

NORTHLAND REGIONAL COUNCIL

<p>Report and Decision of the Hearing Committee Meeting held at Copthorne Hotel and Resort, Bay of Islands on 17 and 18 May 2018, and 16 and 17 August 2018</p>
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Independent Hearing Commissioner Ms Sharon McGarry (Chair) and Councillor Justin Blaikie were appointed by the Northland Regional Council to hear and determine applications by Mr D C Schmuck for resource consents associated with the operation of Doug's Opua Boat Yard and the reconstruction of the jetty facility and dredging. The applications, made in accordance with the Resource Management Act 1991, were lodged with the Northland Regional Council on 7 November 2017 and referenced as NRC Application No. APP.039650.01.01.

REPRESENTATIONS AND APPEARANCES

Applicant:

Ms C Prendergast, Counsel, Henderson Reeves
Mr D Schmuck, Applicant and owner of Doug's Opua Boat Yard

Tabled Statements:

Mr A Johnson, Project and Design Engineer, Total Marine Services
Dr S Brown, Principal Marine Ecologist, 4Sight Consulting
Mr M Poynter, Principal Ecology Consultant, 4Sight Consulting
Mr J Papesch, Senior Civil Engineer, Haigh Workman Limited

Submitters:

Mr D Degerhorm
Mr P Nobbs
Dr A Atkinson
Ms M Marks
- Dr J Booth, Marine Scientist
Mrs J Kidman, Interesting Projects Limited
Mr C P Sharp
Mr P Clark
Mr D Clark
Mrs J Clark
Mrs M Larcombe
Mr M Rashbrooke
Mr G Drain
Mrs A Kyriak
Ms J Johnston
Mr D Dysart

Tabled Statements:

Sir W Kearney
Mr D Dysart
Mrs A Kyriak

Section 42A Reporting Officer:

Ms M Donaghy, Consultant Planner, MJD Environmental Limited

Tabled Statements:

Mr P Maxwell, Coastal Works Consents Manager, NRC
Mr R Griffiths, Marine Research Specialist, NRC
Ms J Simpson, Technical Director – Environmental Engineering, Tonkin and Taylor

BACKGROUND AND PROCEDURAL MATTERS

1. This is the report and decision of Independent Hearing Commissioner Sharon McGarry (Chair) and Councillor Justin Blaikie. We were appointed by the Northland Regional Council (NRC or 'the Council') to hear and decide applications lodged by Mr D C Schmuck ('the Applicant'), pursuant to the Resource Management Act 1991 (RMA or 'the Act'), for resource consents associated with the operation of Doug's Opua Boat Yard (DOBY) at Walls Bay; and to reconstruct the existing wharf facility and to dredge an approach to and around the wharf facility.
2. The applications were publicly notified on 20 and 21 December 2017.
3. The Applicant provided further information¹ to the application on 19 April 2018 after the hearing date was set.
4. On 20 April 2018, the NRC received an email from Mrs Angelika Kyriak, a submitter, requesting clarification of the jurisdictional boundaries and the potential need for resource consents from the Far North District Council (FNDC). On 23 April 2018, the NRC received an email from Dr Tony Atkinson, a submitter, objecting to the provision of the revised plans and pointing out errors in the consent process. He requested renotification of the applications and a deferral of the hearing.
5. On 24 April 2018, the NRC received an email from Sir William Kearney, a submitter, raising concern that the 'updated' plans were fundamental to the applications and should have been lodged before the application was notified.
6. On 26 April 2018, the NRC received an email from Ms Maiki Marks, a submitter, raising concern that the revised plans indicated the Applicant required additional resource consents from the FNDC and that a joint hearing should be held to consider the applications together.
7. In response to these emails, we requested the NRC's Reporting Officer, Ms Melanie Donaghy, address the concerns raised by submitters. We received an email from Ms Donaghy on 27 April 2018, which stated:

"The updated drawings circulated on 19 April 2018 were requested by the Council in order to have a set of drawings with all of the existing and proposed structures shown, which would provide clarification of the location and extent of activities sought by the application that were notified. All of the activities were subject to the public notice, but were not clearly represented in the various drawings and plans contained in the application documentation as notified.

The updated drawings clarify the following:

- *The extent of the proposed extension to the Exclusive Occupation Area sought by the application (this shows a southern, eastern and northern extension to the current authorised Exclusive Occupation Area);*
- *The extent of the new proposed seawall / erosion barrier sought by the application. The approximate length of the new proposed seawall as shown on the updated drawings is shown as 48.7m. However, this measurement includes the existing seawall which the new seawall will continue on from. A hand drawn plan included in the application that was notified states the length of the new seawall will be approximately 40m;*
- *The location of the existing authorised working boat mooring/dinghy pull, dinghy ramp and seawall in relation to the proposed new works;*

¹ An aerial site overlay plan, a general arrangement plan, and an 'Ecological Survey – Doug's Boatyard' by 4 Sight Consulting dated April 2018.

- *The position of moorings within the mooring filed in relation to the proposed dredging area.*

It is acknowledged that there are minor changes to the measurements of the proposed capital dredging of the approach channel shown on the updated plans from what was notified including the following:

- *Reduction in the channel width by 1m and an increase in the channel length by 5m (increase in total dredge area of 457 square metres);*
- *Reduction in the capital dredge volume by 20.3 cubic metres;*
- *Reduction in the footprint in-ground volume by 49 cubic metres.*

There are no changes to the dimensions or location of the proposed replacement jetty facility including the fixed jetty, gangway, pontoon (marina) and mudcrete grids to what was notified. In addition, the Council's initial assessment that the jetty facility is located below the line of mean high water springs remains unchanged.

It is understood that it is not unusual for application information to be clarified, corrected or amended through the Resource Consent process right up to the close of the hearing as long as it is within the scope of the application as notified. It is considered that the updated drawings are within the scope of the application as notified. The drawings were circulated to all submitters and have been referred to in the section 42A report. Submitters (or their experts) will have an opportunity to consider and respond to the clarifications at the hearing.

The Council may request further information from an applicant using section 92 of the RMA at any time, but may only 'stop the clock' if a section 92 request is made prior to notification. Typically, timeframes are extended with the applicant's agreement if additional information is considered to be required to address matters raised in submissions. In this case, the Applicant contacted the Council following the receipt of submissions to advise that he was going to seek an ecological assessment to address the issues raised in submissions on the application, and this was subsequently provided to the Council on 6 April 2018. The ecological report was circulated to all submitters on 9 April 2018. The section 42A report also references the content of the ecological report.

The additional information that has been supplied by the Applicant and referred to by Mr Atkinson, Mr Kearney and Ms Marks was received by the Council prior to the completion of the s42A report and has been assessed and considered as part of that report. The matters referred to in the ecological report or on the updated plans are matters that are subject to the application and are able to be considered during the hearing of the application. The section 42A report has been circulated to submitters for consideration in accordance with the requirements specified by section 42A(3)(a) of the RMA.

In respect of Mr Kearney's concerns regarding the hearing process and the ability of the Council to proceed. The RMA prescribes the timeframes under which a hearing of an application must be held (unless these timeframes have been extended with the agreement of the Applicant). The Council is constrained by the requirements of the RMA to hear and decide the application."

8. On 30 April 2018, the NRC received an email from Mr Peter Clark, on behalf of the Waikare Maori Committee, requesting the hearing be delayed to enable the adequate consideration of the applications given there had been no consultation with tangata whenua.
9. We issued Minute #1 on 1 May 2018 addressing the matters raised by submitters, and procedural matters and directions for the upcoming hearing. In summary, we concluded that some of the issues raised could be addressed at the hearing, and that the further information provided was within the scope of the application as notified, and that the hearing should not be deferred.

10. We received a number of further emails from submitters seeking clarification of a number of matters. We issued Minute #2 on 7 May 2018 in response to these emails and to further clarifying the hearing process.
11. Prior to the hearing, a report was produced pursuant to section 42A of the RMA ('the staff report') by Ms Donaghy. The staff report provided an analysis of the matters requiring consideration under the RMA and recommended the following applications should be granted:
 - (a) Replacement resource consents for the existing slipway, dingy ramp, workboat mooring and dingy pull-out, and timber and stone seawalls;
 - (b) Renewal resource consents for discharges to air, discharge onto land, discharge of washdown water into the coastal marine area (CMA), and the discharge of stormwater into the CMA; and
 - (c) Resource consent to demolish the existing jetty, proposed replacement of the jetty facility (including a fixed jetty, gangway, three working berths, two marina berths and two mudcrete grids), slipway refurbishment, new seawall, extended stormwater drains, extension to exclusive occupation area, and dredging for jetty berths and mudcrete grids.
12. The staff report recommended that applications for resource consents for the proposed beach rehabilitation and capital dredging of an access channel should be refused. A suite of recommended consent conditions was appended to the staff report for our consideration.
13. The staff report, Applicant's evidence and submitter expert evidence was pre-circulated prior to the hearing in accordance with section 103B of the RMA. The application documentation, submissions, staff report and pre-circulated evidence was pre-read by us and we directed that it was 'taken as read' during the hearing².
14. The hearing of the application commenced at 9.15 a.m. on Thursday 17 May 2018. Evidence was heard over the course of two days and the hearing was adjourned at 11.30 a.m. on Friday 18 May 2018.
15. At the beginning of the hearing, Ms Donaghy tabled a statement addressing procedural matters and minor corrections to the staff report. Ms Donaghy noted that there is an existing coastal permit (CON20120791417) and a land use consent (CON20120791418) granted by the NRC for the dingy ramp and an extension to the dingy ramp. She stated that the land use consent for the landward portion of the dingy ramp had been omitted from the staff report. She noted that the Far North District Council had transferred its functions and powers for the land use consent to the NRC. She recommended that the land use consent should be included within the applications for consideration.
16. We were provided with an email dated 16 May 2018 from Mr Alister Taylor raising concerns that the NRC had not confirmed receipt of his submission and that he had not received copies of the updated plans or notice of the hearing. He requested an 'adjournment' of the hearing to enable him to attend the hearing and consider the further information.

² As provided for by section 41C(1)(b) of the RMA.

17. We were provided with a copy of Mr Taylor's initial email (dated 21 January 2018) and an email from Mr Paul Maxwell, Coastal and Works Consents Manager for the NRC, to Mr Taylor explaining why the email dated 21 January 2018 had not been regarded as a submission and updating the application process.
18. We addressed this matter at the beginning of the hearing and informed those in attendance that the email from Mr Taylor (dated 21 January 2018) clearly stated that he considered he could not make a submission because of the deficiencies in the application documentation. We accept the NRC took this to mean the correspondence was not a submission. However, we note that the issues raised are matters also raised by other submitters for our consideration, including the accuracy and adequacy of the application documentation.
19. We undertook a site visit on Friday 18 May 2018 accompanied by Mr Schmuck, Dr Atkinson and Ms Sluys, Hearing Administrator for the NRC.
20. We issued Minute #3 on 21 May 2018 setting out a timeframe for providing written details of the amendments made to the applications at the hearing and further supporting information.
21. On 28 May 2018, we received a Memorandum of Counsel for the Applicant seeking 'enlargement of the time by which supporting information is to be filed'. The Memorandum confirmed that the applications for the proposed beach rehabilitation and the proposed seawall were formally withdrawn; and that the area to be dredged and volume of material to be removed had been reduced.
22. We responded to the Applicant's request by issuing Minute #4 on 30 May 2018. We considered we did not have the ability to delay the hearing process and suggested the Applicant request a suspension of the processing of the application under section 91A of the RMA.
23. The Applicant subsequently requested a suspension under section 91A. The suspension of the application ceased on 11 July 2018 and provision of the further information was completed on 16 July 2018.
24. We issued Minute #5 on 27 July 2018, giving notice of the resumption of the hearing and directions for the provision and pre-circulation of the Applicant's evidence, an Addendum to the staff report, and any further submitter expert evidence.
25. The hearing was reconvened for a further two days on 16 and 17 August 2018.
26. Following the reconvened hearing we issued Minute #6 on 22 August 2018 directing the provision of further information, and revised proposed conditions and plans to support further verbal amendments to the applications made by the Applicant at the reconvened hearing. We also subsequently issued Minute #6a on 24 August 2018 to amend the timeframes set out in Minute #6.
27. The further information and revised conditions were circulated to the Reporting Officer and submitters for further comment.
28. We formally closed the hearing on 15 October 2018, after receiving the Applicant's written right of reply on 8 October 2018.

29. We acknowledge the parties' willingness to respond to our requests for further information, further revision of conditions, and responses to new information throughout the process. We consider the approach taken has greatly assisted us in fully understanding the applications sought. We thank all the parties for their contributions in this regard. We also thank Ms Sluys for the assistance that she provided throughout the hearing process. We wish to thank those parties who attended the hearings and presented evidence.

THE APPLICATIONS

30. The staff report detailed background information to the applications and outlined the existing resource consents held for DOBY in Table 1, as reproduced below:

Current Authorisation Number	Previous Consent Reference	Activity Type	Activity Description	Expiry Date
AUT.007914.01.03	CON20030791401	Coastal permit – Structures	A wharf, wharf abutment and walking track security lighting, discharge piping and access pontoon.	30/03/2036
AUT.007914.02.01	CON20030791402	Coastal permit – Structures	A slipway, complete with cabling and a dinghy ramp.	30/03/2036
AUT.007914.03.01	CON20030791403	Coastal permit – Structures	Those parts of a timber and stone seawall and associated reclamation that lie within the CMA.	30/03/2036
AUT.007914.05.01	CON20030791405	Coastal permit – Mooring/Dinghy Pull	A workboat mooring and pull.	30/03/2036
AUT.007914.06.01	CON20030791406	Coastal permit – Structures	Signage and hoardings.	30/03/2036
AUT.007914.07.01	CON20030791407	Coastal permit – Structures	Maintenance dredging of seabed material at the slipway.	30/03/2036
AUT.007914.08.01	CON20030791408	Coastal permit – Other	Use structures for purposes associated with the boat yard, including survey and inspection of ships and safe ship management, gridding of vessels for maintenance, marine brokerage of vessels for sale and/or charter.	30/03/2036
AUT.007914.09.01	CON20030791409	Coastal permit – Occupation	Occupy an area of seabed associated with the slipway and wharf structures.	30/03/2036
AUT.007914.10.03	CON20060791410	Coastal Discharge	Discharge of treated wash water to the CMA.	30/03/2018
AUT.007914.11.02	CON20060791411	Discharge to Air	Discharge of contaminants to air from boat maintenance activities.	30/03/2018
AUT.007914.12.02	CON20060791412	Discharge to Air in CMA	Discharge contaminants activities to air in the CMA from boat maintenance.	30/03/2018
AUT.007914.13.02	CON20060791413	Discharge contaminants to land	Discharge contaminants to ground from boat maintenance activities.	30/03/2018

Current Authorisation Number	Previous Consent Reference	Activity Type	Activity Description	Expiry Date
AUT.007914.15.02	CON20060791415	Coastal Discharge	Discharge stormwater to the CMA.	30/03/2018
AUT.007914.16.01	CON20120791416	Coastal Permit/ Structure	Concrete Seawall.	30/03/2036
AUT.007914.17.01	CON20120791417	Coastal Permit/ Structure	Dinghy ramp extension.	30/03/2036
AUT.007914.18.01	CON20120791418	Land Use Consent	Dinghy ramp landward of MHWS.	30/03/2036

31. The staff report outlined which applications were considered as ‘early replacement consents’ for the existing structures shown in Figure 1, including the slipway, dingy ramp, a workboat mooring and dingy pull, and timber and stone seawalls. It noted these existing resource consents had 18 years until expiry and that replacement consents were sought for a duration of 35 years.
32. The staff report outlined which applications were ‘renewal consents’ for the discharge of wash water to the CMA, discharges to land and air associated with vessel maintenance activities, and stormwater discharges. It noted the existing discharge consents expired on 30 March 2018 and that the activities continue to be exercised in accordance with section 124 of the RMA. The staff report noted a consent duration of 18 years is sought for the renewal of these consents.
33. The staff report stated that the terms ‘replacement’ and ‘renewal’ of consents are technically regarded as ‘new consents’ under the RMA. The staff report outlined the applications for resource consent for new activities including:
- (a) Demolition of the existing jetty;
 - (b) Reconstruction of the jetty facility;
 - (c) Placement of two mudcrete grid structures;
 - (d) Refurbishment of the existing slipway (within the CMA);
 - (e) Use of two of the five new berths for temporary or permanent berthing of vessels for accommodation purposes;
 - (f) Construction of approximately 50 metre long seawall northward of the existing seawall;
 - (g) Disturbance of the foreshore/seabed;
 - (h) Beach rehabilitation;
 - (i) Capital and maintenance dredging;
 - (j) Relocation and extension of stormwater; and
 - (k) Extension to authorised exclusive occupation area of the CMA.
34. As outlined above, the Applicant formally amended the applications throughout the hearing process by withdrawing the proposed beach refurbishment activities and the proposed seawall, northward of the existing seawall; and the proposed mudcrete grid shown on the northern side of the proposed jetty. The further information provided also reduced the area of proposed dredging by 52% and the volume to be excavated by 42%. The Applicant also proposed the construction of a sub-surface erosion barrier to avoid effects on the pipi beds from dredging.

35. Further amendments to the application during the reconvened hearing included: replacement of the proposed mudcrete grid with an impermeable 'concrete grid' and wastewater collection system; the addition of a public dingy pull to the north side of the proposed wharf; concreting the CMA end of the slipway to 'cap' contaminated sediments; and moving the position of the proposed security gates on the proposed wharf.

REGIONAL PLAN RULES AFFECTED

36. The staff report stated the proposed and existing activities are classified under the operative Regional Coastal Plan for Northland (**RCP**) and the proposed Regional Plan (**PRP**) as follows:

Consent Type	For	Detail	Classification
APP.039650.01.01 Coastal Permit	Structures	Place use and occupy space in the CMA with a reconstructed jetty facility (including fixed jetty, gangway pontoon and piles, associated services, two mudcrete grids, signage and hoardings).	<ul style="list-style-type: none"> ▪ Discretionary activity in accordance with Rule 31.6.3(l) and 31.6.3(o) of the RCP. ▪ Discretionary activity in accordance with Rule C.1.1.16 of the PRP.
APP.039650.02.01 Coastal Permit	Alteration or extension of authorised structures	Place use and occupy space in the CMA with a refurbished slipway, turning block and associated cabling.	<ul style="list-style-type: none"> ▪ Discretionary activity in accordance with Rule 31.6.3(k) and 31.6.3(l) of the RCP. ▪ Permitted activity in accordance with Rule C.1.1.7 of the PRP.
APP.039650.03.01 Coastal Permit	Occupation	Occupy space in the CMA associated with a jetty facility and slipway to the exclusion of others.	<ul style="list-style-type: none"> ▪ Innominate activity within the RCP and PRP and is therefore deemed to be a discretionary activity in accordance with section 87B(1)(a) of the RMA.
APP.039650.04.01 Coastal Permit	Marina Development and Occupation	Use the slipway and jetty facility structures and three work berth areas for the purposes of vessel maintenance and chartering, and the two berths associated with the jetty facility pontoon as a marina.	<ul style="list-style-type: none"> ▪ Discretionary activity in accordance with Rule 31.6.8(l) and 31.6.8(m) of the RCP. ▪ Innominate activity within the PRP and is therefore deemed to be a discretionary activity in accordance with section 87B(1)(a) of the RMA.
APP.039650.05.01 Coastal Permit	Structures	Place use and occupy space in the CMA with a new seawall and existing seawalls (inclusive of existing reclamation associated with the existing seawall).	<ul style="list-style-type: none"> ▪ Discretionary activity in accordance with Rule 31.6.3(l) of the RCP. ▪ Discretionary activity in accordance with Rule C.1.1.17 of the PRP.
APP.039650.06.01 Coastal Permit	Structure	Use and occupy space in the CMA with a dinghy ramp.	<ul style="list-style-type: none"> ▪ Discretionary activity in accordance with Rule 31.6.3(l) of the RCP. ▪ Discretionary activity in accordance with Rule C.1.1.15 of the PRP.

