

Whangarei District Council Meeting

Agenda

Date: 22 July, 2021

Time: 9:00 am

Location: Council Chamber
Forum North, Rust Avenue
Whangarei

Elected Members: Her Worship the Mayor Sheryl Mai
(Chairperson)
Cr Gavin Benney
Cr Vince Cocurullo
Cr Nicholas Connop
Cr Ken Couper
Cr Tricia Cutforth
Cr Shelley Deeming
Cr Jayne Golightly
Cr Phil Halse
Cr Greg Innes
Cr Greg Martin
Cr Anna Murphy
Cr Carol Peters
Cr Simon Reid

For any queries regarding this meeting please contact
the Whangarei District Council on (09) 430-4200.

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8.2. Property Transaction

9. Closure of Meeting

Recommendations contained in the Council agenda may not be the final decision of Council.

Please refer to Council minutes for final resolution.

4 Public Forum

Meeting: Whangarei District Council
Date of meeting: 22 July 2021
Reporting officer: C Brindle (Senior Democracy Adviser)

1 Purpose

To afford members of the community an opportunity to speak to Council and to report on matters raised at public forums where appropriate.

2 Summary

Standing Orders allow for a period of up to 30 minutes to be set aside for a public forum at the commencement of each monthly council meeting.

The time allowed for each speaker is 5 minutes.

Members of the public who wish to participate should send a written application, setting out the subject matter and the names of the speakers, to the Chief Executive at least 2 clear working days before the day of the meeting.

Speakers

Speaker	Subject
Elizabeth May Archdall Perales	Tarsealing of Glenmohr Road, Waipu and community concerns around safety for increased volume of traffic both local and as an emergency road for State Highway 1 and the current condition of the road and safety fence.
Linda Glibbery	Tarsealing of Glenmohr Road, Waipu and community concerns around safety for increased volume of traffic both local and as an emergency road for State Highway 1 and the current condition of the road and safety fence.
Conrad LaPointe (Habitat for Humanity)	Housing in Whangarei

Report on actions taken or comment on matters raised

Where practicable actions taken on matters raised by previous speakers are reported back to public forum. There were no speakers at the 24 June Council meeting.

Item 5.1
Whangarei District Council Meeting Minutes

Date: Thursday, 24 June, 2021
Time: 9:00 a.m.
Location: Council Chamber
 Forum North, Rust Avenue
 Whangarei

In Attendance
 Her Worship the Mayor Sheryl Mai
 (Chairperson)
 Cr Gavin Benney (virtually)
 Cr Vince Cocurullo
 Cr Nicholas Connop
 Cr Ken Couper
 Cr Tricia Cutforth
 Cr Shelley Deeming
 Cr Jayne Golightly
 Cr Phil Halse
 Cr Greg Innes
 Cr Anna Murphy
 Cr Carol Peters
 Cr Simon Reid

Not in Attendance Cr Greg Martin

Scribe C Brindle (Senior Democracy Adviser)

1. Karakia/Prayer

Cr Peters opened the meeting with a karakia/prayer.

2. Declarations of Interest

Item 7.5 Long Term Plan 2021 – 2031 Adoption – recommendation 3

3. Apology

Cr Greg Martin

Moved By Cr Simon Reid

Seconded By Cr Greg Innes

That the apology be sustained.

Carried

4. Public Forum

There were no public forum speakers.

5. Police Report

5.1 Police Report

Moved By Cr Simon Reid

Seconded By Cr Carol Peters

That Council note the report.

Carried

6. Confirmation of Minutes of Previous Meeting of the Whangarei District Council

6.1 Minutes Whangarei District Council meeting held 27 May 2021

Moved By Cr Tricia Cutforth

Seconded By Cr Shelley Deeming

That the minutes of the Whangarei District Council meeting held on Thursday 27 May 2021, including the confidential section, having been circulated, be taken as read and now confirmed and adopted as a true and correct record of proceedings of that meeting, subject to a correction to the Mayor's signature.

Carried

7. Decision Reports

7.1 Revenue and Financing Policy

Moved By Cr Greg Innes

Seconded By Cr Carol Peters

That Council:

1. Receive the information.
2. Adopt the Revenue and Financing Policy (having undertaken the Special Consultative Procedure, in accordance with sections 82, 82A and 102 of the Local Government Act 2002).
3. Authorises the Chief Executive to make minor amendments, drafting, typographical or presentation corrections necessary to the Revenue and Financing Policy.

Carried

7.2 Fees and Charges 2021 to 2022

Moved By Her Worship the Mayor

Seconded By Cr Nicholas Connop

That Whangarei District Council:

- a) Notes the inclusion of the additional fee for Building Consent Online Management Processing in addition to those fees adopted in February.
- b) Approve the amendment of the cents per kilometre mileage rate from 82 to 79 cents per kilometre, in order to align with IRD rates recently amended.
- c) Adopt the fees and charges listed in **Table A**, as follows and as per attachment 1: *Statement of Proposal: Proposed Fees & Charges 2021-22*, (with the exception of the cents per kilometre mileage rate addressed in recommendation b.)
- d) These fees were consulted on and deliberated within the LTP consultation process, as required under the Special Consultative Procedure under the Local Government Act 2002.
- e) Authorises the Chief Executive to make minor amendments, drafting, typographical or presentation corrections necessary to the 2021-2022 Fees and Charges document.

Table A: 2021-22 Fees and charges subject to the Special Consultative Procedure

	Refer Statement of Proposal
Bylaw Enforcement	Page 7
Drainage (Waste Water and Trade Waste)	Page 4 - 6
Food Premises	Page 8 - 10
Gambling and Racing Act	Page 10
Health Act Registered Premises	Page 11
Public Places Bylaw	Page 12
Resource Management Act: Resource Management Administrative Charges District Plan/Private Plan Changes Council Professional Fees Monitoring and Land Use Abatement Notices	Page 13-21
Rubbish Disposal	Page 22-23
Water Supply	Page 24-25

Carried

Cr Cocurullo requested his vote against be recorded.

7.3 Rates Policies

Moved By Cr Gavin Benney

Seconded By Cr Carol Peters

That Council:

- 1 Adopts the rates remission and postponement policies, including changes, as required under Sections 85-90 of the Local Government (Rating) Act 2002 and Sections 109-110 and Schedule 11 of the Local Government Act 2002.
- 2 Adopts the policy for early payment of rates, as required under Section 55 of the Local Government (Rating) Act 2002.

Carried

Cr Cocurullo requested his vote against be recorded.

7.4 Development Contribution Policy 2021 Adoption Report

Moved By Cr Shelley Deeming

Seconded By Cr Phil Halse

That the Council

1. Approve and Adopt the Development Contributions Policy 2021 in accordance with Section 102 of the Local Government Act 2002
2. Authorises the Chief Executive to make any necessary drafting, typographical or presentation changes or corrections to the Development Contributions Policy 2021 prior to the document being published.

Carried

Cr Cocurullo requested his vote against be recorded.

7.5 Long Term Plan 2021 - 2031 Adoption

Item 7.5.1 containing Audit New Zealand's final Audit Opinion was distributed prior to the meeting. Audit NZ subsequently advised the third paragraph under the opinion paragraph be replaced with the following:

'The Council's forecasts to replace existing assets are consistent with it's approach to replace it's assets, and reasonably take into account the Council's knowledge of it's assets' condition and performance;'

The amended Audit Opinion was tabled at the meeting.

The recommendations were taken in parts.

Moved By Her Worship the Mayor

Seconded By Cr Ken Couper

That Council:

1. Adopt the Long Term Plan 2021 – 2031, inclusive of Audit New Zealand's final audit opinion tabled at the meeting.

Carried

Crs Cocurullo and Reid requested their votes against be recorded.

2. Resolve to carry forward unspent capital project budgets as at 30 June 2021 (in additional to those already forecast) into the 2021-22 year. These subsequent carry forwards will be part of a revised budget, which will be reported back to Council.

Carried

3. Confirms the establishment of a new Trust/Council Controlled Organisation for the Northland Events Centre.

Carried

4. Notes the potential for increased carryforwards as a result of an ambitious programme, particularly in Transportation.

Carried

5. Notes that it is increasingly likely that further decreases to Central Government Transport subsidy will require a review of revenue/rates and/or service delivery through a future Annual Plan or Long Term Plan Amendment process.

Carried

6. Authorises the Chief Executive to make any necessary drafting, typographical or presentation changes to the Long Term Plan 2021 – 2031 document.

Carried

Declarations of Interest:

Interests in regards to recommendation 3 (NECT) of Item 7.5 were declared by Cr Halse as Chair of the NECT and Cr Benney as a Trustee of NECT.

Both Cr Halse and Cr Benney withdrew from the table and took no part in discussions or voting on recommendation 3.

Cr Cutforth abstained from voting on recommendation 3.

A break was taken from 11.17am to 11.37am following Item 7.5.

7.6 2021-22 Rates Resolution

Moved By Her Worship the Mayor

Seconded By Cr Greg Innes

That the Council:

- a. Having adopted the 2021-31 Long Term Plan, including the 2021-22 Funding Impact Statement, resolves to set the following rates in

accordance with the Local Government (Rating) Act 2002 for the financial year 1 July 2021 to 30 June 2022:

a. General Rates

Rate/Differential category	Basis of assessment	Including GST
General Rates		
Uniform Annual General Charge	Per separately used or inhabited part of a rating unit *	\$724.00
Residential category**	Per \$ of land value	\$0.0025738
Multi-Unit category**	Per \$ of land value	\$0.0051476
Miscellaneous category**	Per \$ of land value	\$0.0025738
Rural category**	Per \$ of land value	\$0.0032709
Commercial and Industrial category**	Per \$ of land value	\$0.0166764

b. Targeted Rates

Rate/Differential category	Basis of assessment	Including GST
Sewerage Rates (Connected to wastewater system)		
Residential category**	Per separately used or inhabited part of a rating unit*	\$803.00
Other – non-residential**	Per pan or urinal	\$513.00
Water Rates		
Consumption charge <i>Note: where an invoice for water by meter relates to a period that spans two financial years, the consumption over the period will be pro-rated (i.e. the amount of water consumed or supplied in the first year will be charged at the first year's amount per cubic metre, and the amount consumed or supplied in the second financial year will be charged at the second year's amount per cubic metre).</i>	Volume of metered water consumed per cubic metre	\$2.32
Supply charge (metered)	Per separately used or inhabited part of a rating unit to which the water is supplied*	\$35.00

Availability charge	Per separately used or inhabited part of a rating unit for which the water is available to be supplied*	\$35.00
Uniform charge (unmetered)	Per separately used or inhabited part of a rating unit to which the water is supplied*	\$486.00
Backflow preventer charge	Per water supply connection, based on the nature of connection	
	15/20mm connection	\$82.43
	25mm connection	\$83.56
	32mm connection	\$98.85
	40mm connection	\$101.16
	50mm connection	\$104.95
	80/100mm connection	\$264.34
	150mm connection	\$309.45
	200mm connection	\$512.51
Hikurangi Swamp		
Hikurangi Swamp Special Rating District	Per hectare of land in the Hikurangi Swamp Special Rating area based on location within that area***	
	Class A	\$213.96
	Class B	\$192.56
	Class C	\$149.77
	Class D	\$21.40
	Class E	\$10.70
	Class F	\$4.28
Hikurangi Swamp Drainage Rating District	Per hectare of land in the Hikurangi Swamp Drainage Rating District based on location within that area***	
	Class A approx 5,592 ha	\$21.60
	Class F approx 11,974 ha	\$2.16
Roading seal extension rates		
Attwood Road	Per rating unit within the area of benefit ***	\$920.00

Brooks Road	Per rating unit within the area of benefit ***	\$920.00
Massey Road	Per rating unit within the area of benefit ***	\$920.00
Nook Road	Per rating unit within the area of benefit ***	\$920.00
Tahunatapu Road	Per rating unit within the area of benefit ***	\$920.00

* The definition of a separately used or inhabited part of a rating unit can be found in the Funding Impact Statement section of Council's 2021-31 Long Term Plan.

** The definitions of these differential categories can be found in the Funding Impact Statement section of Council's 2021-31 Long Term Plan.

*** The definitions of these specified and defined area of benefits can be found in the Funding Impact Statement section of Council's 2021-31 Long Term Plan.

2. Resolves to agree the due dates and penalties as set out as follows:

a. Penalty and due dates for rates paid in instalments

Due dates and penalty dates for rates other than metered water rates (volumetric, supply and backflow preventer charges)

Council agrees the following due dates and to add penalties to rates other than metered water rates (volumetric, supply and backflow preventer charges) not paid by the due date under Section 57 of the Local Government (Rating) Act 2002. A penalty of ten percent (10%) will be added to the amount of each instalment which remains unpaid after the due date for payment, in accordance with the table below:

Instalment	Due date for payment	Date penalty will be added
One	20 August 2021	25 August 2021
Two	20 November 2021	24 November 2021
Three	20 February 2022	23 February 2022
Four	20 May 2022	25 May 2022

Due dates and penalty dates for metered water rates (volumetric, supply and backflow preventer charges)

Council agrees the following due dates for payment and to add penalties to water rates not paid by the due date under Section 57 of the Local Government (Rating) Act 2002.

Water accounts are processed monthly, two-monthly or six-monthly. Council agrees that the due dates of these accounts will be relative to the consumer's cyclic billing period and will show on the water rates invoice in accordance with the following table:

Month water rates invoice issued	Due date for payment
July 2021	20 August 2021
August 2021	20 September 2021
September 2021	20 October 2021
October 2021	20 November 2021
November 2021	20 December 2021
December 2021	20 January 2022
January 2022	20 February 2022
February 2022	20 March 2022
March 2022	20 April 2022
April 2022	20 May 2022
May 2022	20 June 2022
June 2022	20 July 2022

A penalty ten percent (10%) will be applied to amounts of water rates unpaid after the due date, in accordance with the following table:

Month water rates invoice issued	Date penalty will be added
July 2021	25 August 2021
August 2021	23 September 2021
September 2021	27 October 2021
October 2021	24 November 2021
November 2021	23 December 2021
December 2021	25 January 2022
January 2022	23 February 2022
February 2022	23 March 2022
March 2022	26 April 2022
April 2022	25 May 2022
May 2022	23 June 2022
June 2022	25 July 2022

b) Additional penalty charges

Additional penalty on arrears for rates other than metered water rates (volumetric, supply and backflow preventer charges)

In accordance with section 58 of the Local Government (Rating) Act 2002 Council agrees that a penalty of ten percent (10%) will be added to any unpaid rates (including penalties previously added and water rates) from the previous rating years that remain unpaid as at 1 July 2021. This penalty will be added on 1 September 2021.

Carried

7.7 Representation Review 2021 - Initial Proposal

Moved By Cr Vince Cocurullo

Seconded By Cr Simon Reid

That Council:

1. Receives the Representation Review 2021 – Initial Proposal report.

2A. Resolves, pursuant to sections 19H and 19J and clauses 1 and 2 of Schedule 1A of the Local Electoral Act 2001, to adopt as its Initial Proposal for the review of representation arrangements for at least the 2022 triennial elections, the following:

- (i). The Whangarei District Council to comprise the mayor elected at-large and 13 councillors elected under the ward system, specifically 11 general ward councillors and two Māori ward councillors.
- (ii). The Whangarei District Council be divided into six wards, consisting of the following:

Bream Bay General ward (represented by two general councillors) being the existing ward, comprising the area delineated on Plan LG-002-2012-W-4 deposited with the Local Government Commission with ward boundary changes as shown on Attachment D;

Hikurangi Coastal General ward (represented by two general councillors) being the existing ward, comprising the area delineated on Plan LG-002-2012-W-3 deposited with the Local Government Commission with ward boundary changes as shown on Attachment E;

Mangakahia-Maungatapere General ward (represented by one general councillor) being the existing ward, comprising the area delineated on Plan LG-002-2012-W-2 deposited with the Local Government Commission with ward boundary changes as shown on Attachment F;

Whangarei Heads General ward (represented by one general councillor) being the existing ward, comprising the area delineated on Plan LG-002-2012-W-7 deposited with the Local

Government Commission Land as shown on Attachment G;

Whangarei Urban General ward (represented by five general councillors) being the combined areas of the existing Denby ward comprising the area delineated on Plan LG-002-2012-W5 deposited with the Local Government Commission and the existing Okara ward comprising the area delineated on Plan LG-002-2012-W-6 deposited with the Local Government Commission. The proposed new ward boundary is shown on Attachment H;

Whangarei District Māori Ward (represented by two Māori councillors) comprising the whole area of the district as delineated on Plan LG-002-2012-W-1 deposited with the Local Government Commission as shown on Attachment L.

- (iii). No community boards be established.
- (vi) Notes the reason the total number of councillors is proposed to remain at 13 (plus the mayor) is to provide effective representation of Whangarei District residents and ratepayers (ensuring accessibility to a large and diverse area made up of populated towns and villages and sparsely populated rural areas);
- (v) Notes the reason for combining the two existing urban Denby and Okara wards into one urban ward is to acknowledge that two urban wards are no longer needed due to changing demographics and the Whangarei urban area would be effectively represented as one urban area represented by five councillors.
- (vi) Notes the reason for establishing one district-wide Māori ward, represented by two councillors, is to provide effective representation of the Māori population of the district.
- (vii) Notes the reason for the ward boundary alterations are for compliance with the requirements for fair representation prescribed in the Local Electoral Act 2001.
- (viii) Prepares the Initial Proposal for consultation with the community.

Amendment

Moved By Her Worship the Mayor
Seconded By Cr Nicholas Connop

That Council:

1. Receives the Representation Review 2021 – Initial Proposal report.
- 2.B Confirms that it intends to adopt as its Initial Proposal for the review of the representation arrangements for at least the 2022 triennial elections, the following:
 - (i). The Whangarei District Council to comprise the mayor elected at-large and eight councillors elected under the ward system, specifically six general ward councillors and two Māori ward councillors.
 - (ii). The Whangarei District Council be divided into two wards, consisting of the following:

Whangarei District General ward (represented by six general councillors) comprising the whole of the district as delineated on Plan LG-002-2012-W-1 deposited with the Local Government Commission;

Whangarei District Māori Ward (represented by two Māori councillors) comprising the whole area of the district as delineated on Plan LG-002-2012-W-1 deposited with the Local Government Commission as shown on Attachment L.
 - (iii). Community boards to be established.
 - (iv). Issues a public notice that informs the public of the Initial Proposal as adopted and the opportunity to make a submission on the Initial proposal from 30 June 2021 to 31 July 2021.
 - (v). Recognises that the adoption of 2B (i) – (iii) above will require further discussion and development of the nature and structure of the community boards to be established and the Initial Proposal will therefore be brought back to Council in July for adoption.
 - (vi). Recognises that this will push out the timeframes for issuing of the public notice and consultation with the community, previously provided to the public and a revised timeline will be developed.

On the amendment being put Cr Deeming called for a division:

	For	Against	Abstain
Her Worship the Mayor	X		
Cr Gavin Benney		X	
Cr Vince Cocurullo		X	
Cr Nicholas Connop	X		
Cr Ken Couper		X	
Cr Tricia Cutforth	X		

Cr Shelley Deeming		X	
Cr Jayne Golightly		X	
Cr Phil Halse		X	
Cr Greg Innes		X	
Cr Anna Murphy	X		
Cr Carol Peters	X		
Cr Simon Reid		X	
Results	5	8	0

The Amendment was Lost (5 to 8)

On the motion being put Cr Cutforth called for a division:

	For	Against	Abstain
Her Worship the Mayor	X		
Cr Gavin Benney	X		
Cr Vince Cocurullo	X		
Cr Nicholas Connop		X	
Cr Ken Couper	X		
Cr Tricia Cutforth		X	
Cr Shelley Deeming	X		
Cr Jayne Golightly	X		
Cr Phil Halse	X		
Cr Greg Innes	X		
Cr Anna Murphy		X	
Cr Carol Peters	X		
Cr Simon Reid	X		
Results	10	3	0

The motion was Carried (10 to 3)

7.8 2021 LGNZ Annual General Meeting Remits

1. Tree Protection

Moved By Cr Shelley Deeming

Seconded By Cr Phil Halse

That Council **not support** the remit that LGNZ:

- Advocate that the provisions that were added to the RMA, that restricted tree protection, be repealed urgently and that this change be carried through into new resource management

legislation, thereby restoring the right to councils to adopt and enforce locally appropriate policies to protect trees in their district. And that LGNZ advocate to use the current RMA reform process to ensure these changes are carried through into new legislation.

Procedural motion

Moved By Cr Ken Couper

Seconded By Cr Simon Reid

That the motion be put.

Carried

On the motion being put Cr Murphy called for a division:

	For	Against	Abstain
Her Worship the Mayor		X	
Cr Gavin Benney	X		
Cr Vince Cocurullo	X		
Cr Nicholas Connop		X	
Cr Ken Couper	X		
Cr Tricia Cutforth		X	
Cr Shelley Deeming	X		
Cr Jayne Golightly	X		
Cr Phil Halse	X		
Cr Greg Innes		X	
Cr Anna Murphy		X	
Cr Carol Peters		X	
Cr Simon Reid	X		
Results	7	6	0

The motion was Carried (7 to 6)

2. Rating Value of Forestry Land

Moved By Cr Greg Innes

Seconded By Cr Nicholas Connop

That Council **support** the remit that LGNZ:

- Requests the Valuer General to amend the relevant legislation to allow for Local Government to address the growing disparities between the rating valuation of forestry land and other land uses.

Carried

Cr Reid requested his vote against be recorded.

3. Funding of Civics Education

Moved By Cr Tricia Cutforth

Seconded By Cr Anna Murphy

That Council **support** the remit that LGNZ advocate to central government for provision of funding to enable Councils to engage in civics education for high school children.

Carried

4. Promoting local government electoral participation

Moved By Her Worship the Mayor

Seconded By Cr Shelley Deeming

That Council **support** the remit that LGNZ support the legislative change that proposes that the power the Chief Executive has under the local Government Act (42,2(da)) for “facilitating and fostering representative and substantial elector participation in elections and polls held under the Local Electoral Act 2001” be removed and placed with the Electoral Commission.

Carried

5. Carbon emission inventory standards and reduction targets

Moved By Cr Anna Murphy

Seconded By Cr Nicholas Connop

That Council **support** the remit that LGNZ works with central government in a) developing consistent emission inventory standards for use by local and regional authorities, and b) setting science-based emissions reduction targets to support delivery on our National Determined Contribution under the Paris Agreement and on our nationwide emissions budgets being established by government via advice from the Climate Change Commission.

Carried

Crs Reid and Golightly requested their votes against be recorded.

6. WINZ Accommodation Supplement

Moved By Cr Carol Peters

Seconded Cr Ken Couper

That Council **support** the remit that LGNZ works with the Government to:

1. Conduct an urgent review of the Work and Income New Zealand (WINZ) Accommodation Supplement (AS) system zones in partnership with Territorial Authorities.

2. Schedule a two yearly review of the WINZ AS system zones in partnership with Territorial Authorities ongoing.

Carried

7. Liability - Building Consent functions

Moved By Cr Ken Couper

Seconded By Cr Shelley Deeming

That Council **support** the remit that LGNZ works with Government to obtain legal protection/indemnity from the Crown in favour of all Councils, and/or to implement a warranty scheme, for any civil liability claim brought against a Council with regards to building consent functions carried out by Consentium (a division of Kāinga Ora), as any such costs should not be borne by ratepayers.

Carried

Cr Reid requested his vote against be recorded.

8. Public Excluded Business

Moved By Cr Shelley Deeming

Seconded By Cr Vince Cocurullo

That the public be excluded from the following parts of proceedings of this meeting. The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under Section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

General subject of each matter to be considered		Reason for passing this resolution in relation to each matter	Ground(s) under Section 48(1) for passing this resolution
1.1	Confidential Minutes Whangarei District Council meeting 27 May 2021	Good reason to withhold information exists under Section 7 Local Government Official Information and Meetings Act 1987	Section 48(1)(a)
1.2	Civic Honours Selection Committee Approval of Minutes and Recommendations 2021		
1.3	Rent Arrears Waiver		

This resolution is made in reliance on Section 48(1)(a) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by Section 6 or Section 7 of that Act which would be prejudiced by the

holding of the whole or the relevant part of the proceedings of the meeting in public, are as follows:		
Item	Grounds	Section
1.1	For the reasons as stated in the open minutes	
1.2	For the reasons as stated in the open minutes	
1.3	The making available of information would be likely to unreasonably prejudice the commercial position of the persons who are the subject of the information To prevent the disclosure or use of official information for improper gain or improper advantage	Section 7(2)(b)(ii) Section 7(2)(j)

Carried

9. Closure of Meeting

The meeting concluded at 1.33pm.

Confirmed this 22nd day of July 2021

Her Worship the Mayor Sheryl Mai (Chairperson)

Item 5.2
Whangarei District Council Meeting Minutes

Date: Tuesday, 29 June, 2021
Time: 9:00 a.m.
Location: Council Chamber
 Forum North, Rust Avenue
 Whangarei

In Attendance	Her Worship the Mayor Sheryl Mai (Chairperson) Cr Gavin Benney (Virtually) Cr Vince Cocurullo Cr Nicholas Connop Cr Ken Couper Cr Tricia Cutforth Cr Shelley Deeming Cr Jayne Golightly Cr Phil Halse Cr Greg Innes Cr Greg Martin Cr Anna Murphy Cr Carol Peters Cr Simon Reid
Scribe	C Brindle (Senior Democracy Adviser)

1. Karakia/Prayer

Cr Cocurullo opened the meeting with a karakia/prayer.

Crs Cutforth and Murphy joined the meeting at 9.01am following the karakia/prayer.

3. Apologies

There were no apologies.

4. Decision Reports
4.1 Three Waters Reform - Council's Next Steps

That the Whangarei District Council

1. Notes that participation in the Government's three waters reform is voluntary with the ability for Councils to "opt out" of the reform process;
2. Notes that the Memorandum of Understanding with government which provides for WDC to be part of the three waters reform process expires on 30 June 2021;
3. Notes that the Department of Internal Affairs has refused an Official Information Act (OIA) request to provide WDC with specific information which shows that Whangarei ratepayers would be better off under the reform programme;
4. Provisionally exercises its right to "opt-out" of the Government's three waters reform process until new information, that confirms ratepayers would be better off by Council participating in the reforms, is provided.
5. Requests the Mayor and Chief Executive to write to the Chief Executive of the Department of Internal Affairs advising that WDC intends to formally withdraw from the three waters reforms.

On the motion being put Cr Deeming called for a division:

	For	Against	Abstain
Her Worship the Mayor	X		
Cr Gavin Benney	X		
Cr Vince Cocurullo	X		
Cr Nicholas Connop	X		
Cr Ken Couper	X		
Cr Tricia Cutforth	X		
Cr Shelley Deeming	X		
Cr Jayne Golightly	X		
Cr Phil Halse	X		
Cr Greg Innes	X		
Cr Greg Martin	X		
Cr Anna Murphy	X		
Cr Carol Peters	X		
Cr Simon Reid	X		
Results	14	0	0

**The Motion was Carried (14 to 0)
Unanimous**

4.2 Private Developer Agreement – Totara Parklands playground development

Moved By Cr Phil Halse

Seconded By Cr Shelley Deeming

That the Council

1. Approves a Private Development Agreement with Totara Parkland Limited to develop a playground on Lot 516 DP 507433 in lieu of paying Parks and Reserves Urban Village Development Contributions assessed at \$122,461.20 plus GST and;
2. Delegates the Chief Executive the authority to finalise the terms and conditions relating to the Private Development Agreement with Totara Parklands Limited.

Carried

4.3 Easement over Local Purpose (Esplanade) Reserve - Whangarei Heads Road

Moved By Cr Greg Innes

Seconded By Cr Nicholas Connop

That Whangarei District Council; pursuant to Section 48 of the Reserves Act 1977;

- a. Resolves that public notice of the application is not required in accordance with Section 48(3) of the Act.
- b. Approves the application by Pricilla Moore for easement rights to drain stormwater from a three lot subdivision of 1856 Whangarei Heads Road (Lot 1 DP 58765) over the Local Purpose (Esplanade) Reserve Lot 2 DP 48484.

Carried

4.4 NECT Trustee Reappointment and Update on New Trust

Item 4.4.1 containing further information and updated recommendations was distributed prior to the meeting.

Moved By Her Worship the Mayor

Seconded By Cr Carol Peters

That the Council:

1. Notes the consultation feedback from Northland Regional Council on the new Trust.
2. Notes the continuation of the Management Agreement and Provision of Services Agreement.

3. Agrees to indemnify all trustees of Northland Events Centre Trust for any liabilities that may be incurred in winding up the Trust.
4. Approves the reappointment of Councillor Gavin Benney as a trustee of the Northland Events Centre Trust for a term to end on 31 October 2021.
5. Appoints General Manager Dominic Kula as a trustee of the Northland Events Centre Trust from 1 July 2021 to 31 October 2021.
6. Endorses the Trust Deed for the new Trust and notes that the Trust Deed will be finalised and put to Council for approval at a later date.
7. Delegates Dominic Kula's position on the trustee recruitment panel to General Manager Sandra Boardman from 1 July 2021 (for the avoidance of doubt, Dominic Kula will come off the selection panel from 01 July 2021).

Carried

Declarations of Interest:

Interests were declared by Cr Halse as Chair of NECT and Cr Benney as a Trustee of NECT.

Both Cr Halse and Cr Benney withdrew from the table and took no part in discussions or voting on Item 4.4.

Cr Cutforth abstained from voting on Item 4.4.

4.5 Sensitive Expenditure Policy

Moved By Cr Nicholas Connop

Seconded By Cr Anna Murphy

That Council:

1. Receive the information.
2. Adopt the Sensitive Expenditure Policy.
3. Authorises the Chief Executive to make any necessary amendments to the policy based on recommendations received from Audit New Zealand as part of the 2021 audit process.
4. Authorises the Chief Executive to make minor amendments, drafting, typographical or presentation corrections necessary to the Sensitive Expenditure Policy.

Carried

4.6 Amendments to the Speed Limit Bylaw 2019

Moved By Cr Shelley Deeming

Seconded By Cr Nicholas Connop

That the Council

1. In its capacity as Road Controlling Authority, pursuant to Section 22AB(1)(d) of the Land Transport Act 1998, make the amendments as set out in Attachments 1 and 3 to the Whangarei District Speed Limits Bylaw 2019 with effect from 01 August 2021.
2. Authorises the Chief Executive to make any minor edits or amendments to the Bylaw Amendments to correct any identified errors or typographical edits or to reflect decisions made by Council.

Carried

5. Information Reports

5.1 Financial Report for the 11 months ending 31 May 2021

Moved By Her Worship the Mayor

Seconded By Cr Shelley Deeming

That the Council notes the operating results for the eleven months ending 31 May 2021.

Carried

5.2 Capital Projects Report for the 11 Months Ending 31 May 2021

Moved By Cr Simon Reid

Seconded By Cr Phil Halse

That the Council notes the Capital Projects Report for the eleven months ending 31 May 2021.

Carried

6. Public Excluded Business

There was no business conducted in public excluded.

7. Closure of Meeting

The meeting concluded at 10.06am.

Confirmed this 22nd day of July 2021

Her Worship the Mayor Sheryl Mai (Chairperson)

6.1 CON21015 Port Road Bridge Widening and Kioreroa Road Intersection Upgrade Contract Award

Meeting: Whangarei District Council
Date of meeting: 22 June 2021
Reporting officer: Mark Seakins, NTA
 Jeff Devine, NTA Strategy and Planning Manager

1 Purpose

To award Separable Portions 1 and 2 of CON21015 Port Road Bridge Widening and Kioreroa Road Intersection Upgrade for a contract value of \$7,319,053.22 exclusive of GST.

2 Recommendation

That the Whangarei District Council award the contract for Port Road Bridge Widening and Kioreroa Road Intersection Upgrade (CON21015) to United Civil Construction Ltd for \$7,319,053.22 (Seven Million, Three Hundred and Nineteen Thousand, and Fifty-Three Dollars and Twenty Two Cents) excluding GST. This approval is for Separable Portions 1 and 2 only.

3 Background

The Port Road Bridge Widening and Kioreroa Road Intersection Upgrade project includes the 4-laning of Port Road from the Port Road/Okara Drive roundabout to Kioreroa Road and the upgrade of the Port Road /Kioreroa Road intersection. The Port Road Bridge Widening portion and the 4-laning to Kioreroa Road is being funded by the Ministry of Business, Innovation and Employment (MBIE) as part of the government's "shovel ready" COVID-19 response programme. An agreement between MBIE and the Council for this project was signed in November 2020. The approved MBIE budget for this work is \$10M.

A separate application has been made to Waka Kotahi NZ Transport Agency for funding of the Port Road / Kioreroa Road Intersection Upgrade. The estimated cost of the intersection upgrade work is \$6M.

The bridge widening involves the construction of a new two-lane bridge including a 3m wide shared path which will be located next to the existing two-lane bridge which crosses the Hāhā/ Limeburner's Creek. The existing bridge will be retained, resulting in 4-lanes overall. This contract is for the main construction of the bridge and intersection work. CON21015 has been broken into three Separable Portions as described in the table below:

Separable Portion	Description	Funded by
1	Bridge construction	MBIE (funding approved)
2	Approaches to the new bridge	MBIE (funding approved)
3	Port Road / Kioreroa Road Intersection upgrade	WDC/Waka Kotahi (Funding to be confirmed)

This recommendation is for the award of Separable Portions 1 and 2 which have funding approved by MBIE.

A separate agenda item for Separable Portion 3 for the intersection upgrade, will be presented to Council for approval should the funding for this work be approved. In the meantime, a business case for this work is being developed and design work is underway. At this stage, the type of intersection (roundabout vs signals) is still to be confirmed through the business case process.

The MBIE funded Separable Portions 1 and 2 have very tight timeframes, with the bridge construction programmed for completion in just 8 months (March 2022) and the associated approach works to be completed 3 months later (June 2022).

Due to the tight timeframes, enabling works and service relocations for the bridge widening works are already underway through smaller contracts to clear the site ready for the main contractor to start.

The resource consent application has been lodged for Separable Portions 1 and 2. This is expected to be processed in a non-notified basis and is likely to be approved in late July in time for the start of these works.

4 Discussion

4.1 Procurement

Contract 21015 was publicly tendered on the TenderLink website. Due to the tight timeframes involved in this project, the tender was based on a preliminary design of the bridge and intersection with the intention that the final contract price would be agreed with the preferred tender following the completion of the detailed design. Tenders closed on 6 May 2021.

Three conforming tenders were received as described below:

- Downer New Zealand Ltd
- Fulton Hogan Ltd
- United Civil Construction Ltd

These tenders were evaluated using the Price Quality Method in accordance with the Rooding Procurement Strategy and NZ Transport Agency's Procurement Manual. The result of the tender evaluation process is described in the table below. The prices described below are for all three separable portions:

Tender	Tender Price (excl GST)	Supplier Quality Premium	Adjusted Tender Price (excl GST)
Downer New Zealand Ltd	\$17,134,329.29	-\$532,129.50	\$16,602,199.79
Fulton Hogan Ltd	\$17,988,289.47	-\$628,065.86	\$17,360,223.61
United Civil Construction Ltd	\$11,271,968.16	+\$421,456.25	\$11,693,424.41
Engineer's Estimate	\$12,634,147.07		

The United Civil Construction Ltd tender was found to have the lowest overall adjusted tender price and is therefore the preferred tender. This tender also had the lowest tender price.

An arithmetic check was undertaken and no errors were found in the United Civil Construction Ltd tender, although an issue was found at the time of tender where they had priced for the wrong thickness of asphalt for Separable Portion 3 (50mm rather than the correct 140mm). This issue results in United Civil Construction Ltd's price being approximately \$400,000 too low. This issue has already been reflected in their Supplier Quality premium.

Following confirmation that United Civil Construction Ltd was the preferred tenderer, negotiations were undertaken to agree their contract price based on changes between the preliminary and detailed design, including the adjustment for the thickness of asphalt as described above. This has resulted in their negotiated contract price being \$1.23M higher than their tender price. The changes in their price is due to additional works that have been identified in the detailed design that were not originally included in the preliminary design. This includes permanent sheetpile walls in the eastern abutment and timber pole abutment support to reduce potential settlement effects. The cost increase is considered reasonable considering the scale of the additional works involved. Overall, United Civil Construction Ltd's negotiated tender price of \$12,509,746.22 is still over \$4.5M cheaper than the other two tender prices received, even before the detailed design changes are added to the other tenders.

Although United Civil Construction Ltd's price is substantially lower than the prices received from the other two tenderers, they have confirmed that they can complete the contract works within this negotiated price.

4.2 Financial/budget considerations

The United Civil Construction Ltd tender has a negotiated tender price of \$12,509,746.22 (excl GST). This is 1% lower than the unadjusted Engineer's Estimate. A review of the individual rates generally appears reasonable.

The breakdown of their tender price into the individual separable portions is shown below:

Separable Portion	Tender Price (excl GST)	Comments
1 – Bridge Construction	\$4,800,123	Funded within available MBIE budget (see table below)
2 – Bridge Approaches	\$2,393,930	Funded within available MBIE budget (see table below)
3 – Intersection Upgrade	\$5,310,693	Provisional – Funding to be confirmed by Waka Kotahi
Total	\$12,509,746	

The total cost of Separable Portions 1 and 2 is \$7,194,053.22 excluding GST. In addition, an allowance of \$125,000 has been allowed for landscaping around the bridge which is still being designed. This results in an overall value of Separable Portions 1 and 2 of **\$7,319,053.22** excluding GST.

The overall breakdown of the project costs and how they compare to the approved \$10M of MBIE funding is shown in the table below:

Description	Estimated Cost (excl GST)	Status
Investigation, design and consenting	\$1,272,000	Nearly complete
Enabling works and service relocations	\$840,300	Underway
CON21015 Port Road Bridge Widening and Kioreroa Road Intersection Upgrades – Separable Portions 1 and 2 only	\$7,319,053	This contract award
Contract Supervision & Council Costs	\$564,000	To commence
TOTAL ESTIMATED COST	\$9,995,353	
TOTAL APPROVED MBIE BUDGET FOR SP1 and SP2	\$10,000,000	

This shows that Separable Portions 1 and 2 of Contract 21015 can be funded from the approved \$10M MBIE budget.

Separable Portion 3 for the Port Road / Kioreroa Road Intersection Upgrade is pending the approval of the \$6M budget by Waka Kotahi. As described above, approval to proceed with Separable Portion 3 will be sought through a separate agenda to Council if and when Waka Kotahi agree to fund this work.

4.3 Policy and planning implications

This project is part of a package of work that includes the \$6M Port Road/Kioreroa Road Intersection Upgrade which has been included in the Council's Long Term Plan for 2021/31.

The construction of the Port Road Bridge Widening and the Port Road/Kioreroa Road Intersection Upgrade (when funded) will help enable the Port Nikau Development to proceed.

4.4 Risks

There is a risk that MBIE may withdraw the funding for this project. This risk is considered low because:

- The project is well advanced compared to many other “Shovel Ready” projects around the country.
- The MBIE project manager has advised that because this project is well advanced it is likely that Council will be able to uptake the full funding for the project.
- Council will be able to claim the next \$4M for the project in July when the contract is awarded, and consent granted. This will help commit the MBIE funding. Council has already secured \$1M of funding from MBIE for this project.

5 Significance and engagement

The decisions or matters of this Agenda do not trigger the significance criteria outlined in Council’s Significance and Engagement Policy, and the public will be informed via the publication of this Agenda on the Council website.

As mentioned above, the Port Road / Kioreroa Road Intersection Upgrade, which is part of the package of work, has already been consulted on through the Council’s Long Term Plan for 2021/31.

Consultation with Te Parawhau (mana whenua of the area) has been undertaken for the Port Road Bridge Widening as part of the resource consent application, and they are currently undertaking hui to develop a cultural impact assessment for the project.

6.2 Easement Request - Marsden Maritime Holdings

Meeting: Whangarei District Council
Date of meeting: 22 July 2021
Reporting officer: Sue Hodge (Manager, Parks and Recreation)

1 Purpose

To seek Council's decision on an application for an access easement by Marsden Maritime Holdings over a recreation reserve (Lot 804 DP 376145) in favour of Lot 704 DP 376145 to provide for vehicle access to a loading bay for supermarket operations.

2 Recommendations

That the Whangarei District Council, pursuant to Section 48 of the Reserves Act 1977,

1. Accepts the application by Marsden Maritime Holdings Ltd for an access easement over Lot 804 DP 376145.
2. Resolves that the application by Marsden Maritime Holdings Ltd for an access easement over Lot 804 DP 376145 is to be publicly notified and objections or submissions called for.

3 Background

Marsden Maritime Holdings (MMH) have obtained a resource consent (LU2000068) to construct a supermarket facility at 30 Rauiri Drive, One Tree Point.

The approved development incorporates the creation of a loading bay alongside the western façade of the building, as well as an alternative loading bay on the north side of the building. Access to the western loading bay is intended to be obtained over the adjacent WDC owned Recreation Reserve legally described as Lot 804 DP 376145. The Recreation Reserve provides access to and boat trailer parking for the Marsden Marina public boat ramp.

Discussions were held late in the Resource Consent process as to the acceptability of access to the loading bay across the reserve. The requirement for an easement, as well as an alternative loading bay were added to the conditions of consent. As the land is vested as Recreation Reserve, the applicant needs to apply for an access easement under the Reserves Act 1977 over Lot 804 DP 376145 to access the designed loading bay.

The application was received on 26 February 2021.

4 Discussion

Lot 804 DP 376145 is the public boat ramp and boat trailer carpark at Marsden Marina.



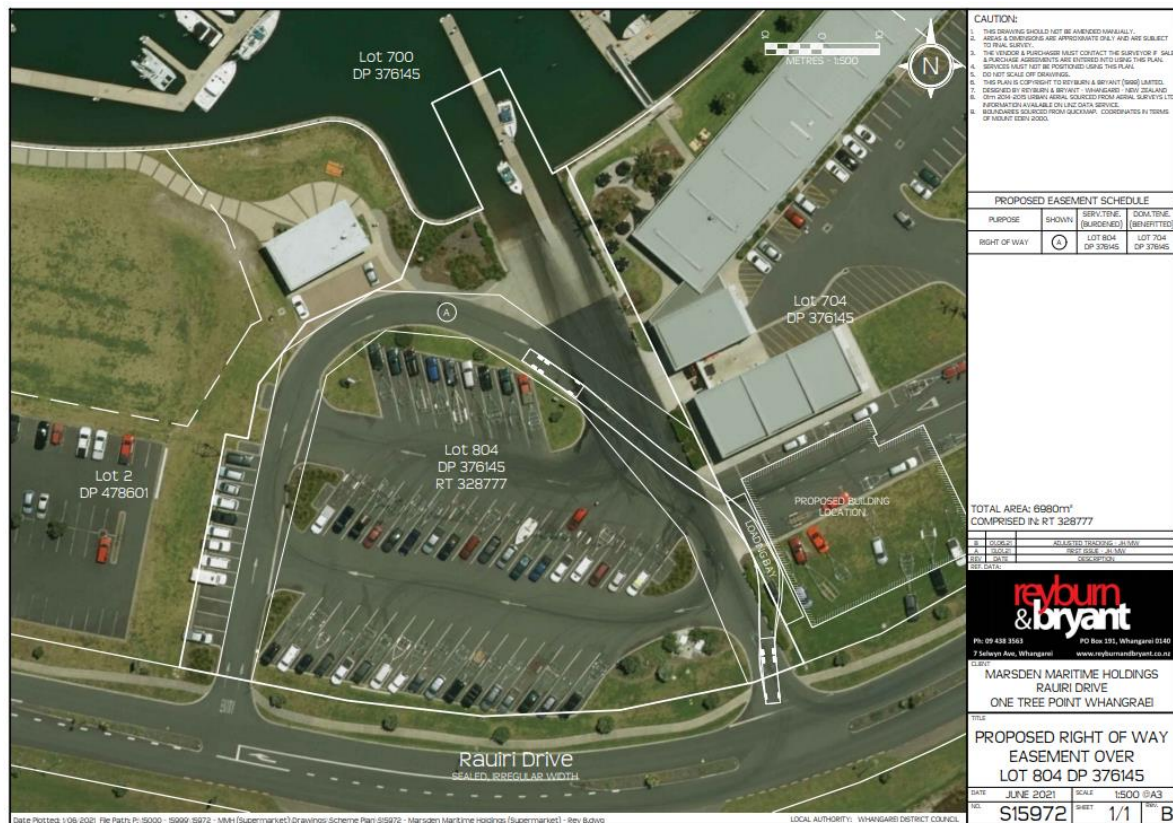
Figure 1: Aerial photo showing Lot 804 DP 376145 and adjacent Lot 704 DP 376145.

This is a very popular and well used facility for local and visiting boat owners and is often full especially during the summer months and weekends. Cars and trailers are often queueing at peak times to launch and retrieve boats.

Currently, Lot 704 DP 376145 is accessed from the marina car park via an internal road to facilitate access into the commercial area including a GAS petrol station. This is an informal arrangement not legalised through the granting of an access easement.

The proposed easement would be through the car park enabling delivery trucks to enter and exit the designed loading bay averaging approximately 4.5 truck movements per day. This is expected to consist of:

- Daily deliveries – milk and dairy goods, courier deliveries (pies, cakes, eggs etc) and bread trucks (Fielders/Tiptop).
- Weekly deliveries – Coke, Frucor, ice cream, delicatessen, Four Square van purchases (sometimes twice a week), Foodstuffs dry goods deliveries (approximately twice a week), Foodstuffs chilled/frozen goods deliveries (approximately three a week).



The following have been identified as potential issues with the granting of an easement for access:

1. Carpark maintenance of the easement area – noting that large trucks will impact on the wear and tear of the wider carpark.
2. Safety of users of the carpark and reserve and conflict with carpark users especially in summer where there will be an increase in both deliveries and users of the boat ramp.
3. Increasing numbers of movements and / or truck sizes as the needs increase without any ability to limit.
4. Restrictions on the ability to change the layout of the car park should Council require it.

The applicant has accepted the imposition of conditions within the easement instrument to address these issues. The conditions address vehicle movements, maintenance and easement review as follows:

1. Vehicle Movements - Deliveries are to be limited to 4 per day Sunday - Friday. One delivery only permitted on Saturday. Avoidance of known busy periods will be required. Trucks will have a maximum size limit. No deliveries or pickup by car will be permitted. Any future 'click and collect' services offered by the supermarket must use a different access location. The use of the easement for click and collect services will not be allowed.
2. Maintenance - A fair percentage towards ongoing maintenance of the road access and surface in the reserve is to be paid. Any costs to repair damage caused directly are to be paid.
3. Review of Easement or Easement Conditions - If the carpark layout is altered, or the carpark is closed the easement and easement conditions will be reviewed and amended as appropriate. The easement and easement conditions will be reviewed

if (reasonable) complaints are received. Each party may request a review of the easement (including surrender) or the easement conditions.

The applicant has accepted all costs required to establish the easement including:

1. Public notification of the easement.
2. Valuation of the easement area.
3. Compensation for the right of way.
4. Legal fees, including registering the easement on the title.
5. Survey and LINZ fees.

Under the Reserves Act 1977 Council has delegation to grant rights of way. The request for this easement falls under section 48(1)(f) -

(f) providing or **facilitating access** or the supply of water to or the drainage **of any other land not forming part of the reserve or for any other purpose connected with any such land** (authors emphasis).

4.1 Financial/budget considerations

All costs of the easement process are to be borne by the applicant, including Council's legal costs.

4.2 Policy and planning implications

1. The desire for this easement relates to the convenience of the adjacent development. Councillors might wish to consider why ratepayers and boaties should be inconvenienced by what appears to be poor planning by the developer.
2. By consenting to the easement application, it creates a precedent for using Council parks or reserves to make it easier to undertake commercial purposes.

4.3 Options

Option 1

Accept and notify the application as per s48 (2) of the Reserves Act.

The applicant has noted in their application that they don't believe the easement application should be publicly notified - as under S48 (3) it is:

- (a) not likely to be materially altered or permanently damaged; and
- (b) the rights of the public in respect of the reserve are not likely to be permanently affected - by the establishment and lawful exercise of the right of way or other easement.

Officers recommend that public notification is required pursuant to s48(2) of the Reserves Act, objections or submissions to the proposal called for and if required a hearing to consider the objections or submissions held.

The reason being that the rights of the public will be permanently affected due to the traffic movements and potential conflicts in the carpark.

Council is also required to consult with and seek the views of hapu/iwi as required by s4 of the Conservation Act.

Option 2

Decline the easement application.

Council officers cannot decline the application; however, Council can make this decision. If Council is of a mind to decline the easement application, then the appropriate resolution would be:

That the Whangarei District Council, pursuant to Section 48 of the Reserves Act 1977,

- a. Declines the application by Marsden Maritime Holdings Ltd for an access easement over Lot 804 DP 376145.

4.4 Risks

By consenting to the easement application, it creates a precedent for using Council parks or reserves to make it easier to undertake commercial purposes.

5 Significance and engagement

The decisions or matters of this Agenda do not trigger the significance criteria outlined in Council's Significance and Engagement Policy, and the public will be informed via Agenda publication on the website.

6 Attachments

1. Relevant section of the Reserves Act 1977
2. MMH Application

Attachment 1:

Relevant section of Reserves Act 1977

48 Grants of rights of way and other easements

- (1) Subject to subsection (2) and to the [Resource Management Act 1991](#), in the case of reserves vested in an administering body, the administering body, with the consent of the Minister and on such conditions as the Minister thinks fit, may grant rights of way and other easements over any part of the reserve for—
 - (a) any public purpose; or
 - (b) providing access to any area included in an agreement, lease, or licence granted under the powers conferred by this Act; or
 - (c) the distribution or transmission by pipeline of natural or manufactured gas, petroleum, biofuel, or geothermal energy; or
 - (d) an electrical installation or work, as defined in [section 2](#) of the Electricity Act 1992; or
 - (e) the provision of water systems; or
 - (f) providing or facilitating access or the supply of water to or the drainage of any other land not forming part of the reserve or for any other purpose connected with any such land.
- (2) Before granting a right of way or an easement under subsection (1) over any part of a reserve vested in it, the administering body shall give public notice in accordance with [section 119](#) specifying the right of way or other easement intended to be granted, and shall give full consideration, in accordance with [section 120](#), to all objections and submissions received in respect of the proposal under that section.
- (3) Subsection (2) shall not apply in any case where—
 - (a) the reserve is vested in an administering body and is not likely to be materially altered or permanently damaged; and
 - (b) the rights of the public in respect of the reserve are not likely to be permanently affected—
 by the establishment and lawful exercise of the right of way or other easement.



Office use		Date Received: 26/2/21
Planner:	Cristal Bennett	Time Received:
Engineer:	Bhupinder Gill	Payment received:
Due date:	15/3/21	R/N 1107020
Tech1 app #:	SD2100030	
Property #:	120168	Land #: 118435

Resource Consent Application - Form 9 RMA

This application for resource consent is made pursuant to Section 88 or 139 of the Resource Management Act 1991 (RMA 1991). Please note that your application will be subject to all other relevant provisions contained within the RMA.

This form is designed to provide the required details, and must be submitted as part of your application. Please note that the public can view all information provided in your application.

District Plan rules & maps, application forms and land information are available on Council's website www.wdc.govt.nz

If you have attended a pre-application or duty planner meeting about your proposal, enter their name

1 Application Details – It is important that you fully complete all sections

Full Name of Applicant Marsden Maritime Holdings

Postal address PO Box 196, Ruakaka 0151

Phone no 027 223 4379

Email felix.richter@marsdenmaritime.co.nz

I hereby apply to Whangarei District Council for

☐ Land Use Consent (s88)

☐ Subdivision Consent (s88)

☐ Certificate of Compliance (s139)

☐ Subdivision and Land Use Consent (s88)

This application also includes

☒ Right-of-way (s348)

☐ Easement Cancellation (s243)

☐ Consent Notice (s221)

☐ Amalgamation Covenant/Condition (s240/s241)

☐ Conservation Covenant (s114)

☐ Other

Description of activity To create a right of way easement over Lot 804 DP 376145 in favour Of Lot 704 DP 376145.

Additional consents (i.e. NRC consents)

☐ No additional resource consents are needed for the proposed activity

☐ The following additional resource consents are needed for the proposed activity, and have (or have not) been applied for (give details)

Have you applied for a BC or PIM ☐ Yes ☐ No If yes, state BC or PIM no _____

2 Site Detail

Property address 32 Rauiri Drive, Marsden Cove

Legal description Lot 704 DP 376145 CT 306255 Property ID _____

District Plan Environment _____

3 Site Visit Requirements

(A site visit is generally undertaken by staff processing the application)

3.1 Is there a locked gate or security system restricting access by Council staff? ☐ Yes ☐ No

3.2 Is there a dog on the property? ☐ Yes ☐ No

3.3 Provide details of any entry restriction or hazards that Council staff should be aware of, e.g. health and safety, organic farm, measures to inhibit the transfer of Psa-V etc.

4 Ownership (if different from applicant)

Full legal name of owner -

Postal address of owner _____

Full legal name of occupier _____

Postal address of occupier _____

Phone no (owner) _____ Email (owner) _____

5 Payer (mandatory)

Full legal name of payer Marsden Maritime Holdings

Address of payer PO Box 196, Ruakaka 0151

Phone no 027 223 4379 Email felix.richter@marsdenmaritime.co.nz



Signature (Mandatory)

26/02/2021

Date

(NB By signing this form you undertake to pay Council's processing fees)

6 Address for Service/Correspondence (Agent)

Name Reyburn and Bryant

Ref no 15972

Telephone Mobile _____ Landline 09 438 3563

Postal address PO Box 191, Whangarei 0140

Email joseph@reyburnandbryant.co.nz

7 Attachment checklist (mandatory requirements are in bold)

- | | |
|--|--|
| 1. Completed application form | 2. Cover letter / description of the activity |
| 3. Advance fee/deposit | 4. Assessment of environmental effects (AEE) |
| 5. Assessment against the operative and proposed District Plan rules, objectives and policies and assessment criteria | 6. Assessment against Part 2 of RMA |
| 7. Assessment against National Environmental Standards (NES) including contaminated soils | 8. Assessment against National Policy Statement |
| 9. Certificate of title dated within 6 months | 10. Building activity or scheme plans |
- Specialist Reports:**
- | | | |
|--|---------------------------------------|--|
| <input type="checkbox"/> Iwi Consultation | <input type="checkbox"/> Landscape | <input type="checkbox"/> Written Approvals |
| <input type="checkbox"/> Engineering | <input type="checkbox"/> Geotechnical | <input type="checkbox"/> Ecological |
| <input type="checkbox"/> Archaeological | | |
| <input type="checkbox"/> Other (specify) _____ | | |

8 Signature of the applicant(s) or agent
Payment of fees and charges

Please refer to Council's 'Schedule of Fees & Charges' at www.wdc.govt.nz/ratesandpayments/feesandcharges.

You are required to pay an advance fee deposit at time of lodgement.

You will be charged a processing fee when Council has reached a decision on your application. Interim billing may also occur on applications. The processing charge covers tasks such as site visits, report preparation, information searches, and input from other Council staff including engineers. Mileage is also charged.

Development Contributions

When granting consent to certain activities the council may levy a monetary contribution. Development contributions are levied under the Local Government Act 2002 in accordance with Council's Development Contributions Policy. When such contributions become due, the consent holder is responsible for their payment. Unless otherwise advised, the name and contact address of the person responsible for payment of any contributions will be taken as the applicant.

Privacy Information

The council requires the information you have provided on this form to process your application under the RMA and to collect statistics. The council will hold and store the information, including all associated reports and attachments, on a public register. The details may also be made available to the public on Council's website. These details are collected to inform the general public and community groups about all consents which have been processed or issued through the Council. If you would like to request access to, or correction of any details, please contact the Council.

Site visit

By signing this form, you confirm that the Council is permitted to undertake a site inspection.

Declaration for the applicant or authorised agent

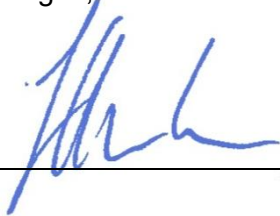
I/we confirm that I/we have read and understood the notes above.

Applicant's Signature _____ Date _____

Declaration for the agent authorised to sign on behalf of the applicant.

As authorised agent for the applicant, I confirm that I have read and understood the above notes and confirm that I have fully informed the applicant of their/its liability under this document, including for fees and other charges, and that I have the applicant's authority to sign this application on its/their behalf.

Agent's Signature _____ Date 26/02/2021



26 February 2021

Whangarei District Council
Private Bag 9023
WHANGAREI 0148

ref.15972.jbh

To whom it may concern,

RE APPLICATION PURSUANT TO SECTION 348 OF THE LOCAL GOVERNMENT ACT (1974) AND SECTION 48 OF THE RESERVES ACT (1977) – MARSDEN MARITIME HOLDINGS – 32 RAUIRI DRIVE, MARSDEN COVE.

Summary

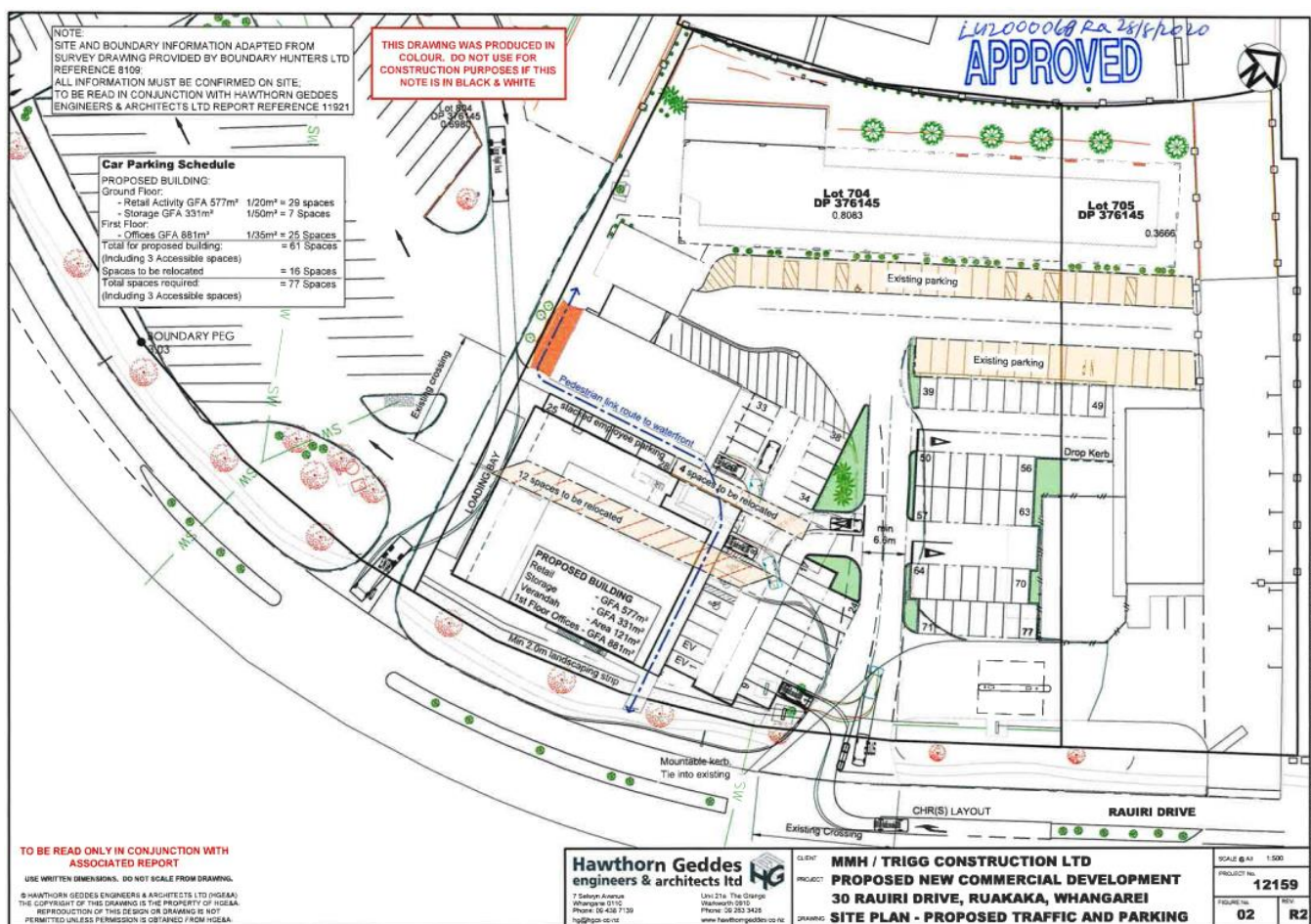
1. This is an application pursuant to Section 348 of the Local Government Act, 1974 and Section 48 of the Reserves Act, 1977 to create a right of way easement over Lot 804 DP 376145 in favour of Lot 704 DP 376145. A scheme plan showing the proposed easement is **attached**.

Background

2. In August 2020, WDC approved the construction of a new commercial building at 32 Rauiri Drive, Marsden Cove under the land use consent referenced LU2000068. The commercial building was proposed to contain a Four Square supermarket at ground floor and eight commercial office activities on the first floor. A copy of the LU2000068 decision is **attached**.
3. The approved development incorporates the creation of a loading bay alongside the western façade of the building. Access to this loading bay is intended to be obtained over the adjacent WDC owned recreation reserve legally described as Lot 804 DP 376145.
4. To legalise the access arrangement approved under LU2000068, it is necessary to first establish a right of way easement over Lot 804 DP 376145 in favour of Lot 704 DP 376145.

The proposal

5. The proposed right of way easement will allow loading vehicles to access the loading bay proposed to be located on the western side of the building as indicated on the approved plan shown in Figure 1 below:



6. The frequency of deliveries will be relatively low – averaging approximately 4.5 visits a day. Deliveries generally consist of:
 - Daily deliveries – milk and dairy goods, courier deliveries (pies, cakes, eggs etc) and bread trucks (Fielders/Tiptop).
 - Weekly deliveries – Coke, Frucor, ice cream, delicatessen, Four Square van purchases (sometimes twice a week), Foodstuffs dry goods deliveries (approx. twice a week), Foodstuffs chilled/frozen goods deliveries (approx. three a week).
7. This low frequency of deliveries is unlikely to cause any disruption to car park users and will not materially alter or permanently damage the car park itself.
8. The WDC Parks and Recreation Department have been consulted with regarding this aspect of the proposal, and their correspondence is **attached**.
9. In the unlikely event that the subject land ceases to be utilised as a car park, the easement over the reserve would need to be cancelled. To account for this, it is proposed to include wording in the

easement document, which will stipulate that if the use of the recreation reserve was to change, the dominant tenement must agree to surrender (or alter) their easement.

Statutory context

10. The proposal is subject to Section 348 of the Local Government Act, 1974:

348 Powers of council with respect to private roads and private ways

- (1) Except with the prior permission of the council, no person shall lay out or form any private road or private way, or grant or reserve a right of way over any private way, in the district.*
- (2) Subject to section 347, in granting any such permission the council may—*
- (a) impose such conditions as to widths, levels, entrances, courses, formation, cost of formation, maximum number of buildings to be erected fronting any such private road or private way, minimum distances between any 2 buildings, position of building line, and otherwise in all respects whatsoever as the council thinks fit; and*
 - (b) require the owner or owners to whom permission is given to enter into a bond to comply with any conditions imposed by the council. Every such bond shall be deemed—*
 - (i) to be an instrument creating an interest in each parcel of land to which the conditions apply within the meaning of section 51 of the Land Transfer Act 2017, and may be registered accordingly; and*
 - (ii) to be a covenant running with each such parcel of land, and shall bind subsequent owners.*
- (3) Any permission of the council under subsection (1) to lay out or form any private road or private way as aforesaid shall be deemed to lapse on the expiration of 3 years after the grant thereof, unless the work has then been completed to the satisfaction of the council; but may from time to time be extended by the council for a period or periods not exceeding 1 year at any one time.*
- ...

11. The creation of a right of way easement over a reserve vested in an administering body is also subject to s48 of the Reserves Act, 1977:

48 Grants of rights of way and other easements

- (1) Subject to subsection (2) and to the Resource Management Act 1991, in the case of reserves vested in an administering body, the administering body, with the consent of the Minister and on such conditions as the Minister thinks fit, may grant rights of way and other easements over any part of the reserve for—*
- (a) any public purpose; or*
 - (b) providing access to any area included in an agreement, lease, or licence granted under the powers conferred by this Act; or*
 - (c) the distribution or transmission by pipeline of natural or manufactured gas, petroleum, biofuel, or geothermal energy; or*
 - (d) an electrical installation or work, as defined in section 2 of the Electricity Act 1992; or*
 - (e) the provision of water systems; or*
 - (f) providing or facilitating access or the supply of water to or the drainage of any other land not forming part of the reserve or for any other purpose connected with any such land.*

Subsection 2 of s48 states the following regarding notification of applications under this section of the Act:

- 2) Before granting a right of way or an easement under subsection (1) over any part of a reserve vested in it, the administering body shall give public notice in accordance with section 119 specifying the right of way or other easement intended to be*

granted, and shall give full consideration, in accordance with section 120, to all objections and submissions received in respect of the proposal under that section.

12. However, subsection 3 provides exceptions relating to when the notification process required by subsection 2 is not necessary:

3) Subsection (2) shall not apply in any case where—

- (a) the reserve is vested in an administering body and is not likely to be materially altered or permanently damaged; and*
- (b) the rights of the public in respect of the reserve are not likely to be permanently affected — by the establishment and lawful exercise of the right of way or other easement.*

(underlining is my emphasis)

13. Having considered the above, notification under s48(2) of the Reserves Act, 1977 is not considered necessary in this case. The reasons for this are set out as follows:
- The proposal will not materially alter the subject reserve (no physical works are necessary). The right of way easement will allow the leaseholders of the new MMH commercial building to utilise the existing parking and manoeuvring area within Lot 804 DP 376145 for access to the allocated delivery area.
 - The proposal will not permanently damage the reserve. The existing formation is designed to cater for low usage such as what is proposed.
 - The rights of the public in respect of the reserve are not likely to be permanently affected. The proposed vehicle movements (averaging approximately 4.5 daily) will not conflict with other vehicles' usage of the reserve.

Assessment of effects

14. The subject reserve is currently occupied by a car park which is predominantly used by vehicles towing and launching boats at the Marsden Cove boat ramp. The low frequency of deliveries proposed by this application will ensure that there is no disruption to the general public's use of the land. The utilisation of this land by delivery vehicles servicing the proposed Four Square will also not permanently damage the subject parking area.
15. As stated earlier, in the unlikely event that the subject land ceases to be utilised as a car park, the easement over the reserve would need to be cancelled. To account for this, it is proposed to include wording in the easement document, which will stipulate that if the use of the recreation reserve was to change, the dominant tenement must agree to surrender their easement.
16. No adverse effects are anticipated to result from the proposed easement.

Conclusion

17. This application proposes to establish a right of way easement over Lot 804 DP 376145 in favour of Lot 704 DP 376145. Notification under s48(2) of the Reserves Act, 1977 is not required in this case as the proposal will not materially alter or permanently damage the reserve. No adverse effects are anticipated to result from the proposed easement.
18. We trust that the above is sufficient to allow the processing and approval of this application. Please do not hesitate to contact the undersigned if there are any concerns or queries relating to the above.

Yours faithfully,



.....
Joseph Henehan
Senior Planner

Enclosed

Right of way scheme plan
LU2000068 decision
WDC Parks and Recreation Department correspondence



CAUTION:

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PROPOSED EASEMENT SCHEDULE			
PURPOSE	SHOWN	SERV.TENE. (BURDENED)	DOM.TENE. (BENEFITTED)
RIGHT OF WAY	(A)	LOT 804 DP 376145	LOT 704 DP 376145

TOTAL AREA: 6980m²
COMPRISED IN: RT 328777

REV	DATE	DESCRIPTION
A	13.01.21	FIRST ISSUE - JH/MW

REF. DATA:

Ph: 09 438 3563 PO Box 191, Whangarei 0140
7 Selwyn Ave, Whangarei www.reyburnandbryant.co.nz

CLIENT

MARSDEN MARITIME HOLDINGS
RAUIRI DRIVE
ONE TREE POINT WHANGARAEI

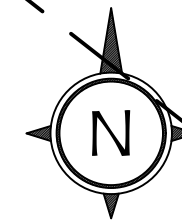
TITLE

PROPOSED RIGHT OF WAY
EASEMENT OVER
LOT 804 DP 376145

DATE	JANUARY 2021	SCALE	1:500 @A3
NO.	S15972	SHEET	1/1
		Rev.	A

LOCAL AUTHORITY: WHANGAREI DISTRICT COUNCIL

10 0 5
METRES - 1:500



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PURPOSE	SHOWN	SERV.TENE. (BURDENED)	DOM.TENE. (BENEFITTED)
RIGHT OF WAY	(A)	LOT 804 DP 376145	LOT 704 DP 376145

A	13.01.21	FIRST ISSUE - JH/MW
REV	DATE	DESCRIPTION
REF. DATA:		

**reyburn
&bryant**

CLIENT
MARSDEN MARITIME HOLDINGS
RAURI DRIVE
ONE TREE POINT WHANGARAE

TITLE

PROPOSED RIGHT OF WAY
EASEMENT OVER
LOT 804 DP 376145

DATE	JANUARY 2021	SCALE	1:500 @A3	
NO.	S15972	SHEET	1/1	Rev. A

LOCAL AUTHORITY: WHANGAREI DISTRICT COUNCIL

Date Plotted: 13/01/2021 File Path: P:\15000 - 15999\15972 - MMH (Supermarket)\Drawings\Scheme Plan\15972 - Marsden Maritime Holdings (Supermarket) - Rev A.dwg

Section 95 of the Resource Management Act 1991

Notification Decision – Discretionary Activity

1 Consent Application

Council Reference	LU2000068 and P118435		
Reporting Planner	Alister Hartstone (Consultant)		
Applicant	Marsden Maritime Holdings Limited		
Application	<p>Landuse consent to construct a two-level building with 1789m² gross floor area and 121m² verandah, and establish and operate a supermarket and eight commercial tenancies from the building with associated access, parking and heavy goods loading bay, and signage;</p> <p>Controlled activity consent under the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health ('NESC'S'); and,</p> <p>Partial surrender of an existing resource consent issued by the Whangarei District Council (ref RC41087)</p>		
Property Address	30 Rauiri Drive, Marsden Cove		
Legal Description	Lot 704 DP 376145		
Date Lodged	28/5/2020		
Site Visit	N/a		
Environment	<p>Business 3 Environment (ODP)</p> <p>Local Commercial Zone (PDP)</p>		
Resource Notations	Flood Susceptible Area		
Other	N/a		
Internal	Date sent	Amendments sent	Comments received
WDC Rooding		4/8/2020	10/8/2020
WDC Parks			21/8/2020
WEDC Development Engineering Officer			21/8/2020
External	Date sent	Amendments sent	Comments received
N/a			

2 Further Information

Requested	Received
16/6/2020	9/7/2020

3 Description of Proposal

Section 3 of the application prepared by Reyburn and Bryant Limited dated May 2020 ('the application') provides a detailed description of the proposal. The proposal provides for the construction of a LU2000068 and P118435 Marsden Maritime Holdings Limited Marsden Cove



commercial building on a site currently containing an existing commercial centre at Marsden Cove. The use of the proposed building is split between a supermarket operating on the ground floor occupying 908m², and eight commercial tenancies on the first floor occupying 881m². A 121m² verandah is proposed on the eastern façade being the main access point to the building.

On-site parking for 61 vehicles (in addition to the 48 existing carparks) and loading bays are provided to service the proposed building.

A number of matters were raised in the Section 92 request issued on the 16th June 2020. The applicant has subsequently provided additional information to address these matters. That information comprises the following as part of the formal response dated 9th July 2020:

- Clarification regarding on-site parking allocation and servicing of the development
- Clarification regarding the activity status under the Operative District Plan and compliance with the underlying Comprehensive Development Plan for Marsden Cove
- Advice that any lighting associated with the development will comply with the required permitted standards for lighting
- Advice regarding the need to restrict the nature of activities using the office tenancies
- Traffic Impact Assessment prepared by Hawthorn Geddes Limited dated 6th July 2020
- Confirmation regarding the extent of signage proposed across the site consisting of 18 signs totalling 53.51m²
- Acknowledgement that controlled activity consent is required under the NESCS for soil disturbance
- Provision of an acoustic report prepared by Marshall Day Acoustics Limited dated 15th July 2020 addressing operational and construction noise.

Following receipt and initial review of the Section 92 information, the application was reallocated by Whangarei District Council for processing. A further review of the information was undertaken with advice emailed to the applicant under cover of email dated 11th August 2020. This resulted in two outstanding matters being identified and addressed as follows:

- The applicant has presented two options for the provision of a suitable loading bay to service the development. The reason for doing so is that the development plans as originally lodged proposed a loading bay with access over the adjacent Council reserve. No legal access is available over the reserve to service the loading bay. On this basis, the two options for provision of loading bays are set out in the following site plans:
 - a) Plan prepared by Hawthorn Geddes Limited referenced as 12159C Sheet C101 Revision R1, showing the loading bay adjoining the western façade of the proposed building with access to be provided over the adjacent reserve
 - b) Plan prepared by Hawthorn Geddes Limited referenced as 12159 Figure No.3 Revision R1, showing the loading bay adjacent to the northern façade with tracking curves showing a heavy goods vehicle entering and reversing from the bay. This option requires relocation of 4 stacked car parks (Parks 25 – 28) identified on the original plan as being for staff only.

Advice had been received from Council's Roading and Parks Departments confirming that both alternatives would be acceptable. However, the loading bay with access over reserve could not be utilised until legal access over the reserve was granted. Council's Roading and Parks Department subsequently provided their agreement to the option of allowing for an 'either/or' condition as part of the consent. It is noted that the Parks Department has indicated that consent may not be granted for an easement over the adjacent reserve should such an application be made.

