

Decision Report

Bay of Plenty Regional Council Environmental
Delivery Group's

Resource Consent Applications to Bay of Plenty Regional Council
(67958 and 68114)

and

Notices of Requirement to Western Bay of Plenty District Council
(4944(L) and 5080(L))

1 July 2015

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1 Appointments

The Western Bay of Plenty District Council (WBPDC) and Bay of Plenty Regional Council (BPRC), both acting under section 34A of the Resource Management Act 1991 (RMA), appointed the following independent hearing commissioners to conduct a hearing into the Bay of Plenty Regional Council Environmental Delivery Group's (Applicant) resource consent applications to BPRC (numbers 67958 and 68114) and notices of requirement to the Western Bay of Plenty District Council (numbers 4944(L) and 5080(L)) regarding the proposed re-diversion of water from the Kaituna River into the Ōngātoto/Maketū Estuary and the creation and enhancement of wetland areas and public recreational facilities including a public boat ramp and car parking area and associated works (the proposal):

- Rob van Voorthuysen¹ (Chair); and
- Antoine Coffin²
- Nigel Mark-Brown³

2 Description of the Proposal and Approvals Sought

The nature of the proposal was very fully described in the application documents, the Section 42A Report,⁴ and the Applicant's opening legal submissions and evidence. By way of high level overview, we note that the proposal comprises the following key elements:

- (a) A new channel from the river upstream of Ford Road, along the south of Fords Road, and meeting the existing Ford's Cut;
- (b) More culverts added to the existing Ford's Cut culverts, as well as widening and deepening of Ford's Cut, to allow a larger flow of water (an additional 15% to make 20%) into the estuary;
- (c) A block between Ford Island and Ford Road to stop saline intrusion, the majority of which will be planted or will restore naturally as wetland, with the northern tip likely to be used for re-located mooring facilities and vehicular access to the Island;
- (d) An upgraded public boat ramp and facilities, including carparking, on the Corbett land to the south of the Island;
- (e) Removal of the small stopbanks to the north of Ford's Cut and the causeways blocking flow in the upper estuary between Papahikahawai Island and Maketu Spit;
- (f) Placement of material for erosion protection and ecological enhancement works on and adjacent to the southern edge of Papahikahawai Island; and
- (g) The establishment of wetland ecosystems along the new channel, Ford's Cut, and to the north of Ford's Cut.

Ancillary works include an additional culvert between the Kaituna River and the Lower Kaituna Wildlife Management Reserve and the construction of a light vehicle / pedestrian bridge between the Spit and Papahikahawai Island.⁵

The application comprises nineteen resource consents sought from the BPRC and two notices of requirement sought from the WBPDC.⁶

¹ Commissioner van Voorthuysen is an experienced commissioner, having sat on over 220 hearings throughout New Zealand since 1998. He has qualifications in engineering and public policy and is a full member of the NZPI.

² Commissioner Coffin is a cultural heritage expert with 17 years experience in Maori planning. He has qualifications in Maori language, strategic planning and business.

³ Commissioner Mark-Brown has sat as a commissioner on over 30 hearings and is also a practicing chartered professional engineer with wide experience in flood management and assessment of environmental effects from construction activities

⁴ Hearing Agenda, Bay of Plenty Regional Council - 1370 67958 and 1370 68114 Western Bay of Plenty District Council – RC4944(L) and RC5080(L), 7th April 2015, Shanani Miles, Sections 4 and 5.

⁵ Submissions on behalf of the Applicant, paras 22 and 23, page 5.

⁶ Hearing Agenda, Sections 4.1 and 4.2, pages 3 to 6.

The resource consents required are:

- Under section 9(2) of the Resource Management Act 1991 and Rule 1C of the Bay of Plenty Regional Water and Land Plan as a Discretionary Activity – for land disturbing activities (including earthworks within the Riparian Management Zone of a river or stream and earthworks within the Coastal Margin setbacks);
- Under section 9(2) of the Resource Management Act 1991 and Rule 2C of the Bay of Plenty Regional Water and Land Plan as a Discretionary Activity – for land disturbing activities by way of vegetation clearance (including vegetation clearance within the Riparian Management Zone of a river or stream during earthworks activities);
- Under sections 15(1)(a) and 15(1)(b) of the Resource Management Act 1991 and Rule 37 of the Bay of Plenty Regional Water and Land Plan as a Discretionary Activity – for the temporary discharge of (sediment) contaminated water to water and to land (in circumstances where contaminants may enter water) during construction activities;
- Under sections 14(2) and 14(3) of the Resource Management Act 1991 and Rule 43 of the Bay of Plenty Regional Water and Land Plan as a Discretionary Activity – for the temporary take of water during construction activities;
- Under sections 14(2) and 14(3) of the Resource Management Act 1991 and Rule 48 of the Bay of Plenty Regional Water and Land Plan as a Discretionary Activity – for the permanent diversion of water from the Kaituna River into Ongatoro / Maketū Estuary and to the Lower Kaituna Wildlife Management Reserve;
- Under sections 13(1) and 13(2) of the Resource Management Act 1991 and Rule 71 of the Bay of Plenty Regional Water and Land Plan as a Discretionary Activity – for the placement of structures on, and the disturbance of, the bed of the Kaituna;
- Under section 9(2) of the Resource Management Act 1991 and Rule 85 of the Bay of Plenty Regional Water and Land Plan as a Discretionary Activity – for the modification of the Ongatoro/Maketū Estuary and Lower Kaituna Wildlife Management Reserve Wetlands through permanent changes in water flow and temporary discharges of sediment during construction activities;
- Under sections 15(2) and 15(2A) of the Resource Management Act 1991 and Rule 19(z) of the Bay of Plenty Regional Air Plan as a Discretionary Activity – for the temporary discharge of dust during construction activities;
- Under section 12(3) of the Resource Management Act 1991 and Rule 9.2.4(b) of the Bay of Plenty Regional Coastal Environment Plan as a Discretionary Activity – to temporarily discharge sediment contaminated water into the Coastal Marine Area during construction activities;
- Under section 12(3) of the Resource Management Act 1991 and Rule 10.2.4(d) of the Bay of Plenty Regional Coastal Environment Plan as a Discretionary Activity – to temporarily take coastal water from within the Ongatoro/Maketū Estuary at a rate greater than 15 cubic metres per day during construction activities;

- Under section 12(3) of the Resource Management Act 1991 and Rule 10.2.4(e) of the Bay of Plenty Regional Coastal Environment Plan as a Discretionary Activity – to temporarily dam coastal water during construction activities;
- Under sections 12(3) and 14(2) of the Resource Management Act 1991 and Rule 10.2.4(g) of the Bay of Plenty Regional Coastal Environment Plan as a Discretionary Activity – to divert coastal water from the Kaituna River into the Ongatoro/Maketū Estuary;
- Under section 12(3) of the Resource Management Act 1991 and Rule 10.2.4(g) of the Bay of Plenty Regional Coastal Environment Plan as a Discretionary Activity – to temporarily divert coastal water during construction activities;
- Under sections 12(1) and 12(3) of the Resource Management Act 1991 and Rule 12.2.4(a) of the Bay of Plenty Regional Coastal Environment Plan as a Discretionary Activity – for the occupation of the Coastal Marine Area;
- Under sections 12(1) and 12(3) of the Resource Management Act 1991 and Rule 13.2.4(h) of the Bay of Plenty Regional Coastal Environment Plan as a Discretionary Activity - for structures within the Coastal Management Zone;
- Under sections 12(1) and 12(3) of the Resource Management Act 1991 and Rule 14.2.4(b) of the Bay of Plenty Regional Coastal Environment Plan as a Discretionary Activity - for the disturbance of, removal of material from, and the deposition of material on, the foreshore and seabed;
- Under sections 12(1) and 12(3) of the Resource Management Act 1991 and Rule 14.2.4(e) of the Bay of Plenty Regional Coastal Environment Plan as a Discretionary Activity – for construction activities associated with a Discretionary Activity;
- Under sections 12(1) and 12(3) of the Resource Management Act 1991 and Rule 14.2.4(j) of the Bay of Plenty Regional Coastal Environment Plan as a Discretionary Activity – for the removal, damage, modification and destruction of indigenous vegetation in the foreshore and seabed; and
- Under sections 12(1) and 12(3) of the Resource Management Act 1991 and Rule 15.2.4(b) of the Bay of Plenty Regional Coastal Environment Plan as a Discretionary Activity – for a reclamation within the Coastal Management Zone.

The notices of requirement sought are:

- Designation for the construction of boating facilities, enhancement works, earthworks and diversion works; and
- Designation for the operation and maintenance of the Project including diversion, enhancement works and boating facilities.

There are no outstanding consents required for the proposal that have not been applied for. We are satisfied that all of the activities proposed, including monitoring and mitigation, are provided for under the suite of resource consents sought. We note that the on-shore facilities associated with the Waterhouse and Coastguard relocated moorings are provided for under the notices of requirement. An outline plan will be required for those facilities,

however no further land use consents for them are required from the Western Bay of Plenty District Council.

3 Notification, Submissions and Written Approvals

The applications were publicly notified on a number of dates in September and December 2014. In total fifty four submissions were received. Acting under our delegated authority, we accepted nine late submissions on the notices of requirement.⁷ The submissions were summarised in detail in the Section 42A Report.⁸ We adopt those summaries but do not repeat them here. However, we record that we read all of the submissions in full.

No written approvals were received for either the resource consent applications or the notices of requirement.

4 Process Issues

4.1 Section 113 of the RMA

Section 113(3) of the Resource Management Act (RMA) states:

- A decision prepared under subsection (1) may, -
- (a) instead of repeating material, cross-refer to all or a part of -
 - (i) the assessment of environmental effects provided by the applicant concerned;
 - (ii) any report prepared under section 41 C, 42A, or 92; or
 - (b) adopt all or a part of the assessment or report, and cross-refer to the material accordingly.

In this case the application documents and the Applicant's submissions and evidence were of an extremely high level of comprehensiveness and quality. The same can be said of the Section 42A Report and evidence presented by the submitters who chose to appear at the hearing. Due in large part to the constructive consultative approach adopted by the Applicant, by the conclusion of the hearing there were relatively few matters of significance remaining in contention for a proposal of this scale.

We note that the documentation for the hearing (the application, supporting technical reports and peer review reports and memoranda, S42A Report and hearing evidence) totalled over 3000 pages. We do not wish to unnecessarily add to that substantive amount of documentation. Accordingly, in the interests of brevity and economy, we intend to make extensive use of section 113 of the RMA and we will not dwell on matters that were not in contention. That is not to say we have glossed over or ignored any matters that were not in contention. We have carefully reviewed the documentation relating to those matters and have satisfied ourselves that the outcomes agreed between the Applicant, submitters and reporting officers are appropriate.

4.2 Consultation

Under section 36A of the RMA there was no obligation on the Applicant to undertake consultation for either the resource consent applications or the notices of requirement. Notwithstanding that, the Applicant nevertheless completed what in our view was a very comprehensive consultative process that was helpfully summarised in the evidence of Mr Pim de Monchy.⁹ Consequently, rather than paraphrasing that part of Mr de Monchy's

⁷ There were 38 in time submissions and 9 late submissions received on the Wider Proposal. The 9 late submissions on the resource consents were accepted by BPRC staff under their delegated authority. There were 8 submissions received on the amended boat ramp proposal (Hearing Agenda Sections 7 and 8, pages 14 to 16).

⁸ Hearing Agenda, Section 8.1, pages 16 and 17 and Appendix 11.

⁹ de Monchy, Evidence, paras 43 to 68, pages 13 to 21. Mr de Monchy is the Manager Kaituna Catchments at the BPRC and the Project Manager for the proposal.

evidence we have instead included it in full in Appendix 2 of this decision. It is to be read and taken as part of our decision.

We also note that the Applicant obtained Cultural Impact Assessments (CIAs) from relevant Tangata Whenua groups: Ngati Rangiwewehi,¹⁰ Ngati Whakaue ki Maketū,¹¹ Tapuika,¹² and Waitaha, Ngati Makino, Ngati Pikiāo and Ngati Tunohopu.¹³ We record that we read each of those CIAs. We discuss this further in section 7.9 of this decision.

5 Hearing and Appearances

The hearing was held in the Corbett Marae located at Ford Road, Maketu, from Monday 4 May 2015 to Thursday 7 May 2015. The commissioners undertook a site visit on the afternoon of 6 May 2015 accompanied by Mr de Monchy and Mr Dylan Makgill (for the land portion) and additionally by Mr Rodney Waterhouse and his son for the part of the site inspection undertaken by boat. We are grateful to Mr Waterhouse and his son for providing their boat and their time for that.

The Applicant undertook to provide their Reply in writing and we received that on Thursday 21 May 2015. We thereafter closed the hearing on the afternoon of Wednesday 27 May 2015, having satisfied ourselves that we did not require any further information from the reporting officers, the submitters or the Applicant. The date by which our decision was required to be delivered was extended by 15 working days, with the Applicant's approval, under section 37A(4)(b)(ii) of the RMA, given the complexity of the proposal and the interests of the community in us achieving an adequate assessment of its effects (RMA section 37A(1)(b)).

A list of the parties who appeared at the hearing is provided in Appendix 1 of this decision. We have not attempted to summarise each of the written and verbal submissions, statements or evidence received during the course of the hearing as that would result in an unnecessarily long decision. Copies of that written material are held by the WBPDC and the BPRC. We took our own notes of the verbal statements and evidence presented to us, and any answers to our questions. We have however referred to, summarised or quoted from relevant elements of some of the submissions, statements and evidence in the balance of this decision.

We note that some of the evidence presented at the hearing by the Applicant refined and updated matters dealt with in the AEE. This included matters relating to the proposed new moorings for Mr Waterhouse and the Coastguard, the on-shore facilities associated with those moorings, the extent of monitoring to be undertaken to assess river bank erosion in the lower Kaituna River and the provision of a culvert to service the Lower Kaituna Wildlife Management Reserve.

6 Statutory Instruments

6.1 Policy statements and plans

The planning instruments that provide the planning and policy framework for our consideration of the applications are as follows:

- New Zealand Coastal Policy Statement 2010
- National Policy Statement for Freshwater Management 2014

¹⁰ Prepared by Te Maru o Ngati Rangiwewehi Iwi Authority.

¹¹ Prepared by Te Runanga o Ngati Whakaue ki Maketū.

¹² Prepared by Conroy & Donald Consultants Limited on behalf of Tapuika Iwi Authority.

¹³ Prepared by Mauri Tau Solutions Limited and Hinemoana Associates on behalf of Waitaha, Ngati Makino, Ngati Pikiāo and Ngati Tunohopu.

- Operative Bay of Plenty Regional Policy Statement 2014
- Operative Regional Coastal Environment Plan 2003
- Proposed Regional Coastal Environment Plan 2014
- Operative Regional Water and Land Plan 2008
- Operative Bay of Plenty Regional Air Plan 2003
- Operative Western Bay of Plenty District Plan 2012

We note that the National Policy Statement for Freshwater Management 2014 is of limited relevance in this case as the footprint of the proposal falls entirely within the coastal environment. This is evident from Map 23 of the Operative RPS. The New Zealand Coastal Policy Statement 2010 is therefore the dominant superior instrument, apart of course from the RMA itself.

The applications¹⁴ were comprehensively evaluated against these statutory instruments and plans in the Section 42A Report.¹⁵ The reporting officer's advice to us under both sections 104(1)(b) and 171(1)(a) of the RMA was:

“Overall, in my opinion, granting the resource consent and confirming the notice of requirement sought by the Applicant is consistent with the outcomes sought by the relevant provisions within the planning instruments identified and ... as such is consistent with these instruments.”¹⁶

The wider proposal was also assessed against the statutory instruments in a comprehensive manner in the application document.¹⁷ It concluded that in overall terms the proposal was consistent with the objectives and policies of those instruments. Planning evidence for the Applicant was provided by Stephanie Brown. She did not address the statutory instruments, relying instead (we understand) on the assessment that she undertook and included in the application document. We note that the application document did not assess the Proposed Regional Coastal Environment Plan 2014, on the basis that “... the Proposed Plan has only just been notified it has not been subject to testing and could change, [so] little weight should be applied [to it].”¹⁸

Consequently, we asked Ms Brown about the extent to which the proposal was consistent with Policies NH 4, NH 5 and NH 11 of the Proposed Regional Coastal Environment Plan 2014, given the direction in those policies to avoid adverse effects on indigenous biodiversity and outstanding natural features and landscapes.¹⁹ Ms Brown advised that in her view the proposal would give rise to a demonstrable and regionally significant social, cultural and natural heritage benefit (satisfying Policy NH 5(a)) and that adverse effects on the indigenous biodiversity values and attributes that could not be avoided, remedied or mitigated were proposed to be offset, so as to result in no net loss and preferably a net indigenous biological diversity gain (satisfying Policy NH 11(d)).

