AUCKLAND UNITARY PLAN
INDEPENDENT HEARINGS PANEL

Te Paepae Kaiwawao Motuhake o te Mahere Kotahitanga o Tāmaki Makaurau

Report to Auckland Council
Hearing topic 033 and 034

General Coastal Marine Zone and other coastal zones

July 2016

Hearing topic 033 and 034 General Coastal Marine Zone and other coastal zones

Contents

1. Hearing topic overview

1.1. Topic description

Topics 033 and 034 address the regional coastal plan provisions of the Proposed Unitary Plan relating to the General Coastal Marine Zone and other coastal zones.

Topic	Proposed Auckland Unitary Plan reference	Independent Hearings Panel reference
033 and 034 address the regional coastal plan provisions of the Proposed Unitary Plan	Chapter D - Zone Objectives and Policies - 5 - Coastal Zones Chapter E - Overlay Objectives and Policies (SEA- M) Chapter F - Precinct Objectives and Policies (some)	D Overlays (D9, D10 and D11) F Coastal I Precinct Objectives and Policies (some)

Under the Local Government (Auckland Transitional Provisions) Act 2010, section 144 (8) (c) requires the Panel to set out:

> the reasons for accepting or rejecting submissions and, for this purpose, may address the submissions by grouping them according to—
>
> (i) the provisions of the proposed plan to which they relate; or
> (ii) the matters to which they relate.

This report covers all of the submissions in the Submission Points Pathways report (SPP) for this topic. The Panel has grouped all of the submissions in terms of (c) (i) and (ii) and, while individual submissions and points may not be expressly referred to, all points have nevertheless been taken into account when making the Panel's recommendations.

1.2. Summary of the Panel's recommended changes to the proposed Auckland Unitary Plan

This report addresses the hearing topics 033 General Coastal Marine Zone and 034 Other coastal zones. This report, and the provisions of the Plan identified in 1.1 above, together makes up the coastal plan component of the Unitary Plan.

Many of the plan provisions have been carried over from the operative Regional Plan: Coastal as they had been shown to be the most appropriate provisions.

The main changes recommended by the Panel are:

i. mangrove removal is less permissive than in the notified Plan, with deletion of some the permitted activities which referenced the 1996 date;

ii. that the discharge from vessels be the same as the Resource Management (Marine Pollution) Regulations 1992 with some additional agreed areas being included and excluded;

iii. the Mooring Zones and Mooring outside Mooring Zones remaining in one section and not split across the Mooring Zone and the General Coastal Marine Zone;

iv. deleting part of the Mooring Zone at Ōkahu Bay, and substituting a precinct where moorings are prohibited recognising the relationship of Ngāti Whātua Ōrākei with their ancestral land and waters;

v. the removal of explicit provisions for houseboats in the activity table of the Coastal - General Coastal Marine Zone and in the Coastal - Mooring Zone, and reliance on other plan provisions to enable and manage the location of houseboat mooring zones, the provisions for vessels (which includes houseboats) and discharge requirements;

vi. that the Plan be amended to state that the Council supports the introduction of a coastal occupation charging regime, and that this be done at an appropriate time through the plan change process;

vii. the provisions related to aquaculture - existing and new;

viii. the provisions relating to Gabador and Port Ōnehunga.

1.3. Overview

There were a significant number of submissions lodged to the coastal provisions of the Plan. The Panel also received a significant amount of evidence on the range of topics, much of it supporting the amended provisions proposed by the Council as part of the mediation process. Overall the Panel has proposed little significant change from the mediated version provided by the Council at the opening of the hearing, and refined in its closing statement.

The amended provisions are set out in the Panel's recommended version of the Unitary Plan. The Panel considers that these provisions are the most appropriate and give effect to higher order planning documents (the New Zealand Coastal Policy Statement 2010 and the regional policy statement) and the purpose of the Resource Management Act 1991.

Many of the coastal provisions are determined by the New Zealand Coastal Policy Statement 2010 and the regional policy statement to which the Plan must give effect. In this regard the Minster of Conservation, along with a number of other parties, presented evidence on what was required to give effect to the New Zealand Coastal Policy Statement 2010 and to address the implications of the King Salmon decision.

This report addresses the particular matters that were either in contention or not agreed at the hearing. It is not possible to address every change or alteration that has been made, as many are detailed changes to improve the readability and functionality of the Plan. The main issues and resulting changes to the Plan are listed below and addressed in detail in the sections of this report:

i. removal of mangroves;

ii. untreated discharges from vessels;

iii. aquaculture;

iv. functional versus operational need;

v. livestock restrictions in the coastal marine area;

vi. the Waitematā Navigation Channel Precinct;

vii. mooring zone;

viii. bio-fouling;

ix. issues raised by Ports of Auckland Limited - Onehunga yard and Gabador;

x. issues raised by Federated Farmers - drainage to and in the coastal marine area and livestock access to the costal marine area;

xi. issue raised by the Environmental Defence Society Incorporated and the Royal Forest and Bird Protection Society of New Zealand –significant ecological areas and other activities;

xii. occupation and occupation charging regime.

The matters that were largely agreed or are not in contention are summarised in the following list.

i. Defence zone

   a. The Coastal - Defence Zone provides for the continued operation of defence activities into the coastal marine area adjacent to the Devonport Naval Base in Devonport (Stanley Bay) and the Onetaunga Bay Wharf (Kauri Point).

   b. Many of the New Zealand Defence Force activities in the coastal marine area are managed under the Coastal - General Coastal Marine Zone provisions. This special zone provides for defence-related activities and related development. Some utility operators seek provisions to enable infrastructure in this zone.

ii. The Coastal – Ferry terminal Zone provides for the integrated operation of existing and new ferry terminal facilities. Generally submitters sought greater flexibility in the provisions, particularly with respect to the purpose of the zone and the level of development. The key issues are:

   a. the explicit inclusion of ferry services as well as facilities;

   b. the explicit inclusion of both passengers and goods as part of ‘public transport needs’;

   c. controls to minimize development obstruction of views from both ‘public places’ as well as ‘land’ in general;

   d. rezoning of adjacent land; and

   e. inclusion of public transport facilities on the landward side of the zone.

iii. Planting in the coastal marine area including vegetation removal.

   a. Exotic or introduced plants can spread rapidly and cause adverse effects on indigenous biodiversity. This section deals with the careful removal of

exotic species and replanting within the coastal marine area. In addition, the Pacific oyster, valued for aquaculture, has also spread through large parts of the coast and displaced native oyster, causing significant adverse effects on recreational use and amenity values. Several issues have been raised in relation to vegetation removal that relate to enabling infrastructure and port operations to occur.

b. Planting native plants for habitat protection and enhancement or for coastal hazard mitigation can have beneficial effects on the ecology of the coastal marine area. The aim of the proposed Auckland Unitary Plan is to ensure that distinct natural variations in native plant species and biodiversity in the coastal marine area are maintained. Ms Faire (on vegetation removal), Ms Coombes (on coastal marine area planting), Ms Myers and Ms Absolum address this issue in their evidence.

iv. The proposed Auckland Unitary Plan provides for a range of dredging activities including capital dredging, maintenance dredging, rivermouth dredging and dredging to maintain access to existing structures. A number of parties in their evidence sought changes to the wording of the relevant objectives and policies and additional rules. Ms Faire's rebuttal evidence outlines that she does not support any further amendments to objectives and policies but accepts additional rules relating to rivermouth dredging (with volume and length limits) and express recognition of existing lawful drainage.

1.4. Scope

The Panel considers that the recommendations in 1.2 above and the changes made to the provisions relating to this topic (see 1.1 above) are within scope of submissions.

For an explanation of the Panel's approach to scope see section 2.1 (Overview) of the Panel's report to Auckland Council July 2016.

1.5. Documents relied on

Documents relied on by the Panel in making its recommendations are listed below in section 18 Reference documents.

2. Mangrove removal

2.1. Statement of issue

The issue of mangroves was the most contentious in the coastal hearing. It was accepted by most parties that mangroves are a valuable part of Auckland's ecosystem, however they have been spreading in some areas to the point where they are having an adverse effect on some coastal values.

The main area of disagreement was the permitted activity status of mangrove removal. The proposed Auckland Unitary Plan sought a permitted activity rule to allow mangroves to be removed to a state that existed in 1996. From the Council's perspective, the 1996 line was the state of mangrove growth along Auckland's coastline as depicted in comprehensive

aerial photographs available to the public via the Council's GIS system. The Council chose this method of control because it is certain, measurable and simple. Alternative methods of control would require contested evaluative evidence on the historical extent of mangroves in any particular location, and their beneficial or adverse effects, by resource consent application for mangrove removal.

Several submitters sought permitted activity status for mangrove removal for mangroves which were established before 1996 in specific locations. The Ōmaha Beach Community and the Gibbs Foundation opposed the proposed date of 1996 as the base date for permitted mangrove removal and sought a different date for the Whangateau Harbour (Ōmaha) and the Kaipara Harbour. The Manukau Harbour Restoration and Onehunga Enhancement Societies and others (Ms Turner) sought a base date going back to the 1950s or earlier).

