



**APPLICATION FOR RESOURCE CONSENT
JETTY
OMAKIWI COVE
BAY OF ISLANDS**

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1.0 The Proposal and Reasons for the Application

This assessment is in support of an application for resource consent as detailed below.

The Application Proposal

The application, Explore Limited, seeks the necessary consents to establish a jetty and pontoon at Omakiwi Cove in the Bay of Islands as illustrated in the appended reports, plan and drawings.

The applicant is a major operator of tourist vessels in the Bay of Islands and the Hauraki Gulf. Currently Explore provides a range of marine tourist services in the Bay of Islands including regular services to Urupukapuka Island and cruises throughout the Bay of Islands, with the longer term intention to expand operations as tourism numbers and demand grows post-pandemic.

In the longer term Explore anticipates growth in visitors to the Bay of Islands wishing to experience the landscape and cultural history of the outer Bay of Islands, and the proposal has also been designed to accommodate this anticipated growth in demand for water based tourism in the Bay of Islands.

In the immediate future the jetty proposal is to provide additional berthing capacity in the outer Bay of Islands for Explore's tourist vessels. The jetty will also be used to load provisions onto vessels and to service the café facility operated by the Applicant on Urupukapuka Island. This requires the jetty to be of sufficient length to accommodate Explore's vessels. Accordingly the jetty been designed to allow space for passenger access and for a small service vehicle to deliver provisions and other goods to vessels.

This application does not seek exclusive occupation of the coastal marine area and accordingly the jetty will be available for use by others, provided that this does not impinge on the applicant's ability to use the jetty to carry out its business operations.

As the appended plans illustrate the proposal comprises a jetty extending from the shore at the southern end of the bay some 124 metres beyond MHWS. The jetty will be three metres wide for the majority of its length with the final 9 metres 4.3 metres wide. A small

rip rap wall will be placed at the landward end of the jetty to prevent erosion of the adjacent embankment as illustrated in the appended plan. The jetty will be fixed on cross braced timber posts at either side placed at 4.5 m centres.

A 14 metre long articulated aluminium mesh gangway extends from the end of the jetty to a pontoon 12 metres long and 4.3 metres wide with a 3 metre long aluminium ramp at its outer end. To ensure passenger safely fences with handrails will be fixed on either side of the jetty. Fenders will be fixed on either side of the pontoon and a small turntable will be located in the centre to facilitate the manoeuvring of small service vehicles used to load the boats.

Two plastic pontoons to facilitate berthing dinghies will be attached to the landward end of the pontoon and secured by six piles. A fender dolphin to assist with the berthing of larger vessels will be located some 13 metres to seaward of the end of the pontoon.

Appropriate finishing materials will be used to mitigate the visual impact of the extended jetty including timber decking on the pontoons, and matt black finishing sleeves over the pontoon piles berthing dolphins.

The final configuration will provide berthage for a range of vessels operated by the applicant, and also accommodate a range of small craft within the inner plastic pontoons. Berthage for visiting vessels will be provided alongside the northern side of the pontoons.

Overall the proposed structures will extend some 160 metres seaward of MHWS as illustrated in the plan at Appendix 1.

Consents required

The application subject of this AEE are made in respect of the consents to undertake the works necessary for the proposal as described above and in the appended plans and reports. Consents are required in terms of operative and proposed regional planning instruments being the operative Regional Coastal Plan for Northland, and the proposed Regional Plan for Northland as detailed below.

Coastal Consents: Regional Coastal Plan for Northland (RCPN).

The part of the CMA subject of the application is within the Marine 2 (Conservation) Management Area in terms of the RCPN.

Consents are required in terms of the RCPN as set out below:

1. Clause 31.4.4 w of the RCPN requires discretionary consent to the proposed establishment of the jetty, walkway, pontoons and piles.

Vessels will not be permanently berthed at the jetty or pontoon and accordingly the proposal is not for a marina.

Coastal Consents: Proposed Regional Plan for Northland (PRPN).

The part of the CMA subject of the application is within the General Marine Zone in terms of the PRPN. Resource consents are required pursuant to Section 12 of the Resource Management Act 1991 (the Act) and the PRNP as set out below:

1. Clause C.1.1.21 of the PRPN requires discretionary activity consent to the proposed jetty, pontoon and piles as structures.
2. Clause C.1.1.22 of the PRPN requires discretionary activity consent to the proposed rip rap wall as a hard protection structure.

Overall this application requires consent for a **discretionary activity**

2.0 *The Site and Locality*

Omakiwi Cove is located on the eastern shores of the outer Bay of Islands within the Te Rawhiti Inlet. Access to the Cove is by water via the Inlet or by land from Rawhiti Road. The Cove is enclosed by Wairiki Point in the south and Okuia Point in the north with an extensive shallow beach at the head of the Cove.

