

Decision released from confidential session

Recommendation from (agenda report)

Date of meeting

Council

10 November 2022

Report Title and number

Mayor's Report - Confidential R27328

Documents released

Report (R27328), tabled documents and the decision

Motion - lost

That the Council

1. Receives the report Mayor's Report - Confidential (R27328); and
2. Instructs officers to discontinue the declaration proceedings ENV-2022-CHC-27 in relation to launching of vessels at Delaware Bay; and
3. Agree that Mayor Nick Smith, with the support of Council officers, work with affected and interested groups to explore a mutually agreed outcome in relation to accessing the beach at Bishop Point, Delaware Bay; and
4. Confirms that His Worship the Mayor report to Council on a monthly basis on progress; and
5. Agrees that Report (R27328) and the decision remain confidential at this time.

The motion was put and a division was called:

For

His Worship the Mayor Smith
(Chairperson)
Cr Hodgson
Cr Skinner

Against

Cr Anderson
Cr Benge
Cr Brand
Cr Courtney
Cr O'Neill-Stevens
Cr Paki Paki
Cr Rainey
Cr Rollo
Cr Sanson
Cr Stallard

The motion was lost 3 - 10.

His Worship the Mayor/Skinner

Lost

Subsequent Decision Resolved CL/2022/257

That the Council

1. Agrees that Mayor's Report - Confidential (R27328), the decision and tabled documents (1982984479-5290 and 1982984479-5291) be released from confidential business.

His Worship the Mayor/Hodgson

Carried

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Item 1: Mayor's Report - Confidential

Council



10 November 2022

REPORT R27328

Mayor's Report - Confidential

1. Purpose of Report

- 1.1 To discontinue declaration proceedings in relation to launching vessels at Delaware Bay and work directly with parties on finding a solution.

2. Recommendation

That the Council

1. ***Receives the report Mayor's Report - Confidential (R27328); and***
2. ***Instructs officers to discontinue the declaration proceedings ENV-2022-CHC-27 in relation to launching of vessels at Delaware Bay; and***
3. ***Agree that Mayor Nick Smith, with the support of Council officers, work with affected and interested groups to explore a mutually agreed outcome in relation to accessing the beach at Bishop Point, Delaware Bay; and***
4. ***Agrees that Report (R27328) and the decision remain confidential at this time.***

3. Exclusion of the Public

- 3.1 This report has been placed in the confidential part of the agenda in accordance with section 48(1)(a) and section 7 of the Local Government Official Information and Meetings Act 1987. The reason for withholding information in this report under this Act is to:

- Section 7(2)(g) To maintain legal professional privilege

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Item 1: Mayor's Report - Confidential

4. Discussion

4.1 The Council, through staff acting under delegated authority, has initiated declaration proceedings before the Environment Court to determine the status of boat launching activities at Bishop Point, Delaware Bay. I accept there is some debate as to the application of Rule 33.1 in the Nelson Resource Management Plan (NRMP – see extract below) but this stems from several perspectives.

Item	Permitted
CMr.33 Disturbance of foreshore or seabed by vehicles [note – this rule is a regional rule]	CMr.33.1 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. Conditions: i) vehicles are not driven in a manner which poses a threat to public safety, and ii) no contaminants are released to land or water from the vehicle and no refuelling may take place on any area of foreshore or seabed, and iii) disturbance (especially to sand dunes, vegetation and bird nesting areas) is the minimum necessary to enable the activity to take place.

4.2 Boat launching in this locality has a long tradition. There is no constructed boat ramp and users rely on the natural profile and surface of the beach. This is no different from the custom and practice enjoyed by many New Zealanders all round the coastline. Public boat ramps are a convenience which local authorities and boating clubs sponsor and for which consents are normally required, but these do not, in my view, negate the alternative options for individuals accessing the sea.

