

BEFORE THE DECISION-MAKING COMMITTEE AT AUCKLAND

Application for a marine dumping consent by Coastal Resources Limited to dump dredged material at a deep-sea site east of Great Barrier Island

PRESENTATION BY CRAIG SHEARER FOR EMPIRE CAPITAL LIMITED

Introduction

1. I do not intend traversing the evidence I submitted to the Committee – you all would have read that and I am happy to respond to any questions you may have on it.
2. In summary I support the application, in my experience working with the marina industry there is a reliance on dumping dredged material into marine dumping grounds – land based alternatives are not viable on a large scale – and many of the marinas have a backlog of material they need to dredge and dispose of. Sedimentation is an ongoing problem. And there is a shortage of marina berthage space, meaning extensions to existing marinas or more marinas are needed. I will not elaborate at this stage as other submitters representing the Empire Capital Group will be addressing you next and they are in a better position to elaborate on operational requirements for dredging and dumping.
3. I have read many of the technical reports, the various expert witness statements and listened to some of the evidence to be presented to the Committee. Although I understand there are parties opposed to the granting of consent, I note this is not the view of the many technical experts informing the Committee. Rather it is the possible conditions that are the focus of attention.
4. I believe the application can be granted with conditions which will ensure the proposal will comply with the requirements of the EEZ Act.
5. The focus of my presentation today will be on those conditions not agreed at the Planning Expert conferencing.
6. The Planning Expert Conferencing was an excellent process and a large degree of agreement was reached amongst the parties on conditions that would be appropriate should the DMC decide to grant consent. I suggest it would be appropriate for a further conferencing session to occur to try and achieve consensus on the remaining issues. In my experience it is always useful for a hearings committee to receive agreed positions from the experts informing the process.

7. However, although I am an optimist, consensus may not be achievable!!
8. So, therefore, on the following pages I have provided my opinion for you, via notes in the right hand column, on some of the conditons that are important to the Empire Capital Group, and that were still in contention at the conclusion of the expert conferencing. The following notes will ensure you know my position on these matters in the event differences are not resolved through futher conferencing or if indeed it does not occur.
9. I have deleted all conditions below which are agreed or on which I have no view.

PROPOSED CONDITIONS OF CONSENT (POST-EXPERT CONFERENCING COPY)

Last Updated: 27/11/2018

Note: Black text where agreed by all experts
Red text where proposed by Catherine Clarke
Blue text where proposed by David Hay
Green text where proposed by Andrew Riddell
Highlighted text where matters for the DMC to consider

1. Subject to compliance with these consent conditions, the activities authorised by this consent shall be undertaken in general accordance with the operational descriptions contained in the documents detailed below:

- Report entitled "Marine Consent to Dump Application and Supporting Impact Assessment, Applicant: Coastal Resources Limited, Site: Northern Area including Appendices One to Ten (inclusive)", Authored by Osbornehay, Dated May 2018;
- Correspondence entitled "Response to Request for Information under Section 54(1)", Authored by Osbornehay, Dated October 25, 2018;
- Report entitled "Dredged Material Disposal Study", Authored by Beca Limited, Dated 25 October 2018;
- The expert and supplementary evidence presented by the experts for the Consent Holder to the Decision Making Committee.

Where operational descriptions contained in these documents are contrary to the conditions of this consent then the conditions will prevail.

1A The Consent Holder shall not dump more than 250,000 cubic metres of dredged material at the NDA per annum.

1A No more than 100,000 cubic metres of dredged material shall be dumped at the NDA per annum, based on a five year rolling average.

Commented [CS1]: I support the insertion of the word "general" because in my experience I have always found that many plans have the best intentions but can often be found wanting when they come to be implemented "on the ground". Too often operational descriptions are interpreted literally with no flexibility. The word "general" provides for limited flexibility.