The Mangrove Protection Society, supported by the Royal Forest and Bird Protection Society and the Environmental Defence Society, and others, including the Waitākere Local Board, fundamentally disagreed on provisions for the removal of mangroves. They saw positive impacts that mangroves provide which are associated with erosion protection and habitat expansion.

As reported, the outcome of mediation was that submitters were largely in two groups regarding the extent of mangrove removal that should be provided for:

i. those who wish to allow for more mangrove removal, as they stated that the 1996 line was arbitrary and unnecessarily restrictive on mangrove removal;

ii. those who wanted more restrictive provisions, stating there should be no or limited permitted mangrove removal, and a resource consent should be required for any removal.

This matter took up considerable hearing time, involved legal submissions, a number of lay and expert witnesses, and strongly held positions on the matter. Legal submissions and expert evidence dealt extensively with the issue of mangroves by a number of parties including; the Council, the Ōmaha Beach Community, the Gibbs Foundation, the Mangrove Protection Society, the Environmental Defence Society and the Royal Forest and Bird Protection Society. The Manukau Harbour Restoration Society, the Waitākere Local Board and others also presented evidence.

The Panel acknowledges that the statutory context and planning for the consideration of mangroves is complex and includes:

i. section 6(a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development;

ii. section 6(c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna;

iii. section 6(d) the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers;

iv. section 7 (c) the maintenance and enhancement of amenity values;

v. section 7(d) intrinsic values of ecosystems;

vi. section 7 (f) maintenance and enhancement of the quality of the environment;

vii. New Zealand Coastal Policy Statement 2010, objective 4 Public access to the coastal marine area;

viii. New Zealand Coastal Policy Statement 2010, policy 11 Indigenous Biodiversity;

ix. New Zealand Coastal Policy Statement 2010, policy 13 Preservation of natural character;

x. New Zealand Coastal Policy Statement 2010, policy 14 Restoration of natural character;

xi. the relevant provisions of the regional policy statement.

The Panel also acknowledges that this context recognises the competing interests of mangrove removal/retention, including within the New Zealand Coastal Policy Statement 2010, and that the Unitary Plan needs to provide the appropriate management regime, in terms of section 32 of the Resource Management Act 1991.

The key areas in dispute were the permitted activity rule for removal of seedlings, removal of mangroves which have established post 1996 and the removal of mangroves in relation to existing significant infrastructure. The evidence of Drs Dumbell and Lundquist was that there are positive ecological benefits from mangrove removal especially where mangrove expansion is threatening salt marsh and other sensitive habitats. Dr De Luca disagreed.

The focus for the Environmental Defence Society and the Royal Forest and Bird Protection Society (the Societies) was on the deletion of the permitted activity rules for mangrove removal, although they agreed that seedling removal should remain as a permitted activity. The essence of the Societies' case was that all mangroves have important ecological values, particularly as habitat for threatened bird species such as banded rail, and in accordance with the New Zealand Coastal Policy Statement 2010, policy 11 and the provisions of B4.3.4 in the proposed Auckland Unitary Plan as notified, adverse effects on those threatened species and habitat are required to be avoided. The Societies contended that all mangrove removal should require a resource consent to assess the relevant effects, regardless of the cost of that exercise.

The Council did not agree with the Societies' reasoning and conclusion for the reasons provided below.

i. The evidence of Dr Lundquist is that:

   a. recently established mangroves have lesser ecological values than more established mangroves;

   b. the relative value of mangroves compared to other estuarine environments has not been determined. The expansion of mangroves will result in the removal of another form of marine environment and there may be positive or adverse effects through that expansion;

   c. there is no robust scientific evidence about the value of mangroves as habitat for threatened bird species, particularly for newly-colonised areas;

(summary evidence of Dr Lundquist, para 1.4 and 1.10. 9 Ibid, para 1.3 and 1.4. 10 Rebuttal evidence of Dr Lundquist, para 7.2 - 7.6);

d. the carefully crafted permitted activity standards will ensure that adverse effects from permitted mangrove removal will be minimised and mitigated.

ii. The Council's position is that the New Zealand Coastal Policy Statement 2010, policy 11(a) and proposed Auckland Unitary Plan B4.3.4 policy 14 allow for some minor or transitory adverse effects. By contrast the Societies adopt a more stringent approach of avoidance of all effects.

iii. The proposed Auckland Unitary Plan already identifies the significant ecological areas where mangroves are an important component of the significant ecological area values and where permitted removal is not allowed. The Panel can therefore be confident that the Plan adequately protects locations which have identified specific values related to mangroves.

iv. In light of Dr Lundquist's evidence about the values of the recently colonised areas, it is in fact New Zealand Coastal Policy Statement 2010, policy 11(b) and proposed Auckland Unitary Plan B4.3.4 policy 17 that are most relevant, and those provisions allow for some adverse effects to occur.

v. The Council's mangrove provisions are therefore consistent with policy 11(b) of the New Zealand Coastal Policy Statement 2010 and give due regard to the public access obligations in section 6(d), the restoration of natural character in New Zealand Coastal Policy Statement 2010, policy 12, and the costs associated with obtaining consents for resource consent for mangrove removal given that the majority of mangrove removal will be undertaken by community groups who cannot afford that cost.

vi. The position of the Mangrove Protection Society conflicts with the aspirations of community groups such as the Manukau Harbour Restoration Protection Society and the Omaha Beach Community.

2.2. Panel recommendation and reasons

Having considered all of the submissions and evidence the Panel does not agree with the evidence of the Council or those submitters seeking the permitted activity status for removal of mangroves for the reasons set out below.

Based on all of the submissions and evidence heard (both lay and expert) the Panel does not support the permitted activity status of mangrove removal based on a particular date. The reasons for this are set out above but in summary are:

i. the provisions of the Resource Management Act 1991, and in particular Part 2, and the New Zealand Coastal Policy Statement 2010;

ii. the value of mangroves as indigenous flora, and accepting the need to weigh the competing interests in the coastal marine area of their retention such as access, use and visual amenity, which can only be done through the consenting process on a case-by-case basis;

iii. that multiple dates were proposed by different submitters as the threshold when the value of the mangroves was such that removal could be permitted. In this respect the

Panel found that the dates, while attempting to determine a pre-mangrove or minor mangrove state, were arbitrary and not a sound basis to set planning controls.

Overall, while the Panel acknowledges all of the expert evidence and opinions presented, the Panel prefers, for the reasons above, that of the expert of the Mangrove Protection Society - Dr De Luca.

The Panel recommends that mangrove removal is a discretionary activity. This is due to the complexity of the resource management issues of mangroves (and their removal) and the need to assess the competing values including; ecological, biological, natural character, landscape and visual amenity, cultural values as well as public access and use of the coastal environment.

The Panel considered whether the activity status could be restricted discretionary. However given the wide range of matters that need to be assessed, it was determined that the matters could not and should not be limited as required by a restricted discretionary activity.

The Council and most submitters accepted that seedlings could be removed as of right in most areas. The Panel accepts this and recommends permitted activity status, with standards as set out in the Panel's recommended revised Plan.

3. Untreated discharge from vessels

3.1. Statement of issue

As set out in the Council's opening legal submissions, the Council's position on the discharge of untreated sewage from vessels had changed since notification. The boating and yachting community supported the Council's amended position, with a few exceptions which are set out below.

The Panel notes that the Council supports the legal submissions of Mr Brabant on behalf of Yachting New Zealand. Those submissions in summary set out that the discharge of sewage from ships is controlled by the Resource Management (Marine Pollution) Regulations 1998 which provide for specific and limited variations through the coastal plan provisions to the regulatory provisions controlling these discharges. Mr Brabant set out that the provisions as notified in the proposed Auckland Unitary Plan purported to introduce a blanket extension of the distance offshore from the 500m in the regulations to 2kms and that they were unlawful, as they are outside the scope of what the regulations permit. The Panel agrees with those legal submissions.

A number of individual submitters, for example Dr Wedekind, some aquaculture groups, the Waiheke Board and the Auckland Regional Public Health Service, all sought to retain the notified version of the rules which impose a 2km distance from mean high water springs.

3.2. Panel recommendation and reasons

The Panel does not support thesubmissions seeking retention of the provisions of the notified Plan and nor does the Council. This is due to Mr Brabant's legal submissions and the evidence relating to the effects of such discharges based on the 500 m rule. The Panel finds that the most effective and efficient method to control the discharge from vessels is to

rely on the provisions of the Marine Pollution Regulations, as well as applying specific restrictions within some harbours, embayments and bays as set out in the Plan. The additional areas of harbours, embayments and bays are those agreed between the Council and Yachting New Zealand.

As outlined in Yachting New Zealand's legal submissions, that organisation does not oppose further restrictions for Bostaquet Bay Kawau Island, and Nagle Cove and Tryphena Harbour at Great Barrier Island. However, Yachting New Zealand noted that Islington Bay, Rangitoto, Huruhi Bay, Waiheke Island and Bon Accord Harbour are already protected by the combination of water depth and distance. The Panel agrees that those bays are adequately covered by the control regarding the depth of discharges.

