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 Opua Boatyard for resource consents relating to the redevelopment of the existing boatyard located at 1 Richardson Street, Opua, and a consequential application to vary the conditions of the Interesting Projects Ltd (Great Escape Yacht Charters) resource consent.

SUBMISSIONS OF COUNSEL FOR THE APPLICANTS IN REPLY TO NRC RESPONSE TO MINUTE 4A AND THE COMMISSIONERS REQUESTS POST MINUTE 5

Dated this 25th day of September 2020

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Introduction

1. These submissions:

   (a) respond to matters raised by Mr Hartstone in his response on behalf of the Northland Regional Council to the Commissioner's requests in Minute 4/4A;

   (b) comment on the NRC approach to public access to structures and activities in the CMA;

   (c) confirm the Applicants response to requests post Minute 5, and in particular, its position with respect to the provision for public berthing on the marina pontoon; and

   (d) Identify the outcome of the Hood/Hartstone discussions as to a proposed condition providing for reasonable temporary public berthing on the pontoon.

Reply to Mr Hartstone's response to Minute 4A

2. By Minute 4A, the Commissioner requested that Mr Hartstone provide a brief statement regarding his position (with reasons) on behalf of the NRC on each of the changes to the proposed conditions suggested by Mr Hood for the Applicants, and various other discrepancies.

3. It was agreed that the Applicants would have the right of a final reply to the matters raised in Mr Hartstone's response, with the reply to be provided by 18 September 2020. That date was then amended to 25 September 2020 as a result of issues surround in the provision of options for public berthing on the wharf facility.

4. The Applicants and witnesses have considered the conditions as proposed by Mr Hartstone for the NRC. Matters where a response is considered necessary are discussed below:

   Condition 7(g)(iii)

5. Mr Hood advises that he is not vehemently opposed to Mr Hartstone's suggested condition for the mitigation of water blasting activities. In Mr Hood's opinion however, the proposed amendment is no more explicit and certain[1] in respect to operational outcomes than the condition suggested by him.

6. I agree with Mr Hood – as a matter of principle, matters related to the operation of the activity and the facility should be left to the Operational Management Plan ("OMP"). Provided condition 7 includes a requirement for the OMP to consider measures to minimise the effects of water blasting activities on the walking track, the logistics of those measures should be dealt with in the OMP.

7. The FNDC land use consent provides for water blasting activities on the Reserve, and identifies where those activities may occur

[1] The definition of "practicable" open to interpretation and by its very nature, is dependent on the circumstances existing in each case.

(anywhere within Area A). Existing and proposed conditions on the discharge consents include a requirement for an Operational Management Plan, reviewable every three years in consultation with the relevant Council officer, to cover the operation and management of all aspects of the boatyard operations (condition 7), together with a review condition pursuant to s 128 of the RMA (condition 15).

8. Rather than imposing a particular action as a condition, the OMP gives Council officers the flexibility to work with the consent holder to provide a best practice solution, and thus achieve a more appropriate outcome to suit the circumstances.

Condition 31

9. Mr Hood disagrees with Mr Hartstone's view that condition 31 should be structured to ensure "unrestricted public access". He notes the primary purpose of the wharf and pontoon is not for public access, and as a result opines that there are clear and obvious reasons to restrict public access in the same way as applies to other similar facilities.

10. In his response, Mr Hartstone notes his understanding that there is "a presumption of public access in the CMA and any structures within it unless there is a specific reason for it not to be provided or be limited in some way".

11. I agree with Mr Hood, and discuss the issue further below.

Condition 34

12. Mr Hood remains of the opinion that this condition is unworkable and unnecessary. He considers there to be administrative difficulties in determining the assessment baseline and ultimately contaminant sources. He also considers that the potential for sediment contamination from the occasional sanding and grinding associated with minor 200mm repairs is virtually non-existent.

13. In addition, Mr Hood notes that the conditions of consent agreed by the Northland Regional Council in the Environment Court proceedings for the same activities do not include a condition requiring the monitoring of sediments.[2] He therefore queries the reason for such inclusion in these proceedings.

14. Dr Wilson agrees with Mr Hood's opinion. Given the elevated levels of metal concentrations, specifically copper, in the discharge from the upper catchment, he considers it would be difficult to determine whether an exceedance of sediment copper concentrations was due to the upper catchment discharge or from activities occurring at Doug's Opua Boatyard.

