

IN THE ENVIRONMENT COURT
AT AUCKLAND

ENV-2019-AKL-

IN THE MATTER

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

AND

IN THE MATTER

of an appeal under Clause 14 of the First Schedule of the RMA against a decision of the Northland Regional Council on the proposed Northland Regional Plan (the **Plan**)

BETWEEN

MANGAWHAI HARBOUR RESTORATION SOCIETY INC.

Appellant

AND

NORTHLAND REGIONAL COUNCIL

Respondent

NOTICE OF APPEAL

Dated: 17 June 2019

Solicitor for Appellant

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To: The Registrar
Environment Court
Auckland

1. Mangawhai Harbour Restoration Society Inc. (the **Appellant**, or **MHRS**) appeals against parts of a decision of the Northland Regional Council (the **Council**) on the proposed Northland Regional Plan (the **Plan**).
2. The Appellant has the right to appeal the Council's decision in accordance with Clause 14 of the First Schedule of the Resource Management Act 1991 (the **RMA**) because the Appellant made a submission on the Plan (the **Submission**). A copy of the Submission is attached and labelled Schedule 2.
3. The Appellant provides further details of the reasons for the appeal below and in the attached Schedule 1.
4. The Appellant is not a trade competitor for the purposes of section 308D of the RMA. The Appellant could not gain an advantage in trade through this appeal.
5. The Appellant received notice of the decision on or about 5 May 2019.
6. The parts of the decision that the Appellant appeals are in relation to the Plan rules, policies and maps as set out below:

Plan Reference	
C.1.4.1	Mangrove seedling removal
C.1.4.2	Minor mangrove removal - permitted activity
C.1.5.11	Deposition of material for beneficial purposes - restricted discretionary activity
New rule sought	Removal of marine pests - permitted activity
C.1.8	Coastal works general conditions
C.8.3.1	Earthworks - permitted activity
C.8.4.1	Vegetation clearance and coastal dune restoration in the coastal hazard management area - permitted activity
D.2.18	Precautionary approval to managing effects on significant indigenous biodiversity
D.4.1	Maintaining overall water quality
H.3.3	Coastal water quality standards
Maps	Significant Ecological Area
Maps	Significant Bird Area
Maps	Areas of outstanding and high natural character
Maps	Marine Mammal and Seabird Area

The Appellant's reasons for appeal, and specific relief sought from the Court, for each of these parts is set out in Schedule 1 to this Notice.

BACKGROUND

7. The Appellant is a voluntary and charitable society established for the purpose of restoration, maintenance and enhancement of the Mangawhai harbour and surrounding features. The Appellant's objects include:
 - (a) Restoring features of the harbour that have been damaged by pollution, erosion or anthropogenic influences;
 - (b) Restoring and maintaining navigable waterways within the harbour;
 - (c) The management of mangroves within the harbour;
 - (d) Maintaining and enhancing the quality of water in the harbour; and
 - (e) Assisting the maintenance, preservation and enhancement of the sand spit and bird sanctuary.
8. The Plan is of critical importance to the Mangawhai community and environment. The maintenance and ongoing restoration of the Mangawhai harbour is crucial to the sustainable management of the harbour and its unique geology. By undertaking appropriate maintenance, restoration and enhancement activities, the Appellant seeks to continue its well-established record of facilitating sustainable management of the Mangawhai harbour, for the benefit of the community and the environment alike.
9. The Appellant's activities have historically achieved significant and crucial benefits for Mangawhai harbour and its surrounding environment, including restoring and stabilising the sand spit and nearshore harbour system, maintaining the harbour channel and tidal prism, and creating valuable roosting and breeding areas for the critically endangered fairy tern and other native birdlife species.
10. The Appellant is a long-standing charitable organisation in the Mangawhai community, with an excellent record of environmental stewardship and proactive restoration. The Appellant is reliant on the Regional planning framework to enable and undertake its various environmental and harbour restoration activities and objectives. This context forms the basis for this appeal.

REASONS FOR APPEAL, AND RELIEF SOUGHT

11. The Council's decisions regarding various parts of the Plan covered by this appeal:
 - (a) Fail to adequately give effect to the statutory requirements of section 30 and part 2 of the RMA, as required by section 66 of the RMA, and the New Zealand Coastal Policy Statement (the NZCPS);

- (b) Do not appropriately have regard to the actual and potential effects of coastal restoration activities on the environment; and
 - (c) Include arbitrary thresholds or criteria for coastal restoration activities, which are not supported by an appropriate and robust analysis as required by section 32 of the RMA.
- 12. The Plan will improperly inhibit or prevent the restoration activities undertaken by the Appellant, as opposed to enabling those activities in the manner required by the legislative framework outlined above. Specifically, various parts of the Plan would inhibit the Appellant and the Mangawhai community from:
 - (a) Preserving and restoring the Harbour's historical and long-term natural state;
 - (b) Maintaining and restoring the long-term health of the harbour, particularly its tidal functioning and ecological life-supporting capacity; and
 - (c) Managing the increasing demands on the harbour environment arising from population and visitor growth.
- 13. In the attached Schedule 1, the Appellant provides the reasons for appeal in full.
- 14. The Appellant seeks the following relief from the Court:
 - (a) The relief specified in Schedule 1 to this Notice; or
 - (b) Such further, consequential or alternative changes to the Plan as may be necessary or appropriate to address the reasons for appeal or give effect to the changes specifically sought.
- 15. In addition to the changes specifically sought in Schedule 1, there may be other methods or Plan amendments that are able to address the Appellant's concerns. The specific requested amendments in Schedule 1 do not limit the generality of the reasons for the Appellant's appeal, or the nature and detail of amendments that could address the Appellant's concerns.
- 16. The following documents are attached to this notice:
 - (a) The Appellant's reasons for appeal and relief sought (**Schedule 1**) and its attachments;
 - (b) A copy of the Appellant's Submission (**Schedule 2**);
 - (c) A copy of the relevant parts of the decision by Council (**Schedule 3**); and
 - (d) A list of names and addresses of persons to be served with a copy of this notice (**Schedule 4**).



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Ray Welson, Deputy Chairperson
Mangawhai Harbour Restoration Society Inc.

