

EPA Report

Workability of Conditions of Consent as Imposed on EEZ900012

Coastal Resources Limited

EEZ100015

OCTOBER 2018



**Environmental
Protection Authority**
Te Mana Rauhi Taiao

New Zealand Government

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Introduction

1. Coastal Resources Limited (CRL) is applying for a 35 year consent to dump up to 250,000m³ per year of dredged material at the Northern Disposal Area (NDA). The NDA is a 1,500m radius circle, centred on 36° 12.3403"S and 175° 48.002 "E (WGS84 datum), thus covering an area of about 7km², located on the mid-continental shelf approximately 25km east of Great Barrier Island and 22km north of Cuvier Island. The water depth at the NDA is about 140m. The site has soft bottom sediment and is downwards sloping towards the east. Sections 3.6 and 4 of the application, described the seabed bathymetry as generally flat with little to no distinguishable morphologic feature.
2. CRL is the holder of a deemed marine dumping consent EEZ900012 under which 50,000m³ can be dumped at the NDA per year. This deemed consent was granted by Maritime New Zealand (MNZ), under the Maritime Transport Act 1994 (MTA), as permit 568 in December 2012. The permit was granted for a duration of 20 years and a number of conditions were placed on the permit.
3. CRL's MNZ permit 568 became deemed marine dumping consent EEZ900012 (EEZ900012) with the commencement of the Exclusive Economic Zone and Continental Shelf (Environmental Effects - Discharge and Dumping) Regulations 2015 (D&D regulations). EEZ900012, and its environmental management and monitoring plan, was therefore not granted under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act), but a different marine management regime. That MTA regime also included guidance, referenced in various sections of Part 180 under the MTA which detail a number of requirements regarding assessment of dredged material and monitoring of effects, as relating to marine dumping. With the introduction of the D&D Regulations under the EEZ Act, Part 180 no longer applies to the EEZ, as set out in section 257A of the MTA. No reference to the guidance document under Part 180 was included in the D&D Regulations.
4. Conditions of consent, as imposed on EEZ900012, were drafted to meet relevant requirements under the MTA regime. Conditions imposed on any consent granted under the EEZ Act must comply with section 63 of the EEZ Act. Such relevant conditions may differ from the deemed consent conditions.
5. CRL has proffered a number of consent conditions in section 9 of its application (EEZ100015), which are to a large extent based on the conditions placed on EEZ900012.
6. The DMC has therefore requested the EPA to report on the workability of the conditions on EEZ900012, under the EEZ Act regime. "Workability" refers to whether the condition is clear, certain, specific to address a potential adverse effect, meet the requirements under the EEZ Act and regulations, and are able to be measured in the field.
7. This report has not considered the merits of CRL's proffered conditions and whether they properly address or manage any adverse effects. The report focuses only on the workability of the conditions on EEZ900012 under the EEZ Act.

Approach

8. The following assessment highlights consent conditions of EEZ900012 which the EPA does not consider workable, including as a result of the consent being administered under a different regime (i.e. the EEZ Act) from that under which it was granted (i.e. MTA). EEZ900012 consent conditions which have not led to workability issues are not discussed. This does not mean that the EPA propose that the remaining conditions be imposed on the current application (EEZ100015), or that the EPA consider them the most appropriate in dealing with the proposed activity under the EEZ Act.
9. The assessment includes comment on where conditions address matters which are not covered by the EEZ Act. Comment on whether the condition has been proffered for EEZ100015, either as imposed on EEZ900012 or in some alternative form, is also included. Where alterations have been made, comment is made on its appropriateness in dealing with known workability issues. In noting that a consent has been appropriately amended, however, is not to be read as EPA's support of that consent condition, only a recognition that the correct workability issue with the consent appears to have been addressed by the applicant.

Assessment

10. Table 1 gives an overview of the consent conditions on EEZ900012 where the EPA has identified workability issues, in administering the consent under the EEZ Act. Other conditions in the deemed consent that are considered workable are not addressed.

Table 1. Assessment of workability of conditions on EEZ900012 under the EEZ Act.

EEZ900012 Condition with workability issues	EEZ100015 proffered condition	Workability
1(a)	Proffered, with appropriate amendments	Current condition specified only capital dredging for consideration of dredging depths and potential for layered contamination. Proffered EEZ100015 condition addresses this by including all dredging.
1(b)	Proffered, with appropriate amendments	Current condition references the New Zealand Action List contained within the New Zealand Guidelines for Sea Disposal of Waste which has not been updated since published in 1999. Proffered EEZ100015 condition includes reference to the ANZECC (2000) document which corresponds with requirements under condition 6 for post monitoring of the disposal site. Revised ANZECC guidelines have since been released (August 2018).
2(a) - (c)	Not proffered	This condition relates to the MTA and therefore is not within the scope of the EEZ Act and D&D Regulations. In addition, condition 2 (b) includes reference to the Maritime Rules and Marine Protection Rules (under the MTA), which are not referenced in the D&D Regulations.
3(i)	Not proffered	This condition (as it relates to the towing and passage plans) is not within the scope of the EEZ Act and D&D Regulations.

6(d)	Proffered, with appropriate amendments	Current condition does not have flexibility in the frequency of the monitoring triggered by dredged volumes for 6 (a), (b), (c) and (e) to account for operational limitations (such as weather conditions, vessel availability). Proffered EEZ100015 condition addresses this by including a range of dredge volumes which trigger monitoring requirements.
6(e)	Proffered, with amendments	MB-2 accuracy has never been achieved, but question the need of this level of accuracy in order to achieve the required monitoring of mound development.
11(e)	Not proffered	This relates to a condition under the previous MTA regime that was removed when it transferred over to the EPA.
17	Proffered, with no amendments	Condition does not stipulate staff/crew to be trained in marine mammal detection using the approved equipment and processes. This therefore, may introduce uncertainty regarding the robustness of marine mammal observations.
18	Proffered, with amendments	This condition (as it relates to notification requirements to the New Zealand Defence Force) is not within the scope of the EEZ Act and D&D Regulations.
20	Proffered, with no amendments	This condition (regarding all disposal vessels having an active Automatic Identification System) is not within the scope of the EEZ Act and D&D Regulations.
21	Proffered, with no amendments	This condition (requiring lodgement of a passage plan to the Auckland Harbourmaster) is not within the scope of the EEZ Act and D&D Regulations.
22	Proffered, with no amendments	This condition (requiring notification to the Auckland Harbourmaster for each disposal trip) is not within the scope of the EEZ Act and D&D Regulations.
23(b), (h)	Proffered, with no amendments	These conditions (referring to notifications to the Auckland Harbourmaster and inclusion of vessel's daily log books) are not within the scope of the EEZ Act and D&D Regulations.
27	Proffered, with no amendments	This part of the condition (referring to the Auckland Harbourmaster) is not within the scope of the EEZ Act and D&D Regulations.

Conclusion

11. CRL has proffered consent conditions in section 9 of the application. These are largely based on existing conditions on EEZ900012. This report has not considered CRL's proffered conditions, but only the workability of the conditions on EEZ900012, noting also whether the condition was included by CRL in the proffered consent conditions for EEZ100015.
12. The DMC, if it is minded to grant consent, needs to consider which conditions may be appropriate, under the EEZ Act, to deal with adverse effects of the activity on the environment or existing interests. The DMC may wish to seek further advice on the workability and appropriateness of the proffered consent conditions.

END



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