19 August 2022
Job No: 1017720.2000

HEB Construction Limited
PO Box 76-007
Manukau
Auckland 2241

Attention: Darren Bentham

Dear Darren

Te Araroa Proposed Barge Facility
Alternative Locations Assessment

1 Introduction

This letter report presents an alternative locations assessment for a proposed barge facility in the East Cape, Te Araroa ("the project" or "the facility"). The purpose of this assessment is to consider the 'functional need' of the project as required by the National Policy Statement for Freshwater Management 2020 (NPS-FM) in its given location. Functional need "*means the need for a proposal or activity to traverse, locate or operate in a particular environment because the activity can only occur in that environment".* This assessment is required as the project involves works in a segment of 'natural wetland' in its proposed location and responds to a recommendation provided within the legal advice provided by Buddle Finlay Limited (BF) described in Section 2. This alternatives assessment considers alternative locations for the proposed barge facility along the East Cape coastline.

2 Background

BF provided legal advice to Te Rimu Trust (TRT) titled *'Te Araroa proposed barge facility – advice on 'specified infrastructure' and 'functional need'* dated 15 July 2022 and attached at Appendix A. This legal advice reviewed planning analysis undertaken by Tonkin & Taylor Limited (T+T) with regards to the project and set out that:

a) *there is a strong argument that the project is 'regionally significant infrastructure' and therefore falls within the definition of 'specified infrastructure' in the NPS-FM; and*
b) *Tonkin & Taylor have identified a series of factors which support a conclusion that the project has a 'functional need' to be established in its proposed location. Further support for that conclusion is provided by the High Court's decision in Poutama Kaitiaki Charitable Trust v Taranaki Regional Council (Poutama).*

BF recommended that for the purposes of the eventual application for resource consents under the COVID-19 Recovery (Fast-Track Consenting) Act 2020, a fulsome explanation of the process followed in considering alternative locations for the project should be undertaken. This letter report provides an explanation of the key considerations and constraints associated with alternative locations for the project.

3 Timber catchment

Timber is the primary cargo which created the need for the project. Consequently, given the facility needs to be located within its catchment of maturing plantation timber, shown as the area north of the red line in Figure 3.1 below.

The significance of the red line is that this denotes the southern extent of the supply catchment for the facility. That is, from the red line north road-based transport to Te Araroa is shorter than the distance to Gisborne Port.

