

1. My name is Linda Elizabeth Kirk.
2. My qualifications and experience are as set out in my evidence dated 18 September 2023.
3. Since preparing my evidence in chief, I have:
 - a. Participated in expert conferencing and am a signatory to the Joint Witness Statements for Avifauna and Planning (dated 20 September 2023) and for Planning (dated 28 September 2023);
 - b. Read the Hearing documents that are available on the Northland Regional Council website: [Northport Limited - Port Expansion project at Marsden Point \(Joint notification\) - Northland Regional Council \(nrc.govt.nz\)](#); and
 - c. Read the rebuttal evidence of Dr Mitchell and Mr Hood, and Dr Bull, and provide a brief response to some of the points made by them in this summary statement.
4. **The key points I wish to highlight in this summary are that, in my opinion:**
 - a. **The planning framework provides for areas for port activities and areas that recognise significant ecological values.**
 - b. **The planning framework does not enable the port expansion in preference to avoiding adverse effects on threatened indigenous species.**
 - c. **There is evidence that adverse effects of the eastern reclamation could be significant.**
 - d. **Minor effects are not effects that have been avoided.**
 - e. **In terms of indigenous biodiversity, the applicant's planning experts and the Council's reporting officers have concluded that the proposal is consistent with the PRP-AV policy framework. However, this is on the basis that the relevant standard is the avoidance of 'more than minor effects', and that the proposal will meet this standard. I disagree with this assessment. In my opinion, that is not the relevant standard, and any positive benefits of the proposed roosting sandbank cannot be**

treated as a 'discount' so as to reduce the adverse effects, which have been assessed by the applicant's avifauna expert Dr Bull as 'moderate'.

- f. The proposed roosting sandbank will also not 'avoid' adverse effects on Threatened and At Risk indigenous taxa.
- g. Any potential benefits of the proposed roosting sandbank are positive effects that are required to be taken into account under s104(1)(ab).
- h. However, there is uncertainty as to the degree the proposed roosting sandbank would actually offset the loss of roosting habitat for Northern New Zealand Dotterels and Variable Oystercatchers.
- i. In addition, there is evidence before the Hearing Panel that the proposed roosting sandbank would create additional adverse effects on a different threatened species with a higher threat status (Lesser knots) which must also be avoided in order to be consistent with the regional policy framework.
- j. How the planning provisions are weighted is a matter for the Hearing Panel in its consideration under s104, and the Hearing Panel may conclude that the granting of resource consent is possible.
- k. But a fundamental unresolved issue remains in contention under the Whangarei District Plan, that being the matter of port-related activities falling within the definition of industrial activities outside of the Port Operations Area and the Port Management Areas B and C. As such, in my opinion, in the Natural Open Space Zone, the port related activities are a non-complying activity under Rule NOSZ-23.
- l. If the components of the proposal are 'bundled' and assessed as an integrated whole under s104D, I consider the grant of consent for the proposal in its current form would be difficult, as it is unlikely either limb of s104D would be met.
- m. There is a lack of information on key elements, and a precautionary approach should be taken to assessing the effects of the proposal.
- n. The proposed 35-year lapse date is contrary to good resource management practice and should be rejected.

5. The following expands on the above key matters. I note that for ease of reference, I have provided some key planning provisions that I refer to, as **appendices** to this summary.

Planning Framework

6. Table 1 summarises the activities and overlay/zoning in relation to the port-related activities (see Appendix 1 for maps and overlays).

Table 1: Summary of Planning Overlays/Zones and Activities of Concern

KEY:		
	Relevant	Not relevant

Plan	Overlay/Zone		Activity		
		Dredging	Eastern Reclamation	Proposed roosting sandbank	Above MHWS components (pocket park and port operation)
Proposed Regional Plan-Appeals Version (PRP-AV) Overlays	Significant Bird Areas	✓ (part of existing and proposed dredging footprint)	X	✓	X
	Significant Marine Mammal and Seabird Area	✓	✓	✓	X
	Significant Ecological Areas	X	X	✓	X
	Marsden Point Port Zone	✓	✓	X	X
	General Marine Zone	X	X	✓	X
Whangarei District Plan (WDP) Zones	Natural Open Space Zone	X	X	X	✓
	Coastal Environment Overlay*	✓	✓	✓	✓
	Port Zone	X	X	X	X

*Note – District-wide matters Map 43 of the WDP shows the Coastal Environment Overlay as extending across the entirety of the mapped area, extending across the CMA – see Figure 1 in Appendix 1.

Proposed Regional Plan (PRP-AV)

7. The regional planning framework is enabling of Regionally significant infrastructure (Rsi) including ports, while also providing a strong directive for the protection (through avoidance) of habitat of Threatened and At Risk indigenous taxa in the coastal environment.
8. **The PRP-AV directs that adverse effects on Threatened and At Risk indigenous taxa within the coastal environment be avoided (Policy D.2.18(1)). Outside the coastal environment, the PRP-AV directs that adverse effects on Threatened and At Risk indigenous taxa are not more than minor (Policy D.2.18(2)). Given the above, and the clear wording of Policy D.2.18(1), I strongly disagree with Dr Mitchell's and Mr Hood's opinion that Policy D.2.18 allows for minor adverse effects on Threatened and At Risk indigenous taxa within the coastal environment.**
9. I also note that the eastern reclamation will permanently remove both foraging and roosting habitat for variable oystercatchers (VOC) (Threatened – At Risk, recovering) and northern New Zealand dotterel (Threatened – Nationally increasing) i.e. a permanent loss of low-mid foraging habitat and high tide roosting habitat. This site is located in a significant marine mammal and seabird area (SMMSA). In the 'Maps' section of the PRP-AV at page 340, the description of the map layers is based on reports as follows:

“The mapping is based on reports by Kerr, V., 2017. Kerr & Associates, that identify known:

 - *Indigenous taxa that are listed as threatened or at risk in the New Zealand Threat Classification System;*
 - *Areas of indigenous vegetation and habitats of indigenous fauna, that are significant using the assessment criteria in Appendix 5 of the Regional Policy Statement for Northland; and*
 - *Areas set aside for full or partial protection of indigenous biodiversity under other legislation.”*
10. In my opinion, as the site is identified as a SMMSA, this overlay is important for managing the values in the SMMSA and is provided for in Policy D.2.18(1)(a)(ii) (see Appendix 2). Policy D.2.18(1)(a)(ii) directs that within the coastal environment, the adverse effects of activities are avoided on the “values and characteristics of areas of indigenous vegetation and habitats of indigenous fauna that are assessed as

significant using the assessment criteria in *Appendix 5 of the Regional Policy Statement*¹ [see Appendix 3].

11. The proposed roosting sandbank to the west of the existing port is aimed at only potentially providing for high tide roosting habitat for Variable Oystercatchers and Northern New Zealand dotterels.
12. **The site of the proposed roosting sandbank is a significant bird area (SBA), significant marine mammal and seabird area (SMMSA) and significant ecological area (SEA). This site currently provides foraging habitat for lesser knots (Threatened – At Risk, declining) as they winter over in New Zealand. Policies D.2.18(1)(a)(i) and D.2.18(1)(a)(ii) apply here and a sandbank covering lesser knot foraging area is contrary to these policies.**

Proposed Roosting Sandbank – ‘avoidance measure’ or ‘positive effect’?

13. In my opinion, positive effects (if any) from the proposed roosting sandbank should be considered as a positive effect under s104(1)(ab), and not an avoidance measure as the applicant’s experts assert.
14. **In my opinion, the proposed roosting sandbank is not avoidance or mitigation as it does not prevent the effects from happening (avoid) and it does not reduce the effects (mitigate) because it does not address the effects at the point of impact.**
15. As I understand the High Court’s guidance in the case law of Buller¹ at paragraph [72], the proposed roosting sandbank is ‘new’, and offers a potential positive effect, so cannot be treated as reducing the level of effects that would be caused by the eastern reclamation:

*“... offsets do not directly mitigate any adverse effects of the activities coming with the resource consents on the environment. [...] it cannot be said logically that enhancing the habitat of snails elsewhere in the environment mitigates that adverse effect, unless possibly the population that was on the environment that is being destroyed was lifted and placed in the new environment. [...] The usual meaning of “mitigate” is to alleviate, or to abate, or to moderate the severity of something. Offsets do not do that. Rather, they offer a **positive new effect, one which did not exist before.**” [my emphasis]*

¹ High Court decision in *Forest & Bird v Buller District Council* [2013] NZHC 1346

16. The Variable Oystercatchers and New Zealand dotterels will not, and cannot be, transposed to the sandbank, and there is no evidence to show that these two bird species will actually use it. Therefore, it cannot be considered as either mitigation or an avoidance measure to reduce the level of adverse effects in the round, and it should be treated as a measure to offset or compensate for the loss of habitat under s104(1)(ab) (noting there are doubts about whether in fact it will achieve positive outcomes and that no monitoring of its usefulness is proposed, nor are any alternatives provided).
17. In addition, Dr Beauchamp considers that the proposed roosting sandbank and its maintenance would cause additional significant adverse effects on the foraging habitat for lesser knots, which is a Threatened - At Risk, declining species.
18. The creation of adverse effects on Threatened and At Risk taxa in the coastal environment from the reclamation and creation of the sandbank as part of the port expansion are important factors in the policy framework in the regional planning documents. In particular:
 - a. The standard required for Regionally significant infrastructure (Policy D.2.7 of the PRP-AV) is “minor”, subject to consistency with other specified policies in Policy D.2.7(1)(a)-(d)). Those policies include Policy D.2.18 which is strongly directive and requires adverse effects on Threatened and At Risk indigenous taxa to be avoided for all activities in the coastal environment. In my opinion, a ‘minor’ effect is simply not an ‘avoided’ effect under Policy D.2.18(1)(a) as I discuss next.
 - b. In my opinion, Policy D.2.18 has a strong directive force in the management of adverse effects on indigenous biodiversity and gives effect to Policy 4.4.1 of the RPS, and intentionally so, as the last paragraph in the explanation to RPS Policy 4.4.1 says: *“in Northland many such habitats have been degraded, so there is a greater need to give some protection to the valued habitats that remain extant.”* See Appendix 3.
 - c. Policy D.2.18(1)(a) directs that ‘adverse effects’ are avoided in the coastal environment for those three matters listed. It does not refer to ‘avoiding minor effects’. The next planning cascades are for those matters listed in Policy D.2.18(1)(b), where the direction is that significant adverse effects are avoided, and then, avoiding, remedying or mitigating other adverse effects in the coastal environment.