Date: 17 June 2019

Address for service:

C/- Mr J A Carnie
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Note to appellant

You may appeal only if—

- you referred in your submission or further submission to the provision or matter that is the subject of your appeal; and
- in the case of a decision relating to a proposed policy statement or plan (as opposed to a variation or change), your appeal does not seek withdrawal of the proposed policy statement or plan as a whole.

Your right to appeal may be limited by the trade competition provisions in [Part 11A](#) of the Resource Management Act 1991.

The Environment Court, when hearing an appeal relating to a matter included in a document under [section 55\(2B\)](#), may consider only the question of law raised.

You must lodge the original and 1 copy of this notice with the Environment Court within 30 working days of being served with notice of the decision to be appealed. The notice must be signed by you or on your behalf. You must pay the filing fee required by [regulation 35](#) of the Resource Management (Forms, Fees, and Procedure) Regulations 2003.

You must serve a copy of this notice on the local authority that made the decision and on the Minister of Conservation (if the appeal is on a regional coastal plan), within 30 working days of being served with a notice of the decision.

You must also serve a copy of this notice on every person who made a submission to which the appeal relates within 5 working days after the notice is lodged with the Environment Court.

Within 10 working days after lodging this notice, you must give written notice to the Registrar of the Environment Court of the name, address, and date of service for each person served with this notice.

However, you may apply to the Environment Court under [section 281](#) of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see [form 38](#)).

Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must,—

- within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in [form 33](#)) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in [section 274\(1\)](#) and [Part 11A](#) of the Resource Management Act 1991.

You may apply to the Environment Court under [section 281](#) of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see [form 38](#)).

**How to obtain copies of documents relating to appeal*

The copy of this notice served on you does not attach a copy of the appellant's submission and (or or) the decision (or part of the decision) appealed. These documents may be obtained, on request, from the appellant.

*Delete if these documents are attached to copies of the notice of appeal served on other persons.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.

Schedule 1 form 7 heading: amended, on 1 November 2010, by [regulation 19\(1\)](#) of the Resource Management (Forms, Fees, and Procedure) Amendment Regulations 2010 (SR 2010/279).

Schedule 1 form 7: amended, on 3 March 2015, by [regulation 5\(1\)](#) of the Resource Management (Forms, Fees, and Procedure) Amendment Regulations 2014 (LI 2014/386).

Schedule 1 form 7: amended, on 3 March 2015, by [regulation 5\(2\)](#) of the Resource Management (Forms, Fees, and Procedure) Amendment Regulations 2014 (LI 2014/386).

Schedule 1 form 7: amended, on 1 November 2010, by [regulation 19\(1\)](#) of the Resource Management (Forms, Fees, and Procedure) Amendment Regulations 2010 (SR 2010/279).

Schedule 1 form 7: amended, on 1 June 2006, by [regulation 10\(4\)](#) of the Resource Management (Forms, Fees, and Procedure) Amendment Regulations 2006 (SR 2006/99).

Schedule 1: Reasons for MHRS Appeal and Relief Sought

	Plan Reference	Appellant’s Basis for Appeal	Relief Sought
Rules			
1.	C.1.4.1 Mangrove seedling removal	<p>As stated in the Submission at point 7, the Appellant supports the removal of mangrove seedlings as a permitted activity. The Council amended this Rule following submissions, however the Appellant appeals on the basis that one of the remaining criteria is inappropriate, unjustified and would unduly restrict the activity.</p> <p>The MHRS seeks the amendment of C.1.4.1(4), which overstates the bird breeding, roosting and nesting season. The season at Mangawhai is 1 September – 28 February (and for the most part, occurs in October – January), not 1 August to 31 March. This Court, in NZEnvC284 2013, granted consent for mangrove removal (full trees and seedlings) at Mangawhai using motorised hand-held tools, on the condition that removal would not occur during the period of 1 September to 28 February. This was based on expert evidence as agreed by the parties to that proceeding (including the MHRS, Council and DOC).</p> <p>The (incorrect) “August to March” bird breeding and nesting season currently recorded in Rule C.1.4.1(4) also contradicts “Rule C.1.5.3(3) – Removal of nuisance marine plant debris”, which <u>correctly</u> acknowledges the parameters of this season as “September to February”.</p> <p>There is no known scientific basis to limit removal of mangrove seedlings using motorised hand-held tools to April-July only in each year. The MHRS supports this Rule’s permissive approach to the use of motorised machinery to transfer people, tools or removed mangrove vegetation (as provided under this Rule).</p>	<p>Revise Rule C.1.4.1 to read as follows:</p> <p><i>(proposed deletions in striketrough and proposed additions are <u>underlined</u>)</i></p> <p>Mangrove seedling removal–permitted activity</p> <p>The pulling, cutting or removing of mangroves in the coastal marine area or in the bed of a river and any associated damage or disturbance to the foreshore, seabed or bed of a river are permitted activities provided:</p> <ol style="list-style-type: none"> 1) The mangroves are less than 60 centimetres tall, and 2) The mangroves are not under the canopy area of any existing mature mangrove, and 2) The removal is by hand or using hand-held tools (including

			<p>motorised), and</p> <p>3) Any removal by motorised hand-held tools is not undertaken between 1 August and 31 March <u>1 September and 28 February</u> (inclusive) to avoid disturbance of birds during breeding, roosting and nesting periods, and</p> <p>4) The activity complies with all relevant conditions of C.1.8 Coastal works general conditions.</p>
2.	C.1.4.2 Minor mangrove removal - permitted activity	<p>As stated in the Submission at point 8, the Appellant generally supports Rule C.1.4.2, although considers that the restriction of mangrove removal to “1m of the footprint of the structure” under the heading “All other structures and farm fencing” in Table 1 is unduly restrictive.</p>	<p>Revise Table 1 to read (under the heading “All other structures and farm fencing”) as follows:</p> <p>Restricted to one <u>five</u> metres of the footprint of the structure.</p>
3.	C.1.5.11 Deposition of material for beneficial purposes - restricted discretionary activity	<p>The Appellant supports the insertion of new rule C.1.5.11, as advocated for in the Submission at point 12. However, the Appellant appeals on the basis that the activity should be classified as controlled, rather than restricted discretionary.</p> <p>The MHRS undertakes maintenance dredging currently, including depositing dredge spoil at specific locations within the Harbour to maintain, enhance and restore foreshore and dune areas. The depositing of dredge spoil (which replenishes the Mangawhai Spit and foreshore areas, and creates highly valuable roosting sites for endangered birdlife) are environmentally beneficial activities.</p> <p>When granting the MHRS’ current dredging consent (CON 19990716101), the NRC</p>	<p>Revise Rule C.1.5.11 to be a controlled activity rather than a restricted discretionary activity, and revise relevant restricted discretionary activity criteria to be “matters of control”</p>

