EXECUTIVE SUMMARY

The proposal involves the removal of an existing boat shed previously used for commercial purposes, to be replaced by a residential unit and boat shed occupying both the coastal marine area and land. The application includes a request to cancel a consent notice condition imposed as part of a previous subdivision. There are number of consents required from both the District and Regional Councils. For this reason, the application has been processed jointly by the two Councils, with a joint public notification process, and will result in a joint hearing before an Independent Hearings Commissioner.

Through the public notification process, a number of submissions have been received, expressing a number of concerns relating to the proposal. These concerns generally fall to be considered as effects on public land and public access, effects of treatment and disposal of effluent on the subject site, and effects on coastal character and amenity.

The effects of the proposal have been assessed in this report, as have the relevant planning provisions, including the New Zealand Coastal Policy Statement 2010 and Northland Regional Policy Statement.

The recommendation contained in this report finds that consent may be granted to the proposal as presented, subject to a number of conditions. Those conditions are borne out of technical expert reports provided with the application, from the content of submissions, and from technical reviews undertaken by experts on behalf of the District Council.

Report Author
The following report has been prepared by Alister Hartstone, Consultant Planner, on behalf of the Far North District Council. Mr Hartstone has over 20 years experience as a planner dealing with complex resource consent and policy matters, and has presented evidence at Council and Environment Court hearings. He has previously worked for Far North District Council as a Planner and Section Planner, and was Resource Consents Manager at Whangarei District Council between 2005 - 2016. He now works as a private consultant based in Whangarei. He is a full member of the New Zealand Planning Institute.

Mr Hartstone’s involvement with the application commenced from the close of the public notification period for the application.

List of Abbreviations used in this report
MHWS – Mean High Water Springs
CMA – Coastal Marine Area
NZCPS – New Zealand Coastal Policy Statement
RPS – Regional Policy Statement
RMA – Resource Management Act
ACM – Asbestos Containing Materials
FNDC – Far North District Council
NRC – Northland Regional Council
TO: HEARINGS COMMISSIONER(S)

FROM: ALISTER HARTSTONE, CONSULTANT PLANNER

APPROVED FOR RELEASE BY: PAT KILLALEA, PRINCIPAL PLANNER – DISTRICT SERVICES

SUBJECT: A RESOURCE CONSENT APPLICATION, JOINTLY PUBLICLY NOTIFIED WITH NORTHLAND REGIONAL COUNCIL, UNDER SECTION 88 OF THE RESOURCE MANAGEMENT ACT 1991

BEING AN APPLICATION FOR RESOURCE CONSENT TO:

1. To demolish an existing boatshed and replace with a residential unit at 33 Deeming Road, Okiato, Russell. The proposal will breach District Plan rules relating to setback from boundaries, sunlight, earthworks, setback of buildings from the CMA and an effluent disposal system within 30m of the CMA.

2. A breach of the Regional Water and Soil Plans requirements for setback of secondary treated effluent from the CMA. (Note this breach is to be processed by the FNDC pursuant to a transfer of powers agreement with NRC)

3. A breach of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health as a result of the previous use of the site as a boatyard.

4. Cancellation of an existing consent notice conditions which requires the maintenance and preservation of the existing boatshed and slipway

REFERENCE: 2160169-RMALUC

Note: This report sets out the advice of the reporting planner. This report has yet to be considered by the Hearings Commissioner(s) delegated by the Council to determine this application. The recommendation is not the decision on this application. A decision will only be made after the Hearings Commissioner(s) have considered the application and heard the applicant and any submitters.

HAVING CONSIDERED THE PROPOSAL AGAINST THE RELEVANT STATUTORY CRITERIA IT IS RECOMMENDED BY THE REPORTING PLANNER THAT THE RESOURCE CONSENT APPLICATION BE GRANTED, SUBJECT TO THE IMPOSITION OF CONDITIONS.

IT IS RECOMMENDED THAT THE APPLICATION TO CANCEL THE CONSENT NOTICE CONDITION IMPOSED ON THE CERTIFICATE OF TITLE FOR LOT 4 DP 208303 BE GRANTED.

RECOMMENDED CONDITIONS OF CONSENT

1) That the proposal shall be carried out in accordance with the information and plans provided with the application listed as follows:
- Plans prepared by Going Architectural Design Limited, consisting of Foundation Plan, Ground Level Floor Plan, Elevations Plan, Roof Plan, and Roof Framing Plan (all dated 25\textsuperscript{th} November 2015) and Proposed Site Plan dated 21\textsuperscript{st} July 2015.
- ‘Coastal Hazard Report for Proposed Development 33 Deeming Road, Tapu Point, Okaito for Johnathon Edwards’ prepared by Haigh Workman Limited dated July 2015
- ‘Landscape and Visual Assessment Relating to a Resource Consent Application re: The Proposed Conversion of Boat Shed to Boat House, 33 Deeming Road, Okaiti (sic), Bay of Islands’ prepared by Ecoprojects Consulting Network Limited dated 22 December 2015.
- ‘Plan of Tree Stabilisation Plus Engineers Letter’ contained in Appendix 21 of the application, addressing the retention of the two existing pohutukawa on the site.

Where there is any inconsistency between the documents referenced above and any condition of consent, the condition shall prevail.

2) That prior to the commencement of any site works (including soil disturbance and/or removal of any structures) the consent holder shall:

a) Provide to the Council a Site Remedial Action Plan prepared in accordance with the Detailed Site Investigation Report prepared by Haigh Workman Limited dated November 2015 that complies with the MfE Contaminated Land Guideline No.1:2011. That Plan is to detail (as a minimum) the following:
   - means of remediating the contaminated soils located on the site as identified in the Haigh Workman Report, noting that any soil used for capping should be sourced locally where possible.
   - A site management plan which addresses the means of erosion and sediment control, managing heavy vehicle movement on and off the site, dust and other nuisances, and any damage to Council road formation, associated with earthworks required for remediation,
   - means of certification and testing (if required) on completion of the remediation works to confirm satisfactory completion,
   - identify any limitations on future land use to maintain the integrity of the topsoil/subsoil capping,
   - incorporate any provisions necessary to provide for the effluent treatment and disposal system to be designed under Condition 3(b) below, and planting of specimen trees as identified in the Detailed Landscape Revegetation Plan prepared by Ecoprojects Consulting Network Limited to be implemented under Condition 4(f) below.

   \textit{Note: It is recognised that other legislative requirements, particularly as they relate to identification, handling, and removal of ACM’s, will apply as part of any Site Remedial Action Plan}
b) Provide suitable evidence to confirm that an Authority has been issued by Heritage New Zealand Pouhere Taonga to allow all site works to be undertaken as proposed.

3) That prior to or in conjunction with the lodging of a building consent, the consent holder shall:

a) Provide to the Council detailed design of a prop structure (or similar) to be constructed to preserve the integrity of the two pohutukawa trees located on top of the cut rock face.

b) Provide to the Council a detailed design of the on-site effluent treatment and disposal system, incorporating a filtration and UV disinfection process, as per the report entitled ‘On-Site Wastewater System Design Review for Jonathon Edwards, 33 Deeming Road, Okiato RMA s92 FNDC 2160169 & NRC APP.005509’ prepared by Haigh Workman Limited dated 3 February 2016, and the three matters identified under Section 2.3 in the review report prepared by Quattro Engineering Limited dated July 2016 (and any subsequent information provided prior to or at the hearing). The design shall incorporate appropriate measures to ensure the following:
   - That the quantity of wastewater discharged does not exceed 870 litres within any consecutive 24 hour period,
   - That no part of the disposal field is located closer than 5 metres to the coastal marine area.
   - That an audible and visual high wastewater level alarm system shall be specified within all wastewater pump chambers.
   - That at least 24 hours emergency wastewater storage capacity within the treatment system, above the level at which the high wastewater level alarm is activated, is provided.
   - A proposed treatment performance standard to the UV treatment stage to ensure the appropriate reduction of microbes prior to disposal.
   - Nutrient reduction is provided unless the applicant provides an assessment by a suitably qualified person to show it is not necessary for this particular site.
   - The construction of a vehicle barrier / bollards to keep vehicles off the effluent disposal areas.

c) In conjunction with Condition 3(b) above, provide to the Council a complete operations and maintenance manual that details the necessary requirements and actions in order to ensure that the treatment and disposal system can be operated and maintained in a manner to ensure ongoing compliance with the Northland Regional Water and Soil Plan Rule 15.1.4, and in accordance with AS/NZS 1547:2012, Appendix T, with focus on clause T4 (emergency management) and T5 (guidance for householders), including proposed UV maintenance requirements. The manual shall include evidence of a maintenance contract with a suitably qualified and experienced person to maintain the wastewater treatment system so that it works effectively at all times. At a minimum, all maintenance shall be in accordance with the recommendations of the Operation and Maintenance Manual prepared by the system supplier.

d) Provide to the Council details to confirm that a suitable water supply can be provided so as to comply in all respects with the NZFS Fire Fighting Water
Supplies Code of Practice SNZ PAS 4509:2008, to be approved as part of any building consent.

