BEFORE THE ENVIRONMENT COURT

Decision No. [2014] NZEnvC 101

IN THE MATTER	of an application for declarations under Section 311 of the Resource Management Act 1991 (**the Act**)
BETWEEN	DOUGLAS SCHMUCK (ENV-2013-AKL-000032)
	Applicant
AND	FAR NORTH DISTRICT COUNCIL, NORTHLAND REGIONAL COUNCIL
	Respondents
AND	BAY OF ISLANDS COASTAL WATCHDOG INC
	Section 274 party

Hearing:	19 March 2014 at Paihia
Court:	Environment Judge DA Kirkpatrick
Appearances:	Ms CH Prendergast for Douglas Schmuck Ms JS Baguley and Mr JGA Day for Far North District Council Mr C Dall on behalf of Northland Regional Council Mr M Leiding on behalf of Bay of Islands Coastal Watchdog Inc
Date of Decision:	2 May 2014

DECISION OF THE ENVIRONMENT COURT

(ii) An area of esplanade reserve vested in the Far North District Council (**the District Council**) containing a slipway and part of the turntable with ancillary utilities;[2] and

(iii) A portion of the coastal marine area adjacent to the esplanade reserve containing a slipway and a wharf with a pontoon.

[3] Attached to this decision as **Appendix 1** is a plan of these three areas, taken from the Consent Order dated 31 January 2002 (**the Consent Order**) which granted the resource consents which are the subject of this proceeding, and which may assist in understanding the layout of the various activities. As will become clear, the focus of this proceeding is in relation to the works and activities on the area of esplanade reserve.

[4] The declarations sought by Mr Schmuck are grouped into five matters:

1. A declaration as to the existence and scope of the land use consent for the boatyard and the slipway. While there is no dispute between any of the parties about the granting of the resource consents, nor is there any issue raised in the pleadings as to the terms and conditions of those consents as they were granted, the District Council raises an issue about whether the Court's discretion should be exercised to make such a declaration in the present circumstances.

2. A declaration which effectively seeks to amend part of the Consent Order dated 31 January 2002. This is opposed by the District Council.

3. Three declarations relating to the review conditions attached to the land use consent. The District Council abides the making of these.

4. Four declarations as to the scope and extent of the land use consent, including its date of commencement, whether it has been given effect to, and whether certain activities on the esplanade reserve are lawful on the basis of implied landowner consent by the District Council. There is no dispute as to the date of commencement of the land use consent, but Bay of Islands Coastal Watchdog (**BOICW**) challenges whether

[2] Legally described as Sec 1-4 SO 68634 (Title Identifier NA 121C/187).

Background

[8] Boat building activities have occurred at Walls Bay for many years. Boatyard activities started in about 1972, after the grant of a specified departure consent on 17 November 1971 by the Bay of Islands County Council to Mr E T Leeds. In 1976 consent for a new slipway in the current location was given by that Council and it was built between 1977 and 1979. In 1988-89, approvals were granted by the Council and by the Minister of Conservation for the jetty.

[9] Litigation involving boat building activities on this site has also occurred for some time.[3] In particular, the establishment of the boatyard and slipway at Walls Bay has been considered by the Court previously in ***Schmuck v Far North District Council***.[4] That decision was in respect of an appeal against an abatement notice. In considering a defence based on existing use rights, Judge Sheppard reviewed voluminous affidavits and set out a history of the site down to the hearing before him in 2000 at paragraphs [7] – [18] of the decision which I have drawn on for my brief summary in [8] above. For present purposes, the important point is that because no authority had been given to carry out boatyard activities on the esplanade reserve, the Court did not uphold the defence of existing use rights and accordingly disallowed the appeal.

[10] Faced with that ruling and in order to regularise the position of his boatyard in terms of the resource consents needed for its existence and operation, Mr Schmuck applied in 2000 to the Far North District Council for land use consent in relation to both his own property and the esplanade reserve, and to the Northland Regional Council for a range of coastal and discharge permits. These were granted (noting that the District Council granted the land use consent in part, declining certain activities in relation to the esplanade reserve) subject to conditions and were then subject to appeals by the Applicant (RMA 381/01), by the submitters ET & MC Leeds (RMA 387/01) and by the Director-General of Conservation (RMA 393/01).

[11] These appeals were ultimately resolved by a Consent Order made by the Environment Court and dated 31 January 2002. That Consent Order amended the decisions of both the District and the Regional Councils as shown on the Schedule attached to the order. Since the making of that Consent Order, certain of the consents

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[3] See, e.g., ***Kyriak v Schmuck***, A155/98, relating to an application for an interim enforcement order , and ***Kyriak v Schmuck***, A135/99, relating to three separate proceedings about the site.
[4] A26/2000.

stormwater containment system and a discharge containment system, as well as authorising the reconstruction and concreting of the slipway and boatyard.

(ii) Section B, relating to activities and structures on the esplanade reserve, including a commercial marine slipway with a turntable, a concrete washdown area and associated discharge containment system as shown on an attached plan and to be located above 10 metres above mean high water springs, with a stormwater and conduit drain, security light pole and associated utilities, safety signage, wharf abutment and existing wooden and stone retaining walls. The consent also authorises the reconstruction of the slipway between the boat yard property and mean high water springs and the concreting of that part of the slipway situated above a line 10 metres from mean high water springs. It also authorises the carrying out of washing down of boats provided that repairs and maintenance may be carried out on the reserve only in accordance with condition 8 to the consent.

(iii) Section C records that the District Council refused its consent for certain activities and structures on the esplanade reserve, being the stormwater containment system, the discharge containment and the use of the concrete slipway for boat repair and maintenance.

[14] A review of sections B and C indicates that there is potential conflict where certain activities that appear to be granted on appeal (as shown in bold type) in section B also appear to be refused in terms of section C. Ordinarily an order of the Environment Court would not include reference to any matters for which consent had been refused by the original consent authority, other than to the extent that the Court's decision on appeal granted consent to such matters. If (as here) the refusal of consent was the subject of the appeal, then normally the Court's order would set out what the Court decided rather than repeat the decision at first instance. The possible convenience of the parties in using the format and content of the original District Council decision as a basis for the Consent Order, without addressing the fact that Part C would not reflect the amendments that were to be made in Part B, is now more than offset by the inconsistency on the face of the Consent Order and the clear need for that to be remedied. Mr Schmuck seeks to remedy this by means of the second declaration he has applied for, but this is opposed by the District Council on the grounds that it is inappropriate for the Court to amend its own order by way of a

[16] It can be seen that these conditions also create some conflict with the scope of section C of the land use consent. I will discuss this conflict in detail below.

[17] These amended conditions were lodged with the Court together with a Memorandum dated 21 December 2001 signed by or on behalf of the parties to the appeals. The Memorandum includes the following paragraphs:

> 5. The amendments to the conditions, all of which are within the ambit of the original application as notified and are in the scope of the relief sought in the appeals, have meant that the boatyard's use of the reserve will be more restricted than was consented to by the respondents. Potential adverse effects will be mitigated further.
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> 6. All parties acknowledge that, before using the reserve in the manner consented to, the applicant must obtain the consents of the respective authorities and the Minister of Conservation under the Reserves Act 1977. This is a case where it is necessary to define the areas of reserve required for use in connection with the resource consents before considering the boatyards application for appropriate easements under the Reserves Act 1977 to match those resource consents.

These paragraphs are of importance to the question of whether the land use consent in relation to the esplanade reserve has been "given effect to" in terms of s125 of the Act, as discussed below. As noted at the outset of this decision, the Environment Court has no jurisdiction over matters under the Reserves Act 1977. I am referring to such matters in this decision to the extent that they are relevant to considering and determining Mr Schmuck's application for declarations as to giving effect to the land use consent and to whether the use of the esplanade reserve may be lawful. These comments may also assist the parties and other readers of this decision to understand this case and my decision.

[18] The Court made the Consent Order on 31 January 2002. Mr Schmuck then proceeded to apply to the Far North District Council, as the administering body of the esplanade reserve, for easements in relation to those parts of the land use consent and the discharge consents granted by the Regional Council which affected the esplanade reserve. The process followed was not straightforward, but it is outside the scope of this proceeding for me to rehearse it here. Ultimately the District Council appointed a commissioner to hear that application and submissions on it. In a report dated 22 December 2005 the Commissioner recommended the granting of the easements sought by Mr Schmuck, and the District Council adopted that recommendation on 9 March 2006.

obtaining authorisation for use of the esplanade reserve by way of easement pursuant to s48 of the Reserves Act 1977 has not yet been completed.

Issues for the Court

[22] On their face, the declarations sought by the Applicant raise legal issues relating to the content and effect of the resource consents and I will address these in terms of the particular declarations. From the affidavits and the manner in which the matter was argued before me, however, the underlying issues in this case relate to:

(i) the use of an area of esplanade reserve for slipway and boatyard purposes involving the repair and maintenance of vessels;

(ii) the public interest in managing the use of esplanade reserves to protect access to and along the coastal marine area; and

(iii) the relationship between resource consents under the Resource Management Act 1991 and easements under the Reserves Act 1977.

[23] In considering these issues in the context of this proceeding, the Court must be mindful that its jurisdiction under s310 of the Act is confined to matters arising under the Act. The proper scope of declaratory relief and the exercise of the Court's discretion to make declarations under that section does not extend to matters under other legislation or rules of law, unlike the powers of the High Court under the Declaratory Judgments Act 1908. The Environment Court has no jurisdiction to declare a position under the Reserves Act 1977 or in relation to the general law of property. While the Court may refer to other law where relevant and necessary,[6] such reference must clearly be confined to ensure that the specific jurisdiction in s310 of the Act is not exceeded.

Declaration 1 - Existence of Resource Consents

[24] As explained at the hearing by his counsel, the Applicant's real concern is that the existence of resource consents is challenged, with some suggestion that they may be "revoked". Mr Schmuck is also concerned that the Walls Bay Esplanade Reserve Management Plan adopted by the Council pursuant to s41 of the Reserves Act on 21 February 2013 does not deal properly, in his view, with the slipway. Hence, I was

[6] See re ***Coromandel Marine Farmers Association (Inc)*** (unreported) HC Auckland CIV-2006-419-000877, 7 March 2008, Cooper J at paragraph [16]

> local authority or consent authority where the Court is satisfied that the information accompanying the application contained inaccuracies relevant to the making of such an order which materially influenced the decision to grant consent.

There is no provision in the Act by which a resource consent can otherwise be "revoked". While in ordinary conversation one might use that word to describe one or other of the statutory mechanisms listed above, it is preferable in a proceeding such as this to use the pertinent statutory language.

[27] It is common ground among the parties that no issue arises in the present case as to termination, cancellation (either through non-exercise or through inaccuracies in the application) or surrender. The particular issue that does arise in the present proceeding is about lapsing. This issue is also the subject of the second part of the fourth declaration sought by the Applicant, but given its general existential importance to the consents I will address it in detail now.

Lapsing

[28] BOICW asserts that the land use consent in relation to the esplanade reserve has lapsed because it was not given effect within five years of the date of commencement, and no application for extension of the lapse date was ever made. The argument is that the consent holder could not give effect to the land use consent in respect of works and activities on the esplanade reserve because no right to occupy any part of the esplanade reserve by easement pursuant to s48 of the Reserves Act 1977 has been obtained. BOICW says that lack of such authorisation under the Reserves Act means that the land use consent has not been given effect in terms of s125 of the Act.

[29] The District Council did not fully join in this argument, either for or against, beyond offering some observations on it while stating that it accepts that there are valid resource consents on foot in relation to the Applicant's activities on the esplanade reserve as contained in the Consent Order. The issue does not arise in relation to the coastal and discharge permits, so the Regional Council was not involved in this issue.

[30] The Applicant sought, as the second part of his proposed fourth declaration, that the Court declare that the land use consent RC2000812 has been given effect to

impediments to putting those physical aspects in place.[9] None of those cases discuss the issue of whether there may be a legal impediment to giving effect to a resource consent except in the context of where that legal impediment holds up the actual physical works.

[33] In the present case, of course, the resource consents held by the Applicant were in the nature of retrospective consents, to "tidy up" the consenting issues relating to the boat yard and slipway which were identified in the decision of the Environment Court disallowing his appeal against an Abatement Notice.[10] In this case, the physical works were in place, and the boatyard and slipway activities were occurring when the Consent Order was made. On the basis of the cases on the meaning of "given effect to", the consents in this case were given effect to in fact on the day they commenced. The issue raised by BOICW is whether they were given effect in law.

