

BEFORE THE NORTHLAND REGIONAL COUNCIL

and FAR NORTH DISTRICT COUNCIL

APP.040976.01.01 and
RC 2200220 RMALUC

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

of an application for regional and district resource consents to extend the hardstand area immediately adjoining the southern extremities of Bay of Islands Boatyard, Opuia (legally described as Lot 1 DP 199153)

BETWEEN

FAR NORTH HOLDINGS LIMITED

Applicant

AND

NORTHLAND REGIONAL COUNCIL and

FAR NORTH DISTRICT COUNCIL

Consent Authority – Commissioner Rob van Voorthuysen

ON

7 December 2020

STATEMENT OF EVIDENCE OF J V KEMP

(PLANNING)

22 NOVEMBER 2020

INTRODUCTION AND EXPERIENCE

- 1 My name is Jeffery Victor Kemp and I am a Full Member of the New Zealand Planning Institute. I hold a New Zealand Certificate in Town Planning having received that qualification in 1979 and I have been engaged in the planning profession for over 40 years. I have completed the Ministry of the Environment “Making Good Decisions” programme and received certification to act as an Independent Commissioner.

- 2 In July 1996 I established Bay of Islands Planning Limited a private consulting business operating from Kerikeri and specialising in resource management, building consent administration, liquor licensing and property management. I am the Principal Consultant and the Principal Director of the company. Prior to entering private practice I had been employed by a number of local authorities in New Zealand and Australia.
- 3 I have been actively involved in resource consent applications to the Far North, Kaipara and Whangarei Districts and the Northland Regional Council and have appeared before the Environment Court on a number of occasions and in the High Court.
- 4 In this matter I appear on behalf of the applicant Far North Holdings Limited (**the Applicant**). I prepared the resource consent application in conjunction with the other contributing consultants. I have visited the site many times, and I am familiar with the location and its surroundings. I have not viewed the site from within the waters of the Kawakawa River.
- 5 Although this hearing is not before the Environment Court, I record that I have read and agree to abide by the Environment Court's Code of Conduct for Expert Witnesses as specified in the Environment Court's Consolidated Practice Note 2014. This evidence is within my area of expertise, except where I state that I rely upon the evidence of other expert witness as presented to this hearing. I have not omitted to consider any material facts known to me that might alter or detract from the opinions expressed.
- 6 In preparing this evidence I have considered and relied on the provisions of the Resource Management Act (**the Act**); the New Zealand Coastal Policy Statement (NZCPS); the Northland Regional Council's (**NRC**) and Far North District Council's (**FNDC**) statutory planning documents and other supporting statutory documents. I have taken into account the application and supporting information, the submissions received and the Section 42A Planning Report of Mr Alister Hartstone on behalf of both the Regional and District Councils (the Section 42A Planning Report) and the Engineer's Report prepared by Mr Hedger on behalf of the District Council .

SCOPE OF EVIDENCE

- 7 The Hearings Agenda contains copies of the original application and supporting information. This includes my Planning Report incorporating an Assessment of Effects on the Environment (**AEE**) and the detailed technical reports presented in support of the

application. The applicant's representative and their other expert witnesses will address the potential effects of the development within their areas of expertise.

- 8 In accordance with Minute 1 issued by the Commissioner on 27 October 2020 I do not propose to repeat the detail contained within the applicant's Planning Report and AEE or the Reports prepared by the other expert witnesses but rather to consider specific issues that have been raised within the Section 42A Planning Report and some of the matters raised by submitters.
- 9 For the avoidance of doubt, I maintain the same professional opinion set out in the applicant's Planning Report and AEE.
- 10 In regard to the Section 42A Planning Report Mr Hartstone has recommended that the application be approved subject to resolution of a number of matters and to recommended conditions. I agree with the assessment of the application status and I also agree with Mr Hartstone's comment that the reclamation is likely to be zoned Industrial with application of the Maritime Exemption Area notation. This was assumed in formulation of the application and is also taken into account in Mr. Hartstone's assessment. I also support the recommendations to grant consent in respect of the Regional and District Council applications.
- 11 Given the overall favourable nature of the report, I intend to confine my evidence to some general comments under the headings of matters raised within the report and submissions. I also have some comments to offer on the recommended conditions that I will discuss at the end of this evidence. Where necessary I will cross-reference items addressed by other members of the applicant's team of expert witnesses and the application documents.

