Decision Report

Ōpōtiki Marina and Industrial Park Limited

Application RM21-0541

to

Bay of Plenty Regional Council

31 May 2023

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**Appendix 1** Consent Conditions

# 1 Introduction

1. Ōpōtiki Marina and Industrial Park Limited (Applicant) has applied to the Bay of Plenty Regional Council – (BOPRC) for various resource consents to construct a new marina and industrial park on land at 1631 State Highway 2, Ōpōtiki.

|  |  |
| --- | --- |
| **Consent** | **Description** |
| RM21-0541-LC.01  | Land Use - Earthworks.  |
| RM21-0541-CC.01 | Construction of Coastal Structures – Seawall, Temporary Culvert, Stormwater Outlet, and Marina Structures.  |
| RM21-0541-CC.03 | Coastal Structures-Structures Located within Marina Basin, Stormwater Outlet Pipe and Seawall |
| RM21-0541-CC.02 | Diversion of Water – Temporary.  |
| RM21-0541-DC.01 | Discharge temporary stormwater to land and the CMA.  |
| RM21-0541-DC.02 | Discharge dewatering water to land soakage and the CMA. |
| RM21-0541-WT.01 | Water Take – Take and Use of Coastal Water.  |
| RM21-0541-WT.02  | Water Take – Dewatering.  |

**The application is granted for the reasons herein.**

# 2 Appointments

1. The BOPRC, acting under s34A of the Resource Management Act 1991, appointed Independent Hearing Commissioners Bill Wasley,[[1]](#footnote-1) and Siani Walker[[2]](#footnote-2) to hear and decide the application RM21-0541 to construct a new marina and industrial park on land at 1631 State Highway 2, Ōpōtiki.

# 3 Description of the Proposal

1. The proposal is described in the Applicant’s AEE[[3]](#footnote-3) and evidence and the BOPRC section 42A report.[[4]](#footnote-4) We adopt those descriptions, but note some of the more salient matters as follows:
* *The development involves the creation of a safe harbour basin on the western side of the Ōpōtiki Harbour/Waioeka Estuary and the establishment of facilities within the basin to store vessels and provide for loading and unloading as well as servicing. The marina basin will be dug out of land, rather than extending into the common marine and coastal area (CMCA). Once the marina basin is opened to the Ōpōtiki Harbour, it will become part of the coastal marine area (CMA) but not part of the CMCA. The marina basin will be approximately 500 m long and 180 m wide and will provide a rectangular area of roughly 6 ha of water space which will be excavated from land to a depth of 4.5 m below mean sea level (Moturiki Datum). Based on these dimensions the total volume of water within the basin (at mean sea level) is 264,000 m3. The basin will have an opening (width of approximately 60 m at water level) to the main harbour channel to provide all-tide access. The perimeter of the harbour basin, including the entrance will be lined with a rock revetment to provide erosion protection. The existing revetment on the outer face of the site along the edge of harbour channel will be replaced.*
* *Within the marina basin, a range of marine facilities will be provided. The main components are:*
	+ *A commercial wharf providing berthage and loading/unloading facilities for vessels servicing the marine farms offshore.*
	+ *A lifting bay with travel lift to remove vessels and transport to an integrated hardstand area for maintenance and repairs.*
	+ *Marina berths (170) comprising of floating pontoon structures tethered to timber piles.*
	+ *A boat ramp for recreational boat launching.*
	+ *Ancillary jetty structures.*
* *There is the potential that construction of the marina basin and the structures and facilities within it will be staged. If this does occur, the first package of works will involve stages 1 and 2 of the marina basin, commercial wharf, lifting bay and single row of marina berths. Subsequent stages will add additional marina berths along with a recreational boat ramp.*
* *The land surrounding the marina basin will be developed into an industrial park which will provide activities and services to support the aquaculture industry and other marine-related activities enabled by the improved harbour access. The concept plan identifies the following activities:*
	+ *Buildings for marine farm use.*
	+ *Vessel maintenance hardstand area and wash down facility, including buildings for vessel servicing and refitting.*
	+ *Vessel storage areas, retail area for boating related equipment sales and car parking.*

1. It is noted that the proposal was the final stage of a four-stage development that had included development of the mussel farm, processing factory, harbour works which are currently underway and the subject proposal.
2. We discuss aspects of the application in more detail in section 5.1 of this Decision.

# 4 Process Issues

## 4.1 Written approvals, notification, and submissions

1. No written approvals were obtained.
2. The application was subject to limited notification notified as separate applications and the water take applications were limited notified to the submitters on the earlier discharge applications. Ten submissions were lodged to the application with 8 being in opposition to the proposal.
3. Two late submissions were received these being from Ngāti Patumoana and Ngāi Tamahaua Working Group, Mr Maui Hudson of Ngāi Tamahaua. Ms Petricevich recommended that we accept the late submissions, and such acceptance was not opposed by the applicant. We noted that in Ms Petricevich advice to us regarding late submissions dated 13 March 2023, that Mr Tim Herewini of Ngāi Tamahaua at the pre-hearing meeting held on 24 February 2023 had requested that the late submissions of Ngāti Patumoana and Mr Maui Hudson of Ngāi Tamahaua not be accepted.
4. After consideration of all relevant matters including the advice of Ms Petricevich, and the provisions of section 37(1)(b) of the RMA, we issued Minute 2 RM21-0541 dated 14 March 2023, granting a waiver to enable acceptance and consideration of the late submissions. The reasons for granting the waiver are outlined in that Minute.
5. We received a memorandum dated 13 March 2023 from Mr Herewini on behalf of parties outlined in the memorandum, requesting that we strike out the submissions that we had granted a waiver to accept. We did not take any action on this request advising that we would discuss the matter at the hearing and is considered in section 4.4 of this decision.
6. The submissions were summarised in the s42A Report.[[5]](#footnote-5) We adopt that summary but do not repeat it here for the sake of brevity. We were provided with copies of all original submissions.
7. Iwi submitters raised in their written submissions and oral presentations reference to their application for an order recognising Customary Marine Title and Protected Customary Rights under the Marine and Coastal Area (Takutai Moana) Act 2011 (MACA). Ms Petricevich advises, ‘all of the activities occurring as part of the application are located within the legal title of the Applicant and are outside of the common marine and coastal area, and the requirements of the MACA do not apply because the site is freehold land (private ownership at the commencement of the MACA Act), so is excluded from the common marine and coastal area’[[6]](#footnote-6).

## 4.2 Officer’s recommendation

1. Ms Petricevich, the Consultant Consents Planner, and reporting officer, recommended that the application be granted subject to a range of conditions.