We have reviewed the relevant provisions of the statutory instruments and plans ourselves and we concur with the advice of the reporting officer and Ms Brown. In particular, we find that the Applicant's proposal is highly consistent with the following objectives and policies of

¹⁴ Where we use the term “applications” we mean the resource consent applications and the notices of requirement

¹⁵ Hearing Agenda, Sections 12.3 to 12.6, pages 92 to 115.

¹⁶ Hearing Agenda, Section 12.7, page 115.

¹⁷ Kaituna River Re-diversion and Ongatoro/Maketu Estuary Enhancement Project, Notice of Requirement and Resource Consent Application, OPUS, July 2014, Part 10, pages 97 to 102, and Appendix 2.

¹⁸ Ibid, Appendix 2, page xxxix.

¹⁹ Part of the proposal lies within ONFL 11, an Indigenous Biological Diversity Area A and an Indigenous Biological Diversity Area B (see maps 16a and 16b of the Proposed RCEP).

the NZCPS 2010, which as we have noted is the superior instrument (apart from the Act itself) to which we must have regard under section 104(1)(b) of the RMA for this proposal:

Objective 2

To preserve the natural character of the coastal environment and protect natural features and landscape values through: ...

- encouraging restoration of the coastal environment

Objective 3

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

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

Policy 14 Restoration of natural character

Promote restoration or rehabilitation of the natural character of the coastal environment, including by:

- (a) identifying areas and opportunities for restoration or rehabilitation; ...
- (c) where practicable, imposing or reviewing restoration or rehabilitation conditions on resource consents and designations, including for the continuation of activities; and recognising that where degraded areas of the coastal environment require restoration or rehabilitation, possible approaches include:
 - (i) restoring indigenous habitats and ecosystems, using local genetic stock where practicable; or
 - (ii) encouraging natural regeneration of indigenous species, recognising the need for effective weed and animal pest management; or
 - (iii) creating or enhancing habitat for indigenous species; or
 - (iv) rehabilitating dunes and other natural coastal features or processes, including saline wetlands and intertidal saltmarsh; or
 - (v) restoring and protecting riparian and intertidal margins; or
 - (vi) reducing or eliminating discharges of contaminants; or
 - (vii) removing redundant structures and materials that have been assessed to have minimal heritage or amenity values and when the removal is authorised by required permits, including an archaeological authority under the Historic Places Act 1993; or
 - (viii) restoring cultural landscape features; or
 - (ix) redesign of structures that interfere with ecosystem processes; or
 - (x) decommissioning or restoring historic landfill and other contaminated sites which are, or have the potential to, leach material into the coastal marine area.

In particular, we find that the Applicant's proposal embodies elements that are consistent with all of the components of NZCPS Policy 14(c), except perhaps clause (x) which is not relevant in this case.

We record that we heard no planning evidence that suggested the proposal was inconsistent with any of the statutory instruments. In that regard we did receive qualified expert planning evidence from Christine Ralph on behalf of the Te Tumu Landowners Group. However, Ms Ralph's assessment of the statutory instruments was limited to the extent to which they required the adoption of a precautionary approach.²⁰ We record that we are not persuaded that a precautionary approach is warranted in this case, as we find on the evidence that the

²⁰ Ralph Evidence, 7 April 2015, paras 61 to 68, pages 18 to 20.

adverse effects of concern to Ms Ralph²¹ are not ‘potentially significantly adverse, serious or irreversible’ as was suggested by her. We return to that matter later in Section 7.5 of this decision report.

We record that we have had regard to all of the statutory instruments and have considered them when evaluating the applications and the matters raised in the submissions.

6.2 Iwi management plans

The reporting officer²² brought three relevant iwi management plans to our attention. These were the Nga Aukati Taonga o Tapuika me Waitaha 1993 (a joint Iwi Management Plan prepared by Tapuika and Waitaha); the Ngati Rangiwewehi Iwi Environmental Management Plan 2012; and the Ngati Whakaue Iwi Resource Management Plan 2011. Mr Miles advised that the relevant sections of these plans had been identified and addressed within the Cultural Impact Assessments.²³ We concur with that advice and record that we have had regard to these iwi management planning instruments and considered them when evaluating the applications and the submissions. In particular, we find that the consent conditions relating to the “Tangata Whenua Involvement Plan” (Conditions 8A.1 to 8A.5) will greatly assist with the material exercise of kaitiakitanga, a RMA section 7(a) matter to which we must have particular regard.

6.3 Sections 105 and 107 of the RMA

For the discharge permits sought we must have regard to sections 105 and 107 of the RMA. These matters were addressed in the Section 42A Report. With regard to section 105 of the RMA Mr Miles advised:²⁴

“... in summary it is my opinion that the proposed discharges are appropriate having had regard to the matters prescribed within section 105”;

Having reviewed the application documents and the evidence we agree with Mr Miles on the section 105 matters.

In particular we note that the primary discharge which is the subject of the applications is the re-diversion of Kaituna River water back into the Maketu Estuary. While the estuary is a sensitive receiving environment (section 105(1)(a)), the reason for the Kaituna River re-diversion discharge is to deliver an environmental restoration and enhancement outcome that will partially restore the natural hydrological situation that existed prior to the creation of the Te Tumu diversion in 1956 (section 105(1)(b)). There is no alternative environment into which the Kaituna River re-diversion discharge can occur to achieve the desired outcome (section 105(1)(c)).²⁵

With regard to section 107 of the RMA Mr Miles advised:²⁶

“...in summary, the proposed discharge is not anticipated to result in any of the items detailed with sections 107(1)(c) through 107(1)(g). Appropriate conditions are to be included on the discharge permit as prescribed by section 107(3) of the Act.”

Again, having reviewed the application documents, the Section 42A Report and associated peer reviews and the Applicant’s evidence, we agree with Mr Miles.

²¹ Exacerbated erosion of the Te Tumu Landowners land adjacent to the Kaituna River.

²² Hearing Agenda, Section 12.10, page 119.

²³ Ibid.

²⁴ Hearing Agenda, section 10.1.3, page 22.

²⁵ There are alternative re-diversion methods and we consider those in section 7.1 of this decision.

²⁶ Ibid, Section 10.1.4, page 23.

In particular we note that we received no expert evidence suggesting that the primary discharge which is the subject of the applications will result in the production of any conspicuous oil or grease films, scums or foams, or floatable or suspended materials (other than entrained sediment which we address in section 7.2 of this decision), nor any conspicuous change in the colour or visual clarity (again other than entrained sediment). There will not be any emission of objectionable odour, nor any significant adverse effects on aquatic life.

In relation to the Titchmarsh water intake, the effects of the proposal could potentially render fresh water unsuitable for consumption by farm animals. However, the Applicant has proposed comprehensive conditions which in our view fully mitigate this potential effect. In fact they provide for betterment of the current situation. We discuss this further in section 7.12 of this decision.

To the extent that any of the section 107(1) effects occur during construction, we allow those effects under section 107(2) because we are satisfied that discharges giving rise to those effects will be of a temporary nature (section 107(2)(b)).

7 Matters of Contention

7.1 Matters Agreed

As we stated at the beginning of this decision, by the conclusion of the hearing there were relatively few matters of significance that remained in contention for a proposal of this scale. Some matters of concern to submitters were resolved prior to or during the hearing. These matters were:

- The concerns expressed in the submissions of the Department of Conservation and Fish and Game New Zealand about potential adverse effects on the Lower Kaituna Wildlife Management Reserve, due to reduced water flows into the reserve. This matter was resolved by Conditions 23.1 to 23.4 which include requirements for investigations, planning and monitoring of an additional culvert to supply water to the wetland. We understand these conditions have been agreed between the submitters and the Applicant and this was confirmed by the Fish and Game witness²⁷ who appeared at the hearing. We have reviewed those conditions ourselves and find them to be an appropriate means of safeguarding the values of the Management Reserve and so we do not address this matter further.
- The concerns of Powerco regarding potential adverse effects on its assets within the Project area. Conditions 15.1 to 15.5 of the resource consents require a Network Utility Management Plan and the consent holder to liaise with Powerco in terms of overseeing and approving works that impact on its services. We note that Powerco did not appear at the hearing.
- Traffic effects, particularly in terms of the Ford Road Bridge. Conditions 5.1 to 5.7 of the notices of requirement require a Construction Traffic Management Plan to be provided to the Bay of Plenty District Council. The appropriateness of this approach was confirmed by the Bay of Plenty District Council witness who appeared at the hearing (Marc Fauvel).
- Mr Flauvel for the Bay of Plenty District Council also advised²⁸ that his Council's concerns relating to operational procedures for the re-diversion intake (regarding flooding risk at Maketu township), beach and dune restoration at the Maketu

²⁷ John Meikle

²⁸ Statement of Evidence of Marc Fauvel, Western Bay of Plenty District Council, 5 may 2015

foreshore, monitoring of the Maketu township foreshore and ecological effects, the drainage of farmland, boating facilities (providing new facilities at Te Tumu as part of the proposal) and dredging at Maketu (the Otumakoro Stream culvert) had all been resolved to the satisfaction of the Council.

- Vehicular access to Ford Island. Access acceptable to the island's owners is to be provided across the proposed new salinity block.
- Stakeholder input to the preparation of the Operations and Maintenance Manual. Resource consent condition 26.2(a) requires that the Operations and Maintenance Manual is to be prepared in consultation with the Bay of Plenty Regional Council Rivers and Drainage Manager and Western Bay of Plenty District Council.
- The provision of temporary and permanent alternative moorings for Mr Waterhouse and the Maketu Coastguard. These are to be provided and are addressed in the resource consent conditions 11.5(f) and (g) (for the temporary mooring during construction of the Project) and 17.2 (for the permanent mooring). We heard from both Mr Waterhouse and the Maketu Coastguard at the hearing and each submitter confirmed the appropriateness of these arrangements and consent conditions.

We are satisfied that the above matters have been appropriately resolved.

7.2 Matters Outstanding

The outstanding matters were usefully summarised in the Applicant's Reply submissions. In this section of our decision we consider what we find to be the remaining matters of contention, noting that we separately discuss the statutory tests relevant to the notices of requirement in section 8.

The remaining matters in contention were:

- Alternative proposals
- Water quality and ecology
- Erosion of Te Tumu Landowners land
- Navigability of the Te Tumu bar
- Navigability of the Te Tumu channel
- Recreational boat users
- Maketu spit erosion
- Excavation of Maketu flood tide delta
- Maketu boat ramp
- Ongoing Tangata whenua involvement
- Titchmarsh water intake
- Titchmarsh and Brain land

We consider each of these matters in the sections of this decision that follow.

Readers will note that the manner in which the following matters are addressed varies. For example, in some cases we quote from the evidence that was before us and in other cases we summarise what we consider to be the key points from that evidence. This variance results from each of the three commissioners drafting different sub-sections of this part of the decision, once our deliberations on the above listed matters had been concluded. We

record that notwithstanding this different drafting style, the stated findings on each matter addressed below are agreed by the entire panel.

7.3 Alternative proposal

We consider the Applicant's assessment of alternatives in section 8.1 below. However, at this point in our decision we address the concerns of one submitter, Mr Don Paterson, who proposed an alternative re-diversion option utilising an 'overtopping' weir at Te Tumu that would divert water back down the natural Kaituna River channel flowing into Papahikahawai Creek. Mr Paterson's proposal had been previously considered by the Applicant and their reasons for not adopting it were set out in a memorandum prepared by Stephen Everitt of WaterLine Engineering Consultants.²⁹ Mr Everitt also addressed Mr Paterson's alternative proposal in his evidence to us. Mr Everitt stated:

"In my discussions with Mr Paterson we agreed that the most benefit to the estuary would be achieved by diverting all of the Kaituna River water back into the estuary – this is consistent with the full diversion option investigated for many years. To achieve this Mr Paterson proposed an overtopping weir at Te Tumu that diverted all the river water into the estuary and prevented saltwater entering the river and then the estuary. On 5 March 2014 I documented my understanding of his proposal and on 6 March 2014 Mr Paterson agreed I had done so correctly.

On 17 March 2014 I documented my assessment of the feasibility of his proposal from an engineering perspective, from which I now summarise the critical point.

The weir at Te Tumu would prevent floodwaters from exiting the river and raise flood levels upstream. He and I agreed on this adverse effect for which previous investigators including myself had proposed flood relief gates at Te Tumu. In disagreement Mr Paterson proposed that the low height weir would soon overtop causing outward rushing river water to erode sideways and then down and scour out a flood relief channel.

I could not agree with Mr Paterson that this mode of flood relief would be predictable, reliable and timely to prevent flooding of farmland and Maketū township. Furthermore, after the flood, the sand would have to be replaced either side of the overtopping weir to re-divert the river water back into the estuary.

In his submission (3rd para 5th page), Mr Paterson proposes another alternative differing from that on which we agreed. Mr Paterson proposes that the river entrance at Te Tumu is **not** blocked with an overtopping weir thus allowing satisfactory flood passage, with which I concur. To prevent highly saline water entering the estuary through his re-opened old river channel into the Papahikahawai Creek, he now proposes to construct a low height weir low enough to pass mid to high tide water flows. He proposes this will allow predominantly freshwater that floats on top of saltwater into the estuary and prevent the underlying saltwater entering the estuary.

This is an option that was considered (Options N and P) and which is summarised in Options and Alternatives Report of September 2013, at page 15. These investigations concluded this option will not separate freshwater from saltwater. The work done by DHI shows that the water coming in through Te Tumu on the rising tide is highly saline due to the mixing of freshwater and seawater at the turbulent water of the seashore. Furthermore, the low height weir will allow water out of the estuary back through Te Tumu, again contrary to the objective to get more water flowing out through the Maketū estuary entrance.

In my view, the various alternatives to the Project have been thoroughly considered and assessed, and I support the Project as proposed.³⁰

²⁹ Kaituna River Rediversion and Wetland Creation Project – Consideration of Don Paterson's Option', dated the 17th of March 2014

³⁰ Evidence of Stephen Everitt, paragraphs 92 to 98, pages 21 and 22.

Mr Paterson is a registered natural therapies practitioner. He did not present any expert technical evidence in support of his alternative proposal or his claim that it was superior to the Applicant's proposal. In contrast Mr Everitt is a highly qualified and experienced water and soil engineer. We find Mr Everitt's evidence on this matter to be compelling. We are satisfied that the Applicant has meaningfully assessed Mr Paterson's alternative proposal and we are not persuaded that Mr Paterson's alternative proposal is superior to the Applicant's proposal. We do not consider Mr Paterson's alternative proposal further.

7.4 Water quality and ecology

One of the primary aims of the Applicant's proposal is to improve the water quality and ecology of the Maketu Estuary. Evidence on this matter for the Applicant was provided by Keith Hamill, a highly qualified and experienced environmental scientist. Mr Hamill helpfully summarised his opinion on these matters as follows [abridged by us]:

"Ongatoro / Maketū Estuary has important ecological values yet large areas of the estuary are highly degraded. The degradation is due to dense accumulations of benthic algae that occur in the upper estuary, Papahikahawai Lagoon and margins of the mid-estuary and southern estuary. The dense algal accumulations result in anoxic muds and a loss in the abundance and diversity of shellfish and other benthic fauna. In some parts of the upper estuary benthic macrofauna have been completely excluded. The dense algal accumulations also cause very low dissolved oxygen (DO) concentrations. The DO in the main channel of the mid-estuary is sufficiently low to frequently exclude (or kill) most fish species at night. In simple terms, the life-supporting capacity of Ongatoro / Maketū estuary is significantly compromised.

Changes expected due to the Project that are relevant to ecology include:

- Considerably more flushing of benthic algae and associated muds. This is driven by an increase in both the maximum current speed and residual current speed towards the entrance. Higher current speeds may also improve shellfish feeding.
- Slightly lower salinity in most of the estuary (but a slightly higher mean and range in the upper estuary). This will generally make conditions a little less favourable for the algae *Gracilaria* sp., sea lettuce but a little more favourable for sea grass germination.
- An overall increase in nitrogen (N) and phosphorus (P) concentrations due to a greater river load (ranging from a 4% reduction in the upper estuary to a 25% increase in the lower estuary), but a corresponding decrease in N and P released from anoxic muds associated with algae accumulations. The reduced internal load is unlikely to fully balance the additional load of N from the river but may potentially more than balance the additional load of P from the river. The risk of additional nutrients stimulating faster sea lettuce growth is expected to be small because sea lettuce is already replete in N and P.

