

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

**I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKĀURAU**

Decision [2022] NZEnvC 114

UNDER

the Resource Management Act 1991

IN THE MATTER OF

to the Proposed Northland Regional
Plan Topic 15 Mangrove Provisions

BETWEEN

MANGAWHAI HARBOUR
RESTORATION SOCIETY
INCORPORATED

(ENV-2019-AKL-110)

CEP SERVICES MATAUWHI
LIMITED

(ENV-2019-AKL-111)

BAY OF ISLANDS MARITIME
PARK INCORPORATED

(ENV-2019-AKL-117)

ROYAL FOREST AND BIRD
PROTECTION SOCIETY OF
NEW ZEALAND
INCORPORATED

(ENV-2019-AKL-127)

Appellants

AND

NORTHLAND REGIONAL
COUNCIL

Respondent

Court:

Judge J A Smith
Commissioner R M Bartlett

Hearing:

10 – 11 August 2020
23 – 24 September 2020
4 – 5 May 2022

Topic 15: Mangroves



Appearances: Mr K R Littlejohn and Ms G Gamboni for Mangawhai Harbour Restoration Society Incorporated (**MHRS**)
Mr A Riddell for CEP Services Matauwhi Limited (**CEP Services**)
Ms S Gepp for Bay of Islands Maritime Park Incorporated (**BOIMPI**)
Mr P Anderson for Royal Forest and Bird Protection Society of New Zealand Incorporated (**Royal Forest and Bird**)
Ms K Anton for Minister of Conservation (s 274 Party)
Ms S Shaw for Patuharakeke Te Iwi Trust Board and Fairy Tern Trust (s 274 Party)
Ms H Rogan for New Zealand Fairy Tern Trust (s 274 Party)
Mr R Gardner for Federated Farmers of New Zealand (appearance excused)
Mr M J Doesburg for Northland Regional Council

Date of Decision: 29 June 2022

Date of Issue: 29 June 2022

INTERIM DECISION OF THE ENVIRONMENT COURT

A: For the reasons set out in this decision we have adopted the wording set out in annexure “C” for the following provisions:

- (a) Policy D.5.26;
- (b) Policy D.5.27;
- (c) Rule C.1.4.1;
- (d) Rule C.1.4.2;
- (e) Rule C.1.4.3A;
- (f) Rule C.1.4.3;
- (g) Rule C.1.4.4;
- (h) Rule C.1.4.5A;
- (i) Rule C.1.4.5; and
- (j) Rule C.1.4.6.

B: Of those provisions, the following may be subject to some final wording alteration. If there is a disagreement between the parties, parties may file submissions on the following within 20 working days for consideration by the

Court:

- (a) Rule C.1.4.3A;
- (b) Rule C.1.4.3;
- (c) Rule C.1.4.5; and
- (d) Rule C.1.4.6.

These remaining final wording issues are noted in annexure “C”. The Court will then confirm final wording for these provisions.

C: This has been a particularly difficult and complex case due to the COVID-19 lockdowns and the introduction of substantive changes by regulation and standards during the period immediately thereafter. On the face of it, no party can be held responsible for these delays and accordingly, on a tentative basis the Court considers that the costs should lie where they fall. If any party wishes to seek costs they are to file an application within 20 working days, replies to be filed within 15 working days, and any final reply five days thereafter. Such an application is not encouraged.

REASONS

Introduction

[1] These appeals relate to mangrove removal under the Proposed Northland Regional Plan (**PNRP**). The status and standards for mangrove removal has had a particular focus in the Mangawhai Estuary with contested removal consents.

[2] This hearing has had a particularly difficult process through to finality due to a combination of:

- (a) COVID-19 and the multiple lockdowns and disruptions that occurred as a result;
- (b) the subsequent introduction of new national environmental standards and regulations in relation to freshwater and the difficulties with finalising

aspects due to uncertainties as to the interpretation of these documents;

- (c) a declaration decision by this Court being appealed to the High Court and then remitted back to this Court;¹
- (d) the prospect of further changes to policies and standards; and
- (e) the considerable workload on the Court as a result of the aforementioned matters.

[3] The first stage of these proceedings occurred in September 2020, after the Level Four lockdown in 2020. In the course of considering this matter, the Court and parties became aware of the introduction of new policy (National Policy Statement for Freshwater Management 2020 (**NPSFM**)) and standards (Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (**NES-F**) and Resource Management (Stock Exclusion) Regulations 2020 (**SER**)). The impact of these new controls had an unclear impact in respect of saline areas (not freshwater, particularly mangroves).

Declarations and basis of continued hearing

[4] The Court issued a declaration² on this issue which was then appealed to the High Court. The High Court reached a decision concluding that the freshwater regulations did apply within the coastal environment.³ It was then necessary for the parties to consider the ramifications of this in terms of the plan and the obligations of the Council as to the regulations / standards, and of course the plan change subject to these appeals.

[5] In the end, the parties did not wish to call for further evidence and the matter proceeded by way of written submissions and audio-visual appearances before the Court with comprehensive and helpful submissions. As well as this, the parties have

¹ *Bay of Islands Maritime Park Inc v Northland Regional Council* [2021] NZEnvC 6; *Minister of Conservation v Mangawhai Harbour Restoration Society Inc* [2021] NZHC 3113.

² *Bay of Islands Maritime Park Inc v Northland Regional Council* [2021] NZEnvC 6.

³ *Minister of Conservation v Mangawhai Harbour Restoration Society Inc* [2021] NZHC 3113.

done their best to narrow down the issues in contention given the prospective complexity of the matters before the parties and the Court.

Role of Court and Council

[6] In short, the parties have agreed that it is the role of the Council to decide the impact of the regulations and standards. Although the Court can have regard to this in considering whether the issue is within scope, it is looking for a pragmatic and practical answer in terms of effectiveness and efficiency under s 32AA.

[7] The Court is not bound to introduce changes required the regulations or policy on these appeals. That is a Council obligation. Although the Council has quite usefully tried to identify those provisions which it believes will conflict with the regulations, the Regional Council has yet to undertake the task required either under the terms of the regulations (SER)/standards in identifying those provisions which would be removed from the plan.

[8] We see there is an added complexity to the Council's task in this regard as there are prospective further changes to both the regulations and standards which at this stage have not been promulgated. Some of the parties to this hearing are aware of those changes and may have been involved in the discussions about them. Nevertheless, it cannot be presumed that any particular changes will take place until they are finalised and promulgated.

[9] Finally, as the matter has drifted further from the original date of notification going back as far as 2016 and 2017, the continuing force and relevance of the plan becomes more of a moot point. The parties agreed it is important to finalise the plan. Most provisions have now been finalised but there are continuing areas of difference in relation to some important issues around marine spatial planning, the coastal areas, saline waters, vehicles on beaches and the like. Given the volatile nature of changes in this area, all parties seem to agree with the Court that it is important that we reach some finality in respect of these proceedings given the ongoing costs to everyone.

The core issues

[10] The matters largely come down to issues surrounding mangroves and their removal in particular.

[11] The following rules are still in contention between the parties:

- (a) Rule C.1.4.1 Mangrove seedling removal – permitted activity;
- (b) Rule C.1.4.2 Minor mangrove removal – permitted activity;
- (c) Rule C.1.4.3A Mangrove removal by the Department of Conservation – controlled activity;
- (d) Rule C.1.4.3 Mangrove removal – controlled activity;
- (e) Rule C.1.4.4 Mangrove removal in the Whangārei City Centre Marine Zone and the Coastal Commercial Zone – restricted discretionary activity (largely agreed);
- (f) Rule C.1.4.5A Mangrove removal existing activities – discretionary activity;
- (g) Rule C.1.4.5 Mangrove removal – discretionary activity; and
- (h) Rule C.1.4.6 Mangrove removal (including seedlings within sites and areas of significance to tangata whenua) – non-complying activity.

[12] There are also some issues around general conditions applying to activities relating to how mangroves may be removed and when. There are some disagreements around the policy setting for this, in particular Policy D.5.26 Mangrove removal – purpose and D.5.27 Mangrove removal – effects. Nevertheless, those arguments are more limited in their scope than those relating to the provisions we have discussed.

[13] We now quote extensively from the Council’s closing submissions which we

consider fairly summarised certain aspects of these proceedings:⁴

History of the Topic 15 appeals

The Proposed Plan was notified in September 2017. Following submissions and hearings, the Council's decision on submissions on the Proposed Plan was notified on 4 May 2019 and appeals filed on or before 17 June 2019. Mediation on Topic 15 began in September 2019 and the hearing commenced in August 2020, following a delay caused by COVID-19.

The NES-F took effect on 3 September 2020 part-way through the hearing of Topic 15 – Mangrove Removal.⁵ The parties could not agree on the interpretation and application of the NES-F and sought that the Court determine whether the NES-F applied to wetlands in the CMA. The Court issued declarations on 10 February 2021, which were appealed to the High Court. On 18 November 2021, the High Court allowed the appeals, quashed the Environment Court's declaration, and declared:

The Resource Management (National Environmental Standards for Freshwater) Regulations 2020 apply to natural wetlands in the coastal marine area.

The Environment Court is required to consider the proposed regional plan for Northland in light of the constraints imposed by the Resource Management (National Environmental Standards for Freshwater) Regulations 2020.

The purpose of this hearing is to complete Topic 15 – Mangrove Removal, so that the Court can determine the appeals against the provisions.

In the intervening time, other Proposed Plan appeals have marched forward. Notably, the objectives, policies and maps relating to significant ecological areas, significant bird areas, natural character areas and natural features have been resolved as part of Topic 11. At the time of the Topic 15 hearing in 2020, those matters were still unresolved.

Legal issues

The High Court's finding that the NES-F applies to natural wetlands in the CMA has implications for Topic 15. Mangrove removal is "vegetation removal" for the purpose of the NES-F. The removal of mangroves regulated by the Topic 15 provisions may (in some cases) occur within "natural wetlands" in the CMA. Therefore, that activity is captured by the NES-F.

The interaction between the NES-F and coastal activities has recently been illustrated in Northland. Far North Holdings Limited and Far North District Council sought consent as a referred project under the COVID-19 (Fast Track Consenting) Act 2020 (**FTA**) for a public boat launching facility at Rangitane known as the Rangitane Maritime Development.

⁴ Closing submissions of counsel for Northland Regional Council dated 22 April 2022 at [6] – [13].

⁵ The hearing had commenced in Auckland on 10 August 2020 but had adjourned following the second hearing day due to a change in COVID-19 alert levels. The hearing recommenced on 23 September 2020.

The project involved the removal of seven mature mangroves and reclamation of approximately 7,400m² of CMA. The expert consenting panel determined that it was jurisdictionally precluded from determining the application, because the project involved “earthworks” that would drain a natural wetland – a prohibited activity under reg 53 of the NES-F.⁶

On its face, the application of the NES-F to the CMA creates an issue about how the Topic 15 provisions and the NES-F should be reconciled. However, the Council’s submission is that the obligation to recognise the NES-F falls squarely on the Council not the Court, and is separate from the determination of the appeals. The Council submits that the NES-F is relevant to the appeals only to the extent that the Topic 15 provisions are more stringent than the NES-F, such that further assessment is required under s 32(4) of the RMA.

The Regional Council’s role under the NPS-F

[14] As a Court, we are in no doubt that there is an issue as to how the Topic 15 provisions and the NES-F and SER controls should be reconciled. The SER do not feature in these provisions but we include comment at this stage given they are relevant to other plan issues. That obligation in the Court’s view falls clearly on the Council, explicitly by the wording of the regulation. Accordingly, the parties now appear to agree that we should proceed to determine the appeals on the basis of the evidence and submissions before us and that questions of conflict with the NES-F and SER are matters for the Council.

[15] Where a Topic 15 provision is more stringent than the NES-F a further assessment is also required under s 32(4) of the RMA. The issues in this case related to appeals which largely sought more liberal outcomes.

[16] Section 44A of the RMA requires local authorities to recognise national environmental standards in their plans and proposed plans. Where there is a national environmental standard s 44A directs the local authority to amend the plan or proposed plan to remove the duplication or conflict “without using the process in Schedule 1; and as soon as practicable after the date on which the standard comes into force”.

[17] This would also clearly apply to the NES-F and the Council has commenced

⁶ Under cl 2(4) of sch 6 of the FTA, resource consent cannot be granted for an activity that is classified as prohibited in a national environmental standard.

the work of aligning the Proposed Plan (including Topic 15) with the NES-F under s 44A. It has completed a s 44A analysis, identifying provisions of Topic 15 that are duplications or conflicts with the NES-F. This was filed as a memorandum on 1 April 2022.

[18] The solution adopted in the interim by the Council has been to include in the proposed plan a statement as follows:

A rule in this Plan prevails over a standard in the NES-F if it is more stringent than a standard. A standard in the NES-F prevails over a rule in this Plan if it is more stringent than the rule.

[19] The Council and other parties recognise the difficulty that this places both the Court and parties in.

[20] The Council considered the most effective way forward was for:

- (a) the Court to conclude the hearing of Topic 15 and resolve the appeals by determining the most appropriate form of Topic 15 provisions; and
- (b) after those provisions are determined, the Council was to exercise its s 44A powers to remove conflict or duplication with the NES-F. This may not occur until later in 2022, particularly if the NES-F is amended.

[21] All parties now appear to accept that for the purpose of this case, the burden of plan alignment is on the Council, not the Court. Given this Court only has the same powers as the Council under s 290 of the Act it could not be that we are to take into account matters that were not even in contention or raised or in existence at the time of the original decisions. We agree that changes beyond the scope of the reference appeal before the Court could be resisted unless they meet the criteria of ss 292 and 293 of the Act.

[22] In *Mawhinney v Auckland Council*, Wylie J said:⁷

...The Court's jurisdiction on an appeal under cl 14 of the Act is not unlimited. As is noted in *Environmental and Resource Management Law*, the Court is primarily

⁷ *Mawhinney v Auckland Council* (2011) 16 ELRNZ 608 at [111].

a judicial body with appellate jurisdiction. It is not a planning authority with executive functions. When it is dealing with an appeal in relation to a plan change, it must consider whether any proposed amendment goes beyond what is reasonably and fairly raised in the original submission and the notice of appeal. After hearing the appeal, the Court may, instead of allowing or disallowing the appeal, exercise its discretion under s 293 to direct the local authority to prepare changes to the plan to address matters identified by the Court. It cannot go beyond that.

[23] We agree that as the NES-F came into effect after the notification and submissions, the NES-F itself cannot be within the scope of the appeals on Topic 15. When the same issue is raised it is a matter to which we could have regard in considering the appropriate outcome. This did not exercise the Court at this hearing because it was agreed by all parties that, because of the power to alter the plan without utilising the Schedule 1 process, there was a correction procedure provided for. It also avoided the potential for this Court to become embroiled in a mobius loop where no matter could be concluded because of changes that took place which then need to be considered.

[24] We think there is particular force in this argument because of the information given to us by several parties to this case that changes to the NES-F and NPSFM are currently being considered by relevant government officials and it is likely that new documents will be produced. In fact, at one stage it was requested that this decision be adjourned to allow for that document to be produced by the end of March 2022. In the end, it is clear that the document may be some months away. An “exposure draft”, at the time of writing, has been issued by the Ministry for the Environment for comment.

[25] We understand that parties have now agreed that this issue is not being pursued for the purpose of this case and we can therefore focus on the policies and rules in question. As we understand these, they are:

- (a) Policies D.5.26 and D.5.27; and
- (b) Rules, particularly relating to activity status:
 - (i) Rule C.1.4.1 Mangrove seedling removal – permitted activity;

- (ii) Rule C.1.4.2 Minor mangrove removal – permitted activity;
- (iii) Rule C.1.4.3A Mangrove removal by the Department of Conservation – controlled activity;
- (iv) Rule C.1.4.3 Mangrove removal – controlled activity;
- (v) Rule C.1.4.4 Mangrove removal in the Whangārei City Centre Marine Zone and the Coastal Commercial Zone – restricted discretionary activity;
- (vi) Rule C.1.4.5A Mangrove removal existing activities – discretionary activity;
- (vii) Rule C.1.4.5 Mangrove removal – discretionary activity; and
- (viii) Rule C.1.4.6 Mangrove removal (including seedlings within sites and areas of significance to tangata whenua) – non-complying activity.

[26] We intend to deal with each of these in turn and then on a wholistic basis at the end.

Section 32AA analysis

[27] Section 32AA deals with requirements for undertaking and publishing further evaluations:

32AA Requirements for undertaking and publishing further evaluations

- (1) A further evaluation required under the Act–
 - (a) is required only for any changes that have been made to, or are proposed for, the proposal since the evaluation report for the proposal was completed (the changes); and
 - (b) must be undertaken in accordance with section 32(1) to (4); and
 - (c) must, despite paragraph (b) and section 32(1)(c), be undertaken at a

level of detail that corresponds to the scale and significance of the changes; and

- (d) must–
 - (i) be published in an evaluation report that is made available for public inspection at the same time as the approved proposal (in the case of a national policy statement or a New Zealand coastal policy statement or a national planning standard), or the decision on the proposal, is notified; or
 - (ii) be referred to in the decision-making record in sufficient detail to demonstrate that the further evaluation was undertaken in accordance with this section.
- (2) To avoid doubt, an evaluation report does not have to be prepared if a further evaluation is undertaken in accordance with subsection (1)(d)(ii).
- (3) In this section, proposal means a proposed statement, national planning standard, plan, or change for which a further evaluation must be undertaken under this Act.

[28] Thus, as we understand, the duty of the Court is to evaluate these changes in accordance with s 32(1) to (4) and to give reasons for why we prefer one provision over another to satisfy those subsections. The level of detail is contextual relating to the scale and significance of the changes.

[29] Section 32 itself requires the Court to:

- (1) ...
 - (a) examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act; and
 - (b) examine whether the provisions are the most appropriate way to achieve the objectives by–
 - (i) identifying other reasonably practicable options for achieving the objectives; and
 - (ii) assessing the efficiency and effectiveness of the provisions in achieving the objectives; and
- ...
- (2) ...
 - (a) identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the

implementation of the provisions, ...

- (b) if practicable, quantify the benefits and costs, referred to in paragraph (a); and
- (c) assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.

[30] In considering an appeal of these sorts there are limitations on how far the Court can go, as we have discussed earlier in the decision. However, generally the following propositions would follow:

- (a) the Court does not start with any particular presumption as to the appropriate provision;
- (b) the most appropriate does not mean superior and requires the choice of the most appropriate option available. This is sometimes called the better/best provision available in the scope of the hearing;
- (c) the Court seeks to obtain the optimum resource management solution under the Resource Management Act and the scope of the appeal before it. This requires an evaluation of the totality of the evidence given in the hearing without imposing a burden of proof on any party; and
- (d) a policy, rule or method can be considered against the purpose found in the objectives and undisputed policies in the plan. Where the objectives and policies are challenged, these need to be judged against superior documents including any relevant regional plans, policy statements and national standards. Regard should be had to the policies and objectives of the plan through the consideration of Part 2 of the RMA where this becomes necessary (i.e., where the provisions are not otherwise clear). The need to resort to Part 2 applies only where the provisions are themselves not clear and may not achieve the higher order documents.

Section 32(4) obligations

[31] In this topic, there is the possibility that certain outcomes may amount to a prohibition or restriction greater than that under the NES-F. If so, this may be justified in the circumstances of the region under s 32(4). To that extent, s 32AA(1)(d)(ii) would require reasoning to justify the regional exception to the greater or lesser restriction. Those that have a lesser restriction would not have effect given s 43B of the Act. This is because s 43B is drafted as an exemption to the requirement to meet the regulation. This poor drafting creates difficulties with s 32(4) which itself creates an exception to meeting the regulations. In this case we do not need to resolve the inconsistencies, but they further confuse a difficult situation.

[32] That the greater restriction may be ‘justified in the circumstances of the region’ makes clear that some form of regional distinction is required. This may include environmental, ecological, geological, and cultural factors specific to the region or of such importance to the region as to make regionally specific provisions more appropriate than the nationwide standards.

[33] Finally, we should note that in relation to the policies and rules that we are about to discuss, the differences have been narrowed considerably since the first hearing in 2020. A number of them simply turned upon preferred wording and what wording may be most effective for achieving the purpose. Nevertheless, there are also differences of substance in some particular areas. We will discuss these as we reach them.

