**Bay of Plenty Regional Council**

**Report From:** David Greaves

**Environmental Planner**

**Ryder Consulting Limited**

**Consultant Consents Officer**

**Date:** 29 July 2016

**File Reference:** RM16-0129

**Report to:**

**Reuben Fraser**

**Consents Manager**

**Non-Notified Resource Consent**

**Application Number** **RM16-0129**

**Opotiki District Council**

**Ohiwa Harbour**

1. Introduction

The Applicant is seeking resource consent to occupy space within the Coastal Marine Area and to undertake maintenance activities associated with the existing structures it has in place within the Ohiwa Harbour.

The following is an exert from section 2.1 of the Proposal:

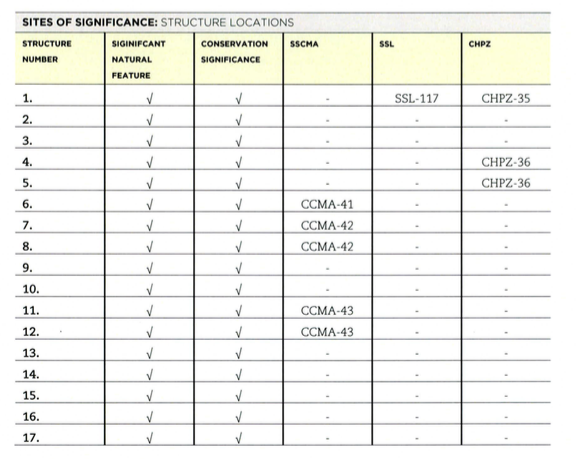
*The Opotiki District Council has existing infrastructure assets located in and around the Ohiwa Harbour. These include culverts, district roads, a boat ramp and a cycleway. Some of these assets are located within the Coastal Marine Area (CMA) or within very close proximity to it. The majority of the existing assets were lawfully established prior to the Resource Management Act 1991 (RMA), or have obtained resource consent prior to construction, where required. There are some assets, however, which have not been legalised under the RMA. It is the intention of the Opotiki District Council to obtain a comprehensive consent to legalise all of the unconsented structures owned by Opotiki District Council that are located in the CMA on the eastern side of Ohiwa Harbour.*

1. The Application
   1. Description of Proposal

The structures that require resource consent are outlined in Section 3 of the application and include 13 culverts, the Ohiwa Harbour Cycleway and the various support structures associated with them. In addition to this, approval is sought to enable maintenance activities to be undertaken on the structures and on the existing District Roads that are located adjacent to the Coastal Marine Area. Detail on the location of the roads and the associated structures is provided in section 2.1.3 of the application. These roads are identified as the southern end of Ruatuna Road and parts of Ohiwa Loop Road and Reeves Road. The maintenance activities are limited to the replacement of Rip Rap from existing structures and the backfilling of material behind existing structures. The maintenance activities may include the temporary discharge of sediment contaminated stormwater.

The approximate locations of the structures are identified in Figure 1 below. In addition to this, a schedule of the type, location and extent of the structures has been completed by the applicant. This schedule is attached as Annexure A to this report.

The Coastal Plan identifies the Ohiwa Harbour as an ‘Area of Cultural or Conservation Significance’ - ACVS-13. In addition to this, culverts 4 and 5 are located within the Coastal Hazard Protection Zone (CHPZ-36, Pataua Island scientific reserve). Table 1 identifies the location of the structures as they relate to the Operative Coastal Plan zones.



**Table 1: Structure locations**

It is noted that two of the culverts contain floodgates that have historically been installed to restrict the flow of tidal waters and therefore protect grazing land from flooding. However it is acknowledged that the retention of these floodgates results in adverse effects on the environment, in particular with regard to inhibiting fish passage. The Freshwater Fisheries Act 1982 requires the written approval of the Director General of Conservation for the construction of culverts in any natural water that impedes the movement of fish. The Applicant is not proposing to seek the approval of the Director General nor does this application seek to legalise the structures through this application. Rather, it is proposed that the Applicant will remove the structures within 6 months of the issuing of consent. It is proposed that the landowners upstream of the structures will be advised of the planned removal and as such should they wish to seek approval for their retention such an application may be able to be made by them prior to the removal.

This application for resource consent to the Bay of Plenty Regional Council is seeking to legalise an existing situation. No new or extended structures are proposed.



**Figure 1: General location of structures.**

* 1. Activities requiring consent

The Proposal requires resource consent for the following activities:

*Under section 12 of the Resource Management Act 1991 and* ***Rule 12.2.4(a) of the Bay of Plenty Regional Coastal Environment Plan*** *as a Discretionary Activity – for the occupation of land within the Coastal Marine Area associated with the identified cycleway (including any associated supporting structures), retaining walls associated with the district roads and 13 culverts;*

*Under section 12 of the Resource Management Act 1991 and* ***Rule 13.2.4(h)******of the Bay of Plenty Regional Coastal Environment Plan*** *as a Discretionary Activity – for the maintenance and repair of the identified cycleway and any associated support structures, the support structures associated with the district roads which are located within the Coastal Management Zone and 13 culverts;*

*Under section 12 of the Resource Management At 1991 and* ***Rule 13.2.4(k) of the Bay of Plenty Regional Coastal Environment Plan*** *as a Discretionary Activity for the retention of culverts 1, 4 and 5 within the Coastal Habitat Protection Zone;*

*Under section 12 of the Resource Management Act 1991 and* ***Rule 14.2.4(e) of the Bay of Plenty Regional Coastal Environment Plan*** *as a Discretionary Activity for the disturbance of the foreshore or seabed associated with the maintenance of the identified cycleway, associated support structures and culverts;*

