

## ***Brief of Expert Evidence of Jane Johnston***

in the matter of Resource Consent Applications APP. 039650.01.01

in support of the Submission lodged by myself - Jane Johnston (made as a local resident).

***Dated 9<sup>th</sup> May 2018***

I, JANE JOHNSTON state

- 1 My name is Jane Ellen Johnston; place of residence at 19 Yorke Rd, Haruru Falls, Bay of Islands
- 2 I am an environmental scientist, and a strategic policy and planning professional (with qualifications and experience relevant to both the Local Government Act required planning process and the Resource Management Act), currently operating as a self employed consultant offering services to a variety of public agencies and private individuals.
- 3 I hold a Bachelor of Science degree from the University of Auckland, and a post graduate degree – a Master of Philosophy with Distinction, in Environmental and Resource Management from Massey University.
- 4 Within my Bachelor of Science degree I achieved academic competency in the following relevant disciplines: - biology; physics; maths –statistical analysis; urban geography (form and function, socio-economics of development of places); Development Studies; Climatology; Remote Sensing; Coastal Geomorphology; Hydrology; among other less relevant disciplines to this application);
- 5 Within my Master’s qualification, I achieve A and A+ grades in planning techniques, planning law, planning methods and a B+ in Geographic Information Systems. I have been an expert in the field of monitoring, for the purposes of state of the environment monitoring and reporting and methods to evaluate the effectiveness of planning methods (as deployed by regulatory authorities) – in that I oversaw the preparation of guidance on monitoring (under both the RMA and the Local Government Act - LGA) for the Local Government Sector, and delivered courses around the country in this field, as well as working in whole of Government teams to design national monitoring frameworks and systems.
- 6 Within my Masters qualification, I also received A+ for my thesis, in which I considered the underpinning principles informing the consultation requirements of the Resource Management Act, and the permitted (but not prescribed) informal consultation or engagement processes allowed within its framework and contrasted these against the relative merits (pros and cons) of numerous environmental/resource management conflict dispute resolution methods and processes available under that Act (via longitudinal case studies of disputes and their resolution). I became an expert in ‘consensual dispute resolution’ and a practitioner in same. For example, in successfully formulating and brokering an agreement between all interested parties to the management plan of the Kaimanawa Wild Horses – a Management Plan still in use by DoC today, having been adopted in late 1995.

- 7 I have formerly been employed as a Strategic Planner at the Far North District Council, and have researched development patterns and trends across the Far North, and in the Bay of Islands – and was responsible for modelling and forecasting possible future development scenarios, based on identification of relevant influences, drivers, regulatory frameworks and factors that contribute to the development of form and functionality of places. This work was to contribute to the drafting of the inaugural 30Yr Infrastructure Strategy (although I did not lead or conclude that work), and to the review of the Far North District Plan (that is currently still underway).
- 8 I have formerly been employed as a Snr Policy Analyst - Environment and Regulation, on behalf of the Local Government Sector, at Local Government New Zealand (Jan 2003 – June 2007). In that capacity I was lead analysis responsible for working with the Department of Conservation and other agencies on the review of the NZ Coastal Policy Statement.
- 9 Following my departure from LGNZ, I was later sub-contracted by Boffa Miskell in a consultancy capacity, to deliver a comprehensive peer review analysis of the draft proposed NZCPS (in 2008), and to draft an annotated revised NZPS and policy analysis – to reflect my critical review of it and proposed solutions (to address deficiencies), on behalf of the Local Government Sector – after LGNZ contracted Boffa Miskell to deliver this work. This contributed significantly to the final adopted NZCPS of 2010.
- 10 I was contracted to lead the review of the Wellington Regional Council's - Regional Policy Statement, that set precedents in the definitions of 'coastal environment', 'natural environment', 'significant regional infrastructure' and was instrumental in formulating a new format for Regional Policy Statements, that the Northland Regional Council then adopted for use in their more recent review of this Region's RPS.
- 11 I was contracted to Project Manage and lead a team of experts within the various regulatory authorities with oversight for approvals for the Transmission Gully Project – that became the pre-application check prior to lodgement with the newly established Environmental Protection Agency; that saw the first private plan change proposal, to a regional plan anywhere in NZ. My peer review analysis influenced not only the content of that proposed private plan change and supporting documents, but the concept of 'off-setting' as a method of mitigating adverse effects.
- 12 I made a submission to the Resource Consent as a private individual – as my family has resided in the Bay of Islands since 1981, and I have been a frequent visitor to the area ever since that time, and having resettled back here permanently (I hope) in mid 2012. I also have elderly parents, brothers, nieces and nephews, and my own child who are also resident in the Bay. We all make frequent use of the public spaces, coastal walkways, picnic areas and recreation opportunities provided by the publicly accessible public spaces around and in the Bay of Islands.
- 13 I also visited the site and considered the proposals as described in the original notified application. Prior to my lodging my submission, I also met with members o the Opuia Coastal

Protection Society to hear what they know of the area, and the history of its development and use. However, I am not a member of that Society, and they did not contract me to provide them professional expert advice or assistance.

