



CRITIQUE

of

Letter from FNDC Monitoring Officer to two Opuia complainants dated 16/05/2017.

MR

Page 1.

The letter is headed **“Re: Request for Service Number: 3825741, Boat Lady Hawke on Reserve Area.”** It commences: “Further to our phone conversation this afternoon I have enclosed a copy of the easements granted over the reserve area.”

Initial Observations:

(1) Failure to respond appropriately.

The complaints were filed pursuant to the RMA s35(5)(i), requesting to be acknowledged as such and to be registered on Council’s statutory RMA s35(5)(i) Complaints Register. They were **not** made as an RFS (Request For Service), which FNDC ‘system’ has been demonstrated to be ineffective in this matter.

(2) Failure to identify relevant legislation:

These complaints (since September 2016) have concerned failures by the boatyard to comply with express conditions of Resource Consents, and the continuing failure by FNDC staff to enforce compliance. These are matters raised pursuant to the RMA, **not** the Reserves Act to which the referenced easements relate.

(3) Failure to provide accurate documentation:

The purported ‘copy of the easements granted over the reserve area’ enclosed with the letter is not accurate. It is a copy of **proposed** easements recommended by FNDC to DoC dated 09 March 2006. The easements ‘granted’ by FNDC 5 June 2015 (registered on 27 July 2015) include significantly larger specified ‘easement’ areas and expanded private rights over public land from what was publicly notified in August 2005, and larger areas, different ‘easement’ designations and further ‘easements’ from those recommended by Council in 2006. These matters are presently still before the Court.

(4) Failure to observe express conditions of easements: The proposed easements ‘A’, ‘B’, ‘C’, and ‘D’, in the document forwarded by the Monitoring Officer 16 May 2017 **each has the condition expressly stated:** “That all activities shall be carried out in accordance with any relevant resource consent”. This is also stated in the FNDC document ‘Annexure B’ (2015) by reference to the easements as ‘granted’ by FNDC 5 June 2015, with application to easements ‘A’, ‘B’, ‘C’, and ‘E’ (easement ‘D’ in this document relates only to “existing wooden and stone retaining walls”).

As covered above, the complaints with photographs all concern evidenced failures by the boatyard operator to comply with express conditions of specified “relevant resource consent”, and, ‘Annexure B’ usefully records that such compliance is **also an express condition** of all but one of the **easements as ‘granted’**.

The relevant **resource consents** are:

FNDC RC 2000812, which, after Court-conducted mediation between the parties to appeal in 2001 was promulgated by the Environment Court with the-then-applicable NRC consents as a Consent Order on 31 January 2002, **and** NRC 2008 replacement consents 20060791410 (10-15).

The relevant **resource consent conditions** are:

(FNDC) RC 2000812 **Conditions 4), 8), 9) and 13)**, and (NRC) CON200060791410 (10-15),
(13) Discharge to Ground, Conditions 15(a) to (e), specifically 15 (a), (c) and (e).

The FNDC Condition 4) states:

"Except as provided in condition 8 that no materials, tools or other items shall be placed or left on the Esplanade Reserve except as may be necessary for the passage of boats on the slipway and only whilst those activities are being carried out."

The FNDC Condition 8) states:

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

The FNDC Condition 9) states:

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

The FNDC Condition 13) states:

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

The NRC replacement consent Condition 15 states:

"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:**" (my bold)

Condition 15 (a) states:

"Drop sheets shall be used to collect materials that arise from boat maintenance activities within those areas of the boatyard where the yard surface is pervious (ie metallised areas, grassed areas etc).

Condition 15 (c) states:

"All materials accumulating on drop sheets shall be removed daily or on the completion of maintenance activities whichever occurs first. The collected materials shall be disposed of at an authorised hazardous waste treatment or disposal facility."

Condition 15(e) states:

"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."

In 1994 the Schmuck family bought the boatyard with the slipway consented to cross public land subject to strict conditions confining its use for access only. About a year after taking over the operation in 1996, despite professing to have a degree in Business and Law, Doug Schmuck began working on boats on the access slipway. This activity became subject of an Enforcement Order and two Abatement Notices. His appeal on the basis of 'existing use rights' and 'adverse possession' was rejected by the Environment Court, 10 March 2000. The Court confirmed the boatyard had no rights to conduct work on the public land, which additionally had become local purpose (esplanade) reserve by public process in 1998. The boatyard owner then applied-for and was granted FNDC and NRC RMA consents in April 2001 to expand the boatyard's industrial activities onto public reserve. Following appeals and Court-conducted mediation between parties in 2001, these consents were reduced in scope and promulgated with a Consent Order 31 January 2002. Clause 6 of the Consent Memorandum recorded the acknowledgement of the parties that the subject resource consents could **not** be exercised (or 'given effect') on Walls Bay Reserve **unless** requisite easements were first obtained under the Reserves Act. Relevant easements had already been applied-for in 1999 and had been **declined** by DoC 23 May 2000. 'The parties' who signed the Memorandum 21 December 2001 were the boatyard owner, two Opuia couples including the original boatyard founder, DoC, NRC and FNDC.

Sometime in 2003, **without** having obtained the Reserves Act easements, the boatyard operator again began waterblasting and vessel repair and maintenance activities on the slipway on reserve. Complaints with evidence resulted in some enforcement action by NRC staff which was not followed through, and no relevant action at all from FNDC staff. Both FNDC and NRC staff allowed the exercise of the Consent Order resource consents on the reserve **without** any Reserves Act authorisation while three further easements applications were **declined**, the last one by DoC in August 2013. These activities on reserve remained unlawful, until, under its newly delegated (2013) statutory powers from Conservation Minister Nick Smith, the FNDC in June 2015 'granted' Reserves Act easements to the boatyard operator significantly **beyond** what had been publicly notified and subject of public submissions and a hearing by due process.

So, **not only** were these activities unlawfully conducted on reserve without Reserves Act authorisation over some 13 years, **and**, the NRC and FNDC had both signed the relevant Consent Memorandum in 2001 **acknowledging** that this was **not** to occur, **but also**, the **relevant boatyard activities were not even being conducted in compliance with the express conditions of the resource consents**. Following the 'grant' of easements in 2015 (still before the Court in 2017), further efforts and evidenced complaints have not resulted in compliance, or effective enforcement action by FNDC and NRC staff. Neither of them can apparently understand their own consent conditions and NRC staff declined to receive certain emails and then flatly refused to meet with complainants to constructively clarify and sort out the issues.

