

## BEFORE THE NORTHLAND REGIONAL COUNCIL

**IN THE MATTER** of the Resource Management Act 1991

**AND**

**IN THE MATTER** of a resource consent application by Douglas Craig Schmuck under section 88 of the Resource Management Act 1991, for the early replacement of existing coastal permits and renewal of discharge permits for Doug's Opuia Boat Yard and proposed new coastal permits for works associated with the reconstruction of the jetty facility, slipway refurbishment and new works including beach rehabilitation and seawall.

**APPLICATION** APP.039650.01.01

### ADDENDUM TO S42A REPORT

MELANIE DONAGHY

NORTHLAND REGIONAL COUNCIL REPORTING OFFICER

#### 1.0 Introduction and Background

1. This s42A Report Addendum is in response to the Hearing Committee's Minute No. 5 issued after the adjournment of the hearing on 18<sup>th</sup> May 2018. The purpose of the adjournment is as described in the Hearing Committee's minute provided as Attachment 1, *"to enable Mr Doug Schmuck ('the Applicant') to provide written details of the amendments to the applications made verbally at the hearing and to provide further information"* (point 1, Minute 5, 27<sup>th</sup> July 2018 from the Hearing Committee).
2. The Applicant provided written notice of amendments made to the applications on 28<sup>th</sup> May 2018 with the final versions of additional technical reports provided as further information, received on 16<sup>th</sup> July 2018.

#### Amended Applications

3. In the 'Memorandum of Counsel for the Applicant' provided on 28<sup>th</sup> May 2018, the applications were amended as follows:
  - The proposed beach rehabilitation works was withdrawn from the applications;
  - The proposed new seawall was withdrawn from the applications;
  - The proposed capital dredging area was reduced by 53% and the volume to be excavated reduced by 42%.

#### Further Information

4. The further information supplied by the Applicant on 16<sup>th</sup> July 2018 in support of the applications included the following:
  - Total Marine Services Ltd - Technical Report – Preliminary Design of Timber Jetty, Pontoon and Dredging at Doug's Boatyard Opua (dated: 11 July 2018) (final version provided 16<sup>th</sup> July 2018).
  - 4Sight Consulting Ltd – Ecological Assessment: Doug's Opua Boatyard – Assessment of Ecological Effects for Proposed Dredging and Structural Works (Dated: July 2018) (provided 12 July 2018).
  - AECOM – Doug's Opua Boat Yard – Air Quality Assessment: Assessment of Air Emissions from Boat Yard Activities (Dated: 9 July 2018) (final version provided 16<sup>th</sup> July 2018).
  - MetOcean Solutions Ltd – For the Opua Marina Stage 2 Development (dated: October 2013) (provided 12 July 2018).
5. In reviewing the further information provided by the Applicant, specifically the 'Structural Site Aerial Overlay' plan (dated 13/07/2018) within the Technical Report from Total Marine, it appears that the **proposed northern mudcrete grid has also been withdrawn** from the applications, with one remaining mudcrete grid to the southern side of the reconstructed jetty facility.
6. Point 3 of Minute No. 5 issued by the Hearing Committee directs a response from the Northland Regional Council (NRC) reporting officer to address the evidence presented at the hearing, the amended applications and the Applicant's further information.

#### Addendum Structure

7. For clarity, this addendum provides a response to the matters as outlined in Point 3 of Minute No. 5 in the following order:
  - 1) The Applicant's further information – A brief summary is provided for each new technical report provided by the Applicant. I then provide my opinion as to the implications of the further information in relation to (a) the possible grant of consents and (b) any amendments to the recommended consent conditions.
  - 2) The evidence presented at the hearing and subsequent amendments to the applications are discussed together in relation to each of the proposed activities, where contention has been observed. I provide a response to this information in relation to (a) the possible grant of consents and (b) any amendments to the recommended consent conditions.
8. In forming the opinions reported in this addendum, I have sought and received expert advice from:
  - Richard Griffiths (NRC Marine Research Specialist) in respect of the 4Sight Ecological Report and proposed discharge conditions;
  - Ricky Eyre (NRC Coastal Monitoring Manager) in respect of consent compliance information and proposed discharge related conditions;
  - Paul Maxwell (NRC Coastal and Works Consents Manager) in respect of the Total Marine Technical Report; and proposed conditions;

- Jim Lyle, Northland Regional Harbourmaster in respect of the amended dredging of an access channel
9. Unless stated otherwise, I have adopted the advice as received. Copies of the written advice from Mr Griffiths, Mr Maxwell and Mr Eyre are attached as Appendices 2, 3 and 4 for completeness. The Harbourmaster provided verbal comment on the amended dredging proposal and potential effects to the existing public mooring area.
  10. In terms of a review of the AECOM Report, NRC engaged the services of Jenny Simpson, Technical Director – Environmental Engineering at Tonkin + Taylor. However, Ms Simpson's assessment on the AECOM Report was provided shortly prior to the deadline for the completion of this addendum and I have therefore not had the opportunity to review or comment on Ms Simpson's recommendations. A copy of her review is attached however as Appendix 7.
  11. This addendum concludes with a recommendation on the applications having reviewed the above information, comments and responses.

## **2.0 RESPONSE TO FURTHER INFORMATION PROVIDED BY THE APPLICANT**

### **Total Marine Services Ltd Technical Report**

12. This report was prepared by Andrew Johnson, Design and Project Engineer for Total Marine Group. The report analyses the sites locality and design considerations along with the construction methodology of the timber jetty, pontoon and newly proposed subsea erosion barrier<sup>1</sup>. Beach morphodynamics and aesthetics are discussed along with the proposed dredging methodology.

### Reporting Officer Response

13. In terms of the proposed subsea erosion barrier, the Total Marine Report provides a limited analysis of how the proposed barrier will function or how significant its effects will be on the currently stable beach profile. Mr Maxwell has stated that there does not appear to be a clear need for the barrier or its efficacy for its intended purpose, and he has suggested that a shallow sloping batter is preferable in protecting the shellfish bed from dredging activities, with minimal modification to the stable seabed levels.
14. In regards to the proposed dredging methodology, Mr Maxwell has acknowledged that the batter slopes proposed are typical of those for similar scaled activities elsewhere in the Bay of Islands.

