> of marine sediments in the area where the slipway first enters the CMA. Dr Wilson stated these sediments have concentrations of copper, lead, and zinc above the Guideline Value “High” values presented in the 2018 Australian and New Zealand Guidelines for Fresh and Marine Water Quality around the slipway – the extent of contamination having been assessed by various studies, including in 2018 by Haigh Workman and 2019 by 4Sight Consulting. He described the extent of contamination to be “...localised contamination of the sediment up to 5 m either side of the slipway”.
167. In answers to questions, Dr Wilson stated that, provided there are good sediment control measures implemented during the excavation of the contaminated sediment, then the risk of resuspension of contaminated sediments and their transport to other parts of Walls Bay was very low. Dr Wilson noted the sediments are currently able to be resuspended, but that disturbing them through excavation increases the risks of resuspension. However, he stated the works would probably be undertaken at low tide which reduces resuspension risks. Dr Wilson stated it was only the top layers of sediment which had elevated concentrations of metals and if these were removed during low tide then any resuspension of the remaining sediment would pose a low risk as the concentrations of metals in the deeper sediments were not elevated.
168. In answers to questions, Dr Wilson confirmed that a significant amount of additional work had been done since the 2018 NRC hearing in terms of characterising the extent of contaminated sediments around the slipway. He considered the more recent sampling undertaken provided good spatial coverage to be confident that all the sediments with elevated concentrations of metals would be removed.

*Capital and Maintenance Dredging*

169. The Applicant proposes to undertake capital and maintenance dredging, using a barge mounted hydraulic excavator, around the new wharf and pontoon, including creation of an approach towards the Veronica Channel. A total of 4,329 m<sup>3</sup> of capital dredging is proposed and in the order of 300-500 m<sup>3</sup> of maintenance dredging is likely to be needed annually.

170. The Application states that the area beneath the wharf is very shallow and that vessels sit on the seabed during low tide. The proposed capital dredging around the wharf and pontoon would enable vessels to float at all tides and the proposed dredging around the slipway would enable vessels to be hauled up and down the slipway at all tides. Additional capital dredging is also proposed to create an all tide approach channel (fairway) from the Veronica Channel.
171. The Application stated there are 80 moorings in the CMA in the area and dinghies from these moorings regularly use the dinghy ramp next to the slipway but that it is currently only able to be used at high tide. The proposed dredging would facilitate all tide access to the dinghy ramp.
172. Mrs Kidman stated the proposed dredging around the wharf and pontoons would improve accessibility and reduce health and safety risks for the business operated by Interesting Projects Limited from its pontoon adjacent to the wharf.
173. Dr Wilson stated substantial quantities of sediments will be resuspended during dredging activities. He noted that a 'silt curtain' would be used around the dredge works but, while this will minimise the transport of suspended sediments, there will still be some that will be dispersed into the surrounding environment.
174. Dr Wilson stated the sampling of subtidal sediments has shown that concentrations of metals in these sediments are low and therefore there is little risk to nearby areas from metals in these sediments.
175. Dr Wilson stated any benthic organisms within the dredging footprint areas will be removed, resulting in their mortality. However, the biota present are common and will recolonise and recovery would be in the order of some months to a year.
176. The Application (including the 4Sight Consulting report included as Appendix 14) noted one of the most important ecological features in Walls Bay is a pipi bed. Dr Wilson stated pipi are known to be potentially vulnerable to the effects of excessive sedimentation. He stated the potential effects of the dredging on the pipi bed, and similarly on other nearby benthic habitats such as those on the rocky intertidal shoreline at either end of the bay, is likely to be limited due to the intermittent and short-term nature of the works and the low amount of suspended sediment that is expected to bypass the silt curtain. Dr Wilson noted that during high winds and heavy rainfall the fine sediments present in Walls Bay currently get resuspended so these habitats would likely already be exposed to similar elevated suspended sediment concentrations.
177. The Application noted that 4Sight Consulting had estimated up to 5% of the pipi bed may be affected by the dredging and that consideration was given to transplanting pipis that are currently located within the zone that would be disturbed, however on balance this was not considered necessary. In answers to questions, Dr Wilson advised he was not aware of where the 5% figure came from, however later in the hearing he confirmed it was in an earlier 4Sight Consulting report prepared by another ecologist (Dr Brown). Dr Wilson stated he was not aware that transplanting the affected pipi had been considered and stated that perhaps this was something Dr Brown had considered. Dr Wilson stated that, in his professional opinion, the sediments removed by dredging from the area where the pipi bed is should be

sorted, and all pipi recovered should be relocated further along the beach. He stated these relocated pipi would survive. The Applicant's final set of proffered conditions included a requirement for a Pipi Relocation Plan to be prepared by a suitably qualified ecologist with this Plan to include details of the methodology to:

- Assess the potentially affected areas of sediment for the presence of pipi;
- Remove pipi from sediments to be dredged or excavated;
- Provide measures to enhance pipi survival and re-establishment;
- Limit and otherwise contain contaminated sediment losses within a secure area above Mean High Water Springs; and,
- Relocate pipi to an unaffected area of Walls Bay

178. Dr Wilson agreed with the NRC's recommendations made during the 2018 hearing that there should be a restriction on when dredging may and may not occur – that is, no dredging between October and January as this is when cockles and pipi spawn, and no dredging between November and March as this is when recreational users would more likely be using the area. Mr Hartstone also confirmed that the NRC's recommendation in terms of dredging restriction periods still stood.

179. The Application proposed to construct a buried erosion barrier which would extend from the shore out to just beyond the proposed capital dredging batter. The purpose of this erosion barrier is to stabilise the adjacent pipi bed. Mr Johnson provided evidence on the alternatives that were considered to protect the pipi bed – these were: a) reducing the dredge footprint so that it did not intersect the pipi bed; b) extending the batter up into the pipi bed; and c) constructing an erosion barrier. In terms of types of erosion barrier, Mr Johnson stated two options were considered, namely a placed rock erosion barrier and a soldier pile wall.

180. Mr Hartstone stated 'softer' protection measures were preferable to hard structures as proposed by Mr Schmuck. In answers to questions, Mr Hartstone stated that he considered the proposed erosion barrier to be appropriate from an engineering perspective. He also stated he was in support of Dr Wilson's recommendation that any pipis that are removed during the dredging should be relocated.

181. Mr Dysart considered the only deepening that is warranted is around the pontoon at the end of the wharf and that the area around the Interesting Projects Limited pontoon only needs maintenance dredging as it has not been dredged for 10 years. He also questioned Mr Schmuck's assertion that the 80 nearby mooring owners regularly use the dinghy ramp next to the slipway and that it was only available at high tide. Mr Dysart considered only very few (five or six) people use this dinghy ramp as most of them use the other dinghy ramp at the south end of the beach (by the dinghy racks). He stated there would be little benefit to dinghy owners from the proposed dredging and therefore the proposed dredging near the shore as proposed is not justified. Mr Dysart also opposed the dredging closer to the shoreline on the basis that it would endanger the shellfish (pipi) bed.

182. Mr Cooper expressed concerns regarding compliance with any consent conditions for the dredging because, based on experience, dredging using barge mounted hydraulic excavators elsewhere had adversely impacted seafood in the Ōpua/Taumārere area. He stated he was concerned the proposed dredging would adversely affect the nearby shellfish beds.
183. Mr Rashbrooke considered maintenance dredging was appropriate but did not consider the proposed capital dredging was warranted.
184. Mr Clark took his own water depth measurements around the wharf during a low tide in July 2020 and was of the view that no dredging was necessary.

#### *Wharf Demolition and Construction*

185. Demolition of the existing wharf and construction of the new wharf will involve disturbance of the seabed. Dr Wilson stated these works would likely be carried out at the same time as the capital dredging.
186. Dr Wilson noted that resuspension of sediment and dispersal of such sediment may occur, but the volumes generated will be much smaller than that from capital dredging.
187. The Application stated the works would be carried out in accordance with a Demolition and Construction Management Plan and a condition requiring this plan to be prepared and complied with was proffered. The proffered condition outlined the Demolition and Construction Management Plan would need to include details of sediment controls, including sediment curtains/screens, that would be implemented during demolition and construction works.
188. Mr Hartstone considered the proffered condition requiring preparation and adherence with a Demolition and Construction Management Plan to be appropriate to address potential adverse effects associated with the demolition and construction works.

#### ***Findings – Effects on Water Quality and Marine Ecology***

189. I find that the actual and potential adverse effects of the stormwater discharges on water quality within Walls Bay will be minor and acceptable provided the proffered conditions which mitigate potential effects are complied with. In particular, the construction and use of the fox valve and Stormwater360 system for the management of wash water and stormwater will ensure no wash water or first flush stormwater from the working areas of the boatyard and Area A will be discharged to Walls Bay. All other stormwater from the working areas of the boatyard and Area A will be treated by way of the Stormwater360 system prior to discharge to Walls Bay – this system will ensure the stormwater is treated to meet the water quality standards specified Policy H.3.3. of the PRP after reasonable mixing.

190. I find that the actual and potential adverse effects of the proposed capital and maintenance dredging on water quality within Walls Bay will be minor and acceptable provided the proffered conditions which mitigate potential effects are complied with. These include a requirement for a Dredging and Mooring Management Plan to be prepared and complied with. This Plan will outline the mitigation measures that will be implemented (e.g. use of silt curtains) to ensure adverse effects on water quality adjacent to the dredging areas is minimised.
191. I find that the actual and potential adverse effects of the proposed wharf demolition and construction on water quality within Walls Bay will be minor and acceptable provided the proffered conditions which mitigate potential effects are complied with. These include a requirement for a Demolition and Construction Management Plan to be prepared and complied with. This Plan will outline the mitigation measures that will be implemented (e.g. use of silt curtains) to ensure effects on water quality adjacent to the works is minimised.
192. I find that the actual and potential adverse effects of the proposed removal of contaminated sediments around the slipway on water quality within Walls Bay will be minor and acceptable provided the proffered conditions which mitigate potential effects are complied with. These include compliance with a Remediation Plan. I find that the removal of these contaminated sediments to be a positive effect.
193. I find that the actual and potential adverse effects of the proposed capital dredging on the marine ecology within Walls Bay will be minor and acceptable provided the proffered conditions which mitigate potential effects are complied with. These include a requirement for a Pipi Relocation Plan to be prepared and complied with. The adverse effects on marine ecology relate to both sedimentation effects and removal of up to 5% of the pipi bed. Sedimentation effects will be minor provided the proposed mitigation measures are implemented, in particular compliance with the various management plans associated with dredging and construction activities. Removal of up to 5% of the pipi bed, from an ecological perspective, will be minor and the Applicant's proposed relocation of pipis from the dredged sediment to other parts of the beach will minimise the effects to an acceptable level. I discuss the effects of removing some of the pipi bed on cultural values later in this decision.

### **Effects on Public Access**

194. Mr Schmuck is seeking exclusive occupation of the CMA in and around the proposed coastal structures. Public access to and within the CMA were significant issues in contention. These related to: 1) the proposed exclusive occupation of the CMA sought by Mr Schmuck in and around the coastal structures to enable him to undertake various activities associated with boat maintenance; 2) the proposed establishment of two marina berths; and 3) the proposed installation and use of a security gate on the wharf. I discuss these in the following sections, noting that I have divided the sections into the issues associated with public access through the CMA waters being sought as exclusive occupation and public access to and from the structures (the wharf and pontoon), with the latter section being further divided into issues to do with the pontoon and those associated with the proposed security gate.



*Public Access through the CMA Waters of the Proposed Exclusive Occupation Area*

195. The Application seeks an increase to the existing exclusive occupation area of the CMA by 8.8 m to the east and an additional 8 m to the north, and an additional 3 m to the south. The new area would encompass the reconstructed wharf, vessel berths (including those for Interesting Projects Limited), and the area where vessels are manoeuvred while being placed on and taken off the cradle on the slipway.
196. In answers to questions, Mr Hood confirmed that the consents held by Interesting Projects Limited only includes exclusive occupation for the area occupied by its pontoon and not any of the surrounding seabed or water space. In answers to questions, Mr Schmuck confirmed the increase in exclusive occupation area sought to the north of the reconstructed wharf was specifically to provide for Interesting Projects Limited including waters beyond its pontoon that would be shifted ~4 m to the north.
197. In answers to questions, Mr Schmuck stated that, while the Application stated an additional 8 m of exclusive occupation area was being sought to the east of the wharf, this was not correct. He noted the measurement shown on the existing consent plan was incorrect by ~7 m. That plan shows the exclusive occupation extending east from the end of the pontoon a distance of 3 m so as to encompass the 'Slipway Turning Block' at the eastern end of the slipway. The proposed exclusive occupation area sought still only extends out to that point.
198. Mr Hood stated the purpose of the exclusive occupation area was to ensure that the requisite parts of the CMA are available for the proposed uses when required. When the area is not required for the proposed uses, the public would not be excluded. He agreed with Mr Hartstone that the area for exclusive occupation should reflect the minimum area required to carry out the activity it supported, and he considered the area being sought reflected that minimum requirement.
199. Mr Schmuck stated the exclusive occupation area being sought was the minimum required for navigational and operational purposes and that he had never withheld reasonable public access through the currently authorised exclusive occupation area and he would continue to not withhold such access through the proposed area. Ms Prendergast stated the Applicant's proffered Condition 31 reflected that commitment (this condition relates to both the CMA waters and what constitutes reasonable public access to the wharf and pontoon, including access through the security gate which I discuss later in this decision). In particular, the Applicant's proffered Condition 31(a) states that "*...public access to the dinghy ramp to the south of the wharf, and beach landings to both sides of the wharf, will be available at all times*".
200. A number of submitters, namely Mrs Kyriak, Mrs Larcombe, Mr Kearney, Dr Atkinson, Mr Rashbrooke, and the Ōpua Coastal Protection Society, considered the exclusive occupation to be unnecessary and essentially results in privatisation of the CMA. All considered that public access through the CMA should be maintained.

201. Mr Hartstone noted that granting consent to an exclusive occupation area does not imply that the public is restricted to such an area, however he stated such areas should reflect the minimum area required to carry out the activity it supports. In his Staff Report he considered the extension of the exclusive occupation area being sought to be 'substantial' and that some of the additional area being sought had not been justified. In answers to questions, Mr Hartstone considered the exclusive occupation area around the dredge footprint was reasonable during the time that dredging occurs.
202. Mr Hartstone stated that he generally agreed with the Applicant's proposed Condition 31 (with the exception of the matter of access through the security gate, which I discuss later in this decision) and that it is consistent with Policy 4.8.1 of the RPS – this policy relating to public exclusion from structures or the common marine and coastal area.

#### *The Marina Berths*

203. The proposal includes two marina berths, one on the north side and one on the south side of the pontoon. No marina berths are currently authorised by the existing consents and the area to the north and south of the existing pontoon are 'working berths' and the proposal is essentially converting these to marina berths.
204. There was conflicting evidence in respect to whether or not there was demand for additional marina berths in Ōpua. I raised this in questions because the General Assessment Criteria 32.2.7 of the RCP, relating to new marinas, includes *"The extent to which demand for the proposed marina has been demonstrated, in particular by local residents"*. Mr Schmuck stated there was significant demand and Mrs Kyriak stated there were berths available at the Ōpua Marina.
205. Ms Prendergast, in the Right of Reply, stated the case law on the matter was clear, namely the decision maker's task is to consider the potential effects on the environment, not the need or lack thereof for the facility. However, she stated where the Court has to consider the sustainable development of limited resources such as coastal land, it is likely to take demand (or lack of it) into account in weighing up matters and exercising its overall discretion. She stated that was not the case with the proposed marina berths as demand for marina berths and moorings in the Ōpua area is strong, noting that Policy D.5.19 of the PRP recognises Ōpua as an area of high demand for such facilities. It notes that *"high density on-water boat storage (including ... marinas) is likely to be the only way to provide additional on-water boat storage"*.
206. Mr Hood considered there was no requirement to demonstrate the need for a marina. He stated that, in terms of the PRP, Policy D.5.19 mentions demand but not that there has to be a demonstrated demand, but more that there is a specific demand for moorings and marinas in Ōpua.

207. Mr Hood noted the RCP contains a combined 'moorings and marinas zone' but the new PRP has split them into separate zones and new marinas are discretionary in both zones. He stated this does not mean that all new marinas must be in marina zones only that the PRP has identified marina zones for the existing marinas in Northland – that is, *"if you are in a marina zone you can expect a marina"* but in terms of the resource consent activity status new marinas in the marina zone are discretionary, as are new marinas in mooring zones.
208. One of the main concerns of submitters regarding the two marina berths was that it would effectively exclude the public from using the pontoon for berthing of vessels. Mrs Kyriak noted the consent for the existing pontoon includes a condition which enables its use for *'casual berthing of craft'* and that the Consent Holder must *'allow reasonable access to and use of the wharf and pontoon structure'*. She noted that the availability of the pontoon to the public at all times was an inducement to the granting of consent back in 2002 (arising from Environment Court mediation proceedings).
209. Mr Kearney stated the proposed marina berths must also be able to be used for casual berthing and be freely available at all times. He stated that privatising two berths would be a serious loss to the public.
210. Mr Rashbrooke stated existing all tide access to the pontoon (which he referred to as the 'dinghy pontoon') is frequently used by keeled yachts.
211. The Ōpua Coastal Protection Society stated the proposed marina berths will deprive the public the right of access to the pontoon.
212. The Staff Report stated there was little evidence to suggest there has been any demand or need for the public to use the existing pontoon berths at any time. However, Mr Hartstone stated that should evidence be presented to suggest unimpeded public access should be retained *"...then either one or both of these [marina] berths may have to be removed from the proposal"*. In light of the evidence presented by submitters on the use of the existing pontoon, I asked Mr Hartstone what his position was in respect of the marina berths. In response, he stated the existing pontoon appeared to be used occasionally and if there is such demand for public use then at least one of the proposed marina berths would need to retain that public access.
213. Following the hearing I requested further information from the Applicant regarding the matter of reasonable public berthing at the proposed marina pontoon as it was very unclear whether the pontoon would be available for such berthing or not. Included in the information provided were variations of a new proffered condition regarding what constitutes 'reasonable public berthing', with the final version reading (note: these conditions would logically come after proffered condition 31 so, for the purposes of this decision, I present them as Conditions 31A and 31B):

*31A. Subject to arrangement with the Consent Holders in advance and compliance with the restrictions of access through the security gate, berthing of vessels not associated with Doug's Opua Boat Yard and marina, or Great Escape Yacht Charters, shall be permitted at the marina pontoon (or within the Marina Mooring Area shown on the Total Marine Plan APP-039650-01-01) for the purpose of loading/unloading passengers, crew, stores and small equipment, provided that:*

*(a) The Consent Holders and/or their representative are present at the facility at all times;*

*(b) Maximum stay of 1 hour.*

*(c) No vessel to be left unattended.*

*(d) No discharge to the marine environment.*

*(e) No swimming or vessel maintenance.*

*31B. A sign is to be erected on the wharf and pontoon detailing the terms of public berthage outlined in condition 31A. The sign shall also include a contact phone number(s) to enable berthing arrangements to be made with the Consent Holder.*

214. The Applicant provided a number of responses and updated positions on the matter of provision of reasonable public berthing, some of which included conflicting statements between witnesses, but the final position on the matter was confirmed to be as follows:

- a) If either of the two marina berths are unoccupied the vacant berth(s) may be used for reasonable public berthing subject to conditions;
- b) The eastern face of the pontoon may also be used for reasonable public berthing whether or not there are vessels occupying the marina berths, again subject to conditions; and
- c) The Applicant will take all practicable steps to ensure the vessels at the marina berths do not overhang the eastern face so that public vessels larger than a 'tender' can use the eastern face for reasonable public berthing.

