

**BEFORE THE NORTHLAND REGIONAL COUNCIL HEARINGS  
COMMISSIONER**

**IN THE MATTER** of an application under section 88 of the  
Resource Management Act 1991 (Act)

**AND** an application by Doug's Opuā Boatyard for  
resource consents relating to the redevelopment  
of the existing boatyard located at 1 Richardson  
Street, Opuā, and a consequential application to  
vary the conditions of the Interesting Projects Ltd  
(Great Escape Yacht Charters) resource consent.

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**SUBMISSIONS OF COUNSEL IN REPLY  
ON BEHALF OF INTERESTING PROJECTS LIMITED**

**Dated this 1<sup>st</sup> day of September 2020**

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## Introduction

1. Interesting Projects Limited, trading as Great Escape Yacht Charters ("GYEC"), operates out of Doug's Opua Boatyard ("DOBY"). It holds consent to operate a charter boat business from its pontoon attached to the wharf owned and consented to DOBY (AUT008270.01.02).
2. The s 127 application to vary the conditions of the company's consent arises out of the application by DOBY to, in particular, demolish and reconstruct the wharf some 3 metres further north than the existing structure. As a consequence, the pontoon used by the company also moves an equivalent distance and requires an amendment to its consent to maintain its position on the north side of the reconstructed wharf. No other amendments to the consent are required.

## The GEYC consent status

3. In her presentation to the hearing, Mrs Kyriak questioned the status of the consent held by GEYC, saying that "GEYC does not have consent for chartering, nor does it have consent for a sailing school." She suggests that the s 42A report has amalgamated the Schmuck application and the GEYC application, and queries the status of the existing GEYC consent, asking "what has happened to the conditions of the GEYC consent, imposed by the Environment Court and essential to the control of the operation?"
4. Mrs Kyriak is confused; the two consents remain separate and in effect.
5. To clarify: GEYC currently operates its sailing school and chartering operations lawfully as Mr Schmuck's licensee under consent AUT.007914.08.01 held by DOBY. That consent provides:
  - (08) To use the above structures for purposes associated with the boatyard, including survey and inspection of ships and safe ship management, gridding of vessels for maintenance, marine brokerage of vessels for sale and/or charter in conjunction with the boatyard office.
6. GEYC also operates under its own consent AUT.008270.01.02 which provides for the company:

To place and use a floating structure alongside the existing jetty at Doug's Opua Boat Yard for the purpose of maintaining and servicing charter trailer yachts ... subject to the following conditions:

1. This consent is to use those parts of the coastal marine area at Opua Basin for the purposes of the consent as shown on NRC plan No. 3014A .... The floating structure shall only be located on the northern side of the existing jetty. ...

7. The only change sought to the GEYC consent is that necessitated by the relocation of the wharf. Compliance with the consent requires the correct location of the “floating structure” to be shown on the plan attached to the consent. No other changes to the GEYC consent are proposed or required.
8. No changes are proposed to the existing DOBY consent which, until surrendered by the putting into effect of the current application (if granted), remains in effect until its expiry on 30 March 2036.

### **Dredging**

9. In his submission tabled at the hearing, Mr P Clarke asserted that the statement dredging was required to allow all tide access to the Great Escape Yacht Charter (“GYEC”) pontoon and dock was inaccurate and misleading. By his measurements (with a bamboo pole and measuring tape), there was ample depth from 30 metres out from, and at points along, the wharf and pontoon to allow all tide access for the Noelex 30 boats used by GYEC.
10. With respect, Mr Clarke’s efforts and assertions can be given no weight. The primitive method used to take the spot measurements cannot be verified as being accurate; nor can they said to be representative of the situation at low tide. The reality is that the pontoon is often aground and inaccessible by water at low tide.
11. It is correct that there is deeper water at various points next to the pontoon where, with a challenging manoeuvre, trailer sailors may be able to get in to the dock at low tide. The sailors need to wind the keels up and unpin the rudders, making steering to the dock exceedingly difficult.
12. However, once they are docked, those boats are unable to manoeuvre themselves into a position to get out from the dock at low tide because the water around the pontoon is too shallow. Further, GEYC also owns and uses fixed keel Raven 31 boats. It is just not possible for these boats to get in or out of the dock at low tide.
13. The proposed dredging will considerably enhance the safety and improve the overall efficiency of the GEYC operation.

