

# Whangarei District Council Meeting

## Agenda

**Date:** Thursday, 28 November, 2024

**Time:** 9:00 am

**Location:** Civic Centre, Te Iwitahi, 9 Rust Avenue

**Elected Members:** His Worship the Mayor Vince Cocurullo  
Cr Gavin Benney  
Cr Nicholas Connop  
Cr Ken Couper  
Cr Jayne Golightly  
Cr Phil Halse  
Cr Deborah Harding  
Cr Patrick Holmes  
Cr Scott McKenzie  
Cr Marie Olsen  
Cr Carol Peters  
Cr Simon Reid  
Cr Phoenix Ruka  
Cr Paul Yovich

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

|   |          |
|---|----------|
| <b>1. Karakia/Prayer</b>  |          |
| <b>2. Declarations of Interest / Take Whaipānga</b>   |          |
| <b>3. Apologies / Kore Tae Mai</b>  |          |
| <b>4. Public Forum / Huihuinga-a-tangata</b>  | <b>5</b> |
| <b>5. Confirmation of Minutes of Previous Meeting of the Whangarei District Council / Whakatau Meneti</b>   |          |
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- 7.1 Confidential Minutes Whangarei District Council 24 October 2024
- 7.2 Confidential Minutes Whangarei District Council Extraordinary Meeting 21 November 2024
- 7.3 Road Legalisation Blue Horizon Road
- 7.4 Road Legalisation Otuhi Road
- 7.5 Road Legalisation Rauiri Drive, Marsden Cove
- 7.6 Transition Advisory Board Update and Terms of Reference
- 7.7 Property Purchase

**8. Closure of Meeting / Te katinga o te Hui**

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:** 28 September 2024  
**Reporting officer:** Nicolene Pestana (Team Leader Democracy)

### 1 Purpose / Te Kaupapa

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

No applications to speak had been received at the time of agenda closure.

#### Responses

| Speaker   | Topic                                |
|---|--------------------------------------|
| Colin Edwards   | Renewal of ground lease – legal fees |
| <p><i>Response</i></p> <p>Staff considered that matters raised by Mr Edwards and sought advice as to what is currently best practice within the industry. It has become apparent that there is no common or standardised approach to this matter. The ex-harbour board leases almost universally require the lessee/tenant to pay so that is simply a matter of contract. The position adopted by WDC is consistent to the approach of NRC when dealing with their leaseholders of their Dryland Endowment land.</p> <p>It was always common practice that the lessee paid the lessor's costs. It is only in recent years that there has been a change in practice in some guidance, although this is universal. While the Auckland District Law Society standard lease form does provide for each party to pay their own costs there are other commercial leases which provide for the tenant to pay the landlord's costs.</p> <p>Council's current approach is consistent with and a continuation of the original contracts and as such has been in practice for over 25 years and in each case the tenant when taking on the lease knew what the terms were, and those terms included paying for the landlord's legal costs.</p> |                                      |

Part of our consideration is the cumulative effect of any decision not to enforce the terms of contract as the same consideration would need be given to all Council's other almost 150 commercial tenants. To change practice now would incur considerable cost on Council and by extension ratepayers as Mr Edwards lease is just one of many leases renewed under these terms each year of leases for commercial premises used for or intended to be used for commercial activities.

It is estimated for costs on an annual basis would be approximately \$40,000.00 exclusive of GST and disbursements so over 5 years that would be something in the vicinity of \$200,000.00 and that is only for the commercial leases. In addition, there are all the reserves leases and Council transact approximately 15 of those a year so that would be another \$20,000.00 per year.

Staff have advised Mr Edwards that the agreed terms will remain, and the condition of the contract needs to be honoured.

## Whangarei District Council Meeting Minutes

**Date:** Thursday, 24 October, 2024  
**Time:** 9:00 a.m.  
**Location:** Civic Centre, Te Iwitahi, 9 Rust Avenue

### In Attendance

His Worship the Mayor Vince Cocurullo  
 Cr Gavin Benney  
 Cr Nicholas Connop  
 Cr Ken Couper  
 Cr Jayne Golightly  
 Cr Phil Halse  
 Cr Deborah Harding  
 Cr Patrick Holmes  
 Cr Scott McKenzie  
 Cr Marie Olsen  
 Cr Carol Peters  
 Cr Simon Reid  
 Cr Phoenix Ruka  
 Cr Paul Yovich

### Scribe

C Brindle (Senior Democracy Adviser)

### Administration

- Meeting livestreamed

#### 1. Karakia/Prayer

His Worship the Mayor opened the meeting with a karakia/prayer

#### 2. Declarations of Interest / Take Whaipānga

No declarations of interest were made in the open section of the meeting.

#### 3. Apologies / Kore Tae Mai

Cr Paul Yovich (early departure) and Cr Phoenix Ruka (late arrival).

**Moved By** Cr Carol Peters

**Seconded By** Cr Deborah Harding

That the apologies be sustained.

**Carried**

*Cr Phoenix Ruka joined the meeting at 9:02am following apologies.*

**4. Public Forum / Huihuinga-a-tangata**

Colin Edwards - renewal of ground lease - legal fees

**5. Confirmation of Minutes of Previous Meeting of the Whangarei District Council / Whakatau Meneti**

**5.1 Minutes Whangarei District Council Meeting held 26 September 2024**

**Moved By** Cr Carol Peters

**Seconded By** Cr Simon Reid

That the minutes of the Whangarei District Council meeting held Thursday 26 September 2024, 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.

**Carried**

**6. Decision Reports / Whakatau Rīpoata**

**6.1 Cobham Oval - Parking restrictions**

**Moved By** Cr Phil Halse

**Seconded By** Cr Simon Reid

That Council:

1. Notes the feedback from Elected Members at a Briefing on 11 September to introduce permanent parking restrictions at Cobham Oval by Council resolution;
2. Reserves, under section 591 of the Local Government Act 1974 and under clause 15.1.a of the Parking and Traffic Bylaw 2017, the area of the carpark southeast of Cobham Oval shaded blue in Attachment 1 as a parking place;
3. Prescribes, under clause 15.1.c of the Parking and Traffic Bylaw 2017, a maximum period of 4 hours for the parking of any vehicle at the Cobham Oval parking place, except for vehicles displaying Council-approved permits;
4. Specifies, under clause 16.1 of the Parking and Traffic Bylaw 2017, the four parking spaces highlighted yellow in Attachment 2 as mobility parking spaces;



5. Determines that the parking restrictions under resolutions (3) and (4) above will take effect once traffic control devices that evidence those restrictions are in place;
6. Directs staff to install the traffic control devices by 30 November 2024;
7. Notes that staff will have to apply regulatory discretion around enforcement of the restrictions in some instances;
8. Directs staff to report back on traffic management requirements and potential safety improvements within the road corridor that could reduce the use of traffic cones during an event, while addressing necessary health and safety requirements;
9. Directs staff to engage with Cobham Oval Trust, Northland Cricket Association and NECT on implementation and report back to Council with any changes that require a resolution.

Procedural Motion

**Moved By** Cr Ken Couper

**Seconded By** Cr Paul Yovich

That the motion now be put.

*On the procedural motion being put Cr Connop called for a division:*

|                       | <b>For</b> | <b>Against</b> | <b>Abstain</b> |
|-----------------------|------------|----------------|----------------|
| His Worship the Mayor | X          |                |                |
| Cr Gavin Benney       | X          |                |                |
| Cr Nicholas Connop    |            | X              |                |
| Cr Ken Couper         | X          |                |                |
| Cr Jayne Golightly    |            | X              |                |
| Cr Phil Halse         |            | X              |                |
| Cr Deborah Harding    |            | X              |                |
| Cr Patrick Holmes     | X          |                |                |
| Cr Scott McKenzie     |            | X              |                |
| Cr Marie Olsen        |            | X              |                |
| Cr Carol Peters       | X          |                |                |
| Cr Simon Reid         |            | X              |                |
| Cr Phoenix Ruka       | X          |                |                |
| Cr Paul Yovich        | X          |                |                |
| <b>Results</b>        | <b>7</b>   | <b>7</b>       | <b>0</b>       |

**The motion was Lost (7 to 7)  
on the Casting Vote of His Worship the Mayor**

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

|                       | <b>For</b> | <b>Against</b> | <b>Abstain</b> |
|-----------------------|------------|----------------|----------------|
| His Worship the Mayor | X          |                |                |
| Cr Gavin Benney       | X          |                |                |
| Cr Nicholas Connop    |            | X              |                |
| Cr Ken Couper         | X          |                |                |
| Cr Jayne Golightly    | X          |                |                |
| Cr Phil Halse         | X          |                |                |
| Cr Deborah Harding    | X          |                |                |
| Cr Patrick Holmes     | X          |                |                |
| Cr Scott McKenzie     | X          |                |                |
| Cr Marie Olsen        | X          |                |                |
| Cr Carol Peters       | X          |                |                |
| Cr Simon Reid         | X          |                |                |
| Cr Phoenix Ruka       | X          |                |                |
| Cr Paul Yovich        | X          |                |                |
| <b>Results</b>        | <b>13</b>  | <b>1</b>       | <b>0</b>       |

**The Motion was Carried (13 to 1)**

## **6.2 Local Government Funding Agency - 2024 Annual Meeting Matters**

**Moved By** His Worship the Mayor

**Seconded By** Cr Carol Peters

That the Council:

1. Notes the Local Government Funding Agency has advised that its Annual Meeting will be held on 19 November 2024 in Wellington (and virtually upon request).
2. Notes that General Manager Corporate / Chief Financial Officer Alan Adcock will attend the Annual Meeting in his role as Local Government Funding Agency Director, not as a representative of Council.

3. As a consequence of item 2 above, Council appoints Craig Stobo, Local Government Funding Agency Chair, as Council's proxy.
4. Agrees that the proxy votes in favour of the following proposals which require ordinary shareholders resolutions:

**LGFA Resolution 2: Election of Company Directors** (undertaken by way of a poll)

- a) To re-elect Alan Adcock as a non-Independent Director for an additional three-year term
- b) To re-elect Craig Stobo as an Independent Director for an additional three-year term
- c) To elect Elena Trout as an Independent Director for a three-year term.

**LGFA Resolution 3: Election of Nominating Local Authorities to the Shareholder's Council**

- a) To re-elect Auckland Council as a Nominating Local Authority to the Shareholders' Council
- b) To re-elect Wellington City Council as a Nominating Local Authority to the Shareholders' Council.

**LGFA Resolution 5: Changes to the Foundation Policies**

To approve the amendments to the Foundation Policies of the Company.

5. Agrees that the proxy votes against the following proposal which requires ordinary shareholders resolutions:

**LGFA Resolution 4: Directors' Remuneration**

To approve the following increases in Director fees payable, in each case with effect from 1 July 2024:

- a) In respect of the Director acting as chair of the Board of Directors, an increase of \$3,720 per annum, from \$124,000 per annum to \$127,720 per annum
- b) In respect of the Director acting as chair of the audit and risk committee, an increase of \$2,340 per annum, from \$78,000 per annum to \$80,340 per annum
- c) In respect of each of the other Directors acting as members of the audit and risk committee, an increase of \$2,190 per annum, from \$73,000 per annum to \$75,190 per annum
- d) In respect of each of the other directors, an increase of \$2,100 per annum, from \$70,000 per annum to \$72,100 per annum.

**Carried**

### **6.3 Road Corridor Maintenance Contract Procurement Plan**

**Moved By** Cr Simon Reid  
**Seconded By** Cr Carol Peters

That the Council:

1. Approves the Procurement Plan for the Whangarei Road Corridor Maintenance Contracts
2. Notes Additional reporting requirements will be introduced during the contract implementation phase for staff to report on the contract progress and performance to the Chief Executive and the Chairman of the Infrastructure Committee on a quarterly basis in addition to monthly reporting through the Operations Report.
3. Notes that following the procurement process, Contract Awards will be brought back to council for approval. This is expected to be in April 2025.

**Carried**

#### **6.4 Nominees for Joint Climate Change Adaptation Standing Committee - Hapū Membership**

**Moved By** Cr Phoenix Ruka  
**Seconded By** Cr Deborah Harding

That the Council:

1. Appoint Whangārei Hapū nominees to the Joint Climate Change Adaptation Standing Committee:
  - Primary Representative: Delaraine Armstrong
  - Alternate: Hinemoa Apetera.
2. Note that these appointments will replace the current Māori Ward Councillors in accordance with the Terms of Reference for the Joint Climate Change Adaptation Standing Committee (March 2022):
  - Cr Deb Harding
  - Cr Phoenix Ruka.
3. Acknowledge and thank Councillor Deb Harding and Councillor Phoenix Ruka for their work whilst on the Joint Climate Change Adaptation Standing Committee.
4. Note the WDC Elected Member on the Joint Committee is Councillor Scott McKenzie and that Councillor Nicholas Connop is the alternate member.

Carried

**7. Public Excluded Business / Rāhui Tangata****Moved By** His Worship the Mayor**Seconded By** Cr Patrick Holmes

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 Emergency Whangarei District Council 26 September 2024 | Good reason to withhold information exists under Section 7 Local Government Official Information and Meetings Act 1987 | Section 48(1)(a)  |
| 1.2   | ICT – Contracts Update  |  |   |
| 1.3   | Update on the Insurance Policy Renewal for 2024-2025                        |  |   |
| 1.4   | Land Purchase Springs Flat Project  |  |   |
| 1.5   | Potential Opportunities for High-Level Major Sporting Events in Northland   |  |   |

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)    |
| 1.3  | To protect information that would disclose a trade secret   | Section 7(2)(b)(i) |
| 1.4  | To enable Council to carry on without prejudice or disadvantage negotiations (including commercial and industrial negotiations) | Section 7(2)(i)    |

Item 5.1

8

|     |   |                 |
|-----|---|-----------------|
| 1.5 | To enable Council to carry on without prejudice or disadvantage negotiations (including commercial and industrial negotiations) | Section 7(2)(i) |
|-----|---|-----------------|

**Carried**

*A break was taken at this juncture from 10.20am to 10.30am.*

## **8. Closure of Meeting / Te katinga o te Hui**

His Worship the Mayor closed the meeting with a karakia/prayer at 11.19am.

Confirmed this 28<sup>th</sup> day of November 2024

His Worship the Mayor Vince Cocurullo (Chairperson)

## Whangarei District Council Meeting Minutes

**Date:** Thursday, 7 November, 2024  
**Time:** 9:00 a.m.  
**Location:** Civic Centre, Te Iwitahi, 9 Rust Avenue

**In Attendance**

His Worship the Mayor Vince Cocurullo  
 Cr Nicholas Connop  
 Cr Ken Couper  
 Cr Jayne Golightly  
 Cr Phil Halse  
 Cr Patrick Holmes  
 Cr Scott McKenzie  
 Cr Marie Olsen  
 Cr Carol Peters  
 Cr Simon Reid  
 Cr Paul Yovich

**Not in Attendance**

Cr Gavin Benney  
 Cr Deborah Harding  
 Cr Phoenix Ruka

**Scribe** N. Pestana (Team Leader, Democracy)

### Administration

- Meeting livestreamed

#### 1. Karakia/Prayer

His Worship the Mayor opened the meeting with a prayer.

#### 2. Declarations of Interest / Take Whaipānga

No interests were declared.

#### 3. Apologies / Kore Tae Mai

Cr Deb Harding, Cr Gavin Benney and Cr Phoenix Ruka (apologies).

**Moved By** Cr Carol Peters

**Seconded By** Cr Phil Halse

## Item 5.2

That the apologies be sustained.

**Carried**

**4. Decision Reports / Whakatau Rīpoata**

**4.1 Alcohol Control Bylaw - Hearing**

**Moved By** His Worship the Mayor  
**Seconded By** Cr Nicholas Connop

That Council:

1. Receives the feedback on the proposed amendments to the Alcohol Control Bylaw and alcohol ban areas in Attachments 1 and 2;
2. Hears the oral feedback on the proposed Alcohol Control Bylaw and alcohol ban areas from the submitters listed in Attachment 3.

**Carried**

*The submitters who were heard are listed:*

Warwick Taylor

Chase Cahalane – Surf Life Saving New Zealand

**5. Public Excluded Business / Rāhui Tangata**

There was no business concluded in public excluded.

**6. Closure of Meeting / Te katinga o te Hui**

His Worship the Mayor concluded the meeting at 9.20am.

Confirmed this 28<sup>th</sup> day of November 2024

His Worship the Mayor (Chairperson)



## 6.1 Notice of Motion – Background Information

|                           |  |
|---------------------------|--|
| <b>Meeting:</b>           | Whangarei District Council   |
| <b>Date of meeting:</b>   | 28 November 2024   |
| <b>Reporting officer:</b> | Andrew Venmore – Manager Water Services, Rebecca Vertongen – Legal Counsel |

### 1 Purpose / Te Kaupapa

To provide background information on the Directive from the Director-General of Health to fluoridate and to provide context of legal obligations and risks in relation to the Notice of Motion regarding fluoridation.

### 2 Recommendation/s / Whakataunga

That the Council:

1. Notes the information contained in this report about the Directions relating the fluoridation of Whangārei's water supply and legal advice relevant to the notice of motion.
2. Notes the legal advice on the legal risks which include the potential for:
  - Prosecution;
  - Intervention by the Minister of Local Government;
  - The Ministry of Health directly intervening to implement the directive;
  - The Ministry of Health seeking a court order for implementation; and
  - The risk of personal liability for Elected Members.
3. Notes that the Ministry of Health has indicated that their Bill of Rights review is in its final stages and they hope it will be completed by the end of the year.
4. Notes that staff will keep Elected Members informed of any new or updated information as it becomes available.

### 3 Background / Horopaki

In July 2022 the Director-General of Health issued a directive for WDC, along with 13 other Councils, to fluoridate water supplied from five water treatment plants in Whangarei and Bream Bay. The timeframe for this directive to be implemented was June 2024 for Whau Valley, July 2024 for Ruddells, September 2024 for Ahuroa and Ruakaka Water Supplies and June 2026 for Poroti Water Supply.

In October 2023 a contract to install fluoridation equipment was awarded. At the same time Council also agreed to accept funding from the Ministry of Health totaling \$4,557,856.88 (excl GST), being the full cost of constructing the fluoridation infrastructure at the first four plants. At Poroti the fluoride equipment was to be installed as part of the plant upgrade project in 2026. The operational cost of fluoridation will have to be met by Council.

In April, Council agreed to request an extension from the Director-General of Health. A response was received from the Director-General on 7th June 2024 approving the extension until 28 March 2025. This means that fluoride will need to be added to the water at the four treatment plants from the last week of February 2025. The final site, Poroti, has been directed to fluoridate by July 2026. Staff have made a funding application to the Ministry of Health to cover the costs of constructing fluoride dosing facilities at Poroti.

## 4 Discussion / Whakawhiti kōrero

### 4.1 Other Councils

Of the 13 other Councils that have been directed to Fluoride their water supplies, 7 have started fluoridation at all or some of the directed sites. Two other Councils are due to commence fluoridation before the end of the year. The remaining Councils have completion dates in 2025.

### 4.2 Legal Assessment - Executive Summary

- The decision of whether or not to fluoridate a water supply, is **not** currently a power or function of Local Authorities.
- The government, in amending the Health Act 1956, has made the decision regarding whether or not to begin fluoridation of a water supply a power and function of the Director-General Health.
- Local authorities retain no lawful discretion whether to comply with a Direction.
- The declaration taken by Elected Members at the start of the term requires them to perform the functions imposed by the Local Government Act and any other Act, including the Health Act 1956.
- The Courts have held (as recently as July 2024) that there is no justifiable reason for a local authority to refuse to implement the Director-General of Health's directive.

#### 4.2.1 Legal Background

On 10th November 2023 the High Court issued its judgement finding the Director-General had made an error of law by not explicitly considering the New Zealand Bill of Rights Act 1990 in making the decision. However, the High Court did not quash the directives, nor did it find that fluoridation of water supplies was unlawful, and the original direction remained in force. A second hearing was held on 2nd February 2024 to consider the appropriate relief. The judge decided that the directions remain in place but directed the Director-General of Health to assess each direction in terms of the Bill of Rights Act.

The Ministry of Health have indicated that the Bill of Rights review is nearing completion and they hope that it will be completed by the end of the year. A further appeal is being heard in June 2025. The Courts have stated that "*There is no basis in Radich J's decision, or any other authority to which I have been referred, for the proposition it was unlawful for the Council to comply with a valid Direction simply because it is being reconsidered due to an error of law.*"

#### 4.2.2 Changes to Health Act 1956 removed Council decision making on fluoridation

In 2021 the government passed legislation transferring the control of water fluoridation from local authorities to the Director-General of Health. The Bill had unanimous support from parliament in its third and final reading in November 2021. The stated intention of the Bill was to introduce consistent decision making in relation to fluoride. It also recognized the significant costs that Councils had incurred in litigation defending decision to fluoridate.

The requirements under the Health Act 1956 have been set out in previous agenda items but in summary:

- The Director-General of health may direct a local authority to add or not to add fluoride to drinking water supplied through its local authority supply (section 116E(1)).
- A local authority that receives a direction under section 116E must comply with that direction (section 116I(1)).

Since the legislation changed, the role of local authorities and the validity of the directions issued have been tested through the Courts. A summary of that litigation is included in Appendix 1. There is no instance where the Court held that Council has any remaining discretion to choose whether or not comply with a Direction.

#### 4.2.3 Declaration taken by Councillors

At the 13 November 2024 briefing, Councillors asked for clarification on the role of the oath/declaration taken by Elected Members at the beginning of their term, with the role of Elected Members in relation to fluoridation.

Pursuant to Clause 14, Schedule 7 of the Local Government Act 2002, Whangārei District Council's Elected Members made the following declaration on 2 November 2022:

*I, [name of Elected Member] declare that I will faithfully and impartially, and according to the best of my skill and judgment, execute and perform, in the best interests of Whangārei District, the powers, authorities, and duties vested in, or imposed upon, me as a member of the Whangārei District Council by virtue of the Local Government Act 2002, the Local Government Official Information and Meetings Act 1987, or any other Act.*

The declaration imposes in a broad sense a duty of civic responsibility, diligence and competence in carrying out the functions of the particular body. The duties outlined are complemented by the code of conduct which all Councils are required to have (clause 15, Schedule 7 of Local Government Act 2002). The code sets out the understandings and expectations adopted by the local authority regarding the manner in which members may conduct themselves while acting in their capacity as members.

In wording of the declaration and the Code of Conduct includes a duty to uphold the law or to perform those functions imposed upon an Elected Member by any other Act.

There is no latitude or leeway within the declaration or the Code of Conduct which allows for an Elected Member to wilfully (as opposed to accidentally) disregard the law or a lawful instruction, even if they do not agree with that law or instruction.

#### 4.2.4 Potential Legal Implications of Notice of Motion

If Council accepts the Notice of Motion and resolves not to fluoridate the district's water supplies as required by the Directive from the Director-General of Health, the following are legal risks:

### **Prosecution**

Failure to follow a direction to fluoridate the water supply is a strict liability offence. This means that it is not necessary to prove that WDC intended to commit the offence.

The Ministry has indicated in the recent hearing for *New Health New Zealand Incorporated v Director-General of Health* [2024] NZHC 1717 that they would pursue an educational approach in the first instance:

[8] Mr Varuhas, for the respondents, opposed the application on the basis that it is at odds with my previous decisions, that the first respondent is actively complying with the orders that have been made, that the first respondent's directions remain valid in the meantime and that there is no indication that the Director-General would take enforcement action in relation to the directions. ...

[11] Mr Varuhas put it on the basis that at this stage the Director-General is taking an educative approach. Any decision on enforcement action would need to be informed by the Solicitor-General's guidelines. In the event that enforcement action was threatened, then the most appropriate course would be for any council affected to seek interim orders.

Before filing the charging document – the Ministry would have to be confident that they could satisfy the threshold for prosecution under the Solicitor General Guidelines (and any internal prosecution policy they have) which requires satisfaction of two requirements:

1. Evidence which can be adduced in court which is sufficient to provide a reasonable prospect of conviction – the Evidential Test; and
2. Prosecution is required in the public interest – the Public Interest Test.

If a resolution is passed to the effect of Council not following the Directive, the evidential test would be clearly satisfied. If Whangārei District Council is the only (or first) Council to refuse to follow the directive, there is the possibility that the public interest test could be satisfied in such proceedings having a deterrent value for other local authorities who have or may be issued Directions.

### **Minister of Local Government Intervention**

A refusal by members of a local authority to perform and exercise lawful functions, could be the basis for a ministerial intervention. The intervention powers of the Minister of Local Government hinge on when there is a “problem” in relation to a local authority. Section 256 of the Local Government Act 2002 defines a problem as including:

- (a)(ii) a significant or persistent failure by the local authority to perform 1 or more of its functions or duties under any enactment.

If the Minister considers that failure to follow a direction of the Director-General of Health is a problem, there are various levels of ministerial intervention available under the Local Government Act including the appointment of a Crown Review Team (section 258), Crown Observer (section 258B), Crown Manager (section 258D) or Commissioner (section 258F) to assist or direct Council to address the problem or to perform the functions of Council.

### **Other Ministry of Health legal actions**

There are other legal options available to the Ministry which may be more likely to achieve their goals relating to the fluoridation of Whangārei's water supply than prosecution (unless it is considered that the deterrent value of initiating a prosecution is of higher importance to them):

- Intervene directly to implement the directive: Where the local authority ... fails to exercise any power or perform any duty under this Act, the Director General may himself or herself exercise the power or perform the duty (section 123(2)) or get employees or contractors to do so (section 123(3)).
- Apply for a writ of mandamus to compel a local authority to perform any duty that the local authority has failed to perform under the act (section 123A Health Act 1956).

Each of these would involve the legal costs of Council responding to claims and potentially responsibility for the costs of the Ministry in bringing the proceedings.

### **Personal liability for Elected Members**

As outlined in the briefing agenda for 13 November 2024, Elected Members are usually protected from personal liability under the Local Government Act 2002 and indemnified for any action taken in good faith and carrying out the powers and responsibilities of the Council (section 43 LGA 2002).

However, this indemnity does not apply, and Elected Members may be liable (jointly and separately) for losses incurred by the Council, where a decision of the governing body has resulted in:

- Unlawfully spent money; and
- Unlawfully incurred a liability.

Costs incurred from refusing to follow an order from the Director-General of Health could fall within this exemption to the indemnification provisions. The provisions have been considered to impose an obligation on a member who is aware of an issue to take an active part, a failure to vote or silence on the vote may be taken as assent. Liability would only be incurred by those Elected Members who voted in favour of the decision that resulted in the unlawful act (and those who abstain).

Members are only liable for these types of losses if the Auditor-General issues a report on the loss to the Minister of Local Government. An elected member will have a defence (and will not be liable) if they can prove the act (or failure to act) that resulted in the loss occurred:

- without their knowledge;
- with their knowledge but against their protests made at or before the time when the loss occurred;
- contrary to the manner in which they voted on the issue at a meeting; or
- in circumstances where they acted in good faith and relied on reports, information, or professional / expert advice given by a council staff member or a professional adviser or expert on matters that the elected members reasonably believed were within the person's competency

#### **4.2.5 Conclusion**

The decision whether or not to fluoridate is not a power or function of local government. The exact consequence of failing to follow the Directive is unknown because there a number of different options available to the Ministry of Health and the government. This item outlines the legal risks of non compliance.

## **5 Significance and engagement / Te Hira me te Arawhiti**

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 / Ngā Tāpiritanga**

Appendix 1: Summary of cases relating to Fluoridation since the legislation was changed

**Appendix 1: Summary of cases relating to Fluoridation since the legislation was changed.**

| Type of application and date                  | Case reference  | Outcome of case   |
|---|---|---|
| Costs award<br>2 July 2024                    | Fluoride Action Network (NZ) Inc v Hastings District Council [2024] NZHC 1781 | <p>Consideration of costs to be awarded after Fluoride Action Network’s unsuccessful application for interim injuncton</p> <p>Justice Lahood: <i>“The proceeding was effectively another vehicle for groups that oppose fluoridation to challenge the Director-General’s directions to local authorities to fluoridate their water supplies and to challenge the fluoridation of water in New Zealand more generally ... <b>issues relating to justification of water fluoridation have already been raised and dismissed by the courts at all levels. In addition, Parliament has explicitly endorsed water fluoridation as a public health measure.</b>”</i></p> <p>Outcome: Fluoride Action Network ordered to pay costs of \$41,000 against to Hastings District Council.</p>   |
| Interim injunction application<br>16 May 2024 | Fluoride Action Network (NZ) Inc v Hastings District Council [2024] NZHC 1313 | <p>Application for urgent injunction by Fluoride Action Network to halt the introduction of fluoride to urban water supply of Hastings.</p> <p>Summary of decision by Justice Lahood:</p> <p><i>In summary, I consider the application for judicial review should be dismissed because:</i></p> <p><b>(a) It was not unlawful for the Council to comply with a valid Direction simply because it is being reconsidered due to an error of law. The legal effect of Radich J’s decision is that acting upon the Direction is not presumptively unlawful.</b></p> <p><b>(b) Neither <a href="#">s 6 of the New Zealand Bill of Rights Act 1990 (Bill of Rights)</a>, or the principle of legality, require the legislation to be interpreted in a way that gives the Council a discretion whether to comply with the Direction.</b></p> <p><i>(c) There is ample evidence to provide a rational basis for both the Council’s decision not to seek an extension of the deadline to comply with the Direction, and for the Director-General to not offer one.</i></p> |

|  |   |  |
|--|---|--|
|  |   | <p><i>There is no basis in Radich J's decision, or any other authority to which I have been referred, for the proposition it was unlawful for the Council to comply with a valid Direction simply because it is being reconsidered due to an error of law.</i></p> <p>Outcome: No interim injunction granted.</p>  |
| Application Interim orders seeking recall of decision 26 June 2024 | New Health New Zealand Incorporated v Director-General of Health [2024] NZHC 1717 | <p>New Health sought interim order preventing further action regarding to directions, amended to be a recall of the February 2024 decision.</p> <p>Justice Radich:<br/>At the conclusion of this morning's teleconference, I said that I would not be making the interim declarations sought. The starting point is that, in [33] of my 16 February 2024 decision, having considered the position, I concluded that it was not appropriate in this case for an interim order to be made. The applicant seeks, through the recall application, to have that conclusion altered. That application is yet to be considered but at this stage I do not see a basis to make such a material change to the decision on relief.</p> <p>... there has been no indication that the Director-General would take enforcement action and the Director-General has not taken any such action. Mr Varuhas put it on the basis that at this stage the Director-General is taking an educative approach. Any decision on enforcement action would need to be informed by the Solicitor-General's guidelines.</p> <p>Outcome: New Health application unsuccessful</p> |
| Relief hearing 16 February 2024                                    | New Health New Zealand Incorporated v Director-General of Health [2024] NZHC 196  | <p>Parties were unable to agree on relief. Hearing considering relief – i.e. whether the directions should be quashed or not.</p> <p>Justice Radich:<br/><i>However, I am not satisfied that the appropriate remedy is to quash the decisions. As I said in the first decision, regard needs to be had to such factors as the potential for significant prejudice to public administration, prejudice to third parties and events subsequent. It is apparent from evidence filed that funding is being provided to local authorities for the capital</i></p>   |



|   |  |  |
|---|--|--|
|   |  | <p><i>works to which the directions relate. Practical relief needs to be given to require the substantive rights assessment to be undertaken by the Director-General, but without at this stage in the process setting the decision aside.</i></p> <p>Outcome: Director-General to review rights assessment but directions still in effect.</p>  |
| <p>Application for judicial review of Director General directions to 14 Councils<br/>10 November 2023</p> | <p>New Health New Zealand Incorporated v Director-General of Health [2023] NZHC 3183</p> | <p>Application for judicial review by New Health New Zealand Incorporated on basis that Director-General of Health had not considered Bill of Rights.</p> <p>Outcome: yes, the Director-General was required to turn his mind to whether the directions given to the 14 local authorities under s 116E of the Health Act were in each case a reasonable limit on the right to refuse medical treatment, he needed to be satisfied that they were and, if satisfied, he needed to say why that was so.<br/>No relief granted at this hearing.</p> <p>Outcome: Parties sent away to see if can agree on relief outcome.</p>  |
| <p>Application for interim injunction<br/>16 September 2022</p>   | <p>New Health New Zealand Inc V Wellington Water Ltd [2022] NZHC 2389</p>                | <p>Application for interim injunction by New Health New Zealand Inc to stop Wellington turning fluoridation back on after a technical fault had led them to stopping fluoridation for a time.</p> <p>Justice Cooke: <i>I accept that the applicant can technically say it has a position to preserve under <a href="#">s 15</a>. But substantively Wellington water supplies have been fluoridated since the 1960s, and the argument that the operational failures mean that interim relief is now appropriate pending the substantive challenge is at best opportunistic, and also somewhat artificial given that full fluoridation has largely been restored. <b>The applicant has already engaged in very extensive litigation contending that fluoridation of drinking water supplies is unjustified, and that litigation has failed in the High Court, the Court of Appeal, and the Supreme Court. Its views have been heard and already dismissed at all levels. In any event there is now legislation that prevents local authorities from discontinuing fluoridation. Notwithstanding the arguments advanced by the applicant it seems to me that this legislation likely applies.</b></i></p> <p>Outcome: Application for interim injunction refused.</p> |



## 6.2 Notice of Motion re Fluoridation – Cr Gavin Benney

**Meeting:** Whangarei District Council  
**Date of meeting:** 28 November 2024  
**Reporting officer:** Simon Weston (Chief Executive)

### 1 Purpose / Te Kaupapa

To consider a Notice of Motion received from Councillor Gavin Benney.

### 2 Recommendations / Whakataunga

That the Council:

1. Resolves to NOT fluoridate the Whangarei District's water supplies as required by the directive from the Ministry of Health (MOH);
2. This decision is based on recent court rulings and research that question the effectiveness, safety and legality of fluoridation;
3. That the Mayor and the Chief Executive write to the Ministry of Health, the Minister of Health and the coalition government advising them of this decision.

### 3 Background / Horopaki

The Chief Executive received a Notice of Motion, within the timeframe specified in Standing Orders, from Councillor Benney for inclusion in the agenda for the 28 November 2024 Council meeting.

A staff report relating to this Notice of Motion has been included in the agenda.

### 4 Discussion / Whakawhiti kōrero

Cr Benney proposes to move the following motion:

*That the Council:*

1. *Resolves to NOT fluoridate the Whangarei District's water supplies as required by the directive from the Ministry of Health (MOH);*
2. *This decision is based on recent court rulings and research that question the effectiveness, safety and legality of fluoridation;*

3. *That the Mayor and the Chief Executive write to the Ministry of Health, the Minister of Health and the coalition government advising them of this decision.*

Cr Benney's signed Notice of Motion and background information is appended as Attachment 1.

## **5 Significance and engagement / Te Hira me te Arawhiti**

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 or Council News.

## **6 Attachments / Ngā Tāpiritanga**

Attachment 1: Cr Benney's signed Notice of Motion and background information

To the Chief Executive

**Under the Whangarei District Council's Standing Orders (Adopted 15<sup>th</sup> December 2022) – Clause 27.1, page 56.**

It is my intention to move the following Notice of Motion at the Whangarei District Council's meeting on 28<sup>th</sup> November 2024.

**NOTICE OF MOTION**

1. That Whangarei District Council (WDC) resolves to NOT fluoridate the Whangarei District's water supplies as required by the directive from the Ministry of Health (MOH);
2. This decision is based on recent court rulings and research that question the effectiveness, safety and legality of fluoridation;
3. That the Mayor and Chief Executive write to the Ministry of Health (MOH), the Minister of Health and the coalition government advising them of this decision.



Signed on 21 October 2024

**Cr Gavin Benney**  
Hikurangi-Coastal Ward Councillor  
Whangarei District Council



## **NOTICE OF MOTION**

1. That Whangarei District Council (WDC) resolves to NOT fluoridate the districts water supplies as required by the directive from the Ministry of Health
2. The decision is based on recent court rulings and research that question the effectiveness, safety and legality of fluoridation
3. That the Mayor and Chief Executive write to the Ministry of Health (MOH), the Minister of Health and the coalition government advising them of this decision.

## **Background/Further information (Compiled by Councillor Gavin Benney)**

### **DIRECTIVE**

-In 2022 the then Director General of Health (DGoH) Ashley Bloomfield directed 14 councils to fluoridate their water supplies.

-In November 2023 that directive was found by the High Court to be unlawful in that it did not adequately consider the Bill of Rights Act

-That decision has been appealed by the MOH

-the appeal is still before the courts and is unlikely to be heard until late 2025

-despite the High Court finding the directive unlawful, the current Director General of Health has directed the 14 councils to proceed with fluoridation

- In June 2024 the High Court ruled the directives still to be valid citing legal counsel for the DGoH as there being no evidence the DGoH would take an enforcement approach, but rather is concentrating on an educative approach.

### **RECENT RESEARCH AND COURT DECISIONS**

-In September 2024 a United States Federal Court issued a ruling that "fluoridation poses an unreasonable risk to human health"

-Numerous recent studies in the USA and Canada found fluoridation causes damage to the developing brains of children

-(As stated above) In November 2023 the NZ High Court found the directive to be unlawful



## **FLUORIDE**

- Fluoride used in our water supply is an industrial waste product from the fertiliser industry.
- It is unprocessed hazardous waste
- Fluoride is a chemical compound and is not a natural product
- Fluoride is a neurotoxin
- All science agrees that Fluoride is dangerous to peoples health, the issue that causes disagreement is the level of fluoride required
- Most scientists agree that children should not ingest fluoride
- New Zealand councils fluoridate their water supplies between 0.7 and 1 milligrams per litre (mg/l)
- many studies now find that 0.7 mg/l poses an unreasonable risk of injury
- It is widely accepted that pregnant women should not ingest fluoride.

## **HOW EFFECTIVE IS FLUORIDE IN OUR WATER SUPPLY?**

- The Cochrane Collaboration, that the DGH relied on for making the directive has now been updated and has found there is very little evidence and, in fact, there may be no benefit.
- The two major studies prior to Cochrane (LOTUS 2024 and CATFISH 2022) were funded by the UK Government and they both found basically the same as Cochrane, that there was very little evidence the fluoridation reduced dental decay.
- Tooth paste manufacturers who use fluoride are required to display 'Do Not Swallow' on their tubes
- Only a tiny percentage of a fluoridated water supply is drinking water (between 1 and 3%)

-The vast majority of the fluoridated water supply is used for all other household requirements i.e. cooking, showering, bathing, washing clothes etc

-This means that your clothes, skin, food and stomach will be subject to contact with a neurotoxin for no reason.

-If the Whangarei water supply is fluoridated this will reach only around 60% of the population

-It is argued that the remaining 40% of the population on private water supply is the most 'at risk' group

### **POLITICAL SITUATION**

-In 2021 the then Labour Government passed a bill taking the power to fluoridate or not off local councils and given directly to the Director General of Health

-Dr Shane Reti (now Minister of Health) was opposed to that bill and introduced a supplementary order for local health authorities to be involved in decision making

-this was lost

-In October 2024 coalition government partner NZ First passed a remit that the fluoridation of water supplies should go back to local government.

-It has been reported numerous times that the DGoH has advised that there is no intention to fine local councils who do not obey the directive

-In 2018 the NZ Supreme Court ruled that fluoridation is compulsory mass medication that engages section 11 of the Bill of Rights, our right to refuse medical treatment. No other substance is put into our water supply for medicinal purposes.

-In the past couple of years the government has spent tens of millions of dollars installing equipment for fluoridation

-The yearly cost to councils is unknown but is at least \$100,000 annually.

### **WHAT COUNTRIES FLUORIDATE THEIR WATER?**

- Fluoridation has been banned in all of continental Europe
- Only 4% of the world's population drink fluoridated water
- Only 8 countries have more than 50% fluoridation
- The US Environmental Protection Agency is now legally obliged to “reduce or remove the risk posed by fluoridation”. This could, and probably will be, the end of fluoridation in the USA.
- Only 3 countries in the world have mandatory fluoridation

### **ARE THERE OTHER OPTIONS?**

- A targeted program in schools aimed at educating and teaching children (similar to the Childsmile model used effectively in Scotland)
- Sugar tax on products that cause tooth decay
- Education on dental health

All the above alternatives are cheaper and much more effective in fighting tooth decay

### **BILL OF RIGHTS ACT**

-Section 11 of the BOR states that everyone has the right to refuse medical treatment. As stated above, the NZ Supreme Court ruled that fluoridation does engage this section. What was not agreed either way, was if fluoridation also engages section 5 making it a “justifiable limitation”. This is why the DGoH has been ordered by the High Court to undertake a Bill of Rights analysis to show why she thinks it is justified. It has now been one year since she was ordered and there has still been no analysis,

**HEALTH ACT**

-Section 23 states that "it shall be the duty of every local authority to improve, promote and protect public health within its district

-Section 23(c) states that "if satisfied that any nuisance, or any condition likely to be injurious to health or offensive, exists in the district, to cause all proper steps to be taken to secure the abatement of the nuisance or the removal of the condition"

## 6.3 Coastal Protection Works Policy Application – One Tree Point West

**Meeting:** Whangarei District Council

**Date of meeting:** 28 November 2024

**Reporting officer:** Jim Sephton (General Manager – Infrastructure)  
Christine Niblock (Team Leader – Infrastructure Planning)

### 1 Purpose / Te Kaupapa

The purpose of this report is to provide an opportunity for Elected Members to consider the merits of an application for landowner approval pursuant to the Whangārei District Council's Coastal Protection Works Policy ('the Policy').

The application seeks landowner approval for coastal protection works on Council Esplanade Reserve along a portion of the cliffs at One Tree Point West.

A formal resolution of Council is required, pursuant delegations of the Reserves Act 1977.

### 2 Recommendations / Whakataunga

That the Council:

1. Adopts the Council Officer recommendation to approve the application for landowner approval pursuant the Coastal Protection Works Policy; and
2. Agrees that the proposal aligns with the purpose of the reserve as prescribed by Part 3 Reserves Act 1977 and s229 RMA 1991; and
3. Grants landowner approval, pursuant s23 Reserves Act 1977.
4. Notes that there is no funding for New Seawalls in the current Long Term Plan. Funding of the project will be through the directly affected community.

### 3 Background / Horopaki

#### Coastal Protection Works Policy (the Policy)

The Policy was adopted by Whangārei District Council on the 14 March 2024. The Policy provides a decision-making framework for Council in considering Landowner Approval for coastal protection works on Council land. The Policy sets out the 'general principles' that apply to all decisions of Council for coastal protection works, including Reserves Act requirements.

Approval may be provisional, requiring that all necessary authorities are obtained, including WDC and NRC resource consents and any necessary easements and/or a license to occupy. Council may choose to delegate this final approval in accordance with the Delegation Register.

Section 5.4.4 of the Policy states that Council will *only* provide landowner approval for coastal protection works where:

- The works do not unduly impact the use and enjoyment of a place.
- Council infrastructure, assets and buildings are not negatively impacted.
- There is a clear erosion or inundation risk to life or property.
- Clear justification that the proposed works are the best option, with a preference for nature-based-solutions (NBS).

## 4 Discussion / Whakawhiti kōrero

An unprotected section of high cliff shoreline along western One Tree Point (OTP) in the Whangarei Harbour is prone to episodic erosion and cliff subsidence. This poses a public health and safety risk to users of the esplanade reserve land which runs along the cliff, as well as users on the beach below. Private properties, the public road, associated underground services and a 'regionally significant' port navigational beacon to the east of the reserve are also at risk of erosion in the longer term.

The esplanade reserve which runs along the top of the western OTP cliff line is a significant asset to the community and is an important public access route. There is an existing rock revetment wall to the south; the proposal is essentially an extension of this existing wall and is not unlike other rock revetment structures located in nearby areas.

The OTP coastline consists of cliffs (8-11m high) of the Pleistocene age that are identified as an Outstanding Natural Feature in the Northland Regional Plan and a geological feature of national importance. A regressive Pleistocene depositional sequence can be observed from this location and is particularly evident near the navigational beacon. The proposal has been designed to accommodate and preserve this outstanding natural feature, alongside protection of the core public assets noted prior.



Figure 1: Approx location of rock revetment

## Coastal Processes and Erosion Assessments

Various assessments have been commissioned over the years concerning the One Tree Point area, with Tonkin and Taylor completing the most recent draft. Refer attachments 3-4.

The primary mechanisms of erosion of the cliff face is water level and wave action. This causes weakening, undercutting and eventual slumping of the cliffs.

Earlier assessments undertaken by Gibb (1998) and Tonkin and Taylor (2012) classified the OTP cliff area to the west as 'High to Very-High' hazard rating. The erosion results in 'episodic' events rather than being a gradual retreat. Projected risk scenarios and thresholds are provided in the Tonkin and Taylor AEE (DRAFT) provided as attachment 2.

### The Proposal: Rock Revetment

A 120m long x approx. 2m high rock revetment structure is proposed to mitigate the loss of the cliff-top esplanade reserve and protect public access along the beach, at risk of subsidence of the cliff face. Significant regional infrastructure and other public assets will be protected, along with some private properties. The existing timber platform and stepped access will be repositioned to maintain public access.

A lot of consideration has gone into design options, including consideration of cliff contouring, a nearshore breakwater, additional warning 'cliff management' signs, and managed retreat from the cliff. The three main options costed in 2018 were:

- Breakwater or similar - \$90,000
- Manage risk through fencing/signage - \$5,000
- Rock revetment - \$350,000 (longer option than proposed)

Constructing a rock revetment will result in a more natural process that gradually reduces the angle of the cliff through reduced erosion at the base of the cliff and continued sub-aerial weathering. Therefore, promoting a natural reduction of the cliff slope. This has significant health and safety benefits and greater certainty in terms of feasibility.

*"From a geotechnical perspective, only the rock revetment option could be considered effective in reducing long-term erosion of the cliffs of OTP West, and only the combination of cliff management and rock revetment would reduce the long-term risk from cliff collapse (T+T, 2012)."*

The geotechnical society previously submitted against this proposal. However, the proposal has been revised to accommodate the natural geological feature and staff have been working closely with the society who support this revised proposal.

### Assessment Against Coastal Protection Works Policy – Step 1 and 2

The coastal protection structure proposed at OTP is consistent with the reserve's 'purpose'. Fundamentally, it will contribute to the conservation values of the esplanade reserve in accordance with Section 229(a) and (b) of the RMA, by:

- protecting the natural values associated with the esplanade reserve or esplanade strip; and
- mitigating natural hazards.

The proposed structure will preserve public recreation opportunities as it will protect public access to the entirety of the esplanade reserve, allowing it to stay open and continue to be used and enjoyed by the public on an ongoing basis. Furthermore, the structure will reduce the public health and safety risks of users of the esplanade reserve and the beach below by reducing the risk of cliff subsidence. In this case, the proposal *does* meet the criteria of the Policy and remains in alignment with the 'purpose' of the Reserve in accordance with the Reserves Act.

The Patuharakeke Hapū Environment Management Plan is not generally supportive of hard protection structures on the coastline, however, the Hapū have provisionally indicated that they are generally satisfied that the proposed location of the rock revetment would mean that the ONF feature would not be lost.

The proposal has been assessed against step 1 and 2 of the Policy. A full assessment is provided as attachment 1. On this basis, Council may, through formal resolution, provide landowner approval.

Following this process, Council will be able to begin the resource consent process and determine financial arrangements for construction and ongoing maintenance.

#### 4.1 Financial/budget considerations

If approved, the wall would become a Council Asset and would be managed as part of the Coastal and Flooding Activity. As there is significant net public benefit, it is reasonable that Council contributes towards ongoing operational funding.

There is no funding for New Seawalls in the 2024 LTP. Financing of construction is through the community and staff will work with adjoining properties to develop an appropriate payment plan. It is suggested that negotiations are made with adjoining private property owners, proportionate to private benefits.

The following provides an estimate for associated costs:

- Landowner/Reserves Act Approvals  
To date, only the Council Officers' time has been utilised in preparing a response with Council able to use existing resources and technical information to inform a decision.
- Resource Consenting  
Resource consent from both WDC and NRC is required. With significant net public benefit, and the structure likely to become an asset of the Council, it is suggested the Council contribute towards the Consent through making available all of the previously developed reports and consenting documents and continue to support the community through staff time to develop the resource consent application. This can be covered by existing Infrastructure Planning OPEX budgets.
- Construction Costs  
Construction costs and feasibility were considered during early optioneering reports in 2018, as mentioned previously. Based on recent examples, construction costs for a typical rock revetment structure are in the range of \$1200 – 1500 per l/m. For a 120m wall, this would be in the vicinity of \$200,000.
- Ongoing Costs/Other Matters  
There is ongoing resource consent monitoring, future maintenance costs. Council must also acknowledge potential public health and safety liabilities, if the risk is not managed appropriately.

#### 4.2 Policy and planning implications

This report ensures we are meeting the requirements of the Reserves Act 1977.



### **4.3 Options**

Option 1 is to approve the staff recommendation and grant landowner approval. Council staff will then work with the affected community regarding financial arrangements, design and construction.

Option 2 is to reject the recommendation. Council would continue to monitor the area in terms of erosion hazard risks.

The recommended option is Option 1.

### **4.4 Risks**

There is minimal risk to Council in providing landowner approval; this paper ensures we are meeting our obligations under the Reserves Act 1977.

If landowner approval is provided, there is a risk that Council will become liable for ongoing maintenance. This can be mitigated by conditioning design and construction requirements.

If landowner approval is not provided Council will need to continue monitoring the area and may need to undertake alternative actions to manage risk to the public and infrastructure from erosion. A technical risk assessment has been completed as part of the optioneering phase to ensure the proposal is the best option in terms of risk reduction from coastal erosion.

## **5 Significance and engagement / Te Hira me te Arawhiti**

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 Agenda publication on the website.

## **6 Attachments / Ngā Tāpiritanga**

- Attachment 1 Council Officer Assessment – One Tree Point West
- Attachment 2 Draft AEE 2024 T&T
- Attachment 3 Geological Assessment 2016



## One Tree Point – Coastal Protection Works 2024

### Assessment against the Coastal Protection Works Policy

#### Step 1: Determine whether the proposal is consistent with the reserve purpose

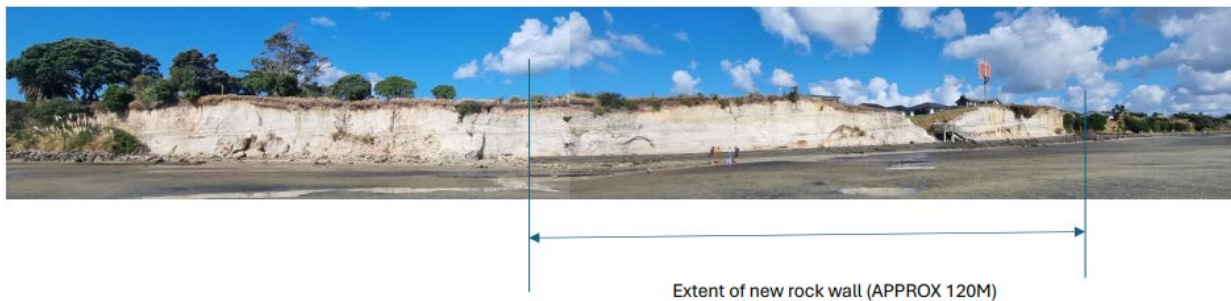
The following is the Council Officers response against step 1.