Consent Type	For	Detail	Classification
APP.039650.07.01 Coastal Permit	Structures	Use and occupy space in the CMA with stormwater culverts.	<ul style="list-style-type: none"> ▪ Discretionary activity in accordance with Rule 31.6.3(l) of the RCP. ▪ Discretionary activity in accordance with Rule C.1.1.15 of the PRP.
APP.039650.08.01 Coastal Permit	Mooring/Dinghy Pull	Use and occupy space in the CMA with a workboat mooring and associated dinghy pull.	<ul style="list-style-type: none"> ▪ Discretionary activity in accordance with Rule 31.6.8(h) of the RCP. ▪ Permitted activity in accordance with Rule C.1.2.4 of the PRP.
APP.039650.09.01 Coastal Permit	<ul style="list-style-type: none"> ▪ Demolition and Removal of Unsafe Structures ▪ Disturbance of the foreshore and seabed ▪ Beach Scraping 	Disturb the foreshore and seabed during demolition and removal of unwanted structures, jetty reconstruction and slipway refurbishment, seawall construction, and during beach refurbishment activities.	<ul style="list-style-type: none"> ▪ Controlled activity in accordance with Rule 31.6.3(b) of the RCP (removal of structures). ▪ Disturbance of the foreshore and seabed is an innominate activity within the RCP and is therefore deemed to be a discretionary activity in accordance with section 87B(1)(a) of the RMA. ▪ Restricted discretionary activity in accordance with Rule C.1.5.11 of the PRP (beach scraping).
APP.039650.10.01 Coastal Permit	Capital Dredging	Capital dredging to form five all-tide berths and two mudcrete grids alongside the jetty facility and an approach channel (and batters) to the jetty facility and slipway.	<ul style="list-style-type: none"> ▪ Discretionary activity in accordance with Rule 31.6.7(b) of the RCP. ▪ Discretionary activity in accordance with Rule C.1.5.12 of the PRP.
APP.039650.11.01 Coastal Permit	Maintenance Dredging	Maintenance dredging to maintain vessel berths and mudcrete grids, and approach channel and batters to the slipway and jetty facility.	<ul style="list-style-type: none"> ▪ Controlled activity in accordance with Rule 31.6.7(a) of the RCP. ▪ Controlled activity in accordance with Rule C.1.5.10 of the PRP.
APP.039650.12.01 Coastal Permit	Coastal Discharge	Discharge of washwater to the CMA from vessel maintenance activities on the mudcrete grids.	<ul style="list-style-type: none"> ▪ Discretionary activity in accordance with Rule 31.6.5(c) and 31.6.5(e) of the RCP. ▪ Discretionary activity in accordance with Rule C.1.7.4 and C.1.7.5 and C.1.7.6 of the PRP.
APP.039650.13.01 Coastal Permit	Discharge to Air in the CMA	Discharge contaminants to air in the CMA from vessel maintenance activities.	<ul style="list-style-type: none"> ▪ Discretionary activity in accordance with Rule 31.6.5(r) of the RCP. ▪ Discretionary activity in accordance with Rule C.7.2.7 of the PRP.
APP.039650.14.01 Discharge Permit	Discharge to Air	Discharge contaminants to air from vessel maintenance activities.	<ul style="list-style-type: none"> ▪ Discretionary activity in accordance with Rule 9.1.5 of the RAQP. ▪ Discretionary activity in accordance with Rule C.7.2.7 of the PRP.

Consent Type	For	Detail	Classification
APP.039650.15.01 Discharge Permit	Discharge to Land	Discharge contaminants to land from vessel maintenance activities.	<ul style="list-style-type: none"> ▪ Discretionary activity in accordance with Rule 20.3 of the RWSP. ▪ Discretionary activity in accordance with Rule C.6.9.6 of the PRP.
APP.039650.16.01 Coastal Permit	Coastal Discharge	Discharge stormwater to the CMA.	<ul style="list-style-type: none"> ▪ Discretionary activity in accordance with Rule 31.6.5(c) of the RCP. ▪ Discretionary activity in accordance with Rule C.6.4.4 of the PRP.

SITE DESCRIPTION

37. The staff report described the application site and the surrounds of Walls Bay. We generally adopt the description in the staff report, but note the concerns of submitters in relation to the statement that:

“The application site and landscape displays a modified and developed character with the existing commercial structures including the Applicant’s existing coastal and land based structures, the nearby Opua Wharf and the existing cluster of moored vessels, which has the effect of extending the man-made character out from the shoreline and into the CMA.”

38. We consider the CMA and coastal environment of the Walls Bay area is largely unmodified by built structures, other than the Applicant’s existing seawall, slipway and wharf, and boats and moorings. Overall, we agree with submitters that it is relatively unmodified and undeveloped, compared to the Ōpua Wharf and marina area; and that the area retains a relatively high level of natural character and amenity.
39. We note from the staff report that the application site is not located within an area identified in the RPS maps as having high natural character or any outstanding natural landscapes.
40. The application site includes activities undertaken within the Applicant’s property, the Walls Bay Esplanade Reserve (‘the esplanade reserve’ or ‘the reserve’) and the CMA. The site is approximately 200 metres west of the Ōpua wharf.
41. The Applicant’s boat yard property is zoned ‘commercial’ under the FNDC’s District Plan. Part of the existing slipway and part of the slipway turntable are on the Applicant’s property.
42. The Walls Bay Esplanade Reserve (‘the reserve’) is approximately 1,292 square metres (m²) and immediately adjoins the west boundary of the Applicant’s property. The Applicant identified areas of the reserve as ‘Area A’ and ‘Area B’ where activities associated with the operation of DOBY are undertaken including the discharge of wash water and contaminants onto land, and the discharge of contaminants into air from vessel maintenance. Part of the existing slipway and slipway turntable are located within the esplanade reserve in ‘Area A’. Part of ‘Area A’ is covered with plastic and a concrete sump (with bunding) to contain and collect wash water.

43. The existing structures are generally located within the CMA or along the CMA boundary of mean high water springs (MHWS). The landward abutment of the existing jetty is outside of the CMA and is within the reserve area.
44. The CMA affected is classified as 'Marine 4 (Moorings including Marinas) Management Area' (M4MA) under the RCP; and as a 'Mooring Zone' under the PRP.
45. The Ōpua to Paihia coastal walkway traverses the reserve area and crosses the slipway rails.
46. The Ecological Report by 4Sight Consulting identified a pipi and cockle bed in the intertidal zone adjacent to the beach to the south of the slipway.
47. The existing wharf and pontoon structure include the permanent mooring of a floating pontoon utilised by Great Escapes for a yacht charter business. The floating pontoon is authorised by Coastal Permit AUT.008270.01.02.

NOTIFICATION AND SUBMISSIONS

48. The application was publicly notified on 20 December 2017.
49. Forty-four submissions were received. Twenty-one submission were in opposition to the applications; 17 submissions were in support; three submissions were neutral; and one was in support and opposition.
50. One late submission from Ms Necia Knowles was received eight days after the submission period closed. The staff report noted the reason given was due to a delay in postal delivery. We were advised by Ms Donaghy at the hearing that the NRC had waived compliance with the submission period timeframes in accordance with section 37A(1) to enable the submission to be received. The Applicant confirmed at the hearing agreement to waive compliance with the submission timeframe under section 37 of the RMA to enable the submission to be received.
51. The staff report noted that the reasons for the submissions in opposition included:
 - (a) *Commercial activities given precedence within a public esplanade reserve;*
 - (b) *Adverse effects to ecology including marine life and flora and fauna from dredging and discharge;*
 - (c) *Adverse effects to residential amenity;*
 - (d) *Application is inappropriate at the proposed location given a large, fully serviceable marina is available in Ōpua;*
 - (e) *Exclusive occupation of public resources for commercial/private gain;*
 - (f) *Adverse impact on cultural and spiritual values;*
 - (g) *Lack of consultation with tangata whenua;*
 - (h) *Adverse effects to natural character, landscape and visual amenity;*
 - (i) *Place application on hold until the High Court has issued a decision on the current appeal regarding easements over land;*
 - (j) *Poor quality, detail and clarity of the application;*
 - (k) *Chartering of vessels;*

- (l) *Renewal of discharge permits;*
- (m) *Adverse effects to the public access, amenity and recreational use of the Walls Bay Esplanade Reserve;*
- (n) *Proposal is unsuitable at the proposed location;*
- (o) *Exclusive occupation of the CMA at the proposed location is contrary to the purpose of the Walls Bay Esplanade Reserve;*
- (p) *Boat yard maintenance and operations should be carried out on private land;*
- (q) *Marina berths should be located in a marina zone;*
- (r) *Works affecting the Ōpua to Paihia walking track should not be instigated or carried out by a member of the public;*
- (s) *Proposed protection works are unnecessary and inappropriate;*
- (t) *Adverse effects to the seabed including water movement;*
- (u) *Proposal is contrary to the New Zealand Coastal Policy Statement (NZCPS), Northland Mooring Strategy, the RMA, RCP and the PRP;*
- (v) *Inappropriate and unnecessary use of the CMA;*
- (w) *Renewal of discharge consents should not occur due to issues with current discharge activities (non-compliance);*
- (x) *The application misleads the community;*
- (y) *The application should include land use consent and have joint input with the FNDC;*
- (z) *Potential reclamation rather than protection works;*
- (aa) *No reason given for the requirement of a new reconstructed jetty facility;*
- (bb) *Adverse effects to public health/air pollution from discharge activities;*
- (cc) *Adverse effects to the existing and adjoining mooring area;*
- (dd) *Existing signage is misleading. Private signage should be on private land;*
- (ee) *Additional marine services should be contained within the area from the wharf to the Ashby yard, which already has existing intensive development;*
- (ff) *Adverse effects to public car parking on Richardson Street;*
- (gg) *Further encroachment of commercial activity into the CMA;*
- (hh) *Lack of detail in regards to the screens proposed on the three new work berths to contain air and ground contamination;*
- (ii) *Change to the existing jetty facility to a commercial/industrial marina;*
- (jj) *The scale of the proposed capital dredging is unwarranted;*
- (kk) *Lack of alternatives in Ōpua for recreational, seaside, grassy areas for public recreational value; and*
- (ll) *Adverse effects to conservation areas and road reserve.*

52. The staff report noted that reasons for the submissions in support included:

- (a) *Modernisation of the boat yard;*
- (b) *Boat yard has always operated appropriately and efficiently without misconduct;*

- (c) *Boat yard is one of the last small private maintenance facilities in the upper north that offers traditional ways in terms of boat handling, fitting and repairs with modern discharge of pollutants;*
 - (d) *Upgrading the boat yard facilities will assist in compliance with discharge requirements;*
 - (e) *Dredging the seabed will improve its recreational value as a swimming area;*
 - (f) *Positive recreational and amenity effects;*
 - (g) *The Applicant has improved public access in the vicinity of the site over the years;*
 - (h) *The Applicant has contributed to a renewed pipi environment with improvement works over the years;*
 - (i) *Local consultation as to the preservation of the existing pipi bed in conjunction with the proposal;*
 - (j) *Local consultation as to methods of restoration of the Ōpua to Paihia walking track including the proposed seawall;*
 - (k) *The boat yard is a well utilised and important business for residents and the international boating community;*
 - (l) *The boat yard has no impact on personal residency, privacy or sensibilities despite its extremely close proximity to residences;*
 - (m) *Previous upgrades to the boat yard have improved amenity values to the area including a reduction in silt build up within the bay and the protection of the Ōpua to Paihia walking track from erosion;*
 - (n) *Improved coastline protection;*
 - (o) *The proposed all-tide jetty facility including the berths will enhance accessibility and safety from the existing jetty facility;*
 - (p) *Positive economic effects - source of employment; and*
 - (q) *Boat yard represents the character of the locale.*
53. The staff report noted the reasons for the neutral submissions and the submissions in support and opposition to the applications included positive and visual amenity effects, and positive effects to recreational values including swimming and boating. The staff report stated the submissions suggested the following relief:
- (a) *Strict monitoring of all dredging and associated activities.*
 - (b) *No restriction to public access along the esplanade reserve at all times.*
 - (c) *No water or land discharge of contaminants.*
 - (d) *Noise restrictions.*
 - (e) *Boat yard is responsible for ensuring sufficient carparks are available for boat yard users within the grounds of the boat yard.*
 - (f) *Public access is not encumbered along the Ōpua to Paihia walking track at all times.*
 - (g) *The proposed exclusive occupation and use of the CMA only pertains to the new jetty facility.*
 - (h) *No adverse effects to the recreational use of the CMA.*

- (i) *The prevention of recirculation of toxic metal sediments or persistent organic compounds or other pollutants or their degradation products, which may then become bioavailable in either the water column or in food chain processes.*
54. We were provided with, and have read copies of, all of the submissions received and consider these were accurately summarised in the staff report, as detailed above. We adopt that summary of submissions attached to the staff report (Appendix B) for the purposes of our decision as provided for by section 113(3)(b) of the RMA.
55. We were advised on 18 September 2018 that Mr (Cyril) Peter Sharp had passed away. We thank Mr Sharp's family for advising the NRC and send our sincere condolences for their loss. We have included a summary of Mr Sharp's submissions made at the hearing as part of the record of evidence.

SUMMARY OF EVIDENCE

Applicant's Case

56. The notified application and AEE documentation were prepared by Mr Schmuck. Appended to the application were: copies of the existing resource consents; a NRC monitoring report of the discharge of treated wash water (dated 9 May 2017); a 'Combined Council Operational Management Plan Review for Doug's Opua Boatyard' (dated 26 August 2014); an assessment of boatyard emissions by Mr Andrew Curtis; Senior Environmental Engineer for Woodward-Clyde (NZ) Limited (dated 7 February 2000); a copy of an affirmation of Mr Colin Dall (dated 4 March 2014), a copy of Environment Court Decision No.C146/98 (dated 22 December 1998); Environment Court Decision No. [2014] NZEnvC 101 (dated 2 May 2014), photographs; and plans by Total Marine Serviced Limited (dated 24 November 2017).
57. Further information was provided prior to the initial hearing including a report by Dr Stephen Brown of 4Sight Consulting titled 'Ecological Survey: Doug's Opua Boatyard' (dated April 2018); and two updated plans by Total Marine Services Limited entitled 'Aerial site overlay' (dated 8 May 2018) and 'General arrangement' (dated 8 May 2018).
58. **Ms Collen Prendergast**, Counsel, conducted the Applicant's case and presented legal submissions. She provided copies of following documents:
- (a) A diagram of a cross-section of the slipway to demonstrate the direction of air discharges;
 - (b) A copy of Plan 8095;
 - (c) Dredging mooring management plan principals;
 - (d) An email from Mr Ross Watters, Maritime Officer for NRC (dated 15 May 2018);
 - (e) A letter from Mr Rob Lang, Managing Director for Mooring Northland (dated 15 May 2018);
 - (f) A wind rose diagram for 'Whitangi 1999'; and
 - (g) A letter from Dr Brown, Principal Marine Ecologist for 4Sight Consulting Limited responding to briefs of evidence from Mr Booth and Ms Johnston.

59. In summary, at the initial hearing Ms Prendergast submitted:
- (a) It is agreed that a land use consent is required for the abutment of the jetty and parts of the seawall or structures above MHWS, and that the existing abutment is currently authorised by a land use consent;
 - (b) The FNDC has transferred powers to the NRC under section 33 of the RMA to issue land use consents adjoining the CMA and therefore the NRC has the jurisdiction to consider the land use applications;
 - (c) The evidence of Ms Johnston should not be considered to be that of an objective expert witness given she has not agreed to abide by the Code of Conduct for expert witnesses in the Environment Court Practice Note 2014 and she is conflicted as a submitter;
 - (d) It is unclear who Mr Booth is presenting evidence for, as he is not a submitter, and he has not agreed to abide by the Code of Conduct for expert witnesses;
 - (e) Ms Johnston and Mr Booth require leave from the Hearing Committee before their evidence can be admitted and taken into account as 'expert evidence';
 - (f) Matters relating to the reserve and easements over it are not relevant to the applications and the Applicant holds valid and extant resource consents for the boat yard's activities on the reserve;
 - (g) Claims of breaches of the conditions of the consent and contamination do not stack up with NRC's monitoring records, which show a very good compliance record;
 - (h) The Abatement Notice issued in 2010, which requires concreting part of the slipway, is currently being held in abeyance awaiting resolution of the easement issue;
 - (i) Compliance with conditions is not a valid reason to decline to grant consent and it must be accepted that the Applicant will comply with the conditions of consent;
 - (j) The offensive odour boundary and the occupation area boundary do not coincide and it is sensible the seaward boundaries should be aligned;
 - (k) There are no substantive issues arising from submissions; and
 - (l) The effects of the applications will be no more than minor and are consistent with the objectives and policies of the relevant plans, therefore the consents sought should be granted.
60. After the adjournment of the initial hearing the Applicant provided the following further information:
- (a) *'Technical Report: Preliminary Design of Timber Jetty, Pontoon and Dredging at Doug's Boatyard Opua'* (dated 11 July 2018) by Mr Johnson, Total Marine Group;
 - (b) *'Doug's Opua BoatYard – Air Quality Assessment'* (dated 9 July 2018) by Mr Peter Stacey, AECOM New Zealand Limited;
 - (c) *'Ecological Assessment: Doug's Opua Boatyard'* (dated July 2019) by Dr Brown, 4Sight Consulting Limited; and
 - (d) *'Opua Marina Stage 2 Development Modelling'* (dated October 2013) by MetOcean Solutions Limited.

61. At the reconvened hearing, Ms Prendergast presented further written submissions of Counsel and tabled the following further information:
- (a) A letter from Mr Johnson (dated 15 August 2018) responding to the addendum to the staff report and technical reviews;
 - (b) A memorandum from Mr Stacey (dated 13 August 2018) responding to the Addendum to the staff report and the technical review of the air effects assessment;
 - (c) A letter from Mr Schmuck to Mr Ricky Eyre, Monitoring Officer for NRC (dated 14 August 2018) documenting the 'as built' discharge and containment structures and systems; and
 - (d) A statement from Mr Mark Poynter of 4Sight Consulting responding to the Addendum to the staff report and technical reviews.
62. In summary, Ms Prendergast's further submissions were:
- (a) Some aspects of the applications have been withdrawn and amended to address concerns raised;
 - (b) Further expert advice has been sought and provided following the initial hearing and the suspension of the application;
 - (c) The Applicant generally agrees with the Reporting Officer's recommended conditions of consents; and
 - (d) The proposed sub-surface erosion barrier is to mitigate any potential adverse effects of the proposed dredging on the pipi beds and coastal erosion.
63. On the second day of the reconvened hearing, Ms Prendergast tabled an updated 'Attachment A – Doug's Opua Boatyard Containment Tradewaste Systems (Operational)' (dated 17 August 2018), an outline of the works to be undertaken on the proposed concrete grid (dated 17 August 2018), and a revised set of plans dated August 2018.
64. Following the adjournment of the reconvened hearing, the Applicant provided the following further information:
- (a) A copy of Coastal Permit AUT.008270.01.02 held by Interesting Projects Limited T/A Great Escape for the placement and use of the floating pontoon for the purpose of maintaining and servicing charter trailer yachts;
 - (b) A letter from Mr John Papesch, Senior Civil Engineer with Haigh Workman Limited providing a 'preliminary environmental impact assessment of the discharge of treated boat washdown water/discharge of stormwater to the CMA';
 - (c) A set of amended plans APP-039650-01-01 Sheets 0001-0008 (dated 31 August 2018) by Total Marine Services showing the amendments detailed; and
 - (d) A Memorandum of Counsel for the Applicant in response to our Minute #6a.

