DECISION ON CHANGE OF CONDITION OF DEEMED MARINE DUMPING CONSENT EEZ900012
Coastal Resources Limited
CHANGE OF CONDITION CONSENT EEZ700001

Pursuant to s 87F(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (the EEZ Act), the request by Coastal Resources Limited to change some definitions and change conditions 17 and 21 and cancel conditions 3(i), 3(j) and 16 of their deemed marine consent EEZ9000012, is GRANTED.

Condition 17 is amended with the words “for” inserted after “…observations” and after “…marine mammals”, and “immediately” inserted after “…at least 30 minutes”, so that it reads (emphasis added):

During the course of the disposal operations the Permit Holder must undertake observations for marine mammals for at least 30 minutes immediately prior to any dumping activity. The observation must be in accordance with the equipment, specifications and processes described in the DSSM plan and approved by the Director. Dumping activity may only occur provided there is no evidence of marine mammals detected using those approved equipment, specifications and processes.

Condition 21 is amended with the words “if the proposed passage to be used has not previously been subject to a passage plan submitted to the Auckland Harbourmaster’s office” replacing the fullstop “.” after “…of planned departure” so that it reads (emphasis added):

The Permit Holder must lodge a passage plan with the Auckland Harbourmasters office at least 12 hours in advance of planned departure if the proposed passage to be used has not previously been subject to a passage plan submitted to the Auckland Harbourmaster’s office.

Conditions 3(i), 3(j) and 16 are cancelled.

The definitions are amended as shown in Schedule 1.

This deemed marine dumping consent expires on 31 December 2032.

Dated this 7th day of April, 2016

Kevin Thompson
EPA Deputy Chairman,
Chair of the Decision-making Committee

Sarah Gardner
General Manager, Applications and Assessment
DECISION ON CHANGE OF CONDITION APPLICATION

Background

1. The Environmental Protection Authority (EPA) is the consent authority for activities within the Exclusive Economic Zone (EEZ) and continental shelf beyond the 12 nautical mile limit from New Zealand's coastline. One of the EPA's functions, pursuant to section 13(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act), is to decide applications for marine dumping or discharge consents.

2. Under section 87J of the EEZ Act, a Consent Holder of a marine discharge consent or marine dumping consent can make a request to the EPA to change or cancel one or more conditions of their consent. If the EPA considers the request is not limited to minor matters the request will be dealt with under the marine consent process. If the change to one or more conditions is limited to minor matters the EPA will decide the request.

3. On 31 October 2015, the Exclusive Economic Zone and Continental Shelf (Environmental Effects—Discharge and Dumping) Regulations 2015 (the D&D Regulations) came into effect and all dumping permits issued by Maritime New Zealand (MNZ) were transferred to the EPA as deemed marine dumping consents under s 164A of the EEZ Act.

The Application

4. The original dumping permit No. 568 was granted by MNZ and commenced on 2 November 2012. Following the commencement of the D&D Regulations on 31 October 2015, permit No. 568 was transferred to the EPA as deemed dumping consent EEZ900012.

5. While monitoring compliance with the conditions of EEZ900012 it became apparent to the EPA that there was some discrepancy between the EPA's and CRL's interpretation of conditions 16 and 17. Condition 16 requires CRL to observe for marine mammals from within the Disposal Area (DA)\(^2\), which is a 1,500 metre radius circle centred on 36°12.3403'S and 175°48.0002'E.

6. The EPA has determined from the monitoring reports contained in the suite of documents received from MNZ, that in exercising the consent, the tow operator has started observing at up to 4.6km from the centre of the DA and therefore, has been non-compliant in relation to condition 16.

7. The barge operator has told the EPA that in order to carry out the 30 minute observation period entirely within the DA, the tow must considerably reduce its speed and/or circle or loop around inside the DA, or remain stationary. It is not feasible for the tow to take these steps as to do so could become a health and safety risk to crew and may cause the barge to become a hazard to passing vessels.

8. The EPA has discussed the non-compliance with CRL and in an email to CRL on 16 December 2015 the EPA notes CRL must address non-compliance with conditions of their consent.

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\(^2\) If the barge and tow approach the DA at 5 knots then in 30 minutes (using the calculation: Distance = Speed x Time divided by 60) the barge and tow travels 2.5 nautical miles, (4.63km).
SCHEDULE 1:
CHANGES TO DEEMED MARINE DUMPING CONSENT CONDITIONS

DEFINITIONS

b) Director means the Director of Maritime New Zealand Environmental Protection Authority

e) Disposal Permit means this disposal permit granted by the Director to Coastal Resources Limited, which is a marine protection document issued under marine protection rule part 180 and sections 262 and 270 of the Maritime Transport Act 1994. By definition, it is subject to the provisions of the Maritime Transport Act 1994 regarding its revocation, suspension, and/or the imposition of further conditions.