215. In respect of c), the Applicant stated that vessels using the marina will generally be of a size that they would not overhang the eastern face, but that this cannot be guaranteed. However, the proffered condition in respect to reasonable public use would require the public to make arrangements with the Applicant ahead of wanting to berth at the pontoon and the Applicant may therefore be able to manoeuvre the marina berthed vessels to enable berthing on the eastern face.

216. I also sought further information from the Applicant regarding what other parts of the wharf or pontoon would be available for reasonable public berthing within the 'Marina Mooring Area' shown on the Total Marine Plan APP-039650-01-01. I asked this because this area was specified in the proffered condition as being available for reasonable public berthing, but it was unclear to me what other areas were actually going to be available. The Applicant advised me "*...all of the wharf and pontoon faces that lie within the Marina Mooring Area that are not otherwise occupied, depending on the state of the tide and any safety or security issues that may arise at the time of the request to come alongside, can accommodate reasonable public berthing*".

217. Mr Hartstone provided the following comments regarding the proffered condition on reasonable public berthing:

*“While the proposed condition wording is somewhat unusual in terms of limitations on use and occupation, there is at least one similar situation in the Bay of Islands where a time limit is specified for occupancy of a wharf area for berthing, although it is for different operational reasons. As marina berths, they are expected to be leased to third parties by the consent holder. Given the ‘rights’ likely to be associated with those leases (as with most marina berths), it is appropriate that some limitations are imposed on any public use. The condition as presented is therefore acceptable on the basis that it does provide some scope for the public to utilise the marina berths if unoccupied and if required. While it is not stated, it is presumed that the consent holder cannot unreasonably withhold consent to any member of the public wishing to use a berth in accordance with the condition.”*

218. A number of submitters repeated the findings of the 2018 NRC decision that there was insufficient land-based infrastructure to support the proposed marina.
219. In answers to questions Mr Hartstone stated there was no policy which outlined calculations for, say, the number of toilets or showers for marina user numbers. He referred to the consents for the Ōpua Marina which equated to one toilet per 19 berths and one shower per 22 berths. In his view the land-based infrastructure provided within the boatyard, including parking, rubbish, and ablutions was adequate. Mr Hood was of the same view.

#### *The Wharf Security Gate*

220. The proposal includes provision of a lockable security gate on the wharf, to be located just before the ‘T-head’ part of the structure (where the width of the wharf increases). The Application states that the area seaward of the proposed gate location is ‘*a very hazardous working environment*’ due to lifting equipment as well as storage and ‘*permanent berthage*’.
221. Mr Hood stated it was important to ensure that the structures are able to be used for their intended purpose without being compromised by, or endangering, the public. He stated the primary purpose of the structures was for boat maintenance activities, commercial charters, and marina activities and that when maintenance activities are taking place on the wharf (i.e. crane operations, various mechanical repairs, unloading of equipment) there can be ropes, motors, rigging, and other equipment on the wharf, all of which present a health and safety risk. In addition, Interesting Projects Limited require the ability to transport people and gear to and from their boats without undue restriction. For security reasons, the gate is proposed to be locked when the wharf is not attended by Mr Schmuck or Interesting Projects Limited (and/or their agents and/or customers).
222. Ms Prendergast, in the Right of Reply, stated the security gate was needed “*...to enable the restriction of public access at night to parts of the wharf and pontoon for security as well as health and safety and operational reasons*”.
223. Mrs Kidman stated she supported the addition of restricted access to the wharf ‘*after hours*’ as Interesting Projects Limited had expensive equipment and she would like to limit ‘*unauthorised access*’.

224. The Applicant's final set of proffered conditions included amendments to Condition 31, which includes a clause (b) and (c) relating to access through the security gate which read:

*(b) Public access past the wharf sign board, security gate and charter boat berth area, may be restricted by the consent holders when working conditions require;*

*(c) Public access through the security gate is to be permitted from 0700-1800, and 0700-2000 during NZ Daylight Savings time when the consent holders of the facility are on site and working conditions will allow, provided that fishing, collection of seafood and the bringing of any equipment onto the structures is prohibited.*

225. Mr Hood considered unrestricted public access to the wharf and pontoon(s) was not appropriate. The Applicant's Right of Reply included new evidence<sup>15</sup> in respect of other marina and wharves where public access was restricted. Mr Hood stated *"The proposed restriction on unfettered public access at DOBY is less restrictive than other such facilities in Northland, including the boat maintenance wharf facility and the marina at Opua"*.

226. Mr Dunn stated that public access along the existing wharf currently occurs, and he had never observed a situation where access has been denied or hindered except when public safety was a concern.

227. In his Staff Report Mr Hartstone questioned the necessity of the security gate given that there is not one on the existing wharf and he was unsure why restrictions on public access was now needed following years of operation and what now appeared to be 'down-sizing' of the boat maintenance operations. He stated there was no evidence to suggest new hazards or concerns having arisen which now makes the wharf unsafe for public access. He also stated that Condition 31(c) as proposed by the Applicant would appear to suggest that public access beyond the security gate would not be available without the specific permission of either Mr Schmuck or Interesting Projects Limited (as consent holders) and this was more restrictive than the 2002 consents which have no specific limitations across any part of the existing wharf. Mr Hartstone stated it was not clear why additional restrictions beyond those imposed in the 2002 consents were necessary.

228. Following the hearing Mr Hartstone provided comments on the Applicant's final set of proffered conditions. In response to Condition 31(c), he stated that he had changed his mind and that the security gate was acceptable but that it should be open at all times during the hours specified in the Right of Reply conditions, irrespective of whether Mr Schmuck and/or Interesting Projects Limited were on-site, unless working conditions require public access to be restricted. In this respect he recommended Condition 31(c) should read:

*(c) Unless restricted by working conditions, public access through the security gate shall be available during the hours of 0700 – 1800, and 0700 – 2000 during NZ Daylight Savings time. Any access outside these hours shall be by way of arrangement with the consent holder. The consent holder shall erect signage on*

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<sup>15</sup> The Right of Reply included examples, including photographs, of various gates.

*the wharf on the lighting pole adjacent to the wharf abutment as shown on the Northland Regional Council Plan Number 4953/2 to advise the public of the availability of the public access.*

229. I requested further information from Messrs Hartstone and Hood on whether there were security gates available which incorporated automatic or pre-programmed locking mechanisms so as to allow access during specified periods of time even if the consent holder(s) was not present on-site. Mr Hartstone confirmed that such systems are available (and provided a website link) that include timers which can be programmed ('Prime Time Digital Timer'), including software 'add-ons' that can be used. In addition, the systems would allow operation of the gate remotely meaning it could be locked/unlocked without persons having to be physically on-site. Mr Hood had nothing further to say on this matter as he considered unrestricted access was not appropriate.

### ***Findings – Effects of the Activities on Public Access***

230. I find that the exclusive occupation area being sought in relation to the CMA waters to be appropriate as it is the minimum area necessary for navigational and operational requirements and that it will not unduly result in the exclusion of the public from passing through that area. There will be times that the public will be excluded, however that will only be during periods when the Applicant is undertaking activities associated with boat maintenance, manoeuvring vessels, or dredging – at all other times the public would not be excluded from using the exclusive occupation area around the proposed structures. Further, the Applicant's proffered conditions makes it clear that public access to the dinghy ramp to the south of the wharf, and beach landings to both sides of the wharf, will always be available (Condition 31(a)). The Applicant has provided such reasonable public access under the current consents and has committed to provide the same access under these new consents. The Applicant clearly stated that *'when the area is not required for the proposed uses, the public would not be excluded'*.
231. I find that the use of the proposed pontoon for marina berths will reduce the public's ability to gain access to and from the CMA compared to the access that is currently available at the existing pontoon, but not unduly so. The use of the pontoon for marina berths will mean there is a greater likelihood of vessels occupying the two sides of the pontoon compared to the current situation where the existing pontoon is used for two working berths. However, public berthing will still be possible if one, or both, of the marina berths are vacant and also elsewhere on the pontoon (e.g. the eastern face) and within the Marina Mooring Area. The evidence in front of me suggests that public use of the existing pontoon does occur, but it is not heavily used by the public. The Applicant's new proffered conditions 31A and 31B (discussed in paragraph 213) clearly provide for reasonable public berthing at the marina pontoon and the Marina Mooring Area, subject to conditions which include advance notice being given and a time limit for such berthing. I find the proffered conditions to be generally acceptable but that they should be amended to ensure overhangs over the eastern face of the marina pontoon by vessels berthed at the marina are minimised as far as is practicable so that larger public vessels have the opportunity to tie up on the eastern face – in the absence of such a condition any overhangs would mean the eastern face would only really be available for dinghies/tenders. I also consider the conditions should be amended to state the consent

- holder shall not unreasonably withhold permission for public vessels to use the marina pontoon or other areas within the Marina Mooring Area.
232. In addition to public berthing at the marina pontoon or other areas within the Marina Mooring Area (discussed in the previous paragraph) the Applicant's proffered Condition 31 also clearly allows for "...reasonable public access to and use of the ...wharf...". This relates to the wharf landward of the security gate as that part of the wharf is outside the Marina Mooring Area and, as such, reasonable public access and use of that part of the wharf is not subject to the same restrictions as that which would apply at the marina pontoon or other areas within the Marina Mooring Area.
233. I find that the Applicant's justification for the proposed security gate to be somewhat confused and not entirely coherent. The Applicant considers such a gate is needed due to the health and safety issues associated with boat maintenance activities that occur on the wharf. However, as pointed out by Mr Hartstone, the gate's proposed location is some way down the wharf and beyond the three 'working berths' adjacent to the wharf, meaning the public would have unlimited access to that part of the wharf where health and safety risks may exist due to work being done on vessels at those three working berths. While the Applicant has proffered conditions which could limit public access to the wharf beside these three working berths if working conditions require this, justifying the need for the security gate on the grounds of health and safety is, in my view, very questionable as there does not appear to be any significant health and safety issues beyond (seaward of) the proposed security gate – the only item that may constitute a health and safety risk on that part of the wharf is a proposed small crane.
234. Both Ms Prendergast and Mrs Kidman confirmed that the security gate was intended to also prevent access to the area of the Interesting Projects Limited pontoon and the marina berths 'after hours' and 'at night' for security reasons. That appears to me to be the main purpose of the security gate and, as such, I find the gate to be acceptable for that purpose, however I consider it must remain open during daylight hours even when Mr Schmuck and/or Interesting Projects Limited are not on-site – a matter in which I agree with Mr Hartstone. The Applicant's proffered condition in that respect is inappropriate as it will unduly restrict public access to the eastern end of the wharf and the pontoon when the Applicant is not on-site, noting the pontoon also available for reasonable public berthing (discussed earlier in this decision). Mr Hartstone provided evidence to show that there are gate locking systems that are available which can be pre-programmed to lock and unlock at prescribed times, meaning the Applicant does not necessarily need to be present on-site to lock and unlock the gate.
235. As stated in paragraph 225, the Applicant included new evidence in their written Right of Reply in respect of other facilities which have security gates – this new evidence was submitted despite me reminding the Applicant on more than one occasion during the hearing that the written Right of Reply may not include new evidence. I place little, if any, weight on that new evidence because no information was provided in respect to the background to the consents for those facilities – each case is different and I can only make my decision on the evidence put in front of me during the hearing.



## Effects on Cultural Values

236. Section 5.10 of the Application covered 'Cultural and heritage effects' and stated *"The recent (now withdrawn) DOBY application was circulated to iwi/hapu groups with recognised interest in the area"* – this being the 2018 application. The section noted a submission in opposition was made by the Waikare Marae Maori Committee. Further, the Application stated *"As a result of the history of the site and the relationship between the parties, the applicant has chosen not to engage in further consultation with tangata whenua, except to the extent of its obligations under MACA. The proposal relies on the public notification process"*.
237. Section 5.10 of the Application *"...recognises that the shellfish bed located adjacent to the slipway and beach area is a source of kaimoana for at least one member of the community, and as such is a taonga of importance to tangata whenua that needs to be considered. Accordingly, the proposal incorporates an erosion barrier designed to avoid the disturbance of the shellfish bed. Aside from the existing shellfish bed within the vicinity of the proposed site, there are no identified customary activities that are considered likely to be put at risk by the implementation of the proposal. Furthermore, the New Zealand Archaeological Association website does not show any registered archaeological sites located within the vicinity of the site"*.
238. The Applicant did not consult with any persons, including tangata whenua, because, as stated in Section 7.2 of the Application *"The applicant has recently been through a notified resource consent application for a similar range of activities to those now proposed. Multiple parties filed submissions, including iwi and other interest groups opposed to the DOBY operation in general. That application was declined. The applicant has considered the issues raised by the various parties, and where practicable and appropriate has sought to alleviate those concerns within the current proposal. Overall, the effects of the proposed activities relative to those already consented are positive. The applicant considers that further consultation/discussion with interest groups is unlikely to yield positive results. As a result, the applicant seeks to rely on the public notification process to draw out any additional issues beyond those raised with the previous resource consent application"*.
239. Mr Hood stated *"I am advised by Mr Schmuck that his relationship with tangata whenua has eroded over the years to be virtually non-existent. With this as a background to the current proceedings, it is likely that consultation would likely have been a futile exercise in any event. Fortunately, due to the long history of planning applications and resource consent applications affecting the subject land, the consents and their effects are well understood by tangata whenua"*.
240. In terms of the Ngā Tikanga mo te Taiao o Ngāti Hine 2008 (Ngāti Hine Iwi Environmental Management Plan) Mr Hood stated *"I have reviewed this plan. Key outcomes sought are improvements to the quality of the environment, and the preservation and enhancement of kaimoana. The proposed redevelopment (incorporating better management of discharges and the remediation of contaminated soils and sediments) will improve the quality of the environment as sought in this plan. Furthermore, the importance of the shellfish bed adjacent to the slipway and beach area has been recognised by modification of the proposed dredge area and the associated subsurface erosion barrier"*.

241. In terms of submissions, Mr Hood stated “...the matters raised in the submission made by local iwi have been addressed by a combination of Court decisions and technical assessment. In addition to the matters raised in the submission, in my view the new consents sought by DOBY will have positive effects for tangata whenua and their taonga because they will result in a general improvement to the quality of the environment. I note that improving the quality of the environment is a specific focus of the Ngāti Hine Iwi Environmental Management Plan”.
242. Mr Hood’s evidence did not cover potential effects on cultural values and, in answers to questions, he stated that was because he did not have any information on cultural values and he understood there to be conflict between Mr Schmuck and iwi so did not consider there to be a great deal of benefit in attempting further consultation. He acknowledged it was best practice to consult and agreed that it was not normal to rely on submissions to determine effects on cultural values. He also agreed that a Cultural Impact Assessment (CIA) would have been useful in this case. Despite this, Mr Hood stated the RMA does not require an applicant to consult but it does require a consent authority to at least understand the effects on tangata whenua – in the absence of a CIA he considered the contents of submissions was the only thing he had to go on.
243. The submission lodged by Ngā Tirairaka o Ngāti Hine Trust included a request to meet with Mr Schmuck to discuss the proposal and I asked him if he was going to accept that request. Mr Schmuck advised me he would not because “...they are aware of the issues”.
244. Mr Cooper, for Ngā Tirairaka o Ngāti Hine Trust, stated there were important sites of significance to hapu and iwi in the area, with known pipi beds within close proximity to the proposal area. He stated the Trust was not satisfied that these beds would not be adversely affected by the proposed dredging.
245. Mr Cooper noted that traditional food gathering continues in the area, albeit not at the scale it once did due to depletion of their coastal taonga. He noted children still randomly eat the oysters from the rocks and dig for hūai (cockles) and pipi in the area.
246. Mr Cooper stated Ngā Tirairaka o Ngāti Hine Trust’s views the application in the context of the entire Ōpua/Taumarere natural and cultural environment. He stated the proposal is ‘chemical heavy’ which not only contaminates the earth but co-mingles with the flow and movement of water. As discussed in paragraph 0 of this decision, Mr Cooper also referred me to Section 15 of the Ngā Tikanga mo te Taiao o Ngāti Hine 2008 (Ngāti Hine Iwi Environmental Management Plan) which covered water, including coastal waters.
247. Mr Cooper stated the Application did not provide any tangata whenua historic context to the area – this history is of cultural significance and a sign of respect to Ngā Tirairaka o Ngāti Hine Trust’s customary rights and identity. He stated the Applicant’s choice to exclude their history demonstrates a lack of regard for their cultural values and practices and is an affront to the mana of Ngāti Hine. The submission lodged by Ngā Tirairaka o Ngāti Hine Trust stated there are five current Treaty of Waitangi claims which involve the location of the proposal.

