

SECTION 42A STAFF RECOMMENDING REPORT

ID Ref: A1414730
Application no: RM19.441
Prepared for: Hearings Commissioner
Prepared by: Hilary Lennox, Consultant Planner
Date: 24 November 2020

Subject: Application RM19.441 by Port Otago Ltd for various coastal permits for the purpose of beach rehabilitation at Te Rauone Beach, Dunedin

1. Executive Summary

Port Otago Ltd (the Applicant) applied for five Coastal Permits (RM19.441.01 - 05) to allow the rehabilitation of Te Rauone Beach. Following further discussion with the applicant, it was considered appropriate to roll the four longer-term consents sought into one Coastal Permit. The consents sought are now, therefore, as follows:

- RM19.441.01 Coastal Permit (20 year term):
 - To occupy of the common marine and coastal area with three rock groyne structures, a boardwalk and appurtenant structures;
 - To disturb the foreshore and seabed while undertaking groyne construction and on-going beach renourishment works;
 - To deposit sand onto the foreshore and seabed while undertaking on-going beach renourishment works; and
 - To discharge water and sand into water while undertaking on-going beach renourishment works.
- RM19.441.02 Coastal Permit (3 year term):
 - To erect three rock groyne structures, a boardwalk and appurtenant structures that are fixed on the foreshore and seabed.

A description of the site and the proposed activities are discussed in detail in the application documents, the s95 Notification Report dated 4 May 2020, and the Applicant's response to ORC's request for further information. This detail is not repeated in this report.

The application was publicly notified at the Applicant's request. With 383 submissions in support, 2 in opposition and 1 neutral, there is clearly strong public support for the proposal.

Both the Department of Conservation (DOC) and ORC's ecological advisor expressed concerns that the suite of conditions originally proposed would not be adequate in appropriately managing potential adverse effects. These concerns have mostly been resolved through further assessment, revised draft consent conditions and the provision of a draft Environmental Management Plan. At the time of writing this report, there were a number of minor outstanding issues but these are expected to be resolved before the hearing.

After assessing the actual and potential effects of the proposal, considering submissions, and considering all of the matters in section 104 of the Resource Management Act 1991, I

recommend that Resource Consents RM19.441.01 - 02 be **granted** for a period of **20 years** and **3 years** respectively, subject to the conditions attached (with minor amendments).

2. Purpose of this Report

This report has been prepared under Section 42A of the Resource Management Act 1991 to assist in the hearing of the application for resource consent. The purpose of this report is to assist the Hearing Commissioner in making a decision on the application. This report contains my recommendations and is not a decision on the application, nor is it binding on the Hearing Commissioner. The report is evidence and will be considered along with any other evidence that the Hearing Commissioner will hear.

3. Report Author

My name is Hilary Lennox and I am a Senior Consultant with Ahika Consulting Ltd. I hold a Bachelor of Environmental Geoscience honours degree and a Masters of Applied Environmental Geology from Cardiff University. I have been working as a planning and environmental consultant for over 15 years, both in the private and the public sector. I am a Certified Hearings Commissioner having completed the 'RMA Making Good Decisions Programme'. I have been engaged by the Otago Regional Council to report and make recommendations on the above application.

4. Status of the Application

As discussed in the s95 Notification Report, this application has been assessed as a discretionary activity. The Council may grant or refuse the application. If granting consent, the Council may impose conditions under section 108 of the Act.

5. Notification and Submissions

At the Applicant's request, the application was publicly notified on Saturday 16 May 2020. The Applicant is also seeking various resource consents from the Dunedin City Council and so this was processed as a joint notification. ORC received a total of 386 submissions. Of these, 383 were in support, 2 were in opposition, and 1 was neutral. A total of 68 submitters originally indicated that they wished to be heard. A summary of submissions is provided below. Consideration of the matters raised in opposition is provided elsewhere in this report where appropriate.

Table 1: Summary of Submissions

Submitter and Position	Submission Points
383 various submitters - Support	Distressed from watching beach and trees disappearing over recent years. Address the erosion issue, save the beach. Protect the sand dunes. Restoration of the beach is overdue. Protect and enhance habitat for wildlife. Protect the natural environment and biodiversity.

	<p>Access to the beach provides opportunities for engagement with environmental issues.</p> <p>Beach is important to the community / unites the community.</p> <p>Visited this beach as a child / protect the beach where they were brought up.</p> <p>Protect and restore the beach for future generations.</p> <p>Protect cultural values.</p> <p>Protect historical / heritage values.</p> <p>Enhance visual appearance.</p> <p>Protect and enhance amenity / recreation opportunities including walking, kayaking, swimming, picnics, children playing, dog walking, gathering kai moana, diving.</p> <p>Availability of boating and fishing access has declined.</p> <p>Improve safety for beach users.</p> <p>Provide a destination for visitors.</p> <p>Area important to tourism.</p> <p>Concerned about effects of increased cruise ships and dredging operations.</p> <p>Wake from passing ships can impede on enjoyment of the beach.</p> <p>Port Otago have a moral obligation to fix the beach.</p> <p>Protection of adjacent properties.</p> <p>Road will soon be undermined by erosion.</p>
<p>Steven Clearwater - Neutral</p>	<p>Would like rock from local quarries to be used.</p> <p>Design does not accommodate boat launching or parking, small wharf/pier or mariner to moor boats.</p>
<p>Department of Conservation - Oppose</p>	<p>Construction could cause adverse effects on sealions, penguins, wading birds, sea birds, lizards and other fauna.</p> <p>Detail and effectiveness of the proposed Environmental Management Plan and Lizard Management Plan is unknown.</p> <p>Potential adverse effects on cockles and seagrass beds.</p> <p>Uncertainty regarding potential adverse effects on coastal processes and impacts on ecologically and culturally significant sites nearby.</p> <p>No cultural assessment has been provided.</p> <p>Impact of construction potentially on existing values of site, including through the introduction of weeds.</p> <p>Mitigation measures proposed don't provide enough certainty.</p>
<p>Simon James - Oppose</p>	<p>Dumping of sand and rocks will obliterate a unique piece of coastline.</p> <p>Concerned about effects on adjacent cockle beds.</p>

6. Assessment of Environmental Effects

6.1 General

An assessment of environmental effects was undertaken as part of the s95 Notification Report. The s95 Notification Report concludes that for the purposes of the notification assessment,

adverse effects of the proposed activities may be more than minor but they will be localised, and should mostly be temporary in nature. This assessment did not take into account the positive effects of the proposal as this is not a consideration under s95 of the RMA.

Please note that the reason for public notification was that the applicant requested it (Section 95A(3)(a)), rather than it necessarily being required under Section 95A(8)(b). In other words, a decision was not made on whether the application would have been notified if the applicant had not requested it.

