



Department of Conservation
Te Papa Atawhai

To: Stef Bowman, Permissions Regulatory Delivery Manager as Delegate of Minister of Conservation

From: Helen Neale, Hearing Chair as Delegate of Director-General of Conservation

CC: Stef Bowman, Permissions Regulatory Delivery Manager

Date: October 2024

SUBMISSION SUMMARY RECOMMENDATION REPORT

1.0 APPLICATION DETAILS

Applicant: Mercury Bay Boating Club Inc ("the Club")

Permission Number: 112555-OTH

Permission Type: Lease / Licence / Easement

1. Brief "Activity" description: Relocation of the existing Mercury Bay Boating Club Building ("the club building") (including lean-to storage and decks), installation of services and utilities associated with the club building, construction and ongoing maintenance of a public dinghy/kayak ramp, and the undertaking of activities associated with the Club such as junior and senior learn-to-sail programs, hosting of sailing events and regattas. All within part of the Esplanade Reserve – Marina Bay¹ ("the esplanade reserve") on the edge of the Whitianga Township.

2.0 PURPOSE

2. This report is provided pursuant to section 49(2)(d) of the Conservation Act 1987 (CA). It provides the Minister with:
 - A summary of all submissions received
 - Recommendations to the extent to which submissions are allowed and accepted:
 - A recommendation on the application so the Minister can decide whether to proceed.
 - Any recommended actions because of those submissions e.g. special conditions.
 - Any recommendations on further information the Minister may wish to obtain and consider.

¹ Naming convention recorded in the DOCGIS

3. In section 49(2)(a) of the Act it refers to allowing a person or organisation to provide a written submission to the Director-General against or in support of the proposal. In this report where “submissions” is used this term covers submissions from objectors and submitters.
4. Additionally, where “objectors” or “objections” are used these terms mean an expression of feeling of disapproval or opposition, a reason for disagreeing, being opposed to the application.
5. Where “submitters” or “comments” are used these terms mean an expression of neutrality or support and approval, a reason for neutrality, support or approval of the application.
6. In section 49(2)(d) of the Act it refers to the extent to which all submissions should be allowed or accepted. In this report where “allowed” is used, this term means that if I consider a submission to be legally relevant, I recommend that it is “allowed”, subsequently “not be allowed” refers to the opposite. Where “accepted” is used, this term means that if I consider a submission has substantive merit or is correct, I recommend that it is “accepted”, subsequently “not be accepted” refers to the opposite.
7. If I recommend that a submission “not be allowed” then I do not give a recommendation about whether it should be “accepted”.
8. The implications and extent of “allowed” and “accepted” submissions are noted for the Minister to assist the Minister in forming a view ‘before deciding whether or not to proceed with the proposal’, pursuant to section 49(2)(e) of the Conservation Act 1987.
9. I note that any recommendation, as the Director-General’s delegate, that I make to the Minister in no way fetters the Minister’s discretion in considering all the relevant issues of this application.

3.0 BACKGROUND (from the Application documents)

10. Proposed Activity.

- The club building has a total floor area, including the deck of approximately 336m² (the club building is approximately 201m², the deck areas are 100m² and the covered lean-to storage for sailing dinghies is 35m²), and
- the Club will undertake activities associated with the Boating Club on the surrounding grass area and within the mud flat area outside the esplanade reserve, such as junior and senior learn-to-sail programs, hosting of sailing events and regattas.
- The Club proposes constructing and maintaining a public dinghy/kayak ramp to facilitate access to the mud flat area, but which would also be available to the public to access the Whitianga Harbour.

- The installation of the services (power, water) will occur within a common trench and is indicated on the proposed site plan (Appendix 2). The common trench takes the most direct route from the club building to the esplanade reserve/Council road edge as possible, and then travels within the esplanade reserve along the boundary in a westerly direction.

11. Building Use

The Club is 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 club related operation costs. Supplementary information (dated 31 May 2024) describes the club building as rated to hold 60 persons and comprises of a main function room, observation tower, kitchen, toilet, showers and a storage garage for dinghies and associated sail-training equipment. The club building has also been previously 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 Club derives a modest income from hire charges which are put towards building upkeep (maintenance and insurance) and general running costs. A considerable amount of time is spent administering the bookings, including meeting with hirers, opening-up, inspections and cleaning. This is carried out on a voluntary basis, usually by a committee member.

12. The Club has no restaurant, bar, or liquor licence.

13. Location of proposed activity

The Club is seeking a long-term concession over part of the Esplanade Reserve. This reserve formed of reclaimed land administered by the Department under section 23 of the Reserves Act 1977 and section 229 of the Resource Management Act 1991².

14. The esplanade reserve is situated within a marine setting and nearby to a sporting precinct. The Whitianga Harbour runs along the southside, the Whitianga Marina, carparking and public boat ramp are to the north east. Lyon Park a reserve administered by the District Council for sports and recreational purposes, and which is home to the Mercury Bay Rugby Club is situated across the road to the north from the esplanade reserve. To access the location by vehicle you must travel along Dundas Street. See Figure 1 which shows the esplanade reserve amongst the marine setting.

² Land Status Check ([DOC-7511553](#))



Figure 1 Esplanade Reserve – Marina Bay (also known as the Southern Reclamation) denoted by the red line (middle bottom)

15. Other Matters

The Club has been functioning for ~25 years on the Buffalo beach reserve administered by the District Council, however following emergency relocation works the club building was uplifted and moved back from its original location in January 2023, to safeguard it from coastal erosion. It was anticipated that the club building would be moved further back on the reserve, however a combination of the vulnerability of the reserve to coastal erosion effects and substantial cultural and heritage considerations have signalled the end of this operation at Buffalo Beach reserve.

16. The esplanade reserve is zoned Marine Service Zone (“the Zone”) and permitted activities include Commercial/Recreational Facility, Community Facility and an example included is “sailing school, yacht club”. However, a land-use consent will be required as the club building will not meet the 5m side-yard standards for the Zone. The resource consent has been lodged and is on hold pending landowner permission. Further information received states that there will also be planning-related provisions under section 39 which discusses Transport regarding Rule 6 vehicle parking, loading and manoeuvring. And that the public dinghy/kayak ramp is a permitted activity in the Zone.
17. A building consent will be lodged with the District Council. Geotechnical investigations will be carried out and a foundation design prepared. Initial indications are that a pile driven design will be most appropriate.
18. Consent from the Waikato Regional Council will be sought for the dinghy/kayak ramp.

19. **Public notification**

The application was received on the 24th of October 2023 and publicly notified from the 10th of April 2024 in the following newspapers, The Valley Profile and The Informer (Whitianga), and on the [DOC website](#), with the notification period closing on the 9th of May 2024 at 5pm.

20. **Submissions**

122 submissions were received, and 18 submitters asked to be heard. All records have been entered into the Register [DOC-7636800](#).

4.0 DETAILS OF HEARING

Date/Location:

Wednesday 24th July 2024 from 9.00am – 1.25pm when the hearing was closed. The hearing was located within a meeting room at the Aotearoa Lodge, Whitianga

Chair:

Helen Neale, Conservation Dogs Programme Manager, Tauranga

Panel members:

Ainsley Harris, Ranger, Whitianga

Amy Blair, Supervisor, Whitianga

Objectors and Submitters that were heard:

Name of Individual	Address
[REDACTED] (verbal submission presented by [REDACTED] Holland Beckett.	[REDACTED]
[REDACTED]	

Club's representatives:

[REDACTED]	RMS Surveyors
[REDACTED]	
[REDACTED]	Harkness Henry Specialist Lawyers

Media presence: [REDACTED] The Coromandel Informer (present from 12.20 pm)

21. **Closed Hearing**

The hearing was closed to the general public, but the media were invited to attend.

22. The hearing was designed to support a more inclusive speaking opportunity for all those who wanted to be heard, by creating a less formal and more intimate setting to encourage all submitters and objectors to speak comfortably. The Club was present during the full hearing allowing the Club the opportunity to hear each objector and submitter and to respond at the end of the hearing. Each objector and submitter only attended the hearing during their submission.