Plate 1: Site Location

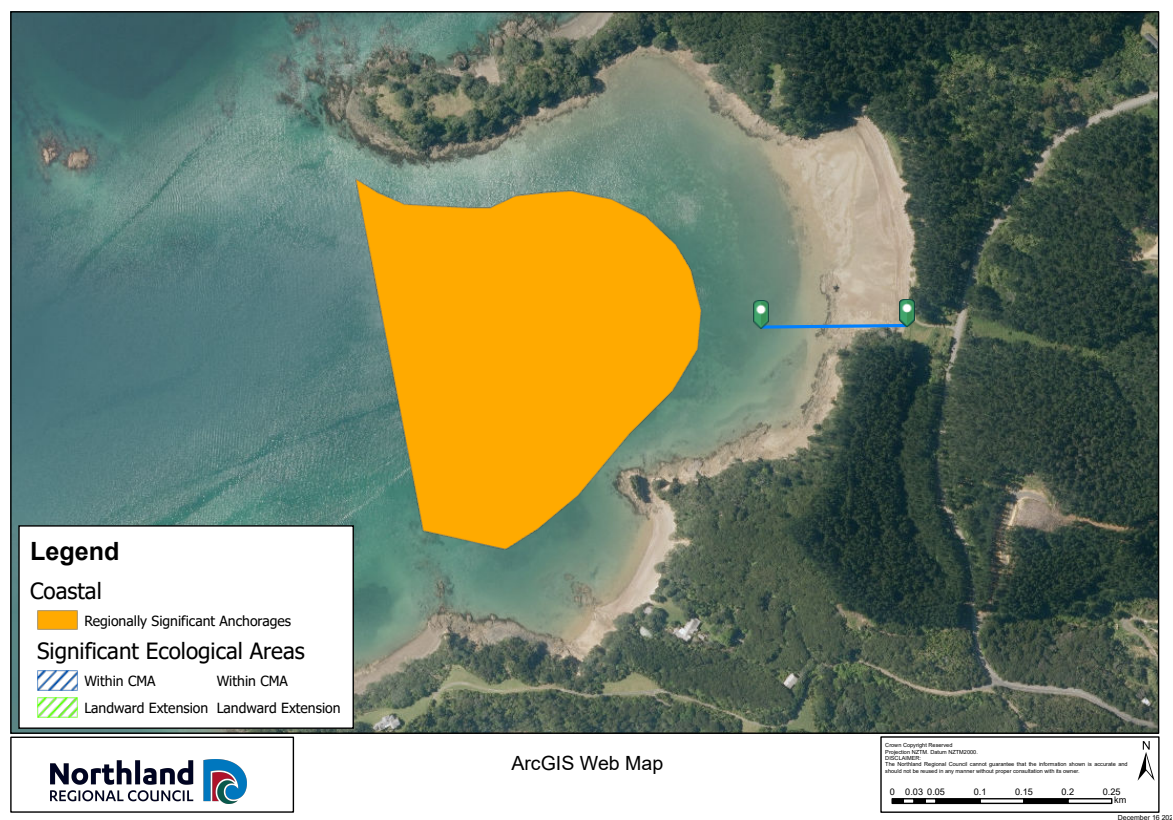


 Site location

A sandstone cliff marks the southern end of the beach. A low embankment is adjacent to MHWS along the beach front. The beach is largely composed of sand and pebble material extending into an intertidal area some 100 metres wide and containing low rock outcrops

composed of sandstone and populated by flora and fauna common to the locality such as small cockles and brown seaweed.

Plate 2: Jetty Location and Regionally significant anchorage



The waters of the Cove are identified in the PRPN maps as part of a wider area of high natural character which includes the majority of the waters of the outer Bay of Islands. While historic aerial photography of the Cove shows the presence of seagrass, the investigation recorded in the Ecological Report at Appendix 4 found only small and isolated clumps of seagrass in and around the footprint of the jetty.

A large part of the Cove is identified as a regionally significant anchorage in the PRPN maps and as such anticipates that it to be used for by a variety vessels, particularly during the summer season when the Bay of Islands is a popular destination for recreational boating As shown by the blue line in the excerpt from the PRPN Map at Plate 2 above the proposed jetty will not extend into the area identified.

Plate 3: View east of Rawhiti Road over ONL



Beyond the immediate coastal margin the land slopes upward from Rawhiti Road into the hilly hinterland of the bay. Whilst this land is identified as an Outstanding Natural Landscape (ONL) in the RPSN maps it is the subject of silviculture and has recently been cleared of pine trees. Consequently this activity has all but erased any natural landscape value to be expected of such areas, as Plate 3 above illustrates. In addition, the land to the north of the bay has been recently subdivided into four rural-residential sites as identified in the landscape assessment. These sites may be expected to be developed for houses and other domestic infrastructure. The riparian margin comprises an area of level ground largely covered in Kikuya grass and weed species with scattered flax.

Rawhiti Road runs roughly parallel to and set back from the beach with a short gravel access track extending to the beach over a site owned by the applicant at approximately the location of the proposed jetty. Part of this area adjacent to the landward end of the jetty will be levelled and covered with a gravel surface in order that it can be used to load and unload vehicles.

3.0 Statutory Considerations

Resource Management Act 1991 (the Act)

The proposal comprises a discretionary activity overall and consent is required in terms of the following sections of the Act:

- Erection or placement of structures (s12(1)(b)).
- Occupation of space in the common marine and coastal area (s12(2)(a)).
- Damage, destruction or disturbance of the foreshore or seabed (s12(1)(c), (e) and (g)).
- Discharge of contaminants (s15(1)(d)).

The Act requires in the case of a discretionary activity to be considered in terms of section 104, which states;

- (1) *When considering an application for a resource consent and any submissions received, the consent authority must, subject to [Part 2](#) and [section 77M](#), have regard to—*
- (a) *any actual and potential effects on the environment of allowing the activity; and*
 - (ab) *any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and*
 - (b) *any relevant provisions of—*
 - (i) *a national environmental standard:*
 - (ii) *other regulations:*
 - (iii) *a national policy statement:*
 - (iv) *a New Zealand coastal policy statement:*
 - (v) *a regional policy statement or proposed regional policy statement:*
 - (vi) *a plan or proposed plan; and*

- (c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.
- (2) When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect.
- (2A) When considering an application affected by [section 124](#) or [165ZH\(1\)\(c\)](#), the consent authority must have regard to the value of the investment of the existing consent holder.
- (2B) When considering a resource consent application for an activity in an area within the scope of a planning document prepared by a customary marine title group under [section 85](#) of the Marine and Coastal Area (Takutai Moana) Act 2011, a consent authority must have regard to any resource management matters set out in that planning document.
- (2C) Subsection (2B) applies until such time as the regional council, in the case of a consent authority that is a regional council, has completed its obligations in relation to its regional planning documents under [section 93](#) of the Marine and Coastal Area (Takutai Moana) Act 2011.
- (2D) When considering a resource consent application that relates to a wastewater network, as defined in [section 5](#) of the Water Services Act 2021, a consent authority—
 - (a) must not grant the consent contrary to a wastewater environmental performance standard made under [section 138](#) of that Act; and
 - (b) must include, as a condition of granting the consent, requirements that are no less restrictive than is necessary to give effect to the wastewater environmental performance standard.
- (3) A consent authority must not,—
 - (a) when considering an application, have regard to—
 - (i) trade competition or the effects of trade competition; or
 - (ii) any effect on a person who has given written approval to the application:
 - (b) [Repealed]
 - (c) grant a resource consent contrary to—