1| USE OF SCREENS.

FNDC Condition 13): Requirement to use screens if water blasting on slipway on reserve in Area 'A'. This has not been complied with since the Consent Holder recommenced boatyard industrial activities on reserve in 2003. On just two occasions around 2012 he briefly hung-up a single piece of material resembling a tennis net (about 1.5m high) on the Northern side of a vessel being waterblasted on the slipway. This was not effective, and the main reserve area accessible to the public in need of protection from contaminants is anyway on the Southern side of the slipway and has remained fully exposed for 13 years. In late 2016 some similar micky-mouse measures briefly appeared including tarpaulins propped-up about 400mm high around boat cradles on the slipway, and a plastic sheet spread-out beyond the consented Area 'A' on reserve.

Years of photos show spray plumes over the reserve including when the above fleeting contrivances were briefly in place. They did not work at all, let alone "to effectively contain all contaminants within the washdown perimeter" as specified in Condition 13). There has been no compliance and no enforcement.

To add insult to injury, new national regulations came into effect in July 2015 requiring more extensive measures in mitigation for waterblasting, anti fouling applications, and repair and maintenance work. These apply to operations on private land and within Industrial zoned areas. The present owner had the boatyard residential section rezoned Commercial **but** is conducting waterblasting, anti fouling, maintenance and repair activities on **public** reserve land zoned Conservation and otherwise entirely within a Residential area.

A comparable panelbeating operation cannot obtain consent within a Residential or Commercial area. It can **only** be sited within an Industrial zone on account of noise and fumes. The boatyard business as established from 1966 was unobtrusive boat-building in a purpose-built shed. From 1996 it became entirely a boat maintenance operation **conducted outside**, and, since 2003, also **on public reserve**, and **without screens**.

Further Observations:

(5) In her letter of 16 May 2017 the FNDC Monitoring Officer makes no reference at all to this ongoing issue of non-compliance with condition 13 repeatedly raised in complaints. She fails even to address it.

2| CONFINEMENT OF WATERBLASTING TO BOATYARD IMPERVIOUS SURFACES.

NRC Replacement Consent, Condition 15(e) Discharge to Ground. In 2003 NRC staff had advised the boatyard owner in writing that if he wanted to work on boats on the turntable he needed to turn them parallel to the boundary, so that all contaminants were collected in the turntable sump. He briefly complied. NRC staff responded to complaints with evidence in 2004 with an Abatement Notice regarding the washing down of vessels on the "land of the local purpose reserve that is outside the area of the concrete turntable". After a further six months of non-compliance they issued an Infringement Notice, but withdrew from the enforcement action after a Court date had been set, because, as verbally conveyed to a complainant, 'it would cost NRC more to proceed in a contested hearing than would be recovered with the Infringement fine'.

Part of the NRC consents which were part of the 2002 Consent Order expired in 2006 and were replaced in 2008. Part of this replacement consent is express Condition 15(e). This makes explicit that, pursuant to the NRC consent for Discharge to Ground, waterblasting or the washing down of boats may **only** take place over impervious yard surfaces. The only impervious yard surface then and now is the concrete turntable, and the Condition states "ie: the turntable". Fairly straightforward, one would think, but this condition has not been complied-with even after the replacement consent was issued: waterblasting and washdowns continue to be conducted **not** on "impervious yard surfaces" but on the slipway **on Walls Bay Reserve**. Repeated evidenced complaints to NRC and FNDC have not resulted in compliance-with or enforcement of this express condition of NRC consent. It has long contrasted with the FNDC consent to waterblast on reserve **subject to** first obtaining easements **and** conditional on the use of screens, which acknowledgement from the Consent Memorandum and express FNDC consent condition respectively have **also** been ignored.

The FNDC Monitoring Officer refers, 16 May 2017: "From the photographic evidence provided it appears Doug is carrying out maintenance on the boat where contaminants are required to be collected in the impervious yard surfaces. (the turntable and drop sheet area)".

Further Observations:

(6) The FNDC Monitoring Officer has misquoted the NRC express condition of consent. It says “impervious yard surfaces (ie: the turntable)” It does **not** say “ie: the turntable **and drop sheet area**”. Pervious yard surfaces, drop sheets, and requirements for their use is another issue to be examined shortly. The last paragraph of her letter states:

“FNDC believe the boat, Lady Hawke, to be in the right area for this kind of maintenance work. **Even though there are no boats in the boatyard itself**, water blasting, washing down or any maintenance that has materials that arise from boat maintenance should take place over the impervious area.” (my bold)

This paragraph from the Monitoring Officer, while appearing reasonable to the uninitiated, is indicative of a lack of attention given the relevant consent conditions and practical details, and of an alarming tendency by relevant FNDC staff to just make things up. This latest boat subject of complaint was waterblasted on reserve **without** the use of any screens, then worked-on on reserve for several days when it would, in fact, fit entirely in the boatyard where such work is required to be done if the boat will fit (see next section). Following complaints with evidence, the boat was eventually moved to the turntable but left unnecessarily **overhanging** the reserve while having further work done on/from/over the reserve for a total of 23 days.

It could have easily been turned parallel on the turntable so as to be in compliance ‘entirely within the Consent Holder’s site’. About 600mm of the turntable encroaches onto reserve (not 2m as depicted on plans that have found their way into various processes) and such boats if not otherwise placed on any of the four areas of hardstand on the boatyard site may be repaired on the turntable **provided** they are turned parallel to the reserve boundary to be fully on/over **a boatyard surface** and **not overhanging the reserve**.

Further Observations:

(7) The FNDC Monitoring Officer refers: “water blasting, washing down or any maintenance . . should take place over the impervious area.” This is what the NRC express Condition 15(e) is partly directed towards (‘waterblasting/washdowns’). However, she confuses the major part of the boatyard turntable sited on the private land with the 600mm sited on reserve, and confuses the Area ‘A’ at the top of the access slipway on reserve with a “yard surface”. The “impervious yard surface” subject of the express consent condition has now ‘morphed’ to become “the impervious **area**” and **to include the reserve**.