23. **Site Visit**

Several site visits were undertaken. The day prior to the hearing I visited the esplanade reserve, i.e. the site of the application, to get a general sense of the site, and where it was in relation to town, etc. (The panel members did not attend this visit, as they are local people who already have local knowledge). The general nature of the proposed site for the club building was evident including its proximity to a marine precinct and the location of several community sporting facilities nearby. On the afternoon of the hearing day I visited [REDACTED], the residence of [REDACTED] at [REDACTED] invitation in relation to effects on [REDACTED] property resulting from the proposed activity, including, from the deck, the view shaft that would be impacted by the proposed relocation of the club building. I also visited the esplanade reserve again shortly after. I noted the proximity of [REDACTED] residence to the proposed site of the club building. I also viewed the trees and estuary area described in [REDACTED] submission as supporting wildlife activity. At the time of this visit, being early afternoon on a week day, there was limited vehicle activity evident in the area.

5.0 SUMMARY OF KEY POINTS

24. 122 written submissions were received as part of the public notification phase. These were made up of 20 submissions from objectors, 1, 1 comment and 101 submissions from submitters. A summary of each submission received is linked to this report in Appendix 1.
25. This report categorises the submissions into themes and subthemes (see section 6 below). Quotes from submissions have been included as examples under each sub-theme. The quotes are representative examples and not exhaustive of the submissions available. Where part of a submission has been quoted this has been italicised and placed in inverted comma.

[REDACTED]

26. Appendix 1 also contains an Issue Point spreadsheet (Tab 2) which depicts the themes and subthemes applicable to each submission received and the numbering system (column A Tab 1 & 2) used to identify each submission.
27. The submissions have been 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

6.0 RECOMMENDATIONS AS TO WHETHER SUBMISSIONS SHOULD BE ALLOWED AND ACCEPTED

Planning

Consistency with the Coromandel Peninsula Conservation Land Management Plan (the Plan)

28. 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.

29. *"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)."*

Hearing Chair recommendation

30. The Minister must have regard to whether the Application is in accordance with relevant conservation management documents, and I consider that this document is a matter that is relevant to the Minister's decision under S17W. Accordingly, I recommend that the Minister **allow** the submission.
31. The Plan is an aged document, and I do not have advice as to its current status, i.e. whether it remains operative or not. I recommend this matter be addressed in the decision report.
32. Although it is unclear if this document can be considered to still be operative, even if it is I am not convinced that the objection is correct. My view is 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 as well as enhance the visual aesthetics of the esplanade reserve through planting and landscaping. Therefore, I recommend to the Minister that (even if the Plan is operative), this submission **not be accepted**.

Nature and Effects of Activity

Section 17 U (4) suitable alternative test

33. Submitters noted that the current location of the club building is subject to coastal erosion effects and substantial cultural and heritage considerations, and the continued occupation of Buffalo beach reserve is not viable. They consider that the location of the club building on the esplanade reserve is supported by the esplanade reserve being located within the Thames Coromandel District Plan's marine service zone and a sailing school and yacht club is a permitted activity.

For example:

34. *"Moving the Club building helps facilitate relocation off wāhi tapu site, acknowledging the cultural significance of Taputapuātea and the ecological qualities of the surrounding foreshore area. Location compliments the adjacent marina activities and will help consolidate public amenities in the central township area. The area is zone for this activity in the District Plan. No alternative locations with the direct access to the sea or harbour. Building and dinghy ramp will support a wide range of water-based sports and recreational activities not currently provided for in the township."*

35. *"Lot 6 DP 426920 is a vacant piece of reserve land directly adjacent to the harbour. It is ideally suited for the boating club and its associated activities and can provide direct access for launching and retrieving the sailing boats. Furthermore, the Council's District Plan provides for such activities as a permitted activity, Refer to Section 49. 4.1.1a – Examples of activities that comply with Rule 1.1 a) include: boat sales, dive bottle filling, hire of marine vehicles, sale of fishing gear, seafood outlet, sailing school, yacht club, coast guard."*

36. *"The existing site in Buffulo Beach is vulnerable to coastal erosion. on coastal restoration projects (dune fencing and Waikato Regional Council coastal species trial which bounds the existing clubroom site). The proposed Dundas Steet site is designated as appropriate for the intended activity under the TCDC District Plan. The proposed clubroom sites and associated launching ramp are in a sheltered appropriate location on the southern margin of the Whitianga Marina reclamation. It is clear of hazards at the existing Dundas Street public boat ramp, the string currents further eastward towards the edge of the channel and associated mooring hazards for small sailing craft."*

37. Conversely, objectors considered that Brophy's Beach would be an alternative location.

For example:

38. *"An alternative could be at the end of Stormont Lane, at Brophy's Beach, Whitianga."*

39. *"Check out the eastern areas such as Takapuna as to where their Boating Club is situated ... the northern end of Brophy's Beach is another alternative."*

Hearing Chair recommendation

40. The Minister must have regard to whether the Activity could be undertaken in another location that is outside the conservation area to which the Application relates or in another conservation area, where the potential adverse effects would be significantly less, or the Activity could reasonably use an existing structure or facility. And so, I consider that this matter is relevant to the Minister's decision under S17U(4). Accordingly, I recommend that the Minister **allow** the submissions.

41. In their Application the Club indicated that they had considered alternative sites along Buffalo Beach, including the present site at Taputapuataea, Brophy's Beach, Ohuka Reserve and the main

Buffalo Beach reserve however they were ruled out as being either impractical (for launching boats) or subject to heritage, planning and/or viewshaft issues.

42. I am unable to determine whether the Brophy's Beach location (which is not on a conservation area) may be a suitable location. Additional evidence is required. Accordingly, I recommend that the Minister **accept** that the Brophy's Beach site **may** have merit, but I am unable to conclude whether this location provides a satisfactory location without further information. I recommend that the Minister obtains further information on this before making a decision.

Effects on recreational enjoyment by the public

43. Submitters viewed the Activity as fostering recreation, enabling participation of youth in recreation, supporting the development and growth of sailing sports in New Zealand and improving opportunity for smaller Clubs like waka ama to expand through the advantage of co-location.

For example:

44. *"The proposed site is sheltered and provides the safest area for water sports, which is crucial for juniors. The site would provide our [REDACTED] safe access to the estuary, especially when ocean conditions become unsafe and would allow us to build relations and share resources with an existing, well-established club. The kayak ramp would allow [REDACTED] to launch [REDACTED] with ease. [REDACTED] plays an integral role as a [REDACTED] tool in crossing ocean. [REDACTED] is the fastest growing sport in NZ. It's multi-age inclusive, to which families can do together. Our [REDACTED] and it is part of [REDACTED] provides for mind, body and soul."*

45. *"This Club run by a voluntary group fulfils many elements of DOCs mission statements, including Connection with nature and cultural heritage enriches people's lives. It is also very much in line with the Principles of the Treaty and the DOC Strategy."*

46. *"The Mercury Bay Boating Club has been an integral part of our community for over seven decades, providing a hub for sailors of all ages and skill levels to come together, share their passion for boating, and participate in various maritime activities. Throughout its history, the club has played a significant role in promoting water safety, fostering camaraderie among sailors, and contributing to the cultural fabric of Mercury Bay. Siting the club building on DOC land aligns perfectly with the objectives of both the club and the department. By establishing a permanent base in close proximity to the Marina, the club will be better equipped to serve its members and fulfil its mission of promoting boating excellence and maritime education. Moreover, having a dedicated space for meetings, training sessions, and social gatherings will*

enhance the overall experience for sailors and encourage greater participation in club activities.”

47. *“The proposed small boat launching ramp could in no way have a detrimental impact on the surrounds or the integrity of the rock wall but would be very useful to young small boat sailors and would be a safer option than sharing the other boat ramp which is used by vehicles launching and retrieving. The site in question is currently barren and used primarily for parking, often for people who launch their dinghies to go out to their boats on moorings, overflow trailer parking from boats launched in the marina, or day trippers. There is enough room on this part of the southern reclamation for these activities and, if permitted, amenity planting.”*

48. *Verbal submission: “Will provide a venue for other groups within the wider community (all manner of water sports, first aid courses etc). Just as importantly provides amenity for passive users (E.g. functions for senior members of the community whom appreciate the natural environment.”*

49. Conversely, objectors consider that the recreational opportunities which exist on the esplanade reserve will be adversely impacted by the positioning of a club building.

