

**BEFORE INDEPENDENT HEARING COMMISSIONERS APPOINTED BY  
NORTHLAND REGIONAL COUNCIL**

**UNDER**

the Resource Management Act 1991 (**RMA**)

**AND**

**IN THE MATTER**

of an application for a resource consent to  
build a replica of the Mangawhai Wharf

**BY**

**THE MANGAWHAI HISTORIC WHARF  
TRUST**

Applicant

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**STATEMENT OF EVIDENCE OF VISHAL CHANDRA  
FOR THE MANGAWHAI HISTORIC WHARF TRUST**

**(PLANNING)**

**Dated: 4 September 2020**

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## 1. INTRODUCTION AND EXPERIENCE

### Qualifications and experience

- 1.1 My name is Vishal Chandra. I am a consulting principal planner at Dream Planning Limited (**DPL**). I have been engaged by Mangawhai Historic Wharf Trust (**MHWT**) to support their resource consent application to construct, re-establish and operate the historic Mangawhai Wharf at the end of the Moir Street in Mangawhai.
- 1.2 I have practised in the resource management area for over 15 years and have gained extensive experience in both the public and private sectors. Previously I have been in management and technical roles in private practice and within local government.
- 1.3 I hold the qualifications of Master and Bachelor of Planning with Honours, both from the University of Auckland. I am a full member of the New Zealand Planning Institute (**NZPI**), Chair of the NZPI Aotearoa Pacific Practitioners Group and committee member of the NZPI Papa Pounamu. I am also a qualified independent commissioner.
- 1.4 My principal areas of practice are land development, and infrastructure planning for transport and water. I have led policy and plan development work, specifically in relation to land rezoning and designations.
- 1.5 I have been engaged as a planning lead on this project post notification of the resource consent and close of submissions. I am familiar with the intent of the proposal, technical assessment reports and matters raised by submitters.
- 1.6 I have visited the site on a few occasions recently, the last visit being 27 August 2020.

### Purpose and scope of evidence

- 1.7 The purpose of my evidence is to provide an assessment of the proposal against the relevant planning framework. My evidence is structured as follows:
  - a) Overview of the development, surrounding environment, need for consent and process to date (Section 3);

- b) Analysis of the relevant statutory provisions i.e. section 104 and Part 2 along with other relevant statutory and non-statutory documents (Section 4);
- c) Comment on issues raised in submissions (Section 5);
- d) Comment on issues raised in the section 42A report and the conditions offered by the MHWT (Section 6), and
- e) Conclusion (Section 7).

1.8 In preparing this evidence, I have reviewed and rely on the evidence of the following:

- a) Mr Colin Leach (MHWT);
- b) Dr John Craig (Ecology);
- c) Miss Kylie McLaughlin-Brown (Landscape, Character and Visual);
- d) Dr Philip McDermott (Research and Analysis); and
- e) Mr Roy Faris (Construction).

1.9 A summary of my evidence is contained in Section 2.

### **Expert Witness Code of Conduct**

1.10 I have been provided with a copy of the Code of Conduct for Expert Witnesses contained in the Environment Court's Consolidated Practice Note 2011. I have read and agree to comply with that Code. This evidence is within my area of expertise, except where I state that I am relying upon the specified evidence of another person.

1.11 I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

## **2. EXECUTIVE SUMMARY**

2.1 The proposal is to construct, re-establish and operate the historic wharf near the existing Moir Street boat ramp. The proposal will have significant positive effects on recreation, social and education outcomes for the community and its visitors.

- 2.2 The wharf site is located within the coastal marine area and identified as Marine 1 (Protection) Management Area under the operative Northland Regional Coastal Plan 2004 (NRCP), and General Marine under the proposed Northland Regional Plan - Appeals Version 2020 (**PNRP**). Recreational activities (excluding structures) can occur in this area and are permitted subject to meeting performance terms, standards or conditions.
- 2.3 The key issues, identified in the Assessment of Environmental Effects (**AEE**) prepared by DPL or raised through submissions include:
- a) Location of the wharf and the need for it;
  - b) Impact of the construction activity;
  - c) Operational impact of the wharf development on the surrounding environment, and its occupants and users; and
  - d) Positive effects.
- 2.4 The AEE for the proposal identifies and assesses the actual and potential environmental effects. I confirm and agree with the opinion as set out in the AEE that the application accords with the relevant matters under the Resource Management Act 1991 (**the RMA**). In this regard, my views differ from those of the section 42A report author, and I provide an evaluation against section 104 of the RMA.
- 2.5 I have reviewed submissions received to the resource consent application and have responded to the issues of relevance to my area of expertise, including suggesting new conditions in addition to those originally proposed.
- 2.6 In my opinion, the wharf development is consistent with the statutory planning framework's overall objectives and policies that apply, and the project is reasonably practicable. I have also identified and considered relevant non-statutory documents such as the draft Kaipara Sub-regional Spatial Plan 2020 and the draft Mangawhai Spatial Plan 2020 as part of this assessment.
- 2.7 Overall, having regard to the effects (and relying on the technical expert evidence) with appropriate operational protocols, design, and construction conditions, I conclude that the wharf will have only minor effects.

### **3. OVERVIEW**

#### **The historic wharf**

- 3.1 Mangawhai harbour served as the primary point of entry and departure for goods to the wider district prior to road and rail links. Trade occurred from the bank until a wharf was built in 1880s. This historical wharf catered for the community's commercial needs, especially timber trade.
- 3.2 The wharf was a critical piece of infrastructure for the wider region and as such is an important part of its history. With commercial decline from the establishment of other access links such as road and rail, the wharf fell into disrepair raising safety concerns for the community. It was demolished in the 1950s.
- 3.3 Remnants of the wharf footprint are present on the seabed. The footprint of the wharf is recognised as an archaeological site.
- 3.4 The interest to the wider local community of rebuilding the wharf is its historic link and to provide a functional structure that will add amenity value to the fast-growing coastal town. The intent of the project is to enhance access to the coastal marine area and provide recreational opportunities to the local community and visitors. The development also recognises the history of the original wharf and will display ecological values information of this locality, providing educational opportunities.
- 3.5 Location of Mangawhai in close proximity to Auckland and Whangarei, and on the Twin Coast discovery route brings growth. The Kaipara District Council anticipates this to be of up to 40% by 2028, and considers the wharf would complement the community's recreational needs (referred to in the letter contained within Attachment 1 of the application). Growth is also planned within the Spatial Planning work for Mangawhai and the wider Kaipara district, led by Kaipara District Council.