Commented [CS2]: I support the applicant's request for 250,000m³ per annum. In my experience most marinas in the Auckland region are behind with their dredging programmes, and I am aware of new developments being proposed that will require major capital works dredging.

I have also read the Market Economics report which signals there will be up to 2.8 million m³ of dredged material over the next 10 years that will need access to a disposal area.

100,000m³ is not enough in my view – I consider a disposal site is akin to a key infrastructure facility. Auckland and indeed NZ has a habit of undersizing facilities with subsequent consequences.

2. This consent expires on {35 years from the grant of consent}.

Commented [CS3]: Marinas and the dredging industry need certainty if they are going to invest in existing and new assets. Auckland is the city of sails with demand for new berthage increasing. Operators and developers need certainty before they will invest in new marinas or upgrade existing ones. A marine disposal site with adequate capacity for a significant term is critical to financial planning.

In my view the longer the term the better.

I note section 76 of the EEC Act provides for a review of duration and conditions of any consent

5A If the Consent Holder becomes aware of any breach of condition 5, the Consent Holder must:

- a) Suspend dumping operations immediately;
- b) Notify the EPA of the event by the close of the Business Day following the Consent Holder becoming aware of such an event.
- c) If the breach is only to 5(aa), for the relevant source site,
 - i) Undertake the process set out in conditions 6 and 7, in order to determine the detailed description and characterisation of the waste to be collected for disposal; and
 - ii) Not resume loading operations from that Source Site, until the EPA provides written acceptance of the Sampling Results, as per condition 7(a).
- d) For all other breaches of condition 5, the Consent Holder shall undertake the process for monitoring of the NDS as set out in conditions 8 and 9.
- e) For the avoidance of doubt, dumping may not recommence unless written acceptance is provided by the EPA under condition 7A or 9, as the case may be.

Commented [CS4]: I am not in agreement with this proposed condition 5A. If there is a breach of condition 5 (exceedances of any of the values in Schedule 2) then the appropriate action is to notify the EPA and the EPA can, if they consider it necessary, issue an Enforcement Order (S115 EEZ Act) or Abatement Notice (S125) and require the person to cease an activity that contravenes consent conditions.

To me the suggested 5A is approaching adaptive management (prohibited by S64 of the EEZ Act) in that it requires actions which lead to a different management approach. My advice is that it would be more appropriate to retain flexibility of approach by discussing the matter with the EPA instead of being directed into the specific actions being suggested by Mr Riddell for DOC.

I understand Mr Hay has suggested an alternative condition whereby if the consent holder is aware of a breach of conditions then it must inform the EPA within 48 hours. Then it is up to the EPA to determine if any action is required using the measures referred to above. This seems to me a sensible approach and I support it.

7A. No dumping of dredged material from a source site shall occur until the EPA has certified that the sediment and biosecurity characterisation for that Source Site has been completed in accordance with conditions 6 and 7. If within {20 Working Days} the EPA has not certified or rejected the sediment and biosecurity characterisation, it will be deemed to be certified.

Commented [CS5]: There has to be a set timeframe to respond so I support the 20WD requirement. Otherwise dredging operations could be held up indefinitely by slowness of EPA staff.

7B. If the Consent Holder becomes aware of an incident which could result in a significant change to the sediment and/or biosecurity characterisation at the Source Site, the EPA is to be notified immediately.

7B. If the Consent Holder becomes aware of any event which would indicate a likely change in the characteristics of the sediments collected for disposal from a Source Site (such as, without limitation, a pollution event, operational activities, or arrival of a vessel compromised with an exotic organism) that could increase levels of contamination or biosecurity risk, the Consent Holder must:

- a) Suspend loading operations from that Source Site immediately upon the Consent Holder becoming aware of such an event.
- b) Notify the EPA of the event by the close of the Working Day following the Consent Holder becoming aware of such an event.
- c) For that Source Site, undertake the process set out in conditions 6 and 7, in order to determine the detailed description and characterisation of the waste to be collected for disposal.
- d) Not resume loading operations from that Source Site, until the EPA provides written acceptance of the Sampling Results, as per condition 7A.