248. Mr Cooper concluded the Application did not satisfy the provision of the RMA in regard to cultural and environmental matters. He stated Ngā Tirairaka o Ngāti Hine Trust opposed the Application on the grounds of insufficient recognition of the cultural and traditional principles of tangata whenua, inadequate acknowledgement of Ngā Tirairaka o Ngāti Hine Trust as kaitiaki, and disregard of their partner rights embedded in the Treaty of Waitangi.
249. In answers to questions Mr Cooper indicated that he would be willing to be involved with discussions with Mr Schmuck but there needed to be a willingness from him – he said he was sitting “...open armed to any attempt [for further discussion/consultation] for the sake of our taonga to do so”. In the Applicant’s written Right of Reply Ms Prendergast stated “...following Ngati Hine’s presentation at the hearing, Mr Schmuck approached Mr Cooper with a view to instigating some discussion between the parties. Subsequent contact has been made and the matter progressed. I understand further progress will be made following the decision on his application”.
250. Mr Clark’s concerns related to irreversible effects of the proposal on “Te moana pikopiko I Whiti”, including mahinga kai and fisheries at Walls Bay. He also considered the proposal did not give effect to the Matters of National Importance specified in the RMA.
251. Mrs Marks outlined that there are claims under the Treaty of Waitangi that relate to Walls Bay, namely Wai 2424, WAI 2027, and WAI 49. She stated her claim (WAI 2424) related specifically to environmental degradation of the whenua rahui (reserve) at Walls Bay, focussing on the failure of local and central government to protect the integrity of the reserve and interests of the public generally and the four local hapu specifically. Mrs Marks stated the claims are concerned about the moanatapu (sea) and the environment, and the effects of commercial and industrial businesses on the environment.
252. Mrs Marks stated her main concern related to the discharges of contaminants from boat maintenance activities which end up being discharged to the sea. She also expressed concerns about the esplanade reserve having been used as a dumping ground for boatyard material.
253. Ngā Tirairaka o Ngāti Hine Trust identified a lack of consultation with iwi/hapu groups. The Trust expressed concerns that the Applicant proposed to rely on public notification in lieu of robust consultation with tangata whenua. Mrs Marks also highlighted that no sincere or effective consultation was carried out with hapu.
254. In his Staff Report Mr Hartstone notes that the Applicant had notified all known groups applying for recognition of customary marine title in accordance with Section 62 of the Marine and Coastal Area (Takutai Moana) Act 2011 and, at the date of preparing his report, no responses had been received from any notified parties.
255. Other relevant parts of Mr Hartstone’s Staff Report relating to effects on cultural values are:
- 78. The application states that improvements to stormwater management and resulting discharges to the CMA, removal of contaminated material and additional restrictions on activities resulting in potential discharges are considered to result in positive effects. Those positive effects are considered to suitably*

*address any cultural concerns regarding the proposed activities. In conjunction with this, protection of the shellfish bed as a taonga recognised by tangata whenua has been provided for in the application.*

*80. ...No specific sites of significance such as wāhi tapu have been identified in submissions as relevant considerations, although reference has been made to the importance of the stream running through the site.*

*81. Two matters are considered relevant in assessing effects on cultural values. The first is the extent of the existing environment as it relates to both existing consented boatyard and wharf activities and those cultural values that exist in the area. The degree of modification in Walls Bay that has taken place over time has resulted in the current environment. While this does not negate the cultural values that may be present, particularly those associated with the shellfish beds and stream, it provides a context against which those values must be considered.*

*82. The second matter is how the changes to the existing environment might adversely affect those cultural values to the extent that such effects are not acceptable. The applicant has highlighted improvements in the quality of stormwater discharges, removal of contaminated material, both of which are presently potential threats to the viability of the kaimoana source. The existing stream, which is culverted along the length of the DOBY property, is highly modified. While some minor changes to the management of that stream are proposed, it will remain a highly modified watercourse.*

*83. In the absence of any defining comments indicating significant adverse cultural effects, it is considered that any adverse effects on identified cultural values are likely to be acceptable.*

256. I asked Mr Hartstone whether any of the evidence he had heard during the course of the hearing had changed his view on effects on cultural values. He stated it was his understanding that there were two components that were of significance in this respect, namely the stormwater discharge into the CMA and the effects on the pipi bed. He was of the view that the improvements proposed in respect of stormwater quality are a benefit to everyone, including tangata whenua, but he was unsure whether affecting up to 5% of the pipi bed and relocating those pipi was acceptable to tangata whenua.

### **Findings – Cultural Effects**

257. I find the Applicant's approach in terms of consulting with tangata whenua to be unhelpful. There was essentially no consultation undertaken and, while section 36A of the RMA clearly states that consultation by an Applicant is not mandatory, it is certainly best practice and without such consultation it is not possible for an Applicant to understand how a proposal may affect cultural values and relationships that tangata whenua may have with the subject site. The Applicant's approach was clearly one which relied on *"...the long history of planning applications and resource consent applications affecting the subject land, the consents and their effects are well understood by tangata whenua"*. Such an approach is essentially 'one-way' and the Applicant has not engaged with tangata whenua with the aim to find out what their values and relationships are. That is very unfortunate, and it is clear there has been a breakdown in the relationship between Mr Schmuck and tangata whenua.

258. I find that the improvements in stormwater treatment (and other site management improvements proposed) will result in significantly less contaminants entering the CMA compared to what has occurred over the duration of the previous consents. I agree with Mr Hartstone that this is a significant benefit to everyone, including tangata whenua.
259. It is clear that shellfish in and around the subject site are important to tangata whenua, in particular the pipi bed within Walls Bay. While up to 5% of the pipi bed may be affected by the removal of sediments around the slipway, I find the Applicant's proposed relocation of the pipis from the dredged sediment to other parts of the beach will minimise the effects to an acceptable level. Dr Wilson was confident that the relocated pipi would survive and, as such, the overall viability of the pipi bed will not be adversely affected meaning it will continue to be available as a source of kai moana for tangata whenua.
260. In terms of effects on other cultural values, I agree with Mr Hartstone that the extent of the existing environment as it relates to both existing consented boatyard and wharf activities and those cultural values that exist in the area are relevant considerations in this case. It is clear that Walls Bay has been modified over many years, including by way of the activities for which the Applicant holds resource consents. While these factors do not negate the effects of such activities on the cultural values that are present, it provides an important context against which the effects of the proposal on those cultural values must be considered. The relevant consideration in this case is whether the changes to the existing environment proposed might result in greater adverse effects on cultural values than what currently exists and if there are any such additional effects whether they are acceptable. With this context in mind, I find that the proposal will not result in any greater adverse effects on cultural values than what is currently authorised by way of the Applicant's existing consents.
261. I record here that it is well established through case law that the RMA and Treaty claims processes are separate, and the Crown's obligations to redress past breaches of the Treaty stand apart from the RMA process. Treaty claims, therefore, have no direct relevance to my determination of this Application.
262. I also record here that while consultation with tangata whenua is best resource management practice, it is not 'required' (mandatory) under the RMA (as stated in section 36A) and a lack of consultation is not a valid reason to refuse the consents sought. I have focused on assessing the actual and potential adverse effects on the environment, including cultural values and relationships.
263. It would appear, based on the information I was provided following the hearing, that Mr Schmuck is keen to at least attempt to mend the breakdown in relationship with tangata whenua. I hope this is the case and that constructive engagement occurs as it will be beneficial for all parties moving forward into the future.
264. Lastly, I heard no evidence that there are any holders of Customary Marine Title for the subject site. I note the Applicant has provided notice to a number of parties who have made applications under the Marine and Coastal Area (Takutai Moana) Act 2011 but no responses were received.

## **Overall Summary of Environmental Effects**

265. I am required to consider the potential and actual environmental effects of the activities which are the subject of this Application on an evidential basis. I have considered the evidence submitted by the Applicant, Mr Hartstone, Mr Maxwell, and the submitters within the context of the statutory framework. I have also considered the contents of the written submissions and the various legal submissions.
266. I find that the proposed activities will provide a variety of positive effects.
267. Some of the evidence put forward an argument that there were also positive environmental effects of the proposal compared to the exercise of the existing discharge permits that are being replaced. I recognise that the proposal as it relates to the discharges will result in environmental benefits compared to those associated with the exercise of the existing discharge permits – in particular the improvements in the stormwater discharges and mitigation measures proposed for the discharges to air. Additionally, the removal of the contaminated sediments around the slipway within the CMA will be an environmental benefit.
268. I find the actual and potential adverse effects of the activities, which includes moving Interesting Projects Limited's existing pontoon ~4 m to the north (being the subject of its application to change conditions under section 127 of the RMA) on the environment to be, at worst, minor and acceptable. This finding is dependent on the Applicant complying with the conditions of consent that have been put forward and those that I have imposed (discussed in more detail later in this decision).

## **SECTION 104(1)(ab) OF THE RMA – ENVIRONMENTAL OFFSETS AND COMPENSATION**

269. Section 104(1)(ab) of the RMA requires me to have regard to any measure proposed or agreed to by the Applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity.
270. The Applicant is not proposing any offsetting or compensation for any adverse effects.

## **SECTION 104(1)(b) OF THE RMA – RELEVANT PLANNING PROVISIONS**

271. Section 104(1)(b) of the RMA requires me to have regard to the relevant objectives and policies of the NZCPS, RPS, RCP, RAQP, and the PRP. I outline the relevant objectives and policies of these planning documents in the next sections.

### ***New Zealand Coastal Policy Statement***

272. Mr Hood advised that Objectives 1, 2, 3, 4, and 6 of the NZCPS were relevant. The Application also noted that Objective 5 of the NZCPS was relevant. Mr Hood advised that Policies 1, 2, 6, 11, 13, 14, 15, 18, 19, and 23 of the NZCPS were relevant. The Application also noted Policies 5, 21, 22, and 25 of the NZCPS were relevant. Mr Hartstone also considered Policies 4 and 12 of the NZCPS to be relevant.

273. Mr Hood concluded *“The proposed redevelopment is not contrary to any of the avoidance policies within the NZCPS”* and *“The NZCPS is the foundation document underpinning the lower order regional plans. In my opinion, the proposed DOBY redevelopment is entirely consistent with this document”*.

**Regional Policy Statement**

274. Mr Hood advised that Objectives 3.2, 3.4, 3.5, 3.10, 3.12, 3.13, 3.14, and 3.15 of the RPS were relevant. Mr Hood advised that Policies 4.2.1, 4.4.1, 4.6.1, 4.8.1, 4.8.3, 4.8.4, 5.1.2, 5.2.3, 7.1.3, and 8.1.1 of the RPS were relevant.
275. Mr Hartstone accepted and adopted the assessment provided in the Application in respect of the applicable objectives and policies of the RPS.
276. Mr Hood concluded *“...the proposed DOBY redevelopment is consistent with the policy direction in both these higher order plans [being the NZCPS and the RPS]. Also, importantly, the proposal is not contrary to any of the avoidance policies within these documents”*.

**Regional Coastal Plan for Northland**

277. Mr Hood advised that Objectives 7.3, 10.3(1), 16.3, 17.3, 19.3, 20.3, and 22.3 of the RCP were relevant – I note that the copy of the relevant provisions attached to his statement of evidence showed Objectives 28.3(2) and 28.3(4) as being highlighted and, having read those, I assume he considered them to also be relevant despite not discussing them in his statement of evidence.
278. Mr Hood advised that Policies 7.4(1), 7.4(4), 10.4(1), 10.4(3), 16.4(2), 16.4(3), 17.4(3), 17.4(6), 17.4(7), 17.4(8), 17.4(9), 19.4(1), 19.4(4), 20.4(1), 20.4(2), 20.4(3), 20.4(6), 22.4(1), 22.4(4), 22.4(7), 28.4(7), and 28.4(8), of the RCP were relevant.
279. Mr Hood concluded *“The Marine 4 Management Area clearly contemplates structures in the CMA (including marina berths). In my view, the existing and proposed DOBY structures are consistent with the anticipated outcomes for the Marine 4 Management Area”*. In terms of the other provisions of the RCP relevant to the proposal he concluded *“The general objectives and policies are focused on improving the quality of the environment through best practice effects management and facilitating public access to and along the CMA except in specified circumstances. For the reasons outlined in my evidence, I consider that the DOBY proposal achieves both the Marine 4 Management Area and general environmental outcomes anticipated by the RCP”*.

**Regional Air Quality Plan for Northland**

280. Mr Hood advised that Objective 2 and Policies 3 and 9 of the RAQP were relevant.
281. Mr Hood concluded *“The RAQP is a relatively small document that is focussed on the best practice management of air discharges. Notwithstanding that the DOBY discharges are minor, the best practice measures recommended by Mr Stacey will ensure consistency with the direction under the RAQP”*.

### **Proposed Regional Plan for Northland**

282. Mr Hood advised that Objectives F.1.2, F.1.3, F.1.4, F.1.7, and F.1.12 of the PRP were relevant. He also advised that Policies D.1.1, D.1.2, D.2.2, D.2.11, D.2.12, D.2.15, D.2.16, D.3.1, D.3.3, D.3.4, D.4.1, D.5.15, D.5.16, D.5.17, D.5.19, and D.5.24 of the PRP were relevant.

283. Mr Hood concluded:

176. *Like the RCP, the general approach to managing activities in the CMA in the PRP is through marine zones. Similarly, there is a general layered approach to managing the effects of activities in these zones, with those effects needing to be considered in the context of the activities and facilities anticipated by the zone.*

177. *The Mooring Zone clearly contemplates structures in the CMA, as do the Coastal Commercial Zone and the Marina Zone. However, no one zone of the PRP provides for all the activities at DOBY.*

178. *Beyond the anticipation of structures in the CMA, the PRP is generally focused on improving the quality of the environment, with the quality of stormwater discharges being particularly relevant to the DOBY operation. Unlike the RCP, the PRP prescribes minimum water quality standards. The evidence is that the proposed discharges will meet those standards.*

179. *Overall, in my opinion the proposed DOBY activities are appropriate in the context of the PRP due to a combination of factors, including the zone, the nature of the receiving environment, the proposed effects management, and the general improvement to the quality environment.*

### **Summary – Relevant Planning Provisions**

284. I record here that I have had regard to all of the above provisions in making my decision on the Application.

285. Mr Hartstone's overall assessment was (emphasis added):

179. *Section 104(1)(b) requires a consent authority to have regard to relevant provisions of various statutory planning documents. The above assessment addresses the various provisions in national and regional documents. The hierarchical relationship between the NZCPS, RPS, and Regional Plans (particularly the PRP in this case) is a key element given the majority of the proposed activity is located within the CMA. The proposal is considered to be generally consistent with the provisions of all of these documents.*

180. *Based on the information provided with the application, the site is considered appropriate in terms of providing for the occupation and use of the CMA for various activities as sought. It has a functional need to be located in the coastal marine area. The site is not identified as containing any significant values, is part of a modified environment, and no significant cultural effects have been identified. The zoning of the CMA area recognises the existing mooring activities and accommodates activities such as marinas and dredging in appropriate locations. The effects associated with stormwater and air discharges have been assessed as appropriate and acceptable and this satisfies many of the objectives and policies.*



286. Mr Hood's overall assessment was "*...the application is in full alignment with all the relevant statutory planning documents*".
287. I agree with Mr Hartstone's overall assessment in that the Application is generally consistent with the relevant provisions of the planning documents. I do not agree with Mr Hood that there is 'full alignment'.

#### **SECTION 104(1)(c) OF THE RMA – OTHER RELEVANT MATTERS**

288. Section 104(1)(c) of the RMA requires me to have regard to any 'other matters' that are relevant and reasonably necessary to determine the Application. Messrs Hartstone and Hood agreed the Ngā Tikanga mo te Taiao o Ngāti Hine 2008 (Ngāti Hine Iwi Environmental Management Plan) was a relevant 'other matter' for me to consider for this application – I discussed a number of the relevant provisions of this Plan earlier in this decision and do not repeat them here. As discussed earlier in this decision I also consider the WBRMP to be a relevant 'other matter'.
289. I have had regard to these documents in arriving at my decision. I adopt the assessments provided by Mr Hartstone for the purposes of my decision as provided for by section 113(3)(b) of the RMA.

#### **SECTION 104(2A) OF THE RMA – VALUE OF INVESTMENT**

290. When considering a 'replacement' application affected by section 124 of the RMA, as is the case for the existing deemed permits, section 104(2A) of the RMA requires me have regard to the value of the investment of the existing consent holder.
291. The value of investment of the Applicant is relevant not only in terms of deciding whether to grant the Application but also the appropriate term of consent.
292. As discussed earlier in this decision, there was conflicting information on whether some of the consents being sought were, in fact, replacement consents or new consents. Certainly the discharge permits are replacement consents but not those associated with the CMA structures.
293. The only evidence I was provided in respect to 'level of investment' was from Mr Hood who stated "*...reconstruction of the wharf and slipway and the associated capital dredging is a significant investment for DOBY that justifies the proposed 35-year expiry date (estimated at approximately \$700,000.00 in addition to the \$700,00.00 [sic] already spent on resource consent matters)*". These sums relate to future costs associated with the new wharf/slipway and dredging, not with the existing value of investment in the boatyard itself to which the replacement discharge permits relate. I received no evidence on the value of the investment Mr Schmuck has in the boatyard (and the upgrades proposed there) but I suspect that some of the \$700,000 relates to upgrades 'on land'.

