Sea Change

From: s 9 (2)(a) s 9 (2)(a)
Sent: Tuesday, 25 October 2022 7:07 pm
To: Sea Change
Subject: Submission on changed to Marine Reserve

Follow Up Flag: Follow up
Flag Status: Completed

Categories: Reply sent, Recorded

Hi

Please see below my submission on the expansion of the Cathedral Cove Marine Reserve

Name: s 9 (2)(a) , s 9 (2)(a)
Submitting as property owner at s 9 (2)(a) **. Representing individual view**

1. Hahei Beach Boundary
We **do not agree** that the marine reserve should be extended along Hahei Beach because:

1. It would be almost impossible to clearly identify the start/end of the Marine Reserve on a beach. This could lead to administration confusion relating to concessions, policing etc
2. We believe dog owners should be able to walk their pets over the entire length of the beach when permitted by current TCDC regulations. It would be good i if dog walkers could use the track from the cathedral cove car park to the beach as well.
3. Hahei Residents believe they should retain the right to fish (or remove items such as shells or seaweed) along the entire beach

2. Mahurangi Island Boundary
We would prefer that the north west coast of Mahurangi Island remain outside of any marine reserve expansion since it offers a safe family boating/fishing experience in adverse weather. It is also a spot that can be easily reached my non motorised craft .

3. Expansion of marine reserve seaward
We are in favour of this taking place.

Thanks
s 9 (2)(a)

Sent from my iPhone

Sea Change

From: s 9 (2)(a) s 9 (2)(a)
Sent: Tuesday, 25 October 2022 7:12 pm
To: Sea Change
Subject: Marine reserves Hurakaki Gulf.

Follow Up Flag: Follow up
Flag Status: Completed

Categories: Reply sent, Recorded

We need a lot more marine reserves in the Hurakaki Gulf to help the maine life to recover from decades of over fishing and pollution. I cant believe just how bad this problem has became and we need a lot more than just a few little parts of the Gulf put into marine reserves more like 50% of the Gulf.
Thanks to the New Zealand Green Party for pushing this much needed issus to be put forward to the Government.
Thank you.
Kind regards
s 9 (2)(a)

Sea Change

From: s 9 (2)(a) s 9 (2)(a)
Sent: Tuesday, 25 October 2022 7:27 pm
To: Sea Change
Subject: Submission on Revitalising the Gulf
Attachments: Submission - s 9 (2)(a).docx

Follow Up Flag: Follow up
Flag Status: Completed

Categories: Reply sent, Recorded

Hi
Please find attached my submission on the Revitalising the Gulf Marine Protection Proposals.

s 9 (2)(a)
s 9 (2)(a)

SUBMISSION on REVITALISING the GULF: Marine Protection Proposals

My name is s 9 (2)(a) and I live at s 9 (2)(a) s 9 (2)(a)

We moved to s 9 (2)(a) s 9 (2)(a). From our house we look out across the Hauraki Gulf to Te Hauturu-o-toi/Little Barrier Island and Aotea/Great Barrier Island. The opportunity to live so close to the Gulf was a primary reason why we chose to live here, as was the Goat Island Marine Reserve.

I own a launch, I snorkel, I fish and I kayak in the Gulf and the seas beyond. We visit the Mokes, Aotea and Kawau several times every year.

I am involved with conservation of marine and coastal areas in the Hauraki Gulf as a volunteer at s 9 (2)(a) and through various restoration, research and citizen science projects involving seabirds and manta.

I am passionate about the Gulf and its flora and fauna. In the 20 years I have lived here I have been fortunate to see Pygmy Blue Whales, Southern Right Whales, Orca, Manta, Sunfish, huge feeding congregations of seabirds, massive fish schools and many other delightful spectacles. The Gulf can really turn it on and it continues to astound and excite me. But behind those amazing iconic moments I believe that the Hauraki Gulf is in a state of decline. Scallops and crays have all but disappeared, seabirds struggle for food and have to work harder to raise their chicks, invasive species are spreading, and yet we keep calling on the moana for more and more fish!

The Hauraki Gulf is in a biodiversity crisis and ecological collapse. It is time to act for the benefit of future generations.

I welcome ***Revitalising the Gulf***: the proposals are timely and balanced and a great starting point on the road to recovery. I believe that this may be our last opportunity to restore the Hauraki Gulf. If this proposal is unsuccessful or is watered down then the Gulf will continue to degrade and more and more species and populations of marine plants and animals will be lost.

GENERAL POINTS

I support the Marine Protection Proposals in ***Revitalising the Gulf*** to establish new marine and seafloor protection areas to restore the Hauraki Gulf Marine Park / Tīkapa Moana / Te Moananui ā Toi.

I am fortunate to experience the Goat Island and Tawharanui Marine Reserves, Poor Knights and DEEP WATER COVE on a regular basis. The recovery and subsequent health and diversity of these areas when protected from fishing is nothing short of extraordinary. I look forward to seeing the recovery of the areas proposed for protection.

Full marine protection is the only proven way to restore an ecosystem to full health. An intact ecosystem is also more resilient to external pressures such as

sedimentation, pollution and the impacts of climate change. This proposal to protect a range of small areas in the Gulf will also bring benefits to the wider marine environment; feeding and replenishing unprotected waters.

The Government must act with urgency to set in place all proposed 19 protection zones in the Hauraki Gulf Marine Park by introducing legislation as soon as possible to enact these marine protection areas.

The extent of recovery within the High Protection Areas is dependent on how well other proposals in ***Revitalising the Gulf*** are implemented and managed over time. In particular, reform to fisheries management through the delivery of the Hauraki Gulf Fisheries Plan is essential. To achieve maximum benefits for revitalising the Gulf, I implore the government to move with pace to deliver the Hauraki Gulf Fisheries Plan in close alignment with the marine protection proposals.

The majority of the proposed High Protection Areas adjoin land areas that are in conservation management of one sort or another. This makes good sense and will increase the benefits of protection on both land and sea. I would like to see this principle taken further through protecting *all* marine areas where they adjoin land that is managed for conservation.

I ask that a pathway for other marine protected areas (i.e. new HPAs) to be assessed and included in the Hauraki Gulf Marine Protection legislation. Without such a pathway, the legislation will act as a block to the creation of other marine protected areas and/or mana whenua led initiatives in the Hauraki Gulf in the future.

The proposals in ***Revitalising the Gulf*** will result in approximately 6% of the Hauraki Gulf Marine Park being in a form of no-take marine protection (excluding the cable protection zones which don't constitute marine protection under IUCN definitions). Whilst an enormous step forward for the Hauraki Gulf, this is still a very small fraction of the Marine Park and requires further ambition to reach a 30% target.

Management of the Hauraki Gulf Marine Park must be active, adaptative and enduring to not only meet the current environmental degradation, but the uncertainty created by direct and indirect effects of climate change.

SUPPORT FOR INDIVIDUAL RESERVES AND ADDITIONAL AREAS:
I have personal experience of the following areas and I strongly support their protection.

Te Hauturu-o-toi/Little Barrier (#1) and Craddock Channel Seafloor Protection Area (#6)
On the northern coast of New Zealand's premier conservation reserve, the proposed High Protection Area will provide for the protection and restoration of a significant area of habitats typical of the Outer Hauraki Gulf. Manta are frequently seen in this area and it is also a highly productive area for seabirds due to upwellings on deep reef structures. The proposed Craddock Channel Seafloor Protection Area to the east of Hauturu will provide some level of protection for reef and seafloor communities and is relatively large. The HPA should be extended to the east coast

of Hauturu to include further shallow reef areas that have been excluded from the Seafloor Protection Area. There is a strong argument to be made that the entire coast of Hauturu should be protected within a no-take marine reserve to reflect a consistent conservation vision for the land and sea.

Mokohinau Islands High Protection Area (#8a) & Seafloor Protection Area (#8b)
The Mokohinau Islands have exceptionally high conservation values both on land and in the sea. Highly diverse seabird populations, unique reptiles and invertebrates on land will be connected through contiguous conservation reserves with a range of shallow and deep reefs in the marine environment that support large schools of reef fish as well as sub-tropical species. The "Mokes" has the potential to rival the Poor Knights as a spectacular land and sea reserve. Consideration should be given to extending the HPA to include Fanal Island.

Kawau Bay High Protection Area (#10a) & Seafloor Protection Area (#10b)
High geophysical diversity and high habitat diversity typical of inner gulf environments. This area has great potential for restoration and recovery in an area that already has considerable recreational use. The Seafloor Protection Area will provide protection to the zone's seafloor communities including scallop beds and for nursery habitats for snapper, sharks and other species.

Cape Rodney-Okarari Point (Goat Island) (#13)
The proposed seaward extension to the existing reserve will significantly improve the ecological integrity of the reserve. The new area is based on better understanding of the movements of lobster and snapper. Goat Island is already an outstanding reserve area and is very popular for recreation: the extension will reinforce its status as an icon of marine conservation in New Zealand.

The Otata/The Noises High Protection Area (#14)
The Otata/Noises Islands are a fantastic example of private and community-led conservation. I have been fortunate to have been involved with seabird restoration programs on the island. It is anticipated there will be multiple benefits from marine protection surrounding The Noises islands. An HPA will protect and enhance important ecological linkages between terrestrial and marine habitats including a diverse range of regionally significant sand and soft sediment habitats and associated biological communities. The proposal will allow for significant ongoing research and knowledge of the Hauraki Gulf and enable opportunities for education in a recovering marine and coastal environment. I strongly support the proposal for the Otata/The Noises HPA.

ADDITIONAL AREAS
As well as some further extensions to proposed reserves noted above, additional areas should be considered for protection.

Aotea/Great Barrier – the northern coast on both the west and east side of the Needles and around Rakitu Island.

Tawharanui Marine Reserve - this should be extended to seaward for the same reasons as the extension to Cape Rodney- Okarari Point and also to include the eastern and southern coasts of Tokatu Point.

Hākaimangō – Matiatia Marine Reserve (Northwest Waiheke Island)

This proposal from the Friends of the Hauraki Gulf should be included within the ***Revitalising the Gulf*** program. The proposed reserve is large, well sited and is in the transition zone between the Inner and Outer Hauraki Gulf. The area is geologically remarkable for its extensive underwater platforms and terraces, and the diversity in physical habitat is reflected in its flora and fauna.

CUSTOMARY PRACTICES

I support the approach taken in the ***Revitalising the Gulf*** to provide for customary practices. This has an emphasis on ensuring that biodiversity objectives are not compromised and includes good planning provisions and multiple checks and balances. I support mana whenua to continue to undertake their non-commercial customary practices, including with respect to their ancestral role as kaitiaki of the Gulf.

However, in the case of the two proposals to extend existing reserves at Goat Island and Whanganui-a-Hei, I believe that these extensions should be under the Marine Reserves Act to prevent confusion.

Sea Change

From: Seahawk Charters s 9 (2)(a)
Sent: Tuesday, 25 October 2022 8:01 pm
To: Sea Change
Subject: DOC Seachange Submission
Attachments: Seachange DOC proposal.docx

Follow Up Flag: Follow up
Flag Status: Completed

Categories: Reply sent, Recorded

Seachange
Department of Conservation
Seachange@doc.govt.nz

25 October 2022.

Submission on proposed High Protection Zones in the Hauraki gulf

My/our concerns about this process and the proposal itself can be summarised as follows:

It is not democratic

- Very little time has been given for people to hear about, understand and respond to these marine protection proposals .
- The source documents are complex and the most important information about the size and reach of the proposed High Protection Areas are located in the appendix (slides 124 to 142) of a 144 page report
- Not all relevant stakeholders or intermediaries between the proposal and the affected groups have been directly contacted by DOC or HGF to alert them to this proposal. For example bait and fishing supply shops had no idea of this proposal yet it is their customers who will be directly affected by the establishment of no fish zones around the inner gulf areas including 50 km2 area around the Noises.

It is potentially very divisive.
The proposal expressly prevents any recreational or commercial fishing in these areas but allows for :
The customary practices of mana whenua, including customary non-commercial fishing, will be provided for within HPAs. Customary practices will be managed to achieve the biodiversity objectives agreed with mana whenua for each site. Protected Customary Rights (PCR) and Customary Marine Title (CMT) recognised under the Takutai Moana Act will be unaffected.

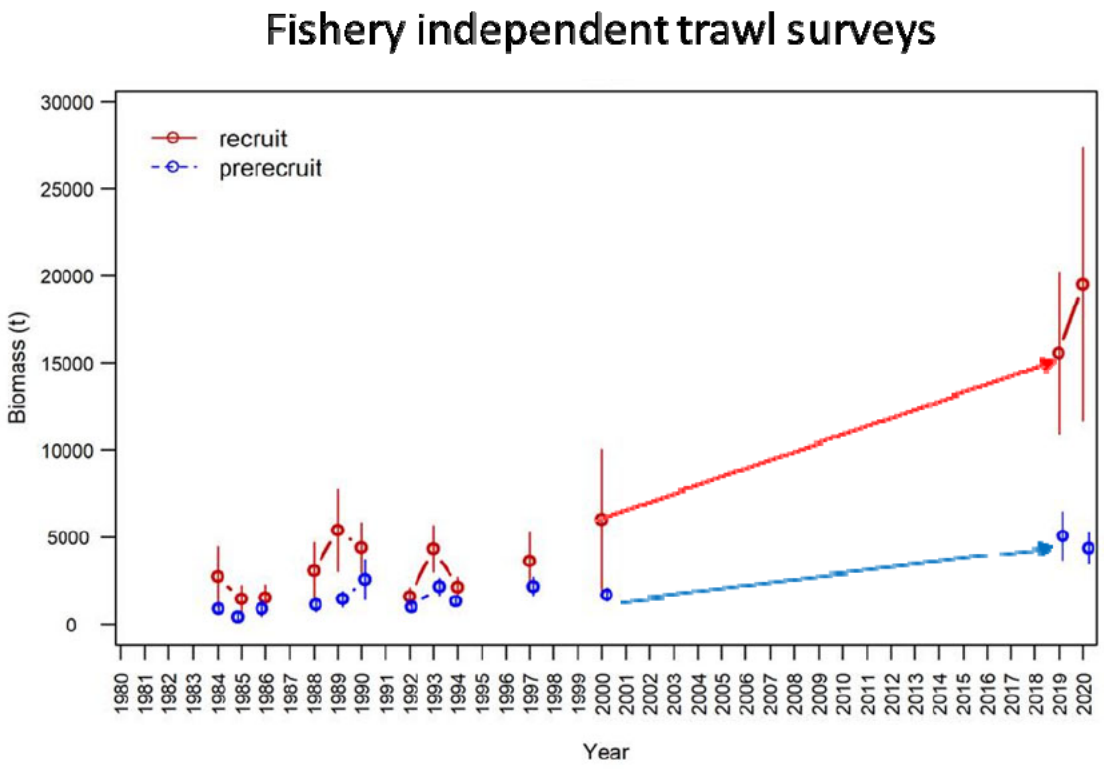
Inevitably this will be reinterpreted as two different sets of rules for the same area of water that was once accessible to all. There is no guidance within the documentation on how this work in practice in large areas such as the Noises (50 km2) or the Motukawao Group (30 km2) which is a very popular and productive fishing area across all cultural groups, Maori, Pakeha, Pacifica and Asian

It inconsistently applies its own guidelines to justify the HPA's .
The purpose of the High Protection Ares is to *support the recovery of some of the most biodiverse regions in the Gulf*.
Some of the most at risk marine ecosystems include scallops, crayfish and the loss of kelp forests, in part, to a greater or lesser extent, due to the encroachment of kina.

Yet few of the detailed assessments outlining the ecological objectives and justification for an HPA specifically mention the protection or restoration of scallops or crayfish and in some cases the report acknowledges that *most of the soft-sediment habitat within the area has unknown values; it is thought to be dominated by mud substrate (Motukawao group).*
Nor is there any data or observations that set the benchmark on how the establishment of the specific HPA's will improve the pre-HPA ecosystems around these areas.

Part of the fundamental rationale for the establishment of these HPA's are out of date or no longer apply .
Much of the work on the establishment of these HPA's began 6- 7 years ago; well before the Gulf wide government moratorium on scallop collection or dredging, or collection of crayfish or the establishment of rahui to protect coastlines. But the rationale for these HPA's do not reflect these important advancements in the protection of sea-life and the sea floor.

The narrative of the DOC proposal and its supporting documentation also predates the publication of the NIWA trawl survey data in 2021 that shows snapper stocks and many other species have significantly recovered over recent years .
See slide below :



HPA's are not strategically aligned to solving the biggest future threat to the Gulf .

With the reduction of commercial fishing pressure, decreases in recreational bag quota and the moratoriums on crayfish and scallop harvesting the pressure on the future of the Hauraki Gulf increasingly shifts towards land based, not sea-based activities.
The biggest threat to the recovery of the Gulf is sedimentation; from rural and forestry-based activities in the Waikato and Coromandel catchments and the rapid development of rural land for housing and commercial developments along the northern and southern coastlines of the Auckland region.
The increasing rate of subdivision, combined with higher frequency high volume rainstorms has accelerated the flow of sediments down the many streams and rivers to the estuaries that feed into our coastlines from Long bay north to Leigh, and on Waiheke Is land . And the extension of the northern motorway is only going to push that rate of sedimentation along the very coastline that feed into the HPAs for Tiritiri Matangi, Mahurangi, Kawau Is land right up to Goat Is land itself.

If we need to see what the future of suffocating sedimentation looks like, visit Long Bay reserve after a storm, or compare the health of the Waitemata harbour to what it was 6 years ago.
The danger is that the establishment of HPA's creates an illusion of protection and revitalisation when sedimentation will continue to spread across the Gulf irrespective of these new boundaries.

In summary the proposed creation of these HPA's is:

- based on out of date data and assumptions about the biggest threats to the Gulf,
- the process for gathering feedback is undemocratic
- the establishment of the HPA's is potentially very divisive between manu whenua Māori and other long established groups of gulf users.
- Will not solve the fundamental problems facing the health of the Hauraki Gulf, which are now fundamentally land based.

Thank you, for your consideration.

Regards

s 9 (2)(a)

Seahawk FISHING CHARTERS

s 9 (2)(a)
s 9 (2)(a)

Seahawk Fishing Charters
s 9 (2)(a)

seahawk.co.nz

Sea Change

From: s 9 (2)(a)
Sent: Tuesday, 25 October 2022 8:10 pm
To: Sea Change
Subject: Extension of Marine Reserve along Hahei Beach

Follow Up Flag: Follow up
Flag Status: Completed

Categories: Reply sent, Recorded

Kia ora
As a s 9 (2)(a) I would like to notify you of my support for the extension of the Marine Reserve along Hahei Beach. Dogs can be walked somewhere else, a system for monitoring public use can be established, and clear markers for the start/ end can be constructed. I do not agree that fishing, or removal of seaweed or shells should continue. We all have to make sacrifices for our marine life and for our beach ecosystems.
Nga mihi,
s 9 (2)(a)

s 9 (2)(a)
s 9 (2)(a)

Auckland address:
s 9 (2)(a)

Name	Heather Russell
Interest	Family have owned property in s 9 (2)(a) for over fifty years
Tribal Affiliation	Ngati Kuri Te Aupouri Te Rarawa
Contact details	Heather Russell s 9 (2)(a)

Thank you, for the opportunity to respond to the *Revitalising the Gulf Marine protection proposals* (the Proposal). My specific interest is in proposal for the Hahei area and the proposed changes *Te Whanganui-O-Hei (Cathedral Cove) Marine Reserve*.

Hahei is a thriving holiday community with a strong and vibrant culture built around the recreational use of the Hahei beach. However, the recent promotion of tourism in the area has resulted in several adverse impacts on the natural environment. These impacts include:

1. Increased traffic in the area resulting in increased pollution.
2. Increased damage to the flora and fauna due to increased foot traffic.
3. Increased noise pollution due to more frequent (and more numerous) tourism operations (primarily boats and vehicles).
4. Increased pressure on the beach as numbers increase.

These activities have not only impacted the community but also have had a significant impact on the maritime environment. The Proposal singularly fails to recognise these impacts. There is a strong research interest in the negative impacts of tourism on coastal environments. Gorsman E., *The impact of Tourism on Coastal Areas*, 1997 (for example) outlines the impact of increased tourism on the health of marine and coastal environments. Any proposal to address the health of the marine environment needs to address more than the maritime. The Department of Conservation appears to be taking a piecemeal approach, maritime based approach to resolving a more holistic problem. This approach does not reflect what is best for the environment.

The Proposal fails to address the effects on the community in any meaningful manner. I can see no mechanism (or process) contained in the consultation documents that outline how the Community's concerns (as opposed to mana whenua) will be incorporated into finalised changes. It is also apparent from Table 19, *Sea Change – Tai Timu Tai Pari Plan Marine Protected Area (MPA) proposals – Agency analysis and advice on selection of MPAs towards development of the Hauraki Gulf Marine Park MPA network,* that the impact of the Proposal on the community has not been considered as part of the objectives. Therefore, these objectives are a fundamentally flawed metric for assessing the Proposal. Changes to the maritime environment will inevitably and fundamentally impact the littoral and coastal environment and (therefore) the community. It is my reading of the available documents that the community has not been considered at all. This could be considered as a deliberate ploy to make the Proposal seem more beneficial and attractive.

Furthermore, it is my experience that recent Department of Conservation consultations have similarly failed to address the community's concerns (i.e., the paving of the track to Cathedral Cove against the wishes of the community). This is a fundamental flaw in the process, and it is my assertion that until this issue is dealt with the Proposal must be paused. The Department of Conservation has not discussed, articulated, or been available to the community in any meaningful manner to discuss their objectives or any future plans that they may have for Hahei. There appears to be a creeping approach to restricting the activities of the Hahei community.

In addition, I am somewhat disturbed by some of the information contained in the Proposal, in particular:

1. The lack of firm geographic references in the document located on the Department of Conservation website (https://www.doc.govt.nz/haveyoursayonthegulf) make a meaningful assessment of the effects of the proposed changes 'challenging'. The approximate location of the boundary as 'halfway along Hahei beach' seems fundamentally flawed. There is no logical explanation for this arbitrary boundary. Is there a plan to extend the MPA further in the future? Is there a plan to extend restrictions of activities in the future?
2. There is a lack of clarity on who the Department of Conservation has consulted as mana whenua for Hahei. Did the Department consult Ngati Hei or Ngā Puhi. How were any differences between the two peoples addressed?
3. There is a lack in clarity in 'permitted activities' in the proposed *High Protection Area*. For example:
    a. The continuance of the ability for pets (dogs) to walk on the beach (during permitted hours). This is not mentioned in the Proposal. However, there are apocryphal stories that there will be further restrictions on the dogs. This lack of clarity could be considered disingenuous at best.
    b. There is no clarity on the ability to launch small boats from the existing access points within the *High Protection Area*. There are both formal and informal boat ramps in this area.
    c. There is no reference to the existing practice of fishing from beach. This is a long-standing practice for residents. The current proposal will also create an elitist recreational fishing, small boat fishing will be a prohibited activity as small boats will not be safely reach areas outside the *High Protection Area*.
    d. Is the collection of Tuatuas from the foreshore included in the prohibition? Another long-standing and sustainable practice.

These flaws coupled with the lack of meaningful consultation and the lack of a holistic proposal to address the unsustainable increase in tourism indicates that this proposal is fundamentally unsupportable. The Department of Conservation needs to take a community-based approach to rebuild a sustainable approach to the protection of our taonga – Hahei.

In its current form I cannot support the Proposal.

Sea Change

From: s 9 (2)(a)s 9 (2)(a)
Sent: Tuesday, 25 October 2022 8:29 pm
To: Sea Change
Subject: Submission

Follow Up Flag: Follow up
Flag Status: Completed

Categories: Recorded

This is a private submission as a bach holder at s 9 (2)(a)
Name: s 9 (2)(a)
Contact details: email: s 9 (2)(a)
Mobile: s 9 (2)(a)
Home address: s 9 (2)(a)

My Submission:

I am in favour of the extension of the exisiting marine reserve as planned beyond Mahurangi island.

However, I am strongly opposed to including the proposed additional triangular piece from the tip of Mahurangi island to approximately half way along Hahei beach.
The inconvenience to the thousands of people who enjoy this stretch of beach would be considerable for minimal additional protection of the marine environment. My observation is that this small triangle of water is used predominantly by recreational boats passing through or anchoring, particularly in the lea of Mahurangi island for overnight shelter. So the additional marine protection gained by designating this small triangle a marine reserve would be minimal but the disruption to one of the most popular beaches on the Coromandel would be intolerable and set a huge precedent. Please listen to the people who respect and enjoy this beautiful beach.

s 9 (2)(a)
25 October 2022

Sea Change

From: s 9 (2)(a) s 9 (2)(a)
Sent: Tuesday, 25 October 2022 10:02 pm
To: Sea Change
Subject: Hauraki Gulf Submission
Attachments: Hauraki Gulf Submission s 9 (2)(a) .docx

Follow Up Flag: Follow up
Flag Status: Completed

Categories: Reply sent, Recorded

Please find my submission attached.

Thank you for the opportunity.

s 9 (2)(a)

s 9 (2)(a)
s 9 (2)(a)
[redacted]
[redacted]

25 October 2022

Minister of Oceans and Fisheries, Hon. David Parker Minister of Conservation,
Hon. Poto Williams c/- Te Papa Atawhai Department of Conservation
by email: seachange@doc.govt.nz

Dear Ministers,

Time is running out for the Hauraki Gulf and action is urgently required to protect and revitalise its biodiversity.

It is already severely under pressure and this will be steadily amplified by challenges ahead posed by climate change.

The proposals for legislation to create marine protection in the Hauraki Gulf Marine Park are commendable but should be considered a bare minimum.

Extension of the marine reserves is vital as are the proposed high protection & seafloor protection areas. (It's pleasing to see the additional HPA around Ōtata / the Noises Island since the strategy document was released in 2021).

I live on the s 9 (2)(a) and when we first moved here 25 years ago, there were mussels all over the local rocks. Now the rocks are covered with pacific oysters and tubeworm, leaving no place for the mussels to attach. I have seen invasive Asian date mussels washed up leaving black slime (and a very potent pong), and one day counted over 70 dinner plate-sized spotted jellyfish (the weeds of the ocean) on a small stretch of beach. If I can easily observe these small but significant signs of degradation near my home, it's nothing compared to what scientists are warning us is happening throughout the gulf.

My husband is a keen recreational fisherman and may grumble about new restrictions but the mindset that the sea is an endless resource and that every New Zealander has a *right* to its bounty is not fit for the twenty-first century.

There are myriad challenges, lobbyists are loud, and pragmatism has its place.

But sometimes you have to be bold, and this is one of those times.

Thank you for the opportunity to submit.

Ngā mihi

s 9 (2)(a)

s 9 (2)(a)

Sea Change

From: s 9 (2)(a) s 9 (2)(a)
Sent: Tuesday, 25 October 2022 10:10 pm
To: Sea Change
Subject: Submission on Cathedral Cove reserve Extention

Follow Up Flag: Follow up
Flag Status: Completed

Categories: Reply sent, Recorded

Name s 9 (2)(a)
Ratepayer and owner of s 9 (2)(a)
s 9 (2)(a)

I do not agree to extending the existing boundary along Hahei Beach.
Having a Reserve actually on a populated beach is untenable. There is plenty of unpopulated coastline in NZ for more Reserves

Thankyou for your consideration
s 9 (2)(a)

Sent from Mail for Windows

Sea Change

From: s 9 (2)(a) s 9 (2)(a)
Sent: Tuesday, 25 October 2022 10:21 pm
To: Sea Change
Subject: Hauraki Gulf Marine Protection feedback

Follow Up Flag: Follow up
Flag Status: Completed

Categories: Recorded, Reply sent

Hi,

I am one of the majority of residents of the Hauraki Gulf area who do NOT fish, but recreate on or in the water, love the sea and all the creatures that live in it. We live in s 9 (2)(a) near the beach, and want to preserve the Hauraki Gulf for our kids and future generations.

I object to the current state where 94% of the Gulf is available to recreational fishers to predate marine life, especially given that people who do the fishing are a minority of the population. Why should they have access to such a large area of public space, to carry out an activity that harms the Gulf ecosystem and degrades it for everyone else.
Sure some commercial fishing needs to happen - most people like to eat fish sometimes - but we need to urgently protect the Gulf ecosystem to keep it healthy.

I would like to see protections go much further, about 40% protected and leave 60% for fishing.

Please also make sure enforcement and penalties for breaching protected areas are robust.

Kind Regards,

s 9 (2)(a)
s 9 (2)(a)

Sea Change

From: s 9 (2)(a) s 9 (2)(a)
Sent: Tuesday, 25 October 2022 10:21 pm
To: Sea Change
Subject: Te Whanau o Pākiri Submission on Sea Change
Attachments: DOC Submission Te Whanau o Pākiri.pdf; Side Scan Pakiri Beach Horse Musells.pdf; s 9 (2)(a) _2005 _SeaSketch_Network_Proposal_Hauraki_Gulf.pdf

Follow Up Flag: Follow up
Flag Status: Completed

Categories: Reply sent, Recorded

Please find attached our submission and supporting documents.

Ngā mihi

s 9 (2)(a)

Te Whanau o Pākiri

Submission in response to 'Revitalising the Gulf' marine protection zones proposed by the Department of Conservation.
Link: https://www.doc.govt.nz/haveyoursayonthegulf

Nature of submission	Te Whanau o Pākiri seeks to propose the placement of High Protection Marine Areas and in particular stronger Seafloor Protection within the Pākiri and Mangawhai embayment Of Hauraki Gulf Marine Park Area and to have sand mining within the embayment and the Hauraki Gulf prohibited.
Date:	18 October 2022

This submission is on behalf of Te Whanau o Pākiri. Te Whanau o Pākiri are a registered society and community group comprised of tangata whenua and longtime residents of our hāpori at Pākiri. Our rōpu encourages active community involvement in social, cultural, environmental, health, education, and economic activities to enhance wellbeing and development of our local whanau and community. Our formal operations began in 1989 when Pākiri Te Whanau Community Group Inc (Te Whanau O Pākiri) (TWOP) became an incorporated Society. Prior to that our group was known as The Pākiri Tribal Committee since the 1940's. We are an active administrative and representative body for the hau kainga and whanau residing at Pākiri.

Pākiri is located at the northern area of the Hauraki Gulf adjacent to Hauturu o-Toi and is part of the Mangawhai- Pākiri Embayment. Te Motu-o-Hawea, Goat Island Marine Reserve and Okakari Point sits at the Southern end. Pākiri Beach itself is bookended by two regional Parks, Pākiri and Te Arai.

TWOP has objected to sand mining in its rohe moana since 1947. Past member and original founder and the current TWOP Chairs late father Laly Haddon was awarded a QSM in 2009 by the Department of Conservation for his role in conservation across the Auckland region for three decades. He was our iwi leader for the formation of Ngāti Manuhiri and Ngāti Wai as well as the Chair of the Hauraki Gulf Forum and an active participant in the Leigh Marine Reserve. Laly acted on behalf of his people especially enabling a vision of kaitiaki sustaining the mauri of the Gulf and its taonga. Lalys leadership in this space enabled the involvement of our rangatahi at Pākiri in conservation with members of TWOP working for DOC and helping with predator trapping to save threatened birds at Pākiri and planting Pohutukawa in coastal revegetation projects. He carved a pathway and built the relationships for our current hapu leadership to benefit directly from today.

More recently TWOP have been active in the Auckland Council hearings process objecting to a consent application relating to extraction of sand, associated discharges into coastal marine area and disturbance to the seafloor. TWOP strongly object to the continuation and ramping up of sand extraction within the embayment by McCallum Brothers led by Callum McCallum for over 9 million cubic metres of sand from the seafloor over a 35-year term. (Interestingly Callum McCallum was a stake holder representative on the first Tai Timu Tai Pari – Sea Change Plan.)

The sand consent application for the far shore was refused primarily on grounds relating to the uncertainty of effects on coastal processes and cultural effects, on mana whenua values. Those concerns led to a conclusion that the proposed activity is not consistent with provisions of the Auckland Regional Coastal Plan.

It was found that:

- Significant adverse cultural effects from sandmining have occurred over the last 80 plus years since sand mining operations began
- Significant cultural effects that would occur because of continued mining
- Inconsistency of sandmining with the Treaty of Waitangi principles, including the principle of active protection.
- Inconsistency of continued sandmining with the obligations under Part 2 of the RMA to recognize and provide for the relationship of Māori with their whenua and moana and the exercise of kaitiakitanga.
- The inconsistency of sandmining with the relevant RMA policy and planning instruments
- The lack of information on the long-term effects of sand mining on coastal processes
- The failures of MBL to comply with the conditions of its current consent

A copy of the council decision on the offshore consent application declining the consent is attached.

TWOP give our full support with the purpose of the plan to "*To fix the Gulf*" especially *enabling a vision of kaitiaki sustaining the mauri of the Gulf and It's taonga* (LP Haddon 2009)

Part of the plan is to extend or create some new marine reserve areas

While the plan doesn't propose any extensions or new reserves in the Pākiri embayment we strongly encourage that this is revisited and reconsidered, and that stronger protection of the Sea floor and a High Protection Area is applied based on the protection needed for taonga species and resources due to the:

- Depletion of sand resource
- Absence of horse mussels
- Depletion scallops and other shellfish and biogenic habitats within the Pākiri embayment. And the knock-on effects of this on habitats and diets of endangered sea and shore birds.

The late Dr Roger Grace originally proposed a Marine Protected Area off the coast at Te Arai Point because of the high values present in that area. He recommended

it be placed 5 km out to sea and 5 km north or south of Te Arai Point. He expected that sandmining would be phased out. We would like to see this reinstated. Please see attached Report p8 Grace 2005 Seasketch Network Proposal. *Towards a Marine protected Areas Network For the Haurak Gulf Marine Park*

In summary TWOP:

- Strongly support the restriction and prohibition of sand extraction and mining on the sea floor within the Pākiri Mangawhai embayment.

- Strongly urge inclusion of a HPA in the Pākiri Mangawhai embayment in line with the recommendations of Dr Roger Grace. See Appendix report.

- Extending High Protection area and seafloor protections in line with the Regional Park Areas that flank Pākiri at Te Kiri's Pa (Pākiri Regional Park) in the south and Te Arai Point Regional Park in the North- extending the area of park protection on land to a corresponding area under water as a bare minimum of protection. Work on land by community groups to restore riparian margins, reforestation and wet land restoration on these parks will work holistically in supporting the corresponding marine areas. Especially in the restoration of mauri so desired.

- Protecting the customary rights of whanau that reside along the coastline at Pākiri.

- Support High Protection Areas and strongly recommend the consideration of placing more within the Mangawhai Pākiri Embayment

- Increase the area under marine protection in the Gulf to a figure significantly higher than 6.6% and closer to 30%

- Seafloor protection areas at Cape Rodney Okakari Point and the proposal for more High Protection Areas

- Would like to be involved with Mana Whenua in setting the biodiversity objectives for the Mangawhai and Pākiri embayment. Support the return of the Horse Mussel beds that were once extensive and covered the length of the embayment and Scallop beds once abundant. (See Side Scan Pakiri Beach Horse Mussels Attached) Protection of our Taonga species as well as the biogenic habitats and shell beds from Cockles, Dog Cockles, Whelks and Scallop that are currently extracted processed and sold as crushed shell for concrete and landscape materials

These are matters that are affecting our immediate environment and are as well, regionally, and nationally significant. Any decision made within our adjacent marine area and moana effects the relationship of the Māori community at Pākiri, our culture and traditions with our ancestral lands, moana and taonga. These cultural aspects are recognized as of national importance and would not be addressed in full without our participation.

s 9 (2)(a) on behalf of Te Whanau o Pākiri.

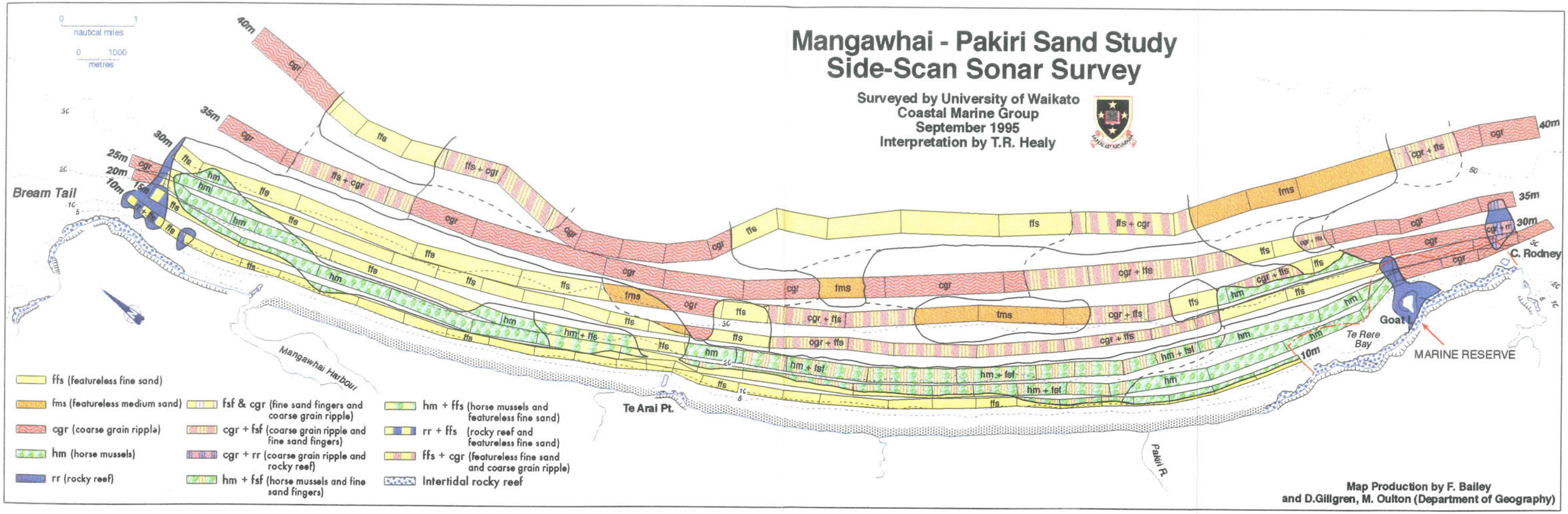


Figure 11. Side-scan sonar survey: Sea floor pattern interpretation.

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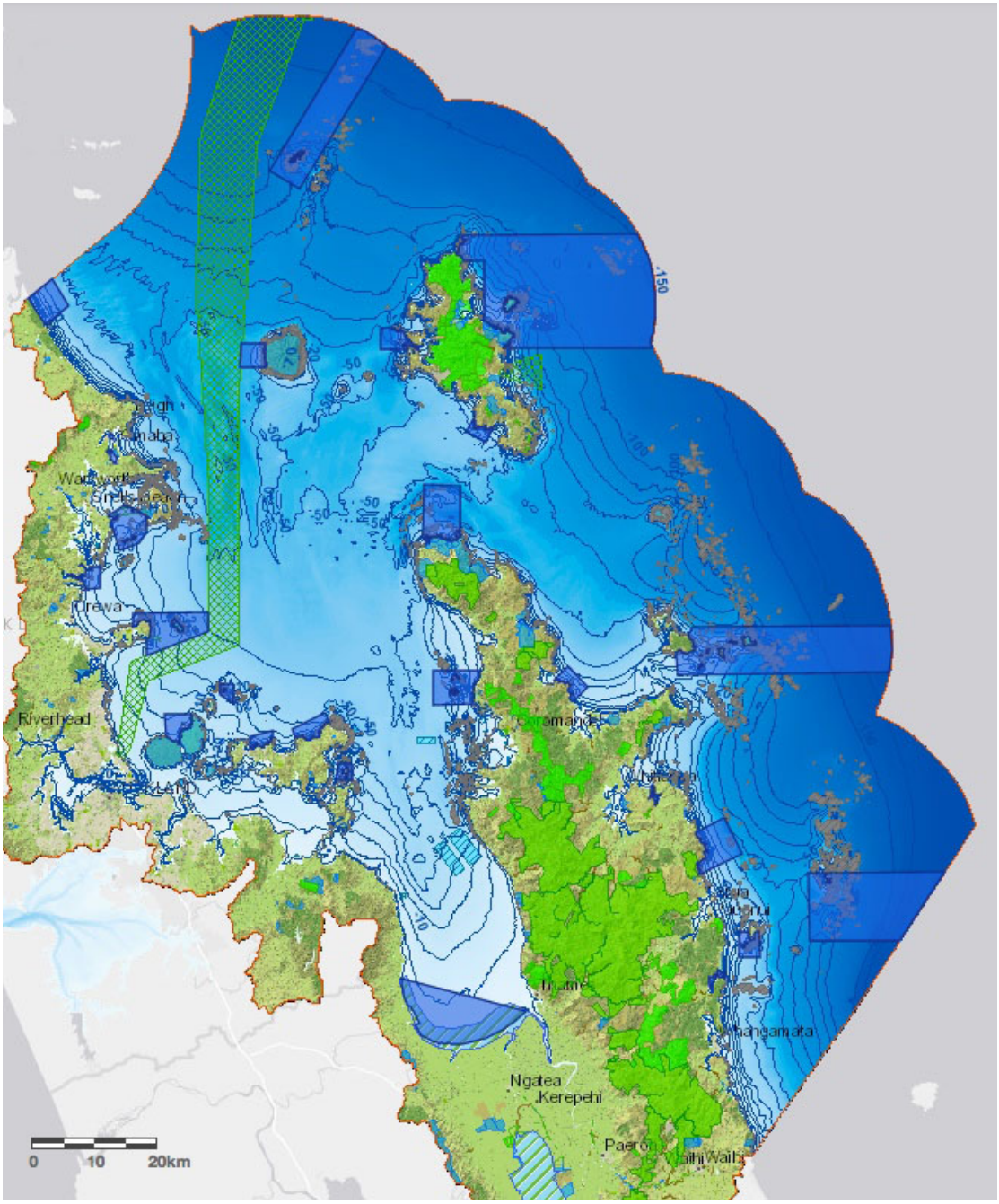
TOWARDS A MARINE PROTECTED AREAS NETWORK FOR THE HAURAKI GULF MARINE PARK

SEASKETCH DRAFT MPAs NETWORK, SITE DESCRIPTIONS. 12 Dec 2014 update Roger Grace. For consideration by the Biodiversity and Biosecurity Round Table of the Marine Spatial Planning process for the HGMP.



Draft Type 1 MPA network for the Hauraki Gulf Marine Park.

CONTENTS

INTRODUCTION

Two successive State of our Gulf reports to the Hauraki Gulf Forum (HGF 2011, 2014) have shown that many indicators for the environmental health of the Hauraki Gulf are in serious decline. The 2011 report was a catalyst for a response by Auckland Council, Waikato Regional Council, Department of Conservation and Ministry of Primary Industries to sponsor a Marine Spatial Planning Process to address a multitude of terrestrial and marine issues which are known to influence the ecological health of the Gulf.

One of the serious issues the Gulf has suffered is loss of biodiversity in its many forms. MPAs or Marine Protected Areas can be effective tools for protection of marine biodiversity. Particularly Type 1 MPAs, in New Zealand known as Marine Reserves established under the Marine Reserves Act 1971, are known to be very effective at allowing marine life and habitats to recover from many years of degradation caused through fishing pressure, loss of ecosystem services and resulting trophic cascades.

The New Zealand Biodiversity Strategy (DOC 2000) aims to maintain marine habitats and ecosystems in a healthy functioning state, and to allow degraded areas to recover. The aim is to have 10% of NZ's marine environment with some form of protection effective for biodiversity. The Marine Protected Areas Policy and Implementation Plan (DOC & Ministry of Fisheries 2005) will be a key means of achieving this.

An effective network of MPAs for the Hauraki Gulf Marine Park must have as its core a series of Type 1 MPAs or marine reserves. Lesser levels of protection in Type 2 MPAs can be seen as supplementary to the core network of no-take marine reserves. The MPA network proposed is just one, but a very important one, of the processes which can lead to an improvement in the environmental health of the Hauraki Gulf. It will definitely lead to greatly improved ecological health in the approximately 10% of the HGMP targeted, and the benefits of these improvements can spill over into other areas. Larger MPAs will also allow restoration of natural population structure of exploited species, including large old fish much reduced in fished areas, which provide different ecological services from small fish.

But what of the other 90%? There are many opportunities for substantial adjustments in management of fisheries which can lead to environmental improvements, including reduction in bottom-impacting fishing techniques, and increase in the standing biomass (eg. doubling) of many commercial and recreational species thus reducing the impact of trophic cascades. Decrease in sediment and nutrient runoff from the surrounding catchment is also seen as critical to an improvement in overall health of the Gulf. All these moves need to progress together in order to not only arrest the decline of the Gulf, but to turn it around and to head towards an improvement in key environmental indicators.

ACKNOWLEDGEMENTS

Although my approach in preparing this draft network of MPAs has been largely intuitive based on years of experience and knowledge of the Hauraki Gulf and an understanding of the basic principles of MPA network design (Ballantine 2014; Thomas & Shears 2013), I have taken particular guidance from the recent MSc thesis of Susan Jackson (Jackson 2014) and the maps contained therein. Detailed attribute maps in the Seasketch programme have also been extremely useful, especially those maps showing:

MPA Policy Habitat Classification (2014),
Biogenic Habitats Ecosystem Services,
Ecosystem Productivity Ecosystem Services,
Recreational Fishing Effort (2004-5),
Snapper Catch Intensity,
Average Annual Intensity of Trawl Fishing, and
Indicative Areas of Commercial Scallop Dredging.

Presentations to the Biodiversity and Biosecurity Round Table have also been very helpful, as well as discussions with other Round Table members. A common theme in the results from the public Listening Posts held early in the MSP process was a clear desire for more marine reserves. A parallel result came from an Auckland Council People's Panel survey recently in which, in the last 12 months, 39% of respondents had visited a marine reserve in Auckland, whereas only 24% had fished in the ocean. These results suggest that the MSP process has a clear mandate to recommend creation of more marine reserves.

TYPE 1 MPAs (No-take Marine Reserves)

Preamble:
Type 1 MPAs, or no-take Marine Reserves, are the top protection class of MPAs and offer the best protection for biodiversity that we can provide. We have a few long-established Type 1 MPAs which prove the value of total protection and the increase in value of these areas through time. Because this protection is the best we can offer, there is no option to adjust restrictions so in theory there is no need from a management point of view to monitor these MPAs extensively, in contrast to partial protection (Type 2 MPAs) where monitoring is required to test the effectiveness of variable controls imposed and allow adjustment if necessary.

Five main principles

In preparing this Draft MPA network **five main principles** are taken into account:

1. REPRESENTATION. All marine habitats in the HGMP should be represented in the network.
2. REPLICATION. There should be more than one example of each habitat represented in the network to safeguard against accidental compromise and loss of a habitat type.
3. NETWORK DESIGN. The network should be designed with connectivity in mind, so that marine life has a chance to use the protected areas as "stepping stones" from one sanctuary to the next.
4. PERMANENT. The MPAs should be permanent. They increase in biodiversity value as time progresses and should be allowed to continue this process toward maximum value.
5. SUFFICIENT QUANTITY. There should be enough MPAs and of sufficient size for the network to be self-sustainable and viable. In this case a loose goal of around 10% of the area of the HGMP in Type

1 MPAs has been the target, which is compatible with the goal for the Territorial Sea as set out in the NZ Biodiversity Strategy 2000, but is minimal in terms of modern international goals (20 to 40%, Thomas & Shears 2013). Currently we have six marine reserves in the HGMP totaling only 0.3% of its area.

Additional design elements

In addition the following points, from a functional and practical point of view, are considered important **elements of design** of the network of Type 1 MPAs:

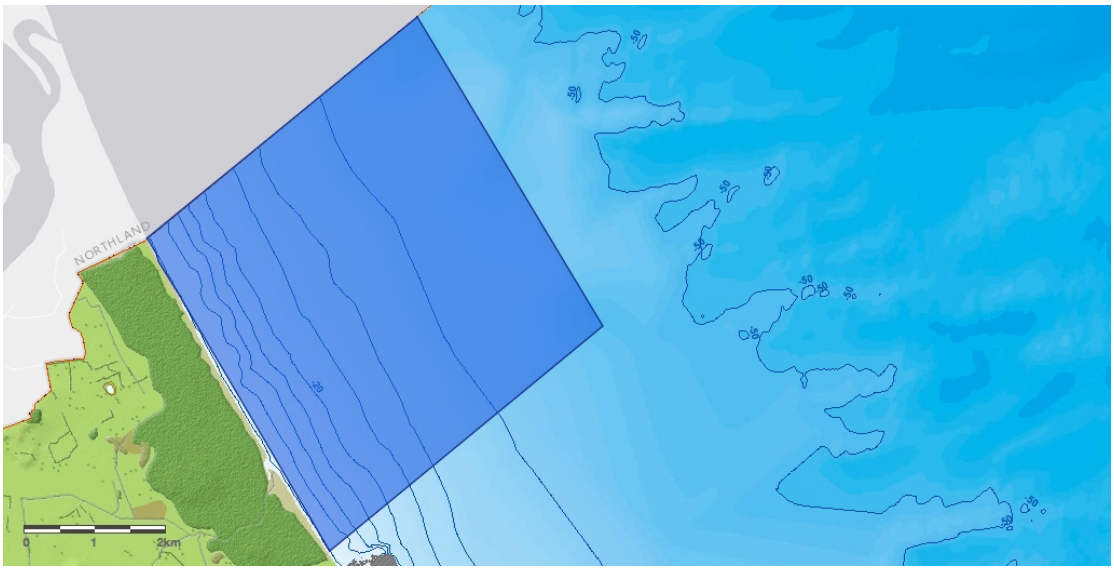
- Where possible a coastline length of at least 5 kilometres should be included in the MPA.
- For connectivity, similar habitats in representative MPAs should be preferably less than, and not much more than 50 kilometres apart.
- Boundaries should be kept simple, with straight lines preferable to a distance-off line. Where possible boundaries should follow north-south or east-west orientation. Final boundaries should take account of ease of sighting using obvious land marks where possible.
- For coastal reserves, inclusion of accessible coastline is desirable for ease of public access.
- Where possible reserve boundaries should not cut through rocky reefs, but should include the entire edge of a reef, preferably with a buffer of soft sediment around each reef system.
- Aim for a low boundary to area ratio – "chunky" rather than long and skinny – to minimize edge effects.
- Because of the "edge effect" caused by fishing on the boundaries of a reserve, large reserves are more effective at biodiversity protection than small reserves, and especially so for mobile fish species.
- Because of conflict with other uses, particularly recreational fishing, it will be difficult to achieve large reserves close to population centres. Proposed larger reserves are therefore generally confined to the outer Gulf and areas remote from centres of population.

In most cases the boundaries shown on the accompanying maps are indicative only, and subject to discussion and adjustment to best suit biodiversity goals, habitat capture, and social or cultural aspirations. Although it is desirable to minimize conflict, often top fishing spots coincide with the best biodiversity hot spots, so in some cases compromises will have to be made. In preparing this draft allowance for biodiversity values has generally taken priority at this stage, though other factors have been taken into account where possible.

In some cases it may be appropriate to create Type 2 MPAs, particularly Mataitai, surrounding or adjacent to the proposed Type 1 MPAs. In this early draft little attention has been given to this concept, but development of the idea is encouraged.

When viewing these draft MPA maps in Seasketch, it is desirable to have the bathymetry contours and rocky reef attributes switched on.

Site name	Description and notes
Te Arai	**3204.4 ha**



Exposed sandy beach. About 5km of beach, either north or south of Te Arai depending on local criteria. Probably not including the rocky reefs of Te Arai. Out to about 5km offshore. This habitat is represented in MPAs only at Tawharanui in the HGMP, and then a much smaller area and less exposed. There is a complication of sand mining close to shore but possibly this may be phased out in a few years. There may also be an overlapping large offshore sand extraction licence area. Several reports and good biological survey information is available. There are shelly areas offshore.