#### **The existing site and surrounding environment**

- 3.6 The technical experts' evidence provides an outline of the existing environment as it pertains to their respective disciplines. For conciseness I have not repeated the descriptions provided by each expert but provide below, a summary of the main features of the existing physical environment.

- 3.7 The area of works for the proposed wharf spans from the coastal edge north of the existing Moir Street boat ramp, in the northeast direction above the footprint of the original wharf towards the tidal northern channel (this being one of the two channels formed from the division of the main channel i.e. the tidal northern and southwestern arms of the harbour). This is defined as the upper reaches of the Mangawhai Harbour.
- 3.8 Landward activities near the site are predominantly residential with the exception of the adjacent commercial uses i.e. the Mangawhai Tavern Market which operates on Saturdays and the Mangawhai Tavern itself. The Mangawhai Village as a business and commercial core is located 500m from the site.
- 3.9 The wider landscape comprises the historical residential use with infill development occurring over time, and more recent greenfield subdivisions and developments.
- 3.10 The seascape or harbour environment accommodates a range of activities including small coastal structures such as ramps, steps and boardwalks with recreational surface water activities (motorised and non-motorised). The coastal edge in this location comprises a continuous esplanade reserve on the adjacent peninsula with Pohutukawa trees while the coastal marine environment comprises coastal vegetation in pockets along with clusters of mangrove areas.
- 3.11 The area overall is modified in parts where the natural and built environment coexist. With further development planned and occurring, an increase in use of the coastal environment is expected, primarily for recreational purposes.
- 3.12 The NRCP recognises the application area as Marine 1 Management Area while the PNRP identifies this area as General Marine. The PNRP introduces overlays such as significant bird area. Significant marine mammal and seabed area and high natural character, all of these overlays are subject of appeals, and do not carry statutory weight.
- 3.13 The wider statutory environment includes the Mangawhai Sandspit, an Outstanding Natural Feature.

### **The proposed wharf development**

- 3.14 The AEE sets out MHWT's proposal to construct, re-establish and operate the historic wharf near the existing Moir Street boat ramp, at the eastern end of Moir Street, Mangawhai. This requires incidental disturbance of the seabed.
- 3.15 The design of the wharf replicates the original historic wharf in terms of its location, dimensions and materials used. The wharf extends 101 m into the coastal marine area with 300 mm diameter piles at 4.5 m intervals. This comprises a walkway (90 m in length and 3 m in width) and head of the wharf (10.9 m by 12 m). The head contains a building for shelter, seating and information display purposes (7 m by 6 m, and 3.1 m in height) with its eastern and western ends open.
- 3.16 Changes to the original design include removal of the shed on the landward side of the wharf, and the introduction of a gangway 14 m in length and floating pontoon (12 m by 4 m) that is attached to four piles. These reflect a change from a predominantly commercial structure to a recreational amenity.
- 3.17 A term of 35 years is sought for the wharf to occupy the coastal marine area.

### **Reasons for consent**

- 3.18 The key RMA statutory provisions of relevance to the consideration of the wharf development are set out in Part 2 (purpose and principles) and Part 6 (resource consents). These provisions are set out in Section 5 of the AEE.
- 3.19 Section 4 of the AEE outlines the resource consents required and applied for by MHWT to construct, re-establish and operate the historic wharf. These relate to placement, use and occupation of the coastal marine area with the proposed structures, and incidental disturbance of the seabed. These have been applied for under the NRCP and the PNRP. When bundling the resource consent applications, the overall status of the activities for which consent is required has been assessed as non-complying.
- 3.20 The plans and specifications for the wharf development have not changed since the AEE was filed.



### **Process to date**

- 3.21 The application was publicly notified on 25 May 2020. The submission period closed on 23 June 2020.
- 3.22 A total of 227 submissions were received, of these 31 were in opposition. Of the total submissions received, five were received after the close of submissions.
- 3.23 My evidence sets out how the proposed wharf has been assessed in terms of actual and potential effects on the environment relying on the AEE, within the context of the statutory planning framework based on the considerations of the experts, the section 42A report and the submissions received.

## **4. STATUTORY ANALYSIS**

### **Planning framework**

- 4.1 The principal framework for my evaluation is section 104(1) of the RMA which requires when considering an application for resource consent and any submissions received that the consent authority, must subject to Part 2, have regard to:
- a) Any actual and potential effects on the environment of allowing the activity including measures proposed by the applicant for the purpose of ensuring positive effects, or to offset or compensate for adverse effects;
  - b) Any relevant provisions of a national environmental standard or policy statement, a New Zealand Coastal Policy Statement; a regional policy statement, a plan or proposed plan; and
  - c) Any other matters that the consent authority considers relevant and reasonably necessary to determine the application.
- 4.2 I also address below in my evidence section 104(2) of the RMA, relating to adverse effects of activities permitted by a plan. This refers to the concept of a permitted baseline, being the level of adverse effects which the NRCP and PNRP accept as appropriate. The section 42A report does not address this.