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Item 1: Mayor's Report - Confidential

- 4.3 Prior to the NRMP being notified, the area was covered by the Waimea County District Scheme which required public boat launching ramps to get consent. As no public launching ramp was constructed, no consent was necessary to facilitate access to the beach. Such access by individuals was not unlawful. (Note, that the jurisdiction of the district scheme stopped at MHWL with activity on the beach being subject to the Harbours Act 1950 and Local Government Act 1974).
- 4.4 When the NRMP was notified in 1996, Rule 33.1 permitted the driving of vehicles on beaches for the purpose of "launching or retrieval of recreational and commercial vessels at launching ramps", subject to some performance conditions. "Launching ramps" is an undefined term but "launching structures" is defined to be any "structure" intended to be used for launching vessels. While the intent may have been to use the terms interchangeably, confusion exists as to whether a launching ramp is a constructed or natural feature.
- 4.5 In August 1998, launching ramp notations were added to the working draft planning maps of the NRMP but not because of any submission, and in November 2003 the Bishop Point notation was removed, again as an administrative exercise with no public input but followed email interchange with Ngāti Tama. The NRMP was made operative in January 2006 and is therefore deemed to have been through all the correct processes. However, the history does leave open a number of questions and I am not confident the declaration proceedings are the appropriate means to resolve issues. They will not be inexpensive, and unbudgeted costs have already been incurred.
- 4.6 The practical effect of the evolution from the Waimea County Council District Scheme under the Town and Country Planning Act, to the proposed plan NRMP in 1996, to the adding and then removal of the notations of the Bishop Point boat ramp, if determined by the Environment Court to prohibit boat launching, is that this will have inadvertently occurred without any notification or public process. An important RMA principal is that people will not have rights affected without them having an opportunity to have input into the decision.
- 4.7 There is an alternate launching ramp notation marked on the NRMP into the Delaware Estuary at the Cable Bay end, but it is not a practical access and has never been used. It has not been helpful to indicate to boat users that there is an alternative launch ramp when it only exists in theory. My preferred outcome is a brokered solution where boat access is allowed but restricted to a discrete area. The difficulty with the Court application is its role is simply to rule on the interpretation of a plan that is confusing and unclear rather than what is the right practical answer to the balance of interests.
- 4.8 Given the national direction to promote public access to and along the coast, and recognising that beaches are legally defined as roads, a fair and liberal interpretation is that a beach can be used for launching vessels, provided the beach can be accessed legally via a road or with

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Item 1: Mayor's Report - Confidential

the permission of the adjoining landowner. Not all access to the beach needs to be through public launching ramps.

- 4.9 The issue could then become one of scale and intensity as contemplated by the conditions attached to Rule 33.1. If enough vehicles crossed the beach and resulted in a hardening of the access point, or where damage to flora and fauna was occurring, this might constitute a situation where consent was required. Cawthron Institute was commissioned to report on the ecological effects of vehicles in Delaware Bay and while there is some suggestion of adverse effects, these are not clearcut or widespread, and at higher tides, there is less need for vehicles to traverse the beach.
- 4.10 I accept that Ngāti Tama and other iwi consider unconstrained access to the coast in Delaware Bay to cause cultural offence and we need to better understand the nature of this. The solution lies in restoring access to an appropriate area.
- 4.11 In my view, the preferred outcome here is that the community should decide on how best to manage access to the beach at Bishop Point. Leaving the interpretation to the Court does not guarantee the best community outcome. If Rule 33.1 is breached in terms of disturbance to vegetation and birdlife, that is an enforcement matter for the Council.
- 4.12 The Council should discontinue the declaration proceedings, and I will commit to working with the parties to see how best to reconcile all the differing views, including the position adopted by Ngāti Tama which also has a long history in this location. Some parties may seek costs against Council for efforts to date and given the advanced nature of the proceedings, costs have already been incurred. There may also be some reputational implications by withdrawing. However, withdrawing now and before parties have to report to the Court (between now and 2 December 2022) could reduce the cost impact. The option of continuing with the proceedings will only serve to create further division with the other stakeholders involved who support continued access in this location.
- 4.13 To reduce the risk of cost awards, an alternative approach could include the option of seeking an adjournment of the proceedings instead of withdrawing. That is, adjourning to allow discussions between the parties. This would require some 'sounding out' as to whether the other parties are amenable to such an approach and this delay may work against this option.
- 4.14 I am mindful that elected members should not get involved in enforcement actions, but Mr Bush-King, General Manager, Environmental Management has confirmed that declaratory proceedings are not prosecutorial and are about interpreting the rules. It is currently the role of the Council to set the policy and rule framework and, in this case, I would invite the Council to lead on this matter.