MATTERS RAISED IN SECTION 42A REPORT

- 12 The Report seeks further information or advice concerning the following matters:

- Need for consent for clearance of indigenous vegetation;
- Extent of any hydrological effects;
- Definition of occupation area;
- Consultation with tangata whenua and mahinga kai;
- Formation standards and shared access;
- Provision of vehicular access to jetty on request;
- Construction time frames; and

- Consideration of alternative sites.

13 Most of these matters are dealt with by other witnesses for the Applicant. I shall comment briefly on vegetation clearance and address alternative sites. As this is also a matter raised by a number of submitters I shall deal with it in that context.

14 I agree with Mr. Hartstone's assessment of the FNDP rules on vegetation clearance in paragraph 11 of his Report that clearance of indigenous vegetation as a permitted activity is limited to an area extent of 500m². An ecological assessment of the southern end of the site was undertaken by Northland Ecology, and an assessment of ecological effects was also undertaken by 4Sight Consulting (refer evidence of Ms Sanderson Kane). The majority of the area to be cleared consists of exotic weed species with the indigenous vegetation being limited to the scattered individual mangrove and pohutukawa along the shoreline and parts of the toe of the slope where the cycle trail is diverted. I have approximated the total length of the diversion at about 120 m. At 3 m wide this would give an area of 360 m². As not all of the vegetation is indigenous, the total area to be cleared is less than 500 m² and no consent for vegetation clearance is required.

SUBMISSIONS

15 The Report provides a summary of matters raised in the submissions [Attachment A to the Report]. I agree with the summation of the main issues in support and those in opposition. I also intend to provide general comments on the matters raised in submissions, under the headings of exclusive occupation, land status, alternative sites, environmental effects and statutory considerations.

16 I also adopt the approach that the matters raised within the submission are addressed within the application documents or addressed within the applicant's evidence being presented to the Commissioner.

EXCLUSIVE OCCUPATION

17 A number of submitters have opposed the loss of accessibility to the shoreline and the extension of maritime activities in Opuā. In the words of Ron Cooke, who is supported by other submitters, *"The site begins with the headland that currently separates (visually and geographically) the industrial park and part of the boatyard from the beginning of the cycle trail and recreational waters from Ashbys South. There should be no further industry upstream from this point (headland) that further excludes the public and destroys the*

attraction that the entrance/exit to the cycle track and the lower reaches of the Taumarere should have."

- 18 From a planning perspective I would point out that the application area has been zoned for industrial use and designated for railway purposes for more than 30 years. In the Bay of Islands County District Scheme it was zoned Marine 3 which provided for maritime industry. When this was changed to Industrial when the current District Plan was promulgated, the only submissions in opposition sought that industrial activities be limited to maritime industry as per the *status quo*. Although an effects based plan does not lend itself to prescribing particular types of industrial activity, the use of the Maritime Exemption Area notation effectively facilitates establishment of such activities. This application is therefore in keeping with the intentions of the District Plan.
- 19 I would also point out that the barge dock is not a new activity within the Opuia maritime area but rather it is a *replacement* for the barge dock displaced by construction of the second stage of the Marina. The background to this application is that the applicant holds consent for a barge dock located on the original shoreline immediately south of the public boat ramp which separates the two stages of the Marina development, the activity having been displaced as a result of the construction of the second stage of the Marina. That consent is required to be relinquished when the construction of the Marina is completed but the dock itself has been inoperable since the seawall for the Marina reclamation was built.
- 20 The 'new' shoreline of the marina reclamation has an esplanade reserve and is being landscaped and turned into an attractive facility for the public. Replacing the barge dock next to a working boatyard is a better juxtapositioning of facilities. **Attachment A** to this evidence provides an aerial photograph indicating the original location of the barge dock and the walkway being constructed around the Stage 2 Marina reclamation.
- 21 Mr Cooke and other submitters also are of the opinion that the proposal results in the destruction of a small recreational beach used for fishing, dog walking and dinghy launching. While I agree that the flat area of shoreline immediately south of the Boatyard boundary will be removed, when the context is fully considered I do not believe that any recreational opportunities are 'lost'.
- 22 Mooring owners are not disadvantaged by the proposal. Currently they launch from the small ramp at the boatyard boundary depicted on Photos 1 and 8 in Mr Cocker's Report. They have to park in Baffin Street and walk along the Boatyard boundary carrying their

gear. Launching from the new jetty will be much easier and although parking will not be available at the turnaround, they will be able to obtain a timed code access which will allow them to drive to the end of jetty to drop off and pick up their gear.

