BEFORE THE EPA
COASTAL RESOURCES LIMITED MARINE CONSENT APPLICATION

IN THE MATTER of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012

AND

IN THE MATTER of a decision-making committee appointed to consider a marine consent application made by Coastal Resources Limited to Dispose of Dredged Marine Sediment at the Northern Disposal Area

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SUMMARY STATEMENT OF DAVID NEILSON HAY FOR COASTAL RESOURCES LIMITED

DATED 27 NOVEMBER 2018

MAY IT PLEASE THE COMMITTEE

1. My full name is David Neilson Hay. I am a Planning Consultant/Director with Osborne Hay (North) Limited which is based in Warkworth, Auckland. I hold the qualifications of a Master of Science Degree (with Honours) (1992) in Resource and Environmental Planning from the University of Waikato. I am a full member of the New Zealand Planning Institute.

2. I was the Planning Consultant for Coastal Resources Limited (**CRL**) for the original dumping permit application to Maritime New Zealand (**MNZ**) in 2008 for the Northern Disposal Area (**NDA**) and have continued to provide planning advice to CRL since the granting of that permit (and subsequent amendments).

3. I led the preparation of the current marine dumping consent application and supporting Impact Statement (**IA**) under the Exclusive Economic Zone Act (**EEZ**). I have prepared a Statement of Expert Planning Evidence and have participated in the Planners facilitated conferencing.

Additional Information Since the Preparation of Evidence

4. Since preparing my Statement of Evidence I have read or participated in:
   - The various briefs of evidence for the Department of Conservation.
   - The briefs of evidence for Dredging New Zealand, Bayswater Marina, Empire Capital, Hobsonville Marina and Pine Harbour Marina.
   - The evidence of Professor Jeffs for the Auckland Conservation Board.
   - The various reports prepared for the DMC by NIWA, Boffa Miskell, DHI, Sapere Research Group and Ngā Kaihautū Tikanga Taiao.
   - A meeting with representatives of the Auckland Conservation Board.
   - The Planners facilitated conferencing.

5. At the time of finalising this statement, the joint statement from the Planners conferencing was completed and was awaiting to be circulated. This Joint Statement included an updated set of draft recommended conditions which identifies those conditions the Planners were in agreement with, those conditions where there was disagreement and those conditions where the DMC may wish to seek further advice or clarification. I attach as Attachment One this set of conditions.

6. In response to a request from Fisheries Inshore New Zealand (FINZ), the fisheries

data provided to the DMC from Fisheries New Zealand was further assessed by Trident Systems Ltd and their report released to FINZ.

7. No matters have arisen which has a material effect on my evidence except in relation to the scope of the consent and conditions which I address shortly.

Scope of Consent

8. I withdraw paragraphs 142 to 146 of my evidence as I now understand that my recommendation to change the purpose of the consent inadvertently triggered the requirement to also grant consent under s20 of the EEZ. For physical monitoring at the NDA the applicant will be required to continue to follow the procedures under the Exclusive Economic Zone and Continental Shelf (Environmental Effects—Discharge and Dumping) Regulations 2015 (**2015 Regulations**) or at some later stage seek consent under section 20 of the EEZ to cover the physical monitoring if CRL do not wish to following the regulation requirements during each monitoring episode.

Summary of Evidence

9. Section 20G(3) of the EEZ Act provides for dumping at sea if authorised by a marine consent. The proposal is defined as a discretionary activity under section 36 of the EEZ Act and the 2015 Regulations as the dumping is not within an "authorised location".

10. In my evidence I have considered the matters which the Decision-Making Committee (**Committee**) of the Environmental Protection Authority (**EPA**) must consider in making a determination on these applications for consent under sections 10, 59, 60 and 62 of the EEZ Act.

11. Attachment A to this statement is an updated set of conditions for the Committee to consider in terms of section 63 of the EEZ Act. This set of conditions is that prepared by the Planners at the Facilitated Conferencing and is "based" on the conditions which were appended to my primary evidence.

12. It remains my opinion that the information available to the Committee is both adequate and sufficiently certain, so that the Committee is not required to favour caution and environmental protection. I have not identified any matters in evidence raised or the other expert conferencing statements which give rise to a concern that the information available to the DMC is not adequate or sufficiently certain for the

Committee.