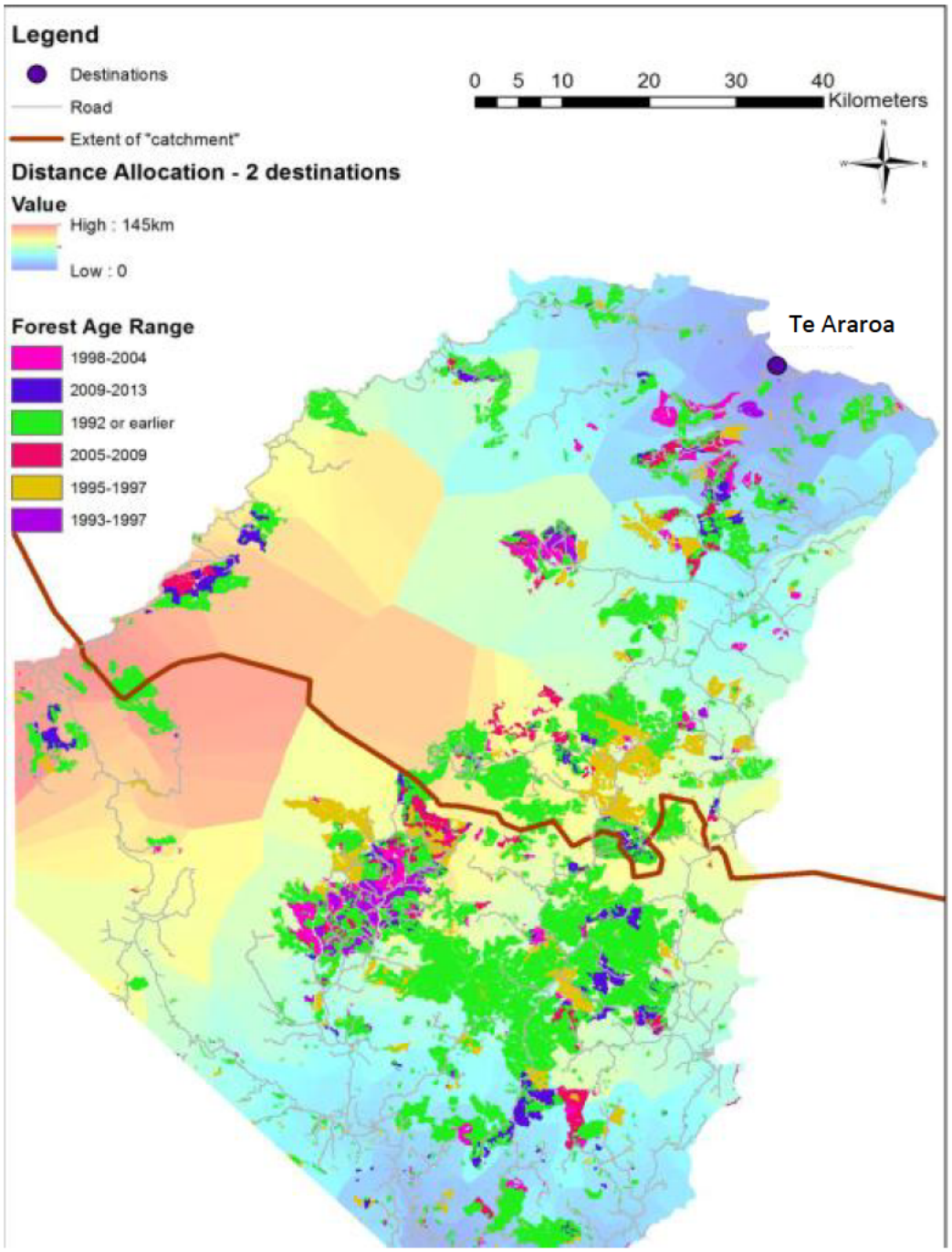

Figure 3.1: Map of the Gisborne and Ōpōtiki Districts showing the location of forests and when they were planted (Source: Scion, 2016)

4 East Cape

Figure 4.1 identifies all potential locations for the facility within the catchment of maturing timber as denoted by Figure 3.1.

The facility needs to be located where a suitable and existing road connects the facility at the shoreline to the State Highway (SH), so that export cargo can be delivered to the export vessel. The existing road needs to be able to provide functional and safe access for conventional logging trucks. A narrow, winding, steep road which has a significant length between its intersection with the SH and its termination at the facility would not be suitable.

Further, the facility needs to be located within a backshore area which is characterised by flat and stable land (i.e., not characterised by cliffed unconsolidated sediments like much of the East Cape). The blue lines shown on Figure 4.1 denote the areas of the East Cape region where based on desktop analysis, a suitable backshore area and road access could potentially faciltate the construction and operation of the facility. The red lines shown on Figure 4.1 denote the areas of the East Cape region where the facility could not be sited due to backshore and road access characteristics.

