

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

**I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKĀURAU**

Decision [2023] NZEnvC 138

IN THE MATTER OF appeal under s 120 of the Resource
Management Act 1991

BETWEEN MCCALLUM BROS LIMITED

(ENV-2022-AKL-121)

(ENV-2022-AKL-220)

Appellant/Applicant

AND AUCKLAND COUNCIL

Respondent

AND PAKIRI G AHU WHENUA TRUST
(and others set out in Annexure C)

Section 274 parties

Court: Judge J A Smith
Judge A H C Warren
Commissioner S Myers
Commissioner K Prime
Special Advisor R Howie

Hearing: 19 – 21 June 2023, 27 June 2023, 30 June 2023
Last case event: 30 June 2023

Appearances: J MacRae and N Hopkins for McCallum Bros Limited
L E Bielby, K A Fraser and L M Leyland for Auckland Council
L Black for Pakiri G Ahu Whenua Trust, S Wikaira, and R
Greenwood
J M Pou and T M Ulrich for Manuhiri Kaitiaki Charitable Trust
L Sutherland and D V van Mierlo for the Director-General of
Conservation
L Muldowney and S Thomas for Environmental Defence Society
J C Campbell and N R Williams for Friends of Pakiri Beach
Incorporated
K R M Littlejohn and S Hiew for Mangawhai Harbour
Restoration Society Incorporated
M Downing and P A Anderson for Royal Forest and Bird
Protection Society of New Zealand Incorporated



V N Morrison-Shaw for Te Whanau o Pakiri
C T Patterson for New Zealand Fairy Tern Charitable Trust
D E Clapshaw
L Barton for Kaipara District Council
H Atkins and A Scharing for Te Arai Group

Date of Decision: 4 July 2023

Date of Issue: 4 July 2023

DECISION OF THE ENVIRONMENT COURT

Mahia i runga i te rangimarie me te ngākau māhaki.¹

A: The Environment Court grants an interim/temporary consent for the identified activities within parts of the offshore areas as marked in Appendix 5 to Annexure B, this being a sub-area of the application area. The Resource Consent authorises the Consent holder to:

- (1) Remove sand from and disturb the seabed of the common marine area by way of dredging under section 12(1), 12(2)(b) and 12(3) of the Resource Management Act 1991 (RMA); and
- (2) Discharge excess seawater, shell and sand from dredging activities into coastal water under section 15 of the RMA.

B: The Court records:

- (1) this is a temporary/interim consent pending the determination of appeals, based upon that before the Environment Court (ENV-2022-AKL-000121);
- (2) it has granted the interim/temporary consent on the basis of agreement by all parties to the appeal. This is without prejudice to the position of any party on the appeal itself;
- (3) simultaneous with the grant of this consent, the applicant abandons an appeal in respect of the inshore area (ENV-2022-AKL-000220) and

¹ With a peaceful mind and respectful heart, we will always get the best results.

acknowledges that the inshore consent is now at an end;

- (4) that this consent is interim/temporary and will expire on the earlier of
 - (a) determination of the appeals relating to the offshore consent (ENV-2022-AKL-000121), and this may include determination of the appeal/s from the Environment Court decision;
 - (b) three years from the date of either notification of the utilisation of the current offshore consent or 30 July 2023 whichever comes first;
 - (c) the removal of 230,000m³ in total, at a maximum rate of 76,000m³ in any 12-month period, and 7,500m³ in any month;
- (5) it is explicitly acknowledged that this interim consent has no rights of renewal attached and it has expressly been granted pending determination of the applicants' appeal for offshore consent, with the consent of all parties.
- (6) by consent and pursuant to section 108 and 108AA of the RMA, this Resource Consent includes and is subject to the further conditions annexed hereto in Annexure B, Schedule 1.

C: The Court records the applicant has offered the following Augier conditions in addition to those already noted:

- (1) neither MBL or any associated entity will seek to utilise or obtain consent for inshore sand removal until determination of the offshore appeal (if at all);
- (2) neither MBL or any associated entity will seek to vary or extend this interim/temporary offshore consent beyond the terms on which it is granted;
- (3) MBL or any associated entity acknowledges that it will not exercise any rights, if such exist, under s 124 RMA in respect of this interim/temporary offshore consent.

D: Orders are made accordingly, and terms of this order shall attach to the conditions of consent and this decision shall be attached to the conditions of consent and form part of those conditions to both give background to the granting of the consent and the constraints upon it.

- E: The question of costs is adjourned for resolution after the substantive offshore appeal has been heard and determined.
- F: The Court records that the application for adjournment by MBL and applications for strike out by both Ngati Manuhiri and Friends of Pakiri Beach are accordingly resolved and therefore formally withdrawn before the Court. Costs on those issues may form part of any substantive application for costs in due course.

REASONS

Introduction

[1] These proceedings originally concerned six appeals filed in relation to applications by McCallum Bros Limited (**MBL**) relating to applications for consents authorising sand extraction and associated discharges in the coastal marine area in the Mangawhai-Pakiri Embayment. We refer to these as the **offshore**, **midshore**, and **inshore** applications.

[2] Hearing of the appeals was set to commence on 19 June 2023. Prior to commencement of the hearing, on 7 June 2023, MBL filed:

- (a) a memorandum to advise the Court that it **intended** to withdraw its midshore application; and
- (b) an application for adjournment of its inshore application.

[3] These were considered in the week commencing 19 June 2023.

Midshore application

[4] The midshore application has been the subject of an Environment Court decision issued 22 June 2023.² The midshore application was formally recorded as withdrawn.

² *McCallum Bros Limited v Auckland Council* [2023] NZEnvC 130.

The appeals by Manuhiri Kaitiaki Charitable Trust,³ Friends of Parkiri Beach Incorporated⁴ and Director-General of Conservation⁵ were allowed. The appeals by MBL regarding the midshore consent conditions was refused.⁶

Outstanding appeals

[5] This leaves two outstanding appeals both from MBL, one regarding the offshore application⁷ the other regarding the inshore application.⁸ Both appeals are by MBL against refusal of consent.

[6] The inshore consent has expired but continues to be utilised by MBL relying on s 124 of the Act. This permits extraction up to 76,000m³ per annum.

[7] The offshore consent expires in 2023 but is subject to a cumulative maximum take of 2,000,000m³. That maximum will be exhausted within the next few weeks. Given the volumetric limit, s 124 RMA does not give rights to take further volume and a new consent is required.

[8] Both consent applications were refused at first instance and MBL appealed both refusals. There are a number of s274 parties and the Auckland Council who oppose the Appeal.

Application for adjournment of Inshore application

[9] MBL's application for an adjournment of its Inshore appeal⁹ was made on the basis that the application for consent will be withdrawn following a final determination of its Offshore appeal¹⁰ regardless of the outcome of the Offshore appeal. At that point MBL would lose or surrender its rights to continue to extract

³ ENV-2022-AKL-000218.

⁴ ENV-2022-AKL-000232.

⁵ ENV-2022-AKL-000234.

⁶ ENV-2022-AKL-000219.

⁷ ENV-2022-AKL-000121.

⁸ ENV-2022-AKL-000220.

⁹ ENV-2022-AKL-000220.

¹⁰ ENV-2022-AKL-000121.

sand from the inshore under s 124 RMA.

[10] The parties were asked to respond by 9 June 2023. Parties responded, with the majority opposed to the adjournment of the Inshore appeal, suggesting instead that the appeal be struck out or withdrawn. The Court received formal applications for strike out from Manuhiri Kaitiaki Charitable Trust and Friends of Pakiri Beach Incorporated.

[11] On 12 June 2023, a follow-up memorandum was filed by MBL, consolidating its position regarding the application for adjournment and responding to various concerns raised by the parties. We conclude the memorandum was unclear in a number of respects and this was a theme of the opposition parties' submissions.

[12] The interlocutory applications were set down for hearing in the week of 19 June 2023.

Hearing 19 – 20 June 2023

[13] The week of 19 June 2023 was used to discuss the adjournment and strike out applications and to address other matters. There were relatively robust conversations between the Court and the parties as to how to move forward. Multiple proposals were put forward and discussed.

[14] On 20 June 2023, MBL introduced a new proposal for discussion. This was based on discussions with Mr Patterson for the Fairy Tern (Tara Iti) Trust. MBL proposed a temporary consent regime in part of the proposed offshore extraction area. The proposal is essentially to shift the ability to take 76,000 cubic metres annually under the Inshore consent, operating under s 124 RMA, to the offshore, and to limit it to areas that have been subject to extraction in the past.

[15] Mr Patterson was clear that his clients focus is on reducing risk to Tara Iti one of the world's rarest bird species (less than 40 birds and less than 10 pairs). They saw benefits in moving the activity to at least 2km from shore as significantly reducing the prospects of Tara Iti disturbance, particularly in breeding and fledging periods.

[16] MBL had circulated the proposal to other parties who were able to comment in general terms.

Proposed interim/temporary Offshore consent

[17] On 20 June 2023 MBL filed a memorandum setting out details of its proposal for temporary Offshore consent.

[18] The intention of the grant of a temporary consent is that it would enable MBL to, immediately after the grant of the temporary consent and upon reaching its maximum volume under the existing offshore consent, surrender its existing inshore consent and withdraw its inshore appeal and commence extraction of sand under the interim/temporary consent.