[34] Overall, we do not understand there to be any argument that the Proposed Northland Regional Plan has objectives that seek to protect or enhance Northland’s environment including its biodiversity, resilience, the hazards, tangata whenua values, natural character and features, while also enabling economic wellbeing and regionally significant infrastructure (including energy supply) to operate. There are several objectives unresolved and on that basis we might refer to the Regional Policy Statement (**RPS**), the New Zealand Coastal Policy Statement 2010 (**NZCPS**) and ultimately to Part 2 of the Act. However, the differences between the parties are at a fine level of detail, requiring the Court’s evaluation of the evidence before it. We are

satisfied that reference to higher order documents in this way is unlikely to assist us but have kept them in mind as we consider the provisions.

Plan overlays

[35] Before moving on to the particular provisions in question, there are several more matters that need to be addressed because of their relevance to the hearing generally and the provisions now before the Court:

- (a) Significant Bird Areas;
- (b) treatment of High Natural Character Areas; and
- (c) treatment of Sites or Areas of Significance to tāngata whenua.

[36] As has been clear not only in this case but in other associated cases, the Council made a decision earlier within the Proposed Northland Regional Plan preparation process to map Significant Bird Areas (**SBA**) separately from Significant Ecological Areas (**SEA**). Most of Northland's coastline has been mapped as SBA. The consequences of SBAs having the same effective status as SEAs would be that the avoidance policy under the NZCPS and incorporated with the RPS and this Proposed Regional Plan, would impose significant constraints within these areas.

[37] It has been clear throughout the plan hearings, including this one, that some areas within the SBA must be protected under Policy 11(a) of the NZCPS, under the RPS and under the Proposed Regional Plan. These areas may also contain values protected under Policy 11(b). In some cases, areas will contain both values requiring protection. This issue is as yet unresolved and there is an appeal before the Court seeking that the SBAs have the same effective status as the SEAs. That matter is still to be resolved.

[38] Nevertheless, it is clear that there is the potential for any activity status within an SBA to include areas that may not have been properly identified yet under Policy 11(a) or (b) or under the RPS and Proposed Regional Plan as SEAs. In other words, the fact that they have been identified as SBAs has on some occasions meant that they

have not also been identified as SEAs. The question for this Court is whether this requires that all rules and activities in mangrove areas seek to avoid any effects because of the potential that areas that meet Policies 11(a) and (b) and/or the RPS and the Regional Plan provisions may be present.

[39] This question also relates to both High Natural Character Areas and Sites or Areas of Significance to tāngata whenua (**SSTW**).

[40] Currently, High Natural Character Areas do not have the same protection given the direction of Policy 13(1)(b) of the NZCPS to avoid significant adverse effects and avoid, remedy, mitigate other adverse effects. The matter has not been fully considered by the Court but there may also be potential for these areas to have within them areas that meet Policy 11(a) and (b). We are not able to comment further on that at this stage given that this issue has not come before the Court.

[41] In relation to SSTW similar issues might arise. However, in this particular case, there is a limited number of SSTW, held by Patuharakeke Te Iwi. In relation to their sites, they have reached an agreement with all other parties that there should be a non-complying activity status for seedling removal and mature mangrove removal within any Patuharakeke Te Iwi Trust Board Site or SSTW.

[42] This issue will still need to be resolved for any further site or SSTWs adopted in the future but recognises the tikanga of Patuharakeke that mangroves are important and constitute part of their environment worthy of protection. The parties have agreed to this provision and therefore it is not in dispute before us but that change needs to be incorporated. The memorandum recording that agreement is annexed hereto and marked “**A**” and is to be incorporated as part of the changes approved by the Court in due course.

The changes themselves

[43] In moving to the changes themselves we note that the plan adopts a hierarchy from permitted, controlled, restricted discretionary, discretionary to non-complying. Many of the issues between the parties related to what status a particular activity

should have within this range based on the parties' perception of the effects of mangrove removal on biodiversity and other values.

[44] We heard considerable ecological evidence about the effects of mangrove removal or retention on the habitat particularly of threatened bird species that include fairy tern, Australasian bittern, and banded rail. The focus of much of the evidence was on Mangawhai harbour / estuary. Particular reference was made to the effects of previous mangrove removal on the fairy tern which has a New Zealand Threat Classification status of nationally critical and for which Mangawhai estuary forms part of its habitat.

[45] The evidence provided conflicting viewpoints on the effect of previous mangrove removal, which were said to lead to a deterioration in benthic fauna communities and in the population of certain fish species on which fairy tern prey, or conversely to lead to a significant increase in biodiversity within the harbour. Mangroves are an indigenous coastal vegetative habitat used by many fish, birds and invertebrates both resident and transitory.

[46] Removal of mangroves was said to disturb ecological sequences or corridors and lead to the removal of a buffer to sensitive ecological areas around estuary margins. This was not generally agreed, a contrary view being that mangroves create a monoculture, displacing biodiverse and valued indigenous habitats such as saltmarsh, intertidal flats, seagrass beds, roosting sites and shellfish beds. Other evidence was that mangroves are neither more nor less valuable than other estuarine habitats. Overall, opinion varied widely as to the benefits and dis-benefits of mangrove removal.

[47] In the past the difference between the parties related to the question of the level of conservatism that should be adopted in relation to avoidance of adverse effects. Mangawhai Harbour Protection Society has previously undertaken considerable clearance of mangroves from Mangawhai Harbour under existing resource consents and sought provisions that would allow some continuation of such activities on the basis that they would have beneficial effects on biodiversity.

[48] The other parties sought more restrictive controls limiting the activities that could be undertaken, particularly in areas mapped as having high or outstanding ecological and natural character values or high cultural importance. But even parties that otherwise seek restrictive controls such as the Department of Conservation seek an exemption for themselves in relation to certain activities.

[49] The same could be said for Mangawhai Harbour Restoration Society, particularly in relation to areas that have already been the subject of mangrove removal through previous consents. These tensions represent the key differences between the parties to be considered for the individual provisions.

D.5.26 Mangrove removal – purpose

[50] As can be seen in the table annexed hereto and marked “**B**”, the differences are overall somewhat more subtle and the Regional Council’s position has been modified from that in that original decision. A variation has been suggested by all parties, except the Regional Council and Mangawhai Harbour Restoration Society, to both the substantive and amended provisions proposed by the Regional Council.

[51] The introduction of the words “consideration of granting” and “limited to circumstances where” appears to be a de-facto form of prohibition on those activities that do not meet the criteria. Words such as “consideration of granting” and “is limited to circumstances where” give the impression that there is somehow a constraint upon the Council’s power to consider consents.

Evaluation

[52] The use of the words “consideration” and “resource consent for mangrove” gives the impression that the policy is dealing with resource consents. This has led to the view by other parties that there should be some constraint on that discretion. However, in our view, the policy misconceives its role by purporting to give some directions around resource consents rather than the circumstances where mangrove removal may be appropriate. We would therefore prefer wording to the effect:

Subject to policy D.2.16, mangrove pruning or removal may be appropriate

where:

...

[53] In this way the criteria for consideration that should be followed through in applying the rules clearly refer to the policies of the plan.

The paragraphs / subparagraphs of D.5.26

[54] All parties but the Council believe there should be a mandatory requirement:

1. it is demonstrated that the purpose of the mangrove removal in 2 a) – n) below can be achieved
2. it is the minimum necessary to maintain, restore or improve one or more of the following:

[55] Proposed clause 1 does not offend against the provision of dictating the outcome but shows necessity for satisfaction that the outcome outlined will be achieved rather than a prospect or hope.

[56] The Council's stance was that the addition of this wording added no practical value to clause 1. We conclude that this wording is useful in focussing the minds of parties on how the activity will achieve the benefits of the objectives and policies. As it is agreed by all the other parties we need not comment on it further.

[57] In clause 2 the proposed inclusion of "the minimum" appears out of place in policy. The rules provide maximum areas and excluded locations to protect mangrove values. Inclusion of "minimum" puts a further onus of justification on any applicant which we consider unnecessary given the specificity of the rules. We conclude the provision is unnecessary in a policy.

[58] In relation to subparagraph (b) the Minister of Conservation, CEP Services and Patuharakeke Te Iwi Trust Board sought removal of the word "colonised" as being inappropriate and preferred it be replaced by "displaced". We understood that no other party disagreed with that approach although no other parties have sought the inclusion of that word. Thus we conclude that the words should read:

(b) critical habitats that have recently been displaced by mangroves, such as seagrass meadows and shellbank roost areas

[59] In our view, this does not limit the circumstances to only seagrass meadows and shellbank roosts but gives clear examples by type. To that end, we conclude that this forms solid guidance to decision makers as to the type of critical habitats that need to be in consideration, which may include similar types of habitat (rush marsh, salt marsh and intertidal flats, among others), rather than exhaustive list in (b). We approve the proposed wording.

[60] In relation to subparagraph (c), most parties seek amendments to permit “mangrove seedling removal from areas within which mangroves have previously been lawfully pruned or removed”. The Council, however, simply speaks about “areas within which mangroves have been previously been lawfully pruned or removed”. This on the face of it would allow removal of larger mangroves.

[61] Overall, we have again concluded that reference to mangrove seedlings as sought by Bay of Islands Maritime Park and Forest and Bird is appropriate in these circumstances and we modify the wording to fit within the chapeau of paragraph 1:

(c) the removal of mangrove seedlings is in areas from within which mangroves have previously been lawfully removed; or

...

[62] We did not understand there to be any dispute between the parties as to:

- (d) public recreation and walking access;
- (e) connections with reserves or publicly owned land and the coast;
- (f) public use and public amenity values;
- (g) water access for vessels and navigation;
- (h) public health and safety;
- (i) access to the coast from marae or to areas of traditional use;

- (j) ongoing authorised activities;
- (k) infrastructure;
- (l) maintenance of drainage channels, control of flooding or erosion caused by mangroves;
- (m) tidal flows; or
- (n) scientific research.

[63] Paragraph 2 also constitutes a difficulty with parties seeking to change the Regional Council provision that resource consent:

must not be granted where it is for the purpose of removing mangroves from private views.

[64] Again, to express the matter in terms of a policy the wording would be more along the lines of “mangrove removal should not occur to improve private views” or alternatively, “its purpose is not the improvement of private views”. We adopt the latter.

D.5.27 Mangrove removal – effects

[65] There is only one change in relation to this Policy. This provision will now read:

When considering resource consents for mangrove removal, take into account effects specific to the removal of seedlings or of mature trees and shrubs, and have regard to a range of potential adverse effects in particular:

...

[66] All parties seem to accept that provision, it having been agreed in mediation.

[67] In our view, this provides greater clarity for the need to consider the effects relating to the removal of seedlings and trees and shrubs.

Rule C.1.4.1 Mangrove seedling removal – permitted activity

[68] The first matter in “**B**” arising in C.1.4.1, which is the permitted activity status

rule, is the terminology to be used for the removal of seedlings. Although there appeared to be an initial issue as to “pulling, cutting or removing”, the Maritime Park suggestion of “removal” in our view covers the issues. All parties agree that these are mangrove seedlings. This appears to overcome issues with the chapeau which will now read:

The removal of mangrove seedlings in the coastal marine area ...

[69] In our view, this provides greater clarity ensuring that the permitted activity status relates to seedlings rather than shrubs or trees.

[70] The rule then goes on to specify a number of other criteria or standards.

[71] Regarding the height of the mangroves the two issues here are whether they should be 50 or 60 cm tall and whether they should be unbranched. Overall, we have concluded that the better position is 50 cm unbranched. This is the current condition on the existing Mangawhai resource consents for seedling removal. Accordingly it appears to us logical that we should be consistent in that approach.

[72] Although we accept that it is somewhat more conservative, it does strike the correct balance in the avoidance of adverse effects. We were told that some mangroves can be slow growing in particularly difficult environments and may take some years to achieve 60 cm. Often, they are branched even though they are smaller. Accordingly, we consider that this properly recognises a balance between positions of the parties.

[73] The parties seem to agree on the change from mangroves to seedlings.

[74] The additional issue is whether the words “under the canopy area” is appropriate or should be substituted with “within the pneumatophore (aerial root) system of any existing [mature] mangrove”. In our view, there are two issues with this:

- (a) should it be a “canopy area” or “pneumatophore system”; and
- (b) should it be “mature” mangrove.

[75] The pneumatophore system for mangroves extends some distance from the tree itself, particularly in maturing mangroves, and can exist beyond the canopy of the tree for several metres. The exact extent was not established before us, but we accept that it can create a platform on which new seedlings can take root. The canopy of the tree tends to develop and grow larger as the shrub or tree matures. However, the question of what a mature mangrove is in our view creates some difficulties.

[76] In considering the practical application of this rule, we have concluded that it should relate to “the canopy area of any existing mangrove”. For seedlings, there is no practical canopy area as this has not yet developed. Addition of the word “mature” creates further confusion and possible argument. Accordingly, we have concluded that the wording should be:

2. the seedlings are not under the canopy area of any existing mangrove.

Motorised hand tools

[77] Again, these provisions⁸ have two aspects:

- (a) what is a hand-held tool;
- (b) whether motorised tools should be allowed.

[78] In relation to what is a hand-held tool, one would have thought that this is where the entire tool can be held and operated by a single person. To clarify, in case there are reasons for doubt in future, such a tool might include chainsaws, hedge trimmers and line trimmers operated electrically or by petrol. This in itself gives rise to issues as to the disturbance of important wildlife during peak seasons.

[79] We have concluded that the removal of seedlings using motorised equipment at any time of the year is not appropriate. While peak season for breeding is particularly important for birds their general disturbance at any other time can have significant consequences both on feeding and on condition.

⁸ Rule C.1.2.1 3. and 4.

[80] We have concluded that the hand-held tool itself must be self-contained, lifted and operated by a single person and should not include any motorised equipment.

[81] To this extent we adopt the suggested wording of Maritime Park:

3. the removal is by hand or using hand-held tools (excluding motorised), and

Times for removal

[82] Given that we are not permitting motorised tools, we conclude that the period suggested in “**B**” by the Council of 1 August to 31 March (inclusive) to avoid disturbance of birds during breeding, roosting and nesting seasons is appropriate. Even without hand-held tools, there is potential for people working close to roosting areas to have adverse effects on threatened bird species. We are aware that in Mangawhai Harbour there is at least the prospect of banded rail, bittern, fairy tern, as well as birds such as the bar-tailed godwit that could be disturbed by removal during these times.

[83] Accordingly, we are satisfied that with that approach, we would prevent adverse effects beyond those which are minimal and/or transitory. We adopt the suggested wording of Maritime Park:

4. any removal is not undertaken between 1 August and 31 March (inclusive) to avoid disturbance of birds during breeding, roosting and nesting periods, and

Seedling removal within mapped areas

[84] Maritime Park and others seek provisions that exclude removal of seedlings from mapped Significant Ecological Areas (**SEA**), Significant Bird Areas (**SBA**), Outstanding Natural Character Areas (**ONCA**), High Natural Character Areas (**HNCA**), Outstanding Natural Landscapes (**ONL**) or Sites or Areas of Significance to tāngata whenua (**SSTW**). Council on the other hand suggests that such exclusion should be restricted to within SEAs or SBAs, as did the Minister of Conservation. Mangawhai Harbour suggests that seedling removal should not be excluded within SEAs.

[85] This raises the issues discussed earlier by the Court of the way in which the mapping occurred for the regional plan and the fact that an SBA may not be included as an SEA, even though the area may have values under Policy 11(a) and (b) NZCPS. Similarly, some of the natural character areas, particularly ONCAs, may contain areas of significant indigenous vegetation and rare or at-risk species.

[86] We have concluded that, with the addition of control over machinery (proposed paragraph 6), the range of areas excluded from seedling removal can be somewhat reduced. Our reasoning is that the mere presence of people within an SBA or even an SEA may not in itself create adverse effects on the outstanding or natural character, values. The SSTW are to be dealt with separately.

[87] In relation to SEAs and SBAs, we do acknowledge that the mere presence of people within some of these areas may damage important aspects of the ecological area. The areas we are speaking about in relation to mangrove seedling clearance are on the very periphery of the areas of significance. Without motorised hand tools the disturbances are likely to be relatively minimal. The exclusion of certain times of the year also means that during peak periods of significance, no seedling removal could occur.

[88] Given the history of the Mangawhai Harbour and the existing consents, we are satisfied overall that adverse effects will be avoided by the controls around seedling removal not being allowed within a mapped SEA.

[89] The wording in the following clause that “the activities comply with the C.1.8 Coastal works general conditions” is agreed by all parties.

Motorised vehicles and machinery – note

[90] In relation to the use of motorised vehicles and other motorised machinery in the note, the current framing by the Council and the Minister of Conservation is to permit the use of vehicles and motorised machinery on the foreshore to transport people, tools or removed mangrove vegetation if the conditions of Rule C.1.5.1, regarding the use of vehicles on beaches and other activities that disturb the foreshore

and seabed, are met. With a view to the practicality of carrying out any of the permitted seedling or mangrove removal, and with the exclusions above regarding the restriction on the use of motorised tools and the seasonal constraints, we are satisfied that this level of protection of the foreshore is appropriate and decline to limit such access further.

[91] We note however that the terms of rule C.1.5.1 have yet to be settled. Constraint over vehicles could still occur in terms of those provisions.

[92] Thus the note shown in “**B**” should be amended to provide:

The use of vehicles on the foreshore associated with mangrove removal is controlled by Rule C.1.5.1 Use of vehicles on beaches and other activities that disturb the foreshore and seabed.

Note generally

[93] The dispute as to the rest of the notes relates to changing the words “pulling, cutting or removing mangroves” to “removal of mangroves” for the first three bullet points and the last bullet point. We agree that “removal” follows from our earlier decision.

C.1.4.2 Minor mangrove removal – permitted activity

[94] C.1.4.2 deals with minor mangrove removal and a whole range of activities, many of which were covered in our D.5.26.

[95] We agree with the appellants, particularly Maritime Park and Forest and Bird, that the heading gives the impression there is a general permitted activity status for mangrove removal. Given the table itself refers to authorised activities, we have concluded that the heading should read:

Minor mangrove removal for specified authorised activities – permitted activity

[96] We think the reference to “structures, pipes and artificial watercourses” by the parties confuses the plan approach and that the table represents the activities that are authorised.

[97] The next change sought the addition of the word “existing” to read “necessary for the continuation of existing authorised activities” rather than “necessary for the continuation of authorised activities”. This change needs to be read in the context of the other changes sought which we set out in more detail. Some of these relate to drafting and others relate to matters of more substance. Retention of the word “existing” appears to foreclose the potential for other structures that could in future be considered essential, subject to any necessary resource consents or other regulations, which cannot be anticipated. We decline to include it.

[98] It appears to be the Council’s intention that where the activity is located within mapped SEA, ONCA, ONL, SBA or SSTW the total area of mangrove removed is less than 200 square metres in any 12-month period. The provisions for Maritime Park seem to set up another sub-group of authorised activities but exclude others. The reasons for this were discussed at the hearing but are still not clear to this Court. It seems in our view to create significant areas for dispute and confusion.

[99] Overall, we have concluded that the preference is for the Council’s paragraph 1 which in our view sets out clear limits relating to the activities within mapped areas.

[100] We agree that “removal or pruning is not undertaken between 1 August and 21 March (inclusive)” should be included under paragraph 1 in any of those areas.

[101] The Council has removed the words “mangrove removal and disturbance general conditions” from paragraph 3. We think that should be retained for clarity.

[102] Accordingly, we conclude the provision contain the following:

- (a) Under 1:
 - (i) the total area of mangroves removed is less than 200 m² in any 12-month period, and
 - (ii) such removal or pruning is not undertaken between 1 August and 31 March (inclusive) to avoid disturbance of birds during

breeding, roosting and nesting periods, and

- (b) Under 2:
 - (i) the mangrove removal or pruning does not exceed the limits in Table 3, and
- (c) In 3 the words “mangrove removal and disturbance general conditions” should be retained;

[103] Within Table 3 under “Artificial watercourses and rivers” the removal of condition 4 (now replaced by paragraph 1 of the rule) is agreed by all parties; as is the removal, under “Electricity transmission lines and cables”, of the words “and not exceeding an area of 200 m²”. We agree those changes are necessary.

[104] We further agree with the change to replace “clearance” within Table 3 with “removal or pruning” for consistency within the rules.

[105] The next major proposed change is in the notes where the word “removing” is changed to “removal” in the first, second and third bullet points. We again agree with that course as it provides greater clarity.