CONDITIONS

3. Prior to the first occasion on which the Permit Holder proposes to exercise the privileges of this dumping permit, the Permit Holder shall provide a completed DSMM plan to the Director, which shall include:

   a. An introduction to the project,
   b. A project description,
   c. Notification and reporting roles and responsibilities,
   d. Site management roles and responsibilities,
   e. Management conditions and practices,
   f. A description of the requirements for waste characterisation, as reflected in Condition 1(a),
   g. A monitoring plan including:
      i. Null hypotheses,
      ii. Information on the monitoring undertaken to date and information on the weather conditions when monitoring occurred, and
      iii. Post-disposal monitoring consistent with the monitoring required in Condition 6, including details of the intended analysis of the result.
   h. The names of all contractors providing services to the Permit Holder in respect of the dumping permit.
   i. The safe ship management manuals and barge safety certificates (or equivalents), for all tugs and towed barges to be used for the proposed operations.
   j. The number of crew required to safely manage the operation, the names of the current crew and masters to be used for the proposed operations, and evidence of their qualifications, and
   k. The towing plan, including passage plan and operational limits.

16. Prior to any actual disposal, the Permit holder must observe for marine mammals for 30 minutes from within the Disposal Area. No disposal may occur while marine mammals are in the Disposal Area.

17. During the course of Disposal Operations, the Permit Holder must undertake observation for marine mammals for at least 30 minutes immediately prior to any dumping activity. The observation must be in accordance with the equipment, specifications and processes described in the DSMM plan and approved by the Director. Dumping activity may only occur provided there is no evidence of marine mammals detected using those approved equipment, specifications and processes.

21. The Permit Holder must lodge a passage plan with the Auckland Harbormaster’s office at least 12 hours in advance of planned departure if the proposed passage to be used has not previously been subject to a passage plan submitted to the Auckland Harbormaster’s office.
9. On 7 March 2016, CRL submitted a request to the EPA to change some definitions and conditions 3 (i – j), 16, 17 and 21 of its deemed consent EEZ900012 (Appendix 1) under s 87J of the EEZ Act, in part to achieve compliance with the EEZ Act.

10. On 21 March 2016, the EPA informed CRL of its decision not to return the application, for changes and cancellations to conditions of their deemed dumping consent, as incomplete under section 41, and of its decision that the application is likely to be limited to minor matters under s 87(3)(b) of the EEZ Act.

Request subject to approval

11. The following table describes the requested changes to and cancellation of conditions within deemed consent EEZ900012.

<table>
<thead>
<tr>
<th>Reference Number (from original consent)</th>
<th>Marine consent conditions to be changed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Condition 3</td>
<td>3(i) The safe ship management manuals and barge safety certificates (or equivalents), for all tugs and towed barges to be used for the proposed operations 3(j) The number of crew required to safely manage the operation, the names of the current crew and masters to be used for the proposed operations, and evidence of their qualifications</td>
</tr>
<tr>
<td>Condition 16</td>
<td>Prior to any actual disposal, the Permit holder must observe for marine mammals for 30 minutes from within the Disposal Area. No disposal may occur while marine mammals are in the Disposal Area.</td>
</tr>
<tr>
<td>Condition 17</td>
<td>During the course of the disposal operations the Permit Holder must undertake observations of marine mammals at least 30 minutes prior to any dumping activity. The observation must be in accordance with the equipment, specifications and processes described in the DSSM plan and approved by the Director. Dumping activity may only occur provided there is no evidence of marine mammals detected using those approved equipment, specifications and processes.</td>
</tr>
<tr>
<td>Condition 21</td>
<td>The Permit Holder must lodge a passage plan with the Auckland Harbormaster's office at least 12 hours in advance of planned departure.</td>
</tr>
</tbody>
</table>
12. In addition to requesting changes to conditions (of their deemed dumping consent) CRL have proposed updating some of the definitions within the consent to reflect the regulatory change;

**PART A**

Authority Change to “The Environmental Authority”

Director Replace with “Director: Means the Delegated Authority of the Environmental Protection Authority”

**PART B**

b) Director means the Delegated Authority of the Environmental Protection Authority

e) Remove “By definition, it is subject to the provisions of the Maritime Transport Act 1994 regarding its revocation, suspension, and/or the imposition of further conditions”

13. Section 164A requires the terms and conditions of the MNZ dumping permit to be carried over to the deemed marine dumping consent. There is nothing in the legislation to say that the term “Director” should be read as “EPA” (cf s 164B which explicitly sets out that these changes are made to conditions specified in Marine Protection Rules that are applicable to marine discharge consents). While in practical terms, the EPA takes s 164A as implying that all existing deemed dumping consents be read as if “Director” meant the EPA, there is no reason to refuse a request for this change to be made explicitly in this instance.
Statutory Framework

15. The purpose of the EEZ Act is to promote the sustainable management\(^3\) of the natural resources of the exclusive economic zone and the continental shelf and to protect the environment from pollution by regulating or prohibiting the discharge of harmful substances and the dumping or incineration of waste or other matter.

16. Section 20 of the EEZ Act restricts certain activities from being undertaken in the EEZ or in, or on, the continental shelf unless they are authorised under the EEZ Act. Section 20G restricts the dumping of waste or other matter (including ships, aircraft, or structures) into the sea within the EEZ or above the continental shelf beyond the outer limits of the EEZ or onto the continental shelf.

