

**NORTHLAND REGIONAL COUNCIL
AND
WHANGAREI DISTRICT COUNCIL**

**Report and Decision of the Hearing Commissioner.
Meeting held in the Kaipara Room, Northland Regional Council, Whangarei
on 2 August 2019
commencing at 10:30 am.**

Independent Hearing Commissioner, Dr Rob Lieffering, was appointed by the Northland Regional Council and the Whangarei District Council to hear and determine the application for resource consents lodged by the Whangarei Harbour Marina Management Trust associated with a proposed marina at Port Road, Whangarei. The application, made in accordance with the Resource Management Act 1991, was lodged on 1 March 2018 and referenced as Application No. APP.039865.01.01 by the Northland Regional Council and as Application No. LU1800032 by the Whangarei District Council.

Representations and Appearances

Applicant:

Ms S. Shaw, Counsel

Mr B. Hood, Planner, Reyburn and Bryant Limited

Mr D. Botica, Engineer, Hawthorn Geddes Limited

Mr J. Blackburn, Engineer, Hawthorn Geddes Limited

Submitters:

Mr A. Peet

Northland Regional Council and Whangarei District Council:

Mr A. Hartstone, Planner, Set Consulting Limited (Consultant)

Mr B. Tate, Engineer, Riley Consultants Limited (Consultant)

Ms A. Sluys, Hearing Administrator

BACKGROUND AND PROCEDURAL MATTERS

1. This is the report and decision of independent Hearing Commissioner Dr Rob Lieffering. I was appointed by the Northland Regional Council (**NRC**) and the Whangarei District Council (**WDC**) to hear and decide the application for various resource consents (**the Application**) lodged by the Whangarei Harbour Marina Management Trust (**the Applicant**) associated with a proposed marina to be located at Port Road, Whangarei (**the Marina**).
2. The Application was lodged with both the NRC and the WDC on 1 March 2018 pursuant to section 88 of the Resource Management Act 1991 (**RMA**).
3. The NRC and the WDC engaged a consultant planner, Mr Alister Hartstone, to process the Application and to prepare a report pursuant to section 42A of the RMA (**the Staff Report**). The Staff Report was circulated to the parties prior to the hearing as required by section 103B of the RMA.
4. Five briefs of expert evidence were submitted by the Applicant, these being from Mr Brett Hood (planner), Mr Dean Botica (geotechnical engineer), Mr James Blackburn (hydraulics engineer), Mr Mark Poynter (ecologist), and Mr Simon Cocker (landscape architect). The Applicant made a request to allow these briefs of evidence to be provided late (by one day for all briefs except Mr Cocker's which would be two days late). I agreed to this request and provided submitters the equivalent extra time to submit any briefs of expert evidence.
5. The Applicant's briefs of evidence were circulated to the parties as required by section 103B of the RMA.
6. Mr Adrian Peet, a submitter, provided some written material prior to the hearing. This written material was not 'expert' evidence, however it was still circulated to the parties prior to the hearing.
7. The hearing commenced at 10:30 am on Friday 2 August 2019 and was held in the Kaipara Room of the NRC's offices, Whangarei.
8. The Staff Report provided an analysis of the matters I must consider under the RMA in making my decision. The Staff Report also included a recommendation that the Application should be granted, subject to a suite of recommended consent conditions.
9. On 3 May 2019 I issued Minute #1 which sought information from the NRC regarding the legal status of Mr Peet's boat shed (**the Boat shed**), which is located adjacent to the subject site, and whether any unauthorised parts of the Boat shed formed part of the 'existing environment'. I received a copy of a legal opinion authored by Ms Lucy de Latour and Mr Mike Doesburg of Wynn Williams on 19 July 2019 (**the legal opinion**). I discuss the legal opinion in more detail later in this decision.
10. On 22 July 2019 I issued Minute #2 which included directions to ensure a smooth hearing process and confirmed the extension of time given to the Applicant to provide its briefs of evidence.

11. I pre-read the Application and its supporting documentation, the submissions, the Staff Report, and the pre-circulated evidence. I directed that this material be 'taken as read' during the hearing¹.
12. At the end of the formal part of the hearing it was agreed that the Applicant would provide its Right of Reply in writing, including a set of amended conditions. The Applicant and Mr Hartstone were to meet to discuss the conditions and any differences of opinion on the conditions were to be provided to me if no agreement on them could be reached.
13. I undertook a site visit on Saturday 3 August 2019. I was accompanied by Ms Alissa Sluys, the NRC's hearing administrator. It was high tide when I visited the site and I took several photographs. Ms Sluys returned to the site during low tide and took additional photographs which were emailed to me.
14. I received the Applicant's Right of Reply in writing on 16 August 2019 which included a set of conditions which had been agreed to between the Applicant and Mr Hartstone. However, the set of agreed conditions provided with the Right of Reply had numerous errors and formatting issues and I asked for a revised (corrected) version of the agreed conditions to be provided. I received a corrected set of agreed conditions on 19 August 2019. I requested clarification from the Applicant and Mr Hartstone on a number of the corrected conditions and received a response on 30 August 2019.
15. Having satisfied myself that I had sufficient information to make a decision I formally closed the hearing on 30 August 2019.
16. I would like to thank Ms Sluys for the excellent assistance she provided throughout the hearing process. I also wish to thank those parties who attended the hearing and presented evidence.

THE APPLICATION

17. The nature of the activities was described in detail in the Application, the Staff Report, and the Applicant's evidence. As such, I do not repeat that information here, however the following are the key components of the proposal:
 - To establish and operate a maximum 130 berth marina consisting of a 4,550 m² reclamation of the coastal marine area (**CMA**) adjacent to Port Road, Whangarei, accommodating a:
 - Marina building (containing office and ablutions) and parking area on the reclaimed land;
 - rock retaining wall along the western side of the Marina basin;

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

- rock armoured batter slope along the northern edge of the Marina adjacent to Te Matau a Pohe bridge;
 - submerged batter slopes to the east and south of the Marina between the Marina and the Hātea River and Limeburners Creek channels;
 - 100-150 piles and associated floating marina piers and berths and associated utilities; and
 - formed public access along the eastern edge of the reclamation as a link with the existing Hātea Loop walkway.
- Expanded land-based disposal of dredge spoil on the Bell Block (adjacent to Kissing Point Marina) derived from the capital and maintenance dredging associated with the Marina.
18. The following resource consents have been applied for from the NRC:
- APP.039825.01.01 – Reclaim 4,550 m² of the CMA;
 - APP.039825.02.01 – Place, use, and occupy space in the CMA with a marina development (including piers, finger piers, piles and associated vessel berths; access ramps; Utility services including electricity and water on the marina structures and a sewage pump-out facility);
 - APP.039825.03.01 – Occupy part of the CMA to the exclusion of others;
 - APP.039825.04.01 – Place, use, and occupy space in the CMA and on land with hard protection structures;
 - APP.039825.05.01 – Capital dredging in the CMA to establish a marina basin;
 - APP.039825.06.01 – Deposit dredge spoil in the CMA to form a reclamation;
 - APP.039825.07.01 – Maintenance dredging of a marina basin;
 - APP.039825.08.01 – Remove mangroves from the CMA;
 - APP.039825.09.01 – Incidental discharges to the Hātea River associated with disturbance of the seabed due to dredging, mangrove removal and the transport and transfer of dredged spoil;
 - APP.039825.10.01 – Divert and discharge stormwater, and dredge spoil decant water, from a reclamation;
 - APP.039825.11.01 – Deposit dredged spoil to land at an existing dredging disposal site known as “the Bell Block”; and
 - APP.039825.12.01 – Discharge contaminants (leachate) to land from deposition of dredge spoil.
19. A land use consent from the WDC has also been applied for the Marina activities on the proposed reclamation, being referenced as Application No. LU1800032.

20. The Application seeks a 35-year duration for all the consents – I discuss this in greater detail later in this decision.

PLAN RULES AFFECTED

21. The proposed activities require resource consents from the NRC under various rules of the operative Regional Coastal Plan for Northland (**RCP**) and the Regional Water and Soil Plan for Northland (**RWSP**). In addition, resource consents are required under various rules of the Proposed Regional Plan (**PRP**) which was notified on 6 September 2017 (being before the Application was lodged) and the rules of the PRP had immediate legal effect so are relevant to consider for this Application.
22. The relevant rules in the NRC's plans are discussed in detail in Section 1.4 of the Application and the activity status for the activities are either controlled or discretionary. Mr Hartstone agreed with the Applicant's assessment of the rules that are applicable for the NRC consents.
23. Section 1.4 of the Application states the proposed activities on the reclamation are innominate under the Whangarei District Plan (**WDP**) and are therefore deemed to be discretionary in accordance with section 87B(1)(a) of the RMA – this is because the reclaimed 'land' on which the activities would occur does not currently exist and is therefore not zoned under the WDP. Mr Hartstone agreed with this assessment.
24. Messrs Hood and Hartstone both considered the various activities requiring consent are inter-related to such a degree that they should be 'bundled' with the most restrictive activity status applying to the bundle. I agree. In this case the bundle is to be treated as **discretionary**.
25. I adopt the Applicant's assessment in respect of the relevant rules and activity status for the 'bundle' for the purposes of my decision as provided for by section 113(3)(b) of the RMA.
26. Messrs Hood and Hartstone provided evidence regarding the various appeals that had been received on the PRP rules. However, in answers to questions both experts confirmed those appeals were not relevant given it is the rules that are operative at the time the Application was lodged that are only relevant, and the status of the activity is 'locked in' from that time.

SITE DESCRIPTION

27. The site and surrounding areas are described in detail in Section 2 of the Application and I adopt that assessment for the purposes of my decision as provided for by section 113(3)(b) of the RMA.
28. The only note I make is that Section 2.4 of the Application, which covers existing structures in the CMA, does not identify the Boat shed despite it being discussed later in Section 8.8 of the Application. In answers to questions Mr Hood stated he did not know why the Boat shed was not included in Section 2.4 of the Application and acknowledged it should have been.

NOTIFICATION AND SUBMISSIONS

29. The Application was publicly notified on 5 September 2018.
30. The Staff Report stated that 10 submissions were received across both councils. Two submissions opposed the Application and eight were in support. A table was included in the Staff Report which summarised the submissions received.
31. The Staff Report identified that Mrs Hicks, a submitter in opposition, initially wished to be heard but she had withdrawn her wish to be heard. The Applicant confirmed it had reached agreement with Mrs Hicks on the concerns she had regarding the proposal.
32. Two submitters wished to be heard, namely Mr Peet and Mr Houghton. Only Mr Peet appeared at the hearing.
33. I was provided with copies of all the submissions received and consider these were accurately summarised in the Staff Report. I adopt that summary for the purposes of my decision as provided for by section 113(3)(b) of the RMA. I discuss the key outstanding objections later in this decision report - they are essentially the matters which are in contention.

ASSESSMENT

34. In assessing the Application, I have considered the Application documentation, the Staff Report, all submissions received, and the evidence provided during the hearing.
35. I record that the findings I have made and the decision I have arrived at are based on all the evidence before me and my consideration of that material within the context of the statutory framework.

Statutory Considerations

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

- (vi) *a plan or proposed plan; and*
- (c) *any other matter the consent authority considers relevant and reasonably necessary to determine the application.*
37. In terms of section 104(1)(b), I was advised that the applicable statutory planning documents for this Application are:
- The Regional Policy Statement for Northland (RPS);
 - The RCP;
 - The RWSP;
 - The PRP;
 - The WDP (including Plan Changes 87, 109, 136, and 148); and
 - The New Zealand Coastal Policy Statement (**NZCPS**)
38. Section 104(2) of the RMA states that, when forming an opinion for the purposes of section 104(1)(a), I *may* disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect. This is referred to as the application of the 'permitted baseline'. Mr Hartstone stated there is no permitted baseline under any of the NRC's plan rules nor the WDP relevant for this Application.
39. Section 104(3)(a)(ii) states that I must not have regard to the effect on any person who has given written approval to the Application. No written approvals were provided so this section is not relevant to my considerations.
40. Section 104B of the RMA applies in this case as I am dealing with a bundle that has an overall discretionary status. This section states that I may grant or refuse the Application sought and if granted I may impose conditions under section 108 of the Act.
41. Sections 105 and 107 are relevant to some of the activities for which resource consents are sought. I discuss these two sections later in this decision.
42. My assessment of the Application considers each of these sections of the RMA below.

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

43. The project will result in various actual and potential effects on the environment. The actual and potential effects of the proposal on the Boat shed formed the basis of the evidence presented at the hearing. There were many other actual and potential effects associated with the proposal for which I received evidence however were not in contention, these being:
- Positive effects, including economic effects and provision of public access through connection of the Hātea Walkway Loop to future access options along the Hatea River on Port Road;

- Noise effects during construction and operation of the marina;
 - Disruptions to Port Road traffic and parking;
 - Disruption to Hātea River users and navigational effects;
 - Sediment and water quality during construction and operation of the marina;
 - Biosecurity;
 - Natural hazards;
 - Ecological effects, including effects on mangrove habitats and the intertidal soft shore, and birds;
 - Natural character, landscape, and visual amenity (including lighting);
 - Cultural and heritage values; and
 - Dredge spoil disposal at the 'Bell Block'.
44. The Application and the Applicant's experts assessed these actual and potential effects comprehensively. The only adverse effects which were assessed in the Application as being more than minor were the visual effects of the proposal on the occupier(s) of the Boat shed – those effects were assessed by Mr Cocker as being 'very high'. Mr Cocker based this assessment on the Boat shed being occupied on a permanent (or semi-permanent) basis because his report (included as Appendix 12 in the Application) stated '*The boat shed is leased on a long-term basis...*'. I discuss this matter later in the 'Legal Status of the Boat shed' section of this decision.
45. All other actual and potential adverse effects of the proposal on the environment were assessed by the Applicant's experts as being, at worst, minor.
46. Mr Hood stated the marina would provide significant regional benefits, both in terms of economic benefits but also by providing significant additional capacity for permanent and short-term berths. He referred to the economics impact assessment prepared by Market Economics Limited included as Appendix 16 of the Application.
47. Mr Hartstone generally agreed with the Applicant's assessment of the actual and potential effects and the conclusions on the magnitude of those effects. I note the NRC engaged the Cawthron Institute (**Cawthron**) to undertake a peer review of the Applicant's ecological effects assessment – this peer review identified some information gaps which the Applicant subsequently addressed to the peer reviewer's satisfaction. The NRC also commissioned two other peer reviews (on hydraulics and geotechnical matters) and I discuss those later in this decision.

48. I do not propose to cover the matters that were not in contention (listed in paragraph 43 above) in this decision. Instead, as provided for by section 113(3)(b) of the RMA, I adopt the Applicant's evidence outlined in its Application and in the various statements of evidence (where they relate to those matters) for the purpose of this decision. The fact that I do not discuss these matters in this decision should not be interpreted to mean I have glossed over or ignored them and not considered all the relevant effects and planning provisions pertaining to them. I record here that I have carefully reviewed the documentation relating to the matters not in contention.

Matters in Contention

49. I have focused my assessment in this decision on the actual and potential environmental effects which formed the basis of the evidence presented during the hearing and which I consider to be the 'matters in contention'. These matters related to the actual and potential effects of the proposal on the Boat shed which is located adjacent to the subject site. I discuss the evidence presented at the hearing regarding these effects and my findings in the following sections. However, first I discuss the legal status of the Boat shed as there was initially differences of position on this matter between Mr Hartstone and the Applicant.

Legal Status of the Boat shed

50. The Staff Report stated the Boat shed had no current authorisation and, as such, it did not form part of the 'existing environment' and therefore '*any potential adverse effects on the boat shed cannot be considered in determining this application*'.
51. However, Section 8.8 of the Application, which discusses the 'Adjoining landowner', stated '*This boat shed is located within the CMA and is subject to a Northland Regional Council consent (AUT.006166.01.01)*'.
52. As the statement in Section 8.8 of the Application appeared to conflict with Mr Hartstone's statement in his Staff Report, I sought further information from the NRC prior to the hearing (by way of Minute #1) as to whether the Boat shed, as it exists today, or any part of it, had any legal authorisation, and, if so, what did the authorisation cover (e.g. structure in the CMA and/or occupation of the CMA). Additionally, I sought further information from the NRC regarding whether any unauthorised parts of Boat shed formed part of the 'existing environment' and whether I was required to consider any adverse effects on those unauthorised parts.
53. The NRC engaged Wynn Williams, a law firm, to provide a response to my questions (**the legal opinion**). The legal opinion confirmed the Boat shed is authorised by a deemed coastal permit, originally granted under section 178 of the Harbours Act 1950, by virtue of sections 384(1)(b) and 425(3) of the RMA. The deemed coastal permit covers both the Boat shed structure and its occupation of the CMA.