## 4.3 Hearing, appearances, and site visit

1. We held a hearing in the Baptist Church Hall in Ōpōtiki on Thursday 23 and Friday 24 March 2023.
2. Attendees present at the Hearing for the applicant were Vanessa Hamm (Counsel), Chris Peterson (Applicant), Tim Fergusson (Planner), Robert Edwards (Chairman- Whakatōhea Maori Trust Board), David Napier (Civil Engineer), Fiona Wilcox (Ecologist), and Di Lucas (Landscape Architect).
3. For the submitters, the iwi and hapū representatives in attendance were from Ngāi Tamahaua, Tim Herewini, Tracy Hillier, Kayreen Tapuke, Genevieve Pupuke, with Maui Hudson and Moetu Togia (online); from Ngāti Patumoana, Graeme Paki Riesterer; from Te Ūpokorehe, Trevor Ransfield, Ngaire Ngamoki, Ms Georgina Kohunui, Maude Edwards; and from Ngāti Ira, Roger Rakuraku, Ronnie Kure, Amber Rakuraku.
4. Attendees from Council were Danielle Petricevich, Ella Tennant, Rachael Musgrave, Mel Jones, Tamahou McGarvey, and Mark Townsend (online).
5. Evidence and legal submissions from the applicant were pre-circulated in accord with Minute 1 RM21-0541 dated 21 February 2023 that we had previously issued. We note that a short time extension was provided to Ms Hamm for receipt of her opening legal submissions due to an Environment Court case she was involved in. It is noted that this did not disadvantage any party as legal submissions can be tabled and presented at the opening of the hearing. Copies of the legal submissions and briefs of evidence are held by BOPRC. At the hearing, a number of submitters spoke to their submissions.
6. We do not separately summarise the matters covered here, but we refer to or quote from that material as appropriate in the remainder of this Decision. We took our own notes of any answers given to verbal questions that we posed to Hearing participants.
7. Ms Hamm provided her written reply to us on 17 April 2023 in accordance with Minute 3 RM21-0541 dated 28 March 2023. We requested some further information from Ms Hamm regarding who the iwi/hapū representatives were that went on the site visit with Ms Di Lucas, which Ms Lucas had referred to at the hearing, and this was received on 27 March 2023.
8. We closed the hearing on 10 May 2023, having concluded that we required no further information from any of the parties, after we had received a response from Ms Hamm regarding the iwi/hapū representatives who went on the site visit with Ms Di Lucas. Those parties were Robert Edwards, Danny Pahuru, Graeme Paki Riesterer, Mere Freethy, Muriel Kelly, Irene Moore, and Joe Kahika.
9. We conducted a site visit on the afternoon of Thursday 23 March 2023, accompanied by Mr Gary Black of HEB Construction. Mr Black did not have any role in respect of the application or hearing. No other parties were present. All parties were advised at the hearing, of the site visit arrangements.

## 4.4 Request to strike out submissions

1. As previously noted, we had received via memorandum from Mr Herewini on behalf of Ngāi Tamahaua submitters, a request to strike out the above-referenced submissions.
2. After receipt of our Minute 2 dated 14 March 2023, a second memo request to strike out the submissions was received by the Council on 23 March 2023 from Mr Herewini. This request was provided to us during the morning hearing. We subsequently took the opportunity to review the request during the morning adjournment.
3. On recommencement of the hearing, the Chair advised verbally acknowledgement of the second request, and that the commissioners have the ability to strike out a submission in whole or in part, before, during, or after the hearing, and that the commissioners will take into consideration the request in the memo, during deliberations. It is noted that when exercising the power to strike out, we must record our reasons for doing so.
4. An opportunity was provided to both Mr Herewini and Ms Hamm to comment on the strike out request. Mr Herewini re-iterated the key points in the strike out request. Ms Hamm noted that the use of the strike out provisions were very limited and had not utilised them . She also outlined, and again re-iterated in her reply submissions, that the strike out power should only be utilised in a clear situation where appropriate reasons could be given and that we need to bear in mind the inclusive approach to public participation through the RMA. She was of the view that no grounds existed for use of the strike out powers and provided detailed reasons for reaching that conclusion in her reply
5. We have considered the strike out application made by Mr Herewini, the response from Ms Hamm and the associated RMA provisions. Section 41D of the RMA is clear that a direction to strike out may be made before, at or after the hearing. There are ramifications in using the provisions to strike out as it ultimately denies a party from having the matters raised in their submission, being given any consideration at all.
6. In responding to matters raised by Mr Herewini, the matter of representation among Ngāi Tamahaua is not for us to resolve or determine, and therefore not a matter for our consideration.
7. We are not aware of any grounds for the deceptive conduct alleged in the strike out, either by the Council or the commissioners. All of the processes are public, and our Minutes have been circulated to all parties. We have also considered both strike out requests.
8. The RMA provides for the waiver of timeframes and there is a discretion that consent authorities have depending on the circumstances to waive time frames and allow late submissions to be considered. We provided those reasons on our minute granting the timeframe waiver. It is noted that the submissions were only one working day late. The submission of Ms Tuoro had been received within the closing date for submissions as advised at the hearing.
9. We wish to note that it is an important RMA consideration that we hear from those who wish to be heard and did so even if they did not strictly keep to the matters that were outlined in their submission. In our opinion there has been no disadvantage to submitters by hearing the late submissions. The weighing up of evidence and submissions, and the judgment to be exercised, is ours alone.
10. In our consideration of the strike out memorandum, we have considered the relevant provisions of the RMA which is essentially section 41D of the RMA. We are satisfied that in reviewing the submissions they are not frivolous or vexatious, outline relevant matters for our consideration, is not an abuse of the hearing process noting the submissions were only a day late and did not impact on the hearing process, did not contain offensive language and did not reference any expert evidence which had been prepared by a person who was not an independent person with specialised knowledge to give expert evidence as a witness.
11. Having considered all of the above grounds for exercising the strike out provisions and only one ground needs to be satisfied, we conclude and determine that it is not appropriate to exercise the powers of section 41D of the RMA and strike out the late submissions, as there are no applicable grounds to do so.

## 4.5 Consent categories.

1. It had been agreed by the reporting officer and the applicant that the application be considered as a discretionary activity as it is the most restrictive of the applicable activity classifications. We concur with that advice and therefore consider the application as such.

## 4.6 Permitted baseline

1. When forming an opinion for the purposes of subsection 104(1)(a) of the RMA we may disregard an adverse effect of the activity on the environment if a national environmental standard or a plan permits an activity with that effect.[[7]](#footnote-7) We have not disregarded any effects associated with the application.

# 5 Section 104 and 104B matters

1. We now address the relevant aspects of the application in terms of sections 104 and 104B of the RMA.

## 5.1 Actual and potential effects on the environment

1. Having reviewed the documentation we find that we should address the following matters:
* Positive effects
* Water quality
* Coastal processes
* Wetlands - Huntress Creek and Waioeka River Bend
* Ecology
* Flooding
* Māori cultural interests and values.
1. We wish to stress that listing ‘Māori cultural interests and values’ last does not intend to demean those matters. It simply reflects the fact that an assessment of those matters is often usefully informed by the preceding ‘western’ technical evidence and findings.
2. The matter of the relevant ‘environment’ arose during the hearing, as significant changes have occurred on the site, and in the vicinity of the site from the granted Ōpōtiki Harbour Entrance development (OHED) currently being implemented, including coastal erosion works[[8]](#footnote-8). We have adopted an orthodox approach and have taken the existing environment to comprise of the water quality in the Waioeka River and Otara River as it is today, inclusive of the effects of authorized coastal activities being the OHED and other existing consents[[9]](#footnote-9).
3. Having said that, we agree with Ms Hamm that the OHED context is important, with a number of resource consents granted in connection with the OHED consents[[10]](#footnote-10), including the scale of change in the Ōpōtiki Harbour entrance, which is significant and near the Ōpōtiki Marina area[[11]](#footnote-11).

