

Part VIII: National policy statements and national environmental standards

National Environmental Standard for Freshwater Management Regulations 2020 (NESFM)

The project involves works in a 'natural wetland'. The proposed barge facility meets the definition of 'specified infrastructure'¹ and therefore the activity to undertake earthworks to construct the barge facility is a discretionary activity under Rule 45 (2) of the NESFM as follows:

45 Discretionary activities

(2) Earthworks or 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.

Specified infrastructure is defined as any of the following:

- a Infrastructure that delivers a service operated by a lifeline utility (as Defined in the Civil Defence Emergency Management Act 2022);
- b Regionally significant infrastructure identified as such in a regional policy statement or regional plan (emphasis added); and
- c Any public flood control, flood protection, or drainage works carried out:
 - i. By or on behalf of a local authority, including works carried out for the purposes set out in section 133 of the Soil Conservation and Rivers Control Act 1941; or
 - ii. For the purpose of drainage by drainage districts under the Land Drainage act 1908.

T+T consider that the proposed barge facility meets the definition of 'regionally significant infrastructure' and can therefore be considered 'specified infrastructure' for the following reasons:

- There is no definition of regionally significant infrastructure under the TRMP (which includes the Regional Policy Statement). Further, the Regional Policy Statement (RPS) (2018) pre-dates both the NES-FM and National Policy Statement for Freshwater Management 2020 (NPS-FM). Put another way, the TRMP does not yet reflect the NES-FM and NPS-FM expectation that regional policy statements and regional plans will identify regionally significant infrastructure.
- Given there is no definition, full consideration of the RPS and regional plans is required as to whether the proposed barge facility is a piece of regionally significant infrastructure. This approach accords with a purposive interpretation and the legal advice from Derek Nolan, QC for the Thames Kōpū Marine Precinct project².
- Cargo loading facilities are included within the definition of "infrastructure" in the TRMP and the Resource Management Act (RMA).
- The commercial component of the proposed barge facility aligns with the RPS (section B3.4). In particular;
 - Objective B3.5.1(1) *The provision by relevant organisations of safe, efficient, and convenient rail, air, port and road transport services in a way that avoids, remedies or mitigates adverse effects on the natural and physical environment;*
 - Policy B3.5.2(3) *To recognise and promote the environmental and economic advantages of efficient rail and sea;*
 - Policy B3.5.2(4) *To encourage efficient and sustainable transport and utility networks in the region;*

¹ As defined in the National Policy Statement for Freshwater Management 2020 (NPS-FM).

² Legal Opinion from Derek Nolan QC to the Kopu Marine Precinct Expert Consenting Panel dated 31 January 2022. <https://www.epa.govt.nz/fast-track-consenting/referred-projects/kopu-marine-precinct/reports-and-advice/>. The panel appointed Derek Nolan QC to provide legal advice on the matter regarding 'specified infrastructure'.

Policy B3.5.2(6) *To be willing to consider new transport options – such as barging or new port facilities – which might reduce the region’s dependence on roading; and*

Policy B3.5.2(7) *To encourage efficient and sustainable port developments.*

The proposed barge facility also aligns directly with the strategic objectives of the Te Tairāwhiti Regional Land Transport Plan (RLTP) including;

- ‘A transport system that is healthy and safe for all users, with no deaths or serious injuries.’
- ‘A land transport network that is resilient to changes in climate, land use and demand’
- ‘A transport system that enables the efficient and reliable movement of people and goods to, from and throughout the region’; and
- ‘A transport system which supports low-carbon travel and communities and has minimal impact on the environment’

Existing and likely future challenges for the transport network are outlined within the RLTP including land slippage closing roads (and no alternative local roads creating significant detour times which affect supply chains), freight impacts on the road network, and climate change effects are likely to compound the existing resilience related issues on the network. The barge facility aligns with the resolutions to these issues and policies including ‘Explore the potential for and support the development of rail and coastal shipping as alternatives to road freight’ and that ‘Exports and imports are supported through appropriately maintained intra- and inter-regional connections which offer a choice of mode including low-carbon alternatives (e.g. rail and coastal shipping).’

Further, a priority investment/activity identified within the RLTP is for a coastal shipping investigation project titled the ‘Te Tairāwhiti Coastal Shipping Investigation Project’. One of the purposes of the RLTP is to present the activities that are seeking funding through the National Land Transport Programme (NLTP), which must be consistent with the Government Policy Statement (GPS) to secure funding. The current GPS strategic priorities are shown within the Figure below:



Figure: Government Policy Statement strategic priorities Source: Tairāwhiti Regional Land Transport Plan

The proposal has been allocated funding through the NLTP and therefore is considered to be consistent with the GPS.