54. The legal opinion stated the Boat shed appeared to have been modified without consent and those modifications were unauthorised (and unlawful) and any additional activities carried out at the Boat shed (e.g. occupying it as a dwelling) would require separate authorisation. The legal opinion stated the authors' understanding was that the Boat shed had been modified by way of infilling one of the two open berths shown on the plan with flooring, and windows had been installed facing the harbour channel. The legal opinion stated any modifications to the Boat shed would require separate authorisation, as would any activities carried out at the Boat shed (e.g. to occupy the Boat shed as a dwelling) – the legal opinion noted the NRC had written to the various owners of the Boat shed over the years about these non-compliances but no resource consent had been obtained to authorise the modifications.
55. The legal opinion also stated the unauthorised aspects of the Boat shed are to be excluded from the 'existing environment' when assessing effects in terms of section 104(1)(a) of the RMA.
56. At the start of the hearing Mr Hartstone tabled a Statement of Evidence in which he referred to the legal opinion and accepted that the Boat shed was legally authorised and, as such, formed part of the existing environment. Further, he stated that Policy D.5.22 of the PRP would apply to the Boat shed because it has now been shown to be an authorised structure – that policy states that dredging, disturbance, and deposition activities should not cause damage to authorised structures and I discuss this policy in greater detail later in this decision.
57. Mr Hood, in his pre-circulated evidence, stated the various technical reports prepared on behalf of the Applicant, and subsequently his planning assessment, had all been completed on the basis of the Boat shed being part of the existing environment. Mr Hood tabled a Summary of Evidence statement during the hearing which stated it was his understanding that the Boat shed was authorised for storing boats and not for residential use, and that no authorisation existed for mooring vessels outside the Boat shed.
58. Ms Shaw's opening legal submissions for the Applicant confirmed she had reviewed the legal opinion and agreed with all its conclusions. She noted the two High Court cases and the three Environment Court cases relied on in the legal opinion had not subsequently been overturned, adversely cited, or superseded. Ms Shaw also confirmed that one of the Environment Court decisions (the *Schofield* decision) had recently been favourably cited by the High Court.
59. In paragraph 44 I discussed the conclusion reached by Mr Cocker that the adverse effect of the proposal on the visual amenity of the occupiers of the Boat shed was 'very high'. However, as outlined in the legal opinion, any use of the Boat shed as a dwelling is unauthorised and, as such, any effects on its occupiers need to be excluded from the 'existing environment' when assessing effects in terms of section 104(1)(a) of the RMA. The legal opinion stated that the use of the Boat shed as a dwelling '*...may change the assessment of effects such as the visual amenity effects of the proposed activity on the boat shed (to the extent it is authorised)*'.

Findings – Legal Status of the Boat shed

60. While there was initially a difference of position between Mr Hartstone and the Applicant regarding the legal status of the Boat shed, following receipt of the legal opinion all parties agreed that the Boat shed is authorised and, as such, it forms part of the existing environment and any effects on it must be considered under section 104(1)(a) of the RMA. I agree.
61. Those parts of the Boat shed that are unauthorised or unlawful are not part of the environment against which the effects of the proposal are to be considered.

Potential Adverse Effects on the Boat shed

62. Mr Botica presented expert evidence on geotechnical matters associated with the proposal, in particular the stability of the various batters that would be created around the perimeter of the Marina basin following the capital dredging. It is the southern batter which is adjacent to the Boat shed and its stability was the key issue for Mr Peet.
63. Mr Botica explained that the northern batter would be rock armoured and a retaining wall would be constructed along the western side. He stated the southern and eastern batters, which would both have a 1 vertical in 3 horizontal (1V:3H) slope, would be fully submerged throughout the tidal cycle and, as such, they would not have any armouring.
64. The Hawthorn Geddes (**HG**) geotechnical report, included as Appendix 14 of the Application, noted the factor of safety (**FoS**) design requirements for slope stability were >1.5 for long-term (drained) and >1.3 for short-term (undrained). For the southern and eastern batters the drained and undrained FoSs were reported as 3.20 and 2.43, respectively, both being well above the FoS design requirements.
65. The NRC engaged Riley Consultants to peer review the HG geotechnical report which identified a number of issues which were addressed by HG in an addendum geotechnical report (dated 21 March 2019). The HG addendum report included revised stability analyses for the various batters and rock walls that took into account corrected undrained shear strengths for the sediments. The HG addendum report presented a revised undrained FoS for the southern and eastern batters of 2.93, which was still well above the design requirement FoS of 1.3. There was no revision of the drained FoS.
66. The HG addendum report also presented a seismic analysis for the drained and undrained stability, and noted that a FoS of >1.15 was considered adequate for seismic purposes. For the southern and eastern batters the seismic analysis resulted in drained and undrained FoS of 1.48 and 1.33, respectively, both being greater than 1.15.
67. The Riley Consultants peer review also recommended that an assessment of vibration risk of the proposal on the Boat shed should be undertaken. In response to this recommendation, the HG addendum report stated:

"It is noted that all dredging activities will be undertaken in soft marine mud. The risk of vibration in this material affecting the existing nearby boat shed is considered to be low. Based on experience with upstream dredging of these soft marine muds, there was no measurable vibration on adjacent buildings. We note that it will be a requirement to undertake a detailed condition survey of the shed prior to starting any works. Regular inspections to identify damage resulting from nearby work can be undertaken".

68. In answers to questions Mr Botica considered the risks of vibration on the Boat shed from installing the piles within the Marina was not great and was less than the earthquake (seismic) risks that had been analysed. Mr Tate (Riley Consultants) agreed with Mr Botica that the vibration risks associated with pile driving were minor.
69. In answers to questions Mr Botica confirmed that reference to the 'requirement' for a detailed condition survey to be undertaken (stated in the HG addendum report, refer paragraph 67 above) was intended to mean by way of consent condition, however he acknowledged that no such condition had been volunteered at the time the HG addendum report was written. This 'requirement' was included in the Applicant's conditions tabled at the hearing as part of its Augier (volunteered) conditions.
70. In answers to further questions, Mr Botica stated that the Applicant's Augier conditions tabled at the hearing did not include any requirement for regular inspections of the Boat shed and he considered that such inspections should be undertaken. He stated that fixing at least one monitoring point to the Boat shed and surveying it would be beneficial, but that would require Mr Peet's permission. Mr Botica stated the Boat shed should be monitored for a period of between three and six months before works begin to ascertain the baseline natural movement that the Boat shed may currently be experiencing – this information would be able to be used once construction commences to determine if any movement of the Boat shed was as a result of the works or simply within 'natural' movement tolerances.
71. The Augier conditions tabled at the hearing included a requirement for the Applicant to install a monitoring pile around 10 m from the top of the southern batter, being between the southern batter and the Boat shed. That pile would then be monitored and if specified movements were detected then stabilisation works would be employed.
72. Mr Tate confirmed the Applicant had identified and assessed the key geotechnical issues associated with the proposal. He stated the amount of investigation information available appears reasonable for this stage of the project and that appropriate methodologies have been used by the Applicant's experts.
73. In his Completion of Technical Review letter (dated 1 April 2019) Mr Tate listed six matters which he recommended be included in consent conditions. I asked Mr Hartstone whether these recommendations had been included in his recommended conditions and he advised they had been and advised me of the relevant conditions.

74. Mr Blackburn presented expert evidence in respect of hydraulics. He outlined the work that had been undertaken in terms of modelling of the Hātea River in and around the subject site. He confirmed the model included the flows from Limeburners Creek.
75. Mr Blackburn confirmed the hydraulic model had been revised and rerun in response to matters identified in the NRC's peer review undertaken by Dr Joynes (Golovin). Dr Joynes prepared an addendum to his initial peer review report which concluded '*...the hydraulic modelling shows the effect on the hydraulic of the river to be negligible for the 100-year flood at low tide...*'.
76. Mr Blackburn stated the Marina basin would result in changes to water flow directions and velocities in and around the subject site. He stated that potential effects of flow velocities along the submerged southern batter on its stability had not been specifically assessed, however the velocities predicted by the model in this area of the Marina basin were less than the critical velocities to cause erosion.
77. Mr Blackburn confirmed assessment of the stability of the submerged batters would occur through the hydrographic surveys that would be undertaken as part of determining whether maintenance dredging was required – while the main purpose of that survey work would be to determine areas where maintenance dredging was necessary, the survey would include the submerged batter areas so any erosion or slumping would be able to be detected.
78. In answers to questions, Mr Blackburn stated there were various options available to stabilise the submerged batters should monitoring show that to be necessary, some of these options involved placing structures within the CMA. I asked the Applicant whether stabilisation solutions involving structures within the CMA were 'within scope' of the Application and Mr Hood stated there was no scope in the Application for such structures, namely because the experts were confident the batters will not fail. However, he stated that, in the unlikely event such stabilisation structures were necessary, the emergency provisions in section 330 to 331 of the RMA could be relied upon. I questioned whether the Applicant was able to rely on these emergency provisions and Mr Hartstone confirmed they could not.
79. In its Right of Reply the Applicant confirmed it could not rely on the section 330 RMA provisions and accepted that separate consents may be required if armouring of the submerged batter(s) were considered necessary in the future. With respect to the southern submerged batter, the Right of Reply stated (noting that the condition numbers differ to the final set of corrected conditions):
- a) *There is no evidence indicating a risk that the submerged batter will fail.*
 - b) *Condition 12 requires a detailed geotechnical investigation prior to construction.*
 - c) *New Augier condition 56 requires that the applicant undertake a hydrographic survey within one month of the completion of capital dredging, one year later, and then five yearly.*

- d) *New Augier condition 57 provides that if the hydrographic survey indicates scour or slump of the submerged batter, a geotechnical investigation will be carried out to determine the likely cause and whether contingency measures should be employed to stabilise the batter. An advice note is included that consent may be required for stabilisation work, and a trigger for NRC review of the consent conditions pursuant to s128.*
 - e) *Risk of failure of the submerged batter (which is unlikely) has therefore been adequately addressed through requirements for design and monitoring.*
80. In terms of monitoring the effects of the activities on the Boat shed, the Applicant's Right of Reply included a revised set of Augier conditions that included significant changes to those tabled at the hearing. The Right of Reply provided a helpful summary of the changes and I repeat them in full as follows (noting that the condition numbers differ to the final set of corrected conditions):

Augier condition 55 (boat shed monitoring plan) has been extensively re-worked and is now split into three sections: pre-construction, construction and post-construction. This condition has been revised having reviewed other marina conditions, and the City Rail designation and consent conditions (which included monitoring of neighbouring third party properties).

Pre-construction:

- a) *Detailed visual pre-works condition assessments are to be undertaken of the boat shed interior (if Mr Peet consents to access) and exterior.*
- b) *Monitoring brackets are to be fixed to the boat shed (if Mr Peet consents) and monitoring pile, and their locations surveyed.*
- c) *Three baseline monitoring measurements are to be taken.*

During construction:

- a) *Monthly monitoring at both locations is to be undertaken.*
- b) *If movement is detected at either location, monitoring frequency will increase to weekly and a geotechnical investigation will be undertaken.*
- c) *If greater movement is detected at either location:*
 - i) *works will cease in the vicinity of the boat shed.*
 - ii) *a geotechnical investigation will be undertaken (if not already triggered), and contingency measures will be employed to stabilise the excavation. An advice note is included that consent may be required for stabilisation work, and a trigger for NRC review of the consent conditions pursuant to s128. (Note that, as works will have ceased, construction in the vicinity of the boat shed will not progress until any necessary consents that may be required have been obtained).*
- d) *Increased monitoring will continue until no further movement is detected at the monitoring pile.*

- e) *Monthly monitoring will continue for 12 months after completion of the excavation.*

Post-construction:

- a) *Detailed visual post-works condition assessments are to be undertaken of the boat shed interior (if Mr Peet consented to access for a pre-works inspection) and exterior.*
- b) *The construction monitoring regime will be repeated for the first maintenance dredge.*

With respect to the risk of damage to the boat shed, the applicant says:

- a) *There is no evidence indicating any risk that the boat shed will suffer damage.*
- b) *Condition 12 requires a detailed geotechnical investigation prior to construction. A new note links condition 12 to new Augier condition 54, which requires that the detailed geotechnical investigation specifically consider effects of the construction on the boat shed.*
- c) *Despite there being no evidence of risk to the stability of the boat shed, the heavily revised Augier condition 55 (boat shed monitoring plan) sets out a robust monitoring proposal, including baseline condition assessment and location survey, followed by construction and post-construction monitoring.*
- d) *New Augier condition 58 requires the applicant's geotechnical engineer to hold \$1M professional indemnity insurance, and the applicant and its construction contractors to hold \$1M public liability insurance.*
- e) *The applicant considered the merits of a condition requiring rectification of any damage to the boat shed. The applicant does not consider it appropriate to include such a condition, as it would place NRC in the position of policing compliance between the applicant and a third party in relation to building works on third party property that do not form part of the consented works. The applicant says that is something that the applicant and Mr Peet would need to resolve directly. The applicant therefore has not volunteered a rectification condition with respect to the boat shed.*
- f) *In the unlikely event that damage to the boat shed occurred - despite detailed design consideration, monitoring, stop-works and stabilisation conditions - the monitoring records volunteered by the applicant would provide the evidential foundation for the parties to resolve the matter through insurance and/or civil avenues.*
- g) *Risk of damage to the boat shed (which is unlikely) has therefore been adequately addressed through extensive checks and balances including requirements for design, monitoring and insurances.*

81. Mr Peet presented extensive evidence on a range of matters, including:

- A history of events, including consultation undertaken by the Applicant;
- Stability of the submerged batters;

- Hydraulics of the area;
 - Apparent disparities in the various reports prepared by the Applicant's experts;
 - Risks associated with earthquakes and tsunamis; and
 - Conditions of consent should the Application be granted.
82. In answers to questions Mr Peet confirmed that he was not an expert in any of the subjects that he was presenting evidence on.
83. In terms of hydraulics, Mr Peet considered the Applicant's experts did not seem to have taken into account '*...the effects of the slowed water then impacting the southern batter and the resulting acceleration in flows*' which will then '*...generate strong eddies with velocities far in excess of the 'average' velocities mentioned*' in the HG reports. He considered the hydraulic report prepared by HG did not take into account the effects '*...of flows impacting on the batter obliquely*', nor '*...the added acceleration due to the flows impacting those from Limeburners Creek*'.
84. Mr Peet questioned how the southern batter would be repaired should it get eroded and he noted there was only 16 m between the top of that batter and the Boat shed.
85. In terms of geotechnical issues, Mr Peet considered that the southwestern end of the basin had been designed with the intention to leave it '*...in a greatly reduced unprotected state and hope for the best*'. He considered a calculated FoS of 2.92 for the southern batter '*doesn't make sense*' for an unprotected batter that would be subjected to increased flows from water entering the Marina. He referred to, and presented, a quote from an email he had received from Dr Chu, a professor at Nanyang Technological University, Singapore, which stated '*I share your concern. It is risky for the permanent batter or a 1:3 slope dredged in soft clay within a river to be left unprotected*'. In answers to questions Mr Peet acknowledged that Dr Chu's email, which had been pre-circulated to the parties prior to the hearing, included the following additional sentences: '*I suggest what you can do is get another consultant to review the design. This is done frequently for construction projects to either look for alternative solutions to save costs or ensure the design is proper. If you want me to do it, I will need to pair up with a consultant who runs a proper business, or you can just deal with him directly. My semester will start in Aug and I cannot spend too much time on this*'.
86. Mr Peet provided several quotes from various geotechnical publications covering subjects including variables that should be taken into account, pore water pressures, and influences of human activity.
87. Mr Peet provided a set of conditions which he requested be imposed should consent be granted. Those conditions covered the following:
- A monitoring programme to provide early warning of stability issues;

- Remedial measures to prevent damage to the area should be specified;
 - Limiting the dredge depths to different depths shown on the plans not just -3.5 m;
 - Restricting the Marina boundary as shown on the plans so that there can be no further changes to what is shown on the plans;
 - Installation of a monitoring pole (pile) to monitor 'mud levels' and a second marker nearby to be used to monitor horizontal movements; and
 - The other conditions included in his written submission.
88. Mr Peet tabled an alternative layout plan for the Marina which included a 45 m 'no dredge zone' around the Boat shed. He also tabled an unsigned 'Agreement' between the Applicant and himself.
89. In answers to questions Mr Peet stated he had no objections, in principle, with the Applicant installing monitoring brackets on the outside of the Boat shed.

Findings – Potential Adverse Effects on the Boat shed

90. I find the Applicant's experts have appropriately assessed the risks of the proposal on the Boat shed. The NRC engaged independent experts to peer review the work of the Applicant's experts and while the peer reviewers identified several issues, the Applicant's experts have addressed those to the satisfaction of the NRC experts. I heard no expert evidence to show that the Boat shed will be adversely affected.
91. I find the conditions volunteered by the Applicant in respect of monitoring the potential effects on the Boat shed to be entirely appropriate. I consider the conditions to be robust and I commend the Applicant for volunteering them. I record here that had the Applicant not put these conditions forward as Augier conditions then I would have imposed conditions with essentially the same intent. I note that Mr Hartstone stated he would have recommended similar conditions be imposed had the Applicant not volunteered them.
92. The Applicant's conditions in respect of monitoring the Boat shed are, in part, dependent on Mr Peet providing his approval for such monitoring. It is clearly in Mr Peet's interest to have this monitoring undertaken as it has been volunteered by the Applicant to deal with the concerns he has regarding how the proposal may affect the Boat shed. However, in the event that he does not provide his approval then I agree with the Applicant that those components of the monitoring do not need to be undertaken. Whilst conditions cannot be imposed that rely on third party approvals, the Applicant's Augier conditions are drafted in a manner that does not 'rely' on Mr Peet's approval.

93. Mr Peet's tabled documents included numerous excerpts of material put forward as 'expert evidence', including a pre-circulated email from a Dr Chu. As I outlined to Mr Peet during the hearing, such material cannot be considered as expert evidence in such proceedings because the author(s) have not prepared any statement of evidence and, further, they have not been made available for me to ask questions of their evidence (statements). Accordingly, I have little choice but to place minimal weight on those excerpts provided in Mr Peet's tabled documents. This should not be interpreted to mean I have ignored that material; I have considered the material but given it minimal weight. I record here that I appreciate the considerable effort Mr Peet went to in preparing his written statement.

