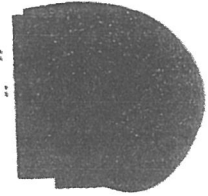


- 9 MAY 2018

FILE No.  
N.R.C.



Please Quote Files: MCO7914, MCO8270,  
ICE409882, ICE410028 &  
ICE409997

BPSH:BPSH

16 February 2004

D C Schmuck  
C/- Post Office  
Opua 0290

Caring for Northland and its Environment

All correspondence to be addressed to:  
Northland Regional Council  
Private Bag 9021  
Whangarei  
New Zealand

Quayside and Robert Street Offices:  
Email: [mailroom@nrc.govt.nz](mailto:mailroom@nrc.govt.nz)  
Website: [www.nrc.govt.nz](http://www.nrc.govt.nz)  
Phone: (09) 438 4639  
Fax: (09) 438 0012

COPY FOR YOUR  
INFORMATION

Dear Doug,

## RESOURCE CONSENT MCO7914: USE OF STRUCTURES AND DISCHARGES TO GROUND

This letter refers to the above resource consent and several complaints received by the Council regarding the alleged non-compliance of the activities associated with this resource consent. I make the following comments.

### 1. Use of Coastal Structures

Please ensure that the wharf is not used for the permanent mooring of any vessel (permanent as defined by consent), unless the use is associated with the *'repairs and maintenance or survey work which, because of their nature, requires a vessel to be located at the wharf for a longer period'*. Please note that if vessels are found to be permanently moored to the wharf the Council may request that you provide evidence to demonstrate that this use is associated with repairs and maintenance or survey work.

Please ensure that the floating pontoon is only used for the casual berthing of craft. I note that the term casual is not defined in the consent, and that this is therefore open to interpretation. However, I note that as long as the casual berthing of craft is not interfering with the reasonable public access through the occupancy area and the reasonable public use of the structures, then the casual berthing of vessels is just that (i.e. casual and not of a defined period of time).

I note that your consent also provides for the use of the above structures for *'charter in conjunction with the boatyard office'*. I wish to make it clear that whilst the usage requirements relating to the permanent mooring and casual berthing of craft do not restrict you from chartering, any chartering must be done in accordance with the above usage requirements.

### 2. Discharges To Ground

I refer to the Memorandum of the Environment Court dated 21 December 2001. Point 6 of this Memorandum stated, in part, that *'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.* With regard to the consents granted by the Northland Regional Council, please ensure that no further discharge of contaminants are made to the grounds of the esplanade reserve from the washing and scraping of vessels until such time as an easement has been obtained for this purpose.

To achieve this it may be necessary to clean the portion of the vessel above the turntable and then turn the vessel on the turntable to clean the remaining portion above the turntable sump. This will allow the discharge to be collected by the sump within the turntable. I note that Calum Bonnington has discussed this with you in the past (refer attached letter).

Please contact the undersigned if you wish to discuss any of the above.

Yours sincerely

Bruce Howse  
Coastal Monitoring – Team Leader

Please Quote File: Inc 6378

CHB:CHB

7 August 2001

Mike Rashbrooke  
Post Office  
Opuia

COPY FOR YOUR  
INFORMATION

Dear Mr Rashbrooke

**INCIDENT 6378 -DOUGS OPUA BOATYARD**

You reported an incident involving Doug's Opuia Boatyard to the Northland Regional Council Environmental Hotline on the evening of August 2<sup>nd</sup>. A written statement to this effect was submitted to our Opuia Office the following day.

I undertook a site visit of Doug's Opuia Boatyard on August 3<sup>rd</sup> to investigate the claim of unauthorised discharges to the CMA. While it was clear that the vessel on the cradle had been water blasted the previous day, I saw no evidence of any direct discharge to the CMA. There was also no evidence (paint flecks) of any material having been washed down the gravel slipway and into the CMA. Neither was there any evidence of this having occurred recently during periods of high intensity rainfall.

As the stem of vessels can extend beyond the turntable, some of this material is not being collected by the sump within the turntable. Paint flecks that have been washed off boats being cleaned on the slipway that have fallen below the turntable and therefore not collected by the sump appear to remain on the upper portion of the slipway, and do not make their way into the CMA.

However, I have discussed with Mr Schmuck a change to the cleaning procedures that he uses, and he will now clean the portion of the vessel above the turntable and then turn the vessel on the turntable to clean the remaining portion above the turntable sump. This will allow the discharge to be collected by the sump within the turntable.

Yours faithfully

Calum Bonnington  
Environmental Monitoring Officer -Coastal

~~Elle McClintock~~,  
Monitoring Officer,  
Northland Regional Council,  
Opua Office,  
Unit 10, Opua Marina Industrial Park,  
Opua 0200.

Mike Rashbrooke,  
5A English Bay Road,  
Opua 0200,  
Bay Of Islands.

RE: CON2006791410 (10-15)

09-02-10

1

Dear ~~Elle~~,

This is to confirm the content and outcome of our discussion this morning regarding the interpretation of some NRC consent conditions as apply to the operation of 'Doug's Boatyard', Opua. The consent conditions under discussion were parts of CON2006791410 (10-15). I had left a message for you last week with Elle McClintock ( Opua office receptionist) asking you to call me for a discussion because I had given verbal information and made some verbal complaints, Oct.-Nov. last year, about what appeared to be, on the face of it, breaches of some of those conditions.

I had made first contact with you at your office early December, when you assured me that drop cloths are not required for any of the sanding, scraping, and spraying activities that had occurred over the period in question; that these activities were additionally allowed to be conducted on or over the reserve where it was covered by an impervious surface, and that you would not be responding to any further complaints from me.

When I attempted, early December, to engage you in a discussion about the interpretation of the relevant consent conditions, explaining that I was ~~the only~~ public submitter at the hearing in 2007 that renewed and modified them, you stopped me short and stated that you were ISO highly qualified as a monitoring officer, and were a better judge of all matters involved with my concerns and information.

Since that time, I have provided no further information or complaints. I have been intending to contact you to see if we were looking at the same consent, and if so, to discuss how and why we appear to have such different interpretations of it.

However, a bigger issue arose, being the boatyard owner's application under dubious circumstances to have Parliament grant him some industrial 'easements', which the Reserves Act does not allow, and which would enable him to actually give effect to the relevant RCs as apply to any industrial boatyard work on or over the reserve. As I believe I have conveyed to you, these RCs are presently not able to be exercised until such time as such easements are obtained, as formally acknowledged by all parties to the relevant Consent Order, which include the boatyard owner, the NRC, and FNDC.

As I mentioned today, yet another issue has arisen and made our having this discussion a matter of some urgency. That is an application for a restraining order against me by the boatyard owner with requested special conditions including that I cannot take any photos of boatyard activities or make any associated complaints to the FNDC or NRC. It would seem to be based in part on a contention that my information and complaints, Oct-Nov, have been without substance, and/or vexatious.

#### SOME BACKGROUND.

I have made no relevant complaints to the FNDC since 2005. I have, over the past year or so, made useful informal observations to your predecessor at the Opua Office, the late Mat Kearney, who used to act on them and informed me several times that he had instructed the boatyard owner to only wash down and paint boats over the boatyard turntable, not, as sometimes done, partly or fully over the reserve.

I was able casually to observe this compliance myself. For a period of time the boatyard owner would clean and paint vessels only on the turntable, and additionally turn the vessels North – South or parallel to his boundary with the reserve and waterblast the side facing his property, turning the boat 180 degrees to clean the other side. This process resulted in all contaminants being collected and contained in the turntable sump for treatment. I gathered some of this compliance was effected without prompting from Mat, and it seemed the boatyard owner was taking on board the relevant consent conditions. Then Mat died, and some of the previous apparent non-compliance began to occur again, with work on or over reserve.

## OUR DISCUSSION.

Having not heard from you regarding my request for a constructive discussion, I decided to drop by your office this morning on my walk, and was pleased you were able to make some time available. Here is how I recall our discussion went:

You duly accessed the relevant consent. I pointed to the bottom of the first page, under (10), point 2 :

“The boat washwater containment system, and CTS treatment system shall be constructed and be fully operational in general accordance with the details provided in the application, by no later than 31 March 2009.”

I asked you initially what you thought about this, and you replied initially that you thought it was fine. I asked if this washwater containment system was completed and you replied that it was.

I then referred you to the accompanying plan of the boatyard, Plan No 3231c. I pointed to the hatched area and drew to your attention the written description of this area as “Concreted Area to width of turntable”

I asked if this was constructed and in place. You replied that you were “satisfied” that all contaminants were contained. I asked again if the concrete washdown area as applied for had been constructed. You repeated your assurance. I commented that it couldn’t be constructed because the boatyard owner couldn’t obtain the necessary industrial ‘easements’ to allow him to do so. That is one of the reasons, I maintained, he should not have been conducting industrial activities on reserve. I pointed out that the concrete washdown and containment area had not been constructed, and the relevant consent issued explicitly on the basis that it would be constructed. . “by no later than 31 March 2009”. . would therefore presumably be void, and anyway had expired. Your reply was that your only concern was the containment of contaminants. I suggested that that is precisely what the concrete washdown pad was intended for, and why it was explicitly required for, or as part of, any exercise of the relevant consent to conduct that activity in that particular area, on public land, subject to the requirement to first obtain relevant industrial ‘easements’.

You said “Doesn’t matter. The impermeable surface is in place between the slipway rails. I am satisfied that all contaminants are contained on the drop sheet.” I pointed out that the plastic surface between the slipway rails does not contain all contaminants, as a good deal of cleanings, scrapings and spraydrift from conducting those activities on or over the reserve in that position fall out each side of the rails where they are not contained. You replied that you had seen no evidence of that. I offered you some photos to demonstrate my contention. You declined to look at them.

I argued that the plastic film between the rails was not a ‘drop sheet’ as such, as it was nailed down semi permanently, while a ‘drop sheet’ normally referred to a loose segment of cloth of some kind, as indicated by the descriptions and requirements under ‘(13) DISCHARGE TO GROUND’ 15 (a) to (e), where a ‘permanent’ drop sheet would not be practical. We then moved on to discuss those conditions.