- (i) [section 107](#), [107A](#), or [217](#):
 - (ii) an Order in Council in force under [section 152](#):
 - (iii) any regulations:
 - (iv) *wāhi tapu* conditions included in a customary marine title order or agreement:
 - (v) [section 55\(2\)](#) of the Marine and Coastal Area (Takutai Moana) Act 2011:
- (d) *grant a resource consent if the application should have been notified and was not.*
- (3A) See also [section 103\(3\)](#) of the Urban Development Act 2020 (which relates to resource consents in project areas in transitional periods for specified development projects (as those terms are defined in [section 9](#) of that Act)).
- (4) *A consent authority considering an application must ignore subsection (3)(a)(ii) if the person withdraws the approval in a written notice received by the consent authority before the date of the hearing, if there is one, or, if there is not, before the application is determined.*
- (5) *A consent authority may grant a resource consent on the basis that the activity is a controlled activity, a restricted discretionary activity, a discretionary activity, or a non-complying activity, regardless of what type of activity the application was expressed to be for.*
- (6) *A consent authority may decline an application for a resource consent on the grounds that it has inadequate information to determine the application.*
- (7) *In making an assessment on the adequacy of the information, the consent authority must have regard to whether any request made of the applicant for further information or reports resulted in further information or any report being available.*

Section 104(1) of the RMA requires any consideration of an application for resource consent to be subject to Part 2 of the RMA. Recent decisions of the courts have indicated that it is unnecessary to undertake a separate assessment of applications in terms of Part II of the RMA, except where there is invalidity, incomplete coverage or uncertainty of

meaning in the planning documents¹. For this reason the assessment below assumes that the provisions of the relevant regional planning instruments, particularly the PRPN, articulate the imperatives of Part 2 of the RMA such that specific reference to Part 2 in this assessment is redundant.

The planning instruments that apply to consideration of this application include the Operative Regional Coastal Plan for Northland (RCPN) and the Proposed Regional Plan for Northland (the PRPN). The PRPN was notified on September 6 2017 and at the time of lodgment of this application there are provisions within this instrument that are the subject of appeals, some of which have been resolved and others the subject of on-going mediation and potential litigation. Amongst the provisions that are the subject of appeal at the time of lodgement of this application are clauses C.1.1.21 and C.1.1.22 of the PRPN.

Accordingly, and in order to cover all provisions relevant to the proposal, all relevant provisions of CCPN and the PRPN applicable to the project are assessed without ascribing weight to the provisions of either instrument.

Marine and Coastal Area (Takutai Moana) Act 2011

While applications have been made for customary marine title under the Marine and Coastal Area (Takutai Moana) Act 2011 for the waters within Omakiwi Cove at the time of preparation of this application no customary marine titles were in place.

In accordance with the requirements of section 62 of the Marine and Coastal Area (Takutai Moana) Act 2011 the relevant applicant groups have been provided with copies of the application for this proposal and their views have been sought.

¹ See *Environmental Defence Soc Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38, (2014) 17 ELRNZ 442.

RJ Davidson Family Trust v Marlborough District Council [2017] NZHC 52

4.0 The New Zealand Coastal Policy Statement 2010

The New Zealand Coastal Policy Statement 2010 (NZCPS) contains a number of objectives policies which regional and territorial planning instruments must give effect to and which are also intended to guide the decision making by consenting authorities. A brief commentary on the Objectives of the NZCPS which have relevance to consideration of this application is set out below:

Objective 1:

To safeguard the integrity, form, functioning and resilience of the coastal environment and sustain its ecosystems, including marine and intertidal areas, estuaries, dunes and land, by:

- maintaining or enhancing natural biological and physical processes in the coastal environment and recognising their dynamic, complex and interdependent nature;*
- protecting representative or significant natural ecosystems and sites of biological importance and maintaining the diversity of New Zealand's indigenous coastal flora and fauna; and*
- maintaining coastal water quality, and enhancing it where it has deteriorated from what would otherwise be its natural condition, with significant adverse effects on ecology and habitat, because of discharges associated with human activity.*

The assessment of ecological effects report at Appendix 4 indicates that there are no significant ecosystems in the vicinity that might be affected by the work and, aside from some short-term effects during the construction process; the ecological effects of the activity will be no more than minor. In particular, this report notes that there are small clumps of low quality seagrass around the footprint of the proposed jetty but that effects of the proposal on these will be inconsequential

In addition, any effects on coastal processes in Omakiwi Cove will be confined to the immediate vicinity of the Bay. As explained in the construction methodology statement at Appendix 2, the processes associated with the construction of the proposal will be of short duration and will be carefully managed such that there will be no long-term effects on coastal processes.

Objective 2:

To preserve the natural character of the coastal environment and protect natural features

and landscape values through:

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

In this location the natural character of the local coastal environment is in large part defined by the adjacent headlands in close proximity to the waters of the bay. The natural character of the hinterland has largely been compromised by the forestry activities on this land. In addition, while the sites to the north of the bay that are the subject of the recent subdivision consent are yet to be developed, the construction of dwellings and associated structures must be anticipated on these sites such that these are integral to the local landscape, as will the recently denuded hillsides that form the hinterland of the Cove.

Further the presence of substantial numbers of vessels in the Cove as anticipated by the Significant Anchorage overlay in the PRPN maps, results in a further dilution of the natural character of the coastal environment of the Cove.

Viewed in this context it is considered that the addition of the jetty and pontoon will create little disruption to the existing natural elements of the landscape in Omakiwi Cove.

Objective 3

To take account of the principles of the Treaty of Waitangi, recognise the role of tangata whenua as kaitiaki and provide for tangata whenua involvement in management of the coastal environment by:

- recognising the ongoing and enduring relationship of tangata whenua over their lands, rohe and resources;*
- promoting meaningful relationships and interactions between tangata whenua and persons exercising functions and powers under the Act;*
- incorporating mātauranga Māori into sustainable management practices; and*
- recognising and protecting characteristics of the coastal environment that are of special value to tangata whenua.*

Ngati Patukeha are recognised as the tangata whenua and have been provided with details regarding the proposal. Dialogue with Ngati Patukeha representatives has taken place over the last year and representatives of the hapu have visited the site on several occasions. While the preliminary response of the hapu has been positive, the most recent advice to the applicant is that consideration of the proposal by the hapu has not concluded and that a formal response will be provided in due course.

