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Decision No. A 173 /2005

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of six appeals under s.120 of the Act

BETWEEN **WHANGAMATA MAORI COMMITTEE**

(RMA 060/97)

THE HAURAKI MAORI TRUST BOARD

(RMA 062/97)

WHANGAMATA MARINA SOCIETY INC

(RMA 068/97)

TE KUPENGA O NGATI HAKO INC

(RMA 074/97)

MINISTER OF CONSERVATION

(RMA 093/97)

Appellants

AND **THE WAIKATO REGIONAL COUNCIL**

Respondent

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AND

IN THE MATTER of three further appeals under s.120 of the Act

BETWEEN **HAURAKI MAORI TRUST BOARD**

(RMA 981/98)

WHANGAMATA MARINA SOCIETY INC.

(RMA 982/98)

WHANGAMATA MAORI COMMITTEE

(RMA 1001/98)

Appellants

AND **THE THAMES-COROMANDEL DISTRICT COUNCIL**

Respondent

BEFORE THE ENVIRONMENT COURT

Environment Judge R J Bollard (presiding)
Deputy Environment Commissioner A H Hackett
Deputy Environment Commissioner I G McIntyre

HEARING at Whangamata on 4,5,6,7 and 8 October 1999; 16,17,18,19 and 20 October, 13 November 2000; 19, 22, 23, 24, 25 and 26 November 2004; and at Thames on 7, 8 and 9 September 2005

COUNSEL

P J Kapua (all hearings), G A Cole (1999 & 2000 hearings), K Taurau (2004 hearing) and A Anderson (2005 hearing) for appellants in RMA 60, 62 and 74/97, 981 and 1001/98
A S Menzies (all hearings) and J Forret (2004 & 2005 hearings) for Whangamata Marina Society Inc., both as appellant in RMA 68/97 and 982/98 and as applicant

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K G Parker (all hearings) and B A Parham (1999 & 2000 hearings) for the Waikato Regional Council
M J Savage (1999 hearing), S J Berry (2000, 2004 and 2005 hearings), R Randall (1999 hearing) and J L Vella (2004 and 2005 hearings) for the Thames-Coromandel District Council

FINAL DECISION ON RESOURCE CONSENT AND COASTAL PERMIT APPLICATIONS AND RECOMMENDATION TO THE MINISTER OF CONSERVATION ON APPLICATIONS TO CARRY OUT RESTRICTED COASTAL ACTIVITIES

Introduction

[1] Following the interim decision in these proceedings (A025/2001) delivered on 19 February 2001 (the 2001 decision), a further hearing phase occurred in November 2004, followed by another period of adjournment to enable the Whangamata Marina Society Inc (the society) to apply for an additional consent that the Whangamata Maori Committee and other associated appellants (the iwi appellants) contended through their counsel was required. A formal ruling (A145/2004) upholding that contention was given at the conclusion of the 2004 hearing phase (the 2004 ruling).

[2] The additional application related to traffic effects from trucking movements incidental to the removal off-site of excavated material from the area proposed by the society for the construction of a marina in the Moanaanuanu Estuary adjacent to the Whangamata Harbour (with accompanying coastal works). The volume of spoil to be removed was notably greater than that originally intended, with a correspondingly reduced amount of excavated material to be retained within the landward side of the project as fill (115,500m^3 (refer the 2004 ruling, paragraph [2]), as opposed to 150,000m^3 (refer the 2001 decision, paragraph [9])). The intended outcome on-site was a lower contoured landform, with removal of "high points" exceeding 4m above natural ground level.

[3] The society duly applied to the Thames-Coromandel District Council (TCDC) for the additional consent, and three appeals were lodged by iwi interests under s.120 of the Resource Management Act 1991 (RMA). Those appeals were heard over two days in September this year, immediately prior to the receipt of final evidence and submissions in the present proceedings. The decision on those appeals (the trucking decision) is delivered contemporaneously with this decision.

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[4] We will endeavour to refrain from unnecessary repetition of matters contained in the 2001 decision and the trucking decision, as well as two other decisions shortly to be mentioned. However, some explanation will be necessary to set the present decision in context. All five decisions (plus the 2004 ruling) effectively relate to one another, and should be read in their totality in order to appreciate fully the various factors bearing on the lengthy process concerning the marina proposal and its ultimate outcome.

[5] Immediately prior to the 2004 hearing phase, appeals by various iwi interests and the society were heard in relation to a proposed variation to the Proposed Regional Coastal Plan (PRCP), propounded by the Waikato Regional Council (Environment Waikato) consequent upon the 2001 decision. In the course of the 2001 decision, we invited Environment Waikato to consider the possibility of "introducing changes to the PRCP", having commented at paragraph [43]:

> For present purposes, we find ourselves confronted with a situation whereby, instead of lending readily perceivable support to the proposal, the PRCP fails to do so through its classification of the whole of the Upper Whangamata Harbour, including the subject area, as an ASCV, with associated provisions aimed at conserving and protecting the natural character of the area. Those provisions have doubtless been conceived as warranting application to the ASCV overall, but they are without appropriate qualifying criteria or other indicative guidance pointing to the selection of the 4ha coastal marine area in question for a marina project within the ASCV confines. That is somewhat puzzling when one notes that in the 1980s, albeit prior to the RMA, there was provision for a marina at this location, with a demonstrable consistency of planning intent as between the landward and seaward components. We were left without any adequate explanation as to how and why the PRCP has omitted reference to a possible marina, either by way of positive endorsement, by way of guiding criteria or other planning method, or by way of explanation of a changed approach to the concept of a marina within this part of the estuary.

[6] Under the proposed variation as notified a marina zoning was proposed at Whangamata. However, in its decision upon submissions, Environment Waikato decided to delete that zoning (plus another marina zoning at Whitianga), but nevertheless considered that the variation contained sufficient alteration to the PRCP's framework to enable the society's marina proposal to be favourably considered – Environment Waikato having endorsed the proposal at the original application hearing stage in late 1996.

[7] Insofar as the proposal in 1996 embraced restricted coastal activity applications requiring the endorsement of the Minister of Conservation, namely:



- to construct a 205-berth marina with coastal works that include dredging of marina basin, and marina channel, control structures, pontoons and slipway; and

- for the placement of fill onto a salt marsh for the development of hardstand and parking areas.

— it was recommended to the Minister by Environment Waikato's Hearing Committee (but with a Ministerial representative declining) that those permits be granted.

[8] Other applications upheld by Environment Waikato sought coastal permits to—

- discharge seepage water from the marina basin during the period the marina is being constructed into the Moanaanuanu Estuary; and

- discharge drainage water from excavated marine basin sediment into the Moanaanuanu Estuary.

Detailed conditions were attached to each permit, together with recommended conditions for the consents requiring the Minister's sanction. In 1998, consents were granted by TCDC for the landward part of the proposal (refer paragraphs [5] and [6] of the 2001 decision).

[9] It was from the decisions of the two Councils that the present appeals were lodged and first came on for hearing, firstly towards the end of 1999, and then in late 2000, resulting in the 2001 decision early the following year on an interim footing. The delay in being able finally to determine these proceedings is basically explicable from matters raised in the 2001 decision. A notable difficulty was generated by the society itself. Its intent, as publicly notified originally, was to maintain fill levels within the landward side of the proposed development between 2m and 4m above natural ground level. Unfortunately, its plans presented before us in 1999, and again with some revision in 2000, revealed that the 4m limit was proposed to be exceeded to an unacceptable degree (refer paragraph [31] of the 2001 decision).

[10] Rather than reapply to TCDC with a fresh proposal, the society decided to revise its development plans to conform with the 4m limit, resulting in the need to

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remove a significantly greater volume of material off-site. Unfortunately, the society thought it could proceed in this Court on that basis, without needing to obtain an additional resource consent regarding the increase in off-site disposal activity. It was only at the 2004 hearing phase that we were able to assess that issue in the light of arguments for and against – the upshot being the 2004 ruling. We are now in a position at last to finally determine these proceedings.

[11] A decision was delivered on the appeals to the proposed variation on 25 January 2005 (A010/2005). That decision was expressed to be interim on account of a perceived difficulty with regard to the variation, stemming from the Regional Policy Statement (RPS). A further hearing in relation to the matter raised occurred in March, with the final determination of the variation now being issued as one of three contemporaneous decisions – the others being the present decision and the trucking decision. Under the final decision on the variation, zoning provision for the establishment of a marina basin is included at Whangamata and Whitianga (where a marina already exists) on a discretionary activity footing, with related objectives, policies, implementation methods and assessment criteria.

[12] At the conclusion of the 2004 hearing phase, it was indicated that further evidence was desired by the Court from Mr K J Caldwell, an environmental engineer who had previously given evidence for the society at the hearing preceding the 2001 decision. The request for such further evidence stemmed from evidence presented for the iwi appellants at the 2004 hearing by Ms A T Sheffield, a person qualified and experienced in contaminated land management and familiar with the Whangamata Harbour from a coastal geomorphology perspective. As observed by the presiding Judge:

> I have conferred with the Commissioners about the possibility of hearing further from Mr Caldwell, and we would like to do that. We apprehend that a major or significant platform of the appellants' case is based on the contention that the implications for ongoing maintenance via dredging have not been sufficiently assessed by the applicant. We have no view on that either way but we would like to hear Mr Caldwell to comment in the light of the evidence that's come from Ms Sheffield, and also indicate to us whether he considers the possibility of additional dredging from the marina basin itself to be a matter of concern, and if so how he sees it as impacting on the operation of the marina in the ensuing years.

[13] We also requested that another witness be recalled to give further evidence, namely, Mr G L Don, a consulting biologist who had also given evidence for the society prior to the interim decision, and had given further evidence at the 2004 hearing. In his case it was requested that he update the Court on his assessment of

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the society's proposal for wetland and environmental enhancement, given the intended in-filling of a salt marsh area, (refer paragraphs [33] to [37] of the 2001 decision), and the proposed siting of the marina within the upper Whangamata Harbour, which is notated under the Proposed Regional Coastal Plan (PRCP) as an Area of Significant Conservation Value (ASCV).

[14] Mr Caldwell and Mr Don duly gave evidence as to the matters pertaining to their recall at the ultimate hearing phase in September this year. Evidence for the iwi appellants in response to Mr Don's evidence was called from two ecologists, Dr R J Pierce and Mr W B Shaw, each of whom gave evidence during the 2004 hearing phase. We come to discuss the evidence of these witnesses later.

[15] Another issue that arose from the 2004 hearing was whether the Court would have the ability to impose a restrictive building height condition on the earthworks consent (if upheld), insofar as it would allow for the disposal of fill on land zoned Housing Extra Density Policy Area (HEDPA) owned by TCDC (refer the 2001 decision, paragraph [26]). Counsel for TCDC was requested to consider the issue at law, and on the basis of an affirmative answer, to confer with TCDC's planning witness, Mr A R Matheson, in devising a condition for consideration. We refer to the HEDPA and associated building height issue later.

Foreshore and seabed issue

[16] By memorandum dated 1 August 2005, counsel for the iwi appellants sought an adjournment of the final hearing phase in September. The request was founded upon a contention that, by virtue of the Foreshore and Seabed Act 2004 (FSA), "there is no basis upon which (the society) can secure a title or interest or right in the salt marsh area in particular, to enable it to carry out the activities that it proposes on that site". Not surprisingly, the adjournment application was opposed. After hearing from all counsel at an urgent judicial telephone conference, it was directed that the hearing should proceed in the scheduled week of September, with all parties having the opportunity to address relevant matters arising under the FSA. It will now be convenient to consider that aspect.

[17] For the iwi appellants it is contended that, because parts of the area affected by the marina proposal fall under the FSA, the marina may not be able to proceed, even if the resource consents at issue in these proceedings are upheld. Particular reference is made to the salt marsh area which was said to be now vested in the

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Crown under the FSA (whatever the hitherto existing title position involving TCDC may have been). The foregoing is alleged because the salt marsh area on which fill is intended to be placed is tidal, and the area is intended to be reclaimed to a level above MHWS.

[18] It is common ground that, on the basis that the area in question lies below MHWS (subject to clarification by formal survey as to the bounds), in-filling the area would constitute a reclamation, that term being defined in the PRCP as:

> The deliberate act of filling in an area previously inundated by tide, so that the filled surface is raised above the level of MHWS. A reclamation does not have to be contiguous with the existing dry land.

[19] Section 14(2)(b) of the FSA provides an exception from the prohibition on alienation of the public foreshore and seabed by allowing for grants of interest to occur under s.355 of the RMA in accordance with ss.355AA or 355AB. Section 355(1) provides:

> Any person or local authority may apply to the Minister of Conservation for any right, title, or interest in any land in the coastal marine area which is land of the Crown and which has been reclaimed or is proposed to be reclaimed to be vested in that person.

[20] Section 355AA, in turn, provides:

> **355AA Effect of Foreshore and Seabed Act 2004 on vesting of reclamations**
>
> (1) If an application is made under section 355(1) that relates to land reclaimed from the public foreshore and seabed, the Minister of Conservation may vest in the applicant a right, title, or interest in the relevant land under section 355(3).
>
> (2) However, subsection (1) applies only if, before the commencement of section 13(1) of the Foreshore and Seabed Act 2004,—
>
> (a) a coastal permit has been granted to carry out the reclamation; or
>
> (b) the Minister of Conservation has entered into a written agreement with the applicant to vest a right, title, or interest in the relevant land; or
>
> (c) an enactment has provided for a right, title, or interest in the relevant land to be vested in the applicant.
>
> (3) If subsection (1) does not apply, the Minister of Conservation—
>
> (a) must not vest an estate in fee simple in the relevant land; but

(b) may vest in the applicant a lesser right, title, or interest in the reclaimed land.

(4) Subsection (3)(b) applies,—

(a) in the case of a port company or port operator referred to in section 107B(2)(e),—

(i) for a leasehold interest granted to it, so long as that interest does not exceed 50 years (though it may include a perpetual right of renewal on the same terms as the original lease, to the extent that the land continues to be used for port facilities):

(ii) for any other interest granted to it, so long as that interest, together with any rights of renewal, does not exceed 50 years; and

(b) in the case of any other entity, so long as the interest granted to it, together with any rights of renewal, does not exceed 50 years.

(5) In vesting an interest in reclaimed land under subsection (4), the Minister of Conservation may impose encumbrances or restrictions on the right, title, or interest in order to—

(a) control the use to which the land may be put:

(b) protect access rights in the coastal marine area, subject to any limits imposed by or under any enactment.

[21] In the circumstances of the present case, the Minister of Conservation is authorised to vest in the society a lesser interest in the reclaimed land than an estate in fee simple. However, any such interest, together with any rights of renewal, may not exceed 50 years. The foregoing position is deducible from a straightforward application of the foregoing subsections to the circumstances in hand; refer in particular to subss.(3)(b) and (4)(b).

[22] As the argument proceeded, we did not understand Ms Kapua for the iwi appellants to suggest otherwise. However, an issue arose whether, shortly before the expiry point of an interest granted under s.355AA(3)(b), the society could apply to the Minister for a further term or interest – that is, on the basis of an application to the Minister for a renewal of interest which might or might not be granted, rather than in exercise of a vested right to obtain a renewal.

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[23] Section 355AB provides:

> **355AB Application for renewals**
>
> (1) The holder of a right, title, or interest granted under section 355AA(3)(b)—
>
> (a) may apply to the Minister of Conservation, not later than 3 months before the expiry of the existing right, title, or interest, for a renewal of the right, title, or interest in the same, or part of the same, relevant land; and
>
> (b) has the right to have the application considered and determined before any other application may be considered for a right, title, or interest in the same land.
>
> (2) If an application is made under subsection (1), the holder may continue to operate under the existing right, title, or interest until the application is determined.

[24] In our view, this section would enable the society, should it be granted a leasehold interest by the Minister under s.355AA(3)(b), to seek a renewal of its interest not later than 3 months before the expiry of the interest so granted, in that s.355AB allows for the possibility of the holder of any such interest (which might have been granted for any term up to 50 years) to seek a renewal of interest before any other application may be considered for the same land. Whether any further term should be granted to an applicant (not exceeding 50 years) would lie purely within the Minister's discretion. The fact that the section contemplates the possibility of someone else making an application in respect of the same land is, we think, significant. If someone else can apply for an interest in the land, then the section must surely be interpreted to mean that an existing interest holder may apply first within the specified timeframe, bearing in mind the principle of statutory interpretation under s.6 of the Interpretation Act 1999 that "An enactment applies to circumstances as they arise".

[25] We observe that the foregoing issue is not critical to the society's current position, in that it wishes to proceed in the hope of simply obtaining a term of the order of 50 years, or such period approaching that as the Minister may be prepared to grant. Our remarks are therefore of peripheral import, the main point of concern being the opportunity at law for the society to seek an interest from the Minister for a term of years sufficient to enable it to proceed with its proposal. Given the extensive background to these proceedings, culminating in the last hearing phase in September this year, it is right and proper that we finally determine these appeals under the

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RMA, irrespective of uncertainty associated with seeking and obtaining a satisfactory lease (or other interest) through the Minister.

Salt marsh and associated issues

[26] Much expert evidence prior to the 2001 decision related to the salt marsh area – leading to our concluding at paragraph [37] of the decision as follows:

> Evidence was called for the society from Mr G L Don, managing director of the firm known as Bioresearches, and a person duly qualified and possessing considerable practical experience as a consulting biologist. What he had to say, both initially in-chief and in further evidence given in rebuttal to evidence called from Dr R V Grace, a marine biologist called for the appellants, sufficed to convince us that the salt marsh area is significantly compromised, and that the pattern of quality diminution is likely to accelerate as more and more residential activity establishes in the vicinity, particularly within the HEDPA. Thus, with some misgiving we conclude that the preferable course would be to expend a capital sum of the order that the Society proposes ($40.000) to upgrade a proximate salt marsh area pointed to by Mr Don, where conditions are such that the interests of avian wildlife will be better assisted and enhanced than retaining the remnant salt marsh on the subject site.

[27] Notwithstanding the above determination, much additional evidence was adduced, both at the 2004 hearing and in the last hearing phase in September this year, concerning the qualities of the salt marsh as a wetland area containing indigenous vegetation and as a habitat for avian wildlife.

[28] The society again called evidence at each hearing phase from Mr Don. His involvement with the marina project has extended over a lengthy period, thus enabling him to assess the position in relation to the salt marsh and the upper harbour area generally in and about the vicinity of the proposed marina basin during the ongoing consideration of these proceedings. His view over the salt marsh area has, in substance, remained constant from the time of his first evidence prior to the 2001 decision, then at the 2004 hearing, and most recently at the September hearing.

[29] At the 2004 hearing Mr Don stated that conclusions he had reached in 1999 remained unchanged, and that the proposed marina "would not result in the destruction of any notable habitat or have a significant adverse effect on any threatened species". At the recent September hearing he deposed that, within the wider context of Whangamata Harbour, the salt marsh area is of "significantly lower ecological significance" than other named habitats – including salt marsh habitat upstream of the Moanaanuanu Estuary causeway. Having assessed the salt marsh

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area against Environment Waikato Guidelines referred to in the RPS, his view was that the "salt marsh is of low ecological value in the context of the Moanaanuanu Estuary and the wider district". He also considered that the area did not comprise "significant indigenous vegetation or habitat in terms of the New Zealand Coastal Policy Statement".

[30] Mr Don went on to discuss and assess the proposed ecological enhancement programme consequent upon infilling of the salt marsh area. The programme was said to comprise four elements:

- Estuary enhancement upstream of the causeway
- New Zealand dotterel management programme
- Off-site rush marsh enhancement
- Provision of a training wall bird roost

[31] Despite criticism raised in evidence for the iwi appellants, we accept Mr Don's view that the last three elements will usefully contribute to the wellbeing of avian wildlife and habitat enhancement within the wider coastal environment. Even so, the first item is the one that bears significance in relation to promoting wetland sustainablity in the vicinity of the proposed marina site if the development should proceed, the main aims under that item being:

(i) To reinstate and enhance a 0.97ha area in which intensive planting of native vegetation would occur in order to bring about a coastal vegetation continuum within an overall area of 1.75ha immediately upstream of the causeway. For purposes of elucidation we attach a copy of Figure 1 to Mr Don's evidence showing the boundaries of the area and the broad elements of improvement intended. We also attach his Figure 2 showing the 0.97ha area, a significant portion of which comprises salt marsh to be rehabilitated and enhanced via the improvement programme.

(ii) To increase the quantity of coastal habitat and significantly raise the quality of habitat for banded rail, a nationally threatened species.

(iii) To utilise some of the rushes from the marina site salt marsh area to reinstate degraded areas upstream of the causeway.

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[32] The intended outcomes from the foregoing were described as follows:

> (i) An area of coastal vegetation habitat of approximately equivalent area to the salt marsh site would be planted and enhanced. The total management area would be about 1.8 hectares. The area of new rushes, coastal shrubs and trees would be about 0.9 hectare.
>
> (ii) The vegetation continuum in this area of the estuary would be reinstated and provide habitat that is contiguous with the upstream habitats.
>
> (iii) The quality of habitat and potential productivity of banded rail in the Estuary would be improved significantly.

[33] A costs estimate and breakdown totalling nearly $44,000.00 was produced for various aspects of the proposed works within the reinstatement and enhancement area, including a two-year maintenance programme to be undertaken following plantings. Upon inquiry from the Court, counsel for the society indicated that the society was prepared to meet funding of $2000 pa for ongoing future maintenance of the relevant area, including protection of salt marsh habitat.

[34] By contrast with Mr Don's assessment of the salt marsh area and the appropriateness of the ecological protection programme to be undertaken should the marina proceed, evidence called for the iwi appellants from Dr Pearce and Mr Shaw was strikingly at variance. Dr Pearce spoke of confirmed sightings of several rare or threatened bird species within the salt marsh, and both he and Mr Shaw believed the area to be in good condition and not of the limited quality asserted by Mr Don. It was their view that with relatively inexpensive maintenance the salt marsh would be sustainable well into the future.

[35] Mr Shaw also considered the ecological programme proposed by the society and endorsed by the two Councils to be "grossly inadequate", but did not offer any suitably specific alternative – in effect resting upon his basic viewpoint that the status quo should remain, thus effectively preventing the marina project from proceeding.

[36] Against the background of the divergent views of the ecological expert witnesses as indicated, we have to say that this aspect of the case has proved difficult to adjudge. We have had regard to the RPS and other planning provisions pointed to by Mr Don and Mr Shaw in support of their assessments of the salt marsh area. To assist in weighing the evidence, we undertook a comprehensive site inspection by arrangement with the parties during the recent hearing phase. The inspection also

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embraced the general area on either side of the causeway, including the area that currently features salt marsh within it immediately upstream of the causeway proposed for rehabilitation.

[37] While part of the area falling within the HEDPA may (subject to survey) lie below MHWS and thus fall under Crown ownership under the FSA, there is still land available for high density housing development immediately adjacent to the salt marsh. That being so, we are not as confident as Mr Shaw that the salt marsh area would remain intact and unaffected in the future, following the advent of such development. We do not overlook that service industry development lies not far removed from the proposed enhancement area immediately upstream of the causeway. Comparing the two areas, and having regard to existing and possible future land uses in the vicinity of each, we consider the upstream area to be a reasonable candidate for reinstatement and enhancement, in the interests of future sustainability of indigenous vegetation and wildlife habitat within the coastal environment, in the vicinity of the proposed marina site. We accept Mr Don's evidence in this regard. We also accept his view that birds currently feeding within the salt marsh area may be expected to relocate to other wildlife habitat within the upper harbour and the upstream part of the estuary – an area which was said to contain some 40ha of ecologically significant habitat, including the proposed reinstatement and enhancement area close by.

[38] We reserve further discussion on this branch of the case until our overall evaluation later.

Earthworks, building height and associated issues

[39] After hearing from counsel for TCDC as to the lawfulness of a possible condition to the earthworks consent limiting building height within the HEDPA, (which counsel submitted was a course open to us for reasons that he comprehensively expounded), Mr Matheson was called to give evidence in compliance with the request made of him at the 2004 hearing. A possible form of "tapering height" condition was offered, but it was Mr Matheson's view, for reasons he gave, that such a condition would, in reality, be unnecessary having regard to relevant standards already applicable for the zone. The daylight standard was pointed to specifically as a means of controlling the height of buildings within the HEDPA, and hence as a means of avoiding adverse effects on existing residential properties adjoining within the (lower density) Housing zone. As he noted:

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> Although buildings can be built to 8 metres high, this is restricted by the need to comply with the day-lighting standard. This avoids the situation where a site is filled and, consequently, the permissible height of buildings increases by the same height of fill placed on a property.

[40] Mr Matheson elaborated on his reasoning by further analysis of the HEDPA zoning provisions, in the light of which we are satisfied that a condition as mooted would be to little purpose. The zone's provisions are such that, taking account of the revised fill levels and contouring consequent upon removal of the excess material off-site (via the trucking consent), the appearance of the HEDPA area when filled, and in turn developed, will blend suitably with the surrounding area.

Construction of the marina

[41] Evidence was adduced for the society at the 2000 hearing phase through its engineering witness, Mr P D Mataga, regarding the means to be employed in constructing the approach channel to the marina, the excavation and construction of the marina basin itself, the landfill operation, installation of the marina floating structures, provision of proposed haul-out jetty and ramp, and onshore facilities inclusive of an administration and toilet block, parking areas, trailerboat parking and fencing, boat wash-down and hard-stand facility, stormwater and sewerage systems. Mr Mataga further addressed management and operational issues, both in broader directional and day-to-day operational senses, with particular reference to access and security, and ongoing controls against pollution. Operational aspects were also discussed and reinforced by evidence from the society's president, Mr M G Kelly, whom we found from his several appearances in giving evidence a responsible and convincing witness. We are satisfied from evidence led for the society, amplified by evidence for TCDC, that reasonable public access will be available within the precincts of the marina to meet public interest needs, consistent with the intent of s.6(d) of the RMA, while maintaining necessary security in the interests of boat owners.

[42] We refrain from reproducing the explanatory detail as to the above matters covered in evidence. Suffice it to say, we are satisfied that the overall proposal has been duly investigated and conceived with an appropriate range of engineering and other expert advice and input, and that the various planned elements, comprising the channel, basin, landfill, flotation units and land-based facilities, are generally similar in their characteristics to other successful marina developments elsewhere, such as that at Whitianga.

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Ongoing maintenance of marina basin and channel

[43] At the 2004 hearing, Ms Sheffield pointed to the fact (which is common ground) that the marina basin and channel will require periodic dredging in the future to avoid sedimentation build-up, liable to prevent ready entry/exit via the channel and use of the marina in varying tidal conditions. At the 2005 hearing we were satisfied from further evidence received from Mr Caldwell that dredging of the basin and channel, (estimated at no more, and expectedly less, than 6000m^3 per annum), could be readily undertaken – TCDC already having an (albeit lesser) dredging programme in place incidental to the existing slipway to be removed. As to disposal of such dredgings, we conclude, having listened to the society's case over the successive hearing phases, that viable long-term options exist, without the need to insist that a pre-arranged consent or series of consents be in place prior to the development proceeding. In short, we accept that the dredgings would be readily disposable, whether via appropriate coastal permit authorisation within the marine environment, or by land-based means as illustrated by the trucking consent.

[44] Ms Sheffield went on to suggest that tidal flushing of the marina would not occur over a two-day tidal cycle, contrary to evidence adduced for the society. Mr Caldwell stated in response that, in the light of calculations undertaken with the flushing rate, based upon a marina water depth of approximately 4.0m and a neap tidal range of greater than 1m, "the ebb and flow during the tidal cycle and the mixing that that induces in the marina will be sufficient to 'turn over' the complete volume of the marina in two days (four tide cycles)". He went on to explain the reasoning supporting his view, and, having considered it against the concerns raised by Ms Sheffield, we accept that poor water quality due to lack of flushing is not likely to be an issue on the basis of the works proposed in creating the marina basin and channel and the maintenance dredging intended.

[45] Before leaving this head, we record that the evidence given originally by Mr Caldwell prior to the 2001 decision, coupled with his subsequent evidence in 2005, served to provide adequate assurance that the hydrological and drainage issues for the seaward and landward components of the proposed marina development have been adequately addressed, and that, subject to compliance with relevant consent conditions, the effects of the proposal as regards those issues will be minimal.



Tangata whenua values and concerns

[46] In the course of the 2001 decision we observed at paragraphs [40] and [41]:

> Against the background of the PRCP's general concern to maintain the natural character and attributes of the upper harbour, the appellants have raised strenuous argument concerning perceived potential adverse effects upon kaimoana through modification of the channel by dredging, and consequential restriction of access to shellfish across the deepened channel. We note, however, that access to the shellfish resource would remain available from Moana Point some 400m away, and that TCDC is prepared to consider providing additional carparking there should circumstances so warrant.
>
> Other evidence for the appellants bearing on alleged waahi tapu and other ancestral issues in relation to the coastal area involved in the proposal proved relatively unpersuasive. Answers given under cross-examination were either lacking in consistency or unconvincing when weighed against the analysis advanced for the society by Mr B Mikaere, a former director of the Waitangi Tribunal, and a person qualified in Maori Studies and well-versed in Maori issues generally. These matters, however, (including those in the previous paragraph), would have to be assessed, along with other issues such as the ecology of the area and presence of wildlife, should it be proposed to change the PRCP to afford recognition to the sitting of a marina within this portion of the estuary.

[47] On the issue of shellfish gathering in the vicinity of Moana Point, evidence was called by the society from several witnesses familiar with the coastal area who attested to not having observed any such activity. Be that as it may, we accept the assertions made for the iwi appellants that the historical nature and continuing availability of the resource are factors that are cherished and important. We are not persuaded, however, that construction of the channel will affect the resource significantly, given the intended presence of rock retaining to maintain the channel's position and integrity within the marine environment. We consider also that reasonable access will still be available from Moana Point – a location that is readily accessible within the general confines of Whangamata in the vicinity of the Moanaanuanu Estuary. It was stated for TCDC at the hearing in 1999 that TCDC would be prepared to review carparking provision at Moana Point should a need for additional parking be evident following the marina's establishment. We do not consider it necessary to stipulate that such upgrading be undertaken as a precondition to the marina proceeding, but expect TCDC as a responsible body to abide by its stated intent, so as to ensure that ready and convenient access remains available.

[48] The greater concern for the continuing existence of the general area for possible shellfish gathering is the notable onset of mangrove growth in the vicinity of the proposed marina basin. The change in that respect between our previous

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inspection of the area prior to the 2001 decision and our inspection this year was very noticeable – bearing out evidence by Mr Don at the 2004 hearing concerning the changed conditions, and the firm view on his part that the area proposed for the marina basin is without special conservation value and suitable for the purpose intended. Assisted by our having inspected the area, we accept his evidence in preference to views expressed by Mr Shaw as to the area's degree of ecological significance.

[49] As to the views expressed at paragraph [41] of the 2001 decision (refer above), we confirm our remarks having again reviewed the evidence of witnesses called on behalf of the iwi appellants and from Mr Mikaere for the society. We accept, however, that the iwi appellants and those they represent have strong ancestral ties to Whangamata Harbour inclusive of the Moanaanuanu Estuary – that being reflected by the concerted and sustained opposition on the iwi appellants' part to the marina proposal.