- The noise assessment from Marshall Day Limited dated 15th July 2020 stated that *'We anticipate that noise from the project's construction would comply with the relevant noise limits in NAV6.2 for receivers located off site. NAV 6.2 would be exceeded at some receivers located within the site. However, construction noise would be managed via a project CNMP for all receivers i.e. those within the site and external of the site.'* The infringement of the construction noise standard was further elaborated on by Marshall Day Limited in correspondence dated 21 August 2020. The assessment provided by Marshall Day Limited relies on a Construction Noise Management Plan and concludes that *'Where a temporary noise barrier is erected between the project site and the receivers represented by R1, the noise levels presented in column 5 would be reduced by 10 decibels. As*

such, the range in noise levels experienced by these receivers would decrease from 66-83dB LAeq down to 56-73dB LAeq. Whilst a minor 3dB exceedance of the noise limit is still predicted for a few activities (a fact that is not uncommon on work sites) it must be remembered that these are worst case short-term levels and typical day-to-day noise levels would be appreciably less and would in the main comply with the limit.

With advance warning and consultation with stakeholders, some noisy works may be able to be scheduled to appropriate times / days to avoid non-compliances and therefore avoid adverse effects. That is where Section 6.0 "Engagement" of the CNMP is important.

Based on the predicted noise levels (with 10dB of mitigation from the aforementioned barrier) and implementation of the CNMP, we conclude that any residual effects from construction of the project would be reasonable.'

This advice has been accepted as suitable to confirm that no persons, particularly those tenants of the existing businesses on the subject site (identified as 'R1' in the CNMP), will be adversely affected to a minor or more than minor extent by construction noise. The advice records that there will be no infringement of the permitted vibration standards.

4 Site and Surroundings

Section 2 of the application provides a description of the site and surrounding environment. The description provided in the application is accepted and adopted for the purpose of this report. It is recorded that, at the time of preparing this report, a building consent has been issued and construction works for the development have commenced on the site.

5 Reasons for Consent and Activity Status

Section 4 of the application identifies the infringements associated with the proposed activity under the Operative District Plan. As the application was lodged immediately prior to the release of the Decisions on the proposed Urban and Services Plan Changes, it does not require assessment against the rules of the proposed District Plan by virtue of Section 88A. Further consideration of the relevance of the proposed Plan provisions is addressed under Section 104(1)(b).

The assessment of rule infringements under the Operative Plan provided in the application, as they relate to traffic, parking, and signs, is accepted and adopted for the purpose of this report subject to the following comments.

The evidence provided indicates that a minor infringement of the permitted standard under NAV.6.2 Construction Noise will occur during construction works on the building and associated servicing. The infringement is therefore assessed as a discretionary activity under NAV.7.1.

The Section 92 response confirms that a controlled activity consent is required under the NESCS for soil disturbance on the site, given previous use of part of the site as a petrol station facility and marine servicing (engineering) business.

While the proposed building is located within a flood susceptible area, the applicant has provided an engineering report addressing this matter in accordance with the permitted activity standard under Rule 56.2.3.

The extent of the infringement associated with signs to be provided on the site was initially 28.95m². The amount of proposed signage has increased to 53.51m² as a result of the Section 92 response. All proposed signage will be located on the proposed building.

In considering the extent of parking and access requirements, it is noted that a small portion of development rights provided by resource consent RC41087 has not been completed but is retained. Those rights would result in a small area of additional building and 6 carparks being provided on the site. It was agreed that the appropriate way to manage the relationship between the requirements of the existing resource consent and the current proposal would be for the applicant to request the partial surrender of the existing resource consent RC41087 under Section 138. The part of the consent being

surrendered relates to the as yet unconstructed portion of building and the 6 associated carparks that are to be provided to service that unconstructed portion of building. The applicant formalised a request for this partial surrender of consent under cover of email dated 12th August 2020. This application for partial surrender of consent is assessed in the Section 104 report.

Overall, the proposal is assessed as a discretionary activity. The application has been presented as a 'bundle' of infringements requiring consent for the proposed activity. It is considered appropriate to assess the application as a 'bundled application'.

6 Notification Assessment (Sections 95A – 95G)

Statutory Matters – Public Notification Section 95A

Section 95A of the Resource Management Act 1991 (the Act) provides the process to determine public notification.

The proposal does not require public notification pursuant to s95A(3) and is not precluded from notification under Section 95A(5)(a) or (b).

In terms of Section 95A(8)(a), the proposal is not subject to any rule or national environmental standard that requires public notification. An assessment of adverse effects in accordance with Section 95D is provided below. That assessment confirms that, for the purpose of Section 95A(8)(b), any adverse effects associated with the proposal will be less than minor.

There are no known matters that would constitute special circumstances that would warrant public notification as per Section 95A(9).

Statutory Matters – Limited Notification Section 95B

Section 95B defines the steps to determine limited notification.

Pursuant to Section 95B(2) there are no protected customary rights groups affected by the proposal.

Pursuant to Section 95B(3) no land subject to a statutory acknowledgement is affected by the proposal.

The application is not precluded from limited notification pursuant to Section 95B(6)(a) and (b). Therefore, an assessment of affected persons under Section 95E is required. This assessment is provided further in this report.

Permitted Baseline

For the purposes of addressing Sections 95E(2)(a) and 104(2), a permitted baseline assessment can be undertaken to determine whether there are any adverse effects that can be disregarded in terms of considering persons who may be adversely affected and environmental effects. There are three categories to the permitted baseline test, these being:

- 1 what lawfully exists on the site at present
- 2 activities (being non-fanciful activities) which could be conducted on the site as of right; i.e. without having to obtain resource consent
- 3 activities which could be carried out under a granted, but as yet unexercised, resource consent.

At present, the site contains commercial activities commensurate with the Business 3 zoning under the Operative Plan. The Business 3 zone is intended to generally provide *'....for convenience retail, while ensuring that the building form is appropriate to suburban locations. Suburban centres satisfy the frequent requirements of people and communities for goods and services, recreation, and opportunities for interaction.'* It is noted that the Local Centre Zoning under the proposed Plan has not been challenged by appeals.

No bulk and location infringements have been identified as part of the proposed development. Therefore, the proposed building (when read in conjunction with the other existing buildings on the site) is considered to be of a scale anticipated by the Operative Plan. The proposed activities of a supermarket and offices are not limited by any rule in the Operative Plan, noting that the subject site and proposed activities will meet Rule 41.3.1 Activities Generally. A complying landscaping strip along the road frontage is illustrated on the site plan and the Section 92 response records that relocation of the existing tower sign adjacent to the entrance to Rauiri Drive is a permitted activity.

LU2000068 and P118435

Marsden Maritime Holdings Limited

Marsden Cove

No advice has been provided with the application to confirm whether it would be possible to provide complying parking and access in all respects. However, the Section 92 response suggests that the site could easily be subdivided (albeit as a controlled activity) with each resulting site able to contain a complying activity that would allow for traffic generation and signs of the scale proposed. While not a permitted activity, this proposition can be considered under Section 104(1)(c) as an 'Other Matter'.

The site has previously been subject to a resource consent for development (being RC41087 granted in October 2008). That consent provided for development of a commercial/retail and marine services centre and has been given effect to by way of construction and operation of the majority of the consented activities. Notably, Condition 3(i) of the consent requires on-site carparking for a minimum of 54 cars plus 6 boat trailers. This forms a baseline for the extent of existing legally established development on the site.

On the basis of the above, while a permitted baseline applies to the building and activities contained therein, there is no credible baseline presented that accommodates the additional signage, parking, and access requirements.

Assessment of Effects - Section 95D

The owners and occupiers of the following adjacent properties are excluded from the assessment as per Section 95D(a):

- The Whangarei District Council (as administrator of the adjacent reserve Lot 804 DP 376145)
- The occupiers of existing tenancies on Lot 704 DP 376145 (subject site)
- The occupiers of Lot 705 DP 376145 (noting that the consent holder owns this property)

Section 4 of the application provides an assessment of effects addressing the following rules of the Operative Plan:

- Rule 41.3.5 Provision of Parking Spaces, on the basis that an additional 61 on-site carparks will be provided on-site to service the proposed development, where 77 are required. This is in addition to the 48 carparks currently provided on the site as required under RC41087, noting the partial surrender of that consent will result in no more than the existing 48 carparks being required. It is noted that, regardless of the final loading bay design adopted for the development, the additional 61 carparks are proposed to be provided on the site. Inclusive of the existing parks, there will be 109 carparks on the site to service all existing and proposed activities.
- Rule 41.3.6 Traffic Movements, where the proposed activities will generate more than 200 traffic movements and therefore requires consideration as a controlled activity. The Traffic Impact Assessment report provided records that the traffic generation associated with the proposed office activities will equate to 178 movements per day, while the supermarket activity will generate on average 178 movements per day. The wording of Rule 41.3.6 is recognised as ambiguous, on the basis that the rule refers to any activity generating traffic, rather than traffic generated by all activities on a site. While a conservative position, it is considered that the 'activity' in this instance relates to that sought by the consent application, consisting of one 'activity', albeit the end result will be a supermarket activity and office activity within the proposed building.
- Rule 41.3.7 Signs, where the application proposes 18 additional signs associated with the proposed building and activities covering an area of 53.51m². These signs will be located on the facade of the proposed building and would be expected as a component of any commercial activity such as a supermarket.
- Rule 47.2.1 Parking and Loading due to three parks being partially located over the adjacent site (Lot 705 DP376145 owned by the applicant) and 4 carparks will be stacked, where these parks are to be used solely by employees. These stacked parks will not be provided (and will be relocated elsewhere) where the loading bay is sited on the northern façade of the building (being one of the two options proposed by the applicant). It is noted that the partial surrender of the existing resource consent RC41087 will address the identified infringement in the application associated with the shortfall of 6 carparks.

While not expressly stated in the application, it is recorded that the location and use of a loading bay on the western façade of the proposed building, where access will be provided over adjacent land (Council reserve), will comply with Rule 47.2.1. Parking and Loading in all respects. There is no specified requirement for access and manoeuvring associated with a loading bay to be located on the

same site as the loading bay itself. However, the applicant has acknowledged that the use of the loading bay as proposed will require separate approval from the Council as administrator of the adjacent reserve land. Where that approval cannot be obtained, the applicant has provided an alternative complying loading bay adjacent to the northern façade of the proposed building with access provided internally to the site.

The construction noise infringement has been assessed on the basis of the information provided by Marshall Day Acoustics Limited. It is accepted that, subject to implementation of the Construction Noise Management Plan, any adverse effect associated with construction noise will be less than minor.

The adverse effects of the various traffic and parking infringements associated with the application have been considered by the Council's Roding and Parks Departments. Comments have been provided from both Departments confirming they have no concerns with the proposal. Councils Roding Department have identified some design requirements for the loading bay option provided internally to the site on the northern façade of the building which have been accepted by the applicant. Councils Parks Department have indicated that an application will be required to provide legal access to the proposed loading bay on the western façade and cannot guarantee that such an application will be approved at the time of considering this resource consent application.

Councils Development Engineer has reviewed the application inclusive of the infringements and additional information provided in response to the Section 92 request and confirmed that any adverse effects arising from the proposal will be less than minor.

The application under the NESCS requires consideration as a controlled activity. Council has sought a review of the information provided with the application which has resulted in a memorandum received from Thomas Consultants Limited dated 27 July 2020 acting on behalf of the Council. That memorandum recommends granting consent (and Council is required to do so as a controlled activity) subject to conditions.

On this basis, any adverse effects of the proposal on the receiving environment are considered to be less than minor.

Affected Persons

The application as lodged was not supported by any written approvals. While the issue of the loading bay requiring access over adjacent reserve land has been raised, the application has provided an alternative loading bay option which avoids use of any adjacent land. On this basis, Councils Parks Department are not assessed as an affected person. However, they will be affected through civil proceedings if an application is made to create an easement for access to the loading bay proposed on the western façade.

The effects of construction noise have been given detailed consideration. The technical reports provided from Marshall Day Acoustics Limited have identified that, subject to implementation of a Construction Noise Management Plan, any adverse effects on existing tenants occupying the existing buildings located on the site will be less than minor. This is accepted and adopted for the purpose of determining that those existing tenants are not considered to be affected persons in considered construction noise effects.

It is noted that none of the infringements identified will generate off-site adverse effects such that any persons on adjacent land might be adversely affected. The proposal constitutes commercial use of land zoned for commercial purposes and is largely anticipated by the Operative Plan.

On the basis of the information provided both with the application and resulting additional information request and response, advice from the Councils' Roding and Parks Departments, and the Council's Development Engineer report, it is considered that no persons will be adversely affected to a minor or more than minor extent by the granting of consent to the proposal.

7 Recommendation

That pursuant to Sections 95A - 95F of the Act, this application proceed on a non-notified basis for the following reasons:



1. Sufficient information has been provided with the application to assess the actual and potential effects of the proposal. A permitted baseline has been adopted in assessing the extent of adverse effects associated with the proposed building and activities. The engineering information provided addressing the traffic, access, and parking effects has been confirmed as acceptable and no minor or more than minor adverse effects will arise in that regard.
2. Technical evidence has been provided by the applicant to address the infringement of the permitted construction noise standard. On the basis that the applicant has offered the implementation of a Construction Noise Management Plan to be adhered to during construction works which will effectively ensure a minimal infringement of the permitted level of construction noise, any adverse effects on existing tenants located on the site will be less than minor.
3. There are no rules that relate to this application that require it to be notified.
4. No special circumstances exist to warrant notification.

A handwritten signature in black ink, appearing to read "A Hartstone".

A Hartstone, Consultant Planner

27th August 2020

Date

A handwritten signature in black ink, appearing to read "R. Quinton".

R Quinton, Team Leader (RMA Consents)

28/8/2020

Date

Notice of Decision

LU2000068 and P118435

IN THE MATTER of the Resource Management Act 1991

and

IN THE MATTER of an application under Section 88 of the Resource Management Act 1991 by Marsden Maritime Holdings Limited

Section 104 of the Resource Management Act 1991

Decision – Discretionary Activity

1 Processing Details

Reporting Planner	A Hartstone
Date of Report	27 th August 2020
Section 37	N/a

2 Application Details

The application details, including the proposal have been detailed in Section 1 of the attached Notification Assessment. In addition, the reasons for consent, and the application site and the surrounding environment have been detailed in Sections 4 and 5 respectively of the attached Notification Assessment report.

3 District Plan Zoning/Environment and other Notations

The District Plan zoning and other notations affecting the site have been detailed in Section 1 of the attached Notification Assessment.

4 Statutory Context

Section 104 of the Act sets out those matters that, subject to Part 2, a consent authority must have regard to when considering an application for resource consent. These matters include any actual or potential effects on the environment of allowing the activity, any relevant provisions of a plan or proposed plan, and any other matter the consent authority considers relevant and reasonably necessary to determine the application.

As a discretionary activity, the proposal is required to be considered under Section 104B of the Act.

The application includes a request to partially surrender an existing resource consent RC41087. A surrender of consent requires consideration under Section 138 of the Act.

5 Actual or Potential Effects on the Environment (Section 104(1)(a))

Section 104(2) of the Act allows the consent authority to disregard an adverse effect of the activity on the environment if the Plan permits an activity with that effect (i.e. the permitted baseline principle). This matter has been addressed in Section 6 of the Notification Assessment report and also applies to this consideration. The permitted baseline includes provision for the existing resource consent RC41087 and resulting legally established buildings and activities across the site.

Section 104(3)(a)(ii) of the Act requires that no consideration may be had of any effect on a person who has provided their written approval to the application. No written approvals have been provided with the application.

The adverse effects of this activity have been addressed in Section 6 of the Notification Assessment report. The identified infringements relate generally to traffic and parking, signs, and construction noise. The effects of these infringements have been assessed as less than minor and are therefore acceptable in the receiving environment.



The application includes a controlled activity consent application under the NESCS. Based on the advice provided with the application and technical review undertaken by the Council, it is considered appropriate to grant consent with conditions under the Regulation.

Positive effects will arise from the provision of additional commercial services in the area. The supermarket will service a reasonably large and fast growing residential catchment at Marsden Cove and offers convenience and choice of goods. The office space provided above the supermarket will increase commercial activity within the area. These proposed activities are located on land zoned for such activities and is considered an appropriate and sustainable use of land.

Conditions of consent as provided for under Section 108 of the Act are required to ensure that the development is undertaken in accordance with the plans provided. These conditions need to take into account the fact that a building consent has been granted and works have commenced on the site. Specific conditions are identified to address the following:

- Provision of a loading bay to service the supermarket by way of one of the two alternative options provided
- Provision of formed access and carparking to service the proposed building and activities
- Conditions as recommended by Thomas Consultants Limited to address the consent under the NESCS
- Implementation of the Construction Noise Management Plan as recommended by Marshall Day Acoustics Limited
- A limitation on activities that can occupy the office tenancies to 'commercial services' as defined under the proposed Plan.
- Conditions addressing the NESCS requirements

Overall, taking into account the extent of the permitted baseline, the commercial zoning of the site, and the technical information provided with the application, the adverse effects of the proposal are considered to be acceptable within the receiving environment.

Under Section 138 of the Act, the holder of a consent may partially surrender an existing consent by giving written notice to the Council. The Council may refuse to accept that surrender where it considers the surrender of that part would:

- (a) *affect the integrity of the consent; or*
- (b) *affect the ability of the consent holder to meet other conditions of the consent; or*
- (c) *lead to an adverse effect on the environment.*

In this case, the partial surrender of the consent RC41078 involves relinquishing that part of the existing consent that relates to a portion of consented building that has not been constructed and the 6 carparks required to be provided to service the unconstructed building. The purpose of surrendering this portion of the consent is to accommodate the development now proposed. It is an administrative means of avoiding an overlap between the two consents, particularly in terms of carparking requirements. Given that RC41078 is deemed to be given effect to and all relevant conditions previously met, and the consent holder is the current applicant, it is considered appropriate to accept the partial surrender of the consent.

6 Relevant Planning Provisions (Section 104(1)(b))

The application includes a controlled activity consent application under the NESCS, which is a relevant Regulation that the consent authority must have regard to considering an application. Based on the assessment above, it is considered that the provisions of the Regulation will be met by the proposal.

There are no other national or regional documents identified under Section 104(1)(b)(i) – (v) that are relevant to the proposal.

7 Relevant Provisions of the Operative and proposed Plans (Section 104(1)(b)(vi))

Section 4.6 of the application provides an assessment of the relevant objectives and policies contained in Chapters 5 and 22 of the Operative District Plan. That assessment concludes that the proposal will be consistent with the provisions in both Chapters of the Operative Plan. This assessment is accepted and adopted for the purpose of this report insofar as they relate to the proposal and associated effects on traffic, parking, and signs.

The construction noise infringement requires consideration under the NAV chapter of the Operative Plan. The objectives and policies of that Chapter focus on maintaining amenity values and ensuring noise levels are appropriate for people's health and well-being. It is noted that none of the provisions specifically address construction noise. Based on the information provided with the application, the extent of the construction noise infringement, by way of implementing a Construction Noise Management Plan, will be minimal and will not adversely affect the ability for adjacent activities on the same site to continue operating. There is recognition that construction of buildings on a large site zoned for commercial services should be anticipated, but may result in some intermittent noise generation. However, where that disruption in terms of construction noise is suitably managed and mitigated, it is considered to be appropriate. On this basis, the proposal is consistent with the provisions in the NAV Chapter of the operative Plan.

Section 4.7 of the application provides an assessment of the provisions of the proposed District Plan ('proposed Plan') prior to Decisions on the plan change being released. Since lodgement of the application, the Decisions version of the proposed Plan has been released and the appeal period has closed. It is understood that no appeals have been lodged against the Local Centre Zone as it applies to the site. Two appeals¹ seek changes to the Zone provisions but it appears that the scope of those appeals do not undermine the proposed rules, objectives and policies as they relate to the proposal. Similarly, the scope of appeals on the Transport Chapter do not appear to include the general parking and access provisions within scope as they relate to the subject site. It is noted that under the Local Centre Zone provisions, there are rules specific to grocery stores and commercial services. While no detailed assessment of the rules has been undertaken, it appears that consent would be required for the activity (atleast) under Rule LCZ-R15.1 where the maximum business net floor area is 450m². A discretionary activity consent would be required on this basis.

The application records that the proposal will be consistent with the provisions under the Transport and Signs Chapter of the proposed Plan. This is accepted and adopted for the purpose of this report, noting that the adverse effects of these infringements under the Operative Plan have been assessed as acceptable in the receiving environment.

The proposed building and associated activities are considered to be consistent with the provisions relating to the Local Centre Zone. The zone records that *'The Local Centre Zone services a wide area and contains activities such as supermarkets, a range of retail goods and services, small scale office activities and some community, recreation and health services.'* The Chapter includes specific reference to the One Tree Point / Marsden Cove area stating that *'A range of retail, food and beverage and service activities exist on-site which are strongly oriented toward providing for marine activities.'* The proposed building and activities to be contained therein are considered to meet the directives of this zone.

Section 4.8 of the application provides commentary on the legal effect of rules and relative plan weighting. That assessment records that no assessment of weighting is required as the proposal will be consistent with the provisions of both the Operative and proposed Plan provisions. That conclusion is accepted in this case, noting that since this assessment in the application was provided, the proposed Plan has progressed to the point where a Decision has been issued and the subsequent appeal period has closed.

At the time of preparing this report, the Decision version of the proposed Plan as it relates to the proposal appears to be largely unchallenged by appeals. While two appeals do include reference to the Local Centre Zone as part of scope, the references are generally site specific and/or seek changes that do not affect the scope of the rules as they relate to the current proposal. Therefore, it is considered that the proposed Plan can adopt the predominant weighting to the point of being 'all but' operative in this case.

8 Other Relevant Matters (Section 104(1)(c))

The application identifies that, while not a permitted baseline, given the size of the site it could be subject to subdivision as a controlled activity. The controlled activity lot size for subdivision in the Business 3 Environment is 100m² net site area, which would allow for a significant number of sites. This could create several sites that could each accommodate activities that, of themselves, will comply with the Operate Plan requirements. The cumulative effect of this approach may be to generate a level of effects, particularly in terms of signage, commensurate with that now proposed. The ability to subdivide the site and undertake complying development is accepted and it does inform the nature of the existing environment as it may be if such a development

¹ Southpark Corporation Limited v Whangarei District Council and Kainga Ora – Homes and Communities v Whangarei District Council
LU2000068 and P118435
Marsden Maritime Holdings Limited
Marsden Cove

approach was adopted. On this basis, it is considered to be a relevant and reasonably necessary other matter to consider in determining the application.

9 Part 2 Matters

Section 4.10 of the application provides an assessment of Part 2 matters. This assessment and conclusion is accepted and adopted for the purpose of this report.

10 Decision and Reasons

The application has been assessed with regard given to the relevant matters under Section 104 and Section 138. The effects of the proposal are considered to be acceptable within the receiving environment and the proposal is consistent with the Operative and proposed District Plans. Consideration can therefore be given to granting land use consent and it is considered that it can be granted in this case pursuant to Section 104B and subject to conditions.

The Section 138 application to partially surrender the existing resource consent RC41078 can be accepted.

The controlled activity land use consent required under the NESCS can be granted with appropriate conditions.

The decision is as follows:

A. Section 138 Partial Surrender of Consent

The partial surrender of the resource consent RC41078 granted by Whangarei District Council on the 29th October 2008 is accepted by the Council. For completeness, the portion of consent that is being surrendered is that relating to the portion of proposed building illustrated on the approved plans forming part of the consent that have not yet been constructed at the time of surrender of this consent (being units 13 and 14) and the six carparks that are required to be provided to service those two units.

B. Consent under Section 9 of the NESCS Regulation

Pursuant to Section 9 of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health, the Council grants consent to Marsden Maritime Holdings Limited to undertake earthworks on a site identified as being subject to previous activities on the Hazardous Activities and Industries List.

Conditions addressing the potential management of contaminated soils are imposed as part of the land use consent below.

C. Landuse Consent

Pursuant to Sections 104, 104B and 108 of the Act, the Council grants land use consent to Marsden Maritime Village Limited to construct a 1789m² GFA two-level building with 121m² verandah, and operate a supermarket and eight commercial tenancies from the building with associated access, parking and heavy goods loading bay.

The reasons for this decision are as follows:

1. The relevant matters under Section 104 and 104B have been assessed as part of this report. The effects associated with the proposal have been assessed and are considered to be acceptable in the receiving environment.
2. The proposal will be consistent with the relevant objectives and policies of both the Operative and proposed District Plans.
3. The partial surrender of the existing resource consent RC41078 can be accepted by the Council as it will not affect the integrity of the consent, nor affect the ability of the consent holder to comply with conditions, and will not lead to any adverse effects.

4. Consent can be granted under the NESCS as the proposal is assessed as a controlled activity, and there is no risk for exposure of contaminated soils, subject to compliance with appropriate conditions.

11 Conditions

1. That the proposed activity shall be carried out in general accordance with the information and plans provided as part of the application prepared by Reyburn and Bryant Limited dated May 2020, inclusive of the additional information sought and received by way of the Section 92 request, subject to conditions specified below.

2. Prior to commencing works:

- a) The consent holder must submit a detailed set of engineering plans prepared in accordance with Council's Environmental Engineering Standards 2010 Edition. The engineering plans are to be submitted to the Development Engineer for approval. It is to be noted that certain designs may only be carried out by a Chartered Professional Engineer (CPEng) working within the bounds of their assessed competencies.

All work needing design/certification by a CPEng will require completion of a producer statement (design) (EES-PS1 or similar).

The Consent holder is to submit all documentation as required by Council "Quality Assurance/Quality Control Manual – Vested Assets". This will include nomination of an Engineer and an "Inspection and Test Plan" for approval by the Development Engineer before any works commence.

Plans are to include but are not limited to:

- i. Design details of the car park in general accordance with the Hawthorn Geddes Limited Reference 12159 Drawing "Site Plan-Proposed Traffic and Parking" Figure 02 Revision R2 and Drawing "Alternative Truck access" Figure 03 Revision R1. The design/s shall include provision for a raised table courtesy pedestrian crossing as advised to the consent holder under cover of email dated 11th August 2020 and accepted by the consent holder on the 13th August 2020.

Note: The consent holder has offered two options for provision of a loading bay to service the supermarket. The only option that can be utilised legally at the time of issuing of this consent is that shown on the plan entitled "Alternative Truck access" Figure 03 Revision R1. However, the purpose of this condition is to require the two options to be shown as part of the design details. In the event that legal access to the loading bay adjacent to the western facade of the proposed building is secured, then it may be utilised in accordance with the design provided under this condition without further resource consent.

- ii. Design details for carpark lighting to be installed in accordance with AS/NZS1158.
- iii. Design details of a stormwater connection for proposed development in accordance with the Councils Environmental Engineering Standards 2010 Sheet 36 (where this has not already been approved under any building consent)
- iv. Design details of stormwater mainline reticulation inclusive of any upgrades to the existing reticulation, sumps, manholes, car park treatment devices, detention structures and connections necessary to service the development (where this has not already been approved under any building consent). The design is to include evidence that:
 - a) The existing public reticulation is capable of receiving the additional flows; and
 - b) The new system is capable of receiving stormwater from further upstream Development (where applicable)



Note: Stormwater discharges across Public Reserve will require specific approval in writing from the controlling authority prior to submission of engineering plans.

- b) Where this has not already been approved under any building consent, the consent holder is to submit a Corridor Access Request application to Council's Road Corridor Co-ordinator and receive written approval for all works to be carried out within Council's Road Reserve in accordance with Council's Environmental Engineering Standards 2010 to the satisfaction of the Development Engineer or delegated representative (refer to the advisory clause below for the definition of a Corridor Access Request).
- c) A pre-start meeting is required to be undertaken with the consent holder's representative (DR), contractor/s and all other IQP's or agents and the Development Engineering Officer prior to any works being undertaken on the site.
- d) The consent holder shall notify council, in writing, of their intention to begin works, a minimum of seven days prior to commencing works. Such notification shall be sent to the Development Engineering Officer and include the following details:
 - i Name and telephone number of the project manager.
 - ii Site address to which the consent relates.
 - iii Activities to which the consent relates.
 - iv Expected duration of works.
- e) No construction works are to commence onsite until the engineering plans required in condition a have been approved and all associated plan approval fees have been paid. A copy of the approved engineering plans and a copy of the resource consent conditions and the above letter are to be held onsite at all times during construction.

3. During the undertaking of all construction works, the consent holder shall:

- a) Ensure that spoil from the site are not tracked out onto Council or State Highway Road formations to the approval of the Development Engineer.
- b) Ensure that dust nuisance must be controlled onsite (by use of a watercart or similar) by the applicant so as not to cause "offensive or objectionable" dust at or beyond the boundary of the development.
- c) Implement the measures identified in the Construction Noise Management Plan ('CNMP') prepared by Marshall Day Acoustics Limited dated 20 August 2020 during all construction activities undertaken on the site. The Project Manager as defined under Condition 2 d) above shall be responsible for ensuring that the CNMP is implemented, and more particularly, ensure that those measures and practices identified under Section 5.0 Mitigation and Management are undertaken on the site. Specifically, the temporary noise barriers as defined under Section 5.4.1 of the CNMP are to be deployed on those occasions where construction noise generated from the site is expected to exceed the 70dB L_{Aeq} / 85dB L_{AFmax} limits at the nearest receivers (defined as 'R1' in the CNMP). For clarity, deployment of the screens is only required during any period where such exceedances may occur.
- d) In the event that evidence of soil contamination which has not been previously identified is discovered during earthworks, the consent holder shall immediately cease works in the area and shall engage and seek advice from a Suitably Qualified and Experienced contaminated land professional. Details of any unexpected contamination and contingency measures shall be provided to the Team Leader, RMA Compliance, Whangarei District Council.
- e) Ensure that the following measures are undertaken to minimise risk of any exposure to contaminated soils:
 - Erosion and sediment control measures shall be carried out in accordance with industry best practice.



- Excavation works shall not commence at the site until all the environmental controls have been put in place.
- Exposed excavated areas shall be kept to a minimum at all times to minimise the risk of erosion due to stormwater runoff.
- The consent holder shall control any dust in accordance with the “Good Practice Guide for Assessing and Managing Dust” dated November 2016 and prepared by the Ministry for the Environment.
- All excavated soil removed from the property is to be transported in a covered truck with sealed tailgate and be disposed of at facility licensed to accept the relevant level of contamination.
- All soil stockpiles shall be located within an area of sediment and erosion controls.
- Any materials imported to the site shall meet the “Cleanfill Definition” as outlined in the document titled “A Guide to the Management of Cleanfills” dated January 2002 and prepared by the Ministry for the Environment.

4. Prior to occupation and use of any part of the proposed building, the consent holder shall:

- a) Complete all works as detailed on the approved engineering plans as required under Condition 2 a) above, and shall submit a certified and dated ‘as built’ plan of completed works and services in accordance with Council’s Environmental Engineering Standards 2010 Edition. This condition shall be deemed satisfied once the as-builts have been approved by Councils’ Development Engineering Officer or delegated representative.
- b) Confirm in writing as part of Condition 4 a) above the final constructed option to provide a loading bay to service the supermarket.
- c) The consent holder must reinstate Council’s footpath, kerb and channel, road carriageway formation, street berm and urban services where damage has been caused by the demolition and/or construction works associated with the land use consent. The assets shall be reinstated in accordance with Council’s Environmental Engineering Standards 2010 Edition at the expense of the consent holder and to the satisfaction of the Development Engineer or delegated representative.
- d) The consent holder must submit a certified and dated “as built” plan of completed works and services, and ‘RAMM” data prepared by a suitably qualified person in accordance with council’s Environmental Engineering Standards 2010 Edition to the approval of the Development Engineering Officer.

5. The consent holder shall adhere to the following conditions:

- a) All signage to be located adjacent to or on the proposed building shall not exceed 18 signs totalling 53.51m². This does not limit signage that is already existing and/or advertising existing activities on the site as approved under RC41078. All signs operating from the site as approved under this consent shall be static and not flashing. This does not preclude the use of illumination where it complies with Rule 41.3.7 b) vii. of the Operative District Plan.
- b) Any activities to be located in the eight tenancies on the first floor of the building shall be limited to commercial services, where this is defined as follows:

‘Businesses that sell services rather than goods. For example: banks, real estate agents, travel agents, dry cleaners, health care facilities and hairdressers. It includes offices conducting activities within a building and focusing on business, government, professional, IT or financial services and includes the personal service elements of these activities offered to consumers or clients where visits by members of the public are accessory to the main use.’

- c) A minimum of 61 on-site carparks and a loading bay are to be provided to service the activities within the building.

Note: The purpose of Condition 5 b) above is to ensure that any activities occupying the eight tenancies do not generate additional parking demand beyond that calculated at the time consent was granted. The 61 carparks provided and referenced in Condition 5 c) above is considered adequate to accommodate any commercial service activities established in those tenancies in conjunction with the supermarket operation.

Advice Notes

- 1 This resource consent will lapse five years after the date of commencement of this consent (being the date of this decision) unless:
 - It is given effect to before the end of that period; or
 - An application is made to Council to extend the period after which the consent lapses, and such application is granted prior to the lapse of consent. The statutory considerations which apply to extensions are set out in Section 125 of the Resource Management Act 1991.
- 2 Section 357 of the Resource Management Act 1991 provides a right of objection to this decision. An objection must be in writing, setting out the reasons for the objection and delivered to Council within 15 working days of the decision being notified to you. A fee may be payable to cover the costs of processing any objection.
- 3 The Consent Holder shall pay all charges set by Council under Section 36 of the Resource Management Act 1991, including any administration, monitoring and supervision charges relating to the conditions of this resource consent. The applicant will be advised of the charges as they fall.
- 4 The carparking facility provided in conjunction with this consent is located on private land and is to be operated by the consent holder. The Council is not responsible for any maintenance or management of the carparking area and associated servicing beyond the Council's normal responsibilities to manage and operate any vested assets.
- 5 It is recognised that the consent holder currently holds a building consent for the construction of the proposed building and associated servicing, and has commenced works on the site with approval of the Council. For the purpose of complying with Conditions 2 a), 4 a), and 4 d), the Council may accept documentation as provided and approved as part of the building consent to the Council's Development Engineer. The consent holder is encouraged to liaise with the Council to determine the best manner in which to achieve compliance.
- 6 To help fund additional assets or assets of increased capacity, the Local Government Act 2002 (LGA) allows a council to require development contributions if the effect of a development requires the council to provide new or upgraded infrastructure. The Whangarei District Council has prepared and adopted a Development Contributions Assessment Policy. Under this policy, the activity to which this consent related is subject to Development Contributions Assessment. You will be advised of the assessment of the Development Contributions payable (if any) under separate cover in the near future. It is important to note that Development Contributions must be paid prior to commencement of the work or the activity to which the consent relates or, in the case of a subdivision, prior to the issue of the Section 224(c) Certificate. Further information regarding Council's Development Contribution Policy may be obtained from the Long Term Plan (LTP) or Council's web page at www.wdc.govt.nz.



27th August 2020

A handwritten signature in black ink, appearing to read "A Hartstone".

A Hartstone, Consultant Planner

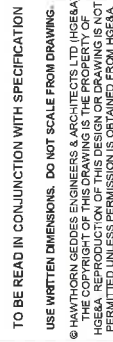
Date

A handwritten signature in black ink, appearing to read "R. Quinton".

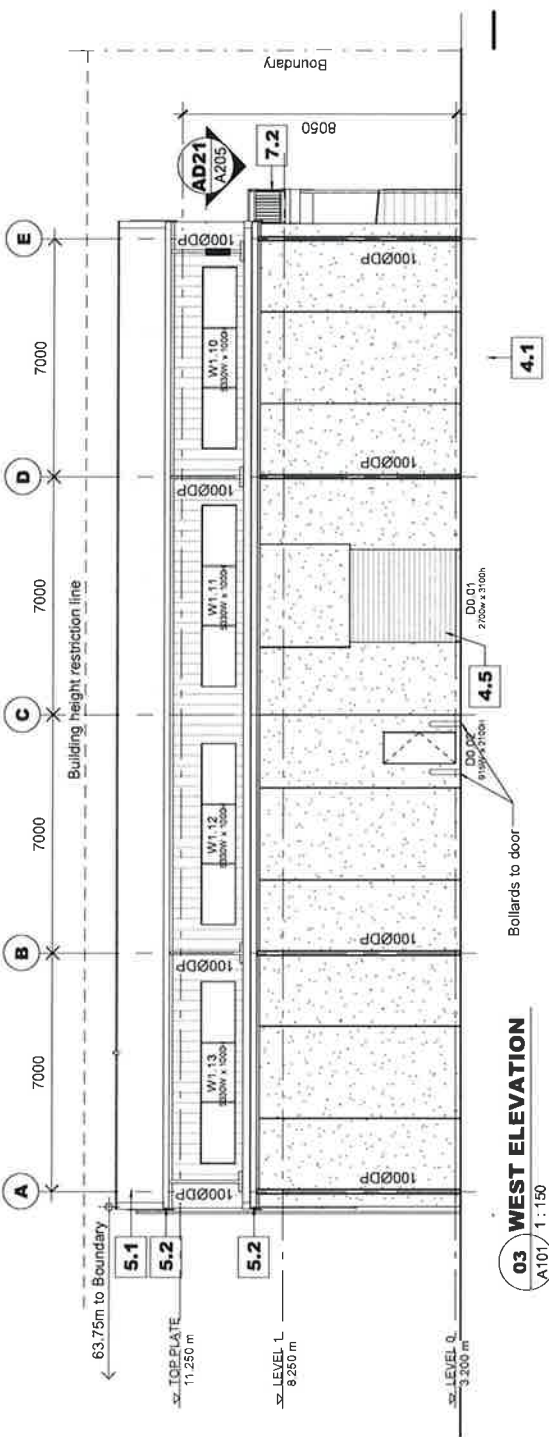
R Quinton, Team leader (RMA Consents)

28/8/2020

Date



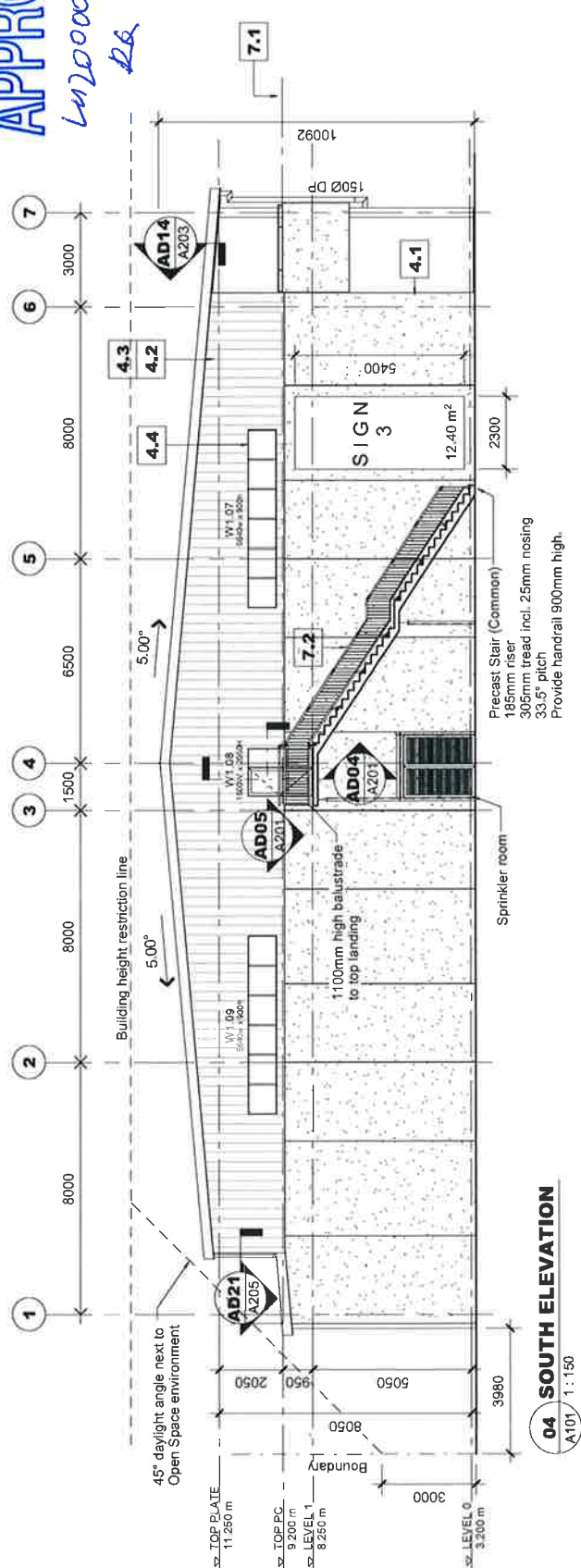
- NOTES**
- 4.1 150mm 40MPa precast concrete panels with 10mm chamfer. Allow 15mm gap between panels
- 4.2 Frametek 150LC95 stud @300ctrs max fixed with 2 screw fixings per stud connection to top and bottom plates. Nogs @1200 ctrs max with Mammoth Arisyl R2.8 insulation. 13mm Gb standard wall lining to internal face with paint finish.
- 4.3 Metacraft 0.55 Colorsteel Maxx T-Rib vertical run profiled metal wall cladding over 20 x 45 Cavitbat System installed horizontally
- 4.4 Altherm 40mm single glazed commercial suite.
- 4.5 Metallit Steel motorised 3.0m x 3.1m Roller shutter.
- 5.1 Metacraft 0.55 Colorsteel Endura T-Rib roof cladding over breather type roofing underlay on steel purlins.
- 5.2 Box Gutter 175mm colour coated to match roofing on external bracket. Provide 1000DP's where indicated on roof plan.
- 7.1 Stainless Steel pipe rail top mounted to Precast panel balustrade
- 7.2 Stainless Steel balustrade with vertical rail infill panels. 1100mm above landings and 900mm above pitch of stair



APPROVED

Ln2000068 28/8/2020

RL



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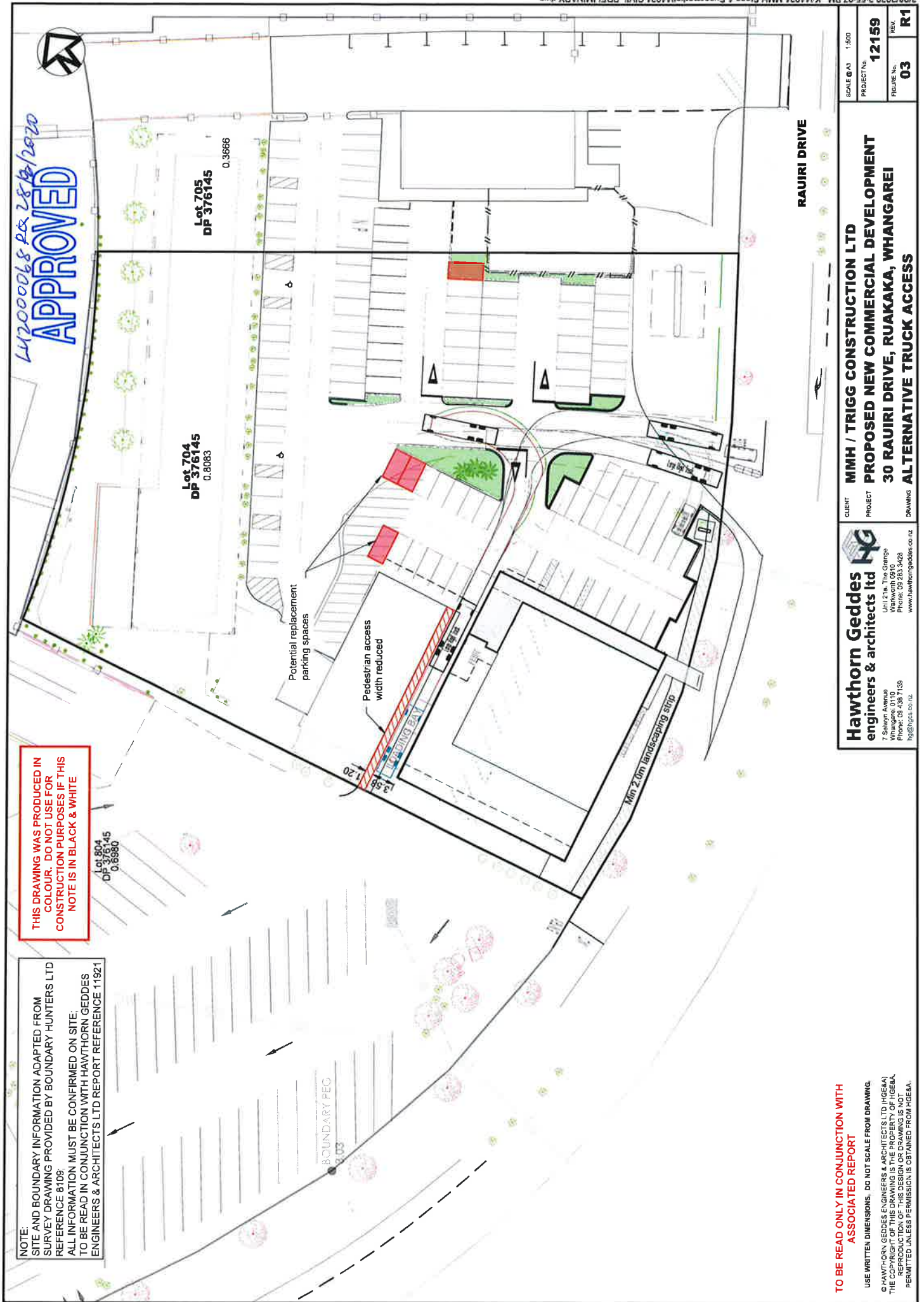
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REV	ISSUED FOR REQUIREMENT	CONSENT	PG	060920
REV	REVISION DETAILS	BY	DATE	



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Reyburn and Bryant

From: Sarah Irwin <sarah.irwin@wdc.govt.nz>
Sent: Monday, 22 February 2021 2:31 PM
To: Joseph Henehan
Cc: Sue Hodge; Chris Beard
Subject: RE: Marsden Maritime Holdings - commercial development at 32 Rauiri Drive, Marsden Cove - right of way over recreation reserve

Hi Joe,

I have discussed this right of way easement with the Parks Team. Thank you for offering up a potential surrender of the Easement if required as use changes.

We do still have concerns on having an easement over this site, As this is a very high use and profile site we still have the following concerns:

- Carpark maintenance of the easement area – noting that trucks will impact on the wear and tear of the wider carpark. Also ensure the turning area at the top are able to be achieved.
- In general we still have concerns around safety of users of the carpark and reserve and ongoing numbers of movements and / or truck sizes as the needs increase.

Noting that it is still Parks and Recreation preference that access to the loading bay is via the MMH site, if MMH would like to proceed with an easement application this outline of the easement seems appropriate. The next steps would be for MMH to formally request the easement via the “other application” process. We are planning to take this to Council when this is received as per the Reserves Act process to determine if they support the easement and to initiate the public notification process.

Kind regards

Sarah

From: Joseph Henehan <joseph@reyburnandbryant.co.nz>
Sent: Tuesday, February 16, 2021 12:54 PM
To: Sarah Irwin <sarah.irwin@wdc.govt.nz>
Subject: RE: Marsden Maritime Holdings - commercial development at 32 Rauiri Drive, Marsden Cove - right of way over recreation reserve

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Hi Sarah,

Any chance you have looked into this one yet? We are hoping to progress this as quickly as possible.

Kind regards

Joe Henehan
 Senior Planner



p 09 438 3563 | f 09 438 0251
PO Box 191 Whangarei 0140 | www.reyburnandbryant.co.nz



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From: Sarah Irwin [<mailto:sarah.irwin@wdc.govt.nz>]
Sent: Friday, 15 January 2021 2:40 p.m.
To: Joseph Henehan <joseph@reyburnandbryant.co.nz>
Cc: Felix Richter <felix.richter@marsdenmaritime.co.nz>
Subject: RE: Marsden Maritime Holdings - commercial development at 32 Rauiri Drive, Marsden Cove - right of way over recreation reserve

Hi Joe,

I will discuss this with Sue next week and get back to you.

Sarah

From: Joseph Henehan <joseph@reyburnandbryant.co.nz>
Sent: Friday, January 15, 2021 1:19 PM
To: Sarah Irwin <sarah.irwin@wdc.govt.nz>
Cc: Felix Richter <felix.richter@marsdenmaritime.co.nz>
Subject: Marsden Maritime Holdings - commercial development at 32 Rauiri Drive, Marsden Cove - right of way over recreation reserve

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Hi Sarah,

Thanks for your time earlier. The scheme plan showing the proposed right of way easement over the adjacent WDC recreation reserve (Lot 804 DP 376145) is attached.

As discussed, we are hoping to gain an understanding on whether or not Parks are supportive of the easement. If there are any concerns that may be able to be addressed via the inclusion of some additional wording within the easement document itself, MMH will be open to incorporating this.

Based on our initial discussions, I understand that Parks have concerns that by approving the creation of this easement it would effectively mean that there could be no change to the future use of the reserve as the MMH property would have an easement over it for access purposes. To account for this, MMH are willing to incorporate wording within the document that would require the easement to be surrendered/amended in the event that the use of the neighbouring reserve changes.

Please feel free to call if you have any questions.

Kind regards

Joe Henehan
Senior Planner



p 09 438 3563 | **f** 09 438 0251
PO Box 191 Whangarei 0140 | www.reyburnandbryant.co.nz



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6.3 Review of the Board Venues Policy – 2021

Meeting: Whangarei District Council
Date of meeting: 22 July 2021
Reporting officer: Vita Strohush – Strategic Planner, Bylaws

1. Purpose

To complete the statutory review of Council's Board Venue Policy and to seek a decision on whether to retain or amend the Policy.

2. Recommendations

That Council;

1. Determines the statutory review of Council's Board Venue Policy is complete.
2. Retains the existing Board Venue Policy with no changes.

3. Background

Council is undertaking the statutory three-yearly review of its gambling harm related policies.

The Elected Members discussed the Board Venues Policy at the briefing on 26 May 2021. This report provides a review of the Policy and consideration of the social impacts of gambling.

The decision of Council required today will determine whether the Policy remains fit for-purpose and can be retained in its current format, or whether Council wishes to make amendments. If the decision is made to amend the Policy, a special consultative procedure in accordance with s83 of the Local Government Act 2002 must be followed.

4. Discussion

4.1 Current policy settings

Council's Board Venues Policy covers only standalone TAB Board Venues, which are owned or leased by the New Zealand Racing Board for the purpose of race and sports betting. It does not apply to TAB facilities in a bar, hotel or club. If a TAB Board Venue wishes to also host gaming machines a separate application must be made under Council's Class 4 gambling policy and the TAB Board Venue must also meet the additional criteria set out in that policy.

Council's current Board Venues Policy allows for up to two standalone TAB venues to be established in the District. Currently there are no TAB Board Venues in Whangarei, since the last standalone venue closed in 2019. Given this, Council may wish to take an opportunity to

revisit its approach to TAB Board Venues and consider whether it wishes to continue to provide an opportunity through the Policy for the establishment new TAB Board Venues.

Currently there are no stand-alone TAB venues in Whangarei District, since the last venue closed in 2019. There are 11 TAB outlets operating in Whangarei as of May 2021. These venues are not within the scope of the Policy and their operations are regulated directly by the provisions of the Racing Act.

Table 1: TAB venues in Whangarei District (as at May 2021)

Name	Outlet Type	Address
Judge House of Ale *	PubTAB Self Service Only	7 Walton Street, Whangarei
Tote & Poke Sports Bar*	PubTAB Full Service	79 Cameron Street, Whangarei
Grand Hotel Whangarei*	PubTAB Self Service Only	2 Bank Street, Whangarei
Northland Club*	ClubTAB Self Service Only	8 Porowini Ave, Whangarei
Kensington Tavern*	PubTAB Full Service	Cnr Davies Street & Kensington Ave, Whangarei
Onerahi Tavern*	PubTAB Full Service	Cnr Waverley Street & Onerahi Rd, Whangarei
Kamo Club*	PubTAB Full Service	11 Meldrum Street, Kamo
Parua Bay Tavern	PubTAB Self Service Only	1034 Whangarei Heads Road, RD4, Whangarei
Ruakaka Tavern *	PubTAB Full Service	Marsden Point Road, Ruakaka
Waipu Hotel*	PubTAB Self Service Only	4 South Road, Waipu
Triple Crown*	PubTAB Full Service	Unit C, 47 Vine Street, Whangarei
* Outlets that are also Class 4 gambling venues		

4.2 Social Impacts

Council is required to consider the social impacts of gambling in its District. As Racing Act 2003 does not specify what is meant by “social impact”, the analysis of social impacts is given by reference to benefits and harms of gambling. Attachment 2 provides a social impacts assessment in relation to the TAB gambling. Attachment 3 provides a social impacts assessment for Class 4 Gambling as well as wider socio-economic impacts of gambling in general, which includes sports and race betting.

There is very limited data available to be able to look at the social impacts of TAB gambling in isolation. Within the available data, there is no ability distinguish between the effects of accessing TAB betting through stand-alone venues that Council is able to control and other TAB opportunities, such as outlets located in pub or through the online app.

4.3 Options

The following policy review options have been developed based on the feedback received at the Briefing on 26 May 2021:

Option	Advantages	Disadvantages	Comments
Option 1 - Recommended Retain the current Board Venues Policy with no changes	Keeps the venue cap at two should RITA(NZRB) wish to open new stand-alone TABs. The social impacts assessment shows the impact of two new stand-alone venues would not be significant as there are currently already 11 TAB venues operating in Whangarei within pubs/class 4 venues.	New stand-alone TAB venues may open in the future, and an opportunity to consider reducing the cap to zero would be lost. However, this might not be a disadvantage if Council wishes to continue providing for stand-alone TAB venues.	If no changes are needed to the policy, then public consultation is not required.
Option 2 Direct the Chief Executive to investigate and draft amendments to the Board Venues Policy, to be reported back to Council for consideration.	An opportunity to revisit the approach to TAB Board Venues and consider whether Council wishes to continue to provide an opportunity though the Policy for the establishment new TAB Board Venues.	Uncertainty associated with public consultation and timeframes.	This option means further briefings, adoption of a Statement of Proposal for any changes and public consultation.

The recommended option is Option 1. The current Policy has last been amended very recently, in 2019 and provides a balanced approach.

4.4 Financial/budget considerations

There are no additional budgeted considerations in relation on the recommended Option 1 - retaining the current Class 4 Gambling Policy with no changes.

5. Significance and engagement

5.1 Significance

The decisions and matters of this agenda do not trigger two or more significance criteria of Council's Significance and Engagement Policy.

5.2 Engagement

If proceeding with Option 1, no public consultation is required. If proceeding with Option 2, further policy review process will involve adoption of a Statement of Proposal for public consultation.

The public will be informed via agenda publication on Council's website.

6. Attachments

Attachment 1 – Board Venues Policy

Attachment 2 - Social impacts of TAB gambling in Whangarei District

Attachment 3 - Social Impacts Report (Class 4 Gambling)

Whangarei District Council

Board Venue Policy

Policy # 021

Board Venue Policy			
Audience (Primary)	External	Business Owner	Strategy Department
Review Date	April 2022	Statutory policy and review?	yes

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Board Venue Policy			
Audience (Primary)	External	Business Owner	Strategy Department
Review Date	April 2022	Statutory policy and review?	yes

Introduction

In terms of section 65D of the Racing Act 2003 territorial authorities must adopt a TAB Board Venue policy for standalone “TABs” operated by the New Zealand Racing Board. The policy must specify whether or not new TAB Board Venues may be established in the district, and where they may be located.

The policy covers standalone TAB Board Venues, which are owned or leased by the New Zealand Racing Board. Council consent is not required under the Racing Act 2003 to establish a TAB facility in a bar, hotel or club. The purposes of the Racing Act 2003 is to provide effective governance arrangements for the racing industry, to facilitate betting on galloping, harness, and greyhound races, and other sporting events; and to promote the long-term viability of New Zealand racing.

Race and sports betting is not class 4 gambling. For class 4 gambling matters please see Council's Class 4 gambling policy which is made under the gambling Act 2003. If a TAB Board Venue wishes to also host gaming machines a separate application must be made under Council's Class 4 gambling policy and the TAB Board Venue must also meet the additional criteria set out in that policy.

Currently there is a single TAB Board Venue in the District located at Vine Street, Whangarei. The policy provides for the establishment of an additional TAB Board Venue in the District with the number of TAB Board Venues capped at two (2). Any application for consent under the policy to establish a new TAB Board Venue, including an application resulting from the need to relocate a venue must be publicly notified and determined at a Council hearing.

1 Objectives of the policy

- 1.1 To provide for Board Venues as required by the Racing Act 2003 including where they may be located.
- 1.2 To have regard to the social impact of gambling taking into consideration the cumulative effects of additional opportunities for gambling in the district.
- 1.3 To facilitate community involvement in decisions about the provision of Board Venues in the Whangarei District.

2 Establishment of Board venues permitted

- 2.1 Council will permit the establishment of Board venues with the total number of venues not to exceed two (2) venues in the District at any time.

Board Venue Policy			
Audience (Primary)	External	Business Owner	Strategy Department
Review Date	April 2022	Statutory policy and review?	yes

3 Relocation of Board venues permitted

- 3.1 Council may permit a Board venue to re-establish at a new site where:
- a. Due to circumstances beyond the control of the owner or lessee of the Board Venue, the venue cannot continue to operate at the existing site. Examples of such circumstances include but are not limited to the following:
 - i expiration of lease
 - ii acquisition of property under the Public Works Act; or
 - iii site redevelopment.

4 Where Board venues may be established or relocated

- 4.1 Any Board venue may be established in the District where it is a permitted activity under the Whangarei Operative District Plan or where resource consent to undertake the activity has been granted by Council but no case shall not be established in a Business 3 Environment.

5 The territorial authority consent process

- 5.1 Any application for consent under this policy to establish a new Board Venue, including an application resulting from the need to relocate a venue will be subject to public notification and determined at a Council hearing.
- 5.2 Council has delegated the power to consider and determine applications for Territorial Authority consent under the Racing Act 2003 to the Licensing Exemptions and Objections Committee and during the term of this policy may delegate such powers to such other committees as appropriate
- 5.3 Submissions in writing shall be invited over a period of not less than 20 working days, with submitters invited to indicate if they wish to be heard on the hearing date. Working days shall have the same meaning as defined in terms of the Resource Management Act 1991.
- 5.4 The Committee shall consider all submissions, written and oral, and shall make a decision including reasons on the application. The Committee's decision shall be final.
- 5.5 The applicant and all submitters shall be advised of the decision, and the reasons for the decision, as soon as practicable.
- 5.6 In considering any application and submissions, the Committee shall have regard to provisions of the Racing Act 2003, objectives of this policy, and the criteria outlined in matters to be considered at hearing.
- 5.7 Notification of application

Public notification shall be undertaken by Council as follows:

 - a. By publication in a local newspaper circulating within the District.

Board Venue Policy			
Audience (Primary)	External	Business Owner	Strategy Department
Review Date	April 2022	Statutory policy and review?	yes

- b. By way of a public notice displayed prominently in the window of the proposed venue or by signage on the venue site for the period during which submissions are open.
- c. By the notification in writing of owners and occupiers of any adjacent properties.
- d. By notification in writing to any other person or party that Council considers necessary.

5.8 Matters to be considered in determining application

In considering an application under this Policy, the Committee shall have regard to the following matters:

- a. The potential cumulative effects of additional gambling opportunities in that location and the social impact within the District generally.
- b. The extent of the potential impact of the venue on the character of the area including the potential for negative effects on the operation, amenity or reasonable enjoyment of residential or other sensitive land uses in the area.
- c. The extent to which the application meets the objectives of the Whangarei District Board Venue Policy, and the purpose and intent of the Racing Act 2003.
- d. Any other matter that Council considers relevant and reasonably necessary to determine the application.

5.9 How an application is to be made

Applications for consent must be made on the approved form and must provide:

- a. Name and contact details of the applicant
- b. Venue name and street address
- c. A scale plan drawn showing areas set aside for gambling and other activities
- d. A location plan showing the location of the venue within the wider community
- e. Names and date of birth of venue management staff
- f. Where the application relates to the establishment of a new Board venue the applicant must provide an assessment of the following matters:
 - i. The potential cumulative effects of additional gambling opportunities in that location and the social impact within the District generally
 - ii. The extent of the potential impact of the venue on the character of the area including the potential for negative effects on the operation, amenity or reasonable enjoyment of residential or other sensitive land uses in the area
- g. Any other information that may reasonably be required to allow proper consideration of the application
- h. Fees
- i. Certificate of compliance under the Resource Management Act 1991 or a copy of the resource consent authorising the proposed activity under the Act.

Board Venue Policy			
Audience (Primary)	External	Business Owner	Strategy Department
Review Date	April 2022	Statutory policy and review?	yes

6 Application fees

Council shall set fees from time to time, under authority of the Local Government Act 2002, and shall include consideration of:

- a The cost of processing any application, including any consultation, public notification and hearings involved.
- b The cost of triennially reviewing the Board Venue Policy including the cost of assessment of the effectiveness of the policy and the social impact of gambling in the District.
- c The cost of any inspection of premises should this be required of Council by the Department of Internal Affairs.

7 Promotion of gambling information to the community

- 7.1 Council will within budget constraints, facilitate the provision of information promoting host responsibility, gambling harm minimisation, problem gambling services and other relevant information to the District community and the industry in an endeavour to contribute towards the achievement of the objectives of this Policy.

Policy Review		
This Policy was reviewed in 2019 and no changes were made to the Policy.		
Date:	28 March 2019	By: Whangarei District Council

Explanatory note: The format of the Policy was updated after the last review to meet the current Council formatting, logo and style requirements.

Social impacts of TAB gambling in Whangarei District

2021

Introduction

The Racing Act 2003 requires every territorial authority to adopt a Board Venues Policy (s65D Racing Act 2003). The policy must be reviewed every three years, and if the decision is made to amend it, a special consultative procedure in accordance with s83 of the Local Government Act 2002 must be applied.

Background

The Racing Act 2003 regulates all gambling on horse racing and sports, through the activities of Racing Industry Transition Agency (RITA) (formerly known as New Zealand Racing Board (NZRB)). The NZRB was renamed as the Racing Industry Transition Agency (RITA) by the Racing Reform Act 2019. TAB New Zealand is the statutory body established through the Racing Industry Act 2020. It provides betting services to New Zealanders and makes returns back to New Zealand racing and sporting organisations. RITA's key objective is to conduct racing and sports betting maximise profits for the long-term benefit of New Zealand racing.

Local authorities have no responsibilities for regulating any type of gambling, other than having policies on board venues under the Racing Act, and Class 4 venues under the Gambling Act.

The Gambling Act 2003 covers:

- Class 1, 2 and 3 gambling, covering other games of chance such as Bingo, raffles, and card games;
- Class 4 gambling ('pokies' in pubs, bars and clubs);
- Casino gambling, including electronic gaming machines (or "pokies") situated in
- Casinos;
- Lotto, and all other products provided by the Lotteries Commission.

The Racing Act 2003 covers:

- to provide effective governance arrangements for the racing industry
- to facilitate betting on galloping, harness, and greyhound races, and other sporting events
- to promote the long-term viability of New Zealand racing.

Council is required to consider the social impacts of gambling in its District. The Racing Act 2003 does not specify what is meant by "social impact", however it defines "harm" by reference to the Gambling Act 2003:

“Harm —

- a) means harm or distress of any kind arising from, or caused or exacerbated by, a person’s gambling; and*
- b) includes personal, social, or economic harm suffered—*
 - (i) by the person; or*
 - (ii) by the person’s spouse, civil union partner, de facto partner, family, whanau, or wider community; or*
 - (iii) in the workplace; or*
 - (iv) by society at large”*

This report addresses social impacts of TAB gambling in terms of benefits and harms. Social impacts of Class 4 Gambling are discussed in a separate report provided to Council at the briefing on 26 May 2021.

TAB gambling participation

The Totalisator Agency Board (TAB) was established as the only betting operator in New Zealand in 1951. In 2003, the NZRB was established under the Racing Act 2003 to administer all racing and sports wagering in New Zealand. The NZRB provides sports betting for domestic and international sports events and is only permitted to allow bets on sports approved by Sports NZ. The NZRB uses the proceeds to support its business operations and the remainder is distributed to sports codes.

The NZRB offers a number of different types of venues:

- Stand-alone TAB store: This is an official TAB location.
- Pub TAB: These outlets are always located within another business, and form part of the services offered by the host. They have all the facilities of a TAB while offering customers the benefits of being in a licensed establishment;
- Pub with TAB self-service terminal: The terminals offer most of the TAB products. The businesses (i.e. the pub) usually don’t have any other TAB facilities available;
- TAB online: The TAB also offers patrons with the option to have an online gambling account to place bets.

The Racing Act 2003 requires Council to have a Board Venue Policy, however this only applies to stand-alone TAB venues. The current policy caps the number of stand-alone TABs at two. Currently there are no stand-alone TAB venues in Whangarei District, since the last venue closed in 2019. TAB gambling is still available in the District through the following TAB outlets in bars and clubs (Table 1).

Table 1: TAB venues in Whangarei District (as at May 2021)

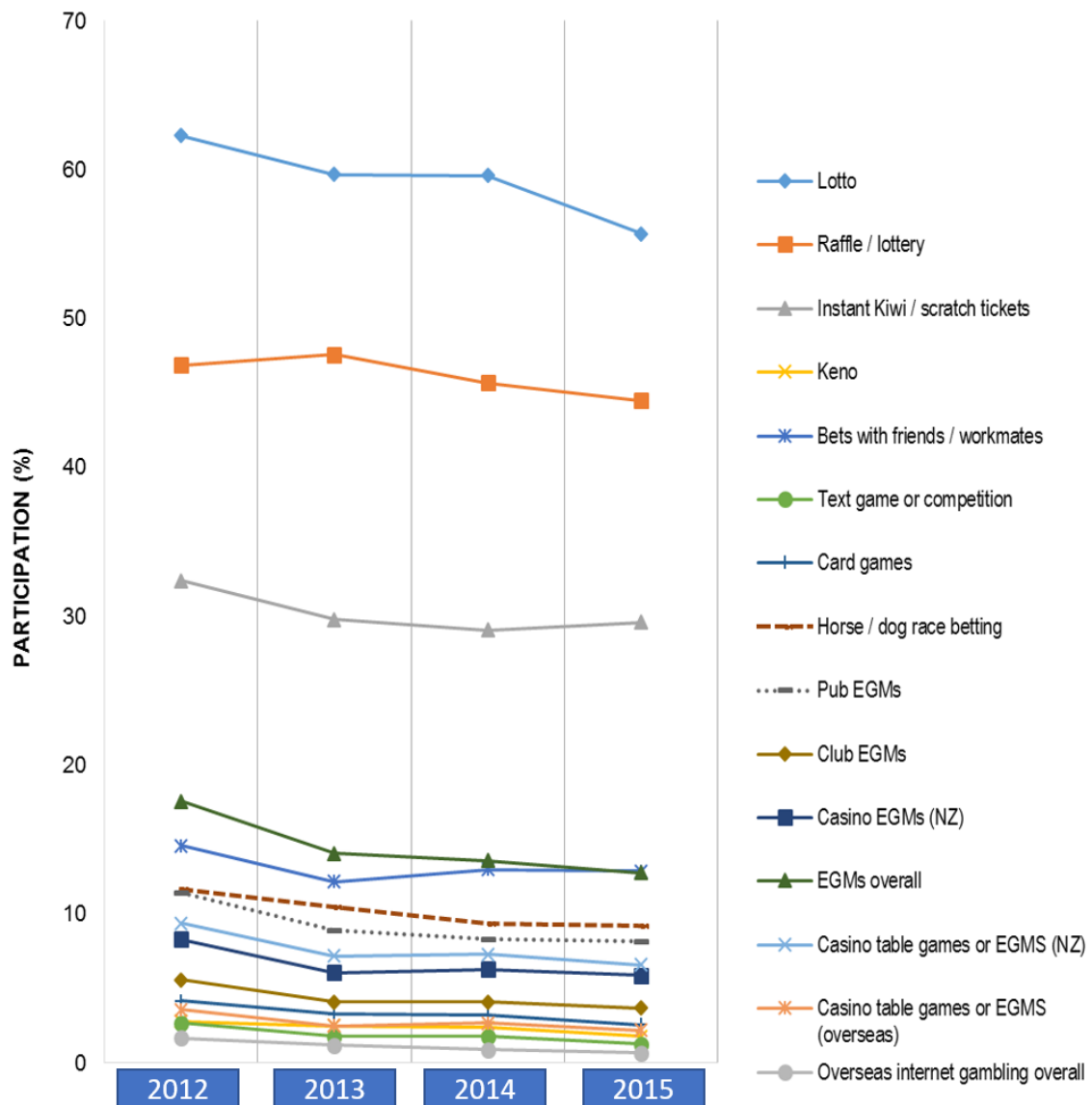
Name	Outlet Type	Address
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Grand Hotel Whangarei*	PubTAB Self Service Only	2 Bank Street, Whangarei
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Waipu Hotel*	PubTAB Self Service Only	4 South Road, Waipu
Triple Crown*	PubTAB Full Service	Unit C, 47 Vine Street, Whangarei
* Outlets that are also Class 4 gambling venues		

Source: <https://static.tab.co.nz/content/store-locator/index.html> as at 27 May 2021.

In 2015 the Ministry of Health conducted a follow-up Wave 4 of the National New Zealand Gambling Study¹ which was first started in 2012. The study found horse/dog race TAB betting participation decreased from 11.7% in Wave 1 (2012) to 9.4% in Wave 3 (2014) and to 9.2% in Wave 4 (2015). **Figure 1** shows the study findings on reported past year participation by gambling activity across 2012-2015. Sports betting is not included in this graph due to low numbers.

¹ MOH. (2015). Wave 4 (2015) of the National New Zealand Gambling Study. <https://www.health.govt.nz/publication/new-zealand-national-gambling-study-wave-4-2015>

Figure 1: Past year gambling participation by activity across Waves 1 to 4 (2012-2015)



Source: New Zealand National Gambling Study, Wave 5 (2015), Ministry of Health

The National New Zealand Gambling Study also provides updated statistics on the spread of online TAB betting and land based (venue) betting. For horse/dog race betting, 6.1% of adults participated through TAB venues in person, and 2.2% through online TAB. For sports betting, participation rates were 1.7% at TAB venues and 1.5% through online TAB. **Table 2** provides comparison of in-person and remote gambling by type of gambling activity in New Zealand. Overall, participation in TAB betting is low at just over 6%, compared with 53.2% of adults reporting participation in Lotto.

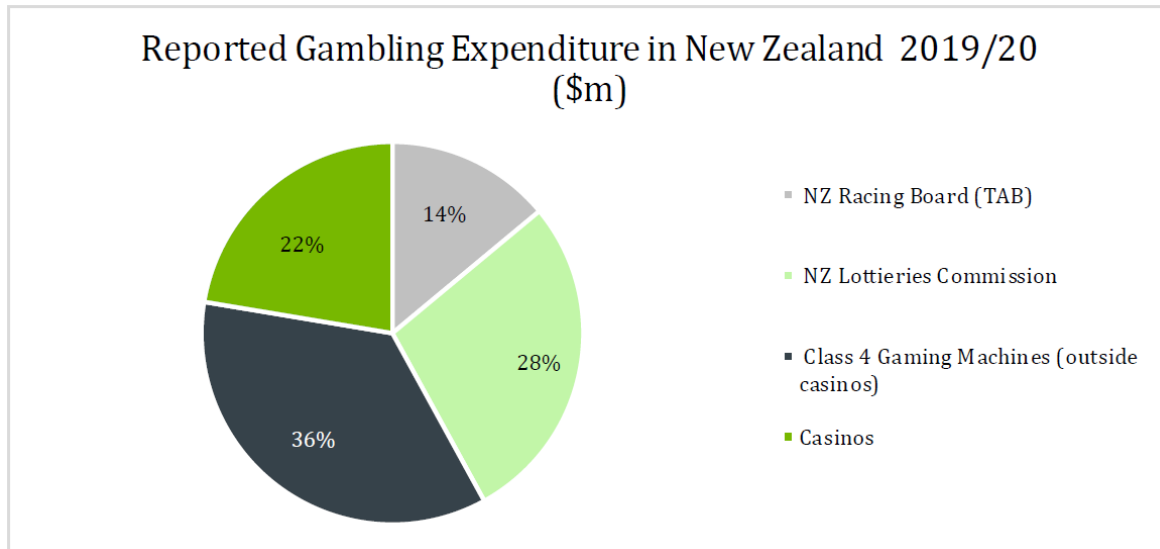
Table 2: Comparison of in-person and online/remote gambling 2012-2015

	Wave 1 – 2012	Wave 2 – 2013	Wave 3 – 2014	Wave 4 - 2015
	%	%	%	%
Horse/dog race betting				
NZ event venue	8.0	6.1	5.4	5.7
NZ TAB on site	7.7	6.9	6.3	6.1
NZ TAB online/ remote	2.9	2.6	2.0	2.2
Offshore online/ remote	0.4	0.3	0.4	0.2
Sports betting				
NZ event venue	2.8	1.6	1.8	1.5
NZ TAB on site	2.9	1.7	1.7	1.7
NZ TAB online/ remote	1.9	0.8	1.1	1.5
Offshore online/ remote	0.4	0.3	0.3	0.1
Poker: Commercial				
NZ on site	1.7	1.2	0.6	0.5
Offshore online/ remote	0.4	0.4	0.1	0.2
Raffle/lottery				
NZ on site	46.9	47.6	45.7	44.5
Offshore online/ remote/on site	3.2	3.2	3.1	2.8
Lotto				
NZ on site	60.9	58.1	57.4	53.2
NZ online	4.9	6.0	8.2	6.9
Keno				
NZ on site	2.3	2.0	1.9	1.4
NZ online	0.7	0.6	0.6	0.4
Casino (table gambles/EGMs)				
NZ on site	9.4	7.2	7.3	6.6
Offshore on site	3.7	2.5	2.7	2.2
Other offshore online gambling [#]	0.6	0.4	0.3	0.3
Overall NZ online gambling	8.0	8.2	10.2	9.0
Overall offshore online gambling	1.7	1.2	0.9	0.7
Overall offshore gambling (online/on site)	7.6	6.4	6.0	5.4

Source: New Zealand National Gambling Study, Wave 5 (2015), Ministry of Health

While the Ministry of Health study does not provide data beyond 2015, information is available on expenditure by gambling activity. **Figure 2** shows expenditure of the four main types of gambling activity in New Zealand: TAB racing/sports betting, NZ Lotteries, pokies, and casino gambling.² TAB expenditure is the lowest, at 14%.