17. Section 87J of the EEZ Act enables the holder of a marine discharge or dumping consent granted under s 87F to request the EPA to change or cancel a condition of the consent. If a request is received, then sections 87B to 87G (with all necessary modifications) and sections 87(3) to (6) apply to the request.

18. The decision is made under s 87F having regard to the requirements of s 80 of the EEZ Act.

19. Section 87(3) provides that if the EPA considers that the requested change or cancellation is likely-

\(b\) to be limited to minor matters, it may deal with the request under section 83.

20. Section 83 provides for a process for dealing with minor changes to conditions without public notification and provides that s 79 (which applies various provisions in relation to further information, advice, submissions, and hearing) does not apply.

21. The Consent holder has a right to object to a decision to refuse the request under section 87(6). Any decision on an objection may then be appealed to the High Court on a question of law under section 104.

22. The Consent holder may also appeal the decision to refuse a minor change request directly to the High Court under section 105(3).

23. There is no statutory timeframe for a minor change review / request process.

\(^3\) Section 10 of the EEZ Act. "Sustainable management" is defined in section 10(2).
Decision-making criteria

24. Sections 87D and 87E of the EEZ Act set out the matters that must be considered in coming to a decision on an application for a marine discharge or dumping consent.

25. Section 87D(2)(b) states that the EPA must take into account for a marine dumping consent:
   
   (i) "the matters described in section 59(2), except paragraphs (c), (f), (g), and (i); and
   
   (ii) the effects on human health of the dumping of waste or other matter if consent is granted; and
   
   (iii) any alternative methods of disposal that could be used; and
   
   (iv) whether there are practical opportunities to reuse, recycle, or treat the waste."

26. Section 87D(3) states that "Section 59(3) applies to the application for a marine discharge consent or a marine dumping consent."

27. Pursuant to the relevant sections of 87E of the EEZ Act, the EPA must make its decision based on the best available information and take into account any uncertainty or inadequacy in the information available. It is important to note that best available information does not include all information and that the EPA must exercise judgement having regard to issues of cost, effort on time.

Assessment

28. On 21 March 2016, the EPA did not return CRL's application (to change and cancel conditions of their deemed dumping consent) as incomplete under s 41 of the EEZ Act. The EPA also concluded that the requested changes are likely to be limited to minor matters under s 87(3)(b) of the EEZ Act and this assessment of the application is taken in that context and under the requirements of s 83 of the EEZ Act.

Section 87D(2)(b)(i): relevant s 59 matters

29. The applicant has provided a description of the existing environment, in the application form and accompanying documents, (see Appendix 1), appropriate to the scale of the application. We consider this description appropriate for this application.

30. The impact assessment in section 3 of the application form and the letter from Osborne Hay, identified the effects the change and cancellation of conditions relative to the scale and significance of those effects on the existing environment and existing interests.

31. Under section 59(2)(a) of the EEZ Act, the EPA must take into account any effects of the change and cancellation of conditions on the environment or existing interests including cumulative effects and effects in the waters above or beyond the continental shelf. We consider that the requested changes and cancellation of conditions, to the extent that they result in any changes to CRL's activities, do not change the effects of those activities. That is;

   (a) the tow and barge will continue to follow the required passage plans,

   (b) CRL will continue to dump no more than 50,000m³ per annum from the same source sites,

   (c) the dredged spoil will continue to be dumped at the same disposal site, and
(d) observations for marine mammals will continue for 30 minutes before the dumping of waste.

32. There are likely to be no effects on the environment or existing interests of other activities undertaken in the area covered by the application or in its vicinity that we should consider under 59(2)(b).

**Conditions 3(i) and 3(j)**

33. Condition 3 and the relevant subsections specify the contents of the DSMM CRL was required to provide to MNZ “prior to the first occasion on which the Permit Holder proposes to exercise of this dumping permit”.

34. We have considered the matters in sections 87D and 87E of the EEZ Act and find there is nothing in those matters that are affected by the proposed cancelling of conditions 3(i) and 3(j). The proposed changes to the condition are administrative in nature and relates specifically to CRL’s requirements under the Maritime Transport Act⁴.

35. Requiring the safe ship management manuals, certificates and lists of current crews to be included in the DSMM is unlikely to prevent or mitigate effects on the environment or existing interests from CRL’s dumping activities.

**Conditions 16 and 17**

36. When considering the effects of cancelling condition 16 and changing condition 17, we have considered the deemed consent and its associated conditions as a whole before specifically assessing the requested changes against each relevant matter in sections 87D and 87E of the EEZ Act.