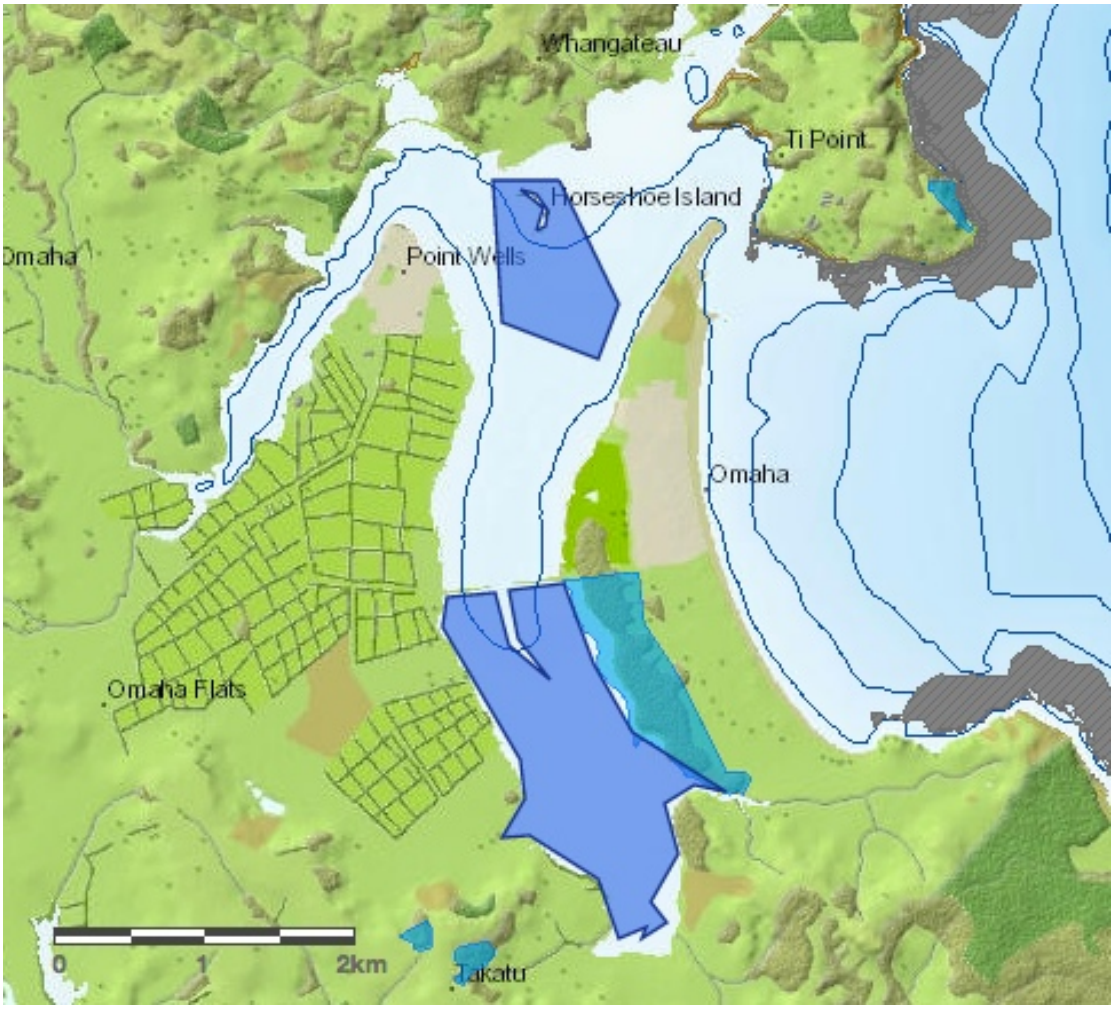
Extension of Leigh Reserve

Potential to extend Leigh Marine Reserve seawards to about 5km offshore. Research at the reserve has shown that crayfish and snapper wander out of the reserve on to the sand where they are sometimes caught (Thomas & Shears 2013), suggesting an extension may safeguard populations. Possibility this might cause more problems than it solves but worth discussing. Extension would be on sand and some shelly sand. (Not currently mapped.)

Cable protection zone

Technically the cable protection zone running through the Hauraki Gulf from Takapuna Beach to the edge of the Territorial Sea north of the Mokohinau Islands is effectively fully protected, as no fishing or anchoring is allowed. The suggestion here is to upgrade the Cable Protection Zone to a full Type1 MPA to formalize its biodiversity protection role as to some extent it has already been serving that function incidental to its cable protection function. Making it an MPA is likely to improve compliance particularly with recreational fishers. The zone protects a wide range and considerable area of soft-bottom benthic habitats from shallow water to depths in excess of 150 metres, many of which are poorly represented elsewhere in the proposed MPA network. The zone also includes some low-level reef habitat northwest of Little Barrier Island, and incidentally contains the wreck of the Niagara. It would also provide a large area for recovery of pelagic fish species.

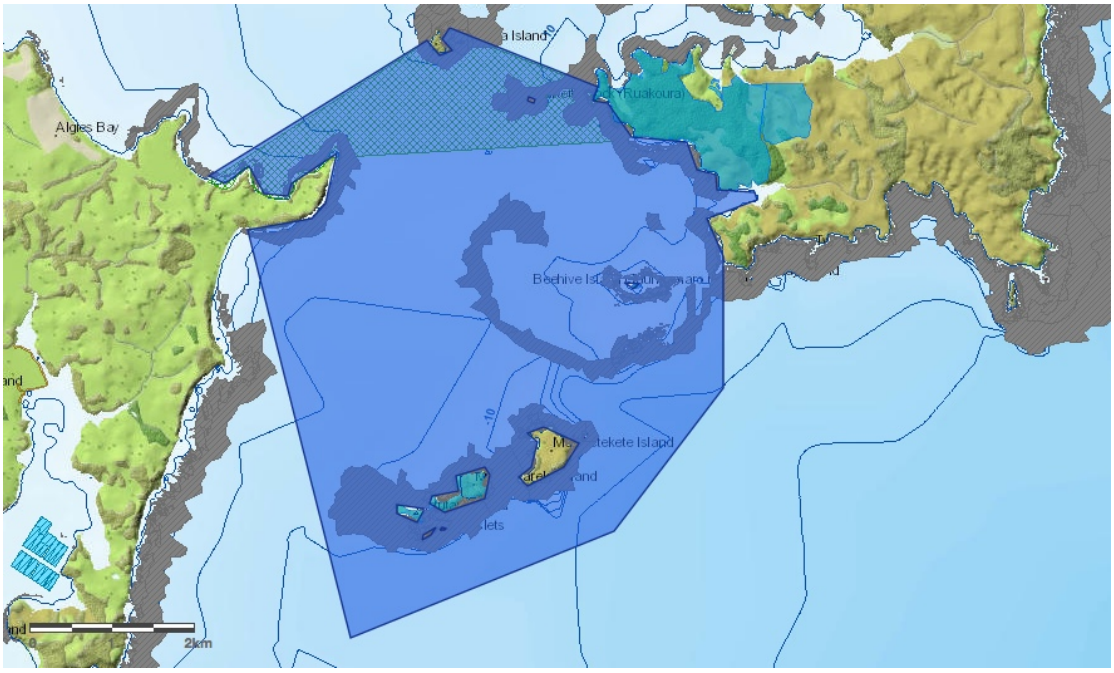
Parts Whangateau Harbour (Waikokopu Creek 185.3ha & Horseshoe Island 69.1ha)



Whangateau HarbourCare Group has since 2009 had plans for a Scientific Reserve in the southern arm of the harbour (**Waikokopu Creek**), extending the existing Omaha Taniko Wetlands Scientific Reserve (kahikatea forest) down to the low tide mark. The area is a rich mosaic of saltmarsh, mangroves, seagrass, firm sand flats and rare coralline turf "rhodolith" balls. Concept of Scientific Reserve rather than Marine Reserve is to allow future manipulation of small mangroves if they spread to compromise the open sand flats valuable to wading birds in the area.
No-fishing zone around **Horseshoe Island** in the northern part of the harbour, including a cockle bed seldom used by shellfish gatherers. Because of the abundance of cockles in the harbour the water is often amazingly clear making the area attractive as a snorkeling site amongst the mangroves. This opportunity is unavailable elsewhere on the mainland areas of the Park and has great educational potential. A no-fishing zone (marine reserve or rahui tapu) would allow buildup of flounder, fascinating for kids to see. The area is already an important nursery for juvenile fish. Protecting a cockle bed will serve as a control for understanding impacts on other cockle beds usually heavily fished. Pipi and cockles are currently protected following a serious die-off in 2009 when 80% of larger cockles died due to a bacterial infection. Closure is due to be lifted in March 2016. More information in the Whangateau HarbourCare Group's 10-point Plan (WHCG 2009), which also

suggests a Community Fisheries Plan or a Mataitai for the remainder of the harbour (see Type 2 MPAs), and at www.whangateauharbour.org

South Kawau Bay 2607.6 ha

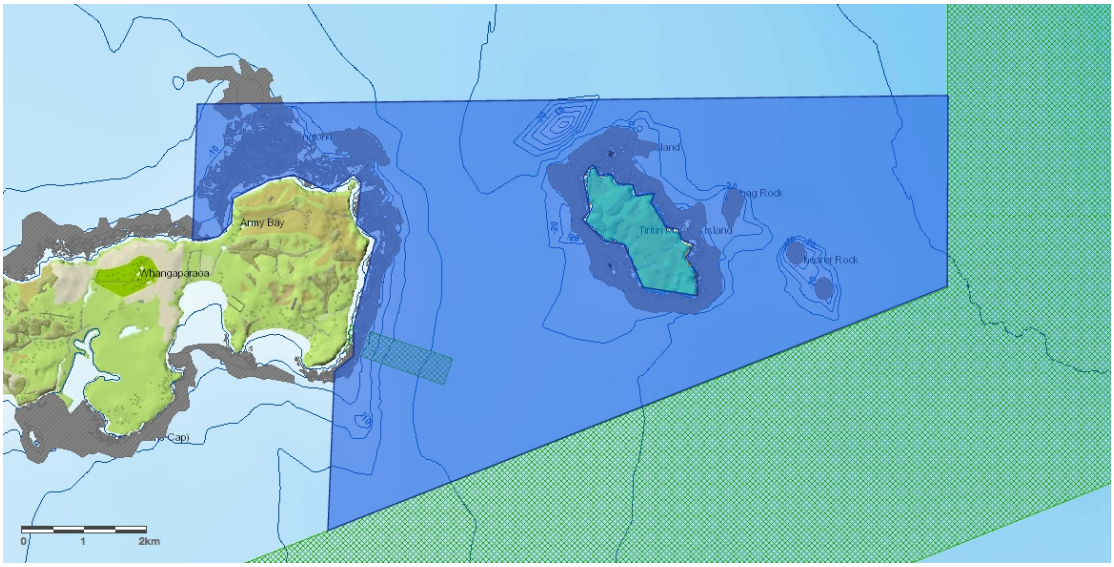


The existing cable zone prohibiting fishing is used as the basis for a no-take MPA and extended to include Beehive Island, Motuketekete and Moturekareka. Rich diversity of soft substrates including shell-gravel current swept areas. Steep rocky reefs drop down the south side of the islands. Beehive Island is a gem with a wide intertidal rock platform with high educational value. Beds of rhodoliths are known in the area. A recreational scallop bed may be contentious but it would be good to have at least one protected in the Gulf. Shore access at Martins Bay and Scandrett's Regional Park. Some detailed habitat information in Chiaroni et. al. 2008.

Te Muri 944.3 ha

This reserve is adjacent to three Regional Parks – Wenderholm, Mahurangi West, and the newly acquired Te Muri. There is no road access to Te Muri. Two estuaries are included – Puhoi River and the much smaller Te Muri estuary, both supporting appropriate quantities of mangroves and salt marsh habitat. The shoreline is moderately sheltered sand stone and mudstone strata. Shallow reefs drop to muddy fine sand close to shore, though there is the isolated Brazier Rock exposed off Wenderholm with extensive submerged rock reef. At the north the entrance to Mahurangi Harbour probably supports horse mussel beds important for juvenile fish. Two sandy beaches are included. Wenderholm is one of the most popular Auckland Regional Parks. Mid-north Forest and Bird was interested in a marine reserve in this general area about 15 years ago.

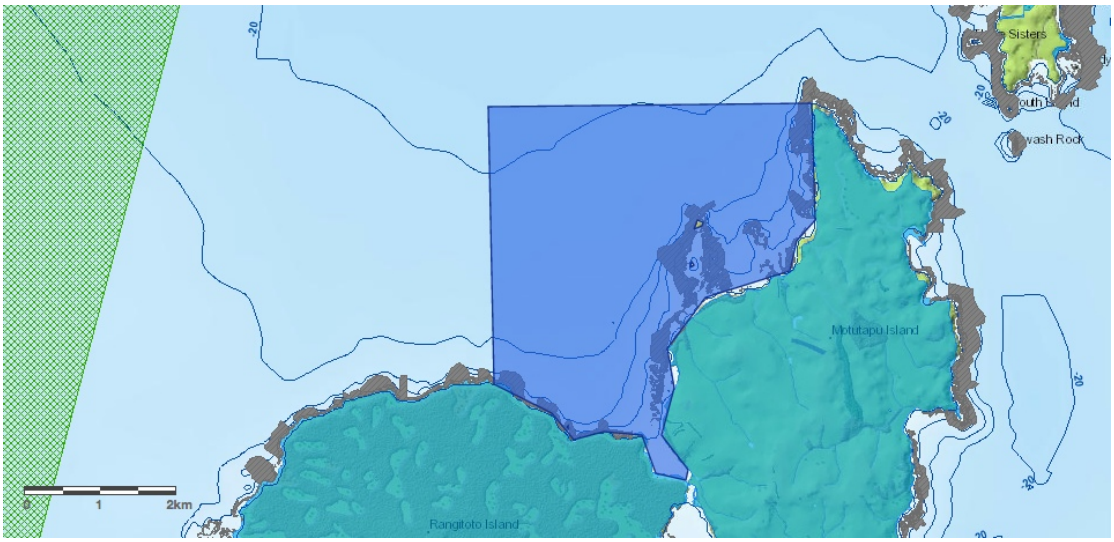
Tiritiri Matangi 4744.3 ha



A lovingly restored wildlife sanctuary on land, some people believe a similar status would be appropriate around the island and its reefs, to foster the ecological

connection between the sea and the land. Hard greywacke rocky shores surround the island, and extend offshore as a series of submerged reefs and emergent rocks. The area is heavily fished recreationally, and kina barrens are extensive (Grace 2014, p 47) where rich kelp forests bristled with crayfish in the 1960's. Hapuku were caught here up to 1945. Strong currents particularly through the Tiritiri Passage flow over shell gravel beds with high biodiversity value, and where currents pass over reefs the benthic life is particularly rich and colourful. Extending the reserve to include the intertidal and shallow subtidal sandstone reefs north of Army Bay would provide access to the reserve for land-based visitors. Huge rock pools in this area would be wonderful snorkeling sites for families and kids, and a marine reserve would give them something exciting to see. Currently shallow reefs in this area are severely degraded extensive kina barrens (Grace 2014). The New Zealand Underwater Association prepared a public discussion document on three options for a marine reserve in this area in December 2002 (NZUA 2002 - document available). Although receiving considerable support, the idea was severely and vocally "hounded down" by the recreational fishing fraternity. There is a major treated sewage outfall off the end of the Whangaparaoa Peninsula discharging high-grade effluent to a subtidal outfall in the Tiritiri Passage, but an existing outfall can be accommodated in a proposed marine reserve. The shape of the proposed reserve in this instance is partly controlled by the idea of joining it up to the cable protection zone which passes a short distance to the south and east of Tiritiri Matangi, thus substantially increasing its effective size and biodiversity benefit.

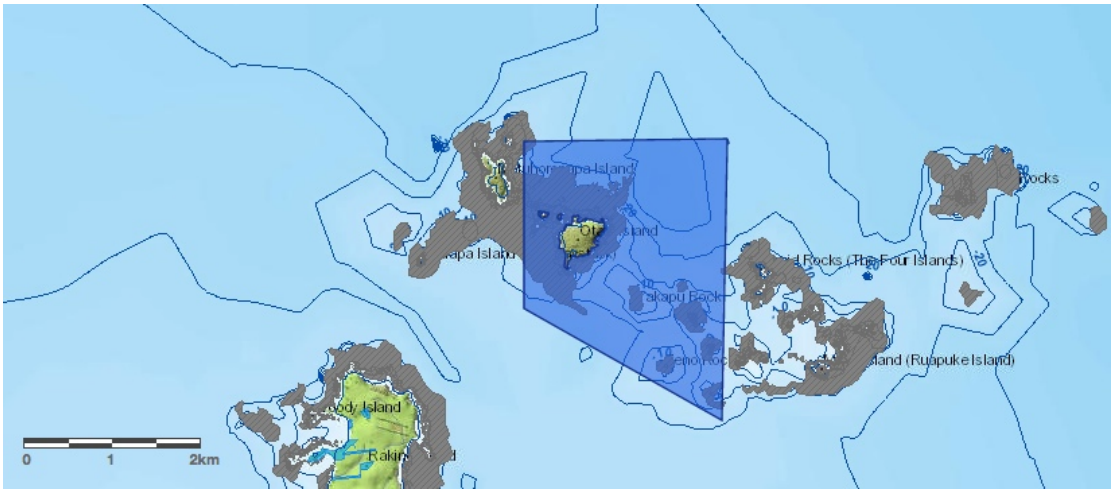
Rangitoto – Motutapu 1469.3 ha



Iconic Rangitoto Island with its rugged basalt lava fields contrasts geologically with the mudstone and sandstone layered rocks of Motutapu, and underwater the habitat provided by these two rock types would be quite different. Capturing these two contrasting shores and underwater habitats within one MPA would be a unique opportunity for biodiversity protection. Kina barrens are prominent on the Rangitoto reefs (Nick Shears, pers. comm.). A few islands and reefs off Motutapu extend offshore, but the reefs drop quickly on to a muddy bottom. Halfway along

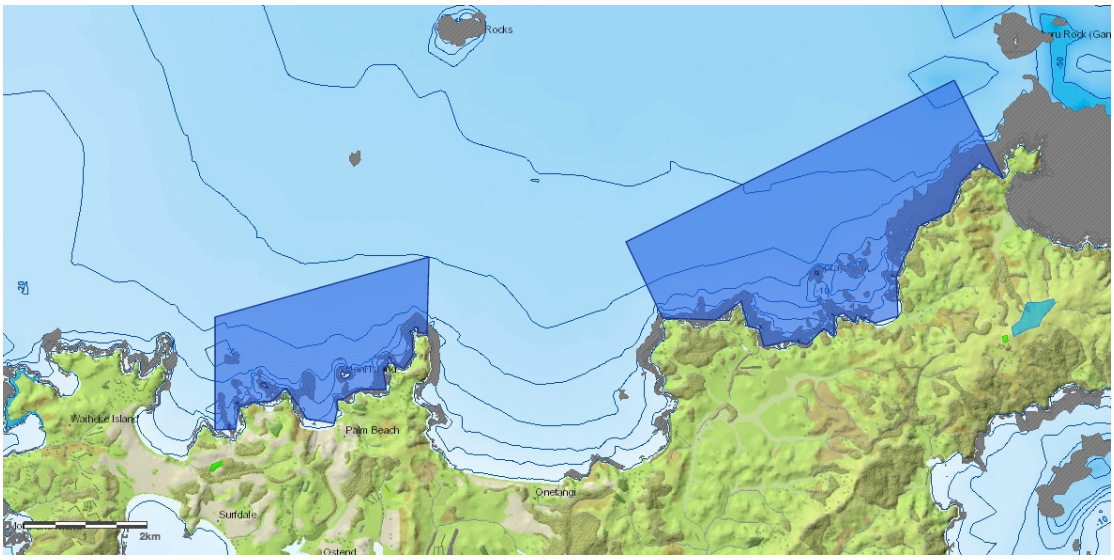
the Motutapu shore is the Motutapu Outdoor Education Centre, which puts hundreds of kids through environmental and educational courses each year, with an emphasis on marine activities. There is also an enormous revegetation project underway on the island. The presence of a marine reserve in this area would be a great boost to their activities. They already support a small voluntary reserve area where snapper numbers have increased.

The Noises Islands (Otata) 566.7 ha



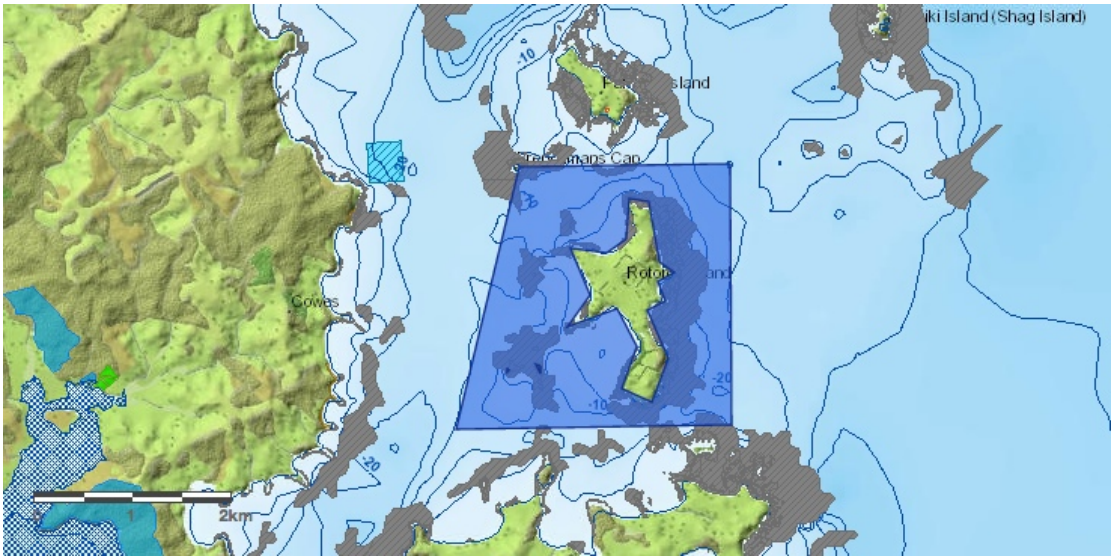
The multitude of small islands and reefs in this area ensures it is a very popular small boat-based fishing spot and attempts to create a no-take MPA in this area will run into stiff opposition from recreational fishers. I believe there is room, however, for both a fishing zone and a no-take area. The high biodiversity values of the hard greywacke shores and reefs deserve to be recognized in a no-take MPA covering approximately half of the area of reefs and islands. Kina barrens are prominent in the area. Subtidally the coastal reefs drop to a sloping seabed of broken shell debris with high biodiversity value, and eventually down to flatter mud-dominated areas. Part of the protected area should include at least one of the islands where visitors can base snorkeling activities on the small gravel beaches. Placement of the boundary will require a lot of public input and discussion. Illustrated is just one option.

Waiheke North (Waiheke West 605.1 ha & Waiheke East 1300.8 ha)



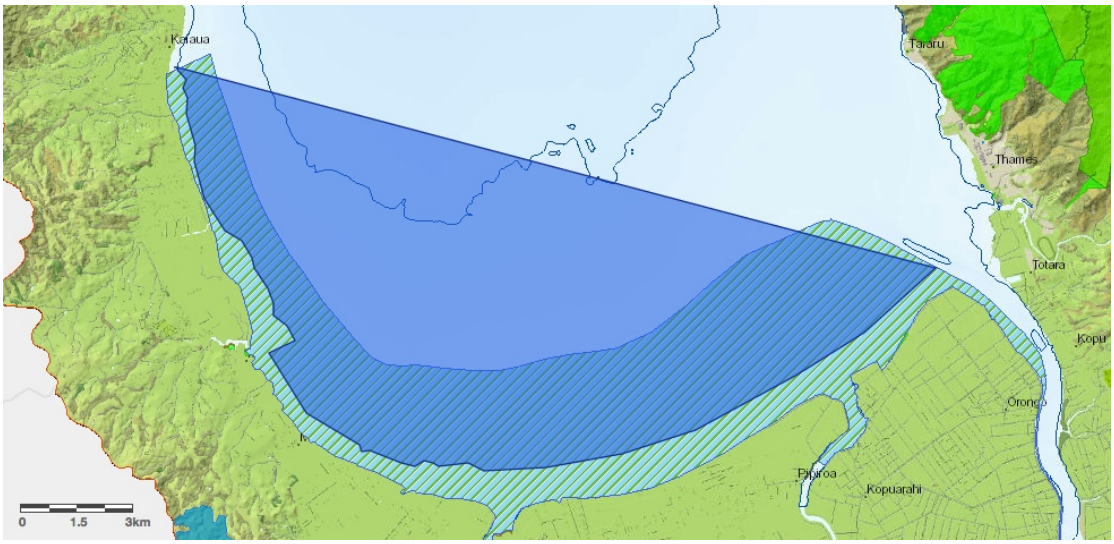
There has already been a lot of public discussion about a no-take MPA on the north side of Waiheke, with a proposal near the populated residential area sparking fierce debate. From a biodiversity recovery point of view there is merit in an MPA somewhere along the northern coast of Waiheke. Surveys have shown severe degradation of shallow reef systems in places, with serious kina barrens from low tide down across the reefs to the sand (Grace 2014, p 48 & 49). The semi-sheltered nature of the coast provides habitat dominated by tangle-weed forest (*Carpophyllum flexuosum*) with a lesser occurrence of the common kelp *Ecklonia radiata*. In many places large numbers of kina are actively eating the algal forest leading to further expansion of kina barrens. Crayfish and fish populations are severely depressed through heavy fishing pressure. Further public discussion will be required to refine ideas on where a suitable site may be. I have illustrated two potential alternatives on the map (Waiheke West and Waiheke East). Waiheke is heavily populated in the west where long term the public benefits of recovery in a marine reserve could be appreciated by more people, but at the same time more people would be prevented from fishing. Towards the east sparse human population means fewer people would be adversely affected, but the public benefits would also be more difficult to access. From a biodiversity point of view it appears there is more degradation in the west than east so the biodiversity recovery benefits of an MPA could be greater toward the west. Habitat information can be found in Kerr and Grace (2013).

Rotoroa Island 564.4 ha



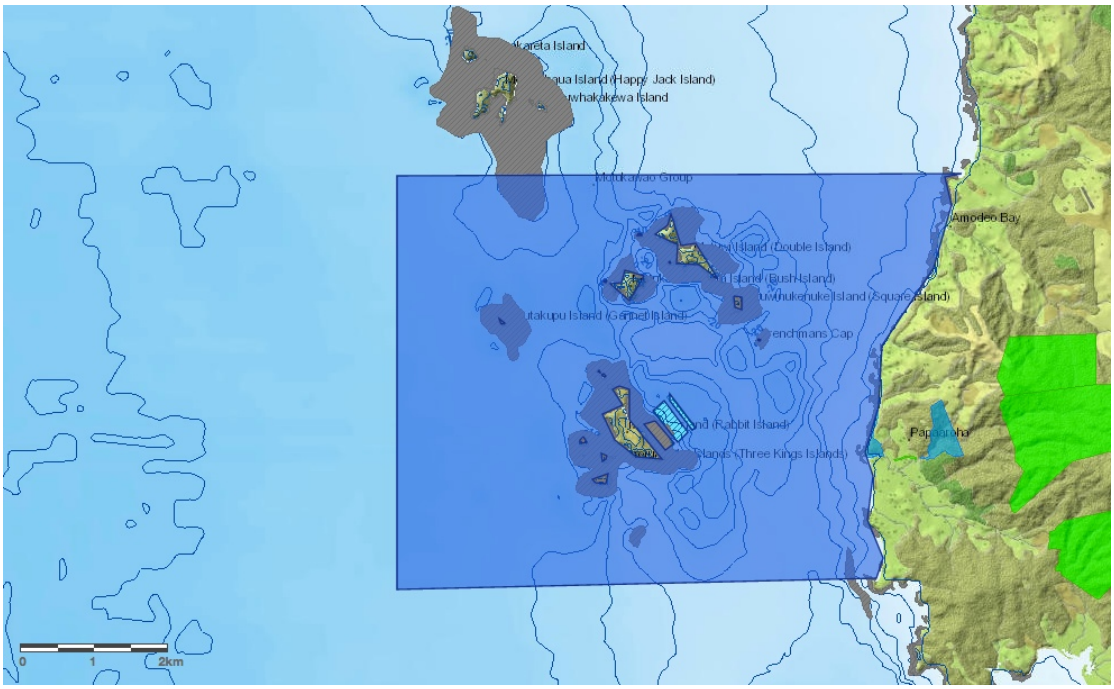
Only 5 kilometres from the existing Te Matuku marine reserve, Rotoroa Island has some of the same habitats but also different ones. Sheltered inshore reefs mostly drop quickly on to sand and shelly sand bottom, though on the more exposed eastern side a few deeper reefs occur. Algal forests are likely to be dominated by tangle weed *Carpophyllum flexuosum*. The Rotoroa Island Restoration Trust has a huge restoration project underway on the island. A marine reserve is seen as an appropriate way to restore the inter-connection between the land and sea aspects of the ecology. The Revive Our Gulf group is using the shallow sandy seabed around the island as a trial site for restoring beds of green lipped mussels. Historically there were 500 square kilometres of natural mussel beds in the Firth of Thames and southern Hauraki Gulf which filtered the water of the Firth in one or two days. The mussels were dredged out commercially in the early half of last century and their water-cleansing ecological service has been lost. The RoG group has a vision of restoring substantial areas of mussels to recover some of the water filtering capacity and improve water quality.

Miranda coast and southern Firth of Thames (Miranda) 12134.5 ha



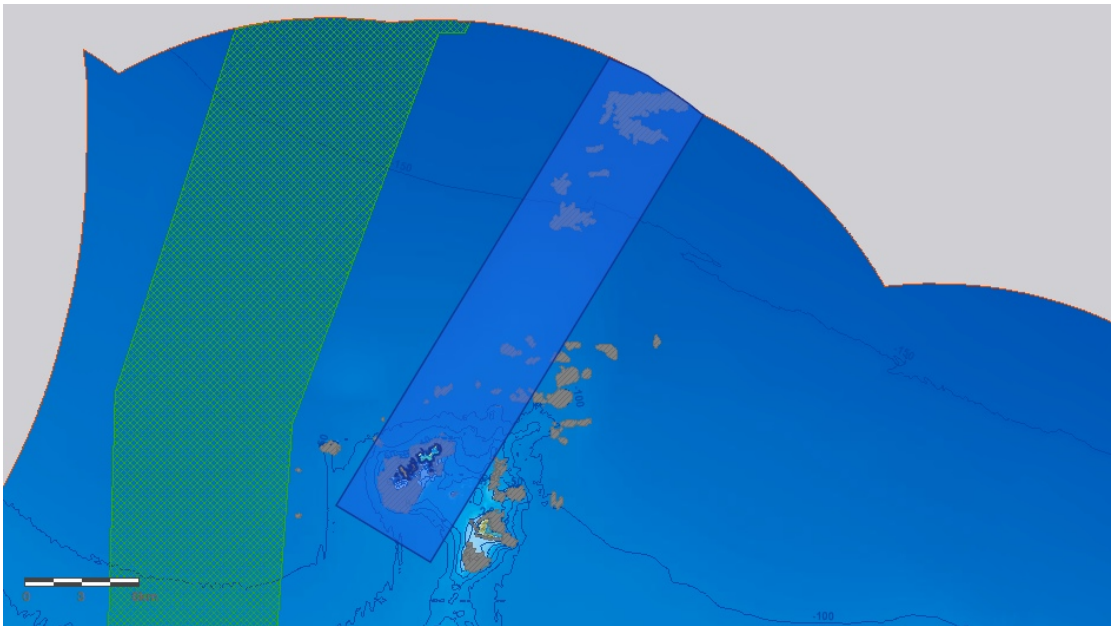
A unique part of the Hauraki Gulf, the Miranda coast and southern Firth of Thames is renowned mainly for its importance as a local and international migratory shore-bird feeding, breeding (for some species) and roosting area. A large area in the southern Firth is a RAMSAR site, internationally recognized for its value to avian life. Although water quality is severely compromised by sediment and nutrient inflows from the Waihou and Piako Rivers, and mangroves are expanding rampantly in the southern Firth, the area represents a marine habitat very different from any elsewhere in the HGMP and warrants an MPA on these grounds. The boundaries of the area will be determined by discussions with local communities and a consideration of ecological values. The Miranda coast has unique shell-bank features, and further south extensive intertidal mudflats are rich feeding areas for wading birds. A Scientific Reserve may be appropriate for the intertidal areas as there may be a need to manipulate mangrove spread to maintain open areas for the birds to feed, but a Marine Reserve would be appropriate in the subtidal area.

Motukawao Islands & Coromandel West Coast (Ngamotukaraka Islands) 3744.4 ha



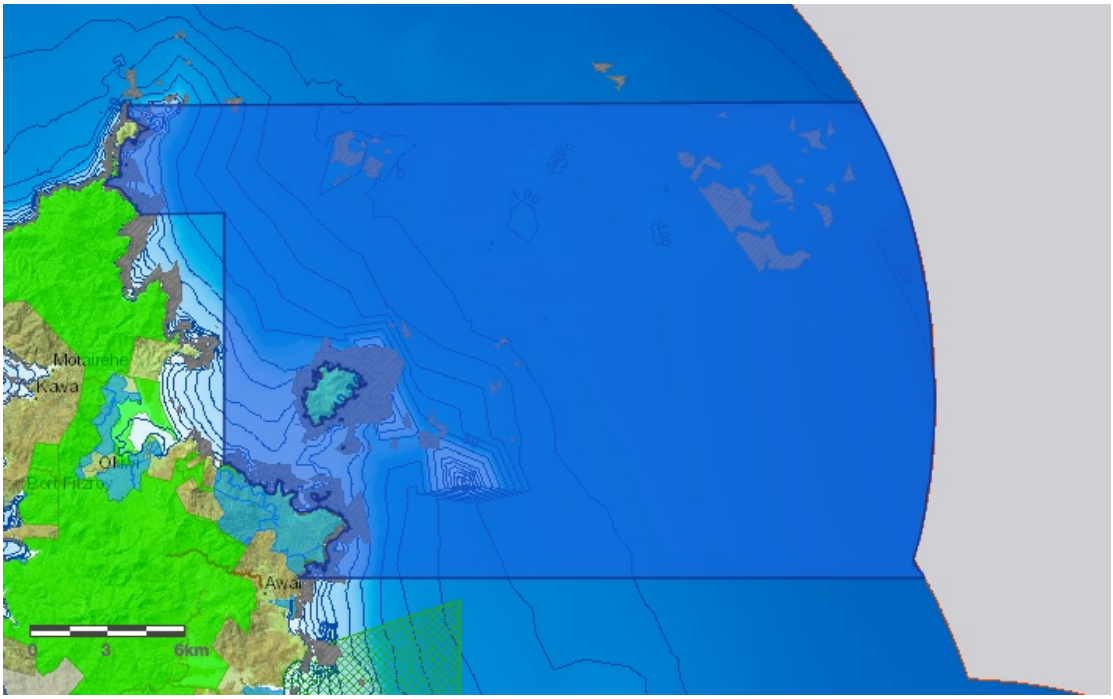
Very different from any other island group in the HGMP, the multitude of islands off the west coast of the Coromandel Peninsula need representation in the network of MPA's. The complex of islands and reefs, shallow and deep water, currents and more sheltered areas, ensures a wide range of biodiversity within the suggested boundaries of a no-take MPA. Inclusion of a length of mainland coastline completes the mix and provides access to land-based visitors. This MPA would be extremely biodiverse and a great asset to the MPA network. Although this is a popular recreational fishing area, there is plenty of room for fishing zones as well as a substantial no-take MPA.

Mokohinau Islands 15852.8 ha



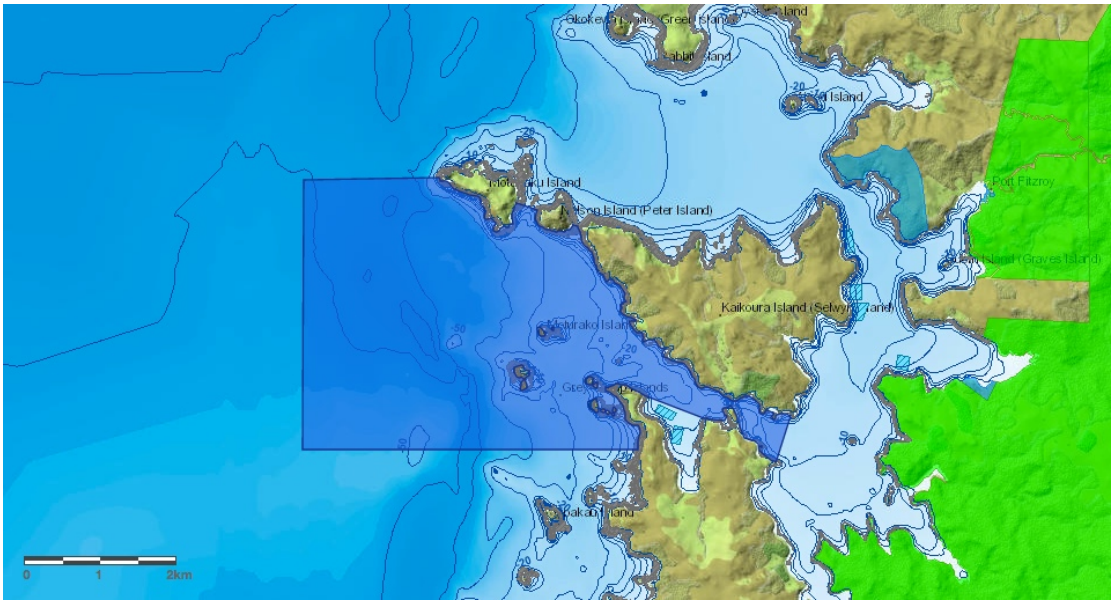
The northernmost in a series of deeper-water MPA's proposed based on the outer islands on the eastern edge of the HGMP. The Mokohinau Islands are 50 kilometres south of the Poor Knights Islands marine reserve, satisfactory for practical connectivity between marine reserves in the network. The Mokohinau Islands are "downstream" of the Poor Knights within the influence of the East Auckland Current which provides a strong subtropical flavour to marine biodiversity. The biodiversity values of the Mokohinau Islands are very high both in the terrestrial and marine environment. Although this is a very popular fishing area, there is sufficient space here to accommodate a fairly large MPA as well as providing for continuing fishing. Deep rocky reefs extend down to over 100 metres and are likely to contain good habitat for hapuku, deep water corals and ancient glass sponges. Extending the MPA to the edge of the HGMP captures extensive rocky reefs below 150 metres, rare within the Park and likely to be extremely rich in biodiversity. These reefs could provide an opportunity for recovery of hapuku populations. A large area of open water around the islands will provide sufficient space to allow recovery of snapper to a natural population structure, as well as spectacular recovery of school fish like trevally and kahawai.

Eastern Great Barrier (Northeast Aotea) 51383.8 ha

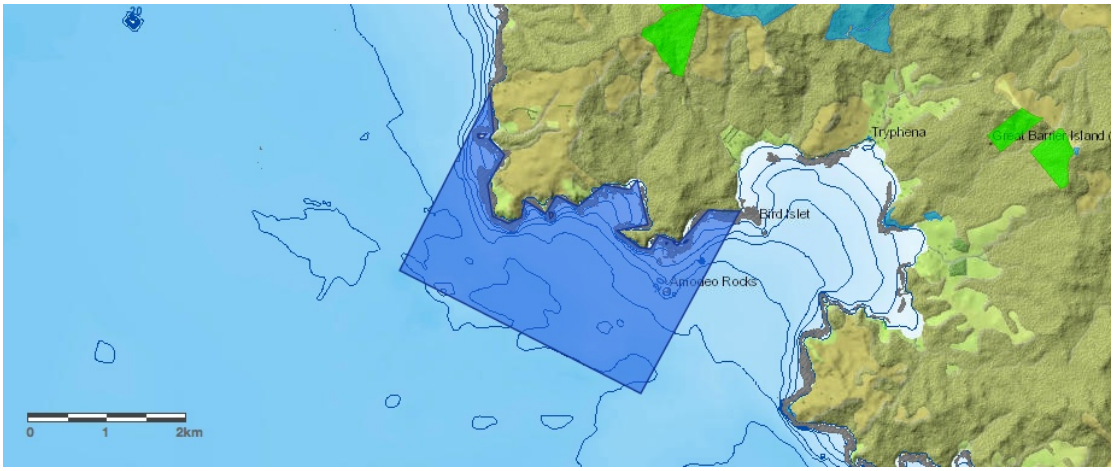


This is essentially a resurrection of the Aotea marine reserve proposed by the Department of Conservation in January 2003 (DOC 2003), but with a small adjustment to accommodate one of the major reasons why, following approval by the Minister of Conservation, the reserve was finally turned down by the Minister of Fisheries. The local iwi was apparently unwilling to give up the coastal fisheries from the Needles to Waikaro Point opposite Arid (Rakitu) Island. This proposal suggests a mataitai reserve along the shore from south of the Needles to Waikaro Point, and further south including the Whangapaoa estuary and some of the shore west of Harataonga Bay. East of this line the no-take MPA would extend out to the limit of the territorial sea, as in the 2003 discussion document (document available). Technical information collated is still relevant, and documents the marine habitats contained within the proposal area. Apart from the clear high-value coastal habitats, of particular note is a series of three large deep water reefs across the northern area of the proposal, ranging from a depth of 70 metres to approximately 150 metres. ROV footage showed these reefs to support high biodiversity value habitats containing black coral, gorgonian corals and ancient glass sponges. This habitat could be particularly valuable for recovery of hapuku populations. The large area of open water would also support the recovery of snapper to a full natural population structure, and recovery of school fish such as trevally and kahawai, and possibly kingfish. The area includes a large swathe of deep muddy sediment habitat not well represented elsewhere in the MPA network.

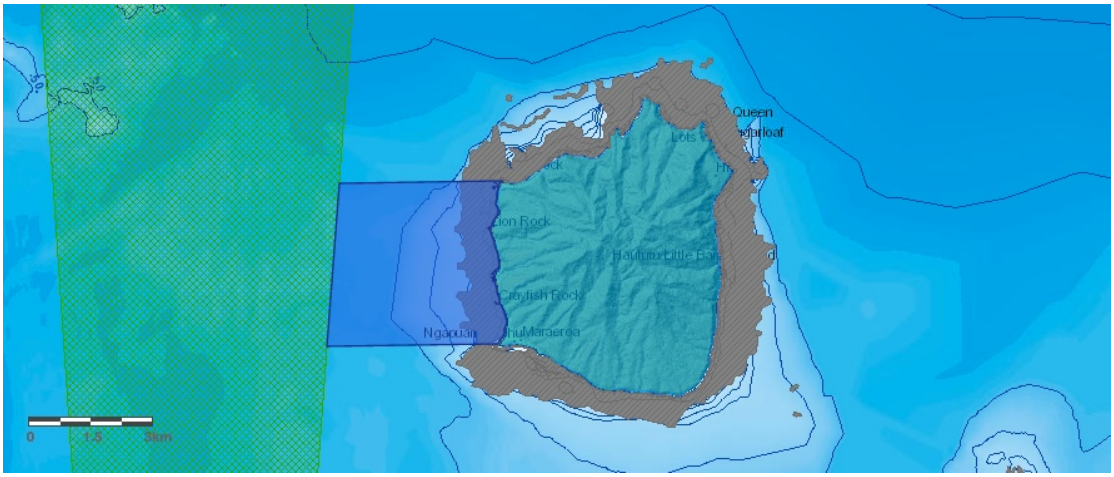
Western Great Barrier (Kaikoura South 1503.3 ha & Amodeo Rocks 667.9 ha)



The area near the Broken Islands west of Port Fitzroy, and part of the deeper Craddock Channel between Great and Little Barrier Islands, contains habitats unique in the HGMP and warrants a no-take MPA somewhere in this area. Further investigation of habitat information, and discussions with the local community, would be required to refine a proposal and boundary locations. There is a lot of mussel farming activity in the area, and considerable opportunity for Mataitai or similar Type 2 MPA areas perhaps nested around a central Type 1 MPA. The area suggested for a Type 1 MPA is south of Kaikoura Island, but is just one of many possibilities. It has also been suggested that a second area nearer Tryphena inlet (Amodeo Rocks) further south could be considered.

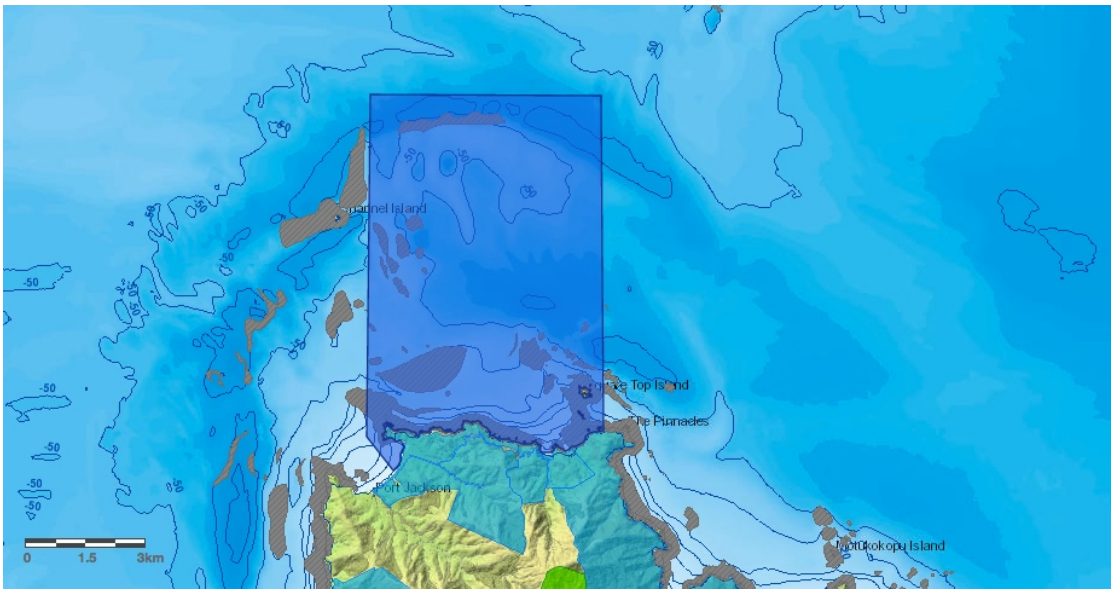


Western Little Barrier 1621.5 ha



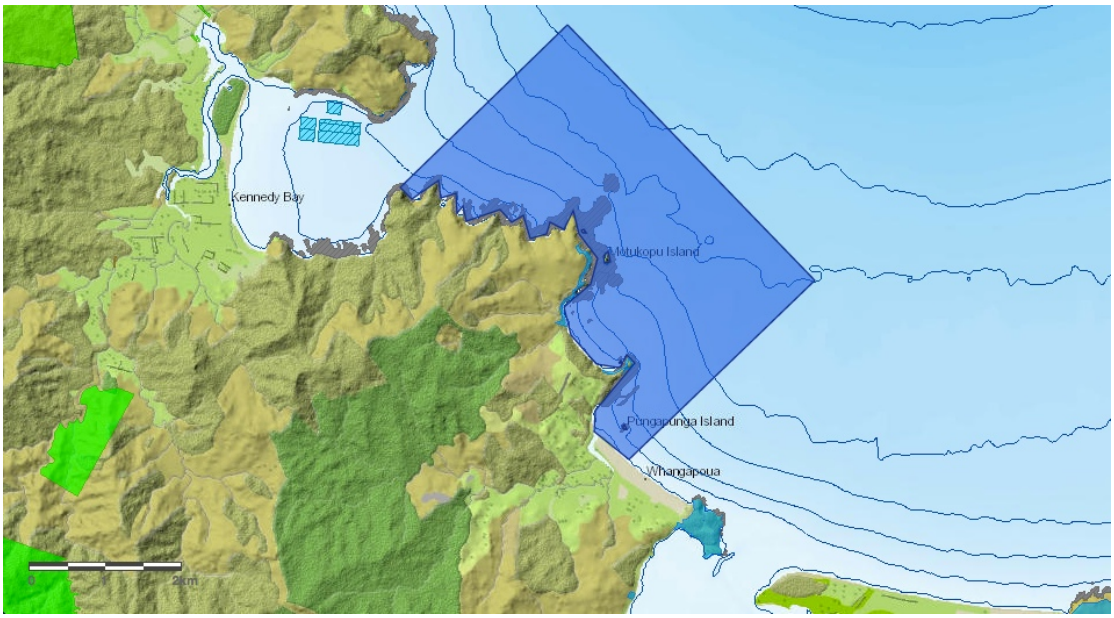
Although Little Barrier is a seriously popular fishing area and there are commercial and recreational scallop fisheries present, the biodiversity values and different habitats of the area and connectivity with the very high conservation status of the land suggest that there should be room for a small no-take MPA adjacent to the Island. The suggestion is for the western shore of the island, that straight section from just north of the boulder bank near the Ranger's station, for approximately 3.5 km northward, could then extend westward to join up with the cable protection zone running north through the central Hauraki Gulf approximately 4 kilometres west of the island and thus maximize the potential for this small reserve. The proposal would include the boulder beach on the shore, and the boulder bank sloping quickly down to shelly sand including part of the scallop bed, and reaching more than 50 metres depth before the cable zone. The boulder slope is ideal crayfish habitat which would allow recovery of this heavily exploited species. Although the suggested reserve is small, it encompasses the same length of coastline that has shown successful crayfish recovery at Tawharanui Marine Reserve. It would encompass a relatively small proportion of a major scallop bed, which should be represented in the MPA network.

Square Top 5181.9 ha



Strong currents through the Colville Channel create a current-swept benthic habitat with high-biodiversity coarse sediment substrates, and several deep rocky reefs. These reefs are no doubt rich in sponge life and this habitat should be represented in the MPA network. Including the north end of Jackson Bay ensures easy access from the shore, and an area for snorkeling safe from the fierce currents in the rest of the proposed MPA. A variety of coastal habitats are included – bays, open rocky coast, small islets and reefs. Google Earth images show extensive kina barrens on parts of the coast so there is no doubt fishing has compromised the shallow reef habitats in this area.

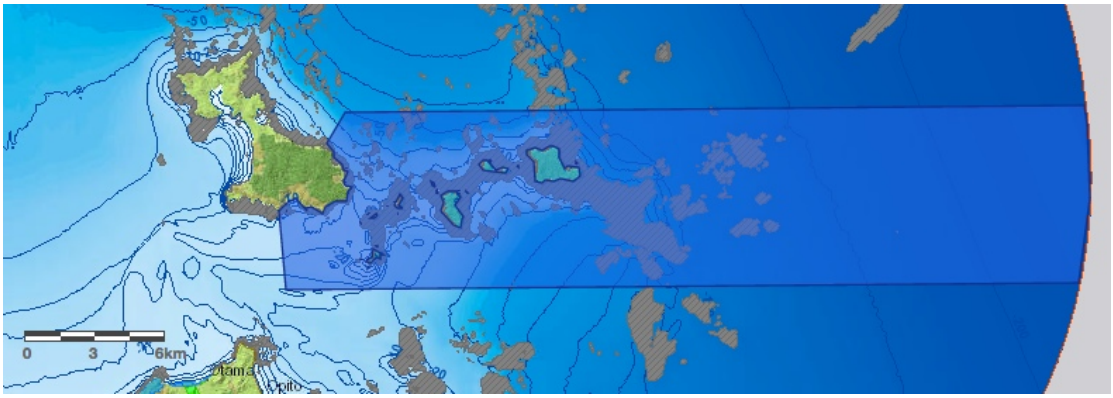
New Chums Beach 1230.6 ha



With only one marine reserve on the Coromandel east coast (Hahei, or Cathedral Cove) there is a need for at least a replicate for Hahei, and representation of many more habitats. New Chums Beach includes a sandy beach, rocky headlands, and

rugged open rocky coast with numerous small embayments. Inclusion of the northern end of Whangapoua Beach would provide easy access for snorkelers, and the small island just off the beach would be extremely popular. Unfortunately the estuary opening at the northern end of Whangapoua Beach has been severely compromised by grazing to the waters edge and removal of most of the natural salt marsh habitat and is probably not worth including as prospects of recovery look unlikely. An MPA running from near the middle of Whangapoua Beach to the eastern headland of Kennedy Bay encompasses about the minimum desirable amount of coastline for a no-take MPA. A good offshore buffer well out on to the sandy seafloor would be desirable to protect crayfish wandering offshore in search of shellfish. The area overlaps with an indicative location of commercial scallop beds but is a very small proportion of the area and the commercial beds are unlikely to extend so close inshore as indicated. Even if there are scallops in the outer part of the suggested MPA, it is good to have a replicate bed for that included in the proposed Hauturu West MPA.