I pointed out that ‘drop sheets’ were specified, 15 (a) to. . “be used to collect materials that arise from boat maintenance activities within those areas of the boatyard where the yard surface is pervious (ie metallised areas, grassed areas etc.)”, and that I had seen industrial activity being conducted on those surfaces on the South-East rail spur without any sign of drop sheets. This led to the assertion from you, that drop sheets were not important or relevant; the issue was whether you could ‘see any evidence’ of contamination. You paraphrased your earlier comment: “I am satisfied that there is no contamination of boatyard surfaces”, and asserted that because the metallised work areas are pervious or permeable (we used both terms) that they would either absorb contaminants, or convey them to the turntable sump.

I found this concept a bit odd, and asked why the hearing committee, who ruled on the application to which I was a submitter, decided to clearly specify the requirement for drop sheets? You replied that the important issue was not the use of drop sheets, but your own observation as to whether there was any contamination. My raising the difficulty of 'seeing' particulates made no apparent impression on you, nor did my observation that contaminants would be flushed from the S-E rail spur directly onto reserve.

I asked if you would be prepared to look at photos showing sanding, scraping and spraying activities being conducted without dropsheets. You said you would not, as drop sheets were not the issue.

I raised the matter that 15 (a) and (d) prescribe drop sheets specifically in respect of "the yard" surfaces. While 15 (b) and (c) refer to containing or collecting materials without specific reference to "the yard", I suggested that (e) removes any ambiguity regarding use of the reserve land by stating as follows: "Water blasting or washing of vessel hulls shall only take place over impervious yard surfaces (ie. the turntable) which are able to collect wastewater for processing via the wastewater treatment system".

I feel bound to express my continuing concern about your response. You said: "The turntable is only given as an example of an impervious surface The drop sheet between the slipway rails is also an impervious surface, which is why those activities (waterblasting or washing of vessel hulls) are allowed on the reserve over the drop sheet." I should like you now to give further consideration to the following:

If the above reference had been "eg." which means 'for example', then I would allow that your position on this matter could be regarded as having a tenuous thread of support. However, it does say "ie." which I understand to be the abbreviation of the latin 'id est', which means 'that is to say'. So, this condition regarding 'waterblasting or washing of vessel hulls' appears to be directed intentionally and specifically at confining that activity to the turntable. When expanded it says: . . . "shall only take place over impervious yard surfaces, *that is*, the turntable. ." I suggest the reason for the "ie." is that at present the only impervious boatyard surface, besides the concrete parking area, is in fact the turntable.

I suggest, if there was any remaining doubt that this consent does not intend to allow the said industrial activities to be conducted on or over the reserve, one would only need to observe the prescriptive use of the word "yard". It does not say "impervious surfaces", it says "impervious *yard* surfaces". That means *boatyard* surfaces. The 'boatyard' refers to the private land. Please do give this some thought.

The boatyard owner has had opportunity since the NRC first notified the boatyard about RMA compliance requirements around 1994-5, to construct a concrete washdown area on private boatyard land. I have submitted on a number of occasions how this can very usefully and effectively be sited between the boatshed and the hill to its North on boatyard property. It would have a number of particular benefits for containment purposes (noise, dust, spray, isolation from other vessels, in an area designed by the previous owner to drain into the turntable collection sump ) and cost a fraction of the money the present owner has spent on trying instead to expand his business and those industrial activities onto the esplanade reserve.

A motivation, but not the reason, for my information and complaint to the NRC, is that the boatyard owner keeps delaying to make these changes necessitated by the introduction of the RMA environmental standards since the early 90s, while pursuing his desire to expand his business onto the reserve. His choices have created this situation. I suggest any problems he may experience from quite apparently being restricted at present to waterblasting etc. boats only over the turntable, are problems of his own making. He has alternative choices and solutions.



I have no issue with his exercising his democratic rights to attempt to expand his business onto esplanade reserve, as he should have no issue with my exercising mine, with others, submitting in opposition to these attempts, successfully to date. I have no issue with his choosing to remain in this awkward interim situation where he is restricted to waterblasting etc. on the turntable. But I do have an issue when, with his having made these choices, he attempts in the meantime to have it both ways by trying to exercise the industrial rights he seeks on and over esplanade reserve. The required 'easements' have been declined to be granted three times, and any relevant resource consent as regards such use of reserve does not have effect without the 'easements'. Further, the activity in question appears not to be allowed even by the consent conditions under discussion. Under these circumstances, I suggest, to allow this activity to continue would make an ass of the law and process, and not reflect well on the fidelity of NRC monitoring.

It would also make more of a mess of our environment and our esplanade reserve. The reason for my information and complaint to the NRC, Oct-Nov, is that the consent conditions they have duly arrived at pursuant to their statutory duty to protect etc. our environment, appear to have been intermittently breached by the boatyard owner, or his customers under his guidance or advice. At least, that is my observation. Your response, early December, indicated to me the need for and usefulness of our subsequently exploring the interpretations of consent conditions, as we have now done.

Around the end of our discussion, I expressed my disappointment that our interpretations of relevant consent conditions were divergent. I raised my concern that as Mr Schuck was making the application for a restraining order, this issue could arise in Court, and we would then necessarily be in conflict on these matters before a judge. I suggested that, because we should be on the 'same team', this would be regrettable, and that I should have to contest your present interpretations. I said my concern was to prevent that if at all possible; it was not a situation I wanted. I invited you to think about the consent conditions, and suggested we could meet in a few days time to discuss them further after some reflection.

You declined further reflection or discussion, and stated that you were not only ISO qualified as a monitoring officer at a high level, but that you were "more qualified" than most other monitoring officers in the Far North.

I asked again if you would look at any photos that illustrate my concerns and you said "No, because they are taken illegally." I asked you what you meant, and you replied that I was. "prohibited from taking photos by a trespass notice." I responded that this is not the case, but that failed to have any effect on your position regarding looking at some photos, which I emphasised, was not for any other purpose than to illustrate that there is a problem that requires a more structured approach to address it. You stated that your regular unscheduled inspections of the boatyard showed it is always complying with relevant consents.

I said I would need to take this discussion further, and requested the name of your supervisor or the person you report to. You wrote down the name 'Tess Dacre' on a piece of paper and gave it to me.

Because of the circumstances, and the need for a unified NRC interpretation of the relevant consent conditions, and response about the matters we discussed, I am spreading this matter of interpretation wider. Cr Lorraine Hill is a local person with some knowledge of the history of the boatyard issues. Cr Mark Farnsworth chaired the hearing, took note of constructive submissions, and participated in devising the consent conditions under discussion. Tess Dacre will naturally have a professional interest in this matter, as also will Ken Paterson as the CEO. He may also be in a position to receive and balance input from the elected Councillors and his professional monitoring staff. I am sure you will agree it is important we get this right.

I emphasise that what I have written here is as accurate as I can recall. In case you have a different recollection of what was said, or feel this account is not balanced, please clarify this immediately. We need to avoid any further confusion in this complicated and drawn out matter.

My only purpose in following this path is to clearly establish what the people who devised the subject conditions intended to be meant by them; whether and to what extent that is different from the conclusions a reasonable person would arrive at, and how a concerned member of the public can assist, on occasion, pursuant to RMA Sections 84 and 35, to bring about the desired level of compliance, and enhanced environmental outcomes.

I request a reply as a matter of some urgency, after these matters have been discussed at all levels, and the NRC response endorsed by the recipients of this letter.

Thankyou for your time today.

Kind Regards,

Mike Rashbrooke.

cc Tess Dacre NRC Monitoring Department.  
Ken Paterson NRC CEO.  
Lorraine Hill NRC Councillor  
Mark Farnsworth, Chair, NRC.



Ken Paterson,  
Chief Executive Officer,  
Northland Regional Council,  
Private Bag 9021,  
Whangarei.

Mike Rashbrooke,  
5A English Bay Road,  
Opua 0200,  
Bay Of Islands.

27-05-10

1

RE: CON20060791410 (10-15) 'Doug's Boatyard', Opua.

Dear Sir,

I refer to my letter of February 9, addressed to ~~Eva Harris~~ and copied to yourself, Cr Mark Farnsworth, Cr Lorraine Hill, and to Tess Dacre. I refer also to two telephone calls to your office in April requesting the reply from the NRC, and to having received assurances from your staff that they would raise this matter with you.

This letter is to make you aware that I have, after three months, still not received a reply as requested.

I have received a letter, 21 May, from ~~Tess Dacre~~ (copy enclosed) which I am sure you will agree does not engage with the issues I raised, February 9, and does not reply with the reasonable and necessary information I have requested of the NRC regarding the above NRC Consent. Her note does not even apparently refer to the NRC Consent in question. I had not mentioned this in my letter of February 9, but ~~Eva Harris~~ also had difficulty finding the relevant NRC Consent, when I went to discuss the matters with her February 9, and required some guidance to locate it.

My copy of CON20060791410 (10-15) was given me at my request by the late Matthew Kearney, former Opua-based NRC Monitoring officer, with whom I had a constructive relationship regarding these issues. I found him to be a competent, diligent, and conscientious NRC professional, and should like to expect the same from other NRC staff. I consider it to be very important in matters such as this that we, quite literally in this case, 'read from the same page'. I believe my letter of February 9 made comment to same effect.

I do not propose to comment on some of the content of the note from Tess Dacre until I have received, as a matter of priority and urgency, the reasonable and necessary information requested February 9.

To make this as clear as I can, I have requested to have, in writing, the official NRC position regarding the correct construction or interpretation of the referenced current NRC consent conditions. That is, the quite apparent, very clear, restriction of washdown activities to the private boatyard land, and more specifically to the boatyard turntable which is presently the only useable boatyard 'impervious surface'. The requirement for the use of 'drop sheets' when boatyard cleaning-scraping etc activities are being conducted over any boatyard pervious surfaces is also very clearly stated.

I have conveyed my own informed and reasonable interpretation, February 9, and offered the NRC my reasoning as to the meaning of key words or phrases in the relevant consent conditions. I have provided a copy of the text in question in order to facilitate this query and discussion.

