

Thursday, 21 July 2022

Expert Consenting Panel – Te Rāhui Herenga Waka Whakatāne
Environmental Protection Agency

Via email: June.Cahill@epa.govt.nz

Tēnā koutou,

FTC-36: Consent Corrections

This letter is to address:

1. Our response to the suggested corrections to the consent conditions as requested by the Whakatane Yacht Club (WYC) and the Bay of Plenty Regional Council (BOPRC) – noting that some of the BOPRC comments relate to requests made by the WYC.
2. As applicant we request the Panel consider a small number of corrections.

Regarding the requested changes to conditions:

- We note that Schedule 6, Clause 40 of the COVID Act allows for ‘minor corrections ... correcting minor omissions, errors, or other defects in a decision of the panel’. The proposed changes from BOPRC and WYC seem to be asking for the Panel to reconsider the decision made on the dredging activity and therefore, it is our opinion that the request goes beyond the ‘minor corrections’ which can be made under Clause 40.
- The proposed conditions were used through the applicants consultation with stakeholders (including F&B, DOC and Councils) and the version which was lodged with the application had been reviewed and no comments had been received.
- The final version of conditions was circulated by the Panel on 9 May 2022 to parties. We note that no comment on the timeframe was received on the dredging monitoring conditions at that time from either BOPRC or the WYC

Regarding the commentary from WYC on the monitoring conditions:

- Based on the advice from our technical advisors (Tonkin & Taylor – Coastal Processes) we adopted the Water Quality Standards conditions from the Whakatane District Council (WDC) Harbour Development Zone (HDZ) Dredging consent (RC65217 - Conditions 10.1, 10.2, 11.1 and 11.2). The months identified in these conditions are December – February and March to August respectively. These timeframes were replicated in our proposed conditions 5.6.1 and 5.6.2.
- WYC has not provided any technical justification as to why the proposed changes are necessary
- We note that the monitoring conditions in the WYC’s dredging consent (62854) only require monitoring during 1 -December – 29 Feb (Condition 10.1 – Visual clarity measurements) and 1 March to 14 August (Condition 10.2 – water sampling) yet WYC is seeking further monitoring than what is required under their dredging consent, and what WDC has to undertake for the HDZ dredging
- Noting the above, we consider that the proposed changes by BOPRC primarily address the concerns of the WYC hence we do not accept nor support the changes sought by the WYC.

Regarding the commentary from BOPRC on the monitoring conditions which you have shared:

- Condition 5.6.1 – for the reasons also noted above - we don't accept the inclusion of 'November' as this is inconsistent with the dredging monitoring conditions in RC62854 (WYC Consent) and RC65217 (WDC Consent).
- Condition 5.6.2 and 5.6.3 – We accept the proposed amendments here noting the minor change proposed in Condition 5.6.1.
- If the Panel accepts the amendments to 5.6.1 thru 5.6.3 and adopts the inclusion of the 'calibrated turbidity meter or similar method' which our technical advisors (Tonkin & Taylor – Coastal Processes) supports, then condition 5.6.4 needs to be amended to include "or a method approved by the consent authority" or else this condition limits the methodologies.
- Condition 5.6.5 - We accept the proposed amendments.

Regardless of the Panel's decision on the above we note that:

- Condition 5.6.2 should be corrected as follows:*measured 200 metres ~~distant~~ downstream from the dredging.....*

Applicant Corrections Sought:

As applicant we request the panel consider the following comments from our Counsel on the decision and consider these corrections:

Comment 1: References to offset/compensation:

Para [74] states: "Rather than an offset, the wetland recreation ensures that there is no loss of wetland extent or values as part of the Project". I consider this is the correct way to reference the wetland restoration works. In contrast, at paragraph [6](b)] a principal issue is framed as: "Are there any actual and potential effects arising from the damage to a natural wetland in constructing the proposed boat harbour and the channel connecting it to the Whakatāne River and, if there are, are the proposed **off-setting** measures sufficient and appropriate?" Similarly at [7(b)] the decision says: "The extent to which the existence of areas of natural wetland will be destroyed is adequately **compensated** for by the restoration works proposed, and to be required as a condition of the grant of consent, on adjacent land." [*emphasis added*]

I recommend the wetland recreation is referred to as a measure to address wetland impacts to ensure there is no loss of extent or values, rather than as offset or compensation, as the latter may be considered inconsistent with the BOPRC Natural Heritage policies and/or the NZCPS.

Comment 2: Policy Consistency

Is para [227] intended to represent a finding on consistency with all of the policy directions listed at [216]? I suggest this should be clarified.

Comment 3: Other Approvals

[49] says "There are clear indications given from DOC and BOPRC that the consents required from those bodies will be forthcoming, at least for stages 1 and 2 of the application, but actual consents are not pre-requisites." I suggest "will be forthcoming" is amended to "are likely to be forthcoming" to ensure those agencies do not become concerned that they are being perceived as having predetermined applications yet to come before them.

Comment 4: Image

[166] includes an image sourced from the CIA. I note that the land to the north of the channel appears to be wrongly identified as “BOPRC lands” in this image (it is scenic reserve). Probably nothing turns on this as the image is intended to show the location of the Marae but I note this in case the Panel wishes to clarify in a footnote.

We thank you for the opportunity to provide comment on the requested corrections sought from others, and confirm our availability to talk further to any of our own comments.

Ngā mihi nui,
Te Rāhui Herenga Waka



Phil Wardale
Project Director