65. Ms Prendergast's Memorandum set out the reasons for the changes made (or not) to the applications and addressed the further information requested. She submitted that use of the term 'wharf' was consistent with the RCP definitions and requested references to 'jetty' be amended to 'wharf' wherever it occurs. She confirmed the exclusive occupation boundary was located to cover the 'least area of seabed as possible' while still allowing sufficient area for the maintenance dredging. She submitted that dredging was required to enable all tide access to the slipway. She said the offensive odour boundary had been significantly reduced and noted that a 15 metre exclusion zone was necessary for spray painting activities only. She submitted that the sub-surface erosion barrier was proposed as mitigation of the effects of dredging and that anyone concerned with the proposed dredging was already involved in the application process. She outlined the maintenance activities proposed to be undertaken on the concrete grid (which Mr Schmuck said are different to those undertaken on the slipway) and improvements made to the design for containing and collecting contaminants. She submitted the proposed 'capping' of the slipway and the use of a mudcrete grid beneath the concrete grid would ensure any contaminated sediments would not be removed by dredging. She highlighted the revised discharge containment system plans provided at the reconvened hearing were in response to the NRC investigations on 20 June 2018. She provided suggested amendments to the conditions recommended by the Reporting Officer in the Addendum to the staff report.
66. **Mr Doug Schmuck** presented a written statement and provided a copy of his CV and a photograph of the site from 1968. His evidence addressed background to the ownership and operation of the boat yard, an historical overview of the occupation of the reserve and foreshore, and the resource consents held for the structures and activities. He outlined the slipway and wharf required reconstruction and considerable capital investment; and that the dredging would enable 24/7 all tide access from the structure to the Veronica Channel. He explained the exclusive occupation boundary was intended to be based on the location of the turning block at the eastern boundary. He proposed to continue to allow public access to the wharf, but in a controlled manner, during daylight hours up to the proposed security gates at the eastern end of the proposed mudcrete grids, with access by permission. He stated permission would not be granted for any form of access by boat, seafood collection, or recreational activities that conflicted with the activities allowed by the resource consents. He stated that the proposed foreshore barriers are to mitigate the adverse effects of the proposed demolition, dredging and construction works; and that the extension of the FNDC stormwater drains is also to protect the foreshore. He outlined work to be undertaken on the proposed mudcrete grids, discharges to land, discharge to air, and the draft dredging mooring management plan. He outlined changes to the proposed conditions and considered most of the concerns raised by submitters were not relevant to the applications.
67. Mr Schmuck responded to many questions clarifying what activities were undertaken where, and to understand the 'slipway refurbishment' and the implications for wastewater collection and stormwater management at the boat yard itself and the slipway.

Submitters

68. **Mr Darren Degerhorm** appeared at the initial hearing and spoke to his submission in support of the applications. He noted the facilities were a good alternative to the larger boat yard facilities and considered the activity added to the colour and vibrancy of the area. He considered the improvements would make it easier to use the facilities as it is currently difficult to work in with the tides for access.

69. **Mr Peter Nobbs** appeared at the initial hearing and presented a written submission in opposition to the applications. He was primarily concerned about the use of public space and the privatisation of public areas. He emphasised the existing wharf allowed reasonable public use at all times and he therefore opposed the proposed security gates to limit use. He considered the gates would make little difference to the security of boats, given they can be easily accessed from the water. He did not oppose the new wharf if the security gates were removed and there was no permeant berthing/marina allowed. He considered the proposed mudcrete grids would be beneficial to the boating community.
70. Mr Nobbs provided further comments on the further amendments and further information provided by the Applicant after the reconvened hearing. He stated the amendments did not address his opposition to the proposed security gates and restrictions on public access.
71. **Dr Anthony Atkinson** appeared at both hearings and spoke in opposition to the applications (providing his speaking notes after each hearing). He highlighted the importance of the reserve to the local community and need to protect it from inappropriate use. He said other users of the reserve and foreshore have been driven out by boat yard activities. He noted the existing wharf was allowed because it enabled reasonable public use. He considered the applications should not have been accepted or notified on the basis the documentation was vague, incomplete and inaccurate. He said this had resulted in the need for further information and ongoing amendments to the application. He supported boat yard activity if it complies with the conditions of the easement and all activities occur within the boundaries of the boat yard property. He considered the use of the reserve should be limited to vessels transiting over the reserve.
72. At the reconvened hearing, Dr Atkinson re-iterated his concerns regarding the inadequate and incomplete notification of the applications. He considered the amended applications were fundamentally now quite different in scope, character, location and size, and should have been re-notified and considered at a joint hearing. He noted the south-east boundary peg pointed out by Mr Schmuck on the site visit is not in the correct location and is actually located under the black plastic. He highlighted that the previous owner of the boat yard had installed the turntable and rails to enable all work to occur within the boatyard site, but that Mr Schmuck had progressively removed these.
73. **Ms Maiki Marks** appeared at the initial hearing and the reconvened hearing in opposition to the applications and called Dr Booth as an expert witness. Prior to the initial hearing, Ms Marks provided a written statement by herself and a written statement of evidence from Dr Booth. She referred to the three Treaty of Waitangi/Te Tiriti o Waitangi claims lodged on the esplanade reserve and the adjoining CMA. She was concerned that the application documentation was not 'fit for purpose' and should not have been accepted by the NRC for notification. She noted that extensive earthworks had been carried out in the reserve and structures placed without authorisation. She considered the Applicant was responsible for removing the reserve sign and requested it be replaced. She highlighted adverse water quality effects and contamination from non-compliance with consent conditions; and the failure of NRC to monitor and enforce compliance and water quality standards. She strongly opposed the proposed dredging due to adverse effects on the fragile land and sea interface and the mauri of the seabed.

74. At the reconvened hearing, Ms Marks provided a further written statement. She noted that the existing activities were already impacting on the public's ability to use and enjoy Walls Bay and the reserve. She highlighted the cultural and spiritual obligations and responsibilities to ensure the moana tapu at Walls Bay is maintained and enhanced for humans and all species. She provided historical photos showing how up to six boats could previously be accommodated within the boundaries of the boat yard site and requested all activities be undertaken within the boat yard site, except for moving vessels up and down the slipway.
75. Ms Marks provided further comments on the further amendments and further information provided by the Applicant after the reconvened hearing. She re-iterated her key concerns and requested that all boat yard activities be contained within the boat yard property boundaries. She highlighted the Applicant's lack of compliance with existing consent conditions and his ongoing use of and effects on the reserve; the 'do now and ask permission later' approach of the Applicant that had been tolerated by NRC; and the lack of faith or trust that the regulatory authorities will monitor and enforce the conditions imposed.
76. **Dr John Booth**, a retired marine scientist from Russell, provided a written statement of evidence on behalf of Ms Marks reviewing the Applicant's ecological survey and assessment. He noted the ecological survey was limited to the shallow part of the site and did not address the effects of dredging. He said the shellfish population survey was limited and sampling details unknown. He concluded the ecological report was '*a minimal, once over lightly investigation into inshore, edible shellfish presence; and a minimal once over lightly investigation into inshore levels of copper and zinc*'. He noted there had been no investigation into the ecological and hydrological effects of the proposed capital and maintenance dredging, particularly on the 'ever-shrinking pipi community biome'.
77. In response to Ms Prendergast's comments that Dr Booth should not be considered as an expert witness, Dr Booth clarified that he had undertaken an independent expert critique of the ecological assessment. He confirmed that these matters were within his knowledge and expertise. He stated he agreed to the Environment Court's code of conduct for expert witnesses.
78. **Mrs Julia Kidman**, on behalf of Interesting Projects Limited trading as 'Great Escape', spoke to her submission in support of the application at both hearings. She outlined the business operation and use of the existing wharf facility with their pontoon barge berthed on the northern side of the existing wharf. She considered the existing wharf was adequate, but that the proposed wharf and dredging would significantly improve the facilities and access. She said current access was limited to a couple of hours either side of high tide, which was restrictive in the busy summer season and required use of dinghys to access their yachts. She considered existing public use of the wharf was low and that the security gates would be good. She noted it was a great spot to run their business, with access to the boat yard facilities and price competition for maintenance and repair works. She considered 24 hour access to the proposed mudcrete grids would be great for immediately addressing safety or maintenance issues and that investment in such much needed facilities was hard to come by in Northland.

79. At the reconvened hearing, Mrs Kidman reiterated her support for the applications and the planned improvements to the yacht hire business and potential expansion. She supported the security gates being open during the day and locked at night. In response to questions, she said the business utilised the boat yard's toilet and shower facilities, put rubbish in the onsite trailer, and used the recycling bins. She did not consider mooring the existing pontoon barge on the opposite side of the proposed wharf would raise any issues for complying with the conditions of their resource consent.
80. **Mr Peter Sharp** presented a written discussion paper at the initial hearing in support of the applications addressing the need for more coastal facilities, walkways and better access, and an Olympic sized salt water pool. He referred to historical dumping of spoil (soft brown rock) from road development in the 1950s and the significant adverse effects of the silt on the beaches and marine life. He also presented further documents in support of further coastal developments at the reconvened hearing.
81. **Mr Peter Clark** spoke in opposition to the applications at the initial hearing. He tabled photographs showing the Ōpua beach before the wharf and marina developments and dredging. He said these showed the significant adverse effects on coastal process and marine life. He noted the area had been a treasured swimming place and kaimoana gathering area. He was concerned the remaining pipi beds at Walls Bay would be disturbed by the capital dredging and overtime would end up in the dredge hole as sediment moved over time. He was opposed to any dredging in the Bay of Islands because of sedimentation and water quality issues and effects on marine life. He considered there was no need to bring bigger boats in or to have all tide access to the wharf.
82. Mr Clark was concerned at the lack of consultation with tangata whenua and references to 'cultural input'. He had no confidence in the Applicant's consent compliance or in the ability of NRC to monitor and enforce conditions. He highlighted the lack of environmental impact assessment and the potential for significant adverse effects on the pipi beds and beach at Walls Bay.
83. **Mr Daniel Clark** spoke in opposition to the applications and in support of his parents Mr Peter and Mrs Janet Clark. He spoke of the rapid decline in water quality from dredging associated with the Ōpua marina development and considered the effects could not be described as 'less than minor'. He considered the effects of the dredging on marine life have been 'massive', resulting in the inability to harvest shellfish and sediment covered fish. He noted the significant effect this had had on his family's lifestyle, and their ability to gather mahinga kai and exercise their role as kaitiaki. He considered the dredging had insulted the mauri of the water and their culture. He emphasised the 'clutter and saturation' of the small intertidal area and the busy nature of the area between Walls Bay and the Ōpua wharf. He noted there was only about 100 metres between the Ōpua wharf and the existing jetty and that the area was already congested and hazardous. He was concerned at the lack of monitoring and enforcement in the maritime area and considered the application would exacerbate this.

84. At the reconvened hearing, Mr Clark read a further written statement on behalf of his father and spoke on his own behalf. The statement questioned where the dredge spoil would be disposed of and the effectiveness of silt curtains; and requested a moratorium of further development in the CMA until a thorough investigation into capacity is undertaken to ensure health and safety issues from congestion are addressed. Appended to the statement were photographs taken in 2016 showing broken and unmaintained sediment fences used on the foreshore near Ōpua. Mr Clark stated that exclusive occupation was 'theft' and considered the dredging would cause erosion of the foreshore. In responses to questions, he stated that he preferred the term 'reasonable public use and access' rather than trying to define this in the consent conditions.
85. **Mrs Janet Clark** spoke in opposition to the applications at both hearings. She was concerned at the general attitude that people expect the environment to give way to their wants and needs. She considered the Ōpua marina clearly shows this attitude. She emphasised the importance of the area to her family and their relationship with the sea and marine life. She strongly opposed any dredging on the basis of adverse effects on marine life and kai moana.
86. **Mrs Myra Larcombe** spoke in opposition to the applications at both hearings. She provided a number of historical photographs showing the changes in the Ōpua area from 1902 through to present day. She considered these showed the significant changes to the coastal environment over time, loss of public space and the ongoing adverse effects on public access to and use of the CMA. She emphasised that the esplanade reserve at Walls Bay was the last remaining flat piece of coastal public land in Ōpua (excluding the 'dog exercise beach'). She considered the current boat yard activities were adversely impacting on public use and enjoyment of the reserve and the beach. She also tabled a copy of the mooring plan for the Ōpua Basin. She noted this demonstrated the busy nature of the mooring area, car ferry lane and the Ōpua wharf, the extremely limited space available, and the need to ensure the mandatory navigational safety passages are maintained.
87. At the reconvened hearing, Mrs Larcombe re-iterated her view that all boat yard activities should be undertaken within the Applicant's property. She strongly disagreed with the Applicant's assessments that the environmental effects would be 'minor' and noted the photographic evidence of spray drift and contamination of the sediments around the beach shows this is untrue. She opposed the private marina berths and wanted all commercial activity using the seabed to be contained south of the wharf. She submitted the Ōpua basin should not be for commercial use and that the fairway surrounding the mooring should remain clear of unnecessary boat traffic caused by a marina facility. She also tabled a further photograph showing a vessel being water blasted on the slipway, within the reserve with spray drift extending across the reserve; and a local newspaper article (date 13 August 2018) on the recent Court of Appeal decision.
88. Mrs Larcombe provided further written comments on the further amendments and further information provided after the reconvened hearing. This was received after the timeframe and is therefore not considered.

89. **Mr Michael Rashbrooke** presented a written statement in opposition to the applications at both hearings and showed a six minute video of boatyard activities occurring within the reserve on the slipway. He also pre-circulated a number of documents prior to the hearing and urged us to compare the application documentation to these pre-circulated documents. He emphasised the need to consider all of the proposed activities together and noted the remaining uncertainty around the marina development and the slipway refurbishment. He said he supported the existing wharf and boat yard operation so long as it is undertaken within the confines of the boat yard, except for the 600 mm encroachment into the reserve from an overhanging vessel on the turntable. He noted this was always the intention of the conditions of consent, but that the word 'yard' in the conditions would have been clearer if 'boatyard' had been used. He considered that at some point a NRC monitoring officer had mistakenly interpreted this to include the slipway and had allowed the Applicant to use plastic to create an impervious layer. He said the sediment contamination around the slipway was not historical and had occurred under the consents issued since 2003. He highlighted the conditions of the existing discharge consents were open to interpretation, are not complied with and are not enforced. He noted the lack of bunding or a cut-off drain between the boat yard boundary and the reserve and the inadequacies of the plastic surface and sump, which resulted in direct overflows to the reserve and the CMA.
90. Mr Rashbrooke's written submissions raised concerns regarding the wording of the proposed activities, the confusion between new applications and 'renewals', and the location where the activities are undertaken (boat yard, reserve and CMA) and consequential jurisdictional matters. He considered the use of the reserve was contrary to the purposes of an esplanade reserve under section 229 of the RMA, as is the exclusion of the public from the CMA or esplanade reserve. He referred to the Reserves Act 1977 and the limited purposes for which a lease, licence or easement can be granted over a reserve. In the event the consents are granted, he requested: no boat yard activities occurring within the reserve, except for moving vessels to and from the CMA and the boat yard; all activities (including air discharges, water blasting and washing down vessels) undertaken on impermeable surfaces within the boat yard; no use of the wharf for accommodation purposes or permanent berthing; no boat repair or maintenance works within the CMA; no change to the existing allowance of reasonable public use and access; signage to enable public use of the wharf; no security gates; a reduction of the exclusive occupation and odour boundaries; and no dredging.
91. Mr Rashbrooke's further written submission reiterated his concerns regarding the inadequate notification of the application; addressed the effect of the Court of Appeal decision (20 July 2018) on the applications; and commented on the Applicant's further information and assessments. He also spoke to his submission summarising the key points. He considered the proposed concrete grid should be located within the boat yard site; and that use of the CMA and reserve for this activity was inappropriate at this location and unnecessary. He noted there was no evidence a new wharf was needed and that convenience did not justify the disturbance to the seabed. He considered the identified contamination had happened since 2003 under the resource consents granted because of a failure to comply with conditions and the failure of NRC to monitor and enforce the conditions.

92. Mr Rashbrooke provided further comments on the further amendments and further information provided by the Applicant after the reconvened hearing. He highlighted the following matters: potentially confusing and misleading statements in the letter from Mr Papesch; ongoing modifications to the boat yard creating maintenance facilities for only one vessel; evidence of ongoing actions ignoring environmental standards and consent conditions; continued use of 'inaccurate' plans showing easements that do not exist; and ongoing amendments to the application that are outside of the scope of the application as notified. He opposed: concreting of the slipway; the concrete grid and sump located in the CMA; the public dingy pull; the proposed marina; any restriction on public use and access to the wharf; the subsurface erosion barrier; any 15 metre exclusion zone in the reserve during spray painting; the extent of the exclusive occupation zone and offensive odour boundary; and the 'capping' of contaminants within the seabed with concrete.
93. **Mr Gary Drain** spoke in opposition to the applications at the initial hearing. He emphasised the importance of protecting the only public reserve area to the north of Ōpua from the expanding commercial activity of the boat yard and charter business. He noted the boat yard operations had historically been small, but had progressively encroached on the reserve. He said the need for land-based facilities and parking had increased from allowing the incremental expansion of these activities and that these pressures had the potential to cause significant adverse effects on the amenity of Walls Bay. He considered congestion and parking problems were already an issue in summer and were inadequate for the existing levels of use. He strongly opposed any exclusive use or occupation of the CMA, and highlighted public use was required to allow existing wharf.
94. **Mrs Angelika Kyriak** presented a written submission at the initial hearing in opposition to the applications. Mrs Kyriak highlighted that the application clearly states that the slipway is not part of the application. She provided a table comparing the current consents with the proposed consents, and set out the policies and objectives of the NZCPS, sections of the Marine and Coastal Area (Takutai Moana) Act 2011, Reserves Act 1977 and RMA. She noted that the reduction of activities on the boat yard property had been offset by a relocation of those activities into the reserve and CMA and that the proposal would, *'...in effect, become an integral structural part of the boatyard's land use consent activities*. She considered the proposed structures, and their use and occupation represented a *'radical departure from the current consent'* and included activities that were currently prohibited. She considered notification of the applications was confusing and inadequate, and that the AEE is incomplete and inconsistent. She highlighted the purpose of the esplanade reserve is recreational use and noted the importance of the reserve in linking the land and the sea. She emphasised the need to maintain and enhance public use and enjoyment of the coastal environment and the statutory duty to do so. She considered the Walls Bay area had high natural character and that the existing coastal structures (jetty, pontoon and moorings) do not intrude on the natural environment. She stated the applications would detract from the community's social and cultural well-being; and emphasised the increase in exclusive occupation and restrictions on public access and use of the proposed jetty.
95. Mrs Kyriak highlighted the intensification of boat yard activities in the CMA and the need to demonstrate that it is not feasible to undertake these activities on land (referencing Policy 4.8 of the RPS and Policy 17.4.3 of the RCP). She said it was unclear how the pontoon structure would be accommodated at the proposed wharf, and how removal of the existing wharf and restricting public use would affect the NRC decision and Environment Court confirmation of the consent for the pontoon barge. She questioned the need for long-term berthage and marina accommodation

facilities for a boat maintenance facility and the requirements for a marina to provide onsite facilities for rubbish, recycling and sewage. She noted that parking was limited and that Richardson Street was already congested in summer. She highlighted the lack of assessment of environmental effects of the proposed dredging, the need for a consent to dispose of the spoil, and the uncertainty surrounding the Applicant's 'intent' to protect the pipi beds.

