

Complex Conservation Act Recommendation and Decision Report

Applicant: Mercury Bay Boating Club Incorporated

Permission number: 112555-OTH

Application Type: Notified Lease/Licence and Easement

To: Nick Kelly, Decision Maker

From: Ange Paget, Senior Permissions Advisor

Legal Review: Anne Bogle and [REDACTED] (External)

Date sent to DM: 12 May 2025

Executive Summary - Whakarāpopoto ā kaiwhakahaere

1. Mercury Bay Boating Club Incorporated (the Applicant) has applied to use part of the Esplanade Reserve – Marina Bay (the reserve) near the Whitianga Marina off Dundas Street.
2. This proposed activity if approved should be granted both a Lease/Licence and a separate Easement contract. See below the parts of the Activity which would be covered by the Lease, Licence and Easement. Also note the Applicant would be holding junior sailing training in the mudflat/estuary area adjoining the reserve in the Whitianga Harbour. However, this is not public conservation land.

Activity Description

3. The Lease would cover -
 - a) the Club Building footprint over the reserve, and
 - b) the operation of a Club Building as a community boating club facility (which comprises a main function room, observation tower, kitchen, toilet, showers and storage area in the northern part of the Club Building for sailing dinghies, sail-training equipment and coach boats), and
 - c) attached lean-to structure which provides storage for sailing vessels and sailing equipment, and
 - d) use for private and community activities/functions by third parties
4. The Licence would cover -

- a) the relocation of the Club Building onto the reserve
 - b) the maintenance and access to the Club Building including the deck (including access to the deck) and ramp attached to the Club Building and lean-to structure, and
 - c) the location and operation of the deck (including access to the deck) and ramp attached to the Club Building, and
 - d) the activity of manoeuvring junior sailing boats on trolleys, from the storage area in the northern part of the Club Building to the proposed publicly available dinghy/kayak ramp, and
 - e) the activity of manoeuvring other sailing vessels and sailing equipment from the lean-to structure and the Club Building directly to the roadway, and
 - f) the construction and maintenance of the publicly available dinghy/kayak ramp.
5. The Temporary Lease would cover earthworks and construction associated with the relocation of the Club Building, installation of services and construction of the dinghy/kayak ramp.
 6. The Easement would cover the installation and ongoing location of the power, water, sewage and wastewater services outside the Licence area which are associated with the Club Building.
 7. This application has been considered under the notified process.
 8. The Applicant seeks a 30 year term, and this is the term recommended if the Application is approved.
 9. You should be aware that an objector from the hearing process wrote to the Minister on the 18 March 2025. You can view the full document at [DOC-10225044](#). The matters in their letter are addressed under the relevant subject headings below.
 10. Furthermore, the Applicant provided comments on the draft version of this document on the 28 March 2025, and further comments on the noise and temporary lease sections of the RDR and the draft conditions on the 7 May 2025. These comments have been incorporated into relevant discussions throughout the document. Therefore, you will note some paragraphs may contradict each other, as original discussion is retained and corrected by the paragraphs following to provide sense to the Applicant's feedback. You are advised to read the document in numerical order. To view the full versions, please see [DOC-7892247](#) and [DOC-10287927](#).
 11. Ngāti Hei strongly supports maximising use of building footprints within the coastal space and the co-location of the waka ama club as a means of ensuring that cultural

interests are protected and advocated for at this locality. The co-location of waka ama is a viable outcome currently being negotiated between the parties.

12. There are several ‘purposes’ for which the reserve is held, addressed in the analysis on section 17U (3). In conclusion the Activity being the footprints of all structures and service corridor, and the passing and repassing of sailing boats and sailing equipment would use approximately 25% of the reserve and would take place predominately within the middle third of the reserve across the width of the reserve (see Appendix 3). The Activity would not in a practical sense impede use of the reserve, including access to the sea. On balance the Activity would enhance the passive recreational use and enjoyment of the reserve, because the proposed publicly available dinghy/kayak ramp would improve public access to the sea, and the presence of the Club Building would likely invite more passive recreation like picnicking and walking along the reserve.
13. The Applicant has investigated alternative locations for the Club Building and associated activities. Sufficient information has been provided to inform you in your s17U(4) consideration.
14. Neither the Waikato Conservation Management Strategy nor the Coromandel Peninsula Land Management Plan carry statutory weight for this site but may be used as guidance as discussed in section 17W. The activity is considered to not be inconsistent with these documents.
15. It is worth noting that this Application requires the consideration of what “off-site” effects are relevant in a concession context. For an “off -site” effect to be relevant to a concession application, it must be an effect on conservation values. This includes effects on natural and historic resources (as defined in the Act), and on recreation.
16. It is recommended that the Application be approved. Please find links to the Lease and Licence document ([DOC-7819044](#)) and Easement document ([DOC-7823930](#)) for approval.

I recommend that you..... (Ngā tohutohu)

	Concession under Part 3B of the Conservation Act 1987	Decision
a)	Approve the Application. Subject to the standard concession contracts and the special conditions identified in this report	Yes / No

Decision Maker Rationale:

I accept and agree with the report writers' recommendations and make the following comments:

- I note that 122 submissions were received, with the majority expressing support for the proposal. This indicates a strong level of community interest and general endorsement of the activity.
- I accept the report's analysis and recommendations regarding the Department's position that off-site effects are only relevant where they impact conservation values. I concur with this assessment and therefore support the conclusions reached on this matter.
- In relation to noise effects, I agree that only those affecting users of the Reserve are relevant to my decision. I acknowledge the applicant's long-standing record of compliance with Council noise limits (noting only one complaint in over 20 years). I consider that the likelihood of significant adverse noise effects on reserve users is low, and that such risks are appropriately mitigated through the proposed conditions. I further note that an adaptive management approach remains available via review conditions should monitoring indicate otherwise.
- Regarding the potential for asset abandonment, I requested further advice on this issue, including the potential imposition of a bond. Having weighed the cost to the applicant, the level of risk to the Department, the proposed activity, and the not-for-profit nature of the applicant, I support the imposition of strengthened conditions around asset ownership and post-concession remediation. These changes are reflected in this document.
- On the matter of construction effects, I endorse the recommendation to include a condition requiring the minimisation of land disturbance, to ensure effects are appropriately managed during the build phase.

- I consider the assessment of coastal hazard risk to be thorough and appropriate. I support the condition that the building must remain relocatable, and that it must be removed at the request of the Grantor, in accordance with the identified risk and DOC's statutory responsibilities.
- In terms of health and safety, I acknowledge both the applicant's response and the report recommendations. I agree that the applicant is best placed to manage the risks to club members, and I am satisfied that adequate systems are in place or can be developed as required under the concession conditions.
- Regarding consistency with the Reserve purpose, I consider the assessment within the report to be detailed and robust. I concur that the proposed activity is consistent with the purpose for which the Reserve is held, and represents a clear improvement over the current use of the site, which is largely ad hoc and unmanaged vehicle parking. The proposal enables enhanced recreational use in a more organised and appropriate manner.
- In terms of facilities hire, I note that a significant portion of the clientele is directly linked to and increases public recreation and engagement with the Reserve. I consider this consistent with the Reserve purpose, and I am satisfied that the associated effects are well understood and can be effectively managed through conditions.
- With regard to public access, I am of the view that this proposal maintains and in fact enhances access to the Reserve, including through the provision of a mobility-accessible deck area, and improved foreshore access via the dinghy/kayak ramp.
- Finally, I support the report's conclusion that there are no practical or more suitable alternative locations for this activity, and I agree that this site is appropriate for the proposed use.

Time spent considering application and making a decision	8
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Permissions Advisor to input time into the Cost Recovery Tool for final processing fee and delete from final saved RDR.



Date: 27 May 2025

Nick Kelly, Operations Manager Whitianga district

Pursuant to the Delegation dated 9 September 2017 and 7 July 2019

Purpose - Te aronga

17. The purpose of this report is to bring together the relevant information and recommendations to support you to make a statutory decision.

Glossary –

18. Club Building

Where the word “Club building” is used it refers to the composition of the elements which make up the Club Building and which are; main function room, observation tower, kitchen, toilet, showers and a large storage area in the northern part of the Club Building (as depicted in figure 2 in Appendix 3),

19. Lean-to structure

Where the words “Lean-to structure” are used together it refers to the enclosed structure attached to the west side of the Club Building (see figure 13 in Appendix 14). This enclosed structure functions as a storage area for sailing dinghies and is accessed from the north side of the structure.

20. Dinghy/kayak Ramp

Where the words “dinghy/kayak ramp” are used together it refers to the ramp structure which will be located amongst the rock armouring wall on the seaward boundary of the reserve, straddling the reserve boundary and the Whitianga Harbour. This ramp will only be suitable for small hand manoeuvred vessels such as junior sailing boats, kayaks and dinghies and will be available to the public to use.

21. Ramp to storage area in the northern part of the Club Building

Where the word “ramp” is used in isolation it refers to the ramp situated on the outside of the northern part of the Club Building which assists the Applicant to move vessels and sailing-equipment out of the storage area in the northern part of the Club Building.

22. Deck

Where the word “deck” is used this refers to the external decking area shown in figure 1 of Appendix 3 which wraps around the Club Building from seaward side of the Club Building to the east side of the Club Building.

Context - Te horopaki

23. The Application site is part of the Esplanade Reserve - Marina Bay located on Dundas Street, in Whitianga. The reserve is formed of four separate land parcels which are referred to as the Esplanade Reserve – Marina Bay. The land parcel concerned lies the furthest west of the four land parcels, it is registered as Lot 6 Deposited Plan 426920 (DP 426920). See figure 4 in Appendix 7 which shows the four parcels and identifies the land parcel to which this Application applies.
24. In 1992 the Minister of Conservation conditionally granted the Whitianga Marina Society Inc. a coastal permit to undertake reclamation works as part of a marina proposal in Whitianga Harbour. The marina was constructed between 1992 and 1995.
25. The Esplanade Reserve – Marina Bay was formed during this reclamation work.
26. The reserve is also known as the Whitianga Marina Southern Reclamation. On 19 December 2012, the Dundas Street site, or Lot 6 Deposited Plan 426920 (DP 426920) was deemed to vest¹ in the Crown as local purpose (esplanade) reserve pursuant to section 246(3) of the Resource Management Act 1991.
27. This reserve is administered by the Department under section 23 of the Reserves Act 1977 for the purposes described in section 23 Reserves Act and section 229 Resource Management Act.
28. The site is close to existing marina infrastructure and is in the Thames Coromandel District Council (TCDC) Marine Service Zone.²
29. The Application proposes.
 - a) the relocation and operation of a Club Building, including attached lean-to structure deck (including access ramps) and ramp, and
 - b) associated power, water, sewage and wastewater services, and
 - c) the construction and location of a publicly available dinghy/kayak ramp (see figure 1 in Appendix 3) and

¹ Pursuant to 246(3) of the Resource Management Act 1991, see Land Status check document [DOC-7511553](#)

² See Appendix 1 Proposed site plan.

- d) use of the reserve to manoeuvre approximately eight junior sailing boats called Optimists on trolleys (see photo of the Optimists in figure 5 in Appendix 8) from the storage area in the northern part of the Club Building (see doors to storage area in the northern part of the Club Building in figure 6 of Appendix 9) across the reserve to the dinghy/kayak ramp during the training session.
 - e) Use of the reserve to manoeuvre other sailing vessels and sailing equipment from the Club Building or lean-to structure directly to the roadway.
 - f) hiring out the Club Building to other persons to offset operational costs i.e. sailing equipment, coaching and other related operational costs in accordance with the Applicant's Venue Hire policy³.
30. The Applicant would also be holding junior sailing training in the mudflat/estuary area adjoining the reserve in the Whitianga Harbour. However, this is not public conservation land.
31. The Application describes the Applicant as being an incorporated society/not for profit organisation with all income generated from membership subs, regatta fees and functions (private and community) used to cover the costs of sailing equipment, coaching and other related operation costs. The Incorporated Societies Register confirms this is the case⁴.
32. As mentioned, the Club Building including attached lean-to structure, deck and ramp would be relocated. The relocation will move the existing Club Building from the current location at Taputapuatea/Buffalo Beach, a council owned reserve. The Club Building is currently on temporary stands, having been uplifted and moved inland from its original location to safeguard the Club Building from coastal erosion during cyclones Hale and Gabrielle. The council owned reserve is part of a wider area of the beach and foreshore known as Taputapuatea, a Māori heritage site of significant cultural importance to Ngāti Hei. The Applicant advises that *"re-establishing the building on Taputapuatea/Buffalo Beach requires new resource and building consents which trigger a number of legislative and planning issues not present at the time of the original consent. In particular, the official listing of the site in 2011 as Wāhi Tapu lifts the bar significantly in terms of consultation with iwi and processes to be followed under the Heritage New Zealand Pouhere Taonga Act 2014 (HNZTPA)"*. The Applicant also comments that they have low confidence in obtaining a cultural impact assessment and believe it is unlikely they would receive the necessary support from Iwi and Heritage NZ to back a resource consent application for Taputapuatea/Buffalo Beach.

³ [Mercury Bay Boating Club - CHARGES & TERMS](#)

⁴ Incorporation Number 314758, [View Details](#)

33. The proposed Lease footprint will cover the Club Building, including attached lean-to structure and activities which may occur inside the Club Building.
34. The Club Building was constructed in the mid 1990's. The Club Building measures 15 metres long by 14 metres wide and is approximately 201m² and the attached lean-to is 35m².
35. The Club Building is rated to hold 60 persons and comprises a main function room, observation tower, kitchen, toilet, showers and storage area for sailing dinghies, sail-training equipment and coach boats (see figure 2 in Appendix 3 for a break-down of the Club Building facilities).
36. The attached lean-to structure is for storage of sailing vessels and associated sail-training equipment.
37. The Applicant would use the Club Building to support sailing programmes, for post-regatta functions, annual prizegiving, AGM and to carry out general maintenance.
38. The Club Building has previously been hired out to individuals, businesses and community groups for classes, meetings and events including corporate training days, art and yoga classes, birthdays, weddings, and funerals/tangihanga. The Applicant proposes to continue this in accordance with the Applicant's Venue Hire policy⁵. Most external hire events occur mid-week during mornings, less than once a week on average, with occasional weekend afternoon and evening events. This is discussed further below.
39. The proposed Licence will cover the deck (including access to the deck) and ramp, manoeuvring of junior sailing boats and other sailing vessels and sailing equipment across the reserve, construction and maintenance of the dinghy/kayak ramp.
40. The deck and ramp are approximately 100m² in total. The deck is proposed to wrap around the Club Building across the seaward side of the Club Building to the east side of the Club Building. The ramp is attached to the northern side of the Club Building to assist the manoeuvring of equipment in and out of the storage area in the northern end of the Club Building. Both the deck and ramp were removed during the building uplift and will need to be reconstructed to suit the reserve.
41. Moving the junior sailing boats on trolleys from the north side of the Club Building to the dinghy/kayak ramp on the seaward boundary of the reserve will occur one hour either side of high tide, and due to tidal dependence in the mudflat /estuary area, approximately two times a week every fortnight typically.

⁵ [Mercury Bay Boating Club - CHARGES & TERMS](#)

42. Moving other sailing vessels and sailing equipment from the Club Building and attached lean-to structure northward to the roadway will occur in an adhoc manner i.e. as and when required.
43. A dinghy/kayak ramp is proposed as a safer alternative to the public boat ramp for the junior sailors to launch the junior sailing boats into the Whitianga Harbour or more specifically the mudflat /estuary area. The dinghy/kayak ramp will be publicly available and maintained wholly by the Applicant. The dinghy/kayak ramp straddles both the reserve and land not administered by the Department.
44. The Easement will cover the installation and maintenance of power, water, sewage and wastewater services within the same trench from the north-western corner of the Club Building directly to the edge of the reserve boundary with the road reserve and west along the boundary to the existing council infrastructure on Dundas Street at the western end of the reserve (see figure 1 in Appendix 3).
45. The Easement area does not lie within the Lease or Licence footprint, therefore cannot be incorporated into the Lease/Licence contract and must be authorised as a separate Easement contract.

Construction activities summary

Clubhouse Building ⁶.

46. The Applicant advises that *“Works will only commence once all approvals have been obtained. The duration of the construction phase is expected to be 6-8 weeks long and will be programmed to occur outside of the peak summer or holiday periods.”*
47. The Applicant advises that *“geotechnical investigations of the building footprint will be carried out and a foundation design prepared by a chartered engineer. Initial indications are that a driven pile design will be the most appropriate.”*
48. The Applicant advises that *“a proprietary self-contained Ecoflow wastewater pumpstation⁷ or similar will be installed by a licensed drainage contractor at the western corner of the building. These systems are installed regularly as an alternative to conventional gravity drainage. Discharge will be via a small (40mm) diameter pressure pipe connecting to the Council wastewater manhole at the end of Dundas Street.”*
49. The Applicant advises that *“stormwater disposal (roof water) will be designed and detailed as part of the building consent. Existing overland flow paths onto and off the*

⁶ Further Information Request [DOC-7671345](#)

⁷ [Pump Information – Ecoflow Pressure Sewer Specialists](#)

site will remain unchanged, currently water sheds directly into the Whitianga Harbour via the rock armouring or the existing boat ramp.”

Power, water, sewage and wastewater services⁸.

50. Power, water, sewage and wastewater services will be installed by a utilities contractor along the edge of the existing access road to connect with the existing public networks at the end of Dundas Street to the west of the reserve. The Applicant advises that *“the duration is expected to take 1 -2 days and will be programmed to occur outside of the peak summer or holiday periods.”*

51. All services will be laid in a single shallow (1m deep x 0.4m wide) trench using a small excavator with a trenching bucket and the trench will be backfilled and reinstated on completion.

Publicly available dinghy/kayak ramp⁹.

52. The Applicant advises that, the publicly available dinghy/kayak ramp is to be designed and supervised by a Chartered Engineer. And design approval shall be obtained from the Department and consent approval obtained from Waikato Regional Council prior to commencement of physical works.

53. Rock armouring will be peeled back using a 5 to 8 tonne digger then replaced by hand once the dinghy/kayak ramp has been installed.

54. Material excavated is expected to be 100m³. Between 15 – 20 truckloads will be removed from site.

55. The Applicant has confirmed that they will maintain the publicly available kayak/dinghy ramp.

Term

56. The Applicant is seeking a 30-year term to occupy part of the reserve.

External Consents

57. The Applicant acknowledges in its Application that a building consent will be required. Verbally they have confirmed that dependent on the outcome, this will be applied for once the decision on this Application has been made.

58. The Thames Coromandel District Council District Plan describes the reserve as being located within the Marine Service Zone. A community facility is a permitted activity in the Marine Service Zone under Section 49, Rule 1, and more specifically the Thames

⁸ Further Information Request [DOC-7671345](#)

⁹ Further Information Request [DOC-7671345](#)

Coromandel District Council District Plan provides examples of activities which comply including ‘...sailing school, yacht club...’.

59. The Applicant has a current resource consent application lodged with the Thames Coromandel District Council, which is on hold until such time as a decision is made on this Application.
60. The Whitianga Marina Society Inc. are an affected party and have provided a letter of support¹⁰ to the Thames Coromandel District Council. I have not been provided information as to whether the Thames Coromandel District Council considers there to be other affected parties.
61. For context the Applicant has provided the Thames Coromandel District Council’s resource consent further information request to the Applicant as of 6th December 2023; *“(a) a site plan demonstrating the provision of onsite parking, turning, manoeuvring to meet the District Plan standards. An assessment of how the provided parking will not affect adjoining land uses, including access to the existing boat ramp and other marina activities will also be required. (b) provision of an assessment of the activity in relation to Section 49 Rule 11 Noise not covered by another Rule in Section 49. Given that the building is intended to be used for “private and community functions from time to time” and the proximity of the Residential Zone, specific consideration should be given to the nighttime noise limits and the potential effects from the use of amplified music and the like, (c) clarification as to the nature and scale of the “private and community functions” that are likely to occur. Will these activities be limited as to numbers, frequency and duration? and (d) confirmation that you have considered whether the site is a piece of land in the context of the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 by utilising one of the methods set out in Regulation 6. It is noted that port facilities, including dry docks or marine vessel maintenance facilities are included as F5 on the HAIL. Although the site itself is not identified as such a facility it is in very close proximity to these activities.”* Therefore, given the information sought by Council it is anticipated that traffic and parking is being contemplated further by Council as part of the consideration of the resource consent application. I discuss traffic, parking and noise effects in the ‘Analysis of Effects’ section.
62. Previously I advised that an objector wrote to the Minister. In the letter the objector raised a concern that the Hearing Chair’s conclusions relied on some submitters’ concerns being addressed through the resource consent process. I discuss in this document which adverse effects would be considered through the resource consent

¹⁰ Letter of Support - <https://doccm.doc.govt.nz/cwxv4/wcc/faces/wccdoc?dDocName=DOC-7852775>

process and draw conclusions as to whether further mitigation by the Department would be useful.

63. I have been provided verification (email dated 19 October 2023) that the Waikato Regional Council (including the Harbour Master) do not consider themselves to be an affected party to the Thames Coromandel District Council resource consent.
64. The Applicant has advised that they will be seeking a resource consent from the Waikato Regional Council for the location of the publicly available dinghy/kayak ramp.