## SECTION 105 OF THE RMA

294. Section 105 of the RMA states that, when considering section 15 RMA matters (discharges), I must, in addition to section 104(1), have regard to:

- (a) *The nature of the discharge and the sensitivity of the receiving environment to adverse effects; and*
- (b) *The applicant's reason for the proposed choice; and*
- (c) *Any possible alternative methods of discharge, including discharge to any other receiving environment.*

295. I have had regard to the three matters in coming to my decision. Messrs Hartstone and Hood provided an assessment of the three matters above and I adopt their evidence for the purpose of this decision as provided for by section 113(3)(b) of the RMA. Further, I have provided discussion on some of these matters earlier in this decision as they are relevant to a number of the issues in contention.

## SECTION 107 OF THE RMA

296. Section 107(1) of the RMA states that a consent authority must not grant a discharge permit or a coastal permit that authorises a discharge into the CMA if, after reasonable mixing, the contaminant or water discharged (either by itself or in combination with the same, similar, or other contaminants or water), is likely to give rise to all or any of the following effects in the receiving waters:

- (c) *the production of any conspicuous oil or grease films, scums or foams, or floatable or suspended materials;*
- (d) *any conspicuous change in the colour or visual clarity;*
- (e) *any emission of objectionable odour;*
- (g) *any significant adverse effects on aquatic life.*

297. Neither Mr Hood nor the Application evaluated section 107 of the RMA. Mr Hartstone provided a very brief discussion on section 107 RMA matters and concluded "*The 4Sight report addresses the matters under Section 107(1) and confirms that the discharge activities will not give rise to any of the effects identified in Section 107(1)(c)-(e) and (g)*". Having read the 4Sight report (Appendix 14 of the Application), I could not find any specific discussion on section 107 RMA matters. The 4Sight report does cover some of the section 107 RMA matters, but only in respect of the dredging (capital and maintenance) and the use of the wharf facilities as a marina. The 4Sight report does not cover any section 107 RMA matters as they relate to the proposed stormwater discharge as it states "*The assessment in this 4Sight report is limited to describing the general water quality in Walls Bay, excluding the stormwater discharge*".

298. Despite the lack of specific evidence from the planners on whether all the discharges would comply with the section 107 RMA restrictions, I am satisfied, based on the other expert evidence I heard from Mr Papesch and Dr Wilson, that the proposed discharges to water will not give rise to all or any of the effects identified in clauses (c)-(e) and (g) of section 107(1) of the RMA.

299. The Applicant's proffered conditions, and those recommended by Mr Hartstone, included three separate conditions which included the restrictions outlined in section 107 of the RMA. These three conditions related to the demolition and construction works, dredging (capital and maintenance), and the stormwater discharge.

## PART 2 OF THE RMA

300. The matters specified in section 104(1) of the RMA that I must have regard to are 'subject to Part 2' of the RMA. These words, and how they apply to the consideration of resource consent applications, has been the subject of a number of cases heard in the Environment Court, High Court, and more recently the Court of Appeal.
301. The Court of Appeal decision on *RJ Davidson Family Trust v Marlborough District Council*<sup>16</sup> (**the Davidson decision**) provides the latest, and most authoritative, position on this matter.
302. Mr Hartstone provided commentary on whether resort to Part 2 was warranted for this Application and stated "*The proposal has required consideration against a suite of planning provisions of which the NZCPS is the prevailing document. All the documents considered contain provisions that are relevant to the proposal. There is no evidence to suggest the relevant provisions are invalid, incomplete or present uncertainty in making any decision. At worst, the validity of the RCP may be in question given its promulgation under a previous version of the NZCPS. However, this has no significance in terms of the manner in which the application has been assessed, given that the PRP assumes significant weight as part of the assessment. No assessment of the application against Part 2 provisions is therefore required*". Mr Hood also considered assessment of the Application against Part 2 RMA matters was not required, essentially for the same reasons as Mr Hartstone.
303. Given the directions issued by the Court of Appeal in the Davidson decision, I agree with Messrs Hartstone and Hood and I do not consider reference to RMA Part 2 matters would add anything to the evaluative exercise I have undertaken under section 104 of the RMA.

## CONCLUSION AND OVERALL DETERMINATION

304. On the basis of the evidence in front of me, I have determined that the Application should be **granted** subject to conditions. I discuss the conditions in the next section of this decision.
305. In coming to my decision to grant the Application I am satisfied the actual and potential adverse effects of the activities on the environment will be, at worst, minor and acceptable. I am also satisfied that the activities are generally consistent with, and align with, the applicable provisions of the relevant statutory planning documents.

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<sup>16</sup> CA97/2017 [2018] NZCA 316.

## Duration

306. Mr Schmuck is seeking a 35-year duration for all the consents he has applied for. No change in expiry date for the Interesting Projects Limited consent is being sought as that is not possible under section 127 of the RMA.
307. Mr Hood discussed Policy 4.8.3 of the RPS which sets out the matters that “particular regard will be had to” in setting the expiry date for coastal permits. These matters being:
- (a) *The security of tenure for investment (the larger the investment, the longer the consent duration);*
  - (b) *Aligning the expiry date with other coastal permits to occupy space in the surrounding common marine and coastal area;*
  - (c) *The reasonably foreseeable demands for the occupied water space by another type of activity (the greater the demands, the shorter the consent duration); and*
  - (d) *Certainty of effects (the less certain the effects the shorter the consent duration).*
308. Neither Mr Hood or Mr Hartstone provided me with any information on the presence of any other coastal permits in the surrounding area and what their expiry dates were, this being a relevant consideration under Policy 4.8.3(c) of the RPS. In answers to questions both planners confirmed that Mr Schmuck’s other consents (those not being replaced) expire in 2036 as does the coastal permit held by Interesting Projects Limited. Mr Hood considered Mr Schmuck’s other consents were not fundamental to the activities going on at the boatyard and he could not see the relevance of aligning the expiry date of the new consents with the other consents. Mr Hartstone considered that aligning the expiry dates would be appropriate if the various activities (or consents) were ‘interdependent’, but he was of the opinion that the consents being sought were not sufficiently interdependent to warrant aligning the expiry dates in this case.
309. Mr Hood explained that the proposal will cost in the order of \$700,000 and that there is a high certainty as to the effects given that an existing facility already exists. In his view a 35-year term is justified in this case.
310. Mr Hartstone considered a 35-year term to be reasonable for the activities and he noted no submissions had been lodged which sought any shorter term.
311. I agree with Messrs Hood and Hartstone that a 35-year duration for all of the consents sought by Mr Schmuck is appropriate.

## Conditions

312. The Staff Report contained recommended conditions for the various resource consents sought by Mr Schmuck. However, there have been several iterations of these conditions over the course of the hearing process. Messrs Hood, Hartstone, and Maxwell worked on the conditions following the formal part of the hearing and Mr Hood then also provided further amendments to those conditions as part of the Applicant's written Right of Reply. I asked Mr Hartstone for his views on Mr Hood's amendments and he provided those to me. There was agreement on most of the conditions, with the main points of difference relating to the matter of access through the proposed security gate (which I discussed earlier in this decision) and compliance limits for metals within sediments within the CMA.
313. The changes to conditions sought by Interesting Projects Limited are relatively minor and were not in contention. The changes are contained in Appendix 1 to this decision and I do not discuss them further here.
314. The conditions I have imposed on the resource consents sought by Mr Schmuck are contained in Appendix 2 to this decision. The conditions are generally based on the final version of conditions provided by the Applicant.
315. The changes I have made to the conditions include grammatical, typographical corrections, corrections to legal descriptions, corrections to AUTH numbering, condition cross-referencing corrections, as well as changes to ensure consistency in the use of terminology. None of these more minor changes alter the intent of those conditions where such changes have been made.
316. I have deleted one condition, this being what was numbered Condition 70 in the Applicant's latest set of proffered conditions. That condition read *"When the water blaster is not being used, all working areas on the washdown pad shall be maintained clean of debris"*. The requirements of that condition already effectively exist in what was numbered Condition 73 (now numbered Condition 75) so I have deleted it to avoid unnecessary duplication.
317. I have made a number of more substantive changes to the conditions, some of which I have alluded to in earlier parts of this decision. I summarise the more substantive changes below, noting that the condition numbering referred to is that contained in Appendix 2 to this decision.
- Condition 1: the words 'intended date of' inserted in the second sentence.
  - Condition 31(c): I agree with Mr Hartstone that public access through the security gate should be provided during daylight hours even if the Consent Holder is not on site (discussed in greater detail in paragraph 234). I have changed Mr Hartstone's suggested wording slightly to make that clearer, including his earlier recommendations that signage be erected on the lighting pole on the wharf advising the public of the hours of public access through the security gate. I have not included the Applicant's proposed prohibition of fishing, collection of seafood, or the bringing of any equipment onto the structures – no evidence was provided to justify the imposition of such restrictions.

- Condition 32: I have amended clause (a) so as to provide flexibility – if the Consent Holder is happy for a vessel to berth without him needing to be present then that is now provided for (the previous wording would have required the Consent Holder to be present). I have amended the wording of the other clauses to make them read better and split the swimming and vessel maintenance clauses into two as they are unrelated activities. Lastly, I have added a new paragraph under the clauses which prohibits the Consent Holder from unreasonably withholding permission for public vessels to berth.
- Condition 33: I have imposed a new condition which requires the Consent Holder to take all practicable steps to ensure vessels berthed at the marina berths do not overhang the eastern face of the pontoon.
- Condition 37: I agree with Mr Hartstone that a condition specifying maximum allowable metal concentrations within marine sediments should be imposed. I have used the wording suggested by Dr Wilson and Mr Hartstone agrees that this wording achieves the same intent as the original wording. I disagree with Mr Hood that such a condition is unworkable and unnecessary.
- Condition 56: I have made minor changes to this condition to make it consistent with the language used in Condition 39.
- Condition 61: I have imposed a new condition which requires the Consent Holder to pull all vessels up the slipway as far as is practicable before any water blasting, wet abrasive blasting, wet sanding, painting, antifouling, and/or maintenance operations commence. As discussed in paragraph 135, I see this as a key mitigation measure and one that should be codified as a condition of consent rather than being embedded in the OMP as suggested by Mr Hood.
- Condition 62: I have made several amendments, including a requirement that not only does the stormwater treatment system have to be constructed, but that it also needs to be commissioned before any discharge activities occur. I have added new text which allows the Consent Holder to locate the stormwater treatment system entirely within Area A rather than between Area A and the CMA as shown on the various plans. Given that new Condition 61 requires vessels to be pulled up the slipway as far as is practicable, it is now very possible for the stormwater treatment system to be constructed entirely within Area A (as discussed in paragraph 137).
- Condition 65: I agree with the wording proposed by Mr Papesch, except that I have inserted the words ‘washing, cleaning, or maintenance’ twice in the condition.
- Condition 67: I have added an additional sentence which requires the Consent Holder to monitor the quality of the stormwater discharge in accordance with the requirements outlined in Schedule 2 (attached to the consent). While the requirements of stormwater monitoring were included in Schedule 2 there was no condition which required the stormwater monitoring to be undertaken.

- Condition 70: I have amended the wording slightly (for consistency with similar conditions) and referenced an amended version of the Reyburn and Bryant drawing referenced as Northland Regional Council Plan 4966 (**Plan 4966**) which shows two separate Offensive Odour and Air Discharge boundaries, one on land and one in the CMA.
  - Condition 71: I have changed the referenced plan from 4952/1 to 4952/3 as the latter shows the relevant areas in better detail.
  - Condition 77, 87, 92, and 95: All four conditions make reference to Plan 4966. I have amended Plan 4966 to show two separate Offensive Odour and Air Discharge boundaries. The on land boundary covers the boatyard property plus part of Section 2 SO 68634 down to 10 m from the CMA line (the bottom of Area A). The CMA boundary coincides with the Occupation Area around the wharf and pontoon. I discuss the basis for these boundaries in paragraphs 143 and 144.
  - Condition 80: I have made minor amendments to this condition by not only requiring the weather station to be installed but then also to be maintained.
  - Condition 91: I have deleted the first sentence of the condition which restricted diisocyanate painting to certain wind directions as that restriction already applies by virtue of the wording of Condition 82 (which applies to water blasting and/or application of antifouling and/or application of all paints).
318. I am satisfied that the conditions, both singularly and in total, are necessary and appropriate to avoid, remedy, or mitigate potential adverse effects identified by the Application and the evidence.

## DECISIONS

### A) Interesting Projects Limited

For the reasons set out above, it is my decision, pursuant to section 127 of the Resource Management Act 1991, to **GRANT** changes to Conditions 1, 3, 5, and 6 of AUT.008270.01.02 held by Interesting Projects Limited T/A Great Escape Yacht Charters as set out in **Appendix 1, attached** to this decision.

### B) Douglas Craig Schmuck

For the reasons set out above, it is my decision, pursuant to section 104B of the Resource Management Act 1991, to **GRANT** the following resource consents to Douglas Craig Schmuck T/A Doug's Opua Boat Yard, subject to the terms and conditions set out in **Appendix 2, attached** to this decision:

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, 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 (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.



<b>AUT.041365.11.01</b>	<b>Capital dredging around berths, fairway and slipway in the coastal marine area.</b>
<b>AUT.041365.12.01</b>	<b>Maintenance dredging to maintain vessel berths, fairway and slipway in the coastal marine area.</b>
<b>AUT.041365.13.01</b>	<b>Discharge treated stormwater to the coastal marine area.</b>
<b>AUT.041365.14.01</b>	<b>Discharge contaminants to land from vessel maintenance activities.</b>
<b>AUT.041365.15.01</b>	<b>Discharge contaminants to air from vessel maintenance activities.</b>
<b>AUT.041365.16.01</b>	<b>Discharge contaminants to air in the coastal marine area from vessel maintenance activities.</b>

Dated this 9<sup>th</sup> day of November 2020



**Dr Rob Lieffering**

**Hearing Commissioner**

## **Appendix 1 – Change to Conditions for Resource Consents AUT.008270.01.03 (Interesting Projects Limited)**

Pursuant to section 127 of the Resource Management Act 1991, changes to conditions 1, 3, 5, and 8 of existing consent AUT.008270.01.02 held by Interesting Projects Limited T/A Great Escape Yacht Charters are granted. The amendments to the relevant conditions are identified below, where deletions are shown as ~~strike through~~, and insertions are identified as **underscored and bolded text**.

**INTERESTING PROJECTS LIMITED T/A GREAT ESCAPE, PO BOX 461, PAIHIA 0247**

**To undertake the following activity in Walls Bay, Ōpua at or about location coordinates 1701530E 6091859N:**

**AUT.008270.01.03**      **Place and use a floating structure in the coastal marine area alongside a wharf facility at Doug's Opua Boat Yard, for the purpose of maintaining and servicing charter trailer yachts.**

**Subject to the following conditions:**

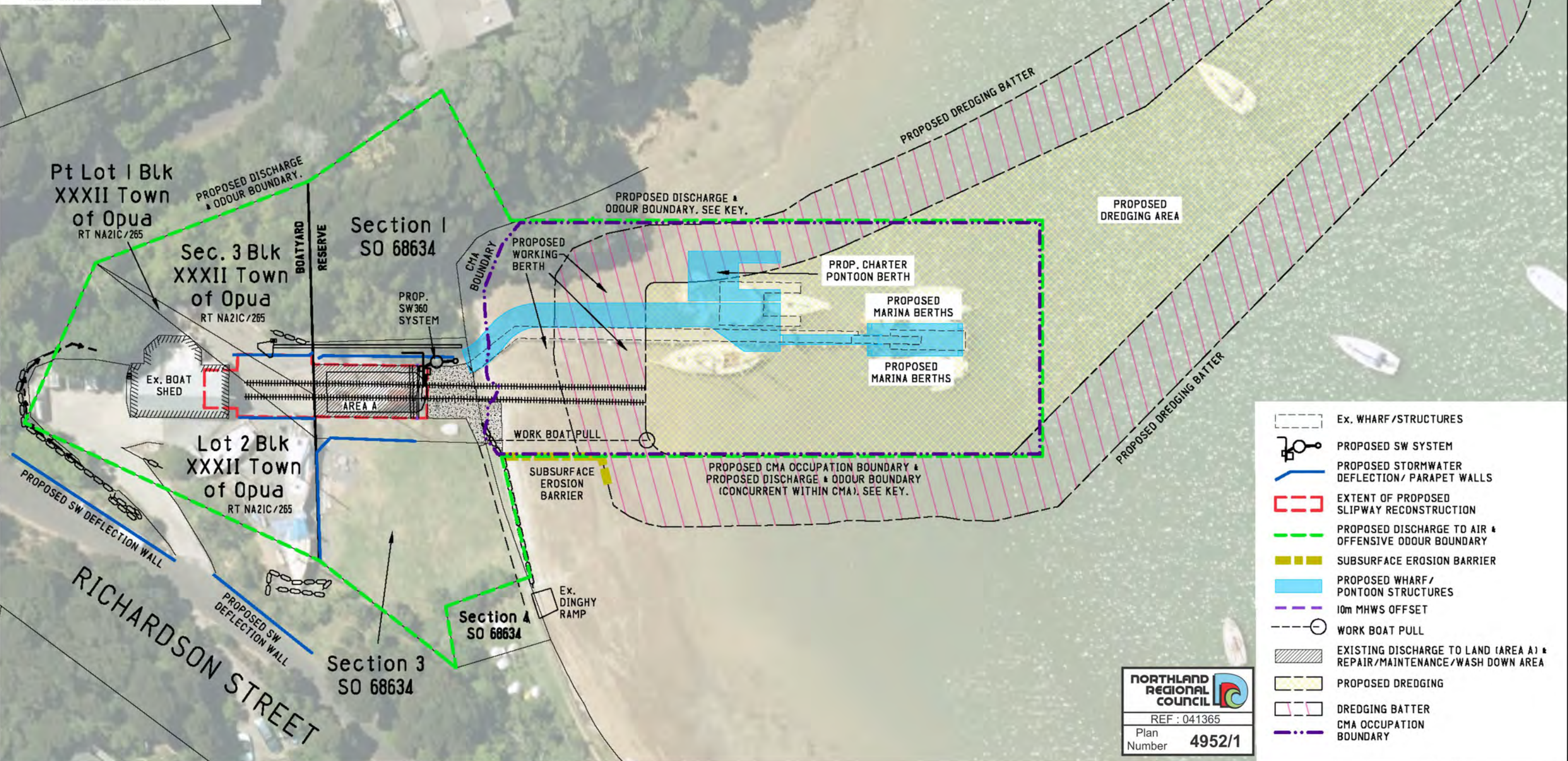
~~To place and use a floating structure alongside the existing jetty at Doug's Opua Boat yard, for the purpose of maintaining and servicing charter trailer yachts, Map Reference Q05:123 537 subject to the following conditions:~~

- 1      This consent is to use only those parts of the coastal marine area at ~~Opua~~ **Ōpua** Basin ~~for the purposes of the consent as shown on NRC Plan No. 3014A attached, and applies only to the structure identified as 'Prop. Charter Pontoon Berth' on the Reyburn and Bryant drawing referenced as~~ **Northland Regional Council Plan Number 4952/1 attached.** The floating structure shall only be located on the northern side of the existing ~~jetty~~ **wharf facility**.  
.....
- 3      The colour of the floating structure shall blend in with that of the ~~jetty~~ **wharf facility** and the surrounding landscape, such that the floating structure is unobtrusive when viewed from anywhere on Beechy Street.  
.....
- 5      Vessel toilets shall not be discharged whilst the vessel is alongside the floating structure or the ~~jetty~~ **wharf facility**.
- 6      All vessel cleaning slops containing chemicals and all rubbish removed from vessels whilst at the floating structure or adjoining ~~jetty~~ **wharf facility** shall be disposed of on land to an authorised disposal facility.