Eastern Mercury Islands 25644.8 ha

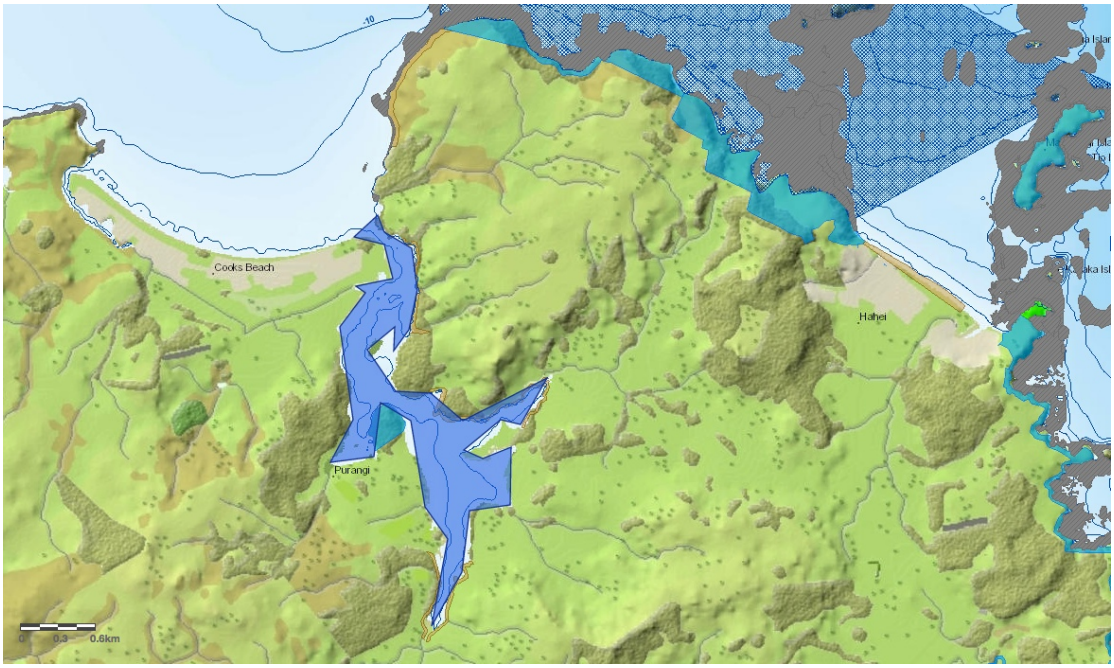


There is a need for a large no-take marine reserve in this area to continue the connectivity opportunities particularly for biodiversity of deep reef systems as in the proposed Eastern Great Barrier (Aotea) MPA. A large MPA here would capture the great diversity provided by a multitude of islands and shallow reefs, and a deep-water reef system extending well offshore to the east to at least 150 metres depth. Although this area is a popular fishing ground, there is ample room for a large MPA as well as for continuing fishing activities. All habitats included in the proposed MPA are well-represented in nearby areas accessible for fishing. The high conservation status of the small islands included enhances the ecological connectivity opportunities between the sea and the land. Extending the MPA to the edge of the HGMP includes waters beyond 200 metres deep, rare within the HGMP. Including part of the southern shore of Great Mercury Island provides a couple of sandy beaches where boating families could enjoy sheltered snorkeling opportunities. There is enough open water area to allow recovery of snapper, trevally and perhaps kingfish populations, and the deep reefs could enhance chances of hapuku recovery.

Extension of Hahei (Cathedral Cove) Marine Reserve

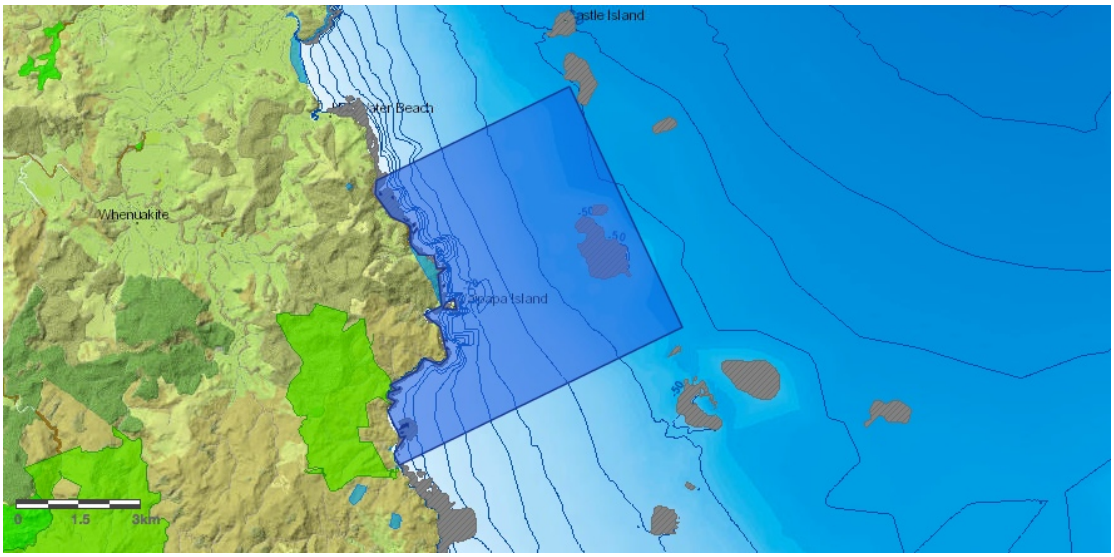
Consideration could be given to an extension eastward of the reserve boundary to improve access. Currently the main access is from a carpark on a headland west of the beach, down a long winding walking track to Cathedral Cove. This precludes the carrying of more than basic snorkeling gear. Better shore access from Hahei Beach to reefs if protected at the east end of the beach would greatly improve public access to the benefits of the marine reserve. This was part of the original proposal but never presented to the Minister of Conservation. (Not mapped, but the area in question is visible at the right of the map of Purangi Estuary below).

Purangi Estuary 127.2 ha



This small estuary on the southern side of Mercury Bay, just around the corner from Hahei (Cathedral Cove) Marine Reserve, is surprisingly intact from an ecological point of view. Saltmarsh and mangrove areas are extensive, and much of the native bush cover remains along the flanks of the estuary. There are a few places where salt marsh has been drained and stock appears to have access down to the shore. The estuary itself has clean sand flats and is likely to retain high biodiversity values. Such high quality estuaries are now hard to find in the HGMP.

Neave's Bay 3751.0 ha

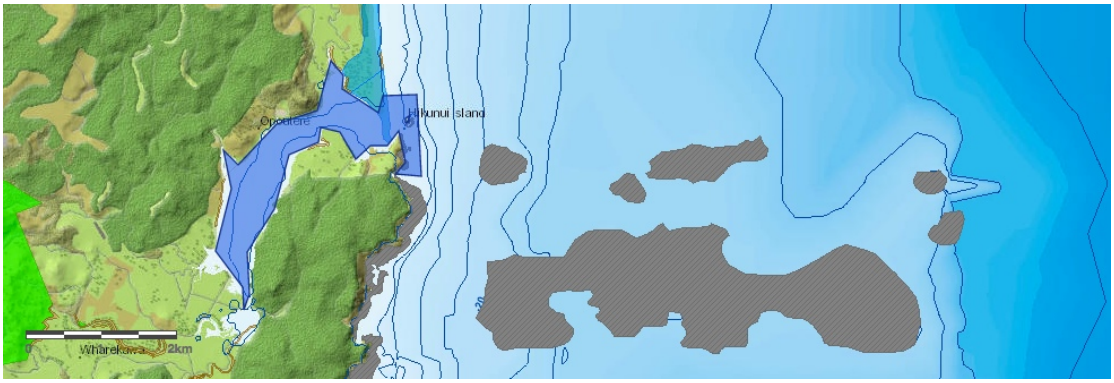


A typical stretch of Coromandel east coast rocky shore, the proposal stretches from Te Karo Bay in the south where there is the only road access, and continues north about 5 kilometres to about half way between Boat Harbour and Hot Water Beach. Most of the shore is backed by bush. There are two sandy beaches in the south of the area accessible to land-based visitors, and a few small islets and reefs close inshore. Shallow reefs drop to sand fairly quickly offshore. The outer part of the MPA captures a representative example of several moderately deep (about 50 metres) rocky reefs scattered along this coast. Google Earth images suggest kina barrens are common on some of the shallow reefs.

South Slipper Island **1232.1 ha**

The southern end of Slipper Island and the smaller islets of Penguin and Rabbit to the south include an impressive variety of biodiversity. A large subtidal seagrass bed is present in the bay at the southwest of Slipper Island. Penguin and Rabbit Islands retain natural bush and are used by nesting seabirds. Exposed rocky reefs in the east contrast with sheltered rocky shores on the west of the islands. Fine sandy sediments west of Slipper Island contrast with coarse shelly sediments in the channels between the islands. A biological survey described the mosaic of benthic communities west of Slipper Island (Grace and Whitten, 1974).

Opoutere Estuary 226.0 ha



Another small estuary in moderate shape ecologically. Saltmarsh areas and shoreline vegetation have been somewhat compromised by clearance and drainage but parts are still in reasonable condition and restoration efforts could improve matters considerably. Fairly large areas of mangrove forest appear in good shape. There may be some seagrass beds present but local knowledge would be needed to confirm. A short section of coast immediately north and south of the estuary entrance, and the small island (Hikinui) just off the entrance, should be included in the MPA to ensure safe passage into and out of the estuary for fish.

Alderman Islands 19166.6 ha

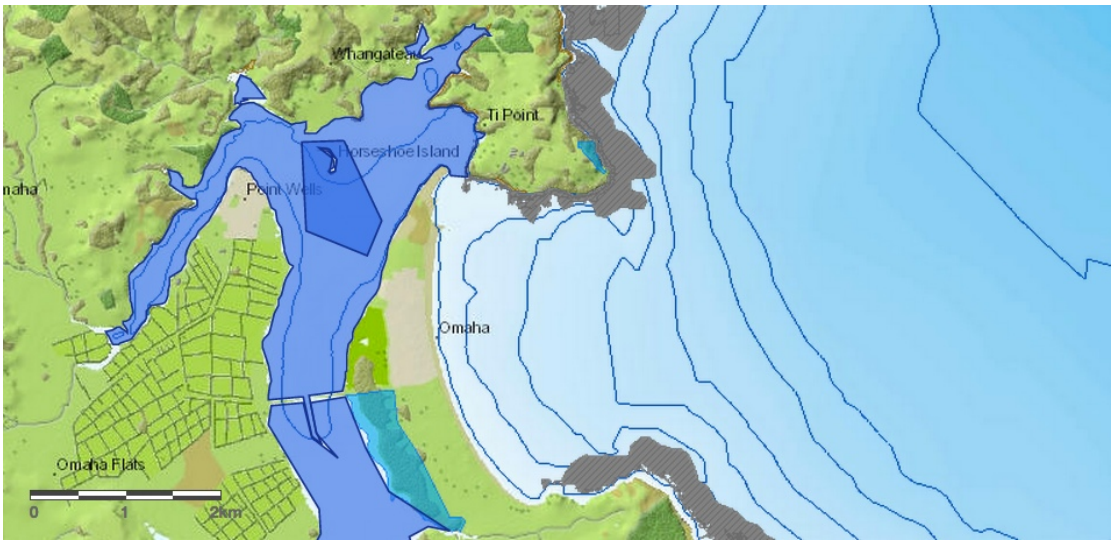
Another “stepping stone” in the network of deepwater and offshore island MPA’s down the eastern side of the HGMP to maintain connectivity for deep water reef fauna, and to provide opportunities for recovery of pelagic fish and hapuku. Although a popular fishing area, the Alderman Islands and surrounding reefs are sufficiently extensive to accommodate both a large no-take MPA and maintain plenty of opportunities for fishing. From a biodiversity point of view the northern half of the island group is probably the most valuable in that there are many small islands and reefs providing extensive shallow rocky reef habitats. These are also most popular for fishing and diving, however, and it may be better to have the MPA in the southern part of the island group and extending to the deep water reefs well offshore. The proximity of very deep water to the east presents an opportunity to create an MPA encompassing waters in excess of 200 metres depth, as the only available replicate of the 200m+ depth at the eastern boundary of the proposed Eastern Mercury Islands MPA. I believe this MPA should extend beyond the boundary of the HGMP in this area and continue out to the edge of the Territorial Sea at 12 nautical miles where depths approaching 1000 metres uniquely occur close to the HGMP. Due to limits imposed by Seasketch this MPA is mapped only to the edge of the HGMP.

TYPE 2 MPAs (Site-specific variation to restrictions)

Preamble:
These may include areas where bottom-impacting fishing methods are excluded, such as trawling and dredging, set-netting, or commercial fishing per se. Customary areas such as Mataitai, Taiapure, and Rahui also come under the Type 2 MPA umbrella. The purpose and specific restrictions would be defined for each area and would not necessarily include biodiversity protection. Requirements for management input are likely to be much greater than for no-take Type 1 MPAs because monitoring and feedback would be required to assess the effectiveness of controls imposed, and adjustment if perceived goals are not met. It may be that some of the benthic protection areas may not need to be imposed if for example recreational dredging for scallops and mussels becomes a generally prohibited activity because of its proven damage to benthic habitats.

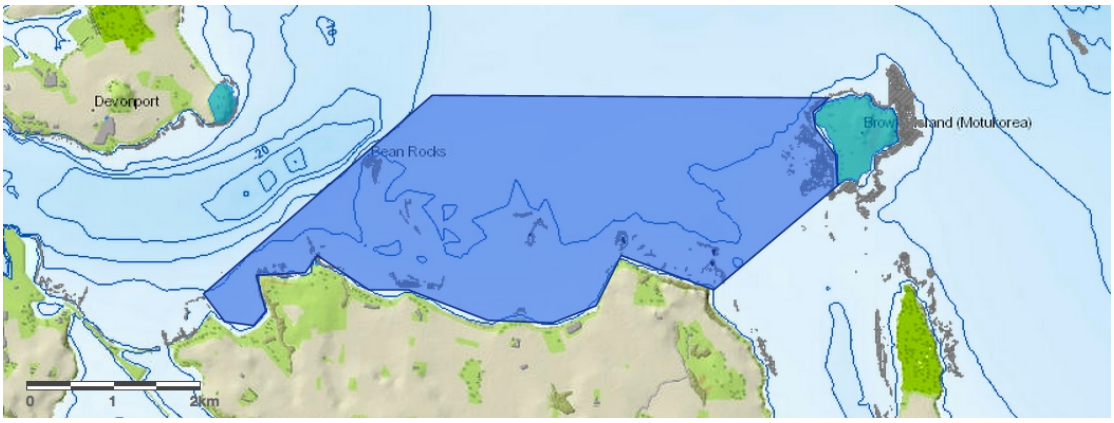
Site name **Description and notes**

Northern Whangateau Harbour **469.2 ha**



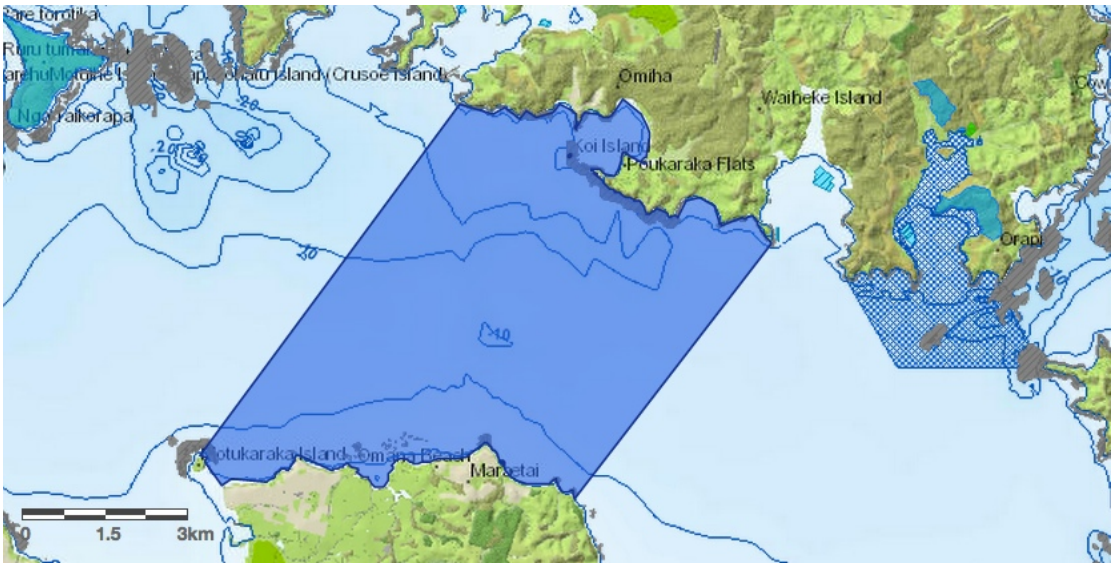
Apart from the proposed no-fishing zone around Horseshoe Island, the remainder of the northern part of the Harbour should be subject to a Community Fisheries Plan or a Mataitai in collaboration with Ngati Manuhiri. Shellfish resources will come under severe pressure once the current harvesting ban is lifted in March 2016, partly because most other cockle beds in the Auckland Region are either seriously depleted, polluted, or closed to harvest. Whangateau has for many years held the best cockle resource in the Auckland Region. There are other fisheries issues in the Harbour which should be more closely controlled than under the normal blanket fisheries controls applicable everywhere.

Okahu Bay to Motukorea (Brown's) Island **1263.0 ha**



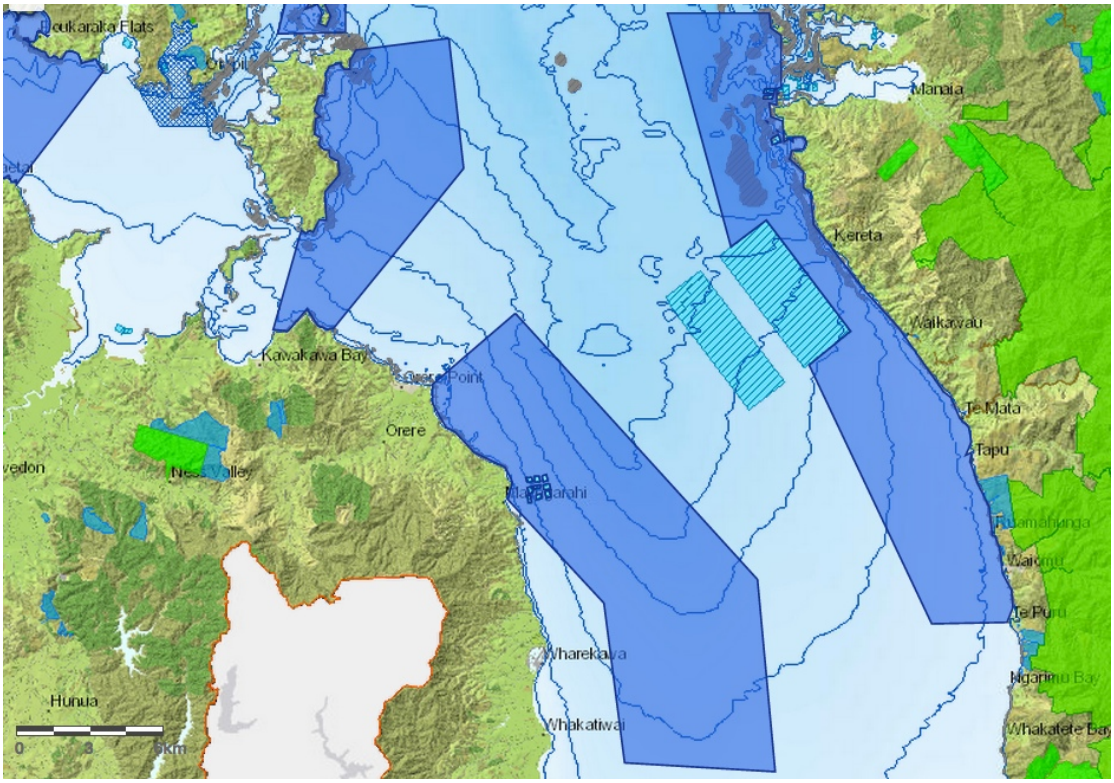
Future benthic protection zone prohibiting dredging, to allow for restoration projects to re-establish green-lipped mussel beds to improve water quality and improve benthic habitat. Ngati Whatua have begun a mussel restoration project in Okahu Bay.

Tamaki Strait 4289.6 ha



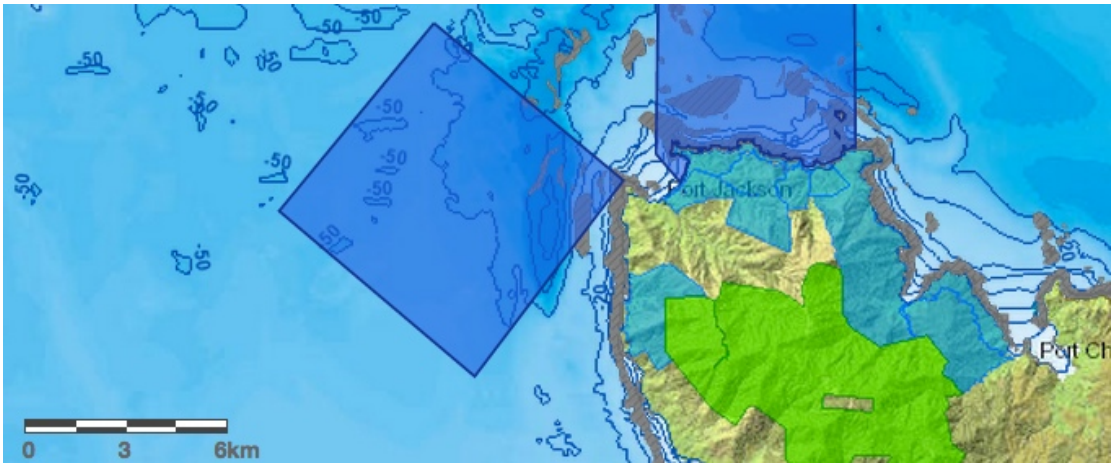
Several possible future benthic protection zones prohibiting dredging, as above. Active restoration, and encouragement of natural regeneration of once-extensive historic green lipped mussel beds is a project currently underway by the Revive our Gulf group, started in the Rotoroa Island area. Aim is to improve the benthic habitat for biodiversity and as a fish nursery, and to improve water quality because of the filtering capacity of many millions of mussels. Boundaries of areas to evolve as the scope of the project develops.

Eastern and Western Firth of Thames (Ponui 5282.1 ha, Orere 11378.5 ha, Te Mata 9556.3 ha)



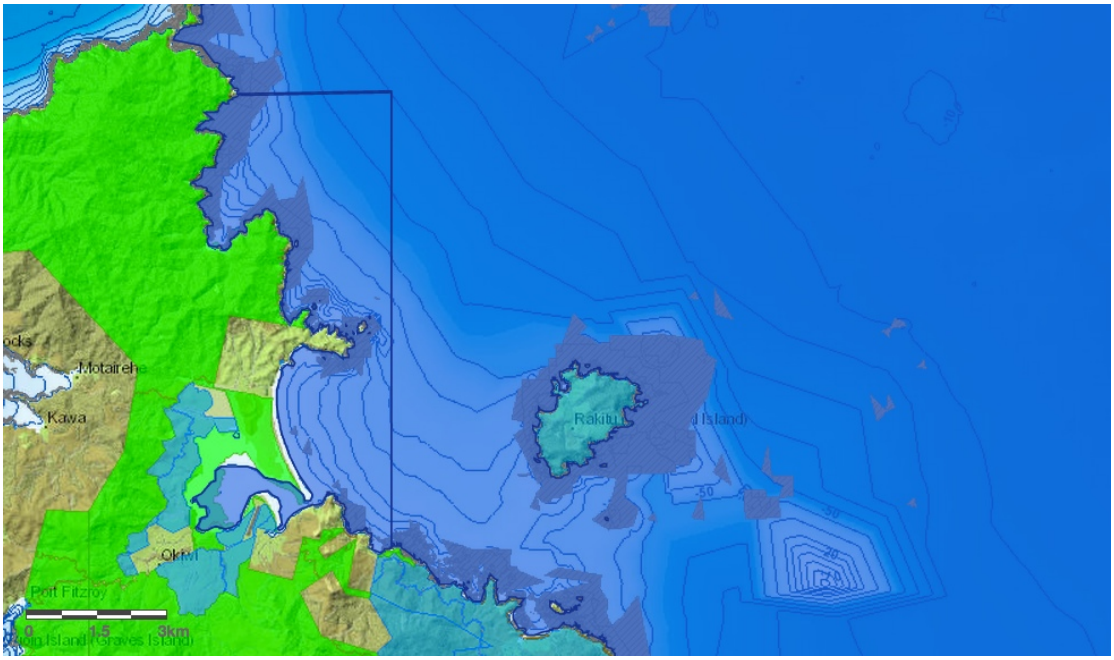
Several large future benthic protection zones prohibiting dredging, as above. Boundaries of areas to evolve as the scope of the mussel restoration project develops.

West Moehau 5570.4 ha



A benthic protection area to prohibit dredging and trawling, extending northwest from the edge of the present commercial scallop bed. Moderate currents and coarse sediments provide a benthic habitat of high biodiversity value not well-represented in proposed MPAs elsewhere.

Waikaro/Whangapoua 2675.3 ha



In the 2003 northeast Aotea marine reserve proposal, the Whangapoua Estuary, the bay south of Waikaro Point and the rocky coastline north of Waikaro Point was a matter of sufficient concern for the Minister of Fisheries to turn down the marine reserve application. It is now intended to suggest that this inshore zone be put forward as a Type 2 MPA, specifically a Mataitai to allow local iwi to manage this area for sustainable customary and recreational fisheries purposes. In the long term this area would benefit greatly from the adjacent presence of a large marine reserve, but the mataitai would give some local control over access to improving fisheries in the zone and could prevent uncontrolled attraction of fishers to the area as fish stocks build. A “lolly scramble” effect should be avoided.

WHERE TO FROM HERE?

We have lots of wonderful science. We have habitat maps, maps of fish distributions, fishing effort, ecological services, productivity, seabird and marine mammal use, currents, aquaculture, historic mussel beds, sediments, gap analysis, shipping movements etc. etc. We have detailed analysis of prioritisation of areas valuable for biodiversity conservation. We have lists of criteria and design principles for networks of MPAs.

We have lots of science from our existing marine reserves, and comparing marine reserves to fished areas, which has given us an understanding of the many values of MPAs. We know the much greater value of no-take versus partial protection for recovery and survival of large, old fish which have a critical role in maintaining ecosystem services and a healthy ecology. We know larval spillover from reserves into adjacent fished areas can be significant. We know degraded kina barrens revert to healthy kelp forests if we stop fishing, but they don't if we simply kick out commercial fishing.

We can always seek more science and more analysis of what information we have. A lot more analysis of the areas proposed can be gleaned from Seasketch including the proportion of each habitat represented in each area, and how this relates to overall goals for the MPA network. An analysis in MARXAN could also be useful. Science will always want more information.

But the science alone has not yet come up with a draft network of marine protected areas. Based purely on the science, any draft network is likely to be extremely complicated, with strange shapes of areas trying to accommodate the "best" result to represent and replicate all the complications of marine habitats and biodiversity values.

It is time to take the available science onboard and to have faith to make the next step toward the social responsibility needed to make some lines on maps based on all the science, but importantly tempered by the less-tangible social and cultural backgrounds, values of mana whenua and kaitiakitanga, and aspirations of all the people involved in the Gulf. We all have different ideas on how best to achieve the common goals of the Marine Spatial Planning process.

So far we have only six no-take marine reserves covering a pathetic 0.3% of the area of the HGMP. Although we have learned a lot from those few MPAs, we all know this is woefully inadequate going forward to arrest biodiversity declines more broadly in the Gulf.

It is imperative that we make good progress on a network of MPAs in this Marine Spatial Plan process, and that we come up with at least a draft MPA design we can learn to live with. The danger is that if we don't get a spatially adequate network design for MPAs into this Marine Spatial Plan, all the space will be allocated to other purposes and in future it will be even harder to get any more MPAs in place.

We have been bombarded with information from many experts in recent months. It is now up to the members of the Stakeholder Working Group, guided by the probably conflicting recommendations of the various Round Tables, to filter and assimilate all the information, and to blend all this into a common tangible result which will carry us forward to an improving Hauraki Gulf.

There have to be some radical changes if we are to see a halting of environmental degradation, and to turn that around toward substantial improvement. An effective, comprehensive network of fully protected MPAs is an essential part of those changes. Marine reserves are no longer just for science. They are critical to the future survival of a healthy Gulf. Business as usual simply isn't going to make the grade.

Recommendations in the Marine Spatial Plan will have no statutory status. The intention is for those recommendations to inform future statutory processes to be carried out by various agencies to implement the plan. Any recommendations in the plan regarding Marine Protected Areas will ultimately form a basis for discussion in a future MPA Forum yet to be initiated under the Marine Protected Areas policy and implementation plan (DOC and Ministry of Fisheries 2005).

When such an MPA Forum will be established is unknown, but it would make sense to establish this imminently as we currently have a lot of the people who could make up that Forum already involved with the MSP process at either SWG or Round Table levels, and already largely "up to speed" with the necessary understanding of the intricacies of an effective network of MPAs. One of the recommendations in the Marine Spatial Plan could be to establish an MPA Forum for this area as soon as possible.

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Roger Grace. 14 December 2014
For Biodiversity and Biosecurity Round Table
Marine Spatial Plan

Decision following the hearing of an application for resource consent under the Resource Management Act 1991

Auckland Council
Te Kaunihera o Tāmaki Makaurau

Proposal

To extract sand from the coastal marine area off-shore at Pakiri.

This resource consent is **REFUSED**. The reasons are set out below:

Application number:	CST60343373 and DIS60371583
Site address:	Coastal Marine Area – Pakiri Beach
Applicant:	McCallum Brothers Limited (MBL) The original applicant (Kaipara Limited) transferred all interests in the applications and its existing coastal permit to MBL on 8 October 2021
Hearing commenced:	Wednesday 5 May 2021, 9.30 a.m. Wednesday 5 and Thursday 6 May were held at the Warkworth Town Hall. Friday 7 May was held at the Omaha Marae. Monday 10 and Tuesday 11 May were held at the Pakiri Hall. Wednesday 12 to Friday 14 May were held at the Warkworth Town Hall. The hearing was reconvened on 28 February and 1 March 2022 and held remotely by way of Microsoft Teams.
Hearing panel:	Les Simmons (Chair) Melean Absolum Juliane Chetham Karyn Kurzeja
Appearances:	**2021 Hearing** For the original Applicant: Kaipara Limited represented by: Morgan Slyfield, Counsel Steve Riddell, Kaipara Limited Dr Shaw Mead, Surf Break Impacts Mike Farrow, Landscape and Visual Clinton Healey, Seabed Survey Gregory Akehurst, Economics Jennifer Hart, Coastal Processes Jon Styles, Acoustics (Airborne) Dr Matthew Pine, Underwater Noise Deanna Clement, Marine Mammals Simon West, Marine Ecology David Hay, Planning

	<u>For the Submitters:</u> Annie Baines, Cultural Christine Baines, Cultural Sammy Williams, Cultural Kelly Klink, Cultural Pakiri G Trust • Wayne Greenwood, Cultural • Baden Brown, Cultural Te Whanau o Pakiri • Olivia Haddon, Cultural • Tamati Stevens, Mātauranga Māori • Sian John, Coastal Processes • Pita Rikys, Cultural • Ian Southey, Ornithologist • Dr Craig Radford, Underwater Acoustics • Ringi Brown • Wendy Brown • Sharley Haddon • Tamihana Paki • Michael Marris • Elizabeth Allen • Star Gossage • Grace Gossage • Marama Gossage • Ra Gossage • Jessie Stanley • Carolyn Reid • Vanessa Mutu Auckland Conservation Board • Lyn Mayes, Chair • Dr Andrew Jeffs, Board member Greg Bradford Sam Bradford Manuhiri Kaitiaki Charitable Trust • Mook Hohneck, CEO • Jason Pou, Counsel • Ringi Brown, Trustee • Vern Rosier, Trustee AML Limited t/a Allied Concrete • Lee Skinner, Corporate McCallum Brothers Limited • John MacRae, Counsel • Callum McCallum, Corporate • Derek Todd, Coastal Processes • Tim Hegarty, Planning • Shayne Elstob

	SAVE Te Arai • Aaron McConchie Mangawhai Harbour Restoration Society • James Carnie, Counsel • Richard Bull, Chair Department of Conservation • Lisa Sutherland, Counsel • Thomas Christie, Planning evidence tabled Surf Break Protection Society • Paul Shanks Royal Forest and Bird Protection Society • Nicholas Beveridge Kayasand • Bram Smith • Andrew Turnbull Damon Clapshaw • Derek Nolan QC, Counsel • Dr Shaw Mead, Coastal Processes Friends of Pakiri Beach • Sir David Williams, KNZM, QC, Chair • Nick Williams, Counsel • Dr Martin Single, Coastal Geomorphology • Dr Philip Mitchell, Planning Bjorn Hilke <u>For Council:</u> Chelsea Gosden, Team Leader Colin Hopkins, ReportingPlanner Bin Qiu, Environmental Health Officer Peter Kensington, Landscape Architect Dr Kala Sivaguru, Coastal Ecologist Ashiska Sharma, Coastal Processes Specialist Alan Moore, Principal Specialist Sam Otter, Senior Hearings Advisor **<u>2022 Reconvened Hearing</u>** <u>For the Submitters</u> Te Whanau o Pakiri • Vicki Morrison-Shaw, Counsel • Pita Rikys, Cultural • Sian John, Coastal Processes • Olivia Haddon, Cultural Director General of Conservation • Dr Tom Shand

	Damon Clapshaw • Derek Nolan, Counsel • Damon Clapshaw • Dr Shaw Mead, Coastal Processes Friends of Pakiri Beach • Derek Nolan, Counsel on behalf of Nick Williams • Professor Mike Hilton, Coastal Processes <u>For the Council</u> • Colin Hopkins, Reporting Planner • Peter Kensington, Landscape Architect • Dr Kala Sivaguru, Coastal Ecologist • Ashiska Sharma, Coastal Processes Specialist • Sam Otter, Senior Hearings Advisor[1] <u>For the Applicant</u> McCallum Brothers Limited represented by: • John MacRae, Counsel • David Hay, Planning • Callum McCallum, Corporate • Tame TeRangi, Cultural • Gregory Akehurst, Economics • Derek Todd, Coastal Processes • Simon West, Marine Ecology
Hearing adjourned	Friday 14 May2021 at 5.20pm
Hearing reconvened	Monday 28 February 2022
Commissioners' site visits	Tuesday 11 May, Thursday 13 May 2021and Monday 7 March 2022
Hearing Closed:	Monday 14 March 2022

INTRODUCTION

1. This decision is made on behalf of the Auckland Council ("**the Council**") by Independent Hearing Commissioners Les Simmons (Chair), Melean Absolum, Juliane Chetham and Karyn Kurzeja appointed and acting under delegated authority under sections 34 and 34A of the Resource Management Act 1991 ("**the RMA**").

2. This decision contains the findings from our deliberations on the application for resource consent and has been prepared in accordance with section 113 of the RMA.

3. The application was publicly notified at the applicant's request on 8 May 2020. A total of660 submissions were received, with 4 in support, 1 being neutral and 655 in opposition.

[1]The Panel would like to thank Mr Otter on behalf of all participants for his management of the hearing across multiple venues, including on-line.

SUMMARY OF THE PROPOSAL AND ACTIVITY STATUS

4. The applicant seeks coastal and discharge permits to extract sand from the coastal marine area off shore at Pakiri. Extraction is proposed to be undertaken using a trailer suction dredge. Consent is being sought to extract up to 2,000,000m³ of sand from between the 25m and the 40m isobaths over an approximate area of 44.12km², with no more than 150,000m³per any 12 month period between the 25m and 30m isobaths.

5. The proposal requires resource consent for the following reasons, as set out in the s42A report.

> ***"Coastal Permit (s12) – CST60343373***
>
> *Auckland Unitary Plan (Operative in part)*
>
> ***Regional Coastal Use (operative plan provisions)***
>
> *F2 Coastal – General Coastal Marine Zone*
>
> - *Consent is required as a discretionary activity for coastal marine disturbance for mineral extraction (excluding petroleum) in accordance with rule F2.19.4 (A28);*
>
> - *Consent is required as a discretionary activity for coastal marine disturbance within the northern and southern control monitoring areas, that is not otherwise provided for in the GCMZ in accordance with rule F2.19.4 (A37);*
>
> ***Discharge Permit (s15) – DIS60371583***
>
> *Auckland Unitary Plan (Operative in part)*
>
> ***Regional Coastal Use (operative plan provisions)***
>
> *F2 Coastal – General Coastal Marine Zone*
>
> - *Consent is required as a discretionary activity for the disposal or storage of waste or other matter arising directly from, or related to, the exploitation and associated offshore processing of seabed mineral resources in accordance with rule F2.19.2 (A15).*
>
> *The reasons for requiring consent are considered together as a* ***discretionary activity*** *overall.*
>
> ***Note:***
>
> *"The application was lodged on the basis that it seeks all necessary consents to give effect to the application, and whilst initially consent was sought only with respect to F2.19.4 (A28), the applicant has subsequently confirmed that consent is also being sought with respect to F2.19.2 (A15) (see attachment 2B).*

It is also noted that the initial Council interpretation and advice to the applicant was that consent was not explicitly required with respect to F2.19.2 (A15), with these matters forming part of the activities associated with F2.19.4 (A28) and the permitted activity F2.19.7 (A62). Noting, however, that there is some inconsistency with the interpretation of the relatively new rules of the AUP (OP) and some overlap of the activities, it is acknowledged that it is appropriate for consent to also be sought for this discharge.

In addition, the Council consider it appropriate that within the control areas (proposed for monitoring purposes), that it is appropriate to distinguish these activities from the mineral extraction activities and have therefore recommended that in line with the applicant seeking all the necessary consents for the activity, that consent also be considered for F2.19.4 (A37)."[2]

6. We note that Mr Hay in his EIC agreed that consent should also be considered in terms of F2.19.4 (A37).

7. The above reasons for consent are from the s42A report dated 1 March 2021. By the time the hearing was closed in March 2022 it is relevant to note that the proposed northern control monitoring area is no longer proposed in its original location. The revised location of this northern area is within the Northland Region. A Certificate of Compliance has been issued by the Northland Regional Council confirming that monitoring within this control area is a permitted activity.[3]

8. Overall the proposal has been considered as a discretionary activity.

PROCEDURAL MATTERS

9. No late submissions were received.

10. No written approvals have been provided.

11. Kayasand Limited (Kayasand) lodged a submission opposing the application. Their submission stated that they were not a trade competitor of the applicant. The issue of whether or not Kayasand were trade competitors was raised, by the then applicant Kaipara Limited. We provided the opportunity for Kayasand to obtain and provide legal advice on the matter. Legal advice from Tompkins Wake dated 25 May 2021 submitted that Kayasand were not trade competitors.

12. The legal advice on behalf of Kayasand stated:

> *"9. In the present context, the Applicant is in the business of extracting and selling sand to the construction industry. Kayasand is in the business of supplying equipment to be used for the purpose of manufacturing sand. Kayasand is not itself in the business of extracting or selling sand, and is therefore not competing in the same commercial market as the Applicant. For these reasons we submit that Kayasand should not be considered to be in trade competition with the Applicant."*

[2] S42A report, Section 10

13. At the reconvened hearing on 1 March 2022 we informed Mr MacRae of this procedural matter and he was given the opportunity to respond to the Tompkins Wake legal advice. Mr MacRae provided a written response dated 11 March 2022 in which he submitted[4] that the Tomkins Wake opinion had failed to address the relevant provisions of the RMA, made no reference to the 2009 Resource Management (Simplifying and Streamlining) Amendment Act which had significantly tightened the restrictions on trade competitors, nor made any reference to the relevant case law following that amendment.

14. The key submissions from Mr MacRae were:

> *"10. The first point is whether Kayasand is engaged in trade competition with MBL or, in the words of s.308A(a) is a "trade competitor". In the absence of a definition in the Act, the Courts have taken a broad view of the matter. The test does not rely on a narrow analysis of markets or market segments but rather whether there is "a competitive activity having a commercial element"; see Montessori Pre-school Charitable Trust v Waikato District Council [2007] NZRMA 55at[19],a High Court decision which has been regularly applied by the Environment Court since.*
>
> *11. In the present case, Kayasand produces equipment which is capable of producing sand from aggregate which, says Kayasand, is of a quality suitable for making concrete. It is clear from Kayasand's submission that they see the use of their products as being in competition with the production of the kind of marine sand produced by MBL. Paragraphs 7-8 and 10-12 of the submission are aimed at persuading the Commissioners to restrict the supply of MBL's off-shore sand in order to promote the use of Kayasand's equipment. Clearly, Kayasand sees MBL's production of marine sand by the use of a dredge and excavating equipment as being an activity that competes with its own production of an alternative form of sand producing equipment. Kayasand's entire case in opposition to the application is that, if the production of marine sand is restricted, then its own position as the producer of alternative sand making equipment will be more competitive. It follows that there is a competitive activity and, of course, there is the requisite commercial element.*
>
> *15. None of the material contained in Kayasand's submission refers to, let alone establishes, a direct effect on Kayasand of any aspect of MBL's proposal that might potentially adversely affect the environment."*

15. We have accepted Mr MacRae's submissions and find that the Kayasand submission must be disregarded under section 104 (3) of the RMA.

16. In relation to the hearing and the process that was established for the caucusing of the coastal processes expert group we issued eight Directions between 22 March 2021 and 21 February 2022. These Directions are all available as part of the hearing records and we see no need to summarise them as part of our decision.

[4] Paras 7-9

17. A Joint Witness Statement (JWS) dated 13 December 2021 resulted from the expert caucusing. It is also available as part of the hearing records and the most relevant contents of the JWS are referred to elsewhere in our decision.

18. The Panel undertook site visits on 11 May 2021 to Pakiri Beach and surrounding area, on 13 May 2021 to Te Arai Beach to observe the night time operation of the William Fraser and on 7 March 2022 an all day visit to various public locations and private properties from Pacific Road Beach in the north to the Pakiri River/Pakiri Beach locality in the south.

RELEVANT STATUTORY PROVISIONS CONSIDERED

19. In accordance with section 104 of the RMA, we have had regard to the relevant statutory provisions including the relevant sections of Part 2 and sections 104, 104B, 105, 107, 108, 108AA, 123, 125 and 128.

RELEVANT STANDARDS, POLICY STATEMENTS & PLAN PROVISIONS CONSIDERED

20. In accordance with section 104(1) (b) (i)-(vi) of the RMA, we have had regard to the relevant policy statements and plan provisions of the following documents.

- New Zealand Coastal Policy Statement 2010 (NZCPS)
- Hauraki Gulf Marine Park Act 2000(HGMPA)
- Auckland Unitary Plan – Operative in Part (AUP)

21. We also considered the following other matters to be relevant and reasonably necessary to determine the application in accordance with section 104(1) (c) of the RMA.

- The following Iwi Management Plans:

  Te Uri o Hau Kaitiakitanga o Te Taiao (2011)

  Te Iwi o Ngatiwai Iwi Environmental Policy Document (2007)

- Marine and Coastal Areas (Takutai Moana) Act 2001
- Tai Timu Tai Pari Sea Change Marine Spatial Plan

Local Board comments

22. No comments were received from the Rodney Local Board.

SUMMARY OF EVIDENCE

23. The Notice of Hearing dated 8 December 2020 included a timetable for the pre-circulation of the Council section 42A report and the evidence to be presented on behalf of the applicant and submitters. The majority of that evidence had been pre-circulated prior to the hearing being postponed due to Covid-19 restrictions. We issued directions

dated 17 March 2021 that requested an addendum to the section 42A report be prepared to address the matters raised in the previously pre-circulated evidence. We also directed a timetable for further expert evidence on behalf of the applicant and submitter's to be pre-circulated prior to the hearing commencing on 5 May 2021.

24. Following the adjournment of the hearing on 14 May 2021, Kaipara Limited, on 21 May, sought directions from us in relation to the remaining hearing process. In summary, following a series of directions, with support from the then applicant Kaipara Limited and general support from submitters, we directed that a further bathymetric survey be undertaken of the existing consented extraction areas and the proposed control areas being sought in relation to the current application. Kaipara had offered to undertake such a survey before the hearing was reconvened. In addition we directed that an expert coastal processes group be convened. The expert group originally consisted of the coastal process experts, seven in total, who had presented evidence during the hearing to date.[5]Their evidence had been presented on behalf of the applicant, submitters and the Auckland Council. The group was to initially discuss and determine the extent of the proposed survey area and the methodology for the survey. Following completion of the survey the group was directed to convene and produce a joint witness statement (JWS). The group was chaired by an independent chair and a JWS dated 13 December 2021 was produced.

25. Following on from the JWS we directed that the parties who were still involved in the hearing (Kaipara Limited was no longer the applicant by this date) provide a supplementary statement of evidence explaining the extent to which the Expert Group caucusing outcomes had changed the conclusions of their evidence in chief presented in May 2021. We also directed, with the support of MBL (now the applicant), that the submitter parties who had engaged coastal experts could also present submissions in relation to the caucusing outcomes, the JWS and the supplementary evidence of the coastal experts.

26. At the reconvened hearing beginning on 28 February 2022 submissions and expert evidence was presented on behalf of the submitters. This was followed by the response of the Auckland Council reporting team and finally, the reply on behalf of MBL. All of the evidence had been pre circulated.

27. Section 113 (1) (ad) requires us to provide a summary of the evidence presented to us during the hearing. With respect to the evidence presented to us from all parties, we see no benefit in summarising it under a 'Summary of Evidence' heading in our decision. The evidence was comprehensive, and the majority of witnesses presented summary statements and those statements can be referred to as part of the hearing records. Additionally, we were presented with a significant volume of evidence in terms of both the numbers of witnesses and the length of many of the individual statements. Again, all evidence presented can be referred to as part of the hearing records. We record that an 'Evidence Index' has also been prepared as part of the hearing record. That index includes reference to the witness statements of evidence and the various legal submissions, communications, photographs, videos and other documentation that were presented to us, or tabled, during the hearing process.

[5]Dr Single was unavailable to participate in caucusing and was replaced by Professor Hilton.

28. In this particular case, in addition to the above factors, the issues that were in contention between the parties was extensive. Therefore we have summarised the evidence presented to us under the headings that we have identified as being the 'Principal Issues in Contention.'

29. We have reviewed and considered all of the evidence presented to us. Not every witness will be specifically identified, nor will the individual statements made by every witness be specifically referred to in our decision.

PRINCIPAL ISSUES IN CONTENTION

30. After analysis of the application and evidence (including proposed mitigation measures), undertaking site visits, having considered the submissions received, the Council section 42A reports, the Council reporting team's response to the evidence presented, the outcome of the caucusing of the coastal process experts and their joint witness statement and the applicant's reply, we have identified the principal issues in contention listed below.

31. While some of these matters were not necessarily issues that were in contention between the parties, we consider that they are relevant in determining our findings on the principal matters that were in contention.

- Legal Submissions, Case Law and Planning Evidence with respect to interpreting the relevant Statutory Documents
- The Need for a Precautionary Approach
- Has Adequate Information been provided to determine the grant of consent (s104(6))
- Cumulative Effects
- Positive Effects
- The Existing/Receiving Environment
- The Permitted Baseline
- Cultural/Mana Whenua Effects
- Coastal Processes Effects
- Ecological Effects
- Recreational and Amenity Effects
- Visual, Landscape and Natural Character Effects
- Lighting Effects
- Noise Effects (above water)
- Economic Effects and Consideration of Alternatives
- The Auckland Unitary Plan – Operative in Part (AUP)
- The New Zealand Coastal Policy Statement 2010 (NZCPS)
- The Hauraki Gulf Marine Park Act 2000 (HGMPA)

- Assessment in terms of s104 of the RMA
- Part 2 Matters

LEGAL SUBMISSIONS, CASE LAW AND PLANNING EVIDENCE WITH RESPECT TO INTERPRETING THE RELEVANT STATUTORY DOCUMENTS

32. The Panel was presented with planning evidence at both parts of the hearing (May-June 2021 and February-March 2022). At the 2021 hearing four of the five qualified and experienced planners (Messrs Hay, Hopkins, Hegarty and Christie) recommended that consent should be granted subject to conditions. Dr Mitchell declined to make a recommendation and, instead, focussed his evidence on the proposed conditions.

33. As the reconvened hearing focussed on the Auckland Council reporting team's response to the evidence heard, and the applicants reply, we heard only from Mr Hopkins and Mr Hay at this time.

34. In his reply Mr Hopkins, the reporting planner, recommended that consent should be refused. This was particularly after considering the cultural evidence that had been presented by Mana Whenua. In summary he considered that:

> "*…adverse cultural effects as experienced by some mana whenua groups are of such significance that they will be unacceptable from a resource management perspective."*[6]

35. In addition to this further assessment in terms of the actual and potential effects on the environment, under s104 (1) (a) of the RMA, Mr Hopkins also revisited his previous assessment under s104 (1) (b) of the RMA. With respect to the NZCPS and Objective 3 and Policy 2, Mr Hopkins concluded that:

> *"Overall, having considered the relevant matters in the NZCPS, the management techniques proposed by the applicant, along with the specialist assessments of the sand extraction activity, it is considered the proposed extraction and associated discharge activities cannot be managed in a way that is fully consistent with the anticipated outcomes of the NZCPS, and in particular this arises through the fundamental conflict between the nature of the activity and its impact on cultural values. Opportunities do exist to promote ongoing engagement in (a) manner generally consistent with the direction of the NZCPS"*[7]

36. He also stated that:

> *"For completeness, beyond these matters, the proposal remains generally consistent with the NZCPS as outlined in the s42A report and the Addendum Report."*[8]

37. With respect to the HGMPA, Mr Hopkins also reconsidered his previous assessment. He now concluded that:

[6] Reply to evidence dated 11 February 2022, page 4
[7] Ibid, page 12
[8] Ibid, page 12

"With respect to the management of the Hauraki Gulf in accordance with s8, within the framework of objectives to protect, maintain, and where appropriate enhance the life supporting capacity of the environment of the Hauraki Gulf and its islands there is a conflict between these identified matters of national significance in particular between the objectives seeking protection in 8(c) and (d) and the objective seeking maintenance in 8(e).

As such, having identified matters of national importance, as well as conflicts between the objectives to protect, maintain, and where appropriate enhance the life supporting capacity of the environment of the Hauraki Gulf and its islands, it is considered that the proposed sand extraction and associated discharge activities cannot be managed in a way that is fully consistent with the anticipated outcomes of the HGMPA. In particular, and notwithstanding the social and economic contribution to well-being of communities, this arises through the fundamental conflict between the nature of the activity and the ability to protect the cultural values of the Hauraki Gulf.

For completeness, on the basis of the assessments with respect to coastal process and coastal ecology, as well as amenity (with respect to recreation), the proposal is considered to remain consistent with the outcomes anticipated by the HGMPA."[9]

38. Mr Hay, in his rebuttal evidence dated 21 February 2022, disagreed with the basis of Mr Hopkins's recommendation to refuse consent. Mr Hay accepted the need for Mr Hopkins to reassess his earlier recommendations after having heard the evidence that had been presented, however he considered that Mr Hopkins had incorrectly applied the tests of "fundamental conflict" and "fully consistent" when reassessing the NZCPS and the HGMPA. Mr Hay stated that:

"There is not a further separate review of the proposal against the Auckland Regional Policy Statement ("RPS") or the relevant sections of the Auckland Unitary Plan – Operative in Part ("AUPOP").

The AUPOP (including the RPS and the Regional Coastal Plan) must give effect to the NZCPS and the HGMPA. That is, the objectives and policies of the AUPOP cannot be inconsistent or contrary with the objectives and policies of these higher order instruments. I therefore have an initial concern that although the Reporting Officer has formed the opinion that the proposal is not fully consistent with the NZCPS and the HGMPA there is no revised assessment of the proposal in terms of the AUPOP objectives and policies which give effect to the NZCPS for example (including the relevant objectives and policies of the RPS and the Regional Coastal Plan)."[10]

39. Mr Hay went on to comment on the key objectives and policies relating to the cultural effects concerns that had been raised by Mr Hopkins. We shall address the relevant AUP provisions later in our decision.