The proposed barge facility is likely to create both value and long term benefits for the region as a whole. There have been several assessments undertaken to explore the potential economic and social benefits of the proposed barge facility, and these demonstrate that if the facility goes ahead, it would be considered regionally significant. The proposed barge facility will support local industries and communities and stimulate economic growth which is discussed in the strategic overview. Through policy and funding allocations (including to TRT), the Government has signalled a strong intent to develop the "blue highway" along the coastline of New Zealand to facilitate the transport of natural resources and commodities between regional New Zealand and the major export ports. For the East Cape area, the proposed barge facility provides a dedicated facility for transporting products to export markets and is very much aligned with and is a critical component of the blue highway.

On the basis of all the above, the proposed barge facility is considered "regionally significant".

The recreational aspects of the project (boat ramp, beach, water sports area, recreational berthing) are not located within a natural wetland. The only area of natural wetland which will be affected by the works is in the location of the breakwaters and dredged access channel. Although some potential recreational aspects (i.e., recreational charters) may utilise the dredged access channel, this is supplementary to the principal purpose of the dredged access channel for safe navigation of vessels involved in commercial operations.

National Policy Standard for Freshwater Management (2020) (NPSFM)

Clause 3.22 (Natural inland wetlands) of the NPSFM requires that;

(1) Every regional council must include the following policy (or words to the same effect) in its regional plan(s):

The loss of extent of natural inland wetlands is avoided, their values are protected, and their restoration is promoted, except where (emphasis added):

(a) the loss of extent or values arises from any of the following:

- (i) the customary harvest of food or resources undertaken in accordance with tikanga Māori*
- (ii) restoration activities*
- (iii) scientific research*
- (iv) the sustainable harvest of sphagnum moss*
- (v) the construction or maintenance of wetland utility structures (as defined in the Resource Management (National Environmental Standards for Freshwater) Regulations 2020)*
- (vi) the maintenance or operation of specified infrastructure, or other infrastructure (as defined in the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (emphasis added)*
- (vii) natural hazard works (as defined in the Resource Management (National Environmental Standards for Freshwater) Regulations 2020); or*

(b) the regional council is satisfied that:

- (i) the activity is necessary for the construction or upgrade of specified infrastructure; and*
- (ii) the specified infrastructure will provide significant national or regional benefits; and*
- (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 (emphasis added).*

The proposed barged facility qualifies as 'specified infrastructure' under the definition of that term in clause 3.21 of the NPSFM: it is "*regionally significant infrastructure identified as such in a regional policy statement or regional plan*", for the reasons set out above. The attached legal advice from Buddle Findlay includes

commentary on the application of clause 3.22(b) of the NPSFM, and in particular the 'functional need' test. In light of that advice, T+T consider that the proposed barge facility has a functional need to be established in its location for the following reasons:

1. The proposed barge facility needs to be located generally in the eastern vicinity of East Cape. This is because it is critical the facility is located adjacent to its catchment of maturing plantation timber the (intended primary cargo) and the facility needs to be centrally located to the intended export ports for the primary cargo via the government's 'blue highway'.
2. The barge port proposal has secured significant funding from the Government under the blue highway initiative as part of decarbonisation and traffic safety initiatives. The TRT site was specifically identified in the funding allocation.
3. The proposed barge port facility needs to be located within a sheltered embayment for efficient and safe barging operations, where the backshore area is flat (i.e. not characterised by cliffed unconsolidated sediments like much of the East Cape).
4. Hicks Bay and Te Araroa were looked at as potential options for a port facility by CIP (the Government) as those sites meet criteria 1-3. CIP commissioned high level effects assessment work and used that work to select Te Araroa over Hicks Bay, primarily due to cultural reasons. 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.
5. Within Kawakawa Bay (Te Araroa) itself the proposed barge facility needs to be located on TRT whenua and in the proposed position for the following reasons:
 - The TRT trustees control their 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 TRT trustees are not a requiring authority under the RMA, and do not have the option of seeking to acquire land compulsorily under the Public Works Act 1981.
 - The site is the preferred location on TRT Land. Two other options were identified on TRT Land – one within the Karakuwhero River, and then one slightly east of the river. The current site 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 wetland). At the other locations more wetland and river habitat would be affected. In summary, the proposed barge facility has been shifted as far eastwards on TRT Land as practicable while ensuring it does not encroach on an adjacent Urupa.
 - 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.
 - Notwithstanding the land ownership issue above, the proposed location is appropriate given that 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.

New Zealand Coastal Policy Statement 2010 (NZCPS) 2010

The NZCPS is relevant due to the need for the project to obtain coastal permits for works in the Coastal Marine Area ("CMA"). In a practical sense, the reference to and broad interpretation of "coastal environment" in the NZCPS, means that all of the project must be regarded as being within the coastal environment.

Under s104(1)(b)(iv) a consent authority, when considering an application for a resource consent and any submissions received, must, subject to Part 2 of the Act, have regard to, amongst other things, any relevant provisions of the NZCPS.

