

**Hearing of Resource Consent Application APP.040213.01.01 by
The Mangawhai Historic Wharf Trust**

**Joint statement of agreed facts and of resolved and unresolved issues of
planning experts
17 September 2020**

Experts Present: **Katie McGuire – NRC (KM)**
 Vishal Chandra – Applicant (VC)
 Linda Kirk – DOC (LK)

Facilitator: **Paul Maxwell**

The following Joint Witness Statement has been agreed by all technical planning experts involved in conferencing in Whangarei on 17 September 2020.

Issues addressed:

1. A number of policies of the relevant statutory planning documents use the terms 'functional need' and 'operational need' in relation to structures within the Coastal Marine Area (CMA). What do these terms mean and does the proposed wharf qualify as having such a need.

Definitions:

- Functional Need: A wharf cannot function on land, is required to locate in the coastal marine area, therefore the proposed wharf has a functional need to be placed in the CMA. The definition of 'Functional Need' from Section B of the Proposed Regional Plan for Northland (PRP) is to be used:

"When an activity or network (including structures) is dependent on a particular location to operate, or is required to traverse, locate or operate in a particular environment due to its technical or operational requirements"

– All Agree.

The above definition is under appeal ENV-2019-AKL-000107, where the appellant has requested inclusion of a definition for 'operational need'. The definition is also subject of another appeal ENV-2019-AKL-000127.

The New Zealand Coastal Policy Statement (NZCPS) was referred in the discussion relative to "...functionally some uses and developments can only be located on the coast or in the coastal marine area...", Objective 6 – Point 3.

- Operational Need: No definition. Is intertwined with Functional Need. All Agree.

- Need: To be in want of/to be essential to. This definition covers a broad continuum of 'need'. All Agree.
2. What does 'avoid' mean in the context Policy 11(a) of the New Zealand Coastal Policy Statement – what level of effect, if any, is permissible.
- VC – Avoid means prevent, but it needs to be in the context of what is being protected. i.e. the appropriateness or inappropriateness of the effect on biodiversity (Policy 11(a)). With this approach, there is no need to avoid all adverse effects or prohibit activities with such effects. Activities with adverse and transitory effects therefore can be permissible that give effect to Policy 11(a).
 - LK/KM – Avoid means avoid, no level of adverse effects is permissible (even if minor or transitory).
3. What are the appropriate weightings to be given to the provisions of the relevant statutory planning documents, in particular the weighting to be given to the provisions of the Proposed Regional Plan that are under appeal.

	KM/VC	LK
• NZCPS	1	1
• Regional Policy Statement for Northland (RPS)	2	2
• PRP	3	4
• Regional Coastal Plan for Northland (RCP)	4	3

KM – RCP/PRP – PRP has been prepared under the more recent NZCPS and RPS.

VC – Agrees with KM, and extends in reference to the progress made within the statutory process for the PRP and the nature of appeals i.e. on specific parts and interests rather than the broader direction, affording PRP more weight over the RCP. KM Agrees.

LK – Disagrees as the RCP is operative and has greater weight than the PRP. Considers that the operative RCP gives effect to provisions that include the protection of indigenous biodiversity under the NZCPS 1994 which are similar to those as contained in the operative NZCPS 2010.

4. What are the 'key' objectives and policies relevant to this application. Does the proposal meet the key objectives and is it consistent with the key policies, and if not, why not.
- There was not enough time to consider whether the proposal met the key objectives, or if the proposal was not consistent with the key policies, and reasons why.

NZCPS Key objectives and Policies

- Objective 1: Coastal environment and ecosystems;
Key: Yes – All Agree
- Objective 4: Public access and recreation;
Key: Yes – All Agree
- Objective 6: Social, economic and cultural wellbeing;

Key: Yes – All Agree

- Policy 1: Extent and characteristics of the coastal environment;
Key: Yes – All Agree
- Policy 3: Precautionary approach;
Key: Yes – All Agree
- Policy 6: Activities in the coastal environment;
Key: Yes – All Agree
- Policy 11: Indigenous biological diversity (biodiversity);
Key: Yes – All Agree
- Policy 18: Public open space;
Key: Yes – All Agree

RPS Key objectives and Policies

- Objective 3.4: Indigenous ecosystems and biodiversity
Key: Yes – All Agree
- Objective 3.15: Active management
Key: Yes – All Agree

- 4.4.1 Policy – Maintaining and protecting significant ecological areas and habitats
Key: Yes – All Agree
- 4.7.1 Policy – Promote active management
Key: Yes – All Agree
- 4.8.1 Policy – Demonstrate the need to occupy space in the common marine and coastal area
Key: Yes – All Agree

RCP Key objectives and Policies

Objectives – All Agree

- 9.2.3 - The protection of significant habitats of indigenous fauna within Northland's coastal marine area.
- 10.3.1 – The maintenance and enhancement of public access to and along Northland's coastal marine area except where restriction on that access is necessary.
- 16.3 - Provision for recreational uses of the coastal marine area while avoiding, remedying, and mitigating the adverse effects of recreational activities on other users and the environment.
- 17.3 The provision for appropriate structures within the coastal marine area while avoiding, remedying or mitigating the adverse effects of such structures.
- 25.3.1. The protection of the important conservation values identified within Marine 1 (Protection) Management Areas including their ecological, cultural, historic, scientific, scenic, landscape and amenity values.
- 25.3.2. Subdivision, use, and development in Marine 1 (Protection) Management Areas occurring without adverse effects on the areas' important values and natural character.

