

10 April 2018

Todd Whittaker  
Planning Consultant  
Gisborne District Council  
PO Box 747  
Gisborne 4010

Dear Todd,

**Re: Eastland Port Ltd: Wharves 6 & 7 and Slipway Redevelopment: Resource Consent Applications: Further Information on Ecology and Noise Matters**

Further to our letter of 19 February and your email of 20 March requesting further technical consideration of a few ecological and noise aspects of the projects.

We provide the following further information and comments in relation to the matters raised. Like the earlier letter, they include material from Marty Bayley on the port operational aspects of two redevelopment projects, along with Malcolm Hunt on noise matters.

**1. Juvenile Crayfish Habitat and Ecological Effects**

**A. Slipway Redevelopment Project**

We note that Shane Kelly (Councils ecological consultant) is satisfied with our 19 February response and there are no outstanding matters.

**B. Wharf 6 and Wharf 7 Redevelopment Project**

We note Shane Kelly's concern with the ecological evidence to support the juvenile crayfish habitat mitigation proposal and the effectiveness of the consent conditions being proposed for this component of the project. We have discussed both matters with Dr Andrew Jeffs and provide the following further technical information and proposed consent conditions.

As outlined below, we are generally of the view that the mitigation proposal is sufficiently robust from both ecological and planning perspectives, although as always can be refined. We say this, bearing in mind that the applications here are discretionary activities where the RMA 'test' is environmental effects of an 'acceptable' nature. We are not involved here with any activities that are non-complying in nature and where the higher 'no more than minor' effects 'test' would apply.

**(i) Ecological Basis of the Proposed Collection Devices**

We understand from Andrew that there is a good body of literature on the 'historical' testing of the similar artificial collection devices, including some data from those deployed in the past within the port.

Andrew also advises that there are several examples of artificial habitat structures being deployed successfully for marine invertebrates, especially for other species of lobsters. Based on the available literature he expects juvenile crayfish will settle into, and use, the artificial structures. Andrew has offered to summarise the background literature on this matter and we will advise further as to when this will be available. Andrew has advised that he is very busy supervising research projects, but will do his best to provide the information to us in a timely manner.

We are, on the above basis, satisfied with the technical support for the proposed collection devices, although we recognise there are inevitably some unknowns as to how effective they will be. Having discussed this with Andrew we are also confident that a suitable regime can be implemented for monitoring the proposed collection devices. This can be done along with deployment of 'crevice collectors' that have been used in the past in the port for assessing the presence and relative density of juvenile crayfish and which will act as a 'control' for the new devices. We cover this matter in more detail later in this letter and will further explain it in the hearing evidence.

We are of the view that the proposed mitigation of any potential effect on the existing juvenile crayfish habitat, should be seen as best endeavours and within the context of what is a working port and the essentially artificial, and/or created nature of the current habitat. The juvenile crayfish preferentially inhabit pholad bivalve burrows created in the papa rock beneath parts of Wharf 6 and 7, which was created by the port construction. In other words, before the port was developed in its present form, the juvenile crayfish were unlikely to have utilised the wharf area under consideration. They will then, necessarily have relied on the natural rocky reefs on the coast, as they no doubt still do.

Wharves 6 and 7 are a very small part of the habitat that juvenile crayfish utilise within the wider Poverty Bay and Gisborne region. As such the proposed mitigation measure is intended to 'offset' the effects of losing some artificial habitat, within what is a still largely unknown (but we expect extensive), natural reef based juvenile crayfish nursery area within Poverty Bay and wider region. In our view redevelopment of Wharves 6 and 7 will not adversely affect the natural juvenile crayfish habitat at that wider scale. In this regard, we note that no submissions have been received from the local crayfish industry group (Tairawhiti Rock Lobster Industry Association) or the national organisation (NZ Rock Lobster Industry Association).

(ii) Proposed Monitoring of the Collection Devices

Andrew, like us, agrees that some monitoring is required to assess use and effectiveness of the proposed collection devices. However, there are a few port operations and health and safety matters to assess and we suggest that the conditions not be overly prescriptive, especially given the general review powers available under Section 128 of the RMA, and as recorded in the current set of draft conditions (Ref. Condition 40).

We have reviewed draft Conditions 46-48 and at this point are reluctant to specify, say the location, number and even type of devices, to be used.

