APPENDIX 5

ENVIRONMENTAL COURT DECISION

[2019]

BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA

Decision No. [2019] NZEnvC 125

IN THE MATTER	of the Resource Management Act 1991
AND	of an appeal under s120 of the Act
BETWEEN	D G SCHMUCK (ENV-2018-AKL-351)
	Appellant
AND	NORTHLAND REGIONAL COUNCIL
	Respondent

Court:	Judge J A Smith, presiding Commissioner R M Bartlett Commissioner I S Buchanan
Hearing:	9-12 April 2019 at Whangarei plus site visit
Appearances:	C H Prendergast for D G Schmuck (**Mr Schmuck**) G J Mathias for Northland Regional Council (**Regional Council**) A S Kyriak for Opua Coastal Preservation Society - s274 party B Kidman, J Kidman and T Dunn in person – s274 parties in support of Mr Schmuck
Date of Decision:	26 July 2019
Date of Issue:	26 JUL 2019

DECISION OF THE ENVIRONMENT COURT

A: The applicant is to provide a draft set of conditions and consent in accordance with this decision to the Regional Council and s274 parties within 30 working days; the Council and parties are to respond to the applicant within a further 20 working days; the applicant is then to provide his final wording of the consents and conditions, with its reasoning therefore, to the Court 10 working days thereafter.

B: In the event that any party disagrees with that final consents and conditions, they are to provide separate memoranda identifying the clause and dispute, their preferred wording and why. That is to be filed within a further 10 working days.

THE SEAL OF THE ENVIRONMENT COURT NEW ZEALAND

C: The Court will then conclude whether it can proceed on the papers or will need to convene a further hearing.

D: Given our conclusion on jurisdiction, it is clear that the continuation under s123 applies only to the consent as it relates to the subject property and not to SO 68634.

E: Any application for costs is to be filed within 30 working days; any reply 10 working days thereafter and a final reply, if any, five working days after that.

REASONS

Introduction

[1] Mr Schmuck has operated Dougs's Opua Boatyard (the 'Opua Boatyard') from Walls Bay, Opua, for many decades. Its operation has been fraught with controversy.

[2] This is an application for renewal of regional consents relating to discharges. These consents have been extant since at least 2002 and were renewed by Regional Council consent CON20060791410 (10-15) on 20 May 2008. The consents 10-15, except 14, expired on 20 March 2018 and the resource consent 1414 expired on 30 March 2009. Accordingly, the following consents expired in 2018, namely:

a) Discharge treated washwater to the coastal marine area (10);
b) Discharges to air (11 and 12);
c) Discharge to ground (13); and
d) Discharge of stormwater to the CMA (15).

The consent for discharge of stormwater to water (14) expired in 2009.

[3] As will becomes clear as we discuss the various consents involved, this matter has become mired in confusion and controversy over several decades. Matters are not clarified by misapplication of numbering and reference to various different consents relating to different periods of time.

[4] No explanation or analysis of this was given to the Court and we have essentially had to sift through the viscera of information contained within various pieces of evidence and bundles of documents to try and ascertain the relevant consents the subject of renewal and the relevant issues in relation to the interconnection between land use and discharge

activities.

[5] For reasons which will become clear, we intend to deal only with the matters that are the subject of this appeal and clearly within frame in this hearing.

The proposal

[6] Walls Bay is a small, relatively closely held bay, near the Opua ferry terminal and wharf. Access can be gained either by narrow road over a small saddle or by walking along a coastal walkway from near the Opua ferry vehicle access. Opua Boatyard occupies the western side of Walls Bay with an esplanade reserve in front and to the east along the seafront. The Boatyard site is dominated by a large boat shed sited on a flat yard, with slipway rails leading to the water to enable boats to be winched up to the yard.

[7] Mr Schmuck prepared and filed his own application for renewal of discharge consents and a copy of supporting document addressed Assessment of Environmental Effects is attached to that application. The information on the Council form is minimalistic i.e. 18-year term resource consent for renewal of all current discharge consents CON200607914 (10-15) so that they coincide with the remaining term of resource consents NLD7914 (01-09).

[8] In his document attached to that application, he notes the proposal at 4.0 as follows:

> This application is for the renewal of an[sic] existing Discharge Consents associated with all of the activities of a boat maintenance facility. The application seeks an 18 year term to coincide with the existing resource consents NLD99714 (01-09) that expire on 30 March 2036. I refer to CON20060791410 (10-15) attached.

[9] That resource consent is annexed hereto as **A** and constitutes the consent that we understand is the subject of the renewal application.

[10] The matter came to this Court after an appeal filed from referral, not only for the renewal of the discharge consents annexed as **A**, but also relating to a number of further activities sought by Mr Schmuck. These included the reconstruction of a new jetty, deepening of the access to that jetty and associated matters.

[11] Early in the process of this appeal those new applications were abandoned given

the Council had refused consent to all matters. In a six-page opening submission, the appellant's counsel did not touch upon the past consents or their renewal but rather reiterated various aspects of a complex historical relationship with the Regional Council and the Opua Coastal Preservation Society Incorporated and repeated arguments in relation to the use of the esplanade reserve adjoining the site.

[12] We repeat Ms Prendergast's argument:

> 15. The expert evidence before the Court will show that:
>
> (a) Mr Schmuck has, since 2002, held valid resource consents providing for boatyard activities on his land, the adjacent esplanade reserve and the CMA, together with rights for discharges to air, land and the CMA. (footnote: See for instance, Schmuck v FNDC and NRC [2014] NZEnvC 101, where Judge Kirkpatrick held that the consent authorising use of the reserve for boatyard activities was valid and had been given effect to. His Honour also was at pains to explain why the paragraph in the Memorandum requiring the Minister of Conservation's consent to the easements did not stop Mr Schmuck from giving effect to the resource consent [45]-[55]).
>
> (b) Mr Schmuck has a good compliance record with the conditions of his discharge consents. Incremental improvements to the washwater and stormwater infrastructure have been made over time. In 2012 all washwater and stormwater from the slipway was diverted to the Opus Trade Waste system leading to a reduction in the contaminants discharged to the CMA.
>
> (c) Since 2015, the levels of heavy metals, particularly copper and zinc, in the stream exceeded the compliance levels prior to any discharge from the boatyard.
>
> (d) Upgrades to the boatyard systems since the monitoring in June 2018 has seen the separation of stormwater from non-working surfaces form that from working surfaces. As from October 2018, all stormwater from working surfaces, including the runoff over those parts of the reserve used for boatyard activities, goes to the CTS and from there to the Opua trade waste system. The risk of adverse effects from any uncontrolled discharge is low. The systems currently in place are able to cope with a medium rainfall event and can operate satisfactorily in the interim period until reconstruction of the slipway and installation of a proprietary stormwater system.
>
> (e) Analysis of the pipis from the shellfish bed adjacent the slipway indicates a viable and healthy pipi population.
>
> (f) Ground contamination across the reserve is minor, with the majority of test results recording acceptable results for a recreational scenario. One of the samples indicating levels of copper above the recreational scenario was located in the vicinity of the

historic boatyard and cannot be attributed to Mr Schmuck's activities.

(g) The overall risk to ecological receptors is low, given the intertidal areas of sampling.

(h) Discharges to air, on the land, in the reserve and to the CMA can be mitigated to ensure the effects on the environment are low, less than minor. Restrictions on the volumes of paints, and in particular diisocyanate, will ensure limited potential for risks to human health and safety.

(i) The planner, after considering the expert evidence and assessing the proposed discharges against the objectives, policies and rules of the relevant planning documents, has concluded that the discharges are consistent with the sustainable management purpose of the RMA and the effects can be mitigated to an acceptable degree.

[13] This is not the first time this matter has made its way to the Environment Court which has been subject to:

a) Appeals relating to original land use consents;
b) A consent order in respect of the land use and discharge consents in 2002; and
c) Subsequently an application for declaration before Environment Judge D J Kirkpatrick in 2014.

Consent 14 has expired

[14] This consent is stated in exhibit **A** to expire in 2009. Nowhere in the evidence was there a discussion to whether this consent was the subject of the application for renewal but given that it has expired by the effluxion of time and there was no suggestion of any application to replace it or any new consent presented to us, we can only assume that it is now expired. Thus, we are only concerned with the renewal of the consents 10-13 inclusive and consent 15. This must be reinforced by the fact that the application itself only refers to the consent annexed as **A** to this matter and therefore must be governed by its terms. It cannot seek the renewal of something which has expired. If there is another consent in existence it was not the subject of this application for renewal.

What areas are the subject of the application for renewal of consents

[15] Given that this was an application for renewal of existing consents, one must assume that it cannot extend or increase the coverage of these consents.

[16] As can be seen from the consent annexed as **A**, the areas involved are explicitly described by their section numbers or DP numbers. The reason for this is unclear and there is no reference in the consent itself to reliance on the maps attached. In its terms, condition 11 refers to Section 1-4 SO63634 Blk V Russell SD. Condition 13, discharge of contaminants to ground, refers to Sections 2 and 3 SO 63634 Blk V Russell SD.

Do GPS coordinates give certainty about included areas

[17] In both cases, all of the various sites are referred to by a general reference to a location to coordinates east and north. The exact position of those coordinates varies slightly with some referring to a coordinate 1701470E 6091840N, i.e., discharge to air, whereas discharge to air from marine vessel construction, sale and repair is at or about locations 1701520E 6091850N.

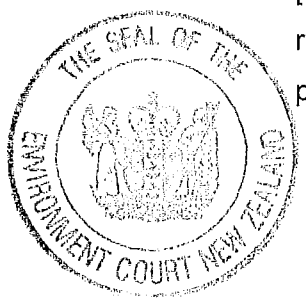
[18] We were not provided with any documents which established the point of these coordinates nor are they annexed to the consent itself. Nor do these appear to be readily available as fixed points or areas with LINZ advising that coordinates cannot be regarded as reliable in terms of *Geodetic Datum 2000 New Zealand*, given they were prepared in 2000. We conclude the GPS coordinates do not clarify the areas included in the consents. In addition, the reference to a general area does not assist in this case.

Subsequent correct citation

[19] While the application did not contain any change of description, it is notable that in the Notice of Appeal, dated 27 November 2018 and filed by Ms Prendergast, paragraph 1(b) and (d) and in the amended appeal filed on 31 January 2019, paragraphs 1(b) and (d), the reference is to SO 68634 (the reserve) and *"being part of the reserve"* in the case of (d). We are able to conclude by the time of filing the appeal it was recognised the reference in the original consent to SO 63634 was not a reference to the reserve.

Other evidence

[20] This led the Court to inspect in more detail the document prepared in 2008 as it related to the land in question. It is notable that the diagram attached to the consent prepared by the Northland Regional Council NTS 3231c shows the SO numbers in



respect of all of the sites but not the SO numbers for Sections 1-4. Nor are these delineated in any detail.

Does the expired consent cover the esplanade reserve

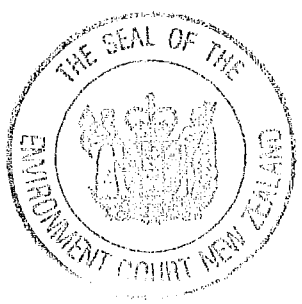
[21] The legal question for this Court is that given that it was an application for renewal for consent CON20060791410 (10-15), (now excluding 14 which has expired), are we able to extend the application to include the correct identification of the SO number as 68634 rather than that shown in all the resource consents the subject of the renewal application.

[22] This was not an issue raised by the applicant, but this does not mean that the issue is not fundamental to the jurisdiction of this Court on an appeal. This Court is a creature of statute and can only act within its jurisdiction.

[23] We have concluded that this Court is limited to the application that has been appealed before it. That application cannot be extended by an appeal although it can be reduced in scope including area. There is clearly an inference that Sections 1-4 identified on the plan are intended to be a reference to SO 68634. Yet there is no indication in the consent itself that the map is determinative for the purposes of the identity of the land in question. The map does not delineate the areas covered by the consent. Nor can it be said that the words *"at or about the GPS coordinates"* establish a different regime for identifying the properties concerned. As we have pointed out, this information does not appear to be readily available, nor can it be regarded as reliable given LINZ's concerns as to land movement in the time since the coordinates were set up in the 2000 data.

[24] For our part, we have concluded that as a clear matter of law, the applicant is limited to renewing the consent that was still in existence at the time of the application. In applying for renewal, Mr Schmuck was specifically relying on s124 of the Act which gives the ability to extend the existing consent for the period until such resource consent is determined (s124(3) of the Act).

[25] We note that in particular under s124(1)(b) the continuing consent section only applies to a new consent for the **same** activity. Given the significant dispute between the parties as to utilisation of the esplanade reserve, any identified error in the consent in relation to this should have been clarified and subject to either declaration or amendment



under s127 prior to its expiry.

[26] Having now expired, the application for renewal cannot be said to provide any potential for amendment of the original consent. The applicant can operate under the existing base consent, notwithstanding the expiry, because of the provisions of s124 only. To change the identification of the property would now be a relatively fundamental matter given the way in which both consent and the renewal application were framed.

[27] We recognise that in this we are taking a technical approach, but we are left with little choice given the wording of the Regional Council resource consent and the wording of the application for renewal.

Conclusion as to scope of appeal

[28] We conclude we are only able to consider the appeal as it relates to the properties identified in the original consent. Given that the description of the land now known as the reserve is incorrect, we cannot properly consider a consent in relation to the wrongly named block of land as it does not appear to be associated with this area at all.

[29] This being the case, we are left to consider the application for discharge consents in relation to the other blocks of land which could be cumulatively described as the Opua Boatyard land. The conclusion is that Opua Boatyard needs to apply for consents in respect of the esplanade reserve land which for whatever reason were not properly included within the original consents.