These changes are included in the Panel's recommended version of the Plan.

4. Functional vs operational need

4.1. Statement of issue

The issue of functional, technical and operational need was addressed by the Council, the New Zealand Transport Agency, Transpower New Zealand, the Auckland Utility Operators Group and others.

The issue is should technical and operational need be explicitly addressed in the Plan as was functional need.

4.2. Panel recommendation and reasons

A functional need is a strong policy position in the operative Regional Plan: Coastal. In essence this is because most of the coastal marine area is public commons and therefore activities which do not functionally need to be in the water, should not be in the coastal marine area. Conversely, wharves, jetties, mooring and aquaculture are examples of activities that do need to locate in the coastal marine area for functional reasons.

The New Zealand Coastal Policy Statement 2010, at objective 6 sets out that:

> functionally some uses and developments can only be located on the coast or in the coastal marine area.

Also Policy 6 (2) states:

> (c) recognise that there are activities that have a functional need to be located in the coastal marine area, and provide for those activities in appropriate places;
>
> (d) recognise that activities that do not have a functional need for location in the coastal marine area generally should not be located there.

The Panel was of the view that functional need was a clear policy direction in the New Zealand Coastal Policy Statement 2010 and not contested in the Unitary Plan and should remain.

The Panel heard considerable evidence from infrastructure providers in support of need to address, in addition to functional need, the concepts of technical and operational need. This

was because while some infrastructure does not have a functional need to locate in the coastal marine area, there are clear operational and technical efficiencies that could be gained. An illustration is linear infrastructure, that would otherwise need to 'follow the land', but could traverse the coastal marine area in ways that avoided or mitigated adverse effect (e.g. being attached to bridges) or done in way to avoid or mitigate adverse effects and obtain considerable operational efficiency.

The Panel considers that the New Zealand Coastal Policy Statement 2010 creates a hierarchy that places a priority on activities that have a functional need to locate in the coastal marine area. However it also addresses that activities that may not have a functional need are still appropriate. Objective 6 states:

> the protection of the values of the coastal environment does not preclude use and development in appropriate places and forms, and within appropriate limits.

Also Policy 6 - Activities in the coastal environment states:

1. In relation to the coastal environment:

a. recognise that the provision of infrastructure, the supply and transport of energy including the generation and transmission of electricity, and the extraction of minerals are activities important to the social, economic and cultural well-being of people and communities;

The Panel accepts that activities with an operational need, especially infrastructure, can be appropriate in the coastal marine area. The Panel is of the view that 'technical need' is the same as 'operational need' and therefore there is no need to separately reference it (see definition of operational need). However the Panel accepts the Council's position that functional and operational need should not be treated the same in a policy sense. This is consistent with the New Zealand Coastal Policy Statement 2010 as outlined above. Accordingly the Panel recommends that there should be an obligation on applicants to demonstrate that alternative locations have been considered when an activity has an operational need but which do not have a functional need. Policies are included in the Plan to require that an assessment be made as to whether there is a practicable alterative location outside of the coastal marine area.

Transpower and others considered that it was not necessary to define either functional or operational need. The Panel concludes that due to the ongoing debate and discussion among the parties about the definitions, and the direction in the New Zealand Coastal Policy Statement 2010 in respect of functional need, it is desirable to provide definitions so all plan users understand what the terms mean.

The terms have been defined in the definitions section of the Plan, with the definition of operational need incorporating aspects of technical need.

5. Houseboats

5.1. Statement of issue

Submitters supported and opposed the specific provisions for houseboats. The submitters and their concerns were outlined in the evidence in chief of Mr Spiro for the Council (Attachment B3 - Mooring Zones).

The notified proposed Auckland Unitary Plan had the following activity status with reference to houseboats:

Use and Occupation by houseboats:

i. Coastal - General Coastal Marine Zone - discretionary and prohibited within that zone in areas with identified values (e.g.outstanding natural landscapes, outstanding natural character);

ii. Rangihoua Creek Mooring Zone (Waiheke): limited to seven existing houseboats occupying the zone at the date of notification of the proposed Auckland Unitary Plan;

iii. Wharf Road Mooring Zone (Waiheke): limited to 4 houseboats including the two existing houseboats occupying the zone at the date of notification of the proposed Auckland Unitary Plan.

There was evidence from a number of parties in support of these provisions, including the Council and the Rangihoua houseboats group. Other parties, including Mr W Crooks, opposed the provisions, particularly permitting houseboats in the Rangihoua Creek Mooring Zone and the Wharf Road Mooring Zone.

5.2. Panel recommendation and reasons

The issue of activity status for houseboats, in particular those on Waiheke Island, have been well canvassed and were set out in submissions and evidence before the Panel.

The Panel has deleted the provisions relating to houseboats. The main reasons for this are set out below.

The definition of a houseboat in the Plan is

> Any vessel or floating structure designed, fitted and used primarily for a residential purpose, as opposed to transport or recreation.
>
> The definition of a vessel includes houseboat.

The Panel does not consider that living on board a vessel (houseboat) is a resource management issue of itself. However the effects from living on board a moored vessel, such as discharges from that vessel and access to and along the coastal marine area, are resource management matters and are appropriately controlled by the Plan.

The mooring of vessels is managed by the Plan. In mooring zones, including the Rangihoua Creek and the Wharf Road Mooring Zones, new and existing swing moorings (including occupation and use by the vessel to be moored) and pile moorings existing at 30 September

2012 (including occupation and use by the vessel to be moored) are permitted activities. New pile moorings are a restricted discretionary activity. A discretionary consent is required for moorings outside of the mooring zone.

The discharge of sewage from vessels is controlled by the Resource Management (Marine Pollution) Regulations 1998, which provide for specific and limited variations through coastal plan provisions to the regulatory provisions controlling these discharges, and by this Plan. This is largely a distance offshore and a depth of water that effectively controls discharges from all vessels including houseboats. There is a range of provisions which address public access to and along the coastal marine area.

The Council also has a range of other regulatory methods, including access and use of public land and health and safety bylaws, that can address the land-based effects arising from houseboat living.

Given the above, the Plan does not need to specifically regulate houseboats, but does regulate the effects from those seeking to live aboard. In terms of section 32 of the Resource Management Act 1991, the Panel finds that regulating the location of houseboats, and the identification of two specific areas, is not the most appropriate or efficient form of management. The Plan appropriately addresses the effects of houseboats, and other regulatory methods are available to the Council to address any land-based access, amenity and health and safety issues.

Accordingly the Panel recommends the deletion of the provisions relating to houseboats.

6. Coastal occupation and occupation charging

6.1. Statement of issue

6.1.1. Coastal occupation

Provisions in the Plan need to address appropriate occupation and use in the coastal marine are. Clear specification of occupation is needed as a basis for any future charging regime to apply to coastal occupation.

6.1.2. Coastal occupation charging

A number of submitters raised the issue of coastal occupation charges. These included the 1298-2 - Kawau Island Advisory Committee, 1320-2 - D Stuart, 1550-2 - Select Country Code, 1590-2 - D van der Velde,2270-4 - D and H Jeffery, 5008-3 - L Hume, 5125-2 - D Galbraith, 8551-2 – AR Moses Family Trust,8553-2 - L Mellars, 8560-2 - C Mellars, 8562-2 - M Mellars, 8590-2 - the Kawau Island Residents and Ratepayers Association, 6661-3 - P Sergent, 6886-3 - P Blundell, 4593-3 - Godwit Trust and 3011-4 - Archilles Management Ltd. They sought an amendment to D5.1.13 (Background, para. 8) as follows:

> In some circumstances the Council may impose a charge for occupation of the coastal marine area.

Submitter 5915-17 - Aquaculture NZ supports the policy to not include occupation charges at this time. Other submitters, such as 4735-327 The Environmental Defence Society, 4848-

324 Royal Forest and Bird Protection Society and 6911-327A Warren,all sought that the Plan be amended to include a charging regime for occupation of the coastal marine area.

6.2. Panel recommendation and reasons

6.2.1. Coastal occupation

The Panel is satisfied on the evidence that occupation of the coastal marine conservation area has been appropriately addressed.

The Panel also supports the policies regarding general occupation and exclusive occupation, as the effects of the two are different. It is accepted that structures (e.g. wharves and jetties) being in the coastal marine area will occupy space, and often have positive effects of enabling greater public access and use of the coastal marine area. However if exclusive occupation is granted, then people can be excluded from those structures and the coastal marine area. Given most of the coastal marine area is public commons, exclusive occupation needs to be justified.

It is also important to clearly specify the occupation provisions, especially those relating to exclusive occupation as they will be relevant to any future coastal occupation charging regime.

6.2.2. Coastal occupation charging

The Resource Management Act 1991 requires that the Council either includes a statement that a charging regime will not apply, or includes a regime for coastal occupation in the Unitary Plan, or in the first plan change after 1 October 2014.