### **Public access**

14. Many of the submitters claim that the current application will restrict their ability to freely access the wharf and pontoon at any time. In particular, they say that the marina berths will prevent access to the pontoon contrary to the consent and the public’s rights to access and use the coastal marine area (“CMA”).
15. Unrestricted public access to the wharf and pontoon has not been permitted since at least 2002, if not before.<sup>1</sup>

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<sup>1</sup> See for instance the discussion in *Kyriak v Northland Regional Council* EnvC C146/98, paras 39, 40.

16. The 2002 consents require that "reasonable public access" be provided to the wharf and pontoon. As shown in the case law cited in my opening submissions, given the purpose of the wharf and pontoon and in light of the activities lawfully carried out thereon, unrestricted public access is not reasonable.
17. In saying that, GEYC's observations are that DOBY has been more than reasonable in the past, permitting 24/7 unrestricted access for both pedestrian and boat access provided there is no conflict with operational requirements at the time. Those observations are supported by Mr Dunn's statement to the hearing wherein he says:<sup>2</sup>

During this 30 year period I have observed extensive use of the adjacent reserve area by the general public .... This public access also occurs on the wharf where track walkers or potential charterers wander down to look or possibly charter a yacht. I have never observed a situation where access has been denied or hindered in either of these two areas except when public safety was a concern and obviously because the boatyard and wharf are working areas and because work safe regulations apply and access would need to be controlled either by Mr Schmuck or the yacht charter operators.

### **Security gates**

18. While committing to continue the provision of reasonable public access generally, the application also seeks consent to erect security gates to enable the restriction of public access at night to parts of the wharf and pontoon for security as well as health and safety and operational reasons. Many submitters oppose any restriction to public access; some also question the need for security gates, a view seemingly shared by the consultant planner in his s 42A report.
19. In para 89 of the s 42A report, the consultant planner refers to the proposed gates to be located to allow access to the working berths but not the GEYC pontoon or marina and goes on to state:
90. Having considered limitations on other wharfs and coastal structures in the Northland area, there are few restrictions on public access associated with marinas and wharfs that have operational functions, particularly during daylight hours. Many marinas and wharf facilities allow for repair work within berths without unduly restricting public access. It is not clear why restrictions on public access would now be sought following many years of operation and what appears to be downsizing of the boat yard operation.
91. There is no evidence to suggest that, having operated under the terms of the 2002 Consent Order, there are new hazards or concerns that have

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<sup>2</sup> Statement of Terrence John Dunn dated 3 August 2020, p 1, paras 3, 4

arisen which no longer make the area safe for public access.

20. Those passages are surprising, to say the least. Restricted access to marinas and to operational areas of working wharves is the usual situation in the Paihia – Opuia area, and for that matter, Northland and New Zealand wide.
21. The Health and Safety at Work Act,<sup>3</sup> in force since April 2016, imposes onerous duties and liabilities on the person in charge of business or undertaking (“PCBU”). Maintenance and charter operations conducted from the wharf are subject to the Act. Bystanders and members of the public need to be restricted from operational areas when operations are in progress, not only for their safety but also for the safety of operators, sailors and DOBY customers.
22. Further, like many other places, Opuia has a problem with theft. Access to the boats needs to be restricted to deter thieves and avoid damage. Security is essential to protect unattended boats and equipment, and particularly so if the marina berths are permitted. During the weekend of 8 and 9 August, GEYC had items stolen from its pontoon, including a metal fire bucket. Users of the wharf and pontoon left an extensive mess of broken shellfish which had to be cleaned up. I’m told such events are not isolated occurrences.
23. Despite the consultant planner’s view, there is ample precedent for restricted access to both wharfs and marinas within a very short distance from DOBY. Just across the water, fencing is erected right across the end of the Opuia wharf preventing public access to the Tucker Thomson berth end of the wharf and all berths attached to this part of the wharf.