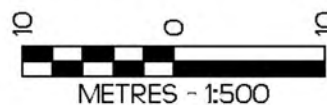
# INFORMATION SOURCES

- SURVEY INFORMATION, INCLUDING MHWS (ESTABLISHED 2010) & 10m MHWS OFFSET LINE IS FROM THOMSON SURVEY LTD PLANS #8095 DATED 09.08.19
- PROPOSED NEW STRUCTURES & DREDGING INFORMATION FROM TOTAL MARINE PLAN APP-039650-01-01 REV. 11 DATED 17.01.2019
- PROPOSED STORMWATER MANAGEMENT INFORMATION FROM VISION CONSULTING CONCEPT PLAN #13958 DATED 05.06.2019 & THOMSON SURVEY LTD PLAN #8095 D9 SW PROPOSED\* DATED 9.08.19
- 0.1m 2014-2015 URBAN AERIAL PHOTOGRAPH SOURCED FROM AERIAL SURVEYS LTD INFORMATION AVAILABLE ON LINZ DATA SERVICE.
- ORIGINAL OCCUPATION AREA & OFFENSIVE ODOUR BOUNDARIES SOURCED FROM NRC PLAN #3231b DATED DECEMBER 2001



- ## GENERAL NOTES
- NO PART OF THIS PLAN MAY BE REPRODUCED, COPIED, OR AMENDED IN ANY FORM WITHOUT THE PRIOR PERMISSION OF REYBURN & BRYANT (1999) LIMITED.
  - DO NOT SCALE OFF DRAWINGS.
  - INFORMATION HAS BEEN COMPILED FROM PDFs BY OTHERS, AND IS THEREFORE INDICATIVE ONLY. SEE SOURCE NOTES THIS SHEET.

LEVELS IN TERMS OF LINZ ONE TREE POINT DATUM  
COORDINATES IN TERMS OF MT EDEN 2000



BY	DATE	NOTES
PD	22.05.19	DRAFTING
PD	24.10.19	DRAFTING
PD	1.11.19	DRAFTING
PD	14.11.19	DRAFTING
MW	23.09.20	DRAFTING

## BOAT YARD SITE PLAN COVER SHEET

DOUG'S OPUA BOAT YARD  
PROPOSED SLIPWAY 2019

**NORTHLAND REGIONAL COUNCIL**

REF : 041365

Plan Number **4952/1**

**reyburn & bryant**

Ph: 09 438 3563  
7 Selwyn Ave, Whangarei

PO Box 191, Whangarei 0140  
www.reyburnandbryant.co.nz

DATE	23.09.20
SCALE	1:500 @A3
JOB	15241 SITE
SHEET	1/3
REV	E



## **Appendix 2 – Conditions for Resource Consents AUT.041365.01 – AUT.041365.16 (Douglas Craig Schmuck)**

## **DOUGLAS CRAIG SCHMUCK, C/- DOUG'S OPUA BOATYARD, 1 RICHARDSON STREET, ŌPUA 0200**

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.

- |                         |   |
|-------------------------|---|
| <b>AUT.041365.01.01</b> | <b>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.</b> |
| <b>AUT.041365.02.01</b> | <b>Reconstruct a slipway in the coastal marine area, inclusive of slipway, turning block, and associated cabling.</b>   |
| <b>AUT.041365.03.01</b> | <b>Place a hard protection structure, being a subsurface erosion barrier, in the coastal marine area.</b>   |
| <b>AUT.041365.04.01</b> | <b>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.</b>   |
| <b>AUT.041365.05.01</b> | <b>Occupy space in the coastal marine area in the vicinity of the wharf facility and slipway to the exclusion of others (occupation area).</b>  |
| <b>AUT.041365.06.01</b> | <b>Use the slipway in the coastal marine area for minor vessel maintenance.</b>   |
| <b>AUT.041365.07.01</b> | <b>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.</b>  |
| <b>AUT.041365.08.01</b> | <b>Use two berths associated with the wharf facility pontoon as a marina in the coastal marine area.</b>  |
| <b>AUT.041365.09.01</b> | <b>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.</b>   |
| <b>AUT.041365.11.01</b> | <b>Capital dredging around berths, fairway and slipway in the coastal marine area.</b>  |
| <b>AUT.041365.12.01</b> | <b>Maintenance dredging to maintain vessel berths, fairway and slipway in the coastal marine area.</b>  |
| <b>AUT.041365.13.01</b> | <b>Discharge treated stormwater to the coastal marine area from a proprietary stormwater system.</b>  |
| <b>AUT.041365.14.01</b> | <b>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).</b>  |
| <b>AUT.041365.15.01</b> | <b>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).</b>   |
| <b>AUT.041365.16.01</b> | <b>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).</b>  |

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](mailto: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** except that the Consent Holder shall allow reasonable public access to and through this area, and reasonable public access to, and use of, the dinghy ramp, wharf, and marina pontoon structures as set out below:
- (a) Public access to the dinghy ramp to the south of the wharf, and beach landings to both sides of the wharf, to be available at all times;
  - (b) Public access past the wharf sign board, security gate, and charter boat berth area, may be restricted by the Consent Holder when working conditions require;

- (c) Access through the security gate shall be provided to the public at all times when the working conditions allow between the hours of 0700-1800, and 0700-2000 during New Zealand Daylight Savings time. Any access outside these specified hours shall be by way of arrangement with the Consent Holder. The Consent Holder shall erect signage on the wharf on the lighting pole adjacent to the wharf abutment as shown on the **attached** Northland Regional Council Plan Number **4953/2** to advise the public of the hours of public access through the security gate.
- 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 areas within the 'Marina Mooring Area' shown on the **attached** Total Marine Services Limited drawing referenced as Northland Regional Council Plan Number **4953/1**, for the purpose of loading/unloading passengers, crew, stores, and small equipment 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;
  - (b) The vessel is berthed for no more than 1 hour;
  - (c) The vessel is not left unattended;
  - (d) There is no discharge to the coastal marine area;
  - (e) No swimming occurs within the Marina Mooring Area; and
  - (f) No vessel maintenance occurs.

The Consent Holder shall not unreasonably withhold permission for public vessels to berth at the marina facility pontoon and/or other areas within the 'Marina Mooring Area' shown on the **attached** Total Marine Services Limited drawing referenced as Northland Regional Council Plan Number **4953/1**.

- 33 The Consent Holder shall take all practicable steps to ensure the vessel(s) berthed at the two marina berths do not 'overhang' the eastern face of the marina pontoon so as to enable public vessels to berth on that part of the pontoon.
- 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 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 from at least three samples in intertidal or subtidal sediment, as measured at any point 10 metres from the facilities, shall not exceed the median concentrations measured in previous years from the same locations. Once sediment metal concentrations decrease below the coastal sediment quality standards (listed below), they shall not exceed the following:
- 65 milligrams per kilogram of total copper,
  - 50 milligrams per kilogram of total lead;
  - 200 milligrams per kilogram of total zinc;
  - 80 milligrams per kilogram of total chromium; or
  - 21 milligrams per kilogram of total nickel.
- 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 All vessels shall be pulled up the slipway as far as is practicable before any water blasting, wet abrasive blasting, wet sanding, 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.

**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 landward of mean high water springs within the area labelled 'Boatyard Activities Offensive Odour and Air Discharge Boundary' identified on the **attached** Reyburn and Bryant drawing referenced as Northland Regional Council Plan Number **4966**.
- 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.039650.15 – 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 Offensive Odour and Air Discharge Boundary' on the **attached** Reyburn and Bryant drawing referenced as Northland Regional Council Plan Number **4966**.
- 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 Offensive Odour and Air Discharge Boundary' identified on the **attached** Reyburn and Bryant drawing referenced as Northland Regional Council Plan Number **4966** 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 spraycoated;
  - (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.039650.16 – 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 Offensive Odour and Air Discharge Boundary' identified on the **attached** Reyburn and Bryant drawing referenced as Northland Regional Council Plan Number **4966**.
- 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 are noxious, dangerous, offensive, or objectionable beyond the 'Coastal Marine Area Offensive Odour and Air Discharge Boundary' identified on the **attached** Reyburn and Bryant drawing referenced as Northland Regional Council Plan Number **4966**.
- 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 <sub>eq</sub>	L <sub>max</sub>	L <sub>eq</sub>	L <sub>max</sub>	L <sub>eq</sub>	L <sub>max</sub>
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 L <sub>max</sub>

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  $L_{\text{eq}}$  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)  $L_{\text{eq}}$  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. 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 upstream and downstream control sites. 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.

#### 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.

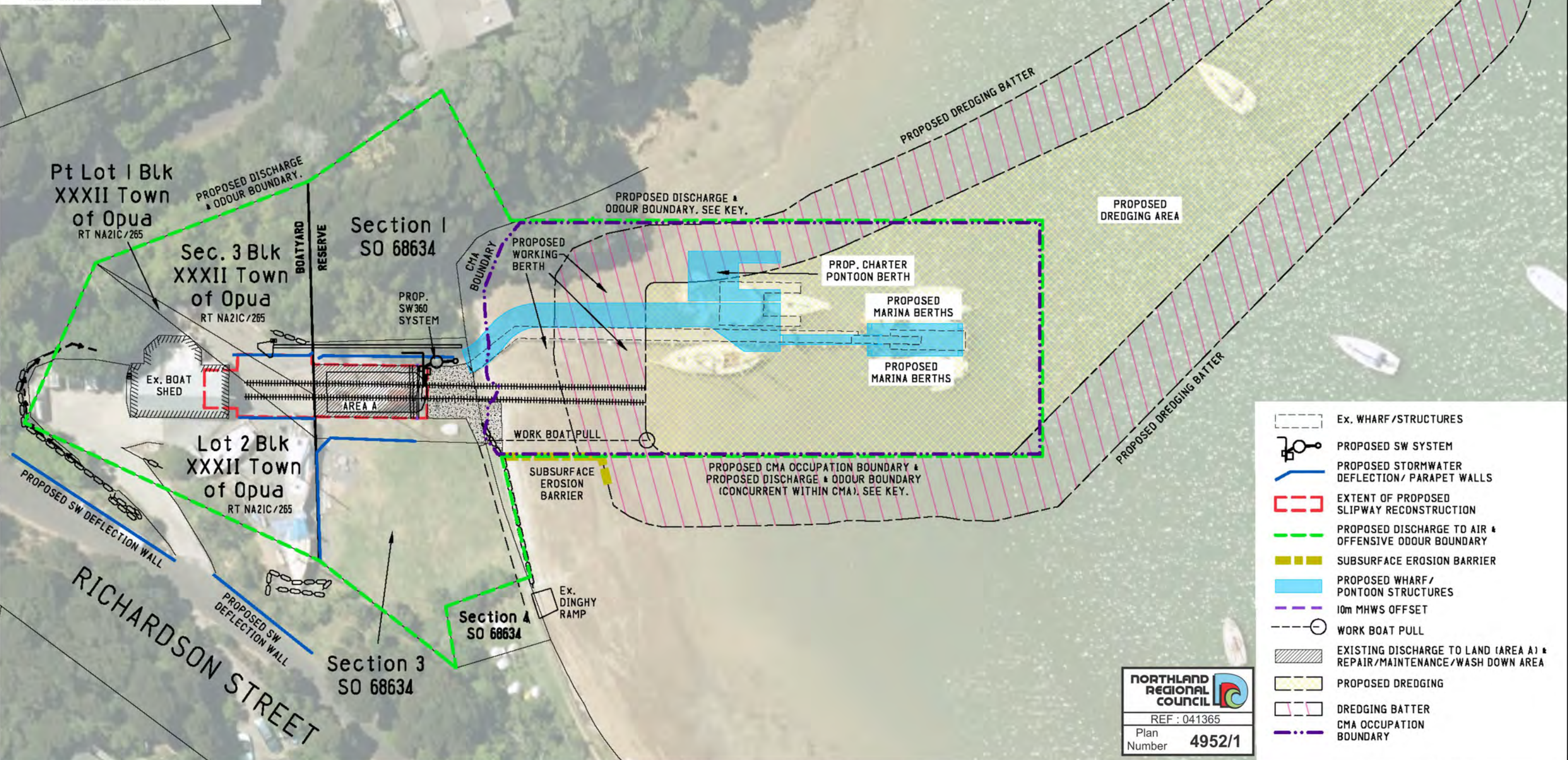
Should the visual inspection indicate any change in clarity at or beyond 100 metres from the point of the dredging operations, then the Consent Holder shall implement the following monitoring programme to assess compliance with the relevant conditions of this consent.

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.



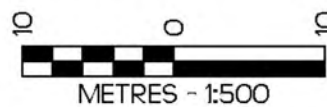
# INFORMATION SOURCES

- SURVEY INFORMATION, INCLUDING MHWS (ESTABLISHED 2010) & 10m MHWS OFFSET LINE IS FROM THOMSON SURVEY LTD PLANS #8095 DATED 09.08.19
- PROPOSED NEW STRUCTURES & DREDGING INFORMATION FROM TOTAL MARINE PLAN APP-039650-01-D1 REV. 11 DATED 17.01.2019
- PROPOSED STORMWATER MANAGEMENT INFORMATION FROM VISION CONSULTING CONCEPT PLAN #13958 DATED 05.06.2019 & THOMSON SURVEY LTD PLAN #8095 D9 SW PROPOSED\* DATED 9.08.19
- 0.1m 2014-2015 URBAN AERIAL PHOTOGRAPH SOURCED FROM AERIAL SURVEYS LTD INFORMATION AVAILABLE ON LINZ DATA SERVICE.
- ORIGINAL OCCUPATION AREA & OFFENSIVE ODOUR BOUNDARIES SOURCED FROM NRC PLAN #3231b DATED DECEMBER 2001



- ## GENERAL NOTES
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  - DO NOT SCALE OFF DRAWINGS.
  - INFORMATION HAS BEEN COMPILED FROM PDFs BY OTHERS, AND IS THEREFORE INDICATIVE ONLY. SEE SOURCE NOTES THIS SHEET.