Overall Summary of Environmental Effects

94. I am required to assess the potential and actual environmental effects of the activities which are the subject of this Application on an evidential basis. I have considered the expert evidence submitted by the Applicant, the NRC's independent peer reviewers, and by Mr Hartstone within the context of the statutory framework. I have also considered the experience and observations of Mr Peet and the written material he provided in his original submission and the statement he tabled at the hearing.
95. I find that the Marina will provide significant positive effects, not only for Whangarei but also the wider Northland region.
96. I find the actual and potential adverse effects of the activities on the environment to be, at worst, minor and acceptable. This finding is dependent on the Applicant complying with the conditions of consent that have been put forward, particularly the Augier conditions that have been volunteered. The adverse visual effects of the proposal on the occupants of the Boat shed were assessed by Mr Cocker as 'very high', however I was advised that the use of the Boat shed for residential activities is not authorised and therefore these effects are not able to be considered in the context of the 'existing environment' under section 104(1)(a) of the RMA.

SECTION 104(1)(ab) - ENVIRONMENTAL OFFSETS AND COMPENSATION

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

SECTION 104(1)(b) OF THE RMA - RELEVANT PLANNING PROVISIONS

99. I am required to have regard to the relevant objectives and policies of the NZCPS, RPS, RCP, RWSP, PRP, and WDP.
100. An analysis of the relevant planning provisions was provided by Messrs Hartstone and Hood. However, neither of them considered the RWSP and both considered that to be an oversight. I requested Mr Hood provide an analysis of the relevant RWSP provisions and that was provided with the Applicant's Right of Reply.

101. In his Staff Report Mr Hartstone advised the RCP was declared operative on 30 June 2004 and therefore pre-dates the 2010 NZCPS, meaning that it does not 'give effect' to the current NZCPS (the RCP provisions reflect the earlier 1994 NZCPS). He also stated the PRP intended to replace the RCP and its provisions are intended to give effect to the 2010 NZCPS and that it has progressed through the RMA Schedule 1 process to the point that the appeal period has closed. He stated that significantly more weight should therefore be given to the PRP provisions than the RCP, however the RCP provisions still require consideration.
102. I have had regard to all of the relevant objectives and policies in the applicable statutory planning documents.
103. For all the matters not in contention, being those listed in paragraph 43 of this decision, I agree with the assessment made by Mr Hartstone in his Staff Report, and the assessment made by Mr Hood in the Application and his Statement of Evidence, the latter covering the 'Decisions Version' of the PRP. As provided for by section 113(3)(b) of the RMA, I adopt both planners' assessments and do not repeat or summarise that material in this decision. The fact I do not discuss these planning provisions in detail in this decision should not be interpreted to mean that I have glossed over them. I record here that I have carefully reviewed all the relevant planning provisions analysed by Messrs Hartstone and Hood and I agree with their analyses and conclusions that the proposal is generally consistent with, or aligned with, the relevant provisions of the applicable planning documents.
104. I briefly discuss the key provisions that relate to the matters in contention (i.e. potential effects on the Boat shed) in the next section of this decision.

Potential Adverse Effects on the Boat shed

105. The key provision relating to the actual and potential adverse effects of the proposal on the Boat shed is Policy D.5.22 of the PRP which states:

Dredging, disturbance and deposition activities should not:

(1) cause long-term erosion within the coastal marine area or on adjacent land, and

(2) cause damage to any authorised structure
106. My findings, presented in paragraph 90, are that the Applicant's experts have appropriately assessed the risks of the proposal on the Boat shed – their evidence having been peer reviewed by the NRC's independent experts. I heard no expert evidence to show that the proposal will result in long-term erosion within the CMA nor cause damage to the Boat shed. Those findings were based on full compliance with the agreed conditions, including the Applicant's Augier conditions. Accordingly, I consider the proposal is consistent with Policy D.5.22 of the PRP.

107. The RCP does not have any provisions specifically relating to protecting authorised structures. Instead, the RCP contains provisions which include more general directives such as Policy 28.4(8) which requires consent authorities to ensure adverse environmental effects associated with new marinas are avoided as far as practicable and avoiding conflicts with other activities. Likewise, Objective 22.3 aims to ensure capital and maintenance dredging is carried out in a manner that avoids, remedies, or mitigates adverse effects on the environment. I consider the proposal is consistent with Policy 28.4(8) of the RCP and will achieve Objective 22.3 of that Plan as far as the actual and potential adverse effects on the Boat shed are concerned.

SECTION 104(1)(c) - OTHER RELEVANT MATTERS

108. Section 104(1)(c) requires me to have regard to any other matters that are relevant and reasonably necessary to determine the Application.
109. Mr Hartstone considered a number of the WDC's non-statutory strategic planning documents to be relevant, in particular the Hihiaua Precinct Plan (2015) and Whangarei 20/20 Momentum. He stated the latter document highlights a new marina in the location identified in this Application.
110. I have had regard to these two documents in arriving at my decision.

SECTION 105 of the RMA

111. Section 105 of the RMA states that, when considering section 15 RMA matters (discharges), I must, in addition to section 104(1), have regard to-
- (a) *The nature of the discharge and the sensitivity of the receiving environment to adverse effects; and*
 - (b) *The applicant's reason for the proposed choice; and*
 - (c) *Any possible alternative methods of discharge, including discharge to any other receiving environment.*
112. Section 105 of the RMA applies to this Application because two of the activities within the CMA involve discharges and two discharges are proposed on land at 'Bell Block'. These activities contravene section 15 of the RMA.
113. Mr Hartstone noted in his Staff Report that the Application does not contain any assessment of section 105 of the RMA and so he provided such an assessment. I agree with his assessment and adopt it for the purposes of this decision. I am satisfied that I have had regard to all the matters outlined in section 105 of the RMA in making my decision on this Application.

SECTION 107 of the RMA

114. Section 107(1) of the RMA states that I am prevented from granting a resource consent allowing any discharge of a contaminant 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) apply² -
- (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.*
115. Section 107 of the RMA applies to this Application because some of the discharges applied for involve contaminants directly to water.
116. Section 4.5.7 of the 4Sight report addresses the section 107 RMA matters and confirms the discharges will not give rise to the effects listed in clauses (1)(c)-(e) and (g).
117. I also note the agreed conditions include several conditions which include receiving water standards that must be met after specified mixing zones. The specified receiving standards include the relevant matters specified in section 107(1) of the RMA.

PART 2 of the RMA

118. The matters specified in section 104(1) I must consider are 'subject to Part 2' of the RMA. These words, and how they apply to the consideration of resource consent applications, has been the subject of a number of cases heard in the Environment Court, High Court, and more recently the Court of Appeal.
119. The Court of Appeal decision on *RJ Davidson Family Trust v Marlborough District Council*³ (**the Davidson decision**) provides the latest, and most authoritative, position on this matter.

² 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.

³ CA97/2017 [2018] NZCA 316

120. In summary, the Davidson decision directs that where the New Zealand Coastal Policy Statement (NZCPS) is relevant to an application and it is clear from the relevant NZCPS policies whether consent should be granted or refused, then there is no need for a decision maker to refer back to Part 2 RMA matters as it would not add anything to the required evaluative exercise – that is, separate recourse to Part 2 RMA matters is not required as those matters are already reflected in the NZCPS objectives and policies. As the Court of Appeal stated⁴:

“Putting it another way, even if the consent authority considered pt 2, it would be unlikely to get any guidance for its decision not already provided by the NZCPS. But more than that, resort to pt 2 for the purpose of subverting a clearly relevant restriction in the NZCPS adverse to the applicant would be contrary to King Salmon and expose the consent authority to being overturned on appeal”.

121. The Davidson decision also provides guidance on whether Part 2 RMA matters need to be considered where the NZCPS provisions do not provide clear guidance on whether consent should be granted or refused, and situations for applications where the NZCPS is not relevant. In both situations the decision maker needs to determine whether the relevant plan has been ‘competently prepared’ under the RMA – that is, whether it contains a coherent set of policies designed to achieve clear environmental outcomes. If the relevant plan meets these criteria then there is no need to consider Part 2 RMA matters, and if the relevant plan does not meet these criteria then the decision maker should consider Part 2 RMA matters and determine whether they provide assistance in making a decision on the Application.
122. Messrs Hartstone and Hood both considered the Davidson decision and concluded that there is no need for me to assess the Application against Part 2 RMA matters as these provisions are expressed in the national, regional, and district planning documents. I agree.
123. Given the directions issued by the Court of Appeal in the Davidson decision, I do not consider reference to RMA Part 2 matters would add anything to the evaluative exercise I have undertaken under section 104 of the RMA.

CONCLUSION AND OVERALL DETERMINATION

124. On the basis of the evidence in front of me, I have determined that the Application should be granted subject to conditions. I discuss the conditions in the next section of this decision.
125. In coming to my decision to grant the Application I am satisfied that the adverse effects of the activities for which resource consents are sought are, at worst, minor and acceptable. I am also satisfied that the activities are generally consistent and align with the relevant provisions of the relevant statutory planning documents.

⁴ At para [71]

Conditions

126. The Staff Report contained recommended conditions for both the NRC and WDC resource consents. However, there have been several iterations of these conditions over the course of the hearing process summarised as follows:
- Mr Hood made a number of recommended changes to the conditions contained in the Staff Report in his Statement of Evidence which was pre-circulated;
 - Messrs Hartstone and Hood met prior to the hearing and Mr Hartstone tabled an amended set of conditions at the beginning of the hearing. These conditions contained numerous changes to those in the Staff Report⁵ as well as a set of Augier conditions volunteered by the Applicant to address Mr Peet's concerns about the Boat shed;
 - Mr Hood recommended additional changes to the Applicant's Augier conditions and also Condition 24, which dealt with receiving water standards, in his Summary of Evidence statement tabled at the hearing;
 - A meeting(s) was held following the formal part of the hearing between Messrs Hartstone and Hood, WDC staff, and NRC staff. This culminated in a set of 'agreed' conditions and revised Augier conditions which were provided with the Applicant's Right of Reply;
 - The agreed conditions included a number of errors (including condition numbering and cross-referencing) and I requested these be corrected – this resulted in a corrected set of agreed conditions being provided by the Applicant; and
 - Having reviewed the corrected set of conditions I noted some areas that required clarification and further information. The Applicant provided a final set of corrected conditions addressing the outstanding issues.
127. The conditions I have imposed on the NRC and WDC resource consents are contained in Appendix 1 and Appendix 2 to this decision, respectively. The conditions are generally based on the final corrected version of conditions provided by the Applicant. There was agreement between the Applicant and Mr Hartstone regarding these conditions and I understand both the NRC and the WDC also agreed with the final set of conditions.
128. The changes I have made to the conditions are only grammatical and typographical and none of the changes are substantive or change the intent of any condition. I have changed the beginning of Condition 26 to make it clear that the receiving water standards specified in that condition do not apply during capital or maintenance dredging as those two activities have their own receiving water quality standards that must be met (as specified in Conditions 15 and 42, respectively).

⁵ Following the hearing I was advised, via Ms Sluys, that the recommended conditions in Mr Hartstone's Staff Report had been altered by the NRC without his knowledge before the Report was sent out to the parties – this explained why the version tabled at the start of the hearing was different to that included in the Staff Report and resulted in some understandable confusion for Mr Hartstone.

129. I note that Condition 42 of the agreed conditions, which relates to receiving water quality standards that must be met during maintenance dredging, begins with '*At any time during the maintenance dredging works, the Regional Council may undertake monitoring...*' whereas all the other conditions which specify receiving standards for water and sediment quality do not include these words (namely conditions 15, 26, 27, 28, 51, and 52). Conditions must be able to be complied with by the holder of the consent and that is not the case with the proposed wording (which appears to be drafted more like an advice note). I also note that Schedule 2, which outlines the monitoring required to be undertaken by the Applicant includes some water quality monitoring required to be undertaken during maintenance dredging – this monitoring being essentially the same as what is proposed during capital dredging albeit with a larger zone of mixing. It is therefore unclear why Condition 42 includes the beginning words presented above. The Council is able to undertake independent monitoring at any time to check compliance with any of the water or sediment quality standards and that ability does not need to be codified in Condition 42. Accordingly, I have removed those words resulting in Condition 42 specifying the receiving water quality standards that must be achieved during maintenance dredging – that is, the wording is now consistent with the drafting of conditions 15, 26, 27, 28, 51, and 52. I have also included an advice note under each of these conditions which reminds the Applicant (Consent Holder) that Schedule 2 outlines the monitoring that is required to be undertaken to determine compliance with the respective condition and that the Council may undertake additional monitoring to check compliance with the specified standards.
130. Schedule 2 outlines the four separate monitoring programmes that the Applicant is proposing to undertake. I have made some changes to the layout of Schedule 2 to identify the four different programmes and also the language that is used – in many cases the terms 'will be' and 'may be' were used and such language does not create any mandatory requirements. I have changed such language to include the word 'shall' so as to create the required compulsion to do the monitoring as specified.
131. Schedule 2 specifies certain monitoring that is proposed to be undertaken during the operation of the Marina, including for faecal coliforms. The wording proposed stated (my emphasis added):

Testing will be carried out for faecal coliforms for compliance with the standard.

Up to four separate testing events for faecal coliforms may be taken annually, unless monitoring results indicate it is necessary to go to a 30 day sampling regime, as provided for in the conditions of consent.

Samples will be taken at no less than five sites within the marina, the precise locations of which will be determined following consultation by council monitoring staff with the Consent Holder.

Sampling will be carried out at the same time for, copper, zinc, lead, temperature, salinity and dissolved oxygen.

This drafting has several problems associated with it. If the Applicant did undertake any testing it would be in compliance with this monitoring requirement because, as drafted, it requires 'up to four' testing events to (possibly) be undertaken. I doubt that is the intent and have changed this wording to require 'at least' four testing events to be undertaken. Further, the drafting does not stipulate any minimum time between the testing events, meaning the Applicant could undertake all four testing events over the space of a week or two and be compliant. Again, I doubt that is the intent as it would not provide any temporal information on faecal coliform counts. I have changed the wording to require testing to be undertaken during the months of November, January, March, and July – that is, primarily over the summer months when the Marina is likely to higher occupancy. The revised wording for this part of Schedule 2 is:

Testing shall be carried out for faecal coliforms for compliance with the water quality standards specified in Condition 27.

At least four testing events for faecal coliforms shall be undertaken annually during the months of January, March, July, and November, unless monitoring results indicate it is necessary to undertake a 30-day sampling regime as required by Condition 27.

During each testing event water samples shall be collected from at least five sites within the Exclusive Occupation Zone, the precise locations of which shall be determined following consultation with the assigned Council monitoring officer.

Additional water samples shall be also be collected at all the sites where faecal coliform testing occurs (described above) and the additional water samples shall be analysed for total copper, total zinc, total lead, temperature, salinity, and dissolved oxygen.

132. In terms of the Whangarei District Council conditions, I have made numerous changes in line with comments I made during the hearing in relation to conditions that required 'approval' by the Council. I expected these references to have been changed (as discussed and agreed at the hearing) to 'certified' or 'certification'. In addition, I have deleted Advice Note 2, which advised the Consent Holder it had the right to object to the decision under section 357 of the RMA – that is not the case here as this Application was publicly notified so section 357 RMA objections do not apply. The Applicant and submitters have appeal rights under section 120 of the RMA and I expect the covering letter that will accompany this decision will outline these appeal rights to the parties.
133. I do not propose to provide a detailed summary of the conditions as many of them are self-explanatory and relate to matters not in contention. Earlier in this decision I included the helpful summary of the Augier conditions provided by the Applicant in its Right of Reply which seek to address the potential adverse effects of the proposed activities on the Boat shed. I refer the reader to paragraph 80 of this decision for that summary of the Augier conditions (noting the condition numbering is different in the final set of conditions).

134. I am satisfied that the resource consent conditions, both singularly and in total, are necessary and appropriate to avoid, remedy, or mitigate potential adverse effects identified by the Application and the evidence.

Duration and Lapsing

135. The Applicant sought a 35-year term and a 10-year lapsing period for all the consents. I note the Application does not differentiate between the NRC and the WDC consents in respect of the duration and lapsing periods being sought.

136. In his Staff Report Mr Hartstone noted '*...the reclamation activity has an unlimited consent term once it is given effect to*'. That is not necessarily correct as section 123(a) of the RMA provides for durations for reclamations to be specified as it states (emphasis added):

'(a) the period for which a coastal permit for a reclamation, or a land use consent in respect of a reclamation that would otherwise contravene section 13, is granted is unlimited, unless otherwise specified in the consent'

137. However, in this case I agree that the reclamation should have an unlimited duration despite the fact the Applicant sought a 35-year duration.

138. For the balance of the NRC consents, I agree with Mr Hartstone that a 35-year term is appropriate for a development of the scale proposed. Mr Hartstone notes no submissions requested any shorter term be imposed.

139. Mr Hartstone does not specifically address the duration of the land use consent applied for from the WDC, however given his recommended conditions for the WDC consent do not include any mention of an expiry date I am assuming he considers it should be granted for an unlimited period. Section 123(a) of the RMA, the text of which is presented in paragraph 136 above, states that the period for which a land use consent in respect of a reclamation is granted is unlimited unless otherwise specified in the consent. In this case I agree that the land use consent from the WDC should have an unlimited duration despite the fact the Applicant sought a 35-year duration.

140. In terms of lapsing, Mr Hartstone's Staff Report recommended the Applicant should provide further information to justify the 10-year lapsing period being sought. Mr Hood provided further information on the likely construction timetable in his Statement of Evidence. I am satisfied with the justification provided and agree that a 10-year lapsing period should be provided for both the NRC and WDC consents.