[30] We are disappointed that this issue was not addressed directly by the applicant given that it is clear from the appeal and the amended appeal that they were aware of the different description of the land at this time. It is also shown as 68634 on the plans submitted by experts in support.

[31] Can we say more generally that the lack of precision about the areas of the esplanade reserve to be utilised, occupied or affected by the activity is at the heart of the concerns of the objectors in this case and to some extent the Council. There appears to have been an assumption that because an existing land use consent allows activities to occur on the reserve, this means that applications for resource consent for discharges must be granted.

[32] A major impact identified by the Commissioners and by ourselves was an impact upon amenity, particularly for those people using the coastal walkway along the frontage of the esplanade reserve. We do not consider that the applicant has considered this effect in any real way but seems instead to rely on the land occupation and existing consents to justify the activity, notwithstanding any impact to amenity of visitors or people using the coastal walkway.

[33] At this stage we need not comment significantly further on this, as further applications are in any event going to be necessary for the range of additional activities for which consent was originally sought. The use of the reserve for discharge purposes might be revisited at that time. For current purposes we consider we are left with the discharge activities as they relate to the applicant's land itself and proceed to consider those.

Area of various activities

[34] This led the Court to another problem that was also faced by the Commissioners in trying to identify which areas are working areas on this site and which areas can be regarded as neutral or clean for the purposes of the discharge activities.

[35] It appears to us that the area to the east of the boatshed (and by extension, along its retaining wall towards the water) is largely an area where, at the most, vehicles would park but usually is utilised by people or for minor storage. The car parking area at the rear is asphalted and appears to collect stormwater.

[36] We are less clear as to how the roof water is dealt with, with various pipes and overflows giving a confused picture that some of that water may in fact be making its way into the treatment water for the boating activity. The area around the front of the shed has some unsealed and some sealed areas and this is further confused by the rotary turntable area and then a sump covered by planks where it is clear water is intruding from surface flow.

[37] The role of the plastic tanks, pumps and their lids further to the west is unclear but may have something to do with trying to pick up water from partway down the slipway area A (on the reserve). We are left befuddled as to why these areas aren't demarcated

more clearly with area to the east being allowed to enter ground, being natural water falling on the ground through the metal. The asphalt area should be directed to a stormwater drainage system.

[38] This would leave the areas in the front and to the western side of the shed treated as the containment area for the Opua Boatyard activity and therefore utilising a single sump and pump to waste. We consider that many of the issues which currently revolve around the volume of water that is received by that system in high rainfall events would be precluded if the area in front of the boatshed (to the reverse boundary) was fully captured, together with the area to the west of the building within the site.

[39] We suspect that the volume of stormwater from the Boatyard working area could be captured within a relatively modest resized sump system. Extra storage could be provided by balance tanks which are already provided on the site. There appears to be a reluctance by Mr Schmuck to uninstalling the turntable and installing an appropriate catchment and sump system. This seems to be at the heart of the problems here.

[40] Beyond that, there has been a failure to ensure that the various water sources are dealt with systematically rather than being allowed to concatenate at various points, i.e., overflow from the building, downflow and then flowing across the ground to the sump, etc. If separation occurred, it appears to us that the roof water and rain falling on the metal and asphalt areas are likely to be controlled by existing authorisations. If not, they could be covered by relatively simple conditions.

Discharge of boat area

[41] This would leave all the water from the operational area on the site, able to be discharged to waste. If so, the only issue would be if there was an event which exceeded the storage volume. We would call this an unexpected or emergency event. This would cover two main situations:

a) Where the pump systems failed through lack of power;
b) The capacity of the storage and/or balance tanks was exceeded.

[42] In those circumstances an overflow to stormwater could be appropriate and this was the basis on which the applicant advanced the case. Nevertheless, having seen the

site, we consider that circumstances in which this would arise could be significantly narrowed by a proper waste grid collection system rather than the existing turntable.

The Commissioner's decision

[43] In considering this matter the Commissioners were confronted not only with issues relating to the renewal of the consents but also a series of new consents for a new wharf and various earthworks and other matters. Some of these applications seem extreme such as re-excavating the site to rehabilitate the soils.

[44] Moreover, the lack of clarity was clearly of significant concern to the authority at first instance and the case was reconvened to try and address some of these matters. It permeates the decision that the consent renewal application did not have clear information on the various aspects of the activity and how they were delineated or to be addressed.

[45] This area of confusion is one that continued before us. It seems to us that the matter can be most simply addressed by dealing with the discharge of contaminants in respect of the working area by requiring the installation of an appropriate system for the collection and removal of gross material and a sump system which pumps to waste, but allowing for emergency/unexpected events in which uncontrolled stormwater could be discharged in certain limited circumstances. This would be on the basis that the balance of the area has separate controls and does not involve any coarse waste materials from the boat building activity.

Air discharges

[46] This then leaves us with the question of air discharges. In this regard Ms Prendergast's argument seems to be that because there was a contractual ability (under the reserve lease) for the Opua Boatyard to conduct repair maintenance and other services on the slipway, issues of amenity were irrelevant and the only issue for this Court was whether it met the various discharge "standards". It may be that this argument was predicated on the land use consent granted and implemented.

[47] There were submissions as to whether or not the droplets of water from water blasting contained contaminants and if so whether they were harmful to humans, and

whether paints, which clearly did contain harmful contaminants, would be acceptable at certain distances from them depending on frequency and type of paint and the like.

[48] The original consent had sought to address some of the issues of impact by requiring a screen to be constructed and we saw this in place and operating. The screen does little to prevent water travelling onto the walkway if a boat is being cleaned immediately adjacent to it. Moreover, the impact of the noise, water plumage and sheer size of the vessel would be enough to put all but the most avid walkers off using this piece of space while the activity was taking place.

The existing land use consent

[49] The district and regional consents were originally granted as part of a package on 31 January 2002 by consent order under the hand of Judge Newhook. It is therefore most curious that the discharge consents that have been the subject of our earlier discussion identify Sections 1-4 SO 63634 repeatedly throughout.

[50] The District Council consents refer to the following activities and structures on the esplanade reserve (Sections 1-4, as shown on SO 68634, section B Introduction) and that the map involved (which is the same for the regional), although not referring to this, clearly refers to the esplanade reserve areas marked A.

[51] One can only say that the reserve area here and the distinction between the land referred to in the Regional Council vs District Council consents cannot be said to be a mere slip given that the documents were prepared at the same time and are included in the same group of consents.

[52] Nevertheless, what we are able to conclude is that the esplanade reserve lands are properly identified in the District Council decision, including section C which provides that:

> Pursuant to s185 and s184 of the Resource Management Act 1991, the Far North District Council refuses its consent in part to the application RC2000812 by D C Schmuck for the following activities and structures on the esplanade reserve:
>
> (Sections 1-4 as shown on SO 68634);
>
> ii) Stormwater containment system (CSW) including all tanks, pipes, cables, traps, filters and utilities;

iii) Discharge containment system (CTS) including all tanks, pipes, cables, traps, filters and utilities;

iv) Use of the concrete slipway for boat repair and maintenance;

viii) (New) existing dinghy racks;

xiii) Existing south dinghy ramp.

[53] This clearly refers to part of the application made given that only selected provisions have not been granted. This was discussed by His Honour Judge Kirkpatrick in the declaration proceedings in 2014 dealing with the district provisions. The Court discusses the apparent conflict between part B and part C of the consent order at paragraph 58 to 61 of the declaration decision. The Court notes at paragraph 59:

> In relation to the containment systems, the consent order records an amendment to condition 3, (quoted above paragraph [15]), stating that these are to be located as far as practicable within the consent holder's site with these arrangements being "to the satisfaction of the District Council's Resource Consent Manager".

[54] It is implicit that this could mean that these systems might be on the esplanade reserve but subject to the manager's apparently unfettered satisfaction and at paragraph 60:

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

[55] Having discussed this, His Honour goes on to say that he is unable in terms of the application for declaration to deal with the conflicts in these provisions as there is no power in a declaration to modify the terms of consent.

[56] Accordingly, the conclusion reached in that declaration gives further strength to our concern that the failings of the various consent wordings should have properly been addressed by modification of the consent rather than an attempting to rectify mistakes in respect of the identification of the land and the wording of the original conditions by a reformulation of the areas at the time of renewal and/or appeal.

The relationship of the land use consent and the regional consents

[57] As the earlier declaration decision was at pains to explain, any right to occupy as a matter of contract or statute is not a matter that concerns the Environment Court in considering a resource consent. It is trite to say that a person can apply for consent to construct a home on their neighbour's property even though they have no right of entry. Whether such consent would be granted given its impossibility is another issue.

[58] In this case, the land use consent granted in 2002 and any lease of the reserve, stand on their own wording and are subject to the limitations set out in part C.

[59] Although application may have been made for general use of the esplanade reserve, it is clear that the conditions as granted for land use were far more limited. Again, referring to the plan annexed to **A**, it can be seen that area A referred to in land use consent condition 8, is an area immediately below and including part of the circle identified as turntable. The boundary line shows that part of this is within the esplanade reserve and there is a further hatched area of undefined width and length identified as concreted area toward the turntable and also as area A.

[60] In addition, there is a small area marked B, very narrow, along the frontage of Section 2 SO 24139, which may be used for the purposes of permitting the repair or maintenance of any vessel standing on the southern branch of the slipway marked C on that attached plan.

[61] There was a review condition and it is clear that the conditions also require:

a) Compliance with condition 2;
b) All necessary plumbing, drainage and building consents obtained prior to commencement of the site work;
c) Discharge containment system and stormwater containment system located as far as practicable within the consent holder's site with these arrangements being to the satisfaction of the District Council's Resource Consent Manager with the exception of 8, no other materials, tools or items placed or left on the esplanade reserve as may be necessary for the passenger boats on the slipway and only once those activities have been carried out;
d) Condition 9 relating to no vessel being left on the slipway outside hours of

operation;

e) Condition 9 and 10 are special conditions in relation to washdown periods.

f) Condition 13...

[62] Importantly there is also requirement for a management plan for approval within three months of the commencement of the consent, covering all aspects of the operation of the boat washdown area including the contingency plans.

Walls Bay and Opua Boatyard

[63] Having examined the conditions that were granted we now go on to discuss the situation as we found it at the time of our site visit before moving to the more specific issues in this case.

[64] Walls Bay is a small area of flat land with hills rising sharply behind the bay on which are a number of private homes. The entire flat area involving some excavation into the adjoining hillsides is either esplanade reserve or the Opua Boatyard site. There has been some slope retention to maintain the integrity of the road on the reserve and this area is separated from the rest of Opua by a headland which juts out closing the eastern side of the bay.

[65] Entering from the east, a walker comes to a grassy knoll, on which there are a number of dinghies and a dinghy rack used by people who have moorings within the bay.

[66] It is clear that one is in part of a well-developed area as the long and recently extended wharf is clearly visible at all points throughout this area. There are a number of vessels also moored nearby and the comings and goings of the Opua ferry are also clearly visible. Notwithstanding this, the site is pleasantly situated looking to the north and has a pleasant but busy maritime view. The walkway appears to be well utilised and we suspect that the grassed area around and just beyond the dinghies would also be popular.

[67] Walking into the bay the Opua Boatyard site is clearly visible as a large shed on the western side of the bay and notched into the hill to provide vehicle access. There is a small wall that has been constructed demarcating the sand from the grass area and this ends near the Opua Boatyard and that there is access down to the beach from that

site. Moreover, there is another wharf just beyond that which goes out towards a charter vessel (owned by Mr and Mrs Kidd). Just beyond the wharf, the walkway again turns around the headland into bush and then out of sight from the area.

[68] Looking at the Opua Boatyard from the water (reference to the plan attached to **A** may be of assistance), the large building has an open area to its east and the bank to the rear is retained. This Boatyard area itself is metalled and although the rails are still on site, any rails enabling the movement of vessels onto that part of the site has been removed. This eastern part of the site can be accesses through a large closed gate but it is unclear what purpose it particularly serves, except perhaps as access for overflow parking.

[69] There is no sign that this area is used regularly for even small boat maintenance and there is no method we can ascertain to move larger vessels either to the east or west of the building although there is sufficient room on both sides. The eastern side of the building is somewhat closer to the surrounding bank which rises sharply to the west. Nevertheless, there is some room there for a vessel but any rails to allow this to occur have also been removed. Although there seem to be the remnants of winch housing on both sides, this did not show any sign of use.

The washdown area

[70] When we looked more closely at the turntable area immediately in front of the building, it became clear that this had been modified so that the turntable could no longer move. It now consists of a large concrete dial within a circular hole with some outer concreting which directs water into this hole.

[71] We were unable to see how this operated or filtered wastewater but it appears that it was connected by a pipe to a small sump slightly to the west which appears to have been in this position for many decades. It was covered simply by wooden planks. It did not appear to be large (less than $1m^3$). Given that the turntable is no longer utilised, we were perplexed as to why this system had not been replaced with a more appropriate catchment pit grid system with associated sump storage to enable washdown to occur and the removal of debris.

[72] Part of the turntable area intrudes into the esplanade reserve by perhaps

something in the order of half a metre to one metre (including the apron). The lack of any proper dimensions on maps or on site made it difficult to ascertain. There appeared to be something in the order of 12m from the edge of the esplanade reserve to the front of the Boatyard building.

The building itself

[73] The boat shed seems to have been constructed in such a way that it can be opened to allow access by a boat. There was no real explanation given as to why this is still not being done although it seems clear that boats are kept outside and that works do not generally take place inside the building.