LEVELS IN TERMS OF LINZ ONE TREE POINT DATUM  
COORDINATES IN TERMS OF MT EDEN 2000



BY	DATE	NOTES
PD	22.05.19	DRAFTING
PD	24.10.19	DRAFTING
PD	1.11.19	DRAFTING
PD	14.11.19	DRAFTING
MW	23.09.20	DRAFTING

## BOAT YARD SITE PLAN COVER SHEET

DOUG'S OPUA BOAT YARD  
PROPOSED SLIPWAY 2019



**reyburn  
& bryant**

Ph: 09 438 3563  
7 Selwyn Ave, Whangarei

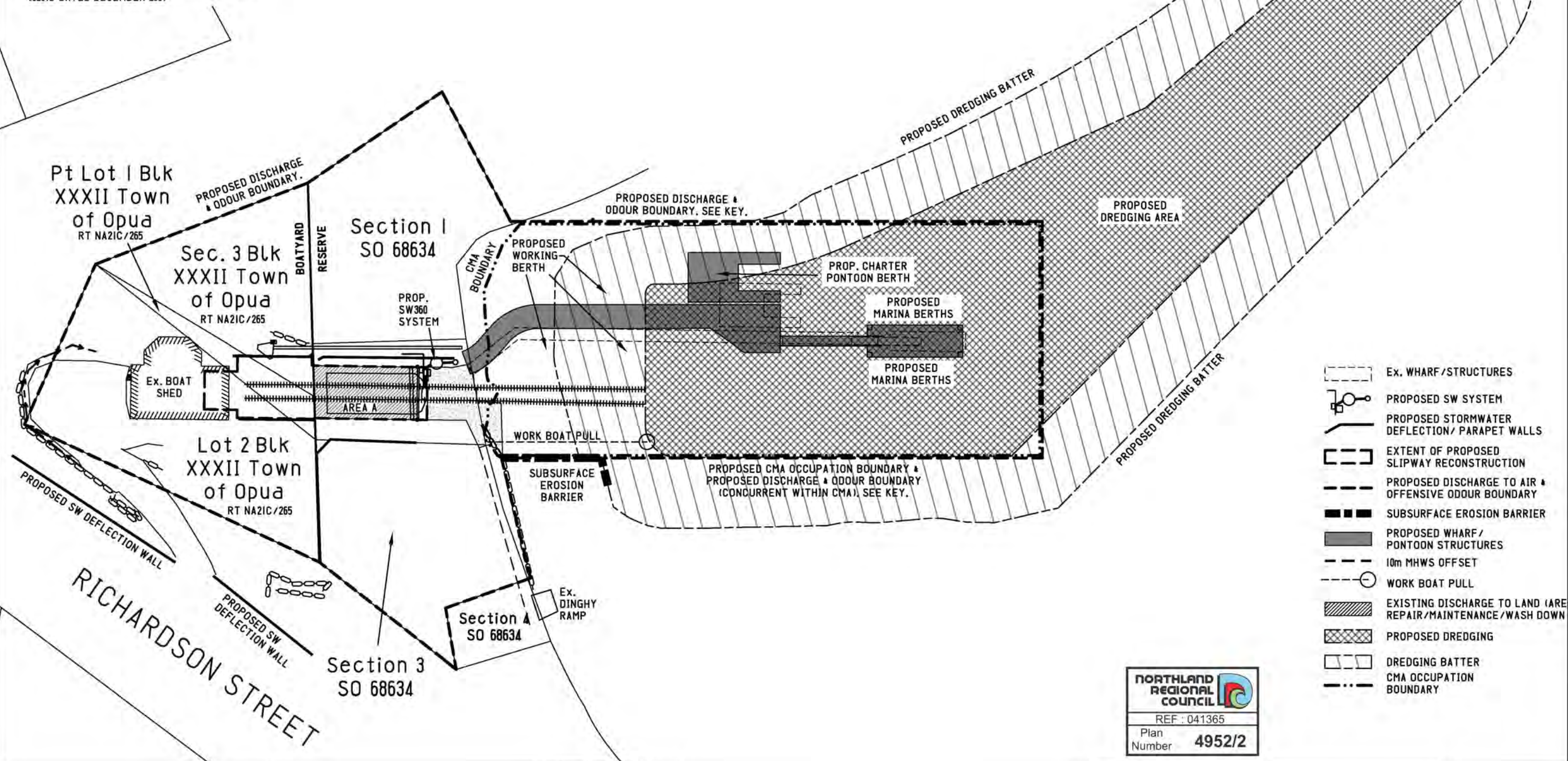
PO Box 191, Whangarei 0140  
www.reyburnandbryant.co.nz

DATE	23.09.20
SCALE	1:500 @A3
JOB	15241 SITE
SHEET	1/3
REV	E



# INFORMATION SOURCES

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LEVELS IN TERMS OF LINZ ONE TREE POINT DATUM  
COORDINATES IN TERMS OF MT EDEN 2000



BY	DATE	NOTES
PD	22.05.19	DRAFTING
PD	24.10.19	DRAFTING
PD	1.11.19	DRAFTING
PD	14.11.19	DRAFTING
MW	23.09.20	DRAFTING

## BOAT YARD SITE PLAN COVER SHEET

DOUG'S OPUA BOAT YARD  
PROPOSED SLIPWAY 2019



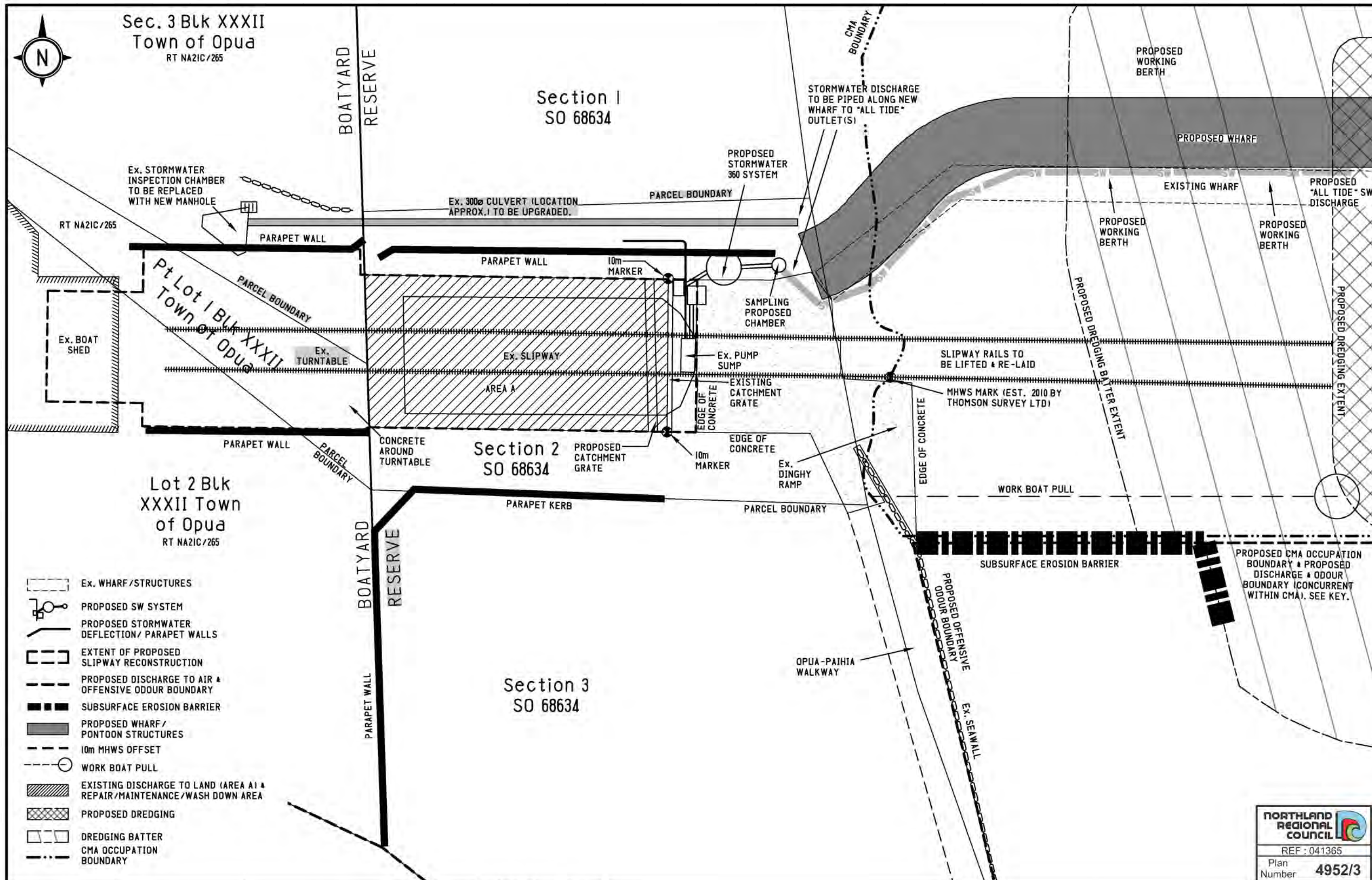
**reyburn & bryant**

Ph: 09 438 3563  
7 Selwyn Ave, Whangarei

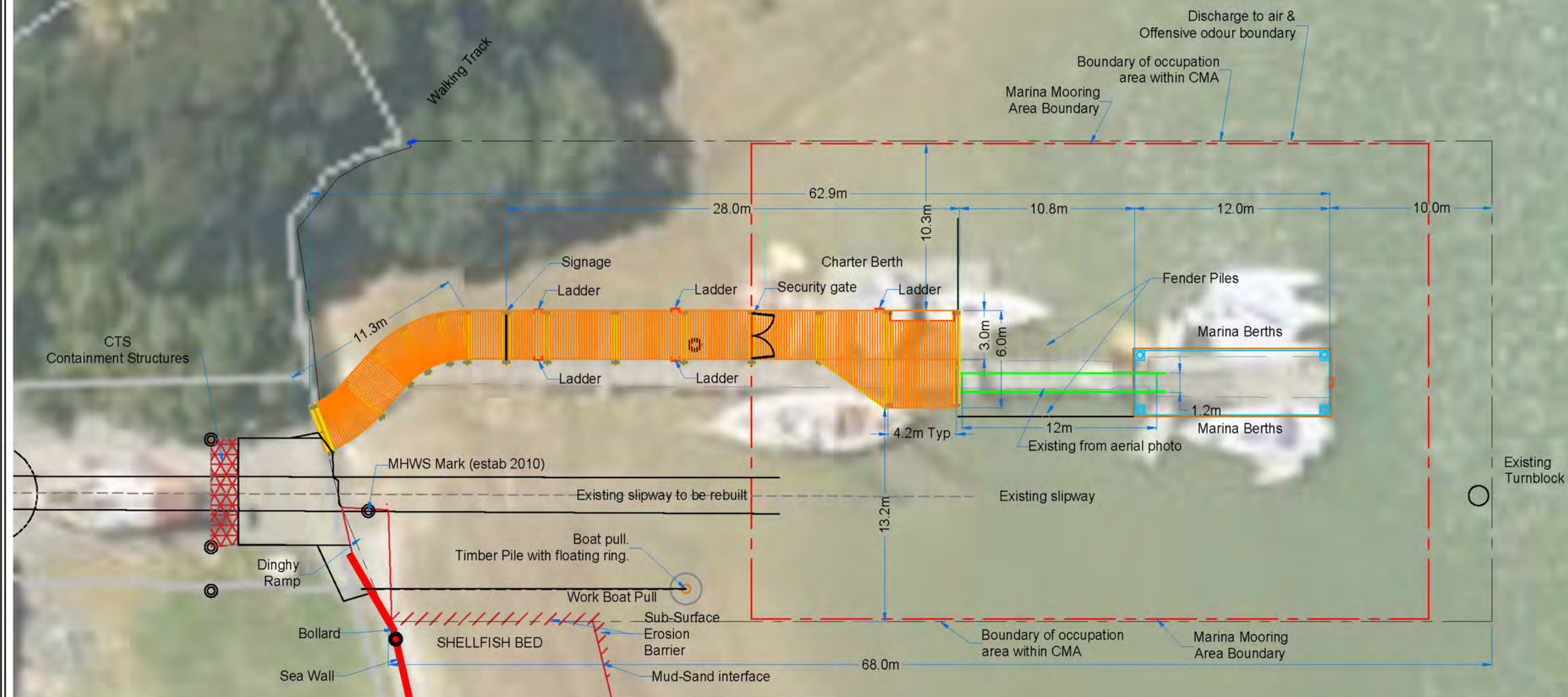
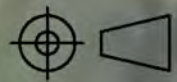
PO Box 191, Whangarei 0140  
www.reyburnandbryant.co.nz

DATE	23.09.20
SCALE	1:500 @A3
JOB	15241 SITE
SHEET	2/3
REV	E









Rev	Date	Description	Check	App
10	17/01/2019	MOVE DRAIN, PONTOON BERTH, SECURITY GATE & MOORING AREA	WNMAJ	
11	17/01/2019	REMOVE CONCRETE SLIPWAY CAPPING	WNMAJ	
12	27/05/2019	ADDED BEACH GRID NOTE	CC	AJ
13	28/05/2020	ADDED FENDER PILES TO PROTECT GANGWAY	CC	AJ

Drawing No: 0155-0504-0001-0001

Date: 28/05/2020

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Scale: 1:250

Client: Doug's Opua Boatyard

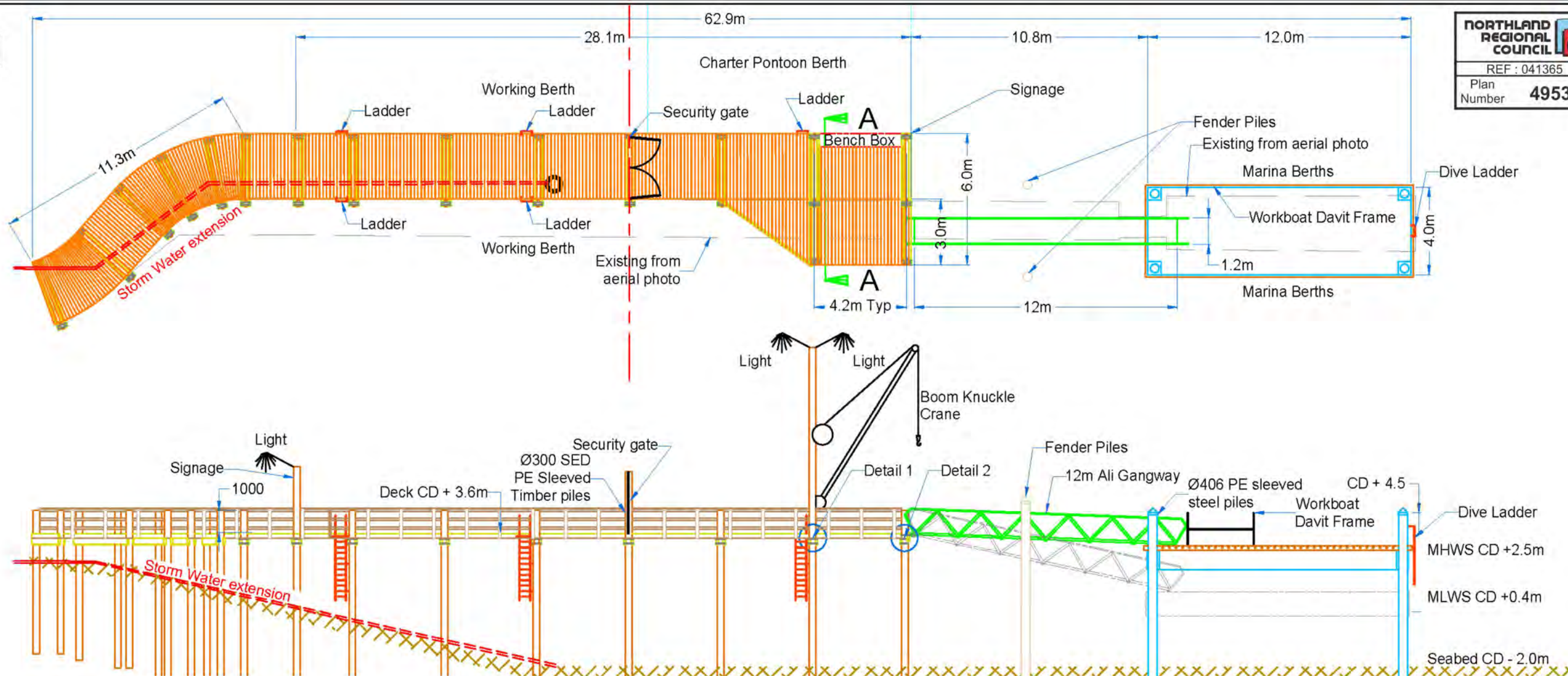
Drawn by: Craig Cave



APP-039650-01-01 Sheet 0001

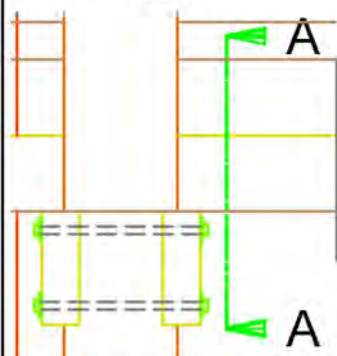
Structural Site Aerial Overlay





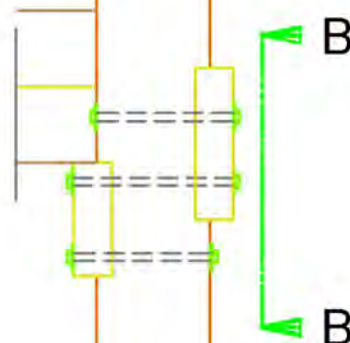
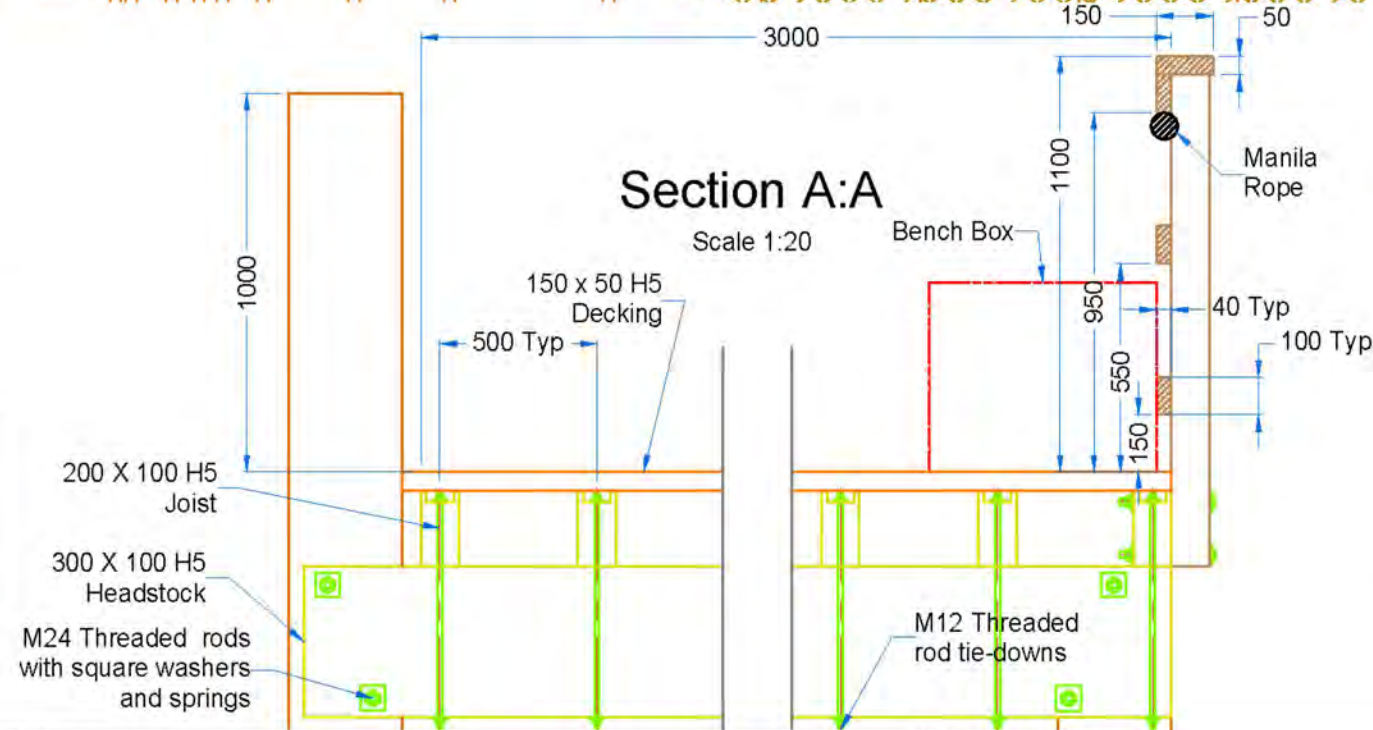
### Detail 1 Typical Jetty construction