For example:

50. *“Currently the Reserve is enjoyed by the public as a flat and grassy reserve ... Whilst the Applicant intends that the footprint of the clubhouse will only occupy 10% of the Reserve area, in reality the building’s presence and proposed location within the Reserve, along with its associated equipment storage, parking, and day-to-day activities would deter visitors from using the Reserve in the same manner that they currently do.”*

51. *Verbal submission: “Local fishermen also fish off this reserve area, mostly around high tide and at night with other fishermen accessing the harbour...”.*

Hearing Chair recommendation

52. On the matter of whether this Activity will support the recreational interest of the public using the esplanade reserve, submissions expressed different views. Those that provided objections said that the Activity will displace and deter the existing recreational activities. And the submitters have said that the Activity would foster recreation, enabling participation of youth in recreation, supporting the development and growth of sailing sports in New Zealand and improving opportunity for smaller Clubs like waka ama to expand through the advantage of co-location. Impacts on recreational values is a matter that is relevant to the Minister’s decision under S17U(1) and (2). Accordingly, I recommend that the Minister **allow** the submissions.

53. However, I am unable to determine whether the submissions which object are correct. I have concluded in paragraph 31 that the Activity would not “*have a **significant** adverse effect on the environment or lessen the value of visitor enjoyment.*” (emphasis added). I do recommend that the Minister **accept** that the recreational values **may** be adversely affected. My view, based on the submissions I heard and read and the site visits, is that the esplanade reserve itself is not used intensively for recreational activities given its location on the way into a marina precinct and adjacent to other sporting facilities. As noted above, I also consider that the Activity has the potential to significantly improve and add value to the current visitor experience on the esplanade reserve. However, I am not able to reach a final recommendation on this, as I do not feel I had sufficient information on the current recreational values of the esplanade reserve. I therefore recommend that Minister obtains further information on this before making a decision.

Effects on birds

54. Objectors consider that there are birds using the esplanade reserve which will be adversely impacted by the Activity.

For example:

55. *“Currently the reserve is enjoyed by the public as a flat and grassy reserve occupied by various avifauna such as spoonbill, dotterel and kākā.”*

56. *“The flight, feeding and the roosting of the local sea birds (oyster pickers) occurs in this area. They feed on the sand and mud banks at low water and as the tide comes in they roost up on the reclamation I have recently observed a family of six dotterels resting and feeding in the area.”*

Hearing Chair recommendation

57. On the matter of whether the activity will adversely affect birds using the esplanade reserve and proximate area, I have heard and read different views. Objectors have said that birds have been spotted on the esplanade reserve and specifically mentioned that oyster pickers⁴ are using the area to feed and roost. The Club has commissioned a base line survey on variable oyster catchers in the Whitianga area which states that they do not roost in this area. Impacts on birds are a matter that is relevant to the Minister’s decision under S17U(1). Accordingly, I recommend that the Minister **allow** the submissions.

⁴ Meaning Variable Oyster Catchers

58. However, I am unable to make an unequivocal finding as to whether the objectors are correct regarding spoonbill, dotterel and kākā. Confirmation that this site is of low importance to variable oyster catchers should also be sought. To my knowledge these species typically frequent various sites to feed and rest with preference given to particular roosting and breeding locations. Additional evidence is needed to indicate if there are any significant roosting or breeding sites within the immediate area that would be adversely affected by this Activity.
59. I recommend that the Minister **accept** that there **may** be adverse effects on birds from the Activity and recommend that the Minister obtains further information on this before making a decision.

Parking availability and traffic congestion effects outside the esplanade reserve boundary

60. Submitters described the parking availability and traffic congestion occurring near the esplanade reserve as being a limited occurrence, with a direct correlation to events held off the esplanade reserve and long weekend boating activities. And will be no greater than that already experienced for a home rugby game on a Saturday afternoon, or on a long weekend when trailer boats utilise the marina parking area.

For example:

61. *"The impacts of additional traffic effects on the neighbouring environment will be no greater than that already experienced for a home rugby game on a Saturday afternoon, or on a long weekend when trailer boats utilise the marina parking area. Likewise, noise effects generated from the activity will be minimal and no greater than that already experienced when the rugby field is in use."*

62. *"Allow the yacht club to be in the marine environment among other sailors, brokers, boat repairers. This is a summer sport so rugby would be unaffected, and we have already run regattas from this area without causing any issues with parking or other boats."*

63. A neutral submission was received recommending that a Traffic Management Plan, Existing Public Ramp and Turnaround Plan and Area Parking Plan be provided as part of the application prior to the decision being made. And noted that the provision of additional information to the community and those impacted by the relocation to an untested site, would allow them to provide informed consent.

64. *"The site that the Club has identified is at the end of Dundas Street, as per your site plan. It is reclaimed land and is well used at this time by a variety of the community, principally for parking and boat launching. To the best of my knowledge the following plans / impacts have yet to be*

provided in support of this site option (singular) and to assist in deciding if Dundas Street is the best option for the Club. I would ask that this information is provided in support of the Club's application and prior to a lease decision. They are: Traffic Management Plan. Existing Public Ramp and turnaround Plan. Area parking Plan. Geo-Technical Report. Landscaping plan. Security Plan. Frequency of Use Plan (in particular function hire). Public Health and Safety Plan (aligned with the Security Plan). Current inhabitants' Relocation Plan. Consultation Plan (with impacted persons or organizations). In closing I believe that it is appropriate for the Club to provide additional information to community and those impacted by the relocation from their current site to an untested site, to allow them to provide informed consent."

65. Objectors anticipate that the Application will generate more traffic near the esplanade reserve and reduce parking availability in the parking areas near the esplanade reserve.

For example:

66. *"Linked to the above, is [REDACTED] concerns regarding the extent to which the site can accommodate all aspects of the activity without causing adverse effects. There is already limited parking space at the end of Dundas Street which causes congestion during the summer months, and the clubhouse will both reduce the area available for parking and bring with it increased traffic to the area. To illustrate this congestion, we attach (at appendix one) recent photos [REDACTED] [REDACTED] has taken of the reserve and the parking capacity issues that are currently being faced. This will force cars, boat trailers and other large vehicles to [REDACTED] [REDACTED] as demonstrated in the images at appendix one) and is likely to create significant traffic congestion. The effect on [REDACTED] [REDACTED] associated with these traffic increases (cumulative to the effects already occurring as a result of the marina) and [REDACTED] ability to safely enter and exit [REDACTED] property will be significant. Again, there is no expert report in relation to traffic effects to refer to."*

67. Verbal submission: *"...in relation to cumulative effects, increased traffic generation and parking constraints is likely to occur as the Application would generate more trips to and from the reserve. During busy periods the reserve can be utilised for parking, but the proposed location of the clubroom is likely to cause parking to intensify on the reserve and the surrounding areas."*

68. *"This proposal will definitely restrict the use of this public area for parking of cars and trailers. Already cars and trailers park on the Dundas street roadside in front of private properties because of limited room in the proposed area."*

Hearing Chair recommendation

69. About the matter of parking availability and traffic congestion outside the esplanade reserve, I have heard and read different views. Those who object suggest that the Activity will generate

more traffic and reduce the public parking available near the esplanade reserve. And those in support have said that it would not.

70. We have also received a comment that a Traffic Management Plan, Existing Public Ramp and turnaround Plan and an Area Parking Plan should be required before a decision is made on the concession.
71. These “off site” 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 “off site” 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 esplanade reserve and do not create effects on conservation values. Those “effects” fall to be considered in the RMA process, not the concession process.
72. Therefore, although I fully acknowledge that these are important issues for objectors and submitters, I recommend that the Minister does **not allow** these submissions.

Effects on the existing parking activity within the esplanade reserve boundary

73. Submitters stated that overflow boat trailer parking occurs on the esplanade reserve when the adjacent formed parking area is full, usually during peak holidays times.