[74] During the hearing, Mr Schmuck undertook that they would be servicing no more than 70 boats per year and that the boats would not exceed 12.5m in length. On the face of it, this would mean that these boats can be accommodated entirely within the boat building site in front of the shed. He did point out however, that some had bow sprits or other features which meant that they would project onto the esplanade reserve even if brought close to the main building.

[75] Such a vessel was on site at the time of our inspection. What was interesting to the Court was that the presence of that boat, close to the shed, did not appear to impinge in any practical way upon the use of the reserve. Other photos showed the vessels being cleaned down towards the bottom of the slipway. These seem to impose a much more significant impact both visually and physically on the reserve.

Washdown on the reserve

[76] Mr Schmuck indicated that he wished to clean down the hull of the vessel closer to the water before moving the vessel up for more significant repairs and maintenance. The reason for this was very unclear until we examined more closely the circular sump area. Because the old turntable has not been installed with a more relevant catchment grating system, it appears that if hull washdown is sent to the turntable, then the barnacles, seaweed and other items get wedged around the edge of the circular dial with no clear way to clean them out. This could be addressed simply by installing a crosshatch grill but this does not appear to have occurred. It would be completely solved by installing a proper catchment at the top of the slipway and ensuring the washdown was simply

directed into that catchment area.

[77] Further down the esplanade reserve near the water on A, the rails themselves need to be navigated by people using both the esplanade reserve and the walkway. However, they are not in themselves an unreasonable or significant impediment. In the area marked A on the map, Mr Schmuck has not installed a concreted apron but rather thick and pervious plastic sheets which must require placement from time to time as they show signs of cutting and pocking from the activities conducted on them. This seems to have led to the construction of a crib wall and other sorts of elements around or close to area A which appear to be some form of crude catchment system.

[78] Again, there is no particular way in which the gross residue from washdown is caught and disposed of appropriately. Many of the complaints made by neighbours related to material being left on the runway area generally, until a suitable tide or storm evacuated it.

Repairs and maintenance

[79] The more substantive repair and painting work is intended to be done near the building but include such part of A as may be necessary for the particular vessel. Again, although Mr Schmuck indicated that the vessel would be brought as close to the building as possible, it seems to be that no 12.5m vessel would ever need the entire area marked A if that approach was adopted. We will discuss this in more detail in due course.

[80] What we did observe was that there was a series of sumps and pumps constructed on the western side of the slipway which seemed to have some involvement with the antiquated sump situated near the turntable. The actual treatment of stormwater from the roof of the building, from the metalled area to the east of the building, metalled area from the west and from the concreted and semi-permeable surfaces such as the carpark and the area in front of the shed was confusing to say the least. There seemed to be a series of pipes in places, several tanks that appeared to be detention tanks and other water tanks. We go into greater detail to explain this in light of the technical information we were given in due course.

[81] On the face of it, the shed appeared to be large enough to take vessels up to 10m at least and possibly longer but does not appear to be used as a controlled environment

for repairs, painting and maintenance of vessels. The turntable area outside has been decommissioned from its original purpose and now serves no practical purpose at all except as a makeshift sump. For whatever reason, it has not been replaced with an appropriate sump and grid system which will enable removal of gross solids and the treatment of other materials before distribution to a wastewater system.

[82] The stormwater from the carpark, metalled areas and other permeable and semi-permeable area is both complex and based around a significantly antiquated and unnecessary turntable/sump system. In short, from our inspection of the site, it appears that most of the activities that would generate discharges to ground or to air could be accommodated either entirely within the subject's site or with minimal effects beyond the boundary perhaps including some of the top (landward part) of area A.

Management plans

[83] A management plan is anticipated in respect of the land use consent and was part of the former discharge consents with the Regional Council. In addition to this, the consent for the land use consents from the District Council also included a notation that the District Council would prepare a management plan in respect of the reserve. The interrelationship of these various documents and their potential to interact or even overrule one another is not a phenomena singular to this case. The complexity here is that the range of issues arising both from the coastal management area, the land use area on the esplanade reserve and the land use on the Boatyard itself and the range of consents required for discharge, add layers of complexity.

[84] The extensive litigation in relation to the contractual and other arrangements for the land further complicate this. From the Environment Court's perspective, our conclusion is quite simple. An authority granted by the Environment Court permits an activity to occur if it is otherwise lawful. Given the multi-layered level of legislation in New Zealand, this might mean that multiple consents are required from the owner, statutory bodies and under the RMA before a particular activity can occur. The grant of one consent does not require that other consents are granted, nor can the consideration of one issue under the criteria, for example of land use, mean that any aspect of the activity which has an environmental impact should not be properly considered if relevant for another consent required under the RMA.

[85] So, for example, achieving the purposes of the Act in part 2 is a matter which might be relevant to every consent that is required under the RMA. As has been clear for many years, a consent required under one statute does not mean that a consent is not required under another, for example the Fisheries Act.[1] The interrelationship between the various statutes is a matter that can sometimes be complex, for example under the Building Act with demolition consents.[2]

[86] Ms Prendergast appears to rely on the fact that the owner now has permission from the Minister to operate on the esplanade reserve. Generally, it is difficult to argue in terms of a Reserves Act that the resource consent constraints for the land use no longer apply. This is not and has never been the case here. RMA conditions continue to apply unless modified on application or cancelled. For the purposes of considering the application for renewal of the relevant consent, we must assume that those conditions are being adhered to.

[87] To the extent that Mr Schmuck seeks the ability to undertake works beyond the conditions of the land use consent and beyond the terms of the application for renewal, he would need to make another application. Some aspects of this matter are likely to be covered already by the application that was originally made but has not been pursued currently under this appeal. For current purposes we understand the maximum area of the reserve that might be used for the purposes of boat repair or maintenance including cleaning it down, are those areas marked A on the plan attached to the original consents. That width is not described in measurement but is the width of the existing turntable and is at least 10m away from the dinghy ramp and/or the commencement of the wharf. This is the area that is not currently concreted but seems to be the maximum area available.

[88] The other area which might be included, although no evidence was given to support it, given the changes to the operation here, was area B. Given that the rails have now been removed in that area, there is no need for area B and nor was any evidence advanced to support its continued inclusion. To the extent that the application sought the ability to wash down vessels below area A, that is outside of the scope of this matter for two reasons:

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[1] *Attorney-General v Trustees of the Motiti Rohe Moana Trust* [2017] NZHC 1429; (2017) 20 ELRNZ 1; [2017] NZRMA 370 (HC).

[2] *View West Limited v Auckland Council* [2018] NZEnvC 237 (EnvC).

a) It is not covered by the resource consent for land use and therefore it would be otiose for this Court to consider a matter which cannot be undertaken in any event;
b) It is not a renewal of the existing discharge consent and requires to be considered as a new application.

What area of the esplanade reserve might be utilised for this activity

[89] The discharge of contaminated water from the spraying down of vessels, maintenance and from discharge to air mainly from solvents from paints are two separate types of effects. In practical terms, we are completely unclear as to why Mr Schmuck would wish to washdown the vessels below area A and this would immediately involve direct conflict with people walking along the coastal walkway whether or not the water spray was contaminated.

[90] We would have thought the water spray in itself, while not offensive in health terms, would certainly have an adverse impact upon walkers (making them wet) and also give some concern as to the contents of that water. If that spray down occurred at least within area A, there is less prospect of any direct contamination contact and the issue turns more upon the spray drift i.e. water mist that might be windborne and any noise or business associated with the activity.

[91] By the time the majority of the boat was moved onto the Opua Boatyard site, with say 1-2m projecting into area A, we conclude that a reasonable member of the public would be able to navigate this area with little or no concern of getting wet, even from washdown activities.

[92] Similarly, it is the potential for proximity between painting and other works which give concern to members of the public. Many of the solvents used in paints are particularly noticeable and previous Court experience suggests members of the public seem to be highly sensitive to these odours.

Statutory considerations on applications

[93] Section 104 sets out the primary matters for consideration particularly under sub-sections 1, 2, 3(a) and (c). In particular, sub-section 1 requires:

When considering an application for a resource consent and any submissions received, the consent authority must, subject to part 2, have regard to:

a) Any actual and potential effects on the environment of allowing the activity;

b) Any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity;

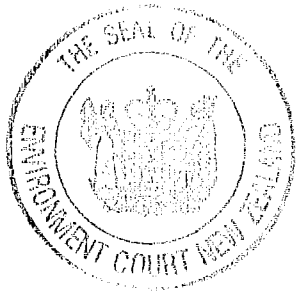
c) Any relevant provisions of:
   i) National Environmental Standards;
   ii) Other regulations;
   iii) National Policy Statement;
   iv) New Zealand Coastal Policy Statement;
   v) Regional Policy Statement or proposed Regional Policy Statement;
   vi) Plan or proposed plan.

d) Any other matter the consent authority considers relevant and reasonably necessary to determine the application.

[94] Section 104(b) clearly empowers the Court on a discretionary application for consent to grant or refuse the application and if it grants it, to impose conditions under s108. We do not understand any aspect of these applications to involve non-complying activities and thus s104D does not apply. Nevertheless, s105 is relevant to discharge permits or coastal permits for things that would contravene s15 or 15(b). The discharges in this case involve discharge of water into water or contaminant onto land which may result in it entering water or contaminants from trade premises into air and probably contaminants from trade premises onto or into land. Thus, additional requirements arise as follows:

Section 105(1)...
The consent authority must, in addition to the matters in s104 have regard to:
a) The nature of the discharge and the sensitivity of the receiving environment to receive adverse effects;
b) The applicant's reasons for the proposed choice;
c) Any possible alternative methods of discharge including discharge into any other receiving environment.

[95] Section 107 also has particular restrictions in relation to certain discharge permits under s107(1) where this relates to:



a) the discharge of a contaminant or water into water (s107(1)(a));

b) Where there is a discharge of a contaminant onto land in circumstances which may result in that contaminant (or any other contaminant emanating as a result of the natural processes from that contaminant) entering water (s107(1)(b)).

[96] This then goes on to state that a consent authority shall not grant a discharge permit if:

> After reasonable mixing, the contaminant or water discharged (either by itself or in combination with the same similar or other contaminant water, is likely to give rise to all or any of the following effects in the receiving waters:
>
> a) The production of any conspicuous oil or grease film, scums or foams or floatable or suspended materials...
>
> d) ...Any conspicuous change in colour or visual clarity;
>
> e) Any emission of objectionable odour;
>
> f) The rendering of fresh water unsuitable for consumption by farm animals;
>
> g) **Any significant adverse effects on aquatic life.** [emphasis added]

[97] Of all of these, s107(g) is the only one which might be applicable and the applicant has gone to some extent to show that these effects do not occur. However, we note that the requirements under s104, 105 and 107 are cumulative and the mere fact that s107(1)(g) is met does not in itself mean that s105(1) has been met or can be ignored.

[98] It appears to have been a focus of much of the evidence on the scientific issues arising under s107 as to effect on aquatic life on the basis that other effects do not need to be taken into account. The definition of effect under s3 of the Act is extremely broad, including effects which are positive or adverse, temporary or permanent, past, present or future and cumulative, regardless of the scale, intensity, duration or frequency of that effect.

[99] In her submissions in reply, Ms Prendergast seems to be asserting that because there is a right to occupy the reserve land and a land use consent to undertake repair, maintenance and cleaning down of vessels, the adverse effects of those activities on the public reserve and amenity are acceptable. Therefore, that they are not a matter relevant to the determination of the consent for the discharge. We are unclear as to the basis for this assertion and the mere fact that a particular activity might be generally acceptable cannot mean that any potential permutation of that could then be said to have no adverse effect on communities, cultural or amenity values. An example may be the use of highly

toxic isocyanates in circumstances where these could be ingested by members of the public. Another may be the application of signage to a boat which would be offensive either culturally or generally to members of the public.

Section 105 and the environment

[100] In this particular case however, the issue is simply addressed by s105(1) which requires in addition to any matters under s104 i.e. those relevant for the purposes of the land use consent, a particular consideration of the nature of the discharge and the sensitivity of the receiving environment to adverse effects. We see no basis to suggest that that environment does not include the full **s2 environment** as defined in the Act which includes:

> a) Ecosystems and their constituent parts including people and communities;
> b) Natural and physical resources;
> c) Amenity values;
> d) Social, economic, aesthetic and cultural conditions which effect the matters stated in paragraphs (a) to (c) of this definition or which are affected by those matters.

[101] Ms Prendergast seems to limit the definition of s105 to simply ecosystems and their constituent parts and natural and physical resources. This would be a significant step away from the receiving environment defined in s2 of the Act. Section 2(a) people and communities as well as (c) and (d) of s2 definitively go wider than environmental impacts on flora and fauna.

[102] Section 104 requires consideration of actual or potential effects on the environment where s105 requires consideration of the sensitivity of that environment to adverse effects. It goes further by requiring investigation of the reason for the applicant's proposed choice and whether there are other alternative methods of discharge.

[103] Accordingly, we conclude that the wording of s105 require consideration of the discharge into land, water and air beyond the evaluation required for a land use consent. Land use requires evaluation of whether or not the use is acceptable. Section 105 requires the Court to consider as to whether it is the best practicable option or to have regard to other options and the sensitivity of the environment itself.

[104] It cannot be an answer to this that the applicant holds consent from the landowner

to undertake works or even a resource consent. For the discharge consents the Court is required to have regard to the matters under s105 including why the applicant has chosen to undertake the work in this place and whether there are alternative methods of discharge.

[105] We do not understand, within the circumstances of this case at least, that this is an examination of alternative sites. The Boatyard has been well established on this site. Yet it goes to the heart of the dispute between the parties as to whether or not Mr Schmuck should be undertaking discharge to water, soil and air on the reserve or on the Boatyard property. As we will discuss Mr Schmuck's reasons for discharge in the reserve were less than clear during the hearing.