The Project will increase the salinity in the Kaituna River near the intake and increase the upstream extent of the salt wedge by about 200m. Fish and macroinvertebrates in this section of the Kaituna River have wide salinity tolerances and the overall effect on fish and invertebrates is expected to be small.

The lower Kaituna River near the proposed intake is an important area for inanga rearing and spawning. The predicted change in the extent of the saline wedge is small compared to natural variability and there will be negligible impact on potential inanga spawning and rearing sites.

Construction of the intake for the proposed re-diversion will result in the loss of about 100m of current wetland margin. The Project more than compensates for this loss by the creation of additional vegetated riparian habitat along the edge of the new channel and Ford's cut.

The proposed re-diversion will increase the microbial load from the Kaituna catchment into Ongatoro / Maketū estuary. This will have negligible impact on the suitability of the lower estuary for recreational bathing, but there is a risk of increased microbial contamination of shellfish in the mid and lower estuary High microbial concentrations currently occur in the

Maketū estuary following rain events; this will remain the case after the re-diversion. The current and future health risk can be managed by not collecting shellfish within 2 to 5 days of a rain event. This advice is unlikely to change without controlling contaminants from the wider catchment. Other initiatives are being implemented that should reduce catchment microbial loads in the long term.

A range of ecological and water quality monitoring is proposed to measure the extent of the benefits and assist with ongoing management of the estuary.”³¹

We queried Mr Hamill regarding the number of extra days that shellfish might not be able to be safely taken from the Maketu Estuary as a result of the proposal. This was a matter of concern to submitters, especially tangata whenua submitters. In his supplementary Reply evidence³² Mr Hamill advised that there could be about 27 extra days each year when the faecal coliform bacteria count in the estuary water would exceed the 43 MPN/100mL shellfish gathering guideline set by Ministry for the Environment and Ministry of Health. Mr Hamill then advised that about 16 of those 27 days would be closely associated with rainfall events after which it was already inadvisable to take shellfish.³³ From this we understand that the net marginal adverse effect of the proposal might be an additional 11 days when shellfish should not be gathered when they otherwise might have been able to be gathered. We also understand that to be a conservative (on the high side) estimate because as noted by Mr Hamill:

“ the model assumed a conservative die-off rate based on night time die-off. In reality, die-off due to UV will be higher during the day which will reduce average concentrations.”³⁴

We find this to be a minor potential adverse effect and one that can be managed by ongoing monitoring and providing clear advice to the Maketu community to avoid shellfish gathering in the days after heavy rainfall.

The Section 42A Report also considered potential adverse effects on water quality and ecology at some length, supported by two peer reviews under taken by Pattle Delamore Partners Limited.³⁵ The reporting officer’s conclusion on water quality and ecology respectively were:

“Having reviewed the Applicant’s assessment of effects report, the Construction Report and received peer review comments, I am of the opinion that the Proposal’s adverse effects on water quality during the construction phase will, subject to compliance with the proposed draft designation and resource consent conditions, be avoided or mitigated to the extent that they will be minor and therefore acceptable.”³⁶

“In summary, it is anticipated that the Proposal, whilst having some positive effects on water quality, will, overall, result in some minor adverse water quality effects within the Estuary through it’s operational phase. These effects arise as a consequence of a predicted increase in bacteria levels associated with bacteria levels. Notwithstanding this, I am of the opinion that these effects are not of a sufficient magnitude whereby resource consent should be refused.”³⁷

“Overall, the Proposal will, in my opinion, result in positive effects on ecological values within the Project Site and wider surrounds through the creation of additional wetland (salinity block and land north of Ford’s Cut) and other habitat areas (banks of the re-diversion channel and

³¹ Evidence of Keith Hamill, paragraphs 10 to 17, pages 3 and 4.

³² We gave leave for the Applicant to provide supplementary evidence in Reply due to the technical nature of many of the remaining matters of contention.

³³ Supplementary Evidence of Keith David Hamill, 21 May 2015, paragraphs 3 to 9, pages 1 and 2

³⁴ Ibid, paragraph 13, page 2

³⁵ Section 42A Report, sections 11.2 and 11.3, pages 25 to 51 of the Agenda.

³⁶ Ibid, section 11.2.1, page 28 of the Agenda.

³⁷ Ibid, section 11.2.2, pages 38 and 39 of the Agenda.

Ford's Cut) and through overall improvements to estuarine health identified within the technical reports."³⁸

There were several submitters who queried the potential water quality and ecology effects of the proposal.³⁹ Mr Eion Harwood opposed the applications and questioned whether the positive effects would be realised, as he was concerned that the increase in currents in the estuary resulting from the proposal would be insufficient to combat the incoming tide. He also thought that the proposal had the potential to increase the extent of anoxic mud in the estuary as result of the deposition of additional sediment from the Kaituna River. In his presentation to us at the hearing, Mr Harwood suggested that the BPRC should divert all of the Kaituna River back into the estuary and purchase all of the farms around the estuary and convert them in to wetlands.

The matters raised by Mr Harwood were addressed by Mr Hamill who advised us [abridged by us]:

"Most anoxic muds found in the estuary are associated with algal accumulations and largely consist of decomposing algae rather than material from the Kaituna River we know that there has been an expansion of the [Maketu Estuary] flood tide delta, and that sand from the flood-tide delta has been redistributed into the upper estuary. There is no indication that these changes were caused by the 1996 re-diversion I also note that my sampling of the Kaituna River during base flow conditions has found that none of the suspended sediment in the Kaituna River settles out under quiescent conditions.

The key ecological issue for Ongatoro / Maketū estuary is to reduce the extent of algal accumulations. In my view, the most effective way to do this is to increase net outward current speeds and flushing (as will occur with the re-diversion). Algal accumulations would also be reduced by reducing nutrient inputs sufficiently to limit algae growth. I strongly support catchment nutrient reductions as part of a strategy to improve Ongatoro / Maketū estuary, but to rely on this without increasing flushing rates would require much larger catchment nutrient reductions to achieve the same benefits. In some parts of the estuary (e.g. Papahikahawai Lagoon) it is likely that internal nutrient loads alone are sufficient to support the high algal biomass in the current environment, i.e. we will not see improvements without improving flushing or some other major intervention."⁴⁰

We note that in his written submission Mr Harwood stated:

"I am making this submission not as an 'expert', but as someone who has spent a lot of time in the upper- to mid-estuary and in Ford's Cuts. I am the grandson of Oliver and Violet Brain, who purchased the property in the early 1950s. I would be one the few people who, over the past 40 years, has spent time on a very regular basis in the upper estuary and I have observed changes over these years. Until recently I still lived locally."⁴¹

While we respect Mr Harwood's view on the matters over which he holds concerns, informed as his view is by his local knowledge, we prefer the expert evidence of Mr Hamill and the opinion of the reporting officer (which we again note relied in turn on the Pattle Delamore Partners Limited technical peer reviews).

³⁸ Ibid, section 11.3, page 51 of the Agenda.

³⁹ We note that Julian Fitter, Chairman of the Maketu Ongatoro Wetland Society Inc. supported the proposal, but expressed a concern that the Kaituna River water was more polluted than that coming from the sea and that could cause an increase in sea lettuce. He suggested that the drains leading into the estuary needed to be treated by wetlands, however we note that is beyond the scope of the proposal before us. Importantly, Mr Fitter advised us that he would support the proposal even if the drains were not so treated.

⁴⁰ Evidence of Keith Hamill, paragraphs 112 to 115, pages 30 and 31.

⁴¹ Submission of Eion Harwood, page 1, 10 October 2014.

The above discussion has focused on aquatic ecology. However, the proposal to recreate wetlands will also have effects on terrestrial ecology. These effects were addressed by Mr Roger MacGibbon, a terrestrial ecologist called by the Applicant. Mr MacGibbon concluded:

“No adverse effects are expected on the existing ecology as a result of the restoration of the areas of wetland. On the contrary, substantial beneficial effects are anticipated. The diversity and abundance of indigenous plants and animals will increase substantially as a result of the increased area of high value habitat and increased biological productivity.”⁴²

We heard no qualified evidence to the contrary and so we accept Mr MacGibbon’s opinion on these matters.

In conclusion then, while we accept that there will be a heightened risk of bacterial contamination of shellfish within the Maketu Estuary, we are not persuaded that results in a risk to public health that is any more than minor. That adverse effect can be avoided by not harvesting shellfish for three to five days after heavy rainfall. We understand that to be the current practice. Other than that we find that the proposal will have an overall positive effect on water quality and ecology of the Maketu Estuary.

7.5 Erosion of Te Tumu Landowners land

Evidence was presented at the hearing on behalf of the Te Tumu Landowners group (TTLG) by Graham Levy⁴³, an experienced engineer working in the field of water resources development and management. Mr Levy’s evidence considered the potential effects of the proposal on erosion in the lower Kaituna River, particularly with regard to the land owned by Ford Land Pty, including both the true left bank of the Kaituna River and Ford Island.

Mr Levy’s main points were that in his opinion:

- previous river diversions had led to ongoing erosion of the banks of the lower Kaituna River;
- the proposed new diversion banks would exhibit similar erosion unless appropriate rock protection was provided;
- there were several factors influencing bank erosion in the lower river that would be exacerbated by the Project. Mr Levy considered that the increased tidal flux and a potential increase in boat traffic had been overlooked by the Applicant and these factors pointed to a likelihood of increased river bank erosion;
- the proposed response (by the Applicant) to erosion risk was monitoring, but the proposed consent conditions would be ineffective in properly understanding and addressing any erosion effects; and
- the extent of proposed protection works needed to increase and/or the consent conditions relating to the monitoring and mitigation needed be more robust and effective.

Mr Levy’s evidence included plotted river cross sections at two locations on the lower river which had been surveyed by the Council on eight occasions between 1992 and 2014. These plots showed erosion at the two locations resulting in migration of the river bank by between 10 and 14 metres at one cross section and between 14 to 16 metres at the other. Mr Levy asserted that this was happening incrementally between surveys and appeared to reflect a regular ongoing fringing such as would be expected in response to normal river flows and minor floods, plus regular tidal variation.

⁴² Evidence of Roger MacGibbon, paragraph 23, page 4.

⁴³ Evidence Graham Levy dated 29 April 2015.

At the hearing Mr Levy referred to Figures G1 to G6 of the DHI modelling report⁴⁴ and how in his opinion these showed increases in river flow velocity at some locations due to the Project works. His evidence also included a table from the DHI modelling carried out for the Applicant showing increases in tidal volume passing through the lower river as a result of the Project, being a 15% increase in a mean tide and a 22% increase in a spring tide. He concluded that would result in more erosive effort by the current on the currently erosion-prone river banks.

Mr Levy also stated that there would be increases in boat traffic using the river channel between the proposed diversion point and the eastern end of Ford Island. He further adduced that as boats will tend to follow the deeper channel in the river, which runs close to the outside of bends, it was inevitable that there would be an increase in bank erosion along this reach of the river.

Mr Levy recommended a significant length of rock protection be installed on the river banks of the diverted channel adjacent to Fords Island in addition to that proposed by the Applicant. He stated this should be installed as a precautionary approach. He believed that to be more appropriate than the Applicant's proposed approach of monitoring erosion, providing information to the adjacent landowner and identifying if there were adverse erosion effects attributable to the Project.

In his supplementary evidence⁴⁵, Mr Ben Tuckey advised that care was needed in interpreting the figures in Appendix G of the DHI report that had been referred to by Mr Levy as they were not specifically set up for accurately modelling current velocities along edges of the river. The model bathymetry along the river edges is jagged which results in slight fluctuations in modelled current speed. Mr Tuckey also presented analyses that showed:

- for a moderate to large flood event there would be a reduction in peak flow of approximately 5% to 30% in the lower river below the diversion channel and a reduction of 10% to 25% of the flood flow volume; and
- in general the right bank of cross section XN2 would be exposed to higher current speeds during river floods for longer in the existing situation compared to what would occur with the Project in place.

Mr James Dahm provided supplementary evidence⁴⁶ to address river bank erosion matters raised during the hearing. His summary of the potential effect of the Project on river bank erosion was that:

- the Project is not likely to have any measurable effect on river bank erosion by frittering processes at low and normal flows because the near bank velocities during such flows are too low; and
- the Project may decrease bank erosion at higher flows as the modelling indicates that the Project will significantly decrease near-bank velocities at the high river flows when most bank erosion occurs.

Mr Dahm's overall opinion was that the effect of the Project on bank erosion in the lower river would be either neutral or would slightly decrease rates of bank erosion.

We note that Mr Tuckey's evidence was that the modelling showed a reduction in peak flows and at cross section XN2 flows would be lower after completion of the Project than before. We also note that Mr Levy stated in his evidence that Mr Tuckey's modelling was generally sound, it had been based on reasonable assumptions and it was reasonably well calibrated.

⁴⁴ Kaituna River Re-diversion and Ongatoro/Maketu Estuary Enhancement Project-Numerical Modelling, DHI, June 2014.

⁴⁵ Supplementary Evidence of Ben Tuckey, 21 May 2015.

⁴⁶ Supplementary Evidence of James Dahm, 21 May 2015.

We find the evidence of Mr Tuckey and Mr Dahm to be compelling and we favour their conclusions over those of Mr Levy. We find that erosion of the banks of the lower river due to the Project is unlikely, and even if it did occur it would not be rapid and certainly does not warrant the placement of large amounts of rock protection as a precautionary measure as was recommended by Mr Levy.

Notwithstanding that finding, we note that consent condition 31.5 offered by the Applicant in Reply (which we have accepted and imposed) addresses potential river bank erosion by including a requirement to vary the consent conditions to provide appropriate mitigation should a material increase in erosion occur that is attributable to the Project. We consider that to be an appropriate precaution that would remedy any adverse erosion effects should Mr Levy's predictions actually eventuate.

With respect to increased erosion of the river banks due to the wakes from increased numbers of boats using the lower river in the future, we find as follows:

- boat use increases in the future will be due to a number of factors which are not directly caused by the Project; and
- it is not appropriate nor within the scope of effects arising from the Project to impose mitigation aimed at addressing any future erosion effects from boat wakes.

7.6 Navigability of the Te Tumu bar

A number of submitters, including Mr Waterhouse and the Maketu Coastguard, expressed concern regarding potential effects of the Project on boating navigation across the Te Tumu bar (we address the Te Tumu channel in the next section of this decision). The Applicant in response provided a "Navigation Memo"⁴⁷ prepared by Mr Tuckey and Mr Dahm. The conclusions of that memo were that the slight reduction in the tidal prism anticipated under the proposal was likely to have little to no effect on limiting bar depths and the proposal would not have any measurable effect on bar depths or other morphological properties at the Te Tumu cut for mean or low flow conditions.

The Council's peer reviewers, Pattle Delamore Partners (PDP), expressed concerns in March 2015⁴⁸ relating to the potential for reduced scouring during large floods resulting in increased bed depths, and therefore reduced navigability, together with concerns about monitoring. As a result of this the Applicant engaged a third specialist, Dr Martin Single, an experienced and well qualified consultant specialising in the science, management and planning of coastal lands and waters, to participate in caucusing between the peer reviewers and the Applicant's experts. The result of the caucusing was agreement that the only reliable and practical means of monitoring the effects on navigability at Te Tumu was to measure outflows from the river to test the DHI model's calibration. At the caucusing Mr Single's opinion was that once flood flows receded the dominant morphological process would be littoral transport carrying sediment into the river mouth and morphological changes resulting from any reduced scouring would be short lived. The peer reviewers concurred with this opinion in principle, but required provision of supporting information before they could make a definitive conclusion on the proposal's effects on navigability associated with reduced flows.

Dr Single presented evidence at the hearing⁴⁹ which addressed the key drivers affecting the mouth and bar, the findings of the DHI numerical modelling, potential adverse effects of the

⁴⁷ Effect of proposed redirection on Te Tumu entrance and Bar, by Eco Nomos Ltd and DHI, 11 February 2015.

⁴⁸ Officers Report, page 76 of the Agenda.

⁴⁹ Evidence of Martin Single, 17 April 2015.

Project on the river bar and its use, and whether monitoring and/or mitigation should be required. Dr Single's conclusions were:

- changes to river and tidal flows resulting from the Project and the predicted difference in morphology between the pre- and post- Project simulations will have an indiscernible effect on the situation at the river mouth and will not compromise the existing navigability of the entrance; and
- river flows upstream of the river mouth would be monitored and compared with model predictions in order to assess the validity of the DHI model. If necessary the model would be amended and used to adaptively manage the Project's flow regime. Dr Single considered that to be an adequate approach.