Scale 1:20



### Section A:A

Scale 1:20

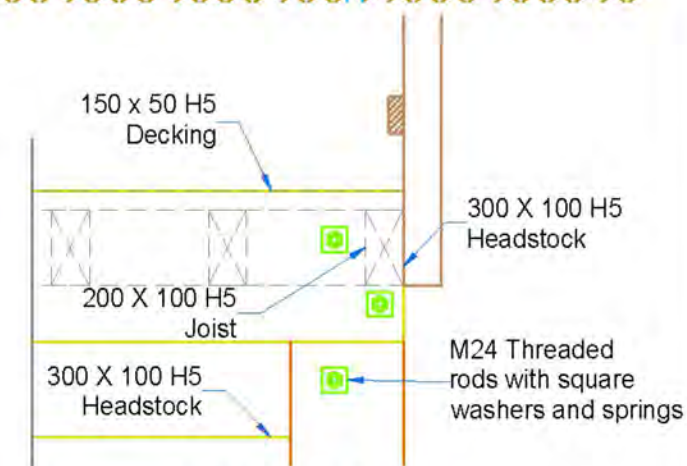


### Detail 2 Gangway Abutment

Scale 1:20

### Section B:B

Scale 1:20



Rev	Date	Description	Check	App
11	17/01/2019	REMOVED CONCRETE SLIPWAY CAPPING	WNMAJ	
12	27/03/2019	ADDED HANDRAIL TO SIDE ELEVATION	CC	AJ
13	27/05/2019	ADDED BEACH GRID NOTE AND SLEEVE NOT TO TIMBER PILES	CC	AJ
14	28/05/2020	ADDED FENDER PILES TO PROTECT GANGWAY	CC	AJ

Drawing No: 0155-0504-0002

Date: 28/05/2020

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Scale: 1:200 & 1:20

Client: Doug's Opua Boatyard

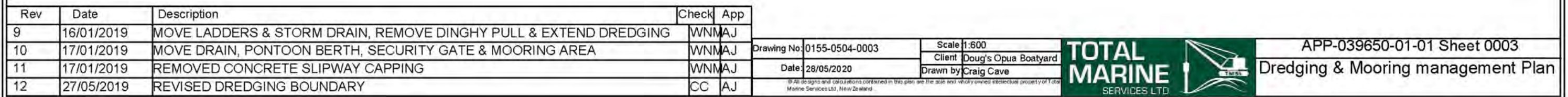
Drawn by: Craig Cave



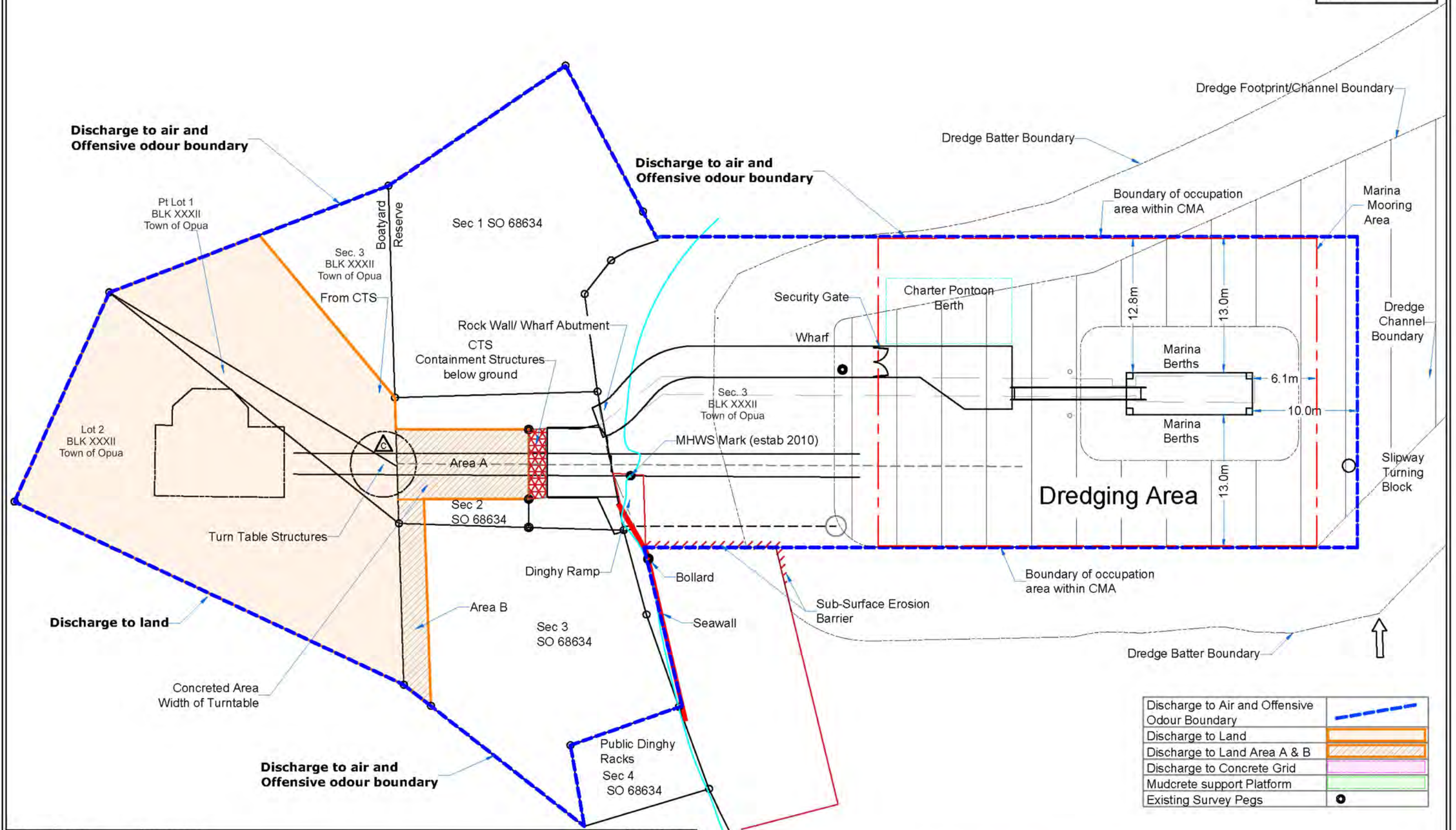
APP-039650-01-01 Sheet 0002

General Structural Arrangement









Rev	Date	Description	Check	App
9	16/01/2019	MOVE LADDERS & STORM DRAIN, REMOVE DINGHY PULL & EXTEND DREDGING	WNMAJ	
10	17/01/2019	MOVE DRAIN, PONTOON BERTH, SECURITY GATE & MOORING AREA	WNMAJ	
11	17/01/2019	REMOVED CONCRETE SLIPWAY CAPPING	WNMAJ	
12	27/05/2019	REVISED DREDGE BOUNDARY	CC	AJ

Drawing No: 0155-0504-0005

Date: 28/05/2020

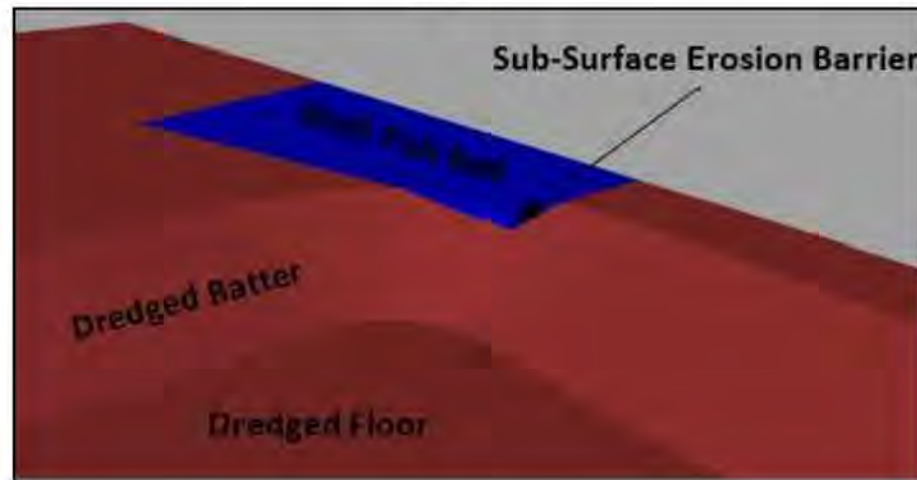
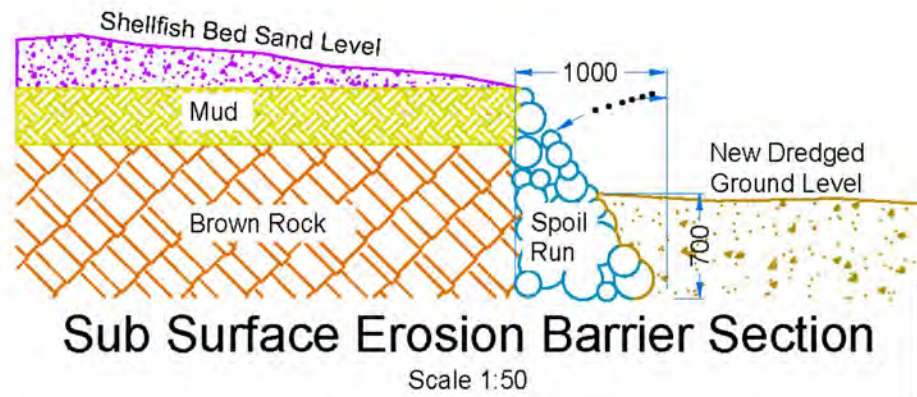
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Scale 1:250

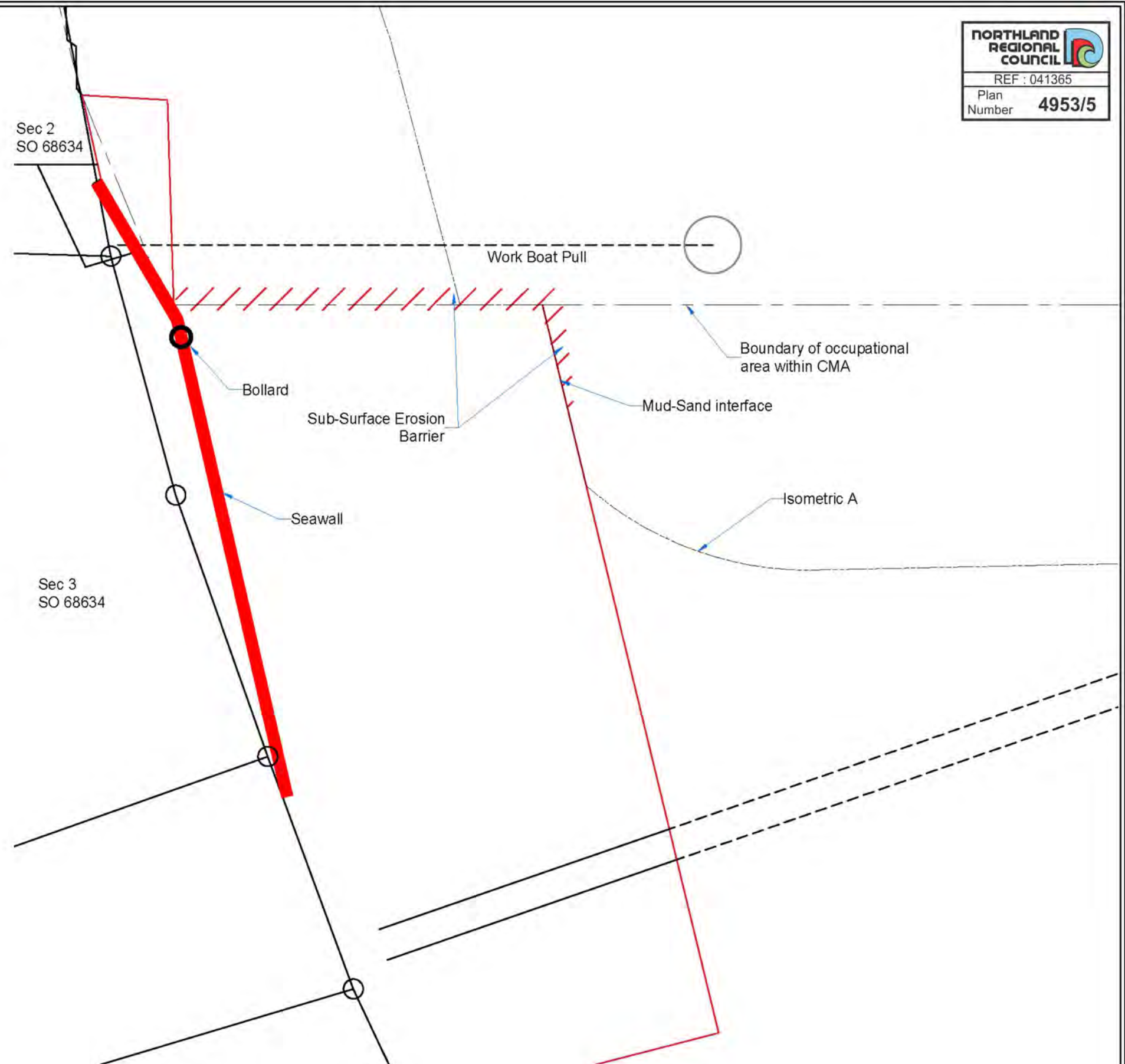
Client Doug's Opua Boatyard

Drawn by Craig Cave





**Isometric A**  
 Showing Sub Surface Erosion Barrier



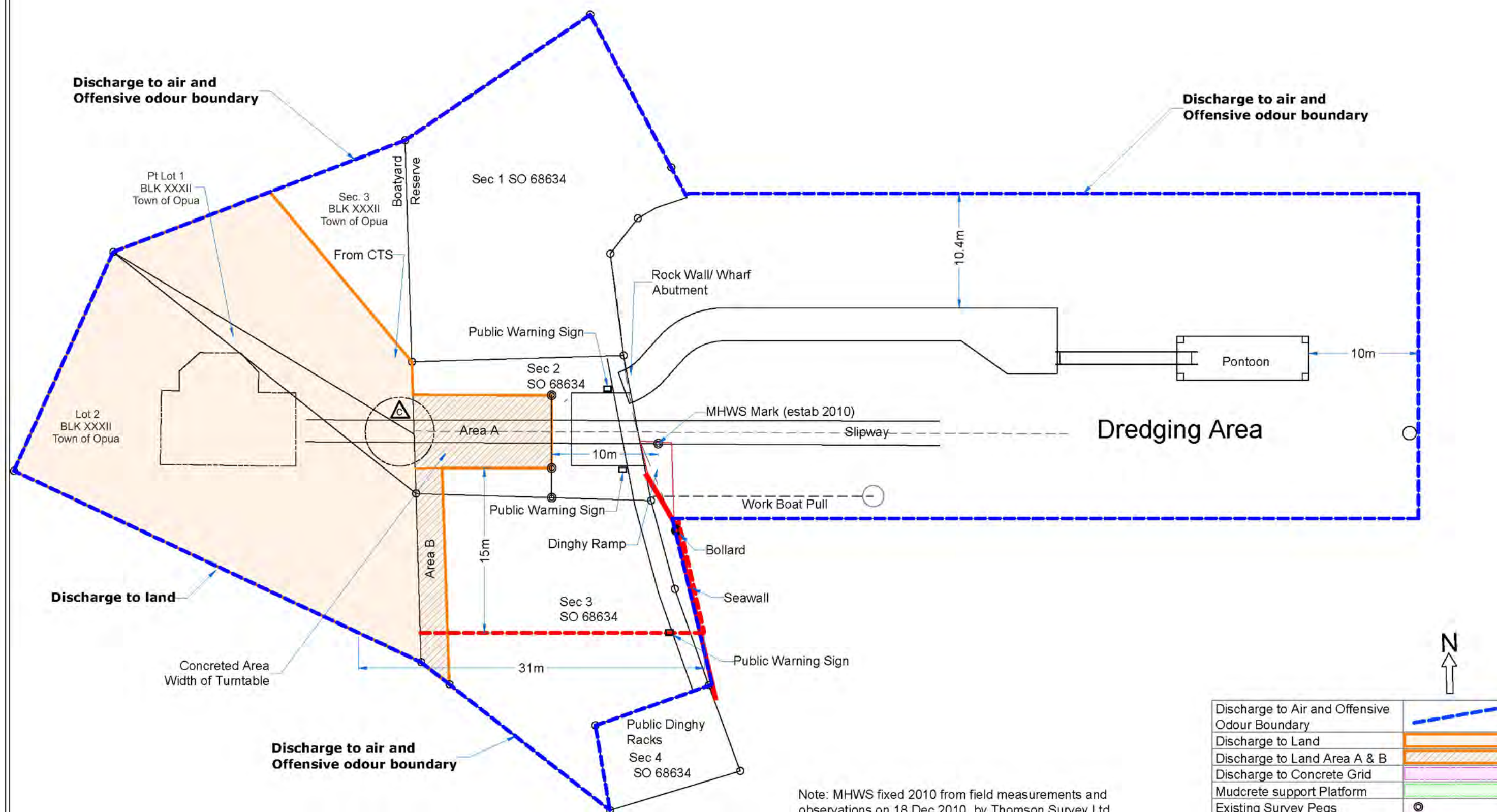
Rev	Date	Description	Check	App
9	16/01/2019	MOVE LADDERS & STORM DRAIN, REMOVE DINGHY PULL & EXTEND DREDGING	WNMAJ	
10	17/01/2019	MOVE DRAIN, PONTOON BERTH, SECURITY GATE & MOORING AREA	WNMAJ	
11	17/01/2019	REMOVED CONCRETE SLIPWAY CAPPING	WNMAJ	
12	27/05/2019	EDITED ISOMETRIC	AJ	AJ