Objective 6:

To enable people and communities to provide for their social, economic, and cultural wellbeing and their health and safety, through subdivision, use, and development, recognising that:

- the protection of the values of the coastal environment does not preclude use and development in appropriate places and forms, and within appropriate limits;*
- some uses and developments which depend upon the use of natural and physical resources in the coastal environment are important to the social, economic and cultural wellbeing of people and communities;*

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

The proposal that is the subject of the application exemplifies the type of activity that functionally must occur within the CMA. As explained above the proposal is intended to facilitate and enhance the provision of a long standing tourist service to the wider Bay of Islands, and also enable provide a facility in the outer eastern Bay of Islands that will allow for greater public access and that can be used by the wider boating community.

The objectives of the New Zealand coastal policy statement are supported by policies including those that are relevant to this application set out below.

Policy 1:

(2) Recognise that the coastal environment includes:

- *physical resources and built facilities, including infrastructure, that have modified the coastal environment.*

The NZCPS 2010 recognises that infrastructure such as jetties and pontoons form part of the coastal environment. It is also noted that the PRPN anticipates that an extensive part of the Cove will be occupied by anchored boats, the presence of which already modifies the coastal environment, especially over the summer. Moreover, the landward part of the coastal environment has been, and will continue to be, modified in terms of the extant resource consent for subdivision such that these elements must be considered as part of the local coastal environment as anticipated by Policy 1.

Policy 6:

(2)... ,in relation to the coastal marine area:

- (a) *Recognise potential contributions to the social, economic and cultural wellbeing of people and communities from use and development of the coastal marine area, including the potential for renewable marine energy to contribute to meeting the energy needs of future generations:*

- (b) *recognise the need to maintain and enhance the public open space and recreation qualities and values of the coastal marine area;*
- (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; and*
- (e) *promote the efficient use of occupied space, including by:*
 - (i) *requiring that structures be made available for public or multiple use wherever reasonable and practicable*

The NZCPS 2010 recognises that the provision of infrastructure, such as that for commercial craft and recreational craft as proposed by the applicant, is important for the social and cultural wellbeing of people and communities. The Bay of Islands is internationally known and increasingly used as a maritime recreational resource. The proposal will facilitate improved access to this resource. Moreover, the proposal will not only provide for access to the CMA by the applicant's vessels but, as the applicant acknowledges, may be used from time to time by others using the cove for recreation.

Policy 13:

- (1) *To preserve the natural character of the coastal environment and to protect it from inappropriate subdivision, use, and development:*
 - *avoid adverse effects of activities on natural character in areas of the coastal environment with outstanding natural character; and*
 - *avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on natural character in all other areas of the coastal environment*

The proposal will not result in an inappropriate use of the coastal environment. The natural character of Omakiwi Cove is modified by the landward subdivision and the inevitable resultant development of the sites created, the on-going use of the hinterland of the cove for silviculture and the number of pleasure craft frequently anchored in the outer part of the Cove. When considered in the context of these existing modifications the proposal and its effects on natural character are considered to be acceptable.

Policy 11 Indigenous Biological Diversity (Biodiversity)

(b) avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on:

- 1. (i) areas of predominantly indigenous vegetation in the coastal environment;*
- 2. (ii) habitats in the coastal environment that are important during the vulnerable life stages of indigenous species;*
- 3. (iii) indigenous ecosystems and habitats that are only found in the coastal environment and are particularly vulnerable to modification, including estuaries, lagoons, coastal wetlands, dunelands, intertidal zones, rocky reef systems, eelgrass and saltmarsh;*

The design of the proposal recognises the importance and vulnerability of seagrass within coastal ecosystems. As the ecological report confirms the jetty avoids significant areas of seagrass and the placement of piles will avoid these. While the jetty may be located over isolated patches of seagrass the assessment concludes this will not compromise their long-term viability.

Policy 15 Natural features and natural landscapes

To protect the natural features and natural landscapes (including seascapes) of the coastal environment from inappropriate subdivision, use, and development:

- (a) avoid adverse effects of activities on outstanding natural features and outstanding natural landscapes in the coastal environment; and*

- (b) *avoid significant adverse effects and avoid, remedy, or mitigate other adverse effects of activities on other natural features and natural landscapes in the coastal environment;*

The hills that form the hinterland of the site are identified as within an Outstanding Natural Landscape (ONL) in the RPSN maps, however the natural qualities that lead to the preliminary identification of this landscape cannot be confirmed by the more detailed assessment contained in the appended landscape and visual assessment.

As a concomitant of the forestry clearance and development foreshadowed by the subdivision consent referred to above, it is considered that the landscape that forms the backdrop to the Cove is, and will continue to be occupied by dwellings, access roads and other elements of domestic and forestry infrastructure found in the local landscape.

As the appended landscape assessment confirms, when the proposal is viewed against the backdrop of the existing riparian development, it will appear as an expected and acceptable addition to the landscape. While the jetty will be an obvious and substantial addition to views of the Cove, it will be seen in conjunction with the boats that occupy the anchorage identified in the PRPN maps. In this sense the jetty and the boats attached to it will be viewed as a normal and integral part of the maritime landscape that is common throughout the Bay of Islands. Similarly, when viewed from the waters beyond the bay, the jetty will be seen in conjunction with boats anchored in the bay and against the backdrop of the landward development and for these reasons it is considered that, to this extent, the proposal does not offend against this policy.