[50] Ms P Clarkin, an administrator for the iwi organisation Te Kupenga O Ngati Hako Inc., was called as an additional witness at the 2004 hearing. She concluded her evidence by stating:

> We wish to reiterate that we are not opposed to marina developments, only when the location affects areas of cultural, spiritual and historical significance to tangata whenua and limits our ability to exercise our customary practices and kaitiakitanga as we have always done. The current marina proposal affects these things and that is why we are opposed.
>
> In conclusion I defer to the statements made by the late Mrs Laura Hiku:
>
> > Customary gathering practices have been developed over thousands of years. The pipi beds are where God placed them. We do not believe they should be moved.
>
> And the late Mr Ropata Rare:
>
> > ...this harbour was frequented by our ancestors for many generations and bequeathed to us in healthy condition, with its mauri intact. We wish to hand that taonga onto our own mokopuna.

[51] We acknowledge the concerns expressed by Ms Clarkin and other iwi appellant witnesses, stemming from their view that the marina proposal runs counter to tangata whenua values based on cultural, spiritual and historical considerations. Yet as observed in other cases, such considerations, while requiring due appraisal under relevant provisions of Part II of the RMA, do not have the effect of trumping all else, where other considerations, pertinent to achieving the Act's single purpose

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under s.5, fall as well to be considered. In the ultimate an overall judgement is required which —

> ...allows for a comparison of conflicting considerations and the scale or degree of them, and their relative significance or proportion in the final outcome: *North Shore City v Auckland Regional Council* [1997] NZRMA 59, 94.

[52] Applying such a judgment against the background of various considerations pointed to in the 2001 decision, and to considerations mentioned, and to be mentioned, in this decision, we conclude that appropriate recognition and provision and particular regard to matters under ss.6(e) and 7(a) of the RMA, and account of relevant treaty principles (including openness and active protection), will be reasonably achieved on the basis of the conditions relating to tangata whenua as proposed for inclusion in the various consents under draft conditions submitted for the society and endorsed by the two councils (a copy of such draft conditions being appended to this decision) – hereafter referred to for convenience as "the draft consent conditions".

[53] In so concluding, we have had regard to the Hauraki Iwi Management Plan dated March 2004. No other iwi plan was referred to us in evidence or submissions. That plan is concerned with protection and management of coastal areas and refers to various matters which, in many respects, are consistent with those raised in the regional planning instruments – for instance in relation to the importance of wetlands and water pollution control. Amongst a wide range of recorded environmental concerns, mention is made of coastal habitat loss and shellfish depletion, along with a perceived need to improve water and seabed quality. In relation to kaimoana, "assured access to a customary take for Hauraki tangata whenua" is expressed as a desired outcome. Amongst other outcomes, "greater understanding of coastal values by communities" is cited. Matters such as the importance attaching to the role of tangata whenua as kaitiaki, including active protection of ancestral taonga from the impacts of growth, are also pointed to.

[54] On the question of water pollution within the harbour, we confirm our remarks at paragraph [42] of the 2001 decision where we noted that, against the background of a more satisfactory boat mooring system, and the comprehensive security and control that would be expected in operating the marina –

> ...concerns raised by the (iwi) appellants as to adverse effects on shellfish through oil leakages and sewage disposal from boats would be better met via the comparatively high standards of the marina. The present proposal also involves

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removal (by agreement) of a slipway operated by Ocean Sports Club in Beach Road – a move anticipated to be environmentally beneficial on account of current risks of harbour contamination from anti-fouling agents and the like employed at the slipway.

[55] While we have noted various aspects of the iwi management plan as above, we have had regard to the whole document, along with all we heard in evidence from Ms Clarkin, Mr Mikaere and others. We later refer to conditions of consent stemming from our assessment of this branch of the case, together with other conditions relating to the reinstatement and enhancement works to be undertaken by the society.

Overall evaluation

[56] For reasons fully explained in the final decision on the variation to the PRCP issued contemporaneously herewith, it will be seen that we are in agreement with submissions advanced by counsel for Environment Waikato in the present proceedings that —

> When read as a whole, the biodiversity provisions of the RPS provide for avoiding, remedying and mitigating adverse effects of use and development through a variety of means, including appropriate off-site mitigation which recognises the specific characteristics of the site that is proposed to be developed.

[57] Under the final decision as mentioned, the variation is upheld on the basis of amendments (with agreed refinements) prepared by Environment Waikato's planning witness in those proceedings, but restoring the zoning provision contained in the variation as originally notified, both for the proposed marina site at Whangamata and for the existing marina at Whitianga. In effect, the final decision accepts that the variation, in the form upheld, is consistent with the RPS. Under the "Nugent provisions" (as revised), (which are attached to the final decision on the variation), new rule 16.2.10, added to Section 16.2 Habitat and Coastal Processes, provides for the use of and occupation of space for the purposes of a marina basin as a discretionary activity, "provided it complies with the standards and terms stated in this rule". The standards and terms are two-fold as follows:

1. The area of the marina basin would not exclude, or effectively exclude, public access from areas of the coastal marine area over 10 hectares or from more than 316 metres along the length of the foreshore.

2. The marina basin shall not be located in any area identified in the Plan as waahi tapu.

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[58] On the evidence, we find that both terms are satisfied in this instance.

[59] In assessing any application for the use of and occupation of space by a marina basin under the rule, regard is to be had to the following:

> i) Satisfaction of Policy 3.1.4B relating to the appropriate location of marinas;
>
> ii) The extent to which the activity will adversely affect any conservation value described in Appendix IV within the ASCV areas as indicated on maps in Appendix III of this plan, and the extent to which these effects can be avoided, remedied or mitigated in terms of Policy 3.2.1;
>
> iii) The Decision-making Criteria and Considerations which are set out in Appendix II of this Plan, and which are relevant to this activity;
>
> iv) The extent to which suitable alternative sites within the harbour, estuary or bay have been considered and reasons for the final choice of site;
>
> v) The extent to which the scale and design of the marina activity is appropriate to the size and physical characteristics of the harbour, estuary or bay.

[60] The rule goes on to state that conditions will be imposed covering various matters – which, of course, does not preclude the imposition of conditions covering all matters viewed as pertinent in a particular case. Conditions of consent covering all the listed matters are incorporated in the draft consent conditions. Under a heading "Principal Reasons for Adopting", an explanation is provided about the rule as follows:

> This rule provides decision-making guidance for the location of marina basins and sets standards to manage environmental effects in the marina basin once a marina is established. Marina basins are to be located in accordance with the criteria in Policy 3.1.4B. This rule only applies to use and occupation of space. Therefore rules relating to other effects from the development of a marina such as dredging, discharges, structures etc will also apply. A marina basin which would exclude the public from 10 hectares or 316 metres along the foreshore would be a restricted coastal activity in accordance with Schedule 1 of the NZCPS. Particular reference should also be made to Policy 4.1.1 Maintaining or Enhancing Water Quality Characteristics.

[61] Another new rule 16.4.25 provides that poles and pontoons within a marina basin are a permitted activity, that is to say —

> The erection, placement, use of or occupation of space by any pole or pontoon structure within the confines of a marina basin is a permitted activity provided it complies with the conditions stated in this Rule.

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The only condition specified is that "the structures shall be maintained in a structurally safe condition at all times". Under an explanatory statement for the rule it is noted that —

> This rule recognises that such structures are an integral part of the marina development. It is considered that once the site for the marina basin is approved the structures do not require further environmental management.

[62] Turning to the assessment criteria, we note first of all that the marina zone provisions, reintroduced under the variation decision for the proposed site at Whangamata (and for the marina at Whitianga), provide that the use of and occupation of space by a marina basin will be considered appropriate when located within a marina zone. Hence, the locational criteria under policy 3.1.4B do not require to be considered. Even so, we have had regard to those criteria, in the light of which, on the basis of the draft consent conditions, we regard the location of the proposed marina as appropriate.

[63] On the basis of Mr Don's evidence we hold that adverse effects through infilling of the salt marsh area will be remedied by the proposed reinstatement and enhancement of the wetland area nearby upstream of the causeway as earlier discussed. We also find that adverse effects on conservation values within the area proposed for construction of the marina basin, inasmuch as that area falls within an ASCV affecting the harbour, will be mitigated through the combined elements of the proposed enhancement programme, with provision being made for remedying those effects to the extent practicable. The additional (last three) elements of the proposed programme (refer above paragraph [30]), are aimed overall at improving areas of indigenous vegetation and assisting the wellbeing of wildlife within the upper harbour reaches (including the estuary).

[64] As to other matters for consideration involving adverse effects on other ecological values within the coastal environment and on coastal processes, as well as upon the relationship that tangata whenua as kaitiaki have with their ancestral taonga, we find that any such effects will be avoided as far as practicable, and otherwise mitigated, with provision being made for remedying the effects to the extent practicable on the basis of the draft consent conditions.

[65] As to other criteria involving adequacy of flushing rates, safe access to open waters, and consistency with the district plan applying to the adjoining land along with adequacy of proposed landward services – we are satisfied that those criteria are suitably met.

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[66] As regards remaining criteria concerning existing development in the area, compatibility with social, economic, cultural and recreational values and uses of the harbour or estuary, maintenance of access to the CMA or mitigation of any adverse effects thereon, and encouragement of rationalisation and consolidation of the numbers and location of pile and swing moorings within the harbour – here again, we conclude that all those criteria are met in the circumstances. On the last score, there was a suggestion for the iwi appellants that there was no guarantee consolidation would occur. However, we are satisfied that a "sinking lid" policy is intended to be applied by Environment Waikato, whereby existing pile and swing moorings will be gradually reduced – a significant contributing factor in that regard being the relinquishment of such moorings by various people seeking to take up marina berths.

[67] Turning to the other four assessment criteria under new rule 16.2.10 (refer paragraph [58] above), we find that the area to be occupied by the proposed marina basin will not affect conservation values attaching to the upper harbour under the PRCP to an unacceptable extent. We so conclude on the basis of steps proposed to be taken to avoid, remedy or mitigate effects on such values under the draft consent conditions - including particularly those conditions directed to the Maori dimension of the case, and to the proposed reinstatement and enhancement programme designed to protect the environment as regards significant indigenous vegetation and wildlife habitat in the vicinity of the site and upper harbour.

[68] As to the decision-making criteria and considerations set out in Appendix II of the PRCP, we consider that such of those criteria that are relevant, weighed against the very considerable evidence advanced for the society and supported by that of Environment Waikato and TCDC, would be reasonably met or covered by the draft consent conditions, or answered from our findings on different aspects of the proposal bearing on the merits.

[69] On the question of suitable alternative sites within the harbour, including the Moanaanuanu Estuary, we reiterate our finding in the 2001 decision (paragraph [46]):

> It may be that the current location warrants regional coastal planning endorsement by allowing for the possibility of the establishment of a marina, coupled with a reduced degree of earthworks for disposal of material on the landward side. None of the evidence of possible alternatives within the harbour has led us to conclude that any other location is clearly superior; and no apparent support was discernible for any alternative by the appellants.

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[70] For many years now the subject site has been well known and referred to, at least as far as those familiar with the township are concerned, as "the Whangamata marina site". From the landward perspective, a Marine Activities zoning has consistently been provided for, both under the transitional plan (which for present purposes bears no practical continuing application), and the proposed district plan (PDP) which is in all relevant respects effectively operative.

[71] As to the seaward component of the proposal, as noted in the 2001 decision (paragraph [43]):

> ...in the 1980s, albeit prior to the RMA there was provision for a marina at this location, with a demonstrable consistency of planning intent as between the landward and seaward components.

[72] Having reviewed the issue of a possible alternative location for a marina within the harbour (including the estuary), in the light of all we have heard in these proceedings, we would go so far as to say that, failing the present proposal, the likelihood of a marina being able to establish elsewhere within the harbour is very unlikely. Following from that, we recall the following passage in the 2001 decision which remains pertinent:

> We are very mindful of, and readily accept, the points urged in favour of a marina at Whangamata, given the unsatisfactory situation surrounding layout of pole and swing moorings for the stationing of boats, and the pressure of boat traffic, especially during holiday periods when the visitor population is known to expand to the order of 40,000. As a witness for the (iwi) appellants candidly put it, Whangamata is a "hot spot".

We also note the convincing evidence of Mr D Pearks, Environment Waikato's coastal consent manager, given under cross-examination by Ms Kapua during the 2004 hearing and in response to questioning by the Court, as to the notable range of perceived benefits the marina development would bring to Whangamata, extending beyond merely the boating public.

[73] Further to references to the RPS in the interim and final decisions on the variation to the PRCP, we have had due regard to relevant provisions of the RPS for the purposes of the present decision. We refrain from repeating the analysis contained in the final variation decision, but simply record that, in our view, the PRCP (as varied) is not inconsistent with the RPS, and that the latter instrument, on analysis, reveals a flexible approach for protecting bio-diversity areas, including, where appropriate, through remediation or mitigation measures where adverse effects cannot be avoided. In this instance, the marina proposal is dependant upon

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infilling of the salt marsh area previously discussed, but we hold that suitable remediation is to be undertaken in the vicinity of the site so as to maintain and protect the area's bio-diversity and coastal wetland system by looking to provide for a wetland area of comparable size and nature via the reinstatement and enhancement programme proposed by the society and endorsed by both the regional and territorial bodies.

[74] We have also paid due regard to the various provisions of the NZCPS that bear relevance in this case. Emphasis was placed during the course of the various hearing phases on Policy 1.1.2 which we cite below, but we have in the course of deliberations considered all parts of the document, including those relating to matters of tangata whenua interest or concern.

[75] Policy 1.1.2 reads as follows:

> It is a national priority for the preservation of the natural character of the coastal environment to protect areas of significant indigenous vegetation and significant habitats of indigenous fauna in that environment by:
>
> (a) avoiding any actual or potential adverse effects of activities on the following areas or habitats:
>
> (i) areas and habitats important to the continued survival of any indigenous species; and
>
> (ii) areas containing nationally vulnerable species or nationally outstanding examples of indigenous community types;
>
> (b) avoiding or remedying any actual or potential adverse effects of activities on the following areas:
>
> (i) outstanding or rare indigenous community types within an ecological region or ecological district;
>
> (ii) habitat important to regionally endangered or nationally rare species and ecological corridors connecting such areas; and
>
> (iii) areas important to migratory species, and to vulnerable stages of common indigenous species, in particular wetlands and estuaries;
>
> (c) protecting ecosystems which are unique to the coastal environment and vulnerable to modification including estuaries, coastal wetlands, mangroves and dunes and their margins; and
>
> (d) recognising that any other areas of predominantly indigenous vegetation or habitats of significant indigenous fauna should be disturbed only to the extent reasonably necessary to carry out approved activities.

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[76] Given the above policy provisions, and others in the NZCPS that bear on the proposal, the formation of an overall judgment to give effect to the Act's purpose under section 5, (bearing in mind and importing the wide range of considerations applicable), is by no means straightforward in a case such as this. As regards Policy 1.1.2, we are very mindful of the priority accorded for the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna. As earlier discussed, the evidence of the ecological witnesses at the 2004 and 2005 hearing phases was in conflict, subsequent to our finding earlier made in the 2001 decision regarding the salt marsh area (refer above, paragraph [26]).

[77] We observe that matters under section 6 of the RMA, while nationally important, are not intended to be interpreted as "veto provisions", but rather, to be given appropriate consideration and weight in the circumstances of the individual case to assist in reaching an appropriate judgement, according with the Act's single purpose under section 5. That is what we have sought to do in this instance in reference to all relevant matters under s.6 – and, indeed in reference to matters to be afforded particular regard and taken into account under ss.7 and 8. As regards s.6(c) concerning areas of significant indigenous vegetation and significant habitats of indigenous fauna, we conclude, on weighing the evidence for and against, that due recognition and provision will be afforded by the reinstatement and enhancement programme intended.

[78] We turn now to the consents granted by TCDC. In the 2001 decision we stated at paragraphs [44] and [45]:

> On the landward side, the district planning provisions do not contemplate the very extensive earthworks and landform alteration implicit in the proposal. We do not overlook the point made by Mr Berry that there is a policy directed to avoiding land uses or development that adversely affect various natural values of certain named harbours, and that that policy omits to mention Whangamata Harbour. However, that point does not suffice in our view to overcome the difficulty presented by the proposal as to the degree of earthworks proposed.
>
> We appreciate that it is the society's wish to dispose of as much material as possible on-site in the absence of a suitable recipient alternative off-site. But given that 60% of the proposed fill material would, according to the applicant's engineering witness, have a beach sand grading, it is certainly questionable that sustainable management of such a resource involves devoting the resource to altering the height and form of this significant area of coastal land, to the extent proposed. One would expect the resource to be usable elsewhere for a worthwhile purpose where it is actually needed, in contrast to what is proposed. Moreover, there needs to be a clear arrangement for disposal of the material requiring removal from the site, so that the effects from that aspect of the proposal can be suitably identified and assessed.

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[79] The PDP provides for marina activities within the landward part of the proposed marina development, and includes development standards designed to protect the amenity values of adjoining areas. Under the society's proposal all appropriate infrastructure is intended to be provided, including roading and provision for/and control of water and wastewater. The landward part of the proposal is intended to lie within the Marina Activities Policy Area (MAPA) that abuts the HEDPA which lies to the rear. A 7m height limit applies within the MAPA which will serve, so the society and TCDC contend, in conjunction with the reduced finished ground height and intended landscaping, to ensure that the proposed marina will be an appropriate development within this coastal area. Development within the HEDPA will, in turn, so it is said, form an appropriate backdrop to the marina complex, with a maximum building height of 8m under the PDP (reduced from 10m under the transitional plan) above the revised base level.

[80] Under Chapter 337 of the PDP, General Policy Areas, the following provisions are of particular significance.

> 337.1 MARINE ACTIVITIES POLICY AREA
>
> .1 **Description**
>
> 1.1 The Marine Activities zone was introduced into the District Scheme in 1986 as a way of providing for activities that were directly associated with specifically marine related activities that need to be located on the water's edge. Marine Activities zone were located at
>
> ...
>
> - Whangamata, on Beach Road adjacent to the causeway and abutting the location selected as the preferred location for a marina.
>
> 1.2 Because of their different settings, each of these policy areas serves a different purpose.
>
> 1.3 The policy area seeks to ensure that where they are needed, areas are set aside where marine activities can be established as of right, and these activities would not be displaced by other light industries, nor detract from the amenities or natural values of the areas in which they are situated.
>
> 1.4 Locations that are suitable for industrial, commercial, and service activities and adjacent to the water, and have appropriate water and land infrastructure available, are few and far between, and should be safeguarded for marine activities only.

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.2 **Purpose**

2.1 To provide the opportunity for a wide range of land-based, water related activities to be established in selected locations adjacent to the coast.

2.2 The policy area ensures that:

(i) Industries, and commercial activities which do not have close links to water-related activities do not take the limited space in these coastal-edge locations.

(ii) Bulk and location standards for buildings, and other activity standards (such as noise) reflect the locality in which the policy area is situated. The types of activities located nearby are an important factor in setting these standards, especially near housing areas.

2.3 The policy area is found within towns.

2.4 Each marine activities policy area has a different character. This will affect how controlled and discretionary activity applications are dealt with.

2.5 **At:**

....

(iii) Whangamata, the Beach Road area is residential in character and is likely to be adversely affected by some industrial activities. As the land is owned by Council there is good local control over activities that could be established there. If the area is sold or management transferred from Council, there would be a presumption against the granting of consent to industries that would have an adverse effect on the amenity values of the adjacent residential areas through excessive noise, unattractive buildings, heavy vehicles servicing the site, smell, hours of operation (night work, early start or late finish, and the like), or which would be adverse to the construction or maintenance of a marina in the adjacent water area. (emphasis added)

[81] Against the foregoing, we accept Mr Berry's submission in his closing address at the 2005 hearing that, while much was heard about the land elevation issue connected with the amount of fill to be deposited within the landward portion of the development, the concept of a marina and its associated activities is strongly supported by the MAPA and associated provisions of the PDP. In the light of the reduced levels, amended contours and intended landscaping, we accept that the

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concern raised in the 2001 decision over "the extent of the proposed earthworks, and the notable raising and reshaping of the landform" has been overcome.

[82] Of particular assistance was the evidence of Mr A M Rackham, a consultant landscape architect duly qualified and experienced, adduced for the society at the 2004 hearing phase. As he noted:

> In terms of appearance, this part of the harbour/estuary complex is among the most modified. Extensive housing, industry to the southwest, the causeway and various other structures and features have reduced the area's naturalness. However, the application site still retains natural elements and some predominantly natural processes, resulting in on-site naturalness. The area retains its relationship to the estuary. This naturalness reflects the presence of vegetation communities – mangroves, the remnant 'rush marsh', and to a lesser extent, shrub and tree plantings. The latter, although planted, have taken on a partly natural appearance.
>
> In my opinion, it is reasonable to characterise the present natural character of the landward parts of the application site as moderately low. The mangroves and mudflats retain a greater naturalness. My comparison with most parts of the Coromandel coast, the application area is strongly modified by surrounding development, and passed landform and landcover changes. It retains localised naturalness, reflecting apparently natural plant communities. However, the processes supporting these communities – the rush marsh and mangroves, are themselves modified by altered sedimentation and drainage patterns resulting from human activities. While the area retains the appearance of naturalness, in my opinion, natural character is sufficiently modified that its preservation or protection in its current form is unlikely to be achievable. Given the zoning in the District Plan, attempts at protection are not justified. Nonetheless, the application site's proximity to the estuary and harbour should be recognised in the way any further changes are handled. Natural elements and appearance should be incorporated into site layout and design.

[83] In terms of cumulative effect, Mr Rackham had this to say:

> A new marina on this site will add to the existing level of development adjacent to the estuary. There will be, at least in the short-term, some reduction in the current natural character. In my opinion, this will not be significant beyond the immediate site. The loss of amenity values that will occur during construction will be rapidly replaced with new values as the proposed landform and associated planting matures. Given the site context and the potential for change implicit in the zoning, I consider that any adverse cumulative effects from additional built development will be minor. In my opinion, the completed landscape will enhance this part of Whangamata.

[84] In discussing changes to the proposal since the 2001 decision, Mr Rackham stated:

> The earthworks and planting are both significantly refined from the proposal presented at the earlier hearing before this Court. For the period of

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> construction, the site will lose its current character and quality. However, to the extent practicable, disturbance will be limited and delayed. Once construction is completed the marina landscape design will provide significant screening from adjacent areas and introduce a new internal quality that will enhance pedestrian relationships with the marina basin and estuary. In my opinion, apart from temporary disturbance, this proposal will replace the amenity values of the existing site with different, but equally attractive features.

[85] In the upshot, Mr Rackham noted that "the success of the proposal remains dependant upon commitment to a landscape plan that develops the conceptual layout and treatment I have described". He favoured a condition requiring the adoption of a landscape development and maintenance plan – including details of earthworks, site drainage, retention of existing vegetation (where that vegetation is within the society's control), transplanting of significant plant material and landscape treatments for planting within the marina site and HEDPA zone in consultation with TCDC. On the basis of such an approach it was his opinion that the proposed marina "will provide an attractive asset to Whangamata that has minimal adverse effects on the area's natural character and amenity values". A condition requiring the adoption of such a plan is contained in the draft consent conditions.

[86] Having reflected on all we heard from the many witnesses, including the iwi appellants' planning witness Mr N J Roberts, we regard the assessment of Mr Rackham on the landscape/amenity issues as persuasive – viewed in conjunction with the supportive planning evidence of Mr D F Serjeant called for the society, and Mr Matheson in support of TCDC's position.

[87] The earthworks as proposed will not be contrary to the objectives and policies of the PDP on the basis of the consent conditions proposed. Of relevance is the following objective at clause 221.3:

> To protect the District's natural environment, amenity or cultural values and landscape character from the adverse effects of land disturbance and earthworks.

– followed by the following policies of relevance at clause 221.4:

> .1 To avoid, remedy or mitigation (sic) the adverse impact of land modification caused by land disturbance or earthworks in the following areas:
>
> ...
>
> 1.7 Waahi Tapu and other places of significance to Tangata Whenua.

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...

.2 To ensure the adverse effects of land disturbance or earthwork activities, are remedied or mitigated to such an extent the landscape character, amenity values and ecology of an area is not degraded.

.3 To recognise the different types of earthworks and land disturbance activities in order to manage their adverse effects appropriately.

...

[88] We have considered other objectives and policies of the PDP as well, drawn to our attention in evidence. Section 2 of the PDP contains a Sustainable Resource Management Strategy, incorporating principles that are general in their wording relating to landscape amenity and ecology, tangata whenua, services and settlements. We have had regard to those provisions plus a considerable range of objectives and policies bearing on relevant matters, including district water bodies, bio-diversity, landscape and natural character, land disturbance and earthworks, transportation, settlements and amenity values, visitors and the environment, heritage resources and tangata whenua issues.

[89] Given the MAPA provisions of the PDP supportive of marine activities in the context of a marina, the scaling down of the on-site earthworks and finished ground levels, and our factual findings on various issues made in the course of this decision, we agree with Mr Matheson that, looking at the range of objectives and policies of the PDP overall that may be said to relate to the proposal in the context of the earthworks involved, the earthworks as now intended, subject to the conditions proposed, will not be contrary to those provisions.

[90] Although the earthworks consent application requires to be considered as a non-complying activity under s.88A of the RMA, given the timing of its original lodgement and the status of the proposed activity at that point, the application in our view satisfies the legislative gateway for a non-complying activity and warrants favourable consideration on its merits.

[91] We do not overlook that during the construction period, effects on amenity values will occur, with the project taking up to two years to complete. As Mr Rackham noted:

> Existing vegetation on the application site will be removed and excavation of the marina basin and completion of the filling mounding will continue over part of this period. The effects of construction will be similar to any large earthworks.

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Key mitigation will include:

(i) Protection of the reserve area adjacent to the existing trailer park.

(ii) Retention of existing mature planting on the outer perimeter of the application site wherever possible during construction.

(iii) Construction of the outer slopes of the fill area as early as possible to allow settling and early landscape treatments of grassing and shrub planting.

The construction will be visible from some adjacent properties and from Harbour View, Mako, Riverview and Hetherington Roads. However, in each case roadside views into the site are restricted by adjacent buildings and vegetation. Not all of the site will be visible from these locations. As with the affected dwellings immediately adjacent to the works, the period during which earthworks will occur in any one location will be less than the total construction period.

The area of the application site closest to affected neighbours is zoned HEDPA and significant disturbance of the existing site from future building construction could be anticipated. The society does not have property rights over that land and cannot make long-term commitments about its use and development.

Once construction is complete the effects on visual amenity will gradually alter as the marina site and associated plantings mature.

[92] In our judgement, any adverse effects from the marina's landward construction, including particularly via the carrying out of earthworks, upon residential amenity, bio-diversity and cultural values, will be avoided, or suitably remedied or mitigated by the features and design of the proposed development, by the comprehensive on-site management procedures to be adopted, and by due adherence to the draft consent conditions. The RMA, of course, does not presuppose that no adverse effects will be caused, whether to the environment or in relation to the values of one or more sections of the community. Here we find that the actual and potential adverse effects will be so controlled, limited, or otherwise addressed by the above means as to fulfil the purpose of the RMA and justify endorsement of the proposal.

[93] We have paid regard to other pertinent provisions drawn to our attention from other instruments in reviewing the landward aspect of the project and the consents relating thereto, including policy 1.1.1 as to preservation of the natural character of the coastal environment as a matter of priority. In our view, the marina with its associated marine activities will not constitute an inappropriate development for this specific location. We elaborate further on this below (paragraph [102]).

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[94] Policy 4.1.4 of the NZCPS states that —

> Provision should be made to ensure that material used to create and form a reclamation, or material sited on a reclamation, in land of the Crown in the coastal marine area, does not include contaminants which are likely to, or have the potential to, adversely affect the coastal marine area.

[95] We cite this policy specifically, inasmuch as the suggestion was raised for the iwi appellants that the existence of some organic matter in the material to be excavated to form the marina basin and provide fill on the landward side of the development would constitute a contaminant with an odour potential. The question of odour is discussed in the trucking decision (as the matter was particularly raised in the context of the appeals concerning that application), but for present purposes we are satisfied, on the evidence adduced in favour of the marina proceeding, that with responsible care and management applied in creating and forming the reclamation regarding the salt marsh area in particular, policy 4.1.4 of the NZCPS will not be infringed.

[96] In determining these proceedings, both in reference to the seaward and landward components of the overall proposal, we have had regard to the provisions of the Hauraki Gulf Marine Park Act 2000 (HGMPA). Under s.9(4) of that Act, a consent authority must, when considering an application for a resource consent for the Hauraki Gulf, its islands, and catchments, have regard to ss.7 and 8 of the Act in addition to the matters contained in the RMA. Under s.10(1), for the coastal environment of the Hauraki Gulf, ss. 7 and 8 are to be treated as a New Zealand coastal policy statement issued under the RMA. However, the effect of s.10(2) is that, if conflict exists between ss.7 and 8 and the provisions of the NZCPS, the latter prevails. There was no suggestion for present purposes that any conflict exists.

[97] Section 7 of the HGMPA provides —

> 7 Recognition of National Significance of Hauraki Gulf
>
> (1) The interrelationship between the Hauraki Gulf, its islands, and catchments and the ability of that interrelationship to sustain the life-capacity of the environment of the Hauraki Gulf and its islands are matters of national significance.
>
> (2) The life-supporting capacity of the environment of the Gulf and its islands includes the capacity —
>
> (a) to provide for —

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(i) the historic, traditional, cultural, and spiritual relationship of the tangata whenua of the Gulf with the Gulf and its islands; and

(ii) the social, economic, recreational, and cultural well-being of people and communities:

(b) to use the resources of the Gulf by the people and communities of the Gulf and New Zealand for economic activities and recreation:

(c) to maintain the soil, air, water, and ecosystems of the Gulf.

[98] Section 8, in turn, provides —

8 Management of Hauraki Gulf

To recognise the national significance of the Hauraki Gulf, its islands, and catchments, the objectives of the management of the Hauraki Gulf, its islands and catchments are –

(a) the protection and, where appropriate, the enhancement of the life-supporting capacity of the environment of the Hauraki Gulf, its islands, and catchments:

(b) the protection and, where appropriate, the enhancement of the natural, historic, and physical resources of the Hauraki Gulf, its islands, and catchments:

(c) the protection and, where appropriate, the enhancement of those natural, historic, and physical resources (including kaimoana) of the Hauraki Gulf, its islands, and catchments with which tangata whenua have an historic, traditional, cultural and spiritual relationship:

(d) the protection of the cultural and historic associations of people and communities in and around the Hauraki Gulf with its natural, historic, and physical resources:

(e) the maintenance and, where appropriate, the enhancement of the contribution of the natural, historic, and physical resources of the Hauraki Gulf, its islands, and catchments to the social and economic well-being of the people and communities of the Hauraki Gulf and New Zealand:

(f) the maintenance and where appropriate, the enhancement of the natural, historic, and physical resources of the Hauraki Gulf, its islands, and catchments, which contribute to the recreation and enjoyment of the Hauraki Gulf for the people and communities of the Hauraki Gulf and New Zealand.

[99] Upon reading the provisions of the two sections in combination, it is evident that, as with the RMA, an overall judgment has to be brought to bear in considering a proposal of the kind before us. That involves having regard to the various factors

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which the two sections point to in the context of recognising the national significance of the Hauraki Gulf (s.7) and managing the Gulf via specified objectives stemming from that significance (s.8).