In the event that the official NRC interpretation is at odds with the plain meaning of the document, I should quite reasonably like to understand how and why that is. If, after such explanation I remain concerned, I would be intending to refer this matter to the Environment Court for a Declaratory Ruling. That is why I wrote, February 9: "I request a reply as a matter of some urgency, after these matters have been discussed at all levels, and the NRC response endorsed by the recipients of this letter." The recipients are listed at the end of that letter, and at the beginning of this one.

I suggest some confusion exists on the part of your monitoring staff regarding the slipway being 'boatyard land'. It is not. The slipway is placed on and traverses the Walls Bay esplanade reserve. The slipway is consented to occupy the reserve; the boatyard is not. Some 600mm of the turntable encroaches onto the reserve land, but this has been accepted by all parties to the very many formal processes that have involved the boatyard since the change of ownership in 1994. The easement granted by DoC in 2000 and again in 2007 allows the turntable encroachment as part of the easement for access utilizing the slipway over reserve.

A restoration project of that reserve is presently underway, and community volunteers at working bees have been observing boats being washed down partly and fully on reserve. This matter needs urgently to be resolved.

I raise these matters with the NRC in the context of long involvement with boatyard issues since the business was established by my stepfather in 1966. I used to work there during university vacations in the early 70s. I was also a submitter to the process that resulted in the consent conditions in question. I believe it was my input regarding the necessity for a field drain along the boatyard Eastern boundary, to collect and control stormwater run-off and stop the 'flushing' of contaminants onto reserve, that resulted in the alternative solution of the Hearing Committee/ Commissioners of requiring the use of 'drop sheets' as clearly enumerated in the consent conditions under discussion. While I remain of the view that my suggestion was a more effective, efficient, and practical means of achieving the improved environmental outcome, the 'drop sheets' would still be a useful step forward if their stipulated use was actually monitored and enforced by current NRC Monitoring staff. That this monitoring and enforcement is not being done is now a matter of record - Ms Harris has stated that the drop sheets are 'not important'.

The main issue remains the restriction of boatyard washdown activities to the boatyard turntable, such that contaminants are effectively contained. I suggest the error of ~~Ms Harris~~, apart from apparently taking guidance in these matters primarily from the consent holder, was to confuse the slipway over reserve with private boatyard land. I tried to share relevant information with her, but she became defensive and dismissive. ~~Tess Dacre~~ appears to have followed suit. I am sure you will see the significance of this error, and its effect on their interpretation of relevant, clearly spelled-out, consent conditions restricting that activity to the private boatyard property. At least, I do hope so.

I should like to suggest that these are serious and urgent matters that require constructive and urgent resolution. I suggest that RMA sections 35 and 84 may provide some context for you in accepting that my request is both reasonable and appropriate. It is also urgent.

I look forward to your acknowledgement and full reply at the earliest.

Kind Regards,  
Mike Rashbrooke.

cc Cr Mark Farnsworth, Chair, NRC.  
Cr Lorraine Hill, Councillor, NRC.

Enclosed: Copy of relevant parts of CON 2006791410 (10-15), same as in letter of February 9.

Copy of note dated 21 May 2010, from Tess Dacre, NRC Monitoring Programme Manager –  
Water & Wastes.

**DOUG'S OPUA BOATYARD (D C SCHMUCK), 1 RICHARDSON STREET, OPUA 0200**

To carry out the following activities associated with the operation of a boatyard at Richardson Street, Opuā:

- (10) To discharge treated wash water to the coastal marine area at or about location co-ordinates 1701520E 6091850N.
- (11) To discharge contaminants to air from marine vessel construction, sale, repair, maintenance and associated activities on Sec 2 SO 24139, Pt Sec 1 SO 16553, Sec 3 SO 46155, Sec 1 – 4 SO 63634, Blk V Russell SD, at or about location co-ordinates 1701470E 6091840N.
- (12) To discharge contaminants to air in the coastal marine area from marine vessel construction, sale, repair, maintenance and associated activities at or about location co-ordinates 1701520E 6091850N.
- (13) To discharge contaminants to ground as a result of boat maintenance activities on Sec 2 SO 24139, Pt Sec 1 SO 16553, Sec 3 SO 46155, Secs 2 and 3 SO 63634, Blk V Russell SD at or about location co-ordinates 1701470E 6091840N.
- (14) To discharge stormwater to an unnamed tributary of the Veronica Channel on Sec 3 SO 46155 Blk V Russell SD at or about location co-ordinates 1701470E 6091840N.
- (15) To discharge stormwater to the coastal marine area at or about map reference location co-ordinates 1701520E 6091850N.

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

Subject to the following conditions:

**(10) DISCHARGE OF TREATED WASH WATER TO THE COASTAL MARINE AREA**

- 1 The total quantity discharged in the exercise of this consent shall not exceed one cubic metre per day.
- 2 The boat wash water containment system, and CTS treatment system shall be constructed and be fully operational in general accordance with the details provided in the application, by no later than 31 March 2009.

- 12 Dry abrasive blasting operations shall only be carried out when the object's size, shape or weight prevents it being practicably transported and blasted in an abrasive blasting booth for which appropriate resource consents are held.
- 13 All items to be dry blasted outside of a booth shall be screened by means of covers, tarpaulins, cladding, or other means, as completely as is practicable, to contain dust emissions and depositions, and to restrict the spread of all blasting debris.
- 14 All abrasive used for abrasive blasting shall contain less than 2% by dry weight free silica.

**(13) DISCHARGE TO GROUND**

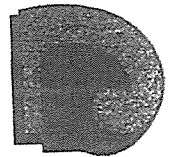
- 15 The Consent Holder shall undertake such measures as are necessary to minimise the discharge of contaminants to ground within the boatyard site and adjacent Esplanade Reserve. Notwithstanding the generality of the foregoing, the following measures shall be carried out:

- (a) Drop sheets shall be used to collect materials that arise from boat maintenance activities within those areas of the boatyard where the yard surface is pervious (ie. metallised areas, grassed areas etc).
- (b) Maintenance activities shall not take place under conditions that would preclude the use of drop sheets from effectively containing materials that have arisen from boat maintenance activities.

*Advice Note: Such conditions may include wind or rain that prevents materials from settling and/or remaining within the confines of the drop sheets.*

- (c) All materials accumulating on drop sheets shall be removed daily or upon the completion of maintenance activities, whichever occurs first. The collected materials shall be disposed of at an authorised hazardous waste treatment or disposal facility.
- (d) Any materials arising from boat maintenance activities that escape from drop sheets or impervious yard surfaces shall be removed from the yard surface and collected for disposal to an authorised hazardous waste treatment or disposal facility.
- (e) Water blasting or washing of vessel hulls shall only take place over impervious yard surfaces (ie. the turntable) which are able to collect wastewater for processing via the wastewater treatment system.

All measures shall be incorporated into the Management Plan required in accordance with the requirements of Condition 21 (below).



Please Quote File: MCO791401  
TED:PEM

Te Kaitiaki Whākehe o Te Tai Tokerau

Private Bag 9021  
36 Water Street  
WHANGAREI 0148  
New Zealand

21 May 2010

Mike Rashbrooke  
5A English Bay Road  
Opua 0200

Phone: (09) 438 4639  
Toll-free: 0800 002 504  
Environmental Hotline:  
0800 504 639  
Fax: (09) 438 0012  
Email: mailroom@nrc.govt.nz

[www.nrc.govt.nz](http://www.nrc.govt.nz)

Dear Sir

**MCO791401: D C SCHMUCK - WHARF AND SLIPWAY**

In response to your letter received on 15 February 2010:

- Northland Regional Council (NRC) has statutory obligation under the Resource Management Act 1991 to issue and monitor resource consents.
- Eva Harris has delegated authority from the NRC to monitor and enforce the conditions of the above consent. It is Ms Harris' reasonable opinion to determine if a non-compliance has occurred.
- NRC officers will continue to routinely monitor this consent and deal with any non-compliances as required.
- NRC has no authority under the Reserves Act 1977.

Yours faithfully

Tess Dacre  
Monitoring Programme Manager – Water & Wastes

MCO791401\_169478

Malcolm Nicholson,  
Chief Executive Officer,  
Northland Regional Council,  
Private Bag 9021,  
Whangarei.

Mike Rashbrooke,  
5A English Bay Road,  
Opua 0200,  
Bay Of Islands.

11-11-12

1

**RE: 1. Unlawful boatyard activities on Walls Bay esplanade reserve, Opua, Bay of Islands.  
2. Unlawful earthworks and installations on Walls Bay esplanade reserve, Opua, Bay of Islands.  
3. Conduct of NRC Monitoring Officer ~~Mike Nagar~~.**

Dear Sir,

I raise these three matters directly with you as CEO of the NRC, and with Craig Brown as representative of Governance of NRC, **because they are connected**, and because Items **1** and **3** above, were raised with your predecessor, Ken Patterson, who failed to engage-with and resolve them, while Item **2** involves a recent event.

I had dealings with your monitoring officer, ~~Mike Nagar~~, in 2010. This arose from complaints to NRC that their Monitoring department was **not** enforcing clear conditions of an NRC consent issued to Dougs Boatyard, Opua. Please find enclosed as **Attachment 1**, a copy of relevant sections of the relevant NRC consent, CON20060791410 (10-15).

These express written conditions include:

- ~ **the use of drop sheets** when boats are being **repaired or maintained** “within those areas of the boatyard where the yard surface is pervious (ie. metallised areas, grassed areas etc)”;
- ~ **the removal**, either daily or upon completion of maintenance activities, whichever occurs first, **of materials accumulating on the drop sheets** (or “yard surfaces”); and, in particular:
- ~ **“Water blasting or the washing of vessel hulls shall only take place over impervious yard surfaces (ie. the turntable) . . .”**

While the use of drop sheets over pervious yard surfaces would certainly improve environmental outcomes and are raised as an issue because this is **expressly required** in respect of vessel repair and maintenance activities on pervious “yard surfaces” by the terms of the consent, it is **the washing/waterblasting etc of vessel hulls** on the boatyard slipway **on reserve** that has been and remains the main issue.