Fixing plastic sheeting on Walls Bay Reserve below the turntable does not make it a “yard surface”. An NRC Monitoring Officer in 2010 also had this difficulty, claiming the ‘ie’ to be an ‘eg’ – ‘for example’, but, as explained to her without result, ‘ie’ is the abbreviation of the Latin ‘id est’ – ‘that is’. In this case it intentionally denotes the turntable on boatyard land rather than intending to ‘include it’ as ‘an option’. The NRC Commissioners in 2008 took good note of submissions and advisedly included these conditions to apply until such time as the boatyard owner might finally obtain Reserves Act easements to lawfully conduct these activities on reserve, at which point he would need to apply for commensurate further NRC resource consents. The FNDC Monitoring Officer has got it wrong, as is made clearer by the following:

3] ONLY BOATS THAT DON'T FIT ON THE BOATYARD CAN BE REPAIRED ON RESERVE.

FNDC RC 2000812 Conditions 4) 8) and 9) (See Page 2). Conditions 4 and 9 both emphasise a general prohibition on leaving boats on the access slipway on reserve. Condition 8 reiterates this ‘default position’ with its first sentence: “Except as provided herein any repair or maintenance work on vessels shall be conducted within the Consent Holder’s site”. Condition 8 goes on to provide relevant exceptions:

“Vessels may be washed down within the area of the Esplanade Reserve marked “A” on the attached plan.” (subject to first obtaining relevant easements and compliance with condition 13 - the use of spray-screens) “Any vessel which by virtue of its length or configuration is unable to be moved so that it is entirely within the Consent Holder’s site may be repaired or maintained on that part of the Esplanade Reserve marked “A” on the attached plan.” The Area “A” depicted on the attached Plan 3231b is 7m wide by 10m at the top of the access slipway on reserve. The operative phrase of the above second condition is that it applies **only** to a vessel “**which**”... “**is unable to be moved** so that it is **entirely within the Consent Holder’s site.**”

So, if it **can** be moved to fit entirely within the boatyard site, then that is where the subject repair and maintenance activities must be conducted by express conditions of consent. The exception for conducting repair and maintenance activities on/over reserve applies **only if** the boat **cannot** fit entirely on the boatyard. This has application also to the easements ‘granted’ in 2015 as regards boats being allowed to be worked on, or to overhang Area “A” on reserve. However, the present matters are concerned with the extant RMA resource consent conditions which have not been enforced since 2003, and are still anyway not being enforced after FNDC ‘granted’ easements in 2015 expressly subject to these resource consent conditions.

Scores of photos since 2003 (and 2015) show boats which can obviously fit entirely on the boatyard site having repair and maintenance activities unlawfully conducted on them while overhanging the reserve or being sited fully in Area “A” on reserve. If more proof were needed, sometimes the same boat photographed having repairs and maintenance work conducted on it on reserve has been photographed on other occasions fitted ‘entirely within the Consent Holder’s site’. The evidence is incontrovertible. There is little compliance and no enforcement. The inaction of relevant NRC and FNDC staff has effectively granted a laissez faire licence for the present boatyard owner to do as he likes – and he has.

Further Observations:

(8) In the paragraph of her letter of 16 May 2017 reproduced near the top the previous page, the FNDC Monitoring Officer refers: “Even though there are no boats in the boatyard itself . . . any maintenance should take place over the impervious area.” As can be seen from the FNDC Conditions 4), 8) and 9) just canvassed, **unless** the boat in question **cannot** be fitted entirely within the boatyard site, the default position applies that . . . “any repair and maintenance work on vessels shall be conducted **within** the Consent Holder’s site.” This indicates the boatyard site, including the major part of the turntable. It does **not** indicate the small part of the turntable encroaching on reserve over which the boat in question has been parked, or any part of Area “A” on the reserve on/over/from which the boat has been worked-on, scraped-down, sanded and repainted (and photographed) for more than three weeks now.

She refers: “FNDC believe the boat, Lady Hawke, to be in the right area for this kind of maintenance work” I would suggest that ‘FNDC’ read their own express conditions of consent and stop making things up.

Since there are, as she observed, “no boats in the boatyard itself”, there would be **ample** room for four such vessels ‘on site’. If for some reason the operator desires instead to work on boats on the turntable, the consent conditions can easily be complied-with by rotating the boat 90 degrees to be parallel inside the boundary instead of projecting across it onto reserve. There is no operational reason whatsoever for the boatyard owner to keep flaunting the consent conditions in this manner. It has the appearance of a deliberated and manipulative campaign to have the authorities and the public accept series of incremental shifts of the primary boatyard operation from the private land onto public reserve, intended to free-up the private site for a house and/or other constructions and uses. Such campaign could be regarded as succeeding apace.

NRC Replacement Consent Conditions 15(a) and (c) (see page 2). These require the use of drop sheets when repairs and maintenance activities are being conducted on **pervious** yard surfaces. The boatyard owner has **not** sealed the four hard-stand areas, understood to be because he has always intended to build there and subsequently conduct the business primarily on the reserve. Despite consent conditions providing incentive to seal boatyard hardstand areas, the turntable still remains the only impervious area of yard surface.

All boatyard work was carried-out on the hardstand areas from 1983 until the present owner began in 1997, and recommenced in 2003, to **also** work unlawfully on Walls Bay Reserve. Complaints in 2010 about the non-use of drop sheets over pervious yard surfaces resulted in one NRC Monitoring Officer advising she was “the most highly ISO qualified” in the Far North, and that it was **for her** to decide whether or not drop sheets needed to be used to collect dust, contaminants and particulates resulting from sanding, scraping, spray painting and such activities being conducted on the **pervious** boatyard hardstand areas adjoining the reserve.

She decided she had the ‘the authority’ to ‘dispense with’ specific express conditions of consent put in place by two highly experienced NRC Commissioners. The next NRC Monitoring Officer was even less coherent, siding with the Consent Holder against any attempt to have NRC enforce their consent conditions regarding drop sheets over pervious boatyard surfaces. He instead ‘required’ the unconsented fixing of ‘permanent’ plastic sheeting down the slipway on reserve, enabling the unauthorised boatyard activities being conducted there to appear to be lawful in 2012. The boatyard operator largely neglected to clean up this fixed sheeting after water blasting etc, and complaints with photos showing marine biota and paint detritus on reserve for periods longer than a week and during heavy rain events have still not resulted in reliable compliance.

NRC Condition 15(c) requires the subject drop sheets to be “removed daily or on the completion of maintenance activities, whichever occurs first”, and the collected materials disposed at an authorised hazardous disposal facility. The unconsented fixed sheeting on reserve is not on a ‘pervious yard surface’, cannot practicably be removed, and is often left soiled in-place as above. Some photos show the solitary occasion around early 2013 when, following complaints, drop sheets were used over pervious yard surfaces for about three days, then were anyway shaken out over the reserve. No compliance, no enforcement.