### **MetOcean Solutions Ltd – Opuia Marina Stage 2 Development Modelling**

15. The Applicant has provided a copy of the above mentioned report which was commissioned by Far North Holdings Limited in support of its resource consent application for the Opuia Marina Stage 2 Development. The report was prepared in 2013 by MetOcean Solutions Ltd and presents output from a calibrated hydrodynamic model of the Bay of Islands, quantifying the potential changes that the Opuia Marina Stage 2 Development may have on tidal flows and sediment transport capacity within the environs.

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<sup>1</sup> New coastal structure introduced to the applications post the completion of the NRC Staff Report



### Reporting Officer Response

16. It is understood that this report is provided with the further information by the Applicant to provide background data in regards to the proposed dredging operations. It is also noted that the Total Marine Report<sup>2</sup> refers to the predicted current and sediment volumes established in the MetOcean Solutions Ltd report when discussing the proposed dredging methodology.
17. The modelling was undertaken by a reputable company with a high level of expertise and experience in hydrodynamic modelling. The models provide a broad understanding of water flows within the dynamic confluence of the Waikare Inlet. Mr Maxwell has commented that in regards to the Kawakawa River and the Veronica Channel, the model does not provide detail at a resolution to understand potential sediment transport within Walls Bay and the vicinity of the jetty and marina facility. However, Mr Maxwell believes that one can infer from the model presented, that once suspended sediment from dredging activities is transported into the vicinity of the Veronica Channel, it is highly likely that strong tidal flows will quickly entrain and disperse the suspended sediments.

### 4Sight Consulting Ecological Assessment

18. This report was prepared by Stephen Brown, Principal Marine Ecologist at 4Sight Consulting Ltd. In summary, the report addresses a general description of the environment, sediment quality, subtidal and intertidal biota, the shellfish bed and hydrodynamics.
19. A summary of the conclusions reached in the 4Sight Ecological Assessment assert that:
- The effects to subtidal and intertidal biota from the proposed structural and dredging works are expected to be no more than minor.
  - Ecological effects associated with installation of the erosion barrier are expected to be no more than minor.
  - On balance, effects from the proposed activities in terms of contaminants are expected to be no more than minor.
  - Analysis of heavy metals in shellfish flesh found no evidence of accumulation of heavy metal contaminants in pipis collected from the pipi bed adjacent to the boatyard.

4Sight Consulting consider this is a well-managed facility and improvements to the system for handling washdown water and stormwater from the boatyard hardstand implemented since 2002 represent improved environmental management and reduced potential for contaminants to enter the coastal marine area (CMA), and Doug's boatyard is likely to be a small contributor to the overall potential contaminant load in the wider area.

The proposed upgrade to structures and deepening around the facility can be carried out with short term and minor ecological or water quality effects confined largely to the immediate works area.

<sup>2</sup> Total Marine Technical Report – Preliminary Design of Timber Jetty, Pontoon and Dredging at Doug's Boatyard Opua - 11 July 2018 – (Page 9)

#### Reporting Officer Response

20. The review carried out by Mr Griffiths is largely supportive of the conclusions reached by Mr Brown, with extra controls recommended for the protection of water quality and the shellfish bed, including an amendment to the condition relating to the temporal restriction on dredging activity during certain months.

21. Accordingly, I recommend that condition 58 be amended as follows:

*Dredging works shall only be carried out between 1 March and 30 November September.*

22. The proposed sub surface erosion barrier was not supported by Mr Griffiths, whereby he concluded that it was unnecessary and that it would likely cause more disturbance to the beach and intertidal shellfish bed during construction and may have unintended consequences for the ongoing beach hydrodynamics.

#### **AECOM – Air Quality Assessment**

23. This report was prepared by Peter Stacey, Principal Air Quality Consultant for AECOM New Zealand Limited. In summary, the report assesses the effects of discharges to air from the Applicant's boatyard activities on the boatyard site and off-site locations. In assessing these effects, dust nuisance from water blasting, sanding and grinding activities and volatile organic (VOC) emissions from the application of antifouling and paints were regarded. A review of the recommended consent conditions is also provided in this assessment.

24. A summary of the conclusions reached in the AECOM Air Quality Assessment assert that:

- Based on an eight day particulate monitoring study, there is unlikely to be any nuisance effects from water blasting, sanding or grinding activities.
- The results of atmospheric dispersion modelling determined that VOC concentrations at nearby residences and at the reserve to the south, were typically below accepted international air quality assessment criteria designed to protect human health. Concentrations of hexamethylene isocyanate have the potential to exceed health-effect assessment criteria when the wind is blowing from the northern quadrant, therefore it is recommended that the use of paints containing this compound are limited during these periods of time.
- Overall, AECOM considers that there is limited potential for VOC from the application of antifouling and painting to cause human health effects, particularly given the limited duration that this activity takes place.

#### Reporting Officer Response

25. The AECOM Report acknowledges the recent installation of an anemometer at the site (as recommended by the Committee at the hearing). The anemometer will provide greater clarity for both the Applicant and general public in terms of consent compliance for any discharge of contaminants to air from sanding and spray coating operations. It is however important that the general public can access the anemometer to check and record compliance if need be.



26. Mr Stacey considers that electric sanding, grinding and spray coating operations should only be undertaken over impermeable surfaces and when the wind speed is between 0.5 m/s and 5 m/s (as a 60 second average). In terms of the application of antifouling and paint, Mr Stacey considers that these activities should only be undertaken when the wind speed is greater than 0.5 m/s and when the apparent winds on the slipway are from the northeast to south<sup>3</sup>.