[9] Ibid, page 14
[10] Rebuttal evidence dated 21 February 2022, page 13

40. Before we do that, it is appropriate to record Mr MacRae's submissions in Reply, as they relate to the differences between the planning evidence of Mr Hopkins and Mr Hay. It was his submission that:

> *"…Mr Hopkins did err in applying the provisions concerned with the protection of cultural values in the NZCPS and the HGMPA as cultural bottom lines (hence his "fundamental conflict"). As a result, he failed to go on to examine the provisions of the ARPS and the ARCP that are required to "give effect to" the NZCPS (per s.67 of the RMA) and "not conflict with" the HGMPA (s.9 (2)).*
>
> *The ARPS and the ARCP clearly meet those statutory requirements of implementation and consistency respectively and are, therefore, the primary documents of reference for the purpose of assessing whether the balance required between the protection of cultural values and the economic and social benefits to be derived from the use and development of coastal resources has been reached in this case. Reference to the NZCPS and the HGMPA is appropriate for the purpose of assisting with the interpretation of the regional planning instruments but it is wrong to apply them as determining the issue without regard to the regional planning instruments or where the regional instruments satisfactorily address the matters in question; Tauranga Environment Protection Society Inc. v Tauranga City Council [2021] NZHC 1201 at paragraphs 119-128."*[11]

41. Having carefully considered the High Court's decision we note the following findings in particular;

> *"[2] (c) The Court erred in law in applying an "overall judgement' approach to the proposal and its approach to pt 2 of the Resource Management Act 1991 (RMA). The Court was required to carefully interpret the meaning of the planning instruments it had identified … and apply them to the proposal.*
>
> *[2] (d) The relevant provisions of the RCEP do not conflict and neither do the provisions of the higher order New Zealand Coastal Policy Statement (NZCPS)*
>
> *[117] I agree it was reasonable for the Court to focus particularly on the RCEP as providing a clear policy framework and consenting pathway and as giving effect to the RPS through more specific direction. There are provisions of the RPS and Tauranga City Plan that are relevant but they supplement and reinforce the interpretation and application of the RCEP…*
>
> *[118] The more major difficulty with the Court's decision is that, consistent with its overall judgement approach, the Court did not sufficiently analyse or engage with the meaning of the provisions of the RCEP or apply them to the proposal here. The Court rejected the proposition of the NZCPS requires consent to be declined because it does not have that regulatory effect. It suggested that regional and district plans "generally treat both the protection of ONFLs and the provision of network infrastructure as desirable. But it considered they did not "particularise how those broad objectives or policies are to be pursued or how potential conflict between them is resolved. Then it mentioned Policy 6 of the NPSET and suggested there is no guidance as to how "potential conflict" between the NPSET*

[11] Submissions in Reply, paras 55 and 56

and NZCPS is to be resolved, and moved to its overall judgement. As I held above, the Court's employment of the overall judgement approach, and failure to analyse the relevant policies carefully, is an error of law.

[119] The starting point is the RCEP. When they are examined carefully, the three sets of values in them can be seen to overlay and intersect with each other without conflicting."

42. Mr Hopkins and Mr Hay had both concluded that the proposed sand extraction was consistent with the direction of the AUP and in particular the regional coastal plan provisions contained in Chapter F2 which relates to the General Coastal Marine Zone. None of the other planners, apart from Dr Mitchell, specifically addressed Chapter F2.[12]

43. Adopting the findings referred to above of the Tauranga decision of the High Court, our starting point in terms of the relevant statutory documents, as set out below, is the AUP and to start with the Auckland Regional Coastal Plan and Chapter F2.

THE AUCKLAND UNITARY PLAN – OPERATIVE IN PART (AUP)

Chapter F2 Coastal – General Coastal Marine Zone

44. The proposed sand extraction seeks coastal and discharge permits within the Coastal-General Coastal Marine Zone. Coastal marine area disturbance for mineral extraction is a discretionary activity under Rule F2.19.4 (A28).

45. At F2.1 under the heading Zone description it is stated that:

"The Coastal – General Coastal Marine Zone comprises the majority of the coastal marine area.

The purpose of the Coastal – General Coastal Marine Zone is to provide for use and development in the coastal marine area, in particular those forms of use and development that have a functional or operational need to be undertaken or located in the coastal marine area, while:

- *enabling people and communities to provide for their social and economic well-being, through the appropriate use and development of the coastal marine area;*
- *enabling the construction, operation, maintenance and upgrading of infrastructure within the coastal marine area (that cannot be practicably located on land) where it has a functional or operational need;*
- *protecting natural character, landscape values and natural features;*
- *maintaining and enhancing water quality and the life-supporting capacity of the marine environment;*
- *protecting significant ecological values;*

[12] Mr Hegarty only referred to the activities permitted in the zone.

- *protecting historic heritage values;*
- *recognising and providing for Mana Whenua values in accordance with tikanga Māori;*
- *maintaining and enhancing public access, open space, recreational use, amenity values, and access to and along the coastal marine area;*
- *not increasing the risk of subdivision, use and development being adversely affected by coastal hazards; and*
- *managing conflicts between activities within the coastal marine area.*

46. In summary, the zone's purpose is to provide for use and development for activities such as the proposed sand extraction, while of particular relevance to this proposal protecting natural character, landscape values, natural features, significant ecological values and heritage values, maintaining and enhancing water quality, the life-supporting capacity of the marine environment, public access, open space, recreational use, amenity values and access to and along the coastal marine area, recognising and providing for Mana Whenua values and managing conflicts between activities within the coastal marine area.

47. F2.1 also states that:

> *"Some parts of the Coastal-General Coastal Marine Zone have particular significant use or values that are mapped in overlays or precincts."*

48. The proposed sand extraction area is outside any of the mapped overlays or controls that have been applied in this particular locality. We note however that there are overlays that have been applied within the coastal marine area and the nearshore environments to the west of the proposed sand extraction area.

49. Further, F2.1 records that:

> *"The Plan has identified significant marine communities and habitats in the D9 Significant Ecological Areas Overlay. The coastal marine area has not been comprehensively surveyed for the purpose of identifying these. The D9 Significant Ecological Areas Overlay under-represents the significant marine communities and habitats present in the sub-tidal areas of the region. Additionally, in larger coastal marine areas with ecological significance, such as the Hauraki Gulf, or the Kaipara and Manukau harbours, it is difficult to map ecological values because of their scale and the highly mobile habits of marine fauna. A precautionary approach is therefore required to manage effects in the coastal environment. The criteria in Schedule 4 Significant Ecological Areas - Marine Schedule will be of use in determining whether a previously unidentified area has significant ecological value. The New Zealand Coastal Policy Statement will also be relevant in that regard, particularly Policy 11."*

50. Finally, we also note that B6.6 of the RPS Mana Whenua chapter "*Explanation and principal reasons for adoption",* states *"for reasons such as limited investment, cultural sensitivities and mismanagement of information in the past, very little Mana Whenua*

cultural heritage has been scheduled despite the large number of Mana Whenua groups with strong associations to Auckland. The Council has a statutory responsibility to protect Mana Whenua cultural heritage from inappropriate subdivision, use and development."

51. The sole objective in relation to mineral extraction is:

> ***"F2.6.2 Objective [rcp]***
>
> *(1) The extraction of minerals, sand, shingle, shell, petroleum, and other natural material occurs in a manner that does not have significant adverse effects on the coastal marine area or nearshore environments.*[13]*"*

52. The related policies to this objective are:

> ***"F2.6.3Policies [rcp]***
>
> *(1) Provide for the extraction of minerals, sand, shingle, shell, and other natural material from appropriate areas, having regard to the values of the area and the natural rate of sediment being deposited over sediment lost from the area where extraction is proposed.*
>
> *(2) Adopt a precautionary approach to applications for petroleum exploration and for mineral extraction within the coastal marine area, which may include using an adaptive management approach in terms of the following:*
>
> *(a) staging the operation;*
>
> *(b) the location of the activity;*
>
> *(c) the maximum volume of minerals, sand, shingle, shell and other natural material to be extracted;*
>
> *(d) the term of consent; or*
>
> *(e) environmental monitoring.*
>
> *(3) Require applications for petroleum exploration or for mineral extraction to identify the significant adverse effects, and the extent to which they can be avoided, remedied or mitigated, for all of the following:*
>
> *(a) marine and coastal vegetation;*
>
> *(b) marine and coastal fauna, including feeding, spawning and migratory patterns, bird roosting and nesting, fish and shellfish;*
>
> *(c) water quality, including effects arising from sediment, turbidity or contaminants;*

[13] Underlining is the Panels.

(d) habitats of a rare or endangered species;

(e) dune stability and coastal erosion;

(f) changes to the bathymetry, foreshore contours, sediment particle size or physical coastal processes;

(g) the values of significant surf breaks identified in Appendix 4 Surf breaks;

(h) recreation and amenity values of the area;

(i) established lawful activities in the area; and

(j) Mana Whenua values.

(4) Require applications for petroleum exploration or mineral extraction in the coastal marine area to include measures to manage any adverse effects, including remediation and mitigation measures."

53. With respect to the planning evidence on these provisions Dr Mitchell in his EIC dated 22 February 2021 stated that:

"37These mineral extraction provisions contain important caveats, to the effect that such activities are not appropriate in all circumstances and proposed extraction needs to be sustainable considering the flow of sediment into and out of the system, and effects on the values of the surrounding environment must align with the relevant policy directions.

39It is also important to note that while the purpose of the above provisions is to avoid 'significant adverse effects' on the Coastal Marine Area and nearshore habitats, that it doesn't alleviate the need for sand mining in the Mangawhai-Pakiri coastal system to also be consistent with the various policies which direct a more stringent approach be taken when managing effects on the various significant and outstanding values attributed to the environment.

40These policies include requirements to avoid:

(a) Certain adverse effects on the adjacent SEA-M and on the significant indigenous fauna which is known to inhabit or pass through the area in which the proposed sand mining occurs; and
(b) Certain adverse effects on the ONL and ONF which are located inshore of the proposal."

41As noted in paragraph 4, there is a high degree of agreement between the various technical experts for the applicant that the effects of the proposal, including on coastal processes and in the highly valued nearshore environment, will likely be acceptable and in accordance with the expectations of the planning documents."

42However, the provisions of the relevant planning documents also direct that a precautionary approach be taken; that the natural and physical resources of this

area be managed in an integrated way; and that the cumulative effects need to be considered.

43Accordingly, and based on the evidence of Dr Single, I consider that the conditions proposed by Mr Hay need to be enhanced, as I will now explain."

54. In his evidence under the heading, the existing environment, Dr Mitchell stated that:

*"22. The area inshore of the extraction area which is of particular concern to FOBP is attributed a range of notable values, and it is classified in the AUP as being a Significant Ecological Area (**SEA**), Outstanding Natural Feature (**ONF**), Outstanding Natural Landscape (**ONL**) and High Natural Character Area (**HNC**), and as containing various regionally significant surf breaks. The AUP schedules in Chapter L of the document contain a description of the values which contribute to the significance of each area. This is important as the planning documents contain specific and more onerous direction for managing effects on these areas. I return to this later in my evidence…*

24. As the Commissioners will be aware, MBL hold existing consents to undertake sand extraction inshore of the proposal and are currently undertaking this activity under section 124 of the RMA whilst their application for a replacement consent is being processed. I understand Mr Hay has assessed the activity assuming the existing MBL activity does not form part of the existing environment for this proposal.

25. I am advised by legal counsel for FOBP that this determination may not be as clear cut as suggested in Mr Hay's evidence and that this will be a matter addressed in FOBP legal submissions.

26. The MBL activity is obviously relevant when the Commissioners are considering the cumulative effects of the current proposal, particularly on coastal processes."

55. Mr Hay in his EIC dated 12 February 2021 stated that:

"137.The sand extraction area has been specifically located so that sand extraction is seaward of the previously confirmed DOC (Depth of Closure) so that it does not have the potential to cause or exacerbate coastal erosion along the Pakiri coastline.

138.F2.6 sets out the objectives and policies for mineral extraction in the CMA. The sand extraction can continue to be undertaken in a manner which avoids significant adverse effects on the coastal marine area and the near-shore environment. Limiting the landward depth of the sand extraction area to the seaward DOC avoids or significantly reduces the risk of potential effects on the near-shore environment.

139.The site is considered suitable for continued sand extraction given the volume of available sand, the relatively small volume of sand being extracted over a twenty year period, and the relatively small extraction area.

140.An adaptive management approach is being undertaken through the implementation of an EMMP."

56. In his EIR dated 16 April 2021, Mr Hay respond to Dr Mitchell's evidence. With respect to Policy 2 and the precautionary approach Mr Hay stated that:

"28. Although I am in agreement that this policy is relevant I further consider that a precautionary approach is not specifically necessary in this case given the potential effects are well known and documented. However, the approach being taken in the application and proposed monitoring mirror those matters listed in this Policy in terms of taking a precautionary approach:"

29.If a precautionary approach is required to be undertaken then I consider that the formulation of the application and the recommended conditions reflect such an approach."

57. Dr Mitchell in his supplementary evidence dated 14 May 2021 stated that:

*"3 In paragraph 28 – 40 of my EIC I set out my assessment of the Auckland Unitary Plan (**AUP**) provisions which are most relevant to the proposal, including those which address the various significant values attributed to the Mangawhai-Pakiri embayment. For the reasons set out in my EIC these AUP provisions highlight the significant values which are present near the proposed sand extraction area, and dictate a precautionary approach be taken to identifying, monitoring and managing the effects of the proposal. The concerns expressed at the hearing about previous compliance and enforcement, further reinforces the planning imperative that a precautionary approach be taken here. The most logical way of achieving that is by robust conditions, the sharing of monitoring information, and potentially even limiting the term of any consent issued.*

*4 Mr Hay acknowledges the additional provisions I identified in his Evidence in Reply (**EIR**), concluding that the proposal is appropriate when assessed against them because the technical assessments do not identify any effects of concern that those provisions address. For the avoidance of doubt, the reason I highlighted these provisions was not because the technical evidence suggests they will not be satisfied, but because they contextualise the sensitivity and values of the general area within which this proposal is located, and because they underpin the need to have robust conditions in place which ensure those areas are protected. In my view Mr Hay's analysis is too narrowly focussed on the findings of the technical assessments rather than considering the wider planning context, and how the proposed conditions will ensure that the various objective and policy outcomes will be achieved. In my opinion, the sensitivity of this area is such that the precautionary approach dictates that the conditions need to include a more comprehensive and robust regime of monitoring, reporting and enforcement in order to be able to detect and respond to any unexpected adverse effects that may eventuate.*

8 As I stated in my EIC, my overall conclusion remains that the provisions of the relevant planning documents direct that a precautionary approach be taken, that

the natural and physical resources in this area be managed in an integrated way and that cumulative effects need to be considered."

58. In his rebuttal evidence dated 21 February 2022, Mr Hay stated that:

> *"50. Having read the Joint Witness Statement prepared by the Coastal Processes Expert Caucusing Group and taking into account their outstanding issues, there is now a stronger argument that a precautionary approach is required particularly in terms of monitoring.*
>
> *51.As outlined in paragraph 29 of the Reply Statement the approach taken in the application and proposed monitoring mirror those matters listed in Policy F2.6.3(2) of the AUPOP in terms of taking a precautionary approach. This approach has been further strengthened by the additional monitoring proposed in the extraction exclusion area and on the beach/foredunes which in part reflects the recommendations of the Expert Caucusing Group. In this respect, this better meets the requirements of taking a precautionary approach in terms of monitoring and reporting."*

59. In his s42A report[14] Mr Hopkins stated with respect to F2.6 that:

> *"The demand for minerals, including sand from the CMA and the social and economic benefits that are associated with extracting the resource is recognised by the AUP (OP), along with need to ensure that the adverse effects of the mineral extraction are appropriately managed to ensure significant adverse effects do not occur.*
>
> *As outlined in the assessments above, the location of the proposed extraction areas (beyond the DoC / Hallemeier limit) and management through the implementation of the EMMP (and application of the management cells) is considered appropriate to ensure that no significant adverse effects arise through the implementation of the activity.*
>
> *Overall, the proposal is considered to be generally consistent with the outcomes anticipated by the AUP (OP) for activities in the General Coastal Marine Zone."*

60. In his Reply to evidence, dated 11 February 2022, Mr Hopkins did not specifically revisit Chapter F2, however in his Conclusion[15] he retained his earlier position that the proposal "*has been demonstrated to be consistent with the direction of the Plan with respect to mineral extraction activities and discharges in the General Coastal Marine Zone*."

61. In addition to the expert planning evidence we heard evidence from many other witnesses who considered that the proposed activity was not appropriately located for a variety of reasons. Some of this evidence was presented from experts in their field, such as some of the coastal process experts, ecologists and the like. Much of the evidence opposing the location of the proposed extraction areas was from Mana Whenua, local residents and interest groups, as well as from organisations such as the Auckland

[14]Page 34
[15]Page 15

Conservation Board and the Mangawhai Harbour Restoration Society. This evidence is discussed elsewhere in our decision.

62. We also received evidence in relation to the reasons why the proposed extraction area had been chosen by the applicant.

63. Mr Hay in his evidence in chief, as quoted above, stated that the proposed extraction area "*has been specifically located so that the sand extraction is seaward of the previously confirmed DOC so that it does not have the potential to cause or exacerbate coastal erosion*."

64. Mr Riddell, the Managing Director of Kaipara Limited, confirmed Mr Hay's understanding of why the proposed location of the extraction area had been chosen.[16]

65. Bearing in mind that the General Coastal Marine Zone comprises the majority of the coastal marine area, it is relevant to note that existing coastal permit 20795 extraction area, as indicated on BECA Drawing No.3233103-CA-013, covers an area of 636 km². Only a small part of the approved 636km² extraction area has been used for sand extraction as extraction is currently limited (by technology and equipment) to around 35-38m in depth, which may over time be extended to about 40m.[17] The proposed extraction area is considerably smaller at approximately 42km².[18]

66. Mr Riddell also stated in his conclusion that based on the evidence of Ms Hart that:

> *"Our application is based on evidence that operating beyond the depth of closure (25 metres) has no discernible effect on the coastal processes and foreshore. This position was confirmed by Auckland Council section 42A officers report in recommending that consent be granted and also by Tonkin and Taylors review on behalf of the Department of Conservation."*[19]

FINDINGS ON CHAPTER F2

67. In the context of this proposal the purpose of the General Coastal Marine Zone is to provide for use and development in the coastal marine area, while, amongst other things; enabling economic well-being through the appropriate use of the coastal marine area; protecting natural character, landscape values and natural features; maintaining and enhancing water quality and the life-supporting capacity of the marine environment; protecting significant ecological values; recognising and providing for Mana Whenua values in accordance with tikanga Māori; and managing conflicts between activities in the coastal marine area.

68. These matters were not in dispute.

69. What was in dispute was the extent to which the above underlined matters can be achieved if the proposed sand extraction is to be consented as an appropriate use.

[16]Riddell EIC, para 26
[17]Riddell EIC, para25
[18]Riddell EIC, para 16
[19]Riddell Reply evidence, para 37

70. It was the applicant's case that the proposal is an appropriate use largely because, subject to the conditions proposed, it avoids significant adverse effects on all the matters listed in Policy F2.6.3 (3).

71. Mr Hopkins, the reporting planner, recommended consent be refused because of the significant adverse effects on Mana Whenua values.

72. The submitters in support considered consent should be granted largely for reasons of economic well-being.

73. The submitters in opposition considered consent should be refused largely because they considered the extraction of sand is not an appropriate use in this particular part of the coastal marine environment, or not appropriate at all.

74. We agree with the expert planning evidence that the sole objective, F2.6.2, is that the extraction of sand from the General Coastal Marine Zone occurs in a manner that does not have significant adverse effects on the coastal marine area or nearshore environments.

75. With respect to Policy F2.6.3 (1), this policy is to provide for the extraction of sand from "*appropriate areas*" having regard to "*the values of the area" and the "natural rate of sediment being deposited over sediment lost from the area where extraction is proposed.*"

76. We accept that the location of the proposed extraction area had been identified by applicant because it was understood the area was to the seaward side of the depth of closure and "technology and equipment" limited extraction to depths around 35-38 metres. These were the primary reasons the proposed extraction area was considered to be suitable from the applicant's perspective. Mr Hay also stated that reasons also included the sand resource available and that a relatively small volume of sand was to be extracted from the proposed smaller extraction area.

77. We do not accept however, that the suitability of this location as determined by the applicant, means that the chosen area is necessarily "*an appropriate area*" in terms of Policy F2.6.3 (1). We accept that "*an appropriate area*" is one that is considered to be "*suitable or acceptable*." However, in terms of this policy, the appropriateness of the chosen areas also requires consideration of the values of the area.

78. The planning evidence, in particular that of Mr Hay, focussed on the fact that the proposed sand extraction area was outside the outstanding natural landscapes, high natural character, outstanding natural features and the significant marine ecological areas identified in the AUP. These identified areas are located on the landward side of the proposed extraction area, either in the coastal marine area or on land within the coastal environment. In other words, he recognised the nature of the surrounding environment, primarily because, in his opinion, there were no significant adverse effects on the surrounding environment, this was an appropriate area for the proposed sand extraction to take place.

79. While understanding Mr Hay's conclusions based on Policy F2.6.3 (3) we are not convinced that his approach fully addresses the issue of "appropriateness" raised in Policy F2.6.3 (1).

80. Our findings on coastal processes, later in our decision, are that we do not have enough reliable information to fully understand the coastal processes and that there remains a great deal of uncertainty about the coastal processes taking place and the actual and potential effects of the sand extraction on those processes. In addition we have accepted the evidence of Mana Whenua and Mr Hopkins that there are significant adverse effects on Mana Whenua values. Given these two findings, we now revisit both of the above policies.

81. Overall we have preferred the evidence of Dr Mitchell where he clearly stated that the values of the surrounding environment, beyond the proposed sand extraction area, need to be taken into account. We note that Mr Hay and Mr Hopkins did not fundamentally disagree with the need to take this approach. We also agree with Dr Mitchell where in his supplementary evidence he considered that *"…Mr Hay's analysis is too narrowly focussed on the findings of the technical assessments rather than considering the wider planning context, and how the proposed conditions will ensure that the various objective and policy outcomes will be achieved. In my opinion, the sensitivity of this area is such that the precautionary approach dictates that the conditions need to include a more comprehensive and robust regime of monitoring, reporting and enforcement in order to be able to detect and respond to any unexpected adverse effects that may eventuate."*

82. Dr Mitchell's conclusions reflect the fact that his overall evidence was focussed on the conditions that had been proposed by others at the 2021 part of the hearing. However, given the lack of reliable information that was identified in the JWS and the resultant uncertainty about the coastal processes, we have accepted Dr Mitchell's approach to the sensitivity of the surrounding environment and the need to consider the wider planning context, particularly with respect to the question of the suitability of the area for sand extraction.

83. In order to determine if the extraction area chosen by MBL is in fact an "appropriate area", we have concluded that considerable weight should be placed on the wider planning context as set out in the AUP. Firstly, in relation to the regional coastal plan provisions, and, later in our decision to other relevant plan provisions.

84. To be fair to Mr Hay he placed considerable weight on Policy F2.6.3 (3) when assessing the effects on the surrounding environment, because that policy requires the identification of "…*the significant adverse effects and the extent to which they can be avoided, remedied, or mitigated …"*on all of the 10 listed matters.

85. With respect to Policy F2.6.3 (1) we find that in order to determine if the proposed sand extraction is from an appropriate area the following consideration is necessary. Having regard to the values of the area, Policy F2.6.3 (3) is a helpful starting point. If there are significant adverse effects that are not avoided, remedied or mitigated in relation to any of the listed matters, this would raise doubts about the suitability of the chosen area.

86. Based on the evidence of Mana Whenua and Mr Hopkins, we find that there are significant adverse effects on Mana Whenua values that have not been avoided, remedied or mitigated. The proposed Community Liaison Group, with an invitation to Mana Whenua to join does not appropriately address the identified effects.

87. With respect to dune stability, coastal erosion and changes to bathymetry, foreshore contours and physical coastal processes we find that there is a great deal of uncertainty and a lack of reliable information for us to understand or determine the extent of effects on these matters. We also cannot ignore the outcome of the expert caucusing and the resultant JWS. This has raised doubts that the previously identified depth of closure is in fact as robust, or as well understood and accepted by the coastal process experts, as had been claimed at the time of the 2021 hearing.

88. Having regard to all these matters we find that the proposed sand extraction area is not an appropriate one.

89. For completeness we note that in terms of Policy F2.6.3 (4) we were not informed of any appropriate measures to manage adverse effects, particularly for Mana Whenua[20], that involved remediation and mitigation measures.

90. With respect to Policy F2.6.3 (2) and the need to adopt a precautionary approach we note that this policy includes the option of using an adaptive management approach in terms of: staging the operation; the location of the activity; the maximum volume of sand to be extracted; the term of consent or environmental monitoring. The adaptive management approach and the conditions proposed by the applicant were largely accepted by Mr Hopkins if consent were to be granted. Given the uncertainty and lack of reliable information we have identified above we find the precautionary approach in this particular case supports the refusal of consent, rather than the grant of consent subject to the proposed conditions of consent.

91. Having regard to the regional coastal plan provisions in Chapter F2, as required by s104 (1) (b) of the RMA we find the proposal is not consistent with the zone description and the relevant objective and policies.

Chapters E18- Natural Character of the Coastal Environment and E19 - Natural Features and Natural Landscapes in the Coastal Environment.

92. These two chapters also contain provisions that are identified as being part of the regional coastal plan. Both chapters were assessed in the evidence of Mr Hopkins and Mr Hay. It is relevant to note that their assessments of these two chapters were set out in the evidence they presented at the 2021 part of the hearing. Mr Hopkins' overall conclusion was the proposal was generally consistent with both chapters. Mr Hay considered that the proposal was consistent with Objective E18.1 (1), Policy E18.3 (3), Policy E18.3 (1) and Policy E18.3 (2), and, was not contrary to Objective E19.2 (1) or its supporting policies. They did not review or update those assessments during the 2022 part of the hearing.

93. While these matters were not in contention between the two planners, we have taken them into account for two reasons.

94. Firstly because these regional coastal plan provisions state that they give effect to specific policies of the NZCPS and specific objectives and policies of the RPS. With respect to E18, the objectives and policies give effect to Policy 13 (1) (b) of the NZCPS and Objective B8.2.1 (2) and Policy B8.2.2 (4) of the RPS. With respect to E19, the

[20] Specifically, the Ahi Kaa submitters

objectives and policies give effect to Policy 15(b) of the NZCPS and Objective B4.2.1 and Policy B4.2.2 of the RPS.

95. Secondly because it is appropriate that we revisit these chapters in light of our findings based on the evidence presented at the 2022 part of the hearing.

96. The Background statement in each chapter makes it clear that the provisions of E18 and E19 "…*apply to activities in the coastal environment that are proposed in areas that are not scheduled …but that require resource consent*."

97. Objective E18.2 (1) is:

> *"The natural characteristics and qualities that contribute to the natural character of the coastal environment are maintained while providing for subdivision, use and development."*

98. The most relevant policy is E18.3 (3). It seeks to manage the effects of subdivision, use and development in the coastal environment to avoid significant adverse effects, and avoid, remedy or mitigate other adverse effects, on the characteristics and qualities that contribute to natural character values, taking into account ten listed matters. The matters of particular relevance to the sand extraction proposal being:

> *"(b)the extent of anthropogenic changes to landform, vegetation, coastal processes and water movement;*
>
> *(d) the temporary or permanent nature of any adverse effects;*
>
> *(e)the physical and visual integrity of the area, and the natural processes of the location;*
>
> *(g)the physical, visual and experiential values that contribute significantly to the wilderness and scenic values of the area;*
>
> *(h)the integrity of landforms, geological features and associated natural processes, including sensitive landforms such as ridgelines, headlands, peninsulas, cliffs, dunes, wetlands, reefs, freshwater springs, streams, rivers and surf breaks;*
>
> *(i)the natural characteristics and qualities that exist or operate across mean high water springs and land in the coastal environment, including processes of sediment transport, patterns of erosion and deposition, substrate composition and movement of biota, including between marine and freshwater environment.*

99. In relation to E19 we note the wording of Objective E19.2 (1) is effectively the same as Objective E18.3 (1) and Policy E19.3 (2) (h) is identical to Policy E18.3 (h).

100. Policy E19.3 (1) relates specifically to managing uses in the coastal environment adjoining scheduled outstanding natural landscapes or outstanding natural features. Policy E19.3 (1) (b) is to "*avoid adverse cumulative effects on the values of outstanding natural landscapes or outstanding natural features*."…..

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101. These objectives and policies are particularly relevant in terms of assessing the regional coastal plan, however we have received no planning evidence on them following the caucusing of the coastal experts and the JWS. Given the uncertainty and lack of reliable information we found earlier in relation to coastal processes, we find ourselves in the same position in relation to these provisions.

The Need for a Precautionary Approach

102. In his opening submissions[21] Mr Slyfield submitted that the Applicant disputed that there is any evidence of uncertainty or lack of knowledge that could trigger a requirement for a precautionary approach. Instead he submitted that there was a considerable body of scientific knowledge concerning this coastal environment and that the relevant coastal processes are some of the most intensively studied in New Zealand. He also noted that monitoring data had been obtained from the operation of the existing consent.

103. Mr Slyfield also submitted that the proposal itself incorporated a number of precautionary aspects, including, what he described as the single greatest precautionary measure, siting the activity beyond the depth of closure. Other examples he identified were the requirements to undertake pre-extraction monitoring and assessments, limits on annual volume to be extracted from individual management cells, more robust reporting conditions, the requirement for extraction to be undertaken predominantly at night, post-extraction monitoring and adherence to a marine mammal management plan.

104. Mr Nolan, on behalf of Mr Clapshaw[22], submitted that:

> "*4.3 In giving effect to the NZCPS as required under s 67(3)(a) of the RMA, the regional coastal plan provisions of the Auckland Unitary Plan ("**AUP**") explicitly require the adoption of a precautionary approach to applications for mineral extraction within the coastal marine area.*
>
> *4.4 This case is unusual, in the sense that the precautionary approach is more normally applied to new activities for which there is an insufficient knowledge base and/or lack of available scientific data to accurately project the likelihood and intensity of adverse effects. This was the case, for example, in the Supreme Court's consideration of New Zealand King Salmon's application for a private plan change and resource consents for intensive salmon farming in the Marlborough Sounds.*
>
> *4.5 In the current case, the Commissioners are dealing with an established activity, but one that has been demonstrated by Mr Clapshaw and Dr Mead to have been undertaken otherwise than in accordance with the existing conditions of consent. There is uncertainty and a lack of knowledge or understanding of the effects of the existing operation "on the ground" because the dredging has not been carried out as originally envisaged or as required, crucial monitoring and other reports were not done or provided when required, and additional levels of investigations were not undertaken when they should have been. As such, the starting point for many*

[21] Paras 108-117
[22] Paras 4.1- 4.8

of the applicant's initial assessments was based on fallacy. There is also uncertainty as to what the effects of extraction are when the consent has not been exercised and properly monitored and assessed during the term of the current consent. The question for the Commissioners is how to approach the consideration of the likely adverse effects of a renewal, in circumstances where the consent-holder and operator have failed to establish a proper baseline built on past compliance and reporting.

4.6 In my submission, the precautionary approach is directly relevant to the Commissioners 'application and analysis of the factual evidence under s 3 of the RMA, particularly the regard that must be had to potential effects (including those of low probability but high potential impact). It requires you to treat with caution the degree of agreement between the various technical experts for the applicant (and the Council's review of that evidence)that the effects of the proposal will likely be acceptable and in accordance with the expectations of the planning documents, where the fundamental basis for that agreement is founded on a total misapprehension as to compliance with the existing conditions of consent, how the dredging has been undertaken, and all of the detailed monitoring required by the conditions but not done. There is also disagreement between the experts for the various parties as to the impact of these breaches of the consent conditions on the existing environment and on sediment transfer within the embayment. That is another reason to favour caution in your approach.

4.7 It is also directly relevant to your consideration of the proposal under s 104(1)(b) as a result of Policy 3 of the NZCPS and the equivalent policy in the AUP, which is a matter I return to later.

4.8 Counsel's opening legal submissions for the applicant referred to a requirement to establish uncertainty or lack of knowledge on the facts before the precautionary approach is invoked. I accept that point as a matter of principle. However, uncertainty or a lack of knowledge has been demonstrated through the work of Mr Clapshaw and Dr Mead, among others, and the applicant's own statements that it was taken aback by the scale of the trench first discovered by Dr Mead and it has now had to admit to reports and monitoring not having been undertaken. So, the applicant's point fails on its own evidence, and a plausible basis has been established for a precautionary approach."

105. Mr Williams on behalf of FOPB submitted that:

"2.7 A key provision of the NZCPS is Policy 3 (Precautionary Approach) required the adopting of "a precautionary approach towards proposed activities whose effects on the coastal environment are uncertain, unknown, or little understood, but potentially significantly adverse…".

2.8 In "Science and the Precautionary Principle in International Courts and Tribunals" Dr Caroline Foster of the University of Auckland Law School, says that:

" … it is commonly understood that precaution requires actors as wishing to engage in activities potentially involving risk of serious harm to bear the burden of proving the safety of the proposed activities before the activities are permitted to

proceed. This is often described as a reversal of the burden of proof although sometimes also as a lowering of the standard of proof. The key point is that a lack in evidence of harm does not provide a basis for reaching the conclusion that there is no threat of harm".

2.9 In the present case there is actual proof of harm: see evidence of Dr Shaw Mead, and as one example, the dredge trenches causing negative environmental impacts to the sediment transport process within the Mangawhai-Pakiri embayment; the evidence of Peter Kensington Landscape Architect expert (referred to below).

2.10 Since the precautionary principle is explicitly incorporated into the New Zealand Coastal Policy Statement it follows that there must be refusal of consent if there exists an environmental risk arising from the proposed dredging."

106. In his Reply Mr MacRae submitted that:

"31. Several submitters, some supported by Counsel and/or their planners, have called for conditions of consent implementing the precautionary approach.

32. Mr. Slyfield submitted in opening that the precautionary approach does not apply as none of the requirements for it apply. These are set out in Policy 3(1) of the NZCPS and Policy B8.3.2(5) of the Auckland Regional Coastal Policy Statement (ARCPS). Those requirements apply to proposed activities whose effects on the coastal environment are uncertain, unknown, or little understood, but potentially significantly adverse.

33. The main point relied on by submitters such as FOPB and Mr. Clapshaw is that alleged areas of non-compliance have created uncertainty as to the effects of aspects of the activity. Mr. Williams takes up the point at paragraphs 2.7 -2.9 of his submissions and Mr. Nolan at his paragraphs 4.1 -4.8.

34. I have submitted in some detail above that the allegations of non-compliance have no proper basis in evidence and that Commissioners can have a high degree confidence in the reliability of the applicant's assessment of effects. In my submission the risk of "significant adverse effects" is negligible.

35. Mr. Hay's opinion, as you have heard is that, although a precautionary approach is not required, the proposed terms and conditions of consent incorporate substantial elements of the precautionary approach. In particular, they implement, in one way or another, all the precautionary requirements for mineral extraction, including elements of adaptive management, listed in Policy F2.6.3(2) of the Auckland Regional Coastal Plan."

107. Ms Sutherland on behalf of the Director General of Conservation also submitted that a precautionary approach is triggered by this application and sought more robust conditions to be imposed.

108. Initially Messers Hopkins[23], Hay and Mitchell did not seek refusal of consent, but focussed on improved conditions. Dr Mitchell did state that:

> *"42. However, the provisions of the relevant planning documents also direct that a precautionary approach be taken; that the natural and physical resources in this area be managed in an integrated way; and that the cumulative effects need to be considered."*

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109. We have taken Chapter F2 as our starting point and in particular F2.6 which relates to mineral extraction in the coastal marine area, as referred to above

110. We find that a precautionary approach is required in this case, primarily because adequate information has not been provided to determine if consent can be granted, as set out in the coastal processes section, below. Alongside this, the outcomes of the JWS which set out what was agreed by the experts and included descriptions such as "*inconclusive*", "*not possible to draw any conclusion*" and "*the volume, rate and direction of sediment transport are not able to be inferred from the data available at this time*."

111. In addition we find that the sensitive nature of this environment, including many of the values and issues listed in F2.6.3 (3) also supports a precautionary approach.

112. On the basis of our findings in the Mana Whenua section, below, we have also found that the adverse effects of the proposal on Mana Whenua values are significant.

113. Policy F2.6.3 (2) is to adopt a precautionary approach, "…*which may include using an adaptive management approach.*"

114. Given the above circumstances, overall we do not consider that granting consent subject to conditions that would include adaptive management, will be sufficient in this case to appropriately adopt a precautionary approach.

Has Adequate Information been provided to Determine the Grant of Consent (s104 (6))

115. Mr Nolan, in his legal submissions on behalf of Mr Clapshaw, submitted that in terms of section 104 (6) of the RMA we should use the discretion to "…*decline an application for resource consent on the grounds it has inadequate information to determine the application*." He made this submission during the 2021 part of the hearing, prior to the caucusing of the coastal processes experts and prior to the JWS that resulted from that caucusing.

116. Before discussing this further, we note that Mr Hopkins in his s42A report[24] advised that:

> *"The information submitted by the applicant is sufficiently comprehensive to enable the consideration of the following matters on an informed basis:*

[23] Mr Hopkins changed his recommendation after hearing the evidence presented during the hearing
[24] S42A report, Section 4

- *The nature and scope of the proposed activity that the applicant is seeking resource consents for.*
- *The extent and scale of the actual and potential effects on the environment.*
- *Those persons and/or customary rights holders who may be adversely affected.*
- *The requirements of the relevant legislation."*

117. He went on to advise that further information had also been received during the processing of the application. That further information was attached to his s42A report.

118. Mr Nolan urged us to exercise our discretion under s104 (6) for the following reasons.

> *"6.5 This subsection was relied upon by the Environment Court in the R J Davidson Family Trust case to decline an application for a mussel farm in Beatrix Bay, in the absence of information from the applicant as to the potential cumulative impacts on King Shag habitat. That finding of the Environment Court was upheld on appeal, and was not disturbed by the further appeal on the relationship between s 104 and Part 2. The Environment Court held that the power to decline on the basis of inadequate information should be exercised reasonably and proportionately in all the circumstances of the case".*
>
> *"6.6Applying those dicta to the present circumstances:*
>
> *a) There is difficulty is assessing the true nature and scope of the proposed activity for renewal, as what is proposed is not what has been taking place in reality at the site.*
>
> *b) The expert assessments for the applicant all suffer from the same deficiency, in that they assume that the consent is being exercised lawfully and that the state of the seabed is as per a fully compliant situation, when that could not be further from the case. As demonstrated by both Mr Clapshaw and Dr Mead, the applicant's team had a poor understanding of how the dredging operation has in reality been undertaken, day in day out, they were unaware of the breaches on the water, they were unaware of the missing reports and the failed monitoring, they did not understand how the vessel operations occurred, they totally missed the fact that the operation was carving trenches through Area 1and as they failed to pick that up in their non-compliant surveys, they also failed to do the required tier 2 detailed investigations.*
>
> *c) In the absence of the proper investigations and monitoring as required by the existing conditions of consent, and the proper reporting and assessments, including as to seafloor imaging, over the period of the consent there is both insufficient information to enable the consent authority to consider matters "on an informed basis"; and the information that the applicant's experts have relied upon is not sufficiently reliable to make predictions as to the future impact of another 20 years of seabed mining.*
>
> *d) It would be reasonable and proportionate in these circumstances to decline the application for renewal. The applicant still has a period of time within which to demonstrate compliance with the existing conditions of consent and to establish a proper baseline and foundation for assessment, without requiring them to cease*

operations. This submission is reinforced by the failure to comply with monitoring conditions which, if they had been complied with prior to the renewal application being made, would have afforded the community a much better information base from which to critically analyse the assertions in the applicant's evidence.

6.7 It is therefore open to the Commissioners to decline the application on the basis of inadequate information and require the applicant to reapply once that information has been properly collated. This applies notwithstanding the fact that, as also in the Davidson case, the application had been accepted by the consent authority as "complete" pursuant to 88 of the RMA.

6.8 Indeed, so long as any refreshed application is made more than six months prior to the expiry of its existing consent, the applicant could continue to operate under the existing consent until such time as a new consent is granted or declined and all appeal rights have been extinguished. That is a far more reasonable and proportionate response than making a judgment that based on multiple hypotheticals, both as to the environment as it exists now or should have existed, and the future environment as it might be modified by any renewed consent."

119. As recorded above Mr Nolan's submissions predated the caucusing of the coastal process experts and the JWS that they produced. We also record that Mr Nolan was also supported by the legal submissions of Mr Williams.

120. It is relevant to record at this stage that the caucusing process and the JWS grew out of the 21 May 2021 memorandum from Mr Slyfield on behalf of the then applicant, Kaipara Limited. Mr Slyfield sought directions from us as to a pathway for the completion of the hearing. Of particular concern at that stage was the doubts that had been expressed by Dr Mead about the reliability of the March 2021 bathymetric survey that had been presented in Kaipara's evidence. In offering to undertake a further bathymetric survey, Mr Slyfield submitted that:

"15.The advantage of a further bathymetric survey and analysis is that it may provide the Commissioners with better information for assessing the relevance of allegations of past conduct under Kaipara's existing consent.

16.From Kaipara's perspective there can be no objection to such information being provided "in reply", as it clearly replies to specific allegations made by Dr Mead on the final day of the hearing. That said, Kaipara has already submitted (and maintains) that it is not for the Commissioners to enforce the existing consent, and the relevance of past conduct cannot go so far as to influence the decision whether to grant or decline Kaipara's current application.

17.Kaipara acknowledges that position has been disputed in the legal submissions given by Mr Nolan QC on behalf of Damon Clapshaw. Therefore, Kaipara considers it is at the discretion of the Commissioners whether this information is likely to assist in the determination of the consent and Kaipara requests the Commissioners' guidance."

121. In our directions dated 27 May 2021, after noting that it was premature to make any determinations on the merits of the evidence, and the legal submissions to date, we stated that:

> *"20.We do however see merit in the further bathymetric survey being offered by the applicant and supported by the Council. We consider that the proposal to survey the entirety of the approved extraction areas will address the concerns identified by Dr Mead. Analysis of the further survey has the potential to provide a more comprehensive understanding of the sediment transport processes within the Mangawhai-Pakiri embayment and any impacts on the beaches and dunes, based on robust and up to date information."*

122. In our further directions dated 23 June 2021 we clarified that:

> *"41(g)Following the completion of the survey, the experts shall be provided with the survey results. Caucusing shall take place and a joint witness statement shall be prepared setting out the areas of agreement and disagreement and the reasons behind the opinion of each expert. The joint witness statement shall specifically address the impact of the survey results on the understanding of the coastal processes and, in particular, the understanding of the sediment transportation process associated with the seabed features identified by the survey."*

123. Mr MacRae, in his Reply submissions dated 1 March 2022, responded to the question of the adequacy of information that had been raised.

> "*28. A number of submitters have suggested that the information and evidence presented in support of the application is so inadequate as to justify declining it. Mr. Williams and Mr. Nolan and other Counsel raised the issue in their legal submissions and suggested that claimed deficiencies and gaps in information, in large part stemming from the alleged instances of non-compliance referred to above, prevented a proper understanding of the activity proposed and would justify the Commissioners declining consent pursuant to their discretion under s.104 (6) of the RMA.*
>
> *29. I was surprised that this matter was seriously advanced by experienced Counsel and submit that, for the following reasons, it warrants little of your attention:*
>
> *a. The Council made a request for further information under s.92 of the RMA and this was answered by the applicant to the Council's satisfaction. This is of relevance to your discretion under s.104 (6) pursuant to s.104 (7).*
>
> *b. As a brief look at the applicant's witness list indicates, the application was supported by the reports and evidence of its independent experts on almost every conceivable area of potential effect of the proposed activity. The one exception was effects on Maori cultural values and, in fairness, this is a difficult area for any applicant as independent expert advice is difficult to obtain. Further, as Mr. Hopkins recognised when presenting his report yesterday applicants and decision makers need to hear from the people who have cultural concerns in order to*

properly understand them. As you have heard, the matter has been the subject of a great deal of attention by MBL since it became the applicant in September 2021.

c. As I have outlined above, the application has been significantly informed by the information gained from 18 years of the same activity, in the same off-shore location, and since late 2019 by the William Fraser using the same extraction equipment, as is proposed.

d. The Council, with its wide experience of every kind of application, has not raised any concerns as to the adequacy, or indeed the accuracy, of the information presented in support of the application.

30. I submit that this application far exceeds the standard of information required of applicants and that, if you were to find otherwise, you would be imposing a new standard which applicants generally would struggle to meet. That is not, of course, the intended outcome of s.104 (6)."

124. At this point it is relevant to consider the outcomes of the caucusing process. There were a number of issues that were agreed. In relation to sediment transportation processes, it was agreed that:

"23.The available information is inconclusive as to the source and mechanism for infilling, sediment transportation processes across the surveyed area, and any long term effects of the trenches on those coastal processes.

24.The available information indicates that sediment is moving in the surveyed offshore area, but it is not possible to draw any conclusion about diabathic or longshore transport. The volume, rate and direction of sediment transport are not able to be inferred from the data available at this time."

125. The JWS noted matters not agreed as follows.

"27.Nil, noting however that the CPECG members do not necessarily agree on points of interpretation of the historical and present-day body of coastal processes information that are outside the scope of the CPECG's caucusing."

126. A number of outstanding issues were recorded.

"28.The ability of the CPECG to draw conclusions is limited by the lack of high quality, repeat surveys covering the extraction area and would be enhanced by a time series of hydrographic data (e.g. Digital Elevation Model) covering the complete Mangawhai-Pakiri embayment, including the beach, nearshore and offshore areas.

29.The CPECG considers that a coordinated and sustained monitoring programme needs to be developed, approved and implemented for any sand extraction activities in the Mangawhai-Pakiri embayment, and linked to an adaptive management plan for those sand extraction activities. Such a monitoring programme might include, for example:…"

FINDINGS

127. We have carefully considered the legal submissions of both Mr Nolan and Mr MacRae, primarily because of the outcomes from the caucusing process and the JWS.

128. Section 104 (6) of the RMA provides a discretion than we *"… may decline an application for resource consent on the grounds that it has inadequate information to determine the application.*"

129. The caucusing of the coastal experts arose from the request from Mr Slyfield on behalf of the then applicant, Kaipara Limited. As we quoted above Mr Slyfield had concluded, at his paragraph 17, that:

> *"Therefore, Kaipara considers it is at the discretion of the Commissioners whether this information is likely to assist in the determination of the consent and Kaipara requests the Commissioners' guidance."*

130. We determined at that stage that we saw merit in the caucusing process and directed that the JWS "…*shall specifically address the impact of the survey on the understanding of the coastal processes and, in particular, the understanding of the sediment transportation process associated with the seabed features identified by the survey*."

131. Our expectation was that the caucusing process would clarify the competing expert evidence we had received during the first stage of the hearing in 2021.

132. The JWS set out what was agreed by the experts and included descriptions such as "*inconclusive*", "*not possible to draw any conclusion*" and "*the volume, rate and direction of sediment transport are not able to be inferred from the data available at this time.*"

133. As identified in the JWS an outstanding issue was the lack of high quality repeat surveys from which comparisons could be made.

134. Rather than assisting us in our deliberations, the caucusing process raised more questions than answers.

135. Turning to Mr MacRae's Reply he submitted firstly that s104 (7) needs to be considered, before we exercise our discretion under s104 (6).

136. We have already noted that the Council did receive further information and it was considered that sufficient information had been made available previously. The s.92 request was made on 7 October 2019 and the information was provided on 14 April 2020.[25]

137. In having regard to the Council's s92 request for further information we find that request is unrelated to the issue that has arisen for us some two years later.

138. Mr MacRae's second submission in his Reply was that the application was "…*supported by the reports and evidence of its independent experts on almost every conceivable area of potential effect of the proposed activity*."

[25] S42A report, Section 4.

139. While this may be the case, this submission does not assist us in any way with the situation that we face following the outcome of the caucusing process.

140. Mr MacRae's third submission was that:

> *"…the application has been significantly informed by the information gained from 18 years of the same activity, in the same off-shore location, and since late 2019 by the William Fraser using the same extraction equipment, as is proposed."*

141. Again, while this may be the case, this submission does not assist us in any way with the situation that we face following the outcome of the caucusing process.

142. Mr MacRae's fourth submission was that:

> *"The Council, with its wide experience of every kind of application, has not raised any concerns as to the adequacy, or indeed the accuracy, of the information presented in support of the application."*

143. Again, while this may be the case, the Council's wide experience relates primarily to the information being provided at the lodgement and assessment stage of the application process.

144. At the decision stage of the process, following the caucusing of experts as has happened here, the Council's wide experience does not assist us with the situation we face.

145. Mr MacRae's fifth submission was that:

> *"…this application far exceeds the standard of information required of applicants and that, if you were to find otherwise, you would be imposing a new standard which applicants generally would struggle to meet. That is not, of course, the intended outcome of s.104 (6)."*

146. We were not provided with any case law, or explanation, from Mr MacRae as to what the intended outcome of s104 (6) is, or maybe.

147. On the basis that all s104 matters relate to the consideration of applications and sits under the heading "Decisions"in the RMA, the intended outcome appears to be that decision makers must have regard to those matters in s104, that are relevant to the application under consideration. While s104 (6) may not be a relevant matter in the consideration of most applications, for the reasons we have set out above, we have found it to particularly relevant to our considerations in this case.

148. As the RMA provides decision makers with a discretion to decline consent on the grounds that they have inadequate information to determine an application, we have no difficulty in this case exercising our discretion.

149. In general terms we have accepted the submissions of Mr Nolan and preferred them to the submissions of Mr MacRae.

150. Our overall finding is that in terms of s104(6), after having regard to the earlier request for further information by the Council in terms of s104(7), we have inadequate information to determine the application.

151. We have however gone on to fully assess the application in terms of all the other relevant statutory tests, as set out elsewhere in our decision.

The Alleged Non-compliance under the Existing Consent

152. A number of submitters alleged that there had been non-compliances with the operation of the existing consent. There was considerable debate during the hearing on compliance issues. By the end of the hearing Mr Hopkins in his reply evidence dated 11 February 2022 advised that condition 3 of the existing permit 20795 had not been complied with. We are unaware of what action Auckland Council is taking, or plans to take with respect to this non-compliance.

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153. Compliance issues are matters for Auckland Council to respond to and they are not a matter for us to determine.

Cumulative Effects

154. In his EIC Mr Hay made the following statement under the heading, Cumulative Effects:

> *"107. For the purpose of considering cumulative effects, I observe that Kaipara Ltd's application was filed, has been notified, and is proceeding to hearing all ahead of the various applications by McCallums. It is my understanding that any cumulative effects from the possible combination of offshore and nearshore extraction activities is therefore a matter for consideration for the application by McCallum Brothers and not this application."*

155. Mr Hay had relied on the evidence of Ms Hart and Mr West and quoted their evidence where they addressed cumulative effects:

> *"108. Ms Hart in her evidence has addressed cumulative effects on the seabed/coastal processes and has concluded:*
>
> *Other consents that may affect the coastal processes in the embayment are the inshore extraction permits, which allow the annual extraction of up to 76,000m3 from nearshore areas inshore of the Depth of Closure. The inshore extraction and offshore extraction are therefore effectively separated from a coastal processes perspective, as the offshore extraction area is beyond the Depth of Closure. This minimises any potential for cumulative effects of the inshore and offshore extraction. Beach and bar system monitoring and analysis for the inshore sand extraction would necessarily include any cumulative effect on the beach and nearshore system from both the inshore and offshore extraction. As noted in paragraph 55, there was no reported change within the accuracy of the survey methods used that could be attributed to anything beyond natural variations arising from weather pattern variations.*

109. Mr West has concluded that there will not be cumulative water quality effects and cumulative effects in terms of ecology and concludes:

From the standpoint of primary production and most other ecological components, it is very difficult to estimate or assess cumulative effects, as most of the effects of the sand extraction operations on the biota are transient in space and time. Operationally it is proposed not to repeatedly extract sand from the same specific area over short time periods of less than six months, thus limiting any cumulative effects of repeated disturbance.

The scallop fishery in the area has been very variable in catch between years, with the most recent plenary report (Hartill & Williams, 2014) showing a declining in catch. Thus the disturbance impact from commercial scallop dredging is not expected to be significant nor contribute greatly to any cumulative effects.

110. On the basis that only one extraction vessel will be operation in this area at any one time there are no cumulative airborne or underwater noise, recreational, plume or visual and landscape effects that require further consideration."

156. Given the outcome of the caucusing of the coastal process experts we have concluded that we cannot rely on the depth of closure to "*effectively separate*" the proposed inshore and offshore extraction areas.

157. In addition we note that Mr West's evidence was that "…*it is very difficult to estimate or assess cumulative effects*" and that, "*it is proposed not to repeatedly extract sand from the same specific area over short periods of less than six months, thus limiting any cumulative effects of repeated disturbance*."

158. Given the repeated extraction revealed during the hearing process, we have also concluded that it is "*very difficult*" for us to make findings on the extent of any cumulative effects, as discussed in paragraph 283, below.

159. What is clear to us, is that the evidence that Mr Hay relied on, when he concluded that cumulative effects was not a matter for consideration in the application before us, is no longer as compelling as it may have appeared to be at the time Mr Hay prepared his EIC.

160. Mr Hopkins did not specifically address cumulative effects. He appeared to have relied on the evidence of the other members of the reporting team, that subject to conditions, any adverse effects from the proposal can be appropriately managed.