[106] For the most part, it appears all of this work could be conducted appropriately on Mr Schmuck's property with perhaps a small intrusion of up to 2m into area A. With appropriate catchment mechanisms, e.g., a tarpaulin leading back to a proper catchment system on the Boatyard site, washdown debris could be directed into the Boatyard's collection system and also any minor emanation of air discharge from work on the boat would be captured within a relatively small range, perhaps 3-5m of his boundary.

[107] We now go onto consider the way in which the Commissioners addressed these issues at first instance before moving onto the various planning documents relevant under s104 and our conclusion in relation to effects and conditions.

The Regional Council Commissioners' decision

[108] The Council Committee was chaired by S McGarry with Councillor J Blakey, and the matter was considered on 17-18 May and 16-17 August. A break in the hearing was necessary to give the applicant opportunity to provide further clarification. The Committee noted that the applications for a replacement and renewal consents were regarded as new consents under the RMA. However, the wording of the original application, the renewal portion (to gain the benefit of s124 of the Act) is such that it sought the same type of consents already granted.

[109] Nevertheless, there were a series of new activities relating to the jetty, mud creek grids, structures, refurbishment of the slipway, new berths, a 50m long seawall, disturbance of the foreshore seabed, beach rehabilitation, capital maintenance dredging,

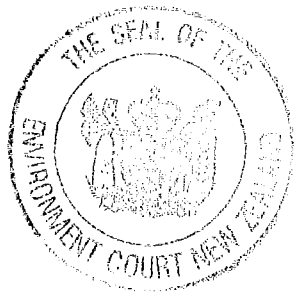
relocation of stormwater and extension of the exclusive occupation of the CMA.

[110] Those new aspects of applications are not before this Court on appeal, having been explicitly adjourned. To the extent any aspect of the matters of renewal goes beyond the existing consent, those would also be part of the new activities.

[111] Overall the activities are discretionary and there was no dispute before us as to this. The Council decision goes onto consider significant numbers of submissions and the evidence of the parties including the s42 report. It is clear from paragraphs 114 to 116 that there was a concern by submitters that the activity of the Boatyard was expanding onto the reserve which Ms Prendergast denied was the case.

[112] The Commissioners summarised Ms Prendergast's submission that the expert evidence shows that the effects of the new activities are minor and can be mitigated by conditions and that the applications are in accordance with the purpose and principles of the RMA and consistent with the objectives and policies of the NZCPS RCPPRP and therefore should be approved. We keep in mind we are dealing with not only the renewals currently before us but also a plethora of new consents. There is nevertheless a relatively high degree of similarity in the matters discussed by the Commissioners at this point including:

> 121 Overall, we agree with the reporting officer and many of the submissions that that application documentation and assessment of effects (AEE) as notified, lacks sufficient detail to adequately consider the effects of the applications. In our view this lack of information and ongoing amendments to the applications have resulted in a significantly protracted hearing process, the need to reconvene the hearing and a lengthy decision process and report writing.
>
> 122 A significant amount of necessary detail regarding the effects of the existing operation, and in particular what activities occur where, was given verbally by Mr Schmuck at the hearing in response to our questions and was not included in the application documentation and...
> ...we remain concerned that detail regarding the existing stormwater and wastewater collection and treatment systems was unclear and undocumented until further information was provided both during and after the reconvened hearing.
>
> 123 We record that we have not considered matters relating to the use of the reserve and the easements sought by the applicant. We have focussed our assessment on the actual and potential environmental effects of the existing and prosed activities on the receiving environment including the CMA, the reserve and the land surrounding the boat yard and this is reiterated at paragraph 124. Again, we have focussed on assessing the actual and potential adverse effects on the environment, including cultural values and relationships.



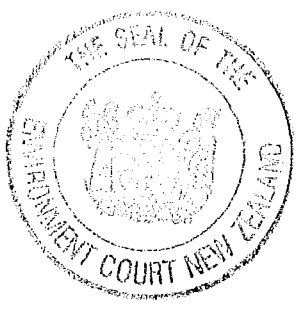
[113] Then follows consideration of relevant statutory provisions, including the citation of some of the matters we have already dealt with.

[114] In the end, the Commissioners considered at:

> 181 We accept the evidence there was no potential nuisance from dust or contaminants entrained in water droplets at the nearest house.
>
> 182 We accept the evidence that discharges into air from the application of solvent based surface coatings using a roller or a brush and grinding and sanding activities (with the use of vacuums) are unlikely to have adverse effects other than localised odours and dust (within 5-10m of the source). We therefore consider the applicant undertaking such activities within the boundaries of the boat yard would be unlikely to result in any nuisance, odour effect within the reserve and CMA beyond 5-10m from the boat yard boundary. While we acknowledge this could have adverse effects on the amenity and use of the adjacent reserve and beach, we consider this would be limited to a strip of the reserve along the eastern boundary of the boat yard. On the basis of the evidence presented, this would warrant an offense of odour boundary extending no more than 10m from the boundary of the boat yard property.
>
> 186 On the basis of the evidence presented, we consider the spray application of anti-fouling paint within the boat yard could potentially be undertaken with minor adverse effects on the reserve if it was undertaken in a "controlled work area" in compliance with the relevant environment protection authority rules and regulations. We have no evidence that the boat yard has a compliant controlled area for spray painting or if that activity can be undertaken away from the boat yard boundary with the reserve. On our site visit we only saw a tent structure which was obviously not sealed.
>
> 186 We consider undertaking water blasting activities on the slipway within the reserve and CMA is currently adversely effecting amenity and people's use and enjoyment of the reserve and beach and the walking track. These are not potential effects. The evidence shows that these are actual adverse effects of the existing water blasting activities undertaken on the slipway within the reserve. The photographs and videos provided show water spray drift extending over large areas of the reserve, people moving to avoid spray drift and people waiting for the activity to stop before using the walkway. We do not agree that this is acceptable based on the "small" number of boats serviced each year. We consider water blasting activities have a significant adverse effect on users of the reserve and the public's access to and along the coastal environment.

In relation to discharge of treated stormwater:

> 191 A key concern of submitters and opposition of the applications was the lack of adequate control and treatment of the discharges of contaminants onto land and into water. Evidence was provided showing direct discharges of wastewater to the CMA (running down the slipway), discharge onto permeable surfaces and the reserve, lack of controls to collect waste material and debris and poor



stormwater management.

In relation to stormwater management, they concluded:

210 The evidence shows the existence of stormwater management measures are inadequate and the stormwater treatment systems rely on the basic settling of contaminants. Stormwater management is currently limited to diverting flow away from work spaces where trade waste is generated...

211 The evidence shows that wastewater is not adequately contained and collected to ensure all contaminated material is disposed of or pumped to the reticulated sewerage system. Untreated wastewater can and does discharge onto land and into the CMA.

217 We do not consider the adverse effects of discharge activities occurring on the slipway, within the reserve, can be sufficiently contained and controlled without a large and permeable concrete (or similar surface with bunding), a sufficiently sized sump, collection of overflows, clean water diversion drains above the boat yard, stormwater interception drain along the eastern boundary of the boat yard and sufficient storage to meet any capacity restraints of the reticulated sewerage system. We consider the slope of the existing slipway results in direct discharges into the CMA and makes containment collection difficult.

219 We agree with the majority of submitters and the reporting officer, that boat yard activities should be undertaken within the boat yard and enable sufficient containment of discharges to land and air. In our view, at this site, this would require additional concrete (or similar surfaces and bunding), clean water diversion drains, overflow cut-off drains and upgraded sumps and pumps. We note the recommendation of Mr Papesch for treatment of stormwater by a typical boat yard system such as "stormwater 360" and diversion of the treated stormwater to the local network. However, this is not what is proposed.

221 Overall, on the basis of the evidence before is we find that the existing discharges onto land and into the CMA from boat yard activities are resulting in significant water quality effects in the receiving environment. We consider the evidence presented showing ongoing poor control and management of wastewater and stormwater and poor management storage and removal of contaminated waste is likely to be the primary cause of sediment contamination around the slipway and wharf berths. This evidence suggests this contamination is at levels that are likely to be having observable adverse effects on marine organisms and eco systems.

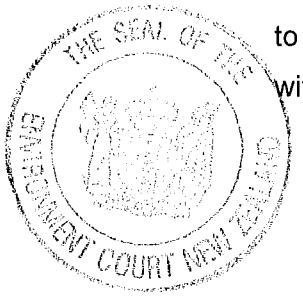
223 We find that the discharges from the activities undertaken on the slipway are resulting in significant adverse effects on the quality of the receiving environment, and cultural values and relationships. We do not consider there is enough information to make a finding on the potential adverse effects on public health from contact with polluted sediment or the harvesting of kaimoana in the immediate vicinity of the slipway and wharf. In our view this should be investigated further.

Overall evaluation by the Commissioners

[115] The Commissioners went on at paragraph 302 to explicitly consider s105 and 107 of the Act. After citing s105 as we have already done, they go on to say:

> 303 We have considered the nature of the air and water discharges and the potential for contamination of the environment and adverse ecological and health effects. We consider the receiving environment includes the boat yard and reserve and the CMA. Overall, we consider the receiving environment of the boat yard has a low sensitivity to adverse environmental effects given the ability to implement systems to avoid and mitigate effects and to restrict and control public access. However, we consider the receiving environment of the reserve and slipway to be highly sensitivity [sic] to adverse effects given public use of the reserve and walkway and CMA and given the inability of the applicant to implement systems and measures to control and mitigate adverse effects and to restrict public access to the site during discharge activities.
>
> 305 We consider the reasons the applicant has chosen to undertake air and water discharge activities in the reserve, primarily relate to convenience and the applicant's assertions that these activities have been undertaken outside of the boat yard for many years. It does not appear to be related to the cost required to make changes to the boat yard property to undertake work within the property as the capital costs to "refurbish" the slipway and upgrade the stormwater and wastewater systems are also significant.
>
> 306 In our view, these reasons are insufficient to justify undertaking air and discharge activities within the reserve and outside of the boat yard property.
>
> 313 We have also concluded that objectionable odours from the spray application of anti-fouling paint and sanding and grinding within the reserve is likely to result in objectionable odours and nuisance dust some 5-10m from the source.
>
> 328 We have given careful consideration to granting consents for discharge activities to be undertaken within the applicant's boat yard so that some level of boat servicing can continue. However, we are mindful this is not what is proposed by the applications; nor do we have sufficient evidence to demonstrate the discharges can be adequately controlled or to enable the formulation of appropriate consent conditions. It also appears the applicant is intent on reducing capacity within the boat yard property to accommodate boat maintenance and repair and it remains unclear how the activities could be managed within the boat yard.

Although the Commissioners also went on to consider questions of effects under s107, these may be in the broader context of the wider range of activities that were sought to be undertaken. We have tried to identify those matters that are more or directly related to the renewal of the consents although we accept that the Commissioners were dealing with matters more broadly.



[116] It is therefore curious that much of the evidence before us was a repetition of that before the Commissioners and any focus of expert evidence was on showing compliance with s107 rather than satisfying us of the matters to which we must have regard under s105. We go on now to address the plan context.

Planning context

[117] The consents we are left to deal with all fall within the domain of the Regional Council. The relevant RMA instruments are:

a) New Zealand Coastal Policy Statement (NZCPS);
b) The Regional Policy Statement for Northland (RPS);
c) Regional Water and Soil Plan for Northland (RWSP);[3]
d) Regional Air Quality Plan for Northland (RAQP);
e) Regional Coastal Plan for Northland (RCP);[4]
f) Proposed Regional Plan for Northland (PRP).

[118] As described earlier the spatial area on which the various activities take place includes the Appellant's commercially zoned property (under the Northland District Plan) and then straddles an Esplanade Reserve and includes part of the CMA. Therefore, in addition to the RMA under which the consents are sought, the Reserves Act has relevance.

[119] As we have said the scope of consents now sought on appeal has narrowed. We had evidence from two expert planners which to some extent was modified as the hearing progressed or by deletions of no-longer-relevant text in prepared reports in an effort to assist the court. This information was by no means concise and we have had to spend some time understanding the nuances of the various consents relative to the statutory instruments. While we have referred to all the instruments and specific parts referenced for us, we highlight some of the more relevant which assist us in the decisions we have to make in the context of the matters now at appeal.

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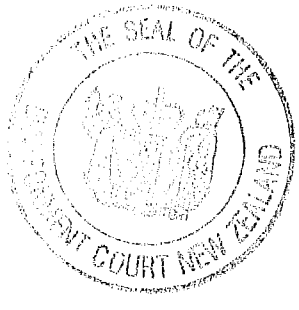
[3] Plan coverage: land from MHWS
[4] Plan coverage: below MHWS

NZCPS

[120] The NZCPS sets out matters relevant to achieving the purpose of the Act. It is at the top of the planning hierarchy and regional plans and policy statements are required to give effect to it. Where such plans are ambiguous or inconsistent with the NZCPS we must look to this document for guidance. Section 104(1)(b)(iv) requires us to have regard to the NZCPS when considering applications for resource consent. The coastal environment is defined in Policy 1(2) of the NZCPS and amongst other things straddles land and sea, so this document needs to be read in that context.