96. In relation to the discharges, Mrs Kyriak disagreed with the staff report and submitted that the effects of the discharge of contaminants and odour on the reserve (as a result of the Applicant's land-based operations) is a matter within the NRC's jurisdiction and must be addressed. She noted that the Applicant had not complied with the existing consent conditions to erect screens to contain contaminants within the perimeter of the washdown area and this condition relied on voluntary compliance. She considered there could be no doubt that the esplanade reserve had been contaminated from activities undertaken in the reserve.
97. A further written statement from Mrs Kyriak was tabled at the reconvened hearing. The statement reiterated her concerns that the proposal is a radical departure from the existing consents and that there is no necessity for the activities, public benefit or justification provided to support it. She objected to the use of the term 'jetty facility' and submitted 'wharf facility' was consistent with the definitions of the RCP. She requested that any replacement consent for the existing wharf is granted with the current conditions relating to location, use and associated occupation of the seabed. She also addressed the Court of Appeal decision (20 July 2018) and implications for this consent process and the scope of the application. She was concerned that the relocation of the wharf northward and proposed activities on the wharf would intrude on the bush clad foreshore at a very special site, affecting residents, visitors and walkway users. Furthermore, the relocation increases the area of exclusive occupation, width of dredging required, increases the separation from the boat yard property it is associated with, and makes supervision of activities more difficult. She also addressed jurisdictional matters associated with the CMA boundary and the location of the dingy ramp and existing seawall; and the scope of the agreement on the transfer of functions, powers and duties pursuant to section 33 of the RMA from the FNDC to the NRC and provided a copy of the agreement.
98. Mrs Kyriak provided further comments on the further amendments and further information provided by the Applicant after the reconvened hearing. Mrs Kyriak stated that the Applicant had been seeking to constrain public use of the reserve and foreshore area and to relocate his boat yard activities to those areas for over 20 years now. She noted the proposed marina development is a new venture. She highlighted there was no public benefit to the community and rejected the Applicant's claim of benefits from the reducing and mitigating adverse effects. She requested the following: that no consents are granted for activities that have not been applied for; that no consent are granted where effects cannot be controlled by conditions and effectively monitored and enforced; that no consents are granted where the conditions are too onerous (e.g. exclusion zone on the reserve); that no consents are granted for activities outside the NRC's jurisdiction; and that no consents are granted for the exclusive occupation beyond that which is reasonably necessary to achieve the purpose of the permit. A statement from Mr Henry Nissen was also provided in support of the submission by Mrs Kyriak.

99. **Ms Jane Johnston** appeared at both hearings and provided a written statement in opposition to the application at the initial hearing. Ms Johnston's statement set out her qualifications and experience as an environmental scientist and strategic policy and planning professional. She provided a review of the Applicant's ecological assessment by 4Sight Consulting and referenced the NRC's Mooring and Marina Strategy (2014) and the FNDC's operative District Plan. She highlighted that the findings of the Applicant's ecological assessment showed the benthic sediment layer in the vicinity of the slipway is significantly contaminated. She considered it was likely harvestable shellfish nearby have been contaminated and emphasised the need to remove the contaminated sediments to protect the public harvesting shellfish and access to the beach. She noted the importance of the grassed esplanade reserve, the beach and the coastal walking track to the public; and the need to maintain and enhance the amenity of the area. She disagreed that there were high levels of commercial activity at Walls Bay, except the boat yard operation; and noted there were other haul out facilities at Ōpua and Waitangi that are more accessible and have land-based facilities for maintenance work. She tabled a copy of Planning Map 92 of the District Plan to demonstrate that the esplanade reserve is a *'rare public space amongst an otherwise crowded out coastal area – with industrial and infrastructure taking priority over public access'*. She considered the applications had been development without sufficient regard to public interest given the location and values of the area to the public. She also tabled a copy of the 'objects' of the Love Opua Charitable Trust (a submitter in support of the applications) from the Companies Office and noted that the applications were not consistent with the Trust's stated objectives.
100. In response to submissions from Ms Prendergast that her evidence should not be considered to be 'expert' evidence, Ms Johnston stated she was qualified to provide a peer review of the ecological assessment. She asked us to focus on the new and additional activities, the source of reference documents, the lack of baseline information to assess effects of the activities (ecological, recreational use, natural character, sensitive sites, hydrological and navigational safety), the important habitat values of the coastal environment to penguins, the direction of the planning framework requiring land based facilities to support development in the CMA, and the need to apply the precautionary principle to activities affecting public access. She questioned whether the reticulated sewerage system was designed to accept such industrial type wastewater. She requested the tightening of the existing consent conditions.
101. At the reconvened hearing, Ms Johnston noted her support of the Addendum to the staff report and considered the Reporting Officer had taken into account the evidence and concerns of submitters. She noted the applications were now quite different and that there was a lot more information than when the applications were notified. She highlighted the change in ecological experts and the suggestion the existing contaminated environment was the new baseline for the purpose of compliance monitoring. She strongly disagreed with this approach and emphasised again the need for remediation of the effects of the existing boat yard activities. She considered 'maintenance' activities needed to be defined and should not be undertaken on the concrete grid. She acknowledged the service provided by the boat yard, but wanted the discharges to the CMA and reserve stopped. She considered maintenance work other than washing down vessels should be undertaken in the boat yard where the discharges can be controlled and the adverse effects avoided and mitigated. She supported a 10 year duration.

102. A statement was tabled at the initial hearing from **Sir William Kearney**, a submitter in opposition to the applications. Sir William expressed concern that the hearing had proceeded, despite his objections, and that the staff report was 'flawed' due to the use of terms such as 'minor' and 'less than minor'. He was also concerned that there was insufficient opportunity for submitters to respond to the further information and ongoing amendments to the application. He agreed with other submitters in opposition and highlighted the historical evidence of Mrs Larcombe, and the expert reviews of Dr Booth and Ms Johnston.
103. A further written statement from Sir William was tabled at the reconvened hearing. Sir William drew our attention to the reasoning and final decision of the Court of Appeal. He noted that the decision is final on the law of New Zealand and stands as law, unless and until the Supreme Court rules against it, and that we are bound by the law as stated by the Court of Appeal. He urged us to read the decision in full and noted the Court held that its decision is not relevant to, and has no effect on, the consideration of the current applications under the RMA. He noted his agreement with and endorsement of the Reporting Officer's comments on the Court of Appeal decision.
104. A statement was tabled at the initial hearing from **Mr Douglas Dysart**, a submitter in opposition to the applications. Mr Dysart referenced the staff report and considered comments made with regard to the effects on visual amenity, landscape and natural character were one-sided, badly worded and misleading. He noted the primary modifications to the coastal environment were from the boat yard activities and that there should be no further modification allowed. He opposed repair and maintenance activities occurring in the CMA due to risks of water, air and noise pollution; and requested all activities only be allowed with the boat yard property. He highlighted the need prevent encroachment and adverse effects on the pohutukawa trees to the north of the proposed jetty; protection of the shellfish beds; adverse effects of the slipway 'refurbishment' on the public walkway; the need to maintain and enhance public access and use of the existing jetty; the need to confine boat repair and maintenance work to the boat yard or the Ōpua marina and commercial area. He noted the Applicant had not justified the functional need for the activities proposed.
105. Mr Dysart presented a further written statement at the reconvened hearing focused on the Applicant's further assessments and proposed conditions of consent and monitoring. He was concerned the air mitigation measures were impractical to avoid discharges on the reserve and are unlikely to be sufficiently monitored and enforced. He noted the poor compliance history of the Applicant and the lack of NRC monitoring and enforcement. He stated the spray drift and water discharges go beyond the plastic surface and that the existing sump overflows. He noted there was no bunding around the boat yard or below the existing sump to prevent overflows to the CMA. In the event the consents are granted, he requested: simpler and enforceable conditions of consent; all activities to be confined to the boat yard site; use of screens if activities are within 15 metres of the reserve; no marina development without land-based toilet facilities and parking; reasonable public use of the proposed wharf at all times; remedial and decontamination works to address contamination; an alarm system and emergency plan for ensuring there are no discharge from the concrete grid into the CMA; and a setback of the concrete grid from the beach to mitigate visual effects.

106. Mr Dysart provided further written comment on the further amendments and information provided after the reconvened hearing. He opposed dredging within 40 metres of MHWS, the exclusive occupation zone, the subsurface erosion barrier, the concrete grid (unless it is 17 metres further back from the shoreline, a 15 metre exclusion zone over the reserve during spray painting, and proposed concreting of the slipway. He requested removal of the contaminated sediments and remediation; all discharge to land and air within the boat yard property boundaries; movement of the proposed public dingy pull to the south side of the proposed wharf, and no restriction of the existing public use of the wharf.

Section 42A Staff Report

107. The s42A staff report was tabled at the initial hearing, however, Ms Donaghy did not provide further comment given the amendments to the applications proposed at the hearing and the need for the Applicant to provide further information. Ms Donaghy also tabled a written statement addressing procedural matters dated 15 May 2018.
108. Ms Donaghy provided an Addendum to the staff report (dated 1 August 2018) prior to the reconvened hearing. The Addendum addressed the amendments to the application made following the initial hearing and responded to the further information provided by the Applicant. Appended to her Addendum were:
- (a) Recommended consent conditions (tracked changes to the Applicant's revised conditions); expert advice from Mr Richard Griffiths (NRC Marine Research Specialist); expert advice from Mr Paul Maxwell (NRC Coastal and Works Consents Manager);
 - (b) Correspondence from Mr Ricky Eyre (NRC Coastal Monitoring Manager) in relation to discharge compliance;
 - (c) A copy of the NRC Abatement Notice (dated 27 October 2010);
 - (d) Written responses to conditions raised during the initial hearing and a summary of the evolution of consents held over time;
 - (e) A technical review of the Applicant's air quality assessment by Ms Jenny Simpson of Tonkin and Taylor.
109. In summary, Ms Donaghy made the following key points in her Addendum:
- (a) There does not appear to be a clear need for the subsurface erosion barrier and its efficacy for its intended purpose is uncertain, and is not supported by Mr Maxwell and Mr Griffiths;
 - (b) The MetOcean Solutions report provided for the Opuia Marina development does not provide detail at the resolution required to understand sediment transport within Walls Bay and vicinity of the applications;
 - (c) The proximity of water blasting activities to the reserve and public walking track has the potential to have adverse effects on amenity values and requires mitigation through the use of temporary screens;
 - (d) The effects of the proposed mudcrete grids are uncertain and potentially significant and the warrant a precautionary approach be taken;
 - (e) The slipway is authorised under CON2000307914 and the refurbishment of the existing slipway within the CMA (below MHWS) is therefore part of the applications;

- (f) Potential adverse effects of the dredging within the M4MA on the public mooring and navigational safety can be addressed by implementation of the Applicant's 'Mooring and Vessel Management Plan';
 - (g) The subsurface erosion barrier is not part of the applications, as notified, and cannot be considered;
 - (h) Consent to occupy any part of the common marine area and CMA under section 12(2)(a) does not give exclusivity to the area of occupation, however, the applications seek exclusive occupation of the area of CMA shown on the plans as the 'occupation boundary area';
 - (i) Advice from Mr Eyre states the current layout of the slipway needs improvement and that concreting of the slipway and collection of all wastewater is required to comply with the Abatement Notice;
 - (j) A recent inspection of the boat yard on 24 May 2018 showed that stormwater from the lower area of the boat yard was running down the slipway to the sump and overflowing to the CMA;
 - (k) A further inspection on 20 June 2018 and water sampling undertaken during a heavy rainfall event showed the current stormwater system is not working effectively, with high levels of copper and zinc in the stormwater discharge from the boat yard;
 - (l) The evidence of submitters and the recent NRC inspections have resulted in a change in position regarding the discharge of stormwater, and changes to conditions and a shorter duration consent of 10 years is recommended accordingly;
 - (m) Overall, she concluded that consents for the mudcrete grid and the discharge of washdown water to the CMA should be refused; and that the other consents sought could be granted, subject to further recommended conditions.
110. At the end of the reconvened hearing, Ms Donaghy present a written Reporting Officer's right of reply (dated 15 August 2018) addressing the Tonkin and Taylor review of the air assessment, sediment metal concentration targets, the mudcrete grid and the proposed security gates.
111. Ms Donaghy provided a second Addendum to the staff report (dated 11 September 2018) following the adjournment of the reconvened hearing and the provision of further amendments and information by the Applicant. The second Addendum commented on the final set of plans and the further amendments to the applications. She noted there had been no reduction in the extent of the exclusive occupation boundary, as suggested. She recommended that the exclusive occupation area should reflect the minimum area required to carry out the consented activities at the structures and provided Figure 1 indicating her suggested amendment to the exclusive occupation area to achieve this. She noted the Applicant had reduced the proposed offensive odour boundary. She remained of the view the proposed subsurface erosion barrier cannot be considered as part of the applications.

112. Ms Donaghy noted the now proposed 'concrete grid' was slightly larger than the proposed mudcrete grid, but considered this was not a matter of concern given the original applications proposed two mudcrete grids and the benefits provided by enabling collection and treatment of wash down water. She considered that the visual effects of the concrete grid could be addressed by consent conditions requiring the concrete to be used for the concrete grid and capping of the slipway to be 'coloured/surfaced/constructed using material to give a recessive appearance'. She noted she continued to support the use of grids within the CMA to assist in achieving the outcomes sought within the Pest Management Plan³, but recommended a precautionary approach be adopted in imposing conditions and reduced consent duration. In light of the further evidence from Mr Poynter, she accepted the environmental benefits of 'capping' the slipway would outweigh any visual effect with the imposition of conditions.
113. Ms Donaghy reiterated the conclusions reached in her Addendum to the staff report and noted she had changed her recommendation in relation to the proposed concrete grid to recommend the grant of consent subject to conditions and a reduced consent term. Appended to her second Addendum was a further tracked change version of the Applicant's revised conditions reflecting her recommended conditions.

Applicant's Right of Reply

114. The Applicant provided written submissions for the Applicant in reply addressing the matters raised by the Reporting Officer and submitters. Ms Prendergast submitted that we had a 'plethora of material' from submitters, of which she considered 'much was irrelevant' to the consideration of the applications. She set out the historical background to: the boat yard activities; the process that stopped the road and created the esplanade reserve; the original application for discharge consents from NRC; the 1998 Abatement Notice served by the FNDC to cease activities in the reserve (except the passage of boats over the slipway); the Environment Court's Consent Order 2002; the renewal of NRC resource consents in 2008; and the core group of opponents to the road stopping and consent applications.
115. In responses to submitters, Ms Prendergast submitted there was no evidence to support claims that the boat yard is expanding its activities or transferring activities onto the reserve and that boat restoration is still being undertaken within the boat yard. She reiterated that the Applicant has held valid resource consents to undertake boat yard activities in the reserve and CMA since 31 January 2002 and that there have been no attempts to change the 2002 Consent Order. She submitted there is no jurisdiction to consider or amend the activities on the reserve as authorised by FNDC RC20000812.
116. In conclusion, Ms Prendergast submitted that the expert evidence shows that the effects of the proposed new activities are minor and can be mitigated by conditions. She noted the extent of the proposed dredging had been reduced and mitigation conditions proffered. She considered that claims of breaches of consent conditions were not verified by the NRC records and Mr Schmuck must be treated on the basis he will comply with the conditions proposed. She submitted that the applications are in accordance with the purpose and principles of the RMA, and consistent with the objectives and policies of the NZCPS, RCP and PRP; and should therefore be approved.

³ Northland Regional Pest and Marine Pathway Management Plan 2017-2027.

ASSESSMENT

117. In assessing the applications before us, we have considered the application documentation and further information, the staff report and technical reviews, the Addendum to the staff report and technical reviews, all submissions received and all evidence provided throughout the hearing process.
118. In addition to the statements of evidence and supplementary statements of evidence presented at the hearing, we requested copies of the following documents:
- (a) A copy of a legal opinion from M A Ray, Consultant with Law North Partners (dated 1 April 2008) regarding the extent (if any) the 2002 Consent Order impacts on the consideration of application for resource consent;
 - (b) The Environment Court's Consent Order dated 31 January 2002;
 - (c) 'Revised Transfer Agreement – Transfer of functions, powers and duties pursuant to section 33 of the Resource Management Act 1991' between the FNDC and the NRC;
 - (d) *Douglas Schmuck v Far North District Council and Northland Regional Council* Environment Court. Decision No. [2014] NZ EnvC 101; and
 - (e) *Opuia Coastal Preservation Incorporated v Far North District Council* Court of Appeal [2018] NZCA 262.
119. We record that the findings we have made and the decision we have arrived at are based on all the evidence before us and our consideration of that material within the context of the statutory framework.
120. We have reviewed and summarised all of the evidence to ensure there is an accurate record of the hearing and the evolution of the application throughout the hearing process. We have taken an inquisitorial approach to our consideration to ensure our decision is based on the best available information. We have focused on ensuring the hearing process is fair and that all parties had the opportunity to comment on any new information or amendments to the application.
121. Overall, we agree with the Reporting Officer and many of the submitters that that application documentation and assessment of effects (**AEE**), as notified, lacked sufficient detail to consider adequately consider the effects of the application. In our view, this lack of information and the ongoing amendments to the applications have resulted in a significantly protracted hearing process, the need to reconvene the hearing, and a lengthy decision process and report writing.
122. A significant amount of necessary detail regarding the effects of the existing operation, and in particular what activities occur where, was given verbally by Mr Schmuck at the hearing in response to our questions and was not included in the application documentation. We note that questions of clarification directed at the Applicant and their legal Counsel took until 3.00 p.m. of the first day of the hearing, in contrast to the 1-2 hours anticipated by the Applicant prior to the hearing. We consider this was as a direct result of the significant lack of documentation and detail of both the existing and proposed activities and AEE. We remained concerned that detail regarding the existing stormwater and wastewater collection and treatment systems was unclear and undocumented until further information was provided both during and after the reconvened hearing.

123. We record we have not considered matters relating to the use of the reserve and the easements sought by the Applicant. We have focused our assessment on the actual and potential environmental effects of the existing and proposed activities on the receiving environment, including the CMA, the reserve, and the land surrounding the boat yard.
124. We agree with the Reporting Officer that matters relating to specific land claims and proceedings under the Treaty of Waitangi/Te Tiriti o Waitangi are not directly relevant to our consideration of the applications. We also agree that while consultation with tangata whenua is good resource management practice, it is not required under the RMA and is not a valid reason to refuse the consents sought. Again, we have focused on assessing the actual and potential adverse effects on the environment, including cultural values and relationships.
125. We accept the advice in the staff report that there are no holders of Customary Marine Title (CMT) for the area and that the Applicant has provided notice to a number of parties who have made CMT applications under the Marine and Coastal Area (Takutai Moana) Act 2011.
126. We consider the correct terminology for the proposed structure is 'wharf' under the definitions of the RCP. We use this term throughout our assessment, but we have not changed all references in the summarised evidence.

Scope of the Applications

127. We accept that the NRC's decision to accept the application pursuant to section 88 is not within the scope of this decision and was at the discretion of the NRC. However, we agree with submitters that the application documentation (as notified) was unclear and insufficient to enable a robust assessment of environmental effects. We do, however, accept that the application documentation was sufficient to enable potentially affected people to ascertain the nature, character and scope of the activities proposed.
128. We agree with the Reporting Officer that the amendments to the wharf plans, prior to the initial hearing, were within the scope of the applications as notified. This does not mean that the environmental effect of the amendments to the wharf are the same, but rather are within the scope (location, nature, character and scale) of the actual and potential effects.
129. The application documentation (dated 17 November 2017) states:
- 'This application seeks those consents to undertake foreshore erosion control earthwork, rehabilitation of the beach, and an amalgamated 35 year term resource consent for all of the existing consent activities in conjunction with a 8168 square metre capital dredging, replacement of the old wharf, floating pontoon, stormwater drain extension, dingy pull and mooring block relocation; to place all new operational maintenance equipment, security structures, navigational and work area lighting, and mudcrete grid platforms that dry at spring low tide associated with working berths along the new wharf. The slipway is not part of this consent application, as it legally stands alone pursuant to s178 of the Harbour Board Act 1950. It is therefore maintained and/or reconstructed as a Deemed Coastal permit in perpetuity. Existing wharf structures have a similar legal status but are in effect built with greater utilitarian purpose as a marina in conjunction with the old activities.'* (pg. 7) [our emphasis].