#### a) Is the structure proposed to be built on Reserve Land above MHWS?

##### ADVICE NOTES:

1. The location of the coastal erosion protection structure is important; the location impacts on Council's ownership of the land and there may be implications under the RMA 1991 and the Reserves Act 1991.
2. The structure, and any part of it, must be located on land above MHWS for the District Council to give such approval. Land below MHWS will require Regional Council approval.

Yes, the hard protection structure, being a rock revetment of approx. 1.5m height and approx. 120m in length (see image 1 below) which will stretch west to east in front of 28 to 36 Karoro Road, is proposed to be built on esplanade reserve land, above MHWS, within the Council Local Purpose (Esplanade Reserve) – see figure 1 below. On this basis, the District Council has delegation to give approval under the 2013 Instrument of Delegation of the Minister of Conservation, and as prescribed by s23 of the Reserves Act 1977.



**Image 1: Extent of rock revetment**



**Figure 1: Location Plan**

## b) Is the structure consistent with the reserve's 'purpose'?

### ADVICE NOTES:

1. *Part 3 of the Reserves Act sets out the classification and purpose of reserves, while s23 provides that local purpose reserves are to be administered and maintained "to the extent compatible with the principal or primary purpose of the reserve".*
2. *Section 229 of the RMA sets out the purpose of esplanade reserves. Council will need to be satisfied that:*
  - a) *the Local Purpose Esplanade has conservation values AND the proposed structure will contribute to the protection of those values. BY:*
    - (i) *maintaining or enhancing the natural functioning of the adjacent sea, river, or lake; or*
    - (ii) *maintaining or enhancing water quality; or*
    - (iii) *maintaining or enhancing aquatic habitats; or*
    - (iv) *protecting the natural values associated with the esplanade reserve or esplanade strip; or*
    - (v) *mitigating natural hazards; or*
  - b) *the proposed structure enables public access to or along the sea; or*
  - c) *the proposed structure enables public recreational use of the reserve and adjacent sea, where compatible with the conservation values of the reserve.*

The unprotected cliff shoreline along western One Tree Point (OTP) in the Whangarei Harbour is prone to episodic erosion and cliff subsidence. This poses a public health and safety risk to users of the esplanade reserve land which runs along the cliff, as well as users of the beach below. An engineered rock revetment structure has been proposed to mitigate the loss of the esplanade reserve land and protect public access along the cliff.

The esplanade reserve runs along the top of the western OTP cliff line and is a significant asset to the community, being an important public access route. Private properties, the public road, associated underground services and a 'regionally significant' port navigational beacon to the east of the reserve are also at risk of erosion in the longer term. The proposed structure will assist in protecting these sites in the future.

The OTP coastline consists of cliffs (8-11m high) of the Pleistocene age that are identified as an Outstanding Natural Feature in the Northland Regional Plan and a geological feature of national importance. A regressive Pleistocene depositional sequence can be observed from this location and is particularly evident near the navigational beacon. The proposal has been designed to accommodate and preserve this outstanding natural feature, alongside protection of core public assets.

The coastal protection structure proposed at OTP is consistent with the reserves 'purpose' as it will contribute to the preservation of the existing conservation values associated with the esplanade reserve, in accordance with Section 229(a) and (b) of the RMA. This is achieved by:

- protecting the natural values associated with the esplanade reserve or esplanade strip; and
- mitigating natural hazards.

The following sets out the information used to inform this opinion.

### i. What are the existing conservation values of the Esplanade Reserve, if any?

The area of OTP where the coastal protection structure is proposed is on the western side of the peninsula, which runs parallel to Karoro Road. A geological assessment (September 2016) a Cliff Hazard Assessment (2012) and an Options Report (2011) were undertaken by Tonkin & Taylor (T&T). These reports have been used to provide a description of the existing natural values of the esplanade reserve.

The esplanade reserve contains a cliff range which is considered to have significant existing natural values. The cliffs range in height from 8m to 11m, with intertidal sand flats located seaward of the cliffs. The New Zealand Geopreservation Inventory identifies the western OTP as a geological feature (the cliffs) of national importance. The cliffs are described in the T&T Reports as being comprised predominantly of

weakly cemented sandstone which are old dune beach sediments of the Pleistocene age (1.8 million to ~10,000 years ago). During spring high tides and storm events waves meet the base of the cliffs; the regressive Pleistocene depositional sequence can be observed from this location and is particularly evident near the navigational beacon.

To further support the significance of this natural feature, the Whangarei District Plan identifies the cliffs on the western side of OTP as an Outstanding Natural Feature (ONF) of national significance due to the value of the geological features. The cliff face is also culturally significant for Hapū, identified in the Patuharakeke Hapū Environment Management Plan.

The esplanade reserve which runs along the top of the western OTP cliff line is also a significant asset to the community, functioning as an important public access route, with steps from the cliff top to the intertidal coastal edge. A public road, associated underground services and a 'regionally significant' port navigational beacon to the east of the reserve are at risk of erosion in the long term.

## ii. Does the proposed structure contribute to the protection of these values?

Several technical reports have been prepared by T&T that indicate the primary erosion mechanism likely to impact on the natural values of the esplanade reserve are marine processes i.e. water level and wave action. This is because high tides generally reach the base of the cliffs and cause undercutting and weak sediments to erode from the base. Once sufficient undercutting occurs to the base of the cliffs, the upper sections of the cliff slump, presenting increased health and safety risks to pedestrians both above and below.

Due to the soft readily erodible nature of the cliffs, projected rates of coastal erosion are likely to increase due to sea level rise, with more hydraulic wave action affecting the cliff toe, exacerbating the risks.

The purpose of the proposal is to reduce the risk from natural hazards on life and property, whilst protecting the conservation values associated with the esplanade reserve. T&T considered the following options in seeking to mitigate the risk of natural hazard events resulting from ongoing coastal erosion of the toe of the cliffs:

- **Do nothing** – this option would mean that the esplanade reserve is likely to have eroded away by 2060. The risk to life and property remains high.
- **Managed retreat** – involves allowing the cliff to erode naturally and moving assets landward over time. Essentially, the esplanade reserve would be treated as an 'erosion strip' and the cliffs would continue to be eroded and public access along the top of the cliffs would eventually be lost. Existing public infrastructure and a regionally significant navigational asset would need to be relocated. The risk to life and property remains high until retreat is completed.
- **Cliff management** - involves putting up fencing and signage to alert the public to subsidence in the vicinity of the cliff base, and instability along the cliff top. Erosion would continue and the esplanade reserve would be lost, eventually requiring managed retreat. Risk to life reduced/managed.
- **Breakwater** – involves a nearshore breakwater which is projected to slow the rate of long-term erosion. Notwithstanding, there remains uncertainty and this would not prevent erosion to reduce the immediate risk to life and property. A breakwater is not as effective as rock revetment in reducing the immediate and long-term risk of subsidence and shoreline retreat. The esplanade reserve would eventually be lost and the risk to life and property remains high with uncertainties.
- **Cliff-recontouring** - involves physically reducing the angles of the cliffs to lessen the risk of a sudden cliff fall and overall reduce short term erosion concerns. Subsidence of the cliff would be reduced for the short term, but the cliff face is likely to continue to erode without any erosion protection at the base, leading to loss of the esplanade

reserve over the long term. Recontouring would be required on a regular basis and is likely to be cost prohibitive.

- **Rock revetment** (preferred option – see below).

### **Rock Revetment (Preferred Option)**

A rock revetment structure constructed at the toe of the cliff was considered the most appropriate option for mitigating the coastal erosion natural hazard and contributing to the protection of the existing natural values of the esplanade reserve. The placement of the structure at the base of the cliff will mitigate the effects of marine wave induced erosion and will likely hold the shoreline in its current position, thus preserving the existing conservation values of the esplanade reserve.

The construction of the rock revetment will have adverse effect on parts of the ONF (the cliffs), which cannot be avoided, remedied or mitigated, however there is a section of cliff that is abutting the Council reserve on Karoro Road which will be preserved through strategic placement of the HPS to allow for continued regression of a portion of the Pleistocene depositional sequence. Potential adverse effects on the remainder of the ONF includes adverse impacts on natural character values where the rock revetment partially obscures the cliffs. On balance, the proposed rock revetment is not considered inappropriate as it will contribute to the preservation of a core section of ONF, along with mitigating the coastal erosion risk to life and property and protecting the existing coastal access arrangements in place.

### **Council Officer Comments**

The rock revetment will assist with the preservation of the esplanade reserves' associated conservation values. The proposal provides for the partial preservation of a nationally significant ONF in its natural state where it abuts the Council reserve.

The proposal also allows for continued recreational access to the coast (which is of high value to the public), helps to protect private properties and public assets and regionally significant infrastructure, which is otherwise likely to be subject to erosion in the future. It results in an immediate reduction of natural hazard risks on life and property.

#### **i. Does the proposed structure enable public access to or along the sea?**

The proposed structure will enhance public access along the sea. Public safety within the esplanade reserve will be improved because of the construction of the rock revetment. The structure will reduce the potential for cliff subsidence, improving the ability for the public to access and use the Coastal Marine Area safely. The existing timber accessway stairs will not be impacted.

#### **ii. Does the proposed structure enable public recreation use of the reserve and the adjacent sea and are these compatible with the conservation values of the reserve?**

The proposed structure will enhance public recreation as it will protect public access to the entirety of the esplanade reserve by allowing it to stay open and continue to be used and enjoyed by the public on an ongoing basis. The structure will reduce the public health and safety risks to users of the esplanade reserve and the beach below by mitigating cliff subsidence. The public has always had access to the esplanade reserve and this part of the coast for recreation and the proposed structure will not compromise this, nor the conservation values associated with the reserve.

#### **c) In the structure consistent with the relevant Reserve Management Plan?**

There is no applicable reserve management plan for the esplanade reserve.

### **Step 1: Determination**

Council must now determine, as a matter of policy, if it is desirable to give approval based on assessment against the above-mentioned criteria. If all of the above criteria are met, Council may consider approval. If the criteria cannot be met, Council cannot provide landowner approval.

In this case, the proposal does meet all of the criteria above as it is consistent with the purpose of the esplanade reserve as prescribed by s23 Reserves Act 1977 and therefore, Council is able to provide landowner approval.

If landowner approval is given by Council, Step 2 of the Coastal Protection Works Policy will be used to guide decision making on whether to allow the proposed coastal protection works at One Tree Point, to proceed to resource consent stage.

---

## **Step 2: Consider whether to allow the proposal, using the policy as a guide.**

*The following is the Council Officers response against step 2.*

### **General Principles:**

**a) Is there a significant public benefit, OR Council owned or managed buildings, structures or infrastructure at risk and unable to be relocated.**

Yes. The structure seeks to protect both a regionally significant navigational beacon and seeks to preserve natural features that are considered nationally significant. Coastal access and recreational opportunities are also enhanced.

**b) Is there an impact on use and enjoyment of a public place?**

Use and enjoyment of the area and the associated conservation values will be protected.

**c) Is there a clear erosion trend and/or inundation risk?**

Yes. Several technical reports are available that outline the risk of erosion and cliff subsidence from continuing wave action.

**d) Is the proposed solution the most appropriate for the site?**

Yes. See previous discussion of the options explored, along with the reasoning for the preferred option. The immediate reduction of the risk natural hazard events on life and property is a key driver in selecting the preferred option.

**e) Are the works supported by tangata whenua and the local community?**

While the Patuharakeke Hapū Environment Management Plan is not generally supportive of hard protection structures on the coastline, engagement has occurred with the Hapū who have provisionally indicated that they are generally satisfied that the proposed location of the rock revetment would mean that the ONF feature and associated cultural values would not be lost.

Private property owners who adjoin the reserve are also in support and are contributing financially to the construction of the structure.

### **Council Resource Contribution:**

**ADVICE NOTES:**

1. Council will only consider the contribution of resources for landowner led coastal protection works when:
  - there is a significant net public benefit OR Council owned or managed buildings, structures or infrastructure are at risk ; and
  - The amount must be proportionate to the public benefit provided by the coastal protection works.

Funding arrangements have not been confirmed but there has been strong support from affected private property owners to contribute financially towards construction costs, recognising that some private properties will benefit long term. There are several options to manage this, depending on how Council wished to proceed.

When considering the significance of the ONF to be preserved and the infrastructure protected, along with the enhancement of public access to the coast (a matter of national importance itself), it is considered that there is a significant net public benefit from the works.

### **Step 2: Determination**

Council must determine, as a matter of policy, if it is desirable to give approval based on assessment against the above-mentioned criteria.

In this case, the proposal does meet all the criteria. The proposal has significant net public benefits, provides for the protection of Council assets and is consistent with the purpose of the esplanade reserve as prescribed by s23 Reserves Act 1977.

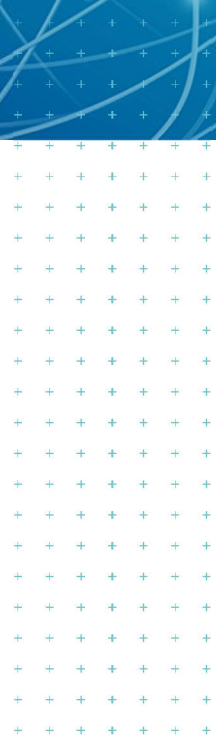
Council may decide to provide provisional landowner approval in accordance with the Policy.

Council may also consider provisional approval of the contribution of resources towards this proposal, recognising that it results in a significant net public benefit.





+ One Tree Point - Coastal  
 Protection Works  
 Resource Consent Application and  
 Assessment of Environmental Effects  
 Prepared for  
 Whangarei District Council  
**Prepared by**  
 Tonkin & Taylor Ltd  
**Date**  
 March 2017  
**Job Number**  
 0030565.0000



draft for client review

Distribution:

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## Schedule 4 requirements

Schedule 4 of the RMA sets out the information required in an application for a resource consent. All relevant matters required to be included have been addressed in the assessments and descriptions in this AEE. The following table provides a summary of the information required in Schedule 4 and a quick reference to its location in this report.

| Schedule 4 Item  | Location within report |
|--|------------------------|
| A description of the activity  | 3                      |
| A description of the site at which the activity is to occur  | 2                      |
| The full name and address of each owner or occupier of the site  | 1.2                    |
| A description of any other activities that are part of the proposal to which the application relates   | 3                      |
| A description of any other resource consents required for the proposal to which the application relates  | 4                      |
| An assessment of the activity against the matters set out in Part 2  | 6.1.3                  |
| An assessment of the activity against any relevant provisions of a document referred to in section 104(1)(b). This must include:   | 6.2 -6.3               |
| <ul style="list-style-type: none"> <li>Any relevant objectives, policies, or rules in a document</li> </ul>  | 6.3.1 -6.3.6           |
| <ul style="list-style-type: none"> <li>Any relevant requirements, conditions, or permissions in any rules in a document</li> </ul>   | Not applicable         |
| <ul style="list-style-type: none"> <li>Any other relevant requirements in a document (for example, in a national environmental standard or other regulations)</li> </ul>   | 6.2                    |
| An assessment of the activity's effects on the environment that includes the following information:  | 5                      |
| <ul style="list-style-type: none"> <li>If it is likely that the activity will result in any significant adverse effect on the environment, a description of any possible alternative locations or methods for undertaking the activity.</li> </ul>   | 5                      |
| <ul style="list-style-type: none"> <li>An assessment of the actual or potential effect on the environment of the activity.</li> </ul>  | 5                      |
| <ul style="list-style-type: none"> <li>If the activity includes the use of hazardous substances and installations, an assessment of any risks to the environment that are likely to arise from such use.</li> </ul>  | Not applicable         |
| <ul style="list-style-type: none"> <li>If the activity includes the discharge of any contaminant, a description of— <ul style="list-style-type: none"> <li>The nature of the discharge and the sensitivity of the receiving environment to adverse effects; and</li> <li>Any possible alternative methods of discharge, including discharge into any other receiving environment.</li> </ul> </li> </ul> | 5                      |
| <ul style="list-style-type: none"> <li>A description of the mitigation measures (including safeguards and contingency plans where relevant) to be undertaken to help prevent or reduce the actual or potential effect.</li> </ul>  | 5                      |
| <ul style="list-style-type: none"> <li>Identification of the persons affected by the activity, any consultation undertaken, and any response to the views of any person consulted.</li> </ul>  | 5                      |
| <ul style="list-style-type: none"> <li>If the scale and significance of the activity's effects are such that monitoring is required, a description of how and by whom the effects will be monitored if the activity is approved.</li> </ul>  | Not applicable         |

| Schedule 4 Item  | Location within report  |
|--|---|
| <ul style="list-style-type: none"> <li>If the activity will, or is likely to, have adverse effects that are more than minor on the exercise of a protected customary right, a description of possible alternative locations or methods for the exercise of the activity (unless written approval for the activity is given by the protected customary rights group).</li> </ul>  | Not applicable  |
| <p>An assessment of the activity's effects on the environment that addresses the following matters:</p> <ul style="list-style-type: none"> <li>Any effect on those in the neighbourhood and, where relevant, the wider community, including any social, economic, or cultural effects.</li> <li>Any physical effect on the locality, including any landscape and visual effects.</li> <li>Any effect on ecosystems, including effects on plants or animals and any physical disturbance of habitats in the vicinity.</li> <li>Any effect on natural and physical resources having aesthetic, recreational, scientific, historical, spiritual, or cultural value, or other special value, for present or future generations.</li> <li>Any discharge of contaminants into the environment, including any unreasonable emission of noise, and options for the treatment and disposal of contaminants.</li> <li>Any risk to the neighbourhood, the wider community, or the environment through natural hazards or the use of hazardous substances or hazardous installations.</li> </ul> | <p>5</p> <p>5</p> <p>5</p> <p>5</p> <p>5</p> <p>5</p> <p>Not applicable</p> |
| <i>For applications involving permitted activities</i>   |   |
| <p>If any permitted activity is part of the proposal to which the application relates, a description of the permitted activity that demonstrates that it complies with the requirements, conditions, and permissions for the permitted activity (so that a resource consent is not required for that activity under section 87A(1)).</p>   | 4   |

## 1 Introduction

### 1.1 Overview and background

The unprotected cliff shoreline along western One Tree Point (OTP) in the Whangarei Harbour is prone to episodic erosion and cliff subsidence which poses a risk to users of the reserve land which runs along the cliff, as well as users of the beach below, and has caused concern among local residents. The main concern is the loss of esplanade reserve land and public access along the top of the cliff between Pyle Road West and the OTP boat ramp (boat ramp).

The esplanade reserve which runs along the top of the western OTP cliffline is a significant asset to the community and is an important public access route from one end of the coastline to the other. The private properties, recreational reserve, public road and associated underground services, and also the navigation beacon to the east of the reserve are also likely to be at risk from erosion in the longer term.

The unstable cliffed shoreline also poses a potential public health and safety risk to the public, from both falling debris along the base of the cliff and sudden loss of material at the top of the cliff. The preferred erosion mitigation option identified by Whangarei District Council (WDC), and supported by local residents, is a rock revetment structure on the foreshore constructed at the toe of the cliff. This new revetment would be similar in visual appearance to the existing revetment structures along the western OTP coastline.

WDC is therefore seeking consent for a rock revetment structure along a segment of the western OTP coastline to reduce the risk of cliff subsidence, protect the esplanade reserve as well as other WDC assets and residential properties, and improve public safety.

This report has been prepared in fulfilment of section 88 of the Resource Management Act 1991 (RMA), and in accordance with our letter of engagement dated 3 November 2014.

### 1.2 Applicant and property details

Table 1.1: Applicant and property details

|   |  |                                     |
|---|--|-------------------------------------|
| Applicant                                     | Whangarei District Council   |                                     |
| Owner of application site                     | Coastal Marine Area (CMA): No ownership.   | Whangarei District Council          |
| Legal description                             | Pt Sec 3 Blk III Ruakaka Survey District (Whangarei Harbour Board Vesting and Empowering Act 1961) | Lot 28 DP 48994 (Esplanade Reserve) |
| Certificate of title                          | -  | 129333                              |
| Site address / map reference (NZTM)           | 1731038 E 6034951 N to 1730943 E 6034818 N   |                                     |
| District Council / Plans                      | Whangarei District Plan.   |                                     |
| Regional Council / Plans                      | Regional Coastal Plan, Regional Water and Soil Plan.   |                                     |
| Address for service during consent processing | Reuben Hansen<br>Tonkin & Taylor<br>PO Box 317<br>Tauranga 3140                                    |                                     |

|   |   |
|---|---|
|   | 07 571 7381<br><a href="mailto:RHansen@tonkintaylor.co.nz">RHansen@tonkintaylor.co.nz</a>   |
| Address for service during consent implementation and invoicing | Paul McDonald<br>Whangarei District Council<br>Private Bag 9023<br>Whangarei 0148<br><a href="mailto:Paul.McDonald@wdc.govt.nz">Paul.McDonald@wdc.govt.nz</a> |

We attach copies of the application forms in Appendix A and a copy of the relevant Certificate of Title in Appendix B.

### 1.3 Overview of resource consent requirements

#### 1.3.1 Regional Coastal Plan

Resource Consent is sought from Northland Regional Council under the following provisions of the Regional Coastal Plan:

- Rule 31.3.4(m) Non-complying – Erection, occupation and use of structure in the Marine 1 (Protection) Management Area; and
- Rule 31.6.3(l) Discretionary – Erection, occupation and use of structure in the Marine 4 (Mooring Management) Area.

Overall, non-complying consent is required under the Coastal Plan from Northland Regional Council.

#### 1.3.2 Regional Water and Soil Plan

Resource Consent is sought from Northland Regional Council under the following provisions of the Regional Water and Soil Plan:

- 34.3(1) Discretionary – Earthworks in the Riparian Margin Zone.

#### 1.3.3 Whangarei District Plan

Resource Consent is sought from Whangarei District Council under the following provisions of the Whangarei District Plan:

- 56.2.1 Discretionary – The construction or alteration of a structure within the Coastal Hazard 1 environment;
- 56.2.2 Discretionary – The construction or alteration of a structure on a sand dune complex within the Coastal Hazard 1 environment;
- 57.2.1 Restricted Discretionary – The construction or alteration of a structure in an Outstanding Landscape Area; and
- 57.2.2 Restricted Discretionary – Earthworks within an Outstanding Landscape Area exceeding an area of 250 m<sup>2</sup>.

Overall, discretionary consent is required from the Whangarei District Council.

### 1.4 Consent duration

The applicant seeks a 35 year consent term for the ongoing occupation and maintenance of the erosion protection structure for the regional resource consents and an indefinite term for the land use consent. Periodic maintenance of the structure over the course of its lifespan is likely to be required.



## 2 Environmental setting

### 2.1 Site location

OTP is located on the southern side of the Whangarei Harbour. Marsden Point and Marsden Bay are located immediately to the south east of OTP.

The area of OTP subject to this consent application relates to the cliffs on the western side of the peninsula, which run parallel to Karoro Road and are contained within the esplanade reserve.



Figure 2.1 Location plan

Copyright: Whangarei District Council GIS Maps 2017

### 2.2 Site description

The geological assessment undertaken by Tonkin & Taylor Ltd (T+T) dated September 2016 (attached at Appendix H), the cliff hazard assessment undertaken by T+T 2012 (attached at Appendix F), and the options report undertaken by T+T 2011 (attached at Appendix D), provide comprehensive descriptions of the site. These have been used to inform the site description below.

#### 2.2.1 Geology

The geology along the western OTP coastline consists of cliffs comprising predominantly weakly cemented sand stone which are old dune beach sediments of Pleistocene age (1.8 million to ~10,000 years ago).

During the Pleistocene, the OTP - Marsden Point area was, for a time, a shallow marine environment as a result of high (interglacial) sea levels. As sea levels dropped in the Late Pleistocene, the sea

regressed, resulting in the shallow marine environment being replaced with a beach environment, and ultimately a coastal onshore dune environment.

This transition can be seen in the cliffs at OTP as an upwards sequence of cross-bedded shallow marine sediments overlain by laminar bedded beach deposits, which in turn are overlain by large-scale cross-bedded dune deposits. A variety of organic-rich swamp deposits have formed in the low-lying inter-dune depressions.

The shallow marine, beach and dune deposits all consists of quartz sand with abundant lithic (rock) fragments and heavy minerals. They are generally well sorted, fine to medium grained and uncemented to very weakly cemented. The dune and beach sands are essentially non-lithified, although the shallow marine sands can be described as an extremely weak rock. There tends to be a greater degree of iron deposition and cementation towards the boat ramp (north-eastern portion) compared to the south-west part of OTP.

### 2.2.2 Land use activities and values

The western OTP shoreline is characterised by a cliffed coastline ranging in height from 8 m to 11 m, with intertidal sand flats seaward of the cliffs. During spring high tides and storm events waves meet the base of the cliffs.

The esplanade reserve on the top of the cliff extends from Pyle Road West to the boat ramp and provides public access along the coastline. There are private properties located to the east of the esplanade reserve and multiple pedestrian accessways to the reserve and/or beach. The accessways are located at the end of Pyle Rd West, along Manaia View Road, south of the site along Karoro Rd, at the middle section of Karoro Road within the site, at the north eastern end of Karoro Road, and at the boat ramp.

The area surrounding the proposed rock revetment is characterised by the following activities and features:

- North: Coastal margin/Esplanade reserve with rock revetment extending northwards;
- West: Intertidal area of Whangarei Harbour;
- South: Coastal margin/ reserve with a segment of rock revetment transitioning into timber seawall; and
- East: Residential subdivision and an esplanade and recreation reserve.

Figure 2.2 below shows the extent of the existing coastal protection structures (by type) along the western OTP coastline. A regressive Pleistocene depositional sequence is able to be observed within western OTP coastline; the location of which has been overlain on Figure 2.2 for reference. The geological sequence is discussed further in section 2.2.3 below.



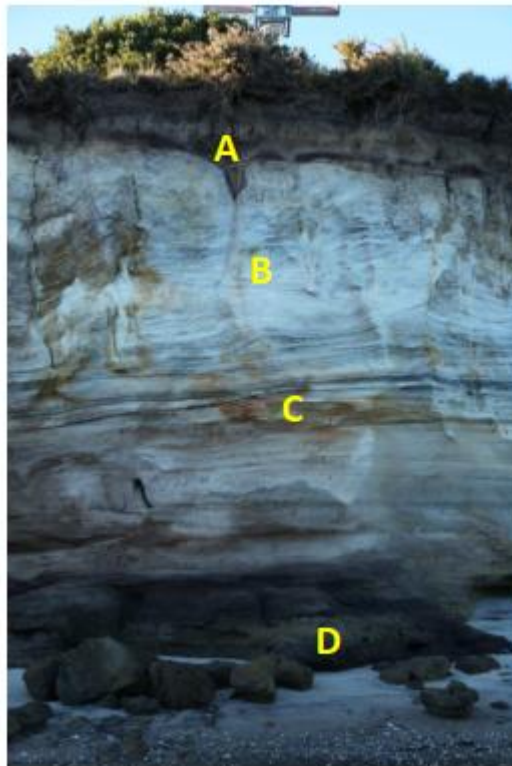
Figure 2.2 Coastal protection works and location of exposed geological sequence- One Tree Point West  
Source: NRC 2009 & T+T 2017

Ad hoc structures, presumably placed to attempt to arrest erosion of the cliff shoreline, are also evident along western OTP coastline, and include tyres, concrete slabs and sandbags.

### 2.2.3 Cliffs and associated geological sequence

As shown in Photograph 1, the regressive depositional sequence is well exposed within areas of the cliffs that extend from the boat ramp in the north-east to the end of Karoro Road in the south-west. The feature is particularly evident towards the south western end of the cliffs, in the vicinity of the navigation beacon.

The New Zealand Geopreservation Inventory identifies the western OTP cliff as a geological feature of national importance. The significance of the geological feature is described in the Geological Preservation Inventory as comprising '*Well exposed late Pleistocene coastal sand sequence with spectacular intertidal trace fossils, and being the only remaining exposures in the area that are not obscured by coastal foreshore protection works. It contains some of the best New Zealand examples of coastal cliff and foreshore exposures showing a shallowing upwards regressive sequence from shallow marine sand through beach sand to coastal foredune, with overlying swamp deposits in interdune hollows*'.



*Photograph 1: Cliff below the Navigation Beacon adjacent to 34 Karoro Road exposing the complete stratigraphic sequence of One Tree Point: A) Organic rich surface deposits; B) cross-bedded foredune deposits; C) sub-horizontally bedded beach deposits; D) cross-bedded shall marine sands. Source: T+T 2016.*

As shown in Photographs 2 and 3 erosion protection works have been constructed at the toe of the cliffs to the north and south of the site. This has slowly resulted in the flattening of the slope and caused vegetation to establish on the slope. This vegetation has eventually obscured the geological sequence which prior to the vegetation becoming established, could be viewed along the western OTP coastline.



*Photograph 2: Rock revetment to the north of the site showing stable angle of repose and vegetation establishment, in comparison to exposed cliff to the south. Source T+T 2014.*



*Photograph 3: Rock revetment and timber seawall to the south of the site. The slope is gradually flattening above the revetment. Source T+T 2014.*

The western OTP shoreline is orientated along a south west to north east axis with cliffs in this area ranging from 8 m to 11 m in height. Seaward of the cliffs are very gently sloping intertidal sand flats. Previous assessments (Gibb, 1998; Tonkin & Taylor, 2011) have identified that the cliffed coastline at OTP is in a state of ongoing erosion, caused by both marine processes (wave action removing material from the base of the cliff) and sub aerial weathering of the cliff face caused by wetting and drying processes.

#### 2.2.4 Ecology

There is limited terrestrial vegetation on the site due to the steep and readily erodible nature of the cliff face. Grassy vegetation is located on the top of the cliff in the reserve area, and a pohutukawa tree is located on the top of the cliff at the northern termination of the proposed revetment. To the north of the site, where rock revetment has already been placed, the slope has stabilised and flattened, and vegetation has grown on it. This comprises a mix of grass, flax and shrubs.

The existing *Zostera* beds are located approximately 60 m offshore from the base of the cliff.

#### 2.2.5 Coastal processes

A description of the coastal processes at the site has been included in the Design Report annexed to this report as Appendix E.

#### 2.2.6 Erosion processes

The primary erosion mechanism is due to marine processes (between 50 – 70%, Gibb 1997) i.e. water level and wave action. High tides generally reach the base of the cliffs causing undercutting and weak sediments to erode away at the base, and once sufficient undercutting occurs the upper sections of the cliff slump. This is shown in photograph 4 below. This leaves an accumulation of talus at the cliff toe, which although provides temporary protection to the cliff toe, is generally weak and non-consolidated. Therefore waves quickly remove this talus material and the erosion process continues. Eroded cliff material provides a source of sediment to the OTP shoreline. Previous coastal process assessments have found that depending on the wave direction, sediment is likely to be transported alongshore both north and south.

The secondary erosion mechanism (between 30 – 50%, Gibb 1997) is due to sub aerial weathering i.e. wetting and drying, of the cliff face above the reach of marine processes. There is also likely to be some erosion due to the placement of fill material and the presence of large vegetation and roots penetrating the subsoils located at the top of the cliff face.

A qualitative hazard assessment undertaken by T+T (2012) concluded that the cliffs of OTP west can be classified as having at least a 'High,' and potentially 'Very High' hazard rating. Due to the soft, readily erodible nature of the cliff (weakly cemented nature of the Pleistocene sand material), the rates of coastal erosion may potentially increase due to sea level rise, with more hydraulic action acting on the cliff toe (Defra, 2002).



*Photograph 4: Northern end of western OTP cliffs showing recent slumping of cliff face. Source T+T 2014.*

### 2.2.7 Shoreline/cliff movement

An assessment of historical imagery (1942, 1985, 1997) determined a maximum erosion rate of -0.09 metre/year at the OTP cliffs (Gibb 1998). A more recent assessment by T+T in 2010 concluded that while higher rates of localised erosion (3.5 m retreat of cliff top position) had occurred along certain sections since 1997, the general erosion rate previously assessed by Gibb was still appropriate.

While an annual rate has been assessed, the erosion is episodic, rather than gradual retreat. A single episodic erosion event could result in the shoreline regressing landward by at up to an estimated 6 m.

Both Gibb 1997 and T+T 2010 have provided assessments on future cliff position given historical erosion rates. It is acknowledged that future erosion rates and therefore future shoreline position, are difficult to assess, especially when taking into account the uncertainty around the rate of predicted sea level rise over the next 50 – 100 years. While the sea level is likely to increase and guidance is provided (MfE 2008- soon to be updated), changes in the localised wind and wave climate in the future are more difficult to quantify.

Table 2.1 shows a summary of cliff erosion setbacks assessed by Gibb 1998 and T+T 2010. The cliff erosion setback assessment undertaken by Gibb included the wider OTP and Marsden Bay area, extending from Pyle Road West to Blacksmiths Creek. However, only the Western OTP results have been included in Table 2.1 below. The 2010 T+T assessment also incorporated a wider area i.e. from OTP to Waipu Cave. However, as above, only the Western OTP results have been included in

Table 2.1. Another method of cliff setback determination (T+T 2011), which used the Walkden & Dickson formulae (2008) has also been used for the Western OTP study area. All methods use historical rates and short term retreat to determine the final setback distance. However, Gibb 1998 did not include a climate change component.

The setbacks derived by T+T 2010 and T+T 2011 include specific formulae, Defra 2002 and Walkden & Dickson 2006 respectively, to assess shoreline retreat due to predicted future climate change. The other difference between the T+T and Gibb assessments is the use of the safety factor. Gibb applied a factor of safety of 1.4 to the total setback, whereas both T+T assessments applied the 1.4 factor of safety to just the short term components of the total setback. Considering the conservatism of applying an allowance for climate change in the T+T assessments, a further factor of safety was not considered necessary.

Therefore, based on the 3 setback assessments, the future shoreline position could be between 11 - 27 m and 21 – 63 m from the 1997 top of cliff over the next 50 to 100 years, respectively. Note that the setbacks shown in Table 2.1 do not take account of any erosion mitigation measures such as the current rock revetments in place.

Table 2.1: Prediction of future shoreline positions

| Year                              | 2060           |                    |               |         | 2110           |                    |               |         |
|-----------------------------------|----------------|--------------------|---------------|---------|----------------|--------------------|---------------|---------|
|                                   | Future erosion | Short term erosion | Safety factor | Setback | Future erosion | Short term erosion | Safety factor | Setback |
| Gibb 1998                         | -7 m           | -6 m               | -4 m          | -11 m   | -11 m          | -6 m               | -6 m          | -21 m   |
| T&T 2010 (Defra 2002)             | -18 m          | -6 m               | -2 m          | -27 m   | -54 m          | -6 m               | -2 m          | -63 m   |
| T&T 2011 (Walkden & Dickson 2006) | -10 m          | -6 m               | -2 m          | -18 m   | -23 m          | -6 m               | -2 m          | -32 m   |

A more recent assessment undertaken by T+T in 2014 used a methodology which combined standard and well-tested approaches for defining coastal erosion hazard zones by addition of component parameters (Gibb, 1978; T+T, 2004; 2006; 2012; CSL, 2008, 2012). However, rather than including single values for each component and a factor of uncertainty, parameter bounds were specified for each parameter and combined by stochastic simulation. Based on the study, the area of western OTP coastline applicable to this application has a 66% probability of exceeding a 27 m setback from the 2013-2014 shoreline by 2065, and a 5% probability of exceeding a 46 m setback from the 2013-2014 shoreline by 2115.



### 3 Proposed works

The proposed rock revetment is approximately 170 m in length and extends from 36 Karoro Road in the south to 24 Karoro Road in the north. As shown on the drawings attached at Appendix C, the proposed rock revetment has a slope of 1.5:1 (H:V) and a crest of approximately 2.0 m wide.

The existing timber stair access and stormwater pipe will also be required to be altered. The timber platform and stepped access is to be repositioned to allow public access over the proposed revetment face. The details for repositioning are to be confirmed during detailed design. The existing wingwall of the stormwater outfall will also be removed and the stormwater pipe extended to discharge onto the rock armour face.

As above, the works involve the construction of a rock revetment at the toe of the cliff. The following works will be undertaken:

- 1 The cliff toe will be backfilled where undermined and the foreshore excavated with an excavator to create an appropriate grade for the structure;
- 2 Geotextile will be placed over graded area and
- 3 The underlayer and armour rock will be then be placed on top of the geotextile to the required grade.

The proposed rock revetment will tie into the existing rock revetment structures at either end of the proposed structure. Refer to the drawings annexed to this report at Appendix C. Vehicle access for construction machinery to the Coastal Marine Area (CMA) is available at the end of Pyle Road West and at the OTP boat ramp as shown in Figure 3.1 below.



Figure 3.1 Location of proposed works

Copyright: Whangarei District Council GIS Maps 2017

Construction works will be undertaken when the foreshore is not inundated with tidal water. It is expected that this requirement will be imposed as a condition of consent.

The construction works are expected to take approximately 20 weeks. It is expected that maintenance of the structure will be required over the duration of its lifespan.

### 3.1 Consideration of alternatives

In determining the appropriate method to mitigate the effects of ongoing coastal erosion, the following options were considered by WDC.

- Do nothing;
- Managed retreat;
- Cliff management;
- Breakwater;
- Cliff re-contouring; and
- Rock revetment.

These options have been summarised below, see the options assessment report attached at Appendix D and the rock revetment engineering design report attached at Appendix E for a more detailed consideration of the options.

#### 3.1.1 Do nothing

Although doing nothing will allow the geological feature along the cliffline of western OTP to continue to remain unobscured, as discussed in section 2.2.7, if the shoreline continues to go unprotected, by 2060 the esplanade reserve is likely to have eroded away. Many of the properties behind the esplanade reserve are also likely to have at the least partially eroded away.

By 2115 there is a small possibility that the cliffline may be set back almost as far as Karoro Road. If this was to occur, all land seaward of the road, including the esplanade reserve and adjacent properties, would erode away.

As the esplanade reserve is considered a significant asset to the community, and in the longer term erosion may have significant impacts on the properties and infrastructure (road and stormwater, sewer and water services) further eastward of the current cliffline, this option is not considered to be favourable.

#### 3.1.2 Managed retreat

The managed retreat approach involves allowing the cliff to erode and moving assets landward if the cliff erodes back to a certain distance of the asset. This will allow the natural character of the coast to be maintained and the geological feature to continue to remain unobscured. This option will be costly and potentially repetitive. Given erosion may have significant effects on dwellings adjacent to the esplanade reserve by 2060, this option may need to be implemented (including establishing triggers and regulatory methods) in the near future.

For this approach the esplanade reserve would essentially be treated as an 'erosion strip', requiring houses to be moved landward prior to the cliffline beginning to retreat to the reserves landward boundary. This will result in public access along the esplanade reserve and coastline at the top of the cliffs being lost.

This option is not considered to be favourable.

#### 3.1.3 Cliff management

The 'cliff management' approach involves putting up fencing and signage to alert the public to the dangers of subsidence in the vicinity of the cliff base and instability along the cliff top. Some signage

is already in place, however this could be extended, with additional signage placed at intervals along the full extent of the base of the cliff, and also signage along with a simple barrier along the top of the cliff (minimum 5 m back from the cliff edge).

Although signage would make the public more aware of the dangers of the unstable cliff landform, there may still be occasions when the warnings are not heeded e.g. disregard of signs, unsupervised children etc. This option would maintain the visibility of the geological feature contained within the exposed cliff face and reduce public risk slightly, however it will not mitigate the drivers of cliff erosion and therefore is not an effective erosion mitigation solution.

This option is not considered appropriate by itself as the risk of subsidence may end up resulting in the reserve along the top of the cliff being closed, either because the risk is too high or is poorly understood by the public. As discussed above, continued erosion may also eventually result in the cliff being setback landward of the existing esplanade reserve, resulting in the loss of both the esplanade reserve and adjacent properties. The closure or loss of reserve is not likely to be well received by the public (both locals and visitors) as this is a major asset for the public and provides recreational access (walking, running etc) along the coastline from Pyle Road West to the OTP boat ramp. Cliff management by itself is not the preferred option, however a combination of cliff management and rock revetment is considered to be both an effective erosion mitigation and risk reduction solution.

#### 3.1.4 Breakwater

A nearshore breakwater would help to attenuate wave energies as they transmit through the structure reducing significant wave heights received at the toe of the cliff. This reduction in wave height and energy would reduce the erosive forces acting on the cliff materials. This option would limit the visual obstruction of the geological feature at the toe of the cliff and could be constructed in a manner which allows for all-tide pedestrian access along the crest whilst providing views of the geological feature. The breakwater would slow the rate of long-term erosion and preserve the view of the lower cliff face, but it would not prevent erosion. This option would not be as effective in reducing the long-term risk of subsidence and shoreline retreat and therefore is not the preferred option.

#### 3.1.5 Cliff re-contouring

Cliff re-contouring involves reducing the angle of the cliffs to lessen the risk of a sudden cliff fall due to waves acting on the toe and overall reduce its erosion potential. A steepened cliff is a lot more prone to erosion with rainfall etc, whereas slopes at a stable angle of repose are less susceptible. Cliff re-contouring is considered to be a dangerous solution during the construction phase due to machinery having to work on or under unstable material. Constructing a rock revetment is likely to result in natural processes gradually reducing the angle of the cliff through reduced erosion at the base of the cliff and continued sub-aerial weathering. Therefore, promoting natural reduction of the cliff slope has significant health and safety benefits and greater certainty, over the option of mechanically cutting the slope at a flatter grade.

If the cliff is re-contoured, the likelihood of subsidence may be reduced for a short term period, however the cliff base is likely to continue to erode without an erosion protection structure at its base. Slumping of the toe of the cut slope will more than likely occur and cause the angle of the cliff to steepen again. Therefore cliff re-contouring would be required on a regular basis, resulting in contractors being put in danger during every construction phase and overall could be very costly due to its likely repetitive nature. Continued re-contouring will also eventually result in the loss of valued land such as the reserve and private properties. When WDC eventually runs out of land to re-contour the private landowners are unlikely to support recontouring of their properties. As such, cliff re-contouring is not considered a long term option and is not preferred.

### 3.1.6 Rock revetment

A rock revetment will mitigate the effects of marine wave induced erosion at the base of the cliff and is likely to generally hold the shoreline in its current position.

A rock revetment constructed at the toe of the cliff is the preferred option at the site for the following reasons:

- It provides greater certainty in mitigating the effects of erosion in comparison to the other options;
- It reduces risk to users of the esplanade reserve area on top of the cliff and the beach itself by reducing long-term risk from subsidence;
- It will assist with protection of the esplanade reserve, which serves as a coastal accessway along the cliff top from Pyle Rd West to the boat ramp. This esplanade reserve provides recreational opportunities for the community i.e. walking, running along the coastline. The rock revetment will also help to protect the properties and infrastructure adjoining Karoro Road, which as discussed above, are likely to eventually erode away if the shoreline is left unprotected;
- The rock revetment is adaptable to sea level rise. i.e. the revetment can be topped up with additional rock to raise the crest to accommodate future sea level rise and storm events if considered necessary;
- It promotes natural reduction of the slope of the cliffed shoreline through gradually reducing erosion at the base of the cliff and continued sub-aerial weathering. This compares favourably to mechanically cutting the cliff to a flatter grade, which poses health and safety risks and holds greater uncertainty in terms of the needs for future mechanical cutting and the frequency of these events; and
- The revetment has a lower construction cost and a lesser occupation of the CMA footprint than the breakwater option.

From a geotechnical perspective, only the rock revetment option could be considered effective in reducing long-term erosion of the cliffs of OTP West, and only the combination of cliff management and rock revetment would reduce the long-term risk from cliff collapse (T+T, 2012).

## 4 Resource consent requirements

The requirements for resource consents are determined by the rules in the Northland Regional Coastal Plan, Northland Regional Water and Soil Plan and the Whangarei District Plan. The rules which apply are determined by the zoning of the site, any identified limitations in the plan and the nature of the activities proposed.

Activities associated with the construction and maintenance of the proposed rock revetment are likely to occur both above and below mean high water springs (MHWS). Therefore works will involve a combination of foreshore disturbance and earthworks as defined in the regional and district plans respectively.

### 4.1 Regional Coastal Plan

As shown on planning Map C13, the site is located within the Marine 1 (Protection) Management Area and Marine 4 (Controlled Mooring) Management Area, and is affected by a Prohibited Anchorage Area overlay. Table 4.1 below sets out the consents required under the Plan for the construction and use of the proposed rock revetment, as well as its occupation of the coastal marine area.

Table 4.1: Resource consents required

| Proposed activity  | Rule reference / description   | Activity status         |
|--|--|-------------------------|
| Construction and occupation of rock revetment in Marine 1 Area.  | Rule 31.3.4(m) – The erection, occupation of space, and use of the structure within the Marine 1 (Protection) Management Area. | Non-complying activity. |
| Construction and occupation of rock revetment in Marine 4 Area.  | Rule 31.6.3(l) – The erection, occupation of space, and use of the structure within the Marine 4 (Mooring) Management Area.    | Discretionary activity. |
| Disturbance of the foreshore within the Marine 1 and Marine 4 Areas due to excavation and vehicle tracking associated with construction of the rock revetment. | Not provided for within the Plan.  | Non-complying activity  |

Overall the proposed rock revetment requires consent from NRC as a non-complying activity.

#### 4.1.1 Permitted activities

The placement of signs by any statutory authority directly relating to information and safety matters concerning the coastal marine area is a permitted activity under Rule 31.3.4(s) in the Marine 1 Area, and a permitted activity under Rule 31.6.3(m) in the Marine 4 Area of the Regional Coastal Plan. Therefore, should WDC decide to erect signage at the site to alert the public to the dangers of subsidence in the vicinity of the cliff base and instability along the cliff top then this activity is permitted.

## 4.2 Regional Water and Soil Plan

Resource consent is required under Rule 34.3(1) as a discretionary activity to undertake earthworks within the Riparian Margin Zone (5m from the top of the bank) which exceeds the permitted activity thresholds of an area of 200 m<sup>2</sup> and volume of 50 m<sup>3</sup>.

## 4.3 Whangarei District Plan

The rules which apply are determined by the zoning of the site, any identified limitations in the plan and the nature of the activities proposed.

### 4.3.1 Zoning

The site is shown on Planning Maps 51E and 51R as being zoned 'Open Space', and within the Coastal Hazard 1 overlay.

### 4.3.2 Definition

It is considered that the proposal to construct a rock revetment on the site and any maintenance activity associated with the structure will be consistent with the definition of 'earthworks' as provided under Section B of the Plan.

### 4.3.3 Scheduled feature

The OTP Interglacial Beach and Dune Deposits are listed as an outstanding natural feature (ONF) and geological site under Appendix 13 of the Plan as they are the only remaining exposed late Pleistocene regressive coastal sand sequence in the area not damaged by protection works. This feature is shown as site Number 15 on Planning Map 51R. Throughout this report reference is made to the "geological sequence", "geological feature" and "ONF". For the purposes of this report these terms are used interchangeably.

### 4.3.4 Resource consents required

Table 4.2 below sets out the consents required under the Plan for the construction and use of the proposed rock revetment.

Table 4.2: Resource consents required

| Proposed activity  | Rule reference / description   | Activity status           |
|--|--|---------------------------|
| Construction of rock revetment within Coastal Hazard 1 area.                         | Rule 56.2.1- Construction of a structure within Coastal Hazard 1 environment.                                      | Discretionary Activity.   |
| Earthworks for construction of rock revetment within Coastal Hazard 1 area.          | Rule 56.2.2- Earthworks on a sand dune complex within the Coastal Hazard 1 environment.                            | Discretionary Activity.   |
| Construction of rock revetment within an Outstanding Natural Feature.                | Rule 57.2.1- Construction of a structure within an Outstanding Natural Feature.                                    | Restricted Discretionary. |
| Earthworks for construction of rock revetment within an Outstanding Natural Feature. | Rule 57.2.2- Earthworks in an Outstanding Natural Feature which will exceed a maximum area of 250 m <sup>2</sup> . | Restricted Discretionary. |

Overall consent is sought for a discretionary activity under the Whangarei District Plan.

#### 4.3.5 Permitted activities

The construction of the rock revetment within the open space environment is a permitted activity under Rule 46.3.1 as the activity is not a residential, commercial or industrial activity and can comply with all relevant conditions.

The construction and placement of a sign is a permitted activity under Rule 46.3.4 provided the sign is required under health and safety legislation.

#### 4.3.6 Plan Change 114 (Landscapes)

The site is also within the proposed outstanding natural feature under Plan Change 114 (Landscapes).

PC114 proposes a Landscapes Chapter. The Landscapes Chapter seeks to implement the Regional Policy Statement, Outstanding Natural Landscapes and Features mapping as a Resource Area overlay, and to protect Outstanding Natural Landscapes and Features.

T+T have recently undertaken a geological assessment (T+T 2016) relating to the extent of the Outstanding Natural Feature of the One Tree Point Cliffs for WDC (attached at Appendix D of this report). The assessment concluded that:

*The longitudinal extent of the ONF as mapped in the geopreservation inventory (and subsequently in relevant planning maps) appears to be incorrect. Based on field mapping T+T believe that the south-western end of the feature lies at approximately 40 Kororo Road, some 250m north-east of the Shearwater Street termination indicated on the other documents.*

WDC subsequently have made a submission on Plan Change 114. In summary, WDC Infrastructure and Services (I&S) consider reserves as critical infrastructure and the submission reiterates that there needs to be more enabling provisions for protecting and maintaining them. Hard protection structures within ONF's are also discussed, with a need to ensure that the policy framework surrounding the establishment and use of hard protection structures enables an effects based consideration of the proposal, taking into account the demonstrable need for the structure. This includes the functional need for some structures to be located in the coastal environment including ONF's and ONL's, which may also be subject to coastal hazards.