As set out in evidence by the Council's expert planner, Ms Coombes, the Council had chosen not to include a charging regime at this time, but would consider whether to do so after the Unitary Plan was made operative, and then only after consultation with affected property owners. Once the Council decides to include occupation charges, a plan change would need to follow the Schedule 1 process of the Resource Management Act 1991.

In summary, an occupation charge would be an annual fee, to be paid by any person, business or organisation that occupies public space in the coastal marine area. It would be like a rental for occupying public space, similar to the concessions paid for occupying and using national parks and reserves. An occupation charge is intended to compensate the public for the private use of public space and for any loss of access to it. As an example, charges could apply to wharves, jetties, boat ramps, boat sheds, moorings, marine farms, marinas, cables and pipelines. Charges would only apply to occupation of public space within the coastal marine area.

The Panel accepts that the Council has determined not to include a charging regime at this time, and that a plan change would be required. However, given the purpose of a charging regime and, for the reasons set out in the submissions listed above in support of the coastal occupation charge (e.g. Environmental Defence Society, Royal Forest and Bird Protection Society and A Warren), the Panel supports and encourages the Council to establish a charging regime.

The Panel recommends to the Council to establish a coastal occupation charging regime, and has amended the background section of the use, development and occupation in the

coastal marine area section to make it clear that a coastal occupation charging regime to compensate the public for occupation of the coastal marine conservation area would be appropriate.

7. Mooring

7.1. Statement of issue

Moorings can occur both within and outside of the Mooring zone. There were a range of submissions relating to the location of mooring zones, how moorings are provided for within the mooring zones, and how moorings are provided for outside of the mooring zones. The range of issues raised are addressed below.

7.2. Panel recommendation and reasons

This section addresses the mooring policy provisions, while the actual location of the mooring zones (those sought to be added, deleted or amended) is addressed in topic 080.

In essence the Plan seeks to provide for moorings in mooring zones, where moorings are largely permitted. This is seen as an efficient way of accommodating vessels and seeking to avoid a proliferation of moorings throughout the coastal marine area. Resource consent (discretionary) is required for moorings outside of the mooring zones.

Many of the issues raised in relation to moorings were addressed at mediation. The Auckland Yacht and Boating Association and other recreational groups wanted to ensure that moorings and mooring zones did not compromise safe and convenient anchoring for recreational boats, particularly in popular boating areas. The Panel, and the Council, have attempted to address this by including policy that seeks to avoid moorings in areas commonly relied on for safe anchorage during adverse weather conditions and areas that are popular cruising and anchoring destinations used by the general boating public.

At the hearing there were three matters the Panel considered required clarification in relation to the mooring zone provisions, namely:

i. that some of the zone provisions apply outside the zone;

ii. that policies 1 and 2 (as notified) apply only to new mooring zones, expansions to existing mooring zones, and moorings outside the mooring zone and not to new mooring zones; and

iii. the definition of a strategic location.

7.2.1. Objectives and policies outside the zone

As set out above the approach to mooring was to enable moorings in the a mooring zone and require consents for mooring outside that zone, most likely in the Coastal - General Coastal Marine Zone. The Panel considered that having all of the mooring provisions in the mooring zone was unusual.

The Council acknowledged that it was unusual in terms of plan structure to have provisions of a zone that apply outside that zone. The practical issue that the Panel raised, and the

Council had identified, is that users of the Plan will not necessarily look to the mooring zone chapter for provisions relating to moorings outside those zones.

Council reported that at mediation for this zone, it was agreed to note this structural matter in the introduction to the coastal zones, under the heading mooring zone. At the hearing for this topic the Council accepted that further clarifications were appropriate, including:

i. changing the relevant section headings from ‘mooring zone’ to ’mooring zone and moorings’; and

ii. including at the start of chapter a direction that some provisions apply outside the mooring zone.

Proposed amendments to this effect were provided.

7.2.2. Policies 1 and 2

At the hearing Mr Spiro, the Council’s planner, expressed his support for amendments to policies 1 and 2 so that they applied to moorings outside a mooring zone as well as new and expanded mooring zones.

7.2.3. Definition of a strategic location

At the hearing the Panel asked about the meaning of strategic location, in the context of policy 2(a). The Council acknowledged that this term was unclear and recommended alternative wording intended to capture popular locations and those that can act as refuges for vessels in bad weather.

7.2.4. Ōkahu Bay

Ngāti Whātua Ōrākei sought to delete that part of the mooring zone in Ōkahu Bay, and that within 12 months of the Plan becoming operative those moorings would be relocated. They also sought that the part of the zone to be deleted become a precinct which would prohibit moorings within the precinct.

Ōkahu Bay has special value and significance to Ngāti Whātua Ōrākei. They advised the Panel that the presence of moorings in Ōkahu Bay impacts on those values, including the mauri of the water, kaimoana, cultural recreation use (wakaama), and visual effects on the outlook from the marae and ancestral lands.

The Panel acknowledges that these values are Part 2 Resource Management Act 1991 matters that need to be recognised and provided for.

Having heard the evidence from Ngāti Whātua Ōrākei and from the Council (supporting the removal of the moorings) the Panel agrees that the moorings should be removed from Ōkahu Bay. The issue before the Panel was the best method to achieve this from a planning perspective.

The evidence of Auckland Council suggested that the mooring zone could remain, but the portion in Ōkahu Bay should have an objective, policy and rule that prohibits moorings in that part of the zone. The preference of Ngāti Whātua Ōrākei was the deletion of part of the zone and its replacement with a precinct with provisions that prohibit moorings in that precinct.

The Panel supports and recommends a precinct as requested by the submitter. A prohibition on moorings in a zone intended to enable moorings is not the appropriate planning mechanism. As such, the Panel agrees that the creation of the Ōkahu Bay precinct best achieves the promotion of the relationship of Ngāti Whātua Ōrākei with their ancestral land and waters by prohibiting moorings in the precinct from 12 months after the Plan is made operative.

The Council's Harbourmaster, Mr Moss, confirmed that the current moorings in that part of the zone to be deleted could all be relocated to that part of the mooring zone to be retained.

7.2.5. Objectives and policies outside the zone

The Panel did not think it ideal to do as suggested by the Council in 7.1.1 above. However because of the way the Plan is structured, and in order to locate all the provisions relating to moorings in one place, the Panel accepts the position. The Panel has amended the wording of the chapter heading to‘Mooring Zones and moorings outside the zone’ to reflect this wider scope. References to this are included in the introduction to the coastal section of the Plan as well as in the introduction of the specific moorings section.

7.2.6. Policies 1 and 2

The Panel does not support the Council’s approach in 7.1.2 above. These policies are at the plan level and address applications for moorings outside of the zone. Applications are not made to expand or create new zones - those are undertaken through the First Schedule of the Resource Management Act 1991. These policies may help guide the Council when considering any plan change, but these policies should not explicitly reference new or expanded zones.

The Panel recommends the revised policies as set out in the Panel’s recommendation version of the Plan.

7.2.7. Definition of a 'strategic location'

The Panel accepts the Council’s revised wording (see 7.2.3 above) as providing greater clarity and being more appropriateto the intent of policy 2 (a).

8. Bio-fouling

8.1. Statement of issue

The Plan as notified provides a detailed suite of provisions to address bio-fouling. The provisions were substantially amended through mediation and all but one aspect was agreed by the parties. The New Zealand Defence Force sought one amendment to a permitted activity standard. The Council and the New Zealand Defence Force have met and agreed amended wording to the provisions.

As reported to the Panel, a joint supplementary statement from the Council and the New Zealand Defence Force was prepared and dated 21 August 2015. That statement recorded that the Council and the New Zealand Defence Force had agreed to a proposed amendment to Land and Water Use control - Passive discharges of hull bio-fouling organisms from

commercial and military vessels. This was to provide a specific regime for military vessels for the management of passive discharges of hull bio-fouling organisms.

8.2. Panel recommendation and reasons

The proposed amendment creates an alternative but complementary regime for management of passive discharges of bio-fouling from military vessels. This acknowledges the special role of the New Zealand Defence Force as a public organisation with particular obligations under the Defence Act 1990, as well as work undertaken by the New Zealand Defence Force in conjunction with the Ministry for Primary Industries to manage bio-fouling of military vessels outside the scope of the Resource Management Act 1991 under the Biosecurity Act 1993.

The proposed amendment would enable the New Zealand Defence Force to rely on a Craft Risk Management Plan prepared under section 24 of the Biosecurity Act 1993 to:

i. ensure that military vessels comply with the Craft Risk Management Standard 1 upon entry into New Zealand waters; and

ii. provide a methodology to Council detailing the measures that will be undertaken in respect of those vessels to ensure that the risk of transfer of any harmful aquatic organisms is minimised while those vessels remain in New Zealand waters.

The Panel accepts this evidence and that the rule is appropriate and effective.