13. In the event that the Committee considers that a precautionary approach needs to be taken then this does not over-ride the ability to grant consent. The EEZ Act provides for this proposal as a discretionary activity and provides for the ability for such activities to be controlled by conditions of consent. The conditions I have recommended will in my opinion appropriately control and manage the actual and potential effects of the activity and will involve monitoring and reporting on the effects of that activity to ensure compliance.

14. The on-going disposal in the NDA will cause significant mortality of benthic biota within the impact area as a result of smothering and/or burial. This effect cannot be avoided but is contained to within the NDA site. To date no effects at the NDA boundary on benthic biota from the disposal operation has been identified. The significance of this effect needs to be considered in the context of the very small area being affected and the area being affected has not been identified as having any special or significant ecological value.

15. Very short term and spatially limited turbidity effects will also arise immediately after the disposal and a small percentage of material remains suspended in the water and can be dispersed over a distance of up to approximately 15km. This has now been further investigated and addressed by Mr Connon.

16. Although the disposal operation over-time will continue to result in a mound being formed, the spatial extent of this is relatively small and defined.

17. The risk of adverse effects on birds, fish and marine mammals has been assessed as very low.

18. Overall, beyond the NDA boundaries no potential significant adverse effects have been identified. The proposed monitoring conditions, in part, are designed to identify if adverse effects start arising at the NDA boundary.

19. In my opinion and based on the evidence of CRL's other expert witnesses, the proposed continued disposal at the NDA site can be undertaken in a manner that appropriately avoids, remedies or mitigates potential significant adverse effects on the environment apart from the impact on benthic biota within the NDA. This is achieved through the control of material which is disposed of at the site, the nature and rate of disposal, the location of the NDA and the very limited spatial extent in which dumping can occur.

20. In my opinion the consent can be granted in terms of section 62 of the EEZ Act. In my opinion and in terms of section 62(2) the application does not need to be refused as:

(1) There is no identified practical or efficient re-use or re-cycling option for the disposal of large volumes of dredged sediment. If more practical and cost-efficient options for re-use or recycling of dredged sediment arise in the future then it is likely for economic reasons that the party seeking to dispose of dredged sediment will use those methods rather than paying for the disposal at the NDA site. There are already examples of this in Auckland including the disposal of dredged material from the dredging of the Mahurangi River and the proposed use of dredged material in a reclamation at Westhaven Marina (subject to obtaining resource consent with the decision on this application due in the next week or so).

(2) The potential effects of the disposal are known and have been assessed. Since the original marine dumping permit application was made a step by step process has been followed in terms of identifying and assessing effects. This commenced with the initial site assessment studies, followed by a trial disposal period and then the granting of the permit for 50,000m^3 and subsequent monitoring. The current application is now for a larger maximum annual volume to provide for the likely maximum annual volumes requiring to be disposed in the future. Through this process and including during the preparation of the IA, evidence, review of submissions and expert conferencing, the draft recommended conditions have also evolved and in my opinion are now substantially more sound and sophisticated than the current conditions.

(3) In my opinion adequate information has been received for the Committee to make a decision.

(4) I am unaware of any circumstances which have now arisen which results in disposal at the NDA site not being the best approach for dredged sediment disposal (when the party requiring the dredged sediment disposal has not secured an alternative disposal method).

21. Mr Riddell in his evidence (paragraph 70) has put forward the proposition that the consideration of alternative methods etc under section 59(2)(b) needs to be considered for each individual source sites. He then progresses this proposition in his paragraph 79 by concluding if consent is granted it can only be for dredged material from the sites identified in Table 3 of the IA.

22. I am in disagreement with Mr Riddell on this point. Section S59(2)(B) outlines matters to be considered but consent does not have to be declined if an alternative method of disposal or a practical opportunity to reuse etc has been identified. It is also my interpretation that this section needs to be considered more holistically. That is, is there any alternative method of disposal to that proposed and/or is there a practical opportunity to reuse, recycle etc the dredged material to be received at the NDA (taking into account the nature, source and volume of dredged material).

