

File ref – FTC000014

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Tēnā koe Louise

Request for information from in relation to LP-14 Waitohi Picton Ferry Precinct Redevelopment under COVID-19 Recovery (Fast-track Consenting) Act 2020

The Waitohi Picton Ferry Precinct Redevelopment Expert Consenting Panel (the panel), has directed the Environmental Protection Authority (EPA), to request further information from you under clause 25 of Schedule 6 of the COVID-19 Recovery Act 2020 (the Act), relating to the Waitohi Picton Ferry Precinct Redevelopment consent application.

Background

The panel find that the proposed conditions lack sufficient limits and standards for the management of actual and potential effects, by way of a management plan approach. They view the proposed conditions as a starting point.

For example, Package 2C (Appendix ABc) Condition (1) says the project will be undertaken “*in general accordance with the information submitted*”, however all of the information submitted states it is conceptual and yet to be finalised. Condition (2) states “*carried out in accordance with the certified CMP*”.

The panel see this as the key issue that needs to be addressed.

The panel consider that a management plan is a tool to give effect to limits and standards set in the consent conditions, and that a consent condition relating to a management plan, should generally specify at least the following:

- a) the purpose or objective of the management plan;
- b) which consent conditions the plan is designed to assist with implementing;
- c) the minimum contents of the plan;
- d) how the plan is to be prepared and who should be involved in that process;
- e) that the management plan is to be submitted to the appropriate council for certification;
- f) a process for reviewing or amending the plan;
- g) that the reviewed or amended plan will be submitted to the appropriate council for recertification;
- h) a clear statement that if there is conflict between the management plan and the consent conditions, then the conditions of consent must prevail.

The conditions of the consent need to set the limits and standards that are to be achieved and should avoid vague or ambiguous wording. Consent conditions cannot not be subject to third party approval. The

conditions cannot delegate decision making to the administration of the consent, but can require certification of compliance against state objectives by suitably identified and qualified persons. The objective or criterion for certification must be included in the conditions as requirements, standards and limits to be met for certification to be given.

Conditions should cross reference the management plans that will give effect to the condition and reference appropriate maps and plans. The stages of construction need to be defined with clear reporting and notification of the commencement of stages.

The Draft Construction Management Plan (CMP) should clearly set out all the specific sub plans. All of these, particularly the CMA Protection Management Plan, Erosion and Sediment Management Plan, Dredging Management Plan, and Noise and Vibration Management need to be clearly linked to the conditions they give effect to. Dust management needs to be included in the ESCP and this will be a key area for conditions relating to avoiding offsite discharges and monitoring required. The air quality and water quality standards to be met and the monitoring required to demonstrate this, needs to be included as conditions of consent.

Management Plans

The Panel has also identified a preference for a:

- Marine Mammals Management Plan which addresses underwater noise monitoring, determination of the BPO for noise attenuation, marine mammal monitoring, staff training, soft starts etc.
- A Cleanfill and Contaminated Material Management Plan; and
- A Stockpile Management Plan.

Questions for Applicant:

With regard to the views of the panel above, the EPA is requesting, on behalf of the Expert Consenting Panel, answers to the following questions: and the supply of the following information:

1. Has there been any testing of the terminal building materials for asbestos?
2. Have existing noise and vibration levels during normal port operations at daytime and night time been measured at the façade of the closest dwellings to the port area?
3. What noise monitoring is proposed during the construction period and post construction during the operation of the new port facility?
4. Where are the closest noise sensitive receptors located?
5. How will dust emissions from the site be managed and monitored throughout the construction period?
6. Will any dredge material or excavated site material that is deemed to be contaminated (i.e. does not meet the definition of cleanfill), be stored at the spoil stock pile areas or will it be directly transported to an authorised disposal site?
7. The technical reports have numerous references to total dredge volumes ranging from 42,000-80,000 cubic metres (m³). Is the maximum total volume to be assessed 80,000 m³?
8. Based on the WSP (2020) report (Appendix O), what total volume of dredge material from the CMA (down to a depth of 2.5m) is expected to be removed? Where and how will this material be dewatered?
9. What is the likely duration of dredging activities?
10. What is the likely duration of construction the scour protection?