161. The only exception to this was his final conclusion in relation to cultural effects. In his Reply evidence he stated that:

"…in the context of this consent, cultural effects are broad ranging and are interlinked with effects on coastal ecology, coastal processes, and the cultural landscape"

Whilst it is acknowledged that the relationship between mana whenua and their tikanga and taonga is subjective as is their appreciation of their ability to exercise kaitiakitanga, the nature of the sand extraction activity (including the process of

extraction and the removal) is such that cultural effects of the activity are particularly sensitive in this case. In this regard, the submissions outline that for some mana whenua groups the adverse effects experienced are significant. On this basis they oppose the granting of consent and continuation of the activity."

162. Dr Mitchell in his EIC had concluded that:

> *"52. The provisions of the relevant planning documents direct that a precautionary approach be taken; that the natural and physical resources of this area be managed in an integrated way; and that the cumulative effects need to be considered."*

163. The planning evidence from Mr Christie and Mr Hegarty did not specifically address cumulative effects.

164. With respect to legal submissions presented to us the following submissions were most relevant.

165. Mr Slyfield's opening submissions included:

> *"8.The Depth of Closure is a central aspect of the present application…*
>
> *10.In other words, extracting sand from the seabed beyond this depth is not expected to have any observable or measurable effect on nearshore coastal processes.*
>
> *59. Some submitters raise concerns about the combination of effects between nearshore and offshore sand extraction — i.e. the combined effects of McCallums' consented activity and Kaipara's consented activity.*
>
> *60. These issues are made more complex by McCallums currently holding two extraction consents, but also having two applications pending, one for replacement of the existing consents, and another for extraction from a location further offshore (but still inside the Depth of Closure).*
>
> *61. It is appropriate to deal with existing and potential future consents separately, from a legal standpoint.*
>
> *63. …There is no legal requirement for you to assess the effects of Kaipara's Proposal as if they are in addition to, or "cumulative upon" the effects of another activity that will have gone out of existence by the time the Proposal is implemented.*
>
> *64. Accordingly, Kaipara's witnesses assess the effects of Kaipara's proposal on the basis that no combination of Kaipara's proposed, and McCallums' existing, consents need be considered. The one exception is Mr Farrow, who has been asked to provide an assessment both with and without McCallums' consents out of an abundance of caution.*
>
> *65. Turning to McCallums' potential future consents (under either of its pending applications) the critical factor is that both applications have been made later in*

time than Kaipara's application and neither of them has yet proceeded to notification. At this juncture it is entirely speculative what the outcomes of those applications may be, and accordingly there is no "cumulative" effects assessment to be made.

66. As the High Court held in Rodney District Council v Gould:

> *A cumulative effect must be one that arises as an effect of the particular*
>
> *application. It is not legitimate to consider, as cumulative effects in relation to a particular application, any effects relating to possible future applications. An effect that may never happen, or if it does, arises from a different activity from that for which consent is sought, is not a cumulative effect.*
>
> *So, if Kaipara's application is granted, and either of McCallums' applications proceeds to determination, it is when that determination occurs that a cumulative assessment is required.*

Disconnected by the Depth of Closure

67. In any event, quite aside from the correct legal approach, Kaipara maintains that there is another, practical, flaw in the suggestion that its effects must be assessed 'cumulatively' with McCallums' effects, at least insofar as coastal processes are concerned: There is no accumulation of any effects on coastal processes. The deliberate siting of Kaipara's proposal beyond the Depth of Closure means that the effects of its Proposal are disconnected from the coastal processes in the nearshore environment."

166. Mr MacRae in his Reply agreed with Mr Slyfield's submissions set out above.

167. Our earlier findings on the need for a precautionary approach and that adequate information has not been provided to enable us to grant consent, are particularly relevant to the issue of cumulative effects.

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168. We accept the evidence on behalf of Kaipara and MBL that the proposed extraction site was deliberately chosen beyond the depth of closure. We also accept that the primary reason for this location was because "*extracting sand from the seabed beyond this depth is not expected to have any observable or measurable effect on nearshore coastal processes*."

169. We also accept Mr West's ecological evidence that is "*very difficult to estimate or assess cumulative effects*."

170. There was no expert evidence or legal submissions that challenged this evidence.

171. Consistent with our earlier findings on the need for a precautionary approach, the outcome of the coastal processes expert group caucusing and our finding that we did not have adequate information to determine the grant of consent, we find that we do not

have adequate information with respect to the nature and extent of cumulative effects. Similarly, we have accepted that there are cumulative and historical effects on Mana Whenua which we discuss further in paragraphs 234-241 of this decision.

Positive Effects

172. Mr Hay and Mr Hopkins agreed that there would be positive effects from the proposal. Mr Hopkins summarised the positive effects in his s42A report as follows:

> *"Submissions*
>
> *The submissions in support of the activity generally recognised the value of the resource to the construction industry.*
>
> *Assessment*
>
> *The applicant has outlined in section 5 of the submitted A.E.E that the proposal will have positive effects in terms of contributing to the supply of sand for use in the construction industry for concrete, and the importance of concrete to the region's economy as it contributes to the built future of Auckland (including urban expansion for residential, business, and road construction).*
>
> *In addition, the applicant has provided an Economic Assessment (see Appendix six of the submitted A.E.E), which identifies the positive benefits associated with the economic efficiency of transporting the sand for the market.*
>
> *I generally agree with the applicant in respect to the identification of the positive effects and note the high level recognition in the AUP (OP) that mineral extraction activities in the coastal environment can have social and economic benefits and can be appropriate activities in the coastal environment."*

173. These positive effects were uncontested.

174. Mr MacRae in his Reply submitted that:

> *"60. Finally, it is notable in reviewing the submissions and evidence of submitters who oppose the application that, to the best of my recollection and with the exception of some expert planners, almost none have recognised the social and economic benefits of extracting Pakiri sand, the importance and comparative scarcity of such sand for making high strength concrete, the economic and environmental advantages of extraction at sea and transport by barge.*
>
> *61. Having regard to the use and development provisions of the ARPS and the ARCP, these are very important factors for your consideration and, when taken together with the comparatively negligible adverse effects of the proposal, should, in my submission, tip the balance heavily in favour of granting consent."*

FINDINGS

175. We find that these positive effects will need to be considered in our overall 104 assessment when we have regard to all actual and potential effects on the environment.

The Existing/ Receiving Environment

176. We set out below the description from the s95 notification report.

> *"Site and surrounding environment description*
>
> *The site is located within the coastal marine area adjacent to the north-eastern boundary of Auckland region. The extraction area is approximately 44km² and the western boundary, closest to the shoreline, closely follows the 25m isobath. The eastern boundary of the extraction area is between 1.2km and 2km from the shoreline. The Leigh Marine Reserve is located approximately3.8km from the southern boundary of the area.*
>
> *The western edge of the sand extraction area adjoins the following overlays as identified in theAUP, although noted in the AEE ('Resource Consent Application and Assessment of Effects onthe Environment for the Continuation of Sand Extraction', prepared by Osbornehay and datedJuly 2019), that the activity itself will avoid these:*
>
> - *Significant Ecological Areas Overlay – SEA-M2-87a, Marine 2*
> - *Outstanding Natural Landscapes Overlay – Area 22. Pakiri Beach*
> - *Outstanding Natural Landscapes Overlay – Area 28, Coastline from Pakiri River to OmahaCove*
> - *Significant Ecological Areas Overlay – SEA-M1-86a, Marine 1*
>
> *On the landward side of the sand extraction area is the coastal areas of Pakiri and Te Arai and within Te Arai is a private golf course with rural-residential development within the area referred to as 'Te Arai North' and is subject to precinct provisions in the AUP. Development in this area has occurred recently with most sites created and development occurring on them. Te Arai South is another precinct area which has been going through the consenting process for the development of additional golf courses and rural-residential lots. At present this land is predominantly in forestry yet to be harvested."*[26]

177. Mr Hay in his EIC dated 12 February 2021 set out a very similar description. In addition to the description he stated that:

> *"57. The existing environment includes the coastal marine area as it currently exists. The only relevant resource consent for the subject area of the CMA is the existing coastal permit for the sand extraction held by Kaipara Ltd and which expires in February 2023. At the request of Counsel for the applicant I have assessed the effects of the proposal without regard to the current permit on the*

[26] Section 8 of the s42a report

basis that the current consent will expire in 2 years' time or may be surrendered earlier if the new consent is given effect to.

58. Currently McCallums undertake sand extraction within the inshore area at Pakiri under a number of coastal permits (ARC28165, ARC228172, ARC28173 & ARC28174). These consents allow for the combined extraction of 76,000 m^3/year of sand from the nearshore area between 5 m and 10 m water depths. These consents expired on the 6th September 2020 but resource consent applications for replacement consents have been lodged and are currently being assessed in terms of s95. A new coastal permit application for a further sand extraction site which will (if granted) replace the existing near shore sites has also recently been lodged by McCallums and I understand this application is to be notified shortly.

59. At the request of Counsel for the applicant I have not placed any weight on the current McCallums extraction activity as part of the existing environment."

178. Mr Hay in his rebuttal evidence stated that:

"89. When assessing effects, the environment is made up of the existing environment and associated physical changes that have occurred from lawfully established activities. Given that sand extraction has been allowed in this wider area for 80 years, any existing physical modification resulting from this activity on the seafloor form part of the environment. The effects from the sand extraction to-date cannot be ignored and a theoretical pre-sand extraction environment used as the environment against which any assessment is undertaken. Likewise, this is not a static environment with natural events also modifying the seafloor over time. I have raised this matter as I am unclear of the description of the environment which the Officers assessment has been undertaken against."

179. Dr Mitchell set out a description of the site for us in his EIC as previously stated in paragraph 53 of this decision.

180. With respect to the legal submissions on behalf of FOPB, Mr Williams stated that FOPB had:

"… tried in vain to convince the Council that it ought to combine the Kaipara hearing with that of the upcoming McCallum Brothers' application(s) so that the cumulative effects relating to adjacent consent areas could properly be considered. It is submitted that for the Commissioners as decision makers to make an informed decision they need to take into account not just the effects of this application but the cumulative and related effects of the pending nearshore applications."[27]

FINDINGS

181. Our overall finding is that the existing/receiving environment extends beyond the proposed extraction area. There was no dispute between Messers Hay, Hopkins and Mitchell on this point. Each of them included a description of the wider existing environment that extended from the land component of the coastal environment, the existing and proposed sand extraction areas and the coastal marine area beyond.

[27]Legal submissions dated 14 May 2021, para 4.1.

182. The primary point of difference between the planners was how they had undertaken their assessment of effects on that existing environment. Mr Hay had relied on Mr Slyfield's legal advice that no weight should be placed on the existing sand extraction activities as part of the existing environment. As we understood Mr Slyfield's legal advice, it was largely based on the submission that:

> *"The deliberate siting of Kaipara's proposal beyond the Depth of Closure means that the effects of its Proposal are disconnected from the coastal processes in the nearshore environment."*

183. By the end of the hearing process, and, particularly the outcome of the caucusing of the coastal processes experts, we were left with significant doubts that the effects of the Proposal are disconnected from the coastal processes in the nearshore environment.

The Permitted Baseline

184. Mr Hopkins in his s42A report agreed with Mr Hay that there is no permitted baseline that is relevant in this particular case. Both of them noted that the movement of vessels through the Coastal Marine Zone is a permitted activity and that this is of some relevance in relation to the visual and underwater noise effects of the activity.

185. Mr Hegarty considered that significant, rather than limited, weight should be given to the permitted activities that enable vessels to operate within the coastal marine area when assessing landscape and visual effects.

> *"19.Furthermore, the two rules above allow for the transit of extraction vessels between the embayment and the Port of Auckland Extraction vessels are also permitted to travel back and forth along the embayment as of right (as long as no extraction is underway). These vessels are also permitted to anchor within the embayment without the need to obtain resource consent. Given these factors, I consider that it would be appropriate to disregard the adverse effects of such activities when considering KL's applications under section 104(2). I therefore consider it appropriate for such permitted activities to be given significant weight when considering the actual and potential effects of this proposal."*

186. In response to Mr Hegarty's evidence, Mr Hopkins, in his Addendum report dated 9 April 2021, stated that:

> *"…I do not consider it appropriate to apply the permitted baseline to the extent that effects should be disregarded. It is considered that the permitted movement of vessels is of relevance, however as identified through the submissions, the identification and association of the extraction vessel as an integral part of the extraction activity does distinguish it from other vessels (including by lighting and movement pattern), and therefore the consideration of those effects on visual and landscape amenity values associated with the activity remains appropriate …"*

FINDINGS

187. We have preferred the evidence of Mr Hopkins, Dr Mitchell and Mr Hay. We acknowledge the permitted activities in the AUP in relation to vessel movements and

associated activities, however for the reasons identified by Mr Hopkins we agree with him that the effects on visual and landscape amenity values fall within the realm of needing to be assessed, rather than disregarded.

Cultural/Mana Whenua Effects

188. At this juncture we wish to mihi to the Mana Whenua submitters for their manaakitanga during the Powhiri and hearing days at Omaha Marae and Pakiri Hall, and for enabling tikanga to be upheld (including during the online forum), setting the context and tone appropriate to the subject matter of the hearing.

Mana Whenua

Mandated Iwi Authorities

189. The submissions and evidence heard explained that Ngāti Manuhiri Settlement Trust (also represented by Manuhiri Kaitiaki Charitable Trust and hereafter referred to as "Ngāti Manuhiri"), and Te Uri O Hau Settlement Trust ("Te Uri o Hau") are the mandated Iwi Authorities representing Māori affected by the application.[28] In addition, Ngātiwai Trust Board holds interests in the marine area offshore from the Pakiri Embayment and is a Mandated Iwi Organisation pursuant to the Maori Fisheries Act 2004.[29]

- Ngāti Manuhiri

190. Mr Jason Pou, Counsel for Ngāti Manuhiri presented legal submissions supported by oral evidence from Chair Mr Mook Hohneck and Trustee Vern Rosieur.

191. A background was provided to the Ngāti Manuhiri Settlement Trust, the mandated tribal entity and Post Settlement Governance Entity for Ngāti Manuhiri following their Treaty Settlement in 2012. Manuhiri Kaitiaki Charitable Trust sits alongside the Settlement Trust and key functions include responding to all resource management matters affecting Ngāti Manuhiri. In outlining Ngāti Manuhiri's authority as Mana Whenua, Mr Pou explained that the application's location is within the region where "Ngāti Manuhiri developed their own distinct identity as a tribal grouping, joining with, and forming strategic alliances with others to cement their place as tangata whenua of the region."[30]Ngāti Manuhiri oppose the proposal, and the ongoing impacts of removing taonga from the rohe in particular. Mr Pou pointed out that all Ngāti Manuhiri submitters are united in their opposition.

192. During the reconvened hearing we received correspondence from Mr Pou requesting an email be tabled for consideration alongside the evidence that was previously presented by Ngāti Manuhiri at Pakiri Hall. The email explained that the relationship between McCallums and Ngāti Manuhiri was an improvement upon their relationship with Kaipara and a number of constructive meetings had been held since the consent was transferred. However, Ngāti Manuhiri stated:

[28]LegalSubmissions for Ngāti Manuhiri Settlement Trust May 11th 2021; Te Uri o Hau Cultural Effects Assessment, August 2020.
[29]Ngātiwai Trust Board submission pp 1101 Vol 2
[30]LegalSubmissions for Ngāti Manuhiri Settlement Trust, para. 11.

"we have not agreed to change our position and cannot support the consent. Because of the mistrust that has developed over time, we do not believe our people are ready to support such a change. To this extent, the Settlement Trust stands by the presentation that was made at the Pakiri Hall."[31]

- Te Uri o Hau

193. While Te Uri o Hau representatives did not submit on the application or appear at hearing, the Te Uri o Hau Cultural Effects Assessment ("CEA") prepared by Environs Holdings Ltd along with a letter from the Trust's Chair tabled at the reconvened hearing was provided by the applicant. These documents identified Te Uri o Hau interests in the proposal area and position on the application. The CEA references the special relationship of Te Uri o Hau as Mana Whenua with association to Mangawhai, particularly in the context of the Te Uri o Hau Claims Settlement Act 2002.

194. It confirms Te Uri o Hau have two Statutory Acknowledgements in the Mangawhai area, the Mangawhai Harbour Coastal Area and Mangawhai Marginal Strip, and describes how these areas were traditionally used for seasonal gathering of kaimoana and other customary materials at Mahinga Kai and Nohoanga sites.[32]Te Uri o Hau also claim a relationship to the coastline as kaitiaki.[33] We discuss the CEA in further detail below, but note it concludes that Te Uri o Hau's relationship as kaitiaki is able to be accommodated in respect of the proposal, provided appropriate consent conditions are imposed and a relationship with the applicant established. Further to this, the applicant tabled a letter from the Settlement Trust's Chair Antony Thompson[34] in reply stating;

"Our decisions [sic] to submit conditional support via our cultural values assessment was premised upon the insights of our executive and environmental team into the proposals submitted for Resource Consent applications by the McCallum Group. We are in the process of considering a relationship arrangement with the McCallum Group which will enable Te Uri o Hau to work in genuine partnership together, ensuring that the sand extraction activities are sustainable to the point of minimal environmental impact."

195. While Mr Hay's evidence notes a "cultural liaison agreement" is being finalised with Te Uri o Hau, at close of hearing we had yet to receive submissions or evidence presented confirming that an agreement had been entered into with Te Uri o Hau. However, we consider we have sufficient information to conclude that from Te Uri o Hau's perspective, any potential cultural effects of the proposed sand extraction activity are acceptable.

- Ahi Kaa

196. The cultural evidence we heard over the course of the hearing described varied and layered Mana Whenua relationships to the application site. In addition to the Iwi Authorities set out above, we heard from the Māori community who have resided at Pakiri and surrounding areas for multiple generations. They are representatives of, and belong to, Omaha Marae; they are landowners of the various Taumata and Pakiri Blocks

[31]Email of Jason Pou, dated 28th February 2022.
[32]Te Uri o Hau CEA pp 13
[33]Te Uri o Hau CEA pp 41
[34] Letter from Antony Thompson dated 25th February 2022

contiguous to the Pakiri shoreline; they are kuia, kaumatua, kaitiaki, whanau of Pakiri, whanau whanui of Ngāti Manuhiri hapū and Ngātiwai iwi and their associated entities; and a blend of all or many of these relationships. The commonality among these witnesses is their status as Ahi Kaa of the Pakiri Coastline.[35] We were presented with historic documentation to support these relationships, including Māori Land Court records, Ngātiwai Trust Board correspondence, reports and correspondence by Laly Haddon dating back to the early 1990's, and decades of temporal photographic records of Pakiri Beach.[36]

197. In her reply statement, Ms Haddon provided a summation of her evidence on behalf of Te Whanau o Pakiri which helpfully set out their enduring relationship to the whenua and moana at Pakiri:

> *"Te Whanau o Pakiri are the local tangata whenua community of Pakiri. Our hapu and iwi are Ngāti Manuhiri and Ngāti Wai. We have unbroken occupation of the Pakiri coastal area and are descendants of the Moekakara waka. We currently reside along the coastline and valleys of Pakiri and have been here mai-rano. Pakiri is one of the last and largest remnants of Maori Freehold land and customary holdings remaining in the Auckland region of which only 0.2% remain in indigenous territories or Māori title. As indisputable tangata whenua we have a direct, long and continuing traditional relationship with the coastal marine environment of Pakiri. We have lived and fished here for generations. We are the indigenous peoples of this place, these are our lands, territories and resources. Pakiri and the our marine environment is very special and unique."*[37]

198. All Ahi Kaa submitters were united in their longstanding objections to the continued mining and dredging of the sea floor in their rohe. They opposed the application on grounds of direct and cumulative effects on the ongoing and enduring cultural relationship to the Pakiri coastline including rangatiratanga and kaitiakitanga, as well the cultural values relating to the mauri of, and effects on, the cultural landscape, taonga species and biodiversity.

Effects on Cultural Values

- Te Uri o Hau Cultural Effects Assessment

199. The Te Uri o Hau/Environs Cultural Effects Assessment ("CEA") prepared by Environs Holdings Ltd was the only such assessment received regarding the application. The CEA summarises the consents sought, sets out the engagement undertaken with the applicant (then Kaipara), the history of the area and Te Uri o Hau interests, cultural values and practices. In addition to the Statutory Acknowledgements, applications for Customary Marine Title and Protected Customary rights have been lodged under the Marine and Coastal Area (Takutai Moana) Act 2011 in relation to the area between Te Arai Point and Bream Tail. The CEA outlines the resource management policy framework including listing relevant provisions of the RMA, NZCPS and RPS, and their own Te Uri o Hau Kaitiakitanga o Te Taiao Environmental Management Plan.

[35]EIC Olivia Haddon, Para 17; Oral Submissions of Annie Baines, 7th May, Mook Hohneck, 11th May for example.
[36]Attachments and supporting documents of Christine Baines, Annie Baines, Wayne Greenwood, Ringi Brown, Wendy Brown and Olivia Haddon for example.
[37] Olivia Haddon, Supplementary Evidence in Reply, para. 2.

200. A key focus of the CEA assessment was the desire to build a meaningful relationship with the applicant including establishing a specific project related agreement. No sites of spiritual or cultural significance were identified relative to the application area. As kaitiaki, Te Uri o Hau's expectations were that cultural monitoring of sand extraction operations would be required under any project related agreement, along with exploration of potential opportunities for training and employment associated with the activity.

201. For the potential ecological effects of the activity, Te Uri o Hau considered overall they would be minor to moderate and noted that due to the connection between tangata whenua and biota inhabiting the coastal marine area such impacts effectively translate to a cultural effect. They were satisfied however, that the pre extraction surveys to identify and exclude shellfish beds from extraction zones, with accommodation for cultural monitoring and communication of relevant management plans under the consent conditions would allow their cultural values and role as kaitiaki to be discharged. A number of consent conditions were recommended to capture these matters[38], however we note these had not been incorporated into the proposed (or evolved) set of conditions at the time of close of hearing.

- Ngātiwai Trust Board Submission

202. Turning to Ngātiwai Trust Board, we note it's submission in opposition and that the Chair of Ngātiwai Trust Board, Mr Aperahama Edwards was present during the powhiri at Omaha marae and during whaikōrero offered his tautoko or support for the Marae's position (although he did not provide any further evidence during the hearing itself).Ngātiwai's submission raised concerns about the implementation of the historical Memorandum of Understanding ("MOU") and Project Agreement in place for the current consent and adverse effects on flora, fauna, kaimoana, water quality and the beach as observed by the whanau of Omaha Marae. We recognise that MBL, with assistance from Mr TeRangi, have recently re-engaged with Ngātiwai Trust Board.[39] However what we have before us remains a live submission in opposition, supporting the observations of adverse cultural effects put forward by Omaha Marae.

Cultural Effects as presented by Ahi Kaa / Ngāti Manuhiri

203. Recognising that all Ahi Kaa in this instance are Ngāti Manuhiri, the descendants of Rahui Te Kiri and Tenetahi[40], we have grouped the cultural effects identified in their written evidence and oral submissions presented at Omaha Marae and Pakiri Hall together.

204. Ahi Kaa witnesses described their long association to Pakiri having occupied the whenua and adjacent moana for at least 600 years discharging their rangatiratanga and kaitiakitanga responsibilities. During submissions, Mr Pou stressed the importance of S6(e) of the RMA to our assessment, noting that Chapter B6 of the RPS contains similar provisions and that these provisions have a relationship-focus which:

[38]CEA, p.50.
[39]Statement of Evidencein Reply of Callum McCallum, 23 February 2022, Attachment: Stakeholder Communication/ Feedback Register
[40]Oral Submissions of various Omaha Marae submitters, 7th May 2021 & Mook Hohneck, 11th May 2021.

"reflectsthe whakapapa or kinship between mana whenua, and the lands, waters, places and taonga directly and indirectly affected by the proposal. Whakapapa creates connection to both physical and spiritual worlds. Features of the physical world are not just physical resources but entities in their own right that mana whenua have an obligation to care for and protect (kaitiakitanga)."[41]

- EffectsonOneonehaea and the wider cultural landscape

205. We heard from Ahi Kaa and Ngāti Manuhiri about the intricate web of values that make up the cultural landscape. Submitters described how the landscape is viewed "looking inward" from the sea back to the beach and river mouths, taking in the motu/islands, currents, tides, winds, cultural keystone/indicator species, maramataka (tohu and seasons), waahitapu, tauranga waka (ancestral waka landing sites), the remaining contiguous Māori land blocks/holdings, and includes the people and their relationships to all these components.[42]These whakapapa links and relationships to the people are inherent in whakatauki, waiata, and are identifiers, for example when Ahi Kaa recite their pepeha.

206. Sand is an important component of this landscape, and we note Ms Haddon's references to 'Ko Oneonehaeate Taonga' – in her pepeha and Mr Hohneck's description of "Nga Oneonehaea" as "*the gleaming sands of Pakiri*" and onepu (sand) as "*he kiriwaiwai*" or the "skin" of this environment.[43] Mr Rosieur referred to Pakiri sands as a "*korowai of our people*" and the embayment as a "food basket to manaaki our people and marae," while Mr Paki stated "*these sands are the sands of Pakiri, they are precious to us*."[44] Ahi Kaa also commented on what they saw as the finite nature[45]of this taonga or treasure, with Ms Haddon describing the "Holocene relic" sands as "tāongatukuiho" (treasures handed down).[46]

207. Coming back to the wider landscape, Mr Hohneck provided a series of maps (attachments to Ngāti Manuhiri Deed of Settlement) as a backdrop to his korero, illustrating the sites and areas of significance on the whenua and moana that make up Ngāti Manuhiri's cultural landscape and seascape as recognised in their Statutory Acknowledgement.[47]He outlined a history of the effects on the hapū from land alienation and loss of access to resources and how the people had maintained their kaitiakitanga and rangatiratanga in the face of adversity and held on to, or bought back whanau land and sites of significance such that Pakiri is the largest remaining area of Māori freehold land inthe Auckland region.

208. Ms Haddon described the features forming the landscape as:

"a critical part of a Whanua /Hapū/ Iwi sense of place and identity. Thus, cumulative changes to the surrounding hinterlands, beach, dunes, form and colour

[41]Legal Submissions for Ngāti Manuhiri Settlement Trust, para. 59.
[42]EIC of Olivia haddon, para. 53, Oral Evidence of Mook Hohneck, 11th May 2021.
[43]EIC of Olivia haddon, p.2, Oral Evidence of Mook Hohneck, 11th May 2021.
[44]Oral Submissions of Vern Rosier and Tamihana Paki, 11th May 2021.
[45]Oral Submissions of Wayne Greenwood, 7th May.
[46]Summary Statement of Olivia Haddon, para. 6.
[47] Schedule 1: Coastal statutory acknowledgement area, as shown on deed plan OTS–125–06, Ngāti Manuhiri Claims Settlement Act 2012

of the sand as observed over a 50 year time frame and stated in the evidence presented in the submission made by my mother Sharley Haddon, is a huge intrusion into these values and a direct breach of the Crown's obligations and duties under TeTiriti of active protection."[48]

209. She further observed that "*past offshore sand mining activities have caused significant adverse effects on the cultural landscape of Pakiri Beach, including to the natural character of the seabed*."[49]

210. Ahi Kaa submitters also described the disruption and mamae (pain) the people "to whom this coastline belongs"[50] felt at seeing and hearing the hum of dredge vessels day and night for decades and seeing first hand effects on the beach and dunes.[51] We note that Mr Kensington has also identified that the ongoing sand extraction activity has the potential to adversely impact Māori cultural landscape values.

211. Mr Kensington's original landscape and visual assessment did not touch on Māori cultural landscape values. His overall finding was the proposal would have very low (less than minor and not significant) adverse landscape, natural character and visual effects and could therefore achieve consistency with the relevant statutory provisions. However, in his addendum statement, he clarified that an assessment of landscape effects must take into account TeAo Māori perspectives and referenced the TuiaPito Ora / New Zealand Institute of Landscape Architects 'Te Tangi a te Manu: Aotearoa New Zealand Landscape Assessment Guidelines. He then qualified his earlier statement following his review of Ms Haddon's evidence, noting that he now held reservations over making such a conclusion on the level of effect. He understood from her evidence that past offshore sand extraction activities have caused significant adverse effects on the cultural landscape of Pakiri Beach, including to the natural character of the seabed. He considered that the proposal to continue this activity could potentially cause ongoing cumulative adverse effects; which could possibly be remedied should the activity cease.[52]

212. In his memorandum in reply, Mr Kensington further explained that his revised opinion was "*primarily in relation to Māori cultural landscape values; which I understand to represent a significant adverse effect in the eyes of tangata whenua.....clearly the 'Mangawhai-Te Arai -Pakiri' coastal environment is a landscape that has cultural value and significance to Māori. As summarised by Ms Haddon, previous sand extraction activity has had a cumulative adverse effect on these values, representing a slow degradation of whenua and a reduction in mana*."[53]

213. To his understanding, adverse effects on Māori cultural landscape values for Ahi Kaa extend beyond the removal of sand from the embayment and include associated impacts on the health of the ecosystem and the ability of Mana Whenua to exercise appropriate tikanga and kaitiakitanga in relation to it. He went on to say that he interpreted Ms Haddon's submission and supporting information to infer that the effects on the cultural

[48]EIC of Olivia Haddon, para. 61.
[49] Evidence in Reply of Olivia Haddon, para. 3.
[50]OralSubmissions of Wayne Greenwood, 7th May 2021
[51] Oral Submissions of Sammy Williams 7th May 2021 and Ra Gossage, 11th May 2021.
[52]Memorandum – Addendum technical specialist review, 8 April 2021, para. 16.
[53]Memorandum – Supplementarytechnical specialist review, 11 February 2022, para. 28-29, 36.

landscape are unable to be mitigated through controls over ongoing sand extraction activity;

> *"rather, pastadverseeffects can only be remedied (and potential future adverse effects avoided) by ceasing the sand extraction activity....In this instance, the ongoing sand extraction activity has the potential to adversely impact Māori cultural landscape values, with these impacts being well-communicated through the submissions and evidence of tangata whenua that have been presented during the hearing to date."*[54]

FINDINGS

214. We acknowledge the effects on the people of Pakiri of observing and hearing the sand extraction vessel operating within their cultural landscape for many years. In our understanding of the evidence presented, effects on the cultural landscape and seascape are not confined to landscape, visual and amenity effects, ie. being able to see and hear the vessel operating. Rather, they extend beyond this to include such matters as the physical removal of the sand (a key component of that landscape) and interrelated impacts on the morphology of the beach, biodiversity, cultural identity and practices, and people's wellbeing.

215. We accept that from a cultural landscape perspective, effects are not confined to the immediate locality of the offshore extraction site because the landscape essentially encompasses the entire Ngāti Manuhiri Coastal Statutory Acknowledgement Area. The cultural landscape is viewed as a whole, and Ahi Kaa do not necessarily distinguish the effects from inshore extraction and this offshore application.

216. We accept the evidence of Ahi Kaa that the past and cumulative effects they have identified on their cultural landscape and seascape are significant and adverse, and will continue under the current MBL application. We also accept Mr Kensington's revised findings in relation to effects on cultural landscape which reinforce our findings in regard to effects on Mana Whenua. That being that the effects of the proposal on cultural landscape values for the Ahi Kaa of Pakiri will be significant and adverse.

217. We reiterate our earlier statement that B6.6 of the RPS, in setting out the explanation and principal reasons for adoption of the Mana Whenua Chapter, identifies that many sites and places of significance are yet to be protected via the mechanisms in Chapter D21, the Sites and Places of Significance to Mana Whenua Overlay, for reasons such as limited investment, cultural sensitivities and mismanagement of information in the past. Nonetheless, Council has a statutory responsibility to protect Mana Whenua cultural heritage from inappropriate subdivision, use and development and we consider the evidence on the cultural landscape before us is of such weight that granting of this offshore consent would not be consistent with the requirements of B6.5.1, namely:

> *"(1) The tangible and intangible values of Mana Whenua cultural heritage are identified, protected and enhanced.*
> *(2) The relationship of Mana Whenua with their cultural heritage is provided for.*

[54] Memorandum – Supplementary technical specialist review, 11 February 2022, para. 30.

(3) The association of Mana Whenua cultural, spiritual and historical values with local history and whakapapa is recognised, protected and enhanced; and

B6.5.2. (1) Protect Mana Whenua cultural and historic heritage sites and areas which are of significance to Mana Whenua."

- Effectson Taonga Species

218. Ahi Kaa submitters held serious concerns about the depletion of key Taonga species, and risks to them due to the operation of the sand extraction vessel and dredging of their feeding habitat. Ms Haddon referred to the plight of a number of 'cultural keystone species', including whai (sting ray), tara iti (fairy tern), and tohora (whales) which are seen as kaitiaki in themselves and indicators of cultural health. Besides their role in the ecosystem, these species are significant in tribal folklore, language, traditions and identity. A number of Ahi Kaa submitters described their involvement with DOC in fairy tern conservation efforts including monitoring and habitat protection and restoration. We have discussed effects on tara iti in the ecology section of this decision.

219. Ahi Kaa have consistently observed a reduction in kaimoana in the Pakiri Embayment. Ms Sharley Haddon produced an email from Adam Kellian of Kellian Fishing Ltd[55], a local commercial fisherman who over the past 2 decades has observed decline in paddle crabs and fish species, as well as changes to the seafloor and dunes. Ms Olivia Haddon further elaborated:

> *"Kaimoana takendirectlyharvested the waters and sands adjoining Pakiri beach areTuatua, Pipi, Paua, Kutai, Kanae, Makawhiti and Inanga, Tipa, Tio, Hururoa, kahawai,Tamuri and Pātiki, Tākeke, Parore, Moki. Our collective memory recalls abundance, our reality today is vastly different.There is a breakdown in the whakapapa and interrelationship between these species. We were reliant on this kaimoana resource, we harvested seasonally according to strict customary practices and tikanga."*[56]

220. Potential adverse effects of sand extraction on the Hururoa (horse mussel), considered an important creator of biogenic habitat and a sentinel species was also a contentious topic. We discuss this further in the ecological effects section of this decision Mr Rikys criticised what he saw as limitations of the ways in which ecological assessments have been carried out, stating:

> *"My next point is specific to assessments of effects of the sand dredging on the marineenvironment which under prevailing practices very quickly becomes compartmentalised whereas the Maori traditional view is both ecocentric as opposed to anthropocentric..."*[57]

221. In relation to this, Ms Haddon expressed concern that mātauranga Māori and tikanga had not been appropriately recognised and provided for in this resource consent process. She emphasized the nature of traditional ecological knowledge including the daily observations of Ahi Kaa, stating:

[55]Attachment to Evidence of Sharley Haddon, dated October 21, 2020.
[56]EIC of Olivia Haddon, para. 69.
[57]EIC of Pita Rikys, para. 17.

"The integration of our mātauranga and tikanga in this specific resource management processes is not evident to us," and;

"Timeisrunningout real damage is occurring. Fundamentally we ask for better management of our seafloor biodiversity our sea creatures the children of Tangaroa because we consider based on our intimate every day observations that the ecological and whakapapa damage caused by sand mining is more than minor."[58]

222. Mr Tamati Stevens, a mātauranga Māori researcher, provided evidence demonstrating the application of cultural/TeAo Māori frameworks to ecological understanding. He stressed the importance of cultural values such as tikanga, mātauranga, the maramataka, and whakapapa, noting the interdependence of indicator species such as tuangi (cockles), hururoa (horse mussels), and tipa (scallops). Mr Stevens has been diving and collecting and observing kaimoana and habitat in the Pakiri Embayment for some time. His mātauranga based research enabled him to conclude that due to prolonged sand extraction Pakiri is a degraded ecosystem, key markers/indicator species are missing, the whakapapa of the system has been altered and disrupted and it requires restoration to a healthy state.[59]

223. We recognise that that there is a disconnect between the way in which technical assessments are carried out and a mātauranga or tikanga based approach. The Hururoa became an important example during the hearing illustrating these differences. A common theme between the ecologists was a lack of evidence to directly attribute ecological effects to sand extraction operations. The applicant and Council ecologists were agreed that pre sand extraction surveys would avoid direct and cumulative effects on horse mussels. However, Dr Sivaguru in reply had disagreed with Mr West that the effects of sand extraction are not permanent, using the non-recovery of horse mussel beds recorded in the 2003 survey as illustration. At the reconvened hearing we asked Dr Sivaguru to comment on the past effects raised by Ahi Kaa and she agreed with their concerns insofar as the ongoing removal of sand and disturbance of the seabed would not assist horse mussel recovery due to the long period required for their recolonisation. She advised that there were also gaps in knowledge and research around recruitment, settlement and other factors for this species.

FINDINGS

224. In our findings we have been cognisant of mātauranga and tikanga in relation to taonga species, including kaimoana. We recognise the need to look at these holistically, rather than in isolation. Therefore we agree with Ahi Kaa that the Proposal will result in significant adverse effects (including past and cumulative effects) on taonga species, and the Hururoa in particular (taking on board the comments of Dr Sivaguru above). We acknowledge that according to mātauranga and the lived experience and observations of the Ahi Kaa, the whakapapa and interrelationships with other species such as Tuangi, Tipa, Tara iti, Whai and Tohora are altered and diminished as a result of the ongoing sand extraction activity. Further, this has consequences in terms of kaitiakitanga, mauri, mana and manaakitanga which we discuss below.

[58]EIC of Olivia Haddon, paras, 44 and 104.
[59]Evidence of Tamati Stevens, para. 12.

- Effects on Rangatiratanga and Kaitiakitanga

225. Ahi Kaa and Ngāti Manuhiri were consistent in their belief that the Proposal will undermine their Rangatiratanga and does not provide for kaitiakitanga. Additional effects on interrelated cultural values, such as mauri, mana and manaakitanga were also raised.

226. Mr Hohneck provided a historical context to the alienation of whenua and removal of resources from Ngāti Manuhiri's rohe, including kauri timber as well as sand. According to Mr Hohneck, gaining recognition of their rights through Settlement had been a long and arduous process and the people are fatigued at having to continue to fight to uphold their rangatiratanga and kaitakitanga. He saw the Proposal as an affront to those rights. Ms Haddon presented a history of her father and other kaumatua and tupuna's ongoing expression of rangatiratanga and kaitiakitanga in trying to prevent sand extraction in the rohe or at minimum establish an engagement strategy and ongoing involvement in the operation.[60] In legal submissions, Mr Pou affirmed that exploitation of Ngāti Manuhiri's resources for the development and expansion of Auckland has negatively affected taonga and the customary rights and practices of Mana Whenua within their ancestral rohe stating:

> "*theimpacts are now a burden that Ngāti Manuhiri have had to shoulderintergenerationally"*, and
>
> *"The removal of sand is not just about the removal of something renewable, it is, in actuality, the removal of the rohe itself and the transferal of it into an area in which others hold mana. Through Ngati Manuhiri eyes, once again, their land is being sold by others."*[61]

227. Mr Hohneck described Pakiri as "the last bastion", and that despite so much of their rohe being lost, it is the biggest Māori landholding in Auckland, a testament to the Rangatiratanga and Kaitiakitanga of Ngāti Manuhiri. He was clear that this landholding extended to the adjoining moana, and we understand that whanau and hapū claims are in process under the Marine and Coastal Area (Takutai Moana) Act 2011.[62] As Ms Haddon explained it:

> *"The moana adjacent to our kainga and the resources in the sea and below it are treasured possessions, our Taonga, that are part of our inheritance. We are dependent on them and we are the kaitiaki of them. The use, development and protection of sustainable management of these taonga is part of our heritage and our tino rangatiratanga."*[63]

228. Her evidence included a statement from her father in 1998 evidence to the Environment Court that read:

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[60] Summary Statement of Olivia Haddon, para. 16.
[61] LegalSubmissions for Ngāti Manuhiri Settlement Trust, paras. 8 and 20.
[62] Eg. Submission of Veronica Bouchier, Submissions Vol 1, p.930; and oral submissions of Annie Baines, 7th May 2021 and Jason Pou, 11th May 2021.
[63] Summary Statement of Olivia Haddon, para. 7.

> *"In his evidence statement accompanying the MOU and report submitted to the Environment Court, my father said "As tangata Whenua and as a representative of iwi, I can quite honestly say that the iwi of Ngāti Wai wish that no sand be taken at all from Pakiri beaches and that in a perfect world, existing operations would be stopped and our true role as kaitiaki of our resource would be restored."*[64]

229. Mr Hohneck gave examples of taonga relevant to other iwi in other parts of the country where relationships to resources had elevated status or protection through Treaty Settlement and subsequently when it came to resource management decision making. These included the relationships between Tainui and the Waikato River, Ngāi Tahu and Pounamu, Te Arawa and their lakes, for example. He sought acknowledgement that the mauri and mana of the "sacred onepu or sand of Pakiri" and Ngāti Manuhiri's relationship to it should be afforded the same status or depth of meaning and connection.

230. Ms Klink provided a broader background to kaitiaki work in Hauraki Gulf, and discussed the concept of utu to achieve balance, ie. putting something back where you have taken something out. When asked how she envisaged this could occur Ms Klink explained that rahui were required to stop the practice of sand mining and allow the space to replenish and for Mana Whenua to be active in that space.[65]

231. Similarly, Ms Haddon and Mr Stevens gave evidence on how many decades of sand mining had diminished the mauri of the Pakiri-Mangawhai Embayment and wider Hauraki Gulf, concluding that continuing the sand extraction activity does not enable the restoration of mauri. Mr Stevens opined that the lack of kaimoana affected kaitiakitanga in that ancestral knowledge is unable to be passed down to the next generations and that the practice of manaakitanga, either through provision of kaimoana to manuhiri or kaumatua to uplift their mauri and wairua, cannot be maintained.[66]

232. Ms Haddon urged us to:

> *"err on the side of caution and decline this application so that no further damage to our whole ecosystem and sea floor ecology will occur so that it may heal itself and that our mana and relationship to it continues."*[67]

233. Mr Pou emphasized that kaitiakitanga was an obligation as opposed to a choice and this was echoed in the submission of Mr Hohneck and Ms Haddon. They did not see conditions or cultural liaison agreements as a means to mitigate adverse effects on kaitiakitanga or enable the expression of it. Mr Williams while stressing he was stridently opposed to the proposal did confirm conditions requiring better informing of the operation would be valuable.[68] Generally Ahi Kaa did not wish to engage in discussion with the Panel on potential conditions. Mr Pou's perspective during questioning was quite telling:

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[64] Summary Statement of Olivia Haddon, para. 14.
[65] Oralsubmission of Kelly Klink, 7th May 2021.
[66] Evidence of TamatiStevens, para. 11.
[67] EIC of Olivia Haddon, para. 107.
[68] Oral Submission of Sammy Williams, 7th May 2021.

"Māori representatives on CLG type structures tend to become spectators to their own demise…bellwethers that have to take messages back to their communities and be chastised for being on them in the first place.."[69]

FINDINGS

234. We agree that removing and relocating sand to another rohe where Ngāti Manuhiri are not mana whenua is not consistent with upholding rangatiratanga. We have already accepted that allowing the Proposal will result in significant adverse cultural effects (including past and cumulative effects) on the cultural landscape and taonga species. It is in their role as kaitiaki that Ahi Kaa have sought refusal of the consent to protect these values and allow the embayment to rest and be restored. We acknowledge that the effects on rangatiratanga and kaitiakitanga flow on to impact the mana and mauri of the environment and the people and also their ability to manaaki. We are also not convinced that mitigation in the form of cultural liaison agreements and conditions in this instance will be adequate to enable the expression of kaitiakitanga.

- Historical and cumulative impacts

235. We were struck by the historical narrative of sand extraction at Pakiri, the background to the long standing objections of Ahi Kaa and the impacts on their wellbeing. Ms Haddon described the burden of proof placed on whanau and the community to prove the mining activity has been damaging, stating:

"Decades of attendinghearings and providing and fighting for an awareness at least of a partnership and advocating for our rights enshrined in the treaty, has subjected my whanau to significant threats of hardship. Our statements and cultural evidence are dismissed as "personal opinion". We are small and the legal process is a Goliath. The submission process has been challenging when there is no respect for our traditional knowledge and cultural perspective and we are unable to be effective when the legislation is enabling unsustainable exploitation and, in our opinion, is still pernicious to our Indigenous rights. Our kaumatua are tired they have dedicated a good chunk of their productive lifetime to this issue, thus creating a sense of apathy in our ability to halt the incoming tide of encroachment to our value systems, relationships to our tāonga and way of life. This is not right."[70]

236. According to Mr Hohneck a 30 year consent equates to a whole generation, and now that the original people standing up regards this issue have passed on, tamariki and mokopuna will have to take up the mantle. He further commented that "applicants come and go, our responsibility for our whenua remains."[71]

237. This was aptly illustrated in the evidence of Ms Grace Atea Gossage Myers who provided a rangatahi voice on behalf of the future generations of Pakiri. She articulated that preserving the treasures that tupuna had fought for and handed down was a responsibility keenly felt.

[69]LegalSubmissions for Ngāti Manuhiri Settlement Trust, 11th May 2021.
[70] Summary Statement of Olivia Haddon, para. 13.
[71]Oral Satement of Mook Hohneck, 11th May 2021.

238. Her whanaunga, Ra Gossage, later commented on the detrimental and intergenerational impacts of sand mining on the health and wellbeing of Kaitiaki and Ahi Kaa, observing how her uncles have fought the fight, which Olivia Haddon has since carried on, and her heartbreak at having to see 17 year old Grace now having to continue it. Ms Gossage further described the mental and physical toll, time and expense incurred by Ahi Kaa having to continually participate in these processes.[72]

239. As mentioned earlier, many Ahi Kaa submitters held concerns about changes to the beach profile and dunes and described observing changes over the decades whilst the current consent has been operating. Mr Wayne Greenwood and Mr Ringi and Ms Wendy Brown emphasized how Mana Whenua living at Pakiri will be affected by climate change and voiced concerns about how beach erosion and sea level rise was a threat to whanau landholdings behind the dunes. These concerns were echoed by Ms Haddon who considered the Proposal would exacerbate erosion and reduce defences to climate change impacts in the future. Mr Greenwood and the Brown Whanau produced articles and maps relating to projected sea level rise and a series of photos over time illustrating changes to the beach and dune system.

240. Mr Brown described how the undermining of sand dunes was resulting in exposure of waahitapu including koiwi, and one of his roles as a kaitiaki was to re-inter koiwi. Mr Tamihana Paki reinforced korero about historic battles and waahitapu along the Pakiri coastline and the need to protect them.

241. Ms Haddon was concerned that because sand dunes are not being replenished fairy tern nesting habitats are increasingly vulnerable to erosion which impacts on their breeding success. Mr West's evidence had confirmed that changes in beach morphology can impact seabird nesting due to habitat reduction but relied on Ms Hart's evidence that beach morphology changes at Pakiri and Te Arai beaches are not related to the offshore sand extraction which we discuss later.

242. Te Whanau o Pakiri called Ms Sian John as a witness in support of their concerns regarding the effects of the proposal in relation to climate change and cumulative effects on the beach and we find agreement with aspects of Ms John evidence in the coastal processes section of this decision.

FINDINGS

243. We accept the consistent and widely held beliefs of Ahi Kaa and Ngāti Manuhiri that renewal of this consent will continue to affect their cultural wellbeing, and represents a continuation of historical and cumulative effects of sand extraction in the Pakiri-Mangawhai Embayment. We recognise the concerns of Ahi Kaa in their role as kaitiaki regarding coastal erosion affecting valued sites and places, including habitat for taonga species and waahitapū, as well as the adjoining Māori land blocks. These concerns are relatively aligned with our findings in relation to coastal processes. That is, due to the uncertainty and conflicting evidence expressed by the coastal experts we are unable to conclude that sand extraction is not contributing to sand erosion on the beach.

[72] OralSubmissions of Ra Gossage, 11th May 2021.

Engagement with the applicant

244. There was considerable discussion by the applicant and Ahi Kaa submitters about the MOU with Ngātiwai Trust Board and what it meant, including the payment, or lack of payment, of the cultural liaison fee. Suffice to say it appeared clear to us that there was little confidence from Ahi Kaa that the MOU had achieved beneficial outcomes for Pakiri. Mr Pou characterised the consultation that had taken place between Kaipara and Ngāti Manuhiri as haphazard and damaging to internal hapū relationships and the relationship with the applicant.

245. At the reconvened hearing, we were heartened to hear that consultation with the Treaty Settlement Entities, as well as Te Whanau o Pakiri, had improved under MBL and was progressing with the assistance of Mr TeRangi. We consider this best practice, regardless of the outcome of our decision.

246. Another point of contention around the MOU arose through Mr Slyfield and Mr Riddell suggesting the MOU and historical evidence of Laly Haddon indicated a preference by Mana Whenua for offshore sand extraction, although Mr Slyfield did concede their view may have changed over time.[73] Mr Hay considered the existing agreement between the Ngātiwai Trust Board and the consent holder for the current sand extraction in this location demonstrated that there was not a fundamental conflict between protection of cultural values and sand mining.[74]

247. Mr Pou addressed the inference that Ngāti Manuhiri had in some way historically consented to sand mining in their rohe or shown a preference for offshore consents, describing this as "manufacturing consent", and arguing that doesn't mean the sand mining is necessarily acceptable:

> "*What should be kept in mind is that these positions might just have been taken out of a perception of inevitability… Care must be taken to ensure that the compromises that were made in the past are not re-engineered to be consent for the purposes of the current application."*[75]

248. In the same vein Ms Haddon stated:

> *"The MOU presented by Mr Slyfield cannot be viewed in isolation, it is misleading ofhim to suggest that Laly and Ngati Wai support offshore sand mining in totality-theirposition was very clear, it is also misleading to claim that our views and positionhave changed over time. Our collective view against the activity today is the same asit was documented in 1947, again in 1992 and in 1998, we have struggled for manyyears to realise a total cessation of mining at Pakiri - whether that is nearshore oroffshore."*[76]

249. Mr Hohneck also stressed that sand extraction offshore was not more appropriate, detailing significant sites and kaitiaki responsibilities, for example in respect of the motu

[73] OpeingLegalSubmissions for Kaipara, Para. 104.
[74] Rebuttal Evidence of David Hay, para. 74.
[75] Legal Submissions for Ngāti Manuhiri, paras 37-38.
[76] Evidence of Olivia Haddon in reply, para 6.

(islands), a whale pathway or trail known as "Waimimiha", and particular currents.[77] Ms Haddon included an excerpt from her father's 1993 evidence which sums up the inseparable nature of elements of Ngāti Manuhiri's rohe:

> *"Ourtraditionaltribaldomain of which we hold traditional ownership rights and mana whenua, mana moana and exercise tino rangatiratanga and kaitiakitanga includes the whole coastline of Pakiri.... and extends over the ocean of Pakiri and beyond to the offshore islands. All three elements, the land, the sea and offshore islands are collectively on tribal domain and cannot be separated."*[78]

FINDINGS

250. We consider Ahi Kaa evidence on the interrelated nature and relationships of the cultural landscape and seascape is compelling and does not create a distinction between offshore, mid-shore or nearshore extraction in terms of acceptability. We acknowledge that engagement, apart from with Te Uri o Hau, has been challenging and sometimes divisive for the parties, but accept that consultation with the relevant Mana Whenua groupings has occurred and appears to have improved under MBL.

251. Notwithstanding this, the evidence of Ahi Kaa and Ngati Manuhiri indicates that the adverse effects on cultural values are such that they are unable to be mitigated through the conditions proposed by the applicant such as the CLG. While Mr TeRangi and others on behalf of the applicant have expressed the view that cultural liaison agreements could also provide a pathway for mitigation, these are yet to be established. We accept that Te Uri o Hau consider consent conditions and a project agreement could allow for the expression of kaitiakitanga, for example through cultural monitoring. Submitters and witnesses like Ms Klink and Mr Stevens, on the other hand, described customary practises and utilisation of Mātauranga Māori in this context as essential to understanding the adverse effects of sand extraction activities on taonga species that must cease to enable balance to be restored, the space to replenish and for Mana Whenua to be active in that space. We accept the view of Ahi Kaa and Ngāti Manuhiri that in this instance, refusal of this consent better supports the integration of Mana Whenua values, mātauranga and tikanga in the management of natural and physical resources as anticipated in Policy B6.3.2.(2) of the RPS.

The Expert Planners' Responses

252. Mr Hopkins did not include an assessment of B6 Provisions in the S42A report with the exception of a broad statement recognising that the applicant has engaged with Tangata Whenua and engagement was ongoing. In his reply Mr Hopkins did not elaborate on these provisions any further, instead focusing on NZCPS and HGMPA provisions. He did however include the following statements, in relation to cultural values in his reply, after considering the evidence presented by Mana Whenua on cultural effects.