37. The CRL 2012 dumping permit application to MNZ was assessed by MNZ through the Patrick Report (May 2012).

38. This report discusses the appearance of Humpback, Southern Right and Grey’s beaked whales in the Hauraki Gulf, generally, but not limited to the migration seasons of Autumn and Spring. These whales have feeding speeds of around 4-5 km/h and average travelling speeds between 5 - 15 km/h. Whales entering the disposal area at travelling speeds could exit the 3000m circle in as little as 15 minutes. Appendix 1, Page 4 of the Patrick Report states:

> “Further specific consultation was also undertaken with Dr Allan Baker, a cetacean specialist familiar with the area of the disposal site, to assess risks to marine mammals. The applicant understands that the disposal site "is unlikely to be a hotspot for cetaceans as there is no obvious food source. However, prior to dumping the area should be visually scanned and if there are any cetaceans passing through the dump site then dumping should be held off until they have passed through (ie. 10 to 20 minutes)" (application letter to MNZ, 11 August 2008). Humpback, Southern Right and Grey’s beaked whales have been sighted in the wider area, generally but not limited to the migration seasons (Autumn and Spring) and so this approach is appropriate.”

39. Page 23 of the same report states with regards to effects on the environment:

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⁴ Maritime rules Part(s) 19-23
“With regard to marine mammals, observation from the vessel/barge in and around the disposal area prior to dumping should be undertaken, to ensure that there are no mammals present during the operation. Given the likely nature of the marine mammal activity in and around the area, namely migration, avoidance of dumping during autumn and spring could also be considered by the applicant as a means of ensuring that no encounters occur, in particular for those species of mammals that surface only after very long periods underwater and may not be observed during transit to the disposal site.”

40. The report recommends a number of conditions, including:

“13. Prior to any dumping operation, the applicant will spend at least 30 minutes, between the time of entering the disposal site and reaching the proposed dump location, monitoring for marine mammal activity, and no dumping shall occur until any marine mammals observed have moved outside the disposal area.”

41. On 2 November 2012 MNZ issued dumping permit No. 568 which included the following condition relating to the monitoring of marine mammals:

“18. Prior to any actual disposal, the permit holder must observe for marine mammals. From the time of entering the Disposal Area until the time of arrival at the Disposal Site Centre, the Permit Holder must spend at least 30 minutes monitoring for marine mammal activity. If marine mammals are observed, no disposal shall occur until the marine mammals are observed moving outside the Disposal Area.”

42. Following an appeal to the district court an amended permit was issued 12 March 2013. A number of changes were made including changes to conditions requiring the monitoring of marine mammals. These conditions now become 16 & 17 and remained un-changed (despite 2 further amendments (3 Feb 2014 & 18 Feb 2015)) and are the conditions for which CRL is seeking amendments:

“16. Prior to any actual disposal, the Permit Holder must observe for marine mammals for 30 minutes from within the Disposal Area. No disposal may occur while marine mammals are in the Disposal area.

17. During the course of Disposal Operations, the Permit Holder must undertake observation of marine mammals at least 30 minutes prior to any dumping activity. The observation must be in accordance with the equipment, specifications and processes described in the DSMM plan and approved by the Director. Dumping activity may only occur provided there is no evidence of marine mammals detected using those approved equipment, specifications and processes.”

43. The intent of these conditions was to ensure that the disposal of CRL’s dredged spoil did not occur over passing marine mammals by observing for mammals 30 minutes prior to dumping. Records show that observations in 2015 were made as the tow and barge approached, then entered the disposal area.

44. CRL have been unable to comply with condition 16. When assessing whether to grant CRL’s request we considered whether carrying out the 30 minute observations whilst approaching the disposal area, and not just from inside the disposal area, is sufficient to guarantee the safety of the marine mammals during the dumping activities.

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5 Means a 1,500 metre radius circle centred on 36°12.3403'S and 175°48.002'E
6 Means the point designated by the following longitude and latitude coordinates 36°12.3403'S and 175°48.002'E
45. The hydrophones, as detailed in the DSMM, used to supplement the visual observations, can pick up sound up to 10km away. Starting the monitoring 30 minutes travel time from the disposal site centre, (about 4.5km), would still pick up any audible marine mammal activity, throughout and beyond the disposal area. Therefore we consider that cancelling condition 16 and modifying condition 17, as requested, is consistent with the intent of protecting marine mammals during CRL’s dumping activities.

46. Section 59(2)(d) and (e) require that we take into account the importance of protecting the biological diversity and integrity of marine species, rare and vulnerable ecosystems and habitats of threatened species. The change of condition 17, and cancellation of condition 16, does not change the length of time observations for marine mammals are conducted, nor does it change the equipment or processes used, or the volume of material dumped. Therefore we conclude that these changes are unlikely to result in additional effects on marine species or ecosystems beyond those already resulting from the consented dumping activities.

47. Section 59(2)(h) of the EEZ Act requires that we consider the nature and effect of other marine management regimes when deciding to grant or refuse CRL’s request. We consider that granting CRL’s request, to cancel condition 16 and change condition 17, is unlikely to effect other marine management regimes. Specifically CRL’s obligations to MNZ and the Auckland Harbormaster remain unchanged.

48. We have concluded that cancelling condition 16, and modifying condition 17, will continue to avoid, remedy, or mitigate the adverse effects of the dumping activity⁷, specifically avoiding dumping dredged spoil in the vicinity of marine mammals.