The Council's peer reviewers advised, by letter dated 28 April 2015, that based on Dr Single's evidence they were satisfied that the proposed change to the hydraulics at the Te Tumu cut would not result in any discernible long term effects on the navigability of the river mouth and bar.

A submitter, Mr R. (Butch) Waterhouse, presented evidence at the hearing. He explained that he operated a licensed commercial fishing operation and recreational fishing charter business from the Kaituna River and that the Te Tumu cut is a vital link to the open sea for his business, recreational users and the Maketu Coastguard. Mr Waterhouse was concerned that increased flood tide flows would transport sediment from the open sea and deposit it in the inner river area and the lowered ebb tide flows would not be able to remove that sediment beyond the river bar, most likely depositing it on the bar itself. A flood event would be required to remove that sediment and waiting for such a flood event to occur would jeopardise his business.

Mr Waterhouse also outlined in some detail where his opinion disagreed with the DHI modelling results. He noted that the modelling showed the channel over the bar moving to the east, but he could not recall the channel ever going east to the extent predicted by the modelling. He considered that this cast doubt on the accuracy of the model. He thought that if the modelling was correct then the proposal would have a direct and significant adverse impact on the ability to navigate the bar and would change its status from difficult to dangerous. Namely, vessels transiting the cut would have to contend with limited visibility of the bar, travel side on to swells, and execute a 90 to 120 degree turn to enter the river.

Mr Waterhouse recommended a number of specific monitoring conditions including monitoring the depth and width of the bar and its approaches by collecting information on river flows, current velocities, sediment movement, erosion, and incident reporting for a minimum of eight years. He suggested that the Applicant should be required to undertake dredging should navigable access across the bar be impeded as a result of the proposal.

Mr Waterhouse's concerns were echoed by the Maketu Coastguard, represented at the hearing by Shane Beech, Geoff Oliver and Julie Cross. The Coastguard suggested that the Applicant should be required to provide a permanent depth monitoring system to ensure no less depth over the bar than at present.

The Applicant addressed the matters raised by these submitters in their Reply. Supplementary evidence was provided by Mr Tuckey and Mr Single⁵⁰. The opinions of those experts on the effects of the Project on the Te Tumu bar can be summarised as follows:

- although there is significant increase in the flood tide volume the sediment transport capacity in the lower river, the Te Tumu cut is dominated by the ebb tide and therefore

⁵⁰ We gave leave for such evidence to be provided.

there would not be any new significant areas of deposition in the lower river and the impacts on navigation across the Te Tumu bar would be negligible;

- the modelling overestimated the migration of the channel to the east due to the scaling method used and so the results could only be used for comparative assessments and not an absolute assessment;
- sensitivity testing of the model simulations, including river supplied sediment, were carried out and did not change any of the findings;
- the modelling showed the potential for sediment to be transported rather than actual volumes being transported. The changes in the flow regime with the Project operating would not result in a change to the thresholds of sediment transport compared to the existing situation and the effects of a combination of environmental conditions, such as those described by Mr Waterhouse, would not result in a noticeable change in the net sediment transport or deposition in the lower Kaituna River; and
- proposed condition 30.4 is appropriate as it provides a check on the validity of the predictions provided by the DHI modelling and requires mitigation if the model has underestimated the changes in tidal flow such that adverse effects could occur.

We have considered the issues raised by the submitters regarding navigability over the Te Tumu bar and the detailed responses of the Applicant's expert and experienced coastal scientists (as summarised above). We note that the advice of these experts was endorsed by the Council's peer reviewer. On balance, while acknowledging the valid concerns expressed by the submitters, we are persuaded by the Applicant's expert evidence that adverse effects on the navigability of the Te Tumu bar are unlikely to arise.

We therefore find:

- the changes to river and tidal flows resulting from the Project and the predicted difference in morphology between the pre- and post- Project simulations will have an indiscernible effect on the situation at the river mouth and will not compromise the existing navigability of the river mouth and bar; and
- proposed consent condition 30.4, which requires monitoring of flows upstream of the river mouth so as to enable the flows predicted by the DHI modelling to be validated and the subsequent adaptive management of the Project if necessary, is adequate in light of the predicted effects on river mouth morphology and bar navigability.

7.7 Navigability of the Te Tumu channel

Having addressed the Te Tumu bar, we now turn to the Te Tumu channel. There are three parties who currently moor their vessels in Ford Loop on a permanent basis, namely the Maketu Coastguard, Butch Waterhouse and Vernon Wills (the Motiti barge operator). As we have already noted, at the hearing we heard from the Coastguard and Mr Waterhouse, both of whom were concerned about the navigability of the Te Tumu bar (discussed in section 7.6 above) and the ongoing navigability of the channel from the proposed new mooring basin to be located seawards of the proposed salinity block.

We established that Mr Waterhouse had been operating from his current site for 30 years (since 1985) and the Coastguard had been operating from Ford's Loop on a permanent basis for two years (since 2013), but the Te Tumu cut had been used by them periodically for 15 years (since 2000). Mr Waterhouse and the Coastguard representatives advised that over those periods of time there had never been an occasion when the incised channel on the true right hand side of the Kaituna River through the Te Tumu cut (the navigation channel) had been too shallow to navigate. Understandably, both submitters wished to see the continuation of that state of affairs.

The Applicant had undertaken modelling that assessed the likelihood of the navigation channel becoming shallower as a result of siltation either caused or exacerbated by the proposed re-diversion works. As outlined above, both submitters were concerned about the validity of that modelling as the predicted results did not appear to accord with their day-to-day knowledge of how the river operated.

This matter was addressed by the Applicant in Reply in supplementary evidence⁵¹ provided by Dr Single who advised:

“...Butch Waterhouse asserted that at low river flows sediment will be mobilised through the throat at Te Tumu on incoming tides and dropped at the Ford Island bend, and not re-mobilised and expelled during low river ebb flows. His view was that in a worst case scenario e.g. with a low river flow, and on a spring flood tide supported by cyclonic conditions sand would be deposited in the channel, including up along the northern edge of Ford Island. He infers that the shift in balance between the spring ebb low flow and the spring flood tide caused by the diversion contributes to this situation.

“... Under existing conditions, with low river flows, cyclonic oceanic conditions and spring tides, there is potential for sand to be deposited within the Kaituna River as far landward as the Ford island bend. For example, there is a sandy beach on the true left bank of the river, just north of the confluence of the channels on either side of Ford Island. Although there will be a larger flood tide volume, and smaller ebb tide volume with the Project operating ... the ebb tide flows will still dominate, with residual sediment transport potential remaining seaward ...”

“It should also be noted that the modelling shows the potential for sediment to be transported rather than actual volumes of sediment being transported. The changes to the flow regime with the Project operating will not result in a change in the thresholds of sediment transport from the existing situation. The effects of a combination of environmental conditions such as described by Mr Waterhouse will not result in a noticeable change in the net sediment transport or deposition in the lower Kaituna River after the Project as would occur without the Project in place.”⁵²

We accept Dr Single’s expert opinion on this matter. However, we note that notwithstanding Dr Single’s view, the Applicant nevertheless continued their consultation with the Maketu Coastguard and Mr Waterhouse during and after the hearing. In their Reply submissions the Applicant advised:

“However, the Applicant discussed this issue with Butch Waterhouse and Coastguard Maketu representatives at the hearing and has offered to undertake some form of sediment mobilization along the area of concern should it silt up to a level where their access was compromised Mr Waterhouse and the Coastguard has said that this is the key area of concern and that the proposed undertaking will address this.”

“The Applicant has discussed potential monitoring with Butch Waterhouse and the Coastguard and has also independently considered this issue. The preference of both the Applicant and the two users is that the Consent Holder be required to act on request rather than undertake monitoring that is unlikely to pick up issues as quickly as the users would. Monitoring would have to be so frequent in order to pick up any issues, and would therefore be at significant cost. A requirement to investigate and act upon notice from the Coastguard or Butch Waterhouse is considered to be a more reliable process, and a more appropriate one once regard is had to the costs and frequency and the Applicant’s evidence that the potential for any effects is very low.”⁵³

⁵¹ We gave leave for the Applicant to provide supplementary evidence in Reply due to the technical nature of many of the remaining matters of contention.

⁵² Supplementary Statement of Evidence of Martin Single, 21 May 2015, paragraphs 4 to 6 [abridged], pages 1 and 2.

⁵³ Reply Submissions on Behalf of the Applicant, Paul Cooney and Rachel Boyte, 21 May 2015, paragraphs 35, 37 and 38 [abridged], pages 7 and 8.

We accept and agree with those submissions. We have reviewed amended resource consent conditions 20.4 and 20.5 proffered by the Applicant and we are satisfied that those amended conditions adequately mitigate the potential adverse effects outlined above. We are grateful to the Applicant and the two submitters for the constructive manner in which this issue has been resolved.

7.8 Recreational boat users

We heard from Mr Wilkinson, an experienced local fisherman, Mr Mike Maasen⁵⁴, an orchard manager and hunter gatherer, Mr Don Paterson⁵⁵ and Mrs Raewyn Bennett⁵⁶ who were all concerned with ongoing access to the coast for fishing and recreation. Their concerns focussed on temporary loss of access to the Ford Road boat ramp as a result of the proposal's earthworks and changes that may occur at the Maketu boat ramp as a result of sedimentation and sand build up. Based on our site visit, we also identified potential access issues with a proposed log deflector at Ford Loop.

In summary, the submitters requested the Applicant commit to providing new public boat ramp facilities at Te Tumu, and ensure the existing boat ramp at Maketu remained workable if that area reverted to a sandy beach as it was prior to 1956. We address the Maketu boat ramp in section 7.10 of this decision.

Mr Stephen Everitt for the Applicant described the current situation and the proposed approach.⁵⁷

"A number of recreational boaties currently launch their boats from the existing Ford Rd launching ramp.

Both land and water access to this facility will be closed for a significant proportion of the construction period. These closures are required to prevent harm to the public and to prevent suspended sediment from excavation in the water entering the river and the estuary. There will be approximately 7-8 months between the close of the Ford Road launching ramp and the opening of the new upgraded boat ramp facility. This closure period might occur over the summer period depending on the contractor's proposed construction programme.

However, recreational boaties will be able to use continue to the existing boat ramp at Bell Road or Maketu throughout the entire construction period. There will be no works undertaken that will impact on the ongoing use of the Te Tumu channel.

As a result, and taking into account the greatly improved facilities proposed as part of the Project, the short term inconvenience for boat users of having to use Bell Road or Maketu, the effects on recreational boat users are considered to be acceptable.

There are no other adverse impacts on boat users either during construction or of an ongoing nature as a result of the Project. The commercial operators and the Coastguard will be re-located during construction and access will be provided."

We find the approach proposed by the Applicant to be reasonable and appropriate.

We now address the log deflector. We observed that three log deflectors are proposed to avoid damage to moored boats in the vicinity of the Kaituna River loop.⁵⁸ We requested

⁵⁴ Evidence of Mike Maasen, pages 1 and 2.

⁵⁵ Summary of Evidence presented by Don Paterson, page 1, bullet point 3.

⁵⁶ Ngati Pikiao ki Maketu Submission, 6 May 2015, page 14

⁵⁷ Supplementary Statement of Evidence of Stephen Everitt, page 2.

⁵⁸ Proposed construction works – drawing no 2/1542/115/6235. Contained in Appendix 3 Applicants Final Plan Set.

further information regarding one of these, on the northern side of the saltwater barrier, as it appeared on small scaled maps to be a potential safety issue for boat passage.

The Applicant provided evidence on this matter as part of the Reply. Mr Stephen Everitt stated:

“If it is seen to be necessary and agreed between the Applicant, the Coastguard and Butch Waterhouse, the log deflector will be constructed at the northern end of the mooring basin. Its length is indicated on Drawing Sheet 16 to be 40 metres. It is my opinion based on the proposed location of the new mooring facility (at either Location A or B) and on discussions with the Coastguard and Butch Waterhouse that the log deflector is likely to be unnecessary.

The Commissioners have sought further detail on the scale of log deflector that would be installed in the event that this is considered to be required. The deflector will be constructed of timber piles, 500mm in diameter, driven into the sediment, either:

- (a) at 1 to 1.5 metre centres (0.5 to 1 metre gaps between piles), or
- (b) at 6 metre centres with horizontal timber poles attached at 200mm (approx.) spacings.

The final design will depend on the size and nature of any material to be deflected.

The conditions of consent have been amended to provide a maximum scale of 40 m (refer Proposed Consent Condition 17.1 (d)).

The existing navigation channel hugs the true right bank of the river, which is where the log deflector would be located. Accordingly, if the deflector is required, the navigation channel will need to be re-routed past the structure. Proposed Consent Condition 20.4 requires the channel for navigation to be maintained at a depth of 1 metre at Mean Low Water Spring. The condition provides for the situation both with the deflector and without the deflector.”

We accept the expert evidence of Mr Everitt and we are satisfied that the proposed conditions of consent adequately address this matter.

7.9 Maketu spit erosion

The issue of erosion of the Maketu Spit was raised by submitters, including the Maketu Ongatoro Wetland Society Inc. and Chris Richmond.

We received evidence on this matter from Mr James Dahm for the Applicant. Mr Dahm advised that the expansion of the flood tide delta within the Maketu Estuary following diversion of the river from the estuary had caused periodic severe erosion along the landward margin of Maketu Spit adjacent to the lower estuary⁵⁹. These periods of erosion had led to breaching of the spit on at least two occasions, in 1979 and 1994. The spit breaches caused significant but temporary changes to the pattern of channels and banks in the lower estuary. Following the breaches, the entrance slowly migrated eastward back to its original position and the pattern of channels and banks in the estuary recovered.

The ongoing upstream expansion of the flood tide delta presently causes severe erosion along the landward margin of the spit. This could lead to a breach in coming years. Mr Dahm advised how modelling by DHI indicated the present dominance of flood tide directed sediment transport over the flood tide delta and strong cross-channel net sediment transport directions directly opposite the present spit erosion. Mr Dahm concluded that this confirmed that the expansion of the flood tide delta is acting to push the tidal channel nearer the spit shoreline in this area. Mr Dahm⁶⁰ noted that the DHI modelling indicated that the proposed partial re-diversion will markedly reduce flood tide directed sediment transport over most of

⁵⁹ Evidence of James Dahm, 17 April 2015, paragraph 23.

⁶⁰ Evidence of James Dahm, 17 April 2015, paragraph 29.

the flood tide delta and will reverse net sediment transport directions, giving rise to ebb-directed net transport along the main channel margin.

The DHI modelling report⁶¹ notes that the proposed re-diversion may slightly exacerbate spit erosion for a period immediately following its implementation. Mr Dahm's opinion⁶² was that initial adverse erosion effects are likely to be minor and the influence of the re-diversion on the present spit erosion will eventually be positive; reducing nearshore velocities and erosion as the channel and flood tide delta dimensions adjust to the altered sediment transport residuals.

However, in view of the uncertainties, monitoring and reporting of potential spit erosion is proposed by the Applicant. In particular, proposed Conditions 31.2, 31.3, 31.6 and 31.7 require the monitoring of the spit and Condition 29.1(d) requires the consent holder to undertake reporting that identifies and prescribes proposed measures and responses. We find that to be appropriate, given the evidence that in all likelihood the proposal will eventually reduce the risk of spit erosion and a spit breach.

On a related issue, the submission of Chris Richmond questioned whether the Project should have included at least a partial excavation of the Maketu flood tide delta, with the sand being used to reinforce the Maketu spit. However, as outlined above, a major benefit of the Project is expected to be the reduction of the flood tide delta in the Maketu Estuary and this is expected to reduce erosion of the spit.

We also note that the Applicant advised⁶³ that it has always been their understanding that tangata whenua would not support excavation of the Maketu flood tide delta as that would be very invasive and impact on existing pipi beds. We note, and support, the Applicant's intent to limit physical intervention in this part of the Maketu estuary as much as possible and allow the estuary to revert a more natural state, in a more natural way.

On balance we do not think that the relief sought by Mr Richmond is warranted.

7.10 Maketu boat ramp

As we noted in section 7.9, submitters Mike Maasen and Raewyn Bennett both expressed concerns regarding the ongoing usability of the existing Maketu boat ramp. They feared that the area may revert to a sandy beach which would adversely affect the usability of the ramp.