DECISION

For the above reasons, it is my decision, pursuant to sections 104B of the Resource Management Act 1991, to **GRANT** the following resource consents to the Whangarei Harbour Marina Management Trust, subject to the terms and conditions set out in Appendix 1 and Appendix 2, attached to this decision:

Northland Regional Council Resource Consents:

AUT.039865.01.01	Reclaim approximately 4,550 square metres (0.455 ha) of the coastal marine area.
AUT.039865.02.01	Place and occupy space in the coastal marine area with a marina development (including three primary piers providing a maximum of 130 berths).
AUT.039865.03.01	Place, use, and occupy space in the coastal marine area with hard protection structures including rock retaining walls (inclusive of stormwater outlets) and rock armoured batter slopes.
AUT.039865.04.01	Place and use structures associated with a marina development (including floating marina piers, pontoons and piles and associated utilities and services, and aids to navigation) in the coastal marine area.
AUT.039865.05.01	Occupy part of the coastal marine area to the exclusion of others.
AUT.039865.06.01	Capital dredging within the coastal marine area of approximately 150,473 cubic metres of material within the footprint of a marina development.
AUT.039865.07.01	Maintenance dredging in the coastal marine area to maintain water depths within a marina basin.
AUT.039865.08.01	Remove mangroves from the coastal marine area.
AUT.039865.09.01	Deposit dredge spoil within the coastal marine area during development of a reclamation.
AUT.039865.10.01	Discharge decant water and stormwater to the coastal marine area during construction of a reclamation.
AUT.039865.11.01	Divert and discharge stormwater to the coastal marine area from a completed reclamation.
AUT.039865.12.01	Incidental discharges of contaminants to the coastal marine area associated with dredging, dredge spoil disposal and other activities that disturb the foreshore and seabed.
AUT.039865.13.01	Deposit dredge spoil from capital and maintenance dredging to land at an existing dredging disposal site within land described as Pt Lot DP35377, known as "the Bell Block disposal area" at or about location co-ordinates 1722040E 6044830N.
AUT.039865.14.01	Discharge contaminants to land (dredge spoil containing seawater and leachate) at the Bell Block disposal area.
AUT.039865.15.01	Take and use seawater to aid in transfer of marine mud from Kissing Point to the Bell Block disposal area.

Whangarei District Council Consent

LU1800032

To undertake marina activities on a proposed reclamation.

Dated this 17th day of September 2019

A handwritten signature in black ink, appearing to read 'Rob Lieffering', with a stylized flourish at the end.

Dr Rob Lieffering

Hearing Commissioner

APPENDIX 1: NORTHLAND REGIONAL COUNCIL CONDITIONS

To undertake the following activities associated with a marina development in the Hātea River, Whangārei between and about location co-ordinates 1720655E 6044595N and 1720655E 6044359N.

WHANGAREI HARBOUR MARINA MANAGEMENT TRUST, 37 QUAYSIDE, WHANGAREI 0110

Note: All location co-ordinates in this document refer to Geodetic Datum 2000, New Zealand Transverse Mercator Projection.

- | | |
|-------------------------|--|
| AUT.039865.01.01 | Reclaim approximately 4,550 square metres (0.455 hectares) of the coastal marine area. |
| AUT.039865.02.01 | Place and occupy space in the coastal marine area with a marina development (including three primary piers providing a maximum of 130 berths). |
| AUT.039865.03.01 | Place, use and occupy space in the coastal marine area with hard protection structures including rock retaining walls (inclusive of stormwater outlets) and rock armoured batter slopes. |
| AUT.039865.04.01 | Place and use structures associated with a marina development (including floating marina piers, pontoons and piles and associated utilities and services, and aids to navigation) in the coastal marine area. |
| AUT.039865.05.01 | Occupy part of the coastal marine area to the exclusion of others. |
| AUT.039865.06.01 | Capital dredging within the coastal marine area of approximately 150,473 cubic metres of material within the footprint of a marina development. |
| AUT.039865.07.01 | Maintenance dredging in the coastal marine area to maintain water depths within a marina basin. |
| AUT.039865.08.01 | Remove mangroves from the coastal marine area. |
| AUT.039865.09.01 | Deposit dredge spoil within the coastal marine area during development of a reclamation. |
| AUT.039865.10.01 | Discharge decant water and stormwater to the coastal marine area during construction of a reclamation. |
| AUT.039865.11.01 | Divert and discharge stormwater to the coastal marine area from a completed reclamation. |
| AUT.039865.12.01 | Incidental discharges of contaminants to the coastal marine area associated with dredging, dredge spoil disposal and other activities that disturb the foreshore and seabed. |
| AUT.039865.13.01 | Deposit dredge spoil from capital and maintenance dredging to land at an existing dredging disposal site within land described as Pt Lot DP 35377, known as “the Bell Block disposal area” at or about location co-ordinates 1722040E 6044830N. |

AUT.039865.14.01 Discharge contaminants to land (dredge spoil containing seawater and leachate) at the Bell Block disposal area.

AUT.039865.15.01 Take and use seawater to aid in transfer of marine mud from Kissing Point to the Bell Block disposal area.

Subject to the conditions below:

General Conditions

1. The activities provided for under these consents shall be carried out generally in accordance with the following information:
 - (a) Resource Consent Application and Assessment of Environmental Effects prepared for the Whangarei Harbour Marina Management Trust dated July 2018 prepared by Reyburn and Bryant Limited, inclusive of Appendices 1–23;
 - (b) Hydraulic Assessment Report prepared by Hawthorn Geddes Limited referenced as Job No 10514 dated 7 March 2018, and subsequent correspondence from Hawthorn Geddes Limited dated 27 June 2018 and 7 August 2018;
 - (c) Document entitled 'Response to Peer Review Ecology and Water Quality' prepared by 4Sight Consulting Limited dated 22 August 2018;
 - (d) Document entitled 'Addendum Geotechnical Report for Resource Consent for Proposed Okara Marina at Port Road, Whangarei – Additional Information in Response to Technical Review' prepared by Hawthorn Geddes Limited dated 21 March 2019.

If there are any differences or apparent conflict between the contents of these documents and any conditions of these consents, then the conditions shall prevail.

2. At least 10 working days prior to commencement of any construction works the Consent Holder shall notify the Council's assigned monitoring officer in writing of the date that the works are intended to commence.
3. On provision of notice under Condition 2 above, the Consent Holder shall arrange for a site meeting between the Consent Holder's contractor and the Council's assigned monitoring officer within the 10 working day period before commencement of any construction works. No works shall commence until the Council's assigned monitoring officer has completed the site meeting. If this site meeting cannot occur during this period due to the Council's assigned monitoring officer not being available, then works can commence on the date specified.

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

4. As part of the written notification required under Condition 2, the Consent Holder shall provide written certification from a suitably qualified and experienced person confirming that all plant and equipment entering the coastal marine area associated with the intended works are free from unwanted or risk marine species. This certification shall be provided to the Council's assigned monitoring officer.
5. The coastal marine area shall be kept free of debris resulting from the activities authorised by these consents.
6. Monitoring of these consents shall be carried out in accordance with Schedule 2 **attached**.

7. The Consent Holder shall, on becoming aware of any discharge associated with the Consent Holder's operations that is not authorised by these consents, comply with the following:
- (a) Immediately take such action, or execute such work as may be necessary, to stop and/or contain the discharge; and
 - (b) Immediately notify the Council by telephone of the discharge; and
 - (c) Take all reasonable steps to remedy or mitigate any adverse effects on the environment resulting from the discharge; and
 - (d) Report to the Council's Compliance Manager in writing within one week on the cause of the discharge and the steps taken, or being taken, to effectively control or prevent the discharge.

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

Advice Note: *The Environmental Emergency Hotline is a 24 hour, 7 day a week, service that is free to call on 0800 504 639.*

8. Prior to a cancellation or expiring of these consents the structures and other materials and refuse associated with these consents shall be removed from the consent area and the consent area shall be restored to the satisfaction of the Council, unless an application has been properly made to the Council for the renewal of these consents or the activity is permitted by a rule in the Regional Plan.
9. These consents shall lapse on 31 July 2029, unless before this date the consents have been given effect to.
10. The Council may, in accordance with Section 128 of the Resource Management Act 1991, serve notice on the Consent Holder of its intention to review the conditions annually during the month of September to deal with any adverse effects on the environment that may arise from the exercise of the consents and which it is appropriate to deal with at a later stage. The Consent Holder shall meet all reasonable costs of any such review.

Marina Construction Including Capital Dredging

11. The marina development shall be constructed in general accordance with the **attached** Hawthorn Geddes Limited drawings referenced as follows:
- (a) Project Number 10514 Sheet C201 Revision 6 (Northland Regional Council Plan Number 4889/1).
 - (b) Project Number 10514 Sheet C211 Revision 3 (Northland Regional Council Plan Number 4889/3).
 - (c) Project Number 10514 Sheet C212 Revision 4 (Northland Regional Council Plan Number 4889/2).
 - (d) Project Number 10514 Sheet C214 Revision 3 (Northland Regional Council Plan Number 4889/4).
 - (e) Project Number 10514 Sheet C215 Revision 3 (Northland Regional Council Plan Number 4889/5).

12. Prior to commencing construction of the marina development, the Consent Holder shall:

- (a) Provide, from a Chartered Professional Engineer, a detailed geotechnical investigation and report addressing all works to be carried out within the Construction Zone Extent (Consent Envelope) as shown on **attached** NRC Plan Number 4889/1. That investigation and report shall include detailed design (including laboratory testing) to confirm any assumptions/knowledge gaps identified during the preliminary design phase, stability analyses to confirm the target Factor of Safety (FoS), and details of pre-construction condition surveys associated with the Te Matau a Pohe support structures both above and below mean high water springs where they are located within or adjacent to Construction Zone Extent (Consent Envelope).

The report shall confirm the extent and volume of material to be removed during capital dredging. The depth shall not exceed 5.5 metres (-3.5 metres below Chart Datum) and the report shall confirm the methodology for removal. Such methodology may identify water and/or land-based excavation activities.

Advice Note: See also Condition 57.

- (b) Provide a Construction Management Plan prepared by a suitably qualified and experienced person that provides details addressing the following matters relating to all construction activities:
 - i. Key project and management personnel and their contact details.
 - ii. Scope of the proposed works associated with construction of the marina basin and reclamation.
 - iii. Construction timetable and hours of operation, noting that dredging activities may only occur between 7 February and 15 December.
 - iv. Means of avoiding any conflict between construction vessels and public activities within the Hātea River, including any existing moorings.
 - v. Means of containing and transporting all dredge spoil material to the authorised disposal site, noting that no spoil may be disposed of to any location other than that authorised under these consents.
 - vi. Provision of an oil spill kit, appropriate to the plant and equipment being used, to be readily available and maintained on site during construction or maintenance works.
 - vii. Means of avoiding any potential discharge or spill of fuel into the coastal marine area or in any other location at or near the site where fuel or oil could enter the coastal marine area, or in such a way that soil or water at or near the site is contaminated.
 - viii. Noise control measures to comply with the Construction Noise standards in Schedule 1 **attached**.
 - ix. Management of any construction lighting.

- (c) Provide a Biosecurity Management Plan (BMP) prepared by a suitably qualified and experienced person that details the measures required prior to, during, and on completion of all constructions works. The BMP shall be prepared generally in accordance with the Council's Marine Pathway Management Plan and shall address the potential for pathways for any pest organisms to be introduced, prevention and monitoring measures, and response should any organism be identified during or after the construction period.
 - (d) Confirm in writing the total number of berths that will be provided within the marina facility.
 - (e) Provide evidence to illustrate that any and all required building consents have been sought and obtained from the Whangarei District Council.
13. No construction works shall commence until Conditions 2, 3, 4, and 12 (a)–(e) above have been complied with and confirmed in writing by the Council's assigned monitoring officer.
14. During the period of construction works, the Consent Holder shall:
- (a) Retain a copy of the documents required to be prepared by Condition 12 (a)–(e) on the site during all construction works and shall be made available for inspection by the public.
 - (b) Comply at all times with the Plans required by Condition 12 (a)–(c).
 - (c) Carry out monitoring during capital dredging in accordance with Schedule 2 **attached**. The results of all testing shall be provided to the Council's assigned monitoring officer.
15. The capital dredging shall not cause the water quality of the receiving waters, as measured at or beyond a 100-metre radius mixing zone from the dredger, to result in, or fall below, any of the following standards:
- (a) The visual clarity, as measured using a Secchi disk, shall not be reduced by more than 50% of the background visual clarity at the time of measurement, and the measurement depth shall not be less than 0.8 metres;
 - (b) The turbidity of the water (Nephelometric Turbidity Units (NTU)) shall not be increased by more than 50% of the background turbidity at the time of measurement;
 - (c) The concentration of total suspended solids shall not exceed 40 grams per cubic metre above the background measurement;
 - (d) The production of any conspicuous oil or grease film, scum or foams, or floatable or suspended materials, or emissions of objectionable odour;
 - (e) There shall be no destruction of natural aquatic life by reason of a concentration of toxic substances;
 - (f) The concentration of dissolved oxygen shall not be reduced below 80% saturation;
 - (g) The natural water temperature shall not be changed by more than 3 degrees Celsius; or
 - (h) The natural pH of the waters shall not be changed by more than 0.2 units.

If at any time water quality falls outside of any of the standards specified in (a)-(h) above, the Consent Holder shall be notified and a second series of tests shall be carried out the next day or as soon as practicable. Should results of the second series of tests continue to exceed any of the standards specified in (a)-(h) above, dredging shall cease and shall not re-commence until the Council's Compliance Manager is satisfied changes have been made to the dredging methods and procedures to ensure compliance with the standards.

For compliance purposes, background water quality shall be measured at approximately 20 metres upstream of the Exclusive Occupation Zone at a point which is not affected by the water from the marina.

Advice note: *Schedule 2 outlines the monitoring the Consent Holder is required to undertake to determine compliance with this condition, however the Council may undertake additional monitoring to check compliance with the above receiving water quality standards at any time.*

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

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

17. On completion of all construction works, but prior to opening and operation of the marina facility, the Consent Holder shall:

- (a) Notify the following organisations in writing of the facility's completion, inclusive of a scale plan of the completed works:
 - i. Hydrographic Surveyor, Land Information New Zealand, Private Box 5501, Wellington 6145.
 - ii. Maritime New Zealand, P O Box 27006, Marion Square, Wellington 6141.

Evidence of this notification shall be provided to the Council's Compliance Manager.

- (b) Provide to the Council's assigned monitoring officer a geotechnical completion report, which may include certification associated with the Building Act 2004, to confirm that all the design criteria have been met, especially with regard to overall slope stability. That report shall include a monitoring and maintenance schedule that shall specify minimum requirements for on-going maintenance works and inspections required for structural integrity purposes. That schedule shall include, as a minimum, a regime of inspections of the structural integrity of the components of the marina facility at a minimum of 10-year intervals, with the last inspection to be carried out a minimum of one year before the expiry date of these consents.
- (c) In conjunction with Condition 12(a) above, provide a post-construction condition survey of the Te Matau a Pohe support structures both above and below mean high water springs where they are located within or adjacent to the Construction Zone Extent (Consent Envelope).

- (d) Provide to the Council's assigned monitoring officer a plan defining the final extent of the Exclusive Occupation Zone; such plan shall include suitable GPS co-ordinate data in order for the Council to be able to locate the boundaries of the Zone.
- (e) Provide to the Council's assigned monitoring officer the Marina Rules that shall apply to every vessel that occupies the marina. Those Rules shall, as a minimum, include the following:
 - i. Biosecurity management.
 - ii. Noise and lighting restrictions.
 - iii. Limitations on boat maintenance and repair activities.
 - iv. Prohibition of deliberate discharge of bilge water, fuel, sewage, waste oil, and litter into marina waters.
 - v. Means of compliance and enforcement.
- (f) Provide to the Council's assigned monitoring officer written evidence that the marina's navigation lighting has been installed so as to comply with the requirements of Maritime New Zealand at all times.
- (g) The seaward edge of the southern marina pier shall be marked with the number 39865 in black lettering on a white background clearly displayed and in such a manner as to be visible from the sea at all times.
- (h) Provide to the Council's assigned monitoring officer suitable written evidence to confirm that all lighting for the marina facility, other than navigation lighting under Condition 17(f) above, meets the following requirements:
 - i. Be the minimum required for its purpose – pathway, surface, or signage illumination.
 - ii. Be entirely of fully shielded full cut-off fittings to contain all light below the horizontal from fittings or masts no higher than 3 metres.
 - iii. Restrict all light spillage to no more than 10 metres from the boundary of the structures.

Marina Exclusive Occupation, Operation, and Maintenance

- 18. The exclusive occupation of the Exclusive Occupation Zone as defined on **attached** Northland Regional Council Plan Number 4889/1 shall not commence until such time as construction works commence.
- 19. The public shall have free access to navigate vessels within the fairways between the marina piers within the Exclusive Occupation Zone as defined on the plans required under Condition 17(d).
- 20. The structures and facilities covered by these consents shall be maintained in good order and repair.