130. On the basis of this description of the activities for which resource consent is sought, we agree with Mrs Kyriak that the application explicitly states that the slipway and any reconstruction is specifically excluded from the applications. We agree with submitters that reconstruction of the slipway (below MHWS) and concreting (capping) of the slipway within the CMA is therefore not part of the application. While we did not seek any submissions in this regard, we consider it is likely the activities associated with reconstruction of the slipway and concreting the seabed within the CMA would require resource consent. We do not accept any claim that the existing slipway or wharf have any legal status beyond the existing coastal permits held by the Applicant.
131. We have considered whether the proposed subsurface erosion barrier can be considered as part of the applications. Mr Johnson stated that the subsurface erosion barrier serves two functions by maintaining the shellfish bed and preventing material build up on the ramp. He agreed with Mr Maxwell that the long-term effects are '*slightly unknown*' and '*may not act as intended*' if currents and/or morphodynamics changed significantly due to natural or unnatural circumstances. This confirms the effects are uncertain and are not necessarily positive.
132. Overall, we agree with submitters and the Reporting Officer that the subsurface erosion barrier was not part of the application (as notified) and would require resource consent to authorise its construction. We therefore find the proposed subsurface erosion barrier is outside the scope of the applications and cannot be considered.
133. We also agree with submitters that the reconstruction of the proposed jetty abutment was not applied for and the effects of the activity have not been assessed, particularly potential effects on the walkway and public access to and along the CMA. Ms Donaghy acknowledged that her assessment had not considered the construction of a new abutment for the proposed wharf, as this was unclear in the application. We find that the construction of a new abutment for the proposed wharf is outside the scope of the applications and therefore cannot be considered.
134. We do not accept the applications are for a 'replacement wharf'. It is a new wharf and pontoon structure in a new location.

Jurisdictional Matters

135. We have considered the scope of the Transfer of Powers from the FNDC to the NRC. We note that the agreement to transfer functions, powers and duties under section 33 of the RMA from the FNDC to the NRC is restricted in the First Schedule to:

'A. Resource Management Act 1991

1. *The processing, administration, and enforcement of Resource Consents for the following activities:*
 - (a) *Land use consents for the construction earthworks for earth dams;*
 - (b) *Land use consents for Private jetties and Boat Ramps that straddle cma;*
 - (c) *Costs of these services to be recovered directly from the applicant/exacerbator.'*

136. We agree with Mrs Kyriak that this does not apply to seawalls. However, we consider the existing seawall (for which consent is sought) is partly within the CMA.
137. Ms Donaghy stated that the existing seawalls are authorised by a valid land use consent from the FNDC for those parts of the seawalls which do not otherwise lie in the CMA. We accept this.
138. Ms Donaghy also clarified that the part of the existing dingy ramp above MHSW is authorised by a valid land use consent granted by NRC. She stated at the commencement of the hearing that this was within the jurisdiction of the NRC and had been considered in her assessment of the application. She acknowledged the staff report did not specify the requirement for a land use consent, but recommended it is included within the decision of the applications.
139. We accept that the required land use consent for the landward portion of the existing dingy ramp is within the jurisdiction of the NRC and that the effects of this activity have been assessed as part of the application. We consider the activity was sufficiently described to enable an assessment of the environment effects and understand the substance of the applications. We consider the form of the resource consent applied for (coastal permit or land use consent) from the NRC is important in terms of our statutory considerations. In this regard, we have focused our assessment on the substance of the application rather than the form of the resource consents required to authorise the activity. We therefore accept that an extended consent term for the existing land use consent for the landward part of the existing dingy ramp, as part of the amalgamation of the Applicant's resource consents, is part of our consideration of the applications.

Statutory Considerations

140. It is important to consider the sections of the RMA that require resource consent for the existing and proposed activities.
141. The applications for the land use activities under the jurisdiction of the NRC are pursuant to section 9 of the RMA – restrictions on the use of land. The activity for land use consent that forms part of this application is the use of land for that part of the existing dingy ramp that is located above MHWS, outside the CMA.
142. The applications for use of the CMA are pursuant to section 12 of the RMA – restrictions on the use of the CMA. The proposed activities forming part of the applications that require a coastal permit under section 12 are as follows:
- (a) Demolition and removal of the existing wharf structure, including disturbance of the foreshore and seabed;
 - (b) Erection of a new wharf structure and pontoon 5 metres north of the existing wharf and pontoon, including disturbance of the foreshore and seabed;
 - (c) Placement of a concrete grid structure and wastewater collection system, in on and over the CMA;
 - (d) Use of the concrete grid for: cleaning vessels down with low pressure water; scraping with hand tools and abrasive pads below the water line; wet sanding by hand with low pressure water (waterlines, propellers, apertures and fixtures); minor replacement and repairs to surfaces and topside including any replacement of fittings and fixture between tides; survey and inspection; and all other maintenance and repairs normally conducted at a working berth;

- (e) Use of the new wharf as a marina for temporary or permanent berthing of vessels for accommodation purposes;
 - (f) Use of the new wharf for working berths for the maintenance, repair and inspection of marine vessels;
 - (g) Capital and maintenance dredging, including the removal of seabed material and disturbance of the seabed;
 - (h) Placement of a new stormwater pipe and outlet;
 - (i) Occupation of the foreshore and seabed by the proposed wharf and pontoon, concrete grid and stormwater pipe and outlet structures; and
 - (j) An extension of the exclusive occupation area authorised by the coastal permit for the existing wharf and pontoon structure, for the use of the proposed wharf and pontoon, working berths, marina berths, concrete grid, existing slipway (and blocks), dingy pull and ramp.
143. The applications for discharge activities are pursuant to section 15 of the RMA – discharges of contaminants into environment. The existing discharge activities that require replacement discharge permits or coastal permits are:
- (a) The discharge of contaminants into air from an industrial or trade premise from boat maintenance and repair undertaken within the boatyard property;
 - (b) The discharge of contaminants into air or onto land from boat maintenance and repair activities undertaken on the slipway and in the CMA;
 - (c) The discharge of contaminants onto and into land in circumstances which may result in that contaminant entering water; and
 - (d) The discharge of any contaminant or water into water (including coastal water) associated with stormwater from the boat yard.
144. We note that while some of the resource consents sought seek to replace existing consents or to renew consent that are due to expire, the considerations required are the same as those for any new activity.

Status of the Resource Consents

145. The starting point for our assessment of the application is to determine the activity class status of the activities under the RCP and the PRP. There was agreement between Ms Prendergast and Ms Donaghy that the activities should be assessed under both the RCP and the PRP. There was also agreement that it was appropriate to bundle the consents sought into two groups for consideration – discharge permits associated with discharges to air and land associated with boat yard operation; and coastal permits for activities within the CMA.
146. Ms Donaghy stated that use of land for the part of the dingy ramp above MHWS, outside the CMA, is classified as a discretionary activity under Rule 12.7.6.3 of the Far North District Plan.

147. We note that Mrs Kyriak objected to classification of the marina development and occupation activity as an innominate activity (section 87B(1)(a) of the RMA) under the PRP and submitted a category should not be re-inserted now. She considered that it is the current policy of the PRP (as amended by s42A recommendations) that should be relevant. She also considered that occupation of the seabed should not be considered separately as an innominate activity and should be part of the consent to place, use and occupy space in the CMA.
148. We note that section 87B(1)(a) requires an application for a resource consent to be treated as a discretionary activity if there is no plan or proposed plan, or no relevant rule in a plan or proposed plan. The staff report stated that occupation of the CMA in relation to the coastal structures and the marina development is an innominate activity under section 87B(1)(a) under the RCP. We assume this means there is no rule in relation to the occupation of the common marine and coastal area.
149. We make no comment on the approach of the PRP or class status of resource consents for activities under section 12(2)(a), except that the provisions are yet to be confirmed by the plan process and may be subject to significant changes. However, we agree with Mrs Kyriak the activity of occupation cannot be separated from the erection, placement and use of the structure, which are deemed discretionary activities under both the RCP and RPRP.
150. Overall, we agree with Ms Donaghy and Ms Prendergast that the activities should be bundled as two groups of applications and considered as **discretionary activities** under sections 104 and 104B of the RMA.

Sections 104 and 104B

151. Section 104(1) of the RMA states that, when considering an application for resource consent and any submissions received, we must, subject to Part 2 of the Act (which contains the Act's purpose and principles), have regard to-
- (a) *Any actual and potential effects on the environment of allowing the activity;*
 - (ab) *Any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment offset or compensate for any adverse effects on the environment that will or may result from allowing the activity;*
 - (b) *Any relevant provisions of a national environmental standard, other regulations, a national policy statement, a New Zealand coastal policy statement, a regional policy statement or a proposed regional policy statement, a plan or proposed plan; and*
 - (c) *Any other matters the consent authority considers relevant and reasonably necessary to determine the application.*
152. Section 104(2) of the RMA states that, when forming an opinion for the purposes of section 104(1)(a), we 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'.
153. Section 104(3)(a)(ii) states that we must not have regard to the effect on any person who has given written approval to the application.

154. Section 104B of the RMA states that we may grant or refuse the application sought; and if granted we may impose conditions under section 108 of the Act.

SECTION 104(1)(A) – ACTUAL AND POTENTIAL EFFECTS ON THE ENVIRONMENT

155. The staff report assessed the following environmental effects of the application:

- Effects on Visual Amenity and Natural Character;
- Effects on Ecological and Water Quality (including kaimoana);
- Effects on Public Access and Recreational Values;
- Effects of Proposed Exclusive Occupation and Use on Public Access;
- Effects on Navigational Safety;
- Effects on Cultural Values and Interests;
- Noise Effects;
- Cumulative Effects;
- Discharge to the CMA Effects;
- Discharge to Land Effects; and
- Discharge to Air Effects.

156. We are required to consider the actual and potential environment within the context of the existing environment, including the activities authorised by the resource consents. The existing consents held by the Applicant and the nature, character and scale of effects of the activities authorised form part of our consideration of the existing environment.

157. We have carefully considered the scope of the existing resource consents, and the content and effect of the conditions of these consents (both separately and in combination) in forming our view of the existing environment to enable consideration of the actual and potential effects of the resource consents sought on this existing environment. In this regard, we find the following on the basis of the conditions of the existing consents:

- (a) The existing wharf can be used for the survey and inspection of vessels, and gridding of vessels for maintenance, marine brokerage of vessels for sale and/or charter in conjunction with the boatyard office;
- (b) The existing wharf can only be used for permanent mooring (for longer than 12 hours per seven day) for repairs and maintenance or survey work that, because of the nature of the work, requires a vessel to be at the wharf for a longer period;
- (c) The pontoon can only be used for casual berthing;
- (d) The existing area identified for maintenance dredging is limited to a small area (approximately 7 metres x 17 metres) at the end of the existing slipway adjacent to the wharf pontoon and can only be undertaken at low tide, using silt screening;
- (e) Dredge material must be disposed of at an approved land-based disposal facility;

- (f) The wharf cannot be used for the cleaning down, or the preparation or painting of vessels hulls;
 - (g) No discharge of contaminants into the CMA or coastal waters is permitted at the wharf from the cleaning of vessel hulls below their water lines, except for the *'controlled removal of marine growths from limited areas of the vessel (for example, skin fittings, propellers or zinc blocks) associated with minor maintenance, where all marine growths that is removed is contained and disposed of to an approved land-based facility'*;
 - (h) The existing 'boundary of occupation area' includes the existing wharf and pontoon and adjacent berth space around the structure (excluding the foreshore to the north of the structure), the existing slipway (including a strip three metres south of the slipway), and the dredge area;
 - (i) The Applicant has the exclusive occupancy of the area identified by the 'boundary of occupation area' on Plan 3231c (attached to the NRC consents) and shall allow reasonable public use to and through this area and reasonable public access to and use of the wharf and pontoon structures;
 - (j) Waste collection facilities shall be provided on the wharf and all waste material removed from the CMA;
 - (k) The 'offensive odour boundary' of the expiring air discharge permit boundary extends over the entire boatyard property, the entire esplanade reserve area, and the CMA from approximately ten metres north of the existing wharf to the south boundary of the reserve, extending past the approximately three metres seaward end of the pontoon;
 - (l) Only treated wash down water can be discharged to the CMA; and
 - (m) A change of conditions to Coastal Permit AUT.008270.01.02 is required for the for the Great Escape pontoon to be located on the southern side of the proposed wharf.
158. We have paid particular attention to the consents sought and the effects of these proposed changes to authorisations sought compared to the effects of the activities authorised by the existing consents.
159. We accept the advice of Ms Donaghy that there is no permitted baseline under the RCP for the demolition and reconstruction of the existing wharf structure in the same footprint. We note her advice that the PRP provides for the demolition and reconstruction of the existing wharf as a permitted activity under Rule C.1.1.7 provided the new structure is in the same location and footprint as the original structure. We accept that the activity status is set at the time the applications were lodged under the operative RCP. For completeness, we note that the proposed wharf is approximately five metres north of the existing wharf and is not within the same footprint. We have not applied any permitted baseline for these reasons.
160. Overall, we accept that noise effects associated with the demolition and construction activities can be avoid and mitigated with the imposition of conditions controlling the hours of operation and the appropriate noise standard (NZS for construction noise). We consider there would be additional noise effects from using the wharf as a marina, however, we consider this is not likely to be significant given the noise effects associated with people staying on boats in the mooring area adjacent to the wharf and the significant number of moorings.

161. We accept the evidence provided by the Applicant and the Harbourmaster that any adverse effects of the proposed dredging on the public mooring area and navigational safety can be mitigated by the implementation of the Applicant's 'Mooring and Vessel Management Plan'.
162. On the basis of the evidence before us, we have focused our assessment on the following potential and actual environmental effects, which formed the basis of much of the evidence presented during the hearing:
- Effects on visual amenity and natural character;
 - Effects on air quality and amenity;
 - Effects on ecology and water quality (including kaimoana);
 - Effects on public access and recreational values;
 - Effects of proposed exclusive occupation and use on public access;
 - Effects on cultural values and relationships; and
 - Cumulative effects.
163. We consider the key actual and potential environmental effects in relation to the discharge activities and coastal permit activities below.

Discharges into Air

164. The key concerns raised relate to adverse effects on the use and amenity of the reserve and walkway and the CMA. Concerns were raised in relation to potential health effects of dust and spray drift, and the contamination of land within the reserve and the CMA.
165. The Applicant provided an Air Quality Assessment by Mr Peter Stacey, Principal Air Quality Consultant for AECOM New Zealand Limited (dated 9 July 2018). In summary, the assessment concluded:
- (a) There is unlikely to be any nuisance effects from water blasting, sanding or grinding activities, based on an eight-day particulate monitoring study;
 - (b) The results of atmospheric dispersion modelling determined that volatile organic compounds (VOC) concentrations at nearby residences and at the reserve to the south, were typically below accepted international air quality assessment criteria designed to protect human health;
 - (c) Concentrations of hexamethylene isocyanate have the potential to exceed health-effect assessment criteria when the wind is blowing from the northern quadrant, therefore it is recommended that use of paints containing this compound are limited during these periods of time; and
 - (d) Overall, there is limited potential for VOC from the application of antifouling and painting to cause human health effects, particularly given the limited duration that this activity takes place.

166. Mr Stacey recommended that electric sanding, grinding and spray coating operations should only be undertaken over impermeable surfaces and when the wind speed is between 0.5 metre per second (m/s) and 5 m/s (as a 60 second average). He also considered that the application of antifouling and paint should only be undertaken when the wind speed is greater than 0.5 m/s and when the winds on the slipway are from the northeast to south. We note that Ms Donaghy recommended a condition based on these recommendations.
167. Mr Stacey noted that dry abrasive blasting is no longer undertaken at the boat yard.
168. Mr Stacey considered the use of mitigation screens during water blasting to be unnecessary given limited potential for dust nuisance, and suggested that provided the water is free of significant impurities, there is limited potential for effects from water blasting activities.
169. Ms Donaghy disagreed noting that while this may be the case for 'health effects', there was potential for adverse amenity effects and offensive effects given the proximity of the reserve and public walking track, and noted this is supported through the evidence of submitters. She stated the suggested advice note by Mr Stacey that '*water vapour associated with water blasting activities at or beyond the site boundary is not considered to be offensive or objectionable*' is not supported. She recommended that temporary screens should be required at all times during high pressure water blasting to mitigate the effects of spray drift on the reserve.
170. Ms Donaghy noted that the AECOM assessment did not address the amenity effects of spray drift from water blasting activities. She considered that the potential for offensive amenity effects required mitigation.
171. The Tonkin and Taylor review of the AECOM assessment by Ms Simpson highlighted that the air effects assessment had focused on 'off-site' effects, meaning effects beyond the identified offensive odour boundary. She noted the particulate monitoring undertaken by the AECOM indicated that scraping and grinding were the activities that generated the highest concentrations of particulate. She noted that AECOM had not considered the potential for exposure to contaminants in dust from anti-fouling paints, but that a consent condition is proposed to require the use of vacuum attachments for grinders and sanders used for the preparation or smoothing of anti-fouling.
172. Ms Simpson agreed with AECOM that the majority of the particles generated would fall to the ground close to the source and would not cause a dust nuisance at the nearest dwelling. However, in the absence of further data, she considered there is potential for short-term elevated concentrations of dust within the reserve at levels that could cause nuisance effects, depending of the frequency of sanding and grinding activities (estimated to occur for 1-2 hours a day on up to 40 days a year) and the pattern and frequency of use of the reserve. She noted this had not been assessed by AECOM because the reserve is within the proposed offensive odour boundary.
173. Ms Simpson noted the potential for water blasting to dislodge larger flakes of material compared to grinding and sanding activities, and that the distance particles could travel would be in the order of five to ten metres from the source. She acknowledged that people in the reserve would be unlikely to remain in the reserve if they were getting wet and this would limit any time of exposure. She considered the description by Mr Stacey of the plume from water blasting as 'water vapour' was inaccurate because it is not in the gaseous phase and is technically a component of the

- particulate matter emissions (including both solid and liquid particles). She considered the water mist was unlikely to contain appreciable contaminants, but is likely to have visual effects and nuisance effects on users of the reserve.
174. Ms Simpson stated that several aspects of the dispersion modelling of estimated VOC emissions from the application of anti-fouling coating and paint undertaken by AECOM were not consistent with good practice and should therefore be considered as a 'screening assessment' only. She noted that the AECOM assessment considered the health effects of exposure to VOCs, but not potential odour effects. However, she considered there was enough information to understand the potential air quality effects of anti-foul and paint coating activities based largely on a qualitative assessment. She noted that using less than 10 litres of paint or antifoul on less than 40 days per year (as estimated by the Applicant) was 'small' and is the key mitigation measure for effects.
175. Ms Simpson noted the AECOM report indicated that boats are painted at the site approximately four times a year with a total usage in the order of 30 litres of paint each year. She considered this was of such a small scale that the potential for off-site effects is negligible. To address the potential effects of spray painting diisocyanate coatings, she considered it would be appropriate to maintain a 15 metre exclusion zone around the activity to minimise exposure to people in the reserve. She considered odour effects were unlikely at residential dwellings, but are likely to be noticeable in the reserve. Again, she noted that the extent to which there would be an offensive or objectionable effect of odours in the reserve depended on the patterns of use of the reserve and the frequency at which the discharge coincides with people being present.
176. Ms Donaghy highlighted the 15 metre exclusion zone recommended by Ms Simpson and supported by Mr Stacey specifically related to the spray application of surface coatings containing diisocyanates. She noted while this exclusion zone would have an adverse effect on the amenity of the reserve, it was estimated to only occur approximately three times a year.
177. Mr Stacey commented on Ms Simpson's review and highlighted the points of agreement. He outlined a range of mitigation measures that should be used to control the air discharges, including wind speed restrictions for sanding and grinding, and the use of vacuum attachments; wind speed and direction restrictions on the spray application of antifouling paint; and the use of screens during water blasting activities. He considered the use of screens would not completely mitigate spray drift, would be impractical and would potentially cause visual effects. He considered that water blasting was unlikely to pose any health risk, as long as the water use met New Zealand Drinking water standards. He considered the main risk was of 'wetting' people using the walking track and those using the reserve within 15 metres of the activity. He stated that while he did not have sufficient expertise to comment on potential amenity effects associated with the spray drift, the effects were likely to be similar to those of ornamental water fountains and automatic watering systems.
178. Mr Stacey clarified that 'off-site' for the purposes of his assessment meant 'areas beyond the boat yard and slipway discharge boundaries' and not the proposed offensive odour boundary. He disagreed with Ms Simpson on the need for the use of tarpaulins to control dust discharges, based on the results of the monitoring undertaken within 3 metres of the activity, and considered their use would be impractical and difficult. He agreed that a 15 metre exclusion zone around boat yard activities would be prudent to protect public safety during spray painting.