9. Significant Ecological Areas – Marine 1 and 2

9.1. Statement of issue

The Environmental Defence Society and the Royal Forest and Bird Protection Society (the Societies) in their legal submissions proposed a major change to the planning approach to significant ecological areas marine 1 and 2. Their proposal was to remove the distinction between marine 1 and 2 and impose the same activity status for all activities in all marine significant ecological areas.

9.2. Panel recommendation and reasons

The Panel notes that the proposed amendment was not supported by any ecological, economic or planning evidence. The Panel supports and accepts that the distinction between significant ecological areas marine 1 and 2 is the appropriate planning response to give effect to Policy 11 of the New Zealand Coastal Policy Statement 2010, in light of the information known and the particular circumstances of Auckland. The distinction between significant ecological areas marine 1 and 2 allows a more nuanced planning approach to differentiate the robustness of each area and the general appropriateness of activities in those areas. The significant ecological areas marine 2 cover a substantially larger area of the coastal marine area than significant ecological areas marine 1, and making the rules the same in both areas would be likely to substantially increase the costs and regulatory burden across the region.

The Panel finds that the proposed amendments are not necessary to give effect to the New Zealand Coastal Policy Statement 2010. If a significant ecological area - marine 2 does

involve a Zealand Coastal Policy Statement 2010 policy 11a value, then avoidance of more than minor and transitory effects is the appropriate response and is available within that existing policy framework.

In this matter the Panel has relied on the expert evidence of the Council. For the above reasons the Panel has not accepted the proposed amendments to remove the distinction between significant ecological areas marine 1 and 2 and has not made wide-ranging amendments as sought by the submitters.

The Societies' submissions also set out that the significant ecological areas marine 1 and 2 overlay was not comprehensively mapped, and that this justified increased protection for all biodiversity values in all parts of the coastal marine area.

The Panel does not support this position, and again notes that the Societies did not produce any expert evidence, and did not acknowledge the expert ecological opinion of Ms Myers, the Council's ecologist. Her opinion was that the Significant Ecological Area – Marine Overlay is robust in relation to near-shore and inter-tidal areas (i.e. those close to shore), but accepted that the overlay was less robust for offshore areas.

The Panel accepts Ms Myer's conclusion, which was not challenged by any other expert opinion, that the mapping of the near-shore significant ecological areas is robust and it is only offshore areas which may not be comprehensively mapped due to a lack of knowledge and the difficulties of adequately mapping those areas. In light of that evidence, and the supporting planning evidence of the Council's witnesses, the Panel prefers the Council's version of the provisions regarding the protection of significant indigenous biodiversity.

10. Additional Activities - vessel speed, vessel lighting, rodent control on vessels, and set nets

10.1. Statement of issue

The Environmental Defence Society and the Royal Forest and Bird Protection Society (the Societies) set out in some detail in their submissions that the Plan should control vessel speed, vessel lighting, rodent control on vessels, and set nets. At the hearing the Panel raised some *vires* issues about the function under section 30 of the Resource Management Act 1991 that these activities related to, and also whether in terms of section 32 having rules in the plan was the most appropriate mechanism, given the other mechanisms (e.g. legislation and bylaws) available to manage these.

The Panel asked Council to address the legal submission filed by the Societies in which they submitted there was jurisdiction under the Resource Management Act 1991 to include rules relating to these matters in a regional coastal plan. The Council's response, which the Panel accepts, did not dispute the jurisdictional analysis put forward by the Societies in relation to vessel speed, vessel lighting or rodent control. The control of activities on the surface of the coastal marine area falls squarely within the ambit of section 12(3) and 30(1)(d)(vii) and is *intra vires* the Resource Management Act 1991.

However the Council was not certain that it had jurisdiction to regulate set nets, the location and type of which are controlled by a number of regulations under the Fisheries Act 1983.

(These are: the Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986; the Fisheries (Commercial Fishing) Regulations 2001; and the Fisheries (Amateur Fishing) Regulations 2013.) Set nets are already regulated by Council bylaw in some parts of the region.

The Council advised that further regulation of set nets in the Plan was unnecessary. The Council particularly noted the restriction on its powers under section 30(2) of the Resource Management Act 1991. While the purpose of a control on the placement of set nets would not be to control the taking, allocation or enhancement of fisheries, that would be one of the effects of such a control.

In these circumstances, the Council did not wish to express a view on whether the Plan could regulate set nets, but considered there is at least doubt as to its ability to do so.

10.2. Panel recommendation and reasons

The Panel has come to the view that in the absence of any involvement of fishing interests in the Plan, apart from a minor involvement of Sanfords, the Panel's position (and that of the Council) is that this fishing control should not be included in the Plan.

Moreover, as raised at the hearing, some of the concerns raised by the Societies are also being addressed by the Hauraki Gulf Forum, using methods such as the 2013 Hauraki Gulf Transit Protocol. The Protocol appears to be producing results by reducing vessel speeds and incidences of whale strike.

On the other activities, the Panel agrees with the evidence of Ms Coombes that there has been insufficient consideration of the benefits and costs of the proposals, with no assessment of how they could be implemented and what the costs would be of imposing and enforcing the controls. There has been no assessment of whether it would be more effective to use tools available under other legislation.

The Council's view was that including rules in the Plan for any of these activities would be premature and unnecessary to duplicate these efforts in the Plan. The Panel agrees and does not recommend their inclusion.

11. Aquaculture

11.1. Statement of issue

The Panel has recommended a specific policy in the regional policy statement to provide for aquaculture in the coastal environment in appropriate places and forms, and within appropriate limits. Accordingly at Plan level the aquaculture provisions need to give effect to this, and frame in a policy sense 'appropriate places and forms, and within appropriate limits'.

Many of these matters regarding aquaculture were agreed at mediation, discussions and at the hearing. The Panel believes that the package of provisions as amended by the Panel and set out in the revised Plan, provides the appropriate planning framework to enable aquaculture while ensuring that the adverse effects can be avoided, remedied or mitigated.

Specific matters that were not agreed, and were the subject of evidence before the Panel, are addressed below.

11.1.1. Appropriate policy approach

The most significant issues in relation the Plan provisions were raised by the aquaculture submitters, iwi and Environmental Defence Society and the Royal Forest and Bird Protection Society. These matters are addressed below.

Mr Turner, the expert planner for Aquaculture New Zealand and the Western Firth Marine Farming Consortium was concerned that the plan provisions had two positions on giving effect to the New Zealand Coastal Policy Statement 2010 following King Salmon, one on biodiversity and another on landscape and natural character. He also questioned if significant ecological areas – marine 2 should be listed in the policies (was Policy 4).

Council's expert planner Ms Faire considered that using both approaches results from the advice and relevant expertise in the biodiversity and landscape teams of Council. Also significant ecological areas – marine 2 was included in Policy 4 based on the evidence of Ms Myers, Council's expert ecologist, because the minimum consent duration for aquaculture is 20 years (addressed in more detail later), and it was considered a precautionary approach was needed.

The Panel agrees in part with the Council and Mr Turner. The Panel has recast both policies 4 and 5 (the numbering has changed in the Panel's revised plan). The Panel has included the following in one policy:

i. significant ecological areas -marine 1 and 2;
ii. scheduled historic heritage places;
iii. scheduled sites and places of significance to Mana Whenua;
iv. outstanding and high natural character areas;
v. outstanding natural features;and
vi. outstanding natural landscapes.

In these areas the policy requires new aquaculture activities to be located and designed to avoid adverse effects on those characteristics and qualities that contribute to those identified values. The "no more than minor and transitory" wording has been deleted as unnecessary in terms of the how the policy has been recast. The Panel is of the view this better addresses the New Zealand Policy Statement 2010 and makes it clear what effects are to be avoided as the items listed are all scheduled with the plan setting out their values.

The following matters are included in a separate policy where, in addition to the policy above, new aquaculture activities are to be designed and located to avoid significant adverse effects, and avoid, remedy or mitigate other adverse effects on the characteristics and qualities that contribute to the values of:

i. mooring zones;
ii. popular and safe navigation routes and anchorages, for example by complying with the current Maritime New Zealand guidelines for aquaculture;
iii. areas with high recreational use or amenity value; and

iv. public access, particularly to highly used areas.

11.1.2. Mana Whenua values

Ngati Paoa appeared at the hearing and requested through legal submission a small number of amendments regarding aquaculture, including that effects on Mana Whenua values should be a matter of discretion. This is on the basis that cultural values were not a matter of consideration when most applications were first approved, often decades ago.

11.1.3. Economic Investment

Mr Turner, on behalf of Aquaculture New Zealand, raised concerns regarding what he contended was the lack of policy support for including economic investment as a matter of restricted discretion. He also expressed concern over the method that council would apply to assess the level of economic investment.

The Council acknowledged this policy gap and proposed an amendment to Policy 5A to include economic investment within the policy framework. The Council stated that the onus will be on the applicant to demonstrate the history of ownership and investment in the existing aquaculture infrastructure. The additional requirement is not intended to be an additional regulatory burden, or particularly onerous, but is one that provides necessary and relevant economic evidence for the Council to evaluate when considering applications for re-consenting.