	<p>expressly recognised in the Consent (“<i>Reasons for Consent</i>”) that:</p> <p><i>Having considered the actual and potential effects associated with the proposal, it is concluded that the granting of this consent will promote the sustainable management of natural and physical resources through the dredging of Mangawhai Estuary channels at specified locations and depositing dredgings on to the Mangawhai Spit and other specified locations. Public wellbeing will be provided for by the improved physical integrity of the spit and the navigation channels in the estuary.</i></p> <p>The <i>improved physical integrity of the spit</i> relies on the deposition of dredge spoil from the maintenance dredging operations undertaken by MHRS. This is of high importance environmentally and to the community.</p> <p>Classifying the activity as ‘restricted discretionary’ is inappropriate and unjustified. There is no proper environmental reason for this beneficial activity to be classified as restricted discretionary.</p> <p>Furthermore, this designation is inconsistent with the designation of maintenance dredging as a ‘controlled’ activity under the Plan (see Rule C1.5.9). The activities of maintenance dredging, and deposition of dredged materials for beneficial purposes, go hand-in-hand at Mangawhai (and presumably, at other locations also).</p> <p>The activity “Deposition of material for beneficial purposes “ should be afforded a more permissive classification, taking into account (inter alia) the policies of the NZCPS, including Policy 26 (Natural defences against coastal hazards).</p> <p>The Appellant therefore seeks that this activity is instead classified as ‘controlled’, which would better enable the continuation of the environmental maintenance and restoration works undertaken by the Appellant at Mangawhai.</p> <p>In addition, not all “matters for discretion” currently included in this Rule are relevant for a controlled activity in this context. The Appellant therefore also seeks that the “matters for discretion” are revised (where relevant) or removed (where not relevant) as “matters of</p>	
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		control” in a form suitable for a controlled activity, as seen for example in Rule C1.5.9.	
4.	New rule proposed: Removal of marine pests - permitted activity	<p>Maintaining its position in point 17 of the Submission, the Appellant appeals the Council's decision not to include a new rule which provides for the removal of marine pests (such as the pacific oyster at Mangawhai) in areas where the marine pests are not commercially farmed, as being a permitted activity.</p> <p>This new Rule will enable environmental groups such as the Appellant, and other persons or organisations exercising stewardship or kaitiakitanga, to maintain and restore areas of the CMA by removing marine pests in these areas.</p> <p>It is noted that the Plan already contains a definition of “marine pest”.</p>	<p>Insert a new Rule as follows:</p> <p>C.1.7.6 Removal of marine pests – permitted activity.</p> <p>The removal of marine pests is a permitted activity in areas where the marine pests are not commercially farmed as of the date the Plan becomes operative, provided that the activity complies with C.1.8 ‘Coastal works general conditions’.</p>
5.	C.1.8 Coastal works general conditions	<p>The Appellant submitted at point 18 of the Submission that it generally supports Rule C.1.8, subject to a number of concerns and requested changes. The Council made some amendments to this Rule, but MHRS appeals on the following points:</p> <ol style="list-style-type: none"> Subpart 8 – The Plan does not provide a definition for “shellfish bed”, and it is unclear the density at which an area will be deemed to be a “shellfish bed”. Given that some shellfish populations can be small, transient and/or temporary, and dredging activities have the potential to disturb shellfish, the Plan should provide a definition (or at the very least, guidance) for what constitutes a “shellfish bed”. For example, a NIWA report prepared for the Ministry for the Environment (“Sensitive Marine Benthic Habitats Defined” - April 2013), suggested that “the definition for beds of large bivalves in the New Zealand EEZ should be: where living and dead specimens of bivalve species cover 30% or more of the seabed in imaging surveys covering 100m² or more, contribute 30% or more by weight or volume to the catch in a single grab sample or dredge tow” [3.1.3]. Subpart 9 – The disturbance to the foreshore caused by the MHRS’ Spit restoration operations cannot (and should not be required to) be remedied within 48 hours, because dredge spoil is being deposited on and used for restoration of the Spit 	<p>Revise the following subparts of C.1.8 as follows:</p> <p>(8) Define shellfish bed (in the definition section of the Plan) using the definition developed by NIWA (2013) or another similar definition.</p> <p>Revise other subclauses as follows:</p> <p>(7) All machinery, equipment and materials used for the activity must be removed from the foreshore and seabed at the completion of the activity. Additionally, vehicles and equipment must be in a good state of repair and free of any fuel or oil leaks. Refuelling must not be carried out in the coastal marine area and for the duration of the</p>

