TO: NORTHLAND REGIONAL COUNCIL HEARINGS COMMITTEE.

RE: "APP.03950.01.01 – D C SCHMUCK – APPLICATION FOR NEW AND EARLY REPLACEMENT CONSENTS FOR ACTIVITIES ASSOCIATED WITH DOUG'S OPUA BOATYARD IN WALLS BAY, OPUA."

Further Submissions by Mike Rashbrooke, **expanding** on initial submissions, 30 Oct 2017 & 08 Feb, 2018.

PROCEDURAL.

1] The public notification of these applications **should have been delayed** in accordance with the statutory discretion conferred on the NRC pursuant to RMA s92 **until more information had been requested** by NRC staff **and received** from the applicant.

2] When this further information had been duly sought and received, and a more complete and coherent picture of what was actually being applied-for emerged, it should have been notified **more clearly** as:

An Application to the NRC:
To **demolish** an **existing private/public jetty** in Walls Bay, Opua, and;
To **extend** or **expand** an area of existing private occupation of the CMA, and;
To **create** and incorporate a significant "**public exclusion area**" in the CMA, and;
To **expand** or **extend** existing **restricted** Repair and Maintenance activities in, or into, the CMA, and;
For a **reclamation** in the CMA **or** a Joint Application to **both** local Councils for a **seawall**.

And a **Joint Application** to **both local Councils**:
To **construct** a **Private Marina** at Walls Bay, Opua, and;
To **reconstruct a slipway** traversing the CMA, public esplanade reserve, and **into** the boatyard site, **or;**
For a **change of use** for the boatyard site, and;
For a **transfer** of **all existing** activities **from** the boatyard site **to** Walls Bay Reserve and/or into the CMA,

and not be confused with Application for **'renewal'** of existing NRC discharge consents for the 'operation' of a boatyard sought to be closed, and 'operation' of a private/public jetty sought to be demolished.

3] It can be argued that it should anyway **not have been notified** "**for activities associated with** Doug's Opua Boatyard", because:
The boatyard access-slipway occupies Walls Bay Reserve; 'the boatyard' does not.
The private/public jetty and boatyard slipway occupies part of the CMA; 'the boatyard' does not.
The actual existing 'boatyard' site has been all-but **closed-down** in preparation for a change of use.

4] **Any** local Council Hearing of a consent application having bearing on or in any way connected with or relying-on certain boatyard uses of Walls Bay Reserve **clearly should be delayed until the outcome of proceedings** heard in the Court of Appeal in Wellington on 13 February 2018 **is known**, because:
The Court may rule the 2015 FNDC purported 'easements' over the reserve null and void, and;
That Decision may result in the need to **retain** the activities on the boatyard site **or** lose the slipway, and;
Establish a need for new plans and commensurate, different, fresh applications to both Councils, and;
May rule discharge to the land of the reserve or an offensive odour boundary over reserve unlawful, and;

The Court of Appeal Decision is regarded as **imminent.**

5] Further reasons to delay a Hearing.

No urgency. The bulk of consents sought comprise proposals for significant **new** and further constructions and uses (affecting public access to the CMA and reserve) which are **without any particular urgency to be heard at this time**, and;

Statutory discretion. With regard to the **expiry** of existing discharge consents the RMA provides the NRC with the discretion **to delay** a hearing for new consents beyond the expiry of the 'existing' discharge consents. For relevant example, some of the subject discharge consents expired in 2006 but were not notified for renewal until 2007, and not replaced until 2008 (which is why they expired March 2018), and;

Further Applications pending. The Applicant has indicated his intent to make further applications. With so many balls in the air, common sense would seem to indicate it would be both more efficient and more effective to delay this Hearing to avoid unnecessary costs and complications to future processes, and;

Moving Target. In these contexts and circumstances with a particularly problematic history, an isolated Hearing by only one of the two statutorily-involved local authorities invokes, in its own way, the famous analogy of five blind men trying to describe an elephant. In **this case** involving only two blind men, the process would have the **additional** complication and challenge of their **not** being in the room at the same time to share and develop their impressions. It would, consequently, not be a **static** exercise owing to piece-meal and on-going changes to the shape and nature of the beast ultimately subject of an attempt to understand and describe **what it is**, and, in this case, also to **'authorise'** it.

