

**IN THE ENVIRONMENT COURT  
AT AUCKLAND**

**I TE KŌTI TAIAO O AOTEAROA  
KI TĀMAKI MAKĀURAU**

**Decision [2023] NZEnvC 243**

IN THE MATTER OF	an appeal under s 120 of the Resource Management Act 1991
BETWEEN	NGĀTI KUKU HAPŪ (ENV-2021-AKL-136) Appellant
AND	BAY OF PLENTY REGIONAL COUNCIL Respondent
AND	TAURANGA BRIDGE MARINA LIMITED Applicant

Court: Chief Environment Court Judge D A Kirkpatrick  
Environment Commissioner A C E Leijnen  
Environment Commissioner J Hodges

Hearing: 14 – 16 November 2022 at Tauranga  
Last case event: 26 September 2023

Submissions: R Enright for Ngāti Kuku Hapū  
K Barry-Piceno for Tauranga Bridge Marina Limited  
R Boyte for Bay of Plenty Regional Council

Date of Decision: 10 November 2023  
Date of Issue: 10 November 2023

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**DECISION OF THE ENVIRONMENT COURT**

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- A: The appeal is allowed in part.
- B: Amendments are to be made to the conditions of consent as set out in **Appendix A** to this decision.
- C: An accurate plan of the occupation permit area is attached as **Appendix B**.
- D: Costs are reserved.

## REASONS

### Introduction

[1] This appeal concerns a decision by the Bay of Plenty Regional Council to grant an application for a controlled activity by Tauranga Bridge Marina Limited for a coastal occupation permit for an existing marina and breakwater in the coastal marine area adjacent to 101 Awanui Drive, SH2, Tauranga known as the Tauranga Bridge Marina. Ngāti Kuku Hapū appealed against two conditions of that consent relating to its duration and the scope of any review of it.

### The Court's decision

[2] In a decision of 7 August 2023<sup>1</sup> the Court allowed the appeal in part by determining that amendments should be made to the conditions of consent. The appeal against the duration of consent of 35 years was refused.

[3] The Court directed that the amendments be made to the conditions of consent as set out in the decision, with the parties to confer and file a joint memorandum setting out the conditions in their amended form, for confirmation by the Court.

### The parties' response

[4] On 26 September 2023 the parties filed a joint memorandum advising the Court that they have reached an agreement on the amendments to the conditions to address the matters raised by the Court at [129](a)-(f) of the decision.

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<sup>1</sup> *Ngāti Kuku Hapū v Bay of Plenty Regional Council* [2023] NZEnvC 163.

[5] In addition, the parties have agreed to the following further amendments:

- (a) Condition 8.10 to clarify that it is the Kaitiaki Group that would pursue the annual payment; and
- (b) Condition 14.1 to reflect the preference of the hapū to take the lead on preparation of the Cultural Monitoring Plan, with the Consent Holder to undertake this as a fall-back position.

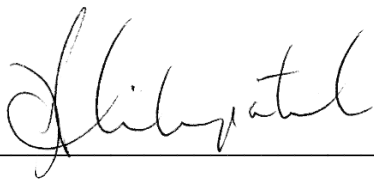
### **Outcome**

[6] The Court approves the amendments to the conditions of consent provided by the parties and is satisfied that they are in accordance with the amendments directed in the Court's decision. The additional amendments sought by the parties are also approved.

[7] The amended conditions of consent are attached in **Appendix A** to this decision.

[8] An accurate plan of the occupation permit area is attached as **Appendix B**.

For the Court:



**D A Kirkpatrick**

**Chief Environment Judge**



## APPENDIX A – CONDITIONS OF CONSENT



# Resource Consent

(a) Resource Consent RM20-0629-AP

Tauranga Bridge Marina Limited

Consent(s) to:

RM20-0629-CC.01

Occupy Coastal Space

Expiry 10 November 2058



The consent(s) are subject to the conditions specified on the attached schedule(s) for each activity. Advice notes are also provided as supplementary guidance, and to specify additional information to relevant conditions.

Fiona McTavish  
**Chief Executive**

Consent Number: **RM20-0629-CC.01**

- (b) Bay of Plenty Regional Council Resource  
Consent

A resource consent:

- **Under section 12(2)(a) of the Resource Management Act and Rule PZ 6(2) of the Bay of Plenty Regional Coastal Environment Plan to undertake a controlled activity, being the occupation of space in the Coastal Marine Area**

subject to the following conditions:

## **1 Purpose**

- 1.1 The occupation of space in the Coastal Marine Area for the existing marina structure as identified on BOPRC Consent Plan RM20-0629-01;
- (a) The Resource consent application received by the Bay of Plenty Regional Council on 24 September 2020, provided by Shearer Consulting; and
- (b) The further information received referred to as 'Iwi Letter Consultation' received by Bay of Plenty Regional Council on 7 April 2021, provided by Shearer Consulting.