[121] Key objectives and their parts relevant to this appeal are (our emphasis added in bold):

> Objective 1
>
> To safeguard the integrity, form, functioning and resilience of the coastal environment and sustain its ecosystems, including marine and intertidal areas, estuaries, dunes and land, by:
>
> - **maintaining or enhancing** natural biological and physical processes in the coastal environment and recognising their dynamic, complex and interdependent nature;
> - protecting representative or significant natural ecosystems and sites of biological importance and maintaining the diversity of New Zealand's indigenous coastal flora and fauna; and
> - **maintaining coastal water quality and enhancing it where it has deteriorated** from what would otherwise be its natural condition, with significant adverse effects on ecology and habitat, because of discharges associated with human activity.
>
> Objective 2
>
> To preserve the natural character of the coastal environment and protect natural features and landscape values through:
>
> - .....
> - identifying those areas where various forms of subdivision, use, and development would be inappropriate and protecting them from such activities; and
> - **encouraging restoration** of the coastal environment.
>
> Objective 4
>
> To **maintain and enhance the public open space qualities and recreation opportunities** of the coastal environment by:
>
> - recognising that the coastal marine area is an extensive **area of public space for the public to use and enjoy**;
> - **maintaining and enhancing public walking access** to and along the coastal marine area without charge, and where there are exceptional reasons that mean this is not practicable providing alternative linking access close to the coastal marine area; and
> - recognising the potential for coastal processes, including those likely to be affected by climate change, to restrict access to the coastal environment and the need to ensure that public access is maintained even when the coastal marine area advances inland.
>
> Objective 6
>
> To enable people and communities to provide for their social, economic, and cultural wellbeing and their health and safety, through subdivision, use, and development, recognising that:
>
> - the protection of the values of the coastal environment **does not preclude use** and development **in appropriate places and forms, and within appropriate limits**;
> - some uses and developments which depend upon the use of natural and physical resources in the coastal environment are important to the social, economic and cultural wellbeing of people and communities;
> - functionally some uses and developments can only be located on the coast or in the coastal marine area;
> - .....



[122] The NZCPS sets out policies which guide us in how the relevant objectives are to be achieved. Some of those that are of particular relevance to these proceeding follow (we have only included the more relevant parts for convenience):

> Policy 4 Integration
>
> Provide for the integrated management of natural and physical resources in the coastal environment, and activities that affect the coastal environment. This requires:
> (a) **co-ordinated management** or control of activities within the coastal environment, and which could **cross administrative** boundaries, particularly:
> (i) the local authority boundary between the coastal marine area and land;
> (ii) local authority boundaries within the coastal environment, both within the coastal marine area and on land; and
> (iii) ……..
> (b) ……
> (c) particular consideration of situations where:
> (i) subdivision, use, or development and its effects above or below the line of mean high water springs will require, or is likely to result in, associated use or development that crosses the line of mean high water springs; or
> (ii) **public use and enjoyment of public space** in the coastal environment is affected, or is likely to be affected; or
> (iii) ….
> (iv) land use activities affect, or are likely to affect, **water quality** in the coastal environment and marine ecosystems through increasing sedimentation; or
> (v) **significant adverse cumulative effects** are occurring, or can be anticipated.
> Policy 6 Activities in the coastal environment
> (1) In relation to the coastal environment:
> ……
> (i) **set back development** from the coastal marine area and other water bodies, where practicable and reasonable, **to protect** the natural character, **open space, public access and amenity values of the coastal environment**; and
> ……
>
> (2) Additionally, in relation to the coastal marine area:
> a) recognise potential contributions to the social, economic and cultural wellbeing of people and communities from use and development of the coastal marine area, including the potential for renewable marine energy to contribute to meeting the energy needs of future generations:
> (b) recognise the need **to maintain and enhance the public open space** and recreation qualities and values of the coastal marine area;
> (c) recognise that there are activities that have a **functional need** to be located in the coastal marine area, and provide for those activities in appropriate places;
> (d) recognise that **activities that do not have a functional need for location in the coastal marine area generally should not be located there**; and
> ……
> Policy 14 Restoration of natural character
> Promote restoration or rehabilitation of the natural character of the coastal environment, including by :
> (a) ……
> (c) where practicable, **imposing or reviewing restoration or rehabilitation conditions** on resource consents and designations, including for the continuation of activities; and recognising that where degraded areas of the coastal environment require restoration or rehabilitation, possible approaches include:
> (i) ……
> (v) restoring and protecting riparian and intertidal margins; or
> (vi) **reducing or eliminating discharges of contaminants**; or
> (vii) **removing redundant structures and materials** that have been assessed to have
> minimal heritage or amenity values and when the removal is authorised by required permits, including an archaeological authority under the Historic Places Act 1993; or
> ……
> Policy 18 Public open space
> Recognise the need for public open space within and adjacent to the coastal marine area,

for public use and appreciation including active and passive recreation, and provide for such public open space, including by:
(a) ensuring that the location and treatment of public open space is compatible with the natural character, natural features and landscapes, and amenity values of the coastal environment;
(b) .....
(c) **maintaining and enhancing walking access** linkages between public open space areas in the coastal environment;
(d) considering the likely impact of coastal processes and climate change so as not to compromise the ability of future generations to have access to public open space;
and
(e) recognising **the important role that esplanade reserves** and strips can have in contributing to meeting public open space needs.
Policy 19 Walking access
(1) Recognise the public expectation of and need for walking access to and along the coast that is **practical, free of charge and safe** for pedestrian use.
(2) **Maintain and enhance public walking** access to, along and adjacent to the coastal marine area, including by:
(a) .....
(b) avoiding, remedying or mitigating any loss of public walking access resulting from subdivision, use, or development; and
(c) identifying opportunities to enhance or restore public walking access, for example where:
.....
(vi) subdivision, use, or development of land adjacent to the coastal marine area has reduced public access, or has the potential to do so.
Policy 23 Discharge of contaminants
(1) In managing discharges to water in the coastal environment, have particular regard to:
(a) the sensitivity of the receiving environment;
(b) the nature of the contaminants to be discharged, the **particular concentration of contaminants needed to achieve the required water quality in the receiving environment, and the risks if that concentration of contaminants is exceeded**;
and
(c) the **capacity** of the receiving environment to assimilate the contaminants; and:
(d) **avoid significant adverse effects on ecosystems and habitats** after reasonable mixing;
(e) **use the smallest mixing zone** necessary to achieve the required water quality in the receiving environment; and
(f) minimise adverse effects on the life-supporting capacity of water within a mixing zone.
(4) In managing discharges of stormwater take steps to **avoid adverse effects of stormwater discharge to water in the coastal environment**, on a catchment by catchment basis, by:
(a) .....
(b) **reducing contaminant** and sediment loadings in stormwater **at source**, through contaminant treatment and by controls on land use activities;
(c) .....
(d) promoting design options that reduce flows to stormwater reticulation systems at source.
(5) In managing discharges from ports and **other marine facilities**:
(a) require operators of ports and other marine facilities **to take all practicable steps to avoid contamination of coastal waters, substrate, ecosystems and habitats that is more than minor**;
(b) .....
(c) require operators of ports, marinas and **other relevant marine facilities** to provide for the **collection** of sewage and waste from vessels, and **for residues from vessel maintenance to be safely contained and disposed of**; and
.....

[123] In summary, we conclude that the directions relevant to these proceedings means that decisions on resource consent should lead to:

a) An enhancement of degraded environmental conditions;
b) Protection of the public access (the esplanade reserve) and the users of it;
c) Active management of discharges including practicable steps to avoid contamination of coastal waters;
d) A functional need for activities to be located to be located within the CMA.

Regional policy and planning instruments

[124] The overarching document for the regional plans is the RPS. On coastal matters this document tends to replicate objectives and policies of the NZCPS. There was no suggestion made that it does not give effect to the NZCPS. This was the case for the regional plans too. As the hierarchy of instruments dictate, the regional plans provide greater particularity to the methods of achieving the higher order documents. In fact, the Council's s42A report generally has adopted a practice of not repeating where objectives and policies in the regional documents where they are somewhat repetitive of the NZCPS.

[125] It is important to note that integrated management is expected across the boundary between the coastal plan and the district plan and regional land based consenting requirements. We discuss the more specific objectives and policies related to the consents sought relative to applicable plan provisions below.

Discharge treated waste/washwater to the coastal marine area (10) and discharge of stormwater to the CMA (15)

[126] RCP: Objectives 13.3, 19.3 Policy 19.4.1. 19.4.3, 19.4.4 have been cited as most relevant. The best practicable option approach is required to avoid, remedy or mitigate adverse effect. Further, if existing discharges after reasonable mixing give rise to any conspicuous grease or films or the like, change in colour or clarity of the receiving water, odour or significant adverse effect on aquatic life, the Council should review the consent conditions. There is a general obligation to ensure individual and cumulative effects of authorised discharges to the coastal marine area do not compromise the maintenance and enhancement of coastal water.

Discharges to air (11 and 12)

[127] RCP: Objective 20 provides for discharges to air provided they avoid adverse

environmental effects. Where avoidance is not practicable, remedying or mitigation of those effects is required. Policy 20.4.1 recognises the importance of air quality to the natural character of the coastal environment. Policy 20.4.2 is directive, requiring that discharges of contaminates to the coastal marine area should not result in degradation of the air quality, nor should they have a significant effect on water quality, and should not result in significant cumulative effects on air quality, taking into account existing discharges of contaminates into air.

[128] Policy 20.4.3 invokes the best practicable option as a method to prevent or minimise adverse effects from the discharge of contaminants to air. Consideration should include the nature of the emission and sensitivity of the environment, financial implications compared to other options, and the current state of technical knowledge and the likelihood of the option chosen being successful.

[129] RAQP: Objective 6.6.2 requires maintenance and where necessary enhancement of air quality so that it is free from noxious, dangerous, offensive or objectionable adverse effects such as odour, smoke and poor visibility. Policies 6.7.1 to 5 were identified as relevant. For instance, these seek to maintain the existing high standard of ambient air quality in Northland and to enhance it in instances where it is adversely affected, and to avoid remedy or mitigate adverse effects including cumulative or synergistic/interactive effects on air quality. The management of hazardous and noxious and dangerous contaminants to air is to ensure adverse environmental effects including on human heath are avoided, remedied or mitigated.

[130] Policy 6.7.4 is *to promote a consistent regional approach to avoid the adverse health and environmental effects from abrasive blasting*[5] *operations.*

[131] Policy 6.9.1 is to avoid, remedy or mitigate any noxious, dangerous, offensive or objectionable effects of discharges of dust into the air. Policy 6.15.1 in respect of odour is to *ensure that the discharge of contaminants to air should not result in offensive or objectionable odours that could adversely affect people and communities.*

[5] The cleaning, smoothing, roughening, cutting or removing of part of the surface of any article using an abrasive jet of sand, metal shot, or grit or other material propelled by a blast of compressed air or steam or by a wheel.

Discharge to ground (13)

[132] RWSP: Objectives 8.6.1 and 2 relevantly require effective treatment and or disposal of contaminants from new and existing discharges to avoid, remedy or minimise adverse effects on the environment and on cultural values and to reduce and minimise quantities of contaminants entering water bodies, particularly in respect of potentially toxic and persistent bio cumulative contaminants. To this end Policy 8.7.3 requires separation distances and Policy 8.15.2 encourages waste minimisation.

[133] In summary, we conclude that these plans direct that decisions on resource consents should result in:

a) The best practicable option to manage discharges;
b) Adverse effects are to be avoided and if that is not available remedy and mitigation of adverse effects can be considered;
c) Management of discharges should integrate across land and water;
d) There is an overall promotion of at least maintenance and otherwise enhancement of environmental quality due to discharges to air, water and land and cumulative effects are to be considered and addressed.

PRP

[134] The PRP is a combined regional air, land, water and coastal plan and once operative will replace the operative individual documents. Things have moved on since Mr Maxwell prepared his s42A report because at the time he prepared this report hearings on submissions had not been undertaken.

[135] Mr Head for the applicant addressed provisions of the PRP but indicated the Council decision had not been released. Since the hearing of this matter, appeals have been lodged with the Court indicating notification by the Council of its decisions on or about 3 May 2019. Given the early stage, any changes to the wording of PRP are unclear.

[136] Discharges to air are addressed in:

a) D.3.1 – General approach to managing air quality;

b) D.3.3 – Dust and odour generating activities;
c) D.3.4 – Spray generating activities.

[137] These seek to:

a) Avoid adverse effects on humans, animals or the ecosystem – D.3.1(1);
b) Use best practicable option;
c) Use of low dust generating on devices for abrasive blasting – D.3.3(2);
d) Use of management plans D.3.1(ii), 3.3(1) and 3.4(2).

[138] Discharge to land or water are covered in D.4.2, D.4.3 and D.4.6. These emphasise best practicable option and industry good management practices.

[139] Overall, these provisions do not advance matters beyond general RMA criteria. We are unclear what PRP provisions are in dispute or what changes may occur.

Reserves Act

[140] The Esplanade Reserve is subject to the Reserves Act and evidence was brought concerning the authority to use this land for boatyard and access purposes. This could be relevant under s104(1)(c). However, as we have already noted, this is not directly before us in this application except to the extent effects may occur beyond the Boatyard boundaries.

Effects of the discharges

[141] We now go on to address the evidence presented at this hearing in relation to the state of the existing environment, the effects of previous activities and likely future effects of the proposed activities.

[142] The Boatyard has been discharging stormwater and washwater from the repair and maintenance of boats on the slipway and within the Boatyard at Walls Bay, and airborne contaminants and washwater form the same area, since consents were issued in 2002. Previous to this, ad hoc boat maintenance activities were carried out in the same general area and at the site of an old jetty at the western end of the bay (since removed). In 2012 the infrastructure was improved to direct some washwater and stormwater to the Opua sewer as trade waste. Monitoring of the environment in and

around the site has been carried out since 2003.

[143] Expert evidence at the hearing dealt with the following matters:

a) The effects of past discharges of stormwater on water quality and sediment quality and ecology (Dr P Wilson and Mr EJ Collings);
b) The effects of discharges to air (Mr P Stacey);
c) Current and future stormwater management on the boatyard and reserve area (Mr JF Papesch).