23. The IA has identified both alternative methods of disposal and practical opportunities to reuse. At the current time these opportunities are very limited and site specific. I would expect in most circumstances if there was such an opportunity the party seeking to dispose of dredged material would be considering such options before they considered the NDA disposal site.

24. I remain of the opinion that an adequate assessment of alternatives for dredged material disposal has been undertaken and there is no basis to limit the consent to accepting dredged material from the potential source sites identified in the IA. If the Department of Conservation was of the view that such an assessment is required and should be undertaken for all dredging operations in Auckland then the Minister of Conservation had such an opportunity to seek then impose this through the submission process to the Auckland Unitary Plan and then through their approval of the Auckland Coastal Plan (which forms part of the Auckland Unitary Plan). This would have been a more appropriate process to include the requirement for such an alternative options assessment rather than now seeking it through a specific consent pertaining to one disposal option.

25. I conclude, based on the expert evidence and my assessment in terms of the decision-making criteria in Sections 59 and 60 of the EEZ Act, that there is no basis for the application to be declined in terms of s62(2). In my opinion granting the marine dumping consent, with the recommended conditions, would be consistent with the purpose (Section 10) of the EEZ Act. In particular, granting the consent and the continued operation of the NDA site will not:

- Affect the sustainable management of natural resources within the EEZ to meet the reasonably foreseeable needs of future generations; and
- Impact on the life-supporting capacity of the environment.

RECOMMENDED CONDITONS OF CONSENT

27. In the Application/IA, a list of recommended conditions was provided. During the preparation of evidence, these were reviewed taking into account the EPA report on the workability of the existing deemed consent conditions, legal guidance on what adaptive management means in terms of consent conditions and feedback from Sanford Limited, Cedenco Foods New Zealand Limited, Fisheries Inshore New Zealand and the Department of Conservation and an updated set of conditions was included in my evidence.

28. Since then, I have undertaken a further review of the recommended conditions in consultation with the various experts and legal Counsel for the applicant. I have also taken into account the recommendations in the evidence for the Department of Conservation and the Auckland Conservation Board and the Conditions Report prepared by the DMC.

29. I circulated my revised conditions from this review to Mr Riddell, Ms Clarke and Mr Shearer prior to the Planners facilitated conferencing on the 27th of November. At the Planning Conference the Planners reviewed each condition along with those earlier proposed by Mr Riddell and also Ms Clarke and a revised set of conditions was prepared. This is attached as Attachment One.

30. I will now outline the changes made and briefly discuss any key differences in opinion

31. The definitions for Bottom Dump Barge and Working Day have been included and a range of minor changes made to other conditions as recommended by Ms Clarke.

32. The use of the definition of ISQG was identified as potentially problematic during the Planners conferencing due to problems accessing and clearly understanding what those standards are. A schedule of standards to replace this and which form a schedule is now being prepared by the applicant as a potential alternative.

33. Throughout the conditions the word “disposal” has been replaced by “dumping” and the phrase “dredged material” has been used.

34. Condition 1 has been amended to include the list of reports which form part of the application. This list may need to be updated prior to the finalisation of the condition. I do not agree that the word “general” between “in” and “accordance”

should be removed. I consider that the inclusion of the term "general" is best practice as it provides a slight degree of flexibility. As a Planner that specialises in obtaining resource consents under the Resource Management Act 1991 and then providing advice in giving effect to those consents, it has been my experience that in recent years the practice by, for example, Auckland Council in not including the word "general" has created less certainty, more confusion in terms of interpretation by Council officers and a degree of uncertainty for applicants when giving effect to their consent. The inclusion of the word "general" provides that slight degree of flexibility sometimes required in practice in giving effect to a consent particularly when the background documentation forms part of that consent.

35. Condition 1A which specifies the permitted annual dumping volume has been added and in hindsight I now consider that it is better practice to have this specified in a consent condition rather than in any consent description. There remains a difference of opinion between myself and Mr Riddell on the annual volume which the consent should provide for and I understand that the expert conferencing of the economists will further explore the expected disposal volumes. This condition may need to be reviewed in light of the outcomes from that conferencing.