[34] As I put to counsel, the codified provisions of the Act relating to the administration of resource consents are normally not to be read as being subject to other legal requirements. I referred during the hearing to the case of ***One Tree Hill Borough Council v Lowe***[11] where the High Court considered whether there were existing use rights attaching to creation of a second dwelling unit on a residential site. A self-contained flat had been created within an existing house before the relevant part or provision of the district scheme became operative, but the building work had not been undertaken in accordance with the relevant bylaws applicable at the time. On that basis, the issue was whether the second unit had been "lawfully established." The Planning Tribunal had held it was not,[12] on the basis that to be lawful the building work had to be done according to the Council's bylaws.

[35] The relevant statutory provision was then s90(1)(a)(i) of the Town and Country Planning Act 1977 (**TCPA**) which provided:

> **90 Existing use may continue—**

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[9] See the progression through the decisions in ***GUS Properties Ltd v Blenheim Borough Council*** (unreported SC M394/75, 24 May 1976); ***Cooke v Auckland City Council*** [1996] NZRMA 511(PT); ***Goldfinch v Auckland City Council*** [1997] NZRMA 117 (HC); ***Body Corporate 97010 v Auckland City Council*** [2000] NZRMA 202 (HC) and [2000] NZRMA 529 (CA); and most recently ***Biodiversity Defence Society Inc v Solid Energy NZ Limited*** [2013] NZHC 3283; (2013) 17 ELRNZ 337.

[10] ***Schmuck v Far North District Council***, Decision A26/2000

[11] Unreported: HC, Wellington, M270/84, 25 March 1986, Chilwell J

[12] ***One Tree Hill Borough Council v Lowe*** (1983) 9 NZTPA 457 (PT)

been lawfully established in respect of any other relevant law such as (in that case) a building by-law. The High Court noted that in general the use of land and buildings is affected by a large number of statutory and common law provisions. The Court drew a distinction between planning legislation and other legislation affecting the use of land and building and held that a use will be "lawfully established" for the purposes of s90(1)(a)(i) where it was established in accordance with the planning legislation (including subordinate legislation) then in force.

[39] After a careful review of relevant aspects of planning law in New Zealand, Canada and Australia, Chilwell J observed:[14]

> In general, the use of land and buildings is affected by a large number of statutory and common law provisions; clearly there will be an area of overlap, in terms of subject matter, between (on the one hand) planning statutes and subordinate legislation and (on the other hand) other statues, rules of common law, and regulatory measures such as bylaws. The existence of an area of overlap may give rise to some difficulty: for instance it would seem anomalous if, in determining whether a use was lawfully established within the meaning of s90(1)(a)(i), regard could be had to breaches of a regulatory measure where that measure took the form of a planning ordinance, but not where the same measure had been enacted as a bylaw, even though it could properly have been incorporated into the provisions of a planning scheme.
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> Yet, despite the potential for overlap in some circumstances, planning statutes and schemes are not the same as bylaws, but rather part of a single, distinct and separate legislative scheme relating to the use of land. ...

[40] Chilwell J also noted that although the effect of existing use rights is that the person carrying on that use may continue to do so despite the fact that it does not comply with the district scheme, the use does not become lawful for all purposes:[15]

> The effect of the present section 90(1) where it applies, is that the person carrying on the non-conforming use may continue to do so despite the fact that it does not comply with the District scheme, but the use does not become lawful for all purposes. In establishing and carrying on a use, one is still bound to observe the requirements laid down by the general law apart from planning law, and still liable, in the event that any of those requirements are not met, to such sanctions as the law may provide. To enlist the existing use provisions of the 1977 Act as a supplementary means of ensuring compliance with rules relating to land use arising outside of the scope of planning statutes, or of punishing non-compliance with such rules, is neither necessary nor conducive to the effective functioning of the law relating to existing use rights. ...

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[14] ***Supra*** at pp 30-31
[15] ***Supra*** at page 32

[43] In my opinion, the approach taken in ***Lowe*** to the consideration of "lawful establishment" being confined to a consideration of planning legislation is equally applicable to the scope of "given effect to". Planning legislation is intended to be read as a code,[17] or at least an integrated and holistic regime of environmental management.[18] As made clear in ***Lowe***, it is not appropriate to use such provisions of the Act as any kind of alternative mechanism to enforce other legal requirements. In my view, the issue of whether a consent holder has lawfully "given effect to" the consents is, in at least the main material respect of lawfulness, the same issue as whether a person has "lawfully established" an existing use.

[44] The issue of the lawfulness of the activities on the esplanade reserve does not, in my opinion, demonstrate any contravention of any control based on the Act. While control may well also be able to be exercised in relation to the use of the esplanade reserve in terms of other legislation or the general law, I consider, on the authority of ***One Tree Hill BC v Lowe***, that I must disregard those other legal controls when deciding whether Mr Schmuck has given effect to the consents he holds in terms of s125 of the Act on his application for declarations under s310 of the Act. On that basis I do not accept the argument advanced by BOICW that the land use consent has lapsed by reason of any alleged lack of authorisation under the Reserves Act.

Lack of Landowner Agreement

[45] BOICW advance two further arguments as to why the land use consent may have lapsed.

[46] Firstly, they suggest that the lack of authorisation under the Reserves Act means that there is no landowner agreement permitting access to the esplanade reserve. On its face, this argument does not present any resource management issue for essentially the same fundamental reason identified above in relation to the principal lapsing issue: that the consenting regime under the Act does not conflict with, and is not determined by, the law of property. I note that, perhaps for this reason, the District Council as the landowner does not join in support of BOICW's argument on this point.

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[17] ***Ideal Laundry Ltd v Petone Borough*** [1957] NZLR 1038; ***McGuire v Hastings District Council*** [2002] 2 NZLR 577 at [20]

[18] ***Falkner v Gisborne District Council*** [1995] 3 NZLR 622; [1995] NZRMA 462; ***Springs Promotions Ltd v Springs Stadium Residents Association Inc*** [2006] 1 NZLR 846; [2006] NZRMA 101 at [58]-[62]

[51] A memorandum of parties seeking a consent order, signed by the parties themselves or by their counsel as attorneys, represents at least an agreement of those parties to compromise the issues in the proceeding as set out in the draft consent order. It may contain other elements that could be regarded by the parties as constituting a further agreement, but that would be a matter to be considered under the law of contract (including any issue as to privity) by a court of general civil jurisdiction and is not a matter affecting the jurisdiction of the Environment Court. For present purposes in relation to the application for declarations, I do not think that the Applicant's subscription to the memorandum estops him from now asserting that he has given effect to the resource consents to which the Consent Order relates. This is for at least two reasons.

[52] Firstly, the statement in paragraph 6 of the memorandum is not carried through into the terms or any condition of any of the resource consents. A resource consent may commence at a later date than otherwise provided for in s116 of the Act, but the resource consent or a determination of the Environment Court must state that. I can find no such statement in the Consent Order or in any of the resource consents attached to it.

[53] The Planning Tribunal addressed a comparable situation in ***Re an application by Hilder***,[19] concerning the lawfulness of activities undertaken by Port Otago Limited in relation to a reclamation at Boiler Point, Port Chalmers, in terms of a deemed coastal permit created by Order in Council. Condition 1 of that coastal permit required Port Otago to comply with all conditions and requirements specified in approvals, consents, rights or authorities granted under the town planning process or applied to water rights under the water and soil legislation. It was suggested that the effect of this condition was to delay the commencement of the consent until those other approvals had been granted, otherwise Port Otago would not be able to comply with the condition. The Planning Tribunal did not accept that argument, holding that there was nothing in the deemed coastal permit that expressly stated any date for its commencement and that Port Otago was by law required to comply with the terms of any other consents that it needed. Had it been intended that the deemed coastal permit was not to commence until any other consents had been obtained, then the Order in Council could have said just that.

[54] The commencement of resource consents is generally addressed by s116 of the Act. Pursuant to that provision, these consents commenced when the Environment

[19] Decision C67/94

Declaration 2 - Amendment of Consents

[58] The second declaration sought by the Applicant is concerned with the apparent inconsistencies between Section B (listing uses granted consent in part) and Section C (listing uses refused consent) of the land use consent, and seeks that the references to the stormwater containment system, the discharge containment system and the use of the concrete slipway for boat repair and maintenance be deleted from Section C and inserted into Section B.

[59] In relation to the containment systems, the Consent Order records an amendment to condition 3 (quoted above at [15]) stating that these are to be located as far as is practicable within the Consent Holder's site with these arrangements being "to the satisfaction of the District Council's Resource Consent Manager." It is implicit that that this could mean that these systems might be on the esplanade reserve but subject to the Manager's apparently unfettered satisfaction.

[60] In relation to the use of the slipway for repairs and maintenance, the Consent Order records a new condition 8 (quoted above at [15]) making certain limited provision for such activity on the esplanade reserve. As observed by counsel for the District Council, this condition is not a straightforward one and I am not surprised by her report that there are issues with its practical enforcement.

[61] While I may reach those understandings from my reading of the land use consent and I have already (at [14] above) noted the potential conflict between sections B and C of the land use consent, neither of those provides any basis for the Court to make a declaration under s310 of the Act which would effectively amend an earlier order of the Court. There is no possible basis on which such a declaration could be made. The circumstances of this case provide no foundation for a review by way of rehearing pursuant to s294 of the Act or for the application of Rule 1.15 (correction of accidental slip or omission) or of Rule 12.8.8 (recalling judgment) of the District Courts Rules 2009 pursuant to s278(1) of the Act. The relevant power given in s310(a) is to declare the existence or extent of a right under the Act, not to create or amend such a right.[20] If the consent is to be amended, then presumably an application under s127 of the Act would be required with all that entails.

[20] ***Hastings District Council v G R Skinner Ltd*** Decision W 86/98

terms of s128(1)(a), specify the time or times when such a review may occur,[21] but it cannot compel a review to occur.[22]

[67] The third part seeks a declaration that any amendments to conditions pursuant to a review under s128 cannot have the effect of preventing an activity for which the consent was granted and must consider whether as a result of the change the consent would still remain viable.

[68] The law in relation to the content and validity of conditions of resource consent is extensive and detailed. Some cases address the principle raised by this third part of the third declaration sought.[23] But almost invariably, the application of such a principle depends on the facts of the case, the circumstances of the parties and other matters of degree, so that a bare hypothetical statement of principle is not really helpful to anyone. Again, there is no present issue between any of the parties about this. There is no current review process, nor did the Applicant point to any condition of the land use consent which could be said to be contrary to this principle, whether generally or in some specific way.

Declaration 4 – Scope and extent of land use consent

[69] The fourth declaration sought by Mr Schmuck is ostensibly about the scope and extent of the land use consent granted by the District Council and confirmed, with amendments, in the Consent Order. It is in four parts, but starts with a preamble which refers not only to the grant of resource consent for activities on the esplanade reserve but also to the issues of landowner consent, Ministerial "ratification" of the Council's decision to grant easements under the Reserves Act and the Council's forbearance of enforcement action until the easement application is finally resolved. Perhaps not surprisingly, the District Council was unhappy with the presence of the preamble.

[70] Given the clear limits in s310 of the Act, the form of any declaration sought from the Court must be worded so as to keep within the jurisdiction conferred by that section. As discussed above, and indeed as acknowledged by counsel for the Applicant during the hearing, matters relating to landowner consent under either the general law of property or the Reserves Act, or the role of the Minister of

[21] ***NZ Rail Ltd v Marlborough District Council*** [1994] NZRMA 70 at 91 (HC)
[22] ***Queenstown Adventure Park (1993) Ltd v Queenstown Lakes District Council*** Decision C096/94
[23] See, e.g., ***Kiwi Property Management Ltd v Hamilton City Council*** (2003) 9 ELRNZ 249 at [64]-[65] and ***Newbury Holdings Limited v Auckland Council*** [2013] NZHC 1172 at [63]-[67]

[77] The issue raised by BOICW of whether the resource consents were lawfully given effect to in relation to the esplanade reserve in the absence of any easements under the Reserves Act has been addressed in detail above. For the reasons I have already given, the requirements of the Reserves Act do not affect the application of s125 of the Act. On that basis, the land use consent has been given effect to.

Implied Landowner Consent

[78] The third and fourth parts of the fourth declaration, as sought, are both dependant on a finding of implied landowner consent by the District Council to boat washdown and repair and maintenance activities on the esplanade reserve by virtue of either the District Council's decision under the Reserves Act to grant the necessary easements for such activities or its apparent decision not to take enforcement action until the easement application is finally resolved.

[79] The District Council objects to the making of such declarations on the ground that its consent as a landowner is not a matter within the scope of s310(1)(a) or (h). I agree that the matters raised by these parts are beyond my jurisdiction.