27. Based on the above and recommendation of Mr Stacey, I recommend that condition 69 be amended as follows:

*Electric sanding and spray coating operations shall be conducted with regard to wind direction and wind strength to prevent or minimise any adverse effects on the environment. Sanding and grinding operations shall only be conducted when the wind speed is between 0.5 m/s and 5 m/s (as a 60 second average). The application of antifouling and paint shall only be undertaken when the windspeed is greater than 0.5 m/s and when apparent wind on the slipway is from the northeast to south (wind is blowing up the slipway through an angle of 45 to 170 degrees). The Consent Holder shall maintain equipment adjacent to the boatyard boundary that displays current windspeed and direction, this equipment and information display shall be visible from the reserve.*

28. In terms of spray drift from water blasting, Mr Stacey considers the use of mitigation screens to be unnecessary given the limited potential for dust nuisance from the water blasting of vessels. He further suggests that provided the water source is free of significant impurities, there is limited potential for effects from water blasting. This maybe the case in regards to 'health' effects, however in terms of 'amenity' effects, I disagree with Mr Stacey. Given the proximity of the reserve and public walking track to where water blasting is carried out, water spray in general maybe considered to be offensive by members of the public, regardless of whether there are any contaminants in the water spray or not. This has been supported through the evidence of Mr Rashbrooke and Ms Marks at the hearing.

29. Further to the above, Mr Stacey has suggested that an advice note be included in the consent conditions stating that "water vapour associated with water blasting activities at or beyond the site boundary is not considered to be offensive or objectionable". For the reasons outlined in the above paragraph, I do not support the inclusion of such an advice note.

30. Subsequently, I do not support the recommendation of Mr Stacey to amend condition<sup>4</sup> 71 to limit the use of screens. However, the following minor change is recommended to ensure that the screens do not remain on the site when high pressure water blasting is not carried out:

31. Temporary screens shall be erected around blasting areas at all times during high pressure water blasting to mitigate effects of spray drift.

32. In regards to dry abrasive blasting, Mr Stacey has indicated that this activity is no longer undertaken at the boatyard. Accordingly, those conditions which solely refer to dry abrasive blasting have been removed in their entirety from the revised conditions (conditions 74 – 76<sup>5</sup>) and those conditions which include the reference to dry abrasive blasting have been amended.

<sup>3</sup> AECOM Assessment of Air Emissions from Boat Yard Activities (9 July 2018) – Review of Proposed Resource Consent Conditions – Page 22

<sup>4</sup> Condition numbering was altered from 72 to 71 in revised conditions (15 May 2018) provided at hearing

<sup>5</sup> Condition numbering was altered from 75-77 to 74-76 in revised conditions (15 May 2018) provided at hearing



33. In final, it is important to note here that the recommendations within Ms Simpson's assessment of the AECOM Report (which I have not yet reviewed) may change my recommendations in regards to appropriate consent conditions for air discharges.

### 3.0 RESPONSE TO EVIDENCE PRESENTED AT THE HEARING AND SUBSEQUENTLY AMENDED APPLICATIONS

#### Authorised Use of the Existing Jetty

34. A number of submitters presented evidence during the hearing asserting that the existing jetty has never been authorised for boat maintenance or repairs to be carried out. However, referring to the current resource consent for the existing jetty, set to expire in 2036<sup>6</sup>, I can clarify that the following 'use' is currently authorised.

35. "For purposes associated with the boatyard, including survey and inspection of ships and safe ship management, gridding of vessels for maintenance, marine brokerage of vessels for sale and/or charter in conjunction with the boatyard office".

36. Further to the above, the following condition of the current jetty authorisation is relevant:

*"The wharf shall not be used for the permanent mooring of any vessel. For the purposes of this condition "permanent mooring" means the use of the wharf for longer than 12 hours in any seven day period or the use for other than repairs and maintenance or survey work which, because of their nature, requires a vessel to located at the wharf for a longer period."*

#### Public Access to the Reconstructed Jetty and Marina Facility


In response to evidence raised at the hearing and comments made by the Committee in relation to the permitted and historical use of the existing jetty, an evolution of the existing jetty has been prepared and is annexed to this addendum as part of Appendix 6.

38. Of particular note is that the previous owner of the boatyard, Mr Elliot, was granted a Harbour Board Licence in 1989 for the construction of the existing jetty to be used in conjunction with the boatyard operations provided that reasonable public access was allowed.

39. When preparing my initial assessment on the application, the current level of jetty use by the public was a valid consideration and is referred to in the s42A report<sup>7</sup>. Referring to the my report, discussions with Council staff and the Applicant, along with the review of written submissions received, lead to the conclusion that the public use of the jetty was not high and that the jetty has always been a 'full working wharf'. However, new evidence presented by submitters at the hearing has indicated that the current use of the existing jetty by the public is greater than what was initially understood, with various mooring/vessel owners frequently dropping off and collecting passengers at the jetty. In light of this new evidence, further mitigation is recommended to ensure that adverse effects to public access can be avoided or adequately mitigated.

<sup>6</sup> NRC resource consent reference: CON20030791408

<sup>7</sup> NRC s42A Staff Report - APP.039650.01.01 - (Paragraphs 77 - 81)

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40. It is therefore recommended that the proposed locked gates be relocated further seaward to the commencement of the proposed gangway, thereby providing security to the proposed marina while allowing full public access over the fixed jetty. In addition, it is recommended that the locked gates remain open during daylight hours to provide unrestricted public use of the pontoon if not in use by another vessel.