> *"Whilst the presentation of of submissions is relevant to understanding all effects, it is of particular value given the subjective nature of cultural effects which are personally and collectively held by mana whenua. In this case a greater*

[77] Oral Submissions of Mook Hohneck, 11th May 2021.
[78] EIC of Olivia Haddon, para. 25.

understanding of the cultural values and the expectations around the ability and practicality of either avoiding, remedying or mitigation these effects has been providedthroughthisprocess.

Havingconsideredthisevidence, my understanding (based on the submissions and evidence presented) is that in the context of this consent, cultural effects are broad ranging and are interlinked with effects on coastal ecology, coastal processes and the cultural landscape.

For the purpose of my planning assessment, I have distinguished between my understandings of the cultural effects as they relate to the ongoing extraction of sand in two ways. In this section, I address the impacts of the sand extraction on the taonga of mana whenua, as well as the impacts of the sand extraction on the ability of mana whenua to exercise their kaitiakitanga (and how that may impact on their mana), as well as the adverse effects on their mana through the removal of their rohe to an area when others hold mana. I address cultural effects resulting on coastal processes (as they relate to impacts on the beach, dune system and underwater environment), and on coastal ecology and biodiversity (and the ability of mana whenua to exercise appropriate tikanga and kaitiakitanga) and the cultural landscape in the sections below.

In regards to the cultural effects associated with the ongoing sand extraction from their rohe, for some mana whenua groups this challenges the ability of mana whenua to demonstrate and exercise kaitiakitanga, with the consequence being a diminishing of their mana. Moreover, the physical removal of sand from their rohe to an area where others hold mana challenges their own mana.

Whilst it is acknowledged that the relationship between mana whenua and their tikanga and taonga is subjective as is their appreciation of their ability to exercise kaitiakitanga, the nature of the sand extraction activity (including the process of extraction and the removal) is such that cultural effects of the activity are particularly sensitive in this case. In this regard, the submissions outline that for some mana whenua groups the adverse effects experienced are significant. On this basis they oppose the granting of consent and continuation of the activity.

It is also understood that should consent be granted, the absence of meaningful engagement and partnership further contributes to the experience of adverse cultural effects.

With these considerations in mind, in the context of the fundamental nature of the sand extraction activity proposed, adverse cultural effects as experienced by some mana whenua groups are of such significance that they will be unacceptable from a resource management perspective."

253. Mr Hay's primary evidence contained an attachment listing the relevant AUP objectives and policies (for cultural matters specifically B6.2.2 and B6.3.2) Overall he considered the application to align with RPS and in respect of cultural matters, noted the existence of an MOU with Ngātiwai Trust Board in relation to the previous consent, that engagement was underway with both Ngāti Manuhiri and Te Uri o Hau Settlement

Trusts' with a view to establishing new cultural liaison agreements to "ensure iwi are afforded the opportunity to implement their kaitiaki role."[79]

254. In Mr Hay's reply statement he elaborated further that in terms of policy B6.2.2 opportunities for tangata whenua to participate in this consenting process have and continue to be provided (through CVA's, submissions and evidence; through continued dialogue between MBL and the two Settlement Trusts; and through the proposed CLG conditions and the cultural liaison agreements under negotiation). As such he considered that Policy B6.2.2 is being given effect to. For the reasons set out elsewhere in this decision, where we have addressed the provisions of the AUP(OP), we do not agree.

255. As regards policy B6.3.2 Mr Hay considers an appropriate assessment of cultural effects has been carried out, presumably referring to the Te Uri O Hau CEA, but noting that there are a range of views on the nature and degree of effects on cultural values. We concur with Mr Hay insofar as we have sufficient information from the CEA, submissions and evidence to determine that Mana Whenua have been able to identify their values as envisaged in B6.3.2.

FINDINGS

256. Overall, we have preferred the evidence presented on behalf of Mana Whenua together with the evidence of Mr Hopkins in terms of his recommendation to refuse consent based on his understanding of the Mana Whenua evidence.

Iwi Management Plans

257. While Iwi Management Plans are not expressly referenced in the objectives and policies of chapter B6 of the RPS, the explanation and principal reasons for adoption (in B6.6) describe how the policies relating to Mana Whenua values seek to ensure that resource management processes in Auckland are informed by Mana Whenua perspectives, and such perspectives are to be accorded status in decision-making and have the potential to influence outcomes. Iwi planning documents are identified as a valuable source of information for integrating mātauranga and tikanga into resource management in Auckland.

258. In this case, the relevant documents are the Te Uri o Hau Kaitiakitanga o Te Taiao (Environmental Management Plan) 2011 and Te Iwi o Ngatiwai Iwi Environmental Policy Document 2007 (hereafter referred to as EMP).

259. Mr Hopkins attached copies of these EMP's to his reply statement, however, there was no assessment of them either in his reply or the Hearing Report. Mr Hay noted this in his rebuttal[80] and included an assessment of both documents, although his assessment was limited to the mineral extraction sections of these documents.

[79]EIC of Mr Hay, para 131.
[80] Statement of Evidence in Rebuttal of David Hay, 21 February 2022, para. 80.

- Ngātiwai EMP

260. In his review of Ngātiwai's EMP Mr Hay mentions the Mineral Resources section which sets out six objectives followed by supporting policies and methods. The objectives and policies relate to sustainable extraction and management of minerals; protection and enhancement of the mauri of mineral resources; recognition of tangata whenua relationships to mineral resources, including as kaitiaki; and increased Tāngata Whenua involvement and use of traditional environmental knowledge in the management and monitoring of mineral resources. Relevant methods are around notification with respect to consent notification, pre-application engagement and preparation of cultural impact assessments, and payment of royalties.

261. Mr Hay's opinion is that the current agreement between Ngātiwai Trust Board and the consent holder reflects these objectives in part and demonstrates that a "fundamental conflict" between sand extraction and cultural values does not exist, and the EMP does not seek prohibition of sand extraction within the Ngātiwairohe. He goes on to say the proposed CLG conditions support these objectives particularly in terms of monitoring. In assessing the methods, Mr Hay notes that while Ngātiwai Trust Board have not prepared a Cultural Impact Assessment, Environs Holdings Ltd have provided a CEA for Te Uri o Hau's area of interest. Ngātiwai Trust Board's submission states that the applicant did not request a CIA from them.[81] Mr Hay also refers to the payment of a royalty to tangata whenua for mineral extraction. We are aware that there are ongoing discussions surrounding the existing agreement with Ngātiwai Trust Board and as alluded to in the reply of Mr McCallum and Mr TeRangi[82], discussions are continuing with the various Iwi and Hapū entities on possible future agreements. Mr Hay therefore concludes that the proposal is not contrary to the Ngātiwai Environmental Policy and that "*the methods outlined have in part been or are being followed by the applicant and Council where relevant*."[83]

262. We think it worth mentioning that Method 11 actually states "*Where there is agreement from Tāngata Whenua that a mineral resource can be extracted, a benefit back to them (in the form of a royalty) will be payable*."[our emphasis]. Therefore, while there may have been agreement reached with Ngātiwai Trust Board regards the existing consent (and we have heard from submitters about unresolved issues in relation to this agreement and fee payment) this is not the case for the application before us. The submission received from Ngātiwai in support of Omaha Marae was opposed to the application and, as noted elsewhere in our decision, at close of hearing the cultural liaison agreements being discussed with Mana Whenua were yet to be confirmed.

263. Besides the Minerals section, there are a number of other policy directives in Ngātiwai's EMP that are likely of relevance to this application. For example, Ngātiwai water objectives seek that:

> *"The life-supporting capacity of creeks, streams, water bodies, wetlands, swamps, springs, aquifers, thermal waters, estuarine waters and coastal waters enables*

[81] Submission of Ngātiwai Trust Board, Submissions Vol 2, p. 1101.
[82] Statement of Evidence in Reply of Callum McCallum, 23 February 2022, Attachment: Stakeholder Communication/ Feedback Register, and Rebuttal Evidence of Tame Te Rangi, para. 54.
[83] Rebuttal Evidence of David Hay, para. 79.

optimum health and wellness for all Tāngata Whenua; those they host within their rohe; their plants, animals and other whanaunga."[84]

264. Indigenous Fauna policies for Ngātiwai rohe include:

"Only after appropriate effective engagement and adequate remediation or mitigation, or safety or security reasons, will Tāngata Whenua support any negative or destructive impacts on their indigenous fauna."[85]

- Te Uri o Hau EMP

265. Mr Hay notes that Te Uri o Hau's EMP does not state sand extraction should not be allowed in any circumstances, and instead outlines what should be considered in applications/consents. We generally agree, as Section 43 "Minerals and Sand Extraction" contains policies and methods seeking that sand mining be sustainable, adverse effects to the CMA are avoided, remedied or mitigated; compliance requires monitoring, and proactive relationships are to be developed. Notwithstanding this, we observe that the sole objective of this section somewhat contrasts with the policies and methods stating:

"*That all future sand extraction is land-based, and minerals are extracted within and outside the statutory area of Te Uri o Hau at a rate that is sustainable for future generations, and is profitable for Te Uri o Hau."*[86]

266. Like the Ngātiwai document, Te Uri o Hau's EMP contains other topics that are relevant to consideration of sand mining activities, for example customary fisheries, biodiversity, marine mammals and cultural landscapes sections. Part 3 of the EMP describes values related to Mātauranga Māori including Spiritual and Cultural Connectedness, Tikanga, Taonga, Kaitiakitanga, Mana Whenua and Mana Moana, and Indigenous Flora and Fauna. The Te Uri o Hau CEA is of great assistance to our assessment, as it includes a specific section on the EMP[87] and Section 12 of the CEA systematically works through the set of values set out in Part 3 of the EMP in assessing the proposal. While the CEA does not specifically mention the Minerals and Sand Extraction section of the EMP, we record that the CEA's analysis indicates that the proposal did not offend any of the EMP values and practices that were assessed.

FINDINGS

267. We accept that engagement has been occurring with the Iwi Authorities as envisaged in the EMPs, and that Ngātiwai and Ngāti Manuhiri did not prepare impacts assessments, for whatever reason. But we have no confirmation that agreements for the application before us have been reached with any Mana Whenua party and the existing MOU is not sufficient evidence in this regard. For the reasons set out above we do not agree that the proposed CLG and information sharing conditions are appropriate to ensure kaitiakitanga and traditional ecological knowledge is recognised and utilised and we

[84]Ngātiwai EMP, p. 21.
[85]Ngātiwai EMP, Policy 11, p. 31.
[86]Te Uri o Hau EMP, p. 73.
[87]CEA, Section 9.7.

received no confirmation from the Iwi Authorities on the adequacy of the proposed conditions.

268. While the Minerals section of the Ngātiwai EMP may not seek to prohibit sand extraction, it does point towards agreement needing to be reached. Other policies in the document contain direction around the life supporting capacity of coastal waters enabling tangata whenua wellbeing and that no negative or destructive impacts on indigenous fauna occur without appropriate engagement, remediation or mitigation. While perhaps not representing a "fundamental conflict" with sand extraction activities, we consider that in light of Ahi Kaa evidence on these matters it is finely balanced and therefore we are not convinced that the proposal is consistent with the Ngātiwai EMP.

269. While Te Uri O Hau's EMP appears to prefer land-based sand extraction, we generally agree with Mr Hay's summary in relation to the Minerals and Sand Extraction section, and the CEA findings give us further confidence that the Proposal is consistent with the Te Uri o Hau EMP. Ideally, we would have had confirmation from Te Uri o Hau that a cultural liaison agreement had indeed been established and that proposed consent conditions adequately captured the CEA recommendations. However, we were persuaded by the letter tabled from Antony Thompson[88] that the Proposal supports the outcomes sought by Te Uri o Hau through their EMP.

OverallFindingsonEffects on Mana Whenua

270. We have carefully considered the evidence of Mana Whenua submitters. While recognising the authority of the relevant Settlement Trusts, we have differentiated evidence presented by Ahi Kaa and Ngāti Manuhiri, acknowledging them as Mana Whenua of the area south of Te Arai Point. We accept that for Te Uri o Hau the cultural effects of the proposed activity were considered minor to moderate[89] and that the Proposal is consistent with the Te Uri o Hau EMP. From Te Uri o Hau's perspective, cultural relationships and Kaitiakitanga can be provided for through meaningful engagement including establishment of a formal relationship agreement, and implementation of a cultural monitoring regime to be secured by appropriate consent conditions.

271. This was not the case for Ngātiwai, Ngāti Manuhiri and the Ahi Kaa. These groups, while having differing mandates and layers of relationship to the Pakiri Embayment, were unified in their opposition to the Proposal. We have been cognisant of that in our decision. We have found their evidence on the adverse effects of the proposed sand extraction activity on their cultural landscape, taonga species, rangatiratanga, kaitiakitanga and cultural wellbeing compelling. Setting aside Te Uri o Hau's position, the only conflicting view before us is that of Mr TeRangi, who relying on the applicant's technical material[90] concluded:

[88] Letter from Antony Thompson dated 25th February 2022.
[89] Te Uri o Hau CEA, pp 46.
[90] Mr Te Rangi advised during the reconvened hearing that he had only read the application material and no evidence from other experts.

"I have formed an understanding that sand extraction at Pākiri is sustainable with minimal environmental effects as well as being able to co-exist with local tangata whenua alongside keeping their Māori cultural values intact."[91]

272. This does not accord with our findings in relation to effects on ecology and coastal processes and those comparative values such as effects on taonga species, cultural landscapes and kaitiakitanga when applying a cultural lens. We therefore prefer the evidence of Ahi Kaa and Ngāti Manuhiri submitters in this regard, who are Mana Whenua of Pakiri with intimate intergenerational knowledge and understanding of that environment. In our view this is consistent with what is required of us by the policies relating to Treaty of Waitangi/TeTiriti o Waitangi partnerships and participation in Chapter B6 of the RPS, e.g. B6.2.2 (1). This evidence was given by Kaumātua and Pūkenga of, or recognised by, the hapū - specialists in the mātauranga and tikanga of their hapū and best placed to convey their relationship to the Pakiri-Mangawhai Embayment. They have told us that their cultural values and relationships, including mauri, and their mana and wellbeing have been, and will continue to be, eroded and diminished as a result of the current application. Refusal of consent is in our view appropriate to ensure Mana Whenua values, mātauranga and tikanga are properly reflected and accorded sufficient weight in resource management decision-making. In reaching this decision we have had particular regard to potential impacts on the holistic nature of the Mana Whenua world view; the exercise of kaitiakitanga; mauri, customary activities, including mahinga kai and sites and areas of significant spiritual or cultural heritage value to Mana Whenua as required by Policy B6.3.2. (6) of the RPS.

273. We have also been cognisant of the Coastal Statutory Acknowledgement Area of Ngāti Manuhiri and note that Poutawa Stream and Pakiri River are also subject to Statutory Acknowledgement under the Ngāti Manuhiri Claims Settlement Act 2012, while cultural redress properties include Hauturu, Pakiri Block Conservation Area, Pakiri Domain, and the Pakiri Riverbed.[92] Policy B6.2.2 (2)(a) seeks that we recognise and provide for the historical association of the claimant group with the area, and any historical, cultural or spiritual values associated with the site or area in resource management processes, where a proposal affects land or resources subject to Treaty settlement legislation. Policy B6.2.2. (5) seeks to enable Mana Whenua to access, manage, use and develop cultural redress lands and interests for cultural activities and accessory activities. Given the submissions of Mr Pou and Hohneck of behalf of Ngāti Manuhiri in this regard, we consider refusal of consent is appropriate to recognise and provide for the associations and relationships to those particular sites and support use and development of cultural redress properties.

274. We acknowledge Mr TeRangi's efforts and belief that genuine engagement with Mana Whenua can provide mechanisms to enable the expression of kaitiakitanga and other cultural values. While engagement may have occurred, and be continuing to occur, we are not satisfied that those mechanisms are in place, and we are not confident that what is proposed can mitigate the significant adverse effects that have been identified.

[91] Rebuttal Evidence of Tame TeRangi, para 20.
[92] SeeAppendix 21, AUP

Coastal Processes Effects

275. The Panel was presented with a great deal of evidence on coastal processes, both in the application and the evidence presented at both parts of the hearing (May-June 2021 and February-March 2022). The volume of technical information, the manner in which it was interpreted and presented to us and the conclusions drawn from it were often complex and conflicting.

276. Before considering the various aspects of coastal processes, we make a number of overall observations. Firstly, Mr Todd, coastal processes expert for McCallum Brothers Ltd, (MBL) found himself in an unusual position. During the first part of the hearing his client, MBL, were submitters in support of the application. As a result, Mr Todd's evidence concentrated, not on the potential effects of the proposed off-shore sand extraction application, but on the potential effects the proposal might have on the existing and proposed mid-shore and in-shore extraction activities. He also recommended that both operators (Kaipara and MBL) should share the burden of monitoring the beach and dunes as part of the consent conditions he promoted.

277. By the time the hearing reconvened, Mr Todd's client had become the applicant and at that point he turned his attention to the broader consideration of potential effects of the off-shore mining proposed.

278. Secondly, we note that it had been anticipated that the caucusing process would be an opportunity for the numerous differences of opinion on the multiple facets of the coastal processes at work in the Mangawhai-Pākiri embayment to be teased out and then explained in the JWS. Unfortunately, this was not the case and we had to rely on further questioning at the resumed hearing to gain a clearer understanding of why opinions differed so radically.

279. Despite this, an important benefit of the caucusing was the additional comparison data from the October 2021(DML for Kaipara), March 2021, (SurveyWorx for Kaipara) and September 2020 (eCoast for FOPB) surveys. The information this provided, in terms of trench infilling rates and the consensus of all members of the Coastal Processes Expert Caucusing Group ("CPECG"), as recorded in the JWS[93]was very helpful.

280. It became clear that different witnesses were relying on different research and survey results in drawing their conclusions. These different sources included the Mangawhai-Pākiri Embayment Sand Study, (MPESS) from the 1990s, which was fundamental to the evidence of both Ms Hart and Ms Sharma and was relied on to various extents by other witnesses. More recent reports prepared by Jacobs for MCL's separate near shore and mid shore sand extraction applications, were relied on by Mr Todd, while the October 2021 seabed survey by DML was fundamental to the caucusing and JWS. The Panel did not have access to either the MPESS or the complete DML survey data and had to rely on interpretation of the various findings in them by different witnesses.

281. We were told by all of the coastal processes experts that despite 80 odd years of sand mining, at least 20 years of sand extraction monitoring work, as well as the information provided by both the MPESS and the Jacob's research, there remains a great deal of

[93]Paragraphs 21 and 22 of the JWS

uncertainty about the coastal processes taking place in the embayment and the actual and potential effects of the sand extraction on those processes.

282. Responses to this uncertainty differed. Ms Hart, Mr Todd, Ms Sharma and Dr Shand were all of the opinion that, with appropriate conditions of consent that enabled an adaptive management regime to be put in place, this consent could be granted. Conversely, Ms John, Dr Mead and Professor Hilton were all of the opinion that until a greater understanding of the coastal processes at work was achieved, particularly the sediment transport system, consent for the offshore mining consent should be refused.

283. Just one of the complicating factors, as pointed out by Dr Mead is that the long term natural variations arising from such influences as intermittent storm events and the El Niño / La Niña southern oscillation weather cycle, all mask the actual effects of sand extraction on the beach and nearshore areas. The Panel also recognise that with more than one sand extraction operation occurring in the same embayment, it would be very difficult to determine which, if any sand extraction activity was causing any identified effect.

284. Lastly, as is explained more fully below under the heading 'Effects on significant surf breaks', the Panel had concerns with Dr Mead fulfilling expert roles for both the Applicant and a submitter in opposition. We observe, however, that at no point do we rely solely on Dr Mead's opinion with respect to coastal processes[94], but find that he is always supported in his view by other experts.

Extraction Tracks

285. Extracts from the DML survey showing shallow extraction tracks across a wide area of the seabed were included in Attachment 3 of the JWS, the DML hydrographic survey report dated October 2021. They are not annotated or specifically referred to in the report and it is not possible to infer from them how much of the surveyed area they represent. Professor Hilton, in referring to the same images, stated in his evidence that *"[T]he pattern and close spacing of trenches, compared with areas of seabed outside the mining areas, is suggestive of a 'ploughed paddock', one that is tens to hundreds of hectares in area*."[95] A number of other witnesses also used the 'ploughed paddock' analogy.

286. We note that, as with other witnesses, it was not always clear in his evidence whether Professor Hilton, in using the term 'trenches', was referring to the 'normal' extraction tracks or the deeper and unexpected trenches in the southern end of existing extraction Area 1.

287. The Professor went on to suggest that these extraction tracks have been present for long periods of time, and concluded that "*the extent, dimensions and persistence of these trenches suggests rates of sand transport and accretion are less than the rates of sand mining in this area of the seabed*"[96].

[94]There was no other expert evidence other than Dr Mead in relation to effects on surf breaks.

[95]Professor Hilton's evidence dated 9 February 2022, para 3.3.

[96]Professor Hilton evidence dated 9th February 2022, paragraph 4.1

288. Dr Mead, similarly asserted that the survey data confirmed the "*widespread and persistent impact to the seabed that has been identified while dredging within the consent boundaries ... the seabed imaging indicates that the hundreds of dredge trenches caused by 'normal' dredging activity are persistent and require severe storm events to recover*."[97]

289. Mr Todd, in his reply, pointed out that no evidence was presented to support the claims of persistence and transport rates. He went on to explain that he had presented evidence to the CPECG meeting on 29 November 2021, that the October 2021 DML survey did not show any evidence of extraction tracks in the area identified as the northern control area on the DML survey plan (page 21 of the JWS) which had been excluded from dredging since April 2021 as it was (then) to be the northern control area (this subsequently changed to a location north of the regional boundary). This showed, in his view, "*that extraction tracks from the William Fraser infilled within 6 months at water depths greater than 30m*".[98]

290. Mr Todd went on to state "*This is backed up by the lack of shallow dredge tracks in the extraction exclusion area, which had also not been dredged since April 2021*". He also pointed out that this is "*in line with Dr. Mead's statement that "the hundreds of run-lines in the DML survey are all post the May [storm] events.*"[99]"

291. Mr Todd further explained that "*it is most probable that all of the dredge tracks in the figures presented by Professor Hilton and Dr. Mead actually occurred within four months of the October 2021 survey. From dredge operation information provided by McCallum's, this is entirely possible, as there was a total of 31 dredge trips to the offshore area over this period, involving a total 234 individual dredge tracks, including over 111 tracks in the area to the north of the Swale Exclusion Zone (Hilton figure 3 and Mead figure 2) and 20 in the northern part of Area 2 (Hilton figure 2)".*[100]

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292. We accept this explanation from Mr Todd and are not surprised that areas where 'normal' sand extraction is taking place will show marks on the seafloor. We also accept Mr Todd's explanation of their likely persistence.

Beach and Dune Erosion

293. There was, overall, less emphasis on the potential effects of sand extraction on the beach and dunes in the evidence of the coastal processes experts, than there was from the local community. The majority of the Mana Whenua and other community groups who provided evidence to us commented on the loss of sand from the dunes, particularly to the south of Te Arai Point. Such claims were often accompanied by photographs said to be demonstrating the loss, along with references to structures such as fences and steps and trees, built and planted in the dunes now having been undermined or washed away.

[97]Dr Mead Supplementary statement of evidence dated 28 January, para 3.4

[98]Todd rebuttal evidence dated 21 February 2022, paragraph 12.

[99]Ibid paragraph 12

[100]Para 13 Statement of Rebuttal Evidence of Derek John Todd dated 21 February 2022.

294. Ms Hart explained the surveying of beach profiles along the embayment which was initiated following a severe storm in 1978 and has expanded and continued ever since. She clearly relied on the depth of closure and 1990s Sand Study in concluding that the "*profile surveys have been focussed on the nearshore changes and are not expected to be affected by sand extraction from beyond the Closure Depth.*"[101] In her evidence to the hearing she went on to say that based on the inshore extraction monitoring reports, that included surveys of the beach profiles, there was "*evidence of episodes of erosion and accretion of the regularly surveyed beach and bar profiles. There was no reported change, within the accuracy of the survey methods used, that could be attributed to anything beyond natural variations arising from weather pattern variations*".[102]

295. In contrast, Dr Shand stated in his report "*All profiles tend to show erosion during the late 1990s and early 2000s followed by recovery before additional erosion after 2010. In general profiles show fluctuations of up to 20m occurring on 10 to 20 year cycles with the southern profiles exhibiting a general erosion trend since the late 1990s while the northern profiles have been stable to accreting over this time.*"[103] Dr Shand went on to conclude: "*A review of beach profiles does appear to show general erosion along the coast, apart from specific profiles since 1978 and more notably since the late 1990s. This differs from analysis by Jacobs (2020) in support of the nearshore application which suggests general accretion. We are uncertain of the reasons for this difference without further investigation or discussion*."[104] He provided the same conclusion in his evidence to the resumed hearing.

296. This opinion is clearly contrary to Mr Todd who concluded in the Jacobs 2020(b) report referred to by Dr Shand, that accretion has occurred over the last 50+ years.[105]Mr Todd pointed out in his supplementary evidence to the first part of the hearing that his assertions that there has been net shoreline accretion along the whole embayment is based on "*much more thorough and comprehensive assessment of shoreline movements than presented by Dr Shand in his report appended to the Mr Christie's evidence, which concluded general erosion based on 11 [*sic - actually 13*] surveyed beach profiles dated from various times since 1978*."[106]Similarly, at the resumed hearing Mr Todd stated "*there has not been any evidence of beach erosion since 2003 that can be attributed to sand extraction*."[107]

297. The important point in this quotation is the reference to being able to attribute erosion to sand extraction activities. The Panel were unable to draw conclusions from the evidence provided with respect to the pattern of accretion and erosion along the foreshore. Perhaps more importantly no-one was able to demonstrate conclusively for us that there is no level of erosion that can be attributed to sand extraction. We do note that in analysing the dune profile data, Mr Todd used the 3.5m contour as proxy for the dune toe, while Dr Shand identified the 4m contour as the upper dune toe. We also note that Mr Todd used Digital Shoreline Analysis (DSAS) as well as beach profiles in his analysis, while Dr Shand appears to have relied on the profiles alone.

[101]Beca report Auckland Offshore Sand Extraction Site - Review of Coastal Processes Effects, July 2019, pp 4-5.
[102]Statement of evidence of Jennifer Hart, dated 12 February 2021,paragraph 54
[103]Beca report Auckland Offshore Sand Extraction Site - Review of Coastal Processes Effects, July 2019, p14.
[104]Ibid page 19
[105]Jacobs Pakiri Sand Extraction Consent report November 2020, p69.
[106]Todd supplementary evidence dated May 2021, paragraph 9.
[107]Todd statement of rebuttal evidence dated 21 February 2022, paragraph 7

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298. The Panel are concerned that they have both lay and expert witnesses reporting serious erosion, particularly along the southern part of the embayment, while at the same time other experts told us that there is no evidence of beach erosion attributable to sand extraction activities. Overall, we find we do not have enough reliable information to conclude that sand extraction is not causing or contributing to sand erosion along the beach.

The Changes to the Understanding of the Depth of Closure between the 2021 Hearing and the 2022 Hearing

299. As already indicated, the depth of closure established in the MPESS at 25m depth below mean sea level (MSL) was both emphasised by the Applicant and generally accepted by most expert witnesses during the 2021 part of the hearing. Importantly, however, its level of 'leakiness' was disputed. Ms Hart, Ms Sharma and Dr Shand expressed confidence that the level of sand movement from the offshore area into the nearshore was limited, except in storm conditions. This separation of the offshore and nearshore areas gave these particular experts confidence that the removal of sand from the off-shore area would have minimal impact on the near-shore area and beach.

300. On the other hand, by the second hearing, the new applicant's expert Mr Todd, was adamant that offshore to nearshore transport of sand occurred to some extent even under ambient conditions, meaning the depth of closure was at best 'leaky' and was probably therefore nearer to 30-35m below mean sea level.

301. As clearly summarised in the legal submissions presented on behalf of MBL by Mr MacRae at the first part of the hearing, Mr Todd's "*approach has been largely to set aside the question of the location of the theoretical closure depth and to look at the impact, or lack of impact, on the seabed, beach and dunes of the volumes of sand that has been extracted from the embayment over the last 60 years. On this approach, the key question is, regardless of the location of the theoretical closure depth, what is the condition of the beach and dunes (erosive or accretive) and what are the inputs and outputs that the relevant coastal processes are delivering to or taking from the embayment that would account for that condition. The result is a sediment budget, a concept widely used and understood by coastal scientists*."[108]

302. Mr MacRae went on to state, "*A consequence of the sand budget approach is that the existence and location of a theoretical depth of closure is a secondary issue and is not essential to a proper assessment of the effects of proposed sand extraction on coastal processes and thence beach and foreshore*."

303. Dr Mead agreed with Mr Todd that the depth of closure was 'leaky' and thus concluded that any offshore extraction must impact nearshore sand movement. Dr Single emphasised that the depth of closure is not a sediment transport boundary, but a morphodynamic boundary and that it is not consistent with good coastal science practice to treat the offshore environment as isolated, as a resource, from the rest of the coastal environment.

[108] Outline of Legal Submissions on Behalf of McCallum Bros. Ltd, dated 12 May 2021, presented by John MacRae, paragraphs 7 & 8.

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304. The Panel accepts that there is doubt about whether the depth of closure is at 25m below mean sea level or further off-shore, as well as just how leaky it is. We do, however, accept Dr Single's advice to be cautious about assuming that the depth of closure provides confidence that off-shore extraction beyond it will have no effect on the in-shore or beach environment. We also note that by the time the JWS was prepared and agreed by all members of the CPECG, the certainty surrounding the depth of closure had diminished. Under the heading "Issues agreed and reasons" it states:

> *"The March 2021 survey indicated that trench infilling has occurred across both the September 2020 – March 2021, and the March 2021 – October 2021 periods.*
>
> *The available information is inconclusive as to the source of and mechanism for infilling, sediment transport processes across the surveyed area, and any long term effects of the trenches on those coastal processes.*
>
> *The available information indicates that sediment is moving in the surveyed offshore area, but it is not possible to draw any conclusions about diabathic or longshore transport. The volume, rate and direction of sediment transport are not able to be inferred from the data available at this time."*[109]

305. This clear statement from seven independent experts underlines the uncertainty we feel about the coastal processes occurring in the embayment as a whole and the depth of closure in particular.

Deep Trenches

306. The discovery of a series deep trenches / swales in the southern part of the currently consented extraction area (Area 1) was made known to the Panel in the evidence of Dr Mead dated 21st February 2021. Annexure 2 of that evidence was the report "*Pakiri Sand Extraction Review: Dredge Trench Assessment*" prepared by Edward Atkin and Dr Mead of eCoast. A combination of side-scan sonar (SSS) and single beam echo sounder (SBES) survey techniques were used to identify and illustrate the presence of the trenches. In his primary evidence Dr Mead stated: "*It is very likely that trenches in the offshore area of 1 to >2.5m depth running shore-parallel for some 18km along the Mangawhai-Pākiri Embayment (~70% of the beach length) is greatly reducing and/or preventing transport of sediment to the beaches.*"[110]

307. It transpired, that as a consequence of this revelation, the consent holder (Kaipara Ltd) commissioned a survey of its existing coastal permit, ie extraction areas 1 and 2, in March 2021. Based on results of this survey data, Kaipara Ltd offered a condition of consent at the 2021 part of the hearing, preventing any further sand extraction in the area of the trenches until they had been infilled to within 0.5m of the surrounding seabed level. The survey also established that Dr Mead's suggestion that trenches extended along the full 18km length of the embayment were exaggerated.

[109] JWS dated 13 December 2021, paragraphs 22-24.

[110] Paragraph 4.16 primary statement of evidence of Dr Shaw Mead dated 21 February 2021.

308. As a result of the survey findings, Kaipara Ltd requested, at the end of first part of the hearing, sufficient time to undertake further survey work before the hearing resumed and their reply was given. The result was the October 2021 DML survey and the caucusing and JWS, along with supplementary evidence from the coastal experts and further submissions from other parties.

309. All the coastal experts agreed that the deep trenches were made by repeated dredging over the same track numerous times. Dr Mead and Professor Hilton, in particular, emphasised that such dredging practices are contrary to the conditions of the existing consent. That is not a matter for us to determine in this hearing and apart from commenting that we were concerned to learn that a number of survey requirements of the existing consent had not been provided to Council, nor apparently sought by Council, we make no further comment on it.

310. The comparison of the October 2021, March 2021, and September 2020 surveys did enable all members of the CPECG to agree that there had been some infilling of the deep trenches during the intervening 11 months. This was expressed as "*the dredged trench features appear to have infilled by between 0.02m and 1.3m over the September 2020 to October 2021 period, however distinct dredged features ... remain evident*".[111]

311. Dr Mead also claimed in his evidence to the resumed hearing that the area identified in the proposed conditions of consent where extraction of sand was not to take place because of the presence of the deep trenches (the Extraction Exclusion Area) was not large enough and did not cover all the seabed where deep trenches were present. He proposed two separate extension areas, one to the north and one to the south. We were told that all the CPECG members had interactive access to the DML survey data which would, we were assured, have enabled them to investigate Dr Mead's claims, at least by reference to point data, if not by the production of profiles. None of the experts did so.

312. Instead, we were told by both Ms Sharma and Mr Todd that "*The dredged trenches identified in the October 2021 survey were in similar locations and sizes as those identified in the September 2020 and March 2021 surveys. No other large areas of trenches [sic] identified*"[112] and that the DML survey "*did not detect any other large or deep trenches from the ones previously mapped and presented to the hearing*"[113]. Mr Todd went on to say, with respect to Dr Mead's claims, that "*I cannot comment on trench depths in these areas as there was no evidence presented to the CPECG on trench depths in the extension areas put forward by Dr Mead.*"[114] Mr Todd confirmed he had not taken the opportunity to interrogate the DML survey data to check this, which the Panel find disappointing. He nevertheless stated that "*Mr Cox* (of DML) *made the statement that he felt the profiles covered all of the deep trenches*".[115]

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313. As a result, the Commissioners are uncertain about whether the Extraction Exclusion Area is sufficiently large to capture all the existing deep shore-parallel trenches. Thus,

[111] JWS paragraph 21, dated 13 December 2021.
[112] Para 3 of Supplementary statement by Ashishika Sharma for Auckland Council dated 11 February 2022.
[113] Para 4 Statement of Rebuttal Evidence of Derek John Todd dated 21 February 2022.
[114] Para 24 ibid.
[115] Verbal comment made by Mr Todd during presentation of evidence.

were we to be granting consent, we would have included an additional condition requiring demonstration that the Extraction Exclusion Area does incorporate all the existing shore-parallel trenches at 0.5m or deeper, prior to sand extraction commencing.

Coastal Processes Effects Summary

314. In summarising the opinions of the various coastal experts, we record that Ms Hart, on behalf of the [then] Applicant stated, *"[O]n the basis of the assessed effects and findings, which take into account the results of past investigations and research, extraction monitoring under the existing consent, and fieldwork and analysis for the consent application, I consider that the proposed extraction is unlikely to result in significant effects on coastal processes*."[116] This conclusion was confirmed in her evidence in reply.[117]

315. Ms Sharma, for the Council, summarised her consideration of potential effects on coastal processes thus, *"[C]hanges indicated in bathymetric survey to date under the existing consent are shown over discrete areas centred around the targeted extraction locations. Observed cumulative effects of extraction to date indicate a small. distributed lowering of the bed level within the extraction areas. The overall effects on coastal processes will be minor*."[118] Ms Sharma's technical memo attached to the s42A Addendum Report, dated 7 April 2021, addresses the pre-circulated evidence of the other coastal processes experts and provides no additional assessment of effects. Her evidence, prepared for the resumed hearing, concludes *"[T]he submitters' statements and conclusions do not change my overall conclusions for the effects of the sand mining activities being less than minor on coastal processes and sediment movement*."[119]

316. As already recorded, Mr Todd concentrated his first two statements of evidence on potential effects of the off-shore sand extraction on MBL's other mid-shore and in-shore interests, together with the appropriate conditions of consent. He did not undertake an overall assessment of effects on coastal processes in his reply evidence, prepared for the second part of the hearing, either. He did however conclude "*I believe that the proposed dredging management regime, along with the monitoring methodology and review process will ensure a better understanding of the coastal processes operating in the embayment, and the detection of changes before adverse effects occur*."[120] He finally concluded with, "*...will mean that adverse effects on coastal processes can be avoided*."[121]

317. As already recorded, Dr Shand disagreed with Mr Todd with respect to the accretion and erosion patterns along the beach and dune. More broadly, he agreed with Mr Todd that, with suitable conditions of consent, particularly the inclusion of a western control site along the landward side of the proposed extraction area, consent could be granted. In answer to questions he confirmed that in his view potential effects of the grant of consent would be minor to less than minor.

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[116]Statement of Evidence of Jennifer Hart, dated 12 February 2021, paragraph 101.

[117]Evidence in reply of Jennifer Hart, dated 16 April 2021, paragraph 49.

[118]Technical Memo Specialist Unit, from AshishikaSharma and Karla Sivaguru, dated 14 January 2021, paragraph 3.1.6, Agenda page 328.

[119]Evidence of Ashishika Sharma, dated 11 February 2022, paragraph 16.

[120]Rebuttal evidence of Derek Todd, dated 21 February 2022, paragraph 26.

[121]Ibid, paragraph 32.

318. Dr Martin Single, coastal processes expert on behalf of Friends of Pakiri Beach, (FOPB) having reviewed the application and other relevant technical reports concluded, "*I consider that the proposed extraction of sand from offshore should require monitoring of the beach and nearshore in addition to surveying of the offshore bathymetry to ascertain the ongoing effects of the activity. In addition, the cumulative effects of existing and any future mining of sand from the nearshore zone of the Mangawhai-Pakiri coastal environment should be managed in such a way that it recognises the contiguous nature of the across shore and inner shelf coastal environments*."[122]

319. It was clear that, like Dr Mitchell, planning expert for FOPB, Dr Single's focus was on the proposed conditions of consent and the need for these to include beach and nearshore monitoring requirements. This was emphasised in his supplementary evidence, as well.

320. At the CPECG and resumed hearing in 2022, Dr Single had been replaced by Professor Hilton whose focus was different from Dr Single's. His evidence concentrated on the deep trenches in the southern end of the existing extraction area and the results of the DML survey, which was instigated as a result of their discovery. He concluded "*Bathymetric data provided by DML Ltd. (October 2021) has provided the first synoptic overview of the seabed over a wide section of the Pakiri-Mangawhai embayment. Trenches arising from offshore sand mining are a conspicuous and worrying feature of this data. The extent, dimensions and persistence of these trenches suggests rates of sand transport and accretion are less than rates of sand mining in this area of seabed. However, the above observations, particularly the extent and number of trenches, is consistent with past work by me, and others, that sand transport at water depths greater than 25m is likely to be low and that replenishment of sand extracted at these depths is unlikely. ... I conclude by emphasizing there are large gaps in our knowledge of the Pakiri-Mangawhai Sand System, indicated by the astonishing results of the October 2021 survey, and that it is timely to exercise much greater caution in the management of this System."*[123]

321. Ms John, who provided an oral statement for Te Whanau O Pakiri, focussed on two matters, the inadequacy of consideration of climate change in the application and Council s42A response and the inadequacy of the cumulative effects assessment undertaken. Following participation in the CPECG and the production of the JWS, Ms John provided a supplementary statement of evidence at the resumed hearing. In it she emphasised that all the experts in the CPECG agreed that "*what is required to enable any conclusions to be drawn is a sustained monitoring programme, that covers the whole embayment (the offshore, nearshore and beach) and shows change over time.*"[124]

322. Ms John concluded "*It is my opinion that a full understanding of the sediment transport processes associated with the Mangawhai-Pakiri seabed and the dredged features is obtained before any further extraction is consented. We cannot currently determine the long-term or cumulative effects of the dredging activity on sediment transport and should not consent an activity whose effects cannot be determined*."[125]

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[122]Evidence of Dr Martin single, dated 22 February 2021, paragraph 30.

[123]Statement of Professor Mike Hilton, dated 9 February 2022, paragraphs 4.1-4.3

[124]Supplementary statement of Sian John, dated 28 February 2022, paragraph 3.

[125]Ibid, paragraph 5

323. As with most of the coastal processes experts, Dr Mead, expert for Damon Clapshaw, did not undertake an assessment of potential effects of the proposed off-shore sand extraction activity, per se. Instead, he concentrated on the breaches of the existing off-shore sand extraction consent and the consequential creation of the deep trenches in the southern part of the consented area. His concern was that the deep trenches would impede natural sand movements shoreward, with any refilling of trenches being extracted again in future. He was also critical of the existing consent's conditions and the manner in which they had or had not been followed by all parties concerned. He noted that despite 20 years of monitoring, "*very little has been learnt with respect to the impacts and sustainable management of the offshore dredging activity in the past 2 decades*."[126]

324. Dr Mead reiterated his concerns at the resumed hearing and concluded with "*[A]s a result, there are a number of unknowns that are not addressed in the current application. In my opinion these issues need to be addressed before the consenting process continues, since the current application is inadequate and does not appropriately address the environmental effects of the activity*."[127]

325. In summary then, the Panel have been provided with contradictory evidence from a range of experts on a variety of aspects of the coastal processes within the embayment. Overall and despite the apparent level of agreement in the JWS, the coastal experts broadly provided us with two opinions. On the one hand, Ms Hart, Ms Sharma, Mr Todd and Dr Shand agreed that, with appropriate conditions in place the proposed activity would result in minor or less than minor adverse effects, or as Mr Todd expressed it, adverse effects on coastal processes can be avoided.

326. In contrast, Dr Mead and Ms John, although falling short of identifying significant adverse effects, urged us to not grant consent without requiring more information about the long term and cumulative effects of sand extraction upon which to base a decision. Professor Hilton did not go quite as far, but did urge us to be very cautious in the management of the embayment. Given our previous findings that we did not have sufficient information to properly understand the effects of the proposal, combined with our findings that a precautionary approach needs to be taken, the Panel has determined that resource consent should be refused.

Effects on Significant Surf Breaks

327. As a result of a number of submissions raising concerns about potential effects of sand extraction on surf breaks in the Mangawhai-Pakiri embayment, the applicant commissioned eCoast to undertake an assessment of this potential in June 2020. The resultant report "Surf Break Impact Assessment" is dated 2 September 2020 and was provided to Council on 8 September 2020. Evidence supporting the report was prepared by one of the authors, Dr Mead on 12 February 2021.

328. These dates are important, in the Panel's view, because they overlap with the timing of the two reports also prepared by eCoast on behalf of Mr Damon Clapshaw, one of the submitters against the sand extraction application. Those reports are dated between

[126] Summary of rebuttal evidence of Shaw Mead, dated 14 May 2021, paragraph 7
[127] Supplementary evidence of Shaw Mead, dated 28 January 2022, paragraph 7.6

December 2020 and February 2021, while the evidence supporting them, again prepared by Dr Mead, is dated 21 February 2021.

329. The Panel noted that Dr Mead was an expert witness acting for both the Applicant and a submitter in opposition, at the same hearing. It became apparent that the Applicant was concerned about such an occurrence. In her primary evidence to the first part of the hearing, Ms Hart, coastal processes expert for the Applicant noted "*..and Dr Mead had not previously advised our team of the trenches when we worked together on further information for the application in 2020*."[128]

330. In his defence, Dr Mead did include reference to these two separate roles in his evidence to the first part of the hearing. He stated that "*after I was retained by FoPB and began working with Mr Clapshaw on the work described above, I was approached by Kaipara Ltd as applicant and requested to provide advice on any implications of the offshore dredging on the surf breaks at Pakiri. I consulted Kaipara Ltd, FoPB and the Surfbreak Protection Society on that matter and it was agreed that as this was not an effect of concern to them in relation to dredging in the offshore area, I could provide that separate advice to the applicant*."[129]

331. In answer to our questions, Dr Mead confirmed that he had undertaken this sort of dual role in the past. Given that Dr Mead confirmed that both of his clients were aware that he was providing advice to the other, the lack of transparency to Kaipara Limited wasa concern.

332. In his report and evidence Dr Mead assessed potential effects on 5 surf breaks:

- Mangawhai Heads,
- Black Swamp;
- Te Arai Beach;
- Forestry; and
- Pakiri Beach.

333. He concluded that the "*magnitude of impacts on wave quality at the four central surf breaks (excluding Mangawhai Heads) in the Mangawhai-Pākiri embayment associated with changes to wave heights and directions due to reflection/refraction/diffraction as waves propagate over modified seabed bathymetry caused by extraction, are considered less than minor to negligible for the proposed resource consent application*."[130] He went on, "*the magnitude of a reduced cross-shore sediment supply to the beaches in the Mangawhai-Pākiri embayment are considered less than minor to negligible for the proposed resource consent and associated management regime*."[131]

334. We were also told of changes to surf breaks by some of the local residents. Mr Sam Bradford told us that in his almost 30 years of surfing along Pākiri Beach he considered there had been adverse effects on the quality of the surf. He said "*during periods of mining in close proximity to certain areas of the beach it has resulted in the degradation*

[128] Jennifer Hart evidence dated 16 April 2021, paragraph 25

[129] Evidence of Dr Shaw Mead, dated 21 February 2021, paragraph 3.6

[130] Paragraph 6, Summary of statement of evidence of Shaw Mead dated 5 May 2021.

[131] Ibid paragraph 7.

of surf quality. The dissolution of banks of sand (those areas along which waves peel) occurs much more quickly when the mining is focussed in different parts of the beach."[132]

335. Dr Mead's evidence was relied on by Mr Paul Shanks, who gave evidence on behalf of the Surfbreak Protection Society Incorporated (SPS). He pointed out the protection provided to Nationally Significant Surfbreaks in the NZCPS (Policy 16) and agreed with Dr Mead that monitoring and the adoption of an adaptive management regime would be important conditions of any consent. He also requested representation of the SPS on any Community Liaison Group that might be established under any such consent.

336. The importance of the local surf breaks was also pointed out by Mr Aaron McConchie on behalf of Save Te Arai, as well as in numerous submissions received.

337. Setting to one side our concern regarding Dr Mead's dual role, we have accepted Dr Mead's evidence on surf breaks and accept that the proposed off-shore sand extraction would have minor to negligible effects on the relevant surf breaks.

Effects on Marine and Coastal Flora and Fauna

338. The evidence presented by Mr West showed that the scientific monitoring conducted in the Kaipara Limited offshore area to date does not result in significant adverse effects to flora and fauna or diversity.[133]

339. Mr West relied on Ms Hart's evidence that any perceived coastal erosion is not the result of sand extraction from Kaipara Limited offshore sand extraction area due to the siting of the offshore area being beyond the depth of closure. It was Mr West's opinion that variations in coastal habitats including perceived coastal erosion was more likely to be the result of natural storm events or land-based activity changes, and thus not related to sand extraction from the Kaipara Limited consented area.[134]

Effects on Benthic Biota

340. Mr West provided the Panel with a summary of the ecological monitoring work that had been undertaken in the area to date. He concluded that the "*lack of complete sets of individual replicate baseline data for both grain size and benthic biota abundance and composition prevented any statistical analysis with future monitoring data*[135]*".* He advised the other issue with the data previously collected was that it was outside the proposed sand extraction area and therefore it was not relevant with which to make any comparison[136].

341. Mr West acknowledged that like any bottom contact activity (such as scallop dredging, bottom trawling, boat anchoring) sand dredging will result in some harm to the seabed benthic communities. However, he is of the opinion that, "*the severity of impact depends on a number of factors and does not preclude the ability of recovery over time following*

[132] Verbal statement of Sam Bradford, page 2.
[133] Mr West's Evidence-in-chief at [6.10]
[134] Ibid at [6.11]
[135] Ibid at [9]
[136] Ibid at [3.10]

the impact"[137]*.* The "*sensitivity of the habitat, scale and frequency of disturbance are major factors in determining the impacts"*[138]*.*

342. We were told by Mr West that the current and proposed draft conditions both include a requirement to assess an area prior to sand extraction activity beginning, which is to ensure sensitive habitats and biota are not damaged. It is also aimed at "*limiting any potential effects by avoiding areas of seabed that would create additional impacts, for example areas with greater than 20% fine sediment being excluded from sand extraction to avoid water quality impacts*"[139].

343. The current consent does not limit the total volume extracted per year for the entire area but allows a total consent limit of 2,000,000m³. It also limits the extraction volume for areas shallower than 30m, which is the area that sand is typically extracted from, to 150,000m³ per year. The draft proposed conditions seek to continue this and add further to the limitations by ensuring the sand extraction is not able to be concentrated in one small area, but spread out over the entire approved sand extraction area, using management cell limits[140]. We were told by Mr West that the aim of this approach is to limit the scale and frequency of impacts to a sustainable level whereby the ecological values of the environment are not permanently degraded. It was Mr West's opinion that the draft conditions and management plans proposed will achieve the desired result of balancing the extraction of sand and limiting any effects[141].

344. A currently unknown percentage of benthic biota remains on the seabed after the passage of the dredge. Mr West advised that 95% of the macrofauna that pass through the dredge are returned to the sea alive. While a percentage of the smaller than 2.5mm sized biota will be retained in the sand hopper, the remainder will be discharged back to sea in an unknown state of health. It is also unknown how many of the species discharged will survive the trip to the seabed and re-establish themselves. The shorter lived small benthic biota will recolonise the seabed during the next seasonal settlement of larvae. Populations of large biota will also be supplemented by seasonal recruitment of larvae[142].

345. Mr West advised that the literature estimates of the "*time taken for a benthic community to recover from a disturbance event of the scale of sand dredging is between 6 months to several years*"[143]. He predicted that the shallow sand layer extracted by the William Fraser's dredge head will result in a short recovery time of less than 1 year and similarly he considered there will be "*no significant differences in species composition and abundance of benthic communities in dredged areas as opposed to the non-dredged control areas*"[144].

[137] Ibid at [6.33]
[138] Ibid at [6.34]
[139] Ibid at [6.35]
[140] Mr West's evidence-in-chief at [6.36]
[141] Ibid at [6.36]
[142] Ibid at [6.40]
[143] Ibid at [6.41]
[144] Ibid at [6.44]

346. Particular focus was given during the hearing to the potential effects of the sand extraction on *scleractinia* or stony corals which are protected under the Wildlife Act (1953).

347. Professor Andrew Jeffs, a marine scientist for the Auckland Conservation Board who has worked in the Hauraki Gulf, including at Pakiri, raised concerns about the direct and indirect effects of sand extraction on biological processes. Dr Jeffs considered that the dredge vessel will cause "*continual and widespread disturbance to subtidal benthic habitats, which appear to include the presence of protected stony corals*[145]".

348. According to Mr West, stony corals were not previously recorded in either the sand extraction area or the control area in 2003, 2006 or 2011. However, in 2017 two samples recorded the presence of stony corals. One sample in the sand extraction area (T7-E, 88m inside the eastern side near the southern end of Area 1) contained 15 individuals and one sample in the control area (T10-3, eastern side in the middle of the control area) contained 1 individual. Both sites were in a depth of approximately 35m[146]. Mr West advised that "*this is relatively shallow for Stony Corals which have a normal habitat range from 50m to significantly deeper depths*[147]". The area deeper than 35m is not normally dredged as it is at the limit of current dredging technology.

349. Since stony corals are protected under the Wildlife Act (1953) sand extraction is required to avoid areas known to contain them. Consequently, Mr West advised the proposed conditions for the renewed consent require the area to be dredged is assessed for the presence of protected species and sensitive habitats, and that the area to be dredged is amended to exclude areas with protected species and sensitive habitats prior to being approved for sand extraction.[148]

350. Dr Kala Sivaguru, Council's Coastal Ecologist agreed with Mr West that "*amendments made to the draft EMMP to include a multi-staged process starting with the non-invasive sampling technique would be appropriate to avoid adverse effects on stony corals as required by NZCPS*[149]". Further, given that the proposed multi-staged approach is to be implemented, including non-invasive methods to detect the presence of them prior to undertaking sand extraction within the management cells, she concluded "*it is likely that the impacts on stony corals could be avoided*"[150].

Effects on Macrofauna / Shellfish

351. Mr Tamati Stevens provided us with a cultural perspective on biodiversity in the Taiao (living environment) on behalf of Te Whanau o Pakiri. He described the impacts of the declining environment on Maori cultural traditions. He explained that "*it is customary for whānau to serve kaimoana or the local produce, whenever there is an event. The*

[145] Professor Andrew Jeffs evidence-in-chief at [3]
[146] Ibid at [6.49]
[147] Mr West's evidence-in-chief at [6.36]
[148] Mr West's evidence-in-chief at [6.50]
[149] Dr Sivaguru's Coastal Ecology memo Feb 2022 at [1.2]
[150] Ibid at [1.2]

absence of the kaimoana is considered embarrassing, and an apology is offered whenever the local delicacy is absent from the table"[151].