4) Prior to the occupation and use of the proposed residential unit, the consent holder shall:

a) Upgrade the existing vehicle crossing to the subject site to provide a crossing which complies with the Councils Engineering Standard FNDC/S/6 and 6B, and section 3.3.17 of the Engineering Standard and NZS4404:2004. Seal the entrance plus splay edges for a minimum distance of 5m from the existing seal edge.

b) Provide formed, surfaced and drained internal access to 3.5m carriageway width with manoeuvring, and parking areas clear of the areas utilized for or designated for effluent disposal beds.

c) Form Easement C so as to provide all weather access in accordance with SNZ HB 8630:2004 Tracks and Outdoor Visitor Structures, Section 2.4 ‘Short Walks’, and including Section 2.4.7.1 Signage. Such formation shall allow for the upgrade of the access as per Condition 4(b) above – where compliance cannot be achieved with the Standard due to the access upgrading, the requirement for access upgrading will prevail and a lesser standard accepted for pedestrian access. Before undertaking this work, the consent holder must confirm in writing that Easement C is legally registered and can be used for public pedestrian access.

Note: The consent holder should liaise with FNDC Parks staff regarding integration of the formed access across Easement C with adjoining reserve land before undertaking works.

d) Submit to the Council final “as built” plans and specifications that show the siting of all components of the wastewater treatment and disposal system. For the purpose of this Condition, the Consent Holder shall ensure that the “as built” plans are drawn to scale and provide sufficient detail for a Council monitoring officer to locate all features identified on the plans.

e) Complete the proposed building in the colour scheme and materials as identified in the application, consisting of weathered cedar board and batten, with the roof, roller doors, and joinery finished in ‘Grey Friars’ colour.

f) Undertake and complete the works identified in the Detailed Landscape Revegetation Plan prepared by Ecoprojects Consulting Network Limited, consisting of specimen tree planting and assisted indigenous regeneration in the areas shown on the Plan.

g) Undertake and complete the works identified under Condition 3(a) above as it relates to the retention of the two pohutukawa trees.

h) Undertake and complete all actions as identified in the Site Remedial Action Plan required under Condition 2(a) above, including provision of any certification and testing required on completion of works.

i) Provide suitable written evidence to the Councils duly authorised officer to confirm that the requirements of Conditions 4(a)-(h) have been completed. That written evidence shall consist of confirmation from suitably qualified and
experienced person/s, noting that the requirements under Condition 4(f) and (g) will require a specialist, such as a landscape ecologist, to confirm the works have been completed and will achieve their intended purpose.

5) The following conditions shall be complied with by the consent holder on an on-going basis:

a) Comply with any site limitations identified in the Site Remedial Action Plan relating to soil contamination, and more particularly any actions required to maintain the integrity of the soil capping across the site.

b) Comply with the operations and maintenance manual provided under Condition 3(c) above, including any on-going monitoring and testing regimes that are required to ensure compliance with specified standards.

c) The consent holder shall ensure that the number of people occupying the dwelling on a permanent basis shall not exceed 6 people to ensure that the ability of the disposal field to dispose of treated effluent is not exceeded.

d) Maintain the specimen tree planting, area of assisted indigenous regeneration, and two existing pohutukawa trees (including any structure used to support them) as implemented under Conditions 4 (f) and (g) above.

e) Maintain the building colour scheme and materials in accordance with those specified in the application, being weathered cedar board and batten, with the roof, roller doors, and joinery finished in ‘Grey Friars’ colour.

f) The consent holder shall, for the purposes of adequately monitoring the consents as required under Section 35 of the Act, on becoming aware of any contaminant associated with the consent holder’s operations escaping otherwise than in conformity with these consents:

- Immediately take such action, or execute such work as may be necessary, to stop and/or contain such escape;
- Immediately notify Council by telephone of an escape of contaminant;
- Take all reasonable steps to remedy or mitigate any adverse effects on the environment resulting from the escape; and
- Report to Council in writing within one week on the cause of the escape of the contaminant and the steps taken or being taken to effectively control or prevent such escape.

6) In accordance with Section 128 of the Resource Management Act 1991, the Far North District Council may serve notice on the consent holder of its intention to review those ongoing conditions 5 (a)-(f) above anytime during the first 12 month period following compliance with condition 4(i) above, and annually thereafter. The review may be initiated for any one or more of the following purposes:

a) To deal with any adverse effects on the environment that may arise from the exercise of the consent and which it is appropriate to deal with at a later stage, or to deal with any such effects following assessment of the result of the Far North District Council of duly delegated Council Officer monitoring the state of the environment in the area.

b) To require the adoption of the best practicable option to remove or reduce any adverse effect on the environment.
c) To deal with any inadequacies or inconsistencies the Far North District Council or duly delegated Council Officer considers there to be, in the conditions of the consent, following the establishment of the activity the subject of this consent.

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

The consent holder shall meet all reasonable costs of any such review.

**REASONS FOR THE DECISION**

1) The site is zoned as Coastal Residential under the Far North District Plan. That zoning does provide for residential development in a coastal context and, taking into account the specific circumstances associated with development on this particular site, it is appropriate and reasonable to allow the construction of the residential unit and boatshed to the scale and form proposed.

2) The demolition of the existing boatshed, and construction of a residential unit and boatshed in the same location, will not generate unacceptable adverse effects on the natural character of the coastal environment, public access to the coast, or coastal water quality.

3) A condition has been included to provide for the formation of a public walking track linking two existing esplanade reserves. The provision of this formed track will assist in achieving public access to and along the coast.

4) The subject site has been identified as containing levels of contaminants in the soils that may be hazardous to human health. Suitable remediation measures are proposed and can be implemented through conditions of consent to mitigate and avoid effects to an acceptable level.

5) Subject to careful design and ongoing management, a suitable on-site effluent treatment and disposal system can be provided to service the proposed residential unit.

6) The activity is assessed as being consistent with the New Zealand Coastal Policy Statement 2010, Northland Regional Policy Statement and, to the extent that they are consistent with these higher-order documents, the Northland Regional Water and Soil Plan and Far North District Plan.

7) In reaching an overall decision, it is acknowledged that the amenity effects as they relate to landscape are more than minor but not significant, and this has been taken into account when making a decision on the proposal. It has been found that, in considering the relevant provisions under Part 2, the proposal is considered to be consistent with the sustainable management purpose of the Act.

________________________________________________________

Report prepared by: Alister Hartstone, Consultant Planner
Approved for submission:
APPLICATION AND PROPERTY DETAILS

SITE ADDRESS: 33 Deeming Road, Russell 0272

APPLICANT: Jonathon Edwards & Alex Ryan

LEGAL DESCRIPTION: Lot 4 DP 208303 with a ¼ share in Lot 5 DP 208303 (access lot)

SITE AREA: 1678m²

DISTRICT PLAN ZONING: Coastal Residential

ACTIVITY STATUS: Non-complying activity

1.0 BACKGROUND

1.1 The subject site has been subject to a number of previous resource consents as detailed below:

- A subdivision consent was issued to the McIlvride Family Trust (Council reference RC1990185) by the Councils Hearings Committee on the 26th May 1999. As part of considering the application, due consideration was given to the need to provide for an esplanade reserve adjoining MHWS. As a result, in granting consent the Committee imposed a consent notice condition pursuant to Section 221 that reads as follows:

  'The existing boatshed/slipway shall be maintained and preserved on-site in its present location by the owner of Lot 2. No work to alter or demolish the boatshed/slipway shall be permitted without prior written approval of the far North District Council.'

  That condition remains registered against the title at this time.

- A subdivision consent which involved a boundary adjustment between lots was granted in April 2001 which created DP208303 (Council reference RC2010743)

- A land use consent application was declined by a Joint Hearings Committee in a decision following a hearing held on the 16th January 2003 (Council reference RC2020463). That application was described as an application to replace an existing boat shed with a new dwelling, wharf and deck, to alter the existing slipway, to renew existing foreshore protection walls and dispose of secondary treated effluent via dripper system.

  That decision was appealed to the Environment Court, and the proposal modified such that a Consent Order was issued by the Court dated 3rd March 2005. That Consent Order records that the conversion of the boat shed to a boathouse (single unit dwelling), construction of a new wharf/deck, and realigning the existing access driveway were declined. Various activities were consented subject to conditions, those activities identified as replacing an existing carport with a new garage, upgrading and resurfacing the existing access driveway, disposal of effluent, permitting private non-commercial on-land storage and maintenance of boats on a renovated slipway, and installation of water tanks and associated earthworks.
A land use consent application was approved by FNDC under delegated authority on 24th March 2005 for the construction of a new dwelling and a workshop associated with an existing slipway (Council reference RC2040726).

1.2 The activities consented under RC2020463 (being the Consent Order) and RC2040726 (for a dwelling and workshop) have not been given effect to and accordingly the land use consents have lapsed.

1.3 The current application was received by the FNDC as a complete application on the 8th April 2016 and is contained in Appendix A. While documentation in the application refers to requests for additional information made under Section 92 of the RMA, these references appear to be incorrect. There has been no Section 92 request made since receipt of a complete application. It is understood that the applicant’s agent had several discussions with FNDC staff regarding the extent of information required to lodge a complete application under Section 88. The information resulting from those discussions was prepared and included in the application prior to lodgement.

1.4 The application was jointly notified with the NRC, with the submission period closing on the 2nd June 2016. Following the close of notification, the applicant’s agent was contacted by e-mail on the 5th July 2016 regarding several matters that required further information or clarification (see Appendix B). Pursuant to Section 88C, that request did not constitute a Section 92 request for additional information, and the applicant has not requested to place the application on hold pursuant to Section 91A. At the time of preparing this report, no information addressing the matters raised has been made available.