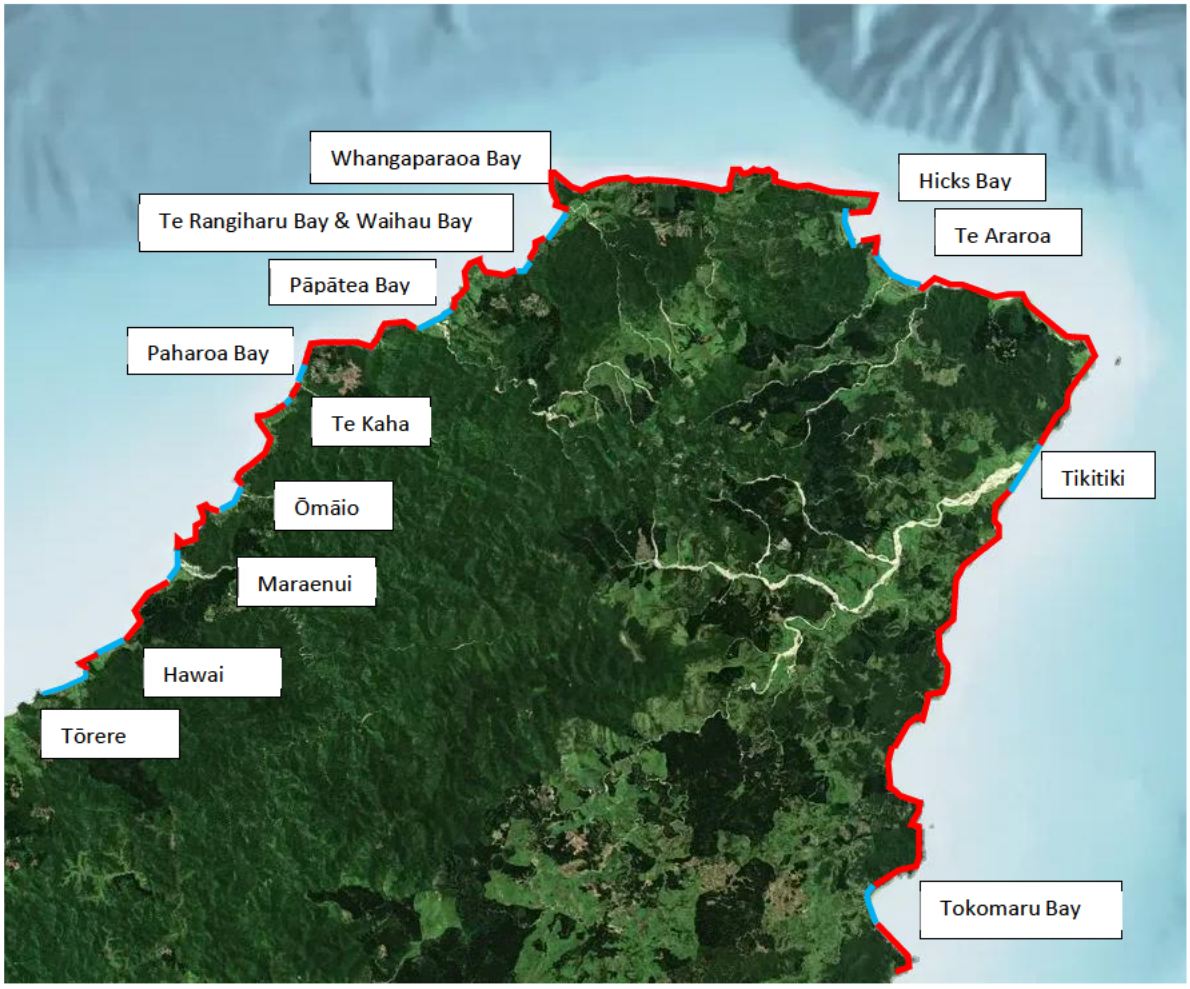

Figure 4.1: Potential suitable embayments along the East Cape within catchment area. Labels relate to the potentially suitable embayments.

The suitability of the embayments identified on Figure 4.1 are considered further in Table 4.1 below. A range of factors are considered including, but not limited to, the degree of exposure of the backshore to wind and waves which would affect safe navigability and loading for vessels, whether the environment is dynamic, the area available in the backshore and foreshore/seabed which is free of constraints, and the location of the embayment with respect to timber catchment. Cultural values associated with the embayment, for example the extent to which the embayment fulfils a kāpata kai function, have not been considered in Table 4.1.

Ideally, the facility should also be centrally located to the intended export ports (Tauranga and Gisborne) for the primary cargo via the government's 'blue highway' (i.e. coastal shipping routes).

Table 4.1: Potential suitability of embayments within East Cape for a barge port facility.