STATUTORY

1] Two Consent Authorities are necessarily involved (as above).
The proposed new 'seawall', wharf abutment, slipway, and marina necessarily involve the local Territorial Authority (FNDC) in connection respectively with effects on land that is under its administration (esplanade reserve on land zoned 'conservation'), and an activity requirement for **further land-based parking** with each marina berth designated ¾ of a car park. Public access to the CMA is also affected. The applicant's foreshadowed **total development concept** would **further** significantly affect Walls Bay reserve in respect of public use of it for recreational activities. This should be a Joint Application and Hearing.

2] RMA s229. "Purposes of esplanade reserves and esplanade strips."
As far as can be discerned from the applicant's material received to date in dribs and drabs, the sought expansion of the existing seabed occupation area would remain **adjoining** 'Sections '1', and '2', and extend further over 'Sec 3' and across 'Sec 4', SO 68634 (the reserve). The **Offensive Odour Boundary** is proposed to cover an even wider area of the CMA **adjoining** esplanade reserve, as well as **the reserve itself**. The consent authority **must** give due consideration to RMA s229, printed-out below for their convenience.

"An esplanade reserve or an esplanade strip has one or more of the following purposes:
(a) To contribute to the protection of conservation values by, in particular, -
(i) Maintaining or enhancing the natural functioning of the adjacent sea, river, or lake; or
(ii) Maintaining or enhancing water quality; or
(iii) Maintaining or enhancing aquatic habitats; or

(iv) Protecting the natural values associated with the esplanade reserve or esplanade strip; or
(v) Mitigating natural hazards; or
(b) To enable public access to or along any sea, river, or lake; or
(c) To enable **public recreational use** of the esplanade reserve or esplanade strip **and adjacent sea, river, or lake,** where the use is compatible with conservation values."(my **bold**).

Proposals Problematic to RMA s229.
I suggest (c) above, in particular, connects these applications to a necessary consideration of RMA s229. It needs to be determined how these proposals to place private constructions, and to conduct private commercial industrial business activities in the CMA **adjoining this reserve**, meet or comply-with the **purposes** of esplanade reserves as provided-for by s229. For example, would these proposals '**maintain or enhance**' the natural functioning of the adjacent sea, the water quality, or aquatic habitats? Would they **protect** the natural values associated with this esplanade reserve? Would they **enable** public access to the sea **adjacent to** this esplanade reserve?

Limited public benefit. I suggest these proposals, if given consent, would benefit a limited class of persons/public, being the applicant and his business clients. While we may expect to hear argument about 'providing access to the Bay Of Islands', it needs to be noted that this can be achieved from a wide range of appropriately zoned commercial sites and/or public launching ramps. This is not a proposal for a public launching ramp but for a private commercial facility from which the applicant wishes to exclude the general public, to control access, and to charge for the access by his selected clients.

Certain public detriment. I suggest these proposals, if given consent, would at the least impede and deter, if not physically prevent, public access to the sea **adjacent the reserve**. Apart from the structures themselves, the industrial activities sought to be conducted in the 'working berths' would make this area unattractive for recreational kyaking or swimming. Further, these proposals **adjacent** esplanade reserve would **not** 'maintain', 'enhance' or 'protect' the other values provided as purposes of esplanade reserves.

Cannot exclude public. It seems clear that a 'public exclusion zone' for the entire occupation area within the CMA adjacent this esplanade reserve, as is apparently sought by the applicant, is simply out of the question. I suggest the RMA s229 effectively rules out **any** area of 'public exclusion' adjoining an esplanade reserve **unless** it is for a public or a conservation purpose. Even if this 'public exclusion area' were sought 'only' for the proposed marina berths and larger area of the jetty, that would be in conflict with argument by the applicant regarding providing public access to the Bay. The consent of the present jetty, sought to be demolished, provides for free public access including the specific use of the floating pontoon at its seaward end for dinghy access. It provides **access** for 'boaties' **to** and **from** the Bay and Opua Basin Moorings area, a public esplanade reserve area, and public (moorings) parking area. This **access** needs to be retained.