[100] We are satisfied that the kaimoana resource of particular concern to tangata whenua will not be significantly affected, with reasonable access to the resource continuing to be available via Moana Point. Furthermore, in our judgement, the siting of the marina development at the location proposed, viewed both in relation to the immediate coastal environment and that pertaining to the wider confines of the estuary and the harbour, will reasonably accord with the ends of ss.7 and 8 of the HGMPA. We so hold for the various reasons expressed in the course of this decision, and on the basis of the comprehensive conditions of consent proposed, including particularly those relating to tangata whenua, and the intended ecological/wildlife enhancement programme put forward by the society, with the approval and support of both Environment Waikato and TCDC, and, as regards the dotterel management programme, the Department of Conservation.

[101] In the course of weighing the multi-faced arguments and considerations advanced for and against the proposal, it appears to us that, should the marina not proceed, the seaward area will become (at least without human intervention) more and more encroached upon by mangrove proliferation and growth. Furthermore, the HEDPA (subject to our remarks at paragraph [37]) will be developable with intensive housing immediately adjacent to the saltmarsh area. In our view, the saltmarsh area is likely to be under threat from domestic and other animals and increased human activity in the immediate area, even if the marina does not proceed. At the least, the area would require meshed ring- fencing as a "no-go" area, and there is no suggestion before us that that is intended. Moreover, it is relatively confined as an individual remnant. In the proposal's favour, on the other hand, are factors that include the positive reinstatement and enhancement programme upstream of the causeway – a programme designed for the purpose of remedying effects by providing comparable quality wetland habitat in the vicinity, coupled with ongoing maintenance of the relevant area through agreed annual financial contributions, or other equivalent value services, provided by the marina consent holder. The large upstream area generally also has the potential for added enhancement measures to be introduced at the instance of relevant agencies, possibly in conjunction with community support initiatives and input.

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[102] In summary, weighing all aspects, including paying regard to ss.7 and 8 of the HGMPA and affording Part 2 of the RMA due primacy, we consider an appropriate development outcome will be achieved within this part of the town's coastal environment, consistent with the RMA's purpose under s.5. The development, though significant in both its marine and landward components, will not be an inappropriate development for the area running counter to s.6(a) of the RMA, given the particular location in the vicinity of the causeway, and the position of the site in relation to the landward area surrounding, and to the immediate and wider reaches of the Moanaanuanu Estuary and the harbour. Plainly the marina, plus development within the HEDPA to the rear, will introduce a notable change within the part of the estuary concerned. Even so, having had regard to the actual and potential effects on the environment of allowing the activity and relevant provisions of the NZCPS and planning instruments, we consider that the development as a whole will be able to be accommodated appropriately within this particular coastal area, on the basis of the modifications to the landward part of the proposal now introduced and the consent conditions proposed.

Consent conditions

[103] Various conditions proposed under the draft consent conditions require that information be provided to representatives of the four iwi bodies listed (they being the bodies represented by Ms Kapua in these and the trucking consent proceedings), or to a single representative if nominated to represent all four, on a range of matters incidental to the exercise of the different consents. Additional conditions bearing on Maori value considerations are included as part of the trucking consent – refer the decision on that application issued contemporaneously. Viewed collectively, we consider that the draft consent conditions pay heed to and appropriately account for the various connections of tangata whenua interests with Whangamata and its harbour and give practical effect to relevant provisions relating to Maori under ss.6, 7 and 8 of the RMA. Via the incorporated conditions, the iwi bodies through their representatives (or representative if one is agreed on for all) will have opportunities to comment on the intended monitoring programme and various management plans, and to be consulted during the construction and operation of the marina.

[104] The draft consent conditions proposed to apply to recommended consent 953761 include detailed provisions designed to give effect to the intended indigenous vegatation/wildlife habitat enhancement programme (including ongoing maintenance).

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Determination and recommendation

[105] For all the reasons we have endeavoured to express, the appeals against the various consents which were granted, or recommended to be granted, at first instance, are allowed to the extent that the conditions are to be amended in accordance with the draft consent conditions (but subject to paragraphs [108] and [109] below). The draft consent conditions as appended incorporate the amended bond conditions as per the memorandum of counsel for the society and the two councils dated 20 October 2005, filed by leave. Given the significance of the project in relation to the coastal environment and Whangamata generally, and the importance of ensuring that the it duly proceeds to conclusion within the anticipated time-frame, once it is under way, it is appropriate that the amended bond conditions be incorporated. Otherwise the appeals are dismissed.

[106] Save for those consents that involve the Minister of Conservation, the consents are upheld, subject to the amended conditions. The Court, in turn, recommends to the Minister of Conservation that the other consents be granted on the terms indicated. For completeness, it is noted that certain proposed consent orders in related proceedings brought by the Minister of Conservation (RMA 93/97) and Whangamata Golf Club (RMA 46/97) have effectively been overtaken and met by the conditions of consent upheld in these proceedings. Those other proceedings are confirmed as being at an end.

Costs

[107] Costs are reserved. If costs should be in issue, any application may be filed and served within 20 working days, the party or parties from whom costs are sought having a similar period in which to reply, with the applicant having a further ten working days in which to furnish any final response.

Leave to apply

[108] Given the history of these proceedings, if anything should require amendment by way of correction or necessary clarification, whether in the body of this decision or in the draft consent conditions, leave is reserved to apply. Counsel for the society and the two councils are requested to lodge and serve a joint memorandum specifying the final form of the conditions by reference to the draft



consent conditions and the following paragraph [109]. A formal order will then issue confirming them accordingly.

[109] In order to marry with the trucking consent conditions, it would be appropriate, in our view, if proposed condition 4B of the draft conditions applicable to recommended coastal permit 953758 were to have a proviso added along these lines:

> Provided, however, condition 21 of the consent upheld by the Environment Court to truck material to disposal destinations off-site shall not be invoked in terms of the present condition as a basis for holding all relevant consents have not been obtained.

We also consider that the words "under the exercise of this consent" in the same proposed condition 4B should be replaced with "in the construction of the marina basin and channel", as per the memorandum of counsel for Environment Waikato dated 25 October 2005, lodged by leave. That amendment is necessary in order to clarify the intended ambit and focus of that condition.

Lastly, we consider that proposed condition 6 to recommended coastal permit 953761, and condition c of the earthworks consent, should each be amended to read consistently with condition 16 of the trucking consent, with the concluding words reading:

> ...and the tangata whenua and Historic Places Trust shall be consulted forthwith, with an appropriate contingency plan being formed, paying heed to Maori protocol, before the works are allowed to recommence.

DATED at **AUCKLAND** this 26th day of October 2005.

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For the Court:

R J Bollard
Principal Environment Judge

DRAFT CONSENT CONDITIONS

SCHEDULE ONE

A That a coastal permit (953759) be granted to the Whangamata Marina Society, PO Box 37, Whangamata to discharge seepage water from the marina basin during construction of a 205 berth Marina at or about map references NZS 260 T12:648-408 on the sea bed of the Moanaanuanu Estuary of the Whangamata Harbour, Blk XVI, Tairua SI), for a term to expire five years after commencement of this consent subject to the following conditions:

1) The consent holder shall provide a management plan for the discharge of seepage water from the marina basin. This plan shall detail the methods and techniques that will be used to treat the sediment laden water, and appropriate procedures to monitor the effects of suspended solids and turbidity on the surrounding environment. This plan shall be forwarded for approval to the Waikato Regional Council at least two months prior to the commencement of construction. One month prior to forwarding the plan to the Waikato Regional Council a draft will be sent to the Iwi representatives which may suggest amendments to the plan which must be submitted to the consent holder within one month of receipt of the plan by the Iwi representatives. If those amendments are not accepted by the consent holder, the consent holder shall forward the suggested amendments to the Council at the same time as it submits the plan for the Council's approval.

2) The discharge shall be undertaken in accordance with the details provided to the Waikato Regional Council in the above condition.

3) The suspended solids concentration of the discharge at the point of outflow from the discharge pipe shall not exceed 80 grams per cubic metre.

4) The turbidity as measured at any point at a depth greater than 300 millimetres and further than two metres out from the waters edge and 100 metres from the point where the discharge occurs into the coastal marine area shall not be 5 NTU's greater than the naturally occurring background level. The control sites at which the background level will be measured shall be determined in consultation with the Waikato Regional Council.

5) The exercise of this consent shall not result in the discharge of any visible oil or grease.

MONITORING

6) The consent holder shall retain an appropriately experienced person to develop a plan to evaluate the effect of the discharge on harbour water quality, the volume of the discharge, and the environmental effects of the discharge on aquatic biota in the receiving environment. This program shall be to the satisfaction of the Waikato Regional Council, and forwarded for approval at least two months prior to the

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commencement of construction. This programme shall also be forwarded to the Iwi representatives at least two months prior to the commencement of construction. The monitoring report shall include reference to the following;

i. the volume of the discharge
ii. the turbidity and if required, the suspended solids concentration of the discharge
iii. maintenance of sediment control measures undertaken
iv. a map of sampling locations
v. the turbidity and if required, the suspended solids concentration of the receiving environment directly adjacent to the discharge point(s) but unaffected by the discharge
vi. the turbidity and if required, the suspended solids concentration of the receiving environment within 100 metres of the discharge point(s) that is directly affected by the discharge
vii. a description of conditions at the time of sampling (eg. weather, tide height, water depth, depth from surface sample was taken, distance from shore).

The results of the weekly monitoring shall be provided to the Regional Council on a fortnightly basis with a final report being provided within three months of the completion of the construction works.

7) The consent holder shall undertake monitoring of the discharge volume and quality and ascertain the effect of this discharge on the surrounding environment, as outlined in condition (6) above. The consent holder shall monitor the discharge three times per week when the discharge is less than 5,000 cubic metres per day, and on a daily basis when the discharge exceeds this volume.

8) The consent holder shall provide an appropriately experienced person to develop and carry out an appropriate biological monitoring program. The program shall be to the satisfaction of the Waikato Regional Council and forwarded for approval at least two months prior to the commencement of construction. One month prior to forwarding the plan to the Waikato Regional Council a draft will be sent to the Iwi representatives which may suggest amendments to the plan which must be submitted to the consent holder within one month of receipt of the plan by the Iwi representatives. If those amendments are not accepted by the consent holder, the consent holder shall forward the suggested amendments to the Council at the same time as it submits the plan for the Council's approval. This monitoring program shall address, indicator species (including a selection of those species that are sensitive to elevated sediment concentrations and a selection of those that are not sensitive to elevated sediment concentrations) distribution and density, also noting all species present that are known to be sensitive to long periods of elevated sediment concentrations.

9) The information gathered in (8) above shall be forwarded to the Waikato Regional Council and the Iwi representatives within two months of the date of sample analysis and a final report shall be provided one month prior to the expiry of this consent.

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10) Any erosion control works that become necessary as a result of this consent shall be undertaken at the expense of the consent holder and as directed by the Waikato Regional Council.

11) The consent holder shall inform the Waikato Regional Council and the Iwi representatives in writing one month prior to their intention to commence construction.

12) The Waikato Regional Council may initiate a review of the conditions of this consent under Section 128 of the Resource Management Act 1991, every two years after the date of granting in the month of October for the purpose of avoiding, remedying or mitigating any adverse effects on the environment from the exercise of this consent.

13) All sample methods of analysis shall be as detailed in the "Standard Methods For The Examination of Water and Waste Water, 1998" 20th edition by A.P.H.A and A.W.W.A and W.E.F or any subsequent update or by some other method approved in advance in writing by Waikato Regional Council.

14) The consent holder shall pay to the Waikato Regional Council any administrative charge fixed in accordance with Section 36 of the Resource Management Act 1991, or any charge prescribed in accordance with regulation made under Section 360 of the Resource Management Act 1991.

GENERAL

15) This consent lapses on the expiry of five years after the date of commencement of the consent.

ADVICE NOTE

In this Consent the Iwi representatives means either a collective nominee or an individual representative of each of the following parties:

- Hauraki Maori Trust Board;
- Te Kupenga O Ngati Hako Incorporated;
- Whangamata Maori Committee;
- Te Runanga O Ngati Puu.

The choice of individual representative or a group nominee is at the discretion of the Iwi parties and will be advised to the consent holder on an annual basis.

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B That a coastal permit (953760) be granted to the Whangamata Marina Society, P 0 Box 37, Whangamata to discharge drainage water from excavated marina basin sediment into the Moanaanuanu Estuary NZS 260 T12:648-408 on the sea bed of the Moanaanuanu Estuary of the Whangamata Harbour, Blk XVI, Tairua SD, for a term to expire five years from the date of commencement of this consent, subject to the following conditions:

1) The consent holder shall provide a management plan for the discharge of drainage water from the excavated marina basin sediment. This plan shall detail the methods and techniques that will be used to treat the sediment laden water, and appropriate procedures to monitor the effects of suspended solids and turbidity on the surrounding environment. This plan shall be forwarded for approval to the Waikato Regional Council at least two months prior to the commencement of construction. One month prior to forwarding the plan to the Waikato Regional Council a draft will be sent to the Iwi representatives which may suggest amendments to the plan which must be submitted to the consent holder within one month of receipt of the plan by the Iwi representatives. If those amendments are not accepted by the consent holder, the consent holder shall forward the suggested amendments to the Council at the same time as it submits the plan for the Council's approval.

2) The discharge shall be undertaken in accordance with the details provided to the Waikato Regional Council in the above condition.

3) The turbidity as measured at a point further than 200 metres from the seaward end of the outfall pipe and at a depth greater than 300 millimetres and shall not be more than 5 NTU above the background level.

4) The exercise of this consent shall not result in the discharge of any visible oil or grease.

MONITORING

5) The consent holder shall retain an appropriately experienced person to develop a plan to evaluate the effect of the discharge on harbour water quality, the volume of the discharge, and the environmental effects of the discharge on aquatic biota in the receiving environment. This program shall be to the satisfaction of the Waikato Regional Council, and forwarded for approval at least two months prior to the commencement of construction. This programme shall also be forwarded to the Iwi representatives at least two months prior to the commencement of construction. The monitoring report shall include reference to the following:

i. the volume of the discharge
ii. the turbidity of the discharge
iii. maintenance of sediment control measures undertaken
iv. a map of sampling locations
v. the turbidity of the receiving environment directly adjacent to the discharge point(s) but unaffected by the discharge

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vi. the suspended solids concentration and turbidity of the receiving environment within 200 metres of the discharge point(s) that is directly affected by the discharge

vii. a description of conditions at the time of sampling (eg. weather, tide height, water depth, depth from surface sample was taken, distance from shore).

The results of the weekly monitoring shall be provided to the Regional Council on a fortnightly basis with a final report being provided within three months of the completion of construction.

6) The consent holder shall undertake monitoring of the discharge volume and quality and ascertain the effect of this discharge on the surrounding environment, as outlined in condition (6) above. The consent holder shall monitor the discharge three times per week when the discharge is less than 5,000 cubic metres per day, and on a daily basis when the discharge exceeds this volume.

7) The consent holder shall provide an appropriately experienced person to develop and carry out an appropriate biological monitoring program. The program shall be to the satisfaction of the Waikato Regional Council and forwarded for approval at least two months prior to the commencement of construction. This monitoring program shall address, indicator species (including a selection of those species that are sensitive to elevated sediment concentrations and a selection of those that are not sensitive to elevated sediment concentrations) distribution and density, also noting all species present that are known to be sensitive to long periods of elevated sediment concentrations. One month prior to forwarding the plan to the Waikato Regional Council a draft will be sent to the Iwi representatives which may suggest amendments to the plan which must be submitted to the consent holder within one month of receipt of the plan by the Iwi representatives. If those amendments are not accepted by the consent holder, the consent holder shall forward the suggested amendments to the Council at the same time as it submits the plan for the Council's approval.

8) The information gathered in (7) above shall be forwarded to the Waikato Regional Council and the Iwi representatives within two months of the date of sample analysis and a final report shall be provided one month prior to the expiry of this consent.

9) Any erosion control works that become necessary as a result of this consent shall be undertaken at the expense of the consent holder and as directed by the Waikato Regional Council.

10) The consent holder shall inform the Waikato Regional Council and the Iwi representatives in writing one month prior to their intention to commence construction.

11) The Waikato Regional Council may initiate a review of the conditions of this consent under Section 128 of the Resource Management Act 1991, every two years after the date of granting in the month of October for the purpose of avoiding, remedying or mitigating any adverse effects on the environment from the exercise of this consent.

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12) All sample methods of analysis shall be as detailed in the "Standard Methods For The Examination of Water and Waste Water, 1998" 20th edition by A.P.H.A and A.W.W.A and W.E.F or any subsequent update or by some other method approved in advance in writing by Waikato Regional Council.

13) The consent holder shall pay to the Waikato Regional Council any administrative charge fixed in accordance with Section 36 of the Resource Management Act 1991, or any charge prescribed in accordance with regulation made under Section 360 of the Resource Management Act 1991.

GENERAL

14) This consent lapses on the expiry of five years after the date of commencement of the consent.

ADVICE NOTE
In this Consent the Iwi representatives means either a collective nominee or an individual representative of each of the following parties:

- Hauraki Maori Trust Board;
- Te Kupenga O Ngati Hako Incorporated;
- Whangamata Maori Committee;
- Te Runanga O Ngati Puu.

The choice of individual representative or a group nominee is at the discretion of the Iwi parties and will be advised to the consent holder on an annual basis.

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SCHEDULE TWO

C That the Minister of Conservation grant a coastal permit (953758) to the Whangamata Marina Society, PO Box 37, Whangamata to contain 4 hectares of the Coastal marine zone and to construct and operate a 300 metre breakwater and control structures related to the marina and dredge a marina basin and channel, for the purposes of a 205 berth Marina at or about map references NZS 260 T12:648-408 on the sea bed of the Moanaanuanu Estuary of the Whangamata Harbour, Blk XVI, Tairua SD, for a term to expire 35 years from the date of commencement of this consent, subject to the following conditions:

1) The design and construction of the works authorised by this consent shall be in accordance with the principles outlined in the document entitled "Whangamata Marina Society - Proposed Whangamata Marina - Assessment of Environmental Effects and Resource Consents" dated 22 November 1995, produced by WORKS Consultancy, and the further information provided as supplements to this document.

2) The marina and associated activities shall be positioned as defined in the plans as shown in the document referred to in 1) as further modified during the consent process and by the plans revised October 2004. The marina shall not occupy a larger area than that which is described in that document. The general form, position and layout of the marina and associated facilities shall be in accordance with those outlined in the supporting information of this application.

CONSTRUCTION and DESIGN

3) The consent holder shall employ appropriately experienced registered engineers to supervise the development of a detailed design for the marina and associated facilities. This engineer shall provide a design certificate describing the works to be constructed and stating that the works have been suitably investigated and are properly designed in accordance with good engineering practice. A copy of that certificate and plans shall be forwarded to the Waikato Regional Council and to the Iwi representatives two months prior to commencement of construction of the marina.

4) The consent holder shall provide a plan detailing construction methods, design, size, maintenance, and location of the bund, breakwater, channel and rip-rap wall, the sequencing and programming of the works and the management and maintenance of the works within six months after the granting of this consent, and prior to the commencement of construction.

4A) Prior to the commencement of construction authorised by this consent, the consent holder shall have the then existing level of the stream bed surveyed by a suitably qualified and experienced person acceptable to the Waikato Regional Council and shall advise the Waikato Regional Council in writing of that survey level. If any future proposal to deepen the stream bed above the control structure is consented to by Waikato Regional Council and pursuant to Section 119A Resource Management Act 1991, the consent holder will investigate whether the proposed deepening will lead to the aggrading of the channel between the marina basin and the main harbour

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channel. Should the investigation show that aggradation will not occur in the access channel between the marina basin and the main harbour channel, the consent holder will take such steps available to it to lower the height of the control structure.

4B) One month prior to the date on which construction of the works authorised by this consent is to commence, the consent holder shall provide to the Waikato Regional Council evidence that all relevant consents have been obtained for the disposal of material to be dredged under the exercise of this consent.

5) The consent holder shall provide an appropriately experienced registered engineer to supervise the construction of the marina. On completion of the marina the engineer shall provide a construction certificate stating that the marina has been constructed in accordance with the design developed for the marina and has been constructed in accordance with good engineering practice. A copy of that certificate shall be forwarded to the Waikato Regional Council and the Iwi representatives prior to the operation of the marina.

6) The consent holder shall inform the Waikato Regional Council and the Iwi representatives in writing of the starting and expected completion date of the works at least one month prior to the commencement of construction.

7) The consent holder shall retain appropriately qualified and experienced persons to develop a plan detailing procedures to be put in place to minimise the potential for sediment discharge from the site during construction of the marina. This plan shall address among other things the following:

i. means of containing sediment in the dredge basin
ii. means of containing construction debris to the work site
iii. measures to be employed to reduce odours associated with disposal of dredged material
iv. means of ensuring contractor compliance with this plan
v. staff responsibilities and procedures to ensure compliance with the plan
vi. sampling sites and means of measuring suspended solids and turbidity

This plan shall be to the satisfaction of the Waikato Regional Council and forwarded for Council's written approval at least one month prior to the commencement of construction. One month prior to forwarding the plan to the Waikato Regional Council a draft will be sent to the Iwi representatives which may suggest amendments to the plan which must be submitted to the consent holder within one month of receipt of the plan by the Iwi representatives. If those amendments are not accepted by the consent holder, the consent holder shall forward the suggested amendments to the Council at the same time as it submits the plan for the Council's approval.

8) The construction of the access channel shall not cause suspended solids concentration of the harbour water further than 150 metres from the site of construction, and up to 1 metre below the water surface or half the depth of the water column, whichever is less, to increase by more than 50 grams per cubic metre above background level.

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9) The construction activities at the site shall not cause the turbidity of the harbour water as measured at control points, to be determined in consultation with the Waikato Regional Council, at any point further than 150 metres from the site of construction, and up to one metre below the water surface or half the depth of the water column, whichever is less, to increase by up to 5 NTU above the background level.

10) The consent holder shall be responsible for implementing the best practical option so as to minimise sediment discharge, damage to the seabed and surrounding environment whilst accessing the site and carrying out the works.

11) The quantity of material to be removed by dredging shall not exceed 167,000 cubic metres during the construction of the marina basin and channel. Records of the amount of material removed shall be kept by the consent holder and shall be made available at all reasonable times to the Waikato Regional Council and to the Iwi representatives.

11A) The material excavated shall be disposed of by the consent holder wherever practicable according to the following priority:

(a) Not less than 110,000 cubic metres on sites adjacent to the marina to achieve the minimum practical operating level.

(b) Disposal of appropriate material to beach nourishment or to stock pile for beach nourishment to Environment Waikato's requirements where consents for these activities have been obtained.

(c) Disposal for other public good purposes agreed by Environment Waikato and for which any necessary disposal consents have been obtained.

(d) Disposal by sale on commercial terms with the net proceeds of sale to be placed in a fund to be utilised by Environment Waikato to protect or restore the coastal environment at Whangamata.

(e) Disposal on sites adjacent to the marina up to the maximum levels allowed by consents granted by Environment Waikato and the Thames Coromandel District Council.

(f) To other sites for which any necessary consents have been obtained or are not required.

12) Construction vehicles shall not be permitted in any part of the coastal marine area beyond the boundaries of the construction site authorised by this consent.

13) Any erosion control works that become necessary as a result of the exercise of this consent shall be undertaken as directed by the Waikato Regional Council at the expense of the consent holder.

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14) Construction works authorised by this consent shall not extend for more than two years from the date on which construction commences.

15) Noise levels of the construction site shall comply with those set out in NZS 6803: 1999, "The Measurement and Assessment of Noise from Construction, Maintenance and Demolition Work". Prior to construction commencing, the consent holder shall supply to Waikato Regional Council a certificate from an appropriately qualified acoustic engineer certifying that the noise levels of the construction can meet those set out in NZS 6803: 1999.

16) Public access shall not be restricted in the coastal marine area subject to safety requirements during construction and boat security after construction.

17) A shore based sewage pump out, handling and disposal facility to service boats using the marina shall be planned and these shall be implemented within two years of the date on which construction of the works authorised by this consent commences.

18) The exercise of this consent shall not result in the discharge of any visible oil or grease.

19) The consent holder shall on request in writing from either the Waikato Regional Council or the Iwi representatives provide a registered survey plan of the marina structures and their location.

19A) The consent holder will provide a roosting area for seabird species at the seaward end of the training wall. The surface area of this roost will be not less than 300m^2 at an RL of 11.6. The rock facing of the roost area is to be surfaced with heavy shell or other material suitable for seabird roost areas.

OPERATION and MAINTENANCE

20) The following maximum noise levels shall apply to all activities under the control of the marina operator:
7:00 a.m. to 10:00 p.m. -55 dBA (L10)
10:00 p.m. to 7:00 a.m. -45 dBA (L10)
as measured at the waterfront on Beach Road or at the notional boundary of any residential building (20 metres forward of the facade of the building).

Noise levels shall be in accordance with NZS 6803: 1999, "The Measurement and Assessment of Noise from Construction, Maintenance and Demolition Work."

21) Maintenance dredging operations of the marina basin shall only be undertaken one hour after the tide starts to go out, ceasing two hours before the tide starts to come in, unless otherwise authorised in writing by the Waikato Regional Council.

22) An appropriate maintenance dredging and disposal plan shall be prepared annually and forwarded to Waikato Regional Council for approval in writing prior to maintenance dredging being undertaken for that year. This plan shall include an

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estimate of the amount of sediment to be dredged, sediment characteristics, disposal site(s) and an assessment of effects at the disposal site. The consent holder is responsible for securing any consents necessary for the disposal of maintenance dredgings. One month prior to forwarding the plan to the Waikato Regional Council a draft will be sent to the Department of Conservation and the Iwi representatives which may suggest amendments to the plan which must be submitted to the consent holder within one month of receipt of the plan by the Iwi representatives. If those amendments are not accepted by the consent holder, the consent holder shall forward the suggested amendments to the Council at the same time as it submits the plan for the Council's approval.

23) The consent holder shall prepare and keep a current management plan for all aspects of the marina facilities and operational procedures to ensure that the operations on the marina site do not have an adverse effect on the environment. This plan shall provide;

i. Description of operations and facilities and their maintenance requirements
ii. Contingency measures associated with operations and facilities and any training required
iii. Berth contract provisions which are directed to ensure that berth holders act in an environmentally appropriate manner
iv. Detail on any penalty provisions that the marina society may impose for inappropriate actions

A draft of this plan shall be provided to the Waikato Regional Council within three months of the date of commencement of this consent and the final plan shall be completed within six months of the date of commencement of this consent, and forwarded to the Waikato Regional Council for written approval. One month prior to forwarding the plan to the Waikato Regional Council a draft will be sent to the Iwi representatives which may suggest amendments to the plan which must be submitted to the consent holder within one month of receipt of the plan by the Iwi representatives. If those amendments are not accepted by the consent holder, the consent holder shall forward the suggested amendments to the Council at the same time as it submits the plan for the Council's approval.

24) The marina shall be operated as detailed in the management plan provided to the Waikato Regional Council as outlined in condition (23) above.

25) The consent holder shall retain an appropriately experienced person to evaluate and characterise the level of contaminants on the site and develop a contingency plan for the prevention and removal of spills of hydrocarbons and other contaminants from entering the coastal marine area. The plan shall detail;

i. What spill prevention measures have been undertaken on site
ii. What equipment is kept on site to remove spills
iii. What training staff have in the use of such measures
iv. How the disposal of contaminated materials will be undertaken

A draft of this plan shall be provided to the Waikato Regional Council and the Iwi

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representatives within three months of the date of commencement of this consent and the final plan shall be completed within six months of the date of commencement of this consent.

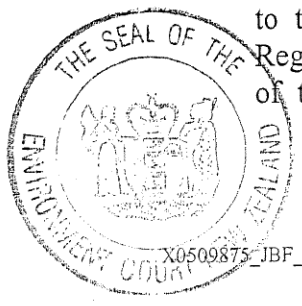
MONITORING

26) The consent holder shall retain appropriately experienced and suitably qualified persons acceptable to Waikato Regional Council after reference to and discussion with the Department of Conservation, to develop an ecological monitoring plan to determine the impact of the marina construction and operation on the surrounding habitat, water quality and aquatic biota. This programme shall be to the satisfaction of the Waikato Regional Council, and forwarded for approval at least two months prior to the commencement of construction. One month prior to forwarding the plan to the Waikato Regional Council a draft will be sent to the Iwi representatives which may suggest amendments to the plan which must be submitted to the consent holder within one month of receipt of the plan by the Iwi representatives. If those amendments are not accepted by the consent holder, the consent holder shall forward the suggested amendments to the Council at the same time as it submits the plan for the Council's approval. The monitoring plan shall include reference to the following:

i. Assessment of habitats including those of Mangroves, Eel grass, Shellfish beds, and Avifauna communities to specifically include NZ Dotterel and Variable Oystercatcher
ii. Assessment of aquatic biota in the vicinity of operations for species density, distribution, and community composition
iii. Frequency and period of monitoring prior to, during and after construction including attention to the critical breeding periods of the NZ Dotterel and Variable Oystercatcher (October-February)
iv. Harbour water quality as a result of dredging and an investigation of the parameters to be measured
v. Contaminated water quality including bacterial levels in both the marina basin waters and in shellfish in the vicinity, hydrocarbon concentrations in the marina basin, and the concentration of elements derived from antifouling products in the marina waters/aquatic species
vi. Reporting procedures

27) The consent holder shall undertake the environmental monitoring programme referred to above and forward the results of that programme at the intervals detailed in that programme to the Waikato Regional Council, the Department of Conservation and the Iwi representatives.

28a) Prior to the commencement of construction, the consent holder will demonstrate to the satisfaction of Waikato Regional Council that the consent holder has sufficient funds committed to carry out the construction of the marina in accordance with the consents granted and shall provide a legally enforceable bond jointly in favour of and to the satisfaction of the Thames Coromandel District Council and the Waikato Regional Council ("the Councils"). The bond is intended to ensure that in the event of the consent holder failing to complete the marina, there are sufficient funds



available to the Councils in order to:

(i) Remove structures from below Mean High Water Springs ("MHWS"); and

(ii) Secure the completion of earthworks, filling, rehabilitation, landscaping and stormwater reticulation to the extent necessary and practicable to avoid, remedy or mitigate adverse effects on the environment and ensure that there is no ongoing liability or responsibility for the Council; and

(iii) Enable any adverse effects on the environment resulting from the consent holder's activities and not authorised by a resource consent to be avoided, remedied or mitigated; and

(iv) Enable the Councils to undertake the monitoring and management of the site until completion of the landscaping and satisfactory operation of the stormwater reticulation system to the extent contemplated in (ii) above.

28b) The quantum of this bond will be determined as follows:

i) Prior to the commencement of construction the consent holder will provide to the Councils a project plan that will identify key construction targets at approximately 6 monthly intervals throughout the marina project.

ii) The project plan will include an estimate of the costings for removal of structures below MHWS and remediation of the land above MHWS for each of the construction targets and consistently with the intent of this bond as stated in (za) above.

iii) Prior to commencement of construction the applicant will obtain a bond sufficient to cover the maximum risk to the Councils as represented by the highest cost estimate in paragraph (ii) above.

iv) The consent holder will maintain the bond agreed under paragraph (iii) until construction is complete and all works have been carried out in accordance with the Landscape and Stormwater Management Plans.