## 5.1.1 Positive effects

1. We agree with the positive effects outlined by the Council reporting officer[[12]](#footnote-12) reiterating that the economic, social, and cultural benefits from the aquaculture industry can be realised through the implementation of a marina development on a site identified and suited for marine activities, on the outskirts of the Ōpōtiki township. The site can efficiently support the aquaculture and fishing industries within the coastal environment. The marina will improve public access to the harbour edge, and adverse effects on adjoining and nearby properties including the floodplain are minimised.
2. These positive effects weigh in favour of granting the application.

## 5.1.2 Water quality

1. Consent 65565 for the OHED allows disposal of dredged material on the site (from the river dredging programme) is a significant source of potential adverse effects on water quality in the Waioeka River.
2. Earthworks excavation of the marina basin and final ground levels on the site will be managed and monitored to ensure sediment contaminated water remains on site. The excavation of the basin, the installation of the main marine structures prior to opening the marina basin to the harbour, and using silt curtains to control the release of sediment when opening the marina entrance will minimise adverse effects on the coastal environment. [[13]](#footnote-13) The discharge of water from excavations of the marina basin to the harbour (balancing water levels between the basin and harbour), will be treated on site prior to discharge to the harbour.
3. Limited excavation to re-construct the river rock revetment face (abutting the river), will generate sediment. Adverse effects to the water quality will be managed by silt curtains to control sediment laden water to settle, also works will be undertaken in smaller sections at a time (approximately 30m-50m), and managing the silt curtain in the changing ebb and flow of river and tidal conditions.
4. Temporary stormwater discharge from the construction of a wetland basin for stormwater treatment, including settlement ponds, will discharge to land soakage and the coastal marine area. This is to ensure discharge of water is treated. The discharge of stormwater in respect of water quality and quantity will be suitable managed and not adversely affect the receiving environment, particularly with respect to instream habitats, public health and safety, aquatic biodiversity, and iwi and hapū values. The receiving environment includes those sensitive to the effects of discharges, however, works are limited to temporary plumes from the reconstruction of the existing revetment and the opening of the marina basin to the harbour.
5. We agree with the reporting officer that the methodologies through certified management plans[[14]](#footnote-14), the consent conditions with water quality standards and monitoring requirements, will mitigate the adverse effects from discharges to water, including the ongoing use of structures within the marina, and water quality[[15]](#footnote-15).

## 5.1.3 Coastal processes

1. The marina basin has a functional need to be located within the coastal marine area. The effects of the marina basin on river flows and tidal flows have been assessed through hydrological modelling considering the new Ōpōtiki harbour entrance and potential changes in wave patterns, currents, and flood flows. Modelling confirms the marine entrance channel is suitable, in terms of river flow, and wave exposure, concluding the development of the marina has no adverse effect on river performance or flood flows[[16]](#footnote-16).
2. Iwi submitters raised concerns with impacts on water levels and silting. River hydrodynamic modelling for water levels and elevations, as a result of the construction of the marina project, will have no effect on water levels at the mouth of the Huntress Creek (adjoining north boundary) as concluded by Mr. Pearce[[17]](#footnote-17).
3. The design of the new river rock revetment comprising re-construction of the existing revetment and revetment extension (northeast and east boundaries), will protect the land forming the marina, from erosion by river flows and wave erosion. The revetment will be constructed with appropriate sediment controls, including monitoring and management practices for the changing river conditions and tidal conditions.

1. With the consented works for the OHED in the vicinity of the marina development, and on the evidence, we are satisfied that subject to consent conditions, including iwi and hapū monitoring in accordance with conditions of consent, that the adverse effects from the construction of the marina basin and rock revetment will be no than minor on the coastal processes.

## 5.1.4 Wetlands - Huntress Creek and Waioeka River Bend

1. The proximity of the wetlands Huntress Creek and Waioeka Bend estuary are adjacent to the marina development north boundary and southeast boundary respectively. The revetment structures along these boundaries and their irregular surface face will allow the outer revetment structures to be colonised by marine and estuarine fauna[[18]](#footnote-18). Adverse ecological effects from the revetment construction will be temporary, and in the long term provide additional habitat for species. The internal marina revetments will have negligible ecological effects on terrestrial, freshwater, and estuarine ecology[[19]](#footnote-19). Ms. Wilcox advises changes to the river morphology and tidal current dynamics within the Waioeka River system, following the opening of the new Ōpōtiki Harbour makes it difficult to determine whether the proposed revetment structures have any adverse impact on the wetland extent and composition within the Huntress Creek and Waioeka River Bend wetland[[20]](#footnote-20). Nonetheless, to minimise adverse ecological effects mitigation measures are accepted in the conditions of consent[[21]](#footnote-21).
2. Iwi submitters identified the site adjoins the wetlands with a ‘high environmental value area’ and a ‘high cultural value area’ raising concerns with the marina development and significant impacts on flora and fauna, and significant adverse impacts on the mauri of the environment in terms of whenua, awa, moana, taonga, and their relationship with the area[[22]](#footnote-22). We find the proposed Tangata Whenua Liaison Group to be an appropriate response to the concerns raised by iwi submitters.
3. On the evidence and subject to conditions of consent, we are satisfied that the adverse effects on the wetlands from the construction of the marina basin and revetment structures will be no more than minor.

## 5.1.5 Ecology

1. From the confluence of the Waioeka and Otara River, the river flows out to Ōpōtiki harbour. The coastal margins, estuaries, and rivers, have significant ecological values for indigenous vegetation, avifauna and aquatic habitats, and that biosecurity and biodiversity values can be affected by pests in areas of indigenous vegetation and habitat, and loss of roosting or nesting habitats.
2. Mr. Suren, a Council freshwater ecologist confirms spawning sites for inanga in Waioeka River are further upstream from the marina development[[23]](#footnote-23).
3. Significant vegetation and habitat changes have occurred to large proportions of the site (marina location), currently used for storage, stockpiling and dewatering of extracted gravel and silt from the Waioeka River, as part of the OHED project. Currently the proposed marina basin location comprises of open water areas with bund creations to facilitate gravel and silt dewatering, with the open water area and other onsite drains changing, with a higher salt content and silt content[[24]](#footnote-24).
4. Ms. Willems, a Council terrestrial ecologist recommends managing effects on biosecurity and biodiversity values includes machinery hygiene protocols, clean materials, and observing for pests, including from vessels coming into the marine area from elsewhere.
5. Opportunities to improve habitats, stormwater wetland and rock revetment design, will be enabled through biosecurity plans for pest surveillance, lizard and fish surveys, and ecological and landscape mitigation, as well as construction management through adherence to construction standards. The site is relatively remote from activities that may be sensitive to adverse effects from construction in respect of noise, vibration, dust and traffic during the construction period, which will be suitably managed through the implementation of construction management measures, and detailed construction management plans, which ensures adverse effects will be mitigated to appropriate levels, noting that most works will take place on the site that are well removed from sensitive receivers.
6. On the evidence, we find that subject to consent conditions which includes adaptive management that the adverse effects on ecology will be adequately mitigated.