The **existing** private/public jetty was lawfully established as regards RMA s10 **before** the adjoining land became esplanade reserve, and is currently protected as an 'existing use'. Were it subject of an application **now** to construct it adjoining land designated as esplanade reserve, that would appear to be contrary to RMA s229 **unless** a clear and enduring public benefit can be demonstrated and included with the conditions of consent. It may also be necessary to demonstrate that such public benefit could **not** be provided elsewhere in areas more appropriately zoned for this purpose. This remains the virtue of the present jetty and consent conditions. Application for consent to demolish it or to change the conditions of its use should be **declined**.

3] The Reserves Act.

Leases, licences and easements.

The RA limits the purposes for which a lease, licence or easement can be granted over a range of reserves. Walls Bay Reserve is in the most highly protected category as an esplanade reserve. It appears to be accepted that a lease or licence is not able to be granted over an esplanade reserve, and the matter before the Court of Appeal is partly about whether the private commercial industrial use rights granted over this reserve by the FNDC in 2015 are the proper subject of an 'easement' rather than of a lease or licence. As raised above under 'Procedural 4]', the outcome of the pending ruling may affect current private commercial industrial uses of this reserve by the boatyard operation, and, therefore, the **need** for discharge consents based on the present location of those uses, and may touch-on the lawfulness under the RA of discharges onto the reserve or odour boundaries extending through and across it.

Protection provided by RA Section 23(2)(a) Provisos.

These expressly prohibit *"the doing of anything with respect to any esplanade reserve that would impede the right of the public freely to pass and repass over the reserve on foot. . ."* FNDC obtained legal advice in 2005 that these provisos did **not** apply to Walls Bay Reserve and proceeded to recommend the purported 'easements'. However, that advice failed to observe that the reserve in question came into existence, and was created, **not** by the LGA s345 as it stated, but through Part 10 of the RMA when the land was subdivided and the **land titles** were issued and filed with the Registrar of Lands. **These provisos do apply**.

The question remains regarding the effects of not just the activities themselves, but the contaminants and odour arising from their conduct on reserve, and the extent to which this impedes the right of the public to freely pass etc. This matter inevitably needs to be considered with regard to the effects from discharges 'authorised' over esplanade reserve by the NRC pursuant to the RMA. I refer to photographic and video evidence submitted to this Hearing demonstrating persistent impediments to public use-of and access-to this esplanade reserve as a result of discharges from waterblasting activities **not** being conducted where it would be the most suitable on the private boatyard site; **not** being conducted on the boatyard turntable to where this activity is expressly restricted by NRC discharge consent (13) condition 10(e), and **not** being conducted in compliance with FNDC RC 2000812 condition 13 requiring the use of screens 'or similar measures' to contain all contaminants within a certain area. FNDC staff claim that NRC staff claim that the spray resulting from the high pressure water blasting of vessel hulls, as is recorded in the photos and video drifting across the reserve and Araroa Trail, does **not** contain contaminants. That extraordinary claim may require to be tested in the Courts, but the conduct of this private industrial activity on public reserve should anyway be ruled out of the question by reference to the RA s23(2)(a) provisos. I submit that the NRC should **not** grant any discharge consents that are **in any conflict** with these provisos.

Reserves Act s94 'Offences'.

I suggest the NRC decision makers carefully read RA s94. The FNDC cannot just give its 'landowner consent' to activities on reserve except pursuant to the relevant provisions of the Reserves Act. Their attempt to do so in October 2014 was quashed in a High Court Ruling in February 2017. With regard to the contemplation of old and new discharge consents as sought in these applications, the NRC should take note regarding the limitations on the exercise of statutory discretion as per Unison Networks v Commerce Commission NZSC [2007]. They should give due thought to the intent of the RMA and RA *". . to be ascertained by reading the Act as a whole."*, and the protections specifically afforded this category of reserve by the Reserves Act.

THE APPLICATIONS.

1| Existing and 'Replacement' Discharge Consents.