2.0 THE PROPOSAL

2.1 The application to the FNDC was publicly notified (jointly with the NRC) and described as per the public notice attached in Appendix C. It is noted that the application is supported by a number of technical reports, as follows:

- ‘Coastal Hazard Report for Proposed Development 33 Deeming Road, Tapu Point, Okiat for Johnathon Edwards’ prepared by Haigh Workman Limited dated July 2015
- “On-Site Wastewater System Design Review for Jonathon Edwards, 33 Deeming Road, Okiate RMA s92 FNDC 2160169 & NRC APP.005509” prepared by Haigh Workman Limited dated 3 February 2016.
- “Landscape and Visual Assessment Relating to a Resource Consent Application re: The Proposed Conversion of Boat Shed to Boat House, 33 Deemings Road, Okaiti (sic), Bay of Islands” prepared by Ecoprojects Consulting Network Limited dated 22 December 2015.

2.2 Plans are included in the application, although a full set of plans confirming the final design and proposed floor areas have yet to be provided as requested. The plans available show the existing boatshed with proposed alterations and additions, with the additions shown as a hatched area on the plan. MHWS is shown on the plans as running diagonally across the building – it is noted that (in approximate terms) the boat storage / deck area is below MHWS, while the balance of the building containing
the residential unit is above MHWS. It is noted that this line marks both the property boundary (according to the title plan) and the jurisdictional boundary between the Regional and District Councils.

2.3 It is understood that the existing boatshed on the site will be dismantled with the existing foundations abandoned or removed. A new single level building utilising the same footprint as the boat shed below MHWS will be constructed, with the building enlarged on the landward side of MHWS to incorporate the existing open slipway area up to the 5 metre high rock face. A retaining structure abutting the cut face will effectively form the south-eastern wall of the building.

2.4 The building will contain an area designated for boat storage / deck with a finished floor level of 2.71 metres, with the balance of the building consisting of a 4 bedroom residential unit with outdoor decks, with a finished floor level of 3.71 metres. The maximum height of the building is stated as 7.3 metres – this is presumed to be above existing ground level. The exterior of the building is to be completed in cedar board and batten, with the roof, roller doors, and joinery finished in ‘Grey Friars’ colour.

2.5 By virtue of the design, there is no unimpeded outdoor space above MHWS that allows walking access from the front to the rear of the building.

2.6 Some landscape planting is proposed, identified as an ‘area of assisted indigenous regeneration’ located at the seaward end of the proposed building on the rock face, with two specimen trees (pohutukawa) to be located adjoining MHWS on the south-eastern beach front, as shown on the Landscape Revegetation plan contained in the application.

2.7 The application includes a plan to retain and stabilise two existing pohutukawa trees located atop the rock face. The proposal includes a prop to support the trees and avoid damage to the proposed building to be located beneath them.

2.8 An effluent treatment and disposal system has been proposed given connection is not available to reticulated sewerage. The system is described as a Natural Flow proprietary advanced secondary treatment plant with UV treatment which pumps treated effluent to dripper irrigation to be located on the site. The irrigation disposal field is defined on a plan provided with the application, noting that the technical report recommends an area of 250m$^2$ with a minimum 5 metre setback from the coastal marine area.

2.9 The site has been assessed as containing elevated heavy metal concentrations, particularly arsenic, chromium, copper and lead, and Asbestos Containing Materials (‘ACMs’), that pose an unacceptable risk to human health if left untreated. To address this, it is proposed to mitigate the risk by a combination of removing exposed contaminants and capping the land through concrete flooring for the proposed building and construction of a subsoil/topsoil cap.

2.10 The extent of subsoil/topsoil capping requires a 600mm layer of soil over an area of 500m$^2$, which equates to 300m$^2$ of soil being deposited on the site. It is noted that the effluent treatment and disposal system has been designed to accommodate the provision of this additional capping.

2.11 As a result of the proposed earthworks for capping, Heritage New Zealand Pouhere Taonga requires an Authority to Modify an Archaeological Site under Section 44(a) of the Heritage New Zealand Pouhere Taonga Act. The site has a history of occupation,
with pre-1900 Maori features and historic evidence of a pre-1900 European occupation. It is understood that an application has been made for the Authority but has yet to be issued at the time of preparing this report.

2.12 A separate report has been prepared by NRC staff to address those matters that fall within their jurisdiction.

3.0 SITE AND SURROUNDING LOCALITY DESCRIPTION

3.1 The subject site consists of a small peninsula known as Tapu Point extending in a south-westerly direction into the Waikare Inlet. The site consists of four areas:

- the narrow extent of access extending from Deeming Road on a downward slope towards the point, with steep vegetated slopes on either side dropping to reserve and mean high water springs;
- The isthmus connecting the mainland area to Tapu Point, which consists of a grass area at the base of the drive that forms a flat usable area with easy grade and access to the shelly beach reserve area facing southeast (known as ‘front beach’). An old stone retaining wall skirts the area which effectively extends from the slipway around the north-western frontage of the site, and appears to form the legal boundary of the site. The flattened grassed area extends to the top of the wall and boatshed/slip way area, with a drop of some 1 – 1.5 metres along this frontage to the coastal marine area (known as ‘back beach’). There is a path cut into the side of the slope that does provide walkable access down to the front beach beyond the extent of the wall although it was overgrown at the time of the site visit. This access appears to align with the legal boundary between the site and adjoining reserve at the north-eastern corner of the flat grassed area. A small shed and single carport are located within this area, while a caravan was parked on the site at the time of the site visit. At its narrowest, the isthmus is approximately 40 metres across from the front beach to back beach.
- Tapu Point is a visually prominent knoll which is steep and heavily vegetated, with several large pohutukawa and wilding pine. Access around or through the reserve appears difficult due to topography. The point is legally identified as Tapu Point Reserve and is administered by FNDC.

3.2 The wider environment of Okiato Point consists of a residential settlement with residential services, nestled into vegetated embayments along and above the wider Waikare inlet coastline. The Russell-Opua car ferry service operates from across a small bay to the northwest of the site, while the Opua wharf is located approximately 400 metres across the channel. The coastline in this area does contain a number of small built features and structures on or adjoining mean high water springs, although the boatshed on the subject site is a recognisable and evident feature of the area.

4.0 REASONS FOR THE APPLICATION

4.1 The rules of the Far North District Plan that require consideration due to infringement, and the activity status under each rule, is described in the Table below:
4.2 In addition to the above, Rule 14.6.1(a)(iii) states that ‘where any land use requires a resource consent for an activity or activities and the Council considers it necessary to require an esplanade reserve or strip for any of the purposes outlined in s229 of the Act, an esplanade reserve or strip may be required;’ Clause 14.6.3 provides for waivers and reductions which can be applied for and considered. The application is silent on this provision. However, it is presumed that by the nature of the proposal, a waiver of this provision is requested.

4.3 In addition, Clause 12.7.7 specifies Assessment Criteria that the Council shall apply to the consideration of all resource consents for land use activities. It is understood these criteria, which are extensive, relate solely to applications infringing any rules under Chapter 12.7 of the District Plan.

4.4 Overall, the application falls to be considered as a non-complying activity.

5.0 SUBMISSIONS RECEIVED

5.1 The submission period closed on the 2 June 2016. Full copies of the submissions received are contained in Appendix D. A brief summary of the submissions together with the relief sought by the submitters is set out below:

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
<th>Commentary</th>
<th>Relief Sought</th>
<th>Wish to be heard</th>
</tr>
</thead>
<tbody>
<tr>
<td>Opua Coastal Preservation Incorporated</td>
<td>PO Box 453 Paihia 0200</td>
<td>Concerns regarding provision of public access along coast. Support provision of public access and right of owner to build on land. Oppose building over seabed and cancellation of consent notice</td>
<td>Provide public access where possible Decline application unless evidence provided to show applicant cannot build on land</td>
<td>Yes</td>
</tr>
<tr>
<td>NZ Fire Service</td>
<td>C/- Beca Ltd P.O.Box 6345</td>
<td>Suitability of water supply and emergency</td>
<td>Include conditions of consent to address</td>
<td>Yes</td>
</tr>
<tr>
<td>Commission</td>
<td>Auckland</td>
<td>vehicle access</td>
<td>water supply and emergency vehicle access for fire fighting purposes</td>
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<tr>
<td>Dell Marie Coyte</td>
<td>395A Aucks Road R.D.1 Russell 0272</td>
<td>Oppose the application – Concerned at loss of public access</td>
<td>Conditions to be imposed requiring fence to demarcate public / private property, and signage</td>
<td>No</td>
</tr>
<tr>
<td>Northland District Health Board</td>
<td>Private Bag 9742 Whangarei Mail Centre Whangarei 0148</td>
<td>Oppose the application on basis that on site wastewater system is unlikely to adequately treat effluent, and disposal field appears inadequate</td>
<td>Decline consent, or impose conditions to address effluent disposal and management of contamination</td>
<td>Yes</td>
</tr>
<tr>
<td>Kororareka Marae Society Inc</td>
<td>PO Box 236 Russell 0242</td>
<td>Concerned about potential for contamination of the moana and seabed by run-off, waste water, effluent, silt, and other contaminants known to exist on the site.</td>
<td>Recommend that proposals for wastewater treatment and disposal and design of the disposal area be re-assessed, and conditions imposed regarding wet garden buffer and any soils to be obtained from the local area (Russell Peninsula)</td>
<td>Not Specified</td>
</tr>
<tr>
<td>Peter Russell and Carol Dianne Deeming</td>
<td>1 Tirairaka Terrace RD 1 Russell 0272</td>
<td>Fully support the application as it will maintain the historic links to the boat yard</td>
<td>Support</td>
<td>No</td>
</tr>
<tr>
<td>Donald Ramsay and Pamela Jill Gray</td>
<td>30 Tirairaka Terrace RD 1 Russell 0272</td>
<td>Concerned with number of breaches of regulations, proximity of sewerage to coastal marine area, and access to foreshore around Tapu Point</td>
<td>Neutral subject to concerns being considered</td>
<td>No</td>
</tr>
<tr>
<td>Anthony Arnold Atkinson</td>
<td>395A Aucks Road RD 1 Russell 0272</td>
<td>Concerned with provision of public access, noting history of previous applications and consent notice condition</td>
<td>Oppose. If consent granted stringent conditions should be imposed (listed in submissions)</td>
<td>Yes</td>
</tr>
<tr>
<td>Mary Elizabeth Lochmann</td>
<td>14 Deeming Road RD 1 Russell 0272</td>
<td>Deceit of scale and effects of plan and building over public domain. Wish Council to enforce District Plan rules and conditions made with DoC regarding esplanade reserve remaining if boat shed remains as commercial boat yard</td>
<td>Opposed – decline consent and if boat shed is removed then land and sea becomes public space</td>
<td>Yes</td>
</tr>
<tr>
<td>Ann Elizabeth Tyson</td>
<td>Apt 3 28A Waiaatarua Road Remuera Auckland 1050</td>
<td>Locality Adjusted roof pitch not reflected on plans</td>
<td>Support</td>
<td>No</td>
</tr>
</tbody>
</table>
5.2 Having reviewed the submissions, the following comments are offered to assist in understanding the scope of the proposal and what the following staff report can consider:

- The submission by the Fire Service Commission appears to address the application as a subdivision, and requests consent notice conditions be imposed. There is no subdivision component, therefore the specific relief sought cannot be granted. However, the provision of water tanks with suitable fire service couplings has been included in details of the application. As the Commission has indicated a wish to be heard, this matter may be explored further at the hearing.

- A focus of a number of submissions is on provision of public access and/or reinstatement of public access along the foreshore. The subject site currently has riparian rights and the existing building occupies private land above MHWS. It is noted that Easement C shown on the title plan is provided for public pedestrian access. There is scope to consider requiring additional esplanade reserve or strip to be vested as per Clause 14.6.1 of the District Plan.

- It is noted that none of the submissions raise specific concerns regarding any heritage or cultural values regarding the building or the historic use of the site, and there don’t appear to be any specific concerns about the existing shed being removed. It is not identified as a historic building or site and is therefore not subject to any formal protection other than by way of the existing consent notice.

5.3 There has been no pre-hearing meeting held between parties.

6.0 REPORTS FROM OTHER OFFICERS/DEPARTMENTS

6.1 In assessing the information provided in the application, the following internal assessments and reports have been provided:

- Quattro Engineering Limited (Mark Shaw) has reviewed the On-site Wastewater System Design and recommendations prepared by Haigh Workman Limited on behalf of FNDC. The review report is contained in Appendix E.

- Littoralis Landscape Architecture Limited (Mike Farrow) has reviewed the Landscape and Visual Assessment report prepared by Ecoprojects Consulting Network Limited. The review report is contained in Appendix F.

- The FNDCs Resource Consents Engineer has provided a report and suggested conditions for the proposal. This report is contained in Appendix G.

6.2 By virtue of the fact that the proposal straddles MHWS, the respective reports prepared by the Regional and District Council address some common issues. Where possible, staff have attempted to use common language and reference to various provisions on a consistent basis.

7.0 STATUTORY ASSESSMENT

7.1 The Act requires for all application for resource consent that subject to Part 2 of the Act, the Council must have regard to the matters set out in section 104 of the Act. Section 104(1) states:

(1) When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to—

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

(b) any relevant provisions of—

(i) a national environmental standard:

(ii) other regulations:
(iii) a national policy statement:
(iv) a New Zealand coastal policy statement:
(v) a regional policy statement or proposed regional policy statement:
(vi) a plan or proposed plan; and
(c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.

7.2 Section 104D sets out the ‘gateway test’ for determining whether consent can be granted to any application for a non-complying activity. Section 104D states that:

‘Despite any decision made for the purpose of section 95A(2)(a) in relation to adverse effects, a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either—

(a) the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies) will be minor; or
(b) the application is for an activity that will not be contrary to the objectives and policies of—

(i) the relevant plan, if there is a plan but no proposed plan in respect of the activity; or
(ii) the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or
(iii) both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity.

7.3 For the purposes of this report, the only matters that are not relevant to consideration of the application are Section 104(1)(b)(ii) as it relates to other regulations, and Section 104 (1)(b)(iii) as it relates to a national policy statement. All other matters are relevant and will be assessed accordingly.

7.4 Section 104(2) allows a consent authority to consider a ‘permitted baseline’ when assessing the effects of any proposal. It allows a consent authority to ‘….disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect.’

7.5 The application does not detail any permitted baseline that may apply when assessing the effects of the proposal. In reviewing the details of the application, it is considered that there is no viable and relevant permitted baseline to be considered when assessing the effects.

7.6 In considering the matters under Section 104(1)(b), and respecting the hierarchical nature of planning provisions, it is noted that the current District Plan provisions were operative before the NZCPS 2010 was released. The now-operative Northland Regional Policy Statement 2016 has been prepared to give effect to the NZCPS 2010. However, no lower-order Regional or District Plans have yet to be reviewed for consistency in terms of the NZCPS 2010 provisions.

7.7 With regard to the request to cancel the existing consent notice condition registered on the title, Section 221(3) and (3A) of the Act states:

(3) At any time after the deposit of the survey plan,—

(a) the owner may apply to a territorial authority to vary or cancel any condition specified in a consent notice:

(b) the territorial authority may review any condition specified in a consent notice and vary or cancel the condition.
8.0 **SECTION 104(1)(A) – ACTUAL AND POTENTIAL EFFECTS ON THE ENVIRONMENT**

8.1 The application includes an assessment of environmental effects and suggested mitigation measures. For the purposes of this report, the effects to be assessed are those identified, and in the general order they appear, in the application where they relate to matters within FNDC’s jurisdiction.

**Wastewater Treatment and Disposal**

8.2 In order to provide for a residential unit on the site, a means of wastewater treatment and disposal is required. Given the physical constraints of the site, a specific design has been required which attempts to utilise the area that is available for disposal. That design specifies *inter alia* that the disposal field be setback a minimum distance of 5 metres from the coastal marine area, and that filtration and UV disinfection be adopted. The design does need to integrate with the intended capping of the majority of the site with topsoil for contamination containment.

8.3 The submissions received from Mr and Mrs Gray, Northland District Health Board, and Kororareka Marae contains specific concerns regarding the potential risks associated with effluent disposal, particularly given the proximity to MHWS.

8.4 District Plan Rule 12.7.6.1.4 requires any part of an effluent treatment and disposal system to have a minimum setback of 30 metres from the coastal marine area. While the Haigh Workman Limited report dated 3 February 2016 identifies the proposal as requiring consent under Rule 15.1.4(d) of the Northland Regional Water and Soil Plan, further discussion with NRC staff indicates that there is no rule in any Regional Plan that specifies a minimum setback for effluent treatment and disposal systems from the CMA.

8.5 The design has been reviewed by Quattro Engineering Limited on behalf of FNDC. That review has assessed the design against the Northland Regional Water and Soil Plan Rule 15.1.4 and AS/NZS 1547:2012 On-site Domestic Wastewater Management. In addition, specific queries raised by FNDC staff and submitters have been addressed in the review. The conclusion reached is that a compliant system can be designed and implemented for the site, with specific requirements included for conditions. However, there are three items identified that require additional information to confirm aspects of the design. At the time of preparing this report, further advice has been received from Haigh Workman via e-mail dated 22 July 2016, with final comments from Quattro Engineering Limited received on the 25th July 2016. This correspondence forms part of Appendix E.

8.6 While the engineering assessment finds that the treatment and disposal system is appropriate for the site, the monitoring of the operation and maintenance of the system is a key component in ensuring any potential adverse effects are avoided. Specific conditions will need to be imposed to ensure there is an adequate regime to monitor and maintain the treatment and disposal system, in conjunction with ensuring that the system operates as a permitted activity under the Regional Water and Soil Plan rule.

8.7 On the basis that technical evidence has been provided to address the adequacy and appropriateness of the proposed effluent treatment and disposal system, and subject to addressing the items identified in the Quattro Engineering Limited review, any adverse
effects arising from the treatment and disposal of effluent on the site are considered to be minor.

**Stormwater Management**

8.8 The application provides an assessment of the total area of impermeable surfaces and determines that the proposal will comply as a permitted activity under Rule 10.8.5.1.6 Stormwater Management, as the total area of impermeable surfaces will not exceed 50% of the site. It is noted that water will be captured on site for water supply, with two 45,000 litre tanks to be located on the site, although the exact location of the water tanks is not confirmed on the plans provided. Any overflow will be directed to the coastal marine area.