Figure 2: share of gambling expenditure in New Zealand per type of activity (2019/2020)



Source: 2021 Social Impact Assessment of Class 4 Gambling in the Whangarei District.

The data on TAB participation prevalence does not differentiate between stand-alone TAB venues and TABs in bars or clubs. It is therefore difficult to extrapolate the extent of the impact of Council's Board Venues policy, which can only apply to stand-alone TAB venues.

² Department of Internal Affairs. (2020) Gambling Expenditure Statistics. [Online] Available from: <https://www.dia.govt.nz/gambling-statistics-expenditure>

Benefits of TAB gambling

It is required by the Racing Act to distribute profits to three racing codes: New Zealand Thoroughbred Racing Incorporated, Harness Racing New Zealand Incorporated, and the New Zealand Greyhound Racing Association (Incorporated).

The Racing Industry Transition Agency has a Class 4 Gambling Operator's licence. Its distributions to sporting and racing clubs from both TAB betting and Class 4 gambling are included in the distributions table below (**Table 3**). **Table 4** shows funding from betting allocated to the racing codes. Funding for other sports purposes has been allocated from gambling proceeds.

Table 3: Racing Industry Transition Authority distributions of net profits

Year distributions:	2019		2020	
	Betting	Gambling	Betting	Gambling
Distributions to the racing industry				
Funding for racing codes	\$148,940,000	-	\$119,784,000	-
The Races Partnership Limited	\$2,600,000	-	\$1,676,000	-
Other distributions (incl. infrastructure and audits)	-	\$13,050,000	-	\$13,239,000
Distributions (grants) to sporting community organisations				
Sports authorised purposes	-	\$4,093,000	-	\$1,961,000
TOTAL DISTRIBUTIONS from Racing Industry Transition Authority	\$151,540,000	\$17,143,000	\$121,460,000	\$15,200,000

Sources: Racing Industry Transition Authority annual report.³

Table 4: Racing codes funding received from NZRB/Racing Industry Transition Authority

Funding year:	2019	2020
<i>NZ Thoroughbred Racing</i>	81,624,033	65,368,457
<i>Harness Racing</i>	44,155,000	35,350,000
<i>Greyhound Racing</i>	25,318,000	21,976,000

Sources: racing codes' annual reports.^{4, 5, 6}

Section 25 of the Racing Act 2003 requires each racing code to distribute funding to the clubs in line with its funding policy. The Whangarei Racing Club has been the main beneficiary of NZRB funding, through Thoroughbred Racing New Zealand Inc., which subsidises race-day meeting costs. There are

³ NZRB (RITA) annual report

<https://www.tabnz.org/sites/default/files/documents/tab21780%20AR%202020%20f%20web%20%281%29.pdf>

⁴ NEW ZEALAND THOROUGHBRED RACING ANNUAL REPORT 2019-20 https://loveracing.nz/OnHorseFiles/NZTR%20AR%202019-20%20HiRes_RBG_29_Oct20.pdf

⁵ HARNESS RACING NEW ZEALAND ANNUAL REPORT 2019-2020. <https://infohorse.hrnz.co.nz/dochr/hrnz/Annual-Report-2020-FINAL.pdf>

⁶ NZ Greyhound Racing Annual Report 2020.

<https://www.grnz.co.nz/Files/November%202020/2020%20Annual%20Report%20Compressed.pdf>

no greyhound racing clubs in Northland, and the Northland Harness Racing Club has disbanded and does not receive any funding from NZRB distributions.

As part of the Covid-19 relief funding the government provided a \$72.5 million support package for the racing industry. The package included \$20 million for the construction of artificial tracks at Awapuni and Riccarton and \$2.5 million for the Department of Internal Affairs to fast track work on online gambling revenue, and address loss of revenue impacts on community and sport groups.³

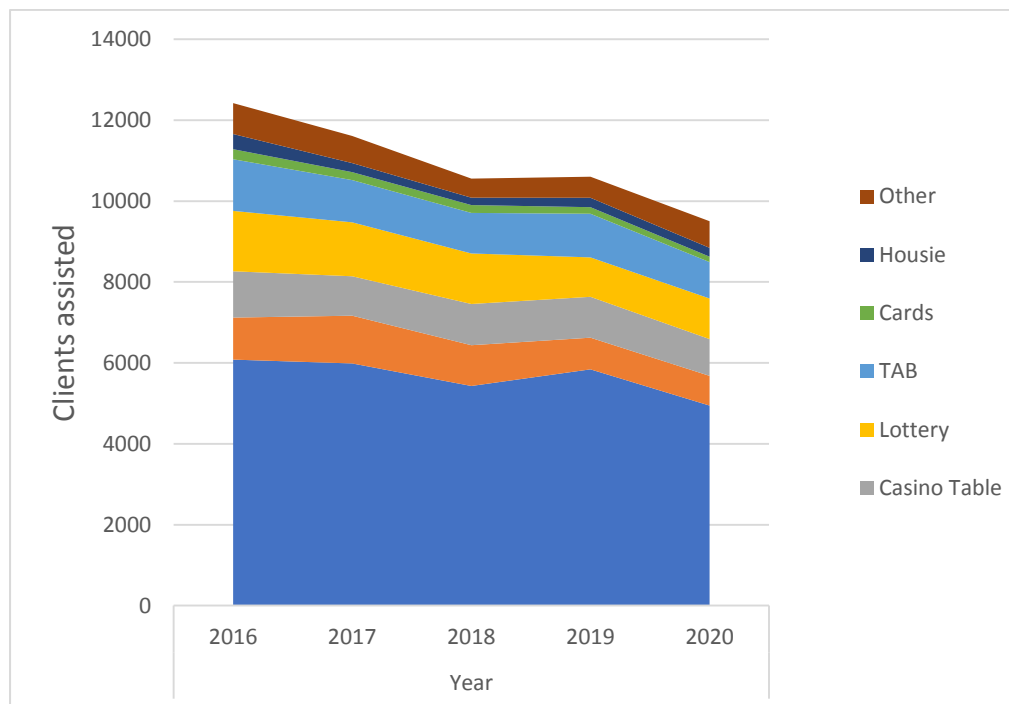
Harms

Problem gambling, or harmful gambling, occurs when people spend more than they can afford, denying themselves or their families some of the necessities of life; spending their savings rather than disposable income; and going into debt or committing crimes to support their gambling habit. Other harms then flow from those behaviors.

A 2012 study funded by the New Zealand Ministry of Health found that the burden of gambling harm is primarily due to damage to relationships, emotional/psychological distress, disruptions to work/study and financial impacts. Socio-economic aspects of problem gambling are discussed in the

Figure 3 shows the number of problem gambling clients assisted by publicly funded services, for various modes of gambling. The number of clients includes both gamblers and their friends, family and spouses, in keeping with the Gambling Act's definition of harm. The proportion of clients affected by TAB gambling is significant, however smaller than Class 4 Gambling. There is no publicly available data on how many of these clients sought help for problems associated with gambling, specifically, within the Whangarei District.

Figure 3: Clients assisted by primary problem gambling mode - Ministry of Health



Data source: Ministry of Health. Intervention client data. <https://www.health.govt.nz/our-work/mental-health-and-addiction/addiction/gambling/service-user-data/intervention-client-data#ppgm>

As part of this policy review package a separate Social Impact Assessment of Class 4 Gambling in the Whangarei District is provided. The assessment considers problem gambling in relation to all types of gambling, not just class 4 gambling in isolation. It is common for TAB outlets to operate within an existing class 4 gambling venue. It therefore is recommended that this report is considered in conjunction with the 2021 Social Impact Assessment of Class 4 Gambling.

Conclusion

In setting its policy Council is required to provide an appropriate balance between minimising gambling harm and continuing access to gambling as a form of entertainment, employment, and a source of funding for sports and community organisations.

Participation in TAB betting is lower than other gambling modes. Data suggests the proportion of online TAB betting is very small, however this may have changed since the covid-19 lockdown and the associated shift of activities online.

Benefits of TAB include funding distributions provided to the Whangarei Racing Club at the Ruakaka Racecourse.

While the data included in this report and the Social Impact Assessment of Class 4 Gambling demonstrates measurable harms from TAB gambling, it is important to distinguish that Council's Board Venue policy can only regulate the establishment of stand-alone TAB venues and does not apply to TAB outlets in bars and clubs. While the current Board Venues Policy allows for a maximum of two stand-alone TAB venues in the District, no such venues have been operating since 2019.



2021 Social Impact Assessment of Class 4 Gambling in the Whangārei District



ALLEN+CLARKE

ALLEN + CLARKE

Allen and Clarke Policy and Regulatory Specialists Limited (*Allen + Clarke*) is a consultancy firm based in Wellington, New Zealand and Melbourne, Australia. We specialise in research and evaluation, policy and programme development and implementation, business change, operational management and risk, and governance and secretariat services. A key component of our work is undertaking reviews and developing and implementing policies that improve outcomes for the public. Founded in 2001, the company is owned and managed by senior staff and has a team of approximately 70 senior policy and evaluation practitioners, analysts, and project support staff. Our company works extensively for a range of central and local government agencies in New Zealand, and international clients and non-government organisations in Australia, the Pacific and Asia. More information about our work can be found on our website: www.allenandclarke.co.nz.

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INTRODUCTION

The Whangārei District Council (the Council) has commissioned independent consultancy firm *Allen + Clarke* to provide a social impact report in relation to Class 4 gambling (pokies in pubs and clubs) in the Whangārei District.

This report assesses the current state of gambling in Whangārei and the associated social harms and social benefits. This piece of work will be used to feed into an additional report providing the Whangārei District Council with different policy options available to them in relation to Class 4 gambling.

The Gambling Act 2003¹ (the Act) classifies gambling based on the amount of money spent and the risk of gambling problems associated with an activity. Classes of gambling range from Class 1, representing low-stake, low-risk gambling (such as raffles), to Class 4, which represents higher-risk, high-turnover gambling (pokies in pubs and clubs).

Casino operations and lotteries run by the New Zealand Lotteries Commission are treated as separate classes of gambling within the Act. While other types of gambling such as casinos and Lotto are active in the Whangārei District, these are treated as separate classes of gambling under the Act, and as such are beyond the scope of this report.

Methodology

This social impact report primarily applied a desk-based quantitative research approach. To collate the latest data on gambling activity and gambling harm, *Allen + Clarke* used the following data sources.

- **Department of Internal Affairs (DIA) Gaming Machine Proceeds (GMP) Dashboard²** – This Dashboard provides information on the number of gaming machines, venues, and amount of money being spent at a territorial and national level. This Dashboard provides data from March 2015 – December 2020 and forms a basis of the statistical insight for this report. The *Allen + Clarke* team accessed this Dashboard in April 2021. The main data drawn on for this report is included in Appendix A.
- **Statistics New Zealand data³** – Census data was accessed online from Statistics NZ. This provides the most up to date population and ethnicity estimates which are used throughout the report. The *Allen + Clarke* team accessed these statistics in April 2021. It is important to note that Statistics NZ reporting brackets are 15 years old and above, while Class 4 gambling is restricted to those aged 18 and over. Any statistics relying on the census data therefore encompass a slightly wider bracket than those able to legally gamble. Statistics relying on population and ethnicity data are used to provide best estimates.
- **New Zealand Deprivation Index⁴** – The NZ Deprivation Index ranks socioeconomic deprivation based on the 2013 census information. A number of variables are taken into account, including car and telephone access; receipt of means-tested benefits;

¹ The Gambling Act 2003. [Online]. Available from: <http://www.legislation.govt.nz/act/public/2003/0051/latest/DLM207497.html>

² Department of Internal Affairs. (2020), *2011-2020 Gambling Expenditure Statistics XLSX*. [Online]. Available from: <https://www.dia.govt.nz/gambling-statistics-expenditure>

³ Statistics New Zealand. *Infoshare*. [Online]. Available from: <http://archive.stats.govt.nz/infoshare/>

⁴ Atkinson J, Crampton P, Salmond C. (2014) NZDEP2013: index of deprivation. New Zealand Ministry of Health. [Online] Available from: <https://www.otago.ac.nz/wellington/departments/publichealth/research/hirp/otago020194.html>

unemployment; household income; sole parenting; educational qualifications; home ownership, and home living space. This creates a 1-10 scale, where 1 is the least deprived areas and 10 the most deprived.

- **Health and Lifestyles Survey (HLS)**⁵ - The HLS is conducted every two years and is a nationally representative, face-to-face, in-home survey that facilitates the monitoring of health behaviours and attitudes of New Zealanders aged 15 years and over. The 2018 HLS gambling questions were designed to assess experience, knowledge and opinions about gambling and gambling-related harm among New Zealand adults, both overall and among different social and population groups. The HLS includes the Problem Gambling Severity Index (PGSI), which provides a validated measure of an individual's level of gambling-associated risk and harm. The HLS offers the most complete set of information about the incidence and prevalence of gambling harm in the total New Zealand population.
- **Client Information Collection (CLIC) Database**⁶ – A Ministry of Health database of problem gambling service provider statistics. It represents the number of clients who have received problem gambling treatment services by territorial authority.

Class 4 Gambling

Under the Act (and the Racing Act 2003)⁷, every territorial authority must adopt a Class 4 Gambling Venue Policy and review that policy every three years.⁸ In reviewing the policy, the territorial authority must 'have regard to the social impact of gambling within its District'. This means considering the benefits and harms associated with Class 4 gambling in the community. The Whangārei District Council adopted a Class 4 Venue Policy in 2004 and it was most recently amended by Council in July 2019.⁹

Class 4 gambling represents relatively high-risk, high turnover gambling. It covers all gambling using electronic gaming machines (EGMs or 'pokies') outside of casinos (i.e. in pubs and clubs). This type of gambling is considered 'continuous' as players may 'reinvest' any winnings immediately. This has been identified as among the most high-risk forms of gambling.¹⁰

As seen in Figure 1 below, Class 4 gambling has the highest reported expenditure of the four main types of gambling activity in New Zealand: TAB racing/sports betting, NZ Lotteries, pokies, and casino gambling.¹¹

⁵ Health Promotion Agency. (2018) 2018 Health and Lifestyles Survey. Wellington: Health Promotion Agency. [Online] Available from: <https://kupe.hpa.org.nz/#!/gambling>

⁶ CLIC Data retrieved from personal communication (2021) sent to Greg Martin.

⁷ Racing Act 2003. [Online]. Available from: <http://www.legislation.govt.nz/act/public/2003/0003/latest/DLM184055.html>

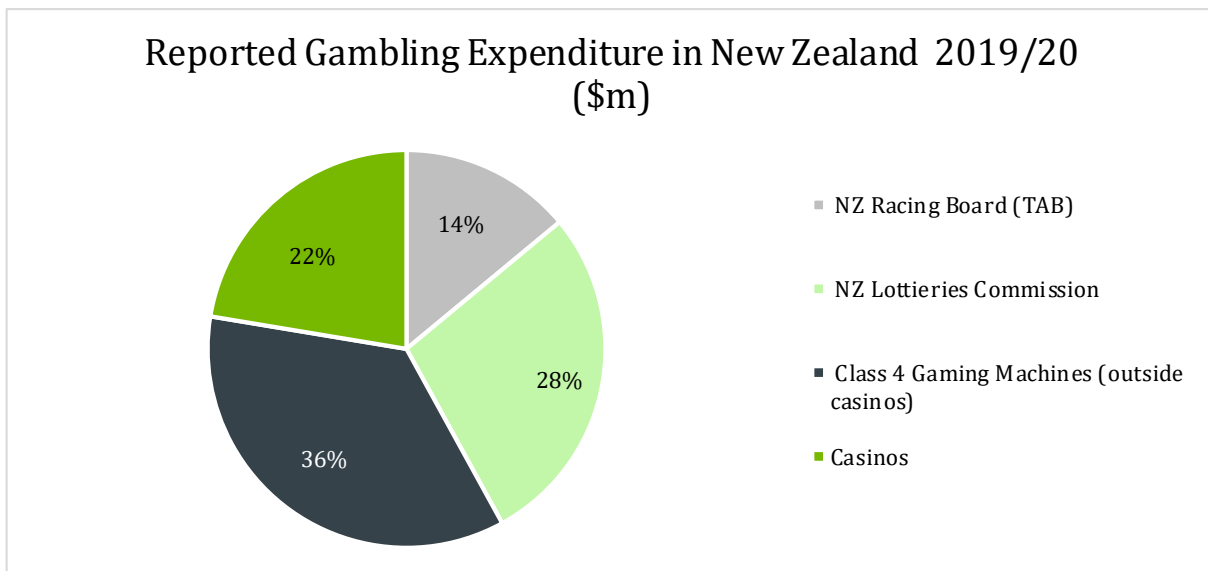
⁸ Gambling Act 2003, s 102.

⁹ Whangārei District Council. (2019). *Class 4 Gambling Venue Policy*. Whangārei District Council. [Online] Available from: <https://www.wdc.govt.nz/Council/Council-documents/Policies/Class-4-Gambling-Venue-Policy>

¹⁰ Abbott (2017). Gambling and gambling harm in New Zealand: a 28 year case study. *International Journal of Mental Health and Addiction*, 15, 1221–1241 <https://doi.org/10.1007/s11469-017-9767-6>

¹¹ Department of Internal Affairs. (2020) Gambling Expenditure Statistics. [Online] Available from: <https://www.dia.govt.nz/gambling-statistics-expenditure>

Figure 1: Reported gambling expenditure of the four main types of gambling activity in New Zealand 2019/20
 - Actual dollars (non-inflation adjusted) for gambling operators' financial year-end



Across New Zealand, over \$810 million was spent on pokies in 2020, which equates to approximately \$2.22 million per day.¹² New Zealand had an average number of 14,781 machines which equates to approximately \$54,864.50 lost on each machine in 2020.¹³

Under the Act, Class 4 gambling may only be conducted by a corporate society and that society must distribute net proceeds (profits) for an 'authorised purpose'. Corporate societies are licensed by Internal Affairs to operate pokie machines in clubs or in commercial venues (pubs and bars). 'Authorised purpose' includes a charitable purpose which is non-commercial and is beneficial to the whole or a section of the community or promoting and conducting race meetings under the Racing Act 2003.¹⁴ An example of an authorised purpose could therefore be a pub distributing gaming machine proceeds to a local amateur sports group.

¹² Department of Internal Affairs. (2020), *Class 4 Gambling Key Performance Indicators*. [Online]. Available from: <https://www.dia.govt.nz/gambling-statistics-key-performance-indicators?OpenDocument>

¹³ Department of Internal Affairs. (2020), *2011-2020 Gambling Expenditure Statistics XLSX*. [Online]. Available from: <https://www.dia.govt.nz/gambling-statistics-expenditure>

¹⁴ Section 4.

Current state of gambling in the Whangārei District

The Council currently adopts a 'sinking lid' policy to Class 4 venues.¹⁵ This means that Council does not grant consents for new venues and gaming machines, so that overtime as venues close or lose their licence, the number of gaming machines and venues decrease.

As at December 2020, Whangārei had 19 venues and 269 gaming machines.¹⁶ During 2020, Whangārei players spent \$16.3 million on EGMs which is approximately \$44,484 per day.¹⁷

Table 1: Class 4 Gambling Venues in Whangārei District as at December 2020

Venue Name	Society Name	Club or non-club	Number of Gaming Machines
Tote & Poke	Oxford Sports Trust Inc	Non-Club	18
Kamo Hotel	Grassroots Trust Limited	Non-Club	18
The Grand Hotel (Whangarei)	Pub Charity Limited	Non-Club	18
Northland Club Inc	Northland Club Inc	Club - Chartered	18
Judge - House of Ale	Oxford Sports Trust Inc	Non-Club	18
Tikipunga Tavern	Oxford Sports Trust Inc	Non-Club	18
Pure Bar & Grill	Oxford Sports Trust Inc	Non-Club	18
Onerahi Tavern	Pub Charity Limited	Non-Club	18
Ruakaka Tavern	Pub Charity Limited	Non-Club	18
Kensington Tavern	Oxford Sports Trust Inc	Non-Club	18
Kamo Club	Kamo Club Incorporated	Club - Chartered	16
Hikurangi Hotel	Rano Community Trust Limited	Non-Club	13
Waipu Hotel	Four Winds Foundation Limited	Non-Club	12
Coalies Sports Bar and Grill	The Lion Foundation (2008)	Non-Club	11
Ngunguru Sports Complex	Ngunguru Sports & Recreation Society Incorporated	Club -Sports	10
The Whangarei Returned Services Association Incorporated	The Whangarei Returned and Services Association Inc	Club - RSA	9
Triple Crown	Four Winds Foundation Limited	Non-Club	9
Kensington Club	Kensington Club Incorporated	Club -Sports	6
Poroti Tavern	Pub Charity Limited	Non-Club	3
19 Venues	11 Societies	5 Club 14 non-club	269 Machines

¹⁵ Whangārei District Council. (2019). *Class 4 Gambling Venue Policy*. Whangārei District Council. [Online] Available from: <https://www.wdc.govt.nz/Council/Council-documents/Policies/Class-4-Gambling-Venue-Policy>

¹⁶ Department of Internal Affairs. (2020). *All venues and numbers by territorial authority at 31 December 2020 XLSX*. [Online]. Available from: <https://www.dia.govt.nz/gambling-statistics-historical-data-venues-machine-numbers>

¹⁷ Department of Internal Affairs. (2020). *2011-2020 Gambling Expenditure Statistics XLSX*. [Online]. Available from: <https://www.dia.govt.nz/gambling-statistics-expenditure>

Whangārei has seen a decrease in venue and electronic gaming machine numbers

Figures 2 and 3 show DIA data from March 2015 to December 2020.¹⁸ In the Whangārei District, venues decreased by 3 or -13.5% and the number of EGMs decreased by 35 or -11.5% during this period. At a national level over the same period, venues decreased by 209 or -16.4% and EGM numbers decreased by 1,833 or -11.0%. The number of venues in Whangārei during the period Covid-19 restrictions lowered to 18 in December 2019 but increased back to 19, remaining at 19 for the year 2020. EGMs in Whangārei during Covid decreased from 274 to 269.

Figure 2: Number of Venues in Whangārei and New Zealand

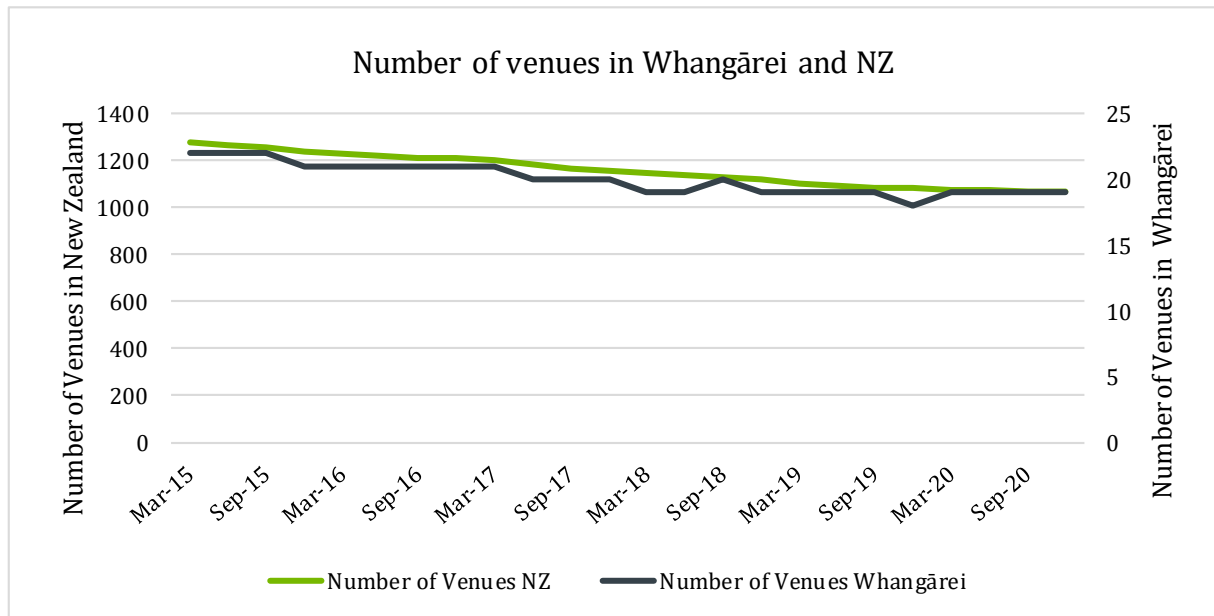
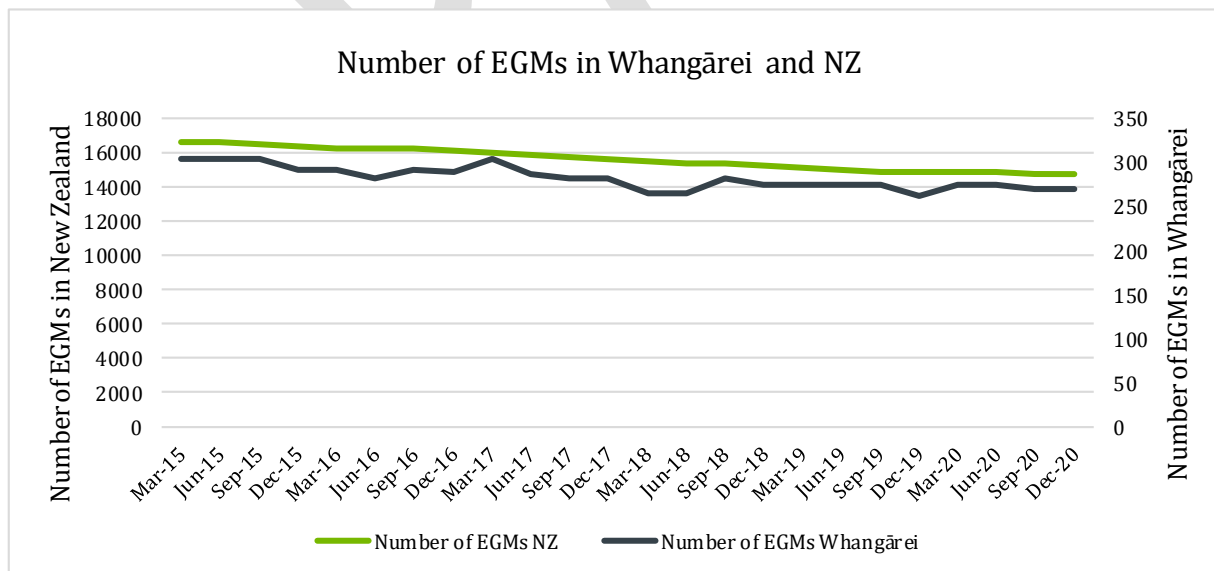


Figure 3: Number of EGMs in Whangārei and New Zealand



¹⁸ Department of Internal Affairs. (2020), *2011-2020 Gambling Expenditure Statistics XLSX*. [Online]. Available from: https://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Resource-material-Information-We-Provide-Gambling-Expenditure-Statistics

Whangārei has a moderate number of gaming machines for the size of the population

EGM density considers the number of gaming machines available per 10,000 people.

As shown in Table 2, as at June 2020 Whangārei had 274 machines, which equates to an average of 28 machines per 10,000 people and an average of \$165.63 spent per person. Nationally, EGM density is an estimated 29 machines per 10,000 people. Other districts with similar population size estimates such as Dunedin, New Plymouth and Rotorua all have a higher EGM density than Whangārei.

This suggests that the relative accessibility and opportunity for gambling is slightly lower in Whangārei than in some broadly comparable regions.

Table 2: Number of Electronic Gaming Machines per 10,000 people

	Estimated Resident Population as at June 30 2020 ¹⁹	Number of gaming machines in the area as at June 2020 ²⁰	Number of gaming machines per 10,000 residents
Whangārei District	98,300	274	28
New Zealand	5,107,700	14,847	29
Dunedin City	134,100	397	30
New Plymouth District	86,100	303	35
Rotorua District	77,300	365	47

¹⁹ Territorial authority area of usual residence five years ago (2013) by territorial authority area (2018), for the census usually resident population count, 2018 Census. Data retrieved from Statistics New Zealand. *Infoshare*. [Online]. Available from: <http://archive.stats.govt.nz/infoshare/>

²⁰ Department of Internal Affairs. (2020), *2011-2020 Gambling Expenditure Statistics XLSX*. [Online]. Available from: <https://www.dia.govt.nz/gambling-statistics-expenditure>

SOCIAL HARMS OF GAMBLING IN THE WHANGĀREI DISTRICT

The main social harms seen with gambling in the Whangārei District relate to financial costs and the impact of problem gambling.

Financial costs

Whangārei has seen an increase in expenditure on electronic gaming machines

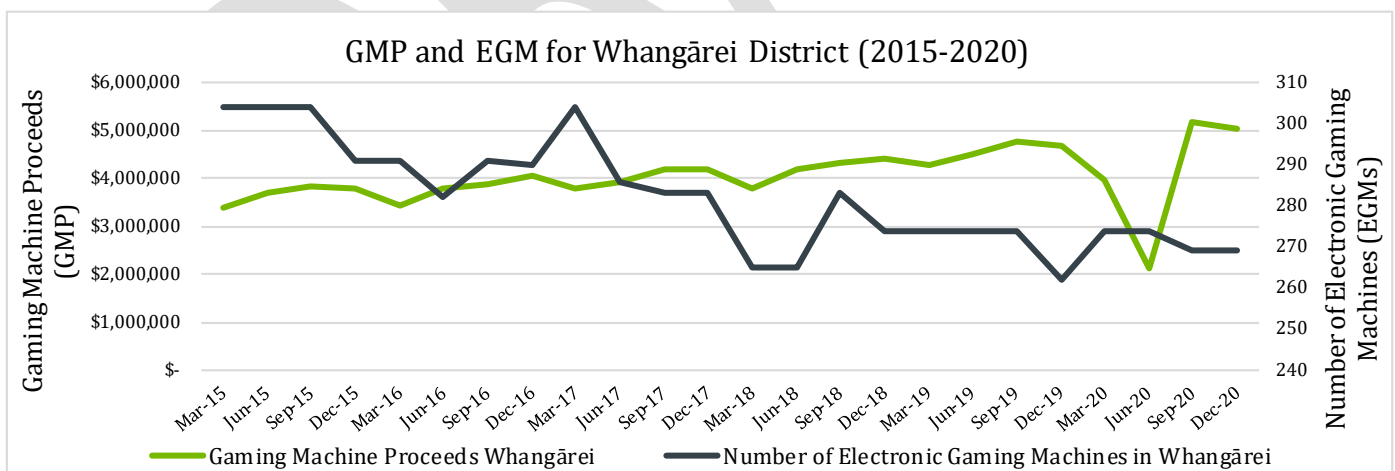
Gaming Machine Proceeds (GMP) is used to measure the amount of money lost by gamblers. It is defined as the total dollar turn-over minus the player pay-outs. It is therefore a measure of the actual losses incurred by pokie players.

As can be seen in Figure 4, Whangārei has seen an increase in pokie expenditure (green line) from March 2015 to December 2020, with a 49.5% GMP increase (as a comparator this is higher than the national average which increased by 30.6%).²¹ Over the same period, Whangārei experienced a decrease in the number of EGMs (black line). Higher pokie expenditure occurred despite a decrease in the number of machines and venues.

The impact of Covid-19 is demonstrated in the decrease in expenditure on EGMs between December 2019 to June 2020. In Whangārei District, the expenditure decreased from \$4.69m in December 2019 to \$2.12m in June 2020. The enforcement of level 3 and 4 lockdowns in New Zealand likely had a huge part in restricting people's access to EGMs. As the lockdowns lessened from June 2020 to September 2020, there was a large increase in expenditure on EGMs in Whangārei, increasing to \$5.17m, which is higher when comparing to the last peak in 2019 of \$4.78m. So, despite observing a decrease in expenditure in 2020 during the period of Covid-19 lockdown and restrictions, Whangārei has seen an increased expenditure overall.

For long term trends of GMP and number of EGMs from 2007-2020 see Appendix B.

Figure 4: Gaming Machine Proceeds and number of Electronic Gaming Machine in Whangārei over time



²¹ Department of Internal Affairs. (2020), *2011-2020 Gambling Expenditure Statistics XLSX*. [Online]. Available from: <https://www.dia.govt.nz/gambling-statistics-expenditure>

The decrease in expenditure on EGMs does not account for the expenditure in online gambling. It is possible that the decrease in expenditure on EGMs was shifted to online forms of gambling during Covid-19 restrictions.

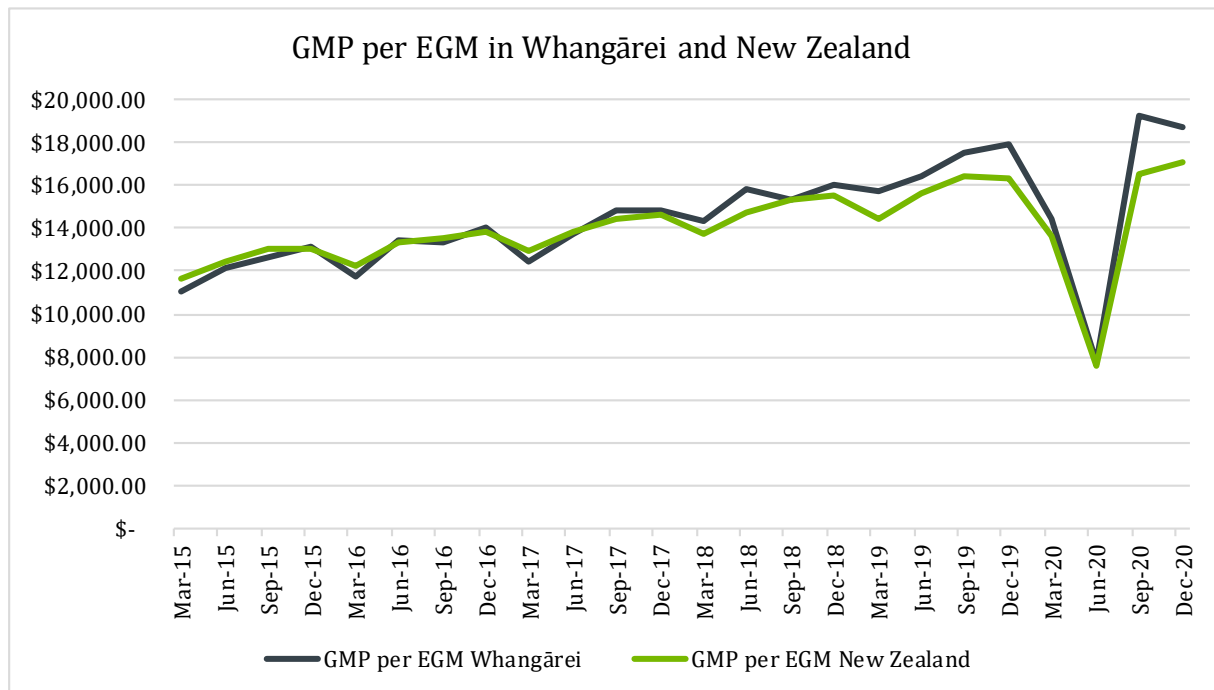
Whangārei has seen increased expenditure per electronic gaming machine

With more money being spent and fewer machines being available, the conclusion can be drawn that Whangārei EGM players are either spending more money per gaming machine, spending longer playing, or more players are playing. This correlation can be examined by analysing GMP as a proportion of the number of EGMs. Looking at the expenditure per machine, rather than solely GMP, offers a better reflection of the amount of money being spent by gamblers in the region.

As shown in Figure 5, GMP per gaming machine in the Whangārei District has increased by 68.9% since March 2015. This means that the average spending per machine in December 2020 was \$7,635 more than it was in March 2015. As a comparison overall, New Zealand spend per machine increased by 46.8% with machines making \$5,440 more than they did in March 2015.²² Similar to Figure 4, in Figure 5 we observe a large decrease in GMP per EGM during the Covid-19 restrictions period between December 2019 and June 2020, and then increasing back to its peak from June 2020 to September 2020.

These data demonstrate that while both Whangārei and New Zealand are experiencing a growth in GMP per EGM. Whangārei's growth in expenditure is higher than the national average spend. In 2020, Whangārei players were losing an average of \$60,525.85 per pokie machine.²³

Figure 5: Gaming Machine Proceeds per Electronic Gaming Machine in Whangārei and New Zealand



²² Department of Internal Affairs. (2020), *2011-2020 Gambling Expenditure Statistics XLSX*. [Online]. Available from: <https://www.dia.govt.nz/gambling-statistics-expenditure>

²³ Department of Internal Affairs. (2020), *2011-2020 Gambling Expenditure Statistics XLSX*. [Online]. Available from: <https://www.dia.govt.nz/gambling-statistics-expenditure>

Problem gambling

Problem gambling leads to other social harms

One of the common concerns with gambling is the emergence of 'problem gambling'. DIA defines problem gambling as 'gambling that causes or may cause harm to an individual, his or her family, or the wider community'.²⁴ Problem gambling is most commonly associated with gaming machines and its harmful effects can include:

- financial problems,
- problems at work (ranging from poor performance to fraud),
- poor parenting and other relationship problems,
- family violence,
- alcohol abuse,
- mental health problems; and,
- suicide.

It has been estimated that every problem gambler, on average, negatively affects six other people.²⁵ It inflicts harm on partners, children, parents, siblings, grandparents, work colleagues, and friends. Children can suffer greatly from harmful gambling where they miss out on essential needs and can experience feelings of neglect. Research has also consistently indicated that children of problem gamblers are two to four times more likely to develop gambling problems themselves than the children of non-problem gamblers.²⁶

There is consistent evidence linking harmful gambling and family violence.²⁷ The Ministry of Health and Auckland University of Technology released research in 2017 that highlighted the link between problem gambling and family violence. The research found that 50% of the participants (people who were seeking help from problem gambling services) reported that they were victims of family violence, and 44% reported that they were perpetrators.²⁸

Numerous studies have also suggested a link between problem gambling and suicidality. Research has suggested that gambling and suicidal behaviour may be linked due to extreme economic losses incurred from gambling, where suicide appears to be the only solution.²⁹ Another trend noted was that suicidal acts by gamblers were triggered by interpersonal and/or working challenges, alongside personality traits of impulsivity and psychiatric co-morbidities.

²⁴ Department of Internal Affairs. (2019) Problem Gambling. [Online] Available from: <https://www.dia.govt.nz/Services-Casino-and-Non-Casino-Gaming-Problem-Gambling>

²⁵ Dowling, N. (2014). The impact of gambling problems on families (AGRC Discussion Paper No. 1). Melbourne: Australian Gambling Research Centre.

²⁶ Dowling, N. (2010). *Children at risk of developing problem gambling*. The Problem Gambling Research and Treatment Centre. Available online at: <https://pdfs.semanticscholar.org/a75b/4f3d45bba709321e35002f8933e09f607858.pdf>.

²⁷ Dowling, N. (2014). The impact of gambling problems on families (AGRC Discussion Paper No. 1). Melbourne: Australian Gambling Research Centre. [Online] Available from: https://aifs.gov.au/agrc/sites/default/files/publication-documents/agrc-dp1-family-impacts_0.pdf

²⁸ Auckland University of Technology. (2017). *Problem Gambling and Family Violence in Help-Seeking Populations: Co-Occurrence, Impact and Coping*. Wellington: Ministry of Health. [Online] Available from: <https://www.health.govt.nz/publication/problem-gambling-and-family-violence-help-seeking-populations-co-occurrence-impact-and-coping>

²⁹ Giovanni M, Fabiola S, Federica F, Mariangela C, Nicola P, et al. Gambling Disorder and Suicide: An Overview of the Associated Co-Morbidity and Clinical Characteristics, *Int J High Risk Behav Addict*. 2017; 6(3):e30827. doi: 10.5812/ijhrba.30827.

Māori and Pacific Island communities have a higher prevalence of problem gambling

In the national Health and Lifestyles Survey (HLS) respondents (aged 15+) answer questions related to their gambling experiences. This produces the Problem Gambling Severity Index (PGSI) which is designed to screen for the likelihood of experiencing problems, rather than describing the extent of harm being experienced.

Table 3 gives the national estimated percentage of the population affected (that is, the unadjusted prevalence in the specified population) by gambling harm. Gambling harm has been recorded by ethnicity.³⁰

As seen in Table 3 below, communities with higher Māori and Pacific Island populations are expected to be more profoundly impacted by gambling harm than other ethnic communities. Moreover, according to the 2018 HLS, Māori have a four-fold higher risk of having moderate or problem gambling compared with non-Māori.³¹

Table 3: 2018 Health and Lifestyles Survey Problem Gambling Severity Index by ethnicity

Indicator ³²	Māori (%)	Pacific Island (%)	Asian (%)	European/ Other (%)
Gamblers (PGSI) – non problem	58.9	53.9	36.5	67.4
Gamblers (PGSI) – low risk	4.5	3.0	3.8	3.9
Gamblers (PGSI) – moderate risk and problem	5.9	3.5	1.1	1.4

Figure 6 shows the ethnic distribution of the Whangārei adult population, as at the 2018 census.³³ As shown, Whangārei has a relatively high adult Māori population. Of the adult Whangārei population Māori make up approximately 22% and Pacific Islanders 3%. At a national level Māori represent approximately 13% and Pacific Islanders 6% of the adult population.³⁴ Having a higher Māori population than the national average means that Whangārei is likely to experience greater gambling harm as this community is at significantly higher risk of gambling harm than other ethnicities.

³⁰ Ethnicity is the ethnic group(s) a person identifies with. Ethnicity is self-perceived so members of the HLS Survey may belong to more than one ethnic group. Participants may therefore be 'double counted' as they apply to multiple ethnicities.

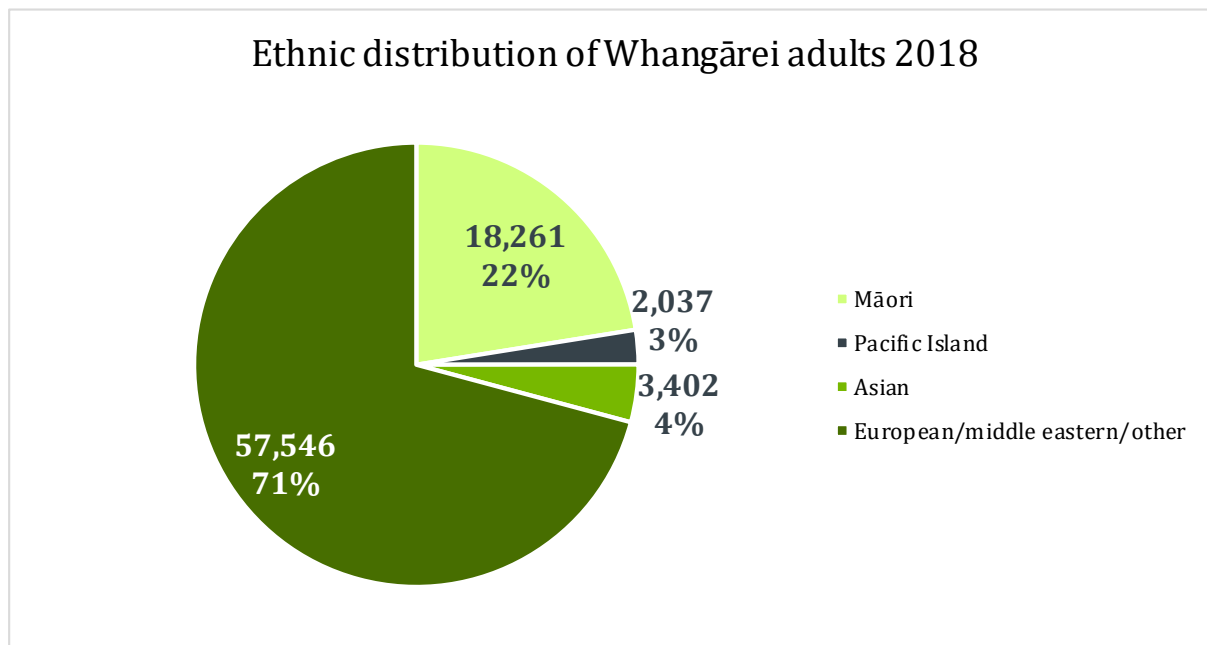
³¹ Health Promotion Agency. (2018) 2018 Health and Lifestyles Survey. Wellington: Health Promotion Agency. [Online] Available from: <https://kupe.hpa.org.nz/#!/gambling/gambling-harm>

³² The PGSI is a 9-item scale used to assess people's experiences of gambling-related harm in the last 12 months. The PGSI score determines which category a respondent will apply to. A PGSI score of 0 or NA is 'non-problem', 1-2 is a 'low risk' and 3-7 'moderate risk', 8-27 'problem gamblers'.

³³ This data comes from Statistics NZ and represents the Ethnic Group (group total responses) above the age of 15, for the census usually resident population count of Whangārei in 2018. Aged 15 and above has been used as the HLS survey respondents were aged 15 and above. Ethnic group total response was also selected, rather than detailed single ethnic response, as HLS respondents were able to select multiple ethnic categories. This allows for a more accurate comparison of the data. It is also of note that Statistics NZ report brackets are 15 years and over, while Class 4 gambling is restricted to people aged 18 and over. These numbers are therefore estimates.

³⁴ Statistics NZ Dataset: Ethnic group (grouped total responses) and number of ethnic groups specified by age group, for the census usually resident population count, 2018 Censuses, Whangārei and New Zealand. [Online]. Available from: <http://archive.stats.govt.nz/infoshare/>

Figure 6: Ethnic distribution of Whangārei adults 2018



EGMs are more prevalent in the more deprived communities of Whangārei

While EGM density is relatively low in Whangārei and gaming machine numbers and venues are decreasing, the remaining EGMs continue to be disproportionately located in the most deprived areas. A 2015 report commissioned by the Ministry of Health found that people living in neighbourhoods with the highest levels of deprivation (i.e. the most deprived) were five times more likely to report moderate-risk/problem gambling than those living in neighbourhoods with the lowest levels of deprivation (i.e. the least deprived).³⁵

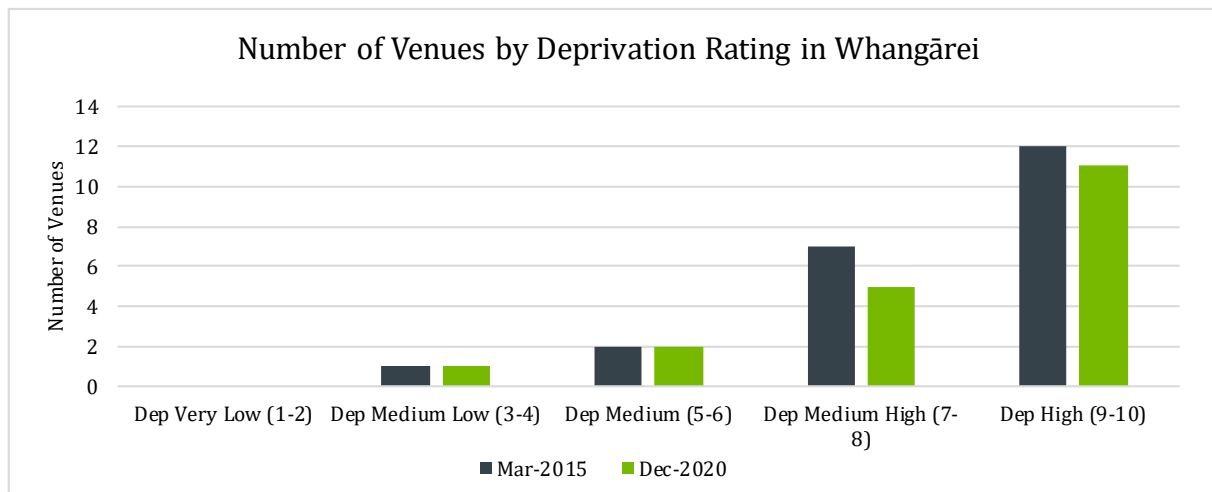
Having gaming machines located in high deprivation areas is therefore of concern as it may lead to a higher prevalence of gambling harm. Figure 7 shows the correlation in Whangārei between a higher deprivation index score and more gaming venues.³⁶ This trend is consistent across Whangārei since 2015 where more deprived communities had more gaming machine venues.

³⁵ Allen & Clarke. (2015). *Informing the 2015 Gambling Harm Needs Assessment*. Report for the Ministry of Health, Wellington: Allen & Clarke Policy and Regulatory Specialists Ltd.

³⁶ Deprivation ratings were obtained from the University of Otago Socioeconomic Deprivation Indexes: (2013). Atkinson J, Crampton P, Salmond C. (2014) NZDEP2013: index of deprivation. New Zealand Ministry of Health. [Online] Available from: <https://www.otago.ac.nz/wellington/departments/publichealth/research/hirp/otago020194.html>

Venue numbers were obtained from the Department of Internal Affairs. Department of Internal Affairs. (2020), *2011-2020 Gambling Expenditure Statistics XLSX*. [Online]. Available from: <https://www.dia.govt.nz/diawebsite/nzf/wpg/URL/Resource-material-Information-We-Provide-Gambling-Expenditure-Statistics>

Figure 7: A comparison of the number of venues by deprivation index in Whangārei (March 2015, December 2020)



The 2015 report also found that pokies in the most deprived areas provided over half of the total expenditure.³⁷ This is of concern as communities with a high deprivation index are those that have characteristics such as low employment, low income, lack of access to food and heating and a reliance on support services. The relatively higher expenditure in more deprived areas could have a negative socioeconomic impact, further driving people to lower levels of poverty and deprivation due to income being more distributed to gambling. Furthermore, this might lead to a lessening of social cohesion between community members.

The fact that gambling is concentrated to a small group in the community is also reflected in the 2018 HLS which estimated that 1.3% of the population played pokies at least once a week.³⁸ Regular gambling is therefore limited to a very small margin of the population. When looking at the use of pokie machines in the last 12 months the HLS estimated that 13% of the population played annually.³⁹ Applying this to the Whangārei District means that the annual losses on pokies in 2020, of around \$16.28 million,⁴⁰ came from approximately 10,270 people (of which an estimated 1,027 people were playing at least weekly).⁴¹

Intervention services in Whangārei

Service availability represents the number of intervention services available in the District which specialise in preventing or minimising gambling harm.

Table 4 is CLIC data of clients receiving services in the Whangārei District 2019/20.⁴² The intervention client data represents the number of clients who have received problem gambling treatment services and who have identified to the service provider a primary problem gambling mode causing them harm.

³⁷ Allen & Clarke. (2015). *Informing the 2015 Gambling Harm Needs Assessment*. Report for the Ministry of Health, Wellington: Allen & Clarke Policy and Regulatory Specialists Ltd.

³⁸ Health Promotion Agency. (2018) 2018 Health and Lifestyles Survey. Wellington: Health Promotion Agency. [Online] Available from: <https://kupe.hpa.org.nz/#!/gambling/gambling-participation-frequency/hls-gaming-machines-in-pub-club-at-least-weekly>

³⁹ Health Promotion Agency. (2018) 2018 Health and Lifestyles Survey. Wellington: Health Promotion Agency. [Online] Available from: <https://kupe.hpa.org.nz/#!/gambling/gambling-participation>

⁴⁰ Department of Internal Affairs. (2020), *2011-2020 Gambling Expenditure Statistics XLSX*. [Online]. Available from: <https://www.dia.govt.nz/gambling-statistics-expenditure>

⁴¹ Stats NZ: Age and sex by ethnic group (group total responses), for census night population counts, 2018 Censuses (TA) Whangārei District aged 15 and above. [Online]. Available from: <http://archive.stats.govt.nz/infoshare/>

⁴² CLIC Data retrieved from personal communication (2021) sent to Greg Martin.

In 2019/20, 331 people accessed gambling support services. Of those that accessed services, 192 were female and 139 were male. Almost two thirds of the clients identified as Māori, suggesting that Māori are one of the groups most impacted by gambling harm in Whangārei. Compared to 2018/19, there was a 9.24% increase in people accessing gambling support services in 2019/20, going from 303 to 331 people. In figure 8, it is observed that during the Covid lockdown restrictions there was no apparent decrease in help seeking. This suggests that people were still experiencing gambling harms through other means such as online gambling. Online gambling and related harm is an area that requires urgent research attention, and investigation with gambling harm service providers.

Table 4: CLIC data of people accessing gambling support services in Whangārei 2019/20

Gender	Ethnic group	Family/Affected Other	Gambler	Total
Female	East Asian	1	0	1
	Maori	69	50	119
	Pacific	5	2	7
	Other	23	42	65
Male	East Asian	1	1	2
	Maori	39	52	91
	Pacific	1	3	4
	Other	15	27	42
Total		154	177	331

Figure 8: CLIC data of clients assisted for problem gambling (all intervention type) from June 2005 to June 2020



SOCIAL BENEFITS OF GAMBLING IN THE WHANGĀREI DISTRICT

Gambling can provide a social benefit to the Whangārei District by way of entertainment, employment opportunities and investment into community groups.

Entertainment

Gambling is a popular form of entertainment for many New Zealanders. In the 2018 Health and Lifestyles Survey an estimated 13% of people (510,000) have played electronic gaming machines in the last 12 months.⁴³ Gambling can be a social activity that offers enjoyment and excitement to the player and a respite from day-to-day living.

Employment

Class 4 gambling and sports and race betting services create employment opportunities for the corporate societies administering the gaming machines, the venues operating them, and the servicing industries.

The housing of electronic gaming machines in local venues offers a source of employment for Whangārei District residents, although we are unable to measure the value of that employment. The addition of pokies to venues can also enhance the profitability of the business.

Community grants

Electronic gaming machines provide an injection of money into the local community. Community grants are a major benefit to the local community as they assist in the operation of numerous community initiatives and organisations.

Both club and non-club venues operate Class 4 gambling machines, as can be seen in Table 1. 'Club venues' are incorporated societies that operate to raise funds for their own community (including the club itself). Typical examples include the Returned and Services Association (RSA) and citizens clubs. Club venues own and operate their own gaming machines.

'Non-club venues' are public venues such as pubs and hotels. Machines in non-club venues are owned and operated by societies which are licensed to operate them solely as a form of community fundraising. Societies are required to return a minimum of 40% of their gaming machine proceeds (excluding GST) to the community by way of grants.⁴⁴ In addition societies must distribute GMP to venues (up to 16%) and the government (23% for gambling duty and 1.5% for problem gambling levy).⁴⁵

In 2018, proceeds from 32 societies nationally were returned to communities. This totalled approximately \$276 million and was distributed among 11,000 community organisations.⁴⁶ The significant investment gambling offers highlights what an important source of funding this is for many communities in New Zealand.

⁴³ Health Promotion Agency. (2018) 2018 Health and Lifestyles Survey. Wellington: Health Promotion Agency. [Online] Available from: <https://kupe.hpa.org.nz/#!/gambling>

⁴⁴ Gambling (Class 4 Net Proceeds) Regulations 2004, s 10.

⁴⁵ Problem Gambling Fund (2019) *Class 4 Gambling "The Pokies"*. [Online]. Available from: https://www.pgfnz.org.nz/downloads/assets/13511/1/fs_13%20class%204%20gambling%20%27the%20pokies%27%20sep%202019.pdf

⁴⁶ Gaming Machine Association New Zealand. (2019) *2018 Community Distribution*. [Online] Available from: <https://www.gmanz.org.nz/resource/2018-community-distribution/>

In the Whangārei District it is unknown exactly how much money has been reinvested into the community through grants and where the money has been invested. The annual GMP in 2020 was \$16.28 million.⁴⁷ Accordingly, approximately \$6.51 million (40%) is required to be distributed back to the community. Noting however that GST would first need to be removed, that venues classified as ‘club venues’ are not required to make community grants and that money is not required to be invested in the community from where it originated. The actual amount invested back into the Whangārei community would therefore be less than \$6.51 million.

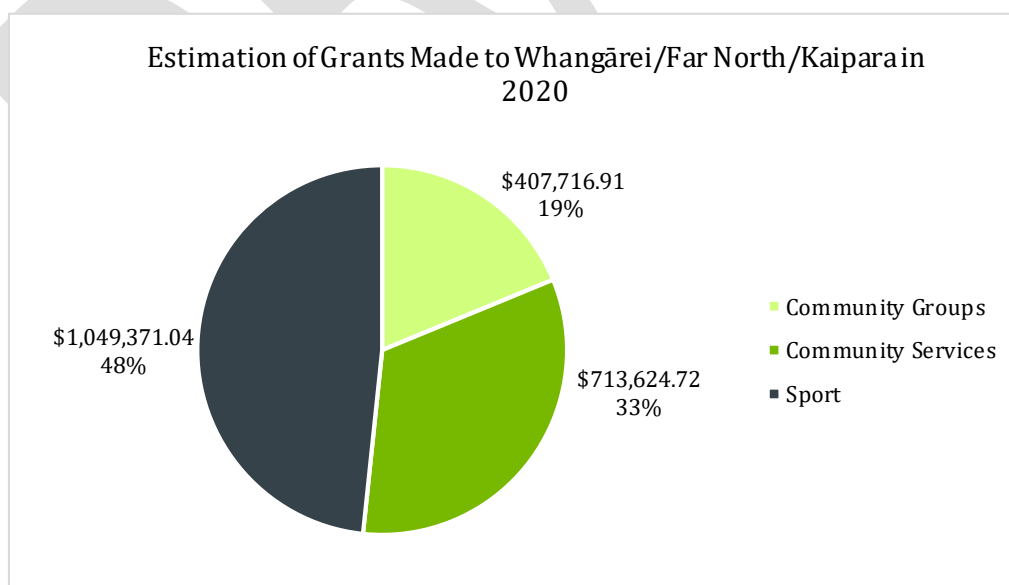
The Grants Database, maintained by The Problem Gambling Foundation, provides an indicative estimate of investment into the community. It is not precise due to incomplete reporting and delays in reporting, but it provides the best available data. In 2020, the database recorded \$2.17 million of grants made to Whangārei/Far North/Kaipara. This is a large decrease from the 5.60 million of grants made to Whangārei/Far North/Kaipara. Examples of investment include the Oxford Trust supporting amateur sports teams and Pub Charity supporting local social initiatives.

One issue to contend with is the presence of online gambling. While 40% of the GMP expenditure is distributed back into the community, expenditure that goes into online gambling cannot be distributed back into the community as this is often pooled back into other countries. It has been argued that reducing the access to poker machines at pubs and casinos would lead to an influx in online gambling. With an influx of online gambling occurring, this would lead to a reduced amount of money available to be redistributed back in the community.

Figure 8 provides an estimation of the distribution of gaming machine proceeds in the Whangārei community into three categories: Community Groups (which includes arts, scouts etc), Community Services (which includes education and health), and Sport. As can be seen in the graph the largest recipient of grants in the Whangārei District was likely to be sports.

It is noted that the Grants Database is not regularly audited, includes the Far North and Kaipara, and may have incomplete data. It therefore serves only to provide a rough indication of expenditure.

Figure 9: Estimation of the EGM grants made to the Whangārei/Far North/Kaipara in 2020



⁴⁷ Department of Internal Affairs. (2020), *2011-2020 Gambling Expenditure Statistics XLSX*. [Online] Available from: <https://www.dia.govt.nz/gambling-statistics-expenditure>

Having over \$2.17 million invested back into Whangārei/Far North/Kaipara has a significant impact on the community. In May 2019, the Council sought public consultation on the proposed Policy.⁴⁸ Many community groups responded that they are reliant on gambling funding to survive. For these groups it is crucial that they have some fundraising support available to them. A significant reduction in the accessibility of gambling may lead to a reduction in the amount of gambling funds and community grants that are made. This could lead to some organisations and activities ceasing to operate if alternate funding were not sourced.

⁴⁸ Whangārei District Council. (2019) *Whangārei District Council Meeting Minutes 11 June 2019*. [Online] Available from: <https://pub-wdc.escribemeetings.com/FileStream.ashx?DocumentId=1154>

CONCLUSION

Class 4 gambling continues to be a popular form of entertainment for the people of Whangārei. It creates employment opportunities for Whangārei District residents and can increase the profitability of the business. It can also offer a form of entertainment for the public and provides an important source of funding for many community groups.

In recent years Whangārei has seen a decrease in venue and electronic gaming machine numbers, but an increase in gambling expenditure. Electronic gaming machines remain prevalent in Whangārei's more deprived communities, and the occurrence of gambling harm continues to sit with a small proportion of the population being responsible for the majority of the spending.

A Class 4 gambling policy must carefully consider the social impact of gambling in the Whangārei District and provide an appropriate balance between minimising gambling harm and continuing access to gambling as a form of entertainment, employment, and a source of funding for community organisations.

APPENDIX A

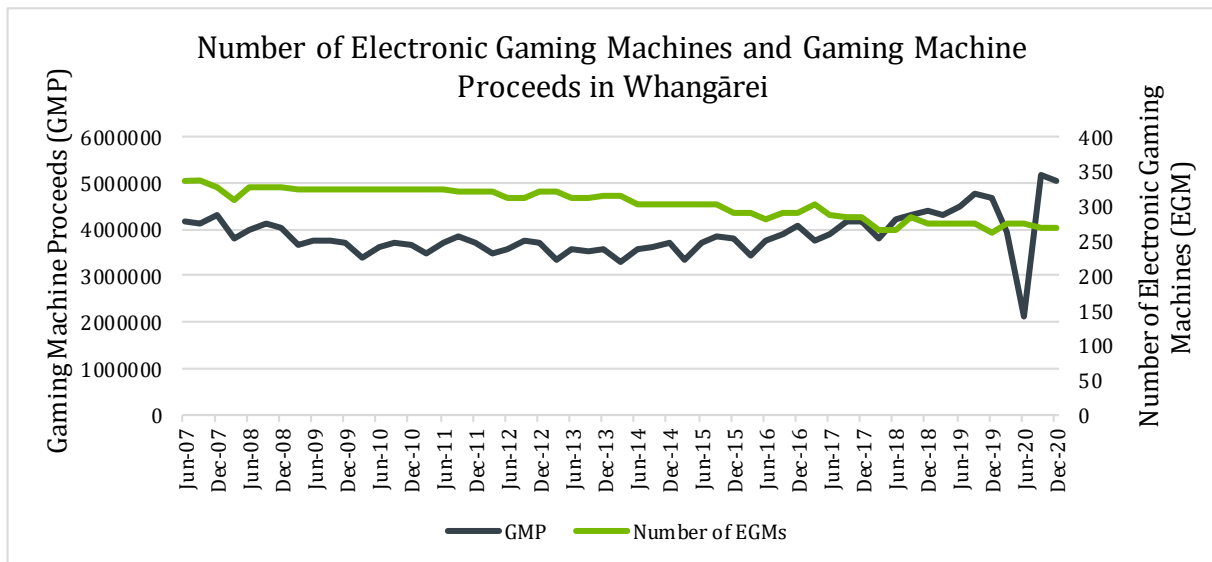
Table 5: Statistics on Whangārei Class 4 Gambling from Department of Internal Affairs

Quarter	GMP (\$)	Δ GMP (\$)	GMP per EGM	Number of venues	Δ venues	Number of EGMs	Δ EGMs
Mar-15	\$ 3,366,428.09		\$ 11,073.78	22		304	
Jun-15	\$ 3,702,158.98	\$335,730.89	\$ 12,178.15	22	0	304	0
Sep-15	\$ 3,854,212.88	\$152,053.90	\$ 12,678.33	22	0	304	0
Dec-15	\$ 3,809,230.32	-\$44,982.56	\$ 13,090.14	21	-1	291	-13
Mar-16	\$ 3,425,451.07	-\$383,779.25	\$ 11,771.31	21	0	291	0
Jun-16	\$ 3,780,349.38	\$354,898.31	\$ 13,405.49	21	0	282	-9
Sep-16	\$ 3,892,774.51	\$112,425.13	\$ 13,377.23	21	0	291	9
Dec-16	\$ 4,074,472.93	\$181,698.42	\$ 14,049.91	21	0	290	-1
Mar-17	\$ 3,770,263.01	-\$304,209.92	\$ 12,402.18	21	0	304	14
Jun-17	\$ 3,918,966.08	\$148,703.07	\$ 13,702.68	20	-1	286	-18
Sep-17	\$ 4,189,736.01	\$270,769.93	\$ 14,804.72	20	0	283	-3
Dec-17	\$ 4,194,866.36	\$5,130.35	\$ 14,822.85	20	0	283	0
Mar-18	\$ 3,802,416.66	-\$392,449.70	\$ 14,348.74	19	-1	265	-18
Jun-18	\$ 4,202,834.17	\$400,417.51	\$ 15,859.75	19	0	265	0
Sep-18	\$ 4,330,327.63	\$127,493.46	\$ 15,301.51	20	1	283	18
Dec-18	\$ 4,398,813.95	\$68,486.32	\$ 16,054.07	19	-1	274	-9
Mar-19	\$ 4,295,078.77	-\$103,735.18	\$ 15,675.47	19	0	274	0
Jun-19	\$ 4,506,439.76	\$211,360.99	\$ 16,446.86	19	0	274	0
Sep-19	\$ 4,784,245.64	\$277,805.88	\$ 17,460.75	19	0	274	0
Dec-19	\$ 4,688,276.01	-\$95,969.63	\$ 17,894.18	18	-1	262	-12
Mar-20	\$ 3,951,342.00	-\$736,934.01	\$ 14,420.96	19	1	274	12
Jun-20	\$ 2,123,195.88	-\$1,828,146.12	\$ 7,748.89	19	0	274	0
Sep-20	\$ 5,174,159.38	\$3,050,963.50	\$ 19,234.79	19	0	269	-5
Dec-20	\$ 5,032,757.17	-\$141,402.21	\$ 18,709.13	19	0	269	0

Δ symbol represents change in value.

APPENDIX B

Figure 10: Number of Electronic Gaming Machines and Gaming Machine Proceeds in Whangārei over time (Jun-07 – Dec-20)



6.4 Review of the Class 4 Gambling Policy - 2021

Meeting: Whangarei District Council
Date of meeting: 22 July 2021
Reporting officer: Vita Strohush – Strategic Planner, Bylaws

1 Purpose

To complete the statutory review of Council's Class 4 Gambling Policy and to seek a decision on whether to retain the Policy without amendment.

2 Recommendations

That Council

1. Determines the statutory review of Council's Class 4 Gambling Policy is complete.
2. Retains the existing Class 4 Gambling Policy with no changes.

3 Background

Council is undertaking the statutory three-yearly review of its gambling harm related policies.

Council staff have now reviewed the Class 4 Gambling Policy and presented their findings at the briefing on 26 May 2021 together with the relevant attachments. This report is intended to meet the statutory requirement that a review of the policies has been completed and that Council has had regard to the social impact of class 4 gambling within the District in undertaking the review.

The decision of Council required today will determine whether the Policy remains fit for-purpose and can be retained in its current format, or whether Council wishes to make amendments and consult on proposed amendments with the community.

4 Discussion

4.1 Current policy settings

Council's current Class 4 Gambling Policy (**Attachment 1**) utilises a sinking lid on the number of venues and the number of electronic gaming machines (EGMs). The Policy allows for limited relocation and merging of venues.

The relevant Policy provisions are summarised in the table below:

Table 1 – Current Policy provisions

Policy	1. Establishment of Venues	2. Location of venues	3. Number of Electronic Gaming Machines	4. Relocation of venues	5. Merger of venues
Class 4 Gambling (C4G) Policy approach	s.3.1. C4G Policy Whangarei District Council will not permit the establishment of new class 4 gambling venues in the Whangarei District.	s.5.1 C4G Policy Any class 4 venue may only be established in a Business 1, Business 2 or a Business 4 Environment as defined under the Whangarei District Plan.	s.3.1. C4G Policy Whangarei District Council will not permit the establishment of new class 4 gambling venues in the Whangarei District.	s.4.1.a. C4G Policy Council may permit relocation if due to circumstances beyond the control of the owner or lessee of the class 4 venue, the venue cannot continue to operate at the existing site (e.g. expiration of lease)	s.4.1.b C4G Policy Council may permit relocation if the new site is as a result of the approved merger of two or more clubs under section 95 of the Gambling Act 2003.

4.2 Social Impacts

Class 4 gambling is considered ‘continuous’ as players may ‘reinvest’ any winnings immediately. This has been identified as among the most high-risk forms of gambling. When reviewing the Class 4 Gambling Policy Council is required to consider the social impacts of gambling in high-deprivation areas. Analysis of the social impacts of Class 4 Gambling is provided in **Attachment 2**.

4.3 Options

The Options Analysis Report provided in **Attachment 3** examines a broad suite of potential policy configurations for regulating Class 4 Gambling in the District, from more enabling to more restrictive. Appendix 1 to the Options Analysis Report provides detailed analysis of each of the policy options available to the Council. A high-level Summary of Options is provided in **Attachment 4**.

Based on the feedback received at the Briefing on 26 May staff prepared this report based on an indication of retaining the current policy with no changes. Council decision is needed today on whether the Policy can be retained in its current format, or whether Council wishes to make substantive changes. The two options are discussed in Table 2.

Table 2 - Options

Option	Advantages	Disadvantages	Comments
Option 1 - Recommended Retain the current Class 4 Gambling Policy with no changes	Under this policy setting the number of venues and EGMs gradually declines over time as new venues are unable to open, thus reducing access to Class 4	Reduced contributions from gaming proceeds to community funding. A risk associated with an ongoing reduction in EGM numbers is that people may turn to	If no changes are needed to the policy, then public consultation is not required.

	Gambling in the District and the associated social harm	other types of gambling, specifically offshore online gambling.	
Option 2 Direct the Chief Executive to investigate and draft amendments to the Policy, to be reported back to Council for consideration.	Opportunity to have further discussion around the available options.	Uncertainty associated with public consultation and timeframes.	This option means further briefings, adoption of a Statement of Proposal for any changes and public consultation.

The recommended option is Option 1. The current Policy has last been amended very recently, in 2019. This is a balanced policy setting among a range of other options provided in Attachment 3. The research provided in Attachments 3 and 4 does not suggest significant changes in the District of a scale that would require a change of policy.

4.4 Financial/budget considerations

There are no additional budgeted considerations in relation on the recommended Option 1 - retaining the current Class 4 Gambling Policy with no changes.

5 Significance and engagement

5.1 Significance

The decisions and matters of this agenda do not trigger two or more significance criteria of Council's Significance and Engagement Policy.

5.2 Engagement

If proceeding with Option 1, no public consultation is required. If proceeding with Option 2, further policy review process will involve adoption of a Statement of Proposal for public consultation.

The public will be informed via agenda publication on Council's website.

6 Attachments

Attachment 1 - Class 4 Gambling Policy

Attachment 2 - Social Impacts Report

Attachment 3 - Options Analysis Report

Attachment 4 - Summary table of policy options, impacts, costs, benefits, and risks.

Class 4 Gambling Venue Policy

Contents

1. Legislative requirement.3
2. Objectives.3
3. Establishment of new class 4 venues3
4. Relocation of existing class 4 venues.3
5. Where class 4 gambling venues may be established 3	
6. Restrictions on the maximum number of machines that may be operated at a class 4 venue	4
7. The territorial authority consent process	4
8. Promotion of gambling information to the community.5



1. Legislative requirement

- 1.1 Section 101 of the Gambling Act 2003 requires territorial authorities to adopt a policy on class 4 venues.

2. Objectives

- 2.1 To control the growth of class 4 gambling in the Whangarei District.
- 2.2 To minimise the harm caused by class 4 gambling in the Whangarei District.
- 2.3 To facilitate community involvement in decisions about the provision of class 4 gambling in the Whangarei District.
- 2.4 To allow those who choose to use class 4 gaming machines may do so in a safe and well managed environment.

3. Establishment of new class 4 venues

- 3.1 Whangarei District Council will not permit the establishment of new class 4 gambling venues in the Whangarei District.

4. Relocation of existing class 4 venues

- 4.1 Whangarei District Council may, in accordance with section 98(c) of the Gambling Act 2003, permit a class 4 venue to re-establish at a new site where:
- a. Due to circumstances beyond the control of the owner or lessee of the class 4 venue, the venue cannot continue to operate at the existing site. Examples of such circumstances include but are not limited to the following:
 - i. expiration of lease
 - ii. acquisition of property under the Public Works Actsite redevelopment.
 - b. The new site is as a result of the approved merger of two or more clubs under section 95 of the Gambling Act 2003.
- 4.2 Any permission to relocate a class 4 venue will be subject to the following conditions:
- a. Except as provided for in 4.1 (b) above, the venue operator of the business at the new site shall be the same as the venue operator at the site to be vacated.

5. Where class 4 gambling venues may be established

- 5.1 Any class 4 venue may only be established in a Business 1, Business 2 or a Business 4 Environment as defined under the Whangarei District Plan.

6. Restrictions on the maximum number of machines that may be operated at a class 4 venue

- 6.1 Whangarei District Council will, under section 98(a) of the Gambling Act 2003, not consent to any increase in the number of class 4 gambling machines operated at a venue, specifically:
- for an application under section 92 of the Gambling Act 2003
 - for an application under section 93 of the Gambling Act 2003.