Discretion to make declarations

[80] As noted previously, the power of this Court to make declarations is conferred by s310 of the Act. It is conferred in discretionary terms, but without any criteria for the exercise of that discretion being included in the statute. It is relevantly expressed to be in relation to "this Act". It is appropriate therefore to consider case law in relation to the making of declarations to guide that discretion, but bearing in mind that those cases decided by the High Court under the Declaratory Judgments Act 1908 may relate to the much broader jurisdiction which that Court has.

[81] It is of the essence of the judicial function to interpret and apply the law in terms of the facts of a particular case. With respect to statutes, the courts have the function of authoritatively construing legislation to give effect to the will of Parliament. The courts are never entitled to decline to determine the legal meaning of a relevant enactment on the ground that it is not clear, as it is the courts' role to provide that clarity. [24]

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[24] ***Electoral Commission v Tate*** [1999] 3 NZLR 174 (CA) at [30]-[36]. As to the reference there to *The Laws of New Zealand*: "Courts", The Rt Hon Justice Hardie Boys, now see in that work para 134, at pp 153-5, esp. fn 4.

> "The question must be a real and not a theoretical question; the person raising it must have a real interest to raise it; he must be able to secure a proper contradictor, that is to say, some one presently existing who has a true interest to oppose the declaration sought.": and
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> (c) "In those and other cases cited by counsel it is apparent that the Court acted only when there was a right in issue which required protection or enforcement. Examples are ***Gouriet v Union of Post Office Workers*** [1978] AC 435, ***Malone v Metropolitan Police Commissioner*** [1979] Ch 344, ***Nixon v Attorney-General*** [1930] 1 Ch 566, and ***Turner v Pickering*** [1976] 1 NZLR 129.
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> In my view it can seldom if ever be a function of the Court to make findings on issues which bear no relationship in a real sense to the rights of the parties inter se and the absence here of a right requiring protection, enforcement, or even judicial recognition is I think so strong a factor in the exercise of the discretion as to be fatal to the case for the administrator."

[85] In the context of the Act, similar concerns about the existence of a real issue between the parties have been expressed by the Planning Tribunal.[28]

[86] Subsequently, the Court of Appeal has returned to what may be seen as the more expansive approach. In ***Burrell Demolition Ltd v Wellington Regional Council***,[29] the Court said:

> [12] Although discretionary in nature, the power given to the Environment Court to make declarations is a useful tool in the administration of the Act. We agree with Doogue J that particularly when parties who are faced with a live issue, as these parties were, combine to seek declaratory assistance, the Environment Court should be slow to decline relief. It is not appropriate to seek to compile an exhaustive list of circumstances when it may be right nevertheless to refuse declaratory relief. We also agree with Doogue J that the fact that the Environment Court Judge found the formulation of the declaration sought too precise and restrictive was not a sufficient reason of itself to decline to make any declaration at all. Having become acquainted ourselves with the construction issues, we do not consider that it would have been an unduly onerous task for the Judge to reformulate the declarations to accord with her views or simply to express those views and leave it to counsel to lodge draft declarations to reflect them.

[87] Importantly, as observed by this Court in ***Application by Far North District Council***,[30] the last proposition in that passage is not relevant where other parties oppose the making of a declaration on the ground, for example, that it is not necessary to do so.

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[28] ***Applications by Canterbury Frozen Meant Co Ltd & ors*** (1993) 2 NZRMA 282 at 285; and ***Application by Christchurch City Council*** [1995] NZRMA 129 at 134-5.
[29] Unreported: CA161/01, 18 March 2002.
[30] Decision A 073/2004

[93] The fourth declaration is in four parts. The first part relates to the date of commencement of the land use consent and I have addressed this at [72]-[73]. While this matter appears beyond any doubt to me, it represents the application of the law to relevant facts and I will make such a declaration for the sake of any assistance it may give the Applicant.

[94] The second part of the fourth declaration, relating to whether the land use consent has been "given effect to" or whether it has lapsed or is otherwise incapable of being given effect, raises the most significant issues in this proceeding. I have dealt with these matters in detail above at [28]-[56] and [74]-[76]. Given the argument advanced by BOICW and the significance of it to the Applicant, it is clearly a justiciable issue affecting the rights and interests of the parties. It is therefore appropriate that the Court reach a conclusion and make a declaration. For the reasons I have set out, I will make the declaration sought by the Applicant.

[95] The third and fourth parts of the fourth declaration raise issues concerning whether the use of the esplanade reserve is lawful pursuant to implied consent on the part of the District Council as landowner. For the reasons set out at [45]-[47] and [77]-[78], the Court does not have the jurisdiction under s310 of the Act to make any such declaration involving matters concerning the Reserves Act 1977 or the general law of property.

Decision

[96] For the foregoing reasons, I make the following declarations:

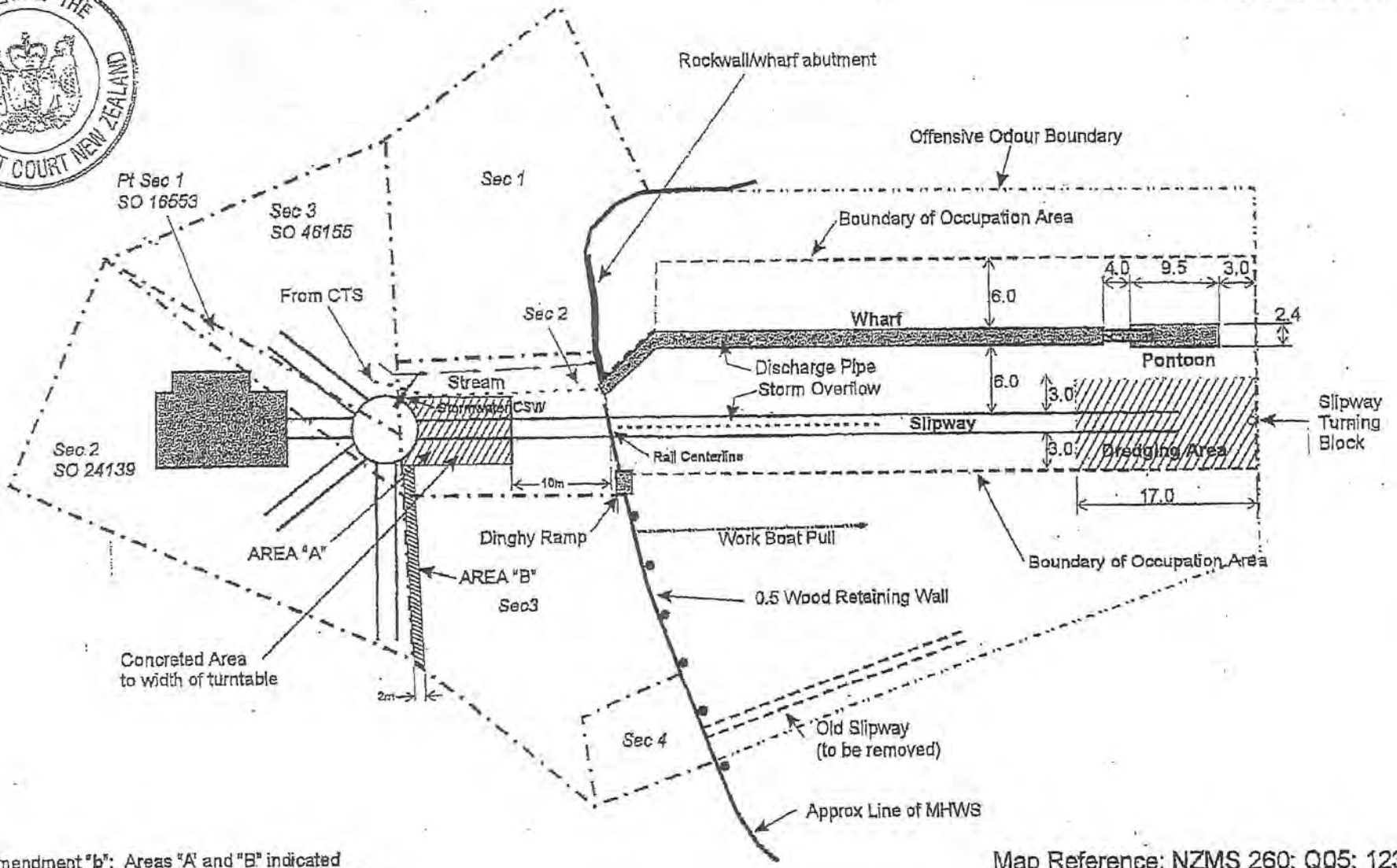
A. The opportunity for the Far North District Council to review condition 8 of land use consent RC2000812 in accordance with the last sentence of that condition expired on 1 February 2003.

B. Condition 12 of land use consent RC2000812 does not require the Far North District Council to undertake a mandatory review of the conditions of that consent.

C. Land use consent RC2000812 granted by the Far North District Council and confirmed with amendments by the Environment Court by the Consent Order dated 31 January 2002 commenced on the date of that Consent Order.

THE SEAL OF THE ENVIRONMENT COURT NEW ZEALAND

Note: Dimensions in Metres



Amendment "b": Areas "A" and "B" indicated
Amendment "a": Washdown area in CMA deleted

Map Reference: NZMS 260: Q05: 123-537

	By	Date
Dwn.	C N Anderson	
App'd		

Amendment		
No.	By	Date
a	C N Anderson	03/01
b	C N Anderson	12/01

RESOURCE CONSENT NLD 99 7914
for
Doug's Opua Boat Yard
Boat Maintenance Facilities - Opua

NORTHLAND REGIONAL COUNCIL

Scale	Plan No.
N.T.S.	3331b

APPENDIX 1

12.7 LAKES, RIVERS, WETLANDS AND THE COASTLINE

Wai

Ma te wai, ka ora ai nga mea katoa. Kia tupato te whakahaere mahi o tena, kia u tonu ki te mauri.

Water

Water has a vital quality that nourishes all living things. Let us ensure its purity to retain that essential life force - the mauri of the water.

CONTEXT

Note: For the purposes of this chapter "lakes" include the Waingaro and Manuwai Reservoirs.

The Far North District has an extensive coastline, eight harbours, estuaries, many rivers and streams, lakes and wetlands. The health of these water bodies is vital to sustaining all kinds of life. Human activity, however, can lead to contamination of the water, reduced water quantity and consequential loss of habitats. For example, Lake Omapere and a number of small west coast dune lakes have been contaminated by nutrients and other material in rural run-off to the extent that they are no longer suitable for their indigenous aquatic ecosystems, contact recreation or water supplies, and have degraded aesthetic values. Also, there are several inner harbours and estuaries which, due to contamination from rivers, do not meet the very high standards for shellfish gathering, cultivation, or human consumption e.g. Kawakawa estuary, some areas of the inner Bay of Islands and inner Whangaroa harbour (refer to s17/4 of the Regional Policy Statement for Northland). Maintaining water quality and quantity is therefore fundamental if sustainable management of natural and physical resources is to be achieved.

The District has a surprising scarcity of high quality water resources, despite its large land area. Most of the rivers and streams are relatively short with small catchments which means that sources of potable water are limited. Conserving water quantity is therefore very important, particularly in catchments near to settlements that have the capacity to be utilised as potable water supplies.

Pollution by rural and urban run-off contaminated from non-point source discharges and stormwater is a major cause of deteriorating water quality. Degradation of water quality can have an adverse impact on visual and amenity values. The Northland Regional Council and Far North District Council jointly share responsibility for ensuring that pollution from this, and all other sources, is minimised. While the Northland Regional Council is responsible for the control of discharges of contaminants to air, land and water, and for the use of land and water for the maintenance and enhancement of water quality, Far North District Council has primary responsibility for the subdivision, use and development of land, and for the control of activities on the surface of water. Thus, Far North District Council can manage the location of buildings, impervious surfaces and effluent disposal in relation to riparian margins as one method of addressing the effects of activities on water quality. The Council can also, through its own Strategic and Annual Plans, set priorities for the public provision of stormwater systems and adopt best management practices when implementing its works programme. Accordingly, the Plan provisions are designed to complement those of the Regional Policy Statement and Regional Water and Soil Plan.

Public access to the margins of rivers, lakes and the coastline is highly sought after. In particular, tangata whenua have an interest in gaining access, via traditional paths, to food-gathering areas. Also, there is considerable demand for residential properties with beach frontage and/or sea views, especially along the eastern coastline. As a result, subdivision offers many opportunities to acquire riparian margins and to secure public access where appropriate. This includes the opportunity to have unformed legal road vested as esplanade reserve. However, it will not always be wise to facilitate public access because of conservation, amenity, landscape, heritage, cultural and spiritual values, or topography or safety reasons. In such cases, public acquisition of the riparian margins may be justified in order to protect and preserve those special values.