11.1.4. Using biodiversity offsets in the coastal marine area

The legal submissions of the Environmental Defence Society requested that the Panel include an offsetting policy to address residual adverse ecological adverse effects from aquaculture activities. The Council's position was that it did not consider a specific policy just for aquaculture was necessary as the matter of ecological offsets is included in the biodiversity section of the regional policy statement- natural heritage - biodiversity.

In terms of the Plan's coastal zones, specific offsetting in the coastal marine area had only been referred to in the reclamation section. Council accepts that there is no doubt that reclamation results in permanent loss of parts of the coastal marine area, and so not all effects can be avoided. From the Council's perspective, the offset policy in the reclamation section is not generally an ecological offset, but one that compensates for the loss of coastal marine area space through other compensatory benefits, such as additional or enhanced public access, public facilities or environmental enhancement or restoration.

The Environmental Defence Society and Royal Forest and Bird Protection Society in legal submissions and the Department of Conservation in mediation as reported to the Panel, expressed concerns that this approach would cause confusion with the well-understood application of ecological offsetting for biodiversity. The Societies sought that the term ‘compensating for’ should be used in place of ‘offset’ in the reclamation background section and supporting policy. The Council supports such an amendment as it more clearly reflects the intended policy position.

11.1.5. Appropriate locations for aquaculture

The Plan does not identify areas that are suitable for aquaculture. Ms Faire, for the Council, considered that aquaculture businesses rely on a number of variables including access to spat, new technology for growing product, specific water depth, high water quality, bio-

security risks and access to wharves to get the product to market. For these reasons she considered that identifying locations for new aquaculture is better left to the industry and not a suitable role for Council.

11.1.6. Consent duration as a matter of Restricted Discretion

Westpac Mussels requested that consent duration should not be included as a matter of restricted discretion, because aquaculture operators require sufficient security of tenure to justify the significant financial investment associated with establishing new farms, and section 123A of the Resource Management Act 1991 states that the default minimum time for aquaculture consents is 20 years, unless a shorter period is requested by the applicant or is necessary to manage adverse effects.

11.2. Panel recommendation and reasons

11.2.1. Appropriate policy approach

The Panel agrees that an explicit precautionary approach provision does not need to be applied as the policies enable the appropriate assessment to be made. However the Panel has retained the precautionary approach policy for aquaculture activities that propose using species, techniques or locations not previously used for aquaculture and where the adverse effects are uncertain, unknown or little understood but are potentially significant.

Mr Turner sought that policy 8, relating to managing the allocation of space in areas where there is high and competing demand for space, be deleted. Ngati Paoa sought that it be retained. Ms Faire, and the Council, sought its retention.

The Panel agrees with the Council and Ngati Paoa. If this policy was deleted the Council would need to rely on sections 165L-165N of theResource Management Act 1991, under which the Council can request the Minister of Conservation to approve an allocation method. The Council can also request the Minister of Aquaculture for a hold on new applications for consents to occupy space for specified aquaculture activities under section 165ZB or seek that consents are processed together under section 165ZF.

The Panel notes that aquaculture legislation is complex and has been through significant amendments in the last ten years. This policy provides some Auckland-specific guidance in this complex area. While the policy is complex, if it were deleted there would need to be a replacement policy that includes benefits for Mana Whenua or cross referencing to regional policy statement and relying on the sections of the Resource Management Act 1991. The Panels find it is more appropriate and efficient to retain the policy.

11.2.2. Mana Whenua values

Ms Faire for the Council agreed that effects on Mana Whenua values should be a matter of discretion. The Panel also agrees, and has included in its recommendation version of the Plan policies, matters of discretion and assessment criteria that refer to cultural values and inclusion of effects on Mana Whenua.

Ngati Paoa in its original submission and legal submission sought that new aquaculture in spaces allocated under the Maori Commercial Aquaculture Claim Settlement Act 2004 be a restricted discretionary activity. The Panel notes that the Council did not support that amendment and instead considered the Plan already provided adequate policy support for

Treaty-related matters which can be considered in applications involving Mana Whenua. The new settlement space provisions were not developed with the intention that aquaculture development by Mana Whenua would be given a more permissive status in overlays.

The Panel, while understanding Ngati Paoa's concern, agrees with the Council for the reasons set out above.

11.2.3. Economic Investment

The Panel agrees with the submitter. The Council has provided appropriate policy wording to address 'the level of investment'.

11.2.4. Using biodiversity offsets in the Coastal Marine Area

The Panel has not included an offsetting policy in the aquaculture section. The Panel considers that the policy framework it has recommended, some of which is set out above, with a clear emphasis on avoiding adverse effects on identified values, and avoiding where practicable in other areas, is more appropriate than a specific offset policy. However not having an offset policy would not preclude an applicant from offering and offset. In doing so an applicant could rely on the regional policy statement policy.

With respect to the reclamation policy and the issue of offset vs compensate, the Panel agrees with the submitters and Council and has used the term ‘compensate’ in its recommendation version of the Plan.

11.2.5. Appropriate locations for aquaculture

The Panel notes that the Council concurs with this view and considered it was not the role of local authorities to direct industry as to where it shall locate. In its closing statement, the Council stated that it simply did not, nor cannot have, all of the information necessary to make such commercial decisions. It went on to say, it is for the Council to identify, on the basis of robust information, where aquaculture development is not suitable, given the environmental, social and cultural information available. The ecological, heritage and amenity values within the overlays provide this information to applicants, and for evaluating applications.

The Panel does not necessarily agree with the Council that it is not its role to identify areas that are suitable for aquaculture. The Council has through the Plan, on land and in the coastal marine area, spatially identified many areas that are suitable for particular activities. The Panel also notes the Waikato Regional Council has identified areas suitable for aquaculture (e.g. Wilson’s Bay in the Firth of Thames). The Auckland Council has chosen not to do so, and has identified areas where aquaculture is unlikely to be suitable.

The Panel did not receive evidence from submitters or the Council about suitable locations (zones) for aquaculture. On this basis the Panel accepts the position set out by the Council and that new aquaculture will need to be established by resource consents or through plan changes.

11.2.6. Consent duration as a matter of restricted discretion

The maximum consent time stipulated in section 123A of the Resource Management Act 1991 for activities in the coastal marine area is 35 years. The Council acknowledged the default minimum consent duration in section 123 but it, and the Panel, have concerns that if

consent duration is not reserved as a matter of discretion, consents will be granted for the default position of 20 years without considering whether a shorter period is required to ensure that adverse effects on the environment are adequately managed, or considering whether a longer period might be appropriate.

The Panel also notes that for regional consenting matters, consent duration has been included as a matter of discretion. This is to provide the ability to determine if a period shorter than 35 years (and 20 years in the case of aquaculture) is appropriate. Accordingly this matter is not limited to aquaculture.

12. Coastal Transition Zone

12.1. Statement of issue

The Coastal Transition Zone is land which is above mean high water springs that was, in the past, unzoned in the district plans of the former territorial authorities. This zone is an administrative tool to improve regulatory integration between the coastal marine area and land controls for this previously unzoned land. The Council intends to phase out this zone as mapping of boundaries is refined over time. The seaward boundary is the location of mean high water springs as at 2012.

For the Council, Mr Tamura's evidence addresses the zone provisions and that as far as the Council was aware all matters had been agreed between submitters. This topic has been the subject of mediation where the proposed amendments were agreed. No further amendments were proposed by Mr Tamura or the Council.

12.2. Panel recommendation and reasons

The Panel accepts the zone and its intent, and the need to set in place a process (zone) to deal with land that 'falls between the gap' due to the accuracy or otherwise of mapping the mean high water springs, which will always be a difficult matter as the location moves.

The Panel accepts the zone is an administrative one, and the rules simply set out which zone rules apply if the land is 'unzoned' due to the identification of the mean high water springs issue.

As this zone is not about assessing the effects of any proposal and is purely administrative, the Panel saw no need for an objective or policy. The Panel recommends that the objective and policy be deleted, and in doing the administrative nature of the zone is strengthened.

13. Port of Onehunga

13.1. Statement of issue

The majority of the issues relating Port of Onehunga are set out in the Onehunga Port Precinct 080 hearing report.

One issue dealt with here is the appropriate coastal protection yard at the Port of Onehunga.

13.2. Panel recommendation and reasons

The Panel's reasons and recommendations are set out in the report referred to in the Statement of Issue section above.

With respect to the coastal protection yard at the Port of Onehunga, Ports of Auckland Ltd sought that the Port of Onehunga be excluded from a coastal protection yard requirement. Ms Coombes in her rebuttal evidence proposed that it be specified as 15m from mean high water springs rather than applying the 25m required in the Light Industry zone.

Ms Turner for the Manukau Harbour Protection Society, Onehunga Enhancement Society and Jackson Electrical Industries did not support the Ports of Auckland Ltd request. She was concerned that once this area was no longer required for port purposes, as had been well signalled (and addressed more fully in the Precinct report), greater public access would be very important. If there was no coastal protection yard, this would mean that buildings could be built very close to, or over the mean high water springs boundary, and therefore potentially inhibit public access and use and enjoyment of the foreshore area.

