

**BEFORE THE HEARING COMMISSIONERS FOR NORTHLAND REGIONAL
COUNCIL**

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

of applications by Doug's Opuā Boatyard
for discharge consents and coastal permits
for activities ancillary to and associated
with the boatyard on 1 Richardson Street,
Opuā

**STATEMENT OF DOUGLAS CRAIG SCHMUCK
FOR THE APPLICANT**

Dated: 20 July 2020

Henderson Reeves Lawyers

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I, DOUGLAS CRAIG SCHMUCK, state:

1. I have been the owner and proprietor of Doug's Opuia Boatyard since 1994.
2. I have made this application for many reasons not the least of which is a promise to a dying man who never once broke a promise to me.
3. I am further compelled by the fact that the structures are now over thirty years old and may present unforeseen liability issues that now need to be addressed together with the associated discharge consents that have expired and need reassessing so that they are fit for purpose.
4. At the same time, I am not compelled by any particular competitive motive with other commercial activities in Opuia that have been undertaken in the Opuia Town Basin over the last 140 years. This because being a sole trader in the oldest boatyard in Opuia has given me a unique perspective in how I deal with my customers as individuals, and the satisfaction of a job well done.
5. Likewise, when I was asked by the QC acting for me regarding the easement issues before the Supreme Court as to why I persevered against the collective opposition of neighbours, iwi, and organized fringe interests, my response was easy. It is a way of life and a traditional maritime activity long established at the site.
6. The reasons then for this application are many and not just because I can or that I endeavour to expand or change the character, intensity, or scale of that which has been here long before any reserve; nor by which the amenity values to this community are in any way altered and/or aggravated.
7. To me, this application is much more the case of what I should be doing for the future as it is my intent, nay duty, to downsize and raze the old from living memory of that which has caused this 25 year dispute. And from its footprint, create anew a modern facility after the remediation of the landward site and foreshore is complete.
8. I therefore propose to:
 - (a) Reconstruct all my structures on the seabed of the CMA so that they are fit for purpose within the historical footprint and land boundaries that apply. And if there is some expansion in the area of occupation of the

CMA, then it is to accommodate the needs of navigational access at low tide to the proposed facilities that otherwise is all but unachievable at half tide or lower.

- (b) Remake these structures to more stringent safety standards in operations and utilisation over and above those that have existed in the same small bay for half a century. This keeping squarely in mind that maintenance of vessels, their fixtures, fittings, materials, loading and unloading of vessels with goods and people in any commercial capacity, onto or over the wharf or a marina pontoon will preclude other general forms of public access that might exist on other wharves in the same body of water, but to which access is also limited by way of reasonableness which would include no swimming, fishing, or wharfage without consent.
- (c) Control the use of any structures so that they meet the future needs of those purposes for which the foreshore in the CMA is suited, and by which these maritime structures were created; and that will continue to operate since they were lawfully established pursuant to s184 of the Harbours Act 1950 and are subsequently, Accommodated Activities (in s 9(1) of the Marine and Coastal Area (Takutai Moana) Act 2011), and Infrastructure in s2 of the RMA.
- (d) Allow all reasonable public access to those who are in the end, the future users of these new facilities as intended in the application, with closure of general public access to the Marina Mooring Area when the wharf is not in attendance by the consent holders and/or their several agents and/or when operations in vessel maintenance within any area of the wharf and/or on the pontoon that would preclude reasonable public access in any event. This directly in relation to similar maritime structures that abound in the Opuia Town Basin.
- (e) In effect, enhance the purpose of this cross boundary facility in the first instance, pursuant to all coastal and district planning in the past and present or future, in promoting improvement to navigational access to existing structures for which this application is directly advanced.
- (f) Raze the old to form the new, so that all the facilities on land and in the CMA will be environmentally maintained and serviceable for the next 35

years; bringing them into the 21st century and into the same context as the other commercial boat maintenance facility within one kilometre of the site.

(g) And lastly, because it is my responsibility and indeed to my benefit and the benefit of the hundreds of persons whom custom this boatyard year in and year out, that I hold these facilities for the future of its kind being part of the persona of a long and respected tradition that has all but disappeared from the New Zealand landscape in modern times; for which I and it remain one the very last of that kind.