For example:

74. *“The only part of the application that needs to be addressed is the matter of parking facilities. Access to the site is from the already formed Dundas Street. Trailer boat parking is provided opposite the subject site for marina users, which is generally adequate throughout most of the year, however, during peak holiday times the use of this site is exhausted with the overflow utilising the subject site for informal parking.”*

75. Objectors conclude that the esplanade reserve is currently used for parking, but the location of the club building may cause parking to intensify on the esplanade reserve and increase congestion in this area.

For example:

76. *“Considering the amount of use the Street site already gets from cars and trailers, I would suggest that this application to restrict use of land around the building, on an informal basis, would create a great deal of congestion and frustration. I*

am aware of the numbers involved for regattas, weddings, funerals and meetings. A dinghy involves a car and a trailer plus room to rig your dinghy."

77. *"...in relation to cumulative effects, increased traffic generation and parking constraints is likely to occur as the Application would generate more trips to and from the reserve. During busy periods the reserve can be utilised for parking, but the proposed location of the clubroom is likely to cause parking to intensify on the reserve and the surrounding areas."*

Hearing Chair recommendation

78. On the matter of the existing parking activity on the esplanade reserve, submissions expressed different views. Objectors state that the location of the club building will restrict land use and intensify the parking both on and off the esplanade reserve. Submitters say the parking on the esplanade reserve is informal and occurs as an overflow when parking in the surrounding area is not available. The matter of congestion off-site has been previously discussed in the parking off the esplanade reserve section above on page 15, and therefore I recommend that the Minister **does not allow** this part of the submissions.
79. However, the use of the esplanade reserve itself for parking is a relevant issue, as this may affect the natural, historic and conservation values of the area (including current recreational use). Accordingly, I recommend that the Minister **allow** the submissions in part.
80. I am unable to make a definite finding as to whether the objectors are correct. Additional advice regarding the effects of vehicles on the esplanade reserve is required. Accordingly, I recommend that the Minister **accept** that the location of the club building **may** intensify parking on the esplanade reserve which may, in turn, be adverse for conservation values. My view based on the submissions I have heard and read, and the site visits I have been on, is that parking on the esplanade reserve is currently unmanaged with the esplanade reserve only used intensively for this purpose during the peak summer season or when significant sporting/boating events are held. I recommend that the Minister obtain advice on this before making a decision.

Effects on public enjoyment and natural and historic resources, and conservation values

81. Submitters state the esplanade reserve is a largely vacant area which is used for ad-hoc overflow trailer parking and the Activity will improve the function and tidiness of the esplanade reserve.

For example:

82. *"...the whole Dundas Street area⁵ will become functional, tidy and revitalised."*

⁵ "Dundas Street area" meaning the esplanade reserve

83. *"The site is currently used in an ad-hoc manner for overflow boat and trailer parking at peak times. Most of the time the site is largely vacant and is not actively managed by Council or DOC. The proposed relocation of the boat club building to its location will improve the amenity and function of the site ..."*

84. We received a submission which commented that a Landscaping Plan, Security Plan, Frequency of Use Plan (particularly function hire), Public Health and Safety Plan and Current Inhabitant's Relocation Plan be provided as part of the application prior to the decision being made.

85. *"The site that the Club has identified is at the end of Dundas Street, as per your site plan. It is reclaimed land and is well used at this time by a variety of the community, principally for parking and boat launching. To the best of my knowledge the following plans / impacts have yet to be provided in support of this site option (singular) and to assist in deciding if Dundas Street is the best option for the Club. I would ask that this information is provided in support of the Club's application and prior to a lease decision. They are: Traffic Management Plan. Existing Public Ramp and turnaround Plan. Area parking Plan. Geo-Technical Report. Landscaping plan. Security Plan. Frequency of Use Plan (in particular function hire). Public Health and Safety Plan (aligned with the Security Plan). Current inhabitants' Relocation Plan. Consultation Plan (with impacted persons or organizations). In closing I believe that it is appropriate for the Club to provide additional information to community and those impacted by the relocation from their current site to an untested site, to allow them to provide informed consent."*

86. Conversely, objectors consider that the amenity of the esplanade reserve will be adversely impacted by the Activity, as it will affect the character of the esplanade reserve.

For example:

87. *"In terms of effects, the Application refers to there being 'low potential for impact on neighbouring properties and viewshafts'.⁶ Our submission is that this is not a fair assessment of the effects of the Application. [REDACTED] considers the potential for adverse effects on [REDACTED] property arising from the Application to be high. The reasons for this position are as follows: (b) The Club has assumed that the clubhouse will not generate high levels of noise or traffic. There is no expert report provided in relation to the noise associated with the activity, and therefore it is impossible to determine the scale of the noise effects. Given the Club hires out its*

⁶ Pg 2 Concession Application of Mercury Bay Boating Club

clubhouse for events, in addition to the regular activities of the Club, there is potential for there to be significant noise increases that will adversely affect [REDACTED]. These effects should have been addressed through an expert noise report.

(c) The Application further states that noise and traffic effects will in any event be less than what might be reasonably be anticipated by the existing marina and coast guard operations, public boat ramp users and the rugby club and sports activities.⁷ This misses the point that these additional effects are cumulative to those existing noise and traffic producers, and the cumulative effect on top of what is already occurring is of concern to [REDACTED]

(e) The Application states that the Clubhouse will be used for private and community functions.⁸ This will bring with it a significant amount of people visiting the area, and as discussed bring with it adverse noise, traffic and parking effects. There is a further concern around anti-social behaviour that may be associated with functions, which is an unfortunate but inevitable consequence. While the Application states that the Club does not have a restaurant or bar or a liquor license this does not mean that such a license cannot be obtained for specific functions, or for general use in the future. The Clubhouse will be in an area that is not busy, well-lit or populated during the night, meaning there will be limited passive surveillance of activities occurring there. These effects cannot be discounted and are of significant concern to [REDACTED]

6. The Application also dismisses the positive effects of the site itself. The site is an open space and [REDACTED] often observes local families and visitors using the area for picnics. While the Application states that it is only taking up a footprint of 10%, in reality the large building's presence along with the parking associated and boats, etc stored outside will deter people from using it in this way. The building is also proposed to be located in the centre of what is a long and narrow reserve. Given the characteristics of the reserve and the proposed location of the building, the public would be deterred from utilising the remainder of the space.

7. The Application also refers to abandoned vehicles and derelict boats and dinghies being a reoccurring problem at the site.⁹ [REDACTED] disagrees with this statement as in [REDACTED] residing at [REDACTED] rarely observes any vehicles, boats or dinghies being abandoned on the reserve land.

[REDACTED] is concerned that the application attempts to downplay the adverse effects that [REDACTED] and [REDACTED] will experience as a result of the granting of the lease and the relocation of the clubhouse. The Club has made assumptions to lead to the conclusion that there is low potential for impact on [REDACTED] and [REDACTED] and have not provided evidence to support these assumptions. The effect on [REDACTED] should not be discounted in the way that they are by the Application."

88. Verbal submission: "Loss of the Reserve's amenity as the flat grassy reserve will be predominately overtaken by the clubroom and the associated activities that will inevitably spill out onto the greater reserve. This will completely change the character of the reserve. This is particularly concerning given the sensitive location of the reserve and its border with the coastal marine area. The amenity of [REDACTED] and [REDACTED] properties will also be adversely

⁷ Pg 15 Concession Application of Mercury Bay Boating Club

⁸ Pg 3 Concession Application of Mercury Bay Boating Club

⁹ Pg 20 Concession Application of Mercury Bay Boating Club

effects as the clubroom will be within the viewshafts [REDACTED] the reserves and the Whitianga Harbour. Increased noise levels at the reserve, and in the adjoining area, associated with the activities of the clubrooms (i.e. sailing events and functions), as well as increased traffic noise. Again, this will change the character of the reserve completely, which is currently a calm and quiet place. Due to the insufficient information in the application, there is no certainty or base level of understanding as to what levels of noise can be expected."

[REDACTED]

89. "The proposed site is too close to residential homes so that after hours social events become just another drinking place in the centre of Whitianga."