Policy 23:

- (1) *In managing discharges to water in the coastal environment, have particular regard to:*
- a. the sensitivity of the receiving environment;*
 - b. the nature of the contaminants to be discharged, the particular concentration of contaminants needed to achieve the required water quality in the receiving environment, and the risks if that concentration of contaminants is exceeded; and*
 - c. the capacity of the receiving environment to assimilate the contaminants; and:*

- d. avoid significant adverse effects on ecosystems and habitats after reasonable mixing;*
- e. use the smallest mixing zone necessary to achieve the required water quality in the receiving environment; and*
- f. minimise adverse effects on the life-supporting capacity of water within a mixing zone.*

The attached ecological assessment has assessed the effects of establishing the jetty and concludes that, aside from some short-term effects, the effects of the construction activity on water quality and habitat values will be no more than minor.

5.0 The Operative Regional Coastal Plan for Northland

The RCPN covers the coastal marine area around Northland. The site is within the Marine 2 (Conservation) Management Area which is described as including areas within which appropriate subdivision, use and development is not precluded provided that this is managed in as such a way as to protect, and where practicable, enhance natural, cultural and amenity values.

The objectives, policies, and methods contained within the RCPN manage the effects of protection, use and development of the CMA. In particular Clause 31.4.13 of the RCPN contains performance standards which apply to discretionary activities carried out in the Marine 2 (Conservation) Management Area. Compliance with those that apply to the proposal subject of this application are assessed as follows:

General Performance Standards

The following standards shall apply to all specified permitted, controlled, restricted discretionary and discretionary activities, and to all non-complying activities, listed in the Marine 2 (Conservation) Management Area:

- (a) Noise generated as a result of activity within the coastal marine area shall comply with the following standards:*

- (i) *the activity shall not cause excessive noise as defined in section 326 of the Resource Management Act; and*
- (ii) *any construction or maintenance activity near coastal subdivisions or other urban areas shall comply with the noise standards of the district council which is responsible for the use of the adjoining land.*

The proposed works will take place over a short period of time and, given the distance from adjacent properties that are not in the ownership of the applicant, it is considered that these works will not result in any excessive noise experienced by those properties.

- (b) *All lighting associated with activities in the coastal marine area shall not by reason of its direction, colour or intensity, create:*
 - (i) *a hazard to navigation and safety; or*
 - (ii) *a hazard to traffic safety on wharves, ramps, and adjacent roads; or*
 - (iii) *a nuisance to other users of the surrounding coastal marine area or adjacent land.*

Any lighting to be provided will be limited to low wayfinding lights on the jetty and downlighting on the pontoons to ensure the safety and convenience of users.

- (c) *Discharges to water shall, after reasonable mixing, comply with the relevant receiving water quality standards and shall not contain any contaminants which could cause:*
 - (i) *the production of conspicuous oil or grease films, scums or foams, or floatable or suspended materials.*
 - (ii) *any conspicuous change in the colour or visual clarity of the receiving waters.*
 - (iii) *any emission of objectionable odour.*
 - (iv) *accumulation of debris on the foreshore or seabed underlying or adjacent to the discharge point.*
 - (v) *any significant adverse effects on aquatic life or public health.*

There will be no permanent discharge to water. Minor discharges to water during the construction processes have been assessed in the appended ecological report, and it is considered that the methodologies to be employed during the construction process will ensure any effects on water quality as a result of discharge can be considered to be no more than minor.

- (d) *Any modification of the contour of the foreshore caused during any authorised construction or maintenance activity other than dredging shall be restored as soon as practicable after the completion of the construction or maintenance activity.*

There will be a minor modification of the foreshore resulting from the activity, however it is intended that the rip rap hard protection structure at the base of the jetty will be built within the intertidal to a level at the same height of the embankment. While there will be of necessity some disturbance of the foreshore this will be of short duration and will be restored as soon as the wall is in place.

- (e) *Unless expressly authorised to do so by a coastal permit, structures within the coastal marine area shall not unduly impede safe navigation within natural drainage channels or unduly restrict the flow of flood waters within such channels.*

The proposal will not impede navigation within the bay or impede the flow of water from the land into the bay. In particular, as attested by the operator's statement at Appendix 4 the use of the jetty be accomplished without impeding other vessels within the identified anchorage.

- (f) *Discharges of contaminants into air shall not:*
 - (i) *Result in the discharge of black smoke apart from coal, oil or diesel burning equipment for a period of up to 15 minutes from startup from cold, or for soot blowing.*
 - (ii) *Result in any offensive or objectionable odour, or any noxious or dangerous level of gases.*

- (iii) *Result in a discharge to air of offensive or objectionable dust.*
- (v) *Result in concentrations of air pollutants that exceed as a minimum the National Ambient quality guidelines, May 2002.*

Any discharge of contaminants to air will be confined to exhaust emissions from machinery used during the construction and dredging activity.

Section 32.1 contains a number of general criteria which are applied to consideration of applications for discretionary applications within all marine management areas. Those of relevance to the proposal are evaluated below:

- 3. *The extent to which the proposal will add to the cumulative adverse effects of use and development on the coastal environment, including those associated with similar existing uses or developments within the same locality.*

There are no other similar uses within the part of the bay such that the proposal will lead to cumulative effects.

- 3. *The extent to which the proposed activity is consistent with the planning provisions of the adjacent land (where there are associated land-based requirements).*

The adjacent land is zoned General Coastal in the operative Far North District Plan. This zone allows for the development of the adjacent sites for residential use as a permitted activity, subject to certain standards. The proposal does not seek consent for any land-based structures or activities.

- 7. *The extent to which the proposed use or development will maintain or enhance public access to and along the coastal marine area, or to land, with consideration being given to the adverse effects such access would have on the natural character of the coastal environment.*

The proposal will not alter the ability of the public to access the CMA and its landward margin. It is important to note that public access is only available to this bay from the water as the landward development is essentially “gated” such that public access from the land is not available. To the extent that the jetty will be available for the use of the applicant’s customers and the boating community, it will enhance public access to this part of the coast.

8. *The extent to which the proposed activity will maintain or enhance recreational opportunities in the coastal marine area or on adjacent land.*

The proposed activity will enhance the ability to access the coastal marine area for recreational purposes for Explore’s customers.