Potential adverse effects that I consider to have been adequately addressed by the applicant are:

- There should be no effect on harbour tide level given the very small scale of the proposed works relative to the overall scale of the harbour.
- There may be minor, localised current effects at mid-tide, and low velocity currents will be deflected around the groynes, but localised increases in current velocity should be difficult to discern.
- Wake from large vessels might be reflected back into the channel but shouldn't impact adjacent shores.
- Localised changes to wave and current conditions at Te Rauone Beach as a result of the proposed works will not affect other harbour areas.
- The proposed works will intentionally alter sediment processes. Down-coast sediment processes will need to be monitored. There may need to be initial renourishment of the southern fillet beach, south of the southern groyne, as a result.
- The works should ensure the retention of a beach along this stretch with no significant adverse effects to the adjacent physical coastal environment for the design life of the project.
- Areas of the beach and reserve will be excluded from the public during the construction and maintenance periods, but some areas will still be accessible, and access will not be adversely affected once the works are completed.
- There may be some short-term, minor effects on amenity values during the construction stages due to restricted access, visual impacts and noise.
- The rock groynes will not be out of character with the wider environment and so overall adverse visual effects on landscape values are expected to be minor.
- The exact location of the historic timber groyne that is within 10 m of the proposed southernmost groyne will be confirmed prior to contractor engagement so that it can be avoided, and an Archaeological Authority will be obtained prior to works commencing as a precautionary measure.

A formal Cultural Impact Assessment was not provided with the application. The applicant did, however, provide a letter from Aukaha Ltd, dated 29 November 2019, stating that Te Rūnanga o Ōtākou did not oppose the application proceeding on a non-notified basis subject to a suite of conditions. A further letter directly from Te Rūnanga o Ōtākou, dated 21 November 2019, was also provided with the application. The purpose of that letter was to support TRBCCC endeavours to fundraise for the project. Te Rūnanga o Ōtākou then provided a submission on 13 June 2020 supporting the application in its entirety subject to a reduced suite of conditions:

- That the Kai Tahu ki Otago Natural Resource Management Plan (NRMP) be considered and adhered to;

- That Te Rūnanga o Ōtākou be informed in real time when adaptive management is being considered; and
- That baseline information prior to commencement of construction be undertaken.

Te Rūnanga o Ōtākou's submission has been taken as superseding the original letter. All of their recommended conditions have been addressed in the recommended consent conditions attached. Consideration of the NRMP is provided later in this report. In conclusion, I consider that effects on cultural values have been addressed adequately.

Potential adverse effects that warrant further consideration (ecological considerations) are discussed below.

6.2 Ecological Considerations

Both DOC and ORC's consultant ecologist, Dr Hilke Giles of Pisces Consulting Ltd (who was providing advice to ORC only), expressed concerns that the suite of conditions originally proposed would not be adequate in appropriately managing potential adverse effects on ecological values, namely benthic fauna, cockles, seagrass beds, sea lions, birds and lizards.

In response, the applicant prepared a draft Environmental Management Plan (attached) and also engaged Dr Leigh Tait from NIWA to prepare the report *Managing and Mitigating Impacts to Seagrass Beds*, dated 20 October 2020 (attached). A number of informal meetings, phone calls and email discussions were also had between myself, Dr Giles, Dr Tait and the applicant. As a result, the applicant has proposed an adaptive management regime, which includes revised consent conditions and an Environment Management Plan that incorporates Dr Tait's report and recommendations.

A summary of the issues raised by Dr Giles throughout the process is provided in the attached memo dated 16 November. Table 1 indicates which issues have been resolved. At the time of writing this report, there were a number of minor outstanding issues but these are expected to be resolved before the hearing. This may result in some minor amendments to the recommended consent conditions and the draft Environmental Management Plan. Where any issues remain unresolved, these will be discussed at the hearing.

The applicant also undertook consultation with DOC to see how they could address the issues raised in their submission. At the time of writing this report, my understanding is that DOC is largely satisfied with how the applicant has responded, and that they are working through remaining issues with the applicant. DOC have indicated that if they are satisfied with the recommended conditions that are circulated with this report then they will not need to appear at the hearing. I believe the outstanding issues between DOC and the applicant to be those summarised in the table below. Note that these are DOC's concerns and the applicant's responses, not mine.

Issue raised by DOC	Applicant's response
<p>The application includes monitoring of benthic communities, but these are not included in the draft consent conditions.</p>	<p>Benthic (infauna) communities conditions provided with the application have been removed. This is an amendment to the application that was made post assessment of the effects on seagrass by NIWA. The benthic surveys undertaken by Ryder noted a range of burrowing and epifaunal species present within and adjacent to the construction footprint, however, also noted that there were few valued or habitat forming species besides seagrass. There is no real merit of undertaking benthic monitoring as it is difficult to find meaningful metrics.</p>
<p>The degree to which the structures may retain drift seaweeds and the resulting nutrient enrichment has not been addressed. This would cause amenity (visual and smell) impacts, so could require a response regardless of the ecological impacts.</p>	<p>We do not consider that drift seaweed is an issue which warrants consideration as part of this application as there is no available evidence suggesting that similar structures enhance the accumulation of macroalgae through hydrodynamic processes. Existing evidence points strongly to wind driven movement and accumulation of macroalgal blooms. Further, there is little evidence of Otago Harbour having an issue with excessive macroalgal blooms. Large scale removal of macroalgal biomass has its own set of impacts and considerations as few methods other than machinery-based removal are practical.</p>
<p>Given that there is also the Wildlife Act process in train we haven't suggested any changes to the resource consent condition on lizards – the expectation is that once the WA authority is granted, the LMP will be finalised in line with that, and can then be lodged to meet the resource consent requirement.</p>	<p>We agree with this and have altered the LMP conditions to reflect this. We also note that the EMP will be updated once the Wildlife Act permit is granted to reflect any requirements made.</p>
<p>Request the following condition: <i>'If any marine mammals or wildlife are found in a distressed state, the Department of Conservation must be contacted in the first instance to assess the animal/bird and undertake necessary action.'</i></p>	<p>In POL's experience, it is sometimes difficult to get hold of DoC when a mammal or bird is found in a distressed state and so wish to include that an appropriate wildlife facility can be contacted if DOC are unavailable:</p> <p><i>'An appropriate wildlife facility can be contacted if the Department of Conservation are unavailable.'</i></p>
<p>Request that reporting all mammal sightings and any management</p>	<p>POL consider that reporting all mammal sightings to DOC as soon as is practicable is onerous and</p>

actions undertaken are reported to DOC as soon as is practicable.	unnecessary, and suggest reporting on 1 April each year instead.
Request the following condition: <i>'Critical work areas and machinery that could be hazardous to marine mammals or wildlife should be fenced off with temporary fencing to prevent access by the marine mammals or wildlife.'</i>	POL consider the addition of this condition impractical given this would essentially require fencing within the water to separate mammals/wildlife from construction of the rock groynes.

I consider that DOC's concerns have been adequately addressed by the applicant, however, I cannot speak on behalf of DOC. At the time of writing this report, DOC's submission was still in opposition and they maintained the right to be heard at the hearing.

In summary, provided that the minor outstanding issues raised in Dr Giles' memo are addressed, I am satisfied that significant potential adverse effects on ecological values can be managed appropriately through the recommended consent conditions (with minor amendments) and the Environmental Management Plan.

7. Section 104 Evaluation

Section 104 of the Act sets out the matters to be considered when assessing an application for a resource consent. These matters are subject to Part 2, the purpose and principles, which are set out in Sections 5 to 8 of the Act.

The matters of Section 104(1) to be considered when assessing an application for a resource consent are as follows:

- (a) *any actual and potential effects on the environment of allowing the activity;*
- (ab) *any measure proposed or agreed to by the Applicants for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity;*
- (b) *any relevant provisions of:*
 - (i) *a national environmental standard;*
 - (ii) *other regulations;*
 - (iii) *a national policy statement;*
 - (iv) *a New Zealand coastal policy statement;*
 - (v) *a regional policy statement or proposed regional policy statement;*
 - (vi) *a plan or proposed plan; and*
- (c) *any other matter the consent authority considers relevant and reasonably necessary to determine the application.*

These matters are discussed in the following sections.