[REDACTED]

90. "(The lease) ... will impact the visual sights of the harbour for 30 years. The [REDACTED] was hardly used for a number of years, what happens when it shuts down and we are left with an old building falling apart on our waterfront."

Hearing Chair recommendation

91. Regarding the matter of whether the Activity will adversely affect the public enjoyment and natural and historic resources of the esplanade reserve, submissions expressed different views. 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, provide an opportunity for anti-social behaviour during functions, and these effects will impact on the residential property adjacent to the esplanade reserve. Also, an objector has raised the risk that DOC will be left with an abandoned building at some point in time.
92. Submitters have said that the esplanade reserve is barren and used for overflow trailer parking and the location of the club building will improve the function and tidiness of the esplanade reserve.
93. Some of the issues raised by objectors relate to off-site effects that do not relate to natural or historic values, or conservation values more generally. I have explained above on page 15 that these are not legally relevant to the decision at hand. I recommend these **not be allowed**.
94. However many relate to the use of the esplanade reserve itself, and I recommend that the Minister **allow** these submissions.
95. It is my view that conditions can be imposed which mitigate these potential adverse effects sufficiently. Some issues, such as noise effects both on the esplanade reserve and off-site will also be addressed in the resource consent process. Standard concession conditions require adherence to other legal requirements (for example, noise restrictions). I have considered my view in paragraph 31 that the Activity would not "have a **significant** adverse effect on the environment or lessen the value of visitor enjoyment" (emphasis added) however recommend that the Minister **accept** that the adverse effects **may** impact the public enjoyment and natural

and historic values and conservation values. I recommend that the Minister include conditions which would mitigate the potential noise effects and anti-social behaviour.

96. We received a comment that several plans should be obtained before a decision is made. Regarding the proposed plans I consider the premise for the plans have merit and that the issues that would be covered in a geo-technical report, landscaping, occupancy of use and public safety plans, are matters that are relevant to the Minister's decision under S17U(1). Accordingly, I **allow** the submission.
97. I consider that these issues could be addressed in different ways. For example, with regard to the suggestion of a geotechnical report, it is common sense that the Minister needs to be satisfied as to the physical suitability of the esplanade reserve for the proposed relocation. This would likely require a technical report of some nature, possibly geotechnical, as a condition of any concession, assuring the Minister on this matter. On the other hand, landscaping, occupancy and safety might require a different approach. I therefore recommend that the Minister **accept** that these issues need to be addressed but I make no further recommendation as to the manner in which the Minister should address them.

Miscellaneous

Public safety in the Whitianga Harbour

98. Submitters describe how the use of the Whitianga Harbour, or more specifically the estuary/mud flat adjoining the esplanade reserve will be safe for use by the Club as a training area.

For example:

99. *"For the last [REDACTED] years I have been involved with [REDACTED] on a commercial basis. [REDACTED] include many past and present [REDACTED] teams, [REDACTED]. Under the guidance of team mates who performed tidal current surveys at [REDACTED] venues I have done a preliminary hydro-graphic survey of the estuary in the area in the area to the south of the proposed club room site. Initial findings show that the current over the mud flat area peaks at 0.9kn based on a 2.0m high water. Due to the tidal nature of the location sailing lessons would only happen 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."*

100. *"Would like to mention that the ability to function in the promoting and development of small yacht racing in the area of the Whitianga estuary adjacent to the proposed site of the club rooms at Dundas Street is not impeded by the tidal nature of the area. I spent a great deal of [REDACTED] and other [REDACTED] Club situated at the tip of [REDACTED]"*

the [REDACTED] at the [REDACTED]. Similar tidal conditions are experienced to that adjacent to Dundas Street, however very successful racing can be conducted over the full tide period.”

101. Objectors conclude that the Whitianga Harbour is too dangerous as a training area for inexperienced youth due to the swift current of the Whitianga Harbour.

For example:

102. *“To suggest the Whitianga river become a training area for dinghy sailors, let alone junior sailors, is unwise and has a lack of understanding toward safety, in this particular river-marine environment.... The proposal does not future proof the safety of junior sailors and shows a distinct lack of understanding or care toward: [1] the dangerous behaviour of the Whitianga river, [2] the unpredictability of youth, [3] the changing experience.”*

103. *“While I acknowledge a solution is urgently required relocation to the proposed Dundas Street site is dangerous for users and the general public. High river flow and trying to be yachting with small boats in a main channel and anchoring area is beyond comprehension and trying to exit the harbour into the main bay is a disaster waiting to happen.”*

104. *“There are also questions regarding the appropriateness of the Application site for the activity. The Application implies that boating activities will occur in the harbour adjacent to the proposed site as the plans provide for the installation of an adjacent dinghy ramp (that is separate from the public boat ramp already located at the reserve). Thames Coromandel District Council staff have acknowledged that this area would be hazardous for learner sailors as there are several large, submerged boulders and a sandbar in front of the marina wall near the boat ramp. We attach those emails for your reference. There have also been concerns raised within Council regarding the suitability of the harbour for sailing given the strong currents in this area.”*

Hearing Chair recommendation

105. On the matter of whether the Whitianga Harbour is safe for use by the Club submissions expressed different views. Objectors have said that the currents in the Whitianga Harbour are too strong and dangerous, risking the safety of users, particularly young persons. Submitters have said that this is not the case and one submitter [REDACTED] has provided evidence.

106. The submission mentioned above states that initial findings show that the current over the mud flat area peaks at 0.9kn based on a 2.0m high water. And that the surveyed current speed combined with level of supervision over junior sailors, within the two hours either side of high tide, would imply this is a suitable venue for junior sailing lessons.
107. Also, the Club 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. The data showed that the relative mean tidal flow within the training area (mud flat area) is 0.4 knots and 0.8 within the main Whitianga Harbour navigational boat channel. The Club says that the data shows that there was very little tidal movement within the training area up to one and a half hours post high tide.
108. An internal email dated 6 December 2023 between Thames Coromandel District Council staff¹¹ details a query from the Planner reviewing the Club's resource consent application. The Planner sought advice on the location of Dundas Street boat ramp and associated boat trailer parking. Although this question was not addressed in the email, the [REDACTED] did explain that the *"sandbar that is building up off Dundas is rather problematic for all and probably particularly hazardous for learner sailors... There is also several large, submerged rocks in front of the marina wall near the ramp that are problematic"*. The included diagram shows the sandbar directly out from the Dundas Street boat ramp near the navigational boat channel.
109. The Club have clarified that that the training area is within the estuary/mud flat area, which will be accessed by the Club from their kayak/dinghy ramp. Both the training area and the dinghy/kayak are located to the west of the boat ramp and do not require the Club to navigate the issues presented in the email.
110. The safety of the Club's activities in the Whitianga Harbour is directly associated with an activity that is initiated on public conservation land and is relevant to the Minister's decision and accordingly, I recommend that the Minister **allow** the submissions.
111. The Club has a history of managing boating activities and in one sense water safety for its members is its "core business". I am sure there is every incentive for the Club to ensure that their members are not exposed to any unreasonable risk in this area.
112. On the basis of information available to me, I recommend that the Minister **accept** that safety is an important issue that the Minister needs to be confident about before making a decision. I reach a tentative view that the training area is safe for the activity. I consider the Club has the experience and the incentive to ensure it has chosen a safe site. Also, the data supplied provides supporting evidence that the training area is a suitable venue. Further, standard conditions would require a Health and Safety Plan. However, given the importance of the issue, I recommend the Minister seek further advice from the Department on this matter.

General support for the Club activity

¹¹ [REDACTED]

113. Submitters provide general support for the Application and the continuation of the Club. And note the contribution of the Club to the development of safe boating and water skills and to the Whitianga community generally.

