Bay of Plenty Regional Council and Opotiki District Council

The Opotiki Harbour Entrance Proposal

Decision and Recommendation to the Minister of Conservation, on Notified Coastal Permits 65566, 65567,65569 and Land Use Consent Application Numbers 65563-65565, 65568 Opotiki District Council, and Land use Consents from Opotiki District Council RC2009/24 – 27.

COMMISSIONERS:	Mr Greg Hill	Environment Bay of Plenty (Chairman)
	Mr Richard Heerdegen	Minister of Conservation's appointee
	Mr Richard Frankland	Opotiki District Council
COUNCIL OFFICERS:		
	Mr R Fraser	Senior Consents Officer – Environment Bay of Plenty (EBOP)
	Ms J Noble	Reporting officer – EBOP
	Mr R Schlotjes	Environment and Planning Manager - Opotiki District Council
	Mr R Thompson	Reporting Officer - Opotiki District Council (Consultant Planner)
	Ms Sue Cubbon	Committee Administration
APPLICANT:	Opotiki District Council (ODC)	
APPEARANCES:		
For the applicant:	Ms V Hamm	Legal Counsel
	Mr J Forbes	Mayor Opotiki District
	Mr J Dahm	Coastal Scientist
	Maurice Davies	Marine & Coastal Engineer
	Dr C Pedersen	Technical Team Leader
	Mr T van Kalken Peter Atkinson	Geotechnical design & Construction
	James Finlay	Engineering Design & Services - ODC

Ms R de Lambert	(Landscape Architect
Dr B Coffey	(Marine Research)
Mr W Shaw	Ecologist
Mr I Craig	Aquaculture Developer
Mr V Payne	Chief Executive Officer - ODC
Mt T Fergusson	Senior Planner Harrison Grierson
Te Riaki Amoamo	Kaumatua & historian

Submitters who appeared:

Barry Howe

John Burchitt

Turinga Mokomoku

Philip Hermanson

Barry Cawte

Gary van de Werff

Richard Claydon &
Robbie Peterson

Dick Anstis

Mangala Wickmanayake,
Environment Bay of
Plenty

Linda Conning, Forest &
Bird Protection Society of
NZ

Mike & Meg Collins

Dan Lux

Lloyd Hosken

Pita Helmbright,
Helmbright Maori
Incorporation
Andrew Glazier,
Department of
Conservation

Donna Adlam

The hearing commenced at 1.30 pm 29th June 2009 and concluded at 12.00 midday on the 2nd July 2009. At this time the Commissioners adjourned the hearing so that they could review the evidence and ensure that they had all the information they needed to be able to make a decision/recommendation to the Minister of Conservation. The hearing was closed on Friday 10th of July. The public was excluded from the deliberations of the Commissioners.

Decision on the applications made to the Bay of Plenty Regional Council.

(A) That coastal permits be **GRANTED**

65566 - Coastal Permit to undertake the following activities associated with the establishment of the new Opotiki Harbour entrance and closure of the existing Waioeka River mouth:

- Removal of material from the foreshore and seabed;
- Discharge of sediment, slurry water and sediment-laden stormwater to the coastal marine area (from dredging activities, earthworks and construction activities);
- Disturbance of the foreshore and seabed;
- Take of coastal water;
- Diversion of coastal water;
- Erection and removal of temporary structures;
- Occupation of the CMA by temporary structures;
- Deposition of material in the coastal marine area; and
- Erection and use of permanent structures (geo-container bank reinforcement less than 300 m in length, geo-container dyke).

65567 - Coastal Permit to undertake the following activities associated with dredging up to 50,000 m^3 per year from the Harbour entrance channel:

- Erection and removal of temporary structures;
- Discharge of sediment, slurry water and sediment-laden stormwater to the coastal marine area (from dredging activities, earthworks and construction activities);
- Disturbance of the foreshore and seabed;
- Take of coastal water;
- Occupation of the CMA by temporary structures; and
- Deposition of material in the coastal marine area.

65569 - Coastal Permit to occupy the coastal marine area with the following structures:

- Harbour entrance training walls and associated scour protection;
- Geo-container bank reinforcement; and
- Geo-container dyke.

(B) That land use consents be **GRANTED**

65565 - Land Use Consent to undertake earthworks and land disturbance by vegetation clearance associated with the following activities:

- Up to 10,000 m^3 of earthworks associated with upgrading two access roads;
- Constructing two 5000 m^2 construction compounds;
- Stockpiling construction materials;
- Cutting through an existing sand-spit to create a new Harbour entrance; and
- Earthworks associated with the disposal of up to 450,000 m^3 of dredged material to land.

65568 - Land Use Consent to undertake earthworks associated with the disposal of up to 50,000 m^3 of dredged material on land.

Recommendations to the Minister of Conservation on the Restricted Coastal Activity applications made to the Bay of Plenty Regional Council.

(C) That pursuant to section 117(6)(b) of the Act, the Minister of Conservation **GRANTS** the coastal permits pursuant to the Operative Bay of Plenty Regional Coastal Environment Plan to:

65563 - Coastal Permit to:

- Remove up to up to 741,000 m^3 of material from the foreshore and seabed by dredging;
- Erect, use and maintain two training walls (approximately 500 m in length and 120 m apart) and associated scour protection works in the coastal marine area;
- Erect, use and maintain a bank-reinforcement structure (approximately 425 m in length) from sand-filled geotextile bags in the coastal marine area; and
- Deposit over 50,000 m^3 of materials in the coastal marine area, including dredged material and rock.

65564 - Coastal permit to:

- Reclaim approximately 1.9 hectares of foreshore and seabed.

Decision on the applications made to the Opotiki District Council.

(D) That land use consents be **GRANTED** for:

RC2009/24 – Earthworks and vegetation clearance associated with the construction of access roads and the establishment of construction compounds, as well as the location of temporary buildings in areas subject to coastal hazards.

RC2009/25 – Excavation of a new river channel through the eastern sand spit and earthworks in estuarine areas for the deposition of dredged material including the creation of dewatering ponds for dredged material.

RC2009/26 - Structural alteration of an identified landscape (Waioeka/Otara Rivers), earthworks in estuarine areas for scour protection and training wall foundation works, and activities in areas subject to coastal hazards.

RC2009/27 - Earthworks in estuarine areas associated with the deposition of material from maintenance dredging activities.

1 The Applications - Purpose and Background

1.1 What is applied for?

Opotiki District Council (the Applicant) has applied for resource consents to undertake a variety of activities associated with the establishment of a new Opotiki Harbour Entrance approximately 400 m east of the existing Waioeka/Otara Rivers entrance. The new entrance will comprise a new 120 m wide channel, two river training walls (approximately 500 m in length) and scour protection works. The existing river mouth will be closed.