23 G Simmonds refers to swimming from a small beach south of the proposed jetty and says there is nowhere to swim in Opuia without *“navigating mud and sharp shells”*, which as indicated in Photo 8 in Mr. Cocker’s report appear to prevail at the northern end of the site. She suggests that the jetty and pontoon would provide good opportunities for swimming and fishing, particularly if a ladder were provided.

24 Ms Simmonds believes the location is appropriate *“as it is already environmentally compromised”* and welcomes the opportunity for the proposed turning area to be cleared of weeds and rubbish.

25 In my opinion, the application utilises a stretch of coastline in conformation with the District Plan intentions while at the same time maintaining and arguably enhancing recreational opportunities for the public. Loss of access to a short length of shore is compensated by the new esplanade at the original site of the barge dock and the easier accessibility to moorings provided by the jetty and access arrangements.

LAND STATUS

26 One submitter, the Pou Herenga Tai Twin Coast Cycle Trail Trust, claims that the application has not stated that the land is subject to treaty settlement. This is incorrect, paragraph 8 of the Planning Report I prepared records that the western portion of the site was gazetted in 1999 as no longer being required for railway purposes and that it was subsequently added to the ‘land bank’ for redressing treaty settlement claims. In fact, the seaward ‘site’, which is Crown Land but has a certificate of title, is also part of the land bank.

27 I also stated in that paragraph that inclusion in the land bank does not preclude development on the land which in any case may not be used for redress and if it is may not necessarily be granted to the party who sought its inclusion in the land bank.

ALTERNATIVE SITES

28 In paragraph 186 of his Report, Mr Hartstone notes that *“The consideration of alternatives is a matter that can be considered when determining a decision, where the extent of actual and potential adverse effects may be significant. In addition, it is required in accordance*

with Policy 10(c) of the NZCPS.” He goes on to say that some commentary on alternatives is provided in the application in assessing Policy 10(c) of the NZCPS although there is no direct assessment of alternatives, and “It would be helpful for the applicant to provide a condensed and detailed consideration of the alternatives to the current proposal, including those alternatives suggested through submissions.”

- 29 There is a difference in wording between the AEE requirements of Schedule 4 of the RMA and Policy 10(c) of the NZCPS in that the AEE requires “a description of any possible alternative locations or methods for undertaking the activity” while Policy 10(c) requires reclamation to be avoided unless “there are no practicable alternative methods of providing the activity”. The discussion of Policy 10 in my Planning Report commencing at paragraph 127 was predicated on this distinction and considered locational criteria rather than specific locations.
- 30 The criteria encompass “ location relative to the receiving or originating point of the materials transfer, good sea access, good road access, space onshore to provide sufficient operating area and support facilities, compatibility with public access to the coast particularly for recreational activities, establishment costs, land tenure, and avoidance of adverse environmental effects on coastal values, including visual impact, cultural aspects, land use compatibility, and coastal processes.” In the application the criteria were applied to *localities* rather than specific sites.
- 31 One of the sources for deriving those criteria was the assessment of alternative sites prepared by Total Marine Services (a copy of that assessment is attached to the evidence of Mr. Papesch) in respect of their submission supporting a previous application to locate the barge dock at Colenso Triangle. That application was declined, appealed and subsequently withdrawn during negotiations primarily because of the strong opposition on cultural grounds by Ngati Manu, Te Uri Karaka and Te Uri o Raewaera Hapu through their representative Arapeta Hamilton who has subsequently provided support for this application site through the email contained within my Planning Report.
- 32 The use of this site was in fact first mooted during the Hearings process for the Colenso Triangle application and has been pursued through this application as being more appropriate in terms of zoning, its ability to meet principles applicable to coastal planning such as consolidation of development, lack of significant adverse effects, and support in terms of cultural matters.

- 33 A number of submitters have stated that the application did not examine alternative sites and that there are a number of possible alternatives. Some submitters suggested particular areas.
- 34 In considering an appropriate method for landing oysters, the assessment concluded that the key determining factors are that the industry uses barges and that the aim is to land the product and get it into refrigerated transport as expeditiously as possible so that health and safety risk factors in respect of shellfish for human consumption are minimised. Good access to the roading network is also essential. All tide access is also preferable, particularly where limits are proposed on hours of operation as is intended with this facility.
- 35 The assessment concluded that in terms of structures, ramps or low seawalls such as the reclamation edge are the most practical way of accommodating barging activity related to both the oyster farming needs and those of the contractors.
- 36 In terms of location, the assessment concluded that the eastern side of the Kawakawa River and the Waikare Inlet were not appropriate because of limited road access and long distances to major roads and the more pristine landscape and natural environment of the shorelines with built development limited to scattered dwellings and farm buildings.
- 37 One submitter referred to *“completing a connecting road from the oyster farms on the northern side of the Waikare Inlet to the Russell Road”* and refers to previous expenditure. This reference is to a reclamation consented previously for the landing of old timber and oyster detritus from oyster farms which had previously ceased to operate when the waters of the Inlet became contaminated by sewage. The material was to be retained on the site to allow it to dry off before processing or being transported elsewhere. Road access was obtained over private land but was not a critical factor for the intended usage.
- 38 The access difficulties pertaining to that site are not however conducive to the transportation of fresh oysters given the need for either a ferry crossing from Okiato to Opuā, which also has financial implications, or the lengthy coastal route around Russell Forest. Securing access over private land would also be a major constraint.
- 39 Other submitters have suggested accommodation of the facility within the adjacent Bay of Islands Marina Boatyard, utilisation of the Opuā Wharf or use of the public boat ramp within the Marina. All of these facilities are intensively used for their primary purposes and as discussed in the application the configuration of the wharf is not conducive for barge operations.

- 40 Although it is currently being used to land oysters in the absence of any replacement for the barge dock, use of the boat ramp is totally inappropriate as it is entirely incompatible with its intended purpose of facilitating recreational boating activities and its central position within the two 'halves' of the Marina adjacent to the esplanade walkway and other public facilities in the vicinity. Other witnesses will provide photographic evidence of this current usage.
- 41 The applicant also has experience of user conflict elsewhere in the District where oyster farmers resort to using public boat ramps because of a lack of planned landing facilities. While policy and plan provisions are now in place to ensure that new farming operations have provision of appropriate land based facilities, the Waikare inlet farmers are in need of replacement facilities which should be fit for purpose and not repeat historical deficiencies in planning for this activity.
- 42 Finally, two submitters have named proposed alternatives described as "opposite the Opuia Industrial Estate" and "at Whangae where the railway shed once stood". I understand these to be referring to the same area, a triangular piece of land on the eastern side of State Highway 11 and the northern side of the Whangae River at its confluence with the Kawakawa River. Maps and aerial views of the area are provided in Attachment B to this evidence.
- 43 Based on the cadastral boundaries, the land appears to be partly road reserve and partly railway corridor land and is used as a works area servicing the State Highway and the Cycle Trail/railway. In my opinion it is patently unsuitable for provision of a maritime servicing facility as the aerials show how it is completely separated from the Kawakawa River by the cycle trail/railway embankment, which at this location is south of the proposed railway terminus at Colenso Triangle and hence will eventually be restored to railway.
- 44 The submitters claim that development of this area will have less impact than the application. In environmental terms, the shoreline at this point has extensive areas of mangrove and tidal mud flats and is likely to have higher habitat value than the application site given the extent of the mangrove and bush area to the north. The submitters have not suggested how the material is to be landed and what structures/reclamation would be necessary, nor how navigable the Whangae River would be. The extract from the NZ Navigation Charts provided as **Figure 4** in the Planning Report within the application documents is reproduced in Attachment B and annotated to show the location suggested by the submitters. The available water depth is less than what is

available at the application site and substantial dredging would be required compared to the relatively low volume needed for this application.

- 45 This particular site was assessed by the marine contractor in the list provided as the attachment to Mr. Papesch's evidence as number 6 'Opposite Carters' and was found deficient in all aspects except road access.

WATER QUALITY

- 46 Some submitters have raised issues in respect of water quality and pollution by contaminants such as copper. While these have been considered by Ms Kane-Sanderson and Mr. Papesch, I would offer some information on stormwater treatment. I have recently obtained renewal consents for the operations of the Boatyard together with consent for a new haulout facility on the hardstand area used by the Boatyard on the northern side of Baffin Street. Those consents include a new stormwater treatment system for the Boatyard hardstand, improvement of the system and change to the proprietary brand to be used in the Marina Stage II reclamation, and diversion of waste from the new haul out pad and the existing sanding pad within the Boatyard to the FNDC sewerage network as trade waste. The system proposed for this application is similar to those approved under those recent consents.