15. He goes on to express a concern as to the way in which the current condition provides for the establishment of a compliance baseline. He emphasises the importance of conducting baseline sampling *prior*

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[2] For completeness, Schedule 2 to the conditions is also omitted from the conditions agreed and filed in the Environment Court.

to the commencement of dredging to ensure that the baseline levels are representative of the current state of Walls Bay, noting:

> The proposed dredging activities will remove some sediments with elevated metal concentrations, however, sediments from Walls Bay will naturally be redistributed over time, including those with elevated metal concentrations outside of the dredging footprint. Sediment metal concentrations in the proposed dredged area are likely to decrease following the dredging, but will likely increase slightly over time as sediment is redistributed around Walls Bay until a new equilibrium is established (or until the next round of dredging occurs, in which case, the process will repeat).

16. Dr Wilson concludes:

> … I agree with the concern raised by the Applicant regarding the elevated metal concentrations in the upper catchment discharge and its potential to contaminate Walls Bay sediments and, therefore, complicating sediment contaminant monitoring. However, if the Council decides that sediment contaminant monitoring in Walls Bay is required, I consider the recommended condition above to be appropriate with the clarification the 'baseline' monitoring is conducted prior to dredging.

17. A copy of the further statements from Mr Hood and Dr Wilson with respect to the proposed conditions is **attached**, marked "**A**".

Condition 62

18. Mr Papesch's comments and suggested amendments to this condition were included within counsel's memorandum dated 15 September 2020. His suggested amendment is reproduced below for ease of reference:

> 62. All stormwater from areas of land used for the maintenance of vessels shall be directed to a proprietary stormwater treatment system for treatment prior to discharge to the coastal marine area. That proprietary stormwater treatment system shall utilise a demand driven diversion valve that shall automatically direct wash down water (trade waste) to the public sanitary sewer. In addition, the 'first flush' of 10 mm of rainfall shall be directed to the public sanitary sewer. The consent holder shall ensure that the slipway is cleaned after any water blasting of vessels.

Public access - further comments

19. There is clearly a difference of opinion between the NRC consultant planner Mr Hartstone, and the Applicants planner, Mr Hood, as to the requirements of the NZCPS and the relevant planning documents in relation to public access to and around structures in the CMA. Mr Hood considers that the general thrust of the NZCPS and planning

documents is to provide for public access wherever reasonable and practicable.[3]

20. Mr Hartstone considers there is a presumption of public access in the CMA and any structures within it *unless* there is a specific reason for it not to be provided or be limited in some way.[4] He appreciates that there is a balance to be struck that allows the wharf to be used for its intended purpose(s) but goes on to say that "*must allow* for reasonable public access (my emphasis)."[5]

21. I agree with the approach taken by Mr Hood. I consider Mr Hartstone has added a "gloss" to the words of the legislation, the NZCPS and the relevant regional planning documents.

22. It is acknowledged that the mere grant of a coastal permit does not authorise exclusive rights of occupancy. But as shown in my opening submissions, the permit may expressly or implicitly provide otherwise,[6] and may exclude the public completely where necessary to avoid potential conflict with the purposes of the permit.[7]

23. In that regard, I note Policy 6 of the NZCPS relates to Activities in the Coastal Environment. Policy 6(2)(e) deals with structures in the CMA and is particularly relevant to the DOBY wharf. It reads as follows (emphasis added):

> (e) Promote the *efficient use* of occupied space, including by:
>
> (i) requiring that structures be made available for public or multiple use *wherever reasonable and practicable;*
>
> (ii) …
>
> (iii) considering whether consent conditions should be applied to ensure that space occupied for an activity is *used for that purpose effectively* and without unreasonable delay.

24. The Department of Conservation Guidance on the implementation of Policy 6(2) notes that conditions *can* (but not must) require structures to be available for public use.[8]

25. The regional plans generally reflect the intent of the NZCPS 2010, although are not necessarily prepared under it. As noted by Mr Hood in his evidence in chief, the regional plans generally look to encourage public access but also recognise that it may be necessary

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3 See Hood EIC, paras 34 -36, 75 -103, 116-117 (p 27 – Note, page numbering issues), 117-119 (p 30), 131, 134-136, 161-162;; Hood Comments on proposed conditions of consent dated 31 August 2020, paras 4 – 6; Hood Final Right of Reply dated 18 September 2020, paras 6 – 8.