36. Condition 2 has been amended so it is clear from what date the consent is given effect to. There remains a difference of opinion between myself and Mr Riddell on the duration of the consent. It remains my opinion that a shorter duration as sought by Mr Riddell is not required because in the event that issues arose with the consent then the EPA can review the duration of the consent under section 76 of the EEZ Act.

37. Condition 2A has been added and I understand this practice would in any event be undertaken by the Consent Holder.

38. Condition 3 has been changed to reflect the recommendations of Ms Clarke that the lapse date of the consent is five years rather than ten years after the commencement date.

39. Condition 5 has been changed to reflect that the monitoring sites are now specifically identified in Schedule 1. In the event that the reference to ISQG is replaced with a specific schedule of contaminants then Condition 5(a) would need to be updated to reflect this. I note that the Planners have raised a concern about the term "statistically significant different" in condition 5(b).

40. Conditions 5 (b) and (c) has been amended to reflect that two control sites have

now been re-introduced into the schedule of monitoring sites and are to be used as the basis of comparison.

41. Mr Riddell is seeking a new condition 5(d) which requires the monitoring of suspended sediment concentrations at the NDA boundary. I do not support such a condition on the basis that I am unsure of what environment effect such a condition is seeking to assess.

42. A new condition 5A has been proposed outlining the process if the Consent Holder becomes aware of any breach of Condition 5. I do not support the need for such a condition as the EEZ Act specifies the enforcement action which can be progressed if the consent holder is in breach of the consent.

43. Condition 6 has had additional wording included at the start to make clear the purpose of this monitoring and this reflects the recommendation of Ms Clarke.

44. Condition 8 has had various changes made to it to now refer to the schedule of monitoring sites, methodology schedules and the bathymetry monitoring has been re-introduced. This condition has reintroduced that the monitoring is to be undertaken on the basis of volume disposed off rather than each spring (which has been retained for the benthic and biosecurity monitoring.

45. A new Condition 7A is proposed which requires that the EPA certifies that the sediment and biosecurity characterisation for source sites has been completed. A time period for EPA to provide this certification (or to reject it) has been recommended and which I support.

46. A concern was raised by Mr Riddell that the EPA may not be made aware if an incident occurred at the source which may significant change the sediment and/or biosecurity characterisation at the source site. I have therefore recommended Condition 7B to address this while Mr Riddell and Ms Clarke have recommended a more extensive version in the alternative 7(b). I have a concern that the further steps recommended in the alternative 7(b) may be adaptive management and in any event the EPA has a range of powers available to it to manage the situation as soon as they are made aware of it and this does not need to be stipulated in a condition.

47. For both Conditions 8 and the new 8A, Mr Riddell and Ms Clarke are both seeking additional time periods for when monitoring is required to be undertaken which I do not consider are necessary. For example, if only a small volume of dredged

material has been disposed of in a one-year period then the bathymetric survey would not identify it.

48. Condition 8A has been added and is the benthic and biosecurity monitoring and has been split from the other monitoring on Condition 8 as it is undertaken at a different time from the other monitoring. The extent of the monitoring has now been changed significantly from just the NDA boundary sites to all the monitoring sites plus the two control sites, which reflects an outcome of the Marine Ecologists conferencing.

49. Condition 8A(b) introduces the requirement for video transects at all monitoring sites which again is an outcome of the Marine Ecologists conferencing. I note that Mr Riddell is seeking additional grab or box core samples to be included as part of this condition.

50. Mr Riddell is seeking in his proposed Condition 8B suspended sediment plum monitoring at set periods. I am not supportive of such a condition as it is unclear what environment effect such monitoring is assessing. If the concern is that the sediment plume modelling may be incorrect then the EPA can seek a review to address in terms of section 76 of the EEZ Act.

51. Condition 9 has been re-worded taking account of suggestions by both Mr Riddell and Ms Clarke.

52. Condition 9A has been introduced as recommended by Ms Clarke. I consider that this condition is important in terms of setting the volume of material which can be dumped during the monitoring period. The five-month period has been set because this would allow at one month for EPA to review the monitoring results in the event that the monitoring reports were not submitted to the EPA until the end of the four-month period.