**Condition 21**

49. We have considered the relevant matters in sections 87D and 87E of the EEZ Act and find there is nothing in those matters that are affected by the proposed change in the wording of Condition 21. The proposed changes to the condition are administrative in nature and relates to CRL’s reporting requirements to the Auckland Harbormaster. On 10 March 2016, the Auckland Deputy Harbormaster confirmed the proposed changes to the reporting requirements was acceptable.

50. We have concluded that changing condition 21 does not result in any changes to the effects on the environment or existing interests from CRL’s consented dumping activities.

**Section 87D(2)(b)(ii): Effects on Human Heath**

51. CRL is not proposing to change the source of the dredged material, and therefore the composition of dumped dredged spoil will not change. Pre-disposal source site sampling occurs periodically as required by condition 1 of the consent. The results of this periodic sampling must be approved⁸ before removal of sediment for disposal is permitted. This ensures that the composition of the waste matter is known and will remain within ANZECC⁹ guidelines, therefore providing an appropriate level of protection for human health.

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⁷ Matter to consider under s 59(2)(j) of the EEZ Act
⁸ Since 31 October 2015 these results have been approved by the EPA
⁹ The Australian and New Zealand Environment Conservation Council Guidelines for Fresh and Marine Water Quality
health. The quantity dumped per annum will still remain at 50,000 cubic tonnes as permitted by the
deemed dumping consent EEZ900012.

52. Additionally modifying condition 21 does not remove CRL’s obligations to the Auckland Harbourmaster
and therefore there is unlikely to be any changes to the health and safety risks to users of Auckland’s
waterways.

53. Therefore we conclude that granting CRL’s requests is unlikely to have any effect on human health.

Section 87D(2)(b)(iii): Any alternative disposal methods

54. Alternative disposal methods and options to reuse, recycle or treat the waste were analysed in the
original permit application which MNZ granted in 2012. Revisiting those options and alternatives is not
relevant to this application.

Section 87D(2)(b)(iv): Practical opportunities to reuse, recycle, or treat the waste

55. We do not consider this matter has any relevance to making our decision to grant or refuse this
application.

Section 87D(3)

56. When making our decision we must have regard to—

“(a) any submissions made and evidence given in relation to the application; and

(b) any advice, reports, or information it has sought and received in relation to the application; and

(c) any advice received from the Māori Advisory Committee.”

57. As the changes sought in CRL’s application have been considered likely to be limited to minor matters\(^\text{10}\)
and are being considered under the provisions of s 83 of the EEZ Act, the request has been dealt with
without public notification of the application. No submissions, or reports from the Māori Advisory
Committee, have been sought in relation to the application.

58. We have considered the reports produced in relation to CRL’s original application to MNZ and advice
from the Auckland Deputy Harbourmaster.

Section 87F(2)

59. We have turned our minds to s 87F(2) and consider there are no grounds on which to refuse the
application.

Section 80

60. We have considered the requirements of s 80 of the EEZ Act and record that we have;

(a) considered the relevant matters in sections 59 and 60,

(b) complied with section 61,

\(^{10}\) Decision made 21 March 2016 under s 87(3)(b)
(c) concluded that the activity allowed by the consent will continue to be viable after the proposed change of conditions

(d) had regard to the manner in which the activity authorised by the consent has been undertaken through consideration of compliance reports, and the application.

Conclusion

61. We have considered all the information provided by CRL and Osborne Hays and taken into account the matters under sections 87D and 87E of the EEZ Act. We are satisfied that our decision is based on the best available information in accordance with section 87E of the EEZ Act.

62. We have formed the view that there is no basis on which to refuse the application under s 87F(2).

63. We conclude that the request may be granted and that:

(a) There are no significant effects on existing interests arising from the request.

(b) All relevant matters under sections 87D and 87E have been considered.

(c) The applicant is already authorised under its deemed marine dumping consent EEZ900012 to carry out the activities relating to the disposal of waste and other matters at the disposal site located at 36° 12.3403′S and 175° 48.002′E.

(d) The effects of changing conditions 17 and 21 and cancelling conditions 3(i), 3(j) and 16 are unlikely to change the existing effects of the activities authorised by CRL's deemed marine dumping consent. The effects of the change and cancellation of conditions are therefore considered to be less than minor.

(e) Granting the change of conditions for the deemed marine dumping consent accords with the sustainable management purpose of the Act.

64. We have decided to GRANT the request by CRL, to change some definitions, to change conditions 17 and 21 and cancel conditions 3(i), 3(j) and 16 of the deemed marine dumping consent, EZZ9000012.

65. The changes are detailed in Schedule 1.

66. Deemed dumping permit EEZ900012 expires 31 December 2032. The request to change conditions 17 and 21 and cancel condition 16 do not affect the original duration of the consent.
Request to change and/or cancel conditions of a marine/discharge/dumping consent

Under section 87 and section 87J of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012

Section 1: Applicant Details

Applications can only be made by authorised consent holders

**Organisation name:** Coastal Resources Limited

**Postal address:** PO Box 8, Beachlands

**Phone:** 09 536-5152

**Email:** simon@kaipara.co.nz

**Key Contact name:** Mr Simon Male

**Phone:** 09 536-5152

**Email:** simon@kaipara.co.nz

**Permit/license number:** 568

**Consent (including deemed consents) number:** EEZ900012

I understand that the EPA will recover its actual and reasonable costs associated with processing this application.