*Under section 9) of the Resource Management Act 1991 and* ***Rule 1C of the Bay of Plenty Regional Water and Land Plan*** *as a Discretionary Activity – for earthworks within the Coastal Margin associated with maintenance of the identified cycleway (including any associated supporting structures), retaining walls associated with the district roads and 13 culverts.*

*It is noted that an assessment of the relative provisions of the Proposed Regional Coastal Environment Plan have been undertaken. The Proposal is able to comply with all of the provisions that are operative or have been given legal effect. It is noted that a number of provisions that have been appealed have not been given legal effect and as such no assessment against them has been made.*

* 1. Other consents and approvals required

No other resource consents are required for the proposed activity. However, the Freshwater Fisheries Act 1982 requires that no person shall construct a culvert in any natural water in such a way that the passage of fish would be impeded, without the written approval of the Department of Conservation. Two of the identified culverts currently contain floodgates that effectively restrict fish passage. As outlined in the application, the Applicant proposes to remove the floodgates following approval of the resource consent applications.

* 1. Consultation & Affected Persons

Section 5.0 of the Applicant’s Assessment of Environmental Effects identifies that consultation has been undertaken with the Bay of Plenty Regional Council, the Upokoere Hapu Resource Team, the Royal Forest and Bird Protection Society and the Department of Conservation.

E-mail correspondence from Linda Conning of the Royal Forest and Bird Protection Society has confirmed that they do not hold any concerns with respect to the Proposal. The application notes that Tim Senior of the Bay of Plenty Regional Council identified that any resource consent application would need to address the passage of fish through the culverts and that verbal support for the Proposal had been provided by the Upokoere Hapu Resource Team.

As identified in the notification report, it is considered that given the period of time that the structures have been in place and the limited potential effects resulting from their retention, there are no parties potentially affected by the Proposal.

Delegated approval to process the application on a non-notified basis was provided on the 26th of July 2016.

* 1. Timeframes

|  |  |
| --- | --- |
| Application ready to process: | 29 March 2016 |
| Further information requested: | 13 April 2016 |
| Further information received: | 13 May 2016  29 June 2016  7 July 2016  8 July 2016  21 July 2016 |
| Draft conditions circulated: | 19 July 2016 |
| Draft conditions agreed: | 29 July 2016 |
| Non-Notification Approved under Delegated Authority: | 29 July 2016 |
| Forwarded for approval: | 29 July 2016 |

* 1. Notification

As discussed in the associated Notification Report and also within Section 5 of this Report, I consider that the activities proposed by the Applicant will have environmental effects that are no more than minor and, as such, public notification is not required under section 95A(2) the RMA. Additionally, I do not consider there to be any affected persons or customary rights holders and, as such, limited notification is not required under section 95B of the RMA.

Approval to process the application without notification was provided under delegated authority on the 29th of July 2016.

1. Statutory Considerations

The matters to which a Consent Authority shall have regard when considering applications for resource consents are set out in section 104(1) of the Act as follows:

When considering an application for resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to –

*(a) any actual and potential effects on the environment of allowing the activity; and*

*(b) any relevant provisions of –*

1. *a national environmental standard*
2. *other regulations*
3. *a national policy statement*
4. *a New Zealand coastal policy statement,*
5. *a regional policy statement or proposed regional policy statement; and*
6. *a plan or proposed plan; and*

*(c) any other matters the consent authority considers relevant and reasonably necessary to determine the application.*

The actual and potential effects on the environment of allowing the activities are addressed in section 4 of this Report.

The relevant provisions of the applicable national and regional planning documents are discussed in section 5 of this Report.

Relevant Part 2 matters are discussed in section 6 of this Report.

1. Assessment of Actual and Potential Effects 104(1)(a)
   1. Existing Environment – Site Values

As identified above, the structures have been established in their existing locations for a considerable period of time. Little information is known on when they were constructed, but the applicant has identified that many of them are in excess of 40 years old.

The historical establishment of the structures has resulted in changes to the environment. This has included the reduction in saltmarsh communities as a result of the floodgates and changes to the position of the Coastal Marine Area following the construction of roads.

The Ohiwa Harbour is identified as an Area of Significant Conservation Value (ASCV-13). The following extract from the Operative Regional Coastal Plan identifies the values of the harbour:

*Part of the estuarine margins of Ohiwa Harbour and several islands in the harbour are protected under different pieces of legislation: Tern Island is a wildlife refuge reserve, Pataua Island is a scientific reserve, Uretara Island and Tauwhare Pa are scenic reserves. Motuotau Island is a nature reserve. Hokianga Island is a Maori Reserve. Several sites are protected by Historic Places Trust designations.*

*Ohiwa Harbour is classified as an outstanding Site of Special Wildlife Value (SSWI) for the presence of significant breeding colonies of nationally threatened species: New Zealand dotterel (Charadrius obscurus) and the presence of regionally threatened and rare species: banded dotterel (Charadrius bicinctus), variable oystercatcher (Haematopus unicolor), Caspian tern (Hydroprogne caspia), banded rail (Rallus philippensis assimilis), North Island fernbird (Bowdleria punctata vealeae) and the presence of a range of national and international migratory wildlife species notably the bartailed godwit (Limosa lapponica baueri), reef heron (Egretta sacra) and royal spoonbill (Platalea regia). The harbour has been identified as a wetland of international importance, especially for wading birds.*

*It contains 1-2% of the New Zealand dotterel population which reside on the harbour, and is a nationally significant post breeding flocking location for 5% of the New Zealand dotterel population. It also contains approximately 5% of the banded dotterel national population, and 2% of the variable oystercatcher population reside on the harbour.*

*The harbour supports natural beds of mussels, pipis, cockles, scallops and oysters. The harbour is nationally important for its fisheries and has been ranked of outstanding value especially for fish at critical stages of their biological cycles.*

The Ohiwa Habour is listed as a Site of Special Wildlife Value (SSWI) due to the number of rare/threatened nesting bird species found in and around the harbour. The harbour also supports a number of shellfish beds and is of national importance for the support the harbour provides to fisheries.

