

16 February 2022

Expert Consenting Panel
Kōpū Marine Precinct
Environmental Protection Agency

By e-mail: alexander.erceg@epa.govt.nz

Dear Panel,

RE: RESPONSE TO COMMENT – WAIKATO REGIONAL COUNCIL

Thank you for the opportunity to provide a response to the Waikato Regional Council (WRC) comments on the Kōpū Marine Project.

The response covers the following four topics in turn:

- The applicability of the Regionally Significant Infrastructure provisions
- The applicability of the regulations 45 and 53 of the National Environment Standards for Freshwater (NES-FW)
- Conditions of consent
- Ecological matters

Regionally Significant Infrastructure

Somewhat disappointing, the comments provided by WRC, which we received on the 11th February 2022 conflict with earlier advice provided by senior staff and elected members of WRC, which is primarily documented in the letter dated 26 July 2021, appended to the application documents¹. It also conflicts with the legal advice provided by Alan Webb² and the legal advice provided to the Panel by Derek Nolan, QC. Given that the Applicant has already provided a thorough legal opinion on this matter I do not consider it necessary to further comment on the argument put forward by WRC in this set of comments.

National Environmental Standards - Freshwater

The comments provided by WRC suggest that, in the event the Regionally Significant Infrastructure definition is applied, it does not necessary follow that regulation 45 overrides regulation 53. These regulations are included below for ease of reference (my emphasis added):

45 Discretionary Activities

- (1) Vegetation Clearance within, or within a 10m setback from, a natural wetland is a discretionary Activity if it is for the purpose of constructing specified infrastructure.*
- (2) Earthworks or land disturbance within, or within a 10 m setback from, a natural wetland is a discretionary activity if it is for the purpose of constructing specified infrastructure.*
- (3) Earthworks or land disturbance outside a 10 m, but within a 100 m, setback from a natural wetland is a discretionary activity if it—
(a) is for the purpose of constructing specified infrastructure; and
(b) results, or is likely to result, in the complete or partial drainage of all or part of the natural wetland.*

¹ Appendix L, Option 2 Application

² Appendix H, Option 2 Application and legal overview dated 12 November 2021.

(4) *The taking, use, damming, diversion, or discharge of water within, or within a 100 m setback from, a natural wetland is a discretionary activity if it is for the purpose of constructing specified infrastructure.*

53 Prohibited Activities

- (1) *Earthworks within a natural wetland is a prohibited activity if it—*
- (a) results, or is likely to result, in the complete or partial drainage of all or part of a natural wetland; and*
 - (b) does not have another status under any of regulations 38 to 51.*
- (2) *The taking, use, damming, diversion, or discharge of water within a natural wetland is a prohibited activity if it—*
- (a) results, or is likely to result, in the complete or partial drainage of all or part of a natural wetland; and*
 - (b) does not have another status under any of regulations 38 to 51.*

It is therefore clear from subclauses (1)(b) and (2)(b), that the activity status in regulation 45 overrides the activity status under regulation 53.

The core issue raised in the WRC comments appears to be whether option 2 constitutes regionally significant infrastructure.

WRC say it is not for two reasons:

- a) Policy 6.3(a)(ii) does not provide for infrastructure in the CMA to be regionally significant because the definition of regionally significant infrastructure is narrower than the definition for infrastructure; and
- b) Policy 3.22 of the NPS-FM requires cases to be considered on a case-by-case basis.

The first argument is premised on there being no regionally significant infrastructure in the “list” of RSI in the WRPS.

This issue has already been addressed by the Applicant. The WRPS “list” is not closed. It uses the word “includes” before listing the *current* Regional Significant Infrastructure (see further details in Alan Webbs letter dated 23 September 2022¹). There is no bar anywhere to allowing Regionally Significant Infrastructure in the CMA. Indeed, to do so would be contrary to other WRPS objectives and policies that endorse the establishment and support of the aquaculture industry. Policy 6.3(a)(ii) certainly does not create such a prohibition.

This reasoning is fanciful and should simply be ignored.

Conditions of Consent

A comprehensive review of conditions will be provided in response to the 2nd further information request.

Ecological Matters

4Sight Ecologists have provided an additional Memorandum in response to the matters raised by WRC, which is attached to this letter. It is noted that a number of the matters overlap with the matters raised by Forest and Bird, which were addressed in an earlier Memorandum, therefore there is some repeat of information.

Please advise if there are any further questions that arise from this.

Kind Regards,



Christina Walker
Principal Planner and Hamilton Manager
4Sight Consulting Ltd

Attachment - Ecological Memorandum

16 February 2022

Lorenzo Canal
Urban Solutions Limited
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Parnell
Auckland 1052

By e-mail: lcanal@urbansolutions.co.nz

Dear Lorenzo,

RE: WAIKATO REGIONAL COUNCIL SUBMISSION ON THE KOPU MARINE PRECINCT APPLICATION

INTRODUCTION

Thames Coromandel District Council is proposing to redevelop existing marine and ancillary land facilities at 11 Quay St, Kopu, to accommodate increased marine activities including site access from King Street and Quay Street, mixed-use hardstand, marine servicing zone, and bulk transport and storage. An alternative design was prepared in November 2021 to avoid earthworks in the natural wetland habitat identified within the proposed development footprint that could result in its partial or complete drainage. Applications for both the original and the revised designs have been submitted. Due to the order that they were submitted in the application, Option 1 is the revised/reduced design and Option 2 is the original design that includes mangrove removal.

Waikato Regional Council (WRC) has made a submission on the proposed development raising concerns regarding the potential adverse environmental impacts of this proposal.

This letter responds to a number of the ecological issues raised by WRC that we consider could benefit from further comment. Sections of this response have been replicated from our previous response to Forest and Bird (10 February 2022).