Rule C.1.4.3A Mangrove removal by the Department of Conservation

[106] As can be seen from Annexure “B”, this is a new rule proposed by the Department of Conservation. Originally, it was intended to be a controlled activity, but we were told at the hearing that the parties now agree it should be a restricted discretionary activity.

[107] The wording of the conditions themselves are of no concern to any of the parties including the Council. However, from the Court’s perspective we consider that the Department of Conservation seeking more restrictive conditions on all other parties but allowing itself extended powers seems inconsistent with the role of this Court in determining a plan.

[108] The Department of Conservation is not the only party that has to perform statutory functions or powers for the purpose of maintaining or enhancing biodiversity and intertidal habitats. Such groups might include district and regional councils, a group of other bodies including such parties as Forest and Bird, and other specialist conservation groups may also have statutory functions or powers in this area.

[109] No alternative wording was suggested but we would have thought “Mangrove removal by statutory or incorporated bodies for conservation purposes – restricted discretionary activity” would be an appropriate heading.

[110] The only additional change then would be to change the words as follows:

The removal or pruning of mangroves in the coastal marine area or in the bed of a river by a statutory or incorporated body in the performance of its statutory functions or powers for the purpose of maintaining or enhancing biodiversity and intertidal habitats, and any associated damage or disturbance to the foreshore, seabed or bed of a river that is not a permitted activity in section C.1.4 of this Plan is a restricted discretionary activity.

...

[111] Given the activity status is now restricted discretionary, our conclusion is that it better meets the goal of maintaining or enhancing biodiversity without “picking winners”. Any party seeking such a consent would need to demonstrate that it was either within a statutory power that they held (for local authorities or other statutory bodies) or within their powers (if an incorporated society). However even then it must be for the purpose set out of maintaining or enhancing biodiversity in intertidal habitats.

[112] If the concern is that groups such as the Mangawhai Harbour Restoration Society may seek to exercise such powers, we note the following:

- (a) they would need to demonstrate it was for the specified purpose; and
- (b) they would need to satisfy the controlling authority on all matters of control which are extensive and, in our understanding, would require detailed conditions.

[113] In principle, we consider that the matters of control for a restricted discretionary activity are specified to the extent that they would avoid adverse effects on the environment. It is clear that the grounds on which such consent would be granted are relatively restrictive.

[114] Given that the final wording of this is not agreed between the parties and the Court wishes to generalise the provision somewhat as to who could apply, we see this provision as being subject to further submissions from the parties within 20 working days of the date of the decision with final wording to be agreed. In the event it is not agreed, the Court will issue a final decision as to the wording.

[115] Again, we see the purpose of the NZCPS, RPS and the proposed regional plan itself being better met by provisions that encourage the maintenance and protection of important ecological features and habitat.

[116] The parties seem to accept that there may be circumstances in which the removal of mangroves might be appropriate for ecological and habitat reasons. Those are far more limited than some parties argued but nevertheless each case can be considered on its merits.

C.1.4.3 Mangrove removal – controlled activity

[117] The disputes in this area shown in “**B**” commenced with the wording for the rule. Maritime Park and others suggested that the introduction should read “Mangrove removal for specified purposes – controlled activity”. We agree that precision in this area is important given that the circumstances are particular. There should not be a general view that mangrove removal is a controlled activity. Accordingly, we consider that the change suggested better expresses the purpose of the rule and its setting.

[118] The next dispute between the parties is in paragraph 3. It is now agreed between parties to add after “freehold title” the words “provided the purpose is not to improve views”. Originally, this had the words “private views” in it. We consider that gives an element of dispute. The condition is already stated to be in relation to private land and therefore whether the views are private views or not seems irrelevant. It seems to

us no more justifiable to remove mangroves on private land to improve views by other people, such as a neighbour, than it is to remove them for one's own benefit. We did not understand any parties to significantly object to the removal of "private". In our view, it better reflects the intent of paragraph 3.

[119] At the of end of 3, the appeal parties and their supporters seek that there be a list of controlled activities. These appear at the end of C.1.4.3.

Are controlled activities provided?

[120] The major difference between the parties is the proposed deletion of paragraph 4 by Maritime Park (and others – the 'consolidated position') and Forest and Bird. Paragraph 4 provides that controlled activity status would apply to a new resource consent application to remove or prune mangroves that would replace an existing resource consent, where it is made before the expiry of the existing resource consent.

[121] We understand that Mangawhai Harbour Restoration Society seeks to be able to reapply for their consents and consider that where removal has already been permitted this should create a controlled rather than a full discretionary or non-complying application.

[122] Our view is clear that an existing consent granted under a different regime does not necessitate the grant of a new consent. We have concluded that such a special pathway for future applications should not exist and that they should be subject to the rigour of examination as a discretionary activity. The reasons for this are the clear and stringent requirements to avoid adverse effects. At this stage, the lack of full information in relation to SBAs means that this Court should be cautious to avoid any adverse effects on areas that may meet the criteria under the NZCPS Policy 11(a), the RPS or the Proposed Regional Plan provisions.

[123] Given that we have deleted paragraph 4, the range of activities anticipated is relatively narrow. However, the parties' major difference in this point is what area of vegetation can be removed and in what period. The parties are silent on the 500 m

removal or pruning of mangroves in areas that are not mapped as described in paragraph 5, and this seems to be agreed but it is unclear whether this is per year or in total. For our part, this provision would only make sense if it was up to a maximum of 500 m² in any 12-month period.

[124] On the face of it, the intention of the Minister and Maritime Park is that this can only be relied on where it is not within an SEA, SBA, ONCA, HNCA, ONL or SSTW. Given the extent of coverage of those areas, there would be very few areas within Northland that would then be subject to this rule.

[125] Overall, our view is that the first two grounds are legitimate grounds for mangrove clearance and in fact aspects of it are already permitted. We consider that the question of the use of private land is more concerning. It appears that the intent is to provide that the owner of such land may utilise it for the construction of a home if it is otherwise permissible, but this is not clear from the document.

[126] Overall, our feeling is that looking at the matters of control most of the issues of concern can be addressed by adopting the Maritime Park's suggested matters of control with a change to the wording in relation to Item 4 so that the effects are considered where removal or pruning is proposed:

- (a) in or near a Historic Area or Site;
- (b) near a Significant Ecological Area;
- (c) near a Significant Bird Area;
- (d) near a Site or Area of Significance to tangata whenua.

[127] We have concluded that Item 5 should read:

Effects on the characteristics, qualities and values that make any of the following mapped (refer |Maps|Ngā mahere matawhenua) area or feature of "high" or "outstanding" value, where the removal or pruning is proposed in a location near the area:

- a) Outstanding Natural Character Area.
- b) High Natural Character Area.

c) Outstanding Natural Landscape.

[128] Together these provisions mean that these matters are specifically and directly assessed.

[129] To that extent, we therefore conclude that the Regional Council's provisions could otherwise be more properly adopted:

- (a) 200 m² in any 12-month period if located within a mapped area;
- (b) up to 500 m² per annum in all other areas except private land; and
- (c) in relation to private land, up to 200 m².

[130] The reason we have taken a different approach for private land is because of the potential to utilise the clearance to improve the aspect and amenity of the property. That does not appear to be the intent of this provision, rather the intent is to provide practical use for the land by way of permitting the construction of a home.

[131] Clearly, it is possible that a further consent could be applied to clear another area after the initial area had been cleared. We can see no reason to prohibit this course and it would require an assessment on each occasion of the matters of control which we have elaborated upon. Accordingly, we conclude that with those changes of C.1.4.3 mangrove removal as a controlled activity can be undertaken.

[132] The merging of the various provisions would include our adoption of the Maritime Park's and Forest and Bird's wording "indigenous biodiversity" under 'Matters of control', as we see this adds clarity. Those parties also proposed, under 3, a new clause requiring an assessment under Appendix 5 of the RPS which would add further rigour to the evaluation and may require some further discussion between the parties.

[133] We add the changes those parties made under "For the avoidance of doubt" at the end.

[134] We wish to give the parties up to 20 days to finalise the wording and file an agreement or memorandum explaining the differences remaining.

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

[135] The parties agree that the words “pulling” and “cutting” should be taken out in favour of “removal” of mangrove seedlings. Otherwise, the issue is the matters of discretion related to method, timing and extent of removal.

[136] In considering those matters, the following should be taken into account. It is now agreed between the parties:

- (a) in paragraph 1, to delete the words after “river” (“... river, ~~including where it affects the ability of tangata whenua to carry out cultural and traditional activities~~”);
- (b) the addition at paragraph 6 of “effects on tangata whenua cultural values”;
and
- (c) the addition at paragraph 7 of “effects on Outstanding and High Natural Character”.

[137] Again, changing the wording from “removing” to “removal or pruning of mangroves” for the first two bullet points seems to be agreed.

C.1.4.5A Mangrove removal existing activities – discretionary activity

[138] C.1.4.5A appears to deal with activities that are permitted under Table 3 of C.1.4.2 but which exceed the extent in particular but are otherwise not part of the permitted activity. For reasons again that are unclear, Maritime Park and others seek that this be limited to regionally significant infrastructure. However, Table 3 covers a range of matters some of which could be arguably regionally significant infrastructure and some others not, such as boat ramps.

[139] Our clear view, as discussed earlier, is that Table 3 activities should be permitted. Those that are not become discretionary activities. Subject therefore only to achieving consistent terminology with the amendments we have made in the other provisions (namely to delete “pulling, cutting” from the first line of the chapeau, and to change in the first three bullet points “removing” to “removal”) we see the Council’s position and wording as entirely reasonable. The question of whether anything in Table 3 is existing lawfully in our view is clearly covered by the word “authorised”.

[140] Nevertheless, Table 3 is clearly intended to give a range of activities which have a particular permitted status or, if not permitted, discretionary status under the plan. Accordingly, we consider that the Council’s position for C.1.4.5A is appropriate. Overall, we conclude that these provisions are better and that they provide clarity around the activities in Table 3 being either permitted or discretionary. We would not make further changes beyond those suggested now by the Council in the appendix.

C.1.4.5 Mangrove removal – discretionary activity

[141] The differences in wording here relate firstly to the issue as to whether the areas of particular interest; SEA, SBA, ONCA, ONL or SSTW should be dealt with as discretionary activities or as non-complying activities. This issue turns on the recognition that SBAs may include areas under Policy 11(a) and 11(b) of the NZCPS, areas of significance under the RPS and under the Proposed NRP. The difficulty is that these areas have not to date been fully identified. The SBAs cover most of Northland coast and the activity status in relation to mangrove removal in SBAs would have a significant impact on applications made for areas outside those displaying the particular values under Policy 11(a) and (b).

[142] The position of Maritime Park is that given there could be areas meeting the significance criteria in any one of the SBAs, none of the areas should allow removal without a full non-complying activity status. Curiously enough this provision is worded in such a way that the matters for consideration are not listed.

[143] Although we can understand this for a full discretionary activity, we would have thought that the provision should clearly identify:

- (a) that it is to avoid adverse effects as matters identified in Policy 11(a) of the NZCPS, matters of areas of values of particular significance identified in the RPS or Proposed Regional Plan;
- (b) avoid significant effects on those areas under 11(b); and
- (c) avoid effects on areas identified as of significance under the RPS.

[144] We note that the reason for these differences is that the RPS itself identifies matters under Policy 11(b) NZCPS as requiring avoidance of adverse effects. Accordingly, the question is that in every case do those matters need to be identified. In our view, we should not exclude areas other than those that are part of an SEA, SBA, ONCA, ONL or SSTW.

[145] The intent is to bring particular attention of the applicant and consent authority to the matters under those provisions so that they are considered as part of the application for consent. While this may impose an obligation on the applicants in the meantime to identify the particular values, in our view this is necessary because of the Council not completing that task particularly in relation to SBA. To that extent, information would be provided as part of these applications which would build up the knowledge base and information as to the values of these areas for future planning documents and protection as required.

[146] In our view, this would better achieve the purpose of the Act by requiring the parties to establish what those values are and how they are to be avoided in every case. This may in turn identify new areas of significance or it may clarify the values within particular areas already identified. This will require a redrafting of the Council's wording in accordance with this decision. That includes reinstatement of SSTW in the list of mapped areas.

[147] We would adopt the Maritime Park's changes to the clarity of provisions with a move to "removal" as noted in the first three bullet points in the list of matters covered for the avoidance of doubt, and in the first paragraph of the rule.

[148] We give 20 working days for the parties to finalise the wording. If they are

unable to do so, then a separate position should be again stated for the Court to finalise. We will be expecting provisions very close to finalising.

C.1.4.6 Mangrove removal – non-complying activity

[149] A similar issue arises in C.1.4.6 in relation to non-complying activity. We would include as a note the list of mapped areas provided by several of the parties. In our view, the issue is the values that are identified in respect of these. We would add requirement for any application to demonstrate how the application would achieve the policies and objectives of the plan and the NZCPS in particular.

[150] Again, in relation to the first three bullet points we would change “removing” to “removal or pruning of mangroves”.

[151] Again, with this provision this will require the parties to identify those relevant policies and objectives so that they can bear directly upon the consideration. It may be necessary to refer to the RPS as well. Again, we would give the parties 20 working days to achieve agreement or state separate provisions. Those matters are remaining for further submission.

Comment

[152] The Court has been concerned to see that parties in other matters, notwithstanding the clear indications from the Court, are inevitably returning to the Court with the continuation of the position adopted in the hearing. This has proved unhelpful and adds significantly to the time the Court has to spend on quite complex matters which should be resolved by appropriate drafting detail.

[153] The Court’s intention in our view is clear in each case and we expect that the parties should reach accommodation on the final wording in 20 working days. If they cannot do so, they need to state their position in a joint memorandum.

[154] This should be prepared by the Regional Council, with their position stated. Where a party disagrees, they are to state their alternative provision and then why. We

do not seek a repetition of the arguments made in this Court or to re-litigate the determinations already reached. The intention is only to enable the parties to reach a final accommodation as to wording.

[155] To that end, we would expect that any party who disagrees with the Council's draft wording would require no more than one to two paragraphs to explain their position. The intention is that we can finalise these provisions which can then either be incorporated into the plan through agreement to give some protection on those matters, or alternatively can be taken on appeal as to final form, rather than in light of a decision.

Interim decision

[156] For the reasons set out in this decision we have adopted the wording set out in annexure "C" for the following provisions:

- (a) Policy D.5.26;
- (b) Policy D.5.27;
- (c) Rule C.1.4.1;
- (d) Rule C.1.4.2;
- (e) Rule C.1.4.3A;
- (f) Rule C.1.4.3;
- (g) Rule C.1.4.4;
- (h) Rule C.1.4.5A;
- (i) Rule C.1.4.5; and
- (j) Rule C.1.4.6.

[157] Of those provisions, the following may be subject to some final wording alteration. If there is a disagreement between the parties, parties may file submissions on the following within 20 working days for consideration by the Court:

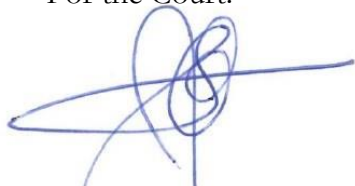
- (a) Rule C.1.4.3A;
- (b) Rule C.1.4.3;
- (c) Rule C.1.4.5; and
- (d) Rule C.1.4.6.

[158] These remaining final wording issues are noted in annexure “C”. The Court will then confirm final wording for these provisions.

[159] This has been a matter of huge complexity to all the parties and we appreciate the time and effort that has been put into moving this matter in difficult circumstances. As it transpires, an earlier agreement between the parties as to the way forward in this matter might have obviated the need for and delay caused by the application for declaration. Nevertheless, we appreciate that all parties including the Court were taken by surprise by the introduction of these changes. It has taken all experts and counsel some time to come to grips with the changes proposed and those now mooted.

[160] This does not appear to be a case for award for costs. There is wide public interest in this case, and we appreciate this is a difficult and complex environment with high values, including within the marine area. This has been a particularly difficult and complex case due to the COVID-19 lockdowns and the introduction of substantive changes by regulation and standards during the period immediately thereafter. On the face of it, no party can be held responsible for these delays and accordingly, on a tentative basis the Court considers that the costs should lie where they fall. If any party wishes to seek costs they are to file an application within 20 working days, replies to be filed within 15 working days, and any final reply five days thereafter. Such an application is not encouraged.

For the Court:



J A Smith
Environment Judge



"A"

**BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO
AT AUCKLAND**

UNDER

the Resource Management Act 1991

IN THE MATTER

of appeals under clause 14 of the First
Schedule to the Act in relation to the
Proposed Northland Regional Plan

BETWEEN

**ROYAL FOREST AND BIRD PROTECTION
SOCIETY OF NEW ZEALAND INC**

BAY OF ISLANDS MARITIME PARK INC

CEP SERVICES MATAUWHI LTD

**MANGAWHAI HARBOUR RESTORATION
SOCIETY INC**

Appellants


AND

**NORTHLAND REGIONAL COUNCIL
Respondent**

JOINT MEMORANDUM OF COUNSEL

23 September 2020

TOPIC 15 – MANGROVE REMOVAL

 <p>SARAH SHAW Solicitor</p>	<p>Counsel acting: Sarah Shaw Barrister PO Box 4146 Kamo 0141 sarah@sarahshaw.co.nz 022 587 8952</p>
--	---

MAY IT PLEASE THE COURT

1. The “consolidated provisions” put forward by Patuharakeke Te Iwi Trust Board (“the Trust Board”) together with Bay of Islands Maritime Park, Forest & Bird, CEP Services and the Fairy Tern Trust seek a non-complying activity status for seedling and mangrove removal in mapped Sites of Significance to Tangata Whenua (“SSTW”), with the exception of:
 - a. rule C.1.4.2 (permitted activity) for the continuation of existing authorised regional infrastructure (defaulting to rule C.1.4.5A discretionary activity); and
 - b. rule C.1.4.4 (restricted discretionary activity) in the Whangarei City Centre Zone and Coastal Commercial Zone.
2. (The Trust Board has subsequently also agreed to a restricted discretionary activity rule (C.1.4.3A) for DOC’s conservation work for threatened species).
3. The Trust Board has refined its position on SSTW and reached agreement in principle with the Council that a non-complying activity status for *Patuharakeke’s* SSTW is appropriate (recognising that in future other iwi or hapu might seek to introduce new SSTW into the Plan, but have a different approach to mangrove clearance within their rohe).
4. The Council’s preference for rule wording to achieve this was to refer to:
 - *Sites and Areas of Significance to Tangata Whenua: Ruakaka*
 - *Sites and Areas of Significance to Tangata Whenua: Takahiwai*
 - *Sites and Areas of Significance to Tangata Whenua: Mangawhatai*
5. As this would add extra length to every affected rule, the Trust Board has in the alternative drafted a standalone non-complying activity rule (C.1.4.7) specific to Patuharakeke’s SSTW. This is efficient as the list of sites only has to be mentioned in the rules once.

6. That non-complying rule, attached as Appendix 1 to this memorandum, has been agreed by the Council and the other signatories to the memorandum.

23 September 2020

 <hr/> <p>S Shaw Counsel for Patuharakeke Te Iwi Trust Board</p>	 <hr/> <p>M Doesburg Counsel for Northland Regional Council</p>
<p><i>Ms Gepp recorded agreement with Court 24 Sept 10.25am</i></p>  <hr/> <p>S Gepp Counsel for Bay of Islands Maritime Park</p>	 <hr/> <p>A Riddell CEP Services Matauwhi Ltd</p>
 <hr/> <p>P Anderson/W Jennings Counsel for Forest and Bird</p>	 <hr/> <p>S Ongley/ M Downing Counsel for Minister of Conservation</p>
 <hr/> <p>H Rogan NZ Fairy Tern Charitable Trust</p>	 <hr/> <p>K Littlejohn Counsel for Mangawhai Harbour Restoration Society</p>
<hr/> <p>G Mathias Counsel for Top Energy</p>	

Appendix 1

Rule C.1.4.7 Mangrove removal (including seedlings) within Sites and Areas of Significance to tangāta whenua – non-complying activity

The pulling, cutting or removal of mangrove seedlings and removal or pruning 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 that is not:

1. a permitted activity in rule C.1.4.2 for the continuation of existing authorised:
 - a. regionally significant infrastructure comprising roads, railway lines, bridges, suspended telecommunications lines, electricity transmission structures and electricity transmission lines and cables; or
 - b. [electricity transmission structures and electricity transmission lines and cables that are not regionally significant infrastructure where removal is less than 200m² in any 12 month period]; or
2. a restricted discretionary or discretionary activity in rules C.1.4.3A, C.1.4.4 or C.1.4.5A, is a non-complying activity within the following mapped areas (refer I Maps | Ngā mahere matawhenua):

1. Sites and Areas of Significance to tangāta whenua: Ruakaka
2. Sites and Areas of Significance to tangāta whenua: Takahiwai
3. Sites and Areas of Significance to tangāta whenua: Mangawhati.