Key concerns:

65. The dinghy/kayak ramp will be available to the public. The dinghy/kayak ramp should be designed to be sympathetic to the values of the reserve, the appropriate landowner approvals and Waikato Regional Council consents are gained prior to the works and potential liabilities to the Department are mitigated ongoing. This is discussed further in the Analysis of Effects section.
66. Anti-social behaviour associated with the Club Building footprint can affect the wider environment including the general public's use of the reserve. In the Analysis of Effects section, I discuss how the potential adverse effects associated with anti-social behaviour i.e. noise, alcohol consumption would be addressed.
67. In the submission process some objectors raised concerns about effects which are "offsite" effects. Some of these are relevant to this concession process but some are not. In the Submissions Summary Report the Hearing Chair considers the relevance of "offsite" effects raised in the submissions. This document adopts the same position as the Hearing Chair when it comes to "offsite" effects, as set out at paragraph 71 of the Submissions Summary Report (in relation to "traffic" effects):

"These "offsite" traffic-related effects are clearly important to objectors and submitters. However, I must now explain an issue that may not be immediately apparent to objectors and submitters. The definition of "effects" in the Conservation Act applies the definition in section 3 of the RMA, which includes positive or adverse, temporary or permanent, cumulative or any other of the definitions under section 3. On the face of it this would include these "offsite" traffic-related effects. However, there is a further element to what "effects" are relevant to a concession application. For an "effect" to be relevant to a concession application, it must be an effect on conservation values. This includes effects on natural and historic resources (as defined in the Act), and on recreation. It does not include traffic-related effects that occur outside the reserve and do not create effects on conservation values. Those "effects" fall to be considered in the RMA process, not the concession process."

68. The reserve is held for the purposes of a reserve administered under S23 of Reserves Act 1977 and S229 of the Resource Management Act 1991. I draw your attention to S23(2)(a) of the Reserves Act *‘where scenic, historic, archaeological, biological, or natural features are present on the reserve, those features shall be managed and protected to the extent compatible with the principal or primary purpose of the reserve ...provided also that nothing in this paragraph shall authorise the doing of anything with respect to any esplanade reserve created ... that would impede the right of the public freely to pass and repass over the reserve on foot’* and section 229 of the RMA *‘An esplanade reserve or an esplanade strip has 1 or more of the following purposes: ...to enable public access to or along any sea, river, or lake; or ...to enable public recreational use of the esplanade reserve or esplanade strip and adjacent sea, river, or lake, where the use is compatible with conservation values.’*
69. Ngāti Hei have expressed a strong interest in protecting the cultural values associated with the reserve. How these interests which are important to Ngāti Hei are protected, is addressed in the Section 4/ToW section and Analysis of Effects section.
70. A copy of the final application can be found here (Form 1A; Structure/Easement Application (revised prior to public notification to include the dinghy/kayak ramp [DOC-7637059](#)).

Treaty Partner Relationships

71. The table below summarises our engagement with Treaty partners on this application:

Treaty partner	Summary of Treaty partner engagement	Mitigations proposed by Treaty partner
Ngāti Hei	The local district held a kanohi to kanohi meeting on the 18 October 2024.	<ul style="list-style-type: none"> a) Ensure the reserve space is retained as green space outside the footprint of the Club Building. b) Sharing of buildings located in the coastal areas c) Allow co-location of the waka ama club.

72. The district was asked to engage with the appropriate whānau/hapū/iwi to determine whether the effects of the Activity would adversely impact cultural values. The district engaged with Ngāti Hei.
73. Ngāti Hei representatives expressed general concerns about the pressure to use the coastal space for occupations in Whitianga. They emphasized the desirability of sharing common spaces as much as possible to maximise the use of building footprints.
74. They viewed the reserve as an obscure muddy land parcel which would benefit from the Activity by way of enhancing the habitat and greening the space. Principally as the Activity is anticipated to reduce vehicle movements on the reserve. I note that the Application describes the Applicant undertaking maintenance of the grass, trees and gardens at no cost to the Department¹¹. This is discussed in the Analysis of Effects section
75. Ngāti Hei supported the application. And they expressed a firm view that the co-location of the waka ama club at the Club Building would best protect the cultural values of the reserve due to waka ama club's better understanding of Māori interests, tikanga and kaitiakitanga. This is discussed in Section 4 below.

Section 4: Giving effect to the Principles of The Treaty of Waitangi - Ngā mātāpono Tiriti

76. Four principles have been identified as most relevant to the work of Te Papa Atawhai: Partnership, Informed Decision-Making, Active Protection, and Redress and Reconciliation.
77. Ngāti Hei are one of the 12 iwi who form the Hauraki Collective¹², and will receive collective redress through the Hauraki Iwi Collective Redress Deed¹³ (Deed). The Deed acknowledges the effect of the Crown's actions and omissions which had a negative impact on Ngāti Hei... And provides certain redress which will then on-transfer to specific iwi to form part of their iwi-specific settlements. The full and final settlement of historical Treaty of Waitangi claims of the Iwi of Hauraki will be made through iwi-specific settlements.¹⁴ Therefore, this Deed does not replace individual iwi/hāpu treaty negotiations.
78. Ngāti Hei have not reached a settlement with the Crown at this stage.
79. Ngāti Hei do not have a specific Environmental Plan noted on their website.

¹¹ Application, page 12

¹² [Organisations - Ngati Hei ki Wharekaho](#)

¹³ [Te Arawhiti - Ngāti Hei](#)

¹⁴ https://whakatau.govt.nz/assets/Treaty-Settlements/FIND_Treaty_Settlements/Ngati-Hei/DOS_documents/Ngati-Hei-Deed-of-Settlement-summary-v2.pdf

80. The Deed states that it provides for the establishment of the Pare Hauraki Collective Cultural Entity to represent the Iwi of Hauraki in relation to natural resource matters. And that members will be appointed to a range of co-governance bodies. The Conservation Framework with the Department of Conservation is noted as a co-governance which “*aims to establish an effective partnership that recognises both the mana whenua and kaitiakitanga responsibilities of the Iwi of Hauraki and enhances the conservation of natural resources and historical and cultural heritage in its rohe. The Conservation Framework co-governance and co-management provisions include the development of a conservation management plan and strategy, a decision-making framework and a Department of Conservation Relationship Agreement.*”¹⁵ The Conservation Framework outcomes have not been produced yet. Therefore, I may only conclude that there is partnership anticipated which aims to enhance conservation of natural resources.
81. Regarding enhancing the conservation of natural resources, firstly Ngāti Hei consider that the Activity would benefit the reserve by way of enhancing the habitat and greening the space and in the Analysis of Effects section, I discuss this further and share this opinion. Secondly reflecting Ngāti Hei’s desire for common use of the area, a condition ensuring the Club Building is available to be booked by the public is recommended.
82. Reflecting on Ngāti Hei’s desire for co-location of the waka ama club with the Applicant, in the Applicant’s email dated 5 September 2024, they confirmed that “*The relocation of the boat club building to Dundas Street now provides an opportunity for waka ama to return to the harbour and at the same time solves their storage and space issues by making provisions for the waka to be stored under the building. To this end, our engineers are already looking at modifications to the subfloor and foundation design to accommodate waka and outriggers. So, in summary, yes, if the application is approved, and based on discussions to date with Mike Bennett, Waka Ama will look to co-locate at the Dundas Street site.*”
83. Subsequently following feedback from the Applicant on a draft of this document, the Applicant has advised that “*Following further investigation, it is considered unlikely that waka can be practically stored under the clubhouse building. The craft are too long and heavy to be manoeuvred in and out from underneath the building. The building itself would have to be raised to a height which would make access ramps impractically large. On balance, waka would be stored outside, as they are now at Brophys Beach and in most other locations around the rohe where waka ama clubs operate.*”

¹⁵ [Pare Hauraki Collective Redress Deed Settlement Summary](#), page 2

84. Despite being unable to store the waka ama within the Club Building footprint, you may still consider the waka ama club could negotiate use of the Club Building on a regular basis, which would be advantageous.
85. I note the waka ama would need to be located on the grass outside the Club Building, however the use of the Licence area to store vessels has not been contemplated in this document. Furthermore, although it is common to see waka ama stored outside, and this is identified as the current situation at Brophy's Beach, the waka ama club may want to house their waka ama at some stage, and again this has not been contemplated in this document.
86. Co-location (with exception of housing waka ama on the grass) could be enabled by ensuring the description of the Activity in the Lease/Licence contract allows for the waka ama activities. The broad description of the activity allowing sailing vessels and sailing equipment could include waka ama storage and manoeuvring. – "Lease Land activities – ... attached lean-to structure which provides storage for sailing vessels and sailing equipment," "Licence Land activities - ... the activity of manoeuvring other sailing vessels and sailing equipment from the lean-to structure and the Club Building directly to the roadway."
87. However, this does not address the location of waka ama on the reserve outside the Lease footprint and this would need to be considered separately in a new application. You may consider you would be able to fulfil most but not all of the anticipated outcomes which Ngāti Hei have identified at this point in time.
88. The kanohe to kanohe meeting provided a meaningful way of engaging with Ngāti Hei about the Activity. The opportunity provided a clear transfer of expression between both parties, and I have been able to gather a very good understanding of Ngāti Hei's interests as a result. I consider that you can make an informed decision which will actively protect Ngāti Hei interests.

Contributions

Technical Advice

Historic Heritage (link to full advice can be found 'Contributions document register' in Appendix 1).

89. The Senior Heritage Advisor, Catheryn Barr recommends that all earthworks associated with the establishment of the Activity at this location are carried out under an Archaeological Accidental Discovery Protocol. This is included as a recommended condition in the Analysis of Effects section.

90. She also advises that the 20 metre section of the reserve at the western entrance appears to be original ground surface and may contain archaeological artefacts. Therefore, to avoid adverse effects on archaeological artefacts the laying of ground services within an existing trench in this section is preferable, otherwise if not a common trench must be used. This is included as a recommended condition in the Analysis of Effects section.

Management Planning (link to full advice can be found 'Contributions document register' in Appendix 1).

91. The Waikato Conservation Management Strategy and Coromandel Peninsula Land Management Plan may be used as guidance but they are not binding because the reclamation was deposited and vested before the draft Waikato Conservation Management Strategy was publicly notified and no amendment was undertaken to include the reserve after the public notification period closed and the Waikato Conservation Management Strategy became operative. Furthermore, section 17D (7) of the Conservation Act requires the Waikato Conservation Management Strategy to identify and describe all protected areas covered, and the site is not listed in the Waikato Conservation Management Strategy.

91. The Activity is not inconsistent with the provisions of the Waikato Conservation Management Strategy, Coromandel Peninsula Land Management Plan and Conservation General Policy.

Resource Management Planning (link to full advice can be found 'Contributions document register' in Appendix 1).

92. Graeme Silver, Senior National RMA Advisor advises that the reserve is not in a hazard zone and that as the Club Building was relocated, I should consider maintaining the ability for the Club Building to be relocated. This is included as a recommended condition within the Analysis of Effects section.

Advice from District Operations

93. Ben Gordon, Senior Biodiversity Ranger advised that this is not a main roosting site for any wildlife and that he agrees with the Variable Oyster Catcher Survey¹⁶, that the area is not of any significance to variable oyster catchers, shorebirds and wader species and they are likely to be unaffected by the Activity (link to full advice can be found 'Contributions document register' in Appendix 1).
94. Josh Angell, Senior Ranger Heritage and Visitors advised that the site is not actively managed and does not have any major recreational outcomes aside from access to the water, fishing and a small amount of overflow boat trailer parking. Also, he advises "*I'm*

¹⁶ [REDACTED] "MBBC -Variable Oyster Catcher Survey", Soundcounts, July 2024

not 100% sure on the potential agreement going forward for the land management and the expectations of maintenance for the reserve if the Boating Clubs application is approved. But I would assume this would be part of the application. If not, it could trigger the need for the district team to maintain this area in the future.” (link to full advice can be found ‘Contributions document register’ in Appendix 1).

Summary of public notification process

95. Under section 17U(1)(f) you must consider any relevant oral or written submissions received because of any public notice issued under section 39. To assist you in doing so, I provided you with the Submissions Summary report on the 26 November 2024. Please refer again to that report in making your decision.
96. The Application was publicly notified, and I received 122 submissions. Eighteen submitters asked to be heard. A closed hearing was held in Whitianga, and 10 submitters (5 opposed and 5 supportive) were heard. The Applicant was provided an opportunity to speak to the hearing issues at the end of the hearing and reviewed the draft Submissions Summary Report.
97. The submissions were categorised under the following themes and subthemes:

Theme	Subtheme
1) Planning	(a) Coromandel Peninsula Conservation Land Management Plan
2) Nature and Effects of Activity	(a) Section 17 U (4) suitable alternative test (b) Effects on recreational enjoyment by the public (c) Effects on birds (d) Parking and traffic congestion effects outside the esplanade reserve boundary (e) Effects on the existing parking activity on the esplanade reserve (f) Effects on public enjoyment, natural and historic values
3) Miscellaneous	(a) Public safety in the Whitianga Harbour (b) General support for the Club activity (c) Consultation Plan (d) Adverse effects on the viewshaft from the adjacent residential property

98. Section 17U(1)(f) directs you to consider “relevant” submissions. And that in the hearing process some submissions addressed matters that I do not consider relevant. *“For an “effect” to be relevant to a concession application, it must be an effect on conservation values. This includes effects on natural and historic resources (as defined in the Act), and on recreation. It does not include traffic-related effects that occur outside the*

esplanade reserve and do not create effects on conservation values. Those “effects” fall to be considered in the RMA process, not the concession process”.

99. The Hearing Chair concluded overall that the concession process could proceed. “The submissions detailed above address matters related to this Application and proposed activities on the reserve. I have indicated the submissions that fall outside the scope of matters that you can consider under the Conservation Act and related statutory documents. There were differing views expressed on a number of matters and for some of them I recommend that further advice/information is obtained prior to making a decision.” And “On this basis I recommend that the process of further consideration of this concession proceeds with the above requests for additional detail and/or conditions being met.”
100. The Hearing Chair made the following recommendations to the Minister, regarding further information to be obtained prior to making a decision and I discuss these matters further in this document
- a) I obtain information to confirm the unsuitability of Brophy’s Beach as an alternative location for this activity. This is discussed in the s17U (4) section.
 - b) I obtain information from the local office on the recreational use of the reserve. This is discussed in the Analysis of Effects section and the information can be viewed in the Contributions Register in Appendix 1.
 - c) I obtain advice on the usage of the reserve and adjacent mudflat/estuary area by the spoonbill, dotterel, kākā and variable oyster catchers. This is discussed in the Analysis of Effects section and the information can be viewed in the Contributions Register in Appendix 1.
 - d) I obtain advice on the potential for the Activity to improve public amenity and access to the Whitianga Harbour via the proposed kayak/dinghy ramp. This is discussed in the Analysis of Effects section.

Statutory Analysis

Section 17S: Contents of Application

Does the Application include all required information as per s17S?	Yes
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Discussion:

101. I requested and was provided the following additional information to support the Application prior to the public notification phase.

- a) the type of use associated with the Club Building including the reserves area outside, the frequency of this use over an annual period and the associated hire-age charges.
- b) details about the construction methodology related to installing the services and the dinghy/kayak ramp and relocating the Club Building on the reserve.
- c) an assessment of effects which relates to the construction methodology including disturbance areas and mitigation measures.
- d) advice about the consideration of alternative sites.
- e) the resource consent requirements for the proposed activity.
- f) greater detail as to the reason why the Club Building was relocating from the existing location, and why it was not a suitable site.
- g) Clarification that parking on the reserve was not included in the proposed activity (related to a plan provided which showed parking lots on the reserve).

102. Additionally, after reviewing the draft Submissions Summary Report, the Applicant provided further advice about their investigation of other sites around Whitianga and whether the sites would be suitable locations for the Activity.

Section 17SC: Public Notification

Is public notification required?	Yes
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Discussion:

103. The Application includes exclusive use of public conservation land, therefore requires a lease. A lease application must be publicly notified. Public notification is discussed above.

Section 17U(1) and (2): Analysis of effects

Is the activity consistent with s17U(1) and (2)	Yes
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Discussion:

Effects on recreation

104. The Hearing Chair recommends in the Submissions Summary Report that further information on the current recreational use of the reserve is obtained.

105. As noted above, Josh Angell, Senior Ranger Heritage and Visitors advised that the site does not have any major recreational outcomes aside from access to the water, fishing and a small amount of overflow boat trailer parking.

106. Furthermore, Josh advises that *“the site was historically a more prominent location for persons to fish, predominately at high tide, however the construction of the pier*

adjacent to the reserve has meant the reserve is not well used for fishing. The pier is located to the east of the boat ramp in front of the marina” and “the reserve is not used often for walking or picnicking”. A pier provides access to deeper water and wider variety of fish, a stable platform to fish from and a requirement for less gear as you do not need to cast as far as you would from the waterfront¹⁷. Additionally, a rock armouring wall lies partly on the reserve between the reserve and the Whitianga Harbour. Access to the water is limited, as the rock armouring wall restricts access to only the more agile members of the public. The shape, placement, and slope of the rocks require individuals to have good balance and a reasonable stride, as a basic requirement. Additionally, should they be carrying equipment this further reduces the accessibility.

107. The public boat ramp is located adjoining the eastern end of the reserve. The public can park in the public sealed carpark located within 50 metres of the boat ramp. Both the Applicant and submitters tell us that historically during significant events the existing sealed carpark has been insufficient to cope with the number of vehicles requiring parking and the reserve has been used as overflow parking. I conclude typically a person would use closer carparking where available and so the reserve is likely used due to being in closer proximity to the public boat ramp.
108. Subsequently following the Applicant’s review of a draft version of this document, the Applicant has sought to clarify that the boat ramp adjoining the eastern end of the reserve is free to use, and additionally there is also a private boat ramp within the marina. Furthermore, parking for cars and boat trailers is available in a designated carparking area which is not sealed, in fact there is not a sealed carparking area at this location. This does not change my recommendation.
109. The Applicant has supplied both a proposed site map in their Application (see figure 1 in Appendix 3) and concept plans (see figure 6 in Appendix 9 and [DOCDM-7740211](#)) which include a deck area which wraps around the Club Building across the seaward side of the Club Building to the east side of the Club Building, including a set of stairs and access ramp. A deck can provide an elevated vantage point and picnicking and seating area for the public. There are currently no structures on the reserve which would support passive recreation such as a deck may.
110. The Applicant proposes constructing a dinghy/kayak ramp which will be available to the public, and ownership and maintenance will be the Applicant’s responsibility.
111. At present (i.e. without the proposed dinghy/kayak ramp) the Applicant could use the public boat ramp situated adjacent to the eastern end of the reserve to launch the junior sailing boats. The Applicant states that the use of a dinghy/kayak ramp would minimise

¹⁷ [Beach Fishing vs Pier Fishing 2 Great Options - The Beach Angler](#)

conflict between the Club's activities and existing users of the public boat ramp. Where vehicles and pedestrians are using a minimal space serious harm accidents are possible. This may be even greater where children are concerned. Furthermore, the Applicant has verbally commented that Dundas Street boat ramp has a slippery substrate where the water resides which is hazardous to walk on. The Application contains photos of the boat ramp and the slippery substrate can be seen in these photos¹⁸. The rock armouring wall is an unsuitable alternative as the access is restricted to only the more agile members of the public, particularly when handling junior sailing boats and dragging the bottom of the junior sailing boats across the rough substrate of the rocks is damaging to the exterior of the boat. The shape, placement, and slope of the rocks require individuals to have good balance and a reasonable stride, as a basic requirement without also needing to balance or support a small vessel down the rock armouring wall.

112. The proposed dinghy/kayak ramp provides a fit for purpose structure which enables both the Applicant and the public to launch and retrieve small vessels from the Whitianga Harbour with relative ease. In my opinion, the dinghy/kayak ramp will provide a safe and functional facility for both the Applicant and the public. And may improve the passive recreational use of the reserve.
113. The location of the dinghy/kayak ramp is partly on the reserve and partly on land not administered by the Department, which means that Department is not legally able to approve the entire structure.
114. I recommend including conditions which (a) confirm that any necessary approvals have been granted by the adjoining land manager for the location of part of the dinghy/kayak ramp (b) confirm ownership and maintenance of the dinghy/kayak ramp is wholly the Applicants, (c) The Concessionaire is required to provide the Grantor with a design plan and construction description to review and approve before undertaking the works (d) that the Applicant must ensure a code of compliance certificate is current and any remediation work required by the local authority is undertaken as required and (e) the dinghy/kayak ramp must be available to the public at all times with the exception of times when public use of the dinghy/kayak ramp is prevented due to reasons of public safety or emergency.
115. The proposed activity is likely to contribute positively to recreation generally by enabling participation of youth in sailing sports and recreation.
116. I do not consider that the Activity will adversely affect the existing access to the water to recreate. However, it is anticipated that this proposed activity will displace some of the overflow boat trailer parking. In a sense this is an adverse effect on current "recreational

¹⁸ at Figure 13 and 16 in the Application

use”. However, it is arguable whether using an esplanade reserve for car-parking is within the purposes of such a reserve. Therefore, I advise you to give little weight to this effect.

117. I consider it likely that the Activity will enhance passive recreation on the reserve. Contributing factors are the opportunity for recreationally focused clubs to use the Club Building to hold meetings, additional structure i.e. deck, which allows the public to view the Whitianga Harbour from an elevated vantage point and picnic or sit. The presence of the Club Building including attached lean-to structure and displacement of the overflow boat trailer parking and grass growth is likely to both allow and encourage a greater number of persons to pass safely along part of the reserve and use this space for passive recreational activities i.e. picnicking, sitting, viewing the Whitianga Harbour.
118. Previously I advised that an objector wrote to the Minister. In the letter the objector agreed with the Hearing Chair’s conclusion in the Submissions Summary Report that further information should be obtained about current recreational use of the reserve. I conclude that the district has provided adequate advice regarding the current recreational use of the reserve to draw recommendations which would sufficiently mitigate adverse effects of the Activity.

Effects on birds

119. The Hearing Chair recommends in the Submissions Summary report that further information on the usage of the reserve and adjacent mudflat/estuary area by spoonbill, dotterel, kākā and variable oyster catchers is obtained.
120. As noted above, Ben Gordon, Senior Biodiversity Ranger advised that this is not a main roosting site for any wildlife (link to full advice can be found ‘Contributions document register’ in Appendix 1).
121. He advises that he agrees with the Variable Oyster Catcher Survey¹⁹, the area is not of any significance to variable oyster catchers, shorebirds and wader species and they are likely to be unaffected by the Activity.
122. I consider that in viewing the Site Plan (see figure 1 in Appendix 3), the Activity being the structure footprints and service corridor, and the pass and repass to move sailing boats and sailing equipment will use 25% of the reserve and takes place predominately within the middle third of the reserve, across the width of the reserve. The Activity would not encroach on the reserve space currently occupied by the existing trees; therefore, the existing trees will remain and continue to provide habitat for wildlife that may use the reserve.