- 4.3 In my opinion, recreational uses of the Coastal Marine 1 and the General Coastal areas are allowed to the extent that these meet performance terms, standards or conditions, and do not involve installation of structures. A speed limit of five knots applies within this coastal marine area.
- 4.4 Compliance with the occupation and use of the coastal marine area and especially with the speed limit, means any associated effects such as movement of water resulting from the vessels, noise from motorised vessels and people, and visual presence of users on the water surface and their vessels, can be considered as the permitted baseline.
- 4.5 The receiving environment is made up of the existing environment and associated effects from lawfully established activities and includes effects from any consents (not impacted by proposal) that have been granted or are likely to be implemented. It also includes the environment as likely to be modified by activities permitted by the plan.
- 4.6 In this location, the receiving environment comprises the seascape and the landscape, including all developments on land, along the coastline and within the coastal marine area described in section 3 of this evidence. It also includes natural features such as protected vegetation and the coastal and estuarine environment. Activities outlined under the permitted baseline, also need to be considered in the context of considering effects of the proposed wharf.
- 4.7 The relevant statutory documents addressed in my evidence are:
- a) New Zealand Coastal Policy Statement 2010 (**NZCPS**);
  - b) Northland Regional Policy Statement 2004;
  - c) Operative Northland Regional Coastal Plan 2016; and
  - d) Proposed Northland Regional Plan – Appeals Version 2020.
- 4.8 The key non-statutory documents include draft Mangawhai Spatial Plan, July 2020, and draft Kaipara Sub-Regional Spatial Plan, May 2020.
- 4.9 In my opinion, the wharf is generally consistent with these plans and policies as outlined in the AEE. As there is an extensive list of relevant objectives and

policies, I have focused this section of my evidence on what I consider to be the key policies and policy direction of the relevant plans.

### **New Zealand Coastal Policy Statement 2010**

- 4.10 The NZCPS sets policy direction for management of the coastal environment of New Zealand and is relevant to this proposal. It contains objectives and policies including those aimed at safeguarding the integrity, form, function and resilience of the coastal environment, and sustaining its ecosystems, and preserving the natural character of the coastal environment.
- 4.11 In the Preamble, the NZCPS sets out issues and challenges relevant to New Zealand's coastal environment. Of particular relevance to the wharf development, are the following:
- *Loss of natural character, landscape values and wild or scenic areas along extensive areas of the coast, particularly in areas closer to population centres or accessible for rural residential development;*
  - *Continuing decline in species, habitats and ecosystems in the coastal environment under pressures from subdivision and use, vegetation clearance, loss of intertidal areas, plant and animal pests, poor water quality, and sedimentation in estuaries and the coastal marine area;*
  - *Loss of natural, built and cultural heritage from subdivision, use, and development, and*
  - *Compromising of the open space and recreational values of the coastal environment, including the potential for permanent and physically accessible walking public access to and along the coastal marine area.*
- 4.12 Objectives 1 to 6 of the NZCPS and Policies 1 (extent and characteristics of the coastal environment), 2 (Treaty of Waitangi), 3 (precautionary approach), 6 (activities in the coastal environment), 11 (protect indigenous biodiversity), 13 (preserve natural character), 17 (protect historic heritage), 18 (public open space) and 19 (walking access) are relevant, as outlined in the AEE (section 7) and the section 42A report (section 10.1).
- 4.13 Particular regard has been given to relevant NZCPS objectives and policies in developing the project and the wharf's design. The location and scale of the wharf has recognised the characteristics of the coastal environment including

coastal fauna and flora, and recognised and involved mana whenua, providing for kaitiakitanga.

- 4.14 Consideration has been given to public access and recreational use of the wharf by the community, and coastal hazard areas have been identified and assessed.
- 4.15 Balancing the range of issues covered by these provisions, controls over the design and location of the wharf development include construction method and seasonal requirements; restricted use for recreational purposes only and maximum duration of berthing; and maintenance restriction for no dredging in future. These restrictions also manage user health and safety risks, alongside inclusion of physical measures such as bollards, rails, lighting and signage.
- 4.16 The history and ecology of the area have been recognised and facilitated with the inclusion of a shed to display information for educational purposes, enabling social and cultural wellbeing.
- 4.17 I generally agree with the section 42A report author, and concur with the AEE. Consequently, I do not agree with the section 42A report author that there is a need for the precautionary approach which she has adopted as a basis for recommending consent be refused.
- 4.18 I acknowledge that risks related to possible interference with shore bird breeding and feeding may exist. However, Dr Craig's evidence, on which I rely, confirms the adaptable nature of these birds especially fairy tern, and outlines the key threats. Those are not directly associated with the proposed wharf or its users and use. As such, the risks outlined in the section 42A report are considered to be low, and not adverse in nature, and therefore the need to avoid adverse effects without which consistency with the NZCPS cannot be confirmed, is incorrect.
- 4.19 The precautionary approach (Policy 3) involves developing the case outlined above, and specifically the following:
- a) Construction methodology, hours and days of work, breeding season restriction, compliance with noise and vibrations limits;
  - b) No commercial operation will take place from the wharf;
  - c) Limit of stay of users to 30 minutes when berthing;

- d) Recognition of the speed limit applicable to this part of the estuary and associated anticipated effects such as noise; and
  - e) A no dredging restriction associated with the wharf infrastructure.
- 4.20 Policy 11 seeks to protect indigenous biological diversity in the coastal environment by avoiding adverse effects of activities on indigenous taxa (a(i)), and avoiding significant adverse effects (and avoid, remedy or mitigate other adverse effects) on habitats in the coastal environment (b(ii)) and indigenous ecosystems (b(iii)).
- 4.21 Relying on the evidence on Dr Craig and Dr McDermott, I understand that over time any potential impact on native fauna will be removed given these species habituate, and any effects that might occur will be temporary and transitory.
- 4.22 The wharf development therefore is consistent with Objective 1, Policy 3 and 11, and all other relevant NZCPS objectives and policies identified above.