Drafting note: the square brackets in para 1(b) reflect the agreement reached with Top Energy not to seek more restrictive provision than the Council had proposed for rule C.1.4.2 with respect to electricity transmission structures and electricity transmission lines and cables, rather than a rule component that the Trust Board seeks itself.

Revised table of parties' positions for hearing

Red text are amendments proposed by the Council to the decisions version of the provisions.

Blue text are further amendments proposed by the parties prior to evidence exchange.

Green text are amendments proposed following evidence-in-chief and rebuttal exchange between parties.

Policies

Decisions version	Provisions agreed in mediation	Northland Regional Council position	Mangawhai Harbour Restoration Society Inc position	Bay of Islands Maritime Park position	Forest and Bird position	CEP Services and Patuharakeke Te Iwi Trust Board position	New Zealand Fairy Tern Charitable Trust position	Minister of Conservation position
Policies								
<p>Policy D.5.26 Mangrove removal - purpose Subject to Policy D.2.16, resource consent for mangrove pruning or removal:</p> <p>1. may be granted when it is necessary to maintain, restore or improve one or more of the following:</p> <p>a) biodiversity, aquatic ecosystem health, natural features, or scheduled historic places, or</p> <p>b) habitats that have been displaced or colonised by mangroves, including rush marsh, salt marsh and intertidal flats, or</p> <p>c) areas within which mangroves have previously been lawfully pruned or removed, or</p> <p>d) public recreation and walking access to, or along, the coastal marine area, or</p> <p>e) connections with reserves or publicly owned land and the coast, or</p> <p>f) public use and public amenity values, or</p> <p>g) water access for vessels and navigation, or</p> <p>h) public health and safety, including sightlines and traffic safety, or</p> <p>i) access to the coast from marae, or to areas of traditional use, or</p> <p>j) ongoing authorised activities, or</p>	Unresolved.	<p>Policy D.5.26 Mangrove removal - purpose Subject to Policy D.2.16, resource consent for mangrove pruning or removal:</p> <p>1. may be granted when it is necessary to maintain, restore or improve one or more of the following:</p> <p>a) biodiversity, aquatic ecosystem health, natural features, or scheduled historic places, or</p> <p>b) <u>critical habitats that have recently been colonised by mangroves, such as seagrass meadows and shellbank roost areas, habitats that have been displaced or colonised by mangroves, including rush marsh, salt marsh and intertidal flats, or</u></p> <p>c) areas within which mangroves have previously been lawfully pruned or removed, or</p> <p>d) public recreation and walking access to, or along, the coastal marine area, or</p> <p>e) connections with reserves or publicly owned land and the coast, or</p> <p>f) public use and public amenity values, or</p> <p>g) water access for vessels and navigation, or</p> <p>h) public health and safety, including sightlines and traffic safety, or</p> <p>i) access to the coast from marae, or to areas of traditional use, or</p> <p>j) ongoing authorised activities, or</p> <p>k) infrastructure, or</p> <p>l) maintenance of drainage channels, control of flooding or erosion</p>	<p>Policy D.5.26 Mangrove removal - purpose Subject to Policy D.2.16, resource consent for mangrove pruning or removal:</p> <p>1. may be granted when it is necessary to maintain, restore or improve one or more of the following:</p> <p>a) ...</p> <p>b) habitats that have been displaced or colonised by mangroves, including rush marsh, salt marsh and intertidal flats, or</p> <p>c) ...</p> <p>No further changes sought.</p>	<p>Policy D.5.26 Mangrove removal - purpose Subject to Policy D.2.16, resource consent for mangrove pruning or removal <u>is limited to circumstances where:</u></p> <p>1. <u>It is demonstrated that the purpose of the mangrove removal in 2 a) – n) below can be achieved;</u> and</p> <p>2. <u>may be granted when it is the minimum area</u> necessary to maintain, restore or improve one or more of the following:</p> <p>a) biodiversity, aquatic ecosystem health, natural features, or scheduled historic places, or</p> <p>b) <u>critical habitats that have recently been colonised by mangroves, such as seagrass meadows and shellbank roost areas</u> chenier shell-banks on which shorebirds roost that have been colonised by mangrove seedlings habitats that have been displaced or colonised by mangroves, including rush marsh, salt marsh and intertidal flats; or</p> <p>c) <u>mangrove seedling removal from</u> areas within which mangroves have previously been lawfully pruned or removed; or</p> <p>d) public recreation and walking access to, or along, the coastal marine area, or</p> <p>e) connections with reserves or publicly owned land and the coast, or</p> <p>f) public use and public amenity values, or</p>	<p>Policy D.5.26 Mangrove removal - purpose Subject to Policy D.2.16, resource consent for mangrove pruning or removal <u>is limited to circumstances where:</u></p> <p>1. <u>It is demonstrated that the purpose of the mangrove removal in 2 a) – n) below can be achieved;</u> and</p> <p>2. <u>may be granted when it is the minimum area</u> necessary to maintain, restore or improve one or more of the following:</p> <p>a) biodiversity, aquatic ecosystem health, natural features, or scheduled historic places, or</p> <p>b) <u>chenier shell-banks on which shorebirds roost that have been all traditional shell bank roosting sites that are being colonised by mangrove seedlings</u> habitats that have been displaced or colonised by mangroves, including rush marsh, salt marsh and intertidal flats; or</p> <p>c) <u>mangrove seedling removal from</u> areas within which mangroves have previously been lawfully pruned or removed; or</p> <p>d) public recreation and walking access to, or along, the coastal marine area, or</p> <p>e) connections with reserves or publicly owned land and the coast, or</p> <p>f) public use and public amenity values, or</p> <p>g) water access for vessels and navigation, or</p>	<p>Policy D.5.26 Mangrove removal - purpose Subject to Policy D.2.16, resource consent for mangrove pruning or removal <u>is limited to circumstances where:</u></p> <p>1. <u>It is demonstrated that the purpose of the mangrove removal in 2 a) – n) below can be achieved;</u> and</p> <p>2. <u>may be granted when it is the minimum area</u> necessary to maintain, restore or improve one or more of the following:</p> <p>a) biodiversity, aquatic ecosystem health, natural features, or scheduled historic places, or</p> <p>b) habitats that have been displaced or colonised by mangroves, including rush marsh, salt marsh and intertidal flats, where that displacement is not a consequence of sea level rise; or</p> <p>c) <u>areas within which mangroves have previously been lawfully pruned or removed,</u> or</p> <p>d) public recreation and walking access to, or along, the coastal marine area, or</p> <p>e) connections with reserves or publicly owned land and the coast, or</p> <p>f) public use and public amenity values, or</p> <p>g) water access for vessels and navigation, or</p> <p>h) public health and safety, including sightlines and traffic safety, or</p> <p>i) access to the coast from marae, or to areas of traditional use, or</p>	<p>Policy D.5.26 Mangrove removal - purpose Subject to Policy D.2.16, resource consent for mangrove pruning or removal <u>is limited to circumstances where:</u></p> <p>1. It is demonstrated that the purpose of the mangrove removal in 3 a) – l) below can be achieved; and</p> <p>2. A management plan stating purpose and demonstrating how cleared areas will be maintained; and</p> <p>1. <u>A contestable management plan is produced specifying the objectives of the mangrove removal, and how it will be carried out and maintained.</u></p> <p>2. <u>may be granted when it is the minimum area</u> necessary to maintain, restore or improve one or more of the following:</p> <p>a) biodiversity, aquatic ecosystem health, natural features, or scheduled historic places, or</p> <p>b) <u>chenier shell banks on which shorebirds nest that have been colonised by mangrove seedlings, or</u></p> <p>b) habitats that have been displaced or colonised by mangroves, including rush marsh, salt marsh and intertidal flats,</p> <p>c) areas within which mangroves have previously been lawfully pruned or removed, or</p> <p>OR mangrove seedling removal from areas within which mangroves have previously been</p>	<p>Policy D.5.26 Mangrove removal - purpose Subject to Policy D.2.16, resource consent for mangrove pruning or removal <u>is limited to circumstances where:</u></p> <p>1. <u>It is demonstrated that the purpose of the mangrove removal in 2 a) – n) below can be achieved;</u> and</p> <p>2. <u>may be granted when it is the minimum area</u> necessary to maintain, restore or improve one or more of the following:</p> <p>a) biodiversity, aquatic ecosystem health, natural features, or scheduled historic places, or</p> <p>b) habitats that have been displaced or colonised by mangroves, including rush marsh, salt marsh and intertidal flats, or</p> <p>c) areas within which mangroves have previously been lawfully pruned or removed, or</p> <p>d) public recreation and walking access to, or along, the coastal marine area, or</p> <p>e) connections with reserves or publicly owned land and the coast, or</p> <p>f) public use and public amenity values, or</p> <p>g) water access for vessels and navigation, or</p> <p>h) public health and safety, including sightlines and traffic safety, or</p> <p>i) access to the coast from marae, or to areas of traditional use, or</p> <p>j) ongoing authorised activities, or</p> <p>k) infrastructure, or</p>

Decisions version	Provisions agreed in mediation	Northland Regional Council position	Mangawhai Harbour Restoration Society Inc position	Bay of Islands Maritime Park position	Forest and Bird position	CEP Services and Patuharakeke Te Iwi Trust Board position	New Zealand Fairy Tern Charitable Trust position	Minister of Conservation position
<p>k) infrastructure, or</p> <p>l) maintenance of drainage channels, control of flooding or erosion caused by mangroves, or</p> <p>m) tidal flows, or</p> <p>n) scientific research, and</p> <p>2. must not be granted where it is for the purpose of improving private views.</p>		<p>caused by mangroves, or</p> <p>m) tidal flows, or</p> <p>n) scientific research, and</p> <p>2. must not be granted where it is for the purpose of improving private views.</p>		<p>g) water access for vessels and navigation, or</p> <p>h) public health and safety, including sightlines and traffic safety, or</p> <p>i) access to the coast from marae, or to areas of traditional use, or</p> <p>j) ongoing authorised activities, or</p> <p>k) infrastructure, or</p> <p>l) maintenance of drainage channels, control of flooding or erosion caused by mangroves, or</p> <p>m) tidal flows, or</p> <p>n) scientific research, and but</p> <p>3. must not be granted where it is for the purpose of improving removing mangroves from private views.</p>	<p>h) public health and safety, including sightlines and traffic safety, or</p> <p>i) access to the coast from marae, or to areas of traditional use, or</p> <p>j) ongoing authorised activities, or</p> <p>k) infrastructure, or</p> <p>l) maintenance of drainage channels, control of flooding or erosion caused by mangroves, or</p> <p>m) tidal flows, or</p> <p>n) scientific research, and but</p> <p>3. Resource consent must not be granted where it is for the purpose of improving removing mangroves from private views.</p>	<p>j) ongoing authorised activities, or</p> <p>k) infrastructure, or</p> <p>l) maintenance of drainage channels, control of flooding or erosion caused by mangroves, or</p> <p>m) tidal flows, or</p> <p>n) scientific research, and but</p> <p>3. must not be granted where it is for the purpose of improving private views.</p>	<p>lawfully pruned or removed, or</p> <p>d) public recreation and walking access to, or along, the coastal marine area, or</p> <p>e) connections with reserves or publicly owned land and the coast, or</p> <p>f) public use and public amenity values, or</p> <p>g) water access for vessels and navigation, or</p> <p>h) public health and safety, including sightlines and traffic safety, or</p> <p>i) access to the coast from marae, or to areas of traditional use, or</p> <p>j) ongoing authorised activities, or</p> <p>k) infrastructure, or</p> <p>l) maintenance of drainage channels, control of flooding or erosion caused by mangroves, or</p> <p>m) tidal flows, or</p> <p>n) scientific research, and but</p> <p>4. must not be granted where it is for the purpose of improving removing mangroves from private views.</p> <p>OR must not be granted where it is for the purpose of improving to improve recreation, or visual amenity associated with private views.</p> <p>Note: Council's b) and c) have been deleted as they would be covered by a) and an appropriate management plan.</p>	<p>l) maintenance of drainage channels, control of flooding or erosion caused by mangroves, or</p> <p>m) tidal flows, or</p> <p>n) scientific research, and</p> <p>3. must not be granted where it is for the purpose of improving private views.</p>
<p>Policy D.5.27 – Mangrove removal - effects</p> <p>When considering resource consents for mangrove removal, have regard to a range of potential adverse effects, in particular:</p> <p>1. effects on ecological values including:</p> <p>a) disturbance, displacement or loss of fauna and habitat, and</p> <p>b) disturbing or displacing birds classified as</p>	<p>Policy D.5.27 – Mangrove removal - effects</p> <p>When considering resource consents for mangrove removal, take into account effects specific to the removal of seedlings or of mature trees and shrubs, and have regard to a range of potential adverse effects, in particular:</p> <p>1. effects on ecological values including:</p> <p>a. disturbance, displacement or loss of fauna and habitat, and</p>		No further changes sought.					

Decisions version	Provisions agreed in mediation	Northland Regional Council position	Mangawhai Harbour Restoration Society Inc position	Bay of Islands Maritime Park position	Forest and Bird position	CEP Services and Patuharakeke Te Iwi Trust Board position	New Zealand Fairy Tern Charitable Trust position	Minister of Conservation position
<p>Threatened or At Risk in the New Zealand Threat Classification System, particularly within Significant Bird Areas, and</p> <p>c) disturbing ecological sequences, or corridors, and</p> <p>d) removal of a buffer to sensitive ecological areas, and</p> <p>e) disturbance of the foreshore and seabed, including compaction, sediment redistribution, and mangrove biomass deposition, and</p> <p>2. increased risk of coastal erosion where mangroves provide a buffer against coastal processes causing erosion, and</p> <p>3. effects on tangata whenua cultural values, and</p> <p>4. amenity impacts from removal and disposal including noise, smoke, odour and visual impacts, and</p> <p>5. short and long-term effects on local sediment characteristics and hydrodynamics, and</p> <p>6. changes to natural character.</p>	<p>b. disturbing or displacing birds classified as Threatened or At Risk in the New Zealand Threat Classification System, particularly within Significant Bird Areas, and</p> <p>c. disturbing ecological sequences, or corridors, and</p> <p>d. removal of a buffer to sensitive ecological areas, and</p> <p>e. disturbance of the foreshore and seabed, including compaction, sediment redistribution, and mangrove biomass deposition, and</p> <p>2. increased risk of coastal erosion where mangroves provide a buffer against coastal processes causing erosion, and</p> <p>3. effects on tangata whenua cultural values, and</p> <p>4. amenity impacts from removal and disposal including noise, smoke, odour and visual impacts, and</p> <p>5. short and long-term effects on local sediment characteristics and hydrodynamics, and</p> <p>6. changes to natural character.</p>							

C.1.4.1 Mangrove seedling removal – permitted activity

Decisions version	Provisions agreed in mediation	Northland Regional Council position	Mangawhai Harbour Restoration Society Inc position	Bay of Islands Maritime Park, Forest & Bird, Patuharakeke Te Iwi Trust Board, CEP Services consolidated position	New Zealand Fairy Tern Charitable Trust position	Minister of Conservation position
C.1.4.1 Mangrove seedling removal – permitted activity						
<p>Rule C.1.4.1 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"> the mangroves are less than 60 centimetres tall, and the mangroves are not under the canopy area of any existing mature mangrove, and the removal is by hand or using hand-held tools (including motorised), and any removal by motorised hand-held tools is not undertaken between 1 August and 31 March (inclusive) to avoid disturbance of birds during breeding, roosting and nesting periods, and the activities comply with all relevant conditions of C.1.8 Coastal works general conditions. <p>Note: Use of vehicles and motorised machinery on the foreshore to transport people, tools or removed mangrove vegetation is a permitted activity if the conditions of Rule C.1.5.1 Use of vehicles on beaches and other activities that disturb the foreshore and seabed – permitted activity are met.</p> <p>For the avoidance of doubt this rule covers the following RMA activities:</p> <ul style="list-style-type: none"> Damage or disturbance of any foreshore or seabed associated with pulling, cutting or removing mangroves (s12(1)). Pulling, cutting or removing mangroves in the coastal marine area and any associated damage or disturbance of the foreshore or seabed (s12(3)). Disturbance of the bed of any river, associated with pulling, cutting or removing mangroves (s13(1)). Damage, destruction, disturbance or removal of mangroves from the bed of a river (s13(2)). Discharge of sediment into water incidental to pulling, cutting or removing mangroves (s15(1)). 	<p>Unresolved.</p>	<p>Rule C.1.4.1 Mangrove seedling removal – permitted activity</p> <p>The pulling, cutting or removing of mangroves seedlings 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"> the mangroves seedlings are less than 60<u>50</u> centimetres tall, and the mangroves seedlings are not under the canopy area of any existing mature mangrove, and the removal is by hand or using hand-held tools (including motorised), and any removal by motorised hand-held tools is not undertaken between 1 August and 31 March (inclusive) to avoid disturbance of birds during breeding, roosting and nesting periods, and <p>5. <u>the seedlings are not within a mapped Significant Ecological Area or Significant Bird Area, and</u></p> <p>6. <u>the activities comply with all relevant conditions of C.1.8 Coastal works general conditions.</u></p> <p>Note: Use of vehicles and motorised machinery on the foreshore to transport people, tools or removed mangrove vegetation is a permitted activity if the conditions of Rule C.1.5.1 Use of vehicles on beaches and other activities that disturb the foreshore and seabed – permitted activity are met.</p> <p>For the avoidance of doubt this rule covers the following RMA activities:</p> <ul style="list-style-type: none"> Damage or disturbance of any foreshore or seabed associated with pulling, cutting or removing mangroves (s12(1)). Pulling, cutting or removing mangroves in the coastal marine area and any associated damage or disturbance of the foreshore or seabed (s12(3)). Disturbance of the bed of any river, associated with pulling, cutting or removing mangroves (s13(1)). Damage, destruction, disturbance or removal of mangroves from the bed of a river (s13(2)). Discharge of sediment into water incidental to pulling, cutting or removing mangroves (s15(1)). 	<p>Rule C.1.4.1 Mangrove seedling removal – permitted activity</p> <p>The pulling, cutting or removing of mangroves seedlings 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"> the mangroves seedlings are less than 60 centimetres tall, and the mangroves seedlings are not under the canopy area of any existing mature mangrove, and the removal is by hand or using hand-held tools (including motorised), and 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>5. <u>the seedling removal does not exceed 200m² in any 12-month period within a mapped Significant Ecological Area, and</u></p> <p>6. <u>the activities comply with all relevant conditions of C.1.8 Coastal works general conditions.</u></p> <p>.....</p> <p>No further changes sought.</p>	<p>Rule C.1.4.1 Mangrove seedling removal – permitted activity</p> <p>The pulling, cutting or removing removal of mangroves seedlings 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"> the mangroves seedlings are less than 60<u>50</u> centimetres tall <u>and unbranched</u>, and the mangroves seedlings are not <u>under the canopy area within the pneumatophore (aerial root) system</u> of any existing <u>mature</u> mangrove, and the removal is by hand or using hand-held tools <u>(including excluding</u> motorised), and any removal <u>by motorised hand-held tools</u> is not undertaken between 1 August and 31 March (inclusive) to avoid disturbance of birds during breeding, roosting and nesting periods, and <p>5. <u>the seedlings are not within a mapped (refer I Maps Ngā mahere matawhenua):</u></p> <ol style="list-style-type: none"> Significant Ecological Area, Significant Bird Area, Outstanding Natural Character Area, High Natural Character Area, <u>[Outstanding Natural Landscape], or</u> <u>Site or Area of Significance to tangata whenua; and</u> <p>6. <u>Motorised vehicles and other motorised machinery are not used on the foreshore or within the coastal marine area, and</u></p> <p>7. <u>the activities comply with all relevant conditions of the C.1.8 Coastal works general conditions.</u></p> <p>Note: <u>The relevant conditions in C.1.8 Coastal works general conditions are conditions 7, 8, 9, 10, 11 and the Mangrove removal pruning conditions 14 to 20.</u></p> <p>Note: <u>Use of vehicles and motorised machinery on the foreshore to transport people, tools or removed mangrove vegetation is a permitted activity if the conditions of Rule C.1.5.1 Use of vehicles on beaches and other activities that disturb the foreshore and seabed – permitted activity are met.</u></p> <p>For the avoidance of doubt this rule covers the following RMA activities:</p>	<p>Rule C.1.4.1 Mangrove seedling removal – permitted activity</p> <p>The pulling, cutting or removing removal of mangroves seedlings 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"> the mangroves seedlings are less than 60<u>50</u> centimetres tall <u>and unbranched</u>, and the mangroves seedlings are not <u>under the canopy area within the pneumatophore (aerial root) system</u> of any existing <u>mature</u> mangrove, and the removal is by hand or using hand-held tools <u>(including excluding</u> motorised), and any removal <u>by motorised hand-held tools</u> is not undertaken between 1 August and 31 March (inclusive) to avoid disturbance of birds during breeding, roosting and nesting periods, and <p>5. <u>Removal is not undertaken within 200m of recognised shore bird roosting sites for two hours either side of high tide.</u></p> <p>6. <u>the seedlings are not within a mapped (refer I Maps Ngā mahere matawhenua):</u></p> <ol style="list-style-type: none"> Significant Ecological Area, Significant Bird Area, Outstanding Natural Character Area, High Natural Character Area, <u>[Outstanding Natural Landscape], or</u> <u>Site or Area of Significance to tangata whenua; and</u> <p>7. <u>Motorised vehicles and other motorised machinery are not used on the foreshore or within the coastal marine area, and</u></p> <p>8. <u>the activities comply with all relevant conditions of the C.1.8 Coastal works general conditions.</u></p> <p>Note: <u>The relevant conditions in C.1.8 Coastal works general conditions are conditions 7, 8, 9, 10, 11 and the Mangrove removal pruning conditions 14 to 20.</u></p> <p>Note: <u>Use of vehicles and motorised machinery on the foreshore to transport people, tools or removed mangrove vegetation is a permitted activity if the conditions of Rule C.1.5.1 Use of vehicles on beaches and</u></p>	<p>Rule C.1.4.1 Mangrove seedling removal – permitted activity</p> <p>The pulling, cutting or removing removal of mangroves seedlings 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"> the mangroves seedlings are less than 60 centimetres tall <u>and unbranched</u>, and the mangroves seedlings are not <u>under the canopy area within the pneumatophore (aerial root) system</u> of any existing <u>mature</u> mangrove, and the removal is by hand or using hand-held tools (including motorised), and any removal <u>by motorised hand-held tools</u> is not undertaken between 1 August and 31 March (inclusive) to avoid disturbance of birds during breeding, roosting and nesting periods, and <p>5. <u>the seedlings are not within a mapped Significant Ecological Area or Significant Bird Area, and</u></p> <p>6. <u>the activities comply with all relevant conditions of C.1.8 Coastal works general conditions.</u></p> <p>Note: Use of vehicles and motorised machinery on the foreshore to transport people, tools or removed mangrove vegetation is a permitted activity if the conditions of Rule C.1.5.1 Use of vehicles on beaches and other activities that disturb the foreshore and seabed – permitted activity are met.</p> <p>For the avoidance of doubt this rule covers the following RMA activities:</p> <ul style="list-style-type: none"> Damage or disturbance of any foreshore or seabed associated with <u>pulling, cutting or removing removal</u> of mangroves (s12(1)). <u>Pulling, cutting or removing Removal</u> of mangroves in the coastal marine area and any associated damage or disturbance of the foreshore or seabed (s12(3)). Disturbance of the bed of any river, associated with <u>pulling, cutting or removing removal</u> of mangroves (s13(1)). Damage, destruction, disturbance or removal of mangroves from the bed of a river (s13(2)). Discharge of sediment into water incidental to <u>pulling, cutting or removing removal</u> of mangroves (s15(1)).