8.9 Any adverse effects associated with storm water management and disposal are considered to be less than minor.

**Historic Heritage**

8.10 Neither the boat shed nor Tapu Point is identified in the District Plan as a historic building, site of cultural significance, or registered archaeological site. However, the application is supported by a number of reports addressing the heritage values located on the site and adjoining areas. While Heritage New Zealand Pouhere Taonga have not lodged a submission on the application, it is understood that an Authority has been lodged and is currently being processed. That application is made on the basis that, while the proposal will not disturb any existing archaeological deposits in any way, the depositing of topsoil to achieve the capping requirement to address the National Environmental Standard technically requires an Authority.

8.11 No submissions have been lodged which raise any specific concerns regarding historical values associated with the boat shed or commercial boat building activities on the site. The submission from P and D Deeming is noted as supporting the application on the basis that it will maintain historic links to the boatyard.

8.12 With regard to the cultural values associated with the site, the application is not supported by a cultural impact assessment. However, the application includes correspondence between the applicant and representatives of the Karehu Maori Committee, and Kororareka Marae of Russell. A formal submission has been received from Kororareka Marae raising concerns regarding contamination from wastewater treatment and disposal, and the use of fill to be obtained from local areas.

8.13 A submission has been received from Nga Kaitiaki o Te Awatapu o Taumarere me Te Moanatapu o Pikopiko I Whiti which highlights a number of concerns that are shared with other submitters, such as coastal hazard risks, degradation of the coastal marine area, and building a private residence over the seabed.

8.14 Much of the concern regarding contamination of the coastal marine area from effluent has been assessed, with a finding that the effluent and treatment disposal system is appropriate and effects will be minor subject to conditions.

8.15 Having considered the content of the submissions and information provided in response, any effects on historic heritage values will be minor.

**Terrestrial Fauna and Flora**
The application identifies the need to protect and retain the two large existing pohutukawa located above the cut face on the site. No other vegetation is proposed to be removed, and the Detailed Landscape Revegetation Plan provided details additional planting on the site, consisting of 2 specimen trees and assisted indigenous revegetation on the exposed rock face at the western end of the proposed building.

With the provision of landscape planting and retention of trees as proposed, the effects on terrestrial fauna and flora will be less than minor.

**Earthworks**

A relatively extensive amount of earthworks is proposed to be undertaken on the site, consisting of an area of 500m$^2$ being covered in 600mm deep topsoil and subsoil for the purposes of capping an area identified as subject to contamination. This equates to approximately 300m$^3$ of fill being required to be deposited on the site. The District Plan Rule 12.3.6.1.3 specifies a permitted standard of a maximum of 200m$^3$ in any 12 month period per site.

It is noted that consent is required under the Regional Water and Soil Plan for earthworks within a Riparian Management Zone, and is addressed in the NRC staff report. It is considered that the effects of the earthworks are adequately dealt with under that regime, noting that the recommendation is to grant consent.

**Natural and Coastal Hazards**

The application is supported by a Coastal Hazard Report prepared by Haigh Workman Limited. Specific threats are assessed in the report and identified as coastal flood hazard, coastal erosion hazard, and coastal landslide hazard, with recommendations made to mitigate or avoid those effects.

Minimum floor levels are specified with a requirement for new foundations, and means of stabilising the existing rock face are specified. The assessment includes reference to the operative RPS provision relating to minimum floor levels, and confirms that the proposal will comply with the directive in that document.

It is stated in the application that the provision of two 45,000 litre water tanks with appropriate fittings will meet the New Zealand Fire Service specifications in terms of volume. It is not clear whether access to both the site and the location of water tanks is intended to comply with the NZFS Fire Fighting Water Supplies Code of Practice SNZ PAS 4509:2008. As per previous comments regarding the issues raised in considering the Fire Service submissions, the applicant may need to clarify what is proposed, and the Fire Service may need to assist when speaking to their submission.

Councils Resource Consents Engineer has reviewed the report and confirmed he is satisfied with the information provided. Therefore, subject to clarifying access to water supply for fire-fighting purposes, the potential adverse effects associated with natural and coastal hazards can be avoided and mitigated by way of appropriate conditions so as to be minor.

**Impacts on Public Reserve and Public Access**

The application states that any effects of the proposal on existing public access is nil. However, it does detail potential adverse effects associated with the construction of the 3 metre high retaining wall against the rock face adjoining the slipway. This is located between 0.5m and 1.1 metres below the boundary of the Tapu Point reserve, with the
wall serving as the external wall on the southeastern side of the proposed residential
unit. The application refers to District Plan Rule 10.8.5.1.7 Setback from Boundaries,
which specifies a minimum 1.2 metre setback for internal boundaries.

8.25 It is noted that there is no written approval or submission received from the Parks
Division of FNDC, being the body responsible for administration of reserve land in the
area. However, a number of submissions have raised concerns that the proposed
building either impinges on existing public reserve, or that the land should become
public space once the shed is removed. Some discussion on the scope of the
application and the legal situation regarding the present land ownership is detailed in
Paragraph 5.2 of this report.

8.26 The application does not include provision for any additional public land, nor is there any
provision for alternative access to link the existing reserves across the isthmus of the
site. The applicant has been requested to comment on whether a more formal linkage
between the front and back beach reserves can be provided, with no response received
to date. This request is made partly on the basis that the previous land use consent
granted for the site (Council reference RC2040726) included a condition requiring the
formation of a suitable track for public access across Easement C as shown on the title
plan. It is understood that Easement C was imposed as part of a previous subdivision
specifically to provide a legal link between the reserves for the public, but has never
been formed. The applicant has also been asked to confirm the registration of easement
C on the title, as it does not appear to be listed in the Schedule contained in the
easement certificate that forms part of the certificate of title documentation provided with
the application.

8.27 The submissions from Dell Coyte, Opua Coastal Preservation Incorporated, and A
Atkinson, have all made comments to the effect that better access formation and
signage should be provided if any link can be provided. A condition may be imposed to
require the easement to be formed to a suitable standard. Provision of a formed link
gains more impetus when considered against the NZCPS 2010 policies detailed further
in this report.

8.28 One potential benefit in providing a formed link, and not pursuing additional reserve land
as sought by submitters, is the avoidance of the public utilising an area of land that is
contaminated by the previous commercial activity on the site. It is unlikely that the FNDC
would wish to inherit responsibility for any public land that is potentially not fit for
purpose.

8.29 It is noted that, while submissions have focused on the public access issue, it is not
clear whether tangata whenua may have some cultural concerns regarding enhanced
access to Tapu Point. Further consultation with tangata whenua may be necessary to
address any concerns regarding public access provided to such an area. As it stands,
the formation of a link between existing reserves via Easement C may avoid this issue.

8.30 Considering the extent of the development in relation to existing reserve land, the
evidence provided suggests any effects on the use and enjoyment of existing public
reserves in the area will be less than minor. With regard to the potential loss of future
reserve land as a result of the building being located over MHWS and therefore retaining
riparian rights, the formation of a link between the front and back beach reserves over
Easement C is considered to be a viable and appropriate alternative that should be
required as a condition of consent.
Contaminated Land

8.31 The application includes a Detailed Site Investigation report prepared by Haigh Workman Limited in order to identify and address potential contaminants contained on the site. The need for a consent, and resulting assessment contained in the report, are directed by the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (‘NES’). While it is not clarified in the application or technical report, it is understood that the application is a restricted discretionary activity under Section 10 of the NES.

8.32 The report is deemed to have been prepared by a Suitably Qualified and Experienced Practitioner, and follows the prescribed Contaminated Land Management Guidelines, as defined under Section 3 of the NES. The report identifies a number of potential contaminants resulting from the previous use of the site for commercial boat building and repairs, and testing shows elevated levels of arsenic, cadmium, and lead in soils across the site, with isolated areas of ACMs. The ‘Summary of Identified Pollutant Linkages’ contained in the report (pg 20) concludes that:

- There is a moderate to high risk of exposure to construction workers and adjacent site users from asbestos to the west of the existing boatshed (slipway and possibly boatshed, and under the boatshed) if fibres become airborne;
- There is a moderate to high risk of exposure to construction workers, site end-users, and proposed landscaping from arsenic, chromium and lead across all made ground and natural soils (where exposed);
- There is a low risk of exposure to construction/demolition workers and adjacent site users of asbestos located within existing building infrastructure, provided an appropriate method of removal/demolition is undertaken.

8.33 The report identifies an ‘Outline Remediation Plan’ effectively involving containment and capping of the existing soil contamination, and removal of soil. It recommends conditions of consent that requires the identified Remediation Plan to be implemented. Subject to those conditions being imposed, the adverse effects associated with contaminated land an exposure to contaminated soils will be minor and largely avoided.

Landscape and Visual Effects

8.34 The application relies on the Landscape and Visual Assessment report prepared by Ecoprojects Consulting Network Limited to address matters of landscape and visual effects. That report states that there are no adverse landscape effects identified from the building and site development as proposed. The report goes on to assess criteria under Section 11.5 of the District Plan, and concludes that ‘The proposed form of development and the landscape mitigation and enhancement that goes with it is entirely consistent with the natural character of the land in the local and regional coastal zone.’