Some of the existing structures are located within sites which are considered significant marshbird habitats, as follows:

* SSL 117 & CHPZ 35 - SH 1 - Branded Rail and North Island Fern Bird (Structure 1).
* CHPZ 36 - Pataua Island Marshes - Branded Rail (Structures 4 & 5).
* SSCMA 41 - Pukeruru Point - North Island Fern Bird, NZ Kingfisher, Pukeko, White-Faced Heron (Structure 6).
* SSCMA 42 - Ohiwa Scenic Reserve Inlet - Branded rail, north island fern bird, Pukeko (Structures 7 & 8).
* SSCMA 43 - Reeves Road Embayment - Branded Rail, North Island Fern Bird, NZ Kingfisher and Pukeko (Structures 11/12).

In addition to this, the Regional Coastal Plan also identifies the Ohiwa Harbour as an Outstanding Natural Feature and Landscape. Table 1 identifies the location of the structures in relation to Plan’s sites of significance.

* 1. Environmental Effects

The application has been referred to Susan Southerwood, Contract Engineer, and Stephen Park, Senior Environmental Scientist, both of the Bay of Plenty Regional Council. Both have undertaken technical audits of the application and provided advice with respect to the same.

Based on the technical reviews and the direction provided by the relevant planning documents, it is considered that the potential adverse effects resulting from the Proposal are categorised as; Ecological, Landscape and Visual, Floodgates and Engineering Performance. An assessment of each of these is addressed below.

4.2.1 **Ecological Effects**

The Ohiwa Habour is listed as a Site of Special Wildlife Value (SSWI) due to the number of rare/threatened nesting bird species found in and around the harbour. The harbour also supports a number of shellfish beds and is of national importance for the support the harbour provides to fisheries.

Mr Park has undertaken a thorough assessment of the Proposal. With regard to the support structures and rock seawalls, he concludes that the structures have only very minor and localised ecological effects. He concludes that given they are already in place and are adjacent to other long established infrastructure, there are no ecological issues that would preclude these structures from being consented.

Mr Park’s assessment of the culverts has reached a similar conclusion. He considers that the retention of the structures in their current location will result in negligible and localised ecological impact beyond what already exists. He does not believe that there are any ongoing ecological effects resulting from the retention of the culverts, with the exception of the two culverts that contain floodgates. A full assessment of the floodgates is included below. It is noted that Mr Park’s conclusion also applies to structures 1, 4 and 5 that are located within the Coastal Habitat Protection Zone.

In light of the above assessment, it is concluded that the Proposal will not result in any adverse ecological effect.s

4.2.2 **Landscape and Visual Effects**

The Ohiwa Harbour is identified as an area of Significant Conservation Value and an Outstanding Natural Feature and Landscape. Schedule 5 of the Regional Coastal Environment Plan provides Guidelines for development within such areas. The Guidelines identify that the construction of structures and their ongoing maintenance needs to be sympathetic with the existing character and values of the area. It is noted that the structures have been established for a considerable period of time and as a result of this, have integrated into the environment. The Applicant is proposing limited maintenance activities, with just the replacement and backfiling of material in order to maintain the existing function and character. No new structures are proposed.

Whilst it is acknowledged that the structures have been historically established, some for in excess of 40 years, it is considered appropriate that their ongoing condition is maintained so as to ensure that the values of the area are not degraded. As such, it is considered suitable that the imposition of conditions address the physical form of maintenance activities to ensure that the character of the area is not degraded over time.

4.2.3 **Floodgates**

Both Mr Park and Ms Southerwood have identified that the retention of the floodgates on culverts 2 and 10 are likely to result in significant adverse effects on the environment. In Mr Park’s assessment, he notes that the floodgates restrict the flow of the tide to the landward side of the culverts. He has noted that in the case of culvert 2, the historical installation of the gate has virtually destroyed the saltmarsh ecological values on the landward side of the culvert. The removal of the floodgate will eventually restore some of these values as the restrictions on the tidal movements will no longer be limited. The Applicant proposes that the gates be removed from the culverts within six months of the granting of consent, in order to allow the opportunity for property owners on the landward side of the gates to seek consent for their retention if so desired. Given the period of time the gates have already been established on the sites, the proposed timeframe for their removal is considered reasonable, in that it is not likely to result in any additional adverse environmental effects beyond the current levels. A full assessment of the effects associated with retaining the structures is able to be undertaken at the time a future application is made.



**Figure 2: Existing floodgate at Culvert 10**

4.2.4 **Engineering Performance**

Ms Southerwood has undertaken a thorough assessment of the structures, including inspecting a number of them during a site visit, in order to determine their current engineering performance and ongoing maintenance requirements. Following her assessment, the applicant provided a comprehensive schedule of the strucutres, identifying their location and current condition. Included within the schedule was information in relation to the ongoing maintenance requirements. The schedule identified that culvert 7 and the Rip Rap wall 16 require maintenance to return the structures to the required level of service. The extent of the works is limited, with culvert 7 requiring minor repairs to the headwall and the replacement of material behind the wall that has been subject to scour. Rip Rap wall 16 has also been subject to scour between the edge of the Rip Rap and the road. It is proposed to place additional material in this location to ensure that the integrity of the wall is not compromised. Whilst the condition of these two structures does not require immediate remedial action, it is proposed that the works will be undertaken by the end of 2017.

In addition to the above maintenance activities, the Applicant has advised that the only ongoing maintenance proposed is the topping up of Rip Rap material and backfilling to address scour as required. There are no major upgrades or renewals of the structures proposed in the immediate future. It is acknowledged that this maintenance work may result in the temporary discharge of sediment to water for maintenance activities such as the replacement of Rip Rap. It is considered that this will result in limited discharge and that the effects are able to be managed via operational controls such as the timing of works.