#### **Northland Regional Policy Statement 2016**

- 4.23 The NRPS is Northland's overarching document prepared under the RMA, which is given effect to by the provisions of the NRCP and PNRP. It sets out the strategic RMA framework for the identified issues of significance, resultant priorities and outcomes sought. The strategic objectives and policies of the NRPS provide a framework to achieve the integrated, consistent and coordinated management of the region's resources.
- 4.24 The strategic objectives are generally based on Part 2 of the RMA, issues facing the Region and the Council's functions. This framework is based upon not compromising the strategic direction of containment and intensification, and the avoidance of adverse effects on the environment.
- 4.25 Under the NRPS, matters related to environmental protection, such as the coastal environment, natural resources, infrastructure, environmental risk, urban growth and form, have specific objectives, policies and methods to achieve sustainable and integrated management of natural and physical resources in the region.
- 4.26 A comprehensive analysis is included in the AEE (section 6) which I agree with and in the section 42A report (section 10.2) that states inconsistency exists with Objective 3.4 and Policy 4.4.

- 4.27 Objective 3.4 relates to safeguarding ecological integrity by protecting significant habitats of indigenous fauna, maintaining the extent and diversity of indigenous ecosystems and habits, and where practicable enhancing these. The relevant policies which achieve these include 4.4 (maintain and enhance indigenous ecosystems and species).
- 4.28 I rely on Dr Craig and Dr McDermott, both of whom within their respective evidence confirm the minor scale of effect, and how the shore birds would respond to development of the wharf and its use within the coastal marine area used for foraging.
- 4.29 A detailed assessment is contained under the NZCPS analysis and for these reasons consistency with Objective 3.4 and Policy 4.4 is achieved.
- 4.30 The strategic objectives and policies align with the direction contained in the NRCP and PNRP.
- 4.31 The NRCP and PNRP objectives and policies recognise the need to provide opportunities for growth and development, and specifically encourage diversity in order to cater to peoples' variable needs while managing effects of those activities.
- 4.32 In my opinion, the policy thrust of the NRPS seeks to provide for integrated management of natural and physical resources while it accounts for social, economic, aesthetic and amenity, and cultural dimensions. Based on the above discussion, the proposed wharf location is a suitable one, where all of the dimensions are balanced with the natural environment, which can cope with and habituate to change.
- 4.33 Change is anticipated and expected over time and provided for by the NRCP and PNRP. As demonstrated through earlier analysis and with expert input, the effects of the proposal on the environment and on any persons will be managed appropriately. This proposal is as a result consistent with the NRCP and PNRP.

#### **Regional Plan (operative and proposed)**

- 4.34 The NRCP and PNRP are key resource management documents prepared under the RMA, and these are the most critical parts of the strategic planning framework. Once the proposed replaces the operative plan, it would play a

role in the successful implementation of the NRPS by identifying opportunities and constraints for activities and development. It will also identify highly valued and regionally significant resources that the policies protect or manage.

- 4.35 The NRCP and PNRP establish clear and consistent priorities for resource use and protection by identifying boundaries and limits based on environmental values, establish priorities for resource use where there are likely to be competing uses, such as competition for use between preservation and recreation, and set out rules for regulating use and development.
- 4.36 The relevant NRCP chapters and corresponding objectives include 7.3, 8.3, 10.3, 12.3, 13.3, 16.3, 17.3 and 25.3, and Policies 7.4.2, 8.4.1, 10.4.1, 12.4.3, 16.4.1, 16.4.2, 16.4.4, 16.4.3, 17.4.3, 17.4.4, 17.4.8, 25.4.1, 25.4.4. An assessment is contained in the AEE (Section 8) which demonstrates general consistency and I agree with that assessment.
- 4.37 The relevant PNRP Objectives include F.1.2 (water quality), F.1.3 (indigenous ecosystems and biodiversity – under appeal), F.1.4 (economic wellbeing – under appeal), F.1.7 (use and development – under appeal), F1.11 (natural character – under appeal), and Policies include D1.4 (places of significance to tangata whenua), D.2.2 (social, cultural and economic benefits of activities), D.2.4 (adaptive management), D.2.11 (marine and freshwater pest), D.2.14 (historic heritage), D.2.15 (natural character, outstanding natural landscape and outstanding natural feature – under appeal), D.2.16 (indigenous biodiversity – under appeal), D.2.18 (indigenous biodiversity – under appeal), D.2.17 (land base values and infrastructure – under appeal), D.4.1 (water quality) and D.5.24 (disturbance of seabed).
- 4.38 The section 42A report (sections 10.3 and 10.4) provides an analysis against the proposed and operative plans. For the most part, I agree with the section 42A report author, and draw attention to the specific provisions where I have opposing views.
- 4.39 I disagree with the section 42A report author's conclusion that the location of the development is contrary to the objectives and policies. I believe this issue has been narrowly viewed on the basis of points registered by the submitters in opposition, and council's ecology expert. Dr Craig's and Dr McDermott's evidence provide clarity on the scale and nature of the ecology effect as being

transitory given that these birds can habituate to change, and in turn the biodiversity effects will be of the same character.

4.40 The higher order documents have been assessed earlier in this evidence and I hold the same view for this part i.e. relying on the experts, I believe the resulting effects on shore bird habitat especially on fairy tern, will not be adverse in scale and will be transitory in nature.

4.41 Accordingly, it is considered that the proposal can be constructed, re-established and operated in a manner that is consistent with the objectives and policies of the NRCP and PNRP.

#### **Section 104(1)(a) - Actual or Potential Effects on the Environment**

4.42 An assessment of actual and potential effects on environmental is contained in section 3 of the AEE. That assessment is further explained by earlier witnesses relative to the points raised by submitters.

4.43 I confirm and agree with the opinion as set out in the AEE.

#### **Section 104(1)(b) - Relevant Provisions**

4.44 Earlier in this evidence I considered the relevant provisions. It is my opinion that the wharf development is generally consistent with the relevant provisions of these documents.