8.35 It is understood that the site has previously contained a residential unit and has a history of occupation. As the site is zoned Coastal Residential, there is a legitimate expectation that the site can be developed for residential purposes. It would be possible for the boatshed to be retained in its current state, in accordance with the consent notice, and a new dwelling located on land. While any dwelling would require a resource consent due to infringement of the water setback rule, there are no rules that address visual amenity. The visual and landscape effects of such an outcome, where both the existing boatshed and a new dwelling were to be located on the site, would likely be significant.

8.36 The Landscape and Visual Assessment has been reviewed by Mr Mike Farrow of Littoralis Landscape Architecture. Mr Farrow confirms that adverse visual effects will be
of a very limited magnitude, since the building will be positioned where there is already a structure, and the new building would be of very similar form and scale to that which it would replace.'

8.37 With regard to matters of landscape effects, Mr Farrow expresses concern that the proposal does not adequately recognise the existing boatshed as a strong component of the ‘sense of place’ of the Okiato and Tapu Point shore. In addition, the relationship between the coastal setting and the functional use of the building as a boat shed (for ‘maritime use’) is largely severed by the use of the building as a residential unit. Mr Farrow does allude to a possible design approach to rectify his concerns regarding local character and sense of place. However, he concludes that ‘In these circumstances it would appear that the landscape effects of the proposal could be appropriately assessed as being more than minor, although I suspect that they would not reach the threshold of being “significant”.’

8.38 On the basis of Mr Farrow’s advice, there is a concern that effects on landscape (as a subset of wider amenity values) have not been adequately addressed. These concerns appear to be able to be addressed by a relatively simple re-design of the exterior of the building, particularly the use of aluminium joinery and glazing fronting the Veronica Channel. The applicant is invited to provide additional information regarding landscape effects, in particular whether any amendments can be made to ameliorate these concerns. However, in the absence of such information at this time, the effects on landscape are considered to be more than minor.

Amenity Values

8.39 Amenity values are defined as ‘those natural or physical qualities and characteristics of an area that contribute to people’s appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes.’ Several submitters, including Dell Coyte, P and D Deeming, Opua Coastal Preservation Society, and A Atkinson, are concerned about the effects on amenity values associated with the Tapu Point area, notably the quiet coastal setting and the ability to access the coastal marine area via public reserve. The issue is whether the introduction of a residential unit with associated activities on the site as proposed will have an adverse effect on those attributes that make up the amenity values of the area.

8.40 The District Plan describes the Coastal Residential Zone as providing ‘...for the most intensive development of all the zones in the coastal environment. It is applied in areas where an urban residential style and scale of development exists now. It enables the further development of these areas in a way which retains, as far as possible, the natural character of the coastal environment.’ The introduction of a residential activity as proposed is not likely to introduce adverse effects on many of those values when considered against the existing environment. However, the assessment of landscape effects does find that the effects may be more than minor, and that has a potential effect on the aesthetic coherence and appreciation of the coastal setting.

8.41 The location of the proposed building will not adversely affect the ability for the public to access and enjoy the existing reserves along the coastal edge, and the proposal will not adversely affect any flora or fauna of the area. The provision of a suitable formed link between the front and back beach reserves will provide some additional amenity value to users of the reserves.

8.42 However, Mr Farrow’s review of the visual and landscape effects highlights concerns regarding the aesthetic coherence and cultural attributes associated with the proposal.
Unless the applicant can suitably address those concerns, those particular effects on amenity values may be considered more than minor.

Conclusion

8.43 In conclusion, it is considered that all relevant actual and potential adverse effects have been addressed above. It is concluded that, taking into account the conditions that have been offered through both the application and various supporting reports, the majority of adverse effects arising from a grant of consent to the proposal will be minor.

8.44 A concern has been expressed regarding the effects on amenity in terms of landscape, particularly where the proposed building has no functional connection to the coastal setting and design elements of the building reflect more of a residential use than maritime activity.

9.0 SECTION 104(1)(B)(I) – RELEVANT PROVISIONS OF NATIONAL ENVIRONMENTAL STANDARDS

9.1 The relevant provisions of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (‘NES’) have been considered in the application. An assessment of the provisions is contained in the ‘Contaminated Land’ section of the effects assessment above.

10.0 SECTION 104(1)(B)(IV) – RELEVANT PROVISIONS OF THE NEW ZEALAND COASTAL POLICY STATEMENT (‘NZCPS’)

10.1 The NZCPS is relevant to the application given the proposal is contained entirely within the coastal environment. At the time of preparing this report, the application does not provide any assessment of the relevant provisions, despite a request for a suitable assessment being made following the close of notification.

10.2 In reviewing the NZCPS 2010 provisions, many of the provisions will either not be directly relevant to the proposal or will be assessed as part of the NRC staff report. This assessment focuses only on those objectives and policies that have a direct bearing on the application. Copies of these relevant provisions are contained in Appendix H.

10.3 Objectives 1, 2, 3, 4, 5, and 6 as they relate to maintaining coastal water quality, preserving natural character of the coastal environment, recognising and protecting characteristics of the coastal environment that are of special value to tangata whenua, maintaining and enhancing public open space and walking access, addressing the risk of coastal hazards, and consideration of appropriate use and development of the coastal environment, are relevant. There are a number of policies that underpin these objectives, and they are discussed in more detail below.

Policy 2 – The Treaty of Waitangi, Tangata Whenua and Maori

10.4 Clause 2(d) is relevant as the applicant has provided evidence of ongoing and effective consultation with local marae to provide opportunities to address cultural concerns. While there are residual concerns expressed in the submissions received, these concerns are shared by other submitters.

10.5 Clause 2(c) directs decision makers to take into account any iwi resource management plan and any other relevant planning document recognised by the appropriate iwi authority or hapū and lodged with the council. It is noted that no iwi management plans
or other documents have been lodged with FNDC that relate to the subject site or surrounding area.

Policy 6 – Activities in the Coastal Environment

10.6 Clauses 1(e), (f), (h) and (i) are considered most relevant to the proposal. The proposal is not considered to offend Clause 1(e) as it will not compromise any activities of national or regional importance that have a functional need to locate in the CMA. Clause 1(f) refers to maintaining the character of the existing built environment and, more particularly, considering where development resulting in a change in character would be acceptable. The replacement of the boatshed with a building of similar scale and form used for residential purposes is not likely to change the character of the area to an extent that it would be unacceptable.

10.7 Clause 1(h) refers to consideration of adverse visual effects being avoided in sensitive areas such as headlands. The proposal does occupy a prominent location on a small headland, however, the visual effects of the proposal are considered to be minor, largely due to the existing built form.

10.8 Clause 1(i) addresses the need to set back development from the coastal marine area, where practicable and reasonable, to protect the natural character, open space, public access and amenity values of the coastal environment. Having assessed the effects of the proposal, and recognising that the proposal utilises an existing building, it is considered that the natural character, open space, and public access values will be protected. Amenity values, particularly in terms of landscape, have been identified as being of concern. However, recognising that there are constraints associated with the use of the land, particularly in terms of contamination and availability of land for effluent disposal, it is considered practicable and reasonable to utilise the building for its intended residential purpose in this case.

10.9 Clause 2 identifies a number of matters to be considered in relation to the coastal marine area. These matters are considered in the NRC staff report.

Policy 15 – Natural Features and Natural Landscapes

10.10 Policy 15 requires natural landscapes in the coastal environment to be protected from inappropriate use and development. As the site is not identified as containing outstanding landscape values, Clause b) applies whereby significant adverse effects should be avoided on natural landscapes in the coastal environment. Mr Farrow’s view is that the landscape effects of the proposal are more than minor, but states that he suspects ‘…that they would not reach the threshold of being “significant”:’ If the effects on landscape are not considered to reach a threshold where they could be deemed significant and therefore should be avoided, the proposal is considered to be consistent with this policy.

10.11 It is considered that a significant effect might arise if the proposal was being put forward in the absence of the existing boat shed on the site, or where an additional building was being constructed on the isthmus adjoining the existing boatshed. However, the existing shed forms part of the existing landscape, and the introduction of the proposed building is not considered to create a significant effect on the landscape values in the coastal environment.
Policy 18 – Public Open Space

10.12 The policy requires recognition and provision for public open space. In particular, Clause c) indicates that this should be achieved by maintaining and enhancing walking access linkages between public open space areas in the coastal environment. While noting that the proposal will have no effect on the enjoyment and use of the existing reserves in the area, the applicant has been requested to advise on provision of any form of physical link between the front and back beaches. The provision of such a formed link across the site, suitably formed and marked for public use, would enhance the use of existing public open space. In the absence of advice from the applicant, it is considered appropriate to require the formation of public access to a suitable standard to link these two reserves by way of consent condition. That would appear to address concerns raised by several submitters, and is an alternative that may provide a better outcome than any attempt to secure additional reserve land where riparian rights currently exist.

Policy 19 – Walking Access

10.13 Clause 2(c) under Policy 19 reinforces the potential to provide a linkage between existing reserves by ‘….identifying opportunities to enhance or restore public walking access, for example where: 
i. connections between existing public areas can be provided….’

As stated above, it is considered appropriate to provide a suitable formed link in this case.

Policy 23 – Discharge of Contaminants

10.14 Clause 2 addresses the management of discharge of human sewage to the coastal environment. As the discharge is not directly to water, it generally complies with this clause. However, the risk of treated sewage having an adverse effect on water quality is an evident concern. This has been addressed by way of the engineering information provided regarding the operation of the on-site treatment and disposal system, and imposition of suitable conditions.