Ms Southerwood has noted that a number of the culverts contain existing silt and sediment deposits that could be considered to restrict the flow of water through the culverts. The Applicant has advised that the current maintenance regime does not involve the removal of this material, rather, the culverts self flush during storm and tidal events. The Proposal does not include any change to this regime or the manual removal of material at all. Ms Southerwood has considered this aspect of the Proposal and believes it appropriate that regular maintenance activities are carried out to remove the sediment to ensure that the performance of the culverts is not compromised. Ms Southerwood has identified that without this sediment removal, there are potential adverse effects up stream from the culverts. Conditions of consent are able to be imposed to ensure that this maintenance is undertaken and as such the potential adverse effects on the environment are avoided.

Ms Southerwood’s assessment of the Proposal concludes that subject to the imposition of conditions around the repair to sites 7 and 16, along with general ongoing assessment and maintenance requirements for the structures, the adverse effects from the retention of the structures is considered to be no more than minor.

* 1. Summary

It is recognised that the Ohiwa Harbour contains a number of significant values, including being identified as an area of Significant Conservation Value and an Outstanding Natural Feature and Landscape. However, given the extended period of time that the structures have been in place and their satisfactory performance during this time, it is considered that subject to the imposition of appropriate ongoing maintenance conditions, the retention of the structures is compatable with the environment within which they are located.

1. Objectives and policies of the relevant statutory and planning instruments 104(1)(b)
   1. New Zealand Coastal Policy Statement 2010

The New Zealand Coastal Policy Statement (hereafter reffered to as ‘**the NZCPS**’) sets out objectives and policies to achieve the purpose of the Act, in relation to the coastal environment.

The provisions considered most relevant to the application are:

***Objective 3***

*To take account of the principles of the Treaty of Waitangi, recognise the role of tangata whenua as kaitiaki and provide for tangata whenua involvement in management of the coastal environment by:*

* *Recognising the ongoing and enduring relationship of tangata whenua over their lands, rohe and resources;*
* *Promoting meaningful relationships and interactions between tangata whenua and persons exercising functions and powers under the Act;*
* *Incorporating mātauranga Māori into sustainable management practices; and*
* *Recognising and protecting characteristics of the coastal environment that are of special value to tangata whenua.*

***Objective 4***

*To maintain and enhance the public open space qualities and recreation opportunities of the coastal environment by:*

* *Recognising that the coastal marine area is an extensive area of public space for the public to use and enjoy;*
* *Maintaining and enhancing public walking access to and along the coastal marine area without change, and where there are exceptional reasons that mean this is not practicable providing alternative linking access close to the coastal marine area; and*
* *Recognising the potential for coastal processes, including those likely to be affected by climate change, to restrict access to the coastal environment and the need to ensure that public access is maintained even when the coastal marine area advances inland.*

***Objective 6***

*To enable people and communities to provide for their social, economic, and cultural wellbeing and their health and safety, through subdivision, use, and development, recognising that:*

* *the protection of the values of the coastal environment does not preclude use and development in appropriate places and forms, and within appropriate limits;*
* *some uses and developments which depend upon the use of natural and physical resources in the coastal environment are important to the social, economic and cultural wellbeing of people and communities;*
* *functionally some uses and developments can only be located on the coast or in the coastal marine area;*
* *the coastal environment contains renewable energy resources of signicant value;*
* *the protection of habitats of living marine resources contributes to the social, economic and cultural wellbeing of people and communities;*
* *the potential to protect, use, and develop natural and physical resources in the coastal marine area should not be compromised by activities on land;*
* *the proportion of the coastal marine area under any formal protection is small and therefore management under the Act is an important means by which the natural resources of the coastal marine area can be protected; and*
* *historic heritage in the coastal environment is extensive but not fully known, and vulnerable to loss or damage from inappropriate subdivision, use, and development.*

***Policy 18***

***Public open space***

*Recognise the need for public open space within and adjacent to the coastal marine area, for public use and appreciation including active and passive recreation, and provide for such public open space, including by:*

*(a)  ensuring that the location and treatment of public open space is compatible with the natural character, natural features and landscapes, and amenity values of the coastal environment;*

*(b) taking account of future need for public open space within and adjacent to the coastal marine area, including in and close to cities, towns and other settlements;*

*(c) maintaining and enhancing walking access linkages between public open space areas in the coastal environment;*

**Comment**

The NZCPS recognises the value of public spaces adjacent to the Coastal Marine Area as well as the heritage and cultural values traditionally present within these areas. It is considered that the Proposal is consistent with the NZCPS in that the structures enhance public access to and along the coast. The structures have been long established and their retention and future maintenance is not considered to result in significant adverse effects on the environment.

* 1. Operative Bay of Plenty Regional Policy Statement 2014 - s104(1)(b)(v)

The Operative Bay of Plenty Regional Policy Statement 2014 (hereafter referred to as ‘**the RPS**’) was made operative on 1 October 2014, replacing the Bay of Plenty Regional Policy Statement 1999.

The RPS provides a framework for sustainably managing the Region’s natural and physical resources. It highlights regionally significant issues in relation to land, air, fresh and coastal water, infrastructure and biodiversity, including issues of significance to iwi.