The effects of discharges of stormwater on water quality, sediment quality and ecology

[144] Water quality samples have been assessed from nine occasions in relation to total copper, total zinc and total lead as these are the main contaminants of concern from Boatyard activities. Prior to 2015, metal concentrations exceeded the relevant ANZECC & ARMCANZ toxicity guideline values for water quality in marine waters. After the washwater was diverted to the Opua sewer in 2012 there was a reduction in contaminants discharged to the CMA, as was evident in the 2015 survey results, with most close to or below the toxicity guideline values.

[145] It is noteworthy that the concentrations of zinc and copper in the natural stream that drains the north-eastern slopes above the site and does not receive any of the discharges from the Boatyard activities, were higher than those in the waters that are influenced by Boatyard activities.

[146] Since October 2018 when further modifications were made to the system of sumps and pumps around the spillway, under normal weather conditions only clean water has been discharged from the working areas. As a result, future stormwater discharges from that source under normal weather conditions are expected to have a less than minor effect on water quality or sediment quality.

[147] In the event a power outage or extreme weather event overwhelmed the system, stormwater could overflow into the CMA. The risk of contamination is expected to be limited for the following reasons:

a) It is unlikely any water blasting will be carried out in an extreme weather event;
b) The waste from any water blasting preceding or in the early stages of the event will have been pumped away; and
c) Any washwater left in the sumps will be significantly diluted by the catchment runoff.

Concentrations of any contaminants entering the CMA from an uncontrolled discharge would be "low and probably negligible".

[148] Further in relation to sediment quality, sampling of intertidal sediment was carried out on three occasions between 1998 and 2019. Sediment quality changes much more slowly than water quality and reflects and integrates multiple sources of contaminants. Sampling was as follows:

a) 1998 –Intertidal sediments along a transect between the slipway and the jetty (data from samples collected by Mr Shmuck);
b) 2018 – Intertidal and subtidal sediments distributed around Walls Bay (data from 4Sight Consulting);
c) 2019 – Intertidal sediment from a 3 x 3 grid centred on the slip.

[149] From the 1998 results there were elevated concentrations of copper, zinc and lead above the relevant guidelines in the upper intertidal area, with the concentrations decreasing with distance from the shore. It is likely these high concentrations were the result of accepted practices at the time and may have resulted from uncontrolled activities from the period before the site first obtained resource consents.

[150] Samples from 2018-2019 show a reduction in sediment metal concentrations (for example, near-shore copper concentrations diminished from 1860 mg/kg in 1998 to 480 mg/kg in 2019), albeit some were still above guideline values. Subtidal sediments were all below the relevant guidelines, indicating the metal contamination is localised and restricted to the intertidal zone.

[151] As a result of the improved washwater and stormwater management systems proposed it can be expected there will be continued improvement in water quality and a consequential reduction in the concentration and mass load of contaminants discharged into the CMA.

[152] An ecological survey carried out in Walls Bay recorded a typical range of organisms on the rocks and sediments adjacent to the site including cockles, pipi and Pacific oysters. The high density of the pipi beds and the broad range of size distributions within them indicated that the population was viable and healthy. Pipi flesh was analysed for concentrations of chromium, copper, nickel and zinc and the concentrations of metals were found not to exceed levels stipulated in the New Zealand Food Standards. There was no evidence of local contamination of pipi at Wall Bay.

[153] Additional work on sediment quality was carried out on the land within the reserve, with an initial survey in May 2017, followed up with a more intensive survey in January 2019. In the latter, 252 samples of sediment from 55 boreholes were collected from the soil surface, from 33cm below ground level, and from 50cm below ground level. These were analysed for a suite of heavy metals and compared to Soil Contaminant Standards for a "parks/recreation" scenario and an "outdoor worker" scenario.

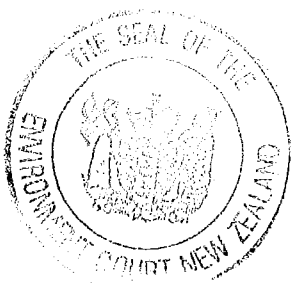
[154] Ground contamination across the reserve was found to be minor, with the majority of test results recording acceptable concentrations for a recreational exposure scenario. Some areas of the Boatyard and slipway indicate heavy metal contamination above the outdoor worker threshold within the top 33cm of the soil. Remediation was proposed to mitigate the risk to human health.

Discussion on effects

[155] A problem that this Court faced and had been faced by the Commissioners also, was the inability to correlate data from various studies. It was not until after the hearing and in final written submission that Ms Prendergast supplied correlated version of studies showing the overlay of sites with boreholes and examination points. Unsurprisingly, given the presence of the wharf and the fact that an earlier boatyard had been operation took place close to where the dinghy store is now, the most elevated levels were those close to the wharf and those where the previous boatyard had been sited.

[156] Overall, chemical levels appear to have stopped rising in recent years. Two issues arise:

a) It is not clear that all the contamination encountered is a result of the Boatyard



activity;

b) It appears that vessels had their hulls informally cleaned by their owners at the wharf and even on the sides of the beach for many years, this being a common practice previously.

[157] To the extent that there are elevated levels close to the slipway and the wharf adjacent, these are more likely to have been associated with the Boatyard over the years. Nevertheless, there is nothing we are able to see in those which gives us cause to consider that there is any ongoing contamination of the marine environment today beyond that which would be regarded as minimal. Indeed, from the scientific analysis carried out it is expected that contaminant inputs will continue to decrease given the changes already made to the boatyard operations and the further changes we will require.

[158] As such we would disregard any impact from this activity on the general coastal marine environment subject only to maintaining some monitoring to ensure that this situation does not change. We note the situation is further compounded by a stormwater outlet discharging next to the wharf. Studies of this by the Council have shown that this too contains elevated levels of some of the chemicals of interest and this cannot be attributed to Doug's Boatyard.

The effects of discharges to air

[159] The activities that can generate particulate matter (dust) at the site include sanding and grinding, water blasting and application of antifouling and paint to vessels. Water blasting has generally been carried out on the slipway, with sanding, grinding and applications of antifouling and paint carried out within the Boatyard above the turntable. Antifouling and painting would also be carried out in the turntable area.

[160] The greatest potential for particulate discharges to air is from sanding and grinding the vessels to remove antifouling material which may contain contaminants such as zinc and copper. Meteorological conditions can affect the amount of material discharged and where it disperses to. The Boatyard site is surrounded by hills to the north, west and south, and the vast majority of winds at the site are likely to be from the northeast and southeast. Local records show calm conditions for 36% of the time. During low wind speeds particulates from sanding or grinding will land within the vicinity of the boat cradle and turntable in the Boatyard. At higher wind speeds particulates will travel

further.

[161] Monitoring of sanding and grinding activities was carried out using two particulate monitors over eight days and compared with one-hour and 24-hour triggers from the Ministry for the Environment's Good Practice Guide for Managing Dust. Results from locations 15m from the boundary of the boatyard showed there was one exceedance of the one-hour trigger level close to where the vessels were being worked on. The one-hour trigger is an indicator that if the activities continue for a long period, particulate concentrations may reach the 24-hour trigger level. That may indicate chronic nuisance effects. Mr Schmuck said that the grinding and sanding would only occur for two hours out of 24.

[162] Mr Stacey considered that a one-off exceedance at the particulate level recorded was unlikely to lead to the 24-hour trigger level being reached, but that there was potential for that to occur. He recommended as follows:

a) Scraping, sanding and grinding of boats should only take place when wind speed is less than 5m/s as a 60-second average;
b) Sanders and grinders should be fitted with vacuum attachments.

[163] With this mitigation there would be little potential for dust nuisance for people using the reserve or walkway and no potential for nuisance at the nearest residential property, some 35m to the north and at a higher elevation.

[164] In relation to fine particulate matter (PM_{10} - particulate matter with a diameter of less than 10 microns), this is one of the main air pollutants in New Zealand. The National Environmental Standard for it sets a limit of 50 $\mu g/m^3$ averaged over 24 hours. The highest 24-hour concentration calculated was 30 $\mu g/m^3$ (based on the conservative assumption that all total suspended particulate is PM_{10}).

[165] Water blasting can also generate particulates when sediments, barnacles and other organisms are removed from the hulls of boats. Water blasting is "inherently self-mitigating" as the majority of particulates will be within water droplets that then fall to the ground. Screens were recommended and have been erected while work is carried out on the reserve area, and it has been recommended that the nozzle of the water blaster always be pointed downward. Finer spray can travel further from the working area.

Analysis of samples of the fine spray indicated these met relevant drinking water quality standards, such that they would not cause either health or dust nuisance effects.

[166] Modelling of volatile organic compounds that are emitted from antifouling paint was carried out, with a receptor 15m from where the vessels would be painted. For most compounds the concentrations within the reserve and at the nearest residence were below assessment criteria (the Auckland Unitary Plan Standard). The exception was hexamethylene diisocyanate, which has the potential to exceed the standard at both locations. Mr Schmuck advised that these paints are used up to three times a year, for a period of two hours on any given day. Mr Stacey recommended that paint be applied at no greater than the permitted activity limit of 30 L/day, while diisocyanate paint should be restricted to 7.5 L/day and only on days when the wind is blowing up the slipway (away from the reserve).

Discussion

[167] We note that Mr Stacey's evidence was based on the continued use of the slipway for water blasting, with the other activities carried out on the Boatyard itself. He considered that with the mitigation he proposed the effects of the discharges to air would be minor. As previously noted we saw the screen (that is part of the mitigation of effects for operations within the slipway area) in place and operating. It did not satisfactorily contain the spray from the wash down area and this could reach the walkway if a boat was being cleaned nearby. The noise of the activity, water plume from the water blasting and size of the vessel being cleaned could well act as deterrents to people wanting to walk through, let alone sit down and enjoy, the reserve.

Current and future stormwater management on the Boatyard and reserve area

[168] The existing "working areas" of the boatyard comprise the 60m^2 slipway, which drains to a weir at the bottom, and the 400m^2 area within the boatyard site which generally discharges to the turntable sump. The sump discharges via a series of pumps and settlement tanks to the sewer network as trade waste.

[169] A potential issue with this setup is that the capacity of the sewer network to manage the flows that could be generated from the combined stormwater and wastewater flowing to the turntable sump is insufficient. Currently 4-10 L/s of combined flows to the turntable sump may be generated in an intense rainfall event, whereas the

design capacity of the Opua Environment One (E/One) system that pumps to the sewer has a relatively low outflow of 0.56 L/s.

[170] The boatyard is situated in the base of a valley with a catchment area of 2.44ha and receives a substantial natural flow of stormwater from the slopes above. During a one in ten-year rainfall event, the flow entering the western corner of the site (in the stream that can be seen there) exceeds the capacity of the 300mm diameter culvert that carries the stream along the western edge of the site. While there are clean water diversions around parts of the working area, overland flows pass through the site in such events and may lead to the system's capacity being overwhelmed. The quantity of rainwater generated from the 460m^2 working area of the site is relatively small, calculated at 6.3 L/s, compared to the total runoff that could pass through the site in a one in ten-year event, being 548 L/s.

[171] Mr Papesch had recommended that Mr Schmuck install a 9,000 L attenuation tank such that peak flows generated by stormwater runoff in the working area, including the slipway, could be stored and discharged at a rate which matches the E/One pump capacity. He had revisited the site since making that recommendation, the tank had been installed, and he was satisfied the systems in place would cope with a medium rainfall event.

[172] The engineering recommendations noted that consent was sought based on improvements to stormwater and slipway trade waste management that would be made within two years (apparently under the assumption that the slipway could continue to be used as part of the boat washing and maintenance working area). He acknowledged that the existing systems do not follow best practice but that the boatyard can operate satisfactorily "in the interim". It was anticipated that a management plan to develop improved water management solutions would be prepared.

Discussion

[173] Earlier in this decision we described the existing stormwater management infrastructure around the boatyard itself as being minimal. There did not appear to us to be any hydrological separation of the active working area from the gravel/metal yard to the north and south of it. As a result, catchment flows in heavy rainfall events readily enter the site and entrain waste materials in a heavy rainfall event as described above.

[174] The Boatyard has adopted a system more recently of trying to store water from the washdown area and then discharge this back to the Opua sewer to ensure appropriate treatment. The arrangement has been agreed between the Council and Mr Schmuck and we agree that it is a sensible way to deal with contaminants within the washdown liquid. The difficulty in this case has been the lack of separation between the various sources of natural water from the surrounding catchment, and the contaminated waters. It is clear to us currently that natural ground flow and possibly even stormwater flow from the roof is making its way into the sump and also entering the Opua sewer system.

[175] From the drawings, that part of the working area within the Boatyard that is actively used for boat repair (which we are calling the "active" working area) appears to us to be a small part of the "working area" described by Mr Papesch. If the active working area was hydrologically isolated from the surrounding area and provided with a larger sump to replace the turntable sump it appears that the potential for trade waste to be entrained in overland flows would be considerably reduced, if not entirely, mitigated. Similarly, the need to pump stormwater from overland flow that reaches the turntable area to the sewer, could be significantly obviated.

Alternative methods

[176] We are inevitably forced back to the position where it appears to us that these activities can be practically conducted within the Boatyard premises. Without the use of the shed itself, it is unlikely that any vessel over 10-11m could be contained entirely within the Boatyard site. The reasons for not using the Boatyard shed were never explained to us. It may relate to other activities being conducted within it. However, in practical terms it appears to have been designed for the purpose of working on boats in a covered and sheltered environment.