We asked the Applicant to address this matter in their Reply. The Applicant submitted⁶⁴ that they had not sought any consents for excavation in the Maketu estuary so any requirement to undertake dredging to retain access to the boat ramp (as had been suggested by the reporting officer), or to extend the boat ramp (as suggested by Mr Maasen), was outside the scope of the application. However, the Applicant considered that Mr Maasen's evidence regarding the boat ramp being currently useable three hours either side of high tide would provide a useful ongoing reference point for determining whether use of the ramp was being adversely affected by the Project.

The Applicant therefore offered condition 20.6, which requires that if surveys demonstrate that the existing Maketu boat ramp is unable to be used three hours either side of high tide, then the consent holder must apply for any necessary resource consents to extend the boat ramp or undertake other mitigation measures such as the clearance or excavation of sand. We find that the Applicant's proposal in this regard is an appropriate way of monitoring the

⁶¹ Kaituna River Re-diversion and Ongatoro/Maketu Estuary Enhancement Project - Numerical Modelling, DHI, June 2014.

⁶² Evidence of James Dahm, 17 April 2015, paragraph 57.

⁶³ Applicant's Reply Submissions 21 May 2015, paragraph 84

⁶⁴ Ibid, paragraph 77

situation and mitigating any adverse effects that eventuate and we have imposed the offered condition accordingly.

7.11 Ongoing tangata whenua involvement

The tangata whenua groups associated with the proposal area are in the main, Te Arawa waka descent groups. Each iwi, hapu and whanau claim descent from important ancestors from Te Arawa waka and have distinct as well as shared traditions, events and relationships.

Ngati Whakaue descend from their eponymous ancestor Whakaue Kaipapa, and had a significant flax trading post in the 1830s run by Hans Tapsell. As a result of an attack in 1836 Ngati Whakaue sent a large contingent of warriors from Rotorua to retake the Maketu area and subsequently all lands from Maketu to the Wairakei Stream. Many Ngati Whakaue reside at Maketu and have land interests in the coast lands of Te Tumu. Ngati Whakaue are heavily involved in Maketu Estuary and Kaituna River restoration projects.⁶⁵ Ngati Whakaue refer to the Maketu estuary by many names, including Te pataka o Te Arawa, Te Awa Kari o Ngatoroirangi and a shortened form Ongatoro.

Ngati Rangiwewehi descend from Te Arawa waka ancestors including their eponymous ancestor Rangiwewehi. The iwi have land interests at Te Tumu, Pakaingaataru, Papahikahawai (Island), Otaipara Pa, and Te Puke.⁶⁶

Tapuika occupied the coastline from the time of the waka Te Arawa arrival. They have a long association with, and intrinsic connection to, the Kaituna River as source of food, identity, customary resources, former residences and sites of significance. The Maketu Estuary has been an important source of food. Tapuika refer to the Kaituna River as Te Awanui o Tapuika. Tapuika have a number of Treaty settlement roles and rights in Kaituna river management.⁶⁷

Ngati Makino, Ngati Tunohopu, Waitaha, and Ngati Pikiao prepared a collective cultural impact assessment.⁶⁸ All these iwi and hapu have distinct and overlapping land and river interests. Waitaha have interests west along the coast, Ngati Tunohopu have close links with Whakaue and the flax trading post of the 1830s, Ngati Makino have a large traditional territory reaching from inland lakes to the coast, and Ngati Pikiao has a leading role in the retaking of Maketu in 1836. At the time of the hearing it was still unclear what, if any, tangata whenua matters were in contention and what mechanism or processes might be appropriate to provide for the on-going involvement of tangata whenua. The Applicant had expended considerable time and effort to consult with relevant iwi, hapu, whanau and individuals with tangata whenua interests at Maketu estuary and the Kaituna River. The Applicant also commissioned several cultural impact assessments prepared by tangata whenua groups to inform and support the applications.

Four cultural impact assessments (CIA) were prepared by tangata whenua groups. A summary of these is provided for in the Section 42A Report.⁶⁹ The CIAs did not identify any adverse effects resulting from the proposed re-diversion. There are several conditions or recommendations in each CIA which provide conditional support for the proposal. Having read the CIAs, we find that the key issues arising from them are the ongoing involvement of tangata whenua in the implementation of the Project, including monitoring of on the ground implementation, and the potential effects of construction on taonga and fish passage. We note that all the CIAs identified positive effects of the proposal on the ecology of Maketu

⁶⁵ Te Runanga o Ngati Whakaue. Cultural Impact Assessment. March 2014.

⁶⁶ Te Maru o Ngati Rangiwewehi Iwi Authority. July 2014.

⁶⁷ Conroy and Donald Consultants. Tapuika Cultural Impact Assessment February 2014

⁶⁸ Pia Bennett. Cultural Impact Assessment for Waitaha, Ngati Makino, Ngati Pikiao and Ngati Tunohopu. July 2014.

⁶⁹ Section 42A Report, Section 11.4, pages 52 to 53 of the Agenda.

Estuary and a general alignment with goals and aspirations of tangata whenua, in particular restoring the mauri of Ongatoro (Maketu Estuary).

The Applicant's consultation, CIAs, and submissions received confirmed the Maketu estuary and Kaituna River as being of high cultural, spiritual and social significance to tangata whenua. Tangata whenua groups emphasised the effects of historic public works and the degradation of the Maketu estuary as a source of food and identity.

The tangata whenua groups consulted with included:

- Ngati Rangiwewehi;
- Ngati Whakaue ki Maketu;
- Ngati Pikiāo ki Maketu;
- Ngati Makino;
- Tapuika; and
- a number of Maori community members during three meetings held at at Whakaue Marae.

A number of potentially affected Maori Land Trusts were also consulted.

Eight submissions were received from tangata whenua groups and individuals. Five of these were in support and three were in opposition (Nga ahi kaa roa o Maketu, Ngati Pikiāo ki Maketu, and Ngati Makino Heritage Trust). With regard to the submissions in opposition we note:

- Representatives of Nga Tangata ahikaa roa o Maketu did not attend the hearing or provide any evidence. Their submission was very brief and did not provide any evidence to support their views;
- Ngati Pikiāo ki Maketu attended the hearing and supported the proposal. They sought assurances that those whanau connected to Maketu would be involved in the implementation and monitoring of the proposal; and
- Ngati Makino Heritage Trust attended the hearing with other tangata whenua groups, supporting the proposal.

With regard to those submitters who supported the proposal we note:

- Tapuika Iwi Authority supported the proposal, particularly its aims and objectives. Tapuika believed their concerns had been met by the proposal and that the 'details' needed to be worked through. From our questions we understand these details to be protocols for monitoring earthworks, involvement in the wetland restoration, potential interpretation/education programmes and a cultural mapping project;
- Te Runanga o Ngati Whakaue ki Maketu submitted in conditional support of the proposal, attended the hearing and confirmed their support;
- Ngati Rangiwewehi submitted in conditional support of the proposal but did not attend the hearing;
- Te Maru o Kaituna submitted in support of the proposal but did not attend the hearing;
- Mr Petera Tapsell submitted in support but did not attend the hearing.

Mr Pim de Monchy, provided evidence for the Applicant related to consultation and tangata whenua issues.⁷⁰

⁷⁰ Evidence of Pim De Monchy. pages 14 and 15. This text is also repeated in paragraphs 47, 48, 50, 56, 57 in Appendix A of this decision.

“As part of the Project’s assessment of social and cultural effects, during January and February 2013 research assistants conducted interviews with 246 people in and around Ongatoro / Maketū Estuary...Food/kaimoana was the most highly valued aspect, especially by Māori participants. Recreational opportunities and fishing were highly valued by people from all ethnic groups. Māori participants emphasised the importance of cultural activities, and were also more likely to mention family connections and home as important. Both Māori and Pakeha participants thought the Maketū/Kaituna area had conservation value and also mentioned intrinsic values.

Between May and August 2013, following on from Council’s decision on the scope of the re-diversion, the Project Team consulted with tangata whenua, other stakeholders, and the general public on a further two options for the Project. The Project was publicised in local media and information posted on the Council’s website. Responses were invited from iwi, landowners, environmental groups, the local community, and other key stakeholders. The purpose was to determine the community’s preferred option for the Project, and to identify key themes or suggestions for improvement...

...We met with Trustees of Papahikahawai Island both in Rotorua and on-site to explain the preferred option and how it would preclude cattle grazing in the future. We sought to understand their vision for the Island and included aspects of that vision in the Project design. We obtained support in principle for a compensation agreement and a co-funded Biodiversity Management Plan to restore indigenous vegetation to the pasture-dominated island over a ten year period.

Following on from meetings with individual iwi interested in the area of the Project, we commissioned the preparation of Cultural Impact Assessments. These were carried out by Maria Horne for Ngati Whakaue ki Maketū, Elva Conroy for Tapuika, Gina Mohi for Ngāti Rangiwewehi and Pia Bennett for all of Ngāti Mākino, Waitaha, Ngāti Pikiao and Ngāti Tūnohopū.”

Ms. Steph Brown also provided some comments, having been responsible (as we understand) for the planning and consultation inputs to the application.⁷¹

“Mr de Monchy notes that Council has to date engaged four young Maketū ahi kaa in the investigation and consenting phase of the project to carry out monitoring and research work, and is committed to finding further opportunities within the bounds of local government procurement procedures. Proposed consent conditions also require the identification of opportunities for tangata whenua involvement in aspects of the Project on a long-term basis, including in monitoring and wetland restoration.

I am satisfied that the consultation undertaken in relation to the Project has been comprehensive and consistent with sound consultation practice.”

We asked each of the tangata whenua groups at the hearing what they believed the mechanisms and process should be to provide for on-going involvement of tangata whenua. The conditions of consent relating to tangata whenua involvement recommended to us by the Applicant and the reporting officer did not specify who tangata whenua were or what type of structure or forum would be established to involve tangata whenua. We considered that to be an omission for large scale works of this nature. Furthermore, we asked if there was a way of articulating who the specific tangata whenua groups would be, rather than a generic group called ‘tangata whenua’. The later question was somewhat of a sensitive point for tangata whenua submitters who preferred not to answer the question directly, presumably due to the chance of missing someone out or causing offence. The former question received a level of consensus that tangata whenua groups should be engaged individually and offered opportunities to be involved at a level and in locations appropriate and relevant to their interests. In this regard, in Reply the Applicant offered to include in the conditions a

⁷¹ Evidence of Steph Brown. page 14, paragraphs 76 to 77.

list of tangata whenua groups, with provision for other such relevant groups identified in the future to be added, to be involved in the implementation and monitoring of the proposal. To this end the relevant conditions of consent⁷² that relate directly to tangata whenua have now been grouped together under a heading of “Tangata Whenua Involvement Plan” to avoid any confusion and provide a coherent list of opportunities for tangata whenua involvement.

We are satisfied that these conditions address concerns of tangata whenua and are consistent with the relevant RMA Part 2 matters, namely section 6(e) special relationships of tangata whenua, 7(a) Kaitiakitanga and section 8, Principles of the Treaty of Waitangi, as they apply to this proposal.

7.12 Titchmarsh water intake

Mr Titchmarsh takes water from the Kaituna River using a floating intake for his stock-drinking and pasture irrigation supplies. The area of the River where the supply is located is subject to saline influence. The Applicant has identified that migration of the saline wedge as a result of the Project has potential to result in a ‘small’ adverse effect on Mr Titchmarsh’s existing water take, particularly during low flows. The Applicant considers that these effects can be appropriately mitigated through a combination of improved extraction controls to prevent saltwater contamination (that is, the installation of a salinity monitor in the river adjacent the intake and abstracting only when salinity levels are suitable) and the provision of additional storage for stock water.⁷³

At the hearing Mr Titchmarsh advised us that he has no existing constraints on his water takes due to salinity in the river and that the increased salinity and the Applicant’s proposed mitigation will make the operation of his water take more difficult and unreliable. We accordingly asked the Applicant to give further consideration to measures that could address Mr Titchmarsh’s concerns.

The Applicant provided a response through the supplementary evidence of Mr Everitt⁷⁴ which we summarise as follows:

- Mr Titchmarsh’s water supply is currently restricted, based both on scientific evidence of existing saline intrusion levels at the location of his current take and on previous advice from Mr Titchmarsh during discussions with Mr Everitt;
- Mr Everitt predicts the Project will result in the time available to take water decreasing from 19.4 hours to 18.4 hours per day and Mr Titchmarsh had advised that he required approximately 16 hours per day to irrigate his land;
- the proposed mitigation measures include installation of automated salinity monitoring and pump control devices which can exist alongside the current manual management system. They will assist with managing the current constraints together with any additional impact caused by the Project and will additionally improve the reliability of the existing system;
- any alternative option to relocate the intake further upstream involves land not owned by Mr Titchmarsh and would also require extending the power supply lines and delivery pipe. Mr Everitt did not consider the considerable cost of this option was warranted and noted it would involve considerable betterment of the existing situation; and
- Mr Everitt concluded the proposed mitigation constituted an improvement on the present situation and was more than sufficient to address any effect of the Project on Mr Titchmarsh’s existing take.

⁷² Conditions 8A.1 to 8A.2 in the regional council consents.

⁷³ Evidence of Stephen Everitt, paragraph 65.

⁷⁴ Supplementary Evidence of Stephen Everitt, 21 May 2015, paragraphs 18 to 27.

We find the evidence of Mr Everitt on this matter to be persuasive and note that Mr Titchmarsh did not present any expert evidence that countered the opinions of Mr Everitt. On balance we find that the works offered by the Applicant are fair and reasonable and sufficiently remedy the potential adverse effects of the Project on Mr Titchmarsh's water take.

7.13 Titchmarsh and Brain land

As set out in paragraphs 70 and 71 of Mr de Monchy's evidence:

"The Project requires 31.1 hectares of land from Mr Alan Brain comprising low-lying and relatively unproductive dairy support land as well as a channel of water known as Ford's Cut. Some of this land is required to widen and deepen Ford's Cut, and the balance will be used to create estuarine and palustrine wetlands. During the process of evaluating options it became clear that the costs of protecting parts of this 31.1 hectare area from higher water levels post-Project would far exceed the value of the land in question. Council paid for a valuation requested by Mr Brain from a valuer of his choice. A Notice of Desire pursuant to s18 of the Public Works Act has been sent to Mr Brain and registered against the titles affected. Council has made Mr Brain two offers to purchase land and is committed to negotiating a voluntary settlement in good faith if at all possible.

The Project requires 13.3 hectares of land from Kaituna Pastoral Farms Ltd (Mr Allan Titchmarsh). This area comprises approximately nine hectares of natural wetland, and 4.3 hectares of dairy pasture, some of which lies on the existing scheme stop bank. Mr Titchmarsh indicated a preference to receive land of equivalent value rather than cash for the land required for the Project, so it was agreed to suspend negotiations to see whether surplus land would become available through negotiations with Mr Brain. This has recently become much less likely, so negotiations are set to resume with Mr Titchmarsh. A Notice of Desire pursuant to s18 of the Public Works Act has been sent to Mr Titchmarsh and registered against the titles affected."

The works required to protect the Brain land from the higher water levels associated with the proposal and the costs of those works are:

"The works would include stopbanking, drainage and seepage control. The costs associated with protecting the land to a sufficient level would be at least \$1.04M, and to a standard usually applied to farmland within the [Kaituna Catchment Control] Scheme, approximately \$1.55M."⁷⁵

At the time of the hearing, the land purchase negotiations referred to by Mr de Monchy had not been concluded. Further, both Mr Brain and Mr Titchmarsh appeared at the hearing and reiterated their opposition to the use of their land for the Applicant's proposal. Consequently, we need to consider whether it better promotes the purpose of the Act to recommend the approval of the notices of requirement as opposed to allowing the land in question to remain as dairy pasture.

However, we firstly note that any adverse effects on the Brain and Titchmarsh farming operations resulting from the use of the land for the proposal will be compensated by monetary payments made by the Applicant under the Public Works Act. We therefore restrict our consideration to the overall use of the land, namely would it better meet the purpose of the RMA and the subordinate instruments for that land to remain as farmland or for it to be restored to a wetland and used for a diversion channel respectively.

Firstly, we find that the Applicant has thoroughly considered alternatives to the use of the Brain and Mr Titchmarsh land. We find that the use of that land is necessary to achieve the objectives of the proposal and the selection of the Applicant's preferred option is neither arbitrary nor cursory. In that regard we adopt the Applicant's submissions in Reply:

⁷⁵ Evidence of Stephen Everitt, para 60, page 14.