Embayment	Constraints and opportunities
Tokomaru Bay	• Offers a degree of shelter from northerly, southerly and westerly swells and winds. • There are dwellings located adjacent to the foredune of the entire embayment. Therefore, there is no space for a barge facility. Due to the presence of the dwellings the dust, noise, lighting and vibration impacts resulting from a barge facility, including associated logging truck movements, would be unacceptable. • The northern corner of the embayment (where the historic wharf is sited) comprises a seabed that is too shallow and rocky for the navigation of large vessels and there is not enough suitable space in the backshore area to construct and use a barge facility. • On the southern edge of the supply catchment and the furthest point east for forests located within the Ōpōtiki District. Consequently, logs from further north and within the Ōpōtiki District would need be carted a significant distance, minimising the benefits of the utilisation of the blue highway (i.e. taking trucks off roads and reduced carbon emissions, road wear and tear, accidents, increased resiliency to natural hazards etc). • Is not centrally located to its intended export ports (Tauranga and Gisborne). • Overall, not suitable.
Tikitiki	• Is exposed to swells and winds from most quadrants and has no headland features to provide a degree of shelter • The Waiapu River is highly dynamic with the outlet continually shifting. There are also other small rivers flowing through the backshore area. The rivers' presence means the backshore area is not stable enough to construct and use a barge facility. • Wetlands are located in the backshore area. • Beach Road terminates near two Marae. For the reasons provided above for residential dwellings at Tokomaru Bay siting a barge facility adjacent to Marae would not be acceptable. • Overall, not suitable.
Te Araroa	• Offers a degree of shelter from easterly, southerly and westerly swells and winds. • There are no dwellings adjacent to or near the barge facility. • The backshore area is characterised by dune ridges and swales comprised of stable aggregate. • Karakatūwhero adjoins the western end of the site and is dynamic but does not migrate east into the facility site. • Has small segments of wetlands to be removed in its proposed location. • SH 35 adjoins the site (trucks will not need to traverse other roads). • The site is centrally located within catchment to be harvested (i.e., it is midway between the southern extent of the catchment that straddles the Ōpōtiki and Gisborne Districts. The site is equidistant from Gisborne and Tauranga ports for export.

Embayment	Constraints and opportunities
	• The site has been identified and funded by the Government as part of the Blue Highway initiative.
Hicks Bay	• Northern Hicks Bay was looked at as a potential option for the facility by the Government alongside Te Araroa. This was because it has some of the attributes that Te Araroa has. Crown Infrastructure Partners commissioned high level effects assessment work and used that work to select Te Araroa over Hicks Bay, with one of the main reasons being due to cultural values. Matakaoa Point at Hicks Bay has a very important reef structure which is used for kaimoana gathering and which would have been destroyed through construction of the wharf proposed at that location. Further, the Matakaoa plateau (where the landside loading facilities were proposed) is an area of historic occupation by Tangata Whenua. • The central portion of Hicks Bay has a large wetland located in the backshore and the southern end has dwellings and a school located adjacent to the foredune. • Overall, not suitable.
Whangaparoa Bay	• Offers a degree of shelter from easterly and southerly winds. • The northern end has dwellings and a school located adjacent to the foredune. • The Whangaparaoa River and Waitawake Stream outlets are connected to an expensive wetland complex located within the backshore of the entire embayment. • Overall, not suitable.
Te Rangiharu Bay and Waihau Bay	• Offers a degree of shelter from easterly and southerly winds. • Beginning to create proximity issues for forests located within the Gisborne District i.e., logs from the southern end of the catchment in the Gisborne District would need be carted a significant distance. This comment applies to all sites below which get further and further away from the forests located in the Gisborne District. • Te Rangiharu Bay has dwellings and a campground along its entire length. • There is not enough space between the shoreline and SH 35 to construct and operate a facility at Te Rangiharu Bay and Waihau Bay. • Waihau Bay comprises a seabed that is too shallow and rocky for the navigation of large vessels. • Orete Point could potentially provide enough space in the backshore to construct a barge facility, but this landform contains a well know and significant pa site. • Overall, not suitable.
Pāpātea Bay	• Offers a degree of shelter from easterly and southerly winds. • Significant distance from forests in Gisborne District. • Raukokōre River is dynamic (same comments apply as for Tikitiki). This river dominates the central and eastern segments of the bay and the Te Waiti Stream creates similar impacts (but on a small scale) for the western segment of the bay. • There are large wetlands located in the backshore areas.