Historically, some settlements have developed close to, or over, the coast e.g. Mangonui and Rawene. These are recognised as having a special character and are therefore identified as heritage precincts. Some activities also have a need to be located close to, or over, the boundary of the coastal marine area. Where there is a functional need of this kind, the Plan recognises and provides for the circumstances in which development can occur.

Where development occurs within the coastal marine area (under the jurisdiction of the Northland Regional Coastal Plan) there may be adverse effects that occur on the land i.e. within the District. For example, parking associated with marinas can cause traffic problems and loss of amenity in coastal settlements. Co-operation between the two Councils is essential to ensure that all of the adverse effects of an activity located in the coastal marine area are adequately addressed when resource consents are considered. This is one of several cross-boundary issues which need to be resolved.

complete a link or to secure public access to key locations is limited by available finance. Therefore the Council will use a variety of means in order to provide public access whenever such opportunities occur during subdivision and development of land near lakes, rivers and the coastline. However, there will be circumstances where public access is not desirable and, in these cases, the Council will consider conservation measures to be a priority (refer to ***Objective 12.7.3.3***; ***Policies 12.7.4.6*** and ***12.7.4.8*** and ***Methods 12.7.5.2***, ***12.7.5.4***, ***12.7.5.5*** and ***12.7.5.8***).

To enable development that is functionally related to the water, the Plan identifies Maritime Exemption Areas in parts of the coast where riparian margins are not required (***Objective 12.7.3.5***; ***Policy 12.7.4.5*** and ***Method 12.7.5.3***). *In conjunction with Heritage Precincts* (refer to ***Section 12.5***), *this same approach is used to recognise historic patterns of development.*

Activities such as earthworks and land clearance close to water bodies can adversely affect the stability of their margins, water quality and ecosystem viability. Rules in ***Section 12.3*** *together with the provisions of the Regional Water and Soil Plan control excavation and filling. These controls are complemented by rules which limit building and impervious surfaces near riparian margins and by assessment criteria. The restoration and enhancement of riparian areas by stock exclusion and planting can reduce the risk of natural hazards and improve natural character. Proposals to undertake restoration and enhancement initiatives will be taken into account when assessing applications to reduce the required setbacks.*

12.7.6 RULES

Activities affected by this section of the Plan must comply not only with the rules in this section, but also with the relevant standards applying to the zone in which the activity is located (refer to ***Part 2 Environment Provisions***), and with other relevant standards in ***Part 3 – District Wide Provisions***.

Particular attention is drawn to:

(a) ***Chapters 7-10*** in ***Part 2***;

(b) Other sections within ***Chapter 12 Natural and Physical Resources*** (and the ***District Plan Maps***);

(c) ***Chapter 13 Subdivision***;

(d) ***Chapter 14 Financial Contributions***;

(e) ***Section 15.1 Traffic, Parking and Access***;

(f) ***Chapter 17 Designations and Utility Services*** (and the ***Zone Maps***).

Where relevant, refer to other sections of the plan such as Part 2 – Environmental Provisions and other parts of Part 3 – District Wide Provisions as there may be other provisions that need to be considered.

12.7.6.1 PERMITTED ACTIVITIES

An activity is a permitted activity if:

(a) it complies with the standards for permitted activities set out in ***Rules 12.7.6.1.1*** to ***12.7.6.1.6*** below; and

(b) it complies with the relevant standards for permitted activities in the zone in which it is located, set out in ***Part 2 of the Plan - Environment Provisions***; and

(c) it complies with the other relevant standards for permitted activities set out in ***Part 3 of the Plan - District Wide Provisions***.

12.7.6.1.1 SETBACK FROM LAKES, RIVERS AND THE COASTAL MARINE AREA

For the purposes of this rule, lakes include the Manuwai and Waingaro Reservoirs.

Any building and any impermeable surface must be set back from the boundary of any lake (where a lake bed has an area of 8ha or more), river (where the average width of the riverbed is 3m or more) or the boundary of the coastal marine area, except that this rule does not apply to man-made private water bodies other than the Manuwai and Waingaro Reservoirs.

The setback shall be:

(a) a minimum of 30m in the Rural Production, Waimate North, Rural Living, Minerals, Recreational Activities, Conservation, General Coastal, South Kerikeri Inlet and Coastal Living Zones;

(b) a minimum of 26m in the Residential, Coastal Residential and Russell Township Zones;

(c) a minimum of 20m in the Commercial and Industrial Zones.

Provided that these setbacks do not apply:

(i) to activities in a Maritime Exemption Area; or

(ii) to river crossings, including but not limited to, fords, bridges, stock crossings and culvert crossings; or

(iii) to activities related to the construction of river crossings; or

(iv) to pumphouses utilised for the drawing of water from the lake, river or wetland, provided such pumphouse covers less than $25m^2$ in area; or

(v) to buildings and impermeable surfaces associated with utility service structures, provided that they do not exceed 2m in height or 5m in area; or

(vi) to activities associated with the maintenance, replacement and upgrading of existing linear network utilities; or

(vii) where there is a legally formed and maintained road between the property and the coastal marine area, lake or river; or

(viii) to activities associated with marine farming shore facilities on Lot 1 DP197240 (Orongo Bay), Lot 1 DP155347 (Waikare Inlet) and Lot 1 DP190467 (Waikare Inlet); or

(ix) 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; or

(x) to activities, buildings and impermeable surfaces associated with the operation of a commercial boatyard on Part Allotment 6, Section 13, Town of Russell.

Note 1: Attention is also drawn to the rules applying in the Coastal Hazard 1 Area (***Rule 12.4.6.3.1***) and Coastal Hazard 2 Area (***Rules 12.4.6.1.1*** and ***12.4.6.2.1***).

Note 2: A schedule of Lakes is provided in ***Appendix 1C***.

12.7.6.1.2 SETBACK FROM SMALLER LAKES, RIVERS AND WETLANDS

Any building and any impermeable surface must be set back from the boundary of lakes (where the lake bed has an area of less than 8ha) smaller continually flowing rivers (where the average width of the river bed is less than 3m) and wetlands except that this rule does not apply to man-made private water bodies.

The setback shall be:

(a) 3 x the area (ha) of the lake (e.g. if the lake is 5ha in area, the setback shall be 15m); and/or

(b) 10 x the average width of the river where it passes through or past the site;

provided that in both cases the minimum setback shall be 10m and the maximum setback shall be no more than the minimum required by ***Rule 12.7.6.1.1*** above;

(c) 30m for any wetland of 1ha or more in area.

Provided that these setbacks do not apply:

(i) to river crossings, including but not limited to, fords, bridges, stock crossings and culvert crossings; or

(ii) to activities related to the construction of river crossings; or

(iii) to pumphouses utilised for the drawing of water from the lake, river or wetland, provided such pumphouse covers less than $25m^2$ in area; or

(iv) to buildings and impermeable surfaces associated with utility service structures, provided that they do not exceed 2m in height or 5m in area; or

(v) to activities associated with the maintenance, replacement and upgrading of existing linear network utilities; or

(vi) where there is a legally formed and maintained road between the property and the coastal marine area, lake or river.

These setbacks do not apply to river crossings or activities related to the construction of river crossings, or to access for the maintenance of existing utility service structures, linear network utilities or pump houses permitted by this rule.

Note 1: Attention is also drawn to the rules applying in the Coastal Hazard 1 Area (***Rule 12.4.6.3.1***) and Coastal Hazard 2 Area (***Rules 12.4.6.1.1*** and ***12.4.6.2.1***).

Note 2: A schedule of Lakes is provided in ***Appendix 1C***.

12.7.6.1.3 PRESERVATION OF INDIGENOUS WETLANDS

Any land use activity within an indigenous wetland of $200m^2$ or more that does not change the natural range of water levels or the natural ecosystem or flora and fauna it supports is a

ACCOUNT No: — DATE: 27/9/17

RECEIVED FROM: DOUGS OPUA BOATYARD

Seven hundred and sixty nine DOLLARS

AND fifty cents only CENTS

FOR: CONSCENT RENEWAL DISCHARGE PERMITS.

SIGNATURE:

503560. for FINANCE MANAGER

JOP173Q

NORTHLAND REGIONAL COUNCIL
Private Bag 9021
Whangarei
Phone 09 470 1200
GST No. 46-655-984

TOTAL	
769	50.

CHEQUE CASH EFTPOS

No. 43047

This application is made under Section 88/127 of the Resource Management Act 1991

To: Consents Department
Northland Regional Council
Private Bag 9021
Whāngārei Mail Centre
Whāngārei 0148

IMPORTANT NOTES TO APPLICANTS

(a) **Please read fully** the notes below and the Information Brochures and Explanatory Notes available from the Council, **before** preparing your application and any supporting information.

(b) The Resource Management Act 1991 sets out the information you must provide with your application for a resource consent. If you do not provide adequate information, your application cannot be received nor processed by the Council and will be returned to you. If you are unsure of what information should be included with your application, please contact the Council before submitting the application.

(c) Applications require notification (public advertising calling for submissions) unless the Council is satisfied that the adverse effects on the environment of the activity for which consent is sought will be minor; and written approval has been obtained from every person who the Council is satisfied may be adversely affected by the granting of the consent. The Council also has available a form "Form 8A – Affected Person's Written Approval", to help you record such approvals for applications that may be processed without public notification.

PART A – GENERAL

APPLICANT	Full Names
(1) Full Name of Applicant(s): (in full e.g. Albert William Jones and Mary Anne Jones. For Companies, Trusts and other Organisations, commonly used name)	DOUGLAS CLAIR SOMMERVILLE FOR: DOUG'S OPUA BOATYARD
Phone Number – Business:	(09) 4027-055 Fax:
Home:	(09) 4074-577 Mobile: 021143 7719
E-mail:	TOTARAHILL@XTRA.CO.NZ

For applications by a company, private trusts or other entity/organisations, the Directors; Trustees and Officers' full names must be supplied and Section (12) completed and signed.

(2) Postal Address: (in full)	1 RICHARDSON ST. OPUA, 0200
(3) Residential Address: (if different from postal address)	121 PORATI RD, RD2 KAIKOHE, 0472

Application Form continued on next page

(4) **Address for Service of Documents:** (if different from postal address e.g. Consultant)	

(5) **Owner/Occupier of Land/ Water Body:** (if different from the Applicant)	

(6) Type(s) of Resource Consent sought from the Regional Council

You will need to fill in a separate Assessment of Environmental Effects Form for each activity.
These forms can be obtained from the Northland Regional Council.

Coastal Permit

☐ Mooring ☐ Marine Farm ☐ Structure ☐ Pipeline/Cable
☐ Other (specify)

Land Use Consent

☐ Vegetation Clearance ☐ Quarry ☐ Structure in/over Watercourse
☐ Earthworks ☐ Construct/Alter a Bore ☐ Dam Structure
☐ Other (specify)

Water Permit

☐ Stream/Surface Take ☐ Damming ☐ Groundwater Take ☐ Diverting Water
☐ Other (specify)

Discharge Permit

☐ Domestic Effluent to Land ☑ General Discharge to Land ☐ Farm Dairy Effluent to Land/Water
☑ Air ☑ Water
☐ Other (specify)

(7) Other Resource Consents required from the District Council

Where other Resource Consents are required for the same activity, they must be applied for at the same time.
Not doing so will delay the processing of this application.

What other Resource Consents are required from the District Council?

☐ None ☐ Land Use Consent ☐ Subdivision Consent

Have the applications been made? ☐ Yes ☐ No

(8) Description of the Activity.

Please briefly describe the activities and duration for which Consent(s) are being sought. It is important you fill this out correctly, as the Council cannot grant Consent for any activity you do not apply for.

18 YEAR TERM RESOURCE CONSENT FOR: RENEWAL OF ALL CURRENT DISCHARGE CONSENTS CONTROLLING (10-15) SO THAT THEY COINSIDE WITH THE REMAINING TERM OF RESOURCE CONSENTS NLD 7914 (01-09)

Application Form continued on next page

(9) Location of Property/Waterbody to which Application relates:

Describe the location in a manner which will allow it to be readily identified, e.g. street address, legal description, harbour, bay, map reference etc. Attach appropriate plans and/or diagrams.

Property Address: (see rate demand) 1 RICHARDSON ST. **Locality:** OPUA

Legal Description: SEC 2, PT LOT 1, SEC 3 **Blk:** XXXII TOWN SOUTH OPUA

Other Location Information: SEC 1-4 / SO 68634, CAN 5339 / PA 2035

PART B – ASSESSMENT OF EFFECTS ON THE ENVIRONMENT

You must include an assessment of the effects of your activity on the environment as part of your application.