179. At the end of the reconvened hearing Ms Donaghy, remained of the view some form of screening was required to mitigate the adverse effects of water blasting activities undertaken on the slipway within the reserve. She noted that the AECOM response recommended the erection of a sliding screen which required placing structures (posts) in the reserve and adjacent to the public walking track. She considered this was not appropriate given it is uncertain whether this is achievable and may require an easement. She noted she also did not support the AECOM recommendation to limit the use of screens during certain wind speed and directions, as it would be difficult to monitor.
180. Ms Donaghy highlighted that Ms Simpson had recommended the use of tarpaulins or sheeting to enclose dust generating activities, but that Mr Stacey disagreed based on the monitoring. Ms Donaghy accepted that the use of dust tarpaulins would be impractical and difficult, and considered a condition requiring an attached dust collection device would mitigate dust emissions. She noted the Environmental Protection Authority's requirement for a 'controlled work area' to prevent overspray entering the environment, measures to warn people of the activity, and the collection and removal of old antifouling paint.

Evaluation

181. We accept the evidence that there is no potential nuisance from dust or contaminants entrained in water droplets at the nearest house.
182. We accept the evidence that discharges into air from the application of solvent-based surface coatings using a roller or brush, and grinding and sanding activities (with the use of vacuums) are unlikely to have adverse effects other than localised odours and dust (within five to ten metres of the source). We therefore consider the Applicant undertaking such activities within the boundaries of the boat yard property would be unlikely to result in any nuisance odour effects within the reserve and CMA beyond five to ten metres from the boat yard boundary. While we acknowledge this could have adverse effects on the amenity and use of the adjacent reserve and beach, we consider this would be limited to a strip of the reserve along the eastern boundary of the boat yard. On the basis of the evidence presented, this would warrant an offensive odour boundary extending no further than ten metres from the boundary of the boat yard property.
183. We accept the evidence that the application of solvent-based surface coatings using a roller or brush and grinding and sanding undertaken on the slipway within the reserve has the potential to cause nuisance odour and dust effects up to five to ten metres from the source. We find that this is likely to result in nuisance odour and dust effects on the amenity and use of the northern half of the reserve and the walkway, extending to the CMA boundary. We consider this to be more than a minor effect and potentially a significant adverse effect when painting and sanding and grinding activities coincide with high public use of the reserve. We do not accept that the significance or level of adverse effects is reduced by the 'small' number of boats serviced, rather the probability of significant adverse effect occurring is reduced. We consider that conditions restricting activities on the slipway in certain wind speeds and directions would be problematic to implement and difficult to enforce, and would not avoid adverse effects on users of the reserve. We also have doubts that a vacuum attachment can be utilised with mechanical grinders. Overall, we find that application of solvent-based surface coatings using a roller or brush, and grinding and sanding activities undertaken on the slipway within the reserve has the potential to cause nuisance odour and dust effects on users of the reserve that are potentially significant.

184. We accept the evidence that the spray application of coatings has the potential to cause adverse odour effects and that the spray application of coatings containing diisocyanates can cause adverse health effects within 15 metres of the source. We were told by the air experts that this warranted implementation of a 15 metre exclusion zone to protect people's health. We have considered the effect of this exclusion zone on the amenity and use of the reserve and CMA, and find that such as requirement for activities undertaken on the slipway would exclude public use and enjoyment of a large portion of the reserve and would extend to the walkway and beach. We consider this would have a significant adverse effect on users of the reserve and it is not mitigated by the 'small' number of days it occurs. We also note that implementation of an exclusion zone would require signage and temporary barriers, which we consider is undesirable and it is uncertain if such measures would be allowed within the reserve, even if infrequent. Therefore, the implementation of such mitigation depends on factors outside of the Applicant's control.
185. On the basis of the evidence presented, we consider the spray application of antifouling paint within the boat yard could potentially be undertaken with minor adverse effects on the reserve if it was undertaken in a 'controlled work area' in compliance with the relevant Environmental Protection Authority rules and regulations. We have no evidence the boat yard has a compliant controlled area for spray painting or that activity can be undertaken away from the boat yard boundary with the reserve. On our site visit we only saw a tent structure, which was obviously not sealed.
186. We consider undertaking water blasting activities on the slipway within the reserve and CMA is currently adversely affecting amenity and people's use and enjoyment of the reserve and beach, and the walking track. These are not potential effects; the evidence shows these are actual adverse effects of the existing water blasting activities undertaken on the slipway within the reserve. The photographs and videos provided show water spray drift extending over large areas of the reserve, people moving to avoid spray drift, and people waiting for the activity to stop before using the walkway. We do not agree that this is acceptable based on the 'small' number of boats serviced each year. We consider water blasting activities have a significant adverse effect on users of the reserve and the public's access to and along the coastal environment.
187. We accept the evidence that water spray drift is unlikely to cause health effects. However, we consider the spray contains small particles of marine debris and contaminants from surface coatings. We consider it is ludicrous to liken the effects of spray from water fountains and irrigation systems to that associated with water blasting boats in need of maintenance and repair. It also results in contaminants entrained in the water being dispersed some distance across the reserve, outside of area currently covered with plastic material. In our view, it is likely the soil in the reserve, adjacent to the slipway, is likely to have been contaminated by activities undertaken on the slipway.
188. Overall, we agree with submitters that such activities should be undertaken within the boat yard or on a purpose-built facility where effects can be controlled so as to avoid or mitigate adverse air effects. We note that the existing FNDC land use consent requires the use of screens and that this has not been complied with. This confirms the use of screens is impracticable and would require the erection of further structures within the reserve to implement effectively. The approval for such structures is outside of the Applicant's control. Furthermore, the evidence of Mr Schmuck and Mr Stacey questions the effectiveness of such measures.

189. We remain unconvinced that a resource consent for a discharge to air in the CMA is required given the limited scope of activities that are currently permitted at the wharf and those that are proposed at the new wharf. Mr Schmuck referred to the occasional brush application of paint to the decks and interiors of boats at the wharf and the potential for nuisance odours. We do not consider this type of activity is likely to require consent and note that the wharf is not 'an industrial or trade premise' under the definition in the RMA, as the boat yard property is.
190. We do not accept that the proposed 'offensive odour boundary' would provide sufficient protection of the Walls Bay air quality and amenity, nor does it reflect the concept a reasonable 'zone of non-compliance' from the source of the air discharge activities.

Discharge onto Land in Circumstances where it may enter the CMA and Coastal Waters

Discharge of Treated Stormwater into the CMA

191. A key concern of submitters in opposition to the applications is the lack of adequate control and treatment of the discharges of contaminants onto land and into water. Evidence was provided showing direct discharges of wastewater to the CMA (running down the slipway), discharge onto permeable surfaces in the reserve, lack of controls to collect waste material and debris, and poor stormwater management. Concerns were raised regarding existing water quality effects and sediment contamination, and the need to protect public health and marine life.
192. Ms Marks and the Clark family raised concerns regarding adverse effects on cultural values and relationships from degraded water quality and heavy metal contamination, particularly in relation to their ability to harvest kai moana and exercise kaitiakitanga.
193. In particular, Ms Johnston was concerned about contamination of nearby shellfish and that the number of people harvesting shellfish in the area is unknown. She considered it was not good enough for the Applicant to attribute this to historical activity. She considered it was not accurate to purport the contaminants had come from some other runoff (road surfaces) given lower levels of contaminants on the closest roads.
194. The application stated:
- 'As for DISCHARGE effects, disposal of marine maintenance discharge activities on the adjoining site of the proposed structures in the CMA are now redirected to the new Opuia high-pressure sewer scheme that became operational in early September 2012. The parameters of discharge on the new structures will remain associated with those operational consents that already exist and are therefore examined in the AEE.'* (pg. 5)
195. The letter and attached information and plans from Mr Papesch provided an overview of the application site in its present form and recommendations for any remediation or improvements required. The letter stated:
- 'During the site walkover survey localised areas of visual and olfactory evidence of contamination was observed including:*
- *Staining of surface soils at the site of the winch and along the line of wire rope;*

- *Staining of surface soils and diesel odour at the location of the diesel drum storage;*
 - *Anticipated elevated contaminants within areas of vessel maintenance.'*
196. Mr Papesch stated that the area subject to trade waste collection is limited to a 400 m² area directed to the turntable sump and 60 m² to the slipway weir. On the basis of hauling approximately 30-35 boats per year, as advised by Mr Schmuck, he estimated the total trade waste per year is in the order of 500 m³ per year (30 m³ of washdown water and 470 m³ of stormwater infiltration). He stated the existing treatment system provides basic settling through a series of tanks, which is not considered adequate to achieve modern compliance for coastal water discharges to meet the NRC rules or ANZECC guidelines⁴. However, he noted the existing treatment system discharges to the public sewer and therefore a more detailed investigation was not warranted.
197. In relation to stormwater infiltration into the trade waste system and the risk of overwhelming the sewerage pump station, Mr Papesch recommended further stormwater attenuation be built into the system by way of incorporation of a stormwater detention tank. He estimated a 9,000 litre detention tank with a designed orifice would be sufficient for up to a 120 minute duration storm for a 1 in 5 year event.
198. In relation to the 'localised zinc and copper contamination' recorded on 20 June 2018 within the stormwater discharge, Mr Papesch stated this had 'been addressed through better site management via improved collection and discharge to the sewer system'.
199. Dr Brown considered the boat yard was a well-managed facility and that improvements to the system since 2002 have reduced the potential for contaminants to reach the CMA. He considered the boat yard activities were likely to be only a small contributor of the overall contaminant load in the wider area.
200. Mr Poynter noted that any compliance limited for copper and zinc concentrations in sediments needed to reflect the localised elevated background concentrations. He considered that with improved controls over runoff from the boatyard and other local sources, a progressive reduction in contaminant concentrations over time can be expected.
201. Correspondence provided by Ms Donaghy from Mr Eyre (15 May 2018) stated the current layout of the slipway needed improvement and was not considered best practice. He noted that the existing consent did not require all stormwater from the boat yard to be treated and recommended any new consent state that all stormwater is treated before discharge. He noted that it was a condition of consent that all debris must be collected and removed from the slipway at the end of each day. He noted the evidence of submitters showing breaches and said these had been followed up and that the requirement is accepted by Mr Schmuck.
202. In response to correspondence with Mr Eyre, Mr Schmuck stated (email dated 24 May 2018) that:

⁴ Australian and New Zealand Guidelines for Fresh and Marine Water Quality, August 2018.

'to mitigate discharge from the impermeable surfaces of Area 'A' and the adjacent slipway corridor he would have the shunting system of any potential overflowing sump contents hooked up to the CSW treatment system by noon tomorrow. This, then, will control approximately 120 square metre of water shed above the CTS sump collection system that will run 24/7'.

203. In further correspondence, Mr Eyre noted the high levels of copper and zinc in the boat yard stormwater on 20 June 2018 and considered it was similar untreated stormwater found at other boat yards. He highlighted that there was a noticeable increase in copper and zinc concentrations downstream of the boat yard compared to upstream, despite elevated levels upstream. He considered this showed the existing stormwater treatment system is not operating efficiently. He noted problems with establishing compliance with receiving water standards without the imposition of a point of discharge standard. He noted the importance of documenting and detailing the existing system and the need to ensure all stormwater from the yard is directed through the treatment system. He considered the current consented system was unclear.
204. Ms Donaghy recommended that the alterations to the stormwater and wastewater systems recommended by Mr Papesch should be reflected in the conditions of consent and required within six months of the commencement of the consent.
205. Mr Griffiths commented on the sediment contaminant levels and considered some of the sampling sites (ISL, M, I3 and S3) showed concentration levels where you would expect to observe impacts on marine organisms and ecological communities. He noted that with the exception of sampling sites S1, S2 and SC, contaminant levels recorded were well above levels recorded in the NRC state of the environment monitoring in the Bay of Islands. He did not agree with the statement that in the 4Sight Report that the contaminant load found was as the result of historical activities and that DOBY was likely to be only a small contributor to the overall potential contaminant load in the wider area. He considered that the recent compliance monitoring shows the concentrations of metals in the discharge from the boat yard are high and suggest the current activities are continuing to contribute to high levels of metals in Walls Bay.
206. In submissions in reply, Ms Prendergast submitted it is not credible that the contamination of the reserve and Walls Bay has occurred solely as a result of Mr Schmuck's boatyard activities. She noted that uncontrolled boat maintenance activities on the unformed road were common occurrences since the 1960s and that proof of historical contamination can be seen by the sediment sampling results for Site I3. She referred to earthworks undertaken in the 1960s to create the platform to create the slipway and the evidence of Mr Sharp that this went into the CMA.
207. Ms Prendergast highlighted that NRC compliance monitoring of the stormwater discharge and the receiving waters shows elevated levels for copper and zinc upstream of any discharge from the boatyard. She submitted that this indicated upstream contamination either by natural or unnatural causes, and noted this was acknowledged by Mr Eyre when he commented that proposed compliance limits may be unrealistic. She highlighted the Hill Laboratories water quality analysis attached the AECOM report that shows that spring water used by the boatyard for water blasting has ten times more copper than the proposed compliance level in the discharge. She submitted compliance limits need to reflect upstream water quality and questioned why the proposed heavy metal levels differ to the Water Quality Standards set out in Rule D.4.3 of the PDP.

208. Ms Prendergast stated that the alterations and amendments to the discharge of wastewater and stormwater systems recommended by Mr Papesch would be partially implemented (installation of a 9,000-litre detention tank), but that the upgrading of the wastewater treatment system is dependent on the reconstruction of the slipway, the grant of earthwork consents, and to some extent the outcome of the processes surrounding the recent Court of Appeal decision. She therefore proposed an alternative condition requiring the upgrades (excluding the detention tank) to be completed within two years of the commencement of the consent or at the time of reconstruction of the slipway.

Evaluation

209. The discharge permits sought are for the existing stormwater and wastewater collection and disposal systems.
210. The evidence shows the existing stormwater management measures are inadequate and stormwater treatment systems rely on basic settling of contaminants. Stormwater management is currently limited to diverting flow away from work spaces where trade waste is generated. The evidence of Mr Papesch confirms that the existing system is not adequate to achieve compliance with water quality standards.
211. The evidence shows that wastewater is not adequately contained and collected to ensure all contaminated material is disposed of or pumped to the reticulated sewerage system. Untreated wastewater can and does discharge onto land and into the CMA.
212. We find there is no basis on which Dr Brown has formed his opinion that DOBY is a well-run facility in terms of the discharges, other than on the claims of Mr Schmuck and consider his opinion to be outside his area of expertise.
213. We have not been provided with any plans or details of how the existing stormwater management and treatment systems will be upgraded or the level of treatment to be achieved, except for the recommendations of Mr Papesch and the Applicant's commitment to implement these within two years of the commencement of the consent or the completion of the reconstruction of the slipway. Mr Schmuck relies on the 'slipway refurbishment' to address this, after the discharge permits are in place. No details of the slipway refurbishment were provided to demonstrate how stormwater management will be improved and how the wastewater collection and reticulation to the reticulated sewage will be managed. No details were provided for the refurbishment of the slipway for the portion below or above MHWS.
214. The recent compliance monitoring undertaken by NRC shows that the existing stormwater management and treatment is inadequate and that high levels of copper and zinc are running off the boatyard site and into the CMA. Mr Eyre's correspondence also raising concern that the existing limits and standards for the discharge and receiving water quality may not be appropriate and that monitoring is problematic without the ability to sample at the point of discharge. We have no confidence in the existing stormwater management and treatment system. We have no evidence to support the premise that the conditions and limits of the existing discharge permit are sufficient to avoid and mitigate adverse effects of the receiving environment. In fact, the conditions they seem somewhat aspirational, and in light of the evidence, ineffective. There is no evidence to support Dr Brown's claim that improvements will result in the progressive reduction of contaminants released to the CMA.

215. The sediment sampling undertaken indicates heavy metal contamination of beach sediments around the slipway, with a decreasing gradient with increasing distance. This shows that a point source discharges near the boat yard activities are resulting in localised contamination of sediments in the CMA, at levels which are likely to be having observable adverse effects on marine organisms and communities. We consider this is most likely to be from discharges to the CMA from activities undertaken on the slipway and the exercise of the existing discharge permits. While we accept DOBY would be a small contributor to the sediment contaminant load to the receiving environment, we consider DOBY would be the primary contributor to the heavy metal contaminant load at Walls Bay.
216. The preliminary investigations indicate localised surficial contamination of the sediments immediately around the slipway and southern wharf berth. We consider this does not fit with Ms Prendergast's theories of contamination from historical use and sediment disposal into the CMA associated with earthworks or road works. Elevated levels of lead do not fit with Ms Prendergast's theory of elevated copper and zinc concentration from other source upstream of DOBY and cannot be dismissed as likely to be from historical use of the slipway. The evidence shows untreated stormwater from the boat yard is discharged into the CMA; and untreated wastewater, marine debris and paint particles are discharged to the CMA both directly from the slipway and sump, and indirectly from the impervious surfaces of the slipway and reserve.
217. We do not consider the adverse effects of discharge activities occurring on the slipway, within the reserve, can be sufficiently contained and controlled without a large impermeable concrete (or similar) surface with bunding, a sufficiently sized sump, collection of overflows, clean water diversion drains above the boat yard, a stormwater interception drain along the eastern boundary of the boat yard and sufficient storage to meet any capacity restraints of the reticulated sewerage system. We consider the slope of the existing slipway results in direct discharges into the CMA and makes containment and collection difficult.
218. In our view, use of the black plastic material and the existing sump and float switch pump are woefully inadequate to avoid any discharge of contaminants onto land and into the CMA. We are in no doubt that significant discharges of contaminants into the CMA occur frequently both directly and indirectly. The photographic and video evidence of submitters clearly show the extent of effects on the reserve and walkway from water blasting activities and widespread contamination from paint and debris particles on the slipway both within the reserve and the CMA. We consider this is not authorised by the conditions of the existing consents and the effects are unacceptable.
219. We agree with the majority of submitters and the Reporting Officer that boat yard activities should be undertaken within the boatyard in enable sufficient containment of discharges to land and air. In our view, at this site, this would require additional concrete (or similar) surfaces and bunding, clean water diversion drains, overflow cut off drains, and upgraded sumps and pumps. We note the recommendation of Mr Papesch is for treatment of stormwater by a typical boat yard system such as 'Stormwater360' and diversion of the treated stormwater to the local network. However, this is not what is proposed.

220. We do not accept that the existing contamination of the sediments in the receiving waters is addressed by the Applicant and it makes compliance limits based on marine species protection levels difficult to impose. We do not consider this can be addressed by an advice note acknowledging that copper, zinc and lead concentrations in the immediate receiving environment exceed levels for protecting marine life.
221. Overall, on the basis of the evidence before us, we find that the existing discharges onto land and into the CMA from boat yard activities are resulting in significant water quality effects in the receiving environment. We consider the evidence presented showing ongoing poor control and management of wastewater and stormwater, and poor management, storage and removal of contaminated waste is likely to be the primary cause of sediment contamination around the slipway and wharf berths. The evidence suggests this contamination is at levels that are likely to be having observable adverse effects on marine organisms and ecosystems.
222. The evidence provided and the conditions proffered by the Applicant in relation to upgrading the existing wastewater and stormwater systems are not sufficient to protect the environment or to assess the likely effectiveness of the improvements.
223. We find that the discharges from activities undertaken on the slipway are resulting in significant adverse effects on the quality of the receiving environment, and cultural values and relationships. We do not consider there is enough information to make a finding on the potential adverse effects on public health from contact with polluted sediment or the harvesting of kai moana in the immediate vicinity of the slipway and wharf. In our view, this should be investigated further.