Embayment	Constraints and opportunities
	• Overall, not suitable.
Paharoa Bay	• Offers a degree of shelter from easterly and southerly winds. • Significant distance from forests in Gisborne District. • Kereū River is dynamic (same comments apply as for Tikitiki. • There is a Marae located at the northern end on elevated land overlooking the embayment. • There is not enough space between the shoreline and SH 35 to construct and operate a barge facility at the southern end and the northern end has reefs located on the seabed and a cliffed shoreline. • Overall, not suitable.
Te Kaha	• Offers a degree of shelter from easterly and southerly winds. • Significant distance from forests in Gisborne District. • There are several embayments located in close proximity to Te Kaha, however all of these have similar characteristics which are there is not enough space between the shoreline and SH 35 to construct and operate a barge facility, there are dwellings, schools, Marae and resorts present and they comprise a cliffed shoreline or a seabed that is too shallow and rocky for the navigation of large vessels. • Overall, not suitable.
Ōmāio	• Offers a degree of shelter from easterly and southerly winds. • Significant distance from forests in Gisborne District. • Hāparapara River at northern end is dynamic (same comments apply as for Tikitiki). Central segment of bay does not provide enough space between the shoreline and SH 35 to construct and operate a barge facility and there is a Marae close to the shoreline. Southern end of the bay comprises a seabed that is too shallow and rocky for the navigation of large vessels and backshore area has numerous dwellings located within it. • Overall, not suitable.
Maraenui	• Offers a degree of shelter from easterly and southerly winds. • Significant distance from forests in Gisborne District. • Motu River at northern end is dynamic (same comments apply as for Tikitiki). Central and southern end of bay backshore area has numerous dwellings, a School and Marae located within it. • Overall, not suitable.
Hawai	• Offers a degree of shelter from easterly and southerly winds. • Significant distance from forests in Gisborne District.

Embayment	Constraints and opportunities
	• Hawai River at northern end is dynamic (same comments apply as for Tikitiki). Northern end of bay backshore area has numerous dwellings, a campground and Marae located within it. • The entire bay does not provide enough space between the shoreline and SH 35 to construct and operate a barge facility. • Overall, not suitable.
Tōrere	• Offers a degree of shelter from easterly and southerly winds. • Significant distance from forests in Gisborne District. • Hawai River at northern end is dynamic (same comments apply as for Tikitiki). Waiiti Stream and other rivers flow through the backshore throughout the entire bay. • Northern end of bay backshore area has numerous dwellings, Marae and a School located within it. Wetlands are present in the central segment of the embayment. Southern end of embayment backshore area has numerous dwellings. • Overall, not suitable.

5 Te Araroa

From Table 4.1 it can be seen that the only constraint affecting the Te Araroa site is the wetlands in the backshore and that key opportunities relate to this site that are not able to be attained at any other site. On this basis, Te Araroa is the proposed location for the barge facility. The barge facility is proposed within Te Araroa on Te Rimu Trust Land in the location shown in Figure 5.1 and Figure 5.2 below.