14A Visual detection for marine mammals is to be undertaken (by an appropriately trained crew-member) immediately prior to dumping. In the event a marine mammal is sighted within 250 metres of the vessel(s) immediately prior to dumping, then dumping shall not commence until all marine mammals are seen to move out of the 250 metre area or have not been sighted for 30 minutes.

14B A written record of the period in which the detection was undertaken, identity and number of marine mammals detected, method of detection, any actions taken, personnel undertaking detection, confirmation that the personnel has the required training, and general weather conditions will be summarised in the monthly written record required under Condition 19.

14C The consent holder shall make available to all crew members undertaking dumping activity at the NDA, a New Zealand marine mammal species identification guide to assist in the accurate identification of species.

Commented [CS6]: These are two slightly different approaches to the issue of there being a significant change to the characterisation of material at a source (eg marina basin) site.

I have been involved in consenting several dredging activities and have observed dredging operations many times. "Events" likely to change the material characterisation are in my opinion very limited (I don't know of any occurring) – maybe a spillage of fuel, in which case all marinas have to follow strict oil spill response plan procedures, and this is unlikely to settle into the sediment to be dredged. And any such events are likely to be restricted to a small part of the marina/area to be dredged.

I certainly cannot imagine an event which would be significant enough to require going right back through the condition 6 and 7 process (set out in Schedules 3 and 4) – in other words starting again – this could take months. This is a very specific and inflexible "direction" which may be completely unnecessary and yet the consent holder (actually the marina owner or dredging operator) will be forced to go through it, even if it is unnecessary, before recommencing operations. .

So for this reason I favour the first of the two options, that suggested by Mr Hay. EPA could be notified and then any action needed could be discussed with them. But ultimately EPA have enforcement/abatement powers available to them.

Commented [CS7]: 300m was suggested as being appropriate as this would be a distance consistent with the Marine Mammals Protection Regulations which prohibit vessels being within 300m of whales, dolphins and seals. I am happy for this to be amended to ensure consistency.

23. For all vessels, including barges, associated with the dumping of dredged material at the NDA:

- (i) In order to avoid adverse effects on sea birds, lighting is to be inward and downward facing and minimised as far as practicable while still complying with any relevant regulations and safety requirements; and
- (ii) The 'Clean Hull' for 'long-stay vessels' requirement specified in the Craft Risk Management Standard: Biofouling on Vessels Arriving to New Zealand (MPI, 15 May 2014), or any subsequent variation thereof is to be followed.

Craig Shearer
30 November 2018

Commented [CS8]: There was much discussion on this point. I agree some standard is needed. I am also aware that for a 100 nautical mile round trip there is significant additional fuel used if the hulls of vessels are heavily fouled – Mr Thompson can elaborate on this but hulls are regularly cleaned to achieve fuel efficiency.

I am not altogether comfortable with applying the Craft Risk Management Standard for long stay vessels. This is a standard developed for international vessels visiting NZ, designed to prevent influx of organisms into New Zealand, and it could change at any time! Further, I have no idea how the EPA will ever have the resources to monitor this condition.

A more applicable standard is that set out in the Auckland Unitary Plan (I note that this is largely unchanged by PC 15 notified yesterday) – passive discharges from commercial vessels is a "permitted" activity subject to a Biofouling Management Plan being approved. I like this approach better – responsibility for biofouling regulation of vessels then rests with the regional council. It would seem to me that the Committee should rely on the regional councils regulating the cleaning of hulls. Afterall, this consent can only control the barges/tugs coming to the site, but there will be 100's of other vessels crossing the site and adjacent areas each year, including non-commercial vessels, which this consent will have no control of.

Although most dredgings to the NDA will come from the Auckland region, some may come from the Waikato of Northland regions and I understand they may not have the same standards. This may be an issue for the Committee