Signed: [Signature]

Date: 7/3/16

Lodge application:
- By post to: Environmental Protection Authority, Private Bag 63002, Wellington 6140
- In person at: Environmental Protection Authority, Level 10, 215 Lambton Quay, Wellington
- By email to: eez.info@epa.govt.nz.

OFFICE USE ONLY

Application Number

Date received

EPA Contact

[Logo of Environmental Protection Authority]
Completing this application form

Use this application form if you intend to apply for a change or cancellation of consent conditions under sections 87 or section 87J of the Exclusive Economic Zone and Continental Shelf Act 2012 (the EEZ Act).

All notified and non-notified discretionary activities requiring a marine consent are described in the EEZ Act, which can be viewed at: http://www.legislation.govt.nz/act/public/2012/0072/latest/DLM3955428.html?src=qs

Your application must fully describe the proposal and include an impact assessment prepared in accordance with section 39 and any regulations, including the Exclusive Economic Zone and Continental Shelf (Environmental Effects Discharge and Dumping) Regulations 2015.

Please also include information that addresses the matters the decision-maker will take into account (in addition to the impact assessment) listed in section 59 of the EEZ Act for marine consents and 87D(2) of the EEZ Act for marine discharge and dumping consents. You may attach additional information to supplement and support your application.

We recommend that you discuss these information requirements with EPA staff before lodging the application. Contact details are: 0800 208 338 (from within New Zealand) and +64 04 916 2426 (from overseas), or you can email the EEZ Consenting Team at EEZ.Info@epa.govt.nz.

You are requested to send the EEZ Consenting Team an electronic copy of your application. Please separate large documents into smaller files of no more than 5 MB. Please ensure you have referenced all attached documents in Section 6: Attachments.
Section 2: Description of proposal

Please describe your proposal to enable the EPA and any reader to understand what conditions you are proposing to change or cancel and why. Note that this description may be used on the EPA website to identify your proposal.

The changes being sought are:

Definitions (at start of permit):

Authority: Change to "The Environmental Protection Authority"

Director: Replace with "Director: Means the Delegated Authority of the Environmental Protection Authority"

Definitions (on page 2 of the permit):

(b) (Director) Change to "Delegated Authority of the Environmental Protection Authority"

(e) Remove the last sentence, "By definition, it is subject to the provisions of the Maritime Transport Act 1994 regarding its revocation, suspension, and/or the imposition of further conditions."

Additional Specific Amendment being Sought under s39(1)(a):

Conditions 16 and 17:

Coastal Resources is seeking the deletion of Condition 16 and modification to Condition 17.

The proposed change to Condition 17 is (in bold):

17 During the course of the Disposal Operations the Permit Holder must undertake observations of marine mammals for at least 30 minutes immediately prior to any dumping activity. The observation must be in accordance with the equipment, specifications and processes described in the DSSM plan and approved by the Director. Dumping activity may only occur provided there is no evidence of marine mammals detected using those approved equipment, specifications and processes.

Condition 3 i-j:

Coastal Resources is seeking the deletion of clauses i and j in Condition 3. These read:

i) The safe ship management manuals and barge safety certificates (or equivalents), for all tugs and towed barges to be used for the proposed operations,

j) The number of crew required to safely manage the operation, the names of the current crew and masters to be used for the proposed operations, and evidence of their qualifications, and

Condition 21:

An amendment to this condition is being sought to reflect the current practice.

Current Condition 21:

"21 The Permit Holder must lodge a passage plan with the Auckland Harbourmasters office at least 12 hours in advance of planned departure."
Proposed Condition 21:

"21 The Permit Holder must lodge a passage plan with the Auckland Harbourmasters office at least 12 hours in advance of planned departure if the proposed passage to be used has not previously been subject to a passage plan submitted to the Auckland Harbourmasters office."

Section 3: Impact assessment

Please complete the tables below. Your answers must contain information in such detail as corresponds to the scale and significance of the effects that the change or cancellation to the condition(s) of consent may have on the environment and existing interests, and in sufficient detail to enable the EPA and people whose existing interests are or may be affected to understand the nature of the change or cancellation to the condition(s) effects on the environment and existing interests.

You may attach additional information to support or supplement your answers. Clearly describe all attachments in Section 6. If a section is considered not relevant to your application to change or cancel a condition(s) of consent please note the rationale.

The EPA must be satisfied that you have made a reasonable effort to identify both the persons whose existing interests are likely to be affected and the effects of the activity on the environment and existing interests.

Sections 87(2)(b) and 87(2)(c) of the EEZ Act provide for references to the ‘activity’ to be references only to the effects of the change or cancellation.