4.45 My evidence considers the wharf development in relation to the relevant objectives and policies of the statutory framework. In my opinion, the project is consistent with, and at least not contrary to the overall relevant planning provisions.

4.46 Consequently, I see no impediment from a planning perspective to the granting of the resource consents with appropriate conditions.

#### **Section 104(1)(c) - Other Matters**

4.47 These may include other plans, strategies and documents (non-statutory and outside the RMA) that may be relevant. I consider the Kaipara Sub-regional Spatial Plan (draft, May 2020) and the Mangawhai Spatial Plan (draft, July 2020) relevant, noting these may only be relevant in part in setting the wider context and priorities for this locality.



- 4.48 The draft Kaipara Sub-regional Plan 2020 enables a holistic approach to development and management of resources within urban, peri-urban and rural communities across the district, and the relationship between these settlements and villages. It identifies Mangawhai as the fastest growing settlement in the district at present and recognises it as a key urban centre.
- 4.49 Key urban areas are towns that service the needs of their residents and businesses, as well as servicing needs of those from outside the district. This gives an indication of the scale of development anticipated, and the corresponding level of infrastructure investment (i.e. linear infrastructure such as roads and footpaths, and social infrastructure such as reserves and sports facilities) in Mangawhai.
- 4.50 The draft Mangawhai Spatial Plan 2020 sets the 30-year spatial framework for growth and development. The forward notes that the district is the fastest growing district in the North Island, with 20% population increase over the past five years, the majority of which is in Mangawhai.
- 4.51 The spatial plan sets out to provide suitable areas for people to live, learn, work and play under the vision for a cohesive community that respects its natural setting, offers living and working choices and celebrates iwi culture, heritage, and embraces the future. The outcomes which the proposed wharf development supports, include:
- a) Natural Environment – *“Improve connectivity and public access to the local natural environment.”*
  - b) Iwi and Culture – *“Identify, protect and communicate the cultural and archaeological histories of the people of Mangawhai.”*
  - c) Community – *“Provide additional community facilities that continue to meet the needs of the growing and developing community.”*
- 4.52 These non-statutory spatial plans will inform and be incorporated within the forthcoming district plan for Kaipara, and this is when these documents will be afforded statutory weight. This implementation mechanism illustrates the significance of the work being undertaken for Mangawhai within the community, and its relevance to the proposed wharf.

- 4.53 The wharf is considered to directly improve and support social and recreational outcomes of the community now and in the future, and educate locals and visitors alike through linkages with history and culture, and may support economic growth while protecting the natural environment.

#### **Section 104D - Gateway Test**

- 4.54 Section 104D of the RMA requires non-complying activities to pass at least one of the tests of either sections 104D(1)(a) or 104D(1)(b) before an application can be assessed to make a decision under s104B of the RMA. If the application fails both tests then the application must be refused consent.
- 4.55 In respect of section 104D(1)(a), based on evidence of Dr Craig, I am of the opinion that adverse effects of the proposal will be minor. I note the discrepancies Dr Craig has identified within the submissions opposing the application on the grounds that the wharf would pose a significant threat to foraging shore birds and the evidence he presents of the demonstrated capacity of the fairy tern to habituate to the presence of people in the Mangawhai Estuary and surrounding environment. This is supported by Dr McDermott's research into the history of bird numbers and the growth of settlement in the catchment and activity in and around the harbour.
- 4.56 In respect of section 104D(1)(b), I consider (relying on the experts) that the proposal is not contrary to the objectives and policies of the relevant plans as outlined earlier in this evidence.
- 4.57 Case law has established the "contrary to" is a strong test, and that the application would need to be contrary to the general thrust of the objectives and policies as a whole, or at least significantly contrary to some provision which is particularly important to the case. I consider that while there may be opposition suggesting that the wharf poses risks to native fauna and therefore biodiversity objectives and policies, Dr Craig's evidence (based in part on the evidence presented in opposition) establishes that the resulting effects of the proposal are not a threat to the shore birds, especially the fairy tern, and the proposal is therefore not contrary to the biodiversity objectives and policies. The wharf development is consistent with a wide range of objectives and policies that seek social, cultural and economic wellbeing outcomes.
- 4.58 I note here the absence of the need for dredging and only minor disturbance to the seabed from the pile installations, and the use of the proposed wharf for

recreational and educational use only. Mr Leach in his evidence offers conditions of consent to restrict establishment of any commercial operation from this wharf, limited tie up times, and that no dredging is to occur in association with the use and functions of this wharf. These measures limit the potential of nuisance effects (analysed later in this evidence in response to submissions) and provide consistency with the relevant plans.

- 4.59 I conclude that as the application meets the tests of section 104D of the RMA, it can therefore be assessed against the provisions of section 104B of the RMA, and a substantive decision can be made.

### **Part 2 - Purpose and Principles**

- 4.60 Nothing in the evidence I have read, or from my own investigations, suggests that there is a gap in the statutory policy framework that would necessitate considering Part 2 of the RMA. Nevertheless, I address the key aspects of Part 2 below.
- 4.61 The proposal is considered consistent with the purpose and principles of the RMA. The effects of the proposal, which are discussed in Section 5 of the AEE and in the evidence of the technical experts, are considered to be acceptable given that the wharf is fitting within its immediate and wider environment. Of particular relevance is that the most significant of effects from the proposal will be transitory and short term, and any adverse effects can be appropriately managed, remedied or avoided.
- 4.62 The wharf development promotes social outcomes by accommodating the recreational needs of a growing community and in the form of education relating to local history, culture and ecology.
- 4.63 After considering the relevant Part 2 matters, works subject of this application will underpin the social sustainability i.e. will support existing residential and business population and potentially foster economic activity, while managing environmental effects and meeting cultural expectations, all of which would ensure the sustainable future growth for this locality.

## **5. COMMENT ON ISSUES RAISED IN SUBMISSIONS**

5.1 A total of 227 submissions were received, of these 31 were in opposition. Of the total submissions received, five were received after the close of submissions.