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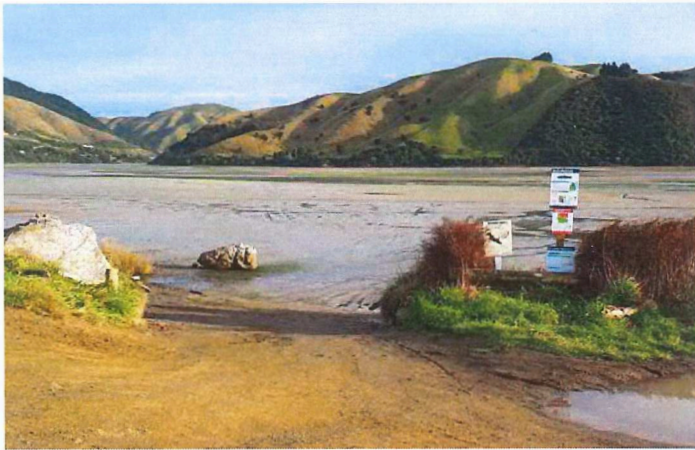
Item 1: Mayor's Report - Confidential

Author: Nick Smith, Mayor

Attachments

Nil

Released 10 November 2022



DELAWARE ESTUARY – THE ISSUES

Delaware (wakapuaka) Estuary – What’s happening?

For some years, vehicles and trailers have been driven across the mudflats at the end of Māori Pā Road to launch and retrieve boats in the channel. This has impacted on the delicate estuarine ecosystem, and been in conflict with cultural values held by local iwi.

The Council acknowledges the popularity of Delaware (Wakapuaka) Estuary compared to other nearby sites (including Cable Bay) particularly with smaller boat owners and families, due to the ease and safety of access at this spot.

The Council has been working with local iwi, residents and the boating/fishing community to reach agreement over an appropriate way to manage access. The aim is to ensure small boats can still be launched and retrieved, while recognising and respecting the Estuary’s cultural and ecological values.

We’re now in a position to start preparing an access solution which is expected to be in place for the 2019-20 launching and retrieval.

PROPOSAL FOR MANAGED ACCESS

As shown on the map, we propose to create a 20m wide marked vehicle lane with wider fans at both the creek near the layby for high tide, and at the edge of the main channel in the Estuary for low tide launching and retrieval.

Vehicle access would be solely for boat launching and retrieval only, not for cockle harvesting, set-netting or any other purpose.

We also propose to set most of the lay-by aside for use by the general public, rather than just for car and trailer parking. Cars and trailers would park on the road shoulder.