WDC considered that:

*'The requirement to 'avoid' the use of hard protection structures associated with coastal hazard management under policy LAN 1.3(3) of PC114 may be more onerous than the direction under the NZCPS and RPS. The use of 'avoid' within this policy raises concerns in the context of the decision of the Supreme Court in King Salmon. As 'avoid' may be interpreted as an instruction to "not allow" or "prevent the occurrence of". Concerns are raised that this directive may have unintended outcomes of precluding the use of hard protection structures, before a thorough consideration of effects has been undertaken and the overall merits of the proposal identified.*

*In the wake of the King Salmon case, a policy framework that enables a consideration of the 'appropriateness' of an activity will be required in the consideration of resource consent applications, and as such, the provisions of PC114 should facilitate the consideration of all relevant effects and matters relating to the provision of infrastructure to be undertaken, recognising the role of infrastructure in providing for community wellbeing.*

*Accordingly, WDC Infrastructure & Services supports a policy framework that, whilst discouraging the use of hard protection structures and promoting alternatives (in accordance with the RPS and NZCPS), enables a discretionary consideration of the effects of such structures without inadvertently*

prohibiting their use through the use of the word 'avoid'. This is considered appropriate and warranted because:

- *Hard protection structures already exist in coastal ONFs and ONLs.*
- *The potential visual effects of not being able to maintain existing hard protection structures needs to be understood.*
- *Hard protection structures may be necessary as the only practical means to protect critical network and community infrastructure which provides for the social, economic and cultural wellbeing of the community.*
- *The NZCPS seeks to ensure that public access to the CMA is maintained and enhanced and a hard protection structure may protect public land from erosion.*
- *Hard protection structures may be utilised as the only available and practical means to protect an ONF from coastal erosion, thereby protecting them from complete destruction*
- *Policy 27(c) of the NZCPS and Policy 7.2.2 of the RPS recognise that hard protection structures may be the only practical means to protect existing infrastructure of national or regional importance, to sustain the potential of built physical resources to meet the reasonably foreseeable needs of future generations, and that their use may be considered appropriate in certain circumstances.*

The submission also comments on the extent of the OTP cliffs outstanding natural feature in the PC114 maps, with further revisions considered to be necessary to map the feature accurately. The Geoscience Society have agreed with T+T's assessment (September 2016) that the current longitudinal extent of the ONF shown in the Geopreservation Inventory, RPS and the District Plan PC114 map is incorrect.



Figure 4.1 Extent of ONF in proposed district plan (shown in green) on the left and extent of ONF in RPS (shown in yellow) on the right.

Source: WDC & NRC, 2017.



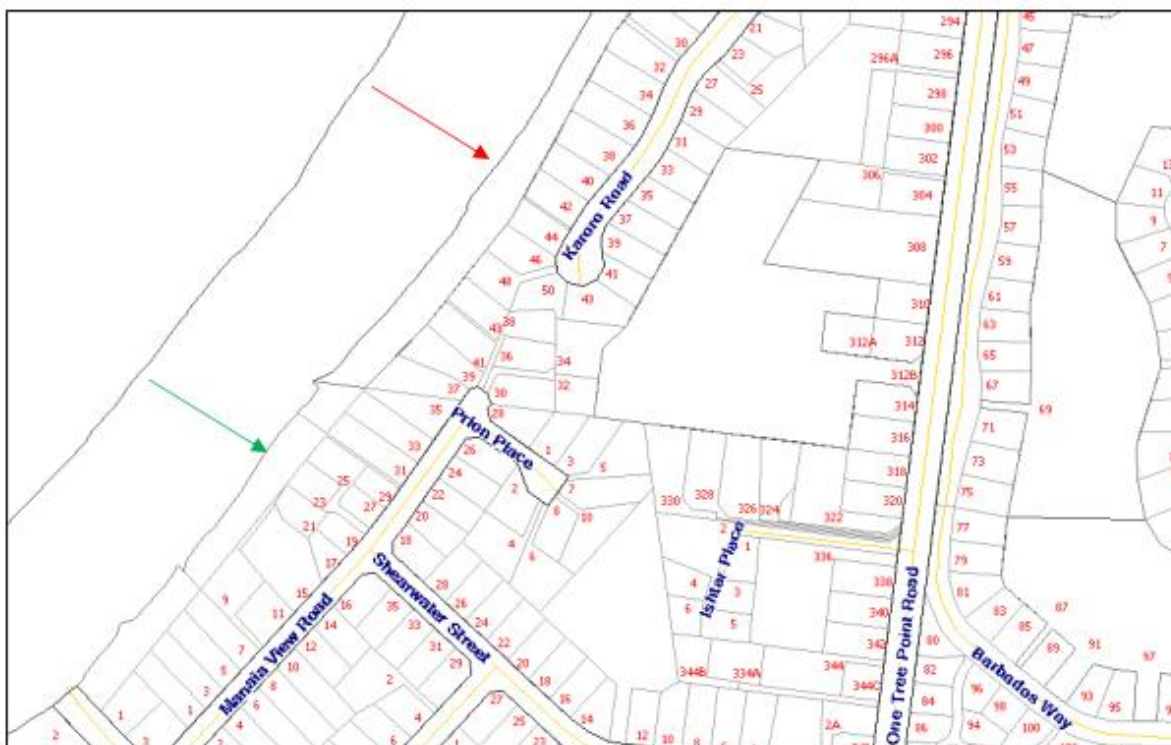


Figure 4.2 Cadastral map indicating the south-western termination of the ONF. Red arrow indicates the end of the ONF based on field mapping by T+T in 2016. Green arrow indicates the end of the ONF shown in the Geopreservation Inventory and planning documents. Source Terraview 2016

The period for lodging further submissions on Plan Change 114 closed on 20 December 2016 and the Hearing of submissions is expected to take place in mid-2017. Therefore, the plan change has not yet been made operative.

## 5 Assessment of effects on the environment

### 5.1 Introduction

The following assessment identifies and assesses the types of effects that may arise from the proposed works. This assessment also outlines the measures that the applicant proposes to avoid, remedy or mitigate any potential adverse effects on the environment.

Actual and potential effects on the environment have been identified as including:

- Positive effects;
- Effects on geological feature;
- Landscape and natural character effects;
- Amenity effects;
- Coastal process effects;
- Ecology effects;
- Public access and safety effects;
- Cultural and archaeological effects and;
- Water quality effects.

### 5.2 Positive effects

The assessments of cliff set-back determination discussed in section 2.2.7 indicate that erosion may cause a relatively significant setback in the future position of the shoreline if not protected appropriately. If the shoreline continues to go unprotected, by 2060 the esplanade reserve has a high chance of eroding away and access along the coastline will no longer be available. Many of the properties/land behind the reserve may also partially erode away. Although there is only one dwelling currently built on this land (dwelling at southern end of proposed rock revetment) and one dwelling at the northern termination of the proposed rock revetment, there are four other properties adjacent to the reserve which may be built on in the future. There is also a WDC recreational reserve which is accessible to the public.

Based on the T+T assessment undertaken in 2014, the area of western OTP coastline applicable to this application has a 66% probability of exceeding a 27 m setback from the 2013-2014 shoreline by 2065. The current physical width of the esplanade reserve at the site varies between approximately 5 m and 15 m. Therefore, if the shoreline is left unprotected, it is likely that the esplanade reserve will be completely lost to coastal erosion by 2065.

Overall, the rock revetment will assist in reducing long-term erosion of the cliff base. As sub-aerial weathering will continue to occur on the cliff, the slope will flatten over time and vegetation is likely to grow. This will reduce the long term risk of cliff subsidence and provide protection to the esplanade reserve, recreational reserve, private properties, and infrastructure at the top of the cliff. As discussed above, the esplanade reserve is a valuable asset to the community and allows people to access and use the area alongside the coastline from Pyle Rd West to the OTP boat ramp for a variety of recreational activities (running, walking, cycling etc).

The rock revetment will mitigate the effects of long-term erosion, reduce health and safety risks of cliff subsidence both to the users of the esplanade reserve, and users of the beach below. This will allow the reserve along the top of the cliff to stay open and continue to be used and enjoyed by the public on an ongoing basis.

A qualitative hazard assessment undertaken by T+T (2012) and attached to this report at Appendix F states:

*The cliffs of One Tree Point West can be classified as having at least a 'High,' and potentially 'Very High' hazard rating. The risk to people near the base or crest of the cliffs is likely to be more than insignificant and potentially in excess of what could be considered tolerable, given the apparent frequency of debris falls from the cliffs and likely high public use.*

The hazard assessment confirms that from a geotechnical perspective only, the rock revetment would be effective in reducing long-term erosion of the cliffs of OTP West, and with respect to public risk, a combination of cliff management and the rock revetment would deliver reductions in long-term risk from cliff subsidence. Cliff subsidence currently poses a risk to both users of the esplanade reserve at the top of the cliff and users of the beach at the base of the cliff.

### 5.3 Effects on geological feature

As discussed above, the site is located within an outstanding natural feature. The cliff is identified as a geological feature of national importance due to the late Pleistocene regressive coastal sand sequence and trace fossils which are exposed.

Based on discussions with the Geoscience Society, a rock revetment is likely to adversely affect the geological feature both in terms of obscuring the base of the cliffs and also altering the natural processes that create the cliff formation. Once the revetment is constructed, over time the cliff is likely to resemble the adjacent shoreline where existing erosion protection is in place. Sub aerial weathering will continue until a stable cliff face is reached, which will then allow vegetation to grow. As shown in photograph 5 below, this is likely to eventually obscure the geological feature.



Photograph 5: Looking south along western OTP coastline showing comparison between area that has been armoured by rock and the exposed cliff face at the site. Source: T+T 2014.

The New Zealand Geopreservation Inventory states that the ONF at OTP is considered to be at significant risk of damage or destruction by humans, in particular by potential cliff stabilisation works. WDC has corresponded with the Geoscience Society, and the Geoscience Society suggested that WDC consider retaining a fresh exposure of the best part of the sequence. If a part of the sequence was to be retained, a part of the shoreline would remain unprotected from coastal erosion, allowing natural processes to continue to occur and the cliff to continue to erode in part. This would allow the steep slope of the escarpment to be maintained, preventing vegetation growth and allow the sequence to remain exposed. From WDCs' perspective this is not considered an appropriate option as, although the feature will continue to be exposed in part, the part of the esplanade reserve which is unprotected will be at risk of eroding away and/or may be unusable due to potential cliff subsidence and health and safety issues. This will prevent the public from being able to access and use the full extent of the esplanade reserve from Pyle Rd West to the OTP boat ramp.

As shown in Figure 2.2 on page 5 the shoreline to the north and south of the site have been significantly modified by erosion protection structures (rock revetment and timber seawall). However, further north of the site there is an area within the outstanding landscape feature and identified regressive sequence that has not been modified by rock revetment which can be observed by the public. As shown in photograph 6 below, the geological sequence can also be observed at the exposure at OTP boat ramp.

Although the geological sequence can be observed and viewed by the public in areas such as the boat ramp and the northern western OTP peninsula, T+T's geologists consider that the prominent/special feature of the cliff exposures at the site may, in some regard, be the trace fossils.

From a visual inspection conducted by a T+T geologist, these fossils do not appear to be present at the OTP boat ramp or the northern end of the western OTP peninsula. Consequently, as the proposed rock revetment is likely to result in the geological sequence becoming obscured by vegetation, it is likely that more than minor adverse effects will result from the construction and use of the proposed rock revetment.



*Photograph 6: Geological feature observed from entrance of OTP boat ramp. Source: T+T 2014*

## 5.4 Landscape and natural character effects

WDC has not commissioned a landscape and visual assessment of the proposed revetment by a landscape architect. We make the following observations in terms of landscape and visual considerations.

Any landscape and natural character effects of the proposal are likely to relate to more rock being introduced to the base of the cliff, which is likely to result in the eventual change in the slope of the cliff face, and vegetation eventually becoming established. Based on advice from geologists, following the construction of the proposed revetment, the cliff will look similar in appearance to the areas which have been modified by rock revetment to the north and south of the structure (shown in photograph 5). On the basis of these key factors, it is likely that the proposed revetment will adversely affect the natural character of the coastal environment.

T+T notes that the proposed structure is located within a highly modified environment, with the areas to the north and south modified by erosion protection structures (rock revetments and seawall), structures such as timber stairs located along the coastline, and intensive residential development within the backshore area on the top of the peninsula. On this basis, the proposed rock revetment will be in keeping with the highly modified existing environment and will not materially change the overall visual impression of the peninsula as a whole.

## 5.5 Amenity effects

Any visual effects have been addressed in sections 5.3 and 5.4 above. Other components of amenity effects include noise, dust and vibration which may be associated with the construction of the structure.

It is considered that the main receptors of these short term construction based effects will be the houses in close vicinity of the site, and/or users of the esplanade reserve.

To mitigate potential adverse effects on nearby properties, and users of the esplanade reserve the applicant offers that conditions are imposed by WDC and NRC that require:

- Compliance with NZS 6803: 1999 *Acoustics - Construction Noise*; and
- Construction work is undertaken between 7am and 7pm Monday to Saturday (excluding public holidays).

## 5.6 Coastal effects

### 5.6.1 Shoreline location

The proposed construction of a rock revetment will move the location of the shoreline (defined by MHWS) seaward by approximately 5 m. The rock revetment has been designed to have a seaward face with a slope of 1.5(H):1(V), which is the maximum acceptable slope for a structure of this nature, for the purpose of minimising the area of the CMA the structure occupies. In plan form, the total occupation area of the rock revetment (including both above and below MHWS) will be approximately 1,500 m<sup>2</sup> (approximately 170 m x 8.5 m).

### 5.6.2 Sea levels

There will be no measurable effect on static sea levels caused by the proposed works. The rock revetment will reduce wave run-up levels in storm events due to the more dissipative character of its sloped faced containing voids compared to the existing vertical and solid cliff face.

The effect of projected sea level rise on the revetment is expected to be minor because the revetment is designed for the expected sea level rise over its 50 year design life. The revetment may need to be upgraded in the case that sea level rise within the design life of 50 years is greater than predicted.

The revetment crest level can be topped up with additional rock after 50 years to accommodate longer-term sea level rise to extend its design life and provide a similar level of protection to the cliff to what the design currently provides.

### 5.6.3 Waves

The proposed rock revetment will provide an effective energy dissipating slope which will reduce wave action across the revetment slope, thereby reducing erosion of the cliff toe. Some minor overtopping ( $< 10 \text{ l/s/m}$ ) may still occur during strong winds from the North West at high water levels. The revetment is likely to be less reflective than the cliff face and similar to the existing rock revetments to the north and south.

### 5.6.4 Currents

Tidal currents are likely low over the shallow intertidal platforms. No changes to currents are therefore anticipated due to the proposed construction and use of the revetment.

### 5.6.5 Coastal erosion

The weakly cemented sand stone cliffs that occur along western OTP are subject to ongoing erosion at the toe, both by undercutting due to wave attack, and sub-aerial weathering processes. Once sufficient undercutting occurs, the upper section of the cliffs slump, leaving an accumulation of talus at the cliff toe. This talus provides temporary protection to the cliff toe, but is generally weak and non-consolidated and is removed quickly by wave and tidal processes. Rock revetments either side of the unprotected cliffs at the site appear to have been successful in reducing the rate of toe erosion, as these revetments are located more seaward than the unprotected cliff edge. The slope behind the revetments has continued to adjust to a lesser slope and have become vegetated, thereby obscuring the exposed geological sequences in the cliff face. Stabilising the cliff toe with the proposed rock revetment would likely remove the long term erosion component, but the upper parts of the cliff would still likely retreat back to a stable angle of repose.

### 5.6.6 Beach scour

A rock revetment can potentially increase scour of the seabed seaward of the structure due to an increase in wave reflection. While there is likely to already be some wave reflection off the natural cliff occurring at higher tides, scour is likely to increase due to the increased frequency of waves reflecting off a revetment which extends further out into the CMA than the current cliff face.

However, considering the relatively low wave energy along the shoreline and the wave absorption/energy dissipation characteristics of a rock revetment, any increase in scour attributable to the structure is likely to be negligible. This is supported by site observations by T+T's coastal engineers of the existing rock revetments to the north and south of the site which show little evidence of significant scour, when compared to segments of the foreshore which are not protected by rock revetments.

### 5.6.7 Sediment processes

Erosion of the existing unprotected cliff feature is currently supplying sediment to the beach/foreshore system. A reduction in, or even cessation of, cliff erosion due to a rock revetment

will result in a reduction in sediment supply. However the effects of a permanent reduction of sediment supply are likely to be minor for the following reasons:

- The sediment supply from eroding cliffs along western OTP has already been significantly reduced with approximately 80% of the cliffs now protected;
- Based on an average cliff height of 7 m and erosion rate of 0.1 m per year, T+T's coastal scientists have estimated that the 170 m of unprotected cliff could supply, on average, approximately 119 m<sup>3</sup> of material per year to the beach/foreshore system. Under the existing situation, the majority of the eroded material is likely to form the shoal offshore of the unprotected shoreline. A cessation of eroded cliff material forming the shoal is likely to reduce the shoal over time but unlikely to cause significant effects on local or wider coastal processes; and
- The reduction of the localised shoal at the site is likely to result in a slight increase in wave energy received at the shoreline. However, as the affected shoreline will be protected by the proposed revetment, the effects of slightly increase wave energy are likely to be less than minor.

Because the proposed revetment is to be constructed at the toe of the cliff on the upper beach face it is unlikely to have any adverse effect on the longshore transport of sediment at the site. Overall, it is considered that the proposed revetment is likely to result in minor adverse effects on coastal processes.

#### 5.6.8 Effects on adjacent shorelines

The proposed rock revetment will be terminated against the existing rock revetment at its northern end and a rock revetment at its southern end. By tying in the new revetment to the ends of the existing revetments, end effects will be mitigated to the extent that they will be minor.

#### 5.7 Ecology effects

An assessment of the significant ecological marine areas in the Whangarei Harbour by Vince Kerr for NRC outlined that the area from OTP to Marsden Bay:

*comprises shallow intertidal and subtidal sandy soft bottom habitats. These habitats are flushed with considerable oceanic waters on incoming tides as well as the nutrients and plankton of the harbour waters. In the subtidal part of this area, in most years, scallops can be found there. Seagrass beds are returning to this area following a trend in the last four years in much of the harbour habitats suitable for seagrass. These shellfish and seagrass communities and associated benthic invertebrates are a major food source for shorebirds and a significant nursery and feeding area for many coastal fish species.*

Although the proposed revetment structure will occupy the shoreline and cover an intertidal area of the harbour, the structure will be located on the upper beach face in the intertidal zone where benthic communities are typically sparse in terms of density and diversity. The *Zostera* bed at the site is located approximately 60 m offshore from the cliff toe and so will not be affected by the construction of the proposed revetment.

In addition, the structure will be located on the upper beach face against the cliff face which is prone to slumping and deposition of deep layers of talus material, which would cover the foreshore in a similar manner to the revetment.

The existing rock revetments located to the north and south of the site have resulted in new habitat being created within the vegetated slope above the structures which are likely to be inhabited by insects and birds etc.



Any disturbance to the foreshore will be minimised as much as possible during the construction of the rock revetment. Haul routes for construction machinery will be established along the beach at the toe of the cliff and therefore vehicles will not transit across or close to shellfish beds, vegetated areas, bird nesting areas, or any area identified as waahi tapu. Overall, any adverse effects of the rock revetment on coastal ecology are likely to be minor.

## 5.8 Public access and safety effects

Public access and safety to and along the coast will be maintained and enhanced as a result of the proposal as public safety will be improved. The structure will reduce long term erosion of the esplanade reserve on the top of the cliff which provides access along the coastline, and the flatter vegetated slope will reduce the potential for cliff subsidence, improving the ability for the public to access and use the CMA safely.

During storm conditions and high tides waves can currently reach the base of the cliff. Therefore public access to the intertidal sand flats at the site is already limited in some circumstances. Following construction of the proposed revetment there will likely be no pedestrian access along the upper beach face during high tides. However, this adverse effect on public access along the the CMA is somewhat offset because the structure is likely to provide greater stability of the cliff and therefore safer public access to and along the CMA.

During the construction works access to the beach will be restricted, however the works will be of limited duration and will therefore only have temporary effects on public access to the CMA. Access along the CMA through the esplanade reserve is unlikely to be affected by the works.

Overall, it is considered that any adverse effects on public access to and along the CMA resulting from the construction and use of the proposed revetment are likely to be short term and minor.

## 5.9 Cultural and archaeological effects

New Zealand Archaeological Association's Archsite shows that Registered Archaeological Sites Q07/1037 Q07/320 and Q07/321 (all midden) are located at the top of the cliff and within the upper cliff face itself near the site. Archsite states that the registered sites contain small 'in situ' shell midden deposits which appear to consist largely of cockle shells with very occasional oyster shells present.

Due to the location of the proposed works at the toe of the cliff in the CMA, and the location of the midden at the top of the cliff and/or within the upper cliff face, it is highly unlikely the proposed works will affect any of these registered archaeological sites. The Accidental Discovery Protocol will be adhered to throughout the duration of the physical works programme to construct the proposed revetment.

The site where it is proposed to construct the revetment is not identified as a significant site/area to Tangata Whenua and is not identified as a heritage site in the Whangarei District Plan. WDC have contacted Te Patuharakeke Hapu regarding the proposal and are awaiting feedback.

It is considered that all potential adverse effects of the proposal on archaeological resources can be mitigated through the implementation of an Accidental Discovery Protocol so that they are less than minor. Any potential adverse cultural effects of the proposal will be understood following the conclusion of WDC's engagement process with Te Patuharakeke Hapu.

## 5.10 Water quality effects

During construction works there is a potential for sediment to discharge into the CMA. During a high tide and/or storm surge, sediments disturbed on the foreshore, due to excavation and machinery

movements, are likely to become suspended in the coastal water column, thereby resulting in a minor and temporary discolouration of sea water, but otherwise are unlikely to adversely affect marine organisms. This temporary effect of suspended sediments in the coastal water is likely to be very similar to what currently occurs when talus material is deposited on the foreshore and mobilised by coastal processes.

To mitigate potential adverse effects on water quality the following measures are proposed:

- Excavation for the foundation of the structure and placement of fill will take place when the intertidal area is not inundated by seawater;
- No segment of imported backfill will be left unprotected at the end of each working day or when tidal water prevents further work occurring. The fill is to be protected by either rock or geotextile fabric;
- No refuelling of machinery will occur within the CMA;
- A hydrocarbon spill kit will be kept on site at all times; and
- The specification for imported rock and fill materials used in construction will ensure these materials are free of organic material or contaminants.

Overall any adverse effects of the works on coastal water quality are expected to be less than minor.

## 6 Statutory assessment

### 6.1 RMA assessment

#### 6.1.1 Section 104 RMA

Section 104 of the RMA requires that when considering an application for Resource Consent, the NRC and WDC must, subject to Part 2, have regard to:

- 1 Any actual and potential effects on the environment of allowing the activity.
- 2 Any relevant provisions of:
  - A national environmental standard;
  - Other regulations;
  - A national policy statement;
  - A Regional Policy Statement or Proposed Regional Policy Statement;
  - A Plan or Proposed Plan; and
- 3 Any other matters considered relevant to determine the application.

The effects of the activity have been assessed in Section 5 of this report. An assessment of the application against the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health ("NES Soil"), Regional Policy Statements and Plans is provided below.

#### 6.1.2 Section 104D RMA

Section 104D of the RMA is relevant to NRC's determination of the application in terms of the non-complying component under the Regional Coastal Plan. In order for NRC to consider the application under s 104, it must first be satisfied that the application can pass through one of the following two limbs of the "gateway test":

- The adverse effects of the activity on the environment will be minor; or
- The application is for an activity that will not be contrary to the objectives and policies of the Plan.

Only one of the two limbs must be met in order for NRC to proceed to consider the application under s 104. As set out in Section 5 above, there are likely to be 'more than minor' adverse effects on the ONF.

In terms of the second limb of the gateway test, the Courts have found that the term "contrary to", should be treated as meaning "repugnant to" or "opposed to in nature". Further, the Courts have found that when undertaking an assessment of an application to determine whether it is or is not repugnant to the objectives and policies of the Plan, that the objectives and policies should be considered as a whole. The activity is assessed against the objectives and policies framework of the Regional Coastal Plan within Section 6.3.2 of this report.

#### 6.1.3 Part 2 of the RMA

Part 2 of the RMA sets out the purpose and principles of the Act. The purpose of the RMA is to promote the sustainable management of natural and physical resources.

##### 6.1.3.1 Section 5

Constructing the rock revetment will help to mitigate the effects of coastal erosion, protect the esplanade reserve and properties behind the cliff, and reduce health and safety risks associated with

cliff subsidence. The proposal represents a sustainable management approach to coastal erosion, because it will allow current and future generations to continue to be able to use and enjoy the esplanade reserve which provides access to and along the coastline. It will also sustain the potential of physical resources (e.g. dwellings and in the longer term, infrastructure) to meet the reasonably foreseeable needs of future generations. Based on predicted shoreline regression these physical resources are likely to be subject to future coastal erosion if erosion protection measures are not established.

Overall, the proposal will provide for the social, cultural and economic wellbeing of the OTP community and the general public and therefore accords with the purpose of the RMA.

#### 6.1.3.2 Section 6

Regard has been given to:

- The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use and development;
- The protection of outstanding natural features from inappropriate subdivision, use and development;
- The maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers; and
- The relationship of Maori and their culture and traditions with ancestral lands, water, sites, waahi tapu, and other taonga.

The proposal is in accordance with the matters of national importance set out within the RMA. Although the proposed works will change the visual appearance of the coastal environment with the introduction of new rock at the toe of the cliff, the natural character of the coastline has already been significantly modified through the urban development of the backshore area, and the construction of erosion protection structures along the coastline. Therefore the rock revetment is considered in keeping with its environs. There is tidally restricted pedestrian access along the beach in front of the existing cliff face, and although the rock revetment is likely to further reduce access along the beach, due to the structure extending further seaward than the existing cliff base, the structure will reduce the risk of cliff subsidence. Consequently, the rock revetment is unlikely to materially affect the provision of current tidally restricted pedestrian access along the foreshore. The proposed revetment will assist with maintaining public access along the top of the cliff, allowing people to continue to enjoy and use the esplanade strip which extends from Pyle Rd West to the boat ramp.

The rock revetment will adversely affect and obscure the ONF. However on balance, the proposed rock revetment will maintain the esplanade reserve (which provides recreational access and is of high value to the public), and help to protect properties, and in the longer-term infrastructure, which is likely to be subject to erosion in the future. Therefore, the proposed revetment is considered to be a necessary and 'appropriate' use of the CMA.

The site where it is proposed to construct the revetment is not identified as a significant site/area to Tangata Whenua and is not identified as a heritage site in the Whangarei District Plan. WDC have contacted Te Patuharakeke Hapu regarding the proposal and are awaiting feedback. Any potential adverse cultural effects of the proposal will be understood following the conclusion of WDC's engagement process with Te Patuharakeke Hapu.

### 6.1.3.3 Section 7

Regard has been given to:

- Kaitiakitanga;
- The maintenance and enhancement of amenity values;
- Intrinsic values of ecosystems; and
- Maintenance and enhancement of the quality of the environment.

Amenity values and the quality of the environment in the locale will overall be maintained as a result of the works, and any adverse effects on aquatic ecosystems are likely to be less than minor.

As discussed above, the western OTP coastline has already been highly modified by erosion protection structures and urban development of the backshore area. Rock revetment structures have been constructed to the north and south of the proposed site which has resulted in the cliff slope flattening and vegetation becoming established. Although the introduction of rock at the base of the cliff at the site will likely result in a stable angle of repose being formed and vegetation eventually becoming established, this is not out of character with the balance of the Western OTP coastline. Therefore, the quality of the coastal environment is overall, expected to be maintained. The works will help to maintain the esplanade and recreational reserves at the top of the cliff and their associated amenity values, which includes their use for recreational purposes. The proposal therefore will allow the public to continue to enjoy the use these important community assets.

Although the proposed rock revetment will be constructed and occupy an area within the intertidal zone of the Harbour, it will be located on the upper beach face at the base of the cliff well clear of any *Zostera* beds. *Zostera* is identified as a major food source for shorebirds and provides a significant nursery and feeding area for many coastal fish species. The upper beach face and intertidal zone is also typically sparse in terms of density and diversity of benthic fauna. Overall, regard has been given to the intrinsic values of ecosystems and these ecosystems are unlikely to be impacted by the proposal.

### 6.1.3.4 Section 8

There is nothing encompassed within the proposal which is contrary to the principles of Te Tiriti o Waitangi.

## 6.2 National Environmental Standards

The only potentially relevant NES is the NES for Assessing and Managing Contaminants in Soil to Protect Human Health (2011) (NES Soil). As the site is not considered a "piece of land" the NES does not apply.

## 6.3 Policy framework analysis

### 6.3.1 New Zealand Coastal Policy Statement

The New Zealand Coastal Policy Statement (NZCPS) is a strategic document which outlines policies and objectives to achieve the purpose of the Resource Management Act in relation to the coastal environment of New Zealand. Key themes identified in the NZCPS and relating to the proposal are:

- Safeguarding the form and function of the coastal environment;
- Preservation of the natural character of the coastal environment;
- Preservation and enhancement of open space and recreational opportunities of the coastal environment; and

- Management of coastal hazards.

The King Salmon decision and subsequent Davidson decision and their implications to RMA law and practice has been considered in the assessment of the objectives and policies below. The King Salmon decision directs that the policies within the NZCPS are intended to, and do have binding effect, and these policies need to be achieved, rather than referring back to an overall broad judgement under s104 and Part 2 of the RMA. The Davidson decision extends this approach to the assessment of applications for Resource Consent.

A detailed assessment of the proposal against the relevant objectives and policies contained within the NZCPS is provided in Table 6.1.

Table 6.1: NZCPS objective and policy assessment

| Objective/policy  | Response  |
|---|---|
| <p><u>Objective 1</u><br/> <i>To safeguard the integrity, form, functioning and resilience of the coastal environment and sustain its ecosystems, including marine and intertidal areas, estuaries, dunes and land, by:</i></p> <ul style="list-style-type: none"> <li>• <i>maintaining or enhancing natural biological and physical processes in the coastal environment and recognising their dynamic, complex and interdependent nature;</i></li> </ul> <p>...</p> <p><u>Policy 11</u><br/> <i>To protect indigenous biological diversity in the coastal environment:</i></p> <p>...</p> <p><i>(b) avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on:</i></p> <p><i>(i) areas of predominantly indigenous vegetation in the coastal environment;</i></p> <p><i>(ii) habitats in the coastal environment that are important during the vulnerable life stages of indigenous species;</i></p> <p><i>(iii) indigenous ecosystems and habitats that are only found in the coastal environment and are particularly vulnerable to modification, including estuaries, lagoons, coastal wetlands, dunelands, intertidal zones, rocky reef systems, eelgrass and saltmarsh;</i></p> <p><i>(iv) habitats of indigenous species in the coastal environment that are important for recreational, commercial, traditional or cultural purposes;</i></p> <p><i>(v) habitats, including areas and routes, important to migratory species; and</i></p> <p><i>(vi) ecological corridors, and areas important for linking or maintaining biological values identified under this policy.</i></p> | <p>As set out in Section 5, any increase in scour of the foreshore attributable to the new revetment is likely to be negligible due to the relatively low wave energy along the shoreline and the wave absorption characteristics of the rock revetment. The reduction in sediment supply from the protected 170 m of cliffed shoreline is also likely to be negligible.</p> <p>The intertidal area at the base of the cliff is intermittently disturbed and smothered by layers of sediment due to cliff collapse and the upper beach face where the structure is to be located is typically sparse in terms of benthic density and diversity. These factors mean that the proposed site is likely to have low habitat and ecological value. Foreshore disturbance will be minimised as far as practicable during the construction of the rock revetment by vehicles transiting the foreshore along dedicated haul routes along the base of the cliff.</p> <p>On the basis of the above, the revetment works will not detrimentally affect the form and function of the coastal environment because biological and physical processes will be maintained. Consequently, it is considered the proposal is consistent with the objective and policy.</p> |
| <p><u>Objective 2</u></p>   | <p>The objective seeks to protect natural character values at the site and the ONF as a natural feature.</p>  |

*To preserve the natural character of the coastal environment and protect natural features and landscape values through:*

- *recognising the characteristics and qualities that contribute to natural character, natural features and landscape values and their location and distribution;*
- *identifying those areas where various forms of subdivision, use, and development would be inappropriate and protecting them from such activities; and*
- *encouraging restoration of the coastal environment.*

#### Policy 13

*(1) To preserve the natural character of the coastal environment and to protect it from inappropriate subdivision, use, and development:*

- (a) avoid adverse effects of activities on natural character in areas of the coastal environment with outstanding natural character; and*
- (b) avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on natural character in all other areas of the coastal environment;*

*including by:*

*(c) assessing the natural character of the coastal environment of the region or district, by mapping or otherwise identifying at least areas of high natural character; and*

*(d) ensuring that regional policy statements, and plans, identify areas where preserving natural character requires objectives, policies and rules, and include those provisions.*

*(2) Recognise that natural character is not the same as natural features and landscapes or amenity values and may include matters such as:*

- (a) natural elements, processes and patterns;*
- (b) biophysical, ecological, geological and geomorphological aspects;*
- (c) natural landforms such as headlands, peninsulas, cliffs, dunes, wetlands, reefs, freshwater springs and surf breaks;*
- (d) the natural movement of water and sediment;*
- (e) the natural darkness of the night sky;*
- (f) places or areas that are wild or scenic;*
- (g) a range of natural character from pristine to modified; and*
- (h) experiential attributes, including the sounds and smell of the sea; and their context or setting.*

#### Policy 15

*To protect the natural features and natural landscapes (including seascapes) of the coastal*

Policies 13 and 15 provide more helpful qualification around the circumstances when protection is required and what the values and ONF should be protected from. It is clear that the policies seek to protect natural character values and protect natural features from "inappropriate" use. T+T consider that the proposed revetment constitutes an appropriate use; primarily due to how it will mitigate adverse effects on public access to and along the CMA.

With respect to natural character, the proposed structure is located within a highly modified environment, with the areas to the north and south modified by erosion protection structures (rock revetments and seawall), structures such as timber stairs located along the coastline, and intensive residential development within the backshore area on the top of the peninsula. On this basis, the proposed rock revetment will be in keeping with the highly modified existing environment including its character values.

The proposed revetment will have adverse effects on the ONF which cannot be mitigated or avoided. As set out above, T+T consider the proposed revetment constitutes an appropriate use and therefore whilst adverse effects are likely to result on the ONF from the proposed revetment the revetment itself is not considered an inappropriate use.

On the basis of the above, is considered that the proposal is consistent with the objectives and policies because their directives around protecting natural character values and natural features are qualified to be in relation to inappropriate uses. Policies 18 (c), 18(d), 18(e), 19(1) and 19(2)(c) and 27(c) of the NZCPS, discussed below, provide assistance to decision makers with deciding when a use may be deemed appropriate. The policies listed lend support to the proposed revetment and why it can be considered an appropriate use.

|   |   |
|---|---|
| <p>environment from inappropriate subdivision, use, and development:</p> <p>(a) avoid adverse effects of activities on outstanding natural features and outstanding natural landscapes in the coastal environment; and</p> <p>(b) avoid significant adverse effects and avoid, remedy, or mitigate other adverse effects of activities on other natural features and natural landscapes in the coastal environment;</p> <p>including by:</p> <p>(c) identifying and assessing the natural features and natural landscapes of the coastal environment of the region or district, at minimum by land typing, soil characterisation and landscape characterisation and having regard to:</p> <p>(i) natural science factors, including geological, topographical, ecological and dynamic components;</p> <p>(ii) the presence of water including in seas, lakes, rivers and streams;</p> <p>(iii) legibility or expressiveness—how obviously the feature or landscape demonstrates its formative processes;</p> <p>(iv) aesthetic values including memorability and naturalness;</p> <p>(v) vegetation (native and exotic);</p>  |   |
| <p><u>Objective 4</u></p> <p>To maintain and enhance the public open space qualities and recreation opportunities of the coastal environment by:</p> <ul style="list-style-type: none"> <li>• recognising that the coastal marine area is an extensive area of public space for the public to use and enjoy;</li> <li>• maintaining and enhancing public walking access to and along the coastal marine area without charge, and where there are exceptional reasons that mean this is not practicable providing alternative linking access close to the coastal marine area; and</li> <li>• recognising the potential for coastal processes, including those likely to be affected by climate change, to restrict access to the coastal environment and the need to ensure that public access is maintained even when the coastal marine area advances inland.</li> </ul> <p><u>Policy 18</u></p> <p>Recognise the need for public open space within and adjacent to the coastal marine area, for public use and appreciation including active and passive recreation, and provide for such public open space, including by:</p> <p>(a) ensuring that the location and treatment of public open space is compatible with the natural</p> | <p>The principal driver of the proposal is to protect the esplanade reserve. The works will maintain the existing open space qualities of the coastal environment and recreational opportunities of the coastal environment. Tidally restricted access along the foreshore is currently available at the site and this will still be the case following the construction of the proposed revetment. The rock revetment will mitigate the effects of erosion and cliff subsidence, and allow access along the top of the cliff within the esplanade reserve to be maintained. The esplanade reserve provides recreational opportunities and access along the CMA from Pyle Rd West to the boat ramp. Given the cliffed shoreline comprises uncemented to weakly cemented sands, the frequency and severity of erosion events is likely to increase over time due to the effects of sea level rise if the cliff edge is left unprotected. Therefore, public walking access through the esplanade reserve is likely to be even more detrimentally affected in the future if the current loss of the reserve is not mitigated by the proposal. Consequently, it is considered that the proposal is consistent with the objective and policies. As noted above, Policies 18 and 19 lend support to the proposed revetment being considered appropriate because they seek to maintain and enhance public walking access to and along the CMA by mitigating any loss of access and</p> |



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| <p><i>character, natural features and landscapes, and amenity values of the coastal environment;</i></p> <p><i>(b) taking account of future need for public open space within and adjacent to the coastal marine area, including in and close to cities, towns and other settlements;</i></p> <p><i>(c) maintaining and enhancing walking access linkages between public open space areas in the coastal environment;</i></p> <p><i>(d) considering the likely impact of coastal processes and climate change so as not to compromise the ability of future generations to have access to public open space; and</i></p> <p><i>(e) recognising the important role that esplanade reserves and strips can have in contributing to meeting public open space needs.</i></p> <p><b><u>Policy 19</u></b></p> <p><i>(1) Recognise the public expectation of and need for walking access to and along the coast that is practical, free of charge and safe for pedestrian use.</i></p> <p><i>(2) Maintain and enhance public walking access to, along and adjacent to the coastal marine area, including by:</i></p> <p><i>(a) identifying how information on where the public have walking access will be made publicly available;</i></p> <p><i>(b) avoiding, remedying or mitigating any loss of public walking access resulting from subdivision, use, or development; and</i></p> <p><i>(c) identifying opportunities to enhance or restore public walking access, for example where:</i></p> <p><i>(i) connections between existing public areas can be provided; or</i></p> <p><i>(ii) improving access would promote outdoor recreation; or</i></p> <p><i>(iii) physical access for people with disabilities is desirable; or</i></p> <p><i>(iv) the long-term availability of public access is threatened by erosion or sea level rise; or</i></p> <p><i>(v) access to areas or sites of historic or cultural significance is important; or</i></p> <p><i>(vi) subdivision, use, or development of land adjacent to the coastal marine area has reduced public access, or has the potential to do so.</i></p> | <p>restoring access where it is threatened by erosion or sea level rise.</p>  |
| <p><b><u>Objective 5</u></b></p> <p><i>To ensure that coastal hazard risks taking account of climate change, are managed by:</i></p> <ul style="list-style-type: none"> <li><i>• locating new development away from areas prone to such risks;</i></li> <li><i>• considering responses, including managed retreat, for existing development in this situation; and</i></li> </ul>  | <p>OTP is as an area of significant urban development which is affected by coastal hazard. WDC has considered the potential coastal management options that could be used to reduce long term erosion of the cliff and reduce the risk to people using the reserve and foreshore in the vicinity of the cliff at the site. Section 3.1 sets the options considered and the reason for selecting the proposed revetment as the preferred option. The</p> |

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| <ul style="list-style-type: none"> <li>• <i>protecting or restoring natural defences to coastal hazards.</i></li> </ul> <p><u>Policy 25</u><br/><i>In areas potentially affected by coastal hazards over at least the next 100 years:</i></p> <ul style="list-style-type: none"> <li>(a) <i>avoid increasing the risk of social, environmental and economic harm from coastal hazards;</i></li> <li>(b) <i>avoid redevelopment, or change in land use, that would increase the risk of adverse effects from coastal hazards;</i></li> <li>(c) <i>encourage redevelopment, or change in land use, where that would reduce the risk of adverse effects from coastal hazards, including managed retreat by relocation or removal of existing structures or their abandonment in extreme circumstances, and designing for relocatability or recoverability from hazard events;</i></li> <li>(d) <i>encourage the location of infrastructure away from areas of hazard risk where practicable;</i></li> <li>(e) <i>discourage hard protection structures and promote the use of alternatives to them, including natural defences; and</i></li> </ul> <p>...</p> <p><u>Policy 27</u></p> <p>(1) <i>In areas of significant existing development likely to be affected by coastal hazards, the range of options for reducing coastal hazard risk that should be assessed includes:</i></p> <ul style="list-style-type: none"> <li>(a) <i>promoting and identifying long-term sustainable risk reduction approaches including the relocation or removal of existing development or structures at risk;</i></li> <li>(b) <i>identifying the consequences of potential strategic options relative to the option of 'do-nothing';</i></li> <li>(c) <i>recognising that hard protection structures may be the only practical means to protect existing infrastructure of national or regional importance, to sustain the potential of built physical resources to meet the reasonably foreseeable needs of future generations;</i></li> <li>(d) <i>recognising and considering the environmental and social costs of permitting hard protection structures to protect private property; and</i></li> <li>(e) <i>identifying and planning for transition mechanisms and timeframes for moving to more sustainable approaches.</i></li> </ul> <p>(2) <i>In evaluating options under (1):</i></p> | <p>strategic importance of the esplanade reserve, in terms of the public access and open space values attached to it, is the principal reason for the revetment being preferred over other options. There is no practical alternative location for re-routing the public access to and along the CMA provided by the esplanade reserve given the private landownership surrounding the reserve. The proposed revetment is unlikely to compromise any natural defence mechanisms (sand dunes, estuaries, intertidal vegetation) to coastal erosion such at the site because there are none. The establishment of the proposed revetment at the site will not increase the risk of social, environmental and economic harm from the coastal erosion at the site for users of the reserve because its presence will in no way increase the intensity of use or the type of activities that will occur on the esplanade reserve. As to the residentially zoned parcels located landward of the esplanade reserve, the land is already subdivided for residential development with some dwellings already in existence and the proposed revetment will not of itself facilitate more intense development.</p> <p>It is considered that the proposed rock revetment, as a hard protection structure, is the only practical means to protect the esplanade reserve as piece of regionally important infrastructure which is necessary to sustain the potential of built physical resources to meet the reasonably foreseeable needs of future generations. Predicted future shoreline retreat<sup>1</sup>, which ranges between 11 m and 18 m for a 50 year timescale and 21 m and 63 m for a 100 year timescale, will result in the loss of the esplanade reserve and private property to erosion, and in the longer term, the cliffline could encroach into Karoro Road and threaten infrastructure, such as roading, water, sewer and stormwater systems.</p> <p>The nature and scale of the effects of future sea level rise on the coastal erosion hazard and associated risk at the site are uncertain, particularly for the longer timescales (50 to 100 years from present). The structure itself can be adapted in the future to provide a similar level of protection to the cliffed shoreline as what the design currently allows for. This is because the crest of the rock revetment can be topped up with additional rock to accommodate future sea level rise and storm events if considered necessary.</p> <p>The proposed rock revetment will be constructed at the base of the cliff shoreline, significantly below the crest of the landform, and as far landward as practicable. Further, the structure will follow the alignment of the shoreline morphology.</p> |
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<sup>1</sup> Identified in Section 2.2.7 of this report.

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| <p>(a) focus on approaches to risk management that reduce the need for hard protection structures and similar engineering interventions;</p> <p>(b) take into account the nature of the coastal hazard risk and how it might change over at least a 100-year timeframe, including the expected effects of climate change; and</p> <p>(c) evaluate the likely costs and benefits of any proposed coastal hazard risk reduction options.</p> <p>(3) Where hard protection structures are considered to be necessary, ensure that the form and location of any structures are designed to minimise adverse effects on the coastal environment.</p> <p>(4) Hard protection structures, where considered necessary to protect private assets, should not be located on public land if there is no significant public or environmental benefit in doing so.</p>   | <p>Consequently, the form and location of the proposed revetment has been designed to minimise adverse effects on the coastal environment.</p> <p>On the basis of the above, it is considered that the proposal is consistent with the objective and policies.</p>  |
| <p><u>Objective 6</u></p> <p>To enable people and communities to provide for their social, economic, and cultural wellbeing and their health and safety, through subdivision, use, and development, recognising that:</p> <ul style="list-style-type: none"> <li>• the protection of the values of the coastal environment does not preclude use and development in appropriate places and forms, and within appropriate limits.</li> <li>• functionally some uses and developments can only be located on the coast or in the coastal marine area;</li> </ul> <p>...</p> <ul style="list-style-type: none"> <li>• the protection of habitats of living marine resources contributes to the social, economic and cultural wellbeing of people and communities;</li> </ul> <p>...</p> <p><u>Policy 6</u></p> <p>(1) In relation to the coastal environment:</p> <p>(a) recognise that the provision of infrastructure, the supply and transport of energy including the generation and transmission of electricity, and the extraction of minerals are activities important to the social, economic and cultural well-being of people and communities;</p> <p>(b) consider the rate at which built development and the associated public infrastructure should be enabled to provide for the reasonably foreseeable needs of population growth without compromising the other values of the coastal environment;</p> <p>...</p> <p>(2) Additionally, in relation to the coastal marine area:</p> <p>(a) recognise potential contributions to the social, economic and cultural wellbeing of people and</p> | <p>The proposed revetment will enable the public access, open space and recreational values attached to the esplanade reserve to be maintained. For this reasons the social, economic and cultural wellbeing of the community can be attained.</p> <p>Central to the commentary around “appropriateness” under the response to Policies 13 and 15 is that protecting the values of the coastal environment (including ONFs) is not a bottom line that must be achieved in a vacuum without consideration of other factors. This is confirmed through Objective 6 stating that the desire to protect of ONFs does preclude uses such as the proposed revetment. The proposed revetment has to be sited within the coastal environment adjacent to the ONF if it is to serve its intended purpose.</p> <p>As recognised by Policy 1(2)(i), the esplanade reserve is a physical resource and is a key part of the coastal environment in much the same way that the ONF is. That is, there is no primacy provided to either resource in terms of their contribution to the make up of the coastal environment.</p> <p>On the basis of the above, it is considered that the proposal is consistent with the objective and policies.</p> |

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| <p><i>communities from use and development of the coastal marine area, including the potential for renewable marine energy to contribute to meeting the energy needs of future generations:</i></p> <p><i>(b) recognise the need to maintain and enhance the public open space and recreation qualities and values of the coastal marine area;</i></p> <p><i>(c) recognise that there are activities that have a functional need to be located in the coastal marine area, and provide for those activities in appropriate places;</i></p> <p><i>(d) recognise that activities that do not have a functional need for location in the coastal marine area generally should not be located there; and</i></p> <p>...</p>  |  |
| <p><u>Policy 1</u></p> <p>...</p> <p><i>2) Recognise that the coastal environment includes:</i></p> <p><i>(a) the coastal marine area;</i></p> <p>...</p> <p><i>(c) areas where coastal processes, influences or qualities are significant, including coastal lakes, lagoons, tidal estuaries, saltmarshes, coastal wetlands, and the margins of these;</i></p> <p><i>(d) areas at risk from coastal hazards;</i></p> <p>...</p> <p><i>(f) elements and features that contribute to the natural character, landscape, visual qualities or amenity values;</i></p> <p>...</p> <p><i>(h) inter-related coastal marine and terrestrial systems, including the intertidal zone; and</i></p> <p><i>(i) physical resources and built facilities, including infrastructure, that have modified the coastal environment.</i></p> | <p>The policy is clear that the coastal environment is a dynamic and complex zone where coastal processes, areas at risk from coastal erosion, ONFs, and physical resources (such as the esplanade reserve and residential development further landward of esplanade reserve), are interacting with one another. The development of this proposal to manage the coastal erosion at the site has recognised and considered the listed values, resources and features, in terms of their contribution to the composition of the coastal environment. It is therefore considered that the proposal is consistent with the policy.</p> |
| <p><u>Policy 20</u></p> <p><i>(1) Control use of vehicles, apart from emergency vehicles, on beaches, foreshore, seabed and adjacent public land where:</i></p> <p><i>(a) damage to dune or other geological systems and processes; or</i></p> <p><i>(b) harm to ecological systems or to indigenous flora and fauna, for example marine mammal and bird habitats or breeding areas and shellfish beds; or</i></p> <p><i>(c) danger to other beach users; or</i></p> <p><i>(d) disturbance of the peaceful enjoyment of the beach environment; or</i></p> <p><i>(e) damage to historic heritage; or</i></p> <p><i>(f) damage to the habitats of fisheries resources of significance to customary, commercial or recreational users; or</i></p>   | <p>It will be necessary for machinery to work within the CMA to supply materials and excavate the foreshore to construct the toe of the revetment. The area where machinery movements will take place (at the top of the foreshore profile) is characterised by low ecological and habitat values. Further, the area of disturbance will be the minimum necessary to undertake the work. For these reasons, vehicle use of the foreshore will be controlled and the proposal is consistent with the policy.</p>  |

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| <i>(g) damage to sites of significance to tangata whenua; might result.</i> |  |
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### 6.3.2 Northland Regional Policy Statement

The Northland Regional Policy Statement (RPS) is a strategic document which provides an overview of the major resource management issues and sets out the direction for managing the use, development and protection of the natural and physical resources of the region.

The RPS Maps show that:

- The entire site is affected by an ONF overlay;
- Approximately half of the site is affected by a High Natural Character overlay; and
- The Coastal Environment overlay extends landward into the peninsula east of Karoro Road.

Table 6.2 provides an assessment of the proposal against the RPS. To avoid repetition, the assessment has been limited to the only objective that is materially different, or more specific than those provided in the NZCPS.