11. Given the risk that the release of nutrients from dredging may stimulate phytoplankton and nuisance algal growth (Appendix K p43), would it be appropriate to avoid dredging during the summer months when water temperatures are higher and recreational use is highest?
12. Based on the WSP (2020) report (Appendix O), what total volume of material excavated from the terrestrial site is likely to be removed to an authorised disposal site?
13. How and where will any contaminated dredge material (i.e. does not meet the definition of cleanfill) be dewatered before use on the site? Will this be undertaken on an impermeable surface where the discharge can be contained and treated before discharge (Appendix Va)?
14. How, and where will contaminated dredge spoil be 'blended', and what is the process for managing this and re-testing to reclassify the material as 'cleanfill' (Appendix Va)?
15. What conditions are proposed to reflect section 7.5.4 of the CMP (Appendix Va) regarding testing and assessment of dredge sediment, and section 7.5.5 restricting the use of untested material below 2.5m?
16. How will any dewatering discharge from the material to be reused as cleanfill spoil and stormwater from the stock pile areas be managed, treated and discharged (Appendix Va)?
17. What discharge standards will be met for dewatering discharges and stormwater from the stockpile areas and how will this be monitored?
18. Where is the Coastal Marine Area boundary in the Waitohi Awa and how far upstream does it extend? Is this defined in the MEP? Can you please provide a map indicating the extent of the Coastal Marine Area for the Waitohi Awa?
19. Does the existing culvert of the Waitohi Awa to the Coastal Marine Area allow for fish passage in all flow conditions?
20. How will the two options for upgrading the existing culvert (which involve raising the base of the culvert or lifting the roof);
 - a) be designed to ensure fish passage is maintained; and
 - b) ensure the NZ Fish Passage Guidelines (Franklin et al. 2018) are met (Appendix K)?

Particularly in relation to the embedding the invert by 25-50%, and ensuring well graded substrate is present throughout its length.

21. How will fish passage be maintained during any river diversions or dewatering (Appendix K)?
22. It is proposed to only undertake works in the bed of the Waitohi Awa in 'low flow' conditions (Appendix K) – is this defined and what is known about minimum, median and maximum flows?
23. How will a 'gravel bund' be used to divert water from work areas? Will this involve imported gravel and then the removal of gravel? Where will sediment ponds be located? (Appendix K pg. 7)
24. Are there any critical periods in any threatened species' life cycles when works in the bed or banks of the Waitohi Awa should be avoided? Should some species' spawning periods be avoided to mitigate potential adverse effects?
25. How will bank armoring such as riprap be used to mitigate adverse effects on natural character and visual amenity?
26. What mitigation measures or improvements could be included to enhance ecological and habitat values upstream of the culvert to offset the effects of the closed culvert outlet?
27. What water quality standards should be met during construction works in the Waitohi Awa? Where, and how should these be measured?
28. What water quality and sediment control monitoring is proposed during works in the Waitohi River?
29. Is consent sought for a temporary bridge structure between the reserve and the marshalling yard? Will this require any instream works (Appendix K)?
30. How will dewatering, required for instream works, be managed given treatment will likely be required (Appendix K, pg41) before discharge? What discharge standards will be met for total suspended solids before discharge?