28c) In the event that the consent holders and the Councils are unable to agree on the quantum of the bond, the dispute shall be referred to arbitration in accordance with the provisions of the Arbitration Act 1996.

28d) With the exception of arbitration costs incurred under paragraph (28c) all costs relating to the bond shall be paid by the consent holder.

29) The Waikato Regional Council may initiate a review of the conditions of this consent under Section 128 of the Resource Management Act 1991, every two years after the date of commencement of the consent in the month of October for the purpose of avoiding, remedying or mitigating any adverse effects on the environment from the exercise of this consent.

30) All sample methods of analysis shall be as detailed in the "Standard Methods For The

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Examination of Water and Waste Water, 1998" 20th edition by A.P.H.A and A.W.W.A and W.E.F or any subsequent update or by some other method approved in advance in writing by Waikato Regional Council.

31) The consent holder shall pay to the Waikato Regional Council any administrative charge fixed in accordance with Section 36 of the Resource Management Act 1991, or any charge prescribed in accordance with regulation made under Section 360 of the Resource Management Act 1991.

GENERAL

32) This consent lapses on the expiry of five years after the date of commencement of the consent.

ADVICE NOTE
In this Consent the Iwi representatives means either a collective nominee or an individual representative of each of the following parties:

- Hauraki Maori Trust Board;
- Te Kupenga O Ngati Hako Incorporated;
- Whangamata Maori Committee;
- Te Runanga O Ngati Puu.

The choice of individual representative or a group nominee is at the discretion of the Iwi parties and will be advised to the consent holder on an annual basis.

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D That the Minister of Conservation grant a coastal permit (953761) to the Whangamata Marina Society, P 0 Box 37, Whangamata to reclaim 1.4 hectares of the Coastal marine zone by placement of fill onto a salt marsh for development of a hardstand and parking area for the purposes of a 205 berth Marina at or about map references NZS 260 T12:648-408 on the sea bed of the Moanaanuanu Estuary of the Whangamata Harbour, Blk XVI, Tairua SD, subject to the following conditions:

1) The consent holder shall inform the Waikato Regional Council and the Iwi representatives in writing at least one month prior to the reclamation taking place.

2) The consent holder shall inform the Waikato Regional Council and the Iwi representatives prior to the commencement of construction of the method by which material shall be discharged into the reclamation area.

3) All sediments that are placed onto the salt marsh under the exercise of this consent shall be placed to the satisfaction of the Waikato Regional Council.

4) The consent holder shall be responsible for implementing the best practical option so as to minimise sediment discharge, damage to the seabed and surrounding environment whilst accessing the site and carrying out the fill placement.

5) Construction works shall be carried out in a manner that complies with the noise levels as set out in NZS 6803: 1999, "The Measurement and assessment of Noise from Construction, Maintenance and Demolition Work." Prior to construction commencing, the consent holder shall supply to Waikato Regional Council a certificate from an appropriately qualified acoustic engineer certifying that the noise levels of the construction can meet those set out in NZS 6803: 1999.

6) If any archaeological remains are found the works within a 20 metre radius of the relevant area where the remains are found shall cease and the tangata whenua and Historical Places Trust shall be notified and an appropriate contingency plan formed, before the works are allowed to recommence.

7) The consent holder shall provide appropriately experienced persons to detail a management plan to be put in place that details how the potential and actual effects on the fauna in and around the site during construction of the marina will be minimised. The plan shall address fauna to be protected and staff responsibilities and procedures to ensure compliance with the plan. The completed plan shall be provided to Waikato Regional Council for written approval, prior to commencement of construction. One month prior to forwarding the plan to the Waikato Regional Council a draft will be sent to the Iwi representatives which may suggest amendments to the plan which must be submitted to the consent holder within one month of receipt of the plan by the Iwi representatives. If those amendments are not accepted by the consent holder, the consent holder shall forward the suggested amendments to the Council at the same time as it submits the plan for the Council's approval. The consent holder will forward copies of the draft management plan to the Department of Conservation for comment before completion of the plan.



(8) Following consultation with Thames Coromandel District Council, Waikato Regional Council, the Department of Conservation, Iwi representatives and under the guidance of an appropriately qualified ecologist, the consent holder shall undertake work to the value of $45,000 (excluding gst) to enable enhancement and restoration works to be undertaken on the land described as the "enhancement area" on figure 1 attached to this consent and in general accordance with the Moanaanuanu Estuary Enhancement Proposed Management Plan, being Appendix 6 to Mr Don's evidence to the September 2005 hearing and attached to this consent. The enhancement and restoration works encompassed by this condition (excluding the initial 2 year maintenance programme) shall be completed before the marina commences operation.

8A Following the completion of enhancement measures detailed in condition (8) to this consent (including the initial 2 year maintenance programme) the consent holder shall provide money or services up to the value of $2000.00 (excluding gst) per annum for the purposes of monitoring and maintaining enhancement measures detailed in condition 8 to this consent. Such work shall be done in accordance with a Maintenance Plan to be approved by the Waikato Regional Council.

8B. To the extent practicable, and to the extent of the areas that are made available to the consent holder for enhancement prior to the date on which marina construction is programmed to commence, and following consultation with Thames Coromandel District Council, Waikato Regional Council, Iwi representatives and the Department of Conservation, native rush plants from the marina site saltmarsh that are not transplanted in accordance with condition 8 of this consent shall be used to enhance other estuarine sites in the District. That enhancement process will, as a priority, remedy sites from which pampas has been removed, to the extent that the total area of enhancement (including areas provided for under condition 8 of this consent) is equal to or exceeds the area of saltmarsh removed for development of the marina, provided that sufficient areas have been made available prior to the date on which marina construction is programmed to commence, and shall be carried out under the guidance of an appropriately qualified ecologist.

The Waikato Regional Council will advise the consent holder of areas available for enhancement at least one month in advance of the programmed date of commencement of construction.

9) The exercise of this consent shall not result in the discharge of any visible oil or grease.

10) The Waikato Regional Council may initiate a review of the conditions of this consent under Section 128 of the Resource Management Act 1991, every two years after the date of commencement of consent in the month of October for the purpose of avoiding, remedying or mitigating any adverse effects on the environment from the exercise of this consent.

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11) Construction works authorised by this consent shall not extend for more than two years from the date on which construction commences.

12) The consent holder shall pay to the Waikato Regional Council any administrative charge fixed in accordance with Section 36 of the Resource Management Act 1991, or any charge prescribed in accordance with regulation made under Section 360 of the Resource Management Act 1991.

13) This consent lapses on the expiry of five years after the date of commencement of the consent.

ADVICE NOTE

a) Sediment from this activity will potentially contribute to sediment entering the Moanaanuanu Estuary and the marina basin and shall be monitored as part of the conditions attached to coastal permits 953759 and 953760.

b) In this Consent the Iwi representatives means either a collective nominee or an individual representative of each of the following parties:

- Hauraki Maori Trust Board;
- Te Kupenga O Ngati Hako Incorporated;
- Whangamata Maori Committee;
- Te Runanga O Ngati Puu.

The choice of individual representative or a group nominee is at the discretion of the Iwi parties and will be advised to the consent holder on an annual basis.

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SCHEDULE THREE

Pursuant to the provisions of Sections 104 &105 of the Resource Management Act 1991, the Thames Coromandel District Council grant consent to the Whangamata Marina Society Inc:

1. To undertake earthworks involving the placing of fill taken from the construction of the Whangamata Marina, on several parcels of land adjacent to the Whangamata Marina site owned by Thames-Coromandel District Council; and

2. To establish marina facilities within the Marine Activities zone (eg a car parking area, a washdown area, a hard-stand area, a secure dry boat storage area, boat maintenance area, car and trailer parking, administration office (50m²) and toilet facilities)

on the site off Beach Road, Whangamata (legally described as Part Section 13 Block XVI Tairua SD, and Pt SO 20568 Sheet 1 Whangamata Blk XVI Tairua SD). Access to the facilities will be from Beach Road.

Pursuant to the provisions of Section 108 of the Resource Management Act 1991, the consent is subject to the following conditions:

EARTHWORKS

a) The development shall be undertaken generally in accordance with the information and plans submitted with the application provided that the finished contours shall be generally in accordance with the Dunwoodie & Green Surveyors Ltd plan referenced as File 3304, Sheet 11 and dated August 2004 (attached to this consent as Attachment A).

b) The consent holder shall commission an archaeological survey of the site (ie landward of Mean High Water Springs) for the purpose of recording any information of archaeological or cultural significance. The archaeologist shall be a qualified person approved by the Historic Places Trust, and shall present a written report to the Trust and the Manager Environmental Planning Services promptly after completing the survey.

   No work shall commence within the site until such time as the consent holder has obtained any necessary approval from the Historic Places Trust to destroy, damage or modify any archaeological site identified in the survey.

   The Trust shall be advised of this condition by the consent holder and shall be kept informed of progress by the appointed archaeologist.

c) Whether or not the report referred to in Condition b) above records significant information, if any archaeological remains are found, the works within a 20 metre radius of the relevant area where the remains are found shall cease and the tangata whenua and Historic Places Trust shall be notified and an appropriate contingency plan formed, before the works are allowed to recommence.

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d) A 'Stormwater Management Plan' including stormwater runoff and upstream catchment calculations for stormwater drainage and details of the piping of the 20% stormwater runoff flows and the manner in which discharge to Council stormwater or water system be to the satisfaction of and be submitted for approval by the Manager Environmental and Planning, prior to the commencement of construction.

e) The construction noise levels as measured at any point within the boundary of the site shall not exceed the limits specified in Table 2 – Long-term Duration of NZS 6803:1999 Acoustics – Construction Noise.

Subject to the express provisions of this condition, the noise levels shall be measured and assessed in accordance with the requirements of NZS 6803:1999 Acoustics – Construction Noise.

Prior to earthworks commencing, the consent holder shall supply to the Thames Coromandel District Council a certificate from an appropriately qualified acoustic engineer certifying that the noise levels can meet those set out in NZS 6803 :1999. A Noise Control Management Plan shall be prepared by an appropriately qualified acoustic engineer, showing how the requirements of NZS 6803 : 1999 and the certificate are to be complied with. Both the certificate and the Noise Management Plan shall be to the satisfaction of and be submitted for approval by the Manager Environmental and Planning, prior to the commencement of construction.

f) Compaction and final certification of the earthworks standards shall be in accordance with Appendices A & B of NZS 4404, and shall be to the satisfaction of and be submitted for approval by the Manager Environmental and Planning.

g) A Dust Management Plan showing the manner in which dust is to be controlled during construction activities shall be to the satisfaction of and be submitted for approval by the Manager Environmental and Planning, prior to the commencement of construction.

h) Engineering plans of any works to be undertaken on the site are to be to the satisfaction of and be submitted for approval by the Manager Environmental and Planning, prior to the commencement of construction.

i) A detailed Landscape Management Plan, including an implementation and maintenance programme, plant sizes at planting time and showing the manner in which screening of the boat and trailer parking areas is provided for, shall be to the satisfaction of and be submitted for approval by the Manager Environmental and Planning, prior to the commencement of construction. One month prior to forwarding the plan to the Thames Coromandel District Council a draft will be sent to the Iwi representatives which may suggest amendments to the plan which must be submitted to the consent holder within one month of receipt of the plan by the Iwi representatives. If those amendments are not accepted by the consent holder, the consent holder shall forward the suggested amendments to the Council at the same time as it submits the plan for the Council's approval.

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The Landscape Management Plan shall be prepared by a qualified member of the New Zealand Institute of Landscape Architects and will be generally in accordance with Figure 6 attached to the evidence of Mr Allan Rackham, entitled "Whangamata Proposed Marina – Landscape Plan", attached to this consent (as Attachment B).

MARINA FACILITIES

j) The site is to be developed generally in accordance with the plans and information submitted with this application and as supplied in response to Section 92 Requests for Further Information.

k) The facility is to be connected to Council's water reticulation system.

l) The water supply connection is to be metered and the public supply is to be protected by a backflow prevention device.

m) The facility is to be connected to Council's wastewater reticulation system.

n) Details of the proposed wastewater discharge dump connection to be provided for boats visiting the Marina.

o) The washdown system is to be protected by silt and other contaminants interceptor trap before being discharged.

p) A Dust Management Plan showing the manner in which dust created as a result of boat cleaning activities is to be controlled to ensure there are no nuisances to properties outside the site, shall be to the satisfaction of and be submitted for approval by the Manager Environmental and Planning, prior to the commencement of construction.

q) Confirmation of the volumes of water being utilised and of wastewater being discharged to Council's sewer system are to be provided, prior to the setting of headworks contributions. Headworks contributions for water and wastewater services are payable.

r) No works are to take place in the Council's Road Reserve without Council's approval.

s) The carparking areas are to be constructed to Council's urban standard, complete with stormwater runoff control.

All internal roading and parking to be permanently surfaced, including the road area shown as 'Metal'. (The grassed / occasional parking area is acceptable to be formed in grass).

t) Engineering plans for works on the site are to be approved before any work takes place. This includes dimensional carparking layout.

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u) The public walkway from Beach Road to Hetherington Road is to be formed and remain accessible to the public at all times following the completion of the marina construction and once it is practicable to form the walkway.

v) Conditions j) - r) above are to be carried out and completed to the satisfaction of the Manager Environmental and Planning.

w) Any night lighting shall be installed, designed, located and shaded in order that the level of lighting measured at the boundary of the site with any land zoned Housing or Housing (Extra Density Policy Area) is no greater than 8.0 lux.

TRAFFIC MANAGEMENT

(x) A traffic management plan is to be prepared and submitted for the approval of the manager Environmental Services prior to the removal of material from the site. The traffic management plan is to include provisions which address the following matters:

i. Signage to indicate the presence of trucks crossing at both the site of loading and the site of unloading.

ii. Route to be used by trucks exiting and entering the site.

iii. Assessment of road quality prior to the use and restoration of roads where damage has occurred as a result of use by trucks undertaking work pursuant to this consent.

iv. Cleaning of trucks exiting the site.

v. Cleaning of road ways where material has been spilt from trucks undertaking work pursuant to this consent.

vi. Days and hours of that trucks will be exiting and entering the site (excluding Sundays and public holidays where no truck movements are provided).

vii. Signage to include the following information:

- Days and hours of truck movements.
- Phone contacts for enquiries regarding the trucking activities.

viii. Manner in which a record of truck movements is to be kept and reporting of this information to Council.

GENERAL

y) This consent lapses on the expiry of 5 years after the date of commencement of the consent.

z) The Thames Coromandel District Council may initiate a review of the conditions of this consent under s.128 of the Resource Management Act 1991 every two years after

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the date of commencement of this consent in the month of October for the purpose of avoiding, remedying or mitigating any adverse effects on the environment from the exercise of this consent.

BOND CONDITIONS

za) Prior to the commencement of construction, the consent holder will demonstrate to the satisfaction of Thames Coromandel District Council that the consent holder has sufficient funds committed to carry out the construction of the marina in accordance with the consents granted and shall provide a legally enforceable bond jointly in favour of and to the satisfaction of the Thames Coromandel District Council and the Waikato Regional Council ("the Councils"). The bond is intended to ensure that in the event of the consent holder failing to complete the marina, there are sufficient funds available to the Councils in order to:

(i) Remove structures from below Mean High Water Springs ("MHWS"); and

(ii) Secure the completion of earthworks, filling, rehabilitation, landscaping and stormwater reticulation to the extent necessary and practicable to avoid, remedy or mitigate adverse effects on the environment and ensure that there is no ongoing liability or responsibility for the Council; and

(iii) Enable any adverse effects on the environment resulting from the consent holder's activities and not authorised by a resource consent to be avoided, remedied or mitigated; and

(iv) Enable the Councils to undertake the monitoring and management of the site until completion of the landscaping and satisfactory operation of the stormwater reticulation system to the extent contemplated in (ii) above.

zb) The quantum of this bond will be determined as follows:

i) Prior to the commencement of construction the consent holder will provide to the Councils a project plan that will identify key construction targets at approximately 6 monthly intervals throughout the marina project.

ii) The project plan will include an estimate of the costings for removal of structures below MHWS and remediation of the land above MHWS for each of the construction targets and consistently with the intent of this bond as stated in (za) above.

iii) Prior to commencement of construction the applicant will obtain a bond sufficient to cover the maximum risk to the Councils as represented by the highest cost estimate in paragraph (ii) above.

iv) The consent holder will maintain the bond agreed under paragraph (iii) until construction is complete and all works have been carried out in accordance with the Landscape and Stormwater Management Plans.

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zc) In the event that the consent holders and the Councils are unable to agree on the quantum of the bond, the dispute shall be referred to arbitration in accordance with the provisions of the Arbitration Act 1996.

zd) With the exception of arbitration costs incurred under paragraph (zc) all costs relating to the bond shall be paid by the consent holder.

NOTES

1. The consent is not be construed as granting consent to the "Boat User Accommodation - Future" shown on the land fronting Hetherington Road.

2. In order to proceed in terms of this consent, the consent holder will almost certainly need to negotiate alternative sites for the disposal of surplus fill. This will require possible additional resource consents from the Thames Coromandel District Council and/or the Waikato Regional Council. In addition, a new agreement may be necessary with Transit New Zealand in respect of State Highway No 25.

3. The applicant advises that it proposes to subdivide the land zoned Marine Activities from that land zoned Housing (Extra Density Policy Area), in order that separate arrangements can be made for the Society's occupation of the land zoned Marine Activities. As part of this subdivision, it would also be necessary and appropriate to provide for right of way access over the land zoned Marine Activities, to enable vehicular access to and around the existing boat trailer park (on land zoned Reserve).

4. The applicant advised that the administration office building is to be located greater than 12 metres from the boundary of the legal road, thereby making this component of the application a controlled activity rather than a non complying activity. The assessment of this part of the application was undertaken on that basis.

5. In this Consent the Iwi representatives means either a collective nominee or an individual representative of each of the following parties:
   - Hauraki Maori Trust Board;
   - Te Kupenga O Ngati Hako Incorporated;
   - Whangamata Maori Committee;
   - Te Runanga O Ngati Puu.

   The choice of individual representative or a group nominee is at the discretion of the Iwi parties and will be advised to the consent holder on an annual basis.

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Thames Coromandel District Council - Encounter Print A4 Portrait

FIGURE 1

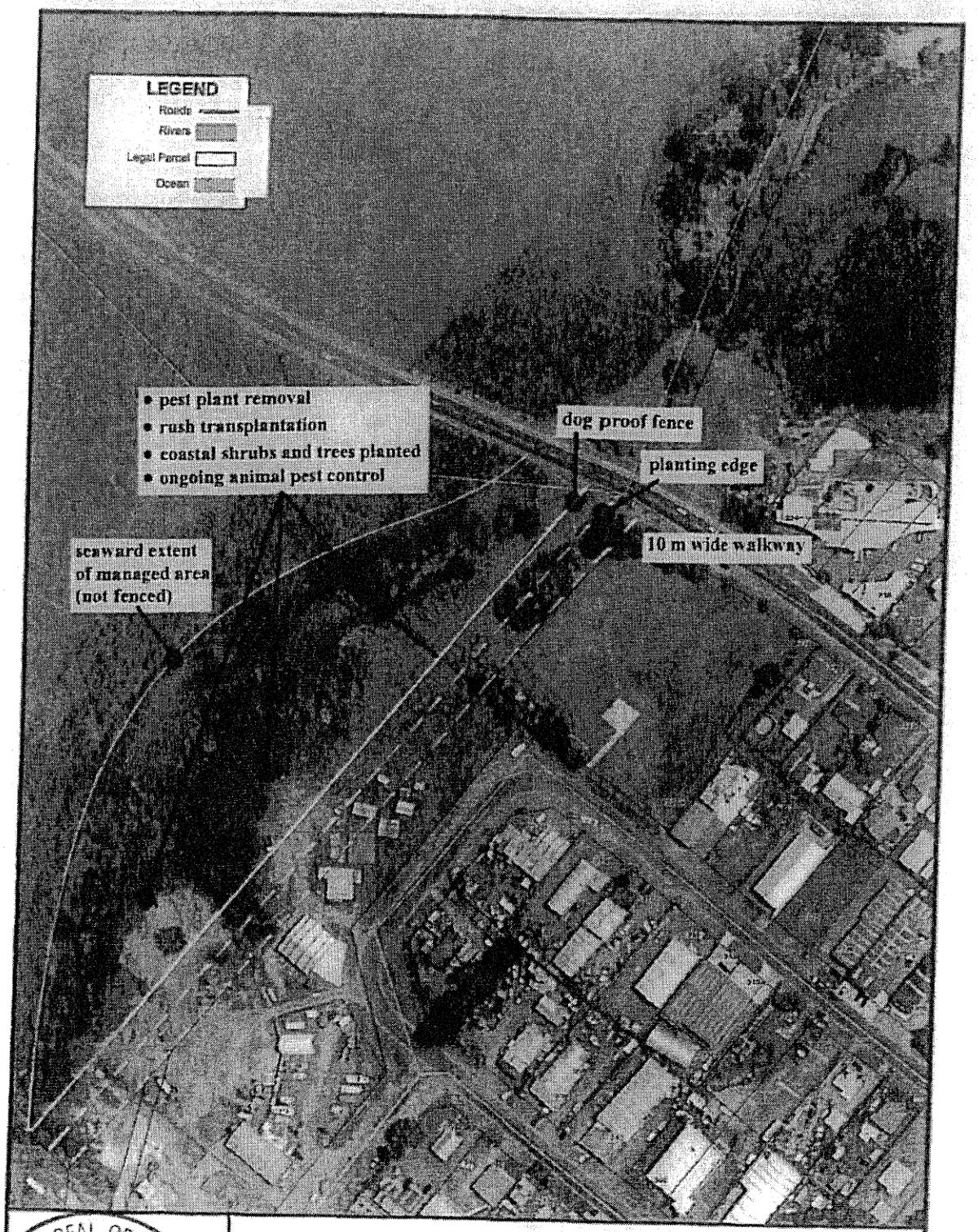

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FIGURE 1 ENHANCEMENT AREA

Thames Coromandel District Council - Encounter Print A4 Portrait

FIGURE 2

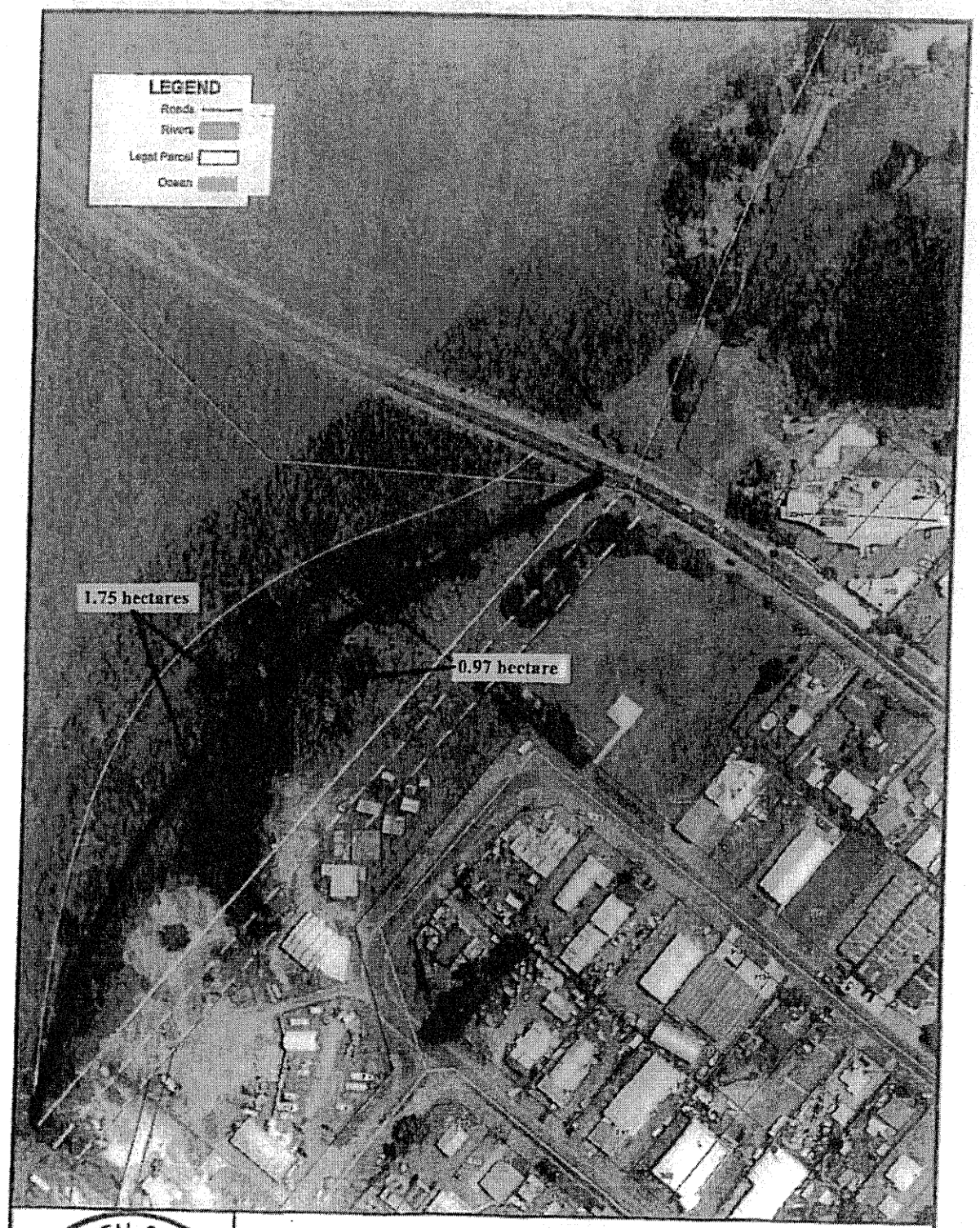

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FIGURE 2 APPROXIMATE AREAS

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IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of six appeals under s.120 of the Act

BETWEEN **WHANGAMATA MAORI COMMITTEE**

(RMA 060/97)

THE HAURAKI MAORI TRUST BOARD

(RMA 062/97)

WHANGAMATA MARINA SOCIETY INC

(RMA 068/97)

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TE KUPENGA O NGATI HAKO INC

(RMA 074/97)

MINISTER OF CONSERVATION

(RMA 093/97)

Appellants

AND **THE WAIKATO REGIONAL COUNCIL**

Respondent

AND **TE RUNANGA O NGATI PU INC**

Section 274 party

AND

IN THE MATTER of three further appeals under s.120 of the Act

THE SEAL OF THE ENVIRONMENT COURT NEW ZEALAND

BETWEEN	**HAURAKI MAORI TRUST BOARD**	
	(RMA 981/98)	
	WHANGAMATA MARINA SOCIETY INC	
	(RMA 982/98)	
	WHANGAMATA MAORI COMMITTEE	
	(RMA 1001/98)	
	Appellants	
AND	**THE THAMES-COROMANDEL DISTRICT COUNCIL**	
	Respondent	
AND	**TE RUNANGA O NGATI PU INC**	
	Section 274 party	

BEFORE THE ENVIRONMENT COURT

CORRIGENDUM TO DECISIONS A025/2001 AND A173/2005

[1] Further to a judicial telephone conference with Ms Kapua for the iwi interests, Mr Menzies for Whangamata Marina Society Inc., Mr Parker for Waikato Regional Council, and Mr Berry for Thames-Coromandel District Council (TCDC) on 3 February 2006, regarding an appeal lodged by Mr Ropata Rare on behalf of Te Runanga O Ngati Pu Inc (RMA 878/99) against the decision of TCDC concerning the Whangamata Marina proposal, it is acknowledged and confirmed that that appeal was withdrawn at the time of the hearings that preceded the Court's interim decision A025/2001. A separate appeal (RMA 980/98) by Mr P Barrett (who claimed to represent Ngati Pu) was formally dismissed (refer minute of the Court dated 20 February 2001 attached).

[2] According to the recollection of counsel for the iwi interests (which the Court acknowledges, and from which counsel for other parties do not dissent), the withdrawal of RMA 878/99 was on the basis that Te Runanga O Ngati Pu Inc would be recognised as a s.274 party in relation to the various proceedings between other iwi interests, the

Waikato Regional Council and Thames-Coromandel District Council, with Ms Kapua representing all the iwi interests, including Ngati Pu (alternatively referred to as Ngati Puu).

[3] It is formally recorded, therefore, that the intituling of Decisions A025/2001 and A173/2005 should be as shown at the head of this corrigendum, and that Ms Kapua and counsel who appeared with her should be shown as having represented Ngati Pu as a s.274 party along with the various iwi appellants named in the intituling.

DATED at **AUCKLAND** this 7th day of February, 2006.

THE SEAL OF THE ENVIRONMENT COURT NEW ZEALAND

R J Bollard
Principal Environment Judge

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IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of six appeals under s.120 of the Act

BETWEEN **WHANGAMATA MAORI COMMITTEE**

(RMA 060/97)

THE HAURAKI MAORI TRUST BOARD

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WHANGAMATA MARINA SOCIETY INC

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Appellants

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Section 274 party

AND

IN THE MATTER of three further appeals under s.120 of the Act

BETWEEN **HAURAKI MAORI TRUST BOARD**

(RMA 981/98)

WHANGAMATA MARINA SOCIETY INC

(RMA 982/98)

THE SEAL OF THE ENVIRONMENT COURT NEW ZEALAND

WHANGAMATA MAORI COMMITTEE

(RMA 1001/98)

Appellants

AND **THE THAMES-COROMANDEL DISTRICT COUNCIL**

Respondent

AND **TE RUNANGA O NGATI PU INC**

Section 274 party

BEFORE THE ENVIRONMENT COURT

FURTHER CORRIGENDUM TO DECISION A173/2005

[1] Additional to earlier corrigenda recorded (a) in the formal order issued pursuant to paragraph [108] of the above decision, and (b) as to the intituling to the proceedings, it has come to the Court's notice that the third sentence in the second paragraph of the quotation from Mr Rackham's evidence (para [82] of the decision), should read:

> "By comparison with most parts of the Coromandel coast, the application area is strongly modified by surrounding development, and past landform and land cover changes".

[2] Subject to the corrigenda referred to, the decision is confirmed.

DATED at **AUCKLAND** this 13th day of February 2006.

THE SEAL OF THE ENVIRONMENT COURT NEW ZEALAND

R J Bollard
Principal Environment Judge

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IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of six appeals under s.120 of the Act

BETWEEN **WHANGAMATA MAORI COMMITTEE**

(RMA 060/97)

THE HAURAKI MAORI TRUST BOARD

(RMA 062/97)

WHANGAMATA MARINA SOCIETY INC

(RMA 068/97)

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TE KUPENGA O NGATI HAKO INC

(RMA 074/97)

MINISTER OF CONSERVATION

(RMA 093/97)

Appellants

AND **THE WAIKATO REGIONAL COUNCIL**

Respondent

AND

IN THE MATTER of three further appeals under s.120 of the Act

BETWEEN **HAURAKI MAORI TRUST BOARD**

(RMA 981/98)

THE SEAL OF THE ENVIRONMENT COURT NEW ZEALAND

WHANGAMATA MARINA SOCIETY INC.