Waterblasting on the boatyard turntable. As covered in documents submitted, this activity is expressly confined to be conducted on "impervious yard surfaces (ie the turntable)" by NRC Discharge to Ground Consent (13) Condition 10(e). As evidenced by photos and video submitted, the Consent Holder has failed to comply with this condition and the relevant NRC staff have failed to enforce it. It remains problematic. **The activity of waterblasting vessel hulls needs to continue to be expressly restricted to being conducted on the private boatyard site**, and, more specifically and practicably, between the boatshed and hill as described in documents submitted and illustrated by a diagram submitted. This is unarguably the best available site from an environmental and regulatory perspective, being located on private land at the furthest possible distance from the public reserve, public walkway and the sea. It would require minimal trouble or expense to set-up, and be more straightforward for compliance and/or enforcement.

Discharge consents to air and ground of Walls Bay esplanade reserve. The relocation of washdowns or waterblasting, as above, would greatly assist the NRC 'replacement' discharge consents to be **revised** with conditions aimed to avoid **any** boatyard discharges to ground over the public reserve save from the hauling of boats up and down the access slipway. The same applies by reference to **discharge to air consents**, excepting that if this is not deemed possible, then they should be limited to the fullest extent that **is** deemed possible. The same applies by reference to odour boundaries. I refer to documents submitted discussing the existing regulations for a comparable panel-beating operation, noting this activity is confined to an Industrial zone, with an odour boundary going only to the edge of the private site. That activity is conducted on private land zoned Industrial while this activity would be conducted on private land zoned Commercial but within a Residential area and bordering a public esplanade reserve zoned 'Conservation'. If the public are protected by District Plan Rules to that extent from the effects of industrial activities within an Industrial area, then why not within an area of esplanade reserve zoned conservation with the Araroa Trail traversing it?

For boatyard activities on reserve. There should be **no** boatyard activities on reserve except for the use of the access slipway for access purposes only, with commensurate discharge prohibitions or conditions providing for the protection of the land of the reserve to cover exigencies as may occur from that use.

Existing private/public jetty. NRC should 'roll over' the **existing** NRC consent conditions **prohibiting** its use for accommodation purposes, **limiting** permanent berthing to 12 hours in a week, **limiting** its use for boat repair work beyond casual inspections, replacing zinc blocks, sorting propeller and exterior fittings issues and what are known as 'boat valet' activities in relation to charter vessels, and **providing** for free public dinghy access to the pontoon and free reasonable public access to the structure by boat or foot. This jetty is presently consented under those conditions to 2036, and no evidence has been presented that it is unsound as to require demolition, or of any need for a change to its existing consent conditions. To that end I submit that a condition **does** require to be added, requiring the applicant to **display permanent signage** at **both** ends of the structure **advising of the free reasonable public access 24/7**. In relation to what has been happening incrementally by way of privatising and commercializing the existing jetty spaces and surrounds, I suggest such signage is not only essential but also urgent. The applicant has **not** applied for consent to raise the existing jetty boardwalk level in response to and/or in anticipation of rising sea levels, but he could reasonably do so, and I would likely support that application.

CMA occupation area and related odour boundaries. These need to be **reduced in area** to the fullest extent practicable, and the relevant odour boundary must not extend over the Araroa Trail and reserve.

2] Sought New Consents for New Wharf, Work Areas and Activities, Marina berths and Dredging. 6

There is **no** established practical need for these private works, **no** established concomitant public benefit, and ultimately **no** merit to these proposals, which can be characterised as merely 'a wealthy man's whimsy'.

I have a mooring (642) close to the sought dredged channel area, which, along with approx eight other such moorings, would be affected to their detriment by the establishment of and subsequent maintenance dredging of the sought private channel through a public Moorings Area with associated tapered 'batters'. When wind and tide factors are taken into account in connection with the manner in which boats swing around and pull at their mooring blocks from different directions under varying conditions, the detriment to at least some of the existing moorings and mooring owners is obvious. There is no discernable public benefit to compensate for the public detriment resulting from the sought dredging

The existing jetty has an existing maintenance dredging consent for the pontoon area which **already** appears, by observation, to provide 'all-tide' access or at least berthing for two yachts of up to 35 feet. The existing 'Great Escape' yacht charter operation and sailing school, which presently also utilizes the pontoon at the end of the jetty, makes good use of smaller 'trailer sailor' shallow- draught yachts which have been successfully operating in present circumstances to offer low-cost affordable sailing experiences and access to the Bay Of Islands to locals and tourists alike.