41. In light of the above, it is therefore recommended that condition 31 be amended as follows:

*The area of exclusive occupation, over which the Consent Holder may exercise control of access and use, is limited to the Occupation Area identified on the Total Marine Services Limited drawing referenced as Northland Regional Council Plan Number 4826/2, except that the Consent Holder shall not limit **public** access to and reasonable use of:*

- (a) *The dinghy ramp and access on to the intertidal beach on the southern side of the slipway; and,*
- (b) *The jetty facility and marina facility ~~by the pedestrian public during daylight hours by arrangement with the jetty facility and marina management.~~ Signage shall be erected on the jetty facility gateway to advise the public of the availability of the public access.*

#### **Reconstructed and Existing Jetty Abutment**

42. In terms of the jetty abutment being located landward of Mean High Water Springs (MHWS), the Applicant presented evidence at the hearing which directed the Committee to Far North District Plan (FNDP) Rule: 12.7.6.1.1(IX), which states (*abbreviated for relevance*):

*"Any building and any impermeable surface must be set back from the boundary of the coastal marine area a minimum of 30m provided this setback does not apply to Doug's Opua Boatyard's existing uses and or resource consents applicable over Sec 1, 2, 3 & 4 SO68634 (esplanade reserve) CT 121C/187; NRC Plan Map 3231B; and pt Lot 1, Lot 2 & Sec 3 Town Block of Opua XXXII CT 21C/265.*

43. The Applicant considers this rule to be relevant to the current proposal to reconstruct the jetty facility, thereby categorising the jetty abutment where it is located landward of Mean High Water Springs (MHWS) as a permitted activity under the FNDP.
44. My understanding of FNDP Rule 12.7.6.1.1(IX) is that it is specific to existing uses and/or resource consents as they pertain to Doug's Opua Boatyard. If the reconstructed jetty facility is to be constructed from the existing jetty abutment (i.e. the existing jetty abutment remains) I believe "existing uses" would be relevant and no land use consent would be required. However, if the reconstructed jetty facility is to be totally rebuilt including the jetty abutment landward of MHWS, it is my interpretation that **discretionary land use consent would be required from the Northland Regional Council (NRC) under the Transfer of Powers and Functions agreement between the Far North District Council (FNDC) and NRC.**
45. Further to the above, I can clarify that the existing jetty abutment currently holds a valid land use consent from FNDC.



## Marina

46. Various submitters raised concerns at the hearing with the appropriateness of the proposed marina, in particular, the evidence presented by Ms Johnston asserted that the "RCP is zoned for moorings not for a marina". This is incorrect as the proposed site is located within a zone which is regarded as the most suited location for a marina within the Operative Plan, being the MM4 zone (Moorings including Marinas Management Area). Accordingly, the proposal was assessed against the general performance standards of Rule 31.6.11 of the RCP along with relevant MM4 'Marina Policies' including the following:

28.4.7.a *Allow for the potential for marina development in Marine 4 (Moorings including Marinas) Management Areas.*

28.4.8 *The Council and consent authorities will, when considering a resource consent application for a marina development, consider the appropriateness of the proposal against the following parameters:*

- the location, intensity, character and scale is appropriate to the character, heritage and amenity values in the coastal environment including the land above mean high water springs; and
- the infrastructure (including sewage disposal, rubbish collection and parking) necessary for use, activities and development exists or is provided, within the Marine Management Area or within the adjoining district; and
- avoiding conflicts with other activities to the extent consistent with the purpose of the Marine Management Area; and
- avoiding as far as practicable adverse environmental effects (including cumulative effects); and
- take into account sites of cultural value; and
- taking into account likely changes to water quality and flushing characteristics and proposals for the management of discharges and for heavy metal monitoring program; and
- providing for the rationalisation and reduction of surrounding moorings; and
- taking into account the need for reasonable provision of public access; and
- take into account the positive and negative social, cultural and economic well-being effects to the local area, including;
  - o the extent to which there are economic benefits from the construction and use of the marina to the local economy; and
  - o the extent to which there are social benefits of providing a greater number of people the opportunity to moor their vessels at sought after locations; and
  - o the extent to which a more efficient use of water space will be achieved compared to the existing use of the water space for moorings, including whether the water space needed for moorings is reduced; and
  - o the extent to which the demand for mooring space would be better met by a marina compared to other mooring systems; and
- any other matter the Council considers relevant.

47. In response to evidence presented at the hearing by submitters including Ms Johnston, Mr Rashbrooke and Mrs Kyriak, the above direction of the Operative Plan indicates that marinas are considered to be an appropriate activity at the location sought provided certain parameters are met. In accordance with the above parameters, in particular the second paragraph whereby the appropriateness of the marina proposal is to be measured against "the infrastructure (including sewage disposal, rubbish collection and parking) necessary for use, activities and development exists or is provided, within the Marine Management Area or within the adjoining district", rubbish disposal and curbside collection is available at the boatyard site, a publicly available sewage pumpout system and refuelling facilities operated by Far North Holdings Limited is available at the Opuia Marina approximately 600 m from the proposed marina. It is understood that toilet facilities are available in the boatyard building. If this is not the case, the nearest public toilet facilities are available near the Opuia ferry ramp. It is also understood that parking is likely to be able to be accommodated on the boatyard site with further limited parking near the Opuia Community Hall on the corner of Beechey Street and Richardson Street via the coastal walkway. The proposed use of the marina berths by visiting vessels (offshore) would likely mean that demand for additional parking attributed to use of the marina berths would be limited.

48. The evidence presented by Mrs Kyriak addressed concerns with the proposed marina and focused on the policies of the Proposed Plan rather than the Operative Plan. While it is acknowledged that the direction of the Proposed Plan provides a more current policy direction from the Council, the policies within this proposed document are afforded little weight at this time as issues associated with them are yet to be resolved.

49. As discussed above, I have accepted the evidence presented at the hearing by submitters in terms of the level of public use of the existing jetty facility. As a result of this new information, further mitigation is required in order to avoid adverse effects to public access as far as practicable. It has therefore been recommended that condition 31 be amended to provide greater public access over the jetty facility including the marina.

50. It is also recommended that condition 37 be amended in accordance with current Marine Pollution Regulations as follows:

*The Consent Holder shall prohibit berth holders, as a condition of berthage, from discharging wastes (e.g. untreated sewage, greywater, oil, contaminated bilge water) into coastal waters within or adjacent to the jetty and marina facility.*

#### **Mudcrete Grid/s**

51. Although not referred to within the amended applications provided by the Applicant<sup>8</sup> the Technical Report provided by Total Marine includes updated plans for the applications which show only one mudcrete grid<sup>9</sup>, with the more northern grid removed. It is therefore assumed that only one grid is now proposed on the southern side of the reconstructed fixed jetty.