21. The Consent Holder shall comply with the monitoring and maintenance schedule specified as part of the report provided under Condition 17(b). The monitoring shall be undertaken by a suitably qualified and experienced person and each inspection of the components of the marina facility shall be reported in writing and a copy provided to the Council's assigned monitoring officer within one month of the Consent Holder receiving the inspection report. The Consent Holder shall complete any recommendations for maintenance or repair works made in the report within the timeframes specified for undertaking such works in that report. The Consent Holder shall notify the Council's assigned monitoring officer as soon as the maintenance or repair works have been completed on each occasion.
22. In the event of failure or loss of structural integrity of any part of the marina structures, the Consent Holder shall immediately:
 - (a) Retrieve all affected elements and debris that might escape from the facilities and dispose of these on land where they cannot escape to the coastal marine area; and
 - (b) Advise the Regional Harbourmaster for Northland and the Council's Compliance Manager of the event and the steps being taken to retrieve and dispose of the affected elements and debris.

Advice Note: *The principal purpose of this condition is to avoid navigation safety being compromised by floating debris and avoid contamination of the coastal marine area by debris arising as a result of loss of structural integrity of the structures.*

23. The Consent Holder shall ensure that the Marina Rules provided under Condition 17(e) are imposed and enforced as is reasonably necessary at all times.
24. Noise generated by any activity associated with the use and operation of the marina shall not exceed the Operation Noise limits specified in Schedule 1 **attached**.
25. The Consent Holder shall ensure that signage containing the information detailed in Schedule 3 **attached** is permanently displayed in a prominent position on the marina structures immediately adjacent to the location of any sewage pump out facility and on the pontoon housing the facility so as to be able to be read at a distance of five metres.
26. Except as provided for in Conditions 15 and 42 (which specify receiving water quality standards for capital and maintenance dredging, respectively), the exercise of these consents shall not cause any of the following effects on the water quality of the receiving waters as measured at any point at or beyond the boundary of the Exclusive Occupation Zone as defined on the plans required under Condition 17(d):
 - (a) The production of any conspicuous oil or grease films, scums or foams, or floatable or suspended materials;
 - (b) A conspicuous change in the colour or visual clarity;
 - (c) An emission of objectionable odour;
 - (d) A significant adverse effect on aquatic life;
 - (e) The natural pH of the water shall not fall outside the range of 7.0 to 8.5;
 - (f) Change the natural water temperature by more than 3 degrees Celsius;
 - (g) The concentration of total copper to increase above 0.0013 milligrams per litre or above background concentrations, whichever is the greater;

- (h) The concentration of total lead to increase above 0.0044 milligrams per litre or above background concentrations, whichever is the greater; or
- (i) The concentration of total zinc to increase above 0.015 milligrams per litre or above background concentrations, whichever is the greater.

For compliance purposes, background water quality shall be measured at approximately 20 metres upstream of the Exclusive Occupation Zone at a point which is not affected by the water from the marina.

Advice Note: *Schedule 2 outlines the monitoring the Consent Holder is required to undertake to determine compliance with this condition, however the Council may undertake additional monitoring to check compliance with the above receiving water quality standards at any time.*

27. The total faecal coliform count shall be less than 150 colony forming units (cfu)/100 millilitres as sampled at any point within the Exclusive Occupation Zone as defined on the plans required under Condition 17(d). If this test is failed, then the median result of samples taken at each sampling site as a result of four subsequent sampling events within a 30-day period shall be less than 150 cfu/100 millilitres and the 80th percentile less than 600 cfu/100 millilitres.

Advice Note: *Schedule 2 outlines the monitoring the Consent Holder is required to undertake to determine compliance with this condition, however the Council may undertake additional monitoring to check compliance with the above receiving water quality standards at any time.*

28. The exercise of these consents shall not result in the concentrations of any of the metals in seabed sediments within the Exclusive Occupation Zone as defined on the plans required under Condition 17(d) to exceed the following:

- (a) 65 milligrams per kilogram of total copper;
- (b) 50 milligrams per kilogram of total lead;
- (c) 200 milligrams per kilogram of total zinc;
- (d) 80 milligrams per kilogram of total chromium;
- (e) 21 milligrams per kilogram of total nickel; or
- (f) 1.5 milligrams per kilogram of total cadmium.

Advice Note: *Schedule 2 outlines the monitoring the Consent Holder is required to undertake to determine compliance with this condition, however the Council may undertake additional monitoring to check compliance with the above receiving sediment quality standards at any time.*

29. Boat maintenance, which includes the removal or application of paint or antifouling, or activities involving grease or oil shall not be carried out within or adjacent to the marina facilities.

30. No vessel shall be permitted to use any marina berth for overnight accommodation, unless:

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

- (b) The vessels sewage holding tank(s) have been sealed by the Consent Holder to prevent use whilst the vessel is used for accommodation at the berth.

Stormwater Discharge

31. The stormwater discharge point and associated structure shall be located as shown on the **attached** NRC Plan Number 4889/2 and the stormwater treatment system and discharge structure shall be designed and constructed in accordance with the report entitled 'Engineering Report for proposed Okara Marina' prepared by Hawthorn Geddes Limited dated 4 December 2017.

Advice Note: *Design details regarding the construction of the stormwater system are required under Condition 2(a) of the Whangarei District Council consent.*

Maintenance Dredging

32. All maintenance dredging authorised under this consent shall be undertaken within the Exclusive Occupation Zone as defined on the plans required under Condition 17(d).
33. The depth of maintenance dredging shall not exceed -3.5 metres below Chart Datum.
34. The Consent Holder shall notify the Council's assigned monitoring officer, in writing, of the date maintenance dredging is intended to commence, at least two weeks beforehand, on each occasion that maintenance dredging is to occur.
35. A copy of these consents shall be provided to the person who is to carry out the work, prior to commencement of the maintenance dredging on each occasion. A copy of these consents shall be held on site, and be available for inspection by the public, during the works on each occasion.
36. The Consent Holder shall notify the Council's assigned monitoring officer in writing as soon as each stage and/or season of maintenance dredging has been completed, providing details of the locations where dredging has been undertaken and the volume of dredged spoil removed from each area on each occasion.
37. Maintenance dredging shall only be carried out between 7 February and 15 December by a barge-mounted hydraulic excavator and/or by a shore based hydraulic excavator, or an alternative method approved by the Council's Compliance Manager.
38. All dredged spoil removed during maintenance dredging shall be fully contained upon being excavated and whilst being transported to an authorised disposal site.
39. All dredged spoil removed during maintenance dredging shall be disposed of at a disposal site authorised to accept such material.
40. Work associated with the maintenance dredging shall be carried out only during the hours between 7.00 a.m. and sunset or 8.00 p.m. that day, whichever is the earlier.
41. Noise generated by the maintenance dredging shall not exceed the Construction Noise limits specified in Schedule 1 **attached**.
42. Any discharge arising from maintenance dredging shall not cause the water quality of the receiving waters, as measured at or beyond a 200-metre radius mixing zone from the dredger, to result in, or fall below any of the following standards:

- (a) The visual clarity, as measured using a Secchi disk, shall not be reduced by more than 50% of the background visual clarity at the time of measurement, and the measurement depth shall not be less than 0.8 metres;
- (b) The turbidity of the water (Nephelometric Turbidity Units (NTU)) shall not be increased by more than 50% of the background turbidity at the time of measurement;
- (c) The concentration of total suspended solids shall not exceed 40 grams per cubic metre above the background measurement;
- (d) The production of any conspicuous oil or grease film, scum or foams, or floatable or suspended materials, or emissions of objectionable odour;
- (e) There shall be no destruction of natural aquatic life by reason of a concentration of toxic substances;
- (f) The concentration of dissolved oxygen shall not be reduced below 80% saturation;
- (g) The natural water temperature shall not be changed by more than 3° Celsius; or
- (h) The natural pH of the waters shall not be changed to more than 0.2 units.

For compliance purposes, background water quality shall be measured at approximately 20 metres upstream of the Exclusive Occupation Zone at a point which is not affected by the water from the marina.

Advice Note: *Schedule 2 outlines the monitoring the Consent Holder is required to undertake to determine compliance with this condition, however the Council may undertake additional monitoring to check compliance with the above receiving water quality standards at any time.*

- 43. If at any time water quality falls outside of the standards outlined in Condition 42, above, the Consent Holder shall be notified, and a second series of tests shall be carried out the next day or as soon as practicable. Should results of the second series of tests continue to exceed the standard outlined in Condition 42 above, maintenance dredging shall cease and shall not re-commence until the Council's Compliance Manager is satisfied changes have been made to the dredging methods and procedures that are likely to ensure compliance with the standards.
- 44. The Consent Holder shall carry out monitoring during maintenance dredging in accordance with Schedule 2 **attached**.

Disposal of Capital and Maintenance Dredging Spoil

- 45. The disposal of dredged spoil at the Bell Block shall be undertaken within the dredging disposal area as shown on the **attached** Northland Regional Council Plan No. 4889/6.
- 46. The final fill platform shall not exceed a height of RL 4.00 metres above mean sea level.
- 47. The Consent Holder shall minimise contamination of stormwater from the bunded area by constructing and maintaining silt detention facilities to such dimensions as are necessary to prevent the discharge of sediment (suspended solids) in excess of 100 grams per cubic metre from all disturbed areas.

48. Erosion and sediment control measures shall be constructed and maintained generally in accordance with the principles and practices contained within the Auckland Council document entitled “GD05: Erosion and Sediment Control Guide for Land Disturbing Activities in the Auckland Region”. Where there are inconsistencies between GD05 and the conditions of these consents, then the conditions of these consents shall prevail.
49. All bare areas of land created by the exercise of these consents shall be effectively stabilised against erosion and sediment loss within two months of placement. Stabilisation measures shall include topsoiling and establishing with suitable vegetation, to achieve not less than an 80% groundcover, or covering with mulch or other erosion protection material.
50. Refuelling and servicing of machinery shall not be carried out in such a way that soil or water at the site is contaminated. Where an accidental spillage to land occurs, all contaminated soil shall be collected and disposed of at a site that is authorised to accept such material.
51. Notwithstanding any other conditions of these consents, the disposal of dredged material shall comply with the following receiving water standards as measured at the floodgate to the Waioneone Creek:
 - (a) The visual clarity of the water shall not be reduced by more than 40%;
 - (b) The natural water temperature shall not be changed by more than 3° Celsius;
 - (c) The natural pH of the waters shall not be changed to more than 0.2 units;
 - (d) There shall be no production of conspicuous oil or grease films, scums or foams, floatable or suspended materials, nor emissions of objectionable odour;
 - (e) There shall be no destruction of natural aquatic life by reason of a concentration of toxic substances; and
 - (f) The concentration of metals shall not exceed the following, except where caused by natural events:

Metal	Maximum allowable concentration (milligrams per cubic metre)
Total copper	1.3
Total lead	4.4
Total zinc	15.0

Advice Note: Schedule 2 outlines the monitoring the Consent Holder is required to undertake to determine compliance with this condition, however the Council may undertake additional monitoring to check compliance with the above receiving water quality standards at any time.

52. Notwithstanding any other conditions of these consents, the disposal of dredged material shall not cause the concentration of metals in sediments in the coastal marine area, as measured at or beyond any point 20 metres downstream of the Waioneone Creek Floodgate, to exceed any of the concentrations in the table below:

Metal	Maximum allowable concentration (milligrams per kilogram, dry weight)
Total arsenic	20
Total cadmium	1.5
Total chromium	80
Total copper	65
Total lead	50
Total zinc	200

Advice Note: *Schedule 2 outlines the monitoring the Consent Holder is required to undertake to determine compliance with this condition, however the Council may undertake additional monitoring to check compliance with the above receiving sediment quality standards at any time.*

53. The Consent Holder shall carry out monitoring during disposal of dredging material in accordance with Schedule 2 **attached**.
54. The Consent Holder's operations shall not give rise to any discharge of contaminants, which in the opinion of a Council monitoring officer is noxious, dangerous, offensive or objectionable at or beyond the property boundary.
55. The Consent Holder shall maintain the stormwater system and floodgate so that it operates effectively and efficiently. This maintenance shall include, but not be limited to, the maintenance of the free flow of water within all swale drains and the regular removal of sediment from any silt traps.

Augier Conditions offered by Consent Holder

56. The top of the dredge batter shall be at least 15 metres from the closest corner of the exterior walls of the boat shed as shown on the **attached** drawing Project No. 10514 Sheet C218 (R4) ("plan C218 (R4)") prepared by Hawthorn Geddes Limited dated 10 May 2019 (Northland Regional Council Plan Number 4889/7).
57. The detailed geotechnical investigation and report required by Condition 12(a) shall expressly consider any effects of the construction on the stability of the boat shed.
58. Prior to the commencement of construction, a Boat shed Monitoring Plan ("BMP") shall be submitted for certification by the Council's Compliance Manager. The BMP shall be prepared for the purpose of setting out a methodology and monitoring response for excavation works and maintenance dredging in proximity to the boat shed and shall be generally in accordance with the **attached** plans referenced as plan C218 (R4) and Project No. 10514 Sheet C219 (R5) ("plan C219 (R5)") prepared by Hawthorn Geddes Limited dated 10th May 2019 (Northland Regional Council Plan Number 4889/7 and 4889/8).

The BMP shall provide for the following (as a minimum):

- (a) Prior to the commencement of any construction activity:

- i. The Consent Holder shall appoint a suitably qualified person to undertake a detailed visual pre-works condition assessment of the boat shed:
 - Interior (“the pre-works boat shed interior assessment”); and
 - Exterior.
 - ii. The Consent Holder shall contact the owner of the boat shed at least 15 working days prior to the proposed date for the pre-works boat shed interior assessment to arrange for access to the boat shed interior.
 - iii. If agreement to access the boat shed interior is not obtained from the boat shed owner within 20 working days from the contact in (a)(ii) above, the Consent Holder shall not be required to undertake the pre-works boat shed interior assessment or the post-works boat shed interior assessment in (c)(i) below.
 - iv. The Consent Holder shall provide a copy of the pre-works condition assessment report/s in (a)(i) above to the boat shed owner and to the Council’s assigned monitoring officer within 15 working days of the assessment being undertaken.
 - v. A monitoring pile shall be driven to a depth of 2.5 metres below Chart Datum at approximately location A on plan C218 (R4) (4889/7) and plan C219 (R5) (4889/8) (**the monitoring pile**).
 - vi. A monitoring bracket shall be affixed to the monitoring pile (**the pile monitoring bracket**).
 - vii. A monitoring bracket shall be affixed to the boat shed at approximately location B on plan C218 (R4) (4889/7) and plan C219 (R5) (4889/8) (**the boat shed monitoring bracket**).
 - viii. The Consent Holder shall contact the owner of the boat shed at least 15 working days prior to the proposed date for affixing the boat shed monitoring bracket to arrange for permission to affix it.
 - ix. If agreement is not obtained from the boat shed owner within 20 working days from the contact in (a)(viii) above, the Consent Holder shall not be required to affix or monitor the boat shed monitoring bracket.
 - x. The baseline position (X, Y, and Z coordinates) of the pile monitoring bracket and the boat shed monitoring bracket shall be recorded by survey immediately after installation.
 - xi. Baseline monitoring shall be undertaken of the pile monitoring bracket and the boat shed monitoring bracket on at least three occasions not less than one month apart.
 - xii. The Consent Holder shall provide a copy of the baseline monitoring results to the boat shed owner and to the Council’s assigned monitoring officer within 15 working days of each measurement.
- (b) During construction:
- i. Monitoring of the pile monitoring bracket and the boat shed monitoring bracket shall be undertaken at a frequency of not less than monthly from the commencement of construction.
 - ii. If monitoring at either the pile monitoring bracket or the boat shed monitoring bracket indicates lateral movement greater than 25 millimetres and/or vertical movement greater than 10 millimetres at the monitoring position, then:

- The monitoring frequency shall be increased to weekly at both locations;
 - The Consent Holder shall engage a suitably qualified person to undertake a geotechnical investigation to determine the likely cause of the movement and, if the likely cause is the construction works, identify any remediation measures that may be required. The results shall be included in a geotechnical report; and
 - The Consent Holder shall provide a copy of the geotechnical report to the boat shed owner and to the Council's assigned monitoring officer within 15 working days of its completion.
- iii. If monitoring at either the pile monitoring bracket or the boat shed monitoring bracket indicates lateral or vertical movement exceeding 50 millimetres horizontally and 20 millimetres vertically, then:
- Work within 45 metres of the boat shed shall cease.
 - If not already undertaken in (b)(ii) above, a geotechnical investigation shall be carried out to determine the likely cause of the movement and, if the likely cause is the construction works, contingency measures shall be employed to stabilise the excavation (the stabilisation works).
- Advice Note:** *Consent may be required from the Northland Regional Council for the stabilisation works.*
- The Northland Regional Council may review the conditions of the consent pursuant to Section 128 of the RMA.
- iv. Monitoring shall continue at the increased frequency following stabilisation works until it is established that no further movement at the pile monitoring bracket is occurring.
- v. Monthly monitoring of the pile monitoring bracket and the boat shed monitoring bracket shall continue for a minimum period of 12 months following completion of the excavation works.
- vi. The Consent Holder shall provide a copy of the monthly monitoring results to the boat shed owner and to the Council's assigned monitoring officer within 15 working days of each measurement, and weekly monitoring results within 5 working days of each measurement.
- (c) Post construction
- i. The Consent Holder shall appoint a suitably qualified person to undertake a detailed visual post-works condition assessment of the boat shed:
- Interior ("the post-works boat shed interior assessment"); and
 - Exterior.
- ii. The Consent Holder shall contact the owner of the boat shed at least 15 working days prior to the proposed date for the post-works boat shed interior assessment to arrange for access to the boat shed interior.
- iii. If agreement to access the boat shed interior is not obtained from the boat shed owner within 20 working days from the contact in (c)(ii) above, the Consent Holder shall not be required to undertake the post-works boat shed interior assessment.