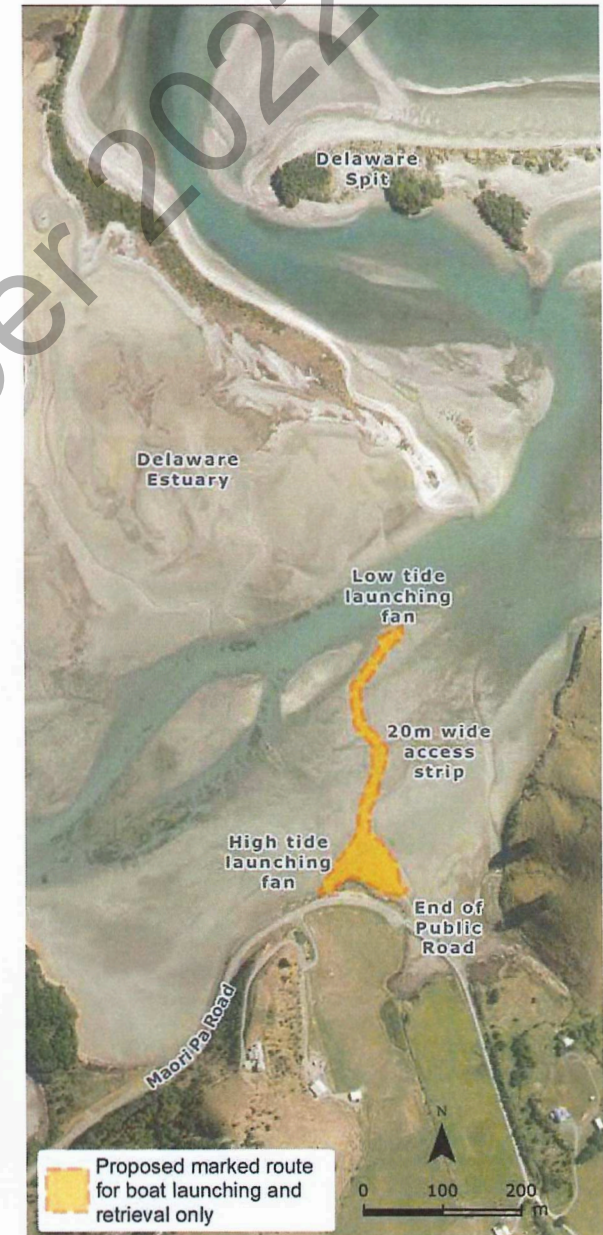
This proposal creates the smallest possible ‘footprint’ on the Estuary, while still providing for vehicle access.

Users would generally need to time launching and retrieval at higher or lower tides.