52. Evidence was presented at the hearing by submitters both in support and opposition to the proposed mudcrete grid/s.

<sup>8</sup> Memorandum of Counsel for the Applicant Seeking Enlargement of the Time by Which Supporting Information is to be Filed – Colleen Prendergast – 28 May 2018

<sup>9</sup> Total Marine Technical Report – Preliminary Design of Timber Jetty, Pontoon and Dredging at Doug's Boatyard Opuia - 11 July 2018 (Total Marine Services Ltd - Structural Plans – 13 July 2018)



53. To provide clarification to my initial assessment of the appropriateness of this activity, reference was made to the most recent Northland Regional Pest and Marine Pathway Management Plan<sup>10</sup> (Pest Management Plan). This recently adopted management plan includes rules seeking to prevent the spread and establishment of marine pests into and around Northland. The relevant rules include:

✓ Rule 10.1.1 The owner or person in charge of a craft entering Northland must ensure that the fouling on the hull and niche areas of the craft does not exceed 'light fouling'.

✓ Rule 10.1.2 The owner or person in charge of a craft moving from one designated 'place' in Northland must ensure that the fouling on the hull and niche areas of the craft does not exceed 'light fouling'.

54. For clarity purposes, 'light fouling' is defined within the Pest Management Plan as: "small patches (up to 100 millimetres in diameter) of visible fouling, totaling less than five percent of the hull and niche areas. A slime layer and/or any species of barnacles are allowable fouling".

55. In achieving the outcomes sought within the Pest Management Plan, the Council have become more acceptant of mudcrete grid proposals in recent times, thereby assisting vessel owners/operators in achieving compliance with the relevant aforementioned rules of the Pest Management Plan, seeking the prevention of spread and establishment of marine pests into Northland.

56. Council's required controls and restricted use of the mudcrete grid is reflected in the recommended consent conditions and it is considered that any adverse effects generated by the placement or use of the grid can be mitigated or avoided through compliance with the recommended consent conditions. However, the evidence presented at the hearing reflecting non-compliance of discharge consent conditions on separate occasions along with the recent sampling results from NRC's monitoring staff (post hearing)<sup>11</sup>, have led me to adopt a precautionary approach<sup>12</sup> with my consideration of this new activity. I therefore no longer support the granting of consent for the following activities as the effects on the CMA by the Applicant's operations are uncertain and potentially significantly adverse:

- \* ✓
- A mudcrete grid
  - To discharge washdown water containing contaminants to the CMA.

57. Should the Committee choose to grant consent for the above activities, the recommended conditions have been amended to provide greater protection to the CMA and clarity for all those concerned. The amended conditions are provided below:

58. Proposed amendment to condition 18:

<sup>10</sup> Northland Regional Pest and Marine Pathway Management Plan 2017 – 2027 ([www.nrc.govt.nz](http://www.nrc.govt.nz))

<sup>11</sup> The compliance matters are discussed under 'Discharges' further in the Addendum (pages 16-17)

<sup>12</sup> New Zealand Coastal Policy Statement – Policy 3 – Precautionary Approach

The structures shall be constructed and maintained in ~~general~~ accordance with the **attached** Total Marine Services Limited drawings referenced as Northland Regional Council Plan Numbers 4826/1 and 4826/3. The mudcrete grid shall be designed to include a sump capable of holding a submersible pump and constructed so that any water discharged onto the grid is directed into the sump.

59. Proposed amendment to condition 39:

Activities on the mudcrete grids shall be limited to:

- (a) Inspection of vessel hulls;
- (b) Removal of micro-fouling marine growth, being slimes and/or films, from vessel hulls by, wet wiping with 'soft tools' such as cloths, squeegees or wiper systems, sponges, soft brushes or other non-abrasive methods;
- (c) The cleaning of vessel hulls using low pressure high-volume water. Where wash down water is discharged onto the grid, the water containing contaminants shall be pumped from the grid sump into either a containment system for removal from the coastal marine area or directly to trade waste. The sump pump shall be sized to have sufficient capacity to avoid overflow of wash water from the grid sump onto the adjacent foreshore and seabed.
- (d) Removal of marine growth (macro-fouling) from propellers, drive shafts etc and sea chests using hand tools. All material removed shall be contained (e.g. in buckets, on tarpaulins or drop cloths) and disposed of outside of the coastal marine area; and
- (e) Minor repairs to vessels involving no discharge of contaminants into coastal waters or onto the seabed.

60. Proposed amendment to condition 41:

All solids, ~~and~~ sludge **and liquids**, removed from vessels using the mudcrete grids or from the cleaning of the grids shall be disposed of at an off-site facility that is authorised to accept such wastes.

~~**Advice Note:** As far as is practicable, the contaminated liquids generated during wet wiping/cleaning activities and washdown shall be collected, and disposed of into the Ōpua municipal sewage system.~~

61. Proposed amendment to condition 42:

Signs shall be erected and maintained on the jetty **and marina** facility adjacent to the mudcrete grids advising of the restrictions on activities at the grids.

62. Proposed amendment to condition 63 (Discharge Washdown Water Containing Contaminants to the CMA):

The discharges of ~~vessel~~ hull washdown water authorised by this consent applies only to the area of the mudcrete grids identified on the **attached** Northland Regional Council Plan Numbers 4826/1 and 4826/4. The discharge may only occur when the grid surface is exposed during the low tide cycle and only if sump pumpout equipment is installed and operating.