(RMA 982/98)

WHANGAMATA MAORI COMMITTEE

(RMA 1001/98)

Appellants

AND **THE THAMES-COROMANDEL DISTRICT COUNCIL**

Respondent

BEFORE THE ENVIRONMENT COURT

Principal Environment Judge R J Bollard (presiding)
Deputy Environment Commissioner A H Hackett
Deputy Environment Commissioner I G McIntyre

IN CHAMBERS at Auckland

ORDER

UPON READING the memorandum of counsel for Whangamata Marina Society Inc. (WMS), the Thames-Coromandel District Council and the Waikato Regional Council dated 4 November 2005 with attachments, lodged in accordance with the leave to apply reserved at paragraph [108] of Decision A173/2005 dated 26 October 2005 **AND UPON BEING SATISFIED** that an order should issue as below to give due effect to the intent of the said decision (read in conjunction with Interim Decision A025/2001 dated 19 February 2001) **THIS COURT HEREBY ORDERS** that:

1. The appeals are allowed to the extent that the consents granted to WMS and the recommendations made to the Minister of Conservation shall be on the terms and conditions contained in the documentation attached hereto and labelled Schedule One, Schedule Two and Schedule Three.

2. In other respects the appeals are dismissed except that costs are reserved in accordance with paragraph [107] of Decision A173/2005.

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Note: By way of corrigendum the word "sitting" in the penultimate line of paragraph [46] of Decision A173/2005 should read "siting"; also the reference to paragraph [58] in paragraph [67] should be to paragraph [59].

DATED this 12th day of December, 2005.

For the Court:



R J Bollard
Principal Environment Judge

SCHEDULE ONE

A That a coastal permit (953759) be granted to the Whangamata Marina Society, PO Box 37, Whangamata to discharge seepage water from the marina basin during construction of a 205 berth Marina at or about map references NZS 260 T12:648-408 on the sea bed of the Moanaanuanu Estuary of the Whangamata Harbour, Blk XVI, Tairua SI), for a term to expire five years after commencement of this consent subject to the following conditions:

1) The consent holder shall provide a management plan for the discharge of seepage water from the marina basin. This plan shall detail the methods and techniques that will be used to treat the sediment laden water, and appropriate procedures to monitor the effects of suspended solids and turbidity on the surrounding environment. This plan shall be forwarded for approval to the Waikato Regional Council at least two months prior to the commencement of construction. One month prior to forwarding the plan to the Waikato Regional Council a draft will be sent to the Iwi representatives which may suggest amendments to the plan which must be submitted to the consent holder within one month of receipt of the plan by the Iwi representatives. If those amendments are not accepted by the consent holder, the consent holder shall forward the suggested amendments to the Council at the same time as it submits the plan for the Council's approval.

2) The discharge shall be undertaken in accordance with the details provided to the Waikato Regional Council in the above condition.

3) The suspended solids concentration of the discharge at the point of outflow from the discharge pipe shall not exceed 80 grams per cubic metre.

4) The turbidity as measured at any point at a depth greater than 300 millimetres and further than two metres out from the waters edge and 100 metres from the point where the discharge occurs into the coastal marine area shall not be 5 NTU's greater than the naturally occurring background level. The control sites at which the background level will be measured shall be determined in consultation with the Waikato Regional Council.

5) The exercise of this consent shall not result in the discharge of any visible oil or grease.

MONITORING

6) The consent holder shall retain an appropriately experienced person to develop a plan to evaluate the effect of the discharge on harbour water quality, the volume of the discharge, and the environmental effects of the discharge on aquatic biota in the receiving environment. This programme shall be to the satisfaction of the Waikato Regional Council, and forwarded for approval at least two months prior to the commencement of construction. This programme shall also be forwarded to the Iwi representatives at least two months prior to the commencement of construction. The monitoring report shall include reference to the following;

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i. the volume of the discharge
ii. the turbidity and if required, the suspended solids concentration of the discharge
iii. maintenance of sediment control measures undertaken
iv. a map of sampling locations
v. the turbidity and if required, the suspended solids concentration of the receiving environment directly adjacent to the discharge point(s) but unaffected by the discharge
vi. the turbidity and if required, the suspended solids concentration of the receiving environment within 100 metres of the discharge point(s) that is directly affected by the discharge
vii. a description of conditions at the time of sampling (eg. weather, tide height, water depth, depth from surface sample was taken, distance from shore).

The results of the weekly monitoring shall be provided to the Regional Council on a fortnightly basis with a final report being provided within three months of the completion of the construction works.

7) The consent holder shall undertake monitoring of the discharge volume and quality and ascertain the effect of this discharge on the surrounding environment, as outlined in condition (6) above. The consent holder shall monitor the discharge three times per week when the discharge is less than 5,000 cubic metres per day, and on a daily basis when the discharge exceeds this volume.

8) The consent holder shall provide an appropriately experienced person to develop and carry out an appropriate biological monitoring programme. The programme shall be to the satisfaction of the Waikato Regional Council and forwarded for approval at least two months prior to the commencement of construction. One month prior to forwarding the plan to the Waikato Regional Council a draft will be sent to the Iwi representatives which may suggest amendments to the plan which must be submitted to the consent holder within one month of receipt of the plan by the Iwi representatives. If those amendments are not accepted by the consent holder, the consent holder shall forward the suggested amendments to the Council at the same time as it submits the plan for the Council's approval. This monitoring programme shall address, indicator species (including a selection of those species that are sensitive to elevated sediment concentrations and a selection of those that are not sensitive to elevated sediment concentrations) distribution and density, also noting all species present that are known to be sensitive to long periods of elevated sediment concentrations.

9) The information gathered in (7) above shall be forwarded to the Waikato Regional Council and the Iwi representatives within two months of the date of sample analysis and a final report shall be provided one month prior to the expiry of this consent.

Any erosion control works that become necessary as a result of this consent shall be undertaken at the expense of the consent holder and as directed by the Waikato Regional Council.

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11) The consent holder shall inform the Waikato Regional Council and the Iwi representatives in writing one month prior to their intention to commence construction.

12) The Waikato Regional Council may initiate a review of the conditions of this consent under Section 128 of the Resource Management Act 1991, every two years after the date of granting in the month of October for the purpose of avoiding, remedying or mitigating any adverse effects on the environment from the exercise of this consent.

13) All sample methods of analysis shall be as detailed in the "Standard Methods For The Examination of Water and Waste Water, 1998" 20th edition by A.P.H.A and A.W.W.A and W.E.F or any subsequent update or by some other method approved in advance in writing by Waikato Regional Council.

14) The consent holder shall pay to the Waikato Regional Council any administrative charge fixed in accordance with Section 36 of the Resource Management Act 1991, or any charge prescribed in accordance with regulation made under Section 360 of the Resource Management Act 1991.

GENERAL

15) This consent lapses on the expiry of five years after the date of commencement of the consent.

ADVICE NOTE

In this Consent the Iwi representatives means either a collective nominee or an individual representative of each of the following parties:

- Hauraki Maori Trust Board;
- Te Kupenga O Ngati Hako Incorporated;
- Whangamata Maori Committee;
- Te Runanga O Ngati Puu.

The choice of individual representative or a group nominee is at the discretion of the Iwi parties and will be advised to the consent holder on an annual basis.

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B That a coastal permit (953760) be granted to the Whangamata Marina Society, P 0 Box 37, Whangamata to discharge drainage water from excavated marina basin sediment into the Moanaanuanu Estuary NZS 260 T12:648-408 on the sea bed of the Moanaanuanu Estuary of the Whangamata Harbour, Blk XVI, Tairua SD, for a term to expire five years from the date of commencement of this consent, subject to the following conditions:

1) The consent holder shall provide a management plan for the discharge of drainage water from the excavated marina basin sediment. This plan shall detail the methods and techniques that will be used to treat the sediment laden water, and appropriate procedures to monitor the effects of suspended solids and turbidity on the surrounding environment. This plan shall be forwarded for approval to the Waikato Regional Council at least two months prior to the commencement of construction. One month prior to forwarding the plan to the Waikato Regional Council a draft will be sent to the Iwi representatives which may suggest amendments to the plan which must be submitted to the consent holder within one month of receipt of the plan by the Iwi representatives. If those amendments are not accepted by the consent holder, the consent holder shall forward the suggested amendments to the Council at the same time as it submits the plan for the Council's approval.

2) The discharge shall be undertaken in accordance with the details provided to the Waikato Regional Council in the above condition.

3) The turbidity as measured at a point further than 200 metres from the seaward end of the outfall pipe and at a depth greater than 300 millimetres and shall not be more than 5 NTU above the background level.

4) The exercise of this consent shall not result in the discharge of any visible oil or grease.

MONITORING

5) The consent holder shall retain an appropriately experienced person to develop a plan to evaluate the effect of the discharge on harbour water quality, the volume of the discharge, and the environmental effects of the discharge on aquatic biota in the receiving environment. This programme shall be to the satisfaction of the Waikato Regional Council, and forwarded for approval at least two months prior to the commencement of construction. This programme shall also be forwarded to the Iwi representatives at least two months prior to the commencement of construction. The monitoring report shall include reference to the following:

i. the volume of the discharge
ii. the turbidity of the discharge
iii. maintenance of sediment control measures undertaken
iv. a map of sampling locations
the turbidity of the receiving environment directly adjacent to the discharge point(s) but unaffected by the discharge

THE SEAL OF THE ENVIRONMENT COURT NEW ZEALAND

vi. the suspended solids concentration and turbidity of the receiving environment within 200 metres of the discharge point(s) that is directly affected by the discharge

vii. a description of conditions at the time of sampling (eg. weather, tide height, water depth, depth from surface sample was taken, distance from shore).

The results of the weekly monitoring shall be provided to the Regional Council on a fortnightly basis with a final report being provided within three months of the completion of construction.

6) The consent holder shall undertake monitoring of the discharge volume and quality and ascertain the effect of this discharge on the surrounding environment, as outlined in condition (6) above. The consent holder shall monitor the discharge three times per week when the discharge is less than 5,000 cubic metres per day, and on a daily basis when the discharge exceeds this volume.

7) The consent holder shall provide an appropriately experienced person to develop and carry out an appropriate biological monitoring programme. The programme shall be to the satisfaction of the Waikato Regional Council and forwarded for approval at least two months prior to the commencement of construction. This monitoring programme shall address, indicator species (including a selection of those species that are sensitive to elevated sediment concentrations and a selection of those that are not sensitive to elevated sediment concentrations) distribution and density, also noting all species present that are known to be sensitive to long periods of elevated sediment concentrations. One month prior to forwarding the plan to the Waikato Regional Council a draft will be sent to the Iwi representatives which may suggest amendments to the plan which must be submitted to the consent holder within one month of receipt of the plan by the Iwi representatives. If those amendments are not accepted by the consent holder, the consent holder shall forward the suggested amendments to the Council at the same time as it submits the plan for the Council's approval.

8) The information gathered in (8) above shall be forwarded to the Waikato Regional Council and the Iwi representatives within two months of the date of sample analysis and a final report shall be provided one month prior to the expiry of this consent.

9) Any erosion control works that become necessary as a result of this consent shall be undertaken at the expense of the consent holder and as directed by the Waikato Regional Council.

10) The consent holder shall inform the Waikato Regional Council and the Iwi representatives in writing one month prior to their intention to commence construction.

11) The Waikato Regional Council may initiate a review of the conditions of this consent under Section 128 of the Resource Management Act 1991, every two years after the date of granting in the month of October for the purpose of avoiding, remedying or mitigating any adverse effects on the environment from the exercise of this consent.

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12) All sample methods of analysis shall be as detailed in the "Standard Methods For The Examination of Water and Waste Water, 1998" 20th edition by A.P.H.A and A.W.W.A and W.E.F or any subsequent update or by some other method approved in advance in writing by Waikato Regional Council.

13) The consent holder shall pay to the Waikato Regional Council any administrative charge fixed in accordance with Section 36 of the Resource Management Act 1991, or any charge prescribed in accordance with regulation made under Section 360 of the Resource Management Act 1991.

GENERAL

14) This consent lapses on the expiry of five years after the date of commencement of the consent.

ADVICE NOTE
In this Consent the Iwi representatives means either a collective nominee or an individual representative of each of the following parties:

- Hauraki Maori Trust Board;
- Te Kupenga O Ngati Hako Incorporated;
- Whangamata Maori Committee;
- Te Runanga O Ngati Puu.

The choice of individual representative or a group nominee is at the discretion of the Iwi parties and will be advised to the consent holder on an annual basis.

THE SEAL OF THE ENVIRONMENT COURT NEW ZEALAND

SCHEDULE TWO

C That the Minister of Conservation grant a coastal permit (953758) to the Whangamata Marina Society, PO Box 37, Whangamata to contain 4 hectares of the Coastal marine zone and to construct and operate a 300 metre breakwater and control structures related to the marina and dredge a marina basin and channel, for the purposes of a 205 berth Marina at or about map references NZS 260 Tl2:648-408 on the sea bed of the Moanaanuanu Estuary of the Whangamata Harbour, Blk XVI, Tairua SD, for a term to expire 35 years from the date of commencement of this consent, subject to the following conditions:

1) The design and construction of the works authorised by this consent shall be in accordance with the principles outlined in the document entitled "Whangamata Marina Society - Proposed Whangamata Marina - Assessment of Environmental Effects and Resource Consents" dated 22 November 1995, produced by WORKS Consultancy, and the further information provided as supplements to this document.

2) The marina and associated activities shall be positioned as defined in the plans as shown in the document referred to in 1) as further modified during the consent process and by the plans revised October 2004. The marina shall not occupy a larger area than that which is described in that document. The general form, position and layout of the marina and associated facilities shall be in accordance with those outlined in the supporting information of this application.

CONSTRUCTION and DESIGN

3) The consent holder shall employ appropriately experienced registered engineers to supervise the development of a detailed design for the marina and associated facilities. This engineer shall provide a design certificate describing the works to be constructed and stating that the works have been suitably investigated and are properly designed in accordance with good engineering practice. A copy of that certificate and plans shall be forwarded to the Waikato Regional Council and to the Iwi representatives two months prior to commencement of construction of the marina.

4) The consent holder shall provide a plan detailing construction methods, design, size, maintenance, and location of the bund, breakwater, channel and rip-rap wall, the sequencing and programming of the works and the management and maintenance of the works within six months after the granting of this consent, and prior to the commencement of construction.

4A) Prior to the commencement of construction authorised by this consent, the consent holder shall have the then existing level of the stream bed surveyed by a suitably qualified and experienced person acceptable to the Waikato Regional Council and shall advise the Waikato Regional Council in writing of that survey level. If any future proposal to deepen the stream bed above the control structure is consented to by Waikato Regional Council and pursuant to Section 119A Resource Management Act 1991, the consent holder will investigate whether the proposed deepening will lead to the aggrading of the channel between the marina basin and the main harbour

THE SEAL OF THE ENVIRONMENT COURT NEW ZEALAND

channel. Should the investigation show that aggradation will not occur in the access channel between the marina basin and the main harbour channel, the consent holder will take such steps available to it to lower the height of the control structure.

4B) One month prior to the date on which construction of the works authorised by this consent is to commence, the consent holder shall provide to the Waikato Regional Council evidence that all relevant consents have been obtained for the disposal of material to be dredged in the construction of the marina basin and channel. ~~under the exercise of this consent~~. Provided, however, condition 21 of the consent upheld by the Environment Court to truck material to disposal destinations off-site shall not be invoked in terms of the present condition as a basis for holding all relevant consents have not been obtained.

5) The consent holder shall provide an appropriately experienced registered engineer to supervise the construction of this marina. On completion of the marina the engineer shall provide a construction certificate stating that the marina has been constructed in accordance with the design developed for the marina and has been constructed in accordance with good engineering practice. A copy of that certificate shall be forwarded to the Waikato Regional Council and the Iwi representatives prior to the operation of the marina.

6) The consent holder shall inform the Waikato Regional Council and the Iwi representatives in writing of the starting and expected completion date of the works at least one month prior to the commencement of construction.

7) The consent holder shall retain appropriately qualified and experienced persons to develop a plan detailing procedures to be put in place to minimise the potential for sediment discharge from the site during construction of the marina. This plan shall address among other things the following:

i. means of containing sediment in the dredge basin
ii. means of containing construction debris to the work site
iii. measures to be employed to reduce odours associated with disposal of dredged material
iv. means of ensuring contractor compliance with this plan
v. staff responsibilities and procedures to ensure compliance with the plan
vi. sampling sites and means of measuring suspended solids and turbidity

This plan shall be to the satisfaction of the Waikato Regional Council and forwarded for Council's written approval at least one month prior to the commencement of construction. One month prior to forwarding the plan to the Waikato Regional Council a draft will be sent to the Iwi representatives which may suggest amendments to the plan which must be submitted to the consent holder within one month of receipt of the plan by the Iwi representatives. If those amendments are not accepted by the consent holder, the consent holder shall forward the suggested amendments to the Council at the same time as it submits the plan for the Council's approval.

The construction of the access channel shall not cause suspended solids concentration

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of the harbour water further than 150 metres from the site of construction, and up to 1 metre below the water surface or half the depth of the water column, whichever is less, to increase by more than 50 grams per cubic metre above background level.

9) The construction activities at the site shall not cause the turbidity of the harbour water as measured at control points, to be determined in consultation with the Waikato Regional Council, at any point further than 150 metres from the site of construction, and up to one metre below the water surface or half the depth of the water column, whichever is less, to increase by up to 5 NTU above the background level.

10) The consent holder shall be responsible for implementing the best practical option so as to minimise sediment discharge, damage to the seabed and surrounding environment whilst accessing the site and carrying out the works.

11) The quantity of material to be removed by dredging shall not exceed 167,000 cubic metres during the construction of the marina basin and channel. Records of the amount of material removed shall be kept by the consent holder and shall be made available at all reasonable times to the Waikato Regional Council and to the Iwi representatives.

11A) The material excavated shall be disposed of by the consent holder wherever practicable according to the following priority:

(a) Not less than 110,000 cubic metres on sites adjacent to the marina to achieve the minimum practical operating level.

(b) Disposal of appropriate material to beach nourishment or to stock pile for beach nourishment to Environment Waikato's requirements where consents for these activities have been obtained.

(c) Disposal for other public good purposes agreed by Environment Waikato and for which any necessary disposal consents have been obtained.

(d) Disposal by sale on commercial terms with the net proceeds of sale to be placed in a fund to be utilised by Environment Waikato to protect or restore the coastal environment at Whangamata.

(e) Disposal on sites adjacent to the marina up to the maximum levels allowed by consents granted by Environment Waikato and the Thames Coromandel District Council.

(f) To other sites for which any necessary consents have been obtained or are not required.

12) Construction vehicles shall not be permitted in any part of the coastal marine area beyond the boundaries of the construction site authorised by this consent.

13) Any erosion control works that become necessary as a result of the exercise of this

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consent shall be undertaken as directed by the Waikato Regional Council at the expense of the consent holder.

14) Construction works authorised by this consent shall not extend for more than two years from the date on which construction commences.

15) Noise levels of the construction site shall comply with those set out in NZS 6803: 1999, "The Measurement and Assessment of Noise from Construction, Maintenance and Demolition Work". Prior to construction commencing, the consent holder shall supply to Waikato Regional Council a certificate from an appropriately qualified acoustic engineer certifying that the noise levels of the construction can meet those set out in NZS 6803: 1999.

16) Public access shall not be restricted in the coastal marine area subject to safety requirements during construction and boat security after construction.

17) A shore based sewage pump out, handling and disposal facility to service boats using the marina shall be planned and these shall be implemented within two years of the date on which construction of the works authorised by this consent commences.

18) The exercise of this consent shall not result in the discharge of any visible oil or grease.

19) The consent holder shall on request in writing from either the Waikato Regional Council or the Iwi representatives provide a registered survey plan of the marina structures and their location.

19A) The consent holder will provide a roosting area for seabird species at the seaward end of the training wall. The surface area of this roost will be not less than $300m^2$ at an RL of 11.6. The rock facing of the roost area is to be surfaced with heavy shell or other material suitable for seabird roost areas.

OPERATION and MAINTENANCE

20) The following maximum noise levels shall apply to all activities under the control of the marina operator:
7:00 a.m. to 10:00 p.m. -55 dBA (L10)
10:00 p.m. to 7:00 a.m. -45 dBA (L10)
as measured at the waterfront on Beach Road or at the notional boundary of any residential building (20 metres forward of the facade of the building).

Noise levels shall be in accordance with NZS 6803: 1999, "The Measurement and Assessment of Noise from Construction, Maintenance and Demolition Work."

21) Maintenance dredging operations of the marina basin shall only be undertaken one hour after the tide starts to go out, ceasing two hours before the tide starts to come in, unless otherwise authorised in writing by the Waikato Regional Council.

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22) An appropriate maintenance dredging and disposal plan shall be prepared annually and forwarded to Waikato Regional Council for approval in writing prior to maintenance dredging being undertaken for that year. This plan shall include an estimate of the amount of sediment to be dredged, sediment characteristics, disposal site(s) and an assessment of effects at the disposal site. The consent holder is responsible for securing any consents necessary for the disposal of maintenance dredgings. One month prior to forwarding the plan to the Waikato Regional Council a draft will be sent to the Department of Conservation and the Iwi representatives which may suggest amendments to the plan which must be submitted to the consent holder within one month of receipt of the plan by the Iwi representatives. If those amendments are not accepted by the consent holder, the consent holder shall forward the suggested amendments to the Council at the same time as it submits the plan for the Council's approval.

23) The consent holder shall prepare and keep a current management plan for all aspects of the marina facilities and operational procedures to ensure that the operations on the marina site do not have an adverse effect on the environment. This plan shall provide;

i. Description of operations and facilities and their maintenance requirements
ii. Contingency measures associated with operations and facilities and any training required
iii. Berth contract provisions which are directed to ensure that berth holders act in an environmentally appropriate manner
iv. Detail on any penalty provisions that the marina society may impose for inappropriate actions

A draft of this plan shall be provided to the Waikato Regional Council within three months of the date of commencement of this consent and the final plan shall be completed within six months of the date of commencement of this consent, and forwarded to the Waikato Regional Council for written approval. One month prior to forwarding the plan to the Waikato Regional Council a draft will be sent to the Iwi representatives which may suggest amendments to the plan which must be submitted to the consent holder within one month of receipt of the plan by the Iwi representatives. If those amendments are not accepted by the consent holder, the consent holder shall forward the suggested amendments to the Council at the same time as it submits the plan for the Council's approval.

24) The marina shall be operated as detailed in the management plan provided to the Waikato Regional Council as outlined in condition (23) above.

25) The consent holder shall retain an appropriately experienced person to evaluate and characterise the level of contaminants on the site and develop a contingency plan for the prevention and removal of spills of hydrocarbons and other contaminants from entering the coastal marine area. The plan shall detail;

i. What spill prevention measures have been undertaken on site
ii. What equipment is kept on site to remove spills
iii. What training staff have in the use of such measures

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iv. How the disposal of contaminated materials will be undertaken

A draft of this plan shall be provided to the Waikato Regional Council and the Iwi representatives within three months of the date of commencement of this consent and the final plan shall be completed within six months of the date of commencement of this consent.

MONITORING

26) The consent holder shall retain appropriately experienced and suitably qualified persons acceptable to Waikato Regional Council after reference to and discussion with the Department of Conservation, to develop an ecological monitoring plan to determine the impact of the marina construction and operation on the surrounding habitat, water quality and aquatic biota. This programme shall be to the satisfaction of the Waikato Regional Council, and forwarded for approval at least two months prior to the commencement of construction. One month prior to forwarding the plan to the Waikato Regional Council a draft will be sent to the Iwi representatives which may suggest amendments to the plan which must be submitted to the consent holder within one month of receipt of the plan by the Iwi representatives. If those amendments are not accepted by the consent holder, the consent holder shall forward the suggested amendments to the Council at the same time as it submits the plan for the Council's approval. The monitoring plan shall include reference to the following:

i. Assessment of habitats including those of Mangroves, Eel grass, Shellfish beds, and Avifauna communities to specifically include NZ Dotterel and Variable Oystercatcher
ii. Assessment of aquatic biota in the vicinity of operations for species density, distribution, and community composition
iii. Frequency and period of monitoring prior to, during and after construction including attention to the critical breeding periods of the NZ Dotterel and Variable Oystercatcher (October-February)
iv. Harbour water quality as a result of dredging and an investigation of the parameters to be measured
v. Contaminated water quality including bacterial levels in both the marina basin waters and in shellfish in the vicinity, hydrocarbon concentrations in the marina basin, and the concentration of elements derived from antifouling products in the marina waters/aquatic species
vi. Reporting procedures

27) The consent holder shall undertake the environmental monitoring programme referred to above and forward the results of that programme at the intervals detailed in that programme to the Waikato Regional Council, the Department of Conservation and the Iwi representatives.

28) Prior to the commencement of construction, the consent holder will demonstrate to the satisfaction of Waikato Regional Council that the consent holder has sufficient funds committed to carry out the construction of the marina in accordance with the consents granted and shall provide a legally enforceable bond jointly in favour of and

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to the satisfaction of the Thames Coromandel District Council and the Waikato Regional Council ("the Councils"). The bond is intended to ensure that in the event of the consent holder failing to complete the marina, there are sufficient funds available to the Councils in order to:

(i) Remove structures from below Mean High Water Springs ("MHWS"); and

(ii) Secure the completion of earthworks, filling, rehabilitation, landscaping and stormwater reticulation to the extent necessary and practicable to avoid, remedy or mitigate adverse effects on the environment and ensure that there is no ongoing liability or responsibility for the Council; and

(iii) Enable any adverse effects on the environment resulting from the consent holder's activities and not authorised by a resource consent to be avoided, remedied or mitigated; and

(iv) Enable the Councils to undertake the monitoring and management of the site until completion of the landscaping and satisfactory operation of the stormwater reticulation system to the extent contemplated in (ii) above.

28b) The quantum of this bond will be determined as follows:

i) Prior to the commencement of construction the consent holder will provide to the Councils a project plan that will identify key construction targets at approximately 6 monthly intervals throughout the marina project.

ii) The project plan will include an estimate of the costings for removal of structures below MHWS and remediation of the land above MHWS for each of the construction targets and consistently with the intent of this bond as stated in (28a~~za~~) above.

iii) Prior to commencement of construction the applicant will obtain a bond sufficient to cover the maximum risk to the Councils as represented by the highest cost estimate in paragraph (ii) above.

iv) The consent holder will maintain the bond agreed under paragraph (iii) until construction is complete and all works have been carried out in accordance with the Landscape and Stormwater Management Plans.

28c) In the event that the consent holders and the Councils are unable to agree on the quantum of the bond, the dispute shall be referred to arbitration in accordance with the provisions of the Arbitration Act 1996.

28d) With the exception of arbitration costs incurred under paragraph (28c) all costs relating to the bond shall be paid by the consent holder

29) The Waikato Regional Council may initiate a review of the conditions of this consent under Section 128 of the Resource Management Act 1991, every two years after the date of commencement of the consent in the month of October for the purpose of

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avoiding, remedying or mitigating any adverse effects on the environment from the exercise of this consent.

30) All sample methods of analysis shall be as detailed in the "Standard Methods For The Examination of Water and Waste Water, 1998" 20th edition by A.P.H.A and A.W.W.A and W.E.F or any subsequent update or by some other method approved in advance in writing by Waikato Regional Council.

31) The consent holder shall pay to the Waikato Regional Council any administrative charge fixed in accordance with Section 36 of the Resource Management Act 1991, or any charge prescribed in accordance with regulation made under Section 360 of the Resource Management Act 1991.

GENERAL

32) This consent lapses on the expiry of five years after the date of commencement of the consent.

ADVICE NOTE
In this Consent the Iwi representatives means either a collective nominee or an individual representative of each of the following parties:

- Hauraki Maori Trust Board;
- Te Kupenga O Ngati Hako Incorporated;
- Whangamata Maori Committee;
- Te Runanga O Ngati Puu.

The choice of individual representative or a group nominee is at the discretion of the Iwi parties and will be advised to the consent holder on an annual basis.

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D That the Minister of Conservation grant a coastal permit (953761) to the Whangamata Marina Society, P 0 Box 37, Whangamata to reclaim 1.4 hectares of the Coastal marine zone by placement of fill onto a salt marsh for development of a hardstand and parking area for the purposes of a 205 berth Marina at or about map references NZS 260 T12:648-408 on the sea bed of the Moanaanuanu Estuary of the Whangamata Harbour, Blk XVI, Tairua SD, subject to the following conditions:

1) The consent holder shall inform the Waikato Regional Council and the Iwi representatives in writing at least one month prior to the reclamation taking place.

2) The consent holder shall inform the Waikato Regional Council and the Iwi representatives prior to the commencement of construction of the method by which material shall be discharged into the reclamation area.

3) All sediments that are placed onto the salt marsh under the exercise of this consent shall be placed to the satisfaction of the Waikato Regional Council.

4) The consent holder shall be responsible for implementing the best practical option so as to minimise sediment discharge, damage to the seabed and surrounding environment whilst accessing the site and carrying out the fill placement.

5) Construction works shall be carried out in a manner that complies with the noise levels as set out in NZS 6803: 1999, "The Measurement and assessment of Noise from Construction, Maintenance and Demolition Work." Prior to construction commencing, the consent holder shall supply to Waikato Regional Council a certificate from an appropriately qualified acoustic engineer certifying that the noise levels of the construction can meet those set out in NZS 6803: 1999.

6) If any archaeological remains are found the works within a 20 metre radius of the relevant area where the remains are found shall cease and the tangata whenua and Historic~~al~~ Places Trust shall be consulted forthwith, with an appropriate contingency plan being formed, paying heed to Maori protocol, before the works are allowed to recommence.

7) The consent holder shall provide appropriately experienced persons to detail a management plan to be put in place that details how the potential and actual effects on the fauna in and around the site during construction of the marina will be minimised. The plan shall address fauna to be protected and staff responsibilities and procedures to ensure compliance with the plan. The completed plan shall be provided to Waikato Regional Council for written approval, prior to commencement of construction. One month prior to forwarding the plan to the Waikato Regional Council a draft will be sent to the Iwi representatives which may suggest amendments to the plan which must be submitted to the consent holder within one month of receipt of the plan by the Iwi representatives. If those amendments are not accepted by the consent holder, the consent holder shall forward the suggested amendments to the Council at the same time as it submits the plan for the Council's approval. The consent holder will forward copies of the draft management plan to the Department of Conservation for comment before completion of the plan.

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8) Following consultation with Thames Coromandel District Council, Waikato Regional Council, the Department of Conservation, Iwi representatives and under the guidance of an appropriately qualified ecologist, the consent holder shall undertake work to the value of $45,000 (excluding gst) to enable enhancement and restoration works to be undertaken on the land described as the "enhancement area" on Figure 1 attached to this consent and in general accordance with the Moanaanuanu Estuary Enhancement Proposed Management Plan, being Appendix 6 to Mr Don's evidence to the September 2005 hearing and attached to this consent. The enhancement and restoration works encompassed by this condition (excluding the initial 2 year maintenance programme) shall be completed before the marina commences operation.

8A Following the completion of enhancement measures detailed in condition (8) to this consent (including the initial 2 year maintenance programme) the consent holder shall provide money or services up to the value of $2000.00 (excluding gst) per annum for the purposes of monitoring and maintaining enhancement measures detailed in condition 8 to this consent. Such work shall be done in accordance with a Maintenance Plan to be approved by the Waikato Regional Council.