[19] The key elements of the proposal were:

- (a) the interim consent is without prejudice to the position of parties on appeal and is subsumed within the full appeal when finally determined. It thus has no life as a consent subject to s 124 RMA for example;
- (b) an interim extraction volume of 76,000m³ annually. This volume is to be calculated from the date on which MBL exhausts the total volume limit for its existing Offshore consent. MBL's remaining allowance of sand under its existing Offshore consent was approximately 20,000m³ at the beginning of June 2023. This amount will have reduced to approximately 12,000m³ by the end of June 2023 and if the rate of extraction is temporarily increased, could be exhausted, allowing for some poor weather conditions, by the end of the end of July 2023. Commencement of extraction under the temporary consent would then occur;
- (c) MBL's existing inshore consent would be surrendered, and its inshore appeal withdrawn contemporaneously with the interim/temporary consent being granted. No further extraction would occur or consent be sought for the inshore area by MBL until the appeals are finally determined;

- (d) extraction is to be limited to the two extraction areas approved under the existing offshore consent referred to as Area 1 and 2 respectively in the existing consent. The amended map attached as appendix 5 to the Interim/Temporary consent shows the location of the approved areas shaded in grey by reference to GPS points. As these areas are already subject to extraction and have been for many years, they would not require pre-approval by the Council under the conditions of consent proposed for a permanent offshore consent. This is subject to ensuring at least 2km separation to shore and more than 25m depth as well as frequency of extraction;
- (e) the proposed temporary extraction area be at least 2km from the shore for its entire length;
- (f) volumes extracted under the temporary consent are to be deducted from the 2,000,000m³ total volume limit proposed in the Offshore application, if that is granted;
- (g) the temporary consent is to terminate on the final determination of all appeals in relation to MBL's substantive Offshore application i.e., on the same basis as applies to existing consents under s 124(3) RMA; and
- (h) conditions on the temporary consent are to be based on the conditions currently proposed for the permanent offshore consent with appropriate amendments.

[20] The proposal is advanced on the basis that it would result in the early termination of all extraction from the inshore and would bring MBL's inshore s 124 RMA rights to an early end.

Hearing 21 June 2023

[21] On 21 June 2023 the Court and the parties undertook a discussion of the proposal. The parties were then given time to discuss amongst themselves the conditions of the interim/temporary consent.

[22] It was agreed by all parties:

- (a) that they would agree to such an arrangement given the risk to inshore areas and Tara Iti even though tangata whenua, and some other s 274 parties remain opposed to any consents within the embayment at all
- (b) that the final wording of the interim/temporary consent and its conditions need to be settled;
- (c) the parties wished to see if these could be agreed by consent in the first instance; and
- (d) in the event they could not resolve all issues, they acceded to the Court determining any disputed wording.

[23] This agreement gave the Court confidence that issues could be reduced to a hearing on the offshore consent, provided the terms of the agreement were resolved promptly.

[24] The parties sought a short period to advance consideration of the interim/temporary consent and condition wording and the hearing was adjourned to 27 June 2023.

Hearing 27 June 2023

[25] MBL filed a memorandum on 27 June 2023 to update the Court on the progress the parties had made in agreeing conditions of consent on the interim/temporary offshore consent intended to replace MBL's continuing rights of sand extraction pursuant to its existing Inshore consent under s 124(3).

[26] MBL advised that feedback and/or suggested amendments had been received from:

- (a) Friends of Pakiri Beach Incorporated;
- (b) Damon Claphsaw;

- (c) Auckland Council;
- (d) Te Whanau o Pakiri Incorporated;
- (e) Manuhiri Kaitiaki Charitable Trust;
- (f) Royal Forest and Bird Protection Society of New Zealand Incorporated;
- (g) Mangawhai Harbour Restoration Society Incorporated;
- (h) Department of Conservation;
- (i) Environmental Defence Society;
- (j) Te Uri o Hau Settlement Trust; and
- (k) Pakiri G Whenua Trust and Sherie Wikaira.

[27] MBL provided the Court with a clean version of the amended conditions reflecting amendments suggested by Auckland Council, Department of Conservation and Friends of Pakiri Beach Inc.

[28] MBL advised that it had received a significant number of amendments by other parties, but they had been unable to respond fully to the requests in the time available. A number of the requests overlapped with points previously agreed by MBL. MBL had provided the 27 June 2023 version of conditions so the Court and parties could work off a common version for further discussions.

[29] MBL was of the view that most significant issues raised by the parties had been largely resolved. The matters which remained unresolved were generally matters of detail. The exception was the membership, role and primary functions of the proposed supervisory committee.

[30] Other parties had been advancing matters in the interim and a further set of conditions was filed that had been approved by Ngāti Manuhiri and Te Whanau o Pakiri. A number of other parties either approved of this set or were working through them.

[31] The Court reconvened on 27 June 2023 to discuss progress with the conditions. It was clear from this discussion that some matters remained outstanding between the parties and further time was needed to continue discussions. The main concerns appeared to be around wording of conditions for the 2km distance, calibration, and the supervisory group.

[32] The Court granted a request by the parties to see if matters could be fully resolved and issued a Minute annexed hereto and marked **Annexure A**.

Hearing 30 June 2023

[33] A joint memorandum of counsel was filed on 29 June 2023. The memorandum advised that the parties had undertaken extensive discussions on various amendments proposed to the conditions of the consent. As a result of those discussions, significant areas of further agreement had been reached. There were relatively few issues remaining to be finally agreed.

[34] On 30 June 2023, MBL filed a version of the conditions with amendments made after business hours overnight. Not all of the parties had seen these conditions.

[35] Also on 30 June 2023, Friends of Pakiri Beach identified three matters requiring attention; Appendix four – extraction reporting cells and monitoring cells, Appendix five – extraction area, and conditions 34 and 35. These were supported by the Fairy Tern Charitable Trust.

[36] The Court reconvened on 30 June 2023. The Court made some suggestions and heard from the parties. This included Augier conditions being offered and agreement of all parties to a consent order being made.

[37] The consent to this approach is unanimous and we resolve wording issues and area of extraction later in this decision.

Legal framework

[38] Section 116(1) RMA states:

Except as provided in subsections (1A), (2), (4) and (5), or section 116A and 116B, every resource consent that has been granted commences–

- (a) when the time for lodging appeals against the grant of the consent expires and no appeals have been lodged; or
- (b) when the Environment Court determines the appeals or all appellants withdraw their appeals–

unless the resource consent states a later date or a determination of the Environment Court states otherwise.

[39] Section 116 RMA cannot apply on its terms given that no consent was granted to the offshore application.

[40] Section 279 RMA states:

- (1) An Environment Judge sitting alone may make any of the following orders:
- (b) an order that is not opposed:

[41] This is a broad unfettered power which must be exercised for the purposes of the Act as stated and expanded on in Part 2. Clearly all parties must also agree to any interim order. This provides flexibility to deal with particular issues and outcomes not only by the Judge but by the Court as a whole. No party took a different view to our interpretation of our powers per s 279 RMA.

[42] Here all parties agree there is less risk to the foreshore and Tara Iti with an offshore consent. This Court has had a number of hearings relating to pressures on this nearly extinct species; land based,¹¹ harbour based,¹² freshwater based,¹³ and also broader planning changes. The focus on removing this ongoing risk from inshore extraction motivates the court and parties, including MBL.

¹¹ *Te Arai Coastal Lands Ltd v Auckland Council* [2014] NZEnvC 98.

¹² *Mangambai Harbour Restoration Society Inc v Northland Regional Council* [2012] NZEnvC 232.

¹³ *New Zealand Fairy Tern Charitable Trust v Auckland Council* [2019] NZEnvC 172.

[43] The interim/temporary consent is generally within the scope of the application filed.

Other factors

[44] While some form of interim/temporarily consent would operate as a lesser extent than the application applied for, it nevertheless represents grant of consent, albeit on a temporary/interim basis, than that which was refused at first instance.

[45] Normally the Court would be reluctant to consider such an event but there are a number of exceptional circumstances which encourage us beyond those relating to the environmental matters raised.

[46] The first of these is that the applicant, at the request of the Court, has offered two Augier conditions to the grant of consent. Firstly, that neither MBL or any associated entity will seek to utilise or obtain a consent for the inshore area until the determination of the offshore appeals (if at all). The second is that the applicant nor any associated entity will not seek to vary or extend the interim temporary offshore consent beyond the terms on which it is granted in this decision. Furthermore, MBL acknowledges that the applicants and associated entities will not seek to exercise any rights if such exist under s 124 of the Act. This gives us an increased level of assurance that there is some finality to this matter.

[47] Furthermore, the applicant has offered that the court may record MBL to simultaneously withdraw its appeal in respect of the inshore area and acknowledges that in doing so all s 124 RMA rights are lost, that the appeals are thereby finally determined. The Court is satisfied that it is essentially moving the activity, currently preserved by s 124 RMA, into a less intrusive area where all parties agreed there are less effects.

[48] Nevertheless, this has been a difficult decision for many groups, particularly the tangata whenua groups who oppose any form of sand mining within the embayment. In doing so there has been a considerable level of cooperation between the parties and seeking the best environmental outcome while the substantive offshore hearing

is proceeding. Nevertheless, it would be a pre-condition of the temporary/interim consent that, in addition to the Augier conditions and the surrender of the inshore appeal, it is granted with the consent of all the parties, which has been confirmed several times to this Court.

[49] Furthermore, the authority is an interim or a temporary one only and will expire on the earlier of the following events:

- (a) on determination of the appeals relating to the offshore consent (ENV-2022-AKL-000121). The parties acknowledge that this includes any determination of appeal(s) from the Environment Court decision subject to the upcoming hearing;
- (b) three years from the date on which the applicant notifies full utilisation of its current offshore consent or 30 July 2023 whichever is earlier; or
- (c) the removal of a maximum of 230,000m³ of sand, at a maximum rate of 70,000m³ in any 12-month period and 7,500m³ in any one-month period.

[50] Further in particular it is agreed that the interim consent has no rights of renewal.

[51] The parties also agreed that the interim/temporary consent will be further subject to a set of conditions which are annexed hereto as **Annexure B**.

[52] We conclude that jurisdiction exists to make an interim order by consent notwithstanding no original further consent was granted.

[53] In this case, evidence is largely that there would be less effects in the offshore. The interim/temporary consent is acceptable with conditions applied. Most concerns raised by the witnesses are cultural concerns. Parties have anticipated tangata whenua have involvement in this interim/temporary consent. While this does not answer the cultural concerns, it ensures those issues are front and centre during the operation of this interim/temporary consent. Other concerns such as the distance and closure

depth have been addressed through conditions of consent.

Court's comments

[54] This matter has been discussed broadly between the Court and the parties. The Court sets out some of the key points that arose during discussions below.

[55] All parties have consented to such an arrangement. The interim arrangement is agreed to without prejudice to any parties' position on hearing the substantive offshore appeal.

[56] The temporary consent is being granted to allow progress of the substantive offshore appeal and to reduce any potential effects from the continuation of the inshore consent under s 124 RMA, including effects on Tara iti (fairy tern), amenity effects (such as having a vessel close to shore), and potential effects on the foreshore.

[57] This temporary consent will entirely dispose of any question of s 124 RMA rights in the inshore. On granting the temporary consent, MBL will surrender the inshore application and withdraw their inshore appeal, and MBL will relinquish its rights under s 124 RMA such that all rights to extract in the inshore are gone. It is agreed that s 124 RMA will not apply to the temporary consent.

[58] This temporary consent is not a consent that can be refreshed by a new application. It is only for the purpose of the resolution of these appeals.

[59] One of the features of this application is that it involves an area beyond two kilometres of the foreshore (MHWS) including Te Arai Point and in depths greater than 25 metres. The area of the consent is a sub-area of the full area of consents sought. It has now been identified by GPS coordinates. Furthermore, the applicant has agreed that it will enter this area from the seaward side and is finalising conditions with the parties for such a course.

[60] Issues relating to how volume of sand were weighed was subject to some discussion, and a default position suggested by the Court whereby a full load for each

trip would be assumed unless the applicant produced evidence to the contrary. This matter is covered in conditions 33 - 35.

[61] By the same token, there were concerns relating to the potential take of sand beyond the consent area. This is a major issue for the substantive hearing and there are assertions by s 274 parties which were opposed by the applicant and by the Council. Nevertheless, the Court suggested that it may be possible for the vessels to operate after they have entered the consent area, only within that area. Mr MacRae raised practical difficulties with doing this given the length of the vessel and its trailing dredge arm. He suggested instead that there is now a sensor system which will detect when the dredge is lifted from the ocean floor. This could be utilised to provide regular reports indicating that the dredges operated within the consent area. The parties agreed that they would finalise a condition. The matter is now included within condition 34(e).

[62] There were earlier concerns relating to extraction monitoring conditions and the temporary/interim consent. Beyond the concerns raised by the Court, the parties have provided conditions that will apply to the temporary consent. Officially, there have been concerns about calibration issue which now appears to have been addressed by the discussion that the Court have addressed above. Those are now incorporated in conditions 33 - 35. The issues relating to the supervisory group that would operate in the interim appear to have been resolved and the wording of that has been the subject of considerable discussion between the parties. It is now encapsulated as a mātauranga Māori expert panel and is covered by conditions 51 to 57. There is also a provision for a community liaison group. Although this is somewhat less stringent than this Court might normally impose for final conditions, we accept the temporary nature of this interim consent and the need for a practical approach while matters in dispute are being resolved/while the appeals are being determined.

[63] To that end, parties have engaged in a cooperative way seeking to have pragmatic provisions which are workable in the short term. There has been a high level of cooperation between all parties in achieving this and we consider that the outcome of this has been a considered and balanced approach.

[64] Accordingly, it appears to us that we should grant an interim/temporary consent with a clear statement of the consent that is granted and its limitations. Beyond that there are further conditions which relate to the operation itself which are set out in **Annexure B, Schedule 1**. To the extent some of the conditions repeat provisions of the grant, it is clear that such conditions in **Annexure B, Schedule 1** are subservient to the grant itself. Accordingly, we do not consider it necessary to make further changes to those conditions given the urgency of the matter and the amount of negotiation which has already been engaged.

Grant of an interim/temporary consent

[65] The Environment Court grants an interim/temporary consent for the identified activities within parts of the offshore areas as marked in Appendix 5 to Annexure B, this being a sub-area of the application area. The Resource Consent authorises the Consent holder to:

- (a) Remove sand from and disturb the seabed of the common marine area by way of dredging under section 12(1), 12(2)(b) and 12(3) of the Resource Management Act 1991 (RMA); and
- (b) Discharge excess seawater, shell and sand from dredging activities into coastal water under section 15 of the RMA.

[66] The Court records:

- (a) this is a temporary/interim consent pending the determination of appeals, based upon that before the Environment Court (ENV-2022-AKL-000121);
- (b) it has granted the interim/temporary consent on the basis of agreement by all parties to the appeal. This is without prejudice to the position of any party on the Appeal itself;
- (c) simultaneous with the grant of this consent, the applicant abandons an appeal in respect of the inshore area (ENV-2022-AKL-000220) and acknowledges that the inshore consent is now at an end;

- (d) that this consent is interim/temporary and will expire on the earlier of:
- (i) determination of the appeals relating to the offshore consent (ENV-2022-AKL-000121), and this may include determination of the appeal/s from the Environment Court decision;
 - (ii) three years from the date of either notification of the utilisation of the current offshore consent or 30 July 2023 whichever comes first;
 - (iii) the removal of 230,000m³ in total, at a maximum rate of 76,000m³ in any 12-month period, and 7,500m³ in any month;
- (e) it is explicitly acknowledged that this interim consent has no rights of renewal attached and it has expressly been granted pending determination of the applicants' appeal for offshore consent, with the consent of all parties.
- (f) by consent and pursuant to section 108 and 108AA of the RMA, this Resource Consent includes and is subject to the further conditions annexed hereto in Annexure B, Schedule 1.

[67] The Court records the applicant has offered the following Augier conditions in addition to those already noted:

- (a) neither MBL or any associated entity will seek to utilise or obtain consent for inshore sand removal until determination of the offshore appeal (if at all);
- (b) neither MBL or any associated entity will seek to vary or extend this interim/temporary offshore consent beyond the terms on which it is granted;
- (c) MBL or any associated entity acknowledges that it will not exercise any rights, if such exist, under s 124 RMA in respect of this interim/temporary offshore consent.

[68] Orders are made accordingly, and terms of this order shall attach to the conditions of consent and this decision shall be attached to the conditions of consent and form part of those conditions to both give background to the granting of the consent and the constraints upon it.

Costs

[69] The question of cost is adjourned for resolution after the substantive offshore appeal has been heard and determined.

[70] The Court records that the application for adjournment by MBL and applications for strike out by both Ngati Manuhiri and Friends of Pakiri Beach are accordingly resolved and therefore formally withdrawn before the Court. Costs on those issues may form part of any substantive application for costs in due course.

Final comment

[71] Mahia i runga i te rangimarie me te ngākau māhaki.¹⁴ This Court has been impressed by the level of cooperation of the parties given the number of parties and the complexity of the issues involved. Many of these issues have been longstanding and parties hold very strong views in respect of them. Nevertheless, the parties have been able to put aside these differences and focus on the environmental issues at large to achieve a better result for tara iti and the environment as a whole, pending the decision of the Court.

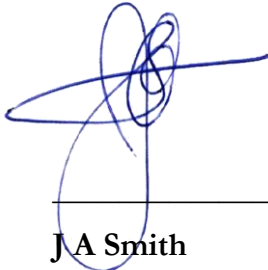
[72] I note that the offshore consent is identified as having less effects generally than the inshore or midshore consent. Accordingly, the closure of the inshore area in the interim ensures that effects are minimised pending the substantive hearing of this matter and the decision of the Court.

[73] The substantive hearing is now to progress from 17 July 2023. We attach as **Annexure A** a copy of the earlier minute of this Court issued in relation to the resolution of this issue and also directions for the substantive hearing.

¹⁴ With a peaceful mind and respectful heart, we will always get the best results.

[74] The only appeal still continuing before the Court is ENV-2022-AKL-000121.
The other five may be regarded as resolved.

For the Court:



J A Smith
Environment Judge



Annexure C
Section 274 parties

D CLAPSHAW

ENVIRONMENTAL DEFENCE SOCIETY

INCORPORATED R GREENWOOD

KAIPARA DISTRICT COUNCIL

MANGAWHAI HARBOUR RESTORATION SOCIETY INCORPORATED
MANUHIRI KAITIAKI CHARITABLE TRUST

NEW ZEALAND FAIRY TERN CHARITABLE TRUST
PAKIRI TE WHANAU COMMUNITY GROUP INCORPORATED (“TE
WHANAU O PAKIRI”)

ROYAL FOREST AND BIRD PROTECTION SOCIETY OF NEW ZEALAND
INCORPORATED

TARA ITI GOLF CLUB LIMITED

TE ARAI LINKS

TE ARAI NORTH LIMITED

TE ARAI RESIDENTS' ASSOCIATION INCORPORATED

TE ARAI SOUTH HOLDINGS LIMITED

TE ARAI SOUTH OWNERS' SOCIETY INCORPORATED
S WIKAIRA

Annexure A

IN THE ENVIRONMENT COURT AT AUCKLAND

I TE KŌTI TAIAO O AOTEAROA KI TĀMAKI MAKĀURAU

IN THE MATTER OF appeals under section 120 of the
Resource Management Act 1991

BETWEEN MCCALLUM BROS LIMITED
(ENV-2022-AKL-121)
(ENV-2022-AKL-220)

Appellant

AND AUCKLAND COUNCIL
Respondent

AND PAKIRI G AHU WHENUA TRUST
(and others as set out in Appendix A)
Section 274 Parties

MINUTE OF THE ENVIRONMENT COURT

(28 June 2023)

Introduction

[1] These proceedings concerned six appeals filed in relation to applications by McCallum Bros Limited (**MBL**) for consents authorising sand extraction and associated discharges in coastal marine area in the Mangawhai-Pakiri Embayment. We refer to these as the offshore, midshore, and inshore applications.

[2] Hearing of the appeals was set to commence on 19 June 2023.

McCallum Bros Limited v Auckland Council



[3] Prior to commencement of the hearing, on 7 June 2023, MBL filed:

(a) a memorandum to advise the Court that it **intended** to withdraw its Midshore application; and

(b) an application for adjournment of its Inshore application.

Midshore application

[4] The Midshore application has been the subject of an Environment Court decision issued 22 June 2023.¹ The Midshore application was formally recorded as withdrawn. The appeals by Manuhiri Kaitiaki Charitable Trust, Friends of Pakiri Beach Incorporated and Director-General of Conservation were allowed. The appeals by MBL regarding the midshore consent conditions was refused.

[5] This leaves two outstanding appeals both from MBL, one regarding the offshore application the other regarding the inshore application.

Inshore application

[6] MBL's application for an adjournment of its Inshore appeal² was made on the basis that the application will be withdrawn following a final determination of its Offshore appeal³ regardless of the outcome of the Offshore appeal. At that point MBL would lose or surrender its rights to continue to extract sand from the inshore under s 124 RMA

[7] Parties responded with the majority opposed to the adjournment of the Inshore appeal, suggesting instead that the appeal be struck out or withdrawn. The Court received formal applications for strike out from Manuhiri Kaitiaki Charitable Trust and Friends of Pakiri Beach Incorporated.

[8] The interlocutory applications were set down to be heard in the week of 19 June 2023.

¹ *McCallum Bros Limited v Auckland Council* [2023] NZEnvC 130.

² ENV-2022-AKL-000220.

³ ENV-2022-AKL-000121.

Proposed interim order

[9] The parties have been engaged in trying to resolve the inshore consent and appeal by withdrawal and surrender, while all consenting to an interim order allowing the applicant to operate to similar take volumes in the offshore area, pending the resolution of the applicant's appeal and its determination through the appeal process (reflecting s124 of the Act).

[10] Good progress has been made, the parties have all consented to such an arrangement and further agreed the court can resolve any remaining wording differences on interim conditions. The interim arrangement is agreed to without prejudice to any parties' position on hearing the substantive Offshore appeal and to reduce any potential effects from the continuation of the inshore consent under s124 of the Act.

[11] The parties require a short further period to see if they can resolve wording without court intervention. During the Pakiri Sands Hearing of Interlocutory applications, yesterday 27 June, oral directions were delivered, addressing the following matters.

Directions for Interlocutory Hearing

[12] Parties are to provide a joint memorandum outlining the agreed provisions of the proposed interim consent and those in dispute by **4:00pm Thursday, 29 June 2023**.

[13] If the parties file a consent memorandum resolving the wording of the interim consent and conditions and surrendering and withdrawing the inshore consent and appeal by **Wednesday 28 June at 5pm**, the court will advise if the matter will be concluded on the papers, or the hearing reconvened.

[14] Subject to the above, the interlocutory Hearing will reconvene at **10:30am on Friday 30 June** via Microsoft Teams, to finalise the interim consent and the conditions of the interim offshore consent and resolve the inshore consent and appeal.

Directions for substantive Hearing

[15] By **Friday 7 July by 5:00pm** the applicant is to provide a clean copy of updated conditions for the substantive offshore appeal.

[16] The substantive Hearing on the applicant's offshore appeal will begin on **17 July 2023** via Microsoft Teams. Mr MacRae for the applicant McCallum Bros Limited is to open.

[17] Counsel for Friends of Pakiri Beach have indicated their unavailability in the week of 17 July. The applicant has offered to re call their relevant witnesses in the beginning of the week of 24 July so that counsel for Friends of Pakiri Beach can complete cross-examination.

[18] The Hearing is to remain online, save for 21 and 22 August 2023 when the Court will hear from the majority of cultural witnesses, on location at the Omaha Marae.

[19] The applicant is to provide the Court with an order of Hearing containing an order of all parties and order of applicant's witnesses by **Wednesday 12 July at 4:00pm**.

[20] It was agreed by consent that the Auckland Council is to be heard in the later weeks of the Hearing, after the cultural witnesses have been heard.

[21] For clarity the substantive Hearing will take place on the original dates, the weeks of:

- (a) 17, 24 and 31 July 2023;
- (b) 21 and 28 August 2023; and
- (c) 4 September 2023.



JA Smith
Environment Judge



Appendix A
Section 274 parties

D CLAPSHAW

ENVIRONMENTAL DEFENCE SOCIETY

INCORPORATED R GREENWOOD

KAIPARA DISTRICT COUNCIL

MANGAWHAI HARBOUR RESTORATION SOCIETY INCORPORATED

MANUHIRI KAITIAKI CHARITABLE TRUST

NEW ZEALAND FAIRY TERN CHARITABLE TRUST

PAKIRI TE WHANAU COMMUNITY GROUP INCORPORATED (“TE
WHANAU O PAKIRI”)

ROYAL FOREST AND BIRD PROTECTION SOCIETY OF NEW ZEALAND
INCORPORATED

TARA ITI GOLF CLUB LIMITED

TE ARAI LINKS

TE ARAI NORTH LIMITED

TE ARAI RESIDENTS' ASSOCIATION INCORPORATED

TE ARAI SOUTH HOLDINGS LIMITED

TE ARAI SOUTH OWNERS' SOCIETY INCORPORATED

S WIKAIRA

Annexure B

Temporary offshore consent as per decision of the Environment Court dated 4 July 2023.

Additional conditions set out in Schedule 1 below.

TEMPORARY OFFSHORE CONSENT

SCHEDULE 1

TEMPORARY OFFSHORE CONSENT - CONSENT CONDITIONS

CONDITIONS

Consent Glossary

Extraction Exclusion Area	The area where sand extraction is not permitted (until allowed under Condition 13) as shown on the map at Appendix 5.
Control Areas	The control areas defined on the Bioresarches Drawing "Monitoring and Reporting Cell Plan", dated 30 June 2023. Appendix 4
Council	Auckland Council
CLG	Community Liaison Group
EMMP	Environmental Monitoring Management Plan
Extraction Area	The consented sand extraction area is shown shaded grey and defined by the coordinates listed on the map in Appendix 5
MBES	Multi Beam Echo Sounder
MMMP	Marine Mammal Management Plan
Monitoring Cell	Subdivisions of the Extraction Area as defined on the Bioresarches Drawing "Monitoring and Reporting Cell Plan", dated 30 June 2023 or any subsequent revisions. Appendix 4
Reporting Cell	Subdivisions of the Extraction Area as defined on the Bioresarches Drawing "Monitoring and Reporting Cell Plan" dated 30 June 2023 or any subsequent revisions.
RMA	Resource Management Act 1991
Sand	Includes shell and all other sediment extracted from the seabed by the trailing suction dredge method.

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SEMR Sand Extraction Monitoring Report.

Sensitive Benthic Communities Means the habitats described in the Appendix Two to these conditions.

SQEP Suitably Qualified and Experienced Person

General Conditions

These conditions apply to all resource consents.

1. These consents must be carried out in general accordance with the documents and drawings and all supporting additional information submitted with the application and as updated during the Council Hearing, detailed below, and all referenced by the Council as resource consent number CST60343373 and DIS60371583.
 - a) The documentation included in Appendix One and the drawings referenced below. Where there is an inconsistency between documentation then the later documentation will apply:

Drawing title and reference	Author	Rev	Dated
Offshore Sand Extraction Area showing Monitoring and Extraction Cells and Control Areas with Monitoring Cells	Bioresearches	Version 3.12.2 by SW	30 June 2023
Map 7: Proposed Sand Extraction Area and Control Areas, with previously approved extraction area shaded, boundary points	Bioresearches	Version 3.14.3 by SW	30 June 2023

2. Where there are differences or apparent conflict between the documents listed in Appendix 1 and the conditions of these consents, the conditions of these consents prevail.

TEMPORARY OFFSHORE CONSENT

3. Under section 125 of the RMA, these consents lapse on a date to be 6 months from date of grant unless:
 - a) The consents are given effect to; or
 - b) The Council extends the period after which the consents lapse.
4. The Consent Holder must pay the Council an initial consent compliance monitoring charge of \$1,116.00 (inclusive of GST), plus any further monitoring charge or charges to recover the actual and reasonable costs incurred to ensure compliance with the conditions attached to these consents.

Advice Note

The initial monitoring deposit is to cover the cost of inspecting the site, carrying out tests, reviewing conditions, updating files, etc., all being work to ensure compliance with the resource consent(s). In order to recover actual and reasonable costs, monitoring of conditions, in excess of those covered by the deposit, will be charged at the relevant hourly rate applicable at the time. The consent holder will be advised of the further monitoring charge. Only after all conditions of the resource consent(s) have been met, will the council issue a letter confirming compliance on request of the consent holder.

Duration of the consent

5. These consents will expire:
 - a) on the final determination of the offshore application and appeal in ENV-2022-AKL-000121. For the purpose of this clause, "final determination" to be interpreted in the sense in which it is used in s. 124(3) of the RMA, or
 - b) 3 years from the date of the commencement of sand extraction under these consents, or
 - c) the extraction of a total volume of 230,000m³ of sand under these consentswhichever occurs the earliest, unless they have already lapsed, been surrendered or been cancelled at an earlier date pursuant to the RMA.

TEMPORARY OFFSHORE CONSENT

Commencement of sand extraction

6. The Consent Holder must notify the Council in writing at least ten (10) working days prior to the date on which sand extraction under these consents will commence.
7. The Consent Holder must notify all the parties to ENV-2022-AKL-000121 in writing at least ten (10) working days prior to the date on which sand extraction under these consents will commence.

Provide for a review under section 128

8. The conditions of these consents may be reviewed by the Council (Manager - Resource Consents) at the Consent Holder's cost, by serving notice under section 128(1) of the RMA at any time:
 - a) To deal with any significant unanticipated adverse effects on the environment arising from the exercise of these consents, or
 - b) To deal with any significant unanticipated adverse effect on the environment which is identified in any SEMR provided to the Council in the previous three months; and
 - c) To require any remedial actions or alterations to the extraction and discharge activities to rectify that significant unanticipated adverse effect including, but not limited to, a reduction in the consented area.

Occupancy of the common marine and coastal area

9. The occupation of the common marine and coastal area by the authorised activities is not an exclusive right of occupancy. The general public or any person(s) may not be excluded from the area(s) or any part of the area(s) to which these consents applies.

Extraction Exclusion Area

10. A bathymetric survey of the Extraction Exclusion Area is to be undertaken during October annually using a multi-beam echosounder (MBES) capable of detecting seabed features to 0.5m in height, with horizontal positional accuracy of 3m or better. The MBES survey output is to comprise detailed cross sections across the remnant trenches in the Extraction Exclusion Area, including relative seabed levels and

TEMPORARY OFFSHORE CONSENT

chainages, water depths, cross section start and end coordinates and comparing the series of annual surveys. It is also to comprise a detailed colour-banded bathymetric map of the trenches and the 100m strip on each side, with a coordinate grid, showing the trench paths and cross section locations. The vertical resolution of the colour banding should be 0.2m. MBES backscatter data is to be included in the map (or a separate map) as well as bathymetry if the bathymetric data alone is not sufficient to identify trench features and compare them with previous annual maps.

11. The outputs of the annual survey required under Condition 10 are to be submitted to Council and the CLG within three months of the completion of the survey.
12. The requirements of Condition 10 do not apply to any part of the Extraction Exclusion Area where a survey has shown that the trenches have recovered to within -0.5m (vertical measure) of the surrounding seabed level provided that an assessment by a suitability qualified and experienced person confirming the recovery has been submitted to Council.
13. The Consent Holder must not undertake any sand extraction from any part of the Extraction Exclusion Area until a survey confirms that the recovery standards set out in Condition 12 have been met, and the survey has been submitted to the Council in accordance with Condition 12. The survey shall also be submitted to the CLG when it has been established pursuant to Condition 58.

OPERATIONAL CONDITIONS

Extraction Area

14. Extraction may only occur in the Extraction Area identified in Appendix 5 to these consents the shoreward boundary of which being no less than 2km from any datum point along the mean high water mark as identified in Appendix 5.
15. Within the Extraction Area, sand extraction must not occur in areas which contain any of the following:
 - a) Sediment with an average proportion of mud (grain size finer than 0.063mm) exceeding 20% by weight; or
 - b) Sensitive Benthic Communities; and/or

TEMPORARY OFFSHORE CONSENT

- c) The presence of species absolutely protected under the provisions of the Wildlife Act 1953.

Sand extraction volume

16. The maximum volume of sand extracted (which is the sand which is loaded into the extraction vessel and transported from the site) shall not exceed 76,000m³ a year from the date of commencement of these consents.
17. The maximum volume of sand extracted within any consecutive 30 day period must not exceed 7,500m³.
18. The maximum volume to be extracted within a 12 month period from a single Reporting Cell shall not exceed the limit in the table below.

Volume Limits on Reporting Cells

Reporting Cell Number ¹	Approximate Reporting Cell Area ²	Maximum Volume (m ³) ³
11	60%	6,000
12	60%	6,000
13	65%	6,500
14	95%	9,500
5/15	120%	12,000
21	100%	10,000
22	100%	10,000
23	100%	10,000
24	100%	10,000
25	100%	10,000
31	85%	8,500
32	85%	8,500
33	75%	7,500

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Reporting Cell Number ¹	Approximate Reporting Cell Area ²	Maximum Volume (m ³) ³
34	65%	6,500
35	65%	6,500

¹ As shown on the plan in Appendix 5.

² Expressed as a percentage of the area of each Reporting Cell to the area of a complete Reporting Cell (200m x 2,000m = 400,000m²).

³ Maximum volume limit from Reporting Cells.

Sand extraction and discharge methodology

19. The sand extraction and transportation is to be carried out by the William Fraser using a trailer suction dredge unless a change in the vessel(s) used for sand extraction and transportation has been certified in writing by the Council in accordance with Condition 21.
20. The Consent Holder must, to their best endeavours, evenly spread extraction within the Extraction Area.
21. Any change of the sand extraction and/or discharge methodology from that provided in the consent application documentation and/or the use of an alternative vessel(s) for extraction to the William Fraser will require written certification from the Council, before any change in the sand extraction operation or vessel(s) used for the sand extraction.
22. Any proposed change of vessel or extraction and/or discharge methodology must be notified in writing to the Council and be accompanied by a report prepared by a suitably qualified and experienced person that demonstrates that the proposed vessel and methodology will not result in any materially different adverse effects from the vessel and methodology then in use and must include a report from an independent engineering surveyor stating the volume of sand in cubic metres that is carried by the vessel(s) for extraction and transport when loaded to the load line marked on the vessel's or vessels' hull(s) in accordance with Maritime NZ requirements.

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Advice Note

An alternative vessel is only required to be certified once unless there are subsequent significant changes to the sand extraction and/or discharge methodology used on that vessel.

Operational time restriction

23. Sand extraction must only occur between the hours of:
- a) 9.00pm to 5.00am during the period when New Zealand daylight saving is in force; or
 - b) 7.00pm and 6.00am during the period when New Zealand daylight saving is not in force.

Despite the restriction in Condition 23 there will be no operational time restriction for up to 20 days per calendar year (excluding statutory public holidays) (exception to daily time limits). If any of those 20 days are used consecutively, the consecutive period shall not exceed 5 days. At the conclusion of any consecutive period of days used, an equivalent period of consecutive days will accrue before the exception to daily time limits is again relied upon.

MANAGEMENT PLANS

Environmental monitoring management plan

24. Within 3 months from the consent commencing, the Consent Holder must submit to the Council an EMMP for certification that the monitoring to be undertaken in accordance with the EMMP will achieve the objectives of the EMMP and compliance with the relevant consent conditions.
25. Any subsequent review or updates of the monitoring methodologies proposed in the EMMP must be submitted to the Council for certification prior to being implemented. Any other updates to the EMMP (including final SEMR reports) must also be submitted to the Council so that Council can maintain a current copy of the EMMP.

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26. The Consent Holder must have the EMMP(s) peer reviewed by a SQEP(s) prior to its submission to the Council. The Consent Holder must provide any feedback received from the SQEP(s) on the EMMP to the Council at the time they are submitted for certification, along with any explanation of where suggested changes to the EMMP by the SQEP(s) has not been incorporated and the reasons why.
27. The Consent Holder must meet the costs of the production, certification and subsequent updating of the EMMP. The EMMP will generally be based on the draft EMMP (dated December 2022) amended in accordance with the requirements of these conditions of consent. Any changes to the final EMMP submitted for certification to Council which differ from the draft EMMP (dated December 2022) will be supported by an assessment from an appropriately qualified and experienced person or persons.
28. The objectives of the EMMP are:
 - a) To provide the baseline information for the subsequent sand extraction monitoring.
 - b) To require sand extraction monitoring
 - i. To identify in a timely manner any changes required to the sand extraction method and timing to further minimise any identified significant unanticipated adverse ecological and/or coastal processes effects on the environment.
 - i. To assess if any changes are required to the monitoring and reporting methodologies.
 - c) In relation to sand extraction and vessel tracking monitoring
 - i. To provide a record of sand extraction volumes, locations (i.e. reporting cells), timing, water depth and sea conditions during extraction and confirmation that the permitted sand extraction volumes are being complied with.
 - ii. To identify when the sand extraction monitoring is required to be undertaken.

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- iii. To provide a record of where sand extraction has been undertaken and confirmation that sand extraction has only been undertaken within approved sand extraction sub-areas.
- iv. To demonstrate that best endeavours have been used to evenly spread extraction throughout the Extraction Area.

29. The EMMP must:

- a) Record the objectives of the EMMP set out in Condition 28 and the monitoring programme to achieve those objectives.
- b) Include a plan showing the Extraction Area.
- c) Include the table from Condition 18 defining the maximum quantity of sand to be extracted.
- d) Record the volume of sand which has been extracted from each Reporting Cell.
- e) In relation to the monitoring programme shall provide:
 - i. That all pre-extraction baseline ecological and subsequent monitoring surveys are undertaken using a consistent quantitative sampling technique;
 - ii. Control and potential impact sites for baseline data collection;
 - iii. For the purpose of analysis and reporting, taxa must be identified to the lowest practical taxonomic levels in order to obtain ecologically meaningful results;
 - iv. The proposed reporting regime for the results of the monitoring, which, as a minimum, must include a final reporting date six months from the completion of the monitoring programme, and may include interim reporting dates;
 - v. Bathymetric survey method for the sea floor (pre-sand extraction) in the monitoring cells in which sand extraction will occur and the immediately surrounding monitoring cells (which is to include seabed imaging in map

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- form using 0.2m vertical resolution MBES colour-banded bathymetry). MBES backscatter is to be used, in addition to MBES bathymetric data, to allow identification, and comparison over time, of seabed features; and
- vi. Sediment texture monitoring.
- f) Detail the monitoring programme for the SEMR required under Condition 40. The monitoring programme must be sufficient to achieve the objectives set out in Condition 29(e), and must include, at minimum:
- i. Bathymetric survey method for the sea floor (post-sand extraction) in the monitoring cells in which sand extraction will occur and the immediately surrounding monitoring cells (which is to include seabed imaging in map form using 0.2m vertical resolution MBES colour-banded bathymetry). MBES backscatter is to be used, in addition to MBES bathymetric data to allow identification, and comparison over time, of seabed features;
 - ii. Sediment texture monitoring methodology;
 - iii. The monitoring methodology for the collection of information capable of detecting whether the sand extraction is having effects of ecological significance upon benthic macrofauna and / or benthic communities; and
 - iv. Set out the foredune and beach monitoring programme as required under Conditions 41 and 42 including the methodology, locations, timing and reporting requirements of beach topographic surveys.
- g) Include copies of any completed SEMR.
- h) Identify a process for assessing any issues arising from the survey design, methods of sampling, analysis and / or reporting and the process for implementing any recommended changes.
- i) Specify the qualifications and experience required for those supervising and undertaking monitoring and reporting.

Advice Note

The EMMP is a "living document" that includes all monitoring documentation.

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Marine Mammal Management Plan

30. Within 20 working days from the consent commencing, the Consent Holder must submit to the Council for certification a Marine Mammal Management Plan (MMMP) to minimise the risk of harm to marine mammals from its operations. The MMMP must be based on the draft MMMP dated 08/12/2020. In the meantime, the Consent Holder will continue to observe the Hauraki Gulf Transit Protocol for Commercial Shipping.
31. The MMMP must detail the following:
- a) Methods employed to minimise risk of whale strike;
 - b) Methods employed to avoid the attraction of marine mammals to the extraction vessel;
 - c) Methods employed to minimise entanglement of marine mammals with the dredgehead and associated underwater equipment.
 - d) Methods to address any effects of the activity of sand extraction on the values associated with tohorā (whales) as a taonga species within the Embayment.

Any subsequent review or updates of the MMMP must be submitted to the Council for certification.

32. The Consent Holder must record and report any incident which results in injury or mortality to a marine mammal to the Council, Ngāti Manuhiri, Te Uri o Hau and the Department of Conservation as soon as practicable.

Advice Note

These consents do not remove the need to comply with the Wildlife Act 1953 and the Marine Mammal Protection Regulations 1992.

MONITORING AND REPORTING

Volume and location

33. Prior to exercising this consent, the Consent Holder must provide to the Council a report prepared by an independent engineering surveyor, the surveyor to be approved by the Council, stating the volume of sand in cubic metres that is carried

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by the *William Fraser* when loaded to the load line marked on the vessel's hull in accordance with Maritime NZ requirements.

34. The Consent Holder must keep a record for each extraction event of:
- a) In the event that the *William Fraser* is not fully loaded, the Consent Holder may report the volume of the incomplete load calculated from the onboard sensors (Holland Dredge Design Sensors) measuring compliance with the load line marked on the vessel's hull in accordance with Maritime NZ requirements before any unloading of sand and in any event within 30 minutes of the *William Fraser* tying up at the Port of Auckland. The record must include for each load:
 - i. a screenshot or other verifiable way of showing the date and time, the reading of the sensors and the draft of the vessel,
 - ii. the volume of the load by reference to the load-line.
 - b) Subject to Condition 33, the volume of sand loaded into the extraction vessel shall be recorded on the basis that the maximum capacity of the hopper on the *William Fraser* is on average 900m³ of sand per extraction event, or such greater or lesser amount as is determined by the engineering surveyor's report required by Condition 33.
 - c) The volume of sand from each Reporting Cell where extraction has occurred,
 - d) The date, time, water depth and sea conditions during the period of extraction,
 - e) An electronic record of the track of the sand extraction vessel (using a GPX file format or equivalent) and mapped using a differential global positioning system ("DGPS") showing:
 - i. A complete track of the vessel from the southernmost waypoint shown in Appendix 5 prescribing the shoreward limits of its approach to and departure from the Extraction Area;
 - ii. A track of the vessel showing when the dredgehead is on the seabed extracting sand and when the dredgehead is above the seabed and not extracting sand for the purpose of turning outside the boundaries of the Extraction Area, avoiding the Extraction Exclusion Area,

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avoiding Sensitive Benthic Communities or protected species (see Condition 15(c)) or for any other reason.

35. The Consent Holder must provide to the Council and the CLG a copy of the records required by Condition 34 quarterly from and including the first full quarter after these consents commence. If no sand extraction has occurred during that quarterly period then a statement to that effect will be provided to the Council. The Consent Holder must notify Council of any non-compliances with Conditions 15, 16, 17, 18 and 23 and the reason for the non-compliance as soon as practical.

Sand extraction monitoring report (SEMR)

36. The Consent Holder must prepare and submit to the Council an SEMR ("initial SEMR") for the Extraction Area within 3 months of the commencement of these consents. The purpose of the initial SEMR is to provide baseline data obtained prior to the commencement of these consents.
37. The Consent Holder must subsequently prepare an SEMR ("subsequent SEMR") with data gathered as at March 2025 and March 2026. The purpose of subsequent SEMRs is to provide for a comparative analysis of baseline data with subsequent data so as to permit an assessment of the effects of sand extraction in the areas covered by the initial SEMR and to identify changes to extraction or discharge activities that avoid adverse effects on communities and species described in Condition 15(b) and (c) and respond to the effects assessment.
38. The Consent Holder must have each subsequent SEMR peer reviewed by a SQEP(s) prior to its submission to Council. The Consent Holder must provide any feedback received from the SQEP(s) on the SEMR documents to Council at any time they are submitted for certification, along with any explanation of where any comment suggesting changes to the SEMR has not been incorporated and the reasons why.
39. Each subsequent SEMR must be submitted to the Council and the CLG not less than four months after the time limits referred to in Condition 37.
40. The subsequent SEMRs must comply with the relevant requirements set out in the EMMP, and include:

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- a) An analysis of the results of the monitoring required under the approved EMMP and an assessment to ascertain whether extraction activity has adversely affected sediment transport processes and/or impacted on benthic macrofauna beyond impacts experienced as a result of natural perturbations;
- b) A comparative analysis of the bathymetry within the limits of the survey accuracy;
- c) A comparative analysis of sediment texture at sites within and adjacent to areas where sand extraction has been undertaken;
- d) Any recommendations for changes to sand extraction or discharge methodologies (including rates and periods between sand extraction episodes) to avoid adverse effects on communities and species described in Condition 15(b) and (c) based on the results of the SEMR; and
- e) The results of the foredune and beach monitoring.

Foredune and Beach Monitoring

41. The Consent Holder must undertake a topographical survey of the beach and foredune every six months with one survey to be undertaken in March-April period and one in September-October period to enable consistent seasonal comparisons. The topographical survey must include the following:

- a) Extend alongshore from approximately 2.5 km north of the existing profile P1 to approximately 2.0 km south of existing Profile P8, as shown in Drawing IZ111900-003 Survey Beach Volume Compartments (Appendix Three).
- b) The topographic survey is to be undertaken by a survey specified aerial drone utilising Real Time Kinetic (RTK) survey accuracy to 50mm horizontal and vertical and using secondary ground control points for validation. Survey point density to be no less than 1m between points across the whole survey area. The survey area shall include:
 - i. Foredune line (i.e. top of the foredune face);
 - ii. Seaward dune toe (i.e. major change of slope at dune/beach boundary);
 - iii. High tide or most recent storm run up limit (i.e. berm location);

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- iv. Lowest position possible on the beach (i.e. low tide run-up limit); and
 - v. Location of Pakiri River, Poutawa Stream, and Te Arai Creek mouth channels through the foredune and across the beach.
42. Analysis of the topographical surveys:
- a) Analysis of the topographical survey data must be undertaken by dividing the beach/dune environment into the following three compartments as shown on Drawing IZ111900-003 (Appendix Three):
 - vi. Northern compartment from 2.5km north of existing Profile P1 to the northern side of Te Arai Point.
 - vii. Central compartment from the southern side of Te Arai Point to the northern side of Poutawa Stream.
 - viii. Southern compartment from the south side of Poutawa Stream to a point 2km south of existing Profile P8.
 - b) The analysis of the topographical survey data must include:
 - i. Interpolated Beach profiles at the historical beach profiles P1 to P9 as shown on Drawing IZ111900-003 (Appendix Three).
 - ii. Additional Interpolated beach profile sites as determined in the EMMP.
 - iii. Beach elevation and volume changes in designed areas around the mouths of Pakiri River, Poutawa Stream, and Te Arai Creek as shown on Drawing IZ111900-003 (Appendix Three).
 - iv. Beach and foredune contour position and volume calculations over the topographic survey area within each of the above compartments.
43. The Consent Holder will submit the results of the topographical survey to the Council and the CLG no later than 2 months following the periods referred to in Condition 41.

OTHER OPERATIONAL REQUIREMENTS

Noise

44. The noise (rating) level and maximum noise level generated by the sand extraction vessel (including any pumping or mechanical equipment used in the sand extraction process) must not exceed the following noise limits when measured and assessed on land at the adjacent coastline and/or within any notional boundary of a site:

7am-10pm (Monday to Sunday) 50dB LAeq

10pm-7am (Monday to Sunday) 40dB LAeq and 75dB LAmax

All noise measurements and assessments must be in accordance with the New Zealand Standard NZS 6801:2008 Measurement of environmental sound and the New Zealand Standard NZS 6802:2008 Acoustics – Environmental noise'. Notional Boundary is defined in Chapter J of the Auckland Unitary Plan.

Lighting

45. For all vessels associated with the sand extraction, to avoid or mitigate adverse effects on sea birds and on people viewing from land, lighting is to be inward and downward facing and minimised as far as practicable while still complying with any relevant maritime regulations and safety requirements.

Oil Spill Response Plan

46. Before the commencement of sand extraction under these consents, the Consent Holder must submit to the Council a Tier 1 (under the Maritime Transport Act 1994) Oil Spill Response Management Plan. This plan must be prepared in accordance with the requirements of Maritime New Zealand.

Operational Schedule

47. The Consent Holder must make a provisional copy of each weekly/monthly operating schedule available online (on the Consent Holder's website) for public viewing. The schedule must also provide details of monitoring, surveying and other non-sand extraction activities authorised under these consents.

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Advice Note

Weekly operational schedules are subject to change as a result of weather, operational issues and other unforeseen events. For clarity, publishing the operating schedule on the Consent Holder's website is considered sufficient to meet this condition of consent.

Compliance

48. The Consent Holder shall comply with the requirements of all management plans prepared and certified by the Council pursuant to the conditions of these consents.

Biosecurity

49. Before the commencement of sand extraction under these consents, the Consent Holder must submit to the Council a Biosecurity Plan. As a minimum the plan shall include a surveillance and response plan targeted at invasive marine species and unwanted organisms. The purpose of the Plan is to identify whether transit of the dredge vessel between the Port of Auckland and the Mangawhai-Pakiri Embayment and the operation during the extraction might result in an avoidable spread of invasive marine species and unwanted organisms.

Navigation

50. On its northern approach to the Extraction Area, the extraction vessel shall not turn west toward the southern boundary of the Extraction Area until it has passed to the eastern side of the Navigation Waypoint shown in Appendix 5. The vessel shall pass to the east of this waypoint when leaving the Extraction Area.

MATAURANGA MAORI/EXPERT PANEL

51. The Consent Holder must establish and maintain an Expert Panel for the purposes of expert oversight, assessment, and reporting for the life of this consent, including input

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into any changes associated with monitoring or reporting on cells. Within two weeks of the grant of consent, the Consent Holder will invite Omaha Marae and the Pakiri G and Taumata A & B blocks, Ngāti Manuhiri, Te Whānau o Pākiri (in addition to a representative of the Consent Holder) to collectively establish an expert panel (who are not commissioned by the Consent Holder for the purposes of implementing this consent). The Panel will comprise an expert in each of the following areas:

- a) Coastal processes
- b) Marine ecology
- c) Avifauna
- d) Matauranga
- e) Planning

Note: The individual discipline experts will represent the discipline not a party.

52. The purpose and function of the Expert Panel shall include the following matters:

- a) review and provide feedback on the draft Management Plans prior to submission to the Council for certification,
- b) review the monitoring reports (including peer review comments provided by the SQEP(s) in relation to those monitoring reports) prepared in line with the Consent Conditions, including the sand extraction records, and advise the Consent Holder and the Council within ten working days of receiving the reports where the analysis undertaken by the Expert Panel identifies sand extraction inconsistent with the SEMR,
- c) provide advice to the Consent Holder where the Consent Holder proposes to change or amend provisions of any certified Management Plans, and provide the Council with a copy of this advice;
- d) make recommendations to the Consent Holder in respect of findings, and provide Council with a copy of those recommendations;
- e) make recommendations to the Consent Holder as to the form appropriate for circulation of information to the following parties:

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- i. Ngāti Manuhiri
 - ii. Te Whānau o Pākiri
 - iii. Omaha Marae
 - iv. Pākiri G Ahu Whenua Trust and Taumata A & B blocks
 - f) Prepare a Statement of Position in relation to the matters at a) – c) above for provision into the public domain within one month of each meeting.
53. The Consent Holder will within 2 weeks of the establishment of the Expert Panel invite the Expert Panel to set the date of its first meeting.
54. Following the first meeting, it is anticipated that the Expert Panel will meet three monthly or at such greater intervals as it otherwise decides for the life of the consent.
55. The Consent Holder shall coordinate the activities of the Expert Panel including provision of secretarial services, timely provision of data and reporting, and coordination of Expert Panel meetings.
56. The Consent Holder shall meet the actual or reasonable costs, whichever are less, for the participation and contribution of the Expert Panel members.
57. The Consent Holder will supply the Panel with the documents listed below. In each case, the document will be provided in draft and in a timely fashion before being submitted to the Council by the Consent Holder to allow the Panel to consider the document and make recommendations to the Consent Holder should the Panel see fit:
- a) The outputs of the annual survey referred to in Condition 11 and the survey referred to in Condition 13 relating to the Extraction Exclusion Area.
 - b) Any report of any incident which results in injury or mortality to a marine mammal as referred to in Condition 32.
 - c) The records of sand extraction events referred to in Condition 34.
 - d) The topographical survey results referred to in Condition 43.
 - e) Any EMMP required to be submitted to Council under Condition 24.
 - f) The SEMRs required to be submitted to Council under Conditions 36 and 37.

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- g) Any application to change the sand extraction and /or discharge method or change of extraction vessel under Condition 21.

Advice Note: The Council has the ability to consider the minutes of the Expert Panel for the purposes of monitoring, and ensuring compliance with, the conditions of consent.

COMMUNITY LIAISON GROUP

- 58. The Consent Holder must within 2 months from the commencement of these consents, invite Friends of Pakiri Beach, Environs Holdings Limited (for the Te Uri o Hau Settlement Trust), the Surfbreak Protection Society, Omaha Marae, Te Whanau o Pakiri, Department of Conservation, Mangawhai Harbour Restoration Society Inc, the Pakiri G Ahu Whenua Trust and Taumata A&B blocks to participate in a Community Liaison Group ("CLG") comprising a representative of each of its members. The Consent Holder shall be a member of the CLG. The purpose of the CLG is to discuss matters relating to the exercising of these consents, provide input into management and monitoring plans, and discuss monitoring results.
- 59. Provided at least two of the parties listed in Condition 58 confirm, in writing, that they wish to participate in the CLG, the Consent Holder must establish the CLG. Council may also participate as an observer, should it wish to do so.
- 60. Meetings of the CLG should be held annually in the vicinity of Pakiri/Leigh.
- 61. The Consent Holder will be responsible for keeping and distributing meeting minutes and must meet the administrative costs of the CLG.
- 62. The Consent Holder must submit a draft of the following documents to the CLG for written comment at least 20 working days prior to submitting it to Council for certification:
 - a) Any EMMP required to be submitted to Council under Condition 24.
 - b) The SEMRs required to be submitted to Council under Conditions 36 and 37.

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- c) Any application to change the sand extraction and / or discharge method or change of extraction vessel under Condition 21.
63. The Consent Holder must provide any feedback received from the CLG on these documents to Council at the time they are submitted for certification, along with any explanation of where any comment suggesting changes to the documents has not been incorporated and the reasons why.

Advice Note: The Council has the ability to consider the minutes of the CLG for the purposes of monitoring, and ensuring compliance with, the conditions of consent.

Advice notes

1. Any reference to number of days within this decision refers to working days as defined in s2 of the RMA.
2. For the purpose of compliance with the conditions of consent, "the council" refers to the council's monitoring officer unless otherwise specified. Please email monitoring@aucklandcouncil.govt.nz to identify your allocated officer.
3. For more information on the resource consent process with Auckland Council see the council's website: www.aucklandcouncil.govt.nz. General information on resource consents, including making an application to vary or cancel consent conditions can be found on the Ministry for the Environment's website: www.mfe.govt.nz.
4. If you disagree with the monitoring charge specified in condition 4 or any additional charges relating to the processing of the application(s), you have a right of objection pursuant to sections 357A and/or 357B of the Resource Management Act 1991. Any objection must be made in writing to the council within 15 working days of your receipt of this decision (for s357A) or receipt of the council invoice (for s357B).
5. The consent holder is responsible for obtaining all other necessary consents, permits, and licences, including the Heritage New Zealand Pouhere Taonga Act 2014. These consents does not remove the need to comply with all other applicable Acts (including the Wildlife Act 1953, Marine Mammals Protection

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Regulations 1992 and the Health and Safety at Work Act 2015), regulations, relevant Bylaws, and rules of law.

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APPENDIX ONE: DOCUMENTATION REFERRED TO IN CONDITION 1

Report title and reference	Author	Rev	Dated
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Memorandum of Consent

Consent Order

Relevant existing documents referred to in the conditions of consent (eg. Maps, plans etc)

TEMPORARY OFFSHORE CONSENT

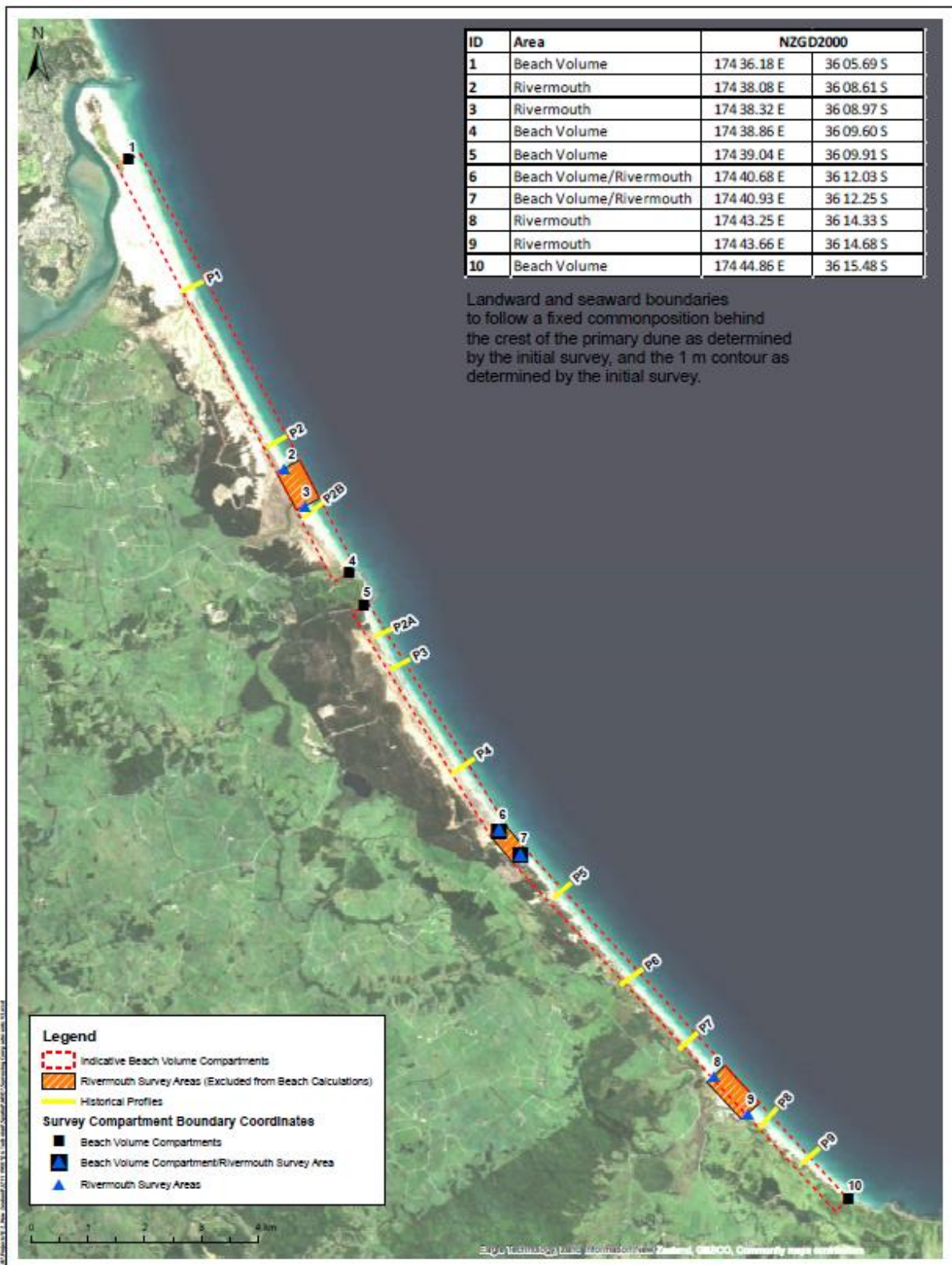
APPENDIX TWO: SENSITIVE BENTHIC COMMUNITIES

Habitat	Primary indicators
Beds of large bivalve molluscs	<p>A bed of large bivalves exists where living specimens of bivalve species:</p> <ul style="list-style-type: none"> • are estimated to cover 30% or more of the seabed on average in visual images of either 1m² or lateral view; or • comprise 30% or more by average weight or volume in grab samples. <p>Large bivalves include: Horse mussels (<i>Atrina zelandica</i>) Scallops (<i>Pecten novaezelandiae</i>) Large dog cockle, (<i>Tugetona laticostata</i>) Dredge oysters (<i>Ostrea chilensis</i>) Green lipped mussels (<i>Perna canaliculus</i>) Geoducks (<i>Panopea zelandica</i> and <i>P. smithae</i>) Trough Shells (<i>Spisula discors</i> and <i>S. murchisoni</i>) Triangle Shell (<i>Crassula aequilatera</i>)</p> <p>Shellfish known to pass through dredge alive at greater than 90% are excluded; Clam (<i>Dosinia anus</i>, <i>D. subrosea</i>, <i>Bassina yatei</i>) <i>Myadora sp.</i></p>
Brachiopod beds	<p>A brachiopod bed exists if:</p> <ul style="list-style-type: none"> • one live brachiopod occurs per m² of seabed sampled using seabed photographs; or • one or more live specimens occur in grab samples.
Bryozoan thicket	<p>A bryozoan thicket (here the term thicket is used synonymously with the terms bed, reef, meadow, etc.) is present if:</p> <ul style="list-style-type: none"> • colonies of large frame-building bryozoan species cover at least 50% of the seabed in visual imaging surveys; • one or more colonies of large frame building bryozoan species occur per m² of seabed sampled using towed sampling gear; or • one or more large frame building bryozoan species is found in grab samples.
Calcareous tube worm thickets	<p>A sensitive tube worm thicket is present if:</p> <ul style="list-style-type: none"> • 2 or more colonies of a mound forming species of tube worm are found in any grab sample; or • 2 or more colonies are observed at a greater than 10% coverage in a visual image, either 1m² or lateral view.
Chaetopteridae worm fields	<p>A sensitive Chaetopteridae worm field is present if worm tubes and/or epifaunal species:</p> <ul style="list-style-type: none"> • contribute 25% or more of the volume of a sample collected in a grab sample; or • colonies of tube worm species cover at least 50% of the seabed in visual imaging surveys.
Macro-algae beds	<p>Detection of a single occurrence of any fixed specimen of a red, green or brown macroalga at greater than 30% cover is sufficient to indicate that this habitat has been encountered.</p>
Rhodolith (maerl) beds	<p>A rhodolith bed exists if:</p> <ul style="list-style-type: none"> • a single specimen of a rhodolith species is found in grab sample; or

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	<ul style="list-style-type: none"> • there is more than 10% cover of living coralline thalli in visual images.
Sea pen field	<p>A sea pen field exists if:</p> <ul style="list-style-type: none"> • one or more specimens of any species of sea pen is found in a grab sample; or • two or more specimens per m² are found in seabed imaging surveys.
Sponge gardens	<p>A sponge garden exists if metazoans of Class Demospongiae, Class Hexactinellida, Class Calcarea or Class Homoscleromorpha:</p> <ul style="list-style-type: none"> • are estimated to cover 25% or more of the seabed in visual images of either 1m² or lateral view.

APPENDIX THREE: BEACH SURVEYING VOLUME COMPARTMENTS



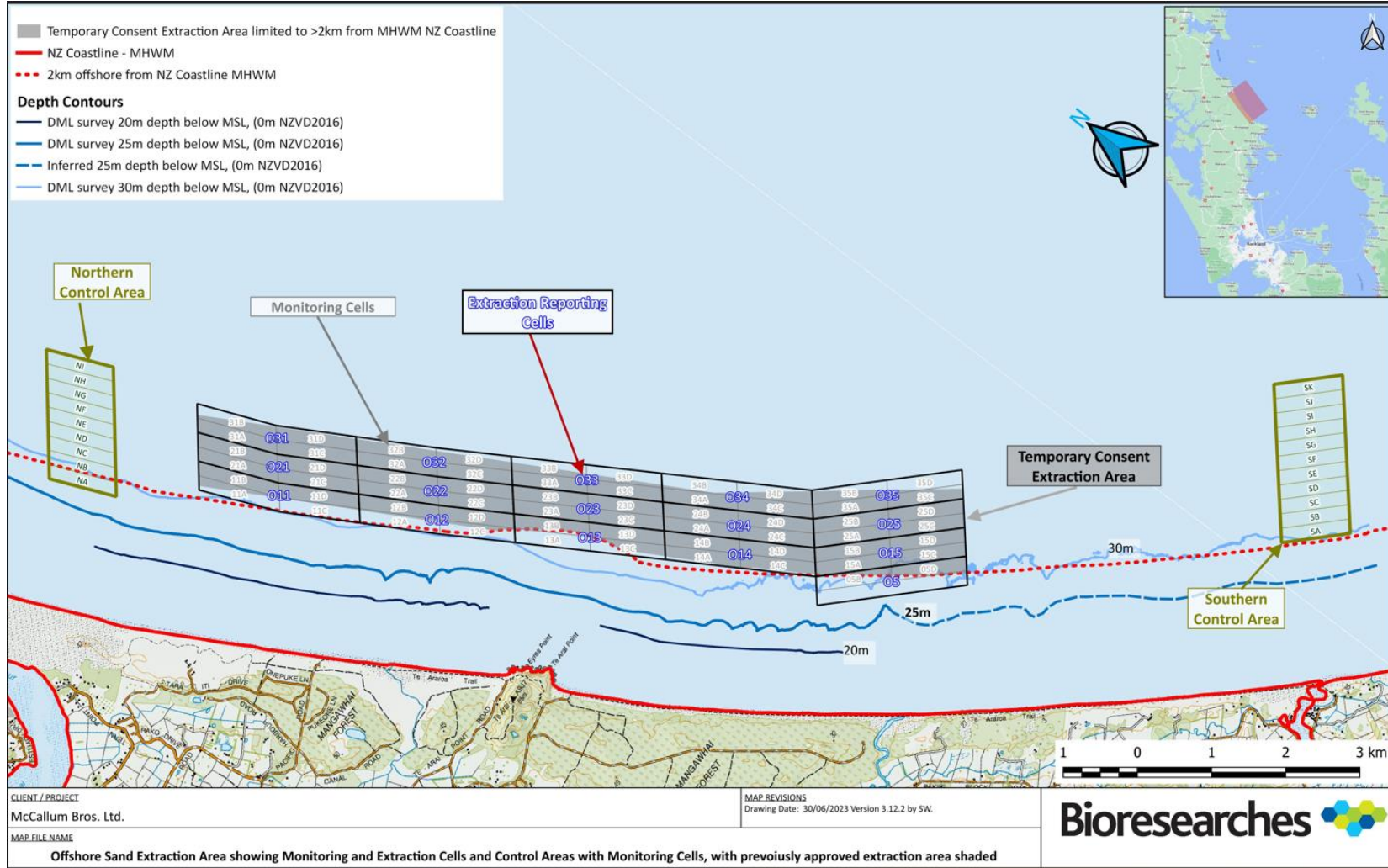
CLIENT	McCullum Brothers Ltd
PROJECT	Pakiri Sand Extraction Consent
SCALE	1:60,000
PROJECT NUMBER	43
DATE	22/09/2022
PROJECT DIRECTOR	DT
DOCUMENT NUMBER	Z111900-NM-DRG-0003
ISSUE	NM
DATE	22/09/2022

Beach Surveying Volume Compartments

Drawing Number: IZ111900-003

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APPENDIX FOUR: EXTRACTION REPORTING CELLS AND MONITORING CELLS



APPENDIX FIVE – EXTRACTION AREA