The Resource Management Act 1991 requires that each application include an assessment of the actual and potential effects of the activity on the environment in accordance with the Fourth Schedule.

To assist you to supply this assessment of effects, the Council has prepared specific forms for various consent activities. For minor activities, all that will be required is for you to complete the specific form. Where the potential effects of the activity are more significant, we recommend you undertake a full assessment of effects, with professional assistance if necessary.

If you are unsure of what information to include with you application and the assessment of effects, please contact the Council before submitting your application. A pre-lodgement meeting with relevant Consent Staff is recommended.

PART C – GENERAL

(10) Renewal of an Existing Resource Consent:

☑ Yes ☐ No ☐ A change in conditions of a current Resource Consent

(11) Fee/Deposit Enclosed with Application(s):

Application to be processed as: ☐ Notified ☐ Limited Notified ☑ Non-notified

☐ Coastal Permit: $ _____ ☐ Land Use Consent: $ _____

☐ Water Permit: $ _____ ☑ Discharge Permit: $ 769.50 TKD

☐ Bore Permit: $ _____ ☐ Change Conditions: $ _____

(12) Signature of Applicant(s) or Persons authorised to sign on behalf of Applicant(s):

IMPORTANT NOTES TO APPLICANTS

(a) Your application must be accompanied by the minimum fee (deposit) as determined by the Council. A schedule of the fee/deposits for different consent applications is annexed. Please note that applications by private trusts and other group entities require the personal guarantees of the Trustees and/or Officers for the payment of costs to be submitted with the application.

- For complex applications, the Council may require an additional deposit pursuant to Section 36(3) of the Act, based on the estimated costs for processing such complex applications and may require progressive monthly payments during consent processing.
- The final fee is based on actual and reasonable costs including disbursements and where this fee exceeds the fee/deposit, the additional fee is subject to objection and appeal.

(b) All accounts are payable by the 20th of the month following the date of invoice. Any actual and reasonable costs, including but not limited to legal costs, debt collection fees or disbursements incurred as a result of any default in payment, shall be recoverable from the Applicant and is so notified in compliance with the Credit Contracts and Finance Act 2003. Submitting this Application authorises the Council to, if necessary, provide your personal information to a Credit Reporter in order to employ in its debt collection services in compliance with the Credit Reporting Privacy Code 2004, should payment default occur.

(c) Resource Consents usually attract an annual fee to recover the reasonable costs of the Council's monitoring, supervision and administration of the Consent during its term.

(d) The information you provide is official information. It will be used to process the application and, together with other official information, assist the management of the region's natural and physical resources. Access to information held by the Northland Regional Council is administered in accordance with the Local Government Official Information and Meetings Act 1987 and the Privacy Act 1993.

Application Form continued on next page

I/we declare that, to the best of my/our knowledge and belief, the information given in this Application and attached Assessment of Environmental Effects is true and correct. I/we unconditionally guarantee jointly and severally to pay the actual and reasonable costs of processing this Application as and when charges become due and payable. I/we acknowledge that I/we understand the consequences of signing this declaration.

Signature: [signature] **Signature:** _____

Full Name (print): DOUGLAS CRAIG SCHMUCK **Full Name** (print): _____

Date: 27 SEPTEMBER 2017 **Date:** _____

Continue with Trustees' and Authorised Officers' signatures below, as necessary.

Personal details and signatures of Trustees*, or Officers authorised to sign on behalf of and to bind Trusts, Societies and Unincorporated Entities

* Private and Family Trusts only

Full Name and Status: (Trustee, Officer etc)	NORTHLAND TRUSTEE (2014) LIMITED
Full Residential Address:	HENDERSON REEVES P.O. BOX 11, WHANGAREI
Signature:	

Full Name and Status: (Trustee, Officer etc)	DOUGLAS CRAIG SCHMUCK TRUSTEE FOR D C SCHMUCK FAMILY TRUST
Full Residential Address:	121 PORATI RD, RD 2, KAIKOHE
Signature:	[signature]

Full Name and Status: (Trustee, Officer etc)	
Full Residential Address:	
Signature:	

Full Name and Status: (Trustee, Officer etc)	
Full Residential Address:	
Signature:	

CHECKLIST – Have you remembered to...

- ☑ Complete all details set out in this Application Form
- ☑ Include an Assessment of Effects of the activity on the environment, set out in the attached form
- ☑ Sign and date the Application Form
- ☑ Include a Site Plan
- ☑ Include the appropriate fee/deposit as set out in the "Schedule of Fees"
- ☑ Complete details of Trustees and/or Authorised Officers on this page

We declare that, to the best of my/our knowledge and belief, the information given in this Application and attached Assessment of Environmental Effects is true and correct. We unconditionally guarantee jointly and severally to pay the actual and reasonable costs of processing this Application as and when charges become due and payable. We acknowledge that We understand the consequences of signing this declaration.

Signature: Signature:

Full Name (print): DOUGLAS DAVID SAMMARCO Full Name (print):

Date: 27 SEPTEMBER 2017 Date:

Continue with Trustees' and Authorised Officers' signatures below, as necessary.

Personal details and signatures of Trustees, or Officers authorised to sign on behalf of and to bind Trusts, Societies and Unincorporated Entities (Trustees and Officers only)

Full Name and Status: (Trustee, Officer etc) A & PTHLAND TRUSTEE 2014 LIMITED

Full Residential Address: [illegible]

Signature: (Director)

Full Name and Status: (Trustee, Officer etc)

Full Residential Address:

Signature:

Full Name and Status: (Trustee, Officer etc)

Full Residential Address:

Signature

Full Name and Status: (Trustee, Officer etc)

Full Residential Address:

Signature:

CHECKLIST - have you checked that you:

- ☑ Complete all details set out in this Application Form
- ☑ Include an Assessment of Effects of the activity on the environment, set out in the attached form
- ☑ Sign and date the Application Form
- ☑ Include a Site Plan
- ☑ Include the appropriate fee/deposit as set out in the "Schedule of Fees"
- ☑ Complete details of Trustees and/or Authorised Officers on this page

COMBINED COUNCIL

OPERATIONAL MANAGEMENT PLAN REVIEW
FOR: DOUG'S OPUA BOATYARD

1. **The scope of this plan review is to update operational management parameters of a boat maintenance facility as agreed to with each of the representative Councils in conjunction with resource consents CON NLD 997914 (1-4 & 6-9), CON2006 0791410 (10-15) AND CON201207914 (16-18), AND RC 2000812:**

In principle, the purpose of this plan, is to continue a sustainable system of operational management and maintenance in conjunction with conditions of consent regarding discharge to the air, ground, and water from the processes of maintenance, repair, and construction of vessels whilst at or on the site associated with the above land use consents. This plan further speaks to conditions of consent (RC 2000812) #'s 3,5,6, & 7, dealing with car parking, safety/security lighting, and signage to effect public knowledge, both general and boating, about the yard operational parameters associated with these consents.

The goals of this plan are therefore, to affect at all practicable times and in the best practice method, a system of adherence to the above principles of consent in achieving conditional criteria related to discharges/environmental effects from those activities and their compatibility between land use and occupation of public and private land, for better understanding within the community in which they must coexist.

This plan review acknowledges treated discharge water access to the new Opua Sanitary Works Scheme (SWSS), Building Consent Number BC-2012-965/1, whilst also providing sufficient capability for emergency procedures and back up in the event of a required discharge into the CMA pursuant to the existing discharge consents.

There are also provisions in this plan to provide operational notice to the FNDC as to the use of the public space for the maintenance, repair, and haulage of vessels onto the site where they overhang (Areas "A"); over and above any normal cleaning, scrapping, and/or wet sanding that any particular vessel may incur; and over area of public space designated for both public and commercial use of that area designated for mast, sails, and rigging.

The implementation of the plan rests with one person; the owner of Doug's Opua Boatyard and/or his assignees and/or agents.

2. **Environmental policies and objectives:**

This boat maintenance facility is an integral planning unit utilizing private land, public land, and seabed within the CMA. There are a considerable number of interrelated activities that take place on each that create a cumulative effect on the overall surrounding marine and coastal residential environment.

Management policies will depend largely on the scope of each and every individual job, scale of works undertaken, and most practical solution to control discharges and/or effects from those works.

Management objectives will largely focus on the ability to contain and/or dispose of any discharge from the work processes to a controlled site or to discharge as a treated by product as per consent parameters into the surrounding environment.

3. Factors of operational management:

There are nine factors of management with regard to boatyard/slipway operations within:(The hours of operation for all outdoor activities associated with the boatyard, with the exception of haulage, shall be limited to 0700 – 2000 hours Monday to Friday and 0800 –2000 hours Saturday, Sunday and public holidays).

They are therefore in the following order:

(a) The slipway operations and maintenance of the boat wash-down area "A" including notice of any repair or maintenance work on vessels in or over-hanging that area, but above 10 meters of the MHWS/CMA; that is unable to be moved entirely within the consent holders site, by virtue of their length or configuration; to the FNDC, which will therefore set the parameters of use prescribed in conditions of consent (RC 2000812) #'s 4 & 8 & 13; and notice in regards to conditions of consent (RC2000812) #15(b).

(b) The best practice operations and maintenance of the wash-water Containment Treatment System (CTS) as prescribed in the discharge consents [CON20060791410 (10)]; (as shown on the survey plans #8095);

(c) The best practice operations and maintenance of the storm-water treatment (CSW) as prescribed in the discharge consents [CON20060791410 (14&15)]; (as shown on survey plans #8095);

(d) Measures to minimise the discharge of contaminants to ground pursuant to condition of consent [CON20060791410 (13)] #15 and/or for earth works in reconstruction pursuant to condition of consent (RC 2000812) #11;

(e) Measures to minimise the emissions and any adverse effects on the surrounding environment from discharges to air, and/or any noise limits prescribed by condition of consent (RC2000812) #14 and discharge consents [CON20060791410 (11&12)].

(f) Measures to minimise the effects on the public use of the coastal walking track and local purpose esplanade reserve; i.e., signage, security lighting, and emergency safety barriers when required prescribed by conditions of consent (RC2000812) #'s 7 & 9.

(g) Measures to minimise the effects of wharf and slipway structures operations and maintenance within the CMA as prescribed by discharge consents [CON20060791410 (12)].

(h) Measures to mitigate the effects of maintenance dredging;

(i) Contingency measures for any unforeseen and/or emergency situation;

4. Procedures for factors of operational management:

a) Factor 3a; wash-down area **"A"** (as shown on the attached survey plans #8095) will be cleaned from the previous operational day and left broom clean, as far as practical, of any excessive debris for the next operational event contained by 2 metre high screening along the boundary of area "A" depending on wind strength and direction, where either applies. These operations may include washing, scrapping, chipping, both wet and /or dry sanding, chemical removal, and water and/or controlled sand blasting of any part of the hull and deck, or equipment attached to the hull and deck, in the preparation of a vessel for maintenance or repair prior to being relocated into the boatyard proper, behind the demarcation line of area **"B"** (as shown on the attached survey plans # 8095). Notice by e-mail will be provided to the FNDC, at the end of each working day, as to the proposed duration of any maintenance, repair, and/or haulage, and any equipment and/or materials to effect those works, on any given vessel standing on its cradle within or overhanging area **"A" that cannot be moved by virtue of its length and configuration entirely within the boatyard site, and/or ancillary maintenance activities on the reserve.** (as shown on the attached survey plans # 8095 & attachment "A").

b) Factor 3b; the (CTS) will stand charged in a full state at all times. Visual and/or mechanical inspections of operational parameters are on going during and directly after wash-down operations. Equilibrium is usually reached 15 or 20 minutes after all input ceases. Since the (CTS), is a unidirectional system when not discharging, mechanical or line maintenance is generally conducted on periodic system pump outs. Ref: attached diagram"A1". In turn, all systems can be site inspected by manhole cover removal. Operational effectiveness parameters can then be assessed and most if not all maintenance or alterations affected at that time. Any necessary contract removal of containment debris will be certified carrier. (Also refer to clause 6 below).

c) Factor 3c; (CSW) can be checked for any flow blockage at any time. The pre-sump or initial trap will collect the lions share of any granular sediments prior to storm-water moving through the main (CSW) weir. The primary function, of the (CSW), is to contain any heavy metal particles from migrating into the CMA. Ref: attached diagram "A2". Any contract removal of containment debris will be by certified carrier.