Coastal Structures and Dredging

224. The key concerns of submitters in relation to the proposed coastal structures (excluding use and occupation which is addressed separately below) and dredging relate to the removal and disturbance of the seabed, water quality impacts, ecological effects, effects on cultural values and relationships, effects on natural character, and effects on public access to the walking track and to and along the CMA.
225. Concern was raised that dredging would cause hydrological effects that would exacerbate coastal erosion of the beach and walkway, and destabilise the existing shellfish bed.
226. Concern was raised that the construction or replacement of the wharf abutment will adversely affect public access to the walkway and that there is no detail provided as to the design or how the construction works will be managed.
227. Concerns were raised regarding the visual effects and effects on natural character from moving the wharf further north, closer to the rocky and bush clad shoreline. Further concerns were raised in relation to the visual and natural character effects of the proposed concrete grid (and mudcrete grid below) and concreting the slipway and seabed to cap contaminated sediments.
228. In relation to these potential effects, the application stated:
- 'As for ECOLOGICAL effects, the activities of dredging and structural constructions will have no more than minor impacts on the surrounding environment when properly controlled so that the impact on tidal, subtidal and benthic habitats is limited or minor in their effects.'*

As for HYDROLOGICAL effects, the proposed dredging cuts and batter angles have been designed to reduce the effects of sediment deposition and erosion in the area. As well as any long shore drift or swash that is naturally occurring. A Mike 3 dredging model was developed to verify this design.

As for CULTURAL effects, the activities will have no known impact on any cultural or ethnic relationship with the Marine and Coastal Area (CMA) that does not already exist within the functions of the resource consents. Nor are there any fisheries that are within the associated footprint or extended site of the proposed dredging.’ (pg. 4).

[...]

‘As for INTER-TIDAL effects, previous Regional Council evidence has shown that effects on inter-tidal flora and fauna were not overly affected by the current activities including maintenance dredging in an area at the end of the slipway and wharf.’ (pg. 5)

229. The Ecological Survey (dated April 2018) by Dr Brown documented a survey undertaken to characterise the populations of edible shellfish on the beach adjacent to the boat yard operation in terms of density and size frequency, to establish whether there was a harvestable shellfish bed at the site; and a sediment quality survey to establish the levels of contaminants in three broad zones (the immediate vicinity of the slipway, the area to be disturbed by dredging, and at ‘background’ or ‘control’ sites adjacent to the proposed dredge area and at points some distance from the boat yard operation).
230. The results of the ecological survey indicated the presence of a small shellfish population on the beach adjacent to the boat yard operation comprised of pipi and cockle. The report stated that the beach survey indicated the pipi population is harvestable, but the cockle population is not. It noted the size frequency distribution of the pipis indicated a stable bed, with relatively light and infrequent harvesting.
231. The results of the sediment quality sampling at the slipway site (‘SL’) indicated ‘significantly elevated levels of copper and zinc’ (relative to ANZECC Interim Sediment Quality Guidelines (ISQG) 2000). The report stated that copper concentrations at site SL exceeded the ISQG high trigger values at which there is a 50% risk of an effect on living organisms based on toxicology tests and that these levels would be regarded as ‘polluted’ sediment; and zinc concentrations at site SL exceeded the ISQG low trigger value at which there is a 10% risk of an effect on living organisms for zinc and would be regarded as ‘moderately polluted’ sediment. The report stated that the high levels of these contaminants did not extend to the sampling sites located 40-50 metres from the slipway or sub tidally within the proposed dredge area.
232. The further Ecological Assessment (July 2018) provided by Dr Brown included an additional ecological survey (conducted on 31 May 2018); surficial sediment sampling; sampling of infaunal communities within the intertidal and subtidal areas of the proposed dredge area to describe the biota present; and a desktop search of available hydrodynamic information and deployment of three ‘drogue oranges’. In summary, the report concluded:
- (a) The effects to the subtidal and intertidal biota from the proposed structural and dredging works are expected to be no more than minor;

- (b) Ecological effects associated with the installation of the erosion barrier are expected to be no more than minor;
 - (c) While the pipi population is potentially vulnerable to the effects of sedimentation the risk is low due to the small scale of the dredging and deployment of a silt curtain;
 - (d) There is likely to be some increase in turbidity in the water column resulting from the suspension of fine silts and clays during dredging, however, this is insignificant in the context of the wider environment and is unlikely to disperse far beyond the close vicinity of the operations;
 - (e) Sediments on the beach near the slipway and extending along the beach are contaminated with elevated levels of copper, zinc and lead that will be disturbed during dredging and resuspended within the water column. However, most of the contaminated sediment will be removed and disposed of at an authorised site on land. On balance, the effects from the proposed activities in terms of contaminants are expected to be no more than minor;
 - (f) Low current speeds and limited capacity for sediment transport predicted in the vicinity of the proposed dredging area indicate localised potential for dispersal of suspended sediment and associated contaminants;
 - (g) Analysis of the heavy metals in shellfish flesh found no evidence of accumulation of heavy metals in pipi collected from adjacent shellfish beds; and
 - (h) The proposed activities can be undertaken with short-term and minor ecological or water quality effects confined largely to the immediate works area.
233. The Addendum to the staff report noted the review by Mr Griffiths was largely supportive of the conclusions reached by Mr Brown in relation to dredging effects, with additional controls for the protection of water quality and the shellfish bed (including a dredging closed season). However, Mr Maxwell and Mr Griffiths did not support the construction of a subsurface erosion barrier due to the disturbance of the pipi bed and the potential for unintended consequences. They therefore remained concerned that the steepness of the proposed dredge batter could potentially adversely affect the stability of the shellfish bed.
234. Mr Griffiths stated that care needed to be taken in selecting a disposal site for the dredge material given the contamination measured. He broadly agreed that as long as the operation is well managed, a silt curtain is deployed and a closed season for pipi and cockle spawning (October – January inclusive) is imposed, the adverse effects are likely to be localised and of relatively short duration. Mr Griffiths agreed that the taxa found in the footprint of the dredge area are common and widespread species in the Bay of Islands; and are likely to recolonise relatively quickly with a similar ecological community. He agreed that the sediment released from the dredging was relatively small and short in duration in the context of the sediment discharged from the Kawakawa and Waikare catchments.
235. Ms Prendergast submitted that concrete capping of the slipway is consistent with capping contaminants in soil which is an approved method.

Evaluation

236. The application, as notified, was extremely limited in terms of an AEE. We find the general statements in the application documents regarding the potential effects of the activities proposed (as set out in paragraph 228 above) to be inaccurate and unsupported by evidence. The assessments in the application are assertions by Mr Schmuck based on his observations. For example, we were told that previous dredging was limited to a small area at the end of the slipway and that it had not been undertaken in accordance of the resource consent for more than ten years. In our view, this does not demonstrate that the effects of proposed capital dredging will be 'less than minor'.
237. The new location of the wharf necessitates dredging of the seabed to the north of the wharf, and the plan indicates the dredge area batter slope will extend to the intertidal zone. Dredging around the wharf and pontoon includes all of the seabed to the south of the wharf to the work boat pull. The dredge area batter slope to the south is steeper than the northern batter and extends into the shellfish bed. We were told approximately 5% of the shellfish bed would be disturbed by the dredging. We consider the direct impact on the shellfish bed is likely to be more than minor, and that indirect effects from sedimentation and instability of the seabed from the steep batter are uncertain and potentially significant. Overall, we agree with Mr Clark that dredging into the intertidal zone and the shellfish bed could potentially have significant adverse effects on the stability of the shellfish bed and should be avoided.
238. The dredging will result in the disturbance and removal of approximately 4,526 m² of seabed and 4,329 m³ of seabed respectively. This will result in the total loss of the benthic organisms which reside in the seabed sediments and localised adverse effects from sedimentation and decreased water quality. We agree that this is likely to be minor in the context of the wider environment, but consider the area to be affected comprises a large part of intertidal and subtidal area of Walls Bay. While we agree the disturbance will be of relatively short duration, we consider the water quality and sedimentation effects will impact a large portion of the Walls Bay CMA. No compensation for the direct impacts on benthic communities or mitigation indirect impacts is proposed, except for use of a silt curtain and a closed dredging season. In our view, disturbing the intertidal zone around the wharf and slipway is likely to disperse any heavy metal contaminants sediments resulting in 'more than minor' effects within the context of Walls Bay.
239. The Applicant's initial ecological survey provided no methodology for the selection of sampling sites and was at best rudimentary. The further ecological assessment and sediment sampling undertaken shows a gradient of declining contamination radiating from the slipway and wharf. Further sediment sampling is required to understand the full extent and depth of the contaminated sediments. The demolition of the existing wharf, construction of a new wharf, and dredging of the contaminated area will disturb the polluted sediments and release them into the water column.

240. We note the submission from the Northland Health Board that the proposed demolition and dredging activities will disturb the contaminants contained in the sediments and resuspend them in the water column, becoming available to marine life through a variety of process. The submission noted that the factors around the release and bioavailability of contaminants during processes which disturb sediments are poorly understood. We agree. We do not have enough information on the scale and extent of the contamination to enable an assessment of the risk of disturbance. We disagree with Dr Brown that 'on balance' the effects of the disturbance of heavy metals contamination is likely to be no more than minor. We simply do not have enough information to make this assessment.
241. In our view, there should be no disturbance of the sediments around the slipway and wharf until further investigations into the scale and extent of the contamination is undertaken. We consider there is sufficient evidence to show the type and pattern of contamination indicates the source is boat yard activities undertaken on the slipway and wharf under the conditions of the existing consents. In our view, remediation of the polluted sediments by removal from the CMA and disposal at a land-based facility should be undertaken as soon as possible. We disagree that capping sediments with concrete is appropriate in the CMA, particularly in a location where public access is high.
242. We accept the evidence of the Clark family that dredging will have an adverse effect on the mauri of the seabed and water quality impacts on kai moana species. We accept that degradation of the quality of the environment negatively impacts on their relationship with the marine environment and their ability to exercise kaitiakitanga. We understand that hydrological changes, exacerbated beach erosion and cumulative effects on water quality are of great concern to tangata whenua. On the basis of the statements of evidence from submitters, we find the adverse effects on cultural values and relationships from dredging in Walls Bay are likely to be significant and cannot be dismissed as 'less than minor'.
243. We consider there is not sufficient information to support a conclusion that the hydrological changes from the dredging will not exacerbate erosion of the foreshore and beach at Walls Bay or the coastal walkway. With the withdrawal of the proposed seawall the potential for erosion is unmitigated.
244. Although no evidence was presented by the Applicant in relation to the effect of the proposed wharf on natural character and visual amenity, we agree with submitters that moving the wharf further north will increase the intrusion on the foreshore, rocky shoreline and the natural vegetation. The structure will be closer to the shoreline to the north and there is little separation between the wharf and the land. The northern berths of the wharf will be close to the shoreline and are located further over the shallow intertidal zone. We consider this will have more than a minor effect on natural character and visual appearance of the shoreline to the north of the wharf.
245. We are concerned that while the change to a concrete grid may have addressed concerns relating to the collection of contaminants and wastewater (avoiding discharge to the CMA), in our view, such a structure has the potential to cause adverse natural character and visual effects. These relate to its size, location, proximity to other structures and the foreshore, and the lack of separation from the shoreline. On the basis of the evidence, we find that the visual effects of the proposed wharf and concrete grid are potentially significant.

246. We disagree with Ms Donaghy that adverse visual effects can be adequately addressed by imposition of a condition requiring the concrete grid to be finished in recessive colours.

Use and Exclusive Occupation of the CMA

247. A key concern of submitters in opposition to the applications relates to the proposed use of the new wharf and pontoon; and the effect and extent of exclusive occupation sought by the Applicant. There was general opposition to restricting public use of the new wharf (through the use of security gates and access by permission), use of the wharf for permanent mooring and accommodation purposes, increased boat yard activity in the CMA and the exclusive use of such a large area of the CMA.
248. A common theme was that existing reasonable public access and use was a condition of allowing the construction of the existing wharf and that this should not be allowed to change. There was a consistent view that the current activity and use of the wharf and pontoon should not be allowed to change or increase.
249. The application stated that there would be improvements to public access from the proposed seawall and foreshore enhancement works. However, these are no longer proposed.
250. Mr Schmuck outlined that restrictions on public access and use on the new wharf and pontoon were necessary for safety and security reasons, particularly given the use as a marina and for permanent berthing. After the initial hearing, he amended the position of the security gates to reduce the extent of restrictions and to allow for public use of the northern side of the landward end of the wharf. He agreed to having the security gates open during daylight hours and only locking them at night. At the reconvened hearing, he further amended the proposal to include a public dingy pull on the northern side of the landward end of the wharf to enable continued dingy access by the public to moorings.
251. Mr Johnson supported positioning the proposed security gates before the 'T-head' to protect public health and safety from lifting equipment, storage and the permanent berths.
252. Ms Prendergast submitted that the wharf was a 'working wharf' and that 'reasonable public use' cannot interfere with the consented activity.
253. Ms Prendergast said that any further reduction in the exclusive occupation area, which restricts the ability to maintain the deep water around the facilities, would frustrate the purpose of the applications.
254. Ms Donaghy stated that the original Harbour Board Licence for the existing wharf was granted to Mr Elliot in 1989 on the condition that 'reasonable public access and use' was provided for. She noted the evidence of public use provided by submitters and recommended at the reconvened hearing that further mitigation was required to ensure that the adverse effects to public access were avoided or mitigated.
255. Ms Donaghy considered the exclusive occupation boundary should reflect the minimum area required to enable authorised use of the structures. She noted the proposed boundary included some of the foreshore and that it had been extended to include the work boat pull and dingy ramp. She considered this was not warranted and recommended the area for exclusive occupation should be reduced.

256. In her submissions in reply, Ms Prendergast stated that the Applicant had made a small adjustment to the exclusive occupation boundary, but not to the extent recommended by Ms Donaghy in the second Addendum as this had not taken into account the work berths on the northern side of the wharf, the slipway block to the east of the mooring area or the slipway block to the south of the mooring area.
257. Ms Prendergast outlined case law in relation to exclusive occupation and submitted that applying the principles to the current application supported the right to exclude the public, where it is by necessity and reasonable implication, without the need for an express condition. She submitted that unlimited or unrestricted public access to the proposed wharf and pontoon is not appropriate in the circumstances due to health and safety requirements and potentially conflicting uses. She noted that the proposed conditions allowed for reasonable public access to and through the exclusive occupation area and reasonable public access to and use of the proposed wharf and pontoon structure, and that this is accepted by the Applicant. She argued that restriction of public access to the wharf and pontoon can be assumed by implication to be reasonably necessary to accommodate the purpose of the coastal permit.

Evaluation

258. We find that the proposed use of the proposed wharf for permanent mooring and accommodation purposes would reduce existing public access and use, as the pontoon would be more likely to be unavailable if vessels are permanently berthed. The condition of the existing consent ensures that the wharf and pontoon are not currently allowed to be in continuous use for permanent berthing. In our view, the change of use to a marina facility will result in a significant reduction in the ability and opportunity for the public to access the land and the CMA.
259. The proposed public berth area and dingy pull is located over the intertidal zone and will be available for only short periods at high tide. We agree with submitters that this does not compensate for the loss of reasonable public access to the existing wharf.
260. We do not accept that restricting public use is justified on the basis of health and safety issues or security.
261. We consider the exclusive occupation area sought is unnecessarily large to enable the exercise of the consents sought. It would effectively give the Applicant control over a large part of the foreshore and seabed at Walls Bay. In our view, this would adversely affect access to and from the adjacent reserve and the CMA.
262. Overall, we find that the use of the proposed wharf and pontoon and exclusive occupation will reduce public access to the CMA, and will reduce the existing amenity of the reserve and coastal environment.

SECTION 104(1)(AB) – ENVIRONMENTAL OFFSETS AND COMPENSATION

263. Section 104(1)(ab) of the RMA requires us 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.

264. There are no measures proposed to ensure positive effects on the environment that are relevant to our consideration. We do not consider the proposed public dingy to be a positive effect compared to the existing environment.

SECTION 104(1)(B) OF THE RMA – RELEVANT PLANNING PROVISIONS

265. We are required to have regard to the relevant objectives and policies of the NZCPS, the RPS, the RCP, the Regional Water and Soil Plan for Northland, the Regional Air Quality Plan for Northland and the PRP.
266. An analysis of the relevant planning provisions was provided by Ms Donaghy in the staff report. We note her assessment was not updated on the basis of the amendments to the application, further information or the evidence of submitters and technical reviews. We have had regard to all of the relevant provisions outlined in evidence in order to make our own assessment.
267. Our assessment below focuses on key matters in contention in relation to each statutory document, and our assessment of potential and actual environmental effects. We have focused on the most relevant provisions to the activities and the key effects identified.

New Zealand Coastal Policy Statement (NZCPS)

268. Ms Donaghy drew our attention to Objectives 1, 2, 3, 4, and 6; and Policy 3 of the NZCPS.
269. Mr Dysart drew our attention to Objective 1 and 4, Policy 6 and Policy 18, and the need to ensure the boat yard activities are confined to the Applicant's property.
270. We have had regard to all of these provisions and find that the discharge activities and dredging activities are contrary to Objective 1, 3 and 6; and Policies 3, 6 and 23. We note the direct relevance of Policy 23(1) and 23(5)(a) regarding the sensitivity of the receiving environment and the need to avoid contamination of coastal waters. We agree with submitters that the discharge activities do not need to be undertaken in the CMA (or on the slipway), and could be set back from the CMA to protect natural character, open space, public access and the amenity values of the coastal environment.
271. We find that the proposed coastal structures are contrary to Objective 2 and 4, and Policy 6, 13 and 18.

Regional Policy Statement for Northland (RPS)

272. In the staff report Ms Donaghy drew our attention to Objectives 3.10, 3.13, 3.14 and 3.15; and Policies 4.4.1, 4.6.1, 4.8.1, 4.8.3, 5.1.2, 8.1.1 – 8.1.4 and 8.2.1 of the RPS.
273. We have had regard to these provisions and find that the discharge activities and dredging activities are likely to be contrary to achieving Objective 3.14 and 3.15. We find the discharge activities are contrary to Policies 5.12 and 8.1.4. Overall, we find that the proposal does not consolidate the discharge activities; provide sufficient setbacks from the CMA to maintain and enhance public access, open space and amenity values; taken into account the values of the adjoining or adjacent land; or ensure adequate infrastructure is provided to manage the effects of the discharges.

274. We find that the proposed wharf and concrete grid are contrary to Objective 3.14 and 3.15, and Policies 4.6.1, 4.8.1, 5.1.2 and 8.1.4. We consider the applications have the potential to have significant adverse effects on the natural character of the shoreline and that visual effects have not been addressed. We do not consider the Applicant has demonstrated the functional need for the concrete grid to be located in the CMA. We consider the proposal increase in the area of CMA affected by DOBY activities, will decrease public access, and open space and amenity values. We do not accept it reflects the smallest area necessary to undertake the proposed activities.