The design and siting of the collection devices requires more detailed consideration, with the ability to readily detach and reattach small units, likely to be paramount. We expect that the monitoring of 'fixed' devices at the most regularly used berth faces, is likely to involve complex diving and 'trigger' both diver and port health and safety issues. Eastland Port are investigating the possibility of trialling some of the devices in other parts of the port, such as the nearby wharves, redeveloped slipway, and Butlers Wall. We will advise further on this.

Andrew suggests that the monitoring be directed at achieving adequate temporal, as well as, spatial coverage. In terms of temporal coverage, we have discussed with Andrew including some of the 'historical' Ministry of Primary Industries (MPI) type collectors in the monitoring programme to provide a 'baseline' for demonstrating that the juvenile crayfish are still arriving, and for comparison with the proposed 'new' style collectors. Records indicate that the MPI crevice collector monitoring in the port commenced in 1987 and stopped in 2003. We also understand that one of the local iwi organisations has had, and may still have, some similar collection devices in place, although we have not seen any results of their monitoring.

We will contact MPI as they also have juvenile crayfish collection devices in other parts of the country that are directed at monitoring settlement patterns. So, we expect that the port company monitoring will be able to include a 'baseline' component that involves some of the collection used in the port or other parts of the country. We will advise further once the information comes to hand.

The other 'baseline' monitoring data to be considered here is that from MPI from the nearby Kaiti Reef. We understand that MPI have been monitoring the presence of juvenile crayfish around the reef since about 1994. However, we are not aware of any data or findings that link the reef and port areas and the different factors, if any, that influence the respective settlement patterns. In this regard, we consider it important to keep a relatively open mind on the likely complex and variable factors that are likely to influence juvenile crayfish settlement within the port. The past literature indicates marked differences in the numbers recorded at different port locations, the reasons for which are largely unknown. So, with the proposed collection devices it will be important to monitor initially over an extended period and not expect results that show instant 'success' or 'failure'.

This brings us back to the earlier points we made about the artificial nature of the port habitat 'loss' and proposed 'mitigation' here and the number of largely unknown (natural) factors that are 'in play'. The port is a relatively recent, rather than a traditional, juvenile crayfish settlement area. If this area can be retained we see it as incidental 'bonus' to continued port operations. Retaining habitat for juvenile crayfish settlement is, in our view, more an objective suited to a natural marine protected area, rather than an artificial, and very busy, port.

In terms of the proposed monitoring we have asked Andrew to consider whether it could become part of a wider Masters level project for a graduate under his supervision. We see this as a good way to approach the monitoring, giving the Council even greater assurance that the efficacy of the collection devices will be assessed and reported independently and with scientific rigour.

As outlined earlier there will be health and safety issues to work through with the port company. We will advise further on this once we hear back from Andrew and Eastland Port in terms of the mechanics of such an approach.

On the above basis, we do not consider we can really provide any 'additional conditions', as requested. We believe we have provided a reasonably comprehensive set of conditions, with associated design, implementation and reporting timeframes. However, we are proposing a couple of refinements as noted (in ~~strikeout~~ and bold) below, which relate to a couple of matters discussed earlier.

#### *Juvenile Crayfish Settlement Devices*

48. *The Consent Holder shall not less than 2 weeks prior to construction of the reclamations submit to the Council's Consents Manager for certification a confirmed design and deployment plan for crayfish pueruli settlement habitat ~~on the reclamations~~ **within the port** in conjunction with Dr Andrew Jeffs of Auckland University. **The design and deployment plan shall include the outcome of consultation with representatives of the Ministry of Primary Industries and the Port Community Liaison Group.***
49. *The approved design and deployment plan shall be implemented and operational before the first peak crayfish settlement period (May to September) following completion of the reclamations. A report on this matter shall be submitted to the Council's Consents Manager for certification by the end of the following October.*
50. *The juvenile crayfish settlement devices shall be monitored for a period of 5 years and then reviewed. An annual monitoring report shall be submitted to the Council's Consents Manager by March 31st each year. The monitoring report shall contain information on inspection dates, observations, conclusions on the effectiveness of the devices, and any changes to the devices. **Copies of the monitoring report shall be provided to the Ministry of Primary Industries and Port Community Liaison Group.***

As outlined above, we propose that the settlement devices not be limited to the Wharf 6 and 7 areas, and the knowledge of MPI and members of the PCLG be utilised at the design stage, and they be kept informed of the monitoring results. MPI are not currently part of the PCLG, but this could be arranged if need be.