Further Observations:

(9) The FNDC Monitoring Officer refers, 16 May 2017, to a “drop sheet area”. She is confused regarding the nature of drop sheets. The distinguishing feature of drop sheets is that they are **removed** daily such that collected contaminants are transferred to a containment system before being disposed-of at an authorised facility. The unconsented fixed sheeting on the slipway on reserve does **not** comprise a removable drop sheet or indeed a ‘drop sheet area’. We can see from the preceding paragraph just how seriously the constructive characteristic of drop sheets has been regarded in practice by the Consent Holder and relevant Council staff.

(10) The FNDC Monitoring Officer also appears to be confused between boatyard rights granted by FNDC 5 June 2015 as Reserves Act easements, and those granted by the FNDC and NRC by Consent Order January 31, 2002 (and the NRC Replacement Consents in 2008), pursuant to the RMA. The differences between the relevant RMA and RA rights granted were raised in the recent High Court proceedings. The proposed easements were consistently described in all relevant FNDC documents as being “intended to align with” or to “be aligned with” the 2002 Consent Order resource consents. In fact, the easement rights as granted June 2015 extended significantly beyond those of the 2002 consent order, and, as described on page 1 of this document under (3), also significantly beyond what was publicly notified as ‘proposed’ easements.

In response to this legal challenge that the RA easements rights granted did not ‘match’ the RMA consent order rights as consistently and publicly stated would be the case, FNDC and the boatyard owner were both at pains to argue that the easements, although admittedly more generous in scope, had not altered or expanded the resource consent rights.

FNDC In-House Counsel George Swanepoel in his affidavit of 3 May 2016 stated at paragraph 54:

“Boatyard work must still be in conformity with the resource consents obtained in 2002. On that basis the easement has been granted over section 2 but Mr Schmuck must still operate within area A of NRC Map 3231B. The Reserves Act consent granted by the Minister which lays easements over section 2, does not in any way add further rights to Mr Schmuck beyond what he has in his consent package obtained in 2002.”
(The RA consent was in fact granted **by the FNDC** acting under the 2013 delegation from the Minister)

Doug Schmuck in his affidavit of 22 June 2016 stated at paragraph 39:

“For the avoidance of doubt, I currently have no right to wash down or repair boats on the additional area of easement shown on plan 03.11. There is no ability for an easement application under the Reserves Act to grant rights under the Resource Management Act. There was – and is – no expansion of the area on which boats can be washed down, repaired or maintained, referred to as Area A in the resource consent. Should I wish to use the expanded easement area to work on boats sometime in the future, I will need to apply for a further resource consent, or a variation to my existing resource consent. I have no doubt that any such application will be publicly notified” . . .

In his Judgement, 14 February 2017, Justice Fogarty noted at paragraph [87]:

“There has been no amendment or expansion of Area A by virtue of the easement application. Grant of a new resource consent or an amendment to the existing consent is required before Mr Schmuck may use any part of the reserve outside Area A to wash down, repair or maintain boats.”

The RMA consents derive from a 2002 Consent Order. In 2014 Mr Schmuck had sought via a declaration in the Environment Court to have certain conditions of the consent order (RC 2000812) amended by the Court.

Judge Fitzpatrick declined to amend the consent conditions, commenting in paragraph [61]:

“There is no possible basis on which such a declaration could be made”, and “The relevant power given in s310(a) is to declare the existence or extent of a right under the Act, not to create or amend such a right.”

Summary:

- *The relevant RMA resource consent conditions must be complied-with pursuant to the RMA s35. & 84.
- *Such compliance is also an express condition for the grant of easements pursuant to the Reserves Act.
- *The subject consent conditions cannot be amended without a publicly notified application for new consent.
- *These conditions have not been complied-with since the 2002 consent order or the 2015 grant of easements.
- *A wealth of date-captured photographic evidence and documentation is available to confirm the facts.
- *The relevant FNDC and NRC staff have been derelict in their enforcement duties for some 14 years.

Footnote: Both previous boatyard owners, two qualified and experienced engineers, other trade professionals and DoC hold that these activities are **anyway** most conveniently and safely conducted on the boatyard land.

29 August 2017

Mr Mike Rashbrooke
5A English Bay Road
Opua 0200

Te Kāunihera o Tai Tokerau Ki Te Raki

Dear Mike

RE: Walls Bay Reserve, Opua (Correspondence Number 3840828)

Thank you for your letters and critique.

I am mindful, as you point out, that this matter has a long history going back a number of years and has been subject to a lot of litigation. This litigation includes the present judicial review proceedings regarding the easements granted over the reserve being on appeal. I therefore do not believe it would be appropriate for me to comment or express an opinion on the matter until all litigation on the matter has been finalised.

With regard to compliance with the terms of the resource consent by Doug's Boatyard, the (Far North District Council) FNDC consent and the (Northland Regional Council) NRC consent terms and interpretation thereof has been agreed with Doug Schmuck and the Northland Regional Council. This was set out in the Letter to Maiki Marks to which you refer. The discussions and agreement included the conditions regarding discharge of contaminants to air and ground when boats are washed down in area 'A' and when screens or similar measures are to be used to contain contaminants. However, as Mr Schmuck has the necessary resource consents, he is entitled to operate his business in terms of those consents without any undue interference from Council. Further, the easements granted remain in place until a Court rules otherwise. Given the agreement reached on the interpretation of the consents, our Monitoring officers have liaised with the NRC and have generally found Mr Schmuck to be compliant.

A number of complaints lodged regarding this matter have been found to be without substance and are a waste of council resources in having to investigate each complaint. Until such time as all litigation has ceased regarding this reserve, Council will not be undertaking any further work other than general maintenance of the reserve.

In your letter of 7 August 2017 you propose that we constructively engage in resolving matters. We do not accept that letters sent were in any way sent to bully, but rather to inform the recipients that the FNDC, NRC and Mr Schmuck have met and determined a common interpretation of the various clauses with an undertaking to comply with the agreed interpretation for the implementation of those clauses.

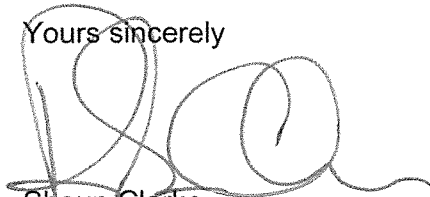
This matter is currently before the Court. Once the Court has finally determined the matter, then all parties will be in a better position to determine the best path forward for the reserve.

At that time, we will be happy to meet to discuss the various issues for the reserve going forward.