Table 6.2: Regional policy statement assessment

| Policy   | Response   |
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| <p><u>Objective 3.1.4</u><br/> <i>Identify and protect from inappropriate subdivision, use and development;</i><br/> <i>(a) The qualities and characteristics that make up the natural character of the coastal environment, and the natural character of freshwater bodies and their margins;</i><br/> <i>(b) The qualities and characteristics that make up outstanding natural features and outstanding natural landscapes;</i><br/> <i>(c) The integrity of historic heritage</i></p> <p><u>Policy 4.6.1</u><br/> <i>1) In the coastal environment:</i><br/> <i>a) Avoid adverse effects of subdivision use, and development on the characteristics and qualities which make up the outstanding values of areas of outstanding natural character, outstanding natural features and outstanding natural landscapes.</i><br/> <i>b) Where (a) does not apply, avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of subdivision, use and development on natural character, natural features and natural landscapes. Methods which may achieve this include:</i><br/> <i>(i) Ensuring the location, intensity, scale and form of subdivision and built development is appropriate having regard to natural elements, landforms and processes, including vegetation patterns, ridgelines,</i></p> | <p>RPS Objective 3.1.4 is very similar to Policies 13 and 15 of the NZCPS because all three seek to protect natural character values and protect natural features from “inappropriate” use. For all the reasons stated under the response to Objective 2 and Policies 13 and 15 of the NZCPS, it is considered that that whilst adverse effects are likely to result on the ONF, the revetment itself is considered to be an appropriate use. Further, the proposed rock revetment will be in keeping with the highly modified existing environment, including its character values. On the basis of the above, it is considered that the proposal is consistent with RPS Objective 3.1.4.</p> <p>Turning to RPS Policy 4.6.1, it does contain the “inappropriate” qualification. Therefore by inference, the policy requires that protection is afforded to the ONF and natural character values at the site, irrespective of whether the revetment is deemed to be an inappropriate or appropriate use. However, from both a planning theory and practical perspective, it is assumed that RPS Policy 4.6.1 was intended to mirror its attendant objective (RPS Objective 3.1.4) to require protection from inappropriate uses, and not appropriate uses (such as the proposed revetment). The explanatory statement to RPS Objective 3.1.4 corroborates this assumption where it states:</p> <p><i>The objective does not seek absolute protection in all cases, as in many circumstances individual elements of these resources (for example, a specific landscape</i></p> |

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| <p>headlands, peninsulas, dune systems, reefs and freshwater bodies and their margins; and</p> <p>(ii) In areas of high natural character, minimising to the extent practicable indigenous vegetation clearance and modification (including earthworks / disturbance, structures, discharges and extraction of water) to natural wetlands, the beds of lakes, rivers and the coastal marine area and their margins; and</p> <p>(iii) Encouraging any new subdivision and built development to consolidate within and around existing settlements or where natural character and landscape has already been compromised.</p> <p>...</p> <p>(3) When considering whether there are any adverse effects on the characteristics and qualities of the natural character, natural features and landscape values in terms of (1)(a), whether there are any significant adverse effects and the scale of any adverse effects in terms of (1)(b) and (2), and in determining the character, intensity and scale of the adverse effects:</p> <p>a) Recognise that a minor or transitory effect may not be an adverse effect;</p> <p>b) Recognise that many areas contain ongoing use and development that:</p> <p>(i) Were present when the area was identified as high or outstanding or have subsequently been lawfully established</p> <p>(ii) May be dynamic, diverse or seasonal;</p> <p>c) Recognise that there may be more than minor cumulative adverse effects from minor or transitory adverse effects; and</p> <p>d) Have regard to any restoration and enhancement on the characteristics and qualities of that area of natural character, natural features and/or natural landscape</p> | <p>unit) can accommodate a degree of modification. The level of protection will depend on the values if these areas.</p> <p>Further, the explanatory statement to RPS Policy 4.6.1 states that NZCPS Polices 13 and 15 are the foundation for RPS Policy 4.6.1. Consequently, because the proposal is consistent with RPS Objective 3.1.4 and Polices 13 and 15 of the NZCPS, it must also be generally consistent with RPS Policy 4.6.1.</p> |
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### 6.3.3 Northland Regional Coastal Plan

Table 6.3 provides a detailed assessment of the proposal against the relevant objectives and policies contained within the Regional Coastal Plan. As stated earlier, the site is located partially within the Marine 1 Management Area and partially within the Marine 4 Management Area.

Table 6.3: Regional Coastal Plan objective and policy assessment

| Objective/policy  | Response   |
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| <p><u>Objective 7.3</u><br/>The preservation of the natural character of Northland's coastal marine area, and the protection of it from inappropriate subdivision, use and development.</p> | <p>As discussed within Section 5 of this report and the response to the NZCPS objectives and policies, it is likely the proposed revetment will impact on the natural character values at the site through the placement of new rock on the foreshore. Therefore, the proposal is in part contrary to the objective.</p> |

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| <p><u>Policy 7.4.1</u><br/><i>In assessing the actual and potential effects of an activity to recognise that all parts of Northland's coastal marine area have some degree of natural character which requires protection from inappropriate subdivision, use and development.</i></p> <p><u>Policy 7.4.2.</u><br/><i>As far as reasonably practicable to avoid the adverse environmental effects including cumulative effects of subdivision, use and development on those qualities which collectively make up the natural character of the coastal marine area including:</i></p> <p>(a) <i>natural water and sediment movement patterns;</i><br/>(b) <i>landscapes and associated natural features;</i><br/>(c) <i>indigenous vegetation and the habitats of indigenous fauna;</i><br/>(d) <i>water quality;</i><br/>(e) <i>cultural heritage values, including historic places and sites of special significance to Maori;</i><br/>(f) <i>air quality;</i><br/><i>and where avoidance is not practicable, to mitigate adverse effects and provide for remedying those effects to the extent practicable.</i></p> <p><u>Policy 7.4.4.</u><br/><i>Subject to Policies 1 and 2 above, through the use of rules in this Plan, to provide for appropriate subdivision, use and development in areas where natural character has already been compromised, including within Marine 3, Marine 4, Marine 5, and Marine 6 Management Areas.</i></p> | <p>However, the proposed revetment does not constitute an inappropriate use of the CMA for the reasons provided previously within this report and therefore is consistent in part with the objective. Approximately half of the site is comprised of Marine 4 Management Area and Policy 7.4.4 encourages appropriate uses (such as the proposed revetment) into these zonings due to the zoning's natural character having been compromised by historic development and use. Consequently, it is considered that the proposal is inconsistent with the objective, insofar as natural character preservation is required, but consistent with it where it requires protection of natural character from inappropriate use. The proposal is consistent with Policy 7.4.2 because adverse effects are avoided as far as reasonably practicable and Policy 7.4.4 directs appropriate use to occur in Marine 4 Management Areas, which a lot of the site is located within, so consistency with this policy is achieved.</p> |
| <p><u>Objective 8.3</u><br/><i>The identification, and protection from inappropriate subdivision, use and development of outstanding natural features and landscapes which are wholly or partially within Northland's coastal marine area.</i></p> <p><u>Policy 8.4.2</u><br/><i>To recognise and provide for the protection from inappropriate subdivision, use and development of landforms and/or geological features of international, national or regional importance which are wholly or partially within Northland's coastal marine area.</i></p>  | <p>The ONF at OTP has been identified within the Plan and objectives, policies and rules developed to protect is from inappropriate use. As above, the proposed rock revetment is not deemed an inappropriate use and so the proposal is consistent with the objective and policy.</p>   |
| <p><u>Objective 10.3.1</u><br/><i>The maintenance and enhancement of public access to and along Northland's coastal marine area except where restriction on that access is necessary.</i></p> <p><u>Policy 10.4.1</u><br/><i>To promote, and where appropriate, facilitate improved public access to and along the coastal</i></p>  | <p>As discussed within Section 5 of this report and the response to the NZCPS objectives and policies, the construction and use of the proposed revetment will maintain and enhance the esplanade reserve and its function in providing open space and recreation value, as well as public access to and along the CMA. The proposed revetment is unlikely to compromise any of the features or values listed in Policy 10.4.1.</p>  |

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| <p><i>marine area where this does not compromise the protection of areas of significant indigenous vegetation, significant habitats of indigenous fauna, Maori cultural values, public health and safety, or security of commercial operations.</i></p>  | <p>Therefore, it is considered that the proposal is consistent with the objective and policy.</p>  |
| <p><u>Objective 11.3</u><br/><i>The management of the natural and physical resources within Northland's coastal marine area in a manner that recognises and respects the traditional and cultural relationships of tangata whenua with the coast.</i></p> <p><u>Policy 11.4.1</u><br/><i>To recognise and, as far as practicable, provide for the concerns and cultural perspective of tangata whenua with respect to the protection of natural and physical resources (especially seafood) in the coastal marine area.</i></p>  | <p>WDC is engaging with Te Patuharakeke Hapu to ensure the proposal recognises and, as far as practicable, takes account of their traditional and cultural relationship with OTP. Therefore, the proposal is consistent with the objective and policy.</p>   |
| <p><u>Objective 15.3.1</u><br/><i>The avoidance, remediation, or mitigation of the adverse effects of natural hazards on coastal subdivision, use and development.</i></p> <p><u>Objective 15.3.2.</u><br/><i>The avoidance, remediation, or mitigation of the adverse effects of subdivision, use and development on the exacerbation of natural hazards in the coastal marine area.</i></p> <p><u>Policy 15.4.3</u><br/><i>In consideration of coastal permit applications to ensure that any natural hazard control measures undertaken in the coastal marine area are the best practicable option and the most effective in the long-term.</i></p> | <p>The proposed rock revetment is required to mitigate the adverse effect of coastal erosion on the esplanade reserve as a strategic and important community asset/piece of infrastructure. Avoiding or remediating the adverse effect of coastal erosion on the esplanade reserve are either cost prohibitive or impractical. The proposed rock revetment will not exacerbate the effect of coastal erosion on the esplanade reserve. WDC has considered the full range of options available to them to manage the cliff erosion and subsidence issue at the site and concluded that a rock revetment provides the most certainty in terms of effectiveness (it is more likely than not likely to be effective and will not necessitate multiple management interventions), the best cost effectiveness, and least adverse effects on the CMA in terms of inducing scour of the foreshore, affecting public access, interrupting coastal processes and benthic fauna. Consequently, it is considered that the proposal is consistent with the objective and policies.</p> |
| <p><u>Objective 16.3</u><br/><i>Provision for recreational uses of the coastal marine area while avoiding, remedying, and mitigating the adverse effects of recreational activities on other users and the environment.</i></p> <p><u>Policy 16.4.3</u><br/><i>In consideration of coastal permit applications within all Marine Management Areas, to ensure that uses and developments which occupy coastal space or utilise coastal resources, do not unnecessarily compromise existing recreational activities.</i></p>   | <p>As discussed within Section 5 of this report and the response to the NZCPS objectives and policies, the proposed revetment has been sited as far landward as practicable to minimise the extent to which it will impact on existing tidally restricted pedestrian access along the foreshore at the site. This also ensure the area the structure will occupy within the CMA is the least possible and recreational activities can continue to be undertaken with little to no new constraints imposed. One of the main drivers of the proposal is to protect and enhance access to the CMA for recreational activities from public roads, the esplanade reserve and timber access steps. Therefore the proposal is consistent with the objective and policy.</p>   |



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| <p><u>Objective 17.3</u><br/><i>The provision for appropriate structures within the coastal marine area while avoiding, remedying or mitigating the adverse effects of such structures.</i></p> <p><u>Policy 17.4.3</u><br/><i>Within all Marine Management areas, to consider structures generally appropriate where:</i><br/><i>(a) there is an operational need to locate the structure within the coastal marine area; and</i><br/><i>(b) there is no practical alternative location outside the coastal marine area; and</i><br/><i>(c) multiple use is being made of structures to the extent practicable; and</i><br/><i>(d) any landward development necessary to the proposed purpose of the structure can be accommodated; and</i><br/><i>(e) any adverse effects are avoided as far as practicable, and where avoidance is not practicable, to mitigate adverse effects to the extent practicable.</i><br/><i>A structure that does not meet all of the considerations listed above may also be an appropriate development, depending on the merits of the particular proposal.</i></p> <p><u>Policy 17.4.4.</u><br/><i>Notwithstanding Policy 3, within Marine 1 and Marine 2 Management Areas, to assess applications for new structures, with particular reference to the nature of and reasons for the proposed structures in the coastal marine area and to any potential effects on the natural character of the coastal marine area, on public access, and on sites or areas of cultural heritage value.</i></p> <p><u>Policy 17.4.8</u><br/><i>In assessment of coastal permit applications to require that all structures within the coastal marine area are maintained in good order and repair and that appropriate construction materials are used</i></p> | <p>As discussed in numerous places in this report, the proposed revetment is considered to be an appropriate structure at the site. Policy 17.4.3 provides some guidance to decision makers on the factors which may assist in determining when a structure may be considered appropriate in both the Marine 1 and Marine 4 Management Areas. It is considered that proposed revetment meets some of the listed guiding factors. Policy 17.4.4 directs the decision maker to apply particular focus on the assessment of the need for the structure to be located in Marine 1 Management Area, and to any potential effects on the natural character of the coastal marine area, on public access, and on sites or areas of cultural heritage value. This report has provided substantive discussion and assessment around the matters specified. Based on assessment provided elsewhere within this report, it is considered that the proposal is generally consistent with the objective and policies.</p> <p>One of the reasons for selecting a rock revetment over other materials typically used to construct seawalls is that rock generally requires less maintenance and lasts longer. Therefore the proposed structure has been designed to ensure minimal maintenance is required, maintenance is uncomplicated and the materials are appropriate to the dynamic coastal environment. Therefore, consistency with Policy 17.4.8 is achieved.</p> |
| <p><u>Objective 25.3.2</u><br/><i>Subdivision, use, and development in Marine 1 (Protection) Management Areas occurring without adverse effects on the areas' important values and natural character.</i></p> <p><u>Policy 25.4.4</u><br/><i>Subdivision, use and development proposals within the Marine 1 (Protection) Management Area will be considered appropriate where;</i><br/><i>(a) the proposal gives rise to a demonstrable public benefit; and</i></p>   | <p>As discussed in numerous places in this report, the proposed revetment is considered to be an appropriate structure within the Marine 1 Management Area. It is likely that the proposed revetment will have adverse effects on the ONF and given the objective seeks to ensure this does not occur, it is considered that the proposal is contrary to this objective. However, the proposal is consistent with the policy because there is a demonstrable need for the structure (to protect the esplanade reserve), there is no alternative location outside the Marine 1 Management Zone, and the structure is unlikely to affect conservation values.</p>  |

|   |  |
|---|--|
| <p>(b) there are no practical alternative locations available outside the Marine 1 (Protection) Management Area; and</p> <p>(c) the level of adverse effects on the important conservation values identified as occurring within that particular area are no more than minor.</p> |  |
|---|--|

Overall the assessment provided within Table 6.3 concludes that the activity is contrary to a part of one individual objective and contrary to one other individual entire objective contained in the Regional Coastal Plan. However, when considered as a whole, the proposal is consistent with the objectives and policies. Consequently, it is considered that the application can satisfy the second limb of the Gateway Test.

#### 6.3.4 Regional Water and Soil Plan objectives and policies assessment

The only component of the proposal requiring consent under this Plan is earthworks above MHWS. An assessment of the proposal against the applicable objective and policy is provided in Table 6.4.

Table 6.4: Regional Water and Soil Plan objective and policy assessment

| Objective/policy   | Response  |
|--|---|
| <p><u>Objective 12.5 4</u><br/> <i>Avoid, remedy or mitigate the adverse effects of activities so as to achieve the protection of areas of significant indigenous vegetation, significant habitats of indigenous fauna, natural character of water bodies and their margins; and to recognise and provide for waahi tapu and other sites of significance to tangata whenua.</i></p> <p><u>Policy 12.6 10</u><br/> <i>To promote the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.</i></p> | <p>The construction of the proposed revetment will occur within the Riparian Management Zone. The main thrust of the objectives and policies of the Plan relating to works located in the Riparian Management Zone is to avoid, remedy or mitigate adverse effects of land use activities on waterbodies, their riparian margins and soil conservation. Therefore, notwithstanding the works will not occur adjacent to a waterbody, we have assessed the objective and policy insofar as they apply to the riparian margin at the site.</p> <p>The earthworks are limited to the area at the base of the cliff which is prone to undercutting by hydraulic processes and slumping onto the foreshore. The base of the cliff above MHWS where the rock will be placed comprises an exposed and near vertical cliff face with no signs of any indigenous flora and is unlikely to contain any indigenous fauna. It is noted that due to the placement of rocks at the base of the cliffs, and a stable angle of repose being formed, vegetation is likely to eventually establish on the cliff face, which will likely result in new habitat being created.</p> <p>WDC have contacted Te Patuharakeke Hapu regarding the proposal and are awaiting feedback.</p> <p>The proposal is therefore considered to be consistent with the objective and policy.</p> |

### 6.3.5 District Plan assessment

Table 6.5 below assesses the application against the applicable objectives and policies of the Whangarei District Plan. Overall the assessment finds that the application is consistent with the objectives and policies.

Table 6.5: District Plan objective and policy assessment

| Objective/policy  | Response  |
|---|---|
| <p><u>Objective 5.3.4</u><br/><i>The amenity values of the coast and open space are maintained and enhanced.</i></p> <p><u>Policy 5.4.6</u><br/><i>To ensure amenity values and natural character associated with Open Space Environments are maintained and enhanced, and to enable public appreciation and enjoyment of such places except where public access is restricted due to ecological cultural, public health and/or safety reasons.</i></p>   | <p>The esplanade reserve is zoned Open Space within the Plan. Further, the Plan clearly states that the areas of the district zoned open space are essential to providing for community well being in relation to recreational and passive enjoyment amenity value. The Plan also makes it clear that recreation and passive enjoyment values attached to the esplanade reserve "should be protected". The proposed rock revetment has been proposed for the specific purpose of providing protection to the esplanade reserve from coastal erosion. Therefore, it is considered that the proposal is consistent with the objective and policy.</p>             |
| <p><u>Objective 10.3.1</u><br/><i>Preservation and protection of the natural character of the coastal environment from inappropriate subdivision, use or development.</i></p> <p><u>Objective 10.3.3</u><br/><i>Maintain and enhance public access, where appropriate, to and along coastal areas.</i></p> <p><u>Policy 10.4.2</u><br/><i>To recognise, in assessing the actual and potential effects of an activity, that most parts of Whangarei District's coastal environment have some degree of character which requires protection from inappropriate subdivision, use and development.</i></p> <p><u>Policy 10.4.3</u><br/><i>To ensure that, as far as practicable, subdivision, use and development is located in areas where the natural character has already been substantially modified.</i></p> <p><u>Policy 10.4.5</u><br/><i>To ensure that subdivision, use and development of the coastal environment provides for, and where possible enhances, public access to and along the coast, except where it is desirable to restrict public access for the following reasons:</i></p> | <p>As discussed in numerous places throughout this report the construction of the proposed revetment will adversely affect the natural character values at the site but the revetment is not considered an inappropriate use because it will assist with preserving the esplanade reserve as a strategic asset for providing public access to and along the CMA. OTP is an area where natural character has been substantially modified through urban development of the backshore and construction of existing erosion protection structures. On the basis of the above it is considered that the proposal is consistent with the objectives and policies.</p> |

|  |   |
|--|---|
| <ul style="list-style-type: none"> <li>• To protect areas of significant indigenous vegetation and/or significant habitats of indigenous fauna;</li> <li>• To protect Maori cultural values;</li> <li>• To protect public health and safety;</li> <li>• To ensure a level of security consistent with the purpose of a resource consent; or</li> <li>• In other exceptional circumstances sufficient to justify the restriction notwithstanding the national importance of maintaining that access.</li> </ul>   |   |
| <p><u>Objective 11.3.1</u><br/><i>Preservation of the natural character of riparian margins and the coastal environment.</i></p> <p><u>Objective 11.3.2</u><br/><i>Protection of Significant Ecological Areas, Built Heritage, Sites of Significance to Maori, riparian habitats and Outstanding Landscapes and natural features, within the coastal environment and alongside rivers and streams.</i></p> <p><u>Objective 11.3.3</u><br/><i>Maintain and enhance public access, where appropriate, to and along the coast and rivers.</i></p> <p><u>Objective 11.3.4</u><br/><i>Recognise and protect riparian margins and the coastal environment as natural hazard buffers.</i></p> <p><u>Policy 11.4.3</u><br/><i>To identify esplanade priority areas within the coastal environment and alongside particular rivers, where the land involved will serve one or more of the purposes of esplanade reserves or esplanade strips set out in section 229 of the Resource Management Act 1991.</i></p> <p><u>Policy 11.4.8</u><br/><i>To set aside esplanade reserves where they contribute to effective hazard management.</i></p> | <p>As discussed in numerous places throughout this report, the construction of the proposed revetment will adversely affect the natural character values at the site as well as the ONF, but will assist with preserving the esplanade reserve as a strategic asset for providing public access to and along the CMA. Therefore the proposal is contrary to Objectives 11.3.1 and 11.3.2 and consistent with Objective 11.3.3.</p> <p>Objective 11.3.4 and Policies 11.4.3 and 11.4.8 support the protection of the esplanade reserve as not only a public access, open space and recreational area, but also as a segment of public land which can buffer the effects of erosion hazards impacting on residential land and infrastructure located landward of the esplanade reserve. Policy 11.4.8 specifically states that the buffering capacity of esplanade reserves can be considered to be an effective hazard management measure. In accordance with Policy 11.4.3, Appendix 5 to the Plan lists the esplanade reserve at the site as an "esplanade priority area" because of its recognised recreation and conservation value. Consequently, the proposal is considered to be consistent with Objective 11.3.4 and Policies 11.4.3 and 11.4.8.</p> |
| <p><u>Objective 15.3.1</u><br/><i>Provide open space that meets community, recreational and conservation needs.</i></p> <p><u>Policy 15.4.3</u><br/><i>To create open space in areas of the Coastal Environment and Outstanding Landscape Areas in order to preserve the qualities of these areas, and where appropriate, provide public access.</i></p>   | <p>As discussed in numerous places throughout this report, the construction of the proposed revetment will assist with preserving the esplanade reserve as a strategic asset for providing public open space adjacent to and connected to the CMA for the community's recreational needs. The site is not identified as being part of an Outstanding Landscape Area. Therefore the proposal is consistent with the objective and policy.</p>  |

|  |   |
|--|---|
| <p><u>Objective 16.3.1</u><br/><i>The preservation of the natural character of the coastal environment.</i></p> <p><u>Objective 16.3.2</u><br/><i>The protection of outstanding landscapes and natural features, including geological sites from inappropriate subdivision, use and development.</i></p> <p><u>Policy 16.4.2</u><br/><i>To protect Outstanding Natural Features, including Geological Sites identified in Schedule 16B from inappropriate subdivision, use and development.</i></p> <p><u>Policy 16.4.4</u><br/><i>To ensure that subdivision, use and development does not adversely affect the natural character of the coastal environment (particularly coastal headlands and promontories), and lakes and rivers and their margins.</i></p> <p><u>Policy 16.4.6</u><br/><i>To ensure that buildings and structures are of a scale, design and location that, where possible, avoids adverse visual effects on landscape character and values, and otherwise mitigates such adverse effects to the maximum extent practicable.</i></p> | <p>As discussed in numerous places throughout this report, the construction of the proposed revetment will adversely affect the natural character values at the site as well as the ONF, but the revetment is not considered an inappropriate use because it will assist with preserving the esplanade reserve as a strategic asset for providing public access to and along the CMA. The shoreline where its is proposed to site the revetment is not a headland or promontory and so does not have a heightened sensitivity to adverse effects on natural character and in any event OTP is an area where natural character has been substantially modified through urban development of the backshore and construction of existing erosion protection structures.</p> <p>The proposed revetment, as a structure, will sit considerably below the crest of the cliffed shoreline will be located at the toe fo the cliff face and tie into existing rock revetments located to the north and south of the site. Therefore, the revetment is of scale, design and location which will assit in mitigating adverse visual effects. Therefore consistency with Policy 16.4.6 is achieved by the proposal.</p> <p>Overall, it is considered that the proposal is contrary to Objective 16.3.1 and Policy 16.4.4 which focus on preserving natural character. However, it is considered that the proposal is generally consistent with Objective 16.3.2 and Policy 16.4.2 because the proposed revetment is not considered to be an inappropriate use.</p> <p>The proposal is therefore considered to be consistent with the objective and policy.</p> |
| <p><u>Objective 19.3.1</u><br/><i>The adverse effects of natural hazards on people, property and the environment are avoided, as far as practicable, or otherwise remedied or mitigated.</i></p> <p><u>Objective 19.3.2</u><br/><i>Existing natural buffers against natural hazard effects are protected, maintained and enhanced.</i></p> <p><u>Policy 19.4.1</u><br/><i>To ensure that subdivision, use and development do not increase the risk from, occurrence of, or the adverse effects of natural hazards.</i></p> <p><u>Policy 19.4.5</u><br/><i>To avoid the need to implement hazard protection works when locating new</i></p>   | <p>The proposed revetment is required to mitigate the effects of coastal erosion on the esplanade reserve and will not increase the risk associated with the hazard, or create new or worse hazard effects following construction. The buffering function of the esplanade reserve has been discussed above and avoidance of the hazard (through managed retreat or not having an esplanade reserve) at this site is not a feasible option.</p> <p>The esplanade reserve is not new development and private property is located behind the reserve. Therefore, the esplanade reserve cannot be set back from the coastal hazard.</p> <p>On the basis of the above it is considered that the proposal is consistent with the objectives and policies</p>   |

*subdivision, use and development in the coastal environment.*

Policy 19.4.6

*To ensure that mitigation measures in response to natural hazards do not, themselves, produce adverse effects on the environment and are designed and located to achieve their purpose.*

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### 6.3.6 Policy framework analysis conclusion

Ultimately, the assessment provided within Tables 6.1- 6.5 demonstrates that the proposal, when considered as a whole, is supported by the objective and policy framework of the relevant planning documents. This includes the NZCPS, Regional Policy Statement, Regional Coastal Plan, Regional Water and Soil Plan and District Plan. It is also concluded that the application can satisfy the second limb of the Gateway Test.

## 6.4 Other matters

### 6.4.1 Iwi Management Plans

The Iwi Management Plans (IMPs) relevant to the site are the:

- Te Iwi o Ngatiwai Iwi Environmental Policy Document.
- Patuharakeke Hapu Environmental Management Plan.
- Ngati Hine Iwi Environmental Management Plan.

The proposal is consistent with the relevant objectives and policies of the IMPs.

## 6.5 Notification

The applicant requests that NRC and WDC publicly notify the application.

## 7 Conclusion

This AEE Report has been prepared on behalf of Whangarei District Council to accompany a resource consent application to construct a rock revetment structure along the western OTP coastline to mitigate the effects of coastal erosion on the esplanade reserve and reduce the risk of cliff subsidence. Predicted future shoreline retreat at the site, which ranges between 11 m and 18 m for a 50 year timescale and 21 m and 63 m for a 100 year timescale, will result in the loss of the esplanade reserve. The proposed revetment will assist in preserving the esplanade reserve, which is an important and strategic asset to the community. This is because the esplanade reserve provides public access to and along the CMA, recreation and open space value, and hazard buffering functionality.

The proposed rock revetment is unlikely to result in any more than minor adverse effects on coastal processes, coastal ecology and habitats, public access along the foreshore, archaeological sites, or coastal water quality.

The proposed rock revetment is likely to result in adverse effects on the natural character and geological feature (which is classified an ONF) through the introduction of rock onto the foreshore and by interrupting the natural processes that cause the cliff face to stay exposed respectively. The principal issue in contention for this application is that the rock revetment is likely to reduce the slope of the cliff face which will in turn facilitate the natural re-vegetation of the exposed cliffed shoreline at the site. This vegetation is then likely to cause the geological feature to eventually become obscured. The potential adverse effect on the geological feature/ONF has been assessed within this report to be more than minor.

The application carries a non-complying status under the Regional Coastal Plan and therefore is subject to the gateway test of s104D of the RMA. Section 6 of this report provides a detailed assessment of the proposal against the objectives and policies of the Regional Coastal Plan. In summary, the assessment finds that while the application may not find support from individual objective and policy, when considered as a whole, the proposal is consistent with the objectives and policies of the Regional Coastal Plan. Consequently, it is considered that the application can satisfy the second limb of the Gateway Test.

Section 6 also provides an analysis of the proposal against the higher order NZCPS as well as the Regional Policy Statement, Regional Water and Soil Plan and District Plan. Ultimately, it is concluded the proposal is supported by the objectives and policies of these planning documents because:

- The principal driver of the proposal is to protect the esplanade reserve and the reserve provides open space and recreational opportunities, as well as access to and along the CMA from Pyle Rd West to the OTP boat ramp.
- The various Plans' directives around protecting natural character values and natural features are qualified to be in relation to "inappropriate" uses. The proposed rock revetment does not constitute an inappropriate use. Specific policies within the NZCPS actually lend support to the proposed revetment being considered appropriate because they seek to maintain and enhance public walking access to and along the CMA by mitigating any loss of access and restoring access where it is threatened by erosion or sea level rise.
- The esplanade reserve is a key resource and part of the coastal environment in much the same way that the ONF is. That is, there is no primacy provided to either resource in terms of their contribution to the make up of the coastal environment.
- The District Plan makes it clear that recreation and passive enjoyment values attached to the esplanade reserve should be protected.



We note the following in terms of an overall comment around the context and timing of the proposed coastal erosion management solution contained within this report. At present, tidal water comes into contact with the soft sedimentary rock cliffed shoreline near the top of the tidal cycle and during storm events. As sea level rises, the frequency and duration of tidal water and wave energy acting on the toe of the cliff will increase.

Therefore, if the coastline is not protected now and the esplanade reserve is left to continue to erode, erosion protection is likely to be required in the future. In T+T's experience where coastal erosion moves landward from public reserves into private properties and/or threatens underground infrastructure, there is heightened interest and pressure to construct erosion protection structures. It is therefore considered that the approach of acting now, by protecting part of the coastline and maintaining public access along it, could be considered prudent and necessary, rather than allowing the cliff to continue to erode for the sole purpose of leaving the geological feature exposed.

On the basis of the above, adverse effects on the geological sequence could be considered to be acceptable as those adverse effects are likely to be outweighed by the benefits to be derived from maintaining the esplanade reserve at the site so it can continue to provide the many functions and benefits listed throughout this report to the OTP community and wider Whangarei District on an ongoing basis. Further, it is considered that proposal is consistent with the policy framework of all statutory planning documents, as well as all relevant matters contained within Part 2 of the RMA. Overall, the proposal is considered to achieve the sustainable management of natural and physical resources which is the keystone of the RMA.

## 8 Applicability

This report has been prepared for the exclusive use of our client Whangarei District Council, with respect to the particular brief given to us and it may not be relied upon in other contexts or for any other purpose, or by any person other than our client, without our prior written agreement.

Tonkin & Taylor Ltd

Environmental and Engineering Consultants

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.....

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31-Mar-17

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## Appendix A: Consent application forms

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Appendix B: Certificate of title

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## Appendix C: Drawings

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## Appendix D: Assessment of options

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Appendix E: Rock revetment engineering design  
report

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Appendix F: One Tree Point west cliff hazard  
assessment

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Appendix G: Geological assessment of outstanding natural feature

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Appendix H: Geopreservation Society of New Zealand correspondence

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**Geological Assessment of  
ONF**

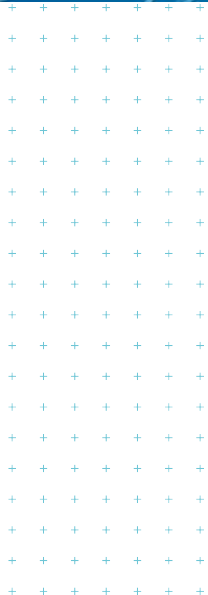
**One Tree Point Cliffs, Northland**

**Prepared for**  
Whangarei District Council

**Prepared by**  
Tonkin & Taylor Ltd

**Date**  
September 2016

**Job Number**  
1000267



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## Figures

## Executive summary

One Tree Point is located on the southern coast of Whangarei Harbour, immediately inland from Marsden Point and Bream Bay. The operative Regional Policy Statement (RPS) lists the cliffs as an Outstanding Natural Feature (ONF) of National Significance.

Whangarei District Council (WDC) is considering making a submission to Plan Change 114 to seek an amendment as to the extent or significance of the mapped feature under both the proposed Regional Plan and PC114. In order to make the decision to proceed with a submission, WDC will require independent geological advice. That advice is the subject of this report.

A site walk-over was undertaken by a Senior Engineering Geologist from Tonkin & Taylor Ltd on 29 August 2016. Based on the site visit and a review of the relevant documentation, we have developed the following conclusions regarding the ONF:

- The geological nature of the ONF is as described in Kenny and Hayward (1996) and Hayward (2015);
- The longitudinal extent of the ONF as mapped in the geopreservation inventory (and subsequently in relevant planning maps) appears to be incorrect. Based on field mapping T+T believe that the south-western end of the feature lies at approximately 40 Kororo Road, some 250m east of the Shearwater Street termination indicated on the other documents;
- The significant observable features of the site are restricted to the coastal section above the intertidal zone. T+T does not believe that the ONF should extend into the beach or intertidal areas as indicated in the draft Regional Plan;
- The RPS incorrectly refers to the large inland dune field rather than the coastal exposure, although the latter is correctly identified on the accompanying map;
- The characterisation of the ONF as being of national significance is considered to be appropriate;
- The ONF is considered to be at significant risk of damage or destruction, however the single greatest risk to it is from natural erosive processes. A considered approach to engineering works within the ONF might actually be beneficial to long term preservation. This should be considered when assessing future restrictions on activities in this area



## 1 Introduction

One Tree Point is located on the southern coast of Whangarei Harbour, immediately inland from Marsden Point and Bream Bay. A feature of One Tree Point are the sub-vertical cliffs that face Whangarei Harbour to the west.

The operative Regional Policy Statement (RPS) lists the cliffs as an Outstanding Natural Feature (ONF) of National Significance (Ref: 2961). The extent of the ONF is shown on the RPS, Regional Plan and Whangarei District Plan. We understand that recently notified Plan Change 114 (Landscapes) seeks to give effect to the maps and the objective, policies and rules associated with the RPS and Regional Plan.

Whangarei District Council (WDC) is considering making a submission to PC114 to seek an amendment as to the extent or significance of the mapped feature under both the proposed Regional Plan and PC114. In order to make the decision to proceed with a submission, WDC requires independent geological advice. WDC has commissioned Tonkin & Taylor Ltd (T+T) to undertake a geological assessment of the ONF and to provide the necessary advice. The geological assessment is the subject of this report.

## 2 Scope of Work

The scope of the geological assessment reported here was as follows:

- Review references to the One Tree Point ONF in the various relevant plans (e.g. RPS, PC114) as well as other relevant geological documents;
- Review the criteria by which the One Tree Point cliffs were evaluated as ONF of regional significance;
- Undertake a site visit to examine the mapped extent of the ONF (on-shore and coastal) as well as adjacent areas. The site visit would be used to characterise the nature of the cliffs and wave-cut platform;
- Prepare a brief report presenting the results of the site visit and our assessment of the ONF with respect to their characterisation in the various planning documents.

The scope of the assessment was limited to providing WDC with the information and advice that it requires to make a decision on whether a submission to PC114 would be advisable.

## 3 Identification the Cliffs as a Feature of Significance

One Tree Point is located within an area of coastal dunes that extends over the broader Marsden Point area. The dunes are the upper part of a regressive coastal depositional sequence reflecting the lowering of sea level during the Late Pleistocene. The dunes are sequentially underlain by beach deposits and shallow marine sands. Although the Pleistocene geology occurs over a large physical area, it is only the coastal cliffs at One Tree Point that expose the full sequence.

Kenny and Hayward (1996) included the coastal exposures at One Tree Point within their inventory of important geological sites and landforms in the Northland Region. It is described as follows:

### ***One Tree Point interglacial beach and dune deposits***

***Significance:*** Well exposed Late Pleistocene regressive coastal sand sequence. Only remaining exposures in the area that are not obscured by coastal foreshore protection works, and should be left in their unmodified state.

***Description:*** Coastal cliff and foreshore exposures show a shallowing upwards regressive sequence from shallow marine sand through beach sand to coastal foredune, with overlying swamp deposits in interdune hollows.

**Locality:** Southern shore of Whangarei Harbour west of Marsden Point, from One Tree Point southwestwards for 1 km.

**Classification:** Importance = B Vulnerability = 1

**Hazards:** Port development, coastal foreshore protection works

The Importance classification of “B” refers to a “site of national significance, educational or aesthetic importance”. The Vulnerability classification of “1” refers to a site that is considered to be “Highly vulnerable to complete destruction or major modification by humans”.

The inventory was developed as a compilation of information provided to a coordinating group of interested societies by individuals. No field work was undertaken. The extent of the feature was indicated in Kenny and Hayward (1996) by a sketch added to a topographic map (Figure 1 below). It is described as the “only remaining exposures in the area that are not obscured by coastal foreshore protection works”.

The geopreservation inventory has been updated since 1996. It also indicates the extent of the One Tree Point feature on a GIS map (Figure 2). Overlaying this map on an aerial photograph indicates that the feature extends from the boat ramp in the north to Shearwater Street in the south-west (Figure 3). A feature described as the “One Tree Point relict dunes and beach ridges” is shown by the inventory extending to the south and east of One Tree Point (Figure 4).

Hayward (2015) reassessed all of the sites listed in the Regional Policy Statement and the geopreservation inventory with respect to them being listed as ONF. Hayward (2015) recommended that the broader inland feature (relict dune and beach ridge) not be recognised as an ONF. The coastal exposures were recommended to remain as ONF but that “unnecessary private land” be removed, essentially restricting it to the cliff-top esplanade and beach.

The One Tree Point ONF presented in Hayward (2015) retained the same importance (B) and vulnerability (1) status as Kenny and Hayward (1996) however the description was expanded to include the following comments on trace fossils<sup>1</sup>:

- “..with spectacular intertidal trace fossils”
- “Contains some of the best New Zealand examples of unusual shallow marine trace fossils”
- “Excellent trace fossil assemblages characterise each paleo-environment”

The comment in the 1996 inventory that “... and should be left in their unmodified state.” was removed.

## 4 Planning Documents and Recognition as an ONF

### 4.1 Regional Policy Statement

Section 6 of the Resource Management Act 1991 (RMA) requires the protection of outstanding natural features and landscapes. This is recognised in the Northland Regional Policy Statement (RPS), a document prepared by the Northland Regional Council (NRC) that provides a broad direction and framework for managing Northland's natural and physical resources. The current RPS was made operative on 9 May 2016.

The RPS lists the “One Tree Point relict dunes and beach ridges” in Table 1 of Appendix 4, which presents those ONF considered to be both natural and of regional significance. The accompanying GIS map (Figure 5) indicates that the ONF covers the same area indicated in the geopreservation inventory (Figure 2) although extending beyond the shoreline.

<sup>1</sup> Trace fossils are not the remains of physical animals but the preservation of their activities e.g. burrows, tracks etc.

It appears that the RPS intended to refer to the “*interglacial beach and dune deposits*” exposed within the coastal cliffs of One Tree Point as the ONF, however it actually appears to mistakenly refer to the broader inland plain (Figure 4). It is the latter feature that Hayward (2015) recommended not to be considered an ONF.

## 4.2 Regional Plan

The NRC Regional Plan is currently out for consultation. It maps the extent of the One Tree Point ONF from the boat ramp to Shearwater Street (i.e. it corresponds to the geopreservation inventory), although it is limited to the coastal foreshore area only (Figure 6).

## 4.3 Whangarei District Plan

The Whangarei District Plan (WDP) became operative in 2007. Appendix 13 of the WDP lists outstanding natural features and geological sites in Whangarei District including the One Tree Point coastal exposures. The WDP uses the same importance and vulnerability ratings as Kenny and Hayward (1996) as well as the same description of the materials for the feature. Its extent corresponds to that in the geopreservation inventory and RPS, although it appears to be limited to the onshore area (Figure 7).

## 5 Site Observations

A site walk-over was undertaken by a Senior Engineering Geologist from T+T on 29 August 2016. The following commentary is based on that visit.

### 5.1 Geology

One Tree Point is located at the northern end of a Pleistocene dune field (Nichol, 2002). During the Pleistocene, the One Tree Point - Marsden Point area was for a time a shallow marine environment as a result of high (interglacial) sea levels. As sea levels dropped in the Late Pleistocene, the sea regressed, resulting in the shallow marine environment being replaced with a beach environment and ultimately a coastal onshore dune environment.

This transition can be seen in the cliffs at One Tree Point as an upwards sequence of cross-bedded shallow marine sediments overlain by laminar bedded beach deposits which in turn are overlain by large-scale cross-bedded dune deposits (Figure 8). A variety of organic-rich swamp deposits have formed in the low-lying inter-dune depressions.

The shallow marine, beach and dune deposits all consists of quartz sand with abundant lithic (rock) fragments and heavy minerals. They are generally well sorted, fine to medium grained and uncemented to very weakly cemented. The dune and beach sands are essentially non-lithified, although the shallow marine sands can be described as an extremely weak rock. There tends to be a greater degree of iron deposition and cementation towards the boat ramp (north-eastern portion) compared to the south-west.

### 5.2 Coastal Platform - Beach

The intertidal area consists of a very gently sloping sand beach. Very little exposure of the shallow marine sands (extremely weak rock) seen in the base of the coastal cliffs occurs within the intertidal area (Figure 9). What rock is exposed has been extensively damaged by the boring activity by marine organisms (Figure 10).

### 5.3 Cliffs

The regressive depositional sequence is well exposed within the cliffs that extend nearly the full distance from the boat ramp in the north-east to the end of Karoro Road in the south-west. Perhaps the most spectacular exposures occur towards the south-western end of the cliffs in the vicinity of the navigation beacon (Figure 11). These cliffs are replaced by vegetated slopes with foreshore protection works within approximately 80m of the navigation beacon.

The prominent feature of the cliff exposures are the abundant trace fossils referred to in Hayward (2015). Examples are shown in Figures 12 to 14.

## 6 Discussion and Conclusions

### 6.1 Nature of Feature

The site walk-over has confirmed the nature of the geological sequence exposed at one Tree Point as being a regressive (upward shallowing) shallow marine to foredune sequence. An unusual abundance of trace fossils is also present.

### 6.2 Extent of Feature

Exposures of the regressive sequence extend from the boat ramp in the north-east to a point approximately 80m south-west of the navigation beacon located within the coastal esplanade. This places the extent of the exposures (and generally unmodified foreshore) to approximately No. 40 Kororo Road, not to Shearwater Street as indicated by the geopreservation inventory and planning documents. We believe that the feature as currently mapped is approximately 250m longer than is justified (Figure 15).

We do not believe that the ONF should extend seaward of the cliffs into the beach or intertidal zone. One of the reasons for One Tree Point being considered an ONF is that it shows a complete regressive depositional sequence. Exposures on the beach or in the intertidal zone are not only extremely limited but they only show the lowest (marine) part of the sequence. With the bulk of the regressive sequence having been eroded away and lost, we do not believe that the ONF can be defined as extending seaward of the coastal cliffs.

The other feature of the ONF (although not one originally listed in the geopreservation inventory) are the trace fossils. T+T found all outcrops within the beach and intertidal zone to be so degraded by marine boring organisms that any trace fossils they contained have effectively been destroyed.

### 6.3 Importance

The site is considered by the geopreservation inventory as being of national significance. This rating reflects both the quality and extent of the exposure as well as the unusually extensive occurrence of trace fossils.

T+T consider that the geological significance applied to this feature is most likely appropriate.

### 6.4 Vulnerability

The ONF is classified in all documentation as being *“highly vulnerable to complete destruction or major modification by humans”*. The extremely weak nature of the deposits makes the cliffs extremely vulnerable to instability and regression. Slumps from the face of the cliffs and the formation of caves at their base are common features. In effect the greatest hazard to the long-term preservation of the coastal exposures are natural erosive processes.

The One Tree Point West coast is likely to have been in long-term retreat since the stabilisation of sea levels in the mid-Holocene. Based on aerial photography interpretation and field measurements, Gibb (1997) estimated that the cliffs in the vicinity of the navigation beacon have retreated at an average of 53mm/year, although rates closer to 100mm/year occur in places.

In all likelihood, any human activity that could impact the cliffs would be undertaken to reduce erosion and damage to the ONF. Given the poor exposure of the ONF within the intertidal zone, the construction of low structures to prevent wave-induced erosion would likely have minor to negligible effects on the ability to observe the geology of this area. Clearly any process by which the cliffs are reduced in angle and vegetated would completely remove the geological features of the site.

The complete absence of engineering works on the cliff line could potentially lead to the ONF's degradation through natural processes.

## 6.5 Conclusions

T+T has undertaken a review of the One Tree Point ONF, including a site visit. We have developed the following conclusions:

- The geological nature of the ONF is as described in Kenny and Hayward (1996) and Hayward (2015);
- The longitudinal extent of the ONF as mapped in the geopreservation inventory (and subsequently in relevant planning maps) appears to be incorrect. Based on field mapping T+T believe that the south-western end of the feature lies at approximately 40 Kororo Road, some 250m north-east of the Shearwater Street termination indicated on the other documents;
- The significant observable features of the site are restricted to the exposures within the coastal cliffs. T+T does not believe that the ONF should extend into the beach or intertidal areas as indicated in the draft Regional Plan;
- The RPS incorrectly refers to the large inland dune field rather than the coastal exposure, although the latter is correctly identified on the accompanying map;
- The characterisation of the ONF as being of national significance is considered to be appropriate; and
- The ONF is considered to be at significant risk of damage and degradation, however the single greatest risk to it is from natural erosive processes. A considered approach to engineering works within the ONF might actually be beneficial in the long term. This should be considered when assessing future restrictions on activities in this area.

## 7 References

Gibb, C. R., (1997). *Seacliff Erosion and Solutions for Western One Tree Point, Whangarei Harbour, Whangarei District*. Report prepared for Whangarei District Council.

Hayward B. W. (2015). *Outstanding Natural Features. Identifying and mapping additional sites in Northland*. Unpublished report BWH 176/16

Kenny, J. A. and Hayward, B. W. (1996). *Inventory and Maps of Important Geological Sites and Landforms in the Northland Region*. Joint Earth Science Societies Working Group on the New Zealand Geopreservation Inventory. Geological Society of New Zealand Miscellaneous Publication 83.

Northland Regional Council (2014). *Outstanding Natural Features, Mapping Methodology Report*.

## 8 Applicability

This report has been prepared for the exclusive use of our client Whangarei District Council, with respect to the particular brief given to us and it may not be relied upon in other contexts or for any other purpose, or by any person other than our client, without our prior written agreement.

Tonkin & Taylor Ltd

Report prepared by and authorised for Tonkin & Taylor Ltd by:



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Kevin J. Hind

Technical Director, PEngGeol

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## Figures

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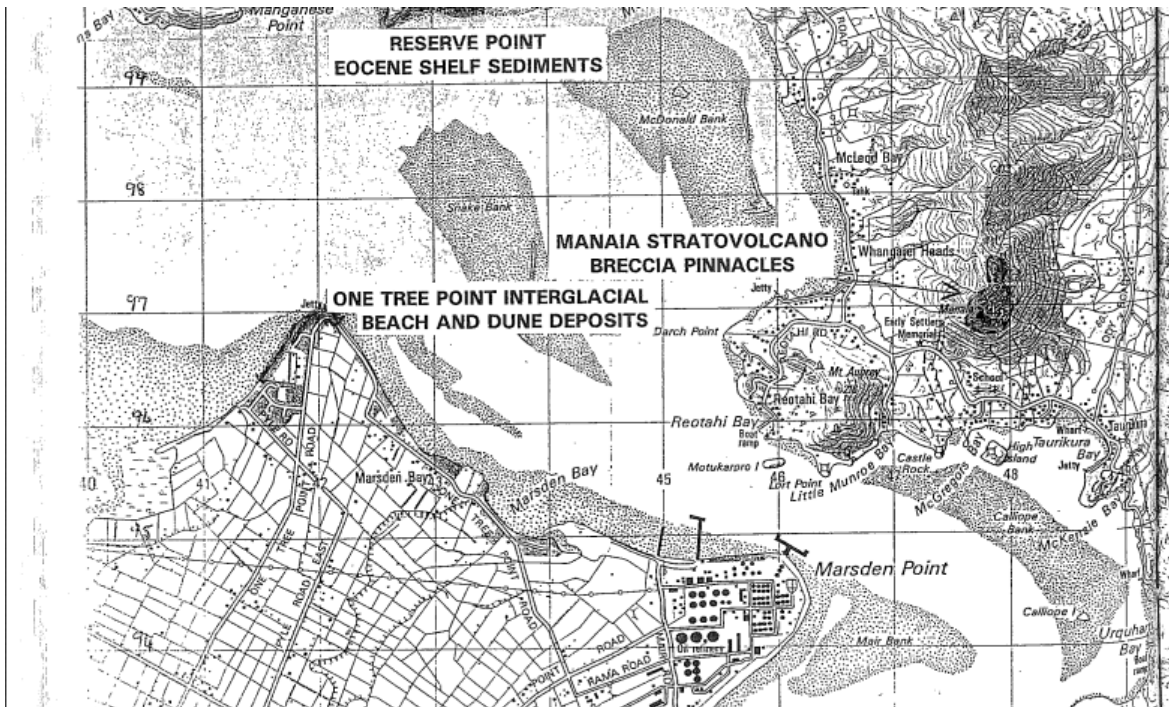


Figure 1: Part of map from Kenny and Hayward (1996) indicating the general location of the One Tree Point ONF

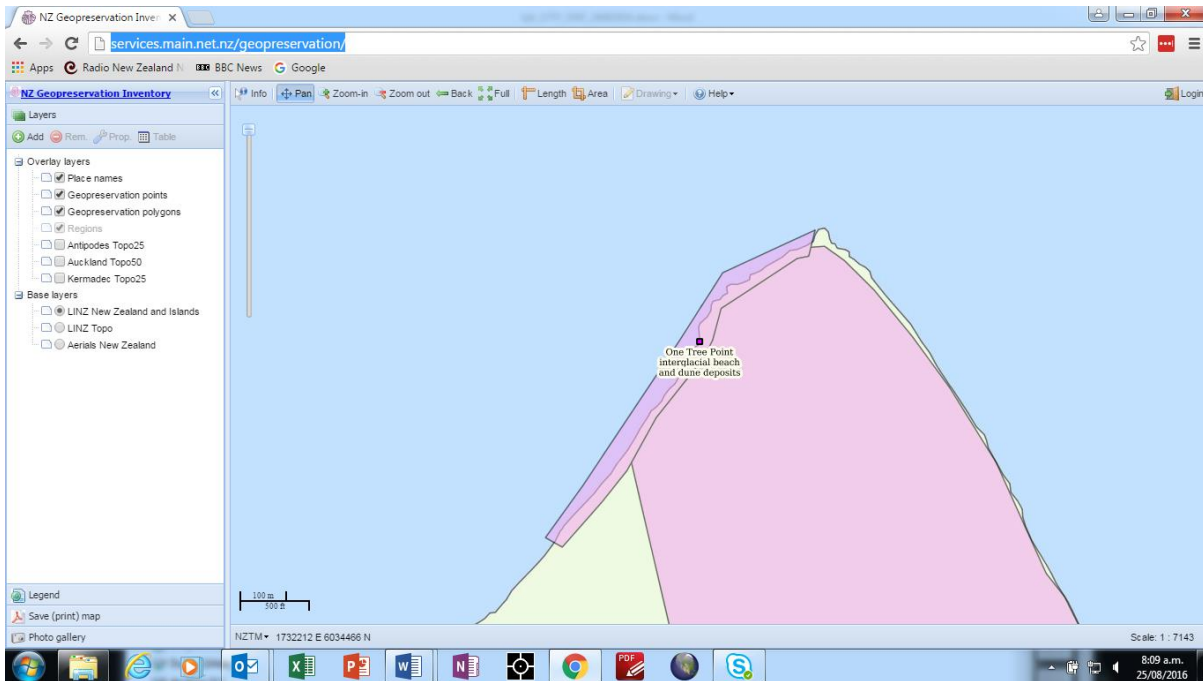


Figure 2: Screen shot of the Geopreservation Inventory showing the One Tree Point interglacial beach and dune deposits. The pink area to the south is the “relict dune and beach ridges” feature. (<http://services.main.net.nz/geopreservation/>)





Figure 3: Google Earth image with the extent of the One Tree Point feature shown in the geopreservation inventory indicated by the red line. It extends from the boat ramp in the north to Shearwater Road.