9. *The extent to which the proposal may require dredging, reclamation, impoundment, and/or foreshore protection works and structures, and the likely effectiveness of any provisions to avoid, mitigate, or remedy actual or potential adverse environmental effects caused by such activities.*

The proposal does not include dredging. While a small revetment will be formed with rip rap rock at the landward end of the jetty, this is intended to protect the embankment at MHWS from erosion during storm events.

10. *Any effects of the proposed activity on those in the neighbourhood and, where relevant, on the wider community, including any socio-economic and cultural effects.*

The adjacent land is wholly within the ownership of the applicants and there will be little or no discernable effect beyond this land. While there are several urupa and sites of significance to iwi landward of the proposed jetty site these are protected through conditions that apply to the recently consented subdivision.

11. *The effect of the proposed activity on the natural character of the site or area within which the activity is proposed and the measures to be undertaken to ensure that natural character will be preserved, particularly in relation to:*

- (a) the topography or bathymetry within the site or area;*
- (b) the natural substrate composition within the site or area;*
- (c) the natural water and sediment movement patterns;*
- (d) the biodiversity of the site or area;*
- (e) the biological productivity of the area;*
- (f) patterns of distribution and abundance of aquatic plants and animals within the site or area;*
- (g) natural migration or movement of fish and other mobile species.*

The proposal will result in little or no modification of the bathymetry within the vicinity of the jetty and pontoon, and for the reasons set out in the appended reports, this is not anticipated to change in any more than a minor way the coastal processes in the bay or adversely affect the ecological characteristics and biodiversity of the locality.

- 13. Where the proposed activity is situated near an identified area of outstanding landscape value, as identified in section 8 of this Plan, the extent to which the proposed activity will compromise the landscape values of that area.*

While the adjacent land has been identified as part of an Outstanding Natural Landscape, it exhibits a limited suite of the natural values identified in the Landscape Assessment worksheet for the ONL. For this reason, and those set out above, it is considered that the landscape values of this area have been compromised to the extent that any remnant values are largely derived from the two headlands that enclose the bay rather than the unremarkable topography of the hills landward of the site that have been used for silviculture. It is considered, therefore, that the proposal will not degrade the residual landscape values of the Cove.

- 23. The location of the proposed activity in relation to navigation channels, ski lanes, and protected anchorages and the extent to which the proposed activity will adversely affect the use of these areas.*

The outer part of Omakiwi Cove subject of the application is identified as a regionally significant anchorage as identified in Plate 2 above. The jetty and pontoon are well removed

from the area identified such that it will not affect boating traffic using the anchorage area. While a ferry approaching the bay may have to traverse the anchorage it is considered that there is sufficient space within the Cove for this not to disrupt the use of the Cove for recreational boating (see operator's statement at Appendix 5). Further, the relative shallowness of the upper reaches of the Cove around the location of the jetty renders it unattractive as an overnight or short-term anchorage such that there will not be a conflict between use of the proposed jetty by Explore vessels and recreational boating activity in the bay.

In summary it is considered that the proposal is able to meet the relevant performance standards in the RCPN.

6.0 The Proposed Regional Plan for Northland

The PRPN was notified on September 6 2017 and at the time of lodgement of this application appeals had been lodged but a number were yet to be resolved. Accordingly, it is considered that the relevant provisions of this instrument must be considered to have some weight in the assessment of this application but are not determinative. An assessment of the relevant provisions of the PRPN has been undertaken and is set out below.

The activity status of the elements of the proposal that require consent under the PRPN are essentially the same as that under the RCPN as detailed above. The location is within the General Marine Zone of the PRPN and is outside any significant ecological area but is within that part of the outer Bay of Islands identified as having high natural character in the PRPN maps.

The introduction to the PRNP states that it does not include all matters that are relevant to consideration of applications for resource consents and that reference must be made to higher level provisions contained in the Regional Policy Statement and national policy statement. Accordingly an assessment has been undertaken with respect to the NCPS above.

Those additional policy matters contained within the PRPN that are relevant to the proposal are assessed below. All references to the provision of the PRPS are to the Appeals version of this instrument dated December 2022.

Section D.1 of the PRNP contains particular policies that address potential effects on Tangata Whenua and their taonga. Those that are relevant to the proposal are addressed below.

Clause D.1.1 requires that:

A resource consent application must include in its assessment of environmental effects an analysis of the effects of an activity on tāngata whenua and their taonga if one or more of the following is likely:

- 1) adverse effects on mahinga kai or access to mahinga kai, or*
- 2) any damage, destruction or loss of access to wāhi tapu, sites of customary value and other ancestral sites and taonga with which Māori have a special relationship, or*
- 3) adverse effects on indigenous biodiversity in the beds of waterbodies or the coastal marine area where it impacts on the ability of tāngata whenua to carry out cultural and traditional activities, or*
- 4) the use of genetic engineering and the release of genetically modified organisms to the environment, or*
- 5) adverse effects on tāiapure, mataitai or Māori non-commercial fisheries, or*
- 6) adverse effects on protected customary rights, or*
- 7) adverse effects on sites and areas of significance to tāngata whenua mapped in the Regional Plan*

(refer / Maps | Ngā mahere matawhenua

Section D.1.2 sets out the matters to be addressed in the analysis of the effects of an activity on tangata whenua and their taonga.

The assessment of effects on tangata whenua arising from the proposal was initiated by Initial contact with Ngati Patukeha as the hapu acknowledged as having mana whenua over Omakiwi Cove. Consultation was undertaken with Ngati Patukeha as set out in

Section 9 below. This includes site visits with representatives of Ngati Patukeha and the provision of plans and drawings and technical reports provided to the iwi representatives. While Ngati Patukeha have yet to provide a formal response as explained below they have not raised any issues in terms of the matters set out in Clause D.1.1.