		<p>(classified as an Outstanding Natural Feature). This Subpart should exclude disturbance activities where the disturbance is the deposition of material for beneficial purposes, covered by Rule C1.5.11. Examples of deposition of material for beneficial purposes include activities such as spit/shoreline stabilisation/enhancement, and wildlife (avian) habitat restoration/enhancement.</p> <p>3. Subpart 10 – The prohibition against “disturbance of indigenous or migratory bird nesting sites” should only apply during bird breeding or roosting seasons.</p> <p>For the past three decades the Appellant has restored and maintained the Mangawhai sand spit and harbour, and it continues to do so. As part of these restoration activities, the Appellant has created bird breeding and roosting sites on the sand spit, using material dredged from the harbour channel. These sites have become the most important breeding ground for New Zealand’s most critically endangered bird, the Fairy Tern. The Appellant does not seek to ‘disturb’ these sites when in use by Fairy Tern, but instead wishes to continue its activity of maintaining and enhancing these bird nesting sites during periods when the birds are not present. Rule C1.8(10) should be amended to enable the continuation of this beneficial activity.</p> <p>4. Subpart 11 – It is not always possible for visible disturbances (to the foreshore and seabed) to be remedied or restored within seven days, as weather can be a factor. The MHRS would support a Rule which allows restoration and remedial work to be carried out within 10 working days or within a time period agreed with the regional council’s compliance manager.</p> <p>5. Subpart 13(a) – The current wording of Subpart 13(a) would preclude many dredging and mangrove removal activities from taking place in any Northland estuary or harbour, including much of the MHRS’ Harbour / estuary restoration and maintenance work, as well as its maintenance dredging activities. Activities such as maintenance dredging need to be carried out over an extending period of time (i.e. more than the “five consecutive days” timeframe allowed under the Plan). The permitted discharges of sediment to water should also be amended to reflect the revised turbidity standards proposed for H.3.3 (see comments on Policy H.3.3 below).</p> <p>6. Subpart 15 - This has been altered in the decisions version of the Plan, and now requires that “<i>Mangrove vegetation removal must avoid creating protruding stumps, by cutting mangrove stumps close to the ground.</i>” There are practical problems with</p>	<p>activity, no vehicle or equipment is to be left in a position where it could come into contact with coastal water.</p> <p>(9) Any visible disturbance of the foreshore or seabed must be remedied or restored within 48 hours of completion of works in a mapped:</p> <p>(a) Area of Outstanding Natural Character Area, or</p> <p>(b) Outstanding Natural Feature, or</p> <p>(c) Site of Area of Significant to Tangata Whenua, or</p> <p>(d) Significant Ecological Area, <u>except where an objective of the activity is to support, maintain, enhance or restore the Area or Feature or part of it,</u></p> <p>(10) There must be no disturbance of indigenous or migratory bird nesting or roosting sites, <u>during the period 1 September – 28 February.</u></p> <p>(11) Outside of outstanding natural character, outstanding natural feature or significant ecological areas, any visible disturbance of the foreshore or seabed must be remedied or restored within seven days, <u>provided that should adverse circumstances arise that make it</u></p>
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		<p>this revised Rule, including:</p> <ul style="list-style-type: none"> (i) In the areas of Mangawhai Harbour where the MHRS was restricted to severing the trunk of mature trees, it was impractical to mechanically sever the tree with a chainsaw or other bladed device at the seabed. When cutting blades come into contact with marine sediment/sand/mud, the blade, chain or machine is rapidly damaged. Therefore, that method of removal, by its very nature, leaves protruding stumps. (ii) It is not possible to “avoid” leaving a stump when severing the trunk using hand held tools. (iii) Following removal, as surficial sediments are flushed away, mangrove stumps will protrude more than when they were initially cut – this too is unavoidable. (iv) The bed of a harbour, estuary or sea is not “ground”. <p>The Rule should be amended to recognise that protruding stumps, for a short-term, are an unavoidable part of mangrove removal. For example, mangroves were removed from the CMA at Mangawhai harbour near the Molesworth Drive causeway, by severing at (or as near as possible to) the base of the trunks. There were stumps remaining after that removal, however the stumps have since rotted away. Depending upon the removal location it can take several years for the stumps to decompose, however they will naturally disappear through decomposition (as evidenced at Molesworth Drive).</p> <p>The Rule should be altered to instead require that persons undertaking this activity should “minimise” the creation of protruding stumps</p> <p>7. Subparts 7 and 18 – these subparts have been altered in the decisions version of the Plan, and now require that:</p> <ul style="list-style-type: none"> 7) “...Refuelling must not be carried out in the coastal marine area and for the duration of the activity, no vehicle or equipment is to be left in a position where it could come into contact with coastal water.”; and 18) “There must be no refuelling on the foreshore or river bed”. <p>These restrictions are unjustified and unworkable.</p>	<p><u>unsafe to conduct remediation and restoration work in the CMA, then such remediation or restoration work shall be carried out within 10 working days, or within a time period agreed with the regional council’s compliance manager.</u></p> <p>(13a) Discharges of sediment to water from any activity must not:</p> <ul style="list-style-type: none"> (a) occur for more than five consecutive days, and for more than 12 hours per day, <u>excluding discharges as part of, or incidental to, an activity covered by Rule C1.5.11 (Deposition of material for beneficial purposes – restricted coastal activity).</u> <p>((15) Mangrove vegetation removal must avoid creating <u>minimise the creation of</u> protruding stumps by cutting mangrove trunks close to the <u>ground bed or foreshore.</u></p> <p>(17) There must be no refuelling on the foreshore or river bed.</p> <p>(19) Access to removal and pruning areas must, <u>where practicable,</u> use existing open areas or paths and; where practicable, avoid disturbance of shellfish beds, soft sand and mud.</p>
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6.	C.8.3.1 Earthworks - permitted activity	<p>At point 20 of the Submission, the Appellant expressed support for this Rule subject to proposed amendments. The Appellant appeals on the Council’s decision not to amend subpart (3). The Appellant seeks an amendment to exclude coastal dune restoration from the requirement of subpart (3). “Coastal dune restoration” is a defined phrase in the Plan.</p> <p>Subpart (3) requires that, for earthworks which satisfy the criteria as a “permitted activity”, erosion and sediment control measures to be implemented in accordance with the Erosion and Sediment Control Guidelines for Land Disturbing Activities in the Auckland</p>	<p>Amend subpart (3) to include an exception for coastal dune restoration as follows:</p> <p>(3) Good management practice erosion and sediment control measures equivalent to those set out in the <i>Erosion and Sediment Control Guidelines for Land</i></p>