Regional Coastal Plan for Northland (RCP)

275. In the staff report Ms Donaghy drew our attention to Objectives 7.3, 12.3.1, 13.3, 15.3.2, 17.3, 19.3, 20.3, 22.3 and 28.3.1; and Policies 7.4, 12.4.3, 15.3.2, 17.4.1, 17.4.3, 17.4.8, 19.4.1, 19.4.3, 19.4.4, 20.4.1, 20.4.2, 20.4.3, 22.4.1, 22.4.7, 28.4.7, and 28.4.13.
276. We have paid particular attention to the RCP provisions for M4MAs and their purpose. We note that Policy 28.4.7.a states '*Allow for the potential for marina development in Marine 4 (Mooring including Marinas) Management Areas*'.
277. Policy 28.4.8 specifically requires us, when considering a resource consent for a marina, to consider the appropriateness of the proposal against a number of parameters. We consider this policy to be directly relevant and have considered each parameter. Overall, we find the increased use of the wharf associated with proposed permanent berths and accommodation is not appropriate given the existing natural character and amenity value at Walls Bay and adjacent coastal environment (including the reserve). We do not consider there is sufficient provision of infrastructure (including sewage disposal, rubbish, collection and parking) either 'within the Marine Management Area or within the adjoining land' for use of the wharf as a marina without increased adverse effects on public access and amenity values. We note the boat yard property is not adjoining the site. We consider the informal arrangement to use the toilet facilities behind the boat yard workshop to be insufficient. Evidence shows that parking in summer is limited and congestion already occurs.
278. We consider the use of the wharf as a marina may conflict with other activities, such as public access and recreation, despite being located in a M4MA. The evidence supports the view that the Ōpua basin mooring area is very busy and at times congested. There is no evidence to suggest the proposed marina will rationalise or reduce surrounding moorings. The marina activities will restrict public access to the pontoon. The evidence shows there will be economic and social benefits to the Applicant, Great Escape yacht charters and DOBY clients. However, we agree with submitters that the social and cultural well-being effects to the local community from the marina activities are negative and that the economic effects are limited. We consider use of the proposed wharf as a marina facility is not appropriate given the existing natural character of the Wall Bay foreshore and CMA.
279. Ms Prendergast noted that submitters had confused 'need' with the requirement for activities to have a 'functional necessity' to be located in the CMA and there was no doubt a wharf and marina have a functional necessity to be located in the CMA. We agree, but we do not agree that the maintenance and repair facilities need to be located in the CMA given the existing access slipway and boat yard property.

280. Overall, we find that the discharge activities and coastal activities are contrary to Objective 3, 13.3, 19.3, 20.3 and 22.3 and Policies 7.4, 12.4.3, 17.3, 17.4.3, 19.4.1, 19.4.3, 19.4.4, 20.0.1, 20.4.2, 20.4.3, and 22.4.1. We consider these objectives and policies are directly relevant to the applications.

Regional Water and Soil Plan for Northland

281. In the staff report, Ms Donaghy drew our attention to Objectives 8.6.1 and 8.6.2; and Policies 8.7.3 and 8.15.2.
282. Given our findings on the inadequacy of the existing stormwater and wastewater systems, we consider the discharge contaminants onto land is contrary to Objective 8.6.1 and Objective 8.6.2 and Policy 8.7.3.

Regional Air Quality Plan for Northland

283. In the staff report, Ms Donaghy drew our attention to Objectives 6.6.1 and 6.6.2; and Policies 6.7.1, 6.7.2, 6.7.3, 6.7.4, 6.7.5, 6.9.1 and 6.15.1.
284. On the basis of our assessment of air effects, we find the air discharge activities are contrary to Objective 6.6.1 and 6.6.2, and Policies 6.7.3, 6.9.1 and 6.15.1.

Proposed Regional Plan for Northland (PRP)

285. Ms Donaghy and Ms Prendergast agreed that we must have regard to the relevant objectives and policies of the PRP, but that these provisions should be afforded little weight given the early stage of the plan hearing process. We agree.
286. In the staff report, Ms Donaghy drew our attention to Policies D.1.4, D.2.2, D.3.4, D.3.1, D.4.3, D.4.4, D.5.13, D.5.14, D.5.17, D.5.18, D.5.19 and D.6.2.
287. Mrs Kyriak drew our attention to Policies D.2.9, D.5.13, D.5.15 and D.5.17. Overall, she considered that Walls Bay is not suitable for a marina development and occupation. We agree.
288. Mr Rashbrooke noted that the zoning under the RCP as a 'mooring and marina area' was not in the PRP. We note this.
289. On the basis of the evidence, we find the discharge activities and dredging activities are contrary to Policies D.1.4, D.3.1 and D.4.3.

SECTION 104(1)(C) – OTHER RELEVANT MATTERS

290. Section 104(1)(c) requires us to have regard to any other matters that are relevant and reasonably necessary to determine the application.
291. We have considered the background to the boatyard activities, the creation of the esplanade reserve, the existing coastal structures and the discharge activities. We have also considered the 20 year history of litigation between the parties in relation to the boat yard activities undertaken within the reserve. However, we reiterate that we have focused our considerations on the environment effects of the activities for which consent is sought.

292. We consider the Applicant's compliance history and environmental standards are relevant considerations.
293. The staff report stated that the NRC's consent monitoring had found that the boat yard is *'largely compliant with the various discharge conditions as they relate to the existing consent'*. However, Ms Donaghy changed her view on the basis of the evidence presented by submitters and the recent compliance investigations undertaken by the NRC, given they showed that the existing wastewater collection and stormwater management system is inadequate and requires improvement to avoid unauthorised discharge to the reserve and CMA. This was evident on our site visit. Ms Donaghy also considered the evidence showed breaches of existing consent conditions.
294. In reply, Ms Prendergast highlighted the NRC compliance history and submitted that all of the complaints received were shown to be of no, or minor non-compliance. She noted that no formal enforcement action had been served on Mr Schmuck since the Abatement Notice in 2010 and that the works required have been completed, except for the requirement to concrete 'Area A' awaiting the determination of the land tenure (easement issue). She submitted that if Mr Schmuck's performance had been as bad as suggested by submitters, he would have been prosecuted by now. She noted that Condition 13 of the FNDC land use consent required screens to 'effectively contain contaminants' not the water plume.
295. Ms Prendergast submitted that the requirement of the 2010 Abatement Notice to seal/concrete the slipway had been 'put on hold' by the NRC until matters related to the easement are finalised and that the ability to undertake that work is also dependent on the outcome of the processes surrounding the recent Court of Appeal decision.
296. We agree with Ms Johnston that there is little evidence to support compliance. The evidence of submitters (written, verbal, video and photographs) shows the various activities, on various dates, undertaken within the reserve and/or CMA (vessel cleaning including washing down, water blasting and scrapping) that are in breach of the conditions of existing consents.
297. The Applicant admits non-compliance with consent conditions on the basis of being unable to undertake the necessary works on the reserve. He also told us that the use of screens for washing down on the slipway, within the reserve, was impractical and that this would be addressed by the slipway refurbishment.
298. We find the Applicant's evidence of compliance with the existing consents is largely based on Mr Schmuck's assertions and observations and lack of enforcement of consent conditions. We consider the NRC reports of compliance or otherwise are based on 'snap shots' during a monitoring officer's site visit; and rely on the officer's interpretation of conditions and an acceptance of Mr Schmuck's interpretation, such as the use of plastic as an impervious yard surface. We place significant weight on recent investigations by the NRC show the existing systems to be inadequate; and the evidence of Mr Papesch that the existing stormwater treatment system cannot achieve water quality standards.
299. The Applicant's sediment sampling indicates the sediments around the slipway have elevated levels of copper, zinc and lead. The NRC investigations show this is not likely to be from upstream stormwater inputs and is likely to be from discharges from DOBY activities entering the CMA directly or indirectly.

300. We consider the evidence shows that the Applicant has not been complying with a number of the conditions of the existing and expiring consents in relation to:
- (a) Only undertaking waster blasting and washing vessel hulls over impervious 'yard' surfaces (i.e. the turntable) which are able to collect wastewater;
 - (b) Using drop sheets to collect materials over pervious surfaces;
 - (c) Collecting and removing material that escapes capture;
 - (d) Storing waste material and rubbish in an open trailer;
 - (e) No provision for waste facilities on the wharf;
 - (f) Preventing direct discharges of wastewater to the CMA;
 - (g) Collection and adequate treatment of stormwater from the boat yard before discharge; and
 - (h) Maintaining the existing seawall in good repair.
301. We accept that the Reserves Act 1977 is not relevant to our considerations under the RMA. However, we note Section 229 sets out the purpose of an esplanade reserve.

SECTIONS 105 AND 107

302. Section 105 of the RMA states that, when considering Section 15 matters (discharges), we 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.*
303. We have considered the nature of the air and water discharges and the potential for contamination of the environment and adverse ecological and health effects. We consider the receiving environment includes the boat yard and reserve, and the CMA. Overall, we consider the receiving environment of the boat yard has a low sensitivity to adverse environmental effects given the ability to implement systems to avoid and mitigate effects and to restrict and control public access. However, we consider that the receiving environment of the reserve and slipway to be highly sensitivity to adverse effects given public use of the reserve and walkway, and CMA; and given the inability of the Applicant to implement systems and measures to control and mitigate adverse effects, and to restrict public access to the site during discharge activities.
304. We note that the inability of the Applicant to implement required upgrades for the wastewater and stormwater systems within the reserve is clearly demonstrated in the fact the Applicant has been unable to fully comply with the conditions of the existing consents and the 2010 Abatement Notice in relation to concreting the slipway and upgrading the stormwater system. This has been the situation for the entire term of the existing consents.

305. We consider the reasons the Applicant has chosen to undertake air and water discharge activities in the reserve, primarily relate to convenience and the Applicant's assertions that these activities have been undertaken outside of the boat yard for many years. It does not appear to be related to the cost required to make changes to the boat yard property to undertake work within the property, as the capital costs to 'refurbish' the slipway and upgrade the stormwater and wastewater systems are also significant.
306. In our view, these reasons are insufficient to justify undertaking air and discharge activities within the reserve and outside of the boat yard property.
307. We note the Court of Appeal decision (2018) notes that the original planning consent for erecting the small boat building office and workshop was subject to condition that '*all activity be confined to that property with a minimum of inconvenience to the public usage of the beach*' (para [8]).
308. Mr Schmuck even acknowledges the intended use of the slipway was for access only when he stated: '*The slipway has been in its current location since 1976. At that time planning consent allowed the slipway over the unformed road to be used only to move boats to and from the sea*'. However, he added that despite this clear intention '*Boat storage, cleaning and maintenance on the unformed road continued*' (para, 8, statement of evidence dated 17 May 2018). It is clear Mr Schmuck considers that continuing to undertake unauthorised activities outside of the boat yard property for 40 years, in direct defiance of the original planning consent, justifies its continuation. We strongly disagree.
309. We question the basis for granting the existing discharge permits given the Applicant could not comply with the conditions without further approvals.
310. We do not accept the Applicants proposed method of discharge within the receiving environment of the reserve. We consider the boat yard is the appropriate receiving environment and that potential alternative methods of discharge are available to the Applicant within the confines of his own property.
311. Section 107(1) of the RMA states that we are prevented from granting consent allowing any discharge into a receiving environment which would, after reasonable mixing, give rise to all or any of the following effects, unless the exceptions specified in Section 107(2) apply⁵.
- (c) *The production of any conspicuous oil or grease films, scums or foams, or floatable or suspended material:*
 - (d) *Any conspicuous change in the colour or visual clarity:*
 - (e) *Any emission of objectionable odour:*
 - (f) *The rendering of fresh water unsuitable for consumption by farm animals:*
 - (g) *Any significant adverse effects on aquatic life.*

⁵ The exceptions being:
(a) that exceptional circumstances justify the granting of the permit; or
(b) that the discharge is of a temporary nature; or
(c) that the discharge is associated with necessary maintenance work—
and that it is consistent with the purpose of this Act to do so.

312. Our assessment of the environmental effects of the applications concludes that the discharges of contaminated wastewater and stormwater to the CMA from boat yard activities undertaken within the reserve and CMA are likely to have resulted in localised pollution of the sediments at the end of the slipway and along the wharf berths. While this needs to be investigated further, the preliminary investigation indicate concentrations of copper, zinc and lead are at levels where observable adverse effects on marine organisms and ecosystems are likely. In our view, this is a significant effect on the quality of the receiving environment.
313. We have also concluded that objectionable odours from the spray application of antifouling paint, and sanding and grinding within the reserve is likely to result in objectionable odours and nuisance dust some five to ten metres from the source.
314. We consider the section 107 requirements are environmental bottom lines intended to prevent unacceptable environmental effects. We do not consider the discharge meet the exceptions set out in section 107(2). We therefore find that we are prevented for granting consent to discharge contaminants to air and water from activities undertaken on the slipway and reserve, outside of the boat yard property.

PART 2

315. It was agreed between Ms Donaghy and Ms Prendergast that there is currently some uncertainty regarding applying Part 2 of the RMA to consideration of resource consent applications. We note that this uncertainty stems from a recent High Court decision – R J Davidson Family Trust v Marlborough District Council⁶ (hereafter referred to as the *Davidson* case) – which found that the Supreme Court’s reasoning in *King Salmon* also applies to decisions on resource consents, namely that there is no ability for decision makers on resource consent applications to look at Part 2 unless there is invalidity, incomplete coverage, or uncertainty in the statutory planning documents. This position differs significantly from the pre-*Davidson* approach of an ‘overall broad judgment’ under Part 2 of the RMA.
316. However, we are aware the decision of the Court of Appeal has been released since the hearing was adjourned and note that it is binding in law. We have not heard submissions on the recent Court of Appeal decision and the implications for this decision. However, we consider the outcome of our assessment of the applications under Section 104 of the Act is unlikely to differ from any overall assessment of the applications under Part 2.
317. We note that the RCP was prepared before the latest version of the NZCPS and that the RRP is in the plan process and may be subject to change. We have therefore placed significant weight on the provisions of the NCPS and RPS, as the higher order planning instruments.
318. All the considerations we have described are subject to Part 2 of the Act. In accordance with Part 2, we consider that the applications are unlikely to achieve the purpose of the Act and are contrary to the principles of the sustainable management of natural and physical resources, as defined in Section 5.

⁶ [2017] NZHC 52

319. We are not satisfied that the Section 6 matters of national importance have been sufficiently recognised and provided for, particularly Section 6(a) – preservation of the natural character of the coastal environment from inappropriate development; and 6(d) – the maintenance and enhancement of public access to and along the CMA.
320. We are also not satisfied that particular regard has been given to Section 7(a) – kaitiakitanga; 7(c) – maintenance and enhancement of amenity values; and 7(f) – maintenance and enhancement of the quality of the environment.
321. On the basis of the assessment of effects of the applications on water quality and ecological values and without input from consultation with tangata whenua, we have insufficient evidence to demonstrate the Applicant has taken into account the principles of the Treaty of Waitangi/Te Tiriti o Waitangi.

CONCLUSION AND OVERALL DETERMINATION

322. We have focused our assessment of the applications on the actual and potential adverse effects of the existing and proposed activities. We strongly disagree with Ms Prendergast that the submissions received do not raise any substantive issues.
323. The evidence before us confirms that the existing stormwater and wastewater management systems are inadequate, do not meet best practice and do not meet current environmental standards. It also shows that certain air discharge activities are required to be undertaken in a controlled work area and that this is not currently available.
324. The evidence also shows that the Applicant cannot comply with some of the key conditions of the existing consents to avoid adverse effects, such as avoiding direct discharge to the CMA, undertaking activities on an impervious yard surface, and using screens when water blasting. It is also clear that there is no certainty that the Applicant can or will comply with the proposed conditions, if, and when the slipway is refurbished. In fact, we have no details of the refurbishment planned and Mr Schmuck declined to inform us of these despite our requests.
325. In our view, there is no doubt that the Applicant's existing boat yard activities are resulting in significant adverse effects on the quality of the receiving environment, cultural values and relationships with the CMA, the amenity of the coastal environment and the reserve, and public access to and along the CMA. These effects have occurred overtime and are cumulative. We consider that of poor management of discharges to air and land over more than 20 years and a lack of consent compliance and enforcement action have resulted in contamination of the surrounding land and the CMA.
326. Overall, we agree with submitters that these actual adverse environmental effects have occurred under the conditions of the existing consents. We agree with Mr Rashbrooke that the intention of the existing resource consents was that discharge activities would be undertaken within the boat yard property, except for large vessels that overhang the turntable. We agree that the reference to impermeable surfaces of the 'yard' should have been 'boat yard' to avoid misinterpretation. We consider the concreting of the slipway was intended to enable the collection of runoff from the boat yard property to prevent discharges to the reserve and CMA, not to enable discharge activities to be undertaken on the slipway outside of the boat yard property. We consider the Applicant has misinterpreted the

conditions of the existing consents to suit his own purposes and plans for the boat yard property.

327. Enforcement action by both the FNDC and the NRC has been taken to prevent these adverse effects, but has not been followed through on the basis of enabling the Applicant to continue to operate his 'small' boat yard business and in the hope that the Applicant can, at some point, obtain the authorisations necessary to undertake activities within the reserve and comply with the conditions of consent and the 2010 Abatement Notice. This has proven to be unachievable over a period of nearly 20 years; and in our view, the evidence suggests this is not likely to change in the foreseeable future. We therefore consider it is highly unlikely that the Applicant can comply with the conditions of proposed which require infrastructure and mitigation measures within the reserve.
328. We have given careful consideration to granting consents for discharge activities to be undertaken within the Applicant's boat yard, so that some level of boat servicing can continue. However, we are mindful this is not what is proposed by the applications; nor do we have sufficient evidence to demonstrate the discharges can be adequately controlled or to enable the formulation of appropriate consent conditions. It also appears the Applicant is intent on reducing capacity within the boat yard property to accommodate boat maintenance and repair and it remains unclear how the activities could be managed within the boat yard.
329. We find that the movement of the proposed wharf five metres to the north and closer to the shoreline and walkway is undesirable based on increased intrusion on the natural character of the land and sea interface. We consider the structure will obscure the natural rocky coastline and will intrude on the natural bush back drop and adjacent walkway. We have no evidence on the visual effects of the concrete grid, but consider there is potential for more than minor effects given its size and location near the shoreline and proximity to the other coastal structures.
330. The movement of the wharf will increase the separation between the boat yard and the wharf, and increases the area between the slipway and the wharf, as well as the area over which exclusive occupation is sought. We find that any increase in the area of CMA impacted by boat yard activities is inappropriate in this location and is undesirable. We find that the exclusive occupation of the area of CMA sought by the Applicant would have significant impacts on public use and access to Walls Bay and the reserve.
331. We consider the dredging is driven by both the Applicant's desire to have all tide access to the new coastal structures and the movement of the wharf north into shallower water. We consider this is inappropriate for the location given the shallow profile of Walls Bay; and unnecessary if it is accepted there is no expansion or increase in DOBY activities proposed. Overall, we agree with submitters that any increase in use of the wharf or CMA for boat yard activities should not be allowed.
332. We find that the disturbance and dredging of contaminants around the wharf and slipway has the potential to resuspend heavy metal contaminants in the water column and disperse them across Walls Bay. We consider this could have significant adverse effects on marine life and potential human health effects. We consider this should be avoided and alternatives for remediation investigated. However, we consider this would not prevent the progressive maintenance and repair of the existing wharf.

333. We do not consider there is sufficient land-based infrastructure to support a marina development. We find that a marina development is inappropriate in this location due to conflict with existing activities, public access and use, and adverse amenity effects on the public reserve and coastal walkway.
334. On the basis of the evidence, we find that the resource consents sought for the proposed coastal structures and their use and occupation, and for dredging should be refused.
335. For completeness, we record that without the further information and assessments provided after the initial hearing and the reconvened hearing, we would have refused the resource consents sought on the basis of insufficient information. The approach we have taken throughout the hearing process has sought to avoid this possible outcome and to ensure we were able to make a complete and robust assessment. We have endeavoured to ensure all parties had access to and the opportunity to respond to all information provided.

DECISION

For the above reasons, it is our decision on behalf of the **NORTHLAND REGIONAL COUNCIL**, pursuant to sections 104, 104B, 105 and 107, and subject to Part 2 of the Resource Management Act 1991, to **REFUSE** the all of the resource consents sought.

Dated this 6th day of November 2018



Sharon McGarry
Hearing Committee (Chair)



Cr Justin Blaikie
Hearing Committee