8B. To the extent practicable, and to the extent of the areas that are made available to the consent holder for enhancement prior to the date on which marina construction is programmed to commence, and following consultation with Thames Coromandel District Council, Waikato Regional Council, Iwi representatives and the Department of Conservation, native rush plants from the marina site saltmarsh that are not transplanted in accordance with condition 8 of this consent shall be used to enhance other estuarine sites in the District. That enhancement process will, as a priority, remedy sites from which pampas has been removed, to the extent that the total area of enhancement (including areas provided for under condition 8 of this consent) is equal to or exceeds the area of saltmarsh removed for development of the marina, provided that sufficient areas have been made available prior to the date on which marina construction is programmed to commence, and shall be carried out under the guidance of an appropriately qualified ecologist.

The Waikato Regional Council will advise the consent holder of areas available for enhancement at least one month in advance of the programmed date of commencement of construction.

9) The exercise of this consent shall not result in the discharge of any visible oil or grease.

10) The Waikato Regional Council may initiate a review of the conditions of this consent under Section 128 of the Resource Management Act 1991, every two years after the date of commencement of consent in the month of October for the purpose of avoiding, remedying or mitigating any adverse effects on the environment from the exercise of this consent.

Construction works authorised by this consent shall not extend for more than two

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years from the date on which construction commences.

12) The consent holder shall pay to the Waikato Regional Council any administrative charge fixed in accordance with Section 36 of the Resource Management Act 1991, or any charge prescribed in accordance with regulation made under Section 360 of the Resource Management Act 1991.

13) This consent lapses on the expiry of five years after the date of commencement of the consent.

ADVICE NOTE

a) Sediment from this activity will potentially contribute to sediment entering the Moanaanuanu Estuary and the marina basin and shall be monitored as part of the conditions attached to coastal permits 953759 and 953760.

b) In this Consent the Iwi representatives means either a collective nominee or an individual representative of each of the following parties:

- Hauraki Maori Trust Board;
- Te Kupenga O Ngati Hako Incorporated;
- Whangamata Maori Committee;
- Te Runanga O Ngati Puu.

The choice of individual representative or a group nominee is at the discretion of the Iwi parties and will be advised to the consent holder on an annual basis.

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Thames Coromandel District Council - Encounter Print A4 Portrait

FIGURE 1

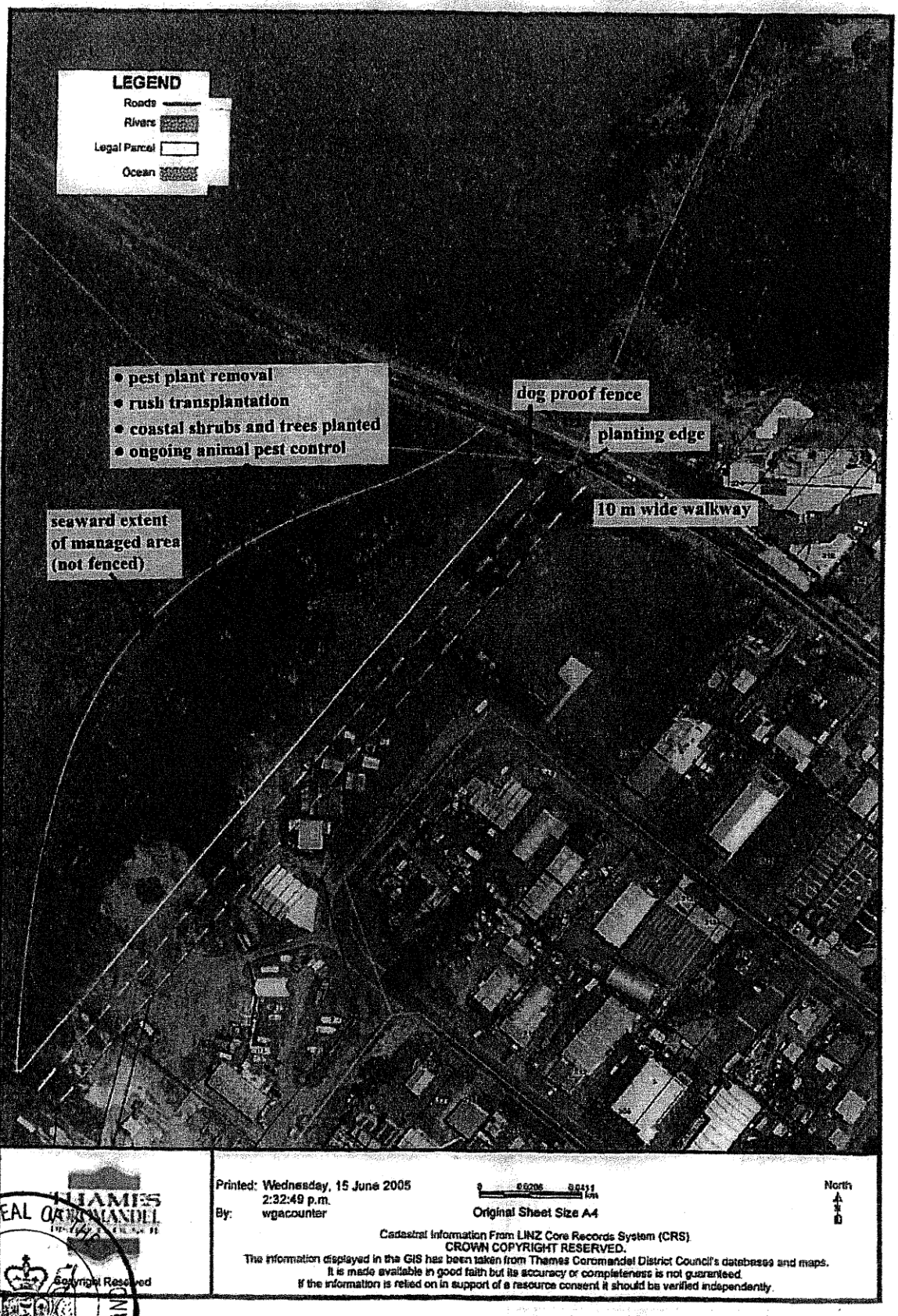

FIGURE 1 ENHANCEMENT AREA

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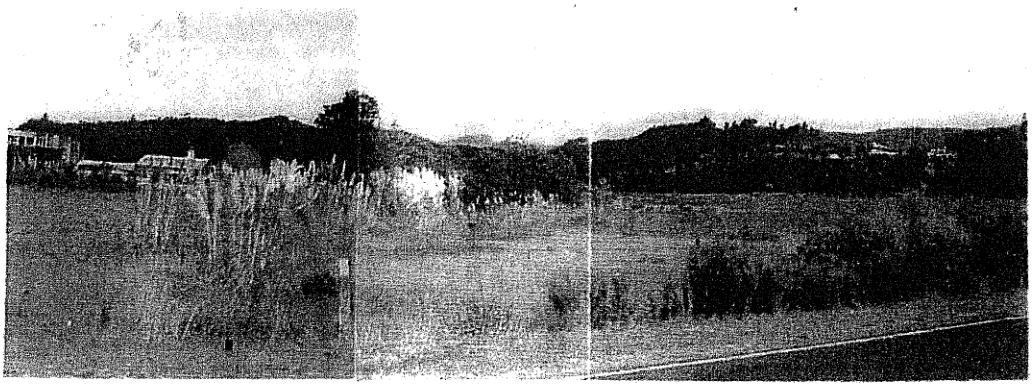
APPENDIX 6

Moanaanuanu Estuary Enhancement
Proposed Landscape Management Plan



WHANGAMATA MARINA
MITIGATION PROPOSAL

PROPOSED LANDSCAPE MANAGEMENT PLAN



Prepared by Bernard Brown Associates Ltd
ANZILA
July 2005

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CONTENTS

1.0 Introduction

2.0 Terms of Reference and Work Brief

3.0 Existing Environment

4.0 Proposed Landscape Management Plan

5.0 Cost Estimates

6.0 Site Works and Planting Specifications

7.0 Maintenance Requirements

APPENDICES

Appendix 1 Whangamata Marina – Mitigation Proposal – Proposed Landscape Management Plan. Drawing No. 64/2005

Appendix 2 Proposed Plant Schedule

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1.0 INTRODUCTION

1.1 My full name is Bernard Duncan Brown and I hold the following qualifications gained from Lincoln University (1967 – 1973) Dip Hort (Distinction), Cert LD and ANZILA (Associate Member of the NZ Institute of Landscape Architecture). I have had 32 years work experience with central government (NZED and MWD) and 16 years as a private consultant Landscape Architect based in Hamilton and Raglan.

1.2 I have worked throughout the Coromandel Peninsula for the last 25 years having been involved with various roading developments, consent applications and assisted the Department of Conservation with management plans.

I am familiar with the coastal ecological values associated with most harbour environments throughout the Coromandel Peninsula.

2.0 TERMS OF REFERENCE AND WORK BRIEF

2.1 The terms of reference for this mitigation proposal are contained in a letter to Bernard Brown Associates (BBA) from the Whangamata Marina Society (WMS) dated 2 July 2005.

2.2 The specific work brief tasks required are outlined in the above correspondence and were confirmed following a site visit by Bernard Brown and Mr Mick Kelly of (WMS) on 12 July 2005. These tasks include the following:

- Prepare a Proposed Landscape Management Plan (LMP) that is consistent with the recommendations made by Mr Graham Don of Bioresearches Ltd in the report titled Whangamata Marina Society, Moanaanuanu Estuary, Esplanade Strip, Enhancement Proposal dated June 2005.

- Describe the existing environment of the subject site and advise on key site preparation works required prior to planting.

- Advise on appropriate mix of species and planting densities for areas below and above mean high water and collectively incorporate these into a Proposed Landscape Management Plan.

- Supply a Proposed Planting Schedule with associated Estimated Costs covering Site Preparation and Site Works, Plant Supply and Planting with follow up maintenance over 2 years.

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3.0 EXISTING ENVIRONMENT

3.1 The subject site is illustrated in Figure 1 below and comprises an area of approximately 1.5 ha of land adjoining the eastern margins of Moanaanuanu Estuary being part of the greater Whangamata Harbour.

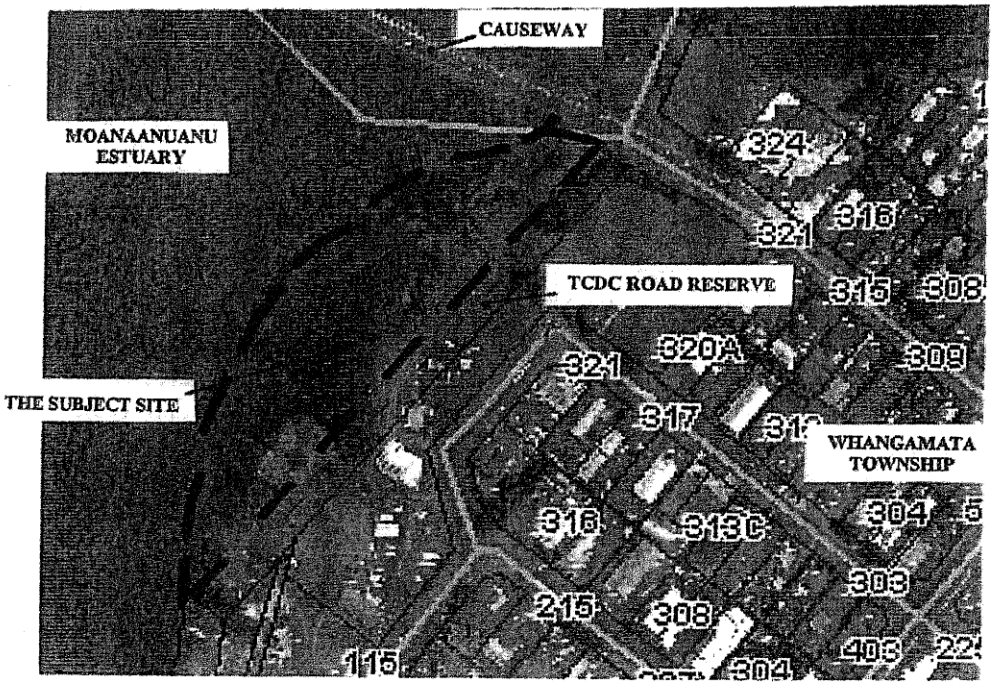

Figure 1 – The subject site proposed for enhancement

3.2 Originally included within the site is the Thames Coromandel District Council 20m wide road reserve which is planned to provide future pedestrian access along the Moanaanuanu Estuary. This leaves an approximate total area of 8800m^2 available for enhancement plantings.

3.3 Research on historical aerial photographs of the area indicate that up to 1950 the site was occupied by Manuka Shrubland with adjoining pasture and exotic forestry. Prior to clearing for these land uses all dryland margins of the Moanaanuanu Estuary were probably covered with extensive Pohutukawa-Haupara climax forest.

3.4 Recent incremental filling over the greater area has occurred permitting residential and light industrial land uses. In the subject site, clean fill has been placed to depths of 1.0m at the northern end and extending to estimated depths of 2.5m – 3.0m in the south portion of the proposed enhancement area. The site has a general unkempt appearance with scattered industrial debris common in the southern areas. Extensive Kikuyu ground cover exists with large patches of Pampas and Wattle.

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3.5 Two open stormwater drains currently dissect the mid sections of the site. Should TCDC require integrated development of a walkway in conjunction with this enhancement proposal, the two open drains will need piping at least over the 20m width of the legal road reserve.

3.6 The historical ad hoc placement of clean fill over the entire site has resulted in mostly poorly drained soils with characteristics resembling andesitic clays laid on sands and estuarine muds. In my opinion, in order to achieve the objectives of the Bioresearches Ltd enhancement planting proposal involving Rushmarsh Habitat, Batter to Rushmarsh & Esplanade (Drier Ground) Associations, local earthworks are required to better define the estuarine margin and higher drier land/soils.

3.7 The above can be achieved by excavating the existing fill batters along the estuarine margin thus forming a 5 – 10m wide "littoral bench" where transplanted Rushes are proposed. All excavated material can be placed parallel to the TCDC walkway forming a series of earthmounds strategically placed between the existing open drains. These areas would effectively form the Esplanade Strip comprising dry ground with the secondary/climax species proposed in the Bioresearches Ltd report.

3.8 In my opinion, the clean fill used is suitable as a "soil" capable of supporting the proposed native revegetation species. It is recommended that immediate grassing with DAP fertiliser be undertaken following site works. It is also recommended that all plantings undertaken have 1 / 20 Agriform Fertiliser tablet and 30 gms wet Rainsaver applied sub surface at planting time. All plantings require to be staked and tied immediately following planting.

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4.0 PROPOSED LANDSCAPE MANAGEMENT PLAN (refer attached Appendix 1)

4.1 The attached Appendix 1, Proposed Landscape Management Plan, presents a Plan with two sections incorporating the site works concept previously described in Sections 3.6 and 3.7 above.

4.2 The three native planting associations proposed by Bioresearches Ltd are illustrated in each of the Sections A-A and B-B. In summary, each of these areas comprise:

- Rushmarsh Habitat - $1600m^2$
  Transplanted Rushes from the Marina Site

- Formed Batter to Rushmarsh - $3200m^2$
  Planted species comprising Marsh Ribbonwood, Flax, Coprosma propingua, Marsh Daisy and Sedges
  Total Plants required @ 1.5m spacing - 1400

- Esplanade Strip (On Mounds) - $4000m^2$
  Planted species comprising, Manuka, Karo, Karamu, Five Finger, Ake Ake, Koromiko, Cabbage Tree, Kahikatea, Pohutukawa, Rimu and Sedges
  Total Plants required @ 1.5m spacing - 1700

4.3 In compliance with Bioresearches Ltd recommendations a continuous 300m long wire mesh fence is proposed to be located on the western TCDC Road Reserve boundary (refer attached Appendix 1).

5.0 COST ESTIMATE (based on current contract rates)

5.1 **Task 1 – Survey & Tidy Up (Spring / Summer)**

- Survey and establish all boundaries
- Remove all debris from site

$2,500

5.2 **Task 2 – Site Preparation (Spring Summer)**

- Spray all Kikuyu ground cover — $2,000
- Remove Pampas and Wattle and all woody weeds
- Use 12 tonne Excavator Truck off site
  Estimate 2 days @ $800/day — $1,600

5.3 **Task 3 – Site Works (Summer)**

- Excavate littoral bench — $2,000
- Form earth mounds
- Shape batters and grass
- Use 12 tonne Excavator @ $800/day
  Estimate total 4 days — $3,200
- Grass all areas using Soil Conservation Mix – Browntop, Yorkshire Fog, Clover with DAP fertiliser @ 250kg/ha — $800



5.4	**Task 4 – Plant Supply and Planting (Winter – May – September)**	
	• Transplanting of Rushes Use Hoff Loader @ $800/day (Estimate 2 days)	$1,600
	• Plant Batter to Rush Marsh Use minimum Pb2 grade @ $3.50 ex nursery 1400 Pb2 plants @ $7.00 planted	$9,800
	• Plant Esplanade Strip (on mounds) Use minimum Pb2 grade @ $3.50 ex nursery 1700 Pb2 plants @ $7.00 planted	$11,900
	• Ancillary Materials Supply 3100 14cm Bamboo Stakes & Tree Lok Ties @ 20¢ each Supply 7 Boxes Agriform Fert Tablets @ $80/box Supply 10kg Rainsaver @ $30/kg	$620 $560 $300
5.5	**Task 5 – Install Wire Mesh Fence**	
	• 300m long / 900mm high wire mesh fence @ $12/m installed	$3,500
	Total Project Estimated Capital Costs (net)	**$38,380**

6.0 SITE WORKS AND PLANTING SPECIFICATIONS

6.1 Weed Control

(a) The key site works objective is to control/remove all existing Kikuyu ground cover and woody weeds including Pampas and Wattle.

(b) Under no circumstances should earthworks (site works) be undertaken until all of the above weeds are deemed effectively controlled or removed from site.

6.2 Planting

(a) All plants supplied shall be minimum Pb2 grade.

(b) All plantings shall have the following supplied at planting time:

- 1/20gm Agriform Fertiliser Tablet
- 30gms wet Rainsaver
- 1/14mm x 1200mm Bamboo Stake each plant tied with Tree Lok ties.

(c) Prior to planting spot spray with Roundup at 1.5m spacings.

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7.0 MAINTENANCE REQUIREMENTS

7.1 It is recommended that a minimum 2 year maintenance programme be undertaken following plantings.

7.2 Each year a total of 3 site visits shall be undertaken to "release" plantings from encroaching grass cover. The task is best performed by hand. No herbicides shall be used.

7.3 Current contract rates for releasing are 0.30¢ per unit net. Given the total 3100 planted species required the estimated contract maintenance costs over 2 years with 6 site visits are:

3100 plants x 0.30¢ x 6 = $5,580 (net)

Bernard Brown ANZILA
July 2005



TYPICAL SECTION A - A
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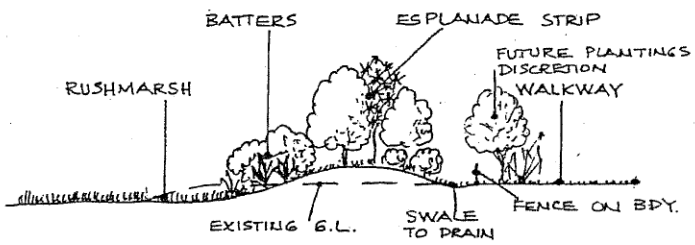

TYPICAL SECTION B - B
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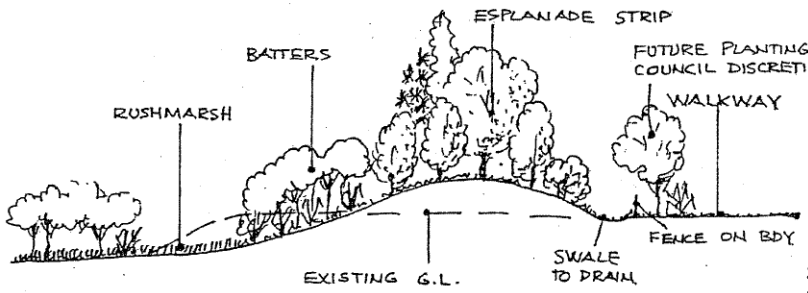

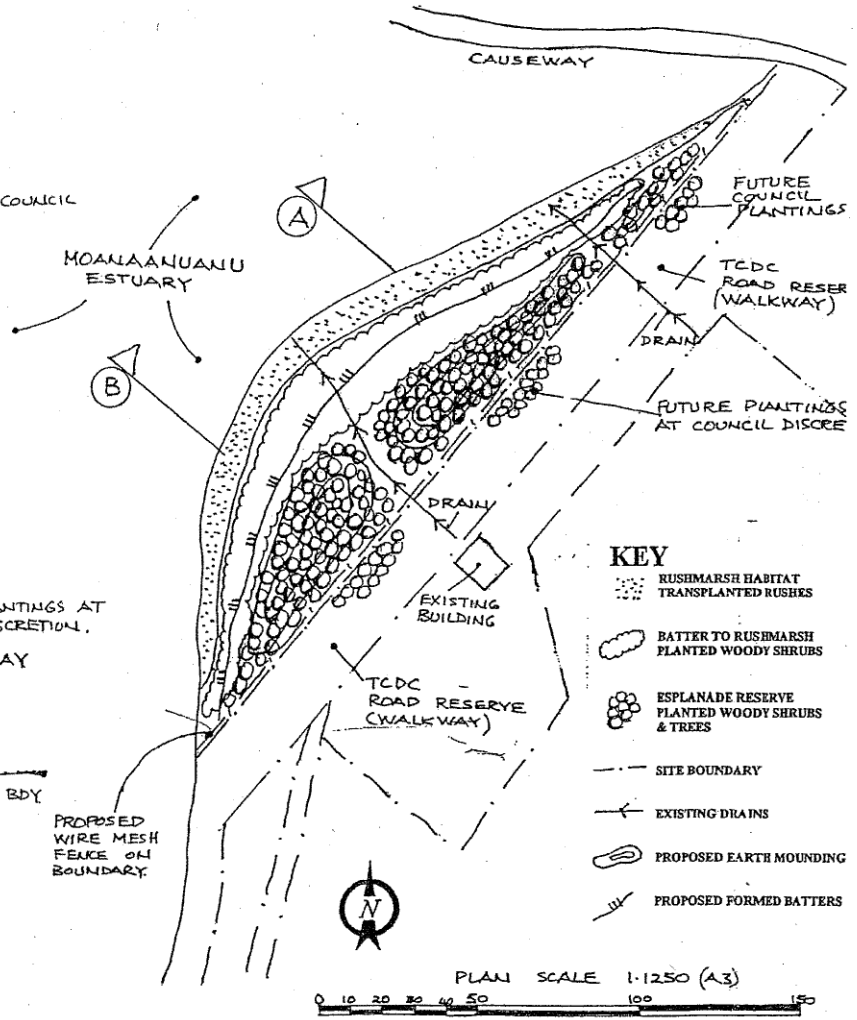

WHANGAMATA MARINA SOCIETY – MITIGATION PROPOSAL
PROPOSED LANDSCAPE MANAGEMENT PLAN

BERNARD BROWN ASSOCIATES
Environmental Planning and Design Consultant

DRAWING NO 64 / 2005

APPENDIX 1

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WHANGAMATA MARINA – PROPOSED MITIGATION
PROPOSED PLANTING SCHEDULE

COMMON NAME	BOTANICAL NAME	MIN GRADE	NO REQ
Rushmarsh Habitat			
Sea Rush	Juncus krausi		
Oi Oi	Apodasmia similis		
	Baumea juncea		

All species to be transplanted using Hoff Loader. Place bucket minimum 300mm beneath root systems an keep intact.

Formed Batters to Rush Marsh – 1400 plants			
Marsh Ribbonwood	Plagianthus divaricatus	Pb2	200
Swamp Flax	Phormium tenax	Pb2	300
	Coprosma propinqua	Pb2	100
Marsh Daisy	Olearia solandri	Pb2	100
Sedge	Cyperus ustellatus	RTH	200
	Carex flagellifera	Pb2	300
Manuka	Leptospermum scoparium	Pb2	300

- Manuka to be Eco sourced – Use local seed

Esplanade Strip – 1700 plants			
Manuka (as above)	Leptospermum scoparium	Pb2	300
Karo	Pittosporum crassifolium	Pb2	200
Houpara	Pseudopanax lessonii	Pb2	100
Ake Ake	Dodonia viscose	Pb2	200
Koromiko	Hebe stricta	Pb2	200
Cabbage Tree	Cordyline australis	Pb2	100
Kahikatea	Dacrycarpus dacrydiodes	Pb2	100
Pohutukawa	Metrosideros excelsa	Pb2	100
Sedge	Cyperus ustellatus	RTH	200
Sedge	Carex flagellifera	Pb2	200

- RTH grades are Rootrainer Hilsons

APPENDIX 2

THE SEAL OF THE ENVIRONMENT COURT NEW ZEALAND

SCHEDULE THREE

Pursuant to the provisions of Sections 104 &105 of the Resource Management Act 1991, the Thames Coromandel District Council grant consent to the Whangamata Marina Society Inc:

1. To undertake earthworks involving the placing of fill taken from the construction of the Whangamata Marina, on several parcels of land adjacent to the Whangamata Marina site owned by Thames-Coromandel District Council; and

2. To establish marina facilities within the Marine Activities zone (eg a car parking area, a washdown area, a hard-stand area, a secure dry boat storage area, boat maintenance area, car and trailer parking, administration office (50m²) and toilet facilities)

on the site off Beach Road, Whangamata (legally described as Part Section 13 Block XVI Tairua SD, and Pt SO 20568 Sheet 1 Whangamata Blk XVI Tairua SD). Access to the facilities will be from Beach Road.

Pursuant to the provisions of Section 108 of the Resource Management Act 1991, the consent is subject to the following conditions:

EARTHWORKS

a) The development shall be undertaken generally in accordance with the information and plans submitted with the application provided that the finished contours shall be generally in accordance with the Dunwoodie & Green Surveyors Ltd plan referenced as File 3304, Sheet 11 and dated October~~August~~ 2004 (attached to this consent as Attachment A).

b) The consent holder shall commission an archaeological survey of the site (ie landward of Mean High Water Springs) for the purpose of recording any information of archaeological or cultural significance. The archaeologist shall be a qualified person approved by the Historic Places Trust, and shall present a written report to the Trust and the Manager Environmental Planning Services promptly after completing the survey.

No work shall commence within the site until such time as the consent holder has obtained any necessary approval from the Historic Places Trust to destroy, damage or modify any archaeological site identified in the survey.

The Trust shall be advised of this condition by the consent holder and shall be kept informed of progress by the appointed archaeologist.

c) Whether or not the report referred to in Condition b) above records significant information, if any archaeological remains are found, the works within a 20 metre radius of the relevant area where the remains are found shall cease and the tangata whenua and Historic Places Trust shall be consulted forthwith, with an appropriate contingency plan being formed, paying heed to Maori protocol, before the works are allowed to recommence.

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d) A 'Stormwater Management Plan' including stormwater runoff and upstream catchment calculations for stormwater drainage and details of the piping of the 20% stormwater runoff flows and the manner in which discharge to Council stormwater or water system be to the satisfaction of and be submitted for approval by the Manager Environmental and Planning, prior to the commencement of construction.

e) The construction noise levels as measured at any point within the boundary of the site shall not exceed the limits specified in Table 2 – Long-term Duration of NZS 6803:1999 Acoustics – Construction Noise.

Subject to the express provisions of this condition, the noise levels shall be measured and assessed in accordance with the requirements of NZS 6803:1999 Acoustics – Construction Noise.

Prior to earthworks commencing, the consent holder shall supply to the Thames Coromandel District Council a certificate from an appropriately qualified acoustic engineer certifying that the noise levels can meet those set out in NZS 6803 :1999. A Noise Control Management Plan shall be prepared by an appropriately qualified acoustic engineer, showing how the requirements of NZS 6803 : 1999 and the certificate are to be complied with. Both the certificate and the Noise Management Plan shall be to the satisfaction of and be submitted for approval by the Manager Environmental and Planning, prior to the commencement of construction.

f) Compaction and final certification of the earthworks standards shall be in accordance with Appendices A & B of NZS 4404, and shall be to the satisfaction of and be submitted for approval by the Manager Environmental and Planning.

g) A Dust Management Plan showing the manner in which dust is to be controlled during construction activities shall be to the satisfaction of and be submitted for approval by the Manager Environmental and Planning, prior to the commencement of construction.

h) Engineering plans of any works to be undertaken on the site are to be to the satisfaction of and be submitted for approval by the Manager Environmental and Planning, prior to the commencement of construction.

i) A detailed Landscape Management Plan, including an implementation and maintenance programme, plant sizes at planting time and showing the manner in which screening of the boat and trailer parking areas is provided for, shall be to the satisfaction of and be submitted for approval by the Manager Environmental and Planning, prior to the commencement of construction. One month prior to forwarding the plan to the Thames Coromandel District Council a draft will be sent to the Iwi representatives which may suggest amendments to the plan which must be submitted to the consent holder within one month of receipt of the plan by the Iwi representatives. If those amendments are not accepted by the consent holder, the consent holder shall forward the suggested amendments to the Council at the same time as it submits the plan for the Council's approval.

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The Landscape Management Plan shall be prepared by a qualified member of the New Zealand Institute of Landscape Architects and will be generally in accordance with Figure 6 attached to the evidence of Mr Allan Rackham, entitled "Whangamata Proposed Marina – Landscape Plan", attached to this consent (as Attachment B).

MARINA FACILITIES

j) The site is to be developed generally in accordance with the plans and information submitted with this application and as supplied in response to Section 92 Requests for Further Information.

k) The facility is to be connected to Council's water reticulation system.

l) The water supply connection is to be metered and the public supply is to be protected by a backflow prevention device.

m) The facility is to be connected to Council's wastewater reticulation system.

n) Details of the proposed wastewater discharge dump connection to be provided for boats visiting the Marina.

o) The washdown system is to be protected by silt and other contaminants interceptor trap before being discharged.

p) A Dust Management Plan showing the manner in which dust created as a result of boat cleaning activities is to be controlled to ensure there are no nuisances to properties outside the site, shall be to the satisfaction of and be submitted for approval by the Manager Environmental and Planning, prior to the commencement of construction.

q) Confirmation of the volumes of water being utilised and of wastewater being discharged to Council's sewer system are to be provided, prior to the setting of headworks contributions. Headworks contributions for water and wastewater services are payable.

r) No works are to take place in the Council's Road Reserve without Council's approval.

s) The carparking areas are to be constructed to Council's urban standard, complete with stormwater runoff control.

All internal roading and parking to be permanently surfaced, including the road area shown as 'Metal'. (The grassed / occasional parking area is acceptable to be formed in grass).

t) Engineering plans for works on the site are to be approved before any work takes place. This includes dimensional carparking layout.

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u) The public walkway from Beach Road to Hetherington Road is to be formed and remain accessible to the public at all times following the completion of the marina construction and once it is practicable to form the walkway.

v) Conditions j) - r) above are to be carried out and completed to the satisfaction of the Manager Environmental and Planning.

w) Any night lighting shall be installed, designed, located and shaded in order that the level of lighting measured at the boundary of the site with any land zoned Housing or Housing (Extra Density Policy Area) is no greater than 8.0 lux.