I refer, as **Attachment 2**, a copy of a letter from Bruce Howse to Doug Schmuck, dated 16 February, 2004. This is evidence that under NRC consent conditions prevailing at that time, previous NRC Monitoring Officers Bruce Howse and Callum Bonnington had taken enforcement action in respect of waterblasting and washing of vessel hulls being unlawfully conducted **on the boatyard slipway on reserve**.

The NRC consents (from the FNDC/ NRC Joint Hearing and subsequent Consent Order) issued 31 January 2002, expired in 2006. In 2007 I submitted, along with retired Australian Supreme Court Justice Sir William Kearney, to a notified NRC resource consent process for replacement consents for the boatyard.

Both submitters made the point that relevant Reserves Act easements consented-to by DoC for boatyard uses of reserve authorise boatyard use of the slipway **only for access purposes** (between the sea and boatyard), and that any other boatyard activity conducted on reserve **not** sanctioned or authorised by a Reserves Act easement comprised **an offence or offences** pursuant to section 94 of the Reserves Act.



I refer as **Attachment 3**, a copy of the submission from Sir William Kearney. He was overseas when the Hearing was held, and could not speak to his submission as he had indicated. My own submission made the same point regarding the NRC being unable to 'sanction', by resource consent, activities that would be unlawful under the Reserves Act, or as Sir William put it, "criminal in nature".

The RMA Commissioners who conducted the Hearing in 2007 were Mark Farnsworth and Peter Jenson. They evidently paid good attention to Sir William's submission and advice, because examination of the conditions of CON20060791410 demonstrate their intention **not** to allow any boatyard industrial activities to be conducted **on reserve**. As can be observed, the references in conditions 15(a),(d) and (e) are **specifically and expressly** to "yard surfaces". **Please take good note of these express conditions.**

In late 2009 I raised with then-NRC Monitoring officer, ~~Eva Harris~~, the lack of any boatyard use of dropsheets **as specified** in CON20060791410, let alone the specified removal of accumulated materials from the dropsheets or from "the yard surfaces". **Particularly**, I raised the unlawful unconsented washing, waterblasting, scraping, cleaning and painting of vessel hulls while they remained on the boatyard slipway **on reserve**. (ie: that **not only** washdowns **but also** repairs and maintenance were occurring **on reserve**)

~~Ms Harris~~ insisted that, as the boatyard owner had placed a permanent sheet of plastic between the slipway rails **on reserve**, this plastic sheet fulfilled the 'dropsheet' requirements **specified** for the **boatyard** pervious "**yard surfaces**". She asserted she had the 'discretion' to ignore written requirements for use of dropsheets over the pervious yard surfaces where repairs and maintenance activities are also being conducted.

She refused to accept my evidence that **the reserve was not a "yard surface"**, and that the conduct of washing or maintaining boats **on reserve** comprised **offences** pursuant to the Reserves Act section 94. Just placing the plastic sheeting on reserve without prior Reserves Act authorisation is an offence. I refer as **Attachment 4** a copy of a letter from the late Ted Kyriak, in 2000, detailing the-then current offences being committed on reserve by the boatyard. Attempting to communicate with ~~Ms Harris~~ on any subject was an exercise in frustration. I was appalled equally at her lack of training and lack of comprehension.

I raised this problem with more senior people in the monitoring department of the NRC. They backed ~~Ms Harris~~ all the way, **completely missing** the import of the express consent conditions and **dodging** the issue of their being complicit in encouraging and condoning **offences** pursuant to the Reserves Act, **through their lack of enforcement of these NRC express consent conditions**. I refer to **Attachment 5**, a letter from ~~Tess Daere~~ sent 21 May, 2010, three months after my complaint of 15 February, 2010.

~~Ms Harris~~ eventually went elsewhere and the NRC appointed ~~Mike Nagar~~ to the Opuia monitoring position. The ongoing nature of boatyard non-compliance with the NRC express consent conditions, and offences against the Reserves Act, prompted me to raise these matters again with ~~Mike Nagar~~ later in 2010. To my astonishment, I encountered not only the same problems regarding his comprehension of **express consent conditions**, but, in addition, an extraordinarily unprofessional attitude towards a simple process directed at resolving the matter.

He **refused** to reply to a perfectly reasonable letter intended to establish what exactly is the content of the consent, and what this means as regards the duties of the NRC Monitoring department. I refer **Attachment 6**, a copy of the letter with 11 useful questions, and as **Attachment 7**, Mr ~~Nagar~~'s refusal to reply.

He displayed an equally unprofessional attitude in respect of my request for Official information, then an unpleasant, biased and objectionable attitude towards myself personally. I refer as **Attachment 8**, copies of relevant correspondence regarding my request for official information.

Mr ~~Nagar~~ **did** take on board my observation that the plastic sheeting unlawfully placed (by the boatyard owner) between the slipway rails on reserve did **not** 'contain', as asserted by ~~Ms Harris~~, the effects from washdowns and related activities being unlawfully conducted on the slipway on reserve. However, rather than enforcing the NRC **express consent conditions** restricting this activity to boatyard "yard surfaces" as a lawful (and most practicable) solution to this problem, Mr ~~Nagar~~ decided instead to 'require' the boatyard owner to place **more** plastic sheeting unlawfully on reserve, this time to **each side of** the slipway rails.

I refer as **Attachment 9**, relevant three pages of the DoC Draft Determination, May 2007, being the outcome of the fourth 'easements' application by the boatyard owner. As can be observed, **page 34 under B**, DoC are prepared to grant an easement under the Reserves Act for the concreting of the top half of the slipway. **However**, as can be observed, **page 33 under A, 3**, consent is (again) **declined** for "a concrete washdown area with associated discharge containment systems". . . That is, "the concreting of that part of the slipway" is consented above a line 10 metres above MHWS **only** for improving the slipway and **not for the conduct of activities giving rise to discharges**. If this is not clear enough, it can be observed that easements sought for the "associated discharge containment systems" on reserve are **declined**.

As can be seen by the enclosed communications in 2010 with NRC staff including the former CEO, they have **confused** the contemplated Reserves Act consent to concrete the top of the slipway, with consent for a "washdown" area. Putting their 'reading' to one side, their 'thinking' appears to have been that with this being the case, the plastic sheeting, and its use for 'containing' the effects of washdowns etc on reserve was some kind of 'equivilent'. It wasn't and it isn't, and **no Reserves Act easement exists** for this activity.

It can further be observed from **A 4, 5, and 6, page 33**, that there is **no easement contemplated** in the Draft Determination for the conduct of vessel washdowns, repairs, or maintenance activities **on the slipway on reserve**. All boatyard industrial activities remain restricted to the boatyard private land, as per the original conditions of consent, comprised in CU192 (1971, 1976).

I have evidently failed in my attempts to convey to two of your 'monitoring' officers, and their 'managers', and even the previous NRC Chief Executive Officer, that the terms of NRC CON20060791410 (10-15) **coincide exactly** with the lawful situation as regards offences against the Reserves Act, as clearly intended by the Commissioners who devised it. Under "(13) Discharge to Ground", while there are some generalities which have evidently confused relevant NRC staff, there is **no** NRC express consent for boatyard activities to be conducted anywhere **except** on the "yard surfaces". All such references are to "yard surfaces".

The comprehension problem appears to stem from none of these NRC staff being aware, and none being willing to learn, that **the Walls Bay Esplanade Reserve is not a "yard surface"**.

I had other related matters to deal with (successfully) at the time of experiencing these problems with your monitoring department, and with Mr ~~Nagar~~ in particular. With the recent Government announcement of the impending withdrawal of relevant proposed clauses from the current ROLD bill, the rule of law and due process are expected to be reasserted in connection with boatyard matters. It is in that context that I now request for the NRC Executive and Governance to **either**:

- 1] Advise Mr ~~Nagar~~ urgently to enforce the express conditions of CON20060791410, and issue an Abatement Notice in respect of **any** boatyard work **not** being conducted on or over "yard surfaces" and **not** in accordance with the other written requirements of the consent (ie: dropsheets) ; **or**
- 2] Put in writing their position on this matter for referral to the Parliamentary Commissioner for the Environment and/or the Environment Court for a declaratory ruling.

I now raise the other matter that has prompted this complaint and information to NRC Executive and Governance, listed as **Item 2** at the heading of this letter: the recent unconsented unlawful earthworks and installations on the Walls Bay Esplanade Reserve. I am informed you will have received complaints and details from other local parties concerning these works and the role of the NRC. To avoid replication, I refer, as **Attachment 10**, copies of recent letters from me concerning these matters to FNDC In-House Counsel John Verry and FNDC Mayor Wayne Brown.

My enquiries indicate that the ‘replacement of a culvert’ would be a ‘permitted activity’, which requires no resource consent, although the term ‘resource consent’ had been used by NRC staff spoken with.

However, **there was not previously any ‘culvert’ in place:** the artesian-fed stream ran down the side of the natural bank on public land, under a small wood footbridge constructed in the 1960s, and into the sea. This stream has been there **unmodified** since pre-contact times and was identified by Maori as a source of fresh water for various purposes.

The stream was there **unmodified** when my stepfather established the boatyard from 1966, and has remained **unmodified** on reserve until the present boatyard owner decided he could deny the public access-to and use-of the stream and water on public esplanade reserve land zoned ‘Conservation’.

Further, the boatyard owner decided he could **combine** this stream on reserve with a containment/treatment system on reserve. Your monitoring staff may argue that the only concern of the NRC in this matter is the so-called ‘replacement of culvert’ issue. I suggest that the **entirely new** large pipe installed on/in reserve is **inextricably** involved-with and connected-to the contaminant containment/treatment system also installed **at the same time on reserve:** the stream is removed, the **new pipe** occupies the previous position of the stream, and the boatyard containment/treatment system on reserve is directed into the **new** large pipe.