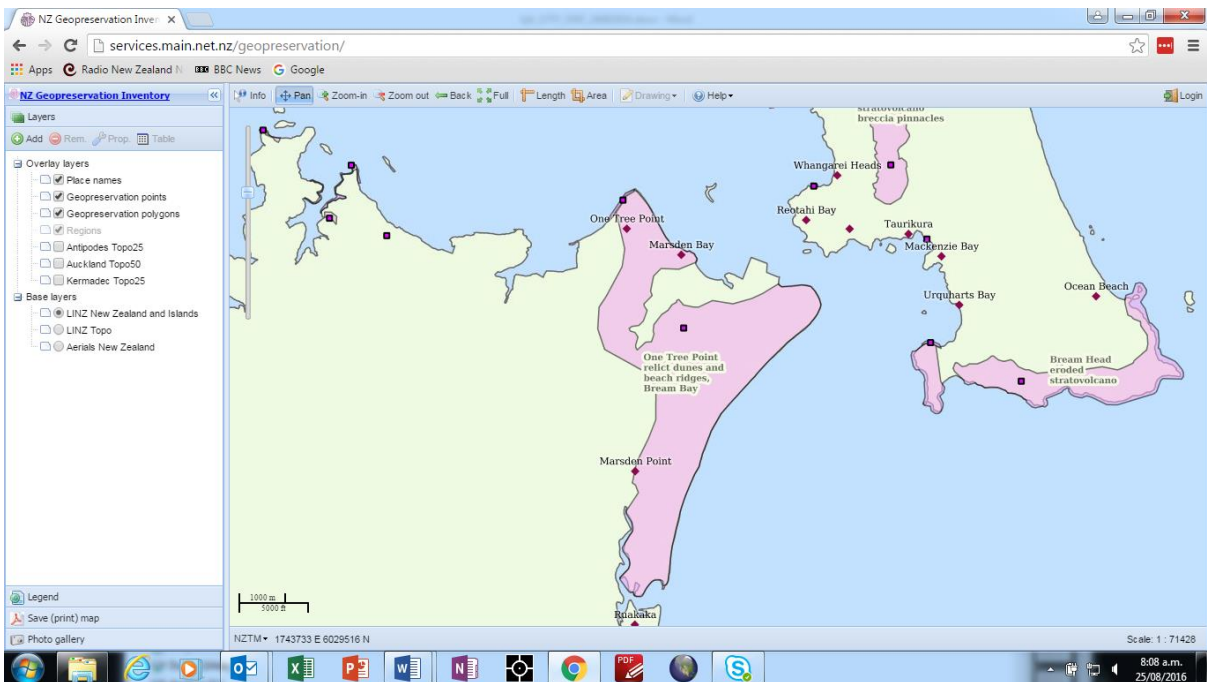


Figure 4: Geopreservation inventory showing the extent of One Tree Point relict dunes and beach ridges to the south and west of the coastal exposures.

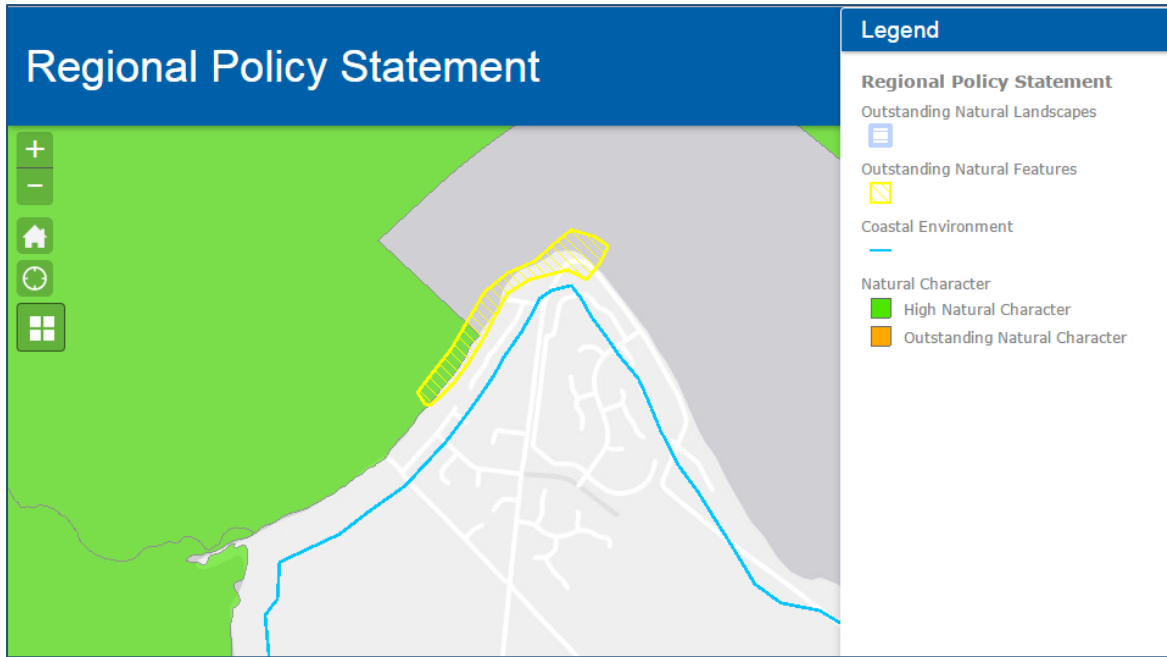


Figure 5: Map from RPS indicating the extent of the One Tree Point ONF



Figure 6: Extent of One Tree Point ONF as indicated in the draft Regional Plan



Figure 7: Proposed District Plan (PC114) indicating the extent of the ONF at One Tree Point (green lines)

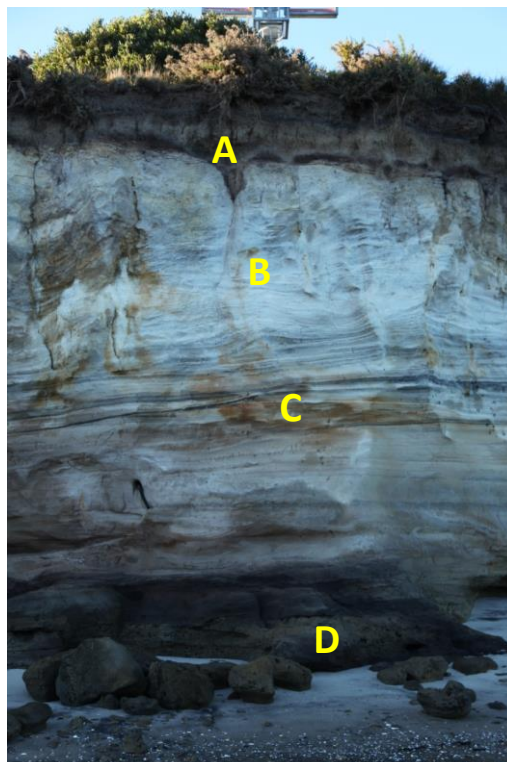


Figure 8: Cliff below the Navigation Beacon exposing the complete stratigraphic sequence of One Tree Point: A) Organic rich surface deposits; B) cross-bedded foredune deposits; C) sub-horizontally bedded beach deposits; D) cross-bedded shallow marine sands.



*Figure 9: View of the beach looking north-east. Limited occurrences of Pleistocene shallow marine sediments can be seen exposed on the beach as extremely weak rock.*



*Figure 10: Intense surficial boring of extremely weak rock exposed within the intertidal zone*



*Figure 11: Large eroding cliffs in front of Karoro Road. The navigation beacon can be seen in the middle. The cliffs are replaced by vegetated slopes with coastal protection works immediately to the right of the photograph*



*Figure 12: Examples of large trace fossils in the shallow marine sediments*



*Figure 13: Band of intensely bioturbated shallow marine sediments (centre) overlying larger individual trace fossils*



*Figure 14: Trace fossils within the laminated beach deposits*

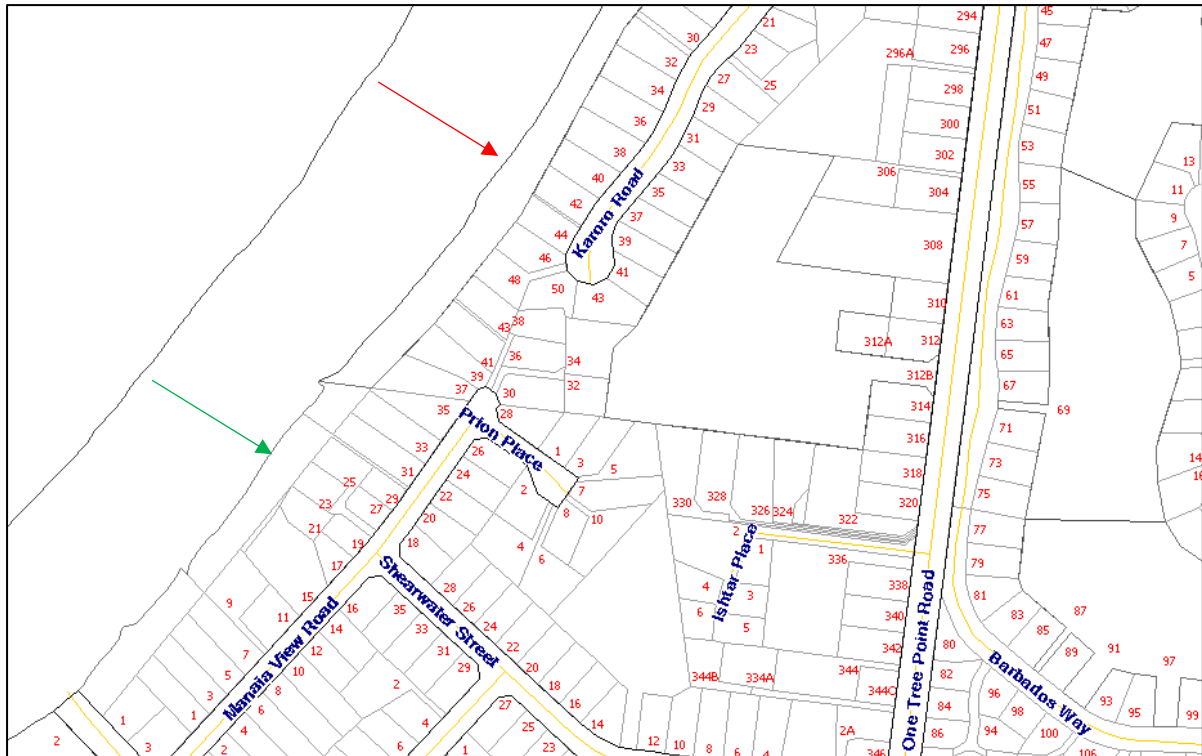


Figure 15: Cadastral map indicating the south-western end of the ONF. Red indicates the end of the ONF based on field mapping by T+T. Green indicates the end of the ONF shown in the geopreservation inventory and planning documents (map source: Terraview).





## 6.4 Alcohol Control Bylaw - Deliberations

**Meeting:** Whangarei District Council  
**Date of meeting:** 28 November 2024  
**Reporting officer:** Will McNab (Strategic Planner – Bylaws)

### 1 Purpose / Te Kaupapa

To consider public feedback on the proposed Alcohol Control Bylaw and alcohol bans and provide direction for a Council decision on the final form of the Bylaw and extent of the alcohol bans.

### 2 Recommendations / Whakataunga

That Council:

1. Approves the following amendment to the proposed register of alcohol bans:
  - a. Beach Road, Onerahi: Option 1 to introduce an alcohol ban from 7pm to 7am along the Beach Road reserve and esplanade;
2. Agrees that no further changes are required to the draft register of alcohol bans;
3. Agrees that no changes are required to the wording of the draft Alcohol Control Bylaw.

### 3 Background / Horopaki

#### 3.1 Council has consulted on a proposal and must now consider public feedback on it

Council began reviewing the Alcohol Control Bylaw (the Bylaw) and related alcohol ban areas in late 2023. Council then adopted a proposal on 29 August 2024, which was informed by early engagement with key stakeholders, including Police, for consultation across September and October 2024.<sup>1</sup>

The community was notified of the consultation via a Council News story published in the Northern Advocate. Social media posts summarising the proposal and inviting submissions were showed over 14,000 times on Facebook, Instagram and Messenger and reached around 10,000 individual accounts of users present in Whangārei District during the consultation period.

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<sup>1</sup> Agenda report available at <https://pub-wdc.escribemeetings.com/FileStream.ashx?DocumentId=4176>.

Council received 73 items of feedback on the proposal, including two late submissions. Two submitters spoke at a hearing in Council Chambers on 7 November 2024.<sup>2</sup> In total, more than 12 times the volume of feedback was received in 2024 than in 2018 (six submissions).

Attachment 1 summarises the public feedback received and provides a staff recommendation to address each key submission point.

### **3.2 Under previous legislation, Council could ban alcohol in public places without much evidential justification; today's legislation provides a much narrower scope to regulate**

Section 147A of the Local Government Act 2002 (LGA) enables Council to ban alcohol in a public place when – and only when – there is evidence that alcohol consumption in that place has led to or exacerbated a “high level of crime and disorder”. Any ban must be an appropriate response, especially in light of the additional search and arrest powers it gives Police, *and* proportionate to that crime and disorder.

This differs to an earlier version of the legislation, when councils could ban alcohol in public places without needing to meet any specific criteria and without explicit reference to proportionality. One common theme to emerge from public feedback was a misunderstanding that Council had unrestricted power to ban alcohol in public places.

It is not for Council to consider whether it is desirable or a good idea to allow people to possess and/or drink alcohol in public places. Quite simply, any ban must be reasonably predicated on a high level of crime and disorder caused or made worse by alcohol consumed in that place and tailored to the incidence of it.

Unfortunately, this means that some compelling points raised in submissions, such as the desire to prevent the mix of alcohol and water-based activities from increasing the risk of individual drownings at the District's beaches, do not fall within the narrow scope of Council's powers to regulate alcohol in public places through a bylaw.<sup>3</sup>

In circumstances where some form of alcohol ban was consulted on, the proposed ban reflected the scale of historical evidence provided by New Zealand Police.

For the review and development of the Bylaw and alcohol bans, staff worked alongside the Alcohol Harm Prevention Officer. The proposed bans reflect the scale of the issues identified by Police. Staff referred to this as “tier one” evidence at the Council Briefing on 26 March 2024, as opposed to the “tier two” anecdotal evidence compiled from public feedback for Council's consideration.<sup>4</sup>

Accordingly, the proposal included an expanded city centre ban, a new ban at Tarewa Park and coastal bans that align with historical information that Council has on record from Police. Furthermore, the bans consulted on are consistent with the bans sought by Police in 2018. Police were informed that Council would consult on a proposal without the blanket coastal alcohol ban and did not request any further coastal alcohol bans as part of this review.

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<sup>2</sup> Agenda report available at <https://pub-wdc.escribemeetings.com/FileStream.ashx?DocumentId=4305>.

<sup>3</sup> Bylaws that go beyond the strict confines of their enabling legislation can prove costly. For example, the High Court recently ruled the Queenstown Lakes District Council's Freedom Camping Bylaw invalid because it considered matters that are not explicitly provided for in the legislation. In this case, the “irrelevant matters” were the economic impact of freedom camping on commercial campgrounds in the area and the (dis)amenity effects of dumped rubbish and waste for neighbouring properties. To date, the case has cost the council well over \$400,000 in legal fees and left it without an operative bylaw to regulate freedom camping in its district.

<sup>4</sup> Briefing presentation available at:

<https://pub-wdc.escribemeetings.com/FileStream.ashx?DocumentId=3900>.

### 3.3 Council's existing blanket coastal alcohol ban makes Whangārei District an outlier

As reported to Council in August 2024, the existing blanket coastal alcohol ban from 300 metres landwards of mean low water springs is in all likelihood unlawful on account of being disproportionate, unreasonable and uncertain. There is no other territorial authority in New Zealand with such a far-reaching coastal rule as Whangārei District.

**Figure 1: Territorial authorities with a blanket coastal alcohol ban (in red)**



### 3.4 At this stage of the process, Council can only amend the proposal in response to the content of submissions

Because Council adopted a draft Bylaw and draft register of alcohol ban areas when it adopted the Statement of Proposal for consultation, it can now only amend the proposal to respond to matters raised in submissions.

Any amendments that might be desired beyond that, in addition to ones that may substantively alter the nature of the proposal, would require a further round of public consultation under section 83 of the LGA.

However, to justify a new round of consultation, Council would need to establish why the original proposal and the rationale for it was incorrect. Council would also need to be able to establish that the decision to reconsult was a reasonable exercise of its discretion. Without sufficient justification, Council could be exposed to judicial review in terms of the adequacy and rationale for its decision-making.

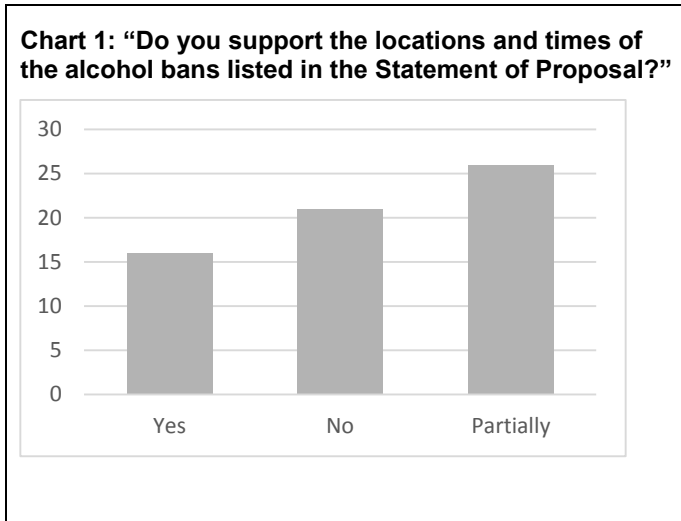
## 4 Discussion / Whakawhiti kōrero

Staff have assessed the public feedback received during the consultation period. Attachment 1 summarises and analyses this feedback. Attachment 3 shows the draft register of alcohol

ban areas in track changes, including the recommended addition of Beach Road, Onerahi.

#### 4.1 Public feedback on the proposed locations and times of alcohol bans was mixed

Public feedback on partially replacing the blanket coastal ban with a series of targeted bans was mixed. Chart 1 below breaks down the 63 answers received to the question “Do you support the locations and times of the alcohol bans listed in the Statement of Proposal?”



Beach Road dominated submissions: 35 out of the 73 submissions in total specifically mentioned Beach Road. Removing Beach Road from the analysis, the general feedback on the locations and times of the proposed alcohol bans tilted more positively, with 13 submitters answering “yes” and 11 answering “no”.

Over 80% of location-specific submission points were on coastal locations.

Attachment 4 shows how a time-limited alcohol ban can be signposted to retain some of the messaging of the “policy” element of an alcohol ban without compromising on the statutory requirements of reasonableness and proportionality.

#### 4.2 The legislation provides an explicit path for Council to add to or amend the register of alcohol ban areas without amending the Bylaw, so Council could treat the 2024/25 summer as a trial period

Section 147B of the LGA provides an explicit path for Council to create new alcohol bans, if necessary, without the need to go through the rigorous process of a full bylaw review.

Any amendments to the ban areas would require some consultation. Depending on the extent of any proposed changes, such consultation could potentially be targeted under section 82 of the LGA over a shorter period than the full month required under section 83.


Given the changes consulted on and the concern expressed by some submitters at the removal of the blanket coastal alcohol ban, Council may wish to treat the summer period as a trial and commit staff to providing an updated issues and options report for Council direction by the end of the 2024-25 financial year.

### 4.3 Council has several reasonably practicable options to address public feedback

#### Beach Road, Onerahi

Council received 34 submission points calling for some form of alcohol ban along the Beach Road reserve and esplanade. This feedback was substantiated by numerous accounts of crime and disorder from multiple submitters, allegedly caused or made worse by alcohol consumption primarily at nighttime.

Staff recommend that Council introduce an alcohol ban from 7pm to 7am in this location, from the intersection of Beach Road with Pah Road in the north southwards along the road reserve and including all public places to the wharf reserve at the southern tip of the peninsula.

| Options for Beach Road, Onerahi                 |   |
|---|---|
| Proposed rule                                   | No alcohol ban  |
| Option 1 (recommended)                          | Introduce alcohol ban 7pm-7am   |
| Option 2  | Introduce alcohol ban 24/7  |
| Option 3  | Retain status quo: no alcohol ban   |
| Map of recommended alcohol ban area (light red) |  |

#### Ōakura Bay

Three submitters made comments to the effect that public disorder and unruly behaviour made worse by alcohol consumption were common prior to the introduction of the 24/7 ban at Ōakura Bay. All six submitters who commented specifically on Ōakura Bay wanted the existing 24/7 alcohol ban to remain in place there.

The existing alcohol ban at Ōakura Bay was gradually introduced almost 20 years ago under a superseded version of section 147 of the Local Government Act 2002 that did not contain the same evidential requirements around crime and disorder as the current s147A.

Council records suggest the ban was introduced at the request of a local community group without further input from New Zealand Police. Under current legislation, it is unlikely that an alcohol ban at all times remains a proportionate response to the problem there.

| Options for Ōakura Bay                     |                                       |
|--|---------------------------------------|
| Proposed rule                              | Alcohol ban 7pm-7am                   |
| Option 1<br>(recommended)                  | Retain status quo alcohol ban 7pm-7am |
| Option 2                                   | Revert to alcohol ban 24/7            |
| Map of proposed alcohol ban area (mustard) |                                       |

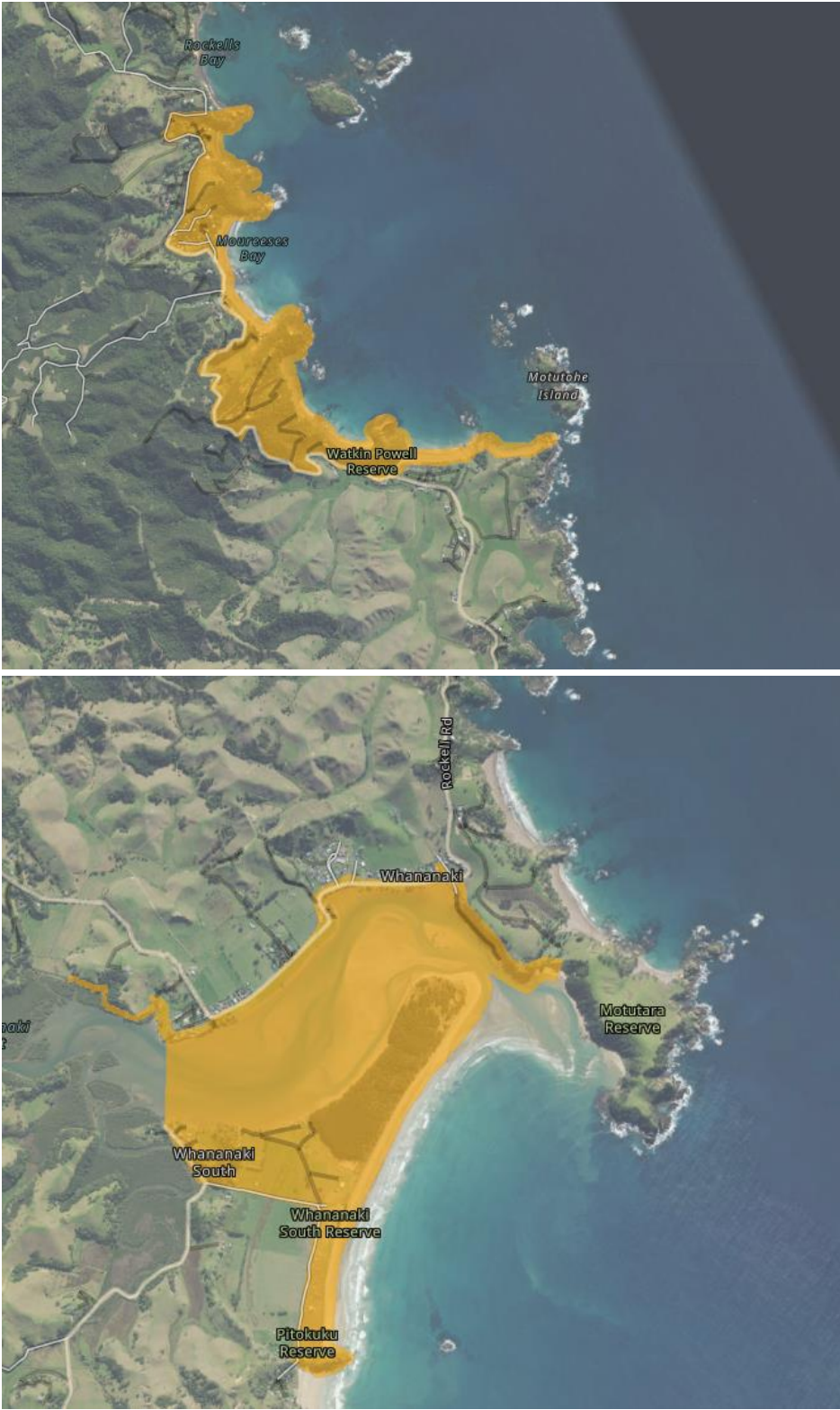
### Whananaki

Four submitters wanted to retain the existing 24/7 ban at Whananaki (including Moureeses and neighbouring bays). Two submitters said that the existing ban had reduced the incidence of antisocial behaviours in the area. One submitter thought that Tauwhara Bay in particular should be alcohol-free during holiday times due to rubbish being left behind.

Another asserted that even with a 24-hour ban, people who were legitimately in the Whananaki area would be able to enjoy an alcoholic drink because they would be staying at a property owned by a local ratepayer. One submitter felt that people should be allowed to enjoy an alcohol beverage there, within reason.

Like at Ōakura, the existing alcohol ban at Whananaki and the bays to its north was gradually introduced almost 20 years ago under a superseded version of section 147 of the Local Government Act 2002 that did not contain the same evidential requirements around crime and disorder as the current s147A.


Council records suggest the ban was introduced at the request of a local community group without any evidence provided by New Zealand Police. Under current legislation, it is unclear that an alcohol ban at all times remains a proportionate response to the problem there.

| Options for Whananaki and neighbouring bays |   |
|---|---|
| Proposed rule                               | Alcohol ban 7pm-7am   |
| Option 1<br>(recommended)                   | Retain status quo alcohol ban 7pm-7am   |
| Option 2                                    | Revert to alcohol ban 24/7  |
| Map of proposed alcohol ban area (mustard)  |  |

## Whangaumu Bay

Two submitters requested the inclusion of Whangaumu Bay among the coastal bans. One commented on its history of antisocial behaviour and mentioned that people often drink at the “northern” (eastern) end of the beach, which can spoil the “family atmosphere” there.

It is unclear the problem meets the s147A threshold to warrant an alcohol ban in this location.

| Options for Whangaumu Bay                  |   |
|--|---|
| Proposed rule                              | No alcohol ban  |
| Option 1<br>(recommended)                  | Retain status quo: no alcohol ban   |
| Option 2                                   | Introduce alcohol ban 7pm-7am   |
| Map of possible alcohol ban area (mustard) |  |

## Ocean Beach

Three submitters specifically requested an alcohol ban at Ocean Beach. In the absence of any signage, visitors to Ocean Beach currently have no way of knowing that alcohol is banned there.


Surf Life Saving New Zealand requested a 24/7 alcohol ban outside the Whangārei Heads Volunteer Surf Life Saving Patrol at Ocean Beach, citing concern at the added pressure intoxicated individuals could place on lifeguard resources. A representative also recounted a life-threatening assault by intoxicated young men on a lifeguard in 2006. The assault left the victim with a broken neck and has had lifelong implications for him.

Unfortunately, the fact that alcohol consumption is proven to disinhibit people and impair judgment, potentially leading to an increased risk of individuals drowning due to poor decision-making, is not a valid reason alone to ban alcohol through the Bylaw.

With regard to the violent assault of a lifeguard at Ocean Beach back in 2006, local media reported the judge stating during the subsequent trial that the offenders “had been drunk and spoiling for a fight the moment they arrived at Ocean Beach.” This suggests that the location of their drinking removes this case from the scope of s147A.

It is unclear that an alcohol ban is a proportionate response to the problem there.



| <b>Options for Ocean Beach</b>             |   |
|--|---|
| Proposed rule                              | No alcohol ban  |
| Option 1<br>(recommended)                  | Retain status quo: no alcohol ban   |
| Option 2                                   | Introduce alcohol ban 7pm-7am   |
| Map of possible alcohol ban area (mustard) |  |

#### 4.4 Financial/budget considerations

Implementation costs (signage) will vary depending on the extent of the final alcohol ban areas approved by Council but are likely to be in the vicinity of \$4,000 to \$8,000. These costs will be borne by the Health and Bylaws department.

While a full signage audit has not been undertaken in recent years, staff understand that much of the existing stock is either outdated and/or in need of replacement. There also appears to be a lack of signage advising the public of existing bans in the vast majority of coastal locations. One signage audit between Onerahi and Ocean Beach for instance did not find a single sign advising the public of the existing coastal alcohol ban.

#### 4.5 Policy and planning implications

Nothing in this report is inconsistent with other Council policies, strategies or plans.

#### 4.6 Options

Council can either approve a combination of the options presented in this report or request that staff prepare a Council Briefing item for further discussion.

#### 4.7 Risks

There are two types of risk of varying degrees if Council decided to amend the alcohol ban areas beyond the options presented in this report.

### **Legal risk**

First and foremost, Council could risk making invalid, unenforceable bylaws (alcohol bans) if it strayed outside the scope of the proposal and the scope of the valid submissions on that proposal. This means that any locations that are not the subject of evidence-based submissions are now outside the scope of the discussion.

Even if Council wanted to broaden the scope by reconsulting on a different proposal, it would need to establish why the original proposal and the rationale for it was wrong, and that reconsulting is reasonable. Without sufficient justification, Council could be exposed to judicial review.

For the areas that remain within scope at this stage of the process (i.e. they are the subject of valid submissions), Council would still need to determine that they meet the evidential threshold of a “high level of crime and disorder” under s147A LGA before it could ban alcohol there. Failure to do so could result in invalid/unenforceable bylaws (alcohol bans).

Reinstating the 300m blanket coastal alcohol ban would present even greater risk: a) the legislation does not allow for such an indiscriminate approach; b) Council would have no evidential basis for it; and c) it would amount to such a significant departure – a reversal – from the proposal that it would certainly require a further round of consultation.

### **Financial/performance risk**

Even if Council proceeded with such a course of action despite the legal risks outlined above, adopting and consulting again on a new proposal would add several months of work to the bylaws and statutory policy work programme. This would lead to certain failure to achieve the performance measure of the Strategy function under Council’s Long Term Plan 2024-25 without additional resourcing.

## **5 Significance and engagement / Te Hira me te Arawhiti**

Council has consulted with the community on the proposed Bylaw and alcohol ban areas following the requirements of section 83 of the Local Government Act 2002 (LGA). The community was notified of the consultation via a Council News story published in the Northern Advocate and on social media. The Have Your Say webpage went live on 20 September 2024. Written submissions were invited through multiple channels until 21 October 2024. A hearing was held in Council Chambers to offer the opportunity for spoken interaction with submitters.

## **6 Attachments / Ngā Tāpiritanga**

Attachment 1 - Alcohol Control Bylaw - Summary of public feedback

Attachment 2 - Draft Alcohol Control Bylaw

Attachment 3 - Draft register of alcohol ban areas

Attachment 4 - Example sign for a time-limited alcohol ban

## Alcohol Control Bylaw - Summary of public feedback

### Summary

Council received feedback on the proposed Alcohol Control Bylaw (the Bylaw) and register of alcohol bans from 73 individual submitters, broken down as follows:

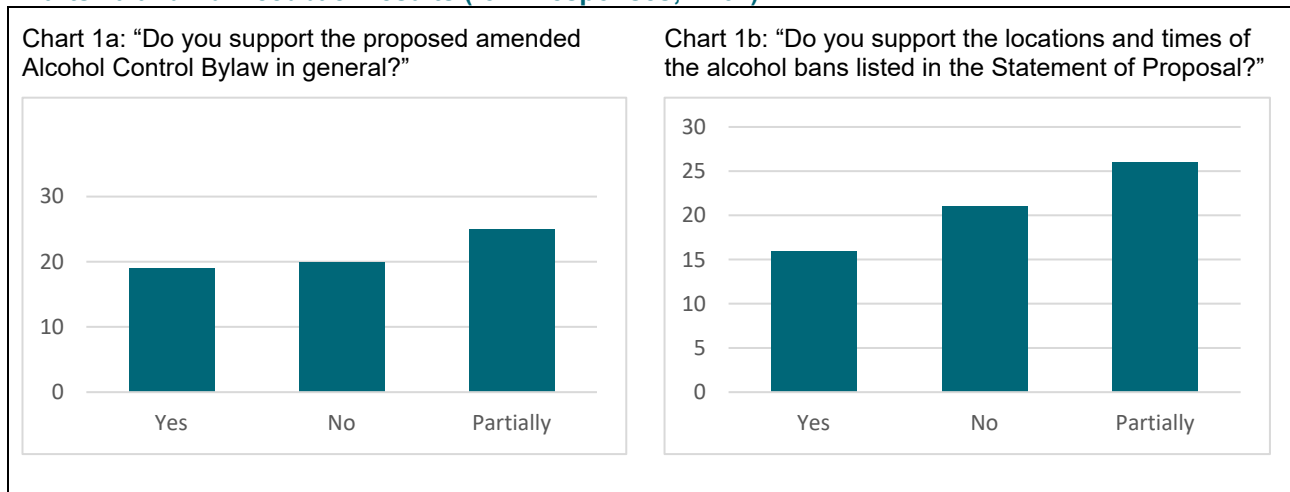
- 63 submitted via the online (OpenForms) form on Council's website;
- nine sent their feedback via email;
- one printed, completed by hand and posted a hardcopy form;
- six represented an organisation.

### General feedback

The feedback form (64 responses in total) asked submitters whether they supported the Bylaw in general and whether they supported the locations and times of the proposed alcohol bans in general. Charts 1a and 1b below shows the responses received for each question.

No submitters commented on the content or wording of the Bylaw in the strict sense.

### Charts 1a and 1b: Feedback results (form responses; n=64)



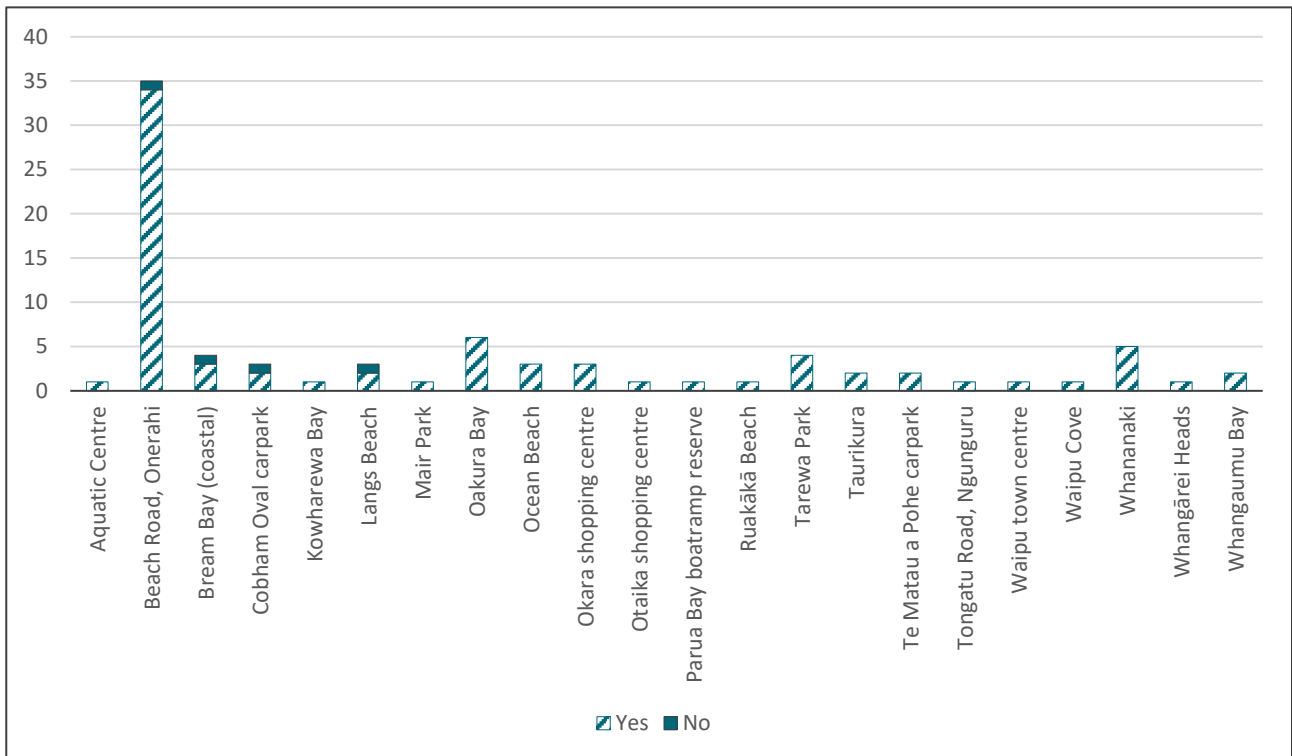
### Out-of-scope feedback

Submission points requesting the retention of the existing blanket coastal alcohol ban from 300 metres landwards of mean low water springs, without substantiating this with any examples of behavioural issues, have not been analysed in detail due to their out-of-scope nature. However, they have been included in the numbers shown in Charts 1a and 1b above.

### Specific feedback by location

Submitters provided specific feedback on 22 individual locations. Submitters who expressed support for the proposed locations and times of the alcohol bans tended not to comment on a specific location.

**Chart 2: “Do you think alcohol should be banned in this location?” Submission points by location**



NB: This chart includes submission points made in feedback submitted via email.  
 Interpretation: 35 submitters commented specifically on Beach Road, of which 34 thought alcohol should be banned there.

### Aquatic Centre

|                      |  |
|----------------------|--|
| Proposed rule        | Alcohol ban 24/7   |
| Submission points    | 1  |
| Summary of feedback  | One submitter commented that permanent vehicle dwellers live there.  |
| Staff recommendation | No change.<br>The Aquatic Centre is covered both by the existing and by the proposed expanded city centre ban. |

### Beach Road, Onerahi

|                     |  |
|---------------------|--|
| Proposed rule       | No ban   |
| Submission points   | 35   |
| Summary of feedback | All but one of the 35 submitters who mentioned Beach Road wanted alcohol banned there. Five submitters requested a ban during nighttime hours; seven wanted a ban in place at all times. |

|                             |   |
|-----------------------------|---|
|                             | <p>Submitters reported witnessing behaviours at various times of the day that would breach one or more of the Crimes Act 1961, Summary Offences Act 1981, Litter Act 1979, Trespass Act 1980, Land Transport Act 1998 and Council’s District Plan, including but not limited to—</p> <ul style="list-style-type: none"> <li>- Excessive noise, in particular at night (14 mentions)</li> <li>- Littering (12)</li> <li>- Intimidation (10)</li> <li>- Fighting in a public place (8)</li> <li>- Reckless or dangerous driving (7)</li> <li>- Property damage (4)</li> <li>- Urinating in a public place (3)</li> <li>- Drink driving (3)</li> <li>- Assault (2)</li> <li>- Trespassing on private property (2)</li> <li>- Arson (1)</li> <li>- Indecent exposure (1)</li> </ul> <p>Most of this behaviour appears to have occurred at nighttime.</p>  |
| <p>Staff recommendation</p> | <p>Change to alcohol ban 7pm-7am.</p> <p>The anecdotal evidence reported by submitters may justify a nighttime alcohol ban along the Beach Road reserve and esplanade as a proportionate response to antisocial behaviours exacerbated by alcohol consumed there.</p> <p>However, the fact that this behaviour is largely attributed to rough sleepers complicates the matter. Council must be satisfied that an alcohol ban is the most appropriate tool to address the problem of intoxicated rough sleepers inconveniencing others in a public place along Beach Road.</p> <p>Similar to the problem of permanent vehicle dwellers occupying parking spaces outside Cobham Oval, a more holistic approach to addressing the problem appears unavailable in the absence of appropriate alternative accommodation, additional funding and/or support, notably from central government.</p> <p>Absent this support, Council may consider that an alcohol ban remains the most appropriate <i>reasonably practicable</i> solution.</p> |

**Bream Bay (coastal)**

|                             |  |
|-----------------------------|--|
| <p>Proposed rule</p>        | <p>Alcohol ban 7pm-7am</p>   |
| <p>Submission points</p>    | <p>4</p>   |
| <p>Summary of feedback</p>  | <p>One submitter felt that in the absence of a ban during daytime hours, there was a risk of alcohol-related antisocial behaviour and injury due to aggression and littered broken glass bottles. Another did not support the nighttime ban in Bream Bay, although did not specify why.</p> <p>In contrast, two submitters felt that the proposed 7pm start time was too early during daylight saving and would prevent families from enjoying the beach with a wine or beer over a picnic dinner.</p> |
| <p>Staff recommendation</p> | <p>No change.</p>  |

### Cobham Oval carpark

|                      |   |
|----------------------|---|
| Proposed rule        | Alcohol ban 24/7  |
| Submission points    | 3   |
| Summary of feedback  | Two submitters supported the proposal to expand the city centre ban to cover the Cobham Oval carpark.<br>Another submitter felt that freedom campers staying at the “freedom camping site” at Cobham Oval should not be exposed to Police searches of their vehicles. |
| Staff recommendation | <b>No change.</b><br>The Cobham Oval carpark is not, and has never been, a designated freedom camping site under Council’s Camping in Public Places Bylaw.  |

### Kowharewa Bay

|                      |  |
|----------------------|--|
| Proposed rule        | No ban   |
| Submission points    | 1  |
| Summary of feedback  | One submitter felt that Kowharewa Bay should have the same 7pm-7am ban as other beaches in the area. |
| Staff recommendation | <b>No change.</b>  |

### Langs Beach

|                      |   |
|----------------------|---|
| Proposed rule        | Alcohol ban 7pm-7am   |
| Submission points    | 3   |
| Summary of feedback  | One submitter felt that the proposed 7pm start time was too early during daylight saving. Another opposed the proposed alcohol ban there altogether. A third submitter, meanwhile, thought the ban should apply 24/7. |
| Staff recommendation | <b>No change.</b>   |

### Mair Park

|                      |  |
|----------------------|--|
| Proposed rule        | No ban   |
| Submission points    | 1  |
| Summary of feedback  | One submitter reported that the occasional presence in Mair Park of intoxicated people and their residual litter make the area feel unsafe for walkers and families.   |
| Staff recommendation | <b>No change.</b><br>While such nuisance or offensive behaviour might trigger Council’s general bylaw-making powers under section 145 of the Local Government Act 2002, it is unlikely to satisfy the specific threshold under s147A of a high level of crime and disorder needed to ban alcohol in this location. |

### Ōakura Bay

|                      |   |
|----------------------|---|
| Proposed rule        | Alcohol ban 7pm-7am   |
| Submission points    | 6   |
| Summary of feedback  | Three submitters made comments to the effect that public disorder and unruly behaviour made worse by alcohol consumption were common prior to the introduction of the 24/7 ban at Ōakura Bay. All six submitters who commented specifically on Ōakura Bay wanted the existing 24/7 alcohol ban to remain in place there.  |
| Staff recommendation | <p>No change.</p> <p>The existing alcohol ban at Ōakura Bay was gradually introduced almost 20 years ago under a superseded version of section 147 of the Local Government Act 2002 that did not contain the same evidential requirements around crime and disorder as the current s147A.</p> <p>Council records suggest the ban was introduced at the request of a local community group without any evidence provided by New Zealand Police. Under current legislation, it is unclear that an alcohol ban at all times remains a proportionate response to the problem there.</p> |

### Ocean Beach

|                      |   |
|----------------------|---|
| Proposed rule        | No ban  |
| Submission points    | 3   |
| Summary of feedback  | <p>Three submitters specifically requested an alcohol ban at Ocean Beach.</p> <p>Surf Life Saving New Zealand requested a 24/7 alcohol ban outside the Whangārei Heads Volunteer Surf Life Saving Patrol at Ocean Beach, citing concern at the added pressure intoxicated individuals could place on lifeguard resources. A representative also recounted a life-threatening assault by intoxicated young men on a lifeguard in 2006. The assault left the victim with a broken neck and has had lifelong implications for him.</p>   |
| Staff recommendation | <p>No change.</p> <p>In the absence of any signage, visitors to Ocean Beach currently have no way of knowing that alcohol is banned there.</p> <p>Under the enabling legislation, Council can only prohibit alcohol where it is satisfied there is evidence of a high level of crime or disorder caused or made worse by alcohol consumed there. Unfortunately, the fact that alcohol consumption is proven to disinhibit people and impair judgment, potentially leading to an increased risk of individuals drowning due to poor decision-making, is not a valid reason alone to ban alcohol through the Bylaw.</p> <p>With regard to the violent assault of a lifeguard at Ocean Beach back in 2006, local media reported the judge stating during the subsequent trial that the offenders “had been drunk and spoiling for a fight the moment they arrived at Ocean Beach.” It is unclear that an alcohol ban is a proportionate response to the problem there.</p> |

### Okara shopping centre

|                      |   |
|----------------------|---|
| Proposed rule        | Alcohol ban 24/7  |
| Submission points    | 3   |
| Summary of feedback  | All three submitters who commented on the Okara shopping centre expressed support for the proposed alcohol ban there, without substantiating their support. |
| Staff recommendation | No change.  |

### Otaika shopping centre

|                      |   |
|----------------------|---|
| Proposed rule        | Alcohol ban 24/7  |
| Submission points    | 1   |
| Summary of feedback  | One submitter reported seeing people “countless times” drinking and being disorderly day and night. |
| Staff recommendation | No change.  |

### Parua Bay boatramp reserve

|                      |  |
|----------------------|--|
| Proposed rule        | No ban   |
| Submission points    | 1  |
| Summary of feedback  | One submitter reported gatherings of people often engaging in antisocial behaviour exacerbated by alcohol consumption. |
| Staff recommendation | No change.<br>It is unclear the problem meets the s147A threshold to warrant an alcohol ban in this location.          |

### Ruakākā Beach

|                      |   |
|----------------------|---|
| Proposed rule        | Alcohol ban 7pm-7am   |
| Submission points    | 1   |
| Summary of feedback  | Surf Life Saving New Zealand requested a 24/7 alcohol ban outside the Ruakākā Surf Life Saving Patrol, citing concern at the added pressure intoxicated individuals could place on lifeguard resources.   |
| Staff recommendation | No change.<br>Under the enabling legislation, Council can only prohibit alcohol where it is satisfied there is evidence of a high level of crime or disorder caused or made worse by alcohol consumed there. Unfortunately, the fact that alcohol consumption is proven to disinhibit people and impair judgment, potentially leading to an increased risk of individuals drowning due to poor decision-making, is not a valid reason alone to ban alcohol through the Bylaw. |

### Tarewa Park

|               |                  |
|---------------|------------------|
| Proposed rule | Alcohol ban 24/7 |
|---------------|------------------|



|                      |  |
|----------------------|--|
| Submission points    | 4  |
| Summary of feedback  | All four submitters expressed support for the proposed new ban at Tarewa Park. One submitter noted it is a high-traffic public place and an alcohol ban could help reduce antisocial behaviour there. Another submitter related reports by their partner, a security guard stationed at Tarewa Park, of frequent antisocial behaviour involving alcohol use. |
| Staff recommendation | No change.   |

### Taurikura

|                      |  |
|----------------------|--|
| Proposed rule        | No ban   |
| Submission points    | 2  |
| Summary of feedback  | Two submitters cited a recent party that “got out of hand” at the Taurikura Hall to support their request for an alcohol ban outside the venue. The party included a brawl outside on the street, trespassing on surrounding properties and broken glass in the carpark and road, and culminated in Police intervention to disperse it.  |
| Staff recommendation | No change.<br>A special licence to supply alcohol at the event would have excluded the Taurikura Hall from the definition of public place under section 147 of the Local Government Act 2002. When the party spread beyond the bounds of the venue, the event would have breached the licence conditions and likely met the threshold for Police intervention. In such instances, an alcohol ban under the Bylaw would be unnecessarily duplicative. |

### Te Matau a Pohe carpark

|                      |  |
|----------------------|--|
| Proposed rule        | Alcohol ban 24/7   |
| Submission points    | 2  |
| Summary of feedback  | Both submitters expressed support for the proposed alcohol ban at the Te Matau a Pohe bridge carpark without substantiating their support. |
| Staff recommendation | No change.   |

### Tongatu Road (Ngunguru)

|                      |  |
|----------------------|--|
| Proposed rule        | No ban   |
| Submission points    | 1  |
| Summary of feedback  | One submitter reported antisocial behaviour related to drinking on the road reserve during both night and day. |
| Staff recommendation | No change.<br>It is unclear the problem meets the s147A threshold to warrant an alcohol ban in this location.  |

### Waipu town centre

|                      |  |
|----------------------|--|
| Proposed rule        | Alcohol ban 24/7   |
| Submission points    | 1  |
| Summary of feedback  | One submitter, writing in support of the alcohol ban in Waipu town centre, suggested extending the ban along the shared path connecting The Centre with Halifax Drive. |
| Staff recommendation | No change.<br>The available Police evidence from Waipu suggests the problem may not meet the s147A threshold to warrant expanding the alcohol ban in this location.    |

### Waipu Cove

|                      |   |
|----------------------|---|
| Proposed rule        | Alcohol ban 7pm-7am   |
| Submission points    | 1   |
| Summary of feedback  | Surf Life Saving New Zealand requested a 24/7 alcohol ban outside the Waipu Cove Surf Life Saving Club, citing concern at the added pressure intoxicated individuals could place on lifeguard resources.  |
| Staff recommendation | No change.<br>Under the enabling legislation, Council can only prohibit alcohol where it is satisfied there is evidence of a high level of crime or disorder caused or made worse by alcohol consumed there. Unfortunately, the fact that alcohol consumption is proven to disinhibit people and impair judgment, potentially leading to an increased risk of individuals drowning due to poor decision-making, is not a valid reason alone to ban alcohol through the Bylaw. |

### Whananaki

|                      |  |
|----------------------|--|
| Proposed rule        | Alcohol ban 7pm-7am  |
| Submission points    | 5  |
| Summary of feedback  | Four submitters wanted to retain the existing 24/7 ban at Whananaki (including Moureeses and neighbouring bays).<br>Two submitters said that the existing ban had reduced the incidence of antisocial behaviours in the area.<br>One submitter thought that Tauwhara Bay in particular should be alcohol-free during holiday times due to rubbish being left behind.<br>Another asserted that even with a 24-hour ban, people who were legitimately in the Whananaki area would be able to enjoy an alcoholic drink because they would be staying at a property owned by a local ratepayer.<br>One submitter felt that people should be allowed to enjoy an alcohol beverage there, within reason. |
| Staff recommendation | No change.<br>Like at Ōakura, the existing alcohol ban at Whananaki and the bays to its north was gradually introduced almost 20 years ago under a superseded version of section 147 of the Local Government Act 2002  |

|  |  |
|--|--|
|  | <p>that did not contain the same evidential requirements around crime and disorder as the current s147A.</p> <p>Council records suggest the ban was introduced at the request of a local community group without any evidence provided by New Zealand Police. Under current legislation, it is unclear that an alcohol ban at all times remains a proportionate response to the problem there.</p> |
|--|--|

### Whangārei Heads

|                      |  |
|----------------------|--|
| Proposed rule        | No ban   |
| Submission points    | 3  |
| Summary of feedback  | <p>Two submitters sought the continuation of some form of alcohol ban along the entire Whangārei Heads coastline. One of them cited the abovementioned recent incident at Taurikura as an example.</p> <p>Another submitter sought clarification on other enforcement mechanisms available in public places in the area in the absence of alcohol bans through the Bylaw and on whether Council can create new bans if necessary by Council resolution.</p>  |
| Staff recommendation | <p>No change.</p> <p>A number of reserves in the Whangārei Heads area are already covered by the Department of Conservation’s Northland Reserves Bylaws, including Bream Head Scenic Reserve, Manaia Ridge Scenic Reserve, Motukiore Island Recreation Reserve, Ocean Beach Recreation Reserve and Bream Islands Scenic Reserve. On these reserves, rangers (which includes constables) can expel persons and/or confiscate alcohol in the possession of persons who engage in disorderly, offensive, threatening, violent, loud or indecent behaviour.</p> <p>Council could create new alcohol ban(s) in future if necessary by Council resolution without needing to amend the Bylaw. This would involve some public consultation under section 82 of the Local Government Act 2002, likely targeting the area(s) concerned.</p> <p>A signage audit carried out by Council staff from Onerahi to Ocean Beach has confirmed there is not a single sign indicating the presence of a coastal alcohol ban in the Whangārei Heads area. Without any signage, visitors have had no way of knowing an alcohol ban has been in place.</p> |

### Whangaumu Bay

|                      |  |
|----------------------|--|
| Proposed rule        | No ban   |
| Submission points    | 2  |
| Summary of feedback  | <p>Two submitters requested the inclusion of Whangaumu Bay among the coastal bans. One commented on its history of antisocial behaviour and mentioned that people often drink at the “northern” (eastern) end of the beach, which can spoil the “family atmosphere” there.</p> |
| Staff recommendation | <p>No change.</p> <p>It is unclear the problem meets the s147A threshold to warrant an alcohol ban in this location.</p>   |





# *Proposed amended Alcohol Control Bylaw*



**Pursuant to the Local Government Act 2002, Whangarei District Council makes the following bylaw about alcohol control in public places**

## **1 Title**

This Bylaw is the Alcohol Control Bylaw 2018.