The following activities are **Restricted Coastal Activities** under the New Zealand Coastal Policy Statement and the Bay of Plenty Regional Coastal Plan (the Coastal Plan):

- Reclamation of more than 1 hectare of foreshore and seabed;
- Erection of training walls and erection of bank reinforcement structures (where > than 300 m in length);
- Removal of more than 50,000 m^3 of material from the foreshore and seabed (to create the new entrance channel); and
- Deposition of more than 50,000 m^3 of material on the foreshore and seabed.

The Minister of Conservation is the consent authority for Restricted Coastal Activities.

The remaining activities are all considered as **discretionary** under the Coastal Plan and the Land and Water Plan.

Overall in terms of the Opotiki District Plan the activity status for this proposal is **discretionary**.

1.2 Training Wall Structures

The Applicant has applied for three options for construction of the river training walls. They have been assessed concurrently, given that the final choice of structure is dependent on future detailed investigations. It is recommended to the Minister that consent be granted for all three options.

Rubble mound – each wall comprises a rock core laid on top of geo-textile filter fabric and a rock mattress. The core is covered by armour stone or pre-cast armour units. The height of the walls varies from 3.8-4.35 m above sea level and the top width varies from 5-6 m.

Scour protection works are also required, and additional foundation work maybe required due to the potential for liquefaction.

Concrete sheet pile – each wall is constructed from parallel reinforced concrete sheets driven approximately 12.5 m into the seabed/land. The centre of each wall is filled with dredged material, and a concrete deck is placed on top. The wall width is 4 m. The deck height is 2.5 m above sea-level. A 1.5 m high wave wall would also be required on top of the concrete deck on the seaward side of the walls to prevent overtopping.

Scour protection works are also required.

Geotextile – seven geotextile tube structures filled with dredged material form the near-shore section of each wall. The walls are trapezoidal in shape. Additional geotextile material is used to found and protect the structures. This section of the wall will be 5.2 m above seal level, and have a width of 5 m at the top.

The seaward section of the walls is formed in a similar manner to the rubble mound design, but three sand-filled geotextile tubes are used in the core instead of rock.

Scour protection works are also required, and additional foundation work maybe required due to the potential for liquefaction.

1.3 Phasing of the Proposal

Phase 1

- Upgrade and reconstruction of 415 m of access track from the end of Snell Road to the sewage effluent pond and construction of an additional 800 m of track (in total up to 10,000 m^3 earthworks required).
- Create two 5000 m^2 construction compounds (on the sand spit, at either side of the proposed location of the new channel).
- Erect temporary staging (if required). This is likely to consist of steel piles driven into the sand spit, foreshore and seabed that are connected by steel tubing and timber decking.

Phase 2

- Basement sand densification (if required). The application states that vibro-compaction and explosive compaction appear to be the most suitable techniques for use through the surf zone.

Phase 3

- Construct two parallel training walls, which are approximately 500 m long and 120 m apart – an indicative methodology is outlined on page 11 of the application.

Phase 4

- Dredging and earthworks to create a 120 m wide river channel (removal of up to 741,000 m^3 of material). This includes:

    1. Dredging inside the existing river channel – above MHWS (about 463,000 m^3);

    2. Dredging a new cut through the sand spit – Hikuwai Beach (about 83,000 m^3); and

    3. Dredging between the training walls (about 75,000 m^3)

    4. Contingency of 120,000 m^3 in the event that a hard pan layer is encountered during dredging within the river estuary. This is explained in the DHI reports. The additional volume is stated in the AEE (pg 14) and included in application #1 in Appendix 1.

Phase 5

- Closure of the existing River entrance channel – river flow will be diverted into the newly dredged channel through the training walls. Then the old channel will be closed using soft rock geo-containers placed in the channel (totalling reclamation of 1.9 hectares of the bed);

- Construction of four bank reinforcement structures (100 - 425 m long) from geo-containers;

- Deposition of dredged material to complete the river closure.

1.4 Associated Activities

- Disposal of dredged material to land (up to 449,000 m^3 plus a potential for an additional 120,000 m^3 if a hard pan layer requires dredging);

- Discharge of sediment, slurry water and sediment-laden stormwater to the coastal marine area (from dredging activities, earthworks and construction activities);

- Removal of native vegetation in the CMA; and

- Earthworks.

An indicative construction sequence is included on page 21 of the application (Appendix 19). In essence, the intention is to prepare the new channel either side of

the sand spit (ocean and landward), construct the training walls, make the cut through the sand spit, divert the River, close the old river channel, construct the sea defence walls and bank protection.

1.5 Maintenance Works

Ongoing dredging will be required to maintain the channel. Up to 50,000 m^3 of material may be removed over any 12-month period. This material will be deposited onto the foreshore on either side of the new entrance as beach nourishment or to land.

2 Location

The Waioeka/Otara River mouth is located approximately 1.5 km to the north-west of Opotiki town centre. The land area is in the Coastal Zone under the District Plan. Waiotahi Beach is to the west of the River mouth, and Hikuwai Beach (also known as Te Ngaio or Snells Beach) to the east. The coastline is open sandy beach that stretches from Opape in the east to Ohope in the west.

The current entrance provides boat access to Opotiki Wharf – located approximately 2km upstream. However due to the dynamic nature of the River mouth and the physical characteristics (coastal morphology) of the area, the entrance only provides limited navigability.

The confluence of the Otara and Waioeka Rivers is almost 2 km upstream of the river mouth. Huntress Creek discharges to the western side of the Waioeka River approximately 750 m upstream of the river mouth. Huntress Creek Conservation Area is located directly on the beach to the west of the Waioeka River.

There are no buildings in the vicinity of the proposed works. However, there is an oxidation pond and effluent disposal field (owned and operated by Opotiki District Council) located to the east of the Waioeka River (south of Hikuwai Beach) and east of the proposed works. There is an urupa near the site of the works, between the oxidation pond site and Hikuwai Beach.

The coastal strip is characterised by coastal dune vegetation. The land behind the dune-land is largely farmland – predominately dairy pasture. The closest residences to the west of the site are located approximately 2 km away in the Waiotahi Beach subdivision [approximately 180 lots]. Only a small number of these lots currently have dwellings on them, but this subdivision is likely to be further developed. The closest residences to the east are those properties located in the northern part of Opotiki (Albert Street). The closest of these dwellings is about 1.5 km from the proposed construction site.