Policy 24 – Identification of Coastal Hazards

10.15 The policy requires identification of hazards and the respective risks over at least a 100 year period. The application includes a Coastal Hazard report that identifies the relevant risks, quantifies the extent of risk for the proposal, and recommends mitigation and avoidance measures to address those risks.

10.16 Having considered the relevant objectives and policies, it is found that the proposal is generally consistent with the provisions of the NZCPS 2010.

11.0 SECTION 104(1)(B)(V) – RELEVANT PROVISIONS OF A REGIONAL POLICY STATEMENT OR PROPOSED POLICY STATEMENT

11.1 The Northland Regional Policy Statement 2016 (‘RPS’) was declared operative on 9th May 2016, which is subsequent to lodgement of the application. However, in making an assessment under Section 104 any relevant provision need to be considered. As noted previously, the RPS has been prepared so as to give effect to the NZCPS 2010, and as a result many of the objectives and policies are similar in wording and intent. Copies of the relevant objectives and policies are contained in Appendix I.
11.2 Objectives 3.11 Regional Form, 3.12 Tangata Whenua role in decision-making, 3.13 Natural Hazard Risk, and 3.14 Natural Character, Outstanding Natural Features, Outstanding Natural Landscapes, and Historic Heritage, are relevant to the proposal. Policy 4.6.1 is a key policy as it relates to managing effects on the characteristics and qualities of natural character, natural features and landscapes. Clause 1(b) of that policy reflects the wording in the NZCPS by stating that significant adverse effects should be avoided, and other effects of development should be avoided, remedied or mitigated as they relate to natural character, natural features and natural landscapes, and specifies methods for achieving this. In particular, it suggests that the location, intensity, scale and form of built development should be appropriate in relation to various natural elements and features. Given the reasons identified when assessing Policies 6 and 15 of the NZCPS, in this particular case the development is considered appropriate.

11.3 Respecting that these objectives, and associated policies, mirror the directives in the NZCPS 2010, and that the proposal has been found to be consistent with that document, the proposal is consistent with the RPS provisions.

12.0 SECTION 104(1)(B)(VI) – RELEVANT PROVISIONS OF A PLAN OR PROPOSED PLAN

Northland Regional Water and Soil Plan

12.1 The majority of relevant matters under the Northland Regional Water and Soil Plan have been considered under the NRC staff report. The aspect within FNDC jurisdiction is the discharge of effluent to land within 30 metres of the CMA (see paragraph 8.3 above). However, as noted previously, the discharge of treated effluent to land, despite being 5 metres from the CMA, is deemed a permitted activity under the Regional Plan. As such, an assessment of the Regional Plan provisions is of little assistance in this regard.

Far North District Plan

12.2 For the purposes of this report, the Coastal Residential zone provisions, then the relevant Natural and Physical Resources provisions, will be addressed. Copies of the relevant sections are contained in Appendix J.

10.8 Coastal Residential Zone

12.3 Objectives 10.8.3.1, 10.8.3.2, and 10.8.3.3 are relevant to the proposal. The objectives emphasise the residential nature of the zone, while recognising that any development must be appropriate where urban amenity and coastal environmental values are compatible. Objective 10.8.3.2 prescribes that the coastline should be protected from inappropriate use and development. It is noted that the subject site has a history of residential and commercial use, noting that a key coastal environmental value is associated with public access. In this context, the proposal is not considered to be inappropriate development.

12.4 Policy 10.8.4.1 reinforces the residential nature of the zone by enabling a range of house types and forms of accommodation to be provided, recognising the diverse needs of the community and coastal location. Policy 10.8.4.3 emphasises the need for sufficient outdoor space for sewage disposal. The proposal is considered consistent with these provisions. Notably, the policies appear to be structured to address effects on natural character of the coastal environment and amenity only where they arise from non-residential activities or where the effects are greater than those arising from a single residential unit. The proposal is considered to be consistent with these objectives and policies.
12.3 Soils and Minerals

12.5 Objective 12.3.3.1 refers to achieving an integrated approach between NRC and FNDC in managing the adverse effects arising from soil filling. In this case, noting that the consent application to NRC specifically addresses the effects of earthworks in the riparian management zone, an integrated approach is appropriate.

12.4 Natural Hazards

12.6 There are a number of objectives and policies that address coastal hazards. However, noting that the NZCPS 2010 and subsequent RPS 2016 provisions effectively supercede the District Plan, and having concluded the effects of coastal hazards can be adequately avoided or mitigated, the District Plan provisions can be met.

12.7 Policy 12.4.3.7 relates to avoiding fire risk arising from the location of residential units in areas not near fire-fighting services. This policy is relevant in the context of concerns raised in the Fire Commission submission. As previously identified, some assistance from both the applicant and Commission, either prior to or at the hearing, would be useful in addressing this matter.

12.5 Heritage

12.8 While the District Plan does not identify any specific heritage buildings or sites on the subject site, it is clear that the site is of cultural significance and has some historic heritage value. Objective 12.5.3.2 refers to protection of waahi tapu from inappropriate use and development. In this case, the evidence from consultation and submissions lodged indicates that much of the concern relates to coastal water quality rather than adverse effects on the cultural connections with Tapu Point itself.

12.9 By way of seeking an Authority from Heritage New Zealand Pouhere Taonga, the provisions regarding recognition and protection of archaeological deposits under Objective 12.5.3.5 and Policy 12.5.4.7 can be considered as met.

12.7 Lakes, Rivers, Wetland, and the Coastline

12.10 There are a number of relevant objectives and policies that relate to such matters as securing public access, avoiding adverse effects of inappropriate use and development, and construction of buildings close to or over water bodies. However, these pre-date the NZCPS 2010. Where specific objectives or policies exist that were operative before a higher order document was released, and those provisions do not align with (in this case) the NZCPS provisions, they are given minimal weight as part of any assessment. On this basis, careful consideration has been given to the District Plan provisions under this chapter, and it is considered that the provisions generally align with the NZCPS 2010.

12.11 Objectives 12.7.3.2 regarding the protection of inter alia landscape values and promotion of amenity values, 12.7.3.3 regarding public access and 12.7.3.5 regarding the avoidance of adverse effects on the coastline from inappropriate use and development largely reflect Policies 18, 19 and 6 respectively on the NZCPS 2010. Policy 12.7.4.2 is relevant as it emphasises the need for landuse activities to improve or enhance water quality by (for example) separating them from the coastline, and aligns with Policy 6 Clause 1(i) of the NZCPS 2010. Policy 12.7.4.6 emphasises the provision of public access to and along the coastline which is reflected more specifically in Policies 18 and 19 of the NZCPS 2010.
12.13 Policies 12.7.4.10 and 12.7.4.12 provide some guidance on situations where activities do not require a setback from the CMA or provision of esplanade reserves. Policy 12.7.4.10 refers to situations where new buildings are in keeping with the historic pattern of settlement, while Policy 12.7.4.12 recognises the need for some commercial and industrial sites to be exempt due to their close relationship to activities conducted in the CMA. This appears to align with Policy 6(1)(i) of the NZCPS 2010 particularly in terms of the wording ‘….where practicable and reasonable….’ where the District Plan policies are identifying when it is practicable and reasonable not to require a setback. As previously noted, in this particular case it is considered reasonable and practicable to dispense with a setback from the CMA.

12.14 Section 12.7.7 of the District Plan includes a comprehensive list of assessment criteria to consider any application against. The application lodged does not directly address these criteria. However, in undertaking an assessment of the effects of the proposal, those criteria are inherently addressed.

12.15 Having found that the proposal is consistent with the NZCPS 2010 and RPS, it follows that the proposal is consistent with the District Plan provisions identified above.

13.0 SECTION 104(1)(c) – ANY OTHER MATTER

13.1 It is noted that several submissions make comment regarding enforcement of District Plan rules and maintaining the veracity of local body bylaws. While precedent is not referred to in the RMA, through the development of case law it has become a relevant consideration particularly for non-complying activities. A precedent effect arises where there is concern that the granting of consent to an activity may set an unacceptable precedent when considering any possible subsequent applications for resource consent for the same or similar activities (in the sense of like cases being treated alike). Any precedent effect can be set aside where there are unusual or distinguishable features that would differentiate it from any subsequent application.

13.2 Having considered the scope of the proposal, its location, and background to it, any possible precedent effect that may arise will be minimal.

13.3 It is considered prudent to consider the consenting history of the site, in particular the application lodged by Dorking Properties Limited (Council reference RC2020463) that was considered and declined that the FNDC Hearings Committee and subsequently appealed to the Environment Court. The reason for considering the matter is to determine whether the current proposal is differentiated to the extent that there is no conflict with matters that had been previously considered and determined in reaching a decision to decline. A copy of that decision is provided with the application in Appendix A.

13.4 Having reviewed the application plans and planning report prepared in behalf of FNDC by the reporting planner, and decision for the previous application, the following points are noted:

- The proposed replacement building for the boat shed (called a ‘boathouse’) exceeded the maximum building height rule, noting the plans depict a two-storied structure that retained little of the character of the existing building. The current proposal is single-level, complies with the District Plan building height rule, and is more closely aligned in terms of design to the existing building.
- The proposal included a wharf and deck structure along the northern and western edge of the boathouse. No such structure is included in the current proposal.
• A double carport was proposed to be located in the location of the existing single carport. Plans provided with the current application show the existing carport being removed with no other buildings proposed.
• The issue of contaminated soils was not known at the time of the application being considered.
• The disposal of effluent, treatment of coastal hazards by raising the floor levels, setback from MHWS, and earthworks were all considerations as part of the previous proposal, and are similar to the matters raised in the current application.

13.5 At the time of the decision, the planning regime was significantly different to that which exists now. The previous application considered the NZCPS 1994, Operative Regional Policy Statement (which has now been replaced), a revised proposed Regional Coastal Plan for Northland, the Transitional (Bay of Islands section) District Plan, and a proposed District Plan. While various rules and provisions were markedly different at that time, the general thrust of those provisions have remained – matters such as public access, natural character and amenity values, and protection of coastal water quality have evolved but remain valid and relevant.

13.6 The decision issued by the joint Hearings Committee records concerns regarding form, scale, and intensity of the non-water based component of the activity, and considered that the proposal, as a residential activity, was an inappropriate use within the coastal environment, and alternatives were available for on-site redevelopment outside of and further setback from the coastal marine area. Much of the concern, in reading the planning report and resulting decision, appears to focus on effects on natural character and amenity, given the size, bulk, and appearance of the proposed buildings to be located on the site. This was emphasised by the proposal not being considered to address the relevant matters under Section 7 in Part 2 of the Act.

13.7 As a result of a subsequent appeal against the decision, the Environment Court issued a consent order dated 3rd March 2005. That Order records that the boathouse and associated wharf and deck were declined, but a number of ancillary activities were consented, including disposal of secondary treated effluent to ground via a dripper system from the proposed waste water system, and to permit the private non-commercial on-land storage and maintenance of boats on a renovated slipway.

13.8 When making a general comparison, there are significant differences between the historical proposal and what is now being presented and considered.

14.0 SECTION 104D ASSESSMENT

14.1 Pursuant to s104D of the Resource Management Act 1991 if a proposal is a non-complying activity then it must pass at least one of the ‘gateway tests’ of either s104D(1)(a) or s104D(1)(b) before an application can be assessed to make a decision under s104B of the Act. If the application does not pass either test of s104D then the application must be declined.

14.2 Having considered all relevant matters under Section 104(1)(a), (b) and (c), the proposal is considered to pass Section 104D(1)(b), whereby the proposal is found to be consistent with the objectives and policies of the District Plan, noting the need for consistency with higher order documents. Based on the information and assessment undertaken, the effects of the proposal as they relate to landscape and amenity effects on the coastal environment are considered to be more than minor. Therefore, the requirement of Section 104D(1)(a) is not passed.
As the proposal passes one of the ‘two gateway tests’, there is the ability to consider granting consent to the proposal.

**Part 2 Assessment**

The purpose of the Act is to promote the sustainable management of natural and physical resources. As set out in Section 5, sustainable management means:

- managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while —
  - (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
  - (b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
  - (c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.

The proposal will be utilising a natural resource, being the land and CMA, by developing an existing physical resource, being the boatshed, as a private residential unit. This does provide for some minor social and economic well-being for the applicant. That development and use in the coastal environment must safeguard the life-supporting capacity of the surrounding natural environment, in this case the water and soil, and avoid, remedy or mitigate the effects associated with the development.

Evidence has been provided to show that the life-supporting capacity of the water and soil will be safeguarded by the proposal. There is some benefit associated with the capping and removal of contaminated soils from the site.

The adverse effects of the proposal have been considered and a number of mitigation, remediation, and avoidance measures have been designed to address adverse effects. This includes the form and scale of the proposed building aligning with the existing boat shed, the capping and removal of contaminated soils, specific design of an effluent treatment and disposal system, and provision of a formed link between two existing esplanade reserves.

Section 6 of the Act identifies Matters of National Importance that must be recognised and provided for. The following matters are relevant to the proposal:

- (a) the preservation of the natural character of the coastal environment (including the CMA), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:…..
  - (d) the maintenance and enhancement of public access to and along the CMA, lakes, and rivers:
  - (e) the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waāhi tapu, and other taonga:
  - (f) the protection of historic heritage from inappropriate subdivision, use, and development:

Due consideration has been given to these matters. The natural character of the coastal environment will be preserved by utilising an existing building that will retain a scale and form that is appropriate for the location. The existing public access will be maintained, and by virtue of a link to be formed between the two existing reserves over the site, access will be enhanced. Maori have been consulted on the project and the cultural values associated with Tapu Point and coastal waters have been recognised in considering the application. The historic heritage elements will largely
be addressed through compliance with the Heritage New Zealand Pouhere Taonga Act 2014.

15.7 In specifically considering the maintenance and enhancement of public access, it would not be sustainable to acquire additional land known to be contaminated and potentially hazardous to human health for public access purposes.

15.8 Section 7 of the Act lists a number of matters that particular regard be had to. The relevant matters are:

(a) kaitiakitanga:

(aa) the ethic of stewardship:

(b) the efficient use and development of natural and physical resources:…..

…. (c) the maintenance and enhancement of amenity values:

…. (f) maintenance and enhancement of the quality of the environment:

15.9 Extensive consultation has taken place with local tangata whenua in developing the application. Recognition of the cultural values associated with Tapu Point and the protection of coastal waters has been an important factor in the way the proposal has been presented. This has emphasised the need for the applicant to exercise kaitiakitanga and stewardship of the values located on the property.

15.10 The proposed building is considered to be efficient in the sense that it largely avoids further development being located on the site, noting that restrictions associated with effluent disposal and contaminated soils would render it impractical and potentially more hazardous to develop for residential purposes.

15.11 The amenity values have been considered in terms of both the visual and landscape effects, and the values that contribute to the overall amenity of the area such as access to reserves and coastal marine area. The effects on landscape and associated amenity values have been assessed as more than minor, and therefore weigh against the proposal when making any decision.

15.12 The quality of the environment has been considered in terms of effects on soils, water, and coastal character and amenity. It is considered that the quality of those elements overall will be maintained by carefully developing the site particularly in terms of effluent disposal and treatment, and enhanced through the appropriate treatment of contaminated soils.

15.13 Section 8 requires that the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) are taken into account when making decisions in relation to the use, development and protection of natural and physical resources. Consultation, or the need to consult, arises from the principle of partnership in the Treaty of Waitangi; this requires the partners to act reasonably and to make informed decisions. Through both consultation by the applicant and the receipt and acknowledgement of submissions through the notification process, effective consultation has occurred. Information has been presented that reflects matters of concern to Maori, and those concerns are presented and considered in this report, and will require consideration when making any decision.

16 Conclusion and Recommendation

16.1 In respect of section 104D of the RMA, the application is considered to pass one of the “threshold tests”. This is sufficient to allow consideration of the granting of
consent, but in reaching any decision a careful balancing of matters, having regard to
the purpose and principles under Part 2 of the Act, must be made.

16.2 In respect of section 104, it is concluded that the majority of effects of the activity on
the environment are acceptable. Concerns have been raised regarding landscape
and associated amenity effects and reasons for this concern provided. Those effects
have been identified as more than minor, but not significant. The nuance of language
and context is important when assessing the proposal against the relevant planning
provisions. The activity will not be contrary to the objectives and policies of the
various planning instrument, notably the NZCPS 2010 and Northland Regional Policy
Statement, as the proposal will avoid any significant effects on landscapes in the
coastal environment. The site is not noted as containing any Outstanding Landscapes
or Features, or a high level of natural character, or any scheduled historic objects,
buildings, or sites of significant to Maori. Due consideration has been given to “Other
Matters” under Section 104(1)(c).

16.3 In balancing aspects of the proposal to reach a decision, it is apparent that there are
tensions that are not easily reconciled. The use of a building in and adjoining the
CMA for residential purposes does not sit comfortably with provisions that relate to
coastal landscapes. However, this is contrasted with a District Plan zoning that
provides for residential development, the need for sufficient land to dispose of
effluent, and the positive effects associated with the containment and removal of
contaminated soil, and the provision of a link between reserves.

16.4 In similar terms, the identification of the contaminated land and the connotations of
that contamination, suggest that a minimal amount of disturbance or active use of the
site will help to safeguard human health. Any provision of additional reserve land
would not be considered sustainable. Locating a dwelling on the isthmus area in lieu
of, or in conjunction with, the existing boatshed, may address concerns expressed by
submitters regarding the occupation of the foreshore and CMA for residential
purposes, but will have implications in terms of contaminated land, availability of
sufficient land for effluent disposal, and visual impact.

16.5 Accordingly, on balance it is considered that the proposal as presented is the most
efficient and appropriate approach for development to be undertaken on the site,
while avoiding, remedying and mitigating adverse effects, and is therefore consistent
with the sustainable management purpose of the RMA.

16.6 In making this recommendation, it follows that the consent notice registered against
the title that requires the existing boatshed and slipway to be maintained and
preserved can be cancelled pursuant to Section 221(3).

16.7 Notwithstanding the above, it would be helpful for the applicant to address the
following matters as identified in this report, either by way of expert evidence being
circulated prior to the hearing, or evidence provided at the hearing:
- identify any design changes to the exterior façade of the building that may
  address the landscape concerns raised by Mr Farrow
- Clarify the status of Easement C as shown on the certificate of title, by way of
  provision of an easement certificate confirming that it is legally registered and able
to be formed and used for public pedestrian access.