## **2 Commencement**

2.1 This Bylaw comes into force on 19 December 2018.

2.2 Amendments to this Bylaw come into force on *[date tbd]*.

## **3 Application**

This Bylaw applies to the Whangārei District.

# **Part 1: Preliminary Provisions**

## **4 Purpose**

The purpose of this Bylaw is to reduce crime and disorder in public places that is caused or made worse by alcohol consumed in those places.

### *Related information:*

*The Act provides explicit details about what this type of bylaw can control. Generally, any transporting of alcohol in unopened containers within an alcohol ban area is permitted, subject to certain conditions. See [section 147](#) of the Act for further details.*

*Alcohol bans do not apply to licensed premises, which can include situations where a special licence has been issued for a specific event. Licensed premises can include areas of public places such as footpaths.*

*Under the Act, only constables (New Zealand Police Officers) can take enforcement action under this Bylaw. Constables have powers of arrest, search and seizure under the Act and can also issue infringement notices.*

## **5 Interpretation**

5.1 Any word used in this Bylaw that is defined in sections 5, 147, 169, 169A or 243 of the Act, or section 5 of the Sale and Supply of Alcohol Act 2012, has, for the purposes of this Bylaw, the same meaning as in those sections, unless otherwise provided for in this clause.

5.2 In this Bylaw, unless the context otherwise requires—

**Act** means the Local Government Act 2002;

**Council** means the Whangarei District Council;

**Whangārei District** means the area within the boundaries of the Whangārei District and includes all coastal areas to the line of mean low water springs.

- 5.3 Any related information, attachments and links are for information purposes only and do not form part of this Bylaw.
- 5.4 The Interpretation Act 1999 applies to this Bylaw.

## Part 2: Control of Alcohol

### 6 Alcohol bans

- 6.1 Council may, by resolution, declare an area to be an alcohol ban area where the consumption, bringing in and possession of alcohol in public places is prohibited or controlled.
- 6.2 Any resolution made under clause 6.1 must also—
  - (a) include a map of the alcohol ban area;
  - (b) specify the time(s) that any prohibition or control applies, and whether the alcohol ban is permanent or temporary;
  - (c) if consumption, bringing in and possession of alcohol is controlled rather than prohibited, specify the nature of the control.
- 6.3. No person may consume, bring into or possess alcohol in any public place (including inside a vehicle) in an alcohol ban area in breach of a resolution made under clauses 6.1 and 6.2.
- 6.4. Clause 6.3 does not apply to a person who is acting pursuant to, and in accordance with any conditions of, a consent granted under clause 12.1.

*Related information: As at 29 August 2024, the Act defines a public place for the purposes of alcohol control as—*

*“a place that is open to or is being used by the public, whether free or on payment of a charge, and whether any owner or occupier of the place is lawfully entitled to exclude or eject any person from it; but does not include licensed premises.”*

### 7 Permanent alcohol bans

- 7.1 Council may under clause 6.1 declare an area to be a permanent alcohol ban area at all times, or for specified, recurring periods of time.
- 7.2 Council will consult in accordance with Part 6 of the Act on any proposal to declare, amend or revoke a permanent alcohol ban.

*Related information: All resolutions of Council declaring permanent alcohol ban areas are included in the Register of Resolutions as additional information to this Bylaw.*

## 8 Temporary alcohol bans

- 8.1 Council may under clause 6.1 declare an area to be a temporary alcohol ban area for a specified period not exceeding seven consecutive days.
- 8.2 Council will give public notice of a temporary alcohol ban at least 14 days before the temporary alcohol ban comes into force.

## 9 Matters to be considered before declaring alcohol bans

- 9.1 Before declaring a permanent alcohol ban, Council—
  - a. must consider views presented to Council through consultation on the proposal to declare a permanent alcohol ban:
  - b. must consider the relevant criteria in sections 147A and 147B of the Act, as applicable:
  - c. may consider any other matter it considers relevant.
- 9.2 Before declaring a temporary alcohol ban, Council—
  - a. must consider the relevant criteria in sections 147A and 147B of the Act, as applicable;
  - b. where the temporary alcohol ban applies to an event, may consider—
    - i. the nature and type of the event:
    - ii. the history (if any) of the event:
    - iii. the number of people expected to attend the event:
    - iv. the area in which the event is to be held:
    - v. whether the Police support the proposed temporary alcohol ban:
    - vi. whether the Police will be present at the event to enforce it; and
  - c. may consider any other information it considers relevant.

*Related information: Records of resolutions made for temporary alcohol bans will not be included in the Register of Resolutions, but are permanently recorded through appropriate Council records of meetings, minutes and resolutions.*



## Part 3: Enforcement Powers

### 10 Enforcement

10.1 A constable may use their powers under the Act to enforce this Bylaw.

*Related information: Section 169 of the Act provides constables with powers of arrest, search and seizure to enforce alcohol bans. Constables must first give people the opportunity to remove any alcohol from the permanent alcohol ban area before carrying out a search.*

10.2 In the case of a temporary alcohol ban declared under clauses 6 and 8 of this Bylaw, a constable may exercise the power of immediate search under section 170(2) of the Act.

*Related information: Section 170(2) of the Act provides constables with additional powers of search in relation to temporary alcohol bans that have been notified and indicated by signage in accordance with section 170(3) of the Act.*

## Part 4: Offences and Penalties

### 11 Bylaw breaches

11.1 Every person who breaches this Bylaw commits an offence.

11.2 Every person who commits an offence under this Bylaw is liable to a penalty under the Act.

*Related information: As at 29 August 2024, the penalty for breaching an alcohol control bylaw is an infringement fee of \$250 under the Local Government (Alcohol Control Breaches) Regulations 2013.*

## Part 5: Exceptions

### 12 Exceptions

12.1 Council may issue a consent to any person, or class of persons, to allow the consumption, bringing in and possession of alcohol in a public place (including inside a vehicle) within an alcohol ban area.

12.2 In considering an application for a consent under clause 12.1, Council will consider the following matters:

- a. The purpose of the exception:
- b. The proposed duration of the exception:
- c. The area of the proposed exception:
- d. Whether the area is under the control of, or managed by, Council:
- e. Whether any other permits are required from Council for the event:
- f. Any other matter Council considers relevant.





# *Alcohol Ban Areas: Proposed Register of Resolutions*



## Proposed register of alcohol bans

| Map #     | Alcohol ban area                                    | Applicable times     |
|-----------|---|----------------------|
| 1         | City centre   | 24 hours daily       |
| 2         | Onerahi   | 24 hours daily       |
| 3         | Otaika  | 24 hours daily       |
| 4         | Otangarei   | 24 hours daily       |
| 5         | Otuhau/Whangārei Falls                              | 24 hours daily       |
| 6         | Ruakākā (Marsden) Village                           | 24 hours daily       |
| 7         | Tarewa Park   | 24 hours daily       |
| 8         | Te Kamo   | 24 hours daily       |
| 9         | Tikipunga   | 24 hours daily       |
| 10        | Waipu   | 24 hours daily       |
| 11        | Oakura  | 7pm-7am daily        |
| 12        | Whananaki (Moureeses Bay)                           | 7pm-7am daily        |
| 13        | Whananaki   | 7pm-7am daily        |
| 14        | Matapouri – Whale Bay                               | 7pm-7am daily        |
| 15        | Pataua North & South                                | 7pm-7am daily        |
| 16        | Bream Bay (Marsden Point to east end of Waipu Cove) | 7pm-7am daily        |
| 17        | Langs Beach   | 7pm-7am daily        |
| <u>18</u> | <u>Beach Road, Onerahi</u>                          | <u>7pm-7am daily</u> |



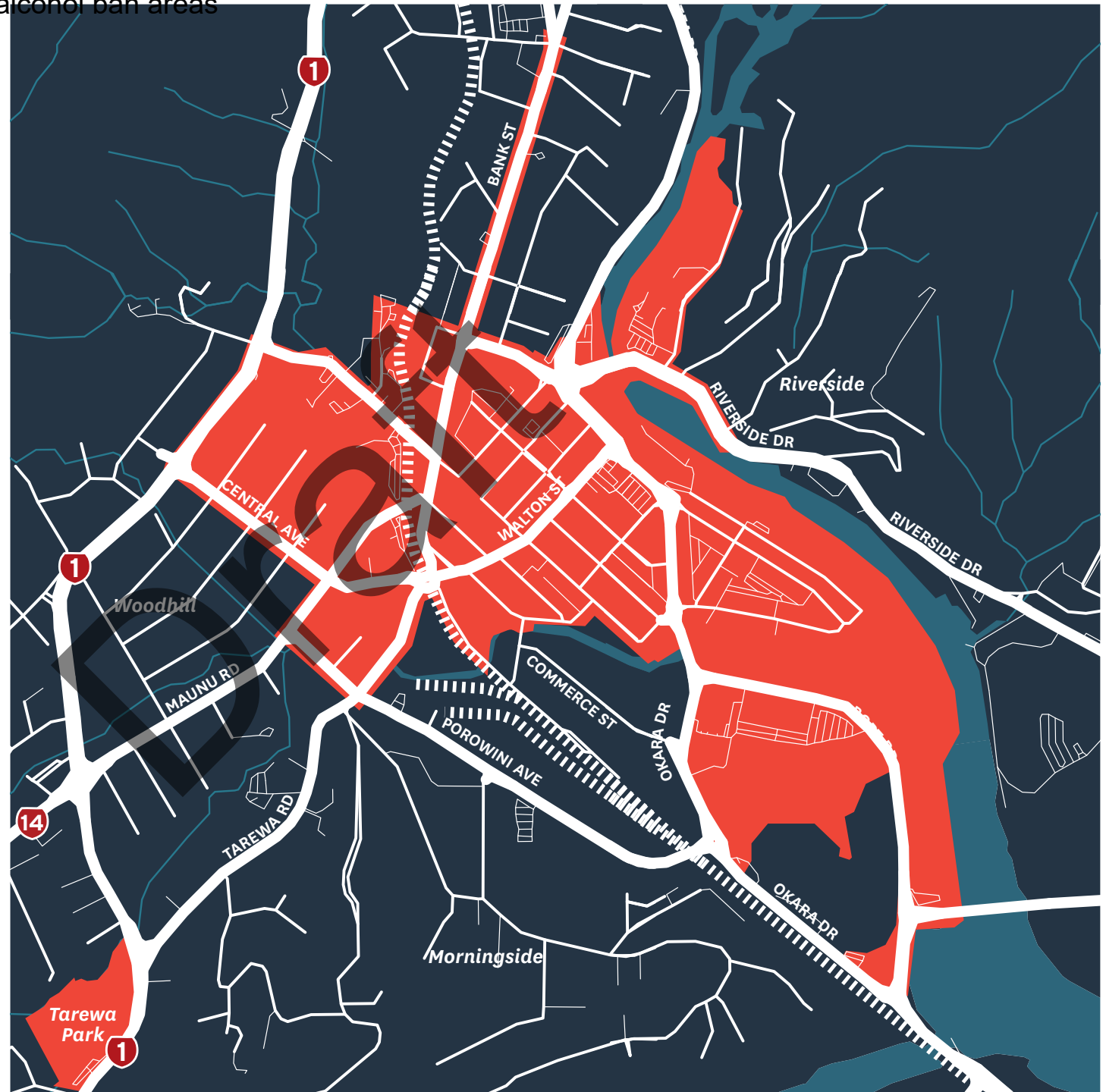
Alcohol Control Bylaw 2018

City Centre

KEY

- Applies 24/7
- Applies 7pm-7am

Alcohol is banned during applicable times in public places within the shaded area. It is up to the discretion of constables to determine whether a place is a public place according to section 147 of the Local Government Act 2002.





Alcohol Control Bylaw 2018

Onerahi

KEY

- Applies 24/7
- Applies 7pm-7am

Alcohol is banned during applicable times in public places within the shaded area. It is up to the discretion of constables to determine whether a place is a public place according to section 147 of the Local Government Act 2002.





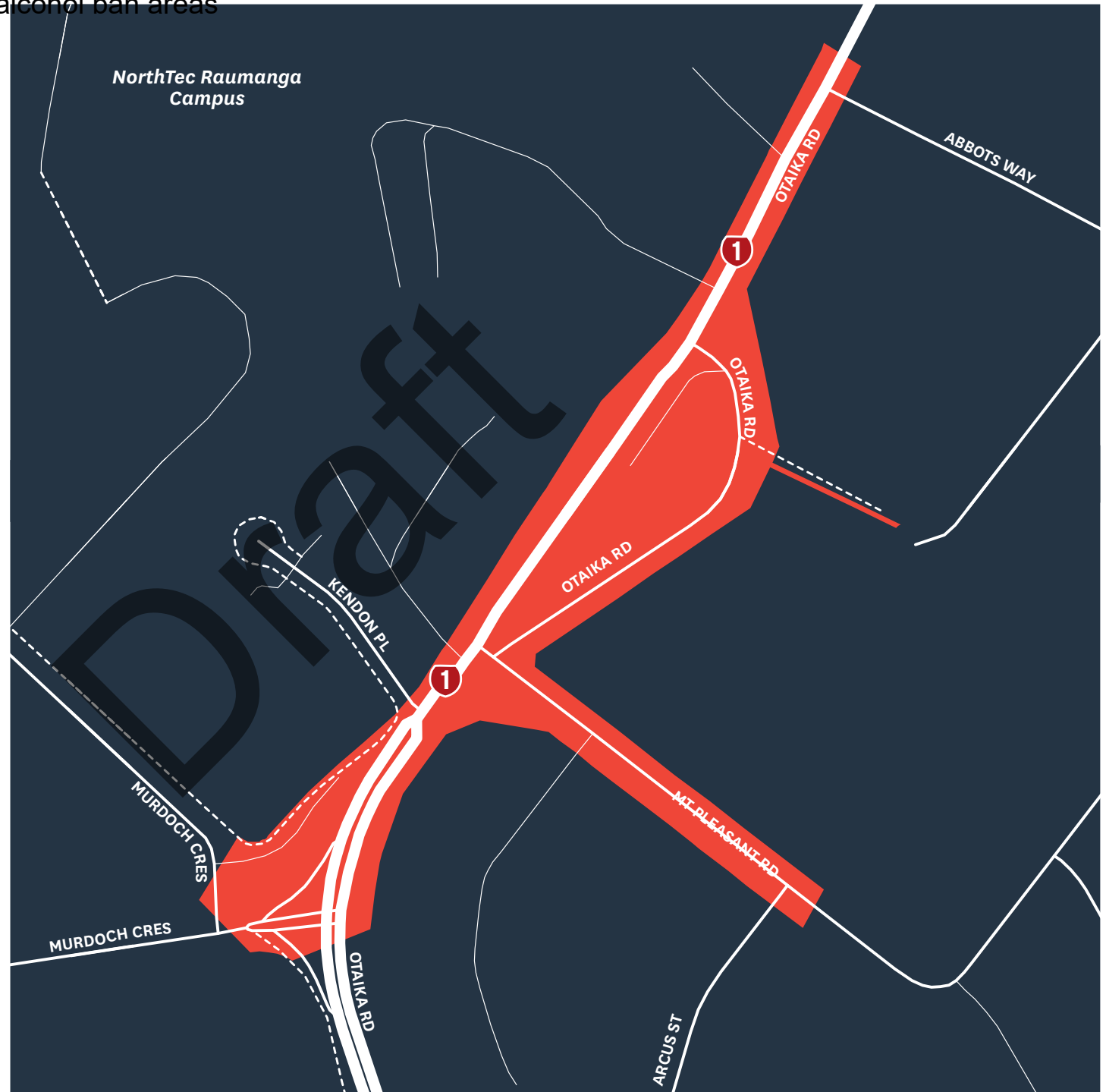
Alcohol Control Bylaw 2018

Otaika

KEY

- Applies 24/7
- Applies 7pm-7am

Alcohol is banned during applicable times in public places within the shaded area. It is up to the discretion of constables to determine whether a place is a public place according to section 147 of the Local Government Act 2002.





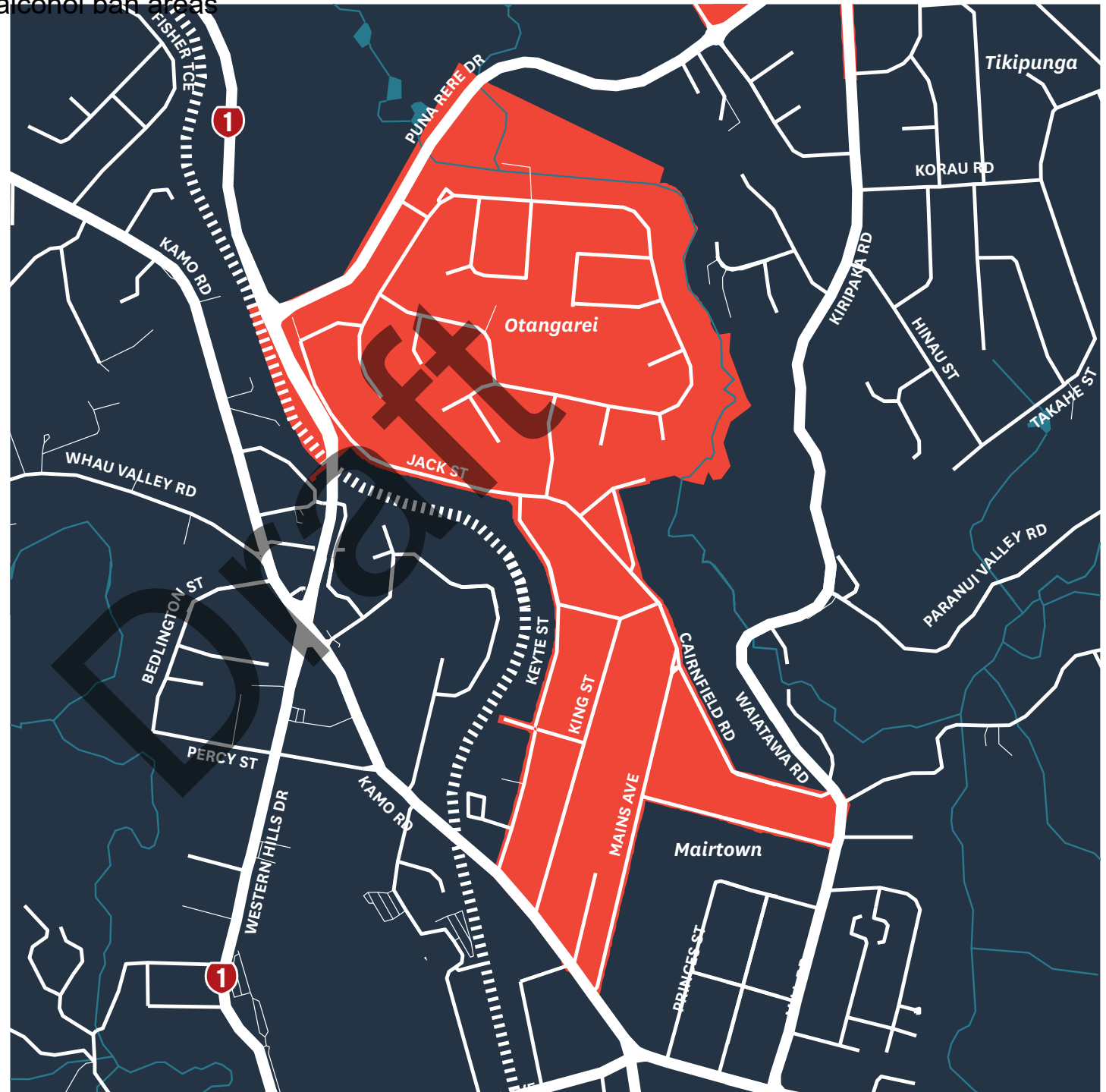
Alcohol Control Bylaw 2018

Otangareei

KEY

- Applies 24/7
- Applies 7pm-7am

Alcohol is banned during applicable times in public places within the shaded area. It is up to the discretion of constables to determine whether a place is a public place according to section 147 of the Local Government Act 2002.







Alcohol Control Bylaw 2018

Otuhau – Whangārei Falls

KEY

- Applies 24/7
- Applies 7pm-7am

Alcohol is banned during applicable times in public places within the shaded area. It is up to the discretion of constables to determine whether a place is a public place according to section 147 of the Local Government Act 2002.





Alcohol Control Bylaw 2018

Ruakākā (Marsden) Village

KEY

- Applies 24/7
- Applies 7pm-7am

Alcohol is banned during applicable times in public places within the shaded area. It is up to the discretion of constables to determine whether a place is a public place according to section 147 of the Local Government Act 2002.





Alcohol Control Bylaw 2018

Tarewa Park

KEY

- Applies 24/7
- Applies 7pm-7am

Alcohol is banned during applicable times in public places within the shaded area. It is up to the discretion of constables to determine whether a place is a public place according to section 147 of the Local Government Act 2002.





Alcohol Control Bylaw 2018

Te Kamo

KEY

- Applies 24/7
- Applies 7pm-7am

Alcohol is banned during applicable times in public places within the shaded area. It is up to the discretion of constables to determine whether a place is a public place according to section 147 of the Local Government Act 2002.





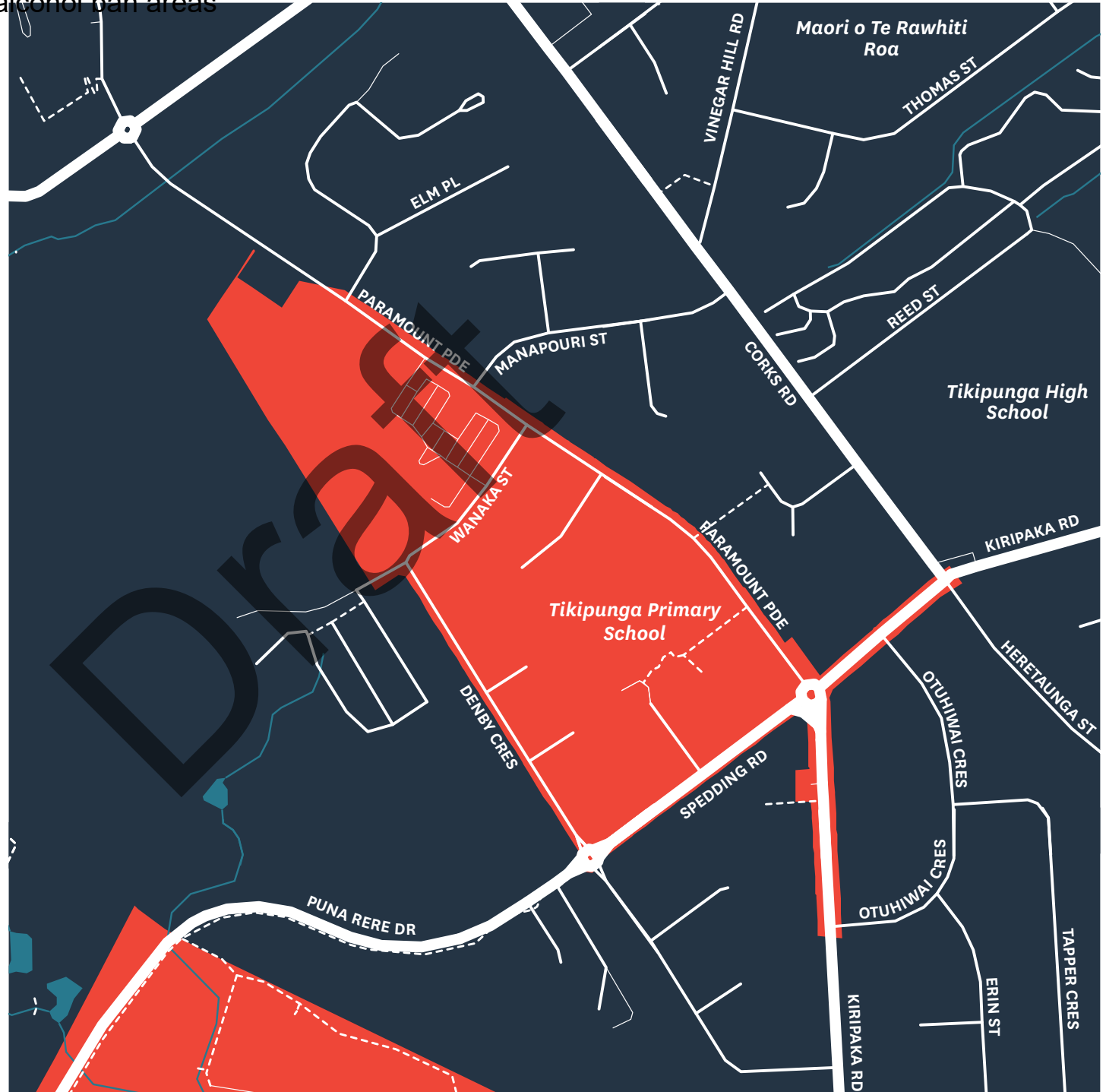
Alcohol Control Bylaw 2018

Tikipunga

KEY

- Applies 24/7
- Applies 7pm-7am

Alcohol is banned during applicable times in public places within the shaded area. It is up to the discretion of constables to determine whether a place is a public place according to section 147 of the Local Government Act 2002.





Alcohol Control Bylaw 2018

Waipū

KEY

- Applies 24/7
- Applies 7pm-7am

Alcohol is banned during applicable times in public places within the shaded area. It is up to the discretion of constables to determine whether a place is a public place according to section 147 of the Local Government Act 2002.





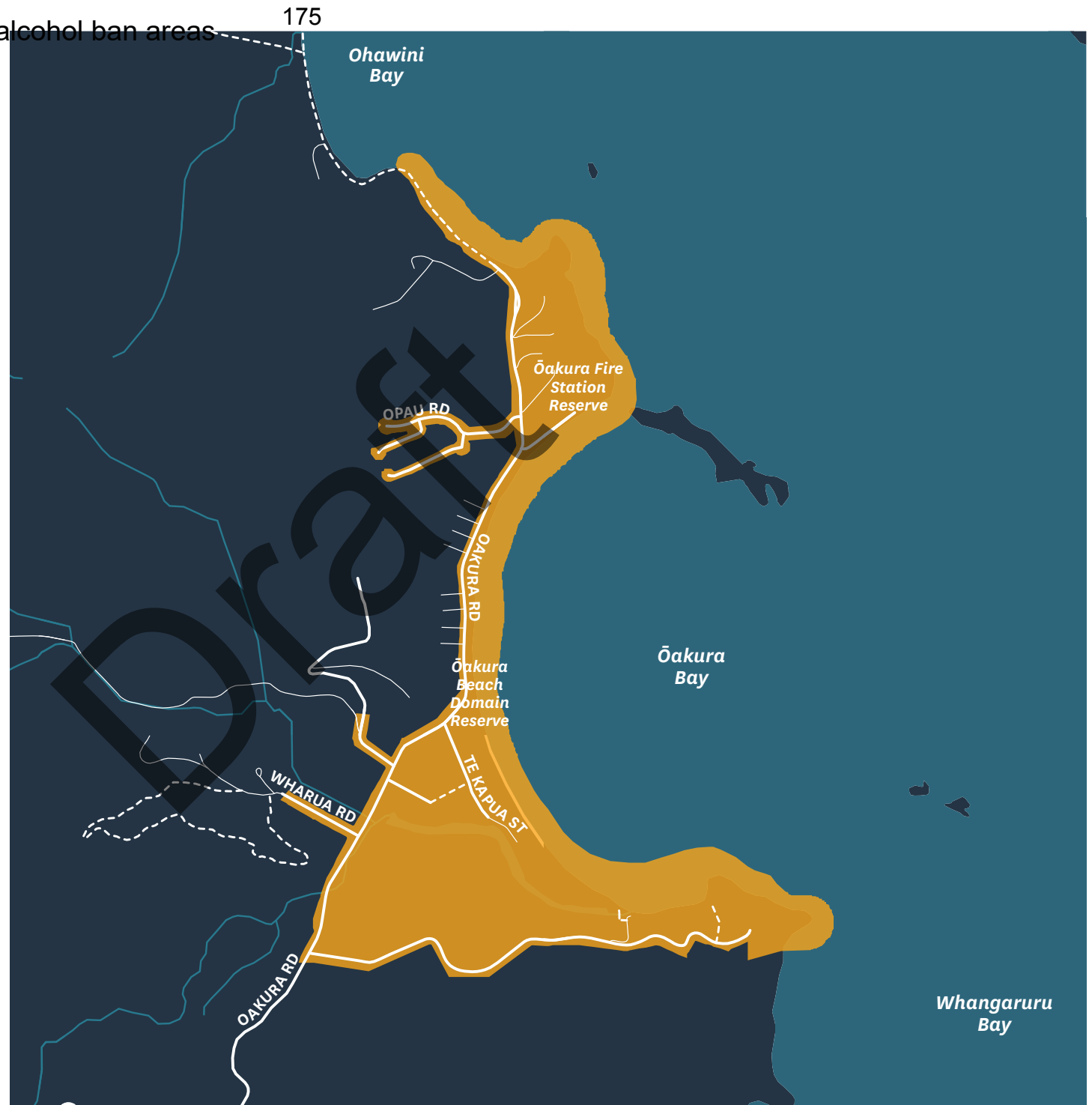
Alcohol Control Bylaw 2018

Ōakura

KEY

- Applies 24/7
- Applies 7pm-7am

Alcohol is banned during applicable times in public places within the shaded area. It is up to the discretion of constables to determine whether a place is a public place according to section 147 of the Local Government Act 2002.





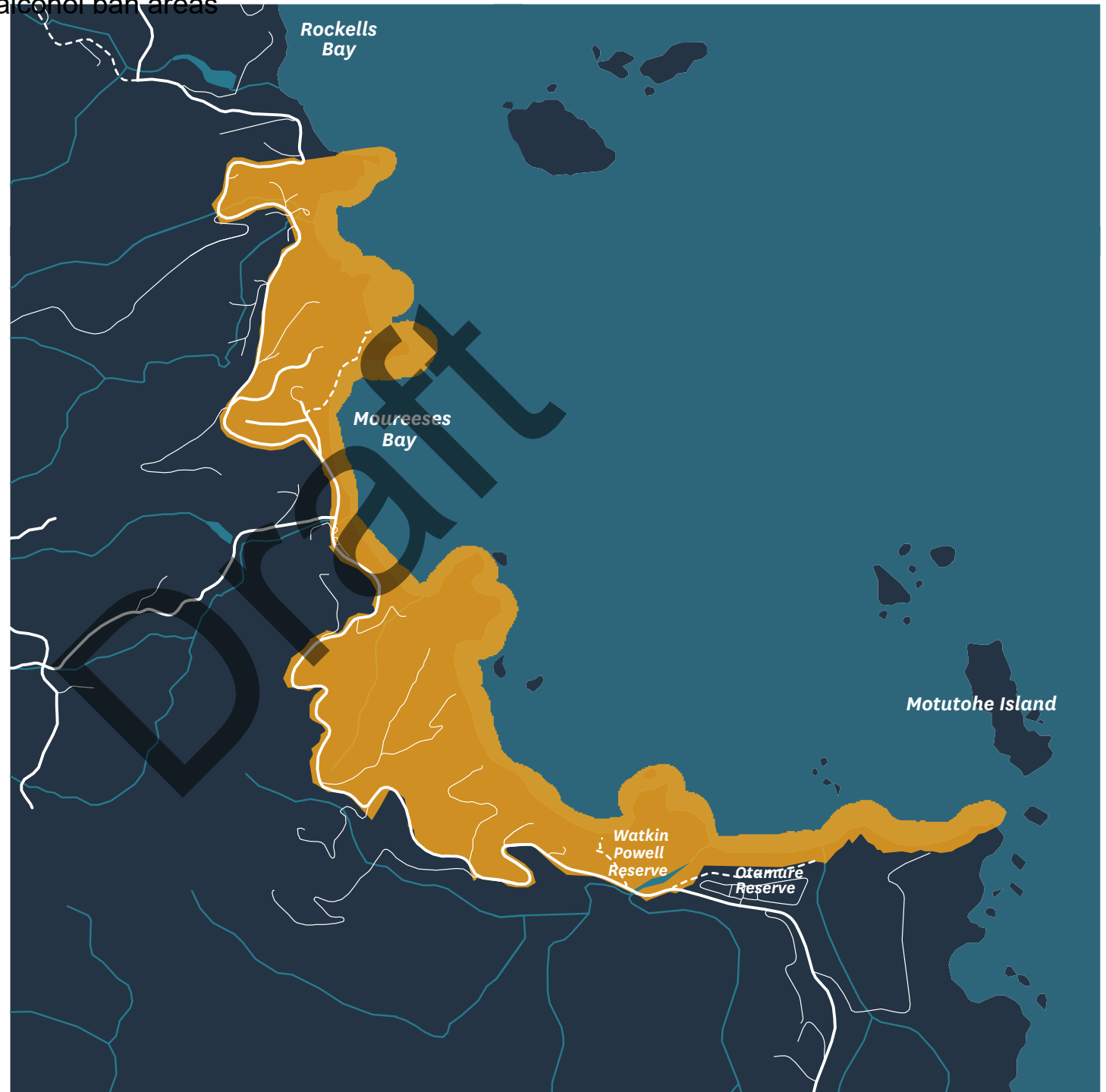
Alcohol Control Bylaw 2018

Whananaki  
(Moureeses Bay)

KEY

- Applies 24/7
- Applies 7pm-7am

Alcohol is banned during applicable times in public places within the shaded area. It is up to the discretion of constables to determine whether a place is a public place according to section 147 of the Local Government Act 2002.









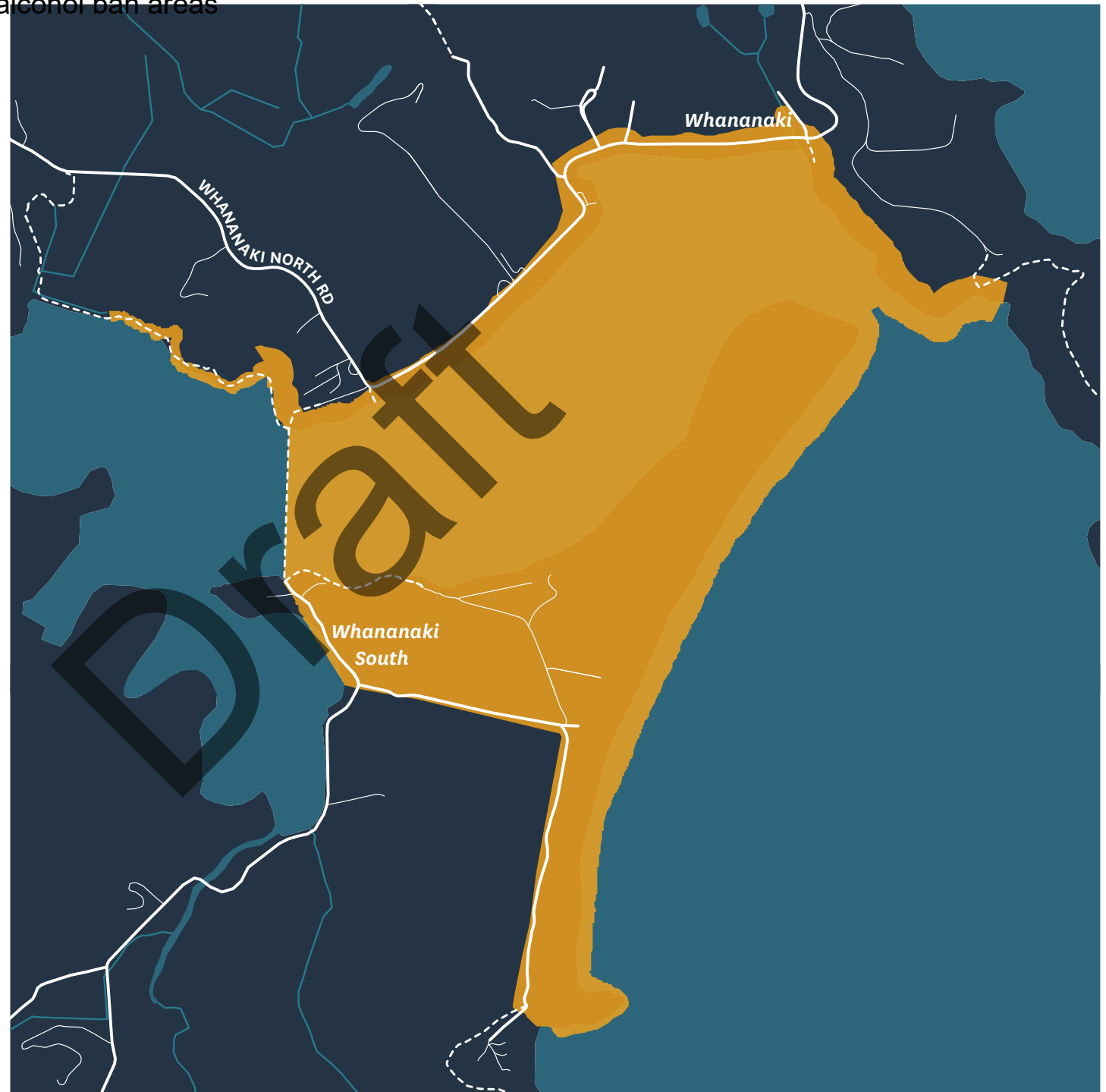
Alcohol Control Bylaw 2018

Whananaki

KEY

-  Applies 24/7
-  Applies 7pm-7am

Alcohol is banned during applicable times in public places within the shaded area. It is up to the discretion of constables to determine whether a place is a public place according to section 147 of the Local Government Act 2002.





Alcohol Control Bylaw 2018

Matapōuri – Whale Bay

KEY

- Applies 24/7
- Applies 7pm-7am

Alcohol is banned during applicable times in public places within the shaded area. It is up to the discretion of constables to determine whether a place is a public place according to section 147 of the Local Government Act 2002.





Alcohol Control Bylaw 2018

Pātaua North and South

KEY

- Applies 24/7
- Applies 7pm-7am

Alcohol is banned during applicable times in public places within the shaded area. It is up to the discretion of constables to determine whether a place is a public place according to section 147 of the Local Government Act 2002.





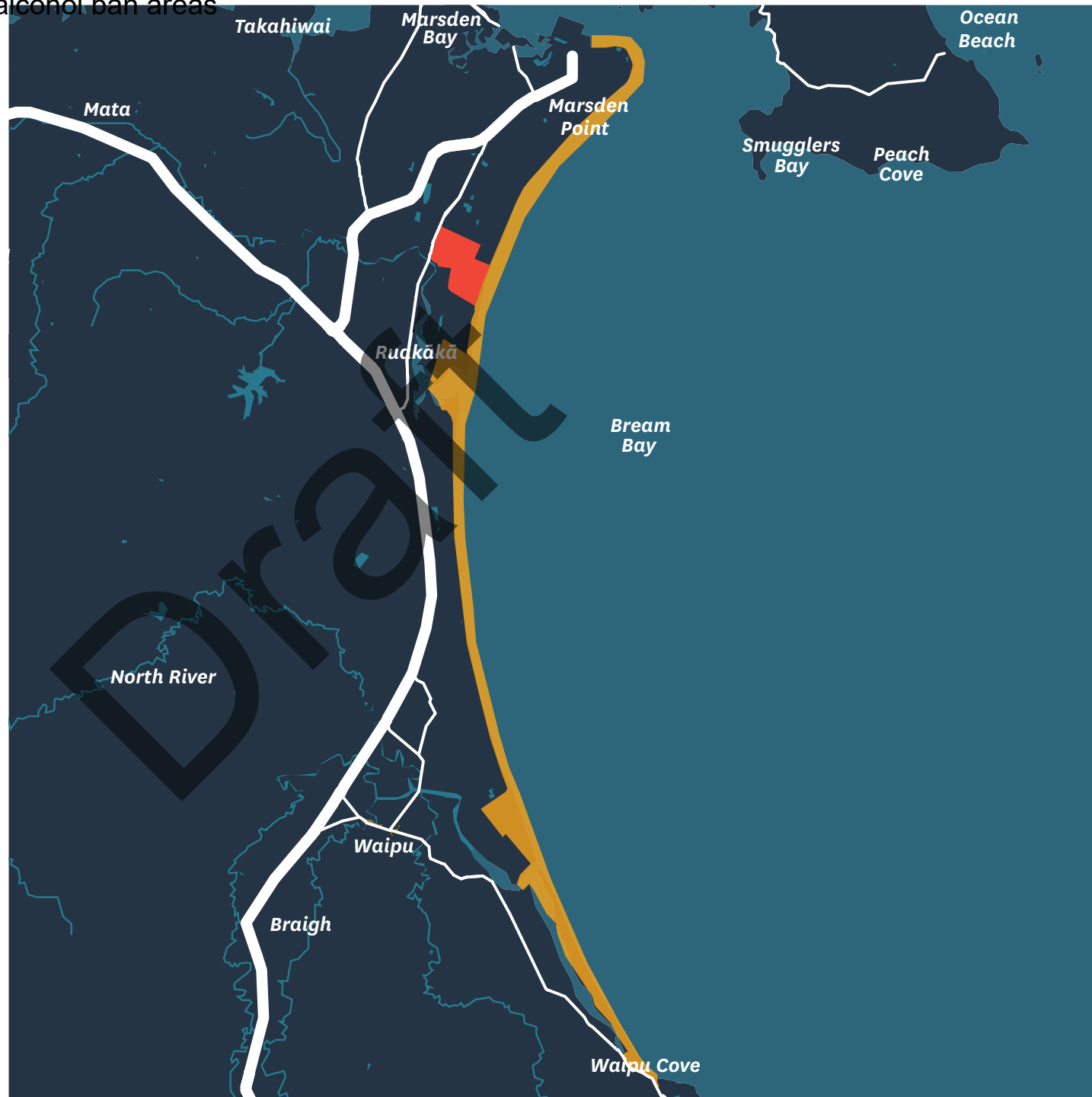
Alcohol Control Bylaw 2018

Bream Bay (from Marsden Point to Waipū Cove)

KEY

- Applies 24/7
- Applies 7pm-7am

Alcohol is banned during applicable times in public places within the shaded area. It is up to the discretion of constables to determine whether a place is a public place according to section 147 of the Local Government Act 2002.





Alcohol Control Bylaw 2018

Langs Beach

KEY

- Applies 24/7
- Applies 7pm-7am

Alcohol is banned during applicable times in public places within the shaded area. It is up to the discretion of constables to determine whether a place is a public place according to section 147 of the Local Government Act 2002.





Alcohol Control Bylaw 2018

Beach Road, Onerahi

KEY

- Applies 24/7
- Applies 7pm-7am

Alcohol is banned during applicable times in public places within the shaded area. It is up to the discretion of constables to determine whether a place is a public place according to section 147 of the Local Government Act 2002.









## 6.5 Adoption of the 2023-24 Annual Report

|                           |   |
|---------------------------|---|
| <b>Meeting:</b>           | Whangarei District Council                      |
| <b>Date of meeting:</b>   | 28 November 2024                                |
| <b>Reporting officer:</b> | Alan Adcock (General Manager – Corporate / CFO) |

### 1 Purpose / Te Kaupapa

To adopt the Council's Annual Report for the year ended 30 June 2024.

### 2 Recommendations / Whakataunga

That the Council:

1. Receives the independent Auditor's Report for inclusion within the 2023-24 Annual Report.
2. Adopts the Annual Report for the year ended 30 June 2024.
3. Authorises the Chief Executive to make any minor editing amendments that are required.

### 3 Background / Horopaki

The Council is required to prepare and adopt an Annual Report each financial year under Section 98(1) of the Local Government Act 2002 (LGA).

The purpose of the Annual Report is to:

- to compare the actual activities and the actual performance of Council in the year with the intended activities and intended level of performance as set out for the respective year in the Long Term Plan and/or Annual Plan; and
- to promote Council's accountability to the community for the decisions made throughout the year by the Council.

Section 98(3) of the LGA requires the Annual Report to be completed and adopted, by resolution, within 4 months after the end of the financial year to which it relates. However, a transitional arrangement was provided as part of the Water Services Acts Repeal Bill to allow an extension to the statutory deadline to the end of December 2024.

### 4 Discussion / Whakawhiti kōrero

At the time of preparing this agenda, the audit was yet to be complete. The 2023-24 Annual Report for adoption will be circulated under separate cover once Council has received final audit clearance.

Deloitte's Audit Report to the Risk and Audit Committee will also be circulated under separate cover. This report will be included in the December Risk and Audit Committee meeting but as a result of the timing of adoption, it has been included within this agenda for completeness and transparency.

A briefing was held on 14 November 2024 to provide Elected Members with an overview of both financial and non-financial results.

### Financial Performance

Council's financial statements show a surplus before tax of \$18.2m, compared to a budgeted surplus of \$25.8m.

Council's operating surplus excluding non-cash adjustments totals \$12.1m, which is \$5.3m unfavourable against budget. This unfavourable variance is mainly due to receiving lower capital subsidy revenue than was budgeted, as well as unbudgeted operating expenses as a result of weather events. This result is explained further in the *Our Performance at a glance* section of the Annual Report.

Council operated within the parameters set within the Financial Strategy:

- To achieve a balanced budget
- To limit rates revenue (excluding water) to a maximum of 70% of total revenue; and
- External net debt be no higher than 175% of total revenue.

Council did not meet two of the financial prudence benchmarks:

- **Rates (increase) affordability benchmark:** this benchmark compares Council actual rates revenue increase, compared to the quantified limit as set in the Financial Strategy. The increase applied to our rates was in accordance with the Financial Strategy; however, the total increase in rates revenue compared to the previous year was higher. This was partly due to the district experiencing higher growth than budgeted. Additionally, the 2022-23 financial year saw a reduction in rates revenue due to a private plan change and its impact on the application of the rating policy.
- **Operations control benchmark:** this benchmark compares actual net cash flow from operations as a proportion of its planned net cash flow from operations. This measure was not achieved due to reduced operating cashflow and is a consequence of the lower than budgeted capital subsidy income.

### Statement of Service Performance

The Annual Report includes key achievements for each activity function along with the results of non-financial performance measures. 45 of 71 or 64% (2023: 66%) of non-financial targets were met and 99% of the targets were measured. One performance measure was not owing to reliance on a third party (Sport New Zealand) survey which was not conducted. This measure has been discontinued in the 2024-34 LTP.

Performance improved or stayed the same of 15 of Council's 18 activity groups with performance measures. Four activity groups including Flood Protection, Community Property, District Planning, Health and Bylaws all achieved 100% of their targets.

As discussed in the 14 November 2024 briefing, where performance measures did not receive an achieved result, commentary is provided to provide context. For several activities, the impacts of higher-than-expected cost escalations, adverse weather events and staffing capacity within a time constrained resources were key issues influencing the ability to achieve expected performance measures.

Several of the performance measures addressed in this Annual Report were improved and updated to be more relevant to the activity function through the development and subsequent adoption of the 2024-2034 Long Term Plan.

A short-form Summary Annual Report will be finalised following adoption of the Annual Report.

#### **4.1 Financial/budget considerations**

The 2023-24 Annual Report reports Council's financial and non-financial performance against budget and service performance targets for the year ending 30 June 2024.

While in isolation the adoption of this report has no budget implications, some of the information contained within it will contribute to the development of the 2025-26 Annual Plan budget.

Management will review the points raised by Deloitte and take appropriate actions to address them.

### **5 Significance and engagement / Te Hira me te Arawhiti**

The adoption of the Annual Report and Summary Annual Report is a specific requirement of the Local Government Act 2002. The process to be followed and items to be reported are covered by Part 6 of the Act. Eh agenda will be available on Council's website. Once adopted, the Annual Report and Summary Annual Report will also be available on Council's website.

### **6 Attachments / Ngā Tāpiritanga**

Attachments under separate cover:

1. Annual Report for the year ended 30 June 2024
2. Draft Deloitte Audit Report to the Risk and Audit Committee (pending final review, prior to distribution)



## 6.6 Temporary Road Closure – LAB Concert 2025

**Meeting:** Whangarei District Council

**Date of meeting:** 28<sup>th</sup> November 2024

**Reporting officer:** Lana van Bergenhenegouwen (Community Events Co-ordinator)  
 Gordon Whyte (CAR Specialist).

### 1 Purpose / Te Kaupapa

To seek approval of the proposal to temporarily close roads, to allow Northland Event Centre 2021 Trust to hold the L.A.B concert on Saturday 25th January 2025.