5.2 I have read and considered the submissions addressing the potential impact of the wharf development and my responses are set out below, grouped by the key themes and issues raised:

- a) Impact of the construction activity;
- b) Operational impact of the wharf;
- c) Location of the wharf and the need for it; and
- d) Positive effects such as increased amenity and recreation, link to history, improved access to the coastal marine area and possibly increase tourism activity.

5.3 Many of the issues raised are addressed generally in my evidence or in the evidence of others.

### **Impact of the construction activity**

5.4 The construction method has been addressed by Mr Faris. I have relied on this expert advice in forming my view of the effects on the environment. I understand from the section 42A report author that these matters are not in contention, subject to appropriate conditions of consent.

5.5 Mr Faris in his evidence notes that works are proposed to be managed in accordance with the relevant construction noise limits NZS 6803:1999, and relevant limits set in the NRCP and PNRP, and the Kaipara District Plan 2013. As a result, this will not create nuisance nearby residents or visitors.

5.6 Construction is proposed to be undertaken within 20-25 weeks. Hours of works will be during the daytime only, and over business hours Monday to Saturday. No works will occur on Sundays and on public holidays, and during extreme weather circumstances. Any effects resulting from the construction works, including seabed disturbance, will therefore occur within the set statutory levels and best practice standards.

- 5.7 No work will occur during the breeding season for shore birds, with no work buffers on either end of this season. Dr Craig and Mr Faris in their respective evidence confirm the appropriateness of this in managing any adverse effects on native fauna breeding.
- 5.8 Adverse effects on water quality will be managed with construction management protocols such as specific methods outlined in Appendix 2 – Development and Operations of the application and discussed in the expert evidence of Mr Faris.
- 5.9 Evidence prepared by Mr Faris (Construction) and Dr Craig (Ecology) confirm that adverse effects will be managed, avoided or remedied over the development phase.

### **Operational impact of the development**

#### Footprint and coastal processes

- 5.10 Submissions raise concerns over operational effects including the location of the wharf. The proposed location of the wharf relates back to its intent which is to re-establish the historic wharf, in its original location. This is outlined in detail in the evidence of Mr Leach. No further locational options had therefore been considered.
- 5.11 The footprint of the wharf will result in the loss of a small area of marine habitat (which is outlined in the application materials and Mr Leach's evidence of 500 sqm over the 38 hectares foraging area i.e. around 0.1%). The project area is relatively small when compared with the foraging area of native fauna i.e. fairy tern, or the wider coastal marine area. The project footprint and any changes or loss of the intertidal habitat when compared with the wider coastal marine environment will have minor adverse effects on intrinsic marine ecological values.
- 5.12 The adaptable nature of the species of shore birds present in this location including the fairy terns will likely see them habituate post construction, as outlined in Dr Craig's evidence. Based on Dr Craig's expertise, I accept that any resulting change will be transitory and adverse effects will be no more than minor.

- 5.13 From a coastal process perspective, the coastal edge is modified from historic changes including the presence of coastal structures such as a rock sea wall, boat ramps and stairs. As the works involve construction of a piled wharf with wide spacing and a pontoon, tidal currents and waves at the site are expected to remain the same as those at present. Mr Faris confirms this in his evidence. Any resulting effects (as outlined in the application) will therefore be no more than minor.

#### Shore birds

- 5.14 Mr Southey and New Zealand Fairy Tern Trust (NZFTT) statements in support of their opposition to the wharf development include the impact of the unavailable feeding or roosting areas resulting from the development, fairy terns being territorial and will not adjust, and exclusive use of feeding territories.
- 5.15 Dr Craig states that most birds are able to adapt to developments within their environment and that the shore birds present in the Mangawhai Estuary, will likely adapt to the wharf. Dr Craig refers to Mr Southey's description of fairy terns as being species which are "fairly tolerant [to] disturbance" (paragraph 5.18 of his submission), and presence of people near fairy tern nests. These suggest people are not necessarily a risk or threat.
- 5.16 Mr Southey in his submission notes that fairy terns feed within proximity to the causeway. Dr Craig points out that this is an area extensively used by vehicles and people. This is, again, contrary point by submitters opposing the wharf in relation to effects of people and their use of the coastal marine environment on shore birds.
- 5.17 Dr Craig notes other factors such as predation, adverse weather, and infertility affecting breeding success, and these do not relate to human use of the coastal marine area.
- 5.18 I accept Dr Craig's observation of the ability of shore birds, including the fairy tern, to adapt and change their pattern of feeding or foraging in response to changes in their environment, again, contrary to the position of the submitters in opposition.
- 5.19 Submitters in opposition extend into other areas of concern attached to the operation of the wharf, such as the impact of increased use of the coastal

marine area, additional noise and introduction of predators from increased access and use of the coastal marine area.

- 5.20 Mr Leach in his evidence outlines the long-term effects of the wharf development and change of the foraging area and roosting habitat for threatened and at-risk species, within the context of limited use and occupation of the channel at low tide given its narrow span and depth, and duration of stay of berthing vessels. Dr Craig outlines the behaviour of all animals and their response to other animals including people and development and concludes that adaption to such changes is normal and refers to habituation, and confirms it is not threatening.
- 5.21 Mr Southey in his submission notes Northland as a successful breeding area for fairy terns given the lower concentration of people. Contrary to that is the recent growth occurring in Mangawhai of approximately 20% over the last five years noted in the draft Mangawhai Spatial Plan 2020. Dr Craig also points out that, fairy tern feeding territories have increased over this period. Dr McDermott points out the increasing concentration of people around and activities on the harbour, especially in the summer breeding season for the fairy terns.
- 5.22 I note growth is planned at a strategic level by Kaipara District Council and apparent in the form of land use and subdivision consents on the ground. Examples of this in Mangawhai include:
- a) Growth along the Twin Coast Highway where infrastructure priorities are placed. Mangawhai Village is on this strategic route for Northland;
  - b) Planned intensification of key centres (including Mangawhai being one of the four centres in Kaipara) and along nodes, referred to in the draft Kaipara Sub-regional Spatial Plan 2020;
  - c) Planned intensification, employment and key routes under the draft Mangawhai Spatial Plan 2020, which sets out how Mangawhai could develop over the coming 30 years, alongside protecting and enhancing the natural environment. This directive sets priorities for community facilities including to largely contain growth within existing urban areas;
  - d) Infill urban residential development and subdivision in Mangawhai Village;

- e) Greenfield subdivision and urban residential development at Moir Point; and
- f) Greenfield subdivision and mixed-use development that comprises commercial, offices, industrial and residential activities along with infrastructure at Mangawhai Central.