Decisions version	Provisions agreed in mediation	Northland Regional Council position	Mangawhai Harbour Restoration Society Inc position	Bay of Islands Maritime Park, Forest & Bird, Patuharakeke Te Iwi Trust Board, CEP Services consolidated position	New Zealand Fairy Tern Charitable Trust position	Minister of Conservation position
				<ul style="list-style-type: none"> • Damage or disturbance of any foreshore or seabed associated with pulling, cutting or removing <u>removal of</u> mangroves (s12(1)). • Pulling, cutting or removing <u>Removal of</u> mangroves in the coastal marine area and any associated damage or disturbance of the foreshore or seabed (s12(3)). • Disturbance of the bed of any river, associated with pulling, cutting or removing <u>removal of</u> mangroves (s13(1)). • Damage, destruction, disturbance or removal of mangroves from the bed of a river (s13(2)). • Discharge of sediment into water incidental to pulling, cutting or removing <u>removal of</u> mangroves (s15(1)). 	<p>other activities that disturb the foreshore and seabed—permitted activity are met.</p> <p>For the avoidance of doubt this rule covers the following RMA activities:</p> <ul style="list-style-type: none"> • Damage or disturbance of any foreshore or seabed associated with pulling, cutting or removing <u>removal of</u> mangroves (s12(1)). • Pulling, cutting or removing <u>Removal of</u> mangroves in the coastal marine area and any associated damage or disturbance of the foreshore or seabed (s12(3)). • Disturbance of the bed of any river, associated with pulling, cutting or removing <u>removal of</u> mangroves (s13(1)). • Damage, destruction, disturbance or removal of mangroves from the bed of a river (s13(2)). • Discharge of sediment into water incidental to pulling, cutting or removing <u>removal of</u> mangroves (s15(1)). 	

C.1.4.2 Minor mangrove removal – permitted activity

Decisions version	Provisions agreed in mediation	Northland Regional Council position	Mangawhai Harbour Restoration Society Inc position	Bay of Islands Maritime Park, Patuharakeke Te Iwi Trust Board, CEP Services consolidated position Minister of Conservation generally supports consolidated position	Forest and Bird	New Zealand Fairy Tern Charitable Trust position	All parties																														
C.1.4.2 Minor mangrove removal – permitted activity																																					
<p>Rule C.1.4.2 Minor mangrove removal – permitted activity</p> <p>The removal or pruning of mangroves in the coastal marine area or in the bed of a river necessary for the continuation of authorised activities in Table 3: Maximum allowable area of mangrove removal 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"> the mangrove removal or pruning does not exceed the limits in Table 3: Maximum allowable area of mangrove removal, and the activities comply with the mangrove removal and disturbance general conditions in C.1.8 Coastal works general conditions. <p>Table 3: Maximum allowable area of mangrove removal</p> <table border="1" data-bbox="65 842 495 1864"> <thead> <tr> <th>Authorised activity</th> <th>Maximum allowable area of mangrove removal</th> </tr> </thead> <tbody> <tr> <td>Boat ramps and jetties</td> <td>Restricted to within: <ol style="list-style-type: none"> 10 metres around the footprint of the structure, and a five-metre wide access channel between the structure and the nearest permanently navigable coastal water. </td> </tr> <tr> <td>Wharves, and marina berths</td> <td>Restricted to: <ol style="list-style-type: none"> within 10 metres around the footprint of the structure, and a five-metre wide access channel between the structure and the nearest permanently navigable coastal water. </td> </tr> <tr> <td>Authorised pipe outlets Also refer to: C.1.5.5 Clearing of stormwater pipe outlets – permitted activity.</td> <td>Restricted to: <ol style="list-style-type: none"> five metres either side of the authorised pipe outlet, and the lineal extent of the clearance is limited to that required to create a free-draining path from the authorised pipe </td> </tr> </tbody> </table>	Authorised activity	Maximum allowable area of mangrove removal	Boat ramps and jetties	Restricted to within: <ol style="list-style-type: none"> 10 metres around the footprint of the structure, and a five-metre wide access channel between the structure and the nearest permanently navigable coastal water. 	Wharves, and marina berths	Restricted to: <ol style="list-style-type: none"> within 10 metres around the footprint of the structure, and a five-metre wide access channel between the structure and the nearest permanently navigable coastal water. 	Authorised pipe outlets Also refer to: C.1.5.5 Clearing of stormwater pipe outlets – permitted activity.	Restricted to: <ol style="list-style-type: none"> five metres either side of the authorised pipe outlet, and the lineal extent of the clearance is limited to that required to create a free-draining path from the authorised pipe 	<p>Unresolved.</p>	<p>Rule C.1.4.2 Minor mangrove removal – permitted activity</p> <p>The removal or pruning of mangroves in the coastal marine area or in the bed of a river necessary for the continuation of authorised activities in Table 3: Maximum allowable area of mangrove removal and any associated damage or disturbance to the foreshore, seabed or bed of a river, are permitted activities, provided:</p> <p>1. the total area of mangroves removed is less than 200 square metres in any 12-month period if</p> <ol style="list-style-type: none"> where the activity is located within a mapped (refer I Maps Ngā mahere matawhenua): <ol style="list-style-type: none"> Significant Ecological Area, or Outstanding Natural Character Area, or Outstanding Natural Landscape, or Significant Bird Area, or Site or Area of Significance to tangata whenua, and the total area of mangroves removed is less than 200 square metres in any 12-month period if, and the mangrove removal or pruning does not exceed the limits in Table 3: Maximum allowable area of mangrove removal, and the activities comply with the mangrove removal and disturbance general conditions in C.1.8 Coastal works general conditions. <p>Table 3: Maximum allowable area of mangrove removal</p> <table border="1" data-bbox="658 1392 1038 1871"> <thead> <tr> <th>Authorised activity</th> <th>Maximum allowable area of mangrove removal</th> </tr> </thead> <tbody> <tr> <td>Boat ramps and jetties</td> <td>Restricted to within: <ol style="list-style-type: none"> 10 metres around the footprint of the structure, and a five-metre wide access channel between the structure and the nearest permanently navigable </td> </tr> </tbody> </table>	Authorised activity	Maximum allowable area of mangrove removal	Boat ramps and jetties	Restricted to within: <ol style="list-style-type: none"> 10 metres around the footprint of the structure, and a five-metre wide access channel between the structure and the nearest permanently navigable 	<p>Rule C.1.4.2 Minor mangrove removal – permitted activity</p> <p>The removal or pruning of mangroves in the coastal marine area or in the bed of a river necessary for the continuation of authorised activities in Table 3: Maximum allowable area of mangrove removal 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"> the mangrove removal or pruning does not exceed the limits in Table 3: Maximum allowable area of mangrove removal, and the activities comply with the mangrove removal and disturbance general conditions in C.1.8 Coastal works general conditions. <p>Table 3: Maximum allowable area of mangrove removal</p> <table border="1" data-bbox="1062 1026 1386 1329"> <thead> <tr> <th>Authorised activity</th> <th>Maximum allowable area of mangrove removal</th> </tr> </thead> <tbody> <tr> <td>...</td> <td>...</td> </tr> <tr> <td>All other structures and farm fencing</td> <td>Restricted to within five metres of the footprint of the structure.</td> </tr> </tbody> </table> <p>No other changes to Table 3.</p>	Authorised activity	Maximum allowable area of mangrove removal	All other structures and farm fencing	Restricted to within five metres of the footprint of the structure.	<p>Rule C.1.4.2 Minor mangrove removal for specified authorised structures, pipes and artificial watercourses – permitted activity</p> <p>The removal or pruning of mangroves in the coastal marine area or in the bed of a river necessary for the continuation of <u>existing</u> authorised activities in Table 3: Maximum allowable area of mangrove removal 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"> the total area of mangroves removed is less than 200 square metres in any 12-month period if the activity is located are not within a mapped (refer I Maps Ngā mahere matawhenua): <ol style="list-style-type: none"> Significant Ecological Area, Significant Bird Area, Outstanding Natural Character Area, High Natural Character Area, [Outstanding Natural Landscape], or Site or Area of Significance to tangata whenua, <p><u>except where the removal or pruning is for existing lawfully established regionally significant infrastructure comprising:</u></p> <ol style="list-style-type: none"> roads, railway lines and bridges; electricity transmission structures; electricity transmission lines and cables; and suspended telecommunication lines; and the removal or pruning is not undertaken between 1 August and 31 March (inclusive) to avoid disturbance of birds during breeding, roosting and nesting periods, and the mangrove removal or pruning does not exceed the limits in Table 3: Maximum allowable area of mangrove removal, and the activities comply with the mangrove removal and disturbance general conditions in C.1.8 Coastal works general conditions. <p>Table 3: Maximum allowable area of mangrove removal</p> <table border="1" data-bbox="1409 1661 1831 1906"> <thead> <tr> <th>Authorised activity</th> <th>Maximum allowable area of mangrove removal</th> </tr> </thead> <tbody> <tr> <td>Boat ramps and jetties</td> <td>Restricted to within: <ol style="list-style-type: none"> 10 metres around the footprint of the structure, and </td> </tr> </tbody> </table>	Authorised activity	Maximum allowable area of mangrove removal	Boat ramps and jetties	Restricted to within: <ol style="list-style-type: none"> 10 metres around the footprint of the structure, and 	<p>Rule C.1.4.2 Minor mangrove removal for specified authorised activities structures, pipes and artificial watercourses – permitted activity</p> <p>The removal or pruning of mangroves in the coastal marine area or in the bed of a river necessary for the continuation of <u>existing</u> authorised activities in Table 3: Maximum allowable area of mangrove removal 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"> the total area of mangroves removed is less than 200 square metres in any 12-month period if the activity is located are not within a mapped (refer I Maps Ngā mahere matawhenua): <ol style="list-style-type: none"> Significant Ecological Area, Significant Bird Area, Outstanding Natural Character Area, High Natural Character Area, [Outstanding Natural Landscape], or Site or Area of Significance to tangata whenua, <p><u>except where the removal or pruning is for existing lawfully established regionally significant infrastructure comprising:</u></p> <ol style="list-style-type: none"> roads, railway lines and bridges; electricity transmission structures; electricity transmission lines and cables; and suspended telecommunication lines; and the removal or pruning is not undertaken between 1 August and 31 March (inclusive) to avoid disturbance of birds during breeding, roosting and nesting periods, and the mangrove removal or pruning does not exceed the limits in Table 3: Maximum allowable area of mangrove removal, and the activities comply with the mangrove removal and disturbance general conditions in C.1.8 Coastal works general conditions. <p>Table 3: Maximum allowable area of mangrove removal</p> <table border="1" data-bbox="1855 1675 2276 1877"> <thead> <tr> <th>Authorised activity</th> <th>Maximum allowable area of mangrove removal</th> </tr> </thead> <tbody> <tr> <td>Boat ramps and jetties</td> <td>Restricted to within: <ol style="list-style-type: none"> 10 metres around the </td> </tr> </tbody> </table>	Authorised activity	Maximum allowable area of mangrove removal	Boat ramps and jetties	Restricted to within: <ol style="list-style-type: none"> 10 metres around the 	<p>Rule C.1.4.2 Minor mangrove removal for specified authorised structures, pipes and artificial watercourses – permitted activity</p> <p>The removal or pruning of mangroves in the coastal marine area or in the bed of a river necessary for the continuation of <u>existing</u> authorised activities in Table 3: Maximum allowable area of mangrove removal 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"> the total area of mangroves removed is less than 200 square metres in any 12-month period if the activity is located are not within a mapped (refer I Maps Ngā mahere matawhenua): <ol style="list-style-type: none"> Significant Ecological Area, Significant Bird Area, Outstanding Natural Character Area, High Natural Character Area, [Outstanding Natural Landscape], or Site or Area of Significance to tangata whenua, <p><u>except where the removal or pruning is for existing lawfully established regionally significant infrastructure comprising:</u></p> <ol style="list-style-type: none"> roads, railway lines and bridges; electricity transmission structures; electricity transmission lines and cables; and suspended telecommunication lines; and the removal or pruning is not undertaken between 1 August and 31 March (inclusive) to avoid disturbance of birds during breeding, roosting and nesting periods, and Removal is not undertaken within 200m of recognised shore bird roosting sites for two hours either side of high tide. the mangrove removal or pruning does not exceed the limits in Table 3: Maximum allowable area of mangrove removal, and the activities comply with the mangrove removal and disturbance general conditions in C.1.8 Coastal works general conditions. <p>Table 3: Maximum allowable area of mangrove removal</p> <table border="1" data-bbox="2300 1669 2721 1911"> <thead> <tr> <th>Authorised activity</th> <th>Maximum allowable area of mangrove removal</th> </tr> </thead> <tbody> <tr> <td>Boat ramps and jetties</td> <td>Restricted to within: <ol style="list-style-type: none"> 10 metres around the footprint of the structure, and a five metre wide access channel </td> </tr> </tbody> </table>	Authorised activity	Maximum allowable area of mangrove removal	Boat ramps and jetties	Restricted to within: <ol style="list-style-type: none"> 10 metres around the footprint of the structure, and a five metre wide access channel 	<p>All parties have agreed that no-one will seek that the permitted activity status for electricity transmission structures and cables be any more restrictive than as proposed by Northland Regional Council.</p>
Authorised activity	Maximum allowable area of mangrove removal																																				
Boat ramps and jetties	Restricted to within: <ol style="list-style-type: none"> 10 metres around the footprint of the structure, and a five-metre wide access channel between the structure and the nearest permanently navigable coastal water. 																																				
Wharves, and marina berths	Restricted to: <ol style="list-style-type: none"> within 10 metres around the footprint of the structure, and a five-metre wide access channel between the structure and the nearest permanently navigable coastal water. 																																				
Authorised pipe outlets Also refer to: C.1.5.5 Clearing of stormwater pipe outlets – permitted activity.	Restricted to: <ol style="list-style-type: none"> five metres either side of the authorised pipe outlet, and the lineal extent of the clearance is limited to that required to create a free-draining path from the authorised pipe 																																				
Authorised activity	Maximum allowable area of mangrove removal																																				
Boat ramps and jetties	Restricted to within: <ol style="list-style-type: none"> 10 metres around the footprint of the structure, and a five-metre wide access channel between the structure and the nearest permanently navigable 																																				
Authorised activity	Maximum allowable area of mangrove removal																																				
...	...																																				
All other structures and farm fencing	Restricted to within five metres of the footprint of the structure.																																				
Authorised activity	Maximum allowable area of mangrove removal																																				
Boat ramps and jetties	Restricted to within: <ol style="list-style-type: none"> 10 metres around the footprint of the structure, and 																																				
Authorised activity	Maximum allowable area of mangrove removal																																				
Boat ramps and jetties	Restricted to within: <ol style="list-style-type: none"> 10 metres around the 																																				
Authorised activity	Maximum allowable area of mangrove removal																																				
Boat ramps and jetties	Restricted to within: <ol style="list-style-type: none"> 10 metres around the footprint of the structure, and a five metre wide access channel 																																				