### 2 Recommendations / Whakataunga

That the Council:

1. Approves the proposal to temporarily close the following roads to ordinary traffic for the L.A.B concert on the following date in accordance with the Transport (Vehicular Traffic Road Closure) Regulations 1965.

**Saturday 25th January 2025**

**Okara Drive**, from the roundabout at Okara Drive & Porowini Ave to the roundabout at Okara Drive & Port Road.

**Period of Closure:** 1pm to 10:30pm

2. Approves the proposal to temporarily close 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 notice of these proposed temporary closures, to consider any objections and to either approve, cancel, or amend any or all of the temporary road closures if applicable.

### 3 Background / Horopaki

L.A.B are set to take their new album and an epic group of friends on the road with them this NZ summer for three special shows in New Plymouth, Taupō & Whangārei, featuring - L.A.B, Stan Walker, Corrella, Aaradhna & AJA.

These outdoor experiences will see L.A.B again bringing the full lighting & visual experience L.A.B have become known for, alongside their unmatched live show. With an ever-expanding

catalogue, these shows will see the band performing tracks that have made them a household name.

## **4 Discussion / Whakawhiti kōrero**

Northland Event Centre 2021 Trust staff are working closely with contractors to ensure they present a safe and well managed event. A temporary road closure will ensure staff and contractors can safely manage patrons as they arrive at the stadium and depart after the event.

A traffic management provider will be engaged to submit a traffic management plan to council for approval and to implement the traffic management plan on the day.

There will be public communications prior to the event providing information around walking routes to the stadium, drop off and pick up zones and suggested parking sites for those attending the event.

### **4.1 Financial/budget considerations**

No additional financial obligations/considerations to council.

### **4.2 Risks**

Patrons attending the event need to know they can arrive and depart the stadium safely and the traffic in the area is well managed. A temporary road closure allows this and dramatically reduces the likelihood of a vehicular related incident occurring.

A full event health and safety plan as well as proof of public consultation with affected owners/occupiers is required no later than 30 days before the event, if not provided the road closure will not go ahead.

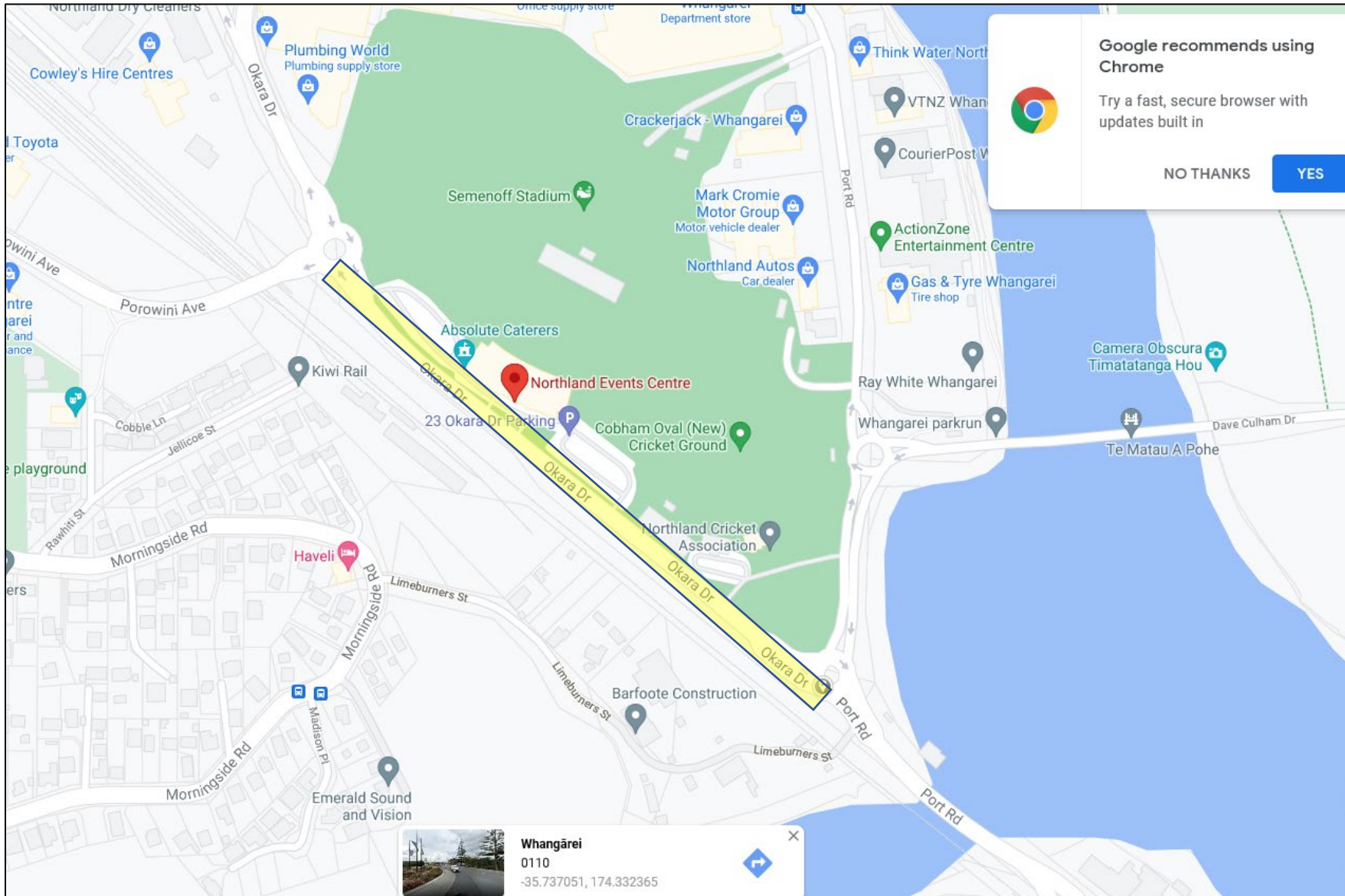
## **5 Significance and engagement / Te Hira me te Arawhiti**

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, marketing by the event organisers.

## **6 Attachments / Ngā Tāpiritanga**

1. Proposed Route Map
2. Application Letter
3. Certificate of Insurance

L.A.B Concert – Semenoff Stadium, Whangārei – Saturday 25 January 2025



Requested Road Closure highlighted yellow







51 Okara Drive, Whangārei, 0110, New Zealand | Phone: 09 430 4833

15 October 2024

Attention: Lana Bergenhenegouwen  
Whangarei District Council  
Community Event Co-ordinator  
Private Bag 9023

Dear Lana

**L.A.B Concert – Saturday 25 January 2025**

A concert featuring L.A.B, Stan Walker, Corrella, Aaradhna and AJA is being held on Saturday 25 January 2025 at Semenoff Stadium, Okara Drive, Whangārei. Gates open at 3pm and the concert finishes at 9.30pm. The Promoter (LOOP) are currently expecting between 7,500 and 10,000 people.

In order to assist us with the delivery of the event, we would like to request a temporary road closure of the following street from 1.00pm – 10.30pm on Saturday 25 January 2025:

Okara Drive – From the Okara Drive/ Porowini Avenue Roundabout to the Okara Drive/ Port Road Roundabout. Refer to attached map.

Yours faithfully

A handwritten signature in black ink, appearing to read 'R. O'Gorman'.

Rachel O'Gorman

**Events & Marketing Manager Northland Events Centre (2021) Trust**





State, a business division of IAG New Zealand Limited  
PO Box 3233 Wellington, 6140  
Phone 0800 80 24 24

17 October 2024

## STATE BUSINESS INSURANCE – LETTER OF CURRENCY

State hereby certifies that the following policy has been issued/renewed:

|                             |   |
|-----------------------------|---|
| <b>Customer Number:</b>     | 20255222  |
| <b>Insured Name:</b>        | LOOP LIVE LTD   |
| <b>Cover:</b>               | Broadform Liability<br>Statutory Liability                          |
| <b>Situation of Risk:</b>   | Anywhere in New Zealand   |
| <b>Limit of Indemnity:</b>  | Broadform Liability: \$10,000,000<br>Statutory Liability: \$500,000 |
| <b>Period of Insurance:</b> | 30 April 2024 to 30 April 2025                                      |

I confirm that the insurance is valid provided the premium has been paid. The continuation of the policy will be subject to an annual review and payment.

Yours faithfully,

SHASAN GALA

State Business Insurance Consultant

*This certificate is issued in Lieu of the Policy and it hereby grants insurance as detailed above. This insurance is subject to the terms, exceptions, conditions and warranties of the company's standard form of policy specified as modified by the endorsements and clauses attached. If not attached, a copy of such policy is available by contacting the company on the above number.*



## 6.7 Temporary Road Closure Application – Northland Car Club Motor Sport Event Series (January – March 2025)

**Meeting:** Whangarei District Council  
**Date of meeting:** 28 November 2024  
**Reporting officer:** Lana Van Bergenhenegouwen (Community Events Coordinator)  
 Gordon Whyte (CAR Specialist, Roading).

### 1 Purpose / Te Kaupapa

To seek approval of the proposal to temporarily close roads, to allow the Northland Car Club Motor Sport Event Series (Jan – Mar 2025).

### 2 Recommendations / Whakataunga

That the Council:

1. Approves the temporary closure of the proposed roads to ordinary traffic for the Northland Car Club Motor Sport Event Series (Jan – Mar 2025) on the proposed dates in accordance with section 342 (1)(b) and Schedule 10 Clause 11 of the Local Government Act 1974, subject to event organisers providing proof of public liability insurance to the Chair of the Infrastructure Committee and GM Infrastructure by no later than 18th December 2024.

#### **Sunday 26<sup>th</sup> January 2025**

**Kaiikanui Road**, from 3km's towards Webb Road to 8kms from Pigs Head Road intersection/roundabout.

**Period of Closure:** 8am to 5:30pm

#### **Sunday 16<sup>th</sup> February 2025**

**Crows Nest Road**, from intersection of Paiaka Road to 2kms from SH1.

**Period of Closure:** 8am to 5:30pm

#### **Sunday 16<sup>th</sup> March 2025**

**Mangapai Caves Road Hillclimb**, from Roundtree Road to McDonnell Road.

**Period of Closure:** 8am to 5:30pm

2. Approves the temporary closure of the side roads off the roads to be closed for up to 100 metres from the intersection for safety purposes.
3. Delegates to the Chair of the Infrastructure Committee and General Manager Infrastructure the power to give public notice of these proposed temporary closures, to consider any objections and to either approve, cancel or amend any or all of the temporary road closures if applicable.

### **3 Background / Horopaki**

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 and community with a number of families spectating and participating in the sport.

### **4 Discussion / Whakawhiti kōrero**

All events are run to Motorsport New Zealand rules and regulations. There will be marshals at the venue to keep everyone safe. The club has either a Motorsport New Zealand Steward or an appointed Safety Officer to oversee the smooth running and compliance of each event.

Traffic management plans for each event are submitted to Whangarei District Council (WDC) 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.

Northland Car Club has a current proof of public liability policy however this expires on 28<sup>th</sup> November 2024 and therefore does not cover the above event dates. Northland Car Club will provide an updated copy that covers their event dates once it has been renewed by their insurance company. A full health and safety plan as well as proof of public consultation with affected owners/occupiers will also be required no later than 30 days before each event, if not provided the road closure will not go ahead.

#### **4.1 Financial/budget considerations**

No additional financial obligations/considerations to council.

#### **4.2 Risks**

Motorsport events carry a number of associated risks, however the Northland Car Club have a history of running well organised events ensuring everything within their control is done to eliminate risks as well as 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 / Te Hira me te Arawhiti**

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, Council News and marketing by the event organisers.

### **6 Attachments / Ngā Tāpiritanga**

1. Application Letter
2. Proposed route maps
  - a. Kaiikanui Road
  - b. Crows Nest Road
  - c. Mangapai Caves Road Hillclimb



Northland Car Club Inc  
PO Box 596  
Whangarei  
info@ncc@org.nz

3rd October 2024

Hi all

Thanks very much for your help with our proposed road closures.

As per our on-line applications we would like to ask the Whangarei District Council to consider our requests for the following closures under the tenth schedule:

26th January 2025 - Kaiikanui Road, Opawhanga

16th of February 2025 - Crows Nest Road, Hukerenui

16th of March 2025 - Mangapai Caves Road, Mangapai

We request the roads to be closed from 8am until 5.30pm but during these times we can allow access through the road if need be as required. We would stop the racing to allow for this to happen safely.

Thanks again for your time and consideration of these events for our club.

Regards

Paul Rodgers  
Speed Committee  
Northland Car Club





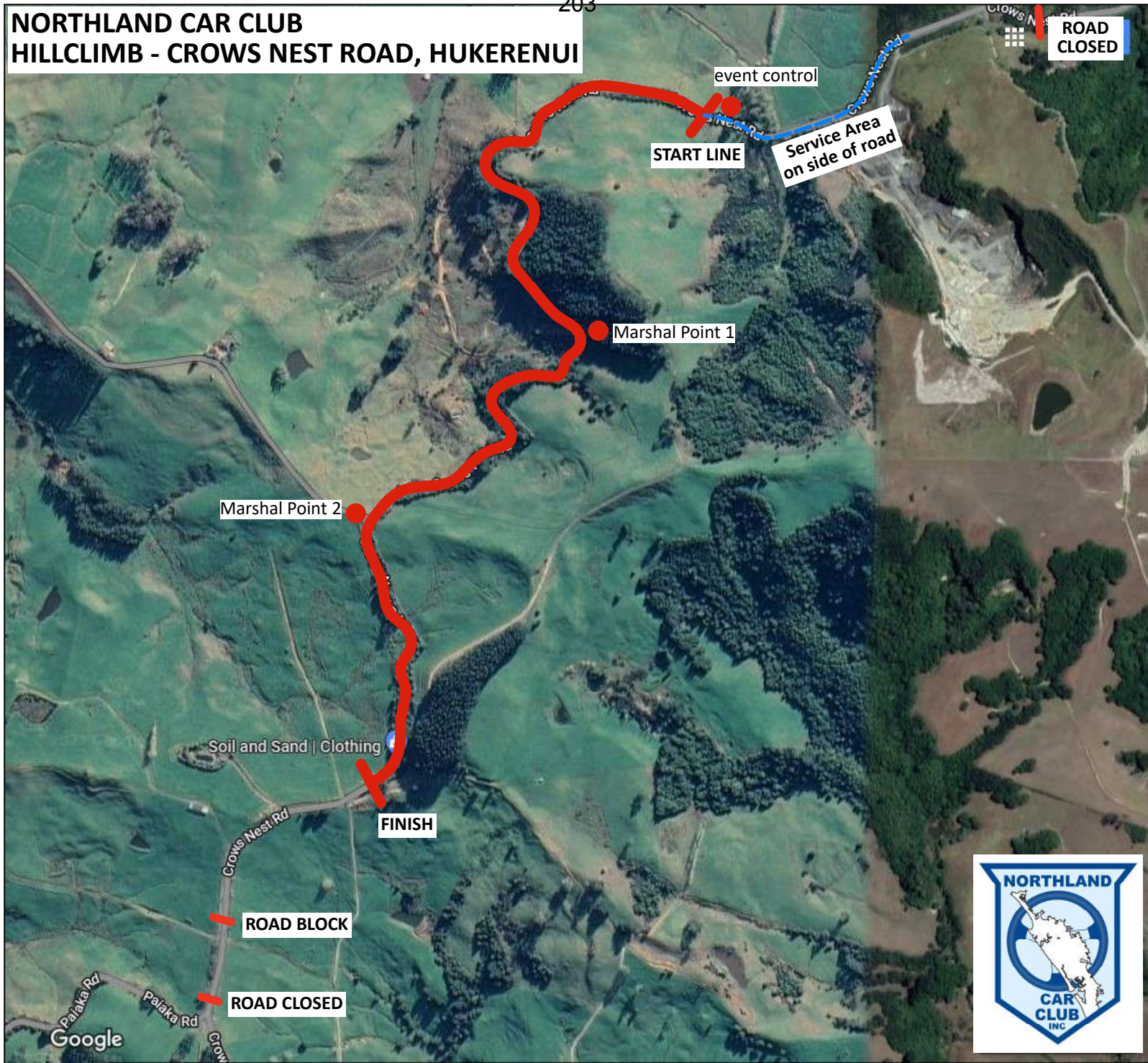
**Course layout: - 2km, 2 intermediate marshal points**



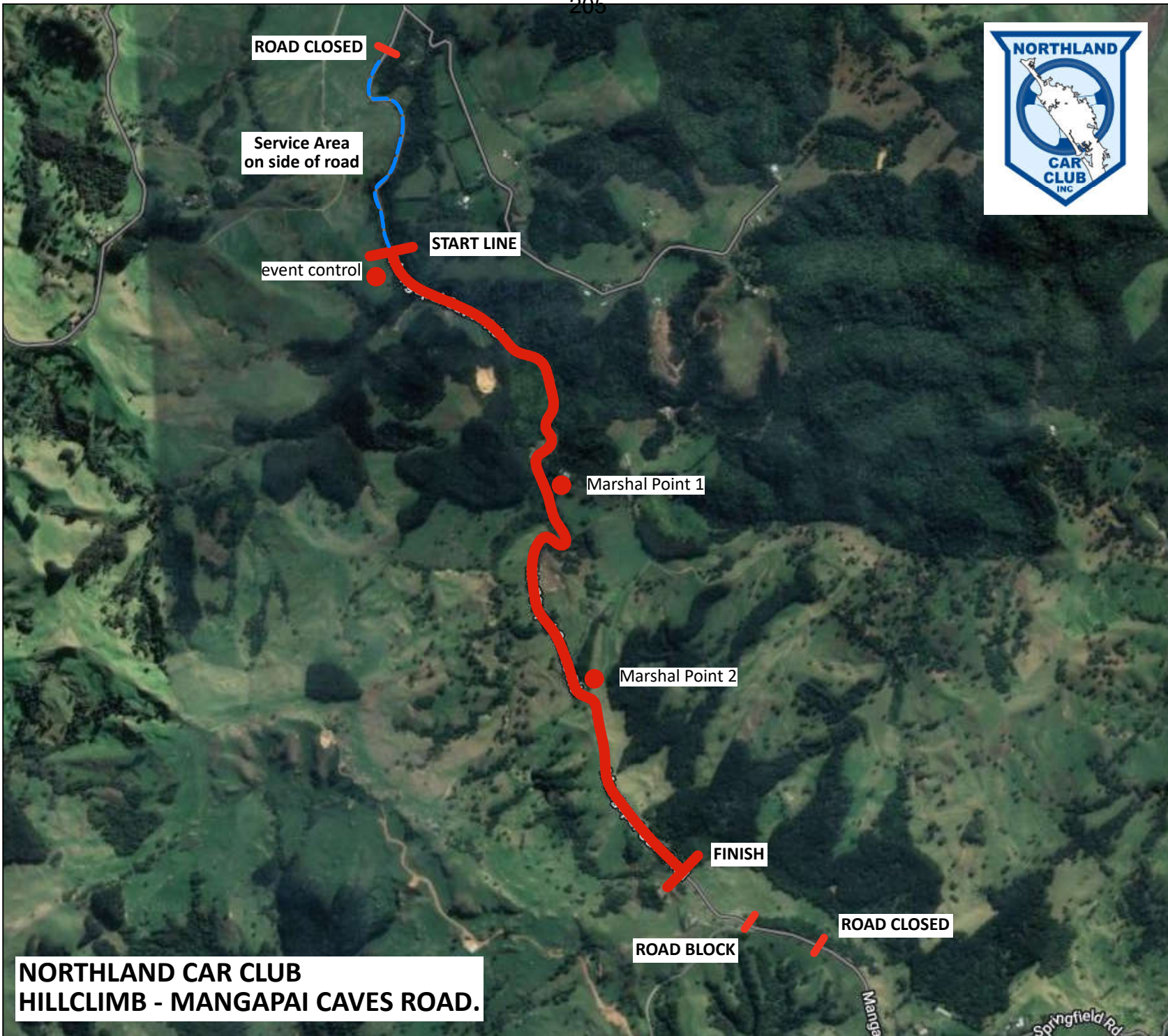


# NORTHLAND CAR CLUB HILLCLIMB - CROWS NEST ROAD, HUKERENUI

203







**NORTHLAND CAR CLUB  
HILLCLIMB - MANGAPAI CAVES ROAD.**



## 6.8 Temporary Road Closure – Vibes on Vine 2025

|                           |  |
|---------------------------|--|
| <b>Meeting:</b>           | Whangārei District Council   |
| <b>Date of meeting:</b>   | 28 <sup>th</sup> November 2024   |
| <b>Reporting officer:</b> | Lana van Bergenhengouwen (Community Events Co-ordinator)<br>Bea Mossop (Venue and Events Manager)<br>Gordon Whyte (Network Coordination Lead Transportation)<br>Ashlee Partridge (Team Leader - Environmental Health, Health and Bylaws) |

### 1 Purpose / Te Kaupapa

To seek approval of the proposal to temporarily close roads, to allow the Vibes on Vine 2025 event to be held on 8<sup>th</sup> February 2025.

### 2 Recommendation/s / Whakataunga

That the Council:

1. Approves the temporary closure of the following roads to ordinary traffic for the Vibes on Vine event on the following dates in accordance with section 342 (1)(b) and Schedule 10 Clause 11 of the Local Government Act 1974.

**Friday 7<sup>th</sup> February 2025**

Vine Street, from Vine/Bank Street intersection to 41 Vine Street.

**Period of Closure:** 7pm to 11:59pm.

**Saturday 8<sup>th</sup> February 2025**

Vine Street, from Vine/Bank Street intersection to 41 Vine Street.

**Period of Closure:** 12am to 11:59pm.

**Sunday 9<sup>th</sup> February 2025**

Vine Street, from Vine/Bank Street intersection to 41 Vine Street.

**Period of Closure:** 12am to 2pm.

2. Approves the temporary closure of the side roads off the roads to be closed for up to 100 metres 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 / Horopaki

Vibes on Vine aims to be an annual celebration of Te Tai Tokerau's music community and our wider Whangārei community. Scheduled to take place in the heart of Whangārei's CBD, this event will feature bands and artists from across our region, creating a dynamic and entertaining experience.

In addition to providing entertainment, the festival will support local businesses by attracting attendees to the area. Although the event is R18, it is designed to foster a vibrant, inclusive, and safe environment for all participants.

### 4 Discussion / Whakawhiti kōrero

#### **Event Team Composition:**

The Vibes on Vine event team consists of highly experienced professionals from Local businesses: Belltech, Soundcave, Cheers Party Hire, and Astro Boy/Beer and Loathing. This team has extensive experience in the Northland event space, providing equipment and services for renowned bands such as The Black Seeds, Troy Kingi, No Cigar, and Jordan Luck. The teams have also supported major events including Maritime Festival; Fritter Festival; The Beach Ball; BOI Festival; and Waitangi Day Celebrations to name a few.

#### **Safety and Compliance:**

The Vibes on Vine production team is deeply embedded in the event industry, with a primary focus on creating a safe environment for all event participants. They are working closely with the Whangārei District Council (events and venues, transportation, and bylaws teams) and NZ Police to ensure the event meets all regulatory compliance standards, including road closure and alcohol policies.

#### **Public Consultation**

Event organisers have initiated a public consultation process. Affected businesses have received an information pack with event details and contact information for any questions or concerns. This includes the venue and events email for direct communication with WDC regarding road closure concerns. Many affected businesses, particularly restaurants and food vendors, have been invited to participate in the event by staying open and selling food. For non-restaurant/food businesses, the event team plans to keep the footpaths on Vine Street open and accessible during parts of the road closure to minimize disruption, with footpaths/access to Vine Street closing from 12pm on the event day (Saturday).

#### **Supporting Documents:**

Event organisers have provided a Vibes on Vine event information pack for the council, which includes more details and an overview of the event management plan. The attached proof of consultation table shows the businesses consulted so far and includes a copy of the letter distributed to affected businesses. Please note that the letter initially referenced a 'family-friendly event'; however, following consultation with police and WDC, the event has been designated as R18, and the letter will be updated accordingly.

Action Required: Approval of road closure for the Vibes on Vine event, ensuring all safety and compliance measures are in place.

#### 4.1 Financial/budget considerations

There are no additional financial obligations/considerations to council.

Additional resourcing for this event are to be funded within existing budget envelopes, event organisers have been encouraged to apply for funding via the Event Development Fund with



a focus on buses and waste minimisation to support the environmental impact of the event while also providing an enhanced event experience that supports safe practices and risk reduction of driving related incidents.

#### **4.2 Risks**

Before the road closure is given final approval the Vibes on Vine team must provide a full event health and safety, proof of public consultation with ALL affected owners/occupiers as well as an approved Traffic Management Plan (TMP)/Corridor Access Request (CAR). To allow alcohol at their event the team must also go through the WDC special alcohol licence process via Bylaws, part of this process includes providing an Alcohol Management Plan.

### **5 Significance and engagement / Te Hira me te Arawhiti**

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, Council News and marketing by the event organisers.

### **6 Attachments / Ngā Tāpiritanga**

1. Proposed Closure Map
2. Application Letter
3. Certificate of Insurance
4. Event Information Pack
  - a) Proof of Consultation
  - b) Waste Minimization Plan





### MAP KEY

-  = PATH
-  = OUTLINE
-  = TOILETS
-  = TICKETING RELATED
-  = ZONES
-  = STALLS
-  = FOOD/BARS





COOP BANK

BNL

BERNINA

STRAND  
ENTRANCE

VIP  
LOUNGE

MENS TOILETS AND URINALS

HANDSOME  
FROG

4J'S  
KEBABS

KIVI  
CARESPINE  
STYING

WOMANS TOILETS

GOODS2U

C3 CHURCH

VIP TICKETING LINES 1  
VIP TICKETING LINES 2

BAR 3

STAGE

MOSH ZONE

FOOD STALL 3 & FOOD  
STALL 4

PRE PURCHASED LINE 1  
PRE PURCHASED LINE 2

CHELL OUT  
ZONE

STAFF ACCESS LINE 1  
STAFF ACCESS LINE 2

BAR 1 & BAR 2

FOOD STALL 1 & FOOD STALL 2

PURCHASING LINE 1  
PURCHASING LINE 2

NO VINE ST  
FACING  
PROPERTYS

LITTLE  
BAMBOO

PAMA  
KRISHNA

UNKNOWN

BRAAIHUT

WHANGAREI  
TRADERS AND  
AUCTIONS

MRS  
KWACKAS

F45 GYM

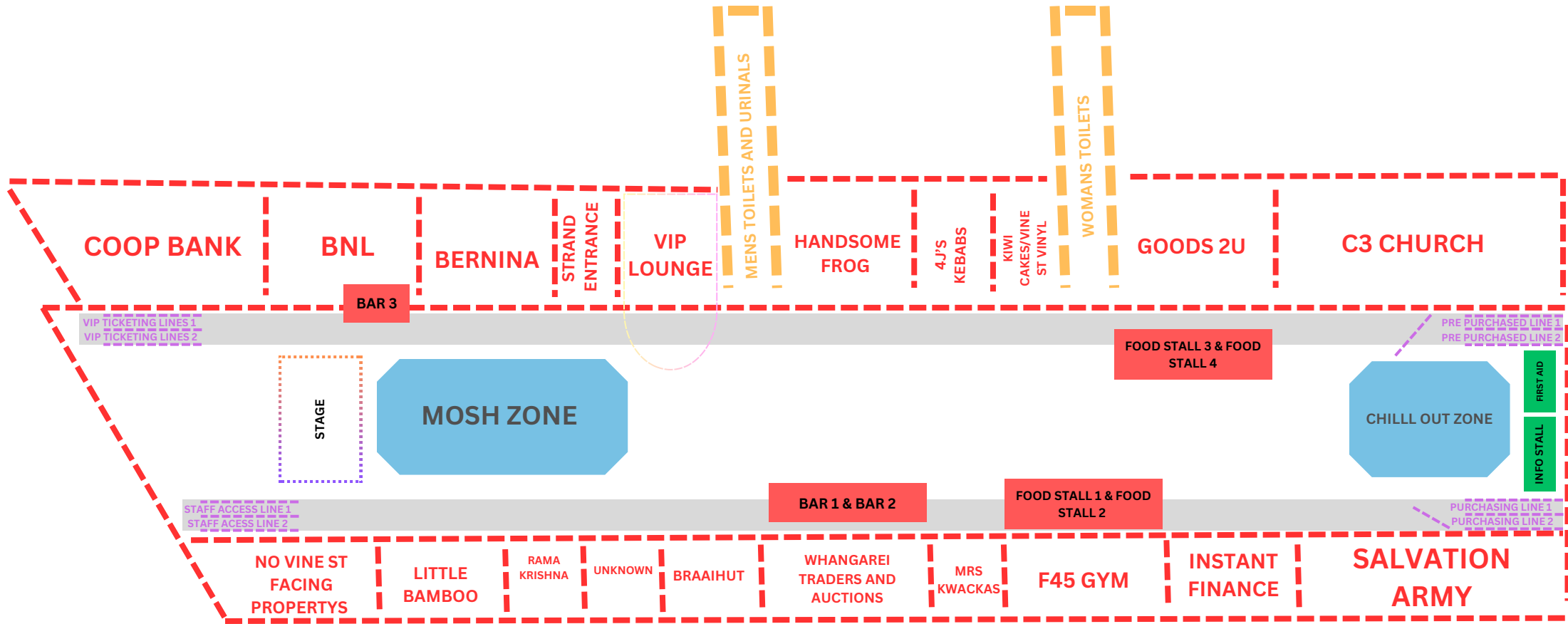
INSTANT  
FINANCE

SALVATION  
ARMY

MUSIC

DANCE

CELEST




**MAP KEY**

- = PATH
- = OUTLINE
- = TOILETS
- = TICKETING RELATED
- = ZONES
- = STALLS
- = FOOD/BARS



# MAP KEY

 = PATH

 = OUTLINE

 = TOILETS

 = TICKETING

RELATED

 = ZONES

 = STALLS

 = FOOD/BARS

Belltech Limited  
16/50 Kioreroa Road  
Whangārei  
Northland



**To: Whangarei District Council**  
Te Iwitahi civic centre 9 Rust Avenue, Whangārei 0110

**Re: Request for Road Closure for Whangārei Vibes on Vine Music Festival**



Tēnā koutou,

I am requesting Whangārei District Council's Councillors & staff to consider our proposed road closure of Vine St, so our team can host a music festival designed to be a cornerstone event in Northland, drawing visitors from near and far to experience the unique identity of our region.

Vibes on Vine is a celebration of Te Tai Tokerau's music whanau and our community. This event, to be held annually in the heart of Whangārei's CBD, brings together bands and artists from across our region for a dynamic event which doesn't just entertain but also supports local businesses.

The festival aims to create a vibrant, inclusive, and safe environment for attendees, which requires a temporary closure of Vine St from Friday Night to Sunday Morning of the 7th to 9th of February. Below is our core "pou" or supporting values.

We are committed to responsible event management, adhering to all applicable laws and regulations, and implementing environmentally sustainable practices to minimize our impact. Our production team works in the core of the event industry. Our main goals lie in creating a safe environment for all people involved. This means implementing the correct health and safety plans, selecting a security and traffic management team that want to create a safe environment while keeping our values at heart.

A key focus of Vibes on Vine is to create a friendly environment where attendees can safely enjoy live music, food, and activities. The event will feature areas such as Chill out zones, and safe spaces for attendees.

We have carefully considered the potential impacts of the road closure and are committed to working closely with the council to implement appropriate traffic management plans, signage, and communication strategies to minimize inconvenience to the public.

We are confident that Vibes on Vine will be a significant event that will enrich our community, celebrate local talent, and provide economic benefits to our region. We hope the Whangārei District Council will support this initiative by granting approval for the requested road closure.

Please let us know if further information is required or if there are any specific considerations we need to address in our planning. We would be happy to meet with the council to speak on behalf of the project.

Thank you for your time and consideration. We look forward to your response.

**Ngā mihi nui,**

**Frankie Johns - Production Manager**



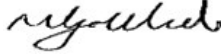


# Certificate of Currency

## Public Liability

**This Certificate:**

- is issued as a matter of information only and confers no rights upon the holder;
- does not amend, extend or alter the coverage afforded by the policy listed;
- is only a summary of the cover provided. For full particulars, reference must be made to the current policy wording;
- is current only at the date of issue.

|                   |  |
|-------------------|--|
| Name of Insured   | Bell Tech 2013 Limited   |
| Policy Number     | BIZ 120240   |
| Policy Period     | 4.00pm Local Standard Time on 21 September 2024 to 4.00pm Local Standard Time on 21 September 2025 |
| Interest Insured  | Business Insurance   |
| Situation         | 16 50 Kioreri Road, PORT WHANGAREI, New Zealand, 0110  |
| Sum Insured       | <b>Public Liability:</b> \$2,000,000   |
| Interested Party  | None Noted   |
| Underwriter       | AIG Insurance New Zealand Limited  |
| Signature         |                 |
| Name of Signatory | Michael Gottlieb   |
| Capacity/Title    | Director   |
| Date              | 18 Sep 2024  |

**Please note**

This Certificate is issued subject to the policy's terms and conditions and by reference to the insured's declaration. The information set out in this Certificate is accurate as at the date of signature and there is no obligation imposed on the signatory to advise of any alterations.



# “Vibes On Vine”

*Information Pack*

*Presented By*



## Table of contents:

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| <b>A breakdown of the roles:</b>  | 2 |
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## What is our event:

Vibes on Vine is a celebration of Te Tai Tokerau's music whanau and our community. This event, to be held annually in the heart of Whangārei's CBD, brings together bands and artists from across our region for a dynamic event which doesn't just entertain but also supports local businesses. The festival is an R18 event but aims to create a vibrant, inclusive, and safe environment for attendees.

## Who's on our team:

The event team is a pretty special one; Belltech & Soundcave, Cheers, and Astro Boy/Beer and Loathing, a very experienced event team. We work in the Northland event space, supplying gear and services for bands such as The Black Seeds, Troy Kingi, No cigar, Jordan Luck etc. Plus events like Fritter Festival, The Beach Ball, BOI Festival, Waitangi Day Celebrations and many more. Our production team works in the core of the event industry and our main goals lie in creating a safe environment for all people involved.

## A breakdown of the roles:

Frankie Johns - Production Manager  
 Tim Bell - Technical Manager  
 Kylie Springford - Site Manager  
 James Sinclair - Bar & Alcohol Manager  
 Sam Tarrant - Bar & Alcohol Manager  
 JP Dignon - Event Security Manager

## Accessibility Information:

Our Accessibility Plan for the event is designed to ensure a welcoming and inclusive experience for all attendees, especially those with disabilities. We will provide information in multiple formats, including printed materials with large fonts and universal accessibility signs on promotional materials. An information stall will be conveniently located near the front entrance, staffed by trained personnel ready to assist.

Public transport options are available, with the Rose Street bus terminal nearby, and accessible drop-off points and parking spaces will be provided. The venue will be free of trip hazards, and accessible toilets will be clearly marked. Throughout the event, we will have sign language interpreters and staff available to help. Signage will be clear and legible, with braille options, and quiet areas will be designated for those needing a break. In case of emergencies, all exits will be

accessible, and trained staff will assist attendees as needed. Our goal is to create a safe and enjoyable environment for everyone.

## Waste Management Plan:

To minimise the ecological impact of the Vibes on Vine, we're implementing a comprehensive Environmental Waste Management Plan centred on sustainability. We're encouraging public transport and carpooling to reduce greenhouse gas emissions, and our fully digital ticketing system will eliminate paper waste. Single-use plastics, including polystyrene and plastic straws, are banned, with free water stations provided to reduce bottled water use. Eco-friendly merchandise and reusable, non-dated signage will further minimise waste. Clear recycling and composting bins will be available, and our trained team will assist attendees in disposing of waste responsibly. These initiatives reflect our commitment to a greener, more sustainable event experience.

***Further waste management plan with more details to come***

## Toilet Management Plan:

For "Vibes on Vine," we're setting up 40 portaloos to ensure attendee comfort and convenience. The units will be divided into separate men's and women's restroom areas. Approximately 30 % of these units will be dedicated urinals, providing quick access for guests and helping to streamline the flow in the main restroom areas. Security staff will be stationed to patrol the entrance and exit of each restroom area, enhancing safety and maintaining an orderly flow.

This setup is designed to minimise wait times and keep the facilities as accessible as possible. Each portaloos will be maintained throughout the event, allowing attendees to focus on enjoying themselves without worry about restroom availability. With regular maintenance and clear signage, we're committed to providing a clean, comfortable, portaloos experience.

## Ticketing and Entry/Exit Management:

The entry and ticketing plan for *Vibes on Vine* is designed to streamline access while ensuring safety and efficient crowd management. There will be four main lines for pre-purchased tickets, each staffed with two ticket scanners. Two will be located at the Salvation Army end of Vine St, with the other two being on the Beer and Loathing end of Vine St. Additionally, we plan to set up two box offices for on-site ticket sales, these will be cashless to ensure the safety of our staff.

Our ticketing team will include staff familiar with Eventfinda's app, ensuring quick processing for attendees. Additionally, we plan to set up three box offices for on-site ticket sales, with the option to operate with two based on final pricing. We will also have QR codes linking to the ticketing website so people can skip the on site ticket sale box office and go straight to the pre-purchased lines.

The main entry points will be clearly marked, with signage and staff directing guests to either pre-purchased or on-site ticket lines. For emergency preparedness, breakable access points will be established and monitored by security to allow emergency services immediate access to the event if needed.

## Alcohol Management Plan:

To ensure responsible alcohol management at “Vibes on Vine”, we’ve established a comprehensive approach to create a safe and enjoyable environment for all attendees. The event will be managed by an experienced bar manager with over 20 years of industry expertise and a manager’s certificate, currently owning and operating popular local venues, Astroboy and Beer and Loathing. Wristbands will be provided at the entry points when security checks IDs to simplify identification, and additional ID checks will be conducted if there’s any uncertainty. Alcohol service will be supported by clear signage promoting responsible consumption and transport options, and water stations will be strategically placed throughout the event. Because this event will be R18, it will help simplify ID checks, bar managers will still check ID’s if unsure. A drinking water truck and free water will be accessible to keep guests hydrated, and a wide range of food options will be offered from local eateries and food trucks, promoting moderation and a friendly environment. The event MC will remind attendees to drink responsibly.

Staff will undergo pre-event training, with a focus on recognizing signs of intoxication using the S.C.A.B. method (Speech, Coordination, Appearance, Behavior). Managers at each point of sale will stay in communication with each other and security to report any incidents. A designated “chill-out” area will provide a space for guests who may need time to recover, with security monitoring and offering water if needed. St John’s event team will also be on-site to assist with any health needs. This plan ensures a controlled, responsible alcohol service, supporting a safe, enjoyable event for all.

## Brief Health & Safety Plan:

For *Vibes on Vine*, we’ve crafted a comprehensive Health and Safety Plan to ensure a safe, enjoyable event for all attendees, vendors, and staff. Security will be a top priority, with over 25 guards deployed at peak times and additional team members positioned at key points to manage crowd flow, entry checks, and emergency access. Trained staff will oversee two main entry points with six ticketing lines, conducting ID checks and bag inspections to maintain a controlled, friendly atmosphere. Designated breakable access points, monitored by security, will allow for rapid entry for emergency services, ensuring swift response capabilities. Clear signage will direct attendees to exits, helping facilitate efficient crowd movement, especially in case of an evacuation.

St John Ambulance will be stationed on-site to manage any medical needs, and all event staff will undergo training in fire response and emergency evacuation procedures. An experienced bar manager will oversee alcohol service, with staff training in place to recognize signs of intoxication using the S.C.A.B. method (Speech, Coordination, Appearance, Behavior). In the event of intoxication, we will have a chill-out area monitored by security to provide a safe space for recovery, along with ample access to water and food options to encourage responsible consumption. Our team will also conduct toolbox talks and pre-event safety briefings to ensure all staff and contractors are aligned on protocols and prepared for potential incidents. With our emergency response and security plans in place, *Vibes on Vine* is dedicated to maintaining a safe, enjoyable environment for the community.

***Additional H&S Plan to be added closer to the event***

## Traffic Management Plan:

We are dedicated to having a safe, achievable traffic management plan in place for our event. We are working with; Gordon Whyte - Network Coordination Lead, and Lana Van Berghenegouwen - Community events Coordinator, JP Dignon - Northland Districts Security, and TMNZ to implement these goals for our event. The road closure will run from **Friday the 7th of January to Sunday the 9th of February**. We are mitigating interruptions to Public Transport who go via Vine St to access the Rose Street bus terminal by starting the road closure on Friday at 7pm after the Citylink buses finish their routes. Throughout Friday night and Saturday day we will be setting up decorations with Cheers Party Hire, Audio Visual needs through Belltech Events & Soundcave, plus setting up VIP areas, bars, chill out zones etc. The road closure ends at 2pm Sunday but we would like to be completely clear of the area by midday, this allows for leeway between 12pm and 2pm for extra road cleanup. This plan prioritises a safe experience for all involved while minimising our effects to neighbouring roads.

The Vibes on Vine event team plan to keep the footpaths on Vine Street open/accessible during parts of their road closure to aid in causing minimal disruption to other Vine Street business e.g. close footpaths/access to Vine Street from 12pm on the Saturday/event day

## Conditions of entry:

1. Ticket & ID Requirements: All attendees must have a valid ticket for entry and must present ID upon request. Attendees must be over 18, and carry valid identification around the event site to present at request.
2. Prohibited Items: The following items are not permitted: weapons, illegal substances, outside alcohol, large bags, glass containers, and any items that could cause harm or disruption. Bag checks will be conducted at entry points. Gang memorabilia, and insignia in accordance with new government regulations.
3. Intoxication Policy: Any attendee showing signs of excessive intoxication may be refused entry or removed from the event. A chill-out area will be available, and staff are trained to monitor and address intoxication levels.
4. Code of Conduct: We are committed to a safe and inclusive event. Aggressive behaviour, harassment, or discriminatory actions toward staff or other guests will not be tolerated and may result in removal.
5. Photography & Filming: By entering, you consent to event photography and filming. Vibes on Vine may use event footage for promotional purposes.
6. Smoking & Vaping: This will be a strictly smokefree event, vaping will be permitted in a designated area. We do not encourage smoking or vaping
7. Food & Beverage: Outside food and beverages are not allowed, except for dietary or medical needs. Food vendors and free water stations are available on-site.

8. Pass Out Policy: Re-entry is not permitted once you leave the event area. Exceptions may be made in certain circumstances at the discretion of security.

## Community Engagement:

For *Vibes on Vine*, we focused on community engagement to ensure the event meets local needs and benefits Whangārei's CBD. We met with Vine Street and CBD business owners to discuss how the event would support local trade and increase foot traffic. We collected feedback on timing, access, and potential impacts on parking, and shared our plans for traffic management, noise control, and safety to address concerns. This input helped us shape the event to be a positive experience for the community and local businesses.

## Frequently Asked Questions (FAQs) for *Vibes on Vine*

1. **What are the event dates and times?**
  - *Vibes on Vine* will take place on the First of February 2025
2. **How can I purchase tickets?**
  - Tickets can be purchased online via our ticketing agent Eventfinda. There will also be a few available at the gate, but we recommend buying early to avoid disappointment.
3. **Is the event family-friendly?**
  - *Vibes on Vine* is a strictly R18 event.
4. **Outside food and drink?**
  - Outside food and drinks are not permitted, except for medical or dietary reasons. There will be plenty of food vendors and water stations available throughout the event.
5. **How will alcohol be managed at the event?**
  - ID checks will be conducted at the bar if the bar manager believes that the ID check at the gate was not correct. There will also be plenty of food and water available.
6. **Are there any restrictions on what I can bring into the event?**
  - For safety, prohibited items include weapons, drugs, large bags, and glass containers. Bag checks will be in place at all entry points.
7. **What if there's an emergency during the event?**
  - In the event of an emergency, please follow staff instructions and head to the nearest emergency exit. Security and first aid teams will be on-site to assist as needed.

*Additional information attached*











| Business Name              | Signature | Contact       |
|----------------------------|-----------|---------------|
| Handsome Frog              |           | 021 053 0051  |
| Vine St Viny and Kimicakes |           | 021 0770600   |
| All you knead              |           | 021 027 95471 |
| Little heaven              |           | 021 023 79320 |
| Benina                     |           | 027 493 4127  |
| RAMA KRISHNA               |           | 210 8342888   |
| Rockshop NZ                |           | 021 1504730   |



# Vibes on Vine

1st of Feb 2025

## OVERVIEW OF THE EVENT;

“Vibes on Vine” is a celebration of Te Tai Tokerau’s music community and our local originality. This is planned to be an annual event, taking place in the heart of Whangārei’s CBD, uniting bands and artists from across the region for an exciting experience that not only entertains but also supports local businesses. The festival strives to foster a vibrant, inclusive, and safe atmosphere for all attendees. The festival runs from **2pm till 10pm Saturday First of February.**

## Our key goals & Pou we stand by;

1. Celebrate local musical artists who hail from Te Tai Tokerau.
2. Support local businesses specifically who reside on Vine St, but boosting the overall business in the CBD.
3. Create a family friendly, safe environment for all.
4. Designed to be a cornerstone event in Northland.
5. Have as minimal waste possible

## What we need to make this happen;

We’re excited to bring the Vibe on Vine event to life, and your support is crucial to its success. To make this event happen, we need to secure a road closure from **Friday at 7 PM to Sunday at 2pm.** Before we present this proposal to the council for a vote, we must conduct a public consultation to ensure community input.

Having the backing of Vine Street businesses will significantly strengthen our case for this road closure. Your support can make a real difference in helping us bring this event to our community. Thank you for considering this opportunity to collaborate!

**How does this affect your business;**

There are many ways our event can affect your business;

1. Increased foot traffic with intentions of purchasing food and beverages
2. More awareness of your business with unique potential customers
3. Sense of community
4. Showcasing Vine st as a future eatery and entertainment hub
5. Up to 2500k attendees near your business

**Who's on our team;**

The event team is a pretty special one; Belltech & Soundcave, Cheers, and Astro Boy/Beer and Loathing, a very experienced event team. We work in the Northland event space, supplying gear and services for bands such as The Black Seeds, Troy Kingi, No cigar, Jordan Luck etc. Plus events like Fritter Festival, The Beach Ball, BOI Festival, Waitangi Day Celebrations and many more. Our production team works in the core of the event industry and our main goals lie in creating a safe environment for all people involved.

**A breakdown of the roles;**

Frankie Johns - Production Manager

Tim Bell - Technical Manager

Kylie Springford - Site Manager

James Sinclair - Bar & Alcohol Manger

Sam Tarrant - Bar & Alcohol Manger

JP Dignon - Event Security Manager

**Some other important information;**

Below is a bit more information you may want:

- The event strives to be as close to zero-waste as possible by providing recycling, composting, and reusable options.
- *Vibes on Vine* is committed to establishing an annual tradition that strengthens the local economy and celebrates Whangārei's unique culture.
- Large security presence with our partner Northland District Security supplying guards and security plans
- Tickets available through Eventfinda (buy early as it may sell out).
- Wristbands will be issued for attendees over 18 (required for alcohol purchase).
- First aid stations and designated chill-out spaces for attendees in need.
- Local businesses featured in promotional materials; event aimed at benefiting the Whangārei CBD economy.

Please for any questions or concerns regarding the event please contact;

[frankie@belltech.co.nz](mailto:frankie@belltech.co.nz)

Please for any questions or concerns regarding the roading, traffic management or permits around the event please contact;

[events@wdc.govt.nz](mailto:events@wdc.govt.nz)



To minimise the ecological impact of the "Vibes on Vine" Street Party, we are implementing a robust Environmental Waste Management Plan that focuses on sustainability and responsible waste practices. One of our primary initiatives is encouraging the use of public transport and carpooling among attendees. This approach aims to reduce individual car trips, thereby lowering greenhouse gas emissions associated with transportation.

In our commitment to minimising waste, we are eliminating the use of paper tickets by utilising a fully digital ticketing system. This transition not only cuts down on paper waste but also enhances the convenience for attendees. Additionally, we are prohibiting single-use plastics, including polystyrene and plastic straws, ensuring that our event aligns with environmentally friendly practices. Free water stations will be available throughout the venue to reduce the demand for bottled water, further decreasing plastic waste.

Our merchandise will be sourced from eco-friendly materials, reflecting our dedication to sustainability. Furthermore, all signage will be designed for reuse in future events, eliminating the need for new materials each year. By avoiding the use of specific dates on our signs, we can ensure their longevity and relevance for upcoming events.

We will also promote waste segregation at the event by providing clearly marked recycling and composting bins, encouraging attendees to dispose of their waste responsibly. Our team will be trained on waste management practices to assist attendees in making environmentally conscious choices. Through these comprehensive initiatives, we aim to create an engaging and sustainable event experience that highlights the importance of environmental stewardship within our community.





## 6.9 Uptake of Severe Weather Emergency Recovery (Waste Management) Order

**Meeting:** Whangarei District Council  
**Date of meeting:** 28 November 2024  
**Reporting officer:** Sarah Irwin, Manager Infrastructure Planning

### 1 Purpose / Te Kaupapa

To seek approval for the uptake of the Severe Weather Emergency Recovery (Waste Management) Order and consequential delegation to the Northland Regional Landfill Limited Partnership (NRLLP).

### 2 Recommendation/s / Whakataunga

That the Council:

1. Approves the invocation of the Severe Weather Emergency Recovery (Waste Management) Order to enable for the construction of a new Class 3 and 4 landfill in Whangarei District.
2. Delegates the decision whether to progress with the implementation of the Severe Weather Emergency Recovery (Waste Management) Order to the Northland Regional Landfill Limited Partnership (NRLLP).
3. Requests that the Northland Regional Landfill Limited Partnership (NRLLP) reports back to Council by February 2025 advising whether the development gains approval of the NRLLP board at their November Board meeting.

### 3 Background / Horopaki

On the 8 September 2023 the Ministry for the Environment (MfE) released the Severe Weather Emergency Recovery (Waste Management) Order to simplify the construction of new Class 2 - Class 5 landfills and temporary waste facilities required to dispose of waste generated by severe weather events. This Order was developed following Cyclone Gabrielle whereby unprecedented quantities of sediment, debris and construction and demolition waste required safe disposal.

The Puwera landfill operation is a class 1 landfill. All waste diverted to this operation is subject to the Class 1 landfill levy rates as outlined in Table 1. The impact of this is twofold, higher landfill disposal costs for managed or controlled fill and secondly much of this waste bypasses Puwera and is transported to the Redvale or other landfill in Auckland that has a separate class 3 operation.