Drawing No: 0155-0504-0006  
 Date: 28/05/2019  
 Marine Services Ltd, New Zealand

Scale 1:150  
 Client: Doug's Opua Boatyard  
 Drawn by: Craig Cave







Note: MHWS fixed 2010 from field measurements and observations on 18 Dec 2010, by Thomson Survey Ltd

Discharge to Air and Offensive Odour Boundary	
Discharge to Land	
Discharge to Land Area A & B	
Discharge to Concrete Grid	
Mudcrete support Platform	
Existing Survey Pegs	

**Offensive odour boundary and Discharge to air boundaries, Discharges to land and to the CMA**

Rev	Date	Description	Check	App
8	15/01/2019	JETTY SHIFTED SOUTH, GRID REMOVED & MOORING BOUNDARY ADJUSTED	WNMAJ	
9	16/01/2019	MOVE LADDERS & STORM DRAIN, REMOVE DINGHY PULL & EXTEND DREDGING	WNMAJ	
10	17/01/2019	MOVE DRAIN, PONTOON BERTH, SECURITY GATE & MOORING AREA	WNMAJ	
11	17/01/2019	REMOVED CONCRETE SLIPWAY CAPPING	WNMAJ	

Drawing No: 0155-0504-0007

Scale: 1:350

Client: Doug's Opua Boatyard

Date: 16/01/2019

Drawn by: Craig Cave

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APP-039650-01-01 Sheet 0007

Discharge Boundaries



# INFORMATION SOURCES

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Pt Lot 1 Blk  
XXXII Town  
of Opuia  
RT NA21C/265

Sec. 3 Blk  
XXXII Town  
of Opuia  
RT NA21C/265

Section 1  
SO 68634

EX. BOAT  
SHED

Lot 2 Blk  
XXXII Town  
of Opuia  
RT NA21C/265

Section 4  
SO 68634

Section 3  
SO 68634

RICHARDSON STREET

6091868.31mN  
1701500.31mE

PROPOSED  
WORKING  
BERTH

PROP. CHARTER  
PONTOON BERTH

PROPOSED  
MARINA BERTH

PROPOSED  
MARINA BERTH

WORK BOAT PULL

SUBSURFACE  
EROSION  
BARRIER

PROPOSED CMA OCCUPATION BOUNDARY  
(CONCURRENT WITHIN CMA).

6091867.17mN  
1701565.58mE

6091838.18mN  
1701565.07mE

NORTHLAND  
REGIONAL  
COUNCIL

REF : 041365

Plan  
Number 4965

- Ex. WHARF/STRUCTURES
- PROPOSED WHARF/  
PONTOON STRUCTURES
- SUBSURFACE EROSION BARRIER
- 10m MHWS OFFSET
- WORK BOAT PULL
- EXISTING DISCHARGE TO LAND (AREA A) &  
REPAIR/MAINTENANCE/WASH DOWN AREA
- CMA OCCUPATION  
BOUNDARY

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

METRES - 1:500

BY	DATE	NOTES
MW	26.08.20	DRAFTING
MW	27.08.20	DRAFTING

## PROPOSED EXCLUSIVE OCCUPATION AREA

DOUG'S OPUA BOAT YARD  
PROPOSED SLIPWAY 2019

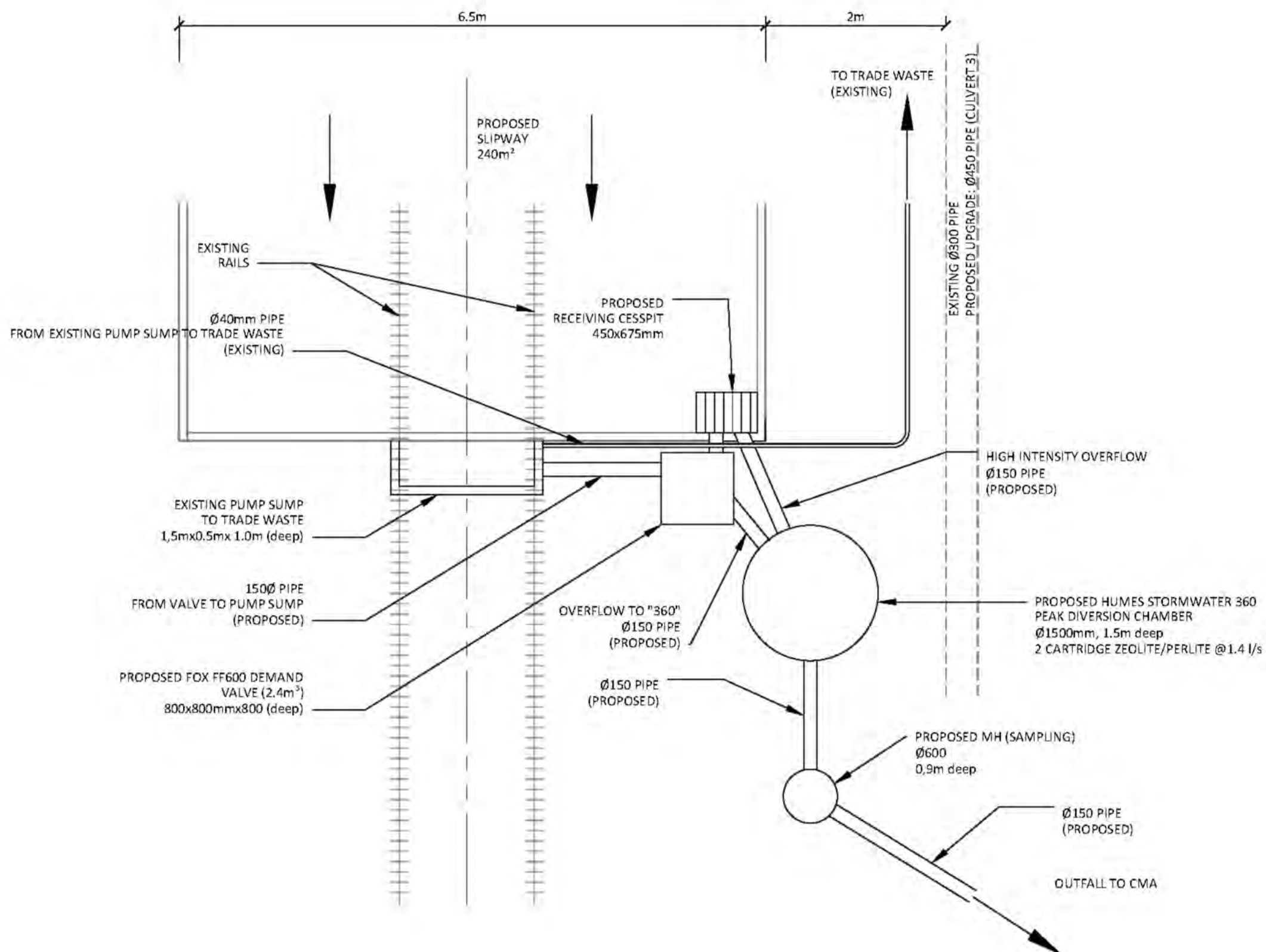
reyburn  
& bryant

Ph: 09 438 3563  
7 Selwyn Ave, Whangarei

PO Box 191, Whangarei 0140  
www.reyburnandbryant.co.nz

DATE	27.08.20
SCALE	1:500 @A3
JOB	15241 SITE
SHEET	1/2
REV	B

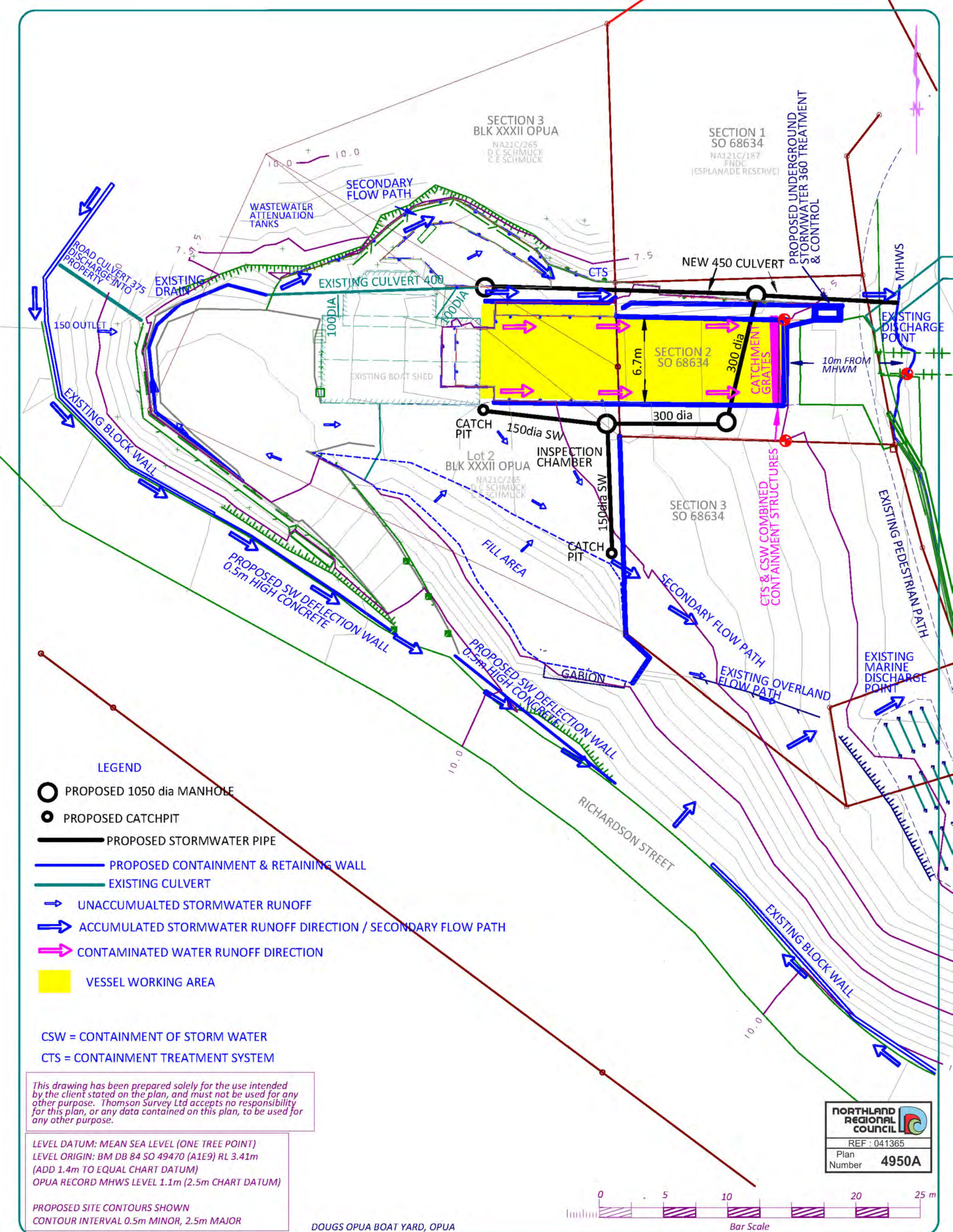




NORTHLAND REGIONAL COUNCIL	
REF : 041365	
Plan Number	4955

# CONCEPT PLAN





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

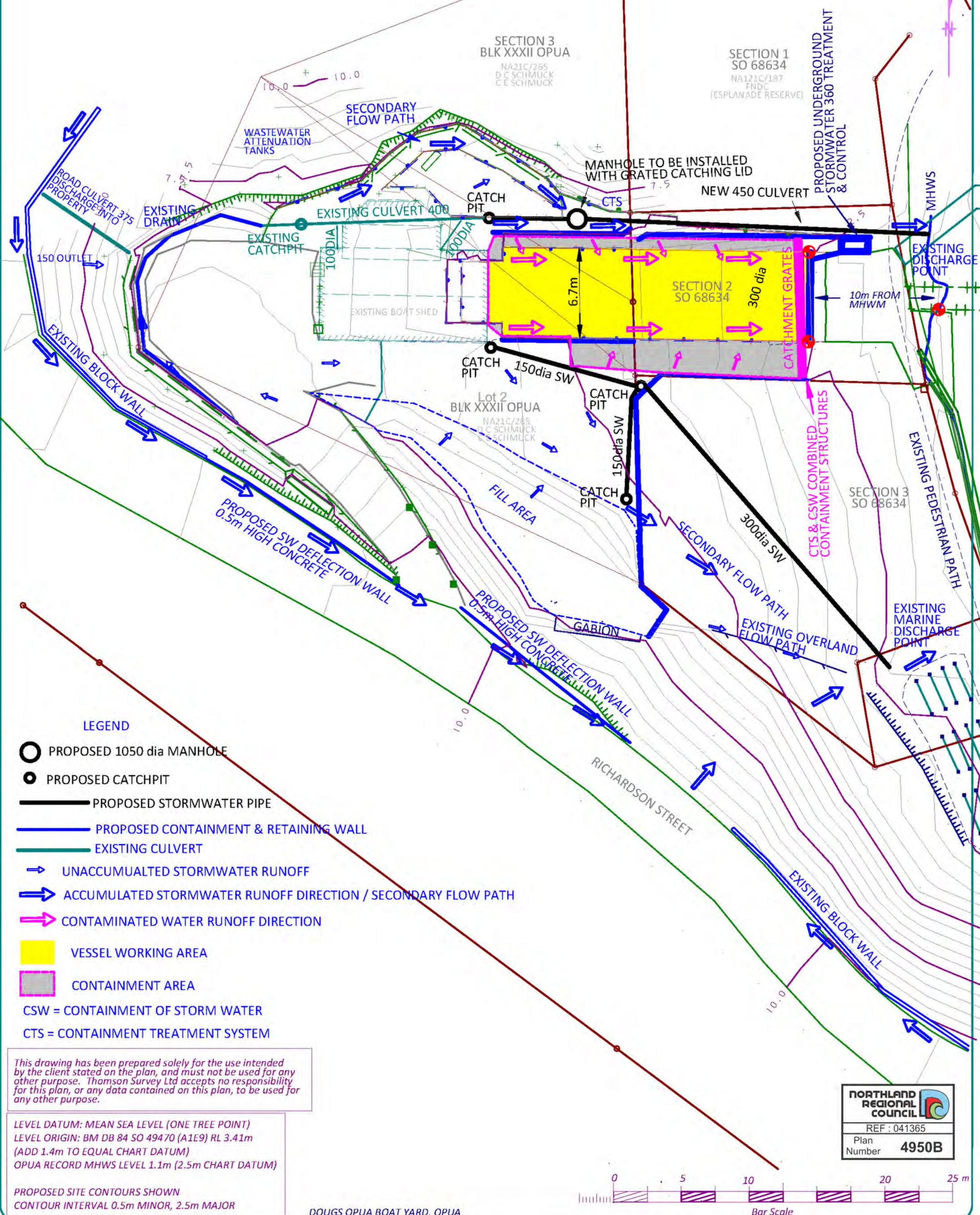
	Name	Date
Survey	SH	2017
Design	SL	17.12.18
Drawn	SL	17.12.18
Approved	SL	28.05.20
Rev	SL	28.05.20

ORIGINAL  
SCALE  
SHEET  
SIZE  
**1:250 A3**

Surveyors  
Ref. No:  
**8095**

8095/ENGINEERING/D9/SW PLAN 28.05.2020.lcd







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Pt Lot 1 Blk  
XXXII Town  
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RT NA21C/265

BOATYARD ACTIVITIES  
OFFENSIVE ODOUR AND  
AIR DISCHARGE BOUNDARY

Sec. 3 Blk  
XXXII Town  
of Opuā  
RT NA21C/265



Lot 2 Blk  
XXXII Town  
of Opuā  
RT NA21C/265

BOATYARD ACTIVITIES  
OFFENSIVE ODOUR AND  
AIR DISCHARGE BOUNDARY

RICHARDSON STREET

Section 1  
SO 68634

Section 3  
SO 68634

Section 4  
SO 68634

Section 2  
SO 68634

6091868.64mN  
1701499.08mE

6091839.05mN  
1701497.42mE

6091867.42mN  
1701565.91mE

6091837.82mN  
1701565.37mE

COASTAL MARINE AREA OFFENSIVE ODOUR AND  
AIR DISCHARGE BOUNDARY

COASTAL MARINE AREA OFFENSIVE ODOUR AND  
AIR DISCHARGE BOUNDARY

Working  
Berths

CHARTER  
PONTON BERTH

MARINA BERTH

MARINA BERTH

WORK BOAT PULL

- Ex. WHARF/STRUCTURES
- OFFENSIVE ODOUR AND  
AIR DISCHARGE BOUNDARIES
- PROPOSED WHARF/  
PONTON STRUCTURES
- 10m MHWS OFFSET
- WORK BOAT PULL
- EXISTING DISCHARGE TO LAND (AREA A) &  
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LEVELS IN TERMS OF LINZ ONE TREE  
POINT DATUM  
COORDINATES IN TERMS OF NZTM



BY	DATE	NOTES
MW	26.08.20	DRAFTING
MW	27.08.20	DRAFTING

## OFFENSIVE ODOUR AND AIR DISCHARGE BOUNDARIES

DOUG'S OPUA BOAT YARD  
PROPOSED SLIPWAY 2019

reyburn  
& bryant

Ph: 09 438 3563  
7 Selwyn Ave, Whangarei

PO Box 191, Whangarei 0140  
www.reyburnandbryant.co.nz

DATE	27.08.20
SCALE	1:500 @A3
JOB	15241 SITE
SHEET	1/2
REV	B