7.1 Section 104(1)(a) - Actual and Potential Effects on the Environment

Section 104(1)(a) of the RMA requires the council to have regard to any actual and potential effects on the environment of allowing the activity. This includes both the positive and the adverse effects.

In considering the adverse effects, the Consent Authority:

- may disregard those effects where the plan permits an activity with that effect; and
- must disregard those effects on a person who has provided written approval.

The actual and potential adverse effects of the proposed activity were considered earlier in this report. In addition to these adverse effects, it is considered that the proposal will have the following positive effects:

- Increasing beach amenity at Te Rauone Beach. The proposed activities will re-establish a beach shape and profile consistent with the natural conditions of Te Rauone Beach prior to advanced erosion. Following the works, a 5m+ high tide beach will be present at Te Rauone Beach. This will make the beach one of the few remaining sandy beaches on the western side of the Otago Peninsula. Coupled with the intentions of the DCC to rejuvenate the Te Rauone Beach Reserve, the works will enhance local amenity significantly.
- Preservation of historical, cultural and spiritual values. The position of Te Rauone Beach near the entrance to the Otago Harbour and to the marae at Otākōu means that it has been an important and well-loved area for generations of Kai Tahu and other communities on the Otago Peninsula. This is reflected in a number of the submissions received in support of the proposal.
- Increased coastal and natural hazard resilience. Erosion is affecting nearby residential properties and the Te Rauone Beach Reserve. There is the potential if erosion continues, that Harington Point Road may also become affected. The construction of the rock groynes may provide some protection against erosion through allowing for re-establishment of the beach.
- Increased ecological habitat following the works. The works have the potential to provide increased habitat in and around Te Rauone Beach when completed. This includes a new haul-out location for sea lions and tidal flat habitat for indigenous birds and benthic communities including native seagrass beds¹.

Taking into consideration the positive effects above and the assessment of adverse effects undertaken for notification purposes, actual and potential effects on the environment are considered to be acceptable.

7.2 Section 104(1)(ab) - Offset or Compensation

The applicant has not proposed or agreed to any measures to offset or compensate for adverse effects that will or may result from allowing the activity.

¹ Note that these improvements are potential but not guaranteed, and that there are no consent conditions requiring a minimum level of habitat creation.

7.3 Section 104(1)(b) - Relevant Planning Documents

The applicant has provided an assessment against some of the relevant planning documents, however, some relevant policies were not assessed and so for the sake of completeness and to avoid any doubt, an assessment against the relevant policies is provided below.

7.3.1 New Zealand Coastal Policy Statement

The New Zealand Coastal Policy Statement (NZCPS) and the Regional Policy Statement for Otago (RPS) were both considered when the Regional Plan: Coast (RPC) was being developed. The RPC is consistent with the NZCPS and RPS so these policy statements are given effect to by assessing the proposal against the RPC. However, in their submission DOC suggested that the application was inconsistent with a number of policies of the NZCPS and so for the sake of completeness, an assessment of the application against the relevant policies of the NZCPS has been undertaken. Policies with common themes have been considered together.

Table 2: Policy Assessment - NZCPS

Policy (paraphrased where appropriate)	Assessment
<i>Policy 3 Taking account of the principles of the Treaty of Waitangi (Te Tiriti o Waitangi), and kaitiakitanga, in relation to the coastal environment</i>	The applicant has undertaken consultation with Tangata Whenua and an assessment against the Kai Tahu ki Otago Natural Resource Management Plan is provided below.
<i>Policy 4 Adopt a precautionary approach towards proposed activities whose effects on the coastal environment are uncertain but potentially significantly adverse. Adopt a precautionary approach, so that:</i> <i>a. avoidable social and economic loss and harm to communities does not occur;</i> <i>b. natural adjustments for coastal processes, natural defences, ecosystems, habitat and species are allowed to occur;</i> <i>and</i> <i>c. the natural character, public access, amenity and other values of the coastal environment meet the needs of future generations.</i>	<p>The applicant provided an assessment of potential impacts on coastal processes and this was reviewed by T&T on behalf of ORC. Overall, likely adverse effects on coastal processes seem to be reasonably well understood. Ongoing monitoring and adaptive management is proposed to ensure significant adverse effects are avoided.</p> <p>Uncertainty remains in terms of adverse effects on ecological values, namely seagrass beds and marine mammals. As a result, an adaptive management approach (with rigorous requirements in terms of effects on seagrass beds particularly) has been proposed.</p> <p>The proposal should significantly enhance public access and amenity values at Te Rauone Beach.</p>
<i>Policy 5 Provide for the integrated management of natural and physical resources. This requires:</i>	The proposal is the result of over 10 years of investigation and consultation between Port Otago, TRBCC and the wider community,

<p>a. a co-ordinated management or control of activities;</p> <p>b. working collaboratively with other bodies and agencies;</p> <p>c. particular consideration of situations where:</p> <p>i. development crosses the line of MHWS.</p> <p>ii. public use and enjoyment is affected, or is likely to be affected.</p> <p>iii. development may be affected by physical changes to the coastal environment.</p>	<p>including Tangata Whenua and local authorities.</p> <p>By lodging a joint application with ORC and DCC, and requesting public notification, the applicant has ensured that the wider community and all stakeholders have been given adequate opportunity to participate.</p> <p>Overall, there is strong support from the community for this proposal. By hearing both applications together, the Hearings Commissioner will be able to consider the application holistically.</p>
<p><i>Policy 6</i></p> <p><i>2a. recognise potential contributions to the social, economic and cultural wellbeing of people and communities from use and development of the coastal marine area.</i></p> <p><i>2b. recognise the need to maintain and enhance the public open space and recreation qualities and values.</i></p> <p><i>2e. promote the efficient use of occupied space, including by:</i></p> <p><i>i. requiring that structures be made available for public or multiple use wherever reasonable and practicable;</i></p> <p><i>iii. ensure that space occupied for an activity is used for that purpose effectively and without unreasonable delay</i></p> <p><i>Policy 18. Recognise the need for public open space for public use and appreciation including active and passive recreation, and provide for such public open space, including by:</i></p> <p><i>a. ensuring that the location and treatment of public open space is compatible with the natural character, natural features and landscapes, and amenity values of the coastal environment;</i></p> <p><i>b. taking account of future need for public open space within and adjacent to the coastal marine area, including in and close to cities, towns and other settlements;</i></p> <p><i>d. considering the likely impact of coastal processes and climate change so as not to</i></p>	<p>Recommended consent conditions require that public access is restricted to the extent required to ensure the safety of both the public and contractors while works are being undertaken.</p> <p>Once constructed, the groynes and nourished beach also allow for greater public access along the beach and improved amenity values.</p> <p>A boardwalk and steps (leading to the beach) at the southern groyne are included as part of these works and will tie into the DCC revitalisation works of the Te Rauone Beach Reserve.</p> <p>The strong community support for the proposal indicates that there will be potential contributions to the social and cultural wellbeing of people and communities.</p> <p>The proposal should assist in reducing adverse impacts associated with coastal erosion so that future generations may continue to have access to the beach. Sea level rise of 0.1m has been allowed for over the 20-year groyne design life. Sea level rise will need to be reconsidered around 2035, with design revisions built into end-of-life major maintenance/replacement plans. This is more cost effective than providing initially for a longer sea level rise</p>