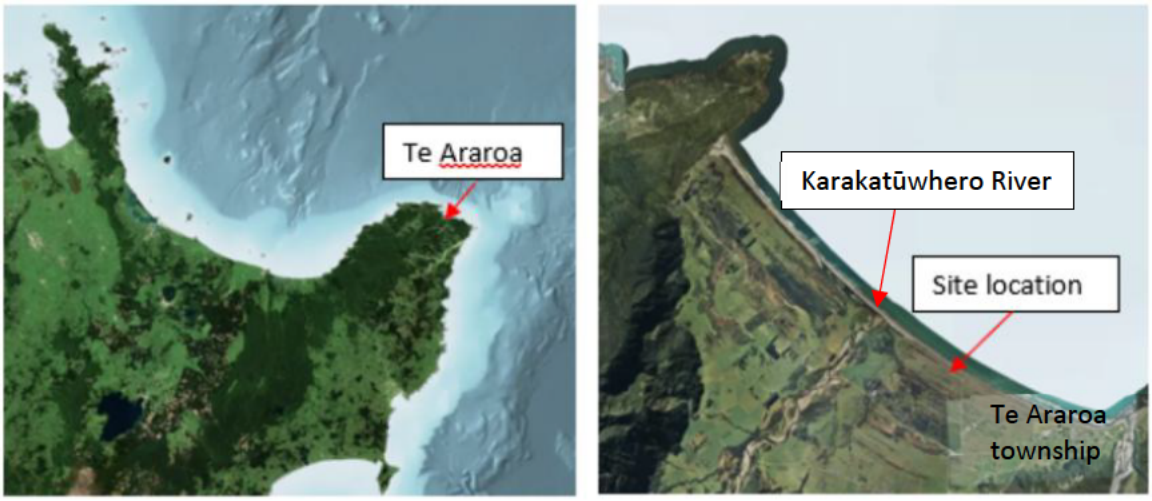

Figure 5.1: Site location

Figure 5.2: Concept plan

The barge facility is proposed to be located within the site location shown in Figure 5.1 for the following reasons:

- The Te Rimu Trustees ("TRT") control their ancestral land and have mandate to pursue the proposal from their shareholders. The majority of land within Kawakawa Bay in Te Araroa is Māori owned. The facility must be located on land in which the land owners have mandate and want to pursue the proposal such as the TRT owned land; and
- The TRT are not a requiring authority under the Resource Management Act 1991, and do not have the option of seeking to acquire land compulsorily under the Public Works Act 1981; and
- The proposed location is appropriate because west of the Karakatūwhero River there are high value wetlands and the migrating mouth of the river which should be avoided, and east of the proposed location the facility would be located too near to the Te Araroa township which could mean that noise, dust, lighting, and vibration effects of the port impact on residents.

Within TRT land the barge facility is proposed to be located within the location shown in Figure 5.2 for the following reasons:

- Two other options were identified on TRT land – one within the Karakatūwhero River outlet, and then one slightly east of the river outlet. The current site, which is at the eastern extremity of TRT land was selected due to reduced ecological effects, and damage to wetland (i.e., at the proposed location only the breakwaters and dredged access channel will result in drainage of a section of degraded wetland). At the other more westward locations in TRT land more wetland (with higher value) and river habitat would be affected. In summary, the proposed barge facility has been shifted as far eastwards on TRT land.

6 Design

The project has a functional need to be located adjacent to the coast due to its need to provide coastal access for vessels. Another option considered was to undertake reclamation of the CMA in order to establish the facility (i.e., to move seaward of the section of wetland which will be affected). This option was not pursued, as it would have greater environmental effects than the preferred barge port option in the backshore.

7 Summary

In summary, the above assessment demonstrates that the location proposed by TRT for a barge port facility is the most appropriate location on the East Cape taking account of many different macro and micro level considerations. On this basis, the proposed barge facility has a functional need to be located in the location proposed by TRT.

8 Applicability

This report has been prepared for the exclusive use of our client HEB Construction Limited, with respect to the particular brief given to us and it may not be relied upon in other contexts or for any other purpose, or by any person other than our client, without our prior written agreement.

We understand and agree that our client will submit this report as part of an application for resource consent and that the consenting panel will use this report for the purpose of assessing that application.