d) Factor 3d; At all practical times where any excessive grinding, scrapping, and/or sanding discharges can be collected by drop cloth or pans, canisters and/or packaged, they will be disposed of at a proper land fill or controlled site. Any earthwork materials, surplus to land development requirements, will be secured on section 2 & 3 of SO 68634 or removed from the site, so that siltation and/or erosion does not occur;

e) Factor 3e; screens and containers will be used to filter emissions at all practical times to one area demarked as the paint cleaning station. Screening will also be erected, when necessarily, to contain any over-spray and/or dust, into areas "A" and/or "B" during any form of blasting operations. To a large degree, the effects of these operations, is self managing due to the on-shore wind-funnelling effect at this particular site in relationship to the landforms of the slipway. They are therefore, totally confined to operational containment areas of this boat maintenance facility as delineated on survey plans #8095. (Also refer to factor a) above). All facility machinery is now electrified to bring any noise level emissions even lower since the grant of consent in 2002. In keeping with the discharge parameters of consent and District Plan rules regarding set-backs, there is unlikely to be any adverse effects on the adjoining public land that have not already existed for 38 years operationally, in its current form.

f) Factor 3f; the boatyard has always undertaken to keep the walking track and public land access safe and open at all practical times during the daily operations of the slipway. (Screening and/or impermeable surfaces can be implemented) when needed to control any over-spray to the public land adjacent to the slipway corridor associated with washing down and/or otherwise in contrary wind conditions or in other circumstances that would restrict access to and along the CMA. The boatyard has always secured all un- occupied machinery and/or un-used equipment from any unauthorized movements during the hours of darkness. If in the case of any reason for personal safety, protection of property, and/or for the integrity of equipment itself, to affect safe operations, trestle barriers will be placed over any obstructions or across the reserve to notify the public in the case of any emergency stopping of equipment or vessels thereon. This is in addition to security lighting and warning signs attached at the slipway crossing post at the wharf abutment and on the adjacent yard retaining wall; that sign facing the crossing. Yard dinghy storage spaces/racks on the slipway are for authorized yard dinghies only and are not for general

public use. They also help demark the operational boundary of the slipway corridor of section 2 with those areas of the open space on the adjoining reserve as delineated on survey plans #8095.

g) Factor 3g; operational parameters of the wharf and slipway in effect are issues of discharge to surrounding waters when any vessel is on or along side these structures. Washing down of vessels for inspection and/or cleaning will be by low presser hose. Containment of sanding dust, scrapping particles, or heavy fluids by drop cloth, paper barrier or vacuum removal to allow relocation of those materials to a proper waste collection site within the boatyard.

h) Factor 3h; periodic dredging will involve the removal of spoil by digger to a proper land fill or discharge at sea by a contract provider. These operations will be conducted at spring low tides when water depths are at a minimum. Duration of works is therefore considerably limited to a matter of hours over a period of approximately four or five days. All dredging will be contained within an enclosure boom.

i) Factor 3i; there is only one unforeseeable discharge emergency that would result in an excessive spill at this particular operational site. That is the rupture of or damage to one of the (CTS) containment tanks.

5. Procedures or contingency measures in emergencies:

a) Contingency measures at this particular site rest largely on the ability to control run-off into the CMA. Because of the close proximity of access to the CMA, the best option is multiple collection pits or traps for water and debris collection and/or filtration. In the past this method has proved very effective for any surface water discharge issue and can be further enhanced for increased efficiency of the (CTS) within the structure of the slipway itself, i.e. the installation of ancillary traps. Oil and fuel spills will be de dealt with in the same manner after soaking up or removal of any excessive fluids for relocation to a disposal site.

b) In the event of any discharge that does not comply with discharge consent conditions, the NRC will be contacted by telephone as soon as possible after corrective action is taken, pursuant to the requirements of condition of consent [CON20060791410 (10-15) #25]. In any other emergency of the kind that might otherwise effect public access to the esplanade reserve, the FNDC will be notified of any corrective action that may require closure of the adjoining reserve.

c) All other discharges on site can otherwise be contained on site save the event of conflagration of the shed and its stores of paints and thinners there in. The effects of this event, although considerable, would still be somewhat minimal due to the limited quantities of any one product in stores. Effective quick use of multiple dry powder fire

extinguishers should see and end to the issue in relatively quick order. Barring that remedy, I can call upon about 5000 Ltrs of water to damp things down. Hopefully by then the fire brigade will be on site and in control of the situation.

6.Procedures with regard to maintenance of systems:

Due to the limited number of vessels hauled at this site, the discharge containment systems only need to be monitored at a six monthly period over the daily operational inspections. It is proposed the entire system undergo cleaning on a yearly basis as past operational parameters indicate. I believe a good operational maintenance period should be completed by spring each year and not later than the end of September prior to the next seasonal influx of haul outs. These procedures may include but are not limited to:

a. Drainage of the system by pumping to a tanker and removal from the site.

b. Inspection, cleaning, and replacement of all or any functional systems apparatus.

c. Removal and replacement of filtration materials.

d. Inspect and confirm all interconnections from pick-up to discharge points.

e. Develop further trapping systems and infrastructures for greater discharge control to meet best practice criteria into the future (as shown on survey plans #8095).

7. Management Plan Review Criteria:

The frequency of review of this plan should be at three year intervals and/or associated with any substantial changes to operational parameters that effect any compatibility to, and/or in cooperation with any policy or rule in a (District or Coastal Plan).

The review method will be by resubmission of the plan with any proposed modifications to practice or operational changes in systems or functions. That any improvements will be undertaken at any reasonable time to affect improved containment processes for the entire site. Monitoring data, when required, should set any system criteria changes for best practice methods associated with discharge consents.

Approval of any changes herein shall be by agreement with the consent holder and the individual Council authorities pursuant to the conditions of consent by which this review is undertaken.

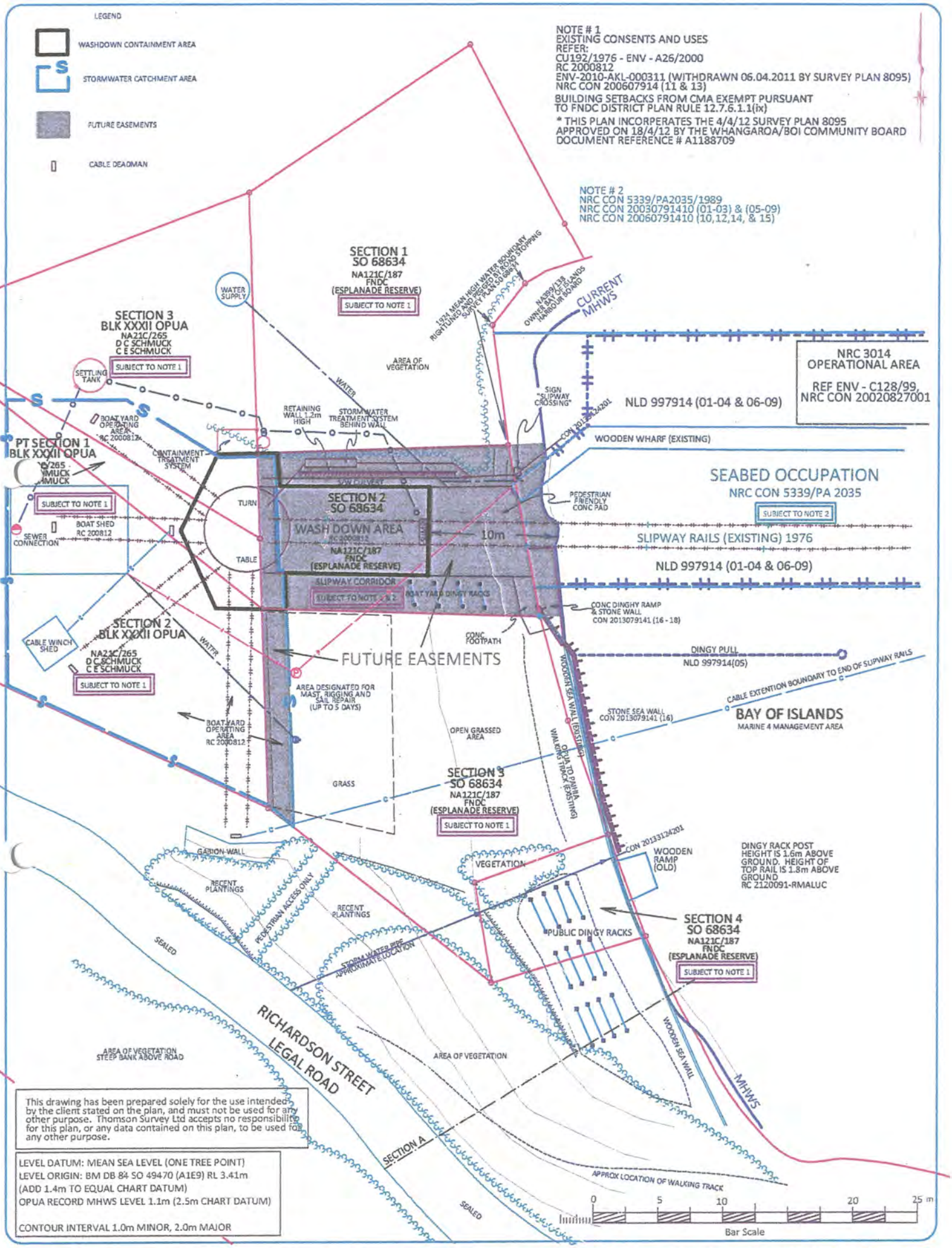
This plan is therefore reviewed in compliance to conditions of consent (RC2000812) #15: on 26th August 2014.

For: The Far North District Council ---P.J. Killalea---

This plan is therefore reviewed in compliance to conditions of consent [CON200607914 (10-15)]# 21: on 27 August 2014.

For: The Northland Regional Council ---
Consents Monitoring Manager

* References for this OMP, but not otherwise attached are: Resource Consents RC 2000812, NLD 99-7914, CON20060791410 along with approved revisions 1 October 2002, to this plan, CON 20120791416 and RC 2140229-RMALUC along with specific attachments: (Survey plans #8095, #8095 sheets: "A", "B", "C", & NRC discharge consents survey plan #03.11 sheets: "A", & diagrams: "A1", & "A2").



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LEVEL DATUM: MEAN SEA LEVEL (ONE TREE POINT)
LEVEL ORIGIN: BM DB 84 SO 49470 (A1E9) RL 3.41m
(ADD 1.4m TO EQUAL CHART DATUM)
OPUA RECORD MHWS LEVEL 1.1m (2.5m CHART DATUM)

CONTOUR INTERVAL 1.0m MINOR, 2.0m MAJOR

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Registered Land Surveyors, Planners & Land Development Consultants

JOINT NRC/FNDC RESOURCE CONSENTS & EXISITING USES DOUGS OPUA BOAT YARD

NLD 997914 (01 -18) / RC 2000812

	Name	Date	ORIGINAL	
Survey			SCALE	SHEET SIZE
Design				
Drawn	SH	28-02-11	1:250	A3
Approved				
Rev	SL	1-05-13		