Decisions version		Provisions agreed in mediation	Northland Regional Council position	Mangawhai Harbour Restoration Society Inc position	Bay of Islands Maritime Park, Patuharakeke Te Iwi Trust Board, CEP Services consolidated position Minister of Conservation generally supports consolidated position	Forest and Bird	New Zealand Fairy Tern Charitable Trust position	All parties
Artificial watercourses and rivers Also refer to: C.1.5.6 Clearing artificial water courses – permitted activity, C.1.5.7 Clearing tidal stream mouths – permitted activity, and C.2.1.3 Maintenance of the free flow of water in rivers and mitigating bank erosion – permitted activity.	outlet to coastal water. Restricted to: 1. five metres either side of the artificial watercourse, and 2. the extent of the clearance is limited to that required to create a free-draining flow path to coastal water, and 3. sites where the adjacent or upstream land or infrastructure is likely to become unsafe, flooded or damaged if the mangroves are not removed, and 4. not exceeding an area of 200 m2 within a mapped (refer I Maps Ngā mahere matawhenua) Significant Ecological Area or Outstanding Natural Character Area.		Wharves, and marina berths Restricted to: 1. within 10 metres around the footprint of the structure, and 2. a five-metre wide access channel between the structure and the nearest permanently navigable coastal water.		2. a five metre wide access channel between the structure and the nearest permanently navigable coastal water.		between the structure and the nearest permanently navigable coastal water.	
Roads, railway lines and bridges	Restricted to: 1. five metres either side of the edge of the formed road, railway line or bridge, or one metre from the base of the batter slope (whichever is the greater), or 2. removal or pruning of mangroves to achieve maintenance of sight clearance lines for road safety at all road intersections, roundabouts and horizontal curves is undertaken in accordance with Guide to Road Design Part 3: Geometric Design. Edition 3.2 (Austrroads, 2016).		Authorised pipe outlets Also refer to: C.1.5.5 Clearing of stormwater pipe outlets – permitted activity. Restricted to: 1. five metres either side of the authorised pipe outlet, and 2. the lineal extent of the clearance is limited to that required to create a free-draining path from the authorised pipe outlet to coastal water.		Wharves, and marina berths Restricted to: 1. within 10 metres around the footprint of the structure, and 2. a five-metre wide access channel between the structure and the nearest permanently navigable coastal water.	Wharves, and marina berths Restricted to: 1. within 10 metres around the footprint of the structure, and 2. a five-metre wide access channel between the structure and the nearest permanently navigable coastal water.	Wharves, and marina berths Restricted to: 1. within 10 metres around the footprint of the structure, and 2. a five-metre wide access channel between the structure and the nearest permanently navigable coastal water.	
			Artificial watercourses and rivers Also refer to: C.1.5.6 Clearing artificial water courses – permitted activity, C.1.5.7 Clearing tidal stream mouths – permitted activity, and C.2.1.3 Maintenance of the free flow of water in rivers and mitigating bank erosion – permitted activity. Restricted to: 1. five metres either side of the artificial watercourse, and 2. the extent of the clearance is limited to that required to create a free-draining flow path to coastal water, and 3. sites where the adjacent or upstream land or infrastructure is likely to become unsafe, flooded or damaged if the mangroves		Authorised pipe outlets Also refer to: C.1.5.5 Clearing of stormwater pipe outlets – permitted activity. Restricted to: 1. five metres either side of the authorised pipe outlet, and 2. the lineal extent of the clearance removal or pruning is limited to that required to create a free-draining path from the authorised pipe outlet to coastal water.	Authorised pipe outlets Also refer to: C.1.5.5 Clearing of stormwater pipe outlets – permitted activity. Restricted to: 1. five metres either side of the authorised pipe outlet, and 2. the lineal extent of the clearance removal or pruning is limited to that required to create a free-draining path from the authorised pipe outlet to coastal water.	Authorised pipe outlets Also refer to: C.1.5.5 Clearing of stormwater pipe outlets – permitted activity. Restricted to: 1. five metres either side of the authorised pipe outlet, and 2. the lineal extent of the clearance removal or pruning is limited to that required to create a free-draining path from the authorised pipe outlet to coastal water.	
					Artificial watercourses and rivers Also refer to: C.1.5.6 Clearing artificial water courses – permitted activity, C.1.5.7 Clearing tidal stream mouths – permitted activity, and C.2.1.3 Maintenance of the free flow of water in rivers and mitigating bank erosion – permitted activity. Restricted to: 1. five metres either side of the artificial watercourse, and 2. the extent of the clearance removal or pruning is limited to that required to create a free-draining flow path to coastal water, and 3. sites where the adjacent or upstream land or infrastructure is likely to become unsafe, flooded	Artificial watercourses and rivers Also refer to: C.1.5.6 Clearing artificial water courses – permitted activity, C.1.5.7 Clearing tidal stream mouths – permitted activity, and C.2.1.3 Maintenance of the free flow of water in rivers and mitigating bank erosion – permitted activity. Restricted to: 1. five metres either side of the artificial watercourse, and 2. the extent of the clearance removal or pruning is limited to that required to create a free-draining flow path to coastal water, and 3. sites where the adjacent or upstream land or infrastructure is likely to become unsafe, flooded	Artificial watercourses and rivers Also refer to: C.1.5.6 Clearing artificial water courses – permitted activity, C.1.5.7 Clearing tidal stream mouths – permitted activity, and C.2.1.3 Maintenance of the free flow of water in rivers and mitigating bank erosion – permitted activity. Restricted to: 1. five metres either side of the artificial watercourse, and 2. the extent of the clearance removal or pruning is limited to that required to create a free-draining flow path to coastal water, and 3. sites where the adjacent or upstream land or infrastructure is likely to become unsafe, flooded	
							Artificial watercourses and rivers Also refer to: C.1.5.6 Clearing artificial water courses – permitted activity, C.1.5.7 Clearing tidal stream mouths – permitted activity, and C.2.1.3 Maintenance of the free flow of water in rivers and mitigating bank erosion – permitted activity. Restricted to: 1. five metres either side of the artificial watercourse, and 2. the extent of the clearance removal or pruning is limited to that required to create a free-draining flow path to coastal water, and 3. sites where the adjacent or upstream land or infrastructure is likely to become unsafe, flooded or damaged if the mangroves are not removed, and 4. not exceeding an area of 200 m2 within a mapped (refer I Maps Ngā mahere matawhenua)	

Decisions version		Provisions agreed in mediation	Northland Regional Council position	Mangawhai Harbour Restoration Society Inc position	Bay of Islands Maritime Park, Patuharakeke Te Iwi Trust Board, CEP Services consolidated position Minister of Conservation generally supports consolidated position	Forest and Bird	New Zealand Fairy Tern Charitable Trust position	All parties
Electricity transmission structures	Restricted to within four metres of the footprint of the structure.		are not removed, and 4. not exceeding an area of 200 m2 within a mapped (refer to Maps Ngā mahere matawhenua) Significant Ecological Area or Outstanding Natural Character Area.		or damaged if the mangroves are not removed, and 4. not exceeding an area of 200 m2 within a mapped (refer to Maps Ngā mahere matawhenua) Significant Ecological Area or Outstanding Natural Character Area.	is likely to become unsafe, flooded or damaged if the mangroves are not removed, and 4. not exceeding an area of 200 m2 within a mapped (refer to Maps Ngā mahere matawhenua) Significant Ecological Area or Outstanding Natural Character Area.	Significant Ecological Area or Outstanding Natural Character Area.	
Electricity transmission lines and cables	Restricted to within two metres either side of the vertical projection of the line on the ground and not exceeding an area of 200 m2.						Roads, railway lines and bridges Restricted to: 1. five metres either side of the edge of the formed road, railway line or bridge, or one metre from the base of the batter slope (whichever is the greater), or 2. removal or pruning of mangroves to achieve maintenance of sight clearance lines for road safety at all road intersections, roundabouts and horizontal curves is undertaken in accordance with Guide to Road Design Part 3: Geometric Design. Edition 3.2 (Austroads, 2016).	
Suspended telecommunication lines	Restricted to within four metres either side of the vertical projection of the cable on the ground.							
All other structures and farm fencing	Restricted to within one metre of the footprint of the structure.							
Note: This rule does not cover activities authorised by Rule C.2.1.3 Maintenance of the free flow of water in rivers and mitigating bank erosion – permitted activity. For the avoidance of doubt this rule covers the following RMA activities: <ul style="list-style-type: none"> • Damage or disturbance of any foreshore or seabed associated with removing or pruning mangroves (s12(1)). • Removing or pruning mangroves in the coastal marine area (s12(3)). • Disturbance of the bed of any river, associated with removing or pruning mangroves (s13(1)). • Damage, destruction, disturbance or removal of mangroves from the bed of a river (s13(2)). • Discharge of sediment into water incidental to the activity (s15(1)). 								
			Roads, railway lines and bridges	Restricted to: 1. five metres either side of the edge of the formed road, railway line or bridge, or one metre from the base of the batter slope (whichever is the greater), or 2. removal or pruning of mangroves to achieve maintenance of sight clearance lines for road safety at all road intersections, roundabouts and horizontal curves is undertaken in accordance with Guide to Road Design Part 3: Geometric Design. Edition 3.2 (Austroads, 2016).				
					Roads, railway lines and bridges Restricted to: 1. five metres either side of the edge of the formed road, railway line or bridge, or one metre from the base of the batter slope (whichever is the greater), or 2. removal or pruning of mangroves to achieve maintenance of sight clearance lines for road safety at all road intersections, roundabouts and horizontal curves is undertaken in accordance with Guide to Road Design Part 3: Geometric Design. Edition 3.2 (Austroads, 2016).			
						Roads, railway lines and bridges Restricted to: 1. five metres either side of the edge of the formed road, railway line or bridge, or one metre from the base of the batter slope (whichever is the greater), or 2. removal or pruning of mangroves to achieve maintenance of sight clearance lines for road safety at all road intersections, roundabouts and horizontal curves is undertaken in accordance with Guide to Road Design Part 3: Geometric Design. Edition 3.2 (Austroads, 2016).		
			Electricity transmission structures	Restricted to within four metres of the footprint of the structure.	Electricity transmission structures Restricted to within four metres of the footprint of the structure.	Electricity transmission structures Restricted to within four metres of the footprint of the structure.	Electricity transmission structures Restricted to within four metres of the footprint of the structure.	
			Electricity transmission lines and cables	Restricted to within two metres either side of the vertical projection of the line on the ground and not exceeding an area of 200 m2.	Electricity transmission lines and cables Restricted to within two metres either side of the vertical projection of the line on the ground and not exceeding an area of 200 m2.	Electricity transmission lines and cables Restricted to within two metres either side of the vertical projection of the line on the ground and not exceeding an area of 200 m2.	Electricity transmission lines and cables Restricted to within two metres either side of the vertical projection of the line on the ground and not exceeding an area of 200 m2.	
			Electricity transmission lines and cables	Restricted to within two metres either side of the vertical projection	Suspended telecommunication lines Restricted to within four metres either side of the vertical projection of the	Suspended telecommunication lines Restricted to within four metres either side of the vertical projection of the	Suspended telecommunication lines Restricted to within four metres either side of the vertical projection of the	
								Note: This rule does not cover activities authorised by Rule C.2.1.3 Maintenance of the free flow of water in rivers and mitigating bank erosion – permitted activity. For the avoidance of doubt this rule covers the following RMA activities:

Decisions version	Provisions agreed in mediation	Northland Regional Council position		Mangawhai Harbour Restoration Society Inc position	Bay of Islands Maritime Park, Patuharakeke Te Iwi Trust Board, CEP Services consolidated position Minister of Conservation generally supports consolidated position		Forest and Bird		New Zealand Fairy Tern Charitable Trust position	All parties
			of the line on the ground and not exceeding an area of 200 m2.		All other structures and farm fencing	cable on the ground.	Suspended telecommunication lines	Restricted to within four metres either side of the vertical projection of the cable on the ground.	<ul style="list-style-type: none"> • Damage or disturbance of any foreshore or seabed associated with removing removal or pruning of mangroves (s12(1)). • Removing Removal or pruning of mangroves in the coastal marine area (s12(3)). • Disturbance of the bed of any river, associated with removing removal or pruning of mangroves (s13(1)). • Damage, destruction, disturbance or removal of mangroves from the bed of a river (s13(2)). • Discharge of sediment into water incidental to the activity (s15(1)). 	
		Suspended telecommunication lines	Restricted to within four metres either side of the vertical projection of the cable on the ground.			Restricted to within one metre of the footprint of the structure.	All other structures and farm fencing	Restricted to within one metre of the footprint of the structure.		
		All other structures and farm fencing	Restricted to within one metre of the footprint of the structure.		<p>Note: This rule does not cover activities authorised by Rule C.2.1.3 Maintenance of the free flow of water in rivers and mitigating bank erosion – permitted activity.</p> <p>For the avoidance of doubt this rule covers the following RMA activities:</p> <ul style="list-style-type: none"> • Damage or disturbance of any foreshore or seabed associated with removing removal or pruning of mangroves (s12(1)). • Removing Removal or pruning of mangroves in the coastal marine area (s12(3)). • Disturbance of the bed of any river, associated with removing removal or pruning of mangroves (s13(1)). • Damage, destruction, disturbance or removal of mangroves from the bed of a river (s13(2)). • Discharge of sediment into water incidental to the activity (s15(1)). 		<p>Note: This rule does not cover activities authorised by Rule C.2.1.3 Maintenance of the free flow of water in rivers and mitigating bank erosion – permitted activity.</p> <p>For the avoidance of doubt this rule covers the following RMA activities:</p> <ul style="list-style-type: none"> • Damage or disturbance of any foreshore or seabed associated with removing removal or pruning of mangroves (s12(1)). • Removing Removal or pruning of mangroves in the coastal marine area (s12(3)). • Disturbance of the bed of any river, associated with removing removal or pruning of mangroves (s13(1)). • Damage, destruction, disturbance or removal of mangroves from the bed of a river (s13(2)). • Discharge of sediment into water incidental to the activity (s15(1)). 			

Rule C.1.4.3A Mangrove removal by the Department of Conservation – controlled activity

Minister of Conservation position
Rule C.1.4.3A Mangrove removal by the Department of Conservation – controlled activity
<p>The removal or pruning of mangroves in the coastal marine area or in the bed of a river by the Department of Conservation in the performance of its statutory functions or powers for the purpose of maintaining or enhancing biodiversity and intertidal habitats, and any associated damage or disturbance to the foreshore, seabed or bed of a river that is not a permitted activity in section C.1.4 of this Plan, is a controlled activity.</p> <p><u>Matters of control:</u></p> <ol style="list-style-type: none"> 1. Method, timing and extent of activities. 2. Effects on aquatic ecosystem health and indigenous biodiversity. 3. Navigation and safety. 4. Effects on the characteristics, qualities and values that contribute to make any of the following mapped (refer I Maps Ngā mahere matawhenua) places of significance, where the removal or pruning is: <ol style="list-style-type: none"> a) in or near a Historic Area or Site. b) in or near a Significant Ecological Area. c) in or near a Significant Bird Area. d) in or near a Site or Area of Significance to tangata whenua. 5. Effects on the characteristics, qualities and values that make any of the following mapped (refer I Maps Ngā mahere matawhenua) area or feature high or outstanding, where the removal or pruning is proposed in a location in or near an area of: <ol style="list-style-type: none"> a) Outstanding Natural Character Area. b) High Natural Character Area. c) [Outstanding Natural Landscape]7. 6. Effects on tangata whenua cultural values. <p>For the avoidance of doubt this rule covers the following RMA activities:</p> <ul style="list-style-type: none"> • Damage or disturbance of any foreshore or seabed associated with removing removal or pruning of mangroves (s12(1)). • Removal or pruning of mangroves in the coastal marine area (s12(3)). • Disturbance of the bed of any river, associated with removing removal or pruning of mangroves (s13(1)). • Damage, destruction, disturbance or removal of mangroves from the bed of a river (s13(2)). • Discharge of sediment into water incidental to the activity (s15(1)).

C.1.4.3 Mangrove removal – controlled activity

Decisions version	Provisions agreed in mediation	Northland Regional Council position	Mangawhai Harbour Restoration Society Inc position	Bay of Islands Maritime Park, Fairy Tern Trust, Patuharakeke Te Iwi Trust Board, CEP Services consolidated position Minister of Conservation generally supports consolidated position	Forest and Bird
C.1.4.3 Mangrove removal – controlled activity					
<p>Rule C.1.4.3 Mangrove removal – controlled activity</p> <p>The removal or pruning of mangroves in the coastal marine area or in the bed of a river to:</p> <ol style="list-style-type: none"> provide a single track no greater than five metres wide where no other alternative publicly accessible track exists, and only to the extent necessary to provide public access to a marae, urupā or public land located outside of the coastal marine area, or maintain existing navigable channels present at the date this Plan becomes operative, or improve the use of private land where the area of removal and pruning is wholly within a freehold title, <p>and any associated damage or disturbance to the foreshore, seabed or bed of a river that is not a permitted activity in section C.1.4 of this Plan, or</p> <p>4. is an application for a new resource consent to remove or prune mangroves that will replace an existing resource consent, provided the application is made before the expiry of the existing resource consent and there is no change to the activities authorised by the existing resource consent,</p> <p>are controlled activities, provided the total area of mangroves removed is less than:</p> <ol style="list-style-type: none"> 200 square metres if the activity is located within a mapped (refer I Maps Ngā mahere matawhenua): <ol style="list-style-type: none"> Significant Ecological Area, or Outstanding Natural Character Area, and 500 square metres in all other areas, other than where clause 6) above applies. <p>Matters of control:</p> <ol style="list-style-type: none"> Method, timing and extent of activities. Effects on aquatic ecosystem health. Navigation and safety. Effects on the characteristics, qualities and values that contribute to make any of the following mapped (refer I Maps Ngā mahere matawhenua) places significant: <ol style="list-style-type: none"> Historic Area or Site. Site or Area of Significance to tangata whenua. Significant Ecological Area. Significant Bird Area. Effects on the characteristics, qualities and values of mapped (refer I Maps Ngā mahere matawhenua) areas of Outstanding Natural Character or Outstanding Natural Features that make the area or feature outstanding. Effects on tangata whenua cultural values. <p>For the avoidance of doubt this rule covers the following RMA activities:</p>	<p>Unresolved.</p>	<p>Rule C.1.4.3 Mangrove removal – controlled activity</p> <p>The removal or pruning of mangroves in the coastal marine area or in the bed of a river to:</p> <ol style="list-style-type: none"> provide a single track no greater than five metres wide where no other alternative publicly accessible track exists, and only to the extent necessary to provide public access to a marae, urupā or public land located outside of the coastal marine area, or maintain existing navigable channels present at the date this Plan becomes operative, or improve the use of private land where the area of removal and pruning is wholly within a freehold title <u>provided the purpose is not to improve private views,</u> <p>and any associated damage or disturbance to the foreshore, seabed or bed of a river that is not a permitted activity in section C.1.4 of this Plan, or</p> <p>4. is an application for a new resource consent to remove or prune mangroves that will replace an existing resource consent, provided the application is made before the expiry of the existing resource consent and there is no change to the activities authorised by the existing resource consent,</p> <p>are controlled activities, provided the total area of mangroves removed is less than:</p> <ol style="list-style-type: none"> 200 square metres <u>in any 12-month period</u> if the activity is located within a mapped (refer I Maps Ngā mahere matawhenua): <ol style="list-style-type: none"> Significant Ecological Area, or Outstanding Natural Character Area, <u>or</u> <u>Outstanding Natural Landscape, or</u> <u>Significant Bird Area, or</u> <u>Site or Area of Significance to tangata whenua, and</u> 500 square metres in all other areas, <u>other than where clause 6) above applies.</u> <p>Matters of control:</p> <ol style="list-style-type: none"> Method, timing and extent of activities. Effects on aquatic ecosystem health <u>and biodiversity.</u> Navigation and safety. Effects on the characteristics, qualities and values that contribute to make any of the following mapped (refer I Maps Ngā mahere matawhenua) places <u>of significance:</u> <ol style="list-style-type: none"> Historic Area or Site. Site or Area of Significance to tangata whenua. Significant Ecological Area. Significant Bird Area. Effects on the characteristics, qualities and values of mapped (refer I Maps Ngā mahere matawhenua) areas of Outstanding Natural 	<p>Rule C.1.4.3 Mangrove removal – controlled activity</p> <p>The removal or pruning of mangroves in the coastal marine area or in the bed of a river to:</p> <ol style="list-style-type: none"> provide a single track no greater than five metres wide where no other alternative publicly accessible track exists, and only to the extent necessary to provide public access to a marae, urupā or public land located outside of the coastal marine area, or maintain existing navigable channels present at the date this Plan becomes operative, or improve the use of private land where the area of removal and pruning is wholly within a freehold title, <p>and any associated damage or disturbance to the foreshore, seabed or bed of a river that is not a permitted activity in section C.1.4 of this Plan, or</p> <p>4. is an application for a new resource consent to remove or prune mangroves that will replace an existing resource consent, provided the application is made before the expiry of the existing resource consent and there is no change to the activities authorised by the existing resource consent,</p> <p>are controlled activities, provided <u>the total area of mangroves removed is less than:</u></p> <ol style="list-style-type: none"> <u>if the activity is located within a mapped Area or Site identified at (a)-(d) below (refer I Maps Ngā mahere matawhenua), the total area of mangroves removed is less than</u> 200 square metres <u>in any 12-month period within that Area or Site if the activity is located within a mapped (refer I Maps Ngā mahere matawhenua):</u> <ol style="list-style-type: none"> Significant Ecological Area, or Outstanding Natural Character Area, <u>or</u> <u>Outstanding Natural Landscape, or</u> <u>Site or Area of Significance to tangata whenua, and</u> 500 square metres in all other areas, <u>other than where clause 6) above applies.</u> <p>No further changes sought to NRC proposed provision</p>	<p>Rule C.1.4.3 Mangrove removal <u>for specified purposes</u> – controlled activity</p> <p>The removal or pruning of mangroves in the coastal marine area or in the bed of a river to:</p> <ol style="list-style-type: none"> provide a single track no greater than five metres wide where no other alternative publicly accessible track exists, and only to the extent necessary to provide public access to a marae, urupā or public land located outside of the coastal marine area, or maintain existing navigable channels present at the date this Plan becomes operative, or improve the use of private land where the area of removal and pruning is wholly within a freehold title, <p>and any associated damage or disturbance to the foreshore, seabed or bed of a river that is not a permitted activity in section C.1.4 of this Plan, <u>or are controlled activities, provided:</u></p> <p>4. <u>is an application for a new resource consent to remove or prune mangroves that will replace an existing resource consent, provided the application is made before the expiry of the existing resource consent and there is no change to the activities authorised by the existing resource consent</u></p> <p>are controlled activities, provided the total area of mangroves removed is less than:</p> <ol style="list-style-type: none"> 200 square metres <u>in any 12-month period</u> if the activity is <u>not</u> located within a mapped (refer I Maps Ngā mahere matawhenua): <ol style="list-style-type: none"> Significant Ecological Area, <u>Significant Bird Area,</u> Outstanding Natural Character Area, <u>High Natural Character Area,</u> <u>[Outstanding Natural Landscape], or</u> <u>Site or Area of Significance to tangata whenua, and</u> <u>the total area of mangroves removed is less than:</u> <ol style="list-style-type: none"> <u>50 square metres in any 5 year period where the activity is for the purpose of improving the use of private land where the area of removal is entirely within a freehold title; or</u> <u>Otherwise 500 square metres in all other areas, other than where clause 6) above applies.</u> <p>Matters of control:</p> <ol style="list-style-type: none"> Method, timing and extent of activities. Effects on aquatic ecosystem health <u>and indigenous biodiversity.</u> Navigation and safety. <u>X. The need for an assessment under Appendix 5 of the RPS.</u> Effects on the characteristics, qualities and values that contribute to make any of the 	<p>Rule C.1.4.3 Mangrove removal <u>for specified purposes</u> – controlled activity</p> <p>The removal or pruning of mangroves in the coastal marine area or in the bed of a river to:</p> <ol style="list-style-type: none"> provide a single track no greater than five metres wide where no other alternative publicly accessible track exists, and only to the extent necessary to provide public access to a marae, urupā or public land located outside of the coastal marine area, or maintain existing navigable channels present at the date this Plan becomes operative, or improve the use of private land where the area of removal and pruning is wholly within a freehold title, <p>and any associated damage or disturbance to the foreshore, seabed or bed of a river that is not a permitted activity in section C.1.4 of this Plan, <u>or are controlled activities, provided:</u></p> <p>4. <u>is an application for a new resource consent to remove or prune mangroves that will replace an existing resource consent, provided the application is made before the expiry of the existing resource consent and there is no change to the activities authorised by the existing resource consent</u></p> <p>are controlled activities, provided the total area of mangroves removed is less than:</p> <ol style="list-style-type: none"> 200 square metres <u>in any 12-month period</u> if the activity is <u>not</u> located within a mapped (refer I Maps Ngā mahere matawhenua): <ol style="list-style-type: none"> Significant Ecological Area, <u>Significant Bird Area,</u> Outstanding Natural Character Area, <u>High Natural Character Area,</u> <u>[Outstanding Natural Landscape], or</u> <u>Site or Area of Significance to tangata whenua, and</u> <u>the total area of mangroves removed is less than:</u> <ol style="list-style-type: none"> <u>for the purpose 3 above, the activity is not for the purpose of private views and is less than 50 square metres in any 5 year period where the activity is for the purpose of improving the use of private land where the area of removal is entirely within a of the freehold title within the CMA; or</u> <u>for the purposes in 1 and 2 above, is less than 500 square metres in all other areas, other than where clause 6) above applies.</u> <p>Matters of control:</p> <ol style="list-style-type: none"> Method, timing and extent of activities. Effects on aquatic ecosystem health <u>and indigenous biodiversity.</u> Navigation and safety. <u>X. The need for an assessment under Appendix 5 of the RPS.</u>