We understand that this is an emotional and difficult matter for the parties involved and appreciate your patience and understanding.

If you require any further information please do not hesitate to contact Darren Edwards, Manager-Compliance, on darren.edwards@fnzc.govt.nz / direct dial 09 407 0414, mobile number 0274 034434.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Shaun Clarke', with a stylized, looping flourish extending to the right.

Shaun Clarke
Chief Executive Officer

~~Wade Heasman~~,
Resource Consent Monitoring Officer,
Far North District Council, Private Bag 752,
Kaikohe.

Mike Rashbrooke,
5A English Bay Road,
Opua 0200,
Pewhairangi/Bay Of Islands.
13-03-18

Written Complaint pursuant to RMA s35(2)(d); S35(3)(a) and (b), and 35(5)(i)
RE: Unlawful boatyard activities conducted on and over Walls Bay Reserve, Opua.

1

Dear ~~Wade~~,

I refer to your email of 20 February 2018 to Maiki Marks in response to complaints regarding the above as have been referred to the FNDC on a semi regular basis for the preceding eighteen months, and on a less regular basis going back to September-October 2004. I am one of these complainants.

I have written previously on this subject to your ever-changing predecessors in FNDC. I expected that you would have been made privy to this extensive correspondence, but your response to Mrs Marks, 20 Feb, indicates that this is not the case. There evidently remains within the FNDC a major and sustained confusion as to what activities are lawfully mandated by the resource consents and recent purported 'easements' obtained by 'Doug's Boatyard' at Walls Bay, Opua, and, in particular, about the effect of the express conditions of the consents and 'easements' as regard boatyard uses of Walls Bay Reserve.

I have been a submitter to all relevant notified consent and 'easements' applications, and to the Walls Bay Reserve Management Plan public hearings. My parents were parties to the Environment Court-conducted mediation in 2001 that led to the Consent Order of 31 January 2002, from which RC 2000812 derives. As it seems you are new to what has subsequently become a regulatory and environmental train-wreck, I have elected to provide you opportunity to read and to understand, and to engage and to finally progress matters to a prompt and lawful conclusion. I use **bold** for emphasis and clarity.

Repair and Maintenance (R&M) activities on boats on Walls Bay esplanade reserve:
(1) FNDC Resource Consent Conditions as per the Consent Order 31 January 2002 (RC 2000812).

1] Conditions 4, 8 and 9 make clear the 'default position' is that all boatyard repair and maintenance (R&M) activities are to be conducted "*within the Consent Holder's site*", and no boat or cradle or equipment or tools are to be left on the reserve except as required while hauling a vessel.

Please advise if you disagree with this conclusion and provide your grounds for doing so.

2] Just to be clear, the "*Consent Holder's site*" denotes the private boatyard land. It does **not** denote **any part** of Walls Bay esplanade reserve.

Please advise if you disagree with this conclusion and provide your grounds for doing so.

3] Condition 8 provides for the **only exception** to the default position. That is: "*Any vessel which by virtue of its length or configuration is unable to be moved so that it is entirely within the Consent Holder's site may be repaired or maintained on that part of the Esplanade Reserve marked "A" on the attached plan.*" (the "attached plan" is NRC Plan Map 3231b. Please find a copy **enclosed** as 'Attachment 1')

Please advise if you disagree with this conclusion and provide your grounds for doing so.

Certain matters of logic follow in connection with this single exception to the default position:

4] The **only** situation or circumstances spelled-out as to where this exception applies is when a vessel is "*unable to be moved so that it is entirely within the Consent Holder's site*". I suggest it follows that, if a vessel **is able** to be moved "*so that it is entirely within the Consent Holder's site*", then "*the Consent Holder's site*" would remain the **only** area where this R&M work may be lawfully conducted on it.

Please advise if you disagree with this conclusion, and provide your grounds for doing so.

5] The **only assessment criteria** provided by the consent conditions as to whether a vessel **is able or unable** "*to be moved so that it is entirely within the Consent Holder's site*" are the vessel's "**length or configuration**". That is all.

Please advise if you disagree with this conclusion, and provide your grounds for doing so

6] The machinery, equipment and organisational skills necessary to move any vessel whose length or configuration is such that it **is able** to be moved so that it is "*entirely within the Consent Holder's site*" are the responsibility of the Consent Holder.

Please advise if you disagree with this conclusion and provide your grounds for doing so.

7] "*Unable to be moved*" is **not** intended to countenance any failures by the boatyard operator to acquire and to install this necessary infrastructure, or to pander to personal convenience, disorganisation or laziness. The only cited mitigating factor, as in 5] above, is **a vessel's** "**length or configuration**"

Please advise if you disagree with this conclusion, and provide your grounds for doing so.

8] Likewise, how the Consent Holder organises the boats in his yard remains his responsibility. He cannot, for example, place one vessel such as to prevent another which can fit in his yard from being moved onto his yard. That would allow *carte blanche* to 'game' or to rort the consent conditions. If the yard were full, that would not trigger the Condition 8 exception such as to authorise working on a boat on the slipway rails on reserve if the **vessel is able to fit** "*entirely within the Consent Holder's site*". The operator would need to wait for the work on another boat to be completed, or to re-arrange positions of boats on the slipway spurs on the 'hardstand' areas on his own land such as to create the necessary space for the subject vessel.

Please advise if you disagree with this conclusion and provide your grounds for doing so.

9] The above applies with particular regard to the Consent Holder having, in March 2017, removed all four slipway spurs from "*the Consent Holder's site*". It is unacceptable to try to 'game' the consent conditions in this manner so as to claim a right to work on any vessel on the reserve on the basis that the Consent Holder himself has removed the infrastructure that most easily allows for the movement of boats onto and off his property. If a boat can physically fit there in terms of its "**length or configuration**" it remains the responsibility of the Consent Holder to organise that, even if, for larger boats, he would **now** likely need to use cradles with 'skids' to do so. His recently making this more difficult for himself does not create any new rights to use the reserve for R&M activities.

Please advise if you disagree with this conclusion and provide your grounds for doing so.

10| If a boat can physically fit on the boatyard site it can **only** be worked-on there.

3

Please advise if you disagree with this conclusion, and provide your grounds for doing so.