In addition to the material already provided you, I refer, as **Attachment 11**, a copy of relevant parts of the Consent Order issued 31 January, 2002. You will know that an application was made by the boatyard owner for RMA consent for a contaminant containment/treatment system **on reserve**, and publicly notified, December 2000. This notified application proceeded to a Joint (FNDC/NRC) Resource Consent Hearing in March 2001. After Appeals and Environment Court-conducted Mediation, this part of the **notified application** was formally **declined** consent by FNDC as shown by the terms of the Consent Order.

To compare the NRC response in this case with how they used to function, I refer to February 1996, when the boatyard owner first made resource consent application to try and expand his business onto public land. NRC staff were alert to relevant law and deferred a Hearing of that application pending formal confirmation from FNDC that the relevant necessary ‘existing use rights’ over the public land were in existence. **In this case however**, despite my having provided ~~Mike Nagar~~, in late 2010, with all relevant background information concerning the boatyard (which he has stated he passed on immediately to the boatyard owner), he evidently decided to ‘approve’ these works **without first establishing whether required RMA resource consents and Reserves Act easements had been obtained.**

In connection with these two issues it is my view that Mr ~~Nagar~~ has demonstrated as follows:

- 1] **Incompetence in his ability to read and understand** the express conditions of an NRC resource consent issued to Dougs Boatyard in Walls Bay;
- 2] **Refusal to respond to correspondence** reasonably intended to educate him on the matter; and
- 3] **Refusal to supply relevant information** reasonably requested under the Local Government Meetings and Official Information Act.

- 4] **Incompetence with regard to his statutory duty** to establish the existence of required RMA resource consents and Reserves Act easements prior to 'approving' that part of the same works as come under the responsibilities of the NRC.
- 5] **An unprofessional bias** towards the interests of a private business individual in contrast to his respective statutory duties to enforce express conditions of consent and to establish the existence of necessary statutory consents before 'authorising' unlawful boatyard works on Walls Bay Esplanade Reserve.

I suggest the NRC co-ordinate with the FNDC to organise the reinstatement of the stream on reserve, while the rest of the unlawful works are the responsibility of FNDC to remove and remedy.

I suggest Mr ~~Nagar~~ receive further relevant training, including about the Reserves Act section 48, and that responsibility for monitoring boatyard consent conditions be assigned to another NRC staffmember.

I need to emphasise that CON 20060791410 (10-15) is issued by the NRC. These are the **conditions of consent** which the NRC arrived at by means of a formal publicly-notified RMA Hearing process. This matter is **not** a wrangle about what the NRC should or should not have included as conditions in their consent. It is about what they **did** include as conditions in their consent. It is about what the RMA Commissioners, Crs Peter Jenson and Mark Farnsworth, **intended** the consent to achieve. Subsequent to their recorded Decision, it is about what any **reasonable person would understand** when reading the relevant conditions of consent.

I suggest that your staff (and previous CEO's) interpretation is **at some odds** with what a reasonable person would understand. We can, of course, test this by referral to the general public.

I need to emphasise that the recent works were not merely unconsented by the RMA, but had been **refused** RMA consent as an outcome of a Joint NRC/FNDC Hearing process.

I look forward to a rapid response to these matters raised.

Kind Regards,  
Mike Rashbrooke.

cc Craig Brown, Chairman of elected representatives (Governance), NRC.

Te Kaunihera a rohe o Te Tai Tokerau

Please Quote File: A270086

MAN:DEP

3 December 2012

Mike Rashbrooke  
5A English Bay Road  
Opua 0200

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Dear Mike

**RESOURCE CONSENT CON20060791410 (10-15)**

I refer to your letters dated 11 and 17 November 2012.

My responses to the issues numbered 1 to 3 in the 11 November letter are follows:

**1 [Alleged] Unlawful boatyard activities on Walls Bay Esplanade Reserve**

I note that you have raised many of the matters outlined in the letter in regard to the lawfulness of the activities with the council previously and that council has responded to those matters previously. Nothing in the letter materially changes the council's previous responses.

In short, Resource Consent CON200607914 (13) expressly allows the "discharge of contaminants to ground as a result of boat maintenance activities on Sec 2 SO 24139, Pt Sec 1 SO 16553, Sec 3 SO 46155, Secs 2 and 3 SO 63634 Blk V Russell SD at or about location co-ordinates 1701470E 6091840N" subject to the condition 15(e) numbered "15" ("Condition 15") of Resource Consent CON200607914 (10-15). Washing and water blasting of vessel hulls are typical boat maintenance activities and Secs 2 and 3 SO 63634 Blk V Russell SD form part of the esplanade reserve. These sections of land are marked as "Sec 2" and "Sec 3" on NRC Plan No 3232c that was attached to Resource Consent CON200607914 (10-15). *Ipso facto*, the discharge of contaminants from the washing and water blasting of vessel hulls taking place within Secs 2 and 3 SO 63634 Blk V Russell SD are expressly allowed by Resource Consent CON200607914 (13)/Resource Consent CON200607914 (10-15) and are therefore lawful activities under the Resource Management Act 1991, subject to compliance with Condition 15. In regard to the latter, council officers routinely monitor the boatyard site to check consent compliance and have taken appropriate follow-up action where they have identified any issues of concern or consent non-compliance.

original  
posted  
3/12/12  
JP  
+ copy  
to Liaison



your subsequent correspondence that the response did not meet your expectations.

- It is acknowledged that in his letter to you dated 9 December 2010 that he incorrectly cited section 18(c)(ii) of the Official Information Act 1982 instead of 17(c)(ii) of the Local Government Official Information and Meetings Act 1987 when notifying you that he was unable to provide you with copies of the documents that you requested in your letter (Local Government official information request) dated 26 November 2010. This is considered to be no more than an honest mistake rather than evidence of incompetence. In fact, in responding to your request, Mr ~~Nager~~ consulted staff of the Office of the Ombudsman and Mr Schmuck. This shows that he took a cautious approach to responding to the request to ensure that he was meeting the various legislative requirements.

With respect to your letter dated 17 November 2012, as stated in "2" above, the council does not consider that the recent earthworks and installations that have been carried out in the esplanade reserve are unlawful with respect to the legislation it is responsible for administering. Therefore, the council considers that it has no grounds to take enforcement action requiring the action you seek you letter.

COMBINED NRC / FNUC CONSENT ORDER  
DELETED THIS.

It is appreciated that you have concerns about the use of the esplanade reserve for boat maintenance activities and the recent earthworks and installations that have occurred. However, the council cannot take action outside of its statutory powers in responding to those concerns.

Yours faithfully

A handwritten signature in black ink, appearing to read 'M. Nicolson', written over a horizontal line.

Malcolm Nicolson  
Chief Executive Officer

cc. Craig Brown



Craig Brown,  
Chairman of Elected Representatives,  
Northland Regional Council,  
Private Bag 9021,  
Whangarei.

Mike Rashbrooke,  
5A English Bay Road,  
Opua 0200,  
Bay Of Islands.

29-11-12

**RE: Walls Bay Esplanade Reserve and ongoing activities of the neighbouring boatyard.**

Dear Sir,

Thank you for your letter of acknowledgement dated 22 November 2013.

I believe we can take the above date as a typo, not as any indication that these matters are expected to remain the subject of complaints and correspondence at this time next year. It is in the interests of an early resolution that I make these comments:

Please note the NRC has been requested (again) to actually respond to some specific issues raised. Broad disclaimers do not address anything. The specific issues raised for your response were:

**Please confirm**, as the Representative of NRC Governance, that the NRC recognizes, acknowledges, **and will enforce the express conditions** of NRC consent CON20060791410 (10-15). Specifically:

- 1] That boatyard washdowns may **only** be conducted on impervious **boatyard** surfaces; and
- 2] That dropsheets **must** be used where/when repairs and maintenance activities are taking place on **pervious** boatyard surfaces.

Your prompt and specific reply is (again) requested as a matter of urgency. Thankyou.

Another related and urgent matter has arisen as a result of the boatyard owner constructing concrete fortifications along a public beachfront adjoining Opua's only esplanade reserve area of any significance. The NRC has been informed that the present wood retaining wall is subject of 12 out of 13 submissions to the FNDC-conducted Walls Bay Esplanade Reserve Management Plan process. These public submitters requested its removal, and a Staff Report in the Draft Plan recommends investigation of this proposal.

All but one of 13 submitters requested the restoration of the original beachfront, for a range of sound aesthetic and practical (and scientifically-backed) reasons, as would be in conformity with RMA section 229 and the Reserves Act purposes of such reserves to enable or provide public access to the CMA and sea.

I invite **anyone** to explain how a wood or now more extensive concrete block barrier "enables or provides access to the CMA", more particularly as it adjoins a grassed, gently sloping public esplanade reserve area.

The current works are **fortifying** and **expanding** a reclamation constructed in 1998 without any consents (see copy of formal written complaint, 1999, enclosed) then granted retrospective consent **by** FNDC as part of the Consent Order 2002, and subject to possible removal through an uncompleted statutory process.

Please arrange to be forwarded all NRC documentation regarding consent for the concrete block works.

Kind Regards, Mike Rashbrooke.

cc- Malcolm Nicholson.

Craig Brown,  
Chairman of Elected Representatives,  
Northland Regional Council,  
Private Bag 9021,  
Whangarei 0148.

Mike Rashbrooke,  
5A English Bay Road,  
Opuia 0200,  
Bay Of Islands.

28-01-13

**RE: Walls Bay Esplanade Reserve and ongoing activities of the neighbouring boatyard.**

Dear Sir,

With reference to my letter to you of 29-11-12, cc-ed to NRC CEO Malcolm Nicholson:

This is to advise you that a letter I have received from Mr Nicholson, dated 3 December 2012, cc-ed to yourself, does not provide a reply-to or even address the specific issues raised with you in that letter.

This is to advise you that a letter I received from yourself, also dated 3 December 2012, cc-ed to Mr Nicholson, does not make a reply-to or even address the specific issues raised with you in that letter.

It was assumed a separate letter would be following, and I have waited patiently over the holiday period for your reply to the specific issues raised, and to receive the requested documentation regarding consent for concrete block works along a public beach adjoining esplanade reserve at Walls Bay, Opuia.