3 Relevant Statutory Provisions

The following provisions of the Resource Management Act 1991 were relevant in the assessment of the application:

- Part 2 of the Act:

- Section 104(1) Resource Management Act, 1991 (RMA) requires that regard be had to:

    - any actual and potential effects on the environment of allowing the activity (s.104(1)(a));

- relevant provisions of a New Zealand Coastal Policy Statement (s.104(1)(b)(ii));

- the Regional Policy Statement (s.104(1)(b)(iii)); and

- relevant plans (s.104 (1)(b)(iv)). Opotiki District Plan, Coastal Environment Plan, Regional Land and Water Plan.

- Sections 104, 104B, 105, 107 and 108.

4 Relevant Plan Provisions

The relevant statutory provisions were considered in this determination. They include the relevant provisions of the:

- New Zealand Coastal Policy Statement,
- The Bay of Plenty Regional Policy Statement, and the
- Bay of Plenty Regional Coastal Environment Plan (Coastal Plan),
- Bay of Plenty Regional Land and Water Plan (Land and Water Plan), and
- The Opotiki District Plan.

5 Summary of Evidence

The following evidence was considered.

5.1 Prior to the hearing

- The application and all submissions
- The reporting officer's section 42A report which set out the proposal, and its assessment against the relevant provisions of the Resource Management Act, the New Zealand Coastal Policy Statement, the Regional Policy Statement and the Regional Coastal Environment Plan. It also contained a draft of conditions of consent should the applications be granted or recommended to be granted by the Minister of Conservation.

5.2 At the hearing:

The Applicant.

The applicant's legal counsel gave opening submissions, and called a number of witnesses, and their evidence is briefly summarised below

- The Mayor – Mr John Forbes. He outlined the vision and importance of this project and its potential positive outcomes to the community of Opotiki and the wider Eastern Bay of Plenty. He considered the proposal would assist the peoples of the area to provide for their social, cultural and economic wellbeing.
- Mr Maurice Davis – a marine and coastal engineer. His evidence set out the navigational design parameters and likely operating conditions (depth of channel,

size of vessels, and their cargo and weight, as well as likely sea and estuary conditions) of the proposal.

- Mr Terry van Kalken and Dr Claus Pederson. – modelling experts. They presented detailed modelling evidence of the likely effects and effectiveness of the training walls, the realignment of the harbour entrance and the likely impacts this would have on harbour dynamics and the ability of vessels to navigate in and out of the harbour area. They also addressed the construction methodologies of the different options to construct the training walls.

- Mr Jim Dahm – coastal process expert. His evidence addressed the range of options that had been considered in respect of the training walls and the differing impacts they would have on coastal process within the harbour and the coastline immediately outside of the training walls.

- Mr Peter Atkinson – engineer. His evidence addressed the construction process that would be required in terms of the three different options proposed by the applicant.

- Mr Jim Finlay – Engineer Services Manager at ODC. His evidence discussed the current and likely traffic effects of the proposal during the construction period. This would involve considerably more (heavy) vehicles on the State Highway and the local roads (particularly on the eastern side of then proposal). He outlined the discussions and agreement reached with the Transport Authority and the road upgrading that would be necessary. He also set out the details of the likely traffic that would need access along the beach to 'serve' the 'western' side of the proposal.

- Ms Rachel de Lambert – Landscape Architect with Boffa Miskell. Her evidence addressed the effects of the proposal on landscape, natural character and visual effects. Her evidence stated that whichever of the construction options were adopted there would be unavoidable adverse effects in relation to landscape and natural character values.

- Dr Brian Coffey – scientist with T Coffey and Associates Ltd. His evidence addressed the existing community structure in intertidal, subtidal and freshwater habitats associated with the Waioeka River Estuary. He also set out the aquatic ecological effects of establishing and maintaining an engineered entrance to the estuary.

- Mr William Shaw – ecologist with Wildland Consultants Ltd. His evidence addressed ecological issues relating to the proposal regarding territorial and estuarine ecology, including potential effects on vegetation and flora, and avifauna including the New Zealand Dotterel.

- Te Riaki Amoamo – Whakatohea kaumatua and historian. His evidence provided an outline of Whakatohea history and that the proposed site lies solely within the Whakatohea rohe. He also outlined important Whakatohea taonga within the vicinity of the proposal. Overall, he stated that Whakatohea support the proposal as it is was important in helping to re-establish their social and economic wellbeing.

- Mr Ian Craig – an Opotiki Businessman, who was the managing director of OPAC the largest employer in Opotiki. His evidence addressed the need for this proposal to service the aquaculture industry, saying that the commercial development of the mussel farm off the coast of Opotiki is essentially reliant on the development of the harbour entrance.

- Mr Vaughan Payne – the CEO of Opotiki District Council. His evidence addressed the proposal and the relevant background, the anticipated benefits, the consultation the Council had undertaken and the relevant Council policies. He also provided evidence that the District is one of the most deprived areas in New Zealand according to the "Deprivation Index", and that this proposal, according a report commissioned by the Council, would derive significant economic, social and cultural benefits to the Opotiki District and the wider region.

- Mr Timothy Ferguson – Planner with Harrison Grierson Consultants Ltd. Mr Ferguson provided very comprehensive planning evidence relating to the proposal, the resource consents sought, the effects of the proposal, the issues raised by submitters, the alternatives considered and the relevant planning instruments. His opinion was that consents could be granted (or recommended that the Minister of Conservation grant) subject to a draft set of conditions that he produced.

Submitters

The following submitters supported the proposal for a number of reasons as set out below:

- Mr Barry Howe
- Mr John Burchitt
- Mr Turinga Mokomoku
- Mr Philip Hermanson
- Mr Barry Cawte - Coastguard
- Mr Gary van de Werff
- Mr Richard Claydon & Robbie Peterson
- Mr Dick Anstis
- Ms Donna Adlam

Overall, the evidence they produced supported the proposal due to:

- The economic benefits, including:
  - Job creation;
  - Development potential;
  - Aquaculture; and
  - Tourism.

- The social benefits, including:
  - Community growth;
  - Employment; and
  - Reducing the deprivation index.

- Navigational benefits:
  - Improved recreational and commercial boat access; and
  - Assist Coastguard Opotiki rescue operations.

- That the proposal is consistent with the RMA, including:
  - The social and economic benefits outweigh any adverse environmental effects; and
  - The application comprehensively identifies and addresses significant adverse effects on the environment.

- Improved flood protection of the urban area.