Decisions version	Provisions agreed in mediation	Northland Regional Council position	Mangawhai Harbour Restoration Society Inc position	Bay of Islands Maritime Park, Fairy Tern Trust, Patuharakeke Te Iwi Trust Board, CEP Services consolidated position Minister of Conservation generally supports consolidated position	Forest and Bird
<ul style="list-style-type: none"> • Damage or disturbance of any foreshore or seabed associated with removing or pruning mangroves (s12(1)). • Removing or pruning mangroves in the coastal marine area (s12(3)). • Disturbance of the bed of any river, associated with removing or pruning mangroves (s13(1)). • Damage, destruction, disturbance or removal of mangroves from the bed of a river (s13(2)). • Discharge of sediment into water incidental to the activity (s15(1)). 		<p>Character or Outstanding Natural Features that make the area or feature outstanding.</p> <p>6. Effects on tangata whenua cultural values.</p> <p>For the avoidance of doubt this rule covers the following RMA activities:</p> <ul style="list-style-type: none"> • Damage or disturbance of any foreshore or seabed associated with removing or pruning mangroves (s12(1)). • Removing or pruning mangroves in the coastal marine area (s12(3)). • Disturbance of the bed of any river, associated with removing or pruning mangroves (s13(1)). • Damage, destruction, disturbance or removal of mangroves from the bed of a river (s13(2)). • Discharge of sediment into water incidental to the activity (s15(1)). 		<p>following mapped (refer I Maps Ngā mahere matawhenua) places of significance, where the removal or pruning is proposed:</p> <ol style="list-style-type: none"> in or near a Historic Area or Site. near a Significant Ecological Area. near a Significant Bird Area. near a Site or Area of Significance to tangata whenua. <p>5. Effects on the characteristics, qualities and values that make any of the following of-mapped (refer I Maps Ngā mahere matawhenua) of Outstanding Natural Character, High Natural Character, or Outstanding Natural Features or Outstanding Natural Landscapes that make the area or feature high or outstanding, where the removal or pruning is proposed in a location near the area:</p> <ol style="list-style-type: none"> Outstanding Natural Character Area. High Natural Character Area. [Outstanding Natural Landscape]. <p>6. Effects on tangata whenua cultural values.</p> <p>For the avoidance of doubt this rule covers the following RMA activities:</p> <ul style="list-style-type: none"> • Damage or disturbance of any foreshore or seabed associated with removing removal or pruning of mangroves (s12(1)). • Removing Removal or pruning of mangroves in the coastal marine area (s12(3)). • Disturbance of the bed of any river, associated with removing removal or pruning of mangroves (s13(1)). • Damage, destruction, disturbance or removal of mangroves from the bed of a river (s13(2)). • Discharge of sediment into water incidental to the activity (s15(1)). 	<p>4. Effects on the characteristics, qualities and values that contribute to make any of the following mapped (refer I Maps Ngā mahere matawhenua) places of significance, where the removal or pruning is proposed:</p> <ol style="list-style-type: none"> in or near a Historic Area or Site. near a Significant Ecological Area. near a Significant Bird Area. near a Site or Area of Significance to tangata whenua. <p>5. Effects on the characteristics, qualities and values that make any of the following of-mapped (refer I Maps Ngā mahere matawhenua) of Outstanding Natural Character, High Natural Character, or Outstanding Natural Features or Outstanding Natural Landscapes that make the area or feature high or outstanding, where the removal or pruning is proposed in a location near the area:</p> <ol style="list-style-type: none"> Outstanding Natural Character Area. High Natural Character Area. [Outstanding Natural Landscape]. <p>6. Effects on tangata whenua cultural values.</p> <p>For the avoidance of doubt this rule covers the following RMA activities:</p> <ul style="list-style-type: none"> • Damage or disturbance of any foreshore or seabed associated with removing removal or pruning of mangroves (s12(1)). • Removing Removal or pruning of mangroves in the coastal marine area (s12(3)). • Disturbance of the bed of any river, associated with removing removal or pruning of mangroves (s13(1)). • Damage, destruction, disturbance or removal of mangroves from the bed of a river (s13(2)). • Discharge of sediment into water incidental to the activity (s15(1)).

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

Decisions version	Provisions agreed in mediation	Northland Regional Council position	Mangawhai Harbour Restoration Society Inc position	Bay of Islands Maritime Park, Forest & Bird, Fairy Tern Trust, Patuharakeke Te Iwi Trust Board, CEP Services consolidated position
C.1.4.4 Mangrove removal in the Whangārei City Centre Marine Zone and the Coastal Commercial Zone – restricted discretionary activity				
<p>Rule C.1.4.4 Mangrove removal in the Whangārei City Centre Marine Zone and the Coastal Commercial Zone – restricted discretionary activity</p> <p>The removal or pruning of mangroves in the Whangārei City Centre Marine Zone or Coastal Commercial Zone, and any associated damage or disturbance to the foreshore or seabed, that is not a permitted or controlled activity in section C.1.4 of this Plan are restricted discretionary activities.</p> <p>Matters of discretion:</p> <ol style="list-style-type: none"> Effects on natural systems and indigenous biodiversity in the coastal marine area or the bed of a river, including where it affects the ability of tangata whenua to carry out cultural and traditional activities. Effects on navigation and safety. Effects on visual amenity values. Effects on historic heritage in the coastal marine area. The positive effects of the activity. <p>For the avoidance of doubt this rule covers the following RMA activities:</p> <ul style="list-style-type: none"> Damage or disturbance of any foreshore or seabed associated with removing or pruning mangroves (s12(1)). Removing or pruning mangroves in the coastal marine area (s12(3)). Discharge of sediment into water incidental to the activity (s15(1)). 	<p>Unresolved.</p>	<p>Rule C.1.4.4 Mangrove removal in the Whangārei City Centre Marine Zone and the Coastal Commercial Zone – restricted discretionary activity</p> <p>The pulling, cutting or removal of mangrove seedlings and removal or pruning of mangroves in the Whangārei City Centre Marine Zone or Coastal Commercial Zone, and any associated damage or disturbance to the foreshore or seabed, that is not a permitted or controlled activity in section C.1.4 of this Plan are restricted discretionary activities.</p> <p>Matters of discretion:</p> <ol style="list-style-type: none"> Effects on natural systems and indigenous biodiversity in the coastal marine area or the bed of a river, including where it affects the ability of tangata whenua to carry out cultural and traditional activities. Effects on navigation and safety. Effects on visual amenity values. Effects on historic heritage in the coastal marine area. The positive effects of the activity. Effects on tangata whenua cultural values. Effects on Outstanding and High Natural Character. <p>For the avoidance of doubt this rule covers the following RMA activities:</p> <ul style="list-style-type: none"> Damage or disturbance of any foreshore or seabed associated with removing or pruning mangroves (s12(1)). Removing or pruning mangroves in the coastal marine area (s12(3)). Discharge of sediment into water incidental to the activity (s15(1)). 	<p>No further changes sought to NRC proposed provision.</p>	<p>Rule C.1.4.4 Mangrove removal in the Whangārei City Centre Marine Zone and the Coastal Commercial Zone – restricted discretionary activity</p> <p>The pulling, cutting or removal of mangrove seedlings and removal or pruning of mangroves in the Whangārei City Centre Marine Zone or Coastal Commercial Zone, and any associated damage or disturbance to the foreshore or seabed, that is not a permitted or controlled activity in section C.1.4 of this Plan are restricted discretionary activities.</p> <p>Matters of discretion:</p> <ol style="list-style-type: none"> Effects on natural systems and indigenous biodiversity in the coastal marine area or the bed of a river, including where it affects the ability of tangata whenua to carry out cultural and traditional activities. Effects on navigation and safety. Effects on visual amenity values. Effects on historic heritage in the coastal marine area. The positive effects of the activity. Effects on tangata whenua cultural values. The timing of the activity to avoid adverse effects on bird breeding. Effects on Outstanding and High Natural Character. <p>For the avoidance of doubt this rule covers the following RMA activities:</p> <ul style="list-style-type: none"> Damage or disturbance of any foreshore or seabed associated with removing removal or pruning of mangroves (s12(1)). Removing Removal or pruning of mangroves in the coastal marine area (s12(3)). Discharge of sediment into water incidental to the activity (s15(1)).

C.1.4.5A Mangrove removal existing activities – discretionary activity

Decisions version	Provisions agreed in mediation	Northland Regional Council position	Mangawhai Harbour Restoration Society Inc position	Bay of Islands Maritime Park, Forest & Bird, Fairy Tern Trust, Patuharakeke Te Iwi Trust Board, CEP Services consolidated position Minister of Conservation generally supports consolidated position	Forest and Bird
C.1.4.5A Mangrove removal existing activities – discretionary activity					
		<p><u>Rule C.1.4.5A Mangrove removal existing activities – discretionary activity</u></p> <p><u>The pulling, cutting, removal or pruning of mangroves in the coastal marine area or in the bed of a river necessary for the continuation of authorised activities in Table 3: Maximum allowable area of mangrove removal and any associated damage or disturbance to the foreshore, seabed or bed of a river, that are not permitted by Rule C.1.4.2 Minor mangrove removal – permitted activity, are discretionary activities.</u></p> <p><u>For the avoidance of doubt this rule covers the following RMA activities:</u></p> <ul style="list-style-type: none"> • <u>Damage or disturbance of any foreshore or seabed associated with removing or pruning mangroves (s12(1)).</u> • <u>Removing or pruning mangroves in the coastal marine area (s12(3)).</u> • <u>Disturbance of the bed of any river, associated with removing or pruning mangroves (s13(1)).</u> • <u>Damage, destruction, disturbance or removal of mangroves from the bed of a river (s13(2)).</u> • <u>Discharge of sediment into water incidental to the activity (s15(1)).</u> 	<p>No further changes sought to NRC proposed provision.</p>	<p><u>Rule C.1.4.5A Mangrove removal for existing regionally significant infrastructure activities – discretionary activity</u></p> <p><u>The pulling, cutting, removal or pruning of mangroves in the coastal marine area or in the bed of a river necessary for the continuation of authorised activities-existing lawfully established regionally significant infrastructure in Table 3: Maximum allowable area of mangrove removal and any associated damage or disturbance to the foreshore, seabed or bed of a river, that are not permitted by Rule C.1.4.2 Minor mangrove removal – permitted activity, are discretionary activities.</u></p> <p><u>For the avoidance of doubt this rule covers the following RMA activities:</u></p> <ul style="list-style-type: none"> • <u>Damage or disturbance of any foreshore or seabed associated with removing removal or pruning of mangroves (s12(1)).</u> • <u>Removing Removal or pruning of mangroves in the coastal marine area (s12(3)).</u> • <u>Disturbance of the bed of any river, associated with removing removal or pruning of mangroves (s13(1)).</u> • <u>Damage, destruction, disturbance or removal of mangroves from the bed of a river (s13(2)).</u> • <u>Discharge of sediment into water incidental to the activity (s15(1)).</u> 	<p><u>Rule C.1.4.5A Mangrove removal for existing specific authorised activities – discretionary activity</u></p> <p><u>The pulling, cutting removal of mangrove seedlings or the removal or pruning of mangroves in the coastal marine area or in the bed of a river necessary for:</u></p> <ol style="list-style-type: none"> 1. <u>the continuation of authorised activities in Table 3 Maximum allowable area of mangrove removal and any associated damage or disturbance to the foreshore, seabed or bed of a river, that are not permitted by Rule C.1.4.2; or</u> 2. <u>the maintenance and operation of lawfully established regionally significant infrastructure; Minor mangrove removal – permitted activity are discretionary activities.</u> <p><u>For the avoidance of doubt this rule covers the following RMA activities:</u></p> <ul style="list-style-type: none"> • <u>Damage or disturbance of any foreshore or seabed associated with removing removal or pruning of mangroves (s12(1)).</u> • <u>Removing Removal or pruning of mangroves in the coastal marine area (s12(3)).</u> • <u>Disturbance of the bed of any river, associated with removing removal or pruning of mangroves (s13(1)).</u> • <u>Damage, destruction, disturbance or removal of mangroves from the bed of a river (s13(2)).</u> • <u>Discharge of sediment into water incidental to the activity (s15(1)).</u>

C.1.4.5 Mangrove removal – discretionary activity

Decisions version	Provisions agreed in mediation	Northland Regional Council position	Mangawhai Harbour Restoration Society Inc position	Bay of Islands Maritime Park, Forest & Bird, Fairy Tern Trust, Patuharakeke Te Iwi Trust Board, CEP Services consolidated position	Minister of Conservation position
C.1.4.5 Mangrove removal – discretionary activity					
<p>Rule C.1.4.5 Mangrove removal – discretionary activity</p> <p>The removal or pruning 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, that is not the subject of any other rule in this Plan are discretionary activities.</p> <p>For the avoidance of doubt this rule covers the following RMA activities:</p> <ul style="list-style-type: none"> • Damage or disturbance of any foreshore or seabed associated with removing or pruning mangroves (s12(1)). • Removing or pruning mangroves in the coastal marine area (s12(3)). • Disturbance of the bed of any river, associated with removing or pruning mangroves (s13(1)). • Damage, destruction, disturbance or removal of mangroves from the bed of a river (s13(2)). • Discharge of sediment into water incidental to the activity (s15(1)). 	Unresolved.	<p>Rule C.1.4.5 Mangrove removal – discretionary activity</p> <p>The pulling, cutting or removal of mangrove seedlings and removal or pruning 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, that is not the subject of any other rule in this Plan, are a permitted or controlled activity in section C.1.4 of this Plan is a discretionary activityies, provided the removal is consistent with protecting the values of the following mapped areas (refer I Maps Ngā mahere matawhenua):</p> <ol style="list-style-type: none"> 1. Significant Ecological Area, 2. Significant Bird Area, 3. Outstanding Natural Character Areas, 4. Outstanding Natural Landscape, or 5. Site or Area of Significance to tangata whenua; <p>For the avoidance of doubt this rule covers the following RMA activities:</p> <ul style="list-style-type: none"> • Damage or disturbance of any foreshore or seabed associated with removing or pruning mangroves (s12(1)). • Removing or pruning mangroves in the coastal marine area (s12(3)). • Disturbance of the bed of any river, associated with removing or pruning mangroves (s13(1)). • Damage, destruction, disturbance or removal of mangroves from the bed of a river (s13(2)). • Discharge of sediment into water incidental to the activity (s15(1)). 	<p>Rule C.1.4.5 Mangrove removal – discretionary activity</p> <p>The pulling, cutting or removal of mangrove seedlings and removal or pruning 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, that is not the subject of any other rule in this Plan, are discretionary activities, provided the removal is consistent with protecting the values of the following mapped areas (refer I Maps Ngā mahere matawhenua):</p> <ol style="list-style-type: none"> 1. Significant Ecological Area, 2. Outstanding Natural Character Areas, 3. Outstanding Natural Landscape, or 4. Site or Area of Significance to tangata whenua; <p>For the avoidance of doubt this rule covers the following RMA activities:</p> <ul style="list-style-type: none"> • Damage or disturbance of any foreshore or seabed associated with removing or pruning mangroves (s12(1)). • Removing or pruning mangroves in the coastal marine area (s12(3)). • Disturbance of the bed of any river, associated with removing or pruning mangroves (s13(1)). • Damage, destruction, disturbance or removal of mangroves from the bed of a river (s13(2)). • Discharge of sediment into water incidental to the activity (s15(1)). 	<p>Rule C.1.4.5 Mangrove removal – discretionary activity</p> <p>The pulling, cutting or removal of mangrove seedlings and removal or pruning 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, that is not the subject of any other rule in this Plan, are a permitted or controlled activity in section C.1.4 of this plan is a discretionary activityies, provided the removal activity is consistent with protecting the values of not undertaken in any of the following mapped areas (refer I Maps Ngā mahere matawhenua):</p> <ol style="list-style-type: none"> 1. Significant Ecological Area, 2. Significant Bird Area, 3. Outstanding Natural Character Areas, 4. [Outstanding Natural Landscape], or 5. Site or Area of Significance to tangata whenua; <p>For the avoidance of doubt this rule covers the following RMA activities:</p> <ul style="list-style-type: none"> • Damage or disturbance of any foreshore or seabed associated with removing removal or pruning of mangroves (s12(1)). • Removing Removal or pruning of mangroves in the coastal marine area (s12(3)). • Disturbance of the bed of any river, associated with removing removal or pruning of mangroves (s13(1)). • Damage, destruction, disturbance or removal of mangroves from the bed of a river (s13(2)). • Discharge of sediment into water incidental to the activity (s15(1)). 	<p>Rule C.1.4.5 Mangrove removal – discretionary activity</p> <p>The pulling, cutting or removal of mangrove seedlings and removal or pruning 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, that is not the subject of any other rule in this Plan, are discretionary activities, provided the removal activity is consistent with protecting the values of not undertaken in any of the following mapped areas (refer I Maps Ngā mahere matawhenua):</p> <ol style="list-style-type: none"> 1. Significant Ecological Area, 2. Significant Bird Area, 3. Outstanding Natural Character Areas, 4. Outstanding Natural Landscape, or 5. Site or Area of Significance to tangata whenua; <p>For the avoidance of doubt this rule covers the following RMA activities:</p> <ul style="list-style-type: none"> • Damage or disturbance of any foreshore or seabed associated with removing or pruning mangroves (s12(1)). • Removing or pruning mangroves in the coastal marine area (s12(3)). • Disturbance of the bed of any river, associated with removing or pruning mangroves (s13(1)). • Damage, destruction, disturbance or removal of mangroves from the bed of a river (s13(2)). • Discharge of sediment into water incidental to the activity (s15(1)).