TRAFFIC MANAGEMENT

(x) A traffic management plan is to be prepared and submitted for the approval of the Manager Environmental Services prior to the removal of material from the site. The traffic management plan is to include provisions which address the following matters:

i. Signage to indicate the presence of trucks crossing at both the site of loading and the site of unloading.

ii. Route to be used by trucks exiting and entering the site.

iii. Assessment of road quality prior to the use and restoration of roads where damage has occurred as a result of use by trucks undertaking work pursuant to this consent.

iv. Cleaning of trucks exiting the site.

v. Cleaning of road ways where material has been spilt from trucks undertaking work pursuant to this consent.

vi. Days and hours of that trucks will be exiting and entering the site (excluding Sundays and public holidays where no truck movements are provided).

vii. Signage to include the following information:

- Days and hours of truck movements.
- Phone contacts for enquiries regarding the trucking activities.

viii. Manner in which a record of truck movements is to be kept and reporting of this information to Council.

GENERAL

(y) This consent lapses on the expiry of 5 years after the date of commencement of the consent.

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z) The Thames Coromandel District Council may initiate a review of the conditions of this consent under s.128 of the Resource Management Act 1991 every two years after the date of commencement of this consent in the month of October for the purpose of avoiding, remedying or mitigating any adverse effects on the environment from the exercise of this consent.

za) Prior to the commencement of construction, the consent holder will demonstrate to the satisfaction of Thames Coromandel District Council that the consent holder has sufficient funds committed to carry out the construction of the marina in accordance with the consents granted and shall provide a legally enforceable bond jointly in favour of and to the satisfaction of the Thames Coromandel District Council and the Waikato Regional Council ("the Councils"). The bond is intended to ensure that in the event of the consent holder failing to complete the marina, there are sufficient funds available to the Councils in order to:

(i) Remove structures from below Mean High Water Springs ("MHWS"); and

(ii) Secure the completion of earthworks, filling, rehabilitation, landscaping and stormwater reticulation to the extent necessary and practicable to avoid, remedy or mitigate adverse effects on the environment and ensure that there is no ongoing liability or responsibility for the Council; and

(iii) Enable any adverse effects on the environment resulting from the consent holder's activities and not authorised by a resource consent to be avoided, remedied or mitigated; and

(iv) Enable the Councils to undertake the monitoring and management of the site until completion of the landscaping and satisfactory operation of the stormwater reticulation system to the extent contemplated in (ii) above.

zb) The quantum of this bond will be determined as follows:

i) Prior to the commencement of construction the consent holder will provide to the Councils a project plan that will identify key construction targets at approximately 6 monthly intervals throughout the marina project.

ii) The project plan will include an estimate of the costings for removal of structures below MHWS and remediation of the land above MHWS for each of the construction targets and consistently with the intent of this bond as stated in (za) above.

iii) Prior to commencement of construction the applicant will obtain a bond sufficient to cover the maximum risk to the Councils as represented by the highest cost estimate in paragraph (ii) above.

iv) The consent holder will maintain the bond agreed under paragraph (iii) until construction is complete and all works have been carried out in accordance with the Landscape and Stormwater Management Plans.

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zc) In the event that the consent holders and the Councils are unable to agree on the quantum of the bond, the dispute shall be referred to arbitration in accordance with the provisions of the Arbitration Act 1996.

zd) With the exception of arbitration costs incurred under paragraph (zc) all costs relating to the bond shall be paid by the consent holder.

NOTES

1. The consent is not be construed as granting consent to the "Boat User Accommodation - Future" shown on the land fronting Hetherington Road.

2. In order to proceed in terms of this consent, the consent holder will almost certainly need to negotiate alternative sites for the disposal of surplus fill. This will require possible additional resource consents from the Thames Coromandel District Council and/or the Waikato Regional Council. In addition, a new agreement may be necessary with Transit New Zealand in respect of State Highway No 25.

3. The applicant advises that it proposes to subdivide the land zoned Marine Activities from that land zoned Housing (Extra Density Policy Area), in order that separate arrangements can be made for Society's occupation of the land zoned Marine Activities. As part of this subdivision, it would also be necessary and appropriate to provide for right of way access over the land zoned Marine Activities, to enable vehicular access to and around the existing boat trailer park (on land zoned Reserve).

4. The applicant advised that the administration office building is to be located greater than 12 metres from the boundary of the legal road, thereby making this component of the application a controlled activity rather than a non complying activity. The assessment of this part of the application was undertaken on that basis.

5. In this Consent the Iwi representatives means either a collective nominee or an individual representative of each of the following parties:
   - Hauraki Maori Trust Board;
   - Te Kupenga O Ngati Hako Incorporated;
   - Whangamata Maori Committee;
   - Te Runanga O Ngati Puu.

   The choice of individual representative or a group nominee is at the discretion of the Iwi parties and will be advised to the consent holder on an annual basis.

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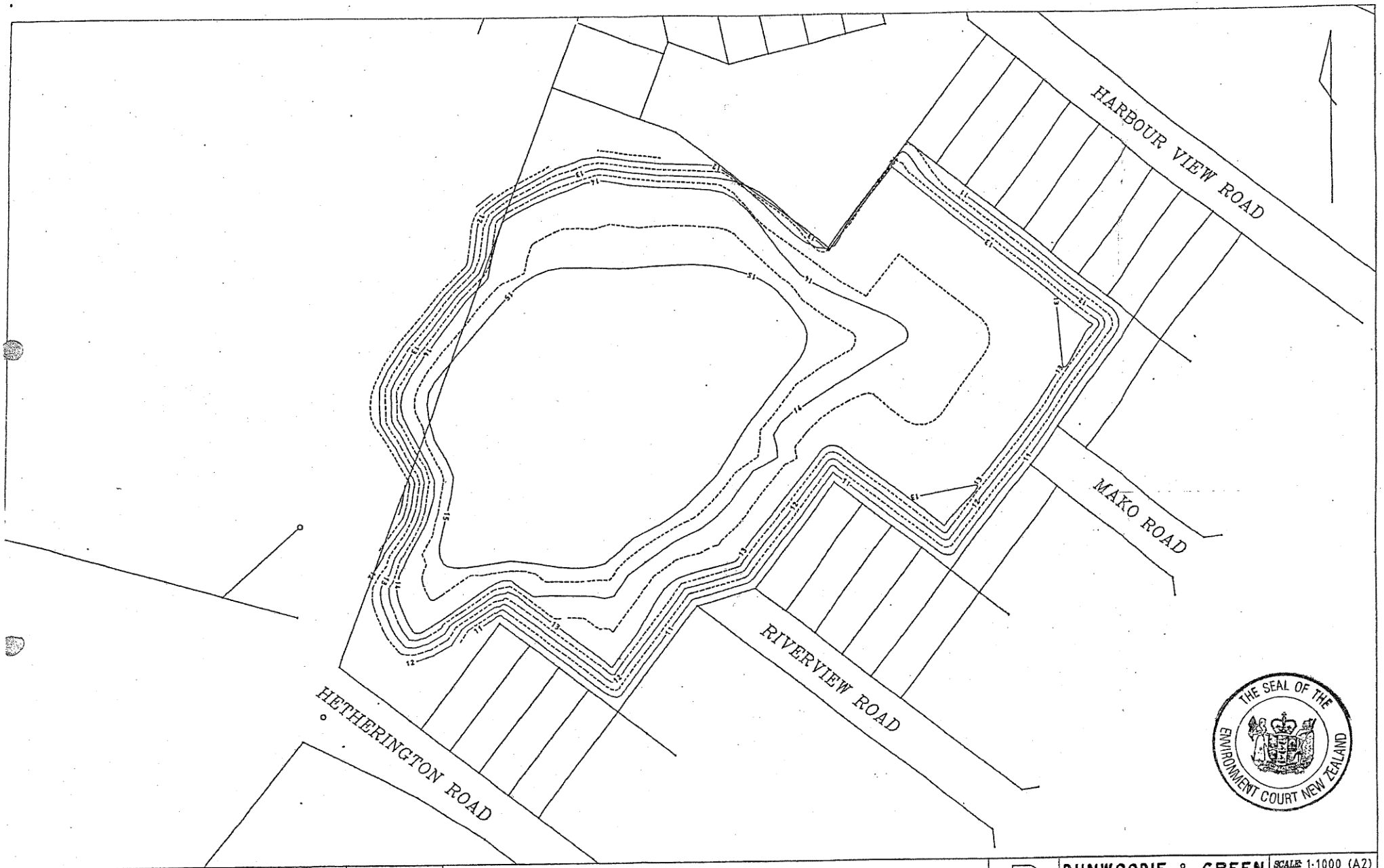
Attachment A



MAXIMUM LEVEL OF FILL ON THE MARINA SITE

FILL VOLUME 115 500 CUBIC METRES ON ORIGINAL CONTOURS AT SEPTEMBER 2000

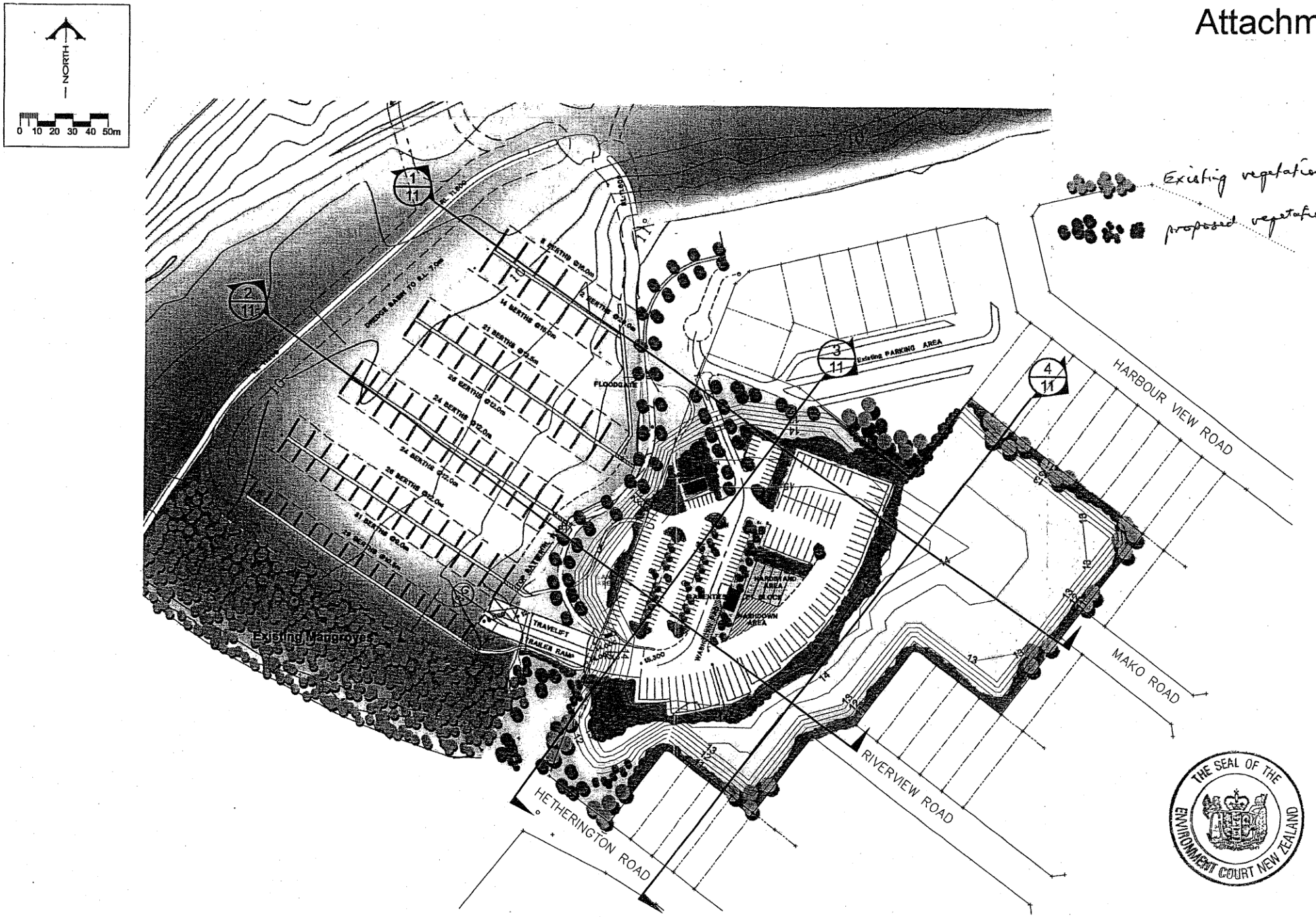
DATE	BY	AMENDMENT
20/10/04	MJD	Amend contours

WHANGAMATA MARINA SOCIETY INCORPORATED

DUNWOODIE & GREEN SURVEYORS LTD
LAND DEVELOPMENT SPECIALISTS
641 POLLEN ST THAMES
Ph (07)8687587 FAX.(07)8688252
LOCAL BODY: THAMES COROMANDEL DISTRICT

SCALE	1:1000 (A2)
DATE	OCT 2004
	SHEET 11
FILE	3304
CCAD FILE	DWGXFAL6

Attachment B



BOFFA MISKELL
planning • design • ecology

WHANGAMAT. ROPOSED MARINA
Figure 6 - Landscape Plan

22 October 2004

A173

Law
KG
342
N5

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of references under clause 14 of the First Schedule to the Act

BETWEEN **THE THAMES-COROMANDEL DISTRICT COUNCIL**

(ENV A0075/04)

WHANGAMATA MARINA SOCIETY INC

(ENV A0076/04)

TE KUPENGA O NGATI HAKO INC

(ENV A0078/04)

HAURAKI MAORI TRUST BOARD

(ENV A0085/04)

Referrers

AND **THE WAIKATO REGIONAL COUNCIL**

Respondent

UNIVERSITY OF OTAGO
21 DEC 2005
LAW LIBRARY

BEFORE THE ENVIRONMENT COURT

Principal Environment Judge R J Bollard (presiding)
Deputy Environment Commissioner A H Hackett
Deputy Environment Commissioner I G McIntyre

IN CHAMBERS at Auckland

THE SEAL OF THE ENVIRONMENT COURT NEW ZEALAND

ORDER

UPON READING the memorandum of counsel for the Waikato Regional Council (WRC) dated 2 December 2005 with attachments, lodged in accordance with the Court's invitation under paragraph [32] of Decision A174/2005 dated 26 October 2005 **AND UPON BEING SATISFIED** that an order should issue as below to give due effect to the intent of the said decision (read in conjunction with Interim Decision A010/2005 dated 25 January 2005) **THIS COURT HEREBY ORDERS** that:

1. The appeals are allowed to the extent that WRC's decision concerning the proposed variation at issue in the proceedings is altered, inasmuch as the terms of the variation to be inserted in WRC's proposed Regional Coastal Plan shall be as shown in the documentation headed "Final Marinas Variation Amended Following Environment Court" attached to this order.

2. In other respects the appeals are dismissed.

Note: At paragraph [21] of Decision A174/2005 it was stated that a copy of pages 123-130 of the Regional Policy Statement was to be attached to the decision. Unfortunately the attachment was inadvertently omitted. A copy of the relevant pages is accordingly annexed hereto marked "Attachment Two".

DATED this 12th day of December, 2005.

For the Court:

THE SEAL OF THE ENVIRONMENT COURT NEW ZEALAND

R J Bollard
Principal Environment Judge

RECEIVED
02 DEC 2005
Environment Court
Auckland

2 Objective

2.1 Amend Objective 3.1 to read:

Preservation of the natural character of the coastal environment by:

- Protecting it from inappropriate subdivision, use and development; and
- Restoring it where appropriate.

3 Policies

3.1 Add Policy 3.1. 4A after 3.1.4 Policy – Inappropriate Use and Development as follows:

Policy 3.1.4A – Use of and Occupation of Coastal Space

Recognise that the use, occupation and development of coastal space is appropriate in the CMA to meet the social, economic and cultural wellbeing of communities, in particular maintaining and enhancing recreational opportunities, provided that:

1. Any adverse environmental effects, particularly on natural character, habitat and coastal processes, are avoided as far as practicable, and if avoidance is not practicable, adverse effects should be mitigated and provision made for remedying those effects, to the extent practicable;

2. The following policies in this Plan are taken into account:

Policy 2.4.1	Kaitiakitanga
Policy 2.3.1	Tangata Whenua values
Policy 3.1.1	Protection of representative features
Policy 3.1.2	Protection of other natural features
Policy 3.1.3	Remote and isolated areas
Policy 3.1.4	Inappropriate use and development
Policy 3.2.1	Protection of significant vegetation and habitat
Policy 3.2.2	Protection of habitats of commercially, traditionally or culturally important species
Policy 3.3.1	Amenity values
Policy 3.3.2	Protection of heritage values
Policy 5.1.3	Appropriate structures
Policy 7.4.1	Inappropriate reclamation, declamation and drainage
Policy 9.1.3	Pressures on public access

Explanation and Principal Reasons for Adopting: This policy recognises the need to balance the use, occupation and development of coastal space with protection of natural character of the coastal environment. The Second Schedule of the RMA states that a Regional Coastal Plan may provide for the control of the use of the coastal marine area, including, where appropriate the protection of conservation values, the recognition of opportunities for recreation, aquaculture and other forms of development. Enjoyment of the coast is important for the social, economic and cultural wellbeing of most New Zealander's. Recreational opportunities can require use of and occupation of space in the CMA and it is therefore important to ensure that facilities can be developed where appropriate.

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Implementation Methods
Rules
All Rules in this Plan, including new rules as set out in this variation.

16.2.10 Marina Basin (Discretionary Activity)
16.4.25 Poles and Pontoons within a Marina Basin (Permitted Activity)

Other Methods

17.1.3 Identification of Areas/Characteristics of Special Value
17.2.8 Tangata Whenua Values
17.2.9 Consultation with Department of Conservation
17.3.7 Consultation with Boating interests
17.8.2 Consultation with Territorial Authorities
17.10.3 Development of Harbour Plans

3.2 Add Policy 3.1.4B as follows:

Policy 3.1.4B - Use of and Occupation of Space for Marinas

The use of and occupation of space for a marina in the CMA is considered appropriate where it is located in an area where the following criteria can be met:

Either–

a) Adverse effects on significant indigenous vegetation and significant habitats of indigenous fauna determined in accordance with Policy 3.2.1(a) are avoided or remedied; and

b) Adverse effects on conservation values described in Appendix IV in an ASCV as indicated by maps in Appendix III of this plan, other than adverse effects on significant indigenous vegetation and significant habitat of indigenous fauna as determined in accordance with Policy 3.2.1 (a), are avoided as far as practicable, and if avoidance is not practicable, adverse effects are mitigated and provision made for remedying those effects, to the extent practicable; and

c) Adverse effects on other ecological values within the coastal environment are avoided as far as practicable, and if avoidance is not practicable, adverse effects are mitigated and provision made for remedying those effects, to the extent practicable; and

d) Adverse effects on the relationship tangata whenua as Kaitiaki have with their identified ancestral taonga such as water, lands, sites, waahi tapu and kaimoana are avoided as far as practicable, and if avoidance is not practicable, adverse effects are mitigated and provision made for remedying those effects, to the extent practicable; and

e) Adverse effects on coastal processes, including water currents and sediment patterns, in the immediate vicinity, along the shore and offshore from the location are avoided as far as practicable, and if avoidance is not practicable, adverse effects are mitigated and provision made for remedying those effects, to the extent practicable; and

f) Tidal flushing rates are adequate to ensure that the pre-existing water quality is maintained or enhanced both within and adjacent to the marina basin; and

g) There is adequate safe access to open waters; and

h) The area is not inconsistent with the District Plan which applies to the adjoining land or with neighbouring water uses, and water, reticulated sewage and

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roading services are able to be provided to adequately service the proposed development; and

i) The proposed marina is within an area of existing development (either in the CMA or on adjoining land) where the natural character has already been compromised and will avoid sprawling or sporadic use or development; and

j) The use of the area is compatible with social, economic, cultural and recreational values and uses of the harbour or estuary; and

k) Public access to the CMA is maintained or enhanced, or any adverse effects on public access to the CMA can be mitigated; and

l) In any harbour where the number of existing moorings exceeds the maximum number specified in Policy 5.1.8 (maximum mooring numbers) of this Plan, the proposed marina would encourage rationalisation and consolidation of the numbers and location of pile and swing moorings.

Or–

m) Located within the Whangamata marina zone or the Whitianga marina zone as shown in Appendix III, Marina Maps of this Plan.

Explanation and Principal Reasons for Adopting: Existing and increasing demand for recreational use of coastal waters is evident, especially in the Coromandel Peninsula. There are conflicts between existing uses and the demand for future uses which may have adverse effects on the environment and other values. Marinas provide protected areas for boats, as well as social and economic benefits. Marinas could have significant adverse effects on the environment and therefore there is a need to ensure that marinas are located in appropriate areas. Criteria in this policy provide guidance for decision making on the appropriate location of marina on a case by case basis. Marinas are also considered appropriate where a marina zone is established in the Whangamata Harbour or the Whitianga Harbour as indicated in Appendix III, Marina Maps of this Plan as these areas have been through a public RMA planning process. Consideration should also be given to the matters outlined in Policy 3.1.4A Use and Occupation of Coastal Space. Refer also to Policy 3.2.1 – Protection of Significant Vegetation and Habitat. Other Policies and their associated Rules in this Plan would also need to be considered in decision making on any resource consent for the establishment and operation of a marina.

Implementation Methods

Rules

16.2.10 Marina Basins (Discretionary Activity)
16.4.25 Poles and Pontoons within a Marina Basin (Permitted Activity)

Other method

17.10.3 Development of Harbour Plans

3.3 Amend Policy 3.2.1 – Protection of Significant Vegetation and Habitat as follows:

Policy 3.2.1 – Protection of Significant Vegetation and Habitat

Identify areas of significant indigenous vegetation and significant habitats of indigenous fauna and protect by:

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(i) avoiding any adverse effects of subdivision, use and development on the areas and habitats listed in Policy 1.1.2(a) of the NZCPS;

(ii) avoiding or remedying any adverse effects of subdivision, use and development on the areas listed in Policy 1.1.2(b) of the NZCPS.

b) Identify the conservation values (described in Appendix IV of this Plan) other than significant indigenous vegetation and significant habitat of indigenous fauna identified under Policy 3.2.1a) above, in areas of significant conservation value (ASCV) (as indicated by maps in Appendix III of this Plan), and protect by avoiding as far as practicable any adverse effects of subdivision, use and development on those values, and if avoidance is not practicable, adverse effects on those values are mitigated and provision made for remedying those effects, to the extent practicable.

Explanation and Principal Reasons for Adopting: This policy is linked to Policy 1.1.2 of the NZCPS which provides further detail in relation to protecting significant areas. Criteria for identifying significant indigenous vegetation and significant habitats of indigenous fauna are contained in the RPS Appendix 3. It is necessary to identify such areas and ensure that any proposed use or development in these areas avoids or remedies any adverse effect on the values that have been identified. The boundary of the ASCV is shown on the Maps in Appendix III. For clarity the ASCV boundary is the line of MHWS within the harbour or estuary extending out to the dotted line as shown on the Maps in Appendix III. The ASCV may include both significant areas and habitats to which Policy 1.1.2 of the NZCPS applies, and other areas of conservation value. In respect of those areas of conservation value to which Policy 1.1.2 does not apply, adverse effects of use or development on those areas may be mitigated. The conservation values may be present throughout the ASCV area and are shown indicatively on the maps in Appendix III and described in Appendix IV. This policy does not preclude appropriate use or development within the ASCV, rather it requires that the conservation values identified within these areas should be carefully managed.

4 Chapter 16 Implementation Methods – Rules

4.1 Add Rule 16.2.10 to Section 16.2 Habitat and Coastal Processes as follows:

Rule 16.2.10 - Marina Basins (Discretionary Activity)

The use of and occupation of space for the purposes of a marina basin is a Discretionary activity provided it complies with the standards and terms stated in this rule.

Standards and Terms

1. The area of the marina basin would not exclude, or effectively exclude, public access from areas of the coastal marine area over 10 hectares or from more than 316 metres along the length of the foreshore.

2. The marina basin shall not be located in any area identified in the Plan as waahi tapu.

Assessment Criteria

In assessing any application for the use of and occupation of space by a marina basin, regard shall be had to the following:

Either satisfaction of all of the criteria listed at a) to l) in Policy 3.1.4B or satisfaction of criterion m) in Policy 3.1.4B relating to the appropriate location of marinas;

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ii) The extent to which the activity will adversely affect any conservation value described in Appendix IV within the ASCV areas as indicated on maps in Appendix III of this plan, and the extent to which these effects can be avoided, remedied or mitigated in terms of Policy 3.2.1;

iii) The Decision-making Criteria and Considerations which are set out in Appendix II of this Plan, and which are relevant to this activity;

iv) The extent to which suitable alternative sites within the harbour, estuary or bay have been considered and reasons for the final choice of site;

v) The extent to which the scale and design of the marina activity is appropriate to the size and physical characteristics of the harbour, estuary or bay.

Conditions will be imposed in respect of the following matters:

1. The appropriate resource consents for activities relating to the construction, development and operation of the marina basin and any associated works in the CMA are obtained (see advice note below).

2. There shall be no discharge of water and/or contaminants into water from boat maintenance, ballast, boat careening, or hull cleaning within the marina basin.

3. There shall be no discharge of sewage or solid wastes into the water within the CMA.

4. The marina shall have at all times an Oil Spill Plan approved by Environment Waikato in accordance with the Maritime Transport Act 1994.

5. The marina shall have at all times a Management Plan approved by Environment Waikato which includes as a minimum:

   a) Description of operations and facilities and their maintenance.

   b) Berth contract provisions which ensure that berth holders act in a manner which will minimise adverse environmental effects of their activities within the marina basin, including any penalty provisions that may be imposed on berth holders for breach of contract.

   c) Waste disposal and litter management.

   d) Hazard mitigation.

Principal Reasons for Adopting: This rule provides decision making guidance for the location of marina basins and sets standards to manage environmental effects in the marina basin once a marina is established. Marina basins are to be located in accordance with the criteria in Policy 3.1.4B. This rule only applies to use and occupation of space. Therefore rules relating to other effects from the development of a marina such as dredging, discharges, structures etc will also apply. A marina basin which would exclude the public from 10 hectares or 316 metres along the foreshore would be a restricted coastal activity in accordance with Schedule 1 of the NZCPS. Particular reference should also be made to Policy 4.1.1 Maintaining or enhancing water quality characteristics.

Advice Note: This rule provides for the use of and occupation of coastal space by marina basins. The Policies and Rules in this Plan relating to the activities that occur in the construction, development and operation of the marina, for example but not limited to structures, dredging, deposition, disturbance and reclamation must also be

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considered and the appropriate resource consents obtained. These activities may be permitted, controlled, discretionary, non-complying or restricted coastal activities depending on the size and scale of the activities involved.

4.2 Add Rule 16.4.25 to Section 16.4 Structures - as follows:

Rule 16.4.25 - Poles and Pontoons within a Marina Basin (Permitted Activity)

The erection, placement, use of or occupation of space by any pole or pontoon structure within the confines of a marina basin is a permitted activity provided it complies with the conditions stated in this Rule.

Conditions

i) The structures shall be maintained in a structurally safe condition at all times.

Principal Reasons for Adopting: This rule recognises that such structures are an integral part of the marina development. It is considered that once the site for the marina basin is approved the structures do not require further environmental management.

4.3 Add Rule 16.2.10 - Marina Basin under 4.1 of this document as an implementation method to the following Policies in the existing RCP.

Policy 3.2.1 Protection of significant vegetation and habitat
Policy 4.1.1 Maintaining or enhancing water quality characteristics

4.4 Add Rule 16.4.25 - Poles and Pontoons within a Marina Basin under 4.2 of this document as an implementation method to the following Policy in the existing RCP.

Policy 5.1.3 Appropriate Structures

4.5 Make any consequential numbering changes to Chapter 16 Implementation Methods – Rules.

5 Chapter 17 - Implementation Methods – Other

5.1 Delete existing Other Method 17.10.3 – Development of Harbour and Beach Use Plan.

5.2 Add Other Method as follows:

Other Method 17.10.3 - Development of Harbour Plans

Environment Waikato will prepare Harbour Plans, in conjunction with tangata whenua, key stakeholders and community members, which identify appropriate use, development and protection of harbours and estuaries, taking into account for example, the following:

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- Compatibility and conflicts between users of the CMA.
- Linkages with land based facilities and development.
- The relationship tangata whenua as Kaitiaki have with their identified ancestral taonga such as water, waahi tapu and kaimoana.
- The maintenance and enhancement where practicable of natural character, amenity, ecological values and public access.
- The need to minimise impacts on coastal processes.
- Social, economic, cultural and recreational aspirations of the local and regional community.
- The cumulative effects of use and development on estuaries and harbours from a strategic, region wide perspective.
- Safeguarding the life supporting capacity of ecosystems.
- Availability of information and the need to make information-based decisions regarding ecological and coastal processes.

Principal Reasons for Adopting: Holistic planning for use, development and protection in harbours and estuaries would ensure that the social, economic, cultural and recreational aspirations of tangata whenua and the Regional community are met. Cumulative effects of use and development on estuaries and harbours will be better avoided, remedied or mitigated through a comprehensive and proactive planning process. An integrated approach involving the community, tangata whenua and other management agencies such as Territorial Authorities will assist in strategic planning. Once prepared the content of these Plans may be implemented as a change or variation (as per the First Schedule of the RMA) to the Regional Coastal Plan or the Navigation Safety Bylaw. The timing and priority of such plans would be set through the annual planning process.

NB: Harbour Plans will need to also take into account the Environment Waikato Navigation Safety Bylaw as prepared under the Local Government Act 1974.

5.3 Add Other Method to the Water Quality section 17.3 as follows:

17.3.15 - Managing Discharges within a Marina

Environment Waikato will liaise with marina operators, territorial authorities and central Government agencies to ensure that the requirements of the Maritime Transport Act (Oil Spill Planning), Biosecurity Act (ballast, hull cleaning, and plant and marine pest issues) and the Resource Management Act (Marine Pollution Regulations) are appropriately managed within the context of a marina development. In addition focus will be given to the avoidance of waste materials in the CMA and the disposal of sewage into reticulated systems.

Principal Reasons for Adopting: Discharges into the CMA are managed under a range of different legislation. This method will enable liaison to occur and encourage the appropriate management of waste materials and avoidance of environmental damage from the risk of oil spills, waste, sewage and biosecurity issues.

6 Appendix I: Information Requirements

6.1 Add the following information requirements into Appendix I – General as follows:

q) Significant adverse effects on the relationship tangata whenua as Kaitiaki have with their identified ancestral taonga such as water, lands, sites, waahi tapu and kaimoana, and how these may be avoided, remedied or mitigated.

) Any land based requirements and any flow-on effects to the CMA.

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s) Any mitigation measures proposed.

7 Appendix II: Decisions-making Criteria and Considerations

7.1 Add the following decision-making criteria and considerations into Appendix II – General as follows:

s) The extent to which the occupation of space by a marina basin will adversely affect the recreational values of other users of the CMA.

t) Effects on tourism.