“As mentioned in opening submissions, there are several reasons why the Applicant is seeking designations over the Brain land:

- (a) The existing Ford's Cut channel needs to be widened, and the causeways in the upper Estuary removed to restore flows. These two actions would expose the balance of Mr Brain's land north of Ford's Cut to higher risk of flooding;
- (b) The costs of protecting the land north of Ford's Cut from that increased risk of flooding would far exceed the value of the land; and
- (c) The land contributes to meeting the Project's enhancement objectives.

The designation over the Titchmarsh land is necessary in order to construct the new diversion channel.”⁷⁶

We also note from the oral evidence of Mrs Raewyn Bennett that much of the land in question was originally part of the Maketu estuary and its surrounding wetlands. Those wetlands comprised an important part of the historical cultural landscape. We heard how tangata whenua have a strong traditional relationship with that ancestral land and how the former wetlands were an important source of kai moana.

The Brain land is low lying and appears to be relatively unproductive. At the time of hearing much of it was devoid of pasture and Mr Brain told us that was the result of salt water contamination. Restoring the Brain land to a wetland will undoubtedly restore and rehabilitate the natural character of the area and restore a historical cultural landscape feature. This will give effect to NZCPS Policy 14(c) which deals with the restoration of natural character. The alternative of protecting that land from higher water levels would not give effect to the NZCPS and would come at a very considerable cost, as noted above.

The Titchmarsh land appeared to be reasonably productive, however, if that land is not to be used for the Project then the proposed diversion channel will instead need to traverse an existing wetland located to the north of the existing stopbank and situated directly adjacent to the Kaituna River. Indeed that was the option that Mr Titchmarsh suggested to us should be pursued. That particular wetland is classified as an Indigenous Biodiversity Area – B in the proposed RCEP.⁷⁷ That means that the wetland meets the criteria in NZCPS Policy 11(b) and under that policy we must avoid significant adverse effects on the values of the wetland. Clearly, the excavation of that wetland for a diversion channel would not be consistent with the policy direction of the NZCPS.

In light of the above we are satisfied that enabling the Brain and Titchmarsh land in question to be used as wetland and diversion channel respectively instead of retaining it as farmland is appropriate and consistent with the NZCPS. We find that confirming the notices of requirement will meet the purpose of the RMA, and be consistent with sections 6(e)⁷⁸, 7(c) (the amenity values of the estuary will be enhanced) and 7(f) (the quality of the estuary environment will be enhanced) of the RMA.

This matter was also addressed by the Applicant in Reply. Counsel reiterated that the use of the land for the proposal would result in a significant environmental benefits and that consequently the sustainable management purpose of the Act would best be promoted through the purchase of the land (economically for the ratepayers) and its re-establishment as wetland.⁷⁹ However the Applicant then went on to submit:

⁷⁶ Reply Submissions on Behalf of the Applicant, Paul Cooney and Rachel Boyte, 21 May 2015, paragraphs 35, 37 and 38 [abridged], pages 7 and 8.

⁷⁷ Schedule 2, Kaituna/Maketu map sheets 15b, 16b, Kaituna River Wetlands and Kaituna River Mouth (part).

⁷⁸ Noting that the wider Maketu Estuary was previously a traditional source of kiamoana for the mana whenua

⁷⁹ Ibid, paragraph 64, page 14.

“In terms of the constraints on the use of land, we note that:

- (a) The RMA has processes in place to ensure that landowners are not subjected to unreasonable restrictions on the use of their land in the interim, including the ability for a person to appeal to the Environment Court where consent under 176 has been refused, or for an order that the land be purchased where the designation prevents reasonable use of the land (s185); and
- (b) The effect will be short-term, given the Requiring Authority has already commenced the acquisition process.

There is no intent on the part of the Council to unreasonably restrict the ability for Mr Brain or Mr Titchmarsh to continue use their land in the same way as they are currently prior to the designation being given effect to. Installing infrastructure (eg a new dairy shed) could pose an issue, but not the continued use of the land to graze stock.”⁸⁰

The Applicant then proffered⁸¹ on an Augier basis two conditions (one for the consents – Condition 7.1A, and one for the designations – Condition 1.1A) that stated (for the consents) that the consent holder would not proceed with any works until it had been demonstrated to the consent authorities that all the land required for the proposal had been acquired or property access granted; and (for the designations) that Mr Brain and Mr Titchmarsh would be free to continue to use their land for the grazing of stock and general farming activities (meaning day to day farming activities including fencing but excluding the construction of new structures) until such time as the works under the designation were to be implemented.

We consider this to be a very reasonable and constructive approach and we commend the Applicant for proffering these conditions. We find that the proffered conditions should be imposed as they address some of the concerns expressed to us by both Mr Brain and Mr Titchmarsh at the hearing regarding their desire to retain an unencumbered use of their land prior to the Project proceeding.

Finally in terms of this particular matter, we note Mr Titchmarsh's comment at the hearing that he is worried about the duration of flooding of his land being made worse by the Applicant's proposal. In response we find that consent conditions 24.1 to 24.7 inclusive comprehensively address mitigation of this potential adverse effect, which through the hearing process we understand to be to the satisfaction of the operators of the Kaituna Catchment Control Scheme within which Mr Titchmarsh's land resides. Consequently, while acknowledging his concern, we do not find that any further mitigation is required to address it.

8 Notice of Requirement Considerations

As we have noted earlier in this decision report, the Applicant has lodged two notices of requirement for new designations. The relevant statutory provisions relating to notices of requirement are set out in s171 of the RMA.

8.1 Section 171(1)(b)

At the time of writing the Requiring Authority did not have sufficient interest in the land to undertake the works encompassed within the notices of requirement. Consequently, we must assess whether the Applicant has given adequate consideration to alternative sites, routes or methods. The proposal will also have significant adverse effects on the existing primary productive capacity of the Brain and Titchmarsh land (in term of changing its land use from pastoral grazing to wetland and diversion channel respectively) and so that too triggers the need for an assessment of alternatives.

⁸⁰ Ibid, paragraphs 66 and 67, page 14

⁸¹ Ibid, paragraphs 68 and 69, page 15

A summary of the alternatives assessment process was included in Mr de Monchy's evidence and we repeat that below as we find that it aptly and succinctly captures the key elements of that process:

"An evaluation of the alternative sites, routes, and methods considered for the Project has been undertaken and is set out in Section 6 of the Assessment of Environmental Effects. It concludes that the proposed work is the best alternative, given the constraints of leaving Te Tumu Cut open and when considering the environmental, social, cultural, and economic parameters. That is, it is the alternative with the best overall outcome and which is able to be managed in a way which avoids, remedies or mitigates potential adverse effects, at a reasonable cost, and which therefore best meets the objectives.

A number of feasibility studies, modelling and 'optioneering' work began in 2001, leading to the definition and exploration of options and variations labelled from A to R. This process continued through a focus group associated with the development of the Strategy, and included the publication in 2008 of a comprehensive options report, and in 2012 with a pre-feasibility and consentability report. Full river re-diversion and partial re-diversion were considered along with retaining the status quo.

After considering these reports, the Regional Councillors resolved in 2012 that the scope of the Project should be limited to a "maximum flow, partial re-diversion" envelope of options (while keeping Te Tumu Cut open for flood relief). Multiple options were evaluated and assessed in a responsive and iterative approach, taking into account feasibility, constraints, fresh to saltwater rations, wetland creation, and land access. Options were assessed against the Project Objectives.

Council formally settled upon the preferred option for re-diversion of the Kaituna River in September 2013 following a four month period of pre-consent consultation..⁸²

The application documentation included a feasibility report prepared by BPRC entitled '*Kaituna River Re-Diversion and Wetland Creation Project – Summary and Analysis of Options and Alternatives*', dated September 2013. We find that this report provided a thorough analysis of the options considered during the period from 2001 through to 2011. The September 2013 report was peer reviewed by Pattle Delamore Partners Limited. That review concluded that the quantity of options assessed by the Applicant was adequate and that the methods used to assess these options (and ultimately select a preferred option) were acceptable.

As we noted in Section 7.1 of this Decision Report, the assessment of alternatives only received serious challenge from one submitter and no expert evidence was provided in support of the specific alternative postulated by that submitter.

In terms of the Section 42A Report, Mr Miles advised us:

"In my opinion, the Requiring Authority has undertaken an extensive consideration of alternative sites, routes and methods of achieving their objectives of the Wider Proposal."

"The option proposed under the Boat Ramp Proposal is the result of the Applicant's consideration of the economics of delivering this piece of public infrastructure and concerns raised in submissions over potential traffic generation effects on the Ford Road one land bridge. In my opinion, the Requiring Authority has demonstrated that they have undertaken an appropriate level of consideration of alternative sites, routes and methods of achieving their objectives of the Boat Ramp Wider Proposal."⁸³

We also note and accept the advice of Mr Cooney who submitted in opening:

⁸² Evidence of Pim deMonchy, paragraphs 36 to 39, pages 12 and 13.

⁸³ Hearing Agenda, Section 13.1, pages 122 and 123.

“... the enquiry into the adequacy of consideration of alternatives does not require the Panel to decide whether the best alternative has been chosen. It needs to be satisfied that the Requiring Authority has reasonably considered other options – that it has not acted arbitrarily or given only cursory consideration to alternatives.”⁸⁴

We conclude on the evidence that the Applicant has reasonably considered other options in a clear and transparent manner and it has not acted in a cursory manner nor arbitrarily selected its preferred option.

8.2 Section 171(1)(c)

Under section 171(1)(c) we must assess whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought. The nine objectives for this proposal were set out in the Section 42A Report⁸⁵ and we do not repeat them all here, but we note Objectives 2 and 3 appear to be the primary ‘outcome’ focused objectives. They read:

2. To determine the optimal path, volume and configuration of a Kaituna River re- diversion option that maximises ecological and cultural benefits while limiting economic costs and environmental effects to acceptable levels by modelling, expert advice, published literature and one phase of pre-consent community consultation by February 2014.
3. To determine the optimal location, size, function, cost and restoration potential of at least 20 hectares of new wetlands to be created during the implementation of the re- diversion by February 2014.

We discussed the matter of the Titchmarsh and Brain land in Section 7.13 in overall terms and concluded that it was appropriate to designate that land as sought by the Applicant. However, we note that at the Hearing Mr Brain told us that in his opinion it was not necessary to take the northern portion of his land for the proposal. This was addressed in the supplementary Reply⁸⁶ evidence of Mr MacGibbon who stated:

“However, we note that Mr Brain contended that it was not necessary to take all of his land as proposed in order to achieve the objectives of the requiring authority. In particular, he suggested to us that it was not necessary to utilise a 4ha block at the northern end of the Brain land that sits above the tidal zone. This area of land was addressed in the supplementary reply evidence of Mr MacGibbon who advised:

Although protected from the full tidal effect by stopbanks, most of the Brain block of land, with the exception of the northern 4 ha, is significantly and visibly affected by salt water now. When the stopbanks are removed this effect will be more pronounced with daily tidal inundation likely over some of the area and spring tide impact over most of it.

I understand that one option for the northern 4 ha block of the Brain land is to build one or more residences there. It is my opinion that such development would create a significant threat to the quality of habitat that could be created by the proposed restoration of the rest of the Brain land, and would create an additional increased risk to the bird life occupying the Maketu spit area and Papahikahawai Island. Human dwellings attract rodents, and ship and Norway (water) rats in particular pose a major threat to wetland, dune and estuarine margin bird species. Domestic cats (especially) and dogs are also a significant threat to bird species. The 4 ha block lies at a hinge-point between the proposed wetland area and the spit and, if

⁸⁴ Submissions on behalf of the Applicant, para 43, page 10.

⁸⁵ Hearing Agenda, Section 13.2, page 123.

⁸⁶ We gave leave for the Applicant to provide supplementary evidence in Reply due to the technical nature of many of the remaining matters of contention.

developed, would provide easy access for predators to disperse between the wetland, Maketu spit and Papahikahawai Island.

In summary, the development of the northern 4 ha block of the Brain for dwellings or lifestyle purposes will provide a major threat to the ability of wetland birds to occupy and establish sustainable populations within the restored wetland area and would create an additional threat to the birdlife currently occupying Maketu spit and Papahikahawai Island.”⁸⁷

We accept Mr MacGibbon’s expert opinion on this matter. We find that the proposed designation of this 4ha northern portion of the Brain land is reasonably necessary for achieving the objectives of the requiring authority.

In terms of the overall necessity of the designations, we note that the reporting officer Mr Miles helpfully evaluated the discrete elements of the proposal and he concluded:

“Overall, in my opinion, the work and designation are reasonably necessary for the Requiring Authority to achieve their identified objectives.”⁸⁸

We have read Mr Mile’s evaluation of the discrete elements of the proposal and we agree with it and adopt it. For the sake of brevity we do not duplicate it here, but we instead repeat it in full in Appendix 3 and record that this forms part of our decision.

We find on the evidence that the works and designation are reasonably necessary for achieving the objectives of the requiring authority.

In making that finding we note the designations are district planning instruments that will effectively supersede the district plan rules for the land that is designated. Consequently, our consideration of ‘appropriateness’ is limited to district plan matters. We do not consider that matters covered by the resource consents required from the BPRC (such as the effects of the various diversions and discharges) are directly relevant to our assessment of reasonable necessity for the designation. However, even if we are incorrect in taking that view, we record that consideration of those non-district plan matters would not have altered our conclusions because potential adverse effects related to them have in our view in all cases been adequately avoided, remedied or mitigated by the recommended and proffered conditions of consent.

9 Part 2 matters

9.1 Positive effects

In sections 7 and 8 of this decision we addressed the potential adverse effects of the proposal. However, the Project will also yield a number of positive effects which are relevant to our Part 2 assessment. The proposal will assist with halting the environmental degradation suffered by the Ongatoro/Maketu Estuary and in so doing it will, at least in part, act to address cultural grievances. We note that the BPRC, in conjunction with others, developed the Kaituna River and Ongatoro/Maketu Estuary Strategy in 2009. The vision for the Strategy is to ensure that as a wider community the policies and plans, activities and actions “*celebrate and honour Kaituna River and Ongatoro/Maketu Estuary life as a taonga*”.

In our view the proposal to re-divert some of the Kaituna River back into the estuary and to create upwards of 19 hectares of new wetland will begin to mitigate the adverse effects that have occurred in the past, which were summarised in the Applicant’s opening submissions as follows:

⁸⁷ Supplementary Statement of Evidence of Roger John MacGibbon, 21 May 2015, paragraphs 5, 7 and 8, page 2.

⁸⁸ Hearing Agenda, Section 13.2, page 124.

- “(a) Thousands of hectares of wetlands have been drained, cleared and converted to farmland since early 1900’s and the natural character has been heavily reduced via stopbanking and land drainage. Around 95% of the salt marsh and freshwater wetland has disappeared since 1956, leaving native plants and animals without this vital habitat.
- (b) The ecological functioning of the estuary has deteriorated, and its life-supporting capacity is significantly compromised. It contains nuisance levels of algae and sea lettuce. With this has come a decline in the size and abundance of kaimoana.
- (c) The estuary in-filling has accelerated, with a large proportion of the tidal prism lost since 1956. There has been extensive erosion of landward shorelines and changes to the shoreline around the harbour entrance. The Maketu spit has breached twice in the last 30 years, impacted by the expansion of the flood tide delta. Bed levels, channels and banks in the area have all been changed.
- (d) The mauri of the estuary and the lower Kaituna River has declined. The health and wellbeing of tangata whenua, derived from their relationship with the river and the estuary, is considered by some to be in a compromised state. There has been a loss of cultural knowledge.”⁸⁹

We also note that the proposal will provide new berths for Mr Waterhouse and the Maketu Coastguard, an improved water intake for Mr Titchmarsh and durable access to Ford Island.

In overall terms we consider the positive effects of the proposal to be significant.

9.2 Part 2

Part 2 of the RMA sets out the purpose and principles of general application in giving effect to the Act. We understand that the RMA has a single purpose, which calls for an overall broad judgement of potentially conflicting considerations, the scale or degree of them, in terms of their relative significance or proportion in promoting the sustainable management of natural and physical resources.⁹⁰ The enabling elements of section 5 are not absolute or necessarily predominant and they must be able to co-exist with the purposes in paragraphs (a) to (c) of section 5.⁹¹

Section 6 of the RMA identifies matters of national importance that we are required to recognise and provide for. In this case we find that all of sections 6(a) to 6(e) are relevant. Section 7 directs that in achieving the purpose of the Act, we must have particular regard to some eleven listed matters. In this case we find that sections 7(a), (aa), (b), (c), (d) and (f), are relevant. Section 8 directs us to take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi). We have done so to the extent that those principles are consistent with the scheme of the RMA.

We have sought to give effect to Part 2 of the RMA in making our decisions on the applications in light of the submissions received.