*Figure 1 - Opuia Wharf, access restricted to the end of the wharf used by Tucker Thompson*

24. At the Bay of Islands Marina, each marina berth finger has a security gate with swipe tag or PIN access only. The work berths are accessed through the fenced hardstand area. Access to the compound is restricted by signage and vehicles can access to the compound with swipe tag only. Once inside the fenced

<sup>3</sup> Health and Safety at Work Act 2015

compound, pedestrians can walk down to the work berths but signs clearly remind users that access is restricted.



Figure 2 - Security gate at Bay of Islands Marina

25. And at the Paihia wharf, signs restrict access to cruise passengers and charter boat operators.



Figure 1 - Example of restricted access at Paihia Wharf.  
Explore Group have a similar sign on their wharf

### Proposed marina berths and public boat access

26. Many of the submitters oppose the proposed marina berths, saying, in various ways, that the marina berths will prevent access by the public to the pontoon which must be freely available at all times.
27. That is not strictly correct. While the current consent provides for the pontoon to be used only for casual berthing, there is nothing in the current consent that requires public access to the pontoon to be freely available at all times. Even if there was such a restriction, Mr Schmuck is entitled to make an application to

change the use and/or conditions at any time, and provided the effects of that use can be mitigated to be minor or less than minor, that application can be granted.

28. DOBY has obligations to provide reasonable public access and use of the wharf and pontoon structures. Mr Schmuck has committed to enabling such access to continue. He has volunteered a condition to this application in an attempt to provide clarity and certainty as to what “reasonable access” means and how it will be achieved.
29. It is important to note that other, publicly owned and much larger, nearby facilities provide a limited number of public berthing facilities, often with restrictions.
30. Port Opua provides two public berths. One of these is a floating pontoon with small separate wharf access, located between the Old Opua Store and the main Opua Wharf. It is suitable only for small boats and dinghies and is currently unusable being in a state of disrepair and roped off with yellow security tape. When in use there is a maximum stay of 30 minutes within any four-hour period, and vessels may not be left unattended. No discharge, swimming or maintenance is allowed.



*Figure 4 - Opua Wharf, second public berth, restricted access in area beyond*

31. The second public berth is on the main Opua wharf at the inland end on the Opua Basin side. As with the other public berth provided, there is a maximum stay of 30 minutes within any four-hour period, and vessels may not be left unattended. No discharge, swimming or maintenance is allowed. This berth is

difficult to access as boats need to cross the car ferry track and manoeuvre in a restricted space between the pontoon mentioned in paragraph 30 and the wharf. It is not suitable for inexperienced sailors.



Figure 5 - Sign on the public berth beside the Old Opua Store

32. Other than the two berths provided by Port Opua detailed in paras 30 and 31, the Bay of Islands Marina does not have any public berths in its 400+ marina complex. The recently constructed SuperYacht wharf alongside the Opua Wharf does not include public berths. Public access to this wharf is provided whilst there is no vessel alongside. There are locked gates at the head of the wharf and the sign makes it clear that the gate will be unlocked when access is available.



Figure 6 - Bay of Islands Marina Superyacht pontoon

33. Demand for marina berths is high. Currently, there are only 7 berths available for sale, ranging in length from 12m up to 50m, none of which would be suitable for GEYC. The Marina often has casual marinas for short term rent. A public launching ramp and



space for dinghies and short term tying up of boats is provided in an area of the complex able to be accessed by the public.

34. In addition, the Opuia Cruising Club allows the public to use their dock for a reasonable fee, with members paying a reduced fee



Figure 7 - Opuia Cruising Club Dock - fees for use

35. Far North Holdings Ltd, a council controlled organisation, owns the Paihia wharf, the Russell Wharf, and the Bay of Islands Marina. One public berth is provided on the recently developed commercial Paihia Wharf, with restricted access to the berths used by sightseeing companies. Short term berths are available for a fee on the recently rebuilt commercial Russell Wharf.



Figure 8 - Paihia Wharf one public berth provided

*Prendergast*

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C H Prendergast  
1 September 2020