7. The territorial authority consent process

- 7.1 Any application for consent under this Policy to relocate a class 4 venue will be subject to public notification and determined after a Whangarei District Council hearing.
- 7.2 Whangarei District Council has delegated the power to consider and determine applications for a consent under this Policy, to the Licensing Exemptions and Objections Committee and during the terms of this Policy, Whangarei District Council may delegate such powers to such other committees as appropriate.
- 7.3 Submissions in writing shall be invited over a period of not less than 20 working days, with submitters invited to indicate if they wish to be heard on the hearing date. Working days shall have the same meaning as defined in terms of the Resource Management Act 1991.
- 7.4 The Committee shall consider all submissions, written and oral, and shall make a decision including reasons on the application. The Committee's decision shall be final.
- 7.5 Public notification shall be undertaken by Council as follows:
- by publication in a local newspaper circulating within the District
 - by way of a public notice displayed prominently in the window of the proposed venue or by signage on the venue site for the period during which submissions are open
 - by the notification in writing of owners and occupiers of any adjacent properties by notification in writing to any other person or party that Council considers necessary.
- 7.6 In considering an application under this Policy, the Committee shall have regard to the following matters:
- the potential cumulative effects of additional gambling opportunities in that location and the social impact within the District generally
 - the extent of the potential impact of the venue on the character of the area including the potential for negative effects on the operation, amenity or reasonable enjoyment of residential or other sensitive land uses in the area
 - the extent to which the application meets the objectives of the Whangarei District Council Class 4 Gambling Venue Policy and the purpose and intent of the Gambling Act 2003
 - any other matter that Council considers relevant and reasonably necessary to determine the application.
- 7.7 Applications for consent must be made on the approved form and must provide:
- name and contact details of the applicant
 - venue name and street address

- c. a scale plan drawn showing areas set aside for gambling and other activities
 - d. a location plan showing the location of the venue within the wider community
 - e. the number of machines that the applicant intends to operate
 - f. information demonstrating that the primary activity for the venue will not be the operation of gambling machines
 - g. details of any sale of alcohol licence(s) applying to the venue
 - h. an assessment of the following matters:
 - i. the potential cumulative effects of additional gambling opportunities in that location and the social impact within the District generally
 - ii. The extent of the potential impact of the venue on the character of the area including the potential for negative effects on the operation, amenity or reasonable enjoyment of residential or other sensitive land uses in the area.
 - i. any other information that may reasonably be required to allow proper consideration of the application
 - j. fees
 - k. evidence of compliance with the Whangarei District Plan, or a copy of the necessary Resource Consent.
- 7.8 Application fees will be set by Whangarei District Council in accordance with section 150 of the Local Government Act 2002 and shall include consideration of the cost of processing the application.

8. Promotion of gambling information to the community

- 8.1 Council will, within budget constraints, facilitate the provision of information promoting host responsibility, gambling harm minimisation, problem gambling services and other relevant information to the District community and the industry in an endeavour to contribute towards the achievement of the objectives of this Policy.





2021 Social Impact Assessment of Class 4 Gambling in the Whangārei District



ALLEN+CLARKE

ALLEN + CLARKE

Allen and Clarke Policy and Regulatory Specialists Limited (*Allen + Clarke*) is a consultancy firm based in Wellington, New Zealand and Melbourne, Australia. We specialise in research and evaluation, policy and programme development and implementation, business change, operational management and risk, and governance and secretariat services. A key component of our work is undertaking reviews and developing and implementing policies that improve outcomes for the public. Founded in 2001, the company is owned and managed by senior staff and has a team of approximately 70 senior policy and evaluation practitioners, analysts, and project support staff. Our company works extensively for a range of central and local government agencies in New Zealand, and international clients and non-government organisations in Australia, the Pacific and Asia. More information about our work can be found on our website: www.allenandclarke.co.nz.

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Final QA check and approved for release:	Kirsten Lovelock

Allen + Clarke has been independently certified as compliant with ISO9001:2015 Quality Management Systems



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INTRODUCTION

The Whangārei District Council (the Council) has commissioned independent consultancy firm *Allen + Clarke* to provide a social impact report in relation to Class 4 gambling (pokies in pubs and clubs) in the Whangārei District.

This report assesses the current state of gambling in Whangārei and the associated social harms and social benefits. This piece of work will be used to feed into an additional report providing the Whangārei District Council with different policy options available to them in relation to Class 4 gambling.

The Gambling Act 2003¹ (the Act) classifies gambling based on the amount of money spent and the risk of gambling problems associated with an activity. Classes of gambling range from Class 1, representing low-stake, low-risk gambling (such as raffles), to Class 4, which represents higher-risk, high-turnover gambling (pokies in pubs and clubs).

Casino operations and lotteries run by the New Zealand Lotteries Commission are treated as separate classes of gambling within the Act. While other types of gambling such as casinos and Lotto are active in the Whangārei District, these are treated as separate classes of gambling under the Act, and as such are beyond the scope of this report.

Methodology

This social impact report primarily applied a desk-based quantitative research approach. To collate the latest data on gambling activity and gambling harm, *Allen + Clarke* used the following data sources.

- **Department of Internal Affairs (DIA) Gaming Machine Proceeds (GMP) Dashboard²** – This Dashboard provides information on the number of gaming machines, venues, and amount of money being spent at a territorial and national level. This Dashboard provides data from March 2015 – December 2020 and forms a basis of the statistical insight for this report. The *Allen + Clarke* team accessed this Dashboard in April 2021. The main data drawn on for this report is included in Appendix A.
- **Statistics New Zealand data³** – Census data was accessed online from Statistics NZ. This provides the most up to date population and ethnicity estimates which are used throughout the report. The *Allen + Clarke* team accessed these statistics in April 2021. It is important to note that Statistics NZ reporting brackets are 15 years old and above, while Class 4 gambling is restricted to those aged 18 and over. Any statistics relying on the census data therefore encompass a slightly wider bracket than those able to legally gamble. Statistics relying on population and ethnicity data are used to provide best estimates.
- **New Zealand Deprivation Index⁴** – The NZ Deprivation Index ranks socioeconomic deprivation based on the 2013 census information. A number of variables are taken into account, including car and telephone access; receipt of means-tested benefits;

¹ The Gambling Act 2003. [Online]. Available from: <http://www.legislation.govt.nz/act/public/2003/0051/latest/DLM207497.html>

² Department of Internal Affairs. (2020), *2011-2020 Gambling Expenditure Statistics XLSX*. [Online]. Available from: <https://www.dia.govt.nz/gambling-statistics-expenditure>

³ Statistics New Zealand. *Infoshare*. [Online]. Available from: <http://archive.stats.govt.nz/infoshare/>

⁴ Atkinson J, Crampton P, Salmond C. (2014) NZDEP2013: index of deprivation. New Zealand Ministry of Health. [Online] Available from: <https://www.otago.ac.nz/wellington/departments/publichealth/research/hirp/otago20194.html>

unemployment; household income; sole parenting; educational qualifications; home ownership, and home living space. This creates a 1-10 scale, where 1 is the least deprived areas and 10 the most deprived.

- **Health and Lifestyles Survey (HLS)**⁵ - The HLS is conducted every two years and is a nationally representative, face-to-face, in-home survey that facilitates the monitoring of health behaviours and attitudes of New Zealanders aged 15 years and over. The 2018 HLS gambling questions were designed to assess experience, knowledge and opinions about gambling and gambling-related harm among New Zealand adults, both overall and among different social and population groups. The HLS includes the Problem Gambling Severity Index (PGSI), which provides a validated measure of an individual's level of gambling-associated risk and harm. The HLS offers the most complete set of information about the incidence and prevalence of gambling harm in the total New Zealand population.
- **Client Information Collection (CLIC) Database**⁶ – A Ministry of Health database of problem gambling service provider statistics. It represents the number of clients who have received problem gambling treatment services by territorial authority.

Class 4 Gambling

Under the Act (and the Racing Act 2003)⁷, every territorial authority must adopt a Class 4 Gambling Venue Policy and review that policy every three years.⁸ In reviewing the policy, the territorial authority must 'have regard to the social impact of gambling within its District'. This means considering the benefits and harms associated with Class 4 gambling in the community. The Whangārei District Council adopted a Class 4 Venue Policy in 2004 and it was most recently amended by Council in July 2019.⁹

Class 4 gambling represents relatively high-risk, high turnover gambling. It covers all gambling using electronic gaming machines (EGMs or 'pokies') outside of casinos (i.e. in pubs and clubs). This type of gambling is considered 'continuous' as players may 'reinvest' any winnings immediately. This has been identified as among the most high-risk forms of gambling.¹⁰

As seen in Figure 1 below, Class 4 gambling has the highest reported expenditure of the four main types of gambling activity in New Zealand: TAB racing/sports betting, NZ Lotteries, pokies, and casino gambling.¹¹

⁵ Health Promotion Agency. (2018) 2018 Health and Lifestyles Survey. Wellington: Health Promotion Agency. [Online] Available from: <https://kupe.hpa.org.nz/#!/gambling>

⁶ CLIC Data retrieved from personal communication (2021) sent to Greg Martin.

⁷ Racing Act 2003. [Online]. Available from: <http://www.legislation.govt.nz/act/public/2003/0003/latest/DLM184055.html>

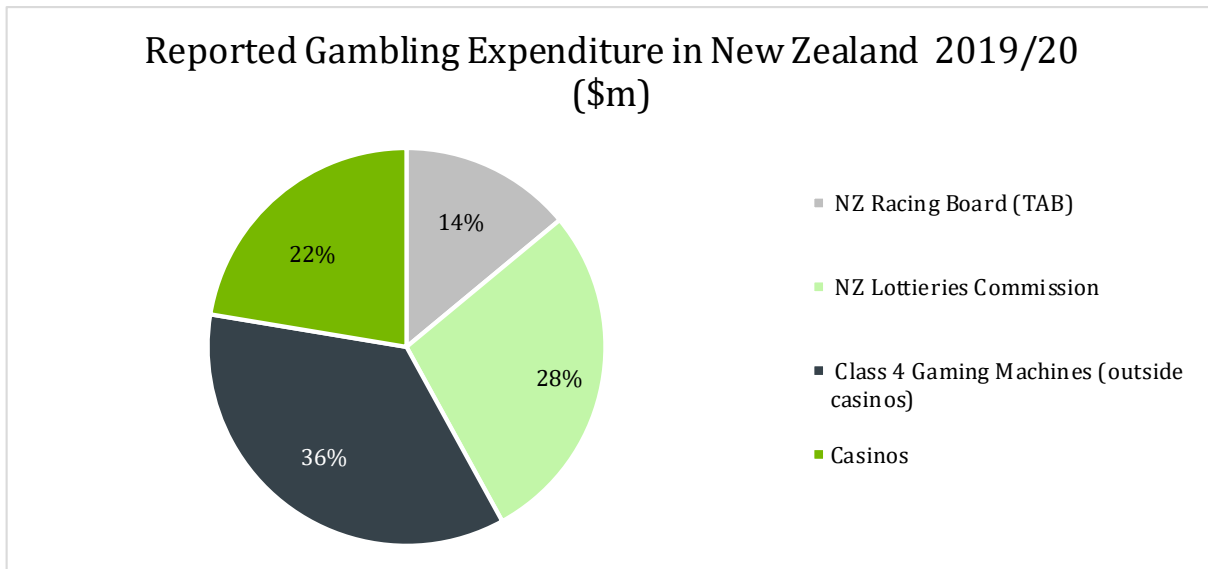
⁸ Gambling Act 2003, s 102.

⁹ Whangārei District Council. (2019). *Class 4 Gambling Venue Policy*. Whangārei District Council. [Online] Available from: <https://www.wdc.govt.nz/Council/Council-documents/Policies/Class-4-Gambling-Venue-Policy>

¹⁰ Abbott (2017). Gambling and gambling harm in New Zealand: a 28 year case study. *International Journal of Mental Health and Addiction*, 15, 1221–1241 <https://doi.org/10.1007/s11469-017-9767-6>

¹¹ Department of Internal Affairs. (2020) Gambling Expenditure Statistics. [Online] Available from: <https://www.dia.govt.nz/gambling-statistics-expenditure>

Figure 1: Reported gambling expenditure of the four main types of gambling activity in New Zealand 2019/20
 - Actual dollars (non-inflation adjusted) for gambling operators' financial year-end



Across New Zealand, over \$810 million was spent on pokies in 2020, which equates to approximately \$2.22 million per day.¹² New Zealand had an average number of 14,781 machines which equates to approximately \$54,864.50 lost on each machine in 2020.¹³

Under the Act, Class 4 gambling may only be conducted by a corporate society and that society must distribute net proceeds (profits) for an 'authorised purpose'. Corporate societies are licensed by Internal Affairs to operate pokie machines in clubs or in commercial venues (pubs and bars). 'Authorised purpose' includes a charitable purpose which is non-commercial and is beneficial to the whole or a section of the community or promoting and conducting race meetings under the Racing Act 2003.¹⁴ An example of an authorised purpose could therefore be a pub distributing gaming machine proceeds to a local amateur sports group.

¹² Department of Internal Affairs. (2020), *Class 4 Gambling Key Performance Indicators*. [Online]. Available from: <https://www.dia.govt.nz/gambling-statistics-key-performance-indicators?OpenDocument>

¹³ Department of Internal Affairs. (2020), *2011-2020 Gambling Expenditure Statistics XLSX*. [Online]. Available from: <https://www.dia.govt.nz/gambling-statistics-expenditure>

¹⁴ Section 4.

Current state of gambling in the Whangārei District

The Council currently adopts a 'sinking lid' policy to Class 4 venues.¹⁵ This means that Council does not grant consents for new venues and gaming machines, so that overtime as venues close or lose their licence, the number of gaming machines and venues decrease.

As at December 2020, Whangārei had 19 venues and 269 gaming machines.¹⁶ During 2020, Whangārei players spent \$16.3 million on EGMs which is approximately \$44,484 per day.¹⁷

Table 1: Class 4 Gambling Venues in Whangārei District as at December 2020

Venue Name	Society Name	Club or non-club	Number of Gaming Machines
Tote & Poke	Oxford Sports Trust Inc	Non-Club	18
Kamo Hotel	Grassroots Trust Limited	Non-Club	18
The Grand Hotel (Whangarei)	Pub Charity Limited	Non-Club	18
Northland Club Inc	Northland Club Inc	Club - Chartered	18
Judge - House of Ale	Oxford Sports Trust Inc	Non-Club	18
Tikipunga Tavern	Oxford Sports Trust Inc	Non-Club	18
Pure Bar & Grill	Oxford Sports Trust Inc	Non-Club	18
Onerahi Tavern	Pub Charity Limited	Non-Club	18
Ruakaka Tavern	Pub Charity Limited	Non-Club	18
Kensington Tavern	Oxford Sports Trust Inc	Non-Club	18
Kamo Club	Kamo Club Incorporated	Club - Chartered	16
Hikurangi Hotel	Rano Community Trust Limited	Non-Club	13
Waipu Hotel	Four Winds Foundation Limited	Non-Club	12
Coalies Sports Bar and Grill	The Lion Foundation (2008)	Non-Club	11
Ngunguru Sports Complex	Ngunguru Sports & Recreation Society Incorporated	Club -Sports	10
The Whangarei Returned Services Association Incorporated	The Whangarei Returned and Services Association Inc	Club - RSA	9
Triple Crown	Four Winds Foundation Limited	Non-Club	9
Kensington Club	Kensington Club Incorporated	Club -Sports	6
Poroti Tavern	Pub Charity Limited	Non-Club	3
19 Venues	11 Societies	5 Club 14 non-club	269 Machines

¹⁵ Whangārei District Council. (2019). *Class 4 Gambling Venue Policy*. Whangārei District Council. [Online] Available from: <https://www.wdc.govt.nz/Council/Council-documents/Policies/Class-4-Gambling-Venue-Policy>

¹⁶ Department of Internal Affairs. (2020). *All venues and numbers by territorial authority at 31 December 2020 XLSX*. [Online]. Available from: <https://www.dia.govt.nz/gambling-statistics-historical-data-venues-machine-numbers>

¹⁷ Department of Internal Affairs. (2020). *2011-2020 Gambling Expenditure Statistics XLSX*. [Online]. Available from: <https://www.dia.govt.nz/gambling-statistics-expenditure>

Whangārei has seen a decrease in venue and electronic gaming machine numbers

Figures 2 and 3 show DIA data from March 2015 to December 2020.¹⁸ In the Whangārei District, venues decreased by 3 or -13.5% and the number of EGMs decreased by 35 or -11.5% during this period. At a national level over the same period, venues decreased by 209 or -16.4% and EGM numbers decreased by 1,833 or -11.0%. The number of venues in Whangārei during the period Covid-19 restrictions lowered to 18 in December 2019 but increased back to 19, remaining at 19 for the year 2020. EGMs in Whangārei during Covid decreased from 274 to 269.

Figure 2: Number of Venues in Whangārei and New Zealand

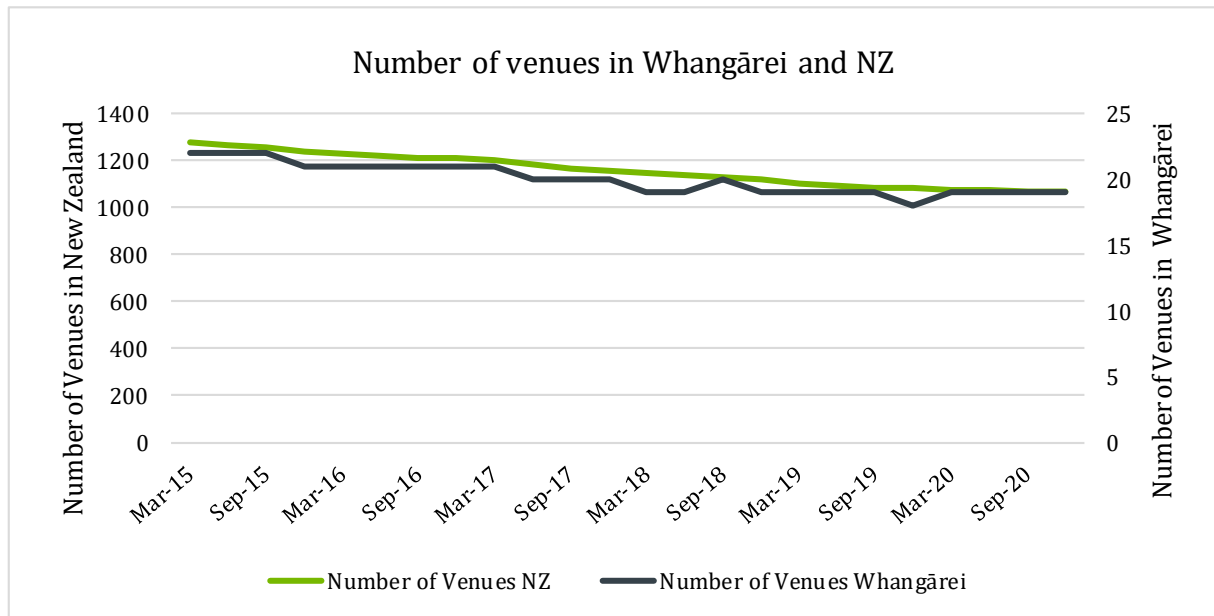
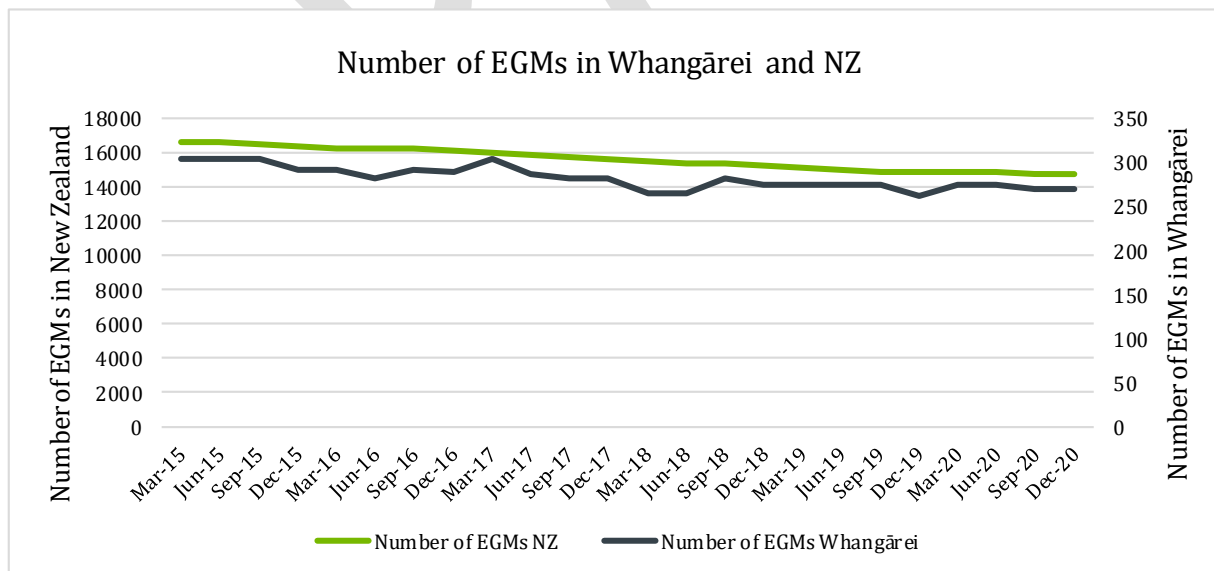


Figure 3: Number of EGMs in Whangārei and New Zealand



¹⁸ Department of Internal Affairs. (2020), *2011-2020 Gambling Expenditure Statistics XLSX*. [Online]. Available from: https://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Resource-material-Information-We-Provide-Gambling-Expenditure-Statistics

Whangārei has a moderate number of gaming machines for the size of the population

EGM density considers the number of gaming machines available per 10,000 people.

As shown in Table 2, as at June 2020 Whangārei had 274 machines, which equates to an average of 28 machines per 10,000 people and an average of \$165.63 spent per person. Nationally, EGM density is an estimated 29 machines per 10,000 people. Other districts with similar population size estimates such as Dunedin, New Plymouth and Rotorua all have a higher EGM density than Whangārei.

This suggests that the relative accessibility and opportunity for gambling is slightly lower in Whangārei than in some broadly comparable regions.

Table 2: Number of Electronic Gaming Machines per 10,000 people

	Estimated Resident Population as at June 30 2020 ¹⁹	Number of gaming machines in the area as at June 2020 ²⁰	Number of gaming machines per 10,000 residents
Whangārei District	98,300	274	28
New Zealand	5,107,700	14,847	29
Dunedin City	134,100	397	30
New Plymouth District	86,100	303	35
Rotorua District	77,300	365	47

¹⁹ Territorial authority area of usual residence five years ago (2013) by territorial authority area (2018), for the census usually resident population count, 2018 Census. Data retrieved from Statistics New Zealand. *Infoshare*. [Online]. Available from: <http://archive.stats.govt.nz/infoshare/>

²⁰ Department of Internal Affairs. (2020), *2011-2020 Gambling Expenditure Statistics XLSX*. [Online]. Available from: <https://www.dia.govt.nz/gambling-statistics-expenditure>

SOCIAL HARMS OF GAMBLING IN THE WHANGĀREI DISTRICT

The main social harms seen with gambling in the Whangārei District relate to financial costs and the impact of problem gambling.

Financial costs

Whangārei has seen an increase in expenditure on electronic gaming machines

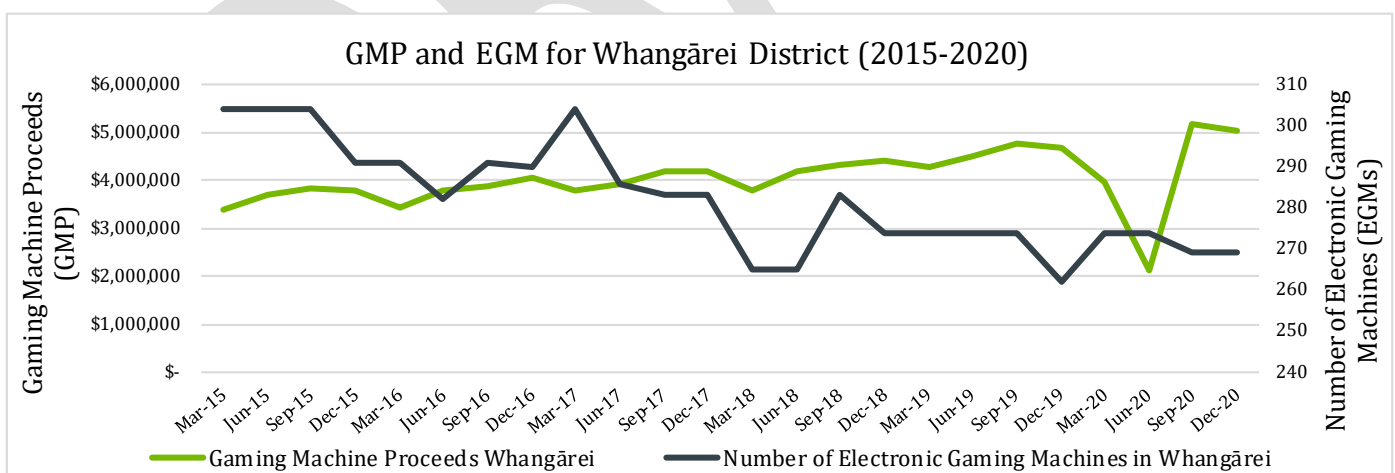
Gaming Machine Proceeds (GMP) is used to measure the amount of money lost by gamblers. It is defined as the total dollar turn-over minus the player pay-outs. It is therefore a measure of the actual losses incurred by pokie players.

As can be seen in Figure 4, Whangārei has seen an increase in pokie expenditure (green line) from March 2015 to December 2020, with a 49.5% GMP increase (as a comparator this is higher than the national average which increased by 30.6%).²¹ Over the same period, Whangārei experienced a decrease in the number of EGMs (black line). Higher pokie expenditure occurred despite a decrease in the number of machines and venues.

The impact of Covid-19 is demonstrated in the decrease in expenditure on EGMs between December 2019 to June 2020. In Whangārei District, the expenditure decreased from \$4.69m in December 2019 to \$2.12m in June 2020. The enforcement of level 3 and 4 lockdowns in New Zealand likely had a huge part in restricting people's access to EGMs. As the lockdowns lessened from June 2020 to September 2020, there was a large increase in expenditure on EGMs in Whangārei, increasing to \$5.17m, which is higher when comparing to the last peak in 2019 of \$4.78m. So, despite observing a decrease in expenditure in 2020 during the period of Covid-19 lockdown and restrictions, Whangārei has seen an increased expenditure overall.

For long term trends of GMP and number of EGMs from 2007-2020 see Appendix B.

Figure 4: Gaming Machine Proceeds and number of Electronic Gaming Machine in Whangārei over time



²¹ Department of Internal Affairs. (2020), *2011-2020 Gambling Expenditure Statistics XLSX*. [Online]. Available from: <https://www.dia.govt.nz/gambling-statistics-expenditure>

The decrease in expenditure on EGMs does not account for the expenditure in online gambling. It is possible that the decrease in expenditure on EGMs was shifted to online forms of gambling during Covid-19 restrictions.

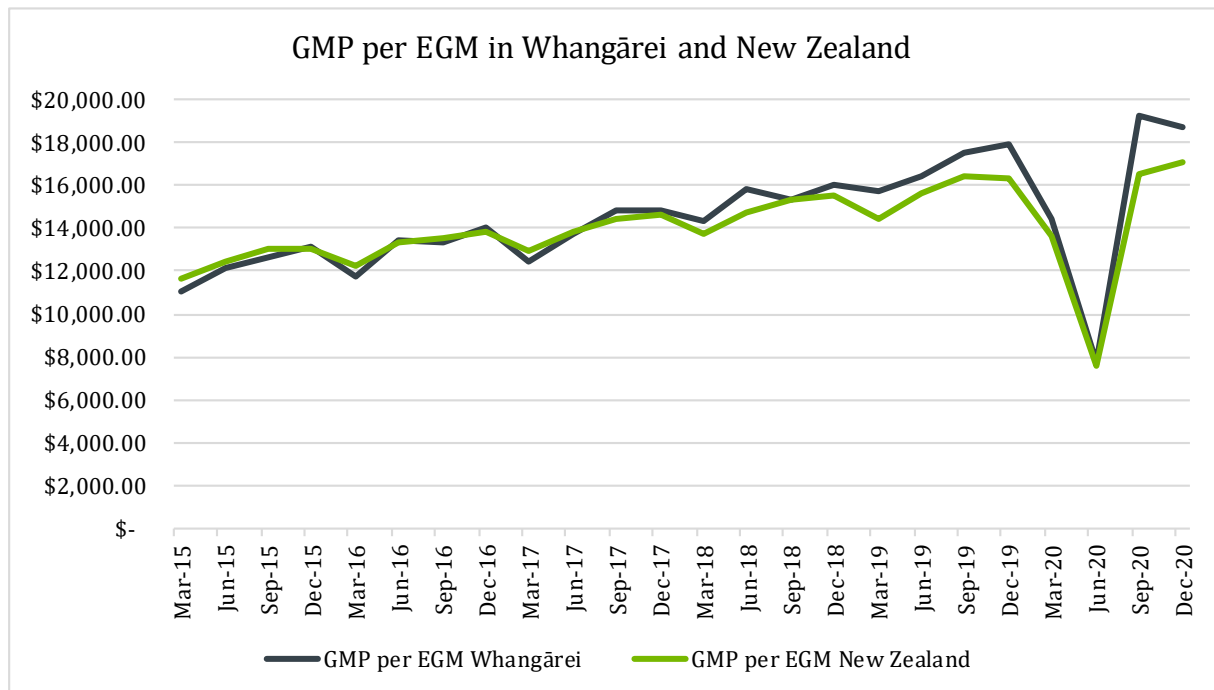
Whangārei has seen increased expenditure per electronic gaming machine

With more money being spent and fewer machines being available, the conclusion can be drawn that Whangārei EGM players are either spending more money per gaming machine, spending longer playing, or more players are playing. This correlation can be examined by analysing GMP as a proportion of the number of EGMs. Looking at the expenditure per machine, rather than solely GMP, offers a better reflection of the amount of money being spent by gamblers in the region.

As shown in Figure 5, GMP per gaming machine in the Whangārei District has increased by 68.9% since March 2015. This means that the average spending per machine in December 2020 was \$7,635 more than it was in March 2015. As a comparison overall, New Zealand spend per machine increased by 46.8% with machines making \$5,440 more than they did in March 2015.²² Similar to Figure 4, in Figure 5 we observe a large decrease in GMP per EGM during the Covid-19 restrictions period between December 2019 and June 2020, and then increasing back to its peak from June 2020 to September 2020.

These data demonstrate that while both Whangārei and New Zealand are experiencing a growth in GMP per EGM. Whangārei's growth in expenditure is higher than the national average spend. In 2020, Whangārei players were losing an average of \$60,525.85 per pokie machine.²³

Figure 5: Gaming Machine Proceeds per Electronic Gaming Machine in Whangārei and New Zealand



²² Department of Internal Affairs. (2020), *2011-2020 Gambling Expenditure Statistics XLSX*. [Online]. Available from: <https://www.dia.govt.nz/gambling-statistics-expenditure>

²³ Department of Internal Affairs. (2020), *2011-2020 Gambling Expenditure Statistics XLSX*. [Online]. Available from: <https://www.dia.govt.nz/gambling-statistics-expenditure>

Problem gambling

Problem gambling leads to other social harms

One of the common concerns with gambling is the emergence of 'problem gambling'. DIA defines problem gambling as 'gambling that causes or may cause harm to an individual, his or her family, or the wider community'.²⁴ Problem gambling is most commonly associated with gaming machines and its harmful effects can include:

- financial problems,
- problems at work (ranging from poor performance to fraud),
- poor parenting and other relationship problems,
- family violence,
- alcohol abuse,
- mental health problems; and,
- suicide.

It has been estimated that every problem gambler, on average, negatively affects six other people.²⁵ It inflicts harm on partners, children, parents, siblings, grandparents, work colleagues, and friends. Children can suffer greatly from harmful gambling where they miss out on essential needs and can experience feelings of neglect. Research has also consistently indicated that children of problem gamblers are two to four times more likely to develop gambling problems themselves than the children of non-problem gamblers.²⁶

There is consistent evidence linking harmful gambling and family violence.²⁷ The Ministry of Health and Auckland University of Technology released research in 2017 that highlighted the link between problem gambling and family violence. The research found that 50% of the participants (people who were seeking help from problem gambling services) reported that they were victims of family violence, and 44% reported that they were perpetrators.²⁸

Numerous studies have also suggested a link between problem gambling and suicidality. Research has suggested that gambling and suicidal behaviour may be linked due to extreme economic losses incurred from gambling, where suicide appears to be the only solution.²⁹ Another trend noted was that suicidal acts by gamblers were triggered by interpersonal and/or working challenges, alongside personality traits of impulsivity and psychiatric co-morbidities.

²⁴ Department of Internal Affairs. (2019) Problem Gambling. [Online] Available from: <https://www.dia.govt.nz/Services-Casino-and-Non-Casino-Gaming-Problem-Gambling>

²⁵ Dowling, N. (2014). The impact of gambling problems on families (AGRC Discussion Paper No. 1). Melbourne: Australian Gambling Research Centre.

²⁶ Dowling, N. (2010). *Children at risk of developing problem gambling*. The Problem Gambling Research and Treatment Centre. Available online at: <https://pdfs.semanticscholar.org/a75b/4f3d45bba709321e35002f8933e09f607858.pdf>.

²⁷ Dowling, N. (2014). The impact of gambling problems on families (AGRC Discussion Paper No. 1). Melbourne: Australian Gambling Research Centre. [Online] Available from: https://aifs.gov.au/agrc/sites/default/files/publication-documents/agrc-dp1-family-impacts_0.pdf

²⁸ Auckland University of Technology. (2017). *Problem Gambling and Family Violence in Help-Seeking Populations: Co-Occurrence, Impact and Coping*. Wellington: Ministry of Health. [Online] Available from: <https://www.health.govt.nz/publication/problem-gambling-and-family-violence-help-seeking-populations-co-occurrence-impact-and-coping>

²⁹ Giovanni M, Fabiola S, Federica F, Mariangela C, Nicola P, et al. Gambling Disorder and Suicide: An Overview of the Associated Co-Morbidity and Clinical Characteristics, *Int J High Risk Behav Addict*. 2017; 6(3):e30827. doi: 10.5812/ijhrba.30827.

Māori and Pacific Island communities have a higher prevalence of problem gambling

In the national Health and Lifestyles Survey (HLS) respondents (aged 15+) answer questions related to their gambling experiences. This produces the Problem Gambling Severity Index (PGSI) which is designed to screen for the likelihood of experiencing problems, rather than describing the extent of harm being experienced.

Table 3 gives the national estimated percentage of the population affected (that is, the unadjusted prevalence in the specified population) by gambling harm. Gambling harm has been recorded by ethnicity.³⁰

As seen in Table 3 below, communities with higher Māori and Pacific Island populations are expected to be more profoundly impacted by gambling harm than other ethnic communities. Moreover, according to the 2018 HLS, Māori have a four-fold higher risk of having moderate or problem gambling compared with non-Māori.³¹

Table 3: 2018 Health and Lifestyles Survey Problem Gambling Severity Index by ethnicity

Indicator ³²	Māori (%)	Pacific Island (%)	Asian (%)	European/ Other (%)
Gamblers (PGSI) – non problem	58.9	53.9	36.5	67.4
Gamblers (PGSI) – low risk	4.5	3.0	3.8	3.9
Gamblers (PGSI) – moderate risk and problem	5.9	3.5	1.1	1.4

Figure 6 shows the ethnic distribution of the Whangārei adult population, as at the 2018 census.³³ As shown, Whangārei has a relatively high adult Māori population. Of the adult Whangārei population Māori make up approximately 22% and Pacific Islanders 3%. At a national level Māori represent approximately 13% and Pacific Islanders 6% of the adult population.³⁴ Having a higher Māori population than the national average means that Whangārei is likely to experience greater gambling harm as this community is at significantly higher risk of gambling harm than other ethnicities.

³⁰ Ethnicity is the ethnic group(s) a person identifies with. Ethnicity is self-perceived so members of the HLS Survey may belong to more than one ethnic group. Participants may therefore be 'double counted' as they apply to multiple ethnicities.

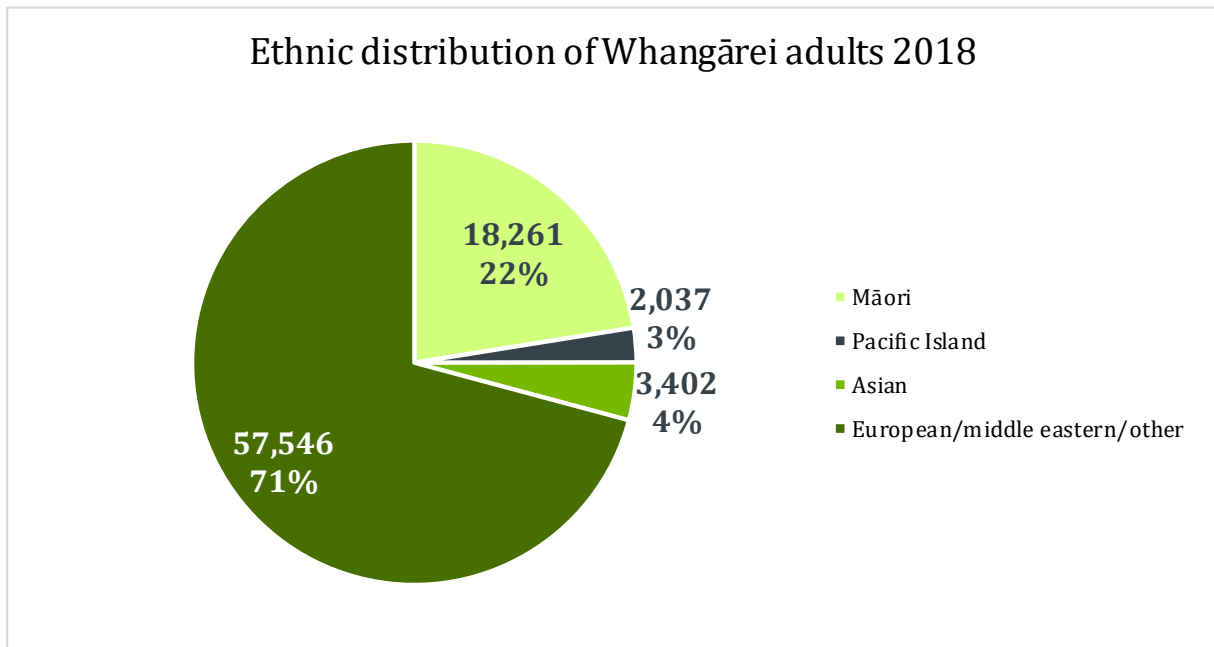
³¹ Health Promotion Agency. (2018) 2018 Health and Lifestyles Survey. Wellington: Health Promotion Agency. [Online] Available from: <https://kupe.hpa.org.nz/#!/gambling/gambling-harm>

³² The PGSI is a 9-item scale used to assess people's experiences of gambling-related harm in the last 12 months. The PGSI score determines which category a respondent will apply to. A PGSI score of 0 or NA is 'non-problem', 1-2 is a 'low risk' and 3-7 'moderate risk', 8-27 'problem gamblers'.

³³ This data comes from Statistics NZ and represents the Ethnic Group (group total responses) above the age of 15, for the census usually resident population count of Whangārei in 2018. Aged 15 and above has been used as the HLS survey respondents were aged 15 and above. Ethnic group total response was also selected, rather than detailed single ethnic response, as HLS respondents were able to select multiple ethnic categories. This allows for a more accurate comparison of the data. It is also of note that Statistics NZ report brackets are 15 years and over, while Class 4 gambling is restricted to people aged 18 and over. These numbers are therefore estimates.

³⁴ Statistics NZ Dataset: Ethnic group (grouped total responses) and number of ethnic groups specified by age group, for the census usually resident population count, 2018 Censuses, Whangārei and New Zealand. [Online]. Available from: <http://archive.stats.govt.nz/infoshare/>

Figure 6: Ethnic distribution of Whangārei adults 2018



EGMs are more prevalent in the more deprived communities of Whangārei

While EGM density is relatively low in Whangārei and gaming machine numbers and venues are decreasing, the remaining EGMs continue to be disproportionately located in the most deprived areas. A 2015 report commissioned by the Ministry of Health found that people living in neighbourhoods with the highest levels of deprivation (i.e. the most deprived) were five times more likely to report moderate-risk/problem gambling than those living in neighbourhoods with the lowest levels of deprivation (i.e. the least deprived).³⁵

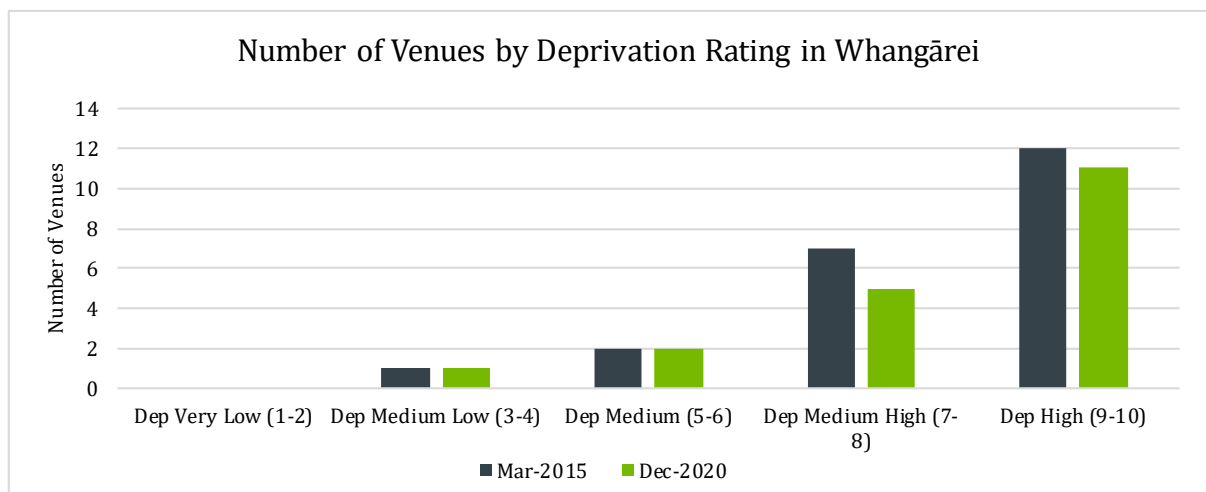
Having gaming machines located in high deprivation areas is therefore of concern as it may lead to a higher prevalence of gambling harm. Figure 7 shows the correlation in Whangārei between a higher deprivation index score and more gaming venues.³⁶ This trend is consistent across Whangārei since 2015 where more deprived communities had more gaming machine venues.

³⁵ Allen & Clarke. (2015). *Informing the 2015 Gambling Harm Needs Assessment*. Report for the Ministry of Health, Wellington: Allen & Clarke Policy and Regulatory Specialists Ltd.

³⁶ Deprivation ratings were obtained from the University of Otago Socioeconomic Deprivation Indexes: (2013). Atkinson J, Crampton P, Salmond C. (2014) NZDEP2013: index of deprivation. New Zealand Ministry of Health. [Online] Available from: <https://www.otago.ac.nz/wellington/departments/publichealth/research/hirp/otago020194.html>

Venue numbers were obtained from the Department of Internal Affairs. Department of Internal Affairs. (2020), *2011-2020 Gambling Expenditure Statistics XLSX*. [Online]. Available from: https://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Resource-material-Information-We-Provide-Gambling-Expenditure-Statistics

Figure 7: A comparison of the number of venues by deprivation index in Whangārei (March 2015, December 2020)



The 2015 report also found that pokies in the most deprived areas provided over half of the total expenditure.³⁷ This is of concern as communities with a high deprivation index are those that have characteristics such as low employment, low income, lack of access to food and heating and a reliance on support services. The relatively higher expenditure in more deprived areas could have a negative socioeconomic impact, further driving people to lower levels of poverty and deprivation due to income being more distributed to gambling. Furthermore, this might lead to a lessening of social cohesion between community members.

The fact that gambling is concentrated to a small group in the community is also reflected in the 2018 HLS which estimated that 1.3% of the population played pokies at least once a week.³⁸ Regular gambling is therefore limited to a very small margin of the population. When looking at the use of pokie machines in the last 12 months the HLS estimated that 13% of the population played annually.³⁹ Applying this to the Whangārei District means that the annual losses on pokies in 2020, of around \$16.28 million,⁴⁰ came from approximately 10,270 people (of which an estimated 1,027 people were playing at least weekly).⁴¹

Intervention services in Whangārei

Service availability represents the number of intervention services available in the District which specialise in preventing or minimising gambling harm.

Table 4 is CLIC data of clients receiving services in the Whangārei District 2019/20.⁴² The intervention client data represents the number of clients who have received problem gambling treatment services and who have identified to the service provider a primary problem gambling mode causing them harm.

³⁷ Allen & Clarke. (2015). *Informing the 2015 Gambling Harm Needs Assessment*. Report for the Ministry of Health, Wellington: Allen & Clarke Policy and Regulatory Specialists Ltd.

³⁸ Health Promotion Agency. (2018) 2018 Health and Lifestyles Survey. Wellington: Health Promotion Agency. [Online] Available from: <https://kupe.hpa.org.nz/#!/gambling/gambling-participation-frequency/hls-gaming-machines-in-pub-club-at-least-weekly>

³⁹ Health Promotion Agency. (2018) 2018 Health and Lifestyles Survey. Wellington: Health Promotion Agency. [Online] Available from: <https://kupe.hpa.org.nz/#!/gambling/gambling-participation>

⁴⁰ Department of Internal Affairs. (2020), *2011-2020 Gambling Expenditure Statistics XLSX*. [Online]. Available from: <https://www.dia.govt.nz/gambling-statistics-expenditure>

⁴¹ Stats NZ: Age and sex by ethnic group (group total responses), for census night population counts, 2018 Censuses (TA) Whangārei District aged 15 and above. [Online]. Available from: <http://archive.stats.govt.nz/infoshare/>

⁴² CLIC Data retrieved from personal communication (2021) sent to Greg Martin.

In 2019/20, 331 people accessed gambling support services. Of those that accessed services, 192 were female and 139 were male. Almost two thirds of the clients identified as Māori, suggesting that Māori are one of the groups most impacted by gambling harm in Whangārei. Compared to 2018/19, there was a 9.24% increase in people accessing gambling support services in 2019/20, going from 303 to 331 people. In figure 8, it is observed that during the Covid lockdown restrictions there was no apparent decrease in help seeking. This suggests that people were still experiencing gambling harms through other means such as online gambling. Online gambling and related harm is an area that requires urgent research attention, and investigation with gambling harm service providers.

Table 4: CLIC data of people accessing gambling support services in Whangārei 2019/20

Gender	Ethnic group	Family/Affected Other	Gambler	Total
Female	East Asian	1	0	1
	Maori	69	50	119
	Pacific	5	2	7
	Other	23	42	65
Male	East Asian	1	1	2
	Maori	39	52	91
	Pacific	1	3	4
	Other	15	27	42
Total		154	177	331

Figure 8: CLIC data of clients assisted for problem gambling (all intervention type) from June 2005 to June 2020



SOCIAL BENEFITS OF GAMBLING IN THE WHANGĀREI DISTRICT

Gambling can provide a social benefit to the Whangārei District by way of entertainment, employment opportunities and investment into community groups.

Entertainment

Gambling is a popular form of entertainment for many New Zealanders. In the 2018 Health and Lifestyles Survey an estimated 13% of people (510,000) have played electronic gaming machines in the last 12 months.⁴³ Gambling can be a social activity that offers enjoyment and excitement to the player and a respite from day-to-day living.

Employment

Class 4 gambling and sports and race betting services create employment opportunities for the corporate societies administering the gaming machines, the venues operating them, and the servicing industries.

The housing of electronic gaming machines in local venues offers a source of employment for Whangārei District residents, although we are unable to measure the value of that employment. The addition of pokies to venues can also enhance the profitability of the business.

Community grants

Electronic gaming machines provide an injection of money into the local community. Community grants are a major benefit to the local community as they assist in the operation of numerous community initiatives and organisations.

Both club and non-club venues operate Class 4 gambling machines, as can be seen in Table 1. 'Club venues' are incorporated societies that operate to raise funds for their own community (including the club itself). Typical examples include the Returned and Services Association (RSA) and citizens clubs. Club venues own and operate their own gaming machines.

'Non-club venues' are public venues such as pubs and hotels. Machines in non-club venues are owned and operated by societies which are licensed to operate them solely as a form of community fundraising. Societies are required to return a minimum of 40% of their gaming machine proceeds (excluding GST) to the community by way of grants.⁴⁴ In addition societies must distribute GMP to venues (up to 16%) and the government (23% for gambling duty and 1.5% for problem gambling levy).⁴⁵

In 2018, proceeds from 32 societies nationally were returned to communities. This totalled approximately \$276 million and was distributed among 11,000 community organisations.⁴⁶ The significant investment gambling offers highlights what an important source of funding this is for many communities in New Zealand.

⁴³ Health Promotion Agency. (2018) 2018 Health and Lifestyles Survey. Wellington: Health Promotion Agency. [Online] Available from: <https://kupe.hpa.org.nz/#!/gambling>

⁴⁴ Gambling (Class 4 Net Proceeds) Regulations 2004, s 10.

⁴⁵ Problem Gambling Fund (2019) *Class 4 Gambling "The Pokies"*. [Online]. Available from: https://www.pgfnz.org.nz/downloads/assets/13511/1/fs_13%20class%204%20gambling%20%27the%20pokies%27%20sep%202019.pdf

⁴⁶ Gaming Machine Association New Zealand. (2019) *2018 Community Distribution*. [Online] Available from: <https://www.gmanz.org.nz/resource/2018-community-distribution/>

In the Whangārei District it is unknown exactly how much money has been reinvested into the community through grants and where the money has been invested. The annual GMP in 2020 was \$16.28 million.⁴⁷ Accordingly, approximately \$6.51 million (40%) is required to be distributed back to the community. Noting however that GST would first need to be removed, that venues classified as ‘club venues’ are not required to make community grants and that money is not required to be invested in the community from where it originated. The actual amount invested back into the Whangārei community would therefore be less than \$6.51 million.

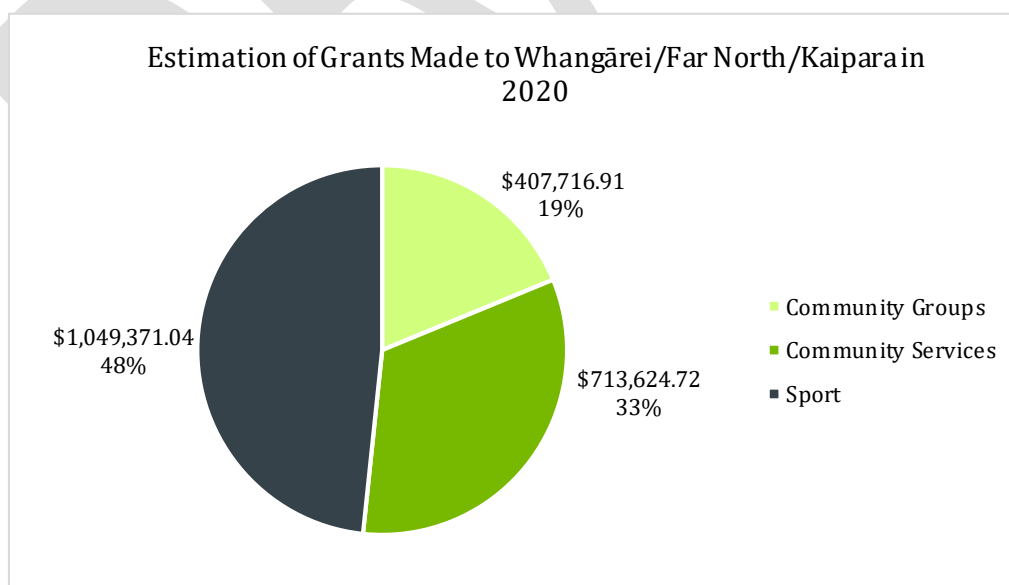
The Grants Database, maintained by The Problem Gambling Foundation, provides an indicative estimate of investment into the community. It is not precise due to incomplete reporting and delays in reporting, but it provides the best available data. In 2020, the database recorded \$2.17 million of grants made to Whangārei/Far North/Kaipara. This is a large decrease from the 5.60 million of grants made to Whangārei/Far North/Kaipara. Examples of investment include the Oxford Trust supporting amateur sports teams and Pub Charity supporting local social initiatives.

One issue to contend with is the presence of online gambling. While 40% of the GMP expenditure is distributed back into the community, expenditure that goes into online gambling cannot be distributed back into the community as this is often pooled back into other countries. It has been argued that reducing the access to poker machines at pubs and casinos would lead to an influx in online gambling. With an influx of online gambling occurring, this would lead to a reduced amount of money available to be redistributed back in the community.

Figure 8 provides an estimation of the distribution of gaming machine proceeds in the Whangārei community into three categories: Community Groups (which includes arts, scouts etc), Community Services (which includes education and health), and Sport. As can be seen in the graph the largest recipient of grants in the Whangārei District was likely to be sports.

It is noted that the Grants Database is not regularly audited, includes the Far North and Kaipara, and may have incomplete data. It therefore serves only to provide a rough indication of expenditure.

Figure 9: Estimation of the EGM grants made to the Whangārei/Far North/Kaipara in 2020



⁴⁷ Department of Internal Affairs. (2020), *2011-2020 Gambling Expenditure Statistics XLSX*. [Online] Available from: <https://www.dia.govt.nz/gambling-statistics-expenditure>

Having over \$2.17 million invested back into Whangārei/Far North/Kaipara has a significant impact on the community. In May 2019, the Council sought public consultation on the proposed Policy.⁴⁸ Many community groups responded that they are reliant on gambling funding to survive. For these groups it is crucial that they have some fundraising support available to them. A significant reduction in the accessibility of gambling may lead to a reduction in the amount of gambling funds and community grants that are made. This could lead to some organisations and activities ceasing to operate if alternate funding were not sourced.

⁴⁸ Whangārei District Council. (2019) *Whangārei District Council Meeting Minutes 11 June 2019*. [Online] Available from: <https://pub-wdc.escribemeetings.com/FileStream.ashx?DocumentId=1154>

CONCLUSION

Class 4 gambling continues to be a popular form of entertainment for the people of Whangārei. It creates employment opportunities for Whangārei District residents and can increase the profitability of the business. It can also offer a form of entertainment for the public and provides an important source of funding for many community groups.

In recent years Whangārei has seen a decrease in venue and electronic gaming machine numbers, but an increase in gambling expenditure. Electronic gaming machines remain prevalent in Whangārei's more deprived communities, and the occurrence of gambling harm continues to sit with a small proportion of the population being responsible for the majority of the spending.

A Class 4 gambling policy must carefully consider the social impact of gambling in the Whangārei District and provide an appropriate balance between minimising gambling harm and continuing access to gambling as a form of entertainment, employment, and a source of funding for community organisations.

APPENDIX A

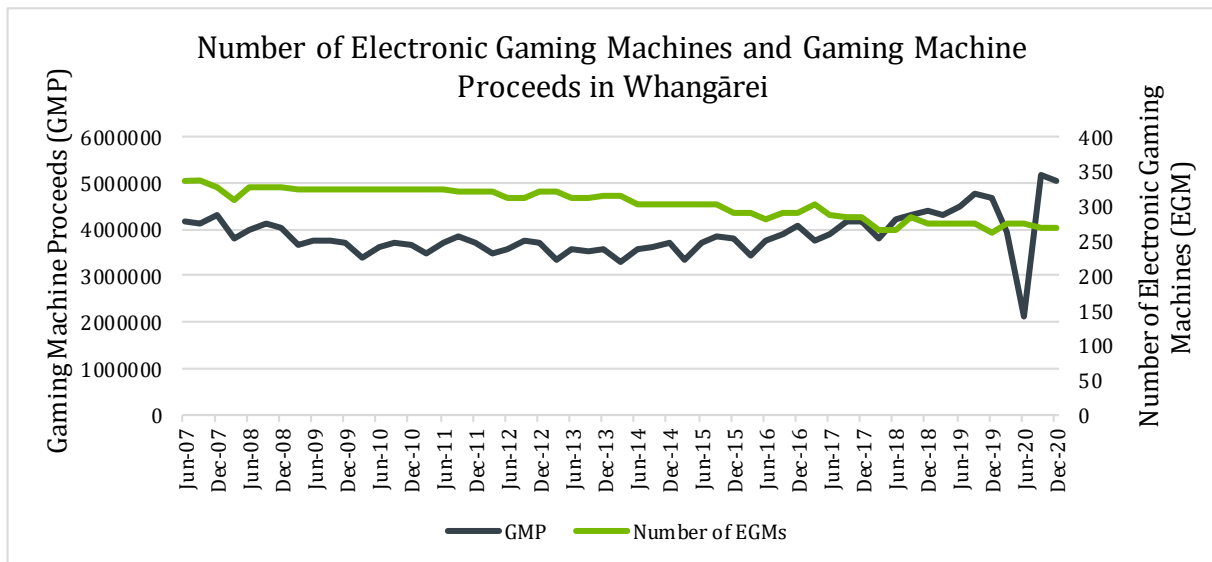
Table 5: Statistics on Whangārei Class 4 Gambling from Department of Internal Affairs

Quarter	GMP (\$)	Δ GMP (\$)	GMP per EGM	Number of venues	Δ venues	Number of EGMs	Δ EGMs
Mar-15	\$ 3,366,428.09		\$ 11,073.78	22		304	
Jun-15	\$ 3,702,158.98	\$335,730.89	\$ 12,178.15	22	0	304	0
Sep-15	\$ 3,854,212.88	\$152,053.90	\$ 12,678.33	22	0	304	0
Dec-15	\$ 3,809,230.32	-\$44,982.56	\$ 13,090.14	21	-1	291	-13
Mar-16	\$ 3,425,451.07	-\$383,779.25	\$ 11,771.31	21	0	291	0
Jun-16	\$ 3,780,349.38	\$354,898.31	\$ 13,405.49	21	0	282	-9
Sep-16	\$ 3,892,774.51	\$112,425.13	\$ 13,377.23	21	0	291	9
Dec-16	\$ 4,074,472.93	\$181,698.42	\$ 14,049.91	21	0	290	-1
Mar-17	\$ 3,770,263.01	-\$304,209.92	\$ 12,402.18	21	0	304	14
Jun-17	\$ 3,918,966.08	\$148,703.07	\$ 13,702.68	20	-1	286	-18
Sep-17	\$ 4,189,736.01	\$270,769.93	\$ 14,804.72	20	0	283	-3
Dec-17	\$ 4,194,866.36	\$5,130.35	\$ 14,822.85	20	0	283	0
Mar-18	\$ 3,802,416.66	-\$392,449.70	\$ 14,348.74	19	-1	265	-18
Jun-18	\$ 4,202,834.17	\$400,417.51	\$ 15,859.75	19	0	265	0
Sep-18	\$ 4,330,327.63	\$127,493.46	\$ 15,301.51	20	1	283	18
Dec-18	\$ 4,398,813.95	\$68,486.32	\$ 16,054.07	19	-1	274	-9
Mar-19	\$ 4,295,078.77	-\$103,735.18	\$ 15,675.47	19	0	274	0
Jun-19	\$ 4,506,439.76	\$211,360.99	\$ 16,446.86	19	0	274	0
Sep-19	\$ 4,784,245.64	\$277,805.88	\$ 17,460.75	19	0	274	0
Dec-19	\$ 4,688,276.01	-\$95,969.63	\$ 17,894.18	18	-1	262	-12
Mar-20	\$ 3,951,342.00	-\$736,934.01	\$ 14,420.96	19	1	274	12
Jun-20	\$ 2,123,195.88	-\$1,828,146.12	\$ 7,748.89	19	0	274	0
Sep-20	\$ 5,174,159.38	\$3,050,963.50	\$ 19,234.79	19	0	269	-5
Dec-20	\$ 5,032,757.17	-\$141,402.21	\$ 18,709.13	19	0	269	0

Δ symbol represents change in value.

APPENDIX B

Figure 10: Number of Electronic Gaming Machines and Gaming Machine Proceeds in Whangārei over time (Jun-07 – Dec-20)





2021 Options Analysis Report

Options Analysis Report on Class 4 Gambling in the Whangārei District

10 May 2021



ALLEN+CLARKE

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Allen and Clarke Policy and Regulatory Specialists Limited (*Allen + Clarke*) is a consultancy firm based in Wellington, New Zealand and Melbourne, Australia. We specialise in research and evaluation, policy and programme development and implementation, business change, operational management and risk, and governance and secretariat services. A key component of our work is undertaking reviews and developing and implementing policies that improve outcomes for the public. Founded in 2001, the company is owned and managed by senior staff and has a team of approximately 70 senior policy and evaluation practitioners, analysts, and project support staff. Our company works extensively for a range of central and local government agencies in New Zealand, and international clients and non-government organisations in Australia, the Pacific and Asia. More information about our work can be found on our website: www.allenandclarke.co.nz.

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INTRODUCTION

The Whangārei District Council (the Council) has commissioned independent consultancy firm *Allen + Clarke* to provide an options analysis report in relation to Class 4 gambling (pokies in pubs and clubs) in the Whangārei District. The report provides the Whangārei District Council with potential options for implementation of their Class 4 Gambling Policy. The current report builds on a companion report exploring the Social Impact of Class 4 Gambling in Whangārei District.

The report first looks at what the Council is required to do when establishing a Class 4 gambling policy according to the Gambling Act 2003 (the Act).¹ It then considers the current approach to Class 4 gambling in Whangārei and presents a range of different policy options available to the Council. Attached to the report is an Appendix which offers a detailed discussion of the options.

Methodology

The options analysis report involved desk-based research. The following sources form the basis of the report.

- **The Gambling Act 2003** - This is the governing piece of legislation which establishes what a Council *must* and *may* do as part of their Class 4 gambling policy.
- **2020 Social Impact Assessment of Class 4 Gambling in the Whangārei District** – *Allen + Clarke* was commissioned to conduct a social impact assessment as part of their work for the Council. The social impact report provides quantitative and qualitative research into the social benefits and harms of gambling in the Whangārei District. That report forms the basis of this options analysis paper.
- **Class 4 Gambling Policies** – The Class 4 gambling policies of numerous other District and City Councils formed an important part of the options analysis. The District and City Council policies referred to in this report include Auckland, Hamilton, Hauraki, Kāpiti, Ōpōtiki, Tauranga, Wellington, Whakatāne. These councils' policies were selected to reflect the range of different approaches available.

CLASS 4 GAMBLING POLICY

Territorial authorities (such as the Whangārei District Council) must have a Class 4 gambling venue policy which is reviewed every three years.² Gambling is overseen by the Department of Internal Affairs (DIA) and is largely governed by the Gambling Act 2003.

Class 4 gambling represents relatively high-risk, high turnover gambling. It covers all gambling using electronic gaming machines (EGMs or 'pokies') outside of casinos (i.e. in pubs and clubs). This type of gambling is considered 'continuous' as players may 'reinvest' any winnings immediately. This has been identified as among the most high-risk forms of gambling.³ Racing and

¹ The Gambling Act 2003. [Online]. Available from:

<http://www.legislation.govt.nz/act/public/2003/0051/latest/DLM207497.html>

² Section 102.

³ Section 102.

³ Abbott (2017). Gambling and gambling harm in New Zealand: a 28 year case study. *International Journal of Mental Health and Addiction*, 15, 1221–1241.

sports betting, which are covered by the Racing Act 2003, do not fall within this classification system and are therefore beyond the scope of this paper.

Under the Act, Class 4 gambling may only be conducted by a corporate society and that society must distribute net proceeds (profits) for an 'authorised purpose'. Corporate societies are licensed by Internal Affairs to operate pokie machines in clubs or commercial venues (pubs and bars). 'Authorised purpose' includes a charitable purpose which is non-commercial and is beneficial to the whole or a section of the community, or promoting and conducting race meetings under the Racing Act 2003.⁴ An example of an authorised purpose could therefore be gaming machine proceeds derived from a pub being distributed by a corporate society to a local amateur sports group.

The key stakeholders involved in Class 4 gambling in Whangārei include but are not restricted to:

- Gaming Societies
- Venue operators
- Grant recipients
- Community members
- Social Services (such as Problem Gambling Foundation and other gambling help service providers)
- Whangārei District Council.

Stakeholders approached for comment on the development of this document were: Pub Charity Limited (Martin Cheer), Alzheimers Northland (Kevin Salmon), Public Health Northland District Health Board (Anil Shetty), Sport Northland, Oxford Sports Trusts, and Onerahi Tavern.

What a council *must* do in their Class 4 venue policy

Under the Act, the policy *must* "consider the social impact of gambling" within the District, specify whether or not Class 4 venues may be established, and if so, where they may be located.⁵

[See Table 3 and Table 4 for a discussion of the options for establishment and location].

What a council *may* do in their Class 4 venue policy

The policy *may* specify any restrictions on the maximum number of gaming machines that may be operated at a Class 4 venue and may include a relocation policy.⁶

[See Table 5 and Table 6 for a discussion of the options for the maximum number of gaming machines permitted, and relocation policy].

In determining the Class 4 policy relevant matters include:⁷

- The characteristics of the district and parts of the district
- The location of kindergartens, early childhood centres, schools, places of worship, and other community facilities

⁴ Section 4.

⁵ Section 101.

⁶ Section 101(3).

⁷ Section 101(4).

- The number of gaming machines that should be permitted to operate at any venue or Class of venue
- The cumulative effects of additional opportunities for gambling in the district
- How close any venue should be permitted to be to any other venue
- What the primary activity at any venue should be.

Policy considerations

In establishing a Class 4 gambling policy, the Council therefore need to consider their approach to the following five matters:

1. Establishment of venues
2. Location of venues
3. Number of electronic gaming machines
4. Relocation of venues
5. Merger of venues.

Class 4 venue policy consent process

Under the Act, consent from the Council is required when:⁸

- A corporate society proposes to increase the number of gaming machines in operation at a Class 4 venue
- A corporate society applies for a Class 4 venue licence for a venue that was not on any society's licence within the last six months
- There is an application for a Class 4 venue for which a Class 4 venue licence was not held on 17 October 2001⁹
- A corporate society wishes to relocate and change the venue to which the Class 4 venue licence currently applies.

In applying for Council consent the application must meet conditions established in the District Council Class 4 gambling policy.¹⁰ The Council must then consider and determine whether or not to grant consent.¹¹

Class 4 venue licences are non-revocable

Once a consent has been granted and a licence has been issued for the venue concerned, the consent remains in effect for as long as the Class 4 licence is held for the venue. The consent is not revocable, nor does it lapse or expire unless a Class 4 licence is not held for the venue for a period of more than six months. If the consent ceases the venue must apply to the Council for a new licence under the current Class 4 venue policy.

⁸ Section 98.

⁹ Venue licences granted after 17 October 2001 may only house a maximum of nine electronic gaming machines (see s 92-94).

¹⁰ Section 99.

¹¹ Section 100.

CURRENT CLASS 4 GAMBLING POLICY IN WHANGĀREI

The Council adopted the Class 4 Gambling Venue Policy (the Policy) in March 2004. This was most recently amended in July 2019.¹²

The Council currently has a 'sinking lid' policy. This means that when an existing Class 4 venue licence ceases, or a society/venue decreases the number of machines they operate, consent for another venue or for more gaming machines will not be granted. Over time this leads to a decrease in the number of venues and machines in the District.

As at December 2020, Whangārei had 19 venues and 269 gaming machines.¹³ During 2020, Whangārei players spent \$16.3 million on EGMs which is approximately \$44,484 per day.¹⁴

Table 1 below provides a summary of the current policy approach to Class 4 venues in the Whangārei District.

Table 1: Current policy approach to Class 4 Gambling in Whangārei

Policy	Approach
Establishment of venues	Sinking lid policy. Restricts establishment of 'new venues' to those that are relocating and merging.
Location of Class 4 venues	Venues may only be established in Business 1, 2 or 4 Environment.
Number of electronic gaming machines	Sinking lid policy. Consents to increase the number of machines in a venue are not permitted.
Relocation of existing Class 4 venues	Only permitted when: <ul style="list-style-type: none"> The venue cannot continue to operate at the existing site due to circumstances beyond the control of the owner or lessee of the venue. The new site is a result of the approved merger of two or more clubs.
Merger of venues	Allows venues to merge.

¹² Whangārei District Council. (2019). Class 4 Gambling Venue Policy. [Online]. Available from;

<http://www.wdc.govt.nz/PlansPoliciesandBylaws/Policies/Documents/Class-4-Gambling-Venue-Policy.pdf>

¹³ Department of Internal Affairs. (2020), *All venues and numbers by territorial authority at 31 December 2020 XLSX*. [Online].

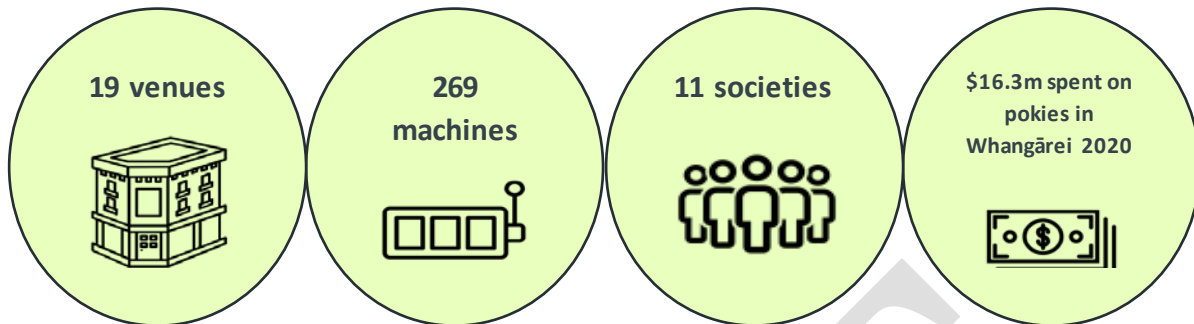
Available from: <https://www.dia.govt.nz/gambling-statistics-historical-data-venues-machine-numbers>

¹⁴ Department of Internal Affairs. (2020), *2011-2020 Gambling Expenditure Statistics XLSX*. [Online] Available from:

<https://www.dia.govt.nz/gambling-statistics-expenditure>

Snapshot of gambling in Whangārei 2020

The following has been drawn from the Social Harm Report:



- **Whangārei has seen a decrease in venue and electronic gaming machine numbers.** Between March 2015 to December 2020, the number of venues decreased by 3 and the number of EGMs decreased by 35.¹⁵
- **Whangārei has seen an increase in expenditure on electronic gaming machines.** In 2020, Whangārei players spent \$16.3 million on pokies, meaning they were losing on average \$60,525.85 per machine. This increased spending is higher than the national average.¹⁶
- **More electronic gaming machines are housed in high deprivation communities** than low deprivation communities.¹⁷
- **Whangārei may experience a greater level of gambling harm than the national average.** In Whangārei 22% of the adult population identify as Māori who have been reported to have a four-fold higher risk of having moderate risk or problem gambling compared with non-Māori.¹⁸
- **Whangārei has a lower EGM density (number of machines per 10,000 people) than the national average.** In Whangārei there are 28 machines per 10,000 residents while nationally there are 29 machines per 10,000 people.
- **Gaming machine proceeds benefit the community.** In the Whangārei District it is unknown exactly how much money has been reinvested into the community through grants and where the money has been invested. However, in 2020 the annual gaming machine proceeds (GMP)¹⁹ was \$16.3 million²⁰ meaning approximately \$6.51 million (40%) is required to be distributed back to the community.

¹⁵ Department of Internal Affairs. (2020), *2011-2020 Gambling Expenditure Statistics XLSX*. [Online]. Available from: https://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Resource-material-Information-We-Provide-Gambling-Expenditure-Statistics

¹⁶ Department of Internal Affairs. (2020), *2011-2020 Gambling Expenditure Statistics XLSX*. [Online]. Available from: https://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Resource-material-Information-We-Provide-Gambling-Expenditure-Statistics

¹⁷ Department of Internal Affairs. (2019), *2011-2020 Gambling Expenditure Statistics XLSX*. [Online]. Available from: https://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Resource-material-Information-We-Provide-Gambling-Expenditure-Statistics

¹⁸ Health Promotion Agency. (2018) 2018 Health and Lifestyles Survey. Wellington: Health Promotion Agency. [Online] Available from: <https://kupe.hpa.org.nz/#!/gambling/gambling-harm/gamblers-pgsi-moderate-risk-and-problem>

¹⁹ Gaming Machine Proceeds (GMP) is used to measure the amount of money lost by gamblers. It is defined as the total dollar turn-over minus the player pay-outs. It is therefore a measure of the actual losses incurred by pokie players.

²⁰ Department of Internal Affairs. (2020), *2011-2020 Gambling Expenditure Statistics XLSX*. [Online] Available from: https://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Resource-material-Information-We-Provide-Gambling-Expenditure-Statistics

- **Gambling provides a popular form of entertainment** and employment/business opportunity in the District.

A potential concern for Whangārei is that EGMs are concentrated in higher deprivation communities. There has also been a greater increase in GMP than the national average, despite having a lower gaming machine density (number of machines per 10,000) and decreasing number of venues and EGMs.

Policy options must consider the social impact of gambling in the Whangārei District and provide an appropriate balance between minimising gambling harm and continuing access to gambling as a form of entertainment and source of funding for community organisations.

POLICY OPTIONS SUMMARY

In establishing a Class 4 venue policy there are five main policy considerations that the Council needs to consider. As discussed above, these have been drawn from the Act.

For each of these policy considerations there are different options available to the Council. A summary of these options has been presented in Table 2 below, and a detailed discussion of each option and its legislative fit is included in the Appendix.

Table 2: Options summary table

1. Establishment of Venues	2. Location of venues	3. Number of Electronic Gaming Machines	4. Relocation of venues	5. Merger of venues
1a – Allow establishment of new venues	2a – Allow establishment of venues anywhere in the District	3a – Allow maximum number of EGMs	4a – Allow relocation of venues	5a – Allow venues to merge
1b – Restrict establishment of new venues with a cap	2b – Restrict where venues can be established	3b – Cap number of EGMs	4b – Place conditions on when venues can relocate	5b – Allow venues to merge with a restriction on the number of EGMs they may house
1c – Restrict establishment of new venues to those that are relocating and/or merging – sinking lid	2c – Restrict what venues can be established near	3c – Sinking lid on number of EGMs	4c – No relocation of venues	5c – No merging of venues
1d – No establishment of new venues – and a sinking lid as venues close (i.e no replacement of closing venues)				

Note: the grey shaded boxes represent the current Council approach.