	<p>Region (2016) for the duration of the activity.</p> <p>Coastal dune restoration work is usually undertaken by volunteers, supervised by NRC Staff and often funded in part by the local community with assistance from NRC for supply of dune vegetation. Erosion and sediment control is not commonly a relevant concern when the substrate is sand. In the context of coastal dune restoration, requiring adherence to these Guidelines is unnecessary, impractical and oppressive.</p> <p>For example, section G5.0 of the Guidelines states that <i>“works within the CMA will typically require a resource consent. The application for this consent will need to address the potential environmental effects and how these will be mitigated. The fundamental principles of ESC, such as timing and staging of works, and isolating the earthworks site from clean water while minimising the discharge of dirty water, also apply to works in the CMA. Applicants shall discuss all proposed works with Auckland Council in order to address potential impacts in the CMA.”</i> The activity of coastal dune restoration is clearly distinguishable from the types of works contemplated by the Guidelines.</p> <p>Subparts (5) and (6) in Rule 8.3.1 will already provide adequate protection against erosion and materials entering the CMA. Subpart 6 in particular requires that <i>“earth and debris are not deposited into, or in a position where they can enter, a natural wetland, a continually or intermittently flowing river, lake, an artificial water course, or the coastal marine [area]”</i></p> <p>Subpart (7)(a) already makes specific allowance for coastal dune restoration activities, so too the volume threshold in Subpart (1), and Subpart (3) should be amended similarly.</p> <p>Persons undertaking coastal dune restoration (usually, volunteer community groups) should not be required to incur additional costs (which could be substantial) from compliance with Guidelines that have scant (if any) relevance to the activity, are impractical and serve to defeat the otherwise-permissive approach afforded to coastal dune restoration activities under the Plan (refer Rule C.8.4.1).</p> <p>Coastal dune restoration should be excluded from Rule C.8.3.1(3).</p>	<p><i>Disturbing Activities in the Auckland Region 2016...are implemented, for the duration of the activity, <u>except for coastal dune restoration.</u></i></p>
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7.	C.8.4.1 Vegetation clearance and coastal dune restoration in the coastal hazard management area - permitted activity	<p>As the Appellant noted at point 22 of the Submission, it generally supports this Rule, subject to proposed amendments to subparts (4), (6) and (7). It appeals this Rule on the basis that the Council decided not to amend those subparts as follows:</p> <ul style="list-style-type: none"> • Subpart 4 – Disturbance of indigenous or migratory bird nesting sites should only be prohibited during bird breeding, roosting and nesting periods. For additional discussion on reasons, see comments above on Rule C1.8(10). • Subparts 6 and 7 – The 10 working days’ notice periods required under these subparts are inconsistent with the notification period required under C.8.3.1 (8), which requires Council’s compliance manager be given 5 working days’ notice of an activity. <p>Given that the activities captured by C.8.4.1 and C.8.3.1 are related, the notice requirements under both these Rules should be the same – i.e. five working days. This is because coastal work needs to be undertaken when the weather conditions are conducive to working in the CMA. Weather forecasting within 5 working days is a more practicable timeframe than 10 working days, especially in the Winter and Spring months when coastal works are normally carried out.</p>	<p>Revise C.8.4.1 as follows:</p> <p>(4) There is no disturbance of indigenous or migratory bird nesting sites <u>between 1 September and 28 February (inclusive) to avoid disturbance of birds during breeding, roosting and nesting periods.</u></p> <p>(6) and (7) – Reduce the notice requirements from 10 working days to 5 working days.</p>
Policies			
8.	D.2.18 Precautionary approval to managing effects on significant indigenous biodiversity	<p>Policy D.2.18 provides, somewhat unusually, that the “<i>greatest extent of adverse effects reasonably predicted by science</i>” should be given the most weight where there is “<i>scientific uncertainty</i>” about the adverse effects of certain activities.</p> <p>The Appellant appeals this Policy on the basis that it is:</p> <ul style="list-style-type: none"> (i) Inappropriate and inconsistent with relevant national planning and legal requirements; (ii) Unlawful and ultra vires (including that the Policy improperly restricts/impairs the legal powers, and legal obligations, of Council and this Court when evaluating competing scientific evidence); and (iii) Is unnecessary in any event (because the correct ‘precautionary approach’ is well 	Delete Policy D.2.18

		<p>established in case law).</p> <p>This Policy should be deleted. To expand on some of these reasons:</p> <p>(1) This Policy appears to misstate (and therefore does not properly “give effect to”) the precautionary approach adopted in the NZCPS (Policy 3). Policy 3 promotes a precautionary approach to managing activities in the coastal environment when the effects of those activities are uncertain but potentially significantly adverse. The policy particularly directs a precautionary approach where the use and management of coastal resources that are potentially vulnerable to effects from climate change.</p> <p>The Courts have made several rulings setting out how the precautionary approach is to be applied in the RMA context, particularly where there is scientific uncertainty. However, disagreement between experts does not necessarily justify a precautionary approach (see the 2010 NZCPS Guidance Note on Policy 3 - http://www.doc.govt.nz/Documents/conservation/marine-and-coastal/coastal-management/guidance/policy-3.pdf). The DOC Guidance Notice also recognises that the application of the precautionary approach is a risk management approach, not a risk assessment approach.</p> <p>In <i>Greenpeace NZ Inc v Minister of Fisheries</i> (HC Wellington CP492/93), the High Court found that even if there is a dispute of material fact, that does not necessarily mean that the precautionary approach must be adopted; rather, the obligation is to consider the evidence.</p> <p>In <i>Ngati Kahu Ki Whangaroa Co-op Soc Ltd v Northland RC</i> (2001] NZRMA 299 (EnvC)), the Environment Court held that the precautionary approach is applied where the Court finds on the totality of evidence that, due to scientific uncertainty, exercise of a resource consent would be likely to cause serious or irreversible harm to the environment. However, the Court stressed that opponents could not invoke the precautionary approach in default of presenting a case.</p> <p>There will always be some degree of “uncertainty” in the scientific community, and to comply with the NZCPS and requirements of the legal authorities, the NRC should</p>	
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		<p>adopt and implement policies with the most robust / recent scientific evidence behind them, rather than giving “the most weight” to the worst-case scenario alleged by one of the participants (which may be incorrect and based on outdated and unreliable “science”). A precautionary approach should only be applied where there is scientific uncertainty or ignorance about the scope or nature of the relevant environmental harm. There needs to be a plausible basis, not just suspicion or innuendo, for adopting the precautionary approach (see <i>Aquamarine Ltd v Southland RC</i> (EnvC C126/97) and <i>Trans Power NZ Ltd v Rodney DC</i> (A085/94) (PT)).</p> <p>(2) This Policy is unnecessary, because there is already a general precautionary principle in environmental law (including in case law – see for example <i>McIntyre v Christchurch CC</i> (1995 2 ELRNZ 84) and in the RMA). The application of this Policy in addition to the usual precautionary principle (inherent in law) will lead to conflict.</p>	
9.	D.4.1 Maintaining overall water quality	<p>Point 27 of the Submission notes that the Appellant generally supports this Policy (subject to its appeal on Policy H.3.3, below). The Appellant appeals this Policy on the basis that:</p> <ul style="list-style-type: none"> • Unless Policy H.3.3 is revised, the contents of Policy D4.1(2) are inappropriate (for further reasons, see discussion on Policy H.3.3 below); and • The wording of D.4.1 should be amended to better enable activities (despite the potential for a water / sediment quality standard to be temporarily exceeded) where the activity will maintain or enhance current beneficial aspects / values of the area. <p>Although the Policy was amended by Council following initial submissions and now appears to contain somewhat clearer guidelines for the threshold for granting resource consent, it still does not have any regard to whether the resource consent applicant can show that the activity will maintain or enhance current beneficial aspects / values of the surrounding area.</p>	<p>Amend the Policy as follows:</p> <p>D.4.1 Maintaining overall water quality</p> <p>When considering an application for a resource consent to discharge a contaminant into water:</p> <ol style="list-style-type: none"> 1) have regard to the need to maintain the overall quality of water including the receiving water’s physical, chemical and biological attributes and associated water quality dependent values, and 2) have regard to the coastal sediment quality guidelines in H.3 Water quality standards and guidelines, 3) have regard to <u>whether the</u>