## 5.1.7 Flooding

1. Ōpōtiki township is surrounded by stop banks providing flood protection of the township from Waioeka and Otara rivers, and the incoming tides of the Ōpōtiki Harbour. Developments within the Waioeka Otara Rivers catchment should not detrimentally affect the flood protection systems[[25]](#footnote-25). The Waioeka floodway wraps around the south and west boundaries of the site.
2. Access to the marina development site traverses the Waioeka floodway from State Highway 2 to the site. Mr. Townsend emphasizes that no increase in flood levels is acceptable to the floodway as an increase in levels (even less than 15mm) would generate adverse effects on flood control infrastructure and impact the functioning of the floodway. He emphasized that the consent conditions for the OHED were specific to this need.
3. Mr. Townsend recommends flood modelling effects within the Waioeka floodway are to have no effect of increasing flood to the design level of the Ōpōtiki township stop banks and he recommends three locations to measure ‘no increase in flood risk’ in a 1%AEP flood event.
4. We note that the Applicant was concerned about the absolute nature of this proposed condition regarding no increase in flood risk to the design level of the Ōpōtiki stop banks, and that the condition should be a target to be aimed for.[[26]](#footnote-26)
5. We have considered the matter and concluded that a conservative approach to providing a greater level of certainty is required given the concerns expressed by Mr Townsend. Therefore, given the evidence before us, and subject to the condition of consent for the ‘no increase in flood risk’ design solution, any adverse effects of flooding can be mitigated.

## 5.1.8 Māori cultural values and interests

1. A cultural values assessment prepared for the OHED was confirmed by Whakatōhea Māori Trust Board to apply in principle to the site and marina development project. No other cultural impact assessment or cultural impact assessments were provided in support of the application.
2. Ten submissions were received to the application with 8 opposed[[27]](#footnote-27) and 2 in support[[28]](#footnote-28), with submissions from Ngāi Tamahaua, Ngāti Ngahere, Ngāti Irapuaia (Ngāti Ira), and Te Ūpokorehe. Two late submissions were received from Ngāti Patumoana and Ngāi Tamahaua Working Group (Maui Hudson), and accepted by the Commissioners[[29]](#footnote-29). The reporting officer summaries the effects identified by submitters[[30]](#footnote-30) and this summary is accepted as a correct reflection of the concerns raised by iwi and hapū representatives who spoke to their submissions at the hearing.
3. Ms. Lucas undertook a site visit with Whakatōhea kuia and kaumatua. The site visit discussed cultural sites and the cultural landscape in the area, including being shown the location of a Pa site located to the west of the site. The interaction with iwi during the site informed Ms. Lucas understanding of the natural and cultural character and values of the harbour and coastal plains landscape associated with the site. The effects on the natural landscape will be mitigated through the continuity of local vegetation and natural tones for structures. Accepting the state of the receiving environment, the permitted regime and adequate conditions of consent ensuring adequate detailed plans, implementation, and management, will allow the marina works to settle in over time, as the natural processes and elements adjust to the new regime, will have cumulative effects that are no more than minor[[31]](#footnote-31). We concur with this position.
4. A pre-hearing on 27 February 2023 was held with attendees from[[32]](#footnote-32) the BOPRC (four), the Applicant (five), and from Iwi and hapū submitters with attendees present from Ngāi Tamahaua (seven), Te Ūpokorehe (seven) and Ngāti Ira (one). Issues discussed were not resolved, but iwi and hapū advised they opposed engagement with Whakatōhea Maori Trust Board, and that they were willing to explore a Memorandum of Understanding between the Applicant, Ngāi Tamahaua, Te Ūpokorehe, and Ngāti Ira. A site visit invitation was extended to iwi and hapū and accepted, to visit the marina development site.
5. At the hearing, Iwi submitters Ngāi Tamahaua, Ngāti Rua, Te Ūpokorehe and Ngāti Ira spoke to their written submissions, with more than one person speaking[[33]](#footnote-33). The submitters explained that iwi and hapū (as tangata whenua) have significant values and interests in whenua, awa, moana and taonga in Whakatōhea Rohe, and the use, development and protection of these resources continues to be about relationships between taonga and people.
6. The submitters outlined Waioeka and Otara awa, the wetlands Huntress Creek and Waioeka river bend, and associated taniwha in the waterways are taonga (treasures) and tipuna (ancestors). It was expressed that Iwi and hapū have a whakapapa (connection) to these resources and a unique relationship with the awa and its tributaries, which lies at the heart of their spiritual and physical wellbeing, and their tribal culture and identity. This gives rise to kaitiaki responsibilities to protect the mana and mauri of these resources, tribal tikanga, and taonga including taniwha along parts of the awa and tributaries.
7. Given the importance of these resources to the submitters, we summarise our understanding of the matters raised at the hearing as follows.
* Whakapapa connections to the area and the site for the proposed Marina development is how iwi and hapū at place connect to sites, places, and resources in their rohe (area).
* Mātauranga Māori is learnt on the marae from kuia., kaumatua, and whanaunga. Iwi and hapū at place determine their culture and traditions with ancestral lands, water, sites, waahi tapu, and other taonga, including the mana and mauri of those resources.
* Intricate knowledge of the site, the wider area, and resources within the awa and tributaries is well known amongst iwi and hapū . Also, sites and places of significance such as Pa, waahi tapu, urupā, taniwha, etc., are known to iwi and hapū at place, which is not always shared openly or publicly.
* We speak for ourselves. Iwi and hapū at place rights and interests are Te Tiriti based and not determined by any other entities including Whakatōhea Māori Trust Board.
* Seeking genuine partnerships with iwi and hapū at place.
* Sensitivity of dune areas is important because some sites and places of significance are at risk of being physically exposed, damaged, and destroyed, including flora and fauna.
* Environmental conditions for the location of the marina development include flooding, king tides, stormy seas, cyclones, etc. How can these be overcome?