5.23 Relying on the expert opinion of Dr Craig, I believe adverse effects on shore birds including fairy terns are transitory and will be no more than minor.

#### Change in recreational use

5.24 The wharf will provide for an increase in recreational use by providing improved pedestrian access to the water. There is also likely to be some increase in use for water-based activities although that is not expected to grow significantly. Mr Leach in his evidence describes restrictions of a narrow channel and depth at low tide, restriction of commercial use of the wharf, and a maximum berthing time of 30 minutes for vessels. These, the distance of the wharf from the boat ramps in the lower arbour, water speed restrictions in the upper harbour, and the shallow nature of the inter-tidal area will limit the intensity of use and address possible intensity related concerns registered by submitters in opposition.

5.25 Mr Leach outlines a five-knot speed limit which applies to motorised vessels. This poses user discomfort for a journey between the upper and lower estuary, reducing the high expected number of users, the submitters in opposition are believing the wharf will attract.

5.26 Relying on Mr Leach's evidence, change in use of the coastal marine area and any increase in users will likely be gradual especially with limitations of access by water.

#### Public infrastructure

5.27 Submitters in opposition raised the issue of public infrastructure needs, such as parking and toilet facilities.

5.28 Although the proposed wharf is a public recreation amenity, it has no commercial functions, and will not generate the need for public infrastructure which may otherwise have been appropriate.



- 5.29 I agree with the section 42A report author that any resulting effects of the wharf development without these amenities will be less than minor, relying on the existing small area of parking near the boat ramp, general users being local residents who may not need to drive, and proximity of the wharf to the Mangawhai Village commercial area which contains parking and toilets.
- 5.30 Wharf users will also have access to parking available at the end of Moir St which is only occasionally heavily used (on Saturday mornings and for special events). Wharf users who also visit the tavern have access to toilet facilities there. Otherwise, parking, toilets, and retail facilities are available at the Village centre 500m away
- 5.31 The Kaipara District Council through its infrastructure work and the draft Mangawhai Spatial Plan 2020 plans transportation improvements by way of new and upgrades of roads, intersections and footpaths in this locality. These will improve the connection between the harbour and Mangawhai Village, better servicing users of the harbour esplanade, visitors to the Saturday market, and visitors to the tavern, as well as any additional people attracted by the wharf.

Impact of the development on natural character and amenity

- 5.32 The natural character and visual amenity effects in the context of the existing and likely future environment are influenced by the scale of developments present within the existing environment (mostly on land), the level of change the environment can sustain and sensitivity of the viewing audience.
- 5.33 In her evidence, Miss McLaughlin-Brown states that a seascape cannot be considered separately to the landscape; these jointly inform character values. While the coastal area (in this location) is recognised to hold high character values, changes to the adjacent landscape have taken place in form of development and vegetation clearance. Change has also occurred along the coastal edge with installation of minor access structures such as the boat ramp, stairs, jetty, and erosion protection rock wall, clearance of vegetation along the coastal edge, remnants of the original wharf being present including changes expected from construction of the consented boardwalk noted by Miss McLaughlin-Brown. These limit any sensitivity towards changes from the proposed wharf, and any adverse effects of the development will therefore be no more than minor.

- 5.34 The RMA refers to amenity as qualities and characteristics that contribute to the appreciation of pleasantness, aesthetics coherence and cultural and recreational attributes. It can be tangible and measurable.
- 5.35 Miss McLaughlin-Brown from her visual assessment confirms that the wharf will only be visible intermittently due to the line of Pohutukawa along the coastal edge which breaks direct views. The majority of views closest to the wharf are in the northern and eastern directions within a wide seascape, and backdrop of the rural hinterland.
- 5.36 Miss McLaughlin-Brown confirms that while a visual change, it is not necessarily one that is adverse in nature, especially as these wider backdrops diminish prominence of the proposed wharf structure. At high tides, the scale of the wharf will be reduced further with fewer exposed piles.
- 5.37 Night-time visual effects relate to artificial lighting along the wharf and at its head. The low placement and downward orientation of the wharf lights for user safety and direction ensure light spill is minimised and avoids the open sky or water below.
- 5.38 Navigational lights are common in the coastal marine environments and within the context of this site, they have a functional requirement which will result in no more than minor adverse effects.
- 5.39 The expert evidence concludes that the proposal is appropriate to this location and will have no more than minor adverse effects. Relying on Miss McLaughlin-Brown's evidence, I concur and believe natural character and amenity values will be appropriately maintained.

#### Health and safety, and proximity with existing activities

- 5.40 Health and safety matters including proximity of the tavern to the wharf have been raised in submissions in opposition. Mr Faris in his evidence discusses this from a design and operational perspective i.e. rails for support, bollard to prevent vehicle access to the wharf, sensor lighting for wharf users and navigational lighting for water vessels.
- 5.41 Mr Faris covers the matter raised around the use of materials and contaminants from these being discharged to the coastal waters. Noting the proposed materials are those used in coastal environments and will be treated

and certified reducing any risks of contaminants being discharged into the coastal marine environment.