Clause D.5.13 is to:

Manage Regionally Significant Anchorages (refer [I Maps](#) | [Ngā mahere matawhenua](#)) by:

- 1. 1) recognising the value of Regionally Significant Anchorages to the boating community as

anchorages that are critical refuges during bad weather, and*
- 2. 2) avoiding [structures](#) that have adverse effects on the ability of [vessels](#) to anchor in a Regionally Significant Anchorage, except [structures](#) installed to reduce the environmental impact of repetitive [anchoring](#) and that are freely available for public use.*

In this case the proposed jetty does not extend into the area that is identified as a Regionally Significant Anchorage and thus will not reduce the viability of the Cove as a place of shelter for vessels during bad weather. Moreover, the jetty will be available for public use, provided this does not impinge on the use of the jetty by the applicant. Clause D.6.1 addresses the appropriateness of Hard Protection Structures and states that:

Priority will be given to the use of non-structural measures over the use and construction of hard protection structures when managing hazard risk.

New [hard protection structures](#) may be considered appropriate when:

- 1) alternative responses to the hazard (including soft protection measures, restoration or enhancement of natural defences against coastal hazards and abandonment of assets) are demonstrated to be impractical or have greater adverse effects on the environment, or*

- 2) *they are the only practical means to protect:*
- a) *existing or planned **regionally significant infrastructure**, or*
 - b) *existing **core local infrastructure**, or*
 - c) *concentrations of existing vulnerable development, and*
 - d) *they provide a better outcome for the local community, district or region, compared to no **hard protection structure**, and the works form part of a long-term hazard management strategy, which represents the best practicable option for the future.*

In this situation it is considered that the rock revetment proposed is the most practical measure to prevent erosion of the embankment at the base of the jetty

Clause D.6.2 addresses the design of new hard protection structures as follows:

*New **hard protection structures** must:*

- 1) be located as far landward as possible in order to retain existing natural defences against coastal hazards as much as possible, and*
- 2) be designed and constructed by a **suitably qualified and experienced professional**, and*
- 3) incorporate the use of soft protection measures where practical, and*
- 4) be designed to take into account the nature of the coastal hazard risk and how it might change over at least a 100-year time-frame, including the projected effects of a sea level rise, using the latest national guidance and best available information.*

The rock revetment at the base of the jetty comprises a new hard protection structure. The length of new structure will be placed along the approximate alignment of MHWS. The design and construction of the structure will be undertaken by an engineer experienced in

coastal structures. This construction technique has been used successfully in other locations within the Bay of Islands as a defence against coastal hazards. As far as can be determined from the NRC natural hazard mapping the proposed revetment is within the 100 year coastal flood event line, however it will be a permeable structure, and there are no buildings or other structures adjacent to the proposed revetment. Accordingly, it is considered that account has been of this coastal hazard risk.

7.0 The Regional Policy Statement for Northland

The RPSN contains a broad suite of policy statements that must be considered when assessing applications for coastal permits. Those that are relevant to the proposal are addressed below.

Policy 4.1 seeks to protect important indigenous ecosystems and habitats and maintain the diversity of indigenous species. The RPS states that this policy reflects Policy 11 of the New Zealand Coastal Policy Statement 2011, which applies in the coastal environment, and takes into account the decision of the Supreme Court in *King Salmon (Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd)* [2014] NZSC 38. Policy 4.4.1(1), in particular, requires the avoidance of adverse effects of development in the coastal environment.

The assessment of ecological effects report concludes the effects of the proposal on benthic habitat values and ecosystems will be transitory and no more than minor such that this policy direction is achieved.

Policy 4.5 sets out the regime in the RPS for Identifying the coastal environment, natural character, outstanding natural features, outstanding natural landscapes and historic heritage resources.

This section of the RPS states that the areas identified in the Regional Policy Statement - Maps will form Northland's:

- (a) *Coastal environment;*

- (b) *High and outstanding natural character areas within the coastal environment (except where the coastal marine area beyond harbours / estuaries remain unclassified); and*
- (c) *Outstanding natural features and outstanding natural landscapes.*

The RPS states that this policy assists in the implementation of section 6 of the Act and the New Zealand Coastal Policy Statement 2010 (NZCPS) by:

- *Identifying the coastal environment;*
- *Identifying high and outstanding natural character areas (in the coastal environment); and*
- *Identifying outstanding natural features and landscapes.*

As stated in section 4 above the land above the site is identified as an outstanding natural landscape or having high natural character in the RPS maps. The explanation to policy 4.5.2 states that:

Regional Policy Statement Maps of high and outstanding natural character, outstanding natural features and outstanding natural landscapes identify those areas where caution is required to ensure subdivision, use and development is appropriate. They have been developed using the best information available and ground tested where practicable.

This policy recognises that despite best endeavours, the maps may not always be accurate at individual property or site-scale. Therefore qualified site or property-specific assessment at greater resolution and accuracy may be able to demonstrate that the values are not present or are of less (or more) significance than depicted on the maps or that a lesser (or greater) degree of sensitivity and / or caution is warranted in relation to specific proposals.

Further, the explanation to Policy 4.5 states that this policy contemplates refinement of the maps in accordance with Method 4.5.4, following further detailed assessment, provided the change is undertaken using the attributes and criteria listed in Appendix 1. There has been no refinement of the maps relevant to this proposal subsequent to notification of the RPS.

In order to accurately assess the effects of the proposal on the landscape at this location the appended visual, natural character and landscape effects assessment has undertaken a detailed assessment in terms of the criteria cited above as contemplated by the explanation to Policy 4.5. The conclusion of this assessment is that the natural landscape values are highest around the enclosing headlands of the Cove with the currently denuded hinterland hills making a lesser contribution to these values.

Policy 4.8 states that:

(1) Only consider allowing structures, the use of structures and other activities that occupy space in the common marine and coastal area where:

- (a) They have a functional need to be located in the common marine and coastal area, unless the structure, use or activity is consistent with Policy 4.8.1(2);*
- (b) It is not feasible for the structure, the use or the occupation of space to be undertaken on dry land (land outside the common marine and coastal area), unless it is consistent with Policy 4.8.1(*
- (c) It is not feasible to use an existing authorized structure; and*
- (d) The area occupied is necessary to provide for or undertake the intended use.*

As explained above there is a functional need for the proposal to be located within the common marine area with a facility that has sufficient berthage capacity, with, as the appended technical reports demonstrate, minimal environmental effects.