For example:

114. *"Mercury Bay Boating Club has been a stalwart of the Whitianga and wider Mercury Bay community for some 30 odd years. It is my true belief that everything in the wider powers that be should foster, support and at all cost maintain this learning institution for the sake of our children that follow in our footsteps."*

115. *"Support learning facilities for youth and community, safe in harbour location, and co-ordinated marine precinct."*

116. *"My reasons for supporting MBBC in this application to lease the site at Dundas Street is that it is currently just grass and being used to park vehicles on, currently has no other use that has the chance to be purposefully used by our community of all ages, for the boat club that has a very precious history and who would like to provide a service to young and old on the water and for functions for non-boaties like the clubhouse was used for before Cyclone Gabrielle and the damage that ensued."*

117. *"Although there is some nostalgia attached to the history of the club, there is a real need for club in our community. I was a [REDACTED] at the club for many years and the huge importance of water safety, learning about our marine environment and providing the skills to manage a vessel in this area are priceless. Hundreds of children have been through this programme and come out as confident sailors with an excellent knowledge of boats, on water rules, water safety, knowledge of weather and sea conditions and finding a love of the ocean and our bay. We have nowhere for swimming lessons here so the Boating Club provides the next best thing. The training was so successful, [REDACTED] as well which proved to be popular. There is in other facility that provides this kind of help, training and knowledge. Not only was the club rooms important for training but it provided a well utilised club rooms for funerals, weddings, meetings, mental health training and yoga. We have very few facilities available like this in town and it is sorely missed."*

Hearing Chair recommendation

118. On this matter of supporting the continuation of the Club activity and its contribution to the development of safe boating and water skills and to the Whitianga community generally. The submissions contain some relevance to matters to be considered by the Minister in their decision making under S17U(1). Accordingly, I recommend that the Minister **allow** in part the submissions. The strategic positioning of the Club on the esplanade reserve will positively

influence the development of safe boating and water skills. The interface between the esplanade reserve and the water provides an ideal environment for fostering these essential skills. Therefore, it is recommended that the Minister **accept** that there **will** be positive benefits this location will offer in promoting safe boating and water skills.

Consultation Plan

119. We received a comment recommending that a Consultation Plan be provided as part of the application prior to the decision being made. And noted that the provision of additional information to the community and those impacted by the relocation to an untested site, would allow them to provide informed consent.

120. *"The site that the Club has identified is at the end of Dundas Street, as per your site plan. It is reclaimed land and is well used at this time by a variety of the community, principally for parking and boat launching. To the best of my knowledge the following plans / impacts have yet to be provided in support of this site option (singular) and to assist in deciding if Dundas Street is the best option for the Club. I would ask that this information is provided in support of the Club's application and prior to a lease decision. They are: Traffic Management Plan. Existing Public Ramp and turnaround Plan. Area parking Plan. Geo-Technical Report. Landscaping plan. Security Plan. Frequency of Use Plan (in particular function hire). Public Health and Safety Plan (aligned with the Security Plan). Current inhabitants' Relocation Plan. Consultation Plan (with impacted persons or organizations). In closing I believe that it is appropriate for the Club to provide additional information to community and those impacted by the relocation from their current site to an untested site, to allow them to provide informed consent."*

Hearing Chair recommendation

121. On this matter of whether a consultation plan is required. Consultation, and public views, are relevant to the Minister's decision under sections 17U, 17SC and 49. Accordingly, I recommend that the Minister **allow** this submission.
122. However, there is no requirement for a Consultation Plan per se and additional community engagement beyond the requirements of these sections of the Act. I consider the community has had an opportunity to comment on the application via this s 49 process. Accordingly, I recommend that the Minister does **not accept** this submission.

Adverse effects on the viewshaft from the adjacent residential property

123. Submitters describes how the existing pohutukawa trees on the esplanade reserve will screen the club building from neighbouring properties and additional planting could mitigate this potential adverse effect.

124. *"The visual effects from neighbouring properties to the west will be mitigated by the existing Pohutukawa trees already located on the site between the proposed building and those property boundaries. Further landscape planting could be done to provide additional screening if required."*

125. Conversely an objector considers the Activity will adversely affect the viewshaft from the property at [REDACTED]

[REDACTED]

126. *"(a) The amenity effects on [REDACTED] property arising from the lease will be significant. The Application states that the site is 'well screened by established trees'¹², but this is inaccurate. As is to be expected in the location of [REDACTED] property, a key aspect of its amenity is the outlook to the [REDACTED]. The Application will have a significant effect on this amenity, and will completely change the character of the outlook, which is currently a quiet [REDACTED]. The bulk of the building will impede the viewshaft of [REDACTED] and is significant in terms of its impact on amenity. We note that the Club has not obtained an assessment from a Landscape Architect to reach its conclusion that the proposal is not likely to result in adverse amenity effects."*

Hearing Chair recommendation

127. On the matter of whether the Activity will adversely affect the viewshaft of the neighbouring properties, one objector [REDACTED] submitted that the club building would have a significant effect on [REDACTED] in one direction. I visited [REDACTED] house, and agree that this is likely, or at least possible. However, as I have noted above on page 15, in a concession application "effects" are only relevant if they are effects on natural or historic resources, or conservation values more generally (which includes recreation). I determine that the effects on the viewshaft are not an effect on natural, historic or conservation values in this sense. I recommend that the Minister **does not allow** this submission.

128. This Activity is subject to the Resource Management Act, and I understand that the Club has applied for a resource consent. The RMA process is the appropriate mechanism to address this submission.

¹² Pg 16 Concession Application of Mercury Bay Boating Club

7.0 CLUB'S REPLY

129. At the hearing the Club supplied a verbal reply, they also provided this verbal reply in writing with accompanying attachments on the day of the hearing, this can be found in full at [DOC-7728957](#)].

The Club's reply contained the following comments:

Coromandel Peninsula Conservation Land Management Plan

130. *"We note that the [REDACTED] submissions refer to the "Coromandel Peninsula Conservation Land Management Plan" ("CPCLMP"). We understand that the CPCLMP was revoked when the Waikato Conservation Management Strategy ("CMS") became operative. That was on September 29, 2014. The 2023 statutory planning status report notes that the Waikato CMS is 'current' and that the CPCLMP is 'to be revoked'. It would appear that this is an administrative step that may still be pending¹³."*

Sec. 17U

131. *"This is a not for profit, community-based club that is having to relocate from its former site because of coastal erosion. It is proposing to relocate its existing building to a site that is appropriately zoned and which was constructed as part of a reclamation consent specifically to provide for boating in Whitianga."*
132. *"The existing site cannot accommodate the clubrooms any longer. Taputapuatea (the existing site) has historical and cultural significance for manawhenua and the existing site is unsuitable for a multitude of reasons. The relocation has the support of mana whenua and will establish the club in a location that is both more accessible and safer for members¹⁴."*
133. *"This application is for a concession under s170 Conservation Act where the contents of the application are specified in s 175. S 175 requires a description of potential effects of the proposed activity and actions to avoid, remedy or mitigate any adverse effects. In this case it is relevant that the land is zoned Marine Services under the 'Operative in Part' Proposed District Plan. The types of activities permitted in this zone include: (i) commercial recreation/community facility; (ii) industrial; (iii) marine equipment storage; (iv) restaurant; (v) festival/event. The list is indicative and subject to performance standards, but it represents the type of activities and effects (including visual and noise effects) that the local community has determined is appropriate for sites zoned Marine Services. That has involved public consultation and did not result in any appeals regarding the zone itself or this site in particular¹⁵."*

¹³ Abstract from [REDACTED] "MBBC - Legal Submission on behalf of Applicant", Harkness Henry, [REDACTED]

¹⁴ Abstract from [REDACTED] "MBBC - Legal Submission on behalf of Applicant", Harkness Henry, [REDACTED]

¹⁵ Abstract from [REDACTED] "MBBC - Legal Submission on behalf of Applicant", Harkness Henry, [REDACTED]

