

Invitation for Comment on Kōpū Marine Precinct

Kōpū Marine Precinct is a Referred Project under the COVID-19 Recovery (Fast-track Consenting) Act 2020

Application name	Kōpū Marine Precinct
EPA reference	FTC000034
Applicant/s	Thames Coromandel District Council
Comments due by	1 February 2022
Accessing the application	https://www.epa.govt.nz/fast-track-consenting/referred-projects/kopu-marine-precinct/the-application/

An application has been made by Thames Coromandel District Council (the applicant) under the COVID-19 Recovery (Fast-track Consenting) Act 2020 (the Act) for resource consents for project the Kōpū Marine Precinct (the project).

To comment on the project application, please fill in the details on the attached form and:

- **Email** the form to kopu.fasttrack@epa.govt.nz. Please mark in the subject line: “Comments on Kōpū Marine Precinct Fast Track Application (Your name/organisation) by **1 February 2022**”; or
- **Post** the form to Kōpū Marine Precinct Application, Environmental Protection Authority, Private Bag 63002, Waterloo Quay, Wellington 6140 in time for the form to be received by the **1 February 2022**; or
- **Deliver in person** to Environmental Protection Authority, Grant Thornton House, Level 10, 215 Lambton Quay, Wellington by **1 February 2022**. Please note that due to potential changes in colour settings under the COVID-19 Protection Framework (the “traffic light system”) our reception may not be open to the public. We suggest phoning ahead to check. A COVID-19 Vaccine Pass is required to be presented to enter the EPA offices.

Comments must be received by the EPA, on behalf of the Kōpū Marine Precinct Expert Consenting Panel, no later than **1 February 2022**

If your comment is not received by the EPA by **1 February 2022** the Panel is not required to consider your comment (although it may decide to).

Under the COVID-19 Recovery (Fast-track Consenting) Act 2020 there is no right to seek a waiver of the time limit.

If you are an iwi authority you may share the consent application with hapū whose rohe is in the project area in the application and choose to include comments from the hapū with any comments you may wish to provide.

Important information

Your personal information will be held by the EPA and used in relation to the project consent application process. You have the right to access and correct personal information held by the EPA.

A copy of your comments, including all personal information, will be provided to the Expert Consenting Panel and the applicant.

All comments received on the application will be available on the EPA website.

If you are a corporate entity making comments on this application, your full contact details will be publicly available. For individuals, your name will be publicly available, but your contact details (phone number, address, and email) will not be publicly available.

Please do not use copyright material without the permission of the copyright holder.

All information held by the EPA is subject to the Official Information Act 1982.

More information on the fast-track consenting process can be found at <https://www.epa.govt.nz/fast-track-consenting/about/>.

More information on the commenting on a fast-track consenting application can be found at <https://www.epa.govt.nz/fast-track-consenting/commenting/>.

Your Comment¹ on the Kōpū Marine Precinct

All sections of this form with an asterisk (*) are mandatory.

1. Contact Details

Please ensure that you have authority to comment on the application on behalf of those named on this form.

Organisation name (if relevant)	Waikato Regional Council		
*First name	Alejandro		
*Last name	Cifuentes		
Postal address	Private Bag 3038 Waikato Mail Centre Hamilton		
*Home phone / Mobile phone		*Work phone	07 859 2786
*Email (a valid email address enables us to communicate efficiently with you)	Alejandro.Cifuentes@waikatoregion.govt.nz		

2. *We will email you draft conditions of consent for your comment

X	I can receive emails and my email address is correct	<input type="checkbox"/>	I cannot receive emails and my postal address is correct
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3. Please provide your comments on this application

Note: Waikato Regional Council has not received any resource consent applications related to the Kōpū Marine Precinct to date.

General comments

We note that the application now includes two options which would both have to be assessed under the National Environmental Standard for Freshwater (NES-F), given that the application documents identify the existence of a natural wetland in the project area (see Appendix R for option 1 and the redesigned EEA, dated Nov 2021). According to the September 2021 High Court decision (*Minister of Conservation et al vs Royal Forest and Bird Protection Society of New Zealand Incorporated [2021] NZHC 3113*) the NES-F applies to natural wetlands in the coastal marine area (CMA).

¹ If you do not use this form to write your comment please attach this form with the personal details filled out to your comment.

The application of the NES-F rules is particularly relevant for the assessment of option 2 since it will result in the drainage of a wetland. This option relies on the Kōpū Marine Facility meeting the definition of Regionally Significant Infrastructure of the Waikato Regional Policy Statement (WRPS), as outlined in Appendix H (legal opinion). This is based on the assumption that policy 3.22 of the National Policy Statement for Freshwater Management (NPS-FM) would exclude specified infrastructure (i.e. infrastructure that meets the definition of regionally significant infrastructure under a regional plan or regional policy statement) from certain requirements under the NES-F – it would not be assessed under regulation 53 (drainage of a wetland as a prohibited activity). Although WRC staff agree that the marine precinct proposal does meet the WRPS definition of infrastructure, we consider it does not meet the narrower definition of *regionally significant* infrastructure. The WRPS provides for future infrastructure (policy 6.3(a)(ii)) and enables WRC to collaborate with Territorial Authorities in the integrated management of infrastructure in the CMA, however it does not provide for infrastructure in the CMA to be considered regionally significant. This interpretation is based on the understanding that the definition of “regionally significant infrastructure” is narrower than that for “infrastructure” in the WRPS.