POLICY OPTIONS

The following section of the report considers different policy options available to the Council and provides a general discussion of the likely impacts, costs, benefits, and risks. It draws together a range of the options presented in Table 2 (and the Appendix). A brief overview of the potential impacts, costs, benefits and risks is included in each section, with a fuller account of these in a separate section of the report and detailed in the Appendix. It should be borne in mind that once a Class 4 venue gambling operation licence has been granted it cannot be revoked.

Many policy options and variations of these options are available to the council. The following is not an exhaustive list, nor is it recommendations on what the Council should do. Options have been presented in order of least restrictive to most restrictive. These have been included as an example of the range of options available, and to encourage discussion.

Option 1: Allow establishment of new venues and allow relocation and mergers

1. Establishment of Venues	2. Location of venues	3. Number of Electronic Gaming Machines	4. Relocation of venues	5. Merger of venues
1a – Allow establishment of new venues	2a – Allow establishment of venues anywhere in the District	3a – Allow maximum number of EGMs	4a – Allow relocation of venues	5a – Allow venues to merge

New venues would be allowed to establish in the District and could house the maximum number of gaming machines permitted in the Act (18 for pre 2001 licence holders and 9 for post 2001 licences). Venues that currently house fewer machines than permitted under the Act may therefore apply to hold more. This option would open the gaming market in Whangārei and may lead to an increase in gambling.

Under this option venues would be able to be established anywhere in the District and would be free to relocate and merge with other Class 4 venue establishments. This could lead to the development of venues in high deprivation communities.

Potential impacts, costs, benefits, and risks

This option would likely lead to an increase in gaming machine venues and EGM numbers, and an increase in gaming machine participation. Increased participation would mean higher gaming machine proceeds, and an increased pool of money for distribution for distribution for 'approved uses' (i.e. grants that provide community benefit). Also the development of employment opportunities for new venue staff. This option would also be likely to lead to a greater degree of gambling related harm (including personal, whanau/family, and community-level harm), and increased demand for gambling harm support services.

Option 2: Cap the number of venues and allow relocation and mergers

1. Establishment of Venues	2. Location of venues	3. Number of Electronic Gaming Machines	4. Relocation of venues	5. Merger of venues
1b – Restrict establishment of new venues with a cap	2b – Restrict where venues can be established 2c – Restrict what venues can be established near	3a – Allow maximum number of EGMs	4a – Allow relocation of venues	5a – Allow venues to merge

This option is relatively open and would allow for gambling to continue at its current level.

The cap could be set at 18 venues (the current number in operation). New venues could only be established when one closed or lost its licence, ensuring that only a maximum of 18 venues remained in operation at any time.

New venues could also be restricted with a policy on where they can be established and what they can be established near. For example, venues could only be established in Business 1 and 2 Environments (established in the District Plan) and be 100 metres from schools and religious sites. This would help assist in the distribution of gambling in Whangārei and could draw venues away from high deprivation communities.

Under this option the maximum number of EGMs would be determined by the Act (18 for pre-2001 venue licences and nine for post-2001 licences). This may result in an increase in the number of gaming machines in the District as current licence holders may apply to increase the number they hold (if less than the statutory maximum). Allowing venues to merge without a cap may also lead to an increase in the number of gaming machines in operation. The merged venue may hold the EGMs of the two previous venues, and a new venue may hold nine.

This option would allow for pre-existing venues to relocate and merge. This would enable venues to move out of unsafe or expensive buildings and would allow businesses that are struggling financially to combine and form a more profitable venture.

Potential impacts, costs, benefits, and risks

This option may result in an increase in the number of EGMs (if licence holders have less than the statutory limit), while the number of venues would not be able to rise above the current level of 18. This may result in increased EGM participation, with an associated increase in gambling harm and demand for gambling harm services. Also an increase in proceeds to be distributed to 'approved uses'. Allowing venues to merge or relocate may be useful for businesses that are not viable in their current location.

Option 3: Cap the number of venues/EGMs and restrict relocations/mergers

1. Establishment of Venues	2. Location of venues	3. Number of Electronic Gaming Machines	4. Relocation of venues	5. Merger of venues
1b – Restrict establishment of new venues with a cap	2b – Restrict where venues can be established 2c – Restrict what venues can be established near	3b – Cap number of EGMs	4b – Place conditions on when venues can relocate	5b – Allow venues to merge with a restriction on the number of EGMs they may house

This option would allow for the current level of gambling to be maintained and controlled.

As with option 2 the cap could be set at 18 venues, with restrictions on where new venues can be established. A cap could be placed on the number of EGMs at 269 (the current number of machines in operation). This would ensure that the number of gaming machines available in the community would not exceed what they currently have access to. Should a new venue be established, they would only be allowed to hold as many EGMs as were available within the District cap.

Conditions could be placed on relocation of Class 4 venues. The policy could require that only venues where the lease is expiring or there is an acquisition of property under the Public Works Act may relocate. The relocation policy could go further to allow applications for relocation when a venue wants to move from outside the Permitted Venue Area to inside. This would allow venues to relocate more freely and would assist in the re-distribution of gambling in the District.

Conditions could also be placed on the merging of venues. This could place a cap on the number of gaming machines that may be housed in the merged venue which is less than 30 EGMs (the maximum number allowed under the Act). This could state that when two clubs merge, they may consolidate the number of gambling machines to 18 or the combined total of the number of existing machines, whichever is the *lesser*. This would help restrict the density of gaming machines housed at one venue.

Potential impacts, costs, benefits, and risks

This option would allow the level of access to EGM gambling in the community to remain as it is currently. This suggests that this option would have little impact on gaming participation or related harm. Conditions on where a venue may relocate could result in venues moving from higher to lower deprivation areas if this were mandated. This would result in a reduced concentration of EGM outlets in high deprivation areas, which may result in lower gambling participation and harm in these communities. Its benefits would be ongoing employment for venue staff, continuity of gaming machine proceeds for distribution, and continued access to EGMs for entertainment and recreation.

Option 4: Sinking lid on venues/EGMs and allow restricted relocation and merger (status quo)

1. Establishment of Venues	2. Location of venues	3. Number of Electronic Gaming Machines	4. Relocation of venues	5. Merger of venues
1c – Restrict establishment of new venues to those that are relocating (not merging)	2b – Restrict where venues can be established	3c – Sinking lid on number of EGMs	4b – Place conditions on when venues can relocate	5a – Allow venues to merge

This option would continue to reduce the accessibility of gambling in the District over time.

Under this option, the approval of venue licences would only be granted to existing Class 4 venues wishing to relocate. This is a sinking lid approach because the number of venues is unable to increase beyond those currently in operation. If a venue closed or lost its licence, permission to establish a new venue would not be granted, leading to a decrease in the number in operation. The number of EGMs would also be subject to a sinking lid. This means that licences for more EGMs would not be granted.

Restricting where venues can be established would only apply to venues that are relocating (as new venues cannot be established). As with Options 2 and 3, the policy could establish which Business Environments are appropriate for relocation and require that sites be 100 metres from community facilities.

Similar to Option 3, conditions could be placed on when venues may relocate, restricting relocations to when a lease expires or there is acquisition of the property. This option would allow venues to merge.

Potential impacts, costs, benefits, and risks

Under this option the number of venues and EGMs would gradually decline over time. This may mean less access to EGMs. This would afford fewer opportunities to play EGMs over time, which may result in lower EGM participation rates. This, in turn, may result in a reduction in gambling-related harm. If gaming machine proceeds declined there would be less funding available for 'approved uses'. This also reduces access to EGM for entertainment over time. A risk associated with an ongoing reduction in EGM numbers is that people who use EGMs may turn to other types of gambling, specifically offshore online gambling. The extent to which this happens is unknown, but online gambling (e.g. online pokies, or online casino games), being offshore, is not taxed and is not subject to the gambling levy which supports community grants.

Option 5: Sinking lid on venues/EGMS and allow relocation

1. Establishment of Venues	2. Location of venues	3. Number of Electronic Gaming Machines	4. Relocation of venues	5. Merger of venues
1c – Restrict establishment of new venues to those that are relocating (not merging)	2b – Restrict where venues can be established 2c – Restrict what venues can be established near	3c – Sinking lid on number of EGMs	4a – Allow relocation of venues	5c – No merging of venues

This option would continue to reduce the accessibility of gambling in the District.

As with Option 4, a sinking lid would be placed on venues and gaming machine numbers. Licences would therefore not be granted unless a venue was relocating. Restrictions could be placed on where relocated venues can move to. As with Option 2, permitted areas may include Business 1, 2 and 4 Environments and may require that venues be 100 metres from a school or religious site.

This option would allow for the relocation of any Class 4 venue. Placing no restrictions on which venues can relocate would help encourage venues to move into permitted areas and assist in the distribution of gambling in the District. As a result, venues may move out of residential or other high deprivation areas where they currently operate, and into Business Environments.

Mergers would not be permitted under this option. This would mean that venues are not able to combine forces and increase the number of gaming machines housed at the merged venue. This may result in the eventual closure of venues that are not profitable at their current site and are unable to merge with an existing Class 4 venue.

Potential impacts, costs, benefits, and risks

Much like Options 4 and 5, under this option the number of venues and EGMs would gradually decline over time. This may mean less access to EGMs. This would afford fewer opportunities to play EGMs over time, which may result in lower EGM participation rates. This, in turn, may result in a reduction in gambling-related harm. If gaming machine proceeds declined there would be less funding available for 'approved uses'. This also reduces access to EGM for entertainment over time. A risk associated with an ongoing reduction in EGM numbers is that people who use EGMs may turn to other types of gambling, specifically offshore online gambling.

Option 6: No establishment of new venues and no relocation or mergers

1. Establishment of Venues	2. Location of venues	3. Number of Electronic Gaming Machines	4. Relocation of venues	5. Merger of venues
1d – No establishment of new venues – and a sinking lid as venues close (i.e no replacement of closing venues)	2b – Restrict where venues can be established 2c – Restrict what venues can be established near	3c – Sinking lid on number of EGMs	4c – No relocation of venues	5c – No merging of venues

This option would be the most restrictive policy on gambling.

The establishment of new venues, relocations and mergers would be prohibited. This would effectively freeze gambling in Whangārei as venues would be forced to continue to operate at their current site until they closed or lost their licence.

It may result in venues continuing to operate at unsafe premises in order to retain their licence, or in high deprivation communities. Prohibiting relocation and mergers may also result in the number of venues decreasing faster because they cannot move away from expensive, or inappropriate venues, and cannot merge with a more financially viable Class 4 venue.

Potential impacts, costs, benefits, and risks

The impacts of the is option would be similar to Option 5 but the with the additional risk that venues being unable to relocated may mean that inappropriate venues or those in high deprivation areas would have no option to relocate to another area. This most restrictive option would, over time, likely result in a reduced access to EGMs through venue closures and a reduction in the number of EGMs. This would reduce employment opportunities for venue staff, and the potential of encouraging EGM users to switch to online gambling. It would also reduce the funding pool for distribution to community activities.

Overview of likely impacts, costs, benefits and risks

There are a range of impacts, costs, benefits, and risks associated with establishing a Class 4 venue gambling policy. If a policy is too restrictive it will reduce accessibility of gambling as a form of entertainment, may lead to a reduction in the amount of money available for community funding and could lead to people taking up online gambling. However, if a policy is too broad it could lead to an increase in gambling, problem gambling and other associated social harms in the region. The likely impacts of a Class 4 gambling policy therefore must be carefully considered.

The following summary points have been drawn from the Appendix. For further detailed discussion see the Appendix.

- Establishment of venues:** Once a Council consent has been granted for a venue or gaming machine it cannot be revoked. Any decisions to extend the establishment of venues should therefore be cautious. Adopting a broad policy that allows for the establishment of new venues would likely lead to an increase in the number of Class 4 venues in the District. This may lead to a subsequent increase in gambling, gaming machine proceeds and problem gambling. While this may have positive flow on effects for the venues and community groups who rely on gaming machine grants, it may also have negative effects on parts of the community that are at risk of problem gambling and would ultimately not support a continuing reduction or control over gambling in the District. Restricting the establishment of venues or prohibiting their establishment would result in controlled growth and/or a reduction of gambling in the region.
- Location of venues:** A broad location policy could lead to potential socio-economic harm as venues could establish in and around low deprivation communities. Research conducted for the Ministry of Health in 2015 found that people living in neighbourhoods with the highest levels of deprivation (i.e. the most deprived) were five times more likely to report moderate-risk/problem gambling than those living in neighbourhoods with the lowest levels of deprivation (i.e. the least deprived).²¹ Having gaming machines located in high deprivation areas is therefore of concern as it may lead to a higher prevalence of gambling harm. The report also found that pokies in the most deprived areas provided over half of the total expenditure.²² This is of concern as communities with a high deprivation index are those that characteristically have low employment and low income. The policy around location of venues therefore must carefully consider ways to help reduce the impact of gambling on high deprivation communities.
- Cap the number of EGMs:** If the cap were set at 18, it would allow for the current level of gambling to continue, but may allow for the redistribution of some venues from high deprivation areas to lower deprivation areas when venues close or relocate to Permitted Venue Areas under the Policy (if mergers and relocations are allowed). Industry would likely be more supportive of a cap on the number of venues currently in operation, as opposed to a sinking lid. While a cap does not encourage a reduction in the amount of gambling in the District, it does control it. There is a risk that the cap may lead to an increase in gambling if the venue moves to a more profitable area, or if the cap is placed higher than the current number of establishments (18). The approach taken to capping

²¹ Allen & Clarke. (2015). *Informing the 2015 Gambling Harm Needs Assessment*. Report for the Ministry of Health, Wellington: Allen & Clarke Policy and Regulatory Specialists Ltd.

²² Allen & Clarke. (2015). *Informing the 2015 Gambling Harm Needs Assessment*. Report for the Ministry of Health, Wellington: Allen & Clarke Policy and Regulatory Specialists Ltd.

venues will influence the number of venues in operation. For example, if the venue cap was set by population estimates, as the population of Whangārei increases more venues may be permitted to establish. The Council would therefore need to carefully consider how the cap would be determined.

- Sinking lid:** Adopting a sinking lid policy would over time lead to the eventual closure of all Class 4 venues in Whangārei. This approach however has been criticised as unjustified due to a lack of correlation between decreasing venue numbers and decreased spending or gambling harm. In Whangārei from March 2015 to December 2018 the number of venues in Whangārei decreased by 4 while the gaming machine proceeds (GMP, amount of money lost by players) increased by 39.3%.²³ When comparing the Problem Gambling Severity Index (PGSI) scores for the 2006/07 and 2011/12 New Zealand Health Survey waves, no significant changes were observed in the proportion of 'problem or moderate risk gamblers' (1.4% in 2006/07 and 1.0% in 2011/12), while the number of 'non-problem/recreational gamblers' decreased (54.7% in 2006/07 and 42.3% in 2011/12).²⁴ Similarly, according to the Health and Lifestyle Survey, nationally there has been no statistically significant change in the prevalence of moderate risk or problem gambling between 2012 and 2018.²⁵ This suggests that decreasing the number of available machines/venues does not restrict the playing of problem gamblers but reduces casual and recreational play. While the goal of a sinking lid approach is to continually reduce gambling opportunities, gambling harm and gambling expenditure, this has not yet been seen in Whangārei.
- Online gambling:** Reducing the number of gaming machines available may have the unintended consequence of driving people toward online gambling. Online gambling does not have the same safety controls in place as Class 4 gambling. With Class 4 gambling players must go to a licenced venue, must be over 18, venues must provide problem gambling pamphlets, and gaming machines have prize pool limits among other restrictions. Online gambling however is more accessible and less controlled. It operates 24 hours a day in private, players can be encouraged to continue to gamble and there is no guaranteed return to players. Moreover, money from online gambling can be offshore and returns nothing in tax or community funding.
- Community funds:** There are concerns that a restrictive policy may eventually lead to a decrease in community funds. In the Whangārei District it is unknown exactly how much money has been reinvested into the community through grants and where the money has been invested. The annual GMP in 2020 was \$16.3 million, accordingly approximately (40%) is required to be distributed back to the community.²⁶ While the amount of GMP may eventually decrease in the District, current venues would continue to operate and generate proceeds. Conversely, we cannot be certain that GMP are returned to the communities from which they were derived, and the staged approach of the sinking lid would provide time for the community and Council to find new sources of funding.

²³ Department of Internal Affairs. (2020), *2011-2020 Gambling Expenditure Statistics XLSX*. [Online]. Available from:

https://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Resource-material-Information-We-Provide-Gambling-Expenditure-Statistics

²⁴ <https://www.health.govt.nz/publication/gambling-and-problem-gambling-results-2011-12-new-zealand-health-survey>

²⁵ Health Promotion Agency. (2018) 2018 Health and Lifestyles Survey. Wellington: Health Promotion Agency. [Online] Available from: <https://kupe.hpa.org.nz/#!/gambling/gambling-harm>

²⁶ Department of Internal Affairs. (2020), *2011-2020 Gambling Expenditure Statistics XLSX*. [Online] Available from:

https://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Resource-material-Information-We-Provide-Gambling-Expenditure-Statistics

- **Relocation:** In Whangārei venues are more common in high deprivation communities.²⁷ This is of concern as research suggests that high deprivation communities are five times more likely to report moderate-risk/problem gambling than those living in neighbourhoods with the lowest levels of deprivation.²⁸ Research by the Ministry of Health in 2008 found that there were significant associations between gambling behaviour and neighbourhood access to gambling venues. In particular, problem gambling was found to be more significantly associated with living closer to a gambling venue.²⁹ The risk of having a relocation policy that is too restrictive, is that gambling venues will remain concentrated in Whangārei's high deprivation communities.
- **Mergers:** Mergers primarily benefit the industry. Licences that could otherwise cease to exist can merge with another existing Class 4 venue licence. This would allow a licenced venue that may be struggling to make a profit to merge with another venue, to form a more profitable venture. Mergers will likely lead to an increased number of EGMs housed at the merged venue, which could lead to increased expenditure and profit with more gambling activity able to take place.

CONCLUSION

There are several policy options available to the Council regarding their Class 4 venue policy. As discussed in this report a Class 4 gambling policy must carefully consider the social impact of gambling in the Whangārei District and provide an appropriate balance between minimising gambling harm and continuing access to gambling as a form of entertainment, employment, and a source of funding for community organisations.

APPENDIX

The Appendix tables provide a detailed analysis of each of the policy options available to the Council. Each option considers the legislative fit and other District Council examples, followed by a discussion on the likely impacts, costs, benefits, and key risks associated with establishing the policy.³⁰

²⁷ Deprivation ratings were obtained from the University of Otago Socioeconomic Deprivation Indexes: (2013). Atkinson J, Crampton P, Salmond C. (2014) NZDEP2013: index of deprivation. New Zealand Ministry of Health. [Online] Available from:

<https://www.otago.ac.nz/wellington/departments/publichealth/research/hirp/otago020194.html>

Venue numbers were obtained from the Department of Internal Affairs. Department of Internal Affairs. (2019), *2011-2019 Gambling Expenditure Statistics XLSX*. [Online]. Available from: <https://www.dia.govt.nz/diawebsite/nzf/wpg/URL/Resource-material-Information-We-Provide-Gambling-Expenditure-Statistics>

²⁸ Allen & Clarke. (2015). *Informing the 2015 Gambling Harm Needs Assessment*. Report for the Ministry of Health, Wellington: Allen & Clarke Policy and Regulatory Specialists Ltd.

²⁹ Ministry of Health. 2008. *Raising the Odds? Gambling behaviour and neighbourhood access to gambling venues in New Zealand*. Wellington: Ministry of Health. [Online]. Available at: <https://www.health.govt.nz/publication/raising-odds-gambling-behaviour-and-neighbourhood-access-gambling-venues-new-zealand>

³⁰ Under the Local Government Act 2002 section 77, in the course of decision-making, a local authority must seek to identify all reasonably practicable options and assess the advantages and disadvantages.

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Table 3: Policy options regarding the establishment of venues

1. Establishment of Venues Under the Act the Council must determine whether or not Class 4 venues may be established in the District. The Council can therefore allow the establishment of new venues, restrict establishment of new venues, or not allow the establishment of new venues. Any new venue establishment would need to be in line with policy regarding Permitted Venue Areas and number of gaming machines (see Table 4 and Table 5).	
Option (How this option would apply drawing on examples from other Territorial Authorities)	Legislative fit (How does the Act apply here? What would be required to amend the policy?)
1a – Allow establishment of new venues This option would allow for the establishment of new Class 4 venues in the District. Under this option the merger and relocation of pre-existing Class 4 venues would be permitted (if allowed under the Policy).	Under s 101(3) of the Act the Council must determine if Class 4 venues may be established in the region. Under this option the establishment of new venues would be permitted. The current Policy does not permit the establishment of all new venues so the Policy would need to be redrafted. A TA may choose to place additional requirements on venue applications as a ‘relevant matter’. Should the Council wish to place additional conditions on the establishment of venues this would need to be drafted into the Policy, as currently no such requirements exist.
1b – Restrict establishment of new venues with a cap This option would restrict the number of venues that can be established in the District. Permission to establish a new venue would only be granted if the number of venues has not reached the limit. The cap could be placed at a number lower than currently in operation, at the current level, or at a higher number of venues than at present. Under this option the merger and relocation of pre-existing Class 4 venues would be permitted (if allowed under the Policy) as they would take place within the cap (venue numbers do not increase with mergers or relocations). As with option 1a additional conditions may be attached to the establishment of new venues (for example requiring that the venue’s primary purpose is not Class 4 gambling). One way to establish the cap is to set the limit at the current number of venues in operation. Another approach could be based off population estimates or capping the number of venues that are permitted in different regions of the District Plan. For example the Hauraki District have placed a cap on the number of Class 4 Gambling venues to be allowed in the District, which shall not exceed nine.	Under s 101(3) the Council may establish a cap for the maximum number of venues that may be in operation in Whangārei. If Council wished to adopt a cap based on the current number of venues in operation, the cap would be set at 18 for the Whangārei District. Any cap on the number of venues would need to be drafted into the Policy.
1c – Restrict establishment of new venues to those that are relocating and/or merging – sinking lid (status quo) This option would only allow ‘new venues’ to be established when relocation and merging provisions of the policy have been met (if allowed under the Policy. If the Policy does not allow for either of these to take place, this option would not be viable). As with option 1a additional conditions may be attached to the establishment of new venues (for example requiring that the venue’s primary purpose is not Class 4 gambling). Unlike option 1a and 1b, this is a form of sinking lid. Licences are only able to be issued when it is an already licenced venue relocating or merging with another licenced venue. If a venue lost its licence or merged with another venue, the total number of available venues in the District would therefore decrease. For example in Hamilton , consents for new Class 4 gambling venues are not granted unless two or more Class 4 venues are merging, or a Class 4 venue is relocating from outside the Permitted Venue Area to within.	Under s 101(3) of the Act a Council must determine if Class 4 venues may be established in the District. This option allows Class 4 venues to be established in the case of a merger or a relocation. Relocation results in a new venue licence being issued. Under s 97A of the Act, when a TA grants consent in respect of a venue (the new venue) to replace an existing venue (the old venue), a new Class 4 venue licence is granted in respect of the new venue. Similarly, the merging of two or more Class 4 venues results in a new Class 4 licence to the merged clubs and the cancellation of the previous venue licences (s 95(6)). Under the current Policy relocation and merging may lead to the establishment of a new venue in the Whangārei District. No change to the Policy would be required under this option.

<p>1d – No establishment of new venues - sinking lid</p> <p>This option would prohibit the establishment of new venues. Once a venue has lost its licence, closed or merged, the number of venues in the District decreases.</p> <p>Under this option the merger and relocation of pre-existing Class 4 venues would not be permitted as they both result in the issuing of new venue licences.</p> <p>This is a stricter option than 1c (which also operates as a form of sinking lid) because new venue licences for relocations would not be granted.</p> <p>Note – this is the most restrictive approach that can be taken to the number of venues in operation. Closing all current venues is not an option for TA's. Once a consent has been granted and a licence has been issued for the venue concerned, the consent remains in effect for as long as the Class 4 licence is held for that specific venue.</p> <p>Auckland Council will not grant consent for the establishment of any new Class 4 Gambling venues. This also means council will not grant consent for the relocation of an existing venue.</p>	<p>S 101(3) of the Act allows a TA to determine if the establishment of Class 4 gambling venues is permitted in the District or not.</p> <p>Under the current Policy the establishment of new Class 4 gambling venues is not allowed, however it does allow Class 4 venues to relocate and merge. The Policy would have to be amended to remove the current exception for relocating and merging venues.</p>
<p>Likely impacts, costs, benefits, and risks</p> <p>(economic, health, social, compliance, environmental, and cultural impacts, and any uncertainties) (What are they? And who would receive them?) (key risks associated with the option, the probability they will occur and magnitude of the risk)</p> <ul style="list-style-type: none"> Once a Council consent has been granted for a venue or gaming machine it cannot be revoked. Any decisions to extend the establishment of venues should therefore be carefully considered. Placing conditions on the venue, such as requiring that its primary purpose not be gambling, helps encourage venues to diversify their income stream. Placing conditions on the establishment of a new venue is possible under options 2a, 2b, 2c. Allowing the establishment of new venues would likely lead to an increase in the number of Class 4 venues in the District. This may lead to a subsequent increase in gambling, gaming machine proceeds and problem gambling. While this may have positive flow on effects for the venues and community groups who rely on gaming machine grants, it may also have negative effects on parts of the community that are prone to problem gambling and would ultimately not support a continuing reduction or control over gambling in the District. The Council may also be criticised for reneging on their previously firm sinking lid stance. Restricting establishment of new venues to those that are relocating and merging is a sinking lid approach, because it does not allow for the number of venues to increase. This is the current Policy in Whangārei. Once one of the venues lose their licence, the number of licensed venues in the District decreases. Allowing mergers and relocations to take place would enable venues to move to areas inside the Permitted Venue Area and would allow ventures to merge and remain profitable. If the cap were set at 18, it would allow for the current level of gambling to continue, but may allow for the redistribution of some venues from high deprivation areas to lower deprivation areas when venues close or relocate to Permitted Venue Areas under the Policy (if mergers and relocations are allowed). Industry would likely be more supportive of a cap on the number of venues currently in operation, as opposed to a sinking lid. While a cap does not encourage a reduction in the amount of gambling in the District, it does control it. There is a risk that the cap may lead to an increase in gambling if the venue moves to a more profitable area, or if the cap is placed higher than the current number of establishments (18). The approach taken to capping venues will influence the number of venues in operation. For example, if the venue cap was set by population estimates, as the population of Whangārei increases more venues may be permitted to establish. The Council would therefore need to carefully consider how the cap would be determined. Adopting a sinking lid policy would over time lead to the eventual closure of all Class 4 venues in Whangārei. This approach however has been criticised by members of the industry as unjustified due to a lack of correlation between decreasing venue numbers and decreased spending or gambling harm. In Whangārei from March 2015 to December 2018 the number of venues in Whangārei decreased by 4 while the gaming machine proceeds (GMP, amount of money lost by players) increased by 39.3%.³¹ When comparing the Problem Gambling Severity Index (PGSI) scores for the 2006/07 and 2011/12 New Zealand Health Survey waves, no significant changes were observed in the proportion of 'problem or moderate risk gamblers' (1.4% in 2006/07 and 1.0% in 2011/12), while the number of 'non-problem/recreational gamblers' decreased (54.7% in 2006/07 and 42.3% in 2011/12).³² Similarly, according to the Health and Lifestyle Survey, nationally there has been no statistically significant change in the prevalence of moderate risk or problem gambling between 2012 and 2018.³³ This suggests that decreasing the number of available machines/venues does not restrict the playing of problem gamblers but reduces casual and recreational play. While the goal of a sinking lid approach is to continually reduce gambling opportunities, gambling harm and gambling expenditure this has not yet been seen in Whangārei. 	

³¹ Department of Internal Affairs. (2020), *2011-2020 Gambling Expenditure Statistics XLSX*. [Online]. Available from: https://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Resource-material-Information-We-Provide-Gambling-Expenditure-Statistics

³² <https://www.health.govt.nz/publication/gambling-and-problem-gambling-results-2011-12-new-zealand-health-survey>

³³ Health Promotion Agency. (2018) 2018 Health and Lifestyles Survey. Wellington: Health Promotion Agency. [Online] Available from: <https://kupe.hpa.org.nz/#!/gambling/gambling-harm>

- Reducing the number of gaming machines available may also have the unintended consequence of driving people toward online gambling. Online gambling does not have the same safety controls in place as Class 4 gambling. With Class 4 gambling players must go to a licenced venue, must be over 18, venues must provide problem gambling pamphlets, and gaming machines have prize pool limits among other restrictions. Online gambling however is more accessible and less controlled. It operates 24 hours a day in private, players can be encouraged to continue to gamble and there is no guaranteed return to players. Moreover, money from online gambling can be offshore and returns nothing in tax or community funding.
- Research by the Ministry of Health in 2008 found that there were significant associations between gambling behaviour and neighbourhood access to gambling venues. In particular, problem gambling was found to be more significantly associated with living closer to a gambling venue.³⁴ It is possible that over time with the closure of numerous venues, particularly those in high deprivation areas, the opportunity to gamble would decrease and lead to a reduction in problem gambling in Whangārei.
- There are also concerns that a sinking lid approach may eventually lead to a decrease in community funds. In the Whangārei District it is unknown exactly how much money has been reinvested into the community through grants and where the money has been invested. The annual GMP in 2019 was \$18.3 million, accordingly approximately (40%) is required to be distributed back to the community.³⁵ While the amount of GMP may eventually decrease in the District, current venues would continue to operate and generate proceeds. Conversely, we cannot be certain that GMP are returned to the communities from which they were derived, and the staged approach of the sinking lid would provide time for the community and Council to find new sources of funding.
- The closure of venues may lead to some job losses in the hospitality industry as gaming machine venues shut down and are unable to re-establish elsewhere.
- Adopting a strict no establishment of new venues approach would mean that venues must continue to operate at their current location, and when this venue loses its licence or closes, the number of venues in the District decreases. This strict approach would eventually lead toward the closure of all gambling venues in Whangārei. Closure of Class 4 venues may lead to decreased hospitality in the area if venues struggle to attract clients without gaming machines. It would eventually result in less expenditure of gaming machines and therefore less gaming machine proceeds.

³⁴ Ministry of Health. 2008. Raising the Odds? Gambling behaviour and neighbourhood access to gambling venues in New Zealand. Wellington: Ministry of Health. [Online]. Available at: <https://www.health.govt.nz/publication/raising-odds-gambling-behaviour-and-neighbourhood-access-gambling-venues-new-zealand>

³⁵ Department of Internal Affairs. (2020), *2011-2020 Gambling Expenditure Statistics XLSX*. [Online] Available from: https://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Resource-material-Information-We-Provide-Gambling-Expenditure-Statistics

Table 4: Policy options regarding the location of venues

2. Location of venues	
If Class 4 venues may be established the Council must determine where they may be established. A TA can establish zones where the establishment of Class 4 venues is permitted/prohibited. The TA can also place further restrictions on facilities that they can be placed near. This would restrict establishment of new venues which would only be granted consent if they were within a Permitted Venue Area.	
Option (How this option would apply drawing on examples from other Territorial Authorities)	Legislative fit (What does the Act say? What would be required to amend the policy?)
2a – Allow establishment of venues anywhere in the District This would allow new venues to establish in any part of the District.	Under s 101(3) of the Act the Council <i>must</i> determine where venues can be located. The Policy would need to be amended to allow venues to establish in any part of the District.
2b – Restrict where venues can be established (status quo) Under this option, Class 4 venues could only be established in the approved parts of the District Plan (Permitted Venue Area). For example in Wellington new venues are restricted to the “Central Area Zone” and to “Centres” in the District Plan. New venues in “Neighbourhood Centres” are not permitted.	Under s 101(3) of the Act the Council <i>must</i> determine where venues can be located. The current Policy allows Class 4 gambling venues to be established in Business 1, Business 2 or Business 4 Environments (as listed in the District Plan). In Whangārei, this largely restricts development to the central business district, Kamo and Marsden Point. ³⁶ Under this option the Council could further restrict development by reducing the number of business environments where development is possible.
2c – Restrict what venues can be established near This option can exist alongside options 1a and 1b as it places an additional requirement on newly established venues. Under this option a licence would not be granted unless the proposed site was a certain distance from particular facilities. For example, requiring that the site be 100 metres away from a school. In Hamilton if the proposed gambling venue premises is located within the “Central City” zone: the premises must not be adjacent to any other Class 4 gambling venue or casino; and must not be adjacent to any school, or early childhood centre; and must not be closer than 100 metres (in a straight line) to any residentially or special character zoned land or community facilities zoned land as outlined in the Hamilton City Proposed District Plan (or resulting Operative District Plan). In Tauranga the proposed venue must be located within a commercial or industrial zone identified in the operative Tauranga City Plan, excluding areas within 100 metres of residential zones with a deprivation index of 8, 9 or 10, measured on the NZDep 2013 (and any subsequent updates).	Placing additional requirements on where venues can be established is allowed under s 101(3) of the Act. Additional requirements would need to be established by the Council. This could include consideration of the location of kindergartens, early childhood centres, schools, places of worship, and other community facilities. Consideration could also include the deprivation index of an area, as seen in Tauranga’s policy.
Likely impacts, costs, benefits, and risks (economic, health, social, compliance, environmental, and cultural impacts, and any uncertainties) (What are they? And who would receive them?) (key risks associated with the option, the probability they will occur and magnitude of the risk)	
<ul style="list-style-type: none"> A broad location policy could lead to potential socio-economic harm as venues could establish in and around low deprivation communities. Research conducted for the Ministry of Health in 2015 found that people living in neighbourhoods with the highest levels of deprivation (i.e. the most deprived) were five times more likely to report moderate-risk/problem gambling than those living in neighbourhoods with the lowest levels of deprivation (i.e. the least deprived).³⁷ Having gaming machines located in high deprivation areas is therefore of concern as it may lead to a higher prevalence of gambling harm. The report also found that pokies in the most deprived areas provided over half of the total expenditure.³⁸ This is of concern as communities with a high deprivation index are those that have characteristics such as low employment and low income. 	

³⁶ Whangārei District Council. GIS Whangārei District Council Map. [Online] Available from: <http://gis.wdc.govt.nz/intramaps90/?project=Whangarei&configId=0df84abb-1e1f-4b1c-a202-d198446d9c4e> [accessed on 4/5/2020].

³⁷ Allen & Clarke. (2015). *Informing the 2015 Gambling Harm Needs Assessment*. Report for the Ministry of Health, Wellington: Allen & Clarke Policy and Regulatory Specialists Ltd.

³⁸ Allen & Clarke. (2015). *Informing the 2015 Gambling Harm Needs Assessment*. Report for the Ministry of Health, Wellington: Allen & Clarke Policy and Regulatory Specialists Ltd.

- Zoning where venues can be established can help ensure a distribution of venues in the District, can reduce their density in high deprivation areas and can ensure that they are not placed near other community facilities. Moreover, establishing a Permitted Venue Area would not impact upon pre-existing venues. Venues outside of the permitted area may therefore choose to continue to operate at their current location. However, should a venue seek a new licence because they are establishing a new venue (option 2a, 2b, 2c) relocating (option 4a, 4b) or merging (option 5a, 5b), this will only be granted in a Permitted Venue Area.
- Gambling societies would benefit from a broader policy as it would enable them to establish venues in a greater range of areas. It follows that the more restrictive the policy the greater the pressure that is placed on the industry as it restricts the development opportunities. The industry could subsequently incur costs due to limited and potentially competitive property markets.
- While it is not possible to quantify the amount that problem gambling may be reduced with a more restrictive location policy, if the Council were to adopt a broad location policy (which could lead to the establishment of venues in areas which are prone to problem gambling), this could send the message to the public that the Council is not taking steps to reduce problem gambling in the District.

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Table 5: Policy options regarding the number of electronic gaming machines that may operate

3. Number of Electronic Gaming Machines Under the Act the Council may restrict the maximum number of electronic gaming machines (EGMs) that may be operated at a Class 4 venue. The number can be restricted by the Act or by the Council who may place a cap or sinking lid on the number of EGMs.	
Option (How this option would apply drawing on examples from other Territorial Authorities)	Legislative fit (What does the Act say? What would be required to amend the policy?)
<p>3a – Allow maximum number of EGMs</p> <p>The Act establishes the maximum number of EGMs that are allowed in venues. Following this option, the maximum number of EGMs as established in the Act would be allowed.</p> <p>Under this option, venues would be allowed to relocate and merge (if allowed under the Policy) because the Act sets maximum limits on the number of EGMs that may operate at relocated and merged venues.</p> <p>Permission for additional EGMs under s 95 and s 96 could be granted up to the maximum number of EGMs determined in the Act.</p> <p>Whakatāne's relocation policy states that as per the Gambling Act, the number of licenced gaming machines at the new venue will be the same as the number of licenced gaming machines at the old venue.</p> <p>Tauranga's merger policy states that where Clubs merge in accordance with section 95 of the Gambling Act 2003, the maximum number of gaming machines shall be the same as allowed under section 95 of the Gambling Act 2003. This is 30 gaming machines or the combined total of the number of existing machines, whichever is the lesser.</p>	<p>In general, Class 4 venue licences held on 17 October 2001 can have a maximum of 18 gaming machines (s 92), and Class 4 venue licences granted after 17 October 2001 can have a maximum of nine gaming machines (s 93).</p> <p>When venues relocate the maximum number of gaming machines permitted to operate at the new venue, at the time when the new Class 4 venue licence takes effect, is the same as the maximum number of gaming machines permitted to operate at the old venue (s 97A).</p> <p>Venues granted a licence after 17 October 2001 can apply to the TA for additional EGMs, and seek ministerial discretion (s 96). If granted, the number of EGMs must not exceed that established by the TA or 18.</p> <p>Similarly, when clubs are merging they can apply to the TA for additional EGMs, and seek ministerial discretion (s 95). If granted the number must not exceed that established by the TA, and must not exceed the lesser of 30 or the combined total of the number of existing machines of the clubs merging.</p> <p>This approach would be relatively easy to implement as it would be applying the relevant sections of the Act.</p>
<p>3b – Cap number of EGMs</p> <p>Placing a cap on the number of EGMs able to operate in the District would restrict the maximum number of machines that could exist.</p> <p>Under this option, venues would be allowed to relocate and merge (if allowed under the Policy) because the Act restricts the maximum number of EGMs to the same number before relocation or merging occurred (s 97A, s 95).</p> <p>Permission for additional EGMs under s 95 and s 96 could only be granted if the cap had not been reached.</p> <p>The way that the cap is determined will influence the way that it operates. The cap could be set per zone in the District, by the District as a whole, per capita or per venue.</p> <p>Wellington has placed a cap on the number of machines that may operate in each of the zones. Numbers shall not exceed those recorded for each zone.</p> <p>In Hauraki the maximum number of gaming machines allowed (cap) within the District shall not exceed 69.</p> <p>Some territorial authorities such as Kāpiti Coast District Council have population ratio-based caps. Under this approach, caps on pokie machines were set at ward levels, based on population per ward and the District ratio of one machine to 167 adults. The Policy restricted the entry of any new machines to Ōtaki and shifted existing allocation caps to other wards with a lower average of machines to local adult population.</p>	<p>Under s 101(3) of the Act the Council <i>may</i> place restrictions on the maximum number of gaming machines that may be operated at a venue.</p> <p>The Council may place a limit/cap on the number of machines that may operate at a venue which is lower than the maximum number allowed under the Act. For example lower than 18 (for pre October 2001 licences) lower than 9 (for post October 2001 licences) and lower than 30 (for venues that merge).</p> <p>Limiting the number of EGMs which may be in operation impacts upon applications under s 95 and s 96 which must not exceed that established by the TA (the cap).</p> <p>The current Policy does not place a cap on the number of EGMs, but adopts a sinking lid approach. If a cap on the number of EGMs were sought, the Council would need to decide how they were going to determine the cap and would need to have this written into the Policy.</p> <p>Note: A Territorial Authority does not have the power to reduce the current number of machines in the District. Any proposed 'cap' in gaming machine numbers would only affect new venues as existing venues already have a statutory entitlement to the number of machines they are operating.</p>

<p>3c – Sinking lid on number of EGMs (status quo)</p> <p>This option would prohibit the addition of new EGMs as licences for new EGMs would not be granted. Once a venue has lost its licence or reduced EGM numbers in a merger, the number of EGMs in the District decreases.</p> <p>Under this option, venues would be allowed to relocate (if allowed under the Policy) because the relocated venue cannot house more than the number of EGMs at the original venue (s 97A). Similarly, the merging of pre-existing Class 4 venues would be permitted (if allowed under the Policy) because the new venue cannot house more EGMs than the original licences.</p> <p>Permission for additional EGMs under s 95 and s 96 would not be granted. Venues could therefore not seek ministerial discretion for additional EGMs at their venue.</p> <p>In Ōpōtiki permission for additional new pokie machines shall not be given.</p> <p>In Tauranga no additional gaming machines may be operated at Class 4 Venues. The maximum number of gaming machines at the relocated venue shall be the maximum number of gaming machines at the venue before relocation. And the maximum number of gaming machines for venues that merge is 30 gaming machines or the combined total of the number of existing machines, whichever is the lesser.</p>	<p>Under s 101(3) of the Act a Council <i>may</i> place restrictions on the maximum number of gaming machines that may be operated at a venue. The Council can therefore adopt a sinking lid approach to the number of EGMs.</p> <p>This is the current approach of the Whangārei District Council.</p> <p>Limiting the number of EGMs which may be in operation impacts upon applications under s 95 and s 96 which must not exceed that established by the TA. With a sinking lid, additional EGMs would not be permitted by the Council so applications under s 95 and s 96 would not be granted.</p> <p>Note: A Territorial Authority does not have the power to reduce the current number of machines in the District. Any proposed 'cap' in gaming machine numbers would only affect new venues as existing venues already have a statutory entitlement to the number of machines they are operating.</p>
<p>Likely impacts, costs, benefits, and risks</p> <p>(economic, health, social, compliance, environmental, and cultural impacts, and any uncertainties) (What are they? And who would receive them?) (key risks associated with the option, the probability they will occur and magnitude of the risk)</p>	
<ul style="list-style-type: none"> • Allowing venues to house the maximum number of EGMs would allow some venues to increase their licence, raising the number of gaming machines in the District. This may lead to an increase in gaming expenditure, benefiting the industry but potentially harming the community with increased spending and gambling harm. Allowing machine numbers to increase does not closely align to the purpose of the Gambling Act which is to “control the growth of gambling” and “prevent and minimise harm from gambling, including problem gambling”.³⁹ • A capped model would allow for sustained and controlled gambling in the District. The way that the cap is determined will influence the way it operates. For example if it is per venue, then some venues may be able to increase the number of gaming machines, if it is by the District, when one venue goes out of business or merges other venues may seek to increase their number of EGMs. • The risk of having a cap that is too restrictive or a sinking lid approach is that fewer gambling machines does not necessarily lead to less gambling expenditure or gambling harm. Whangārei has seen an increase in pokie expenditure from March 2015 to December 2019 where GMP increased by 39.3%.⁴⁰ During these same quarters, Whangārei has also experienced a decrease in the number of EGMs with the reduction of 42 machines. Therefore, despite a decreasing number of EGMs there has been an increase in spending. This suggests that players are playing longer, spending more, or more people are playing. • As noted in Table 3, despite decreasing gaming machine numbers there has not been a significant change in problem gaming. This suggests that decreasing the number of EGMs does not specifically target those that are regularly gambling. • Concerns that with fewer EGMs there will be less community funding available is unlikely to be an issue in the short term. Based on the increased expenditure in gaming machines in previous years, and the staged approach of a sinking lid, the number of EGMs would gradually decline. This would mean that funding would still be available while the EGMs and venues continue to operate, and the staged approach would provide time for the community and Council to find alternative sources of funding. 	

³⁹ Section 3.

⁴⁰ DIA Dashboard

Table 6: Policy options regarding the relocation of venues

4. Relocation of venues Under the Act the Council may include a relocation policy. A relocation policy is a policy setting out if and when the Council will grant consent for a Class 4 venue (within its district) to replace an existing venue which holds a Class 4 licence. The relocation of venues is subject to any restrictions placed on the Permitted Venue Area's and establishment of new venues under the Policy.	
Option (How this option would apply drawing on examples from other Territorial Authorities)	Legislative fit (What does the Act say? What would be required to amend the policy?)
4a – Allow relocation of venues This option would allow an existing Class 4 venue to move to a Permitted Venue Area under the District Plan (provided the licensing of new venues is allowed under the Policy – see options 1a, 1b, 1c). In Whakatāne an application to relocate a current Class 4 venue would be granted consent provided the new venue meets the District's location requirements (Business Centre zone and not within 50 metres of a 'sensitive use' parcel of land').	Under s 101(5) of the Act, a relocation policy is a policy setting out if and when the territorial authority will grant consent in respect of a venue within its district where the venue is intended to replace an existing venue (within the district) to which a Class 4 venue licence applies. The Council therefore have the ability to allow the relocation of venues in the District. When consent for relocation is granted in respect of a venue (the new venue) to replace an existing venue (the old venue) <i>a new Class 4 venue licence</i> is granted in respect of the new venue (s 97A). It is also important to note that under s 102(5B) whenever a territorial authority is considering whether to include a relocation policy in its Class 4 venue policy, it must consider the social impact of gambling in high-deprivation communities within its district. Under the currently Policy venues can only relocate when circumstances beyond their control arise. To adopt this option the Policy would therefore need to be amended by removing the additional conditions placed on relocation.
4b – Place conditions on when venues can relocate (status quo) Conditions may be placed on the relocation so that it can only take place in certain circumstances. As with option 4a this would allow an existing Class 4 venue to move to a Permitted Venue Area under the District Plan (provided the licensing of new venues is allowed under the Policy – see options 1a, 1b, 1c). For example in Hamilton venues may move when they propose to move from outside the Permitted Venue Area to inside. As part of the application for a new venue consent the society must undertake to permanently close the existing venue. In Tauranga if the premises cannot continue to operate at the existing venue site the Council may consider granting consent for relocation. Circumstances include but are not limited to: due to a natural disaster or fire, the licensed premises is unfit to continue to operate; and/or the venue is deemed to be earthquake-prone; and/or the property is acquisitioned under the Public Works Act 1981; and/or expiration of lease; and/or site redevelopment.	Whangārei currently adopts a similar policy to Tauranga regarding relocation. Under the current Policy relocation is only permitted when the venue cannot continue operating at the existing site due to circumstances beyond the owner or lessee's control. Circumstances may include expiration of a lease or acquisition of property under the Public Works Act. Permission to relocate will also only be granted when the venue operator of the business at the new site is the same as the venue operator at the site to be vacated. Policy could be amended to include further conditions or circumstances that lead to relocation or amended to open the Policy up to allow greater flexibility. For example, Whangārei could adopt a more open policy like Hamilton where applications for relocation are considered when a venue wants to move from outside the Permitted Venue Area to inside.
4c – No relocation of venues Under this option a Class 4 venue (within its district) would not be granted permission to relocate. In Auckland existing Class 4 venues are not able to relocate from one part of the city to another.	Under s 101(5) the TA may determine if a relocation policy applies. The Council therefore can prohibit the relocation of Class 4 venues. The current Policy allows relocation, so amendment would be required.

Likely impacts, costs, benefits, and risks

(economic, health, social, compliance, environmental, and cultural impacts, and any uncertainties) (What are they? And who would receive them?) (key risks associated with the option, the probability they will occur and magnitude of the risk)

- In September 2013 s 102(5B) was added to the Act, requiring TAs to consider whether to include a relocation policy, and in doing so to consider the social impact of gambling in high-deprivation communities within its district. The DIA describes these amendments as a tool for TAs to help address the concentration of gaming machine venues in high deprivation areas.⁴¹
- In Whangārei venues are more common in high deprivation communities.⁴² This is of concern as research suggests that high deprivation communities are five times more likely to report moderate-risk/problem gambling than those living in neighbourhoods with the lowest levels of deprivation.⁴³ Research by the Ministry of Health in 2008 found that there were significant associations between gambling behaviour and neighbourhood access to gambling venues. In particular, problem gambling was found to be more significantly associated with living closer to a gambling venue.⁴⁴ The risk of having a relocation policy that is too restrictive, is that gambling venues will remain prevalent in Whangārei's high deprivation communities.
- Allowing venues to relocate could enable them to move out of certain areas (e.g. areas that are residential, high deprivation, or in close proximity to other community facilities), to move out of unsafe buildings (for example earthquake prone buildings). It could also ensure venues were not negatively impacted by Public Work acquisitions, and allow venues to move following a natural disaster or lease termination. Under the Act, gaming machine entitlements sit with the property's physical address. In order to hold on to their licence (and same number of EGMs), venues must remain at the same property. If the Policy is overly restrictive and venues cannot relocate it may lead to establishments remaining in unsafe buildings, or property owners extorting licence holders who are captive tenants.
- While a relocation policy would benefit the industry as they would have the ability to move to more favourable locations or upgraded premises, movement would only be allowed to Permitted Venue Areas, which encourages the distribution of venues and may result in the removal of a venue from residential or high deprivation communities.
- Moving venues to other centres and more modern premises may help create a busier and more vibrant city centre, helping the local hospitality sector.⁴⁵ Having relocation policies may also allow TA's more flexibility to respond to urban growth, re-zoning and other changes in the district.

⁴¹ <https://www.dia.govt.nz/Services-Casino-and-Non-Casino-Gaming-Info-for-Territorial-Authorities>

⁴² Deprivation ratings were obtained from the University of Otago Socioeconomic Deprivation Indexes: (2013). Atkinson J, Crampton P, Salmond C. (2014) NZDEP2013: index of deprivation. New Zealand Ministry of Health. [Online] Available from:

<https://www.otago.ac.nz/wellington/departments/publichealth/research/hirp/otago020194.html>

Venue numbers were obtained from the Department of Internal Affairs. Department of Internal Affairs. (2020), *2011-2020 Gambling Expenditure Statistics XLSX*. [Online]. Available from: https://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Resource-material-Information-We-Provide-Gambling-Expenditure-Statistics

⁴³ Allen & Clarke. (2015). *Informing the 2015 Gambling Harm Needs Assessment*. Report for the Ministry of Health, Wellington: Allen & Clarke Policy and Regulatory Specialists Ltd.

⁴⁴ Ministry of Health. 2008. Raising the Odds? Gambling behaviour and neighbourhood access to gambling venues in New Zealand. Wellington: Ministry of Health. [Online]. Available at: <https://www.health.govt.nz/publication/raising-odds-gambling-behaviour-and-neighbourhood-access-gambling-venues-new-zealand>

⁴⁵ <http://www.gamblinglaw.co.nz/download/Research/TAInfo.pdf>

Table 7: Policy options regarding the merger of venues

5. Merger of venues	
The Council can determine whether two or more Class 4 venues may merge to exist as a single gambling venue. The Council may allow venues to merge, allow mergers with certain conditions, or not allow them to take place.	
Option (How this option would apply drawing on examples from other Territorial Authorities)	Legislative fit (What does the Act say? What would be required to amend the policy?)
<p>5a – Allow venues to merge (status quo)</p> <p>Allowing venues to merge would enable two or more Class 4 venues to become one licenced Class 4 venue. Under this option merged venues would be able to house the maximum number of EGMs as determined by the Act (the maximum is 30 EGMs).</p> <p>In Hamilton, two or more private clubs may merge and consolidate the operation of their Class 4 gambling activities at a single existing gambling venue that is located within a Permitted Venue Area.</p>	<p>Under s 95 merging applies when two or more Class 4 venues can each demonstrate that they intend to merge into a single club operating at a single Class 4 venue.</p> <p>When clubs are merging they can apply to the TA for additional EGMs, and seek ministerial discretion (s 95). If granted the number must not exceed that established by the TA, and must not exceed the lesser of 30 or the combined total of the number of existing machines of the clubs merging.</p> <p>The maximum number of EGMs is either 30 or the combined value of the merging clubs, whichever value is lower.</p> <p>Note: Merging clubs wishing to receive ministerial discretion under section 95 can only merge into a venue that was licensed on 17 October 2001 and that has not been without a licence for more than a period of six months since then.</p>
<p>5b – Allow venues to merge with a restriction on the number of EGMs they may house</p> <p>Under this option, the Council may establish a limit on the number of EGMs that may be housed in the merged venue which is less than 30 EGMs (the maximum number allowed under the Act).</p> <p>Hamilton: Two or more private clubs which merge may consolidate the number of gambling machines being operated at the merged private club venue to the <i>lesser</i> of: a. 24 gambling machines or b. <i>the sum of the number of gambling machines previously operated</i> by each private club individually.</p> <p>Whakatāne: When two clubs wish to merge physically and legally, they will be allowed to operate <i>the sum of the number of gaming machines</i> specified in all the corporate societies' Class 4 Venue licences at the time of application, or 18 machines, whichever is the <i>lesser</i>.</p> <p>Tauranga: where Clubs merge in accordance with section 95 of the Gambling Act 2003, the maximum number of gaming machines shall be the same as allowed under section 95 of the Gambling Act 2003. This is 30 gaming machines or the <i>combined total of the number of existing machines</i>, whichever is the <i>lesser</i>.</p> <p>Hauraki District: Should two or more clubs with existing Class 4 gambling venue licences merge the Council will give consideration to the maximum number of machines at the merged venue being up to the <i>lesser</i> of: a. <i>the number of merging venues multiplied by nine</i>; or b. <i>the total of the machine numbers in the merging venues</i> prior to the merger; or c. 18 machines.</p> <p>For example in Auckland the number of machines in the merged club venue will be no more than 5/6ths of the sum of the number of machines specified in the Class 4 Gambling venue licences of the merging club venues at the time consent is sought (the number will be rounded down to the nearest whole number, if it is not a whole number).</p>	<p>Under s 95 ministerial discretion to grant more EGMs for merging venues cannot exceed that established by the TA.</p> <p>The TA therefore has authority to further limit the number of EGMs permitted in merged venues. This limit can be established by policy which could restrict it in the following ways:</p> <ul style="list-style-type: none"> • State the maximum number of machines that may be operated after a merge • Limit the number of EGMs to the number of merging venues multiplied by nine.

<p>5c – No merging of venues</p> <p>This option would prohibit Class 4 venues from combining to form one operation.</p> <p>In the Ōpōtiki District when two clubs wish to merge physically and legally, they will no longer be allowed to operate gaming machines.</p>	<p>Under s 95, merging venues must have obtained consent from the Council for the new venue. Under this options Policy would prohibit venues from merging so consents would not be granted.</p> <p>As it stands, the Policy currently allows for mergers to take place, so under this option the Policy would need to be amended.</p>
<p>Likely impacts, costs, benefits, and risks</p> <p>(economic, health, social, compliance, environmental, and cultural impacts, and any uncertainties) (What are they? And who would receive them?) (key risks associated with the option, the probability they will occur and magnitude of the risk)</p>	
<ul style="list-style-type: none"> • Mergers primarily benefit the industry. Licences that could otherwise cease to exist can merge with another existing Class 4 venue licence. This would allow a licenced venue that may be struggling to make a profit to merge with another venue, to form a more profitable venture. Mergers will likely lead to an increased number of EGMs housed at the merged venue, which could lead to increased expenditure and profit with more gambling activity able to take place. • When venues merge a new licence is issued. In issuing a new venue licence Council need to ensure that it complies with the Policy including the Permitted Venue Area. This would help ensure that merging venues are not creating larger establishments in high deprivation communities or near other community facilities (depending on the Policy). Council could however include an exception in the Policy which allows merging venues to exist at pre-existing locations that are outside of the Permitted Venue Area. • Allowing mergers to take place reduces the number of venues active in the district as one (or more) society mergers with another pre-existing Class 4 venue. It can also allow for a more productive use of land by freeing up real estate. • A more restrictive merger policy may lead to more venues ‘going under’ as they can no longer afford to keep operating. If a sinking lid approach were adopted this would lead to a reduction in the total number of venues and EGMs in the District. If a cap were established a new venue could be established in the Permitted Venue Area. 	

Summary of Policy Options, Impacts, Costs, Benefits, and Risks.

Policy option	Impacts	Costs	Benefits	Risks
Option 1: Allow establishment of new venues and allow relocation and mergers	Probable increased numbers of EGM venues and EGMs, and increased participation in EGM use. Increased gaming machine proceeds.	Greater level of expenditure from the community.	More employment opportunities for venue staff. More money available to be distributed for community benefit.	This option would be likely to lead to a greater level of gambling-related harm, and demand for gambling help services.
Option 2: Cap the number of venues and allow relocation and mergers	May result in an increase in the number of EGMs, participation rates.	Potentially greater level of expenditure from the community.	May benefit businesses that are not viable in their current location.	Possible increase in gambling-related harm.
Option 3: Cap the number of venues/EGMs and restrict relocations/mergers	Would allow the level of access to EGMs to remain as it is currently.	Unlikely to impact on gambling-related harm	Continued employment for staff. Continuity of funding for community benefit.	Continued level of gambling related harm in the community.
Option 4: Sinking lid on venues/EGMs and allow restricted relocation and merger (status quo)	The number of venues and EGMs would decline over time, which may mean less access to EGMs, and lower EGM participation.	Less funding available for distribution for community benefit. Reduced access to EGMs for recreation.	If EGM participation rates decrease, there may be in reduction in EGM gambling related harm.	Reduced access to EGM may lead people who use EGM to turn to other forms of gambling (e.g. offshore online gambling which is untaxed and returns no money to the community).
Option 5: Sinking lid on venues/EGMS and allow relocation	Decline in EGM and venue numbers over time.	As for Option 4.	As for Option 4.	EGM users switch to online gaming, which is unsupervised and unlicensed.
Option 6: No establishment of new venues and no relocation or mergers	Decline in EGM and venue numbers over time.	As for Option 4.	As for Option 4.	EGM users switch to online gaming, which is unsupervised and unlicensed.

6.5 Trade Waste Bylaw review – adoption of Statement of Proposal 2021

Meeting: Whangarei District Council
Date of meeting: 22 July 2021
Reporting officer: Simon Charles (Manager – Waste and Drainage)
 Vita Strohush (Strategic Planner – Bylaws)

1 Purpose

For Council to adopt the Statement of Proposal for the amendment of the Trade Waste Bylaw and the associated Summary of Information and to provide a proposed timetable for consultation and hearings process.

2 Recommendations

That the Whangarei District Council:

1. Reviews the Trade Waste Bylaw as per section 160 of the Local Government Act (LGA) and resolves that the Bylaw should be amended.
2. Makes determinations in accordance with 155 of the LGA, that the proposed amended Trade Waste Bylaw is the most appropriate way of addressing the perceived problem and is the most appropriate form of bylaw and does not give rise to any implications under the New Zealand Bill of Rights Act 1990.
3. Adopts the Statement of Proposal (Attachment 1) and Summary of Information (Attachment 2) for public consultation using the special consultative procedure in accordance with sections 86 and 156 of the LGA.
4. Approves the draft of the proposed Trade Waste Policy to be finalised in parallel with the Bylaw amendment.
5. Authorises the Chief Executive to make any necessary minor drafting or presentation amendments to the Statement of Proposal and Summary of Information and to approve the final design and layout of the documents prior to final printing and publication.

3 Background

Council's Trade Waste Bylaw was first made in 2008 and reviewed in 2012. Section 158 requires a local authority to review a bylaw no later than five years after the date on which the bylaw was made, and thereafter every ten years. The Bylaw is due for its next review by 2022.

The Bylaw applies to the discharge of trade waste into Council's public wastewater network. Trade waste means waste discharged from trade premises to Council's sewerage system in the course of any trade or industrial process. This includes discharges from businesses such as restaurants and any other premise discharging non-domestic wastewater. The Bylaw provides for the protection of the public sewer, protection of the environment and public health and for recovery of the costs associated with disposing of trade waste.

The current bylaw is based on NZS 9201: Part 23 Model Trade Waste Bylaws as are the majority of local authority trade waste bylaws. Overall there are no significant issues with the performance and application of the Bylaw. Some improvements in drafting are required. This report will present a draft Statement of Proposal for the amendment of the Bylaw.

Section 148 of the LGA establishes specific guidelines for reviewing trade waste bylaws and requires consultation to be carried out for two months.

4 Legislative Requirements

4.1 Statutory bylaw review process

Council briefing held on 8 April 2021 commenced the statutory assessment of the Trade Waste Bylaw for review under the LGA. At the briefing Council determined under section 155(1) LGA that a bylaw is the most appropriate way of addressing the perceived problem, being the rules around the provision of wastewater disposal and treatment service for non-residential waste for the purpose of protecting Public Health and Council's wastewater infrastructure.

The current Bylaw has been in operation since 2012 with no negative feedback from trade waste consent holders. However, improvements in the drafting of the Bylaw are required.

- The bylaw in its current form contains large amounts of technical detail, including physical and chemical limits.
- When technical limits change at the national level, to reflect those in the bylaw would require full public consultation which is a resource-intensive and time-consuming process. Whilst no changes were required in this way during the currency of the existing bylaw it is understood that such changes are imminent due to governments focus on improving environmental outcomes.
- The current bylaw does not offer flexibility for Council to choose a waste tracking system other than the one integrated in the current Ministry for the Environment Code of Practice.

Based on this, under s.155(2) of the LGA, the current Bylaw is not the most appropriate form of bylaw and needs to be amended.

4.2 Determination whether the proposed amended Bylaw is appropriate

After completing the statutory review process as outlined in section 4.1 and resolving that the Bylaw should be amended, Council must act under section 155(2) of the LGA to assess the appropriateness of the proposed amended Bylaw. Council must determine whether the proposed amended Bylaw—

- (a) is the most appropriate form of bylaw; and
- (b) gives rise to any implications under the New Zealand Bill of Rights Act 1990.

These determinations are provided below. The draft Statement of Proposal for the amendment of the Trade Waste Bylaw is attached, together with the proposed amended bylaw text with marked up changes.

4.3 Appropriateness

In making a decision about the appropriateness of a bylaw, Council must comply with the decision-making provisions of the LGA (Sections 76 to 81 LGA). Section 77 provides that a local authority must, in the course of the decision-making process, seek to identify and assess all reasonably practicable options. Reasonably practicable options for the amended Trade Waste Bylaw were provided at Council briefing on 8 April 2021.

Options discussed included:

- Option 1 – only improvements in drafting but without substantive effect
- Option 2 – removing Schedules 1A, 1B and 1C from the Bylaw and moving them into a trade waste policy document separate from, but linked to the Trade Waste Bylaw. Incorporate improvements in drafting throughout the bylaw where required.

Elected Members indicated support for developing Option 2 for the amendment of the bylaw. Staff have prepared a Statement of Proposal for the review of the Bylaw based on this option.

The changes propose to move the schedules of technical waste characteristics to a separate trade waste policy document. The advantage of a policy is that it would allow council at any time to add, delete or modify physical, chemical or prohibited waste characteristics by resolution without having to carry out formal public consultation on the bylaw.

Staff further recommend to amend clause 6.4.3. of the Bylaw to build into the Bylaw the ability for Council to choose a waste tracking system other than the one nominated by the current Ministry in their Environmental Code of Practice. Under the proposed changes, Council would be able to select a preferred waste tracking system by resolution at any time outside the bylaw review process.

The proposed amended Bylaw is considered appropriate because the Bylaw:

- a) sets specified criteria for all trade premises to manage discharges to an acceptable standard;
- b) provides a basis for enforcement;
- c) provides for recovery of the costs associated with disposing of trade waste
- d) provides for waste minimisation and management programmes for waste producers
- e) is based on New Zealand Standard NZS 9201: Part 23 Model Trade Waste Bylaws. Adherence to the Standard enables standardization of Trade Waste Bylaws across Northland.

4.4 Bill of Rights considerations

Council should now consider whether the bylaw gives rise to any implications under the New Zealand Bill of Rights Act 1990 (Section 155(2) LGA). Both the current and the proposed amended Bylaw are unlikely to give rise to any implications under the New Zealand Bill of Rights Act 1990. The restrictions set in the Bylaw are reasonable and necessary for the protection of the environment and the public wastewater system.

4.5 Special Consultative Procedure

Under section 156 LGA, Council is now required to use the special consultative procedure in the LGA to make the proposed amendments. The attached Statement of Proposal is part of that process.

Section 148 of the LGA requires:

- to advise the Minister of Health of a proposed bylaw in relation to trade waste
- that consultation on a Trade Waste Bylaw must be carried out for two months
- Council must consider in the course of public consultation submissions in writing by owners or occupiers of trade premises within its district

Section 83 of the LGA sets out the requirements for special consultative procedure. Council must prepare and adopt a Statement of Proposal (SOP) and make it as widely available as is reasonably practicable as a basis for consultation.

The LGA requires Council to prepare a summary of the information contained in the statement of proposal to enable public understanding of the proposal. The Summary of Information is provided in Attachment 2.

Council is further required to provide an opportunity for persons to present their views to the local authority in a manner that enables spoken (or New Zealand sign language) interaction between the person and the local authority. This will be provided through a formal Council Hearing. The date of the Hearing will be communicated in the Statement of Proposal and through the consultation activities.

The following consultation activities are proposed:

- Public consultation on the proposed amended Bylaw with publication of a Statement of Proposal for public feedback.
- A letter to the Minister of Health advising of the Bylaw review and consultation on the proposed amended Bylaw.
- A letter to key stakeholders to advise of the consultation and how to have a say:
 - existing and potential trade waste dischargers and owners or occupiers of trade premises
 - Council's Maori partners
- Media advisory to the general public by public notice in the Whangarei Leader.
- Digital advisory of consultation on Council's website.

Indicative timeframes for Bylaw review – short/single engagement process:

Trade Waste Bylaw		
Month 1	Feb-2021	Scoping / sign off
Month 2	Mar-2021	Research
Month 3	Apr-2021	Infrastructure briefing - issues and options / direction
Month 4	May-2021	SOP development + tikanga re: mortuary wastewater
Month 5	Jun-2021	SOP development + tikanga re: mortuary wastewater

Month 6	Jul-2021	Briefing - draft SOP; Council meeting - adopt SOP
Month 7	Aug-2021	Formal consultation 4 Aug - 4 Oct 2021
Month 8	Sep-2021	Formal consultation
Month 9	Oct-2021	Hearing 19 October 2021
Month 10	Nov-2021	Deliberations/adoption
Month 11	Dec-2021	Implementation

5 Significance and Engagement

5.1 Significance

Council's Significance and Engagement Policy (the Policy) requires an assessment of the significance of every issue requiring a decision in accordance with the Policy's criteria for determining significance. Staff consider the decision to adopt the Statement of Proposal, the Summary of Information and the associated amendments is not significant as it does not trigger two or more of the significance criteria.

5.2 Engagement

Section 4.5 outlines the engagement process and requirements for the matters addressed in this report.

6 Considerations

6.1 Policy Considerations

The preferred option for bylaw amendment (Option 2) proposes to remove Schedule 1A from the Bylaw and move it into a Trade Waste Policy document separate from, but linked to, the Trade Waste Bylaw. The Policy will need to be adopted at the time of amending the Bylaw.

The proposed draft Trade Waste Policy is provided in Attachment 4.

6.2 Financial

It is not expected that there will be any financial impacts associated with having a separate policy in addition to the Bylaw.

6.3 Risks

Should Council not proceed with the proposed amended Bylaw the risk is that the Bylaw would expire. Without effective regulation through the Bylaw there is potential for pollution of the natural environment, increased risk to public health and risk of a serious incident or loss to Council, compounded by reduced enforcement options.

The key risks associated with the proposal at this stage of the process relate to the consultation activities. It can be difficult to ensure all members of the community are aware of the consultation process and are therefore able to make their views known to Council. The consultation plan discussed in Section 4.3 aims to address these issues.

6.4 Impact on Māori

Discharge of mortuary wastewater into the public wastewater system has been considered in relation to Te mana o te wai. Discharge of human waste, especially to waterways, is a controversial topic and is of interest to Māori.

We consider that these cultural issues are wider than trade waste and relate to wastewater management more broadly. Currently our mortuary wastewater discharges are not included in our management of Trade Waste but are included in the public wastewater conveyance and treatment process i.e. transported via sewers to the Whangarei Wastewater Treatment Plant, treated and then passed through wetlands before ultimately being discharged into the Hatea River. Wetlands provide the link between human waste and Papatūānuku that is culturally significant to Māori.

Northland Regional Council is currently undertaking work on the issue of mortuary wastewater discharges. Pending the outcome of that work, staff advice is that the issue of mortuary wastewater discharges would be best considered in the broader scope of the Wastewater Bylaw.

7 Attachments

1. The Statement of Proposal
2. The Summary of Information on the proposed changes
3. The proposed amended Trade Waste Bylaw with tracked changes
4. The proposed Trade Waste Policy

Statement of Proposal Review of the Trade Waste Bylaw



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1. Introduction

Council's Trade Waste Bylaw applies to the discharge of trade waste into Council's public wastewater network. Trade waste means waste discharged from trade premises to Council's wastewater system in the course of any trade or industrial process. This includes discharges from businesses such as restaurants and any other premises discharging non-domestic wastewater, as well as tankered waste. The Bylaw provides for the protection of the public sewer, protection of the environment and public health, and for recovery of the costs associated with disposing of trade waste.

Council assessed that the Bylaw has performed well since its last review in 2012. The proposed minor changes to the Bylaw are explained in this Statement of Proposal. A 'Statement of Proposal' (SOP) is a legal requirement when Council is proposing to make or amend a bylaw. This document sets out the changes Council is proposing to make and the reasons for it. A copy of the proposed amended Bylaw is also provided, with the changes marked up so you can compare them against the current bylaw.

Before making a final decision on the proposed amended Bylaw, Council wants to hear your views. To assist you in providing feedback on the Bylaw we have also prepared a shorter document called a Summary of Information, which explains the key matters in the proposal. This is available from our Council offices or online at www.wdc.govt.nz/HaveYourSay

2. Timeline for considering the proposed amended Bylaw

- Submissions period: 4 August - 4 October 2021
- Hearing: 19 October 2021
- Council deliberates on submissions and makes decisions on any changes to the draft Bylaw and/or proposed amendments: November 2021
- Council adopts the final amendments to the Bylaw: late 2021 - early 2022

3. Reason for the proposal

Council must review Bylaws from time to time to ensure they are fit for purpose and continue to achieve desired outcomes. Council's Trade Waste Bylaw was first made in 2008 and reviewed in 2012. The Bylaw is due for its next review by 2022.

At its meeting on 8 April 2021, Council reviewed the Bylaw. Council considered there are no significant issues with the performance and application of the Bylaw and only minor amendments are required. Following review, Council is required to consult with the community on proposed amendments to the Bylaw. This Statement of Proposal is part of the consultation process as required by the Local Government Act 2002.

4. Summary of proposed changes

The following changes are proposed in the amended Trade Waste Bylaw:

- the Physical and Chemical Characteristic Schedules to the Bylaw are to be removed as they are primarily technical items that do not need to form part of the Bylaw
- amendment to clause 6.4.3. of the Bylaw allowing Council to set by resolution a preferred waste tracking system
- improvements in drafting and wording of the bylaw and reorganization of the definitions table

The amended text of clause 6.4.3. of the Bylaw is shown in tracked changes below. Full tracked changes to the Bylaw are provided in the attached proposed amended Bylaw.

6.4.3 Tankered Waste

Tankered waste shall not be discharged into Council's sewerage system by any person discharging or consent holder not compliant with the ~~Ministry for the Environment's WasteMINZ~~ Liquid and Hazardous Wastes Code of Practice (or any subsequent Code of Practice that amends or replaces it).

Council may by resolution select a preferred waste tracking system different from the one specified in the WasteMINZ Liquid and Hazardous Wastes Code of Practice (or any subsequent Code of Practice that amends or replaces it).

Tankered waste may only be discharged by an operator holding a trade waste consent, and into Council's sewerage system at approved locations.

Council may accept tankered waste for discharge at an Approved location.

Tankered waste shall:

- a) be transported by a Registered Offensive Trade license holder licensed to discharge domestic septic tank or industrial wastes*

- b) have material safety data sheets (MSDS) available to Council detailing the contents of a waste
- c) be pre-tested to determine their character if the contents of the waste are not known. Specialist advice on pre-treatment or acceptance may be required. The cost of all analyses and advice shall be borne by the Registered Offensive Trade license holder
- d) not be picked up and transported to the disposal site until appropriate arrangements and method for disposal have been determined by Council
- e) in order to prevent cross-contamination between tanker loads, the tanker shall be thoroughly washed prior to ~~collected~~ collecting a load for disposal into the sewerage system
- f) have 24 hours notice given for the disposal of wastes other than those sourced from domestic septic tanks.

Any person illegally disposing of, or causing to be disposed, tankered waste either by incorrect disclosure of contents (characteristics and/or amount) or dumping into Council's sewerage system at other than the prescribed location shall be in breach of the Bylaw.

[Explanatory Note: The WasteMINZ Liquid and Hazardous Code of Practice 2nd edition dated 2012 is available on www.wasteminz.org.nz](http://www.wasteminz.org.nz)

The existing consents issued under the current Bylaw are intended to be continued. Fees and charges will continue to be set outside of the Bylaw.

The classification of trade waste discharges is proposed to remain unchanged. The Bylaw provides for the following types of trade waste discharges:

Permitted (consent required if decided by Council)

Is a trade waste that has the physical and chemical characteristics which comply without pre-treatment with the requirements of Council standards. No consent is required for a permitted trade waste discharge, but Council has a right of access to inspect any discharge to determine whether a discharge is a permitted trade waste.

Controlled (consent required)

Is a trade waste that requires pre-treatment in order to ensure the discharge meets the requirements of Council standards.

Conditional (consent required)

Is a trade waste that has conditions placed upon the consent holder by Council standards.

Prohibited (not consentable)

Is a trade waste that has prohibited characteristics as defined by Council standards. This waste is not acceptable for discharge into Council's system except if specifically approved by Council as a Conditional trade waste.

Other considerations

Te mana o te wai and the discharge of mortuary wastewater into the public wastewater system.

Council is aware of work being done by Northland Regional Council (NRC) stemming from the recent practice at Gisborne District Council which made mortuary wastewater discharges a prohibited discharge in their updated Trade Waste Bylaw.

Discharge of human waste, especially to waterways, is a controversial topic and is of interest to Māori.