14 Following my lodgement of the submission and receipt of Minute 1 of the Hearing Panel, I asked for clarification from the Hearing administrator as to if I can be my own expert witness, (as a submitter). She responded by asking what my qualifications are. I gathered from that, I ought to restate them here and provide a synopsis of some of the most relevant experience I bring to my review of these applications and what I will comment upon here, about them.

15 I now intend to address a number two matters in turn, for your consideration:

- a. The Ecological Assessment presented by the Applicant, as undertaken by “4Sight” referenced as “AA3213\_D Schmuck\_Ecological Information\_V2.1
- b. The NRC’s “Moorings and Marina Strategy” (2014).
- c. The Far North District Council’s Operative Plan – planning maps.

## **A) The Ecological Assessment (4 Sight)**

16 **The Introduction section (p1)** contains a statement that “Doug’s Opua Boatyard Ltd (DOB) has been successfully operating in compliance with existing consent conditions for many years.” I note this is an unsubstantiated assertion by the writer, as it is not supported with any evidence within the content of the Survey methodology and resultant Assessment, as provided by 4Sight.

17 I personally have experienced and so have witnessed non-compliance with the current resource consent conditions for the operations of the easement, and the boatyard operations. Consequently, it was not a surprise to me to see and hear of other submitters presenting their evidence of complaints about the operation of the boatyard within the public domain (an Esplanade Reserve and in the CMA), and over the applicant’s use of the slipway (provided for by an access Easement across an Esplanade Reserve); and of the on-going conflict between the operation of the boat yard, given its access easement and the lawful use by the public to the Walls Bay (Esplanade) Reserve and the adjacent Coastal Walkway, as well as to access this little Bay for recreational purposes.

18 The introduction also states the applicant has an intention to undertake measures to improve the environmental quality around the facility, and to address matters raised by the Northland Regional Health Board. However, I observe that the application does not suggest specific resource consent conditions to ensure these intentions will be part of any approvals yet to be granted.

19 Rather, the Ecological Assessment presents findings that indeed the benthic sediment layer in the vicinity of the slipway is significantly contaminated, and it is likely therefore that the harvestable shellfish relatively nearby to this boatyard’s activities have been contaminated to levels making them potentially unsafe for human consumption.

20 I observe that there have been no suggested remedy for that historic contamination, now that a contaminated site has been demonstrably identified (as a result of 4Sights testing), to ensure that not only are these contaminants not dispersed, but are removed from this

- environment given it is easily accessible to the public, and is in fact provided for public access including to be able to harvest marine life (recreational fishing and shell fish gathering).
- 21 I raise a question (arising out of the comment in the introduction) as to if it the concern of this applicant that the Opuia Coastal Walkway, that is a publicly accessible and well used recreational amenity, providing access along the coast and across the ridgeline (in the bush) - is subject to slips and coastal erosion – and ask why he would offer to build a retaining wall to protect that public asset, when there is a local authority and a Department of Conservation tasked with responsibility for managing this asset. The Assessment of Environmental Effects as presented has not taken steps to identify the future intentions of those legally responsible for maintain this walkway and indeed to management the Esplanade Reserve in its entirety, to allow for continuing public access around this coast.
- 22 **On the Methods section (p2)** – there has been a reliance on the observations of the Boatyard owner and applicant, as to the presence of shellfish, the extent of the beds and the frequency of shellfish harvesting by the public. This is a very limited and not ‘impartial’ method for determining the extent of the beds, or the take by the public, nor what could be taken in a context of not fearing a potential for toxic shellfish arising out of the proximity of the observable boatyard activities on the slipway, when discharge can be seen draining directly to the water.
- 23 The shellfish population survey is limited, in that it fails to identify the extent of the beds, and thus any likely impact on the beds from the proposed activities. Rather it focuses on establishing density and size of the sample catch, to determine if it is a harvestable population. That does not assist to derive a comprehensive assessment of the effects of the proposed activities. It simply confirms that there will be an effect, and that is potentially, in my view more than minor given the extent of proposed construction and on-going dredging work and boatyard related activities.
- 24 There is no information provided within the methodology to substantiate the selection of sites to be sampled for sediment quality testing – in terms of the hydrological flows within the Opuia Basin. Rather comments such as “background” site in the inter-tidal zone at the Opuia Beach (CE) approximately 230m from the boatyard, and of another “control” or “background site” at (CI), just 40m from the boatyard. The testing also took samples from near the slipway (SL).
- 25 While the method refers to a control and ‘background’ sites, my reading of the results (refer to pg 6) of sediment quality suggest a different interpretation. The reducing level of contaminants with distance from the slipway, can be extrapolated into a scale of declining existing contamination. Most likely emanating from the likely source, apparently centred at the point where the slipway and boatyard activities discharges have made their way into the marine environment and been dispersed throughout the sediments of that Bay.
- 26 The sampling results can tell us something of the deposition of contaminants in this Bay, and potentially to trace back to the source of those contaminants.
- 27 On the Results (p3 – p6). I note that the ‘general site description’ is not a particularly accurate outline of the values in that location. For example, it refers to ‘the beach’ without recognising that it is the only beach in the Opuia Basin that has a gently sloping public reserve at its foreshore, accessible from above from the public road as well as by the coastal walkway from the Opuia beach. It does not state that the public road is right against a retaining wall as it rounds the Opuia beach, providing in fact no grassed area and no dry land for most of that