## **2 Location**

- 2.1 The activity authorised by this resource consent shall be located:
- (a) At or about map reference NZTM 1879317; 5827011 (centre of the site); and
- (b) On the sea bed of Tauranga Harbour to the east of the Tauranga Harbour Bridge Causeway as shown on plan RM20-0629-01.

## **3 Legal Description**

- 3.1 Tauranga Harbour (Crown Land), Tauranga SD (Tauranga District).

## **4 Occupation of Space**

- 4.1 The Marina shall occupy an area no larger than 11.74 hectares as identified in the attached plan titled New Breakwater Plan Rev 1 dated 10.08.2023.
- 4.2 As resource consent 40148 and RM20-0629 (this consent) relate to the same site and activities and cannot operate concurrently, the consent holder must

provide notice under s138 of the Resource Management Act of the surrender in full of Consent 40148 prior to the commencement of this consent.

## **5 Notification**

- 5.1 No less than five working days after the commencement of this consent, the consent holder shall request (in writing) a site meeting between the consent holder and/or a representative and the Bay of Plenty Regional Council. This request shall include details of who is to be responsible for site management and compliance with consent conditions (see Advice Note 2 and 3).

## **6. Rangatira ki te Rangatira Relationship**

- 6.1 The consent holder shall invite representatives of Ngāti Kuku to meet with the Tauranga Bridge Marina Board twice annually to discuss strategic issues relating to the marina and surrounding area.

- 6.2 Prior to the bi- annual board meetings, the Tauranga Bridge Marina Board shall undertake a review of any upcoming construction contracts, employment and/or educational opportunities for local Ngāti Kuku Hapū members including but not limited to; opportunities within the Marina such as for construction of the breakwater, maintenance, marine studies, employment or apprenticeships or support towards nautical marine industry courses offered at local institutions. The review shall be included as one of the Board agenda items for discussion.

*Advice note: This condition was offered by the Applicant and they have agreed to be bound by it in accordance with the principle in Augier.*

## **7. Interim Review**

- 7.1 Within 6 months of either of the Review Triggers set out in Condition 7.3 (below) occurring, the Consent Holder shall engage an independent planning expert to undertake a review of the conditions of this consent. The Consent Holder must consult with the Kaitiaki Group before appointing the independent expert in relation to a suitable expert planning expert.

- 7.2 The purpose of the review is to consider whether there are any changes in the wider regulatory and policy context for the Marina operations since the commencement of the consent and to make recommendations, if necessary, for any changes to the conditions of consent to ensure that they continue to adequately recognise and provide for the relationship of Ngāti Kuku with the common marine and coastal area occupied by the Marina.

- 7.3 The Review Triggers are:

- (a) A planning document being lodged with the Bay of Plenty Regional Council, by a Customary Marine Title Group, in relation to Te Awanui (Tauranga Harbour); and / or

- (b) A Natural and Built Environment Plan (or similar plan, under replacement legislation to the Resource Management Act 1991) being made operative.
- (c) Receipt by the Council of a report under Condition 14.7 that provides the Consent Holder's reasons for not accepting a recommendation made under the Cultural Monitoring Plan to implement measures to address cultural effects.

7.4 The Consent Holder shall ensure that the independent planning expert engages with the Kaitiaki Group as part of the review process and that the report prepared by the expert provides a summary of this engagement and all feedback and recommendations (if any) made by the Kaitiaki Group.

7.5 The Consent Holder must provide the independent planning expert review report within 18 months of either Review Trigger occurring.

7.6 If the independent planning expert report includes recommended amendments to the consent conditions, the report must also identify what, if any, of the recommendations made that the consent holder has or has not sought to implement (whether through a section 127 application or other method) and provide reasons why any recommendation has not been adopted.

Advice note:

This condition was offered by the Applicant and they have agreed to be bound by it in accordance with the principle in Augier.

Upon receiving reasons provided by the Consent Holder for not accepting any recommendations made, the Regional Council will consider whether or not to notify an intention to review any conditions of the consent under s128 RMA. Refer to condition 20 Review Conditions.