Ngāi Tamahaua working group

* Develop a proactive working relationship with the applicant, through the development of individual iwi and hapū Memorandum of Understanding.
* Tangata Whenua Liaison Group to be chaired by Ngāi Tamahaua.
1. The cultural values emphasized by the submitters vary but are similar in the context of the marina development.
2. Considering the submitter evidence, we understand tangata whenua opposition to the application is centred on their connection, both spiritual and physical, with their taonga and ancestral lands, together with their kaitiaki responsibilities for these resources. We note individual submitters raised support for iwi and hapū to develop a relationship with the Applicant through mechanisms such as a memorandum of understanding (MOU). We note the Applicants proposal for a Tangata Whenua Liaison Group is an opportunity to understand the cultural effects from developing the marina project, as well as for the submitters to participate and provide direction to appropriately manage cultural effects. The Applicant advised at the hearing that the MOU with individual iwi and hapū is an agreement of the relationships, and the Tangata Whenua Liaison group is a mechanism to maintain the iwi and hapū relationships during the development of the marina project.
3. We acknowledge the intent of the Applicant as expressed by Mr Peterson and Ms Hamm and note that the recommended conditions of consent appropriately classify that intent, through the Applicant commitment to enable the Tangata Whenua Liaison Group to[[34]](#footnote-34):
* provide hapū cultural perspectives and mātauranga on all matters pertaining to the project including final design details and management plans.
* assist and guide the consent holder on how to address hapū concerns regarding tikanga, waahi tapu, kaitiakitanga and mauri.
* engage on an on-going and regular basis about cultural values and interests associated with the use of structures, maintenance, and operation of the Marina.
* promote the flow of information between hapū and the consent holder so as to, wherever possible, address any issues that may arise; and
* discuss the results of monitoring carried out in accordance with the conditions of the resource consent and any matters that may arise as a result of the monitoring.
* receive, review, and provide feedback on all Management Plans required by the conditions of all resource consents gained as part of this project and other Plans and Reports.
1. We find the proposed Tangata Whenua Liaison group and the individual iwi and hapū memorandum of understandings, are methods that provide an appropriate response to the concerns raised by the submitters.

## 5.2 National environment standards and other regulations

1. No relevant national environmental standards or regulations were brought to our attention, and we are not aware of any.

## 5.3 National policy statements

1. The National Policy Statement: Freshwater Management (NPSFW) is applicable. Our own assessment follows.
2. The sole Objective 2.1(1) of the NPSFM is:

*Objective 2.1*

*(1) The objective of this National Policy Statement is to ensure that natural and physical resources are managed in a way that prioritises:*

*(a)* *first, the health and well-being of water bodies and freshwater ecosystems*

*(b)* *second, the health needs of people (such as drinking water)*

*(c)* *third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future*

1. The application is primarily directed at achieving Objective 2.1(1)(a) and (c). However, we are satisfied that the basin excavation, and the construction of the main marine structures (wharves, board ramp, lifting bay) will occur ‘in the dry’, and separated from any water bodies, to appropriately prioritise the health and well-being of water bodies and freshwater ecosystems. The evidence is that temporary stormwater discharges will not have an adverse effect on the health and wellbeing of water bodies and freshwater ecosystem with the opening entrance to the river commencing only once suspended sediment levels read low concentrations and that the marina activity is provided for. We are satisfied that Objective 2.1(1) does not weigh against granting the applications.
2. Given that the applications involve discharges to land and coastal waters, we consider the most relevant NPSFM policies to be Policies 1, 2, 3, 7, 9, 13 and 15.[[35]](#footnote-35)
3. Policy 1 is to manage freshwater in a way that gives effect to Te Mana o te Wai. The NPSFM states that Te Mana o te Wai is a concept that refers to the fundamental importance of water and recognises that protecting the health of freshwater protects the health and well-being of the wider environment. This largely replicates NPSFM Objective 2.1 which we addressed above.
4. Policy 2 is that tangata whenua are actively involved in freshwater management (including decision making processes) and Māori freshwater values are identified and provided for. In this case this was achieved through the Applicants consultation, the Pre-hearing meetings, and going forward it can be achieved by way of the proposed Tangata Whenua Liaison Group and associated reporting and review requirements.
5. Policy 3 is that freshwater is managed in an integrated way that considers the effects of the use and development of land on a whole-of-catchment basis, including the effects on receiving environments. The proposed activities and mitigation measures are designed in a way that reduces potential adverse effects, such as erosion and sediment control measures, reflecting an awareness of the need for a whole-of catchment approach.
6. Policy 7 is that loss of river extent and values is avoided to the extent practicable. We find that the proposed revetment design and extent, and the opening of the marina entrance will avoid the further loss of river extent and values, to the extent practical. In that regard we discuss the lack of practical alternative treatment and discharge options in section 5.9 of this Decision.
7. Policy 9 is that the habitats of indigenous freshwater species are protected. The Applicant has involved Whakatōhea iwi in the preparation of the resource consent application and measures to ensure that adverse effects on water quality, fauna and habitats are mitigated. All discharges off-site will be subject to prior treatment or control measures to minimise the release of contaminants. The proposal will not result in the loss of extents of values of natural inland wetland, and so this requirement is being met.
8. Policy 13 is that the condition of water bodies and freshwater ecosystems is systematically monitored over time, and action is taken where freshwater is degraded, and to reverse deteriorating trends. We understand that a water quality and sediment monitoring plan covering the discharges, and the receiving water quality is proposed and will be required by conditions of consent.
9. Policy 15 is that communities are enabled to provide for their social, economic, and cultural well-being in a way that is consistent with the NPSFM. Granting the application would achieve that outcome for the Ōpōtiki Marina and Industrial Park Ltd, including iwi and hapū through the Tangata Whenua Liaison Group.
10. In overall terms we find that the application is consistent with the NPSFM.

## 5.4 New Zealand Coastal Policy Statement

1. The Applicant has undertaken an assessment of the activity against the provisions of the NZCPS in Appendix 7 of the application. We adopt their assessment and consider that the application is consistent with the provisions of the NZCPS.

## 5.5 Regional Policy Statement

1. The Bay of Plenty Regional Policy Statement (RPS) became operative on 1 October 2014. The Applicant has undertaken an assessment of the activity against the provisions of the RPS in Appendix 8 of the application, and Mr Fergusson provides a summary of the assessment within the AEE[[36]](#footnote-36), and we note key elements of his assessment as follows:
* activities occur in rural areas, and these will inevitably result in the loss of versatile soils. There will be an inevitable loss of a relatively small area of rural production land. This is unavoidable and pastoral grazing is not considered to be a long-term sustainable land use in this location due to its low-lying nature and proximity to the coastal marine area.
* the site does not contain any natural freshwater bodies and the adjoining harbour is within the coastal marine area;
* inclusion of a comprehensive package of measures to remedy or mitigate unavoidable effects to an acceptable level including monitoring and contingency measures, essentially proposing an adaptive management approach, which is consistent with a precautionary approach;
* public access to the harbour edge will be improved through the Harbour Industrial Zone Structure Plan which includes provisions for a walking / cycling track around the site, as part of a wider network of proposed trails;
* natural hazard risks relevant to the proposal relate to flooding and earthquakes;
* ongoing involvement of tangata whenua in the development of the marina project through individual iwi and hapū MoU and the proposed Tangata Whenua Liaison group.
1. An assessment of the RPS was undertaken by the reporting officer Ms Petricevich, who confirms the proposal is consistent with the objective and policies of the RPS.
2. Overall, the marina development is generally consistent with the objectives and policies of the RPS.