Policies – All Agree

- 9.2.4.1 To identify habitats or habitat areas of indigenous fauna that have moderate, moderate high, high or outstanding value within Northland's coastal marine area and protect these from adverse effects of subdivision, use and development.
- 9.2.4.3 In processing coastal permit applications for subdivision, use and development within all Marine Management Areas, require specific assessment of the actual and potential effects of the proposed subdivision, use or development on any significant habitat in the vicinity and, if significant, particular consideration be given to either:
 - (a) declining consent to the application; or
 - (b) requiring as a condition of the permit, mitigation and/or remedial measures to be instituted.
- 10.4.1 To promote, and where appropriate, facilitate improved public access to and along the coastal marine area where this does not compromise the protection of areas of significant indigenous vegetation, significant habitats of indigenous fauna, Maori cultural values, public health and safety, or security of commercial operations.
- 10.4.2 Where appropriate, to provide for the restriction of public access where this is necessary to protect areas of significant indigenous vegetation, significant habitats of indigenous fauna and sites of Maori cultural value.
- 16.4.1 To adopt a permissive approach toward recreational activities in Marine 1 and Marine 2 Management Areas, except where these:
 - (a) require associated structures; or
 - (b) cause adverse environmental effects, including those resulting from discharges of contaminants, excessive noise, and disturbance to significant indigenous vegetation and significant habitats of indigenous fauna; or
 - (c) obstruct public access to and along the coastal marine area; or
 - (d) endanger public health and safety; or
 - (e) compromise authorised uses and developments of the coastal marine area; or
 - (f) adversely affect the amenity values of the area.
- 16.4.2 In consideration of coastal permit applications, subject to relevant protection policies within this Plan, to provide for new uses and developments within Marine 1,

Marine 2, and Marine 4 Management Areas which maintain or enhance recreational opportunities within the coastal marine area.

- 17.4.3 Within all Marine Management areas, to consider structures generally appropriate where:
 - (a) there is an operational need to locate the structure within the coastal marine area; and
 - (b) there is no practical alternative location outside the coastal marine area; and
 - (c) multiple use is being made of structures to the extent practicable; and
 - (d) any landward development necessary to the proposed purpose of the structure can be accommodated; and
 - (e) any adverse effects are avoided as far as practicable, and where avoidance is not practicable, to mitigate adverse effects to the extent practicable. A structure that does not meet all of the considerations listed above may also be an appropriate development, depending on the merits of the particular proposal.
- 17.4.4 Notwithstanding Policy 3, within Marine 1 and Marine 2 Management Areas, to assess applications for new structures, with particular reference to the nature of and reasons for the proposed structures in the coastal marine area and to any potential effects on the natural character of the coastal marine area, on public access, and on sites or areas of cultural heritage value.
- 25.4.1 The Council and Consent Authorities will give priority to avoiding adverse effects on the important conservation values (as identified in Appendix 9) associated with an area within any Marine 1 (Protection) Management Area when considering the subdivision, use, development and protection of the Northland Region's Coastal Marine Area.
- 25.4.3 When considering any coastal permit application within the Marine 1 (Protection) Management Area, to implement the policies in the New Zealand Coastal Policy Statement and in Part IV (Protection Policy) of the Regional Coastal Plan for Northland which are consistent with the purpose of this Marine Management Area.
- 25.4.4 Subdivision, use and development proposals within the Marine 1 (Protection) Management Area will be considered appropriate where;
 - (a) the proposal gives rise to a demonstrable public benefit; and
 - (b) there are no practical alternative locations available outside the Marine 1 (Protection) Management Area; and
 - (c) the level of adverse effects on the important conservation values identified as occurring within that particular area are no more than minor.

PRP - Key objectives and Policies

Objectives – All Agree

F.1.3 Indigenous ecosystems and biodiversity

Key: Yes

F.1.7 Use and development in the coastal marine area

Key: Yes

Policies

D.2.1 Rules for managing natural and physical resources


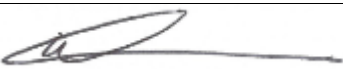
Key: Yes – All Agree*(see attached note)

D.2.16 Managing adverse effects on indigenous biodiversity

Key: Yes – All Agree

D.2.18 Precautionary approach to managing effects on significant indigenous biodiversity

Key: Yes – All Agree

Party	Person Signing	Email Confirmation	Signature
Director General of Conservation	Linda Kirk	18.09.2020 @ 3.38	
Northland Regional Council	Katie McGuire	18.09.2020 @ 11:30AM	
Mangawhai Historic Wharf Trust	Vishal Chandra	18.09.2020 @ 11:54AM	

Environment Court Practice Note: Section 7.3 (d).

Change of opinion in relation to Policy D.2.1 outside of the Joint Witness Statement:

- * VC does not agree that Policy D.2.1 of the RCP is principally relevant, in his full reading of the policy text (having relied on the title of the policy being read to him, during the conferencing session), with particular reference to the directive to "include rules to manage...", as this relates to plan development and/or plan changes.

His reason to support this is having relied on the title of the policy text being read out (towards the end of the session when he encountered connection issues) he was unable to view the full online documents, and that he disclosed this shortcoming of access at the time of the conferencing session.

KM in her subsequent review of the JWS that all planners were working on, agreed that Policy D.2.1 of the RCP is not principally relevant.