Tonkin & Taylor Ltd

Report prepared by:

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Hayley Jones
Environmental Consultant

Authorised for Tonkin & Taylor Ltd by:

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Peter Millar
Project Director

Technical review by Reuben Hansen, Principal Environment Consultant

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Appendix A Buddle Finlay legal advice

BUDDLE FINDLAY

Memo

15 July 2022

To: Richard Clarke and Tiwana Tibble, Te Rimu Trust

Copy: Hayley Jones, Tonkin & Taylor

From: David Randal, Thad Ryan, and Chelsea Easter

Te Araroa proposed barge facility – advice on 'specified infrastructure' and 'functional need'

Tēnā kōrua Richard, Tiwana,

1. Thank you for your instructions in relation to the Te Araroa proposed barge facility (**project**).

2. Following discussions with Tonkin & Taylor, we have been asked to advise on the application of the 'specified infrastructure'[1] and/or 'functional need'[2] requirements of clause 3.22(1)(b) of the National Policy Statement for Freshwater Management 2020 (**NPS-FM**) and regulation 45(2) of the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (**NES-F**).

3. Our advice, in summary, is as follows:

   (a) In light of Tonkin & Taylor's planning analysis, we consider there is a strong argument that the project is 'regionally significant infrastructure' and therefore falls within the definition of 'specified infrastructure' in the NPS-FM; and

   (b) Tonkin & Taylor have identified a series of factors which support a conclusion that the project has a 'functional need' to be established in its proposed location. Further support for that conclusion is provided by the High Court's decision in *Poutama Kaitiaki Charitable Trust v Taranaki Regional Council (**Poutama**),* **attached**.[3]

Regionally significant infrastructure / specified infrastructure

4. We have reviewed the planning analysis on the 'regionally significant infrastructure' / 'specified infrastructure' requirement from Tonkin & Taylor in relation to the project, as well as the legal advice provided by Derek Nolan QC to the Expert Consenting Panel for the Thames Kōpū Marine Precinct project.[4]

5. Regulation 45(2) of the NES-F provides that earthworks land disturbance within, or within a 10 m setback from, a natural wetland is a discretionary activity if it is for the purpose of constructing specified infrastructure. That regulation then defines 'specified infrastructure' to include (relevantly) "*regionally significant infrastructure as identified as such in a regional policy statement or regional plan*".

[1] As defined in clause 3.21 of the NPS-FM and noted as a requirement in clause 3.22(b)(ii) and (iii). Of relevance for this project appears to be (b) "*Regionally significant infrastructure identified as such in a regional policy statement or regional plan*."
[2] As defined in clause 3.21 of the NPS-FM and noted as a requirement in clause 3.22(b)(iii).
[3] *Poutama Kaitiaki Charitable Trust v Taranaki Regional Council* [2022] NZHC 629.
[4] Legal advice: Kōpū Marine Precinct – specified infrastructure (31 January 2022); available at: Microsoft Word - Draft opinion on Option 2 and specified infrastructure - final.docx (epa.govt.nz)

6. Clause 3.21 of the NPS-FM also provides for a definition of 'specified infrastructure' which again includes (relevantly) "*regionally significant infrastructure as identified as such in a regional policy statement or regional plan"*.

7. As such, both the NPS-FM and NES-F anticipate that regional planning documents will specifically identify 'regionally significant infrastructure' to guide the application of the relevant NPS-FM and NES-FM provisions.

8. However, the Tairāwhiti Resource Management Plan (**TRMP**), which includes both regional policy statement and regional plan provisions for Tairāwhiti / Gisborne, predates the NPS-FM and the NES-F. It has not yet been updated specifically to identify 'regionally significant infrastructure', as anticipated by the NPS-FM and NES-F.

9. With that in mind, we agree that a purposive approach is appropriate to identify if the project is 'regionally significant infrastructure' for the purposes of:

   (a) regulation 45(2) of the NES-F; and

   (b) the definition of 'specified infrastructure' in clause 3.21 of the NPS-FM (which includes 'regionally significant infrastructure').

10. Tonkin & Taylor have identified that there is strong support for finding the project amounts to 'regionally significant infrastructure' (and would be identified as such if the TRMP had a list), in:

    (a) the TRMP (including the regional policy statement objectives and policies); and

    (b) Te Tairāwhiti Regional Land Transport Plan.

