

COVID-19 Recovery (Fast-track Consenting) Act 2020

Rangitane Maritime Development by Far North Holdings Limited and Far North District Council

M-7 Minute of the Rangitane Maritime Development Expert Consenting Panel – 14 March 2022

Issue relating to “Natural Wetland”

1. On 23 February 2022, the Rangitane Maritime Development Expert Consenting Panel (the Panel) issued [Minute 5](#).
2. That Minute raised the issue of the High Court decision¹, and its finding that the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-F) apply to “*natural wetlands*” within the coastal marine area (CMA).
3. The Panel appointed a Special Advisor to provide ecological advice to assist the Panel in considering the relevance of the High Court decision in relation to the application being considered by the Panel. The brief to the Special Advisor included a request for an opinion as to whether the seven mangroves sought to be removed as part of the proposal, or any area within the project site, constitutes a “*natural wetland*” for the purposes of the NES-F.
4. The ecologist has now provided her advice to the Panel. The full report can be viewed on the EPA website here: [Ecological Tech Review of Rangitane Maritime Development \(epa.govt.nz\)](#)
5. In summary, the report concludes that:
 - “*The individual mangroves proposed to be removed form part of the coastal wetland mosaic at this location.*”
 - *The ecosystem type:*
 - *Meets the definition of ‘wetland’ under the [Resource Management Act 1991]; and*
 - *It is not: –*
 - *A wetland constructed by artificial means;*
 - *A geothermal wetland*
 - *An area of improved pasture”*
6. The overall conclusion of the report is that “*the mangroves are a feature of a ‘natural wetland’ ecosystem*”.
7. Clause 2(4)(a)(ii) of Schedule 6 of the COVID-19 Recovery (Fast-track Consenting) Act 2020 (the Act) provides that consent applications must not be lodged with the EPA nor determined by a panel if they relate to an activity that is classified as a prohibited activity including under any National Environmental Standard.

Directions of the Panel

¹ Bay of Islands Maritime Park Inc v Northland Regional Council [2021] NZEnvC 006 [10 February 2021]

8. The expert opinion provided by the Panel's Special Advisor, that the project site is a "*natural wetland*", gives rise to a number of preliminary legal and procedural issues which require consideration before the application can be determined by the Panel. Before progressing further with its consideration of the application, the Panel directs the applicant to provide the following information to assist in the Panel's assessment, should the applicant wish to do so. If any of the following information is not provided by the requested date, the Panel will proceed to determine the application in the absence of that information, taking its own advice as considered appropriate:
 - a. A response to the report provided by the Special Advisor for consideration by the Panel;
 - b. Legal submissions on the implications for the proposal of a finding that the proposal would be undertaken within a "natural wetland" under the NES-F, including:
 - i. An assessment against any relevant Regulations under the NES-F;
 - ii. An assessment of the Activity Status of the application, taking into account any resource consents required under the NES-F;
 - c. Any technical or planning assessments required to support any assumptions or conclusions contained in the legal submissions provided in response to point b. above;
 - d. Any updated assessments against any of the relevant statutory documents (such as Regional or District Plans and National Policy Statements).
9. The applicant's response to the matters raised in para 9 (including advice that the applicant does not intend to provide any of the requested information) must be received by the EPA no later than 21 March 2022.

Appointment of a Special Advisor

10. In accordance with clause 10(3) of Schedule 5 of the Act, the Panel will appoint Sarah Shaw as a Special Advisor to provide independent legal advice to the Panel relating to this issue. If, upon receipt of the above information, the Panel considers it would be useful to obtain independent planning advice, it reserves the right to do so.
11. Upon receipt of the information from the applicant as directed above, the Panel will prepare a brief for Ms Shaw to address any legal and/or procedural questions. It is intended that Ms Shaw will be provided with any information provided by the applicant in response to this Minute.



Mary Hill

On behalf of the Rangitane Maritime Development Expert Consenting Panel.