[177] Accordingly, under s105(1)(b) there is no explanation at this time as to the applicant's reasons for choosing to work on the vessel within the reserve area rather than within their own Boatyard shed or on the applicant's land immediately outside it.

[178] It may be that by virtue of the modified turntable sump system there is some practical reason that the railing cannot be laid into the shed, but we saw nothing to prevent it. Compared with the alternative suggested for collecting wastewater from the slipway area, it would seem to be a significantly more straightforward process to continue

the rails into the shed allowing vessels to travel into the shed itself or alternatively mounting it onto some form of manoeuvrable cradle.

[179] Similarly, no explanation has been given to us as to why the applicant is still fixated on the use of the rotating turntable when this has been discontinued as a method of moving vessels around the property. It is simply a sump area now and could be well adapted at a relatively low cost to accommodate a better catchment system for gross materials and better sump collection for treatment and discharge to the sewer system. Again, from the earlier decision, we can see that there was concern at discharges occurring immediately adjacent to the coastal walkway and beyond 5m of the applicant's boundary.

[180] In relation to discharges we conclude that there is nothing in the evidence now produced that suggests that the approach of the Commissioners was wrong. Some of these materials are in themselves relatively dangerous and rely upon air dispersal and in fact on occasions proper containment to ensure that acceptable levels are received. We would have considered a public area such as the reserve to be a relatively sensitive environment to airborne isocyanates or other paint derivatives and that as far as possible those should be contained within the applicant's site.

Constraint of effects

[181] The concept of the adverse effects of activities being contained within the applicant's site is a well-established principle.[6] The end result of this is that the approach adopted in 2002 by the Court in the consent order and subsequently reinforced by the NRC decision in 2008 was to largely require the applicant to contain the discharge of these materials to their own site. There was an acceptance that there may be some overhang (or dispersal into air) into the reserve with particular vessels. However, it is not clear how that has been extended to the concept that washdown will occur on the slipway and that the vessel repairs can take place on the slipway also.

[182] We are in no doubt that it is within the powers of this Court, on an application for discharge consent to impose conditions to require the applicant to retain all or most of the activity within their own site even if they do have the power to utilise the reserve area.

[6] *Auckland Regional Council v Fletcher Building Limited* DC Auckland, CRI-2006-004-010308, CRI-2006-004-015372, 16 November 2006 (DC).

The reasons for doing so are explicitly provided for in s105 and 107.

[183] In the circumstances of this case we do not think any of the matters under s107 arise and quite simply the issues in this case relate to the fact that the activity can occur almost entirely on the applicant's site and that any adverse effects can be redirected onto the applicant's site with the exception of potential air discharge within a fairly small mixing zone of up to 5m beyond the applicant's boundary.

[184] The area of A being 10m beyond the applicant's boundary may have had its genesis in the applicant earlier saying that it was involved in servicing larger vessels. Mr Schmuck has now agreed to vessels being no longer than 12.5m and has also agreed to a limit of 70 vessels per year. Those undertakings mean that the full area of A is not required to accommodate a vessel.

[185] We are satisfied that with a slight extension of say 1.5-2m beyond the applicant's boundary, repairs, maintenance and washdown of vessels could be contained. To that extent, this would require a catch-sheet that would redirect any washdown materials, overspray and the like, back into the site to be caught in the catch-pit and impermeable areas that would be required to be constructed.

[186] For our part, we conclude that the separation of stormwater from this working surface in front of the Boatyard and to the immediate west of the shed (the area of the current sump area) would be sufficient to minimise the amount of stormwater that would be contained and sent to waste because of the limited surface area involved. Moreover, the avoidance of overflow from the roof pipes, the area east of the building but not including the area immediately parallel with the front of the building and the catchment of the working area into the sump, would mean that these areas could be minimised and well contained within a reasonable storage. To that end, we agree with the suggestion by Mr Papesch that something in the order of $9m^3$ including in-ground sump storage and tanks would be sufficient to ensure that the water from this limited area could be properly processed and discharged to waste.

[187] This would mean that water from the traffic area, the asphalt area, the eastern side of the building (which is currently metalled) and from the rear portion of the west of the building (small triangular area), could be controlled by other mechanisms and dealt with as clean stormwater. This may have been the intention of the designs that have

been provided to us, but we were unable to ascertain this from either the plans or our site inspection. There appears to have been a great deal of work done to prepare for the slipway being included as an area for water collection and little thought given to the separation of stormwater and working surface water on the site itself.

Outcome

[188] For the reasons we have explained, we consider that the consent can properly be granted for the activity on the applicant's site, while allowing:

a) A small area within area A up to 2m adjoining the applicant's site, over which a boat can be situated, provided there is appropriate management to ensure that water, other materials and any overspray are redirected onto the collection system on the Boatyard site;
b) A maximum working zone for proper air quality control of 5m from the boundary of the property within area A and perhaps slightly to the east and west of that from the connection point of area A. This could easily be controlled by signage rather than any sort of physical separation.

[189] Beyond this, we conclude:

a) There is no power for us to grant a consent in respect of 68634 Sections 1-4 or any part thereof given it was not part of the applicant for renewal;
b) In any event, there is no justification under s105 to do so given that the activity can be provided for adequately on this site with the minor amendments we have discussed.

[190] In the end our conclusion is very much in accordance with the decision of the Commissioners in the first instance. We note that they were under the significant disability of having to deal with an extensive range of new applications and limited information. Although we have been provided with some more information in respect particularly to s107, it is regrettable that the applicant has chosen not to advance significant evidence in relation to the s105 matters.

Outcome and costs

a) The applicant is to provide a draft set of conditions and consent in accordance with this decision to the Regional Council and s274 parties within **30 working days**; the Council and parties are to respond to the applicant within a further **20 working days**; the applicant is then to provide his final wording of the consents and conditions, with its reasoning therefore, to the Court **10 working days** thereafter;

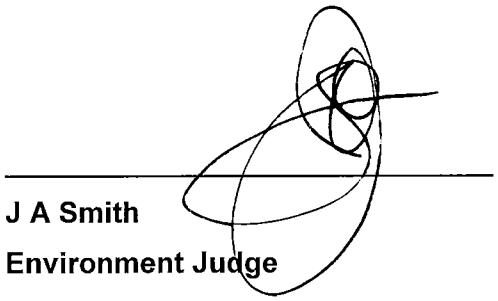
b) In the event that any party disagrees with that final consents and conditions, they are to provide separate memoranda identifying the clause and dispute, their preferred wording and why. That is to be filed within a further **10 working days**;

c) The Court will then conclude whether it can proceed on the papers or will need to convene a further hearing;

d) Given our conclusion on jurisdiction, it is clear that the continuation under s123 applies only to the consent as it relates to the subject property and not to SO 68634;

e) Any application for costs is to be filed within **30 working days**; any reply **10 working days** thereafter and a final reply, if any, **five working days** after that.

For the court:



J A Smith
Environment Judge

The following are recently expired consents for Discharges being exercised under section 124 of the Act: AUT.007914.10–13 and AUT.007914.15

CON20060791410
(10-15)

Resource Consent

Pursuant to the Resource Management Act 1991, the Northland Regional Council (hereinafter called "the Council") does hereby grant a Resource Consent to:

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, Opua:

(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.

3 The wash water discharge treatment system shall:

(a) Retain all particles larger than 60 micrometres (µm) diameter.

(b) Retain no less than 90% of total suspended solids.

(c) Retain no less than 80% total copper and zinc, and no less than 80% soluble copper and zinc.

4 Notwithstanding any other conditions of this consent, the discharge shall not result in any of the following effects in the receiving waters, at or beyond the edge of the mixing zone:

(a) A reduction in the dissolved oxygen concentration to below 80% of saturation.

(b) A change in the natural water temperature greater than three degrees Celsius.

(c) A change in the natural pH greater than 0.2 units.

(d) The change in water clarity as measured by the black disc method shall not be greater than 20%.

(e) The change in hue as measured with the Maunsell Colour Chart System shall not exceed 10 units.

(f) The production of any conspicuous oil or grease films, scums or conspicuous floating or suspended materials.

(g) The concentration of metals shall not exceed the following:

total copper	0.0013 g/m³
total lead	0.0044 g/m³
total zinc	0.015 g/m³

Guideline: ANZEEC 2000: 95% specie level of protection for slightly-moderately disturbed systems.

(h) Any emission of objectionable odour.

(i) Any adverse effect on aquatic life.

The harbour waters within a 10 metre radius of the discharge point, shall be deemed to be the mixing zone for this discharge.

When the background water quality in the coastal waters does not meet the above standards, then the discharge shall not cause the water quality in the harbour at the edge of the mixing zone to be worse than the background water quality.

(Note: For compliance purposes, when comparing background and receiving water quality results the error of the analytical method, or measuring instrument, at the 95%ile confidence level shall be taken into account.

The Consent Holder shall provide and maintain easy access to a sampling point in the discharge pipe at the end of the jetty. This shall allow for the taking of samples, and the introduction of tracer substances as required.)

(11 & 12) DISCHARGES TO AIR

5 Except as required by the following conditions, no alteration shall be made to plant or processes that may significantly change the nature, effects, or quantity of contaminants discharged as described in the consent application without the prior written approval of the Council.

6 The exercise of this consent shall not give rise to any discharge of contaminants, which is noxious, dangerous, offensive or objectionable at or beyond the boundaries of Sec 2 SO 24139, Pt Sec 1 SO 16553, Sec 3 SO 46155, Sec 1 – 4 SO 63634, Blk V and the area within the Coastal Marine Area defined by the Offensive Odour Boundary in NRC Plan No 3231c.

7 Where practicable, the Consent Holder shall preferentially use surface coating materials and application methods that have a low odour and/or low emission/loss potential.

8 All operations shall be conducted with regard to wind direction and wind strength to prevent or minimise any adverse effects on the environment.

9 Notwithstanding Condition 8, the Consent Holder shall not apply antifouling paint using spray application equipment when the wind speed is below 0.5 m/s (as a 60 second average) or the wind direction (as a 60 second average) is blowing from between 45 degrees through to 170 degrees.

10 The discharge of contaminants into the air from the exercise of this consent shall not cause or significantly contribute to ambient concentrations of the following contaminants exceeding the following limits at or beyond the boundaries of Sec 2 SO 24139, Pt Sec 1 SO 16553, Sec 3 SO 46155, Sec 1 – 4 SO 63634, Blk V and the area within the Coastal Marine Area defined by the Offensive Odour Boundary in NRC Plan No 3231c.

Contaminant	Ambient Limit (micrograms per cubic metre)
Particulate (PM_{10})	50 micrograms per cubic metre (24 hour average)
Lead and lead compounds expressed as lead	0.5 micrograms per cubic metre (3 month moving average)
Copper and copper compounds expressed as copper	20 micrograms per cubic metre (8 hour average)
Zinc and zinc compounds expressed as zinc	4.8 micrograms per cubic metre (8 hour average)
Tin and tin compounds expressed as tin	2.4 micrograms per cubic metre (8 hour average)
Isocyanates, (as –NCO), including all isocyanates and pre-polymers as mists, dusts, and vapours	0.048 micrograms per cubic metre (8 hour average)

11 As far as is practicable, work areas and surrounding areas shall be cleared of accumulations of waste generated as a result of, and as soon as is practicable after completion of any abrasive blasting or water blasting operation. All waste material shall be disposed of at a location with the appropriate resource consents.

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. metalled 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).

(14) DISCHARGE OF STORMWATER TO WATER

16 The stormwater discharge treatment system shall:

(a) Retain all particles larger than 60 micrometres (µm) diameter.

(b) Retain no less than 90% of total suspended solids.

(c) Retain no less than 80% total copper and zinc, and no less than 80% soluble copper and zinc.

17 Notwithstanding any other conditions of this consent, the discharge shall not result in any of the following effects in the receiving water, at or beyond the edge of the mixing zone:

(a) A reduction in the dissolved oxygen concentration to below 80% of saturation.

(b) A change in the natural water temperature greater than three degrees Celsius.

(c) A change in the natural pH greater than 0.2 units.

(d) The change in clarity as measured by the black disc method shall not be greater than 40%.

(e) The change in hue as measured with the Maunsell Colour Chart System shall not exceed 10 units.

(f) The production of any conspicuous oil or grease films, scums or conspicuous floating or suspended materials.

(g) The concentration of metals shall not exceed the following:

total copper	0.0014 g/m³
total lead	0.0034 g/m³
total zinc	0.008 g/m³

Guideline: ANZEEC 2000: 95% specie level of protection for slightly-moderately disturbed systems.

(h) Any emission of objectionable odour.

The drain waters immediately upstream of the coastal walkway, shall be deemed to be the edge of the mixing zone for this discharge.

When the background water quality in the drain does not meet the above standards, then the discharge shall not cause the water quality in the drain at or beyond the edge of the mixing zone to be worse than the background water quality.

(Note: For compliance purposes, when comparing background and receiving water quality results the error of the analytical method, or measuring instrument, at the 95%ile confidence level shall be taken into account.)

18 The discharge of treated stormwater from the boatyard to the stream authorised by this consent shall be discontinued upon connection of the treated stormwater discharge into the discharge pipe to the wharf.

(15) DISCHARGE OF STORMWATER TO THE CMA

19 The stormwater discharge treatment system shall:

(a) Retain all particles larger than 60 micrometres (µm) diameter.

(b) Retain no less than 90% of total suspended solids.

(c) Retain no less than 80% total copper and zinc, and no less than 80% soluble copper and zinc.

20 Notwithstanding any other conditions of this consent, the discharge shall not result in any of the following effects in the receiving water, at or beyond the edge of the mixing zone:

(a) A reduction in the dissolved oxygen concentration to below 80% of saturation.