¹⁹ [REDACTED] “MBBC -Variable Oyster Catcher Survey”, Soundcounts, July 2024

123. A mudflat/estuary area within the Whitianga Harbour adjoins the reserve at the western end. This area will be utilised by Applicant from one to two hours before high tide through to one to two hours after high tide for the training of 4 to 6 children in junior sailing boats as part of the junior sailing programme, and this timeframe is outside the period when shore birds and wader species would typically use the mudflat/estuary area.²⁰
124. Therefore, I consider that the Activity will not have adverse effects on any birds which may use the reserve and adjacent areas.
125. Previously I advised that an objector wrote to the Minister. In the letter the objector agreed with the Hearing Chair's conclusion in the Submissions Summary Report that further information should be obtained about whether the Activity may have adverse effects on birds. I conclude that you have sufficient advice from the district regarding the whether the Activity may adversely impact birds to draw recommendations which would sufficiently mitigate adverse effects of the Activity.

Parking availability and traffic congestion

126. The Hearing Chair recommends in the Submissions Summary report that further information on the usage of the reserve for parking should be obtained.
127. The Applicant has since confirmed that they are not seeking any dedicated carparking or carparking activities within the reserve.
128. I note that vehicle use of the reserve is also discussed in the effects on recreation above and the effects on public enjoyment, natural and historic values below. In these sections, I comment that historically during significant events the existing carpark has been insufficient to cope with the number of vehicles requiring parking and the reserve has been used as overflow parking, and in my opinion typically a person would use closer carparking where available and so the reserve is likely used due to being in closer proximity to the public boat ramp. Furthermore, "presence" – i.e., the use and occupation of the building, and the regular activities on the reserve may contribute to greater use of the public space and would improve informal or passive surveillance and I expect that active use of the reserve may reduce some anti-social behaviour such as the parking in vehicles.
129. Vehicle use of the reserve has adversely affected the green space at the western end of the reserve as can be seen in the aerial photo in the Photo Points Location Plan²¹. While some boat trailer parking on the reserve will be displaced by the Activity, it is arguable

²⁰ [Shore birds - Te Ara Encyclopedia of New Zealand](#)

²¹ <https://docm.doc.govt.nz/cwxv4/wcc/faces/wccdoc?dDocName=DOC-7740197>

whether using the reserve for this purpose is within the purposes of an esplanade reserve.

130. Parking availability and traffic congestion outside the reserve boundary are offsite effects which are clearly important to objectors and submitters, having been raised through submissions. However, these offsite effects are not considered relevant to the Application, not being effects on conservation values. Therefore, parking availability and traffic congestion outside the reserve are not considered to be a relevant consideration under s17 U (1) and (2).
131. Furthermore, as discussed previously, I have been provided Thames Coromandel District Council's further information request, and given the information sought by council, it is anticipated that traffic and parking is being contemplated further by council as part of the consideration of the resource consent application.
132. Previously I advised that an objector wrote to the Minister. In the letter the objector agreed with the Hearing Chair's conclusion in the Submissions Summary Report that further information should be obtained about whether the Club Building will restrict land use and intensify parking on and off the reserve.
133. Regarding restricting land use, I have discussed the impact that parking currently has on the recreation use of the reserve and the positive impacts displacement of parking may contribute to the conservation values. Additionally, regarding land use for parking, it is arguable whether this use of the reserve is within the purposes of an esplanade reserve. Furthermore, parking availability and traffic congestion outside the reserve boundary are not effects on conservation values and are therefore not relevant matters for your consideration. I conclude that I have raised their concerns for you to consider and that I have addressed the Submissions Summary Report recommendation regarding the effects of vehicles on the esplanade reserve.

Effects on public enjoyment, natural and historic values

134. Regarding the dinghy/kayak ramp, the Hearing Chair recommends in the Submissions Summary report that advice is obtained regarding the potential for the dinghy/kayak ramp to improve amenity and access to the Whitianga Harbour.
135. The advantages of the dinghy/kayak ramp to the public's access to the sea and passive recreation are discussed in the effects on recreation section. The public boat ramp carries risks around pedestrian and vehicle interface as well as being slippery underfoot, and the rock armouring wall is restricted to only the more agile members of the public, particularly when handling junior sailing boats and dragging the bottom of the junior sailing boats across the rough substrate of the rocks is damaging to the exterior of the boat. The conservation values at this site are connected to the marine environment, and

the Activity requires the land and water interface to undertake the junior sailing programme within the mudflat/estuary area of the Whitianga Harbour.

136. The dinghy/kayak ramp would provide a fit for purpose structure which enables both the Applicant and the public to launch and retrieve small vessels from the Whitianga Harbour with relative ease. In my opinion, the dinghy/kayak ramp will provide a safe and functional access for both the Applicant and the public and may improve the passive recreational use of the reserve.
137. As mentioned, access to the Whitianga River from the reserve is physically restricted due to the rock armouring wall, however the location of a dinghy/kayak ramp would positively change the physical accessibility and interface with the coastal marine area, and this would contribute to people's appreciation of the reserve. I consider that there is great potential for the dinghy/kayak ramp to improve recreational use of the reserve and access to the Whitianga Harbour.
138. The Club Building including attached lean-to structure will be located on semi-flat ground requiring limited disturbance and no significant earthworks which would materially change the features of the reserve. The location of the Club Building including attached lean-to structure is anticipated to reduce vehicle manoeuvring which should improve pedestrian safety and lead to the recovery of green space. The public may be able to gain greater enjoyment from these values.
139. The location of the power, water, sewage and wastewater services is below the ground and may temporarily disrupt the public's enjoyment of the reserve over the 1 – 2 days of installation, otherwise as underground activity there will be no adverse effect on these values.
140. This site does not currently have significant natural character or amenity value as determined by the discussions with Department staff and through viewing photographic evidence in the Application²². I consider that the re-location of the Club Building including attached lean-to structure, and the associated activities could improve this position.
141. Submitters assert that the reserve currently experiences a level of littering and parked vehicles with some of the occupants remaining inside and, in some cases, overnight, in one submission they comment that the occupants are drinking in vehicles²³.
142. Objectors have said that the Activity will change the character of the esplanade reserve, specifically the Activity will generate high levels of noise or traffic having a cumulative effect over and above what is already occurring off-site, become another drinking place,

²² Figure 11 and 12 in the Application

²³ <https://doccm.doc.govt.nz/cwxv4/wcc/faces/wccdoc?dDocName=DOC-7634913>

provide an opportunity for anti-social behaviour during functions, and these effects will impact on the residential property adjacent to the esplanade reserve.

143. On the matter of littering and parked vehicles with occupants remaining inside, I anticipate that the Activity may positively contribute to the people's use and enjoyment of the reserve through "presence" – i.e., the use and occupation of the building, and the regular activities on the reserve. Presence contributes to people's use and enjoyment of the reserve because the presence of others makes other people feel safer in public spaces and the more people using the public space the greater level of informal or passive surveillance exists. I expect based on the information available about Crime Prevention Through Environmental Design²⁴ that active use of the reserve and informal or passive surveillance may deter offenders and reduce some anti-social behaviour such as the parking in vehicles and graffiti and could possibly reduce littering.
144. However, it is possible that the Club Building may provide additional opportunity for anti-social behaviour such as graffiti and damage to property as the deck is likely to be located in a semi-private positioning on the southern and eastern side of the Club Building. On the other hand, the presence of the Club Building will provide opportunity for the public to sit and view the Whitianga Harbour from the deck space. And as noted, the active use of the reserve is likely to play a key role in mitigating anti-social behaviour. Our view is that on balance the Applicant's use of the reserve will reduce any anti-social behaviour of this sort.
145. The effects of noise on conservation values are a relevant matter to consider as the use of the Club Building for a function or venue hire may generate noise levels which adversely affect the public's enjoyment of the reserve as they recreate.
146. Additionally, noise is an effect covered in the Thames Coromandel District Plan, and I have verification in a letter from the Thames Coromandel District Council (see Context section) that they have requested further information about section 49, rule 11 Noise *"provision of an assessment of the activity in relation to Section 49 Rule 11 Noise not covered by another Rule in Section 49. Given that the building is intended to be used for "private and community functions from time to time" and the proximity of the Residential Zone, specific consideration should be given to the nighttime noise limits and the potential effects from the use of amplified music and the like, (c) clarification as to the nature and scale of the "private and community functions" that are likely to occur. Will these activities be limited as to numbers, frequency and duration?"* Noise levels outside the reserve would be managed by consenting conditions applied by the Thames Coromandel District Council.

²⁴ [Crime Prevention Through Environmental Design | Neighbourhood Support New Zealand](#)

147. I consider although the noise levels outside the reserve would be managed well by the Thames Coromandel District Council District Plan. it is unclear adverse effects of noise within the reserve would be as well managed by the District Council. You may consider imposing conditions which would mitigate the adverse effects of noise on conservation values inside the reserve. This is discussed further below.
148. There is less tolerance of noise by the public when it occurs at night or when natural sounds, traffic sounds and other urban sounds are not present. That said, the public are most likely to use the reserve during the hours of light, given there is no lighting on the reserve. Balmy nights in summer²⁵ where nighttime does not fall until 9pm²⁶ may be frequent given the Whitianga climate. Frequent events i.e. wedding, funerals, social gatherings are another factor which can generate significant noise and may adversely impact other users' enjoyment of the reserve when the likelihood for interaction is higher, i.e. in the weekends. Concerns have been raised about the frequency and adverse effects of the hireage bringing a significant amount of people visiting the area, and associated adverse noise, traffic and parking effects. Although it is not relevant for you to consider the concerns about off-site effects, there could be adverse effects from hireage events on users' recreational enjoyment of the reserve, which is relevant for you to consider.
149. I do not have technical advice which supports an understanding of when the frequency and level of noise from this activity would cause adverse effects. However, on the 9 May 2025, the Thames Coromandel District Council provided information²⁷ pertaining to Requests for Service²⁸ in relation to the Applicant's tenure at 93 Buffalo Beach Road, Whitianga between 2001 and 2025. The results indicate that over approximately 20 years of occupation, only a single noise complaint was recorded—in 2004. This suggests that the Applicant has effectively managed hireage events during this period. This track record may reasonably inform the Department's expectations regarding the Applicant's capability to manage such events on the reserve, including associated noise levels.
150. It seems reasonable to consider that a verified²⁹ complaint would play a key role in establishing a need to address an issue. Therefore, I recommend action is only taken on the prompt of a verified noise complaint from any person(s) using the reserve (emphasis added). Twelve months should be long enough for you to fully understand any adverse effects on reserve users, to deal with any complaints and ascertain the best approach to

²⁵ [Whitianga Climate, Weather By Month, Average Temperature \(New Zealand\) - Weather Spark](#)

²⁶ [Whitianga Summer Weather, Average Temperature \(New Zealand\) - Weather Spark](#)

²⁷ <https://doccm.doc.govt.nz/wcc/faces/wccdoc?dDocName=DOC-10305514>

²⁸ The Requests for Service system captures requests raised by individuals about council property and assets. These requests are captured as requests for service alluding to the requirement for the council staff to deal with the matter

²⁹ Verified meaning confirmed to be true, accurate or authentic through evidence or validation

managing any adverse effects. I recommend leveraging the Thames Coromandel District Council's expertise and established methods for noise assessment, this can be accomplished by collaborating with the Council to develop a robust data collection approach. This would enable you to ascertain what if any adverse effects there might be on people's enjoyment of the reserve, from this aspect of the activity.

151. I suggest imposing a review condition so that at the end of the twelve months you can carry out a review and decide what, if any, further conditions are necessary to manage any adverse effects of hireage on users' enjoyment of the reserve. The hireage activity can continue, along with additional appropriate conditions to manage any adverse effects on reserve users' enjoyment.
152. Given portable sound devices i.e. speakers can contribute to noise pollution, especially in public spaces, I recommend a standard condition is applied to any hireage which prohibits the use of portable or permanent sound devices outside the Club Building.
153. Previously I advised that an objector wrote to the Minister. In the letter the objector raised a concern that the Hearing Chair's conclusions relied on some submitters' concerns being addressed through the resource consent process. I have advised above that the Thames Coromandel District Council District Plan would manage well noise outside the reserve, and I have suggested an approach to manage effects on users inside the reserve.
154. Regarding increased traffic, as previously mentioned this is not considered a relevant matter.
155. Alcohol consumption may contribute to anti-social behaviour outside the Club Building. However, a liquor licence is required in situations applicable to this Application i.e. On-Licence for premises where alcohol is consumed on-site, Club Licence for clubs where alcohol is supplied to members and their guests and a Special Licence for events where alcohol will be sold or supplied³⁰. A liquor license is directly governed by the Sale and Supply of Alcohol Act 2012. This Act sets out the legal framework for the sale, supply, and consumption of alcohol, aiming to minimize alcohol-related harm³¹. Licensing decisions must consider the impact on the local community, including issues like noise, litter, and anti-social behaviour, to maintain the amenity and good order of the area and the Act provides for the monitoring and enforcement of licensing conditions by authorities such as the District Licensing Committees, police, and health officials³². Therefore, I consider the Sale and Supply of Alcohol Act 2012 applies a sufficient level

³⁰ [Alcohol licences | New Zealand Police](#)

³¹ [AL1020 Applying-for-a-licence 5 jm.pdf](#)

³² The Act provides for the monitoring and enforcement of licensing conditions by authorities such as the District Licensing Committees, police, and health officials

of control to mitigate the adverse effects of alcohol consumption on the reserve values, along with your ability to monitor the adverse effects of hireage on reserve users' enjoyment of the reserve and impose further conditions.

156. Regarding the impact on the residential property adjacent to the esplanade reserve, although very important to the objectors, off-site effects, as noted above, are only relevant if they are effects on natural or historic resources, or conservation values more generally (which includes recreation). The effects on the adjacent residential property are not an effect on natural, historic or conservation values in this sense. For that reason, I recommend that you do not consider them in making your decision. I note it is likely that any conditions imposed to reduce adverse effects on users' enjoyment of the reserve e.g. noise etc, are likely to also indirectly benefit any adjacent residential properties.
157. The Hearing Chair states in the Submissions Summary report that geo-technical report, landscaping, occupancy of use and public safety plans, are matters that are relevant to the Minister's decision, and you may consider differing approaches to addressing these issues.
158. Regarding the geo-technical report, I discuss this below.
159. Regarding landscaping, a minimalist approach to landscaping is anticipated i.e. the ground will be flattened and left to re-grass naturally following the construction phase and this is compatible with the existing physical nature of the reserve. Any detailed landscape would detract from the simple features of the reserve. Therefore, we will not be requiring a landscape plan. The Application describes the Applicant undertaking maintenance of the grass, trees and gardens at no cost to the Department³³. I recommend a condition requiring the Applicant to mow the grass area within the Licence footprint, but nothing further.
160. Regarding public safety associated with structures, maintenance of structures and buildings on reserves is important to mitigate risk to public safety, additionally there is benefit from regular maintenance and its contribution to people's use and enjoyment of the reserve. Maintaining a clean and tidy site (including buildings) is a standard obligation of any Lease or Licence contract. There are standard conditions requiring the Applicant comply with all relevant legislation, including e.g. the Health and Safety at Work Act 2015 and the Maritime Transport Act 1994 and Rules. I am also recommending several conditions which further mitigate the potential adverse effects of poor maintenance associated with the building and site.

³³ Application, page 12

161. There is continued pressure on the coastal area to be used for building occupation generally, and Ngati Hei are concerned about how building occupation may adversely affect the marine environment. They see a sharing of resources would reduce this pressure. The Department does not have a policy which discusses sharing of building footprints but the direction of section 17U(4) suggests that the location of a building on public conservation land should be carefully scrutinised.
162. The Activity includes the hiring out the Club Building to other persons to offset operational costs and this provides opportunity for the sharing of the Club Building. The Club advertise the availability of hiring the Clubhouse online, so it is available to any individual or group to hire, as long as they agree to abide by the Club's hireage policy.
163. Regarding public safety plans, while I have discussed in this document the public's safety around the structures, the "presence" of the Activity and its relationship to passive surveillance and contributing to positive outcomes for the reserve, the safety of the Activity in the mudflat/estuary area, I have not directly discussed public safety plans as was likely intended by the submitter. Public safety plans can be useful for protecting a community i.e. risk management, prevention strategies, however in this context where we are managing an activity with a low public risk profile and there are other relevant rules regulating the activity e.g. Health and Safety at Work Act 2015 and the Maritime Transport Act 1994 and Rules. I conclude that we have sufficiently dealt with relevant facets of a public safety plan in the "Analysis of Effects" section, in a manner which is appropriate for the perceived risk and public use applicable to this circumstance.

Asset abandonment

164. An objector has raised the risk that the Department would be left with an abandoned building at some point in time. With any concession involving structures, the Department must consider what happens with the structures at the end of the concession. The standard terms and conditions of a Lease/Licence contract are premised on the assumption that the concessionaire owns the structures and requires the owner to maintain them. The standard terms provide for what happens at the end of the concession term whether this is on expiry of the term, or because the concession is terminated earlier. (See clause 20 of the Lease/Licence contract).
165. Those clauses provide a range of options for what happens to structures at the end of the concession, depending on whether the person has applied for a new concession, and on whether the Department wants the structures to remain or wants them removed. The clauses require the concessionaire to remove the structures if the Department so wishes.

166. Theoretically therefore, the issue of “abandoned” structures is covered off by the terms and conditions. However, in practice the Department is sometimes left with poorly maintained structures that it does not want.
167. We should consider how we mitigate the potential abandonment of the Club Building including attached lean-to structure and dinghy/kayak ramp if the Applicant defaults on the obligations of their contract. As noted, the current Lease/Licence contract templates contain a clause which requires the Concessionaire to remove their structures and facilities and remediate the Land.
168. Firstly, I recommend a condition be added that explicitly state that the building and the ramp are owned by the Applicant. It would read *“For the avoidance of doubt, the building and associated structures on the Land are owned by and are the responsibility of the Concessionaire, and that the cost of remediation is at the Applicant’s expense.”*
169. Secondly, you may consider the imposition of a bond. Having third-party assets on conservation land puts the Department in a vulnerable position and a bond or bank surety is a way of ensuring funding is in place to cover the costs of removing third-party assets and making good the land when a concession expires or is terminated.
170. The Applicant evidently has the financial capacity presently to re-locate the Club Building including attached lean-to structure from the council land. However, its financial capacity going forward is less certain. The not-for-profit nature of the Applicant’s operating model does cast some doubt about the longevity and possibly future management of the Applicant. For instance, reliance on relatively insecure funding arrangements such as fundraising, membership, donations, changes to leadership and governance may result in lack of strategic planning and operational constraints, i.e. increases in overheads, scaling operations effectively to meet demand.
171. Section 17X (e)(i) of the Conservation Act states that we may impose conditions which provide for the *“provision by the Concessionaire of bonds to cover any costs incurred by the Minister in carrying out work that the Concessionaire has failed to carry out and that was required by the concession document to be carried out”*. Additionally, I recommend including a review clause in the Lease/Licence contract which provides for changes to the conditions i.e. inclusion of a bond.
172. The bond can be in either surety or cash. We have been utilising bonds in the mining and Crown Minerals Act context for some time now. However, in terms of a concession considered under the Conservation Act, the Department does not currently have a policy on bonds. Therefore, I do not have direction on critical considerations such as, identifying when a bond is required i.e. at what financial level e.g. cost of removal and

rehabilitation of a site, and how to apply a bond condition which directs the arrangement of the bond fee and implementation.

173. I have made a rough calculation that a demolition and clean-up of the Club Building including attached lean-to structure footprint would be an estimated \$100,000³⁴.
174. Concerning the publicly available dinghy/kayak ramp, as it is a public structure it is more likely that either DOC or the Council may wish to retain it in place and take over maintenance. Therefore, I have not contemplated this cost in the monetary figure above.
175. In summary I have identified that there may be a level of risk associated with the future sustainability of a not-for-profit organisation and the financial capacity to remediate public conservation land where a larger building is concerned. However, as noted I have not found any guidance on the application of a bond in the Conservation Act context. You may want to seek further information about when and how to apply a bond. Otherwise, you may consider the standard clauses mentioned above and the additional special condition recommended are sufficient in this case.

Effects of construction

176. The Activity will require construction activities to facilitate the re-location of the Club Building including attached lean-to structure, deck and ramp, positioning of services and the construction of a dinghy/kayak ramp on the reserve. This is expected to take 6 - 8 weeks in total but each facet may not be completed at the same time
177. It is noted that the Applicant has said that *“All site work will be monitored by RMS Surveyors as designated project managers and will be carried out in accordance with accepted best practice. Compliance will be managed via the Thames Coromandel District Council building consent process and the Waikato Regional Council’s compliance monitoring team”*.³⁵ And that security fencing will be erected³⁶.
178. Relocation of the Club Building including attached lean-to structure, deck and ramp and positioning of services would take place on open grass and bare earth areas. The dinghy/kayak ramp will be installed partly on the reserve across an existing man-made rock armouring wall and partly in the Whitianga Harbour and will require a change to >3 metres of the rock armouring wall to bed the ramp into the ground at an appropriate slant.
179. Construction activities associated with the Activity may adversely impact the coastal marine area through stormwater runoff, erosion, and sedimentation. Erosion and stormwater run-off can cause sediment to end up in the coastal marine area. Sediments

³⁴ [Ultimate Guide To Cost For Demolition Services NZ - Civil Construction Wellington](#)

³⁵ Further Information request, page 4 DOC-7671345

³⁶ Further Information request, page 5 DOC-7671345

can smother aquatic habitats, reducing water quality and harming organisms that live on the bottom. However, these adverse effects can be mitigated through effective management of construction activities and thoughtful infrastructure design.