39(1)(a)
Describe the change or cancellation of each condition for which consent is sought (list each condition separately)

<table>
<thead>
<tr>
<th>Change of condition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Condition number</td>
</tr>
<tr>
<td>Original wording</td>
</tr>
<tr>
<td>Proposed wording</td>
</tr>
<tr>
<td>Rationale for change</td>
</tr>
</tbody>
</table>

| Condition number    | 21 |
| Original wording    | 21  The Permit Holder must lodge a passage plan with the Auckland Harbourmasters office at least 12 hours in advance of planned departure. |
| Proposed wording    | 21  The Permit Holder must lodge a passage plan with the Auckland Harbourmasters office at least |
12 hours in advance of planned departure if the proposed passage to be used has not previously been subject to a passage plan submitted to the Auckland Harbourmasters office.

Rationale for change
Under this condition, the permit holder is required to submit a passage plan each time to the Auckland Harbourmasters Office. In practice, a passage plan is only required for a new route and to be approved once. An amendment to this condition is therefore sought to reflect the current practice.

Cancellation of condition

<table>
<thead>
<tr>
<th>Condition number</th>
<th>3 i-j</th>
</tr>
</thead>
</table>
| Rationale for cancelling | This condition was set as part of Maritime New Zealand’s role in managing coastal vessels. This role has not been carried over to the EPA. It is therefore considered unnecessary for the documentation associated with future changes to the Safe Ship Management Manual and Barge Safety Certificates or to crew to be forwarded to the EPA for approval (in terms of being a change to the DSMM requiring the approval of the EPA).

In respect to 3i, the Safe Ship Management Manual and the Barge Safety Certificates are managed by MNZ irrespective of the consent conditions. The Safe Ship Management Manual is an extensive document and to date MNZ has reviewed these on the tugs when checking the tugs. Condition 3j is not an environmental condition and is not required as part of the implementation of the permit. It is also difficult to actually comply with this in terms of the DSMM Plan as it means that any crew changes needed to be noted in the DSMM Plan which and the changes approved by the EPA. |

<table>
<thead>
<tr>
<th>Condition number</th>
<th>16</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rationale for cancelling</td>
<td>The deletion of Condition 16 and the modification to Condition 17 would remove the current confusion between conditions 16 and 17 and the approved DSMM Plan while retaining the need to observe for mammals at least 30 minutes prior to the disposal.</td>
</tr>
</tbody>
</table>

39(1)(b)
Describe the current state of the area where your consented activity is undertaken and the environment surrounding the area.

The Disposal Site is identified in the Permit as:
1,500 m radius circle centred on 36° 12.3403’S and 175° 48.002’E (WGS84 datum).

A full description of the site was provided in the original application documents. The sediment characteristics of the site has been described in the various monitoring reports submitted to MNZ and more recently the EPA.

In summary:
- The site is located within the EEZ boundary at a depth of approximately 130-140.
- It is located outside of the Hauraki Gulf Marine Park.
- It is located on the continental shelf (a topographically flat terrace).
- The seafloor sediment is mud to sandy/mud.
- There are no nearby reefs or ecological zones of special significance.
- The ecosystem at the site is non-sensitive.
- There are no obvious sites of cultural significance and none were identified during iwi consultation as part of the original application or through the notification/permit processing processes.
39(1)(c) Identify the effects of the change or cancellation of condition(s) on the environment and existing interests (including cumulative effects and effects that may occur in New Zealand or in the sea above or beyond the continental shelf beyond the outer limits of the EEZ).

**Conditions 16 and 17:**

It is our opinion that there will be no change in environmental effects from this minor clarification to the methodology for the observation of marine mammals (through the deletion of Condition 16 and modification of Condition 17).

The clarification to the monitoring methodology will not result in any changes to the biological diversity of the marine ecosystem within the disposal site or the integrity of marine species, ecosystems or processes.

The clarification to the monitoring methodology will not result in any effects on rare species and vulnerable ecosystems or the habitats of threatened species.

There will be no cumulative effects.

There will be no effects beyond the disposal site or the EEZ.

The need to monitor for marine mammals was introduced as conditions to the permit by MNZ at a late stage in the process. This monitoring would normally be undertaken visually as the barge is approaching the disposal site. With the potential for night-time disposal the need for audio monitoring (using a hydrophone) was also introduced. The clarification to the mammal monitoring condition reflects what has occurred to date and will not impact on the purpose or implementation of Condition 17, that is the avoidance of disposal of spool from the barge over a marine mammal such as a whale.

The range for the hydrophone picking up whale sound is dependent on the level of noise being produced by the whale along with conditions at that time. It is understood that in certain conditions, whales can be heard using hydrophones up to 50km away and up to about 10km away with the hydrophone currently being used. A more specific answer on the range of the hydrophone used by Coastal Resources during monitoring cannot be provided due to the range of variables at any one time (including of course the level of noise being produced by the mammal). It is important to recognise that the hydrophone is being used right up until disposal is about to occur and disposal can be halted right until the end in the event that a mammal is identified just prior to disposal. The thirty-minute period set by MNZ was not based on any specific scientific basis but rather what was considered at that time a reasonable period for the barge operators to monitor for mammals as they approached and entered the disposal site.

The clarification to the monitoring condition does not affect any other marine management regiments. As outlined above, the clarification is being sought due in part to the health and safety issues identified by Thompson Towboats in the event that the full thirty-minute monitoring was required to be undertaken within the disposal site.