### **Slipway**

63. The evidence of Mrs Kyriak asserts that the slipway is not part of the current applications as it legally stands alone pursuant to s178 of the Harbours Act 1950. While it is acknowledged that the jetty and slipway were granted a Harbour Board Licence in 1989 (deemed coastal permit), they were both granted resource consent under the current consent<sup>13</sup> which expires in 2036, and are part of the current applications.
64. As a further point of clarification, the current/subject application to refurbish the existing slipway relates only to those portions of the slipway which are within the CMA (below MHWS). ✓

### **Dredging**

65. The proposed capital and maintenance dredging was an issue of contention among many of the opposing submitters at the hearing, in particular the evidence presented by Mr P Clark representing the Waikare Marae, Mr D Clark and Mrs J Clark focused solely on the dredging element of the applications and its potential adverse effect to the further degradation of water quality, amenity and recreational use of Walls Bay including kaimoana. Mr P Clark tabled photos and drawings in support of the Waikare Marae's concerns with the proposed dredging and subsurface erosion barrier.
66. Mr Rashbrooke's evidence at the hearing included concerns with the proposed dredging area and potential adverse effects to the public mooring area including his own personal mooring.
67. Both Ms Marks and Ms Johnston provided expert evidence at the hearing in support of their submissions on the applications. The expert evidence of Mr John Booth<sup>14</sup> and Ms Johnston reviewed the 4Sight Consulting Ecological Report<sup>15</sup> provided by the Applicant post the notification period. However, the content and purpose of the 4Sight Report was taken out of context in the expert reviews. The specific purpose of the 4Sight Report was later clarified in the letter from 4Sight Consulting Limited<sup>16</sup> which was provided as part of the Applicant's evidence at the hearing.
68. In addition to the above, it is however acknowledged that my s42A Report omitted my assessment on the hydrodynamics and ecological effects resulting from the proposed structural works and dredging of an access channel. In this regard, I have accepted the advice from Mr Maxwell and Mr Griffiths in their responses to the further information<sup>17</sup> provided by the Applicant (discussed earlier in the report), which addresses these matters.

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<sup>13</sup> NRC resource consent reference: CON200307914 (01-02)

<sup>14</sup> Expert evidence of John Booth, Marine Scientist – 8 May 2018 – In support of Ms Marks submission

<sup>15</sup> 4Sight Consulting Ltd – Ecological Survey: Dougs Opua Boatyard – Ecological Report – Stephen Brown - April 2018

<sup>16</sup> 4Sight Consulting Ltd – Response to evidence briefs of J Booth and J Johnson: Dougs Opua Boatyard – Stephen Brown – 15 May 2018

<sup>17</sup> Reports provided on 16 July 2018 by the Applicant from 4Sight Consulting Ltd, Total Marine Services Ltd and MetOceans Solutions Ltd (Opua Marina)

69. As a result of matters arising at the hearing by submitters, the Applicant has reduced the proposed capital dredging as shown on the plans included in the Total Marine Technical Report provided as further information<sup>18</sup>. The amended proposal reduces the area to be dredged by approximately 52% and the volume to be excavated by approximately 42%. In support of the amendment to the proposed dredging, technical reports were provided as further information from Total Marine Services Ltd and 4Sight Consulting Ltd. A copy of the MetOcean Solutions Ltd modelling report for the Opuia Marina Stage 2 Development was also provided.
70. As previously discussed, I have accepted the expert advice of Mr Griffiths and Mr Maxwell in regards to the further information supporting the amended dredging proposal.
71. In terms of potential adverse navigational effects to the public mooring area, Council staff discussed the revised dredging area with the Regional Harbourmaster and he has confirmed that he has no navigational safety concerns with the proposed dredging within the MM4 area. It is understood that the dredging in the vicinity of the jetty will enable safe manoeuvring of deeper draft vessels at all stages of the tide. The Applicant now has a 'Mooring and Vessel Management Plan' in place with the Harbourmaster to manage the movement and replacement of vessels and moorings during dredging activities. If consent is granted, the movement of the moorings affected will be undertaken by an approved mooring contractor, who will alter the mooring configuration to accommodate any increased depths arising from the dredged channel.

#### **Subsurface Erosion Barrier**

72. The proposal to construct a subsurface erosion barrier was provided by way of an emailed plan titled 'Shellfish Bed Sub-Surface Erosion Barrier', dated 2nd May 2018. This email was received after the completion of my s42A report and prior to the hearing of the applications. It is understood that the subsurface erosion barrier is proposed to minimise the potential adverse effects of the dredging and slipway reconstruction on the beach and the existing shellfish bed. An assessment of the proposed barrier against the relevant planning documents was not included with the subsea erosion barrier plan.
73. The proposed subsea erosion barrier has been included in the applications post notification and is an additional structure/activity to those proposed in the current applications and requires resource consent pursuant to the RCP and the PRP.
74. In light of the above, I believe this additional structure cannot be considered as part of the current applications.

#### **Exclusive Occupation**

75. The evidence of Mrs Kyriak disputed the use and meaning of the word 'occupy' in regards to the proposed coastal permits. To clarify the requirement of this word, I refer to section 12(2)(a) of the RMA whereby a structure within the CMA must hold a valid resource consent to 'occupy' any part of the common marine and coastal area if not permitted to do so by a national environmental standard or rule in a regional coastal plan or proposed regional coastal plan. To further clarify, this does **not give exclusivity to the area of occupation**.

<sup>18</sup> Total Marine Services Ltd – Dredging Plan with NRC Aerial Overlay – Rev 5 – 13 July 2018 and Dredging & Mooring Management Plan – Rev 5 – 13 July 2018



*The Consent Holder's operations shall not give rise to any dust, overspray, or odour at or beyond the site **Boatyard Discharge area** boundary, which in the opinion of a Monitoring Officer of the council is offensive or objectionable.*

106. Condition 77 has been amended as follows:

*The Consent Holder shall, on a daily basis, keep records of all occasions when **water** abrasive blasting and spray coating activities are undertaken. These records shall be made available to the council's assigned monitoring officer on written request and shall include the:*

- (a) ~~Type and quantity of abrasive used;~~*
- (b) ~~Item(s) being blasted and/or spray coated;~~*
- (c) ~~Method of abrasive blasting used;~~*
- (d) ~~Location at which abrasive blasting and/or spray coating occurred;~~*
- (e) **Date and time (Hours) of operation each day, including a record of the wind speed and direction at the commencement and conclusion of works on each day;***
- (f) ~~Number of blasting and/or spray coating units being used; and~~*
- (g) ~~Types and volumes of coating materials being applied.~~*