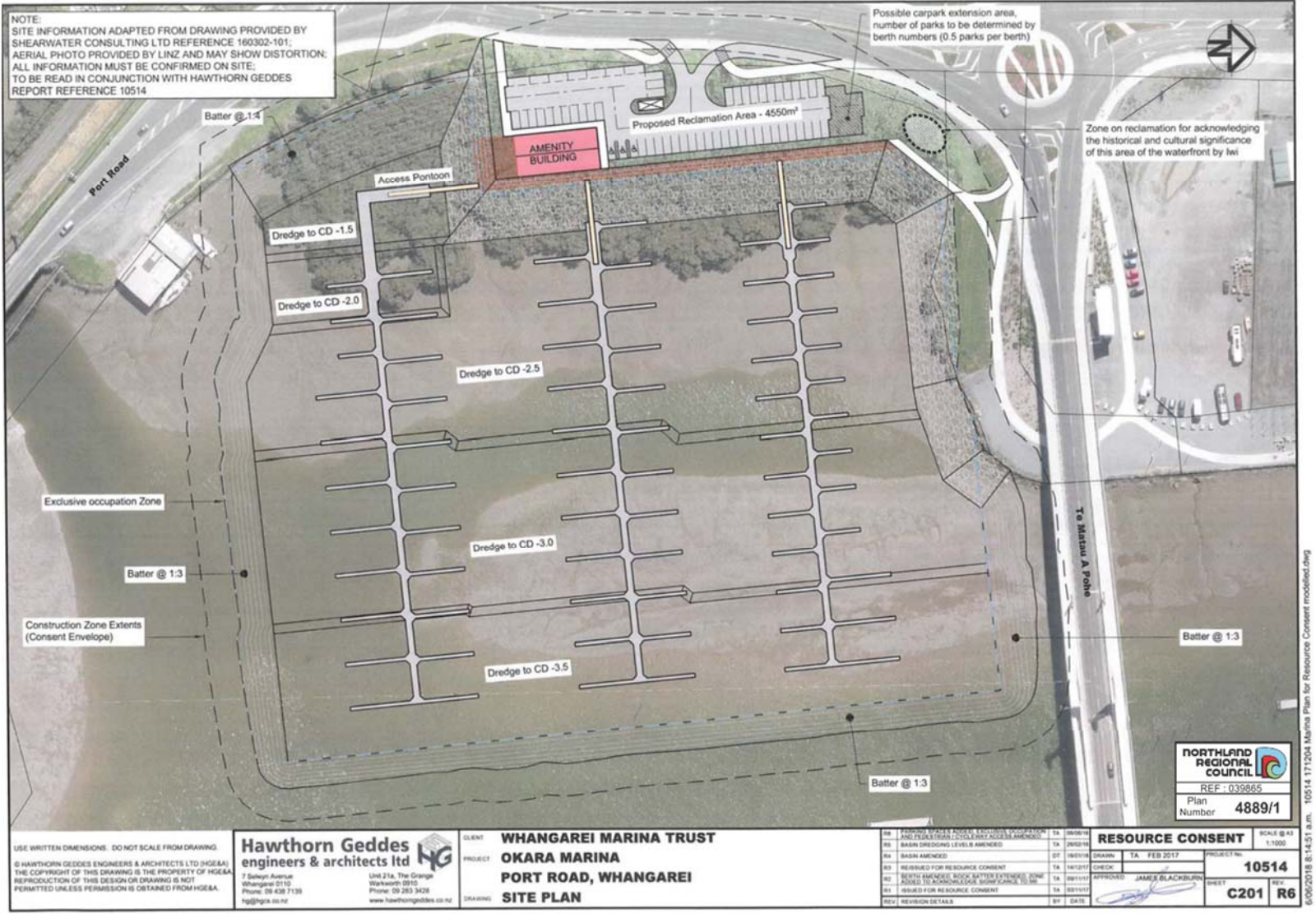
- iv. The Consent Holder shall provide a copy of the post-works condition assessment report/s to the boat shed owner and to the Council's assigned monitoring officer within 15 working days of the assessment being undertaken.
 - v. At the conclusion of the 12-month monitoring period in (b)(v) above, monitoring in accordance with (b)(i)-(b)(vi) above shall be carried out during the first maintenance dredging.
59. The Consent Holder shall undertake a hydrographic survey of the area immediately adjacent to and including the submerged southern dredge batter:
- (a) Within one month of the completion of capital dredging;
 - (b) One year after the initial survey in (a) above; and
 - (c) Every five years after (b) above.
- The Consent Holder shall provide a copy of the hydrographic survey results to the Council's assigned monitoring officer within 20 working days of each survey being undertaken.
60. If the hydrographic survey indicates scour or slump of the submerged southern dredge batter then the Consent Holder shall engage a suitably qualified person to undertake a geotechnical investigation to determine the likely cause of the movement and whether contingency measures should be employed to stabilise the batter. A report shall be prepared outlining the results of the investigation.
- (a) The Consent Holder shall provide a copy of the geotechnical report to the Council's assigned monitoring officer within 15 working days of its completion.
 - (b) The Council may review the conditions of the consent pursuant to Section 128 of the RMA.

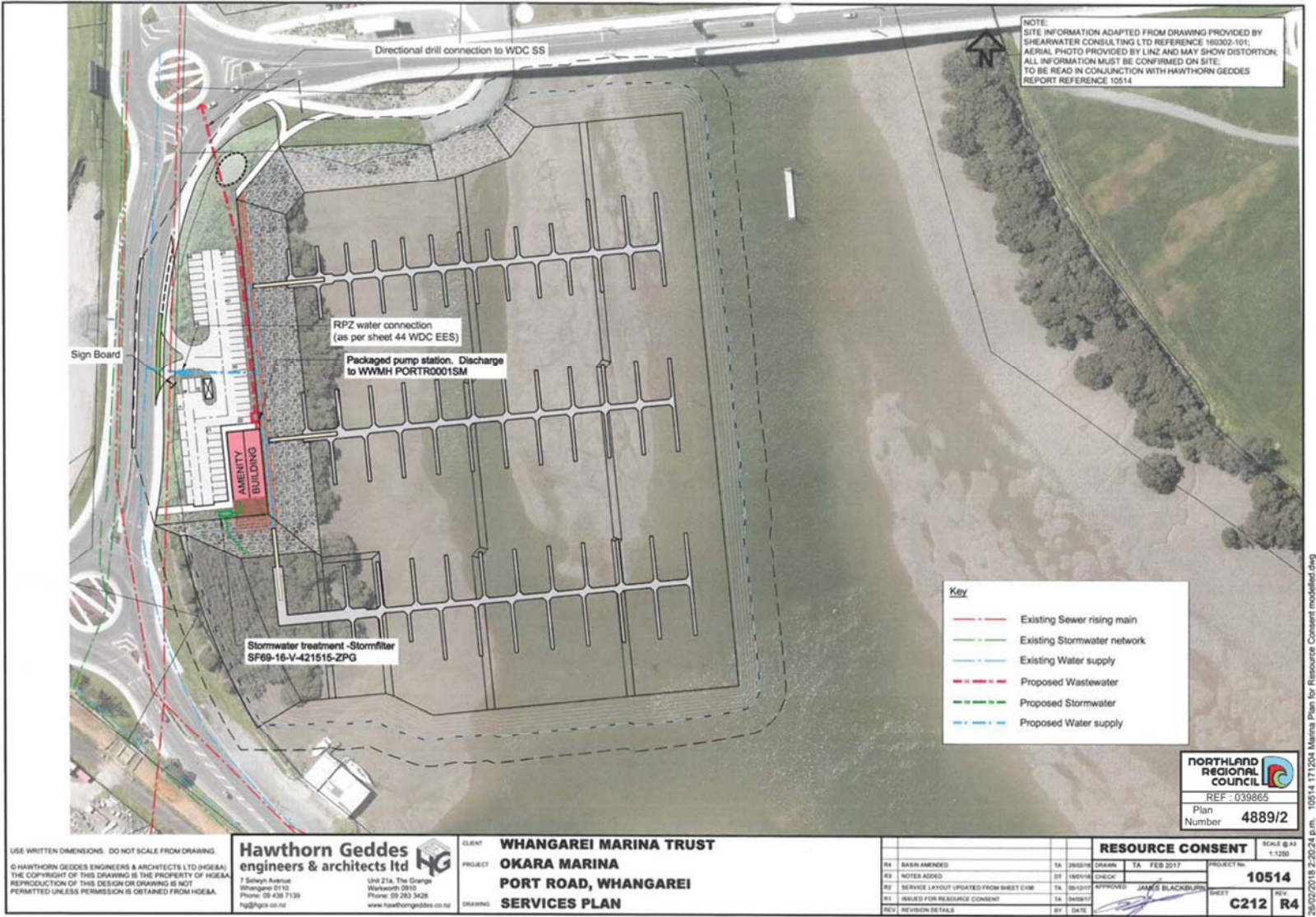
Advice Note: *Consent may be required from the Northland Regional Council for stabilisation works.*

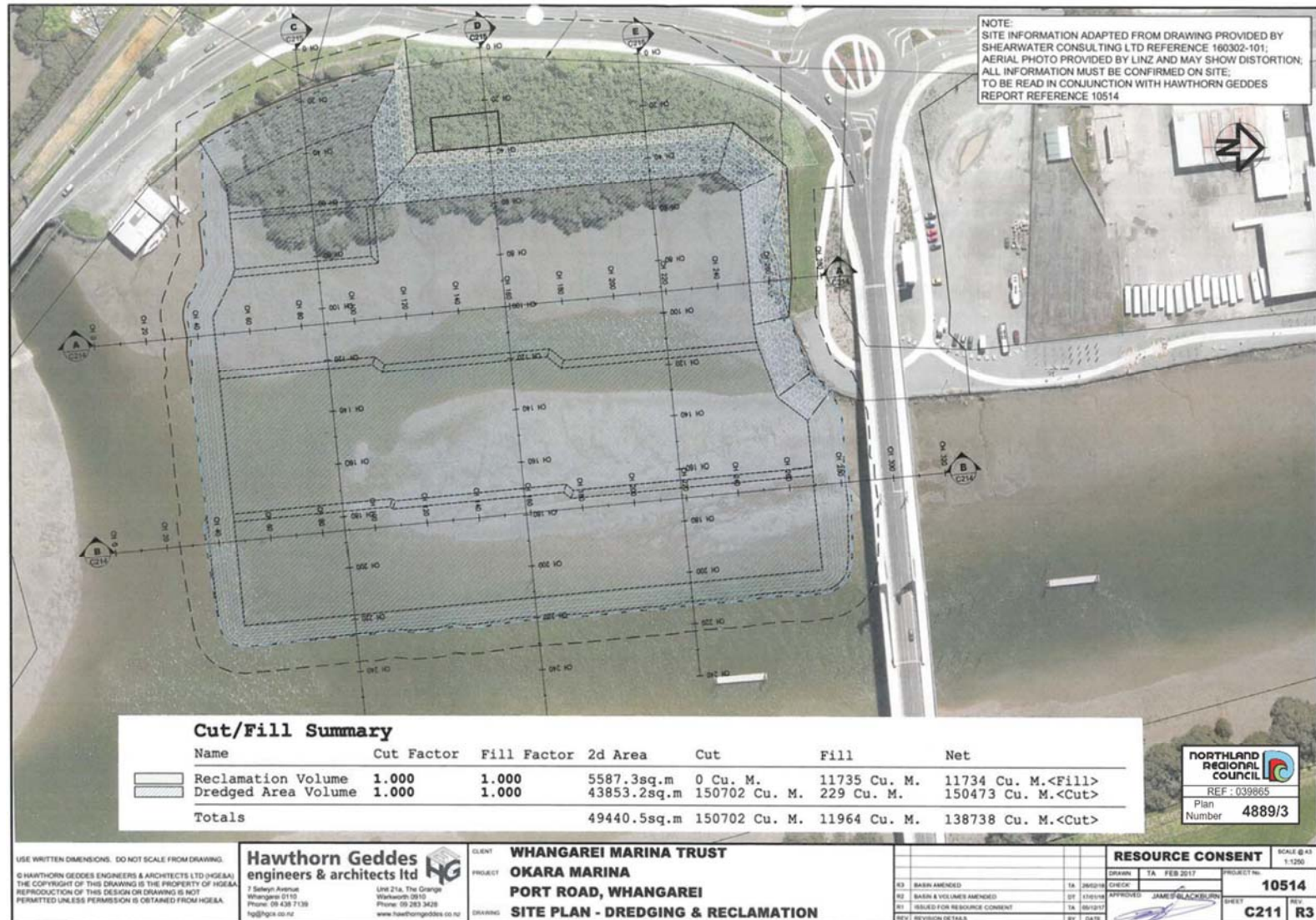
61. The Consent Holder shall ensure that:
- (a) The Chartered Professional Engineer who provides the detailed geotechnical investigation and report required by Condition 12(a) holds at least \$1 million Professional Indemnity insurance.
 - (b) The Consent Holder and its contractors undertaking construction works and maintenance dredging hold at least \$1 million Public Liability insurance.

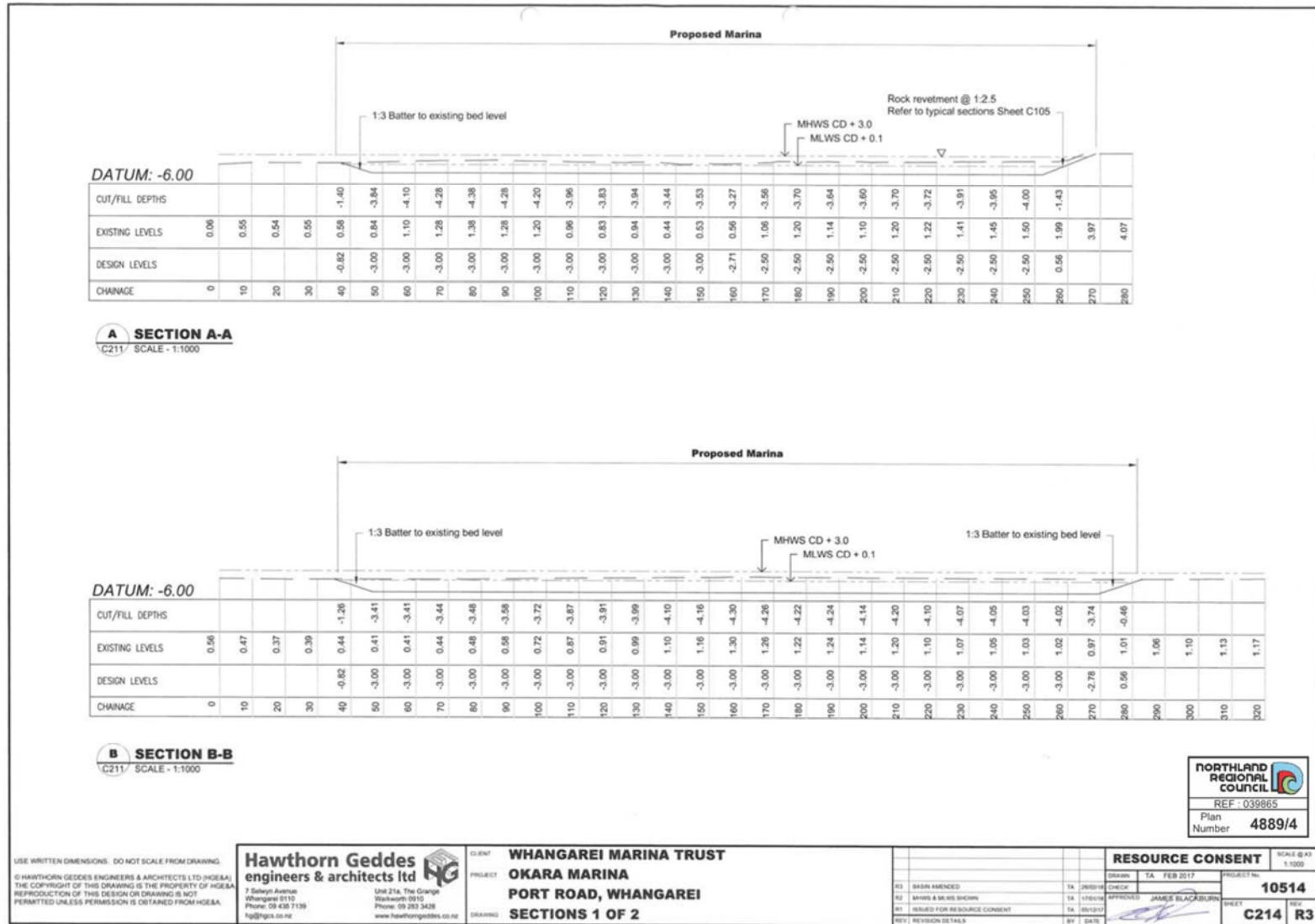
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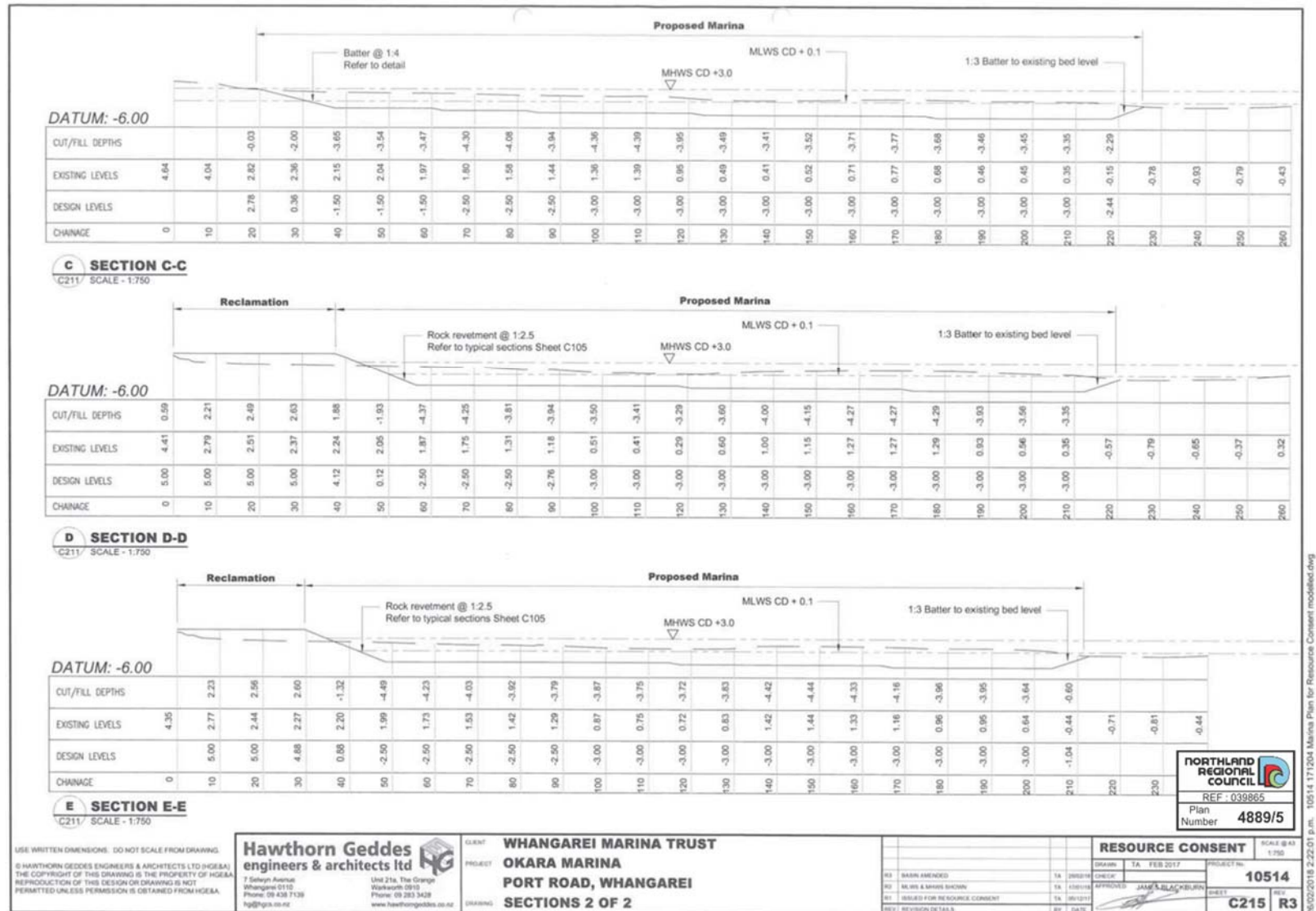
Note: *The plans attached to this consent are reduced copies and therefore may not be to scale and may be difficult to read. In the event that compliance and/or enforcement action is to be based on compliance with the attached plans, it is important that the original plans, are sighted and used.*