**Conditions 3 i-j and 21:**

The deletion of condition 3i-j and the modification to Condition 21 results in no change in environmental effects.
39(1)(d)
Identify persons whose existing interests are likely to be adversely affected by the change or cancellation of condition(s)

**Conditions 16 and 17:**

The site is within the extensive submarine exercise area which is used on occasions by the Royal New Zealand Navy (RNZN). As part of the existing permit, the RNZN is notified prior to disposal periods to confirm there will be no conflicts arising. To date this has not been an issue. The clarification to the mammal monitoring conditions does not impact on the use of this area by the RNZN.

It is considered that there are no parties who may have an interest in this modification. No consultation with other parties (apart from the EPA and Thompson Towboats) has been undertaken in respect to this application and it is considered that there are no affected parties and no written approvals have been sought (nor are required).

**Conditions 3 i-j and 21:**

No parties would have an interest in this deletion or modifications of these conditions.

<table>
<thead>
<tr>
<th>39(1)(e)</th>
<th>Describe any consultation undertaken with people described in 39(1)(d) and specify those who have given written approval to the change or cancellation of condition(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No consultation has been undertaken apart from with the EPA and Thompson Towboats.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>39(1)(f)</th>
<th>Include copies of any written approvals to the change or cancellation of condition(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>☑ Attached</td>
</tr>
<tr>
<td></td>
<td>☑ Not applicable</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>39(1)(g)</th>
<th>Specify any possible alternative locations for, or methods for undertaking, the activity that may avoid, remedy, or mitigate any adverse effects arising from the change or cancellation of condition(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The issues of alternatives to disposal, re-use etc were canvassed in detail in the original application and subsequent responses to Maritime New Zealand and do not need to be re-viewed as part of this application for the minor modification to Conditions 17 and 21 or the deletion of Conditions 16 and 3i-j. The proposed amendments to the various conditions does not impact on the viability of alternative methods for disposal.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>39(1)(h)</th>
<th>Specify the measures that you intend to take to avoid, remedy, or mitigate the adverse effects identified arising from the change or cancellation of condition(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No specific new measures are required to be implemented as no adverse effects arise from the proposed change and cancellation of condition(s).</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>39(4)</th>
<th>Specify any measures required by other marine management regimes or the HSE Act 1992 that may have the effect of avoiding, remeodying or mitigating the adverse effects arising from the change or cancellation of condition(s) specified in s39(1)(h)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Not applicable.</td>
</tr>
</tbody>
</table>

Reg 35 / 87D(2)(a)(II)

Describe the effects on human health of the discharge of harmful substances if the change or cancellation of condition(s) was granted

Marine discharge consent only
Reg 36(a) / 87D(2)(b)(ii)  
Describe the effects on human health of the dumping of waste or other matter if the change or cancellation of condition(s) was granted

The deletion of Condition 16 and modification to Condition 17 does not change the potential effects on human health from the disposal.

Conditions 3 i-j and 21:

The deletion of conditions 3i-j and the modification to Condition 21 results in no change to potential effects on human health. The regulatory control over the tow boats and barges remains with MNZ and is not affected by the removal of Condition 3 i-j.

Reg 36(b) / 87D(2)(b)(iii)  
Describe any alternative method of disposal that could be used

The issues of alternatives to disposal, re-use etc were canvassed in detail in the original application and subsequent responses to Maritime New Zealand and do not need to be re-viewed as part of this application for the minor modification to Conditions 17 and 21 or the deletion of Conditions 16 and 3i-j.

The proposed amendments to the various conditions does not impact on the viability of alternative methods for disposal.

Reg 36(c) / 87D(2)(b)(iv)  
Specify any practical opportunities to reuse, recycle, or treat the waste

The issues of alternatives to disposal, re-use etc were canvassed in detail in the original application and subsequent responses to Maritime New Zealand and do not need to be re-viewed as part of this application for the minor modification to Conditions 17 and 21 or the deletion of Conditions 16 and 3i-j.

The proposed amendments to the various conditions does not impact on the viability of alternative methods for disposal.
Section 4: Information required by section 59 of the EEZ Act

Please provide information relevant to your application to assist the decision-makers assess your application against the matters described in section 59 of the EEZ Act. This will minimise the need for the EPA to request further information. Note that changing or cancelling a condition of a marine discharge consent, information for the purposes of section 59(2)(c) is not required, and section 59(2)(c), (f), (g) and (l) is not required in relation to marine dumping consents.

Please refer to the attached letter (Osbornehay, 7 March 2016).

Section 5: Associated applications, consents, permits and/or licences

List all associated authorisations issued or required to perform the activities subject to this application.

<table>
<thead>
<tr>
<th>Activity</th>
<th>Consent authority with reference if applicable</th>
<th>Authorisation granted? (Yes / No)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
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</table>

Section 6: Attachments

List all documents submitted with the application.

<table>
<thead>
<tr>
<th>No.</th>
<th>Document name</th>
<th>Relevant Section/page reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Osbornehay Letter (7 March 2016)</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Existing Permit</td>
<td></td>
</tr>
</tbody>
</table>