			<p><u>proposed activity will maintain or enhance existing beneficial qualities and values of the surrounding CMA and coastal environment</u> and</p> <p>4) generally not grant a proposal if it will, or is likely to, exceed or further exceed a water quality standard in H.3 Water quality standards and guidelines.</p> <p>Note – if the relief sought by MHRS for Policy H3.3 is not granted, then D4.1(2) should also be deleted</p>
10.	<p>H.3.3 Coastal water quality standards (Turbidity)</p>	<p>The Appellant maintains its position as set out at point 26 of the Submission and has concerns regarding the water quality standards for turbidity adopted in Policy H.3.3. The Appellant appeals this Policy for the reasons set out below.</p> <p>The established scientific approach to managing water quality standards for turbidity involves:</p> <ul style="list-style-type: none"> (a) Establishing background turbidity levels in the particular location, at that time; and (b) Monitoring to ensure that turbidity during the activity does not exceed a specific threshold above background levels. <p>This is the approach commonly accepted and adopted by this Court. For example: a resource consent might include a condition that monitoring during an activity must not exceed 10 NTU above background levels as measured at 150m upstream of the point of confluence where a visible plume enters the main water body (this is similar to the position adopted by the Environment Court in its 2013 decision re: mangrove removal at Mangawhai (Decision No: NZEnvC284 2013). This established approach is scientifically valid, because background levels will vary from location to location, and also from season to season, and day to day, at the same location. Setting a median standard for turbidity for all estuaries and tidal creeks in Northland is not appropriate.</p>	<p>Make appropriate amendments to H.3.3 (Turbidity) to address the following:</p> <ul style="list-style-type: none"> 1) Turbidity standards for tidal creeks and estuaries should be based on threshold values above background turbidity levels (as estuaries and tidal creeks are affected by weather events as well as discharge / disturbance activities). 2) The background turbidity levels for tidal creeks and estuaries should be determined specifically for the estuary / tidal creek in which the activity is taken place (as background turbidity levels will

	<p>The MHRS is also concerned about adopting a ‘general’ NTU standard (which does not reflect the specific circumstances at Mangawhai) because most Harbour maintenance and restoration activities that occur in Mangawhai (e.g. dredging the Harbour Channel and depositing sand onto the Spit) occur during Winter, when there are elevated levels of background turbidity.</p> <p>The NRC has informed the MHRS that the Plan does not clearly reflect Council’s intention relating to turbidity, and in particular, non-compliance would not be measured against a single monitoring result during an activity, but instead non-compliance would only arise where the median of results obtained during monitoring exceeded the threshold specified in H.3.3. Council has confirmed:</p> <p><i>To clarify, in the proposed plan, Mangawhai Estuary will be treated as two different management zones 1) a tidal creek zone 2) an ‘estuary’ zone. The areas upstream of the two causeways are ‘tidal creeks’ and the rest is the ‘estuary’ zone. The turbidity standard for the ‘tidal creeks’ zone is 10.8 NTU and the standard for the ‘estuary’ zone is 6.9 NTU. But the compliance metric is median. The median is effectively ‘the middle’ of a range of numbers. So for the median to exceed 10.8 NTU half the values recorded would need to be above this value. We have used the ‘median’ as a metric for turbidity and some other parameters like nutrients because these can vary according to season, rainfall etc.</i></p> <p><i>...We will still monitor consents in the same manner. i.e. we will collect an upstream/control sample, a samples at the ‘discharge point’ and then a sample at the edge of the mixing zone (the compliance point). If the upstream sample is elevated this is taken into account when assessing compliance. (emphasis added)</i></p> <p>Currently, H.3.3 does not record this. Furthermore, the suggested use of a “median” for compliance purposes is unclear and uncertain (number of samples, time/date range for sample collection, frequency of samples etc).</p> <p>In addition, the NRC informed MHRS that:</p> <p><i>...Since developing the proposed water quality standards for Northland we started sampling water quality in Mangawhai harbour and now have 12 months of data. During the last 12 months, at the four ‘estuary’ estuary sites (48 samples in total)</i></p>	<p>vary depending on the estuary and catchment soil type).</p> <p>A suggested replacement clause is:</p> <p>Turbidity values at the edge of the zone of reasonable mixing must not exceed 10 Nephelometric Turbidity Units (“NTU”) above background levels (background levels are to be measured at 150m upstream of the point of confluence where a visible plume enters the main water body) when the background levels do not exceed 30 NTU. Where background turbidity levels exceed 30 NTU, then the turbidity values must not exceed 50% above background at the edge of the zone of reasonable mixing.</p>
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		<p><i>turbidity only exceeded 6.9 NTU once (9.09 NTU). The median values at the four ‘estuary’ sites were 0.57, 1.73, 0.43 and 0.46 NTU so the medians at all four sites were well within the proposed standard. We also have two ‘tidal creek’ sites in Mangawhai. The median turbidity at these sites was 3.63 and 3.3 NTU so again they were well within the standard for tidal creeks (10.8 NTU).</i></p> <p>The MHRS expects that the median turbidity values in Mangawhai Harbour will, on occasion (and particularly during winter), exceed the turbidity limits recorded in the Plan. The Plan limits are based on a relatively small sample size of data collected by Council, and is not robust or reliable. The more extensive monitoring of water quality within Mangawhai Harbour undertaken by the MHRS over the last few years (a condition of its mangrove removal consent – CON20102684401) recorded baseline turbidity levels which exceeded the turbidity limits currently set out in the Plan 50% of the time, which would make MHRS’ compliance with the Plan impossible during those periods.</p> <p>In any case, the NRC’s advice above indicates that situation-specific background levels will still be relevant when assessing non-compliance. The MHRS considers this to be essential (given its experience in undertaking substantial projects in the CMA, and extensive monitoring experience in the Mangawhai Harbour). The Policy needs to be amended to record this.</p> <p>Accordingly, the Policy needs to be amended to reflect the currently established (scientifically valid) approach to managing turbidity for activities in the CMA, as adopted previously by this Court.</p>	
Maps			
11.	Map - Significant Ecological Area	<p>The Appellant appeals this designated area of the map on the basis that the Council has not amended the area to correctly reflect the relevant locations within Mangawhai harbour.</p> <p>Council has designated these areas as “Significant Ecological Areas” due to the alleged presence of shellfish beds in these locations. However, Council has relied on limited and out-dated information when making this assessment.</p> <p>The mapped areas are derived from Councils “<i>Significant Ecological Marine Area</i></p>	<p>Limit the designation of ‘Significant Ecological Areas’ in the Mangawhai harbour to areas of the harbour that contain significant shellfish populations (See area marked on attached Annex A)</p> <p>Replace the current Plan map for</p>