In that regard, the nature of the project is such that it will, over time, sustain the potential of both the Maketu Estuary and the Kaituna River to meet the reasonably foreseeable needs of future generations, both in terms of the ecological health of the estuary and the recreational

⁸⁹ Submissions on Behalf of the Applicant, paragraph 17, page 4

⁹⁰ *Green & McCahill Properties v Auckland Regional Council* [1997] NZRMA 519 (HC).

⁹¹ *Day v Manawatu-Wanganui Regional Council* [2012] NZEnvC 182 [5-215] (not questioned on appeal: *Horticulture NZ v Manawatu RC* [2013] NZHC 2492)

and commercial boating needs of the local populace (s5(2)). Any future adverse effects on the Maketu boat ramp or boating access through the Te Tumu cut will be mitigated or remedied (s5(2)(a)). The proposal will assist with safe-guarding the life-supporting capacity of the Maketu Estuary. Any adverse effects on shellfish quality in the estuary will be less than minor (s5(2)(b)).

We find that approving the proposal will assist with preserving the natural character of the Maketu Estuary (s6(a)), protect the outstanding natural feature and landscape that comprise the Maketu Estuary (s6(b)), protect the significant indigenous vegetation of Ford's Island (s6(c)), maintain and enhance public access to the estuary, the Kaituna River and the ocean through the Te Tumu cut (s6(d)), and better provide for the relationship of Maori and their culture and traditions with the estuary (s6(e)). The proposal will enable tangata whenua to fulfil their kaitiakitanga and stewardship obligations with regard to the estuary (s7(a) and (aa)), maintain and enhance amenity values, intrinsic values of the estuary ecosystem, and the quality of the estuarine and Kaituna River environments (s7(c), (d) and (f)).

The Treaty of Waitangi (s8) is a partnership between the Crown and Maori, however in our view the Applicant has been respectful of the Treaty principles and has sought to reflect these principles in their consultation with tangata whenua, in the development of the overall proposal and in agreeing to prepare a Tangata Whenua Involvement Plan relating to the implementation of the Project. We note that we heard no evidence suggesting that the proposal did not take into account the principles of the Treaty of Waitangi.

We are also satisfied that the comprehensive suite of conditions for the resource consents and the notices of requirement will ensure that potential adverse effects are appropriately avoided, remedied or mitigated (s5(2)(c)).

In overall terms we are satisfied that approving the consents and notices of requirement would be consistent with Part 2 of the Act.

10 Duration

For the resource consents the Applicant sought a duration of 35 years. Mr Miles considered the matter of duration and advised us:⁹²

"The Applicant has sought a 35 year term for the resource consents. This is the maximum duration that can be granted under section 123(d) of the RMA In my opinion, a consent term of 35 years is appropriate for the nature of the activity proposed by the Applicant. In this regard, the application included a comprehensive assessment of the Project's potential effects on the environment, including a large number of technical reports that have been robustly peer reviewed. A comprehensive monitoring and reporting programme has been proposed by the Applicant sitting behind these [recommended] monitoring and reporting conditions is a condition that provides for a six monthly review of the resource consent conditions. Additionally, formal community and Tangata Whenua engagement is provided for the lifetime of the resource consent through conditions 33 within my recommended draft conditions. Finally, as acknowledged within the application material and by the Peer Reviewers, the full realisation of the Project's benefits is likely to be take decades."

We agree with the reporting officer. A 35 year duration is appropriate for a proposal such as this which will yield significant cultural, social and natural heritage (ecological) benefits.

⁹² Hearing Agenda, Section 13.5, pages 125 and 126.

11 Conditions

At the commencement of the hearing we were advised that there was little, if any, outstanding dispute between the reporting officer and the Applicant in terms of the recommended conditions.

By way of summary, the Applicant suggested conditions for the consents and designations as part of their application documentation. The Applicant's proposed conditions were reviewed by the reporting officer and some amendments were recommended in the Section 42A Report. This occasioned further discussion between the Applicant and the officer and as a consequence Ms Brown provided a further suite of amended recommended conditions as part of her evidence for the Applicant. Mr Miles then recommended some further amendments when presenting his officer's report towards the conclusion of the hearing.

Final suites of amended recommended conditions for both the consents and the notices of requirement were attached to the Applicant's Reply submissions. The further amendments therein arose either in response to matters raised by the submitters or in response to questions from the commissioners. We have carefully reviewed both suites of conditions and find them to be generally appropriate.

We have however made some amendments to the resource consent conditions as follows:

- several minor consent numbering, cross-referencing and grammar corrections;
- consent (l) should refer to Rule 10.2.4(g);
- condition 5A should refer to an Environmental Monitoring Programme;
- condition 7.5 should refer to Stage 1 commissioning;
- condition 8.5A should require the amended Plan to be provided to the Council;
- condition 13.8 should refer to the Council rather than the Council's CEO;
- condition 28.2 should refer to the Environmental Monitoring Programme;
- condition 28.2(g) should be simplified to require compliance with the conditions of consent. The requirement to undertake all sampling, monitoring and reporting in accordance with the verified Environmental Monitoring Programme should then be contained in a new standalone condition 28.3;
- conditions 30.4(b) and 31.3 should refer to Stage 1 commissioning;
- condition 32.2 should require monitoring five years after commissioning; and
- references to Stage 2 commissioning of the diversion structure should be removed from conditions 32.3, 33.2, 35.2, because the definition of "commissioning" covers that aspect.

We have also made some amendments to the notice of requirement conditions as follows:

- several minor consent numbering, cross-referencing and grammar corrections;
- the definition of "District Council" should refer to the Western Bay of Plenty District Council;
- the definition of the "Plan" (just above the General Conditions) should refer to the "Designation Plan";
- condition 10.4 should refer to the Wetland Restoration Plan; and
- conditions 13.3 and 14.1 should refer to the Requiring Authority.

Both suites of final conditions are set out in Appendix 4 of this decision.

We note that the proposal occasioned applications to be made for 19 separate resource consents. We considered whether it would be appropriate to separately impose conditions for each consent, namely if there should be 19 separate consent documents instead of one combined suit of conditions. In this case the Applicant proposed one combined suite of conditions and the reporting officer recommended one combined suite of conditions. We understand that this is the BPRC's preferred approach as it is administratively efficient and avoids the duplication of conditions that would result from having 19 separate consent documents. Consequently, we have accepted the format of the consent conditions as proffered by the Applicant and recommended to us by the reporting officer. We also note that none of the submitters queried this format.

We note that the conditions make extensive use of management plans. In our view these are an appropriate mechanism to ensure that conditions of consent are complied with and they avoid the necessity for excessive detail in the conditions themselves, particularly with regard to the detail of how certain construction works or mitigation actions will occur. We have reviewed the recommended conditions relating to the management plans and find them to be comprehensive and appropriate. Each suite of management plan conditions specifies the purpose or objective of the plan, which conditions it is designed to assist with implementing, the minimum contents of the plan, how it is to be prepared and who should be involved in that process. The conditions also specify that each management plan is to be submitted to the regulatory council and thereafter certified. A process is set out for reviewing or amending the plans. If there is conflict between the management plan and the conditions then the conditions prevail. We are satisfied that the approach to the management plans is both appropriate and reflective of what we understand to be current best practice.

We are satisfied that the final resource consent conditions, both singularly and in total, are necessary and appropriate to avoid, remedy or mitigate potential adverse effects identified by the technical reports and investigations, the peer reviews and the submitters. We are also satisfied that the monitoring and reporting conditions will enable the ongoing effects of the proposal to be assessed over time, thereby informing whether or not future reviews of conditions under s128 of the RMA are necessary. However, we do not consider it necessary or helpful to laboriously discuss each of the individual conditions that comprise the 40 page long comprehensive suite of resource consent conditions.

The same findings apply to the recommended designation conditions. However, we note that, as was suggested by the Applicant in Reply, we have inserted conditions relating to the Tangata Whenua Involvement Plan that are identical to the conditions on the resource consents. We have also inserted conditions relating to the on-shore structures and buildings to be provided for Coastguard Maketu and Mr Waterhouse at the new salinity block as the existing provisions of the District Plan will be superseded by the designations. In that regard, we note that the Western Bay of Plenty District Council as a submitter did not suggest any amendments to the designation conditions proffered by the Applicant and recommended to us by the reporting officer.

12 Determination

12.1 Consents

Pursuant to the powers delegated to us by the Bay of Plenty Regional Council under s34A of the Resource Management Act 1991, we record that having read the application documents, the officer's report, the submissions and the evidence presented at the hearing, and having considered the various requirements of the RMA, we are satisfied that:

- i. The Applicant has undertaken a thorough assessment of the potential adverse effects that might arise from the proposed re-diversion of water from the Kaituna River into the Ōngātoro/Maketū Estuary and the creation and enhancement of wetland areas and public recreational facilities (including the public boat ramp and car parking area) and associated works (the proposal);
- ii. The potential adverse effects of the proposal are either minor or can be adequately avoided, remedied or mitigated by the imposition of conditions under section 108 of the RMA;
- iii. The effects of the proposal, when managed in accordance with those conditions, will not be inconsistent with the relevant statutory instruments and plans; and
- iv. Allowing the proposal to proceed will be consistent with the Purpose and Principles of the RMA.

We therefore **grant** the resource consent applications sought by the Bay of Plenty Regional Council Environmental Delivery Group for the proposal as listed in section 2 of this decision subject to the imposition of the conditions set out in Appendix 4 for the reasons listed above and as further discussed in the body of this decision report.

12.2 Notices of requirement

Pursuant to the powers delegated to us by the Western Bay of Plenty District Council under s34A of the Resource Management Act 1991, we record that having read the application documents, the officer's report, the submissions and the evidence presented at the hearing, and having considered the various requirements of the RMA, we are satisfied that:

- i. The Applicant has undertaken a thorough assessment of the potential adverse effects that might arise from the proposed re-diversion of water from the Kaituna River into the Ōngātoro/Maketū Estuary and the creation and enhancement of wetland areas and public recreational facilities (including the public boat ramp and car parking area) and associated works (the proposal);
- ii. The Applicant has thoroughly and responsibly investigated and given adequate consideration to alternative sites, routes or methods;
- iii. The works and designation are reasonably necessary for achieving the objectives of the requiring authority;
- iv. The potential adverse effects of the proposal are either minor or can be adequately avoided, remedied or mitigated by the imposition of conditions on the designations;
- v. Confirming the notices of requirement will be consistent with the Purpose and Principles of the RMA.

Pursuant to Section 171(2) of the Resource Management Act 1991 (RMA), we therefore recommend that the Western Bay of Plenty District Council **confirms** the two notices of requirement for the proposed to re-diversion of water from the Kaituna River into the Ōngātoro/Maketū Estuary and the creation and enhancement of wetland areas and public recreational facilities (including the public boat ramp and car parking area) and associated works to the extent delineated on the plan prepared by Opus International Consultants Limited referenced as Drawing Number 2_1542_115_5235, Sheet Number 21, Revision 4 and dated the 7 April 2015, as was contained in Appendix 25 of the Hearing Agenda and is also contained in Appendix 4 of this decision report, subject to the imposition of the

conditions also set out in Appendix 4 for the reasons listed above and as further discussed in the body of this decision report.

Signed by the commissioners:

A handwritten signature in black ink, appearing to be 'Rob van Voorthuysen', written over a faint horizontal line.

Rob van Voorthuysen (Chair)

A handwritten signature in black ink, appearing to be 'Antoine Coffin', written over a faint horizontal line.

Antoine Coffin

A handwritten signature in black ink, appearing to be 'Nigel Mark-Brown', written over a faint horizontal line.

Nigel Mark-Brown

Dated: 1 July 2015

Appendix 1 Appearances

Kaituna Rediversion Hearing held on 4 – 7 May 2015 at Boy Corbett's Marae 83 Ford Road, Maketū

Hearings Committee

R Van Voorthuysen (Chair)
N Mark-Brown
A Coffin

Applicant

P Cooney and R Boyte (Legal Counsel)
P de Monchy (Manager Kaituna Catchments)
B Tuckey (Coastal Scientist)
S Everitt (Engineer)
J Dahm (Environmental Consultant)
K Hamill (Environmental Scientist)
R McGibbon (Ecologist)
M Single (Coastal geomorphologist)
S Brown (Planner)

Staff

D Makgill (Consents Team Leader Bay of Plenty Regional Council)
S Miles (Reporting Officer)
C Watt (Environmental Consents Manager Western Bay of Plenty District Council)
S Cubbon (Secretary)
V Hamm (Legal Counsel)

Submitters

J Fletcher, G Levy and C Ralph – Te Tumu Landowners Group
R Waterhouse - Waterhouse Partnership
J Fitter - Chair of Maketū Ongatoro Wetland Society Inc
M Fauvel - Western Bay of Plenty District Council
R Waugh - Bay of Plenty Regional Council Rivers & Drainage Section
S Beech, G Oliver and J Cross – Coastguard Maketu
Alan Brain
M Horne and B Wilkinson - Ngāti Whakaue ki Maketū
E Harwood
R Weld
M Massen
J Meikle – Fish & Game New Zealand (Eastern Region)
M Pittar
R Hintz
D Patterson
A Titchmarsh
J Pou and P Bennett – Ngāti Mākino Heritage Trust
R Bennett – Ngati Pikiāo ki Maketu
J Maxwell – Tapuika Iwi Authority

In Attendance

W Murray, Mark James and R Meha-Rangitauira (Regional Council)
F Clarkson, M Metcalf and C Koopu (Department of Conservation)
Members of the public O Dommett, K Hefferon, T Burgess, J Ryan, T Ruru, S Bodley-Davies, S Banks, G & D Ford, R Bushell, E Harwood, D Dean, F Whata, H Anderson, K Stevens, P Atutahi, A Patel, T Curtis and L Wharepai.

Appendix 2 Applicant's Consultation

In this Appendix we have included the summary of the Applicant's consultation that was included in the evidence of Pim deMonchy. We consider that the consultative process was comprehensive and note that it occurred over an extended period of time. We heard little, if any, criticism of the consultative process from submitters who appeared at the hearing. In fact many submitters were appreciative of the consultation undertaken. This description of the consultation undertaken is to be read and taken as part of our Decision.

- “43. As the Project Manager, I have been responsible for the consultation undertaken on the Project. I have led this process right through the development of options and the inception of the Project (termed the Pre-Consent phase), through the Project refinement and pre-lodgement stage, and have been involved in almost all submitter meetings post-notification. In this section I will give an outline of these three phases of consultation.
44. The Project Team prepared a Communications Plan prior to the commencement of the consultation and engagement programme, outlining the principles and processes to be undertaken. The following general tools and techniques were used throughout the process:
- Public meetings and drop in sessions
 - Displays at community events
 - Newsletters and media releases
 - Project website - updated as necessary
 - Face to face meetings - meetings were set up as they were required or requested
 - Database - an internal database was set up and maintained to include names and contact details
45. Our overall aim was to provide the community with opportunities for active engagement prior to decisions being made, to ensure informed decision making that reflected to the extent practicable the views and preferences of the community.

Pre-Consent phase 2001 - 2013

46. Prior to my involvement with the Project there was an extensive period of consultation, including focus groups, a Joint Council Committee, public meetings and submissions to prepare the Kaituna River and Ongatoro / Maketū Estuary Strategy in 2009. The community input to the Strategy led to the identification of the re-diversion of the Kaituna River among the Strategy's highest priority management actions.
47. As part of the Project's assessment of social and cultural effects, during January and February 2013 research assistants conducted interviews with 246 people in and around Ongatoro / Maketū Estuary. Participants were asked to rate the health of the lower Kaituna River and Ongatoro/Maketū Estuary, to provide information about the value to them of these areas and to give their perceptions of how this proposed partial re-diversion would affect their use of the river and estuary.
48. Food/kaimoana was the most highly valued aspect, especially by Māori participants. Recreational opportunities and fishing were highly valued by people from all ethnic groups. Māori participants emphasised the importance of cultural activities, and were also more likely to mention family connections and home as important. Both Māori and Pakeha

participants thought the Maketū/Kaituna area had conservation value and also mentioned intrinsic values.