180. Regarding the adverse effects associated with the construction phase, the area of disturbance should be minimised. The footprint of the construction activity should be minimised to avoid undue adverse effects on the reserve. The Applicant has provided a 'Limit of Disturbance' area³⁷. Which sits within the Lease/Licence and Easement areas defined in both the Lease/Licence and Easement contracts, and in my view, this is a reasonable space which will enable construction to be carried out without undue restriction and additionally remains clear of the existing trees. Also, by confining the construction to this designated area other parts of the reserve remain open to the public. I recommend that the Applicant be granted a temporary lease for a "construction footprint", which will be for the period of construction only and be larger than the final lease footprint. This construction footprint will be materially altered by the construction activities, but only temporarily, because the site will grow back in grass at the completion of the construction activity, except for the footprint of the Club Building including attached lean-to structure, deck and ramp. Because construction activities may cause temporary adverse effects on the environment and encounter public safety concerns, the Applicant needs a temporary lease of a wider area allowing the Applicant to cordon off the area to the public, in order to carry out the construction activities without the public using the construction zone.
181. Therefore, I recommend that the Lease/Licence and Easement contracts set out the activity of a temporary lease for construction activities within the construction foot print area which covers the area as defined in figure 3 in Appendix 5 and that the temporary lease only be permitted for a total of 8 weeks during a 12 month period. Additionally, that you require the erection of fencing sufficient to restrict the public from accessing the construction zone during the construction phase.
182. The Applicant in their feedback has requested the timeframe be extended to 16 weeks on account of the Applicant not having direct control over 3rd parties such as Powerco and Veolia who will install the utility connections and taking into consideration most residential dwellings take 6-12 months to construct. The Applicant notes that it "*will of course be in the their interests to get all works completed as quickly as possible and any fenced-off areas will be kept to a minimum at all times*".
183. I do not disagree with the Applicant's advice, and I think it has merit. I consider an extension to the timeframe would be fair and reasonable, and likely avoids non-

³⁷ Further Information request, page 15 DOC-7671345

compliance or a requirement for a variation process. Therefore, the temporary lease area would only be permitted for a total of 16 weeks during a 12 month period.

184. I recommend that you consider whether we also ensure that even though we have provided a designated construction footprint in the form of a temporary lease, we also require land disturbance to be kept to a minimum. I recommend including a condition in the Lease/Licence and Easement contracts which requires land disturbance to be kept to a minimum.
185. Furthermore, spoil should be kept away from any possible drainage routes. Sites should be identified where stormwater can be diverted away from earthworks. Spoil should be placed on the uphill side of any trench to allow the trench to trap any sediment. The placement of any spoil should be carefully considered to minimise the transport by stormwater. Earthworks should not be undertaken during periods of heavy rain.
186. Additionally filter fabric fences or coir logs should be erected on the down-slope side of stockpiles and disturbed surfaces to filter sediment from surface runoff. Sandbags may be utilised as required to direct water from work sites, provide silt retention and stabilise areas during construction. These need to be well constructed with a second line if risk of collapse is considered possible. Silt traps may be utilised to allow contaminated surface water to settle before entering water ways. Filter fabric baskets or filter socks shall be placed around the end of any diversion culverts.
187. I recommend including conditions in the Lease/Licence and Easement contracts which mitigate the adverse effects of the construction activity on the coastal marine area from stormwater runoff, erosion, and sedimentation during the construction phase.
188. This Activity is regulated by the Waikato Regional Council and will need a resource consent³⁸. The Waikato Regional Council consents for the marine environment are designed to manage and mitigate various effects on the coastal marine area, i.e. water quality, habitat protection, erosion and sedimentation as part of the resource consent requirements the Applicant will need to mitigate the effects on the coastal environment. Therefore, both the Department and the Waikato Regional Council will be regulating the construction activities and applying mitigating conditions sufficient to address the concerns raised.
189. Previously I advised that an objector wrote to the Minister. In the letter the objector raised a concern that the Hearing Chair's conclusions relied on some submitter's concerns being addressed through the resource consent process. In my view we are not wholly reliant on the resource consent process to mitigate the adverse effects of the construction works, we are applying our own mitigating conditions. However, reliance

³⁸ [What activities need a resource consent? | Waikato Regional Council](#)

on the Waikato Regional Council's mitigating conditions is also appropriate in this context where the adverse effects are both occurring on the reserve and off-site i.e. from on the reserve and in the coastal marine area.

190. In summary, I conclude that the natural values at the location of the dinghy/kayak ramp would not be adversely impacted by the location of a dinghy/kayak ramp.
191. Below I discuss heritage values.
192. For the purposes of administering a contract, including seeking compliance, it is important that the Department has an accurate record of the footprint of the structures on the reserve. Regarding the Club Building and services, the Applicant has supplied both a proposed site map in their Application (see figure 1 in Appendix 3) and concept plans (see figure 6 in Appendix 9 and [DOCDM-7740211](#)). However, the final location of the Club Building including attached lean-to structure and deck may be moved to the east or west slightly depending on engineering/foundation design requirements, therefore I recommend including a condition which requires the Applicant to supply as built plans within 6 months of the re-location works. The location of the services is unlikely to change from what is depicted in the plans provided with the Application, as there is little scope for movement from the direct path between the Club Building and the service connections on the Council land. Additionally, the description of activity in the Easement contract would conclude that it is in accordance with the plan included.
193. Furthermore, the design of the dinghy/kayak ramp has not been scoped, and I recommend a condition in the Lease/Licence contract which requires the Applicant to supply a construction plan to be agreed by the Department before work commences. Also, I recommend including a condition which requires the Applicant to supply as built plans within 6 months of the works being completed.
194. A submitter has raised the question of whether the site was suitable for the activity, and that you should require a geotechnical report before granting (see paragraphs 91-97 Submissions Summary Report. As discussed previously, it is noted that the Applicant advises that *“geotechnical investigations of the building footprint will be carried out and a foundation design prepared by a chartered engineer. Initial indications are that a driven pile design will be the most appropriate”* and *“All site work will be monitored by RMS Surveyors as designated project managers and will be carried out in accordance with accepted best practice. Compliance will be managed via the Thames Coromandel District Council building consent process and the Waikato Regional Council's compliance monitoring team”*.
195. Previously I advised that an objector wrote to the Minister. In the letter the objector agreed with the Hearing Chair's conclusion in the Submissions Summary Report that further information be obtained - geotechnical report. I am not recommending that a

geotechnical report is required before a decision is made, because compliance with the Building Act and any notices and requirements of a territorial authority, is an existing clause in the Lease/Licence and Easement contracts. The Building Act and geotechnical assessments are closely related, as geotechnical assessments play a crucial role in ensuring that buildings comply with the requirements of the Building Act. Geotechnical assessments provide critical information about soil and ground conditions, which is essential for designing safe and stable foundations. This ensures compliance with the Building Code, which is part of the Building Act³⁹. In my opinion this offers the necessary confidence that the suitability of the site will be appropriately assessed and it does not present a risk to the Department to approach the timing of this information in this way and arguably it is fairer and simpler to allow the Applicant to undertake this assessment as part of the Building consent requirements.

Heritage values

196. Catheryn Barr, Senior Heritage Advisor advises that the activity is predominantly on reclaimed land, and there is unlikely to be any archaeological issues associated with the work. The only area where there may need to be consideration of archaeology, is the 20 metre section of the reserve at the western end, which may be original ground surface remaining rather than reclaimed land. The only proposed ground disturbance in this area is associated with service trenching.
197. Catheryn Barr recommends that all earthworks associated with the establishment of the Activity at this location are carried out under an Archaeological Accidental Discovery Protocol. Therefore, it is recommended that an Archaeological Accidental Discovery Protocol is included in the Lease/Licence and Easement contracts.
198. The Heritage Advisor also recommends that an existing trench is used to lay the easement services, if possible, at the western end. This is also desirable to avoid adverse effects on the reserve values, as discussed in the Effects of Construction section above. Therefore, I recommend including a condition that the Easement contract require the use of any existing service trench or else the consolidation of the services in a single trench.
199. The Heritage Advisor strongly recommends that the legal requirement to halt all works when a potential archaeological site is discovered is accentuated, to mitigate the potential adverse effects on heritage values given an archaeological assessment has not taken place. The Accidental Discovery Protocol contains the condition “*Work shall cease immediately at that place and within 10–30 m (depending on the size of the feature recognised) around the site.*” And this would satisfy this recommendation.

³⁹ [Geotechnical guidance | Building Performance](#)

Cultural Effects

200. As discussed in the Treaty Partner Relationships section we have been advised by Ngāti Hei that the co-location of waka ama on the reserve would support Ngāti Hei interests.
201. The Applicant has confirmed that it is certainly the intention for the Club Building including attached lean-to structure to be used as a base for waka ama. The Applicant advises that they have been discussing the logistics of co-location with the waka ama club, and the Applicant is looking at modifications to the subfloor and foundation design to accommodate waka and outriggers.
202. Subsequently feedback from the Applicant on a draft version of this document confirms that the Applicant is *“in discussions with Waka Ama as to how the two clubs might work together to co-locate and share facilities. Preliminary investigations into the possibility of waka being stored inside or under the building suggest this is not practical due to the size of the craft. It is more likely that Waka Ama would look to store lifejackets and paddles in the building and make use of ablutions and facilities.”*
203. The waka ama club say in their submission⁴⁰ that *“they are currently situated at Tarapātiki Bridge, Brophy’s Beach, with no club buildings to operate from. The reserve is sheltered and provides the safest area for water sports, and this is crucial for junior participants. The reserve would provide the waka ama club with safe access to the Whitianga River estuary/mud flat area, the dinghy/kayak ramp would facilitate access to the water and the waka ama club would build relations and share resources with the Applicant who are an existing, well-established club.”*
204. However, as noted, at this stage the details of how the waka ama club and the Applicant may wish to locate activities together has not been established. We anticipate that the waka ama club would share the Lease area with the Applicant, in a co-location arrangement. There could be differing versions of this e.g. share the use of the Club Building permanently and/or locate equipment within the attached lean-to structure and other storage areas within the Club Building. We do not know. But co-location or maximising use of building footprints on public conservation land is a desired outcome shared by both the Department and our treaty partner.
205. To enable any future arrangement, we recommend that, the activity granted includes the ability for the Applicant to share space with the waka ama club i.e. storage of equipment, use of building space for office work/functions of the club. The broad description of the activity allowing sailing vessels and sailing equipment provides for waka ama storage and manoeuvring, which would require separate approval from the Minister. “Lease Land activities – ... attached lean-to structure which provides storage for sailing vessels

⁴⁰ <https://doccm.doc.govt.nz/cwxv4/wcc/faces/wccdoc?dDocName=DOC-7634744>

and sailing equipment,” “Licence Land activities - ... the activity of manoeuvring other sailing vessels and sailing equipment from the lean-to structure and the Club Building directly to the roadway.”, which is useful given we do not know if that the waka ama club co-location will occur. Please refer to the “s4/ToW” section for more information on this issue.

Coastal Inundation / Flooding and Coastal Erosion

206. With climate change, more extreme rainfall events are expected to occur, and sea levels continue to rise with warming temperatures causing the melting of ice and thermal expansion of sea water. Future sea level rise, driven by climate change may cause or exacerbate coastal inundation/flooding and drive a long-term trend in coastal erosion. The site and development directly adjoin the coast.
207. Development in high-risk areas without appropriate steps to address natural hazards can pose a risk to lives, businesses and homes. This can leave communities, insurers, councils and government facing costs for repairs and recovery.
208. The management of natural hazards is regulated under the Resource Management Act 1991 (RMA).
209. Under the section 31 (1) of the RMA, District Councils have certain functions for the purpose of giving effect to.
 - “(a) the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district:”
 - “(b) the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of— (i) the avoidance or mitigation of natural hazards”
210. The purpose of the Thames Coromandel District Council District Plan is to assist the council to carry out their functions to achieve the purpose of the RMA. As mentioned, the Thames Coromandel District Council District Plan describes the reserve as being located within the Marine Service Zone. A community facility is a permitted activity in the Marine Service Zone under Section 49, Rule 1, and more specifically examples of activities which comply include ‘...sailing school, yacht club...’.
211. Therefore, the Thames Coromandel District Council has a major role in controlling actual or potential effects of development such as this Activity, for the purpose of avoiding or mitigating natural hazards. And I conclude that the Thames Coromandel District Council has considered their obligations under the RMA and implemented policy to suit, and this policy anticipates the Activity.

212. The New Zealand Coastal Policy Statement (NZCPS)⁴¹ is prepared by the Department under the RMA. The purpose of the NZCPS is to state policies in order to achieve the purpose of the Act in relation to the coastal environment of New Zealand.
213. Although, this Application is being considered under the matters of the Conservation Act not the RMA, the decision-maker needs to consider the effects of coastal inundation/flooding and coastal erosion on the reserve, given the implications of these natural hazards on the suitability of the reserve for the Activity.
214. The NZCPS provides national policy direction for local authorities in their management of the coastal environment. The NZCPS contain several objectives and policies which covers a lot of different elements such as protecting natural features and biodiversity, consideration of effects on the land administered under the Conservation Act, including having regard to the purpose, and ToW considerations. And these have been considered in this document. However, as a new development activity, I consider policy 25 should be explored further in this section – *‘Avoid an increase in risk of social, environmental and economic harm from coastal hazards’*.
215. In considering the NZCPS policy 25, I have firstly reviewed the Department’s internal guidance document ‘Coastal hazards and climate change adaptation planning for recreational, historic and property assets – Guideline’ states “*As a general principle the Department is expected to manage coastal assets in a way consistent with the NZCPS*”⁴². Although this statement is provided in relation to DOC-owned assets I consider there would be a broader application across consideration of third-party assets on public conservation land, given natural hazards are not specific to DOC assets and the adverse effects of natural hazards affect the Department in terms of implications i.e. debris on reserves, difficulty of resourcing clean-ups, demolition of buildings. The Department should make consistent decisions on management of natural hazards and assets on public conservation land in their decision making.
216. Furthermore, the ‘Coastal hazards and climate change adaptation planning for recreational, historic and property assets – Guideline’ also directs the Department to work towards the development of adaptation plans for coastal assets and places. The reserve does not have an adaptation plan. However, given the direction in the guidance document, it is anticipated that the Department will develop an adaptation plan for this reserve in the future. The adaptation plan may require outcomes which necessitate changes to the concession e.g. create drainage⁴³, relocate a structure. Therefore, I

⁴¹ [New Zealand Coastal Policy Statement 2010: Marine & coastal publications](#)

⁴² [Coastal hazards and climate change adaption planning for recreational, historic and property assets – Guideline](#), page 8

⁴³ [Coastal hazards and climate change adaption planning for recreational, historic and property assets – Guideline](#), page 15

recommend a condition which enables a review of conditions should the adaptation plan require actions to mitigate climate change effects.

217. Secondly below I have researched the two key considerations, inundation/flooding and coastal erosion using the research tools offered by various government websites.
218. The NZ Sea Rise: Te Tai Pari O Aotearoa programme⁴⁴ has released location specific sea-level rise projections out to the year 2150 (medium confidence) and year 2300 (low confidence) for every 2 kilometres of the NZ coast and can be viewed through the NZ Sea Rise map online tool⁴⁵.
219. The NZ Sea Rise map tool shows a projection mapped on a separate piece of land which forms part of the greater Esplanade Reserve – Marina Bay 100 metres north-east of the reserve. This projection shows that at year 2150 the sea level rise would be 1 metre, or 1.24 metres with vertical land movement applied. The vertical land movement is predicted to be between -1.26 +/- 2.1 mm per year.
220. The Waikato Regional Council has developed a coastal inundation tool⁴⁶ to show which areas of our region's coastline are susceptible to coastal flooding, both now and in the future with projected sea level rise. The Waikato Regional Council describes inundation/flooding as "coastal flooding, also known as coastal inundation, can be caused by high tides, storm surges and tsunamis. It can also be caused or exacerbated by sea level rise and subsidence"⁴⁷. Subsidence being areas of land sinking or caving in. Under subsidence, the webpage states that "The relative ground movement of New Zealand's coastline is not yet well understood⁴⁸". The Waikato Regional Council's coastal inundation tool predicts that if the sea level rises above 2.4 metres, then the reserve may be subject to flooding in the future.
221. We can determine from combining the predictions of the NZ Sea Rise map tool (1 – 1.2 metre rise) and the Waikato Regional Council's coastal inundation tool (2.4 metres rise required), that coastal inundation/flooding is unlikely to affect the reserve within a 30 year term, that being the proposed term of the concession, subject to the subtleties in the vertical land movement between the projection point land parcel and the reserve with approximately 100 metres between them.
222. In respect of coastal erosion, the Thames Coromandel District Council Plan contains a map delineating the coastal erosion line and the future coastal process line, however

⁴⁴ [NZ SeaRise Programme](#)

⁴⁵ [Maps – NZ SeaRise Programme](#)

⁴⁶ [Coastal Inundation Tool](#)

⁴⁷ [Coastal flooding \(inundation\) | Waikato Regional Council](#)

⁴⁸ [Coastal flooding \(inundation\) | Waikato Regional Council](#)

both lines apply to the open coast. Graeme Silver, Senior National RMA Advisor advises that the reserve is not in a hazard zone.

223. Furthermore, the reserve boundary with the Whitianga Harbour has an engineered rock armouring/revetment. This rock armouring lies at a 45 degree slope with the Whitianga Harbour waterline and is partially submerged. It was installed when the reserve was reclaimed. This rock armouring absorbs the wave or river energy protecting the coastline from erosion. The Senior National RMA Advisor advises that the rock armouring is part of the protection structure for the marina and associated activities so he would be confident that it will be maintained.
224. The Senior National RMA Advisor recommends that as the Club Building was relocated, we consider maintaining the ability for the Club Building to be relocated. The Ministry for the Environment's coastal hazards and climate change guidance⁴⁹ identifies relocatable buildings as suiting two adaptation options, (1) 'Accommodate' "Stay in place and make changes to buildings and infrastructure to improve resilience and work around the increasing risk. For example, raising floor levels or roads, building relocatable houses" and (2) 'Retreat' "Permanent removal or relocation of existing habitation (people and buildings), assets and services from the coast in a planned, staged and managed approach over time". I would recommend that we apply a condition to the concession requiring the Club Building including attached lean-to structure to remain relocatable if the adverse effects of climate change mean the activity can no longer be safely carried out.
225. I have considered the NZCPS and in my opinion granting the Activity would not be inconsistent with the NZCPS.
226. As discussed in the Management Planning advice the Department should monitor the activity and its effects including cumulative effects, on a regular and ongoing basis to assess the effects of the Activity on the Coromandel Peninsula Coastline and the site. To this end, the Lease/Licence contract terms and conditions contains provisions for monitoring and cost recovery of staff time.

Safety of the Applicant's members in the Whitianga Harbour

227. The Hearing Chair recommends in the Submissions Summary report that further information on the safety of participants in the training area (mudflat/estuary area) and recommends a condition requiring a Health and Safety Plan.
228. The Applicant will undertake junior sailing training exercises in the mudflat/estuary area of the Whitianga Harbour located adjacent to the seaward boundary at the western most part of the reserve.

⁴⁹ [Coastal-hazards-and-climate-change-guidance-2024-ME-1805.pdf](#), page 28

229. Objectors in their submissions have said that the currents in the Whitianga Harbour are too strong and dangerous, risking the safety of users, particularly young persons.
230. This activity, and related safety issues arises “offsite” occur mainly on the waters of the harbour, which are not managed by the Department. I don’t consider the activity is sufficiently interrelated to, and proximate to the Applicant’s activities on the reserve to be deemed a relevant “off-site effect” in a general sense. However, under the Health and Safety at Work Act (HSAWA), the Department is a PCBU, because it collects rent from the Applicant. Safety is a relevant consideration on the reserve as safety is inextricably related to recreation, which is a conservation value. It may be that given the activity on land is inextricably linked to the activity on the water, some residual liability may arise under the HSAWA for activities on the water.
231. The Applicant has clarified that that the training area is within the mudflat/estuary area, which will be accessed by the Applicant from their dinghy/kayak ramp. Both the training area and the dinghy/kayak ramp are within the mudflat/estuary (or, in the case of the dinghy/kayak ramp, partly in the mudflat/estuary and partly on dry land) and do not require the Applicant to navigate the open reaches of the Whitianga Harbour. The Applicant has confirmed verbally on the 8 January by phone, that training will take place within two hours of high tide to two hours after high tide.
232. The Applicant has provided tidal speed sampling data from marks within the training area and further out into the Whitianga Harbour within the navigational boat channel over a 74 – 97-minute period *post high tide (emphasis added)*. The data showed that the relative mean tidal flow within the training area (mudflat/estuary area) is 0.4 knots and 0.8 within the main Whitianga Harbour navigational boat channel. The Applicant states that this sampling data shows that there was very little tidal movement within the training area up to one and a half hours *post high tide (emphasis added)*.
233. A submission⁵⁰ from a person involved with PredictWind.com described in their words as a company who, “*supply weather and current information on a commercial basis (to) ... America’s Cup teams, round the world racers and Olympians*”, completed a preliminary hydro-graphic survey of the mudflat/estuary area. They state that their “*initial findings show that the current over the estuary area/mud flat peaks at 0.9 kn based on a 2.0 metre high water. Due to the tidal nature of the location sailing lessons would only happen for approximately 2 hours either side of high tide. The surveyed current speed combined with level of supervision over junior sailors imply this is a suitable venue for junior sailing lessons*”.