Effects on recreation, public enjoyment and the natural and historic resources

134. *“Currently, Mercury Bay Boating Club (MBBC) organises a variety of events for its members during both the summer and winter seasons, but its larger events are predominantly in the summer. MBBC offers a comprehensive Learn to Sail program, which includes Learn to Sail 1, Learn to Sail 2, Learn to Sail 3, and youth mentoring programs. MBBC also provides Learn to Race clinics and Learn to Sail courses specifically designed for adults. There will be continued ability for the public to have foot access to all of the site except for the building itself. That is what the Reserves Act anticipates for esplanade reserves¹⁶.”*
135. *“Section 23(4) Reserves Act provides for the situation when a reserve is not vested in a local authority. That applies here. It is explicit that the Minister can provide access to the whole or any part of a reserve and this is what is sought as part of this application. Namely, the Club seeks exclusive occupation of that small part of the esplanade reserve on which the building and its decks will be located. The rest of the esplanade reserve will remain open and available to the public for foot and parking access, as happens now, and will continue to be available for picnicking and other recreational activities, noting the current use observed by the Club and other locals familiar with the site is predominantly car and boat trailer parking¹⁷.”*
136. *“The purposes above are alternative, and we submit that this proposal will facilitate both (b¹⁸) and (c¹⁹) and will not disadvantage any of the other purposes. The proposal will enhance the ability of the sailing public, and local [REDACTED], to obtain direct and safe access to the estuary for both learning and participating in their recreational activity. That can only happen in a location close to the water and this is the ideal location²⁰.”*
137. *“The CMS specifically addresses the need to have more of the public engaged in recreation activities and notes the value of public lands and waters in the Waikato that provided a variety of outdoor recreational opportunities.²¹²²”*

¹⁶ Abstract from [REDACTED] “MBBC - Legal Submission on behalf of Applicant”, Harkness Henry, [REDACTED]

¹⁷ Abstract from [REDACTED] “MBBC - Legal Submission on behalf of Applicant”, Harkness Henry, [REDACTED]

¹⁸ (b) to enable public access to or along any sea, river, or lake;; Purposes of esplanade reserves and esplanade strips, Section 229 of the Resource Management Act 1991

¹⁹ (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, Purposes of esplanade reserves and esplanade strips, Section 229 of the Resource Management Act 1991

²⁰ Abstract from [REDACTED] “MBBC - Legal Submission on behalf of Applicant”, Harkness Henry, [REDACTED]

²¹ Waikato Conservation Management Strategy Section 5.3, Objective 5.3.1.1

²² Abstract from [REDACTED] “MBBC - Legal Submission on behalf of Applicant”, Harkness Henry, [REDACTED]



Figure 2 Architectural concept²³

Effects on bird species

138. *"Submissions to the Department of Conservation as part of their consultation process stated that the proposed site was a roosting site for Variable Oyster Catcher (VOC). The Club needed to better understand VOC use of the Lot 6 Esplanade Reserve. The base line survey²⁴ determined that: VOC were observed at the Esplanade Reserve (Site 3) ... on two occasions during this work. Site occupancy and counts show this site to be of low importance to the birds compared to other terrestrial sites. VOC consistently utilise the beach front supratidal roosting area on the Whitianga esplanade (Site 5) This site is the most important roosting area for oyster catchers about the Whitianga Harbour and beachfront²⁵."*



Figure 3 Site 3 – Esplanade Reserve²⁶

²³ "MBBC - Architectural Renders (Concept) - Dundas St", Studio 77, [REDACTED]

²⁴ Assessed using occupancy rates at individual sites

²⁵ [REDACTED] "MBBC -Variable Oyster Catcher Survey", Soundcounts, [REDACTED]

²⁶ Figure from [REDACTED] "MBBC -Variable Oyster Catcher Survey", Soundcounts, [REDACTED]



Figure 4 VOC Habitat Survey sites, showing Site 3 and Site 5²⁷

139. On the 16 October 2024 the Club was provided this report in draft to consider and offer feedback for the Department to review.
140. On October 30, 2024, the Club issued a response. The document includes the Applicants reply and the Departments evaluation. ([DOC-7812765](#))

Alternative sites

141. The Club advises that further to Point 41 which states “In their Application the Club indicated that they had considered alternative sites along Buffalo Beach, including the present site at Taputapuatea, Brophy’s Beach, Ohuka Reserve and the main Buffalo Beach reserve however they were ruled out as being either impractical (for launching boats) or subject to heritage, planning and/or viewshaft issues”. The following is accurate.
142. *The Club has investigated several sites along the coastal margins of the Whitianga township, as described in Section B (p11) of the concession application. In summary, alternative sites have been investigated. None are considered suitable. The proposed site at Dundas Street is an excellent location and is the only viable site for the relocation of the boat club building.*
143. *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*

²⁷ Figure from [REDACTED] “MBBC -Variable Oyster Catcher Survey”, Soundcounts [REDACTED]

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.)

144. *The Dundas Street site and adjacent reclamation areas in and around the marina are the only areas in Whitianga designated Marine Service Zone. All other sites suggested by submitters have zone purposes that are much less aligned with the proposed activity, typically 'Open Space' or 'Recreation Passive'. This would make any resource consent application in such locations more difficult and open to challenge.*
145. *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. 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.*
146. *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.*
147. *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>*
148. *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.*
149. *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.*
150. *In contrast, the esplanade reserve at Dundas Street is not likely to be further developed or upgraded (due to the cost of ongoing dredging to keep the navigation channel open for*

powerboats), nor does it have any significant cultural, heritage or zoning issues. There is only [REDACTED] Street, located approximately [REDACTED] away, on the diagonal.

151. In summary, alternative sites have been investigated. None are considered suitable. The proposed site at Dundas Street is an excellent location and is the only viable site for the relocation of the boat club building.

Effects on recreational enjoyment by the public

152. Further to point 53, the Club advises that “Having maintained a photo-log of the site for 10 months, we cannot find any photos containing people fishing from the site. In contrast, the new F-Pier in the marina located immediately to the north is frequently used by the public for fishing and has bait boards and wash-down hoses available for public use. The occasional fishing activities that have been observed are usually closer to the boat ramp end of the reserve, where the water is deeper. The clubhouse will not impede access for fishing or other recreational activities on the reserve and it will improve public access to the water by way of the proposed dinghy ramp.”
153. “Canoeing and kayaking already occur in this location and [REDACTED] has at times moored [REDACTED] immediately adjacent to the proposed site (Fig 1 below). Other sail boats have been observed doing likewise from time to time, over all states of tide (Fig 2). None of the club’s operations will prevent or impede these activities and instead are entirely consistent with existing recreational use. The local DoC Area Office should be able to provide further comment around recreational values and existing use of the reserve.”



Figure 5

Street

(Fig 1)



Figure 6

Small sailboat on the mudflats off the Dundas Street Reserve (July 2024) (Fig 2)

Effects on birds

154. Further to point 59, the Club advises that *“Noting the reserve is a relatively recent man-made reclamation, there is little basis for the site being a significant long-term habitat for avifauna. Oyster catchers have been observed on the site from time to time, as they are elsewhere around the town on parks and reserves and grassed berms. However, this is opportunistic behaviour, not a site of significance, nor their preferred habitat.”*
155. *“Spoonbills are intertidal feeders and therefore only present on the harbour mudflats at low tide, i.e. the exact opposite times of day to when the club might run sailing lessons. Kaka are a highly mobile species and are not uncommon in trees and gardens across the Peninsula”.*
156. *“Dotterels generally prefer open sand-spit type areas with flat access to the water. Rock-walled gravel and grass carpark areas are not their preferred habitat. None of these (or any other bird species) nest on the site, which has no natural shelter and is frequently traversed by vehicles and boat trailers”.*
157. *“It is highly unlikely that the presence of the clubhouse building nor associated club activities will have any significant impact on bird life. In contrast, the current site on Taputapuatea is a recognised nesting ground for a variety of shorebirds. Relocation of the building to Dundas Street will have a net-positive impact on local avifauna. The local DoC area office should be able to provide further comment around this”.*

Effects on parking within the esplanade reserve boundary

158. Further to point 80, the Club advises *“Evidence presented by the club from extensive monitoring of parking suggests there is generally capacity on the reserve and surrounding areas to accommodate both the clubhouse building and existing users without significant impact. Monitoring has been undertaken now for more than 10 months and the reserve and surrounding areas have been observed at peak capacity for just 12 days within that period. The presence of the clubhouse building and associated activities will not have any significant impact on parking within the reserve”.*
159. *“Furthermore, it is arguable that parking is not in itself an activity that is provided for under the purposes of esplanade reserves. Increased public amenity and improved access to the harbour via the dinghy ramp should carry more weight in terms of the reserve purpose under the Reserves Act”.*
160. *“The Chair states that “...the location of the club building may intensify parking which may in turn may be adverse for conservation values.” The Club is unsure what those conservation values might be and asks that the Chair accepts the evidence presented by the Club and*

reconsiders the recommendation to seek further advice regarding impact on parking within the reserve boundary, certainly beyond the local Area Office.”

