

**Before the Environment Court
At Christchurch
I Mua I te Kōti Taiao
Ōtautahi Rohe
ENV-2022-**

Under the Resource Management Act 1991 (RMA)

In the matter of an application for declarations by **Nelson City Council**
under section 311 of the RMA

Application for declarations

Date: 8 August 2022



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To: The Registrar
Environment Court
CHRISTCHURCH

Nelson City Council applies for the following declarations:

- A The use of the beach area below mean high water springs (**MHWS**) at Delaware Bay (shown on **Plan A** attached) for driving vehicles across to launch and retrieve recreational boats/ fishing vessels at the water's edge is not a Permitted Activity under Rule CMr.33 of the Nelson Resource Management Plan (**Plan**), and therefore, the activity requires resource consent.
- B The beach area at Delaware Bay (shown on **Plan A** attached), below MHWS, which is used to launch and retrieve recreational boats/ fishing vessels, is not a launching ramp under Rule CMr.33(d) of the Plan.

The grounds for this application are:

1 The relevant Delaware Bay area is shown in the attached **Plan A** (taken from Exhibit JB02).

2 In Chapter 13 Introduction in the Plan, CMd1.4.i states:

Delaware Inlet is a relatively unmodified inlet at the mouth of the Wakapuaka River, some 15km north of Nelson City. It provides a sheltered estuarine habitat for a wide range of species, including some rare or endangered bird species. The inlet is of national significance for nature conservation and estuarine values. A large number of archaeological sites exist around the margins of the Inlet. The Inlet is of high value to Maori for spiritual reasons and as a traditional food gathering area. Some significant forest remnants occur in the Wakapuaka River Valley. The area is sensitive to change due to its relatively unmodified state.

3 An area of legal road at Delaware Bay is used by the public to access the beach area (the 'dirt' track shown in the area below, on the seaward side of the formed legal road), below MHWS, to then drive across to launch and/or retrieve recreational boats/fishing vessels at the water's edge:



- 4 The red line on the map above shows the area that is legal road and the area used by the public to access the beach area (often referred to as a 'launching ramp') is on legal road.
- 5 The beach area on the seaward side of the legal road is coastal marine area. It is in this beach area that launching and retrieving of recreational boats/fishing vessels occurs.
- 6 The relevant rule that governs this activity on the beach area is CMr.33 of the Plan. It is a regional rule, which only applies to the coastal marine area.
- 7 Rule CMr.33 provides:
 - Driving of vehicles on, and disturbance of the foreshore or seabed by vehicles, is permitted if the activity is associated with any of the following activities:
 - a) surf life-saving operations, or
 - b) emergency situations or special circumstances including oil spills, rescue operations, salvage of vessels or sea mammal stranding, or
 - c) the removal of litter, nuisance matter, or debris which may affect navigation and safety, or
 - d) the launching or retrieving of recreational or commercial vessels at launching ramps, or
 - e) Council data collection, monitoring or enforcement activity, or

- f) beach grooming undertaken by the Council, its agent, or a consent holder as part of the conditions on a consent, or
- g) activities undertaken in accordance with an Approved Conservation Management Strategy or Plan or Reserves Management Plan, or
- h) legitimate research, law enforcement or military activities undertaken by either the police, customs, Government departments or New Zealand Defence Force or recognised educational institutes, or
- i) use of the portion of Point Road below mean high water springs, or
- j) the maintenance, construction or placement of network utility structures undertaken under a permitted activity rule of this Plan or authorised by way of a Resource Consent, or
- k) the transportation of lawfully harvested aquatic organisms.

8 'Foreshore' is defined in the Plan as:

any land covered and uncovered by the flow and ebb of the tide at mean spring tides and, in relation to any such land that forms part of the bed of a river, does not include any area that is not part of the coastal marine area.

9 'Coastal marine area' is defined as:

means the foreshore, seabed, and coastal water, and the air space above the water—

- (a) of which the seaward boundary is the outer limits of the territorial sea:
- (b) of which the landward boundary is the line of mean high water springs, except that where that line crosses a river...

10 'Seabed' is not defined.

11 'Launching ramp' is not defined, although 'launching structure' is defined to mean 'any structure intended for the purposes of launching vessels.'

12 If launching is not permitted under Rule CMr.33, then it will need consent under Rule CMr.33.3 which states:

Disturbance of the foreshore or seabed that contravenes a permitted condition, and is not regulated under another rule, is discretionary.

- 13 The Planning Maps do identify 'launching ramps', but on Planning Map 37, there is no 'launching ramp' identified at Delaware Bay.
- 14 Rule CMr.33(d) permits the driving of vehicles on the foreshore or seabed that is associated with launching or retrieving of recreational or commercial vessels at 'launching ramps'.
- 15 This does not permit driving vehicles across the beach and launching or retrieving recreational or commercial vessels at various locations along the water's edge, where there is no form of launching ramp.
- 16 The beach area at Delaware Bay, below MHWS, which is used to launch and retrieve recreational boats/fishing vessels, is not a 'launching ramp' under Rule CMr.33(d) of the Plan.
- 17 To be a 'launching ramp' under Rule CMr.33(d) of the Plan, the ramp does not need to be identified on Planning Map 37 and can be any formed launching ramp that directly accesses coastal water.
- 18 We attach the following documents:
 - 18.1 **Plan A** showing the Delaware Bay area.
 - 18.2 An affidavit of Julie Clare Barton in support of the application for declarations; and
 - 18.3 A list of names of persons to be served with a copy of the application.

Date: 8 August 2022



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**Kerry M Anderson / Kate H
Rogers**
Counsel for Nelson City Council

This document is filed by Kerry Anderson of DLA Piper New Zealand, solicitor for Nelson City Council.

The address for service on Nelson City Council is at:

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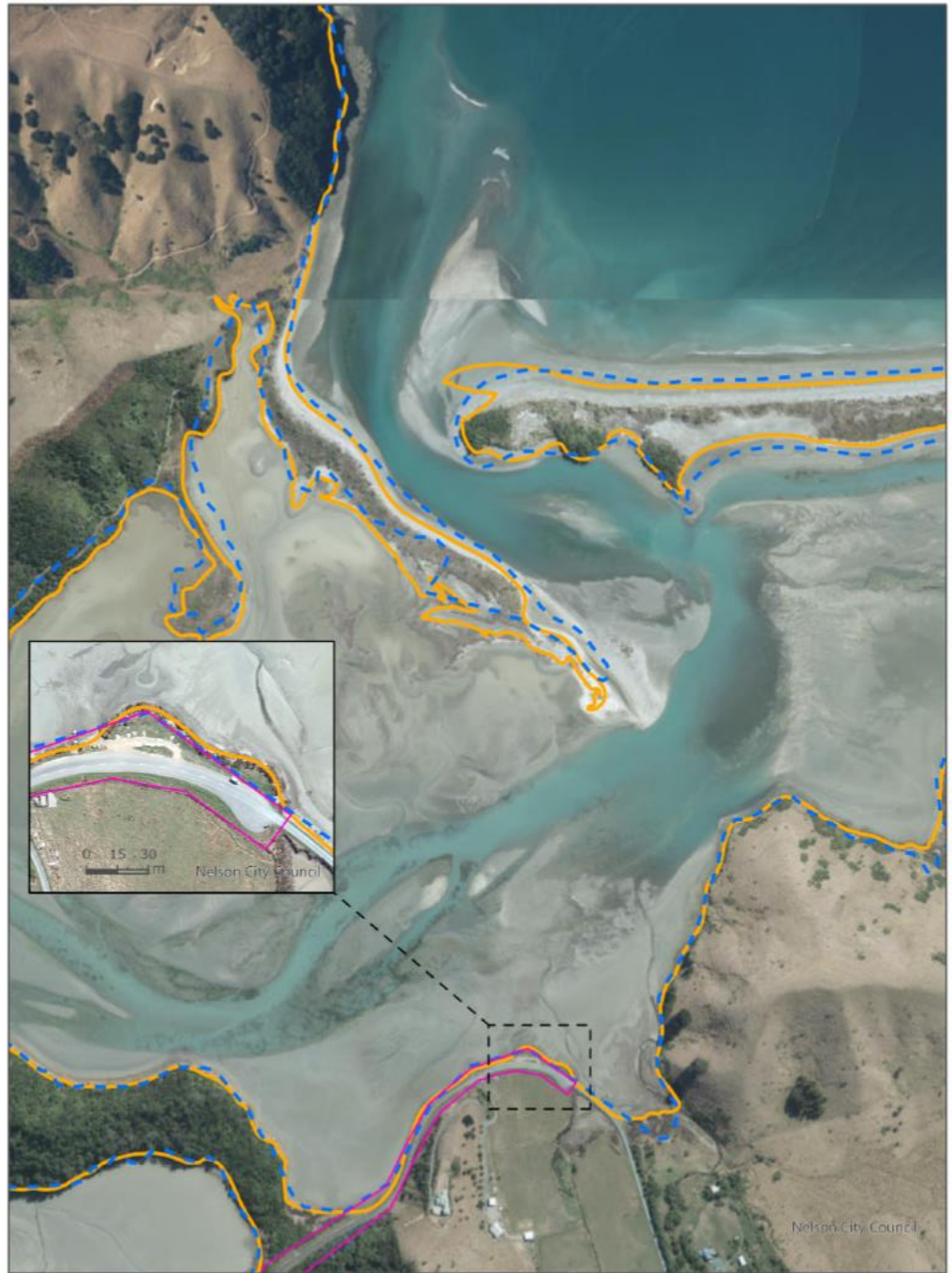
Documents for service on Nelson City Council may be:

- left at the above address for service, or
- posted to the solicitor at PO Box 2791, Wellington 6140, or
- transmitted to the solicitor by fax on +64 4 472 7429.

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Plan A - Delaware Bay Area



Delaware Bay
Attachment 1

Nelson City Council
Te Kaunihera o Whakatū

Aerial Photography flown 14 & 17 Mar 2020 and 16 Jan & 3 Feb 2019 (north)
Coordinate System: New Zealand Transverse Mercator 2000.

Legal road boundary
 Mean High Water Springs (Nelson Resource Management Plan)
 Mean High Water Springs (Nelson Plan)

0 50 100 150 200 m

N
July 2021

PO Box 645 Nelson 7040 New Zealand PH 03 5460200 nelson.govt.nz

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