4 Hartstone Response to Minute 4A, dated September 2020, para 4 g)

5 Ibid

6 *Hume v Auckland Regional Council* CA262/01, Court of Appeal 17 July 2oo2, Tipping, McGrath, Glazebrook JJ

77 *Coleman v Rodney District Council* High Court, Auckland, 24/9/2004, CIV-2003-404-3167, Heath J, at [66] – [72]; See also *Hauraki Maori Trust Board v Waikato Regional Council* High Court Auckland CIV-2003-485-999, Randerson J, at [36]

8 See Department of Conservation Guidance Note, Table 3, Policy 6(2) Matters, point 5, https://www.doc.govt.nz/globalassets/documents/conservation/marine-and-coastal/coastal-management/guidance/policy-6.pdf

to restrict access to provide for or undertake the uses permitted by the permit,[9] or for such matters as public health and safety[10] and the security of commercial operations.[11]

26. Further, s 122(5) of the RMA recognises that a coastal permit may expressly provide for exclusive occupation of the CMA where that is *reasonably necessary* to achieve the purpose of the coastal permit (my emphasis).

27. In my submission therefore, there is no absolute presumption of public access; rather it is muted by the requirements to consider whether public access is reasonable, necessary and practicable in the circumstances of each case.

28. Here, the purpose of the permit is to, among other things, enable the construction and operation of a working wharf for multiple uses associated with and ancillary to the adjacent boatyard. In such circumstances, case law shows that restrictions on public access are appropriate and can be either explicit or implied.[12]

29. It is perhaps pertinent here to reproduce in full, the relevant paragraph from *Hume v Auckland Regional Council.*[13] There, after discussing the statutory approach to the CMA and public access,[14] and looking particularly to the construction of s 122(5), the Court of Appeal said:

> [19] The language of paragraph (b) also supports a disjunctive interpretation. *The words are "except to the extent that is reasonably necessary".* They are not "except to the extent the consent authority considers reasonably necessary"*.* The latter formulation is what might have been expected if paragraph (b) was intended to provide a qualification on the consent authority's ability expressly to provide otherwise. Furthermore, to construe paragraph (b) as such a qualification would really be to state the obvious in that the power expressly to provide otherwise must in any event be one which is designed to be exercised with the general legislative approach to the coastal marine area in mind. Thus, *express exclusion to whatever extent is already limited to circumstances reasonably necessary to make the permit workable.* Permit holders are protected against inappropriately conflicting use or occupancy of the relevant part of the coastal marine area by their ability to obtain an enforcement order under s314 of the Act. (my emphasis)

30. Mr Hartstone seems to have accepted that restriction on public access when working conditions require is reasonable and appropriate. The condition suggested in his s 42A report shows that, as does his acceptance of points (a) and (b) of the condition offered by Mr Schmuck as a means of providing some transparency around the meaning of the term "reasonable public access".

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9 RPS, policy 4.8.1(3)

10 Hood EIC, para 117 (RPS, policy 4.8.1(3)); para 131 (RCP policy 10.4.3)

11 RCP, policy 10.4.3

12 See my opening submissions dated 3 August 2020, paras 19 - 33

13 CA262/01; (2002) 8 ELRNZ 211

14 Ibid, at [14] – [27]

31. However Mr Hartstone clearly considers that a security gate is not necessary, that public access should be freely available to and through the gate and only be restricted when working conditions require, regardless of whether the consent holders are on site or not. He justifies this opinion on the basis that there appeared to have been no issues with security or health and safety in the past, there was no gate in the previous consent, and no evidence was led to show anything had changed.

32. That is in fact not correct. First, society itself has changed; vandalism and petty theft has become the norm. It is no longer sensible to leave your house or car unlocked, even on your own property, particularly when you are not there or sometimes even when you are. Certainly, insurance companies no longer pay out in those circumstances. Further the Health and Safety legislation has changed, and imposes far more stringent liability on the person or persons in charge (the PCBU). It follows that the ability to be able to show that steps are being taken to ensure the safety of all persons and the protection of valuable assets to the greatest extent possible is necessary, and very important in the circumstances existing today.