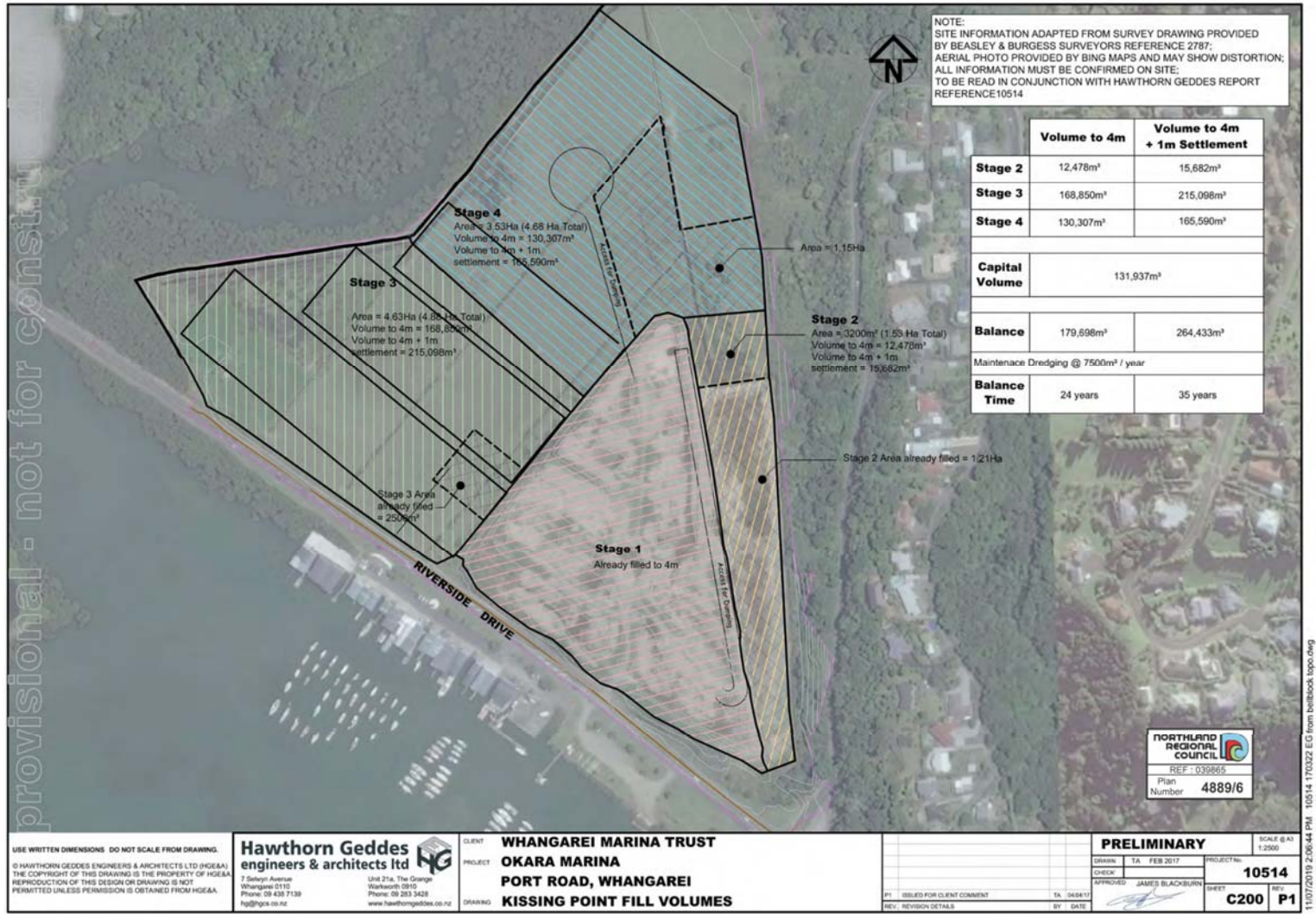


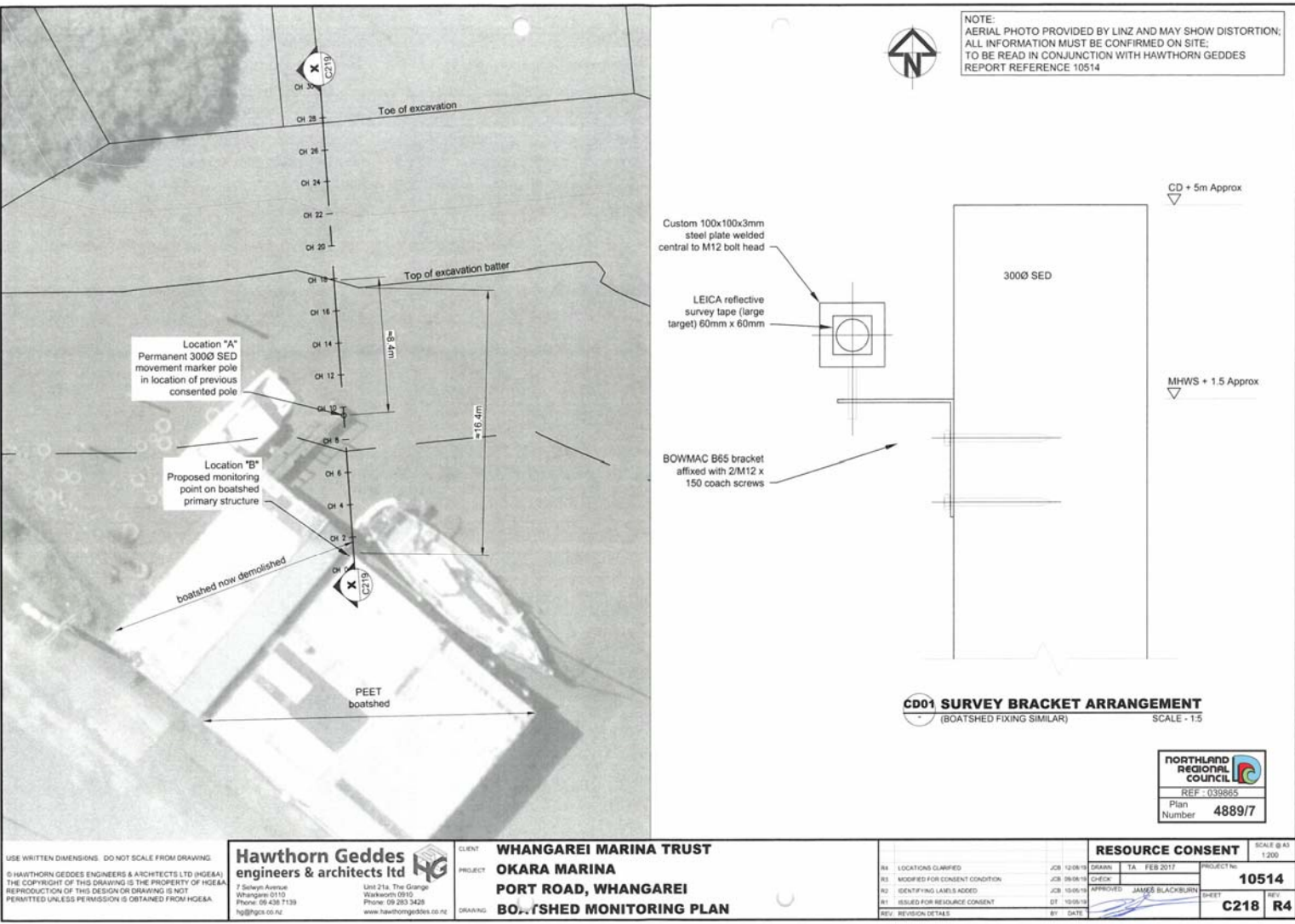


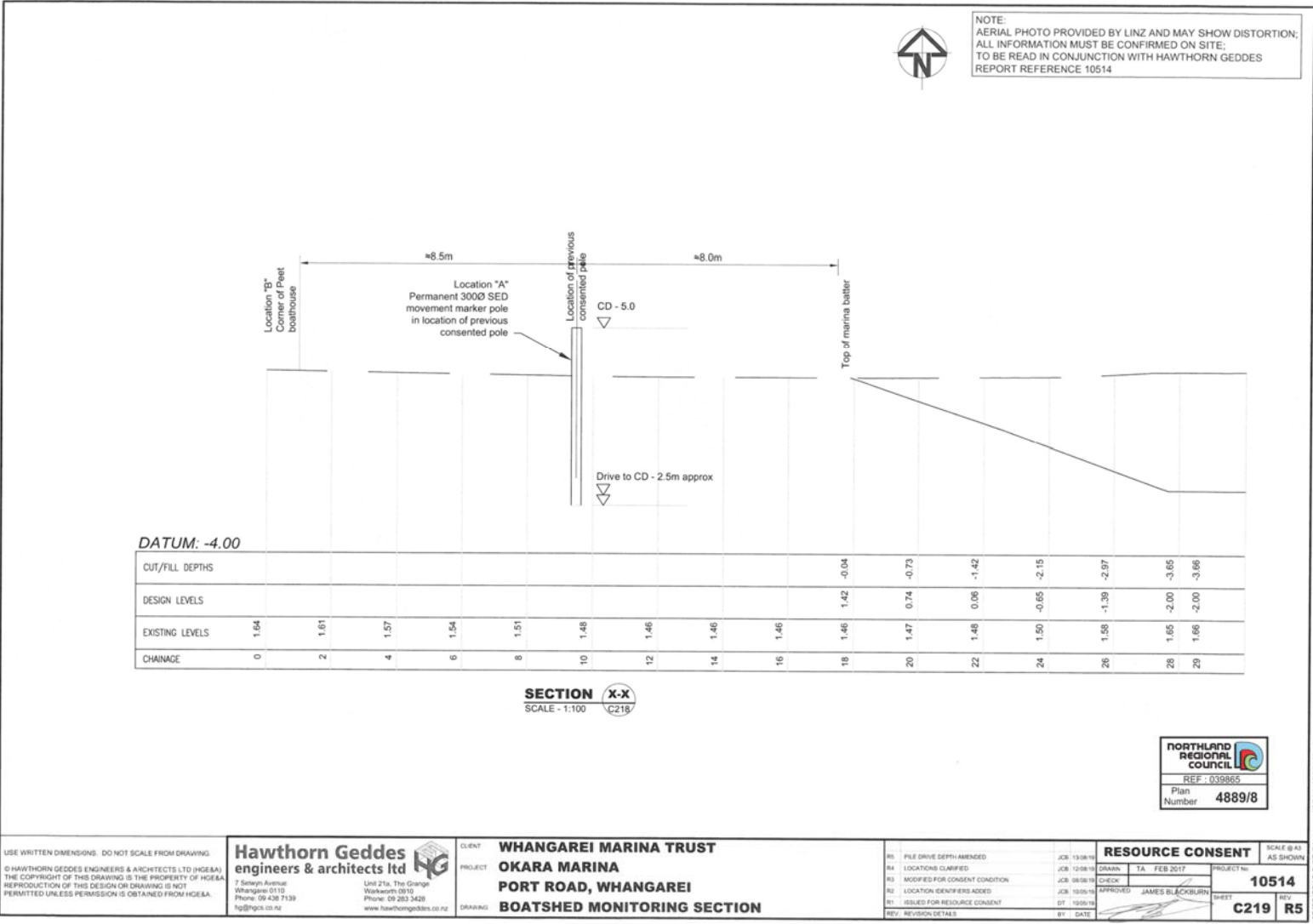












SCHEDULE 1

ENVIRONMENTAL STANDARDS – NOISE

CONSTRUCTION NOISE

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

Time of Week	Typical Duration	Typical Duration (dBA)		Short Term Duration		Long Term Duration	
		L _{eg}	L _{max}	L _{eg}	L _{max}	L _{eg}	L _{max}
Weekdays	0630 – 0730	60	75	65	75	55	75
	0730 – 1800	75	90	80	95	70	85
	1800 – 2000	70	85	75	90	65	80
	2000 – 0630	45	75	45	75	45	75
Saturdays	0630 – 0730	45	75	45	75	45	75
	0730 – 1800	75	90	80	95	70	85
	1800 – 2000	45	75	45	75	45	75
	2000 – 0630	45	75	45	75	45	75

Construction Sound levels shall be measured in accordance with New Zealand Standard NZS 6803:1999 “Acoustics – Construction Noise”. Measurement shall be at any point on the line of mean high water springs within the marina and at any point along mean high water springs on the adjacent foreshore.

Notes: 1 “Short-term” means construction work at any one location for up to 14 calendar days.

“Typical duration” means construction work at any one location for more than 14 calendar days, but less than 20 weeks.

“Long-term” means construction work at any one location with a duration exceeding 20 weeks.

2 Noise levels L₁₀, L₉₅ and L_{max} are measured in dBA. Definitions are as follows:

- (a) dBA means the sound level obtained when using a sound level meter having its frequency response A-weighted. (See IEC 651);
- (b) L_{max} means the maximum noise level (dBA) measured;
- (c) L₉₅ means the noise level (dBA) equalled or exceeded for 95% of the measurement time;
- (d) L₁₀ as for L₉₅ except that the percentage figure is 10%.

OPERATION NOISE

Noise from any activity authorised by these consents (except for construction noise) shall comply with the following noise standards at the notional boundary of any noise sensitive activity.

Time Period (Mon – Sun)	Noise Limit
0700 hrs to 2200 hrs	55 dBA LA _{eq} (15min)
2200 hrs to 0700 hrs	45 dBA LA _{eq} (15min)
	75 dBA LA _{max}

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

Notes: The boundary of the marina, for the purposes of measuring noise level, shall be the line of mean high water springs.

SCHEDULE 2

MONITORING PROGRAMME

The Consent Holder shall undertake the following monitoring, listed as A) – D) below.

A) DURING CONSTRUCTION OF MARINA DEVELOPMENT (INCLUDING MANGROVE REMOVAL, RECLAMATION, AND CAPITAL DREDGING)

The Consent Holder, or its assigned agent, shall take Secchi readings at least daily of the waters 50 metres upstream and 100 metres downstream of the dredging operation/construction activities. Results of the daily readings shall be recorded in a written log book by the Consent Holder. This log shall be made readily available for viewing by the Council upon request. Should two consecutive sets of Secchi readings indicate water quality outside that allowed for by Condition 15 at or beyond the compliance boundary, then the Consent Holder shall notify council as soon as practicable (but not longer than the following day) and take steps to improve water quality at the compliance boundary.