STAUTORY OVERVIEW

- 47 The planning report and accommodating AEE have set out the applicable planning framework upon which to determine the application, in conjunction with the supporting application documents. The context of the application within these planning documents is detailed within the application and has been summarised within the Section 42A Report. As noted in that Section 42A both Mr Hartstone and myself agree on the activity status, the relevant objectives , policies and rules to be assessed. Collectively the application is to be assessed under Section 104 of the Act with regard to a Non Complying Activity. This has been detailed in the application and reflected in the Section 42A Report, Point 12 , wherein the proposal has effects which will be minor and the activity is not contrary to the applicable objectives and policies.

CONCLUSIONS

- 48 Taking into account Mr Hartstone's Section 42A, I consider there is a commonality of opinion that the application as sought sits appropriately within the framework of the applicable planning documents. Clarification of matters raised within the Section 42A

report have been addressed within my evidence and those of the applicants supporting experts. To that end I consider the application warrants approval under Section 104D and in doing so would not create effects beyond the application area or undermine the integrity of the applicable objectives and policies.

CONDITIONS OF CONSENT

- 49 The supporting evidence of the applicant has addressed a number of the recommended conditions of consent. Save those conditions sought to be amended , the recommended conditions of consent are appropriate.

I would be pleased to answer any questions. Thank you.

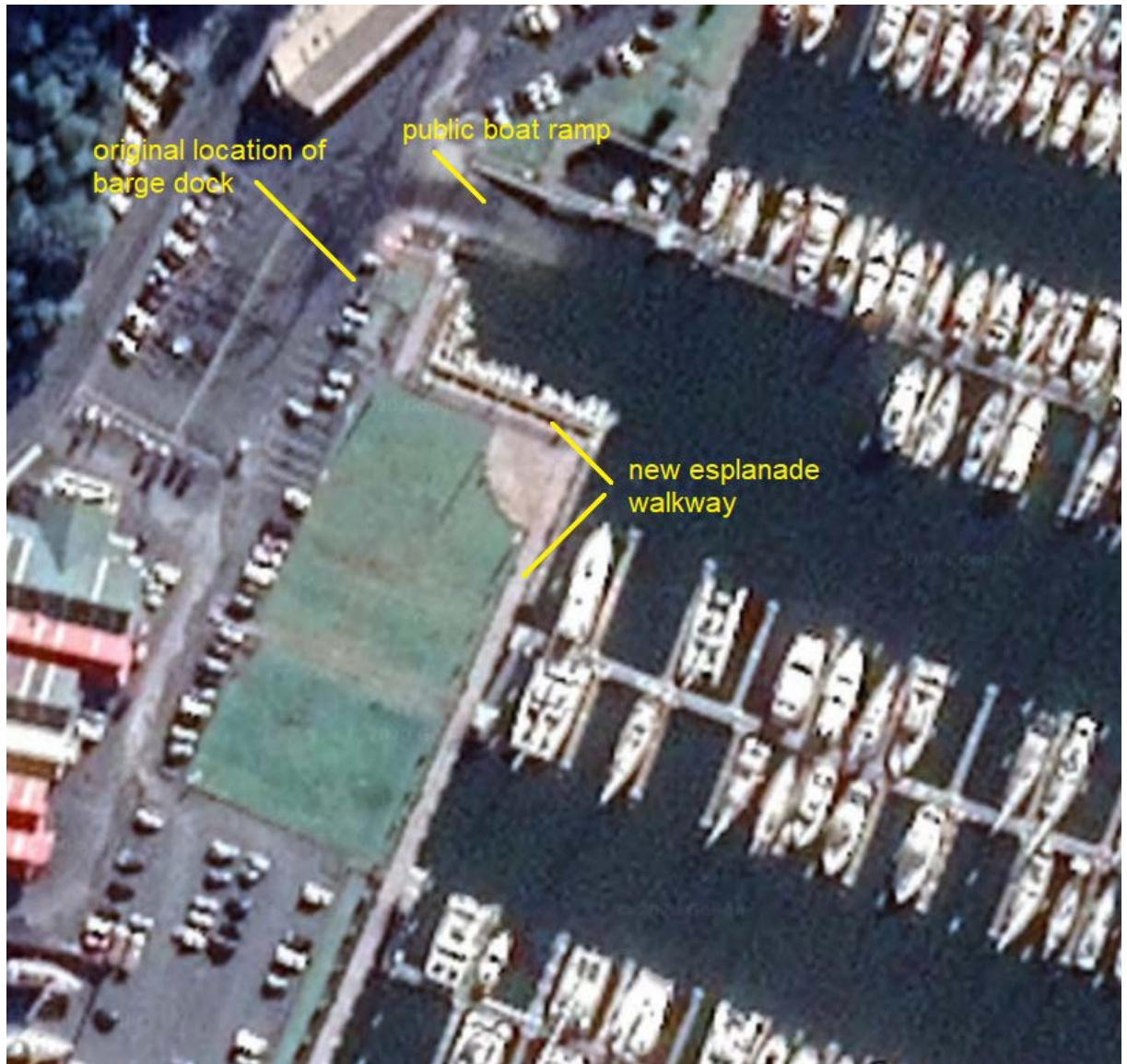
A handwritten signature in blue ink, appearing to read 'Jeff Kemp', is written over a light blue horizontal line. The signature is fluid and cursive.