33. Second, evidence relating to security was led by both Mr Schmuck and Mrs Kidman during the hearing.[15] In particular, the reply on behalf of Interesting Projects Ltd/Great Escape Yacht Charters referred to incidents of vandalism and theft and noted the security measures in place at other facilities in Opua and Paihia.[16] An email received from Mr Schmuck on 22 September (**attached**, marked "**B**") refers to a recent incident of vandalism on the GEYC offices.

34. But the issue of the security gate and restrictions on public access is not solely about protecting the assets. It is also about protecting the environment. The consent holders have responsibility and are liable for the environmental effects arising from activities on the wharf and in the CMA. That liability does not change when they are not on site. But in those circumstances, there is no one with the right to oversee and control what occurs on the wharf, and thus ensure compliance with the conditions of consent.

35. The application seeks two marina and three work berths. Boats moored at the wharf are valuable assets. The wharf structure itself is a valuable asset, as is the GEYC office structure. The environment is perhaps the most valuable asset of all. The provision of some form of security to protect those assets is a no brainer. What is being sought is no different to that on similar facilities within Opua and the rest of New Zealand.

Provision for public berthing

36. As is shown below, there has clearly been misunderstanding and miscommunication between the Commissioner and Mr Schmuck[17]

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15 By Mr Schmuck in response to questions; by Mrs Kidman in her Statement dated 25 July 2020, para 9

16 Interesting Projects Reply submissions, paras 18 - 35

17 As the owner and overall consent holder, Mr Schmuck has responded to this issue on behalf of himself and Interesting Projects Ltd/Great Escape Yacht Charters.

with respect to the provision of "casual berthing" or "reasonable public berthing" on the proposed marina berth pontoon.

37. As applied for and as notified, the application provided for two marina berths and a dive ladder on the pontoon extending from the eastern end of the wharf.

38. Mr Schmuck responded to what he perceived as an invitation from the Commissioner in Minute 4A, and provided an amended pontoon design incorporating an additional pontoon finger in order to make provision for a Marina Berth/Reasonable Public Berthing Area. In response to the Commissioner's request for clarification in Minute 5, Mr Schmuck amended the design to delete reference to multiple use, and provide a smaller area specifically designated for "Reasonable Public Berthing".

39. Some two days later however, he withdrew the proposal for an amended pontoon with provision for a designated public berthing area, and indicated he would instead revert to accommodate public berthing as it had been done in the past. At the same time, because of past confusion and uncertainty as to what "casual berthing" actually meant, Mr Schmuck proposed a condition to clarify the terms on which such temporary berthing would be allowed.

40. The Commissioner's response to the withdrawal was to require the proposed condition to be discussed with Mr Hartstone. In addition, given "the proposed changes to the pontoon," he required Mr Hartstone to confirm that the proposed change was also within scope,[18] and the Applicant to update the plans accordingly.

41. Counsel queried the latter requirements, noting that no changes were proposed to the pontoon as existing, and nor was there any changes proposed to the application applied for. The response (and the confusion) was clear: the Commissioner understood that the Applicants were reverting back to the original pontoon design but now making specific provision of a public berthing area at the end of the pontoon.

42. In fact, that was and is not what was proposed. Mr Schmuck had decided to *withdraw the amended pontoon design to provide for a designated public berthing area*, and would instead accommodate public berthing as had been done in the past. There is therefore no change to the design of, or the use to be accommodated on, the pontoon shown in the application as being for two marina berths.

43. **Attached**, marked "**C**" is a letter, dated 21 September 2020, from Mr Schmuck explaining his position to the latest requests from the Commissioner. The provision of a dedicated space for public berthing on what is a small, multi-use working wharf is neither reasonable nor practicable.

44. Mr Schmuck is entitled to make an application for whatever he wants to do. He is also entitled to volunteer such conditions as he thinks appropriate to clarify and achieve mitigation of the effects of the

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[18] Mr Hartstone had previously assessed the first proposal for the amended pontoon and multiple use berth as being within the scope of the application as notified.

activities provided for by the application. Discussion between the party's experts in an attempt to reach agreement on the wording of such conditions is also appropriate.