For completion, I trust you are aware that, for 34 years from 1983 until March 2017, this boatyard had four cradles and four slipway spurs of various lengths **on the boatyard site**. Its maximum capacity was four boats at one time, such that, if the yard were full, all four available cradles would anyway be employed and unavailable for use in connection with working on another vessel on the slipway where it sits on Walls Bay Reserve. The maximum weight that the haul-out winch system can handle is 20 tons, which was the design capacity of the largest (now the only remaining) boatyard cradle. I am aware of a vessel of 39 feet which weighs 17 tons, but, with lighter construction, vessels of up to as much as 50 feet can be hauled. Vessels of as much as 50 feet **have** in fact been hauled and fitted *"entirely within the Consent Holder's site"*.

Sometimes these same vessels have subsequently been worked-on on or over Walls Bay Reserve when it had already been demonstrated **beyond any reasonable doubt** that they **can**, in fact, be moved so that they are *"entirely within the Consent Holder's site"*. Photographic evidence is available.

The boatyard cradles were not easily able to be adapted to haul a catamaran yacht. The *'configuration'* matter would appear to apply only to trimarans, as the central hull could be placed on a cradle with its uprights removed and some means devised to support the boat's outriggers during transit up the slipway. However, if it can be hauled up that slipway, it would, in **almost** all cases, be able to be moved so that it is *"entirely within the Consent Holder's site"*.

Please indicate if you doubt the above factual information and require more information and evidence.

To put it bluntly, there are very few circumstances indeed where the Condition 8 exception could be lawfully invoked. The surviving Opuia parties to the relevant 2001 Consent Memorandum and 2002 Consent Order have confirmed that they would not have signed-up to the Consent Order had they anticipated that the Condition 8 exception would subsequently be miss-applied, unlawfully exploited, and persistently abused in the manner that it has been, and to this extent. They did not anticipate or expect that the other parties, namely the Consent Holder, the FNDC and the NRC, would fail, respectively, to observe the terms of the Consent Memorandum, to comply with the relevant consent conditions, or to faithfully discharge their statutory duties to monitor and enforce them.

The Boat In Question subject of recent complaints and evidence.

The yacht ~~"Maui"~~ is approx 35 feet long. It can clearly fit *"entirely within the Consent Holder's site"*. In fact, if more cradles were available, it would be possible to fit at least six boats of this size *"entirely within the Consent Holder's site"*. It was slipped on or before 21 January 2018 and likely water blasted on reserve without the use of any screens, but that event was not captured on film on this occasion.

It was placed **on reserve** in front of the boatyard turntable with its bow facing the boatshed, and its stern further overhanging the reserve, until 3 March 2018. **For 40 days** it has had R&M activities conducted on it while on and overhanging Area 'A' on Walls Bay Reserve. These activities, recorded almost daily, have been conducted partly on the Consent Holder's site but mostly, unnecessarily and unlawfully, on and over Walls Bay Reserve. Scaffolding has been unnecessarily and unlawfully placed on reserve to do this work, which is required by express conditions of consent to be conducted *"entirely within the Consent Holder's site"*.

This unlawfulness applies with particular regard to ~~'Maistral'~~ for **two** reasons:

4

1] As stated, a boat this size can anyway easily fit "*entirely within the Consent Holder's site*", and;

2] Even after the recent removal of boatyard rail spurs, this vessel, and many others up to 50 feet in length, can easily be fitted "*entirely within the Consent Holder's site*" **by the simple expediency** of moving it **fully onto the turntable** then **rotating the turntable** so that the boat is parallel with the boatyard boundary. Most of the turntable is in fact on boatyard land (only approx 600mm encroaches onto reserve), and a boat so arranged would be fitted "*entirely within the Consent Holder's site*". See: **'Attachment 2'**.

See also **'Attachment 3'**, being photos of ~~'Maistral'~~, and the Consent Holders own yacht 'Puffin' which was hauled Monday 5 March 2018 (another yacht was positioned in the same manner during the intervening two days). The turntable is the round structure, observed most clearly **in front of 'Puffin'**. You will observe that neither boats nor cradles were moved fully onto the turntable on boatyard land, or 'onto' it at all.

(2) FNDC 'Easements' Conditions, 5 June 2015, as 'Registered' 27 July 2017.

These 'easements' were purportedly granted pursuant to the Reserves Act to 'align with' the resource consents but did not in fact 'match' them. This matter was raised in High Court proceedings. In his Judgment of 14 February 2017, Fogarty J addressed this matter in paragraphs [86], [87] and [88]:

"[86] Mr Brown for the third defendant argues that there was no legal significance to the differences between areas of the easements in the plan before the Environment Court and the plan for the purposes of the s 48 easement (respectively Plan 3231b and Plan 03.11). He submits that while the easements may extend over an area larger than Area A on NRC Plan 3231b, **the conditions of the resource consent govern the operation of the boatyard. Area A on Plan 3231b continues to denote the limits of the area** of the reserve on which boats can be washed down, repaired or maintained." (my **bold**)

"[87] **There has been no amendment or expansion of Area A by virtue of the easement application.** Grant of a new resource consent or an amendment to the existing consent is required before Mr Schmuck may use **any part of the Reserve outside Area A** to wash down, repair or maintain boats." (my **bold**)

"[88] That submission is consistent with my own aforesaid reasoning" . . .

For Completion, I provide you with a relevant extract from the sworn affidavit of Douglas Schmuck, 22 June 2016, paragraph 39:

"For the avoidance of doubt, I currently have no right to wash down or repair boats on the additional area of easement shown on plan 03.11. There is no ability for an easement application under the Reserves Act to grant rights under the Resource Management Act". . .

And from the FNDC's 'In-House Counsel', Mr Swanepoel, 3 May 2016, paragraph 54:

" Boatyard work must still be in conformity with the resource consents obtained in 2002. On that basis the easement has been granted over section 2 but Mr Schmuck must still operate within area A of plan NRC Map 3231b. The Reserves Act consent granted by the Minister which lays easements over section 2, does not in any way add further rights to Mr Schmuck beyond what he has in his consent package obtained in 2002."

No doubt Mr Swanepoel can confirm for you the content of his own affidavit, and I must express my surprise that you evidently were not properly briefed on these matters. 'Easement' area 'X' is not called-out in the 2002 'consent package', and no further rights accrue, such as 365 days use of area 'X' for boat repairs.

Please do not confuse the different 'rights' as regards boatyard uses of reserve 'granted' by the 'easements' (still before the Court) pursuant to the Reserves Act, with those granted by resource consents pursuant to the Resource Management Act. **Please do not be confused** either by the different nomenclature as regards identified 'easements' and 'easement' areas. The RC consent conditions take precedence in this matter, as **unambiguously confirmed** by the first and third defendants and by Fogarty J in his Judgement.