BANDED RAIL

Territories and Home Range

WRC raised concerns about the loss of banded rail habitat and the adverse effects it may have on the banded rail, primarily the potential need for the two individual birds to move into adjacent habitat that may be territory of other birds, noting that the mangrove and intertidal habitat found north, south and across the river from the proposed site has not been surveyed for banded rail.

Jacques De Satge of Massey University (PhD candidate) presented at the Auckland regional meeting of the Ornithological Society of New Zealand (Birds NZ) on 6 Dec 2021 to discuss the findings of his currently unpublished dissertation on 'Habitat use of mangroves by banded rail'. In collaboration with the Department of Conservation (DOC) six banded rail in the Auckland region were GPS collared and tracked with data collected at 20-minute intervals. The results found territories of individuals regularly overlapped with one another and nightly roosting occurred in much closer proximity to one another than originally thought. While not yet published, the preliminary evidence questions current understanding of banded rail behaviour and the assertion that individual territories are rigid, exclusive zones.

The Te Ara government website notes that it is natural for banded rail parents to evict young from their territory after two months¹, indicating that under normal conditions, banded rail would naturally migrate away from their home ranges into new areas. The process of individuals moving out into new areas is a life history trait of banded rail and shared by many species, the process would not cause direct harm to individuals.

Habitat

WRC raised concerns about the loss of banded rail habitat and the adverse effects it may have on the pair of banded rail, particularly foraging capacity.

Given the latest evidence on banded rail territories, the following comments are made with the understanding that individual birds can be expected to move into suitable adjacent habitat both with and without neighbouring banded rail present without experiencing significant adverse effects. Further, our assessment also assumes that, based on the observation of two birds during our survey, it is likely that there are other birds in the vicinity; however, as noted by WRC, the area north of the proposed development was not surveyed.

Foraging

4Sight concluded that the unvegetated intertidal area that may be lost due to the development was small in area, and of low ecological value for sustaining populations of wading birds.

Mr De Satge's research showed that benthic macroinvertebrate communities were richer and more abundant inside large contiguous mangrove stands than along the edge of mangrove stands. The explanation was that mature mangrove stands support a more matured invertebrate community.

De Satge also undertook footprint identification surveys of banded rail using quadrats and found 16/30 had banded rail footprints within the middle of the mangrove stands, while 2/15 had footprints along the mangrove edge, suggesting thin mangrove edges are less desirable environments. Section 3.2.1 paragraph 9 of the ecological assessment report describes the wetland within the proposed development as being of lower ecological value from that in the north as it is narrower, offers less functional habitat, and is impinged by the industrial zone.

On that basis, the removal of narrow strips of mangroves proposed in Option 2 is unlikely to adversely impact banded rail foraging success, given the presence of higher quality foraging habitats to the north.

Lighting

WRC made note of potential disturbance to banded rail from light as a result of the development.

We agree there is the potential for lighting from the new development to have adverse effects on animals. It is generally known birds can be attracted to, and disoriented by, artificial lights². The lighting proposed at the development is restricted to areas that require lighting for their functionality and health and safety requirements. Around the commercial slipway, wharf and carpark, the proposed lighting is designed to illuminate downwards to reduce light spill (AEC Italo lighting). The lighting along the floating pontoon is designed to be mounted at ground level, where they have low luminosity, and illuminate horizontally from a shielded and directed mount (Aqualuma pathway lights). Overall, we consider the lighting proposed for the development will not have adverse effects on banded rail.

There are no New Zealand light pollution guidelines to protect wildlife at the time of writing this memo, however, the Australian Government has recently released guidelines that are applicable to birds, particularly shorebirds and seabirds in a New Zealand setting³. The guidelines include best practice lighting design and light management principles, with a summary provided below.

¹ <https://teara.govt.nz/en/wetland-birds/page-9>

² Rich, C. and T. Longcore (editors). 2006. Ecological consequences of artificial night lighting. Island Press.

³ Commonwealth of Australia. 2020. National Light Pollution Guidelines for Wildlife Including Marine Turtles, Seabirds and Migratory Shorebirds.

Simple management principles can be used to reduce light pollution, including:

- 1) Start with natural darkness and only add light for specific purposes.*
- 2) Use adaptive light controls to manage light timing, intensity and colour.*
- 3) Light only the object or area intended – keep lights close to the ground, directed and shielded to avoid light spill.*
- 4) Use the lowest intensity lighting appropriate for the task.*
- 5) Use non-reflective, dark-coloured surfaces.*
- 6) Use lights with reduced or filtered blue, violet and ultra-violet wavelengths.*

We understand that these management principles will aim to help mitigate the adverse effects artificial lighting may have on birds at the site, and we recommend the developer considers as many of these as practicable.

MANAGEMENT PLAN

WRC does not consider the proposed banded rail management plan suitable without further information on whether the area north of the site has other banded rail, if it forms part of their territories, and confirming the area's suitability or availability for the pair within the site.

4Sight considers the information provided above regarding banded rail territories and home range, and their ability to forage in higher quality habitat north of the site, addresses WRC's concerns about the pair of banded rail moving into available habitat north of the site.

INTERTIDAL/SUBTIDAL HABITAT

WRC considers the marine benthic sampling in and around the site to be rudimentary with a low number of samples.

4Sight acknowledges the low number of samples collected. However, given the homogenous nature of the intertidal and subtidal environment, we consider it highly unlikely that additional sampling would result in a different conclusion than reported. Although noted that sampling replication is low, we consider it sufficient to broadly categorise this habitat.

WRC raises concerns with potential effects of ongoing maintenance dredging. No maintenance dredging is proposed in the application and so its effects are not considered.

Kind Regards,



Daniel Ahern
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4Sight Consulting Ltd