11. We agree that those provisions, and the application of a purposive approach to the relevant NES-F and NPS-FM provisions, support the conclusion that the project amounts to 'regionally significant infrastructure'.

Functional need

12. Clause 3.22 of the NPS-FM sets out a policy requirement that the loss of extent of natural inland wetlands be avoided. That is subject to listed exceptions, including the pathway for 'specified infrastructure' in clause 3.22(b).[5]

13. As set out above, clause 3.21 of the NPS-FM defines specified infrastructure to include "*regionally significant infrastructure identified as such in a regional policy statement or regional plan*". As set out above, we consider there is a strong argument that the project qualifies as 'regionally significant infrastructure' and 'specified infrastructure'.

14. The pathway for the construction of specified infrastructure under clause 3.22(b) of the NPSFM requires that:

    (i) …

    (ii) *the specified infrastructure will provide significant national or regional benefits; and*

[5] Clause 3.22 sets out a similar policy position in respect of rivers.

(iii) there is a functional need for the specified infrastructure in that location; and

(iv) the effects of the activity are managed through applying the effects management hierarchy provisions.

15. Tonkin & Taylor address the significant benefits and effects management requirements in their analysis.

16. The 'functional need' requirement has recently been considered carefully by the Courts in relation to two Waka Kotahi NZ Transport Agency projects – Te Ara o Te Ata: Mt Messenger bypass project and Te Ahu a Turanga: Manawatū Tararua Highway. In both cases the Courts found that there was a functional need for the project to occur in the identified location which had been "*identified after consideration of options in the route designation process*."[6]

17. In particular, the High Court recently considered an appeal from the Environment Court's decision on the Te Ara o Te Ata project.[7] In relation to the 'functional need' requirement in the NPS-FM, the Court held that:

(a) it is not necessary to demonstrate that there are no possible alternative locations in order to fulfil the functional need requirement – practicalities can and should be considered;[8]

(b) there is a fact- and context-specific consideration to be undertaken when considering the functional need requirement;[9] and

(c) the extent to which alternative options have been considered is important.[10]

18. The High Court emphasised that it is important not to read the 'functional need' requirement so narrowly as to defeat the purpose of the 'specified infrastructure' pathway / exemption. The mere fact that there is some other possible alternative location for the activity does not mean the functional need requirement is not met:

> "*…the existence of any conceivable alternative would make the specified infrastructure exception in cl 3.22(1)(b) otiose. Such redundancy could not have been intended.*"[11]

19. We have reviewed the planning analysis from Tonkin & Taylor in support of there being a functional need for the project in its proposed location, in light of the High Court's findings in that case. We agree that the factors identified by Tonkin & Taylor, including the limited suitable locations for geomorphological, logistical and cultural reasons, weigh in favour of the project meeting the functional need requirement. We note that (unlike Waka Kotahi NZ Transport Agency), the trustees of Te Rimu Trust do not have requiring authority status under the RMA, and cannot pursue compulsory acquisition via the Public Works Act 1981. That puts a significant limit on the extent to

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[6] *Director-General of Conservation v Taranaki Regional Council* [2021] NZEnvC 27, (2021) 22 ELRNZ 557 at [41]; *Waka Kotahi NZ Transport Agency v Manawatū-Whanganui Regional Council* [2020] NZEnvC 192 at [314].
[7] *Poutama Kaitiaki Charitable Trust v Taranaki Regional Council* [2022] NZHC 629.
[8] At [51] and [57].
[9] At [58].
[10] At [41(c)] and [58].
[11] At [57].

which the trustees can pursue options on land that they do not have property rights to, and is a matter that should probably be considered in the 'functional need' analysis.

20. For the purposes of the eventual application for resource consents under the COVID-19 Recovery (Fast-Track Consenting) Act 2020, the Expert Hearing Panel will expect a fulsome explanation of the process followed in considering alternative locations for the project, and the constraints associated with that task.

Nāku noa, nā

David Randal
Partner

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s 9(2)(a)