(b) A change in the natural water temperature greater than three degrees Celsius.

(c) A change in the natural pH greater than 0.2 units.

(d) The change in water clarity as measured by the black disc method shall not be greater than 20%.

(e) The change in hue as measured with the Maunsell Colour Chart System shall not exceed 10 units.

(f) The production of any conspicuous oil or grease films, scums or conspicuous floating or suspended materials.

(g) The concentration of metals shall not exceed the following:

total copper	0.0013 g/m³
total lead	0.0044 g/m³
total zinc	0.015 g/m³

Guideline: ANZEEC 2000: 95% specie level of protection for slightly-moderately disturbed systems.

(h) Any emission of objectionable odour.

(i) Any adverse effect on aquatic life.

The harbour waters within a 10 metre radius of the discharge point shall be deemed to be the mixing zone for this discharge.

When the background water quality in the coastal waters does not meet the above standards, then the discharge shall not cause the water quality in the harbour at the edge of the mixing zone to be worse than the background water quality.

(Note: For compliance purposes, when comparing background and receiving water quality results the error of the analytical method, or measuring instrument, at the 95%ile confidence level shall be taken into account.)

GENERAL CONDITIONS APPLYING TO CONSENTS (10 TO 15)

21 The Consent Holder shall maintain the Management Plan that has been approved by the Council (see Advice Note 1 below). The Management Plan shall cover all aspects of:

(a) The operation and maintenance of the boat washdown area;

(b) The operation and maintenance of the wash water treatment system;

(c) The operation and maintenance of the stormwater treatment system;

(d) Measures to minimise the discharge of contaminants to ground. (*see Note 2*)

(e) Measures to minimise the emissions and any adverse effects on the environment from the discharges to air; and

(f) Contingency measures for unforeseen or emergency situations.

The operation and maintenance of the above systems, and the boatyard operations, shall be carried out in accordance with the approved Management Plan.

Advice Note: The initial approved Management Plan shall be that ***attached*** *to this consent.*

22 The Consent Holder shall review the Management Plan, in consultation with the Council, at no greater than three yearly intervals.

23 The Consent Holder shall maintain all facilities covered by these consents in good order and repair.

24 The Consent Holder shall, for the purposes of adequately monitoring the consent as required under Section 35 of the Act, maintain records of any complaints relating to the discharge of contaminants received by the Consent Holder, as detailed below:

(a) The name and address of the complainant;

(b) The date and time the complaint is received;

(c) The duration of the event that gave rise to the complaint;

(d) The location from which the complaint arose;

(e) The weather conditions prevailing at that time;

(f) Any events in the management and operation of any processes that may have resulted in the increased discharge of contaminants; and

(g) Any actions taken by the Consent Holder, where possible, to minimise the contaminant emissions.

The Consent Holder shall notify the Council, as soon as is practicable, of any complaint received. Records of the above shall be sent to the Council upon request.

25 The Consent Holder shall, for the purposes of adequately monitoring the consent as required under Section 35 of the Act, on becoming aware of any contaminant associated with the Consent Holder's operations escaping otherwise than in conformity with this consent:

(a) Immediately take such action, or execute such work as may be necessary, to stop and/or contain such escape; and

(b) Immediately notify the Council by telephone of an escape of contaminant; and

(c) Take all reasonable steps to remedy or mitigate any adverse effects on the environment resulting from the escape; and

(d) Report to the Council in writing within one week on the cause of the escape of the contaminant and the steps taken or being taken to effectively control or prevent such escape.

26 The Council may, in accordance with Section 128 of the Resource Management Act 1991, serve notice on the Consent Holder of its intention to review the conditions of this consent annually during the month of May. The review may be initiated for any one or more of the following purposes:

(a) To deal with any adverse effects on the environment that may arise from the exercise of the consent and which it is appropriate to deal with at a later stage, or to deal with any such effects following assessment of the results of the monitoring of the consent and/or as a result of the Council's monitoring of the state of the environment in the area;

(b) To require the adoption of the best practicable option to remove or reduce any adverse effect on the environment;

(c) To provide for compliance with rules in the regional coastal plan relating to minimum standards of water quality that have been made operative since the commencement of the consent;

(d) To deal with any material inaccuracies that may in future be found in the information made available with the application. (Notice may be served at any time for this reason).

The Consent Holder shall meet all reasonable costs of any such review.

EXPIRY DATE: **30 MARCH 2018** – **for Resource Consents CON20060791410-13 and CON20060791415**

30 MARCH 2009 – **for Resource Consent CON20060791414**

ISSUED at Whangarei this Twentieth Day of May 2008

DL Roke
Consents Manager

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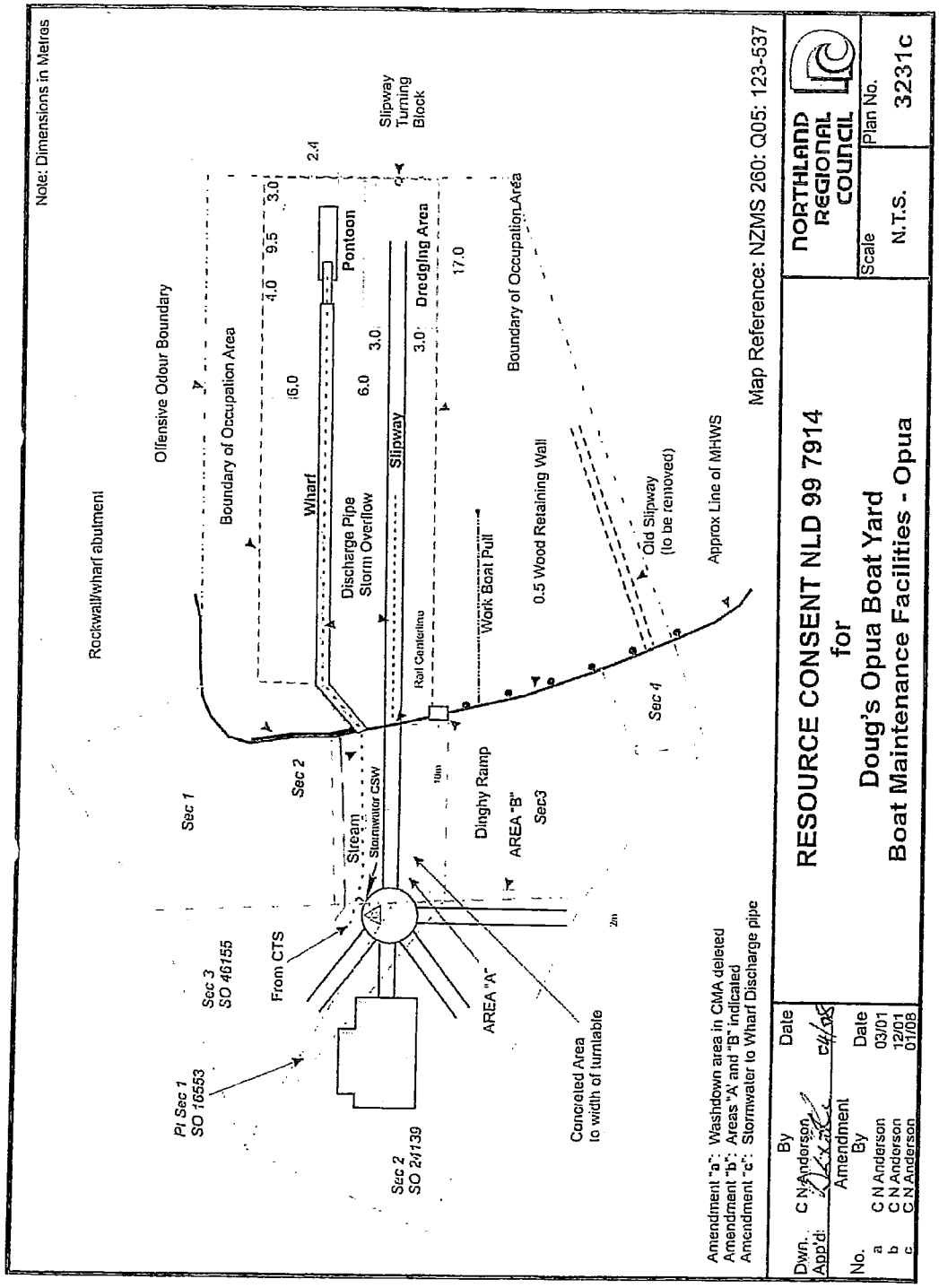
A9


Note: Dimensions in Metres
Rockwall/wharf abutment
Offensive Odour Boundary
Boundary of Occupation Area
Sec 1
Sec 2
Sec 3
SO 46155
Pt Sec 1
SO 16553
Sec 2
SO 21139
From CTS
Stream
Stormwater CSW
Wharf
Discharge Pipe
Storm Overflow
Slipway
Rail Centerline
Pontoon
Dredging Area
Slipway
Turning
Block
Boundary of Occupation Area
Work Boat Pull
0.5 Wood Retaining Wall
Old Slipway
(to be removed)
Approx Line of MHWS
Sec 4
Dinghy Ramp
AREA "B"
Sec3
AREA "A"
Concreted Area
to width of turnlable
4.0
9.5
3.0
2.4
16.0
6.0
3.0
3.0
17.0
10m
2m
Map Reference: NZMS 260: Q05: 123-537
Amendment "a": Washdown area in CMA deleted
Amendment "b": Areas "A" and "B" indicated
Amendment "c": Stormwater to Wharf Discharge pipe
Dwn. C N Anderson
App'd:
Date
No. Amendment By Date
a C N Anderson 03/01
b C N Anderson 12/01
c C N Anderson 01/08
RESOURCE CONSENT NLD 99 7914
for
Doug's Opua Boat Yard
Boat Maintenance Facilities - Opua
NORTHLAND REGIONAL COUNCIL
Scale N.T.S.
Plan No. 3231c

BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA

	IN THE MATTER	of the Resource Management Act 1991
	AND	of an appeal under section 120 of the Act
	BETWEEN	DOUGLAS CRAIG SCHMUCK
		(ENV-2018-AKL-00351)
		Appellant
	AND	NORTHLAND REGIONAL COUNCIL
		Respondent

In Chambers: Judge J A Smith

Parties: C Prendergast and S Henderson for the Appellant
G Mathias for the Respondent
D Dysart – Secretary for Opua Coastal Preservation Inc

MINUTE OF THE ENVIRONMENT COURT
(3 October 2019)

Introduction

[1] The Court has received further memoranda from the parties concerning the "stay application" in the High Court including two further memoranda from Opua Coastal Preservation Inc. There is also a further memorandum from the Appellant dated 2 October received during preparation of this minute.

[2] I cite the joint memorandum from the Appellant and the Regional Council filed on 19 September in full:

> 1. This memorandum is filed in response to the Court's Minute dated 10 September 2019.
>
> 2. Counsel advise that the High Court has confirmed by consent that there be a stay on matters arising from Your Honour's decision and any matters pending, preserving (with emphasis on some particulars) the status quo.
>
> 3. The same is sought of Your Honour's concerns.

> 4. The Appeal is set down for hearing on 24 February 2020 and a date for reconsideration of the matters in the Environment Court should perhaps be set for April 2020.

The memorandum

[3] This joint memorandum is signed by Mr Henderson for the Appellant and Mr Mathias for the Respondent.

[4] I must confess that the meaning of the memorandum is not clear to me given that there is no order of the High Court attached. Nevertheless, it appears that the intent is that the directions contained in the Environment Court's decision where they included timing issues would be vacated. The latest memorandum from the Appellant seems to clarify that the current directions should be vacated. Accordingly, as this appears to be agreed, Directions paragraph 190(a) to (c) and (e) are vacated.

[5] Paragraph 190(d) is a conclusion on jurisdiction and has been stayed by order of the High Court (I assume). Paragraph 190(d) is not a direction but a finding of the Court and is covered by the High Court decision rather than any direction of this Court.

[6] Ms Prendergast for the Appellant has clarified that all other aspects of the application not subject to the Environment Court's decision are withdrawn as follows:

> Without prejudice to his rights to lodge a fresh application for the same or similar activities, the Appellant withdraws that part of the appeal against the Northland Regional Council decision relating to structures and activities in the Coastal Marine Area (numbered (11) in the Notice of Appeal).

This conclusion is based on Ms Prendergast's submission:

> On that basis... no issue arises as to the status of the appeal against the Respondents' decision on the other applications considered at the first instance.

Conclusion

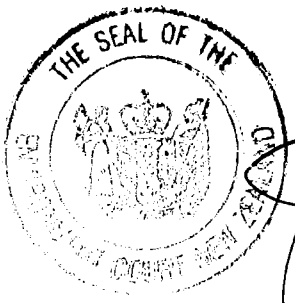
[7] In those circumstances, it appears to me that the decision directions should be subject to a further report by the parties after the hearing in the High Court in February 2020. I direct that: **The Council is to provide an update report as to progress in respect of the appeal by the end of April 2020. If the matter resolves earlier any party may seek, on three days' notice, to convene a telephone conference to discuss progress.**

[8] I make the point that the suggestion that the Court has granted a consent does not follow from the decision. This led to my earlier comment that there was no final decision of this Court to be stayed.

[9] However, it is clear that the directions should properly be vacated pending the hearing of this appeal.

[10] There also appears to be a suggestion that there is some form of final order to be sealed by the Court. To my knowledge, the decision of the Court has already been sealed and issued to the parties. In the circumstances, the Court made directions for the parties to provide further conditions and reasoning therefore for consideration as to whether a consent should properly be granted.

[11] The Court now places this matter on hold until the end of April 2020 and looks forward to receiving an update report from the Council at that time.



J A Smith
Environment Judge