Ms Linda Conning of the Forest & Bird Protection Society of NZ and Ms Meg Collins raised a number of issues, mainly relating to ecological values, and in particular the

impact the proposal would have on the New Zealand Dotterel that breed in this area. If consent were granted they were keen to ensure:

- Minimum impact on dune vegetation and to replant and maintain on completion of the construction;
- That wildlife breeding grounds should be sustained;
- That the negative impact on Dotterel population and habitat be avoided, remedied or mitigated;
- That any adverse impacts on Huntress Creek salt marsh be avoided, remedied or mitigated;
- That their be an opportunity to restore and protect the estuarine and coastal margins of the river-mouth as compensation for the adverse environmental effects of the proposal; and
- That increased public education and access restriction controls be placed to help ensure the survival of the Dotterels.

Mr Lloyd Hosken made it clear he was presenting a "neutral" stance on the application with respect to his evidence. However, overall he was concerned about the viability of the proposal and the role played by the Council, and if the proposal should be lead by "industry". He also addressed the issue of "Mauri" – life force in relation to the proposal.

Mr Mike Collins presented evidence opposing the development. His evidence focussed on one main aspect – that the risk of failure and its consequences are significant. He considered that due to the unknown effects of the proposal combined with climate change, flood events and possible earthquakes, that insufficient detail had been provided to ensure that (as far as is possible) the project would not fail.

Mr Dan Lux presented evidence that while he considered the proposal to be necessary it was ill conceived as it did not address the major problem with respect to flooding in the Opotiki Township. He suggested an alternative; moving the harbour entrance further east to the most northerly part of the present Otara channel where the bend could be utilised to ensure free passage of waters from both rivers.

Mr Pita Helmbright of the Helmbright Maori Incorporation presented in evidence a range of documents relating to their Order of Incorporation and other material. He did not make it clear at the hearing whether they supported or opposed the application.

Mr Andrew Glazier of the Department of Conservation and Ms Mangala Wickmanayake, Environment Bay of Plenty were invited by the Commissioners to answer questions they had in relation to ecological values (and in particular the impact on New Zealand Dotterel (Mr Glazier), and potential flooding impacts (Ms Wickmanayake). Their responses, as experts in their areas, were important to the Findings made by the Commissioners, and this detailed more fully in section 7 - **Main Findings of Fact and Reasons**

Officers of EBOP and ODC

Ms Noble (EBOP) and Mr Thompson (ODC) provided written evidence having heard all of the applicant's and submitter's evidence. Their respective opinions were that consents should be granted and that a recommendation be made to the Minister of Conservation to grant the Restricted Coastal Activity applications. They both provided the Commissioners with a draft set of conditions should consents be granted.

6 Principal Issues in Contention

6.1 Whether there would be significant adverse effects on the natural character, landscapes values and visual amenity of the area.

6.2 Whether there would be significant adverse effects on indigenous ecosystems including:

- Impacts on wildlife and habitat;
- Destruction of the NZ Dotterel habitat;
- Impact on Huntress Creek salt marsh;
- Impacts on intertidal sand/mudflat habitat;
- Impacts on avifauna (birdlife);
- Impacts on inanga spawning ground (mouth of Huntress Creek);
- Long term effects of increased public access; and

6.3 Whether there would be significant adverse effects on coastal processes including:

- Effects of the training walls on sediment dynamics;
- Impacts on the dune system; and
- Dune erosion.

6.4 Whether the proposal would increase the risk of flooding of the township and surrounding area.

6.5 Whether the proposal would result in better and safer navigation in and out of the harbour.

6.6 Whether the effects of project traffic on the operation of the State Highway (and other roads and the beach) would be significant or not.

6.7 Whether the economic benefits of the proposal were realistic or had been 'overstated' and if too much reliance was being placed on the consented aquaculture proposal.

7 Main Findings of Fact and Reasons

The main findings and reasons for these decisions and recommendation to the Minister of Conservation are as follows:

7.1 Natural character, landscapes values and visual amenity of the area.

The Commissioners heard from the applicant's Landscape Architect (Ms De Lambert). In her evidence she states that the "natural character of this part of the Bay of Plenty coastal environment is high" and is "largely unmodified"[1]. She also states that the existing river mouth and adjacent coastline are "a highly dynamic natural system dominated by natural processes and exhibiting a resultant highly unmodified, somewhat remote and wild landscape"[2] . The Commissioners agree with this and find that the area is one of high natural character.

Ms de Lambert also considers that, whichever of the three construction options is selected, it will "generate significant and unavoidable adverse effects in relation to landscape and the natural character of the coastal environment"[3]. Again, the Commissioners agree, and make such a finding.

With respect to this coastline the regional council has undertaken regional coastal landscape assessments to identify outstanding natural features and landscapes. At the

[1] Para 4.5 of Ms de Lambert's evidence.

[2] Para 3.2 of Ms de Lambert's evidence.
[3] Para 3.1 of Ms de Lambert's evidence.

regional scale the Waioeka River and the adjacent coastline is not identified as, or located within, an identified outstanding natural feature or landscape. In terms of the district scale, the area (Waioeka River (OP7, NZMS260 ref W15/W16) is an outstanding natural landscape.

As covered above it is clear that the area has high natural character and landscape values. In terms of the visual effects of the proposed works (namely the harbour works, the training wall and associated revetment work), will generate adverse effects, and that these cannot be avoided or fully mitigated.

Part 2 of the Act includes Section 6 – the matters of national importance. With respect to natural character and landscape the following are significant.

- 6 (a) – The preservation of the natural character of the coastal environment (including the coastal marine area), and its protection from inappropriate subdivision, use and development, and

- 6 (b) – The protection of outstanding natural features and landscapes from inappropriate subdivision, use and development,

(emphasis added)

Also the New Zealand Coastal Policy Statement, the Regional Policy Statement and the regional and district plans all have relevant objectives and policies that recognise and provide for these matters of national importance. These were extensively set out in evidence before the Commissioners, and have not been 're-quoted' here[4].

The Commissioners find that the proposed works will have an adverse effect on the existing natural character and landscape and visual amenity values. However, having heard all of the evidence relating to this application and for the other reasons set out below, the Commissioners find that the proposed use and development is appropriate as:

- It has the potential to enable the Opotiki community to provide for its social, cultural and economic wellbeing; and

- There is a 'functional need' for the proposal to be in the coastal environment (including the coastal marine area); and

- It is a 'public work' for which there will be public, as well as private, benefits.

- It will enable public access to and along the coastal marine area (a matter of national importance); and

- It will improve navigation and safety of those entering and leaving the harbour.

This is consistent with the relevant objectives and policies of the NZCPS, RPS and the regional and district plans.