neighbouring beach at High Tide. The net result is that this small Wall's Bay Reserve is often the only resting and picnicking place in the entire area of Opuia (including around the bluff, past the Wharf, where the Far North Holdings managed properties and marina are located). Furthermore, it doesn't note the very quiet and low use by boating traffic in the Walls Bay and Opuia Beach area, relative to the heavily used wharf, adjacent vehicle ferry and channels associated with the Marina and inlets beyond.

- 28 The amenity of the area, as a publicly accessible and well used coastal (esplanade) reserve and walkway are not well described – but then this an ecological assessment. However, it fails to acknowledge the ecology of the foreshore, at MHW mark, about that mark in the bush and small reserve (across which the applicant has an existing access easement).
- 29 It is regrettable that the Shellfish samples were not tested to see if they are safe for human consumption, given it is known that people are harvesting in this area. It is not possible to visibly observe from the look of a shellfish, if it is "normal and healthy" as stated on p4 of the report).
- 30 "Polluted sediment" has been identified in conjunction with the Slipway sediment samples (SL), and in decreasing scale as distance from the boatyard activity is achieved (so at CI and at CE), and then at the more distant sites. It is not sufficient to attribute that to some historical activity from many years ago. It must be conceived of, that they could have arisen from recent activities as there has been no effort to monitor this receiving environment for the duration of the existing consents.
- 31 On the Discussion (p7 and p8). The statement that there is a 'high level of commercial and other activity' is not substantiated – it is an assertion. In my view there is not a high level of marine activity in the vicinity of the boatyard (other than that associated with the boatyard itself) especially relative to other side of the Opuia Beach, the Wharfs, Marina and extensive marine industrial complex managed by Far North Holdings Ltd (and others) from the bluff and towards the channels. Similarly, there are haul out facilities in other parts of the Bay of Islands that are very busy (at Waitangi), or that could be provided for (at Paihia for example), that are more accessible for transporting maritime vessels to suitable landward based facilities for maintenance work.
- 32 There has been no community survey to find out why more people are not harvesting from the shellfish beds in this easily accessible area. I personally know people who have gathered from there in the past, who don't anymore out of fear of heavy metal or other food poisoning.
- 33 In relation to the statements about the source of contaminants – it is not accurate to purport they may have arisen from some other run-off (road surfaces) when the sites closest to the closest roads to this Bay have a lower level of contamination than the sites close to the Boatyard's slipway. Similarly, moored boats apparently able to leach heavy metals in to the sediment and the influence of the Opuia marina located around the bluff and subjected to primary tidal flows of the most significant channels and river influencing the wider marine environment around Opuia) are not plausible as alternative sources of these contaminants.
- 34 I make these observations to highlight, that the discussion contains an array of unsubstantiated assertions, some of which are not plausible given the environmental context and the location and scale of relevant activities.

35 I consider that this Ecological Assessment actually confirms the local public's fears, that indeed the sediments and potentially also the shellfish beds have been contaminated with metals, most likely sourced from this Boatyard's activities.

## **B Northland Regional Council's Moorings and Marina Strategy (2014).**

Reference available at the following link – not reproduced here for sake of brevity and resource/cost minimisation in presenting to hearing.

