

5 DECEMBER 2018

MEMORANDUM

To April Hussey, Senior Portfolio Manager, LINZ

From Georgina Smith, Holland Beckett Law

Port of Tauranga Limited - Application for freehold interest in reclaimed land at Sulphur Point, Tauranga

We refer to your recent correspondence in respect of this matter. We, on behalf of our client, make the following comments in respect of the draft determination (referencing the applicable paragraphs in the draft determination):

1. The valuation figures (refer paragraph G) are required to be approved in advance by our client's Board so that when they become payable our client is in a position to authorise the expenditure. The next Board Meeting is set down for 21 December 2018, at which time the valuation figures will be presented to our client's Board. In order to keep this matter progressing and enable you to make any adjustments to the draft determination in readiness for it being finalised we provide you with the below comments, however such comments are subject to our client confirming to you in writing that the Board has approved the valuation figures (or otherwise). This will either be on 21 December 2018 or mid-January 2019. Please do not forward the determination to the Minister prior to this approval being confirmed.
2. Paragraph F: our client has been liaising, and continues to liaise with, Ngai Tamarawaho to ensure the cultural values associated with the land continue to be considered during the course of our client's activities and operations on the land. The Appendix to this Memo takes the "Mitigation measures" from pages 14-15 of the Ngai Tamarawaho Cultural Values Assessment and confirms what our actions our client has taken or is taking in respect of those.

The Appendix references the following documents which are attached to this Memo:

- Resource consent 61348.
 - Letter from Ngai Tamarawaho dated 12 July 2014.
3. Should the Minister accept the determination and grant the freehold Titles to our client, we understand that the Registrar will internally complete the process required to issue the Titles in our client's name, and nothing further is required from our client, other than payment of the valuation figures. Please confirm that our understanding of this process is correct.
 4. Our client would also like to understand the trigger point and required timing for payment of the valuation figures. Please advise.

END

Appendix

Mitigation Measures from pages 14-15 of the Ngai Tamarawaho Cultural Values Assessment

Port of Tauranga Limited (the **Port**) has an ongoing relationship with Ngai Tamarawaho which pre-dates the Cultural Values Assessment and is ongoing. For ease of reference, the mitigation measures from pages 14-15 of the Ngai Tamarawaho Cultural Values Assessment are reproduced below with commentary from in italics in relation to each mitigation measure.

- Ngai Tamarawaho is to be consulted about any future land use changes within the Port operations at Sulphur Point.

The Port recognises Ngai Tamarawaho as the hapu that has a traditional and customary relationship with this part of the Te Awanui (Tauranga) Harbour. For this reason, the Port is committed to consult with Ngai Tamarawaho regarding any future land use changes at Sulphur Point. At this point in time, the Port has no plans to utilise the land in the Sulphur Point Port area for any purpose other than port activities.

- Ngai Tamarawaho has a concern for water quality in the harbour and is keen to see the present measures for dealing with stormwater and any other liquid discharges maintained at a high level and where possible, enhanced.

Sulphur Point

The stormwater discharge from Sulphur Point catchments in question is authorised by resource consent 61348 (attached) which includes strict controls required for stormwater management in this area including limits for contaminants discharged in the Port's stormwater. The Port is continuously looking, where practical, to introduce improvements and initiatives that improve stormwater quality and minimise potential for uncontrolled discharges of contaminants. Examples of this include:

- *Recent upgrade of stormwater treatment system at the straddle carrier workshop to prevent contaminants entering the stormwater system.*
- *Procedures in place and followed for the storage of liquid cargos and hazardous substances to minimise the risk of spills and significantly reduce the risk of discharge to the harbour should a spill occur.*
- *The project underway to automate the stormwater shut off valves at Sulphur Point. This will enable stormwater lines to be shut off and isolated in the event a spill.*
- *Current review and upgrade of Port Spill minimisation and Response Procedures and the stormwater contingency and management plan for Sulphur Point areas.*
- *The Port Sulphur Point catchments are swept weekly by vacuum sweeper truck to remove potential contaminants on the ground which could become entrained with stormwater during rain events.*

Mount Maunganui

The Port currently has a resource consent application before the Bay of Plenty Regional Council for the discharge of stormwater from the Mount Maunganui wharves. The Port consulted Ngai Tamarawaho on this and received the attached letter from Ngai Tamarawaho dated 12 July 2014. The resource consent application was limited notified (i.e. to a defined list of people) in 2018 and that list included Ngai Tamarawaho, however it did not make a submission on the resource consent application.