It can be observed that the 'Great Escape' berthing-pontoon (**not** 'an office' as wrongly stated in the Consultant Planner's Report) is nowhere to be seen in the new wharf/jetty proposals and drawings, and their present (unconsented) use of the dinghy-access pontoon at the end of the jetty for their larger charter yachts would be displaced by the sought 'private marina berths'. Along with likely rises in rentals for the sought 'all tide access' berths, it is difficult to escape (as it were) the impression that the operation of 'Great Escape' from the new wharf/jetty is **not** part of the applicant's future plans.

The proposed installation and use of 'mudcrete grids' and 'working berths' for vessel 'washdowns' raises red flags in connection with the issues raised in my initial submissions regarding transferring 'boatyard' activities from the boatyard site into the CMA. Further, even should a consent for a new jetty/wharf remain subject to the same conditions as the existing one, it should be noted that the intent appears to be to create a commercial facility which would have the effect of **concentrating** hull-slime and micro-amounts of anti-fouling residue which may derive from this activity. Hull slime may better be removed by boat owners while the boats are on their moorings in order to disperse it rather than to concentrate this material at Walls Bay

This 'washdown' activity proposed to be **concentrated** at the sought new wharf/jetty also faces a practical challenge of **containment**. 'Drop cloths' will not work unless the ground is clear of water, which would occur somewhat briefly between tides, necessitating some fairly frantic activity before the cloths are inundated. Common sense indicates that most clients would feel obliged to initiate 'cleaning down' activities **before** the tide went out to enable use of drop cloths. Considering the applicant's evidenced long-term and on-going failures to comply with the NRC consent conditions requiring the use of drop cloths when R&M work is being conducted over pervious **boatyard** surfaces some distance from the sea, to grant consent for this activity in reliance on a more problematic use of drop cloths **in the sea** is plainly inadvisable.

To summarise: The applicant doesn't need it; Opua doesn't need it; the Bay Of Islands doesn't need it, and the NRC doesn't need the inevitable aggravations which are likely to ensue if this were granted consent. I submit that the NRC should **decline** the sought new consents in their entirety.

Consultant Planner's Report.
Refers para 296 to *"significant improvements to the operation of the boatyard"* by the applicant. I refer to my submitted correspondence files with both Councils and to the wealth of photographic and video evidence also submitted which demonstrate that there have long been and remain major issues concerning non-compliance by the applicant with both prior and existing boatyard consent conditions governing *"the operation of the boatyard"*. **If** alleged *"improvements to the operation of the boatyard"* is suggested as 'reason' to support or to grant consent for the **new** applications, **then** the evidence submitted clearly demonstrating problematic non-compliance over a prolonged period of time could be taken as 'reason' to **not** support and to **not** grant them. This evidence can anyway be taken as reason to **beef-up** the **existing** consent conditions in combination with further professional development of relevant monitoring staff and CEOs.

As a matter of information, the boatshed and slipway were developed from 1966 by the first owner, Ted Leeds, as covered in attachment 2 of my submission 8 February. This took much time, effort and ingenuity on a shoe-string budget. The Leeds' financed the Elliotts into the boatyard from 1982. They developed the turntable and hardstand areas on the boatyard site in 1983, and the private/public jetty in 1988, also on a shoe-string budget. The Schmuck family bought the boatyard outright in 1994 (subject to lease-back), and were required in 1995 only to develop a land-based contaminant containment system, with an area on the boatyard site **already well set-up** for this purpose, **but declined to do so**.