<p><i>compromise the ability of future generations to have access to public open space.</i></p> <p><i>Policy 19.</i> <i>1. Recognise the public expectation of and need for walking access that is practical, free of charge and safe.</i> <i>2. Maintain and enhance public walking access.</i></p>	<p>horizon given that modelling and guidance will improve between now and then.</p>
<p><i>Policy 11.</i> <i>a. Avoid adverse effects on: indigenous taxa that are listed as threatened or at risk; naturally rare indigenous ecosystems and vegetation types; significant examples of indigenous community types; areas set aside for protection.</i> <i>b. Avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on: habitats that are important during the vulnerable life stages of indigenous species; indigenous ecosystems and habitats that are particularly vulnerable to modification, including eelgrass; habitats of indigenous species that are important for recreational or cultural purposes.</i></p>	<p>Schedule 4 of the Proposed Otago Regional Policy Statement provides criteria for determining significant indigenous vegetation and significant habitat for indigenous biodiversity. The scheme footprint is significant as it triggers Criterion 2 - Rarity - by providing habitat for the at risk declining southern grass skink.</p> <p>Adverse effects will be avoided through the applicant obtaining a Wildlife Authority and adhering to a Lizard Management Plan.</p> <p>An adaptive management approach, with rigorous requirements, has been proposed to ensure that significant effects on seagrass beds are avoided.</p> <p>The proposal could create new habitats for affected fauna and flora (benthic communities, cockles, seagrass, sealions, birds). However, there are no targets that must be reached or monitoring that will be undertaken to demonstrate this.</p>
<p><i>Policy 13.</i> <i>1. Preserve the natural character of the CMA.</i> <i>2. Recognise that natural character may include a range of natural character from pristine to modified.</i></p> <p><i>Policy 14.</i> <i>Promote restoration or rehabilitation of the natural character of the CMA.</i></p>	<p>Otago Harbour has been modified significantly over the past 150 years through the creation of a dredged shipping channel (with subsequent impacts on coastal processes), construction of sea walls and other structures, and land-based development. Te Rauone Beach has been impacted by processes that are thought to result, in part, from human use activities in the harbour.</p> <p>Although the groynes are a hard protection structure, they are not out of character in terms of Otago Harbour. Furthermore, the</p>

	purpose of the groynes is to restore the beach i.e. restore natural character.
<i>Policy 17. Protect historic heritage.</i>	The exact location of the historic timber groyne that is within 10 m of the southernmost groyne will be confirmed prior to contractor engagement and an Archaeological Authority will be obtained prior to works commencing as a precautionary measure.
<p><i>Policy 23.</i></p> <p><i>1. In managing discharges, have particular regard to:</i></p> <p><i>a. the sensitivity of the receiving environment;</i></p> <p><i>b. the nature of the contaminants to be discharged;</i></p> <p><i>c. the capacity of the receiving environment to assimilate the contaminants; and:</i></p> <p><i>d. avoid significant adverse effects on ecosystems and habitats after reasonable mixing.</i></p>	<p>The approach of seeking a discharge permit under Rule 10.5.6.2 is somewhat conservative, but it follows the approach agreed between the applicant and ORC on previous similar applications.</p> <p>Sediment laden water will be discharged as a by-product of the deposition of sand during sea-based renourishment activities. The applicant has assessed potential adverse effects that could result and concluded that vigorous monitoring and an adaptive management regime will be required to manage potential adverse effects on nearby seagrass beds.</p>
<p><i>Policy 25. In areas potentially affected by coastal hazards over at least the next 100 years: avoid increasing the risk of social, environmental and economic harm from coastal hazards; encourage redevelopment, or change in land use, where that would reduce the risk of adverse effects from coastal hazards; discourage hard protection structures and promote the use of alternatives to them.</i></p> <p><i>Policy 26.</i></p> <p><i>1. Provide where appropriate for the protection, restoration or enhancement of natural defences that protect coastal land uses, or sites of significant biodiversity, cultural or historic heritage or geological value, from coastal hazards.</i></p> <p><i>2. Recognise that such natural defences include beaches.</i></p>	<p>The applicant provided an assessment of potential impacts on coastal processes and this was reviewed by T&T on behalf of ORC. Overall, likely adverse effects on coastal processes seem to be reasonably well understood. Ongoing monitoring and adaptation is proposed to ensure adverse effects are managed.</p> <p>Sea level rise of 0.1m has been allowed for over the 20-year groyne design life. Sea level rise will need to be reconsidered around 2035, with design revisions built into end-of-life major maintenance/replacement plans. This is more cost effective than providing initially for a longer sea level rise horizon given that modelling and guidance will improve between now and then.</p> <p>Although the groynes are a hard protection structure solution, they are not out of character in terms of Otago Harbour, and the purpose of the groynes is to allow for the</p>

	restoration of the beach, which a soft protection structure.
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Reclamation is not defined in the NZCPS. Reclamation is, however, defined in the RPC as (my emphasis):

“The permanent infilling of the foreshore or seabed with sand, rock, quarry material, concrete, or other similar material, for any purpose, and includes any embankment, but does not include... any infilling where the purpose of that infilling is to provide beach nourishment.”

In their submission, DOC suggested that the proposal is inconsistent with Policy 10 of the NZCPS. However, I consider that the proposed activity does not include reclamation (as defined in the RPC), and so this policy does not apply.

DOC also suggested that the proposal is inconsistent with Policy 22 of the NZCPS, which addresses sedimentation. I consider that this policy is largely concerned with land-based activities and so it not particularly relevant in the context of this proposal.

Overall, the proposal is considered to be generally consistent with the NZCPS.

7.3.2 Regional Policy Statement and Partially Operative Regional Policy Statement

The Regional Policy Statement for Otago 1998 (RPS) provides an overview of Otago’s resource management issues, and ways of achieving integrated management of natural and physical resources. It is noted that the RPC gives full effect to the provisions of the RPS, therefore provided that the proposal is consistent with the provisions of the RPC (discussed below), it is also consistent with the RPS.

The proposed Regional Policy Statement (pRPS) was notified on 23 May 2015 and a decision was released 1 October 2016. The pRPS was made partially operative on 14 January 2019 (PO-RPS), with the exception of certain provisions that are subject to appeal. The RPC has not been updated following the notification of the pRPS and so an assessment of the proposal against the relevant policies of the PO-RPS is provided below. The provisions that are the subject of court proceedings are identified as follows:

- Proposed mediation changes that have been approved by the Environment Court, but not yet made operative by Council, are shaded in grey.
- Further additions to the RPS as a result of appeals are shown in dark red and underlined.
- Further deletions from the RPS as a result of appeals have been omitted.

Where discussion regarding a particularly matter has already been provided in Table 2 above, this is indicated rather than repeated. Policies with common themes have been considered together.