B) DURING OPERATION OF MARINA

Water Quality Sampling

Testing shall be carried out for faecal coliforms for compliance with the water quality standards specified in Condition 27.

At least four testing events for faecal coliforms shall be undertaken annually during the months of January, March, July, and November, unless monitoring results indicate it is necessary to undertake a 30-day sampling regime as required by Condition 27.

During each testing event water samples shall be collected from at least five sites within the Exclusive Occupation Zone, the precise locations of which shall be determined following consultation with the assigned Council monitoring officer.

Additional water samples shall be also be collected at all the sites where faecal coliform testing occurs (described above) and the additional water samples shall be analysed for total copper, total zinc, total lead, temperature, salinity, and dissolved oxygen.

Marine Sediment Quality Sampling

Seabed sediments shall be collected from at least one site within the Exclusive Occupation Zone of the marina at least annually. Samples shall be collected from the top two centimetres of the sediment and analysed for total copper, total zinc, total lead, total chromium, total nickel, and total cadmium concentrations.

C) DURING MAINTENANCE DREDGING OPERATIONS

During dredging operations, the Consent Holder, or its assigned agent, shall take Secchi readings at least daily of the waters 50 metres upstream and 200 metres downstream of the dredging operation. Results of the daily readings shall be recorded in a written log book by the Consent Holder. This log shall be made readily available for viewing by the Council upon request. Should two consecutive sets of Secchi readings indicate water quality outside that allowed for by condition 42 at or beyond the compliance boundary, then the Consent Holder shall notify council as soon as practicable (but not longer than the following day) and take steps to improve water quality at the compliance boundary.

D) DURING DISPOSAL OF DREDGE SPOIL AT BELL BLOCK

Water Quality - Routine Monitoring

Triplicate* samples of water being discharged downstream of the flood gate to the Waioneone Creek and within the drainage system upstream of the fill site, during, or immediately following a period of moderate to heavy rainfall, shall be collected on at least two occasions each year. All water samples shall be collected, on the same day and preferably within the first hour of significant rainfall so as to collect the “first flush” of contaminants. Due to tidal influences on the stormwater discharges, samples shall be collected as close as possible to the time of low tide so as to achieve a true representation of stormwater quality.

Samples shall be analysed for the following:

- total suspended solids;
- total copper;
- total lead; and
- total zinc.

Water Quality - Background Monitoring

Triplicate* water samples shall also be collected prior to the commencement of earthworks and filling operations. These samples shall be used for comparison and shall be considered to be indicative of “background” water quality within the drainage system.

**Triplicate sampling shall involve collection of three separate samples taken at least nine minutes apart during the same sampling event. Analysis shall be conducted on a composite sample made up of equal volumes of each triplicate sample.*

Sediments Monitoring

Three sediment samples shall be collected from the Waioneone Creek at around a 20-metre radius from the flood gate which drains the Bell Block dredge disposal area at Kissing Point. These sediment samples shall be collected at least annually after a prolonged dry period.

Sediment samples collected shall be composited and analysed for the following:

- Sediment grain size characteristics [fines: Less than 63 microns diameter; sands: less than 2000 microns diameter; gravels and larger material: 2000 microns diameter];
- total arsenic;
- total cadmium;
- total chromium;
- total copper;
- total lead; and
- total zinc.

Field Measurements, Records, Sample Collection, Sample Transport, Detection Limits, And Laboratory Requirements

1. Records

A record of rainfall conditions preceding and during sampling shall be kept. The rainfall recorder site to be used shall be subject to the prior agreement of the Council's assigned monitoring officer.

2. Sample Collection

All samples collected as part of this monitoring programme shall be collected using standard methods and approved containers.

3. Sample Transport

All samples collected as part of this monitoring programme shall be transported in accordance with standard procedures and under chain of custody to the laboratory.

4. Detection Limits

The detection limits for the analysis of metals in water samples collected shall be equivalent to, or better than, those specified below:

Metal	Sediment samples (milligrams per kilogram)	Water samples (milligrams per cubic metre)
total copper	2	1.0
total lead	0.4	0.2
total zinc	4	2.0

5. Laboratory Requirements

All samples collected as part of this monitoring programme shall be analysed at a laboratory with registered quality assurance procedures (see definition below), and all analyses shall be conducted using standard methods.

Registered quality assurance procedures are procedures that ensure that the laboratory meets good management practices and would include registrations such as ISO 9000, ISO Guide 25, and Ministry of Health Accreditation.

SCHEDULE 3

SIGNAGE

The sign shall, as a minimum, include the following information:

- 1 Information regarding normal operation and emergency procedures. The emergency procedure information shall detail how to respond to a sewage spill or an equipment failure. In all cases the procedures for keeping people safe, stopping the pump-out, and minimising pollution of the marine environment shall be clearly displayed.
- 2 After hours contact telephone number for operational assistance.
- 3 Emergency response organisation contact details for:
 - Northland Regional Council's environmental hotline 0800 504 639;
 - Northland District Health Board, On Call Health Protection Officer 09 430 4100;
 - Whangarei District Council 0800 932 463.

APPENDIX 2: WHANGAREI DISTRICT COUNCIL CONDITIONS

1. The activity shall be carried out generally in accordance with the Resource Consent Application and Assessment of Environmental Effects prepared for Whangarei Harbour Marina Management Trust dated July 2018 by Reyburn and Bryant Limited, inclusive of Appendices 1–23, inclusive of the document entitled ‘Addendum Geotechnical Report for Resource Consent for Proposed Okara Marina at Port Road, Whangarei – Additional Information in Response to Technical Review’ prepared by Hawthorn Geddes Limited dated 21 March 2019.

2. Prior to the commencement of any site preparation or construction, the Consent Holder shall provide the following documents to the Whangarei District Council Compliance Team Leader or delegated staff member for certification:

- (a) A detailed set of engineering plans prepared in accordance with the Council’s Environmental Engineering Standards 2010 Edition. The engineering plans shall be submitted to the Council’s Development Engineer for certification. It is to be noted that certain designs may only be carried out by an Independently Qualified Person (IQP) or Chartered Professional Engineer (CPEng) working within the bounds of their assessed competencies. IQP’s must have been assessed by the Council and hold a current status to submit design work.

The plans shall clearly identify what works on completion are to be vested as Council assets and what works are to be retained in private ownership and managed by the Consent Holder or any resulting entity.

The plans shall be prepared generally in accordance with the document entitled ‘Engineering Report for Proposed Okara Marina’ prepared by Hawthorn Geddes Limited dated 4 December 2017 (attached as Appendix 13 to the application). All work needing design/certification by a Council approved IQP/CPEng will require completion of a producer statement (design) (EES-PS1 or similar). Plans shall include but are not limited to:

- (i) Design details of the access and egress points onto Port Road as detailed on the site plan prepared by Hawthorn Geddes Limited referenced as Project No. 10514 Sheet C210 Revision R6 dated 6 June 2018 and in accordance with the Council’s Environmental Engineering Standards 2010 Edition, including road marking, footpaths and lighting, a typical cross section, long section, culverts, drainage flow paths and overland flow paths, and necessary stormwater reticulation and treatment.
- (ii) Design details of the internal carparking layout generally as shown on the site plan prepared by Hawthorn Geddes Limited referenced as Project No. 10514 Sheet C210 Revision R6 dated 6 June 2018 and in accordance with the Council’s Environmental Engineering Standards 2010 Edition, providing for a minimum of 58 carparks inclusive of three disability carparks. Specific provision shall be made for access and manoeuvring for heavy vehicles through the site for loading and refuse collection (without requiring specific identification of a heavy goods loading area).

- (iii) Design details of sewerage mainline reticulation inclusive of any manholes, fittings and connections necessary to service all residential lots, inclusive of calculations in accordance with Section 5 of the Council's Environmental Engineering Standards 2010 Edition.
 - (iv) Design details of sewer connections for the site in accordance with Sheet 36 or 37 and Section 5 of the Council's Environmental Engineering Standards 2010 Edition.
 - (v) Design details of water connections for the site in accordance with Sheet 46 or 47 of the Council's Environmental Engineering Standards 2010 Edition including fire-fighting coverage in accordance with Sheet 45 and Section 6.11.
 - (vi) Design details of water main extensions inclusive of any valves, bulk water meters, fittings and connections necessary to service the site, inclusive of calculations in accordance with Section 6 of the Council's Environmental Engineering Standards 2010 Edition.
 - (vii) Design details of stormwater collection, treatment and discharge via piped reticulated networks inclusive of the stormwater outlet discharging to the marina basin.
 - (viii) Design details of all signs and safety and amenity lighting to be located on the site, including those required for traffic direction, parking, and use of any public amenities to be provided on the site.
 - (ix) Design details associated with the land/water interface, inclusive of the three metre wide boardwalk structure, grassed/planted informal recreation area/s, rain garden or swale structures, specimen trees, and amenity features such as seats and any cultural icons. Specific detail shall be provided to indicate how the layout will link in with the existing Loop walkway and provide for future linkage to pedestrian access to the south of the site on Port Road. The design details shall be prepared generally in accordance with the document entitled 'Assessment of landscape, natural character and visual effects' prepared by Simon Cocker Landscape Architecture dated January 2018 (attached as Appendix 12 to the application).
- (b) The Consent Holder shall submit an Inspection and Test Plan (ITP) for certification prepared in accordance with the Council's Environmental Engineering Standards 2010 Edition and the Council's QA/QC Manual. The ITP shall be submitted to the Council's Development Engineer for certification and be certified prior to the pre-start meeting and prior to any works being completed on the site.
- (c) In conjunction with the engineering plans provided under Condition 2(a) above, the Consent Holder shall provide a Construction Management Plan prepared by a suitably qualified and experienced person that provides details addressing the following matters relating to all land-based activities:
- Key project and traffic management personnel and their contact details.
 - Scope of the proposed works associated with construction of on-site parking, servicing, and access/egress points onto Port Road.
 - Construction timetable and hours of operation.

- Location of all temporary construction traffic and worker traffic parking and site access, including any provision for safe pedestrian access and use within the legal boundary of Port Road.
- Identification of any laydown/construction material storage areas.
- Noise control measures so as to comply with the Construction Noise Standards as per NAV.6.2 Construction Noise contained in the Whangarei District Plan.
- Measures to minimise dust nuisance and avoidance of tracking material via vehicle movements onto the existing road formation.

The Construction Management Plan shall be supported by a Corridor Access Request (CAR) approved by the Council as defined in the new “National Code of Practice (CoP) for Utilities access to the Transport Corridors”.

3. On certification of the plans required under Conditions 2(a)-(c) above, but before commencement of any site works, the Consent Holder shall request a pre-start meeting to be undertaken with the Consent Holder’s representative, contractor(s) and all other IQPs or agents for the Consent Holder, and the Council’s Development Engineer. That request shall be made to the Council’s Development Engineer but may involve other relevant Council staff as may be deemed necessary.
4. At all times during the construction period associated with the establishment of all land-based activities identified as part of this consent, the Consent Holder shall comply with the certified Construction Management Plan required by Condition 2(c) above.
5. All work on the certified engineering plans in Condition 2(a) shall be carried out to the satisfaction of the Council’s Development Engineer.

Compliance with this condition shall be determined by site inspections undertaken as agreed in the certified Inspection and Test Plan required by Condition 2(b) and by provision and certification of supporting documentation provided by the developers representative/s in support of the constructed works – EES PS4 and producer statements including supporting evidence of inspections by those persons, works acceptance certificate, statements of compliance of as built works and as built plans, RAMM data, management plans, operation and maintenance plans and all other test certificates and statements and supporting information required to confirm compliance of the works as required by the Council’s QA/QC Manual and the Council’s Environmental Engineering Standards 2010 Edition.

No construction works are to commence onsite until the engineering plans required in condition 2(a) have been certified and all associated plan inspection fees have been paid.

6. The Consent Holder shall submit all documentation as required by the Council “Quality Assurance/Quality Control Manual – Vested Assets”. This shall include nomination of an IQP and an “Inspection and Test Plan” for certification by the Development Engineer before any works commences.

7. Where damaged by the construction works associated with the land use activities, the Consent Holder shall reinstate the Council's street footpath, stormwater kerb and channel, road carriageway formation, street berm and/or urban services in accordance with Section 3 of the Council's Environmental Engineering Standards 2010 Edition at the expense of the Consent Holder to the satisfaction of the Council's Development Engineer.
8. The Consent Holder shall submit a certified and dated 'as built' plan of completed works and services in accordance with Council's Environmental Engineering Standards 2010 Edition. This condition shall be deemed satisfied once the as-builts have been certified by the Council's Development Engineer or delegated representative.
9. The Consent Holder shall submit certified RAMM data for all new/upgraded or extended vehicle crossing culverts prepared by a suitably qualified person in accordance with Council's Environmental Engineering Standards 2010 Edition to the satisfaction of the Council's Senior Development Engineer.
10. Upon completion of the development works, the Consent Holder shall submit for certification a "Certificate of Completion of Development Works" (EES-PS4 or similar) to the Council's Senior Development Engineer.
11. Following completion of construction, the Consent Holder shall provide a works producer statement from the suitably qualified contractors who completed the works, certifying that the works have been completed in accordance with the certified engineering plans, Council's Environmental Engineering Standards 2010 Edition and best trade practise, to the satisfaction of the Whangarei District Council's Senior Environmental Engineering Officer.
12. On completion of all physical works but prior to the opening and operation of any of the marina facilities, the Consent Holder shall provide suitable evidence by way of written confirmation and/or legal documentation as may be required to confirm that public access is available through the subject site. That access shall consist (as a minimum) of a minimum three metre wide corridor formed to the required Council standard, linking the existing Loop Walkway at the northern end of the site under Te Matau a Pohe through to the southern connection with Port Road. The corridor shall include a boardwalk structure as defined on the plan referenced as Figure 3 contained in Appendix 2 of the document entitled 'Assessment of landscape, natural character and visual effects' prepared by Simon Cocker Landscape Architecture dated January 2018 (attached as Appendix 12 to the application).

Note: *The extent of the public access should be clearly identified on the plans provided under Condition 2(a)(ix) of this consent. This condition is intended to formalise the legal status of that public access.*

13. The operation of the marina activity on completion shall comply with the following conditions on an on-going basis:
 - (a) A minimum of 58 carparks shall be available for use by marina occupants and associated activities at all times.

- (b) All lighting to be established and operated as part of the marina facility shall be constructed and operated so that artificial light is shielded in such a manner that light emitted by the fixture is projected below a horizontal plane running through the lowest point on the fixture; where the lower edge of the shield is to be at or below the centreline of the light source.

This condition does not limit the use of navigational lighting or lighting on vessels where it is required for any regulatory purposes.

- (c) Noise generated at all times from the marina activity located above Mean High Water Springs shall not exceed the following:
- 65 dB L_{Aeq} between 0700 and 2200
 - 55 dB L_{Aeq} and 80 dB L_{AFmax} between 2200 and 0700

Noise shall be measured in accordance with New Zealand Standard NZS 6801:2008 "Acoustics – Measurement of environmental sound" and assessed in accordance with New Zealand Standard NZS6802:2008 "Acoustics – Environmental Noise."

Advice Notes

- 1 This resource consent will lapse ten years after the date of commencement of this consent unless:
 - It is given effect to before the end of that period; or
 - An application is made to the Council to extend the period after which the consent lapses, and such application is granted prior to the lapse of consent. The statutory considerations which apply to extensions are set out in Section 125 of the Resource Management Act 1991.
- 2 A copy of this consent should be held on site at all times during the establishment and construction phase of the activity.
- 3 All archaeological sites are protected under the provisions of the Heritage New Zealand Pouhere Taonga Act 2014. It is an offence under that act to modify, damage or destroy any archaeological site, whether the site is recorded or not. Application must be made to the New Zealand Historic Places Trust for an authority to modify, damage or destroy an archaeological site(s) where avoidance of effect cannot be practised.
- 4 The Consent Holder will need to pay all charges set by the Council under Section 36 of the Resource Management Act 1991, including any administration, monitoring and supervision charges relating to the conditions of this resource consent. The Consent Holder will be advised of the charges as they fall.
- 5 Any works carried out within the Council's road reserve will require an approved Corridor Access Request.

A Corridor Access Request (CAR) is defined in the new “National Code of Practice (CoP) for Utilities access to the Transport Corridors”. This CoP has been adopted by the Council. It provides a single application for Traffic Management Plans/Road Opening Notice applications. Enquiries as to its use may be directed to the Council’s Road Corridor Co-ordinator, ph 430 4230 ext 8231.

- 6 The WDC QA/QC Manual document can be located at the following link:
<http://www.wdc.govt.nz/BuildingandProperty/GuidelinesandStandards/Pages/default.aspx>.
- 7 To help fund additional assets or assets of increased capacity, the Local Government Act 2002 (LGA) allows a council to require development contributions if the effect of a development requires the Council to provide new or upgraded infrastructure. The Whangarei District Council has prepared and adopted a Development Contributions Assessment Policy. Under this policy, the activity to which this consent related is subject to Development Contributions Assessment. You will be advised of the assessment of the Development Contributions payable (if any) under separate cover in the near future. It is important to note that Development Contributions must be paid prior to commencement of the work or the activity to which the consent relates or, in the case of a subdivision, prior to the issue of the Section 224(c) Certificate. Further information regarding the Council’s Development Contribution Policy may be obtained from the Long Term Plan (LTP) or the Council’s web page at www.wdc.govt.nz.