This letter reiterates the request, 29-11-12, for the specified formal written response from NRC, and lodges the request for all NRC documentation regarding the subject concrete block works as an official information request pursuant to the Local Government Meetings and Official Information Act 1987. Given the period of delay following the previous request, please treat this request as a matter of urgency.

You write, 3 December 2012: "It is my expectation that all conditions of consent will be adhered to".

You are now advised that the boatyard owner continues to conduct vessel washdowns on and over the slipway on esplanade reserve, and that dropsheets have still not been observed to be employed while repair and maintenance activities are being conducted on vessels over pervious boatyard surfaces.

I made a complaint to the NRC Office at Opuia, about 3pm, 3 January, concerning a vessel washdown being conducted on the slipway on reserve, and another being worked-on over a pervious yard surface without dropsheets being employed. NRC Monitoring Officer ~~Mike~~ Nagar was in attendance. I informed him I had been advised that the NRC would be enforcing all boatyard consent conditions, and enquired whether that was the case. He replied in the affirmative. I advised him he could come and observe the waterblasting on reserve himself. He waited some 15 minutes before driving to the boatyard. After some ten minutes he left the boatyard and drove away towards Paihia, whereupon the waterblasting on slipway on reserve continued. There were still no dropsheets in evidence over relevant pervious yard surfaces. The vessel was still on slipway on reserve at 4.45 pm.

The same has occurred a number of time since then, and continues as recently as 28 January 2013. I have not bothered to report it for obvious reasons, but have taken evidential photographs.

These public interest issues have ramifications nationwide. Please remedy.

Kind Regards,

Mike Rashbrooke.

Craig Brown,  
Chairman of Elected Representatives,  
Northland Regional Council,  
Private Bag 9021,  
Whangarei 0148.

Mike Rashbrooke,  
5A English Bay Road,  
Opua 0200,  
Bay Of Islands.

07-03-13

**RE: Walls Bay Esplanade Reserve and ongoing activities of the neighbouring boatyard.**

Dear Craig,

Thank you for your letter dated 25 February 2013.

I look forward to receiving the NRC position in writing with regard to the specific issues and legal considerations I have raised with it for several years now.

I enclose, with my compliments, a copy of the FNDC-approved Walls Bay Esplanade Reserve Management Plan for referral to your CEO and his Planners. This with a view to their considering a more constructive approach to co-ordinating and co-operating with, among others, the Department of Conservation, the FNDC, and the various **affected** community groups and hapu which will be participating in the implementation of this Plan. In this context please note page 11, '**(a) Landscape values**' – 'Objective 1 explanation' and 'Policies 1.'

The Draft Plan and Plan process was publicly notified 18 July 2012. Instructions were given by FNDC to **the boatyard owner** and to **affected** community groups that **no changes were to be made** to the reserve **prior** to the adoption and implementation of the Plan (this can be confirmed with the FNDC In-House Counsel, John Verry).

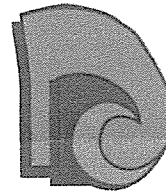
It would appear that the boatyard owner **failed to include this relevant information** (along with other relevant information) with his application to the NRC for a 'retrospective' consent for a new concrete block seawall/reclamation unlawfully constructed, November-December 2012, along the esplanade reserve frontage with the public beach. This has been joined, by poured reinforced concrete, to the existing wood seawall in such manner as to obstruct or frustrate the stated intent of the Draft (now adopted) Plan as regards investigation of the restoration of the natural shoreline.

The 'existing' wood wall was **also** constructed unlawfully in 1999, to a Plan drawn for Doug Schmuck (Oct 1998), using public money designated by a Community Board for specified (other) walkway repairs. The supervisor of that public project subsequently felt obliged to resign from the Community Board. This is why public notification of this category of application (private works on public beach frontage) is so valuable – to bring **all** relevant considerations to the attention of the consent authority.

With regard to the Walls Bay Management Plan process it is my understanding that, as when a Proposed District Plan is notified, planning decisions **in the interim** (prior to its formal adoption) are required to 'give weight' to the provisions in the Proposed Plan. Legalities aside, this would have been and can still be a more intelligent, efficient and constructive way forward for the situation at hand.

Regardless of whether the NRC executive chooses to make the path to resolution of these matters a smoother or rougher one, I should like to acknowledge that your own contribution from governance has been courteous, professional and constructive. Thank you.

Kind Regards, Mike Rashbrooke.



Te Kaunihera a rohe o Te Tai Tokerau

CAB:SHB

Private Bag 9021  
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New Zealand

14 March 2013

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Mr Mike Rashbrooke  
5A English Bay Road  
Opua 0200  
Bay of Islands

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Email: [mailroom@nrc.govt.nz](mailto:mailroom@nrc.govt.nz)

[www.nrc.govt.nz](http://www.nrc.govt.nz)

Dear Mike

**WALLS BAY ESPLANADE RESERVE AND ONGOING ACTIVITIES OF THE  
NEIGHBOURING BOATYARD**

I acknowledge receipt of your letter dated 7 March 2013 referring to my previous correspondence. I have asked that this letter be married up with your previous ones so that all issues are addressed when giving the legal position as it exists.

I look forward to seeing that information and having it forwarded on to you by our management team.

Regards

Craig Brown  
Chairman

A303598

cc. Malcolm Nicolson  
Colin Dall

3 PROMISES AS ABOVE - NEVER GOT THE REPLY!  
WENT THROUGH IDENTICAL PROCESS IN 2011. SAME.

Craig Brown,  
Chairman of Elected Representatives,  
Northland Regional Council,  
Private Bag 9021,  
Whangarei 0148.

Mike Rashbrooke,  
5A English Bay Road,  
Opuia 0200,  
Bay Of Islands.

10-05-13

**RE: Walls Bay Esplanade Reserve and ongoing activities of the neighbouring boatyard.**

Dear Craig,

I refer to our previous correspondence on the above matters and your assurance, repeated 14 March, that your management team would forward me the NRC formal position on the legal matters and issues which I ( and others) have raised with you since November 2012.

I need to bring to your attention that this information has not been received.

As you will be aware, the boatyard owner is presently seeking a generalised Declaration in the Environment Court that various boatyard consents are "lawfully established". This matter is separate from the issues which I (and others) have raised with the NRC, and, in my understanding, such Declaration as sought is unlikely to resolve them or other boatyard regulatory issues connected with the rule of law, due process, and the Reserves Act.

I am sure you will agree that all parties involved with boatyard/reserve matters would wish a prompt resolution to outstanding issues. In order to progress that goal the position of the NRC, in respect of the issues raised with you in writing, requires to be formally stated (as agreed) so that any remaining points of difference can be clearly identified for further discussion **or** (by agreement) prompt referral to the appropriate legal venue(s) provided by our regulatory systems for this purpose.

**Lack of compliance** with NRC express consent conditions requiring the use of drop sheets when vessel maintenance activities are being conducted over pervious yard surfaces **continues**; **lack of compliance** with NRC express consent conditions restricting vessel washdowns to be conducted **only** on boatyard impervious surfaces (ie the turntable) **continues**, and the **private** seawall/reclamation works constructed along a **public** beach and esplanade reserve (prior to the completion of a relevant publicly notified statutory process) has not been subject to public notification.

These matters remain substantive. Please assist to progress prompt lawful resolution.

Kind Regards,  
Mike Rashbrooke.

Craig Brown,  
Chairman of Elected Representatives,  
Northland Regional Council,  
Private Bag 9021,  
Whangarei 0148.

Mike Rashbrooke,  
5A English Bay Road,  
Opua 0200,  
Bay Of Islands.

20-06-13

**RE: Walls Bay Esplanade Reserve and ongoing activities of the neighbouring boatyard.**

Dear Craig,

Thank you for your letter of 15 May and the repeated assurance therein. I regret to need to inform you that your staff are evidently ignoring your instructions to them.

I refer to my letters of 29-11-12, 28-01-13, 13-02-13, 16-02-13, 07-03-13, 10-05-13, and to the content thereof.

I refer to your letters of 22-11-12 (the typo showing 2013 turning out to be prophetic), 03-12-12, and 05-02-13. I refer particularly your letter of 25-02-13 with your assurance that you had instructed the NRC executive to "have the legal position established on all the matters referred to in your correspondence, and have requested that answers are supplied to all the issues raised by you". I refer also to the subsequent two further assurances of same, 14-03-13 and 15-05-13.

I enclose copies of the last three letters from yourself if that will assist you to understand my frustration concerning a timely lawful resolution to these matters being delayed by failures by the NRC to respond, in connection with the issues raised with them, as they have undertaken to do.

In good faith, I cannot file for any lawful resolution while I am waiting to receive the NRC position that it has undertaken to provide me.

Please progress these matters with urgency.

Kind Regards,

Mike Rashbrooke.

Enclosed: Copies of letters from Craig Brown to Mike Rashbrooke  
25 February, 2013, 14 March, 2013, and 15 May 2013.



Please Quote File: A895877 & REG.007914.10

Private Bag 9021  
36 Water Street  
WHĀNGĀREI 0148  
New Zealand

21 November 2016

Phone: 09 470 1200  
Freephone: 0800 002 004  
Environmental Hotline:  
0800 504 639  
Fax: 09 470 1202  
Email: [mailroom@nrc.govt.nz](mailto:mailroom@nrc.govt.nz)

Mike Rashbrooke  
5A English Bay Road  
Ōpua 0200

[www.nrc.govt.nz](http://www.nrc.govt.nz)

Dear Mr Rashbrooke

**COMPLAINTS ABOUT NORTHLAND REGIONAL COUNCIL'S ENFORCEMENT  
OF RESOURCE CONSENT CON200607914(10-15) – DOUG'S OPUA BOATYARD**

I refer to your letters dated 6 October and 7 November 2016.

My responses to the issues raised in those letters are as follows:

**6 October Letter**

The letter has been recorded as a complaint on the Northland Regional Council's electronic document management system.