We consider that these cultural issues are wider than trade waste and relate to wastewater management more broadly. Currently our mortuary wastewater discharges are not included in our management of Trade Waste but are included in the public wastewater conveyance and treatment process i.e. transported via sewers to the Whangarei Waste Water Treatment Plant, treated and then passed through wetlands before ultimately being discharged into the Hatea River.

Wetlands provide the link between human waste and Papatūānuku that is culturally significant to Māori.

Given that Council has a broader scope bylaw in relation to Wastewater that might better regulate this issue, Council has opted to continue with the Trade Waste Bylaw review in isolation at this time.

5. How to give us your feedback

There are several ways you can tell us what you think. You can submit in writing, or online, and you can talk to Councillors at the formal hearing. Go to our public consultations page at www.wdc.govt.nz/HaveYourSay for more information.

Written submissions

You can provide us with a written submission via email or online, or you can fill in the submission form attached to this document.

- Email us: mailroom@wdc.govt.nz with 'camping in public places' in the subject line
- Submit online: www.wdc.govt.nz
- Post the paper form to Council, Private Bag 9023, Whangārei 0148, or deliver to one of our customer service centres at Forum North or Takutai Place, Ruakākā.

Hearing

A formal hearing meeting will be held after the submissions period closes. This is an option if you are happy to address the full Council and answer any questions Councillors may have in Council Chambers.

The Hearing will be held on 19 October 2021 in Council Chambers at Forum North.

We will advise a time for you to attend closer to the date.

Information on the hearings process and what to expect if you want to attend the hearing can be found on our website at www.wdc.govt.nz/HaveYourSay.

What will happen with your feedback

All feedback received will be summarised and reported back to Council to support their deliberations on the proposal. The Elected Members will receive copies of all written submissions and summaries of what people said during the hearings.

6. Legal considerations

The LGA prescribes a procedure for bylaw reviews. Council must determine whether a bylaw —

1. is the most appropriate way of addressing the perceived problem;
2. is the most appropriate form of bylaw; and
3. gives rise to any implications under the New Zealand Bill of Rights Act 1990.

Council has undertaken the review of the current Trade Waste Bylaw by reference to these matters.

6.1. Is a bylaw the appropriate means to deal with the problem?

Council assessed the practicable options for addressing the perceived problem, being the rules around the provision of wastewater disposal and treatment service for non-residential waste. The following options were reviewed:

- **Establish a policy.** A policy does not offer enforcement options, which poses a risk of serious incident and/or pollution of the natural environment.
- **Introduce District Plan rules.** Resource Management Act procedures are not suitable for trade waste circumstances and do not offer enforcement options suitable for this purpose.
- **Regulate through the Bylaw.** A bylaw provides clear communication of requirements, an enforcement mechanism and timely and appropriate response to complaints.

Council determined, under section 155(1) of the Local Government Act (LGA) 2002, that a Bylaw under the LGA continues to be the most appropriate way of managing discharges of trade waste into the wastewater drainage system. This is consistent with the approach taken by other councils of a similar size. The Bylaw provides for the protection of the public wastewater system and public health and safety. Setting requirements through a Bylaw provides greater incentive to reduce unnecessary strain on community wastewater treatment systems.

6.2. Is the bylaw in the appropriate form?

Council's Trade Waste Bylaw is based on the New Zealand Standard model bylaw which is used as the best practice basis for most local authorities trade waste bylaws.

The proposed amended Bylaw is considered appropriate because the Bylaw:

- a. sets specified criteria for all trade premises to manage discharges to an acceptable standard;
- b. provides a basis for enforcement;
- c. provides for recovery of the costs associated with disposing of trade waste
- d. provides for waste minimisation and management programmes for waste producers
- e. is based on New Zealand Standard NZS 9201: Part 23 Model Trade Waste Bylaws. Adherence to the Standard enables standardization of Trade Waste Bylaws across Northland.

The proposed amended Bylaw has improved readability and clearer definitions. Technical details, including physical and chemical limits for trade waste discharges, are removed from the Bylaw and transferred into the Trade Waste Policy. When technical limits change at the national level, Council would be able at any time to reflect these changes in the Trade Waste Policy outside of the 10-year Bylaw review cycle.

Under the proposed amended Bylaw Council will have the ability, by resolution, to select a preferred waste tracking system different from the one specified in the WasteMINZ Liquid and Hazardous Wastes Code of Practice (WasteTrack currently). This proposed change builds flexibility into the Bylaw for the next 10 years, given the WasteTrack system is no longer funded by the Ministry for the Environment.

6.3. *Is the bylaw consistent with the New Zealand Bill of Rights Act 1990?*

The Bill of Rights protects the human rights and fundamental freedoms of all people in New Zealand. It is considered that the current Bylaw and the proposed amended Bylaw does not give rise to any implications under the Bill of Rights. The restrictions set in the Bylaw are reasonable and necessary for the protection of the environment and the public wastewater system.



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*Review of Trade Waste
Bylaw 2012*

***Summary of
Information***



July 2021

Introduction

Whangarei District Council is reviewing the Trade Waste Bylaw. The Bylaw applies to the discharge of trade waste into Council's public wastewater network. Trade waste means waste discharged from trade premises to Council's wastewater system in the course of any trade or industrial process. This includes discharges from businesses such as restaurants and any other premises discharging non-domestic wastewater, as well as tankered waste.

We prepared a document called a 'Statement of Proposal' (SOP) which is a legal requirement when Council is proposing to make or amend a bylaw. The SOP sets out what the Council is proposing and the reasons for it. We do recommend you read the SOP in full to understand the context for the proposed bylaw amendments and what the amendments are. The SOP is available from our Council offices or online at www.wdc.govt.nz/HaveYourSay

This Summary of information includes key information about the proposed amendments to the Bylaw and how to have your say.

Before making any final decisions, we'd like to know your views.

The closing date for submissions is 4 October 2021. Further information on how to make a submission is included in this document.

Timeline for considering the proposed bylaw

Submissions period:

4 August - 4 October 2021

Hearings: 19 October 2021

Council deliberates on submissions and makes decisions on any changes to the draft Bylaw and/or proposed amendments: November 2021

Council adopts the final amendments to the Bylaw: late 2021 - early 2022

How to give us your feedback

There are several ways you can tell us what you think. You can submit in writing, or online, and you can talk to Councillors at the formal hearing. Go to our public consultations page at www.wdc.govt.nz/HaveYourSay for more information.

Written submissions

You can provide us with a written submission via email or online, or you can fill in the submission form attached to this document.

- Email us: mailroom@wdc.govt.nz with 'trade waste bylaw' in the subject line
- Submit online: www.wdc.govt.nz/HaveYourSay
- Post the paper form to Council, Private Bag 9023, Whangārei 0148, or deliver to one of our customer service centres at Forum North or Takutai Place, Ruakākā.

Hearing

A formal hearing meeting will be held after the submissions period closes. This is an option if you are happy to address the full Council and answer any questions Councillors may have in Council Chambers.

The Hearing will be held on 19 October 2021 in Council Chambers at Forum North.

We will advise a time for you to attend closer to the date.

Information on the hearings process and what to expect if you want to attend the hearing can be found on our website in the public consultations section.

What will happen with your feedback?

All feedback received will be summarised and reported back to Council to support their deliberations on the proposal. They will receive copies of all written submissions and summaries of what people said during the Hearing.

Reason for the proposal

The Bylaw provides for the protection of the public wastewater system protection of the environment and public health and for recovery of the costs associated with disposing of trade waste. Council must review bylaws from time to time to ensure they are fit for purpose and continue to achieve desired outcomes. Council's Trade Waste Bylaw was first made in 2008 and reviewed in 2012. The Bylaw is now due for review.

Key elements of our proposal

As a result of the review of the Trade Waste Bylaw, Council considers that the bylaw should be amended.

The following changes are proposed in the amended Trade Waste Bylaw:

- the Physical and Chemical Characteristic Schedules to the Bylaw are to be removed as they are primarily technical items that do not need to form part of the Bylaw
- amendment to clause 6.4.3. of the Bylaw allowing Council to set by resolution a preferred waste tracking system
- improvements in drafting and wording of the bylaw and reorganization of the definitions table
- Full details about the proposed changes is provided in the Statement of Proposal. The text of proposed amended Trade Waste Bylaw with tracked changes is available online or at our Council Offices.



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Trade Waste Bylaw

June 20~~21~~²²



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Access point is a place where access may be made to a Private Drain for inspection (including sampling or measurement), cleaning or maintenance with the location of an Access Point to be in accordance with the New Zealand Building Code.

Analyst means a testing laboratory approved in writing by a Council officer on behalf of Council.

Approval or approved means approval or approved in writing Council either by resolution of Council or by a Council officer.

Bio solids means sewage sludge derived from a sewage treatment plant that has been treated and/or stabilized to the extent that it is able to be safely and beneficially applied to land and does not include products derived solely from industrial wastewater treatment plants. The term Bio solid/Bio solids is used generally through this document to include products containing Bio solids (e.g. compost).

Characteristic means any of the physical or chemical characteristics of a trade waste and may include the level of a characteristic.

Cleaner production means the implementation on trade premises, of effective operations, methods and processes appropriate to the goal of reducing or eliminating the quantity and toxicity of wastes. This is required to minimise and manage trade wastes by:

- using energy and resources efficiently, avoiding or reducing the amount of wastes produced
- producing environmentally sound products and services; and
- achieving less waste, fewer costs and higher profits.

Condensing water or cooling water means any water used in any trade, industry or commercial process or operation in such a manner that it does not take up matter into solution or suspension.

consent and means consent in writing given by Council and signed by a Council officer.

consent to discharge authorising a Person to discharge trade wastes to the sewerage system.

consent holder means the person occupying trade premises who has obtained a consent to discharge or direct the manner or discharge of trade wastes from those premises to Council's sewerage system, and includes any person who does any act on behalf or with the express or implied permission of the consent holder (whether for reward or not) and any licensee of the consent holder.

Contaminant includes any substance (including gases, odorous compounds, liquids, solids and micro-organisms) or energy (excluding noise) or heat, that either by itself or in combination with the same, similar, or other substances, energy or heat:

- When discharged into water, changes or is likely to change the physical, chemical or biological condition of water; or
- When discharged onto or into land or into air, changes or is likely to change the physical, chemical or biological condition of the land or air onto or into which it is discharged

or as described or contained in the Resource Management Act 1991.

Contingency management procedures means those procedures developed and used to avoid, remedy, or mitigate the actual and/or potential adverse effects of these activities on the environment, from an unexpected or unscheduled event resulting in discharge, or potential discharge of contaminants of concern into the sewerage system.

Council and the Council means Whangarei District Council.

Council officer means:

any officer for the time being appointed by Council to carry out or exercise the duties, offices, or powers of a Council officer referred to in or granted by this Bylaw, his deputy or assistant and in acting as provided by this Bylaw shall act as agent for Council; and

any officer appointed by Council as an enforcement officer under S177 of the Local Government Act 2002 as an enforcement officer with powers of entry as prescribed by Sections 171–174.

District means the District administered by Council as established under LGA 2002.

1. Introduction

This Bylaw regulates the discharge of trade wastes to a ~~sewerage-system~~ wastewater system operated by Whangarei District Council (Council).

1.1 ~~1.2~~ Commencement and application

This Bylaw comes into force on 1 July ~~2012~~2021.

1.2 ~~1.3~~ Revocation

The following Bylaw is revoked by this Bylaw: Whangarei District Council Trade Waste Bylaw 20~~12~~08.

1.3 ~~1.4~~ Scope of Bylaw

The Bylaw provides for the:

- a. acceptance of long-term, intermittent or temporary discharge of trade wastes to the ~~sewerage-system~~ wastewater system
- b. establishment of four grades of trade wastes: Permitted, Controlled, Conditional and Prohibited such being defined in clause 4.1.1 of this bylaw
- c. evaluation of individual trade wastes discharges to be against specified criteria
- d. correct storage of materials to protect the ~~sewerage-system~~ wastewater system and stormwater systems from spillage
- e. installation of flow meters, samplers or other devices to measure flow and quality of the trade waste discharge
- f. pre-treatment of waste before it is accepted for discharge to the ~~sewerage-system~~ wastewater system
- g. sampling and monitoring of trade wastes discharges to ensure compliance with this Bylaw
- h. Council to accept or refuse a trade wastes discharge
- i. charges to be set to cover the cost of conveying, treating and disposing of, or reusing, trade waste and the associated costs of administration and monitoring
- j. administrative mechanisms for the operation of the Bylaw
- k. establishment of waste minimisation and management programmes (including sludges) for trade waste producers.

1.4 ~~1.5~~ Compliance with other Acts

Nothing in this Bylaw shall derogate from any of the provisions of the Health Act 1956, the Health and Safety ~~in Employment Act 1992~~at Work Act 2015, the Resource Management Act 1991, the Building Act 2004, the Hazardous Substances and New Organisms Act 1996 and their regulations or any other relevant statutory or regulatory requirements. In the event of any inconsistency between legislation the more stringent requirement applies.

~~Trade premises and other users to which the Bylaw Applies.~~

This Bylaw shall apply to all Trade premises within the Whangarei District where trade wastes are discharged, or sought, or likely to be discharged to the ~~sewerage-system~~ wastewater system operated by Whangarei District Council or its agents. This Bylaw shall also apply to Tankered Wastes collected for the purpose of discharge to a ~~sewerage-system~~ wastewater system operated by Whangarei District Council or its agents.

Pursuant to S196 of the Local Government Act 2002 (LGA) Council may refuse to accept any type of trade waste which is not in accordance with this Bylaw.

2. Interpretation

Unless inconsistent with the text, any term that is not defined in this section takes its common meaning from the Concise Oxford English Dictionary (eleventh edition).

For the purpose of this Bylaw, unless inconsistent with the context, the following definitions shall apply:

Analyst means a testing laboratory approved in writing by a Council officer on behalf of Council.

Approval or approved means approval or approved in writing Council either by resolution of Council or by a Council officer.

Approved site means a site approved for the safe disposal of trade waste.

Bio solids means sewage sludge derived from a sewage treatment plant that has been treated and/or stabilized to the extent that it is able to be safely and beneficially applied to land and does not include products derived solely from industrial wastewater treatment plants. The term Bio solid/ Bio solids is used generally through this document to include products containing Bio solids (e.g. compost).

Characteristic means any of the physical or chemical characteristics of a trade waste and may include the level of a characteristic including characteristics listed in the Trade Waste Policy

Chief Executive means the Chief Executive of Whangarei District Council

Cleaner production means the implementation on trade premises, of effective operations, methods and processes appropriate to the goal of reducing or eliminating the quantity and toxicity of wastes. This is required to minimise and manage trade wastes by:

- using energy and resources efficiently, avoiding or reducing the amount of wastes produced
- producing environmentally sound products and services; and
- achieving less waste, fewer costs and higher profits.

Condensing water or cooling water means any water used in any trade, industry or commercial process or operation in such a manner that it does not take up matter into solution or suspension.

consent means consent in writing given by Council and signed by a Council officer.

consent to discharge authorising a Person to discharge trade waste to the ~~sewerage system~~ wastewater system.

consent holder means the person occupying trade premises who has obtained a consent to discharge or direct the manner or discharge of trade waste from those premises to Council's ~~sewerage system~~ wastewater system, and includes any person who does any act on behalf or with the express or implied permission of the consent holder (whether for reward or not) and any licensee of the consent holder.

Contaminant includes any substance (including gases, odorous compounds, liquids, solids and micro-organisms) or energy (excluding noise) or heat, that either by itself or in combination with the same, similar, or other substances, energy or heat:

- a. When discharged into water, changes or is likely to change the physical, chemical or biological condition of water; or
- b. When discharged onto or into land or into air, changes or is likely to change the physical, chemical or biological condition of the land or air onto or into which it is discharged

or as described or contained in the Resource Management Act 1991.

Contingency management procedures means those procedures developed and used to

avoid, remedy, or mitigate the actual and/or potential adverse effects of these activities on the environment, from an unexpected or unscheduled event resulting in discharge, or potential discharge of contaminants of concern into the ~~sewerage system~~ wastewater system.

Council and the Council means Whangarei District Council, or any person delegated or authorised to act on their behalf.

Council officer means:

any officer for the time being appointed by Council to carry out or exercise the duties, offices, or powers of a Council officer referred to in or granted by this Bylaw, his deputy or assistant and in acting as provided by this Bylaw shall act as agent for Council; and

any officer appointed by Council as an enforcement officer under S177 of the Local Government Act 2002 as an enforcement officer with powers of entry as prescribed by Sections 171 – 174.

Disconnect or disconnection means the physical cutting or sealing of a private sewer from the public ~~sewerage system~~ wastewater system.

District means the District administered by Council as established under LGA 2002.

Domestic wastewater and domestic sewage means either wastewater discharged from premises, used solely for residential activities, or wastes of the same character discharged from other premises, but does not include any solids, liquids or gases that may not be lawfully discharge into sewage drains controlled by this Bylaw. Wastewater or sewage is used interchangeably throughout this document.

~~**Drain** Means that section of private pipe, owned and maintained by the occupier, between the occupier's premises and the point of discharge through which wastewater is conveyed from the premises to the public sewerage system.~~

~~**Grease trap** Means any device approved by the council that allows kitchen and/or food production wastewater to cool, and the grease and solids to separate from the wastewater.~~

Hazardous material wastes means

- a. any raw materials(s), product(s) or waste(s) containing corrosive, toxic, biocidal, ecotoxic (with or without bioaccumulation), radioactive, flammable or explosive materials; or
- b. any material which when mixed with the wastewater stream, is likely to generate toxic, flammable, explosive or corrosive materials in quantities likely to be hazardous to the health and safety of any person or harmful to the ~~sewerage system~~ wastewater system; or
- c. any material containing any hazardous substances as defined by the Hazardous Substances and New Organisms Act 1996; or
- d. any material which meets the definition for infectious substances included in the Land transport Rule; Dangerous Goods 2005 and NZ Standard 5433:2012 – Transport of Dangerous Goods on Land; or
- e. any material which meets the definition for radioactive material included in section 96 of the Radiation Safety Act 2016.

Infringement offence means an offence ~~which falls within the jurisdiction of subpart 3 of Part 9 as~~ specified by this bylaw under s 243 and s 259 of the LGA.

LGA means Local Government Act 2002 – the key legislation (law) that defines what Council's responsibilities are to the community and how they must be fulfilled and reported on.

Long Term Council Community Plan (LTCCP) or Long Term Plan (LTP) means a Long-t-Term pPlan adopted under S93 of the LGA.

Management plan means the plan for management of operations on any premises from which trade waste~~s~~ comes, and may include provision for Cleaner Production, waste minimisation, discharge, contingency management procedures, and any relevant industry codes of practice.

Mass limit means the total mass of any characteristic that may be discharged to the ~~sewerage-system~~ wastewater system over any stated period from any single point of discharge or collectively from several points of discharge.

Maximum concentration means the instantaneous peak concentration that may be discharged at any instant in time.

Occupier in relation to trade premises means the person occupying the premises connected to the ~~sewerage-system~~ wastewater system; and includes any agent, manager, foreman, or other person acting or apparently acting in the general management or control of trade premises and includes the owner of the premises if the premises are unoccupied.

Person ~~includes a corporation sole and also a~~ means a person, occupier or body of persons whether incorporated or unincorporated and includes the Crown and any successor of a person.

Point of discharge means the boundary between the public sewer and private drain but for the purposes of monitoring, sampling and testing, ~~may~~shall be an alternative designated point as specified in the trade waste~~s~~ consent.

Pre-treatment means any processing of trade waste designed to reduce or vary any characteristic in waste before discharge to the ~~sewerage-system~~ wastewater system in order to comply with a trade waste consent.

Premises means either:

- a. a property or allotment which is held under a separate certificate of title or for which a separate certificate of title may be issued and in respect to which a building consent has been or may be issued; or
- b. a building that has been defined as an individual unit by a cross-lease, unit title or company lease and for which a certificate of title is available; or
- c. land held in public ownership (e.g. reserve) for a particular purpose; or
- d. individual units in buildings, which are separately leased or separately occupied.

Prohibited trade wastes means a trade waste that has prohibited characteristics as defined in Schedule 1~~AB~~ and does not meet the conditions listed in the Trade Waste Policy ~~of Schedule 1A.~~

pPrivate drain means that section of drain between the premises and the point of connection to the public~~Council~~ sewerage wastewater system.

Schedule of Fees and Charges Means councils current Schedule of Fees and Charges

Schedule of rates and charges means the list of items, terms and prices for services associated with the discharge of trade waste as approved by Council.

~~**Sewage** means domestic wastewater and may include trade wastes.~~

Sewage sludge means the material settled out and removed from ~~Sewage~~ wastewater during the treatment process.

Sewer means the public pipework drainage system that conveys sewage.

~~**Sewerage-system**~~**Wastewater system** ~~means the physical components of collection, treatment and disposal of sewage and trade wastes, including all sewers, pumping stations, storage tanks, sewage treatment plants, outfalls, and other related structures operated by Council and used for the reception, treatment and disposal of trade wastes~~ means all pipes, pumping stations, storage tanks, wastewater treatment plants, outfalls and other related structures owned by or under the control of

the council, used for the receiving, transporting, treating or disposing of wastewater.

Shall means must, is, or are obligated to.

Significant industry is a term to indicate the relative size of a given industry compared to the capacity of the ~~sewerage system (including the sewage treatment plant) forming part of that sewerage system~~ public wastewater system, which services that industry. Industry size relates to the volume and/or loads discharging into the ~~sewerage system~~ wastewater system. Loads can be the conventional loadings of ~~BOD5~~ chemical oxygen demand and suspended solids or some other particular contaminant (e.g. boron, chromium), which may have an effect on the sizing of the ~~sewerage~~ wastewater system, the on-going system operation and/or the quality of the treated effluent that is discharged.

Stormwater means surface water run-off resulting from precipitation.

Stormwater system means all pipes, pumping stations, storage tanks, outfalls and other related structures owned by or under the control of the council, used for the receiving, transporting, treating or disposing of stormwater.

~~t~~**Tanker waste** ~~is water or other liquid, including waste matter in solution or suspension, which is conveyed by vehicle for disposal, excluding domestic sewage discharged directly from house buses, caravans, buses and similar vehicles.~~ means any type of wastewater which is conveyed by vehicle from any premises for disposal at an approved site.

Temporary discharge means any discharge of an intermittent or short duration. Such discharges include the short-term discharge of an unusual waste from premises subject to an existing consent.

Trade premises means:

- a. any premises used or intended to be used for any business, industrial or trade purpose; or
- b. any premises used or intended to be used for the storage, transfer, treatment, or disposal of waste materials or for other waste management purposes, or used for composting organic materials; or
- c. any other premises from which a ~~c~~Contaminant is discharged in connection with any industrial or trade process; or
- d. any other premises discharging other than ~~d~~Domestic sSewage and includes any land or premises wholly or mainly used for agricultural or horticultural purposes; or
- e. a tanker truck or any other vehicle capable of receiving, storing, transporting or discharging trade waste.

Trade wastes and trade waste means any liquid with or without matter in suspension or solution, ~~therein, which that is, is~~ or may be discharged, from trade premises to Council's ~~sewerage system wastewater system~~ in the course of any business, trade or industrial process or operation in the course of any activity or operation of a like nature; and may include Condensing or Cooling waters or Domestic sewage.

Trade waste consent means a consent of the type as described in clause 3 of this bylaw.

Trade Waste Policy Means a Trade Waste Policy made under clauses 7.8 and 7.9 of this bylaw and adopted by council

Wastewater treatment plant means any arrangement of devices and structures used for treating sewage, and/or trade wastes ~~s~~ prior to discharge to the environment.

Working day means any day of the week other than:

a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, Labour Day

a day in the period commencing with 25th day of December in a year and ending with the ~~second~~ 2nd day of January in the following year.

3. Applications to discharge trade wastes

3.1 Control of discharges

3.1.1 No person shall:

- a. discharge, or allow to be discharged, any trade wastes to a ~~sewerage system~~ wastewater system except in accordance with the provisions of this Bylaw; or
- b. discharge, or allow to be discharged a prohibited trade waste as defined in clause 4.1.1b into the ~~sewerage system~~ wastewater system; or
- c. add or permit the addition of condensing water or cooling water to any trade wastes which discharge into the ~~sewerage system~~ wastewater system unless specific approval is given in a consent; or
- d. add or permit the addition of stormwater to any trade waste, which discharges into the ~~sewerage system~~ wastewater system unless specific approval is given in a consent. ~~or~~

3.1.2 In the event of failure to comply with 3.1.1(a)–(d), Council may physically prevent the discharge to the ~~sewerage system~~ wastewater system if a reasonable alternative action cannot be established with the discharging party or parties.

3.1.3 Any Person discharging to a ~~the sewerage system~~ wastewater system shall also comply with the requirements of the Hazardous Substances and New Organisms Act 1996 (HSNO) and the Resource Management Act 1991 (RMA).

3.2 In the storage, transport, handling and use of hazardous or harmful materials

- a. All persons on trade premises shall take all reasonable steps to prevent the accidental entry of any of the materials listed in 3.2(c) of this Bylaw from entry into the ~~sewerage system~~ wastewater system as a result of leakage, spillage or other mishap.
- b. No person shall store, transport, handle or use, or cause to be stored, transported, handled or used any hazardous substance as defined by HSNO or any of the materials listed in 3.2(c) in a manner that may cause the material to enter a ~~sewerage system~~ wastewater system and cause harmful effects.
- c. Materials referred to in 3.2 (a) and (b) are products or wastes which:
 - i. contain corrosive, toxic, eco-toxic, oxidising, radioactive, flammable or explosive materials; or
 - ii. are likely to generate toxic, eco-toxic, flammable, explosive, oxidising or corrosive materials in quantities likely to be hazardous when mixed with the wastewater stream
 - iii. are likely to be deleterious to the health and safety of Council staff, approved contractors and the public or be harmful to the ~~sewerage system~~ wastewater system.

4. Trade waste discharges and consents

4.1 Classification of trade waste discharges

4.1.1 Trade wastes discharges shall be classified as one of the following types:

- a. Permitted (consent required if decided by Council)

Is a trade waste that has been approved by and is acceptable to Council as long as it has the physical and chemical Characteristics which comply (without pre-treatment) with the requirements of Council standard as defined in ~~Schedule 1A of this Bylaw (Schedule 1A)~~ the Trade Waste Policy. No consent is required for a permitted trade waste discharge but Council has

a right of access to inspect any discharge to determine whether a discharge is a permitted trade waste.

b. Controlled (consent required)

Is a trade waste that requires pre-treatment in order to ensure the discharge meets the conditions of ~~Schedule 1A~~ the Trade Waste Policy.

c. Conditional (consent required)

Is a trade waste that has conditions placed upon the consent holder by Council.

d. Prohibited (Not consentable)

Is a trade waste that has prohibited Characteristics as defined in Schedule ~~1A~~ B of this Bylaw (~~'Schedule 1B'~~) and does not meet the conditions ~~of Schedule 1A~~ listed in the Trade Waste Policy. This waste is not acceptable for discharge in Council system except if specifically approved by Council as a Conditional trade waste.

4.1.2 Council is not obligated to accept any trade wastes. No application for consent shall be approved where the trade wastes discharge would contain, or is likely to contain, characteristics, which are prohibited.

4.1.3 No person shall discharge, or cause to be discharged, any trade wastes to a ~~sewerage system~~ wastewater system except in accordance with the provisions of this Bylaw.

4.2 Application for trade waste consent

4.2.1 Every person who does, proposes to, or is likely to:

- a. discharge into the ~~sewerage system~~ wastewater system any trade waste, ~~other than Permitted trade waste (either continuously, intermittently or temporarily); or~~
- b. vary the characteristics of a consent to discharge that has previously been granted; or
- c. vary the conditions of consent to discharge that has previously been granted; or
- d. significantly change the method or means of pre-treatment for discharge under an existing consent; ;

shall, if required by Council, complete an application in the prescribed form(s) ~~(available from Council's trade wastes Officer)~~ for the consent of Council, to discharge that trade waste, or to the proposed variation(s).

4.2.2 Council reserves the right to deal with the owner as well as the occupier of any trade premises.

4.2.3 Nothing in this Bylaw shall be deemed to prevent Council from dealing separately with trade wastes arising from different departments or from different industrial processes carried out in the same trade premises and from treating the application received from the occupier concerned as if separate application had been made in respect of any such different trade wastes.

4.2.4 The Applicant shall ensure that the application and every other document conveying required information is properly executed and any act done for, or on behalf of, the eventual consent holder (whether for reward or not) in making any such application shall be deemed to be an act of the consent holder.

4.2.5 Council may require an application to be supported by an independent report/statement completed by a suitably experienced and external auditor to verify any or all information supplied by the applicant, and this may include a management plan.

4.2.6 Every application shall be accompanied by a trade waste application fee in accordance with Council's Schedule of Rates Fees and Charges.

4.3 Processing of an application

Council shall acknowledge the application in writing within 10 Working Days of the receipt of application.

4.4 Information and analysis

Upon receipt of any application for a trade waste consent to discharge from any premises or renewal, or alteration of an existing consent ~~to~~ discharge, or to discharge tankered waste into Council's wastewater system, Council may:

- a. require the applicant to submit any additional information which it considers necessary to reach an informed decision;
- b. require the applicant to submit a Management Plan to the satisfaction of Council;
- c. whenever appropriate, have the discharge investigated and analysed as provided for in clauses 6.1 and 6.3 of this Bylaw.

4.5 Consideration of an application ~~by Council~~

Within 20 Working Days (or extended as necessary by Council) of receipt of an application complying with this Bylaw and/or all requirements under 4.4, whichever is the later, Council shall, after considering the matters in 4.6 action one of the following in writing:

- a. grant the application as a permitted trade waste and inform the applicant of the decision by issuing the appropriate notice; or
- b. grant the application as a controlled or a conditional trade waste discharge consent and inform the applicant of the decision and the conditions imposed on the discharge by issuing the appropriate notice of consent to the discharge; or
- c. decline the application and notify the applicant of the decision giving a statement for the reasons for refusal.

4.6 Consideration criteria

In considering any application for a trade waste consent or tankered waste into the wastewater system and in imposing any conditions in a consent, Council shall take the quality, volume and rate of discharge of the trade waste into consideration in relation to the:

- a. health and safety of Council staff, authorised agents, independent analysts and the public;
- b. the quality, volume and rate of discharge of the trade waste from such premises or tanker;
- c. the limits and/or maximum values for characteristics of trade waste~~s~~ as specified in Schedules 1A and ~~1B~~ the Trade Waste Policy;
- d. the extent to which the trade waste may react with other trade waste(s) or Domestic Wastewater to produce an undesirable effect, e.g. settlement of solids, production of odours, accelerated~~ion~~ corrosion and deterioration of the ~~sewerage system~~ wastewater system; ~~etc~~
- e. the flows and velocities in the sewer or sewers in relation to the material or construction of the sewer or sewers;
- f. the capacity of the sewers in any wastewater catchment area and the capacity of any wastewater treatment works serving the catchment in which the trade waste is produced;
- g. the nature of Council's wastewater treatment processes and the degree to which the trade waste is capable of being treated in the relevant wastewater treatment ~~works~~ plant;

- h. the timing and balancing of flows into the ~~sewerage system~~ wastewater system;
- i. existence of any statutory requirements relating to the conveyance, treatment or discharge of raw or treated wastewater to receiving waters, the disposal of sewage sludges, beneficial use of Bio solids and any discharge to air (including the necessity for compliance with any resource consent, discharge permit or receiving water quality guidelines);
- j. the effect of the trade waste ~~d~~Discharge on the ultimate receiving environment;
- k. the conditions on resource consents for the ~~sewerage system~~ wastewater system and the residuals from it;
- l. the possibility of unscheduled, unexpected or accidental events and the degree of risk these could cause to humans, the ~~sewerage system~~ wastewater system and the environment;
- m. consideration for other existing or future discharges;
- n. amenability of the trade waste to pre-treatment;
- o. existing pre-treatment works on the premises and the potential for their future use;
- p. cleaner production techniques and waste minimisation practices;
- q. requirements and limitations related to sewage sludge disposal and reuse;
- r. control of stormwater;
- s. management plan;
- t. tankered waste being discharged at approved locations;
- u. any other matter that Council considers relevant.

4.7 Conditions of trade waste consent

Any consent to discharge may be granted or renewed subject to such conditions that Council may impose including but not limited to:

- a. the particular ~~sewerage system~~ wastewater system or sewers to which the discharge shall be made;
- b. the maximum daily volume of the discharge, the maximum rate of discharge and the duration of maximum discharge;
- c. the maximum limit or permissible range of any specified characteristics of the discharge, including concentration limits and/or mass limits determined in accordance with clause 4.8 of this Bylaw;
- d. the period or periods of the day during which the discharge, or a particular concentration, or volume of discharge may be made;
- e. the characteristics of the trade waste at the point of discharge;
- f. the provision, maintenance and operation by, or for the consent holder (at their expense) of screens, grease traps, oil traps, silt traps, other partial or preliminary pre-treatment processes, equipment or storage facilities designed to regulate the quality, quantity and rate of discharge or other characteristic prior to the point of discharge;
- g. the provision and maintenance of inspection chambers, manholes or other apparatus or devices to provide reasonable access to private sewers for flow measurement, sampling and inspection at the consent holders expense;
- h. the provision and maintenance of a sampling, analysis and testing programme and flow measurement requirements, at the consent holder's expense;

- i. the method or methods to be used for measuring flow rates and/or volume and taking samples of the discharge for use in determining the amount of any trade waste charges applicable to that discharge;
- j. the provision and maintenance of such services, (whether electricity, water or compressed air or otherwise), which may be required in order to operate meters and similar devices at the consent holder expense;
- k. at times specified, the provision in a Council approved format by the consent holder to Council of all flow and/or volume records and results of analyses;
- l. the provision and implementation by the consent holder of a discharge management plan;
- m. risk assessment of damage to the environment due to an accidental discharge of a contaminant;
- n. waste minimisation and management;
- o. cleaner production techniques;
- p. consent holder's use of third parties for treatment, carriage, discharge and disposal of by-products of pre-treatment of trade waste;
- q. requirement to provide a bond or insurance in favour of Council where failure to comply with the consent could result in damage to Council's ~~sewerage system~~ wastewater system, its treatment plants, or could result in Council being in breach of any statutory obligation;
- r. the meeting of any other conditions reasonably necessary to achieve or ensure compliance with this Bylaw and any other legislation.

4.8 Duration

4.8.1 Permitted Discharges shall remain in force indefinitely until either:

- a. cancellation under clauses 3.1.2 or 4.10 of this Bylaw;
- b. the quantity and nature of the discharge changes significantly;
- c. if in the opinion of Council the discharge changes or it is likely to change to such an extent that it becomes a Controlled, Conditional or Prohibited trade waste as such are defined in clause 4.1.1 of this bylaw;
- d. Council changes the trade waste management procedures by implementation of changed trade waste Bylaw conditions or any amendment to, or replacement of, the trade waste Bylaw; or
- e. the conditions on resource consents for the ~~sewerage system~~ wastewater system and the residuals from it change.

In all cases, after appropriate consultation, the Person shall ~~apply~~ make application within 10 Working Days of this change occurring, for a Controlled or Cconditional consent in accordance with clause 4.2 of this Bylaw. ~~This application shall be approved prior to the occurrence of any new discharge~~ No new discharge shall occur until such time as the application has been approved.

4.8.2 Subject to clauses 4.10 and 7.1 of this Bylaw, ~~c~~Controlled and ~~c~~Conditional consents under this Bylaw shall expire at the end of a term fixed by Council subject to the following:

- a. ~~a~~—controlled and conditional consents may be given for a term not exceeding five years to a consent holder who at the time of application satisfies Council that:
 - i. the nature of the trade activity, or the process design and/or management of the premises are such that the consent holder has demonstrated ability to meet the conditions of the consent during its term; and/or
 - ii. cleaner production techniques are successfully being utilised, or that a responsible

investment in cleaner production equipment or techniques is being made; and/or

iii. significant investment in pre-treatment facilities has been made, such that a longer period of certainty for the amortizing of this investment is considered reasonable; and/or

iv. the reissuing of consent cannot be unreasonably withheld.

- b. ~~b~~—in all other cases the term of a ~~c~~Controlled or a ~~c~~Conditional trade waste consent should not exceed two years;
- c. ~~c~~—in all cases where either the consent holder or the owner of the premises changes, or there is a change of use, a new application for a ~~c~~Controlled or a ~~c~~Conditional trade waste consent shall be made. It shall be the responsibility of the consent holder to lodge the new application; and
- d. ~~d~~—the conditions on resource consents for the ~~sewerage system~~ wastewater system and the residuals from it change.

4.8.3 Notwithstanding clause 4.8.2 Council retains the right to review the conditions at an earlier time. The reasons for such an earlier review could include but are not limited to:

- a. the level of consent holder compliance, including any accidents including spills or process mishaps.
- b. matters pertaining to Council resource consents for the ~~sewerage system~~ wastewater system.
- c. matters pertaining to Council environmental policies and outcomes.
- d. new control and treatment technologies and processes.
- e. any of the matters outlined in Section 5 of this Bylaw.
- f. matters pertaining to Council's legal obligations.

4.9 Technical review and variation

4.9.1 Council at any time may require a person undertaking a permitted discharge to apply for consent in accordance with clause 4.8.1 of this Bylaw.

4.9.2 If Council is having problems with excess organic material from trade premises including but not limited to excess oil and grease from food premises, then the offending industry may be required to apply for a conditional consent such that the conditions imposed shall result in a discharge compliant with the requirements of Council standard as defined in Schedule 1A and the Trade Waste Bylaw.

4.9.3 Council may at any time during the term of a consent, by written notice to the consent holder, vary any condition within the consent to address such issues as a change in the:

- a. nature of the discharge;
- b. wastewater system;
- c. circumstances that cause the condition(s) to become inappropriate or unnecessary;
- d. resource consent limits imposed on the discharges or the use of liquids or solids from Council's wastewater treatment plant;
- e. legal requirements imposed on Council.

4.9.4 The consent holder may seek to vary any condition of a consent at any time during the term of a consent by written application to Council, as provided for in clause 4.7 of this Bylaw.

4.10 Suspension or cancellation of the right to discharge

4.10.1 Council may suspend or cancel any consent or right to discharge at any time by giving 15 Working Days written-notice to the consent holder, if the consent holder fails to:

- a. comply with any condition of the consent;
- b. maintain effective control over the discharge;
- c. limit the volume, nature, or composition of trade waste being discharged in accordance with the requirements of the consent;
- d. take any action which in the opinion of Council, threatens the safety of, or threatens to cause damage to any part of the ~~sewerage system~~ wastewater system or the wastewater treatment plant or threatens the environment or the health or safety of any person;
- e. pay any charges due under this Bylaw;
- f. if any other circumstances arise which, in the opinion of Council, render it necessary in the public interest to cancel the right to discharge;
- g. If any process changes require more than 15 Working Days, reasonable time may be given to comply with the consent conditions.

4.10.2 Council may cancel any consent or right to discharge immediately by giving written notice to the consent holder, if the:

- a. discharge contains any prohibited substance;
- b. Council is lawfully directed to withdraw or otherwise terminate the consent summarily;
- c. consent holder discharges any trade waste unlawfully which Council determines may endanger the health or safety of any person, damage any part of the wastewater system or cause serious environmental effects as a result of the discharge;
- d. discharge is not effectively controlled in accordance with the requirements of a consent;
- e. continuance of discharge may, in the opinion of Council, result in a breach of resource consent held by Council;
- f. Council's opinion is that the continuance of the discharge puts at risk the ability of Council to comply with conditions of a resource consent and/or requires additional treatment measures or costs to seek to avoid a breach of any such resource consent.

4.10.3 Council may suspend or cancel any consent or right to discharge, by giving 15 Working Days notice to the consent holder for circumstances other than those in sections 4.10.1 (a)-(f) where it is in the public interest to do so.

5. Trade waste approval criteria

5.1 Pre-treatment

Council may approve a Controlled or Conditional trade waste consent subject to the provision of appropriate pre-treatment systems to enable the Person discharging to comply with this Bylaw, with any such pre-treatment system(s) to be provided, operated and maintained by the Person discharging at their expense. Service contracts for all such devices should be retained at all times that the system(s) operate(s) in accordance with manufacturers specifications. Any waste removed is to be disposed of in an appropriate and responsible manner and/or at appropriate facilities.

Refuse or garbage grinders and macerators shall not be used to dispose of solid waste from trade premises to the ~~sewerage system~~ wastewater system unless approved by Council.

5.2 Dilution

The consent holder shall not, unless approved by Council add or permit the addition of any potable, condensing, cooling water or stormwater to any trade waste stream in order to vary the level of any characteristics of the waste.

5.3 Food premises

Food premises are required under this Bylaw and the Building Act 2004 to provide a means of reducing the amounts of fats, oils and greases (FOGs) discharged to the sewer, most commonly by use of a grease trap. Any grease trap shall meet the standards set out in G13, Section 4 of the New Zealand Building Code and approved documents published by the Building Authority. Trade waste consent conditions may include frequency of grease trap maintenance where ineffective operation is evident.

5.4 Mass limits

A conditional trade waste consent may impose controls on a trade waste discharge by specifying mass limits for any characteristic.

Mass limits may be imposed for any characteristic. Any characteristic of a discharge with a mass limit imposed shall also have its maximum concentration ~~not~~ limited to the value scheduled unless approved otherwise.

When setting mass limit allocations for a particular characteristic Council shall consider:

- a. the operational requirements of and risk to the ~~sewerage system~~ wastewater system, and risks to occupational health and safety, public health, and the ultimate receiving environment;
- b. whether or not the levels proposed pose a threat to the planned or actual beneficial reuse of bio solids or sewage sludge;
- c. conditions in the ~~sewerage system~~ wastewater system near the trade waste point of discharge and elsewhere in the ~~sewerage system~~ wastewater system;
- d. the extent to which the available industrial capacity was used in the last financial period and is expected to be used in the forthcoming period;
- e. whether or not the applicant uses cleaner production techniques within a period satisfactory to Council;
- f. whether or not there is any net benefit to be gained by the increase of one characteristic concurrently with the decrease of another to justify any increased application for industrial capacity;
- g. any requirements of Council to reduce any contaminant discharge of the ~~sewerage system~~ wastewater system;
- h. how great a proportion the mass flow of a characteristic of the discharge shall be of the total mass flow of that characteristic in the ~~sewerage system~~ wastewater system;
- i. the total mass of the characteristic allowable in the ~~sewerage system~~ wastewater system, and the proportion (if any) to be reserved for future allocations; and
- j. whether or not there is an interaction with other characteristics, which increases or decreases the effect of either characteristic on the sewer reticulation, treatment process, or receiving water or land.

6. Sampling, analysis and monitoring

6.1 Flow metering

6.1.1 Flow metering ~~shall~~ may be required by Council:

- a. on discharges when there is not a reasonable relationship between a metered water supply to the premises, and the discharge of trade waste;
- b. when Council ~~shall~~ will not approve a method of flow estimation; or

c. when the discharge represents a significant proportion of the total flow/load received by Council.

6.1.2 The consent holder is responsible for the supply, installation, calibration, reading and maintenance of any meter required by Council for the measurement of the rate or quantity of discharge of trade waste. These devices are subject to the approval of Council, but shall remain the property of the consent holder.

6.1.3 Records of flow and/or volume shall be available for viewing at any time by Council, and shall be submitted to Council at prescribed intervals by the consent holder in a format approved by Council.

6.1.4 Meters shall be located in a position approved by Council, which provides the required degree of accuracy and shall be readily accessible for reading and maintenance. The meters shall be located in the correct position according to the manufacturer's installation instructions.

6.1.5 The consent holder shall arrange for in situ calibration of the flow metering equipment and instrumentation by a Person and method Approved by Council upon installation and at least once a year thereafter to ensure its performance. The meter accuracy shall be $\pm 10\%$ but with no greater a deviation from the previous meter calibration of $\pm 5\%$. A copy of independent certification of each calibration result shall be submitted to Council.

6.1.6 Should any meter installed for the specific purpose of measuring a trade waste discharge, after being calibrated, be found to have an error greater than that specified in Clause 6.1.5 of this Bylaw as a repeatable measurement, Council may make an adjustment to the fee calculation in accordance with the results shown by such tests back-dated for a period at the discretion of Council but not exceeding 12 months, and the consent holder shall pay or be credited a greater or lesser amount according to such adjustment.

6.2 Estimating discharge

6.2.1 Where no meter or similar apparatus is warranted, Council may require that a percentage of the water supplied to the premises (or other such basis as seems reasonable) be used for estimating the rate or quantity of flow for the purposes of charging. If this cannot be achieved then Council has the right to require installation of a Council Approved flow measurement at the consent holder's expense.

6.2.2 Should any meter be out of repair or cease to register, or be removed, Council shall estimate the discharge for the period since the previous reading of such meter, (based on the average of the previous 12 months) charged to the Person discharging and the Person discharging shall pay according to such estimate. Provided that when by reason of a large variation of discharge due to seasonal or other causes, the average of the previous 12 months would be an unreasonable estimate of the discharge, then Council may take into consideration other evidence for the purpose of arriving at a reasonable estimate, and the Person discharging shall pay according to such an estimate.

6.2.3 Where in the opinion of Council, a meter has been tampered with, Council (without prejudice to the other remedies available) may declare the reading void and estimate the discharge as provided above in Clauses 6.2.1 or 6.2.2.

6.3 Sampling and analysis

6.3.1 As determined by Council sampling, analysis and monitoring may be undertaken to determine if:

- a. a discharge complies with the provisions of this Bylaw;
- b. a discharge is to be classified as a permitted, controlled, conditional, or prohibited, under Clause 4.1.1 of this Bylaw;
- c. a discharge complies with the provisions of ~~Schedule 1A~~ [the Trade Waste Policy](#) as a permitted or

controlled ~~d~~ischarge and any consent to discharge; and

d. trade waste charges are applicable to that discharge.

6.3.2 The sampling, preservation, transportation and analysis of the sample shall be undertaken by a Council officer, or the Person discharging in accordance with accepted standard methods, or by a method specifically approved by Council. The Person discharging shall be responsible for all reasonable costs. Where a dispute arises as to the validity of the methods or procedures used for sampling or analysis, the dispute may be submitted to a mutually agreed independent arbitrator.

6.3.3 All Council officers, or any appointed Analyst may enter any premises believed to be discharging trade waste at any time in order to determine any characteristics of any actual or potential discharge by:

- a. taking readings and measurements;
- b. carrying out an inspection; and/or taking samples for testing.

of any solid, liquid or gaseous material or any combination or mixture of such materials being discharged.

Authorisation for entry to premises is given under the LGA and entry shall be in compliance with the Health and Safety policies of that particular site.

6.4 Monitoring

6.4.1 Monitoring for compliance

Council is entitled to monitor and audit any trade waste discharge for compliance. Whether for a Permitted, a Controlled or a Conditional trade waste consent discharge monitoring may be carried out as follows:

- a. Council or its authorised agent shall take the sample with appropriate preservation, and arrange for this sample to be analysed in an approved laboratory by agreed/approved analytical methods;
- b. the sampling procedure shall be appropriate to the trade waste and the analytical method to be used;
- c. Council shall audit the sampling and analysis carried out by a self-monitoring trade waste Person discharging. Analysis shall be performed by an approved laboratory. Inter-laboratory checks are to be part of this process;
- d. Council shall audit the sampling and analysis carried out by an Analyst. Analysis shall be performed by an Approved laboratory. Inter-laboratory checks are to be part of this process; and
- e. Council shall audit the trade waste consent conditions including any Management Plans.

At the discretion of Council all costs of monitoring shall be met by the consent holder either through direct payment to the laboratory or to Council in accordance with Council's charging policy.

6.4.2 Sampling methodology

Normally a single grab or composite sample is sufficient. If required, the grab or composite sample can be split equally into three as follows:

- a. one portion of the sample goes to the trade waste Person discharging for appropriate analysis and/or storage;
- b. a second portion of the sample shall be analysed at a laboratory approved by Council;
- c. a third portion of the sample is retained by Council for 20 Working Days, for additional analysis if required.

Due consideration shall be applied to any changes that could occur in retained trade waste samples

and provisions to mitigate against changes shall be adopted where practicable.

In all cases the samples shall be handled in an appropriate manner such that the characteristics being tested for are, as far as reasonably possible, preserved properly.

All samples shall be preserved, handled, transported and delivered to an Approved laboratory according to approved standards.

6.4.3 Tankered Waste

Tankered waste shall not be discharged into Council's ~~sewerage-system~~ wastewater system by any person discharging or consent holder not compliant with the ~~Ministry for the Environment's WasteMINZ Liquid and Hazardous Wastes Code of Practice~~ (or any subsequent Code of Practice that amends or replaces it).

Council may by resolution select a preferred waste tracking system different from the one specified in the WasteMINZ Liquid and Hazardous Wastes Code of Practice (or any subsequent Code of Practice that amends or replaces it).

Tankered waste may only be discharged by an operator holding a trade waste consent, and into Council's ~~sewerage-system~~ wastewater system at approved locations.

Council may accept tankered waste for discharge at an Approved location.

Tankered waste shall:

- a. be transported by a Registered Offensive Trade license holder licensed to discharge domestic septic tank or industrial wastes
- b. have material safety data sheets (MSDS) available to Council detailing the contents of a waste
- c. be pre-tested to determine their character if the contents of the waste are not known. Specialist advice on pre-treatment or acceptance may be required. The cost of all analyses and advice shall be borne by the Registered Offensive Trade license holder
- d. not be picked up and transported to the disposal site until appropriate arrangements and method for disposal have been determined by Council
- e. in order to prevent cross-contamination between tanker loads, the tanker shall be thoroughly washed prior to ~~collected~~ collecting a load for disposal into the ~~sewerage-system~~ wastewater system
- f. have 24 hours notice given for the disposal of wastes other than those sourced from domestic septic tanks.

Any person illegally disposing of, or causing to be disposed, tankered waste either by incorrect disclosure of contents (characteristics and/or amount) or dumping into Council's ~~sewerage-system~~ wastewater system at other than the prescribed location shall be in breach of the Bylaw.

6.4.4 Disinfected/super chlorinated water

Any water used during the repair and construction of water mains shall be dechlorinated prior to the discharge into the ~~sewerage-system~~ wastewater system. Application for a Temporary Discharge consent shall be made. Such water shall not be disposed of to stormwater or adjacent watercourses without appropriate approvals.

Explanatory Note: The WasteMINZ Liquid and Hazardous Code of Practice 2nd edition dated 2012 is available on www.wasteminz.org.nz

7. Bylaw administration

7.1 Review of decisions

If any Person is dissatisfied with any decision by a Council officer made under this Bylaw, that Person may, by notice delivered to the Chief Executive ~~Officer~~ of Council not later than 20 Working Days after the decision by a Council officer is served upon that Person, request the Chief Executive ~~Officer~~ to review any such decision and such a decision shall be final. Nothing in this clause shall affect any right of appeal under the LGA.

7.2 Accidents and non-compliance

The Person discharging shall inform Council immediately on discovery of any accident including spills or process mishaps, which may cause a breach of this Bylaw.

In the event of any accident occurring on premises for which there is a trade waste consent then Council may review the consent under Clause 4.9 of this Bylaw or may require the consent holder, within 20 working days of the date such requirement is notified to the consent holder in writing, to review the contingency management procedures and re-submit for approval the management plan with Council.

In the event of an accident occurring on the premises of a Permitted trade waste discharge, Council may require the Person discharging to apply for a Controlled or Conditional trade waste consent.

7.3 Charges and payments

7.3.1 Charges

Council may recover fees and charges in accordance with the LGA and in accordance with Council's Schedule of ~~Rates~~ Fees and Charges.

7.3.2 Invoicing

All charges determined in accordance with Clause 7.3.1 of this Bylaw shall be invoiced in accordance with Council's standard commercial practice. The invoice shall provide each Person discharging with a copy of the information and calculations used to determine the extent of any charges and fees due, in regard to a discharge.

7.3.3 Cease to discharge

The Person discharging is deemed to be continuing the discharge of trade waste and shall be liable for all charges, until notice of d~~D~~isconnection is given by the consent(s) holder.

7.3.4 Failure to pay

All fees and charges payable under this Bylaw shall be recoverable as a debt. If the Person discharging fails to pay any fees and charges under this Bylaw Council may cancel the right to discharge in accordance with Clause 4.10 of this Bylaw.

7.3.5 Recovery of costs

In all cases Council may recover costs associated with damage to Council ~~sewerage system~~ wastewater system and/or breach of this Bylaw in accordance with Sections 175 and 176 of the LGA-~~02~~.

7.3.6 Council officers

All Council officers, or other Persons authorised under S174 or S177 or paragraph 32 of Schedule 7 of the LGA shall possess and produce on request warrants of authority and evidence of identity.

Any Council officer may at any reasonable time enter any premises believed to be discharging trade waste~~s~~ to determine any characteristic of any discharge by:

- a. taking readings and measurements;
- b. taking samples of any solids, liquids or gaseous material or any combination or mixtures of such materials being discharged;

- c. observing accidental occurrences and clean up;
- d. carrying out any inspection and/or assessment of the premises.

The extent and level of delegation to Council officers shall be in accordance with Council's Register of Statutory Delegations and Warrants.

Authorisation for entry to premises is given under the LGA and entry shall be in compliance with the health and safety policies of that particular site.

7.4 Transfer or termination of rights and responsibilities

7.4.1 A trade waste consent to discharge shall be issued in the name of the consent holder. The consent holder shall not, unless written approval is obtained from Council:

- a. transfer to any other party the rights and responsibilities provided for under this Bylaw, and under the consent;
- b. allow a point of discharge to serve another premises, or the private drain to that point to extend by pipe or any other means to serve another premises; or
- c. in particular and not in limitation of the above, allow trade waste from any other party to be discharged at their point of discharge.

7.4.2 Renewal of a trade waste consent on change of ownership of premises shall not be unreasonably withheld if the characteristics of the trade waste remain unchanged.

7.4.3 The Person discharging shall give 2 working days notice in writing to Council of their requirement for disconnection of the discharge connection and/or termination of the discharge consent, except where demolition or relaying of the discharge drain is required, in which case the notice shall be within 7 Working Days. The Person discharging shall notify Council of the new address details for final invoicing.

On permanent disconnection and/or termination the Person discharging may at Council's discretion be liable for trade waste charges to the end of the current charging period.

7.4.4 When a Person discharging ceases to occupy premises from which trade wastes are discharged into the Sewerage System any consent granted shall terminate but without relieving the Person discharging from any obligations existing at the date of termination.

7.5 Service of documents

7.5.1 Delivery or post

Any notice or other document required to be given, served or delivered under this Bylaw to ~~the~~ a Person discharging may (in addition to any other method permitted by law) be given or served or delivered by being:

- a. sent by pre-paid ordinary mail, courier, or facsimile, or email to the consent holders at the consent holders last known place of residence or business;
- b. sent by pre-paid ordinary mail, courier, or facsimile, or email to the Person discharging at any address for service specified in the consent to discharge;
- c. where the Person discharging is a body corporate, sent by pre-paid ordinary mail, courier, or facsimile, or email to, or left at its registered office; or
- d. personally served on the Person discharging.

7.5.2 Service

If any notice or other document is:

- a. sent by post it shall be deemed received on the first day (excluding weekends and public

holidays) after posting:

- b. sent by facsimile or email and the sender's facsimile or email machine produces a transmission report indicating that the facsimile or email was sent to the addressee, the report shall be prima facie evidence that the facsimile or email was received by the addressee in a legible form at the time indicated on that report;
- c. sent by courier and the courier obtains a receipt or records delivery on a courier run sheet, the receipt or record of delivery on a courier run sheet shall be prima facie evidence that the communication was received by the addressee at the time indicated on the receipt or courier run sheet, or left at a conspicuous place at the trade premises or is handed to a designated Person(s) nominated by the consent holder then that shall be deemed to be service on, or delivery to the consent holder at that time.

7.5.3 Signature

Any notice or document to be given, served or delivered shall be signed by a Council officer.

7.6 Offences

Every Person discharging, or Owner or Occupier of Trade premises who:

- a. fails to comply with or acts in contravention of any provision of this Bylaw;
- b. breaches the conditions of any consent to discharge granted pursuant to this Bylaw;
- c. fails to comply with a notice served under this Bylaw; or
- d. commits an offence under S239 of the LGA, and is liable to prosecution or the issue of an Infringement notice under S245 of the LGA.

In all cases Council may recover costs associated with damage to Council ~~sewerage system~~ wastewater system and/or breach of this Bylaw in accordance with S175 and S176 of the LGA.

7.7 Transitional provisions

7.7.1 Applications

Any application for a consent to discharge trade waste made under Whangarei District Council ~~2012-1991~~ trade waste Bylaw for which a consent has not yet been granted at the time of this new Bylaw coming into force, shall be deemed to be an application made under Clause 4.2 of this Bylaw.

7.7.2 Existing trade waste consents

Every existing trade waste consent granted under any previous Bylaw shall continue in force as if it were consent under this Bylaw until it reaches its expiry date provided that no consent shall run beyond 5 years from the date of this Bylaw coming into effect.

7.8 Trade waste policies

1. Council may make policies about the discharge of trade waste into the public ~~sewerage system~~ wastewater system.
2. Any policies made under subclause 1) –
 - a. may specify limits on the flow rate and volume of trade waste discharges from trade premises;
 - b. may specify limits on the substances and other permitted characteristics of trade waste discharges from any trade premise;
 - c. must be made in accordance with clause 7.9;
 - d. may be amended, replaced or revoked in accordance with clause 7.9 with all necessary modifications; and

- e. will be publically available.

7.9 Procedure for making trade waste policies

1. Council must before making a policy under clause 7.8 –
 - a. be satisfied that the policy is appropriate to give effect to the purpose of the Bylaw;
 - b. have regard to the effectiveness, efficiency and reasonableness of the policy; and
 - c. have regard to the general decision-making requirements under Subpart 1 of Part 6 of the Local Government Act 2002.

Explanatory note:

Subpart 1 of Part 6 of the Local Government Act 2002 refers to the need to define the problem, identify and assess reasonably practicable options and to consider the views of persons affected by the decision to the extent council in its discretion considers proportionate to the significance of the matters affected by the decision.

~~Schedule 1A – Permitted discharge characteristics~~

~~1A.1 Physical characteristics~~

~~1A.1.1~~

~~The nature and levels of the Characteristics of any trade waste discharged to the sewerage system shall comply at all times with the following requirements, except where the nature and levels of such characteristics are varied by Council as part of an approval to discharge trade waste.~~

~~1A.1.2~~

~~Council shall take into consideration the combined effects of trade waste discharges and may make any modifications to the following acceptable characteristics for individual discharges Council believes are appropriate.~~

~~1A.2 Physical characteristics~~

~~1A.2.1 Flow~~

- ~~a. the 24 hour flow volume shall be less than 2 m³~~
- ~~b. the maximum instantaneous flow rate shall be less than 2.0L/s.~~

~~1A.2.2 Temperature~~

~~The temperature shall not exceed 40°C.~~

~~1A.2.3 Solids~~

- ~~a. non-faecal gross solids shall have a maximum dimension which shall not exceed 15mm~~
- ~~b. the suspended solids content of any trade wastes shall have a maximum concentration, which shall not exceed 2000g/m³. For Significant Industry this may be reduced to 600g/m³~~
- ~~c. the settleable solids content of any trade waste shall not exceed 50mL/L~~
- ~~d. the total dissolved solids concentration in any trade waste shall be subject to the Approval of Council having regard to the volume of waste to be discharged, and the suitability of the drainage system and the treatment plant to accept such waste~~
- ~~e. fibrous, woven, or sheet film or any other materials which may adversely interfere with the free flow of wastewater in the drainage system or treatment plant shall not be present.~~

~~1A.2.4 Oil and grease~~

- ~~a. there shall be no free or floating layer~~
- ~~b. a trade waste with mineral oil, fat or grease unavoidably emulsified, which in the opinion of Council is not biodegradable shall not exceed 200g/m³ as petroleum ether extractable matter when the emulsion is stable at a temperature of 15°C and when the emulsion is in contact with and diluted by a factor of 10 by raw sewage, throughout the range of pH 6.0 to pH 10.0~~
- ~~c. a trade waste with oil, fat or grease unavoidably emulsified, which in the opinion of Council is biodegradable shall not exceed 500g/m³ when the emulsion is stable at a temperature of 15°C and when the emulsion is in contact with and diluted by a factor of 10 by raw sewage throughout the range of pH 4.5 to pH 10.0~~
- ~~d. emulsified oil, fat or grease shall not exceed 100g/m³ as petroleum ether extractable matter when the emulsion is unstable at a temperature of 15°C and when the emulsion is in contact with and diluted by a factor of 10 by raw sewage throughout the range of pH 4.5 to pH 10.0.~~

~~1A.2.5 Solvents and other organic liquids~~

~~There shall be no free layer (whether floating or settled) of solvents or organic liquids.~~

~~1A.2.6 Emulsions of paint, latex, adhesive, rubber, plastic or similar material~~

- ~~a. where such emulsions are not treatable these may be discharged into the sewer subject to the total suspended solids not exceeding 1000g/m³ or the concentration agreed with Council~~
- ~~b. Council may determine that the need exists for pre-treatment of such emulsions if they consider that the trade waste containing the emulsions unreasonably interferes with the operation of Council treatment plant~~
- ~~c. such emulsions of both treatable and non-treatable types, shall be discharged to the sewer only at a concentration and pH range that prevents coagulation and blockage at the mixing zone in the sewer.~~

~~1A.2.7 Radioactivity~~

~~Radioactivity levels shall not exceed National Radiation Laboratory Guidelines.~~

~~1A.2.8 Colour~~

~~No waste shall have colour or colouring substance that causes the discharge to be coloured to the extent that it impairs wastewater treatment processes or compromises the treated wastewater discharge consent.~~

~~1A.3 Chemical characteristics~~

~~1A.3.1 pH Value~~

~~The pH shall be between 6.0 and 10.0 at all times.~~

~~1A.3.6 Organic strength~~

~~The Biochemical Oxygen Demand (BOD₅) of any waste shall not exceed 600g/m³.~~

~~The Chemical Oxygen Demand (COD) of any waste shall not exceed 2000g/m³.~~

~~1A.3.3 Maximum concentrations~~

~~The maximum concentrations permissible for the chemical characteristics of an acceptable discharge are set out in Table 1A.3.1, Table 1A.3.2 and Table 1A.3.3.~~

Table 1A.3.1 – General chemical characteristics CHARACTERISTIC	Maximum- concentration (g/m³)
MBAS (Methylene blue active substances)	500
Ammonia (measured as N)	
- free ammonia	50
- ammonium salts	200
Kjeldahl Nitrogen	150
Total phosphorus (as P)	50
Sulphate (measured as SO ₄)	500
Sulphite (measured as SO ₂)	15
Sulphide – as H ₂ S on acidification	5
Chlorine (measured as Cl ₂)	
- free chlorine	3
- hypochlorite	30
Dissolved aluminium	100
Dissolved iron	100
Boron (as B)	25
Bromine (as Br ₂)	5
Fluoride (as F)	30
Cyanide – weak acid dissociable (as CN)	5

Table 1A.3.2 – Heavy metals METAL	Maximum- concentration (g/m³)
Antimony	10
Arsenic	5
Barium	10
Beryllium	0.005
Cadmium	0.5
Chromium	5
Cobalt	10
Copper	10
Lead	10
Manganese	20
Mercury	0.05
Molybdenum	10
Nickel	10
Selenium	10
Silver	2
Thallium	10
Tin	20
Zinc	10

Table 1A.3.3 – Organic compounds and pesticides	Maximum concentration (g/m³)
COMPOUND	
Formaldehyde (HCHO)	50
Phenolic compounds (as phenols) excluding chlorinated phenols	50
Chlorinated phenols	0.02
Petroleum hydrocarbons	30
Halogenated aliphatic compounds	1
Monocyclic aromatic hydrocarbons	5
Polycyclic (or polynuclear) aromatic hydrocarbons (PAHs)	0.05
Halogenated aromatic hydrocarbons (HAHs)	0.002
Polychlorinated biphenyls (PCBs)	0.002 each
Polybrominated biphenyls (PBBs)	0.002 each
Pesticides (general) includes: insecticides, herbicides, fungicides and excludes organophosphate, organochlorine and any pesticides not registered for use in New Zealand)	0.2 in total
Organophosphate pesticides	0.1

Schedule 1AB – Prohibited discharge characteristics

This schedule defines prohibited trade wastes.

Prohibited characteristics

OB.1.1

Any discharge has prohibited characteristics if it has any solid liquid or gaseous matters or any combination or mixture of such matters which by themselves or in combination with another material shall immediately or in the course of time:

- interfere with the free flow of sewage in the ~~sewerage system~~ wastewater system;
- damage any part of the ~~sewerage system~~ wastewater system;
- in any way, directly or indirectly, cause the quality of the treated sewage or residual Bio-solids and other solids from any sewage treatment plant in the catchment to which the waste was discharged to breach the conditions of a consent issues under the Resource Management Act, or water right, permit or other governing legislation;
- prejudice the occupational health and safety risks faced by sewerage workers;
- after treatment be toxic to fish, animals or plant life in the receiving waters;
- cause malodorous gases or substances to form which are of a nature or sufficient quantity to create a public nuisance; or
- have a colour or colouring substance that causes the discharge from any sewage treatment plant to receiving waters to be coloured.

OB.1.2

A discharge has prohibited Characteristics if it has any characteristic which exceeds the concentration or other limits specified in Schedule 1A unless specifically approved for that particular consent.

OB.1.3

A discharge has prohibited characteristics if it has any amount of:

- a. harmful solids, including dry solid wastes and materials which combine with water to form a cemented mass;
- b. liquid, solid or gas which could be flammable or explosive in the wastes, including oil, fuel, solvents (except as allowed for in Schedule 1A), calcium carbide, and any other material which is capable of giving rise to fire or explosion hazards either spontaneously or in combination with sewage;
- c. asbestos;
- d. tin (as tributyl and other organotin compounds);
- e. any organochlorine pesticides;
- f. genetic wastes, as follows: all wastes that contain or are likely to contain material from a genetically modified organism that is not in accordance with an approval under the Hazardous Substances and New Organisms Act. The material concerned may be from premises where the genetic modification of any organism is conducted or where a genetically modified organism is processed;
- g. any health care waste prohibited for discharge to a ~~sewerage system~~ wastewater system by NZS 4304 or any pathological or histological wastes; or
- h. radioactivity levels in excess of the National Radiation Laboratory Guidelines.

Schedule 1BC – Trade waste charges

Fees and charges are set by Council resolution. This may be done by the annual planning process, fee setting or similar transparent public process in accordance with the LGA.

In the following table Whangarei District Council states what categories they shall charge, or may charge under the tenure of this Bylaw.

Administrative charges		
Category		Description
A1	Connection Fee	payable on application for connection to discharge.
A2	Compliance Monitoring	the cost of sampling and analysis for trade waste discharges.
A3	Disconnection Fee	payable on an application for disconnection of a ceased trade waste discharge.
A4	Trade waste Application Fee	payable on an application for trade waste discharge.
A5	Trade waste consent Renewal Fee	payable on an application for renewal of an existing trade waste consent.
A6	Re-inspection Fee	payable for each re-inspection visit by Council where a notice served under this Bylaw has not been complied with by the trade waste Person discharging.
A7	Special rates for loan charges	additional rates for servicing loans raised for the purposes of constructing or improving the sewerage system <u>wastewater system</u> .
A8	Temporary Discharge Fee	payable prior to receipt of Temporary Discharge.

A9	Annual trade waste Charges	<p>an annual management fee for a trade waste discharge to cover Council's costs associated with:</p> <p>administration</p> <p>general compliance monitoring</p> <p>general inspection of trade waste premises</p> <p>use of the sewerage system <u>wastewater system</u></p> <p>this charge may vary depending on the trade waste sector and category of the discharge.</p>
A10	Rebates for Trade premises within the District	<p>reduction in fees is provided for in Section 150(2). Section 150(4) of the LGA which states that the fees prescribed by Council shall not provide for Council to recover more than the reasonable cost incurred by Council for the matter which the fee is charged.</p> <p>In no event shall the resultant charge be less than Council's sewerage charge for the equivalent period.</p>
A11	New or Additional Trade Premises	pay the annual fees and a pro rata proportion of the various trade waste charges relative to flows and loads.
B1	Volume	payment based on the volume discharged $\$/m^3$.
B2	Flow rate	payment based on the flow rate discharged $\$/L/s$.
B3	Suspended Solids	payment based on the mass of suspended solids $\$/kg$.
B4	Organic loading	payment based on the Biochemical Oxygen Demand or Chemical Oxygen Demand $\$/kg$.
B5	Nitrogen	payment based on the defined form(s) of nitrogen $\$/kg$.
B6	Phosphorus	payment based on the defined form(s) of phosphorus $\$/kg$.
B7	Metals	payment based on the defined form(s) of metal(s) $\$/kg$.
B8	Transmissivity	a charge based on the inhibiting nature of the trade waste to UV light used by Whangarei District Council's disinfection process.
B9	Screenable Solids	payment based on the mass of screenable solids $\$/kg$.
B10	Toxicity charge	payment based on the defined form(s) of the toxic substance(s) $\$/kg$ and/or $\$/m^3$.
B11	Incentive Rebate	a rebate for discharging materials beneficial to Council's sewerage <u>system</u> $\$/kg$ and/or $\$/m^3$.
B12	Depreciation	operating cost related to capital and normally spread across the volume and mass charges.
B13	Capital	apportioned upfront or term commitment capital cost of specific infrastructure required to accommodate a conditional consent.
Tanker waste charges		
C1	Tanker Wastes	set as a fee(s) per tanker load, or as a fee(s) per cubic metre, dependent on trade waste category.





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Trade Waste Policy



April 2021

The purpose of the Trade Waste Policy is to support the Trade Waste Bylaw 2021 by specifying various trade waste discharge limits and requirements issued under clause 7.9 1) of the Bylaw, and include:

- limits to the flow rate and volume for trade waste discharges in clause 1
- limits to the characteristics and substances in any trade waste discharge in clause 2.

Other parts of the Trade Waste Policy assist with its administration by:

- stating the name of this policy, when it comes into force and where it applies in clauses 3, 4 and 5

1. Trade waste discharge flow rate and volume control

1. The control in 2) relates to clause 4.6b of the Bylaw. This control is made under clause 7.8 of the Trade Waste Bylaw.
2. The following table specifies limits to the flow rate and volume of any trade waste discharge from a trade premise into the public wastewater system.

PARAMETER	LIMIT	REASON
Flow rate	2 litres per second	Risk of overloading the hydraulic capacity of the public wastewater network
Volume	2 cubic metres per day	Risk of overloading the hydraulic capacity of the public wastewater network

2. Trade waste characteristics and substances control

1. This control is made under clause 7.8 of the Trade Waste Bylaw.
2. The following table specifies limits for any characteristics and substances of any trade waste discharge from a trade waste premise into the public wastewater system.

Trade waste consents may contain different limits to those specified in this control and may include mass limits.

Physical characteristics

Temperature

The temperature shall not exceed 40°C.

Solids

- a. non-faecal gross solids shall have a maximum dimension which shall not exceed 15mm
- b. the suspended solids content of any trade wastes shall have a maximum concentration, which shall not exceed 2000g/m³. For Significant Industry this may be reduced to 600g/m³
- c. the settleable solids content of any trade waste shall not exceed 50mL/L
- d. the total dissolved solids concentration in any trade waste shall be subject to the Approval of Council having regard to the volume of waste to be discharged, and the suitability of the drainage system and the treatment plant to accept such waste
- e. fibrous, woven, or sheet film or any other materials which may adversely interfere with the free flow of wastewater in the drainage system or treatment plant shall not be present.

Oil and grease

- a. there shall be no free or floating layer
- b. a trade waste with mineral oil, fat or grease unavoidably emulsified, which in the opinion of

Council is not biodegradable shall not exceed 200g/m³ as petroleum ether extractable matter when the emulsion is stable at a temperature of 15°C and when the emulsion is in contact with and diluted by a factor of 10 by raw sewage, throughout the range of pH 6.0 to pH 10.0

- c. a trade waste with oil, fat or grease unavoidably emulsified, which in the opinion of Council is biodegradable shall not exceed 500g/m³ when the emulsion is stable at a temperature of 15°C and when the emulsion is in contact with and diluted by a factor of 10 by raw sewage throughout the range of pH 4.5 to pH 10.0
- d. emulsified oil, fat or grease shall not exceed 100g/m³ as petroleum ether extractable matter when the emulsion is unstable at a temperature of 15°C and when the emulsion is in contact with and diluted by a factor of 10 by raw sewage throughout the range of pH 4.5 to pH 10.0.

Solvents and other organic liquids

There shall be no free layer (whether floating or settled) of solvents or organic liquids.

Emulsions of paint, latex, adhesive, rubber, plastic or similar material

- a. where such emulsions are not treatable these may be discharged into the sewer subject to the total suspended solids not exceeding 1000g/m³ or the concentration agreed with Council
- b. Council may determine that the need exists for pre-treatment of such emulsions if they consider that the trade waste containing the emulsions unreasonably interferes with the operation of Council treatment plant
- c. such emulsions of both treatable and non-treatable types, shall be discharged to the sewer only at a concentration and pH range that prevents coagulation and blockage at the mixing zone in the sewer.

Radioactivity

Radioactivity levels shall not exceed National Radiation Laboratory Guidelines.

Colour

No waste shall have colour or colouring substance that causes the discharge to be coloured to the extent that it impairs wastewater treatment processes or compromises the treated wastewater discharge consent.

Chemical characteristics

pH Value

The pH shall be between 6.0 and 10.0 at all times.

Organic strength

The Biochemical Oxygen Demand (BOD₅) of any waste shall not exceed 600g/m³.

The Chemical Oxygen Demand (COD) of any waste shall not exceed 2000g/m³.

Maximum concentrations

The maximum concentrations permissible for the chemical characteristics of an acceptable discharge are set out in Table 1, Table 2, Table 3 and Table 4.