The provisions of most relevance to this application are:

***Objective 3***

***Equitable and sustainable allocation of public space within the coastal marine area***

***Objective 4***

***Enable subdivision, use and development of the coastal environment in appropriate locations***

***Policy CE 10B: Managing adverse effects of land-based activities in the coastal environment on marine water quality***

*Manage adverse effects, including cumulative effects, from land based activities in the coastal environment on marine water quality by:*

*(a)   Requiring that subdivision, use and development does not result in a significant contribution to sedimentation in the coastal marine area or other water bodies within the coastal environment;*

*(b)   Minimising the creation of impervious surface areas;*

*(c) Minimising contaminants in stormwater that discharges into water or on to land that may enter water, including discharges to existing and new stormwater infrastructure;*

*(d) Minimising the risk of releasing contaminants and avoiding releasing discharges from contaminated land;*

*(e)   Adopting water-sensitive design and management principles;*

*(f)   Adopting on-site management techniques that will improve the quality of stormwater and/or wastewater prior to discharge;*

***Policy CE 11B: Allocating public space within the coastal marine area***

*For allocation of space within the coastal marine area activities shall demonstrate:*

*(d)   Recreational use of the coastal marine area;*

*(e)   Ecological functioning and natural processes of the coastal marine area;*

*(f)   Compatibility with the natural features and landscapes, natural character and amenity values of the coastal environment;*

*(g)   Respect for Māori customary practices; and*

*(h)   Existing uses and constraints in the coastal marine area.*

***Water Quality and Land Use***

***Objective 29: Land use activities are:***

*(1) within the capability of the land to support the activity;*

*(2) integrated with the wider environmental values of their surroundings; and*

*(3) within the capacity of receiving waters to assimilate any discharge.*

***Policy WL 7B: Minimising the effects of land and soil disturbance***

*Achieve regional consistency by controlling land and soil disturbance activities to:*

*(a) Avoid accelerated erosion and soil loss; and*

*(b) Minimise soil and sediment runoff into water, or onto or into land that may enter water, so that healthy aquatic ecosystems are maintained.*

***Policy WL 8B: Providing for regular reviews of regional council consent conditions***

*Require that land use, allocation and discharge consents granted by the Regional Council include provision for regular reviews of conditions to take into account advances in science and technology.*

**Comment:**

The direction provided by the Regional Policy Statement is that of ensuring development is appropriate for the location and that any adverse effects are managed or avoided. The Application details the extent of the existing structures, proposed ongoing maintenance work and the means of managing any effects on it. As identified in Section 4 above, the sites have been historically modified and the only proposed changes to them are as a result of maintenance activities. The technical reviews undertaken by Council staff have concluded that the Proposal and the mitigation measures proposed to manage the effects of development are appropriate and will not result in significant adverse effects on the environment. In light of the extent of the proposed work and the existing level of modification as a result of the existing structures, it is considered that the Proposal is consistent with the relevant Objectives and Policies.

Further to this, Policy CE 11B directly addresses the provision for public space in the Coastal Marine Area. The Proposal is seeking to protect the access to existing open space through the legalisation of the existing structures and provision for them to be maintained into the future. It is considered that the Proposal is therefore able to give effect to Policy CE 11B.

Overall, it is considered that the Proposal is consistent with the Bay of Plenty Regional Policy Statement.

The Regional Council is also able to reserved the right, through the imposition of a review condition, to review any consent to take into account advances in science and technology, as is consistent with Policy WL 8B.

* 1. Bay of Plenty Operative Regional Coastal Environment Plan 2003

The Bay of Plenty Operative Regional Coastal Plan (hereafter referred to as the ‘**ORCP**’) promotes sustainable management of the natural and physical resources of the Bay of Plenty’s coastal environment. The ORCP was amended in February 2011 and is the operative planning document for activities within the Coastal Marine Area.

The provisions of most relevance to this application are:

***Objective 4.2.2***

***The preservation of the natural character of the coastal environment and its protection from inappropriate subdivision, use and development.***

***Objective 6.2.2***

***The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna within the coastal environment.***

***Objective 7.2.2***

***The maintenance and enhancement of appropriate public access to and along the coastal marine area.***

***Objective 8.2.2(b)***

***The protection of the characteristics of the coastal environment of special spiritual, cultural and historical significance.***

***Objective 12.2.2***

***Provision for the exclusive occupation of land and any related part of the coastal marine area while avoiding, remedying or mitigating any associated adverse environmental effects.***

***Objective 13.2.2***

***Any structures in the coastal marine area are to be appropriate.***

***Objective 14.2.2(a)***

***Provisions for disturbance and deposition within the coastal marine area only as appropriate and while avoiding, remedying or mitigating any associated adverse environmental effects.***

***Objective 18.2.2***

***The protection of the heritage values and heritage resources within the coastal marine area.***

***Policy 4.2.3(a)***

*To recognise that there are areas of exceptional natural character which require preservation and for which no development is appropriate. These include but are not limited to the Coastal Habitat Preservation Zone*

***Policy 4.2.3(f)***

*New subdivision, use and development should be located in areas already modified by development. It should also be compact, not add to sprawl or sporadic development, and minimise further loss of the remaining natural character of the areas. In particular, further urban development of the coastal environment in western areas of Tauranga Harbour, Ohiwa Harbour, and Waiotahi Estuary, should be avoided unless it can be demonstrated that there will not be cumulative effects on the natural character and life supporting capacity of these areas.*

***Policy 6.2.3(b)***

*To avoid or remedy adverse effects on the values of the sites and areas of significance in the Coastal Management Zone. The sites and areas are shown on the maps, and a summary of values is provided in the Third Schedule – Areas of Significant Conservation Value, the Sixth Schedule – Significant Marshbird Habitat Areas, and the Seventh Schedule – Significant Indigenous Vegetation Areas. Remediation can be achieved by means of a financial contribution, where appropriate, as set out in the Tenth Schedule – Financial Contributions.*

***Policy 7.2.3(a)***

*To promote public access to and along the coastal marine area and ensure that public access is restricted only where necessary:*

*•   To protect areas of significant indigenous vegetation and/or significant habitats of indigenous fauna;*