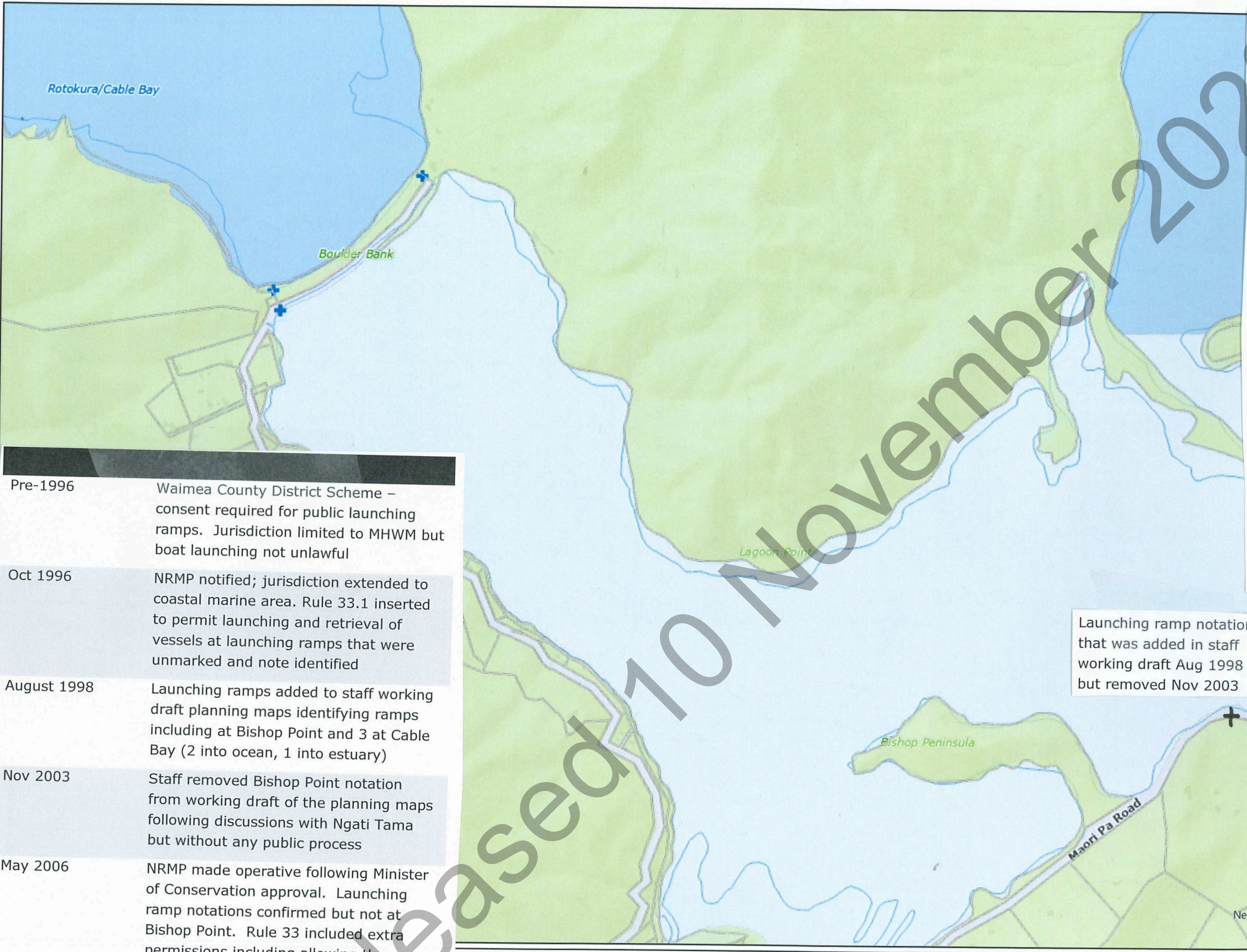
We’re now seeking a short term (1-2 years) resource consent for a trial of this proposal. Assuming resource consent is obtained, we’ll be monitoring the effects of activity and the behaviour of users during this period.

We also expect to actively enforce restrictions on vehicle use outside the marked route during the trial. If the proposal is found to be successful a longer term consent would then be sought.

If you’d like more information, or to provide feedback, email nelson.plan@ncc.govt.nz or phone 03 546 0200



Operative Version



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- Pre-1996** Waimea County District Scheme – consent required for public launching ramps. Jurisdiction limited to MHWL but boat launching not unlawful
- Oct 1996** NRMP notified; jurisdiction extended to coastal marine area. Rule 33.1 inserted to permit launching and retrieval of vessels at launching ramps that were unmarked and note identified
- August 1998** Launching ramps added to staff working draft planning maps identifying ramps including at Bishop Point and 3 at Cable Bay (2 into ocean, 1 into estuary)
- Nov 2003** Staff removed Bishop Point notation from working draft of the planning maps following discussions with Ngati Tama but without any public process
- May 2006** NRMP made operative following Minister of Conservation approval. Launching ramp notations confirmed but not at Bishop Point. Rule 33 included extra permissions including allowing the transportation of lawfully harvested aquatic organisms (as a result of Ministry of Fisheries submission).

Launching ramp notation that was added in staff working draft Aug 1998 but removed Nov 2003

Nelson City Council, Aerial flown:1943; Resolution:0.3 m

Launching Ramp notations



Scale 1:10,000



Date: 8/11/2022

The map is an approximate representation only and must not be used to determine the agents and contractors will not be liable for any costs, damages or loss suffered as a result of the map. City Council information is licensed under a Creative Commons Attribution-NonCommercial-ShareAlike license. Nelson City Council data must not be sold without prior written consent. For more information please contact us. Cadastral information derived from the Land Information New Zealand. CROWN COPYRIGHT RESERVED. Kilmeny.stephens@ncc.govt.nz