Public safety in the Whitianga Harbour

161. Further to point 112, the Club advises *“Safety of members and the public is central to the Club’s operation and success. The Club maintains affiliation with Yachting New Zealand and operates its fleet of rescue boats in accordance with protocols and certifications from MaritimeNZ. The Club is happy to supply the Department with any health and safety policy documents it may require.”*

Recommendation

162. In summary the Club recommends the following.
163. *“Brophy’s Beach is not a suitable alternative option due to ongoing erosion, inundation, zoning and view shaft issues. It is highly unlikely that a resource consent would be successful, nor could a building permit be issued for this location due to natural hazards. The local DoC Area Office should be able to provide further advice, if required”.*
164. *“The proposal will not significantly impact on, and is consistent with, existing recreational use. The local DoC Area Office should be able to provide further advice, if required”*
165. *“The proposal will not have any significant impact on bird life. The relocation from Taputapuatea will have a net-positive effect on local avifauna. The local DoC Area Office should be able to provide further advice, if required.”*
166. *“The site has already been assessed as suitable by a Chartered Engineer. A specific geotechnical report for foundation design will be provided at the time of building consent application. This would be implicit in any decision to allow the building on the site, in the same way that the building will have to comply with the provisions of the building code generally. Imposing further conditions as part of the concession is an unnecessary duplication of existing controls under the building code, and possibly beyond the scope of the concession application.”*
167. *“Note the area is reclaimed land, and that several large commercial buildings, including the coastguard building, marina office, toilet blocks and boatyard maintenance facilities have been constructed over the years on adjacent reclaimed areas”.*
168. *“The club does not envisage any significant landscaping works will be required, however is happy to work with the local DoC area office, the Marina Society and Council around maintenance and upkeep of the site. We note that the area is presently maintained by Council’s Parks and Reserves Department”.*

169. *"The Club maintains various insurances including general public liability insurance of [REDACTED] The club is happy to provide the Department with copies of insurances and health and safety policies as a condition of any concession decision".*
170. *"The club asks that the Chair accepts the evidence provided by the club regarding the appropriateness of the harbour for sailing and water activities, which can be and are already carried out on the water in this location by the public. The club is responsible for the safety of its operations, members and the public at all times and is happy to provide the Department with copies of insurances and health and safety policies as a condition of any concession decision".*

8.0 RECOMMENDATIONS

171. I have made recommendations to the Minister in respect of the extent to which submissions can be allowed and accepted.

Chair Recommendations

172. The submissions detailed above address matters related to this Application and proposed activities on the esplanade reserve. I have indicated the submissions that fall outside the scope of matters that the decision maker 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 on is obtained prior to making a decision. These are detailed below.
173. Suitable Alternative
The applicant has provided appropriate advice as to why Brophy's beach is not a suitable site for this activity. I am satisfied that they have also provided adequate information relating to their investigation of multiple other site opportunities with none of these considered to be suitable. On this basis I am comfortable that the applicant has adequately considered alternative sites and recommend that the Minister obtains information to confirm the unsuitability of Brophy's Beach as an alternative location for this activity.
174. Recreational values of the esplanade reserve
It is my view based on the submissions heard and read and the site visits I have been on, that there are not significant recreational values associated with the esplanade reserve and that is it utilised primarily for car and boat trailer parking. However, I recommend that the Minister obtains information from the local office on the recreational use of the esplanade reserve.
175. Effects on birds

Seabirds are by nature mobile and opportunistic in relation to food sources however for roosting and nesting these sites are typically less variable. I recommend that the Minister seeks advice on the usage of the esplanade reserve by these species as well as the estuary area intended to be used for training related purposes adjacent to it.

176. Effects on parking on the esplanade reserve

The existing parking on the esplanade reserve is unmanaged and only used intensively for parking during the peak summer season or when significant sporting/boating events are held. Monitoring of the reserve and surrounding area over more than 10 months has indicated that the site reaches peak capacity for only 12 days within this period. The existing parking may be intensified by the location of the club building on the esplanade reserve, however parking itself is not an activity provided for under the purposes of this type of reserve. The proposed activity has the potential to improve public amenity and access to the harbour via the new kayak/dinghy ramp and I recommend that the Minister obtains advice on this.

177. Effects on public enjoyment and natural and historic resources generally

I recommend that conditions are considered that would manage potential noise effects (and antisocial behaviour) that may be associated with this activity. The provision of a technical report of some nature, possibly geotechnical, as a condition of any concession, is also recommended to ensure the Minister of the suitability (from a structural perspective) of the esplanade reserve for this Activity. I have not made a recommendation as to how the Minister should address landscaping requirements, occupancy of use or public safety.

178. Effects on Water safety

On the matter of water safety my view is that the Club will prioritise the safety of their members and that the information provided indicates that the tidal area is suitable for this activity. The applicant is affiliated with Yachting New Zealand and operates its fleet of rescue boats in accordance with Maritime NZ protocols and certifications. I am therefore satisfied that the Minister can have confidence that water safety matter will be appropriately addressed through these procedures.

Summary

179. On balance, my view is that the matters raised by submitters indicate a high level for support for this Activity at the esplanade reserve, a location which they note is within an appropriate District Plan zone. There are a number of matters of concern with some matters falling outside the scope of considerations under the Conservation Act, however I do not consider that there was sufficient evidence provided that would indicate these are not able to be either managed by appropriate conditions or alternatively addressed as part of alternative processes under the RMA.

180. 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.



Helen Neale, Manager Conservation Dogs Programme, Tauranga, Delegate of the Director General of Conservation as Chair of the Hearing Panel

Date: 16/10/2024]

Recommendation:

1. Note the summary of submissions received during the public notification process:

Yes / ~~No~~

Comments:

2. Note the recommendations as to the extent to which submissions are allowed and accepted:

Yes / ~~No~~

Comments:

3. Note the recommendations on further information to be considered:

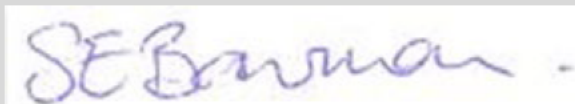
Yes / ~~No~~

Comments:

4. Note the overall recommendation that the proposal should proceed to further consideration.

Yes/~~No~~

Comments



Stef Bowman, Permissions Regulatory Delivery Manager, Delegate of the Minister of Conservation

Date: 27 February 2025

Spreadsheet containing summarises the objections and submissions issues points, references to the Themes and Sub-Themes they have been categorised into and whether they are allowed or accepted. It can be viewed here [DOC-7636800](#)

Notes:

1. Heights in terms of Mean Sea Level (KID46) via (LID2)
2. Survey Date: 16 August 2023

TCDC Planning Zone: MARINE SERVICE ZONE

Lion Park
(Recreation Reserve - TCDC)

Lot 2
DP 426920
1856.1m²
(Crown Land - Reclamation)

Whitanga Marina Society
(Leasehold)

Area A
DP 426920
(Public Access Easement)

DUNDAS STREET

Lot 1
DPS 1252G
54 x 75, 2m²
24, 2m² Street

LOT 6
DP 426920
2374m²
(Crown Land - Reclamation)

Whitanga Marina Society
(Leasehold)

Proposed mooring system

Proposed launch ramp

Public launch ramp

WhITANGA HARBOUR

Scale: 1:500 (A3)

Date: 02 April 2024

1:500 Scale Bar

0 5 10 15 20 30 40 50
meters

Mercury Bay Boating Club
PROPOSED RELOCATION SITE
DUNDAS STREET, WHITANGA

RMS
SURVEYORS
Stewart Group Limited

Property Development Consultants
Resource Management Consultants
404 Rye Road, Whitangarei
33 Albert Street, Whitangarei
Telephone 0800 367 747
www.rmsnz.co.nz

Project No.
7876
Drawing No.
03
Revision