## **8 Kaitiaki Group**

8.1 Within six months of the commencement of this consent, the consent holder shall engage with Ngāti Kuku Hapū and the Whareroa Marae Committee to invite them to establish a Kaitiaki Group to liaise and meet for the following purposes in relation to the activities authorised by this consent:

- (a) To collaborate with the consent holder in the development of the cultural monitoring plan under condition 12 of this consent;
- (b) To receive and distribute the technical review and monitoring outcomes of this consent to their respective groups;
- (c) To allow the Kaitiaki Group to make recommendations to the consent holder regarding actions to be taken in response to monitoring reports, marina management plan and mitigation plans and any section 128 RMA review matter if appropriate; and
- (d) To discuss any other relevant matters that may be agreed by the Kaitiaki

Group.

- 8.2 The consent holder shall arrange for a meeting with the Kaitiaki Group within 6 months of commencement of this consent and from there on annually, or as required by the Kaitiaki Group.
- 8.3 The consent holder shall provide a written invitation to the members of the Kaitiaki Group at least ten working days before a proposed meeting is to be held.
- 8.4 The meetings shall be held at a convenient location as agreed by the Kaitiaki Group. The costs of the meetings relating to venue, facilities and food, tea and coffee, shall be borne by the consent holder.
- 8.5 The minutes of the meetings of the Kaitiaki Group shall be provided to all attendees and to the Regional Council by the consent holder promptly following each meeting.
- 8.6 The consent holder shall cease to convene any further meetings of the Kaitiaki Group if the majority of the members of the Kaitiaki Group agree the Group is to be disbanded. The consent holder shall give written notice of this to the Regional Council.
- 8.7 The consent holder shall provide the Kaitiaki Group with a copy of the Marina Management Plan annually for the first five years of the consent, including any updates as a result of reviews required by condition 9(below) , and every five years thereafter, as well as copies of the Structural Integrity Reports every two years (condition 12.3).
- 8.8 The consent holder shall report to the Kaitiaki Group any biosecurity dive investigations undertaken within the Marina. Any subsequent findings and detail of any remedial actions undertaken by the consent holder shall be provided to the Kaitiaki Group.
- 8.9 The consent holder shall provide any original seabed and/or beach profile reports (required by condition 9.4) to the Kaitiaki Group within 3 months of its establishment. The purpose of this is to provide the Kaitiaki Group a starting baseline for the purposes of cultural monitoring required under condition 12.
- 8.10 In addition to costs payable for any meetings under condition 8.2, the consent holder shall contribute a total of \$8500 per annum (exclusive of GST if any, payable by 31 March and subject to any annual CPI adjustment). The compensation sum is to be paid into a nominated bank account upon receipt of invoice from ~~Whareroa Marae Committee~~ the Kaitiaki Group.

Advice note: This condition was offered by the Applicant and it has agreed to be bound by it in accordance with the principle in Augier.

This sum is offered by the Consent Holder to be payable directly to Ngāti Kuku for the term of this consent for providing cultural services through engagement



in Marina meetings, observations, reports and monitoring as outlined in these conditions of consent. If the consent holder and Ngāti Kuku agree, this sum can be apportioned other than once yearly, for example biannual invoices and payments made over the term of the consent (to be paid every six months).

- 8.11 Where cultural experts are engaged to undertake the cultural monitoring under condition 14.2, the Consent Holder shall pay the actual and reasonable costs of that expert, and those costs will be additional to the annual payment of \$8,500 provided for in condition 8.10.

## 9. Marina Management Plan

9.1 The consent holder shall within six months of the commencement of this consent prepare a management plan for the Marina, which includes but is not limited to (refer to Advice Note 7 below):

- (a) The berth contract provisions (Marina agreement) which are directed at ensuring berth holders act in an environmentally appropriate manner. The agreement which should include controls, restrictions and management methods for:
  - i. Fuel storage and usage;
  - ii. Boat maintenance in the Marina;
  - iii. Waste management;
  - iv. Sewage management;
  - v. On-board stays within the Marina;
  - vi. Noise;
  - vii. Penalty provisions for inappropriate actions should also be included;
  - viii. Protocols regarding the management of harmful organisms (biosecurity measures); and
  - ix. Any other relevant matters requiring control or required by conditions of this consent.
- (b) A description of the facilities provided and their management, including, but not limited to the refuelling berth and waste disposal systems, to ensure that the natural environment is not contaminated by the operation of the Marina which should include:
  - i. A description of their operation (including but not limited to waste and sewage management);
  - ii. Their maintenance requirements;
  - iii. Contingency measures associated with their operation (e.g. Spill/Fire Response Plan);
  - iv. Those responsible for their operation including any training required; and
  - v. Any other facility or service provided on-site identified by the Regional Council.
- (c) A Tier 1 Site Oil Response Plan as per the requirements of the Maritime Transport Act 1994.