## 5.6 Regional plans

1. The relevant regional plans are the Regional Natural Resources Plan (RNRP) and Regional Coastal Environment Plan (RCEP).
2. The AEE[[37]](#footnote-37) addresses RCEP matters regarding Natural heritage, Water quality, Iwi resource management, Coastal hazards, Recreation and Activities in the coastal marine area, as well as RNRP matters regarding Kaitiakitanga, Integrated Management of land and water, Land management, Discharges to water and land, Water quantity and allocation, and Natural hazards.
3. Mr Ferguson has provided a comprehensive assessment of the relevant provisions of the RCEP and RNRP. We consider his key considerations to include:

RCEP

* Natural Heritage: the works within the coastal marine area (revetment replacement) will not directly affect the wetland vegetation and habitat values within the Huntress Creek, and the potential for the opening of the marina basin to result in a temporary increase in sediment entering the harbour, however the effects on Huntress Creek have been assessed as minor.
* Water quality: management of stormwater developed around the marina basin will incorporate stormwater management systems as outlined in the Stormwater Strategy.
* Iwi resource management: the site adjoins the Ōpōtiki harbour, and Huntress Creek identified as an area of significant cultural value in the RCEP. Ongoing engagement will continue to ensure any adverse effects on resources or areas of significance are avoided as practicable and that any unavoidable effects are remedied or mitigated. Tawharau o nga hapū o Whakatōhea Iwi Management Plan has been taken into account.
* Coastal hazards: existing revetment around the harbour edge will be replaced and a new revetment constructed around the perimeter of the marina basin and is designed to take account of the impact of climate change. A hard protection structure is the only practical option to line the edge of the basin.
* Recreation: public access to parts of the marina basin and to the Ōpōtiki Harbour, are subject to restrictions due to the security and health and safety requirements of operating commercial facilities.
* Activities in the coastal marine area: proposed structures within the marina basin have a functional need to be located within the coastal marine area and are designed taking account of hydrology, coastal processes and the associated potential for erosion and scour.

RNRP

* Kaitiakitanga: the project methodology is developed with a focus on avoiding effects on sites of significant cultural value and maintaining the mauri of the Waioeka / Otara estuary. Enable kaitiakitanga to utilise resources by tangata whenua and providing essential facilities to support Whakatōhea marine farming interests offshore.
* Integrated Management of land and water: the construction and ongoing operation of the facilities will be appropriately managed.
* Land management: the marina basin and harbour edge will be lined with a rock revetment to protect against erosion and scour, and excavations will be undertaken in accordance with BOPRC Guidelines for Land Disturbing activities.
* Discharges to water and land: the dewatering of material excavated from the marina basin and the management of stormwater during the construction period to manage discharge of contaminants to land to manage adverse effects on surface water and groundwater in accordance with the Construction methodology.
* Water quantity and allocation: the nature of the activity being a small-scale and short duration dewatering activity along with the location of the site adjacent to the Ōpōtiki harbour where the groundwater level is around 1m below ground level, means that the proposal is considered to have a negligible impact on the groundwater resource.
* Natural hazards: management of flood hazards and river and land drainage schemes and ensuring flood hazard mitigation works avoid, remedy, or mitigate adverse effects. The project involves replacing an existing rock revetment and modifying the existing ring bank around the perimeter of the project site. These structures are part of the Waioeka-Otara rivers scheme. The purpose of the works is to upgrade the standard of flood protection.
1. In summary, the assessments conclude that the proposed marina project is consistent with the objectives and policies of the RCEP as the project is specifically anticipated by the Harbour Development Zone provisions which provides strong support for the proposal. Also, the proposed marina project is consistent with the objectives and policies of the RNRP, as the project methodology for undertaking the works has been developed with a focus on avoiding, remedying, and mitigating environmental effects, particularly on areas of significant value. This includes erosion and sediment controls and measures to manage discharges from dewatering and stormwater. The engagement with tangata whenua has recognised and provided for kaitiakitanga, through the implementation of the Tangata Whenua Liaison Group.
2. Mr Fergusson concludes that the discharge and water take applications are capable of meeting the policy directives of the RNRP insofar as the current provisions serve the purpose of the RMA.
3. We agree, particularly regarding relevant aspects of the RNRP discharge objectives DW 01, DW 04, DW 05, and policies DW P04, DW P09, DW P51, and DW P57 which require that:
* Discharges of contaminants to land are managed and have no more than minor adverse effects on harbours and estuaries.
* Discharges of contaminants to water are in a manner that takes into account the cultural values of tangata whenua for that area.
* Discharges of water to water avoid, remedy, or mitigate adverse effects on the environment as appropriate to the values, use and existing environmental quality of the activity site.
* Cumulative effects of small-scale discharges of contaminants to water and land are managed appropriately to avoid, remedy, or mitigate adverse effects on water quality (including coastal waters), and soil health and ecosystems.
* Stormwater is discharged to land, where appropriate.
1. In that regard we refer to our assessments in sections 5.1.2 to 5.1.8 of this Decision.

## 5.8 Iwi and hapū management plans (IHMP)

1. Iwi and hapū management plans are formal planning documents developed by whānau, hapū, and iwi, where these documents are taken into account by territorial authorities.
2. Ms. Petricevich advised Whakatōhea hold Tawharau o Nga Hapū o Whakatōhea Resource Management Plan 1993 as the relevant hapū management plan to consider. This plan sets out policies relating to cultural values, historical accounts, descriptions of areas of interest (hapū/iwi boundaries/rohe) and consultation / engagement protocols for resource consents. The applicant provided a fulsome assessment of the marina development against the provisions in the management plan[[38]](#footnote-38).
3. Ms Hamm highlights the submitters in opposition largely raised issues in relation to consultation, the Whakatōhea Maori Trust Board and the OHED[[39]](#footnote-39). The Applicant actively consulted with Whakatōhea Maori Trust Board throughout the development of the application and has committed to ongoing involvement with iwi and hapū in a partnership approach. This includes a commitment to establish agreements with iwi and hapū to formalise a working relationship for development of the marina project, which will enable iwi and hapū to provide direction to appropriately manage cultural effects.
4. Ms. Petricevich also advised another Iwi and hapū management plan, is the Te Ūpokorehe plan Te Ipu o Te Mauri Strategic Plan 2003, which is held by Te Ūpokorehe and is to be requested from the hapū. There is no reference in the AEE that this hapū plan was requested.
5. It is unsurprising that iwi and hapū at place have raised concerns that the Applicant had not engaged iwi and hapū at place, with the iwi submitters reiterating the IHMP was developed and prepared by the iwi and hapū at place. We consider subject to the imposition of appropriate consent conditions that there is an opportunity to develop a working relationship between iwi and hapū at place with the Applicant, and to recognise and support iwi and hapū to reconnect to the site of the marina project to maintain their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.