Additionally, the EPA will need to carefully consider the consequences determining if a project meets the conditions under NPS-FM policy 3.22(b). This policy sets an additional bar to assess the effects of specified infrastructure and requires careful consideration by the consenting authorities on a case-by-case basis. Further, we consider that the provision under NPS-FM policy 3.22 to exclude specified infrastructure does not necessarily make regulation 45 of the NES-F applicable – this regulation covers the construction of specified infrastructure as a discretionary activity. TCDC’s supporting documentation for option 2 appears to assume that regulation 45 would override regulation 53 (drainage of wetland as a prohibited activity). It is not clear that the matters of discretion in regulation 45 would be sufficient to exclude the application of regulation 53. This outstanding matter requires further examination that ought to be addressed by the EPA as the consent authority.

There seems to be a reliance on monitoring and management plans in the conditions proffered by the applicant. Ideally the conditions should set a desired outcome or be clear on the objective and a monitoring or management plan needs to be designed show how this will be achieved.

Finally, we are interested in an opportunity to review the proposed conditions prior to a decision, if possible. We would also appreciate if the EPA’s decision distinguished between the role of the regional and district councils, we consider it easier for the exercise of the local authorities’ functions to have the consents and conditions separated on that basis.

Ecological and biodiversity values

Upon reviewing the information supporting the application WRC staff notes the following:

1. Banded rail is classified as ‘*At Risk – Declining*’ in the NZ Threat Classification System. Their decline coincided with habitat loss (wetland drainage) and are now found to mainly reside in mangrove and saltmarsh ecosystems in the upper North Island.
 - The fact that a pair of banded rail were recorded/seen (ref: Appendix R – Option 1) in this area suggests that there is sufficient habitat/resources to sustain them. WRC staff suggest that further observations by a suitably qualified ecologist on the banded rail pair are required to establish if this area forms part of their territory or the pair are transient.

- If this area forms part of the observed pair's territory (which could include breeding), the Kōpū Marine Facility may destroy up to 10% of their territory but may also cause a larger proportion of their territory to be uninhabitable due to disturbance from noise, light and activity levels associated with the proposed Marine facility.
- Furthermore, if other banded rail territories are contiguous further downstream then the placement of the Kōpū Marine Facility has the ability to destroy the entire territory (or reduce to unsustainable levels) of a potential breeding pair of banded rail.
- We also suggest that the EPA should assess the validity of the assumption that the presence of the suitable surrounding environment "*The mangrove and intertidal habitat found north, south and across the river from the proposed site*" could serve as a justification for disturbance of the habitat. We note these habitats have not been surveyed for banded rail presence, so there is no certainty if they are inhabited by banded rail or whether they may be occupied by additional pairs.
- The supporting documentation states that "[t]he loss of this proportion of foraging habitat is unlikely to have a substantial effect on birds foraging capacity considering the available like-for-like habitat located immediately north of the site." We suggest that the following questions should be answered to ascertain the validity of the statement above:
 - Have banded rail been observed north of this site?
 - Is this area north part of another breeding pair's territory?
 - The report states "unlikely to have a substantial effect." More work is needed to determine if any other avifauna assessments located immediately north of the site to suggest suitability or availability. We were unable to identify any information of this nature in the supporting documents.
- WRC staff does not consider the proposed banded rail management plan is suitable in the absence of the above information.

WRC consider that there are several assumptions in section 4.7 of Appendix R (Potential effects on avifauna) that need further clarification and information gathering.

With respect to intertidal vegetation and intertidal/subtidal invertebrate ecology, WRC staff largely agree with the assessment of Dr Sim-Smith (Appendix S). The intertidal invertebrate survey is rudimentary with a low number of samples and a subtidal assessment was not undertaken. While the conclusion of a depauperate benthic community is likely correct, given the known disturbances at the site, the lack of sampling effort undermines the strength of the conclusions made, for example the absence of taxa listed in Freeman *et al.* (2014). Typically, benthic site assessments would include 10-12 macrofaunal cores i.e., three times the sample effort of this survey.

The AEE has focused on the development and construction of the marine precinct. A wider consideration connected to construction is whether ongoing sediment dredging would be required around structures (such as the ramps, pilings) or in the subtidal channels after construction. Dredging of fine sediments and their disposal, which may require transport through more pristine sites in the Waikato CMA, can have significant impacts on marine biodiversity and ecosystem functioning. Similar concerns about sediment disposal were raised as part of the application for marine dumping – in the Northern Disposal Areas – lodged with the EPA by Coastal Resources Limited. We maintain when consenting infrastructure that will require dredging, disposal ought to be considered from the outset.

Climate Change and Natural Hazards

We notice the EEA covered some of aspects of natural hazards management through design levels that will be able to be modified and managed through an Adaptive Management Plan. However, we highlight the need to assess the application to determine the impact of the proposal on existing natural hazards risk mitigation infrastructure and agreed levels of service for the area. Further, we note the need to ensure that the construction methodology, proposed design and other relevant works are carried out in accordance with the conditions outlined by WRC in the written approval of requiring authority provided to the applicant (Appendix H for option 1). WRC has a strong interest in this application, given that the proposed construction is on WRC land which also has Soil Conservation and River Control Act protection over it.

Thank you for your comments