The relevant provisions of the NZCPS are briefly addressed as follows:

Objective 1 - To safeguard the integrity, form, functioning and resilience of the coastal environment and sustain its ecosystems, including marine and intertidal areas, estuaries, dunes and land, by:

- maintaining or enhancing natural biological and physical processes in the coastal environment and recognising their dynamic, complex and interdependent nature;*
- protecting representative or significant natural ecosystems and sites of biological importance and maintaining the diversity of New Zealand's indigenous coastal flora and fauna; and*
- maintaining coastal water quality, and enhancing it where it has deteriorated from what would otherwise be its natural condition, with significant adverse effects on ecology and habitat, because of discharges associated with human activity*

The fundamental aspects of the coastal environment referred to in Objective 1 above will not be jeopardised by the project. None of the values present at the site and in the area are significantly or solely representative of the wider coastal environment in the area, and neither are the biological values of the site of particular importance. As a result, granting consent to the project would not be inconsistent with the requirements of Objective 1.

Objective 2/ Policy 13/ Policy 14/ Policy 15 - these provisions cumulatively seek to preserve the natural character of the coastal environment and protect natural features and landscape values, while encouraging restoration of the coastal environment. The site is classified as Outstanding Natural Landscape (ONL), and the project will generate a degree of adverse effect through the introduction of the activity to the environment. In that regard the project is inconsistent with the requirement of Policy 15 to avoid adverse effects. However, that inconsistency is tempered by the fact that the ONL classification is dated and when the component factors of naturalness and landscape are considered in accordance with current practice, the ONL status is questionable and the project can be designed to align with the component factors. Further, the project through the implementation of mitigation and enhancement measures is consistent with those parts of Objective 2 and Policy 14 that promote the restoration of natural character in the Coastal Environment.

Objective 3/Policy 2 – these provisions seek to take account of the principles of the Treaty of Waitangi, recognise the role of tangata whenua as kaitiaki and provide for tangata whenua involvement in management of the coastal environment. The project is consistent with this intent given the nature of the applicant and their ownership of the site, the direct benefits that tangata whenua of the wider East Cape area will receive from the project, and the fact that matauraanga Māori will be incorporated into the design and construction of the project.

Objective 4/Policy 18/Policy 19/Policy 20 – these provisions seek to maintain and enhance public access qualities and recreational opportunities in the coastal environment, including through the provision of public walking access that is safe, practicable and free of charge. While the construction of the access channel through the beach and foredune will create a barrier to walking access along the beach itself, the project as a whole remains consistent with these provisions given the walkway that will be created from the project site to/from Te Araroa settlement, and the fact that the project will provide new water based recreational opportunities through the use of the constructed basin for water sports such as waka ama and the enhanced ability for recreational vessels to access the ocean.

Objective 5 – this objective seeks to ensure that new development in the coastal environment is located away from areas prone to natural hazard risk (taking into account climate change). The project is consistent with this objective given that the barge facility is located as far away as practicable from the river related hazards, will be designed to be resilient to seismic hazards and needs to be in the coastal environment for operational purposes, so cannot be moved away from coastal hazards. The design of the facility will make allowance for climate change induced sea level rise.

Objective 6 – this objective seeks to *enable people and communities to provide for their social, economic, and cultural wellbeing and their health and safety, through subdivision, use, and development, recognising that:*

- *the protection of the values of the coastal environment does not preclude use and development in appropriate places and forms, and within appropriate limits;*
- *some uses and developments which depend upon the use of natural and physical resources in the coastal environment are important to the social, economic and cultural wellbeing of people and communities;*
- *functionally some uses and developments can only be located on the coast or in the coastal marine area*

Policy 9 – *Recognise that a sustainable national transport system requires an efficient national network of safe ports, servicing national and international shipping, with efficient connections with other transport modes, including by:*

(a) ensuring that development in the coastal environment does not adversely affect the efficient and safe operation of these ports, or their connections with other transport modes; and

(b) considering where, how and when to provide in regional policy statements and in plans for the efficient and safe operation of these ports, the development of their capacity for shipping, and their connections with other transport modes.

Policy 10 (3) – *In considering proposed reclamations, have particular regard to the extent to which the reclamation and intended purpose would provide for the efficient operation of infrastructure, including ports, airports, coastal roads, pipelines, electricity transmission, railways and ferry terminals, and of marinas and electricity generation.*

The project is entirely consistent with Objective 6. The barge port and its associated commercial and recreational functions are reliant on a coastal location, and will be important to the social, economic and cultural wellbeing of the people of the East Cape through the employment opportunities it will generate and the ability to export materials grown on ancestral land, with attendant flow on economic benefits. The project itself is an appropriate form of development for the site, and the site is an appropriate location given that with the implementation of mitigation and enhancement measures the quality of the environment of the site and general area will be enhanced while retaining the components of the area that fundamentally contribute to its naturalness and natural character.

Likewise the construction and operation of the barge port project is entirely consistent with Policy 9 that is specific to Ports, and recognises that a sustainable national transport system requires an efficient national network of safe ports, servicing national and international shipping, with efficient connections with other transport modes. Policy 10(3) also recognises the importance of ports in the coastal environment, by requiring particular regard to be had to the extent to which a reclamation in the coastal environment would provide for the efficient operation of a port.