- 9.2 The Marina Management Plan shall be submitted to the Regional Council for written certification by the Chief Executive of the Regional Council or delegate that it includes, as a minimum, the matters required by condition [9.1].
- 9.3 The Marina Management Plan must be reviewed every five years as well as upon occurrence of either or both of the following Trigger Events. That review must involve preparation of a report (Review Report) prepared by or on behalf of the consent holder which identifies any matters in the Marina Management Plan which require updating as a result of the review, and attaches an updated Marina Management Plan. The Trigger Events are:
- a) within 6 months of any planning document being lodged by a Customary Marine Title Group for Te Awanui (Tauranga Harbour) in order to respond to any matters raised in that document that are relevant to the operation of the marina; and/or
- b) within 6 months of receiving a report on the environmental and/or cultural monitoring undertaken under Conditions [13 and/or 14] of this consent in order to implement any recommendations made to address environmental and / or cultural effects that are accepted by the Consent Holder.
- 9.4 Following a review under condition [9.3], which has caused the Marina Management Plan to be updated, the updated Marina Management Plan must be submitted to the Regional Council for certification that the matters set out in the Review Report have been included in the updated Marina Management Plan.
- 9.5 Prior to the submission of the Marina Management Plan to the Regional Council for certification in accordance with conditions 9.1 and 9.2, the consent holder shall present a draft Marina Management Plan to the Kaitiaki Group for consultation and feedback on the provisions. The Kaitiaki Group shall respond within 20 working days. Should any disputes arise, these must be noted in the Review Report presented to the Regional Council for consideration in the certification of the Marina Management Plan.
- 9.6 All activities on the Marina shall be undertaken in accordance with the Marina Management Plan, certified under condition 9.2, or any subsequent plan that has been certified by the Chief Executive of the Regional Council or delegate.
- 9.7 The consent holder shall report to the Regional Council and Kaitiaki Group any breach of the Marina Management Plan by users of the marina and any remedial actions undertaken, within 24 hours within the week or on a Monday following a breach occurring on a weekend, unless the breach is significant and requires Regional Council intervention, in which case the Regional Council pollution hotline should be contacted.

## **10 Sewage Pump Out Facility**

- 10.1 The consent holder shall provide general public access to use facilities for sewage pump-out, handling and disposal to service boats. This facility shall be provided at a suitable location in the marina.
- 10.2 The consent holder shall ensure the sewage pump-out facilities are designed and operated at all times to ensure the risk of spillage from operations is avoided.
- 10.3 Appropriate equipment to contain and remove spillages of sewage shall at all times be kept stored in a convenient position near the facility and be available for immediate use.
- 10.4 Management of the sewage pump out facility, including maintenance, inspection and contingency measures shall be detailed in the Marina Management Plan required by condition 9.1.

## **11 Fuelling Facilities**

- 11.1 The consent holder shall provide general public access to use the facility for vessel refuelling.
- 11.2 As a minimum requirement, the provision of fuel facilities in this marina shall comply with:
  - (a) the Hazardous Substances and New Organisms Act 1996 and relevant regulations; and
  - (b) the most current revision of the oil industry "Code of Practice for Design, Installation and Operation of Underground Petroleum Storage Systems".
- 11.3 Fuel facilities shall be designed and operated at all times to ensure the risk of any fuel spill from refuelling operations is avoided.
- 11.4 Appropriate equipment to contain and remove spillages of fuel shall at all times be kept stored in a convenient position near the fuel station and be available for immediate use.
- 11.5 An automated system shall be used and maintained, which correlates fuel sales with fuel tank levels to ensure there is no leakage, over-filling or accidental release of fuel products to the harbour.
- 11.6 The automated fuel measuring system shall be monitored and recorded on a weekly basis; records shall be available for inspection by Regional Council staff at all times.
- 11.7 Management of the fuel facility, including maintenance, inspection and contingency measures shall be detailed in the Marina Management Plan required by condition 6.1.

## **12 Structural Monitoring**

- 12.1 The consent holder shall ensure that the entire structure is inspected within 72 hours of any significant storm event for any structural damage. Should any damage be identified through inspection or be reported to the Marina the Regional Council, the Kaitiaki Group shall be notified of the extent of the damage and any proposed action plan or repairs (See Advice Note 2).
- 12.2 All facilities provided for users of the marina as identified in condition 9.1, shall be maintained in a functional capacity at all times to ensure that users of the marina have appropriate facilities to avoid discharges to the harbour.
- 12.3 The consent holder shall undertake an independent structural integrity survey of the structures authorised by this consent every two years to ensure that it does not represent a danger to the public. The consent holder shall invite nominees of the Kaitiaki Group to be present at the marina when these surveys are taking place. Within 30 working days of the survey being completed, the consent holder shall submit to the Regional Council and the Kaitiaki Group a report, signed by a suitably qualified engineer that certifies that the structure/s are structurally sound and fit for purpose.