⁵⁰ <https://doccm.doc.govt.nz/cwxv4/wcc/faces/wccdoc?dDocName=DOC-7636130>

234. Therefore, based on the information provided by both the Applicant and PredictWind.com, the tidal current within the mudflat/estuary area peaks at 0.9 knots on a 2.0 metre high tide, and reduces to 0.4 knots during the 74 – 97-minute period post high tide. Also, the tidal current in the mudflat/estuary area is half the speed of the main Whitianga River channel between 74 – 97-minute period post high tide.
235. Junior sailors will be supervised by the Applicant and will access the training area directly from the dinghy/kayak ramp which adjoins the mudflat/estuary area, both factors assist in significantly reducing risks associated with inexperience and tidal current.
236. Furthermore, the Applicant has advised that it is affiliated with Yachting New Zealand and operates in accordance with Maritime NZ protocols and certifications.
237. A review of the Maritime NZ website shows that Maritime NZ promotes safe boating on sea including sail boats and requires knowledge of the rules, have the right equipment, and be a responsible skipper.⁵¹”.
238. Considering the safety of those using sailing boats i.e. junior sailors and the instructors, firstly the junior sailing training does not occur within the main Whitianga Harbour navigational boat channel, which as mentioned above has a stronger tidal speed during the two hours either side of high tide than the mudflat/estuary area. Secondly, it seems reasonable to conclude that the Applicant is competent to look after the safety of junior sailors in the water, including adhering to Maritime NZ rules, given it is the Applicant’s core provision, and it is in the Applicant’s interest to provide safety.
239. Following feedback from the Applicant on a draft version of this document that proposed requiring an audited health and safety plan, the Applicant has advised that the Department is at risk of being too prescriptive where they have no expertise i.e. two hours either side of high tide. The Applicant recommends that the Department allow the club to develop its safety plan and manage its operations accordingly.
240. I agree with the Applicant, particularly given health and safety on the water is well regulated in New Zealand. Fundamentally the Department’s role requires the administration of public conservation land and waters and in this case the training area on the water is administered by Maritime NZ rather than the Department .
241. I conclude that we have sufficient information to understand the safety of participants during the junior sailing training activity and there is satisfactory governance by Maritime NZ to reduce and/or mitigate any potential harm.

⁵¹ [Standards - Maritime NZ](#)

242. The activity occurring on the reserve is minimal and would not require a safety plan as per the Department's position⁵² on this matter. Therefore, in conclusion I recommend that the Applicant is not required to provide a safety plan and that no conditions are imposed on the timing of the use of the training area.
243. Previously I advised that an objector wrote to the Minister. In the letter the objector agreed with the Hearing Chair's conclusion in the Submissions Summary Report that further information should be obtained regarding the safety of participants in the training area. I conclude that we have sufficient information to understand the safety of participants.

Adverse effects on the viewshaft from the adjacent residential property

244. One objector submitted that the Club Building would have a significant effect on their outlook in one direction.
245. The effects on the viewshaft from the adjacent residential property, although very important to the objector are off-site effects, and as noted above, offsite effects are only relevant if they are effects on natural or historic resources, or conservation values more generally (which includes recreation). The effects on the objector's viewshaft are not an effect on natural, historic or conservation values in this sense. For that reason, we recommend that you do not consider them in making your decision.

Section 17U(4): Can a structure or facility be reasonably undertaken elsewhere?

Is the activity (where it relates to the building and the dinghy/kayak ramp) consistent with s17U(4) of the Conservation Act? (that is, the activity cannot reasonably be undertaken at another location or in an existing structure?)	Yes
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Discussion:

Use of existing Club Building

246. As discussed in the Context section, the Applicant is proposing to relocate and use their existing Club Building, including attached lean-to structure on the esplanade reserve.

Alternative locations

247. The Applicant has investigated several sites along the coastal margins of Whitianga township and provides the following advice regarding each site examined.

⁵² [Safety plans: Apply for permits](#)

248. *“Sites fronting Buffalo Beach are all problematic due to ongoing erosion, lack of space (Ohuka) and/or potential impact on view shafts. Buffalo Beach sites also have issues with access through dune systems and difficulty of beach launching into waves”.*
249. *“Brophy’s Beach and Ohuka Reserve have good access and less swell (hence they are used as launching sites for regattas), however both are suffering from the effects of coastal erosion and inundation”.*
250. *“Stormont Lane is very restricted in terms of access and parking. There is little or no public land other than unformed road reserve and the road formation itself is partly located on private land. View shafts would be directly impacted. In the absence of a significant reclamation project, Stormont Lane is possibly the least viable location”.*
251. *“Reserve areas fronting the harbour on the northern side of the marina (the Northern Reclamation/Esplanade) were considered by the Club but ruled out. The Northern Reclamation is used intensively for commercial activities, trailer boat parking and general recreation. The area is in high public demand and is all zoned “Recreation Passive”. TCDC have allocated significant resources in their Long-Term Plan for a major redevelopment of this area, including a new commercial wharf for ferry passengers and tour boat operators. A link to the TCDC Esplanade Redevelopment Project webpage is here -> <https://www.tcdc.govt.nz/Our-Community/Council-Projects/Current-Projects/Whitianga-Esplanade-Redevelopment-Project>”.*
252. *“The balance of the land on the northern reclamation is held under leasehold title by the Marina Society and is scheduled to be developed for carparking and marina related activities in the near future”.*
253. *“Sites further up the harbour around Robinson Road were also considered but are also being actively investigated by Council for further boat-ramp upgrades and trailer parking. In addition to zoning and viewshaft issues, the Robinson Road boat ramp / Lover’s Rock areas have significant cultural and heritage issues”.*
254. Regarding Buffalo Beach the Environment Waikato Technical Report: Buffalo Beach Coastal Erosion Management Strategy Part 1 – Strategy⁵³ forms the same opinion. Sites which are prone to erosion are problematic for ongoing occupations i.e. infrastructure damage, and for this reason I conclude that the Activity could not reasonably be undertaken at this location.
255. Below I discuss Brophy’s Beach/Ohuka Reserve.

⁵³ Environment Waikato Technical Report: Buffalo Beach Coastal Erosion Management Strategy Part 1 - Strategy

256. Regarding the Stormont Lane area, google maps shows a location where the roadway runs very near to the coastal boundary, with very little land between. I agree with the Applicant's comments. Furthermore, the Draft Whitianga Coastal Action Plan⁵⁴ developed to provide an annual work plan for the Thames Coromandel District Council describes coastal erosion issues facing Whitianga, and which includes Stormont Lane. Sites which are prone to erosion are problematic for ongoing occupations i.e. infrastructure damage, and for this reason I conclude that the Activity could not reasonably be undertaken at this location.
257. Regarding the Northern Reclamation areas, the Thames Coromandel District Council has several plans for this area. These plans are part of broader efforts to improve marine and waterfront facilities. They include the Whitianga Esplanade Redevelopment⁵⁵ referred to in the Applicant's comments. Except for a small area of public conservation land measuring no wider than 10 metres (which is not large enough to accommodate the Activity), this location is managed by the Thames Coromandel District Council. The redevelopment plans indicates that the location of the Activity at this location does not meet the outcomes anticipated by the land manager. Therefore, I conclude that this Activity could not be reasonably undertaken at this location.
258. The Hearing Chair recommends in the Submissions Summary report that further information is obtained to confirm the unsuitability of Brophy's Beach as an alternative location for this Activity. In 2019 the Thames Coromandel District Council commissioned shoreline management planning to establish a framework for the management and reduction of risks to people, property, the environment and tāonga associated with coastal hazards, with the purpose of developing Coastal Adaptation Pathways. As a result, in 2022 the Thames-Coromandel Coastal Adaptation Pathways iReport was produced and the Thames Coromandel District Council adopted the project outputs and the adaptation pathways⁵⁶. The Coastal Adaptation Pathway⁵⁷ for Ohuka (Brophys Beach) states that there is an existing low profile geo container (sandbag) wall, in a degraded condition, providing some protection to the grassed open space reserve. However, this is an issue because one of the Waikato Regional Council resource consent conditions is that it "*should be covered by sediment and planted*", and because the land is frequently overtopped, the placed material is removed by wave action, and this makes it challenging for the Thames-Coromandel District Council to meet this condition. "*In time, with 0.4m of sea level rise, it is predicted that properties and SH25 will be inundated by 5% AEP (and larger) storm events. This should trigger action to raise*

⁵⁴ [Draft Whitianga Coastal Action Plan](#)

⁵⁵ [Whitianga Esplanade Redevelopment | TCDC](#)

⁵⁶ [Homepage | Thames-Coromandel Coastal Adaptation Pathways iReport](#)

⁵⁷ [Supporting Documents | Thames-Coromandel Coastal Adaptation Pathways iReport](#)

and protect SH25 (where this protection would most likely replace the existing geotextile bag protection), as well as to retreat hazard affected properties and other assets. With 0.6m of sea level rise, properties in the hazard zone will be affected by over 0.5m of flood water. Planning for this change and the restriction of further development should be initiated in the short term.⁵⁸(emphasis added).

259. I conclude that the Brophy's Beach/Ohuka reserve is subject to erosion and flooding and sites which are prone to erosion and flooding are problematic for ongoing occupations i.e. infrastructure damage, and for this reason I conclude that the Activity could not reasonably be undertaken at this location.
260. Previously I advised that an objector wrote to the Minister. In the letter the objector raised a concern that the Applicant in its feedback on the Submissions Summary Report, states that any resource consent for the Taputapuata site would face a higher level of scrutiny due to the zoning/overlays pertaining to that site. When determining whether there are alternative sites for the activity (s 17U(4) Conservation Act 1987) the decision maker need only be satisfied that the activity could *reasonably* be undertaken in another location. I consider that harsher planning requirements should not be a key factor in determining whether the activity could reasonably be undertaken on another site (which would require evidence to be produced by the Applicant rather than just a statement). For the avoidance of doubt, this reasoning applies to all sites and not just the Taputapuata Site.
261. The assessment of alternative sites has not relied on the zoning/overlays of planning requirements, instead I have considered the physical nature of the site for long term occupation and the land managers anticipated management outcomes for these alternative sites.

Suitability of the reserve

262. The Applicant states that *"The esplanade reserve at Dundas Street is by far the most suitable. Had the reclamation existed at the time the clubhouse building was constructed; it is most likely this is where the building would have been located. (The clubhouse was built in the mid 1990's. The reclamation works were completed approximately 5 years later, and the reclamation was given legal effect circa 2012.)"*
263. The Thames Coromandel District Council District Plan describes the reserve as being located within the Marine Service Zone. A community facility is a permitted activity in the Marine Service Zone under Section 49, Rule 1, and more specifically the Thames Coromandel District Council District Plan includes the following examples of activities which comply including *"...sailing school, yacht club..."*.

⁵⁸ [PU97_Ohuka_BrophysBeach_CAP_FINAL.pdf](#) | Powered by Box, Page 3

264. The Applicant is a Whitianga club, offering sailing and boating activities to members of the local community.
265. The Activity includes aspects of the club's junior sailing programme. The mudflat/estuary area provides a suitable and safe training area, clear of the main navigation channel, and the construction and location of dinghy/kayak ramp allows the junior sailors to safely access the mudflat/estuary directly without having to use the public boat ramp or the main navigation channel.
266. Furthermore, the location of the Club Building on the reserve allows the storage of the junior sailing boats close to the dinghy/kayak ramp, and theoretical classes and workshops can be held in the sheltered space of the Club Building with a view of the training area.
267. With capacity for 60 persons, the Club Building also offers a well sized venue to accommodate other Whitianga clubs and organisations who require a venue. The reasonably proximate location to the Whitianga township is anticipated to improve the use of the venue as it is closer to a large population of people. The standard clause in the Lease/Licence contract, clause 31 of Schedule 2 allows co-siting meaning the use of the Concessionaire's structures or facilities by a third-party for an activity, furthermore as discussed, the Activity includes the hiring out the Club Building to other persons to offset operational costs.
268. The reserve is semi-flat and conveniently located near existing infrastructure, including the Whitianga Marina, and is adjacent to the Whitianga Harbour and mudflat/estuary area. Currently, the reserve has low conservation values, but the proposed activity would enhance public use and the amenity features of the reserve. After thoroughly exploring other locations both on and off public conservation land near the Whitianga community, this site has been identified as the most suitable. In my opinion, the reserve offers an ideal interface between land and water, which is essential for the activity.
269. To meet the 17U(4) test you need to be satisfied that the activity (of locating the structures) cannot be reasonably undertaken elsewhere. You may wish to consider whether the Club Building including attached lean-to structure could be located off-site, even though the junior sailing activity and dinghy /kayak ramp could not. On the other hand, you may conclude the Club Building including attached lean-to structure is integral to the other activities and so all the activities must be co-located.
270. I consider that the Applicant has provided sufficient information to support you in determining whether the section 17U (4) test has been met.

271. I consider that the test has been met, and that the activity cannot reasonably be undertaken in another location that is outside conservation land or in another conservation area, where the potential adverse effects would be significantly less.

Section 17U(3): Purpose for which the land is held

Is the activity consistent with s17U(3) of the Conservation Act? (that is, not contrary to the purpose for which the land is held).	Yes
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Title	Section	Considerations
<i>Local purpose (Esplanade Reserve)– Marina Bay⁵⁹</i>	<i>S23 of the Reserves Act 1977 and S229 of the Resource Management Act</i>	<p>The SLM Advisor, Phillippa Rutledge advises that the esplanade reserve is administered by the Department under section 23 of the Reserves Act 1977 for the purposes described in section 229 of the Resource Management Act 1991⁶⁰.</p> <p>Purposes in section 23 Reserves Act, Local Purpose Reserves:⁶¹</p> <p>Section 23 (1) of the Reserves Act states that, “having regard to the specific local purpose for which the reserve has been classified” the following should be managed and protected, where compatible with the primary purpose:</p> <p>“scenic, historic, archaeological, biological, or natural features ... present on the reserve” Section 23 also provides that</p> <p>“nothing in this paragraph shall authorise the doing of anything with respect to any esplanade reserve ...that would impede the right of the public freely to pass and repass over the reserve on foot...”</p> <p>And finally, section 23 provides that</p> <p>“to the extent compatible with the principal or primary purpose of the reserve, its value as a soil,</p>

⁵⁹ Link to status check document

⁶⁰ <https://doccm.doc.govt.nz/cwxv4/wcc/faces/wccdoc?dDocName=DOC-7511553>, page 1

⁶¹ Please go to Appendix 6 for full text of section 23

		<p>water, and forest conservation area shall be maintained.”</p> <p>Section 3⁶² of the Reserves Act describes the general purpose of the Act is to provide for the preservation and management for the benefit and enjoyment of the public areas possessing recreational use or potential, whether active or passive, wildlife, indigenous flora and fauna, environmental and landscape amenity or interest, natural, scenic, historic, cultural, archaeological, biological, geological, scientific, educational, community or other special features or value.</p> <p>And section 3 also provides that as far as possible, the preservation of access for the public to and along the sea coast, its bays and inlets and offshore islands, lakeshores, and riverbanks and fostering and promoting the preservation of the natural character of the coastal environment ... and protection from unnecessary ... development.</p> <p>Purposes in section 229 of the Resource Management Act, Purposes of esplanade reserves and esplanade strips⁶³ (paraphrased)</p> <p>Section 229 prescribes the purpose/purposes of an esplanade reserve. They are: to contribute to the protection of conservation values, in particular maintaining or enhancing: natural functions and quality of adjacent water bodies, water quality and aquatic habitats; protecting natural values associated with the reserve and mitigating natural hazards. Additional purposes of an esplanade are for public benefit. To enable public access and public recreational use to or along any sea, river, or lake provided use is compatible with the compatible with conservation values.</p>
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⁶² Please go to Appendix 6 for full text of section 3

⁶³ Please go to Appendix 6 for full text of section 229 and s 23 Reserves Act

Discussion:

272. A concession shall not be granted if the proposed activity is contrary to the purpose for which the land is held. The purposes are set out in the above table and derive from both the Reserves Act and the Resource Management Act.
273. As summarised above, the “primary” purposes of the reserve are those set out in section 229 of the Resource Management Act, but there are also purposes in the Reserves Act which must be accommodated where they are consistent with the primary purposes (as set out above). Section 229 and section 23 cover quite a number of purposes, with slightly different words. Therefore, in the sections below I have tried to draw the different purposes together into some general categories.

Recreation use, passive and active, features and values

274. The current recreational values of the reserve are passive and primarily associated with the marine area i.e. fishing, viewing the Whitianga Harbour, parking boat trailers. As discussed previously, fishing has more or less been displaced to the nearby pier.
275. The reserve, which is reclaimed land, consists of part of the rock armouring wall, open grass areas with sparse number of trees on the western half and barren, rutted earth with some grass on the eastern half (see the physical elements of the reserve in figure 10 in Appendix 13).
276. Access to the Whitianga Harbour from the reserve is limited to negotiating the rock armouring wall, which forms an interface between the reserve and the Whitianga River. The rock armouring wall lies at a 45-degree slope with the Whitianga Harbour waterline and is partially submerged. As discussed previously, the rock armouring wall restricts access to only the more agile members of the public. The shape, placement, and slope of the rocks require individuals to have good balance and a reasonable stride, as a basic requirement. Additionally, should they be carrying equipment this further reduces the accessibility.
277. The Activity includes the positioning of a dinghy/kayak ramp from the reserve down to the Whitianga Harbour water line. An existing dinghy/kayak ramp located at the northern reclamation, used as an example in the Application, features railings on both sides and a concrete side wall which would be easier to negotiate for a greater level of accessibility levels than the current rock armouring wall. Therefore, you may consider that passive recreation of the reserve increases in the future as a result of this amenity.
278. The parking and manoeuvring of vehicles and boat trailers has occurred predominately in the eastern part of the reserve closest to the public boat ramp. See figure 8 and 9 in

Appendix 12 which shows an aerial map of boat trailers parked on the reserve and photo of the parking which typically occurs in this area. The Club Building including attached lean-to structure would be positioned towards the western part of the reserve, i.e. away from the public ramp. Therefore, some but not all the overflow boat trailer parking may be displaced by the activity. The current vehicle and boat trailer parking activities occur across the full width of the reserve. This prevents the public from freely passing and repassing on foot along the sea. This impediment would occur both when the vehicle is manoeuvring and when the vehicle and/or boat trailer is stationary. It may be considered that the Activity would reduce the current vehicle impediment to public pass and repass, over the reserve on foot. The effects of boat trailer parking are discussed further below.

279. The Club Building would be available for hire to persons to off-set the costs of the building upkeep. The Club Building use would include the deck which is external to the building.
280. I have previously discussed the adverse effects of the Club Building use i.e. anti-social behaviour and noise and have recommended several conditions which would sufficiently mitigate these effects.
281. I anticipate that the presence of the Activity on the reserve, i.e., the use and occupation of the Club Building will contribute to passive recreation because the presence of others makes other people feel safer in public spaces, which implies that more people will use the reserve for passive recreation activities i.e. picnicking, viewing the Whitianga Harbour.
282. The Club Building deck in its elevated position, will provide a viewing area of the Whitianga Harbour and seating area where there is none currently on the reserve, therefore it will provide an amenity for passive recreation.
283. I discuss the location of the structures and services in relation to the public access purpose below. In summary the Activity being the structure footprints and service corridor, and the pass and repass to move sailing boats and sailing equipment will use 25% of the reserve and takes place predominately within the middle third of the reserve across the width of the reserve, and it does not in a practical sense impede use of the reserve.

Wildlife, Indigenous fauna and flora, biological and scientific features and values

284. As mentioned previously the reserve, which is reclaimed land, consists of part of the rock armouring wall, open grass areas with sparse number of trees on the western half and barren, rutted earth with some grass on the eastern half (see the physical elements of the reserve in figure 10 in Appendix 13).

285. Ben Gordon, Senior Biodiversity Ranger advises that the reserve is not a main roosting site for any wildlife and that the area is not of any significance to variable oyster catchers, shorebirds and wader species and they are likely to be unaffected by the Activity.
286. A mudflat/estuary area within the Whitianga Harbour adjoins the reserve on the seaward boundary closest to the western end. This area will be utilised by Applicant from one hour before high tide through to one hour after high tide for the training of 4 to 6 children in junior sailing boats as part of the junior sailing programme, and this timeframe is outside the period when shore birds and wader species would typically use the mudflat/estuary.⁶⁴
287. A handful of Pohutukawa trees and open grass areas are located within the western most third of the reserve, and these features should be preserved and maintained (see figure 10 in Appendix 13). The Activity including the construction footprint will not interfere with these existing features as the Activity would occur outside of this area.
288. The easement services area is partly grassed, being subject to irregular vehicle movements. While I do not know whether the Easement area will self-seed due to its proximity to the access road where there are no bollards to prevent access off the access road onto the reserve self-seeding is possible. The Activity is unlikely to materially change the land at this location.
289. The area between the lean-to structure and the existing Pohutukawa trees to the west is a mixture of barren and grassed area, the barren ground due to vehicular movements. The positioning of the Club Building including lean-to structure near the Pohutukawa trees is likely to reduce the vehicular movements at these locations, because it would be more difficult to manoeuvre a vehicle and boat trailer in this limited space. Reducing vehicular movements should result in grass growth and tree health improving, because vehicles are not compounding the ground and tree roots, additionally the Applicant will be required to mow the grass in this area and keep the area tidy. Therefore, the Activity is likely to improve the biological values of the reserve.
290. The Activity would preserve and maintain the wildlife, indigenous flora features and values.

Soil, water, and forest conservation area

291. As mentioned above the site is reclaimed land, consisting in part of the rock armouring wall, open grass areas with a sparse number of Pohutukawa trees on the western half and barren, rutted exposed soil with some grass on the eastern half (see the physical elements of the reserve in figure 10 in Appendix 13).