Table 1 – General chemical characteristics

CHARACTERISTIC	MAXIMUM CONCENTRATION (g/m ³)
MBAS (Methylene blue active substances)	500
Ammonia (measured as N)	
- free ammonia	50
- ammonium salts	200
Kjeldahl Nitrogen	150
Total phosphorus (as P)	50
Sulphate (measured as SO ₄)	500
Sulphite (measured as SO ₂)	15
Sulphide – as H ₂ S on acidification	5
Chlorine (measured as Cl ₂)	
- free chlorine	3
- hypochlorite	30
Dissolved aluminium	100
Dissolved iron	100
Boron (as B)	25
Bromine (as Br ₂)	5
Fluoride (as F)	30
Cyanide – weak acid dissociable (as CN)	5

Table 2 – Heavy metals

METAL	MAXIMUM CONCENTRATION (g/m ³)
Antimony	10
Arsenic	5
Barium	10
Beryllium	0.005
Cadmium	0.5
Chromium	5
Cobalt	10
Copper	10
Lead	10
Manganese	20
Mercury	0.05
Molybdenum	10
Nickel	10
Selenium	10
Silver	2
Thallium	10
Tin	20
Zinc	10

Table 3 – Organic compounds and pesticides

COMPOUND	MAXIMUM CONCENTRATION (g/m ³)
Formaldehyde (HCHO)	50
Phenolic compounds (as phenols) excluding chlorinated phenols	50
Chlorinated phenols	0.02
Petroleum hydrocarbons	30
Halogenated aliphatic compounds	1
Monocyclic aromatic hydrocarbons	5
Polycyclic (or polynuclear) aromatic hydrocarbons (PAHs)	0.05
Halogenated aromatic hydrocarbons (HAHs)	0.002
Polychlorinated biphenyls (PCBs)	0.002 each
Polybrominated biphenyls (PBBs)	0.002 each
Pesticides (general) includes: insecticides, herbicides, fungicides and excludes organophosphate, organochlorine and any pesticides not registered for use in New Zealand)	0.2 in total
Organophosphate pesticides	0.1

Table 4 - Substances

COMPOUND	SUBSTANCE MASS LIMIT (KG/DAY)	REASON
All substances	Not exceeding 5 per cent of the total mass for that substance received at a wastewater treatment plant	Risk of overloading the treatment capacity of the wastewater treatment plant

3. Title

This policy is the Trade Waste Policy 2021.

4. Commencement

This policy comes into force on xxxxx

5. Application

This policy applies to Whangarei District.



Private Bag 9023, Whangārei 0148, New Zealand
Forum North Building, Rust Avenue, Whangārei
Ruakākā Service Centre, Takutai Place, Ruakākā
P +64 9 430 4200 | 0800 932 463
mailroom@wdc.govt.nz | www.wdc.govt.nz
[Facebook.com/WhangareiDC](https://www.facebook.com/WhangareiDC)

6.6 Whangarei Art Museum Trust – Variation of lease

Meeting: Whangarei District Council
Date of meeting: 22 July 2021
Reporting officer: Sue Hodge (Parks & Recreation Manager)

1 Purpose

To consider a minor variation to the Deed of Lease between Whangarei Art Museum Trust and Whangarei District Council for the Hundertwasser Arts Centre and Wairau Māori Art Gallery building footprint at the Town Basin.

2 Recommendations

That Council;

1. Approves a variation to the Deed of Lease between Whangarei Art Museum Trust and Whangarei District Council dated 20 June 2018 whereby the “leased area” is extended to include the landscaped area as shown on the plan attached to the agenda report; and
2. Confirms the tenant has changed its name to Heritage Art Precinct Trust and this should be reflected in the variation to the Deed of Lease and;
3. Authorises the Chief Executive to execute the Variation of Deed of Lease

3 Background

Whangarei Art Museum Trust (WAMT), a Council Controlled Organisation, is a charitable trust that runs an art museum, and was established to maintain, collect, display, conserve, and promote art within Northland. It is currently developing the Hundertwasser Arts Centre and Wairau Māori Art Gallery (Hundertwasser building).

Council has leased the Hundertwasser building footprint only to WAMT. The Deed of Lease (Attachment 1) was signed in June 2018. The term of the lease is 34 years and 11 months and expires 11 May 2052. The leased area is 1318m² more or less and shown as attached plan “A” in the Deed of Lease.

The reasoning behind the leased area being only the building footprint was to minimise WAMT’s ongoing maintenance costs with Council being responsible for the ongoing maintenance of the landscaped and open space areas surrounding the building.

Recently the Hundertwasser Foundation in Vienna have requested consideration be given to a larger area to be included in the Deed of Lease specifically the area of landscaping designed and built as part of the Hundertwasser building. Their reasoning is to protect this area from future development or design change as they consider the landscaped area a part of the architecture of the building. This enlarged area includes areas of irregular paving, a fountain at the entrance to the building and some plantings.

WAMT have requested Council consider this variation of their Deed of. The original leased area and the proposed lease area are shown on Attachment Two.

WAMT have recently changed their name to Heritage Art Precinct Trust. Any proposed variation to the Deed of Lease can also include the change of name. For the purposes of this report they are still referred to as WAMT as this is the name of the tenant on the existing Deed of Lease.

4 Discussion

The Deed of Lease includes the following obligations.

Clause 8.1(a) –(d) requires the tenant (WAMT) to maintain the interior and exterior of the building.

Clause 8.1 (f) requires WAMT to:

Keep any grounds yards and surfaces in a clean and tidy condition and maintain any garden or lawn areas in a tidy and cared for condition save that the Landlord (Council) will keep and maintain the open grassed areas which will lead up to the overlay of the roof of the building “the public area”.

Te Kakano – The Seed is already leased to and maintained by WAMT and will remain leased to and maintained by WAMT.

If the leased area is extended WAMT will be responsible for the maintenance of a larger area around the building. Council will continue to be responsible for maintaining the roof plantings and irrigation system.

To ensure that there is a good amenity outcome in this high-quality public space there will need to be a maintenance agreement to ensure the maintenance responsibilities are clear to each party.

4.1 Financial/budget considerations

WAMT currently receives an annual operating grant \$399,000 (2020-21). WAMT’s operating grant from the District Amenities Fund (DAF) will be considered at the 15 July 2021 meeting of the Community Development Committee. At the time of writing this report it is assumed that funding will be a continuation of current funding levels.

Following previous decisions by Council to manage CCO funding outside of the community funding portfolio, and in line with the change of scope of the Community Funding Policy, this will be WAMT's last application to the DAF and their future funding will be managed separately, in line with the Statement of Intent. Council approved additional WAMT funding as part of the 2021-31 Long Term Plan deliberations being \$200,000 in year 1, \$100,000 in year 2, and \$50,000 in year 3.

WAMT also receives a rent concession for the space occupied in the HUB building. This results in rental revenue being recognised (based on a registered valuation), with a corresponding rent concession expense to the same value. (2021: \$171,000) There is no rent concession for the Hundertwasser building as the Deed of Lease states the rent as \$1.

Parks operational funding has been provided for in the Long-Term Plan for the roof maintenance. However, when budgets were set the details of the final landscaping and irrigation system were unknown. Actual costs will not be clear until the final landscape plans are priced by maintenance contractors. The on-going maintenance will be included in the Parks & Gardens maintenance contract.

4.2 Policy and planning implications

There are no policy or planning implications. Although the landscaping is a requirement of the Hundertwasser project resource consent there are no conditions that stipulate who must maintain the area in the future.

4.3 Options

Option One: Vary the Deed of Lease to include a larger area for WAM to maintain and manage. This option will satisfy WAM and the Hundertwasser Foundation. This option provides clarity of ownership with all Hundertwasser project assets being within the leased area. This option could include a more detailed explanation of the maintenance obligations of each party now there is more certainty about the details of the landscaped area and roof maintenance requirements.

Option Two: Decline to vary the Deed of Lease and write to WAM confirming Council will continue to maintain the roof and landscape areas in accordance with the approved WAM maintenance plan and no up-grades or changes will occur within the landscaped area without WAM approval. The landscape areas will vest in Parks assets and depreciation and replacement provided for.

The preferred option is Option One.

4.4 Risks

If choosing Option Two there is a risk that there could be a breakdown in communication and Council could plan an up-grade or change in the landscaped area without informing WAM leading to relationship damage between WAM, Hundertwasser Foundation and Council. This risk can be eliminated by a variation of the Deed of Lease to include the larger area.

Both options increase the risk of gaps in maintenance obligations of the Hundertwasser building and landscape areas. This risk can be eliminated by approved maintenance plans being developed and agreed to by each party.

5 Significance and engagement

The decisions or matters of this Agenda do not trigger the significance criteria outlined in Council's Significance and Engagement Policy, and the public will be informed via Agenda publication on the website.

6 Attachments

1. Deed of Lease – Whangarei Art Museum Trust and Whangarei District Council
2. Plan showing current and proposed lease areas

DEED OF LEASE

Sixth Edition 2012 (5)

GENERAL address of the premises:**Part of the Whangarei Town Basin situated at Dent Street, Whangarei****DATE:** 20 June 2018**LANDLORD:****WHANGAREI DISTRICT COUNCIL****TENANT:****WHANGAREI ART MUSEUM TRUST****GUARANTOR:**

THE LANDLORD leases to the Tenant and the Tenant takes on lease the premises and the car parks (if any) described in the First Schedule together with the right to use the common areas of the property for the term from the commencement date and at the annual rent (subject to review if applicable) as set out in the First Schedule.

THE LANDLORD AND TENANT covenant as set out in the First, Second and Third Schedules.

~~**THE GUARANTOR** covenants with the Landlord as set out in the Fourth Schedule.~~

SIGNED by the Landlord

in the presence of:



Witness Signature

ALAN ABDOON

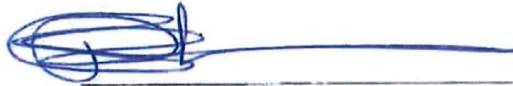
Witness Name

GM CORPORATE / CO

Witness Occupation

1285 WINDGARE TRAIL RD, WINDGARE, VIC 3089

Witness Address



Signature of Landlord

ROB FORLONG

Print Full Name

Director / Trustee / Authorised Signatory / Attorney*

Delete the options that do not apply

If no option is deleted, the signatory is signing in their personal capacity

Signature of Landlord

Print Full Name

Director / Trustee / Authorised Signatory / Attorney*

Delete the options that do not apply

If no option is deleted, the signatory is signing in their personal capacity

SIGNED by the Tenant

in the presence of:

Witness Signature

Witness Name

Witness Occupation

Witness Address

Signature of Tenant

GRANT R. FABER

Trustee

Print Full Name

Director / Trustee / Authorised Signatory / Attorney*

Delete the options that do not apply

If no option is deleted, the signatory is signing in their personal capacity

Signature of Tenant

Thomas Biss - Trustee

Print Full Name

Director / Trustee / Authorised Signatory / Attorney*

Delete the options that do not apply

If no option is deleted, the signatory is signing in their personal capacity

**Note:** If signing by a company or as an Attorney - please refer to the notes on page 3

SIGNED by the Guarantor

in the presence of:

Signature of Guarantor

Print Full Name

Director / Trustee / Authorised Signatory / Attorney**Delete the options that do not apply**If no option is deleted, the signatory is signing in their personal capacity*

Witness Signature

Witness Name

Witness Occupation

Witness Address

Signature of Guarantor

Print Full Name

Director / Trustee / Authorised Signatory / Attorney**Delete the options that do not apply**If no option is deleted, the signatory is signing in their personal capacity*

* If this agreement is signed under:

- (i) a Power of Attorney – please attach a Certificate of non-revocation (ADLS form code: 4098WFP); or
- (ii) an Enduring Power of Attorney – please attach a Certificate of non-revocation and non-suspension of the enduring power of attorney (ADLS form code: 4997WFP).

Also insert the following wording for the Attorney's Signature above:

Signed by [full name of the donor] by his or her Attorney [attorney's signature].

Note: Signing by a company – Companies must sign this document in accordance with section 180 of the Companies Act 1993, to ensure it is binding as a deed. In general, this means:

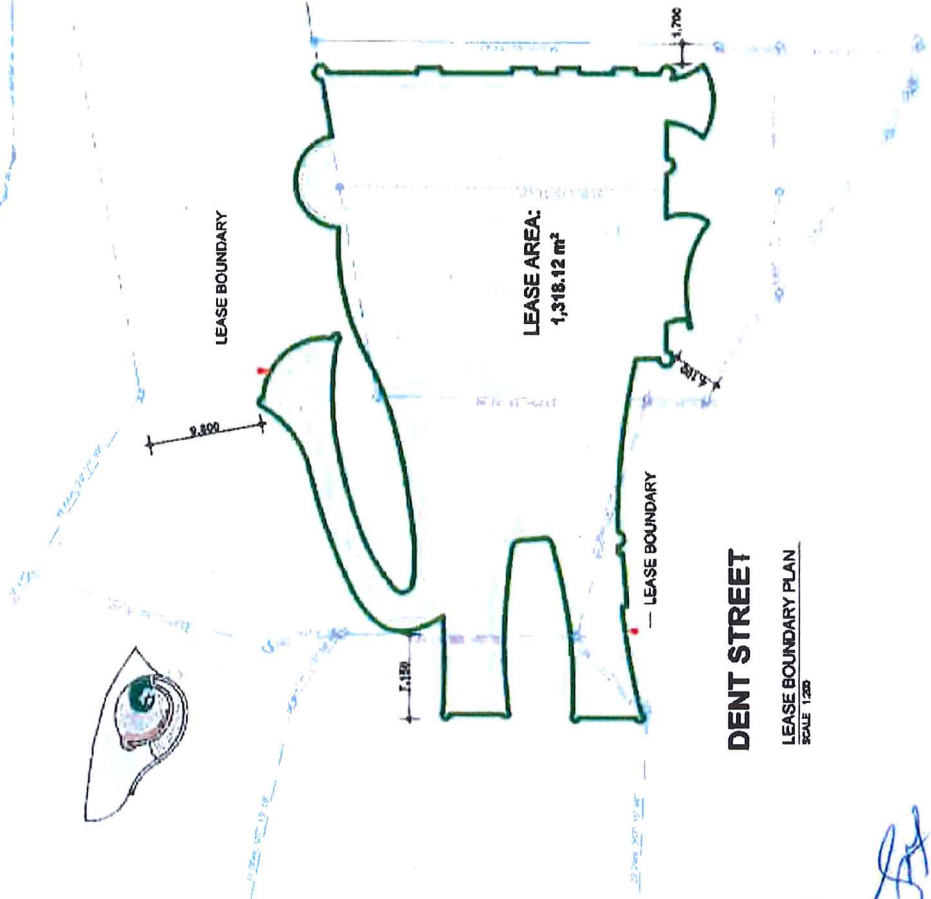
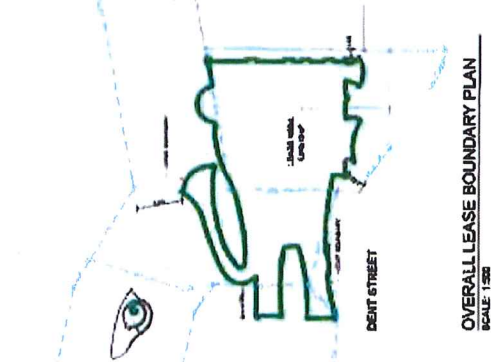
- (a) if there are two or more directors of the company, two directors must sign and no witnessing is necessary;
- (b) if there is only one director of the company, that director signs and the signature must be witnessed.

Other methods of signing may be permitted by the company's constitution or if an attorney has been appointed.

FIRST SCHEDULE

1. **PREMISES:** Area comprising 1318 square metres more or less being the area shown coloured grey and delineated in green marked "LEASE AREA" on the attached plan A such being part of the land comprised within Lot 1 DP 17654 (part CFR NA101C/977), part DP 20091 (CFR NA838/232), Lot 1 DP 17655 (CFR NA105B/441), part Section 3 SO Plan 6896 (CIR 549448) and part Section 2 SO Plan 435768 (part CFR 549448) provided always that for the period of the construction of the Hundertwasser Art Centre with Wairau Maori Art Gallery the Tenant shall be permitted to occupy a larger area being that shown delineated in green on attached plan B.
2. **CAR PARKS:**
3. **TERM:** 34 years 11 months
4. **COMMENCEMENT DATE:** 11 June 2018
5. **RIGHTS OF RENEWAL:** Nil
6. **RENEWAL DATES:** Nil
7. **FINAL EXPIRY DATE:** 11 May 2052
8. **ANNUAL RENT:**
- | | | |
|--------------|----------------|-----------------|
| Premises | \$ 1.00 | plus GST |
| Car Parks | \$ - | plus GST |
| TOTAL | \$ 1.00 | plus GST |
- (Subject to review if applicable)
9. **MONTHLY RENT:** \$ Nil plus GST
10. **RENT PAYMENT DATES:** The 20th day of April in each year of the term of each month commencing on the 20th day of April 2018
11. **RENT REVIEW DATES:**
- (Specify review type and insert dates for initial term, renewal dates and renewal terms. Unless dates are specified there will be no reviews. Where there is a conflict in dates, the market rent review date will apply.)
1. Market rent review dates: N.A.
 2. CPI rent review dates: N.A.
12. **DEFAULT INTEREST RATE:** Nil % per annum
(subclause 5.1)
13. **BUSINESS USE:** Art Centre and Museum as permitted by, and to be built in terms of, the Resource (subclause 16.1) Consent and the Building Consents.

A



NOTES
1. THE CONTRACTOR SHALL COMPLY WITH ALL RELEVANT REGULATIONS AND STANDARDS.
2. THE CONTRACTOR SHALL OBTAIN ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AUTHORITY.
3. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AND PUBLIC ROADS AT ALL TIMES.
4. THE CONTRACTOR SHALL MAINTAIN A RECORD OF ALL WORK DONE AND MATERIALS USED.



DATE: 10/10/2019
DRAWN BY: [Signature]
CHECKED BY: [Signature]
APPROVED BY: [Signature]

VICTORIA AND ALBERT MUSEUM TRUST
HUNTERMAN ART CENTRE

NO.	DATE	DESCRIPTION
1	10/10/2019	LEASE BOUNDARY PLAN
2	10/10/2019	LEASE BOUNDARY PLAN
3	10/10/2019	LEASE BOUNDARY PLAN
4	10/10/2019	LEASE BOUNDARY PLAN
5	10/10/2019	LEASE BOUNDARY PLAN
6	10/10/2019	LEASE BOUNDARY PLAN
7	10/10/2019	LEASE BOUNDARY PLAN
8	10/10/2019	LEASE BOUNDARY PLAN
9	10/10/2019	LEASE BOUNDARY PLAN
10	10/10/2019	LEASE BOUNDARY PLAN

3

[Signature]

[Signature]



14. **TENANT'S
LANDLORD'S INSURANCE:**
(subclause 23.1)
(Delete or amend extent of cover as appropriate)

(Delete either (a) or (b): if neither option is deleted, then option (a) applies)

(Delete option (i) and complete option (ii) if required. If option (i) is not deleted and option (ii) is completed then option (ii) applies)

- (1) Cover for the building against damage and destruction by fire, flood, explosion, lightning, storm, earthquake, and volcanic activity; on the following basis:

- (a) Full replacement and reinstatement (including loss damage or destruction of windows and other glass);

OR

- ~~(b) Indemnity to full insurable value (including loss damage or destruction of windows and other glass);~~

- (2) Cover for the following additional risks:

- (a) (i) 12 months

OR

- ~~(ii) _____ months~~

indemnity in respect of consequential loss of rent and outgoings.

- (b) Loss damage or destruction of any of the Landlord's fixtures fittings and chattels.

- (c) Public liability

15. **NO ACCESS PERIOD:**
(subclause 27.6)

(Delete option (1) and complete option (2) if required. If option (1) is not deleted and option (2) is completed then option (2) applies)

- (1) 9 months

OR

- ~~(2) _____~~

16. **PROPORTION OF OUTGOINGS:**
(subclause 3.1)

100 % which at commencement date is estimated to be \$ _____ Plus GST per annum

17. **LIMITED LIABILITY TRUSTEE:** N.A.
(subclause 45.2)

18. **OUTGOINGS:**
(clause 3)

- (1) Rates or levies payable to any local or territorial authority.
- (2) Charges for water, gas, electricity, telecommunications and other utilities or services, including line charges.
- (3) Rubbish collection and recycling charges.
- (4) New Zealand Fire Service charges and the maintenance charges in respect of all fire detection and fire fighting equipment.
- (5) Any insurance excess ~~(but not exceeding \$2,000)~~ in respect of a claim and insurance premiums and related valuation fees (subject to subclause 23.2).
- (6) Service contract charges for air conditioning, lifts, other building services and security services.
- (7) Cleaning, maintenance and repair charges including charges for repainting, decorative repairs and the maintenance and repair of building services to the extent that such charges do not comprise part of the cost of a service maintenance contract, ~~but excluding~~ ^{and including} charges for structural repairs to the building (minor repairs to the roof of the building shall ~~not~~ be a structural repair), repairs due to defects in design or construction, inherent defects in the building and renewal or replacement of building services.
- (8) The provisioning of toilets and other shared facilities.
- (9) The cost of maintenance of lawns, gardens and planted areas including plant hire and replacement, and the cost of repair of fences.
- ~~(10) Yard and car parking area maintenance and repair charges but excluding charges for repaving or resurfacing.~~
- ~~(11) Body Corporate charges for any insurance premiums under any insurance policy effected by the Body Corporate and related valuation fees and reasonable management administration expenses.~~
- ~~(12) Management expenses (subject to subclause 3.7).~~
- (13) The costs incurred and payable by the Landlord in supplying to the territorial authority a building warrant of fitness and obtaining reports as required by sections 108 and 110 of the Building Act 2004 but excluding the costs of upgrading or other work to make the building comply with the Building Act 2004.

SECOND SCHEDULE

TENANT'S PAYMENTS

Rent The Tenant shall pay the rent for the Term by one payment in advance of \$40.16 and the Landlord acknowledges receipt of the payment of such sum.

- 1.1 ~~The Tenant shall pay the annual rent by equal monthly payments in advance (or as varied pursuant to any rent review) on the rent payment dates. The first monthly payment (together with rent calculated on a daily basis for any period from the commencement date of the term to the first rent payment date) shall be payable on the first rent payment date. All rent shall be paid without any deductions or set-off by direct payment to the Landlord or as the Landlord may direct.~~

Market Rent Review

2.1 ~~The annual rent payable as from each market rent review date (except for a market rent review date that is a renewal date) shall be determined as follows:~~

- ~~(a) Either party may not earlier than 3 months prior to a market rent review date and not later than the next rent review date (regardless of whether the next rent review date is a market or GPI rent review date) give written notice to the other party specifying the annual rent proposed as the current market rent as at the relevant market rent review date;~~
- ~~(b) If the party receiving the notice ("the Recipient") gives written notice to the party giving the notice ("the Initiator") within 20 working days after service of the Initiator's notice disputing the annual rent proposed and specifying the annual rent proposed by the Recipient as the current market rent, then the new rent shall be determined in accordance with subclause 2.2;~~
- ~~(c) If the Recipient fails to give such notice (time being of the essence) the Recipient shall be deemed to have accepted the annual rent specified in the Initiator's notice and the extension of time for commencing arbitration proceedings contained in the Arbitration Act 1996 shall not apply;~~
- ~~(d) Notwithstanding any other provision of this clause, the annual rent payable as from the relevant market rent review date shall not be less than the annual rent payable as at the commencement date of the then current lease term;~~
- ~~(e) The annual rent agreed, determined or imposed pursuant to subclause 2.1 shall be the annual rent payable as from the relevant market rent review date, or the date of service of the Initiator's notice if such notice is served later than 3 months after the relevant market rent review date but subject to subclause 2.3 and 2.4;~~
- ~~(f) The market rent review at the option of either party may be recorded in a deed.~~

Rent Determinations

2.2 ~~Immediately following service of the Recipient's notice on the Initiator, the parties shall endeavour to agree upon the current market rent, but if agreement is not reached within 10 working days then the new rent may be determined either:~~

- ~~(a) By one party giving written notice to the other requiring the new rent to be determined by arbitration; or~~
- ~~(b) If the parties so agree by registered valuers acting as experts and not as arbitrators as follows:~~
 - ~~(1) Each party shall appoint a valuer and give written notice of the appointment to the other party within 20 working days of the parties agreeing to so determine the new rent;~~
 - ~~(2) If the party receiving a notice fails to appoint a valuer within the 20 working day period then the valuer appointed by the other party shall determine the new rent and such determination shall be binding on both parties;~~
 - ~~(3) The valuers appointed before commencing their determination shall appoint a third expert who need not be a registered valuer. If the parties cannot agree on the third expert, the appointment shall be made on the application of either party by the president or vice president for the time being of The New Zealand Institute of Valuers;~~
 - ~~(4) The valuers appointed by the parties shall determine the current market rent of the premises but if they fail to agree then the rent shall be determined by the third expert;~~
 - ~~(5) Each party shall be given the opportunity to make written or oral representations subject to such reasonable time and other limits as the valuers or the third expert may prescribe and they shall have regard to any of the representations but not be bound by them;~~
 - ~~(6) The parties shall jointly and severally indemnify the third expert for their costs. As between the parties, they will share the costs equally. A party may pay the other party's share of the costs and recover the payment on demand from the other party;~~
 - ~~(7) If the parties agree, they may release the third expert from liability for negligence in acting as third expert in accordance with this subclause 2.2.~~

~~When the new rent has been determined the person or persons determining it shall give written notice of it to the parties. The notice shall provide as to how the costs of the determination shall be borne and it shall be binding on the parties.~~

Interim Market Rent

2.3 ~~Pending determination of the new rent, the Tenant shall from the relevant market rent review date, or the date of service of the Initiator's notice if the notice is served later than 3 months after the relevant market rent review date, until the determination of the new rent pay an interim rent as follows:~~

- ~~(a) if both parties supply a registered valuer's certificate substantiating the new rents proposed, the interim rent payable shall be half way between the new rents proposed by the parties; or~~
- ~~(b) if only one party supplies a registered valuer's certificate, the interim rent payable shall be the rent substantiated by the certificate; or~~
- ~~(c) if no registered valuer's certificates are supplied, the interim rent payable shall be the rent payable immediately prior to the relevant market rent review date;~~

~~but in no circumstances shall the interim rent be less than the rent payable as at the commencement date of the then current lease term.~~

~~The interim rent shall be payable with effect from the relevant market rent review date, or the date of service of the Initiator's notice if the notice is served later than 3 months after the relevant market rent review date and, subject to subclause 2.4, shall not be subject to adjustment.~~

2.4 ~~Upon determination of the new rent, any overpayment shall be applied in payment of the next month's rent and any amount then remaining shall immediately be refunded to the Tenant. Any shortfall in payment shall immediately be payable by the Tenant.~~

GPI Rent Review

2.5 The annual rent payable from each GPI rent review date shall be determined as follows:

(a) The Landlord shall adjust the annual rent on the basis of increases (and not decreases) in the GPI by giving notice to the Tenant of the increase (if any) using the formula:

$$A = B \times (G + D)$$

Where:

A — the GPI reviewed rent from the relevant GPI rent review date

B — the annual rent payable immediately before the relevant GPI rent review date

G — GPI for the quarter year ending immediately before the relevant GPI rent review date

D — GPI for the quarter year ending immediately before the last rent review date or if there is no previous rent review date the commencement date of the then current term of the lease (and in the case where A is the GPI reviewed rent for a renewal date then the last rent review date of the immediate preceding lease term or if there is no rent review date the commencement date of the preceding term)

where (G+D) shall not be less than 4

(b) If the GPI is discontinued and not replaced or if there is a material change to the basis of calculation of the GPI, or a resetting of the GPI, on appropriate index which reflects the change in the cost of living in New Zealand as agreed by the parties and failing agreement to be determined by an expert appointed by the president or vice president of the New Zealand Law Society will be used.

(c) If the relevant GPI is not published at the relevant GPI rent review date, as soon as the GPI is published an appropriate adjustment will be made to the rent (if necessary) with effect from the relevant GPI rent review date.

(d) Notwithstanding any other provision of subclause 2.5, the annual rent payable as from the relevant GPI rent review date shall not be less than the annual rent payable immediately preceding the GPI rent review date (and in the case where the relevant GPI rent review date is a renewal date, the annual rent payable at the expiry of the preceding term).

2.6 The new rent determined pursuant to subclause 2.5 shall be payable from the relevant GPI rent review date once it is determined by the Landlord giving notice under that subclause. Pending determination of the new rent, the Tenant will pay the rent that applies prior to the GPI rent review date. On determination of the new rent, the Tenant will immediately pay any shortfall to the Landlord.

Outgoings

- 3.1 The Tenant shall pay the outgoings properly and reasonably incurred in respect of the property which are specified in the First Schedule. Where any outgoing is not separately assessed or levied in respect of the premises then the Tenant shall pay such proportion of it as is specified in the First Schedule or if no proportion is specified then such fair proportion as shall be agreed or failing agreement determined by arbitration.
- 3.2 The Landlord shall vary the proportion of any outgoing payable to ensure that the Tenant pays a fair proportion of the outgoing.
- 3.3 If any outgoing is rendered necessary by another tenant of the property or that tenant's employees, contractors or invitees causing damage to the property or by another tenant failing to comply with that tenant's leasing obligations, then that outgoing shall not be payable by the Tenant.
- 3.4 The outgoings shall be apportioned between the Landlord and the Tenant in respect of periods current at the commencement and termination of the term.
- 3.5 The outgoings shall be payable on demand or if required by the Landlord by monthly instalments on each rent payment date of a reasonable amount as the Landlord shall determine calculated on an annual basis. Where any outgoing has not been taken into account in determining the monthly instalments it shall be payable on demand.
- 3.6 After the 31st March in each year of the term or other date in each year as the Landlord may specify, and after the end of the term, the Landlord shall supply to the Tenant reasonable details of the actual outgoings for the year or period then ended. Any over payment shall be credited or refunded to the Tenant and any deficiency shall be payable to the Landlord on demand.
- 3.7 Any profit derived by the Landlord and if a company by its shareholders either directly or indirectly from the management of the property shall not comprise part of the management expenses payable as an outgoing.

Goods and Services Tax

- 4.1 The Tenant shall pay to the Landlord or as the Landlord shall direct the GST payable by the Landlord in respect of the rental and other payments payable by the Tenant under this lease. The GST in respect of the rental shall be payable on each occasion when any rental payment falls due for payment and in respect of any other payment shall be payable upon demand.
- 4.2 If the Tenant shall make default in payment of the rental or other moneys payable under this lease and the Landlord becomes liable to pay Default GST then the Tenant shall on demand pay to the Landlord the Default GST in addition to interest payable on the unpaid GST under subclause 5.1.

Interest on Unpaid Money

- 5.1 If the Tenant defaults in payment of the rent or other moneys payable under this lease for 10 working days then the Tenant shall pay on demand interest at the default interest rate on the moneys unpaid from the due date for payment to the date of payment.
- 5.2 Unless a contrary intention appears on the front page or elsewhere in this lease the default interest rate is equivalent to the interest rate charged by the Inland Revenue Department on unpaid tax under the Tax Administration Act 1994 during the period for which the default interest is payable, plus 5 per cent per annum.

Costs

- The Tenant
- 6.1 Each party will pay their own costs of the negotiation and preparation of this lease and any deed recording a rent review or renewal. The Tenant shall pay the Landlord's reasonable costs incurred in considering any request by the Tenant for the Landlord's consent to any matter contemplated by this lease, and the Landlord's legal costs (as between lawyer and client) of and incidental to the enforcement of the Landlord's rights remedies and powers under this lease.

LANDLORD'S PAYMENTS**Outgoings**

- 7.1 Subject to the Tenant's compliance with the provisions of clause 3 the Landlord shall pay all outgoings in respect of the property not payable by the Tenant direct. The Landlord shall be under no obligation to minimise any liability by paying any outgoing or tax prior to receiving payment from the Tenant.

MAINTENANCE AND CARE OF PREMISES

Tenant's Obligations

8.1 The Tenant shall be responsible to:

- (a) **Maintain the premises and the building**
In a proper and workmanlike manner and to the reasonable requirements of the Landlord keep and maintain the interior and exterior of the building in the same clean order repair and condition as such will be in at the conclusion of the reconstruction of the building on the land and in terms of the building consents and will at the end or earlier determination of the term quietly yield up the same in the like clean order repair and condition save that the tenant shall not be liable for fair wear and tear arising from reasonable usage.
- (b) **Breakages and minor replacements**
Repair or replace glass breakages with glass of the same or better weight and quality, repair breakage or damage to all doors windows light fittings and power points of the premises and replace light bulbs, tubes and power points that wear out with items of the same or better quality and specification .
- (c) **Painting**
Paint and decorate those parts of the interior and exterior of the building when they reasonably require repainting and redecoration to a specification as approved by the Landlord such approval not to be unreasonably withheld.
- (d) **Floor coverings**
Keep all floor coverings in the Building clean and replace all floor coverings worn or damaged other than by fair wear and tear with floor coverings of the same or better quality, specification and appearance when reasonably required by the Landlord.
- (e) **Damage or loss**
Make good any damage to the property or loss caused by improper careless or abnormal use by the Tenant or those for whom the Tenant is responsible, to the Landlord's reasonable requirements.
- (f) **Care of Grounds**
Keep any grounds yards and surfaced areas in a clean and tidy condition and maintain any garden or lawn areas in a tidy and cared for condition save that the Landlord will keep and maintain the open grassed areas which will lead up to and overlay the roof of the building ("the public area").
- (g) **Water and drainage**
Keep and maintain the storm or waste water drainage system including downpipes and guttering clear and unobstructed.
- (h) **Other works**
Carry out those works maintenance and repairs to the building and the property as the Landlord may require.

TM *JK*

[Signature]

- 8.2 In addition to the requirements of clause 8.1(a) the Tenant shall be liable for the maintenance or repair of all or any building services servicing the building.
- 8.3 Further to all other provisions of this lease the Tenant shall be liable to repair any inherent defect in the building constructed thereon and to pay all outgoings incurred by the Landlord in remedying any inherent defect.
- 8.4 If the Landlord shall give the Tenant written notice of any failure on the part of the Tenant to comply with any of the requirements of subclauses 8.1 through 8.3 the Tenant shall with all reasonable speed so comply.
- 8.5 Should the Tenant require access through the public area to the structure of the building for maintenance/repair purposes it will be permitted to remove, to the extent necessary, the soil/grassed area and vegetation leading up to and overlaying the roof of the building but shall, upon the completion of such maintenance/repair, reinstate the public area to the same condition such as in prior to such maintenance/repair work being undertaken.

Landlord's Maintenance

- 11.1 Save for the obligation to keep and maintain the open grassed areas which will lead up to and overlay the roof of the premises the Landlord has no maintenance obligation with the Tenant being obliged to keep and maintain the building and all building services in good order and repair and weatherproof such including the
- (a) want of repair or defect in respect of any building service or in the building itself; and/or
 - (b) any repair or maintenance which is reasonably necessary for the Tenant's use and enjoyment of the building.
- 11.2 The Tenant shall keep and maintain such service maintenance contracts for lifts, air-conditioning and any other building services servicing the building as it requires with the Tenant being liable for any replacement services where replacement is required.
- 11.3 The Landlord shall not be liable to reimburse the Tenant for the cost of any repairs, maintenance or service contract charges other than repairs or maintenance arising out of the failure of the landlord to meet its obligations in terms of clause 8.1(f) hereof.

MAINTENANCE AND CARE OF PREMISES**Tenant's Obligations** See attached**8.1 The Tenant shall be responsible for:****(a) Maintain the premises**

In a proper and workmanlike manner and to the reasonable requirements of the Landlord keep and maintain the interior of the premises in the same clean order repair and condition as they were in at the commencement date of this lease (or where the lease is renewed, the commencement date of the initial term of this lease) and will at the end or earlier determination of the term quietly yield up the same in the like clean order repair and condition. The premises condition report (if completed) shall be evidence of the condition of the premises at the commencement date of this lease. In each case the Tenant shall not be liable for fair wear and tear arising from reasonable use.

(b) Breakages and minor replacements

Repair or replace glass breakages with glass of the same or better weight and quality; repair breakage or damage to off doors windows light fittings and power points of the premises and replace light bulbs, tubes and power points that wear out with items of the same or better quality and specification.

(c) Painting

Paint and decorate those parts of the interior of the premises which have previously been painted and decorated as at the commencement date of this lease (or where the lease is renewed the commencement date of the initial term of the lease) when they reasonably require repainting and redecoration to a specification as approved by the Landlord such approval not to be unreasonably withheld.

(d) Floor coverings

Keep all floor coverings in the premises clean and replace all floor coverings worn or damaged other than by fair wear and tear with floor coverings of the same or better quality, specification and appearance when reasonably required by the Landlord.

(e) Damage or Loss

Make good any damage to the property or loss caused by improper careless or abnormal use by the Tenant or those for whom the Tenant is responsible, to the Landlord's reasonable requirements.

8.2 Where the Tenant is leasing all of the property, the Tenant shall:**(a) Care of grounds**

Keep any grounds yards and surfaced areas in a clean and tidy condition and maintain any garden or lawn areas in a tidy and cared for condition.

(b) Water and drainage

Keep and maintain the storm or waste water drainage system including downpipes and guttering clear and unobstructed.

(c) Other works

Carry out those works maintenance and repairs to the property as the Landlord may require in respect of which outgoings are payable by the Tenant.

8.3 Notwithstanding subclause 8.1(a) the Tenant shall not be liable for the maintenance or repair of any building services but this subclause shall not release the Tenant from any obligation to pay for the cost of any service maintenance contract or charges in respect of the maintenance or repair of the building services if it is an outgoing specified in the First Schedule but only to the extent specified in the First Schedule.**8.4 Notwithstanding any other provision of this lease, the Tenant shall not be liable to repair any inherent defect in the premises nor to pay any outgoings incurred by the Landlord in remedying any inherent defect.****8.5 If the Landlord shall give the Tenant written notice of any failure on the part of the Tenant to comply with any of the requirements of subclauses 8.1 or 8.2 the Tenant shall with all reasonable speed so comply.****Toilets****9.1 The toilets sinks and drains shall be used for their designed purposes only and no substance or matter shall be deposited in them which could damage or block them.****Rubbish Removal****10.1 The Tenant shall regularly cause all of the Tenant's rubbish and recycling to be removed from the premises and will keep the Tenant's rubbish bins or containers in a tidy condition. The Tenant will also at the Tenant's own expense cause to be removed all trade waste boxes and other goods or rubbish not removable in the ordinary course by the local authority.****Landlord's Maintenance** See attached**11.1 The Landlord shall keep and maintain the building, all building services and the car parks in good order and repair and weatherproof but the Landlord shall not be liable for any:****(a) Repair or maintenance which the Tenant is responsible to undertake.****(b) Want of repair or defect in respect of building services, so long as the Landlord is maintaining a service maintenance contract covering the work to be done, or where the building services have not been supplied by the Landlord;****(c) Repair or maintenance which is not reasonably necessary for the Tenant's use and enjoyment of the premises and the car parks;****(d) Loss suffered by the Tenant arising from any want of repair or defect unless the Landlord shall have received notice in writing of that from the Tenant and has not within a reasonable time after that taken appropriate steps to remedy the same.****11.2 The Landlord shall keep and maintain service maintenance contracts for lifts, air conditioning and at the Landlord's option any other building services supplied by the Landlord. Whenever building services cannot be maintained in good order and repair through regular maintenance, the Landlord will if reasonably required replace the services with services of a similar type and quality.****11.3 The Tenant shall be liable to reimburse the Landlord for the cost of any such repair, maintenance or service contract pursuant to subclauses 11.1 and 11.2 if it is an outgoing specified in the First Schedule but only to the extent specified in the First Schedule.****Notification of Defects****12.1 The Tenant shall give to the Landlord prompt written notice of any accident to or defect in the premises of which the Tenant may be aware and in particular in relation to any pipes or fittings used in connection with the water electrical gas or drainage services.**

Landlord's Right of Inspection

- 13.1 The Landlord and the Landlord's employees contractors and invitees may at all reasonable times and after having given prior written notice to the Tenant (except in the case of emergencies) enter upon the premises to view their condition.

Landlord may Repair

- 14.1 If default shall be made by the Tenant in the due and punctual compliance with any repair notice given by the Landlord pursuant to this lease, or if any repairs for which the Tenant is responsible require to be undertaken as a matter of urgency then without prejudice to the Landlord's other rights and remedies expressed or implied the Landlord may by the Landlord's employees and contractors with all necessary equipment and material at all reasonable times and on reasonable notice (except in the case of emergencies) enter the premises to execute the works. Any moneys expended by the Landlord in executing the works shall be payable by the Tenant to the Landlord upon demand together with interest on the moneys expended at the default interest rate from the date of expenditure to the date of payment.

Access for Works

- 15.1 The Tenant shall permit the Landlord and the Landlord's employees and contractors at all reasonable times and on reasonable written notice (except in the case of emergencies) to enter the premises for a reasonable period to inspect and carry out works to the premises or adjacent premises and to install inspect repair renew or replace any services where they are not the responsibility of the Tenant or are required to comply with the requirements of any statutes, regulations, by-law or requirement of any competent authority. All repairs inspections and works shall be carried out with the least possible inconvenience to the Tenant subject to subclauses 15.3 and 15.4.
- ~~15.2 If the Tenant's business use of the premises is materially disrupted because of the Landlord's works provided for in subclause 15.1, then during the period the works are being carried out a fair proportion of the rent and outgoings shall cease to be payable but without prejudice to the Tenant's rights if the disruption is due to a breach by the Landlord of the Landlord's obligation, under subclause 15.1, to cause the least possible inconvenience to the Tenant.~~
- 15.3 If in the Landlord's reasonable opinion, the Landlord requires the Tenant to vacate the whole or part of the premises to enable the works referred to in subclause 15.1 to be carried out, the Landlord may give the Tenant reasonable written notice requiring the Tenant to vacate the whole or part of the premises and specifying a reasonable period for which the Landlord requires possession. On the expiry of the notice the Landlord may take possession of the premises or the part specified in the notice. A fair proportion of the rent and outgoings shall cease to be payable during the period the Tenant vacates the premises as required by the Landlord. The parties shall consult to reach agreement as to what part of the premises, if any, the Landlord may take possession taking into consideration the commercial nature of the Tenant's operation. Any disagreement shall be referred to the dispute resolution process in clause 43 of this Lease.
- 15.4 The Landlord shall act in good faith and have regard to the nature, extent and urgency of the works when exercising the Landlord's right of access or possession in accordance with subclauses 15.1 and 15.3.

USE OF PREMISES**Business Use**

- 16.1 The Tenant shall not without the prior written consent of the Landlord use or permit the whole or any part of the premises to be used for any use other than the business use. The Landlord's consent shall not be unreasonably or arbitrarily withheld or delayed in respect of any proposed use which is:
- ~~(a) not in substantial competition with the business of any other occupant of the property which might be affected by the use; and~~
 - ~~(b) reasonably suitable for the premises; and~~
 - ~~(c) compliant with the requirements of the Resource Management Act 1991 or any other statutory provisions relating to resource management.~~
- ~~If any change in use renders any increased or extra premium payable in respect of any policy or policies of insurance on the premises the Landlord as a condition of granting consent may require the Tenant to pay the increased or extra premium.~~
- ~~16.2 If any change in use requires compliance with sections 144 and 145 of the Building Act 2004 the Landlord, as a condition of granting consent, may require the Tenant to comply with sections 144 and 145 of the Act and to pay all compliance costs.~~
- ~~16.3 If the premises are a retail shop the Tenant shall keep the premises open for business during usual trading hours and fully stocked with appropriate merchandise for the efficient conduct of the Tenant's business.~~

Lease of Premises and Car Parks Only

- 17.1 The tenancy shall relate only to the premises ~~and the car parks (if any)~~ and the Landlord shall at all times be entitled to use occupy and deal with the remainder of the property without reference to the Tenant and the Tenant shall have no rights in relation to it other than the rights of use under this lease.

Neglect of Other Tenant

- 18.1 The Landlord shall not be responsible to the Tenant for any act or default or neglect of any other tenant of the property.

Signage

- 19.1 The Tenant shall not affix paint or exhibit or permit to be affixed painted or exhibited any name sign name-plate signboard or advertisement of any description on or to the exterior of the building without the prior approval in writing of the Landlord but approval shall not be unreasonably or arbitrarily withheld or delayed in respect of signage describing the Tenant's business. If approved the signage shall be secured in a substantial and proper manner so as not to cause any damage to the building or any person and the Tenant shall at the end or sooner determination of the term remove the signage and make good any damage occasioned in connection with the signage.

Additions, Alterations, Reinstatement and Chattels Removal

- 20.1 The Tenant shall neither make nor allow to be made any alterations or additions to any part of the premises or alter the external appearance of the building without first producing to the Landlord on every occasion plans and specifications and obtaining the written consent of the Landlord (not to be unreasonably or arbitrarily withheld or delayed) for that purpose. ~~If the Landlord authorises any alterations or additions which are made before the commencement date or during the term of this lease the Tenant will at the Tenant's own expense if required by the Landlord no later than the end or earlier termination of the term reinstate the premises. Ownership of the alterations or additions that are not removed by the end or earlier termination of the lease may at the Landlord's election pass to the Landlord without compensation payable to the Tenant. If the Tenant fails to reinstate then any costs incurred by the Landlord in reinstating the premises whether in whole or in part, within 6 months of the end or earlier termination of the term shall be recoverable from the Tenant, provided always that the alterations and/or additions that are in terms of the building consents are approved without further consent of the Landlord.~~
- 20.2 The Tenant, when undertaking any 'building work' to the premises (as that term is defined in the Building Act 2004), shall comply with all statutory requirements including the obtaining of building consents and code compliance certificates pursuant to that Act and shall provide copies of the building consents and code compliance certificates to the Landlord.

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- 20.3 The Tenant may at any time before and will if required by the Landlord no later than the end or earlier termination of the term remove all the Tenant's chattels. ~~In addition to the Tenant's obligations to maintain the premises pursuant to subclause 20.4 the Tenant will make good at the Tenant's own expense all resulting damage and if the chattels are not removed by the end or earlier termination of the term ownership of the chattels may at the Landlord's election pass to the Landlord or the Landlord may remove them from the premises and forward them to a refuse collection centre. Where subclause 27.5 applies, the time by which the Tenant must remove the chattels and to make good all resulting damage will be extended to 5 working days after access to the premises is available.~~
- 20.4 The cost of making good resulting damage and the cost of removal of the Tenant's chattels shall be recoverable from the Tenant and the Landlord shall not be liable to pay any compensation nor be liable for any loss suffered by the Tenant.

Compliance with Statutes and Regulations

- 21.1 The Tenant shall comply with the provisions of all statutes, ordinances, regulations and by-laws relating to the use of the premises by the Tenant or other occupant and will also comply with the provisions of all licences, requisitions and notices issued by any competent authority in respect of the premises or their use by the Tenant or other occupant ~~provided that and to that end:~~ ^{and}
- (a) The Tenant shall ~~not be required to~~ make any structural repairs alterations or additions ~~to the~~ ^{and} replace or install any plant or equipment ~~except~~ where required by reason of the particular nature of the business carried on by the Tenant or other occupant of the premises or the number or sex of persons employed on the premises.
 - (b) The Tenant shall ~~not be liable to discharge the Landlord's obligations as owner under the Building Act 2004 unless any particular obligation is the responsibility of the Tenant as an occupier of the premises.~~
 - (c) The Tenant will promptly provide the Landlord with a copy of all requisitions and notices received from a competent authority under this subclause.
- 21.2 If the Landlord is obliged by any legislation or requirement of any competent authority to expend moneys during the term of this lease or any renewed term on any improvement addition or alteration to the property ~~which is not the Tenant's responsibility under subclause 21.1 and the expenditure would be an unreasonable amount then the Landlord may determine this lease. Any dispute as to whether or not the amount to be expended by the Landlord is unreasonable shall be determined by arbitration or such shall be met by the Tenant.~~
- 21.3 The Landlord warrants that allowing the premises to be open to members of the public and allowing the use of the premises by members of the public at the commencement date will not be a breach of section 363 of the Building Act 2004. This clause does not apply to any "building work" (as defined in the Building Act 2004) relating to the fit-out of the premises by the Tenant.
- 21.4 The Tenant, when undertaking any building work to the premises, shall comply with all statutory requirements including the obtaining of building consents and code compliance certificates and shall not allow the premises to be open to members of the public or allow use of the premises by members of the public if that would be in breach of section 363 of the Building Act 2004.
- 21.5 During the term and any renewal, the Landlord shall not give consent to or carry out any building work in any part of the Landlord's property which may cause the Tenant to be in breach of section 363 of the Building Act 2004 by allowing the premises to be open to members of the public and allowing the use of the premises by members of the public.

No Noxious Use

- 22.1 The Tenant shall not:
- (a) Bring upon or store within the premises nor allow to be brought upon or stored within the premises any machinery goods or things of an offensive noxious illegal or dangerous nature, or of a weight size or shape as is likely to cause damage to the building or any surfaced area.
 - (b) Contaminate the property and shall undertake all works necessary to remove any contamination of the property other than contamination not caused by the Tenant or which took place prior to the commencement date of the lease term. Contamination means any change to the physical chemical or biological condition of the property by a "contaminant" as that word is defined in the Resource Management Act 1991.
 - (c) Use the premises or allow them to be used for any noxious illegal or offensive trade or business.
 - (d) Allow any act or thing to be done which may be or grow to be a nuisance disturbance or annoyance to the Landlord, other tenants of the property, or any other person, and generally the Tenant shall conduct the Tenant's business upon the premises in a clean quiet and orderly manner free from damage nuisance disturbance or annoyance to any such persons but the carrying on by the Tenant in a reasonable manner of the business use or any use to which the Landlord has consented shall be deemed not to be a breach of this clause.

INSURANCE

Tenant Landlord shall insure

- 23.1 The ~~Landlord~~ ^{Tenant} shall at all times during the term keep and maintain insurance of the type shown and for the risks specified in the First Schedule. ~~If insurance cover required under this subclause becomes unavailable during the term of this lease or any renewal other than because of the Landlord's act or omission, the Landlord will not be in breach while cover is unavailable, provided the Landlord uses all reasonable endeavours on an ongoing basis to obtain cover. The Landlord will advise the Tenant in writing whenever cover becomes unavailable and provide reasons as to the unavailability. The Landlord will also provide the Tenant with reasonable information relating to the cover when requested by the Tenant such to initially be provided through contractor's insurance during construction and thereafter through a policy taken out by the Tenant.~~
- ~~23.2 The parties acknowledge and agree pursuant to section 214 of the Property Law Act 2007 that to the extent of any excess payable regarding any insurance policy held by the Landlord, the excess will represent an amount for which the Landlord has not insured, or has not fully insured the premises or the property against destruction or damage arising from the events that the section applies to. If the Landlord makes any claim against its insurance for any destruction or damage because of any act or omission of the Tenant, the Tenant will pay the Landlord the amount of the excess not exceeding the sum specified in the list of outgoings in the First Schedule.~~

Tenant not to void insurance

- 24.1 The Tenant shall not carry on or allow upon the premises any trade or occupation or allow to be done any act or thing which:
- (a) Shall make void or voidable any policy of insurance on the property.
 - (b) May render any increased or extra premium payable for any policy of Insurance except where in circumstances in which any increased premium is payable the Tenant shall have first obtained the consent of the insurer of the premises and the Landlord and made payment to the insurer of the amount of any such increased or extra premium as may be payable but the carrying on by the Tenant in a reasonable manner of the business use or of any use to which the Landlord has consented shall be deemed not to be a breach of this clause.
- 24.2 In any case where in breach of subclause 24.1 the Tenant has rendered any insurance void or voidable and the Landlord has suffered loss or damage by that the Tenant shall at once compensate the Landlord in full for such loss or damage.

When Tenant to have benefit of Landlord's insurance

- 25.1 ~~Where the property is destroyed or damaged by fire, flood, explosion, lightning, storm, earthquake, volcanic activity or any risk against which the Landlord is (or has covenanted with the Tenant to be) insured the Landlord will not require the Tenant to meet the cost of making good the destruction or damage to the property and will indemnify the Tenant against such cost where the Tenant is obligated to pay for making good such damage or destruction. The Landlord does not have to indemnify the Tenant and the Tenant will not be excused from liability under this subclause if and to the extent that:~~
- ~~(a) The destruction or damage was intentionally caused by the Tenant or those for whom the Tenant is responsible; or~~
 - ~~(b) The destruction or damage was the result of an act or omission by the Tenant or those for whom the Tenant is responsible and that act or omission:~~
 - ~~(1) occurred on or about the property; and~~
 - ~~(2) constitutes an imprisonable offence; or~~
 - ~~(c) Any insurance moneys that would otherwise have been payable to the Landlord for the damage or destruction are rendered irrecoverable in consequence of any act or omission of the Tenant or those for whom the Tenant is responsible.~~

DAMAGE TO OR DESTRUCTION OF PREMISES**Total Destruction**

- 26.1 If the premises or any portion of the building of which the premises may form part shall be destroyed or so damaged:
- (a) as to render the premises ^{totally}untenable then the term shall at once terminate from the date of destruction or damage; or
 - (b) in the reasonable opinion of the Landlord as to require demolition or reconstruction, then the Landlord may within 3 months of the date of damage give the Tenant 20 working days notice to terminate and a fair proportion of the rent and outgoings shall cease to be payable as from the date of damage.

Any termination pursuant to this subclause shall be without prejudice to the rights of either party against the other.

Partial Destruction

- 27.1 If the premises or any portion of the building of which the premises may form part shall be damaged but not so as to render the premises untenable and:
- (a) the ~~Landlord's~~ ^{Tenant} policy or policies of insurance shall not have been invalidated or payment of the policy moneys refused in consequence of some act or default of the Tenant; and
 - (b) ~~all the necessary permits and consents are obtainable,~~ ^{Tenant} the ~~Landlord~~ ^{Tenant} shall with all reasonable speed expend all the insurance moneys received by the ~~Landlord~~ ^{Tenant} in respect of such damage towards repairing such damage or reinstating the premises or the building but the ~~Landlord~~ ^{Tenant} shall not be liable to expend any sum of money greater than the amount of the insurance money received.
- 27.2 Any repair or reinstatement may be carried out by the ~~Landlord~~ ^{Tenant} using such materials and form of construction and according to such plan as the ~~Landlord~~ ^{Tenant} thinks fit and shall be sufficient so long as it is reasonably adequate for the Tenant's occupation and use of the premises.
- 27.3 Until the completion of the repairs or reinstatement a fair proportion of the rent and outgoings shall cease to be payable as from the date of damage.
- 27.4 If any necessary permit or consent shall not be obtainable or the insurance moneys received by the ~~Landlord~~ ^{Tenant} shall be inadequate for the repair or reinstatement then the term shall at once terminate but without prejudice to the rights of either party against the other.

No Access in Emergency

- 27.5 ~~If there is an emergency and the Tenant is unable to gain access to the premises to fully conduct the Tenant's business from the premises because of reasons of safety of the public or property or the need to prevent reduce or overcome any hazard, harm or loss that may be associated with the emergency including:~~
- ~~(a) a prohibited or restricted access cordon applying to the premises; or~~
 - ~~(b) prohibition on the use of the premises pending the completion of structural engineering or other reports and appropriate restrictions required by any competent authority that the premises are fit for use; or~~
 - ~~(c) restriction on occupation of the premises by any competent authority;~~
- ~~then a fair proportion of the rent and outgoings shall cease to be payable for the period commencing on the date when the Tenant became unable to gain access to the premises to fully conduct the Tenant's business from the premises until the inability ceases.~~
- 27.6 ~~This subclause 27.5 applies where subclause 27.5 applies and the premises or building of which the premises form part are not totally or partially destroyed or damaged resulting in the lease being cancelled as provided for in subclauses 26.1 or 27.4. Either party may terminate this lease by giving 10 working days written notice to the other if:~~
- ~~(a) the Tenant is unable to gain access to the premises for the period specified in the First Schedule; or~~
 - ~~(b) the party that terminates this lease can at any time prior to termination establish with reasonable certainty that the Tenant is unable to gain access to the premises for that period.~~
- ~~Any termination shall be without prejudice to the rights of either party against the other.~~

DEFAULT**Cancellation**

- 28.1 The Landlord may (in addition to the Landlord's right to apply to the Court for an order for possession) and subject to section 245(2) of the Property Law Act 2007 cancel this lease by re-entering the premises at the time or at any time after that:
- ~~(a) If the rent shall be in arrears 10 working days after any rent payment date and the Tenant has failed to remedy that breach within 10 working days after service on the Tenant of a notice in accordance with section 245 of the Property Law Act 2007.~~
 - (b) In case of breach by the Tenant of any covenant or agreement on the Tenant's part expressed or implied in this lease (other than the covenant to pay rent) after the Tenant has failed to remedy that breach within the period specified in a notice served on the Tenant in accordance with section 246 of the Property Law Act 2007.
 - (c) If the Tenant shall make or enter into or endeavour to make or enter into any composition assignment or other arrangement with or for the benefit of the Tenant's creditors.
 - (d) In the event of the insolvency, bankruptcy, statutory management, voluntary administration, receivership or liquidation of the Tenant.

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- (e) If the Tenant shall suffer execution to issue against the Tenant's property goods or effects under any judgment against the Tenant in any Court for a sum in excess of ~~five thousand dollars (\$5,000)~~ fifty thousand dollar (\$50,000).

The term shall terminate on the cancellation but without prejudice to the rights of either party against the other.

Essentiality of Payments

- 29.1 Failure to pay rent or other moneys payable under this lease on the due date shall be a breach going to the essence of the Tenant's obligations under the lease. The Tenant shall compensate the Landlord and the Landlord shall be entitled to recover damages from the Tenant for such breach. This entitlement shall subsist notwithstanding any determination of the lease and shall be in addition to any other right or remedy which the Landlord may have.
- 29.2 The acceptance by the Landlord of arrears of rent or other moneys shall not constitute a waiver of the essentiality of the Tenant's continuing obligation to pay rent and other moneys.

Repudiation

- 30.1 The Tenant shall compensate the Landlord and the Landlord shall be entitled to recover damages for any loss or damage suffered by reason of any acts or omissions of the Tenant constituting a repudiation of the lease or the Tenant's obligations under the lease. Such entitlement shall subsist notwithstanding any determination of the lease and shall be in addition to any other right or remedy which the Landlord may have.

QUIET ENJOYMENT

- 31.1 The Tenant ~~paying the rent~~ and performing and observing all the covenants and agreements expressed and implied in this lease shall quietly hold and enjoy the premises throughout the term without any interruption by the Landlord or any person claiming under the Landlord.

RENEWAL OF LEASE

- 32.1 If the Tenant has given to the Landlord written notice to renew the lease at least 3 calendar months before the end of the term and is not at the date of the giving of the notice in breach of this lease then the Landlord will grant a new lease for a further term from the renewal date as follows:
- (a) If the renewal date is a market rent review date the annual rent shall be the current market rent which if not agreed on shall be determined in accordance with subclause 2.2 but the annual rent shall not be less than the rent payable as at the commencement date of the immediately preceding lease term;
 - (b) If the renewal date is a GFI rent review date, the annual rent shall be determined in accordance with subclause 2.6;
 - (c) Subject to the provisions of paragraphs (a) and (b) the new lease shall be upon and subject to the covenants and agreements expressed and implied in this lease except that the term of this lease plus all further terms shall expire on or before the final expiry date;
 - (d) The annual rent shall be subject to review during the term of the new lease on the rent review dates specified in the First Schedule;
 - (e) The Landlord as a condition of granting a new lease shall be entitled to have the new lease guaranteed by any guarantor who has guaranteed this lease on behalf of the Tenant who has given notice of the security of a bank guarantee that has been given;
 - (f) If the renewal date is a market rent review date, pending the determination of the rent, the Tenant shall pay an interim rent in accordance with subclauses 2.3 and 2.4;
 - (g) Notwithstanding anything contained in subclause 32.1(f) the interim rent referred to in that subclause shall not be less than the annual rent payable as at the commencement date of the immediately preceding lease term;
 - (h) The parties will not be released by the renewal of the lease from any liability for any breach under this lease;

ASSIGNMENT OR SUBLETTING

- 33.1 ~~See attached~~ The Tenant shall not assign, sublet or otherwise part with the possession of the premises, the covenants (if any) or any part of them without first obtaining the written consent of the Landlord which the Landlord shall not unreasonably withhold or delay if the following conditions are fulfilled:
- (a) The Tenant proves to the reasonable satisfaction of the Landlord that the proposed assignee or subtenant is (and in the case of a company that the shareholders of the proposed assignee or subtenant are) responsible and has the financial resources to meet the Tenant's commitments under the lease and in the case of the subtenant the subtenant's commitments under the sublease. The Tenant shall give the Landlord any additional information reasonably required by the Landlord;
 - (b) All rent and other moneys payable have been paid and there is not any existing breach of any of the Tenant's covenants;
 - (c) In the case of an assignment a deed of covenant in customary form approved or prepared by the Landlord is duly executed and delivered to the Landlord;
 - (d) In the case of an assignment to a company (other than a company listed on the main board of a public stock exchange in New Zealand or Australia) either a deed of guarantee in customary form approved or prepared by the Landlord is duly executed by the principal shareholders of that company and delivered to the Landlord or a bank guarantee from a registered trading bank in New Zealand on reasonable terms approved by the Landlord as security for the performance by the company of its obligations under this lease is provided to the Landlord;
 - (e) The Tenant pays the Landlord a reasonable costs and disbursements in respect of the approval and the preparation of any deed of covenant or guarantee and (if appropriate) all fees and charges payable in respect of any reasonable inquiries made by or on behalf of the Landlord concerning any proposed assignee, subtenant or guarantor. All such costs shall be payable whether or not the assignment or subletting proceeds;
- 33.2 Where the Landlord consents to a subletting the consent shall extend only to the subletting and notwithstanding anything contained or implied in the sublease the consent shall not permit any subtenant to deal with the sublease in any way in which the Tenant is restrained from dealing without consent.
- 33.3 Where any Tenant is a company which is not listed on the main board of a public stock exchange in New Zealand or Australia, then any change in the legal or beneficial ownership of its shares or the shares of its shareholder or issue of new capital in the company or its shareholder where in any case there is a change in the effective management or control of the company will require the written consent of the Landlord which will not be unreasonably withheld or delayed.

ASSIGNMENT OR SUBLETTING

33.1 The Tenant shall not sublet or otherwise part with the possession of the building or any part of the building without first obtaining the written consent of the Landlord which the Landlord can refuse for any reason save that the Landlord will consent to a sublease of the identified part of the building which is to be utilised as a café providing

- (i) the subtenant, and any assignee of any subtenant of the café, is respectable, responsible and solvent;
- (ii) the Tenant provides the Landlord with all reasonably required information about such subtenant and/or any assignee of the subtenant;
- (iii) the Tenant pays the Landlord's reasonable costs and disbursements in respect of the approval and the preparation of any deed of covenant or guarantee and (if appropriate) all fees and charges payable in respect of any reasonable inquiries made by or on behalf of the Landlord concerning any proposed assignee subtenant or guarantor, such costs being payable whether or not the subletting proceeds; and
- (iv) any such sublease will be subject to a restriction that such cannot offer seafood dishes on more than 50% of its mains menus.

33.2 Where the Landlord consents to a subletting the consent shall extend only to the subletting and notwithstanding anything contained or implied in the sublease the consent shall not permit any subtenant to deal with the sublease in any way in which the Tenant is restrained from dealing without consent.



UNIT TITLE PROVISIONS

~~34.1~~ Clause 34 applies where the property is part of a unit title development.

Body Corporate

~~34.2~~ The expression "Body Corporate" means the Body Corporate under the Unit Titles Act 2010 (in subclauses 34.2 to 34.7 "the Act") in respect of the property.

Act and Rules Paramount

~~34.3~~ This lease shall be subject to the provisions of the rules of the Body Corporate and the provisions of the Act.

Insurance

~~34.4~~ Unless the Body Corporate has resolved that the Landlord is to insure the building the Landlord's obligation to insure the building shall be satisfied by the Body Corporate maintaining the same insurance cover in accordance with the Act.

Landlord's Obligations

~~34.5~~ The Landlord shall observe and perform all of the Landlord's obligations as a member of the Body Corporate and shall use the Landlord's best endeavours to ensure that the Body Corporate complies with its rules and the provisions of the Act.

Tenant's Obligations

~~34.6~~ The Tenant shall comply with the rules of the Body Corporate and the provisions of the Act to the extent that they apply to the Tenant's use of the property.

Consents

~~34.7~~ Where in this lease the consent of the Landlord is required in respect of any matter then the like consent of the Body Corporate shall also be required if the consent of the Body Corporate to the matter would be necessary under its rules or the Act.

CARPARKS

~~35.1~~ The Tenant shall have the right to exclusive possession of the leased car parks, but where any car park is not being used by the Tenant other persons shall be entitled to pass over the same.

~~35.2~~ The Landlord may carry out repairs to the car parks and no abatement of rent or other compensation shall be claimed by the Tenant except pursuant to subclauses 25.1 or 27.3.

~~35.3~~ The Tenant shall comply with the Landlord's reasonable requirements relating to the use of the car parks and except to them and in particular shall only use the car parks for the parking of one motor vehicle per parking space.

~~35.4~~ The provisions of the Second Schedule shall apply to the car parks as appropriate.

GENERAL**Holding Over**

~~36.1~~ If the Landlord permits the Tenant to remain in occupation of the premises after the expiration or sooner determination of the term, the occupation shall be a periodic tenancy only terminable by at least ~~30 working days~~ ^{one month} notice given at any time with the tenancy terminating on the expiry of the notice at the rent then payable and otherwise on the same covenants and agreements (so far as applicable to a periodic tenancy) as expressed or implied under this lease.

Access for Re-Letting or Sale

~~37.1~~ The Tenant will ~~during the term~~ ^{one year before the lease expires} permit the Landlord, the Landlord's representatives and prospective tenants or purchasers to have access to inspect the premises provided that:

- (a) Any such inspection is at a time which is reasonably convenient to the Tenant and after reasonable written notice.
- (b) The inspection is conducted in a manner which does not cause disruption to the Tenant.
- (c) If the Landlord or the Landlord's representatives are not present the persons inspecting have written authority from the Landlord to do so.

Suitability

~~38.1~~ No warranty or representation expressed or implied has been or is made by the Landlord that the premises are now suitable or will remain suitable or adequate for use by the Tenant or that any use of the premises by the Tenant will comply with the by-laws or ordinances or other requirements of any authority having jurisdiction.

Affirmation

~~39.1~~ A party to this lease shall not be entitled to cancel this lease if, with full knowledge of any repudiation or misrepresentation or breach of covenant, that party affirmed this lease.

Waiver

~~40.1~~ No waiver or failure to act by either party in respect of any breach by the other shall operate as a waiver of another breach.

Land Transfer Title or Mortgagee's consent

~~41.1~~ The Landlord shall not be required to do any act or thing to enable this lease to be registered or be required to obtain the consent of any mortgagee of the property and the Tenant will not register a caveat in respect of the Tenant's interest under this lease.

Notices

~~42.1~~ All notices must be in writing and must be served by one of the following means:

- (a) In the case of a notice under sections 245 or 246 of the Property Law Act 2007 in the manner prescribed by section 353 of that Act; and
- (b) In all other cases, unless otherwise required by sections 352 to 361 of the Property Law Act 2007:
 - (1) In the manner authorised by sections 354 to 361 of the Property Law Act 2007, or
 - (2) by personal delivery, or by posting by registered or ordinary mail, or by facsimile, or by email.

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- 42.2 In respect of the means of service specified in subclause 42.1(b)(2), a notice is deemed to have been served:
- (a) In the case of personal delivery, when received by the addressee.
 - (b) In the case of posting by mail, on the second working day following the date of posting to the addressee's last known address in New Zealand.
 - (c) In the case of facsimile transmission, when sent to the addressee's facsimile number.
 - (d) In the case of email, when acknowledged by the addressee orally or by return email or otherwise in writing except that return emails generated automatically shall not constitute an acknowledgement.
- 42.3 In the case of a notice to be served on the Tenant, if the Landlord is unaware of the Tenant's last known address in New Zealand or the Tenant's facsimile number, any notice placed conspicuously on any part of the premises shall be deemed to have been served on the Tenant on the day on which it is affixed.
- 42.4 A notice shall be valid if given by any director, general manager, lawyer or other authorised representative of the party giving the notice.
- 42.5 Where two or more notices are deemed to have been served at the same time, they shall take effect in the order in which they would have been served but for subclause 47.1(p).
- 42.6 Any period of notice required to be given under this agreement shall be computed by excluding the date of service.

Arbitration

- 43.1 The parties shall first endeavour to resolve any dispute or difference by agreement and if they agree by mediation.
- 43.2 Unless any dispute or difference is resolved by mediation or other agreement within 30 days of the dispute or difference arising, the same shall be submitted to the arbitration of one arbitrator who shall conduct the arbitral proceedings in accordance with the Arbitration Act 1996 or any other statutory provision then relating to arbitration.
- 43.3 If the parties are unable to agree on the arbitrator, an arbitrator shall be appointed, upon request of any party, by the president or vice president of the New Zealand Law Society. That appointment shall be binding on all parties to the arbitration and shall be subject to no appeal. The provisions of Article 11 of the First Schedule of the Arbitration Act 1996 are to be read subject to this and varied accordingly.
- 43.4 The procedures prescribed in this clause shall not prevent the Landlord from taking proceedings for the recovery of any rent or other monies payable under this lease which remain unpaid or from exercising the rights and remedies in the event of the default prescribed in subclause 28.1.

No Implied Terms

- 44.1 The covenants, conditions and powers implied in leases pursuant to the Property Law Act 2007 and sections 224 and 266(1)(b) of that Act shall not apply to and are excluded from this lease where allowed.

Limitation of Liability

- 45.1 If any person enters into this lease as trustee of a trust, then:
- (a) That person warrants that:
 - (1) that person has power to enter into this lease under the terms of the trust; and
 - (2) that person has properly signed this lease in accordance with the terms of the trust; and
 - (3) that person has the right to be indemnified from the assets of the trust and that right has not been lost or impaired by any action of that person including entry into this lease; and
 - (4) all of the persons who are trustees of the trust have approved entry into this lease.
 - (b) If that person has no right to or interest in any assets of the trust except in that person's capacity as a trustee of the trust, that person's liability under this lease will not be personal and unlimited but will be limited to the actual amount recoverable from the assets of the trust from time to time ("the limited amount"). If the right of that person to be indemnified from the trust assets has been lost or impaired as a result of fraud or gross negligence that person's liability will become personal but limited to the extent of that part of the limited amount which cannot be recovered from any other person.
- 45.2 Notwithstanding subclause 45.1, a party to this lease that is named in item 17 of the First Schedule as a limited liability trustee, that person's liability will not be personal and unlimited but limited in accordance with subclause 45.1(b).

Counterparts

- 46.1 This lease may be executed in two or more counterparts, all of which will together be deemed to constitute one and the same lease. A party may enter into this lease by signing a counterpart copy and sending it to the other party, including by facsimile or email.

DEFINITIONS AND INTERPRETATION

- 47.1 In this lease:
- (a) "building services" means all services provided by the ^{Tenant} Landlord as an integral part of the building for the general use and enjoyment of the building by the tenants or occupants including water, gas, electricity, lighting, air conditioning, heating and ventilation, telecommunications, lifts and escalators whether or not they are located within the premises.
 - ~~(b) "CPI" means the Consumer Price Index (All Groups) published by Statistics New Zealand or other government agency and any revised, replacement or substituted index.~~
 - (c) "Default GST" means any additional GST, penalty (civil or otherwise), interest, or other sum imposed on the Landlord (or where the Landlord is or was a member of a GST group its representative member) under the GST Act or the Tax Administration Act 1994 by reason of non-payment of any GST payable in respect of the supply made under this lease but does not include any sum levied against the Landlord (or where the Landlord is or was a member of a GST group its representative member) by reason of a default or delay by the Landlord after payment of the GST to the Landlord by the Tenant.
 - ~~(d) "emergency" for the purposes of subclause 27.5 means a situation that:~~
 - ~~(1) is a result of any event, whether natural or otherwise, including an explosion, earthquake, eruption, tsunami, land movement, flood, storm, tornado, cyclone, serious fire, leakage or spillage of any dangerous gas or substance, infection, plague, epidemic, failure of or disruption to an emergency service; and~~
 - ~~(2) causes or may cause loss of life or serious injury, illness or in any way seriously endangers the safety of the public or property; and~~
 - ~~(3) the event is not caused by any act or omission of the Landlord or Tenant.~~

- (e) "GST" means the Goods and Services Tax arising pursuant to the Goods and Services Tax Act 1985 and "GST Act" means the Goods and Services Tax Act 1985.
- (f) "premises" includes all the Landlord's fixtures and fittings provided by the Landlord and those set out in the Fifth Schedule.
- (g) "premises condition report" means the report as set out in the Sixth Schedule.
- (h) "renewal" means the granting of a new lease as provided for in subclause 32.1.
- (i) "rules" in clause 34 means the Body Corporate operational rules under the Unit Titles Act 2010 and any amendments to those rules or replacement rules.
- (j) "structural repair" means a repair, alteration or addition to the structure or fabric of the building but excluding building services.
- (k) "term" includes, where the context requires, a further term if the lease is renewed.
- (l) "the common areas" means those parts of the property the use of which is necessary for the enjoyment of the premises and which is shared with other tenants and occupiers.
- (m) "the Landlord" and "the Tenant" means where appropriate the executors, administrators, successors and permitted assigns of the Landlord and the Tenant.
- (n) "the property" ~~and "the building"~~ means **the land, building(s) or improvements on the premises** of the Landlord which comprise or contain the premises. ~~Where the premises are part of a unit title development the words "the property" mean the land and building(s) comprised in the development.~~
- (o) "those for whom the Tenant is responsible" includes the Tenant's agents employees contractors or invitees.
- (p) "working day" has the meaning given to it in the Property Law Act 2007. Notices served after 5pm on a working day, or on a day which is not a working day, shall be deemed to have been served on the next succeeding working day.
- (q) A reference in this lease to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (r) A reference to the words "include" or "including" are to be interpreted without limitation.
- (s) If any inserted term (including any Further Term in the Third Schedule) conflicts with the covenants in the First, Second and Fourth Schedules, the inserted term will prevail.
- (t) Whenever words appear in this lease that also appear in the First Schedule then those words shall mean and include the details supplied after them in the First Schedule.
- (u) Where the context requires or admits, words importing the singular shall import the plural and vice versa.
- (v) Where the Landlord's consent or approval to any matter is required under this lease then, unless expressly stated to the contrary in this lease, in each case the Landlord:
 - (1) must not unreasonably withhold consent or approval, and
 - (2) must, within a reasonable time of the Landlord's consent or approval being requested:
 - (i) grant that consent or approval; or
 - (ii) notify the Tenant in writing that the consent or approval is withheld.
- (w) "the Hundertwasser Project" means the construction/building of the Hundertwasser Art Centre with Wairau Maori Art Gallery as such has been promoted by Prosper Northland Trust the design of which has been approved under the resource consent.
- (x) "the building" means the building being constructed by the Tenant on the property at the Commencement Date such being known as the Hundertwasser Project in terms of the building consents and the resource consent.
- (y) "the building consents" means the building consents issued by the Council under numbers BC1701436 and BC1701438.
- (z) "the Hundertwasser Art Centre with Wairau Maori Art Gallery" means the proposed use and development promoted by Prosper Northland Trust and as detailed as Option B in the 2015 Referendum conducted by the Council for the use of the former Northland Regional Council building at the Town Basin in Whangarei.
- (aa) the resource consent means the resource consent issued by the Council under reference LU1200155 dated 13 March 2013.
- (bb) The Council means Whangarei District Council acting in its regulatory and public administrative role.