9. These, then, are the foundations of my purpose in this application as it has been notified with all the technical expertise that I have brought before this Hearing. This is in keeping with my commitments to the NRC, by which I should have undertaken these upgrades many years ago, but could not due to related issues over time in tenure over the land by which the road was stopped, easements created, and property rights established.
10. Therefore, if we are going to consider these matters in this application for the sake of all New Zealanders, then let us strive for the best outcomes for those whom benefit the most with a crystal clear set of understandings for those whom benefit the least, so that a good regime of best practice, utilisation, and control of effects on and in the CMA are therefore achieved through greater navigational access and new structural integrity.
11. Notwithstanding the personal views outlined in some submissions, it is my belief there is nothing in this application that has more than minor effects on the environments in which these structures have and will operate; specifically, when greater general public access to land by water and vice versa, by water to land is the end result.
12. Therefore, with all of the above said, I commit this application for your deliberations within the protocols for this hearing and final conclusions towards a comprehensive set of consent conditions to effect all of the proposed improvements for the future of this traditional boat maintenance facility.

Response to comments in the s42A report

13. With respect to some of the issues raised by the NRC planner, I will endeavour to be as clear as I can with the information that applies.

Consultation with tangata whenua

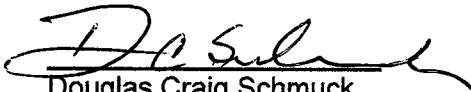
14. The s 42A report notes that I relied on notification of the application as consultation with iwi and others and is impliedly critical of that approach.
15. In the process of over 25 years surrounding compliance to the RMA after I acquired the facility, I have undertaken extensive and comprehensive consultation with the public, both those connected with or to the boatyard and the surrounding communities as far afield as Whangarei. I have talked and/or written to Hapu, iwi, and civic organisations multiple times, and had over three hundred supporting documents and/or comments/suggestions for further consideration in the various aspects of applications that I have undertaken.
16. In reality, it is unlikely that few people in Northland (and elsewhere in New Zealand) are unaware of the issues at the site if they were inclined to get involved in any form of publicly notified application. It is also a fact that notwithstanding Council and Court decisions and my attempts to consult, a number of persons regularly oppose my activities on the same or similar grounds each time. I have got to the stage where it seems easier to follow the formal processes.

Navigation effects

17. The s 42A report also identifies a number of concerns expressed by the Harbour Master with regards to my proposals. With respect, I think this is as a result of a slight misunderstanding between the Harbour Master and myself.
18. I provided a Dredging and Mooring Management plan (DMMP) which satisfied the Harbour Master at the time of the earlier dredging application. Since becoming aware of his concerns as a result of the planners report, I have now initiated discussions with the Harbour Master's office and provided an updated DMMP for his approval. A copy of that plan is **attached**, marked "A".
19. I have since received an email from Mr Watters, **attached** marked "B" in which he expresses a remaining concern. I am working with him on that, and am confident I will be able to resolve the issue prior to the hearing.

Exclusive occupation and public access

20. I wish to confirm the statements made by Mr Hood in his evidence as to the reasons for the amended exclusive occupation boundary. These statements accurately reflect my advice to him. As it is currently shown, the exclusive occupation boundary is the minimum required for both navigational and operational reasons.
21. Similarly, I confirm Mr Hood's statements in respect to public access to and through the CMA, and over the wharf. I have never unreasonably withheld consent to members of the public using the wharf, and indeed I do think I refuse to many, if any. I am however not prepared to allow such access when there could be risk associated with work activities, or unacceptable intrusion into the authorised boatyard activities and/or those of the charter boat operation. I cannot afford the liability issues that could arise should personal injury or damage to boats or the wharf occur.


Douglas Craig Schmuck

20 July 2020
Date

APP.041365.01/01

DREDGING MOORING MANAGEMENT

PLAN PRINCIPALS

This is a management plan for the conduct of handling both mooring structures and vessels attached to them for the purpose of dredging a deep water channel to a boat maintenance facility inshore within a Marine 4 Management Area.

It is envisioned that this plan will remain in place as part of the consented activities for the purpose of both capital and maintenance dredging into the future, having all of the same responsibilities/ liabilities to those mooring holders in any way affected by these works.