Table 3 Policy Assessment - PO-RPS

Policy (paraphrased where appropriate)	Assessment
<p><i>Policy 1.1.2 <u>Provide for the social and cultural wellbeing and health and safety of Otago's people and communities by:</u></i></p> <p><i>a) <u>Recognising and providing for Kāi Tahu values;</u></i></p> <p><i>c) <u>Taking into account the diverse needs of Otago's people and communities;</u></i></p> <p><i>e) <u>Promoting community resilience and the need to secure resources for the reasonable needs for human wellbeing.</u></i></p>	<p>See table above (Policies 3, 6, 18 and 19 NZCPS)</p>
<p><i>Policy 1.2.1 <u>Integrated management</u></i></p>	<p>See table above (Policy 5 NZCPS)</p>
<p><i>Policy 2.1.2 <u>Ensure that local authorities exercise their functions and powers, by:</u></i></p> <p><i>b) <u>Involving Kāi Tahu in resource management processes implementation;</u></i></p> <p><i>c) <u>Taking into account Kāi Tahu values in resource management decision-making processes and implementation;</u></i></p> <p><i>d) <u>Recognising and providing for the relationship of Kāi Tahu's culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taoka;</u></i></p> <p><i>e) <u>Ensuring Kāi Tahu have the ability to:</u></i></p> <p><i>i. <u>Identify their relationship with their ancestral lands, water, sites, wāhi tapu, and other taoka;</u></i></p> <p><i>ii. <u>Determine how best to express that relationship;</u></i></p> <p><i>h) <u>Taking into account iwi management plans.</u></i></p>	<p>See table above (Policy 3 NZCPS)</p>
<p><i>Policy 3.1.5 <u>Manage coastal water to:</u></i></p> <p><i>b) <u>Maintain healthy coastal ecosystems, the range of indigenous habitats provided by the coastal marine area, and the migratory patterns of indigenous coastal water species;</u></i></p> <p><i>c) <u>Maintain or enhance important recreation values;</u></i></p> <p><i>d) <u>Maintain or enhance, as far as practicable coastal values; and</u></i></p> <p><i>e) <u>Control the adverse effects of pest species.</u></i></p>	<p>The applicant has assessed potential adverse effects on water quality and concluded that vigorous monitoring and an adaptive management regime will be required to manage potential adverse effects on nearby seagrass beds.</p> <p>Public access will be restricted to the extent required to ensure the safety of both the public and contractors while works are being undertaken. Once constructed, the groynes and renourished beach will allow for greater public access along the beach and improved amenity values.</p>

	<p>A recommended consent condition requires all machinery is clean, free of contaminants and in good repair, prior to entering the common marine and coastal area. This should reduce the risk of pest species being brought into the area.</p>
<p><u>Policy 3.1.9 Manage ecosystems and indigenous biological diversity to:</u> <u>a) Maintain or enhance:</u> <u>i. Ecosystem health and indigenous biological diversity including habitats of indigenous fauna;</u> <u>ii. Biological diversity where the presence of exotic flora and fauna supports indigenous biological diversity;</u> <u>d) Control the adverse effects of pest species, prevent their introduction and reduce their spread.</u></p>	<p>The proposal could result in adverse effects on ecological values, namely benthic fauna, cockles, seagrass beds, sea lions, birds and lizards</p> <p>Potential adverse effects on ecological values can be managed appropriately through the recommended consent conditions (with minor amendments) and the Environmental Management Plan.</p> <p>The proposal could create new habitats for affected fauna and flora (benthic communities, cockles, seagrass, sealions, birds). However, there are no targets that must be reached or monitoring that will be undertaken to demonstrate this.</p>
<p><u>Policy 3.1.10 Biodiversity in the coastal environment</u></p>	<p>See table above (Policy 11 NZCPS)</p>
<p><u>Policy 3.1.12 Natural Character</u></p>	<p>See table above (Policy 13 &14 NZCPS)</p>
<p><u>Policy 3.1.13 Encourage, facilitate and support activities that contribute to the resilience and enhancement of the natural environment, by where applicable: ;</u> <u>b) Protecting or restoring habitat for indigenous species;</u> <u>c) Regenerating indigenous species;</u> <u>d) Mitigating natural hazards;</u> <u>f) Improving the health and resilience of:</u> <u>i. Ecosystems supporting indigenous biological diversity;</u> <u>ii. Important ecosystem services.</u> <u>g) Improving access to the coast;</u> <u>h) Buffering or linking ecosystems, habitats and areas of significance that contribute to ecological corridors;</u> <u>i) Controlling pest species</u></p>	<p>As noted previously, the proposal could create new habitats for affected fauna and flora (benthic communities, cockles, seagrass, sealions, birds). However, there are no targets that must be reached or monitoring that will be undertaken to demonstrate this.</p>
<p><u>Policy 3.2.2 Managing significant indigenous vegetation and habitats</u></p>	<p>See table above (Policy 11 NZCPS)</p>

<p><i>Policy 3.2.6 <u>Maintain</u> or enhance highly valued natural features, landscapes and seascapes by all of the following:</i></p> <p><i>a) Avoiding significant adverse effects on those values that contribute to the high value of the natural feature, landscape or seascape;</i></p> <p><i>b) Avoiding, remedying or mitigating other adverse effects;</i></p> <p><i>c) Encouraging enhancement of those values that contribute to the high value of the natural feature, landscape or seascape.</i></p>	<p>Whilst Te Rauone Beach has not been identified as ‘highly valued’ in the RPC, it is clearly valued highly by the local community who have worked for over 10 years on a plan to ‘save the beach’.</p>
<p><i>Policy 4.1.1 Identify natural hazards that may adversely affect Otago’s communities by considering:</i></p> <p><i>a) Hazard type and characteristics;</i></p> <p><i>b) Multiple and cascading hazards;</i></p> <p><i>c) Cumulative effects;</i></p> <p><i>d) Effects of climate change;</i></p> <p><i>e) Using the best available information for calculating likelihood;</i></p> <p><i>f) Exacerbating factors.</i></p> <p><i>Policy 4.1.6 <u>Minimising increase in</u> natural hazard risk</i></p> <p><i>Policy 4.1.7 Reduce existing natural hazard risk by:</i></p> <p><i>a) Encouraging activities that:</i></p> <p><i>i. Reduce risk; or</i></p> <p><i>ii. Reduce community vulnerability;</i></p> <p><i>b) Discouraging activities that:</i></p> <p><i>i. Increase risk; or</i></p> <p><i>ii. Increase community vulnerability;</i></p> <p><i>g) Reassessing natural hazard risk to people and communities, and community tolerance of that risk, following significant natural hazard events.</i></p>	<p>See table above (Policies 4, 25 & 26 NZCPS).</p>