[4] Relevant provisions include: - NZCPS 1.1.1 – 5, 3.1.1 and 3.2.2 – RPS – Objective 9.3.1 (a) and 16.3.1(a) and the associated policies, Coastal Plan – objective 4.2.2, 5.2.2 relating to natural character and landscapes and the associated policies, District Plan - 3.2.2 – Landscapes and Natural Features (and the relevant objectives and policies)

7.2 Public Access

As set out in 7.1, public access to an along the coastal marine area is a matter of national importance

> 6 (d) – The maintenance and enhancement of public access to and along the coastal marine area

This proposal would enhance public access by providing for a safer and more navigable waterway. This is consistent with the relevant objectives and policies of the NZCPS, RPS and the regional and district plans[5].

7.3 Indigenous Ecosystems

The Commissioners heard a considerable amount of evidence from both the applicant (Dr Coffey and Mr Shaw) and submitters (Royal Forest and Bird Protection Society and Mrs Collins and the Department of Conservation). This included the effects of the proposal on avifauna (birdlife) and in particular the NZ Dotterel habitat, the Huntress Creek salt marsh, intertidal sand/mudflat habitats and impacts on inanga spawning grounds.

The Commissioners share the concerns of the Royal Forest and Bird Protection Society (Linda Conning) and Meg Collins (and other submitters) concerned about the ecological impacts of this proposal. The Commissioners find that there will be some adverse effects on the ecological values of the most significant of these on the existing Dotterel habitat.

Aquatic organisms

The Commissioners accept Dr Coffey's evidence and overall findings – that the "assemblage of shellfish, crabs, sand dollars, starfish, shrimp, amphipods and worms offshore of the Waioeka river estuary are typical of open sandy beaches on the east coast of the North Island"[6]. Also accepted is that the current Waioeka river estuary is dominated by freshwater discharge from the Waioeka and Otara rivers – and that this area is "characterised by a low diversity of benthic taxa"[7]

The Commissioner's find that there will be adverse effects on these habitats, but those habitats are not rare or threatened. Furthermore, many of these habitats will re-establish once construction is completed and accordingly any effects are likely to be temporary and relatively short term.

Inanga (Whitebait)

Spawning sites for inanga are important in their own right as well as for cultural and commercial reasons. With respect to this proposal the Commissioners accept the evidence of Mr Shaw that all of the known spawning sites are "upstream of the proposed works (on the margins of the Otara and Waioeka Rivers)"[8]. However he concedes that there could be effects if the works were carried out during the spawning season and if there was salinity intrusion further upstream than at present - but considers this unlikely. Conditions of consent have been imposed to address these concerns.

[5] Relevant provisions include: - NZCPS 3.5.1, RPS - Coastal Plan - District Plan – Chapter 17 Objective 2.
[6] Para 1.10 of Dr Coffey's evidence.
[7] Para 1.13 of Dr Coffey's evidence.
[8] Para 53 of Mr. Shaw's evidence.

Avifauna (birds)

A range of avifauna (birds) inhabits this area and sandpit. These include the following threatened species:

- The Northern NZ Dotterel (Acutely threatened- National Vulnerable)
- Banded Rail (at risk - Naturally Uncommon)
- Caspian Tern (Acutely threatened - National Vulnerable)

Other significant species known to be present in the project area include:

- Australasian Bittern
- Red billed gull
- White fronted tern
- Black and pied shag
- Spotless Crake, and
- International Migrants (e.g. Godwit).

Of most concern was the effect on the Dotterel habitat. It is acknowledged by the applicant that the existing breeding and roosting habitat of the Dotterels would be destroyed by the proposed works as the training walls and channel will be through the middle of this area.

The Northern NZ Dotterel is classified as acutely threatened – nationally vulnerable species and therefore the impact on this population on the spit needs to be carefully considered. This is because there are only a few of these birds remaining and as pointed out by Ms Conning[9] the "Cumulative loss of these small populations will increase the threat to the species as a whole". Again as pointed out by Ms Conning and Ms Collins this habitat has been 'highly productive' in terms of breeding and fledging of chicks[10]. This evidence is accepted and the Commissioners find that this area is an important and productive Dotterel habitat.

The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna is a matter of national importance (section 6 (c)). The proposal will destroy the existing habitat of these Dotterels and it will clearly not be protected.

The New Zealand Coastal Policy Statement, the Regional Policy Statement and the regional and district plans all of have relevant objectives and policies that recognise and provide for the protection of indigenous habitats. Like the issues relating to natural

[9] Para 1.2 of Ms Conning's evidence.
[10] Ms Conning tabled a report Northern New Zealand Dotterel Monitoring Report Opotiki Area 2008-2009 by Hemi Barsdell setting out the breeding statistics of the various Dotterel habitats.

character and landscape values, these were extensively set out in evidence before the Commissioners. The Commissioners have not quoted them in this decision, but have clearly had regard to them, and note that they essentially 'reinforce' the provisions of the Act and in particular the matters set out in Part 2[11].

The applicant proposes and considers that the Dotterels would likely relocate to the 'created habitat' on the western side of the proposed works once they were completed. Mr Shaw states in his evidence,[12] "It is hoped that NZ Dotterel will relocate to the other areas for breeding once the habitat currently used has been destroyed and it is likely that this will occur as this species (and other waders) typically utilise areas of newly-created bare sand" and "The creation and maintenance of habitat suitable for NZ Dotterel (bare sand-driftwood habitat) as part of the overall design of the harbour entrance may provide an alterative breeding location for displaced birds".

The significance of this issue (i.e. as a matter of national importance and the acceptance that the existing habitat would be destroyed) the Commissioners wanted further evidence of the likely success or otherwise of the created habitat and whether or not it was likely the Dotterels would re-locate to this area. The Commissioner's requested that the Department of Conservation (who had lodged a submission and was subsequently satisfied that consents could be granted if certain conditions were imposed) attend the hearing and answer questions that the Commissioners had. Mr Andrew Glazier, who had been closely involved with this project and had considerable experience and understanding of the NZ Dotterel in this area, attended the hearing.

Mr Glazier, in answering questions, considered that if the reclamation and creation of sand dunes and habitat suitable for Dotterel was created, it was likely they would 're-locate here and breed and roost. He stated that Dotterel are "loyal to sites' and would likely return for breeding, find the existing nearby site gone and relocate to the nearest suitable place. Of particular significance in his opinion was creating the 'right sort of environment' and then managing to:

- Educate the public to stay away (including their dogs and vehicles) over the breeding season, and

- Put in place measures to protect the bird – e.g. fencing the area.

Having had regard to the expert evidence, the relevant objectives and polices in all of the relevant documents, and the imposition of suitable conditions (such as no works being initiated until after the breeding season, the creation of suitable habitat and the protection and management of that habitat), the Commissioners find that it is likely, or as likely as possible that the Dotterels, and the other birds, will relocate. On this basis the Commissioners find that the adverse effects of this aspect of the proposal can be appropriately remedied by the re-creation of suitable habitat.