352. It was Mr Steven's opinion that "*the lack of kaimoana served is an indication that the ancestral knowledge is not being taught to the next generations and indicates the following[152]*":

> *"a) Rangatahi are not learning to understand the value of traditional ways and are not familiar with the Maori environment.*
>
> *b) Maori are not adapting our tikanga moana and management techniques to meet the changing times, society and environment about us, and*
>
> *c) Failure to accommodate the Maori environment to enable manaakitanga, sharing with many. We are not managing the concerns and have not developed a common understanding of monitoring and standards (goals) to achieve the abundance required to do so",* (*ManatumoteTaiao, 2003*)[153].

353. Mr Stevens utilises a number of key indicators which he described to us in detail, such as Karepō (seagrass), in his research on declining ecosystems; linking them together to explain the whakapapa of the moana, which is based on Māori knowledge systems.

354. Mr Stevens concluded the dredging is causing significant change to the natural conditions of the essential ecosystems mentioned. He stated: "*it is clear to me the systematic breakdown is occurring due to the lengthy ritual of mining for sand. It amazes me that an essential element is allowed to be taken from the mōana with very little if any understanding of the impact to the taiao concerned*".[154]

355. In the case of Pakiri, the lack of living shellfish, in combination with other essential ecosystem services can cause regular algae blooms, not because of the eutrophication, but due to the lack of Karepō meadows in combination with the lack of life; where the Tuangi, Hururoa, and the other Whakapapa does not exist, in natural proximity[155]. He elaborated on this with the following narrative:

> *"If, the Karepō is failing, then the Takeke cannot tukuna (lay) ā rātou (their) hēki (eggs) Ki (in) te (the) pupuhuka (foam) o te (of the) tai rea (hightide), tai pariata (morning tide) o (of) te (the) Oturu (full moon), matitimuramura (Manuka white flowers are blooming indicating spring)."* (Makiha, Wananga at ParoreRahi, 2019)[156].

356. Mr West said the benthic biota and macrobenthic biota data presented in the application showed "*shellfish have not been destroyed in the sand extraction area, and in fact are not significantly different from that found in the non-sand extraction areas*"[157].

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[151] Mr Tamati Stevens evidence-in-chief at [10]
[152] Ibid at [11]
[153] Ibid at [11]
[154] Mr Tamati Stevens evidence-in-chief at [12a]
[155] Ibid at [12f]
[156] Ibid at [12n]
[157] Mr West's evidence-in-chief at [6.24]

357. We were told by Mr West that 95 per cent of benthic macrofauna individuals sampled, were deemed to have survived the pumping and screen system on the William Fraser. There were differences between the taxa groupings of gastropods, bivalves and crustaceans. When the differing sizes of biota were cross referenced with damage, the data showed the large bivalves seem to be more susceptible to damage when extracted than smaller bivalves[158]. Mr West noted there is still a possibility that they could suffer predation by fish on their descent to the seabed and prior to their reburial in the seabed sediments[159].

358. Mr West pointed out that: "*the longer-lived non mobile fragile animals will be adversely affected by any form of bottom contact activity, hence the condition to pre assess an area to be dredged and either approve or modify the area to be dredged based on the results, excluding areas of significant macrofauna*"[160].

359. Dr Jeffs was particularly concerned about the extensive band of horse mussel habitat that was identified in an expansive seafloor survey undertaken in 1995, which he claimed overlapped with the proposed area for consenting for sand mining[161]. He said we know from research on green-lipped mussels in the Hauraki Gulf that these shellfish beds or biogenic habitats have enormous ecological significance:

> "*Research on green-lipped mussel beds show that compared to adjacent seafloor without a mussel bed they have:*
>
> - *Six times the productivity*
> - *Three times more types of species*
> - *Four times more mobile animals*
> - *About ten times more small and juvenile fish*
> - *Remove around four times more nitrogen from the water column*
> - *Remove sediment from the water*
> - *Stabilise benthic sediment[162]"*

360. He contended that "*the high degree of uncertainty about the possible ecological impacts of this sand extraction activity warrants extreme caution in the decision making around further environmental disruption from sand mining[163]*".

361. With respect to the Hururoa, Mr West advised us that horse mussels are considered a transient species in that they form beds and are then affected by natural storm events which remove large numbers of animals. The beds often do not recover immediately but

[158] Ibid at [6.28]
[159] Ibid at [6.29]
[160] Ibid at [6.30]
[161] Dr Jeffs evidence-in-chief at [Section 3]
[162] Ibid at [3]
[163] Ibid at [3]

require appropriate conditions for the supply of and settlement of planktonic larvae from further afield.[164]

362. Dr Sivaguru considered there is "*potential that the disturbance of the seabed by sand extraction would have had an impact on horse mussel beds*[165]". She elaborated that this may be from a direct impact on the horse mussel beds and/or an indirect effect from increased suspended solid concentrations in and around the area during extraction. In addition, she considered that the ongoing disturbance in the area from sand extraction could have affected the recovery of horse mussel beds in the area. Further, Dr Sivaguru stated the literature suggests that horse mussels are periodically subject to widespread die-offs for which the cause is not definitely known but possible reasons include storm scour, shell damage and subsequent predation, as well as exceeding carrying capacity[166].

363. However, Dr Sivaguru concluded that while there is a high possibility that sand extraction within the consented area may have contributed to the absence of horse mussel beds after 2003, she stated there is "*no strong evidence to support that the decline or absence of horse mussel beds is only related to sand extraction activity within the area because, there are a number of other factors which contribute to the settlement and survival of this species*[167]".

364. Dr Sivaguru did acknowledge there is evidence that these horse mussel bed habitats have not recovered, noting that large bivalve species are likely to take longer to recover than small species.[168] She therefore did not agree that all macrofauna inhabiting the application area will recover within five years as suggested by Mr. West. Whilst she accepted there are limited number of options for the location of the control area, she strongly recommended having two control areas (areas which have not been extracted before) in the EMMP, to reduce the variability of comparison between impacted and unimpacted areas[169].

FINDINGS

365. We found that we did not have enough evidence to confirm that the effects on the macrofauna from the sand extraction were going to be at acceptable levels. Rather, as Mr Stevens (and Dr Jeffs) told us, as the whole system is interconnected any effects on one aspect of the ecosystem will directly impact on the next. From a cultural perspective, the evidence we received was that these adverse effects on the macrofauna were considered to be significant. We agree.

[164] Ibid at [6.31]
[165] Dr Sivaguru's Coastal Ecology Memo Feb 2022 at [1.1]
[166] Ibid at [1.1]
[167] Ibid at [1.4]
[168] Ibid at [1.4]
[169] Ibid at [1.4]

Effects on Birds

366. Concerns relating to the New Zealand fairy tern or tara-iti and New Zealand dotterels have been the subject of a number of submissions.[170] The seabird with the most significant potential for population level effects is the nationally and critically threatened fairy tern. The concerns raised by submitters focus on the loss of nesting habitat, disturbance of feeding, and loss or compromised food sources, and the significance is related to its very low numbers. It has been suggested by several submissions that the foraging range or area the fairy terns visit, overlaps with the sand extraction area, thus the operation of the dredging vessel could adversely affect the fairy tern.

367. Mr West provided us with an overview of where the fairy tern feeds, including the extent to which they forage and nest. Mr West advised us that the literature on diet and observations suggest the majority of fairy terns feed in estuaries, which are not affected by the dredging activity[171]. He further noted that since fairy terns are visual predators feeding during daylight hours, the majority of the dredging activity will not coincide with tern feeding[172].

368. Mr West told us that the fairy tern nests just above the high tide level on sandy beaches and estuarine shores. The majority of the remaining population nest on the shores inside the Mangawhai Estuary to the north-west of the sand dredging areas. Intermittently pairs have nested at the Te Arai and Pakiri Stream outlets on the open coast, at least 1800m west of the sand dredging area. Mr West agreed that changes in beach morphology could be detrimental to seabird nesting by reducing suitable space. However, he relied on Ms Hart's evidence that beach morphology changes at Pakiri and Te Arai beaches are not related to the offshore sand extraction, therefore he concluded that any changes to beach morphology are related to other causes such as natural sea level rise, climate change weather pattern changes, or other near shore or onshore sand extraction activity.[173] He did acknowledge that, if caused by sand dredging, these changes are not likely to be rapid events, much like climate changes, he considered the birds will have time to find suitable habitat or nest elsewhere.[174]

369. Like fairy terns, Mr West advised that dotterels nest on the shore and can be affected by extreme storm events, activity on the beach or erosion of the beach. Again, he relied on Ms Hart's evidence which shows that shoreline erosion is not directly caused by the extraction of sand from the offshore consented area. He advised that dotterels consume a wide range of suitably-sized marine, littoral, and terrestrial invertebrates, and occasionally small fish. None of these food sources occur in the sand extraction area, therefore, the dredging activity will not affect New Zealand dotterels food sources.[175]

370. Ian Southey, an ornithologist for TWOP has undertaken several research projects on the fairy tern. He was concerned about the lack of assessment on these threatened and at-

[170] A variety of other birds were also considered in the various assessments including red billed gulls, Caspian terns, penguins, and shearwaters.

[171] Mr West Evidence-in-chief at [6.14]
[172] Ibid at [6.15]
[173] Ibid at [6.13]
[174] Ibid at [6.13]
[175] Mr West's Evidence-in-Chief at [6.18]

risk species of birds that use the proposed sand extraction site. In particular, he noted there had been no effort made to identify the species present or identify any potential threats to them.[176]

371. Mr Southey explained that the fairy tern is New Zealand's rarest endemic bird. Since 2012 all five deaths of fairy tern have taken place in the one or two breeding pairs at Pakiri and Te Arai, but none elsewhere. He advised these are the breeding pairs most dependent on the area affected by the sand mining and he is concerned that the sand extraction may limit future population growth. He stated: *"if sand mining has affected food supplies enough to play a role in this mortality it would be a major concern"*.[177]

372. When monitoring fairy terns on Mangawhai Harbour on fine, calm mornings Mr Southey had often noticed that some to many of the normally resident birds often cannot be found. He suspects that these birds are feeding at sea as these are the conditions when the pair at Pakiri were most likely to be feeding at sea with well-defined slicks extending well offshore. This occurred at times when suitable fish in the harbour were abundant and even during the short, about four-hour, time window around low tide when harvesting gobies there is possible and efficient. He suggested that this indicates a preference for offshore food whenever it is available.[178]

373. Mr Southey considered if the effects of sand mining reduce the numbers of small pelagic fish in and around the area to be mined it will change the cost effectiveness of foraging at sea. It is uncertain just how big an area will be affected by the sand mining operations and whether or not fairy terns can reasonably be expected to fly beyond it if the impact is severe. If the quantity or quality of the food supply close to the nest is reduced then the energetic cost of harvesting fish relative to the gain in energy will also increase, perhaps to the point where productivity is impacted or adult survival is reduced.[179] He stated *"it is uncertain, at present, whether or not sand mining has actually caused adverse effects on fairy terns, or any other species, but it may have."*[180]

374. Mr Southey concluded that more certain information is required before resource consent could be granted.[181] He noted that monitoring of at-risk birds is not included in the EMMP and he urged that a *"cautious approach be taken and the resource consent be declined until the effects of dredging on fairy terns and other bird species can be properly assessed."*[182]

375. Mr West stated in the case of fairy terns there is "*no food chain linkage between the seabed biota of the offshore dredging area and fish prey of New Zealand Fairy terns in the estuaries*"[183]. Whereas Mr Southey advised us that:

> *"While we may not know just where fairy terns feed offshore we do know, from the observations at the Pakiri nest, that they do, and also that they obtain a moderate*

[176] Mr Southey – Evidence-in-Chief at [49]
[177] Ibid at [30]
[178] Mr Southey – Evidence-in-Chief at [39]
[179] Ibid at [44]
[180] Ibid at [56]
[181] Ibid at [58]
[182] Ibid at [61]
[183] Mr West's Evidence-in-chief at [6.17]

proportion of their food there. They have the ability to feed right across the mining site but the proposed mine covers much of the water that is available for them to use and their only means of avoiding it is to stay inshore where the published studies quoted by Mr West and Dr Sivaguru suggest that little feeding actually takes place. The possibility of existing but unrecognised, or further harm to fairy terns from sand extraction suggests to me that this mining site may be situated in the worst possible place in Auckland from an indigenous biodiversity perspective adding risk to the animal species most likely one to become extinct in the near future. To proceed with granting this resource consent without making any realistic attempt to assess the potential effects of the sand extraction on fairy terns, and also the other "threatened" and "at risk" bird species present, does not make sense."[184]

376. Mr Nick Beverage, a volunteer from Forest and Bird also discussed the distance fairy terns travel offshore for their food. Mr Beverage agreed with the evidence of Mr Southey which was that the fairy tern habitat extends to at least 2km offshore at Pakiri, which clearly overlaps with the proposal site. He noted that Mr West had not provided evidence to dispute that the fairy tern habitat extends to at least 2km off shore[185].

377. Mr Beverage also considered that "*the hours of operation proposed by the applicant would extend beyond hours of darkness and potentially overlap with the NZ Fairy Tern foraging at dawn and dusk when daylight hours start before 7am and extend beyond 6pm and when sand extraction would be undertaken on up to 10 weekend days per year with no time restriction*[186]." Again, we noted Mr Beverage agreed with Mr Southey's evidence because of his experience and expertise as opposed to the response provided by Mr West.[187]

378. The Forest & Bird submission stated that any adaptive management approach is unlikely to be appropriate given the precautionary approach and protection requirements in the NZCPS. It considered that caution must be taken first, not after the adverse effect has occurred. Forest & Bird therefore urged the application of the precautionary approach when considering the location and scale of the proposal and improvements in the monitoring requirements[188], if consent was granted. Mr Beveridge agreed with this stance.

379. Further, it was Mr Beverage's view that there needs to be a high level of certainty that any adverse effects on the fairy tern will be avoided by the proposal, if it is granted. This included any potential for adverse effects on their food chain as a result of sand extraction activities.

380. Dr Sivaguru stated "*the key aspect of fairy tern ecology that could be affected by the sand extraction proposal is food supply*[189]", noting that Mr Southey's evidence covers this in some detail.

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[184] Mr Southey – Supplementary Evidence at [48]
[185] Mr Beverage's Statement-of-Evidence at [8]
[186] Ibid at [8]
[187] Ibid at [9]
[188] Ibid at [12]
[189] Dr Sivaguru's Coastal Ecology Memo Feb 2022 at [1.5]

381. While fairy terns are mainly estuarine and inshore feeders, Dr Sivaguru noted they also feed in the Te Arai dune lakes, and some feeding probably occurs offshore, possibly out to 2km or more, but she stated we do not know what species are eaten or how important this is at critical times in the breeding cycle[190]. She concluded that "*further information is needed on the importance of offshore feeding. This is an information gap, although the proposed sand extraction area in the Mangawhai-Pakiri embayment possibly lies outside the main fairy tern foraging habitats*[191]". As a result, Dr Sivaguru initially agreed it would be appropriate to include a monitoring programme in the proposed EMMP related to food supply for fairy terns (as recommended in the Department of Conservation's submission).

382. Mr West, in his second evidence in reply told us he did not agree with Mr Southey or Dr Sivaguru, "*who both consider further research is necessary to establish that the food source of the New Zealand fairy tern is not affected by the activity of the sand extraction vessel*." To do so, Mr West advised this would likely involve gps/radio tagging of birds at some risk to the individual birds and for obvious reasons he did not support that[192]. Mr West considered there is an "*extremely low likelihood of New Zealand fairy terns attempting to feed in the same space and time as the sand extraction vessel in operation, and that the magnitude of the effect will be negligible as the New Zealand fairy terns have the freedom to catch fish in the offshore area other than the insignificant area temporarily affected by the operation of the sand extraction vessel*", therefore he considered the sand extraction from the new proposed offshore area will not have any significant effect on the fairy tern individuals or population.[193]

383. However, we did note that Dr Sivaguru ultimately agreed with Mr West that a monitoring programme should not form a part of the proposal:

> *"Overall, as identified in my assessment and addendum whilst the additional information on fairy tern foraging and food supply would be invaluable, I agree with Mr West that requesting monitoring programme on fairy tern foraging and food supply is out of the scope of this application. This is because there is no evidence to link any direct or indirect adverse effects from the sand extraction operation on birds including fairy terns"*[194]

FINDINGS

384. We prefer the evidence of Mr Southey, Mr Beveridge (and Dr Sivaguru to an extent) and find that given the uncertainties and the lack of information available on the potential impacts on the food sources of these endangered birds, we conclude that a precautionary approach should be applied and refuse consent, especially given the potential for significant adverse effects on the New Zealand fairy tern population. We find that the proposed conditions do not provide enough certainty that significant adverse effects on these birds will be avoided.

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[190] Ibid at [1.5]
[191] Ibid at [1.5]
[192] Mr West's second evidence-in-reply at [30]
[193] Ibid at [29]
[194] Ibid at [1.5}

Effects on Fish

385. A small number of submissions raised concerns over effects to fish or fisheries stocks by destruction of seabed habitats. An even smaller number of submissions suggested the sand extraction process produces underwater noise at levels harmful to fish.

386. Mr West advised the monitoring conducted to date has not shown significant adverse effects to benthic biota over and above that occurring naturally (as discussed above), therefore he concluded, relying on the site-specific levels of underwater noise that have been measured by Styles Group (set out below) that no adverse effects to fish food stocks has occurred or is likely to occur at the level of sand extraction proposed[195].

387. Relying on the site-specific levels of underwater noise that have been measured by Styles Group in 2020 and shown not to exceed levels deemed harmful to fish or marine mammals, Mr West advised:

> *"It has been identified that there is a risk of auditory masking for fish; however, the risks are substantially smaller than for marine mammals. For example, the 50% probability of a low behavioural response in the delphinids was within 28m compared to 0m for a moderate response. Behavioural response ranges of fish are considered to be smaller still, meaning very small areas and low numbers of fish could potentially be affected."*[196]

388. Dr Sivaguru's review on the impacts on fish was that any adverse effects will be less than minor[197].

FINDINGS

389. We agree with the expert opinions of Mr West and Dr Sivaguru and find that the impacts on fish from the sand extraction activity will be less than minor.

Underwater Noise

390. Dr Matthew Pine of Styles Group prepared a report, "Assessment of Underwater Noise Effects" (the Underwater Noise Assessment), dated 31 March 2020, which was submitted as part of the Section 92 response dated April 142020. He summarised the methodology employed and his assessment findings in his evidence to us.

391. Dr Pine advised that the Underwater Noise Assessment informed the Cawthron Institute's "Marine Mammal Assessment of Effects" (the Cawthron Assessment) dated 14 April 2020.

392. Dr Pine utilised underwater noise modelling to assess the effects on nine marine mammal species identified by the Cawthron Institute as species potentially affected by the activity, due to their presence in the proposed sand extraction area. Dr Pine advised that *"the potential noise effects on invertebrate and fish species are not expected to be*

[195] Mr West's Evidence-in-Chief at [6.21]
[196] Mr West's evidence-in-chief at [6.22]
[197] Dr Sivaguru's Coastal Memo dated January 2021 at [3.23]

greater than for marine mammals (due to their hearing biology)"[198], consequently, the underwater acoustic modelling was therefore performed specifically for marine mammals.

393. To assess the potential underwater noise effects of the sand extraction activities, Dr Pine obtained data to identify the existing soundscape; and he measured the noise levels of the William Fraser while in extraction mode within the proposed sand extraction area[199]. The predicted noise emissions of the William Fraser operating within the proposed sand extraction area were evaluated in terms of the critical distances for which risk of injury, behavioural effects and auditory masking will occur for the species of interest.[200]

394. Dr Pine concluded that injury from the sand extraction activities using the William Fraser is not expected to occur at any stage of operation (including active extraction) within the sand extraction area, for any species.[201] However, Dr Pine advised that behavioural effects can be expected to occur within limited ranges from the vessel and he relied on the findings of Ms Clement which are set out in the following section. In terms of auditory masking Dr Pine assessed the degree of Listening Space Reduction (**LSR**) on the identified marine mammals. The LSR was highest for fur seals (76% reduction in LSR within 15m of the vessel), followed by bottlenose/common dolphins (69% LSR), killer whales (68% LSR), then Bryde's whales (66% LSR). The spatial extent of any auditory masking (i.e. greater than 1% LSR) was highest for fur seals, followed by killer whales, bottlenose/common dolphins and then Bryde's whales.[202]

395. Dr Kala Sivaguru, Council's Senior Coastal Specialist had reviewed the risk of underwater noise effects and she concluded that the effects from the predicted levels would be less than minor, and that there is unlikely to be any risk of Temporary Threshold Shift (**TTS**) or Permanent Auditory Injury (**PTS**) for marine mammals in the extraction area.[203]

396. Both Dr Pine and Dr Sivaguru agree that if a different vessel to that of the TSHD William Fraser is used it would need to operate under similar conditions and be of a similar size and power, or smaller, for the effects to be commensurate with or less than what has been assessed in this process.

397. Dr Craig Radford, underwater acoustician for TWOP advised he would be concerned if the application was approved on the basis of the "*very limited acoustic assessment provided by the Styles Group*"[204]. Dr Radford was of the opinion that "*the likely effects on marine mammals from underwater sound generated by the sand extraction activity have not been adequately considered.*"[205]

[198] Dr Pine evidence-in-chief at [17]
[199] Ibid at [19]
[200] Ibid at [23]
[201] Ibid at [24]
[202] Ibid at [29]
[203] Dr Sivaguru, Coastal technical Memo dated January 2021 at [3.26]
[204] Dr Radford, Letter at [5]
[205] Ibid at [2]

398. He was particularly concerned about the potential impacts of transit activity of the sand extraction vessels between the Auckland offloading facilities and the Pakiri extraction sites. He considered the approval of the consent will result in a significant number of vessel transits, which will result in increasing the overall underwater noise levels, not only at the extraction site but along the entire transit path to and from Pakiri. He opined that this "*will expose marine mammals to increased noise levels above what they are currently exposed to. This could also potentially displace these animals from important feeding and breeding grounds in the Hauraki Gulf."*[206]

399. He advised that underwater sound is also important for many fish and invertebrate species as well and he noted that this was not addressed in Dr Pine's underwater acoustic assessment. Dr Radford was concerned that both within the extraction site itself and along the length of the vessel transit route many commercially and recreationally important fish and invertebrate species have the potential to be affected by the increase in noise levels. He advised that some of these animals are also *"not as mobile as the marine mammals and cannot simply swim away if disturbed by the noise generated as a result of the proposed activity."*[207]

400. Lastly, he raised the issue of ground roll or substrate-borne vibrations, which are generated when noise producing structures come into contact or close proximity to the seafloor, such as the extraction method. He noted this source of noise is *"particularly important for marine animals that live in and on the substrate, such as bivalves (e.g. Hururoa - horse mussels) and crabs (e.g. NZ paddle crab)".* Dr Radford further advised that: "*research has shown that substrate-borne vibrations can cause both behavioural (interferes with feeding) and physiological changes (structural damage) to these groups of animals."*[208]

401. In reply to the matters raised by Dr Radford, Dr Pine advised:

> *"The transit of the vessel is permitted under Policy F2.18.3 of the Auckland Unitary Plan. My initial assessment considered the noise from the vessel under extraction mode only, being the louder activity, given that the transit of the vessel is permitted under Policy F2.18.3 of the Auckland Unitary Plan."*[209]

402. Dr Pine confirmed he had assessed underwater noise effects on fish and invertebrates and concluded the underwater noise effects on fishes and invertebrates were less than for marine mammals, and therefore the assessment, management and mitigation afforded to marine mammals would also provide overlap for fishes and invertebrates.[210]

403. In addition, he confirmed that ground-borne vibrations may occur from the TSHD vessel while in extraction mode where the drag head moves over the sea floor. However, Dr Pine advised:

> *"there is so little scientific data on the effects of ground-borne vibration from sand extraction activities, as well as vessels, on benthic and interstitial fishes and*

[206] Ibid at [2]
[207] Ibid at [3]
[208] Ibid at [4]
[209] Dr Pine's Statement of Evidence in Reply at [9]
[210] Ibid at [12]

invertebrates that it is not possible to meaningfully assess such effects in a regulatory context."[211]

Further:

"If any ground-borne vibrations are generated, I expect that they would not propagate beyond the immediate vicinity of the drag head, where the threat of being sucked up the drag-head would be a greater impact than the ground-borne vibrations."

FINDINGS

404. We note that Dr Sivaguru's accepted the comments provided during the hearing by Dr Pine and agrees that there may be changes in the background underwater noise levels over time[212]. As such, Dr Sivaguru states it would not be appropriate to limit the underwater noise levels during the operation of sand extraction vessel. Dr Sivaguru accepted the deletion of the underwater noise condition. We agree, and if we were of the mind to grant consent then we would not have imposed a condition limiting underwater noise.

Effects on Marine Mammals

405. Dr Deanna Clement, of Cawthron Institute prepared a report, *"Kaipara Ltd Offshore Sand Extraction: Marine Mammal Assessment of Effects"* dated April 2020, which was submitted as part of the Section 92 response dated April 14 2020.

406. Having noted that *"no marine mammal research studies have focussed on the Mangawhai / Bream Bay region*"[213], based on all available species information, Dr Clement advised that "*the species most likely to be affected by the proposal are common and bottlenose dolphins, orca and Bryde's whales. Other species of interest include NZ fur seals, southern right and humpback whales, pilot whales, and sperm whales, due to their potential vulnerabilities or conservation status*."[214]

407. Based on the limited data available, Ms Clement did not consider the Mangawhai / Bream Bay coastal waters as ecologically significant habitats for nearly all of the above species. *"The exception is the small population of critically endangered Bryde's whales that use Hauraki Gulf waters as important resting and feeding habitats throughout the year. The general region also supports populations of nationally endangered or threatened bottlenose dolphins, orca and southern right whales that need to be considered in light of NZCPS Policy 11(a)."*[215]

408. Dr Clement advised the "*extraction activities more likely to affect marine mammals are the production of underwater sound and vessel movements associated within the general extraction region".* She noted that possible indirect effects of sand extraction

[211] Ibid at [15]
[212] Dr Sivaguru's Coastal Ecology Memo Feb 2022 at [1.3]
[213] Dr Clement's Statement of Evidence at [19}
[214] Ibid at [14]
[215] Dr Clement Statement of Evidence at [15]

include potential physical changes to the habitat itself that could adversely affect the health of the local ecosystem and / or impinge on important prey resources.[216]

409. Based on the spatial modelled results of Pine (2020), Dr Clement summarised the results of her review as:

> "*any effects from the underwater noise generated from this sand extraction proposal will likely be transitory and non-injurious for local marine mammals. The overall levels and character of extraction noise will be much less than the numerous vessels currently travelling to and from the Ports of Auckland on a daily basis. The likelihood of any hearing injury effects (TTS or PTS) occurring is considered not applicable (Table 2). Effects will be predominantly limited to the temporary masking of some noise signals when animals are within several kilometres of the dredge and a range of potential behavioural responses at closer proximity (< 400 m).*"[217]

410. The assessment on marine mammals also considered the potential for collision risks from the dredge vessel transiting through the Hauraki Gulf water. Dr Clement advised that the species considered most vulnerable to any potential vessel collisions include "*Bryde's, southern right and humpback whales and to a much lesser extent, bottlenose dolphins and orca (given their current endangered species status rather than propensity for vessel strike)*". In seeking to further reduce any accidental interactions with Bryde's whales, Dr Clement recommended that the activity should formally implement the Ports of Auckland's Hauraki Gulf voluntary transit protocol for commercial shipping.[218]

411. Dr Clement has assessed the overall risk of any impacts from sand extraction activities on local and visiting marine mammals to be *"less than minor to negligible, when considering the types of effects, their spatial scales and durations, likelihood, potential consequences and the mitigation options that are currently implemented."*[219]

412. To ensure that the most appropriate measures are in place and to reduce any identified risks, Dr Clement recommended that several best management practices and formalising of existing operational mitigation actions form a part of the development of a Marine Mammal Management Plan (MMMP).[220]

413. The Auckland Conservation Board raised concerns over the existing acoustic background along transit routes and how this project would be adding to those levels.[221] Dr Clement responded that in terms of underwater noise effects, multiple noise sources are not necessarily additive. Instead, she advised the loudest noise source usually covers or masks any quieter sources. Further, the noise levels generated from the proposal are expected to be lower than the commercial ships passing through the area, noting that the number of vessel trips to and from the extraction area will remain the same, or even reduce slightly, due to the increased volume capacity of the William Fraser.

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[216] Ibid at [16]
[217] Ibid at [34]
[218] Ibid at [17]
[219] Ibid at [48]
[220] Ibid at [17]
[221] Ibid at [53]

414. Mr Thomas Christie, Planner for the Director - General of Conservation while confirming that the findings of the Underwater Noise Effects prepared by Styles Group are generally accepted, considered it prudent for regular underwater noise monitoring to take place.[222] Dr Clement refuted the need for this to occur on the basis that there is little to be gained from regular noise monitoring unless something changes significantly in the operations from the status quo; i.e. new vessel, significantly different pumping system, etc.[223]

415. Mr Christie also considered a greater frequency of reporting is required within the MMMP, but provided no further details. In response, Dr Clement suggested one further change to the MMMP to require the extraction activity sightings log to be provided to Council and DoC upon request. It was Dr Clement's opinion that this level of marine mammal reporting is above and beyond what other vessels operating in the Hauraki Gulf are currently doing as part of the Hauraki Gulf Transit Protocol for Commercial Shipping.[224] She also pointed out to us that under the Marine Mammal Protection Act 1978, the vessel is obligated to report any injury or mortality to DOC as soon as practicable.[225]

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416. We find in favour of Dr Clement and Dr Pine (and Dr Sivaguru) on the evidence before us that any effects from the underwater noise generated from this sand extraction proposal will likely be transitory and non-injurious for the local marine mammals and fish. Further, the proposed MMMP, if the resource consent had of been granted, would suitably mitigate any potential effects on marine mammals.

Effects on Water Quality

The level of effects from discharges of suspended solids from the William Fraser

417. Both underwater observation, as well as above water observation of the plume of the William Fraser whilst carrying out sand extraction activities has been undertaken and inform the findings of Mr West.

418. Mr West advised that water quality testing was completed in 2019 to quantify the natural background turbidity and the suspended solids concentrations in the sand extraction area and that in the water behind the sand extraction vessel during normal operation.

419. During normal sand extraction operations, Mr West advised that a plume is created behind the vessel which is approximately as wide as the vessel at 16m, with very little lateral spread being visually obvious. A very weak surface plume has been shown to only be present at any one location for no more than 3 minutes 15 seconds. The subsurface non-visible plume settles through the water column over a period of about 26 minutes after the passage of the dredge.[226]

[222] Mr Christie Evidence-in-Chief at [30]
[223] Dr Clement Evidence in Reply at [9]
[224] Ibid at [15]
[225] Ibid at [28]
[226] Mr West Evidence-in-Chief at [6.5]

420. Mr West explained that water currents in the sand extraction area are considered to be weak, in the order of 4-7 cm/s on average up to 15 cm/s. Based on the settling time of 26 minutes, the water body that the plume is in, is not expected to move more than about 233m during the period of time for which the plume is present.[227]

421. Mr West concluded that "*the magnitude of effects of sediment discharges on water quality are expected to be negligible*"[228], in regard to the absence of contaminants in the sediments and the limited time period of the plume. He further advised it is not currently planned to operate more than one dredge vessel in the sand extraction area at the same time, thus cumulative effects from more than one vessel will not occur. Further, the short duration and small size of the plume means cumulative effects of repeated dredge passages on consecutive days or even within in the same day, will not occur. Other than natural events no other sources of suspended solids are known to input into the sand extraction area.[229]

422. On that basis, Mr West concluded that water clarity will not be adversely affected at the coast, and changes in water clarity will not be detectable or noticeable at Goat Island, Pakiri Beach, Te Arai Point or any other location where in-water recreational activity occurs, as any plume will be confined to the sand extraction area at its closest point being 1.3 km offshore.[230]

423. Further, the release of contaminants into the water from the seabed sediments is not expected by Mr West, as no contaminants have been found in the seabed sediments nor are there any sources of contamination. He considered the potential for a release of oils and fuel from the dredge vessel to be very unlikely and he advised us he was not aware of any such events occurring in the Pakiri embayment, by a dredging vessel. Such an event is only likely to occur if the vessel suffered a break down, damage or was in distress, which should not happen if the vessel has been maintained and operated in accordance with maritime codes of practice.[231]

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424. We had no opposing expert evidence in regards to water quality, including effects arising from sediment, turbidity or contaminants, which Mr West concluded would be negligible.

Recreational and Amenity Effects

425. Amenity values are defined in the RMA as "*those natural or physical characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes*."[232]

426. Many submitters, both Māori and Pākeha, told us about their perceptions of the adverse effects (harm) the sand mining was having on their appreciation of the Mangawhai-Pākiri embayment, particularly their enjoyment of the beach.

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[227] Ibid at [6.6]
[228] Ibid at [4.9]
[229] Ibid at [4.9]
[230] Ibid at [6.7]
[231] Mr West Evidence-in-Chief at [6.8]
[232] s2 RMA 1991

427. Similarly, a high number of submitters raised concerns about the proposal's potential effects on recreational values. These related to impacts on surf breaks (which are covered elsewhere in this report), recreational fishing and shellfish gathering, and the general enjoyment and amenity values of the Pakiri coastline.

428. Potential amenity and recreational effects identified were interlaced with other potential impacts including on coastal processes, ecology, landscape and natural character. We heard from long time Pakiri residents such as the Bradford, Reid and Stanley families about their observations of significant depletion of the dunes; changes in sand colour and depth from white sand to hard compacted sands or rock, the diminishing presence of shells and marine life along the shoreline, a decrease in surf quality, and the nuisance of noise and lighting impacts associated with vessel operation.

429. For example, Sharley Haddon, who has lived close to the beach for 50 years, and has walked and ridden horses along it regularly, told us "*There is an obvious change in sand colour and depth...it is now compact and hard and dark right up to the high tide mark. Now when I walk on the beach at low tide I get brown dirt on the soles of my feet this has never happened before...when I use my towel to dry my feet it goes brown with dirt...after swimming!!! And there is black sand showing in the water where the waves are breaking on the shore.*"[233] These experiences are clearly related to her appreciation of the beach's pleasantness and recreational attributes. Very similar observations and concerns were voiced by other submitters, as well.

430. In a slightly different vein, Mr Greg Bradford, who lives on the southern side of Rahuikiri Road, told us that "*for each of the 30 years we have lived here the sand barge have always been present. You could set your watch by the time they arrive, 6pm every evening. My heart literally sinks every time I see it because I know the irretrievable damage it is causing.*"[234] Clearly the sight of the extraction vessel is sufficient to undermine Mr Bradford's appreciation of the amenity values of his neighbourhood.

431. Ms Carolyn Reid and her daughter Vanessa, who have had a holiday home on Pakiri Block Road just south of the Poutawa Stream for over 50 years, provided many photographs illustrating their regular use of the beach and the changes they have noticed. One of these changes is the loss of shells on the beach which they told us were once much larger, numerous and varied but have more recently been depleted. They showed us many examples of what they had collected over the years. In their view this loss is a result of sand mining activities in the embayment which impacts their appreciation of the beach's amenity values.

432. These experiences were generally echoed by Ahi Kaa submitters.

433. Mr Farrow, landscape architect for Kaipara Ltd, described Pakiri Beach as having moderately high recreational use and identified it as a weekend and holiday destination for Aucklanders to swim, walk, fish and surf. Mr Hay relied on the assessments of Mr West and Dr Mead to conclude that effects on fisheries and surf breaks will be less than minor and otherwise narrowed his consideration of recreational issues to the immediate sand extraction area stating "*based on the location of the sand extraction area, the sand extraction methodology and experience to date, no effects on fishing or other*

[233] Evidence of Sharley Hadden, given on 10 May 2021, page 2.

[234] Evidence of Greg Bradford, given on 11 May 2021, page 1.

recreational activities (including scuba diving, sailing, motor boating or recreational fishing) is expected."[235] Further, he did not consider that being able to observe the William Fraser offshore adversely impacts the recreational use of the coastline.

434. Mr Kensington observed one or two vessels during his site visits in the waters of the proposed sand extraction area, however he stated that in his experience this part of the coastline is not heavily utilised by vessels. He did have some concerns about the potential for adverse amenity effects experienced by viewers of the sandmining operation, submitters' perceptions about the activity occurring by stealth, and the possibility of cumulative effects should more than one vessel be operating at once.

435. As such he recommended that conditions be imposed in respect of operational time restrictions and that an operational schedule be made available to the public to assist in maintaining the recreational use and enjoyment of the Pakiri coastal environment. This was principally in order to forewarn anyone planning to visit the beach for astrophotography purposes. Mr Farrow was in agreement about the need for operational time restrictions and supported such a condition.

436. Mr Hay did not have an issue with proposed time restrictions but disagreed with a condition requiring an operational schedule for the William Fraser to be publicly available. He considered the use of a phone application, such as the free and downloadable "Marine Tracker" to be a more appropriate tool for parties to use to identify if any boats (including the William Fraser) are operating in the area.

437. Overall, Mr Hay and Mr Hopkins were in agreement that effects on recreation and amenity values will be less than minor and acceptable from a resource management perspective

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438. Notwithstanding Messers Hay and Hopkin's conclusions, we acknowledge the statements of submitters in this regard and additionally, find it somewhat challenging to uncouple potential recreational and amenity effects entirely from other aspects of the application where we have found adverse effects to be more than minor. We accept that there has been a reduction in the recreation and amenity values of the beach as appreciated by the local community.

439. In respect of the policy framework regarding maintenance of recreation and amenity values, we generally agree with Mr Hay that the activity "*does not limit public access, or unreasonably affect recreational activities in the coastal environment*."[236]

440. With regard to the outstanding difference of opinion between Mr Kensington and Mr Hay regarding a publicly available schedule for the vessel, we concur with Mr Kensington's comments recognising the potential for a perceived adverse effect, and a cumulative effect, relating to the experience of the community in regard to operations, including night time operations. Further, what he referred to as a "no surprises" approach could serve to alleviate some of the Pakiri residents' concerns regarding transparency of operations, particularly those concerns around consent compliance. In our view, had we

[235] Hay EIC para. 101
[236] s42A report pg.35

granted consent, a condition would be required tasking the consent holder with provision of an operating schedule of the sand extraction activity (which could also direct people to the 'Marine Tracker' application referenced by Mr Hay as an alternative source of such information).

Visual, Landscape and Natural Character Effects

441. Mr Peter Kensington of KPLC provided Council with a review of the application (which was not provided to us) and, following notification and receipt of the submissions, prepared a follow-up technical review memo, appended to the s42A report. Following receipt of the pre-circulated evidence, he prepared an Addendum Technical Specialist Review memo dated 8 April 2021. A Supplementary Technical Specialist Review memo, dated 11 February 2022, was provided by Mr Kensington ahead of the resumed hearing.

442. Mr Kensington, in the absence of an assessment of landscape, visual and natural character effects from the applicant to comment on, came up with six issues to consider while preparing his first memo.[237] He then went on to consider the proposal under the headings, Visibility, Landscape Effects, Natural Character Effects, Cumulative Effects and Mitigation, while keeping those issues in mind.

443. While acknowledging that recent development north of Te Arai Point has increased the potential residential viewing audience, Mr Kensington concluded that "*adverse landscape effects are likely to be negligible or very low.*"[238] In terms of adverse effects on natural character, Mr Kensington acknowledged there was potential for adverse natural character effects to occur, but concluded "*adverse natural character effects of the proposal will be very low, but controls should be placed over night operations in order to ensure successful mitigation of adverse lighting effects*."[239]

444. Mr Kensington also considered the potential for adverse cumulative effects to arise, given that one other permit already exists and an additional extraction permit is in the pipeline. We were also advised by Mr Clapshaw, a submitter, that there have in the past been instances of up to four vessels operating simultaneously, although not necessarily in the same extraction consent area.[240] Mr McCallum confirmed that since the William Fraser started operations in October 2019, the Kapua, a sand holding vessel, has not been required to supply the Auckland market and is used for occasional supply to other markets, such as Waiheke, Coromandel and Tauranga.[241] It thus appears that more than one vessel may operate at any one time, on occasion.

445. Three matters were of concern to Mr Kensington in his memos. The first was lighting on the vessel. Like the Panel, Mr Kensington had had the opportunity to see the William Fraser operating at night and to see the level of lighting on board. He recommended a condition of consent to ensure there was no objectionable glare produced by lighting on the vessel.

[237] Memo from Peter Kensington to Colin Hopkins dated 28 January 2021, paragraph 12.
[238] Ibid paragraph 15.
[239] Ibid paragraph 19.
[240] Evidence of Damon Clapshaw dated 26 February 2021, paras 3.18 & 3.19.
[241] Evidence of Callum McCallum dated 3 May 2021, paragraph 31 and in reply to questions.

446. A number of local residents also told us about being able to regularly see the lights of the dredging vessel approaching from the south at dusk. We were also provided with photographs of the Coastal Carrier and a barge with lights on operating offshore from Poutawa Stream.[242] Ms Reid told us that the vessel "*looks like a bus, with blazing lights at the front*." She confirmed that lights from the inshore dredging activity were worse than from the offshore operation.

447. The second was the need for publication of the extraction schedule which is addressed elsewhere in this report. The third issue raised by Mr Kensington was a limitation on the extraction occurring during daylight hours on weekends and public holidays.[243]

448. Although Mr Kensington's conclusions in his first memo found effects were "*less than minor and not significant*",[244]after having heard the evidence of the other parties, his addendum memo was less certain. In relation to evidence from Ms Haddon on behalf of Te Whanau O Pākiri, he wrote, "*further information from the applicant is required in order for me to make an informed judgement as to whether the adverse cultural landscape effects identified by Ms Haddon can be successfully avoided, remedied or mitigated*."[245]He understood from Ms Haddon's evidence that past offshore sand mining activities have caused significant adverse effects on the cultural landscape of Pakiri Beach, including to the natural character of the seabed.

449. By his third memo, dated 11 February 2022, Mr Kensington had resolved, at least some of, his uncertainties. As already noted in the Mana Whenua section above, he found that the ongoing sand extraction activity had the potential to result in greater adverse effects than he had previously determined. He wrote "*In addition, much like the Coastal Processes Expert Group, without further detailed monitoring information, I am unable to determine whether adverse effects on the landscape and natural character of the beach and dune systems have occurred, and might continue to occur, as a result of ongoing seabed sand extraction*."[246]

450. He interpreted Ms Haddon's evidence as inferring that the effects on the cultural landscape are unable to be mitigated through controls over ongoing sand extraction activity.

451. As a result of references to potential adverse landscape visual and natural character effects in submissions, as well as the inclusion of the first KPLC Ltd memo in the s42A report, Kaipara Ltd commissioned Mr Mike Farrow of Littoralis Landscape Architecture to undertake an assessment and provide evidence to the first part of the hearing.

452. Mr Farrow appended a copy of Mr Stephen Brown's report "*Pākiri Sand Extraction Project - Landscape Assessment*" to his evidence, although the 27 attachments to that report were not provided[247]. In doing so, Mr Farrow suggested it "*provides a*

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[242] *Presentation of Carolyn Reid.*

[243] *Technical Specialist Memo of Peter Kensington, dated 28 January 2021, paragraph 23.*

[244] *Ibid paragraph32.*

[245] *Technical Specialist Memo of Peter Kensington, dated 8 April 2021, paragraph18.*

[246] Ibid, paragraph 37.

[247] Twelve un-referenced photographs taken by Mr Brown were included in the agenda, pages 177-188, and may have been appended to Mr Hay's assessment of discharges and disposal, and in response to Mr Kensington's preliminary comments on the application. It is noted that 'the Brown report' provided is dated September 2019, while the twelve photographs are dated September 2020, so we assume the photographs provided are not attachments to the report provided.

comprehensive description of the context of that *application and the landscape values that have been recorded along the related portion of the Pākiri coast, most of which is common to this application*."[248] He also confirmed that the report was prepared for a different proposal and emphasised that "*I have not been influenced by Mr Brown's assessment ("the Brown report"), preferring to focus my findings on my own analysis.*"[249]

453. Like Mr Hay, Mr Farrow referred to a number of nearby overlays in the AUP, namely:

- Outstanding Natural Landscapes Overlay - Area 22, Pākiri Beach;
- Outstanding Natural Landscapes Overlay - Area 28, coastline from Pākiri River to Omaha Cove;
- High Natural Character Overlay - Area 48, Te Arai and Pākiri Beach

454. Neither Mr Hay nor Mr Farrow (nor Mr Brown in his report) made reference to the other nearby overlay, namely:

- Outstanding Natural Feature Overlay - ID 149, Pākiri Beach.

455. Council's reporting planner, Mr Hopkins did, however, record this overlay in his s42A report. As the ONF sits within the same area as the ONL (and HNC, and is therefore difficult to differentiate on the AUP maps) and shares the same objectives, policies and rules as the ONL, the Panel were not concerned by this omission.

456. Mr Farrow emphasised the horizontal nature and large scale of the receiving environment; the proposed frequency and duration of extraction activities; and the fact that the majority of the extraction would occur at night.

457. He told us he had been asked to provide his opinion of the adverse landscape, visual and natural character effects under two different scenarios:

> *"(a) as if Kaipara Ltd is not already undertaking sand extraction in the embayment, but that the consented McCallum extraction is in operation; and*
> *(b) without the current sand extraction by McCallum Brothers Ltd*."[250]

458. He concluded, *"[i]n summary, it is my opinion that the two scenarios have closely balanced, very low levels of effects being generated by the Kaipara Ltd proposal. In the situation where both consents exist simultaneously, the slightly elevated effects of the McCallum consent serve to condition the lesser effects of the Kaipara proposal. In the circumstance where the Kaipara activity without the inshore conditioning of the McCallum consent, the greater distance and diminishing of perceived scale and detail of the vessel are the factors that limit experienced effects*."[251]

459. In answer to questions, Mr Farrow did confirm that his assessment was based on only one extraction vessel operating at any one time and that these conclusions might change were the number of vessels to change.

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[248]Statement of evidence of Mike Farrow, dated 12 February 2021, paragraph 31.
[249]Ibid paragraph 32.
[250]Ibid, paragraph 53.
[251] Ibid, paragraph 64.

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460. We find that we agree with both landscape architects that adverse visual effects will be minor, based on the use of only one vessel. However, we find we do not have enough evidence to confirm that the effects on natural character values from the sand extraction were going to be at acceptable levels.

461. We accept Mr Kensington's revised findings in relation to effects on the cultural landscape as they accord with our findings in regard to effects on Mana Whenua, as recorded elsewhere in this report. We too find that effects of the proposal on the cultural landscape values for the Ahi Kaa of Pakiri will be significant and adverse.

Lighting Effects

462. As recorded above, a number of submitters told us of the brightness of the lighting on the sand extraction vessels, as seen from their properties and the shore. It was not always clear whether the lights they referred to were operating in the in-shore or off-shore consent areas. Also as noted, we had the opportunity to observe the vessel operating in the off-shore consent area.

463. In response to concerns raised about lighting, the proposed conditions of consent appended to the evidence of Mr Hay, the Applicant's planner, dated 12 February 2021, included a condition controlling lighting on the vessel. Refinements were made to this condition during the course of the hearing and in the final version appended to Mr Hay's rebuttal evidence dated 21 February 2022, read:

> *"34. For all vessels associated with the sand extraction, to avoid or mitigate adverse effects on sea birds and on people viewing from land, lighting is to be inward and downward facing and minimised as far as practicable while still complying with any relevant maritime regulations and safety requirements."*

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464. This condition was accepted by all parties and, were we to be granting consent, would have been acceptable to the Panel.

Noise Effects (above water)

465. Mr John Styles, of Styles Group prepared a report, "*Assessment of Airborne Noise Effects*", dated 25 February 2020 on behalf of the Applicant which was submitted to Council as part of the Applicant's s92 response. He summarised the methodology employed and his assessment findings in his evidence to us.

466. Mr Styles assessed potential noise effects on both beach users in either the Coastal Transition Zone (CTZ) or the Open Space Conservation Zone (OSCZ), as well as people in the Rural Coastal Zone, (RCZ). The CTZ and OSCZ run in a narrow strip immediately inland from Mean High Water Spring (MHWS), while the RCZ is the closest residential zone in the AUP to the sand extraction activity.

467. Noise measurements of the William Fraser with the drag-head operating were taken in a number of weather conditions with both on and off-shore winds. Similarly, ambient noise

levels were measured at the coastal interface in a variety of weather conditions. Three dimensional modelling of the sound contours was then created for a number of environmental scenarios.

468. The assessment concluded that "*sand extraction activities will only be audible on the beach in the very calmest of conditions when swell heights are close to nil and wind speeds are also nil.*"[252] He went on to say, "*noise of sand extraction is likely to be barely audible even in meteorological conditions that enhance propagation towards the beach, and when the swell is very low*."[253]

469. In terms of potential impacts on residential receivers he concluded, "*the sand extraction noise levels received at the closest RCZ sites will be less than 20dB. This level readily complies with both daytime and night time noise limits applying in the RCZ. Due to the wave action on the beach, noise is unlikely to be audible above background noise levels at the closest RCZ receivers.*"[254]

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470. Both Mr Styles and Mr Qiu, Council's noise specialist, agreed that a condition of consent requiring compliance with maximum specified noise limits would be appropriate, were consent to be granted. We agree.

Economic Effects and Consideration of Alternatives

471. Mr Greg Akehurst of Market Economics prepared a report entitled, "*The Economic Contribution and Impact of Pakiri Sand Extraction*" dated August 2019, which was submitted as part of the lodged resource consent application.

472. The purpose of the economic report was to highlight the role sand extraction at Pakiri plays in facilitating construction in (primarily) the Auckland market, and the implications to the sector and wider economy of not being able to source sand from Pakiri.[255]

473. Mr Akehurst advised us that housing growth in existing urban areas along with infrastructure development, non-residential construction, sports fields and school field development and the ongoing repairs and maintenance of existing and new built form, parks and recreational areas are all significant drivers of sand demand.[256]

474. Furthermore, Auckland's importance and dominance of the New Zealand economy will continue to grow rather than diminish over the next 30 years[257]. We were told by Mr Akehurst that over the next decade, "*it is estimated that Auckland requires investment of around $26bn for infrastructure. The majority of this investment requires significant volumes of concrete and therefore significant volumes of sand*"[258].

[252]Evidence of Jon Styles, dated 10 February 2021, paragraph 29.
[253]Ibid paragraph 32.
[254]Ibid paragraph 33.
[255] This Report addresses all sand extraction at Pakiri — i.e. it covers both McCallum Bros Ltd's offshore sand extraction, as well as the nearshore sand extraction.
[256] Mr Akehurst's evidence-in-chief at [18]
[257] Ibid at [20]
[258] Ibid at [21]

475. Further Mr Akehurst advised: "*sand is a low value, high transport cost item that needs to be sourced close to final use, sources in the south should be used by southern developments while developments in the centre and north should be supplied by the northern sand resources*"[259].

476. In order to understand the value of renewing the resource consent for sand extraction at Pakiri, Mr Akehurst assessed the costs and benefits associated with the potential renewal in comparison with the principal alternatives to sourcing sand from the Pakiri marine consents.[260]

477. He concluded that the costs and benefits, from an economic perspective, are mostly derived from transportation costs (or their avoidance) from the Pakiri extraction site to the main markets compared with the principal alternatives.

478. We were told by Mr Akehurst that the current consented maximum volume from the Pakiri offshore location is 270,000 tonnes. This accounts for 16% of the overall maximum market supply. Of that total maximum consented amount, a total of 210,000 tonnes has been sold into the Auckland market, which equates to 26% of the current market supply.[261]

479. Although he acknowledged that there is theoretically enough capacity within other resources across the Auckland Region to meet the deficit caused by the expiry of the Pakiri consents, Mr Akehurst stated "*in practice this is likely to be relatively expensive and inefficient in terms of transport. Renewing the Pakiri consent ensures a steady supply of high-quality sand to different markets in the North Island and requires no further infrastructural expansion or maintenance*"[262].

480. Mr Akehurst considered the renewal of the Pakiri consents will lead to a "*direct cost-saving of at least $132 million from the transport cost savings within Auckland between 2023 and 2043 (based on the avoided direct road transport and environmental costs)*[263]".

481. In his evidence-in-chief he concluded:

> "*based on a current market share of 41% in the Auckland region, the Pakiri sand resource is one that needs to be considered as regionally significant and is potentially nationally significant given Auckland's future growth and role as a driver of national economic activity. As such, it is essential that access to such an important resource is maintained*"[264].