31. Are specific conditions proposed to avoid any adverse effects on the saltmarsh wetland habitat and the banded rail identified at Shakespeare Bay?
32. Is it feasible to undertake a monthly bird survey of the project area for a year prior to commencement of works to collect baseline data on birds observed and to record nesting/breeding and foraging areas? If it is not feasible, why not? Could this baseline monitoring period be used to train a staff member to undertake bird monitoring during the construction period?
33. Could mana whenua be involved to participate in the year-long baseline monitoring bird survey and monitoring over the construction period to enable exercise of their kaitiakitanga role?
34. Can consent conditions be drafted to link the outcomes of the baseline bird survey with identified nesting/breeding areas, extent and numbers of nesting boxes to be provided, and a predator control programme to protect these areas?
35. For what duration is predator control proposed after the construction works are completed to ensure a net benefit is achieved?
36. Will blue penguin nesting boxes be provided in perpetuity as part of the mitigation of the effects of ongoing port operations?
37. How will consultation regarding the development and implementation of the Avian Management Plan be undertaken with mana whenua, DoC and Forest and Bird, and reported to MDC?
38. The underwater noise assessment is based on a maximum pile size of 1050 mm diameter (Appendix X). However, the benthic report (Appendix K, pg.6) refers to piles of up to 3-6 m, as do other reports stating 2-3 m diameter. How does this affect the predicted underwater noise levels?
39. The Lyttelton Port Company holds consent CRC175507 (refer Appendix 1) for the extensive wharf redevelopment and reclamation in Lyttelton Harbour. These conditions form the basis for a Marine Mammal Management Plan and determination of the BPO for mitigating underwater noise effects. Please comment on the appropriateness of the imposition of such conditions, or similar relating to this project?
40. On the basis of the assessment of effects in Appendix J, is it appropriate to require at least a minimum 10 dBA reduction of underwater noise levels?
41. Are there any times of year where piling activities should be avoided on the basis of potential adverse effects on marine mammals?
42. What conditions are proposed to address training of staff and marine mammal observers?
43. Could mana whenua be invited to be involved in monitoring of actual underwater noise levels, BPO trials and marine mammal observations to enable exercise of their kaitiakitanga role?
44. Section 7.1.2 (Application 2A) sets out a summary of Treaty redress (cultural and commercial) ending with the statement the application is consistent with all relevant Treaty provisions. However, no specific analysis is undertaken. How do we know it is consistent?
45. The application states that this activity will have no effect on the exercise of customary rights if one was granted (section 7.4). What is this statement based on?
46. What impact will the proposed reclamation have on the mouth of the Waitohi Awa? It appears the culvert comes out at the same place the proposed reclamation.

Information Requested

The EPA is also seeking the supply of the following information on behalf of the Expert Consenting Panel:

1. Appendix 4 referred to in Appendix J.
2. Dr Childerhouse and Dr Clement were involved in the Lyttelton Port consent process. Please provide an update of any work undertaken under the conditions of the consent in relation to actual measured noise levels from pile driving, trials of acoustic dampening techniques (e.g. use of bubble curtains), and the effectiveness of the mitigation measures employed (i.e. use of observers, drones, boats etc.)

3. Copies of references:
 - a) Cawthron Report No. 3410 'Monitoring of Port Nelson maintenance dredging and spoil disposal: 2019' by R. Sneddon; and
 - b) Cawthron Report No. 2915 'Assessment of environmental effects of Waitohi Wharf capital dredging proposal' by D. Morrissey and A. Berthlsen 2016.

4. The suggestions and questions from the commenters in the appended comments (refer to Appendix 2 and Appendix 3) align with the current thinking of the panel. The panel is seeking a response from you, in relation to the suggestions and questions within the appended comments.

Timeframes

It is considered that this information is necessary and relevant to the Waitohi Picton Ferry Precinct Redevelopment consent application.

In accordance with clause 25 of Schedule 6 of the Act applicant must:

- a) Provide electronic copies of the information or report requested; or
- b) Advise the EPA, with reasons that you decline to provide the information or report requested.

Please provide the further information to the EPA by **9 March 2021**.

Please note, the information will be provided to the panel, the application and every person who provided comments on the application/notice of requirement. The information will also be made available on the EPA website.

If you have any questions or further queries please don't hesitate to contact Alex Erceg (project lead) at waitohifasttrack@epa.govt.nz, or on 027 293 6728.

Nāku noā, na



Sandra Balcombe
Manager Land and Oceans Applications