45. However, Mr Schmuck is not obliged to engage experts and expend monies on what the Commissioner would like him to do if that does not accord with his intentions with regards to the application. As a result, plans amended to show what was once proposed but then withdrawn have not been provided.

Proposed condition for public berthing

46. Mr Hood, Mr Hartstone and Mr Maxwell have met and discussed the condition related to "casual berthing" ("reasonable public berthing") proposed by Mr Schmuck in an attempt to provide clarity around the terms of the provision of temporary public berthing. The condition suggested by Mr Hood is included as para 2 within his final reply on planning matters, attached, marked "A".

47. I understand that Mr Hood has not had a response back from Mr Hartstone at the time of finalising his Final Reply. In my submission however, the condition is appropriate.

48. It is important that arrangements for such berthing is made with the consent holders in advance. In that way, the consent holders or whoever their agent is onsite can advise whether it is possible at that time and/or to make arrangements to be able to accommodate the request. The importance of someone being on site is a matter of supervision and control as noted by Mr Hood in his reply.

Conclusion

49. It is now some two months since the physical hearing was completed and the hearing adjourned. The time for requests for further information has long passed.

50. The Commissioner is obliged to make a decision on the application on the basis of the evidence related to that application before him.

51. With the greatest of respect, it is time to close the hearing and make that decision.

C H Prendergast
Counsel for the applicant

25 September 2020

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 Opua Boatyard for resource consents relating to the redevelopment of the existing boatyard located at 1 Richardson Street, Opua, and an ancillary application to vary conditions in the Interesting Projects Ltd (Great Escape Yacht Charters) resource consent.

FINAL RIGHT OF REPLY RELATING TO PLANNING MATTERS BY BRETT LEWIS HOOD ON BEHALF OF DOUG'S OPUA BOATYARD (DOBY)

Dated this 25th day of September 2020

Henderson Reeves Connell Rishworth Lawyers
Solicitor: Colleen Prendergast

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Introduction

1. This is a final right of reply relating to planning matters. Aside of the public berthing condition covered in paragraphs 2 and 3 below, the remainder of my reply relates to matters raised in Mr Hartstone's 'Response to Commissioner Minute #4A' dated 7 September 2020.

Public berthing

2. I have considered the proposed condition advanced by Ms Prendergast in her email to the Commissioner dated 17 September 2020 relating to public berthing (below). I have refined the condition as follows:

> 1. Subject to arrangement with the Consent Holders in advance and compliance with the restrictions of access through the security gate, berthing of vessels not associated with Doug's Opua Boat Yard and marina, or Great Escape Yacht Charters, shall be permitted at the marina pontoon (or within the Marina Mooring Area shown on the Total Marine Plan APP-039650-01-01) for the purpose of loading/unloading passengers, crew, stores and small equipment, provided that:
>
>   (a) The Consent Holders and/or their representative are present at the facility at all times;
>   (b) Maximum stay of 1 hour.
>   (c) No vessel to be left unattended.
>   (d) No discharge to the marine environment.
>   (e) No swimming or vessel maintenance.
>
> 2. A sign is to be erected on the wharf and pontoon detailing the terms of public berthage outlined in condition [insert previous condition number]. The sign shall also include a contact phone number(s) to enable berthing arrangements to be made with the Consent Holder.

3. I consider the condition to be appropriate for the following reasons:

   a. The consent holders have responsibility and are liable for the environmental effects arising from activities on the wharf and in the CMA. That liability does not change when they are not on site. But in those circumstances, there is no one with the right to oversee and control what occurs on the wharf, and thus ensure compliance with the conditions of consent.

   b. The application seeks two marina and three work berths. Boats moored at the wharf are valuable assets. The wharf structure itself is a valuable asset, as is the GEYC office structure. The environment is perhaps the most valuable asset of all. The provision of some form of security to protect those assets is a no brainer. What is being sought is no different to that on similar facilities within Opua and the rest of New Zealand.

c. The primary intended purpose of the wharf and pontoon is for boat maintenance and marina purposes.

4. I note that a sign of this nature is a permitted activity under Rule C.1.1.5 of the Proposed Regional Plan, and Rule 31.6.3(n) of the Operative Regional Coastal Plan.

5. I have spoken with Mr Hartstone about this condition, but I understand that he will advise the Commissioner of his view via a separate communication.

Condition 13

6. I have no issue with Mr Hartstone's suggestion in respect to condition 13.

Condition 16

7. I have no issue with Mr Hartstone's suggestion in respect to this condition.

Condition 31

8. I disagree with Mr Hartstone that Condition 31 should be structured to ensure "unrestricted public access". The primary purpose of the wharf and pontoon is not for public access, and there are clear and obvious reasons for that - as evident by the same restrictions applying at other similar facilities (notwithstanding Mr Hartstone's contention about the relevance of scale).

9. I reiterate my view that the condition advanced by the applicant is appropriate and does not require amendment. That condition is as follows:

> 31. The consent holder shall have exclusive occupancy of the area of seabed within the boundary of the Occupation Area shown on Northland Regional Council plan number 4965 except that the consent holder shall allow reasonable public access to and through this area, and reasonable public access to and use of the dinghy ramp, wharf and pontoon structures as set out below:
>
> (a) Public access to the dinghy ramp to the south of the wharf, and beach landings to both sides of the wharf, to be available at all times;
>
> (b) Public access past the wharf sign board, security gate and charter boat berth area, may be restricted by the consent holders when working conditions require;

(c) Public access through the security gate is to be permitted from 0700-1800, and 0700-2000 during NZ Daylight Savings time when the consent holders of the facility are on site and working conditions will allow, provided that fishing, collection of seafood and the bringing of any equipment onto the structures is prohibited.

10. Regarding the security gate options outlined by Mr Hartstone in paragraph 6 of his response, the reason that I have nothing to add in respect to the gate is because I do not consider unrestricted public access to the wharf and pontoons to be appropriate.

Condition 34

11. I reiterate my view that this condition is unworkable and unnecessary. In addition to administrative difficulties in determining the assessment baseline and ultimately contaminant sources, the potential for sediment contamination from the occasional sanding and grinding associated with minor 200mm repairs (restricted by condition 91) is virtually non-existent. Even in the unlikely event that there was some discharge to the CMA associated with such activity, it could conceivably take years before this would register in sediments.

12. I also note that there was no condition requiring the monitoring of sediments in the conditions of consent that were agreed by the Northland Regional Council and applicant planners during the Environment Court hearing for the discharge permits. Therefore, there is no clear reason why sediment monitoring is being proposed under these proceedings, and not the Environment Court proceedings.

Condition 38

13. I have no issue with the suggested amendment to condition 38, subject to the deletion of sediment quality monitoring from Schedule 2.

Condition 62

14. I note that the condition advanced by Mr Hartstone is worded differently to the condition suggested by Mr Papesch in his further statement dated 15th September 2020. I support the version advanced by Mr Papesch.

Condition 63

15. I have no issue with the suggested amendment to condition 63.

Defensive Odour and Air Discharge Boundary

16. I agree with Mr Hartstone's opinion and analysis set out in paragraphs 20-24 of his response.

Mitigation for water blasting activities

17. I am not vehemently opposed to Mr Hartstone's suggestion in respect to Condition 7(g)(iii). However, the proposed amendment (which in some respects reads like a direction) is in fact no more explicit and certain in respect to operational outcomes than the condition advanced by me.

Final housekeeping

18. The final suite of plans to be appended to the consent conditions has been forwarded to the Northland Regional Council. I understand that the Council will need to stamp these plans and assign NRC reference numbers. Those reference numbers will then need to be cross checked against the plans referenced in the consent conditions.

Brett Lewis Hood

Dated this 25th day of September 2020

18 September 2020

Colleen Prendergast
Henderson Reeves
PO Box 11
Whangarei 0140

By e-mail: ColleenPrendergast@hendersonreeves.co.nz

Dear Colleen,

RE: ADDITIONAL POST-HEARING INFORMATION FOR DOUG'S OPUA BOATYARD – SEDIMENT MONITORING (CONDITION 34)

The purpose of this letter is to provide some additional information regarding sediment monitoring in Walls Bay that has been recommended by Council as consent condition 34. The recommended condition is as follows:

> 34. *Prior to the commencement of these consents, sediment sampling and quality analysis shall be undertaken in the vicinity of the structures to establish a compliance 'baseline' at the mixing zone. Metal concentrations in sediments identified in subsequent monitoring of sediments shall not exceed the median concentrations 'baseline' measured in previous years from similar locations. Where the compliance 'baseline' is lower than the levels specified below, then they shall not exceed those levels as follows:*
>
> - *65 milligrams per kilogram of copper,*
> - *50 milligrams per kilogram of lead;*
> - *200 milligrams per kilogram of zinc;*
> - *80 milligrams per kilogram of total chromium;*
> - *21 milligrams per kilogram of total nickel; or*
> - *1.5 milligrams per kilogram of total cadmium.*

I prepared a letter dated 27 August 2020 that suggested wording for sediment contaminant monitoring (condition 35 at the time) because, in my opinion, the previously drafted condition regarding sediment monitoring in Walls Bay was not appropriate. My letter was acknowledged by Mr Hartstone in his response to commissioner minute 4A dated 7th September 2020 [para 8], however, he noted that it "was not sighted by myself [Mr Hartstone] or Mr Maxwell before finalising the conditions". As a result, Council prepared and recommended the condition presented above. Mr Hartstone states that "it is agreed that Dr Wilson's wording of the condition achieves the same intent." [para 9]. I agree with this statement.

The appropriateness of condition 34 has been raised by the Applicant, specifically by Mr Hood in his Comments On Proposed Conditions of Consent dated 31 August 2020 [paras 7–8] and his Final Right of Reply Relating to Planning Matters dated 18 September 2020 [para 9–10]. The main concern raised by Mr Hood relates to the elevated metal concentrations (specifically, copper) in the discharge from the upper catchment that has the potential to contaminate sediments in Walls Bay. Because of this discharge, if the copper concentration in Walls Bay sediments exceeded the consent condition limits, it would be difficult to identify the cause of such exceedance. That is, it would be difficult to determine whether an exceedance of sediment copper concentrations was due to the upper catchment discharge or from activities occurring at Doug's Opua Boatyard. I agree with these concerns.

If Council does decide that condition 34 is necessary, I emphasise the importance of conducting 'baseline' sampling prior to any dredging activities. The condition above states "Prior to the commencement of

these consents…" but this could be rephrased more specifically to "Prior to the commencement of **dredging**…". This is to ensure that the 'baseline' levels are representative of the current state of Walls Bay. The proposed dredging activities will remove some sediments with elevated metal concentrations, however, sediments from Walls Bay will naturally be redistributed over time, including those with elevated metal concentrations outside of the dredging footprint. Sediment metal concentrations in the proposed dredged area are likely to decrease following the dredging, but will likely increase slightly over time as sediment is redistributed around Walls Bay until a new equilibrium is established (or until the next round of dredging occurs, in which case, the process will repeat).

In conclusion, I agree with the concern raised by the Applicant regarding the elevated metal concentrations in the upper catchment discharge and its potential to contaminate Walls Bay sediments and, therefore, complicating sediment contaminant monitoring. However, if Council decides that sediment contaminant monitoring in Walls Bay is required, I consider the recommended condition quoted above to be appropriate with the clarification that 'baseline' monitoring is conducted prior to dredging.

Kind Regards,

Dr Pete Wilson
Senior Coastal Scientist
4Sight Consulting Ltd

Chantelle Foy

From: Colleen Prendergast
Sent: Friday, 25 September 2020 3:22 PM
To: Colleen Prendergast
Subject: FW: Security

-----Original Message-----
From: Doug and Helen [mailto:totarahill@xtra.co.nz]
Sent: Tuesday, 22 September 2020 7:17 a.m.
To: Colleen Prendergast <ColleenPrendergast@hendersonreeves.co.nz>
Subject: Security

Good morning Counsel

Well, it has started!

On Sunday, there was a Maori family grousing around under the wharf and pontoons collecting seafood I presumed. I left whilst they were still there, parents and kids, but afterwards the buggers vandalized Bill and Julie's office with mud smeared all over the windows and cabin and bits of shell with some of the gear on the dock missing.

I have long held, that this sort of thing is an endemic attitude coming from communities not of Opua but otherwise directly sponsored by people like Rashbrooke and the OCP against the establishment and people they dislike, and/or feel that they have no civil obligations to those whom are not of their political and social beliefs.