## 5.9 Section 105 and 107 matters

1. Under s105 of the RMA we must have regard to the nature of the discharge and the sensitivity of the receiving environment, the Applicant’s reasons for the proposed choice and any possible alternative methods of discharge including into another receiving environment.
2. We are satisfied that the assessments we refer to in sections 5.1.2 to 5.1.8 have had appropriate regard to the sensitivity of Huntress Creek and Waioeka river bend, and the Ōpōtiki Harbour receiving environments. The Applicant has chosen to continue to progress the marina project to implement the last piece of the puzzle to consolidate the benefits of the mussel farm and OHED project, to enable the full benefit of the four projects to be realised, which has strong support from Whakatōhea Maori Trust Board[[40]](#footnote-40). Regarding alternatives, Mr Ferguson notes, the site has been specifically identified and zoned for the proposed activity, and it is not necessary or helpful to assess alternative locations to the project site, and the creation of a marina basin on land outside of the coastal marine area is considered to be the most appropriate location[[41]](#footnote-41).
3. On the evidence we are satisfied that that marina site is the appropriate location, and no other alternatives are necessary.
4. We find that a consideration of section 105 matters does not weigh against a granting of consent.
5. Section 107 requires that no discharge permit shall be granted that allows certain listed effects in the receiving waters after reasonable mixing. On the evidence we are satisfied those effects will not occur.

## 5.10 Consent Duration

1. Ōpōtiki Marina and Industrial Park Ltd seek a consent duration term of 15 years to complete the construction activities to enable staged development. For structures requiring ongoing authorisation a consent duration term of 35 years is sought.
2. The reporting officer recommends the construction activities for staged development should have a shorter term of 10 years, given the works are proposed to start immediately, and that this is enough time to complete the initial works and undertake any additional stages, while limiting the duration that effects on the environment will occur.
3. In this case, 10 years is not sufficient time to give effect to the consent given the extent of works proposed in terms of staging the development, infrastructure, buildings, roading and associated landscaping. The ability to secure funding to allow for the construction activities is also a relevant consideration. Accordingly, we agree with the Applicant that a 15-year term for the construction activities is appropriate in this instance.

1. To provide certainty, we have imposed for the construction activities a consent duration term with an expiry date of 1 June 2038 and for the structures requiring ongoing authorisation a consent duration term with an expiry date of 1 June 2058.

## 5.11 Other matters

1. No other relevant matters were brought to our attention, and we are not aware of any.

# 6 Part 2 matters

1. Following the Court of Appeal’s judgement on *RJ Davidson Family Trust v Marlborough District Council* we have not separately assessed Part 2 matters as we consider that the relevant plan provisions have clearly given effect to Part 2 and so assessing the Part 2 matters *"would not add anything to the evaluative exercise"*.

# 7 Determination

1. Pursuant to the powers delegated to us by the Bay of Plenty Regional Council under section 34A(1) of the Resource Management Act 1991, we record that having considered Ōpōtiki Marina and Industrial Park Ltd application documents, evidence, and legal submissions; the BOPRC Section 42A Report; the submissions and submitters evidence, and having considered the various requirements of the RMA, we find that:
2. Based on the evidence before us, the actual and potential adverse effects of the application are either no more than minor or can be suitably avoided, remedied, or mitigated by readily enforceable consent conditions;
3. The application if granted will have substantial positive economic and social effects; and
4. The applications are consistent with the provisions of the relevant existing statutory instruments.
5. We therefore **grant** the applications lodged by Ōpōtiki Marina and Industrial Park Ltd for the construction of a marina development outlined in section 1 of this Decision. Our reasons are set out above and are expanded upon in the body of this Decision.
6. Having made that decision, we acknowledge that tangata whenua oppose the marina development in this sensitive location, but in this case, there are no practical alternatives as the site is enabled for a marina activity through the District Plan zoning provisions as a Harbour Development zone, including the Harbour Industrial Zone Structure Plan. As we noted earlier, Mr Petersons evidence[[42]](#footnote-42) sets out that adoption of the Harbour Development zone within the RCEP was a key step in successfully securing funding for the OHED project, as well as the Provincial Development Unit (Central government), the Bay of Plenty Regional Council, and Ōpōtiki District Council who saw the District Plan Harbour Industrial zone as integral to the overall development of the Ōpōtiki aquaculture industry.
7. In light of those substantial social and economic factors, the absence of demonstrable adverse effects on water quality and aquatic ecosystems, and the processes in place through conditions of consent which require iwi engagement in respect of the Tangata Whenua Liaison group for the construction works, we consider it would be pointless to cease the marina development and contrary to the regional council and district council provisions enabling a marina activity in a location and site that undertook a full public notification process.
8. We were encouraged that the applicant has responded to concerns raised by both the submitters and the BOPRC and committed to ongoing involvement with iwi and hapū through the Tangata Whenua Liaison group and other methods such as individual memorandums of understanding, which provides the opportunity for the applicant to build and maintain a better ongoing relationship with tangata whenua.

# 8 Consent conditions

1. For conditions relating to flooding matters related to the Waioeka floodway, Mr Townsend advised it is imperative that no impediment of the floodway should occur as this would detrimentally affect the flood protection system for the Ōpōtiki township[[43]](#footnote-43). He required specificity in the condition that earthworks within the floodplain shall show modelling where there is ‘no increase in flood level on the design level of the Ōpōtiki Township stop banks (being 1% AEP)’, with measurements captured at three specific locations. The Applicant amended the condition with additional wording ‘… *strive to ensure* …’ and referenced ‘risk’ rather than ‘level’ as part of the precursor to the specified measurements at three locations. We agree with the view of the reporting officer and Mr Townsend to retain the condition as proposed by Council to provide certainty and commitment to ensure no effect of increasing flood levels to the flood protection system.
2. Ms Petricevich recommended a comprehensive suite of conditions as part of her Section 42A Report. At the wrap up of the hearing we requested a clean set of conditions following discussions with the Applicant and reporting officer. The reporting officer suggested an opportunity for iwi submitters to review the amended set of conditions, however Ms Hamm emphasized this was not acceptable as iwi submitters were able to review draft conditions prior to the hearing as they were available during the Limited Notification process[[44]](#footnote-44) and as part of the Applicant planning evidence[[45]](#footnote-45). It was accepted that only the Applicant and reporting officer would meet to discuss amendments to the conditions and provide a clear set of conditions for the Commissioners consideration during the decision making process, if consent was to be granted. We asked Ms Hamm to attach a suite of recommended conditions to her Reply submissions that indicated where wording had been agreed with the BOPRC Section 42A Reporting team and where any areas of disagreement remained.
3. Mr Ferguson and the reporting officer collaborated to discuss and agree a set of conditions, which included the conditions being restructured and amended. Amendments to the conditions comprised of a clean set of proposed Applicant conditions reflecting conditions sought by the Applicant, and a table describing the points of difference with explanatory text as to the reasons for the difference.
4. We have carefully examined the suite of conditions attached to the Reply and find them to be largely acceptable in principle. However, we have made amendments to them to amongst other things: use modern language, correct grammar, impose enforceable obligations on the consent holder and ensure that the conditions are clear and certain on their face.
5. The conditions imposed are attached as Appendix 1 to this Decision. We have not shown our amendments using a ‘track changes’ format. We acknowledge that this will require the Applicant, the BOPRC and submitters to undertake a careful reading of the conditions.
6. It is conceivable that the conditions may still contain minor errors or omissions. Accordingly, should the applicant or the Council identify any minor mistakes or defects in the attached conditions, then we are prepared to issue a revised schedule of amended conditions under s133A of the RMA correcting any such matters. Consequently, any minor mistakes or defects in the amended conditions should be brought to our attention prior to the end of the 20-working day period specified in section 133A of the RMA.