⁶⁴ [Shore birds - Te Ara Encyclopedia of New Zealand](#)

292. The Activity should positively contribute to the condition of the soil in the eastern part of the reserve by reducing the vehicular movements which currently disrupt the growth of grass and may cause adverse effects such as fuel contamination, crushing and compacting of the soil.
293. Environmental hazards such as fuel and rubbish can be detrimental to the health of soil, water and the forests. The construction activity will require machinery which have the potential to leak hazardous fluids, however the Lease/Licence and Easement contracts contain conditions which mitigate these effects. Furthermore, removal of rubbish and ongoing clean-up of rubbish are conditions recommended to be included in the Lease/Licence and Easement contracts.
294. Wastewater and stormwater can have adverse effects on water courses. The wastewater will be managed using a self-contained Ecoflow wastewater pumpstation⁶⁵ installed by a licensed drainage contractor. Discharge will be via a small (40mm) diameter pressure pipe connecting to the Council wastewater manhole at the end of Dundas Street. When a system is not installed properly it may malfunction and leak into the environment, Using a licenced drainage contractor would mitigate this adverse effect. The stormwater disposal will be designed and detailed as part of the building consent as advised by the Applicant. The requirement for a building consent provides a high level of confidence that the system will be designed to mitigate adverse effects such as erosion and pollution.
295. The Activity does not include the area where the Pohutukawa trees are located, but the location of Club Building including attached lean-to structure near the Pohutukawa trees, which has been used for boat trailer parking, should reduce ongoing vehicle movements, particularly boat trailer parking in the future due to the reduced turning and backing space between the Club Building including attached lean-to structure and the Pohutukawa trees, therefore reducing possible incidental damage of the trees by vehicles or tree roots being crushed by vehicles.
296. Land disturbance can cause adverse effects on the water quality of the adjacent Whitianga Harbour. The scale and type of Activity is unlikely to cause erosion and soil loss.
297. The Activity will have a negligible adverse effect on the soil, adjoining waters and the sparse number of Pohutukawa trees. And more likely a positive effect on the reserve values.

Environmental and landscape amenity or interest, natural, scenic and scientific features and values

⁶⁵ [Pump Information – Ecoflow Pressure Sewer Specialists](#)

298. This site does not currently have significant natural character or landscape amenity value as determined by the discussions with Department staff and through viewing photographic evidence in the Application⁶⁶). I consider that the Activity could improve this position.
299. As discussed previously, submitters assert that the reserve currently experiences a level of littering and parked vehicles with some of the occupants remaining inside and, in some cases, overnight, in one submission they comment that the occupants are drinking in vehicles⁶⁷.
300. As also discussed earlier, the Activity may positively contribute to the people's use and enjoyment of the reserve through "presence" – i.e., the use and occupation of the building, and the regular activities on the reserve.
301. And as noted, the use of the reserve is likely to play a key role in mitigating anti-social behaviour. My view is that on balance the Applicant's use of the reserve will reduce anti-social behaviour of this sort.
302. The Activity will involve mowing the grass and keeping the area within the Licence area tidy, which will have a positive effect on recreational use and enjoyment of the reserve.
303. The dinghy/kayak ramp will be installed partly on the reserve across an existing man-made rock armouring wall and partly in the Whitianga Harbour and will require a change to >3 metres of the rock armouring wall to bed the dinghy/kayak ramp into the ground at an appropriate slant. As a man-made feature it is not a natural value but may provide habitat for marine life where it is semi-submerged. This activity is regulated by the Waikato Regional Council and will need a resource consent⁶⁸. As part of the resource consent requirements the Applicant will need to mitigate the effects on the coastal environment, therefore any marine life will be adequately considered and protected by the resource consent requirement.

Historic, cultural and archaeological features and values

304. Archaeological values are unknown but *may* be present in the western end of the reserve closest to the Dundas Street entry/exit (*emphasis added*). The Senior Heritage Advisor has recommended actions to mitigate any potential adverse impacts of the Activity, and which would sufficiently protect any archaeological values present. Discussion on the heritage values and effects can be viewed in the Analysis of Effects section.
305. Ngāti Hei did not mention any cultural features existed on this reserve. What they did indicate is the presence of cultural values associated with the coastal and land interface

⁶⁶ Figure 11 and 12 in the Application

⁶⁷ <https://docm.doc.govt.nz/cwxv4/wcc/faces/wccdoc?dDocName=DOC-7634913>

⁶⁸ [What activities need a resource consent? | Waikato Regional Council](#)

generally in Whitianga. As discussed previously the waka ama club would like to co-locate with the Applicant. The Applicant has advised that they are open to this proposition. Also, Ngāti Hei, our Treaty Partner has expressed a desire to see the waka ama club located at this reserve to preserve cultural values. I have recommended that several conditions are included in the Lease/Licence contract to support this opportunity. To this end, the preservation and protection of cultural values may occur. Discussion on the cultural values and effects can be viewed in the Analysis of Effects section.

Geological

306. As mentioned, in 1992 the Minister of Conservation conditionally granted the Whitianga Marina Society Inc. a coastal permit to undertake reclamation works as part of a marina proposal in Whitianga Harbour. The marina was constructed between 1992 and 1995, and the Esplanade Reserve – Marina Bay was formed during this reclamation work.
307. Reclaimed land is essentially new land typically created by depositing large amounts of soil, sand, or rock onto the seabed or riverbed. This material is often sourced from dredging operations or nearby land. Therefore, reclaimed land can have a different geological composition compared to the existing natural land. Despite this the Activity requires minimal earthworks because the land is semi-flat ground. The trenching required for services will be covered over and returned to pre-work condition. And dinghy/kayak ramp will be installed partly on the reserve and partly in the Whitianga Harbour, this will require a change to >3 metres of the rock armouring wall to bed the dinghy/kayak ramp into the ground at an appropriate slant.
308. Therefore, in conclusion, the Activity will not adversely affect the geological values of the reserve.

Educational and community features and values

309. The reserve may play an educational role in supporting the public's understanding about the marine environment. The reserve is situated in a distinct marine environment, and does not possess significant natural values, however the reserve may play a conduit role in connecting the public with the marine space, particularly the mudflat/estuary environment which offers a different natural environment to the many other beachside/setting locations within proximity to the Whitianga township i.e. Simpson's beach, Buffalo's beach, Brophy's beach. The public can view and access the Whitianga Harbour including the mudflat/estuary area from the reserve, and this may offer an educational experience assisting the public to better understand the marine environment⁶⁹. Also, the Activity may preserve and protect the educational value

⁶⁹ [Natural-resources.pdf](#)

through its marine conservation and environmental stewardship workshops⁷⁰ provided to club members. And the benefit of using the Club Building deck space to view the Whitianga Harbour and mudflat/estuary from an elevated vantage point, providing a good clear view of the area.

310. Subsequently following feedback from the Applicant on a draft version of this document, the Applicant has advised that, as the site is within easy walking distance of Mercury Bay Area School, it is anticipated that building may be used by the school from time to time as a base for their marine studies programs.
311. Therefore, the Activity may contribute positively to educational and community features and values.

Natural functions and quality of adjacent water bodies and mitigating natural hazards

312. As mentioned, the interface between the reserve and the Whitianga River consists of rock armouring, which lies at a 45-degree slope with the Whitianga Harbour waterline and is partially submerged. This rock armouring absorbs wave and river energy, protecting the coastline from erosion and mitigating this natural hazard. And this is discussed more fully above.
313. As mentioned above, land disturbance can cause adverse effects on the water quality of the adjacent Whitianga Harbour. The scale and type of Activity is unlikely to cause erosion and soil loss. It may be considered that the natural functions and quality of adjacent water bodies (sea, rivers, and lakes), aquatic habitats or natural values associated with the reserve will be maintained and not adversely affected by the activity.
314. In summary, I have discussed whether the purposes of the Reserves Act and Resource Management Act which relate to esplanade reserves as described above, with the exception of public access are managed and protected in the presence of the Activity. In the next section I discuss the public access purpose separately.

Public access purpose

315. Section 229 of the RMA includes a purpose of an esplanade reserve is to enable public access to or along any sea, river, or lake. Section 23(2)(a) of the Reserves Act provides ‘*where scenic, historic, archaeological, biological, or natural features are present on the reserve, those features shall be managed and protected to the extent compatible with the principal or primary purpose of the reserve ...provided also that nothing in this paragraph shall authorise the doing of anything with respect to any esplanade reserve created ... that would impede the right of the public freely to pass and repass over the reserve on foot*’. Although it is unclear there are scenic, historic,

⁷⁰ Submission - <https://doccm.doc.govt.nz/cwxv4/wcc/faces/wccdoc?dDocName=DOC-7626310>

archaeological, biological, or natural features present on the reserve, it is clear from the reserve purpose that public access is a key factor for you to consider.

It is necessary to consider whether the activity would “impede” the public’s right “freely to pass and repass over the reserve on foot” (s23 Reserves Act) or restrict or prevent public access to or along any sea, river, or lake (s229 RMA). The NZ Oxford dictionary defines “impede” as “delay or prevent (someone or something) by obstructing them, hinder”⁷¹ “Prevent” means to stop (something) from happening or someone from doing something⁷².

the structures and services

316. The reserve is an irregular oblong shape measuring approximately 130 metres in length, approximately 14 metres at the thinnest end, being from the western boundary to approximately 34 metres along the reserve to the east, and 20 metres in width along the remainder of the reserve. The reserve boundary includes parts of the rock armouring wall on the seaward side. On the north-eastern side of the reserve the boundary has no physical delineation with an open barren area of land owned by the Whitianga Marina Society Inc. (see landownership in figure 10 in Appendix 3), meaning activities within the reserve move seamlessly between the reserve and the private land e.g. boat trailers are parked across both land tenures.
317. The dinghy/kayak ramp will be positioned across the seaward boundary of the reserve, occupying an approximately >10m² area, which equates to occupation of 0.4% of the reserve. The dinghy/kayak ramp is not considered to delay or prevent the public from freely passing and repassing over the reserve on foot. Furthermore, the dinghy/kayak ramp is an amenity which will improve the public’s access to the sea.
318. An underground trench to hold the easement services will be positioned along the northern boundary of the reserve, running from midway along the reserve to the Dundas Street entrance. During the construction phase the public will not be able to enter a designated area, this will ensure the safety of the public and allow the public continued use of the remaining reserve during this period. The designated area is also referred to as the ‘Limit of Disturbance’ area⁷³, and can be viewed in figure 3 in Appendix 5. The construction phase is discussed further below. After the temporary construction phase the trench will be covered in and the public will be able to freely pass and repass over the part of the reserve occupied by the underground trench on foot without impediment.

⁷¹ [Search Results for impede - Oxford Reference](#)

⁷² <https://dictionary.cambridge.org/dictionary/english/prevent>

⁷³ Further Information request, page 15 DOC-7671345

319. The total size of the Club Building structure is 336m², made up of the 201m² Club Building, 35m² attached lean-to structure and 100m² area of the deck and ramps, which equates to 14% of the overall reserve area. This is a relatively small fraction of the overall reserve.
320. The Club Building including attached lean-to structure will prevent foot access where it occupies the reserve, as people can't walk over or through a building.
321. The Club Building including attached lean-to structure would be sited within the section of the reserve, which is 20 metres in width, the widest area. As the footprint of these combined structures measures 15 metres long at its longest point, this leaves approximately 5 metres of reserve remaining for the public to pass and repass around the north and seaward sides of the Club Building. I discuss this below.
322. A ramp is used to allow vessels and equipment to be loaded and unloaded from the storage area within the northern part of the Club Building. Without the ramp vessels and equipment must negotiate an approximately 40 centimetres⁷⁴ high ledge. The ramp is positioned between the Club Building and the northern reserve boundary (see figure 1 in Appendix 3), and therefore if the public walked within the reserve the public would be required to step onto the ramp either at the highest point of 0.4 metres next to the Club Building or the lowest point of less than 100 millimetres at the bottom of the ramp. A person would walk across the slanted ramp face. The obstacle to be negotiated could be considered minimal and not dissimilar to uneven ground which is a feature of the reserve.
323. Furthermore, the northern reserve boundary adjoins private land owned by the Whitianga Marina Society Inc. (a supporter of this Activity⁷⁵). And as previously mentioned the private land runs contiguously with the reserve without demarcation (see Figures 9 and 10), therefore the ramp does not in any practical sense impede the public from pass and repass along the reserve. However, that is the situation at present, and it cannot be guaranteed into the future. Therefore, you should consider the issue of "foot passage" as applying to the reserve within its boundaries.
324. The public's access to the sea is not impeded by the ramp. And in my view the ramp does not impede public access along the reserve.
325. The Applicant has supplied both a proposed site map in their Application (see figure 1 in Appendix 3) and concept plans (see figure 6 in Appendix 9 and [DOCDM-7740211](#)) which include a deck area which wraps around the Club Building across the seaward side

⁷⁴ Verbal confirmation from Applicant

⁷⁵ Letter of Support - <https://doccm.doc.govt.nz/cwxv4/wcc/faces/wccdoc?dDocName=DOC-7852775>

of the Club Building to the east side of the Club Building, including stairs and access ramp leading onto the deck from either side

326. The deck would occupy the entire space between the Club Building and the reserve's seaward boundary. The deck would be positioned across both grass area and part of the rock armouring wall as the seaward boundary crosses both. Therefore, if the Club Building is positioned on the reserve, the deck would allow the public to pass and repass along the sea on foot above the rock armouring wall rather than having to negotiate walking across part of this rock armouring wall. It is important to remember that while the deck is attached to the Club Building, the deck will be open to the public, as the deck will be "licenced" to the Applicant, not leased.
327. The reserve is semi-flat, and it at present it is possible for not only the able bodied public but also some of the disability community to use the reserve with assistance. Also, for those pushing prams. It may be more difficult for those people to use the deck as access along the reserve. You may consider the opportunity to improve the access to the deck and broaden the range of persons who may undertake a passive recreational activity on the deck such as those with disabilities and those pushing wheelchairs or prams, by requiring access ramps on both sides of the deck instead of stairs. I recommend including this as a condition in the Lease/Licence contract.
328. Subsequently following feedback from the Applicant on a draft of this document, the Applicant has advised that the building has always been wheelchair accessible in the past.
329. You need to decide whether the fact the deck, in front of the Club Building, is available to the public, means that their access to and along the reserve is not "impeded" or prevented (in combination with the public's ability to walk across the ramp at the back of the building- discussed above). In my opinion the deck does not impede foot access, particularly if it is possible to build access ramps instead of steps onto the deck.
330. Furthermore, the deck would on the balance likely add value to the reserve, providing an amenity which allows persons to undertake passive recreational activities such as viewing the Whitianga Harbour from an elevation, and having a picnic up of the ground.
331. Concerning public access to the sea, the positioning of the Club Building including attached lean-to structure and deck does not change the fact that the rock armouring wall restricts access to only the more agile members of the public. The shape, placement, and slope of the rocks require individuals to have good balance and a reasonable stride. The use of the publicly available dinghy/kayak ramp to allow the public to access the sea has been discussed above.

332. The Applicant is open to negotiating the configuration of the deck⁷⁶. To this effect, the design is still at concept stage and the extent of the licence area is sufficient enough to accommodate the final deck, ramp and accessibility provisions.
333. The construction phase is expected to take 6 – 8 weeks overall. During the construction phase the public will not be able to physically enter a designated area, this is applied to protect the public from harm but also restrict the impact of the construction activity i.e. disturbance to the land and users of the reserve. The designated area is also referred to as the 'Limit of Disturbance' area⁷⁷, and can be viewed in figure 3 in Appendix 5, this area will cover the entire width but not the entire length of the reserve, approximately 606m². This Limit of Disturbance area will be granted a temporary lease so that it can be fenced to prevent public entry. The construction phase covers the location of the Club Building including attached lean-to structure, installation of services and the construction of the dinghy/kayak ramp, and not all items are likely to occur at once. However, for the purposes of this report I have assessed the Limit of Disturbance as a whole, being the maximum impacted area. Because the Limit of Disturbance extends from the northern boundary to the seaward boundary, the public will not be able to pass and repass along the full length of the reserve over a total 6 – 8 week period, however, will be able pass and repass along the reserve and access the sea outside of the Limit of Disturbance. You may consider the public will be temporarily impeded by the Limit of Disturbance, however, is applied purposefully to protect the public from harm, and that given the temporary nature and short term of this part of the Activity, could be given less weighting when considering whether the Activity impedes the public from pass and repass along the sea.

Manoeuvring the junior sailing boats

334. I have considered above whether the Club Building including attached lean-to structure and deck, dinghy/kayak ramp and services easement would be consistent with the public access purpose of the esplanade reserve. I now consider the junior sailing aspect. Junior sailing training occurs one hour either side of high tide in the mudflat /estuary area. This tidal dependency means the training program typically runs two times a week every fortnight. The junior sailing boats called Optimists sit on trolleys (see Figure 8) and are housed in the storage area in the northern part of the Club Building (see Figure 9). On training days, the junior sailing boats are removed from the storage area and rolled across the reserve to the publicly available dinghy/kayak ramp (see figure 1 in Appendix 3). Typically, this involves 4 – 8 children and 6 Optimists, plus a coach and helper. This

⁷⁶ Verbal confirmation from Applicant

⁷⁷ Further Information request, page 15 DOC-7671345

tidal dependency means the training program typically runs two times a week every fortnight.

335. The use of part of the reserve for the junior sailing program is therefore considered minimal and does not impede the right of the public freely to pass and repass over the reserve on foot. The use is considered to be consistent with the recreational purpose of the esplanade reserve.

Moving other sailing vessels and equipment

336. Furthermore, the Applicant will store other sailing vessels and sailing equipment (i.e. not junior sailing boats) in the Club Building including attached lean-to structure. The other sailing vessels and sailing equipment would be used at another location, and the Applicant would need to move these items across the reserve to the roadway from either the lean-to structure or the storage in the northern part of the Club Building on an adhoc basis.
337. Removing sailing vessels and sailing equipment from the northern part of the Club Building down the ramp and across to the roadway would require use of no more than one metre of the reserve i.e. because as mentioned previously private land adjoins the ramp more or less. Removing sailing vessels and sailing equipment from the lean-to structure to the roadway would require the use of less than 10 metres directly between the northern facing entrance on the lean-to structure and the northern boundary of the reserve.
338. The use of part of the reserve for moving other sailing vessels and sailing equipment is therefore considered minimal and does not impede the right of the public freely to pass and repass over the reserve on foot.

Overall summary

339. The Activity is not contrary to the purposes of the reserve. It may be considered that the features and values of the purposes are not adversely affected, and the Activity may enhance the features and values i.e. enhancing passive recreational use of the reserve, sheltering the existing Pohutukawa trees and green space from vehicular movements.
340. Regarding the public access purpose, on balance in my opinion the Activity is not contrary to the public access purpose of the reserve. It will not impede or prevent public foot access to or along the reserve or to or along the sea. The publicly available dinghy/kayak ramp will improve public access to the sea, and the presence of the Club Building, will not impede public access. I also consider that the deck area is likely to invite more passive recreation such as viewing the Whitianga Harbour and picnicking.
341. I consider the Activity is not contrary to the purposes for which the Land is held.

Section 17U(6) and (7): is exclusive possession necessary

Is the activity consistent with s17U(6) and (7) of the Conservation Act? (That is, exclusive possession is necessary)?	Yes
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Discussion:

342. Exclusive possession of the Club Building including attached lean-to structure (excluding the deck and ramp) is necessary to allow the Applicant to secure the Club Building including attached lean-to structure, as exclusive possession both provides for the protection of the physical security of the Activity, which includes irreplaceable artefacts and memorabilia and other costly assets, and to ensure the competent operation to achieve adequate investment and maintenance. For example, the Applicant intends on hiring out the building from time to time for events and use the rental to offset its costs. This would not be possible without exclusive possession.

Section 17W: Relationship between concessions and conservation management strategies and plans

Is the activity consistent with all relevant statutory planning documents?	Yes
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Discussion:

Conservation General Policy

343. The planning advice states the following key statements about the Conservation General Policy.
344. Sections 4: Conservation of Natural Resources, 9: Peoples Benefit and Enjoyment and 11: Activities Requiring Specific Authorisation of the Conservation General Policy are applicable to this application.
345. Policies read together direct that activities must be consistent with the values of the place and avoid, remedy, or mitigate any adverse effects, including cumulative effects. Additionally, activities should maximize positive impacts on natural resources, historical and cultural heritage, and public benefit and enjoyment, including public access. Also, the effects of the activity should be monitored.
346. It is also recommended that regular and ongoing monitoring to assess the effects of the Activity on the Coromandel Peninsula Coastline are undertaken.
347. The activity would not be inconsistent with the Conservation General Policy.

Waikato Conservation Management Strategy (CMS)

348. The planning advice states the following key statements about the CMS.
349. The CMS does not carry statutory weighting due to.
- a) Public notification of the draft CMS on 5 December 2012, 14 days before the site was deposited and vested in the Crown. And no amendment to include the site after the public notification period closed and the CMS became operative.
 - b) Section 17D (7) of the Conservation Act requires the CMS to identify and describe all protected areas covered, and the site is not listed in the CMS.
350. The CMS may provide guidance.
351. The site is located within the Hauraki Coromandel Place⁷⁸ in the CMS. Coastal-marine areas are a significant part of the peninsula, their ecosystems have significant value, and their ecological health is linked strongly to landmass of the Peninsula. Development pressure on coastal ecosystems is identified as a significant issue on the Peninsula.
352. The CMS describes opportunities for recreation provided by external parties that complement the Departments visitor services and recreation already provided.⁷⁹
353. The CMS describes Hauraki Whānui, marae hapū and iwi as having an important role in the management of conservation values of the Peninsula.
354. The site is reclamation land within an urban area next to a Marina. It is a semi-flat area commonly used by the public for parking vehicles and boats. The CMS policy is intended to protect the natural character or values of sites along the coast. This site does not have the high natural character or landscape amenity values (as discussed in the Analysis of Effects section) this policy intended to protect.
355. The Department should monitor the Activity and its effects including cumulative effects, on a regular and ongoing basis to assess the effects of the Activity on the coastline and the site. The standard terms and conditions of the Lease/Licence and Easement contracts have provision for monitoring and cost recovery.
356. The Activity would not be inconsistent with the CMS, and that the balance between protecting natural values, biodiversity and ecosystems and providing for recreational opportunities can be met.

Coromandel Peninsula Land Management Plan (CPLMP)

357. The planning advice states the following key statements about the CPLMP

⁷⁸ Waikato CMS, Maps 8.2 and 8.2.1, pages 15 & 16.

⁷⁹ Waikato CMS, Part two Description, page 66.