<p><i>Policy 4.1.10 Give preference to risk management approaches that reduce the need for hard protection structures, and provide for hard protection structures only when all of the following apply:</i></p> <p><i>a) Those measures are essential to reduce risk to a level the community is able to tolerate;</i></p> <p><i>b) There are no reasonable alternatives <u>that result in reducing the risk exposure</u>;</i></p> <p><i>c) It would not result in an increase in risk to people and communities, including displacement of risk off-site;</i></p> <p><i>d) The adverse effects can be adequately managed;</i></p> <p><i>e) The mitigation is viable in the reasonably foreseeable long term.</i></p> <p><i>Policy 4.1.11 Enable the location of hard protection structures or similar engineering interventions on public land only when either or both of the following apply:</i></p> <p><i>a) There is significant public or environmental benefit in doing so;</i></p>	<p>The proposal includes the use of both hard protection structures (the groynes) and soft protection structures (the beaches). Without the groynes, the renourished beach would likely erode quickly, with potential adverse effects resulting from deposition of that material down the coastline.</p> <p>Alternative designs have been investigated, with the proposed design being considered the most suitable.</p> <p>The applicant provided an assessment of potential impacts on coastal processes and this was reviewed by T&T on behalf of ORC. Overall, likely adverse effects on coastal processes seem to be reasonably well understood. Ongoing monitoring and adaptation is proposed to ensure adverse effects are managed.</p> <p>T&T concluded that the works should ensure the retention of a beach along this stretch with no significant adverse effects to the adjacent physical coastal environment for the design life of the project.</p>
<p><i>Policy 4.2.1 Ensure Otago's people and communities are able to adapt to, or mitigate the effects of sea level rise, over no less than 100 years, by using:</i></p> <p><i>a) A sea level rise of at least 1 metre by 2115, relative to 1990 mean sea level (Otago Metric Datum); and</i></p> <p><i>b) Adding an additional 10mm per year beyond 2115, <u>or the most up-to-date national or regional guidance on likely sea level rise.</u></i></p>	<p>Sea level rise of 0.1m has been allowed for over the 20-year groyne design life. Policy 4.2.1 suggests that 0.2m should have been allowed for if the 1m rise was taken as an average across the 100 years. However, sea level rise may not happen at a steady rate and the applicant has noted that sea level rise will need to be reconsidered around 2035, with design revisions built into end-of-life major maintenance / replacement plans. This is more cost effective than providing initially for a longer sea level rise horizon given that modelling and guidance should improve between now and then.</p>
<p><i>Policy 5.1.1 Maintain <u>or</u> enhance public access to the natural environment unless restricting access is necessary for one or more of the following:</i></p> <p><i>a) Protecting public health and safety;</i></p>	<p>Public access will be restricted only to the extent required to ensure the safety of both the public and contractors while works are being undertaken.</p>
<p><i>Policy 5.2.3 Protect and enhance places and areas of historic heritage</i></p>	<p>See table above (Policy 17 NZCPS)</p>

<p><i>Policy 5.4.2 Apply an adaptive management approach by both:</i></p> <p><i>a) Setting appropriate indicators for effective monitoring of those adverse effects; and</i></p> <p><i>b) Setting thresholds to trigger remedial action before the effects result in irreversible damage.</i></p>	<p>An adaptive management approach is proposed both in terms of potential effects on coastal processes (namely sediment movement) and effects on nearby seagrass beds. Details are provided in the recommended consent conditions and draft EMP.</p>
<p><i>Policy 5.4.3 Precautionary approach</i></p>	<p>See table above (Policy 4 of the NZCPS)</p>
<p><i><u>Policy 5.4.9 Minimise adverse effects from activities by all of the following:</u></i></p> <p><i><u>a) Avoiding activities that do not have a functional need to locate in the coastal marine area;</u></i></p> <p><i><u>b) When an activity has a functional need to locate in the coastal marine area, giving preference to avoiding its location in:</u></i></p> <p><i><u>i. Areas of significant indigenous vegetation and significant habitats of indigenous fauna;</u></i></p> <p><i><u>iv. Places or areas containing historic heritage of regional or national significance;</u></i></p> <p><i><u>v. Areas subject to significant natural hazard risk;</u></i></p> <p><i><u>c) Where it is not practicable to avoid locating in the areas listed in b) above, because of the functional needs of that activity:</u></i></p> <p><i><u>i. Avoid adverse effects on the values that contribute to the significant or outstanding nature;</u></i></p> <p><i><u>iv. Minimise any increase in natural hazard risk through mitigation measures;</u></i></p> <p><i><u>v. Avoiding, remedying, or mitigating adverse effects on other values;</u></i></p> <p><i><u>d) Providing for the efficient use of space by requiring structures be made available for public or multiple use wherever reasonable and practicable;</u></i></p> <p><i><u>e) Applying a precautionary approach to assessing the effects of the activity, where there is scientific uncertainty, and potentially significant or irreversible adverse effects;</u></i></p>	<p>There are no areas of significant indigenous vegetation within the scheme footprint. Some lizard habitat may be directly impacted, and so a Wildlife Authority will need to be obtained before works commence.</p> <p>Potential adverse effects on nearby seagrass beds will be managed through the proposed monitoring and adaptive management regime.</p> <p>An Archaeological Authority will also need to be obtained due to the potential impact on the historic timber groyne.</p> <p>Public access will be restricted to the extent required to ensure the safety of both the public and contractors while works are being undertaken only.</p> <p>Te Rauone Beach is identified in the RPC as a coastal erosion area. The proposed activities have a functional need to be located in this area because the purpose of the proposal is to restore a beach that has been lost due to coastal erosion processes.</p>

Overall, the proposal is considered to be consistent with the PO-RPS.

7.3.3 Regional Plan: Coast (RPC)

The relevant policies of the RPC are assessed below.

Table 4: Policy Assessment - RPC

Policy (paraphrased where appropriate)	Assessment
<p>5.4.1 To recognise coastal protection areas as identified in Schedule 2.1</p> <p>5.4.2 Priority will be given to avoiding adverse effects on the values identified in Schedule 2.1.</p> <p>5.4.5 To recognise coastal recreation areas as identified in Schedule 2.3</p> <p>8.4.2 For activities involving structures, priority will be given to avoiding adverse effects on values associated with any area identified in Schedule 2.</p> <p>9.4.2 For activities involving the alteration of the foreshore or seabed, priority will be given to avoiding adverse effects on values associated with any area identified in Schedule 2.</p> <p>10.4.2 For activities involving the discharge of water or contaminants, priority will be given to avoiding adverse effects on values associated with any area identified in Schedule 2.</p>	<p>Te Rauone Beach falls within CPA17 Otakou and Taiaroa Head, which is identified in Schedule 2.1 for the following:</p> <ul style="list-style-type: none"> • Kai Tahu cultural and spiritual values; • Estuarine values, incl. wading area for migratory birds; • Significant cockle habitat; • Eelgrass beds; and • Historic values (midden & harbour walls). <p>These values have been recognised, and priority has been given to avoiding adverse effects on these values.</p> <p>CRA 9 Otago Harbour is identified in Schedule 2.3 for boating, fishing and walking. Once completed, the groynes and renourished beach will allow for greater public access along the beach and improved recreational opportunities such as fishing and walking.</p>
<p>5.4.6 Priority will be given to the need to provide for and protect the values associated with the coastal recreation areas when considering the use, development and protection of Otago's coastal marine area.</p>	<p>Otago Harbour is recognised as a coastal recreation area (CRA9). Once completed, the proposal will enhance and create, rather than detract from, opportunities for recreation in the common marine and coastal area.</p>
<p>5.4.10 To recognise and provide for the following elements which contribute to the natural character of Otago's coastal marine area:</p> <p>(a) Natural coastal processes;</p> <p>(b) Water quality;</p> <p>(c) Landforms, seascapes; and</p> <p>(d) Coastal ecosystems.</p>	<p>The proposal may have some localised effects on coastal processes locally, with overall positive effects anticipated through the slowing of coastal erosion processes.</p> <p>Effects on water quality and ecological values have been considered at length and suitable consent conditions recommended to ensure that these effects are managed.</p>