All complaints lodged with the FNDC for the last eighteen months have referred to clear and evidenced breaches of the extant resource consent conditions, the content and effect of which I have endeavoured to explain and illustrate from page one to four of this letter. FNDC staff replies to date have apparently confused these resource consent rights with certain **different** 'easement' 'rights' which cannot lawfully be exercised on Walls Bay Reserve unless and until they have been sanctioned by resource consents.

The 'easements' matter is still before the Court but the 2002 resource consents are **not**. Compliance with their express conditions of consent is **unaffected** by the outcome of current Court proceedings. Even should the FNDC grant of purported 'easements' be upheld by the Court, the serious issues of non compliance with RC conditions would remain and would require to be addressed. They have not been addressed to date, and I suggest it would only be appropriate that they are addressed and enforced **before** the Court rules on the 'easements' matters in order to provide a demonstration of the probity of the FNDC, presently under doubt.

Observations regarding purported 'easements':

Complainants have intentionally confined their information and complaints to RMA matters while the Reserves Act matters remain before the Court, as an exercise in due respect for due process. There remains a separate question as to whether the FNDC has behaved with due respect for due process in allowing the exercise of the purported 'easements' while they have remained under legal challenge since 'granted'.

In the event that the subject 'easements' are upheld by the Court decision, you may subsequently expect complaints, information and evidence specific to the exercise of them by the boatyard operator. I bring to your early attention that the purported 'easements' allow R&M activities on boats on Area 'A' on reserve **subject to the same conditions as RC 2000812**. Three matters would arise:

1. As explained and illustrated herein, confirmed by evidence with complaints, these conditions have **not** been met in respect of the RCs **and** purported 'easements' conditions regarding *"length or configuration"*.
2. The 'easements' conditions **further limit** such use of Area 'A' to the maximum of **60 days** in any calendar year. Owing to difficulties encountered with FNDC staff in respect of this matter, I have kept a diary and recorded with photographs since January 2016. My evidence shows that, **since 27 July 2017**, the boatyard operator has worked-on boats or allowed boats to be worked-on in area 'A', **on reserve**, for some **164 days**. Another yacht was hauled on Saturday 3 March 2018 and placed, like the ~~'Maistral'~~, **in front of the turntable on and unlawfully overhanging reserve**, followed by 'Puffin' from 5 March 2018. On Friday 10th or Saturday 11th March, another yacht (red, about 40 feet) was hauled and this time placed fully on the boatyard turntable. However, it was not turned 90 degrees and unlawfully overhangs reserve.

3. The use of purported 'easement' Area 'X', a two metre strip imposed across the top of Area 'Y' (neither were part of a **notified** 'easements' application) for 365 days for R&M activities, is **not** sanctioned by any resource consent. The lawful right to use it in such manner has **not** been brought into existence.

Water Blasting boats on Walls Bay Esplanade Reserve.

RC 2000812 condition 13 states:

*"During periods where that part of the slipway through the Esplanade Reserve area is being used for washing down of boats, the Consent Holder shall erect screens or implement similar measures to effectively **contain all contaminants within the washdown perimeter**. Screening shall be arranged at the Consent Holder's expense and be to the satisfaction of the District Council's Resource Consents Manager"(my **bold**).*

The "washdown perimeter" pursuant to RC 2000812 is 7 metres wide by 10 metres long. Effective screening has not ever been done, and multiple complaints with evidence have not **so far** resulted in any enforcement action. This unlawful situation cannot be allowed to continue. Please advise, or have the FNDC's Resource Consents Manager advise, and take full responsibility, as to why the FNDC has **not** enforced this consent condition. Should anyone suggest or claim, for example, that contaminants **are** being contained, please would they provide their reasoning **and evidence**. That would be most constructive, thank you.

Please enter this written complaint on the statutory Complaints Register required by RMA s35(5)(i) to be maintained by every local authority, with the necessary detail such as to comply with the requirements specified by RMA s35(3)(a) and (b).

Kind Regards,

Mike Rashbrooke.

Attachments:

1. Copy of NRC Plan Map 3231b.
2. Copy of letter from NRC Monitoring Officer to Doug Schmuck, Feb. 2004. Re: rotating boats on TT.
3. Copy of photos of yachts 'Mastral' and 'Puffin' placed **in front of** boatyard turntable on reserve.
4. Copy of photo of latest yacht (approx 40 feet, red) placed fully on turntable but **not** rotated to be "entirely within the Consent Holder's site".

cc – As may be required.

Shaun Clarke,
Chief Executive Officer,
Far North District Council,
Private Bag 752,
Kaikohe.

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

19-04-18

Complaint RE: Failures by FNDC Monitoring Staff to engage.

1

Dear Sir,

Please find enclosed copies of four recent written complaints addressed to FNDC Resource Consents Monitoring Officer ~~Wade Heasman~~, and a copy of a letter from him received 11 April.

You will note that the written complaints to ~~Mr Heasman~~ concern and reference express conditions of FNDC RC 2000812 issued by the Environment Court as a Consent Order dated 31 January 2002. The consent conditions cited, and photographic evidence provided to illustrate the nature of the non-compliance complained-of, offer an opportunity for FNDC staff to engage. I have sought that engagement to explore what are evidently very different interpretations of the effects of the express conditions governing the exercise of the consents as regards boatyard uses of Walls Bay esplanade reserve.

However, in his letter dated 5 April ~~Mr Heasman~~ makes a number of claims and statements which are **not** referenced to specified conditions of consent. For example, he refers "*The consent and easement allows waterblasting to take place on the slipway*", while neglecting to acknowledge that this activity is subject to FNDC written condition 13) requiring the employment of 'screens or similar measures'... "to effectively contain **all contaminants within the wash down perimeter**" whenever this activity is conducted on the reserve. Complaints with evidence that this conditional right has been exercised for a long period of time on reserve **without** complying with its conditions of consent have been met, 5 April, with a statement of the 'right' without reference to the **conditions**, or to the breach of those **conditions** which gave rise to the complaints with evidence. They have also been met by FNDC staff with the claim that "*NRC is not concerned with the water plume emitted from water blasting as this is not considered a contaminant.*" The complaints concern non-compliance with an express FNDC consent condition, **not** an NRC one, and this extraordinary claim by FNDC staff would **anyway** remain suspect unless and until they could provide a signed statement to this effect from an NRC staff member.