8.0 Assessment of Environmental Effects

Any assessment of environmental effects must be informed by a consideration of the permitted baseline. Section 104(1) of the Act specifically requires that:

When considering an application for resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to:

- a) Any actual and potential effects on the environment of allowing the activity; and,*
- b) Any relevant provision of (vi) a plan or proposed plan*

Section 104(2) of the Act also states that:

When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if the plan permits an activity with that effect.

Section 104(2) formalises and gives statutory weight to the consideration of the baseline of effects from permitted activities on a site. The purpose of the baseline is to isolate and make effects of those activities on the environment that are either permitted by the Plan or have already been consented to irrelevant. Such effects cannot then be taken into account when assessing these effects of a particular resource consent application (Queenstown Lakes District Council v Hawthorn Estate Limited (Court of Appeal, CA45/05, 12 June 2006, William Young P, Robertson and Cooper JJ)).

The application of the permitted baseline in considering the effects of a proposed activity has been clearly set out by the Environment Court as follows:

“It means that in considering the adverse effects of a proposed activity the consent authority should not take into account of any adverse effects which do not exceed adverse effects which would be produced by three possible categories of activity. They are, first, what lawfully exists on the site at present, Secondly, activities (being non-fanciful activities) which could be conducted on the site as of right; ie without having to obtain a resource consent. Thirdly, activities which could be carried out under a granted but as yet unexercised resource consent.”²

In this context the actual or potential effects on the environment of the proposal are considered to comprise the following:

- *Visual, Natural Character and Landscape Effects*

² See *Iloyd v The Gisborne District Council and Foon*, W106/2005

- *Amenity Effects*
- *Effects on Natural processes*
- *Effects on habitat values*
- *Effects on navigation and public use of the CMA*

These effects are discussed below.

Visual, Natural Character and Landscape Effects

The landscape and visual effects of the proposal have been carefully assessed (see Appendix 3) and the conclusion of the assessment, as confirmed by the attached photos is that the proposal will not disrupt the values of the surrounding coastal landscape and will not result in adverse visual effects. In the case of this application, the baseline of effects is established by the forestry activity on the adjacent land and the dwellings and other domestic infrastructure that may be established as permitted activities within the adjacent subdivided land. Accordingly, the visual and landscape effects of this application must be assessed in the context of an environment that is the subject of these consented and established activities. The assessment at Appendix 3 considers the proposal in this context and concludes that such effects are acceptable.

The assessment at Appendix 3 also assesses the effects on views from the existing dwellings located on the points that overlook the Cove. This assessment concludes that because lines of sight from these dwellings are limited, any such effects will be inconsequential.

Amenity Effects

The Act defines amenity values as:

“Those natural or physical qualities and characteristics of an area that contributes to peoples’ appreciation of its pleasantness”

The long-term effects of the proposed works on the amenity of the coastline are considered to be acceptable as measured against the objective and policy framework of the relevant planning instruments. As the photos in the visual assessment demonstrate, when viewed

from the water the resultant modification of the shoreline will not be apparent except from the riparian margins of the bay and to seaward where it will be viewed in conjunction with anchored boats in the bay, and existing and permitted buildings land-based infrastructure. Moreover it is considered that the proposal will contribute to the ability of people to appreciate the Cove and its riparian margins.

The assessment of ecology and water quality effects notes that there will only be a temporary and localised change in the water in the immediate vicinity of the dredging activity and that this will dissipate rapidly after the activity has ceased. It is not anticipated that any odour or debris will be generated by the activity that will result in a reduction in local amenity.

While the construction operations will involve a barge and other machinery operating within the Cove, this will be of relatively short duration. All machinery will be operated within the noise limits of the relevant New Zealand Standard for construction noise NZS 6803: 1999.

While vessels using the jetty will be required to operate in proximity to boats using the Cove as an anchorage, this situation is not dissimilar to that which prevails elsewhere in the Bay of Islands, and in other bodies of water that are popular for recreational boating such as the bays and harbours within the Hauraki Gulf and the Marlborough Sounds. By and large the recreational boating community is well used to sharing such waters with commercial operators.

Furthermore, it is considered that the proposal has the potential to have a positive amenity effect in that will provide access to the foreshore from boats anchored within the Cove and a sheltered landing point in the outer Bay of Islands in emergencies.

Natural and Physical Processes

For the reasons set out in the appended assessment of ecological effects report it is considered that the proposed works will have a minimal effect on the natural and physical processes of the CMA and the benthic environment. Overall it is considered that any effects on natural and physical processes will be temporary and of short duration and can be appropriately mitigated.

Effects on Habitat Values

The ecology effects report notes that there will be minimal effect on the ecology of the Bay, provided proper procedures are observed to avoid effects.

Navigation and Public Use

The proposed development will have minimal effect on the use and enjoyment of the coastal marine area by the public or other users. The site is sufficiently removed from the identified significant anchorage and the vessels using this part of the Cove. There is no public access to the bay from the land as the larger development is “gated” with no public road or paths leading to the foreshore. As a consequence there is little or no public use of the Bay that will be impaired by the proposal.

9.0 Consultation

Consultation with Ngati Patukeha was initiated in 2021 with a site visit by a hapu representative. Communication via intermittent emails and phone calls following that visit culminating in second site visit in March 2022. At that visit the potential for cooperation between the hapu and Explore in providing a cultural experience for passengers at the Cove was discussed. The hapu representative at that site meeting indicated that a full meeting of the hapu was necessary to consider the wider implications of the proposal and it is expected that a formal response would be provided following this meeting.

10.0 Conclusion

The applicant seeks consent to activities in the CMA in order to undertake construction of a jetty and associated pontoons and to occupy the common marine and coastal area. The

nature of the proposal is such that it requires discretionary consent to the proposed activities in terms of the provisions of the RCP and PRPN.

The proposal is able to demonstrate that the effects of the activity are confined to a localised part of Omakiwi Cove and the adjacent property owned by the applicant.

We conclude that the proposal merits consent and recommend it to the Northland Regional Council for approval subject to such conditions as considered appropriate.

C O Burn, MA DipTP MNZPI
Planning Consultant

Appendix 1:

Appendix 2:

Appendix 3:

Appendix 4: