

Mangrove management

Recommendations in response to submissions on the Proposed Regional Plan for Northland - Section 42A hearing report

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Purpose and format of the report

1. This report was prepared pursuant to Section 42A of the Resource Management Act 1991 (RMA). This report provides the hearing panel the rationale for the recommended changes to the aquaculture provisions in the Proposed Regional Plan for Northland (the Plan) in response to submissions. The recommended changes are set out in the document *Proposed Regional Plan for Northland – S42A recommended changes*.
2. The recommendations made in this report are mine and are not binding on the hearing panel. It should not be assumed that the hearing panel will reach the same conclusions.
3. In addition, my recommendations may change as a result of presentations and evidence provided to the hearing panel. It's expected the hearing panel will ask authors to report any changes to their recommendations at the end of the hearing.
4. My recommendations focus on changes to the Proposed Plan provisions. If there is no recommendation, then assume the recommendation is to retain the wording as notified.
5. Generally, the specific recommended changes to the provisions are *not* set out word-for-word in this report. The specific changes (including scope for changes) are shown in the document *Proposed Regional Plan for Northland – S42A recommended changes*.
6. This report is structured with a focus on the key matters for the mangrove provisions raised in submissions. The key matters are:
 - Permitted mangrove removal rules
 - Rule C.1.4.3 Mangrove removal – controlled activity
 - Rule C.1.4.4 Mangrove removal in the Whangārei City Centre Marine Zone – restricted discretionary activity
 - Non-complying vs discretionary for mangrove removal in significant natural areas
 - The activity status and notification requirements for the mangrove rules
 - Mangrove specific provisions for Mangawhai Harbour
 - The mangrove policies
7. Further submitters are generally not referred to as they are in support or opposition of original submissions (they cannot go beyond the scope of the original submissions). The exception is where a further submission raises reasons that have not been raised in the submissions and are material to the analyses.

8. The approach of addressing matters raised in submissions (rather than addressing submissions and/or and submission points individually) is consistent with Clause 10 of Schedule 1 to the RMA.
9. This report should be read in conjunction with section 8.11 - *Mangroves* in the Section 32 report.

Report author

10. My name is James Griffin and I have overall responsibility for this report. I work as a Policy Analyst for Northland Regional Council (regional council). For further details about my qualifications and experience, refer to the s42 report: General approach.
11. The following council staff and consultants have assisted me with the preparation of this report:
 - Paul Maxwell (Coastal & Works Consents Manager)
 - Ricky Eyre (Coastal Monitoring Manager)
 - Katrina Hansen (Biodiversity Advisor)
12. Although this is a council hearing, I have read the Code of Conduct for Expert Witnesses contained in the Practice Note issued by the Environment Court December 2014. I have complied with that Code when preparing this report and I agree to comply with it when giving oral presentations.

About the mangrove provisions

13. The relevant provisions in the Proposed Regional Plan for mangroves addressed in this report are:

Rules

- C.1.4.1 Mangrove seedling removal – permitted activity
- C.1.4.2 Minor mangrove removal – permitted activity
- C.1.4.3 Mangrove removal – controlled activity
- C.1.4.4 Mangrove removal in the Whangārei city centre marine zone – restricted discretionary activity
- C.1.4.5 Mangrove removal – discretionary activity
- C.1.8 Coastal works general conditions
 - Mangrove removal and pruning conditions 14-21

Policies

- D.5.22 Mangrove removal – purpose
- D.5.23 Mangrove removal – outcome
- D.5.24 Mangrove removal – adverse effects

Permitted mangrove removal rules

Background

14. The Proposed Plan includes two rules permitting mangrove removal. Rule C.1.4.1 allows removal of mangrove seedlings beyond existing stands of mangroves. Rule C.1.4.2 permits mangrove removal around structures and in artificial water courses. These rules are also subject to C.1.8 Coastal works general conditions, which includes mangrove removal specific conditions 14 to 21.

Submissions and analysis

15. There were a wide range of views ranging from that there should be no permitted (or controlled) activity rules for mangrove removal (e.g. Bream Bay Coastal Care Trust) through the view that mangrove removal should be permitted in all areas (Land Owners Coalition Inc).

C.1.4.1 Mangrove seedling removal – permitted activity

16. Suggested changes to rule C.1.4.1 *Mangrove seedling removal – permitted activity* (other than deleting the rule) focussed on:
 - the allowable height of the seedlings (any height vs 40cm)
 - removing requirement for the seedling to be unbranched
 - the types of machinery allowed to be used (none vs any)
 - whether seedlings can be removed within existing mangroves or outside existing areas only
 - where the rule applied (anywhere vs predetermined locations outside high value areas)
 - the restrictions to avoid disturbances to birds during breeding, roosting and nesting periods (amending the dates and allowing hand-pulling only during the restricted period)

17. I am still of the view that the 60cm limit should be maintained. Federated Farmers suggested that the 60cm restriction should be removed because “...*one year’s missed removal cannot be caught up the following year*”. I’m not sure what they mean by this – presumably that mangroves can grow more than 60cm over a year – but in the absence of any detail I am unable to assess the proposal. Conversely, Royal Forest and Bird Protection Society proposed the 40cm limit, but they also did not provide any rationale so I am unable to assess the merits of the proposal.
18. While recommending maintaining the 60cm height limit, I do recommend deleting “unbranched” as proposed by A & R La Bonte’ and Mangawhai Harbour Restoration Society Inc. I accept that there is no resource management purpose for it, and I also think it will make the rule easier to apply.
19. I am not convinced by arguments to amend the rule to make it more lenient or stricter in relation to the use of machinery. I believe the conditions (including the general conditions in C.1.8) will adequately manage the effects of the use of machinery to transport people, equipment and removed seedlings. Submitters did not provide any reasons for not allowing motorised hand-held machinery (NZ Fairy Tern Charitable Trust). D Lourie suggested limiting it to electric powered hand-held tools on the basis that petrol-powered chainsaws and brushcutters are a lot noisier and can disturb wildlife. I’m of the opinion that the impact of the noise from petrol powered tools is adequately mitigated by condition 4 which only allows removal outside of the primary breeding, roosting and nesting periods.
20. Rule C.1.4.1 limits seedling removal to outside existing mangrove areas by not allowing removal amongst pneumatophores (aerial roots) of more mature mangroves. This is a similar approach to that taken in the Bay of Plenty, Regional Coastal Environment Plan, where seedling removal is not permitted within 5m of ‘established mangroves’. However, I believe it provides greater clarity to refer to the aerial root zone, than to rely on a newly defined term (established mangroves) that could be open for interpretation. I am of the view that the proposed restriction is appropriate because it allows for recruitment of juvenile mangroves in areas with established trees and avoids damage to mature mangroves roots, in particular in areas where the trees may contribute to significant ecological values or outstanding natural character.
21. Royal Forest and Bird Protection Society NZ and the Minister of Conservation suggested that seedling removal be limited to particular purposes (e.g. for public access and recreation) and are limited or not allowed in significant ecological areas and other areas with outstanding values. The only reason offered was that “*seedling removal on a wide*

scale will not maintain indigenous biodiversity and is not justified¹.” I am not convinced by this argument and am satisfied that the rule, particularly with the seasonal restrictions and not allowing seedlings to be removed within existing stands of mangroves and avoiding disturbance of birds, will maintain indigenous biodiversity.

22. Mangawhai Harbour Restoration Society and A & R La Bonte’ suggested that condition 3 be amended as follows:

“~~The removal~~ Removal using motorised tools is not undertaken between 1 August and 31 March 1 September and 28 February (inclusive) to avoid disturbance of birds during breeding, roosting and nesting periods, and”

23. On the hand, the Royal Forest and Bird Protection Society NZ request an amendment to C.1.8 General conditions applying to C.1.4.1 and C.1.4.2, so that there is no disturbance of indigenous or migratory birds between 1 August and 31 March (inclusive).
24. Mangawhai Harbour Restoration Society and A & R La Bonte’ suggest that the primary bird breeding and nesting season, is 1 September – 28 February (and for the most part, occurs in October – January) and not 1 August to 31 March. They provided no evidence as to why they believe this is the case other than sighting rule C.1.5.4(2) which has a condition limiting the activity, because of potential impacts on birds, between September and February.
25. Rule C.1.5.4 is for the removal of nuisance marine debris (permitted activity). My understanding is that the recommendation is to change the date in condition 2 to 1 August– 31 March.
26. Having received advice from council Biodiversity Adviser Katrina Hansen, my view is that the 1 August to 31 March period is still the most appropriate timeframe.
27. Mangawhai Harbour Restoration Society and A & R La Bonte’ argue that hand pulling during the primary breeding and nesting season is acceptable. They argue that hand-pulling does not cause disturbance to bird breeding or nesting (which does not occur in mangrove areas) and that there are “*other unrestricted activities within the Harbour during*

¹ Royal Forest and Bird Protection Society of NZ

this period that have much greater potential for birdlife disturbance (e.g. use of jet-skis and other motorised pleasure craft / vessels)."

28. I accept Mangawhai Harbour Restoration Society and A & R La Bonte's arguments and therefore recommend allowing hand pulling year-round.
29. New Zealand Transport Agency generally supported this rule however requested a minor amendment to change the focus to when the activity is permitted (rather than not permitted), which I agree with.:
- 4) the removal is undertaken ~~not~~ between 1 April and 31 July ~~1 August and 31 March~~ (inclusive) to avoid disturbance of birds during breeding, roosting and nesting periods, and*

Rule C.1.4.2 Minor mangrove removal – permitted activity

30. There were a wide range of submissions on rule C.1.4.2 *Minor mangrove removal – permitted activity*, ranging from:
- retain it as-is,
 - change to controlled or discretionary activity,
 - further limiting instances when mangrove removal is allowed,
 - adding more structures, and
 - expanding the allowable extent of mangrove removal.
31. Other than those wanting to amend the rule to controlled or discretionary, the submission from Royal Forest and Bird Protection Society NZ sought the most extensive changes to the rule. They wanted the rule limited to mangrove seedling and to a maximum extent of two metres either side of the stated structure or watercourse. They have concerns that allowing mangrove removal as the rule proposes may result in effects beyond those allowable by Policy 11 of the New Zealand Coastal Policy Statement (NZCPS). They also suggest a five metre extent for mangrove removal cannot be justified and two metres is sufficient to provide access.
32. CEP Services Matauwhi Ltd was of the view that the mangrove removal should be limited to the footprint of the activity.
33. Firstly, I do not think it is appropriate to limit mangrove removal under this rule to seedlings only. The structures and artificial watercourses have already been determined

to be an appropriate activity. It is therefore appropriate, in my view, to allow for mangrove removal (including mature mangroves) that hinder the reasonable use and/or functioning of the structure or artificial water course.

34. Secondly, I do not accept that there is an undue risk that the rule may allow mangrove removal in conflict with Policy 11 of the NZCPS. As these activities are:
- associated with authorised activities in areas, that by definition, are to some extent modified at their activity scale, and it's unlikely the values for which the mangroves may have been identified as being significant for, would be in the mangroves next to the existing activities.
 - the rule limits mangrove clearance to an extent that is "*necessary for the continuation of authorised activities*" and then further limited to areas within relatively tight perimeters around structures.
 - the remaining artificial watercourse and river activities clearance must not exceed a total area 200m², which at the estuary scale, represents a very small proportion of mangrove habitat and in my view, adverse effects, are likely to be avoided.
35. Thirdly, the five metre extent is to provide for access and use of the structure. So, for example, two metres would not be enough space for a vessel to berth at a jetty or wharf. Also in some instances mangrove removal would require the use of heavy machinery (e.g. a digger) and two metres would not be wide enough to provide access.
36. Several submitters sought to increase the extent of the area for allowable mangrove removal. Far North Holdings Limited requested an increase from five metres to 10 metres around boat ramps and jetties. Mangawhai Harbour Restoration Society and A & R La Bonte' sought an increase for 'all other structures and farm fencing' from one metre to five metres. No reasons were given by any of these submitters.
37. I agree with GBC Winstone and Fonterra that the stormwater outlets should be expanded to include all pipe outlets.
38. Top Energy sought the rule be amended to provide for the clearance of up to 200m² of mangroves to enable the maintenance and operation of existing electricity transmission structures, lines and cables as a permitted activity to reflect the approach taken in the Auckland Unitary Plan. I agree and recommend its addition to the rule.

C.1.8 Coastal works general conditions 14 to 21 - Mangrove removal and pruning

39. Suggested changes to the mangrove removal and pruning general conditions that have not been addressed above, are:
- Re-locating the text from these conditions into Rule C.1.4.1 and C.1.4.2 (CEP Services Matauwhi Limited).
 - Amending text to refer to banded rail (CEP Services Matauwhi Limited)
 - Limiting powered cutting equipment to, battery powered (Lourie D).
 - Deleting the requirement to remove cut mangrove vegetation from the CMA (Morrison G & P).
 - Amending condition 20 limit disturbance to 'commercially viable' shellfish beds (LaBonte' A & R).
 - Amending condition 20 so that it reads '*Access to removal and pruning areas must use existing open areas or paths and, ~~where practicable~~, avoid disturbance of shellfish beds, soft sand and mud.*' (Royal Forest and Bird Protection Society NZ).
40. I do not support any of these requested changes, for the following reasons:
- I am of the view that by placing the mangrove removal general conditions with the other general conditions, it re-enforces the need to comply with the other general conditions and avoids duplicating the conditions for the permitted activity rules. Therefore, I do not support re-locating these conditions.
 - I do not support referring to banded rail, as there are numerous other bird species that should be considered and I do not believe it is necessary to list individual species.
 - I believe it is too restrictive to limit cutting equipment to battery powered tools, when the timeframes have been confined to outside the most sensitive periods for birds.
 - Regarding the removal from the CMA of waste vegetation from mangrove removal, I believe that without this limitation, potential adverse effects on natural character and public amenity will not be adequately mitigated.
 - I believe that limiting avoidance of adverse effects on shellfish beds to those that are 'commercially viable' does not adequately give effect to NZCPS policy 11 requirement to avoid adverse effects.
 - The suggested deletion of 'where practicable' would require disturbance of shellfish beds, soft sand and mud to be avoided, and I do not believe this is

reasonable or achievable in most cases. In addition, general condition 8 requires ‘no damage to shellfish beds and no disturbance or damage to saltmarsh or seagrass meadows in mapped Significant Ecological Areas’, is intended to avoid adverse effects on significant values.

Recommendation

41. I recommend the following changes to C.1.4.1 *Mangrove seedling removal – permitted activity*:
- Minor wording changes to improve readability
 - Removal of requirement for seedlings to be unbranched
42. I recommend the following changes to C.1.4.2 *Minor mangrove removal – permitted activity*:
- Minor wording changes to improve readability
 - Limiting mangrove clearance to a maximum of 200m² where clearance is not restricted to thin strips associated with authorised activities
 - Change “Stormwater outlets” to “Authorised pipe outlets”
 - Addition of transmission structures, lines and cables.

Evaluation of recommended changes

43. Section 32AA, RMA requires an evaluation of proposed changes to the Plan. The changes, while potentially more than minor in effect, are considered to be within the scope of the preferred management option as set out in Section 8.11 of the Section 32 report and therefore do not require further evaluation.

Rule C.1.4.3 Mangrove removal – controlled activity

Submissions and analysis

44. Submissions on this rule included:
- Change the activity status to discretionary or restricted discretionary
 - Not apply to ‘special’ areas e.g. significant ecological areas
 - Amend the rule so that all mangroves above areas of pipi and cockle beds can be removed.

- Expand rule to cover other circumstances (e.g. access along coastal areas where public use as been compromised by spread of mangroves).
- Add 'effects on tangata whenua and their taonga' to the matters of control

45. I am of the view that there should be a controlled activity, that sits between the permitted and the restricted discretionary and discretionary rules to cover the 'in between' scale of mangrove removal.

46. Regarding mangrove removal in significant natural areas, I accept that the rule needs to be amended to meet the requirements of the NZCPS 'avoid adverse effects' policies. As the rule is written, there is no distinction between removal in and outside of significant natural areas. In "Avoiding adverse effects" in the S42A report *Significant natural and historic heritage*, the conclusion of the discussion is that activities in a significant natural area may be permitted or controlled activities if the adverse effects are temporary, very minor or existed at the time the area was identified for its significant values. I am not confident that the types of mangrove removal anticipated would be neither temporary or very minor. However, if the removal in significant natural areas were to be limited 200 square metres, given the extent of mangroves within significant natural areas and applications for such mangrove removal are relatively uncommon (therefore very minor risk of cumulative effects), my view is the effects would meet the test of 'very minor'.

47. The submitters² seeking the rule be amended to included mangrove removal above areas of pipi and cockle beds have provided very little information about the need and merits of the proposal, therefore I am unable to assess the request.

48. I cannot support the proposed additional circumstances to be added to the rule on the basis that the submitters³ do not provide reasons and as proposed, I do not believe the potential extent of mangrove removal in the proposed additional circumstances would meet the threshold of 'very minor effect' on significant natural areas.

49. Tautari R and Patuharakeke Te Iwi Trust Board Inc argue that because Policy D.5.24 recognises that mangrove removal can have adverse effects on tangata whenua cultural values, this should be reflected in the matters of control for rule C.1.4.3. I agree.

² Kurmann A, Ko Te Hua Marae and Parapara Marae.

³ Mangawhai Harbour Restoration Society and A & R La Bonte'

Recommendation

50. I recommend the following changes to C.1.4.3 *Mangrove removal – controlled activity*:
- Minor wording changes
 - Limiting mangrove removal in significant ecological areas and areas of outstanding natural character to 200 square metres and outside these areas to 500 square metres.

Evaluation of recommended changes

51. Section 32AA, RMA requires an evaluation of proposed changes to the Plan. The changes, while potentially more than minor in effect, are considered to be within the scope of the preferred management option as set out in Section 8.11 of the Section 32 report and therefore do not require further evaluation.

Rule C.1.4.4 Mangrove removal in the Whangārei City Centre Marine Zone – restricted discretionary activity

Submissions and analysis

52. There were relatively fewer submissions on this rule compared to the other mangrove rules. The changes sought focussed on minor amendments rather than wholesale changes.
53. Royal Forest and Bird Protection Society NZ sought no changes provided the Whangārei City Centre Marine Zone does not overlap with a significant area – I can confirm that this is the case.
54. GBC Winstone suggested that the rule be expanded to the Coastal Commercial Zone. The rule reflects the purpose of the Whangārei Harbour Centre Marine Zone, which is to recognise the amenity values of the zone, and that mangrove removal is more likely to be appropriate in this zone relative to other areas. The same principle applies to the Coastal Commercial Zone (though the purpose of the zone is different). The only place where a Coastal Commercial Zone is within a significant ecological area is at Unahi in the Rangaunu Harbour. The Unahi Coastal Commercial Zone is small (less than 0.7 hectares), the significant ecological area is large (the whole harbour), and according to

aerial photography there are very few mangroves in the zone. Accordingly, I agree with GBC Winstones request.

55. Heritage New Zealand proposed adding “*effects on historic heritage that has not yet been assessed for significance*” as a matter of discretion. I agree, as I accept there is a risk of adverse effects on historic heritage, however I think the wording should be more generic and just be “*effects on historic heritage*”.
56. I address the submission from A & R La Bonte’ seeking additions to the rule relating to Mangawhai Harbour in the Mangawhai Harbour specific section below.
57. R Tautari and Patuharakeke To Iwi Trust Board Inc sought deletion of the matter of control “*Effects on indigenous biodiversity where it affects the ability of tangata whenua to carry out cultural and traditional activities*” and replace with the broader phrase “*effects on tangata whenua and their taonga*” on the basis that the interpretation is too narrow. I’m unclear what they mean by the interpretation being too narrow and why the need to broaden it and therefore am unable to assess the request.

Non-complying vs discretionary for mangrove removal in significant natural areas

Background

58. The Proposed Plan includes a catch-all discretionary rule for mangrove removal that is not otherwise a permitted, controlled or restricted discretionary activity – rule C.1.4.5
Mangrove removal – discretionary activity.
59. Notably there is no non-complying rule.
60. Mangrove removal could result in adverse effects on significant ecological areas and areas of outstanding natural character – and the New Zealand Coastal Policy Statement and the Regional Policy Statement require that adverse effects on these areas must be avoided⁴.

⁴ Policies 11 and 13 of the New Zealand Coastal Policy Statement and 4.4.1 and 4.6.1 of the Regional Policy Statement

Submissions and analysis

61. There were some submitters (in particular, Royal Forest and Bird Protection Society NZ) who wanted mangrove removal in significant ecological area and other significant areas to be a non-complying activity. Royal Forest and Bird Protection Society NZ went as far as saying that there should be a prohibited activity rule for some ecological areas where they are identified as significant because of the mangrove values – “*removal of mangroves from such areas is akin to felling native trees within protected sites*”. In a similar vein, T Upperton was of the view that the discretionary activity mangrove removal rule (C.1.4.5) should be changed to prohibited.
62. I’ll address the proposal for the prohibited activity rule first. I disagree - mainly because it is plausible that mangroves could be removed from a significant ecological area where they are identified as significant because of the mangroves value, and not have an adverse effect on the values. For example, the values may be because of the of large size of the area of mangroves or that it they are part of an ecological sequence connecting with saltmarsh. It is plausible that the pruning or even removal of some mangroves on the fringe of the channel which are inhibiting navigation could be done without having a tangible effect on the significant ecological values of the mangroves.
63. In the section “Avoiding adverse effects” in the S42A report *Significant natural and historic heritage*, the distinction between the use of discretionary and non-complying for managing activities that may have adverse effects on significant natural areas is as follows:
- Discretionary activity - where we are less certain that adverse effects will not occur (on the continuum of risk) however the scope and scale of the activity are reasonably constrained, and therefore the potential for adverse effects on significant natural areas is less likely.
 - Non-complying activity - used where the scale and scope of activities is undefined and therefore the likelihood of adverse effects on significant natural areas is more likely (than activities covered by lesser activity status rules).
64. Rule C.1.4.5 *Mangrove removal – discretionary activity* is a generic rule – it covers all mangrove removal regardless of scale, location etc. In my opinion, mangrove removal in relevant significant natural areas would not meet the test of the scope and scale of the activity being reasonably constrained.

Recommendation

65. My recommendation is that a new rule is added making mangrove removal in significant ecological areas and in areas of outstanding natural character a non-complying activity, where the removal is not otherwise a permitted, controlled or restricted discretionary activity.

Evaluation of recommended changes

66. Section 32AA, RMA requires an evaluation of proposed changes to the Plan. The proposed change is required for the mangrove rules to give effect to the New Zealand Coastal Policy Statement and the Regional Policy Statement.

Mangrove specific provisions for Mangawhai Harbour

Submissions and analysis

67. Mangawhai Harbour Restoration Society seek the addition of a “Mangawhai Harbour Mangrove Management Area”, a policy for mangrove removal within the management area, and two rules:
- a controlled activity, in areas where a resource consent for mangrove removal has previously been or is currently granted; and
 - a restricted discretionary activity, in areas where a resource consent for mangrove removal has not previously been granted
68. Mangawhai Harbour Restoration Society’s submission includes extensive reasons for their proposed package of provisions, starting on page 9 of the PDF of their submission under, *C.1.4 Mangrove removal*. In summary, their arguments for their proposal are:
- Mangawhai Harbour is geologically unique in Northland, being a sand (not silt/clay mud) dominated coastal estuarine system.
 - There has been extensive scientific research and monitoring relating to the effects of mangrove removal at Mangawhai.
 - Mangrove proliferation at Mangawhai is a recent and human-induced event.
 - Mangroves are encroaching on high-value indigenous environments – including salt marsh, rush marsh and tidal flats.
 - Mangrove expansion in Mangawhai has caused various adverse effects including accelerating the infilling of the estuary, restricting usability of the coastal marine

area, decreasing space for recreational and education activity, and limiting walking and vessel access.

69. A & R La Bonte' proposed various amendments to the mangrove rules, generally seeking a relaxing of the rules for the Mangawhai Harbour.
70. There were some further submitters that opposed the proposed Mangawhai Harbour mangrove provisions. Royal Forest and Bird Protection Society of New Zealand opposed them on the blanket basis that they do not give effect to the NZCPS, but provide no detail to substantiate the claim. The New Zealand Fairy Tern Charitable Trust provide a range of responses to counter the arguments by Mangawhai Harbour Restoration Society.
71. I'll start with the proposed controlled activity for mangrove removal in areas where a resource consent for mangrove removal has previously been or is currently granted. In principle, I am comfortable with a controlled activity status for a new consent to remove mangroves to replace the resource consent issued by the Environment Court in 2013⁵. The application was well tested and there does not appear to be anything in the Court's decision that would conflict with current policy and case law (including *King Salmon*⁶). However, I am not clear on what the utility of such a rule would be as the resource consent does not expire until 2048 – 30 years away and well beyond the lifetime of the current plan.
72. I understand that there have been several consents granted for relatively small areas of mangrove removal in Mangawhai Harbour, and that has been at least one of these was done for research purposes⁷. I do not think it would be appropriate to have a controlled activity status applying to renewing resource consents where the purpose was for research. A controlled activity status assumes that long term mangrove removal would be appropriate – and that cannot be concluded in that situation. Should the Hearing Panel want to include a controlled activity status for previously approved mangrove removal (other than that approved by the Environment Court) then an assessment should be made

⁵ The interim decision was issued in 2012 which included the substantive assessment of the proposal - Mangawhai Harbour Restoration Society Inc v Northland Regional Council, 2012 NZEnvC 232. The final decision was the granting of resource consent - Mangawhai Harbour Restoration Society Inc v Northland Regional Council, 2013 NZEnvC 284

⁶ Environmental Defence Society Inc v New Zealand King Salmon Company Limited, 2014 NZSC 38.

⁷ Gracefields and Company Ltd, August 2003.

of each instance to ensure that the resource consent anticipated long term removal and that the decision is consistent with current policy and case law.

73. Unless convinced of the utility of a controlled activity rule, then I recommend not including it in the Proposed Plan.

74. I'll now address the proposed restricted discretionary rule for mangrove removal in Mangawhai Harbour, in areas where a resource consent for mangrove removal has not previously been granted. Mangawhai Harbour Restoration Society's suggest the matters of discretion should be limited to;

- Effects on navigation and safety
- Effects on landscape and visual amenity values
- Method and timing of activities
- Effects on birdlife – where removal is seaward of the causeway
- Effects on natural systems and indigenous biodiversity – where the removal is landward of the causeway.

75. The difference either side of the causeway is that the Mangawhai Harbour Restoration Society are of the view that the effects on natural systems and indigenous biodiversity was tested through the Environment Court and it found that it was only effects on birds that were of concern (in terms of effects on natural systems and indigenous biodiversity).

76. The proposed matters of discretion, I understand, are based on the matters the Environment Court considered. I agree that if a restricted discretionary activity rule were to be introduced, then a good guide for the relevant matters of discretion would be the Environment Courts decisions. However, my review of the matters the Court considered in the interim decision and the subsequent resource consent conditions, is that effects on the following are also relevant:

- Water clarity and turbidity
- Harbour flushing
- Impacts on fish species
- Wetlands, salt marsh and shellfish beds
- Natural character
- Public access
- Risk of contaminants being discharged (e.g. fuel)
- Noise

- Sediment resuspension

77. If a restricted discretionary rule were to be included, it is my view that these matters would also need to be included as matters of discretion in addition to those proposed.

78. There were also effects that were referred to in the Environment Court's interim decision, but there was no specific conclusion about the effects (the Courts conclusions were provided in more general terms and it was not clear to what extent the effects influenced these conclusions). While one could assume these effects were not in themselves substantive they were nonetheless relevant effects. These effects included:

- Erosion caused by removing the mangroves
- Mangroves hosting threatened plant species (a threatened lichen was referred to)

79. On that basis, the list of the matters of discretion could therefore read (or words to the effect of):

- Effects on navigation and safety
- Effects on landscape and visual amenity values
- Method and timing of activities
- Effects on natural systems and indigenous biodiversity (covers birds, fish, wetlands, saltmarsh and shellfish beds)
- Water clarity and turbidity
- Harbour flushing (hydrology)
- Impacts on fish species
- Natural character
- Public access
- Risk of contaminants being discharged (e.g. fuel)
- Noise
- Sediment resuspension
- Erosion caused by removing the mangroves
- Mangroves hosting threatened plant species (a threatened lichen was referred to)
- The benefits of removing the mangroves⁸

⁸ This needs to be included to allow the benefits to be assessed and factored in decision making –

80. It is a long list. While there is no limitation on having a restricted discretionary rule with a long list of matters of discretion, I do not see the utility of it. The benefit of a restricted discretionary activity is in the name – the matters of discretion are restricted. I cannot think of any effects (of substance) that are not included in the list. For that reason, I do not recommend the inclusion of a restricted discretionary activity.
81. The last part of the proposal was the addition of two policies specific to Mangawhai Harbour to supersede the other mangrove policies in the Proposed Plan:

Policy 1: Recognise that the benefits of mangrove removal at Mangawhai include:

- 1) Preventing the loss of salt marsh and rush marsh, and restoration of tidal flats and other valuable estuarine environments;*
- 2) Restoring and maintaining long-term sustainable coastal processes and functions, including the tidal prism;*
- 3) Reducing sediment deposition within the coastal marine area that facilitates ongoing mangrove colonisation and spread;*
- 4) Maintaining and increasing foraging and roosting habitat available for bird life, including threatened and at-risk species;*
- 5) Enabling or re-establishing public access to and within the coastal marine area, and improving access to, and use of, the coastal marine area by educational facilities (e.g. schools);*
- 6) Enabling Harbour areas recently colonised by mangroves due to anthropogenic influences to be rehabilitated and restored back to their historical natural state; and*
- 7) Maintaining and preserving the natural character of the coastal environment.*

Mangrove removal will change the current state of the environment, but where the proposed removal seeks to restore an area historically free from mangroves (including reversing the effects of anthropogenic influences in recent decades), the change is unlikely to diminish the natural character of that area and would instead restore and enhance the historical natural character of the area.

Policy 2: Provide for mangrove removal (particularly where mangroves have colonised areas of the Harbour that historically have been free from mangroves) where the proposed removal is to maintain, restore, rehabilitate or enhance any of the following:

- 1) biodiversity and ecological values, including significant wading bird feeding or roosting areas, that existed prior to the spread of the mangroves;*
- 2) the natural state of coastal environments, where the environment has historically been*

- free (or largely free) from mangroves;*
- 3) public access to, along or within the coastal marine area;*
 - 4) connections with reserves or publicly owned land and the coast;*
 - 5) public use (including recreation) and amenity values;*
 - 6) water access for vessels and navigation;*
 - 7) public health and safety, including sightlines and traffic safety;*
 - 8) scheduled historic heritage places or natural features;*
 - 9) ongoing authorised activities and infrastructure;*
 - 10) maintenance of drainage channels, control of flooding or erosion caused by mangroves;*
 - 11) indigenous environments and habitats that have been displaced or colonised by mangroves, including rush marsh, salt marsh and intertidal flats (including preventing future mangrove expansion into these habitats from contiguous or nearby locations);*
 - 12) pre-anthropogenic natural environments; or*
 - 13) natural harbour, estuary and coastal environment processes (including tidal flows).*

Require mangrove removal operations to meet all of the following:

- 1) minimise the disturbance of the foreshore and seabed and to shorebird breeding and feeding, including migratory species;*
- 2) provide for the long-term maintenance of cleared areas; and*
- 3) take an adaptive management approach for mangrove removal and disposal where a significant area of removal is proposed and there is uncertainty over the extent of adverse effects.*

(From Schedule 4 of the Mangawhai Harbour Restoration Society's submission, page 63 of the PDF).

82. The proposed policy (Policy 1) recognising the benefits, assumes that everything listed is a benefit. I accept that these may be benefits (except for the restoration of natural character – addressed in next paragraph), but I do not accept that they can be assumed to be benefits from *any* mangrove removal in the harbour, in particular on the landward side of the causeway (the area not subjected to the scrutiny of the Environment Court's assessment.) Whether the listed benefits are likely could only be determined at the scale of a resource consent application.

83. I have a particular concern with the conclusion of the proposed policy that mangrove removal will “...*unlikely diminish the natural character of the area and would instead restore and enhance the natural character of the area*”. While it is a possibility, I do not think it likely in most instances.
84. If such a policy were to be included, it would need to be couched in terms of a list of one or more benefits that may arise, and that it focusses on the more likely positive effects (not an exhaustive list). However, while the Mangawhai Harbour Restoration Society has provided a lot of information explaining the history and situation in Mangawhai Harbour in relation to mangroves, it has not provided any planning reason for why such a policy should be included in the Proposed Plan. I therefore recommend that such a policy is not included.
85. The second proposed policy is very similar to D.5.22, but instead of the emphasis that mangrove removal may be appropriate, it is that mangrove removal will be provided for, if one or more of the listed benefits apply. Again, the Mangawhai Harbour Restoration Society provides no planning rationale for the policy. An immediate problem with the policy is that it does not account for the requirement of policies 11, 13 and 15 of the NZCPS to avoid adverse effects on prescribed significant/outstanding matters.
86. Lastly, I do not agree with the request that the other mangrove policies in the Proposed Plan should not apply to Mangawhai. Mangawhai Harbour Restoration Society offer no resource management reason why mangrove removal should not (for example) be subject to policy D.5.24 which requires recognition of a range of potential adverse effects from mangrove removal.

Recommendation

87. I recommend no changes.

The mangrove policies

88. This section deals with the submissions on the mangrove policies (D.5.22 – D.5.24)

Submissions and analysis

89. There were generally fewer individuals submitting on mangrove policies than the rules, otherwise the parties submitting were generally the same as on the rules.

90. Various requests were made to amend the mangrove policies and each policy had seven or eight submitters in support of retaining the policies as notified. This included the region’s district councils, Auckland Council and Federated Farmers providing support for all three policies as notified.
91. The submissions from Mangawhai Harbour Restoration Society for the inclusion of new mangrove policies is addressed in the previous section – *Mangrove specific provisions for Mangawhai*.

Policy D.5.22 Mangrove removal – purpose

92. The purpose of the policy is to set out the circumstances when resource consent may be granted for mangrove removal. There were several submitters suggesting additional circumstances, which I have addressed in the following table:

<i>Proposed additional circumstances</i>	<i>Response</i>
The continued operation of regionally significant industry and quarries (GBC Winstone).	“Infrastructure” is already included, which includes regionally significant infrastructure. Not clear how mangroves would affect the operation of quarries.
Displaced historic habitats where the CMA was generally free of mangroves (A & R La Bonte’).	Already captured under the umbrella of “biodiversity and ecological values”
Natural harbour, estuary and coastal environment processes (including tidal flows) (Mangawhai Harbour Restoration Society).	Too broad. Natural processes could cover anything ‘natural’. Tidal flows already included.
The natural state of coastal environments, where the environment has historically been free (or largely free) from mangroves. (Mangawhai Harbour Restoration Society).	Should be more specific about the values or purpose being maintained, restored etc.
Indigenous environments and habitats that have been displaced or colonised by mangroves, including rush marsh, salt marsh and intertidal flats (including preventing future mangrove expansion into these habitats from contiguous or nearby locations). (Mangawhai Harbour Restoration Society)	Already captured under the umbrella of “biodiversity and ecological values”

93. The Bay of Islands Maritime Park Inc. requested that the policy distinguish between seedlings and other more mature mangroves. It is not clear what the purpose of this would be.
94. CEP Services Matauwhi Limited, B Leonard, Tautari R, Patuharakeke Te Iwi Trust Board Inc and the Royal Forest and Bird Protection Society requested various amendments to

the policy but with no, or not enough, reasoning for me to be able to consider the requests or I do not understand the reasons.

95. King K & F and F Foy seem have confused the policy as a rule and it is not apparent from their comments what changes they might seek to the policy.
96. The Ruakaka Parish Residents and Ratepayers seek the deletion of clause 2) – “*resource consent...must not be granted where it is for the purpose of improving private views*”. They argue that resource consent was granted along the Hatea River to improve public views – demonstrating that views are a legitimate reason. They then suggest that excluding private views could be considered discriminatory and that private individuals should be able to improve their water views where they have been compromised by mangroves.
97. The policy recognises public amenity and the Hatea River loop walk example referred to above, is a good example of that, where consent was granted for strips of mangrove removal to improve visual connection to activities on the river, for people using what is possibly Northland’s busiest walkway.
98. This policy is intended to form part of the balance between enabling people to provide for their social, cultural and economic wellbeing, while providing for beneficial values of mangroves. In my opinion, providing for private aesthetic gain, skews this balance. I should also highlight the breadth of part 1 of this policy, provides considerable scope for people to justify mangrove removal (other than for improving private views).