## **13 Environmental Monitoring**

- 13.1 The following monitoring shall be undertaken by the consent holder:
- (a) The consent holder shall undertake annual beach profile monitoring of the foreshore and seabed at three locations spaced 50 m apart fronting the Whareroa Marae for a period of five years following the completion of the construction of the northern breakwater structures.
    - i. The monitoring methodology and programme shall be agreed with the Kaitiaki Group and Ngai Te Rangi Iwi prior to implementation.
    - ii. A copy of the agreed monitoring methodology and programme shall be provided to the Regional Council prior to its implementation (see Advice Note 2 and 5).
    - iii. The consent holder shall invite nominees of the Kaitiaki Group to attend when this monitoring is taking place.
  - (b) A bathymetric survey, by an independent registered surveyor of the seabed adjacent to and under the Aerodrome Bridge (Whareroa Point) in sufficient detail to identify any scour holes around the piers and abutments at the following times:
    - i. Prior to construction of the breakwater.
    - ii. Two months following the completion of construction of the breakwater.

- iii. Six months following the completion of construction of the breakwater.
  - iv. Twelve months following the completion of construction of the breakwater.
  - v. Two years following the completion of construction of the breakwater.
  - vi. Five years following the completion of construction of the breakwater.
- (c) Within 90 days of the construction of the northern breakwater structures, sufficient tidal velocity measurements to confirm the accuracy of the results predicted by the hydrodynamic modelling presented in the Tonkin and Taylor resource consent application RC66504 for the breakwater (T&T Ref: 25762).

13.2 The following reporting and interpretation shall be undertaken by the consent holder:

- (a) The results of the beach profile monitoring required by condition 13.1 above shall be provided to the Bay of Plenty Regional Council, the Kaitiaki Group and Ngai Te Rangi Iwi within six weeks following completion of each annual monitoring exercise.
- (b) No later than one month following the completion of each survey of the seabed adjacent to and under the Aerodrome Bridge the consent holder shall submit the results of the survey to the Bay of Plenty Regional Council, the Kaitiaki Group, and to the New Zealand Transport Agency. The submission of results shall include an interpretation of the survey results with respect to measured scour depths and the design scour for the bridge.
- (c) The tidal velocity measurements undertaken, to confirm the accuracy of the results predicted by the hydrodynamic modelling presented in the Tonkin and Taylor resource consent application RC66504 for the breakwater (T&T Ref: 25762), shall be reported to the Bay of Plenty Regional Council and the Kaitiaki Group within one month of the measurements being completed.

13.3 Should the analysis required by condition 13.1(b) indicate scour depth greater than the design scour depth for the piles or abutments of the Aerodrome Bridge the consent holder shall, within six months of the submission of results to the Bay of Plenty Regional Council under condition 13.2(b), submit a mitigation plan to the Chief Executive of the Bay of Plenty Regional Council or delegate for certification. The mitigation plan shall include:

- (a) Calculations of the required depth of founding to prevent structural instability or failure due to scour over a 100 year planning period.
- (b) Details of proposed mitigation works to prevent structural instability or failure due to scour over a 100 year planning period.
- (c) Proposed construction methodology and measures to avoid, remedy or mitigate any actual or potential effects.
- (d) Feedback from the New Zealand Transport Agency (NZTA) and the Kaitiaki Group on the proposed mitigation plan and comment on how their feedback has been taken into account.

13.4 The consent holder shall implement the mitigation plan required by condition 13.3 within six months of the mitigation plan being approved by the Chief Executive of the Bay of Plenty Regional Council, or delegate.

13.5 Following receipt of any of the monitoring results or mitigation plan required by conditions 12 and 13 above, the Bay of Plenty Regional Council may serve notice on the consent holder under Section 128(1) of the Resource Management Act 1991 of its intention to review the conditions of this resource consent for the following purposes:

- (a) To ensure that the monitoring regime is appropriate and can if necessary be extended.
- (b) To ensure that the conditions of this consent are adequate to deal with any increases in tidal velocity (beyond those predicted by the hydrodynamic modelling presented in the Tonkin and Taylor resource consent application) that could result in adverse effects on other harbour users or the coastal environment.
- (c) To ensure adverse effects from erosion of the beach fronting Whareroa Marae and/or scour of the bed of Tauranga Harbour and any consequential deposition of sediment on the bed of Tauranga Harbour are suitably mitigated or avoided through an appropriate mitigation plan.