Council staff have investigated the recent complaints it has received alleging breaches of Resource Consent CON200607914(10-15). I appreciate that you disagree with the outcome of those investigations. However, that does not mean that Council staff have ignored the evidence/information the complainants have provided to them and I do not accept that Council staff are failing to perform their statutory duty in their response to your complaints.

It is acknowledged that a meeting with Council staff was requested by one of the complainants to discuss the matter and that the request was declined. As you are well aware, the matter of the lawfulness of the activities being undertaken on Doug's Opuia Boatyard and Walls Bay Esplanade Reserve is a highly contentious issue which has a long history and involved significant litigation.

In declining your request to meet, Council staff were concerned that a meeting was unlikely to resolve the matter to the complainant's satisfaction and had a high risk of being counterproductive and/or becoming volatile. As a Chief Executive Officer, it would not be appropriate for me to require staff to arrange a meeting where there was a high risk of the meeting exacerbating a highly contentious issue.

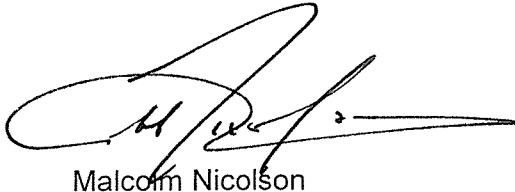
**7 November Letter**

I did respond to your letter dated 11 November 2012, and also to your letter dated 17 November 2012, by letter dated 3 December 2012 (copy **enclosed**).

I do not accept that the Council has not addressed your concerns about the boat maintenance activities being undertaken at Doug's Opua Boatyard. Where Council staff have established non-compliance with consent conditions, they have followed this up with the consent holder.

It is clear that your interpretation of the requirements of Resource Consent CON200607914(10-15) often differs from the Council's interpretation. However, it is unclear from the numerous correspondences between you and the Council, as to which of the *"specific details of NRC consents as raised in complaints and information to the NRC"* that you say the Council hasn't respond to. Please specify precisely which *"specific details of NRC consents"* you believe the Council has not responded to. Upon receipt of this information I will consider if a further response or investigation is required.

Yours faithfully



Malcolm Nicolson  
Chief Executive Officer

Malcolm Nicolson,  
Chief Executive Officer,  
Northland Regional Council,  
Private Bag 9021,  
Whangarei 0148.

Mike Rashbrooke,  
5A English Bay Road,  
Opuia 0200,  
Pewhairangi/Bay Of Islands.

23-01-17

1

RE: Environmental Degradation in Walls Bay, Opuia; Non-Complying Activities, and refusal by NRC staff to address evidence and to meet with informants.

Dear Sir,

I refer to my written complaints of 6 October and 7 November 2016, headed as above and addressed to you as CEO of the NRC, and to a letter from you dated 21 November 2016. For your convenience, I will address matters at issue in the same format as you have touched on them in your letter of 21 November.

### 6 October Letter

1] You advise: *"The letter has been recorded as a complaint on the Northland Regional Council's electronic document management system."*

I specifically advised, 6 October, that my **written complaint** was lodged pursuant to the RMA s35(5)(i), and requested that it be entered as such on the relevant complaints register, which, as you will be aware, is required by RMA s35(1) to be maintained by "every local authority".

2] You advise: *"Council staff have investigated the recent complaints it has received alleging breaches of Resource Consent CON200607914(10-15)."*

I advise that I am not aware of this referenced 'investigation' or of the recorded details and outcome of it; only that the subject alleged non-compliance has not abated.

**Official Information Request:** With regard to your advice as in **1]** and **2]** **above**, in view of the circumstances and pursuant to the LGMOIA, please provide me with a current copy of the NRC's RMA s35(5)(i) complaints register. Thank you.

3] You advise: *"In declining your request to meet, Council staff were concerned that a meeting was unlikely to resolve the matter to the complainants' satisfaction and had a high risk of being counterproductive and/or becoming volatile."*

With respect, your staff appear to have made a presumption about the outcome of a discussion they have not had, and another about the "*satisfaction*" of the complainants as being critical to the purpose of having such. By positing it could be "*counterproductive*" they have made a further negative presumption as to the possible outcome while unilaterally assuming a particular 'desired effect' they have not conveyed to us.

"*. . . becoming volatile.*" Did they intend to mean "evaporating rapidly", "changeable, fickle", "lively, light hearted", "transient" or "apt to break out into violence"?

We have no concerns in connection with these C.O.D. definitions of 'volatile' excepting the last one cited above. If your relevant staff have expressed any genuine concerns regarding a risk of violence, I would suggest they be provided with anger management courses or other further professional development or counseling as may enable them better to participate in robust discussions without resorting to violence. 2

For the record, the three known complainants have been or remain police-vetted Registered Teachers. One is also an ex-Policewoman. None have been the subject of formal warnings from the Police for 'disorderly conduct', 'road rage' and 'common assault', nor further summonsed for 'common assault' or are presently subject of further complaint with evidence of same. Given this long record of physical intimidation of complainants by the relevant consent holder, we would be concerned about any additional potential for violence your staff may have identified among themselves.

However, we trust that, as the CEO, you would in that event take the constructive steps indicated above; instruct them to meet with us as soon as it is safe to do so, and advise us accordingly.

### 7 November Letter

4] You advise: *"I did respond to your letter dated 11 November 2012, and also to your letter dated 17 November 2012, by letter dated 3 December 2012 (copy enclosed)."*

With respect, you did **respond** to my letters **but failed to engage** with the specific issues raised and therefore did not **reply** to my letters, any more than have your relevant staff. This was and remains the problem I am still trying to communicate to you – the failure to engage such that the issues in contention can be made clear and able to be referred, as required, for resolution in the Environment Court.

5] You advise: *"...it is unclear from the numerous correspondences between you and the Council, as to which of the "specific details of NRC consents as raised in complaints and information to the NRC" that you say the Council hasn't respond to. Please specify precisely which "specific details of NRC consents" you believe the Council has not responded to. Upon receipt of this information I will consider if a further response or investigation is required."*

With respect, I believe that I have, on many occasions, "specified precisely" the "specific details" of NRC consent CON200607914 (10-15) which the NRC has not responded-to.

As I advised 7 November 2016, it may be useful to refer to my letter to you of 11 November 2012, copied to the-then NRC Chair Craig Brown. The "specific details" presently subject of further complaint are laid out on the first page at the third and fourth paragraphs (copy **enclosed**).

Please refer also to my one-page letter to Craig Brown of 29 November 2012, copied to yourself as NRC CEO. The issues presently subject of further complaint are summarised about three paragraphs down beginning with **"Please confirm"** (copy **enclosed**).

Nevertheless, thank you for your kind invitation to do so again. Please find **enclosed** a copy of the relevant consent. The relevant express conditions of consent are high-lined in yellow for your convenience. First, allow me to explain or to expand on what is meant by "Express Conditions" of consent.

### General rights subject to conditions.

3

NRC consent CON200607914 (10-15) authorises certain boatyard **activities** listed and described on the first page under **(10), (11), (12), (13), (14) and (15)**. As can be observed, the boatyard **activities** so authorised are **discharges** of “treated wash water”, “contaminants”, and “stormwater” respectively to air, ground and sea.

The boatyard activities leading to the subject discharges and to the need to have these discharges authorised by a local regional authority are themselves authorised pursuant to the RMA by RC2000814 issued by the local territorial authority, the Far North District Council.

8/2

To be clear, CON200607914 (10-15) does **not** ‘authorise’ the boatyard activities leading to the discharges; just the discharges themselves. The **discharge consents** listed and described from (10) to (15) confer **general rights** subject to **general conditions**. These are described on the second to last page of the consent under the heading “*GENERAL CONDITIONS APPLYING TO CONSENTS (10 TO 15)*” and are numbered 21 to 26, four of them with various sub-sections.

These **general rights** subject to the **general conditions** described under 21 to 26 **are further subject to** specific or **express conditions** of consent described after each discharge consent. You will observe on page 1 of CON200607914, after the descriptions of the discharge consents (10) – (15), the phrase “*subject to the following conditions:*” These are the **express conditions** of consent. The consent proceeds to list and describe the relevant express conditions for each general right, commencing with “*(10) DISCHARGE OF TREATED WATER TO THE COASTAL MARINE AREA*”.

Express conditions 1 to 4 apply to discharge consent (10); conditions 5 to 14 apply to discharge consents (11) and (12); conditions (15)(a) to (e) apply to discharge consent (13); conditions 16 to 18 apply to discharge consent (14), and conditions 19 and 20 apply to discharge consent (15).

For your convenience and specificity, the express conditions of consent which remain at issue as regards the statutory monitoring and enforcement duties of the relevant consent authority (NRC) are: **Condition 2 of discharge consent (10) and conditions 15 (a), (b), (c) and (e) of discharge consent (13)**.

I will refrain from critical comment on the content of your letter of 3 December 2012 because the present purpose is to constructively progress cognition, acknowledgment and resolution of these matters that have been outstanding for 12 years now.

### Matters to be Resolved.

1] “**(10) DISCHARGE OF TREATED WASH WATER TO THE COASTAL MARINE AREA**”.  
**Condition 2** is at the bottom of the first page:

“2. The boat wash water and containment system, and CTS treatment system shall be constructed and be fully operational in general accordance with the details provided in the application, by no later than 31 March 2009.”

### Please advise:

- 1.1 Was this express condition met by 31 March 2009 ?
- 1.2 Has this express condition been met to date ?

- 1.3 Does the NRC consider that discharge consent (10) remained valid after 31 March 2009 ? 4  
1.4 Does the NRC consider that discharge consent (10) remains valid today ?  
1.5 If the answer to 1.3 and/or 1.4 is affirmative, please provide your reasoning in support of that position.

## 2] “(13) DISCHARGE TO GROUND”

For express conditions 15 (a), (b) and (c) I will rely on your reading of the high-lined copy provided you.