## **2. Noise Rules, Effects and Monitoring**

### **A. Slipway Redevelopment Project**

We note that two issues are raised here. One is the consideration of cumulative effects of port operations as part of the assessment and decision making (through consent conditions) processes. The other is the assessment of traffic noise, within the port and on Council roads, and associated consent conditions.

We understand these issues only arise in respect of the operation of the redeveloped Wharf 6 and Wharf 7 area and are not relevant to the redeveloped slipway, which as outlined in the AEE is not to be used in any port operational sense. We suggest that this distinction be highlighted in the Council reporting and other processes to follow, so that all parties are aware of this.

B. Wharf 6 and Wharf 7 Redevelopment Project

(i) Cumulative Noise Effects

We agree with your view about the limitations in the current Tairāwhiti RMP rules and need for project specific and effects based conditions. We also agree with the conditions of consent should include limits on operational noise for the Wharf 6 and 7 areas (subject of the applications), along with associated compliance monitoring. We have provided draft conditions on both these matters, along with a condition requiring a Noise Management Plan (NMP) directed at ensuring that, from a day to day port operational perspective, the noise limits are complied with.

We are unsure at this point whether Stephen and you agree with the technical aspects of the draft conditions, i.e. the actual noise emissions limits specified, although understand this not to be the situation. The email indicates that Stephen and you favour different noise limits based on NZS 6809, and the current TRMP based distinction between ‘essential port activities’ and non-essential port activities’ is removed. Malcolm Hunt, along with us, see merit in this alternative approach, but really know to know the actual limits being proposed and how they relate to those in the current draft conditions and past resource consents, before advising further.

The draft noise conditions for the Wharf 6 and Wharf 7 redevelopment we prepared are the same those in the most recent consent issued by the Council for the adjacent Wharfside logyard in February 2017. From a port operational perspective, having different conditions in consents for adjacent areas is not ideal, but probably manageable. Also, the Council consultants and us will need to convince submitters that the current draft conditions modelled on the most recent Wharfside logyard consent conditions and district plan are not appropriate. At the recent pre-hearing meeting we got the impression that the main submitters (i.e. the nearby apartment owners) were reasonably comfortable with the current draft conditions and they were more concerned about where the noise monitoring is to take place, its reporting by Eastland Port and follow up Council actions on any exceedances.

Malcolm advises that he has spoken with Stephen about the alternative NZS 6809 approach and is happy to progress it further through the Council Section 42A report. We suggest that at this point it is best that the alternative conditions be advanced as part of this report and hopefully Malcolm and us can endorse them in our pre-circulated evidence.

We suggest the same Section 42A report approach be taken to the email suggestions that the noise limit compliance monitoring and the NMP ‘apply to whole of port activities’, rather than the Wharf 6 and 7 areas, i.e. ‘the site’. We have some planning concerns with them, but happy to discuss them further.

The September 2017 noise assessment report from Malcolm Hunt submitted with the applications contained an attached August 2017 Port (Wide) Activities Compliance Monitoring Report. It highlighted the difficulties in effectively separating noise emissions from the redeveloped Wharf 6 and 7 areas from the rest of the port, such as the adjacent Wharfside logyard. However, the report generally accepted this difficulty and expected that a 'best practice' approach would be followed whereby the source of any noise emission limit breach would be identified and measures taken by Eastland Port to rectify it.

If for instance the noise monitoring found that the breach occurred say in the Wharfside logyard, then Eastland Port, and/or the Council, would take steps to rectify it through those consents and not the consents that are expected to result from the current applications. Alternatively, if the noise breach was identified as coming from say the more distant Southern logyard or Upper logyard, then one or both organisations would take action based on the resource consents in place for those facilities, not on some wider basis through the subject applications/consents. We doubt whether the port company or the Council has the legal ability to effectively offer or use the current applications/consents to act 'unilaterally' across the whole port, even though the results of the noise monitoring for the Wharf 6 and 7 areas is expected offer this opportunity. However, we are happy to review any legal or other opinions that indicate such an approach is appropriate here.

A very similar situation exists with the NMP. The adjacent Wharfside logyard, once redeveloped, is required to be managed by Eastland Port in accordance with the February 2017 resource consents for the area, including the NMP condition attached to it. The NMP condition being proposed for the Wharf 6 and 7 areas (No. 41) is the same as that in place for the Wharfside logyard (No. 28). Parts of the port, for instance Wharf 8, are not to our knowledge, subject of any NMP or similar consent conditions. However, as outlined above, whilst the idea of a Wharf 6 and 7 area NMP being applied to wider areas of the port has some attraction, we see legal difficulties with such an approach, in terms of the other resource consents in place and the scope of the current applications.