C.1.4.6 Mangrove removal – non-complying activity

Decisions version	Provisions agreed in mediation	Northland Regional Council position	Mangawhai Harbour Restoration Society Inc position	Bay of Islands Maritime Park, Forest & Bird, Fairy Tern Trust, Patuharakeke Te Iwi Trust Board, CEP Services consolidated position Minister of Conservation generally supports consolidated position
C.1.4.6 Mangrove removal – non-complying activity				
		<p><u>C.1.4.6 Mangrove removal – non-complying activity</u> <u>The pulling, cutting or removing of mangrove seedlings and removal or pruning 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, that is not a permitted, controlled or discretionary activity in section C.1.4 of this plan, is a non-complying activity.</u> <u>For the avoidance of doubt this rule covers the following RMA activities:</u></p> <ul style="list-style-type: none"> • <u>Damage or disturbance of any foreshore or seabed associated with removing or pruning mangroves (s12(1)).</u> • <u>Removing or pruning mangroves in the coastal marine area (s12(3)).</u> • <u>Disturbance of the bed of any river, associated with removing or pruning mangroves (s13(1)).</u> • <u>Damage, destruction, disturbance or removal of mangroves from the bed of a river (s13(2)).</u> • <u>Discharge of sediment into water incidental to the activity (s15(1)).</u> 	No further changes sought to NRC provision.	<p><u>C.1.4.6 Mangrove removal – non-complying activity</u> <u>The pulling, cutting or removing removal of mangrove seedlings and removal or pruning 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, that is not a permitted, controlled or discretionary activity in section C.1.4 of this plan, is a non-complying activity.</u></p> <p><u>Note: This rule applies in the following mapped areas (refer Maps Ngā mahere matawhenua):</u></p> <ol style="list-style-type: none"> 1. <u>Significant Ecological Area.</u> 2. <u>Significant Bird Area.</u> 3. <u>Outstanding Natural Character Area.</u> 4. <u>[Outstanding Natural Landscape], and</u> 5. <u>Site or Area of Significance to tangata whenua.</u> <p><u>For the avoidance of doubt this rule covers the following RMA activities:</u></p> <ul style="list-style-type: none"> • <u>Damage or disturbance of any foreshore or seabed associated with removing removal or pruning of mangroves (s12(1)).</u> • <u>Removing Removal or pruning of mangroves in the coastal marine area (s12(3)).</u> • <u>Disturbance of the bed of any river, associated with removing removal or pruning of mangroves (s13(1)).</u> • <u>Damage, destruction, disturbance or removal of mangroves from the bed of a river (s13(2)).</u> • <u>Discharge of sediment into water incidental to the activity (s15(1)).</u>

C.1.8 – General conditions

Decisions version	Provisions agreed in mediation	Northland Regional Council position	Mangawhai Harbour Restoration Society Inc position	Bay of Islands Maritime Park, Forest & Bird, Fairy Tern Trust, Patuharakeke Te Iwi Trust Board, CEP Services consolidated position Minister of Conservation generally supports consolidated position
C.1.8 – General conditions				
<p>Rule C.1.8 General conditions apply to activities, when referred to in the rules of Section C.1.1 General Structures.</p> <p>...</p> <p>Mangrove removal and pruning</p> <p>14. Removed mangrove vegetation must be removed from any position where it is likely to re-enter the coastal marine area.</p> <p>15. Mangrove vegetation removal must avoid creating protruding stumps, by cutting mangrove trunks close to the ground.</p> <p>16. The activity must not disturb or damage areas of seagrass, saltmarsh, or natural wetland.</p> <p>17. There must be no refuelling on the foreshore or river bed.</p> <p>18. Chemical herbicides must not be used.</p> <p>19. Access to removal and pruning areas must use existing open areas or paths where these exist and, where practicable, avoid disturbance of shellfish beds, soft sand and mud.</p> <p>20. The Regional Council's Compliance Manager must be notified (in writing or by email) of the proposed time, location and extent of removal at least 10 working days prior to the work being undertaken, when:</p> <p>a) more 200 square metres of pruning or removal is proposed in any one year, or</p> <p>b) the activity is located in a mapped Significant Bird Area, Significant Ecological Area or Area of Outstanding Natural Character (refer I Maps Ngā mahere matawhenua).</p>	<p>No agreement.</p>	<p>Rule C.1.8 General conditions apply to activities, when referred to in the rules of Section C.1.1 General Structures.</p> <p>...</p> <p>Mangrove removal and pruning</p> <p>14. Removed mangrove vegetation must be removed from any position where it is likely to re-enter the coastal marine area.</p> <p>15. Mangrove vegetation removal must avoid creating <u>minimise the creation of</u> protruding stumps, by cutting mangrove trunks close to the ground.</p> <p>16. The activity must not disturb or damage areas of seagrass, saltmarsh, or natural wetland.</p> <p>17. There must be no refuelling on the foreshore or river bed.</p> <p>18. Chemical herbicides must not be used.</p> <p>19. Access to removal and pruning areas must, <u>where practicable</u>, use existing open areas or paths where these exist and, where practicable, avoid disturbance of shellfish beds, soft sand and mud.</p> <p>20. The Regional Council's Compliance Manager must be notified (in writing or by email) of the proposed time, location and extent of removal at least 10 working days prior to the work being undertaken, when:</p> <p>a. more 200 square metres of pruning or removal is proposed in any one year, or</p> <p>b. the activity is located in a mapped Significant Bird Area, Significant Ecological Area, or Area of Outstanding Natural Character, <u>Outstanding Natural Landscape or Sites or Areas of Significance to tangata whenua</u> (refer I Maps Ngā mahere matawhenua).</p>	<p>No further changes sought beyond NRC provisions.</p> <p>The MHRS notes that Coastal works conditions 5, 7, 8, 9, 10, 11, 22 under this Rule are also of relevance to mangrove removal activities and apply to permitted and controlled removal activities.</p>	<p>Rule C.1.8 General conditions apply to activities, when referred to in the rules of Section C.1.1 General Structures.</p> <p>...</p> <p>Mangrove removal and pruning</p> <p>14. Removed mangrove vegetation must be removed from any position where it is likely to re-enter the coastal marine area.</p> <p>15. Mangrove vegetation removal must <u>avoid creating</u> minimise the creation of protruding stumps, by cutting mangrove trunks close to the ground.</p> <p><i>[**Note that Fairy Tern Trust has concerns that "avoid" may result in excavation which would be a worse environmental outcome than a protruding stump**]</i></p> <p>16. The activity must not disturb or damage areas of seagrass, saltmarsh, or natural wetland.</p> <p>17. <u>There must be no refuelling on the foreshore or river bed.</u></p> <p>18. Chemical herbicides must not be used.</p> <p>19. Access to removal and pruning areas must, <u>where practicable</u>, use existing open areas or paths where these exist and, where practicable, avoid disturbance of shellfish beds, soft sand and mud.</p> <p>20. The Regional Council's Compliance Manager must be notified (in writing or by email) of the proposed time, location and extent of removal at least 10 working days prior to the work being undertaken, when:</p> <p>a. more <u>than</u> 200 square metres of pruning or removal is proposed in any one year, or</p> <p><i>[**Note that the parties have concerns about the cumulative effects associated with multiple and sequential clearances**]</i></p> <p>b. the activity is located in a mapped <u>within 50m of the following mapped areas</u>, Significant Bird Area, Significant Ecological Area, or Area of Outstanding Natural Character, Outstanding Natural Landscape or Sites or Areas of Significance to tangata whenua (refer I Maps Ngā mahere matawhenua):</p> <p>i. <u>Significant Ecological Area,</u></p> <p>ii. <u>Significant Bird Area,</u></p> <p>iii. <u>Outstanding Natural Character Area,</u></p> <p>iv. <u>High Natural Character Area,</u></p> <p>v. <u>[Outstanding Natural Landscape], or</u></p> <p>vi. <u>Site or Area of Significance to tangata whenua.</u></p>

New definition – “Removal”

Decisions version	Provisions agreed in mediation	Northland Regional Council position	Mangawhai Harbour Restoration Society Inc position	Bay of Islands Maritime Park, Fairy Tern Trust, Patuharakeke Te Iwi Trust Board, CEP Services consolidated position	Forest and Bird
New definition – “Removal”					
				<p>New definition of “removal” “Removal” in relation to mangroves means the clearance of mangroves or mangrove seedlings, and includes pulling or cutting where that action threatens the survival of the mangrove or seedling or removes the mangrove or seedling from the location.</p>	<p>New definition of “removal” “Removal” in relation to mangroves means the clearance of mangroves or mangrove seedlings, and includes pulling or cutting where that action threatens the survival of the mangrove or seedling or removes the mangrove or seedling from the location.</p>

Amendment to definition – “Vegetation clearance”

Forest and bird position
Vegetation clearance
<p>A. The cutting, burning, crushing, removal or destruction of vegetation <u>other than mangroves</u>, but does not include clearing:</p> <ol style="list-style-type: none">1) hedges and amenity plants, or2) vegetation along fences and around dams and ponds, or3) vegetation around network utilities, or4) vegetation alongside roads and tracks, or5) vegetation that is infected by an unwanted organism as declared by the Ministry of Primary Industries Chief Technical Officer or an emergency declared by the Minister under the Biosecurity Act 1993. <p>B. <u>Removal including cutting, pulling or other destruction of mangrove seedling and mangrove from the coastal marine area or the bed of a river</u></p>

“C”

Policy D.5.26 Mangrove removal – purpose

Subject to policy D.2.16, mangrove pruning or removal may be appropriate where:

1. it is demonstrated that the purpose of the mangrove removal in 2 a) – n) below can be achieved; and
2. it is necessary to maintain, restore or improve one or more of the following: ...
 - a) ...
 - b) critical habitats that have recently been displaced by mangroves, such as seagrass meadows and shell bank roost areas; or
 - c) the removal of mangrove seedlings is in areas from within which mangroves have previously been lawfully removed;...
3. its purpose is not the improvement of private views.

Policy D.5.27 Mangrove removal – effects

When considering resource consents for mangrove removal, take into account effects specific to the removal of seedlings or of mature trees and shrubs, and have regard to a range of potential adverse effects in particular:

...

Rule C.1.4.1 Mangrove seedling removal – permitted activity

The removal of mangrove seedlings 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:

1. the seedlings are less than 50 centimetres tall and unbranched, and
2. the seedlings are not under the canopy area of any existing mangrove, and
3. the removal is by hand or using hand-held tools (excluding motorised), and
4. any removal is not undertaken between 1 August and 31 March (inclusive) to avoid disturbance of birds during breeding, roosting and nesting periods, and
5. the seedlings are not within a mapped Significant Ecological Area, and
6. the activities comply with the C.1.8 Coastal works general conditions.

Note:

The use of vehicles on the foreshore associated with mangrove removal is controlled by Rule C.1.5.1 Use of vehicles on beaches and other activities that disturb the foreshore and seabed.

For the avoidance of doubt this rule covers the following RMA activities:

- Damage or disturbance of any foreshore or seabed associated with removal of mangroves (s12(1)).
- Removal of mangroves in the coastal marine areas and any associated damage or disturbance of the foreshore or seabed (s12(3)).
- Disturbance of the bed of any river, associated with removal of mangroves (s13(1)).
- Damage, destruction, disturbance or removal of mangroves from the bed of a river (s13(2)).
- Discharge of sediment into water incidental to removal of mangroves (s15(1)).

Rule C.1.4.2 Minor mangrove removal for specified authorised activities – permitted activities

The removal or pruning of mangroves in the coastal marine area or in the bed of a river necessary for the continuation of authorised activities in Table 3: Maximum allowable area of mangrove removal and any associated damage or disturbance to the foreshore, seabed or bed of a river, are permitted activities, provided:

1. where the activity is located within a mapped (refer | Maps | Ngā mahere matawhenua):
 - a) Significant Ecological Area, or
 - b) Outstanding Natural Character Area, or
 - c) Outstanding Natural Landscape, or
 - d) Significant Bird Area, or
 - e) Site or Area of Significance to Tangata Whenua

the total area of mangroves removed is less than 200 square metres in any 12-month period, and such removal or pruning is not undertaken between 1 August and 31 March (inclusive) to avoid disturbance of birds during breeding, roosting and nesting periods, and
2. the mangrove removal or pruning does not exceed the limits in Table 3: Maximum allowable area of mangrove removal, and
3. the activities comply with the mangrove removal and disturbance general conditions in C.1.8 Coastal works general conditions.

Table 3: Maximum allowable area of mangrove removal

Authorised activity	Maximum allowable area of mangrove removal
Authorised pipe outlets ...	Restricted to ... 2. the lineal extent of the clearance <u>removal or pruning</u> is limited to create a free-draining path from the

	authorised pipe outlet to coastal water.
Artificial watercourses and rivers 4. not exceeding an area of 200m² within a mapped (refer Maps Ngā mahere matawhenua) Significant Ecological Area or Outstanding Natural Character Area
Electricity transmission lines and cables	Restricted to within two metres either side of the vertical projection of the line on the ground. and not exceeding an area of 200m²

For the avoidance of doubt this rule covers the following RMA activities:

- Damage or disturbance of any foreshore or seabed associated with removal or pruning of mangroves (s12(1)).
- Removal or pruning of mangroves in the coastal marine area (s12(3)).
- Disturbance of the bed of any river, associated with removal or pruning of mangroves (s13(1)).

...

Rule C.1.4.3A Mangrove removal by statutory or incorporated bodies for conservation purposes – restricted discretionary activity

The removal or pruning of mangroves in the coastal marine area or in the bed of a river by a statutory or incorporated body in the performance of its statutory functions or powers for the purpose of maintaining or enhancing biodiversity and intertidal habitats, and any associated damage or disturbance to the foreshore, seabed or bed of a river that is not a permitted activity in section C.1.4 of this Plan is a restricted discretionary activity.

...

May be subject to some final wording alteration, parties to consult – see [114] of decision

Rule C.1.4.3 Mangrove removal for specified purposes – controlled activity

...

3. improve the use of private land where the area of removal and pruning is wholly within a freehold title provided the purpose is not to improve views,
...
4. ~~is an application for a new resource consent to remove or prune mangroves that will replace an existing resource consent, provided the application is made before the~~

~~expiry of the existing resource consent and there is no change to the activities authorised by the existing resource consent~~

~~are controlled activities provided the total area of mangroves removed is less than:~~

5. 200 square metres in any 12-month period if that activity is located within a mapped (refer | Maps | Ngā mahere matawhenua):
 - a) Significant Ecological Area, or
 - b) Outstanding Natural Character Area, or
 - c) Outstanding Natural Landscape, or
 - d) Significant Bird Area, or
 - e) Site or Area of Significance to Tangata Whenua, and
6. 500 square metres in any 12-month period in all other areas except private land, and
7. in relation to private land up to 200 square metres in any 12-month period

Matters of control:

1. Method timing and extent of activities.
2. Effects on aquatic ecosystem health and indigenous biodiversity.
3. Navigation and safety.
4. The need for an assessment under Appendix 5 of the RPS.
5. Effects on characteristics, qualities and values that contribute to make any of the following mapped (refer | Maps | Ngā mahere matawhenua) places of significance, where the removal or pruning is proposed:
 - a) in or near a Historic Area or Site.
 - b) near a Significant Ecological Area.
 - c) near a Significant Bird Area.
 - d) near a Site or Area of Significance to tangata whenua.
6. Effects on the characteristics, qualities and values that make any of the following mapped (refer | Maps | Ngā mahere matawhenua) area or feature of “high” or “outstanding” value, where the removal or pruning is proposed in a location near the area:
 - a) Outstanding Natural Character Area.
 - b) High Natural Character Area.
 - c) Outstanding Natural Landscape.
7. Effects on tangata whenua cultural values.

For the avoidance of doubt this rule covers the following RMA activities:

- Damage or disturbance of any foreshore or seabed associated with removal or pruning of mangroves (s12(1)).
- Removal or pruning of mangroves in the coastal marine area (s12(3)).
- Disturbance of the bed of any river, associated with removal or pruning of mangroves (s13(1)).

...

May be subject to some final wording alteration, parties to consult – see [134] of decision

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

The removal of mangrove seedlings and removal or pruning of mangroves in the Whangārei City Centre Marine Zone or Coastal Commercial Zone, and any associated damage or disturbance to the foreshore or seabed, that is not a permitted or controlled activity in section C.1.4 of this Plan are restricted discretionary activities.

Matters of discretion:

1. Effects on natural systems and indigenous biodiversity in the coastal marine area or the bed of a river, ~~including where it affects the ability of tangata whenua to carry out cultural and traditional activities~~
- ...
6. Effects on tangata whenua cultural values.
7. Effects on Outstanding and High Natural Character.

For the avoidance of doubt this rule covers the following RMA activities:

- Damage or disturbance of any foreshore or seabed associated with removal or pruning of mangroves (s12(1)).
- Removal or pruning of mangroves in the coastal marine area (s12(3)).
- Discharge of sediment into water incidental to the activity (s15(1)).

C.1.4.5A Mangrove removal existing activities – discretionary activity

The removal or pruning of mangroves in the coastal marine area or in the bed of a river necessary for the continuation of authorised activities in Table 3: Maximum allowable area of mangrove removal and any associated damage or disturbance to the foreshore, seabed or bed of a river, that are not permitted by Rule C.1.4.2 Minor mangrove removal – permitted activity, are discretionary activities.

For the avoidance of doubt this rule covers the following RMA activities:

- Damage or disturbance of any foreshore or seabed associated with removal or pruning of mangroves (s12(1)).
- Removal or pruning of mangroves in the coastal marine area (s12(3)).
- Disturbance of the bed of any river, associated with removal or pruning of mangroves (s13(1)).
- Damage, destruction, disturbance or removal of mangroves from the bed of a river (s13(2)).
- Discharge of sediment into water incidental to the activity (s15(1)).

C.1.4.5 Mangrove removal – discretionary activity

The removal of mangrove seedlings and removal or pruning 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 that is not a permitted or controlled activity in section C.1.4 of this Plan is a discretionary activity provided the removal is consistent with protecting the values of the following mapped areas (refer |Maps|Ngā mahere matāwhenua)

1. *Significant Ecological Area,*
2. *Significant Bird Area,*
3. *Outstanding Natural Character Area, or*
4. *Outstanding Natural landscape, or*
5. *Site or Area of Significance to Tangata Whenua,*

For the avoidance of doubt this rule covers the following RMA activities:

- Damage or disturbance of any foreshore or seabed associated with removal or pruning of mangroves (s12(1)).
- Removal or pruning of mangroves in the coastal marine area (s12(3)).
- Disturbance of the bed of any river, associated with removal or pruning of mangroves (s13(1)).

...

Text above subject to parties finalising wording – see [141] – [148] of decision

C.1.4.6 Mangrove removal – non-complying activity

The removal of mangrove seedlings and removing or pruning 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, that is not a permitted, controlled or discretionary activity in section C.1.4 of this Plan, is a non-complying activity.

Note: This rule applies in the following mapped areas (refer |Maps|Ngā mahere matāwhenua):

1. *Significant Ecological Area*
2. *Significant Bird Area*
3. *Outstanding Natural Character Area*
4. *Outstanding Natural Landscape, and*
5. *Site or Area of Significance to tangata whenua*

For the avoidance of doubt this rule covers the following RMA activities:

- Damage or disturbance of any foreshore or seabed associated with removal or pruning of mangroves (s12(1)).
- Removal or pruning of mangroves in the coastal marine area (s12(3)).
- Disturbance of the bed of any river, associated with removal or pruning of mangroves (s13(1)).

Text above subject to parties finalising wording – see [149] – [151] of decision