	<p><i>Assessment Sheet</i> for Mangawhai Estuary (Vince Kerr, September 2015). This Assessment Sheet states:</p> <p><i>“Three shallow and tidal flat areas within the Mangawhai Estuary have been given a high ranking of ecological significance for marine values. Modifications are taking place in some sandy shore channel and mangrove areas of the estuary. In spite of this, there are still some important soft bottom habitats with healthy and productive shellfish beds”</i></p> <p>The Assessment Sheet relies upon one single report which included research into shellfish populations at Mangawhai: <i>Berkenbusch, K.; Abraham, E.; Neubauer, P., 2015. Intertidal shellfish monitoring in the northern North Island region, 2013–14. New Zealand Fisheries Assessment Report 2015/15. 79 p (see Footnote 3, Assessment Sheet).</i></p> <p>The latest data in that report relating to Mangawhai was in April “2010-11” (the exact year is unclear). The report examined shellfish populations in several locations (Cockle Bay, Grahams Beach, Little Waihi Estuary, Marsden Bank, Okoromai Bay, Pataua Estuary, Tairua Harbour, Umupuia Beach, Waikawau Beach, Waiotahi Estuary, and Whangateau Harbour), but not Mangawhai Harbour. Instead, the report only briefly mentions historical surveys that had occurred at Mangawhai, but did not include any of that data, nor provide any information regarding shellfish populations or locations at Mangawhai.</p> <p>The <i>“Significant Ecological Marine Area Assessment Sheet”</i> for Mangawhai Estuary prepared by Council (and on which the mapping relies) neither contains nor cites any information or data regarding shell fish locations or populations within Mangawhai Harbour, and therefore provides no legitimate basis for mapping of these areas within the Harbour.</p> <p>In contrast, a Mangawhai-specific shellfish survey carried out by Dr Brian Coffey, and submitted to this Court as part of NZEnvC284 2013, establishes (with reliance on research data collected specifically at Mangawhai, and which was collected more recently than the latest data relied upon by Council) that only parts of the mapped areas contain significant shellfish beds.</p> <p>The MHRS recognises the ecological significance of shellfish beds. However, expert evidence provided by marine ecologists Mark Poynter and Dr Coffey to this Court in NZEnvC284 2013 did not consider the tidal flat areas within the Mangawhai Estuary (which have mobile sand) to be significant shellfish areas.</p>	<p>Mangawhai Harbour with attached Annex A.</p>
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		<p>The ‘Significant Ecological Areas’ Map for Mangawhai should therefore be amended so that only the areas of the channel that contain significant shellfish areas (as identified in the evidence presented by Dr Coffey– namely, the area marked on the attached Annex A) are designated as ‘Significant Ecological Areas.</p> <p>The incorrect designation of the other tidal flat areas as “Significant Ecological Areas” has significant practical implications for the MHRS’ harbour maintenance and restoration activities. The incorrectly-designated tidal flats have a dynamic nature which could occasionally cause them to extend into areas presently consented for maintenance dredging or beach/foreshore sand deposition/restoration. The incorrect designations could therefore inhibit or compromise the MHRS’ ability to continue its Mangawhai Harbour dredging and Spit deposition/stabilisation activities, maintain navigable channels, a stable inlet and the restored sand spit, In addition, some of the tidal flats and foreshore areas incorrectly designated Significant Ecological areas, including the most northern area, have been created by the restoration work of the MHRS during the past three decades.</p> <p>The incorrectly-designated tidal flats areas identified in the Mangawhai harbour should not be subject to the major restrictions placed throughout the Plan on deemed Significant Ecological Areas. The various activity restrictions that would arise if these areas were classified as a Significant Ecological Area would stymie current restoration and maintenance activities and threaten to undermine the past restoration activities undertaken by the MHRS.</p>	
12.	Map - Significant Bird Area	<p>The Appellant appeals this designated area of the map on the basis that the Council has not amended the area to correctly reflect the following points.</p> <p>As stated at point 37 of the Submission, there is no valid scientific or evidential basis to support the classification of the entire Mangawhai Harbour as a Significant Bird Area.</p> <p>This classification:</p> <p>(a) Appears to be based on limited and unreliable evidence, and therefore provides no legitimate basis for mapping of these areas within the Harbour;</p>	<p>The ‘Significant Bird Area’ Map should be amended, with the ‘Significant Bird Area’ designation removed from the Upper Harbour areas landward of the two main causeways (apart from areas of rush marsh and salt marsh) and remaining areas of mangrove below (seaward of) the causeways.</p>