### Please advise:

- 2.1 Does the NRC agree that the use of drop sheets when boat maintenance activities are occurring over pervious boatyard surfaces is an express condition applying to discharge consent (13) ?  
2.2 Does the NRC consider that express condition 15 (a) is being complied with at present ?  
2.3 Can the NRC advise of any time when express condition 15 (a) has been complied with ?  
2.4 Does the NRC consider that a lack of compliance with express condition 15 (a) would invalidate discharge consent 13 ?  
2.5 Does the NRC consider that express conditions 15 (b) and (c) are being complied with ?  
2.6 Does the NRC consider that a lack of compliance with express conditions 15 (b) and (c) would invalidate discharge consent 13 ?

### Express Condition 15 (e):

“(e) Water blasting or washing of vessel hulls shall only take place over impervious yard surfaces (ie. The turntable) which are able to collect waste water for processing via the wastewater treatment system.”

### Please advise:

- 2.7 Does the NRC accept the phrase “impervious yard surfaces” to mean impervious **boatyard** surfaces ?  
2.8 Does the NRC agree that the abbreviation ‘ie’ is derived from the Latin *‘id est’* - ‘that is’ ?  
2.9 Does the NRC acknowledge that Walls Bay Reserve is **not** a part of the boatyard or ‘yard surfaces’ ?  
2.10 Does the NRC accept that for compliance with the express conditions of discharge consent 13, the activity of water blasting or washing of vessel hulls is expressly confined to the boatyard private land and specifically to the boatyard turntable - “impervious yard surfaces (ie. The turntable)” ?  
2.11 Does the NRC consider that a lack of compliance with the express conditions of discharge consent 13 would invalidate the consent ?

I was, with Sir William Kearney, a submitter to the application for replacement resource consents in 2008 after relevant NRC consents that were part of the 2002 Consent Order had lapsed. Our submissions focused on the required Reserves Act easements having been declined some four times by due formal process. Commissioners Mark Farnsworth and Peter Jennings evidently took good note of our submissions. In our view, relevant NRC staff have patently failed to enforce certain express conditions promulgated by the commissioners. But that is the conversation we are now commencing with your assistance. Thank you.

Kind Regards, Mike Rashbrooke.

**Enclosed:** Copy of NRC consent CON200607914 (10 – 15), Copy of page 1 of letter of 11 November 2012 and Copy of letter of 29 November 2012, both to NRC Chair and CEO.

cc – Office of the Parliamentary Commissioner for the Environment.



Te Kaunihera a rohe o Te Tai Tokerau

Private Bag 9021  
36 Water Street  
WHANGĀREI 0148  
New Zealand

Phone: 09 470 1200  
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[www.nrc.govt.nz](http://www.nrc.govt.nz)

Please Quote File: REQ.582035

24 February 2017

Mike Rashbrooke  
5A English Bay Road  
Opua 0200

Dear Mr Rashbrooke

**REQ.582035: OFFICIAL INFORMATION REQUEST – DOUG'S OPUA BOATYARD**

In response to your request for various information contained in your letter dated 23 January 2017, I advise the following:

Your request for a copy of the Northland Regional Council's "*RMA s35(5)(i) complaints register*" would require substantial staff time to provide as personal details of complainants, alleged offenders and other persons mentioned in the records for those complaints, such as their names and contact details, would need to be redacted to protect their privacy and ensure that the council did not breach the Privacy Act 1993. Please advise the following:

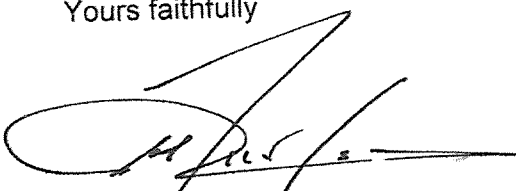
- The specific time period you seek information for (ie the start and end date).
- Whether you seek information on all complaints received by the council or only those pertaining to the boatyard.
- Whether you seek information on complaints made verbally as well as in writing.

I note that the council is entitled to charge for the provision of information and may seek to recover the costs of providing this information if it requires substantial staff time.

However, the following is a summary of the complaints relating to the boatyard that have been recorded on the council's record systems/complaints register in the last 5 years. Please note the summary does not include complaints made about activities in the general area that are not related to the boatyard itself.

- 1.3 As the treated wash water now goes to the municipal sewage network, "discharge consent (10)" is currently not being exercised and is no longer required. However, as the consent holder has not surrendered this consent the consent holder could still exercise/operate under this consent prior to its expiry date (30 March 2018). In this sense, the consent could be considered "valid".
- 1.4 See answer immediately above.
- 1.5 The consent was exercised and has not lapsed, been surrendered or cancelled.
- 2.1 Yes. YARD??
- 2.2 Yes, the council is satisfied that boat washing is being undertaken on impervious surfaces during normal operations. ^
- 2.3 The wording of this question is ambiguous. Are you asking for a specific time when the council has found that condition 15(a) has been complied with, or are you asking if the council can advise that condition 15(a) is being complied with all of the time?
- 2.4 No, consent non-compliance does not make a consent 'invalid' under the Resource Management Act 1991.
- 2.5 Yes – most of the time. As noted above, our recent site inspections found that debris was not being removed from the slipway daily under normal operations, which has been addressed with the consent holder.
- 2.6 No.
- 2.7 Yes. ✓
- 2.8 Yes. ✓
- 2.9 No with respect to the Resource Consent CON200607914 (10-15) as this bundle of consents expressly allows for discharges from boatyard activities taking place on the Walls Bat Reserve.
- 2.10 No. ?
- 2.11 No. ? } CONTRADICTS 2.7 & 2.8

Yours faithfully



Malcolm Nicolson  
Chief Executive Officer



File: E4.12; ICE421099

**ABATEMENT NOTICE UNDER SECTIONS 322 & 324 OF THE  
RESOURCE MANAGEMENT ACT 1991**

**To:** Doug C Schmuck  
Doug's Opua Boatyard  
1 Richardson Street  
Opua 0200

**1. Northland Regional Council gives notice that you must take the following action:**

1. Install an impervious surface on the area around the turntable and on the slipway to ensure that all contaminants from water blasting boats are captured and directed to the treatment system.
2. Concrete the area on the slipway as identified in the attached plan to ensure that all contaminants from water blasting boats are captured and directed to the treatment system.

**2. The location to which this abatement notice applies is:**

Doug's Opua Boatyard, Richardson Street, Opua.  
Sec 2 SO 24139, Pt Sec 1 SO 16553, Sec 3 SO 46155, Sec 1 – 4 SO 68634,  
Blk V Russell SD.

**3. You must comply with this abatement notice within the following period:**

Requirement 1 – by 10 November 2010.

Requirement 2 – within one month of the necessary approvals being obtained from the Department of Conservation and the Far North District Council.

**4. This notice is issued under:**

Section 322(1)(b)(ii) of the Resource Management Act 1991, which states that:

*"(1) An abatement notice may be served on any person by an enforcement officer—*

- (b) Requiring that person to do something that, in the opinion of the enforcement officer, is necessary to ensure compliance by or on behalf of that person with this Act, any regulations, a rule in a plan or a proposed plan, or a resource consent, and also necessary to avoid, remedy, or mitigate any actual or likely adverse effect on the environment—*

(ii) *Relating to any land of which the person is the owner or occupier."*

**5. The reasons for this notice are:**

Enforcement Officer, Michael Nager, visited the property on 22 October 2010 and found that:

- Water blasting of boats had been occurring on the turntable and slipway which was resulting in contaminants not being directed to the treatment system.
- Condition 15(e) of consent CON20060791410 requires *'Water blasting or washing of vessel hulls shall only take place over impervious yard surfaces (i.e. the turntable) which are able to collect wastewater for processing via the wastewater treatment system.'*
- The area where the boats are water blasted on the slipway has not been concreted as agreed during the mediation undertaken as part of the consent application process.

Section 15(1)(b) of the Resource Management Act 1991 prohibits the discharge of contaminants onto or into land in circumstances which may result in that contaminant entering water.

The discharge, on 22 October 2010 contravened section 15(1)(b) of the Resource Management Act 1991.

Contravention of section 15(1)(b) of the Resource Management Act 1991 is an offence under section 338(1)(a) of the Resource Management Act 1991.

This notice has been issued to you to require you to take the action as set out in clause 1 because, in the opinion of the enforcement officer that issued this notice, this action is necessary to ensure compliance by you with section 15(1)(b) of the Resource Management Act 1991 / regulations / a rule in a plan / a proposed plan / a resource consent and also necessary to avoid / remedy / mitigate any actual / likely adverse effect on the environment relating to any land of which you are the owner / occupier. The likely adverse effects include: biological effects, including the smothering of aquatic life; effects on aesthetic values; and effects on matters of significance to Tangata Whenua.

**6. If you do not comply with this notice, you may be prosecuted under section 338 of the Resource Management Act 1991 (unless you appeal and the notice is stayed as explained below), or an infringement notice may be served on you under section 343C of the Resource Management Act 1991.**

You have the right to appeal to the Environment Court against the whole or any part of this notice. If you wish to appeal, you must lodge a notice of appeal in form 49 with the Environment Court within 15 working days of being served with this notice.



An appeal does not automatically stay the notice and so you must continue to comply with it unless you also apply for a stay from an Environment Judge under section 325(3A) of the Resource Management Act 1991 (see form 50). To obtain a stay, you must lodge both an appeal and a stay with the Environment Court.

You also have the right to apply in writing to Northland Regional Council to change or cancel this notice in accordance with section 325A of the Resource Management Act 1991.

7. The name of the enforcement officer serving this notice is:

Michael John Nager

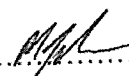
The Northland Regional Council authorised the enforcement officer who issued this notice. Its address is:

Northland Regional Council  
Private Bag 9021  
Whangarei Mail Centre  
Whangarei 0148

Phone: (09) 438 4639  
Facsimile: (09) 438 0012

8. The enforcement officer is acting under the following authorisation:

A warrant of authority issued by the Northland Regional Council, pursuant to section 38 of the Resource Management Act 1991, authorising the officer to carry out specified functions and powers as an enforcement officer under the Resource Management Act 1991 including issue of abatement notices.

.....  
  
Michael John Nager  
Enforcement Officer  
Northland Regional Council

27 October 2010