The Commissioners also accept that the existing environment is a dynamic one, and that the existing spit is subject to storm and flooding events when the Dotterel habitat is periodically destroyed. Notwithstanding this the birds have returned.

[11] Relevant provisions include NZCPS Policy 1.1.2, RPS – objective 9.3.1(a) and the relevant policies, Coastal Plan – Objective 4.2.2 and 6.2.2 and the relevant policies, District Plan Natural Heritage 3.2.4 – Objective 2 and relevant policies.

[12] Paras 71 and 72 of Mr. Shaw's evidence.

The evidence that the other bird species are either more robust or less threatened by this proposal is accepted.

The Commissioners find that while the protection of indigenous habitats is a matter of national importance, this has been appropriately recognised and provided for in the sense that alternative habitat will be created where, according to expert evidence, it is likely the birds will relocate. Again this is consistent with most of the relevant objectives and policies of the NZCPS, RPS and the regional and district plans.

7.4 Tangata Whenua

The Tangata Whenua (Whakatohea) supports this application and presented evidence in support of the applicant[13]. The main basis on which the application is supported is that it is likely to help re-establish Whakatohea's economic base – something that has previously been significantly undermined. Also the proposal does not affect any areas of significance, such as waahi tapu, sites of cultural significance or other taonga.

Mr Pita Helmbright, representing the Helmbright Maori Incorporation presented evidence about the Helmbright Maori Incorporation. Mr Helmbright appeared more concerned about the procedural aspects of the hearing, and in evidence neither said he supported or opposed the proposal.

Given Tangata Whenua (Whakatohea) supports the proposal it is considered that section 6 (e), - The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga – is recognised and provided for and that there are no adverse issues relating to the Treaty of Waitangi raised by this application (section 8).

This is supported by the range of objectives and policies of the NZCPS, RPS and the regional and district plans.

7.5 Coastal Processes, Dredging and Water Quality

One of the significant issues with respect to this proposal was the impact on coastal processes and the effects from dredging (capital and maintenance) and construction works, particularly of the training walls, on sediment dynamics, and the overall impacts on the dune system and potential dune erosion.[14]

Coastal Processes

Mr Dahm – a coastal scientist addressed the range of options (and their advantages and disadvantages), considered with respect to the most appropriate structures, to achieve the desired outcome of a better navigable harbour entrance, and the least adverse effects on natural coastal processes.

The Commissioners accept the evidence of Mr Dahm that the twin entrance training walls was likely to result in significant improvements in navigability at the Opotiki entrance, as its walls would "significantly decrease sediment volumes recirculating through the entrance channel, disrupt the processes maintaining the existing bar, and markedly increase the dominance of seaward-directed sediment transport. Collectively, these

[13] Evidence of Te Riaki Amoamo.
[14] The evidence of Messrs – Davis, van Kalken, Pedersen, Dahm and Atkinson.

processes will provide scouring of the entrance channel and the collapse of the existing ebb tide delta"[15].

The Commissioners find that the proposed twin mole option is the most appropriate in terms of coastal processes and the desire to achieve significant improvements in navigability at the Opotiki entrance. Also any adverse effects have been addressed through the conditions of consent, and this will ensure any effects have been appropriately avoided, remedied or mitigated.

Dredging and Water Quality

The proposal envisages dredging a large amount of silty sediment from the inner harbour intertidal area. These sediments are not preferred for the nourishment of the outer beach or for the filling of the geotextile tubes that may be used in the construction. It is assumed in the application that the majority of this material will be pumped to settlement ponds by the cutter suction dredge. To move a cubic metre of dredged material, a suction dredge will use approximately 4 cubic metres of seawater. The mixture is pumped to settlement ponds where the dredged material settles out and the seawater is usually decanted back into the sea.

This method is ideally suited to clean sands that settle rapidly. In this case the application has not yet identified the amount of fine material present in the dredged material. Fine material may remain in suspension and be discharged with the decant water and could cause environmental damage in the estuary. Further, there has been no testing of the material to determine whether it contains any contaminants, such as hydrocarbons, heavy metals, agri-chemicals and the like. There is a recognition that hydrogen sulphide is likely to be present. Thus it will be necessary to determine the composition of this material at an early stage and allow for this in the detailed design of the settlement system and if necessary any treatment system.

A further issue with the use of the sediments dredged from the inner harbour is that if they are to be used for the construction of the dyke structure for the existing estuary. After the new channel is built, pumping may not be an acceptable delivery method as it will deliver large quantities of water which will not be easily controlled. Silt-laden decant water is likely to spill over the beach areas to the north in this scenario. Careful design of this part of the works will be necessary. Similar concerns exist if the material is to be used to fill geotextile tubes, in respect of control of any discharged water from the operation. Lastly the ability of the material in the intertidal zone to be stable at the slopes shown on the drawings is not certain.

Should the detailed design determine that the material is not suitable for either the dyke or the tube application and that sand must be imported for the project, this will remove the advantage of using the geotextile tubes, a relatively untried and untested technology, for this project. This would impact on the number of truck movements to and from the site, although the movement of rocks to the site by vehicles has been assessed as the 'worst case scenario). The default option of the construction of such walls is to use a rock core material.

Given the nature of the proposal and the potential likely effects (known but not able to be fully quantified until the work is undertaken), the Commissioners (and the applicant by agreeing to a range of conditions at the hearing) have adopted a precautionary approach[16] and imposed a range of conditions including requiring:

[15] Para 36 of Mr Dahm's evidence
[16] Policy 3.3.1 of the New Zealand Coastal Policy Statement

- All **engineering design details** (including results of modelling, design assumptions used in the modelling process, plans and specifications) for all structures and the entrance channel realignment associated with the Opotiki Harbour Entrance,

- A **Construction Management Plan (CMP)** for all construction works authorised by this consent,

- A **Dredging Management Plan (DMP)** for all dredging activities authorised by this consent,

- An **Environmental Mitigation and Remediation Plan (EMRP)** for all construction works authorised by this consent,

- A **Site-wide Contingency Plan (SCP)** for the containment of any spills, and

- A **Monitoring and Review Plan (MRP)** for the Harbour Entrance Project

Engineering Design of the Training Walls

The application seeks flexibility in terms of the final design solution for the walls (the three options) on the basis that the environmental effects of the walls are similar and the worst case has been covered. It is acknowledged by the Applicant that considerable further work is needed to confirm the final design solution. The design of the walls should be completed to international best practice and there are a number of applicable documents that can be used to set this standard. The conditions of consent as alluded to above will enable the consent authority to ensure this occurs.