*•   To protect Maori cultural values;*

*•   To protect public health or safety;*

*•   To ensure a level of security consistent with the purpose of a resource consent; or*

*•   In other exceptional circumstances sufficient to justify the restriction notwithstanding the national importance of maintaining that access.*

*Further provision for and enhancement of public access to and along the coastal marine area will, as far as practicable, avoid any adverse effects on other values.*

*The provisions of chapter 3 – Plan Structure, chapter 4 – Natural Character, the Third Schedule – Areas of Significant Conservation Value, the Sixth Schedule – Significant Marshbird Habitat Areas, the Seventh Schedule – Significant Indigenous Vegetation Areas, the Fourteenth Schedule – Areas of Significant Cultural Value, and the maps, should be used as a guide to the relative sensitivity of the coastal environment to public access.*

***Policy 7.2.3(d)***

*New facilities should be designed to maximise public use and access as well as private use.*

***Policy 8.2.3(c)***

*To avoid, remedy or mitigate adverse effects on resources or areas of special spiritual, historical or cultural significance to tangata whenua. This includes, but is not limited to, those areas and values identified in the maps and Fourteenth Schedule – Areas of Significant Cultural Value.*

***Policy 12.2.3(a)***

*To recognise and provide for the benefits to the wellbeing of present and future generations of maintaining public access to the coastal marine area. Public access should only be restricted where the criteria in policy 7.2.3(a) apply, or specific areas have been identified in accordance with method 7.2.4(a).*

***Policy 13.2.3(f)***

*Consideration will be given to the effects of any activity having regard to adjoining activities or activities located in an adjoining Harbour Development Zone.*

***Policy 13.2.3(j)***

*Activities will not result in any nuisance to adjoining occupiers of the coastal marine area or nearby land, which is not controlled to acceptable levels or avoided altogether. Nuisance effects such as noise, dust, traffic, light, glare or smell are to be avoided, remedied or mitigated.*

***Policy 14.2.3(f)***

*To avoid, remedy or mitigate any adverse environmental effects associated with disturbance, deposition or mineral extraction.*

***Policy 18.2.3(e)***

*To avoid adverse effects on heritage resources as far as practicable, and where avoidance is not practicable, effects shall be remedied or mitigated.*

***Comment:***

As discussed in Section 4 of this report, technical reviews undertaken by Council’s Engineering and Science teams have determined that the potential effects of the Proposal are able to be appropriately avoided, mitigated or remedied. Further to this, the Sites has been historically modified and the scale of maintenance works proposed is considered minor. The imposition of appropriate controls on erosion and sediment, to ensure that contaminants from the land based activities are separated from the coastal environment and construction activities within the Coastal Marine Area are limited, will ensure that the Proposal is consistent with the ORCP.

Public access to the Coastal Marine Area is also identified as a matter of significance in the ORCP. As identified above, it is considered that the Proposal will provide for the continued access and enjoyment of the Coastal Marine Area through the maintenance of the structures.

As identified in the technical reviews, the historical establishment of the structures has not resulted in ongoing effects on the values of the Coastal Protection Zone. It has in fact been identified that in some cases the structures now form an integral part of the environment and ensuring their ongoing maintenance and stability will result in positive effects on the values of the area.

It is considered that the Proposal appropriately addresses the relevant Objectives and Policies of the Operative Regional Coastal Environment Plan.

* 1. Bay of Plenty Proposed Regional Coastal Environment Plan 2015

Decisions were made to the Proposed Regional Coastal Plan (hereafter referred to as the ‘**PRCP**’) in August 2015. Following this a number of appeals have been lodged to the Environment Court.

The provisions of most relevance to this application are:

***Objective 2***

***Protect the attributes and values of:***

***(a)   Outstanding natural features and landscapes of the coastal environment; and***

***(b)   Areas of high, very high and outstanding natural character in the coastal environment;***

***from inappropriate subdivision, use, and development, and restore or rehabilitate the natural character of the coastal environment where appropriate.***

***Objective 3***

***Prevent the further loss of the quality and extent of rare and threatened habitats in the coastal environment of the region. These include coastal forest, seagrass beds, saltmarsh wetlands and sand dunes.***

***Objective 7***

***Discharges of contaminants to the coastal marine area are managed to meet the following goals:***

***(a)   After reasonable mixing, discharges of contaminants meet the water quality classification of the receiving water bodies as a minimum; and have no more than minor adverse effects on aquatic life, habitats, and recreational uses.***

***(b)   Discharges of contaminants occur in a manner that recognises and provides for the cultural values of mana whenua acknowledged for that area.***

***(c) Cumulative effects of discharges are managed in a way that recognises the sensitivity and assimilative capacity of the receiving environment.***

***Objective 14***

***The protection of those taonga, sites, areas, features, resources or attributes of the coastal environment (including the Coastal Marine Area) which are either of significance or special value to tāngata whenua (where these are known).***

***Objective 22***

***Maintain and enhance integrated access to the coastal environment to support people’s recreational activities, safe ocean and harbour access for recreational boats and enjoyment of coastal open space and natural heritage qualities.***

***Objective 24***

***Resources and space in the coastal marine area are used efficiently and public access is appropriately provided for.***

***Objective 26***

***Activities and structures in the coastal marine area are located, designed and undertaken in a manner that is appropriate given the values and existing uses of their location.***

***Policy NH1***

*In relation to the protection of the natural heritage of the coastal environment, activities may be considered appropriate if they contribute to the restoration and rehabilitation of natural heritage and cultural values (including kaimoana resources), or if they:*

*(d)   Are of an appropriate form, scale and design to be compatible with the existing landforms, geological features and vegetation or will only have temporary and short-term effects on such features; and*

*(e)   Will not, by themselves or in combination with effects of other activities, have significant adverse effects on the natural processes or ecological functioning of the coastal marine area;*