49. Approximately half of respondents thought the proposed re-diversion would have a positive effect on their activities; very few thought the effect would be negative. People commented that the re-diversion was likely to improve the health of the estuary and remove sedimentation, although some were concerned about the quality of water flowing down the Kaituna River from further upstream. Some people thought the re-diversion would enhance fishing and fish stocks especially within the estuary; while others were concerned that reduced river flow through the Te Tumu Cut would negatively affect fishing there.
50. Between May and August 2013, following on from Council's decision on the scope of the re-diversion, the Project Team consulted with tangata whenua, other stakeholders, and the general public on a further two options for the Project. The Project was publicised in local media and information posted on the Council's website. Responses were invited from iwi, landowners, environmental groups, the local community, and other key stakeholders. The purpose was to determine the community's preferred option for the Project, and to identify key themes or suggestions for improvement.
51. During this phase the Project Team received 35 separate responses from individuals, local authorities, central government agencies, community organisations, and tangata whenua. Feedback was also received at public meetings and community events. The Project team held targeted meetings with 23 parties, many of whom subsequently provided written responses following their meeting.
52. Almost three quarters of respondents expressed outright or conditional support for the Project, with only 6% expressing outright opposition. The responses did not provide a clear direction on a preferred option. Of the responses received, 20% preferred Option 1 with 14% preferring Option 2 - 66% of responses did not express a preference for either option.
53. Option 1 was rejected based on feedback and expert opinion that the risk of erosion and spit breach associated with using Papahikahawai Creek as the primary channel for the re-diverted flow within the estuary was too high, and the additional cost of earthworks to implement it. Option 2 was modified substantially by shifting the intake 1km upstream and blocking the downstream end of Ford's Loop in response to feedback received about the importance of re-diverting freshwater from the Kaituna River rather than re-circulating sea water from Te Tumu Cut. This modified form of Option 2 was adopted by Council as its preferred option for the Project.

Pre-lodgement phase – 2014

54. Between the conclusion of the pre-consent consultation in August 2013 and consent lodgement in July 2014 the focus shifted to detailed modelling and investigation of the preferred option. Members of the Project team and I held three public meetings at Whakaue Marae to update the community and discuss investigation findings.
55. I met with each of the landowners whose land holdings will be partially required for the Project's preferred option, being Mr Alan Brain (and at that time a fellow trustee), Mr Allan Titchmarsh, and Mr Bruce and Mrs Debbie Dean. The aim of these meetings was to explain the preferred option, to understand the perspective and preferences of each owner in relation to the Project, to understand and plan for any effects that might need to be avoided, remedied or mitigated, to gauge the level of support for the Project, and to start informal negotiations with a view to eventually purchasing the required land. These negotiations are ongoing.

56. We met with Trustees of Papahikahawai Island both in Rotorua and on-site to explain the preferred option and how it would preclude cattle grazing in the future. We sought to understand their vision for the Island and included aspects of that vision in the Project design. We obtained support in principle for a compensation agreement and a co-funded Biodiversity Management Plan to restore indigenous vegetation to the pasture-dominated island over a ten year period.
57. Following on from meetings with individual iwi interested in the area of the Project, we commissioned the preparation of Cultural Impact Assessments. These were carried out by Maria Horne for Ngati Whakaue ki Maketū, Elva Conroy for Tapuika, Gina Mohi for Ngāti Rangiwewehi and Pia Bennett for all of Ngāti Mākino, Waitaha, Ngāti Pīkiao and Ngāti Tūnohopū.
58. We met regularly with Geoff, Dianne and George Ford and their representatives Jeff Fletcher and Christie Ralph to discuss the Project and related issues. As well as modifying the Project design, we are in the process of negotiating an agreement covering the future legal and physical vehicular access between Ford Road and Ford Island, accepting that their existing informal access to Ford Island will be compromised by the Project.
59. Project Technical and Engineering Manager Steve Everitt and I also met with Shane Beech of the Maketū Coastguard, and Butch Waterhouse as the only resident commercial fisherman using Te Tumu Cut regularly. These meetings clarified both parties' understanding of the Project's effects relevant to them, and led to a proposal to shift their mooring facilities.
60. Project team members met with Council staff and ratepayers of the Kaituna Catchment Control Scheme to present effects assessments on the operation of the flood control and drainage scheme and to discuss appropriate mitigation for the slightly higher water levels predicted from Ford Road downstream through the estuary post-Project. At first it appeared that increasing the cross-sectional area of a number of gravity-outlets would provide the best long-term mitigation, but more recent modelling work has suggested that replacing one or two key culverts should be augmented with funds to pay for additional pumping instead.
61. Meetings were held with the Western Bay of Plenty District Council Managers of Reserves and Facilities (Peter Watson) and Roding (Alex Finn), and planner Marc Fauvel in order to clarify expectations, improve understanding and ensure that any issues were flagged well in advance so they could be addressed.
62. Discussions were held with both the Department of Conservation and Fish and Game New Zealand on the effects of the Project, primarily on water levels in the Lower Kaituna Wildlife Management Reserve. It was agreed that an additional intake culvert would be installed to mitigate the slightly lower water levels in the Kaituna River adjacent to the Reserve, and hence lower volumes of water flowing in.
63. The Maketū Ongatoro Wetlands Society met with us on a number of occasions to discuss concerns at the risk of a spit breach, and other matters relating to the ecological health of the estuary and lower river such as treatment wetlands.
64. Drop-in days were held at the Maketū Information Centre for residents who wished to speak on any aspect of the Project on a one to one basis with me.

Post-notification phase

65. The Project's original consent application received 46 submissions of which 24 were opposed, five neutral or indeterminate, and 17 in support.

66. I telephoned, met with, or offered to meet, all of the opposing, neutral, or partially supportive submitters to discuss the matters they raised and determine what further action was required (in some cases this was done by another Project Team member).

67. Submitters with whom we engaged included:

Private Landowners Affected

67.1 Alan Brain - his lawyer Adina Thorn advised that he would not like to discuss his submission. However, Council's property consultant Alan Kane has continued to negotiate and correspond with Ms Thorn on the matter of land acquisition. Council has obtained two updated valuations and presented an offer for both the required land and Mr Brain's entire property.

67.2 Allan Titchmarsh – he remains opposed but is happy to continue discussions and negotiations for the event that the Project is consented. Council has proposed mitigating any slight increase in the frequency of saline water at his consented water take by adding to his storage capacity and installing a salinity meter to prevent pumping when salinity is too high. Further, Council has proposed re-using excavated material from the new channel and old stop-bank to raise the level of Mr Titchmarsh's lowest paddocks. This will better protect these paddocks from floodwaters and will reduce the risk of saline groundwater intrusion limiting pasture production.

Kaituna Catchment Control Scheme and submitters on flooding or drainage effects

67.3 Bruce Crabbe, manager of the Kaituna Catchment Control Scheme together with staff and ratepayers – remains neutral until satisfied that additional modelling has demonstrated effects accurately, and that appropriate mitigation is proposed. It has proved to be quite difficult and time consuming to model the operation of the Scheme's drains due to the flat topography, the inter-linked drains, the three pump-assisted outlets to the river and estuary, and the absence of direct relationships between pump operation and flow volume. Regular meetings to communicate new findings and discuss possible mitigation options have been held with both scheme staff and ratepayers. A further meeting with completed modelling results and mitigation recommendation is scheduled for 20 April, and I am cautiously optimistic that an agreement can be reached.

67.4 Other submitters on flooding or drainage have received a letter outlining the process being followed by Council to more accurately assess the Project's effects and agree on appropriate mitigation with the managers of the Kaituna Catchment Control Scheme.

67.5 Catalyst Highrise – in addition to the letter above, communications with the Project planner regarding water level and quality effects, and two letters from me with information on the effects of the Project on the navigability of Te Tumu Cut, and our proposed monitoring conditions have been provided.

Alternative re-diversion proposal

67.6 Don Paterson – I met with Mr Paterson on-site for two hours to revisit and better understand his alternative proposal for the re-diversion. I also asked Project coastal scientist and modeller Benjamin Tuckey to phone Mr Paterson to understand what he wanted to see and provide feedback to me on his perception of the merits and downsides. Mr Tuckey concluded that the decision not to continue investigations had been the correct one on the basis of risk, as well as the very low probability that the morphological behaviour described by Mr Paterson would in fact occur.

Ecological submissions

- 67.7 Eion Harwood – I offered to meet with Mr Harwood, or to set up a meeting with the Project Team’s ecologists, in order to better understand and respond to his concerns about the ecological effects of the Project. He did not respond to the offer. I spent 90 minutes discussing Mr Harwood’s concerns with him prior to consent lodgement, but he remained unconvinced about the benefits of the option proposed.
- 67.8 Lisette Collins - I offered to meet with Ms Collins, or to set up a meeting with the Project Team’s ecologists, in order to better understand and respond to her concerns about the ecological effects of the Project. I provided a written response from ecologist Keith Hamill. She declined the offer to meet.
- 67.9 Fish and Game New Zealand – I met with Andy Garrick, and Project planner Stephanie Brown corresponded with John Meikle. We accepted their proposed additional conditions.

River users / boat operators

- 67.10 Shane Beech, Coastguard Maketū and R & S Waterhouse – there have been several meetings and correspondence with Project engineer Steve Everitt to negotiate suitable relocation of mooring facilities, and discussion about navigation effects. We also sent two letters in relation to navigation and proposed monitoring conditions. Discussions are continuing.
- 67.11 S Beech, R Waterhouse, J Fletcher, L Balfin, D Butler, H & M By De Ley, J Cross, J Gray, K Witherow, M Brid, M Maltby, M Draffin, M Holyoak, N McPherson, P Crossan, R Beer, R Hintz, R & C Weld – all submitted regarding potential effects on boating navigation through Te Tumu Cut. To acknowledge this as the effect with the most submissions, we engaged a third specialist scientist from Canterbury University to peer review our findings. We then prepared a fact sheet with “Frequently Asked Questions” and answers (attached as Attachment A) which was distributed to all navigation submitters together with an invitation to a meeting on 15 February to discuss navigation matters. The meeting was well attended with 15 boat operators present. Council then reviewed its position, particularly in relation to potential contingency conditions such as extra monitoring of Te Tumu Cut, partial culvert closure and/or dredging, and followed up with a letter outlining the Project position. Council does not wish to commit to dredging because the evidence suggests the Project will have no noticeable effect on navigation, and any dredging would likely be ineffective given the high degree of natural variation in the river mouth and bar conditions.
- 67.12 Ford Land Holdings Pty Ltd, Te Tumu Landowners Group, Te Tumu Kaituna 14 and Te Tumu Kaituna 11B2 – Stephanie Brown and I met with representatives Jeff Fletcher and Christine Ralph to respond to submissions, and provided two letters on navigation. Project Legal Advisor Rachel Boyte has been negotiating an agreement to attempt to provide legal access from Ford Road to Ford Island. All parties are aware that the outcome is contingent on several other legal processes, including the acquisition of title to the reclamation from the Crown and access rights over Western Bay of Plenty District Council reserves.

Tangata whenua submissions in opposition

- 67.13 Ronika Edwards, Ngā Ahi Kaa Roa ki Maketū – I met with Ronika to discuss her concerns, which centred on the limited volume to be re-diverted and the fact that her mother, Pia Ker, had been instrumental in calling for a full re-diversion since 1979 as part of the Maketū Action Group.

- 67.14 Pia Bennett, Ngāti Mākino Heritage Trust – I met with Ms Bennett post-lodgement and we briefly discussed the re-diversion among other things. A few matters remain outstanding, but discussions remain open and will continue to be.
- 67.15 Raewyn Bennett, Ngāti Pīkiao ki Maketū – I met with Ms Bennett for a lengthy meeting in April 2015 to continue discussions. Ms Bennett’s position is that the Council has not paid sufficient attention to the restoration of lost cultural identity. This could most easily be rectified by entering an agreement to employ young ahi kaa people from Maketū to build Māori capacity and restore some of their weakened connections to the estuary and environment. Council has to date engaged four young Maketū ahi kaa in the investigation and consenting phase of the Project to carry out monitoring and research work, and is committed to finding further opportunities within the bounds of local government procurement procedures. We are also proposing conditions that require the identification of opportunities for tangata whenua to be involved in planning and implementation of the wetland restoration (Proposed Condition 24.4(i)), and in developing education or research projects associated with the project, particularly around incorporating elements of Mātauranga Māori, and in wetland restoration and ecological monitoring (Proposed Condition 25.2(i)).

Submissions in support

- 67.16 We also contacted the submitters in favour of the Project to thank them for their submissions and, in some cases, to negotiate on matters outstanding. For example, we have engaged Maketū Ongatoro Wetlands Society to monitor Maketū Spit’s width and height on two transects in response to their concern about the temporary increase in risk of the spit breaching. We have met regularly with Western Bay of Plenty District Council staff to address the matters raised in their submissions.
- 67.17 It is pleasing to have the support of Te Maru o Kaituna River Authority, the new co-governance forum established through treaty settlement legislation. Likewise, supportive submissions from Ngāti Whakāue ki Maketū, Tapuika, Ngāti Rangiwewehi, Papahikahawai Trust, Ngāti Pīkiao (via Collen Skerrett-White) and Te Tumu Kaituna land trusts 8B1, 11B2 and 14 indicate that the Project is close to getting it right from the perspective of tangata whenua (noting however, that we received three submissions from Māori opposed to parts of the Project as detailed above).
- 67.18 We would like to thank the other supportive submitters, including Te Puke Branch of Forest and Bird, Mike Maasen, Michael Pittar, Petera Tapsell, Department of Conservation, Fish and Game New Zealand, Peter Ellery, Chris Richmond, Te Tumu Landowners Group and Ford Land Holdings Pty Ltd.
68. A significant amendment to the Project involving a change to the location of the boat ramp and associated car parking facilities was lodged in December 2014. Eight submissions were received before the 10 February deadline, of which seven were in support and one was neutral. The change to the location of the boat ramp was enabled through the opportunity to purchase the relevant land, and was also made in response to concerns raised in submissions to the July application about effects on Ford Road.”

Appendix 3 Section 171(1)(c) Evaluation Component

The following text is taken from page 124 of the Hearing Agenda, Bay of Plenty Regional Council - 1370 67958 and 1370 68114 Western Bay of Plenty District Council – RC4944(L) and RC5080(L), 7th April 2015, Shanán Miles, Section 13.2. We adopt it in its abridged form as set out below, and it is to be read and taken as part of our Decision.

“As previously discussed ... the Requiring Authority has, in selecting the proposed option, undertaken an extensive investigation of the alternative sites, routes and methods for achieving the goal of the Project and its associated objectives.

I am satisfied, having read the application material and having received peer review comments, that the land permanently required for constructing, maintain and operating the proposed rediversion channel, the proposed ‘salinity block’ and Ford’s Cut are reasonably necessary for the Requiring Authority to achieve item 2 of their identified objectives. It is my understanding that the Requiring Authority is currently in negotiations with the landowners to purchase these areas of land.

I am also satisfied that the areas subject to temporary designation for the construction activities are reasonably necessary to deliver the physical works in association with the proposed works. These are necessary to ensure that the Requiring Authority can carry out these works in a safe, efficient and practical manner, whilst facilitating the measures proposed to mitigate construction effects (for example, managing sediment effects associated with earthworks activities as discussed in section 11.2 of this Report). It is my understanding that the Requiring Authority is currently in negotiations with the landowners of these areas of land to agree upon compensation.

In terms of the Brain Land located to the north of Ford’s Cut, which is proposed to be utilised for wetland creation, weighing up the outcomes sought under item 3 of the identified objectives the implications of the Wider Proposal on this land and the cost considerations [to stopbank the land] previously discussed ... I am also satisfied that this land is also reasonably necessary for the Requiring Authority to achieve not only item 3 of their identified objectives but also item 2. It is my understanding that the Applicant is currently negotiating the purchase of this land.

For the area north of the proposed re-diversion channel that I have previously referred to in this Report as the Titchmarsh Wetland, I note that this is an existing wetland with ecological values recognised in a number of the relevant planning instruments The proposed location of the re-diversion channel and associated stop banking will effectively sever this area of land from the main parcel. I am satisfied that this land is also reasonably necessary for the Requiring Authority to achieve not only item 3 of their identified objectives but also item 2. It is my understanding that the Requiring Authority is currently negotiating the purchase of this land.

In terms of the Corbett property required on a permanent basis in association with the provision of a public boat ramp and associated facilities, this is aimed at delivering the Requiring Authority’s objective of providing improved recreational opportunities as part of the project, which specifically includes the provision of a new public boat ramp and car parking. Given that the designation is for the construction, refurbishment, operation and maintenance of boating and associated parking facilities, I am satisfied that this land is reasonably necessary for the Requiring Authority to achieve their objectives. It is my understanding that the Requiring Authority is currently negotiating the purchase of this land.

Overall, in my opinion, the work and designation are reasonably necessary for the Requiring Authority to achieve their identified objectives.”

Appendix 4 Conditions and plans