Overall the Commissioners find that the effects in terms of coastal processes, construction and dredging are acceptable on the environment, and that any adverse effects are appropriately avoided, remedied or mitigated. As already mentioned above an extensive set of conditions have been imposed (or recommended that the Minister of Conservation impose) to ensure that a precautionary approach is taken and any effects during construction and the ongoing operation (e.g. maintenance dredging) can be appropriately addressed.

7.6 Flooding

The Commissioners were made aware (by the applicant, submitters and Council officers) that floods pose a major risk to the Opotiki Township and that increased flood risk would be unacceptable. In this respect Legal Counsel for the applicant said that the applicant accepted a condition and an advice note which requires that the activities undertaken do not result in an increase in the 100-year return-period flood levels within the Waioeka and Otara Rivers at the Waioeka/Otara confluence, the Waioeka Bridge, or a point approximately 850 m up-stream of the Otara Bridge[17].

The Commissioners are satisfied from the evidence they heard[18] that the proposal will not exacerbate flooding risk to the township. Mr van Kalken's evidence is accepted and the Commissioners find that one of the objectives of the design of the proposal was to ensure that it did not raise flood levels in the Opotiki Township. The Commissioners also accept that for smaller, more frequent events, it is expected that the flood levels would decrease as the effect of the walls would be to maintain an open channel to the sea, allowing flood

[17] Right of Right – para 4.
[18] Evidence of Mr van Kalken, in particular paras 9 and 10,

waters to more easily flow to the sea[19]. On this basis any effect would be positive as opposed to adverse.

The Commissioners did accept, however, that increased flood levels are only predicted for the extreme flood events combined with predicted sea level rises. The applicant (as the Local Authority) accepts that increased flooding risk is unacceptable (regardless of this proposal) and outlined four possible options to address this if necessary. These included:

- Stopbank raising,
- The "bend cut"
- A fuse plug/spillway, and
- Dredging.

All of the options, other than "stopbank raising" require a resource consent. Raising the stopbank is a permitted activity of the Water and Land Plan[20]. Also the Commissioners heard and accepted expert (verbal) evidence from Ms Wickramanayake (Environment BOP) that the existing stopbanks provide different levels of service, but that the urban stopbanks are designed to a 100-year flood event with a minimum freeboard of at least 300mm and in some cases 500mm.

Given the above the Commissioners find that any effects with respect to flooding can be avoided or mitigated and in the 'normal course of events' there is a positive effect on flood prevention by this proposal. This is clearly consistent with the relevant objectives and policies of the planning documents[21].

7.7 Navigation and Safety

The application documents contained a range of different levels and datums when referring to the depth of water in the navigation channel reflecting the fact that the proposed depth of the channel changed between the outset of the design and the application and the usual confusion between land based and sea datums.

For the consideration of navigation in the channel, the only relevant datum is the local sounding or chart datum, which is at the level of the lowest astronomical (or predicted) tide at that location. These local datums are different for different locations as the tidal wave is affected by the landform as it passes around the coastal waters twice each day. Subsequent to an initial conservative estimate, the Applicant has adopted a more accurate datum from a reliable local location (Whale Island). On an open coast such as this, the Commissioners find that this is reasonable and appropriate.

As noted above, the chart datum, usually abbreviated to CD, is the level below which the tide will seldom fall. If the depth of the channel is posted on the nautical chart, anyone using the channel will be able to work out how much water depth is available, provided that person knows the time of the tide.

The original depth recommended by Mr Davis was 4.0m below CD (5.1m below MSL), which allows for the design wave conditions (significant wave height 2.0m) to be occurring at the time of passage. The depth was subsequently changed to 2.6m below CD (3.7m below MSL, which is the figure used in the main application documents). At the hearing most of the evidence stated that the intended depth would be 3.3m below CD (4.4m below MSL) and that this depth is a compromise between having all tide access for

[19] Evidence of Mr van Kalken – para 10.
[20] Rule 45 of the Land and water plan.
[21] Relevant provisions include: RPS Chapter 11 – objective 11.3.1(a) and the relevant policies, Coastal Plan 0 Chapter 11 and Objective 11.2.2.and relevant policies, District Plan – Natural Hazards, Chapter 7 Objective 1 and relevant policies.

the design vessel and the cost of the works. The applicant estimates that the amount of time the conditions would render the channel unsafe for the design vessel would be less than 10% of the time.

The channel as designed would not be suitable for safe passage of the design vessel under the design sea conditions until there is 4.4m of water in the channel and this would not be until the tide is at Mean Sea Level. Therefore regardless of whether it is 10% or more, it is a tidally-restricted entrance.

All of this relates to a design sea condition of a 2.0m high significant wave height in the approaches to the channel. This was selected as it is considered the limiting sea condition for harvesting the mussels (should the consented aquaculture proposal be constructed). The application documents and evidence show that waves in this part of the Bay of Plenty rise much higher under certain conditions, up to 6.64m significant wave height under a 100 year event, in 20 metres of water, which is some distance offshore. Under these conditions, the design vessel would not be operating, however, and the entrance channel would not be safe to use as waves would be breaking within it. Consequently, it will also be a weather-restricted entrance.

The major danger in using such an entrance is the risk of waves breaking over the stern of the boat as it approaches the entrance on the return journey. Waves will break when they begin to "feel" the bottom, which is when the water depth reduces to 1.28 times the wave height. So a 2.0m high wave will break when the water depth reduces to about 2.6m. However, the design value of a 2.0m high significant wave height is a statistical construct reflecting the wide spectrum of different wave heights generated by a wind storm. Heights will range from less than to 2.0m height up to a maximum of 3.6m. A 3.6m high wave will break when the water depth reduces to 4.6m, so if the design vessel is attempting to use the entrance channel as soon as it can as the tide rises, (which is a likely scenario in worsening weather conditions) the occasional wave will likely be breaking, if the depth of water in the channel is 4.4m, as noted above. This is considered to be acceptable, especially if the boat master is used to the entrance and as one of the Coastguard submitters noted[22], the master would be able to pick the right wave to use to gain access.

Conditions were modelled that showed accretion in the entrance channel and under those conditions, much less water may be available in places and a larger number of the waves may be breaking. Also if the bar formation modelled under that extreme scenario were to form then the boat would meet breaking waves before reaching the entrance. The Commissioners accepted and relied on the evident of Dr Pederson who has stated that this is an extreme scenario and note that the applicant has accepted that should such a situation represent a dangerous condition and could persist for some time, then dredging will be necessary.