They have spent much time and money trying to acquire and to use and to modify the **adjoining public land** (and now the public seabed) but have done **nothing** to develop or improve the private boatyard site or its 'operation'. On the contrary, three boatyard cradles have been allowed to deteriorate, and were then junked, and the boatyard hardstand-area rail spurs have been **removed** such that 'the boatyard' now barely exists under what the Consultant Planner calls the applicant's *"ethic of stewardship"*. The applicant clearly feels entitled to grab all the public land he can manipulate his way into obtaining the private use-of as free real estate, by claiming a 'need' for 'the boatyard operation', including to transfer 'boatyard' activities to public reserve or seabed, while all the time intending to close down the boatyard so he can build domestic and/or commercial accommodation on the 'boatyard' site.

The Consultant Planner's confusion on this matter is partly explained or expanded by her comments under 'Site Description' para 25: *"The Applicant's commercially zoned property adjoins the western side of the esplanade reserve and the CMA."* Umm, no it doesn't. It **adjoins** the esplanade reserve which in turn **adjoins** the CMA, but, given what has been going on for some time, this confusion is understandable.

This error is followed by another, para 26: *"The Applicant's commercial jetty facility and slipway. . .are located immediately adjacent to the Applicant's property at the northern end of the beach area."* Umm, no they are not. Firstly, the boatyard **access** slipway over reserve is not a 'commercial' slipway **unless** the Court of Appeal upholds the purported FNDC grant of 'easements'. The jetty remains, as I have described it, a private/public jetty subject to reasonable public access 24/7. The nomenclature of *"commercial"* suits the aspirations of the applicant. His persistent efforts to influence public perceptions in line with these aspirations has contributed to evidenced public confusion on these matters as is shared by the Consultant Planner. Secondly, there exists a certain public esplanade reserve between *"the applicant's property"* and the private/public jetty. The applicant does **not** own *"property at the northern end of the beach"* unless this is intended to denote the wharf/jetty abutment or concrete dinghy ramp.

'4Sight' Ecological Survey/Report. 8

On the first line of the 'Introduction', it makes the untrue assertion of the boatyard *"successfully operating in compliance with existing consent conditions"*. I refer as above to the evidence to the contrary.

Dangerous or *"excessively elevated"* levels of copper and zinc were identified where the slipway meets the sea. The study did not include testing for lead on the given basis that shellfish do not absorb it. I suggest lead is not good in any concentration in the environment irrespective of the evident tolerance of shellfish, and testing for it should have been included with the study. The testing sites should also have been spaced at 1m intervals along the beach in both directions from the slipway for at least 4m. Had this been done, I suggest more such evidence would have been captured.

The ecological survey states *"This level of contamination appeared to be localised to the slipway footprint."* It attributes the cause of the pollution thus: *"Prior to 1999, boat maintenance activities including hull cleaning were conducted at the slipway site within the intertidal zone."*

This is misleading. **Some** anti-fouling jobs were conducted there in the 70s and 80s, but were **mostly** conducted at various 'grids' including those provided by the Harbour Board and then by the NRC. They were also evidently sometimes conducted alongside the jetty after 1988, although the jetty consent expressly prohibits this activity. Further, this was **not** *"prior to 1999"* as stated **but prior to 1995**, when NRC began incremental implementation of the RMA requirements for this activity to be conducted on land, and within land-based contaminant containment systems.

The Report continues *"In 1999 improvements to the boatyard infrastructure and vessel haul-out facilities enabled those operations to be shifted up above the foreshore and subsequently boat cleaning and associated activities were carried out landward of the intertidal zone. The high concentrations of copper and zinc at the slipway sampling site* ***were expected, given its long history of use for boatyard activities."*** (my **bold)**

These assertions are fantasy. As already covered, the present boatyard owner has done nothing, or nothing of any significance, to 'improve' *"the boatyard infrastructure and haul-out facilities"*. He began conducting washdowns and R&M activities on the **public land** in 1997 in violation of the clear conditions of the-then boatyard deemed- consents (CU 192) expressly confining all such work to the boatyard site and expressly **prohibiting** their conduct on the public land. In 1998 and 1999 he was subject of a successful Enforcement Order and two Abatement Notices requiring him to confine these activities to the boatyard site. He resisted all the way. His Appeal to the Environment Court was dismissed and costs awarded against him. The record shows that he has been the only one of the three boatyard owners at Walls Bay to have had such enforcement action taken against him. He has given persistent cause for complaints to both local Councils since 2003, when he **again** began to conduct these activities on reserve **without** Reserves Act authorisation, and the purported RA 'easements' from FNDC in 2015 have been under Court challenge since they were 'granted'.