## 14 Cultural Monitoring

14.1 The Consent Holder shall either invite Ngāti Kuku, as ahi kaa, to must prepare a Cultural Monitoring Plan (CMP) and invite with input from the Kaitiaki Group, or where that invitation is not taken up by Ngāti Kuku, prepare a CMP themselves following engagement with Ngāti Kuku and the Kaitiaki Group to participate in the preparation of the CMP. The objectives of the CMP are to:

- a. Recognise and provide for the role of tangata whenua as kaitiaki, and for tāngata whenua to exercise their right to express their own preferences and apply mātauranga Māori in coastal management within their tribal boundaries and coastal waters;
- b. Monitor the effects of the occupation of space in the Coastal Marine Area by the Marina authorised under this consent on identified cultural indicators and/or values identified by the Kaitiaki Group in accordance with objective (a); and

- c. Identify circumstances in which measures may need to be implemented to avoid, remedy or mitigate any adverse cultural effects identified.

14.2 As a minimum, the CMP shall identify:

- a. The Cultural Values/Mātauranga Māori indicators to be monitored and any thresholds for actions to be taken to avoid, remedy or mitigate effects resulting from the exercise of this consent;
- b. The role and responsibilities of the persons who are to conduct the cultural monitoring;
- c. Details of the monitoring methodology and frequency, including any Mātauranga Māori monitoring proposed by the Kaitiaki Group;
- d. A reporting mechanism for results of the cultural monitoring and of any measures recommended to address cultural effects if these are identified, to the Consent Holder, who shall provide them to the Bay of Plenty Regional Council.

14.3 The CMP shall be provided to the Bay of Plenty Regional Council within 18 months of the commencement of this consent, for certification. Certification shall be limited to ensuring that the CMP complies with this condition, including that the monitoring is within the scope of this consent.

14.4 The CMP can be amended from time to time with the agreement of the Kaitiaki Group.

14.5 The consent holder shall permit access to the site to undertake the monitoring specified in the CMP. Access shall only be withheld for health and safety reasons. Records of any such restriction of access shall be kept along with the reasoning and provided to the Bay of Plenty Regional Council on request.

14.6 The consent holder must implement the CMP.

14.7 In the event that the reporting required under the CMP recommends measures to be implemented to address cultural effects, and the Consent Holder does not accept the recommendations, the Consent Holder must provide a report to the Regional Council and the Kaitiaki Group with the reasons for not accepting the recommendations.

14.8 Records of the cultural monitoring shall be kept for the duration of the consent and provided to the Bay of Plenty Regional Council within 5 working days of it requesting them.

## **15 Control of Discharges**

15.1 The consent holder shall ensure that no food, waste, debris or rubbish is discharged to the Tauranga Harbour as a result of the activities carried out under this permit.

15.2 The consent holder shall provide a facility for rubbish disposal to be used by the berth holders.

15.3 The consent holder shall supply and maintain sufficient public rubbish receptacles around the facilities associated with the marina. The consent



holder shall further take all practicable steps to ensure that birds are not attracted to the Marina by inappropriate rubbish disposal.

- 15.4 The consent holder shall supply a receptacle for the collection of waste oil and ensure that this receptacle is emptied to an approved recycling area on a regular basis.

## **16 Noise**

- 16.1 The consent holder shall ensure that the Marina uses rules which include noise limits and that the following noise limits are placed on berth holders:

- (a) Shall not exceed 55 dBA between 7:00 am and 10:00 pm.
- (b) Shall not exceed 45 dBA between 10:00 pm and 7:00 am.

- 16.2 The noise levels shall be measured and assessed in accordance with the requirement of the New Zealand Standards NZS 6801 (Methods of Measuring Noise) and NZS 6802 (Assessment of Noise in the Environment). The noise shall be measured with a sound level meter complying at least with the Standard TCE 651 (1979) Sound Level Meters Type 2.

## **17 Public Access**

- 17.1 The consent holder shall allow free access to the car parking areas, promenade to rock wall, picnic and beach areas. Further, the consent holder shall not restrict access to the south-western wave attenuator or to the walkways, except where required for purposes of public safety.
- 17.2 The consent holder shall make available free of charge one berth within the marina for visiting waka associated with Ngāti Kuku, Ngāi Te Rangi and Ngāti Ranginui upon request (see Advice Note 4).