Policy D.5.23 Mangrove removal – outcome

99. There was a clear divide between the submitters on this policy, with the only requests being to retain the policy or delete it. Those supporting the policy included Far North District Council, Federated Farmers, Patuharakeke Te Iwi Trust Board Inc and Whangarei District Council. Those seeking the policy be deleted included A & R La Bonte’, Mangawhai Harbour Restoration Society and the Royal Forest and Bird Protection Society.
100. Royal Forest and Bird Protection Society’s position seems to be based on a premise that the destruction of significant biodiversity should not be allowed where it is for amenity

proposes because it cannot be justified under the NZCPS. I agree - but I cannot see how it is relevant to this policy.

101. A & R La Bonte' and Mangawhai Harbour Restoration Society argue the policy should be deleted because:
- There is no other policy relating to an “outcome” that requires the applicant to scientifically demonstrate how a desired outcome will be achieved.
 - There is already an evidential burden on the party making a claim (e.g. a resource consent application) to present evidence supporting the claim.
 - The evidential burden to support any factual claims applies to all aspects of a consent application and there is no justification or basis for treating these particular “desired outcomes” differently from any other outcomes
 - It conflicts with the legal position that consent authorities, and the Environment Court, are not bound by the rules of evidence that apply to judicial proceedings.
102. The submitters in support of the policy did not provide any substantive reasons for their support.
103. I agree that the policy should be deleted. I accept the argument that an applicant is already required to present evidence to support predicted outcomes. Furthermore, decision makers can request information of resource consent applicants if they have concerns about evidence provided.

Policy D.5.24 Mangrove removal – adverse effects

104. Again, there were a wide range of views on this policy from submitters – from delete to retain.
105. Those supporting the policy included Far North District Council, Federated Farmers, Patuharakeke Te Iwi Trust Board Inc and Whangarei District Council.
106. CEP Services Matauwhi Limited and the Royal Forest and Bird Protection Society suggested the policy should be amended to give effect to policies 11, 13 and 26 of the NZCPS. However, they do not provide any alternative wording nor any explanation for their suggestion, and so I am unable to consider the request.

107. CEP Services Matauwhi Limited suggest the policy should set out a stricter management regime in significant areas. This is not the purpose of the policy. The purpose of the policy is to highlight the range of potential adverse effects of mangrove removal – not to set out what may or may not be appropriate mangrove removal in significant areas. I do not think there is any value in having a policy that does what the submitter seeks. What may be appropriate mangrove removal in a significant area will depend on the situation (e.g. amount of mangrove removal vs size of the significant mangrove area) and is best determined at the resource consent level. There are already policies that set the bar for the level of (un)acceptable effects on a significant area and how the effects are to be assessed and managed (see for example Policy D.2.7 Managing effects on indigenous biodiversity).
108. CEP Services Matauwhi Limited also suggest the effects listed in the policy do not properly recognise the role of mangroves as part of sensitive ecological areas. I am not clear why the submitter has this view (not aided by a lack of proposed wording by the submitter) as my reading of the policy is that this is clearly the case.
109. Lastly, CEP Services Matauwhi Limited suggest that adverse effects on natural character should be added to the policy. I agree.
110. The Minister of Conservation request the following change:
When considering resource consents for mangrove removal, take into account ~~recognise~~ that mangrove removal can result in a range of adverse effects, in particular:
1) *Avoid effects on ecological values including:*
111. The Minister of Conservation suggests that “take into account” gives better guidance to decision makers. I disagree. The policy lists a set of potential effects. A decision maker is already required to “have regard to” the effects of the activity (s104(1)(a), RMA). Take into account” and “have regard to” are very similar, and the submitter does not provide any reasons about why this change would assist decision makers in this context. The word “recognise” better reflects the purpose of the policy, which is just to highlight the potential adverse effects of mangrove removal.
112. The Minister of Conservation provides no reasons for adding the word “avoid” and it is not apparent what justification there is for its inclusion.

113. Top Energy suggest that the policy should be amended to require the adverse effects listed to be minimised. The submitter suggests this because they think “recognise” is unclear in terms of assessing an application and that their suggested change will provide more certainty. As previously discussed, the policy is not about setting out how the adverse effects are to be managed – just to highlight them.
114. A & R La Bonte’ and Mangawhai Harbour Restoration Society request the policy be deleted because current scientific evidence does not support the hypothetical range of adverse effects and refers to two examples in particular. The first example is coastal erosion. The submitter refers to unsuccessful attempts at mangroves being introduced in areas to prevent erosion. The policy recognises that removal of existing mangroves may cause coastal erosion - not that planting mangroves on mangroves is a potential tool for managing erosion. The second example is the suggestion that mangrove expansion (not removal) causes the adverse effect of “restricting faunal migration and movement and to shorebird breeding and feeding” – but provides no evidence for the claim. Also, I note (as an example) the Environment Court⁹ in its decision on the mangrove removal in Mangawhai Harbour that *“The mangroves of Mangawhai harbour are clearly an important component of the habitat for banded rail”*.

Recommendation

115. I recommend the following:
- No change to Policy D.5.22 Mangrove removal – purpose
 - Delete Policy D.5.23 Mangrove removal – outcome
 - Add a new clause to Policy D.5.24 Mangrove removal – adverse effects, to recognise adverse effects on natural character.

⁹ Mangawhai Harbour Restoration Society Inc v Northland Regional Council, 2012 NZEnvC 232.