With my evidence submitted are photos of the yacht 'Grenadier' in late 1999 having been scraped down at the bottom of the slipway on now-reserve. The colours are illustrative of many layers of toxic antifouling paint deposited on reserve **land** just above the high-water mark. This was far from an isolated incident **between 1997 and 2000,** and was entirely the responsibility of the present applicant. Let's get our facts right.

Coincidently, the Consultant Planner's Report on page 20 repeats the misleading assertion of the Ecological Report which I have high-lighted above. It would appear both consultants have sourced their versions of 'history' and 'fact' from the applicant.

Within one page of 'information' I would charitably describe as ~~a mixture of inaccurate self-serving~~ ~~pig-swill and~~ confusing gobbledegook, the applicant states, in paragraph 2:

"In the event of becoming operationally responsible for the yard, I worked with the previous owner in all aspects of the facility and saw first hand the practices and conduct of those works not only by him but also the results of the practices of the owners before him and found environmental protection protocols wanting."

(He neglected to mention that, at the end of the two year lease-back arrangement in April 1996, he sued the Elliotts for, among six limbs of claim, *"misrepresentation of consent conditions"*. All six limbs were dismissed August 1997, and full costs awarded the Elliotts).

Ummm, actually, as already covered, deemed consent CU 192 (1971-1976) can be regarded as comprising *"environmental protection protocols"* in that it confined boatyard activities **to the private boatyard site**. As also traversed, neither of the two previous owners laid claim to it nor made a practice of working on the public land in the manner of the present owner, or were ever subject to enforcement actions in respect of statutory breaches of *"environmental protection protocols"*(CU 192). Unlike the applicant.

I refer to photos and video evidence submitted providing ample evidence of longstanding on-going breaches, by the applicant, of the FNDC and NRC *"environmental protection protocols"* encapsulated in the conditions of the respective consents formalised as a Consent Order in 2002. More to the point with regard to the evidence of significant pollution identified in the Ecological Report, the boatyard activities unlawfully conducted on reserve by the applicant since 2003 were carried-out **without** any 'collection sump' until the present one was installed without consent 1st January 2005. As has been raised with both Council staff, this unconsented 'sump' is further in breach of the various Coastal Plans in being located not 10 metres above MHWS but is in fact located 9 metres above MHWS. This represents not just a problem of a rogue operation but an outstanding failure by relevant consent authorities.

The subject boatyard activities should have been restricted to the boatyard site until Reserves Act authorisation had been obtained and had cleared the Court process, which has still not happened yet.

Sometime around 2008, and **without consent**, the applicant placed plastic sheeting down the slipway between the rails which failed to contain the contaminants ensuing from the unlawful use of the esplanade. In 2010, instead of instructing the applicant to restrict his activities to the boatyard site, the NRC perpetuated this ongoing unlawfulness by serving an Abatement Notice requiring further plastic sheeting to be placed, **without consent**, either side of the slipway rails. The Reserves Act s94 makes interesting and relevant reading.

The photo and video evidence submitted shows evidence of the **failure** of this ad-hoc unconsented 'system' to contain contaminants from entering the sea at pretty much **exactly the area** where the Ecological Report identifies the serious heavy-metal contamination. I submit that this contamination/pollution of the Moana simply cannot be dismissed or 'blamed', as is claimed by the applicant and the consultants, on 'past practices'. Its cause lies squarely on the unlawful activities on reserve by the present boatyard owner and abject failure by both local consent authorities to recognise and to carry-out their statutory duties.

I submit this evidence and record suggest there is much to be done to remedy matters **before** considering grant of further consents naively relying on compliance and enforcement of relevant consent conditions.

Mike Rashbrook 16-05-18