		<p>(b) Fails to take into account valid and reliable avifaunal evidence and studies completed within the Mangawhai Harbour, concerning the exact locations used by birdlife within the Harbour.</p> <p>(c) Will unduly restrict current and future MHRS restoration activities within the Harbour and CMA, therefore reducing or preventing the significant benefits that accrue to birdlife from the MHRS’ restoration activities; and</p> <p>(d) Furthermore, the reduction or prevention of restoration activities within the Harbour will not enable the restoration and maintenance of the integrity, functioning and resilience of the coastal environment and associated ecosystems (as required by the NZCPS), which in turn imperils the resident birdlife (including the critically endangered fairy tern, which roosts and breeds on the Mangawhai spit). Put simply, the unwarranted Harbour-wide classification is likely to adversely affect the very thing (birds) it is intended to protect.</p> <p>In particular, there is relatively little birdlife in the mangrove-dominated Upper Harbour areas landward of the two main causeways.</p>	
13.	Map - Areas of outstanding and high natural character	<p>The Appellant appeals these designated areas of the map on the basis that the Council has not amended the area to correctly reflect the following points.</p> <p>As stated at point 38 of the Submission, the Appellant objects to the designation of five different areas in Mangawhai as ‘High Natural Character’. These designations are based on factually incorrect descriptions of those areas (see descriptions in the Plan Maps), and do not reflect the current state of the environment in those areas (correctly described below).</p> <p>‘High natural character’ is defined in the Northland Regional Policy Statement and generally means an area with a high proportion of indigenous vegetation cover, visually unobtrusive land management (e.g. low intensity pasture), few and visually subservient human features and a strong experience of naturalness.</p> <p>‘Areas where natural character is less than high’, on the other hand, generally means one or more of the following: Mostly modified land cover (e.g. pasture, plantations), limited remnant indigenous vegetation, obvious land management patterns, obvious or prominent human structures, and a modest experience of naturalness.</p> <p>Several areas in Mangawhai labelled as “High Natural Character” do not meet or fall</p>	<p>Delete the designation of the following five areas in Mangawhai as ‘High Natural Character’:</p> <ul style="list-style-type: none"> • Unique identifier 36/40; • Unique identifier 36/39; • Unique identifier 36/25; • Unique identifier 36/45; • Unique identifier 36/18.

		<p>within the RPS’ definition of “High Natural Character”, and these designations should be removed from the Plan for the reasons set out below:</p> <ul style="list-style-type: none"> (a) For Unique Identifier 36/40 – There are numerous obvious human structures. The area is surrounded by existing housing developments, new construction and a large-scale development which includes a community shopping area. (b) For Unique Identifier 36/39 – This area comprises the “Sand Island” as well as Back Bay (salt marsh) and the Kainui/Pierson Street arm of the middle harbour. The Sand Island was cleared of 12 ha of mangroves in 2015. On-going juvenile/seedling mangrove removal occurs throughout this area. There are numerous, obvious human structures as the shoreline is almost continuously occupied by homes. New housing subdivisions are in progress. (c) For Unique Identifier 36/25 – The MHRS carries out yearly maintenance dredging with associated sand deposition within the confines of the harbour. This restoration activity maintains the dynamic equilibrium of the inlet, stabilises the sand spit and re-nourishes beaches within the designated sand deposition areas of the harbour. Mangrove removal has been carried out in the lower and middle harbour areas. There are numerous obvious human structures including houses along the shoreline and informal shore protection structures. New subdivisions are in progress. (d) For Unique Identifier 36/45 – This area has a primary school and housing development on the northern arm with the remainder in farmland (e.g. mostly modified landcover with obvious land management patterns). (e) For Unique Identifier 36/18 – This area is periodically re-nourished with sand from dredging operations. The cliff face is stabilised by placement of sand higher up the beach along the cliff face. There is a significant aluminium stairway providing public access from the top of the cliff to the beach. The high tide beach area is increased as a result of the periodic re-nourishment which provides more public recreational area. This beach area should not be considered high natural character as it has been substantially modified (by consent) and will continue to be periodically modified. In addition, the top of the cliff has numerous human structures as it is occupied with homes along its entire length. 	
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14.	Map - Marine Mammal and Seabird Area	<p>The Appellant appeals this designated area of the map on the basis that the Council has not amended the area to correctly reflect the following points.</p> <p>As stated at point 40 of the Submission, there is no valid scientific or evidential basis to support the classification of the entire Mangawhai Harbour as a Marine Mammal and Seabird Area.</p> <p>This classification:</p> <ul style="list-style-type: none">(a) Appears to be based on limited (and very general) evidence, which does not appear specifically applicable to Mangawhai;(b) Fails to take into account the avifaunal evidence and studies completed within the Mangawhai Harbour, concerning the exact locations used by seabirds; and(c) Will unduly restrict current and future MHRS restoration activities within the Harbour and CMA, therefore reducing or preventing the significant benefits that accrue to birdlife (including seabirds) from the MHRS' restoration activities; <p>There is also no evidence of any marine mammals present in areas of the Harbour populated by mangroves, such as in the Upper Harbour areas landward of the two main causeways.</p>	<p>Remove the incorrect designation of various areas in Mangawhai as a 'Marine Mammal and Seabird Area' including the Upper Harbour areas landward of the two main causeways, and remaining areas of mangrove below (seaward of) the causeways.</p>
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Annex A: Proposed Significant Ecological Area