- d. For clarity, Policy D.2.18(2) which provides the 'no more than minor' effects threshold, applies to effects of activities outside the coastal environment. As I understand the proposal, all of the proposal is within the coastal environment therefore this provision is not triggered.
 - e. While Policy D.2.18(5) refers to 'recognising that minor or transitory effects may not be an adverse effect', this does not in my view change the clear wording of Policy D.2.18(1)(a), or require that "no more than minor" be read in. As noted above, that would conflate the two separate parts of Policy D.2.18 which deal with areas within the coastal environment, and areas outside of it separately, with the result that they would be read to provide the same standard for effects management. That is clearly not what is intended under the Policy. This can be seen by the use of the conjunctive "and" between all of the clauses.
19. Where the adverse effects of activities on indigenous biodiversity, including Significant Ecological Areas (SEA), Significant Bird Areas (SBA), Significant Marine Mammal and Seabird Area (SMMSA) and other areas that are assessed as significant under the criteria in Appendix 5 of the Northland RPS are uncertain, unknown or little understood, Policy D.2.20 of the PRP-AV directs a precautionary approach be adopted.

PRP-AV Regionally significant infrastructure provisions

20. I disagree with the statements made by Dr Mitchell at his paragraphs [3.62-3.64] regarding the PRP-AV's approach to Regionally significant infrastructure (Rsi). I continue to consider that Policy D.2.9 establishes a 'bottom line' for Rsi and allows any minor adverse effects provided that the Rsi proposal is consistent with all matters listed in D.2.7(1)(a-d). The technical evidence of Dr Bull considers that the effects on avifauna are moderate if the proposed roosting sandbank is not provided for, and in my opinion, as discussed above, the proposed sandbank cannot not serve to reduce effects as an 'avoidance measure'.
21. I note that Policy D.2.10(2) of the PRV-AV provides a 'carve out' for the National Grid (as a specific subset of Rsi that is crucial in nature). Thus, the PRP-AV provides a pathway through for "*areas and taxa referred to in Policy D.2.18(1)(a) and (2)(a)*" for major upgrading and development of new National Grid infrastructure under Policy D.2.10(2)(a)(i). **Therefore, in my opinion, the PRP-AV planning framework has considered how different Rsi is to be managed and provides an 'exception'**

only for new development or major upgrading of the National Grid by allowing a different pathway regarding Policy D.2.18 due to its critical nature.

Whangarei District Plan (WDP)

22. While the district planning framework is enabling of port infrastructure and has specifically identified Port Operations Areas subject to the PORTZ rules for port activities as shown in Figure 2 in Appendix 1, port-related activities are proposed to be undertaken under the proposal on land currently above MHWS, being esplanade reserve and sand dunes, once these areas are earthworked and converted to a hardstand area. This land is not zoned for such development, and is zoned Natural Open Space (NOSZ).
23. It does not appear that the applicant or the councils' reporting officers had assessed this component of the proposal, until raised by myself in my Evidence in Chief.
24. As stated in the JWS Planning of 28 September 2023, I agree with Ms Sharp and Ms Niblock² that the WDP definition of *Port Activities* does not apply to activities undertaken within the NOSZ, nor is the activity innominate as proffered by Mr Hood and Dr Mitchell. This is because the proposed port related activities come within the definition of 'industrial activity' in the WDP, and are caught by Rule NOSZ-23. The definition of "industrial activity" being:
- "Industrial Activity means an activity that manufactures, fabricates, processes, packages, distributes, repairs, stores, or disposes of materials (including raw, processed, or partly processed materials) or good. It includes any ancillary activity to the industrial activity."*
25. This interpretation is also in accordance with "How the Plan Works (HPW)" in Part 1 of the WDP (refer Appendix 4).
26. I agree with the clear and succinct analysis of Ms Niblock in her statement of 12 October 2023 in why the relevant zones and associated provisions in the WDP must apply to the relevant parts of the proposal and as such, I adopt that analysis and provide it in my Appendix 5.

² Statement of Evidence of Christine Jo-Anne Niblock on behalf of Whangarei District Council Infrastructure Group (dated 12 October 2023)

27. In summary, the rules in 'How the Plan Works', HPW-R1 and R2 are very clear that the application must comply with the relevant overlay and zone rules and if there is any conflict, the most restrictive provision applies.
28. I conclude that the components of the proposal above MHWS that are to be located in the area which is currently esplanade reserve and zoned NOS, is a non-complying activity under Rule NOSZ-R23 (*industrial activities*).
29. Dr Mitchell (Rebuttal at paragraph [3.20]) has queried how, if port related activities on the land currently zoned NOSZ are treated as a non-complying activity, port expansion at Marsden Point could ever be undertaken.³ **I consider that the WDP does provide for the expansion of port activities as per Figure 2 in Appendix 1**, via the large Port Management Area B located to the southwest of Port Operations Area A where the existing port facilities are. Outside of these dedicated Port Zone areas, port related activities are not specifically provided for and the relevant plan provisions need to be considered appropriately.
30. As per paragraph [169] in my Evidence in Chief, I consider that the proposal for port related activities in the NOSZ is inconsistent with the breadth of the NOSZ provisions in the WDP. Objective NOSZ-O1 Natural Environment is directive to "*Protect and enhance natural, ecological, landscape, cultural and heritage values of the Natural Open Space Zone*" and that Objective NOSZ-O2 Activities and Buildings is directive that "*Buildings associated with recreational, education, cultural and conservation activities, complement and do not compromise the values and qualities of the Natural Open Space Zone*".
31. For clarity, I also note that I consider that the proposed pocket park (if this component was considered separately) to be a non-complying activity. I consider it would come within the WDP definitions of *Recreational Facility* and *General Community*. Both *Recreational Facilities* (NOSZ-R17) and *General Community* (NOSZ-R19) are for discretionary activities. However, as the pocket park would exceed the 500m² 'cumulative outdoor area' (an undefined term) in either rule NOSZ-R17 or NOSZ-R19, the activity would not meet the standard and under those rules would be treated as a non-complying activity.
32. **In my opinion, neither the first nor the second gateway tests of s104D are met as there are significant adverse effects on cultural and indigenous biodiversity**

³ Dr Mitchell Rebuttal evidence paragraph [3.20].

values such as those with the removal of the dune system that has been raised in evidence of other submitters such as Patuharakeke Te Iwi Trust Board and Forest & Bird for example. Recreation effects are also significant as there are “residual significant adverse effects at the local scale and more than minor at the regional scale” as stated in section 3.3 of the Joint Witness Statement in relation to Recreation and Planning (dated 21 September 2023).

33. In my opinion, these activities are contrary to the directive objectives and policies of the WDP including DGD-O6, DGD-P8, CE-O12, CE-O13, CE-P1, CE-P2, CE-P4, CE-P5, CE-P19, NOSZ-O1, NOSZ-P1, NOSZ-P5, ECO-O1, ECO-O2, TWP-O1.

Bundling

34. I agree with Dr Mitchell’s rebuttal evidence at his paragraph [3.9] that the application should be considered as an integrated whole and not as a series of discrete component activities. This aligns with the definition of Regionally significant infrastructure in the Regional Policy Statement:

“Regional Significant Infrastructure: See Appendix 3 for a list of identified regionally significant infrastructure. Regionally significant infrastructure extends to the site related components that enable the asset to function”.

35. **As such, I consider the non-complying activity status is the appropriate activity status for the proposal as an integrated whole. This approach is also consistent with how the applicant has bundled the consent applications across the two local authorities, as well as the approach in the joint s42A Officer Report.⁴**
36. **Therefore, in my opinion, an assessment of the proposal as an integrated whole is warranted under s104D. To my knowledge, this assessment has not been undertaken.**

⁴ Para [649] of S42A Officers Report:

*“The reasons for resource consents and permits required are detailed in section 4 of this consent. Overall, resource consent is required from WDC as a **Discretionary Activity**. Resource consent and permits are required from NRC as a **Discretionary Activity**. As these consents have been bundled within the application, consent is sought as a **Discretionary Activity** overall.”*

Section 104(6) and Proposed Lapse Date of 35 years

37. If the Panel is uncertain about the potential effects notwithstanding (or in light of) the expert evidence, it may exercise its discretion to decline the application under s104(6) on the basis that there is not adequate information to make a determination.
38. **The applicant is seeking a proposed lapse date that matches the proposed expiry date of 35 years. This is not sound resource management.** There are technical reasons as set out by Dr Beachamp as well as legal reasons which have been covered in depth in the by legal submissions for Patuharakeke Te Iwi Trust, for having a much reduced lapse date of 5-8 years and the DGC has recommended 5 years.

APPENDIX 1: Summary of Zoning and Overlays in the Planning Framework

1. The port, including each of its components⁵, is recognised as Regionally Significant Infrastructure (Rsi) in the relevant regional and district plans. The plans also include a special port zone in which the current port facilities are located, which have different areas zoned for port activities as can be seen in Figures 1, 2 and 3 below. The Whangarei District Plan (WDP) clearly shows the Port Zone which goes inland as per the application of the PORTZ rules in Figures 1 and 2. The Proposed Regional Plan - Appeals version (PRP-AV) has the overlays of the Marsden Point Port Zone which has a wider zone extending into the coastal marine area than that of the WDP in Figure 3, and then the General Marine Zone outside of that.
2. All of the proposal is located within the Coastal Environment Overlay of the WDP (as confirmed in the Northland Regional Policy Statement (Figure 4 below).

APPENDIX 1 – Zoning and Overlay Maps

Whangarei District Plan Operative in Part 2022 – Key Zoning and Overlays – Northport

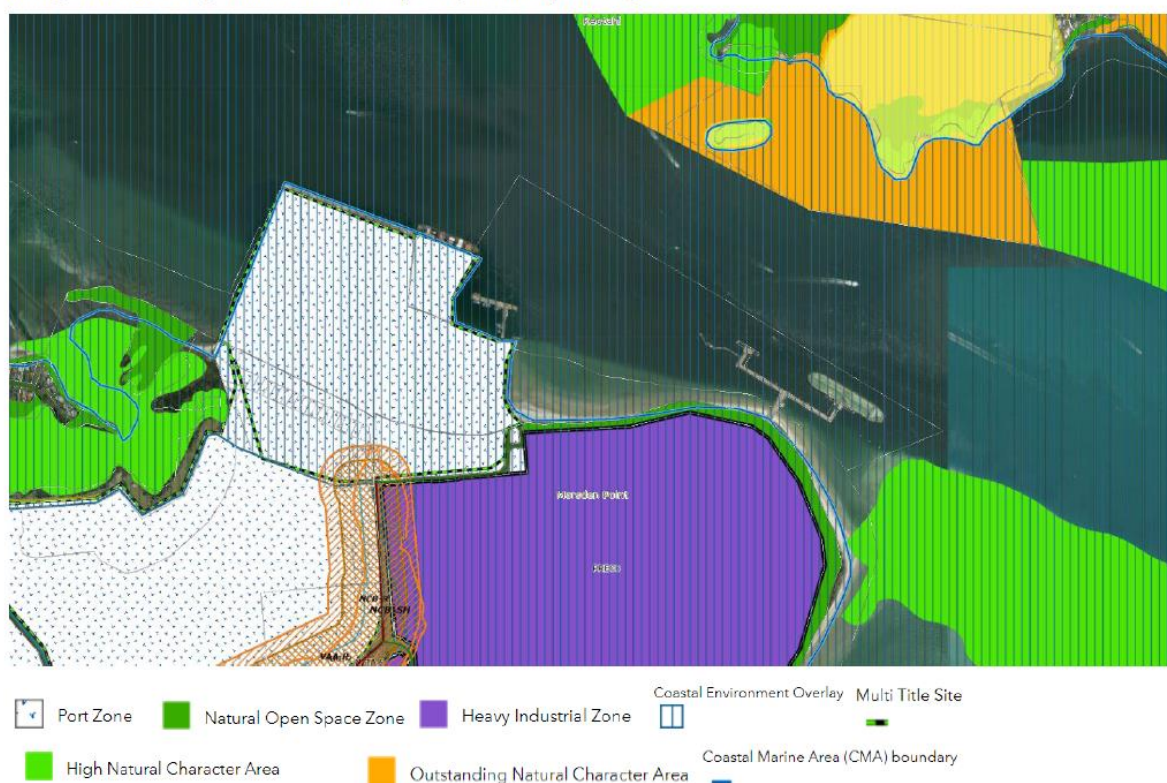


Figure 1: Key Zoning and Overlay Maps from Whangarei District Plan

(Source: Appendix 1 of Kirk's Evidence in Chief)

⁵ The definition of "Regionally significant infrastructure" in the PRP-AV refers to the list of identified regionally significant infrastructure in Appendix H, and states that Regionally significant infrastructure extends to the site-related components that enable the asset to function.

Appendix 1 – Port Operations Area A, Port Management Area B and Port Management Area C Image

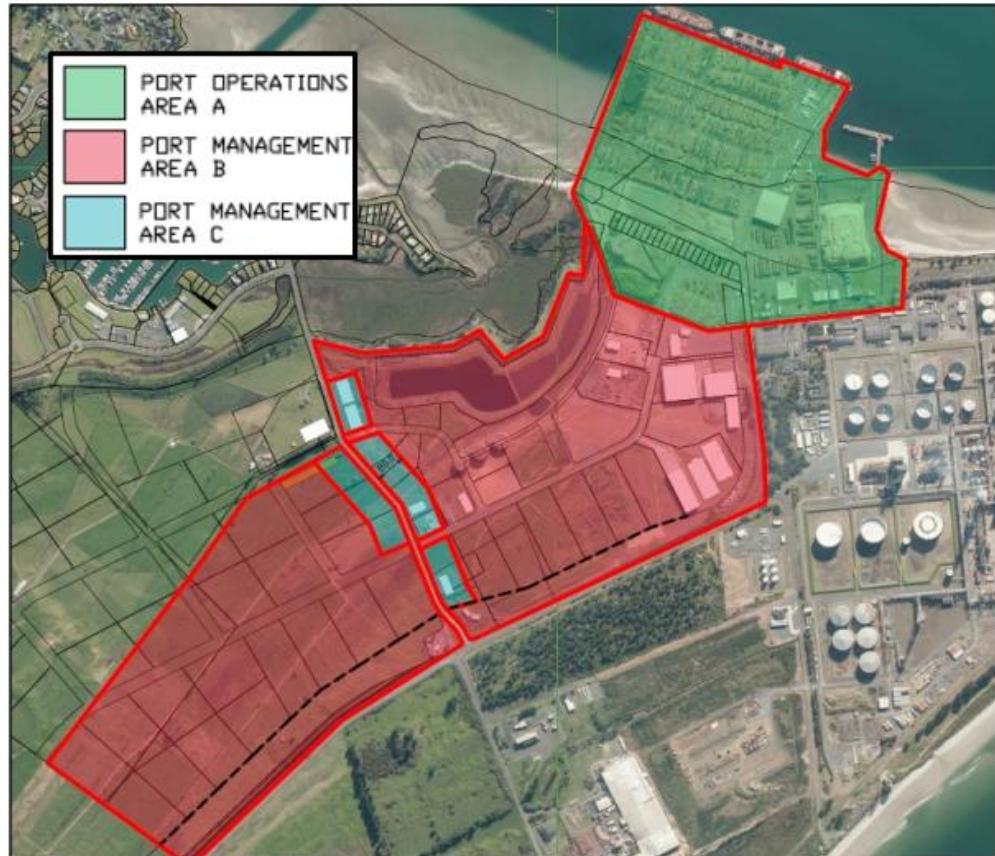


Figure 1: Port Operations Area A, Port Management Area B and Port Management Area C areas subject to the PORTZ rules delineated on the image above.

Figure 2: Appendix 1 Port Operations Areas subject to the PORTZ rules in Whangarei District Plan, page 14.

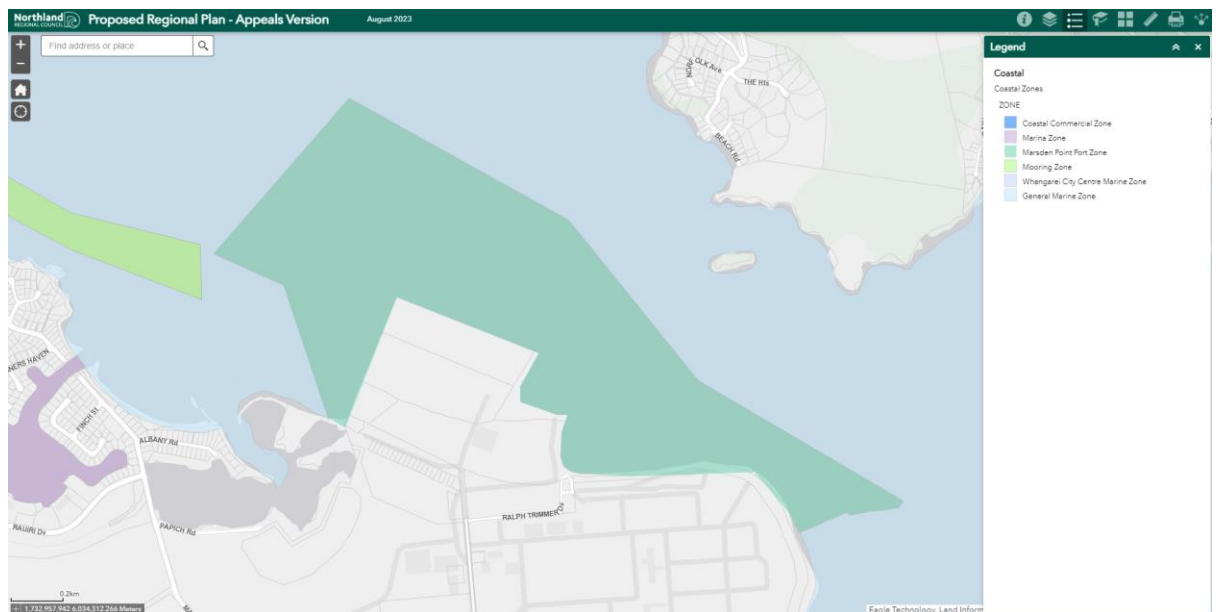


Figure 3: Coastal Zone Overlays in Proposed Regional Plan – Appeals Version

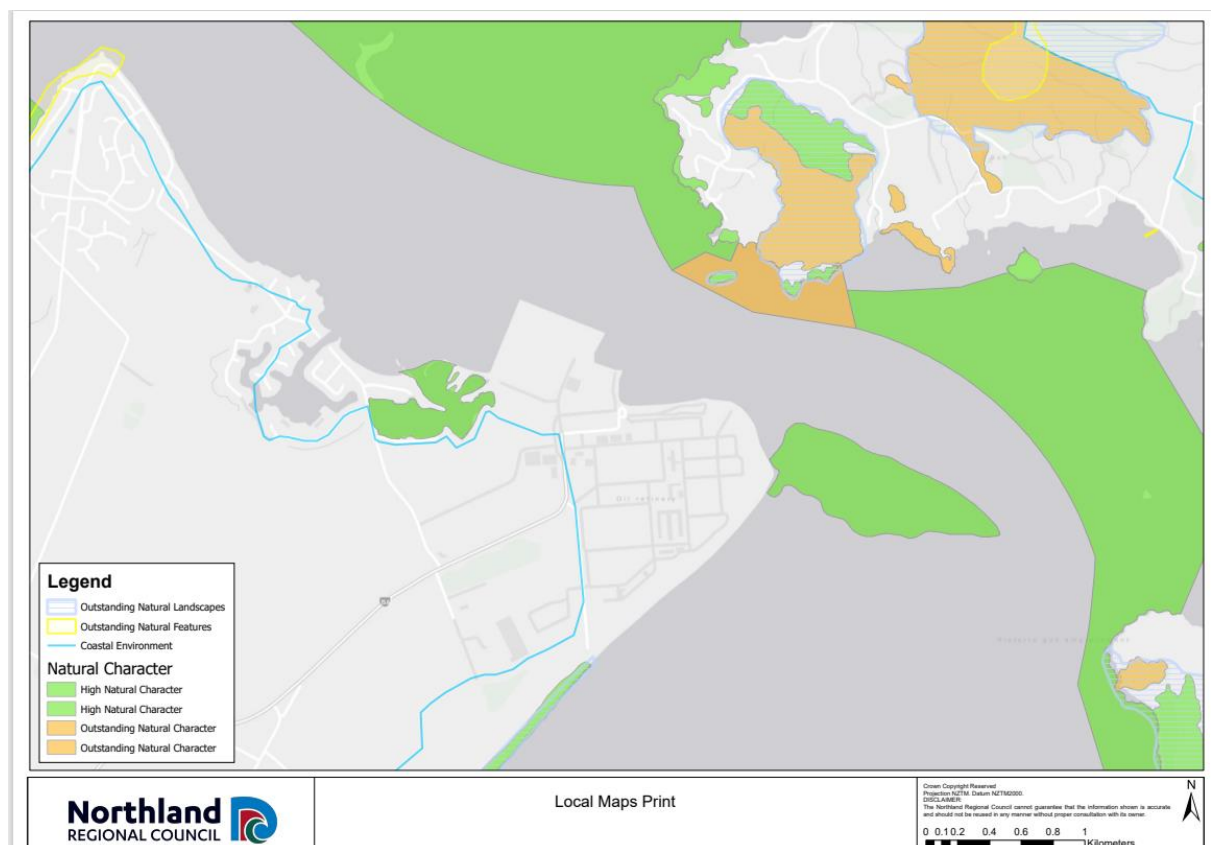
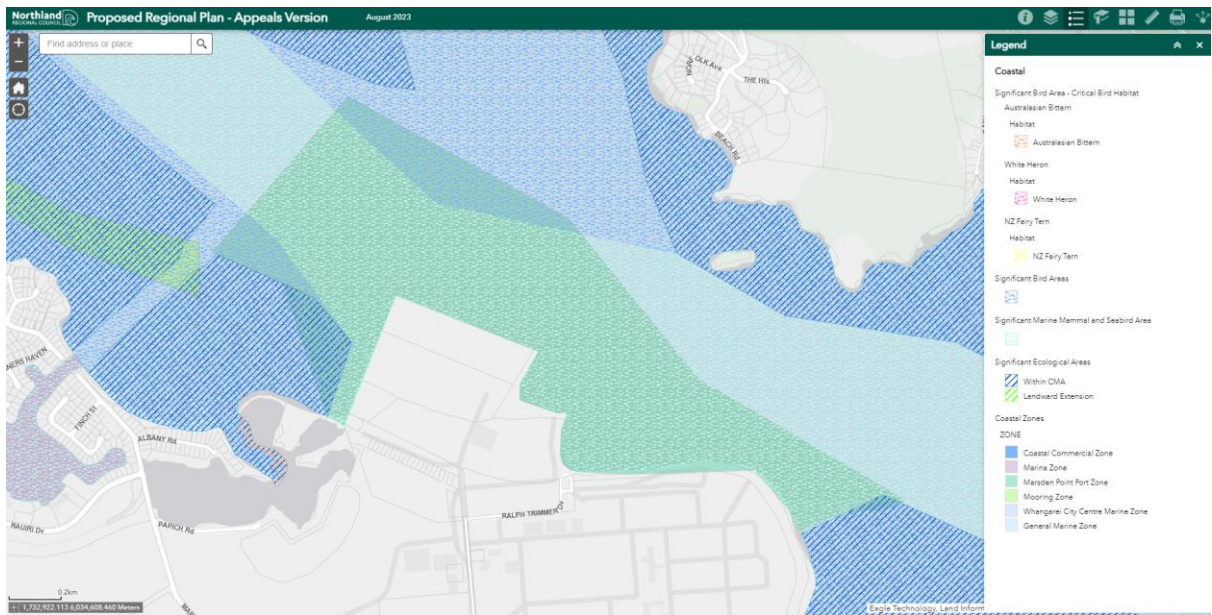


Figure 4: Coastal Environment boundary in Northland's Regional Policy Statement

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**Figure 6: Combined Coastal Overlays of Significant Areas and Coastal Zones
in Proposed Regional Plan – Appeals Version**

Appendix 2: Proposed Regional Plan for Northland – Some Policies from D.2 General and D.5 Coastal

D.2 General

D.2.1 Rules for managing natural and physical resources

Include rules to manage the use, development and protection of natural and physical resources that:

- 1) are the most efficient and effective way of achieving national and regional resource management objectives, and
- 2) are as internally consistent as possible, and
- 3) use or support **good management practices**, and
- 4) minimise compliance costs, and
- 5) enable use and development that complies with any relevant *National Policy Statement*, the *Regional Policy Statement for Northland* and the objectives and policies of this Plan, and
- 6) focus on effects and, where suitable, use performance standards.

D.2.2 Social, cultural and economic benefits of activities

Regard must be had to the social, cultural and economic benefits of a proposed activity, recognising significant benefits to local communities, Māori and the region including local employment and enhancing Māori development, particularly in areas of Northland where alternative opportunities are limited.

D.2.3 Climate change and development

Particular regard must be had to the potential effects of climate change on a proposed development requiring consent under this Plan, taking into account the scale, type and design-life of the development proposed and with reference to the latest national guidance and best available climate change projections.

D.2.4 Adaptive management

Regard should be had to the appropriateness of an **adaptive management** approach where:

- 1) there is an adequate baseline of information on the receiving environment, and
- 2) the occurrence of potential adverse effects can be effectively monitored, and
- 3) thresholds can be set to require mitigation action if more than minor adverse effects arise, and
- 4) potential adverse effects can be remedied before they become irreversible.

D.2.5 Benefits of Regionally Significant Infrastructure

Particular regard must be had to the national, regional and locally significant social, economic, and cultural benefits of **Regionally Significant Infrastructure**.

D.2.6 National Grid infrastructure

Recognise and provide for the national, regional and local benefits of sustainable, secure and efficient **National Grid** infrastructure.

D.2.7 Minor adverse effects arising from the establishment and operation of Regionally Significant Infrastructure

Enable the establishment and operation (including consenting) of **Regionally Significant Infrastructure** by allowing any minor adverse effects providing:

- 1) The **Regionally Significant Infrastructure** proposal is consistent with:
 - a) all policies in **D.1 Tāngata whenua**, and
 - b) **D.2.16 Managing adverse effects on Historic Heritage**, and
 - c) **D.2.17 Managing adverse effects on Natural Character, Outstanding Natural Landscapes and Outstanding Natural Features**, and
 - d) **D.2.18 Managing adverse effects on Indigenous biodiversity**, and
- 2) the **Regionally Significant Infrastructure** proposal will not likely result in over-allocation having regard to the allocation limits in **H.4.3 Allocation limits for rivers**, and
- 3) other adverse effects arising from the **Regionally Significant Infrastructure** are avoided, remedied, mitigated or offset to the extent they are no more than minor.

D.2.8 Maintenance, repair and upgrading of Regionally Significant Infrastructure

Enable the maintenance and upgrading of established **Regionally Significant Infrastructure** wherever it is located by allowing adverse effects, where:

- 1) the adverse effects whilst the maintenance or upgrading is being undertaken are not significant or they are temporary or transitory, and
- 2) the adverse effects after the conclusion of the maintenance or upgrading are the same, or similar, to those arising from the **Regionally Significant Infrastructure** before the activity was undertaken.

D.2.9 Appropriateness of Regionally Significant Infrastructure proposals (except the National Grid)

When considering the appropriateness of a **Regionally Significant Infrastructure** activity (except the **National Grid**), have regard and give appropriate weight to:

- 1) the benefits of the activity in terms of **D.2.5 Benefits of Regionally Significant Infrastructure**, and
- 2) whether the activity must be recognised and provided for by a *National Policy Statement*, and
- 3) any demonstrated **functional need** for the activity, and

- 4) the extent to which any adverse environmental effects have been avoided, remedied or mitigated by route, site or method selection, and
- 5) any operational, technical or location constraints that limit the design and location of the activity, including any alternatives that have been considered which have proven to be impractical, or have greater adverse effects, and
- 6) whether the activity is for **Regionally Significant Infrastructure** which is included in *Schedule 1 of the Civil Defence Emergency Management Act* as a lifeline utility and meets the reasonably foreseeable needs of Northland, and
- 7) the extent to which the adverse effects of the activity can be practicably managed, inclusive of any positive effects and environmental offsets or compensation proposed, and
- 8) whether an **adaptive management** regime (including modification to the consented activity) can be used to manage any uncertainty around the occurrence of residual adverse effects, and
- 9) whether the activity helps to achieve consolidated development and the efficient use of land and resources, including within the coastal marine area.

D.2.10 Operation, maintenance, upgrading and development of the National Grid

- 1) Enable the reasonable operation, maintenance and minor upgrading of existing **National Grid** infrastructure.
- 2) Provide for the major upgrading of existing **National Grid** infrastructure and the development of new **National Grid** infrastructure to which **D.2.17 Managing adverse effects on Natural Character, Outstanding Natural Landscapes and Outstanding Natural Features** and **D.2.18 Managing adverse effects on indigenous biodiversity** apply, where:
 - a) the route, site and method selection demonstrate that, as far as practicable given the constraints imposed by the technical, locational or operational requirements of the network:
 - i. for areas and taxa referred to in **D.2.18(1)(a) Managing adverse effects on indigenous biodiversity** and **D.2.18(2)(a) Managing adverse effects on indigenous biodiversity**, and Outstanding Natural Character Areas and Outstanding Natural Landscapes and features referred to in **D.2.17(1) Managing adverse effects on Natural Character, Outstanding Natural Landscapes and Outstanding Natural Features**, in order of preference:
 1. infrastructure will be located outside of the areas, landscapes and features in (i) or located to avoid adverse effects on the taxa in (i);
 2. infrastructure will be located in more compromised parts of the areas, landscapes and features in (i), where that reduces adverse effects on the characteristics, qualities and values of the areas, landscapes in features in (i);
 3. techniques (such as structure selection) will be used to avoid any remaining adverse effects on the areas, landscapes, features and taxa in (i);
 4. any remaining adverse effects on the areas, landscapes and features and taxa in (i) that cannot be avoided, will be remedied or mitigated; and
 - ii. for other Natural Character Areas and other natural landscapes and features in the coastal environment referred to in **D.2.17(1) Managing adverse effects on Natural Character, Outstanding Natural Landscapes and Outstanding Natural Features** and areas and taxa referred to in **D.2.18(1)(b) Managing adverse effects on indigenous biodiversity** and **D.2.18(2)(b) Managing adverse effects on indigenous biodiversity**, in order of preference:

1. infrastructure will be located to avoid significant adverse effects on the areas, landscapes, features and taxa in (ii);
 2. techniques (such as structure selection) will be used to avoid any remaining significant adverse effects on the areas, landscapes, features and taxa in (ii);
 3. any remaining adverse effects on the areas, landscapes and features and taxa in (i) that cannot be avoided, will be remedied or mitigated; and
- b) when applying (a), recognise that, in some circumstances, the adverse effects on the values of the areas, landscapes, features and taxa in (a)(i) and significant adverse effects on the values of the areas, landscapes, features and taxa in (a)(ii), may be such that the effects will need to be avoided;
- c) other adverse effects are avoided, remedied or mitigated.

D.2.11 Protection of Regionally Significant Infrastructure

When considering new use and development activities that could adversely affect the ongoing operation, maintenance, upgrade or development of **Regionally Significant Infrastructure**; ensure that the **Regionally Significant Infrastructure** is not compromised.

D.2.14 Resource consent duration

When determining the expiry date for a resource consent, have particular regard to:

- 1) security of tenure for investment (the larger the investment, then generally the longer the consent duration), and
- 2) the administrative benefits of aligning the expiry date with other resource consents for the same activity in the surrounding area or catchment, and
- 3) certainty of effects (the less certain the effects, the shorter the consent duration), and
- 4) whether the activity is associated with **Regionally Significant Infrastructure** (generally longer consent durations for **Regionally Significant Infrastructure**), and
- 5) where the resource consent application is to re-consent an activity, the applicant's past compliance with the conditions of any previous resource consent (significant previous non-compliance should generally result in a shorter duration).

D.2.17 Managing adverse effects on Natural Character, Outstanding Natural Landscapes and Outstanding Natural Features

Manage the adverse effects of activities on Natural Character, Outstanding Natural Landscapes and Outstanding Natural Features by:

- 1) avoiding adverse effects of activities as outlined in *Table 17: Adverse effects to be avoided*.

Table 17: Adverse effects to be avoided

Place / value	Location of the place	Effects to be avoided
Areas of Outstanding Natural Character Outstanding Natural Features Outstanding Natural Landscapes	Coastal marine area and freshwater bodies in the coastal environment.	Adverse effects on the characteristics, qualities and values that contribute to make the place outstanding.
Natural Character (incl. High Natural Character) Other Natural Features and Landscapes	The coastal marine area and freshwater bodies in the coastal environment.	Significant adverse effects on the characteristics, qualities and values that contribute to Natural Character or other natural features and landscapes.
Natural Character Outstanding Natural Features Outstanding Natural Landscapes	Freshwater bodies outside the coastal environment.	Significant adverse effects on the characteristics, qualities and values that contribute to Natural Character or which make the Natural Character or landscape outstanding.

- 2) recognising that, in relation to Natural Character in water bodies and the coastal environment (where not identified as Outstanding Natural Character), appropriate methods of avoiding, remedying or mitigating adverse effects may include:
 - a) ensuring the location, intensity, scale and form of activities is appropriate having regard to natural elements and processes, and

- b) in areas of High Natural Character in the coastal environment, minimising to the extent practicable **indigenous vegetation clearance** and modification (seabed and foreshore disturbance, structures, discharges of contaminants), and
 - c) in freshwater, minimising to the extent practicable modification (disturbance, structures, extraction of water and discharge of contaminants), and
- 3) recognising that, in relation to Outstanding Natural Features in water bodies outside the coastal environment, appropriate methods of avoiding, remedying or mitigating adverse effects may include:
- a) requiring that the scale and intensity of bed disturbance and modification is appropriate, taking into account the feature's scale, form and vulnerability to modification of the feature, and
 - b) requiring that proposals to extract water or discharge contaminants do not significantly adversely affect the characteristics, qualities and values of the Outstanding Natural Feature, and
- 4) recognising that uses and development form part of existing landscapes, features and water bodies and have existing effects.

D.2.18 Managing adverse effects on indigenous biodiversity

Manage the adverse effects of activities on indigenous biodiversity by:

- 1) in the coastal environment:
- a) avoiding adverse effects on:
 - i. indigenous taxa that are listed as threatened or at risk in the *New Zealand Threat Classification System* lists, and
 - ii. the values and characteristics of areas of **indigenous vegetation** and habitats of indigenous fauna that are assessed as significant using the assessment criteria in *Appendix 5 of the Regional Policy Statement*, and
 - iii. areas set aside for full or partial protection of indigenous biodiversity under other legislation, and
 - b) avoiding significant adverse effects and avoiding, remedying or mitigating other adverse effects on:
 - i. areas of predominantly **indigenous vegetation**, and
 - ii. habitats of indigenous species that are important for recreational, commercial, traditional or cultural purposes, and
 - iii. indigenous ecosystems and habitats that are particularly vulnerable to modification, including estuaries, lagoons, coastal **wetlands**, intertidal zones, rocky reef systems, eelgrass, northern wet heathlands, coastal and headwater streams, spawning and nursery areas and saltmarsh, and
- 2) outside the coastal environment:
- a) avoiding, remedying or mitigating adverse effects so they are no more than minor on:
 - i. indigenous taxa that are listed as threatened or at risk in the *New Zealand Threat Classification System* lists, and
 - ii. areas of **indigenous vegetation** and habitats of indigenous fauna, that are significant using the assessment criteria in *Appendix 5 of the Regional Policy Statement*, and

- iii. areas set aside for full or partial protection of indigenous biodiversity under other legislation, and
- b) avoiding, remedying or mitigating adverse effects so they are not significant on:
 - i. areas of predominantly indigenous vegetation, and
 - ii. habitats of indigenous species that are important for recreational, commercial, traditional or cultural purposes, and
 - iii. indigenous ecosystems and habitats that are particularly vulnerable to modification, including wetlands, wet heathlands, headwater streams, spawning and nursery areas, and
- 3) recognising areas of significant indigenous vegetation and significant habitats of indigenous fauna include:
 - a) Significant Ecological Areas, and
 - b) Significant Bird Areas, and
 - c) Significant Marine Mammal and Seabird Areas, and
- 4) recognising damage, disturbance or loss to the following as being potential adverse effects:
 - a) connections between areas of indigenous biodiversity, and
 - b) the life supporting capacity of the area of indigenous biodiversity, and
 - c) flora and fauna that are supported by the area of indigenous biodiversity, and
 - d) natural processes or systems that contribute to the area of indigenous biodiversity, and
- 5) assessing the potential adverse effects of the activity on identified values of indigenous biodiversity, including by:
 - a) taking a system-wide approach to large areas of indigenous biodiversity such as whole estuaries or widespread bird and marine mammal habitats, recognising that the scale of the effect of an activity is proportional to the size and sensitivity of the area of indigenous biodiversity, and
 - b) recognising that existing activities may be having existing acceptable effects, and
 - c) recognising that minor or transitory effects may not be an adverse effect, and
 - d) recognising that where effects may be irreversible, then they are likely to be more than minor, and
 - e) recognising that there may be more than minor cumulative effects from minor or transitory effects, and
- 6) recognising that appropriate methods of avoiding, remedying or mitigating adverse effects may include:
 - a) careful design, scale and location proposed in relation to areas of indigenous biodiversity, and
 - b) maintaining and enhancing connections within and between areas of indigenous biodiversity, and
 - c) considering the minimisation of effects during sensitive times such as indigenous freshwater fish spawning and migration periods, and
 - d) providing adequate setbacks, screening or buffers where there is the likelihood of damage and disturbance to areas of indigenous biodiversity from adjacent use and development, and
 - e) maintaining the continuity of natural processes and systems contributing to the integrity of ecological areas, and
 - f) the development of ecological management and restoration plans, and

- 7) recognising that significant residual adverse effects on biodiversity values can be offset or compensated:
 - a) in accordance with the *Regional Policy Statement for Northland Policy 4.4.1*, and⁴³
 - b) after consideration of the methods in (6) above, and
- 8) recognising the benefits of activities on biodiversity values that:
 - a) restore, protect or enhance ecosystems, habitats and processes, ecological corridors and indigenous biodiversity, and
 - b) improve the public use, value or understanding of ecosystems, habitats and indigenous biodiversity.

D.2.19 Managing adverse effects on land-based values and infrastructure

When considering an application for a resource consent for an activity in the coastal marine area or in, on or under the bed of a freshwater body, recognise that adverse effects may extend beyond the coastal marine area or the freshwater body to:

- 1) areas and values including:
 - a) Areas of Outstanding and High Natural Character, and
 - b) Outstanding Natural Landscapes, and
 - c) Outstanding Natural Features, and
 - d) Historic Heritage, and
 - e) Areas of significant indigenous biodiversity, and
 - f) Places of significance to tāngata whenua, and
- 2) land-based infrastructure including:
 - a) toilets, and
 - b) car parks, and
 - c) refuse facilities, and
 - d) boat ramps, and
 - e) boat and dinghy storage, and

when considering a proposal that has adverse effects that may extend beyond the coastal marine area or the freshwater body, decision-makers should have regard to:

- 3) any demonstrated functional need for the activity, and
- 4) the nature and scale of effects, and
- 5) the proximity of mapped Outstanding Natural Landscapes outside the coastal marine area and the potential for activities in the coastal marine area to have adverse effects on the identified natural values, characteristics and qualities of such Outstanding Natural Landscapes, and
- 6) the need to impose conditions on resource consents for those activities in order to avoid, remedy or mitigate these adverse effects.

⁴³ Biodiversity offsetting and environmental compensation are defined in the *Regional Policy Statement for Northland 2016*

D.2.20 Precautionary approach to managing effects on significant indigenous biodiversity and the coastal environment

That decision makers adopt a precautionary approach where the adverse effects of proposed activities are uncertain, unknown or little understood, on:

- 1) indigenous biodiversity, including Significant Ecological Areas, Significant Bird Areas and other areas that are assessed as significant under the criteria in *Appendix 5 of the Regional Policy Statement*; and
- 2) the coastal environment where the adverse effects are potentially significantly adverse, particularly in relation to coastal resources vulnerable to the effects of climate change.

D.5 Coastal

D.5.8 Coastal Commercial Zone and Marsden Point Port Zone Purpose

Recognise that the purpose of the Coastal Commercial Zone and Marsden Point Port Zone is to enable the development and operation of existing and **authorised** maritime-related commercial enterprises or industrial activities located within these zones.

D.5.9 Coastal Commercial Zone and Marsden Point Port Zone

Development in the Coastal Commercial Zone and the Marsden Point Port Zone will generally be appropriate provided it is:

- 1) consistent with:
 - a) existing development in the Coastal Commercial Zone or the Marsden Point Port Zone, and
 - b) existing development on adjacent land above mean high water springs, and
 - c) development anticipated on the land above mean high water springs by the relevant district plan, or
- 2) associated with **Regionally Significant Infrastructure** in the Marsden Point Port Zone.

Development that is inconsistent with (1) or (2) will not necessarily be inappropriate.

D.5.20 Reclamation

Reclamation of land in the coastal marine area shall be avoided unless all the following criteria are met:

- 1) land outside the coastal marine area is not available for the proposed activity;
- 2) the activity which requires the reclamation can only occur in or adjacent to the coastal marine area;
- 3) there are no practicable alternative methods of providing the activity; and
- 4) the reclamation will provide significant regional or national benefit.

D.5.21 Reclamation

When considering proposed reclamations, have particular regard to the extent to which the reclamation and intended purpose would provide for the efficient operation of infrastructure, including ports, airports, coastal roads, pipelines, electricity transmission, railways and ferry terminals, and of marinas and electricity generation.

D.5.22 Reclamation

Recognise the potential benefits of reclamations when they are undertaken to:

- 1) maintain or repair an authorised reclamation, or
- 2) carry out rehabilitation or remedial works, or
- 3) create or enhance habitat for indigenous species where degraded areas of the coastal environment require restoration or rehabilitation.

D.5.24 Dredging, disturbance and deposition activities

Dredging, disturbance and deposition activities should not:

- 1) cause long-term erosion within the coastal marine area or on adjacent land, and
- 2) cause damage to any authorised structure.

D.5.25 Benefits of dredging, disturbance and deposition activities

Recognise that dredging, disturbance and deposition activities may be necessary:

- 1) for the continued operation of existing infrastructure, or
- 2) for the operation, maintenance, upgrade or development of [Regionally Significant Infrastructure](#), or
- 3) to maintain or improve access and navigational safety within the coastal marine area, or
- 4) for beach re-nourishment or replenishment activities, or
- 5) to protect, restore or rehabilitate ecological or recreational values, or
- 6) when it is undertaken in association with the [deposition of material for beneficial purposes](#), including the [restoration](#) or enhancement of natural systems and features that contribute towards reducing the impacts of coastal hazards.

D.5.26 Dumping (deliberate disposal) of dredge spoil and other waste material

Discourage the dumping (deliberate disposal) of dredge spoil and other waste in the coastal marine area, unless:

- 1) it is for beach maintenance, enhancement or replenishment; or the replenishment of other geomorphological features such as banks or spits; or ecological [restoration](#), or
- 2) it is for [restoration](#), maintenance or enhancement of natural coastal defences that provide protection against coastal hazards, or
- 3) it is associated with a [reclamation](#), or
- 4) it is associated with the operation of [Regionally Significant Infrastructure](#) and the dumping does not occur within a mapped (refer [I Maps | Ngā mahere matawhenua](#)):
 - a) Significant Ecological Area, or
 - b) Nationally Significant Surf Break, or
 - c) Area of Outstanding Natural Character, or
 - d) Outstanding Natural Feature, or
 - e) Site or Area of Significance to Tāngata Whenua, or
 - f) [Historic Heritage Area](#).

The dumping (deliberate disposal) of dredge spoil or other waste that is inconsistent with conditions (1) to (4) above may be appropriate, if it is demonstrated that the dumping location is the best practicable option, given the type of material to be dumped.

Appendix 3: Regional Policy Statement for Northland – Some Provisions

4.4 Maintaining and enhancing indigenous ecosystems and species

The objectives relevant to policy and method package 4.4 are:

- | | |
|--|---|
| 3.2 Region-wide water quality | 3.14 Natural character, outstanding natural landscapes, outstanding natural features, and historic heritage |
| 3.3 Ecological flows and water levels | |
| 3.4 Indigenous ecosystems and biodiversity | 3.15 Active management |

4.4.1 Policy – Maintaining and protecting significant ecological areas and habitats

- (1) *In the coastal environment, avoid adverse effects, and outside the coastal environment avoid, remedy or mitigate adverse effects of subdivision, use and development so they are no more than minor on:*
- (a) *Indigenous taxa that are listed as threatened or at risk in the New Zealand Threat Classification System lists;*
 - (b) *Areas of indigenous vegetation and habitats of indigenous fauna, that are significant using the assessment criteria in Appendix 5;*
 - (c) *Areas set aside for full or partial protection of indigenous biodiversity under other legislation.*
- (2) *In the coastal environment, avoid significant adverse effects and avoid, remedy, or mitigate other adverse effects of subdivision, use and development on:*
- (a) *Areas of predominantly indigenous vegetation;*
 - (b) *Habitats of indigenous species that are important for recreational, commercial, traditional or cultural purposes;*
 - (c) *Indigenous ecosystems and habitats that are particularly vulnerable to modification, including estuaries, lagoons, coastal wetlands, dunelands, intertidal zones, rocky reef systems, eelgrass, northern wet heathlands, coastal and headwater streams, floodplains, margins of the coastal marine area and freshwater bodies, spawning and nursery areas and saltmarsh.*
- (3) *Outside the coastal environment and where clause (1) does not apply, avoid, remedy or mitigate adverse effects of subdivision, use and development so they are not significant on any of the following:*
- (a) *Areas of predominantly indigenous vegetation;*
 - (b) *Habitats of indigenous species that are important for recreational, commercial, traditional or cultural purposes;*
 - (c) *Indigenous ecosystems and habitats that are particularly vulnerable to modification, including wetlands, dunelands, northern wet heathlands, headwater streams, floodplains and margins of freshwater bodies, spawning and nursery areas.*
- (4) *For the purposes of clause (1), (2) and (3), when considering whether there are any adverse effects and/or any significant adverse effects:*
- (a) *Recognise that a minor or transitory effect may not be an adverse effect;*

- (b) *Recognise that where the effects are or maybe irreversible, then they are likely to be more than minor;*
- (c) *Recognise that there may be more than minor cumulative effects from minor or transitory effects.*
- (5) *For the purpose of clause (3) if adverse effects cannot be reasonably avoided, remedied or mitigated then it maybe appropriate to consider the next steps in the mitigation hierarchy i.e. biodiversity offsetting followed by environmental biodiversity compensation, as methods to achieve Objective 3.4.*

Explanation:

Policy 4.1 seeks to protect important indigenous ecosystems and habitats and maintain the diversity of indigenous species. The policy reflects Policy 11 of the New Zealand Coastal Policy Statement 2011, which applies in the coastal environment, and takes into account the decision of the Supreme Court in *King Salmon (Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd)* [2014] NZSC 38).

The management approach has a tiered protection structure. Policy 4.4.1(1) provides the highest level of protection to ecosystems, habitats, and species (biological values) most at risk of irreversible loss, with the appropriate management response being to avoid adverse effects in the coastal environment and to ensure there are no more than minor effects elsewhere.

Areas of significant indigenous vegetation and significant habitats fall within this first tier and the criteria to identify these areas are provided in Appendix 5.

Policy 4.1 (2) and (3) provides a lower level of protection for ecosystems, habitats, and species at a lesser risk of loss. It covers the coastal environment and elsewhere.

It should be noted that Policy 4.1 (2) and (3) are broader in scope than section 6(c) of the Resource Management Act, which requires the protection of areas of significant indigenous vegetation and significant habitats of indigenous species as a matter of national importance. This is because in Northland many such habitats have been degraded, so there is a greater need to give some protection to the valued habitats that remain extant.

Appendix 3 – Regionally significant infrastructure

Regionally significant infrastructure includes:

1) Energy, water, communication

- (a) Main pipelines for the distribution or transmission of natural or manufactured gas or petroleum and key delivery points and storage facilities;
- (b) Key facilities required for communication (including telecommunication, broadband, wireless networks and radio);
- (c) The 'national grid' as defined by the Electricity Industry Act 2010 including facilities for the transmission of electricity from the 'national grid' (such as substations, grid injection points etc.) to the 'network';
- (d) Network electricity lines and associated infrastructure that constitute the sub-transmission²⁵ network;
- (e) Electricity distribution assets which supply essential public services (such as hospitals or lifelines facilities), large (1MW or more) industrial or commercial consumers, 1000 or more consumers or are difficult to replace with an alternative supply if they are compromised";
- (f) Electricity generation facilities (including Ngāwhā geothermal power station and Wairua hydroelectric power station) which supply electricity to either the national grid or the local distribution network;
- (g) Regional and district council water storage, trunk lines and treatment plants;
- (h) Regional and district council wastewater trunk lines and treatment plants and key elements of the stormwater network including treatment devices;
- (i) Marsden Point oil refinery and truck loading facility.

2) Transport

- (a) State highways;
- (b) Roads as well as walking and cycling facilities that are of strategic significance as identified in the Regional Land Transport Strategy²⁶;
- (c) Whāngārei, Kaitiāia and Bay of Islands airports;
- (d) Installations and equipment for air navigation;
- (e) Northport, including the adjoining land used for the movement and storage of cargo;
- (f) Railway lines and associated railway facilities.

3) Significant social and community facilities:

²⁵ Sub-transmission means electricity infrastructure which directly conveys, or is intended to directly convey, large quantities of electricity from point to point. Typically such electricity conveyance is across cities, districts or regions between Grid Exit Points and Zone Substations. For the avoidance of doubt, sub-transmission includes assets which were part of the national grid but are no longer owned by Transpower and new assets which perform the function of transmission but are not owned by Transpower.

²⁶ See maps below.

Appendix 5 - Areas of significant indigenous vegetation and significant habitats of indigenous fauna in terrestrial, freshwater and marine environments

An area of indigenous vegetation or habitat(s) of indigenous fauna is significant if it meets one or more of the following criteria:

Note:

- i) These criteria are intended to be applied by suitably qualified and experienced ecologists.
- ii) The meaning of underlined italicised terms are described in ' **Appendix 5 Definitions** '.

1. Representativeness

- (a) Regardless of its size, the ecological site is largely indigenous vegetation or habitat of indigenous fauna that is representative, typical or characteristic of the natural diversity at the relevant and recognised ecological classification and scale to which the ecological site belongs:
 - i. If the ecological site comprises largely indigenous vegetation types; and
 - ii. Is typical of what would have existed circa 1840; or
 - iii. Is represented by faunal assemblages in most of the guilds expected for the habitat type; or
- (b) The ecological site
 - i. Is a large example of indigenous vegetation or habitat of indigenous fauna, or
 - ii. Contains a combination of landform and indigenous vegetation and habitat of indigenous fauna, that is considered to be a good example of its type at the relevant and recognised ecological classification and scale.

2. Rarity / distinctiveness

- (a) The ecological site comprises indigenous ecosystems or indigenous vegetation types that:
 - i. Are either Acutely or Chronically Threatened²⁷ land environments associated with LENZ Level 4²⁸; or
 - ii. Excluding wetlands, are now less than 20% of their original extent; or
 - iii. Excluding man made wetlands, are examples of the wetland classes²⁹ that either otherwise trigger Appendix 5 criteria or exceed any of the

²⁷ Guide for Users of the Threatened Environment Classification, August 2007, Authors: Walker S, Cieraad E, Grove P, Lloyd K, Myers S, Park T, Porteous T, for Landcare Research New Zealand Ltd.

²⁸ Landcare Research in Land Environments New Zealand (LENZ).

²⁹ Johnson P., Gerbeaux P. 2004. Wetland types in New Zealand. Department of Conservation, Wellington.

following area thresholds³⁰ (boundaries defined by Landcare delineation tool³¹);

- a) Saltmarsh greater than 0.5 hectare in area; or
 - b) Shallow water (lake margins and rivers) greater than 0.5 hectare in area; or
 - c) Swamp greater than 0.4 hectare in area; or
 - d) Bog greater than 0.2 hectare in area; or
 - e) Wet Heathlands greater than 0.2 hectare in area; or
 - f) Marsh; Fen; Ephemeral wetlands or Seepage / flush greater than 0.05 hectares in area.
- (b) Indigenous vegetation or habitat of indigenous fauna that supports one or more indigenous taxa that are threatened, at risk, data deficient or uncommon, either nationally or at the relevant ecological scale.
- (c) The ecological site contains indigenous vegetation or an indigenous taxon that is:
- i. Endemic to the Northland-Auckland region; or
 - ii. At its distributional limit within the Northland region;
- (d) The ecological site contains indigenous vegetation or an association of indigenous taxa that:
- i. Is distinctive of a restricted occurrence; or
 - ii. Is part of an ecological unit that occurs on an originally rare ecosystem³²; or
 - iii. Is an indigenous ecosystem and vegetation type that is naturally rare or has developed as a result of an unusual environmental factor(s) that occur or are likely to occur in Northland; or
 - iv. Is an example of nationally or regionally rare habitat as recognised in the New Zealand Marine Protected Areas Policy.

3. Diversity and pattern

- (a) Indigenous vegetation or habitat of indigenous fauna that contains a high diversity of:
- i. Indigenous ecosystem or habitat types; or
 - ii. Indigenous taxa;
- (b) Changes in taxon composition reflecting the existence of diverse natural features or ecological gradients; or
- (c) Intact ecological sequences.

³⁰ The area thresholds for wetlands types in these criteria have been developed by ecologists to act as a trigger to identify indigenous wetlands, which due to their scale alone are likely to have significant biodiversity value above this size threshold. Wetlands of a smaller size may also be considered significant if other criteria are met (such as the presence of threatened species).

³¹ Landcare Research, March 2014. A vegetation tool for wetland delineation in New Zealand http://www.landcareresearch.co.nz/data/assets/pdf_file/0003/71949/vegetation_tool_wetland_delineation.pdf

³² New Zealand's historically rare terrestrial ecosystems set in a physical and physiognomic framework Peter A. Williams, Susan Wiser, Bev Clarkson and Margaret C. Stanley December 2007, Landcare Research (Williams et al 2007).

Landcare Research hold a database of naturally rare (also known as 'originally or historically rare' or 'naturally uncommon') ecosystems and this excludes permanently wet areas of water bodies and below mean high water springs: <http://newzealandecology.org/nzje/2829.pdf>. On request Landcare Research can confirm where these ecosystems are known to be present.

4. Ecological context

- (a) Indigenous vegetation or habitat of indigenous fauna is present that provides or contributes to an important ecological linkage or network, or provides an important buffering function; or
- (b) The *ecological site* plays an important hydrological, biological or ecological role in the natural functioning of riverine, lacustrine, palustine, estuarine, plutonic (including karst), geothermal or marine system; or
- (c) The *ecological site* is an important habitat for critical life history stages of indigenous fauna including breeding / spawning, roosting, nesting, resting, feeding, moulting, refugia or migration staging point (as used seasonally, temporarily or permanently).

Appendix 5 Definitions

Ecological site: the area under assessment comprising one or more ecological units. Ecological sites are comparable with each other at relevant and recognised scales within the landscape. Current ecological classification systems include the ecological districts framework, freshwater biogeographical units and LENZ, and are expected to evolve in terrestrial, freshwater and marine environments as new information and technology develops.

Ecological unit: Any combination of indigenous vegetation types (or suite of interrelated types) plus the landform they occur on. The Ecological Unit may include exotic vegetation types where they support indigenous fauna.

Man made wetlands: These are wetlands developed deliberately by artificial means or have been constructed on sites where:

- a) Wetlands have not occurred naturally previously; and
- b) The current vegetation cover cannot be delineated as indigenous wetland; or
- c) Man made wetlands have been previously constructed legally.

Man made wetlands do not include *induced wetlands*; *reverted wetlands* or wetlands created for conservation purposes for example as a requirement of resource consent.

Examples of man made wetlands include wetlands created and subsequently maintained principally for or in connection with:

- a) Effluent treatment and disposal systems; or
- b) Stormwater management; or
- c) Water storage; or
- d) Other artificial wetlands and water bodies including or open drainage channels (that have been legally established) such as those in drainage schemes).

These may contain emergent indigenous vegetation such as mangroves, rushes and sedges.

Induced wetlands: These are wetlands that have formed naturally on ecological sites where wetlands did not previously exist, as a result of human activities such as construction of roads, railways, bunds etc. While such wetlands have not been constructed for a specific purpose, they can be considered to be artificial in many cases given they arise through physical alteration of hydrology through mechanical human modification.

However these should be assessed on their ecological merits i.e. are not excluded from any Appendix 5 significance criteria.

Reverted wetlands: Where a wetland reverts over time (e.g. stock exclusion allows a wetland to revert to a previous wetland state). In this instance, the wetland has not been purposefully constructed by mechanical change to hydrological conditions. Indigenous wetlands of this sort should be treated as natural wetlands and not excluded from any Appendix 5 significance criteria.

APPENDIX 4: Whangarei District Plan - Part 1: Introduction and General Provisions – Relationship between Spatial Layers – some relevant provisions

Relationship between Spatial Layers

General

HPW-R1 Applications on Sites with Multiple Zones, Overlays or Precincts or on Parts of Sites

1. Where a proposal will take place:
 - a. In two or more zones; or
 - b. Where two or more overlays apply to it; or
 - c. On a site which is partially affected by an overlay or a precinct;then the proposal must comply with the overlay, zone and precinct rules applying to the particular part of the site in which the relevant part of the proposal is located.
2. When considering a proposal all relevant district-wide, overlay, zone and precinct provisions shall apply. When conflict exists between district-wide, overlay, zone and precinct provisions, the most restrictive provision shall apply, except as provided for in HPW-R1.3.
3. Where a proposal will take place in a precinct and a conflict exists between the precinct provisions and a district-wide or zone provision, then the provision (including any rule standards and activity status) in the precinct shall override the provision in the zone or district-wide matter chapters, whether that precinct provision is more or less restrictive. Precinct provisions do not override overlay provisions, unless it is stated otherwise in the rules.

HPW-R2 Applications for More than One Activity

Where:

1. A proposal:
 - a. Consists of more than one activity specified in the Plan; and
 - b. Involves more than one type of resource consent or requires more than one resource consent; and
 - c. The effects of the activities overlap;the activities may be considered together.
2. Different activities within a proposal are subject to different parts of the Plan, each activity will be assessed in terms of the objectives, policies and rules which are relevant to that activity.
3. Where different activities within a proposal have effects which do not overlap, the activities will be considered separately.

HPW-R3 Rules to be Read in Conjunction with Headings and Tables

1. Each rule must be read, interpreted and applied in conjunction with the relevant heading, rule title and sub-heading under which is listed, and any associated table under those headings.
2. Each proposal must be assessed against all relevant rules and the associated headings(s) and tables(s).

HPW-R7 Application of Activity Definitions

1. Where an activity could be captured by more than one definition grouping classification, the most specifically defined activity and most specific rule shall over-ride the more general definition and rule.

APPENDIX 5: Analysis of Application of Industrial Activities and Commercial Activities in the Natural Open Space Zone of Ms Niblock's Statement of Evidence dated 12 October 2023 – paragraphs 3-13

3. Planning Matters – NOSZ/Activity Status

While much of the contention has focused on the 'definition' of activities in determining the overall activity status for the consent, I believe the contention lies, rather, with the need to consider all of the relevant zone(s) as they are currently set out in the Whangarei District Plan.

4. It is agreed that a portion of the proposed expansion of the *existing* port facility will be located outside of the spatially defined 'Port Zone' into what is zoned as Natural Open Space. However, Mr. Hood states in his final evidence in paragraph 21 that the WDP is not constructed to allow for more than one activity status, relying on the HPW-R7, which relates to the application of activity definitions specifically.
5. I disagree with Mr Hood's approach for the following reasons and consider that both the Port Zone and Natural Open Space Zone chapters must apply to the relevant parts of the proposal.
6. The Port Zone is a 'Zone', and HPW-R1 sets out the rules for the management of applications on sites over multiple zones, or on parts of sites. The rules quite clearly stipulate that where a proposal will take place across two or more zones;

HPW-R1 (1)(a:) the proposal must comply with the overlay, zone and precinct rules applying to the particular part of the site in which the relevant part of the proposal is located.

and

HPW-R1 (2): When considering a proposal all relevant district-wide, overlay, zone and precinct provisions shall apply. When conflict exists between district-wide, overlay, zone and precinct provisions, the most restrictive provision shall apply, except as provided for in HPW-R1.3

7. Furthermore, it is my opinion that WDP does allow for applications with more than one activity (refer HPW R2) and specifically describes the situations when these activities may be considered together, such as if there is overlap, or more so importantly, how they are to be considered separately.

HPW-R2 (2) Different activities within a proposal are subject to different parts of the Plan, each activity will be assessed in terms of the objectives, policies and rules which are relevant to that activity.

HPW-R3 (3) Where different activities within a proposal have effects which do not overlap, the activities will be considered separately.

8. Consequently, this approach requires an assessment of the activities proposed within the NOSZ, and subsequently, requires consideration of the definition of activities proposed to take place in this zone.
9. Port Activities are specifically defined within the WDP to apply within the spatially defined Port Zone. As such, an alternative activity definition is required when considering the NOSZ.

The activities proposed to be carried out within the NOSZ may fall under the broad, nested definition of *either* 'Industrial Activities' or 'Commercial Activities' meeting more specific definitions within each nesting table. The proposal encompasses more than one *specific* activity, being more than just 'storage', as Mr Hood understands was the basis for this approach.

10. And while I agree with Mr Hood that Port Activities may not align completely with any one specific activity definition, on the absence of being able to rely on the Port Activities definition, the following, in my opinion, are the most closely aligned definitions within the WDP that would apply within the NOSZ.

Industrial Activity: means an activity that manufactures, fabricates, processes, packages, distributes, repairs, stores, or disposes of materials (including raw, processed, or partly processed materials) or good[s]. It includes any ancillary activity to the industrial activity.

General Industry: means any industrial activity which is not manufacturing and storage, repair and maintenance services, artisan industrial activities, marine industry, waste management facilities, or a landfill.

General Commercial: means any commercial activity which is not a commercial service, entertainment facility, food and beverage activity, funeral home, retail activity, service station or visitor accommodation.

Commercial Activities: means any activity trading in goods, equipment or services. It includes any ancillary activity to the commercial activity (for example administrative or head offices).

11. HPW-R7 states that where an activity could be captured by more than one definition grouping classification, the most specifically defined activity and most specific rule shall over-ride the more general definition and rule. On this basis, it may be considered that the Industrial Activity definition is more applicable to this activity.
12. Notwithstanding, use of *either* of the above-mentioned definitions would result in a Non-Complying activity when assessed against rules NOS-R23 or NOS-R35 of the NOSZ chapter.
13. I appreciate this may result in the need for a more comprehensive assessment of objectives and policies and a stronger reliance of enabling objectives and policies in pursuing s104D; however, I consider the approach of the planning assessment to be of key importance in seeking that the values recognised throughout NOSZ chapter are assessed appropriately and that adverse effects on the values and qualities of the NOSZ are appropriately avoided, remedied or mitigated in accordance with NOSZ-O1 and NOSZ-P5.