107. In order to ensure that the stormwater and wastewater from the proposed activity are kept completely separate, condition 78 has been amended as follows:

*High and low pressure water blasting and wet abrasive blasting of vessel hulls shall be confined to: ~~bunded or sealed areas where water containing contaminants are diverted to the a collection, settlement and filtration system for immediate pumping to a trade waste disposal system.~~*

- (a) Bunded or sealed areas; or***
- (b) Facilities where water containing contaminants is diverted to a collection facility for immediate pumping to a waste containment facility on land for storage prior to offsite disposal; or***
- (c) To a trade waste disposal system.***

## CONCLUSION

108. Having carefully reviewed the evidence presented at the hearing along with the application amendments, further information provided by the Applicant and sampling information provided by NRC staff post hearing, I have amended my recommendation on the applications as follows:

- Applications for resource consents be granted for the existing authorised slipway, dinghy ramp, workboat mooring and dinghy pull and timber and stone seawalls, subject to the recommended conditions appended to this addendum.
- Applications for resource consents be granted for discharge to air within the CMA, discharge to air on land, discharge to land and discharge of stormwater to the CMA, subject to the recommended conditions appended to this addendum.





93. In summary, Mr Eyre confirmed that all complaints received regarding Doug's Boatyard had been actioned by NRC staff, with those complaints relating to the tenure of the reserve being out of NRC's jurisdiction.
94. Mr Eyre acknowledged that the current layout of the slipway is an area needing improvement, however the recent reserve land tenure matters had limited this from happening. Referring to the current abatement notice which was served on the Applicant<sup>22</sup> (Appendix 5), the Applicant is required to concrete the slipway and ensure all stormwater from the slip enters the treatment system once the reserve land tenure matters are resolved. It is understood that in light of the recent Court of Appeal judgement<sup>23</sup>, the requirements within the Council's abatement notice can now be met.
95. Further to the above, I have been advised that an inspection of the boatyard was carried out during the week of 24th May 2018, where it was noted that stormwater from the lower area of the boatyard was running down the slipway to the sump, where once full, would overtop and run directly into the CMA. The stormwater from the upper area of the boatyard was discharging through the stormwater treatment system (being ~75% of the yard).
96. It is understood that this matter of non-compliance has since been remedied by the Applicant with all stormwater being pumped through the treatment system.
97. In light of the non-compliance observed in May, an additional inspection was carried out by NRC monitoring staff on 20 June 2018 during a heavy rainfall event. The results are also annexed in Appendix 4. The sampling highlighted particularly high levels of copper and zinc within the boatyard's discharged stormwater, similar to untreated levels found at other boatyards. This indicates that the current stormwater system is not working effectively which is a matter of great concern and in need of remedying.
98. In conclusion, I would like it known that the submitters' evidence provided at the hearing and subsequent sampling results from NRC inspections, has challenged my ability to continue to support the recommendation of my s42A report in regards to the discharge permits, particularly the discharge of stormwater. Furthermore, the knowledge that the Applicant relies on the discharge permits for the continued operation of his boatyard business has been a considerable matter to consider, particularly in regard to the purpose of the RMA<sup>24</sup>.

<sup>22</sup> NRC Abatement Notice Under s322 & 324 of the RMA – File Ref: E4.12;ICE421099 – 27 October 2010

<sup>23</sup> Court of Appeal of NZ Judgement – CA119/2017 (2018) NZCA 262 – Between Opuia Coastal Preservation Inc and Far North District Council, Minister of Conservation and DC Schmuck – 20 July 2018

<sup>24</sup> Resource Management Act 1991 – Part II – Section 5(2)





76. Mrs Kyriak in her evidence, also disputed the proposed 'Area of Exclusive Occupation' in comparison to the 'Boundary of Occupation' from the current consent (2003)<sup>19</sup>. To clarify, the 'Boundary of Occupation' refers to an area of exclusive occupation in the current consent. I refer to condition 2 from the current consent (2003):

*The Consent Holder shall have the exclusive occupancy of the area of seabed within the boundary of occupation area shown on Northland Regional Council Plan No: 3231 except that the Consent Holder shall allow reasonable public access to and through this area and reasonable public access to and use of the wharf and pontoon structures.*

77. The current applications seek to extend the currently authorised area of exclusive occupation further north to include the berthage areas around the reconstructed jetty and marina facility and south to include the slipway and dinghy ramp. The area of exclusive occupation sought by the Applications can only apply to the CMA. The recommended conditions of consent (Proposed condition 31a) places limits on the exclusivity and does not limit public access to the dinghy ramp or the intertidal area on the southern side of the slipway that may be within the occupation area. Furthermore, I have recommended a change to condition 31 as discussed earlier in the addendum, which provides greater public access to the reconstructed jetty and marina facility.
78. In addition to the above, I recommend that the Applicant relook at the area of exclusive occupation and further clarify the extent of the extension to this area which is sought. An area of exclusive occupation should reflect the minimum area required to carry out the activity it supports. A reduction in this boundary area may be appropriate.

## **Seawalls**

### New Proposed Seawall

79. The new proposed rock seawall was an issue of contention among many submitters at the hearing. Consequently, the Applicant has withdrawn this component of the applications.
80. Those conditions which relate to the seawalls (both new and existing) have been amended to reflect this change in the attached revised conditions.

### Existing Seawalls

81. The Total Marine Services Ltd plans which were circulated just prior to the hearing, and the subsequent plans provided after the hearing adjournment indicate the existing small seawall north of the existing jetty and a small section of the southern seawall is in fact landward of the MHWS mark (last established in 2010). Subsequently, these existing structures require land use consent, which can be captured by the regional council as a 'hard protection structure' pursuant to PRP Rule C.1.1.17. This rule addresses both s9 and s12 matters within the RMA and was captured within my s42A report.
82. Further to the above, I can clarify that the existing seawalls hold valid land use consents for those parts of the seawalls which do not otherwise lie in the CMA from FNDC.