~~Mr Heasman~~ **declined**, 5 April, to address and respond to the **simple question** that is most critical to resolving some of these matters, put to him on page one of my Written Complaint of 13 April 2018:

"2] Just to be clear, the "*Consent Holder's site*" denotes the private boatyard land. It does **not** denote **any part** of Walls Bay esplanade reserve. Please advise if you disagree with this conclusion and provide your grounds for doing so."

I trust you will agree that FNDC staff attempting to ignore a question concerning a critical matter of fact and relevant law with regard to the intended terms of RC 2000812 is unhelpful. Their answer is sought to progress matters constructively. Please arrange for your staff to reply promptly. Thank you.

As to his reported inspections on 23 and 27 March, I must advise that FNDC consent conditions 4, 8 and 9 are clear that no vessel is allowed to be, **as he has recorded**: "*sitting on the slipway with no works being carried out*" for five days from 23 to 27 March. It follows that consent conditions **were** breached.

Further, photographic evidence clearly shows that the yacht was **not** in fact “moved onto the turntable” on the 27th as is wrongly claimed. It was, as subject of complaint, in fact placed on reserve **in front of** the turntable. It appears that ~~Mr. Teasman~~ is unfamiliar with the reserve and boatyard area, and cannot, without assistance, determine the precise location of the turntable. A simple guide to assist ~~Mr. Teasman~~ was provided him in my written complaint of 13 March 2018, top of page 4: if a boat is actually **on** the turntable, it can easily be rotated 90 degrees so as to fit, as required by consent conditions, “*entirely within the Consent Holder’s site.*” The only boat recently to be placed fully on the turntable is recorded in an evidential photograph as attachment 4 to my written complaint of 13 March. However, regrettably, it was **not** rotated so as to comply with express conditions of consent.

Please find enclosed further photographic evidence of another yacht ‘Tramp’ subsequently **also** placed on Walls Bay reserve **in front of** the boatyard turntable and being unlawfully worked-on on reserve from 13 April to the present.

For another example, I fail to grasp how FNDC staff arrived at the conclusion asserted by ~~Mr. Teasman~~, 5 April, that “*The boat yard owner makes the decision whether a vessel can be maneuvered onto the boat yard or it needs to remain on the slipway due to its size configuration*”. Such an all-encompassing autonomous authority over the private business use of esplanade reserve, as now asserted to have been granted the Consent Holder, is news to all local parties to the 2001 Consent Memorandum and 2002 Consent Order. As you will observe, such an alleged private autonomous ‘right’ is not stated anywhere in the Consent Order, and neither is it implied. This ‘right’ appears to have been invented by FNDC staff at some juncture and has apparently become accepted by others, largely because they refuse to engage with the local people who are familiar with the relevant processes since 1996, or indeed, from 1966.

These are just some examples of problematic misinterpretations of the terms of the Consent Order by certain FNDC staff which has led them recently to make the statement in error that “*a number of complaints that are raised are found to be without substance and this unnecessarily ties up Council resources.*”

I suggest what is in fact unnecessarily tying-up Council resources consists in a failure by relevant staff to understand (and to enforce) the consent conditions that the FNDC signed-off-to **as a participant** to the Consent Memorandum and Consent Order before the Environment Court, and subsequent failure to engage with local parties who could greatly assist that understanding. It may be useful to emphasize that this is no ordinary Council consent but one which emerged from mediation with local parties as a Consent Order.

As a ratepayer, I should like Council staff to avoid continuing to waste our environmental and human resources, and have offered to assist staff to arrive at a sensible and logical resolution to the interpretation of relevant consent conditions. I can also assist to make them better aware of where the boatyard boundary with reserve is located. These are simple errors easily righted. However, they continue to refuse to engage, often citing as ‘excuse’ the ‘long history of the matter’ which history largely consists of, and is presently further being perpetuated by, a demonstrated/evidenced failure by FNDC staff to engage.

These matters were traversed in my written complaint to you as FNDC CEO dated 30 September 2017. Patience is running out. Please take action as CEO to instruct relevant staff to engage promptly. Failing that, I would need to refer these matters and evidence elsewhere.

Kind Regards,

Mike Rashbrooke.

Attached: Evidential photos of yacht ‘~~Tramp~~’ unlawfully on reserve since 13 April.

Shaun Clarke,
Chief Executive Officer,
Far North District Council,
Private Bag 752,
Kaikohe.

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

19-04-18

RE; Further photographic evidence of non compliance, Walls Bay reserve, Opua.

Dear Sir,

Please find enclosed the evidential photos regarding the yacht '~~Tramp~~' being worked-on unlawfully on Walls Bay reserve from April 13 to 18, referenced in my complaint sent in another envelope today. You can easily observe the boatyard turntable **in front of** the yacht.

Please also find enclosed evidential photos of the yacht '~~Karena~~' or '~~Kalena~~' hauled 18 April and placed **in front of** the boatyard turntable on Walls Bay reserve. You can easily observe the boatyard turntable **in front of** the yacht.

The simple solution to this documented and evidenced non-compliance is to place the vessels on the boatyard turntable and rotate them 90 degrees as covered in my information and written complaints. This is not rocket science.

Kind Regards,
Mike Rashbrooke.

Dear Doug and Irene,

Thank you for your email regarding screening at Dougs Opua Boat Yard. I have asked the Resource Consents Monitoring Officer to investigate and advise me further on this. He has liaised with the Northland Regional Council (NRC) and I am now able to respond to your questions, as follows:

1. Condition 13 of the FNDC consent requires screening or similar measures to contain any contaminants within the washdown perimeter. The water vapour plume is not considered to be a contaminant and is not covered by this condition of consent. However the management plan for the Boat Yard clause 4f) covers such instances in regards to effects on the walking track.

2. It is the boat yard owner's responsibility to decide on the size and type of screen used. Council does not have the resources to check screening each time a boat is hauled and we rely on the owner's expertise around working on boats. Please note that any issues relating to discharge to air is the jurisdiction of the NRC.

3. We are unaware of any evidence to suggest the bush on the reserve is contaminated as you have indicated. Again this is a discharge to air matter which is administered by the NRC.

The NRC have received the same photos from another source. It is understood that they are investigating the matter and will be in contact with the boat yard owner. Their monitoring officer is away on leave this week so we are unable to liaise with him further until his return.

If you have further concerns about discharge to air please contact the NRC in the first instance.

Kind regards,



Dr Dean Myburgh
General Manager - District Services

District Services, Far North District Council | **24-hour Contact Centre** 0800 920 029