(ii) Traffic Noise

We note the case law references, which we agree are of some relevance. However, we see them as being of very limited application here, because as you note the two redevelopment projects will not generate substantial additional traffic. The Winstone Aggregates Ltd Court decision mentioned involved a new rock quarry, whilst the Pike River Coal Ltd involved a new coal mine, both with significant number of additional truck movements. The Wharf 6 and Wharf 7 redevelopment project is simply intended to replace existing wharf structures and provide safer and more effective berthing conditions for ships (not trucks).

We agree that the NMP can cover measures to mitigate noise from port related traffic operating within the site and we highlighted in the earlier 19 February letter the draft consent condition (No. 41) that require this. However, we have concerns about the NMP, going beyond this and onto Council roads for both effects and jurisdictional reasons. Condition 41, which is reproduced below, in our view fully addresses this matter. It is the same as Condition 28 of Wharfside logyard consents, which are the most recent issued by the Council in February 2017.

We have reviewed the objectives and policies on transport noise in Chapter C 11.2.6 of the Tairāwhiti RMP and consider they support our approach. Policy 2 requires applicants to address the effects of traffic noise, but only where they 'making an alteration to the road network'. No road network alteration is being proposed as part of the Wharf 6 and Wharf 7 redevelopment. Policies 1, 3 and 4 are not in our view applicable to the proposed redevelopment.

The ensuing methods of implementation in C11.2.14 include 'Regulation'. Under Clause 2-Rules it states in (b) "*district rules will be developed to address the adverse effects of the arterial roading network and airport noise on residential dwellings*". As such we do not see a district plan 'policy' directive that indicates the Wharf 6 and Wharf 7 NMP should address road traffic noise.

The ensuing rule C11.2.15.5 -Arterial Roads, is equally specific and of limited, if any relevance, to the wharf redevelopment project. Rakaiaatane Rd that serves the port is identified in the Councils roading hierarchy as a collector road, rather than an arterial. More importantly the rule simply places an onus on people erecting dwelling adjacent to arterial roads to effectively soundproof them and meet specified external and internal Leq (24 hour) noise limits.

Following on from the above point we are reluctant to 'depart' from recently 'accepted' consent conditions, and have different ones applying in different parts of the port. Eastland Port are also keen to have, as far as possible, a consistent set of conditions applying across its operational areas. Also, we expect that submitters will be looking at a similar consistent consent conditions approach to all port activities.

We are, as noted below (in bold), proposing a small change to the NMP condition heading to include the Wharf 6 area, for completeness. This is even though the redeveloped Wharf 6 area will only be used by a small number of serving the fishing fleet, port tugs and dredge, very much like at present. As such the NMP will tend to focus on the much busier and potentially noisier Wharf 7 area.

#### **Wharf 6 & Wharf 7 Noise Management Plan**

41. *A Noise Management Plan (NMP) prepared by a suitably qualified and experienced person, shall be submitted to Council's Consent Manager for certification at least 1 month prior to commencement of operations on the redeveloped Wharf 6 and 7 areas. The objective of then NMP is to set out the methods and procedures necessary to ensure that the noise levels from the wharf operations are minimised as far as practicable. The NMP shall include but not be limited to noise mitigation measures such as:*

- (i) Maintenance of surfaces to avoid the unnecessary generation of noise from vehicles travelling on rough surfaces*
- (ii) Speed restriction on site for the purpose of noise management and for the reduction of braking and acceleration noise*
- (iii) Methods to prohibit the use of audible warning devices (including reverse alarms) as far as practicable*
- (iv) Vehicle operation guidelines to minimise noise emissions*

- (v) *Maintenance of machinery to minimise noise emissions*
- (vi) *Education of staff to minimise noise emissions.*

We trust the above further information and comments are of assistance and we look forward to hearing from you. We have attached a full revised set of draft consent conditions for the Wharf and Wharf 7 redevelopment project, which include the changes identified earlier.

**Max Dunn**



Principal Planning and Policy Consultant

**4Sight Consulting**

**Mark Poynter**



Principal Planning and Policy Consultant

**4Sight Consulting**

Attachments

Wharf 6 and Wharf 7 redevelopment revised draft consent conditions

Copies –by email

Marty Bayley (Eastland Port Ltd)

Malcolm Hunt (Malcolm Hunt & Associates)

David Aubourg (WorleyParsons)