You of all people should know the wisdom of this statement as you have now seen these people in action and the scale of the code of honour that they represent.

So you know now that I will never stand down in the face of such reprehensible bastards which means the security of these facilities is going to be iron clad and controlled!

As always

Douglas

[Evolve:ecf8207b-4202-423c-a279-4a884c206ad7]

Doug's Opua Boat Yard

1 Richardson Street, Opua, Bay of Islands
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Rob Lieffering
Commissioner
Northland Regional Council
Whangarei

Dear Mr Lieffering

REF: APP.041365.01.01 ISSUES ON PUBLIC BERTHING

1. I am concerned to make sure that my volunteering to provide the resources in structures for "Reasonable Public Berthing" over and above what I applied for should not be taken as any form of guile and/or subterfuge. Making provision for reasonable public berthing on a casual basis is a practice that I have conducted in the last 26 years of my stewardship of this boatyard, albeit without specifically designating an area for such use. Those actions predated any form of superimposed condition regarding "Casual Berthing", which at best was misleading in the understandings I always had about my responsibilities.

2. The proposal to the Commissioner's invitation in Minute #4A was to provide solutions in space and function that, if in scope of the original application, could and would provide for greater utilization of the facility for all parties, including consent holders and the boating public associated with them. The proposed amendment to the pontoon design was not meant to confuse or confound. It was in all ways, to be a controlled practice restricted to the hours of operations within the Marina Mooring area or provided at the work berths otherwise if needed.

3. My intention therefore, was to provide for the normal conduct of loading and unloading when arranged, and also for various minor forms of maintenance at no charge to the boating public; a service which is the core purpose of this boatyard and Great Escape Yacht Charters.

4. However, in the context of scope, it would appear there is no room for the type of concept that I have suggested as dedicated "Reasonable Public Berthing" which would not be open to all other users of the facility when not used for its primary purpose. A situation that cannot and will not exist at my structures outside of what I have already done for many years, and by which no single complaint from the NRC and/or any other boating public person has been made in that time.

5. The existing consent uses the term "casual berthing" but over the years, no one has been able to tell me what that means. There is no definition of the term in the Regional Coastal Plan or in any other regional plan that I am aware of. I have always treated the term as allowing for short term berthing for customers of the boatyard and the public by arrangement with the consent holders in advance. And in doing so, I have tried to accommodate those requests at any berth on the facility, not just the pontoon.

6. Therefore in the event of the Commissioner's Minute #5, I withdrew my offer to extend the structures, because I was told by my advisers that the consent holders and their public would be banned from using that same space because those activities would fall outside the purpose of the dedicated "Public Berth",

which in my mind, it was not. And most certainly, that was not what I was proposing nor what I am proposing now just to gain consent for the activities as applied for.

7. The email sent by my Counsel on 17 September 2020 advised that I had decided to withdraw the proposal for an amended pontoon design to provide for a designated public berthing area and instead would accommodate public berthing as has been done in the past. As above, that has always been by arrangement with the consent holders in advance so as to allow temporary berthing for the loading and unloading of the vessel where it will not impede or obstruct the operations of and on the wharf and existing pontoons. However, because I want it to be clear about what is allowed and not allowed, I have now identified the eastern face of the pontoon as that able to accommodate reasonable requests for public berthing.

8. Therefore, the east face of the pontoon will have to work. Despite the Commissioners concerns, it is not limited by overhangs as depicted by Mr Farrow's concept plan but are more likely as shown on NRC plan 4953/1. The entire question then, boils directly down to good management of the structural space proposed, and wanting to provide a form of public access that works with all other users in conjunction with the scale of this facility. But that doesn't mean a change to the plans is required, although I do think a change to the conditions is required to clarify what is meant.

9. The term I used in my response to the Commissioner's invitation was "Reasonable Public Berthing," which to me means just that as opposed to "Public Berth" which it does not. This would obviously mean if there were no way of preventing overhangs at either end of the proposed marina pontoon, then public access would be limited to tenders at that site. So the only change to the application outside of that which was notified and/or is workable with other users of this facility is then, use of the term "Reasonable Public Berthing" rather than "casual berthing," and the conditions that apply to it's use as previously provided by my Counsel.

Doug Schmuck
For: Doug's Opua boatyard

The Applicant