8095 RC SITE PLAN 2.lcd

Surveyors Ref. No: 8095
Series
Sheet of

LEGEND

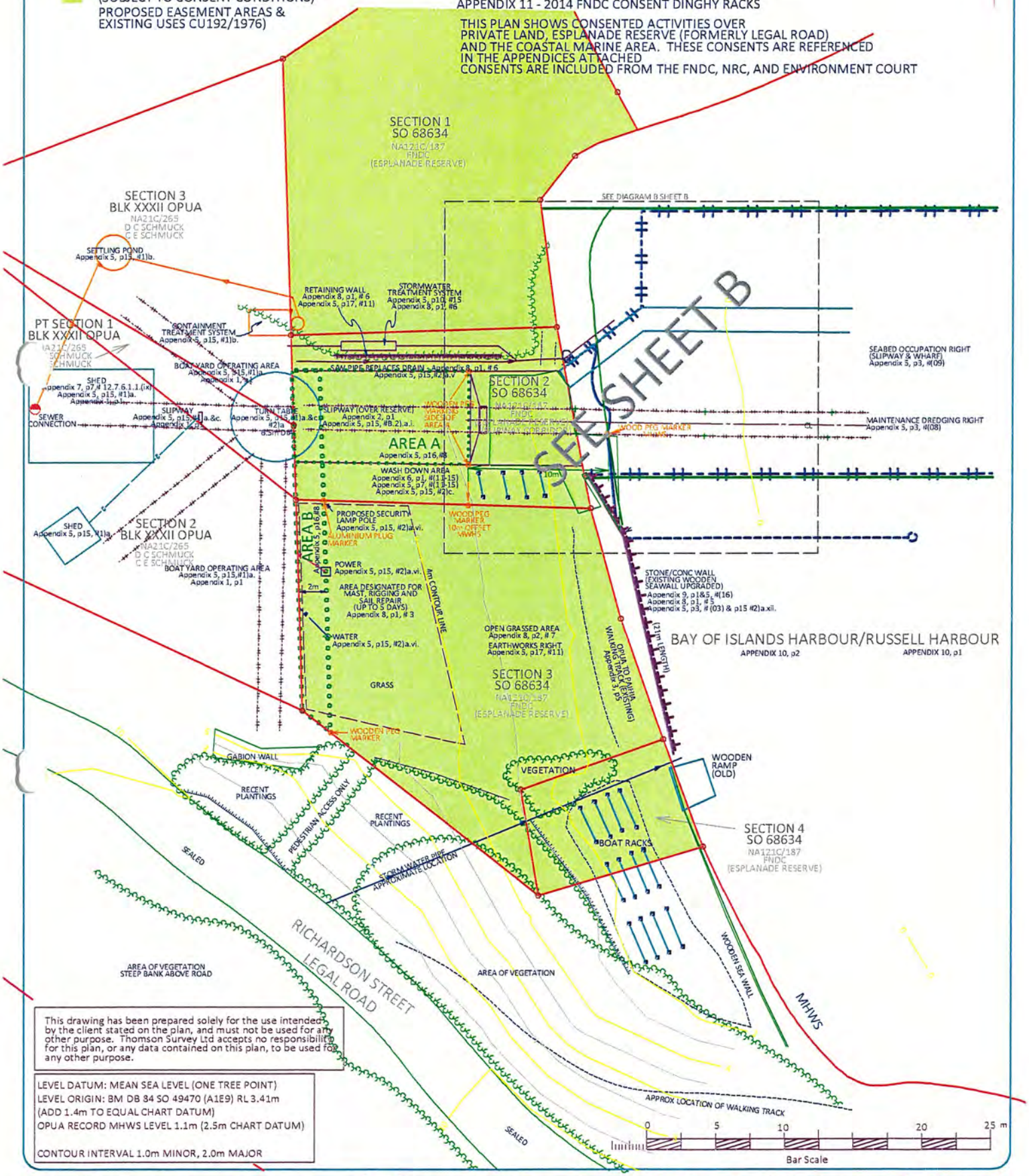
AREA A

AREA B

SECTIONS 1 - 4 SO 68634 (ESPLANADE) (SUBJECT TO CONSENT CONDITIONS) PROPOSED EASEMENT AREAS & EXISTING USES CU192/1976)

NOTE: THERE ARE EXISTING CONSENTS AND PROCEEDINGS
REFER:
APPENDIX 1 - 1966 COUNCIL AUTHORISATION
APPENDIX 2 - 1976 COUNCIL CONSENT CU 192
APPENDIX 3 - 1989 MINISTER OF CONSERVATION CONSENT PA2035
APPENDIX 4 - 2000 ENVIRONMENT COURT DECISION A26/2000 A135/99
APPENDIX 5 - 2002 ENVIRONMENT COURT ORDER CONSENT NLD 99 7914, RC 2000812
APPENDIX 6 - 2008 NRC CONSENT CON20060791410
APPENDIX 7 - 2009 FNDC OPERATIVE DISTRICT PLAN 12.7.6.1.1(ix) (BUILDING SETBACK)
APPENDIX 8 - 2011 FNDC LETTER CONFIRMING PERMISSION
APPENDIX 9 - 2013 NRC CONSENT CON20120791416
APPENDIX 10 - LEGAL SURVEY PLANS
APPENDIX 11 - 2014 FNDC CONSENT DINGHY RACKS

THIS PLAN SHOWS CONSENTED ACTIVITIES OVER PRIVATE LAND, ESPLANADE RESERVE (FORMERLY LEGAL ROAD) AND THE COASTAL MARINE AREA. THESE CONSENTS ARE REFERENCED IN THE APPENDICES ATTACHED
CONSENTS ARE INCLUDED FROM THE FNDC, NRC, AND ENVIRONMENT COURT



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OPUA RECORD MHWS LEVEL 1.1m (2.5m CHART DATUM)

CONTOUR INTERVAL 1.0m MINOR, 2.0m MAJOR

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Registered Land Surveyors, Planners & Land Development Consultants

DOUGS OPUA BOAT YARD CONSENTED ACTIVITIES AS OF JULY 2013 SHEET A

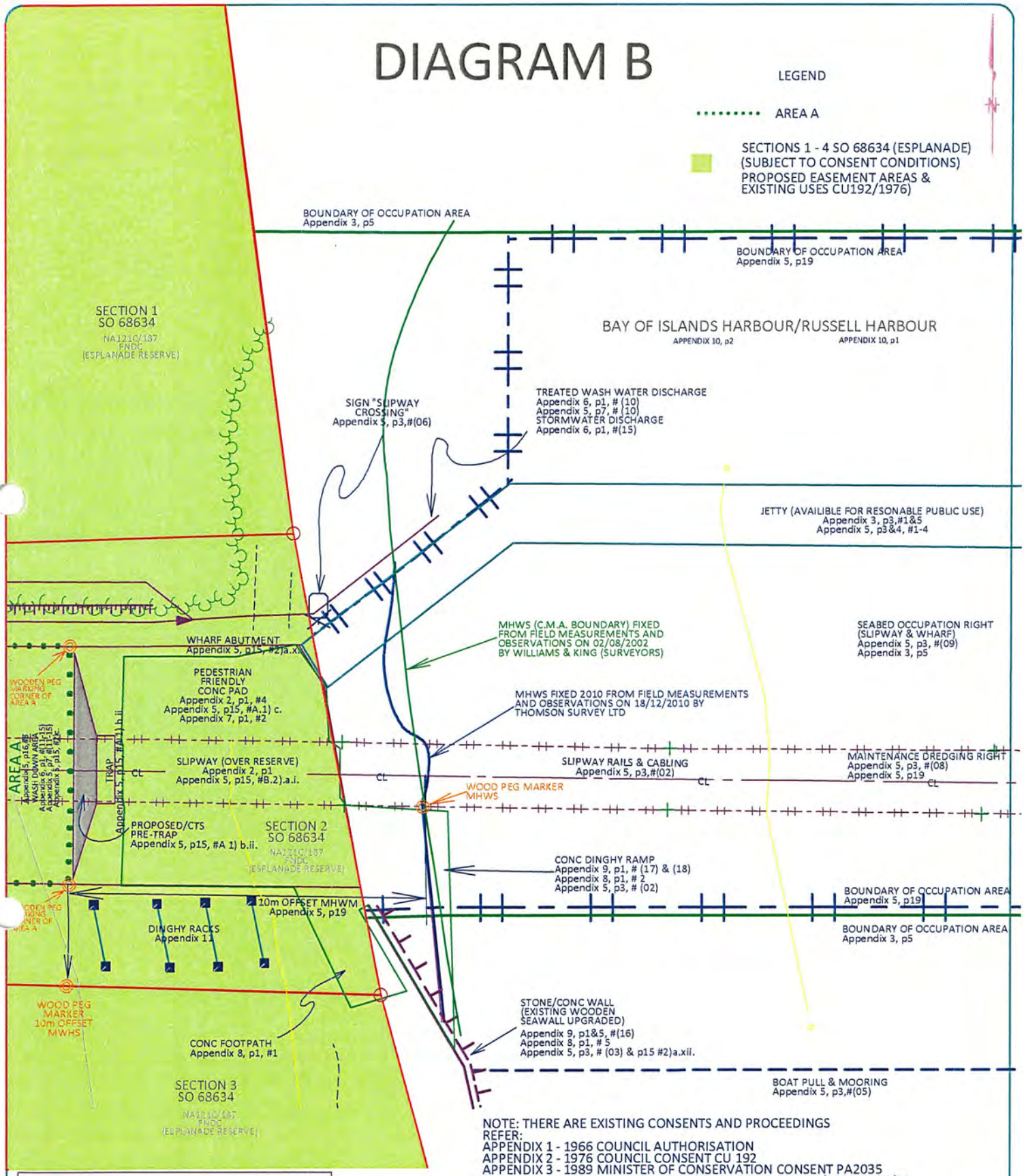
	Name	Date
Survey	SH	18-12-10
Design		
Drawn	SH	28-02-11
Approved		
Rev	SL	23.05.14

8095 APPENDIX PLAN.lcd

ORIGINAL
SCALE 1:250
SHEET SIZE A3

Surveyors Ref. No: 8095
Series
Sheet A

DIAGRAM B



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DOUGS OPUA BOAT YARD
CONSENTED ACTIVITIES
AS OF JULY 2013
SHEET B

	Name	Date	ORIGINAL	
Survey	SH	18-12-10	SCALE	SHEET SIZE
Design				
Drawn	SH	28-02-11	1:100	A3
Approved				
Rev	SL	23.05.14		

8095 APPENDIX PLAN.lcd

Surveyors Ref. No: 8095
Series
Sheet B

FNDC CONSENT CONDITIONS - ENVIRONMENT COURT CONSENT ORDER - 2002

FOR COPY OF ORIGINAL CONSENT - REFER APPENDIX 5

A. That pursuant to section 105 and section 104 of the Resource Managememt Act 1991, the Far North District Council grants its consent to application number RC 2000812 by DC Schmuck for the following activities and structures on land known as Doug's Opua Boatyal'd (See 2 SO 24139, PtSec 1 SO 16553, Sec 3 SO 46155 Blk XXXII Town of Opua:

1) a (i)	A commercial marine slipway including a turntable and all of its integral parts, fixtures, supporting members, attachments and utilities
a (ii)	A boatyard and a paint cleaning station.
a (iii)	A boat building shed
a (iv)	An office
b (i)	A Stormwater Containment System (CSW) including all tanks, pipes, cables, traps, filters, and utilities.
b (ii)	A Discharge Containment System (CTS) including all tanks, pipes, cables, traps, filters and utilities.
c	To reconstruct and concrete the slipway and boatyard including the replacement of existing tramway rails.

B. That pursuant to section 105 and section 104 of the Resource Management Act 1991, the Far North District Council grants its consent in part to application number RC 2000812 by DC Schmuck for the following activities and structures on the Esplanade Reserve (Sec 1, Sec 2, Sec 3 & Sec 4 as shown on SO 68634):

2) a (i)	A commercial marine slipway including a turntable and all of its integral parts, fixtures, supporting members, attachments and utilities, and non-permeable surfaces
a (iv)	A concrete wash down area with an associated discharge containment system as shown on the attached plan and to be located 10 metres above m.h.w.s.
a (v)	A Stormwater and conduit drain
a (vi)	Security light pole and associated utilities for power and water.
a (vii)	Safety signage
b (x)	Wharf abutment
a (xii)	Existing wooden and stone retaining walls, where these do no otherwise lie in the Coastal Marine Area.

b To reconstruct the slipway between the boatyard property and m.h.w.s. and to concrete that part the slipway situated above a line 10 metres from m. h.w.s.

c To carry out the activity of washing down of boats prior to the boats being moved to the boatyard for repairs or maintenance or being returned to the water, provided however that repairs and maintenance may be carried out on the reserve only in accordance with 'condition 8.

Subject to the following conditions:

That, except as otherwise required to be changed by the conditions that follow, the application shall proceed generally in accordance with that shown on Northland Regional ɔuncil plan No 3231a.

2) That all necessary plumbing, drainage and building consents shall be obtained prior to the commencement of site works.

3) That the Discharge Containment System and the Stormwater Containment System shall be located as far as is practicable within the Consent Holder's site with these arrangements being to the satisfaction of the District Council's Resource Consent Manager.

4) Except as provided in condition 8 that no materials, tools or other items shall be placed or left on the Esplanade Reserve except as may be necessary for the passage of boats on the slipway and only whilst those activities are being carried out.
5) The Consent Holder shall provide to the Resource Consents Manager of the Council a parking plan showing 4 onsite car parking spaces which shall be in accordance with the standards specified in the District Plan. The carparking spaces shall be formed and marked in accordance with the plan, as approved-by the Resource Consents Manager, no later than 3 months after the date of this consent.

6) All safety signs and security lighting shall be installed prior to the consent being given effect to. This shall be arranged to the satisfaction of the District Council Resource Consents Manager and shall include conferring with the-Kawakawa Community Board to ensure the signs and lightings are appropriately located in the best interests of the public.

7) That appropriate signage shall be located at the entrance to the property indicating parking for the use of the boatyard facilities. Such signage shall be located in consultation with the District Council's Roading Asset Manager and be to the satisfaction of the District Council's Resource Consent Manager.