358. The CPLMP is an older document (2002 – 2012) and although the CMS states its intention to supersede it, the CPLMP has not been formally revoked so remains operative.
359. The CPLMP does not carry statutory weighting (for this site), because the CPLMP became operative 10 years before the site was vested in Crown, therefore the site wasn't and can't have been considered at the time the CPLMP was drafted and approved.
360. The CPLMP may provide guidance.
361. CPLMP management philosophy is considered consistent with general and specific provisions of the CMS and therefore has not been considered separately.
362. The Activity is not considered to be inconsistent with the CPLMP.

CPLMP, section 3.9 regarding General management for concessions

363. An objector told us that the Application was not consistent with the provisions of the Plan. The objector stated that a concession must be consistent with any relevant conservation management plans and strategies and that the Application does not meet this requirement. The objector provided the below statement indicating the inconsistency of the Activity with the CPLMP.

*"Concessions are necessary to make sure services, business activities and facilities do not conflict with conservation management, **have a significant adverse effect on the environment or lessen the value of visitor enjoyment** (emphasis added)".*
*"The Department would require that any future concession application **add value rather than detract from the current use experience...** (emphasis added)".*
*Highlighting that the requirement is not to detract from the **current** experience. Any experiences derived from the Application would be completely different from what is currently experienced. The Application would lessen visitor enjoyment of the reserve and would not add value to the current user experience. Failing the legislative test of s. 17W (1)."*

364. Furthermore, as previously advised an objector wrote to the Minister. In the letter the objector raised a concern that the Submissions Summary Report "refers to the Coromandel Peninsula Conservation Land Management Plan as being 'aged' and queries whether it can be considered operative." But that "The age of this plan is irrelevant to its applicability to this application and our position is that it must still be considered when making a decision". Below I provide advice from the management planning report regarding application of the CPLMP, and I do not disagree with the conclusion.
365. The management planning advice has stated that the CPLMP does not carry statutory weighting (for this site), because the CPLMP became operative 10 years before the site was vested in Crown, therefore the site wasn't and can't have been considered at the time the CPLMP was drafted and approved.

366. However, the management planning advice says that the CPLMP may provide guidance. With that in mind, I agree with the statement made by the Hearing Chair, Helen Neale in the Submissions Summary Report, that “*the Activity would not have a **significant** adverse effect on the environment or lessen the value of visitor enjoyment*” (emphasis added) given the current primary use of the esplanade reserve, which appears to be for unmanaged parking. Even if the Plan applies, my view is that the Activity would not have a significant adverse effect on the environment and rather has the potential to significantly improve and add value to the current visitor experience ...”. The Analysis of Effects section discusses how the Activity may enhance the recreation and amenity values.

Consistency with Departmental operational policy

367. Departmental operational policy assessed: As mentioned in the Analysis of Effects section, under Climate Change and Flooding, the Department is working with operational teams to develop adaptation plans for coastal assets and places. The reserve has not been subject to consideration; however, the adaptation plan directs that all public conservation land should be included in an adaptation plan in the future. Therefore, it is anticipated that the Department will develop an adaptation plan for this reserve in the future. The adaptation plan may require outcomes which necessitate changes to the concession e.g. create drainage⁸⁰. Therefore, I recommend a condition which enables a review of condition following the development of an adaptation plan.

Other relevant information

Discussion:

368. The Applicant provided comments on the draft version of this document on the 28 March 2025, and these comments have been incorporated into relevant discussions throughout the document. To view the full version, please see [DOC-7892247](#).

Recommended Operating Conditions

Term:

369. A term of 30 years has been applied for. The Building Code compliance states that to comply with the Building Code, the structural stability of a building, with normal maintenance, must continue to satisfy Building Code performance for no less than 50 years⁸¹. Therefore, given the expectation of a 50 year period, a 30 year term would be a suitable term.

⁸⁰ [Coastal hazards and climate change adaption planning for recreational, historic and property assets – Guideline](#), page 15

⁸¹ [Durability | Building Performance](#)

370. A 30-year term for either a Lease, Licence or Easement document is not inconsistent with the legislative provisions of s 17Z regarding term of concession.

371. **Standard and Special Conditions:** Additional conditions are recommended for inclusion in Schedule 3 special conditions, see Appendix 4.

Fees:

372. **Processing Fee:** [REDACTED] plus GST (Note: Still to add Time spent by Solicitor, however fee waiver applied as below).

373. Regardless, the processing fee has been discounted to [REDACTED] plus GST.

374. **Management Fee:** \$400.00 plus GST

This comprises:

- the base rate (managing invoices and follow up): \$150.00 + GST
- rent/fee review (covers the annual portion of the three yearly rent reviews):
\$100.00 + GST
- Rates recovery: \$150.00 + GST

Activity Fee:

375. Lease and Licence: Recommended market rental for the Lease [REDACTED] per annum plus GST and Licence [REDACTED] per annum plus GST, combining to a total of [REDACTED] per annum plus GST.

376. Easement: Recommended total market rental is [REDACTED] per annum +GST

Consisting of the following, Wastewater - [REDACTED] x 10% = [REDACTED] +GST,
Stormwater/sewer - [REDACTED] x 10% = [REDACTED] +GST, Waterpipes - [REDACTED] x 10% =
[REDACTED].00 +GST, Power [REDACTED] x 10% = [REDACTED] +GST

Fee Waiver:

377. The value of the waiver required elevation to Siobhan. See [DOC-10225446](#) for the fee waiver request.

378. *"The processing fee is discounted to [REDACTED] + GST. This ensures the applicant pays for the external costs of the valuation, public notification and hearing costs."*

379. *"The activity fee waiver is discounted by % until the first rental review to [REDACTED] + GST. This fee is also phased in to ensure that the applicant can factor it into their membership costs:*

- Year 1: [REDACTED] + GST*
- Year 2: [REDACTED] + GST*
- Year 3: [REDACTED] + GST"*

380. *“At the first rent review, if the activity remains the same, I recommend a final staged increase to the fee is conducted, to get them to the full fee of [REDACTED] by year six.”*

Appendices

Appendix 1 – Contributions document register ([DOC-7735821](#))

Appendix 2 – Table of activity and locations

Location	Basic Activity (please see Context for details)
<i>Esplanade Reserve – Marina Bay</i>	<ul style="list-style-type: none">a) Relocation and construction of a Club Building including attached lean-to structure, deck (including access to the deck) and ramp (on the northern side of the Club Building) onto the reserve for the purpose of operating sailing and boating club activities from the Club Building, andb) Operate sailing and boating club activities as a community boating club facility (from the Club Building including attached lean-to structure, deck including access ramps and ramp (on the northern side of the Club Building) and within part of the reserve surrounding), andc) Use the Club Building for private and community activities/functions by third parties, andd) Install and maintain power, water, sewage and wastewater services between the Club Building and the existing council infrastructure at the western end of the reserve, ande) Install and maintain a publicly available dinghy/kayak ramp.

Appendix 3 – Map/s

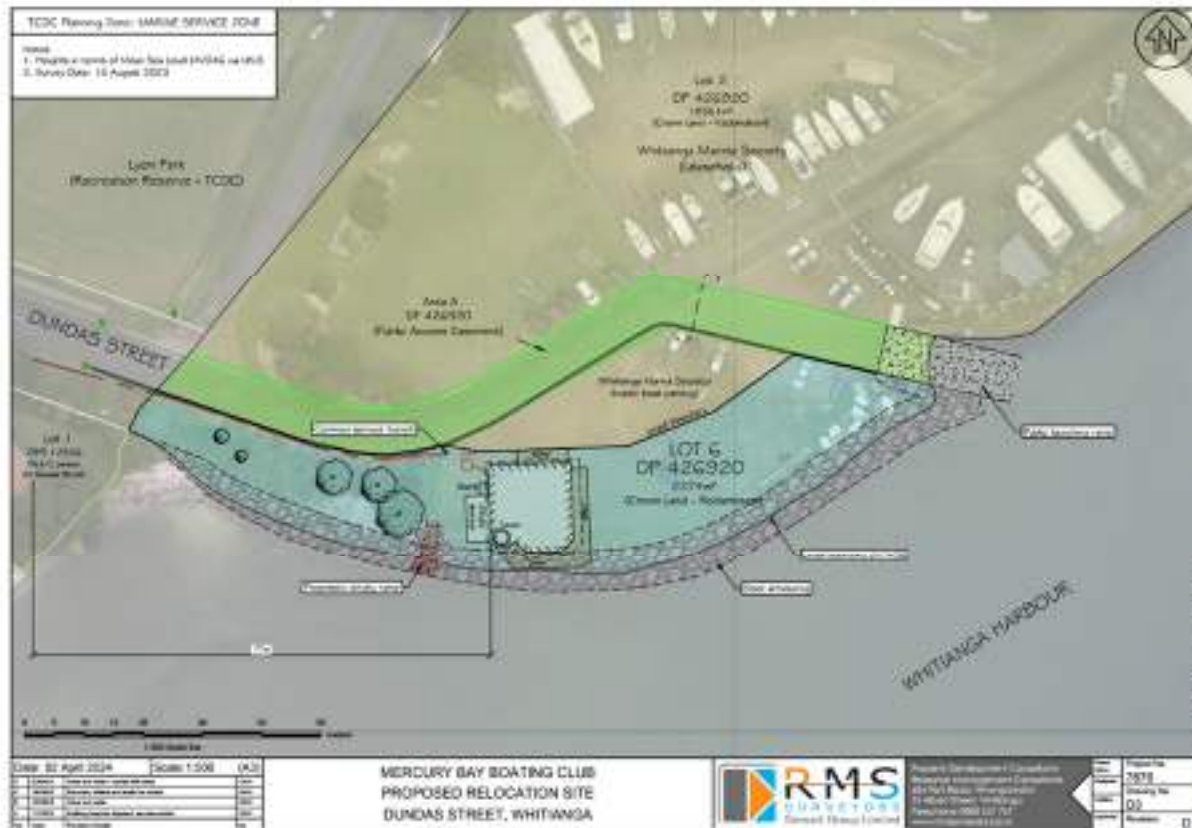


Figure 1: Proposed Site Plan

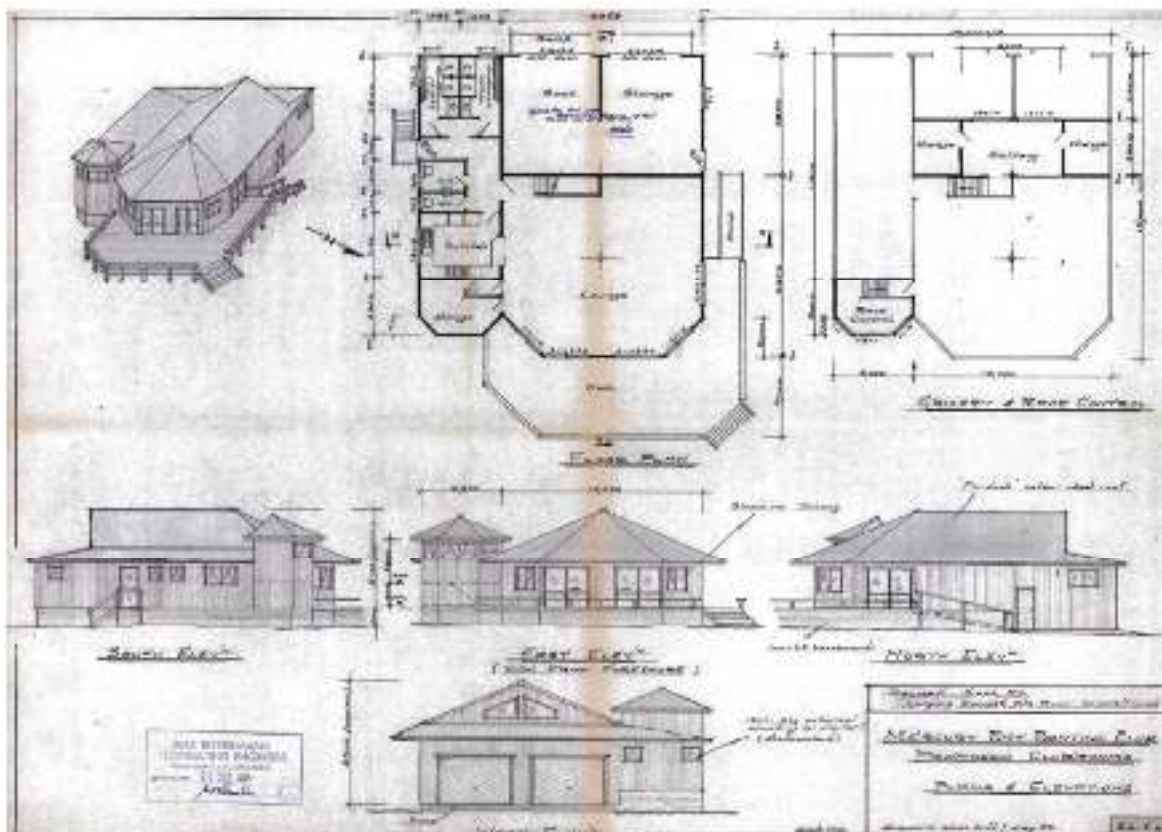


Figure 2: Original drawing (source: resource consent application)

Appendix 4 – Proposed Schedule 3 Special Conditions

Applicant feedback is included in ‘italics’, any resulting changes are marked as ‘removed’ i.e. draft condition is not included and ‘revised condition’ i.e. improved condition recommended.

Lease/Licence

Construction Phase

1. A temporary lease area is provided as indicated in Appendix 5 as the “Limit of Disturbance” to allow the Concessionaire to safely operate during the construction phase.
2. Removed: Use of the temporary lease area is only permitted for a total of eight weeks during a 12-month period, starting on the commencement date.
3. Revised condition: Use of the temporary lease area is only permitted for a total of 16 weeks during a 12-month period, starting on the commencement date.
4. The temporary lease must be fenced sufficiently to restrict unauthorised personal from entering the temporary lease area.
5. The Concessionaire is authorised to reduce the temporary lease area as required and to apply the temporary lease at different times should the easement services located, Club Building, storage garage, deck and ramp relocation and dinghy/kayak ramp be completed at different times.
6. The Concessionaire is authorised to undertake the construction activity within the temporary lease area designated, however must ensure if practicable that the land disturbance is kept to a minimal footprint where possible.
7. *The Applicant in their feedback recommend subtle changes to condition 8 below regarding the deck configuration for the purposes of clarity. I do not disagree, with exception of the inclusion of ‘stairs’ which would not support the accessibility community and have revised as below.*
8. Removed: The Concessionaire must configure the Club Building deck so that the public can pass and repass along the reserve to the south side of the Club Building without needing to walk over a deck, and this design must be approved by the Department prior to construction works.
9. Revised condition: The Concessionaire must configure the Club Building deck by provision of access ramps so that the deck does not obstruct the public from can passing and repassing on foot along the reserve to the south side of the Club Building, and this design must be approved by the Department prior to construction works.
10. The Concessionaire must provide the geotechnical report documents prior to beginning the piling work.
11. *The Applicant in their feedback advised that activities below the Mean High Water Springs mark on the coastline are the responsibility of the Waikato Regional Council to regulate. I do not disagree with this comment the Waikato Regional Council*

website discusses the draft Waikato Regional Council Coastal Plan⁸² and describes the management area as being below the Mean High Water Springs mark to 12 nautical miles. I have adjusted the below condition 12 so that it pertains to the Club Building and adjusted the below condition 15 so that it ensures consent is presented to the Department before these new works are undertaken.

12. ~~Removed: The Concessionaire must provide the Thames Coromandel District Council and Waikato Regional Council consents issued as they become available to the Concessionaire.~~
13. Revised condition: The Concessionaire must provide the consents issued by the Thames Coromandel District Council and Waikato Regional Council which relate to the Club Building as they become available to the Concessionaire.
14. The Concessionaire is required to provide the Grantor with a design plan and construction description regarding the dinghy/kayak ramp to review and approve before commencing works.
15. ~~Removed: The Concessionaire must provide proof of adjoining landowner approval for the construction and ongoing location of the dinghy/kayak ramp before commencing works.~~
16. Revised condition: The Concessionaire must provide the consent(s) issued by the Waikato Regional Council which relate to the occupation of the dinghy/kayak ramp below the Mean High Water Springs mark before commencing works.
17. *The Applicant in their feedback has requested the removal of steam cleaning from the condition 18 below, on the basis that the reserve is open to the public 24/7. Other users of the reserve i.e. TCDC Parks and Reserves using ride-on mowers to cut the grass, the public driving onto the reserve, including with trailers are not required to steam clean their vehicles or equipment. This is a valid point in my opinion, the risk would be no greater than what already exists given the unrestricted public's access and the requirement for all machinery, tools and equipment to be weed-free would likely play a more dominant role in mitigating biosecurity risks.*
18. ~~Removed: The Concessionaire must ensure that all machinery, tools and equipment used in undertaking the Concession Activity is steamed cleaned and weed free prior to being taken onto the Land.~~
19. Revised condition: The Concessionaire take reasonable care to ensure that all machinery, tools and equipment used in undertaking the Concession Activity is in a clean condition and weed free prior to being taken onto the Land.
20. In the event of any hazardous substance spill the Concessionaire must:
 - (a) Take all practicable measures to stop the flow of the substances and prevent further contamination onto the Land or water;
 - (b) Immediately contain, collect and remove the hazardous substances and any contaminated material, and dispose of all such material in an appropriate manner / authorised facility;
 - (c) Notify the Grantor as soon as practicable;
 - (d) Undertake any remedial action to restore any damage to the soil; and

⁸² [Proposed Waikato Regional Coastal Plan | Waikato Regional Council](#)

- (e) Take all measures to prevent any reoccurrence.
- 21. The Concessionaire must take reasonable and proper care not to damage any property of the Grantor and must promptly repair any such damage.
- 22. The Concessionaire must provide as-built plans of the Club Building within 6 months of the completion of the construction phase to be attached to this contract.

Accidental Discovery Protocol

- 23. The Concessionaire must take all reasonable care to avoid any archaeological values on the Land which includes (but is not limited to) historic sites and protected New Zealand objects on the Land. In the event that archaeological sites or other features with heritage values are found during any approved earth disturbance work on the Land:
 - (a) Work shall cease immediately at that place and within 10–30 m (depending on the size of the feature recognised) around the site.
 - (b) A GPS location of the archaeological site shall be recorded along with details of the finding.
 - (c) The Concessionaire shall secure the site and notify the Heritage New Zealand Regional Archaeologist. Further assessment by an archaeologist may be required.
 - (d) The Concessionaire will contact the DOC Whitianga Operations Manager at coromandel@doc.govt.nz within 24 hours of the discovery.
 - (e) If the site is of Māori origin, the Concessionaire shall notify the Heritage New Zealand Regional Archaeologist and the appropriate iwi groups or kaitiaki representative of the discovery and ensure site access to enable appropriate cultural procedures and tikanga to be undertaken, as long as all statutory requirements under the legislation are met (Heritage New Zealand Pouhere Taonga Act, Protected Objects Act).
 - (f) If human remains (kōiwi tangata) are uncovered, the Concessionaire shall advise the Heritage New Zealand Regional Archaeologist, NZ Police and the appropriate iwi groups or kaitiaki representative, and the above process shall apply. Remains are not to be moved until such time as iwi and Heritage New Zealand have responded.
 - (g) Works affecting the archaeological site and any human remains (kōiwi tangata) shall not resume until Heritage New Zealand gives written approval for work to continue. Further assessment by an archaeologist may be required.
 - (h) Where iwi so request, any information recorded as the result of the find such as a description of location and content, is to be provided for their records.
 - (i) Heritage New Zealand will determine if an archaeological authority under the Heritage New Zealand Pouhere Taonga Act 2014 is required for works to continue.

Ongoing use of the Club Building and associated structures

24. For the avoidance of doubt, the Club Building and associated structures on the Land are owned by and are the responsibility of the Concessionaire.
25. Nothing in this Concession shall be deemed to amount to endorsement by the Grantor of the standard of the building and associated structures or services for the purposes of compliance with the Building Act 1991 and/or 2004 or Resource Management Act 1991 or any other statutory requirements relating to the concession activity.
26. The Concessionaire is required to ensure the Club Building always remains relocatable.
27. Further to clause 20.4 of Schedule 2 the removal of structures and other improvements and the remediation of the Land is at the Concessionaire's expense.
28. The Concessionaire shall provide an annual return of booking reservations and income from those reservations to the satisfaction of the Grantor, on the Concession Fee Payment Date each year.
29. The Concessionaire must record all related queries and bookings. These records must be made available to the Grantor within 10 working days of any request.
30. Portable or permanent sound systems are not permitted outside the Club Building.
31. In addition to the express opportunities the Grantor has to review the conditions elsewhere in this Concession, the Grantor may serve notice on a Concessionaire of his/her intention to review the conditions of the concession, at any time or times as required and where necessary for the following purposes:
 - i. to deal with significant adverse effects of the activity that were not reasonably foreseeable at the time the concession was granted; or
 - ii. to deal with the adverse effects of climate change; or
 - iii. to deal with the adverse effects of asset abandonment; or
 - iv. to amend or add to concession conditions to avoid, remedy or mitigate adverse effects of any hireage on users' enjoyment of the reserve.
32. The Concessionaire may undertake maintenance, and repair works to the building and associated structures, however the style and character of the building and associated structures must remain largely unmodified and remain within their current footprint.
33. The building must be weatherproof and in a reasonable state of repair. In particular:
 - (a) The building and its building elements (including walls, floor and roof) must have a low probability of rupturing, becoming unstable or collapsing during the term of the concession.
 - (b) The building and its building elements must not show signs of significant deterioration that would threaten its structural stability during the term of the concession.
 - (c) The building's wall, floor, roof, windows and doors must be in a condition that will ensure adequate resistance to penetration by, and the accumulation of, moisture from the outside during the term of the concession.
 - (d) The building must be in condition that prevents surface water from entering the building during the term of the concession.
 - (e) There must be no impediment (such as jammed doors or windows) to making a quick exit from the building in the case of fire or similar emergency.

- (f) The building must be in a condition that would help prevent or minimise infestations of pests and vermin (such as fleas, bed bugs, rats and mice) inside the building.
 - (g) The building must have adequate passive ventilation to reduce moisture build up inside.
34. The Concessionaire acknowledges that the dinghy/kayak ramp must be available to the public at all times with the exception of times when the public use is prevented due to reasons of public safety or emergency.
 35. The Concessionaire acknowledges that a regular inspection and maintenance schedule must be managed for the publicly available dinghy/kayak ramp.
 36. Further to clause 9.2 of Schedule 2, the Concessionaire must remove and dispose of any waste or rubbish in an approved manner off the Land at a Council approved site. Waste held on the Land prior to its removal must be stored in a manner so as to ensure it does not become a contaminant or is not blown by wind or presents a potential hazard to wildlife.
 37. The Concessionaire must mow the grass area within the Licence footprint.

Climate Change

38. The Grantor may review and amend the conditions of this Concession to reflect climate change-related legislation and government or Departmental policy and those conditions ("Revised Conditions") may, amongst other things, require the Concessionaire to measure, manage and reduce the greenhouse gas emissions of the Concession Activity.
39. Before amending the conditions of this Concession in accordance with clause 3, the Grantor will provide the Concessionaire the draft Revised Conditions. The Concessionaire may provide written comments on those draft Revised Conditions within 60 days. The Grantor must take into account any comments received from the Concessionaire on the Revised Conditions before finalising the Revised Conditions.
40. The Revised Conditions will apply to the Concession Activity 4 months after the Grantor has notified the Concessionaire of the Revised Conditions in accordance with clause 4 or any later date specified in the Revised Conditions.

Myrtle Rust

41. The Concessionaire must know the plants that are affected by myrtle rust and what the rust symptoms look like. This serious fungal disease only affects plants in the myrtle (myrtaceae) family which includes pōhutukawa, mānuka, kānuka, and ramarama. See <https://myrtlerust.org.nz/>.
42. If the Concessionaire encounters suspected symptoms of myrtle rust, the Concessionaire must not touch it and must take the following steps:
 - (a) Call the MPI Exotic Pest and Disease Hotline immediately on 0800 80 99 66
 - (b) Take clear photos, including the whole plant, the whole affected leaf, and a close-up of the spores/affected areas of the plant
 - (c) Don't touch or try to collect samples as this may increase the spread of the disease

- (d) If accidental contact with the affected plant or rust occurs, bag clothing and wash clothes, bags and shoes as soon as possible.

Monitoring and Compliance

- 43. If the Grantor (or the Grantor's employees, agents and contractors) determines that compliance with the conditions of this Concession or the effects of Concession Activity should be monitored, the Concessionaire is to pay either:
 - (a) the full cost of any monitoring programme that is implemented; or
 - (b) if the Grantor determines that the costs should be apportioned among several concessionaires who use the same locations, part of the costs of the monitoring programme.

These costs will include, but are not limited to, the Department of Conservation's standard charge-out rates for staff time and the mileage rates for vehicle use associated with the monitoring programme.

Easement

- 1. The rights and powers implied in easements under Schedule 5 of the Land Transfer Regulations 2018 apply as is relevant to the class of easement provided for in this Concession. Schedule 5 of the Regulations (excluding clauses 13 and 14) is set out in Schedule 5 of this Concession and the clauses are varied as follows:
 - (a) Clause 1 is amended by adding the words "in Schedule 4" after the words "on a plan" in paragraph (a) of the interpretation of "**easement area**"
 - (b) Clause 1 is amended by deleting the words "grantee and" from the interpretation of "**grantee and grantor**"
 - (c) Schedule 5 is amended by adding a new clause 1A: "Any reference to "grantee" in this Schedule is to be read as "Concessionaire" and includes the Concessionaire's agents, employees, contractors, tenants, licensees and invitees."
 - (d) Clause 11(2) is deleted and clause 11(4) is amended by deleting the reference to clause 11(2).
 - (e) Clauses 13 and 14 are deleted.

Construction conditions

- 2. The Concessionaire is required to utilise an existing service trench for installing underground services where available. If this is not feasible, all underground services must be consolidated within a single trench throughout the entire easement.
- 3. The Concessionaire must ensure that all machinery, tools and equipment used in undertaking the Concession Activity is steamed cleaned and weed free prior to being taken onto the Land.
- 4. In the event of any hazardous substance spill the Concessionaire must:
 - (f) Take all practicable measures to stop the flow of the hazardous substance and prevent further contamination onto the Land or into water;

- (g) Immediately contain, collect and remove the hazardous substance and any contaminated material, and dispose of all such material in an appropriate manner / authorised facility;
 - (h) Notify the Grantor as soon as practicable;
 - (i) Undertake any remedial action to restore any damage to the soil; and
 - (j) Take all measures to prevent any reoccurrence.
5. The Concessionaire must take reasonable and proper care not to damage any property of the Grantor and must promptly repair any such damage.
 6. If the Concessionaire opens up the surface of the Easement Land the Concessionaire must immediately upon completion of any works restore the surface of the Easement Land as nearly as possible to its former condition to the satisfaction of the Grantor.
 7. Nothing contained or implied in this Concession requires the Grantor or the Concessionaire to supply services on or under the Easement Land or entitles the Concessionaire to interfere with the services of any other user of the Easement Land.

Accidental Discovery Protocol

8. The Concessionaire must take all reasonable care to avoid any archaeological values on the Land which includes (but is not limited to) historic sites and protected New Zealand objects on the Land. In the event that archaeological sites or other features with heritage values are found during any approved earth disturbance work on the Land:
 - (j) Work shall cease immediately at that place and within 10–30 m (depending on the size of the feature recognised) around the site.
 - (k) A GPS location of the archaeological site shall be recorded along with details of the finding.
 - (l) The Concessionaire shall secure the site and notify the Heritage New Zealand Regional Archaeologist. Further assessment by an archaeologist may be required.
 - (m) The Concessionaire will contact the DOC Whitianga Operations Manager at coromandel@doc.govt.nz within 24 hours of the discovery.
 - (n) If the site is of Māori origin, the Concessionaire shall notify the Heritage New Zealand Regional Archaeologist and the appropriate iwi groups or kaitiaki representative of the discovery and ensure site access to enable appropriate cultural procedures and tikanga to be undertaken, as long as all statutory requirements under the legislation are met (Heritage New Zealand Pouhere Taonga Act, Protected Objects Act).
 - (o) If human remains (kōiwi tangata) are uncovered, the Concessionaire shall advise the Heritage New Zealand Regional Archaeologist, NZ Police and the appropriate iwi groups or kaitiaki representative, and the above process shall apply. Remains are not to be moved until such time as iwi and Heritage New Zealand have responded.
 - (p) Works affecting the archaeological site and any human remains (kōiwi tangata) shall not resume until Heritage New Zealand gives written approval for work to continue. Further assessment by an archaeologist may be required.
 - (q) Where iwi so request, any information recorded as the result of the find such as a description of location and content, is to be provided for their records.

- (r) Heritage New Zealand will determine if an archaeological authority under the Heritage New Zealand Pouhere Taonga Act 2014 is required for works to continue.

Myrtle Rust Protocols

9. The Concessionaire must know the plants that are affected by myrtle rust and what the rust symptoms look like. This serious fungal disease only affects plants in the Myrtle (Myrtaceae) Family which includes pohutukawa, manuka, kanuka, and ramarama. See <https://myrtlerust.org.nz/>.
10. If the Concessionaire encounters suspected symptoms of myrtle rust, the Concessionaire must not touch it and must take the following steps:
- (a) Call the MPI Exotic Pest and Disease Hotline immediately on 0800 80 99 66;
 - (b) Take clear photos, including the whole plant, the whole affected leaf, and a close-up of the spores/affected areas of the plant;
 - (c) Don't touch or try to collect samples as this may increase the spread of the disease;
 - (d) If accidental contact with the affected plant or rust occurs, bag clothing and wash clothes, bags and shoes as soon as possible.

Monitoring and compliance

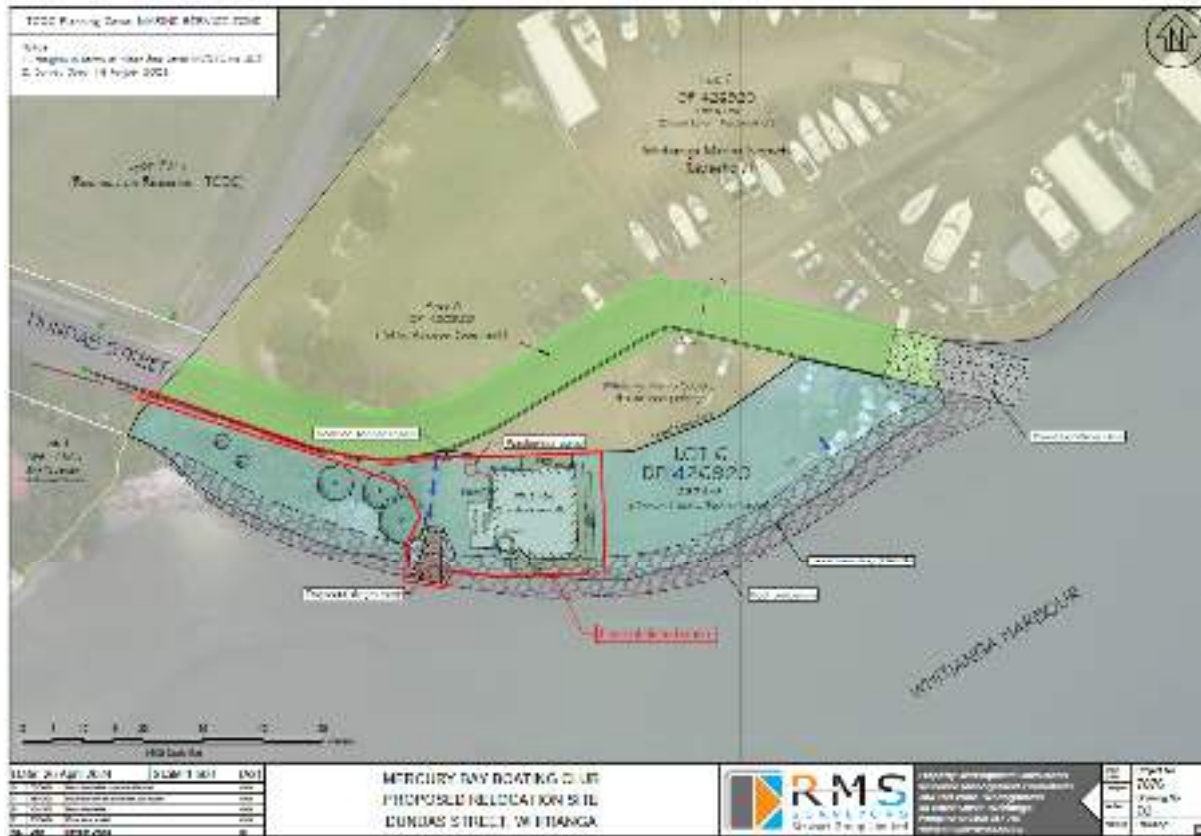
11. If the Grantor determines that compliance with the conditions of this Concession or the effects of Concession Activity should be monitored, the Concessionaire shall meet either:
- a. the full costs of any monitoring programme that is implemented; or,
 - b. if the Grantor determines that the costs should be apportioned among several Concessionaires who use the same location, part of the costs of the monitoring programme.
12. These costs will include the Department's standard charge-out rates for staff time and the mileage rates for vehicle use associated with the monitoring programme.

Termination or Expiry

13. Further to clause 15.3 of Schedule 2 the removal of structures and other improvements and the remediation of the Land is at the Concessionaire's expense.

Appendix 5 – Limit of Disturbance

Figure 3: Shows the limit of disturbance or temporary lease area to be used for the construction phase only.



Appendix 6 – Full text of section 3 and 23 of the Reserves Act and section 229 of the Resource Management Act.

Section 3 General Purpose of the Act

- (1) It is hereby declared that, subject to the control of the Minister, this Act shall be administered in the Department of Conservation for the purpose of—
- (a) providing, for the preservation and management for the benefit and enjoyment of the public, areas of New Zealand possessing—
 - (i) recreational use or potential, whether active or passive; or
 - (ii) wildlife; or
 - (iii) indigenous flora or fauna; or
 - (iv) environmental and landscape amenity or interest; or
 - (v) natural, scenic, historic, cultural, archaeological, biological, geological, scientific, educational, community, or other special features or value:
 - (b) ensuring, as far as possible, the survival of all indigenous species of flora and fauna, both rare and commonplace, in their natural communities and habitats, and the preservation of representative samples of all classes of natural ecosystems and landscape which in the aggregate originally gave New Zealand its own recognisable character:
 - (c) ensuring, as far as possible, the preservation of access for the public to and along the sea coast, its bays and inlets and offshore islands, lakeshores, and riverbanks, and fostering and promoting the preservation of the natural character of the coastal environment and of the margins of lakes and rivers and the protection of them from unnecessary subdivision and development.
- (2) In the exercise of its administration of this Act, the Department may take any action approved or directed from time to time by the Minister so far as it is consistent with this Act or is provided for in any other Act and is not inconsistent with this Act.

Section 23 Local purpose reserves

- (1) It is hereby declared that the appropriate provisions of this Act shall have effect, in relation to reserves classified as local purpose reserves for the purpose of providing and retaining areas for such local purpose or purposes as are specified in any classification of the reserve.
- (2) It is hereby further declared that, having regard to the specific local purpose for which the reserve has been classified, every local purpose reserve shall be so administered and maintained under the appropriate provisions of this Act that—

(a) where scenic, historic, archaeological, biological, or natural features are present on the reserve, those features shall be managed and protected to the extent compatible with the principal or primary purpose of the reserve:

provided that nothing in this paragraph shall authorise the doing of anything with respect to fauna that would contravene any provision of the [Wildlife Act 1953](#) or any regulations or Proclamation or notification under that Act, or the doing of anything with respect to archaeological features in any reserve that would contravene any provision of the [Heritage New Zealand Pouhere Taonga Act 2014](#):

provided also that nothing in this paragraph shall authorise the doing of anything with respect to any esplanade reserve created under [section 167](#) of the Land Act 1948, or section 190(3) or Part 25 of the Municipal Corporations Act 1954 or Part 2 of the Counties Amendment Act 1961 and existing at the commencement of this Act, or any local purpose reserve for esplanade purposes created under the said Part 25 or [Part 2](#) or under Part 20 of the [Local Government Amendment Act 1978](#) or under [Part 10](#) of the Resource Management Act 1991 after the commencement of this Act, that would impede the right of the public freely to pass and repass over the reserve on foot, unless the administering body determines that access should be prohibited or restricted to preserve the stability of the land or the biological values of the reserve:

(b) to the extent compatible with the principal or primary purpose of the reserve, its value as a soil, water, and forest conservation area shall be maintained.

(3) Where a local purpose reserve is vested in a local authority or where the administering body is a local authority, it may from time to time, by public notice, prohibit access to the whole or any specified part of the reserve, and in that case no person shall enter the reserve or, as the case may be, that part, except under the authority of a permit issued by the local authority.

(4) Where a local purpose reserve is not vested in a local authority and a local authority has not been appointed to control and manage it, the Minister may from time to time, by public notice, prohibit access to the whole or any specified part of the reserve, and in that case no person shall enter the reserve or, as the case may be, that part, except under authority of a permit issued by the Minister.

Section 229 Purposes of esplanade reserves and esplanade strips

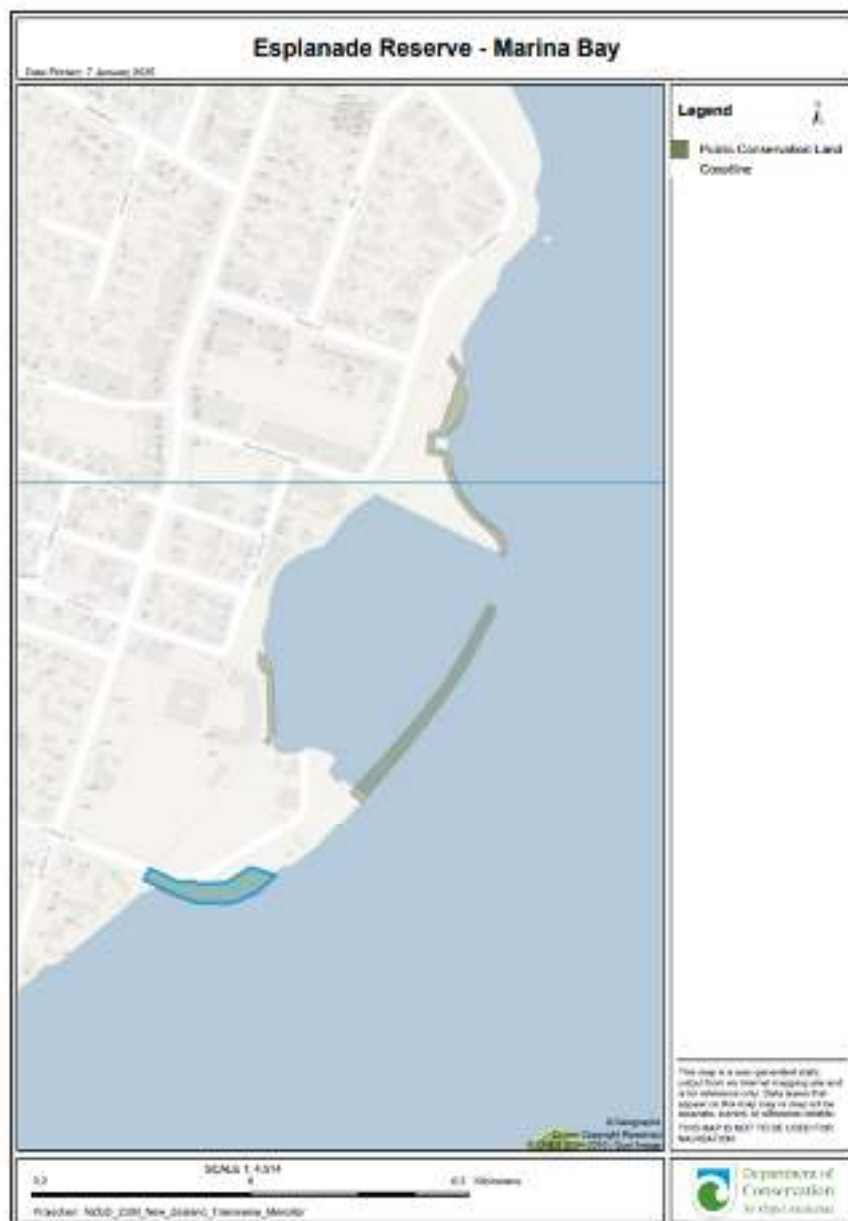
An esplanade reserve or an esplanade strip has 1 or more of the following purposes:

- (a) to contribute to the protection of conservation values by, in particular,—
 - (i) maintaining or enhancing the natural functioning of the adjacent sea, river, or lake; or
 - (ii) maintaining or enhancing water quality; or
 - (iii) maintaining or enhancing aquatic habitats; or

- (iv) protecting the natural values associated with the esplanade reserve or esplanade strip; or
- (v) mitigating natural hazards; or
- (b) to enable public access to or along any sea, river, or lake; or
- (c) to enable public recreational use of the esplanade reserve or esplanade strip and adjacent sea, river, or lake, where the use is compatible with conservation values.

Appendix 7 – Esplanade Reserve – Marina Bay

Figure 4: Shows the land parcel to which this Application applies denoted by the blue outline



Appendix 8 – Junior sailing boats

Figure 5: Shows the Optimists on trolleys in the background



Appendix 9 – Concept drawing of the Club Building

Figure 6: Shows the two doors and the ramp on the north side of the Club Building



Appendix 10 – Aerial mapping showing the absence of demarcation between the reserve and the private land.

Figure 7: Aerial map showing the reserve with green overlay and the remaining barren area which runs contiguously with the reserve



Appendix 11 – Clause 8 of Schedule 2

1. When can the Concession be assigned?

- 8.1 The Concessionaire must not transfer, sub licence, assign, mortgage or otherwise dispose of the Concessionaire's interest under this Concession or any part of it (which includes the Concessionaire entering into a contract or any other arrangement whatsoever whereby the Concession Activity would be carried out by a person (called the assignee) other than the Concessionaire) without the prior written consent of the Grantor.
- 8.2 The Grantor may in the Grantor's discretion decline any application for consent under clause 8.1.
- 8.3 Sections 17P, 17S, 17T, 17U, 17W, 17X, 17ZB and 17ZC of the Conservation Act 1987 apply to applications for consent under this clause unless the Grantor, in the Grantor's discretion, decides otherwise.
- 8.4 If the Grantor gives consent under this clause then the Concessionaire remains liable to observe and perform the terms and conditions of this Concession throughout the Term and is to procure from the Assignee a covenant to be bound by the terms and conditions of this Concession.
- 8.5 The Concessionaire must pay the costs reasonably incurred by the Grantor incidental to any application for consent, whether or not such consent is granted.
- 8.6 If the Concessionaire is not a publicly listed company then any change in the shareholding of the Concessionaire altering the effective control of the Concessionaire is to be deemed to be an assignment and requires the consent of the Grantor.

Appendix 12 – Aerial map and photo showing vehicles and boat trailers parked on the reserve at different points in time.

Figure 8: Aerial map showing the part of the reserve furthest to the east



Figure 9: Photo showing the typical vehicles and boat trailer parking



Appendix 13 – Aerial map and photo showing the physical reserve values



Figure 10: Aerial map showing full extent of Lot 6 Deposited Plan 426920 (DP 426920) (part of Esplanade Reserve – Marina Bay).



Figure 11: Looking from the west towards the east. The reserve starts at the yellow line and runs east.



Figure 12: Looking from north to south. The reserve is located on the seaward side of the road in the foreground.

Appendix 14 – Photo showing the lean-to structure



Figure 13: A photo showing the west side of the Club Building with the attached lean-to structure.