7.2 Add the following decision-making criteria and considerations into Appendix II – Water Quality as follows:

l) Provision of facilities for collection and disposal of hydrocarbon contaminants, for example, waste oil and paint.

m) Provision of pump out facilities for collection and disposal of sewage.

8 Appendix III: Maps

8.1 Include in Appendix III: Maps, Marina Maps 1 & 2 to show Whitianga Marina Zone and Whangamata Marina Zone, as shown in 10.1 and 10.2 of this document.

9 Appendix VI: Glossary

9.1 Add the following definition of 'marina basin':

Marina basin: the area or footprint in the coastal marine area used for the purpose of berthing boats used primarily for pleasure or recreation.

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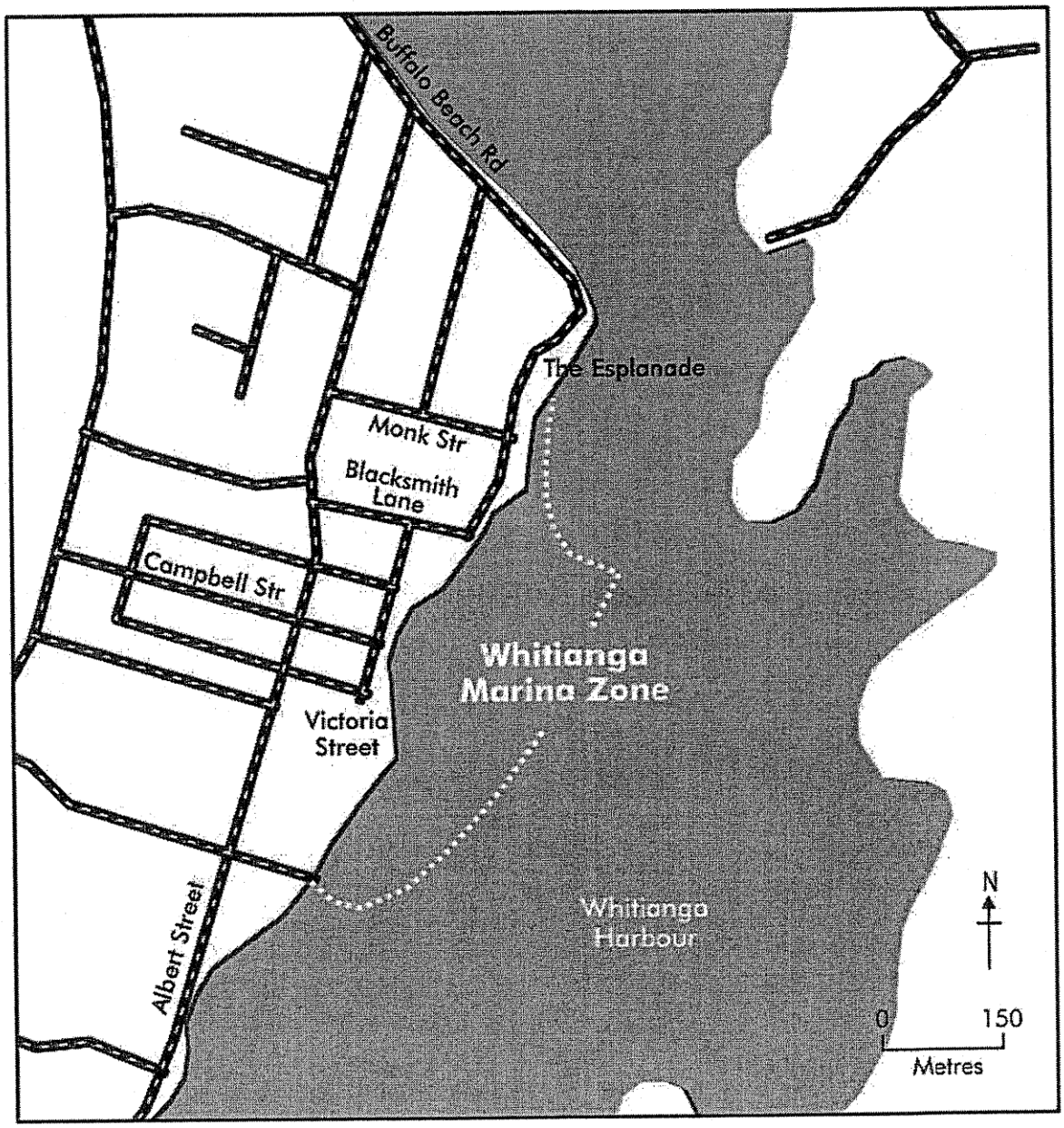
10 Marina Maps

10.1 Marina Map 1: Whitianga Marina Zone



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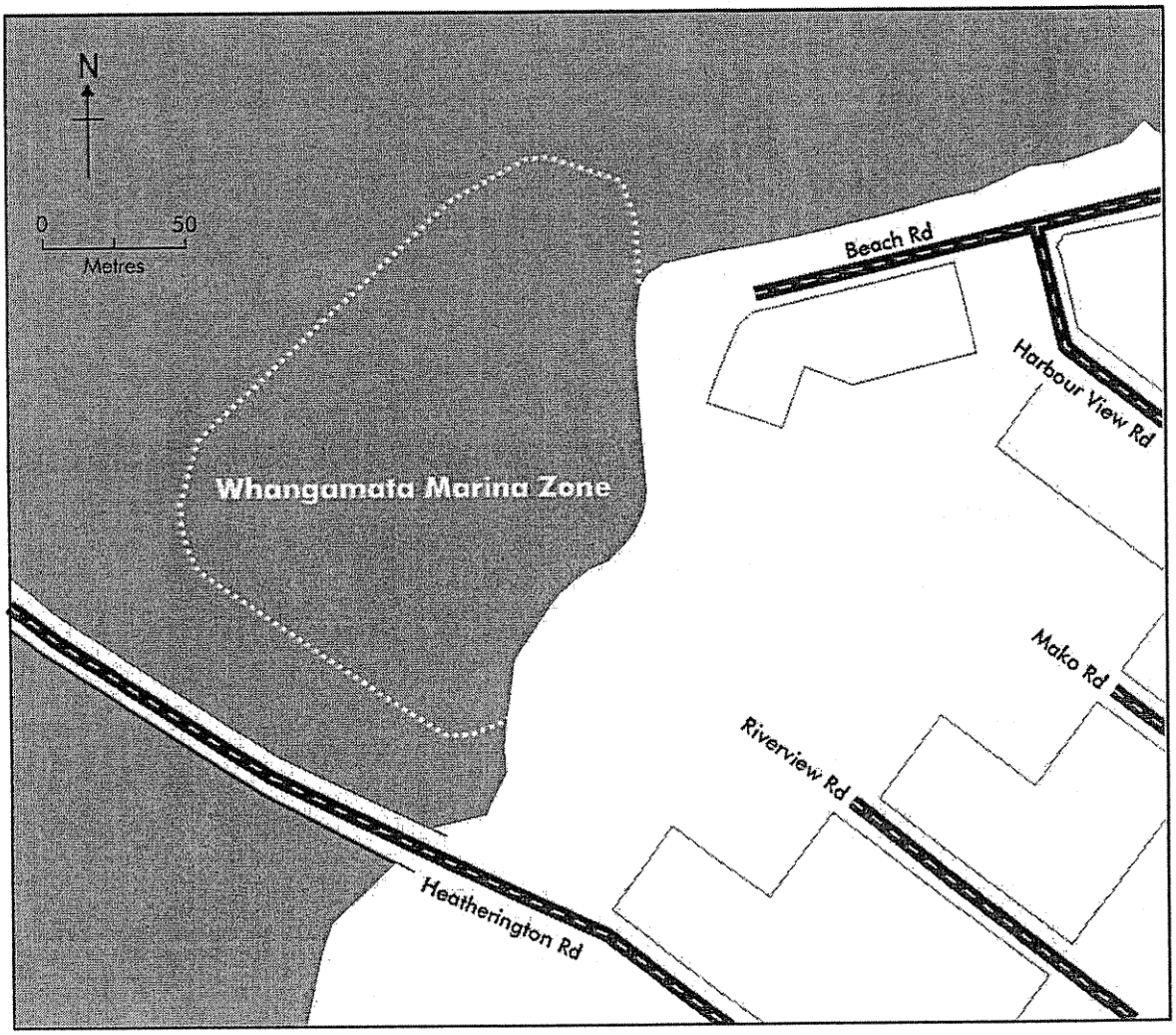
10.2 Marina Map 2 - Whangamata Marina Zone



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3.11 Plants and Animals (Biodiversity)

3.11.1 Overview

New Zealand's indigenous ecosystems are unlike those of any other part of the world and are greatly valued for their intrinsic values, scientific interest and cultural importance. In addition they provide many benefits to humans by: providing clean air and water; removing toxins; trapping the sun's energy through photosynthesis and making it available in the form of plant biomass; converting carbon dioxide to oxygen; providing a storehouse of genetic diversity; and offering a retreat, essential to our quality of life.

Maori regard all plant and animal life as significant, each with a particular purpose. Of special significance are the indigenous species. Many traditional foods and medicines are derived from indigenous biological resources.

In recent times, the emphasis for protecting indigenous ecosystems has shifted from management for human purposes to management for their values as communities of living organisms.

In particular, it is now regarded as important to prevent further modification of and to enhance wherever possible significant indigenous vegetation, significant habitats of indigenous fauna and significant indigenous ecosystems. These include lakes and streams, estuaries, wetlands, coastal margins and lowland forests - which are among the most productive and diverse ecosystems, yet traditionally the most sought after for development.

Intensive and extensive development has significantly modified and limited native ecosystems, animals and plants. However, in some parts of the Region large tracts of native forest and wetland can still be found. These act in conjunction with smaller habitat areas as wildlife corridors and refuges for native birds and other organisms moving from one area to another.

Similarly, riparian vegetation along the margins of lakes, rivers and coasts protects water quality and provides important habitat for a range of aquatic organisms. (Policy Three in section 3.4.5 addresses riparian management for water bodies.)

Some of the Region's indigenous ecosystems are important internationally as well as nationally. Some areas of particular ecological importance are noted below. However, this is not an exhaustive list, but rather an example of the ecological richness and diversity in the Region.

3.11.2 Important Ecological Areas

Many Waikato wetlands are the last remaining representative types found in New Zealand.

The **Lower Waikato Wetlands** include Mangatawhiri, Whangamarino, Lakes Whangape, Waikare and Waahi, and the Waikato river estuary. Together these wetlands provide breeding and wintering grounds for a range of wetland birds, including a number of endangered species. The Whangamarino in particular, supports a large number of endemic native plants. The wetlands are also an important habitat for whitebait species, eels and mullet. Whangamarino (as well as Kopuatai and the Firth of Thames) has been accorded international status as a Ramsar[84] site, signifying its importance to conservation world-wide. (Refer also to section 3.4.8 Wetlands).

Peat lakes, some containing rare plant associations are scattered throughout the area and unique dune lakes exist in the Lower Waikato area.

[84] International Union for the Conservation of Nature and Natural Resources (IUCN), Ramsar Convention for Wetlands of International Significance.

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The **Hauraki-Kopuatai Peat Dome**[85] is the last surviving raised bog in the Region and is considered unique in world terms. It supports, along with nearby Torehape, several distinct wetland communities, which are home to a number of threatened fish, birds and species of plants (including the Giant Wire Rush, which is endemic and found only here and the Chatham Islands).

The **Firth of Thames** has over 663 hectares of mangroves. As well as being an important fishery, the wetland provides a wintering ground for wading birds. It supports up to 40,000 birds a year including international migratory birds. It has been accorded international importance under Ramsar.

The **Coromandel Peninsula** has significant areas of high quality forest, such as the Waitekauri forest, regenerating native forest, diverse coast and marine areas. The entire catchments of many streams in the Coromandel State Forest Park are amongst the most pristine in the Region, and are very important as habitat for native fish and the endangered brown teal. The Moehau ecological area in particular, supports an almost complete altitudinal sequence of plant and animal communities from near sea level to sub-alpine conditions. It is home to a number of rare or endangered endemic species (e.g. land snails, Archey's frog). The Coromandel estuaries are important ecological habitats, for example the Wharekawa Sandspit Wildlife Refuge is habitat for approximately 28 bird species.

The **Mercury, Alderman and Cuvier Islands,** off the Coromandel Peninsula, are free of goats and possums and are considered to be of national importance. These islands serve as refuges for the preservation and rehabilitation of endangered species. They support threatened and/or endemic communities of seabirds, plants and invertebrates, and a high diversity of reptiles. The Ohinau and Clarke Island groups also support threatened species of flora and fauna.

The **Pureora Forest Park** includes systems of unmodified altitudinal vegetation sequences, dense lowland, high altitude peat bogs and natural post-Taupo eruption vegetation. It also supports a number of rare and endangered birds, bats and plants as well as regenerating native forest.

Lake Taupo and the Waikato River support rare indigenous species such as Koaro and the New Zealand dabchick. The associated south Taupo wetland is of national significance because of its size and the variety of plant and bird species occurring there. Lake Taupo is also an internationally recognised trout fishery.

Mounts Tongariro, Ruapehu and Ngaruahoe, the Region's only National park is a world heritage site and features extensive beech forests, mountain tussockland, fernlands, sedge, rushland, mossfields and alpine plant associations. The Kaimanawa and Tongariro Forest Parks are also important ecosystems.

Geothermal ecosystems are relatively rare on a world-wide basis and only a few remain in an essentially undisturbed natural state. The Waikato Region has greater variety of geothermal ecosystems than any other region, and these areas often contain their own unique flora and fauna, with many primitive and ancient species. (Refer to section 3.7 Geothermal).

The **Western King Country Forests** include a complete altitudinal sequence of indigenous vegetation, from close to sea level to the crest of the Herangi Range; and the Tawarau State Forest which contains significant limestone and associated features.

The **Waitomo Caves** and associated **King Country Caves** and **karst**[86] landscape is the most important speleological resource in the North Island, home to plants which favour limestone conditions, and cave dwelling animals.

[85] The Kopuatai, Torehape and Whangamarino wetlands have recently been gazetted as "Government Purpose Reserves - Wetland Management". This gives full protection to their scientific, wildlife and recreational values.

[86] See Glossary for definition of karst.

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Whaingaroa (Raglan), Aotea and Kawhia harbours and the mouths of the Mokau, Marakopa and Waikato Rivers provide an important nursery for fish and habitat for wading birds. Aotea is one of the most pristine harbours in the country because of its rapid water flushing cycle. Whaingaroa (Raglan) and Kawhia harbours contain important geological features. Gannet Island, which is nine nautical miles west of Aotea Harbour, and Albatross Point south of Kawhia Harbour, provide breeding sites for the New Zealand fur seal.

The **Pirongia Forest Park** and **Hakarimata Scenic Reserves** are two of the few areas containing lowland streams which retain a native forest cover. These are especially valuable for native fish.

3.11.3 Significant Resource Management Issues

This section briefly sets out the significant plants and animals (biodiversity) issue for the Waikato Region.

Biodiversity of indigenous vegetation and habitats of indigenous fauna is important in maintaining ecosystem viability, nationally and internationally. Biodiversity provides fresh air, fertile soil and clean water. Biodiversity is reduced when ecosystems are broken up or damaged by inappropriate use of land, air or water, invasion by exotic plants or animals or the unsustainable use of species. The more diverse and complex habitats and life webs are, generally the more resistant an ecosystem is to stresses and changes.

To maintain biodiversity, the life supporting capacity of habitats of the populations making up that diversity and ecosystems must be protected. The range and number of habitats supporting indigenous species have already been severely reduced. Effort must be made to reverse this trend.

Summary of Significant Resource Management Issue

The following is the significant resource management issue that has been identified from the overview section on plants and animals (biodiversity):

1. Biodiversity is important in maintaining ecosystem viability. Biodiversity tends to be lost when ecosystems are broken up or damaged by inappropriate use of land or water, invasion by exotic plants or unsustainable use of species. There has been a reduction in the range, extent and health of indigenous vegetation and habitats of indigenous fauna and this trend is continuing.

3.11.4 Maintenance of Biodiversity[87]

Issue: Biodiversity is important in maintaining ecosystem viability. Biodiversity tends to be lost when ecosystems are broken up or damaged by inappropriate use of land or water, invasion by exotic plants or animals or unsustainable use of species. There has been a reduction in the range, extent and health of indigenous vegetation and habitats of indigenous fauna and this trend is continuing.

Objective: Biodiversity within the Region maintained or enhanced.

Principal Reasons for Adopting: Maintaining biodiversity is critical in achieving the purpose and principles of the RMA. Section 5(c) refers to safeguarding the life supporting capacity of ecosystems. Biodiversity is a component of ecosystems and maintaining and enhancing it is one means of achieving the direction of s5(c). Section 6(c) refers to the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna. Areas of indigenous vegetation and habitats of

[87] See Glossary for definition of biodiversity.

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indigenous fauna are a part of biodiversity and ecosystems and due to the severe reduction in these areas it is important that they are protected to ensure that there is no further loss. Section 7(d) requires particular regard to be had to the intrinsic values of ecosystems and s7(h) requires the protection of trout and salmon habitat. Maintaining and enhancing biodiversity will contribute to achieving these directions. Wide genetic diversity (species and their genotypes) gives ecosystems the resilience to cope with natural and human induced changes. Natural diversity gives the Region its own distinctive biogeographic character as well as providing a resource-pool to meet future needs.

Policy One:
Avoid, Remedy or
Mitigate Adverse Effects on Biodiversity

Allow the use and development of natural and physical resources while avoiding, remedying or mitigating adverse effects on biodiversity in the Region.

Implementation Methods:

1. Advocate, through environmental education:
   i) community awareness of the values of indigenous vegetation and biodiversity and the need for its protection and restoration.
   ii) voluntary mechanisms for the protection of the diversity and quality of habitat
   iii) the planting of indigenous vegetation, particularly regionally appropriate species
   iv) resource management practices that increase and strengthen the biodiversity of the Region
   v) restoration or rehabilitation of degraded or modified areas of indigenous vegetation and habitats of indigenous fauna.
2. Through liaison with territorial authorities, other agencies and resource users advocate:
   i) for the protection and creation of wildlife corridors
   ii) the protection of the margins of lakes, rivers and coasts from inappropriate subdivision, use or development
   iii) the avoidance of isolation or fragmentation of ecosystems
   iv) the protection of the habitat of trout.
3. Provide, through consultation, for the cultural perspectives of tangata whenua in the management of biodiversity in the Region.
4. Investigate, in conjunction with landowners and other agencies, alternative mechanisms for the sustainable management of indigenous vegetation.
5. Recognise the effects of structures and barriers in waterways on aquatic habitats, and in particular on the migration of aquatic fauna, and avoid, remedy or mitigate adverse effects through regional plans and resource consents.
6. Develop and maintain the Regional Pest Management Strategy in a manner which assists in the protection of biodiversity.
7. Encourage resource users and interested parties to sign and act in accordance with voluntary accords, (e.g. the New Zealand Forest Accord) for the protection of indigenous vegetation and habitats of indigenous fauna.

Policy Two:
Regionally Consistent Criteria
For Use When Identifying Significant Areas

Use a consistent approach throughout the Waikato Region when identifying areas of significant indigenous vegetation and significant habitats of indigenous fauna[87a].

Implementation Methods

1. When preparing or implementing regional and district plans, assessing resource consent applications and in the consideration of areas to be protected by non-regulatory mechanisms; an area of indigenous vegetation or habitat for indigenous fauna is significant if the relevant decision-makers are satisfied, on the basis of all evidence presented, that the area currently meets one or more of the criteria in Appendix 3.

[87a] Should planted vegetation (exotic or indigenous) be identified as significant habitat for indigenous fauna, recognition of the ongoing reasonable use of the area must be considered when making management decisions.



2. Through liaison with other organisations that are undertaking protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna advocate the use of the criteria in Appendix 3.

Policy Three:
Protection and Management of Indigenous Vegetation and Habitats of Indigenous Fauna

A. Ensure the existing characteristics that identify natural areas as significant indigenous vegetation and/or significant habitats of indigenous fauna are protected in an appropriate way from adverse effects when using or developing natural and physical resources except:
   i) within Development Geothermal Systems provided for in Chapter 3.7, or
   ii) where those effects cannot be avoided, in which case the effects are to be remedied or mitigated[87b] in such a way that biodiversity is maintained or enhanced, having particular regard to the specific characteristics that identify the area as significant.

B. Subject to the exceptions in Policy Three A), once an area has been identified as being significant, the following factors should be taken into account when determining protective management methods including the allocation of resources:
   i) positive landowner management initiatives
   ii) current uses
   iii) relative significance (based on the characteristics that make an area significant)
   iv) threats to the characteristics that make the area significant (including relative vulnerability to threats)
   v) the effectiveness of management options to address threats
   vi) availability of resources
   vii) the use of non-regulatory methods.

Implementation Methods:

1. Identify areas of significant indigenous vegetation and significant habitats of indigenous fauna in conjunction with territorial authorities, other agencies and interested parties, using the criteria in Appendix 3.

[87b] Remediation and mitigation may be achieved by off

2. Use existing information to develop and maintain a regional database and indicative map of sites known to meet the criteria for significance in Appendix 3. In developing this provide an opportunity for territorial authorities to store sites of local importance on the database.
3. Maintain a regional database of threatened species in the Waikato Region.
4. Through liaison with territorial authorities and the Department of Conservation, Ministry of Fisheries and the Ministry of Agriculture and Forestry advocate the establishment of conservation forests, marine reserves and other reserves in the Region to protect significant indigenous vegetation and significant habitats of indigenous fauna.
5. Through Heritage Protection Orders and Water Conservation Orders protect significant indigenous vegetation and significant habitats of indigenous fauna where appropriate.
6. Through regional and district plans and annual plans consider the use of, firstly the following mechanisms for the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:
   i) economic instruments as an incentive to protect areas of significant indigenous vegetation and significant habitats of indigenous fauna.
   ii) advocacy and provision of information
   iii) providing for voluntary protection
   iv) land acquisition and designation including the use of funding sources such as the Nature Heritage Fund, Queen Elizabeth II National Trust and Nga Whenua Rahui
   v) the creation of esplanade reserves and marginal strips
   vi) provision of works and services

   and secondly, regulatory controls which may include zoning, buffers, rules, conditions on resource consents, abatement notices and enforcement orders.
7. Progress trials of the utility of environmental domains for assessing significant areas of indigenous vegetation and significant habitats of indigenous fauna and, subject to evaluation, initiate a change to Criterion 4.

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Explanation and Principal Reasons for Adopting: Three policies and a range of methods are included that provide a variety of means by which biodiversity and indigenous vegetation and habitats of indigenous fauna can be identified and maintained or enhanced. Territorial authorities, the Minister of Conservation, Minister of Fisheries and the Minister of Agriculture and Forestry have primary responsibility for the management of land and indigenous flora and fauna. The Waikato Regional Council's (Environment Waikato) role is to manage the use, development and protection of natural and physical resources. It is important that these organisations work together in conjunction with landowners to ensure that biodiversity, ecosystems and the protection of significant indigenous vegetation are addressed through their different functions and responsibilities.

To achieve the objective it is necessary to avoid, remedy and mitigate adverse effects on biodiversity to ensure that the values associated with it are not lost. The methods under Policy One are aimed at achieving this policy direction and therefore include a variety of mechanisms as described in the following paragraphs.

Environmental education is an effective means of increasing public awareness of the values of biodiversity and providing information about how adverse effects can be avoided, remedied or mitigated.

The reason for Policy One Method 2 is to inform the groups noted so they can provide for the matters listed. Wildlife corridors can be created to provide a mechanism for indigenous fauna to migrate from one area to another and possibly establish populations in different areas. Development of the margins of lakes, rivers and coasts may adversely affect indigenous vegetation and habitats. Care needs to be taken to ensure that such effects do not occur. If ecosystems are isolated or fragmented their ability to support indigenous vegetation and indigenous fauna is reduced. The protection of the habitat of trout is a directive of s7(h) of the RMA.

The reason for Policy One Method 3 is that it is important to provide for the cultural perspectives of tangata whenua in order to ensure that traditional values can be incorporated into the management of indigenous vegetation and habitats of indigenous fauna.

There are a variety of mechanisms available to protect areas of vegetation and habitats. However, there may be alternative means that have not yet been developed. The reason for Method 4 is to investigate possible alternative methods in order to give landowners and other agencies a wider range of options as to how they may sustainably manage indigenous vegetation.

The reason for Policy One Method 5 is that structures and barriers in waterways may prevent aquatic fauna migrating upstream and may also modify areas of aquatic habitat. For example, a dam may prevent eels from migrating upstream and also change what was a stream habitat into a lake habitat. Methods can be incorporated into regional plans, and conditions put on resource consents, that avoid, remedy or mitigate the adverse effects of structures and barriers on aquatic habitats and the migration of fauna.

Plant and animal pests, such as, possums, deer and old man's beard, have had and continue to have serious adverse impacts on indigenous vegetation and habitats of indigenous fauna. Pest management needs to be undertaken in a manner that assists in the protection of indigenous vegetation and habitats of indigenous fauna.

Advocating that resource users and interested parties act in accordance with voluntary accords such as the New Zealand Forest Accord also provides a mechanism for avoiding, remedying or mitigating adverse effects on indigenous vegetation and habitats of indigenous fauna.

Policy Two ensures that areas of significant indigenous vegetation and significant habitats of indigenous fauna are identified in a consistent manner throughout the Waikato Region. This policy is not intended to create impediments that may limit the planting of indigenous species.

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Method 1 under Policy Two acknowledges that regional and district plans are the main mechanisms controlling land and water use within the Waikato Region. District Councils are able to prepare specific rules for protecting areas of significant indigenous vegetation and habitats of significant indigenous fauna. District councils also use a range of non-regulatory methods to protect such areas. An area of indigenous vegetation or habitat of indigenous fauna is significant if decision makers are satisfied based on the evidence presented that the area meets one or more of the criteria in Appendix 3. There are some significant areas in the Region that will meet more than one criterion but there are other areas that are clearly significant that meet only one. Habitat of threatened species may be an example of the latter.

The purpose of Policy Two Method 2 is to encourage other organisations that have a role in protecting significant areas, such as the QEII Trust, to adopt the same criteria so that there is a consistent identification process throughout the Region.

As part of the implementation of Policy Two Methods 1 and 2, Environment Waikato will work closely with district councils and other agencies to ensure the criteria are used in a consistent manner. Guidelines to implement the criteria have been prepared to assist users.

The reasons for inclusion of Policy Three A) are that the range and extent of indigenous vegetation and habitats of indigenous fauna in the Waikato Region have already been severely reduced. Substantial logging, clearance, and drainage has meant that areas of indigenous vegetation are only remnants of what existed prior to modification by humans. Management of significant indigenous vegetation and significant habitats of indigenous fauna must now be directed toward protection of the characteristics that make areas significant. If the characteristics that make an area significant are not protected, and the range and extent of indigenous vegetation and habitats of indigenous fauna continues to be reduced, the ecological and human values associated with these areas will be lost.

The focus is on the characteristics rather than the area because there will be situations where an area that is significant can be used in a manner that does not affect its "significance" status or ecological viability. For example, if a native forest is only significant because it is a relatively large natural area that contains all or almost all indigenous species typical of that habitat type, then sustainable harvest of a small number of trees, e.g. from its perimeter, will not adversely affect its size or species composition. Similarly if an area is significant because it is a natural wetland, the harvest of game species from that area will not affect its status as a wetland. Conversely, an activity that results in drainage and therefore loss of the wetland would be unacceptable as it would affect the characteristics (i.e. its state as a wetland) that make that area significant.

In addition, some characteristics, which deem an area significant, are not inextricably linked to that specific location. Focusing on the characteristics rather than the area also allows for offsite mitigation, e.g. creation of wetland of a similar type, size and condition to an area considered for drainage. Another example is where an area is only of value because it contains threatened native species (such as giant weta living in gorse). If those threatened species can be successfully translocated to an appropriate, secure area, then the original habitat may cease to be of significance.

Chapter 3.7 of the RPS contains objectives, policies and methods in respect of the Region's geothermal resources. Policy Four of Chapter 3.7.2 allows for the use and development of development geothermal systems while avoiding, remedying or mitigating any adverse effects on the characteristics of the regional geothermal resource. Section 3.7.1 lists highly valued characteristics of the regional geothermal resource and these include biodiversity (a variety and uniqueness in genes, species and populations of plants and animals and micro-organisms). It is not possible to protect every significant feature of these areas when they are developed due to the disruption of surface features caused by extracting large amounts of geothermal fluid from deep below the earth's surface.

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The purpose of Policy Three A) is to clarify what happens once an area has been identified as significant. Policy Three A) ii) provides for circumstances where the adverse effects on the characteristics of a significant area cannot be avoided, in which case the effects are to be remedied or mitigated in such a way that biodiversity is maintained or enhanced having particular regard to the specific characteristics that identify an area as significant. Remediation or mitigation should be directly related to the characteristics that identify an area as significant to ensure that those characteristics are not lost or degraded. However, this may not be practical in every situation, in which case other forms of remediation or mitigation may be considered providing that biodiversity is maintained or enhanced.

The purpose of Policy Three B) is to identify a range of factors that should be taken into account when determining the methods by which significant areas should be managed in order to achieve the protection of the characteristics that identify them as significant.

Policy Three Method 1 is considered necessary to identify the areas of significant indigenous vegetation and significant habitats of indigenous fauna, so that it is known where these areas are for management purposes. By advocating that the criteria in Appendix 3 are used to determine significance and liaising with territorial authorities and other agencies on their use, a consistent approach to determining the significance of indigenous vegetation and habitats of indigenous fauna will be facilitated.

Regarding Policy Three Method 3 the Department of Conservation has assessed threatened species in New Zealand (using criteria relating to taxonomic distinctiveness, status of the species, threats facing the species, vulnerability of the species and human values). This may form the basis of the schedule of threatened species.

Policy Three Method 4 advocates the establishment of conservation forests and marine reserves as a means of having significant areas recognised and protected. Heritage protection orders and water conservation orders in Policy Three, Method 5 may be used where it is considered that a river or area requires the protection afforded by these mechanisms.

As a means of providing protection of significant areas, there is a range of non-regulatory methods that Environment Waikato and territorial authorities can consider using in the first instance, including economic instruments as an incentive. These economic instruments could include purchase or lease by a person or agency for protection, rates relief or direct grants for land management. Secondly use of regulatory controls, such as zoning or rules may be considered. Used in combination or separately, the mechanisms in Policy Three Method 6 will provide a flexible approach to the management of significant areas. The particular mechanism used will depend on site-specific circumstances. In circumstances where significant areas occur on private land councils must collaborate with landowners to achieve protection if necessary.

Regarding Policy Three, Method 7, environmental domains are being developed for the Waikato Region by Landcare Research. These domains can be expressed at national, regional and localised scales. Delineation of appropriate scales will form part of the trials of the utility of domains for assessing significance.

Environmental Results Anticipated:

1. Biodiversity in the Region maintained and enhanced, including the distribution and abundance of indigenous species and ecosystems in the Region.
2. Increased awareness of the values of areas of indigenous vegetation and habitats of indigenous fauna in the Region.
3. Protection of areas of indigenous vegetation and significant habitats of indigenous fauna in the Region.
4. A consistent approach throughout the Region to identifying areas of significant indigenous vegetation and significant habitats of indigenous fauna.

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