[https://resources.nrc.govt.nz/upload/17988/Moorings%20and%20Marinas%20Strategy%20-%20Final%20\(July%202014\)%20\(Web\).pdf](https://resources.nrc.govt.nz/upload/17988/Moorings%20and%20Marinas%20Strategy%20-%20Final%20(July%202014)%20(Web).pdf)

This Strategy contains a section on the Bay of Islands and a specific section just on Opuā area, within Part B – Area Specific Provisions (page 20).

From page 20 of the Strategy - "One of the biggest constraints to increasing the capacity for moorings in Ōpuā basin is the provision of land-based services. Before extension or intensification proposals are implemented, it is essential that we confirm that these services can be provided and ways to fund them have been identified.

It goes on to say "These proposals will not proceed if land based services can not be provided. Assuming the land based issues can be addressed, the intensification proposals are:

Phase 1 (1-4 Years) Create a marina zone around the current marina and proposed marina extension (if resource consent is granted) Re-orientate moorings to maximise swing patterns, where possible · Consider the effectiveness and efficiency of increasing monitoring and enforcement of illegal sewage discharges from vessels in the Opuā Basin. · Create fairways for navigation.

Phase 2 ( 5 -10 Years) Progressively introduce new mooring technology (if trials prove it is viable) · Extend the existing mooring management areas.

Phase 2 ( 10 -20 Years) Create new mooring areas in the Waikare Inlet (if land-based facilities can be provided). Prior to creating any new mooring or marina zones, there will need to be a detailed analysis of the environmental effects. Any new zone would be implemented through the Regional Coastal Plan.

The Resource Management Act 1991 (RMA) sets out the process for how any zones would be put into the Regional Coastal Plan, and requires that the costs (including environmental) and benefits be analysed. "

"Activities in the CMA are to be considered on the basis of their effects on the environment.

Deciding whether an activity is appropriate or not (in the CMA) needs to take account of the scale and nature of the activity, and types of values being affected, how (and scale) they are affected, and whether those effects can be avoided, remedied or mitigated."

It is relevant to consider not only the Regional Policy Statement and Plans, but also the NZ Coastal Policy Statement.

In terms of the wide array of social – cultural – economic and environmental values that are being affected – the AEE disregards many of raised by submitters as important – not only by submitters to this bundle of applications, but as expressly stated in the RMA, in the NZCPS, in the Regional Policy Statement (of the NRC), and in the District Plan (of the FNDC), as well as in the Marina and Moorings Strategy (of the NRC), and the (...Walking Access Strategy Parks and, Community Facility AMP).

Furthermore, I ask that the Hearing Panel reference the source documents contributing the Staff Report (S42 Analysis). Please review the NZCPS and:-

- Consider the Location of Development – and its appropriateness given it is adjacent to a rare and finite area of public space, providing access to the beach CMA.
- Consider Form of Development (functionality) – and desire for intensification to be able to appropriately and adequately manage the potential significant adverse effects (rather than dispersal, via lots of smaller operations) not only of the proposed activities, but all of the landward based services needed to service them.
- Consider the wider increasing Use and Development of the CMA – and the relationship of this single private operation with other publicly supported developments.
- Consider Crown Interest in activities on land of the Crown (e.g. Esplanade Reserve) and in the CMA
- Consider the Cumulative Effects
- Consider the Precedent Effects
- Consider Public or Multiple Use of structures on/in the CMA – and the shift from being publicly accessible to being privately managed and controlled (access).
- Consider future abandonment of structures in the CMA – and the potential impact on neighbouring public spaces, assets and amenity in this Bay.

## **C Far North District Council – Operative Plan**

Finally, I refer to the relevant Far North District Council Planning Maps. It is apparent from a review of those, that the area adjacent to Dougs Boatyard, is a rare public open space amongst an otherwise crowded out coastal area – with industrial and infrastructure taking priority over public access.

It is entirely relevant to consider the future community and its need for secure public spaces at the coast – unencumbered by industrial activity that arguably does not need to be undertaken at the coast, once a boat is hauled out – it can be maintained anywhere. Alternative locations have not been identified, for this activities and the scale proposed by this extensive redevelopment and enlargement of the Boatyards activities and occupation and use of the CMA.

## **D Public Consultation and Environmental Dispute Resolution**

I make the observation that these applications have not been developed with sufficient acknowledgement of the public interest in it, given the location adjacent to a rare reserve, and coastal walking track, a quiet bay and harvestable shellfish populations, not to mention the extensive natural habitat and values all around the landward side of this proposed development.

I recommend there are a number of elements to proposed development in this area that could be improved had the applicant elected to work with others in the community (including the Territorial Authority, its Holding Company, DoC, and community groups active in the area). And, such an approach would have led to conditions being proposed that could mitigate adverse effects that many people will not tolerate – that is likely to lead to on-going conflict and disputes within our community.