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<sup>19</sup> NRC resource consent reference: CON20030791409

### Beach Rehabilitation Works

83. These works were not supported in my s42a Report and were contended among many submitters. Subsequently, the Applicant advised at the hearing that this activity had been withdrawn from the applications.

### Discharges

84. The Applicant's evidence presented at the hearing included a request to change recommended consent condition 71<sup>20</sup> which states:

*"Screens shall be erected around blasting areas during high pressure water blasting to mitigate effects of spray drift."*

85. The Applicant requested this condition be amended to read:

*"Screens shall be erected around blasting areas during high pressure water blasting to mitigate effects of spray drift. The screens shall be of a height sufficient to effectively direct and contain contaminants within the impervious slipway surfaces to allow the collection and treatment of contaminated wastewater thereafter through the discharge containment system".*

86. It is also noted and has been discussed, that Mr Stacey, author of the AECOM Report agrees with the Applicant in regards to this condition.

87. To reiterate my comments earlier, the issue of spray drift becomes an amenity effect which was not assessed within the AECOM Report.

88. Amenity values are those characteristics that influence and enhance people's perception and appreciation of a place.

89. The reserve, in particular the public walking track, is immediately adjacent to where water blasting is carried out and water spray in general maybe considered to be offensive by members of the public, regardless of whether there are any contaminants in the water spray or not. I therefore, continue to believe that this condition is crucial in mitigating adverse effects from spray drift and do not support the Applicant's recommended change to condition 71.

90. During the course of the hearing, submitters presented evidence pertaining to the Applicant's level of non-compliance of previous and current discharge consent conditions. The evidence presented at the hearing by Ms Marks and Mr Rashbrooke included two videos with photographs illustrating various instances of non-compliance with discharge consent conditions. While it is acknowledged that these photos and videos illustrate consent non-compliance by the Applicant, it is not known when these photos/videos were taken as there were no dates provided (whether they were taken during the current discharge consent term (last 10 years) or prior to).

91. Nevertheless, the above evidence was highly concerning, particularly given this evidence appeared to be contrary to the advice I had received from Council's Coastal Monitoring Department<sup>21</sup>.

92. At the adjournment of the hearing, I asked Council's Coastal Monitoring Manager, Mr Eyre, to provide a response on the evidence presented at the hearing by submitters. These comments are annexed as Appendix 4.

<sup>20</sup> Condition numbering was altered from 72 to 71 in revised conditions (15 May 2018) provided at hearing

<sup>21</sup> NRC s42A Staff Report - APP.039650.01.01 – (paragraph 129, page 32)





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99. It has become apparent to me that the historical limitation of the reserve land tenure matters has restricted the Council in the past to deal with compromise rather than **best practice in regards to discharge compliance**. It is expected that the recent Court of Appeal judgement on this matter will provide more certainty to submitters in regards to the **permitted boundaries of the Applicant's boatyard operations**. In addition, the revised consent conditions for discharges should provide all parties involved, with more clarity and expectation than the consent conditions of the historical discharge consents. **In any event, consent compliance and regular monitoring is paramount to the successful mitigation of adverse effects generated by the discharge operations of the boatyard. The Committee may consider a shorter consent term is appropriate for the discharge permits, similar to the determination of the previous discharge consent application<sup>25</sup>, whereby a consent term of 10 years was granted.**

100. In light of the recent sampling results, the following amendments to the discharge related consent conditions are recommended:
101. Condition 33 relating to the water quality limits has been deleted, with reliance left to the conditions which refer to heavy metals in sediment levels. This is due to the practicalities of sampling and the difficulties in proving the source of the contamination. NRC's monitoring staff have found that following rainfall events there is a high load of copper in the embayment waters at control sites.
102. Condition 35 has been amended to provide more clarity:

*Concentrations of metals in seabed sediments adjacent **as measured at any point 10 metres from** to the facilities shall not exceed the following:*

Metal	Limit in Milligrams per Kilogram (dry weight)
Copper	65
Lead	50
Zinc	200

103. Condition 66 has been amended as follows:

~~Water blasting or washdown using high volume water shall not be undertaken on the grids. As far as is practicable washdown liquids shall be contained and disposed of to trade waste system.~~ **The discharges to air authorised by this consent applies only to the Occupation Area identified on the attached Total Marine Services Limited drawing referenced as Northland Regional Council Plan Number 4826/1 and 4826/4**

104. New condition to be included:

**The preparation or smoothing of vessel hulls including removal or smoothing of antifouling shall not be undertaken in the consent area. The preparation or smoothing of vessel or facility superstructure using a sanding device shall not be undertaken unless dust collection apparatus that is operating effectively is attached to the device.**

105. Condition 73 has been amended as follows:

<sup>25</sup> NRC resource consent reference: CON20060791410-15





- Applications for resource consents be granted for the demolition of the existing jetty, proposed replacement jetty facility (inclusive of a fixed jetty, jetty abutment, gangway, working berths and two marina berths), slipway refurbishment, extended stormwater drains, extension to exclusive occupation area and capital and maintenance dredging as far it relates to providing for the jetty berths and an approach channel to the slipway and to the jetty and marina facility, subject to the recommended conditions appended to this addendum.
  - Applications for resource consents be declined for the mudcrete grid and discharge of washdown water to the CMA.
109. I have made recommendations to refine those conditions to, potentially make these more workable and, in cases, enforceable for all concerned. I am happy to provide further clarification of the above matters at the reconvened hearing if required.
110. It is important to note that due to the time constraints in providing this addendum, the NRC plans referred to in the revised recommended conditions (Appendix 1) have not yet been amended to reflect my recommendation (removal of mudcrete grid and relocation of locked gates). It is recommended that this be completed once the Committee has made its decision on the applications.



Melanie Donaghy  
**Consultant Reporting Planner**

1<sup>st</sup> August 2018