***Policy IW 1***

*Proposals which may affect the relationship of Māori and their culture and traditions must recognise and provide for:*

*(d)   Areas of significant cultural value identified in Schedule 6 and other areas or sites of significant cultural value identified by Statutory Acknowledgements, iwi and hapū resource management plans or by evidence produced by tāngata whenua and substantiated by pūkenga, kuia and/or kaumatua.*

***Policy RA 2***

*Protect the public open space qualities of the coastal environment by ensuring that any new activities or new facilities:*

*(e)   Are designed and located to:*

*(i)   Maximise public use and access;*

*(ii)   Ensure safe public access;*

*(iii) Minimise any restrictions on recreational access or people’s enjoyment of any foreshore and public reserve areas abutting coastal settlements; and*

*(iv)   Maintain or enhance walking access linkages between public open spaces in the coastal environment; and*

***Policy RA3***

*Retain or establish appropriate public access to and along the coast, harbours and estuaries in a manner that is consistent with RPS Policy MN 5B, recognising that public access may only be restricted where the restriction is consistent with RPS Policy MN 6B.*

***Policy SO 1***

*Recognise that the following structures are appropriate in the coastal marine area, subject to Natural Heritage Policies NH 1 and NH 4, Iwi Resource Management Policy IW 2 and an assessment*

*of adverse effects on the location:*

*(c)   Structures that provide for public access or recreation that is dependent on a coastal location;*

***Policy SO2***

Structures in the coastal marine area shall:

*(c) Avoid, remedy or mitigate adverse effects on coastal hydrological and geomorphic processes;*

*(d)   Be designed to avoid or mitigate erosion or scour (including stormwater outfall structures);*

*(e)   Avoid adverse effects on navigation channels and mooring areas, while recognising structures associated with infrastructure, transportation (marine and land), public access, and structures below the seabed may be appropriate in such areas; and*

***Policy DD11***

*Recognise the potential benefits of using sand from dredging for the purpose of beach replenishment or building up new high-tide bird roosts or breeding sites.*

***Policy CD1***

*Discharges to the coastal marine area must:*

*(a)   Avoid significant adverse effects, including cumulative effects, on aquatic life, habitats, feeding grounds, kaimoana (including shellfish gathering), ecosystems, contact recreation and amenity values in the coastal marine area after reasonable mixing;*

*(f)   Avoid, remedy or mitigate adverse effects on the stability of the coastal environment, including localised erosion and scour resulting from the discharge;*

**Comment:**

The Proposed Regional Coastal Environment Plan identifies a number of similar issues to the Operative Regional Coastal Environment Plan. In particular, it seeks to ensure development appropriately addresses the adverse effects on the environment, the access to and use of the Coastal Marine Area and ensuring that the values of an area are recognised and protected. As previously identified, the Proposal is considered to appropriately address these matters given the length of time that the structures have been in place and through controls that are able to be imposed to the ongoing maintenance activities. As such, it is deemed that the Proposal is consistent with the Proposed Regional Coastal Plan.

* 1. Bay of Plenty Regional Water and Land Plan - s104(1)(b)(vi)

The Water and Land Plan was made operative on the 1st of December 2008. It regulates water, land, geothermal resources and physical resources associated with the use of water.

The provisions of most relevance to the consideration of this proposal are:

***Objective 26***

***Discharges of contaminants to land are managed to:***

***(a)  Not exceed the natural treatment capacity of the soil****.*

*Objective 9*

*Land use and land management practices are appropriate to the environmental characteristics and limitations of the site, and avoid, remedy or mitigate adverse effects on the life-supporting capacity of soil resources, the receiving environment and heritage values.*

*Policy 51*

*To require the appropriate management of stormwater quality, including:*

*(a) The use of source controls to avoid the contamination of stormwater.*

*(b) The use of best practicable options.*

*(c) Treatment of stormwater to prevent the contamination of receiving environments.*

**Comment:**

The Proposal addresses earthworks and the control and treatment of stormwater associated with maintenance activities for each of the sites to ensure that the effects on the environment are avoided. The introduction of silt and sediment control devices as well as management methods such as dust suppression and site stabilisation, will ensure that any required work is compatible with the environment in which it is located. It is anticipated that the proposed maintenance activities will result in modest earthworks, with limited disturbance.

Whilst the volume of earthworks will not be considerable on each occasion, the location of the site is adjacent to the coastal environment and as such is particularly sensitive. In light of this, consideration has been given to appropriate methods to address potential effects on the environment. It is considered appropriate to impose conditions relevant to the establishment and ongoing monitoring of the mitigation measures. Overall it is considered that the Proposal is of a scale that is consistent with the objectives and policies of the Water and Land Regional Plan.

1. Section 105

Section 105 of the RMA identifies particular matters that are relevant to applications for discharge or coastal permits. The Proposal will result in the construction of structures in the Coastal Marine Area as well as construction activities resulting in the limited discharge of sediment.

Section 105(1) requires consideration to be given to:

*a) the nature of the discharge and the sensitivity of the receiving environment to adverse effects; and*

*(b) the applicant’s reasons for the proposed choice; and*

*(c) any possible alternative methods of discharge, including discharge into any other receiving environment.*

**Comment:**

As identified in the application and confirmed via the technical reviews undertaken by Council staff, the discharge of material from the future maintenance activities will be both limited in volume and undertaken for short periods of time. It is understood that any discharges of sediment to water during maintenance activities will be able to comply with the permitted standards identified in the Land and Water Regional Plan. The application does not seek to extend any of the existing structures and as such, the anticipated maintenance activities will not result in extensive works in the most sensitive areas. The proposed works will ensure that the recreational values of the sites are maintained and the area is suitably protected for the future.