## **18 Mitigation**

- 18.1 The consent holder shall provide a dinghy storage and launching area for use by the mooring holders on the south-western breakwater with sufficient mooring cleats and accessibility.
- 18.2 The consent holder shall provide public access on one of its pontoons for public fishing and recreation.
- 18.3 The consent holder shall provide a minimum of five berths suitable for long term stay by visiting craft (see advice note 4).
- 18.4 The consent holder shall at the first meeting with the Kaitiaki Group consult with them to incorporate features within the Marina facilities to recognise the cultural history and Mana Whenua and Mana Moana relationships to this area such as place names, te reo signage, pou, and/ or cultural kōrero boards. These features shall be developed and installed in consultation with representatives of Ngāti Kuku and the Kaitiaki Group.

- 18.5 Tauranga Bridge Marina will establish a Tauranga Bridge Marina Te Awanui Educational Scholarship and employment Programme (or alternative title) for students who whakapapa to Ngāi Te Rangī Iwi, with preference to be given to those from Ngāti Kuku and Ngāi Tukairangi hapū. The employment opportunities shall be related to the Marina and its related businesses, and the educational scholarships shall be awarded to rangatahi intending to undertake study in the fields of marine studies, fisheries, seafaring, environmental science or environmental management through an approved tertiary provider.

The scholarship donation will:

- i. Comprise a payment of \$1,500 per year for the 35 year term of the consent (CPI adjusted);
- ii. This scholarship payment may be awarded between one or more students per year, at the discretion of the Kaitiaki Group who shall administer the educational scholarship and determine the recipients, in consultation with the Consent Holder.

Conditions 18.4 – 18.5 have been offered by the Applicant and it has agreed to be bound by them in accordance with the principle in Augier.

## **19** Decommissioning

- 19.1 In the event that the consent holder does not apply for replacement consent, at least six months prior to expiry of this consent, for the continued occupation of space in the Coastal Marine Area for the Marina then the consent holder shall provide to the Bay of Plenty Regional Council a decommissioning plan for certification by 1 May 2056 and apply for consents for the disturbance of the CMA due to decommissioning (see Advice Note 5).

## **20** Section 128 Review of Conditions

- 20.1 The Bay of Plenty Regional Council may, any year, within three months of the anniversary of this consent, serve notice on the consent holder under s128(1)(a)(iii), and/or s128(1)(b) and/or s128(1)(ba) of the Resource Management Act 1991 of its intention to review the conditions of this consent. The purpose of such a review is to assess whether or not the conditions of consent need to change (and if so how) in order to:

- (a) Respond to cultural monitoring reports under condition 7 that indicate that the occupation of the CMA by the marina (including the breakwater) is causing adverse cultural effects, including to require the implementation of further mitigation, having regard to any recommendations made by the Kaitiaki Group;

- (b) Respond to ~~or~~ significant changes to beach morphology, as per the requirements of the annual beach profile monitoring required by condition 11;
- (c) Respond to matters raised as part of the independent planning review undertaken pursuant to condition 7;
- (d) Respond to and address any structural integrity issues identified in the five yearly surveys required by condition 12.3 and to provide for the ongoing maintenance of the Tauranga Bridge Marina; and/or
- (e) Respond to and address any unforeseen effects of changes in hydrodynamics and scour; and/ or
- (f) Respond to any unforeseen adverse effects on taonga, sites, areas, features or resources of significance or special value to tangata whenua, which may arise from the exercise of the consent and/or
- (g) Respond to any breach of the conditions of this consent and provide additional mitigation for any effect arising from such a breach of the consent conditions and/or
- (h) Respond to any proposed changes relating to the marina or port that are notified in the relevant regional plan and/or
- (i) Respond to an order made under the Marine and Coastal Area (Takutai Moana) Act 2011 affecting the seabed of Te Awanui at or in the vicinity of the area occupied by the marina; and/or
- (j) Respond to any new requirements in an enactment coming into force that replaces the Resource Management Act 1991; and/or
- (k) Respond to the publication of any statutory policy document in relation to the managed retreat of industrial development in the vicinity of the marina or Whareroa Marae; and/or
- (l) Respond to any report required under the Cultural Monitoring Plan that identifies recommended measures to be implemented to address cultural effects, where the consent holder does not accept the recommendations and/or implement them (refer condition 14.7).

The fair and reasonable costs associated with any such review shall be recovered by the Bay of Plenty Regional Council from the consent holder.

*Advice Note: Conditions 20 1. (a) and (c) has been offered by the Applicant and it has agreed to be bound by them in accordance with the principle in Augier.*

**21** Term

This consent shall expire **35 years** from the date of commencement of this consent.