- 5.42 Taverns and wharfs are commonly located in close proximity, especially in urban areas, although not a direct matter of consideration. Social responsibility and surveillance are outlined in Mr Faris' and Mr Leach's evidence as a management tool.
- 5.43 Other legislation and restrictions on alcohol consumption and behaviours in public spaces will also apply to the wharf and will adequately cater for the concerns registered by submitters in opposition.

#### **Location and need for the wharf**

- 5.44 The intent of the proposal is to re-establish the historic wharf on the original site, enabling locals and visitors to reconnect with local history, and providing education opportunities about the natural environment. Consideration of other sites as a suitable location would not align with these project objectives.
- 5.45 To complete the options analysis and in agreeing with the section 42A Report, I note that aside from Mangawhai Heads (which already contains the majority of the surface water recreation activities), no other practicable options exist.
- 5.46 The current intensity of use at Mangawhai Heads means it is not viable to add additional pressures of another wharf here, nor would it provide suitable access to the Mangawhai Village community to meet their social and cultural wellbeing.

#### **Positive effects**

- 5.47 In the context of the RMA, the definition of "environment" includes people and communities. The facilitation of this wharf development is considered to generate significant positive effects in the form of social benefits from creating employment during the construction phase and thereafter in the form of recreational and educational opportunities. The benefits to the public of access to the wharf is evident in the support outlined by Mr Leach.
- 5.48 Recreational opportunities include enhanced access to the coastal marine area while education opportunities include links to history and information on important local ecology. As an amenity attractive to the public, the wharf has the ability to support and boost the local economy and can be identified as a

significant project at a district level, and share demands placed on the existing infrastructure present at Mangawhai Heads.

- 5.49 The wharf when consented would also deliver an activity that fits within its zone provisions and gives effect to the strategic policy directions under the zone provisions.
- 5.50 The re-establishment and operation of this wharf would also complement the growing residential and business activities in Mangawhai noting the draft Mangawhai Spatial Plan 2020 identifies Mangawhai Village as an area of intensification, an area of commercial growth and employment opportunity.

## **6. SECTION 42A REPORT AND CONDITIONS**

### **Comments on the section 42A report**

- 6.1 I have reviewed the section 42A report which provides comprehensive identification and evaluation of the matters relevant to the application. While I do not agree with the conclusion and recommendation, for the most part I agree with the content.
- 6.2 In the evaluation that follows, I address key matters with a focus on the matters in contention and where I disagree with the analysis and conclusions in the section 42A report.
- 6.3 Impact on native fauna from the proposed wharf development, especially in relation to their ability to feed and breed is not proven to be threatened by additional users including animals. Dr Craig and Dr McDermott outline the reasons within their respective statements of evidence.
- 6.4 A planning position is provided earlier in this evidence in relation to the submitters, where my opinion (relying on evidence of Dr Craig, Miss McLaughlin-Brown, Mr Faris, Dr McDermott and Mr Leach) and considering the proposed conditions (i.e. restrict commercial use of the wharf, no dredging to occur in relation to this wharf and limit of the duration of stay for berthing vessels to 30 minutes), the impact on native fauna will be reduced and to a scale where any adverse effects will be no more than minor. These minor effects can be appropriately managed.

- 6.5 An alternatives assessment of methods and location is not specifically required by the RMA. Notwithstanding this, I agree with the alternatives' consideration contained in the section 42A report.
- 6.6 In relation to this conclusion on adverse effects, I disagree with the section 42A report that the gateway tests have not been met, now that the effects-based test is met given the resulting adverse effects will be no more than minor.
- 6.7 The AEE provides an analysis of the relevant objectives and policies, and I concur with those. The transitory and temporary nature of adverse effects on native fauna and therefore biodiversity (outlined earlier in this evidence), means the proposal aligns with the expectations set by the respective objectives and policies. In this way the second test is also met.
- 6.8 The overall conclusion and recommendation to refuse consent is therefore not supported.

#### **Proposed conditions of consent**

- 6.9 The section 42A report does not contain conditions of consent and suggests that standard conditions exist and that those can be prepared at a later date. To support the preparation of that draft suite of conditions, I recommend the following:
- a) Make appropriate provision for management plans for use during construction, where a draft has been provided and include requirements for it to be finalised;
  - b) Remove requests beyond the scope of this application i.e. covered by other legislation such as obtain an archaeological authority prior to works. These can be included as advice notes;
  - c) Avoid repetition where conditions require the same information or action as that contained within the condition for the activity and development in accordance with plan and information provided; and
  - d) Include conditions offered within the expert evidence and noted in this planning evidence relating to management of adverse effects such as vessel berthing time limit of 30 minutes at the wharf, no commercial use of the wharf and restricting all dredging associated this wharf.

- 6.10 A set of conditions can be provided to the Hearings Committee, the section 42A report author, and the submitters once the expert evidence of the submitters have been considered and further changes (if any) have been made.

## **7. CONCLUSION**

- 7.1 MHWT seek resource consent to construct, re-establish and operate the historic wharf, within the coastal marine area, north-east of the Mangawhai boat ramp.
- 7.2 I conclude, based on my own assessment and the evidence of experts, the application documents and the section 42A report, that the actual and potential adverse effects of the proposed wharf on the environment will be no more than minor.
- 7.3 The wharf development in my opinion is also consistent with the relevant plans (i.e. National Coastal Policy Statement, Regional Policy Statement, Regional Coastal Plan and proposed Regional Plan) and objectives, and principles and purpose of the RMA.
- 7.4 In my opinion, the tests of section 104D of the RMA are met, and the application can be considered further for approval under section 104B of the RMA.
- 7.5 With implementation of the proposed mitigation measures and adherence to conditions of consent, adverse effects will be appropriately avoided, remedied or mitigated.
- 7.6 Any residual adverse effects of the wharf development are outweighed by the positive effects.

**Vishal Chandra**

**Principal Planner**