## Schedule 2 Levy rate

r 5

Schedule 2: replaced, on 1 July 2024, by [section 14](#) of the Waste Minimisation (Waste Disposal Levy) Amendment Act 2024 (2024 No 21).

| Prescribed disposal facility                                  | Levy rate for period 1 July 2024 to 30 June 2025 (\$ per tonne) | Levy rate for period 1 July 2025 to 30 June 2026 (\$ per tonne) | Levy rate for period 1 July 2026 to 30 June 2027 (\$ per tonne) | Levy rate on and from 1 July 2027 (\$ per tonne) |
|---|---|---|---|--|
| Construction and demolition fill disposal facility: class 2   | 30  | 35  | 40  | 45   |
| Managed or controlled fill disposal facility: classes 3 and 4 | 10  | 15  | 15  | 20   |
| Municipal disposal facility: class 1                          | 60  | 65  | 70  | 75   |

Table 1 – landfill levy rates (Waste Minimisation (Calculation and Payment of Waste Disposal Levy) Regulations 2009)

The Order temporarily amends the Resource Management Act (1991) (RMA) to change Class 2 - Class 5 landfill activity statuses in the Act, thereby making it simpler to compile and process a landfill Resource Consent application. The environmental impacts associated with the development of a landfill remains a priority, and as such the Order requires adherence to the Technical Guidelines for Disposal to Land.

Council has been approached by Northland Waste on behalf of the Northland Regional Landfill Limited Partnership (NRLLP) with a proposal to develop a Class 3 and 4 landfill site within land currently owned by the NRLLP utilising the Severe Weather Emergency Recovery (Waste Management) Order.

## 4 Discussion / Whakawhiti kōrero

There is an opportunity for the NRLLP to utilize the delegations provided to Whangarei District Council under the Severe Weather Emergency Recovery (Waste Management) Order.

At present there is no viable waste infrastructure in Northland to deal with material appropriate for class 2 – 5 filling. This is evidenced through the continuous enquiries from the Northland community, civil sector and roading contractors wishing to dispose clean material. The demand in these enquiries significantly spiked following weather events where slips and erosion occurred, evidenced during Cyclone Gabrielle and other recent extreme weather events. These events required stockpiling of significant volumes of dirt and debris from slips on the roadside before the material was hauled from Northland (past the Portland facility gate) to be disposed of at existing clean fill facilities in Auckland, resulting in increased transport cost and associated transport emissions for Northland's Council's and the civil industry.

Existing processes to recycle construction waste via the resort centre will continue.

Establishment of a suitable facility under this Legislation will provide Whangarei and wider Northland with the capacity for the disposal of fill associated with the remaining cleanup of previous events and establishes a local facility to cater for any future weather event fill disposal requirements.

Furthermore, it is envisaged that the future construction of the Northland Corridor under the RONS programme to address the transport network resilience issues recently experienced during significant weather events will see further demand for suitable clean fill facilities in Northland.

A Class 4 landfill can receive clean fill and controlled fill, while a Class 3 landfill can receive clean fill, controlled fill and managed fill. The technical requirements for construction and operation of the two landfill classes are provided in Table 1 below.

**Table 1: Class 3 and Class 4 landfill requirements**

| LANDFILL   | CLASS 4   | CLASS 3   |
|--|---|---|
| <b>Waste types to be received</b>                      | <ul style="list-style-type: none"> <li>• Clean fill</li> <li>• Controlled fill</li> </ul>   | <ul style="list-style-type: none"> <li>• Clean fill</li> <li>• Controlled fill</li> <li>• Managed fill</li> </ul>   |
| <b>Activity Type as per RMA (amended as per Order)</b> | <ul style="list-style-type: none"> <li>• Permitted activity</li> </ul>  | <ul style="list-style-type: none"> <li>• Controlled activity</li> </ul>   |
| <b>Technical requirements</b>                          | <ul style="list-style-type: none"> <li>• Environmental Assessment of site.</li> <li>• Location and transport considerations.</li> <li>• Erosion control (sediment runoff).</li> <li>• Groundwater monitoring.</li> </ul>  | <ul style="list-style-type: none"> <li>• Environmental Assessment of site.</li> <li>• Location and transport considerations.</li> <li>• Groundwater monitoring.</li> <li>• Surface water monitoring.</li> <li>• Capping.</li> </ul>   |
| <b>Environmental &amp; cultural restrictions</b>       | <ul style="list-style-type: none"> <li>• Located 10m from any wetland.</li> <li>• Must not result in drainage of wetland.</li> <li>• Not located in significant natural area.</li> <li>• Not located on culturally significant land unless written permission given.</li> <li>• Cannot be located within the coastal marine area or in the bed of a lake or river.</li> </ul> | <ul style="list-style-type: none"> <li>• Located 10m from any wetland.</li> <li>• Must not result in drainage of wetland.</li> <li>• Not located in significant natural area.</li> <li>• Not located on culturally significant land unless written permission given.</li> <li>• Cannot be located within the coastal marine area or in the bed of a lake or river.</li> </ul> |

Northland Waste on behalf of the Northland Regional Landfill Limited Partnership (NRLLP) have identified a suitable site for the type 3 and 4 landfill. Utilising the delegations in the Severe Weather Emergency Recovery (Waste Management) Order is proposed as an effective solution to provide this facility in a timely fashion.

As Whangarei District Council is included on the list of implementing agencies we are entitled to implement the Order ourselves, or have the Order implemented on our behalf by another party. As Council does not operate any landfills, we are proposing that the NRLLP be the implementing party on behalf of Council.

A few key dates are critical to the proposal. These are listed as follows:

1. The Order is only valid until 31 March 2028. Thus, operation of any developed landfill under the Order can only occur up until 31 March 2028. Should the landfill continue to

operate beyond this date, the landfill will need to be consented as per the standard requirements of the RMA, with obvious effects being established that would be a straightforward process.

2. An Applicant needs to invoke the Order before **20 September 2025** (i.e. the landfill facility needs to be operating before 20 September 2025). This means:
  - i) The identified site/s need to be assessed in terms of any potential environmental constraints
  - ii) A Landfill Engineer will need to be engaged to determine the best layout and design to accommodate a Class 3 or Class 4 landfill
  - iii) *Council approval/consent will need to be granted, and*
  - iv) The supporting infrastructure such as access roads will require construction, and the actual landfill site established.

The decision for Council relates solely to point 2 (iii). The other conditions and any associated costs will be the responsibility of the NRLLP, subject to approval from the NRLLP board at their November Board meeting.

By providing this delegation to NRLLP the development of a facility that provides a local option for the disposal of Clean fill, Controlled fill and Managed fill would have operational benefits (cost and time) to Council as well as for the wider contractor network. This is especially relevant in the management of disaster waste during and after an emergency, something that the Northland region did not have during Cyclone Gabrielle.

#### **4.1 Financial/budget considerations**

There are no direct cost implications for Council of invoking the order and delegating the establishment of a Class 3 or 4 landfill under the Severe Weather Emergency Recovery (Waste Management) Order to NRLLP. There may be savings to operations and projects with reduced landfill and/or transport costs once such a facility is operational. However as noted above, the decision to progress the project will be subject to an appropriate business case being developed by and approved by the NRLLP board. Until this is completed it is not known if there are financial impacts or benefits for Councils through the joint venture.

#### **4.2 Policy and planning implications**

The responsibility to meet the requirements of the Severe Weather Emergency Recovery (Waste Management) Order will be undertaken by the NRLLP including future Resource Consent requirements.

#### **4.3 Options**

1. To approve the uptake of the Severe Weather Emergency Recovery (Waste Management) Order and delegate its implementation to the NRLLP.
2. To decline the request to uptake of the Severe Weather Emergency Recovery (Waste Management) Order and delegate its implementation to the NRLLP.

Option 1 is recommended

#### **4.4 Risks**

There is no risk to Council in providing the delegation to the NRLLP. The decision to take up and progress the construction and operations will be subject to an appropriate business case being developed by and approved by the NRLLP board.

## **5 Significance and engagement / Te Hira me te Arawhiti**

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 / Ngā Tāpiritanga**

Attachment 1 - Severe Weather Emergency Recovery (Waste Management) Order





## Severe Weather Emergency Recovery (Waste Management) Order 2023

Cindy Kiro, Governor-General

### Order in Council

At Wellington this 18th day of September 2023

Present:

Her Excellency the Governor-General in Council

This order is made under section 7 of the Severe Weather Emergency Recovery Legislation Act 2023—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister for the Environment made in accordance with section 8(1) and (2) of that Act.

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## **Order**

### **1 Title**

This order is the Severe Weather Emergency Recovery (Waste Management) Order 2023.

### **2 Commencement**

This order comes into force on 20 September 2023.

## **Part 1 Preliminary provisions**

### *Revocation*

### **3 Revocation**

This order is revoked on the close of 31 March 2028.

### **4 Effect of revocation on status of activities under this order**

- (1) An activity that is a permitted or controlled activity by virtue of this order—
  - (a) retains that status for the duration of this order; but
  - (b) does not retain that status after this order is revoked.
- (2) An activity undertaken in reliance on this order does not—
  - (a) give rise to, or create, any existing use right for the land or structures after the revocation of this order; or
  - (b) qualify for—
    - (i) a certificate of compliance under section 139 of the RMA; or
    - (ii) an existing use certificate under section 139A of the RMA.

### *Effect of order*

### **5 Landfills and temporary waste facilities must comply with other requirements**

This order does not affect any other legal obligations in respect of landfills or temporary waste facilities, including obligations under the Waste Minimisation Act 2008.

## 6 Review of operation of order

The Secretary for the Environment must, not later than 20 September 2024, report to the Minister on the operation of this order, including—

- (a) whether the order is, or will no longer be, needed to assist communities and local authorities affected by the severe weather events to respond to, and recover from, the impacts of the severe weather events; and
- (b) a proposed date or dates for the revocation of the order if the Secretary for the Environment reports under paragraph (a) that the order is or will be no longer needed.

### *Interpretation*

## 7 Interpretation

- (1) In this order, unless the context otherwise requires,—

**activity** means, as the case requires, any or all of the following:

- (a) a class 2 or 3 landfill activity:
- (b) a class 4 or 5 landfill activity:
- (c) a temporary waste activity

**class 2 landfill** means a landfill that accepts waste for a class 2 C&D landfill according to section 6.2 of the technical guidelines

**class 2 or 3 landfill activity** means the construction, operation, or closure of a class 2 or 3 landfill

**class 3 landfill** means a landfill that accepts waste for a class 3 managed fill according to section 6.2 of the technical guidelines

**class 4 landfill** means a landfill that accepts waste for a class 4 controlled fill according to section 6.2 of the technical guidelines

**class 4 or 5 landfill activity** means the construction, operation, or closure of a class 4 or 5 landfill

**class 5 landfill** means a landfill that accepts waste for a class 5 clean fill according to section 6.2 of the technical guidelines

**consent authority** means, as the case requires, 1 or more of the following:

- (a) a local authority listed in clause 8(1):
- (b) Bay of Plenty Regional Council:
- (c) Northland Regional Council:
- (d) Waikato Regional Council

**culturally significant land** is land that—

- (a) is on, or adjoins, a wāhi tapu or a site of cultural significance; or
- (b) is on, or adjoins, land that has an area that is subject to a statutory acknowledgement; or

- (c) is within, is adjacent to, or directly affects the statutory overlay of ngā rohe moana and ngā rohe moana o ngā hapū o Ngāti Porou, as described in section 11 and Schedule 3 of the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019

**disposal** has the meaning given in section 6 of the Waste Minimisation Act 2008

**KiwiRail** has the meaning given in section 5(1) of the Land Transport Management Act 2003

**landfill** means a class 2, 3, 4, or 5 landfill, as the case requires

**operator** means the person in control of a landfill or temporary waste facility, as the case requires

**post-settlement governance entity** has the meaning given in section 9 of the Urban Development Act 2020

**RMA** means the Resource Management Act 1991

**severe weather event** has the meaning given in section 4(1) of the Severe Weather Emergency Recovery Legislation Act 2023

**site management plan** means a plan that meets the requirements in Schedule 3

**specified statutory overlay** means the statutory overlay of ngā rohe moana and ngā rohe moana o ngā hapū o Ngāti Porou in the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, as described in section 11 and Schedule 3 of that Act

**statutory acknowledgement** means redress of that name included in certain Treaty settlement Acts

**technical guidelines** means the *Technical Guidelines for Disposal to Land* published by the Waste Management Institute New Zealand Incorporated (Revision 3.1, September 2023)

**temporary waste activity** means the construction, operation, or closure of a temporary waste facility

**temporary waste facility**—

- (a) means a waste depot or storage facility; but
- (b) does not include a disposal facility (within the meaning of that term in section 7(1) of the Waste Minimisation Act 2008)

**wāhi tapu** or **site of cultural significance** includes those identified in any of the following:

- (a) a relevant plan or proposed plan;
- (b) the New Zealand Archaeological Association's site recording scheme;
- (c) a list maintained under section 65 or 81 of the Heritage New Zealand Pouhere Taonga Act 2014;

- (d) section 11 and Schedule 3 of the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019:
- (e) the records of the Māori Land Court as a site set apart as a Māori reservation under Part 17 of Te Ture Whenua Maori Act 1993

**Waka Kotahi** means the New Zealand Transport Agency established under section 93 of the Land Transport Management Act 2003

**waste**—

- (a) has the meaning given in section 5(1) of the Waste Minimisation Act 2008; and
  - (b) includes debris and sediment.
- (2) Copies of the guidelines incorporated by reference in the definition of technical guidelines are—
- (a) available, free of charge, on an Internet site operated by the Ministry for the Environment; and
  - (b) available for inspection, free of charge, at the head office of the Ministry for the Environment and at other places that the Secretary for the Environment determines are appropriate.
- (3) A term used in this order that is defined in the RMA, but not in this order, has the meaning given in the RMA.
- (4) The modification of legislation by this order does not affect the text of the legislation, but requires it to be read as if amended in the manner indicated by this order.

### *Application*

## **8 Application**

- (1) This order applies only to an activity that is described in subclause (2) and that is carried out in—
- (a) the district of any of the following territorial authorities:
    - (i) Auckland Council:
    - (ii) Central Hawke’s Bay District Council:
    - (iii) Far North District Council:
    - (iv) Gisborne District Council:
    - (v) Hastings District Council:
    - (vi) Hauraki District Council:
    - (vii) Kaipara District Council:
    - (viii) Napier City Council:
    - (ix) Thames-Coromandel District Council:
    - (x) Wairoa District Council:

- (xi) Western Bay of Plenty District Council:
- (xii) Whangarei District Council:
- (b) the region of the Hawke's Bay Regional Council.
- (2) This order applies to an activity that—
  - (a) would require a resource consent under section 9, 14, or 15 of the RMA; and
  - (b) has any status other than that of a permitted activity under—
    - (i) the district or regional plan of a local authority; or
    - (ii) a national environmental standard.
- (3) This order does not apply to an activity in respect of a landfill or temporary waste facility that begins operating on or after 20 September 2025.

## Part 2

### **Class 4 or 5 landfill activity or temporary waste activity where construction work began on or after 8 January but before 20 September 2023**

#### **9 Class 4 or 5 landfill activity is permitted activity if requirements met**

- (1) A class 4 or 5 landfill activity is a permitted activity under section 87A(1) of the RMA if—
  - (a) the activity is in respect of a class 4 or 5 landfill for which the construction work began on or after 8 January 2023 but before 20 September 2023; and
  - (b) the activity is carried out by or on behalf of a local authority listed in clause 8(1), Waka Kotahi, or KiwiRail; and
  - (c) the activity is necessary for the disposal of waste from a severe weather event; and
  - (d) the activity complies with the requirements, conditions, and permissions in Schedule 1 on and from 20 September 2023.
- (2) A class 4 or 5 landfill activity that is a permitted activity under this clause must be treated as a permitted activity for the purposes of the RMA and any secondary legislation, plan, proposed plan, or rule made under the RMA.

#### **10 Temporary waste activity is permitted activity if requirements met**

- (1) A temporary waste activity is a permitted activity under section 87A(1) of the RMA if—
  - (a) the activity is in respect of a temporary waste facility for which the construction work began on or after 8 January 2023 and before 20 September 2023; and

- (b) the activity is carried out by or on behalf of a local authority listed in clause 8(1), Waka Kotahi, or KiwiRail; and
  - (c) the activity is necessary for the storage or sorting of waste from a severe weather event; and
  - (d) the activity complies with the requirements, conditions, and permissions in Schedule 1 on and from 20 September 2023.
- (2) A temporary waste activity that is a permitted activity under this clause must be treated as a permitted activity for the purposes of the RMA and any secondary legislation, plan, proposed plan, or rule made under the RMA.

### **Part 3**

#### **Class 4 or 5 landfill activity, temporary waste activity, or class 2 or 3 landfill activity where construction work begins on or after 20 September 2023**

##### *Permitted activities*

#### **11 Class 4 or 5 landfill activity is permitted activity if requirements met**

- (1) A class 4 or 5 landfill activity is a permitted activity under section 87A(1) of the RMA if—
- (a) the activity is in respect of a class 4 or 5 landfill for which the construction work begins on or after 20 September 2023; and
  - (b) the activity is carried out by or on behalf of a local authority listed in clause 8(1), Waka Kotahi, or KiwiRail; and
  - (c) the activity is necessary for the disposal of waste from a severe weather event; and
  - (d) the activity complies with the location requirements in clause 14(1); and
  - (e) the activity complies with the requirements, conditions, and permissions in Schedule 2.
- (2) A class 4 or 5 landfill activity that is a permitted activity under this clause must be treated as a permitted activity for the purposes of the RMA, and any secondary legislation, plan, proposed plan, or rule made under the RMA.

#### **12 Temporary waste activity is permitted activity if requirements met**

- (1) A temporary waste activity is a permitted activity under section 87A(1) of the RMA if—
- (a) the activity is in respect of a temporary waste facility for which the construction work begins on or after 20 September 2023; and
  - (b) the activity is carried out by or on behalf of a local authority listed in clause 8(1), Waka Kotahi, or KiwiRail; and

- (c) the activity is necessary for the storage or sorting of waste from a severe weather event; and
  - (d) the activity complies with the location requirements in clause 14(1); and
  - (e) the activity complies with the requirements, conditions, and permissions in Schedule 2.
- (2) A temporary waste activity that is a permitted activity under this clause must be treated as a permitted activity for the purposes of the RMA, and any secondary legislation, plan, proposed plan, or rule made under the RMA.

*Controlled activities*

**13 Class 2 or 3 landfill activity is controlled activity if requirements met**

- (1) A class 2 or 3 landfill activity is a controlled activity under section 87A(2) of the RMA if—
- (a) the activity is in respect of a class 2 or 3 landfill for which the construction work begins on or after 20 September 2023; and
  - (b) the activity is carried out by or on behalf of a local authority listed in clause 8(1), Waka Kotahi, or KiwiRail; and
  - (c) the activity is necessary for the disposal of waste from a severe weather event; and
  - (d) the activity complies with the location requirements in clause 14(1); and
  - (e) the activity complies with the requirements, conditions, and permissions in Schedule 2.
- (2) A class 2 or 3 landfill activity that is a controlled activity under this clause must be treated as a controlled activity for the purposes of the RMA, and any secondary legislation, plan, proposed plan, or rule made under the RMA.
- (3) Section 87A(2)(c) of the RMA does not apply in relation to the class 2 or 3 landfill activity.

*Location requirements for permitted and controlled activities*

**14 Location requirements**

- (1) For the purposes of clauses 11(1)(d), 12(1)(d), and 13(1)(d), the location requirements for a landfill activity or temporary waste activity are that—
- (a) the landfill or temporary waste facility must be located at least 10 metres from a natural inland wetland or water body, whether intermittently or permanently flowing; and
  - (b) the activity must not result in partial or complete drainage of a natural inland wetland; and
  - (c) the landfill or temporary waste facility must not be located within a significant natural area; and

- (d) the activity must not be undertaken on culturally significant land, and must not impact on culturally significant land, except with the written permission of the relevant post-settlement governance entity, iwi, or hapū after having been given notice by the operator of the landfill or temporary waste facility in accordance with subsection (2).
- (2) The notice referred to in subclause (1)(d) must be given to the relevant post-settlement governance entity, iwi, or hapū at least 20 working days before the activity is undertaken and must include—
  - (a) details of the proposed activity to be undertaken; and
  - (b) the proximity of the proposed activity to the wāhi tapu, site of cultural significance, or area subject to a statutory acknowledgement or specified statutory overlay; and
  - (c) the anticipated effect of the proposed activity on the wāhi tapu, site of cultural significance, or area subject to a statutory acknowledgement or specified statutory overlay and proposals to avoid, remedy, or mitigate the effect; and
  - (d) a request for permission from the relevant post-settlement governance entity, iwi, or hapū to undertake the proposed activity; and
  - (e) a request for protocols or management plans in relation to the wāhi tapu, site of cultural significance, or area subject to a statutory acknowledgement or specified statutory overlay.

*Application for resource consent*

**15 Making application for resource consent for class 2 or 3 landfill activity**

- (1) Section 88(2) to (5) of the RMA does not apply to an application for a resource consent for a class 2 or 3 landfill activity that is a controlled activity under clause 13(1).
- (2) Instead, an application for a resource consent for a class 2 or 3 landfill activity must include—
  - (a) the applicant's name and contact details; and
  - (b) the name and address of any owner or occupier of the land on which the landfill is sited or proposed to be sited; and
  - (c) a brief description of the need for the landfill activity as it relates to a severe weather event; and
  - (d) the type and volume of material anticipated to be disposed of over the life of the landfill; and
  - (e) a description of the location of the landfill and a broad description of the works to be carried out on the site, accompanied by a map of the area that includes waterways and wetlands within 150 metres of the site; and



- (f) a desktop assessment using all reasonably available information and input from appropriate experts that includes—
  - (i) an assessment of the extent to which the proposed landfill is consistent with the relevant technical guidelines; and
  - (ii) any steps proposed to be taken by the operator to avoid or minimise adverse effects on the environment; and
- (g) a description of any consultation undertaken relating to the siting and operation of the landfill in the proposed location, including with any relevant post-settlement governance entity, iwi authority, and hapū; and
- (h) a site management plan.

#### **16 Application to be determined on non-notified basis**

- (1) Subclause (2) applies instead of sections 95 to 99A of the RMA.
- (2) An application for a resource consent for a class 2 or 3 landfill activity that is a controlled activity under clause 13(1)—
  - (a) must not be publicly notified or given limited notification; but
  - (b) must be determined in accordance with Part 6 of the RMA, unless otherwise specified by this order.

#### **17 Consultation with specified persons**

- (1) As soon as practicable after an application for a resource consent for a class 2 or 3 landfill activity is lodged with a consent authority, the consent authority must notify the persons specified in subclause (2) that the application has been lodged and the notification must—
  - (a) invite those persons to make written comments on the application; and
  - (b) specify the date by which written comments are to be received by the consent authority (which must be at least 15 working days after receiving the notification).
- (2) The persons are—
  - (a) any relevant post-settlement governance entity, iwi authority, and hapū within whose rohe the landfill is proposed to be located; and
  - (b) each local authority in whose district or region the landfill is proposed to be located; and
  - (c) any network utility operator that undertakes a network utility operation in, on, or under the land where the landfill is proposed to be located; and
  - (d) the owners and occupiers of land that has a boundary directly contiguous with the land on which the landfill is proposed to be located; and
  - (e) any requiring authority that holds a designation over the land where the landfill is proposed to be located; and

- (f) any other person that the consent authority considers appropriate, provided that the consent authority is satisfied that the person has an interest in the proceedings greater than the interest of the general public.
- (3) A notification under subclause (1) must be treated as a document to be served for the purposes of the RMA and section 352 of the RMA applies accordingly.
- (4) A person invited to make written comments under this clause on an application—
  - (a) may not appeal under the RMA against the consent authority’s decision on the application; and
  - (b) may not object under Part 14 of the RMA against the consent authority’s decision on the application.
- (5) A person who makes written comments to a consent authority under this clause must not be treated under the RMA as a person making a submission on the application.

#### **18 Determination of application**

When determining an application for a resource consent for a class 2 or 3 landfill activity that is a controlled activity under clause 13(1),—

- (a) the consent authority must have regard to comments provided under clause 17 when considering whether to impose conditions on the consent under section 108(1) of the RMA; and
- (b) the consent authority need not have regard to the matters in section 104(1)(b) or 105 of the RMA when considering the application; and
- (c) if the resource consent is a discharge permit, the consent authority is deemed to be satisfied of the matters in section 107(2) of the RMA; and
- (d) the period during which comments are sought under clause 17 is excluded from the time limits in section 115 of the RMA.

#### **19 Consent authority may impose conditions only in respect of certain matters**

- (1) Section 104A(b) of the RMA does not apply when a consent authority is imposing conditions on a resource consent for a class 2 or 3 landfill activity that is a controlled activity under clause 13(1).
- (2) Instead, a consent authority may impose conditions only in respect of the following matters:
  - (a) landfill design:
  - (b) mitigating the effects of airborne contaminants:
  - (c) the best practicable option to avoid noise emissions and mitigate the effects of noise beyond the property boundary:
  - (d) managing hazardous materials:

- (e) the source, location, method, rate, volume, timing, or frequency of any water take:
- (f) managing discharges to land and water, including stormwater and passive discharges:
- (g) avoiding contaminants entering water:
- (h) managing landfill gas and leachate (for class 2 landfills only):
- (i) monitoring of environmental receptors, including in respect of water-courses, air, and groundwater:
- (j) managing litter, odours, and pests:
- (k) managing traffic to, from, and within the site:
- (l) closure of the site:
- (m) consistency with relevant technical guidelines.

#### **Part 4**

#### **Other matters applying to landfills and temporary waste facilities**

##### **20 Administrative charges in respect of permitted activities**

- (1) This clause modifies section 36(1)(cc) of the RMA.
- (2) A local authority may fix charges for monitoring under section 36(1)(cc) of the RMA despite the authority not being empowered to charge for monitoring in accordance with section 43A(8) of the RMA.

## Schedule 1

### Requirements, conditions, and permissions for purposes of Part 2

cls 9, 10

#### 1 Application of technical guidelines to landfills

The landfill to which the activity relates must be operated and monitored in accordance with the relevant technical guidelines, to the extent practicable.

#### 2 Managing and closing of landfill or temporary waste facility in accordance with site management plan

The landfill or temporary waste facility to which the activity relates must be managed and closed in accordance with a site management plan.

#### 3 Discharges and contaminants

The operator of the landfill or temporary waste facility to which the activity relates must operate it in a manner to avoid noxious, dangerous, offensive, or objectionable discharges of dust or other contaminants beyond the boundary of the property on which the landfill or facility is sited.

#### 4 Notification of landfill or temporary waste activity

- (1) The operator of the landfill or temporary waste facility to which the activity relates must notify the following persons of the landfill or temporary waste activity:
  - (a) owners and occupiers of land adjacent to the landfill or facility site:
  - (b) any relevant post-settlement governance entity, iwi authority, or hapū.
- (2) The notification must be given before the close of 18 October 2023.

#### 5 Providing site management plan

- (1) The operator of the landfill or temporary waste facility to which the activity relates must provide a site management plan to the relevant territorial authority and regional council.
- (2) The site management plan must be provided before the close of 18 October 2023.

#### 6 Amending site management plan

- (1) The operator of the landfill or temporary waste facility to which the activity relates—
  - (a) may amend the site management plan at any time to reflect changes in the landfill or temporary waste facility's design, maintenance or operation, or closure methods, or the management of effects:
  - (b) must amend the site management plan if required by the relevant local authority because the local authority considers that,—

- 
- (i) in respect of a landfill, the site management plan is—
      - (A) insufficient to manage adverse effects appropriately; or
      - (B) inconsistent with the relevant technical guidelines; or
    - (ii) in respect of a temporary waste facility, the site management plan is insufficient to manage adverse effects appropriately.
  - (2) The operator must provide a copy of any amended site management plan to the relevant local authority within 10 working days—
    - (a) after the operator makes the amendment under subclause (1)(a); or
    - (b) after the relevant local authority notifies the operator that an amendment is required under subclause (1)(b).

## Schedule 2

### Requirements, conditions, and permissions for purposes of Part 3

cls 11–13

#### 1 Application of technical guidelines to landfills

The landfill to which the activity relates must be sited, designed, operated, and monitored in accordance with the relevant technical guidelines, to the extent practicable.

#### 2 Constructing, managing, and closing landfill or temporary waste facility in accordance with site management plan

The landfill or temporary waste facility to which the activity relates must be constructed, managed, and closed in accordance with a site management plan.

#### 3 Discharges and contaminants

The operator of the landfill or temporary waste facility to which the activity relates must operate it in a manner to avoid noxious, dangerous, offensive, or objectionable discharges of dust or other contaminants beyond the boundary of the property on which the landfill or facility is sited.

#### 4 Notification of landfill or temporary waste activity

(1) The operator of the landfill or temporary waste facility to which the activity relates must notify the following persons of the landfill or temporary waste activity:

- (a) owners and occupiers of land adjacent to the landfill or facility site:
- (b) any relevant post-settlement governance entity, iwi authority, or hapū.

(2) The notification must be made at least 10 working days before the construction work for the landfill or facility begins.

#### 5 Providing site management plan

(1) The operator of the landfill or temporary waste facility to which the activity relates must provide a site management plan to the relevant territorial authority and regional council.

(2) The site management plan must be provided at least 10 working days before the construction work for the landfill or temporary waste facility begins.

#### 6 Amending site management plan

(1) The operator of the landfill or temporary waste facility to which the activity relates—

- (a) may amend the site management plan at any time to reflect changes in design, maintenance, operation, or closure methods, or the management of effects:

- 
- (b) must amend the site management plan if required by the relevant local authority because the local authority considers that,—
    - (i) in respect of a landfill, the site management plan is—
      - (A) insufficient to manage adverse effects appropriately; or
      - (B) inconsistent with the relevant technical guidelines; or
    - (ii) in respect of a temporary waste facility, the site management plan is insufficient to manage adverse effects appropriately.
  - (2) The operator must provide a copy of any amended site management plan to the relevant local authority within 10 working days—
    - (a) after the operator makes the amendment under subclause (1)(a); or
    - (b) after the relevant local authority notifies the operator that an amendment is required under subclause (1)(b).

### Schedule 3

## Contents of site management plan

cl 7(1)

A site management plan must include, in relation to the landfill or temporary waste facility to which it relates, the following information:

- (a) roles and responsibilities of the operator and site management staff in respect of the landfill or temporary waste facility:
- (b) contact details for the landfill or facility manager:
- (c) procedures for identifying, controlling, and managing hazards (including fire hazards):
- (d) procedures for handling hazardous materials:
- (e) procedures for managing dust and other airborne contaminants so that they do not spread beyond the boundary of the property on which the landfill or facility is sited:
- (f) procedures for managing stormwater:
- (g) procedures for avoiding contaminants entering water:
- (h) procedures for managing noise and controlling nuisances (including litter, odour, and pests):
- (i) measures to manage light spill:
- (j) procedures for managing any water take:
- (k) procedures for managing traffic accessing the facility including the likely route or routes traffic will take to access the landfill or facility:
- (l) for a landfill, procedures for record keeping and verification sampling in accordance with the relevant technical guidelines for the class of landfill:
- (m) details of the process to identify, record, and investigate complaints:
- (n) procedures for responding to queries and complaints:
- (o) procedures for closing the landfill or facility, including site remediation if necessary as a result of the activity.

Rachel Hayward,  
Clerk of the Executive Council.



## Explanatory note

*This note is not part of the order, but is intended to indicate its general effect.*

This order is made under section 7 of the Severe Weather Emergency Recovery Legislation Act 2023 and its effect is temporary. The order comes into force on 20 September 2023 and it will be revoked on the close of 31 March 2028.

The order modifies the Resource Management Act 1991 (the **RMA**) by treating particular activities in respect of temporary waste facilities and some types of landfills as permitted activities, subject to certain requirements in the order being met. Particular activities in respect of other types of landfills are treated as controlled activities subject to certain requirements in the order being met.

### *Part 1*

*Clause 4* makes it clear that activities that are permitted or controlled activities under the order lose that status on the revocation date in *clause 3* or any earlier date on which the order is revoked. Activities in respect of a temporary landfill or waste facility beyond the date of revocation of this order are subject to the resource management regime in operation after revocation of this order.

*Clause 5* makes it clear that landfills and temporary waste facilities must still comply with other legal obligations, including the Waste Minimisation Act 2008.

*Clause 6* requires the Secretary for the Environment to report to the Minister for the Environment on the operation of the order not later than 20 September 2024. The report must include advice as to whether the order is still needed to respond to, and recover from, the impacts of the severe weather events. If the Secretary advises that the order is or will no longer be needed, the report must include a proposed date or dates for revocation of the order.

*Clause 7* sets out definitions for terms used in the order.

The classes of landfills covered by the order are defined by reference to the *Technical Guidelines for Disposal to Land* published by the Waste Management Institute New Zealand Incorporated (Revision 3.1, September 2023). The guidelines are available from the Ministry for the Environment as specified in *clause 7(2)*.

A site management plan is a key requirement in respect of activities covered by the order. The information a site management plan must include is set out in *Schedule 3*.

*Clause 8* limits the application of the order to landfill and temporary waste activities to which the following requirements apply:

- a consent would be required for the activity under section 9, 14, or 15 of the RMA and the activity has any status other than that of permitted activity under the district or regional plan of a local authority or a national environmental standard:
- the activity is carried out in the district of one of the listed territorial authorities or the region of the Hawke's Bay Regional Council.

This clause also provides that the order does not apply with respect to a landfill or temporary waste facility that begins operating on or after 20 September 2025.

### *Part 2*

*Clause 9* provides that a class 4 or 5 landfill activity is a permitted activity if—

- the activity is in respect of a class 4 or 5 landfill for which the construction work began on or after 8 January but before 20 September 2023; and
- the activity is carried out by or on behalf of a local authority listed in *clause 8(1)*, the New Zealand Transport Agency (**Waka Kotahi**), or KiwiRail Holdings Limited (**KiwiRail**); and
- the activity is necessary for the disposal of waste from a severe weather event; and
- the activity complies with *Schedule 1* on and from 20 September 2023.

*Clause 10* provides that a temporary waste activity is a permitted activity if—

- the activity is in respect of a temporary waste facility for which the construction work began on or after 8 January but before 20 September 2023; and
- the activity is carried out by or on behalf of a local authority listed in *clause 8(1)*, Waka Kotahi, or KiwiRail; and
- the activity is necessary for the storage or sorting of waste from a severe weather event; and
- the activity complies with *Schedule 1* on and from 20 September 2023.

### *Part 3*

*Clause 11* provides that a class 4 or 5 landfill activity is a permitted activity if—

- the activity is in respect of a class 4 or 5 landfill for which the construction work begins on or after 20 September 2023; and
- the activity is carried out by or on behalf of a local authority listed in *clause 8(1)*, Waka Kotahi, or KiwiRail; and
- the activity is necessary for the disposal of waste from a severe weather event; and
- the activity complies with the location requirements in *clause 14(1)*; and
- the activity complies with *Schedule 2*.

*Clause 12* provides that a temporary waste activity is a permitted activity if—

- the activity is in respect of a temporary waste facility for which the construction work begins on or after 20 September 2023; and
- the activity is carried out by or on behalf of a local authority listed in *clause 8(1)*, Waka Kotahi, or KiwiRail; and
- the activity is necessary for the storage or sorting of waste from a severe weather event; and

- the activity complies with the location requirements in *clause 14(1)*; and
- the activity complies with *Schedule 2*.

*Clause 13* provides that a class 2 or 3 landfill activity is a controlled activity if—

- the activity is in respect of a class 2 or 3 landfill for which the construction work begins on or after 20 September 2023; and
- the activity is carried out by or on behalf of a local authority listed in *clause 8(1)*, Waka Kotahi, or KiwiRail; and
- the activity is necessary for the disposal of waste from a severe weather event; and
- the activity complies with the location requirements in *clause 14(1)*; and
- the activity complies with *Schedule 2*.

*Clause 14* sets out requirements relating to location, which apply to landfills and temporary waste facilities for which construction begins on or after 20 September 2023. Activities in respect of those landfills and temporary waste facilities cannot be a permitted or controlled activity, as the case may be, unless the location requirements are complied with. In summary,—

- the landfill or temporary waste facility must be located at least 10 metres from a natural inland wetland or water body; and
- the activity must not result in partial or complete drainage of a natural inland wetland; and
- the landfill or temporary waste facility must not be located within a significant natural area; and
- the activity must not be undertaken on, or impact on, culturally significant land except with the written permission of the relevant post-settlement governance entity, iwi, or hapū.

*Clause 15* provides that section 88(2) to (5) of the RMA does not apply to an application for a resource consent for a class 2 or 3 landfill activity. Instead, the application must include certain specified information.

*Clause 16* provides that an application for a resource consent under the order must not be publicly notified or given limited notification. The application must be dealt with in accordance with Part 6 of the RMA except as provided in the order.

*Clause 17* provides that the consent authority must notify specified persons that an application for a resource consent has been lodged, invite them to comment on the application, and give them a date by which comments must be received by the consent authority. A person invited to make comments on an application may not appeal under the RMA, or object under Part 14 of the RMA, against the consent authority's decision on the application.

*Clause 18* modifies requirements that apply when a consent authority is determining an application for a resource consent.

*Clause 19* sets out the matters in respect of which a consent authority may impose resource consent conditions for an activity that is a controlled activity under the order.

#### *Part 4*

*Clause 20* modifies the effect of section 36(1)(cc) of the RMA so that a local authority may fix charges for monitoring in respect of a permitted activity under the RMA despite the authority not being empowered to charge for monitoring under the RMA.

#### *Schedules*

*Schedule 1* sets out requirements, permissions, and conditions for the purposes of *Part 2*. In summary, a class 4 or 5 landfill activity or temporary waste activity is not a permitted activity under *Part 2* unless, amongst other things, it complies with *Schedule 1*.

*Schedule 2* sets out requirements, permissions, and conditions for the purposes of *Part 3*. In summary, a class 2 or 3 landfill activity, temporary waste activity, or class 4 or 5 landfill activity is not a permitted activity or controlled activity (as the case may be) under *Part 3* unless, amongst other things, it complies with *Schedule 2*.

*Schedule 3* sets out the contents required to be included in a site management plan for the purposes of the order.

#### **Statement of reasons**

*This statement of the Minister's reasons for recommending the making of this order is published in accordance with section 10 of the Severe Weather Emergency Recovery Legislation Act 2023.*

The Minister for the Environment (the **relevant Minister**) is satisfied that the order—

- is necessary or desirable for 1 or more purposes of the Severe Weather Emergency Recovery Legislation Act 2023 (the **SWERLA**):
- is no broader than is reasonably necessary to address the matters that gave rise to the order:
- does not breach section 11 of the SWERLA:
- does not limit or is a justified limit on the rights and freedoms in the New Zealand Bill of Rights Act 1990.

#### **Order is necessary or desirable for 1 or more purposes of SWERLA and is appropriate**

The Minister is satisfied, for the following reasons, that the order is:

- necessary or desirable for 1 or more purposes of the SWERLA; and
- appropriate.

The volume of waste and debris generated by the severe weather events would exceed the capacity of existing landfills in the affected regions. Waste and debris include a

variety of materials, including green waste, sediment, treated wood, agrichemicals, plastics, wire, and metal as well as waste from the repair or rebuild of housing or transport infrastructure. Failing to manage this waste appropriately could delay the recovery and clean up in the regions affected by the severe weather events and could pose health and safety and environmental risks through unintentional discharge of pollutants or physical injury. A failure to address limited landfill capacity in a timely way may result in landowners stockpiling mixed waste material rather than disposing of it or disposing of it illegally.

Limited landfill capacity may also limit the ability to remove and dispose of sediment efficiently, or to sort and dispose of waste from the repair of housing or transport infrastructure.

### *Part 1*

Under *clause 2*, the order comes into force on 20 September 2023.

Under *clause 3*, the order is revoked on the close of 31 March 2028 and *clause 4* of the order provides that activities undertaken in reliance on the order do not give rise to existing use rights for land or structures.

This is desirable to assist communities and local authorities affected by the severe weather events to respond to, and recover from, the impacts of the severe weather events, whilst recognising that the new landfills and temporary storage and sorting facilities are a temporary response to an extraordinary situation, and they are not a replacement for appropriate long-term waste management strategies.

If the relevant operator wishes to continue operating beyond 31 March 2028, they will need to secure the appropriate resource consents from the relevant local authority.

*Clause 5* makes it clear that the order does not affect any other legal obligations in respect of landfills or temporary waste facilities, including obligations under the Waste Minimisation Act 2008.

This is necessary so as to avoid doubt that, when the order is used to establish new landfills or temporary waste facilities, other obligations remain, including those relating to levy payments and reporting under the Waste Minimisation Act 2008.

Under *clause 6*, the Secretary for the Environment must report to the Minister on the operation of this order no later than 20 September 2024. Depending on the outcome of that review, the order may be amended if appropriate or required.

That clause will help to ensure that the order continues to be necessary and desirable (in line with the purposes of the SWERLA) and is no broader than is reasonably necessary.

*Clause 7* defines key terms used in the order to ensure clarity and workability. It also includes the incorporation by reference of the *Technical Guidelines for Disposal to Land* published by the Waste Management Institute New Zealand Incorporated (Revision 3.1, September 2023).

That definition helps to ensure that the order references the correct technical guidelines and provides access to them in a way that meets the relevant legislative requirements under the Legislation Act 2019.

*Clause 8* addresses the issue of whether the order is no broader than is reasonably necessary. It creates a geographic restriction on the application of the order to those districts and regions that require additional landfills and temporary waste facilities to manage waste and debris generated by the severe weather events. That clause also limits the creation of new landfills and temporary waste facilities to 2 years from 20 September 2023.

That clause confirms that the order applies to activities that would otherwise require a resource consent under section 9, 14, or 15 of the RMA and that would have an activity status other than for a permitted activity.

This will help to ensure that the order continues to be necessary and desirable (in line with the purposes of the SWERLA) and is no broader than is reasonably necessary.

### *Part 2*

This Part covers the activity status of various waste management activities under the order, where those activities have been undertaken on or after 8 January 2023 but before 20 September 2023 (when the order comes into effect).

*Clause 9* deals with class 4 and 5 landfills, which accept inert material such as sediment. *Clause 10* deals with temporary waste facilities, which will be used to sort or store waste materials temporarily before being reused, recycled, or disposed of as needed.

*Clause 9* provides that a class 4 or 5 landfill activity, in respect of a class 4 or 5 landfill constructed between 8 January 2023 and 20 September 2023, is a permitted activity if—

- it is carried out by or on behalf of a local authority listed in *clause 8(1)*, Waka Kotahi, or KiwiRail; and
- the activity is necessary for the disposal of waste from a severe weather event; and
- the activity complies with the requirements, conditions, and permissions in *Schedule 1*, on and from 20 September 2023.

*Clause 10* provides the same requirements in respect of temporary waste facilities.

As outlined above, the volume of waste deposited onto land in affected regions is overwhelming the capacity of landowners and councils to sort, store, and dispose of waste as part of the recovery process. Inadequate ability to store or sort materials or dispose of waste will pose similar risks to health and the environment, such as unintentional discharge, and those risks will also be exacerbated if not addressed in a timely manner. Not having sufficient sites to sort waste could mean that opportunities to separate waste material for recycling or reuse are missed and more waste is disposed of in landfills.

This Part is desirable to assist communities and local authorities affected by the severe weather events to respond to, and recover from, the impacts of the severe weather events, in particular by enabling the recovery process to move forward in a controlled and safe manner and therefore ameliorating risks to the environment and health.

### *Part 3*

This Part covers the activity status of various waste management activities under the order, where those activities have been undertaken on or after 20 September 2023.

Similar to requirements in *clauses 9 and 10*, class 4 or 5 landfill activities and temporary waste activities are permitted activities if—

- they are carried out by or on behalf of a local authority listed in *clause 8(1)*, Waka Kotahi, or KiwiRail; and
- the activities are necessary for the disposal of waste from a severe weather event; and
- the activities comply with the requirements, conditions, and permissions in *Schedule 2*, on and from 20 September 2023.

Class 2 and 3 landfill activities are controlled activities if the same requirements are met.

In addition to these requirements, the activities must also comply with location requirements in *clause 14*. *Clause 14* requires that —

- the landfill or temporary waste facility is more than 10 metres from a natural inland wetland or water body (whether intermittently or permanently flowing); and
- the activity does not partially or completely drain a natural inland wetland; and
- the landfill or temporary waste facility is not located within a significant natural area; and
- the activity is not undertaken on culturally significant land and will not impact on culturally significant land, unless the written approval of the relevant post-settlement governance entity, iwi, or hapū is provided.

Those location requirements are important to limit the environmental effects of the activities (eg, protecting waterways and significant natural areas) as well as to limit impacts on iwi, hapū, and Māori. Given that the order expedites or overrides consent requirements for waste management activities, it is important to ensure that protections are in place so that the environment and cultural considerations are not ignored.

This is desirable to assist communities and local authorities affected by the severe weather events to respond to, and recover from, the impacts of the severe weather events, in particular by enabling the recovery process to move forward in a controlled and safe manner, and therefore ameliorating risks to the environment and health.

The process for seeking a resource consent for class 2 and 3 landfill activities has been streamlined. *Clause 15* sets out the process to make an application for resource

consent for a class 2 or 3 landfill activity that is considered to be a controlled activity under the order. The clause sets out that section 88(2) to (5) of the RMA does not apply and describes the content of an application.

*Clause 16* requires that controlled activity applications are determined on a non-notified basis. *Clause 17* requires notification of specified persons as soon as practicable after an application for resource consent is made for class 2 or 3 landfill activities, including an invitation to provide comments within 15 working days, and *clause 18* sets out which sections of the RMA do not apply when a consent authority is considering an application.

Those clauses are necessary and desirable as the streamlined controlled activity consent process expedites the consent process. This means that specified local authorities, Waka Kotahi, and KiwiRail can establish landfills and temporary waste facilities more efficiently so that they can process the large quantities of waste and debris quickly to progress the clean-up and recovery while balancing environmental effects. The requirements for an application also provide the relevant consent authorities with appropriate levels of information to provide certainty that the activity is undertaken in accordance with the provisions in the order and the relevant technical guidelines, and that the activity will manage or mitigate environmental effects.

The requirement to invite specified parties to comment on a controlled activity application means that the relevant people will still have the opportunity to provide comments within a reasonable time frame. The consent authority must take those comments into account when deciding what conditions are required.

Those changes to the consent process are desirable to assist communities and local authorities affected by the severe weather events to respond to, and recover from, the impacts of the severe weather events, in particular—

- by alleviating the burden on existing landfill sites and allowing proper and timely disposal of waste (which will reduce short-, medium-, and long-term risks to health and the environment through improper storage);
- by speeding up the existing consenting process for landfill sites for class 2 and 3 landfills, which is not fit for purpose in emergency recovery circumstances (which necessitate disposal of large volumes of mixed waste).

*Clause 19* states that section 104A(b) of the RMA does not apply when a consent authority is imposing conditions on a resource consent for class 2 or 3 landfill activities and provides alternative matters of control.

The matters of control focus on design, management of effects, management of hazardous substances, closure of the site, and the extent of consistency with the relevant technical guidelines.

The consent authority is limited to imposing conditions in relation to the following matters of control:

- landfill design;
- mitigating the effects of airborne contaminants;



- the best practicable option to avoid noise emissions and mitigate the effects of noise beyond the property boundary:
- managing hazardous materials:
- the source, location, method, rate, volume, timing, or frequency of any water take:
- managing discharges to land and water, including stormwater and passive discharges:
- avoiding contaminants entering water:
- managing landfill gas and leachate (for class 2 landfills only):
- environment receptor monitoring, including in respect of watercourses, air, and groundwater:
- managing litter, odours, and pests:
- managing traffic to, from, and within the site:
- closure of the site:
- ensuring consistency with the relevant technical guidelines.

Those changes in respect of the matters of control are desirable to focus the consent conditions on the matters that are most relevant for managing the potential adverse effects that may arise from a class 2 or 3 landfill activity.

#### *Part 4*

*Clause 20* modifies the RMA to enable a local authority to fix charges for monitoring of permitted activities. This is necessary to ensure that local authorities have the means to ensure that those landfills and temporary waste activities undertaken as permitted activities are meeting the requirements as set out in the order.

#### *Schedules*

*Schedules 1 and 2* set out the additional requirements for activities to be permitted or controlled. They include to—

- site, design, operate, and monitor the relevant landfill or temporary waste facility in accordance with the technical guidelines:
- construct, manage, and close the relevant landfill or temporary waste facility in accordance with a site management plan:
- notify specified parties within certain time frames:
- prepare and update a site management plan.

*Schedule 3* sets out the requirements for the contents of the site management plan. This is necessary to ensure that activities are managed appropriately, that environmental effects are avoided, mitigated, or managed, and that sites are closed (including site remediation) once they are no longer operating.

The schedules are necessary and desirable to ensure that the landfill or temporary waste facility operators design and construct (for sites constructed on or after 20 September 2023), manage, operate, and close the sites in ways that meet the requirements of the technical guidelines and a site management plan. Meeting those requirements will result in environmental effects being appropriately managed and provide information to the consent authority to support monitoring, compliance, and enforcement activities.

### **Other preconditions satisfied**

The following preconditions for recommending the making of an order have also been satisfied:

- the draft order has been reviewed by the Severe Weather Events Recovery Review Panel:
- the draft order has been provided to the Regulations Review Committee:
- the relevant Minister has had regard to the recommendations and comments provided by those bodies, and the order and this statement of reasons have been amended to address those recommendations and comments:
- the engagement process under section 9 of the SWERLA has been complied with.

Issued under the authority of the Legislation Act 2019.  
Date of notification in *Gazette*: 19 September 2023.  
This order is administered by the Ministry for the Environment.

**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:

| <b>General subject of each matter to be considered</b> |   | <b>Reason for passing this resolution in relation to each matter</b>   | <b>Ground(s) under Section 48(1) for passing this resolution</b> |
|--|---|--|--|
| 8.1  | Closed Minutes Council 24 October 2024                  | Good reason to withhold information exists under Section 7 Local Government Official Information and Meetings Act 1987 | Section 48(1)(a)   |
| 8.2  | Closed Minutes Extraordinary Council 21 November 2024   |  |  |
| 8.3  | Road Legalisation Blue Horizon Road                     |  |  |
| 8.4  | Road Legalisation Otuhi Road                            |  |  |
| 8.5  | Road Legalisation Rauiri Drive Marsden Cove             |  |  |
| 8.6  | Transition Advisory Board Update and Terms of Reference |  |  |
| 8.6  | Property Purchase                                       |  |  |

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:

| <b>Item</b> | <b>Grounds</b>  | <b>Section</b>  |
|-------------|---|-----------------|
| 8.1         | For reasons stated in the open minutes  |                 |
| 8.2         | For reasons stated in the open minutes  |                 |
| 8.3         | To enable Council to carry on without prejudice or disadvantage negotiations (including commercial and industrial negotiations) | Section 7(2)(i) |
| 8.4         | To enable Council to carry on without prejudice or disadvantage negotiations (including commercial and industrial negotiations) | Section 7(2)(i) |
| 8.5         | To enable Council to carry on without prejudice or disadvantage negotiations (including commercial and industrial negotiations) | Section 7(2)(i) |

|     |   |                 |
|-----|---|-----------------|
| 8.6 | To enable Council to carry on without prejudice or disadvantage commercial activities   | Section 7(2)(h) |
| 8.7 | 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.*