- Ngai Tamarawaho is especially keen to see that comprehensive management and monitoring measures are in place to ensure that normal port operations will not result in any long term negative impact on existing bio diversity or on the wider environmental health of Te Awanui, the Tauranga harbour.

Please refer to comments above. In addition, the Port undertakes frequent monitoring including sampling and measuring of stormwater quality to ensure compliance with the resource consent authorising the Sulphur Point discharge is maintained.

- Ngai Tamarawaho looks forward to receiving copies of any reports and other relevant information arising from Port activities and which might have an impact on the cultural and environmental values set out here. Meetings between the parties to discuss any issues are encouraged with the only qualifier being that they be held at mutually convenient times.

The Port is committed to a long term constructive relationship with Ngai Tamarawaho and expects to engage and consult with them on matters which might impact on their cultural and environmental values.

- Recognising that the Port is a physical reality, Ngai Tamarawaho is pleased to offer appropriate cultural assistance as appropriate in ensuring the safety of all site operations.

This is duly noted.

- Ngai Tamarawaho would be pleased to have their long standing relationship with the area suitably acknowledged. We have some proposals as to how this might be achieved and would be happy to discuss these with the Port in due course. In our minds such acknowledgement would go a long way towards correcting the list of failures by successive authorities to recognise our relationship with the area and to also observe an important cultural tradition which should have been undertaken at the very beginning of the Port's Sulphur Point existence.

The Port has met with representatives from Ngai Tamarawaho and agreed to support and contribute towards a project to recognise the long standing relationship Ngai Tamarawaho has with the Sulphur Point area. Initial suggestions from Ngai Tamarawaho is that this may include some form of sculpture in an area at Sulphur Point visible and accessible to the public.

Other matters

In addition to the matters noted above, the Port established the Nga Mataarae Charitable Trust in 2013. The Trust was established with the mandate to support and fund project that contribute towards the wellbeing of the Tauranga Moana. The Port made an initial capital contribution of \$500,000 and makes annual contributions of \$50,000. The Trust includes representatives from:

- Ngati Ranginui Iwi
- Ngai Te Rangi Iwi
- Ngati Pukenga Iwi
- Mauao Trust
- Tauranga Moana Iwi Customary Fisheries Trust

The Port also funds and administers annual scholarships for students connected with the three local iwi who are studying in fields which promote the wellbeing of Tauranga Moana.

Bay of Plenty Regional Council

Resource Consent

Pursuant to the Resource Management Act 1991, the **Bay of Plenty Regional Council**, by a decision dated 2 June 2006, **Hereby Grants** to:

PORT OF TAURANGA LIMITED

Post Bag 1
MOUNT MAUNGANUI

A discharge permit pursuant to section 15(1)(a) of the Resource Management Act 1991 to **Discharge Stormwater to the Tauranga Harbour** subject to the following conditions:

1 **Purpose**

For the purpose of discharging storm water from the Sulphur Point Wharf Area to the Tauranga Harbour

2 **Discharge Quantity**

The maximum rate of discharge shall not exceed 6.15 cubic metres per second when the design rainfall event of a three month return period ten minute duration storm event is exceeded.

3 **Location of Discharge**

Stormwater shall be discharged to Tauranga Wharf Area, 100 Mirrielees Road, Sulphur Point, Tauranga, as shown on BOPRC Plan Number RC61348/1 submitted with further information dated 15 July 2005.

4 **Map Reference**

At or about map reference:

NZMS 260 U14:8980-8880 (North Outfall),

NZMS 260 U14:8990-8880, and NZMS 260 U14:902-889 (Multiple Outfall),

NZMS 260 U14:9030-8870, NZMS 260 U14: 9030-8830, NZMS 260 U14:9020-8800, and NZMS 260 U14:9010-8770 (Eastern Outfalls).

5 Legal Description

CT 44B/46: Lot 1, DPS 48736, and CT 67D/524: Lot 1, DPS 63988, Blocks VI & X Tauranga SD (Tauranga District).

6 Stormwater System

- 6.1 The stormwater system and outfall shall be constructed and maintained in accordance with BOPRC Plan Numbers RC61348/1, RC61348/2, RC61348/3, RC61348/4, RC61348/5, RC61348/6, RC61348/7, RC61348/8, RC61348/9, RC61348/10, and RC61348/11 submitted with further information dated 15 July 2005.

7 Water Quality

- 7.1 The concentration of suspended solids in the discharge shall not exceed 150 g/m³ at any time except where the design event of a 5 year storm is exceeded.
- 7.2 Stormwater discharged shall be substantially free of floatable solids, oil and grease.
- 7.3 The consent holder shall take all practicable measures to prevent the discharge of any toxic substance that may be harmful to any form of aquatic life, via the stormwater system.

8 Contingency

- 8.1 Any spills of possible contaminants within the storm water catchment area shall be managed according to the Sulphur Point Wharf Area Contingency Maintenance Plan and/or The Port of Tauranga Emergency Spill Response Plan, submitted with further information dated 15 July 2005 or its successor.
- 8.2 The permit holder shall supply an updated Port of Tauranga Emergency Spill Response Plan to the Chief Executive of the Regional Council or delegate upon the issue of this permit. Notification at this time shall include details of who is to be responsible for site management and compliance with consent conditions. (See Advice Note 2).
- 8.3 The permit holder shall supply an updated Port of Tauranga Emergency Spill Response Plan, including details of who is to be responsible for site management and compliance with consent conditions, to the Chief Executive of the Regional Council or delegate on a 2 yearly basis. (See Advice Note 2).
- 8.4 In the event of any spills of possible contaminants (as per condition 8.1) the permit holder shall notify the Chief Executive of the Regional Council or delegate within 24 hours. (See Advice Note 2).
- 8.5 In the event of spills causing contamination of storm water or the Tauranga Harbour the permit holder shall notify the Regional Council or delegate via the Environment Bay of Plenty Pollution Hotline immediately. (See Advice Note 3).

9 **Maintenance**

- 9.1 The storm water treatment system shall be operated and maintained in good working order at all times to the satisfaction of the Chief Executive of the Regional Council or delegate.
- 9.2 All maintenance shall be carried out in accordance with BOPRC Plan Numbers RC61348/1, RC61348/2, RC61348/3, RC61348/4, RC61348/5, RC61348/6, RC61348/7, RC61348/8, RC61348/9, RC61348/10, and RC61348/11 and the Sulphur Point Wharf Area Contingency Maintenance Plan, submitted with further information dated 15 July 2005 or its successor.
- 9.3 No less than five working days prior to the start of any structural maintenance or upgrade works on the storm water system, the permit holder shall request (in writing) a site meeting between the principal site contractor and the Chief Executive of the Regional Council or delegate. Notification at this time shall include details of who is to be responsible for site management and compliance with consent conditions. (See Advice Note 2).
- 9.4 The permit holder shall notify the Regional Council within 48 hours of the completion of any structural maintenance or upgrade works on the storm water system. (See Advice Note 2).

10 **Review of Permit Conditions**

- 10.1 The Regional Council may, within six months of the fifth, tenth, fifteenth, twentieth, twenty-fifth, and thirtieth anniversary of the granting of this permit, serve notice on the permit holder under s.128(1)(a)(ii) and/or (iii) of the Resource Management Act 1991 of its intention to review the conditions of this permit. The purpose of such a review is to assess the need for monitoring and treatment of storm water, including the best practicable option approach, and to impose monitoring and discharge control conditions relating to these discharges, if appropriate.
- 10.2 The Regional Council may, within six months of completion of any impact, environmental investigation or compliance report carried out by the Regional Council that shows there is an adverse effect on the environment as a result of the storm water discharge, serve notice on the permit holder under s. 128(1)(a)(i) and/or (iii) of the Resource Management Act 1991 of its intention to review the conditions of this permit.

11 **Term of Consent**

This permit shall expire on 31 May 2041.

12 **Resource Management Charges**

The consent holder shall pay the Bay of Plenty Regional Council such administrative charges as are fixed from time to time by the Regional Council in accordance with section 36 of the Resource Management Act 1991.

- 13 **The Permit** hereby authorised is granted under the Resource Management Act 1991 and does not constitute an authority under any other Act, Regulation or Bylaw.

Advice Notes:

1. *This consent does not authorise any storm water outfall structure.*
2. *Reporting and notification required by conditions 8.2, 8.3, 8.4, 9.3 and 9.4 shall be directed (in writing) to the Principal Compliance Officer, Environment Bay of Plenty, Box 364, Whakatane, including the consent number.*
3. *Notification required by condition 8.5 shall be via the Environment Bay of Plenty Pollution Hotline, Phone 0800 738 393.*
4. *The consent holder is responsible for ensuring that all contractors carrying out works under this consent are made aware of the relevant consent conditions, plans and associated documents.*
5. *The consent holder is advised that non-compliance with consent conditions may result in enforcement action against the consent holder and/or their contractors.*

DATED at Whakatane this 28th day of July 2006

For and on behalf of
The Bay of Plenty Regional Council

W E Bayfield
Chief Executive

Released under the Official Information Act 1982



Ngai Tamarawaho Environmental Unit

Huria Management Trust

PO Box 398

TAURANGA

12 July 2014

Rowan Johnstone

Port of Tauranga

TAURANGA

By email: rowanj@port-tauranga.co.nz

Dear Rowan

Port of Tauranga – Stormwater Discharge consents

Kia ora

Thank you for coming to discuss the port's application with me last week and supplying relevant documentation. I have discussed the material with our Trust and we are happy with what is proposed and support the Port's proposals but make the following qualifying comments.

As you know our main concern is the potential for a negative impact on water quality within the harbour through sediment and contaminants being discharged via the Port's stormwater systems. In cultural terms our concern is for the *mauri* of the harbour which is already severely compromised. We look to the Port as the major user of the harbour to contribute to *mauri* recovery if only in an incremental way.

In line with our cultural values any new or existing discharges to the harbour must be able to demonstrate that as a minimum these discharges will mean no change to existing water quality in the harbour. But our preference is for a demonstrable improvement in the discharges.

Our view is that in seeking enhancement of water quality it means that there will be an incremental improvement to the *mauri* of the harbour. Over time we can then ensure the viability of the harbour as, for example, an important *kai moana* resource not only for ourselves but for the wider community of Tauranga Moana. It also helps us to properly meet our *kaitiaki* obligations.

We are happy with the proposed use of slot drains, channels, catch pits, screen chambers etc as measures designed to “treat” stormwater. We are not so happy with what is described as “overland flows” i.e. stormwater flowing and percolating through the wharf structures. We assume the solution to our concerns here would be to keep the wharf working surfaces in a tidy state as far as material spills and general cargo rubbish is concerned thereby reducing a potential source of sediments and contaminants.

We are very interested in some the monitoring and research proposals such as determining the impact on marine life of point discharges from the Port stormwater systems. To that end we look forward to being included in the proposed annual meeting to discuss the discharges and monitoring. Hopefully those meetings will also make available the outcome of the University of Waikato research.

Kind regards

A handwritten signature in black ink, appearing to read 'Buddy Mikaere', on a light green rectangular background.

Buddy Mikaere

For Ngai Tamarawaho Environmental Unit

Cc: Cushla Loomb; Marlene Bosch BOPRC