- 1). Therefore, the procedures commensurate to this Dredging Mooring Management Plan (DMMP), are first and foremost consultation with any affected mooring holders prior to any works with the total commitment by Doug's Opuia Boatyard for the care and well being of any vessel and structure affected by this plan. This process has already been undertaken when the original fairway dredge was twice as long. The proposal now only affects two moorings #630 and #652; both vessels will be able to be stored on the land of the slipway or other moorings available to the boatyard until dredging is completed. The owner of mooring #657 has agreed to a small relocation due north to accommodate the end of the fairway, this proposed to be undertaken before dredging begins. Once the dredge is in position there will be no need to relocate any other vessel for the purpose of this proposal except supervision during the hours of dredging operations.
- 2). Secondly is the organization of specialist contractors to undertake the works with the concurrence of the Northland Regional Council subject to all the principles of this (DMMP).
- 3). Third is to facilitate any need of the contractors to expedite the work in a safe and orderly manner; safe conduct of the dredge along the proposed route through the mooring field; and no longer than a period necessary is taken to affect the required works, weather permitting.
- 4). Lastly, the (DMMP) drawing setting out the proposed works and physical layout of the proposed channel, all affected moorings, and dredging operation parameters where required is attached as a Dredging Mooring Management Plan By Total Marine Services.
- 5). Before dredging operations and once all dredging works are complete, the locations and dispositions of all the directly affected moorings will be confirmed to the satisfaction of the Harbour Master office by a dredging survey report.

SCHEDULE OF WORKS

- 1). Relocate mooring #657 and removal the old slipway and pontoon/gangway.
- 3). Relocate any affected vessels to safe storage at the Boatyard or onto a suitable alternative mooring..
- 4). Lift and store any affected mooring structures in the proposed fairway channel and batter to the southern inshore dredging alignment of the boatyard until that dredging of the fairway is complete.
- 5). Once the dredge is 10 meters within the occupational footprint, the GEYC pontoon will be moored with suitable ground tackle in the inner fairway and the wharf removed.
- 6). Construction of the subsurface barrier and inshore dredging will be then undertaken.
- 7). Construction of the new wharf, pontoon, slipway facilities will be undertaken.
- 8). Any adjustments in mooring locations for mooring #630 and #652 will be undertaken.
- 9). During dredging, any vessel and mooring outside the proposed dredge area but within 5 metres will have its tackle extended 90 degrees to the line of work and be under continued attendance during any period of dredging with a minimum distance from the dredge machinery of 10 meters at all times. Any mooring with or without a vessel 15 meters from the line of the dredging boundary will be monitored continually during any activity directly affecting it in the dredging process.
- 10). At all periods that the dredge is not in use, it will be securely moored in the designated operational boundaries shown on the (DMMP) and/or relocated to its usual berth away from the site.
- 11). Once all dredging and required inshore work is complete, the channel will be cleared to effect the dredge extraction along the centreline of the fairway.
- 8). On completion of all works, a mooring position survey report for all affected moorings shown on (DMMP) will be conducted for confirmation by the NRC.

Doug Schmuck

For: Doug's Opuia Boatyard

Date:

Jim Lyle (sited)

Harbour Master/Bay of Islands

Date:

Ross Watters (sited)

Moorings Manager NRC

Date:

"B"

----- Forwarded Message -----

Subject: RE revised plan

Date: Thu, 16 Jul 2020 23:48:24 +0000

From: Ross Watters <RossW@nrc.govt.nz>

To: Doug and Helen <totarahill@xtra.co.nz>

CC: Jim Lyle <jiml@nrc.govt.nz>

Hello Doug

I've had a look over your revised plan with the much reduced dredged channel, and it looks fine to me with only one exception. In the proposal mooring 657 is to be moved north, but that unfortunately will not be approved due to the already large existing overlaps with the adjacent moorings. Additionally if you are proposing to reposition 630 and 652 you will need to apply to this office to do so.

The screen shot below shows the current positions of the moorings and their swing circles - as you can see 657 does not have space to move anywhere.



Ngā mihi
Regards

Ross Watters
Maritime Officer
Harbourmaster's Office
Northland Regional Council » Te Kaunihera ā rohe o Te Taitokerau

P 0800 002 004 » W www.nrc.govt.nz

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-----Original Message-----

From: Doug and Helen [<totarahill@xtra.co.nz>](mailto:totarahill@xtra.co.nz)

Sent: Tuesday, 14 July 2020 9:43 AM

To: Jim Lyle [<jiml@nrc.govt.nz>](mailto:jiml@nrc.govt.nz); Ross Watters [<RossW@nrc.govt.nz>](mailto:RossW@nrc.govt.nz)

Subject: Emailing: 002.jpg

Good morning Jim and Ross

Please see the (DMMP) map submitted with my application and that is part of my plan sent to you for confirmation for the hearing as we discussed this morning.

Please, if you have any further concerns get back and I will adjust the written plan accordingly.

Regards

Doug Schmuck

For: Doug's Opuia Boatyard

Your message is ready to be sent with the following file or link attachments:
002.jpg

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.