In light of this, it is considered that the Proposal will not result in adverse effects of such a scale that could not be avoided, remedied or mitigated. Consideration of the matters identified in Section 105 are consisitent with the matters identified in the relevant statutory planning instruments and addressed within this assessment.

1. Section 107

Section 107 of the RMA identifies particular matters of consideration for applications for discharge permits. In particular, applications for discharges of contaminants to water shall not be granted unless after reasonable mixing it is considered that the contaminant or water discharged is not likely to give rise to a number of identified adverse effects on the environment.

In this instance, the only discharge will be during maintenance activities associated with the existing structures. It is not proposed that significant works will be undertaken without obtaining specific consent approval and as such any discharges from maintenance activities are likely to be minor in nature, intermittent and for short durations at a time.

As such, it is considered that the Proposal is able to satisfy the requirements of Section 107.

1. Part 2 Matters

Consideration of an application under section 104 of the RMA is subject to Part 2. ‘Subject to’ gives primacy to Part 2 and is an overriding guide when applying the provisions of the RMA.

Part 2 of the RMA sets out its purpose, which is to promote the sustainable management of natural and physical resources.

8.1 **Section 5 – Purpose and Principles**

Section 5 of the RMA defines ‘sustainable management’ as:

*‘…managing the use, development and protection of natural and physical resources in a way or at a rate, which enables people and communities to provide for their social, economic and cultural well-being and for their health and safety while:*

*(a) sustaining the potential of natural and physical resources… to meet the reasonably foreseeable needs of future generations; and*

*(b) safeguarding the life supporting capacity of air, water, soil, and ecosystems; and*

*(c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.’*

**Comment:**

Based on the information provided by the Applicant, and the technical reviews undertaken by the Regional Council staff, I consider that the activity can be managed such, that the effects on the environment are avoided, remedied or mitigated, and do not impact the life-supporting capacity of the receiving environment. Whilst the values of the receiving environment are significant, given the length of time that the structures have been in place and role that they now play in maintaining the values of the area, it is considered that their removal would result in considerably greater adverse effects than their retention.

I have recommended conditions of consent that could be imposed on the issuing of resource consent, to ensure that effects that do arise from the retention of the structures and their ongoing maintenance are avoided, remedied or mitigated.

8.2 Section 6 - Relevant Matters of National Importance

Section 6 of the Act lists a number of matters of national importance that are to be recognised and provided for. Given that the nature and scale of the proposal and the values of the Site, the section 6 matters of relevance in the consideration of this application are:

*6(a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:*

*6(c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:*

*6(d) the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:*

**Comment:**

The application and technical reviews have determined that given the historical modification of the site the natural character of the coast has been some what eroded in places. However, the establishment of the identified structures has also provided for habitats and added to the ecological values of the area. In addition to this, the structures have provided for access to and along the coastal environment. Consideration of the value of the structures therefore needs to be balanced against the effects that their historical establishment has created.

Having considered the application, the technical reviews and the relevant planning documents, it is considered that the retention of the structures (with the exception of the floodgates) will ensure the identified section 6 matters are given effect to. Put another way, it is considered that the effects on these matters will be greater, should the structures be removed.

**8.3 Section 7 - Other Matters**

Section 7 of the Act lists matters that are to be given particular regard to. Of these, the following are relevant to this application:

*7(b) the efficient use and development of natural and physical resources;*

*7 (c) the maintenance and enhancement of amenity values:*

*7(d) the intrinsic values of ecosystems; and*

*7(f) maintenance and enhancement of the quality of the environment.*

**Comment:**

As indicated above, it is considered that the Proposal ensures the ongoing maintenance of existing infrastructure and ensures that the benefits derived from this infrastructure, including continued access to the coastal area, are able to be maintained. The ongoing maintenance of the structures will require minimal disturbance to the sensitive areas of the Ohiwa Harbour. Furthermore, it is considered that the removal of the floodgates will result in positive environmental effects through the removal of the barriers to fish and coastal water passage.

In light of the above, it is considered that the granting of consent is consistent with the relevant section 7 matters.

**8.4 Section 8 – Principles of the Treaty of Waitangi**

Section 8 of the RMA requires the consent authority to take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) when considering applications for resource consent. The Waitangi Tribunal and Courts continue to establish the principles of the Treaty of Waitangi. The Waitangi Tribunal has identified four key principles: the principle of active protection, the tribal right to self-regulation, the right of redress for past breaches, and the duty to consult; however, it is recognised that the principles are continuing to evolve.

**Comment:**

There are no identified sites of significance located in close proximity to the structures. The applicant has consulted with the Upokorere Hapu Resource Management Team. It is considered that the retention and ongoing maintenance of the structures is not inconsistent with the principles of the Treaty of Waitangi.

1. Term of consent

The Applicant has requested a 35-year term for the resource consent to allow sufficient time to carry out the works. I consider this term is appropriate given the scale of the infrastructure the structures are associated with and the length of time that they have already been in place. Accordingly, the recommended expiry date is **29th of** **July 2051**.

10 Recommendation

That the Bay of Plenty Regional Council grants Consent RM16-0129 to Opotiki District Council subject to the attached conditions.

**Ryder Consulting Limited**



David Greaves

**Consultant Consents Officer**

### **Reasons for the Decision:**

1. *The decision meets the purpose of the Resource Management Act 1991 (RMA) and was made after having regard to the provisions of Part 2 of the RMA. In particular, any adverse effects of the activity will be appropriately avoided, remedied or mitigated.*
2. *The adverse effects of the activity are considered to be no more than minor, subject to compliance with consent conditions.*
3. *The decision is consistent with the Regional Policy Statement, the Operative Regional Coastal Environment Plan, the Proposed Regional Coastal Environment Plan and the Regional Water and Land Plan.*
4. *A consent term of 35 years is appropriate for the nature and scale of activity.*