Signed by the commissioners:



Siani Walker



Bill Wasley (Chair)

Dated: 31 May 2023

1. Commissioner Wasley is an independent commissioner with the chair certification. He has over 25 years’ experience as a commissioner. He has a planning, and resource management background and is a full member of the NZ Planning Institute. He also undertakes independent chairing of growth management and spatial planning partnerships involving both local government and the Crown. [↑](#footnote-ref-1)
2. Commission Walker is an independent commissioner. She has a planning qualification and is a full member of the New Zealand Planning Institute (NZPI), and Chair of Papa Pounamu Tāmaki Makaurau a special interest group of the NZ Planning Institute. Her experience includes Te Ao Māori including Māori and corporate governance. [↑](#footnote-ref-2)
3. AFFCO New Zealand Limited, Rangiuru Processing Plan, Discharges to the Kaituna River, Resource Consent Applications, Assessment of Effects on the Environment, February 2017 [‘*the AEE’*], section 2 “Description of the Activity” [↑](#footnote-ref-3)
4. Bay of Plenty Regional Council, Officer’s Report for a publicly and limited notified resource consent applications, Section 42A Resource Management Act 1991 (RMA), Todd Whittaker, consultant planner, 22 July 2022, paragraphs 4.13 to4.47. [↑](#footnote-ref-4)
5. Section 5, Notification and submissions. [↑](#footnote-ref-5)
6. S42A report, section 8 MACA, pages 11-12. [↑](#footnote-ref-6)
7. Section 104(2) of the RMA. [↑](#footnote-ref-7)
8. RMA-2009 Coastal Permits 65566. [↑](#footnote-ref-8)
9. RMA-2014 Coastal Permit 66781 [↑](#footnote-ref-9)
10. Vanessa Hamm, Legal Reply Submissions on behalf of Applicant, pg 6, para 13. [↑](#footnote-ref-10)
11. Fiona Wilcox, Ecology Applicant Evidence, 9 March 2023, pg.9. [↑](#footnote-ref-11)
12. S42A Report, page 35, para 11.94 [↑](#footnote-ref-12)
13. Tim Fergusson Planning evidence, page 21, paragraph 79. [↑](#footnote-ref-13)
14. Condition 13 Seawall and Stormwater outlet Construction Management Plan, and Construction Management Plan. [↑](#footnote-ref-14)
15. Section 42A Report, page 19, paragraph 11.25. [↑](#footnote-ref-15)
16. AEE, section 7.3.1 Hydrology, [↑](#footnote-ref-16)
17. Grant Pearce Hydrology and Flooding Evidence, page 7, paragraph, 25. [↑](#footnote-ref-17)
18. Fiona Wilcox Ecology Evidence, paragraph 30. [↑](#footnote-ref-18)
19. Fiona Wilcox evidence, page 16, paragraph 31. [↑](#footnote-ref-19)
20. Fiona Wilcox supplementary evidence, page 1. [↑](#footnote-ref-20)
21. Conditions of consent for ecological effects include, Water quality monitoring, Lizard survey, Fish savage, Ecological buffer area, and No machinery or construction materials within 20m of wetland habitats. [↑](#footnote-ref-21)
22. Section 42A report, page 33, paragraph 11.82. [↑](#footnote-ref-22)
23. S42A report, Ecology, section 11.32. [↑](#footnote-ref-23)
24. Fiona Wilcox Ecology evidence, paragraph 16. [↑](#footnote-ref-24)
25. Memorandum 21 March 2023, Engineering Manager, Mark Townsend. [↑](#footnote-ref-25)
26. Vanessa Hamm Reply Submissions, Flooding Paragraphs 58-60 [↑](#footnote-ref-26)
27. Oppose submissions: Ngāi Tamahaua, Ngāti Ngahere, Ngāti Irapuaia (Ngāti Ira), and Te Ūpokorehe. [↑](#footnote-ref-27)
28. Support submissions: Ngāti Patumoana, Ngāi Tamahaua Working Group (Maui Hudson) [↑](#footnote-ref-28)
29. See section 4.4 Request to strike out submissions [↑](#footnote-ref-29)
30. S42A report, page 33, paragraph 11.82. [↑](#footnote-ref-30)
31. Diane Lucas Landscape Evidence, paragraph 28. [↑](#footnote-ref-31)
32. S42A report Hearing Agenda, Pre-Hearing Report, page 96-97. Attendees listed. [↑](#footnote-ref-32)
33. See section 4.3, Hearing Attendees. [↑](#footnote-ref-33)
34. RM21-0541-CC.01, Condition 6 & Condition Tangata Whenua Liaison Group, clause 1 Purpose. [↑](#footnote-ref-34)
35. The remaining policies relate to procedural matters; BOPRC plan making, the use and development of land, monitoring and information provision; or features that are not present here (natural inland wetlands and outstanding water bodies). [↑](#footnote-ref-35)
36. AEE, section 9.1.2, Bay of Plenty Regional Policy Statement, pp61-63. [↑](#footnote-ref-36)
37. Section 8.6.1. [↑](#footnote-ref-37)
38. AEE, Appendix 6, Whakatōhea Iwi Management Plan Assessment. [↑](#footnote-ref-38)
39. Vanessa Hamm, Reply submissions on behalf of Applicant, p6, paragraph 12. [↑](#footnote-ref-39)
40. Vanessa Hamm, Reply Submission on behalf of Applicant, page 21, paragraph 61. [↑](#footnote-ref-40)
41. AEE, section 9.2 Assessment of Alternatives, p70. [↑](#footnote-ref-41)
42. Chris Peterson evidence, History of the Land, p4, paragraph 9. [↑](#footnote-ref-42)
43. Mark Townsend, Memorandum Opotiki Marina dated 21 March 2023. [↑](#footnote-ref-43)
44. 18 November 2023, Limited Notification letter sent via email to: Ngāi Tamahaua, Ngāti Patumoana, Ngāti Ruatakenga, Ngāti Ngahere, Ngāti Irapuaia, Te Ūpokorehe, and Whakatōhea. [↑](#footnote-ref-44)
45. Chairperson Procedural Minute 1 dated 21 February 2023; Applicant expert evidence due 9 March 2023. [↑](#footnote-ref-45)