It is the Panel's view that allowing the development of buildings directly adjacent to mean high water springs could preclude future opportunities for public access around the coastal edge. In this regard the Panel supports the Council and the submitters represented by Ms Turner.

13.3. Statement of issue

The issues relating Gabador Place are set out in the Gabador Place Precinct (080 hearing report) and in Hazardous Facilities – Sensitive Activity Restriction section of the 039 Hazardous Substances report.

13.4. Panel recommendation and reasons

The Panel's reasons and recommendations are set out in the report referred to in the Statement of Issue section above.

14. Drainage and livestock access in the coastal marine area

14.1. Statement of issue

Federated Farmers confined its interest in the coastal plan to two matters:

(a) drainage, to and in, the coastal marine area; and
(b) livestock access to the coastal marine area.

In Council's rebuttal evidence (Ms Faire) further provision was made to provide for clearing drainage in significant ecological areas – marine 2 as a permitted activity subject to land and water use control. Ms Faire accepted Federated Farmers' (Mr Gardner) amendments to 2.6.A in part. As set out by the Council in closing statements, for clarification the works within the coastal marine area need to be carried out in areas that are adjacent to rural land. The land use control should read:

The activity may only take place in the coastal marine area adjacent to land that is contiguous with land that has a rural zone.

14.2. Panel recommendation and reasons

The Panel has not accepted a lower order activity status in these environments. Accordingly, consistent with the Panel's approach to the majority of activities within significant ecological areas – marine 1, the Panel and the Council consider that a discretionary activity is more appropriate than restricted discretionary to enable a full consideration of all relevant policy matters for this high-value location.

The Panel records that most of the issues relating to livestock exclusion from the coastal marine area were resolved either at mediation or were agreed at the hearing.

Timeframes for the rules to take effect have been included (and essentially agreed by the parties). Policy 21(d) of the New Zealand Coastal Policy Statement 2010 requires that stock be excluded from the coastal marine area within a prescribed timeframe. The proposed timeframe is five and seven years (for different areas) after the proposed Auckland Unitary Plan becomes operative. The Panel considers that this period gives sufficient time for landowners to implement the new requirements for stock exclusion. While the Panel accepts there is no specific evidentiary basis for the dates chosen, they were discussed with stakeholders during the preparation of the Plan and generally agreed to be reasonable.

The Panel recommends the provisions as set out in the Panel's recommendation version of the Plan.

15. Providing for infrastructure

15.1. Statement of issue

The issue is how best to provide for infrastructure in the coastal marine area, particularly in terms issues of functional and operational need.

15.2. Panel recommendation and reasons

The parties at mediation agreed to add a new policy 6A in D5.1.13 of the proposed Auckland Unitary Plan to provide for the use and occupation of the coastal marine area by significant infrastructure. In response to the evidence of Ms Cole, Ms Coombes' rebuttal evidence proposed amending the policy to read 'avoid … significant infrastructure except where' rather than 'provide for … significant infrastructure where it…'.

Ms Allan (hearing presentation paragraph 8. BF\52793904\1 page 12), New Zealand Transport Agency, Transpower and the Auckland Utility Operators Group oppose the modification of policy 6A and seek that it be returned to 'provide for'.

Ms Coombes accepts the submitters' points that the revised wording may not achieve the regional policy statement provisions seeking to provide for significant infrastructure in appropriate locations. The remainder of the policy provides adequate direction for assessing whether a proposal is appropriately designed and located, when read together with other related policies. However, this would be clearer if the policy included 'only'.

The Council considers that policy 6A should state:

> 6A. Avoid the use and occupation of the coastal marine conservation area by significant infrastructure, including where it does not have a functional need to locate in the coastal marine area, and except only where it cannot be practicably located on land and where it avoids significant adverse effects and avoids, remedies, or mitigates other adverse effects on: a. the existing use, character and value of the area …

A new policy 6B in D5.1.13 was proposed in the rebuttal evidence of Ms Coombes to recognise the National Policy Statement on Electricity Transmission 2008. Transpower seeks that this policy be amended to specifically refer to occupation. The Council considers that this is provided for as it is in the section titled use and occupation. However, to avoid any confusion, the Council supports amending the policy as follows:

> 6B. Recognise and provide for the use and occupation of the coastal marine conservation area associated with the effective operation, maintenance, upgrading and development of the components of the electricity transmission network that have a technical, operational or functional need to locate in the coastal marine area in appropriate areas.

Transpower raised a concern about table 1.10 and whether the national grid would fall under 'coastal marine area structures and buildings not otherwise provided for' or 'infrastructure coastal marine area structures not otherwise provided for'. The Council considers that this uncertainty could be addressed by amending the table as follows:

> Infrastructure coastal marine area structures that are a component of infrastructure and are not otherwise provided for.

Transpower also seeks that the provisions relating to maintenance, repairs and reconstruction of existing lawful structures be amended to allow for replacement and that for the National Grid, the area of occupation is allowed to be up to 10m from the existing structure, including within the overlay areas. See also New Zealand Transport Agency legal submissions paragraph 25, Sylvia Allan hearing presentation paragraph 6, 9, 17, 21, BF\52793904\1 page 13.

The rebuttal evidence of Ms Coombes outlined that Council did not at that point in time support the inclusion of replacement but the issue was being considered in the context of Topic 042 Infrastructure. Replacement has now been added to the Auckland-wide infrastructure provisions as part of the mediation for that topic and Council accepts its inclusion.

The Panel considered that reconstruction and replacement were essentially the same, and has not explicitly added 'replacement' to the regional coastal plan provisions.

Ms Allan noted that the proposed amendment to control I6.3.2.3.3 inadvertently restricts works on the national grid as it is in the Electricity Transmission Corridor Overlay. The Council considers that this could be addressed by amending the provision as follows:

> The work must not change the area occupied by the structure except that with respect to network utilities in the General Coastal Marine Zone (outside of the overlays other than

the Electricity Transmission Corridor Overlay), the area of occupation is within 2m of the existing alignment or location.

16. The Waitematā Navigation Channel Precinct

16.1. Statement of issue

Whether the Waitematā Navigation Channel Precinct should be a precinct or a zone.

16.2. Panel recommendation and reasons

At the hearing, the Panel questioned the Council witnesses (Ms Faire and Ms Coombes, both expert planning witnesses) why a precinct was used in the Waitematā Navigation Channel, and whether a zone could be used instead.

Ms Faire acknowledged that this use of a precinct was unusual, but noted that the Channel is a unique and significant item of infrastructure. The purpose of the controls in the Waitematā Navigation Channel is to restrict matters of discretion for dredging and to restrict the placement of structures within the Channel. Ms Coombes also responded that the use of a precinct allows for the tailored application of a limited number of rules and it would not be efficient to create a whole new zone or sub-zone which was substantially the same as the Coastal - General Coastal Marine Zone but with only a few amendments. The Panel accepts this.

17. Consequential changes

17.1. Changes to other parts of the plan

As a result of the Panel's recommendations on this topic relating to mangrove management there are consequential changes to the provisions relating to activities in, on, under and over the beds of rivers and lakes (topic 047).

17.2. Changes to provisions in this topic

There are no changes to provisions in this topic as a result of recommendations on other hearing topics.

18. Reference documents

The documents listed below, as well as the submissions and evidence presented to the Panel on this topic, have been relied upon by the Panel in making its recommendations.

The documents can be located on the aupihp website (www.aupihp.govt.nz) on the hearings page under the relevant hearing topic number and name.

You can use the links provided below to locate the documents, or you can go to the website and search for the document by name or date loaded.

(The date in brackets after the document link refers to the date the document was loaded onto the aupihp website. Note this may not be the same as the date of the document referred to in the report.)