8) Except as provided herein any repair or maintenance work on vessels shall be undertaken within the Consent Holder's site. Vessels may be washed down within that area of the Esplanade Reserve marked "A" on the attached plan. Any vessel which by virtue of its length or configuration is unable to be moved so that it is entirely within the Consent Holder's site may be repaired or maintained on that part of the Esplanade Reserve marked "A" on the attached plan. That part of the Esplanade Reserve marked "B" on the attached plan may be used for the purposes of permitting the repair or maintenance of any vessel standing on the southern branch of the slipway marked "C" on the attached plan. Notwithstanding condition 12 the Council may review condition 8 one year after the date of this consent if requisite approvals under the Reserves Act 1977 have not been received for use of Area "A" and Area "B".

9) Except as provided in this consent no vessel shall be left on the slipway within the Esplanade Reserve. All relevant safety requirements shall be adhered to at all times. The only permitted closure of the Esplanade Reserve is for safety reasons during vessel haulage. No more of the Esplanade Reserve shall be closed than is absolutely necessary.

10) The hours of operation for all outdoor activities associated with the boatyard, with the exception of haulage, shall be limited to 0700 - 2000 hours Monday to Friday and 0800 - 2000 hours Saturday, Sunday and Public Holidays.

11) All earthworks material, which is surplus to the development requirements, shall be secured so that siltation and erosion does not occur, or removed from the site.

12) The District Council reserves the right, pursuant to Section 128 of the Act, to review the conditions herein should it decide there is evidence that the activity creates an adverse effect not currently mitigated through conditions of consent. Such a review shall occur one year after the issue of this decision and every two years thereafter.

13) During periods when that part of the slipway through the Esplanade Reserve area is being used for the washing down of boats, the Consent Holder shall erect screens or ·plement similar measures to effectively contain all contaminants within the washdown perimeter. Screening shall be arranged at the Consent Holder's expense and be to the tisfaction of the District Council's Resource Consent Manager.

14) All activities shall be conducted so as to ensure that noise from the site shall not exceed the following noise limits as measured at or within the boundary of any site in the zone or the residential Zone, or at or within the notional boundary of any dwelling within a rural or coastal zone.

Time period Noise Limit
0700 hrs to 2200 hrs 50 dBA LIO
2200 hrs to 0700 hrs the following day 45 dBA L10 and
65 dBA Lmax

Note: The notional boundary is defined in NZS 6802:1991 Assessment of Environmental Sound as a line 20m from any part of any dwelling) or the legal boundary where this is closer to the dwelling.

NOISE MEASUREMENT AND ASSESSMENT
Sound levels shall be measured in accordance with New Zealand Standard NZS
6801 :1991 Measurement of Sound and assessed in accordance with NZS 6802:1991
Assessment of Environmental Sound.

15) The Consent Holder shall submit a Management Plan to the Far North District Council, for approval, within three months of the date of commencement of these consents. The Management Plan shall cover all aspects of:
a) The operation and maintenance of the boat washdown area
b) Contingency measures for unforeseen or emergency situations. The operation and maintenance of the above systems, and the boatyard operations shall be carried out in accordance with the approved Management Plan.

c)The need to minimise effects on the public use of the walking track and the Esplanade Reserve.

C) That pursuant to section 105 and section 104 of the Resource Management Act 1991, the Far North District Council refuses its consent in part to application number RC 2000812 by DC Schmuck for the following activities and structures on the Esplanade Reserve (See 1, Sec 2, See 3 & See 4 as shown on SO 68634):

2) a (ii)	A Stormwater Containment System (CSW) including all tanks, pipes, cables, traps, filters, and utilities.
a (iii)	A Discharge Containment System (CTS) including all tanks, pipes, cables, traps, filters and utilities.
a (iv)	Use of the concrete slipway for boat repair and maintenance.
a (viii)	Existing dinghy racks
(new) xiii	Existing south dinghy ramp.

The District Council will prepare a management plan for the Esplanade Reserve.

ATTACHMENT "A"

Belcher Street

(20.12)

Public Road

Sec 3
SO 46155

Sec 1
SO 68634

Crown Land

M.H.W.S. (C.M.A. boundary) fixed from field measurements and observations on 02/08/2002

* APPROX. MIXING ZONE BOUNDARIES

Sec 2
SO 24139

Pt Sec 1
SO 16553

Peg Z

88°16' 19.28

Existing Wharf

PENTON

BACKGROUND WATER QUALITY TEST SITE

Existing Building

Turn Table

SO 68634

Slipway

349°22'

13.45

91°44' 21.40

Coastal Walkway

Harbour Endowment
DP 18044

Bay of Islands Harbour

BLK XXXII
Town of Opua

Richardson Street

SEC 3
SO 68634

SEC 4
SO 68634

(2012 & over)

* MIXING ZONE/STATE OF TIDE

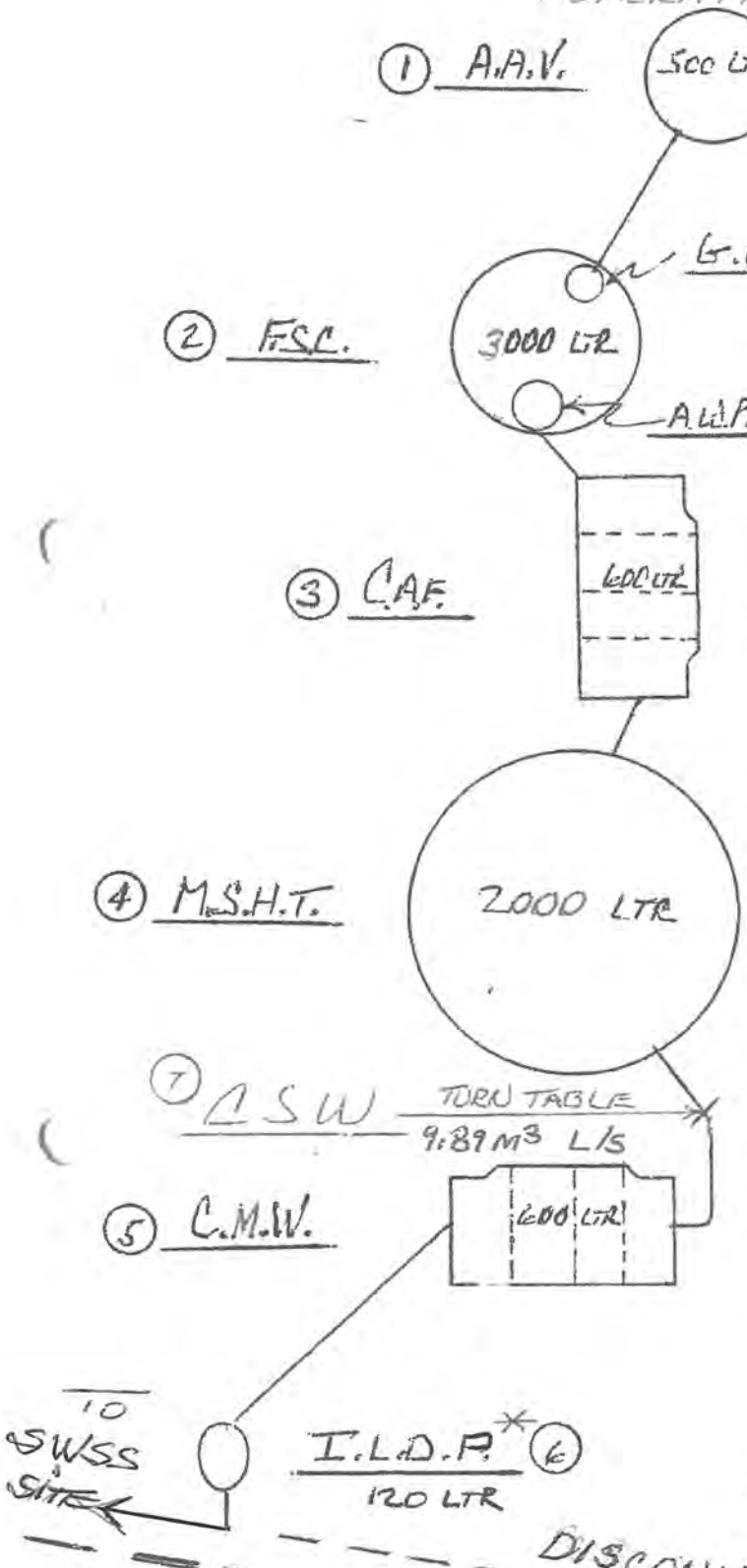
* APPROX. 1/2 OF MAIN CATCHMENT AREA & STORMWATER CONTROL

* APPROX. 150m³ WASHED CATCHMENT AREA

LAND DISTRICT: NORTH AUCKLAND SURVEY BLK & DIST: V RUSSELL NZMS Q 05 SHEET No. 03.11	Composite Plan of Doug's Boatyard Showing 2002 CMA Boundary in Relation to Section Boundaries and Occupation	LOCAL AUTHORITY: Far North District Surveyed by Williams & King, Paihia Scale 1 : 250 Date Nov 2005

ATTACHMENT "A" (1)

DOUG'S OPUA BOATYARD CONTAINMENT & TREATMENT SYSTEMS (OPERATIONAL)



C.T.S.

GLOSSARY:

(1) AQUALIFTIC ANTISIPHON VESSEL

(2) FLOCCULATING SETTLEMENT CHAMBER.
- GRAVITY FLOW RESTRICTIVE REGULATOR.
- AMBIENT WATER PICK-UP FRATISTAT.

(3) COMPARTMENTED AGGREGATE FILTER.

(4) MAIN SETTLEMENT HOLDING TANK.

(5) COMPARTMENTED MIXING WEIR.

(6) IN LINE DISCHARGE PUMP. OR (~~DISCHARGE TO CMA~~) (DISCHARGE TO SWSS)
* MIXED MEDIA (SAND/METAL, CHARCOAL, WOOL BAT)

(7) CONTAINMENT STORM WATER

DOUG'S OPUA BOATYARD
1 RICHARDSON STREET
OPUA 0200
B.O.I. Ph/Fax (09) 402 7055
GST No. 62-348-089

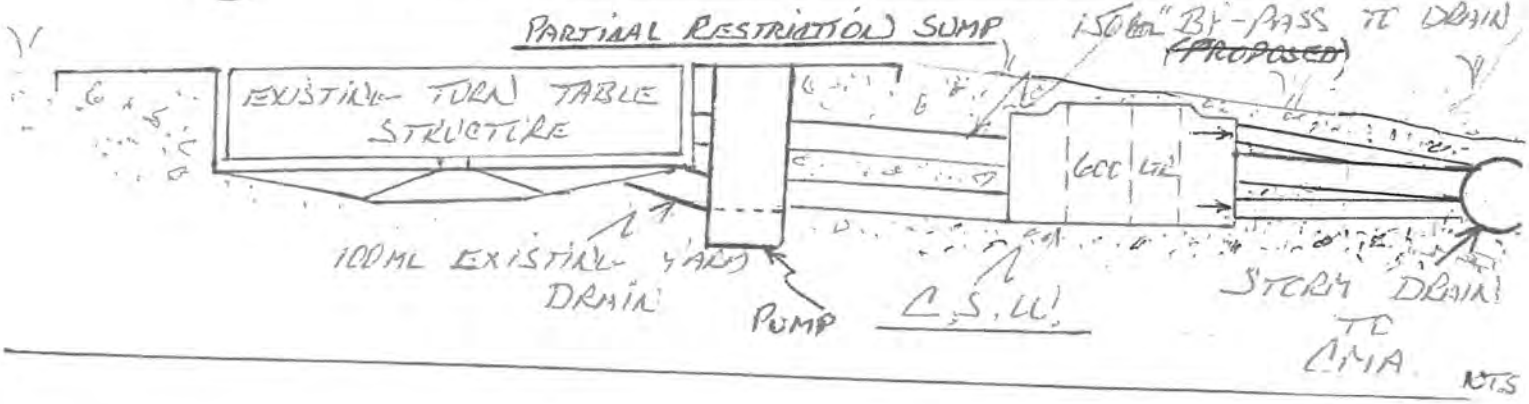
REVISED: 23 SEPT. 2017

NTS

DOUG'S OPUA BOATYARD ATTACHMENT "A" (2)

EXISTING STORM WATER & BY PASS SYSTEM ~~(PROPOSED)~~ (C.S.W.)

(A) TURN-TABLE COLLECTOR WELLS / SUMP



DOUG'S OPUA BOATYARD
1 RICHARDSON STREET
OPUA 0200
B.O.I. Ph/Fax (09) 402 7055
GST No. 62-348-029

REVISED:

23 SEPT. 2017