<p>6.4.2 To recognise and provide for the following elements which contribute to the natural character adjacent to Otago's coastal marine area:</p> <p>(a) Natural coastal processes;</p> <p>(b) Landscapes and landforms; and</p> <p>(c) Coastal ecosystems.</p>	<p>The groynes and renourished beach are not expected to be out of character with the local, modified, landscape.</p>
<p>5.4.11 To have particular regard to the:</p> <p>(a) Amenity values;</p> <p>(b) Cultural values;</p> <p>(c) Scenic values;</p> <p>(d) Ecological values; and</p> <p>(e) Historical values.</p>	<p>Particular regard has been given to all of these values. Significant adverse effects on these values can be managed through recommended consent conditions (with minor amendments), an Environmental Management Plan, and a Maintenance and Operation Plan.</p>
<p>6.4.1 Regard will be had to the effects of any activity in the coastal marine area on any values associated with areas located on the landward side of the line of MHWS and the provisions of any relevant district plan.</p>	<p>Of particular relevance to this application are effects on public access and lizards.</p> <p>Restrictions on public access will be limited to the extent necessary to ensure the safety of both construction workers and the general public while works are being undertaken.</p> <p>In terms of adverse effects on lizards, recommended conditions of consent require that a Wildlife Authority is obtained before works commence, and that a finalised Environmental Management Plan is submitted and adhered to at all times. This will also contain a chapter on managing adverse effects on lizards.</p>
<p>7.4.2 For activities seeking the right to occupy land of the Crown, consideration will be given to the reasons for seeking that occupation, whether or not a coastal location is required, and to any other available practicable alternatives.</p> <p>7.4.3 Public access to and along the margins of the coastal marine will only be restricted where necessary to protect public health or safety.</p>	<p>The proposed activities have a functional need to be located in the common marine and coastal area.</p> <p>Restrictions on public access will be limited to the extent necessary to ensure the safety of both construction workers and the general public while works are being undertaken.</p>
<p>8.4.5 New and existing structures will be required to be maintained in a structurally sound and tidy state, and should blend as far as is practicable with the adjoining landscape to minimise the visual impact of that structure on the character of the area.</p>	<p>The groynes and renourished beach are not expected to be out of character with the local, modified, landscape. Recommended conditions of consent require that the groynes and all their appurtenant component and accessory structures must be</p>

	<p>maintained in a tidy, safe and structurally sound condition at all times. Within one month of the fifth anniversary date of the commencement of this consent and thereafter on the same date every five years, the Consent Holder must submit to the Consent Authority a structural integrity assessment from an independent and suitably qualified engineer that assesses the structural integrity of the structures.</p>
<p><i>9.4.5 The area to be disturbed during any operation altering the foreshore or seabed will be limited as far as practicable to the area necessary to carry out that operation.</i></p>	<p>Restrictions on public access will be limited to the extent necessary to ensure the safety of both construction workers and the general public while works are being undertaken.</p>
<p><i>9.4.6 The integrity of natural features such as beaches and their ability to protect areas above the line of mean high water springs from natural physical coastal processes will be maintained and enhanced wherever practicable.</i></p> <p><i>9.4.8 For the deposition of material, consideration will be given to the reasons for undertaking the activity in the coastal marine area, the public benefit to be derived and to any other available alternatives.</i></p>	<p>Te Rauone Beach is identified in the RPC as a coastal erosion area. The proposed activities have a functional need to be located in this area because the purpose of the proposal is to restore a beach that has been lost due to coastal erosion processes.</p>
<p><i>9.4.10 Alterations of the foreshore and seabed should blend as far as is practicable with the adjoining landscape to minimise the visual impact of the alteration on the character of the area.</i></p>	<p>Otago Harbour has been modified significantly over the past 150 years through the creation of a dredging shipping channel (with subsequent impacts on coastal processes), construction of sea walls and other structures, and land-based development. Te Rauone Beach has been impacted by processes that are thought to result, in part, from human use activities in the harbour.</p> <p>Although the groynes are a hard protection structure, they are not out of character in terms of Otago Harbour. Furthermore, the purpose of the groynes is to restore the beach i.e. restore natural character.</p>

<p><i>10.4.3 To restrict the discharge of contaminants into Otago's CMA where that discharge would result in a lowering of the existing water quality in the receiving waters:</i></p> <p><i>(a) After reasonable mixing; and</i> <i>(b) After disregarding any natural processes that may affect the receiving waters.</i></p> <p><i>10.4.7 The discharge of a contaminant (either by itself or in combination with other discharges) into the coastal marine area will only be allowed where:</i></p> <p><i>(b) There are no practicable alternatives to the discharge occurring to the coastal marine area; and</i> <i>(c) The discharge is of a standard which will achieve a water quality suitable for contact recreation and shellfish gathering within ten years of approving this Plan.</i></p>	<p>As noted previously, the approach of seeking a discharge permit under Rule 10.5.6.2 is somewhat conservative, but it follows the approach agreed between applicant and ORC on previous similar applications.</p> <p>The sediment laden water will be discharged as a by-product of the deposition of sand during sea-based renourishment activities. The applicant has assessed potential adverse effects that could result and concluded that vigorous monitoring and an adaptive management regime will be required to manage potential adverse effects on nearby seagrass beds.</p>
<p><i>14.4.2 The potential effect of activities on natural physical coastal processes operating within the coastal marine area, and the potential for those effects to result in adverse effects within other areas of the coastal marine area will be recognised and taken into account.</i></p> <p><i>14.4.3 Where a resource consent is required under this Plan, to ensure that adequate provision is made in the design of any structure, reclamation, or other physical feature, to recognise the possibility of sea level rise and other natural hazards which may damage that structure, reclamation or feature.</i></p> <p><i>14.4.4 To avoid locating structures and undertaking disturbances of the foreshore or seabed in a coastal hazard area when that activity may increase the adverse effects associated with the hazard.</i></p>	<p>Te Rauone Beach, is identified in Schedule 3.3 as a Coastal Hazard Area 6 (CHA6) - <i>sandy beach erosion (beach, road and property at risk).</i></p> <p>The proposed activities have a functional need to be located in this area because the purpose of the proposal is to restore a beach that has been lost due to coastal erosion processes.</p> <p>The applicant provided an assessment of potential impacts on coastal processes and this was reviewed by T&T on behalf of ORC. Overall, likely adverse effects on coastal processes seem to be reasonably well understood. Ongoing monitoring and adaptation is proposed to ensure adverse effects are managed.</p> <p>As noted previously, the renourishment of the beach is not reclamation as defined in the RPC.</p>

Overall, the proposal is considered to be consistent with the RPC.

7.4 Section 104(1)(c) - Any other matters

7.4.1 Heritage New Zealand Pouhere Taonga Act 2014

The Heritage New Zealand Act makes it unlawful for any person to modify or destroy, or cause to be modified or destroyed, the whole or any part of an archaeological site without the prior authority of Heritage New Zealand. There is one historic groyne that could be affected by the proposed works. Recommended conditions of consent require that this groyne is located and that an archaeological authority is obtained prior to the first exercise of the consents.

7.4.2 Kai Tahu ki Otago Natural Resource Management Plan

The Kai Tahu Ki Otago Natural Resource Management Plan 2005 (NRMP) outlines natural resources of importance to Kai Tahu. The CMA is one of the areas Kai Tahu seeks to preserve and protect. Relevant policies are contained in Chapter 5.8 Coastal Environment and Chapter 8 Otago Harbour Catchment.