Jeff Kemp, Director.

MNZPI

22 November 2020

ATTACHMENT A



Source: Google Maps 2020 imagery

ATTACHMENT B

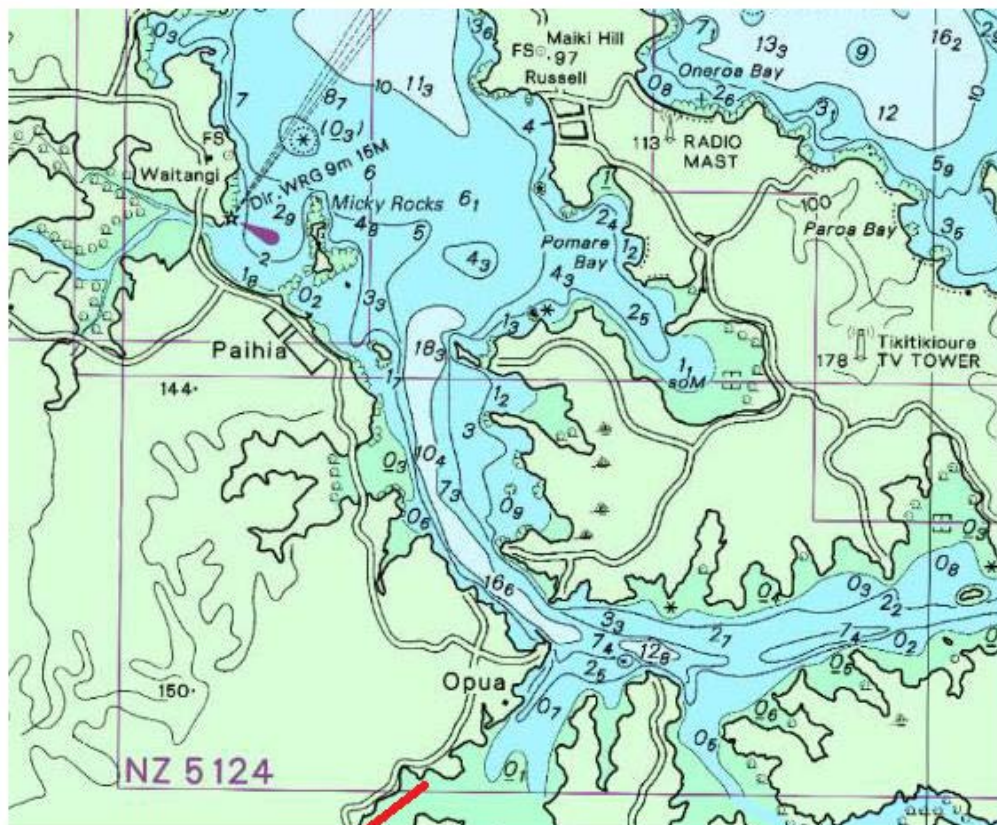
Cadastral Boundaries of Alternative Site Proposed by Submitters at Whangae



Source: Far North Maps 2015 imagery
Recent Aerial



Source: Google Maps 2020 imagery
Annotated Reproduction of Figure 4 from Application Planning Report



Whangae site

Source: NZ Navigation Chart NZ 5124