482. Mr Lee Skinner provided corporate evidence for Allied Concrete and he advised the Panel that "*at the current time there is no alternative to the use of sand for concrete production at the production rate required to meet the demand of the community*[265]."

483. He said that the sand currently sourced from the application site is:

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[259] Ibid at [22]
[260] Ibid at [49]
[261] Ibid at [48]
[262] Ibid at [68d]
[263] Mr Akehurst's evidence-in-chief at [68f]
[264] Ibid at [72]
[265] Mr Lee Skinner's evidence-in-chief at [2.3]

"very good for concrete production because it has a very uniform and consistent grading (size distribution), it is "clean" and largely free of material contaminants so it requires minimal processing[266]".

484. Further:

"The sand is transported to our concrete batching plants from the McCallum Sand Yard at the Ports of Auckland. In terms of timing, cost and average transport distance this is efficient.

We have investigated, and used, alternative sand supplies for our Auckland plants over the years, including Tomorata sand, Waikato River (Tuakau) sand, processed recycled glass, Kaipara inshore sand (Winstones).

These alternative sources are not suitable for a variety of reasons.

(a) Both Tomorata and Waikato River sand require transport over significantly longer distances; cost, fuel usage (carbon footprint) and truck movements on already congested roads,

(b) Waikato River sand increases potential alkaline silica reaction issues with some aggregates,

(c) Tomorata sand had a coarse grading which impacted concrete properties,

(d) Inshore sand deposits, limited supply – sand shortages were a fact of operational life, and

(e) Recycled glass is difficult to source in suitable quantities (even as a partial replacement), has increased health risks due to the respirable silica, and is expensive.

There is no manufactured sand in New Zealand at the current time. It would not be economically efficient to import manufactured sand for concrete production from overseas if there was a suitable source[267]".

485. He elaborated that "*we are concerned that if the sea-based supply was swapped with a sand source from a quarry in the Waikato Region that this would result in a significant increase in truck movements in order to meet the supply/demand for our Auckland plants*.[268]"

486. Mr Skinner concluded by saying he "*fully supports the continued sand mining at the Auckland Off-Shore Sand Mining Site as this provides a secure and efficient supply of sand which is critical for sustainable concrete production in Auckland. An efficient and*

[266] Ibid at [2.6]
[267] Ibid at [2.7 – 2.10]
[268] Ibid at [2.12]

secure sand supply is critical for the on-going economic and social wellbeing of the Auckland community[269]."

487. Dr Jeffs of the Auckland Conservation Board considered the material presented by the applicant did not adequately address the potential for alternative sources of sand. He stated, "*while some alternative sources of sand are identified, their potential to replace in full, or in part, the use of sand from Pākiri Beach is given cursory assessment. There is no appraisal of the capacity of the Auckland sand market to absorb any additional supply costs given the potential risk and impact of conservation and amenity risks of the scale of sand extraction from Pākiri Beach proposed by the applicant*[270]".

488. James Carnie presented legal submissions on behalf of the Mangawhai Harbour Restoration Society who also raised the matter relating to the availability of alternative sources of sand. He submitted that the application "*fails to identify or meaningfully consider several available alternative sources of sand (including numerous quarrying and dredging operations) in the upper North Island. The application also misrepresents the viability of one notable alternative source, being Kaipara Harbour, which it portrays as an unsuitable option*[271]."

489. Mr Carnie told us that "*the most significant commercial source of coastal sand in the Auckland region is the extraction of sand from within the Kaipara Harbour. Winstone Aggregates currently holds a consent to extract up to 350,000m*^{3} *per annum (CST80294086), and Mt Rex Shipping currently holds a consent to extract up to 450,000m*^{3} *per annum (CST80294873)*[272]*."*

490. He further stated that "*the focus of Mr Greg Akehurst's economic evidence for the Applicant is to demonstrate that the costs and benefits of extraction at Pakiri are preferable to those at Kaipara Harbour. However, in reaching that conclusion, Mr Akehurst makes several speculative and unsubstantiated assertions, which ultimately undermine his analysis*.[273]"

491. The Society considered it is unrealistic for Mr Akehurst to suggest that there would be 'no renewals' of the sand extraction consents from the Kaipara resources, leading to Auckland's sand supply reaching 'zero'. Mr Carnie told us that Mr Akehurst also "*failed to recognise the numerous other sources of sand in the Auckland region, most of which comes from quarries, not coastal sources (it appears that Mr Akehurst is not aware of the land-based supply sources that account for 66% of the total Auckland supply market)*[274]*."*

492. In addition, Mr Carnie considered that Mr Akehurst's analysis of transportation costs "*is seriously flawed because his analysis assumes that the final destination for all potential sand sources (whether transported by road or sea) would be downtown Auckland City. Of course, the sand extracted offshore at Pakiri is (for the most part) offloaded at the Port of Auckland, however that is not the final destination for the sand, which still needs*

[269] Ibid at [2.14]
[270] Dr Jeff's evidence-in-chief at [4]
[271] James Carnie Legal Submissions at [4.1]
[272] Ibid at [4.4]
[273] Ibid at [4.5]
[274] Ibid at [4.9]

to then be transported - by road - to its final destinations. That road transportation of Pakiri sand is not counted by Mr Akehurst.[275]"

493. He said: "*it is also incorrect for Mr Akehurst to assume that all sand transported by truck from Helensville (ie. the Kaipara Harbour sources) would be brought into the "Auckland CBD"[12]. In reality, the journey would often be far less. For instance, Mount Rex and Winstone Aggregates' sand distribution yards are located in Helensville itself (as shown on the map at Appendix A of Mr Akehurst's evidence). Also, major concrete manufacturers such as Atlas Concrete, Firth Concrete and Allied Concrete are all based north of Auckland City at Silverdale, Albany and Kumeu (i.e. much nearer to Helensville). The associated transportation costs from Kaipara Harbour sources would therefore be far less than those calculated by Mr Akehurst*.[276]"

494. Mr Carnie concluded that "*in both scenarios (Pakiri and Kaipara Harbour sources), transportation of the sand to its final destination is not accounted for by Mr Akehurst. The true transportation costs are therefore unknown and Mr Akehurst's evidence must be taken as inconclusive and unreliable.[277]"*

495. The Society further submitted that:

> *(a) "The sand system at Kaipara Harbour is dynamic and sustainable – there are millions of cubic metres of sediment input each year; and*
>
> *(b) Notwithstanding the extraction already taking place by other operators in the industry, there is plenty of additional sand available at Kaipara Harbour to meet Auckland's current and foreseeable requirements.[278]"*

496. Mr Carnie also pointed out to the Panel that "*McCallum Bros Ltd has previously acknowledged the Kaipara Harbour as an alternative source for sand*".

> "…*Mr McCallum said the company accepted near-shore extraction at Pakiri would not give a long-term supply and intended to develop the offshore Kaipara resource as an alternative future source*.[279]"

497. We note that Mr Hopkins generally agreed with Mr Akehurst's assessment, concluding: "*mineral extraction activities in the coastal environment can have social and economic benefits and can be appropriate activities in the coastal environment*[280]".

498. In his rebuttal evidence, Mr Akehurst reinforced: "*although there are a number of existing alternative sand extraction sources in and around the Auckland Region, the reality is that they are not as economically or environmentally efficient or effective at getting sand to market as the McCallum Bros Ltd sand sourced from their consents in the Mangawhai-Pakiri Embayment*[281]." He further elaborated in response to questions from the Panel

[275] Ibid at [4.10]
[276] Ibid at [4.11]
[277] Ibid at [4.12]
[278] Ibid at [4.15]
[279] Ibid at [4.21]
[280] Section 42a report, page 23
[281] Mr Akehurst's rebuttal evidence at [49]

that those alternatives are a significant additional cost to the Auckland economy which is already under pressure from building material price increases.

499. When questions were posed to Mr Akehurst about the Helensville sand supply and the rail freight alternative (as opposed to road transport), he informed us he had looked into the costs associated with that, but the costs were not easily available. Therefore, on the basis that the rail line at Helensville has been available for around 100 years and the fact that it had not been used so far, he concluded that it is just not economically viable for it to happen, therefore he did not consider rail freight was a viable alternative.

500. When we put the question to Mr Akehurst of what would be the economic effects of the Pakiri sand consent not being renewed he advised it is not going to impact on the demand for concrete for sand demand out of Auckland. Instead, prices would go up because that volume of sand which is currently taken from the offshore consent at Pakairi (270,000 tonnes) has to be sourced from elsewhere, and he concluded all of the alternative sources are more expensive. So, while it is a relatively small percentage of the overall construction costs, Mr Akehurst responded that the cumulative effects of the price rises will start to impact on the household buying public, which while not being a vast percentage of the overall construction costs, is not insignificant.

FINDINGS

501. We were not convinced by Mr Akehurst that the renewal of the Pakiri offshore sand extraction consent was required from an economic effects point of view. We heard that there are significant alternative sand sources available, for example at Kaipara Harbour from the Mangawhai Harbour Restoration Society and the Auckland Conservation Board, and that there are alternative ways of transporting the sand to its end destination. We were not provided with conclusive evidence as to whether the costs of these alternatives would be more (or less) expensive than sourcing and transporting sand from the off-shore site at Pakiri.

THE AUCKLAND UNITARY PLAN – OPERATIVE IN PART (AUP)

Other relevant provisions of the AUP

502. Having initially considered the relevant provisions of the regional coastal plan, consistent with the *Tauranga* decision of the High Court, we now consider the relevant provisions of other chapters of the AUP. The most relevant expert planning evidence was presented by Messrs Hopkins and Hay and Dr Mitchell. Overall Messrs Hopkins and Hay had concluded the proposal was consistent or generally consistent with all of the relevant provisions of the Chapter B, Regional Policy Statement (RPS) chapters.

503. Mr Hopkins in his s42A report identified Chapters B4, B6, B7 and B8 as being relevant, but did not assess the specific provisions of any of these chapters.

504. Mr Hay identified the same chapters as Mr Hopkins as being relevant. Mr Hay assessed what he considered to be the most relevant provisions.

505. Dr Mitchell took a slightly different approach to the other two planners. Instead of forming an opinion on the extent to which the proposal was consistent with these chapters, his overall conclusion was that:

> *"52. The provisions of the relevant planning direct that a precautionary approach be taken; that the natural and physical resources in this area be managed in an integrated way; and that the cumulative effects need to be considered."*

506. We start our considerations with Chapter B8.

Chapter B8 – Coastal Environment

507. With respect to Chapter B8, Mr Hay's assessment in his EIC included the following.

> *"120. The proposal will not have significant adverse effects on those areas of the coastal environment which are not otherwise identified as having outstanding or high natural character.*
>
> *121. …the proposed sand extraction area is generally within the already consented area (except for part of the landward boundary) but the area which consent is now being sought for has been significantly reduced to reflect that area where sand extraction has been undertaken and can reasonably be expected to occur in the future.*
>
> *122. Given the depth of sand extraction is seaward of the DoC, the sites history of sand extraction, the lack of significant habitats and features, the ability to monitor the site and its accessibility to the Auckland market, it is considered that the site is an appropriate area for continued sand extraction. In particular, sand extraction, site monitoring and delivery of sand to the Auckland market can be undertaken at this site in an efficient manner.*
>
> *123. Sand extraction can be continued at this site in a manner which avoids significant adverse effects on the environment (including along the coastline) while also avoiding potential conflict with other coastal activities or create risk of reverse sensitivity effects.*
>
> *125. Given the history of sand extraction in this area, the studies undertaken for the original application, the monitoring and assessment undertaken during the life of the current consent and the latest assessments, it is considered that a precautionary approach is not required to be undertaken as the potential effects are well known and documented.*
>
> *128. The continued sand extraction will have a positive economic effect in terms of efficiently providing a required construction product to the Auckland community. The sand extraction can be continued in a manner which does not affect the environmental quality or life-supporting capacity of the Hauraki Gulf and no potential adverse cumulative effects have been identified.*

129. The proposal will not result in any further degradation of the coastal environment in this location or the net loss of sensitive marine ecosystems. The extraction site is off-shore, seaward of the DoC and approximately 3.8 km from the Cape Rodney-Okakari Marine Reserve. The potential presence of stony coral and scallop and horse-mussel beds have been identified. The use of the pre-sand extraction assessment methodology will identify such areas and allow for these areas to be excluded from the approved sand extraction areas."

508. In his rebuttal evidence dated 21 February 2022 Mr Hay acknowledged that after reading the JWS there is now a stronger argument that a precautionary approach is required particularly in terms of monitoring.

509. In his EIC under the heading "Regional and National Directives" Mr Hay stated that:

"231. I have addressed the relevant objectives and policies of the AUPOP which includes the Auckland Regional Policy Statement and the Auckland Coastal Plan. I disagree that the proposal is "out of step" with the AUPOP as the AUPOP specifically provides for this activity as a discretionary activity. As a discretionary activity the AUPOP recognises that this activity may be appropriate and can be undertaken in locations where effects on the environment will be to an acceptable level (with appropriate mitigation/consent conditions). If sand mining was considered to be inappropriate activity within Auckland then it could have been deemed a prohibited activity."

FINDINGS

510. Mr Hay provided the most comprehensive assessment of the Chapter B8 provisions of all the planners. While he had identified the above quoted provisions in support of the proposed extraction area, there are a number of provisions that he had not commented on.

511. In terms of Policy B8.3.2 (3) (d), he did not specifically address how the proposal would *"enable the use of the coastal marine area by Mana Whenua for Maori cultural activities and customary uses."*

512. In terms of Policy B8.5.2 he did not specifically address policies (11) and (13).

"(11)Work in partnership with Mana Whenua to protect and enhance culturally important environmental resources and values of the Hauraki Gulf that are important to their traditional, cultural and spiritual relationship with the Hauraki Gulf.

(13) Require management and decision-making to take into account the historical, cultural and spiritual relationship of Mana Whenua with the Hauraki Gulf, and the ongoing capacity to sustain these relationships."

513. We consider that the "Issues" at B8.1 and the "Explanation and principal reasons for adoption at B8.6 are relevant and that they assist in weighing or balancing the sometimes competing aspects of the use of the coastal environment and the natural and physical resources of the coastal environment.

514. In B8.1 the issues include the need for uses within the coastal environment to be in an appropriate place and of an appropriate form.

515. In B8.6 the explanation includes:

> *"The coastal environment and the resources of the coastal marine area comprises some of the most important taonga to Mana Whenua, who have a traditional and on-going cultural relationship with the coast."*

516. With respect to the appropriateness of the siting of the proposed extraction area, we find that Mr Hay has placed considerable weight on the current and past use for sand extraction, and, on the economic and efficiency benefits. He also placed considerable weight on the location of the proposed extraction area beyond the depth of closure. Based on the JWS we doubt the depth of closure approach can now be relied upon to support this as an appropriate location. In contrast however he has not satisfactorily addressed the aspect of "appropriateness of the siting" in terms of the cultural relationship that Mana Whenua have with this particular coastal environment.

517. When Mr Hay addressed the regional directives in his EIC, he concluded that:

> *"If sand mining was considered to be inappropriate activity within Auckland then it could have been deemed a prohibited activity."*

518. We note that he recognised that this proposal is a discretionary activity. As a discretionary activity he stated that this activity may be appropriate and can be undertaken in locations where effects on the environment will be to an acceptable level.

519. From Chapter A of the AUP we note the following description of a discretionary activity.

> ***"A1.7.4. Discretionary activity***
>
> *Resource consent is required for a discretionary activity and may be granted or refused for any relevant resource management reason. An application for resource consent for a discretionary activity will be fully assessed in terms of the relevant provisions of the Plan, including all relevant objectives and policies, and the Resource Management Act 1991, including in particular Part 2.*
>
> *Activities are classed as discretionary where they are not generally anticipated to occur in a particular environment, location or zone or where the character, intensity and scale of their environmental effects are so variable that it is not possible to prescribe standards to control them in advance. A full assessment is required to determine whether the activity, subject to any conditions, would be appropriate in terms of the provisions of the Plan, the effects of the activity on the environment and the suitability of the proposed location."*

520. We find that Mr Hay has only focussed on one aspect of how a discretionary activity is to be assessed. In doing so he has overlooked the need to also assess the proposal *"in terms of the provisions of the plan"*and *"the suitability of the proposed location."*

521. In terms of the regional coastal plan provisions of Chapter F2 we find the provisions of Chapter B8 are consistent with and do not conflict with the mineral extraction provisions at F2.6. Policy F2.6.3 provides for sand extraction "*from appropriate areas, having regard to the values of the area*," including "*Mana Whenua values*."

522. Overall we find that Mr Hay has taken a too narrow an approach to the provisions of Chapter B8, and, has not recognised the significance of this particular coastal environment to Mana Whenua, nor has he given sufficient assessment to "the provisions of the plan" and "the suitability of the proposed location" when concluding the proposed extraction area is an appropriate one.

B6 Mana Whenua

523. With respect to Chapter B6 Mr Hay's in his EIC stated:

> *"130. Turning to B6 (Mana Whenua), the applicant currently has a Memorandum of Understanding with the Ngatiwai Trust Board for the current consent. As outlined by Mr Riddell, although this worked well initially there have been issues in giving effect to it in recent years with staff changes at the Trust Board and concerns being raised about the distribution of the Cultural Liaison Fee.*
>
> *131. The applicant has entered discussions with both the Te Uri o Hau and Ngati Manuhiri Settlement Trusts on a new Cultural Liaison Agreement. I understand that agreement is close to being finalised with Te Uri o Hau but there have been on-going issues in obtaining feedback from Ngati Manuhiri. This agreement includes the establishment of an iwi liaison group to ensure that both Te Uri o Hau and Ngati Manuhiri representatives can oversee the carrying out of the operation and to ensure iwi are afforded the opportunity to implement their kaitiaki role in respect of the sand resource.*
>
> *132. Cultural Impact Assessments were sought from both Te Uri o Hau and Ngati Manuhiri. An assessment was received from Te Uri o Hau and submitted to Council. No assessment has been received from Ngati Manuhiri.*
>
> *133. Having assessed the relevant objectives and policies of the RPS I have formed the opinion that the granting of the consents would be consistent with the RPS."*

524. In his rebuttal evidence dated 21 February 2021 he stated that:

> *"64. In terms of Policy B6.2.2, opportunities have been and continue to be provided to tangata whenua to participate in this consenting process (though the provision of cultural impact assessments if they choose, submissions and evidence and through the continued dialogue MBL is undertaking with the two Settlement Trusts) and in the consent through the recommended conditions relating to the CLG. Further opportunities outside the Resource Management Act 1991 processes may arise through the Cultural Liaison Agreements currently being negotiated. I therefore consider that Policy B6.2.2is being given effect to.*

65. In respect to Policy B6.3.2, it is considered that an appropriate assessment of cultural effects has been provided. It is clear there are a range of views on the nature and degree of the effects on cultural values, which is not uncommon, but Council has not identified that an appropriate assessment has not been undertaken through the consenting process.

66. In terms of Objective B7.4.1(6) and supporting Policy 7.4.2(7), I remain of the opinion that mana whenua values have been recognised and can be provided for and guidance on how this can be achieved was provided in the Cultural Effects Assessment. This will result in effects on cultural values being minimised to an appropriate level although I recognise that effects on cultural values cannot be practically avoided in their entirety. Furthermore, effects on cultural values may differ amongst different people depending on their relationship with the area. The AUPOP is clear that not all effects on cultural values have to be avoided if this is not practical."

525. Earlier in our decision under the heading "Mana Whenua" we have addressed the evidence presented during the hearing on behalf of Mana Whenua and set out our findings. We have also discussed the provisions of Chapter B6 there as well.

526. In addition to the specific objectives and policies, we note the following wording in B6.6 under the heading "Explanation and principal reasons for adoption."

"In making and implementing the Plan, the Council must, as a matter of national importance, recognise and provide for the relationship of Mana Whenua and their culture and traditions with their ancestral lands, water, sites, wāhitapu and other taonga. The Council must also:

- *have particular regard to kaitiakitanga;*
- *take into account the principles of Treaty of Waitangi/TeTiriti o Waitangi; and*
- *recognise the historic, traditional, cultural, and spiritual relationship of Mana Whenua with the Hauraki Gulf/ Te Moana Nui o Toi/Tikapa Moana.*

In the policies relating to Mana Whenua values, the Unitary Plan seeks to ensure that resource management processes in Auckland are informed by Mana Whenua perspectives, including their values, mātauranga and tikanga. Mana Whenua perspectives need to be considered early within resource consent processes, accord status in decision-making and have an opportunity to influence outcomes."

FINDINGS

527. Consistent with our findings on Mana Whenua issues earlier in our decision, we have preferred the planning evidence of Mr Hopkins to that of Mr Hay. While Mr Hay specifically addressed Chapter B6 provisions we find that his conclusion that, providing the opportunity for Mana Whenua to participate in the proposed Community Liaison Group, if consent were to be granted, falls well short of what Chapter B6 anticipates. In respect of the Ahi Kaa this is particularly in relation to engagement early within the consenting process, and an opportunity to influence outcomes.

528. In contrast to Mr Hay, Mr Hopkins has not specifically addressed individual Chapter B6 provisions. However during the hearing process she provided updates with respect to cultural values. In his s42A report, dated 2 February 2021,when commenting on Chapter B6 he stated:

> *"It is recognised that the applicant has engaged with Tangata Whenua (noting that engagement remains ongoing)"*

529. His overall conclusions in his s42A report were as follows.

> ***"19. Conclusion***
>
> *Having considered the proposal against the relevant matters in the AUP (OP), the proposed extraction of sand and associated discharge has been demonstrated to be consistent with the direction of the Plan with respect to mineral extraction activities and discharges in the General Coastal Marine Zone. The proposal is considered to have positive social and economic benefits associated with the extraction of the resource, whilst the actual and potential adverse effects can be managed to ensure that they are acceptable from a resource management perspective.*
>
> *In the context of the consideration and testing the broad discretionary aspects of the application, the proposal is also considered to be consistent with the outcomes of the NZCPS, HGMPA, and intent of Part 2 and is an efficient use of a natural resource.*
>
> *Overall, the proposed sand extraction is considered to be acceptable in the context of the receiving and surrounding coastal environment, and I am satisfied that subject to conditions of consent this proposal can be supported from a resource management perspective."*

530. In his Addendum report, dated 9 April 2021, before the hearing commenced, he stated:

> *"Cultural Values*
>
> *As outlined in the s42A report, a number of submissions in opposition to the application raised that the proposed activity will have broad adverse cultural effects. These cultural effects have been identified and expanded upon in the evidence of Olivia Haddon and Pita Rikys on behalf of Te Whanau O Pakiri. This is also reflected in the in the evidence submitted on behalf of the Pakiri G Trust (Christina Baines and Wayne Greenwood).*
>
> *This evidence identifies that in considering effects on cultural values, and informing the considerations of the application against the New Zealand Coastal Policy Statement(NZCPS), that consideration needs to be given to these mana whenua groups, beyond the mana whenua engaged by the applicant.*
>
> *The Auckland Council identify the representation of mana whenua interests by 19 iwi authorities, and whilst this does not seek to exclude other mana whenua groups from input, this does provide a starting point to assist applicant's in engaging with mana whenua to identify whether proposals will affect mana whenua values*

(Council's internal processes also make the lodgement of applications available to all iwi authorities for comment). The pre-circulated evidence identifies that mana whenua consultation should extend beyond these iwi authorities. Although the pre-circulation of evidence has enabled the identification of these values (particularly beyond the extent of the submissions), it is expected that a greater understanding of the cultural values and the expectations around the ability and practicality of either avoiding, remedying or mitigation these effects will be addressed. It is however understood that (and not undermining their position that consent should not be granted) that should consent be granted that Te Whanau O Pakiri and Pakiri G Trust seek meaningful ongoing consultation and engagement in recognition of their rohe.

Based on the evidence it is recommended that should consent be granted that the provisions in the conditions for consultation and engagement with Te Uri O Hau Settlement Trust be broadened to recognise the rohe of the other identified mana whenua groups.

It is acknowledged that effects on biodiversity and ecology also present as effects on cultural values. The assessments of effects on biodiversity and ecology are considered in the s42A report and with respect to the evidence submitted in the specialist assessments above, where it was concluded that any adverse effects would be less than minor. Whilst further clarification is expected to be provided at the hearing, it is anticipated that these effects will still give rise to cultural values effects of significance, further reinforcing the role of mana whenua for ongoing consultation and engagement though the conditions of the consent should it be granted."

531. We have previously covered Mr Hopkins discussion in his Reply dated 11 February 2022 in the part of this decision relating to Cultural/Mana Whenua effects. After hearing the further articulation of cultural effects in the reply evidence and submissions presented during the hearing, as well as through the legal submissions and other submissions presented on behalf of Ngāti Manuhiri Settlement Trust he provided his final conclusion:

*"**Conclusion***

On the basis of the assessments above, it is appropriate to revisit the conclusion of thes42A report.

Having considered the proposal against the relevant matters in the AUP (OP), the proposed extraction of sand and associated discharge has been demonstrated to be consistent with the direction of the Plan with respect to mineral extraction activities and discharges in the General Coastal Marine Zone. Although the proposal is considered to have positive social and economic benefits associated with the extraction of the resource, and the actual and potential adverse effects arising from the proposal can generally be managed to ensure that they are acceptable from a resource management perspective, the proposal has adverse cultural effects beyond (and irrespective) of the technical understanding of effects of coastal processes and coastal ecology.

In the context of the consideration and testing the broad discretionary aspects of the application, whilst the proposal can be managed such that it is generally consistent with the outcomes of the NZCPS, with respect to adverse cultural effects, these are of a nature that the proposal will not be consisted with the NZCPS in this regard. In addition, the proposal raises conflicts between the management outcomes for matters of national significance in the HGMPA.

Overall, the proposed sand extraction is considered to have adverse cultural effects that are unacceptable from a resource management perspective."

532. While clearly stating his conclusion had been assessed against the relevant matters in the AUP he did not refer to any specific Chapters or provisions. We note that was the same approach he had taken in his s42A report dated 2 February 2021.

533. Mr MacRae, in his Reply, submitted as follows in relation to Mr Hopkins final conclusion.

"Effects on Maori cultural values

53. In the Council Officer's final report, Mr. Hopkins, having heard the extensive evidence given by a range of individuals, whanau, hapu and other groups, concludes that the proposed activity of sand extraction does raise significant cultural concerns and that, as the evidence stood after the hearing in May 2021, these had not been resolved to the point where, consent should be granted. Indeed, he sees a "fundamental conflict" between the nature of the activity and cultural values. He acknowledges that ongoing engagement with tangata whenua through a structure such as a Community Liaison Group as suggested by Mr. Mitchell and a willingness to explore partnership opportunities, do offer the possibility of a resolution but obviously considered that these had not been sufficiently addressed.

54. Mr. TeRangi and Mr. Hay have responded to Mr. Hopkin's report and pointed to some flaws in his understanding of Maori cultural values and his application of the New Zealand Coastal Policy Statement 2010 ***(NZCPS),*** *the Hauraki Gulf Marine Park Act 2000* ***(HGMPA)*** *and the regional planning instruments that apply (the ARCPS and the ARCP).*

55. In my submission, Mr. Hopkins did err in applying the provisions concerned with the protection of cultural values in the NZCPS and the HGMPA as cultural bottom lines (hence his "fundamental conflict"). As a result, he failed to go on to examine the provisions of the ARCPS and the ARCP that are required to "give effect to" the NZCPS (per s.67 of the RMA) and "not conflict with" the HGMPA (s.9(2)).

56. The ARPS and the ARCP clearly meet those statutory requirements of implementation and consistency respectively and are, therefore, the primary documents of reference for the purpose of assessing whether the balance required between the protection of cultural values and the economic and social benefits to be derived from the use and development of coastal resources has been reached in this case. Reference to the NZCPS and the HGMPA is appropriate for the purposes of assisting with the interpretation of the regional planning instruments

but it is wrong to apply them as determining an issue without regard to the regional planning instruments or where the regional instruments satisfactorily address the matters in question; Tauranga Environmental protection Society Inc. v. Tauranga City Council [2021] NZHC 1201 at paragraphs 119 – 128.

57. The objectives and policies in the ARPS and the ARCP, whilst acknowledging the need to protect cultural values, also encourage the use and development of coastal resources. Many of the relevant provisions, including those which address the HGMPA, are set out in Mr. Hay's AEE, pages 17-24. Clearly, no cultural bottom lines are prescribed and no fundamental conflict is envisaged.

58. In any event, since the conclusion of the hearing in May last year, the position has changed considerably:

a. MBL as the applicant has a quite different relationship with Maori than Kaipara and has a quite different understanding of the options for appropriately providing for cultural values;

b. The engagement of Mr. TeRangi has provided MBL with expert and independent advice on all aspects of cultural values and on the resolution of competing claims to mana whenua by groups and individuals with interests in the area.

c. MBL has vigorously pursued constructive discussions with Ngati Manuhiri and Te Uri O Hau with a view to entering into cultural liaison agreements that satisfy their cultural concerns and aspirations for an economic partnership. As you have heard, good progress has been made and Mr. McCallum and Mr. TeRangi expect that agreement will be reached.

d. MBL has included detailed provision for a CLG in the proposed conditions of consent in a manner designed to facilitate the flow of information between the applicant, tangata whenua and local community groups.

59. It is clear from the evidence that MBL, in good faith and with a well advised understanding of the issues, is offering to provide opportunities and mechanisms for the incorporation of kaitiakitanga and other cultural values in the operation, management and monitoring of the proposed activity. In my submission, the requirements of the relevant statutory and planning instruments have been met in a way that should positively encourage the granting of consent. "

FINDINGS

534. Consistent with our findings on Mana Whenua issues earlier in our decision, we have preferred the planning evidence of Mr Hopkins to that of Mr Hay. While Mr Hay specifically addressed Chapter B6 provisions we find that his conclusion that, providing the opportunity for Mana Whenua to participate in the proposed Community Liaison Group, if consent were to be granted, falls well short of what Chapter B6 anticipates. In respect of the Ahi Kaa this is particularly in relation to engagement early within the consenting process, and an opportunity to influence outcomes.

535. While we accept that Mr Hopkins did provide a more detailed assessment of the NZCPS and the HGMPA in his Reply, we do not agree that this undermines his conclusions with

respect to the AUP provisions. We will address the NZCPS and the HGMPA further later in our decision.

536. Bearing in mind Mr Hopkins did not appear to have the benefit of structuring his final conclusions in a manner consistent with the *Tauranga* decision, the layout of his initial conclusions, in his s42A report, and his final conclusions, in his Reply, appear to be following the same approach. The first paragraph in each document relates to the provisions of the AUP and the second relates to the broader discretionary aspects, including the NZCPS and the HGMPA.

537. We have therefore concluded that Mr Hopkins has assessed the AUP provisions separately from the higher order NZCPS and the HGMPA.

538. We find overall that Mr Hopkins conclusion with respect to adverse cultural effects is consistent with the provisions of Chapter B6, consistent with the evidence presented on behalf on Mana Whenua and consistent with our overall findings in relation to Chapters F2 and B6.

B7 Natural Resources

539. In his EIC Mr Hay stated:

> *"113. The AUPOP has mineral objectives and policies at a RPS level (B7.6) which are then supported by objectives and policies in the Regional Coastal Plan (F2). Coastal water objectives and policies are addressed in B7.4.*
>
> *114. In terms of B7.4 (Coastal water, freshwater and geothermal water), the discharge from the sand extraction operation involves excess seawater, oversized material and a small amount of fine clay. These discharges do not contain any introduced or foreign contaminants. By discharging underneath the barge, the material disperses rapidly with the bulk of the material sinking to the seafloor. This occurs within a short period of time.*
>
> *115. This discharge does not degrade the water quality with any plume only lasting a matter of minutes. No potential significant ecological effects have been identified from this process. I therefore consider that the proposal is not contrary to the B7.4 objectives and policies.*
>
> *116. In respect to Objective B7.6.1 (minerals), I consider that granting consent for the continuation of sand mining at this site ensures that the sand resource is utilised in an effective and efficient manner. Sand extraction and delivery to the market can be undertaken at a volume and at a cost which currently meets the community requirements.*
>
> *117. Turning to the supporting policies, both Policies B7.6.2(1) and (4) are relevant. I consider that this site is a suitable area for sand extraction as sand extraction can be undertaken in a manner which avoids significant adverse effects and the sand product can be delivered to the Auckland community in a timely and cost effective manner. Potential significant effects can be avoided or mitigated and*

it is important to note that the word "significant" has been used in B7.6.2(4) in terms of identifying the scale of adverse effects which need to be addressed."

540. Mr Hopkins in his s42A report stated that:

"The proposal reflects the high level direction of the plan to provide for mineral extraction activities in the Auckland region."

541. B7.6 contains the most relevant provisions, identified by Mr Hay in relation to mineral extraction activities.

542. While not raised during the hearing we note that the definition of "mineral extraction activities" in the AUP specifically excludes "common marine and coastal area mineral extraction." The definition in the AUP is that "mineral extraction activities" are "activities carried out at a quarry."

543. We therefore have doubts as to how relevant B7.6 is in relation to the proposed sand extraction in the coastal marine area. Looking at the policies referred to by Mr Hay we note the consistent use of the term "mineral extraction activities."

544. Turning to the "Explanation and principal reasons for adaption" set out in B7.7, to assist our interpretation, we note that under the heading "Minerals" sand is mentioned. However while "quarries" and "mineral extraction activities" are also identified, there is no reference to sand extraction in the coastal marine area.

FINDINGS

545. We find that the provisions at B7.6 are irrelevant and relate only to land based mineral extraction activities.

B4 Natural Heritage

546. Dr Mitchell, in his EIC, considered Chapter B4, and, in particular B4.2, as being relevant with respect to how the effects of the proposed activities will be managed on the outstanding natural features and landscapes identified in the coastal environment. He raised this in the context of whether the proposed extraction area was located in an appropriate area.

547. Mr Hay, in his EIR, responded by stating that:

"19. If it was considered that B4.2 did require consideration then in my opinion the proposal is not an inappropriate development in terms of Objective 1 or supporting Policy 3 as the physical and visual integrity of the High Natural Character overlay area is not being adversely affected.

Objective (1)

Outstanding natural features and landscapes are identified and protected from inappropriate subdivision, use and development.

Policy (3)

Protect the physical and visual integrity of Auckland's outstanding natural landscapes from inappropriate subdivision, use and development."

548. In his s42A report Mr Hopkins stated that:

"The proposal is not located in any Significant Ecological Area or Outstanding Natural Landscape Overlay areas."

FINDINGS

549. In accordance with our findings on visual effects earlier in our decision, we find adverse visual effects will be minor, based on the use of only one vessel. We have thus concluded that the proposal would be consistent with the relevant provisions of B4 in that respect.

550. With respect to our earlier findings on the effects on landscape values, including Mana Whenua cultural landscape values, we find the proposal is inconsistent with the relevant provisions of B4.

551. Following our earlier findings on effects on natural character values, we find we have insufficient evidence to make a finding in relation to the relevant provisions of B4.

B1 Issues of Regional Significance

552. Although not specifically identified in evidence we note that B1.4 identifies the significant resource management issues for the Auckland region. They include:

(5) issues of significance to Mana Whenua
(6) natural resources
(7) the coastal environment

553. We also note B1.5 states that:

"The regional policy statement must be read as a whole. If an issue relates to more than one section, then the relevant objectives and policies in each section must be read"

FINDINGS

554. Our overall finding is that when reading the regional policy statement as a whole, the provisions are consistent with the provisions of the regional coastal plan at Chapter F2.

555. In considering an application for consent for sand extraction in the coastal marine environment, there are many issues and values to be assessed.

556. The sole objective in Chapter F2 is that the extraction of minerals, sand in this case, occurs in a manner that does not have significant adverse effects on the coastal environment, which includes the coastal marine area and the near-shore environments.

557. The policies are to provide for extraction from appropriate areas having regard to the values of the area and the coastal sediment processes. In addition, a precautionary approach is to be adopted. A precautionary approach, may include using an adaptive management approach. Significant adverse effects are to be identified and assessed in relation to ten issues or values. Finally, remediation and mitigation measures are required.

558. Without repeating the relevant provisions of the RPS, all of these regional issues, objectives, policies and explanations and reasons for the adoption of the objectives and policies, consistently use similar language in terms of whether an environment is an appropriate one in terms of the values that exist in that environment.

559. While the "significance" test of adverse effects is a high one, the RPS consistently requires that the values of the particular environment, including the sensitivity of that environment and the need for a precautionary approach are to be assessed on a case-by-case basis.

560. Mana Whenua values not only have an entire chapter, those values are an integral component of the other relevant chapters, especially in B8 the coastal environment.

561. When read together with the provisions of the regional coastal plan, we find the regional policy statement provisions have not been fully or appropriately assessed by any of the planners. To be fair to the planners they did not appear to have been aware of the *Tauranga* decision when they prepared their evidence.

The New Zealand Coastal Policy Statement 2010 (NZCPS)

562. Dr Mitchell stated in his EIC that:

> *"28. Mr Hay and the s42A report have identified the relevant planning provisions as being those contained in the New Zealand Coastal Policy Statement 2010 (**NZCPS**), sections 7 and 8 of the Hauraki Gulf Marine Park Act 2000 (**HGMPA**) and the AUP. Mr Hay includes a long list of the provisions from those documents which address matters of relevance to the proposal in Appendix B and C of his evidence, and both the s42A report and Mr Hay include broad analysis of how the proposal would align with this broad suite of provisions.*
>
> *29. The AUP post-dates both the NZCPS and HGMPA and therefore gives effect to them. As I outline below, the AUP also contains bespoke provisions which address mineral extraction in the coastal environment and the various significant values attributed to the surrounding environment. As such, in my view a focussed analysis of these directly relevant AUP provisions is of fundamental importance when addressing s104(1)(b)."*

563. There was no contrary evidence or submissions to the fact that the AUP post-dates the NZCPS and therefore gives effect it.

564. The evidence of Mr Hopkins in his s42A report was that *"… the proposed sand extraction and associated discharge activities can be managed in a way that is consistent with the anticipated outcomes of the NZCPS."*

565. In his Reply evidence dated 11 February 2022 Mr Hopkins had reached a different conclusion and considered the proposal cannot be managed in a way that is fully consistent with the anticipated outcomes of the NZCPS.

> *"Overall, having considered the relevant matters in the NZCPS, the management techniques proposed by the applicant, along with the specialist assessments of the sand extraction activity, it is considered the proposed sand extraction and associated discharge activities cannot be managed in a way that is fully consistent with the anticipated outcomes of the NZCPS, and in particular this arises through the fundamental conflict between the nature of the activity and its impact on cultural values. Opportunities do exist to promote ongoing engagement in [a] manner generally consistent with the direction of the NZCPS.*
>
> *For completeness, beyond these matters, the proposal remains generally consistent with the NZCPS as outlined in the s42A report and the Addendum Report."*

566. In response to Mr Hopkin's final conclusions, Mr Hay considered *"… that the assessment in the Officers Reply is incomplete and flawed."* Mr Hay's rebuttal evidence dated 21 February 2022 included the following.

> "*82. In terms of how the NZCPS is to be applied in the processing of resource consent applications, it states:*
>
> *• a consent authority, when considering an application for a resource consent and any submissions received, must, subject to Part 2 of the Act, have regard to, amongst other things, any relevant provisions of this NZCPS (section 104(1)(b)(iv) refers);*
>
> *83. The term "have regard to" reflects the term used in S104 which the application is being considered under. I am unaware of the "fully consistent" test which is being used in the Officers Reply. Rather, the Council must have regard to the relevant provisions of the NZCPS. I consider that both the application and the Officers Report gave appropriate regard to the Act and I accept that after hearing evidence and submissions it is reasonable for the Reporting Officer to review the assessment of Objective 3 and Part 2. I am in disagreement that the basis for declining consent can be purely on the basis that an opinion has been formed that the proposal is not "fully consistent with the anticipated outcomes of the NZCPS". The NZCPS does not outline anticipated outcomes so I am unsure of what outcomes are being referred to and, as I have outlined, I consider that although there are conflicting considerations and views these could not be described as a "fundamental conflict" in terms of sand extraction and cultural values.*
>
> *84. In terms of the assessment against the HGMA in the Officers Reply, the "fully consistent" test is again being used. As for the NZCPS, there is no such test and the conclusion that consent has to be declined because of this is incorrect. Regards has been given to the HGMA and I have addressed this in Paragraphs187 and 188 of my original evidence. Furthermore, both Ngati Wai and Te Uri O Hau in their Environment Policy and Iwi Management Plan do not state*

that sand extraction should not be allowed in any circumstances in the Hauraki Gulf but rather they identify what needs to be considered in any such applications and consents."

567. The legal submissions on behalf of a number of submitters requested us to take into account the relevant provisions of the NZCPS. Many submitters also made reference to these provisions of the NZCPS in support of their submissions seeking the refusal of consent to the proposed sand extraction application.

568. We also received planning evidence in relation to the NZCPS.

569. The most relevant provisions identified were: Objective 1-Coastal environment integrity, form, functioning and resilience; Objective 2-Natural character preservation and protection; Objective 3-Treaty of Waitangi; Objective 5-To ensure that coastal hazard risks, taking into account climate change are managed; Objective 6-To enable people and communities to provide for their social, economic and cultural wellbeing; Policy 1-Extent and characteristics of the coastal environment; Policy 2- The Treaty of Waitangi, tangata whenua and Māori heritage; Policy 3-Precautionary approach; Policy 4-Integration; Policy 6-Activities in the coastal environment; Policy 11-Indigenous biological diversity (biodiversity);Policy 13-Preservation of natural character; Policy 15-Natural features and natural landscapes; and, Policy 23-Discharge of Contaminants.

570. Mr MacRae, in his reply submissions, referred us to the *Tauranga* High Court decision and he submitted that Mr Hopkins had erred in applying the provisions of the NZCPS. In particular he submitted that:

56. …Reference to the NZCPS and the HGMPA is appropriate for the purpose of assisting with the interpretation of the regional planning instruments but it is wrong to apply them as determining an issue without regard to the regional planning instruments or where the regional instruments satisfactorily address the matter in question."

FINDINGS

571. We have preferred the planning evidence of Dr Mitchell that AUP provisions post-date the NZCPS and therefore give effect to them.

572. We also accept the legal submissions of Mr MacRae that reference to the NZCPS is appropriate for the purpose of assisting with the interpretation of the regional planning instruments.

573. Our overall finding is that the provisions of the NZCPS have been fully and appropriately addressed in the regional planning documents. In particular, we find that the AUP has specifically addressed the competing issues in this particular case where sand extraction activities are proposed in a sensitive coastal environment from cultural, coastal processes and ecological perspectives.

The Hauraki Gulf Marine Park Act 2000 (HGMPA)

574. We were also requested in the legal submissions and evidence of many submitters to take into account the relevant provisions of the HGMPA.

575. We also received planning evidence in relation to the HGMPA.

576. The most relevant provisions identified to us were: section 7- Recognition of national importance of Hauraki Gulf and Section 8- Management of the Hauraki Gulf.

FINDINGS

577. We have preferred the planning evidence of Dr Mitchell that AUP provisions post-date the HGMPA and therefore give effect to them.

578. We also accept the legal submissions of Mr MacRae that reference to the HGMPA is appropriate for the purpose of assisting with the interpretation of the regional planning instruments.

579. Our overall finding is that the provisions of the HGMPA have been fully and appropriately addressed in the regional planning documents. In particular, we find that the AUP has specifically addressed the competing issues in this particular case where sand extraction activities are proposed in a sensitive coastal environment from cultural, coastal processes and ecological perspectives.

Assessment in terms of s104 of the RMA

580. Section 104 (1) (a) requires us to have regard to actual and potential effects on the environment of allowing the activity.

581. In terms of Mana Whenua/cultural effects we have found these to be adverse and significant.

582. In terms of coastal processes effects we have found we do not have enough reliable information to fully understand the coastal processes and that there remains a great deal of uncertainty about the coastal processes taking place and the actual and potential effects of the sand extraction on those processes.

583. In terms of the array of ecological effects identified we have found these to range from less than minor to significant, given the evidence we have heard from Mana Whenua, in particular the Ahi Kaa submitters.

584. In terms of recreational and amenity effects, visual and landscape effects, lighting effects, and, above water noise effects we have found these to be minor or less than minor.

585. In terms of economic effects, our findings determined that the effects were inconclusive. Again, with regards to the consideration of alternatives we were not provided with conclusive evidence as to whether the costs of these alternatives would be more (or less) expensive than sourcing and transporting sand from the off-shore site at Pakiri.

586. Overall, in terms of section 104 (1) (a) we find that from an effects basis the effects will be significant.

587. Section 104(1) (b) requires us to have regard, in this case, to any relevant provisions of the NZCPS, the HGMPA, and, the AUP.

588. We find that the AUP has been prepared in a manner that is fully consistent with and gives effect to the NZCPS and the HGMPA.

589. Overall, with respect to the relevant AUP Regional Coastal Plan provisions in Chapter F2, we find that the proposal is inconsistent with Objective F2.6.2, and it's supporting Policies F2.6.3 (1), (2), (3) and (4).

590. Overall, with respect to the relevant AUP regional policy statement provisions in Chapters B6 Mana Whenua and B8Coastal environment we find the proposal is inconsistent with Objective B6.2.1 (1), Policy B6.2.2 (1); Objectives B6.3.1 (1) and (2), Policies B6.3.2 (1), (2), (3), (4) and (6); Objectives B6.5.1(1), (2) and (3), Policy B6.5.2 (1); Objectives B8.3.1(1), (2), (3), (6) and (7), Policies B8.3.2 (3)(d), (4) and (5), and Policies B8.5.2(11), (13) and (17).

591. With respect to Chapter B7-Natural Resources, of the Regional Policy Statement we find that Objective B7.6.1 and Policies B7.6.2 relating to mineral extraction activities are not relevant to the extraction of sand from the coastal marine area.

592. In terms of section 104 (1) (c) we have considered:

- the following Iwi Management Plans -
  - Te Uri o HauKaitiakitanga o TeTaiao (2011);
  - Te Iwi o Ngatiwai Iwi Environmental Policy Document (2007);
- The Marine and Coastal Areas (Takutai Moana) Act 2011;
- Te Uri o Hau Claims Settlement Act 2002
- Ngāti Manuhiri Claims Settlement Act 2012
- Tai Timu Tai Pari Sea Change Marine Spatial Plan

593. These documents were considered to be relevant and reasonably necessary to determine the application, particularly with regard to effects on Mana Whenua values and its consistency (or otherwise) with B6 policies of the RPS.

594. In terms of section 104(6) we have found that we have an inadequate level of information to have an informed understanding of the nature, the extent and scale of the application, with respect to the adverse effects on the environment, particularly coastal processes and ecological effects.

595. Overall, in terms of section 104, after having regard to the actual and/or potential effects on the environment and having regard to the relevant provisions of the AUP, the NZCPS and the HGMPA, we have determined that consent be refused.

Part 2 Matters

596. Section 104 states our assessment is subject to Part 2 of the RMA. For completeness, we have turned our minds to the consideration of Part 2.

597. Mr Hopkins considered that "…*an assessment against Part 2 would not add anything to the evaluative exercise*."[282] The reasons for this conclusion were that the provisions of the relevant statutory documents were prepared having regard to Part 2 and "…*that they capture all relevant planning considerations and contain a coherent set of policies designed to achieve clear environmental outcomes*."

598. Mr Hay considered that "*I am not aware of any reasons why the relevant planning provisions in the AUPOP cannot be relied upon and recourse is needed to be made to Part 2*."[283]

599. In response to our question Mr MacRae agreed with Mr Hay that we needed to go no further than the relevant planning provisions.

600. Mr Pou, Counsel for Manahuri Kaitiaki Charatable Trust, submitted that:

> *"As decision-makers, you must "recognise and provide for" the following matter of national importance, relevantly:*
>
> > *"the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga"*[284]

601. Ms Sutherland, Counsel for the Director General of Conservation, submitted that: "The Director-General draws your attention to Part 2 matters:

> *"Section 6(e) relationship of Māori with ancestral lands, water, sites, waahi tapu and other taonga; Section 7(e) kaitiakitanga; Section 8 Treaty of Waitangi. These are matters that will need to be considered and provided for in order to achieve the sustainable management purpose of the Act."*[285]

602. Ms Morrison-Shaw, Counsel for Te Whānau o Pakiri, submitted that:

> *"The Treaty is the foundation on which the laws of this country are based. The guarantee in Article 2 of tinorangatiranga applies not only to land, but as the Supreme Court recently recognised, to the "marina environment". Local authorities as successors to the Crown have a "responsibility for delivering on the Article 2 promise".*
>
> *The relevance of the Treaty in the RMA context is also confirmed in s.8 of the RMA. This section expressly directs decision-makers to take the principles of the Treaty into account when exercising their powers under the RMA. As the Supreme Court has found, this section should not be narrowly construed, and instead,*

[282] S42A report, page 43
[283] EIC, para 203
[284] Opening Submissions, Para 58
[285] Legal Submissions, Para 43

*should be given a "*broad and generous construction*", there being no indication that statutory decision-makers intended "to constrain the ability of statutory decision-makers to respect Treaty principles."*

*Decision makers under the RMA are bound by its terms and these include a "*particular sensitivity to Māori issues*". It is well settled that sections 6(e), 7(a) and 8 contain "strong directions" which must be borne in mind at every stage of the planning process. In my submission, the language of these sections is crucial:*

(a) under s.6(e) the focus is on the "relationship of Māori and their culture and traditions with their ancestral lands, waters, wāhi tapu and other taonga.

(b) under s.7(a) particular regard must be had to kaitiakitanga:

i. being the exercise of guardianship by tangata whenua in accordance with tikanga Māori;

ii. tangata whenua meaning the iwi or hapū that holds mana whenua over that area; and

iii. tikanga Māori meaning Māori customary values and practices – including customary law; and

(c) under s.8 Treaty principles are to be taken into account.

603. *Nowhere in Part 2 of the RMA does Parliament make any reference to iwi authorities or post settlement governance entities. Such status is not an end in itself. What matters under the RMA is a submitter's input in relation to effects, with decision-makers able to assess and weigh that evidence in the usual way. In any event, and as I note further below, in this case both TWOP and Ngāti Manuhiri have filed evidence regarding the significant adverse cultural effects of the proposal.*"[286]

604. Mr Nolan, Counsel for Mr Clapshaw, and Mr Carnie, Counsel for the Mangawhai Harbour Restoration Society Incorporated, also submitted that it was appropriate for us to have regard to Part 2.

FINDINGS

605. We find that it is appropriate to specifically refer to Part 2 for the following reasons.

606. We accept the legal submissions on behalf of submitters and acknowledge that we must recognise and provide for section 6 matters of national importance, including 6(a) and 6(e). We have also given particular regard to the other matters of section 7, including 7(a) and have taken into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) being Section 8.

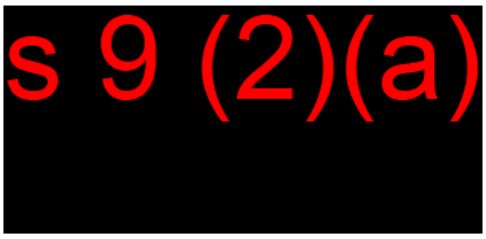
607. Consistent with our earlier findings in relation to the provisions of the AUP (OP), we find our decision to refuse consent is also consistent with the relevant Part 2 matters. Having regard to Part 2 reinforces and does not raise any inconsistencies with our overall considerations under section 104.

[286] Legal Submissions, Paras 4-7

608. In terms of section 5 we acknowledge that Part 2 specifically excludes minerals, which includes sand, from section 5 (2) (a) "*sustaining the potential of natural and physical resources to meet the foreseeable needs of future generations*." While relevant to our considerations, this exclusion does not alter our overall judgement in terms of Part 2 that section 6, 7 and 8 matters support the refusal of consent.

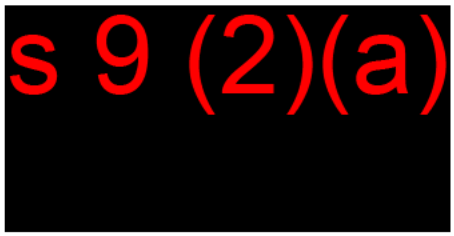
DECISION

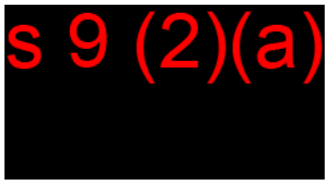
609. In exercising our delegation under sections 34 and 34A of the RMA and having regard to the foregoing matters, sections 104, 104B, 105, 107and Part 2 of the RMA, we determine that resource consent for the extraction of sand within the coastal marine area, offshore from Pakiri, as sought by McCallum Brothers Limited, is refused for the reasons set out throughout this decision.



s 9 (2)(a)

Chair





s 9 (2)(a)

6th May 2022