- *To encourage the integrated management of the coastal environment.*
- *To require an accidental discovery protocol for any disturbance to the coastal marine environment.*
- *To require that all artefacts discovered are returned to the Papatipu Rūnaka and if found on Māori land are returned to the appropriate Rūnaka, whānau or hapu.*
- *To promote the integrated catchment management and inter-agency co-operation in the management of the coastal environment in particular adjacent to Mātaitai and Taiāpure and other important areas.*
- *To encourage access and protection of coastal landscapes.*
- *To require that jetties and other structures in the foreshore area are controlled to minimise adverse environmental impacts and to ensure access by Kāi Tahu ki Otago to culturally significant areas.*
- *To promote best practise methods for harbour works that minimise sedimentation during proposed works.*
- *To identify and protect mahika kai sites of importance to Kā Papatipu Rūnaka in the Otago Harbour Catchment.*

The reclamation of Otago Harbour is inconsistent with the NRMP. However, as noted previously, the renourishment of the beach is not considered to be reclamation as defined in the RPC.

For the reasons explained elsewhere in this report, the application is consistent with the NRMP provided that recommended conditions of consent (with minor amendments) are adopted and adhered to.

7.5 Section 104(2B) of the Act

Under Section 104(2B), a consent authority must also have regard to any resource management matters within the scope of a planning document that has been prepared by a customary marine title group under section 85 of the Marine and Coastal Area (Takutai Moana) Act 2011. There are no such planning documents that apply in this instance.

8. Part 2 of the Act

Under Section 104(1) of the RMA, a consent authority must consider resource consent applications "subject to Part 2" of the RMA, specifically, sections 5, 6, 7 and 8. The Court of Appeal has clarified how to approach the assessment of "subject to Part 2" in section 104(1). In *R J Davidson* the Court of Appeal found that (in summary):

Decision makers must consider Part 2 when making decisions on resource consent applications, where it is appropriate to do so. The extent to which Part 2 of the RMA should be referred to depends on the nature and content of the planning documents being considered.

Where the relevant planning documents have been prepared having regard to Part 2 of the RMA, and with a coherent set of policies designed to achieve clear environmental outcomes, consideration of Part 2 is not ultimately required. In this situation, the policies of these planning documents should be implemented by the consent authority. I consider that giving particular regard to Part 2 "would not add anything to the evaluative exercise" in this situation and that the consideration and application of relevant plan considerations (above) leaves little room for Part 2 to influence the outcome.

9. Section 105(1) of the Act

Section 105(1) of the Act states that where an application is for a discharge permit to do something that would otherwise contravene Section 15 or Section 15B of the Act, "*the consent authority must, in addition to the matters in section 104(1), have regard to –*

- (a) The nature of the discharge and the sensitivity of the receiving environment to adverse effects; and*
- (b) The applicant's reasons for the proposed choice; and*
- (c) Any possible alternative methods of discharge, including discharge into any other receiving environment."*

The above matters have been considered. The discharge will comprise sediment generated during works. There are not expected to be any adverse effects from the discharge that cannot be managed effectively, and there are no alternatives.

10. Section 107 of the Act

Section 107(1) of the Act states that a discharge permit shall not be granted (with certain exceptions) if, after reasonable mixing, the contaminant or water discharged is likely to give rise to all or any of the following effects in the receiving waters:

- (a) The production of any conspicuous oil or grease films, scums or foams, or floatable or suspended material;*
- (b) Any conspicuous change in the colour or visual clarity;*
- (c) Any emission of objectionable odour;*
- (d) The rendering of fresh water unsuitable for consumption by farm animals;*
- (e) Any significant adverse effects on aquatic life.*

The discharge is not expected to cause any of the effects listed under Section 107(1) of the Act after reasonable mixing, provided the recommended consent conditions are imposed.

11. Section 108 and 108AA of the Act

Section 104B provides for Council to impose conditions on a discretionary activity under Section 108 of the Act. Section 108AA sets out the requirements for conditions on resource consents.

The applicant originally applied for five separate Coastal Permits. Section 87 of the RMA defines a coastal permit as ‘a consent to do something in the marine area that would otherwise contravene sections 12, 14, 15, 15A and 15B’. Following further discussion with the applicant, it was considered appropriate to roll the four longer-term consents sought into one Coastal Permit. The consents sought are now, therefore, as follows:

- RM19.441.01 Coastal Permit (20 year term):
 - To occupy of the common marine and coastal area with three rock groyne structures, a boardwalk and appurtenant structures;
 - To disturb the foreshore and seabed while undertaking groyne construction and on-going beach renourishment works;
 - To deposit sand onto the foreshore and seabed while undertaking on-going beach renourishment works; and
 - To discharge water and sand into water while undertaking on-going beach renourishment works.
- RM19.441.02 Coastal Permit (3 year term):
 - To erect three rock groyne structures, a boardwalk and appurtenant structures that are fixed on the foreshore and seabed (2 year term).

Recommended consent conditions are attached to this report. These conditions have been developed following considerable consultation with the applicant and ORC’s consultant ecologist. The applicant also took advice from the DOC. The two consent documents have been structured so that they are exercised in conjunction with one another, with the majority of the conditions placed on the longer-term consent, RM19.441.01. This is to provide simplicity, which should in turn assist the Consent Holder in undertaking their activities in accordance with the consents effectively.

At the time of writing this report, there were a number of minor outstanding issues that may result in minor changes to the recommended consent conditions (detailed in the attached memo from Pisces Consulting), but these are expected to be resolved before the hearing. These are primarily concerned with consent conditions relating to seagrass monitoring and adaptive management.

12. Recommendation

That Otago Regional Council grants to Port Otago Limited, Coastal Permits RM19.441.01 - 05, subject to the terms and conditions set out in the attached consents.

12.1 Reasons for the Recommendation

- (a) That it is expected that the adverse effects on the environment will be minor, and can be adequately addressed through the recommended consent conditions.

- (b) That the proposed activities are consistent with the requirements of the Act and the relevant statutory requirements.

12.2 Term of Consent

Case law has distilled the following factors that will be relevant to the Council's determination of the duration of a resource consent:

- The duration of a resource consent should be decided in a manner which meets the RMA's purpose of sustainable management;
- Whether adverse effects would be likely to increase or vary during the term of the consent;
- Whether there is an expectation that new information regarding mitigation would become available during the term of the consent;
- Whether the impact of the duration could hinder implementation of an integrated management plan (including a new plan);
- That conditions may be imposed requiring adoption of the best practicable option, requiring supply of information relating to the exercise of the consent, and requiring observance of minimum standards of quality in the receiving environment;
- Whether review conditions are able to control adverse effects;
- Whether the relevant plan addresses the question of the duration of a consent;
- The life expectancy of the asset for which consents are sought;
- Whether there was significant capital investment in the activity/asset; and
- Whether a particular period of duration would better achieve administrative efficiency.

The applicant originally applied for a term of 35 years for RM19.441.01, but that was reduced to 20 years to be consistent with the design life of the groynes. A term of 2 years was originally sought for the RM19.441.02 but this was increased to 3 years to allow for unforeseen delays. Consent terms of 20 years for RM19.441.01 and 3 years for RM19.441.02 are recommended for the following reasons:

- The proposal is the result of over 10 years of work by the TRBCCC and the applicant to 'save the beach'. Construction of the groynes and ongoing renourishment of the beach will require considerable expenditure by the applicant, with no financial return on that investment.
- The groynes have a design life of 20 years and so it makes sense for the consent term to align with that.
- The consent conditions, Environmental Management Plan, the Maintenance and Operation Plan and the adaptive management regime will ensure that adverse effects are managed throughout the life of the 20-year consent.
- Restricting the construction consent to 3 years will ensure that delays are avoided where possible, which will limit the duration of adverse effect relating to construction activities (restricted access, noise, visual impacts etc).

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