THIRD SCHEDULE**FURTHER TERMS (if any)**

10 18

FURTHER TERMS – SCHEDULE 3

External Works

48.1 The Tenant shall at its cost undertake:

- (i) the preparation and the implementation of the landscaping required for the Hundertwasser Project in terms of the resource consent.
- (ii) the construction of “road” access from Dent Street through to the wharves at Whangarei Town Basin along the alignment proposed by the Opus design for such road to a standard set by the Council to enable service vehicles to gain access to the wharves within the Town Basin utilised by fishing vessels to enable such vessels to be serviced;
- (iii) the installation of such lighting within the transition zone around the building as shall be required; and
- (iv) all traffic control required during the implementation of the above described works

such works being cumulatively described as “the external works”.

48.2 The external works will be undertaken by the Tenant in accordance with all design specifications and rules required by the Landlord.

Access to the Premises after Commencement Date

49.1 From the Commencement Date the Tenant shall be permitted to have access to the premises for all purposes associated with the construction of the Hundertwasser Project for service vehicles to enable the Tenant to undertake all requisite maintenance and for all other purposes associated with the operation of the Hundertwasser Project.

Exterior Signage

50.1 The Landlord will consider all proposals by the Tenant for the erection of signage relating to the Hundertwasser Art Centre with Wairau Maori Art Gallery and to the Hundertwasser Project generally on land owned by the Landlord beyond the area to be leased subject always to such signage being at the pleasure of the Landlord and on terms and conditions set by the Landlord and providing further that such signage always complies with the Landlord’s bylaws and is in accordance with any resource consent requirements that might be required.

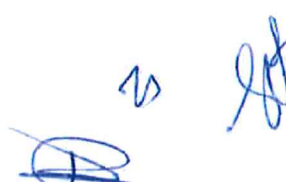
Operating Losses

51.1 If at any time within 10 years from the opening of the Hundertwasser Art Centre with Wairau Maori Art Gallery for public admission the operation of the Hundertwasser Project has accumulated operating losses of \$750,000.00 such shall constitute an act of default for the purposes of clause 28.1 of this lease and

- 2 -

upon the occurrence of such an event the Landlord may exercise its right to cancel the lease by re-entry.

- 51.2** If at any time within 10 years from the opening of the Hundertwasser Art Centre with Wairau Maori Art Gallery for public admission the operation of the Hundertwasser Project has accumulated operating losses of \$1,200,000.00 such shall constitute an act of default for the purposes of clause 28.1 of this lease and upon the occurrence of an event the Landlord will exercise its right to cancel the lease by re-entry.
- 51.3** Operating losses shall for the purposes of clauses 51.1 and 51.2 mean such sum(s) as is/are shown in the annual profit and loss statement for the Tenant in relation to the operation of the Hundertwasser Project as losses/deficits such having accounted for earnings and deducted therefrom all operating costs excluding interest, tax and depreciation.



FOURTH SCHEDULE

GUARANTEE

~~IN CONSIDERATION~~ of the Landlord entering into the lease at the Guarantor's request the Guarantor:

- ~~(a) Guarantees payment of the rent and the performance by the Tenant of the covenants in the lease;~~
- ~~(b) indemnifies the Landlord against any loss the Landlord might suffer should the lease be lawfully disclaimed or abandoned by any liquidator, receiver or other person;~~

~~THE GUARANTOR covenants with the Landlord that:~~

- ~~1. No release, delay or other indulgence given by the Landlord to the Tenant or to the Tenant's successors or assigns or any other thing by which the Guarantor would have been released had the Guarantor been merely a surety shall release prejudice or affect the liability of the Guarantor as a guarantor or as indemnifier;~~
- ~~2. As between the Guarantor and the Landlord the Guarantor may for all purposes be treated as the Tenant and the Landlord shall be under no obligation to take proceedings against the Tenant before taking proceedings against the Guarantor;~~
- ~~3. The guarantee and indemnity is for the benefit of and may be enforced by any person entitled for the time being to receive the rent;~~
- ~~4. An assignment of the lease and any rent review in accordance with the lease shall not release the Guarantor from liability;~~
- ~~5. Should there be more than one Guarantor their liability under this guarantee and indemnity shall be joint and several;~~
- ~~6. The Guarantee and indemnity shall extend to any holding over by the Tenant;~~

FIFTH SCHEDULE**LANDLORD'S FIXTURES AND FITTINGS****(Subclause 47.1(f))**

N8

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SIXTH SCHEDULE**PREMISES CONDITION REPORT****(Subclause 8.1)****Not applicable.**

A handwritten mark or signature in blue ink, consisting of a stylized 'R' or similar character.

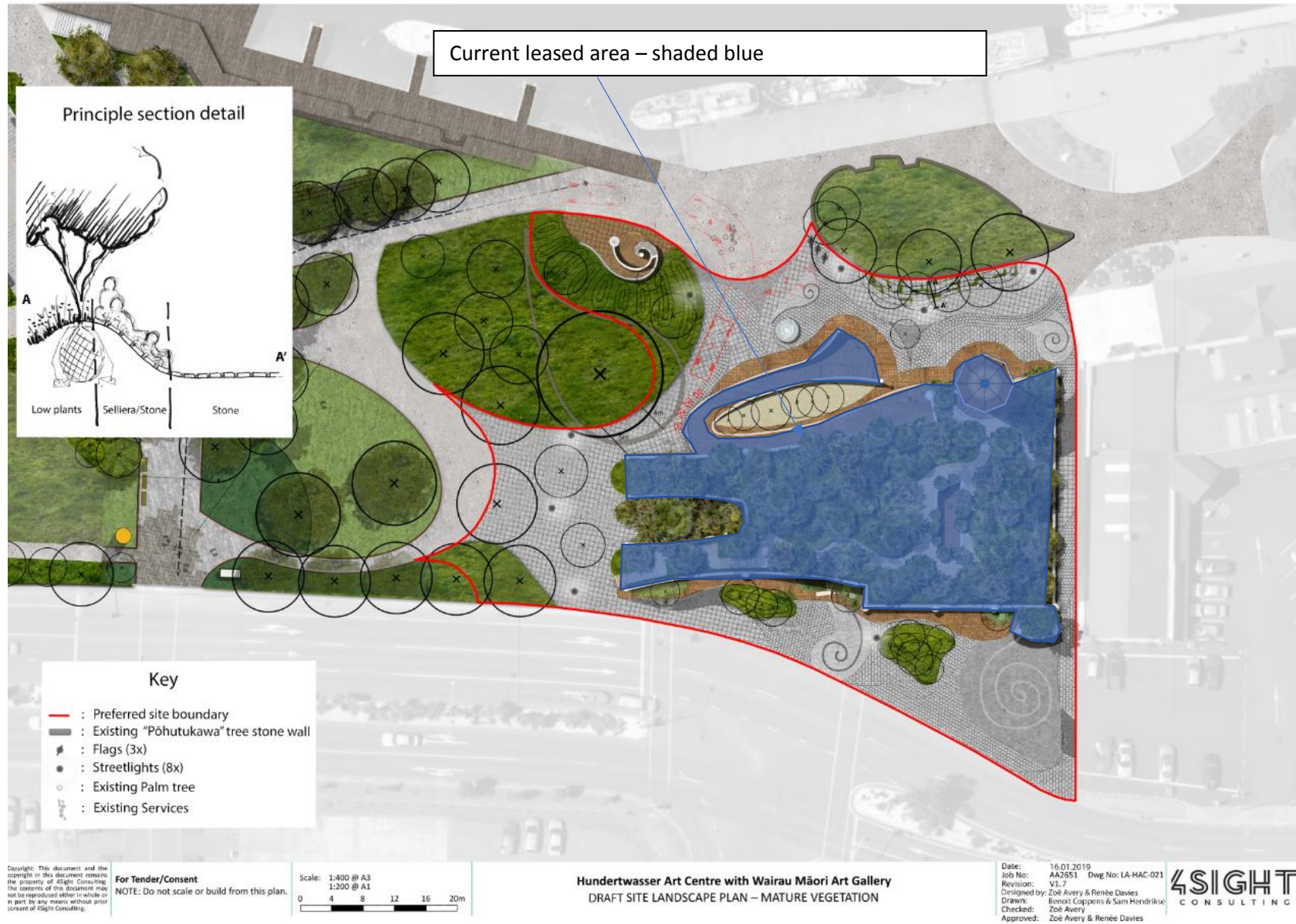
A handwritten signature or mark in blue ink, consisting of a stylized 'S' or similar character followed by a flourish.

Sixth Edition 2012 (5)

Dated _____**Between****WHANGAREI DISTRICT COUNCIL****Landlord****and****WHANGAREI ART MUSEUM TRUST****Tenant****and****Guarantor**

DEED OF LEASE

General address of the premises:**Part of the Whangarei Town Basin situated at Dent Street,
Whangarei**



6.7 Temporary Road Closure – Northland Car Club events September 2021 to January 2022

Meeting: Whangarei District Council
Date of meeting: 22 July 2021
Reporting officer: John Lynch, Community Events Coordinator

1 Purpose

To seek approval to temporarily close roads to allow Northland Car Club events to be held between 5 September 2021 – 30 January 2022.

2 Recommendation/s

That Whangarei District Council

1. Approves the temporary closure of the following roads to ordinary traffic for Northland Car Club events in accordance with section 342 (1)(b) and Schedule 10 Clause 11 of the Local Government Act 1974.

Sunday 5 September 2021

Rosythe Road Waipu, 400 meters from SH1 to a point 1.5kms from SH1.

Sunday 3 October 2021

Doctors Hill Road Waipu, 600 meters from SH1 to Mountfield Road.

Sunday 17 October 2021

Crows Nest Hukerenui, from a point 2kms from SH1 to Paiaka Road.

Sunday 5 December 2021

Paiawa Road (total closure).

Sunday 30 January 2022

Kaikanui Road, from a point approx. 5kms from Pigs Head Road to a point approx. 3kms toward Webb Road.

Period of closure: 9:30am – 5:30pm

2. Approves the temporary closure of the side roads off the roads to be closed for up to 100 meters from the intersection for safety purposes.
3. Delegates to the Chair of the Infrastructure Committee and General Manager Infrastructure the power to give public notices of these temporary road closures.

3 Background

The Northland Car Club run a series of events in accordance with New Zealand Motorsport Standards and Regulations which allow the club members to compete safely under strict managed conditions.

These club days are popular within the club with a number of families spectating and participating in the sport.

4 Discussion

The event organisers personally contact all occupiers of the land adjacent to the roads to be temporarily closed via phone, letter drop and in person.

Traffic management plans for each event are submitted to Council for approval prior to each event occurring. Included in the traffic management plans are arrangements to ensure the affected parties can access their properties during the event.

The event traffic management and safety plans are required to comply with and adhere to the strict safety standards as per Motorsports New Zealand's Motorsport Manual.

4.1 Risks

Motorsport events carry a number of associated risks, however the Northland Car Club run well organized events ensuring everything within their control is done to eliminate risks and manage those risks and hazards that cannot be eliminated, reducing the likelihood of harm occurring to any person, property or business.

Vehicles and drivers are required to comply with the strict safety standards as set down by Motorsport New Zealand.

Spectators are managed at the event with appropriate signage and designated personnel monitoring spectators and their locations.

5 Significance and engagement

The decisions or matters of this Agenda do not trigger the significance criteria outlined in Council's Significance and Engagement Policy and the public will be informed via agenda publication on the website.

6 Attachments

1. Northland Car Club Road Close 2021-22
2. Motorsport Liability Insurance Certificate



NORTHLAND CAR CLUB

P.O. Box 596, WHANGAREI

07/07/2021

The District Councillors
Whangarei District Council
Private bag
Whangarei

ATTN: Simon Megchelse
Petra Gray

NORTHLAND CAR CLUB **APPLICATION FOR ROAD CLOSURES** **SEPTEMBER 2021 TO JANUARY 2022**

We would like to make an application under the **LOCAL GOVERNMENT ACT 1974 SCHEDULE 10** for the road closures as listed below. These roads would be required to be closed from 9:30am to 5.30pm. Vehicles would be able to access the road in between runs and would only be held up for a maximum of 20 minutes.

ROADS REQUIRED ARE AS FOLLOWS:

SEPTEMBER 5TH ROSYTHERoad WAIPU. 400 metres from SH1 to a point 1.5kms from SH1

OCTOBER 3RD DOCTORS HILL ROAD WAIPU. 600 metres from SH1 to Mountfield Road

OCTOBER 17TH CROWS NEST ROAD HUKURENUI. From a point 2kms from SH1 to Paia Road

DECEMBER 5TH PAIAWA ROAD WAIOTIRA. TOTAL CLOSURE

JANUARY 30TH 2022 KAIKANUI ROAD From a point 5kms from PIGS HEAD ROAD to a point 3kms toward WEBB ROAD

We thank you for your ongoing support.
Yours faithfully,

Neil Rodgers
For Northland Car Club

email neilwrc@gmail.com

Ph 09-4347380
Mob 0274375351.

Insurance Certificate

Public & Products Liability
Client ID

43826

Agent No


8000014

We, the Insurers, Vero Liability Insurance Limited confirm that Public & Products Liability insurance has been effected on the following basis:

POLICY NUMBER	HO-LPL-6169522	
THE INSURED	Motorsport New Zealand Inc and Member Clubs in respect of Permitted Events Only	
BUSINESS DESCRIPTION	Administration, Governance and Regulation of Motor Sport in New Zealand	
POLICY PERIOD	From 4.00pm	1 February 2021
	To 4.00pm	1 February 2022
LIMIT OF INDEMNITY	\$ 10,000,000	any one Occurrence and for any one Period of Insurance in respect of Products Hazard
EXCESS	\$ 3,500	per Occurrence
POLICY WORDING	VL POL PL-082017	

This certificate is issued as a matter of information only and is subject to the terms and conditions of the issued policy.

Signed for and on behalf of Vero Liability Insurance Limited



Authorised Officer
JCS



29 January 2021

6.8 Tree Removal within the Whangarei Falls Scenic Reserve for Sands Road Track

Meeting: Whangarei District Council
Date of meeting: 22 July 2021
Reporting officer: Sue Hodge (Manager Parks, Recreation and Solid Waste)

1 Purpose

To seek approval under the powers delegated to Council under the Reserves Act 1977, to remove selected trees from the Whangarei Falls Scenic Reserve to facilitate a new public walking track from Sands Road.

2 Recommendation

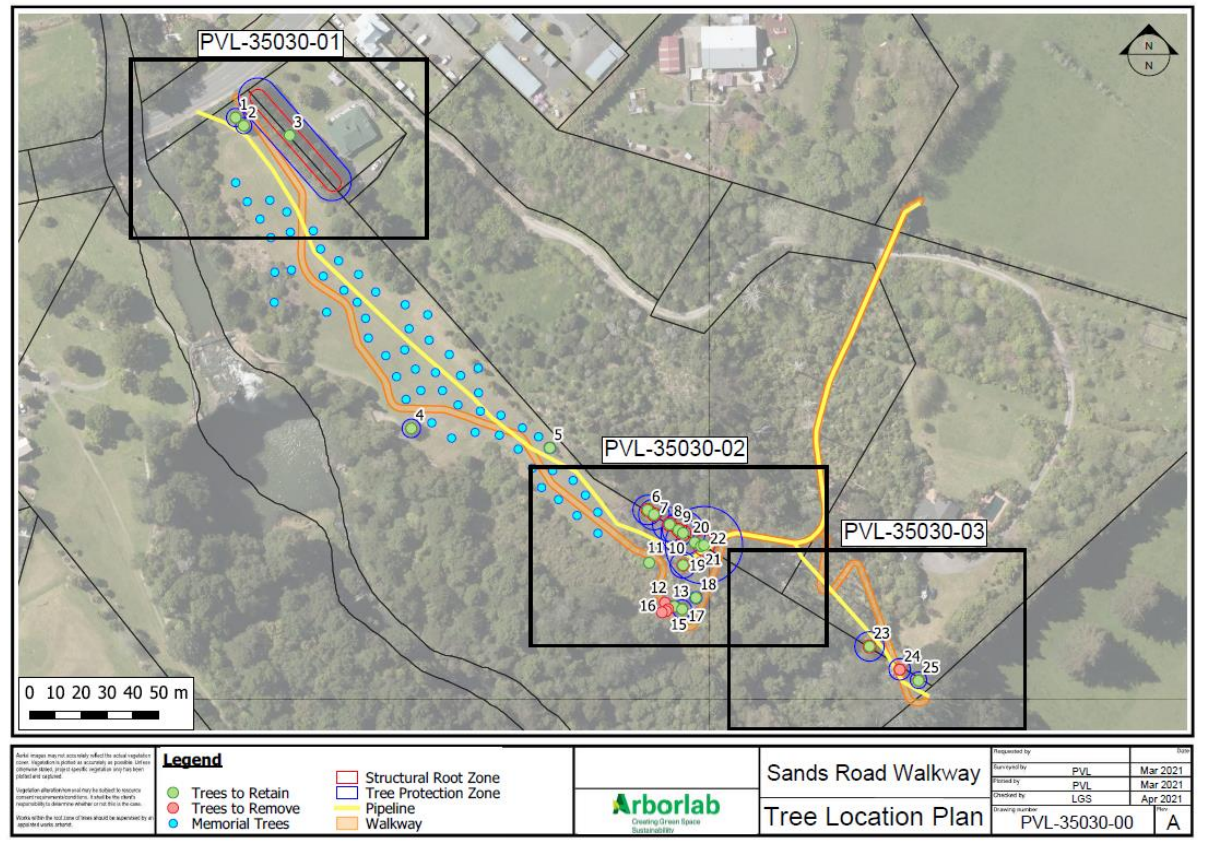
That Whangarei District Council gives express written consent for the removal of trees within the Whangarei Falls Scenic Reserve, for the purpose of facilitating a new walking track, pursuant to delegated powers under s42(1) of the Reserves Act 1977.

3 Background

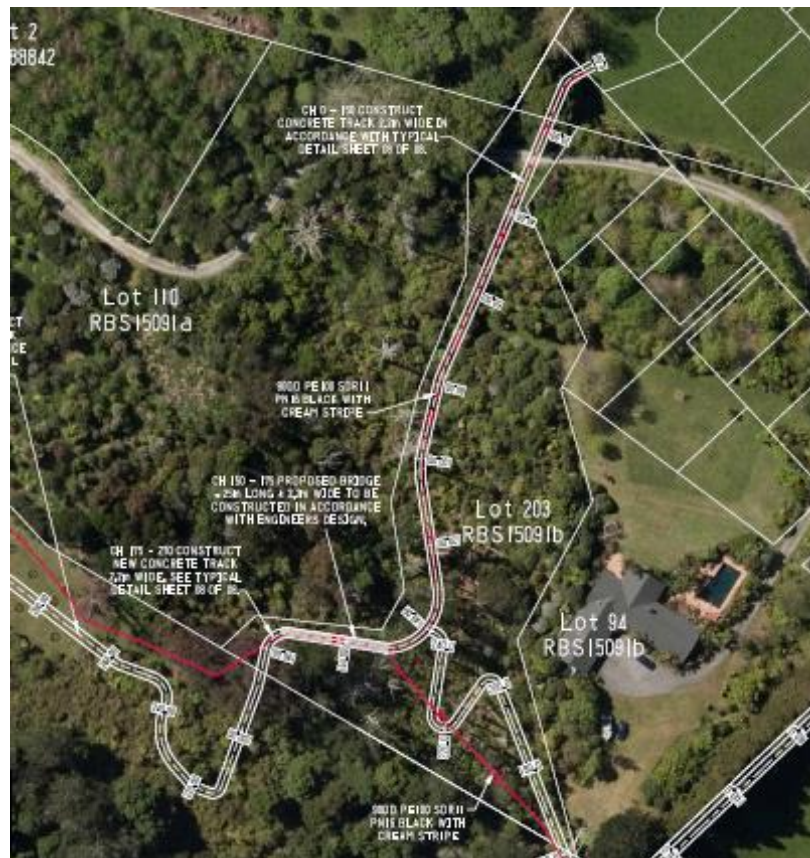
Classic Homes have been working with Whangarei District Council Parks and Recreation Team to facilitate a new walking track connection from the Sands Road Subdivision of Lot 2 DP 525506 to existing tracks within the Whangarei Falls Scenic Reserve (Lot 1 DEEDS 266) and surrounding area.

The track also includes a bridge over an unnamed stream and allows for connection to the Jessie Trust subdivision at 40 Sands Rd.

The track has been designed to meet the walking track standards and the route has been surveyed to provide the most accessible route and avoiding steps wherever possible. The Northland Transport Alliance have also been involved in ensuring it meets the requirements of the walking and cycling strategy. The following map shows the location of the track (Yellow) and the affected trees.



As part of the subdivision application, an additional reserve is proposed to be vested to facilitate the connection. Much of the work will occur on this Lot 203 of SL2000016 prior to vesting.



As part of the track development, it has been identified by an independent arborist, that the preferred route will require removal of five public trees over 6 metres in height, four makamaka and one totara from the Whangarei Falls Scenic Reserve.



Makamaka - Photo Credit - Takana Native Trees



Photo Credit - Podocarpus totara (totara) description (conifers.org)

In addition, there are some understory trees and saplings that will need to be removed.

The trees requiring removal have been identified by the project team in consultation with Arborlab, an arboricultural consultancy.

Te Parawhau have been consulted with as part of the Resource consent process and have provide support for the proposal.

Attachment 1 to this report provides the arborists assessment of the trees.

4 Discussion

4.1 Financial/budget considerations

All works up to an agreed standard are to be funded by the developer, additional costs are budgeted within the NTA budget for shared paths and walkways.

4.2 Policy and planning implications

District Plan Requirements

The site falls within the Open Space Environment of the Whangarei District Plan. The provision of tracks is consistent with the policies and objectives of this zone.

The Resource Area Chapter of the District Plan for Notable and Public Trees (NPT) sits above the Open Space Environment Chapter in the District Plan. As the trees proposed to be removed will not comply with the requirements in the NPT Chapter, a resource consent is required for their removal. This has been lodged for by the developer Classic Homes. Seeking Council approval for removal of the trees within the scenic reserve is the first step in facilitating the development of this track.

Reserves Act Delegation

The 2013 Instrument of Delegation for Territorial Authorities sets out the powers, functions and duties that the Minister of Conservation has delegated to Territorial Authorities under the Reserves Act 1977. The delegations include powers to “*Give, or decline to give, express written consent to the cutting or destruction of trees and bush on any historic, scenic, nature, or scientific reserve*”, pursuant to s42(1). Council is required to consider whether, or not, to give approval to the removal of trees required for the Whangarei Falls – Sands Rd Track within the Whangarei Falls Scenic Reserve.

4.3 Options

The following options are available to Council:

a) Decline to Give Express Consent

This option would require a re-negotiation of the proposed walkway with the Developer which also affects their Subdivision Consent Conditions, potentially mean the project would be unable to progress. Not progressing with the track would mean residents of the new subdivisions along Sands Road will not have direct access to the Whangarei Falls Reserve.

b) Give Express Consent with certain terms and conditions

There is an option available to specify terms and conditions on which the express written consent is given. As the tree removal will require resource consent it will be subject to a full assessment of environmental effects and notification assessment under the Resource Management Act 1991. The consent may also have certain conditions imposed as part of

that process. It would therefore be difficult to manage a potential duplication of terms and conditions imposed via this process.

- c) Give Express Consent without terms and conditions
This is the preferred option as it would allow for the tree removals to occur, providing for an extension of the Whangarei Falls track network and the implementation of the Walking and Cycling and Blue Green Network Strategies. The tree removals would only be undertaken after having been through a resource consent process and in accordance with recommendations by an arborist and conditions of consent.

4.4 Risks

There are risks associated with this decision, as outlined above. The biggest risk is that this project will not be able to go ahead and Council loses the opportunity to extend our track network and provide access for new and developing subdivision areas.

5 Significance and engagement

The decisions or matters of this Agenda do not trigger the significance criteria outlined in Council's Significance and Engagement Policy, and the public will be informed via Agenda publication on the website.

6 Attachment

1. Arborlab Report – Sands Road Walkway

Arboricultural Report
Classic Developments
Sands Road Walkway
Whangarei





Arboricultural Report

Prepared for: Classic Developments

Contact name: Richard Smales
Reyburn and Bryant

Prepared by: Peter van Loon – Consultant Arborist
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Reviewed by: Leon Saxon – Consultant Arborist

Date: 9 April 2021

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Job Ref. 35030

Scope of Works / Executive Summary

It is proposed to construct a new walkway and underground wastewater pipeline through Whangarei Falls Scenic Reserve, between Ngunguru Road and Sands Road. The proposal requires the removal of five protected trees within the reserve along with various non-protected trees within the reserve and private property. Replacement planting will be required to mitigate the removal of the protected trees. Excavation within the root zones of seven protected trees in the reserve will also be required. Due to the methodology of the works, mitigation and the proposed tree protection measures it is expected that any potential adverse effects will be negligible.



1. Introduction

- 1.1 Reyburn & Bryant, on behalf of Classic Developments, has engaged Arborlab Consultancy Services Limited to carry out an arboricultural assessment of effects relating to the construction of a new walkway and underground wastewater pipeline. The proposed works will be carried out within Whangarei Falls Scenic Reserve and adjacent private land, between Ngunguru Road and Sands Road. The proposal requires the removal of seven protected trees growing in the reserve and works within the root zones of five protected trees growing in the reserve which are to be retained.
- 1.2 The purpose of this report is to assess the health of the subject trees, assess and discuss the likely impact of the works and recommend measures to manage and mitigate any potential effects of the works on the subject trees.

Methodology

- 1.3 A Visual Tree Assessment (VTA) consistent with modern arboricultural practices (Mattheck and Breloer, 1994) was conducted during 10.03.2021. This assessment was carried out at ground level which is classified as a 'Level 2' assessment (Dunster et al., 2013).
- 1.4 Hand-held devices have been used to record data onsite. The tree girths and canopy dimensions have been measured conventionally or estimated based on experience. Where possible the tree heights have been measured using a Nikon Forestry Pro laser range finder. Although considered to be acceptable for this tree survey type, all measurements should be considered an approximation.
- 1.5 This report references the Australian Standards (AS 4970:2009) - Protection of Trees on Development Sites.

Tree Protection Zone (TPZ)

- 1.6 The TPZ is the optimal combination of crown and root area (as defined by AS 4970-2009) that requires protection during the construction process so that the tree can remain viable. The TPZ is an area that is isolated from the work zone to ensure no disturbance or encroachment occurs into this zone. Tree sensitive construction measures must be implemented if work is to proceed within the Tree Protection Zone.

Structural root zone (SRZ):

- 1.7 The SRZ is the area of the root system (as defined by AS 4970-2009) used for stability, mechanical support and anchorage of the tree.

Limitations

- 1.8 It should be noted that trees are dynamic organisms by nature and are exposed to varying weather conditions, which on occasion can be severe. In general, this assessment's findings are relevant at the time of the assessment and up to 12-months depending on typical conditions.



- 1.9 This assessment has been made with the location and extent of the works in the vicinity of trees as outlined by the principal contractor and Reyburn & Bryant plan set *EWL15091 (01-08)*. This assessment of effects is not valid if the extent of the work differs from the outlined plan of works provided to Arborlab.
- 1.10 No soil analysis, tissue sampling and/or geological investigations were carried out in support of this assessment of effects.
- 1.11 All data was collected without the use of any invasive and/or diagnostic tools. This assessment of effects has not been commissioned to provide a risk assessment of the trees.

Proposed Works

- 1.12 It is proposed to construct a new walking track through Whangarei Falls Scenic Reserve, between Ngunguru Road and the residential development on Sands Road. The walking track is to be 2.2m-2.5m in width, consisting of 100mm of concrete laid over 100mm of compacted aggregate.
- 1.13 A new wastewater pipeline is also to be installed between Ngunguru Road and the Sands Road development. The wastewater pipeline will be a pressurised pipe of 90mm diameter. The pipe is to be installed by open trenching, with a trench width of 200mm, to a depth of up to 700mm.
- 1.14 From a vegetation alteration perspective, the proposal will require the removal of five protected trees from the reserve measuring greater than 6m in height and/or greater than 600mm in girth. The proposal will also require works within the root zones of seven trees greater than 6m in height and/or 600mm in girth along with works within the root zones of trees small than these dimensions.
- 1.15 This report outlines a tree protection methodology that will be implemented on site during the works.



Figure 1. Location of proposed works within Whangarei Falls Reserve and adjacent private land.

Whangarei District Plan Regulatory Requirements

- 1.16 Trees growing within the reserve are subject to the following rules of the Whangarei District Plan:

NPT.1.7 Restricted Discretionary Activities

4. Construction or alteration of any structure, excavation of land, compaction of soil or formation of any new impervious surfaces within:
 - a. The root zone of any public tree identified in NPT.1.13.1 which does not comply with permitted activity rules within NPT.1.5.5.
 - b. Three times the radius of the canopy root zones of a New Zealand Kauri Tree (*Agathis australis*) listed in NPT.1.13.1.

NPT.1.7 Discretionary Activities

2. Removal of any public tree defined in NPT.1.13.1 which does not comply with the permitted activity rules within NPT.1.5.6.
- 1.17 It is assessed that, from a vegetation alteration perspective, the proposal will be a discretionary activity.



2. Findings

2.1 The table below contains details of the trees greater than 6m in height and/or greater than 600mm in girth within proximity to the works within the reserve. The tree numbers in this table correspond with the tree numbers in the appended Arborlab drawings PVL-35030-00 to PVL-35030-03.

Table 2 – Vegetation inventory

Tree No.	Botanical name	Common name	Height (m)	Girth at 1.4m (mm)	DBH (mm)	DARC (mm)	CSR (M)	Form	Structure	Health	Age class	Ownership	SRR (m)	TPR (m)	Proposal
1	<i>Alectryon excelsus</i>	Titoki	8.5	930	296	321	5	Fair	Fair	Good	Mature	Reserve	2.1	3.6	Retain, WWRZ
2	<i>Alectryon excelsus</i>	Titoki	7	820	261	309	4	Fair	Fair	Good	Mature	Reserve	2.0	3.1	Retain, WWRZ
3	<i>Cryptomeria japonica</i>	Japanese red cedar	14	2000	637	955	8	Fair	Fair	Good	Mature	Private	3.2	7.6	Retain, WWRZ
4	<i>Vitex lucens</i>	Puriri	7.5	940	299	318	4.5	Fair	Fair	Fair	Semi-Mature	Reserve	2.0	3.6	Retain, No works
5	<i>Pittosporum eugenioides</i>	Lemonwood	5	570	181	220	3	Fair	Fair	Good	Mature	Reserve	1.8	2.2	Retain, No works
6	<i>Podocarpus totara</i>	Totara	9	1500	477	522	6	Fair	Fair	Good	Mature	Joint	2.5	5.7	Retain, No works
7	<i>Podocarpus totara</i>	Totara	9.5	1560	497	544	6	Fair	Fair	Good	Mature	Joint	2.6	6.0	Retain, No works
8	<i>Eucalyptus sp.</i>	Gum tree	12	1730	551	598	7.5	Fair	Poor	Fair	Mature	Joint	2.7	6.6	Retain, No works
9	<i>Eucalyptus sp.</i>	Gum tree	13.5	1640	522	563	8	Fair	Fair	Good	Mature	Joint	2.6	6.3	Retain, No works
10	<i>Eucalyptus sp.</i>	Gum tree	18	2240	713	831	10	Fair	Fair	Good	Mature	Joint	3.1	8.6	Retain, WWRZ
11	<i>Podocarpus totara</i>	Totara	6.5	420	134	172	1.5	Fair	Fair	Good	Semi-Mature	Reserve	1.6	2.0	Retain, WWRZ
12	<i>Ackama rosifolia</i>	Makamaka	8.5	510	162	185	2	Fair	Fair	Good	Semi-Mature	Reserve	1.6	2.0	Remove
13	<i>Podocarpus totara</i>	Totara	8.5	590	188	207	2.5	Fair	Fair	Good	Semi-Mature	Reserve	1.7	2.3	Retain, WWRZ
14	<i>Ackama rosifolia</i>	Makamaka	8	390	124	140	2	Fair	Fair	Good	Semi-Mature	Reserve	1.5	2.0	Remove
15	<i>Ackama rosifolia</i>	Makamaka	7.5	380	121	134	2	Fair	Fair	Good	Semi-Mature	Reserve	1.5	2.0	Remove
16	<i>Ackama rosifolia</i>	Makamaka	7	410	131	143	2.5	Fair	Fair	Good	Semi-Mature	Reserve	1.5	2.0	Remove
17	<i>Podocarpus totara</i>	Totara	9	960	306	337	3.5	Good	Good	Good	Semi-Mature	Reserve	2.1	3.7	Retain, WWRZ
18	<i>Podocarpus totara</i>	Totara	8	610	194	242	3	Fair	Fair	Good	Semi-Mature	Reserve	1.8	2.3	Retain, WWRZ
19	<i>Podocarpus totara</i>	Totara	11	1310	417	452	6	Fair	Fair	Good	Mature	Reserve	2.4	5.0	Retain, WWRZ
20	<i>Pittosporum tenuifolium</i>	Kohuhu	6	300	95	121	1.5	Fair	Fair	Good	Mature	Reserve	1.5	2.0	Retain, No works
21	<i>Podocarpus totara</i>	Totara	7	420	134	146	1.5	Fair	Fair	Good	Semi-Mature	Reserve	1.5	2.0	Retain, WWRZ
22	<i>Eucalyptus sp.</i>	Gum tree	20	4000	1273	1751	11	Fair	Fair	Fair	Mature	Joint	4.2	15.0	Retain, WWRZ
23	<i>Podocarpus totara</i>	Totara	11	1490	474	512	5	Fair	Fair	Good	Mature	Reserve	2.5	5.7	Retain, WWRZ
24	<i>Podocarpus totara</i>	Totara	8	1090	347	382	3.5	Fair	Fair	Good	Mature	Reserve	2.2	4.2	Remove
25	<i>Vitex lucens</i>	Puriri	6.5	840	267	312	3	Fair	Fair	Good	Semi-Mature	Reserve	2.0	3.2	Retain, WWRZ

DBH – Diameter at Breast Height – measurement of the trunk diameter at 1.4m above ground level.

DARC – Diameter Above Root Collar – measurement of the trunk diameter just above the root collar.

SRR – Structural Root Radius – Radius of the circle around the centre of the tree containing the structural root system of the tree, based on Australian Standard AS4970-2009.

TPR – Tree Protection Radius – Radius of the circle around the centre of the tree required to maintain the health of the tree, based on Australian Standard AS4970-2009.



Photo 1. Predominantly tree fern canopy above proposed walking track (Approx chainage 230).



Photo 2. Tree 25 (pūriri tree) at south-eastern end of proposed walkway.



Photo 3. Memorial trees recently planted within grassed area of Whangarei Falls Scenic Reserve.



Photo 4. Dead pine and gum trees in proximity to proposed walkway and pipeline within private property.



3. Discussion

- 3.1 When working around trees it is important to consider their root zone. Direct root damage, soil compaction, chemical spillage and soil level changes (both temporary and permanent) can all have a detrimental effect on tree health. When considering development near trees it is necessary to protect the root system of any trees that are to be retained.
- 3.2 The section of the track between chainages 185 and 270 is within an area of native forest. The forest canopy consists predominantly of tree ferns, along with sporadic mahoe, totara, makamaka and pigeonwood. Four protected trees will require removal in the forested section of the track – Trees 12 and 14 – 16. These trees are located within or in close proximity to the footprint of the walkway.
- 3.3 Tree 24 is an early-mature totara tree growing in the reserve. The trunk of the tree is within the footprint of the proposed walkway and pipeline and will require removal. Options were considered to alter the alignment of the walkway and pipeline; however, this was not feasible from an engineering perspective due to the steep gradient of the terrain to the west of the proposed alignment.
- 3.4 The proposal involves the construction of walkway and wastewater pipeline through private property, where there is no legal protection for vegetation. While trees within proximity to the works within this section of the project may be removed as a permitted activity, the retention of surrounding native trees is desirable. It is recommended that a works arborist is engaged at the start of the construction works to provide advice on which trees can be worked around and retained through the private property.
- 3.5 Tree 22 is a large, mature gum tree growing within private property and is in close proximity to the proposed wastewater pipeline. The installation of the pipeline will require excavation within the SRZ, where several large, structural roots were observed on the ground surface. Removal of these roots may compromise the structural integrity of the tree. Excavation of the trench through the root zone of Tree 22 will need to be undertaken in a careful manner so that any roots greater than 50mm in diameter can be worked around and retained.
- 3.6 A number of standing dead pine and gum trees are present in the section of walkway and pipeline through the private property. These trees, particularly following nearby construction works, may pose risk of failure during the works or following completion. Standing dead trees within a fall distance of 1.5x the tree height to the path and works area are recommended to be felled prior to works within that area.
- 3.7 Replacement planting will be required to mitigate the removal of the protected trees within the reserve. A minimum of ten replacement trees of PB95/45L grade should be planted in suitable locations in the reserve in the first planting season following completion of works. The new trees will require aftercare maintenance for a minimum two-year period following planting. In addition, any cleared areas created through the forested sections of the walkway and pipeline should be replanted with appropriate native species. It is recommended that a replanting plan is developed for the site.



- 3.8 A number of memorial trees have recently been planted within the large grassed area of Whangarei Falls Scenic Reserve. The proposed walkway and pipeline are to be constructed through this area, with potential to impact these trees. Being recently planted, the root growth and spread of these trees is expected to be limited, however any compaction of the surrounding soil is likely to reduce the suitability of the soil for future root growth. Ground protection measures should be implemented for all works in proximity to these trees to protect the soil from compaction during the works.
- 3.9 Any of the memorial trees which are in close proximity to the proposed walkway and/or pipeline may be relocated away from the works. The trees are of an age that transplanting is likely to be successful, provided this is undertaken with correct arboricultural procedure and includes aftercare following transplanting.
- 3.10 For long-term life of the walkway and to reduce risk of conflict between tree roots and the path, it is recommended that the walkway design within the TPZ of mature trees incorporates a cellular confinement system such as geoweb filled with no-fines GAP20 aggregate which is lightly compacted by hand prior to pouring concrete. This is to be laid on grade i.e. without excavation. Where the existing ground contours need to be levelled, sand, topsoil or other appropriate material should be used to “build up” areas which require modification.

4. Conclusion

- 4.1 The proposed walkway and pipeline will require the removal of five protected trees within Whangarei Falls Scenic Reserve (Trees 12, 14-16 and 24). Replacement planting will be required to mitigate the removal of these trees.
- 4.2 Various non-protected trees within and adjacent to the alignment of the walkway and pipeline through the private property will require removal to complete the works.
- 4.3 Given the scope of the works required and the tree protection methodologies to be adhered to, it is expected that the works can be undertaken without any foreseeable long-term adverse effects to the health and/or structural integrity of the retained trees.

5. Recommendations

- 5.1 The removal of any vegetation shall be undertaken by suitably trained and experienced individuals and in a manner which avoids any unnecessary damage or disturbance to any retained vegetation and their root zones (for example sectional felling in conjunction with modern rigging techniques where required).
- 5.2 A works arborist should be engaged prior to the undertaking of vegetation removal to mark out those trees that will require removal and those which can be retained. The works arborist should be involved throughout the construction process to advise and supervise works in proximity to trees which are to be retained to ensure that the works do not result in adverse effects on the health and/or structural integrity of the retained trees.
- 5.3 A replanting plan will be required for the site to provide mitigation for the removed trees. At a minimum, this plan should include replanting of large grade (45L or greater) trees for the



removal of the five protected trees at a 2:1 replacement ratio. Additionally, the plan should include native replanting through the forest areas to form a buffer against pest plant invasion.

- 5.4 To avoid and minimise impacts on trees as a result of the works, it is recommended the following tree protection measures and protocols are implemented:

Prior to any works starting

- 5.5 An experienced, qualified arborist (appointed arborist) experienced in tree protection systems, protocols and construction methodologies around trees, is to be engaged to manage the excavations works near trees.
- 5.6 A pre-start meeting be held with the principal, contractor, Council and the appointed arborist to identify areas for onsite monitoring, work timings, work methodologies required near the trees (as outlined to Appendix B of this report), etc.

During construction works

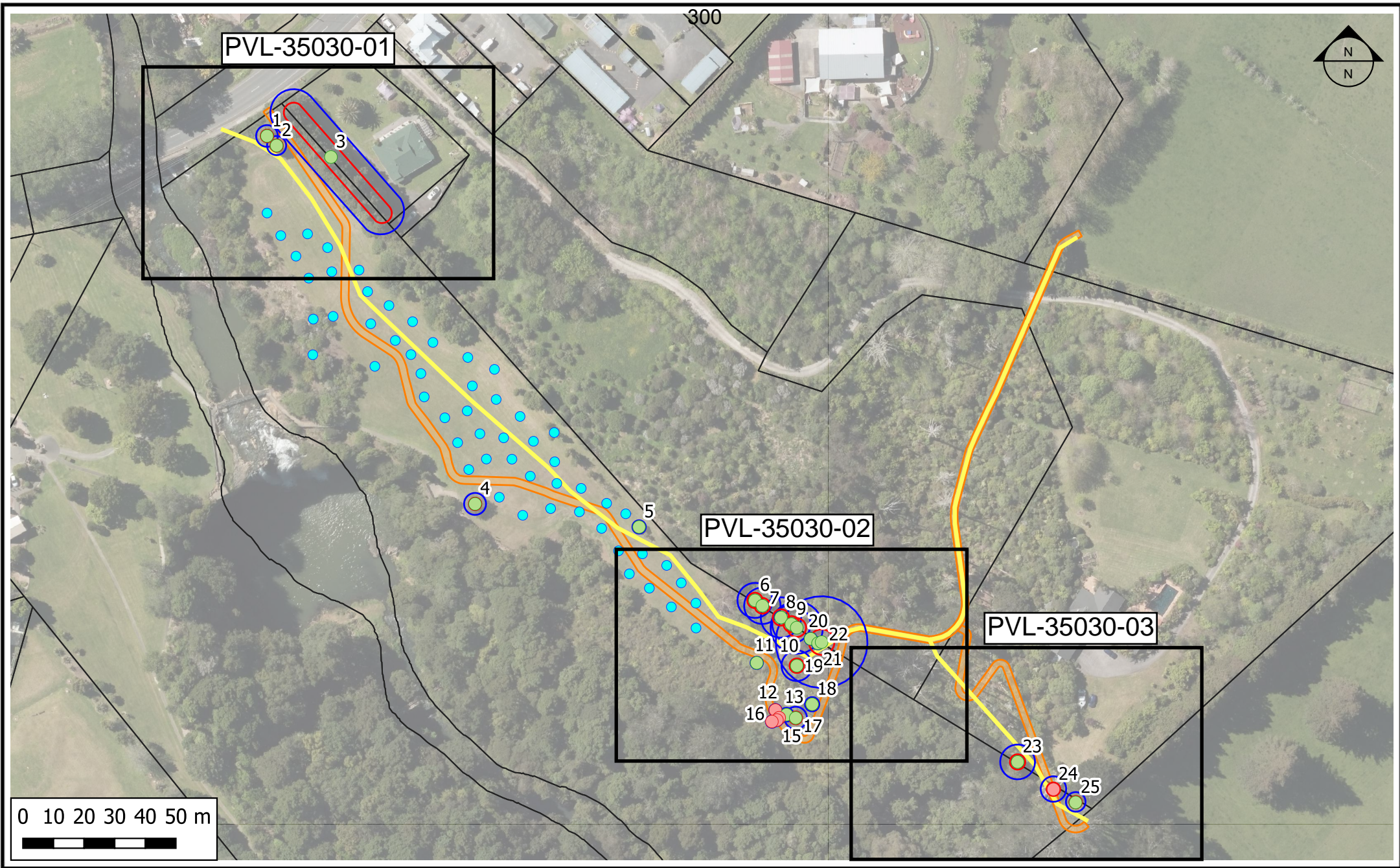
- 5.7 The Appointed Arborist be required to manage all works within the Tree Protection Zone (TPZ).
- 5.8 The works are to be managed so that any potential adverse effects are minimised or mitigated, including (among other things) installing protective fencing and prohibiting chemicals and most vehicles in the TPZ.

Following construction works

- 5.9 Auditing reports should be compiled by the Appointed Arborist.



Appendix A: Arborlab drawings PVL-35030-00 to PVL-35030-03



Aerial images may not accurately reflect the actual vegetation cover. Vegetation is plotted as accurately as possible. Unless otherwise stated, project specific vegetation only has been plotted and captured.

Vegetation alteration/removal may be subject to resource consent requirements/conditions. It shall be the client's responsibility to determine whether or not this is the case.

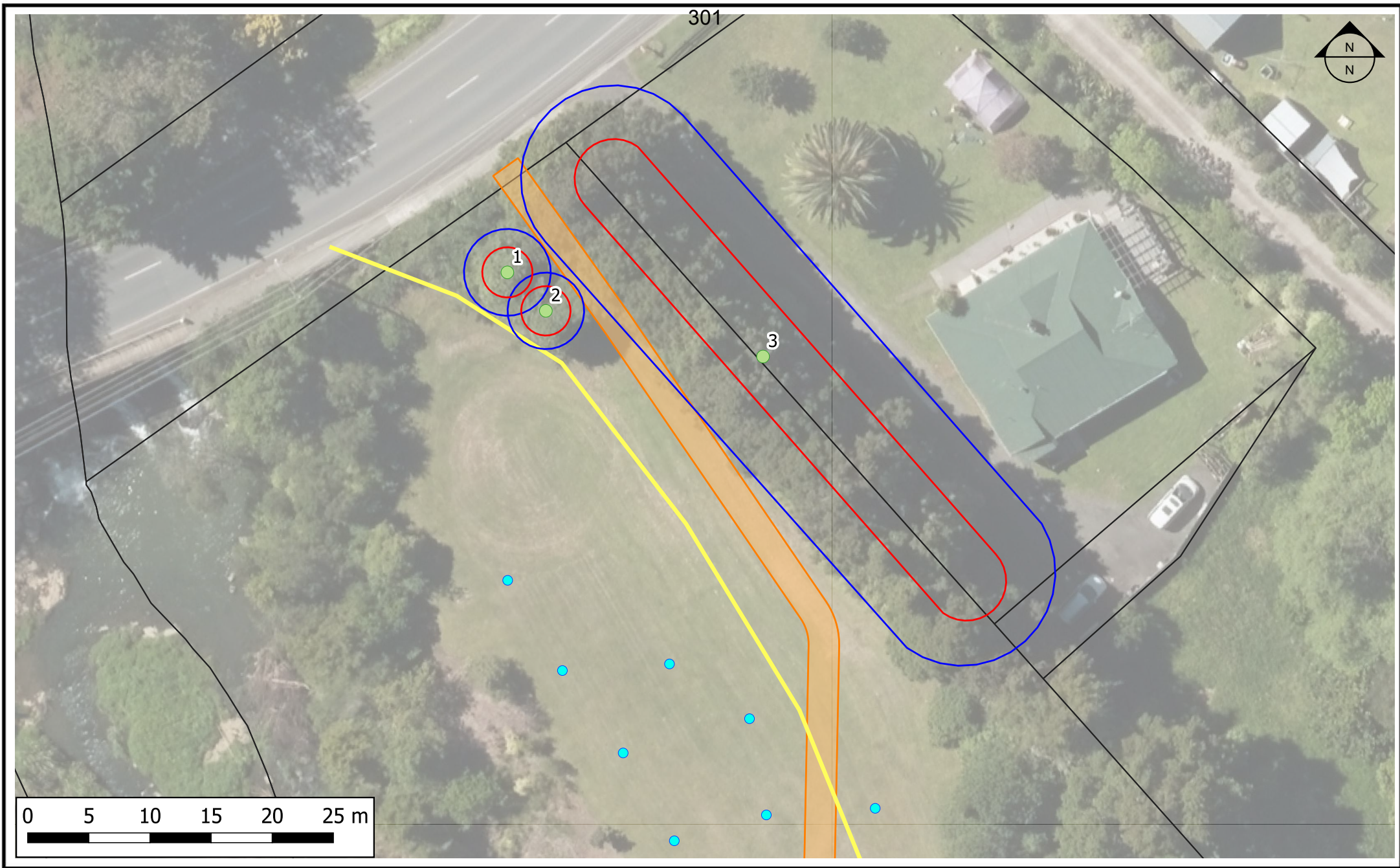
Works within the root zone of trees should be supervised by an appointed works arborist.

Legend	
● Trees to Retain	 Structural Root Zone
● Trees to Remove	 Tree Protection Zone
● Memorial Trees	 Pipeline
	 Walkway



Sands Road Walkway Tree Location Plan

Requested by		Date	
Surveyed by	PVL	Mar 2021	
Plotted by	PVL	Mar 2021	
Checked by	LGS	Apr 2021	
Drawing number	PVL-35030-00	Rev	A



Aerial images may not accurately reflect the actual vegetation cover. Vegetation is plotted as accurately as possible. Unless otherwise stated, project specific vegetation only has been plotted and captured.

Vegetation alteration/removal may be subject to resource consent requirements/conditions. It shall be the client's responsibility to determine whether or not this is the case.

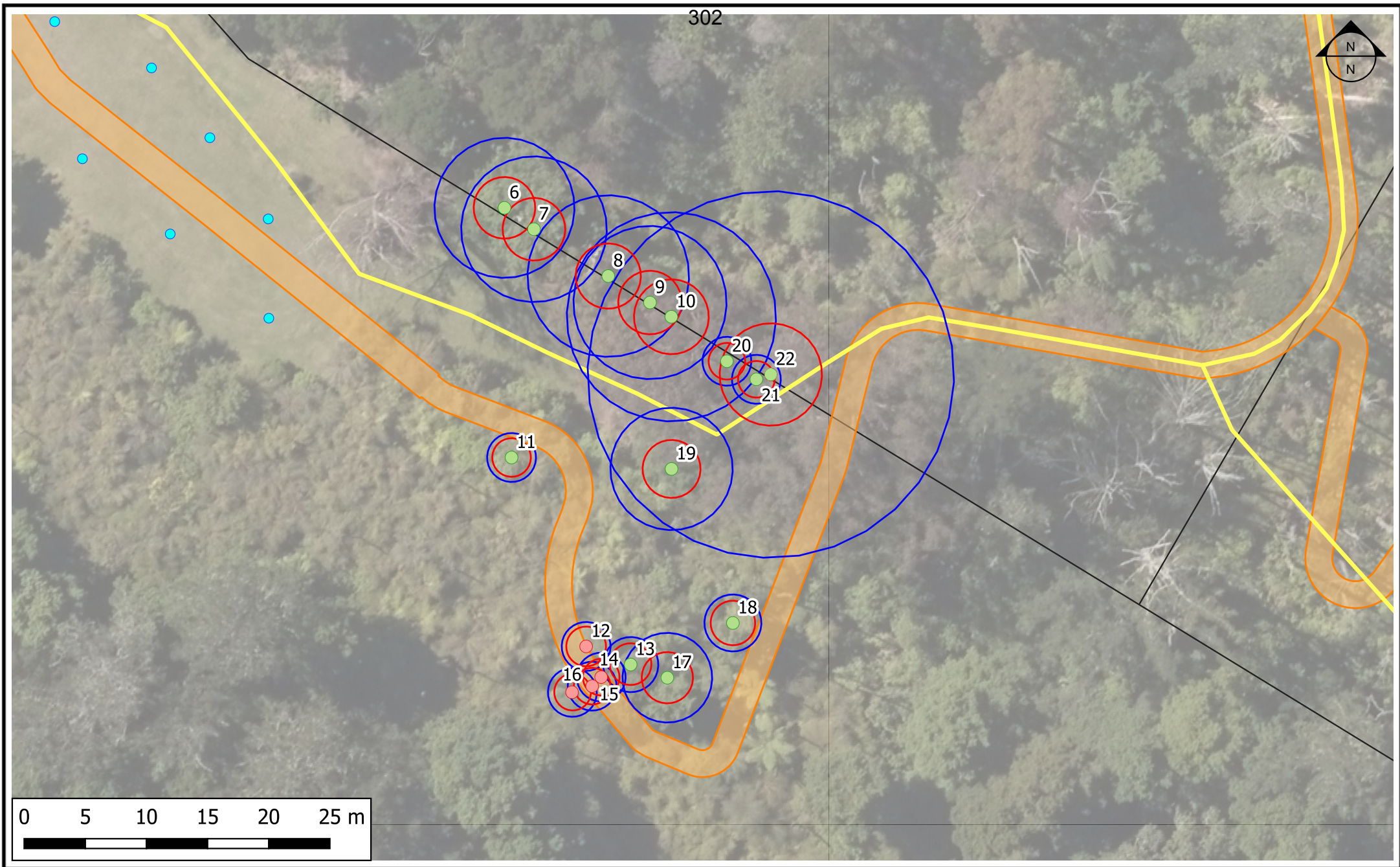
Works within the root zone of trees should be supervised by an appointed works arborist.

Legend	
● Trees to Retain	 Structural Root Zone
● Trees to Remove	 Tree Protection Zone
● Memorial Trees	 Pipeline
	 Walkway



Sands Road Walkway Tree Location Plan

Requested by		Date	
Surveyed by	PVL	Mar 2021	
Plotted by	PVL	Mar 2021	
Checked by	LGS	Apr 2021	
Drawing number	PVL-35030-01	Rev	A



Aerial images may not accurately reflect the actual vegetation cover. Vegetation is plotted as accurately as possible. Unless otherwise stated, project specific vegetation only has been plotted and captured.

Vegetation alteration/removal may be subject to resource consent requirements/conditions. It shall be the client's responsibility to determine whether or not this is the case.

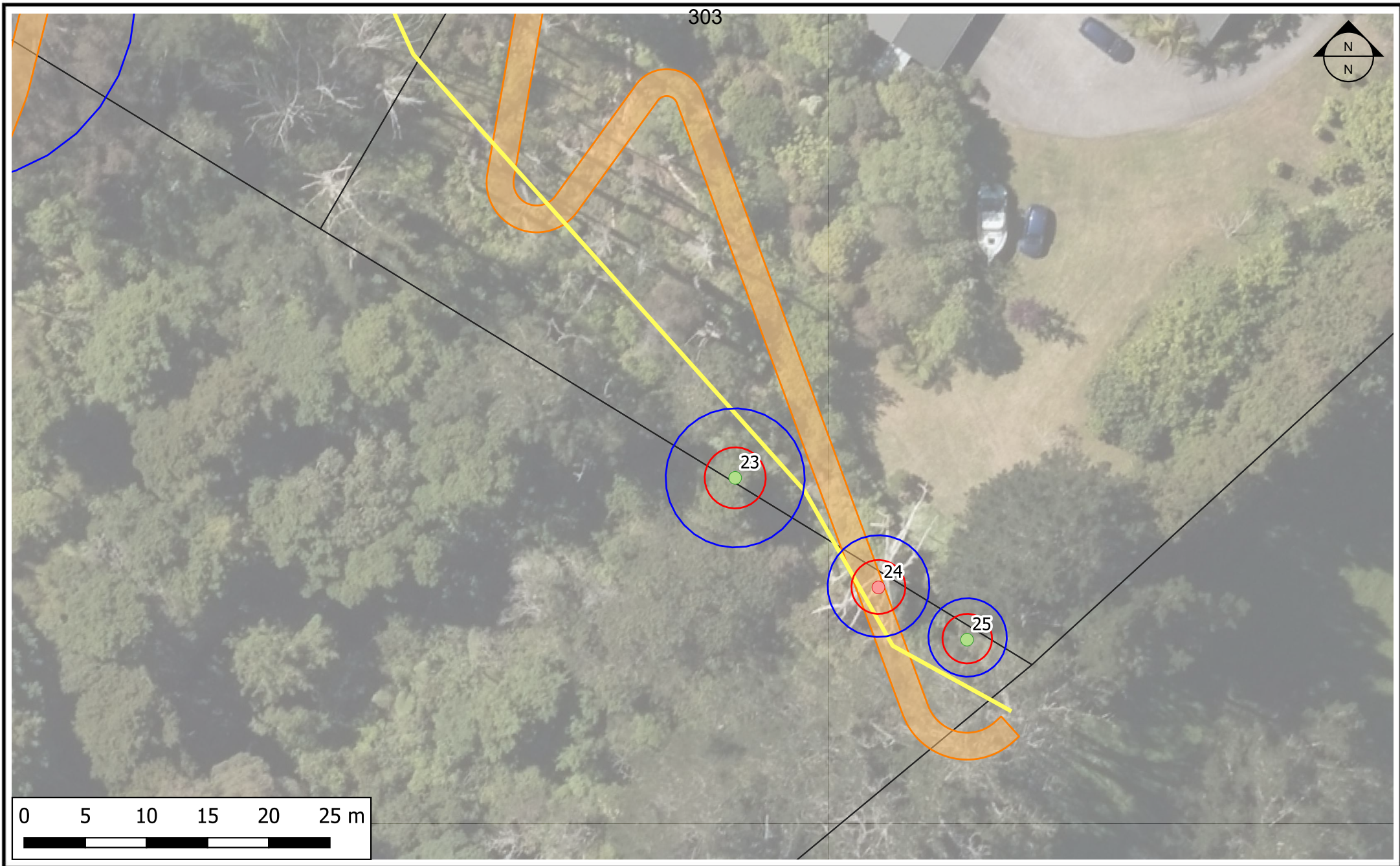
Works within the root zone of trees should be supervised by an appointed works arborist.

Legend	
● Trees to Retain	 Structural Root Zone
● Trees to Remove	 Tree Protection Zone
● Memorial Trees	— Pipeline
	— Walkway



Sands Road Walkway Tree Location Plan

Requested by	Date
Surveyed by PVL	Mar 2021
Plotted by PVL	Mar 2021
Checked by LGS	Apr 2021
Drawing number: PVL-35030-02	Rev: A



Aerial images may not accurately reflect the actual vegetation cover. Vegetation is plotted as accurately as possible. Unless otherwise stated, project specific vegetation only has been plotted and captured.

Vegetation alteration/removal may be subject to resource consent requirements/conditions. It shall be the client's responsibility to determine whether or not this is the case.

Works within the root zone of trees should be supervised by an appointed works arborist.

Legend	
● Trees to Retain	 Structural Root Zone
● Trees to Remove	 Tree Protection Zone
● Memorial Trees	 Pipeline
	 Walkway



Sands Road Walkway

Tree Location Plan

Requested by		Date
Surveyed by	PVL	Mar 2021
Plotted by	PVL	Mar 2021
Checked by	LGS	Apr 2021
Drawing number	PVL-35030-03	Rev
		A



Appendix B: Tree Protection Methodology for Sands Road Walkway

Pre-works

1. An arborist (appointed arborist) experienced in tree protection systems, protocols and construction methodologies around trees, is to be engaged for the project.
2. Prior to works commencing, the consent holder is to arrange a pre-start meeting with the works principal, contractor, representatives of Council and the appointed arborist. The pre-start meeting is to identify:
 - Areas where the appointed arborist will need to be on site monitoring works. The expected work timings near the trees.
 - Work methodologies required.
 - Access to the site for vehicles and equipment and potential for storage of the equipment in relation to the trees.
 - Onsite audit recording method and final report requirements.
3. The construction area and areas where excavations will be required are to be identified prior to construction.

During works

4. All works within a tree's root zone (Tree Protection Zone (TPZ)) will be managed by the appointed arborist.
5. The appointed arborist will audit all works and effects on the tree.
6. Tree protection methodology amendments shall require approval from the appointed arborist and written confirmation from Council's Community Facilities arborist.
7. All work will be managed so that any potential adverse effects are minimised or mitigated.
8. No chemicals or harmful fluids are to be emptied or disposed of within the TPZ.
9. Damage and/compaction to existing soil structure is to be avoided by the exclusion of machinery, structures and vehicles from the TPZ, unless protected with appropriate, fit for purpose, temporary load bearing surfaces.
10. Roots uncovered during the operation are to be retained and protected. However, if this cannot be achieved, the severance of any root in excess of 35mm shall be done so at the discretion of the appointed arborist if the cumulative effects are within the tree's tolerances.
11. Where roots are to be severed, they are to be cut by the appointed arborist, or a contractor approved by the appointed arborist.
12. The backfill of excavations, around retained roots, is to utilise the original excavated material or with a superior quality soil.

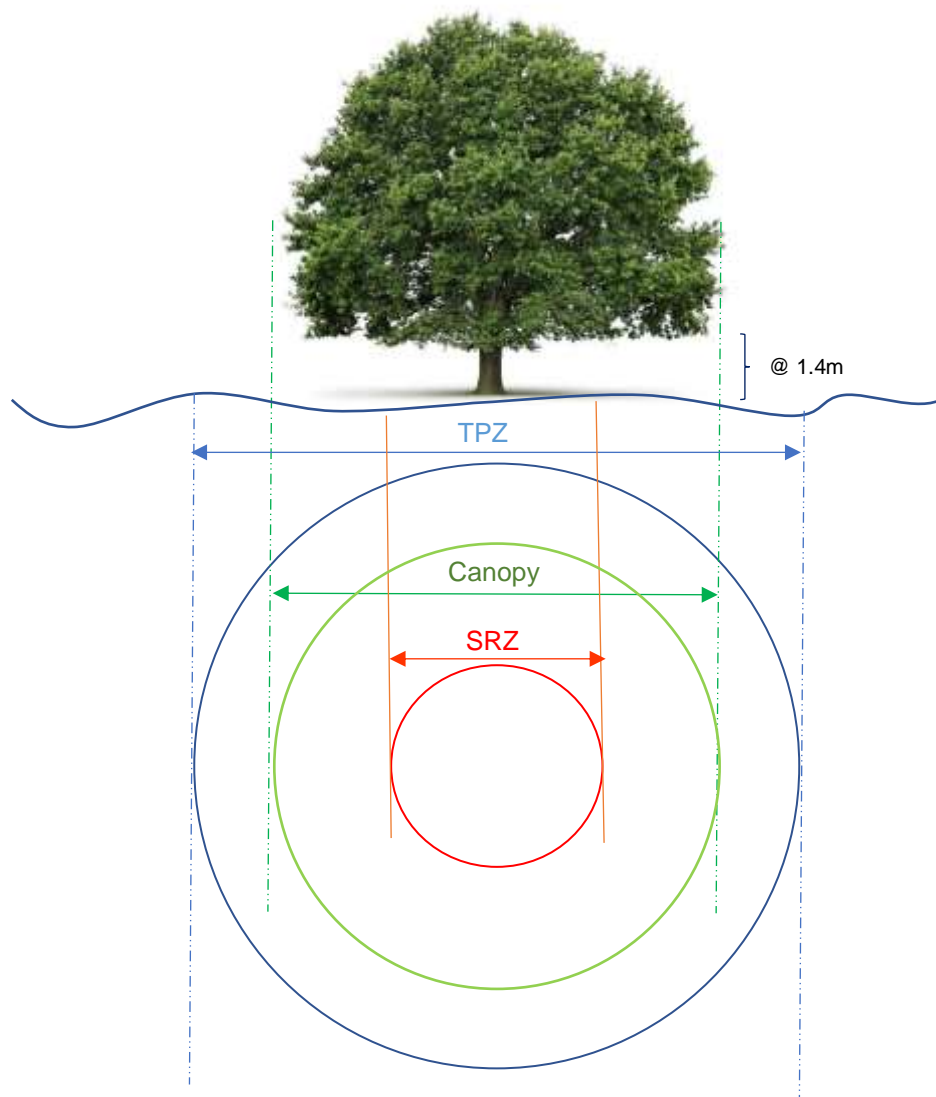


-
13. Retained roots are to be protected through hessian or wool mulch wrapping (or a similar product), and where exposed to chemicals or concrete, to be covered in a layer of polythene (or a similar product). Surface roots are to be covered with geotextile fabric and a 75mm layer of sand where affected by paving.



Appendix C: Tree Protection Zone (TPZ) & Structural Root Zone (SRZ).

The Australian Standard AS 4970-2009 - *Protection of trees on development sites* is used for the allocation of tree protection zones. This method provides a TPZ that addresses both tree stability and growth requirements. TPZ distances are measured as a radius from the centre of the trunk at ground level.



AS4970-2009, s3: The radius of the TPZ is calculated for each tree by multiplying its Diameter @ Breast Height measured @ 1.4m from ground level ($DBH \times 12 = TPZ$). ($DBH = \text{Trunk Girth @ 1.4m} \div \pi$).

To calculate the SRZ: Radius SRZ = Diameter Above Root Crown ($DRC \times 50$) $^{\wedge} 0.42 \times 0.64$. If the DRC is less than 0.15m the SRZ will be 1.5m.

7.1 Financial report for the 12 months ending 30 June 2021

Meeting: Whangarei District Council
Date of meeting: 22 July 2021
Reporting officer: Alan Adcock (General Manager – Corporate/CFO)

1 Purpose

To provide the external net debt position and treasury report as at 30 June 2021.

2 Recommendation

That the Council notes the external net debt position and treasury report as at 30 June 2021.

3 Background

3.1 Operating Result

The usual monthly financial report for the period ending 30 June 2021 has not been prepared.

Following the end of the financial year on 30 June a number of non-cash and year-end adjustments need to be made which are still being worked on. These will be completed as part of the year end process. A full year operational financial report will be provided to Council as part of a workshop to present the results for the 2021 Annual Report.

Capital Project Expenditure

Capital expenditure has not been included in this agenda. Year end accruals are currently being prepared. Accruals are required in order to accurately capture all capital expenditure relating to the year ended 30 June 2021.

A final capital projects report, including revised carry forwards will be provided as part of the August 2021 meeting agenda.

3.2 External Net Debt and Treasury

Total net external debt at the end of June 2021 was \$145.0 million compared to year to date budgeted net debt of \$149.0 million, resulting in net debt being \$4.0 million under budget.

This favourable variance is due to assumptions made regarding the opening net debt position of the 2020-21 Annual Plan (opening balance was \$5m less than budgeted), higher than budgeted rates instalments received, central government funding received, carry

forwards and the year to date favourable operating surplus. Much of this is offset by unbudgeted property purchases.

As at 30 June 2021 cash and term deposits held of \$27.0 million was comprised of:

- \$10.0 million of term deposits relating to short term borrowings not yet required.
- \$2.0 million of term deposits relating to excess cash not currently required.
- \$15.0 million of cash on hand.

Economic Outlook

The commentary in italics below was taken from the Interest Rate Report provided by PWC Treasury Advisory, dated 5 July 2021.

We retain our base-case forecast target date for the Reserve Bank of New Zealand (RBNZ) to begin tightening the cash rate reins in the second half (August/November) of 2022, though we note that the risks to this view are skewed toward earlier rather than lately.

Current market pricing implies an Official Cash Rate (OCR) increase in February 2022, though the market dynamics are fluid.

The market continues to view the odds of an OCR increase in November of this year as slightly better than average and February 2022 as a done deal. We are yet to be convinced of the merits of an early 2022 move, let alone a late 2021 increase.

Borrower Recommendations: Maintain term interest rate risk positions at policy minimums in the 0 – 3 year brackets. The relative flatness of the current curve may create extension opportunities for those looking to undertake maintenance hedging.

4 Accounts Receivable and Arrears

Total arrears as at 30 June 2021 was \$4.3 million, compared to \$5.3 million in the previous year. The due date for rates was extended one-month last year as part of our COVID-19 relief package. The arrears are \$0.1 million less than as at 30 June 2019.

5 Significance and engagement

The decisions or matters of this agenda do not trigger the significance criteria outlined in Council's Significance and Engagement Policy, and the public will be informed via agenda publication on the website.

6 Attachment

Treasury report

TREASURY REPORT
30 JUNE 2021

**STANDARD AND POORS CREDIT RATING:****AA +**

Outlook: Stable

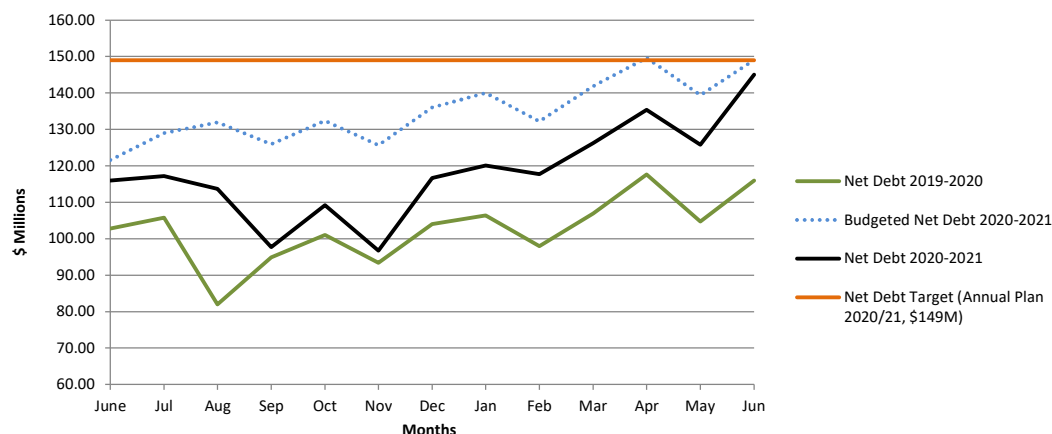
DEBT SUMMARY:**As at 30 June 2021**

External Debt		
Opening public debt as at 1 June 2021		172,000,000
Plus loans raised during month	5,000,000	
Less loan repayments made during month (Note: Facility movement has been netted)	(5,000,000)	
Net movement in external debt		-
Total External Debt		172,000,000
Less: Cash balances (excluding funds held on behalf)		15,000,514
Term deposits (Funds held on deposit until required for project funding)	12,000,000	
Total cash and term deposits		27,000,514
Total Net External Debt		144,999,486

Note: Council also holds \$2.98m of LGFA borrower notes. These are not included in net external debt as per Council's Treasury Risk Management Policy.

External debt is represented by:

Less than 1 Year	30,000,000
1-3 Years	38,000,000
3-5 Years	38,000,000
Greater than 5 Years	66,000,000
Total	172,000,000

NET EXTERNAL DEBT COMPARED TO BUDGET:**Internal Funding* Reserve balances will be updated as part of the Annual Report/year end process**

Community Development Funds		10,667,502
Property Reinvestment Reserve - Committed	-	
Property Reinvestment Reserve - Available for Investment	17,704,482	
		17,704,482
Water Reserve		21,593,354
Total		49,965,339

*Note: Reserves Funding is disclosed to ensure transparency of Council's use of cashflow management to fund capital works. Where funds are raised through property sales or targeted rates for Water, but they are not required for immediate investment in that asset category, Council's Revenue and Financing policy allows them to be used for other purposes, rather than being held on deposit. To ensure total transparency of this we create Reserve Accounts so that the appropriate funding can be made available and transferred back when it is required. The timing of projects requiring these funds is set out in our Long Term Plan (LTP) and/or Annual Plan (AP). These Reserves are not a liability to an external party, and are not part of Council's debt obligations.

The Property Reinvestment Reserve is split to record funds that have been already been committed to land purchases, and the remaining uncommitted balance that is available for other future investment purchases.

The only situation where our Net Debt would increase as a result of these Reserves is if major expenditure on Water Assets or property purchases is brought forward from the dates set out in the LTP/AP.

RESOLUTION TO EXCLUDE THE PUBLIC**Move/Second**

That the public be excluded from the following parts of proceedings of this meeting.

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under Section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

General subject of each matter to be considered		Reason for passing this resolution in relation to each matter	Ground(s) under Section 48(1) for passing this resolution
1.1	Confidential Minutes Whangarei District Council meeting 22 July 2021	Good reason to withhold information exists under Section 7 Local Government Official Information and Meetings Act 1987	Section 48(1)(a)
1.2	Property Transaction		

This resolution is made in reliance on Section 48(1)(a) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by Section 6 or Section 7 of that Act which would be prejudiced by the holding of the whole or the relevant part of the proceedings of the meeting in public, are as follows:

Item	Grounds	Section
1.1	For the reasons as stated in the open minutes	
1.2	To enable Council to carry on without prejudice or disadvantage negotiations (including commercial and industrial negotiations)	Section 7(2)(i)

Resolution to allow members of the public to remain

If the council/committee wishes members of the public to remain during discussion of confidential items the following additional recommendation will need to be passed:

Move/Second

"That _____ be permitted to remain at this meeting, after the public has been excluded, because of his/her/their knowledge of Item _____.

This knowledge, which will be of assistance in relation to the matter to be discussed, is relevant to that matter because _____.

Note: Every resolution to exclude the public shall be put at a time when the meeting is open to the public.