18.1. General topic documents

Panel documents

The Submission Points Pathway report

033 Submission Points Pathway Report- 12 February 2015 (12 Feb 2015)

034-Submission Point Pathway Report - 26 Sept 2014 (20 Oct 2014)

033 & 034 Mediation Joint Statement - Block 3 Session 2 - 2014-12-16 and Updated 20 Jan 2015 (23 Jan 2015)

033 and 034 Underwater noise - Expert Conference Joint Statement- 15 January 2015 (15 Jan 2015)

033 and 034 - Expert Conference Joint Statement - 27 March 2015 (27 March 2015)

Auckland Council marked up version

033 & 034 Mediation Joint Statement - Block 3 Session 2 - 2014-12-16 and Updated 20 Jan 2015 (23 Jan 2015)

033 and 034 - Aquaculture - Mediation Joint Statement-16 January 2015 (19 Jan 2015)

033 and 034 - Mangroves - Mediation Joint Statement - 14 January 2015 (20 Jan 2015)

033 and 034 Appendix 6- 6.3- 6.7- Mediation Joint Statement- 9 December 2014 (09 Dec 2014)

033 and 034 CMA Structures, occupation and use-Mediation Joint Statement-25 November 2014 (02 Dec 2014)

033 and 034- Coastal Transition Zone-Mediation Joint Statement-2 December 2014 (12 Dec 2014)

033 and 034 Defence Zone-Mediation Joint Statement- 2 December 2014 (04 Dec 2014)

033 and 034 Definitions of depositing of material; CMA depositing and CMA disturbance-Mediation Joint Statement-27 November 2014 (03 Dec 2014)

033 and 034- Discharges from Bio-fouling and Vessel Maintenance- Mediation Joint Statement- 18 Dec 2014 (19 Dec 2014)

033 and 034- Discharges- Sewage Discharge from Vessels- Mediation Joint Statement- 18 Dec 2014 (18 Dec 2014)

033 and 034- Discharges-Mediation Joint Statement- 28 January 2015 (29 Jan 2015)

033 and 034- Disturbance- foreshore and seabed- Mediation Joint Statement 21 Nov 2014 (27 Nov 2014)

033 and 034- Disturbance of Foreshore and Seabed- Mediation Joint Statement- 15 December 2014 (15 Dec 2014)

033 and 034 -Drainage, reclamation and declamation-Mediation Joint Statement-17 Nov 2014 (09 Dec 2014)

033 and 034- Exotic vegetation and Pacific Oysters-Mediation Joint Statement-21 Nov 2014 (27 Nov 2014)

033 and 034 Ferry Terminal Zone- Mediation Joint Statement 2 December 2014 (03 Dec 2014)

033 and 034 Local Water Transport Facilities- Mediation Joint Statement- 25 November 2014 (02 Dec 2014)

033 and 034- Marina Zone- Mediation Joint Statement-29 January 2015 (02 Feb 2015)

033 and 034- Minor Port Zone-Mediation Joint Statement -1 December 2014 (02 Dec 2014)

033 and 034 Mop up session- Mediation Joint Statement- 27 November 2014 PM session (04 Dec 2014)

033 and 034- MPI, DOC and NZDF- Further Suggested Mediation Changes (22 Dec 2014) (22 Dec 2014)

033 and 034- MPI, DOC and NZDF- Suggested Mediation Changes (22 Dec 3014)

033 and 034 Planting in the CMA- Mediation Joint Statement-21 November 2014 (27 Nov 2014)

033 and 034 Taking, use, damming or diverting of coastal waters- Mediation Joint Statement-26 November 2014 (26 Nov 2014)

033 and 034- Underwater Noise- Mediation Joint Statement- 15 January 2015 (20 Jan 2015)

033 and 034- Underwater Noise- Mediation Joint Statement- 30 January 2015 (30 Jan 2015)

033 and 034 Use, activities, dvpt and occupation in the CMA-Mediation Joint Statement- 24 Nov 2014 (01 Dec 2014)

033 and 034- Vehicles on Beaches- Mediation Joint Statement-26 November 2014 (26 Nov 2014)

033 and 034- Waitemata Navigation Channel Precinct-Mediation Joint Statement-28 January 2015 (29 Jan 2015)

033 and 034-D.5.1.2- Mediation Joint Statement- 18 November 2014 (19 Nov 2014)

033 and 034-General Coastal zone- Background and Introduction- Mediation Joint statement (18 Nov 2014)

033 and 034 Dredging including associated discharge of contaminants (19 Nov 2014)

New Zealand Coastal Policy Statement

http://www.aucklandcouncil.govt.nz/EN/planspoliciesprojects/plansstrategies/unitaryplan/Documents/Section32report/2.19%20Landscapes%20v2%202013-09-17.pdf

18.2. Specific evidence

Auckland Council

033 and 034 Hrg - Auckland Council (Kathryn Coombes) -Planning - coastal zones(24 Feb2015)

033 and 034 Hrg - Auckland Council (Kathryn Coombes) - Attachment B(24 Feb 2015)

033 and 034 Hrg - Auckland Council - (Kathryn Coombes - Attachment A) - REBUTTAL(17 Mar 2015)

033 and 034 Hrg - Auckland Council - (Kathryn Coombes) - REBUTTAL (17 Mar 2015)

033 and 034 Hrg - Auckland Council (Mark Tamura - Coastal Transition Zone) (23 Feb 2015)

033 and 034 Hrg - Auckland Council - (Matthew Spiro) - REBUTTAL (17 Mar 2015)

033 and 034 Hrg - Auckland Council - (Matthew Spiro - Attachment A) - REBUTTAL (17 Mar 2015)

033 and 034 Hrg - Auckland Council (Matthew Spiro) -Planning (23 Feb 2015)

033 and 034 Hrg - Auckland Council (Matthew Spiro - Attachment C) (23 Feb 2015)

033 and 034 Hrg - Auckland Council (Matthew Spiro - Attachment E (Anti-fouling Guidelines 2013) (23 Feb 2015)

033 and 034 Hrg - Auckland Council (Matthew Spiro - Attachment F) (23 Feb 2015)

033 and 034 Hrg - Auckland Council (Matt Spiro) - Hearing Presentation (31 Mar 2015)

033 and 034 Hrg - Auckland Council - (MeleanAbsolum - Landscapes) - REBUTTAL (17 Mar 2015)

033 and 034 Hrg - Auckland Council (MeleanAbsolum - Landscapes) (23 Feb 2015)

033 and 034 Hrg - Auckland Council - (Shona Myers- Ecology) - REBUTTAL (17 Mar 2015)

033 and 034 Hrg - Auckland Council (Shona Myers -Ecology) (23 Feb 2015)

033 and 034 Hrg - Auckland Council - (Stacey Faire) - REBUTTAL (17 Mar 2015)

033 and 034 Hrg - Auckland Council - (Stacey Faire - Attachment 1) - REBUTTAL (17 Mar 2015)

033 and 034 Hrg - Auckland Council (Stacey Faire) - Planning (24 Feb 2015)

033 and 034 Hrg - Auckland Council (Stacey Faire) - Attachment B (24 Feb 2015)

033 and 034 Hrg - Auckland Council (Stacey Faire) - Attachment B1 -Track changes - Aquaculture (24 Feb 2015)

033 and 034 Hrg - Auckland Council (Stacey Faire) - Attachment C (24 Feb 2015)

033 and 034 Hrg - Auckland Council (Stacey Faire) - Attachment D (24 Feb 2015)

Auckland Council and NZDF (Joint Statement)

033 and 034 - Post Hrg - Auckland Council and NZDF - Joint Statement of expert supplementary evidence - 6 August 2015 (06 Aug 2015)

Auckland Yacht and Boating Association& Yachting NZ (R Brabant)

033 and 034 Hrg - Auckland Yacht and Boating Assoc& Yachting NZ - Legal Submissions(30 Mar 2015)

033 and 034 Hrg - Auckland Yacht and Boating Assoc& Yachting NZ - Legal Submissions - Attachment A - Resource Management (Marine Pollution) Regulations 1998 (30 Mar 2015)

033 and 034 Hrg - Auckland Yacht and BoastongAssoc& Yachting NZ - Legal Submissions - Attachment B - Annex IV of MARPOL (30 Mar 2015)

Environmental Defence Society andRoyal Forest and BirdProtection Society

033 and 034 Hrg - EDS and Royal F & B - Legal Submissions (02 Apr 2015)

Federated Farmers (Richard Gardner)

033 and 034 Hrg - Federated Farmers (Richard Gardner) (03 Mar 2015)

Mangrove Protection Society (Sharon De Luca)

033 and 034 Hrg - Mangrove Protection Society - (Sharon De Luca) - REBUTTAL (16 Mar 2015)

033 and 034 Hrg - Mangrove Protection Society (Sharon De Luca) (02 Mar 2015)

Omaha Beach Community and The Gibbs Foundation (Dr Grant Dumbell)

033 and 034 Hrg - Omaha Beach Community (Dr Grant Dumbelll) (02 Mar 2015)

033 and 034 Hrg - Omaha Beach Community and The Gibbs Foundation - (Dr Grant Dumbell) - REBUTTAL (17 Mar 2015)

033 and 034 Hrg - Gibbs Foundation (Dr Grant Dumbell) (02 Mar 2015)

033 and 034 Hrg - Gibbs Foundation (Dr Grant Dumbell) - Addendum - Attachment 5 Proposed Kaipara 1941 Zone (30 Mar 2015)

033 and 034 Hrg - Omaha Beach Community and The Gibbs Foundation - (Dr Grant Dumbell) - REBUTTAL (17 Mar 2015)

Rangihoua Houseboats

033 and 034 Hrg - Rangihoua Houseboats Group (Graeme Lawrence) (2 Mar 2015)

033 and 034 Hrg - Rangihoua Houseboats Group (Daphne Mitten)(2 Mar 2015)

033 and 034 Hrg - Rangihoua Houseboats Group - GIS map (31 Mar 2015)

Valerie Cole

033 and 034 Hrg - Valerie Cole (02 Mar 2015)

Warren E Crook

033 and 034 Hrg - Warren Crook - Hearing presentation (16 Apr 2015)