Notwithstanding all of this, Commissioners find that the entrance as proposed will, if it functions as intended, represent a very significant improvement in safety over the existing situation; not just for Opotiki but for the wider Eastern Bay region. As noted by the Coastguard, there is no other reliable safe haven east of Tauranga in the Bay of Plenty. The Opotiki Coastguard will need to monitor the depth in the entrance channel and over any offshore bar that forms at the mouth and provide advice to users from time to time.

7.8 Traffic

Concern was raised about the effects of traffic on the State Highway, the local roads and traffic on the beaches – especially from the western side of the proposal.

[22] Mr Barry Cawte – President Coastguard Opotiki.

Mr Finlay's[23] evidence set out the impact that traffic may have, the discussion (and agreement) reached with the New Zealand Transport Agency with respect to appropriate conditions should consent be granted, to avoid and mitigate any adverse traffic effects. In accepting his evidence and the advice of NZTA, the conditions they suggested have been imposed (and were accepted by the applicant).

The Commissioners were concerned about the impact of traffic on the beaches – from an ecological and public access/use and enjoyment perspective. It is accepted that access is required along the beach and the applicant has done all it can to reduce effects to an acceptable level and accepted conditions of consent to this effect.

The Commissioners find that the impact of the proposal on the roading network (State Highway and local roads) and on the beach can be appropriately managed with any effects largely being limited to the construction period. Any effects will be temporary and short term. Appropriate conditions of consent have been imposed.

7.9 Social, Cultural and Economic Benefits

The applicant and the majority of the submitters stated that this proposal would have significant social, cultural and economic benefits, and that these were vital to improving the lives of most of the residents of Opotiki and the surrounding area. It was considered by many that these beneficial effects were sufficient to 'offset' any adverse effects on the natural environment.

The Mayor, Mr John Forbes, set out his vision of the project and the benefits it would likely bring or enable. This involved enabling the aquaculture industry to develop together with other marine-related industries including charter boat operators, other fishing-related industries, as well as the 'spin off' from these to other businesses (more people, more employment, greater wealth and greater demand for services).

Mr Vaughan Payne, the CEO of the Opotiki District Council set out in some detail the proposal and the anticipated benefits (amongst other things). Of particular significance, he pointed out that the Opotiki District is one of the most deprived areas in New Zealand according to the Deprivation Index[24], and that annual income was low and unemployment was high. He considered that diversifying Opotiki's economy "via a return to marine industries … is a key element in rejuvenating the district's wellbeing" [25]

In support of this contention the Council had commissioned a report from consultants entitled "Opotiki Harbour Development Social and Economic Evaluation (URS- 2005). In summary the findings of that report considered that the harbour development combined with the consented mussel farm and processing plant, and the indirect economic benefits, would have significant economic benefits including:

- Employment of 936 people
- Provision of $27.3 million in household income
- Contribution of $34.6 million to Opotiki's gross domestic product, and
- An increase of $44.9 million in output.

[23] Engineering Services Manager – ODC – evidence.
[24] Para 3.5 of Mr Payne's Evidence
[25] Para 3.9 of Mr Payne's Evidence

While the Commissioners were only considering the harbour proposal, they accepted that the proposal would enable other developments to occur, by providing the mussel barges with better access to and from the township and enabling other vessels (including recreational vessels) to more easily, efficiently and safely access the town area and the coastal marine area beyond.

This view was clearly articulated by Mr Craig[26] and a number of submitters (some of whom were local business people). The statement that Opotiki had gone from "boom to gloom" and needed to boom again resonated with the Commissioners. The Commissioners accept that the applicant Council is attempting to enable and provide for the community to provide for their social, cultural and economic wellbeing. This proposal had the potential to 'unlock' the potential of the area in terms of its social, cultural and economic wellbeing and in a manner, according to the Commissioners, that appropriately addresses any environmental issues.

8.10 Overall Reasons

In terms of Section 104(1)(a) of the Act, there are actual and potential positive effects of the proposal which include the potential economic, social and cultural benefits to the Opotiki community as well as the wider regional community as outlined in the reasons above, enhanced public access to and from the harbour as well as improved navigation and safety.

In terms of Section 104(1)(a) of the Act, the actual and potential adverse effects of the activity have been appropriately avoided, remedied or mitigated. This is achieved by the design of the proposal and the conditions of consent, which ensure that a precautionary approach has been taken and that the adverse effects are able to be appropriately avoided, remedied or mitigated.

In terms of section 104(1)(b) of the Act, the proposal is consistent with the objectives and policies of the Regional Policy Statement and the relevant regional and district plans as have been set out in the reasons above.

The proposal gives effect to Part 2 of the Act in that:

(i). It recognises and provides for the following relevant matters of national importance which are:

- 6 (c) – The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna; and
- 6 (d) – The maintenance and enhancement of public access to and along the coastal marine area; and
- 6 (e) - The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga

(ii) With respect to natural character and landscape values that Act states:

- 6 (a) – The preservation of the natural character of the coastal environment (including the coastal marine area), and its protection from inappropriate subdivision, use and development;

[26] Evidence on behalf of the application as a previous managing director of OPAC – the largest employer in Opotiki for 18 years.

- 6 (b) – The protection of outstanding natural features and landscapes from inappropriate subdivision, use and development;

For the reasons set out earlier the proposal is considered to be an appropriate use and development of the coastal marine are and coastal environment, the adverse effects on natural character and landscape values are out weighed by the overall benefits of the proposal in terms of enabling the community to provide for its social cultural and economic wellbeing as well as enhancing public access and improving navigation and safety.

(iii) Has had particular regard to;

- 7(a) - Kaitiakitanga;
- 7(c) The maintenance and enhancement of amenity values; and
- 7(f) Maintenance and enhancement of the quality of the environment.

(iii) Has taken account of section 8 - Treaty of Waitangi.

For all of the reasons expressed above, and in exercising an overall judgement, the proposed activity will promote the purpose of the Resource Management Act as set out in section 5. In particular it has significant potential to enable the community of Opotiki, the Eastern Bay of Plenty and wider community to provide for there social, cultural and economic wellbeing and will meet the reasonably foreseeable needs of current and future generations. In addition to this, the application will, subject to the conditions of consent, ensure that the life-supporting capacity of the coastal environment is maintained, and that any actual and potential effects on the environment can be appropriately avoided, remedied or mitigated.

Greg Hill
Commissioner:
Bay of Plenty Regional Council:

Date: 29th July 2009

Richard Heerdegen
Commissioner:
Minister of Conservation's appointee.

Date: 29th July 2009

Richard Frankland
Commissioner
Opotiki District Council

Date 29th July 2009