**22** Resource Management Charges

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

**23** The Consent

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

(c) Advice Notes

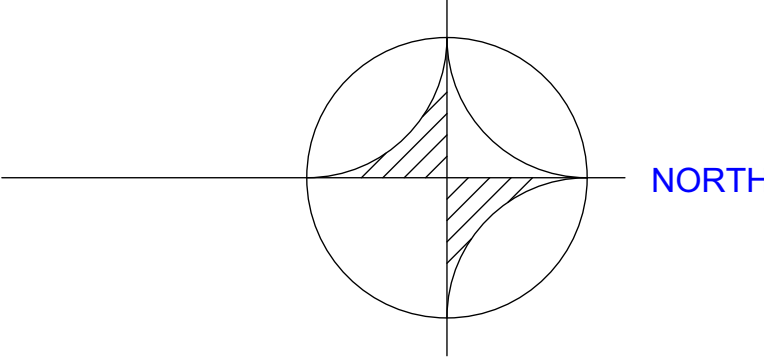
- 1 *The consent holder offered Augier conditions which have been included in this consent following an Environment Court hearing process. These have been identified in advice notes relating to each condition. For the avoidance of doubt, it is noted that all of the Augier conditions were offered by the Applicant on the basis that they are non-severable from Condition [21], being the consent term of 35 years.*
- 2 *The consent holder is advised that under the provisions of section 64A of the Resource Management Act 1991, this consent may become subject to charges for the occupation of Crown seabed and/or foreshore. At the time of issuing this consent there is no charging system in place however this consent may be affected by any charging regime implemented in the future, including any regime relevant to the grant of customary marine title or protected customary rights under Part 3 of the Marine and Coastal Area (Tukutai Moana) Act 2011.*
- 3 *Notification and reporting required by this consent should be made in writing to the Manager Regulatory Compliance, Bay of Plenty Regional Council, PO Box 364, Whakatane 3158 or email [notify@boprc.govt.nz](mailto:notify@boprc.govt.nz) and should include the consent number RM20-0629.*
- 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 should advise visiting iwi and Hapū to give notice of their intended date and time of arrival and departure to the Marina management so a berth location can be confirmed prior to arrival.*
- 6 The consent holder shall be liable for all reasonable costs incurred by the Regional Council under S36(1)(c) of the RMA associated with the implementation of the conditions of this consent.*
- 7 The consent holder is advised to refer to the policies governing marinas, outlined in the proposed Coastal Environment Plan, when drawing up its Marina Management Plan. Policies include, but are not limited to Policy SO6, SO11, SO12, CD6, CD7, CD 12 and CD13.*
- 8 DEFINITIONS OF TERMS within these conditions refer to definitions within the Regional Coastal Environment Plan (2020).*

# Appendix B

## TE AWANUI TAURANGA HARBOUR



SMALL CRAFT MOORING AREA

No10 BEACON  
DATUM F Maketu  
X = 709796 Y= -274344

TAURANGA  
HARBOUR  
BRIDGE

AREA OF OCCUPATION  
SHOWN WITH DASHED  
RED LINE

FLOATING BREAKWATER

No8 BEACON

PROPOSED STEEL  
PILES & CONCRETE  
BREAKWATER WITH  
ART MOTIF

EXISTING  
PONTOON

PROPOSED STEEL  
PILES & CONCRETE  
BREAKWATER WITH  
ART MOTIF

A PIER

B PIER

C PIER

D PIER

E PIER

F PIER

G PIER

H PIER

J PIER

DINGHY  
RACKS

PUBLIC  
PICNIC AREA

Rock wall

Rock wall

FUEL & SEWAGE  
PUMP OUT

EXISTING  
PONTOON

NEW 4m WIDE x 36m LONG  
DOUBLE SKIRTED FUEL DOCK  
PROPOSED FLOATING  
ATTENUATORS BY OTHERS

HAUL OUT

BOAT HARDSTAND

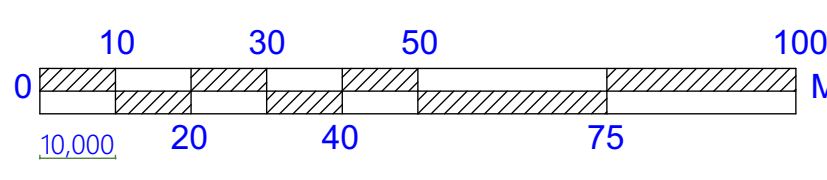
EXISTING BUILDING

MAIN CARPARK

EXISTING ENTRY &  
EXIT LANES

TAURANGA HARBOUR BRIDGE

INNER  
HARBOUR



**NEW BREAKWATER PLAN**  
TAURANGA BRIDGE  
MARINA  
SCALE: 1:1000 @ A3  
DRAWN: 10.08.2023  
REV 1

DRAWN BY: HST DRAFTING  
021 448 485  
Contractor must verify all dimensions on the  
job before commencing any work