53. Conditions 10 to 13 has been re-worded taking account of the recommendations of Ms Clarke. Mr Riddell has expressed in the JWS some concerns with the wording of Condition 10.

54. Condition 14 has been re-worded. The Planners were of the opinion that the requirement for observations of mammals for the full transit of the tug/barge (as recommended in the Marine Mammals JWS) was beyond the scope of the EEZ and has limited it to immediately prior to dumping. Dumping is not to commence if a marine mammal is detected within 250m, with Mr Riddell recommending that the

figure of 300m rather than 250m is used. The 250m is the recommendation in the Marine Mammal JWS. The Planners have not agreed on the term "appropriately trained crew-member".

55. The written record requirements are now included in Condition 14B.

56. Condition 14C has been added and reflects the recommendation by Ms Clarke that the Marine Mammal Species Identification Guide is provided.

57. Conditions 15 and 17 have been slightly re-worded to reflect the recommendations of Ms Clarke.

58. Condition 19 has been significantly re-worded as recommended by Ms Clarke and in my opinion is now clearer in its intent and specific information to be provided.

59. Conditions 19-21 have been amended so that the "form of acknowledgement" which is the term currently used by the EPA is now referred to as "written record" to reflect the recommendation of Ms Clarke. Condition 21 now includes a requirement to provide the Department of Conservation any written marine mammal detection records.

60. Condition 22 has been expanded so it more clearly outlines the information required to be provided in the event of an unplanned event. This largely reflects the recommendation of Ms Clarke and the Planners have agreed on this wording.

61. Condition 23 has been amended in in terms of the lighting requirements on boats (23(i)). Condition 23(ii) is potentially problematic. Ms Clarke has raised a concern that such a condition may not be able to be set as this requirement is the responsibility of MPI. Furthermore, Mr Shearer has identified issues with giving effect to the Standard for New Zealand resident boats. I was unaware of compliance issues with this standard. I now consider that this clause as currently written is problematic.

62. Condition 24 has been amended and now includes as invitees to the "NDA Liaison Group" both representatives of the dredging operators who are utilising the NDA plus a representative of the Department of Conservation. I understand from Mr Riddell that the Department of Conservation would want a staff member present for information sharing/gathering purposes rather than in any regulatory role and I consider this is appropriate. An outcome of conferencing was that Mr Riddell was seeking to identify how best to describe the position of the person who would best

represent the Department of Conservation for this role.

63. Mr Riddell and Ms Clarke seek a new condition 25 which is a review condition. The version in the JWS is a more refined version than that earlier proposed by Ms Clarke. If it is considered by the DMC that this condition is not adaptive management in nature then I could support it.

64. Finally Mr Riddell and Ms Clarke have proposed a condition where the EPA may make a written request for further information. I do not support this condition as it is very broad in nature. Furthermore, the EPA has the provisions under section 141 of the EEZ Act for power of entry for inspection. In respect to the current consent, the EPA already uses its powers under section 141 for the regular audits of the consent which they undertake (and through which they can request additional information).

32. In terms of more general matters I note:

(i) The matter of whether to use Management Plans or Schedules has been raised by both Mr Riddell and Ms Clarke. Although I am in agreement that a Management Plan approach is commonly used is resource consents granted under the Resource Management Act 1991, I have a concern that such management plans could be defined as an adaptive management technique depending on the process of how they are changed over time. To remove this risk I have recommended the use of schedules in the recommended conditions although I do recognise that any changes to them in the future will need to be under the review provisions of the EEZ Act which could be cumbersome in inefficient particularly for minor changes but overcomes the adaptive management issue.

(ii) In terms of Condition 7, I am not in agreement that the requirement to provide MPI the biosecurity characterisation report cannot be included. The applicant is offering this as an Augier condition and the consent holder can provide the MPI this report regardless of any condition. By stating it in this condition gives certainty to interested parties that the biosecurity report is going to be provided to the MPI.

David Hay
28 November 2018

ATTACHMENT ONE: RECOMMENDED CONDITIONS FROM THE PLANNERS EXPERT CONFERENCING